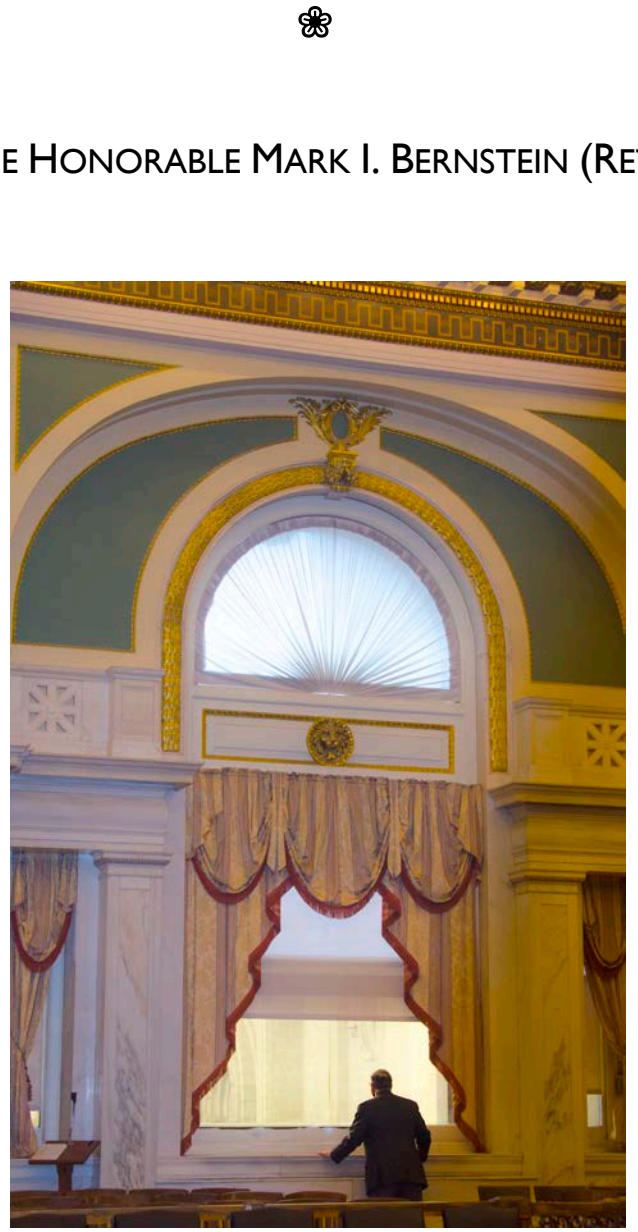
THE TRIALS OF A COMMON PLEAS JUDGE



THE HONORABLE MARK I. BERNSTEIN (RET.)

PHILADELPHIA, PENNSYLVANIA

PHOTOGRAPHS BY TRACY A. STEEN

Chapter One

A Strange Day

MANY HAVE ASKED me why I run my courtroom the way I do. They know I am a stickler for knowing and following the rules and that I am a strict constructionist for rules and statutes. I am sometimes asked why I spend so much time concentrating on the language of the rules and the principles behind them. Finally, after years of dodging the questions with glib responses, I have decided to reveal a true story, so fantastic that had it been told earlier I would have been accused of making things up to garner attention or to justify eccentric behavior. But in my last term of office, with retirement becoming a visible reality, I now hope my experience may prove instructive to those who are able to see the truth. And it

will also explain my insistence on adherence to the rules of court and the statutes of our Commonwealth.

This amazing series of experiences began for me like any other day on July 3, 1991, in the fourth year after I had been appointed to the Court of Common Pleas of Philadelphia. Seated high on the elaborate bench of Courtroom 443, surrounded by an ornate 1891 wood relief that dramatically depicted scenes of justice dispensed, looking out over the empty panorama of a spectacular courtroom designed for an audience of 200, I watched as my non-jury commercial contract case droned on. My mind occasionally wandered.

I contemplated the empty, delicately carved, oak jury box; and then the witness box where the defendant testified to a fantastical rendition of his simple failure to pay a just debt. I looked around and saw the highly polished bar of the court and the secondary bar usually used as a front bench seat for associate attorneys, witnesses, and other direct participants. This secondary bar delineated and barricaded the attorney work area from the space that was reserved for hundreds of visitors, but which that day was occupied only by files containing documents for the case. Sometimes this space was filled with throngs watching the proceedings and participating in the story-world spun under oath. However, this day there was no one.

I pondered what famous trials had occurred in this elaborate courtroom over its hundred years' use. Had the visitor's area ever been filled to capacity? Did they

really need such a large area for lawyers when City Hall was first constructed, before high tech equipment, video projectors, screens, and TVs were brought into court? What cases had this room seen when this courtroom was new? Did judges back then sometimes allow their thoughts to drift as mine did—as this dispute between two partners, who had never raised a voice to each other as long as there had been sufficient cash to divide (tax free) but who now needed to wrap up their sordid affairs, bleated on and on with irrelevant details?

As I looked around wondering what kinds of cases were heard during hot stuffy summers in a courtroom without air conditioning, I realized that two of the four window air conditioners, which under normal circumstances managed to barely keep the courtroom at a tolerable temperature, had ceased functioning entirely. Although that meant I was able to hear more clearly, it also meant (as I shortly became acutely aware) that the room had gotten not inconsequentially hotter. Sitting in my oversized, overstuffed judicial chair, little beads of sweat began to form on my forehead in that humid environment. A clammy feeling arose. Oddly, I was also beginning to feel a chill. I focused on the area below the bench where my court reporter's fingers flew on her machine, hypnotically clickity-clacking. As I leaned back in my chair, the testimony seemed to fade as a not quite dizzy feeling swept over me. I leaned forward to take a sip of water, and I felt as if I were in some other person's body toppling onto the floor.

I have no idea how long I lay under my bench before my disappearance was first noticed. My court officer rushed to my assistance. He fanned me, carefully sat me up, and offered me a drink of tepid water. As I try to recollect every detail of these events 23 years ago, I do not think that I lost consciousness even momentarily.

Shortly I regained my composure, stood up, took off my robe, and went into chambers, the lawyers having already been told the case would resume the next morning. Since I was feeling quite capable, although not quite myself, I resolved that I would, without assistance, go to see my personal physician at the Hospital of the University of Pennsylvania—purely, in my mind, as a precaution. I assured everyone that I could manage on my own and that I would see them all when I returned within the hour.

The door to my chambers closed behind me. I walked down the rarely used interior staircase of City Hall and exited centrally on the north side. Happily, in that brief period of time the oppressive summer humidity had eased because the bright sun had clouded over. The sky darkened—storm clouds seemed to be collecting. I resolved to hail a cab but much to my amazement one of those tourist-inspired festivals had enveloped the entirety of Broad and Market Streets around City Hall. The parade of old-time cars filled Broad Street to such a wondrous extent that it precluded any cabs or even other vehicles crossing to Market. Surprisingly, I did find a line of horse drawn cabs that

must have been recently added as a new tourist attraction. I wondered whether one would assist me to my destination, twenty blocks away—certainly well beyond any normal tourist route. I climbed into the front carriage, identified myself, and inquired, as politely as I could, whether it would be at all possible for me to prevail upon the driver to take me to the Hospital of the University of Pennsylvania at 34th Street. I assured him that I would make it worth his while regardless of the difficulties he might find himself in as a result.

The driver, dressed in period garb, was most friendly and solicitous. He did not complain about having to go so far beyond his accustomed route but said "of course, Judge," as off we trotted. Still not quite feeling myself, the sensation of riding in a horse-drawn cab over what felt like cobblestone was so unsteady that I closed my eyes, began to breath uniformly and deeply, and dozed off. The cabbie most kindly awoke me by saying we had arrived. Because I had mentioned I would be returning to City Hall, and maybe because he knew I was a judge, he said he would wait.

Entering the emergency room, I went straight to the receptionist. I identified myself as Judge Bernstein, and I described my situation. I asked to see Dr. Glueson, my longtime doctor and close personal friend—or if he was not available, any other physician (for what I knew would be simple reassurance that everything was really of no serious concern).

I was quite surprised that the receptionist responded that she could find no Dr. Glueson on the hospital register. She said she would be happy to ask Dr. Prichard to see me, immediately. I was ushered into what must have been the examining room for VIPs or for ornamental exhibits: it was significantly larger than the cubicle I expected and was fitted out with the most exquisite antique medical implements and examining tables.

My feeling of being given judicial preference was reinforced when I had hardly any wait before Dr. Prichard appeared in his white gown, trailed by two nurses complete with nursing bonnets who scurried about preparing implements on a cool tray and placing wet compresses on my forehead. I described my situation and explained that I was certain it was nothing. With a very fine stethoscope hanging from his neck and an eye piece wrapped around his head, Dr. Prichard proceeded to a basic physical examination. He checked my blood pressure using a most delicate and decorative piece of equipment. He tested my reflexes with an antique hammer. He pronounced that I probably had merely experienced a near syncopatic episode. He advised that I probably should not be hearing cases at all in the stifling heat of the summer in those closed up courtrooms of City Hall but rather should follow the example of the other judges and restrict my activities to paperwork or better yet simply close my offices until the cooler weather returned. He solicitously added that I was even

running the risk of serious disease by remaining in the city on a daily basis rather than cooling myself in the salubrious environs of Mt. Airy or Chestnut Hill. I did not know (unless he had received the hospital computer record) how he knew I lived in Mt. Airy. After again suggesting I close up shop for the summer, he pronounced me fit to return to City Hall and asked me if I had any questions. I have to admit that the attention (and perhaps the cool compresses, as well as simply the relaxation and reassurance) had worked wonders. I felt fully capable of resuming my work.

All sense of faintness having left, I thanked everyone and offered my insurance card, but they insisted that they would take care of everything. I declined their offer of a lift home or back to my office. I thanked them for their kindness and assured them that I felt most capable of simply hailing a cab outside. Never have I been treated so well or made to feel so important during an emergency room visit.

Imagine my surprise when the same horse drawn cab was still waiting. Feeling better and thinking that a relaxing open-air ride might very well feel rather nice I accepted his offer to return to City Hall. I did, however, wonder at the route he was taking since we did not pass buildings of the University of Pennsylvania, office towers, or parking lots. Rather, we passed a lively neighborhood of stores with a busy pedestrian and market scene. I was given pause as to whether I had really regained all my senses when I thought I could even see in

the distance, in my mind's eye, glimpses of the old convention center that had been torn down some years before. The Chestnut Street bridge was, however, reassuringly exactly the same, although perhaps a little cleaner than expected. The water of the Schuylkill River was darker and did seem to be running more forcefully than usual for this time of year. I concluded that the storm clouds that had been passing overhead must have dropped extensive rain while I was inside. Once across the bridge the houses appeared as I remembered them, although it was surprising to note how well this neighborhood and its people maintained their sidewalks and stoops, much neater than when I had last passed the area. I also casually noted my surprise that there were so few cars and so many horse drawn carriages and wagons (in what was certainly not the tourist part of town even for a festival day), and that we passed so few traffic signals as we clip-clopped our way towards City Hall.

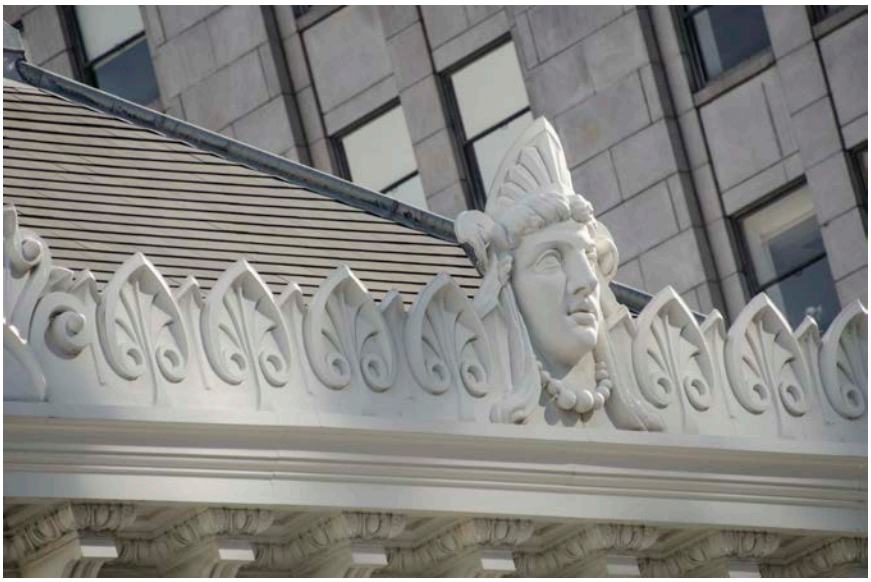
These wonderings came to an abrupt halt when my driver pulled to the curb at the Mayor's City Hall entrance and jumped out to help me down. "It's been a pleasure to serve you, Your Honor," he said. I fumbled in my pockets for my wallet and gave him more than enough in my estimation to cover the hour that he had assisted me (and another sum to ensure that his disappearance from the festival did not occasion any financial loss). I told him to keep all the change since I greatly appreciated the services he had rendered.

Although he looked at me quizzically, he thanked me profusely as I went inside.

The elevators must have been under repair—which was odd since they had been working that morning, seven hours before, but now gave the appearance of having been taken apart and stripped down to their cages, with their doors off. I thought that since I was feeling fine and fully recovered from my previous episode, slowly walking the five flights around the marble circular stair would do me well and I would return to see what work remained in my office, to tell everyone I was fine, and perhaps even to leave on an early train.

Slowly and carefully I walked the marble circular stairs, taking in the sights out the window at every floor until finally reaching the fifth. I walked down those familiar hallways to Room 530 City Hall.

In retrospect I don't understand how I failed to notice that the sign over the door read Judge Bachmann instead of Judge Bernstein. But imagine my surprise (having failed to note the change of name) when my key did not open the door and, upon knocking, the door was opened by a very pleasant young lady I had never seen before in my life and who appeared to have no idea who I was likewise!



CHAPTER TWO

AND TO EVERYONE'S SURPRISE

WHAT CONFUSION SHE must have experienced when I asked her to identify herself and explain why she was in my office. She responded with the exact same questions of me. I told her I was Judge Bernstein and Room 530 City Hall had been my office for over five years. Since I was obviously discomforted by the conversation, Jenny, for that was the young lady's name, became very solicitous and offered me a seat on the plush benches in the chambers anteroom to regain my composure while she would fetch Judge Bachmann, who was fortuitously still in his office. During the moments it took for Judge Bachmann to appear, I noticed that while the physical structure of the room was exactly as I had left it a few hours before, all the computers had been removed, and my pictures and decorations had been replaced by much more expensive original lithographs.

An exquisite tapestry had been hung from the ceiling, which totally transformed the rectangular feel of the entire space. I had only begun to wonder whether I had somehow mistakenly gone to the third floor—and to imagine which of our judges had the resources and taste to decorate such chambers so beautifully—when Judge Bachmann appeared and asked if he could help me.

I responded that I hoped he could begin by explaining what had so dramatically transformed my office so quickly. He was completely taken aback, and he asked if I had identified myself as Judge Bernstein. I assured him that I was Judge Bernstein having been duly appointed and elected and in fact had served continuously, and, I might add, honorably, for over four years. Although apparently confused by my response, he ushered me into my very own office, which to my further surprise had been similarly and suddenly redecorated in Victorian elegance. He invited me to sit down on an antique couch so that we could get to the bottom of this very peculiar situation, which equally intrigued us both.

I found Judge Bachmann to be classically educated and most engaging. He inquired as to whether I knew that I was in Philadelphia, Pennsylvania, and asked for the history of how I became a judge. Thinking back to this discussion I am sure that he believed I was one of those poor unfortunates whose delusional world placed him in an exalted role that he fully believed to be true but which had of course no existence beyond the four

corners of his disturbed mind. However, being of a mind ready to accept all evidence before judiciously reaching any conclusion, Judge Bachmann kindly allowed me to explain in full.

My detailed explanation of how Governor Casey had empaneled lawyers across the state to present to him the most qualified individuals for appointment to a judiciary decimated by corruption intrigued him, rather than convincing him that the medical authorities had to be called. Apparently, I convinced him instead that, whatever my delusions, the depth of my knowledge and the acuity of my judicial thought demonstrated that something truly unusual had indeed occurred.

I explained that I had practiced law in Philadelphia with offices at 16th and Walnut for over a decade (primarily civil litigation and some criminal defense) until the city experienced a horrendous situation where 16 judges had been thrown off the bench for taking petty sums of $300 in gratuities from a labor union, and three or four had actually gone to jail because the gratuities could be connected to actual judicial decisions. In response the governor had created "merit selection" panels, which had recommended me among many others for judgeships. After confirmation by the Senate I took the bench on April 7th and was elected for a full ten-year term the following November. I went on to explain that for three years I had presided over countless criminal cases, many of which were bench trials, until I had most recently been moved to the court's civil division and was

at that very time presiding in Courtroom 443 when I had left City Hall because of the syncopatic episode that I have previously described.

Judge Bachmann stopped me at this point and said that I must be mistaken. I could not have been confirmed in April because the legislature routinely and uniformly meets only January to March before breaking for the summer. My face undoubtedly conveyed such a quizzical look that he thought perhaps he had misheard me. He again asked when I had taken the bench, to which I replied with precision that I had been sworn in by the President Judge Bradley in Room 578, City Hall, on April 7, 1987, at 2:00 p.m.

Imagine the shock I saw in Judge Bachmann's face as he realized that I was fully in control of all my senses. He went to his desk, picked up the evening Bulletin, and showed me the date on the masthead. It read July 3, 1913.

I told him that of course this was impossible and the paper obviously a replica. But after some significant toing and froing we simultaneously came to the inevitable conclusion that somehow after my fall from my chair I had awakened almost 80 years earlier.

Judge Bachmann suggested that while we figured out what was happening and because I was a fully commissioned judge, I should be treated to all the emoluments of my office (which I must say I learned were significantly greater in 1913 than 1991) and most graciously offered that I was more than welcome to stay

with him at his house in the Fairmount suburb of town until a return to my proper era could be arranged.

He graciously asked if I would wait so he could summon his President Judge, the Mayor, and the City Fathers to meet me. Believing that I needed time alone to sort out the amazing transformation I found myself in, I agreed but asked for something to drink while he was away. Although not my usual daytime habit I readily accepted the brandy he offered. He obviously had told his secretary Jennie O'Donnell to check on me frequently, which she did with countless diplomatic excuses or offers of things she could provide.

While alone in what had been my former office (or, more precisely, subsequently my previous office) I wondered in disbelief at the oddity of the situation. Yet in examining the appurtenances and appearances of the chambers—the pens, the paper, the casebooks, the newspaper articles, the pleadings, and the absence of any modern appliances except for the antique telephone—I became convinced that this was no Potemkin village. Indeed, the appellate court reports, sitting on my shelves precisely as they had in 1991 when it had last been my office, ended with the July 1913 decisions! Apparently, I was not dreaming or under any delusion but had in fact performed a reverse Rip Van Winkle. Although this defied all scientific possibility, I was forced to admit the reality that I was in the different world of a time long passed and that until I found a way to restore myself I could only conduct myself in the manner my former law

partner would frequently advise: "When life hands you a lemon make lemonade."

I resolved to learn as much as I possibly could about 1913 and chuckled to myself as I unsuccessfully tried to recall for investment purposes when Xerox and IBM were incorporated and what industries were about to boom when World War would break out. Unfortunately, these historical facts that were suddenly so important had never seemed worthy of note at any earlier time in my life. I couldn't even remember the details of the development of the commercial airline. I found I had little investment knowledge of any immediate use, even with this potential opportunity for easy riches. (But I did think to note that, if I were still in this predicament a decade later, I would sell all my stocks before the Great Depression of 1927… or was it 1926?)

CHAPTER THREE

ACCEPTANCE (OF SORTS) AND A SAD LOSS

MY INVESTIGATIONS OF the chambers and my musings were interrupted by the arrival of a dapper man in his mid-fifties followed by four or five similarly dressed and equally refined gentlemen who most politely introduced themselves each by name and by office held. They had me repeat my entire story from the time I awoke that morning to the time I had first met Judge Bachmann. They all felt the same amazement and incredulity I and Judge Bachmann first experienced. Nevertheless, eventually I convinced them too that I was indeed not an alien from a distant planet nor a person of infirmed mind but rather a visitor from a distant future and that, fortunately or unfortunately, we had all been thrown together with no particular thought of how possibly to extricate ourselves.

Once everyone was satisfied (and amazed at that same truth), we all agreed that I should simply reside

with Judge Bachmann as a guest of the city while the brightest minds pondered what we knew could be only a short visit before a solution was found. We all agreed that in the interim they should teach me all they could about the law and their court and, for the improvement of justice in Philadelphia, obtain from me all they could about my knowledge and experience. The next few days were a blur as I met the governor, councilmen, senators, mayors, scientists, and academics and time after time retold my story. By sticking scrupulously to the truth without trying to magnify my importance I convinced everyone that for better or worse a miracle had occurred.

I became comfortable residing with Judge Bachmann and his many servants at his wonderful mansion at 22nd and Green, from which we daily walked to City Hall. I was the guest of the city at the Academy of Music and the opera. I was fitted for clothing that matched their fashions and was afforded my own carriage to take me on excursions—to visit the seaport and other parts of "old" Philadelphia.

Proud of their justice system and having accepted me as part of their inner circle, my brethren at the bench resolved to teach me the workings of their court (this being of the greatest interest to me). They wished, of course, to show off how professionally and effectively their courts administered justice. Although they believed I was (or at least was sometime in the future to become) a duly commissioned elected judge, it was agreed that I should not actually preside over any cases until and unless the governor and the legislature made the

independent decision that this would be appropriate. We all agreed that should anyone appeal a decision I were to make as a judge, the existential questions that would be presented would be beyond reasonable appellate review. Nonetheless, in anticipation that I might someday return to the bench (or, paradoxically, begin), my (further) juridical education started (or continued) with an introduction to all 19 judges of the Courts of Philadelphia County and with the assignment of Court Administrative Judge Biddle as my guide so I might accurately learn the inner workings of justice in the City of Philadelphia in 1913.

It would probably amaze the reader to describe how sincerely and how graciously the lawyers, the judges, and the entire political establishment—and indeed all the people of Philadelphia—took me to their heart and treated me as an honored guest, how I was fêted and honored once my arrival became generally known, and how, much to my surprise, City Council voted me an annual honorarium equal to the salary of a commissioned judge, the incredible sum of $13,000 a year (this at a time when a successful lawyer was pleased to earn $6,000 or $8,000 in a good year).

Perhaps one day I will be called to write a sociological history comparing the calm and thoughtful manner of life of a time long passed to the chaos and speed of modern life, but that is not my purpose. Let it suffice to say that I was accepted as a learned oddity and a curiosity from a different era, whose eagerness to learn from the people of a long-gone time was wholeheartedly embraced. Since this is intended as a description of court

life and an explanation of judicial conduct I will simply mention without elaboration that after I had overcome everyone's initial disbelief they hosted a round of lavish parties in my honor where the wealthy elite could question and examine me. I became accepted into the civic life of the city, graciously permitted to stay as a guest of Judge Bachmann, who occupied my chambers many decades before I was (or would be) born. I hope I can accurately describe the legal system and the particularities of the individuals who occupied positions of power within that system of justice so long ago so the reader may appreciate the judicial philosophy behind my courtroom requirements and behavior.

Very shortly after my arrival, the legal community was shocked by the surprising and surprisingly unexpected death of the well-respected (though well beyond his time) dean of the bench and bar. Poor Judge Behren—everyone agreed that in his time he was a terrific judge. But by the time I arrived he was 93 and still presiding. He had been a political powerhouse in his day. A ward leader and a candidate for Congress who just barely lost and, as the consolation prize, accepted a judgeship.

Unlike today when, by fiat of the Pennsylvania Supreme Court, we have mandatory retirement age, in 1913 there was no such thing. Judges sat forever. Judge Behren had been a judge for a record setting 36 years and counting. No political leader, no office holder, not even any Supreme Court Justice was willing to tell him that it was time to retire. This was in part due to the respect with which he was held. But one could not discount as a

factor that his son was a State Senator and chairman of the appropriations committee that dealt with court budgets.

Judge Behren had significantly passed his prime. He had trouble seeing and hearing and indeed on occasion during jury trials trouble staying awake. Accordingly, his President Judge mostly presented him with non-jury trials exclusively. It was known to the entire bar that his long-time law clerk, who always sat in the jury box during these non-jury trials, was signaling the judge on objections, and since every decision was held under advisement the verdict was probably, to some large extent, the work of his law clerk as well. Nonetheless, I never heard any criticism of his decisions, which were usually quite appropriate and well-reasoned. However, since everyone knew the story of his age-related challenges, attorneys always tried their cases to the law clerk in the jury box. While meticulously showing respect to the man on the bench it truly was the law clerk whose reactions signaled to the lawyers how they were doing.

Sadly, within a month of my arrival Judge Behren fell and, having broken his hip, died. The funeral at the First Unitarian Church at 21st and Chestnut Streets was a sight to behold. While the entire political and legal community presented themselves to show their respect, an unfortunate atmosphere prevailed outside of the church due to the glad-handing and renewal of acquaintance that always occurs whenever people of the same tribe who have not seen each other for a while are reunited. This was particularly true in the time when

modern communications did not exist, for indeed even telephone conversations were then rare, unreliable, and of poor quality. But it sadly meant the funeral had a carnival atmosphere. Politicians at every entrance and exit touted proposed replacement candidates for judge, hoping thereby to improve the chances of receiving the Republican Party endorsement. These touts, usually accompanied by a young man or cute girl handing out campaign buttons and ribbons, called out to everyone to "come meet the next judge of the Court of Common Pleas." The proposed new judge stood at the door making absolutely sure of shaking every hand, kissing every woman, and patting every child on the head, sometimes having to literally reach over or push someone aside to make contact. It seemed there were three such serious candidates and two or three other wannabes, usually forlornly standing alone wearing ribbons and to my eye a goofy hat to attract attention. It seemed that I was the only one thinking this behavior odd. I must report that during the service itself, which was a fitting tribute to an honest, effective, and well-respected judge, decency prevailed.

To understand the significance of this odd political behavior at an otherwise solemn occasion I must explain the selection process for the judiciary as I came to understand it.


DELPHI
MANET

CHAPTER FOUR

AN EDUCATION BEGINS

THE COURT OF Common Pleas in those days was divided into trinities, each having their own rules, procedures, methods, customs, idiosyncrasies, and distinctive characteristics. Each of these six courts was run by its own President Judge elected by its three members who, after election by the vote of himself and at least one other judge of the same political party, ruled with supreme and ultimate power—like a Latin American dictator whose tenure continued for so long as the military (or in the case of Philadelphia, the political party to which that member belonged) permitted.

One may wonder why a political party could control any one of the six independently elected President Judges who to all external appearances would remain in power so long as one other judge of their court had been treated so fairly or if necessary so preferentially as to remain faithful to the original vote that had elected

his brother President Judge. However, in those days, things did not work as openly, clearly, and apolitically as perhaps one hopes they do today.

Philadelphia in 1913 was controlled by an exceptionally strong Republican political machine, which regularly elected the mayor and almost all other municipal officials and which firmly controlled statewide election to the appellate courts. Those few Democratic Party judges who had achieved office did so strictly at the sufferance of the Republican Party leadership, by a system that I will shortly describe.

The President Judge of each independent court achieved initial election to the bench either because of his long-standing political loyalty and service to the Republican Party or because of a relationship with an individual party official whose turn had come to select a candidate for judgeship, or through family ties to a congressman, state senator, or other plenipotentiary with sufficient political clout to dictate Republican nominees for the bench.

Those few Democrats who achieved seats on the bench did so only because of an unwritten arrangement whereby, in return for the solemn agreement of the Democratic Party chairman not to support true reform or to present strong opposition candidates to any positions of real political power, or perhaps to render support for a needed bridge to end a worthy neighborhood's isolation from the rest of the county, the Republicans would on occasion provide up to a third of the judicial vacancies for selection by Democratic Party leaders.

Unlike today where the weakened political parties have deteriorated possibly to irrelevance and judicial candidates with sufficient independent political backing and financial resources can be elected without party support, in those days the number of judges elected other than through the party process described above could be counted on the fingers of one hand without any need to resort to the use of any digit but the thumb.

Leaders of both parties and judges themselves described this process to me as "merit selection." By "merit selection" they meant that Republican officials, either personally or through their personal designees, met in caucus to weigh the merits of the candidates. "Merits" meant whether the nominee was a member of the bar in good standing—or could with appropriate suggestion in the right quarters be restored to good standing—and had performed sufficient public service to the party—or was sufficiently well connected to those who had—that his turn for a judgeship had come, sometimes having been passed over repeatedly with the solemn promise that he would be next in line when a vacancy occurred. After these merits had been fully evaluated by this elite and themselves meritorious body of citizens in whom the public had repeatedly expressed resolute confidence through repeated election to high office, a slate of "merit selectees" that precisely equaled the number of positions available at election would then be jointly nominated by both parties and presented to voters for electoral confirmation.

So effective was this system in selecting highly qualified individuals who either were above reproach or

whose reproachable reputation had been recently restored by appointment to highly respected commissions and committees for which little or no work was required but no scandalously high compensation was paid, that the selection was ratified by remarkably high margins at every election. Indeed so effective was this system in selecting highly qualified individuals to run for judicial office that the only successful path was the aforementioned service to the party or close relation to an individual whose service to the party or timely needed vote on an issue of political importance required reward at that particular time.

Today, the psychic cost and financial contribution required to obtain party endorsement from the dominant party is hardly worth the expense, beyond the benefit of ensuring that no other candidate achieves that limited advantage which amounts to support in a few wards but access to all ward meetings across the city. In recent years, even party endorsed candidates must maintain independently funded campaigns and expend additional financial resources, frequently to the same politicians who control the party selection process. So the tax for party endorsement, which can be of marginal benefit to nomination, has become a financial reward to the party faithful from those who naively maintain an abiding faith in the system. At the same time, the previous solemn agreement between the parties to present a unified slate has become a myth not only regularly ignored but publicly scoffed at by majority party members as a technique for the redistribution of wealth resources from

one party to another in return for hidden personal favors to party leaders. But I digress.

In those early days of the 20th Century the elite selection committees consisted of luminaries from Philadelphia who were the Republican governor, the Speaker of the House, the Senate President Pro Tempore, a congressman, the mayor, the president of City Council, and highly influential chairmen of committees in the Senate. Sometimes these luminaries could not attend and would be represented by their entirely controlled designees.

I would be remiss if I did not specifically note how different that antiquated system is from current elections or the "merit selection" proposals that are routinely touted by an often shifting and sometimes odd collection of reformers, who are joined by machine politicians whenever it is felt that "reform" credentials are needed. Today's merit selection systems are regularly proposed around election time to afford a veneer of respectability and concern for good government but regularly receive just slightly inadequate support for passage in committee without ever receiving the expenditure of the political capital needed to actually effectuate change.

Under these modern merit selection proposals elected officials such as the Governor, the Speaker of the House, the Senate President Pro Tempore, and significant State Senate and House committee chairs would appoint their controlled supporters as designees, along with a minority of incorruptible members such as the deans of state law schools (who, of course, could never be influenced by the millions of state dollars

received by their universities), to a Merit Selection Panel that would review the qualifications of all who wished to be considered for nomination. These notables would then recommend attorneys for appointment from whom the exact number of vacant judicial positions available would then be selected by the Governor and affirmed by the State Senate.

One can readily see the difference between modern reform proposals and the former party machine selection process where political office holders or their controlled designees convened and upon selection presented the names to the electorate to rubber stamp their nominees. Under the modern merit selection proposals, were they ever to become law, these elected officials would lose their prerogatives, unless of course they controlled their designees, who would form a majority of the Merit Selection Panel, in which case by a one-vote margin they could retain their power to consistently name their nominees.

In an odd conflation of events I learned that 35% of the elected officials who actually picked judges in the early 1900's had spent or would spend some time in jail, as did 35% of the elected officials who would have appointed the majority of designees who would have selected judges under the merit selection proposals presented one hundred years later during the early years of the twenty-first century.


VIRTUE
LIBERTY AND
PENNSYLVANIA
COAT OF ARMS

CHAPTER FIVE

A SURPRISING REALIZATION

BUT THE FOREGOING discussion of the politics of judicial vacancies was a digression from explaining why the President Judge of each of the separate and distinct courts of Common Pleas in Philadelphia County continued to care about the opinions of political leaders even after the judge had been elected for a specific term of office. One might think the judge's only concern would be with the continuing support of at least one of the two other judges of his court and the interests of public justice.

The first answer is quite simply that only a person whose Republican Party loyalty was unquestioned could ever achieve the position of President Judge even over a court as small as three. A second is that the politically connected and ambitious judge who had been elected President Judge could advance in his judicial career only by administrative subservience to those same political

forces that initially put him in office. Finally I came to learn of one example where, in the recent past, a President Judge—having lost sight of this true constituency, the politicians—had taken action disapproved, and the Pennsylvania Supreme Court, through its powers to ensure justice across the commonwealth, had summarily "reformed" his Court by abolishing it. By fiat, requiring nothing more than the concurrence of four of the seven Supreme Court justices, the Supreme Court also signaled an end to all present and likely all prospective future advancement for that jurist, who, I later came to learn, rather than seeking forgiveness, engaged in an unrelenting series of unsuccessful attempts to gain higher judicial office whenever an opportunity arose.

Although the Supreme Court had only rarely reorganized courts, the mere possibility that this could occur without regard to the competence of either the President Judge or the Court generally served as warning enough to all the other President Judges that cognizance of the political winds was a consideration in all significant administrative decisions. It was rumored that this unusual rebuke was the ultimate result of a refusal to hire an administrator recommended by a significant politician. Of course, I could never confirm this supposed origin and report it only as "word on the street is…."

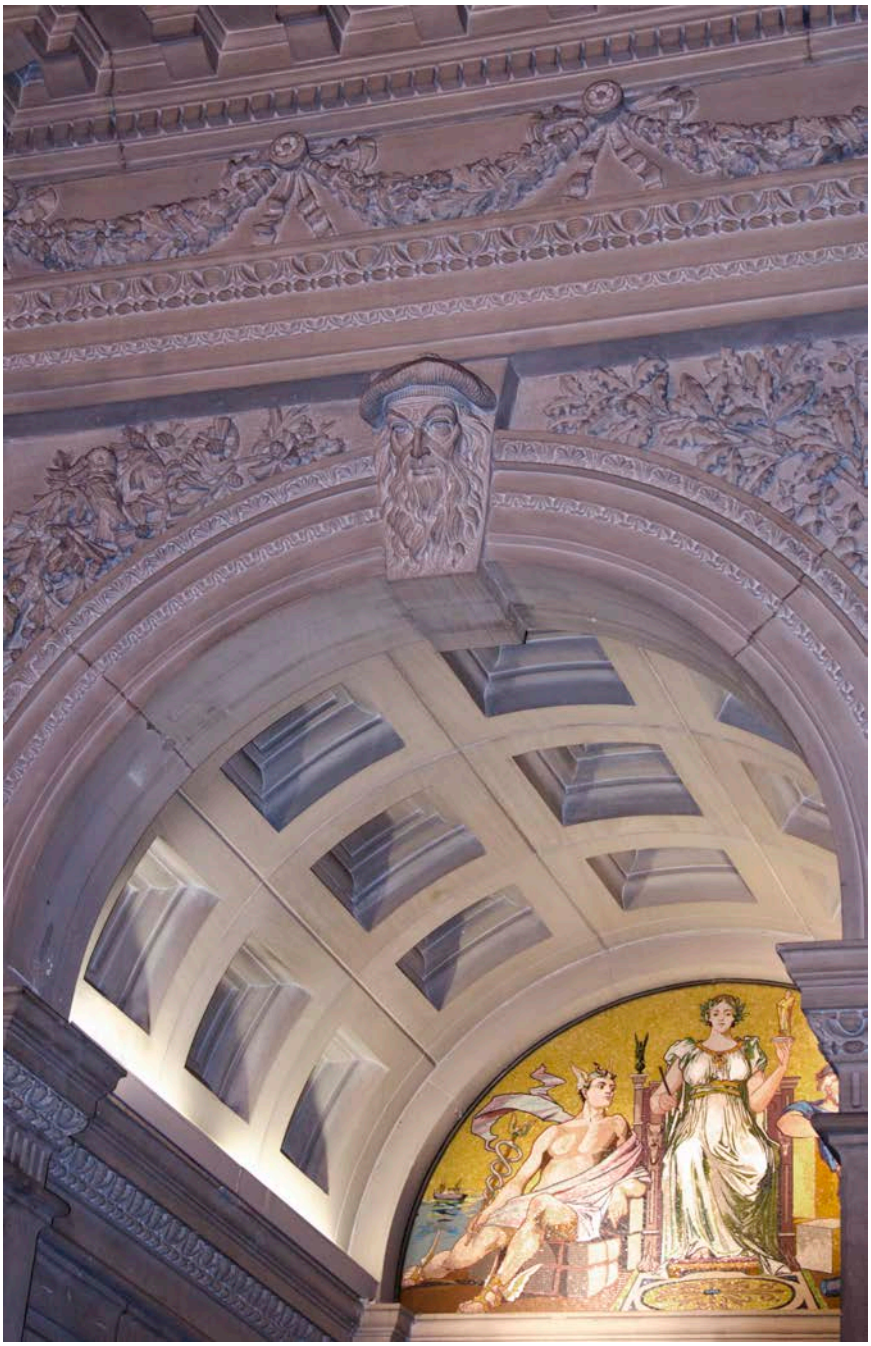
Likewise, although rare, the Republican Party did on occasion cajole ambitious judges to dislodge an incumbent President Judge to demonstrate to the other President Judges and all knowledgeable observers the

necessity for loyalty. Although I never personally saw any case which I could attest had been "fixed", I did observe that attorneys who were also party leaders were routinely advanced on hearing lists and, oddly, found their cases seemingly disproportionally assigned to the same courts and therein disproportionately to the same judges.

Neither the cause of these observations nor the truth of the rumors can I attest to. Although I was frequently astounded by the openness of other judges in honest and seemingly frank conversations with which I was entrusted as a member of the Judicial Club, matters of court budget and employees were kept such dark secrets that a veil uniformly descended. Nonetheless a rumor persisted, perhaps promulgated as a threat never needed to be enforced, that money, budget, and employment decisions were—or at least could be—influenced by party loyalty, and the disloyal could be royally punished in the purse available for the judiciary.

One veteran judge did bemoan to me the fact that he could not hire as his clerk his nephew who had recently graduated from law school. Although the position was vacant, his party chairman had a different candidate whom he had to hire. A court officer once confided to me, as election time approached, the true meaning of a memo received from the President Judge of every court. He said that every year a memo went to all employees that concisely read, "The prohibition against court employees being involved in politics will be enforced as heretofore!" "Do you know what 'heretofore' means?" he whispered one day as we walked

the 4th floor corridor of City Hall. Confused by this comment, I asked what he meant. He whispered, "It's never been enforced heretofore, and the memo signals that nothing has changed."



CHAPTER SIX

A GREAT JUDGE

DURING MY SOJOURN I met some of the finest jurists and some whom I would in all honesty describe differently. One whom I admired and from whom I learned was Judge Morgan. Judge Morgan loved trials. That's all he did. He was an evidence expert and understood evidence better than anyone I ever met. He understood not just the rules but the reasons behind the rules, and when he made a ruling he wouldn't just apply rules in a rote fashion. He intellectually thought back to the reason behind the rules, began his reasoning from that purchase, and traced from the reason for the rule to the specific application before him before rendering his decision. It was marvelous to watch. Even the lawyers felt it was a wonder to watch. Many a lawyer told me that he enjoyed trying a case in Judge Morgan's courtroom because of his decisive and insightful rulings, even if they couldn't understand his reasoning.

Sometimes I observed him try to explain his reasoning behind a ruling. After, his "explanation" would be met with the blank stares of lawyers who respected his knowledge and learning but didn't have a clue what he was talking about. I also observed that he didn't have a clue that they weren't getting it.

He adored trials. The other judges of Common Pleas Court No. 4 were happy to do everything that needed to be done pretrial and he was happy to receive their cases when they were ready for trial. So Common Pleas Court No.4 ran smoothly with three happy judges. He didn't like paperwork, but he loved the courtroom. I saw him on occasion when there had been no ready trial for an extended period of time. He was anxious and disturbed. Mostly he presided over one jury trial after another. On occasion the parties would agree that he could hear a case without a jury. This particularly occurred when the details were somewhat complicated and the attorneys believed that a jury just wouldn't quite understand or at least agreed that it was too complicated a matter for the attorneys to explain to a jury.

Judge Morgan's intuition and perceptions of the courtroom and trials was for me a treasure to behold. He would often sit down with me before the trial day started or after it ended and discuss the attorney's strategies and techniques. One attorney told me that while he hoped to think strategically three steps ahead at trial, he was sure the judge was thinking five steps ahead as to what was going to happen. Judge Morgan loved trial but also believed in fair settlements. He had a sixth sense about case resolution.

One example that I remember quite well involved a hauling and storage company that had been started by two brothers, Henry and Clyde. Over time the company expanded to include a stable where they boarded and cared for other peoples' horses, a breeding farm where they raised and sold horses, a chain of stores where they sold leather goods, a Philadelphia trolley route, and finally an intercity transport stage coach going as far as New York City and Washington, D.C. As the businesses expanded the brothers informally agreed that instead of drawing money out of the businesses they would consider their profits a loan to the company. Over time, younger family members joined the firm and eventually Clyde decided to retire. He ended his active participation but retained one half ownership of the business, received his biannual share of the profits, and expected that his son John would always have a position in the firm. But as it turned out (as everyone knew, Clyde included) John was not particularly good at business. Neither did he have any particular interest beyond cashing his more than ample paycheck.

Henry's son Michael however was much more active and much more confident, and he expected to inherit the businesses. In fact, when Henry also decided it was time to retire that is exactly what happened. Michael became the sole operating manager while John continued to draw his salary and retained a significant title with very little expectation put upon him beyond setting the example of appearing every day at work. But before Henry retired he arranged a "hand shake" deal with his son whereby he would continue to receive a high

percentage of half the profits which percentage would slowly decrease as Michael took more and more responsibility. In the beginning this arrangement worked fine because Michael was able to give himself a fine salary increase and received an increasing portion of his father's share of the profits.

Over time, however, Henry's intrusions and his desire to retain a major hand in the decisions of the business became too oppressive for Michael, who maneuvered his father out of all decision-making. But this, while grating, was acceptable since the money flow kept increasing and, in fact, Henry's wife was more than happy to have him spending less time at work and more in retirement. Like Lear's daughters, however, Michael decided that because he was doing all the work Henry should receive even less of the profits. Although Clyde continued to receive his proper share and John continued to receive his more than ample salary, Michael arranged for Henry to receive less and less. As things deteriorated monetarily so did they deteriorate familially. In fact, things got so bad that when Henry's investments took a surprising turn for the worse he sued his son seeking not only the profits that had been wrongfully withheld but also the return of the money "loaned" by leaving his share of the profits in the business all those years.

The case proceeded to trial. On the first day of trial Judge Morgan took me aside and said "Mark, you know when this case settles don't you?" I said I had no clue, and he inexplicably said, "When Clyde comes to Court." He refused to explain, telling me to watch and not miss any of the trial.

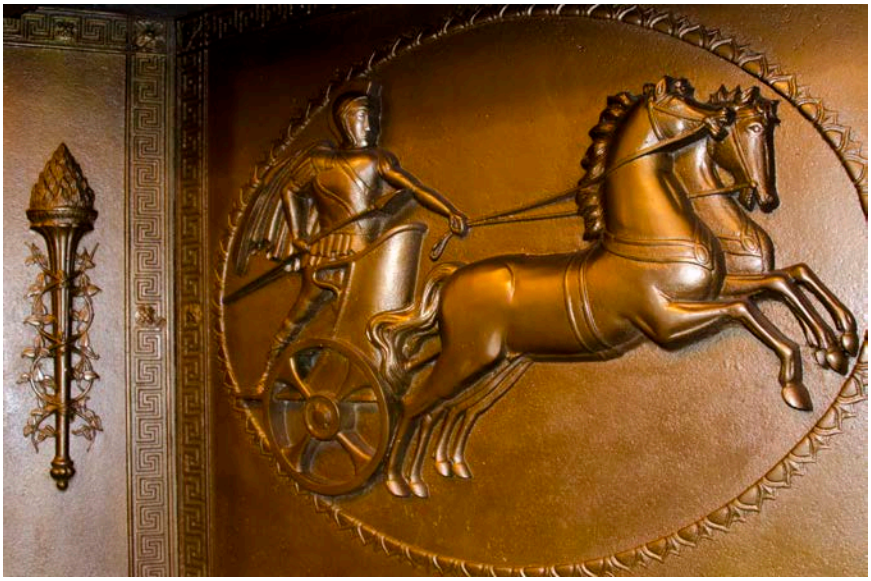
The trial began. Henry and Michael, through their attorneys (both of whom had been selected to be especially nasty), threw verbal hand grenades at each other. The nastiness continued in Henry and Michael's own testimony, as father and son hit below the belt, revealed dirty details only tangentially relevant to business dealings and family problems. Sure enough, after two days of trial, at the beginning of day three, Clyde was in the rear of the courtroom, watching because he was going to be called as a witness. The firm accountant, who had been with the company from the beginning and through all the changes, was testifying. It was a remarkable piece of testimony because while he certainly wanted to testify truthfully, he was loyal both to Henry and to Clyde, who had initially hired him, and he needed to not antagonize Michael, his current boss. He tried desperately not to alienate any of the players in this public family feud. The attorneys felt none of his reticence. As he waffled from one battering to another, trying to remain a friend of everyone, Clyde became more and more visibly agitated in the rear of the courtroom. Finally, after two hours of watching the lawyers backbite, scratch, claw at each other, and smear his brother and nephew's reputations, Clyde walked to the front of the courtroom and spoke privately to his brother and his nephew, and the lawyers jointly asked the judge to recess early for lunch. Although it was not his preference, Judge Morgan called a halt to the testimony at 11:15 and announced that trial would resume promptly at 1:30.

Much to my surprise, just as Judge Morgan had predicted at the start of trial, at 1:30 Clyde was sitting in the front row while the lawyers announced that they had resolved all issues in the case. Judge Morgan understood that family feuds that can resolve temporarily have a nasty habit of flaring up again upon short notice. He directed that the exact terms of the settlement be put on the record. While Clyde in the front row glared at both Henry and Michael, they each in turn begrudgingly agreed to the terms of the settlement, with Judge Morgan asking clarifying questions about future details to tie up all the loose ends that had not yet been firmly worked out.

Once resolved Judge Morgan and I retired to his chambers to discuss the case. "Mark, do you know why it resolved?" I responded that I really did not understand since the parties were going at each other's throats throughout the morning session and indeed did not even seem in much better humor describing the settlement after lunch. Judge Morgan explained that Clyde was the one everyone respected and when he had seen what was happening in court and the public airing of dirty laundry, he grabbed both his brother and his nephew by the throat and told them in no uncertain terms, "Our family doesn't do this!" Because he still had a retained half interest in the company and because of his moral position as an independent and involved yet well-respected outsider, he forced a resolution. Judge Morgan told me he knew that would happen because everybody told him that Clyde was going to be called as a witness, and it was clear

to him that Clyde had not yet learned the extent of this family feud.

Judge Morgan understood human nature, people, and, most important, the dynamics of courtroom trials.



CHAPTER SEVEN

A HALLOWEEN IN COURT

JUDGE ANISE HAD been a prominent lawyer and scion of the Republican Party before becoming a judge. She was held in high regard primarily in reflection of her husband's status—State Senator Anise from Chestnut Hill, chair of the State Judiciary committee. Descended from a long distinguished family of lawyers, jurists, and political financiers, and distantly related to the barons who built Chestnut Hill by putting railroad lines into the isolated suburban location where they wished to build their suburban estates yet needed a way to get to work, she became one of the first women in the Commonwealth of Pennsylvania to be admitted to the University of Pennsylvania Law School and to practice law. She followed a renowned career in the trusts and estate department of one of the major Philadelphia law firms to become the first woman ever elected, with the

support of both parties, to the Court of Common Pleas. Her nomination and election had not been hindered by the fact that the first time she ever set foot in a courtroom was to preside. She was immediately elevated to President Judge of Court III. As it turned out, my arrival into the legal community occurred shortly after her election and elevation to President Judge.

In fact, so short had been her tenure, and so unsure of herself in the criminal courtroom when she first took the bench, she had deferred all criminal sentencings until she felt she could more responsibly mete out appropriate punishment to reprobates. Although most of the reprobates awaiting sentencing languished in the newly constructed Spring Garden prison on the outskirts of Philadelphia proper, she had repeatedly postponed sentencing until she could devote a full afternoon exclusively to the task. Thus, I was present on the day she handed down her first criminal sentence. That day, as it turned out, was Thursday, October 31, 1913, Halloween.

I was invited to observe the proceedings from the jury box and even had the privilege of a private audience with the judge before she took the bench. I found Judge Anise to be an elegant, gracious, distinguished lady in her sixties who was, in some measure, in awe of her responsibility to protect the public by keeping reprobates out of circulation. Reviewing the list of twelve individuals to be sentenced I found that what the judge would primarily confront that day were morality

transgressions. Two of the twelve had been convicted of failure to pay just debts, one of whom had the additional disgrace of failing to pay taxes. These individuals had been incarcerated for over 11 months. Judge Anise expressed her fervent desire that they would have sufficiently seen the fruits of their earlier lifestyle so she could release them from incarceration. Indeed she expressed the hope that their wives and children would have either found sufficient funds to pay the debts or had prevailed upon their family and friends to do so, allowing her in good conscience to release them from prison. However, in the sad event that the debts had still not been paid she saw no alternative but to impose additional incarceration as adequate punishment and to serve as an example to all those others who may similarly contemplate avoiding their lawful obligations.

Judge Anise remarked that after much contemplation about her awesome obligation in criminal sentencing she concluded that there were really only three or four reasonable bases for determining a proper sentence. She had concluded that it didn't matter what sentence she actually imposed as long as she understood the purpose for which the sentence was being meted out. According to Judge Anise, the first proper criterion was punishment. She believed punishing reprobates was how society maintained order and was what most people considered to be the purpose of justice and courts. For this proposition Judge Anise found support in scripture.

Her second criterion for evaluating a proper sentence was public order, so that by seeing the fate that awaited criminals, others would be deterred from similar socially useless activity. Sadly she concluded the third criterion was the fact that some reprobates simply had to be removed from society to avoid repetition of criminality. Judge Anise sadly recognized that when this fact becomes the most significant consideration an indeterminate sentence that could remove an individual from society forever is the only reasonable result. However, in those circumstances, where a term of sentence is required by legislative restrictions imposed upon judicial discretion, the maximum sentence afforded by law should be imposed.

When I gently suggested the concept of rehabilitation or education for people who had transgressed the law and particularly for criminals who were blameless except for having found themselves in financial difficulty which made it impossible for them to fulfill their obligations to creditors, Judge Anise sincerely, thoughtfully, and yet quizzically responded as if I had proposed an interesting but appalling concept that she had never previously considered. The further suggestion that perhaps finding employment for those incarcerated for failure to pay debts or financial counseling or perhaps even governmental assistance she viewed as yet another unique concept that she had never before considered, but she nonetheless strenuously objected that this would encourage irresponsible

behavior. And when I proposed that finding employment for an incarcerated's spouse so she could repay a debt and free her husband, she politely expressed outrage at the concept that a mother should be taken from her maternal duties at home to be thrust into the world—although, she did momentarily entertain the idea that the children could be employed to avoid the cost to law-abiding citizens of a father's further incarceration. She apparently did not recognize the anomaly of a woman Judge being appalled at the thought of a woman in the workforce. She politely suggested that I sounded much like the goo-goo prison reformers who had gotten the state to build a new prison on Spring Garden Street to make incarceration a time for contemplation and devotion to scripture rather than the workhouses that had formerly served so well. She rejected out of hand the concept that incarceration for not being able to pay debts fell disproportionately upon the poor, insisting that she would impose the same punishment on the wealthy.

She jokingly mentioned that I would next be proposing the radical thought that we have classes and medical care in prison, which she believed would actually result in some seeking incarceration. I made a mental note to find time to seek out those goo-goo radical reformers for conversation.

Of the remaining ten individuals scheduled for sentencing, only eight of whom were incarcerated, three were for prostitution, two for lewd behavior, three for public drunkenness, one for theft from a shop, and finally

the most heinous of the reprobates had purloined something directly from a merchant, brandishing a knife on the street during the act.

As we spoke and the day grew long, I gently suggested perhaps the sentencing should begin. Realizing that it was in fact getting on towards evening, Judge Anise readily agreed.

Before court began I took my appointed place in the jury box that of course would have no use during a day of sentencing, as sentencing was exclusively the purview of the judge, without jury. As I settled in I noticed that two of the three convicted prostitutes, who were the only defendants not incarcerated, were seated in the courtroom appropriately dressed together with their children, and they were the only defendants with lawyers. The courtroom was filled with family and friends of the other ten reprobates. Seated to the side, enclosed in a caged area and guarded by four armed sheriffs, were all the remaining defendants awaiting their sentencing—speaking, throwing kisses, holding hands through the bars, sharing cigarettes and candy, and yelling to their loved ones. At the bar of the court were the District Attorney and the three attorneys who had been retained to represent the prostitutes awaiting sentencing.

Before long, the court crier slammed his ceremonial staff to the ground for attention, ordered all conversation to cease and in the formal litany now used only on ceremonial occasions intoned: “All rise! Oyez,

Oyez, Oyez. All manner of persons having business before this honorable court come forward and be heard. The Honorable Shirley M. Anise presiding. God Bless the Commonwealth of Pennsylvania and God Bless this Honorable Court. Be seated and cease all conversation. Good Afternoon, Your Honor." As this incantation progressed, an audible gasp rippled through the court as sequential sections of the courtroom could see Judge Anise emerge from chambers wearing the familiar black robe of her office. Children screamed and ran from the room. One of the prostitutes and two wives fainted as Judge Anise, presumably intending a harmless prank on this Halloween, came out wearing the familiar black robe, her head adorned with a witch's hat and carrying a broom.

CHAPTER EIGHT

A JUDGE'S PASSION

DESPITE EARLY DIFFICULTIES in the criminal courts, Judge Anise rose to become one of the most respected judges on the court—though I later learned that her tenure was short lived. The respect she earned was all the more remarkable because the first time she had ever entered a courtroom was to preside over a case. Perhaps in part due to her unfamiliarity with the courtroom and not knowing any of the important lawyers in town, but also undoubtedly in part because of her husband's status as an important State Senator from the wealthy area of the City known as Chestnut Hill, the leaders of the bar and other important lawyers wanted to impress her with their friendship. Since she was not a member of any of the established lawyers clubs and was a complete unknown, all the big firms and leaders of the bar wanted her to learn that they were her best friend. Because of this pressure, setting aside all precedent, she was invited

by the "Lawyers Club of the Union League" to deliver their annual "Victory Day" address on April 9, 1914, the anniversary of General Lee's Southern Army surrender at Appomattox. That day, April 9, 1914, America awoke to headlines screaming that the government of Mexico had arrested seven American sailors from the crew of a U.S. war ship in Tampico, Mexico.

To understand how this impacted Judge Anise' speech, some historical background is needed. Because of Mexican revolutionary unrest and what is now called "terrorism" along the U.S.-Mexican border the U.S. had positioned a squadron of gunboats off the Mexican coast to protect Americans in Mexico. Seven U.S. sailors had made the mistake of going ashore and had been detained. Although on demand of the commander of the task force sitting in the harbor the soldiers were quickly released this fact did not make the early papers. Despite the speed with which the incident was in fact defused, impetuous, egotistical, jingoist, racist politicians immediately used it as an opportunity to denounce not just the government of Mexico but all Mexican-Americans and Spanish speaking citizens, including those living in Puerto Rico, an island which had recently been taken by the United States in the Spanish American War. This callous and dangerous demagoguery was most pronounced in Pennsylvania where a disrespectful senate race was heating up. 1914 was not many years removed from the Spanish-American war and anti-Hispanic fever continued to be popular.

The 17th Amendment of the United States Constitution had recently established the popular

election of U.S. Senators. Prior to this amendment Senators had been elected by the state Legislature. Thus, 1914 was the first test of what the popular election of senators would mean. Six men vied for the Senate in Pennsylvania. Alexander Mitchell Plumer, the Democratic Party candidate, was an ardent believer in American isolation and a bigoted racialist. He had been feeding popular prejudice and campaigning against the imagined terrors of Irish and Italian immigrants. Plumer hoped to use this Tampico incident to further emphasize how tough he was against immigrants.

On the day that Judge Anise was to deliver her Victory Day speech the same morning headlines which revealed the capture of American sailors also quoted Plumer saying that this was further proof that Mexico was sending "thieves and rapists" to American soil. Ignoring the fact that thousands of Spanish speaking Americans were third generation Americans who had honorably served in our armed forces, he said that all Hispanics should be interned.

Judge Anise had prepared a mundane, boring, self-important speech. To her credit, and marking the beginning of an admirable career, these headlines caused her to discard her prepared remarks, discard her self-conscious inadequacies, and honestly speak from her bountiful heart to the potential crisis. Judge Anise entirely recast her speech to counter and rebuke what she considered a dangerous and growing demagoguery.

Now, of course, being a strictly male club, the Union League had a strict rule against women even entering their building. However, since the Lawyers'

Club annual lecture was regularly attended by over 100 of the most prominent lawyers in Philadelphia, the misogynistic rule was temporarily suspended. Of course, she had to enter through the back door and be always accompanied by both her husband and son, both of whom were revered members. To make her feel more comfortable, the rule was even further relaxed to permit the officers of the club to bring their wives on condition that they leave immediately after the event. I was in attendance as an honored guest. Although there was no record of her speech and therefore I cannot entirely vouch for the accuracy of what I am about to report, I did my very best—after she left to the accompaniment of a standing ovation, some of which was sincere—to jot down detailed notes about what I could remember. What I now write is unfortunately not precise but rather my best recollection of that remarkable speech.

Judge Anise began: "As we test the limits of democracy by directly electing our Senators, America stands at a crucial time. Do we turn upon each other because we fear the future or do we work together as one country to face the future with confidence? One half century ago we fought an unbearable civil war for the right to progress as a free and unified country. Over 90,000 of our fellow Philadelphia citizens—white, Hispanic, immigrant, and, yes, black citizens too—enlisted in the Union army in those terrible years to defeat and abolish slavery. We in this Union League sponsored 5 black regiments. Thousands of Philadelphians died in that conflict leaving brothers and sisters, fathers and mothers to grieve their death. How

many girlfriends, fiancées, and wives were bereft, left to a lonely life, perhaps never to find true lovers again? The sacrifices of these men and those women who suffered to save our country and to bring our people together as one nation under God with liberty and justice for all shall not be dishonored by callous politicians who hope to use racial prejudice and ignorance to tear us apart. The greatness of America lies in the unity of our diversity dedicated to holy political principles.

We are not of a people who are afraid of diversity or the future. No we are a people who celebrate diversity and say that all—Protestant, Catholic, and Jew, English, French, Irish, Italian, Greek and, yes, Spanish speakers too, White and Negro, Mexican and Chinese—can live together, work together, and build a nation together. Our founder, William Penn in his Frame of Government wrote: '…All persons living in this province…shall, in no ways, be molested or prejudiced for their religious persuasion, or practice….' We are all immigrants. My family came 250 years ago from England and some families 30 years ago from Spain or Ireland or Mexico. Some landed in our beautiful port only yesterday, hoping to share our American dream. Between that great surrender we celebrate and today, a testament to Liberty rose in New York Harbor and on its base is an inscription more important now than ever: 'Give me your tired, your poor, your huddled masses yearning to breathe free, the wretched refuse of your teaming shore, send these, the homeless tempest-tost to me, I lift my lamp beside the golden door.'

We are a nation that is great because concepts that embody those immortal words and that were written right here in our city of brotherly love and sisterly affection hold us together. I refer to concepts in that great Declaration of Independence codified into our great Constitution. Yet there are today people who pretend to offer security but who through ignorance, or cynicism or both act to destroy the American dream."

"You know," Judge Anise continued: "I live in wealthy protestant, English Chestnut Hill. Yet I cherish our black neighbors of Washington Square, our Italian immigrants of South Philly, and indeed even our Irish of Port Richmond. These are people who have come to our country seeking a better life for themselves and their children. They have come to this country because when we say in our Constitution that our government will respect everyone's life, everyone's liberty, and promise everyone the pursuit of happiness, we mean it. Our judiciary and our politicians and our people, have agreed upon a wondrous compact. A compact different from those of any other country at any time. A compact which proclaims that freedom of religion shall not be interfered with by the government. A compact which proclaims that freedom of speech shall not be interfered with by the government. A compact which proclaims that freedom of association and the right to petition for a change shall not be interfered with by government. Indeed even the right to elect our leaders, now even including our senators, shall not be interfered with by government.

Although I hold the solemn power to sit in judgment upon others, and I thank the University of

Pennsylvania for allowing me to attend that great law school and our Supreme Court for allowing me to sit for the bar exam, I still cannot vote. But I can speak to you, and speak to our elected officials and work toward that day when women can vote just as men are now allowed to elect our senators. And I will continue to speak out for legal God-fearing citizens wherever they may have been born.

I see the day when all people will rise as high as their abilities can take them. Indeed even those most recently arrived Irish may become our factory workers, our teachers, our legislators, and perhaps even one day mayor of our great city.

Our recent civil war produced horror, but also some very important amendments to our Constitution. These Amendments have completed the circle of our freedom. The abolition of slavery of course, but perhaps in the long run certain parts of these amendments will prove equally important to all Americans. The 14th Amendment requires the equal protection of the laws for all our citizens and places this obligation on all our governments. Discrimination because of race, religion, or any other personal characteristics not related to behavior is prohibited. The 5th Amendment from the beginning mandates that every citizen receive 'due process.'

I have been asked about my judicial philosophy. I just revealed it to you. That is my American Faith, my judicial philosophy! The law must be applied equally to all people and nothing a court can do is proper unless done in accordance with the procedural rectitude we call

'due process.' That is the America I love. That is the American dream that so many seek our shores. We don't need to share a religion, or color, or national origin to forge solid bonds. Our bonds are forged from our great definition of freedom under law.

So when I hear politicians denigrating people because of their birth status or national origin I ask them to remember the founding ideals of America. Remember that we are a country built on noble thoughts, not race, not religion, not color, not ethnic heritage but holy concept. I welcome our newly arrived citizens. I welcome those who have chosen our country, and I embrace them. I ask only that they embrace our deep respect and understanding of the meaning of liberty for which so many of our citizens died in our civil war and in our revolution.

So thank you for allowing me to reflect with you on the meaning of the sacrifice to which this our Union League is dedicated, and to affirm that dedication shared by all the judges in our court and the judges of our federal court to equal treatment under due process of law. We welcome all peoples who share these American ideals. We reject all those who seek to divide us.

I want to leave you with this thought. Every day there are over 800 new arrivals to our port. I welcome them with open arms. I say, let us help get them established. Let us help them keep our country great. They are not thieves, or robbers, or rapists. They are people seeking nothing more than what your forbearers sought when they arrived. A better life in the warm free air of American liberty. In closing let me say that I

embrace my co-religionists and those who affirm the papist religion and indeed even those who conform to the Old Testament God of the Jews. I heard the other day a rumor. A rumor spread by those who seek to alarm and divide. A rumor that a Muslim family is due to arrive by boat today. I choose to welcome them, to visit in their home, and to assure them that we in America support and welcome all people of good will. I will go down to the port this afternoon and, if true, welcome this new family and ask them to help me make our country one nation, under God, with liberty and justice for all. Some may say I'm being corny. Some may say I'm being sentimental. But this is my belief in our country and this is how I live as a citizen, wife, mother and judge. If the American dream is corny and sentimental: 'Deal Me In!'"

Judge Anise was ushered out of the room with applause still ringing. This roomful of standing attorneys representing the best of the "Philadelphia Lawyer" tradition applauded this important jurist. Her reputation which began this day, increased for the rest of her days on this earth.


COMMONWEALTH OF
PENNSYLVANIA
VIRTUE
LIBERTY AND
INDEPENDENCE

CHAPTER NINE

A VARIETY OF APPROACHES

IT IS TRULY remarkable that although no one knew what to make of me, without exception everyone was extraordinarily open, friendly, and hospitable. I was introduced to the bench and the bar as a foreign visitor from a distant time. Just as someone visiting our time from 1913 or 2112 would be an object of curiosity and study about whom everyone might curiously approve, so was I treated. This meant that although I was physically present, no one truly felt that I was even there. Everyone expected that at any moment I would disappear just as casually as I had appeared. The surprising result of this ambiguous existence was that everyone—judges and lawyers, litigants, politicians, even people I would meet on the street—felt totally free to share their true feelings and beliefs and honestly discuss any topic of conversation without the usual diplomacy and obfuscations that usually passes for polite conversation. Equally

remarkable were the dramatic differences in the manner in which each court dealt with its cases and the varied reactions of the bar. Somehow being neither fish nor fowl, everyone assumed I was part of their own club and confided in me freely.

The way this played out can be explained by describing the varied perspectives revealed by the case management procedure of Common Pleas Court Number 9 colloquially referred by everyone as "the Cattle Call." As Judge Brown described it, he had learned through difficult experiences the trick that 10 percent of all cases resolved simply by exposing them to a courtroom. Accordingly he would regularly bring throngs of lawyers into his courtroom for no reason other than to have them report on what had or had not occurred since the last time they had been summoned en masse. Lawyers whose cases had resolved would either send a messenger with a letter and not personally appear or would be present and proudly make a show of walking up to the bar of the court to personally announce the grand result. These lawyers would receive accolades from the judge before their assembled brethren.

Judge Brown and his court staff were very proud of their ability to resolve cases—although in the months that I observed, it did seem that the number of attorneys present for the cattle call never decreased and the number of cases pending in Common Pleas Court Number 9 was higher than in some of the other courts. Nothing actually occurred in the cattle call, and as I learned in conversation with Judge Brown, he never intended anything specific to occur.

Of course, the attorneys always smiled for Judge Brown and laughed at his jokes. Nonetheless, they confidentially expressed to me abhorrence at having to bill their clients for time wasted in court and their disdain for Judge Brown and his tricks. Several lawyers' expressed the opinion that the biggest joke was the cattle call itself. This perspective was really not surprising because attorneys would sometimes sit in his courtroom for hours as he went through hundreds of cases pro forma. Neither was it surprising that in the courtroom the attorneys massed in the cattle call behaved like cattle. Sometimes even after the judge took the bench, the mob was irreverently joking, talking, and yelling across the courtroom. On one occasion I observed a spit ball thrown, followed by a courtroom spitball melee which ceased only when the judge unexpectedly arrived and took the bench. Even once he was securely on the bench an occasional spitball was thrown whenever the judge was clearly looking elsewhere.

One must picture Courtroom 443 City Hall in all its glory to envision the scene. Today some courtrooms have deteriorated and suffer from a lack of maintenance, but in 1913 the courtrooms were new and spectacular, beautiful rugs were matched by shining marble columns, and the ceilings were graced with fabulously painted gold leaf. These courtrooms presented the aura of the rise of American industrial power and a flourishing society. Anyone charged with a crime immediately came in awe of the power of the state, often a greater deterrent to recidivism than any sentence eventually imposed.

Judge Brown would often intentionally arrive 20, 30, or 40 minutes late. He told me that since the cattle call was often the only time the attorneys ever talked to each other about their cases he gave them time to confer. Of course, knowing that Court would not open until 20, 30, or 40 minutes after the announced time the courtroom would frequently be empty at the scheduled start and would slowly fill. Indeed, it's a lucky thing the judge did not take the bench at 9:30 a.m. when all 200 status conference for the day were scheduled because most of the attorneys, expecting him not to arrive until at least 10 or 10:30 a.m., were absent. They would gradually filter into the courtroom, where they milled about joking, smoking, pushing each other, and generally having the grand time which is common when old friends who haven't seen each other for a time have occasion to gather. Although I never did see actual drinking while awaiting court to open, on occasion I thought that out of the corner of my eye I saw an attorney slipping what appeared to be a flask into his rear pocket to the amusement of those nearby.

Generally, by the time the Judge arrived most attorneys were present, with the notable exception of those attorneys who would make a dashing entrance throughout the course of the day. The proceedings started with attorneys whom the judge knew being called up first and asked a rather mundane routine of questions: "Is this case settled?" "No." "Does it look like it will settle?" "We're working on it Judge!" "Do you have any discovery?" "We're trying to work them out, Judge, but the pleadings have not yet closed." "When do you think

it will be ready for trial?" "It's hard to say, we're working very diligently." "Thank you." After the judge received these answers the attorneys would be sent on their way with the admonition to keep working, at which point the Court Crier would call the next case where the same questions and answers were repeated.

But woe be to the attorney who was not physically present in the courtroom when his case was called. Judge Brown would throw himself into a rage about the disgraceful conduct of counsel and the disrespect shown to the bench. He would send minions to fetch the ingrate, threaten arrests, set the matter down for a rule to show cause why the reprobate should not be held in contempt that very afternoon, insist that the sheriff appear in his courtroom with the miscreant, tell everyone in the room that if they saw the offender to remind him to come to the courtroom represented by counsel and to bring his toothbrush, and otherwise make it clear to the assembled bar that dread consequences awaited he who dishonors Judge Brown's Court. On rare occasions I came to learn that when the missing attorney was of a different political persuasion from Judge Brown he would work himself into such a lather the Court Officers would suggest a brief recess at which time he would leave the bench to afford himself a calming smoke. Usually these outbursts would be calmed by the Court Officers or a "friend of the Court" attorney friend of the miscreant explaining the absolute necessity for the attorney's absence—and the cattle call would resume.

On one occasion I did observe an actual contempt hearing late one afternoon. The miscreant attorney

arrived promptly for the hearing at 3:30 as had been ordered earlier in the day, apologized to the Court, promised it would never happened again, and was dismissed with a stern warning to "see to it that it doesn't."

On another occasion, the description of which within minutes flew on wings of rumor across the entire legal community of Philadelphia and its environs, an attorney brought his datebook, secretary, and witnesses to the contempt hearing. Judge Brown asked if he was represented by counsel at this contempt hearing. The attorney responded he was represented "by the best attorney in town, me." When asked why he did not appear in court, he described a day in which he was required to be in four courtrooms at precisely the same time, had picked a jury in one case, assisted a different defendant to plead guilty in a different courtroom, and settled a civil matter in a third. Unrepentant for missing the meaningless cattle call and suggesting that some coordination between the nine courts might be productive he offered to call witnesses to attest to the truth of his actions that day. Judge Brown said that would not be necessary, offered a stern warning to "see to it that it doesn't happen again," and left the bench. As the Judge left the courtroom, counsel said in a stage whisper: "and I seem to have forgotten my toothbrush."

Since everyone knew nothing actually happened at the cattle call, attorneys often sent their least senior associates, who knew nothing about the actual case. But a senior partner would always appear when a case had been settled. Those attorneys who had settled their cases

would tell a Court Officer and were immediately invited to dance up to the bar of the court to receive the congratulations and praise of the judge. Judge Brown would exclaim to all of the assembled crowd what good lawyers these were for "blessed are those who resolve." But those few who would approach a Court Officer and seek permission to leave without telling the judge their case has settled were routinely advised that it was not a good idea to leave for any reason. When Judge Brown would occasionally get irritated, the Court Officers—thinking to themselves that the fact of a settlement could return the judge to his usual pleasant equilibrium—would try to get a settled case in front of him as a service to the rest of the bar. This they could easily do since the judge himself neither had any record nor any concern as to the order in which cases appeared. No concern, that is, unless he saw a lawyer he knew in the crowd, and then he would immediately call up that case.

Ordinarily, he would leave the order of the cases entirely to the Court Officers who ran the courtroom. Since only one Court Officer ran the room the others generally hovered around the courtroom chatting with friendly attorneys, occasionally selling Republican Party annual dinner tickets or tickets to a benefit dinner for the judge. Thus, Court Officers were empowered to leave attorneys who were temporarily or permanently out of their favor sitting in the courtroom for an entirely wasted morning. God help those who had afforded some slight or even perceived slight to any Court Officer in the room or their relatives who populated other offices of the courts. They would find themselves on a widespread shit

list. Those attorneys might arrive smiling, eager, and ready to go only to sit for hours without accomplishing anything even though according to the list they were supposedly the second case to be called. A Court Officer explained to me that he had one lawyer sit hours because of having passed an unfavorable remark to a clerk in another courtroom some weeks before. It has always been remarkable to me how then, and even now, attorneys will say things to Court Officers or reporters or treat them badly without any understanding that this behavior will be elaborately described to the judge and may even circulate widely around the courthouse.

Once, in my courtroom back in the 21st century (or should that be forward in the 21st century?), an attorney for whom English was a second language appeared before me. He spoke with an accent but generally did very well. Occasionally however, he would get confused and misunderstand my directions or question in oral argument. I understood and made allowances. After a few days of trial my Court Officer approached me in chambers and said: "You know, Judge, he speaks perfect English when you are not in the courtroom."

CHAPTER TEN

SETTLED IN PRINCIPLE

AT ONE OF these cattle calls I learned an odd term occasionally used to engender a favorable response from the judge. The term was "settled in principle." When I first saw counsel approach the bar of the court and make the announcement that their case was "settled in principle," I could not understand what the term could mean since it was not one with which I was familiar. I came to learn that it was an extremely flexible and variable term without any fixed definition. It could mean anything from "the attorneys are merely arguing over punctuation in a Settlement Agreement" to "the attorneys agreed to the proper monetary range of what a settlement should look like without ever having gotten approval from their clients." Sometimes it even meant nothing more than that everyone agreed that the case should settle rather than go to trial. There seemed to be no consequences if a case that was "settled in principle"

never actually settled. The case was simply restored to the "trial list."

Nonetheless and perhaps accordingly, attorneys in the know would troop up to the bar of the court and amid broad smiles announce to the courtroom that the judge would be pleased to know that their case had "settled in principle." Without fail this brought a smile to Judge Brown's face. The use of the term would immediately erase any imbalance or displeasure from previous courtroom activity and would change his demeanor to a happy mien. Never once did I hear the judge ask what "in principle" meant. Instead, as if by habit, he would thank the lawyers most heartily for their efforts, announce to the courtroom that this is the type of work that the court expects, and proclaim that with hard work back in your office this is what can be accomplished. The scene inevitably ended as the judge excused the attorneys with heartfelt thanks.

Apparently, "settled in principal" did not occasion any docket activity because I had regular occasion to see the same attorneys, having so announced, return three months later and announce that they were diligently working on the case without any reference whatsoever to the aforementioned "settlement in principle" and without the judge recalling that he had commended the same lawyers for their diligence some months before. Judge Goodwill, about whom I will write at length later, thought the concept ridiculous. He said that "being settled in principle is like being slightly pregnant—it doesn't exist."

Another interesting courtroom phenomena among the cattle waiting for their cases to be called was the constant patter of running feet and jabbering mouths as messengers ran into the courtroom, delivered papers, brought clients or other attorneys into the courtroom for corner conferences, and ran out of the courtroom again and back to the office. The telephone was not yet in common use and messenger service was the only way to conduct any business while waiting for court release. Sometimes these messengers carried messages that required immediate attention, in which case an attorney, from across the courtroom, would interrupt the heretofore-described non-proceedings of calling case after case to the bar of the court by respectfully asking to approach the bench on a personal matter. The judge would interrupt the non-proceedings to hear the individual's personal situation of being summoned to another courtroom, being summoned to see a judge, needing to attend to an arraignment because a client had just been arrested, or just being needed at the office because a client had unexpectedly appeared. The judge would frequently allow this attorney to attend to other business with only an admonishment for him to return as soon as he was able. This was known as "setting the matter aside." When the excused attorney failed to return that day the "set aside" could last months, or at least until the next week's cattle call.

As the day progressed the number of lawyers in the room dwindled. I was astonished to note that however many cases were in the courtroom not one set of lawyers had ever indicated a readiness to go to trial. I inquired

among some friendly Court Officers as to the reason for this and was advised that since Judge Brown did not believe in trials, the bar knew that announcing a readiness to go to trial or persisting in a request to be assigned for trial would result only in ill humor and a disposition worse than anything I could imagine.

When I gingerly raised this issue with the judge in private he offered a lengthy jurisprudential discourse detailing the cost to the citizens of a trial, the emotional distress and disruption to the litigants, and the "fact" that because the county courts were in the business of dispute resolution an actual trial was a failure of the system.

Coming from a court system in the next century where 350 trials take place every year, where civil cases come to trial within 2 years after initiation, and where my courtroom was operated by the judicial tipstaff on my personal staff, I found this lecture hard to understand. Nonetheless, at no time did I doubt the sincerity of Judge Brown's cherished beliefs.

Still confused by the concept of trial as failure, I raised the issue with friendly attorneys. They uniformly agreed that asking to go to trial before Judge Brown was the worst *faux pas* that a young lawyer could commit. They also explained that on those rare occasions when they had seen it happen, they saw the judge fly into a rage about young attorneys who think they know everything and who are going to change a system that has worked well for over a hundred years. The judge would berate them about why they thought 12 schnooks from the streets were more capable of resolving the case than one judge or better yet two lawyers, who could think

rationally about the issues. If the attorneys stood their ground after Judge Brown had embarrassed them, he would assign the case to Judge Feldspar. Upon that assignment the entire room would gasp because everyone who had been at the bar longer than six months understood the dire fate that awaited the rookies.

CHAPTER ELEVEN

JUDGE FELDSPAR'S TRIALS

THE REACTION TO assignment for trial was intriguing. The attorneys who had gotten what they asked for—an assignment to a trial judge—would sometimes become abysmally forlorn and morose as they reluctantly trudged out of the courtroom, clients and witnesses in tow. I wondered the reason for their instant ill humor.

On one occasion Judge Brown decided to increase his settlement rate by requiring over a hundred cases to simultaneously appear in court ready to start trial. He believed that in those cases where businessmen were unable to make it to court the parties would agree to a settlement when their attorneys told them what to expect if they did not show up. On the appointed day, 50 pairs of attorneys—with clients, witnesses, or messengers ready to retrieve witnesses on a moment's notice in town—appeared in Courtroom 443 ready for

trial. As to those cases that had not settled, the court crier dismissed everyone with an assignment to appear at the next cattle call. The lawyers who had spent two weekends preparing for trial, prepping witnesses, and coordinating schedules were furious, although no one demonstrated this to Judge Brown. For weeks afterward attorneys would complain in confidence about this judicial abuse, intimating that it was not the first time he had done this.

That very day, being ready to go to trial and with clients and witnesses in the courtroom, three brave attorneys insisted on trying their cases. In each case Judge Brown berated them, mocked them for their intransigence in the face of reasonable offers of settlement, and sent them off for trial to the same judge, Judge Feldspar.

After the third of these assignments I used the occasion of a break in the action in Judge Brown's courtroom to go to Judge Feldspar's. I arrived to find the door locked, the window to the courtroom covered with paper, and the courtroom seemingly dark. I could not imagine where the six attorneys I had seen leave Courtroom 443 with their twelve parties and their twelve parties' witnesses not an hour before could be. Banging on the door I was eventually let in by a Court Officer who apparently had been sitting in the dark with the doors locked. The courtroom had a musty air. The chairs were misaligned, as though they had been left wherever they had last been skewed. Some trial exhibits, a rusty firearm, a set of photographs, and a pile of documents were scattered about the room as if

abandoned during a fire drill some years before to which no one had in the interim returned. I inquired of the cases assigned that day to Judge Feldspar. The sleepy officer told me that the attorneys had undoubtedly gone to the judge's chambers some two floors below.

I was again surprised when I got to Judge Feldspar's chambers. There I found six attorneys, twelve parties, and four of their witnesses hanging out in the hall or crowded into the anteroom of Judge Feldspar's chambers, the judge not having yet arrived for the day. I waited. After forty-five minutes the judge arrived, greeted me warmly, invited me into his chambers and explained to me his trick—which he called his "process." Judge Feldspar was a rotund, joyous person, who smoked too many cigars. He offered me a brandy although it was still only 10:30 in the morning. I declined the brandy, but feeling that two rejections might be taken the wrong way I agreed to join him in a cigar. Upon lighting up I mentioned that I had just seen three cases assigned to him and as part of my education thought I would observe the trials. He frankly explained that while he would speak to the attorneys in pairs and listen patiently at great length to whatever they had to say about their cases, they would not go to trial that day. The end result of his discussion would be to send the lawyers back to the hall to settle. I suggested that having seen what they had said in Judge Brown's courtroom I doubted that any would settle—and certainly not all three. He assured me that they all would. While skeptical, I asked if I could sit in on the first conference, to which he kindly consented.

The first was a case of a cow that had wandered into a neighbor's yard breaking fences and destroying his vegetable crops. The claimed damages were in excess of $1,000.00, which put the plaintiff's livelihood and family into a perfectly desperate situation. They had struggled to survive for three years until finally managing to get into court. The fence had not yet been repaired, although patching had become a constant need. The ground that had been laboriously hand tilled every year had only recently yielded a crop resembling the routine production of the field prior to the cow's rampage. The defense attorney acknowledged that his client's cow had in fact entered the field but claimed that the entry was due to an open gate and that at any rate the cow had not in any way caused anything close to the extent of damage claimed. At the conference the attorneys argued for about an hour, interrupting each other constantly. Judge Feldspar said very little, only occasionally inquiring sincerely into some detail of the story. After hearing the attorneys at length, Judge Feldspar sent them out to settle the case.

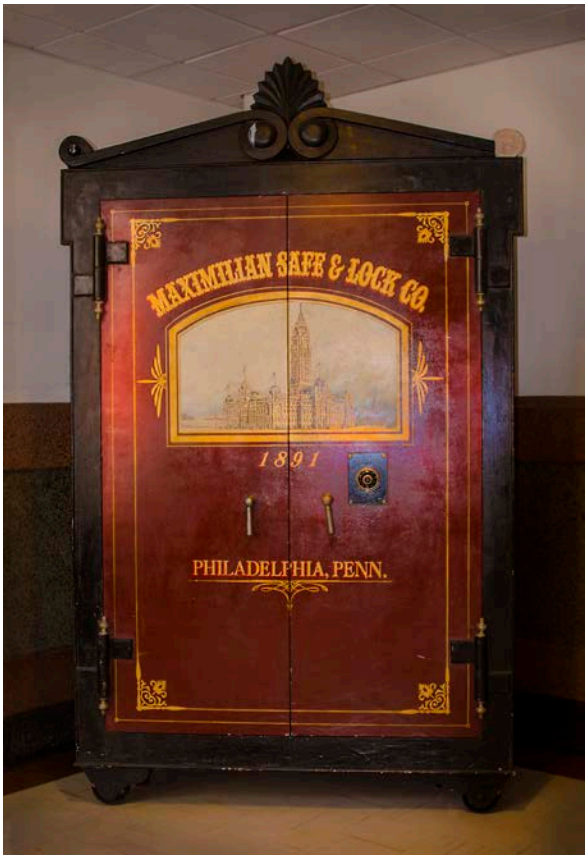
When the second case was conferenced I saw the process repeated. After sending the second tandem to the hallway, the judge offered me another brandy and another cigar and, announcing that he needed a break, sat down to read correspondence. I asked Judge Feldspar what would happen next. He said that after the third conference he would wait for the settlements until lunch. I suggested that I had other things to accomplish that day, thanked him very much, and by his leave would check back later. He thought that would be fine. I

returned at 3:00 p.m., and to my amazement the courtroom remained equally dark. Judge Feldspar had retired for the day, and none of the attorneys was around. When I expressed astonishment to his staff that all three cases had settled they told me that the cases had not, but the judge had recessed court for the day, and all would return at 9:30 a.m. with their parties and witnesses, ready to start trial.

Sure enough at 9:30 a.m. the next morning the parties were there sitting, standing, or smoking in the hall although Judge Feldspar had not yet arrived. The judge arrived promptly at 10:00 a.m., greeted the attorneys, and chatted briefly with each tandem. The judge remained in chambers until 12:30 p.m. when the court broke for lunch. He returned at 1:30 p.m. in the afternoon, and as the afternoon wore on he occasionally chatted with counsel. Court recessed at 3:30 p.m., still without anyone having entered the courtroom. The parties ready for trial were told to return the next day.

On the third day, to my astonishment, one case had indeed settled and only four lawyers—without parties or witnesses—were present. A series of messengers came running back and forth to the attorneys who were sitting idly awaiting the judge. Over the next week I observed the attorneys, without clients, whiling their time away, day by day, sometimes engaging in a game of backgammon, sometimes reading the paper, sometimes studying other files. On one occasion I saw that a defendant himself was present, but he was reading The Count of Monte Cristo in the hallway.

On the fourth day only one set of attorneys was present. I inquired of those attorneys. They said the other remaining case had settled, but since both of their clients were wealthy and it was a nasty business dispute between former partners, they would simply wait until the judge was finally ready to start the trial. While they did not admit to enjoying the sport, they did acknowledge that their firms (two of the biggest and most highly regarded in the city) were billing 6 hours a day while they sat in the hallway doing work for other clients. When I later inquired of senior members of the bar about this strange practice they said these remaining lawyers were on a fool's errand. To their knowledge, after the first five years of his distinguished twenty-year judicial career Judge Feldspar had never entered a courtroom. Nonetheless, he was well respected by other judges as a great "settlement judge."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CHAPTER TWELVE

TOO INSIGNIFICANT FOR PRECIOUS JUDICIAL TIME

I WITNESSED MANY amazing things in court in that time long past. We are so lucky that satellite, media, communications, and general knowledge have stopped the most egregious self-serving practices of prior generations of judges. One example that springs to mind occurred in Common Pleas Court Number 4. Judge Wolfson was presiding. Judge Wolfson was a man with little tolerance for attorneys who wasted precious judicial time. Judge Wolfson also had little tolerance for cases too insignificant for precious judicial time. He learned to conserve judicial resources. Although I spent many hours observing him in court and even privately conversing with him I am not able to report what he thought constituted an important matter that warranted judicial time. Never did I see any relish or intellectual

curiosity for a legal issue nor any appreciation that the parties in any case really cared about the dispute. His general perspective could be summarized in the later-to-become-immortal words "Can we all get along?" When not complaining that the lawyers were being "nits" he vocally affirmed his belief that all cases should settle.

Interestingly, Judge Fourier, who was also a judge of Common Pleas Number 4, was not appreciative of Judge Wolfson's perspective on forcing or cajoling settlement at all costs in all cases. While one judge would never criticize another directly, Judge Fourier did on one occasion reflect upon the judicial perspective that all cases should be settled. Judge Fourier said: "If all cases should settle, then there is no case that a lawyer should decline to file in Court. The result of avoiding trials and forcing all cases to settle is to subsidize the bad lawyers who pursue cases they should lose, or better yet should never have filed."

Common Pleas Court Number 4 scheduled one day per month for what was called "Motions Court." This was another type of cattle call but organized and promoted by the lawyers themselves. Any lawyer who had any "miscellaneous matter" to present before the court or who had any dispute that was not a trial or did not need evidence could simply file a motion. It would be placed on the miscellaneous motions list for the following month.

Since all were required to be present at 9:30 a.m. at the opening of court, the courtroom was filled with attorneys. Generally, Judge Wolfson intentionally took the bench at 10:15 a.m.—because, as he would say:

"these attorneys have probably never even met and they need time to work out their differences among themselves so as not to waste precious judicial time." Of course the bar knew this and at 9:30 a.m. the courtroom would be empty, slowly filling as 10:15 approached. Promptly at 10:15 a.m. Judge Wolfson would ascend to the bench from his chambers in the rear and the Court Crier would proceed to the ceremonial calling of the list. This would consist of stating the name of every case and then intoning, "If you have reached an agreement, please form a line to the right." After calling the 150 names of cases—which itself took close to 30 minutes—the court would then accept the agreements one by one from the attorneys who had formed in line. After each attorney advised the court that an agreement had been reached, the judge would say: "Thank you very much counselor! Does everyone see how good a job experienced counsel are able to do?" After forty of these ceremonies had been completed the first "contested" matter would be permitted to approach the bar of the court and argue their respective points.

The arguments of counsel were often annoying to Judge Wolfson. His annoyance was understandable because counsel were constantly trying to speak over each other. Possibly due to this rude behavior, it was sometimes difficult for me to grasp any semblance of the issue being presented. Often the attorneys would argue between themselves as if on a street corner without any regard to whether the court was even listening. To outward appearances Judge Wolfson focused on the attorneys and intently listened to the drivel and bickering

in the courtroom, although having seen his note pad afterwards I can attest that he spent some of his listening time working on a crossword puzzle, preparing a shopping list, or working on his calendar. The lawyers confided to me their belief that whoever got in the last point, whoever spoke last, generally won before Judge Wolfson. Nothing that I saw made me think the lawyers were wrong.

Despite the apparent courtroom disorder and his actual disinterest, Judge Wolfson invariably cut straight to the real issue. He eliminated the personal bickering and entered what appeared to me to be a judicious and appropriate order with clear deadlines that often included what I came to learn he called a "self-effectuating" Order.

But the most remarkable thing was the late morning occasion when there were still some thirty cases remaining and Judge Wolfson—probably having not gotten sufficient sleep the night before—stepped out of his normal hail-fellow-well-met attitude, in which he seemed to be interested in the welfare of the attorneys who appeared in front of him and to be willing to listen to them at length, and actually lost his temper. Standing up in Common Pleas Court Number 4 where he presided, he announced that he had heard enough of attorney bickering and drivel, that these matters did not appear to be reasonable for determination in a courtroom, and that he would have none of it any longer. He then proceeded to take off his robe and say: "What lawyer wants to hear this drivel? Because I will hear no more."

Needless to say a serious hush fell across the entire room as the attorneys sheepishly looked at each other or the tops of their shoes. Judge Wolfson stood there repeating his challenge: "Doesn't any lawyer have it within himself to take my challenge?" One attorney who had been at the bar long enough to be brave but not long enough to know better approached and sheepishly said, "I would do this, Judge Wolfson, if you really want me to." Judge Wolfson held out the robe for him to put it on and offered him the judicial chair. That attorney, Charles Bridget, having ascended to the bench, three times declined the robe but each time Judge Wolfson insisted that if he was going to make decisions he had to wear the robe. Finally attorney Bridget took the robe. Draping it over his arm, he sat in the offered judicial chair. Judge Wolfson ordered the next case argued and insisted that the now robed attorney Bridget decide the matter. Although hesitatingly at first, Bridget did obey the judicial command. He made a determination of the matter and did so for the next two or three cases, after which Judge Wolfson announced that the attorneys had better go resolve the issues like gentlemen or he'd pick a different attorney to decide. He left the bench and returned to his chambers on the third floor, at which time the Court Officers adjourned "Motion Court" until the following month.

On one other occasion I witnessed Judge Wolfson using a similar technique to avoid the waste of judicial resources, so I can attest that this was not purely aberrational behavior. On that occasion I was afforded the opportunity to observe a settlement conference.

Judge Wolfson alternatively reasoned with the attorneys, cajoled them, or pleaded with them to settle the matter. The only tricks Judge Wolfson did not employ were to engage the attorneys in a discussion of the evidence that would prove the claims they were making or to discuss what the law might be about those claims. Instead, the discussion focused on two topics. The most significant topic, which occupied the most time of the one and a half hour settlement conference, was which attorney had engaged in unethical and improper behavior towards the other attorney. The attorneys discussed the insulting nature of how each had been treated by the other. Judge Wolfson spent an inordinate time discussing in detail the facts of the supposed egregious behavior and desperately tried to effectuate a reconciliation among the members of his bench-bar tribe. He would alternatively minimize behavior to one attorney and then urge both to act productively "for the good of the order." Once he effectuated at least a perfunctory reconciliation between members of the bar who needed to live and work together cooperatively he then successfully managed to get meaningless mutual apologies and promises of more civil decorum in their relationships thereafter.

The other topic of the conference was a summary by each attorney of his side of the issue in the matter. To my eye, each side was grossly exaggerating for maximum effect any possible version of reality, seemingly in complete disregard (if the interruptions of opposing counsel were to be given any credit at all) to any actual testimony that could be presented in court or any actual

documents that in fact existed. Each attorney completed his summary with an outrageous demand for settlement or an offer that would not even pay the opposing attorney's costs thus far expended. When Judge Wolfson had no success cajoling either attorney to become reasonable, he stood up from behind his desk, took off his robe, walked over to the attorney making the most outrageous demand, and put the robe on the seated attorney. After returning to his seat behind the desk he said: "Now that you're the judge what do you think your demand should be?" While I am glad to have seen the demonstration, sadly I am unable to report either the answer or the remainder of the conference because, unfortunately, I was already late for an appointment and had to leave. I did however subsequently learn that the case did not settle—because some months later I had occasion to see it actually on trial before a different judge.

CHAPTER THIRTEEN

NEGOTIATION BY OTHER MEANS

AS I PREVIOUSLY mentioned I was given a remarkable position of confidence with judges and lawyers. Taking advantage of the honesty and candor with which I was treated, I frequently took occasion to spend time in a courtroom before a judge took the bench. I also took to spending time in the various pubs where lawyers would congregate after hard days in office or court. In this way I learned the peculiarities, techniques, nuances, and reputations of each of the several judges for each of the nine courts.

It was amazing to learn the detailed "book" the bar knew about every judge and the ease with which they shared this knowledge. It was also amazing to learn the detailed "book" the judges had about every lawyer and law firm and the ease with which they shared their

knowledge. I wondered what information about my own style, mannerisms, habits, and peculiarities had been shared or would be discussed about me in the future present. If the sharing I witnessed still occurred in the 21st century, I necessarily concluded that the bar knew more and had greater insight into my judicial behavior than ever I did. I made a mental note to seek insight counseling should I ever return to my proper time.

On one occasion over drinks a younger attorney mused, "I wish every judge would prepare a list of dos and don'ts so I would know exactly how to behave." Two older attorneys whom I had observed ingesting prodigious quantities of ale over the prior three hours responded.

The first said, "Some don't want to do that because then they'd have to be consistent."

The more seasoned noted, "Forget that idea, kid. You'll learn more about what they really do by keeping you ears open in this pub."

I learned for example that in Court of Common Pleas No. 3, writs of injunction—that is, petitions seeking to compel another to perform some act or to permanently refrain that other from performing some act—never went to court. They were never heard because Judge Blank, the President Judge of that court, who took all such matters unto himself, forbade any testimony whatsoever. Believing that the court should not be in the business of ordering people to do things, and believing that a piece of bread no matter how thinly sliced always had two sides, he always encouraged the parties to resolve every matter amicably. This

encouragement consisted of congenial discussions of their respective positions, gentle nudges, reasoned discourse, impassioned pleas, invitations to the parties themselves to participate in a round table discussion, securing a room in which the attorneys and their clients could thrash out their differences…and when the effort was to no avail screaming, yelling, berating, and eventually threatening until all participants came to the realization that it would be far better to resolve the case than to remain interminably in contentious argumentation.

Indeed, I was told—although I often viewed with skepticism the anecdotes attorneys spun after a few hours at the pub—that as the hours went on Judge Blank's appearances at these conferences became less and less frequent. Nonetheless, his success in resolving injunctive matters was considered to be one hundred percent.

Unfortunately, since the bar knew they would never have to actually prove whatever outrageous allegations they made, all plaintiffs seeking injunctive relief tried desperately to secure a position in front of Court of Common Pleas No. 3, trusting in the knowledge that the weaknesses and deficiency and perhaps even the absurdities of the case factually or legally would never be confronted and therefore certainly could never be reviewed by an appellate court. Countless questionable injunctions were filed in Court of Common Pleas No. 3. One lawyer confided in me, "If Judge Blank is going to force a settlement, then I know I'm going to get something for my client."

Conversely, well-connected attorneys whose clients actually needed injunctive relief used every artifice to avoid Court of Common Pleas No. 3. As a result, Court of Common Pleas No. 3 always received the weakest of injunctive actions, the ones in which no relief was deserved, the ones for which going to court really was merely negotiating by other means—as war is diplomacy by other means—which had the result that Judge Blank was repeatedly confirmed in his belief that there was no injunctive action that required court testimony or an actual ruling.

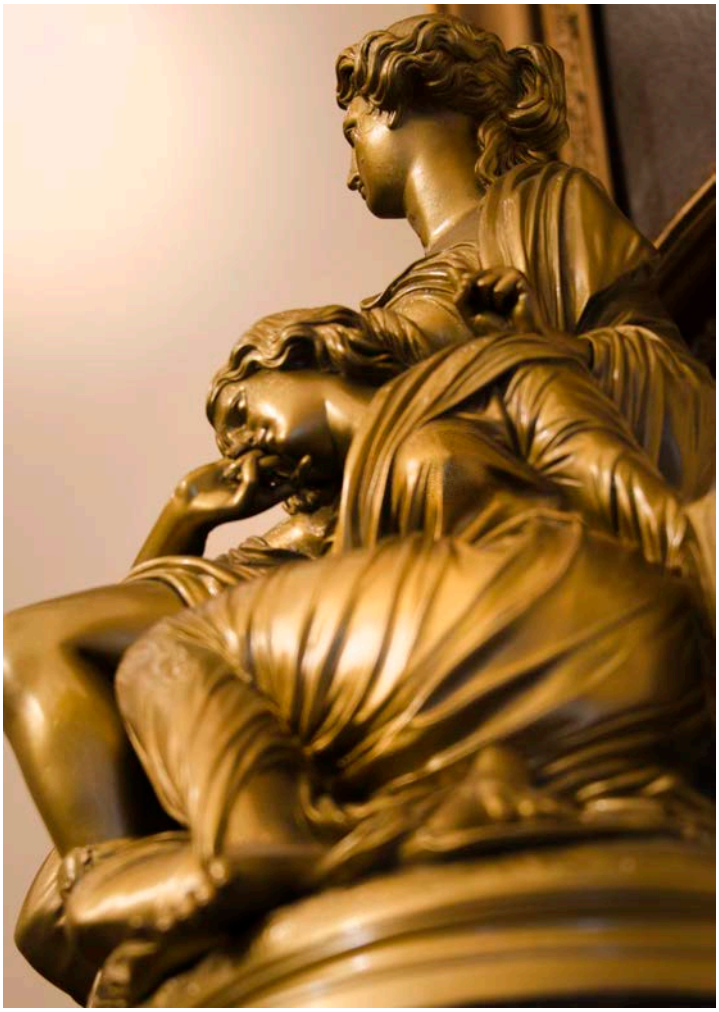
I had heard it rumored, although I could never confirm it, that in fact money exchanged hands in order to get cases of a weak injunctive nature assigned to Court of Common Pleas No. 3—and that greater sums passed to court clerks to avoid it. While I could find no proof whatsoever nor any witness willing to confirm firsthand knowledge, the clarity of the inevitable result in the court made activity to get an injunctive action in front of Court of Common Pleas No. 3 so appealing—and the fees that could be charged so lucrative—that the possibility of actual bribery must be entertained. It is so refreshing to know that the professionalism of my court now (that is, in the future present when I was presiding) has so improved that we can say to a reasonable degree of professional certainty that no such activity occurs.

In conversation among the judges, Judge Blank would boast of his ability to do justice by having the parties resolve injunctive matters among themselves. Many more were filed in Court of Common Pleas No. 3 than in any other, and almost 80% of Judge Blank's time

was spent on theses injunctive matters. His perspective on them was straightforward. He would often confidentially tell me that injunctive hearings were nothing more than business negotiations and that his role was to facilitate that negotiation. He felt that only by settlement could real justice be done—certainly not by the vagaries of proof at trial. Indeed, he mocked other courts whenever he heard of protracted injunction testimony.

Whenever such trials resulted in no order being entered he would find occasion to visit each of the judges of that court. He would dress up, and without mentioning the actual case in casual conversation he would drop comments about an injunctive matter that had just settled in his court and how he was thus free to enjoy a lovely leisurely lunch with his wife, after which he thought he would take a stroll in the Fairmount section of Philadelphia. Needless to say this behavior did not endear him to his colleagues or to the bar. Nonetheless, Judge Blank being the grand nephew of one Republican Party ward leader and being cosy with one Supreme Court Justice, no one would ever mention his behavior in any critical way. It was sad to me when he died because he went to his grave believing that he alone had the solution to a litigious society. My stories of the future-present court successfully managing 7000 cases to trial within two years by 20 trial judges were taken with the same evident grins as when the topic was Paul Bunyon or John Henry the steel driving man. Luckily no one ever actually called me a liar to my face.

Since all assumed that I would sooner or later manage to return to my actual time and resume my elected duties as a judge, many judges and lawyers would offer specific nuggets of advice. Judge Blank's advice concerning injunctions was consistent with his philosophy, experience, and success. He said, "Don't ever take testimony. Lock them up in a room, and make them work it out. They always do. Litigation is only negotiation by other means." Thus were all bills of equity resolved in the Court of Common Pleas No. 3, and perhaps some serious measure of justice was indeed on occasion accomplished.



CHAPTER FOURTEEN

THE 7TH WARD LADIES AUXILIARY OF THE ARCH STREET LONGSHOREMEN'S ASSOCIATION

OTHER COURTS TOOK a different view of injunctive matters. One court in particular had a judge who intentionally avoided injunctive cases as much as possible—Judge Pieroer. But since Court of Common Pleas No. 6 rotated its cases, some number of injunctive cases inevitably got to him. His handling of injunctive matters was the opposite of Judge Blank's in the extreme. Judge Pieroer's view of the requirements, prerogatives, and emoluments of the office to which he had attained because his wife's brother was the most successful banker in the city was that he was to do justice whenever necessary.

In one celebrated case that made the front page of every newsletter and broadside published during the week, the municipality was seeking to remove Pier No.

3 on the Delaware. This hundred-year-old pier was still in use but was allegedly in danger of collapse. It was 16 blocks north of a twenty-year-old pier that could easily accommodate Pier No. 3's traffic. The nearby residents, fearing the loss of their jobs or perhaps simply not willing to go 10 to 15 blocks from their homes for employment at the newer pier objected. They had the support of their local aldermen in claiming that the city had no right to close any pier, particularly one that the neighborhood needed. The suit sought a permanent injunction. Following days of hearing in which countless workers belonging to the Seafarer's and River Motor's Guild testified before a packed courtroom to the inconvenience of having to ply their trade 10 blocks further away and the ease with which the city could render the pier in question fit for at least another five years, Judge Pieroer ruled.

After expounding upon the limited rights of municipalities, precedent, and sound public policy, he entered an injunction prohibiting the destruction of the pier—to the cheers and accolades of all those present. While not formally part of the written decision which succinctly reviewed the evidence as presented at four days of hearing he later confided in me: "Sometimes you see an injustice and you just have to correct it." I am sure the fact that Judge Pieroer—who had been appointed to fill a vacancy—was up for election for a permanent term of office had nothing to do with his decision. I am not, however, as certain about the timing of the appellate court opinion, which was not issued until after the election, and which summarily reversed Judge Pieroer's

decision—clearly, succinctly, and correctly ruling that the city had the absolute power and right to close and destroy a dangerous municipal-owned pier. Neither can I be certain that the choice of assignment to Judge Pieroer, the only Democrat upon that otherwise fully Republican court, had not been designed to pose to him the moral dilemma of entering a popular but legally indefensible decision or an unpopular decision that could lead to election defeat.

Injunctions were also used for other purposes. In one of the few years when the Democrats managed to achieve the governorship and also briefly control the Pennsylvania Senate, a Democrat had been appointed to fulfill an unexpired term of another staunchly partisan Republican court. Needless to say, this did not go over well with either the other members of the court to which he was appointed or its President Judge. This occasioned secret discussions about how to ensure his failure at the election six months later. Although his election was unlikely at best because of the overwhelmingly Republican sentiment in the city and the totally unfounded but widely circulated rumors of his sluggardly behavior on the bench, it happened that a very specific case came up that played directly into the hands of those who wanted his tenure limited.

It seemed that certain ladies of the night and—it was alleged, although proof of this fact has never been presented in public—certain gentlemen of the night as well, had begun to occupy rooms in an upscale neighborhood at Second Street north of Market that they rented out by the hour. Although any business was

conducted in private in the boarding houses near the river and all solicitation was equally discreet, it was a fact that outlandishly dressed women and on occasion gaily dressed men did appear casually strolling in that tony neighborhood.

While the local alderman, who had been in power for over a decade, was not inclined to rock any pecuniary boat affording wages in his district, his wife, believing that her husband had attained his position through her moral uprightness and by her control of his baser instincts, became greatly offended by the nature of the commerce. She organized the "7th Ward Ladies Auxiliary of the Arch Street Longshoremen's Association," reviving a Longshoremen's Association that had existed in name only since the local pier had closed. The auxiliary became a formidable force for moral righteousness. Raising the battle cry: "No immoral behavior behind closed doors!" they organized the most influential women of the area to mercilessly convince their husbands that the lavishly dressed strumpets were an eyesore who must be stopped before they affected property values. This in turn had the effect of an intentional pattern of harassing behavior by the police, who previously had seemingly participated to no small degree in the pleasures and perhaps even proceeds of the trade. Although in truth having no interest in actually terminating the activity, the police brass clearly felt the political necessity of convincing the proprietors that a less organized neighborhood would be a more proper venue for their commerce.

The tactics employed were those traditional police techniques known as "move it on" in which increased patrols questioned anyone who was not a known resident, advised people from beyond the neighborhood not to loiter, and otherwise followed non-residents. One lady of the night was even arrested for crossing the street improperly. This arrest had been made to demonstrate the police efficiency of the "move it on" campaign.

While actual solicitation charges were generally dismissed at the police or magistrate level by a minimal fine, this case became a newspaper *cause célèbre* and could not be so easily dropped. Technically still on the books from colonial times was a law that at any corner specifically so marked a lady could cross only in the accompaniment of a gentleman. The corner in question had indeed been so marked by statute, but no sign had been seen for decades. This statute had been in such disuse for such a substantial length of time that no one could find any precedent for the arrest. In fact, after the city's seedy "industry" determined to contest the issue, a short-lived profession of paid male consorts operated as full time "crosswalk support specialists." These gentlemen escorted ladies across streets and generally served as a gentlemanly counterweight to the increased police presence. It was noted in gossip that some of the 7th Ward Ladies Auxiliary of the Arch Street Longshoremen's Association themselves, perhaps unwittingly, accepted escort services from these young well-built gentlemen.

As the case progressed in the courts, an entire squadron of city lawyers combed ancient parchment

texts found in the dead storage files of the 9th floor of City Hall to verify that the enactment had never been repealed. Another coterie attempted valiantly to determine what penalty the statute allowed for infraction. Legal research finally demonstrated that the maximum fine was six pence, a lordly sum the last time the act had ever been enforced but a pittance by 1913. That sum, even when adjusted at a normal rate, amounted in 1913 to a mere half penny. The alternative penalty of seven lashes was considered so absurd even by its enforcers that although documented was never mentioned in the legal proceedings.

Through happenstance, but perhaps with much greater forethought and intention than would normally be imagined or ever admitted publicly, the case was assigned to the aforementioned Democrat temporary judge. This judge, Judge Morgan, was a virtuous man of high principles. He was devoted to the law and sincere in his public responsibilities. Indeed, since the Democrats so rarely had occasion to name a judge in the county of Philadelphia, they had especially sought a renowned, distinguished, well-respected attorney of impeccable credentials whose integrity could never be challenged. As sadly has happened so often throughout history, however, the fact of character proved to be Judge Morgan's downfall.

When the time came for adjudication Judge Morgan properly refused to accept any testimony about the problems occasioned by the rampant un-virtuous behavior in the neighborhood. Likewise rejected were the Ladies Auxiliary's opinions of the poor example that

these elegant women who did not live there set by strolling about the neighborhood in their finery. Instead, the defense having admitted to crossing the street without escort at the exact location alleged, Judge Morgan focused exclusively on the legal question of whether a colonial pedestrian statute of a regulatory nature that had not been used in any prosecution for at least 50 and possibly 100 years could still legally form the basis of a criminal prosecution.

Although the city solicitors argued strenuously that the law had never been repealed, that the law is the law, and that ignorance of the law is no excuse, they concluded by asking that "the message go out loudly and clearly to that local community, and all the city, heralding that the law will be enforced and morality upheld." Unfortunately, the young city solicitors made the mistake of honestly admitting that they themselves did not know of the statute until studying the matter for days and working late each night. Under these circumstances Mr. J. Whipple (the most prestigious lawyer in the city, who had somehow been retained for an exorbitant sum by the poor misfortunate miss who had crossed without male assistance) argued that to impose any penalty whatsoever upon this type of innocent activity or even to convict was simply a violation of the rights of American citizens—rights for which hundreds of thousands had died in the recent Civil War. He disputed the research of the city solicitors who claimed that all colonial statutes had been incorporated into Philadelphia law and that this particular statute, having never formally been repealed, was still law. He

went further to say that to impose any penalty for an unknown colonial enactment even if, through inadvertence and neglect, the statute remained technically on the books, infringed upon the rights of all people. Mr. Whipple suggested that chaos would reign if every forgotten outdated regulation were suddenly to be enforced—using as examples the statute prohibiting leather making east of 4th Street, the statute prohibiting pubs north of Winter Street, and the statute imposing age limits on selling newspapers or distributing broadsides. He effectively argued that enforcement was absurd, and he argued—for the first time in America—that this type of selective enforcement in truth bore no relationship whatsoever to the crime charged but had been brought and was intended exclusively for the purpose of depriving female citizens of their lawful right to walk the streets of a specific neighborhood.

Winding up his oration, Mr. Whipple proclaimed that the prosecution of this statute was a violation of the rights of American citizens to freedom of movement and commerce guaranteed by Magna Carta, their English heritage, and our beloved Constitution that 250,000 Union soldiers had died to preserve. As an aside, he noted that this regulation, if upheld against his client, would restrict the rights of women everywhere and he was astonished at the silence of the suffragettes who were otherwise so vocal whenever the rights of the gentler sex were restricted.

These arguments, which extended from day to day, became hotly debated in the barber shops and on streets corners throughout the city and remained the

question de jour when Judge Morgan, partially distracted by the demands of the upcoming election, wrote his decision. The populous, having eagerly awaited it, vociferously debated his conclusions. Most of the judiciary would have seen through both the entire prosecution and the ludicrous defense yet as a matter of public policy would have decently affirmed the policy of moving this undesirable commerce to a different neighborhood, would have bowed to the community needs, morals, and values as expressed in the political pressure put on the police department, and would have found the young lady guilty as charged thereby demonstrating that further prosecutions would ensue unless the proprietors moved to a less organized neighborhood. I suspect such judges would have thereafter suspended sentence of all punishment because certainly no one should be punished for a colonial act that had never been enforced and only through ministerial neglect had never formally been repealed. Judge Morgan, however, had too great a respect for the rule of law and was too upright to affect intellectual dishonesty for the purpose of securing election. He could not bring himself to this most reasonable compromise. After receiving briefs from the city solicitors and Mr. J. Whipple, Judge Morgan accurately concluded that no one but the studious city solicitors or the guardians of the 9th floor archives (who valiantly battled mice, rats, bats, and the occasional raccoon which found ancient parchment ideal for nest building and occasionally, during hard times, food for its young) could possibly have known that such activity was in any way prohibited.

Although some friends suggested deferring decision until after the election, knowing that Judge Morgan would never find this ancient law enforceable, others suggested that a well-reasoned opinion would be accepted and actually beneficial because its notoriety would educate the voters to the legitimacy of the rule of law. Judge Morgan thought the latter recommendation sounder and more consistent with his personal integrity and his belief that a judge should not withhold decision for personal advantage. Accordingly, he issued the opinion as soon as it was ready, which unfortunately occurred a mere three weeks prior to the vote.

Judge Morgan issued a thirteen-page, tightly written, well-reasoned opinion which held that while the statute was technically the law, the government had lost the right to enforce the "Feminine Rights Act of 1698" by effectively nullifying it through years of inactivity. Judge Morgan's opinion was so well reasoned that law schools taught it as the first American affirmation of a defense of "selective prosecution." The decision to free the ladies of the night (and those gentlemen who strolled the neighborhood looking for them) to continue their activities despite neighborhood opposition became well known. The thirteen-page opinion was read by the attorneys on the case, was salaciously misquoted by Judge Morgan's political opponents, and became enshrined in the archives of not only the 9th floor of City Hall but also of the University of Pennsylvania law school.

Throughout the remaining election campaign, Judge Morgan became an object of scorn and derision.

Rumor spread that the Ladies Auxiliary had observers watching at every poll. Unhappily, Judge Morgan was heartily turned out of office at election, to the surprise of no one and much to the satisfaction of his President Judge. Thus was integrity and devotion to the rule of law rewarded in 1913. Achieving the lowest percentage vote for judge in the history of Philadelphia, Judge Morgan received only 2 votes in the 7th Ward despite a record turnout of 100% of the eligible voters. Over the years, a rumor spread that even Judge Morgan's wife voted against him. The truth was that Judge Morgan's wife unfortunately had to be away from him to care for her mother—who had become sick just the night before the election—and, regardless, at the time no woman had the right to vote in Pennsylvania. Otherwise, it is almost certain that Judge Morgan's vote total might have been at least 3!

In any event, the Ladies Auxiliary sought the identity of that second vote. One man believed to have loose morals and wrongly believed to have voted for Judge Morgan was chased from the ward by an army of women who arrived the day after the election to watch the volunteer fire department attempt to salvage some of his possessions from the raging fire that enveloped his home on election night.

Sad to report, following Judge Morgan's defeat and his return to the practice of law, no respectable business would hire him. His practice became limited to the business needs of the nightly commerce that despite all that had gone before continued to flourish nicely in the 7th Ward, a fact which further reinforced the totally

inaccurate and scurrilous rumor that circulated like wildfire suggesting that the night before the election Judge Morgan had received a king's ransom thrown over the transom of his home to render that abominable decision. Remarkably, the focus of Judge Morgan's legal practice meant that the "industry" received representation that exceeded its expectations and that over the years resulted in a plethora of "civil liberties" decisions in the appellate courts much to the chagrin of the Ladies Auxiliary.

Judge Morgan earned my respect and admiration, particularly when he privately explained to me why his conscience would not allow him to withhold the finished opinion until after the election.

CHAPTER FIFTEEN

BASHING

IT WAS MY good fortune to see the origins of many of the political activities that continue to this day. I had incorrectly thought that "judge bashing" was a relatively recent phenomenon. Although rare today, not long ago it had become commonplace for the District Attorney's office to blast judges in the press over every decision that the office didn't like. I had thought the approach, which was intended to control the judiciary by getting individual judges to shy away from unpopular decisions lest they be treated as pariahs in the press, was of recent origin. However, an event that occurred while I sojourned in the early twentieth century made me realize that the approach has been a long ignoble tradition.

Although the art of judge bashing is apparently of ancient origin, brash young district attorneys of our day have refined it. One young D.A. in the present who

understood neither ethics nor her role as a protector of justice (rather than as a person intent on getting a conviction) was heard, after an unfavorable ruling, to comment in a stage whisper that could be heard throughout the courtroom, "The Inquirer will love this one." The judge appropriately responded by saying, "I take your comment to be a Motion for Reconsideration, which is denied."

Another such guardian of justice asked to use the judge's phone during a recess—which he used to call a reporter to complain bitterly about the judge.

Sadly, the newspapers are complicit in this behavior. Without any investigation, they routinely publish reckless charges against the judiciary because conflict drives sales. All the better for sales is when the conflict is one-sided because no reasonable judge would ever respond to the self-promoting outrage of a wet-behind-the-ears, egoistic, inexperienced young district attorney. So rather than doing the hard work of actually reading a transcript or consulting with people who understand court procedure, newspapers will unfortunately publish only the misrepresented slant of the prosecutor. They satisfy their journalistic ethics by dutifully noting that the judge refused to comment.

Those few times when judges do respond they invariably do so with either a comment inappropriate to judicial impartiality or words that the reporter misunderstands—because a judge cannot possibly educate a reporter on deadline about the essence of the judicial function, which is to make discriminations, including determinations of credibility. Unfortunately,

without a detailed review of the evidence and without having personally seen the courtroom context, it is impossible for anyone to say why a decision is properly made or why a dispassionate observer disbelieves someone's testimony, including that of a police officer. Any judicial response of course becomes greater meat for the print fodder because it poses the judge's opinion against the prosecutor's opinion, although the prosecutor's job is to present mustered evidence and the judge has the very different job of evaluating that evidence and making a decision. The one opinion has the force of ideology, youthful ambition, and exuberance while the other has the solemnity of law, experience, and responsibility—with the obligation not to engage in petty controversy. These complicated issues are never conveyed through a press that finds ideology and irresponsible exclamations ever more interesting than logic and responsible discourse.

I had the fortune of observing a trial that was held before Judge Samuel Pennypacker of a man who came to a railroad crossing at 20th and Fairmount Streets when a train was passing. He was on a bicycle. The poor man, instead of waiting, rode around in a circle until the train had passed and then immediately crossed. Unbeknownst to him a second train was coming the other way. The second train struck and killed him. A lawsuit was brought against the railroad for striking the bicyclist.

The law was very clear that anyone approaching a railroad crossing must stop, look, and listen before proceeding. This statute, well-established for horses and wagons, clearly also included the mechanical

machines—cars—then coming into greater use. Judge Pennypacker appropriately ruled that a bicyclist had no greater rights than a horse, a carriage, or an automobile and dismissed the case.

Although he was eventually sustained by the appellate courts, their decisions came years after he was blasted by newspapers as far away as Boston. They said that his ruling was proof that "there was great need for new blood on the bench" and that the judges were "a sorry lot of old, short-sighted, 'dandy legged' fellows who could not ride a bicycle if they tried" and who had "no conception of the principles that ought to be applied to its use."

Wisely, Judge Pennypacker chose not to rise to the bait.

CHAPTER SIXTEEN

SURELY MCSORELY

ONE OF THE most interesting and beloved judges I met was Emadeus McSorley. He prided himself on his ability to get along with the practicing bar. McSorley had one of the largest caseloads in the city and was constantly conferencing his cases in his elegant chambers in City Hall. He called these "status conferences" and sincerely believed that he thus kept his finger on the pulse of every one of his cases and effectively moved them along to resolution. He prided himself on making attorneys comfortable, often serving tea and cookies as a way of "breaking the ice" at the beginning of a conference. His tea service was impeccable. He was dignified in every way. He would ask counsel whether and how they would like some tea and would ask his secretary to prepare the tea. When she told him it was ready he would bring the service from the center room into his private chambers

himself and personally serve each lawyer. This became an official break in the substantive action, although from my perspective it was often difficult to see any dramatic change in the tenor, tone, or topic in the conversation before, during, or after tea.

Judge McSorley, always a flawless dresser, had a box seat at the old Baker Bowl, and the conversation usually began and often ended with discussions of the poor Phillies and Athletics baseball teams. McSorley had been captain of his college baseball team, and it was rumored (although the rumor could only be traced back to his secretary of 15 years) that he had been scouted by the Phillies when he was in college and had not been signed to a minor league contract only because there were so many other outstanding prospects—including Ed Delahanty—and because one other player's uncle was connected to ownership.

Except for a break of 15 or 20 minutes for tea and sometimes the additional treat of biscuits baked by McSorley's secretary, these status conferences would last over an hour and followed the same general format. The judge would greet counsel. If any lawyer was from a firm that the judge knew, he would inquire about the health of the various senior partners. Before taking the bench, McSorley had been a junior partner at the firm of Roof, Stoddard, and McSwain, so he considered himself to be a member of the "big firm" elite and the "gentry" of the city. He therefore liked to catch up on the big-firm goings-on. At times named partners would appear, but usually it would be newly hired associates who were assigned to the tea party conferences. They likely had to

make things up about the senior partners because they had probably never seen them or at least had not been in their company other than at the annual Christmas party. Nonetheless these highly paid, highly recruited, highly academic associates could readily and easily converse about the comings and goings of the senior partners, their spouses, their children, their country clubs, and on occasion their tennis and polo exploits. If an attorney was not from a blue blood big firm he would of necessity sit politely but silently during this phase of the conference.

At the proper point Judge McSorley would lean back in his chair and ritualistically say, "Well, counsel, how are we doing in this case?" The attorneys would recite the basics of the law suit, explain the defense, and go over the investigations that they were doing and the discussions and disputations that they were having between themselves as they prepared the case. After this recitation McSorley would pronounce that it appeared that everyone was diligently addressing themselves to the issues, and he would declare the tea service ready. At the conclusion of tea time, McSorley would ritualistically reopen the status conference by saying, "Well, gentlemen, where are we going with this case?" At that point, the attorneys would all concur that they hoped in the future to be in a position to be able to evaluate the merits and demerits, values and negatives, pros and cons, difficulties and advantages, and all other aspects of the issues presented in order to be able to come intelligently to some means of beginning to grapple with a resolution acceptable to all. These presentations were almost always met by sincere, repetitive nodding by all other

participants in the room. The primary speaker would then explain that therefore some modest additional time was needed. The conference would ritualistically end with McSorley pronouncing, "Then, gentlemen, I see that we are making great progress, and we will focus on this matter at our next status conference—shall we say six months hence?" This was usually universally met by a nodding affirmation and the attorneys taking their leave.

I observed this pattern repeated numerous times while I abided in prior Philadelphia. There were only two variations to this tea party conference. The first modest modification was if at the conclusion of the conference an attorney stated that he would be taking a significant vacation with his entire family to the Adirondacks or Bar Harbor, Maine, for the month of July and, accordingly, if it would suit Judge McSorley, he would respectfully request that the status conference occur one year to the day rather than six months hence. Opposing counsel invariably concurred, with the understanding that attorneys are entitled to some relaxation from the grind of the practice of law and because the opposing counsel himself would be sojourning briefly at the shore, so it would be no imposition whatsoever to accede to his compatriot's so reasonable a request.

Remarkably, I saw the same ritualistic status conference occur on the same case on more than one occasion. Once when I came to understand that the status conference I was there to observe was the third or fourth status conference on the same case, I found excuses to take my leave and have tea elsewhere that day.

To McSorley's credit, I must report that on those few occasions when a female lawyer appeared he would treat her with the utmost respect and would permit no denigrating comments from opposing counsel. Invariably, although male attorneys always addressed each other formally as Mr. This or Mr. That, when a female attorney was addressed or even referred to it was by her first name . . . Victoria, or Dorothy. Without fail, Judge McSorley would interrupt counsel to ask, "Who is Victoria?" Counsel would get the message and would thereafter, at least during the remainder of that status conference, treat Victoria with the common respect treated all other members of the bar and address her by her formal Mrs. Picker name.

McSorley was fond of pulling me aside at the conclusion of these conferences to say in a hushed private voice, "Mark, my boy, if these attorneys would only work together I am sure that the case can be amicably resolved. No one wins when a case goes to court. My God, allowing 12 individuals who know nothing about the case to decide these significant issues would be a gross waste of city money. Why, Mark, this case could take three or four weeks to try and think of how much money I am saving the city by assisting the lawyers to come to an amicable resolution." I never understood this perspective when cited by McSorley, or by other judges, because whether the judge was on trial or in chambers his salary and those of his secretary, law clerk, and aide were all paid just as were the gas bills. Indeed, no one ever explained how settling a case saved even $1 for the city because the fixed costs remained exactly the same,

including the dollar a day paid to each juror given that the same number of jurors were called to be available every day. On the rare occasion when a case actually would be scheduled for trial, McSorley would always grant any request for an adjournment, returning the matter to the status conference track.

The only other time I saw deviation from the standard pattern of the tea party conference was when an attorney who was not part of the club and who had no relevant gossip to share would remonstrate that the case had dragged on too long and that he wished on behalf of his client, respectfully, to obtain a trial date. On such rare occasions, McSorley would rebuke the attorney for his lack of respect for the profession, his lack of understanding of the crowded docket under which the Court of Common Pleas labored, and his unwillingness to amicably resolve cases which should of course be resolved. McSorley would then abruptly terminate the conversation with the suggestions that perhaps if the attorney would spend more time getting more significant clients he would understand that cases take time and energy to prepare properly. Nonetheless, a trial date would be given with the concurrence of all counsel. At trial McSorley surprisingly was in complete control of the proceedings, brooked no interruptions, knew the law, and made all rulings totally fairly and without any regard for the attorneys or law firms before him…

McSorley was a favorite of the bar, and a special favorite of lawyers from big firms, who admired his judicial demeanor. At one Bar Association meeting a partner in a big firm who I had just that very day seen at

a tea party conference took me aside and whispered, "You know what we call Emadeus McSorley?" I answered that I did not know what they called Emadeus McSorley. To myself I silently expressed astonishment that a lawyer would bring me into his confidence to this extent, no matter how many cocktails we had shared. He said, "We call him Surely McSorley because there is no request that a big firm lawyer ever made that he didn't McSurely agree to." After I had been shared this intimacy, I understood more clearly the comment that Judge McSorley would often make after a status conference. He would remark on the amount that so-and-so big-firm attorney who had just left the conference had earned that year.

CHAPTER SEVENTEEN

A SURPRISING FAREWELL

ONE OF THE saddest cases I saw way-back-when will stay with me forever. After his wife died, old man Cratchit lived by himself for over sixteen years in a little apartment on Second Street just below Market. He didn't go out much, sometimes shopping for food, on occasion eating at the Polish delicatessen down the block. He was a devoted father and grandfather who attended every family event he could. Each of his three children visited him at least twice a month with their spouses and eight grandchildren. It was sad that no one discovered his body until three days after he passed quietly in his sleep on August 5, 1913. He was only found when his son, John, and John's wife, Mary, came to visit, along with their two children, Timmy (age 11) and Joanne (age 9). In the heat of the Philadelphia summer, as they approached the stairway to Cratchit's second-floor

apartment, the family could tell immediately from the smell that something was wrong. The son kept his wife and children behind as he discovered the sad truth.

Cratchit's family called on the J.J. Mahoney Funeral Home at 6th and Arch, which promptly sent out a fancy horse-drawn hearse to gather the remains and arrange for the funeral. A week later at the funeral home, Rev. Paulson, the entire family, and twenty mourners of all ages (including some who had worked with grandpop Cratchit before he retired sixteen years earlier) arrived to give him a final goodbye.

The funeral home did its best to clean up Cratchit's body and make it presentable even though it had lain in its bed undiscovered for three days. Despite their best efforts, they determined that a closed casket was necessary. Nonetheless, the family was permitted into the back room of the chapel for one last open-casket farewell to grandpop. Upon opening the casket, however, quizzical looks appeared on the faces of the family and, for a time, they were all speechless. Finally, grandchild Amanda, age 15, spoke what everyone was thinking: "That's not grandpop."

All the family members immediately agreed that the body looked something like Cratchit but that it really was not their beloved "Pop." Rev. Paulson, supported by J.J. Mahoney himself, reassured everyone that in fact it was. J.J. told the family that people do look different after laying in the heat for three days following their demise and after the funeral parlor had done their best to try for an open casket funeral. He reassured everyone that the body before them was, in fact, grandpop.

As the skeptical family began to gather at the front doors of the chapel for the beginning of the funeral ceremony, J.J. acknowledged to himself his own doubts. He sent runners to the city morgue, to the ice house where bodies were stored before the day of the ceremony, and to his other funeral parlor at 6th and Washington. He soon realized, by return messenger breathing heavily, that in fact a terrible mistake had been made. He learned that the funeral parlor at 6th & Washington would be sending grandpop's real remains as fast as their horses could run. Telling Rev. Paulson to delay the ceremony, J.J. arranged for six of his sturdiest pall bearers to be ready at the door so that as soon as the proper remains arrived the caskets could be switched and the funeral could proceed as if nothing amiss had happened. While the family stood impatiently waiting to be escorted into the chapel, the second hearse arrived behind two sweating and laboring horses.

Not understanding what could possibly be going on, the confused family watched through the parlor windows as six burly men ran outside and the doors of the hearse flew open. The men grabbed the casket handles and hurriedly pulled the casket out, intending to make a swift but unobtrusive switch. Unfortunately, the funeral home at 6th & Washington, in their haste to get the right body to the right ceremony, had inadvertently failed to secure the lid. As the pallbearers pulled the casket unceremoniously from the hearse, the lid slipped off and—in front of the shocked and dismayed family, which ranged in age from 52 (Jeremy, the oldest son) to

3 (Martha, the youngest grandchild)—out rolled grandpop as dead as ever and more decayed.

Despite the distress, or perhaps because of it, the pallbearers threw Cratchit back into his casket. They exchanged the old casket for the new and the ceremony proceeded normally—although perhaps with significantly more crying than one would have expected for someone who had lived a full and worthy life before he had finally gone to see his maker.

One would have hoped that this would be the end of the sad tale of a sad burial. Unfortunately, it was not to be.

As compensation for having tried to pass off the wrong body, J.J. Mahoney had graciously arranged for grandpop's remains to be laid to rest in a casket that was much more elaborate, much larger, and much heavier than the one that was holding the wrong body. Following the ceremony, the hearse containing the right body and the elaborate new casket slowly walked to the cemetery at Pine Hill Ridge followed by four magnificent carriages for the family and another four carriages for the mourners. When the funeral procession reached plot 67 on Ridge Road, however, the sadness continued. As everyone stood around in the heat, the pallbearers steadied the new casket on two ropes that stretched across the pre-dug grave. Before the casket was to be lowered into its final resting place, the family members took turns approaching it for final goodbyes and prayers. Johnny, age 6 (Martha's older brother), was held by his mother, Sara. As she approached the edge of the gravesite, the ropes holding the heavier-than-expected

new casket above the grave broke from their moorings and the ground gave way underneath her. Into the grave went Johnny and Sara along with the casket, sideways.

As quickly as they could and in a great show of strength the pallbearers pulled the casket from the grave and, to correct the horror, lowered a gravedigger's ladder to allow mom and son to return to solid earth. Both were filthy, scraped, and bruised—and crying—but in truth, other than the indignity and terror, not significantly injured. The final words resumed amidst a crescendo of tears.

Sadly, this too was not the end of the family's distress. Once the final grave-side words were spoken the pallbearers realized that even though Johnny and Sara could fit in the grave as dug along with the elaborate new casket, sideways, the grave was not large enough for the casket if the casket were lowered into the grave right side up. The casket was simply too wide. Although one might think that you could just dig the grave a little wider, that was impossible because of the narrow dimensions of the purchased plot in relation to the adjoining graves, one of which held Cratchit's late, beloved wife. J.J. wisely decided not to attempt to dislodge grandma from her adjacent resting place. To allow some measure of closure for the grieving family, grandpop was laid to rest sideways in the grave and rapidly covered.

J.J. and the cemetery owner, of course, wanted to make amends to the family and offered to rebury both grandpop and grandma in other grave sites free of charge. The oldest son, Jeremy, as spokesperson for the entire family, agreed but insisted that he wanted to be

present when the bodies were taken out of the ground and reburied. Both J.J. and the cemetery owner thought that this was not necessarily the best idea since grandma had been in the ground for more than 16 years, but Jeremy prevailed. Because the weather would cool in the autumn the exhumation was arranged for October 4th. Sadly, even on October 4th all did not go well. As grandma's remains were lifted out of the earth, her deteriorated casket gave up the ghost (in a manner of speaking) and crumbled, revealing a jumble of bones to which were attached pieces of flesh crawling with maggots and worms, all of which proceeded to disintegrate all over the ground.

Eventually the bodies were both reburied, side by side, but it was not so surprising that the family filed a lawsuit. The case came before Judge Begune. He did a fabulous job convincing the J.J. Mahoney Funeral Home and the cemetery at Pine Hill Ridge (whose joint defense could reasonably have been boiled down to "shit happens when people die") to settle the suit with a payment to the family of $6,000.00, which was, at the time, an other-worldly amount.

CHAPTER EIGHTEEN

THE LAZARUS DEFENSE

IN 1913, PERSONAL injury cases were rare—and obstetrical malpractice cases even rarer. I, however, witnessed one of these rare cases, a sensational story that gripped the nation: *Michaelson v. Union Memorial Hospital and Charles Contriallo, M.D.* Few lawyers were willing to take on the medical industry in 1913, but Deal Barrow pursued this case with amazing intensity.

Michaelson involved a new kind of medical device. Spirometers were developed in England in the 1840s to measure the "vital capacity" of the lungs. A portable spirometer was patented in 1865. During the rest of the century experiments were made so that this tool could be used in a variety of ways to improve modern life, and in 1912 a new kind of spirometer was recommended for a new kind of use. Plugged into an electric outlet, the "magnetostepescoptica" spirometer allowed doctors for

the first time to listen to the heartbeat of a fetus in utero. By 1920, however, the magnetostepescoptica spirometer fell out of use, and the *Michaelson* case might have been the cause.

Just after the stroke of midnight on August 10, 1911, Darlene Michaelson, nine months pregnant, had her water burst. Her sister and her mother raced her to Union Memorial Hospital. The night nurse could not hear the heartbeat of Michaelson's baby. At 12:55 a.m., Dr. Charles Contriallo pronounced the baby, Johanna Michaelson, dead in utero. One hour and fifteen minutes later, baby Johanna was born, very much alive, but suffering from severe difficulty breathing. This baby died 12 days later.

Hearing evidence from October 13 to November 4, 1913, the jury rendered a verdict for the plaintiffs and against Union Memorial in the amount of $28,404.66, a staggering sum in those days. That same jury, however, found in favor of Dr. Contriallo, even though he had declared the baby dead before she was born alive.

At the trial, the plaintiffs had called their first witness as on cross-examination: Dr. Contriallo. While it is common today to call a defendant as on cross, this tactic was astonishing in 1913. But Deal Barrow thought there was no way the doctor could defend his decision to pronounce a live baby dead. Barrow reasoned that either the doctor would have to admit he had been wrong, or he would have to try to justify the absurd.

Justify the absurd is exactly what the doctor did. Dr. Contriallo testified as on cross-examination that by 12:55 a.m., after he had spent ten minutes using the

magnetostepescoptica spirometer to check the baby's heartbeat, the child was clearly dead, but that the child had miraculously come back to life when it was born an hour and fifteen minutes later at 2:10 a.m.!

According to Dr. Contriallo, the hospital nurse told him she could not locate any fetal heartbeat using the bedside stethoscope. Dr. Contriallo examined Darlene Michaelson using state of the art advanced medical equipment, the magnetostepescoptica spirometer provided by Union Memorial. Dr. Contriallo testified that the magnetostepescoptica spirometer was the new "gold standard" for examining heart function in a fetus. Barrow asked Dr. Contriallo specifically about the advanced technology of the equipment:

> Q: Is it your belief, Doctor, that properly performing an examination with a magnetostepescoptica spirometer is the gold standard when trying to determine if a baby is dead or alive?
>
> A: Correct.
>
> Q: The standard of care required that you use the appropriate equipment, right?
>
> A: Correct. I used state of the art equipment.

Dr. Contriallo further testified that, given the apparent difficulties of the birth, if he had had any

suspicion, no matter how small—even one percent—that the baby could possibly have been alive, he would have performed an immediate C-section delivery himself. But, being "100 percent positive" that, sadly, the baby was dead, Dr. Contriallo reasoned that his expertise was not needed to deliver a stillborn baby. He ordered the baby to be delivered by C-section by one of Union Memorial's staff doctors. Since it was early morning Sunday, no staff doctor arrived until over an hour had passed.

Dr. Contriallo unequivocally and repeatedly testified that the baby was dead in utero:

> Q: You were literally 100 percent positive that this baby was dead at 12:55 correct?
>
> A: Without a doubt.

Dr. Contriallo insisted that the most modern scientific medical device could find no heartbeat because the baby had none. According to Dr. Contriallo, clearly death in utero had occurred. The miracle birth of a breathing baby after death was quite simply "The Lazarus Effect":

> Q. So Doctor, is it your testimony that the baby returned to life, without any resuscitation?
>
> A. Yes, I used the machine and listened and listened and listened for 10 minutes, and the

> baby was dead. Yes, the baby returned miraculously to life! If there had been any heartbeat, I would have known. There was not one beat!

Dr. Contriallo also agreed that if the baby had been alive in utero, then the baby's death was his responsibility:

> Q: If there was any heartbeat, no matter how weak, doctor, no matter how slow, if it was there and you missed it, you were responsible for the baby's death, correct?
>
> A: That is correct.

But Dr. Contriallo purported to believe resurrection can happen:

> Q: Doctor the idea that a baby's heart could stop, the baby died in utero, and then the baby could come back to life later is absolute fantasy. Isn't that true?
>
> A: No, it's not.

Throughout his testimony as on cross-examination, Dr. Contriallo remained "100 percent positive" that Johanna Michaelson had died and miraculously returned to life. In fact, he had told the mother that Johanna Michaelson was a "miracle baby."

The magnetostepescoptica spirometer that Dr. Contriallo had used had been supplied by Union Memorial. He testified that he had no trouble with the equipment and that he believed it was in perfect working operation:

> Q: Do you believe, Dr. Contriallo, do you believe that the most plausible explanation for the discrepancy between the magnetostepescoptica spirometer you used and the live birth later was that the unit they gave you didn't have enough sensitivity or resolution or power to pick up a heartbeat?
>
> A: Absolutely not.

Counsel for Union Memorial, the renowned William Clarke Mason, emphasized in his opening speech and repeated throughout the trial the theme that Union Memorial was a "community hospital":

> We're a community hospital. We don't have fancy doctors with lots of degrees. We have working doctors who really treat and care for real people. We know what we can do and what we shouldn't do. When there is a problem for which we need help, such as a difficult delivery, we transfer our patients to Pennsylvania Hospital, a mere twenty blocks away.

Mason also described the magnetostepescoptica spirometer equipment:

> I represent the hospital. It's our magnetostepescoptica spirometer machine, we agree. There's no question about that. This magnetostepescoptica spirometer machine, you'll hear, was perfectly fine. It worked fine. Dr. Contriallo didn't have any problems with it. It's been used thousands of time, on all kinds of patients. There's not even a requirement that you have such an advanced machine, but we have one, and so we have it available as an extra tool for the doctors to use. Dr. Contriallo used it, and he was able, sadly, to determine that the baby was dead.

Mason continued:

> If [Dr. Contriallo] had had an inkling, even an inkling that there was fetal life here, that there was a reason to do something, he'd have done the C-section immediately. And the same is true with—they make these allegations that the magnetostepescoptica spirometer wasn't any good. Here it worked fine.

Mason repeated the name for the miracle of Johanna Michaelson returning to life: "The Lazarus

Effect." "Weird things happen," Mason said, "unexplained things happen in medicine." Witnesses at trial testified to "hearing" third-hand about similar resurrections happening in Reading, Pennsylvania, and in New Jersey.

Even in the early part of the 20th century, however, "The Lazarus Defense" seemed hard to accept. Some newspapers branded it heresy, while others hailed the "Miracle of Life", and opined that since we knew human resurrection happened at least once in history with the original Lazarus why couldn't it happen again?

The professional expert witnesses called by both sides at trial tried not to answer the question asked. These witnesses, whose exorbitant fees were revealed to the jury, had moved from the role of objective doctors presenting testimony designed to assist the jury, to the status of paid professional witnesses acting as lawyers with medical degrees on the witness stand. These professional expert witnesses obfuscated, pretended not to understand the import of clear questions, and continually answered the questions that they "wanted to be asked" rather than actually responding to the questions posed.

One expert witness answered every question with ". . . but in this case counselor" and proceeded to restate his position. Judge Kaplan would not allow such a non-response. He consistently insisted that professional expert witnesses for both sides fairly respond to the actual questions opposing counsel asked them. Another expert, in response to a question about resurrection, said, "Where are you going with this?" As to that last non-

response, Judge Kaplan said, "Do you need to know the next question in order to answer that one truthfully, Doctor?" Eventually, every witness understood that, at least in Judge Kaplan's courtroom, they would have to answer the questions posed in cross-examination.

When finally forced to answer Barrow's questions, Union Memorial's medical expert stated that the magnetostepescoptica spirometer equipment the hospital provided might have been inadequate:

> A. The only way I can explain what happened is when the massive insult to the baby occurred, as a result of sudden deprivation of considerable amount of blood supply, the heart becomes stunned and goes into a severe deep decreased rate as low as one per minute. It is so slow as to be undetectable on magnetostepescoptica spirometer. And so [Dr. Contriallo] was fooled, in essence, if that heart was moving. I don't believe the baby was dead. If the heart was just moving slowly, that could actually be missed on a machine of that type.
>
> Q. So, Doctor, do you have an opinion based on a reasonable degree of medical certainty why that heartbeat wasn't detected up on the labor and delivery floor? What are the explanations for that?

> A: We explained that. The heart was already impaired, it was barely moving, and the magnetostepescoptica spirometer machine would not be able to detect that. It's also possible that the old methods and the cautious approach would have been better than relying on supposed improved technology. Further, I tested the power source and it was just barely adequate.
>
> Q: To a reasonable degree of medical certainty, Doctor, the reason that Dr. Contriallo didn't identify a beating heart is because the equipment he was using was not sensitive enough to find it, true or false?
>
> A: True.

After this testimony, Dr. Contriallo's own counsel called him as a witness again, on direct examination, the last witness at trial. In a remarkable transformation, perhaps never seen in a courtroom before or since, Dr. Contriallo entirely recanted his testimony given before the same jury just days before:

> Q: Today is the two-week anniversary of selecting our jury. Have you been here for every day and every minute of this trial?
>
> A: Yes, I have.

Q: And have you seen experts from various places sit up there and give testimony in their opinions?

A: Yes, I have.

Q: Have you been listening?

A: Yes.

Q: During the course of this trial, Dr. Contriallo, have you seen anything or heard anything from your careful watching and listening that caused you to believe that maybe there is another alternative explanation for what happened?

A: Well, when you hear a magnetostepescoptica spirometer expert say that the baby's heart was so weak and had such a slow rate and so irregular that it could have been moving but undetectable by the machine that I was using, that the power provided by the hospital through the plug may have caused the machine to operate slowly, that in fact there are questions as to whether the machine really can do what the manufacturer and the hospital tell you it can do, I mean you can't deny that possibility.

It was the most dramatic courtroom direct examination I have ever witnessed. Dr. Contriallo no longer claimed that baby Johanna Michaelson had miraculously returned from the dead. He entirely abandoned the "Lazarus" resurrection concept on which the entire defense rested. Years after declaring the baby dead, he finally acknowledged that the baby had been alive when he wrongly declared her dead:

> Q: Can we agree sitting here today that while you were performing your magnetostepescoptica spirometer study, the baby was alive?
>
> A: The fact that the baby later had a heartbeat, I would have to agree.
>
> Q: Now, Doctor, you testified that you didn't realize until during this trial that there could be a very slow heartbeat and slow enough that with certain equipment it wouldn't be picked up on magnetostepescoptica spirometer, right?
>
> A: Well, that's what one of the specialists said, yes.
>
> Q: [W]e now know, using the benefit of everything that you learned during this trial, that the child's heart had to have been beating during the magnetostepescoptica

spirometer because it would be medically impossible for the baby to die and come back to life two hours later, right?

A: I agree with that.

Every word of Dr. Contriallo's recantation was reprinted in papers across the country. From New York to California, the country awaited a verdict. Jury deliberations went on from day to day to day. On the fourth day, the jury submitted a note to the judge saying that they were having difficulty. Judge Kaplan told them that if they could not reach a verdict another jury would have the same problem. "Please continue deliberating," he urged.

Finally, on day six, the jury returned a massive verdict, but only against the hospital! Regardless of the absurdity of Dr. Contriallo's original testimony that he actually believed "The Lazarus Defense," and despite his total recantation, at the end of the trial the jury found in his favor. The courtroom was astonished! No one could explain how a defendant who lied and justified his clearly inadequate medical care with absurdity could have carried the day.

But I can reveal "the rest of the story" because Judge Kaplan invited me along as he spoke privately with the jury in the aftermath. They told Judge Kaplan that they thought Dr. Contriallo had learned something. At least he, at the end, accepted responsibility, and at least he would not make similar mistakes again. At least he would never again rely on questionable advanced

medical equipment rather than his medical training. The jury compared Dr. Contriallo's testimony to the defense put forward by Union Memorial, which to the end wanted them to believe that it was possible, without divine intervention, for baby Johanna to really be dead and return to life. Union Memorial had obviously learned nothing from this terrible experience and would continue to harm babies with this machine. And so, the jury found against Union Memorial but in Dr. Contriallo's favor.

Juries are amazing!

CHAPTER NINETEEN

THE THREE T'S

NOT MANY OF today's lawsuits—and only the basic criminal charges—were the same as in 1913. It was truly remarkable for me then (and is even now) to reflect on how the law has changed. Watching court in 1913 I was reminded of what Justice Holmes said: "The life of the law has not been logic; it has been experience." The dramatic changes in the practice of law between my experiences now and way back when have certainly born out the truth of that statement.

One claim that consistently required court action both then and now is a property claim that we call today "Quiet Title." In 1913 ownership problems were similar to those in the 21st century. Who owned what land? Where was the exact border? Had someone stolen property? Had they gained ownership through continuous use of the property despite lack of

permission? Had an easement been created? Back in 1913 an action to "Quiet Title" was called "Trespass to Try Title." The Three T's, as it was known in the trade, had its own arcane and distinctive rules.

I observed one Three T's action involving a Philadelphia couple named the Morgans, who believed they were the owners of a run down but livable house in what we now call Old City, at 5th and Bainbridge. They had lived in the house for 20 years. The Three T's action was filed by supposed new purchasers, the Dehors, who had recorded their own deed to the house with the Recorder of Deeds. The Morgans maintained that they knew nothing of the Dehors' claim to ownership until one morning in October 1913 when they were awakened at 5:30 a.m. by workers who appeared on their doorstep, accompanied by the Dehors, intent on demolishing their home!

When the Morgans understood why those men had come to their door they hollered at them to get off their property. The resulting yells and recriminations by the Morgans and their neighbors eventually led to the appearance of the sheriff who sent the construction (or demolition) crew home. The Morgans went inside their house, although a return to sleep was obviously out of the question. Mr. and Mrs. Morgan immediately went to their local lawyer, Mr. Jahecky, a few blocks away at 5th and Market Street.

After the Morgans deposited their life savings with Counselor Jahecky (and borrowed some from their local pharmacist, who often helped neighbors in distress), he found that the Dehors' deed, supposedly signed by both

husband Wayne and wife Dorothea Morgan on January 1, 1911, purchased the Morgans' home for what was, for that property, the significant sum of $450.00. This deed had been filed on January 2, 1911, and recorded one day later (since recording deeds was the simplest and most ministerial deed) by the County Recorder of Deeds.

Jahecky immediately filed his Three T's action asking that the Morgans' ownership be summarily affirmed against the claims of Mr. and Mrs. Dehors. Given that the Morgans claimed that they had never sold their home and that the deed was phony, Jahecky believed that the case was straightforward and could be readily resolved. However, few cases were ever "readily resolved" in 1913. The Dehors, represented by Trinfil the younger of the prestigious downtown firm of Treckle, Trinfil and Trimacker (interestingly, also known in legal circles as the Three T's) filed a Three T's counterclaim seeking a declaration that the Dehors' purchase was proper and that the Dehors had true ownership.

Through further investigation Jahecky was even more convinced that the deed was forged and that his clients had never signed it. He came to believe that a third-party intermediary, Mr. Scattering, claiming to be a real estate agent, had duped the unwitting Dehors to purchase from him a property that he did not own. However, not to be undone, Daniel Trinfil had contacted the public notary who notarized the deed and who affirmed in a sworn affidavit that the man and woman who had signed the deed had identification papers which conformed to Wayne and Dorothea

Morgan, the names on the deed. He therefore, in good faith, had notarized and recorded the sale.

Because of the strict enforcement of archaic pleading rules, the counterclaim was probably going to be stricken because the Morgans were living at the property. As it was then, title could not be determined if the property was occupied by anyone other than the petitioner, in this case the plaintiffs in the counterclaim, the Dehors. The law at that time required that before the court could permit the Three T's counterclaim to proceed, the Dehors had to file an action in ejectment to remove the Morgans. Thus, although living in the property was no deterrent to the Morgan's Three T's action to quiet title, the Dehors could not get a court to declare them the owners until they had first won an ejectment action and, after clearing the property of residents, filed and won another lawsuit seeking a declaration of their ownership. The fact that the Dehors, known throughout the rest of the proceedings as "plaintiffs in ejectment," could never win in ejectment and could never empty the property unless they proved they owned it was no deterrent to strict enforcement of the procedural rules which required two distinct suits.

Judge Bock, to whom the case was first assigned, always diligently sought any uncrossed "t" or undotted "i" or improperly filed document so he could dismiss a case and clear his docket. He called the process "case management" and sometimes referred to his technique as "upholding reasonable standards of practice." All the lawyers across the city eagerly awaited dismissal of the Dehors' Three T's counterclaim. Although I thought this

procedural "gotcha" was an incredible waste of resources, exalting form over substance in the extreme, the organized bar thought highly of Judge Bock's procedural predilections, particularly attorneys from larger firms who viewed technical pleading rules as the barrier that kept lesser-rabble practitioners from diluting the practice, wasting precious court time, and charging lower fees.

Thus, what could have been wrapped up in one lawsuit to decide who owned the property could not be resolved without three. And, of course, were the Morgans to lose their Three T's action the owner of the house would not have been determined, only that the Morgans were not. Indeed, even if they were to lose their action the Morgans could still succeed in demonstrating that the Dehors' title was fraudulent, and then the court would have to declare formally that no one was the owner. What a waste of time, money and effort!

Judge Bock, upon seeing the procedural quagmire, set forth a "case management order" setting the time for Preliminary Objections to Strike the Counterclaim, a time for a Response to Preliminary Objections to Strike the Counterclaim, a time for the Reply to the Response to Preliminary Objections to Strike the Counterclaim, and a deadline for the Counter Reply to the Reply to the Response to the Preliminary Objections to Strike the Counterclaim. He then set "discovery deadlines" in case there were factual disputes as set forth in the aforesaid pleadings, set deadlines for briefs, counterbriefs, reply briefs and finally set a precise date some 23 months in the

future for oral argument with the ominous phrase that this "absolute" date for oral argument "shall not be continued except for death in the Judge's immediate family." He then put the file into his drawer to await the accumulation of paper and had his secretary mark his calendar for the date of argument 23 months hence.

Almost 23 months later, on January 2, 1916, two days before oral argument, having insisted on strict "pleading practice" (as it was then known) and having waited until all the papers had been filed, Judge Bock dismissed the counterclaim sua sponte. Instead of hearing any oral argument on the voluminous papers, he issued a one-line opinion saying, "Since the law is clear, no argument is required." It was a dismissal that he and the entire bar knew was always to have been the result.

Trinfil the younger immediately filed both an appeal and a different, new action entitled "ejectment," to which he added a second Three T's count conditioned on obtaining judgment in the ejectment action. To further complicate the case, but in the result actually to the benefit of all, this new ejectment and conditional Three T's action was assigned to a different court. Therefore, of course, the case was assigned to a different judge. As luck would have it, the new case was assigned to Judge Bachmann who had a very different approach to litigation. One week later, Judge Bock transferred the Morgan's two-year old Three T's action to Judge Bachman, ridding Judge Bock of a case on his docket, consistent with Judge Bock's efficient case management technique. (I never did learn what happened to the

appeal other than to determine that Judge Bock never wrote any opinion.)

Incredibly, I subsequently heard Judge Bock "modestly" boasting to his fellow judges that his caseload always remained under control because of his skill at case management. Clearly, he considered technical trickery as his proper (and to my eye, perhaps only) case management technique. In a later chapter I will discuss the contrasting techniques of Judge Bachman, from whom I learned a lot, but suffice it to say at this point that within six months of the pleadings being closed (which pleadings were unfortunately significant in number and oppressive in technical requirements) the combined cases were assigned a date for trial.

Pretrial conferences were then rare. There was no meeting to streamline anything, and trial would begin immediately upon the swearing in of the jury, who were required to remain in the courthouse until a verdict had been rendered. Indeed, only recently abandoned was the policy that once the jury began its deliberations no food or water was provided until a verdict had been rendered. Luckily, Judge Bachmann did hold a pretrial conference one week before the case was to be tried, because he learned of serious problems before the jury had been selected.

In what proved to be one of the first cases in Pennsylvania concerning questionable expert testimony, the Morgans proposed to call someone who claimed to be able to analyze hand writing. This witness would testify that the signatures on the deed were not in the Morgans' hands. The Dehors vehemently objected

because this was extraordinary both because of the use of witness who knew nothing about the facts and also because there was no such thing as handwriting expertise. The Dehors argued that the Morgans might as well present a tarot card or palm reader expert or use a crystal ball to define the truth. Finally, the Dehors objected that no notice had been given and that they had no idea what this purported expert could possibly have to say or any factual basis for such extraordinary testimony. The Morgans countered this last point by saying that the Dehors knew full well both what their expert would testify to and how that expert had derived his opinions, because the Dehors too had hired a handwriting expert, who happened to have the diametrically opposite opinion—that the signatures on the deed were genuine.

At the dawn of the 20th century, this clash of experts presented a unique and novel problem. The Dehors' objections were probably the first challenge to expert "scientific testimony." Judge Bachmann expressed great relief that he had held a pretrial conference because otherwise, as he sorted out these knotty issues, the jurors would have remained locked in City Hall or housed in a hotel nearby. Judge Bachmann recessed the matter for 24 hours while he considered what to do.

Such objections to "scientific" testimony have now become common, usually called a *Daubert* (or *Frye*) motion. Hearings on such objections are now commonplace. I could have told Judge Bachmann how we, 80 years later, dealt with such issues and even told him that handwriting expert testimony had become

routine. But in the interest of learning more about judicial behavior in the old days, and of trying to learn how a respected jurist would approach a novel question, I chose not to risk affecting the legal history of Pennsylvania and kept my knowledgeable suggestions to myself. I decided, instead, to act as an observing anthropologist, and I remained silent as the situation unfolded.

After deep consideration and extensive reading, Judge Bachmann decided that the first step would be for each side to produce an affidavit by each proposed expert witness stating precisely what handwriting testimony was, what opinions they would present and how they reached their purportedly scientific conclusions. Judge Bachmann labeled this activity an "offer of proof"—which to my knowledge was the first time that phrase had been used in Pennsylvania. He gave the parties one week to exchange these sworn "offers of proof" with each other and rescheduled the pretrial conference to occur one week thereafter.

The offers of proof said nothing more than what had been represented at the first conference, albeit using many more words—namely that each expert had reviewed the deed signatures and compared it to other known signatures of the parties. The Dehors' expert reached opposite conclusions from the Morgans' expert. Judge Bachmann realized at that second conference that a supplemental affidavit was needed to outline explicitly how it was that each expert believed he had proper qualifications to offer that opinion…what we would now call a curriculum vitae. As before, he gave the parties one

week to produce and exchange these "qualifications affidavits" and rescheduled the conference for one week thereafter. After receiving all the statements about the experts' proposed testimony and their credentials, Judge Bachmann finally held argument. From the bench, he ruled that he would allow both experts to testify and that he would leave the question of truthfulness and accuracy for the jury to decide. Thus did Judge Bachmann anticipate by 70 years our modern Pennsylvania discovery and expert testimony rules.

Years later, reflecting back on this odd coincidence, I realized that procedural justice, however hard it is to define abstractly, embodies the same essential concept of fairness today as it did in 1916…or for that matter 1777. I realized that a sincere and honest judge could always fashion solutions for his or her time that reflected the proper understanding of justice in whatever age he or she lived. This realization led directly, decades later, to my authoring a chapter on judicial ethics in the "Judges' Book." I presented quotations about justice from throughout the centuries to teach the essence of judicial morality.

Immediately after the ruling, the Dehors (the defendants in the first Three T's action, although the plaintiffs in the ejectment action) again objected to the jury comparing expert opinions because the Dehors, as the defendants, would only call their expert witness to testify if the Morgans, as the plaintiffs, had already called theirs. The Dehors argued that allowing the Morgans' so-called expert to testify was a complete miscarriage of justice because the jury would first hear the testimony of

lay witnesses who actually knew something about the facts and because the jury could decide on the credibility of those witnesses without the assistance of any purported experts. Trinfil the younger informed Judge Bachmann (by way of veiled threat, to my ears) that an adverse ruling would necessarily result in extensive delays and likely appeals.

Nonetheless, trial began. The testimony was fascinating because similar testimony could be heard in that same courtroom 80 years later. Both Morgans took the stand as the first witnesses and testified that the property had been their home for two decades. They denied ever meeting the purchasers or anyone on their behalf or ever receiving any of the $450.00 supposedly paid to them. They said they knew nothing of any purported sale until the Dehors appeared at the property with contractors to throw the Morgans out of their own beloved home. An argument ensued and the sheriff was called. Upon hearing the Morgans vociferously proclaim that they had never sold the property to anyone, and the Dehors say that they had bought the property through a licensed real estate agent, while presenting a Deed of Sale that was valid on its face, the sheriff told everyone to get lawyers and let a judge decide.

Despite aggressive cross examination, the Morgans stuck to their guns and testified with seeming credibility to having no intentions to ever sell the house and to never having signed any deed. The Morgans called their bank teller who testified that no unusual or extraordinary deposits had been made during the month of or after the purported sale.

The Dehors testified in turn that they paid good cash money for the house in good faith, and that it was not until the day they arrived at the house with contractors that they became aware that their ownership was in any way in doubt. When asked why they would have purchased a property on the basis of a single exterior look without ever seeing the inside, the Dehors innocently and seemingly honestly testified that the broker, Mr. Scattering, who unfortunately could no longer be found, assured them that the property was vacant and in too dangerous a condition to even enter. He explained that the property was being sold at such a bargain price only because it had to be torn down. The Dehors further testified that although the immediate neighborhood was not great, their councilman, who they had supported in every election campaign, had told them that the entire area was to be purchased by the city as part of an overall neighborhood revitalization plan not yet publicly revealed. He assured them they would be generously compensated at resale to the city. He further assured them that even if their property were not part of the area to be purchased, the neighborhood would definitely be gentrified in the near future, and by building their dream home in the 5th Ward, at a bargain price, they would soon discover a greatly enhanced value! Amazed at their good fortune they had jumped at the chance to invest.

Mr. Scattering appeared at their door with a notarized deed a few days later. He told the Dehors that the Morgans were a lovely couple who were getting up in age and were therefore moving to Virginia to join their

son and his family. Although sad to be leaving Philadelphia, they were excited by the adventure and to finally have some money in their pocket to enjoy their remaining years. According to Scattering, the Morgans had never dreamed that their decrepit building could garner enough to spend their old age with family in relative luxury.

The transfer was joyful. Indeed, the Dehors had even purchased a new device that was then in an embryonic form: a policy of title insurance, in those days titled "Acquisition of Real Property Insurance." Had title insurance been purchased today the title insurance company would have been involved in these lawsuits because, at a minimum, the putative buyers would be entitled to a full refund of their purchase price and, equally important, would be entitled to representation in the lawsuit questioning title. However, as the Three T's law firm of Treckle, Trinfil and Trimacker looked closely at the tightly drawn seven-page contract, it became painfully clear that although the policy insured broken gutters, encroachment by fleas on tidal waters, fire destruction, collapse and rodent infestation between the time of sale and actual conveyance, the policy did not cover any claim concerning whether good title had been sold.

I personally read the policy and was astonished to find in the very first paragraph that the policy ensured against errors in the filing or recordings of the deed but specifically not as to anything concerning the sellers' actual ownership. The following seven pages consisted of conditions and exclusions. To my "Warren Court"

sensibilities this contract was clearly unconscionable and unenforceable against the reasonable expectations of any purchaser. In those days, however, the concept of consumer protection was completely unknown, and courts—because of the supposedly inalienable right of contract—routinely upheld even the most egregiously one-sided deals.

Sadly, these unjust legal concepts appear to be making a comeback (although I wonder how courts will eventually rule on that checkoff box that everyone checks on their computer attesting to having read the contract when everyone in the world knows that no one ever reads it and that the box must be checked in order to get to the next page.) In one case in front of me years later a cable company used miniscule print on page 8 of a 20-page "welcome" package to preclude the possibility of a class action lawsuit. Amazingly, appellate courts in some states upheld this clause even though the buyer didn't even know of it until after the deal had been consummated. Since there was no clear Pennsylvania law, I rejected this one-sided clause in the contract and was eventually affirmed by our Pennsylvania Superior Court.

Back in the early 20th century, it was hard for my modern mind to get around the question of what exactly had been purchased in the title insurance policy, since a claim on the title of the property was not covered. However, as I reflect on the issue today, it seems as though there are accidental death and dismemberment policies sold through the media and direct mail that only cover death or dismemberment if the claimant was in an

automobile driving on a state not a federal highway and only if the claimant was injured due to an accident caused by an intoxicated driver on the third Thursday of the month, or death policies that only insure death due to an airplane crash if a thunder storm which had not been reported at the time of takeoff caused the accident, or children's funeral expense policies that cover only the lordly sum of $500.00 after a $15,000.00 deductible has been paid, or travel insurance policies that cover airfare due to trip cancellation only if the cancellation is not due to a parent or child's sickness or hospitalization. I realize that perhaps the sale of this questionably useful title insurance policy to the Dehors was not as odd as it had at first seemed.

On this note, with the Morgans well on their way to prevailing, the trial adjourned for the weekend. Imagine everyone's shock when on Monday, the second day of trial, neither the Dehors nor their attorney were anywhere to be seen. In their place, present at the bar of court, was Jewell Seriousa, an attorney well known for taking any case annexed to a sufficient retainer. He advised Judge Bachmann that his clients Mr. and Mrs. Secunda had purchased the property from the Dehors the night before for over $110 and that the Secunda's deed had been recorded that very morning.

(To be continued…)

CHAPTER TWENTY

A NICE DILEMMA

CHAPTER 19 DESCRIBED a quiet title action I witnessed that began in 1913. According to Dorothea and Wayne Morgan, who were the plaintiffs in the action, pretend owners sold their family home to a couple, the Dehors, who did not suspect fraud. The cross-cases to determine who owned the house went to trial before Judge Bachman. On the third day of trial, however, everyone was surprised to find that the Dehors had disappeared. Over the weekend they had sold "their" property to another couple, the Secundas, who appeared in court and claimed ownership!

Judge Bachmann was astonished, along with everyone else in the courtroom (including the journalists who had assembled because they were told the case was about a stolen home). He immediately directed his judicial aid to summon the District Attorney.

Despite the confusion, everyone recognized that the man who arranged the sale of the house to the Dehors—Mr. Scattering—had attempted to steal the Morgans' home. D.A. Jones appeared, listened carefully to all that Judge Bachmann had to tell him, and looked carefully at the deed purporting to sell the home. But when D.A. Jones learned that Jewell Seriousa, a well-connected contributor to every successful political campaign in recent memory, represented the Secundas, he announced that his office could not prosecute or even investigate the possible theft since the Dehors' deed had been notarized. Before everyone's jaw could even fully drop at the absurdity of this assertion and before anyone could ask how an undoubtedly falsified notarization could possibly preclude criminal charges, D.A. Jones looked at his watch and disappeared out the back door of the courtroom.

Seriousa immediately launched into an impassioned plea that judgment must be granted in his clients' favor because, however fraudulent the initial purchase by the Dehors, the Secundas were clearly honest "holders in due course" of the deed. Seriousa argued that there was not and never could be any claim of collusion given that the Secundas had never met the Dehors until the night before. He claimed that the court had no choice but to announce the Secundas' deed valid and all disputes between the Morgans and the Dehors moot!

Indeed, according to the law at the time of the trial a future buyer, if the purchase had been in good faith, was sanitized from rescission no matter how deceitful the

original sale—a precedent that, to my eye, was barbaric. But Judge Bachmann was never one to ignore justice when the law was inane. He ruled from the bench that but for the claims of the Secundas the Morgans' ownership was affirmed, the claim of the Dehors was fraudulent, and the Dehors' deed was stricken. He asked for briefs on the claim of the Secundas and held the remainder of the matter under advisement. Thus, ended the original issue but not the case.

The press held its collective breath awaiting the briefing schedule and Judge Bachmann's eventual ruling. Day after day, newspapers ran articles about the case. Initially, the stories were about the hardworking Morgan family, who had lost all their savings defending an obviously fraudulent case and still faced the possibility of losing their home. Trinfil the younger, formerly counsel for the Dehors, refused to discuss with reporters any aspect of the matter, claiming attorney-client confidentiality. He was, however, willing to say that all sales involving his clients were legitimate and completely in good faith and that their sale to the Secundas was upon his advice to try to salvage something because the Dehors too had been obviously defrauded. They had had to arrange a hasty sale cheaply to the Secundas given the possibility they might lose their case. And, he added, with great animation, he and his firm too were victims! The Dehors, who he could no longer find, had not paid his entire fee. Reporters scoured the city but the Dehors had disappeared. They, Mr. Scattering, and the notary had seemingly left town.

Running out of nice things to say about the Morgans, and it being a slow time for news, the reporters started writing about the Secundas, two hard-working citizens, he a bootblack and she a nurse's assistant, who had toiled for years trying to save enough money to buy a home for themselves and their two young children. Their story became compelling because when they were approached with an offer for a house that they could finally afford, in a safer neighborhood where perhaps their children could play outside without fear of assault or kidnapping, they immediately agreed and took all their savings from under their mattress to buy the house of their dreams. Thus, the articles vacillated back and forth between the two lovely families. Newspaper editorials took opposite positions. The Bulletin named the Morgans the obvious winners because they had been the owners all along. The Inquirer decried the possibility that the "holder in due course" principle, the bedrock of all modern commerce, especially essential to the incipient financial industries, could not be compromised without wreaking havoc in the markets. The Inquirer moaned that after all, the poor Secundas were as much victim as the Morgans, both of whom had their dreams thrown into uncertainty. Other papers sought a compromise. The Evening Star proclaimed that the Morgans had an absolute right to remain in their home but only if they refunded the Secundas the $100 the Secundas had, in absolute good faith, paid.

Surprisingly, D.A. Jones had also disappeared. He had been called to Washington suddenly on important grand jury business. He remained there until the press

lost interest in the Morgans and Secundas because a new *cause celebre* had arisen. A local glamorous actress had lost a part in a film because, it was rumored, she had violated the "morality clause" of her contract with a rival producer. Of course, her threat to sue for defamation required all the attention of the fourteen reporters regularly attached to the "legal news" beat. D.A. Jones then returned to Philadelphia to meet with reporters about the investigation he had launched into the influence of anarchists in Hollywood.

Luckily, Judge Bachmann refused to read any of the nonsense being reported. Instead he asked each of his two law clerks, Lissette and William, to draft an opinion. I obtained copies of each draft, and not surprisingly they came out with quite different conclusions. Although both law clerks recited the procedural history as I have previously described, they then dramatically parted ways.

Clerk Lissette wrote:

> Dorothea and Wayne Morgan bought their house at 507 Bainbridge in 1891. Wayne worked as a shoemaker while Dorothea worked as a cleaner serving wealthy families. They both worked long hours and saved everything they could for years to purchase a home to raise a family. Finally, the wonderful day arrived when they could afford a modest but clean house in an older but safe neighborhood. Wayne, Dorothea and newborn John moved in. Soon along

came Elizabeth. The happy family loved their home. They shared joyous birthdays, celebrations of anniversaries, and even the party celebrating Elizabeth's wedding to their glorious son-in-law Malcolm, whose family ran the inn just a few blocks away. They said goodbye to John when he left to join the Rough Riders and followed every day the adventures of the Spanish-American war. It was at this home that uniformed officers knocked one sad rainy morning to tell Dorothea and Wayne that their firstborn had died in a glorious charge in Cuba.

The Morgans' home had seen joyous events, heartbreaking moments, and all the other things that come with a full life. As Dorothea and Wayne aged, she had to stop working in other houses and put all her energies into keeping up their house, frugally managing their budget and keeping an immaculate garden in the back raising vegetables and flowers which she would sell on the street when she was well enough. Eventually Wayne too was unable to work, and he joined her in retirement. They loved their neighborhood. They loved sweeping the sidewalk, sharing the warm summer sun, and chatting with their neighbors who they had known for so many years. As long as it was possible, as long as they could

maintain the house, as long as God would allow them to remain in health, they would stay in their home, hoping never to leave and hoping to die there. Dorothea and Wayne Morgan, despite their heartaches, despite the sad memories and hardships, loved their home.

All this changed early one morning when, astonishingly, due to theft, fraud, manipulation, and lies perpetrated on buyers who were willing to take advantage in any way possible, horror came to their house for the purpose of tearing apart their lovely home and putting them on the street. Their house wasn't much to look at. There was nothing fancy about it. But it was theirs.

This court case has impoverished them further as they fought to keep their home. The anguish and heartache they felt at the prospect of losing their home to thieves and having nowhere to live out their remaining years is not compensable, and these fearful days can never be returned to them. But, as luck would have it, the Court sees through the lies and is prepared to end the Morgans' nightmare.

Realizing that their theft had been recognized, the Dehors, under dark of night

sold their ill-gotten fraudulent deed to other buyers willing to accept, no questions asked, a deal so good they must have known it wasn't true—especially given the notoriety of the Dehors' lawsuit. The Secundas now hope to take further advantage of the Morgans by using the developing commercial law to claim the existence of a right to steal lawfully from the Morgans by pretending to be innocent purchasers. Innocent purchasers do not buy a home without seeing it. Innocent purchasers do not put decent people out of their house because they have the money to hire fancy lawyers. Innocent purchasers do not accept ill-gotten fraudulently obtained ownership. The court finds for Dorothea and Wayne Morgan and decrees that they are the lawful owners of their home against all competing claims.

The second clerk, William, wrote:

America is a great country. We are completing our conquest of the continent and filling the country with homeowners. Our farmers create of the wilderness a land of plenty. We are expanding our resources to become a world power. We help our neighbors to the south and in the Pacific Ocean to resist the yoke of foreign rule.

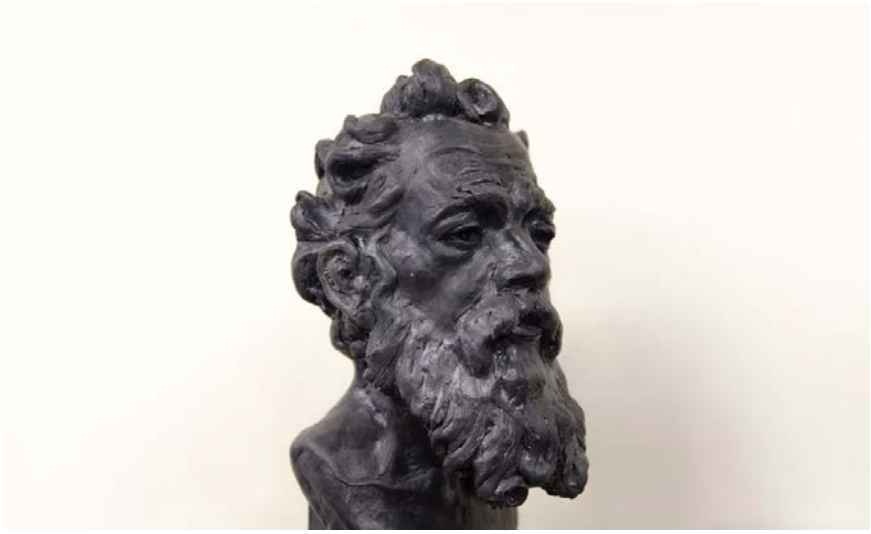
Our worldwide economic interests increase every day, and New York and Philadelphia bustle with economic activity unimagined 50 years ago. The law has mightily striven to keep up with the needs of rapid commercial activity and economic growth. As transactions increase both in volume and speed, past activity, past understandings, past accepted practices become recognized as unwieldy and impractical and must be replaced. New forms must replace ancient traditions if we are to keep pace with modern times. The law must keep up with the times too. We must accept the changes of economic activity and devise new lawful methods of economic growth.

One of the most important economic principles the law has developed to keep up with the rush of modern times is the principle of the "holder in due course." It has become the bedrock of all modern commerce, especially that of our incipient financial industries. The principle may not be compromised without creating havoc in countless markets. Our modern market system requires certainty and bedrock principles that cannot be changed on whim or because of transient unfortunate results. The law cannot be result-oriented. It must be principled and grounded in certainty.

> America's greatness requires no less. America's greatness requires certainty, and America's greatness requires consistency.
>
> It is, of course, sad that the Morgans must find another place to live. It is, of course, sad that this turn of events occurs through the intercession of a criminal and fraudulently constructed deed, but it must be recognized, after all, that the poor Secundas are as much victims as the Morgans. All had their dreams thrown into uncertainty and confusion. Regardless, the growth of our mercantile law requires that we consistently hold as a bedrock principle the sanctity of a "holder in due course." Times that require difficult decisions require that the Court find that the Secundas, having innocently purchased the property and having paid reasonable value in good faith are the rightful owners. Progress demands no less.

Well, I saw both opinions sitting on Judge Bachmann's desk. I never did learn which was issued, since in those days even reported opinions were not easily found and Common Pleas Court opinions were not published in the legal reporters at all. I do, however, have a good idea which opinion was issued, because I shortly thereafter passed Judge Bachmann in the third-floor halls of City Hall. I could not see what he was

reading, but I could clearly hear him muttering, "If the law says that, the law is an ass."



CHAPTER TWENTY-ONE

TURNABOUT IS FAIR OR FOUL

GRAVE ROBBING WAS one of the strangest cases I came upon in that foreign time. Medical knowledge then was not anything close to what we understand today. Even the anatomy of the human body was greatly misunderstood. The modern concept of donating one's body to medical science was not only frowned upon by religious leaders but was illegal under both federal and state statutes.

Likewise, it was even illegal to use corpses for medical education purposes. Nonetheless, medical schools (particularly the famous schools of the University of Pennsylvania and the Jefferson Medical College, which produced the most Philadelphia doctors) routinely conducted anatomy courses that relied on examination of cadavers. Jefferson Medical College quietly required every student to be able to identify the internal organs of

the human body based on a cadaver that had been dissected. Although absolutely a requirement for graduation, nowhere did this requirement ever appear in writing. Procuring these corpses was every institution's secret. A secret assiduously kept hidden from public view.

No grave robbers had been prosecuted in Philadelphia County since 1892, but rumors and innuendo about one notorious incident simmered and bubbled so widely that eventually the district attorney took action. The rumors became a perfect fit for his ambitious plans to become governor of Pennsylvania, and from that platform who knew what the future might bring.

Respected and famous throughout Philadelphia, one of the most knowledgeable professionals at the Jefferson Medical College was the dean, Dr. Apparitus. He was also one of the most self-promoting physicians of his time. He became instantly famous when he was the only one who could stop the asthmatic fits of Mayor Dutchman's son. The mayor's son suffered from severe bronchitis, which would often lead to asthmatic attacks so severe that they actually threatened to take his young life. By alleviating the mayor's son's distress, Dr. Apparitus became especially highly thought of by the political class. They would treat with no other.

Interestingly, Dr. Apparitus had simply used a paste he concocted from a weed he found in vacant lots on the banks of the Delaware just north of the city. Dr. Apparitus would never tell anyone how he had learned this secret remedy but the rumor was that he had secretly

studied with the few remaining Indians secretly camped on Tocks Island. The influence of Dr. Apparitus in political circles was renowned. It was an influence he fostered and wielded frequently.

Samuel Traitz began his career as a businessman in the Old City section. This neighborhood next to the Delaware River was an odd conglomeration of the charming townhouses of the city's prominent and wealthy and, just two blocks north, the worst slums in the city. Between these two diametrically opposite lifestyles were barns and horse stables as well as depots for the trolleys that moved workers on an extensive track system all around the city. The poor residents, a mere three blocks away from fabulously wealthy citizens, often lived with eight families cramped into three-story buildings on literally the wrong side of the tracks.

Traitz operated a pharmacy in the Old City 5th Ward. He greatly overcharged his wealthy clientele and used the excess money to subsidize free medication for the neighborhood poor. Grateful for the kindness he showed and the lives he literally saved, they would do anything to repay his graciousness. Traitz's wealthy neighbors were so pleased with his solicitous manner and extra caring services (and were so wealthy) that they never bothered to evaluate his charges.

Traitz worked tirelessly and to no avail with the county government to accomplish three things: rat control, paving, and street lights. He finally became so disaffected (or some would say he finally became so realistic) because of his failure to get any cooperation from city government or its politicians to ameliorate the

difficult living conditions of the rat-infested 5th, that he decided to involve himself in politics. He instantly received the enthusiastic support of both the poor and the wealthy sides of the ward. He thus easily won the Republican primary in September 1913 over the rarely seen Councilman Bonelli.

How Councilman Bonelli's rise occurred was really an odd story, topped only by his fall. He had served for 20 years, and he was in his late 80s, but he had never done anything for anyone but his most wealthy constituents. Those constituents regularly funded his election campaigns, his business ventures, and (rumor had it) in earlier days his girlfriends. Indeed, so out of touch was Councilman Bonelli by 1913 that he did not even notice that there was any real opposition to his anticipated routine primary victory until a week before he was thrown out of office with about 80% of the vote for Traitz.

Of course, that election was the Republican primary, absolutely tantamount to election since the city was 80% registered Republican and the Democrats' only care was how to continue to receive patronage crumbs. In fact, so clear was that primary nomination tantamount to election that as soon as the result became known everyone began calling apothecary Traitz "Councilman" and approaching him for help with city services or requests for patronage jobs or just with entreaties to be his friend.

Meanwhile, freed of the constraints of having to appear to care about the 5th Ward, Bonelli immediately made a public move to his Montgomery County farm

(where he had in fact been living for over fifteen years). So decrepit was Bonelli's supposed residence in the 5th Ward where he was registered to vote that the residence remained vacant for years thereafter until the city condemned and demolished it.

Traitz's election had been a shock to Bonelli because Traitz did not follow the normal political route of seeking political endorsements or raising money. Rather, Traitz quietly went door-to-door throughout the district asking voters to write in his name as a silent, anonymous protest against the do-nothing City Council and their supposed representative. Traitz never expected to win, hoping only to shame Bonelli into concern and action. But because the only campaigning that occurred in the district was this quiet write-in effort, and because most voters were so disaffected with being totally ignored that any protest received a favorable reception, the entire district was abuzz with the lark.

Bonelli actually spent so much of his time at his farm that he didn't know he was being challenged until one of his faithful retainers, the City Council Sergeant at Arms, reported the rumors that even he had heard. Bonelli, however, being so accustomed to winning without difficulty and without campaigning, refused to take this clearly articulated challenge as anything but a fleck to be brushed off his sleeve. It was subsequently revealed that he had often joked: "Never underestimate the obliviousness of the people to a con. Voters get the government they deserve, and those jerks deserve me."

Bonelli was visibly shaken by the primary election results, which he did not even care to learn of until the

next morning. He absolutely could not comprehend how his constituency could treat him so unfairly and in fact his first question upon learning he had lost was: "Who's Traitz?" Bonelli became so distressed at the idea that his enemies would then begin investigations into his financial dealing that, one month later, he took his own life.

The rumor rapidly spread that Bonelli had been assisted in the taking of his life by loyal lieutenants who had become wealthy over many decades due to his quasi-legal largesse. The circumstances of his death initially appeared suspicious, since it is not often that someone takes their own life by shooting themselves in the back of the head. Nonetheless the Montgomery County Coroner quickly reported that Bonelli had killed himself with his own shotgun. No shotgun case or extra shells were ever found, and his wife never knew he owned one. Nonetheless the report concluded that Bonelli had effectuated the suicide by pulling the trigger with his left big toe while seated on a chair reaching for a bottle of port on a shelf to his right. For many years thereafter this was referred to as the "Councilmanic Stretch," a shrewd reference to both the supposed manner of death and the absurdity of the official conclusion. The "Councilmanic Stretch" became a political insider expression whenever a Paul Bunyan tale became the official explanation for any embarrassing situation.

Thus began the most unlikely grave robbing prosecution ever seen in the city and the last grave robbing prosecution in Philadelphia for 75 years. So naïve was apothecary Traitz and so ardent his desire to eliminate the rats from his ward and get his constituents

street signs and running water that he quickly crossed lines he was not even aware existed.

Bonelli's funeral was a heralded citywide event anticipated for weeks. It took place in the cathedral on 18th Street. Everyone attended, from the governor down to the lowliest ward healer, not only because of the opportunity to reunite the political tribe but also as their first opportunity to meet and get known by now-Councilman-elect Traitz. Little did they know that even then Traitz concealed a dark secret that would in short order result in his political and personal demise.

Bonelli's family, knowing how decrepit his body looked in death, particularly since it was lacking 1/3 of his head, were determined to preserve his memory as a vital force in the political life of the city. They insisted that at his funeral his casket remain closed.

Being one of only seven apothecaries in Philadelphia, Traitz of course had close relations with the famous physicians of the Jefferson Medical College and always willingly assisted in their students' medical training. He regularly lectured medical students on herbal medicines, including those which he regularly made from weeds found in the city's vacant lots. In return, Jefferson encouraged promising medical students to serve the poor in the 5th ward. Despite their lack of finalized formal training, the students brought comfort and healing to the people, especially since medications from Traitz's pharmacy were always available free of charge. Dr. Apparitus was instrumental in these arrangements.

It so happened that very shortly after Traitz's surprising primary election victory and the untimely death of Councilman Bonelli, but before Bonelli's funeral had occurred, Jefferson was about to embark on its final exams. Since anatomy was one of the required courses despite the formal illegality of practicing on corpses, students were required to identify the most important internal organs on a cadaver. Neurology was still in its infancy, so the anatomy of the head was not required. It also so happened that specific year that no cadaver was available.

A cholera epidemic that had just recently lifted from the city (and which had delayed Jefferson's final exams) made dangerous the tried and true method of midnight search parties digging up the recently buried. The fear was that digging the recently buried, particularly in the indigent graveyard, might spread the recently-ended contagion to the medical students in their final testing, might spread the contagion to the entire medical school itself, and might continue to spread the contagion into the population of people visited by students.

The medical school sought to obtain cadavers from New York City and Baltimore. But, sadly, even these extraordinary channels for this illicit traffic had closed, not only because of the epidemic but also because of a recent administrative edict of the United States Attorney General announcing a crackdown on cadaver trafficking. Thus, since cross-state-line transport could involve federal investigation, even those last-resort avenues

were closed. As the anatomy exam approached, there were no suitable cadavers to be found.

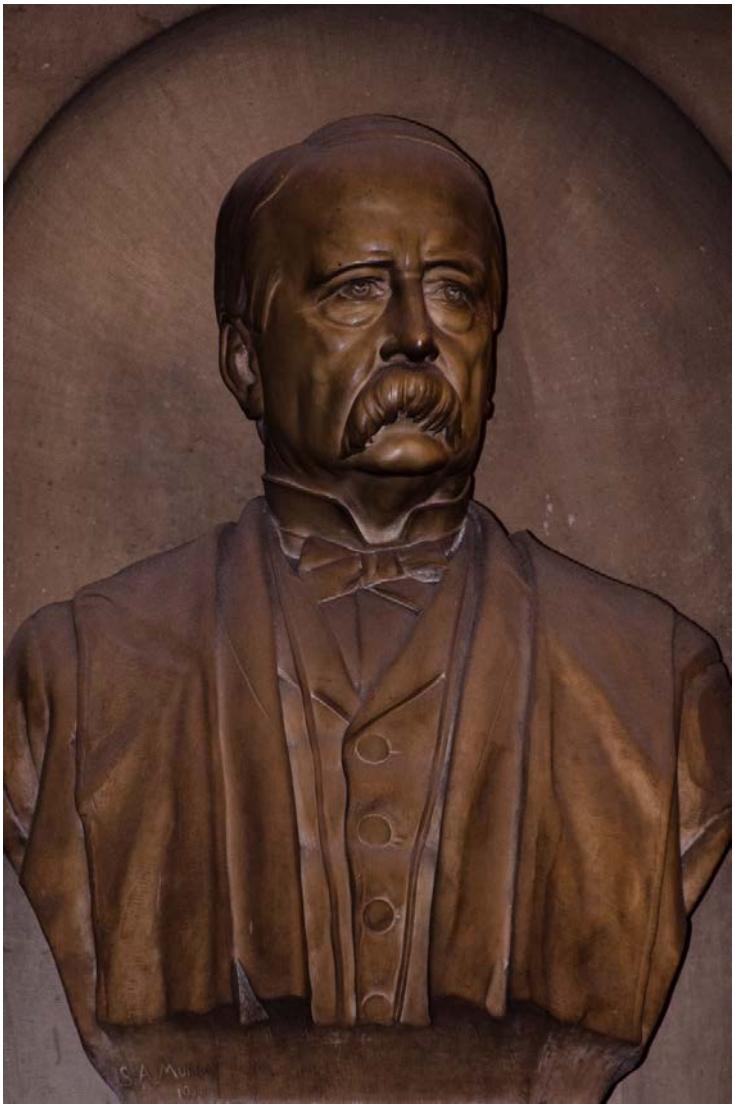
Traitz had arranged cadaver-digging services only occasionally and only upon the utmost necessity. Being revered by the poorest in the city and understanding the needs of the school, he had, on rare occasion, solicited visits to the graveyard from the sons of families he had helped. While not any necessary part of his income, the money Traitz received from this occasional service provided extra reimbursement for his expenses in providing free medications. Occasionally, these excess funds even could pay the rent for a family temporarily facing hardship. Thus, in apothecary Traitz's mind providing cadavers produced a positive effect for science, a learning experience for doctors, and economic benefit to the people he most ardently served.

Traitz's unusual availability and resources in the community were known only to Jefferson's dean, Dr. Apparitus. He viewed Traitz as someone who could solve Jefferson's final exam problem. Of course, the cadaver had to be of recent vintage and although it could be of an older deceased, necessarily it had to be of good health or the possibility existed that some internal organs would be so deformed as to be unusable for testing purposes.

When asked by the dean, Traitz conscientiously and sincerely confronted the immediate problem systematically. He knew that he could not rely on a midnight grave visit because those engaged would have absolutely no ability to distinguish choleral bodies from clean "healthy" bodies and just asking them to try would

expose them, their loved ones, and the city to a possible renewal of the cholera epidemic. This problem was exacerbated because natural deaths had decreased—the elderly, the weak, and the frail had been the first to fall to the cholera.

Searching for a solution, Traitz kept coming back to the one death he knew presented a healthy body even though the head could not be used.



CHAPTER TWENTY-TWO

A BOUQUET OF IRISES

WHEN WE LAST saw the well-meaning apothecary Samuel Traitz in Chapter Twenty-One, he had earned a surprising triumph in the primary election for City Council against the long-time incumbent, Councilman Bonelli. In despair over this election loss, Bonelli had tragically shot himself through the head. Rumors persisted, however, that Bonelli's business associates might have helped him in his supposed suicide.

Just as Bonelli's funeral was to occur, Jefferson Medical College was about to embark on its final exams. The dean, Dr. Apparitus, was distressed at the possibility that his students would not be able to complete their final examinations in anatomy, already delayed by a choleral epidemic, because the epidemic had caused "healthy" cadavers to be in short supply. The Jefferson doctors feared that any available corpses could be infected with

cholera, and that use of infected corpses would spread the contagion. In addition, law enforcement authorities were cracking down on cadaver trafficking, such that "healthy" cadavers were impossible to obtain even with ready money.

The school repeatedly raised the sum they would pay once-apothecary now-Councilman-elect Traitz to obtain even one body, which they hoped to use repeatedly. Dr. Apparitus also repeatedly expressed how indebted the school and he personally would be to Traitz for the service. He implied that Traitz had a long and glorious political career to think about.

Traitz's light bulb finally lit. He realized how sardonic it would be if he could arrange for the body of his political rival, the now-dead Councilman Bonelli, to be surreptitiously shipped to Jefferson for the anatomy tests. If Traitz could manage it, the councilman would serve his district in death better than he ever did in life.

The more Traitz thought about this solution the more delight he took in the plan. Two other factors played into his decision. Upon Traitz's surprising and resounding write-in success in the primary election, reform politicians of the city approached him immediately about running in the next mayoral election in two years. Traitz had never considered advancing in a career in politics, but the adulation he received, coming as it did from all parts of the city even before he took office on City Council, performed a transformation on his soul. He ceased to think of himself as a mere apothecary doing what he could to ease suffering in his neighborhood. Unconsciously he began to see himself as

an urban savior. At the same time, political consultants descended upon him to describe how a mayoral campaign could be run and won and what would be needed for success. The sums of money discussed were well beyond his means and even beyond any resources that he could hope to garner in any normal fashion.

And thus, this confluence of events led Traitz to the most absurd decision of his life. He decided to abduct the body of the dead incumbent (less, of course, the mostly-missing messy head through which Councilman Bonelli had supposedly shot himself in despair over the loss of his seat). Traitz would then deliver the body to Jefferson Medical College and the dean whom Traitz hoped would soon be generous.

Making discrete and veiled inquiries among the poorest families of his ward, Traitz learned that Truss's, the very parlor that was to be used for Councilman Bonelli's funeral, employed two brothers, Jonathan and Harold Rhapsod, from a family Traitz had repeatedly helped. The mechanics of the plan germinated.

Learning of the decision by Councilman Bonelli's family to keep the casket closed at the funeral, Traitz found that the brothers would be pleased to offer their services as watchmen the night before the funeral was to occur. Traitz himself then went to the funeral director, Jonathan Truss, to tell him of a substance he had recently discovered. When injected into a corpse, the substance would totally transform odiferous dead-body smell into an iris-based perfume. According to Traitz, the substance was still in the developmental stage. Would Truss allow Traitz to test the substance on one of the

bodies at the parlor—perhaps the body of the recently-deceased Councilman Bonelli? There was nothing to lose since the funeral was to be closed-casket. If unsuccessful, only the usual offish smell would remain. If successful, a better smell would materialize which, given the extraordinary crowds expected, would clearly add to Truss's reputation. Truss was easily persuaded.

Having succeeded in these machinations, our erstwhile pharmacist—getting wilier by the thought—had only to overcome any possibility of a formal viewing of the body by the family just before the service.

This too Traitz accomplished. He convinced Truss that although the injection would transform the smell within 12 hours, it would also, sadly, grotesquely contort the body. To avoid a family view of a horribly misshapen patriarch who was already missing part of his head, Truss would need to prevail upon the family to view the body and say their last goodbyes the night before.

All difficulties having been thus overcome, Traitz rented a wagon for the night and advised Jefferson to be prepared to receive an appropriate "healthy" body not earlier than 11 o'clock. Because of the potential that Councilman Bonelli could be recognized and given that the head was not involved in Jefferson Medical College's test of its students' knowledge of internal organs, Traitz resolved to leave that part in the casket. He further explained to the dean, Dr. Apparitus, that the body would be delivered headless.

On the night before the funeral, with Traitz's watchmen on duty, the family arrived at Truss's. They

were accompanied by the mayor and all nineteen members of City Council, many of whom were there only to confirm with their own eyes that Councilman Bonelli was dead. Moved beyond words by the state of the corpse's head, the mourners paid their last respects. The casket was closed and sealed, and the family departed.

The body guarded solely by his two co-conspirators, Traitz backed his wagon to the rear door of the funeral parlor. Traitz and the watchmen carefully removed the body from its casket. Unceremoniously, Traitz separated the mangled head from its body and used a bucket to catch the blood. He placed the headless remains into his wagon, and he removed just enough sandbags from the wagon to duplicate the weight of the corpse. He returned to the coffin the no-longer-dripping head and put a bouquet of five hundred irises on top of it. The coffin was then resealed. With the help of the watchmen all was successfully accomplished within five minutes. Within another twenty, the body was successfully delivered to Jefferson.

Upon his safe return home, Traitz took a deep breath and thought of all the good he could accomplish as mayor. That night he dreamed of how he could help his poor neighbors in ways he never dreamed of before. But his dream ended poorly. As his neighbors cheered and danced before the bonfire on which three entire pigs were roasting, Traitz saw himself looking into the night sky. Where he expected to see a full moon, he saw Councilman Bonelli's laughing face.

Traitz awoke shaking with anxiety. He chose to interpret the shaking, however, as only the anticipation of a mayoral election to come.

CHAPTER TWENTY-THREE

A FUNERAL OF FUN

THE PREVIOUS CHAPTER ended with apothecary, Councilman-elect, and sometime cadaver-salesman Samuel Traitz stealing the corpse of his dead rival, Councilman Bonelli, the night before Bonelli's funeral. Counting on the funeral to be closed-casket, Traitz had arranged to sell Bonelli's corpse (minus its mangled head) to Jefferson Medical College, which was sorely in need of a healthy cadaver for final exams, even if the cadaver was headless. Traitz left Bonelli's head in its casket, accompanied by a bouquet of irises.

The funeral was a great success. Everyone who was anyone in town appeared, and a few came from as far away as Washington and New York. For an unknown reason about twelve fashionable men arrived from Trenton and mingled exclusively with another sizeable contingent from Princeton. After passing the closed casket, they stood in the back. Most of them stood

around in a semi-circle within which four argued in hushed voices for about five minutes. I was intrigued and moved closer to hear what was being said but when I was noticed trying to listen, a hulking presence appeared in front of me with his hand outstretched. "Mark, my man, I've heard all about you and just want to shake your hand." Shaking that hand was like grabbing and squeezing a brick. Even though my never before seen "friend" had not been squeezing, I had to shake my hand repeatedly to get the blood flowing and the fingers moving again. After that, my friend said, "It's sort of a private conversation about our dearly departed, right?" I said "right" and trotted off to another part of the funeral parlor.

Shortly thereafter they all left before the dearly departed was moved to the cathedral. I have no way of knowing (and certainly no insider information was ever shared about Bonelli's contacts outside Pennsylvania), but I remember quite clearly that beginning shortly after the funeral bodies were found inside stolen Model T's across New Jersey. As an aside, while these bodies were being found, Amos Slaughter, one of the few established insurance lawyers in town shared with me an interesting story. One of his clients, Public Auto Assurance, had a raft of claims for stolen Model T's in both Princeton and Trenton. Sometime later, these same cars turned up in swamps, dead end streets, and abandoned garages—often with one or more bodies in the backseat or the trunk or both.

For every one of those stolen cars an insurance claim was presented. The claimants all had surprising valuables inside the car when stolen, including furs and

rings just previously purchased. They all told stories about how they had bought these items as gifts and had left them in the car to ensure that the surprise of the gifts would not be ruined by curious kids or sneaky wives. Not only were these claims remarkably similar, but also the claimants had impeccably-documented receipts for every purchase claimed. Although Slaughter didn't handle any of the claims directly, when reviewing the firm's work, as senior partner, he noticed names he recognized. Names who'd frequently been in the news or even had come to the firm for representation for serious crimes. Calling his top buddy in the police department, Slaughter received confirmation that, as he had suspected, the claims were from several members of the two N.J. mob clans, apparently divided by the part of Italy from which their progenitors hailed. Slaughter immediately conferenced with the Public Auto Assurance president, vice-presidents, and heads of investigation and determined that every claim came from the same agent, one Joe Donortano, who had been hired just 3 months before the autos had been stolen. Without any hesitation, everyone agreed that every claim would be quietly paid and that Donortano would be politely released from employment with a generous severance package.

Sad to say, Bonelli's funeral was a lot of fun, especially for Traitz. He was astonished at the number of people who knew and greeted him warmly, many of whom he just couldn't place in his memory. It seemed the lines of well-wishers for the Bonelli family went on for blocks, and since everyone also wanted to chat with

Traitz he was given his own room just off the main hall where the condolences line to greet the family snaked in and out. Everyone seemed somber but not terribly distressed, which was understandable since Bonelli was in his eighties and had lived a long and productive life. No one cried except for two attractive women in their 30's who I noticed sitting in the back row, on opposite sides, crying and sometimes receiving tissues and soft words from apparent admirers who hung around each. Occasionally I noticed a stern glance thrown from one to the other. I never did learn who they were except to be told by a city council aide that they were Bonelli's nieces. But the aide was gone before I could ask why the nieces hadn't been in the receiving line or why they seemed so antagonistic to each other.

The casket was loaded into the hearse, everyone got into their carriage and the processions processed to the cathedral on 18th Street. Traitz, of course, having no staff—indeed, not even having been sworn in—was invited to ride with the mayor, who assigned two aides to help him through what the mayor knew would be a very tiring day. The mayor even provided a carriage for snub-nosed Clemons and burly Bostic, who he had assigned to shepherd Traitz around and to act as both maître d' and security for the soon to be councilman.

After an unusually long service which blended indistinguishably between religious and political speeches, Traitz was ready for bed—and perhaps a nightcap. Clemons and Bostic were right on the nightcap, guiding Traitz to every bar in his district, where Traitz was roundly toasted and congratulated and

hailed. When his district was finished, they drove to Fairmount, then Gray's Ferry, and then to the financial district, where every bar was packed to the gills. Feeling a bit giddy from more alcohol than he had ever drunk before in one night (for how could you possibly insult the people who were drinking to your health and offering "just one more" at every bar) and intoxicated from the exuberant joy he seemingly brought to everyone's miserable lives just by showing up, Traitz agreed to one last trip to the courtyard of City Hall, where every city employee had waited for hours just to get a glimpse of the great man.

In his inebriated and joyous state Traitz never thought to question why 700 city employees had waited over two hours while he visited every bar within range or to question how a platform had been raised so quickly in that courtyard. While Traitz was shaking hands, the spontaneous cry went up "speech, speech" and despite his protestations Clemons and Bostic ushered him onto the platform. Traitz proceeded to slur through the most god-awful, incomprehensible blather of a non-speech I have ever had the misfortune to suffer through. But I must have missed so much because the crowd cheered spontaneously, though I could not ascertain why. As I left for bed, Clemons and Bostic were telling Traitz there was only one more stop. The guildhall of the button makers and tailors was packed, and he just had to at least stop in.

Meanwhile, the funeral parlor was being cleaned. Jonathan Truss, owner, proprietor, and licensed mortician of the first degree was enjoying a well-

deserved nip of brandy in his apartment above the home, earned by a totally successful public event. Enjoying the smell of irises still wafting from below he heard a loud rapping on the door. "Begging your pardon sir, but there's a liquid something on the main floor such that I've never seen before, and being sticky, and I might add a bit smelly, I can't get it up" the janitor told him. Truss dressed quickly, murmuring about how something was always amiss when those political crowds gathered because they always carried on in the most unusual fashion. But when he arrived, he saw something he had never before witnessed in all his years of embalming.

Apparently, something, some liquid type substance, had dripped from the casket, down the legs of the platform which held the casket, and onto the floor. The yellow liquid had congealed to form two six-inch circles that were one inch thick, and it was apparently impervious to any cleaning agents. Even Truss couldn't clean it up. Finally, taking a knife, he scraped what he could off the floor, put it into a pail, and resolved to refinish the floor and replace the platform. Aggravating expenses, but after all, the fortune he'd charged for the spectacular event was designed to cover unexpected expenses. One never knew what would occur at a political funeral. One such event erupted into a melee that broke out every window and smashed every chair in the place.

Finally, Truss was about to return to his drink and a well-deserved sleep when the thought occurred that perhaps this substance had something to do with the compound Traitz had used to create that wonderful iris

smell. The trick was great, but certainly he could not afford to redo the floor and replace the platform for every funeral. Taking the pail upstairs with him, he resolved to determine just what it was.

The next day, Traitz awoke with literally mixed feelings. His head, mouth, nasal passages, and stomach felt like they had been turned inside out and then run over by a 6-horse John Guadeloupe wagon. But, between pulses of his headache he had never been more elated, or more convinced that the brightest of futures lay ahead. Why he hadn't yet done a thing on the public stage and yet everyone apparently considered it a foregone conclusion he would become mayor and savior of the city. And before he knew it a line of well-wishers had formed, and the police had created a cordon around the door to his home to keep things orderly. What a fabulous beginning, except why did his body hurt so much?

That very afternoon, the mayor commissioned Traitz to fill the late Bonelli's council seat, complete with a City Hall office and staff, the general election being a foregone conclusion. Meanwhile a nagging pain lingered in Truss' heart and mind. What was that substance? How could he confront Traitz with the problem and ask him just what his miracle substance was made of and how could it be cleaned. He decided to go over to Traitz with a nice bottle of wine to congratulate him on how well the substance worked and to work out the problem somehow. But when Truss arrived, he found himself 27th in line and Traitz's new best friends Clemons and Bostic guarding the door and ushering in

only those they selected. Finally, his turn arrived. He congratulated Traitz on the magnificent pleasant smell which still lingered, but when he turned the conversation to wanting to purchase more and asking just what the ingredients were since a liquid had apparently leaked from the casket, Traitz (undoubtedly due to the carousing the night before) turned pale, became faint, and ran to the bathroom to upchuck. Clemons and Bostic immediately ushered Truss out and closed the residence for the day, sending countless disappointed well-wishers home.

CHAPTER TWENTY-FOUR

THE MASTER OF HIS FATE

POLITICS IN PHILADELPHIA in 1913 was no place for a rookie amateur. There was no lightning in a bottle, no savior busting onto the scene to clean up Gotham. The pros were just too good, too entrenched, too schooled, too……venal, as Councilman Traitz was soon to learn.

One morning, some weeks after the funeral of Traitz's predecessor, mortician Truss was fuming as he watched his entire floor being replaced. The entire floor needed to be replaced because the substance that had dripped from the coffin could not be removed and, the floor being an ancient floor, no matching wood could be found to repair the two-foot square area that had been ruined. Truss had tried desperately to clean the floor and in despair finally became determined to find out what the substance was that Traitz had put into the coffin to make the funeral parlor smell so sweetly.

In one of those fateful confluences of events, the day Truss took his sample to The Jefferson Hospital was the same day as the cholera-delayed commencement exercises in the quad, and no one had any time to even speak with him let alone agree to test his sample. Thus, does fate turn riches to rags, for had Jefferson doctors learned the story and tested the substance, Traitz's secret might have remained hidden lest the Jefferson doctors' own involvement become known. Instead, Truss had to make the long journey to the Hospital of the University of Pennsylvania, where a true analysis was soon performed and the substance was definitively revealed as HUMAN SPINAL FLUID, which could only have come from the opening in a cut-off head!

Needless to say, Truss was both furious and quite suspicious. Being unable to even get close to Traitz to complain or get any explanation, his thoughts turned to revenge. Meanwhile, the extraordinary results worked their way up to the president of the Hospital of the University of Pennsylvania. Dr. Henry Stokes was a virulent enemy of the Jefferson Medical College and especially its president, who had recently lured three doctors away from him for the unheard-of salaries of $2,200 a year. Dr. Stokes suspected that the Jefferson finals were somehow connected to Truss's finding since rumors had been swirling around the medical community of the oddity that the final exams had been performed on a body with no head. After hearing the results of the test, Dr. Stokes immediately set out to interview Truss.

Some say that events are determined from the beginning of time and no mortal can change what is fated for them. The story of Traitz's fate could be Exhibit A in support of that proposition, because through the confluence of dripping spinal fluid, a graduation ceremony, common rumor, professional malevolence, political intrigue, and the irony of self-interest, none of which could Traitz have anticipated, did personal disaster become inevitable.

Others say man is the master of his fate. But that is certainly true only when one follows the Socratic admonition to "know thyself" and through self-knowledge remains true to one's principles, clear-eyed, cautious, and loyal to one's friends. When flattery, fawning, and honey-eyed words becloud perception and impact cognition, destruction can never be avoided.

When Dr. Stokes visited the funeral parlor and saw the remains of the floorboards soaked in cerebrospinal fluid, he questioned Truss in detail about the funeral. Though hesitant to share his involvement in the extraordinary events leading up to the ceremony itself, he did explain how the viewing was done the night before the funeral.

"Ah, but Mr. Truss, let me stop you there, isn't that unusual?"

"Yes, but you see, since his face was so mangled, we didn't want to reopen the casket on the day of—so we ah . . . did it the night before."

"Oh, right, the face was mangled, but just where did the bullet exit the body?"

"As I remember, the bullet entered the poor councilman's eye and exited through his neck"

"So, the brain matter was not impacted, is that right?"

"I suppose so. . ."

"So, whatever fluid dripped out of the casket could not have come directly from the brain, right?"

"I suppose that's right"

"Tell me everything that happened from the time the casket was resealed to when it was brought into the sanctuary for the service."

"Well, there's really nothing to tell. It was strictly guarded all night and moved directly from our warehouse—oh excuse me, I meant to say from our sanctified preservice area—to the sanctuary."

"Strictly guarded you say. By whom?"

"Oh, very experienced and trusted employees, two brothers."

"Brothers, you say, what were their names?"

"Why Jonathon and Harold Rhapsod, and they both volunteered, being from the councilman's district and all. Jonathon's been a faithful employee for years and upon his recommendation I hired Harold, as a temporary employee, since he had just left school in the 7th grade. He's worked out nicely but of course, as with all new employees he thought he should be paid more than the going salary because he must deal with dead bodies all day. He just couldn't get over his squeamishness."

"And just where do these brothers live?"

While Truss went to his office to get the exact address, Dr. Stokes wondered about the oddity that

constituents, most of whom hated the incumbent, would volunteer to guard the body all night and continued to consider the fluid on the floor and the headless autopsy body.

"They live with their mother and four siblings at 628 Bainbridge St. . . . as I thought, in the councilman-elect's district and indeed even in his own ward."

"And also, in Traitz's district and ward and if my geography of that horrible ward is correct, 6 blocks away from Traitz's apothecary."

"Why, I suppose that's correct"

"Tell me, has anyone in the family been sick recently?"

"Well, their father died, but that was some six years ago, oh wait, yes, just three months ago Jonathon needed to take time off because his mother was deathly ill, but then she recovered and that was the last I heard."

"And do these brothers still work for you?"

"Jonathon yes, but Harold just couldn't get used to the smell of the dead, so he quit about two weeks ago, on good terms mind you and I would hire him back if he wanted."

As Dr. Stokes' mechanical mind digested this information a pattern began to emerge. "Just what aren't you telling me Mr. Truss? I remember the funeral, and I remember the smell, despite being a very crowded and hot room there was not the usual smell of dead and sweat. The place was somehow sweet. Just how did you accomplish that?"

"Oh, excuse me Dr. Stokes, I just remembered something important I have to attend to, could you wait a few?"

"I'll wait as long as necessary Mr. Truss!" Dr. Stokes took this evasive maneuver to be substantive evidence itself that there was something more to be learned!

Time dragged on. And on. Finally, Dr. Stokes walked into the warehouse area and found Truss hiding behind the caskets. "Mr. Truss, just what aren't you telling me? There has been cerebrospinal fluid found on the floor of your premises, a clear health hazard as well as a violation of all that is holy and proper in the handling of a body before a burial. As you know I am under an obligation to report such things to the funeral board, and since you know who I am I assure you the report will come from the mayor after I meet with him this afternoon to tell him my conclusions. If you want to retain your reputation and license and perhaps avoid being sent packing on a tarred rail by enraged citizens once they learn of the exposure to brain juice, I suggest you tell me everything now!"

Whereupon a shaking Truss told Dr. Stokes the entire story leaving out only the money he had been paid by Traitz to try the experiment.

As Dr. Stokes left, his thoughts swirled. He could not care less about Bonelli or Traitz. In fact, for a brief time he thought this information could be used to make Traitz his puppet councilman. But being guided more by his hatred for Jefferson Medical College his thoughts turned quickly to which politician could best use this

information and best reward Dr. Stokes' own institution. He quickly excluded the mayor from consideration since honor and propriety would be factors he would have to consider. No, it had to be someone who would use this information ruthlessly, someone wanting to rise, someone who… Suddenly, he understood precisely the who and the when.

Fate decreed that the morning of the very next day, Harold Rhapsod visited his newly commissioned councilman, Mr. Traitz, to seek employment. Once Swanson, Traitz's Chief of Staff, learned why Rhapsod had come, Swanson became so nice, asking Rhapsod to sit, giving him tea and allowing him one (no more) of the cookies in the office tin while Rhapsod waited for Traitz to return from a very important meeting.

When Traitz returned (with an entourage of two in trail), Swanson said, "Councilman, I'm sure you know Harold Rhapsod, one of your constituents who has come to ask for a job in your office. But I must remind you, you have a meeting with the commissioners in one hour and you must prepare for this important meeting."

As every employee looked on, knowing that for this constituent to be hired one of them had to go or all of them had to take a paycut, Traitz snapped, "Yes, thank you Swanson. What is it, Rhapsod?"

Literally holding his hat in his hand and shaking Harold Rhapsod said, "With all due respect sir, we are all grateful for the many courtesies you've provided our family and particularly when mother was sick, but I was hoping I could have a word."

"Yes, you have it right now, as you can see, I'm very busy. What word?

"I've lost my job at the funeral parlor and I was wondering—that is, Momma was wondering if there was not something, anything, that I could now do for you that would help the family make ends meet?"

"I'm sorry, but as you can see my office is full, and there is nothing I can do for you!"

"But sir, if you would only consider the services we have rend—"

"There is nothing remaining to consider, please help yourself to another cookie." With that Traitz went into his new private office, and without him really intending it, the door slammed shut.

It was rare in the early 20th century for a man to cry, but that was exactly what Rhapsod then did.

Swanson, placed in Traitz office by Council President Swartz (to whom Swanson's loyalties primarily and totally laid), put his arm around Rhapsod's shoulder and, wondering about "services rendered," walked him into the City Council Sargent-at-Arms office. Harold soon found himself employed in an entry level, behind-the-scenes office job.

And so, the general election came and went, without incident. Immediately afterward the mayor appointed a trusted assistant, Miss Anne Teressa, to handle Traitz's formal swearing-in arrangements. And what a blessing she was. As Traitz admitted to her, he knew nothing of the protocols involved, or where the event should be held, or if or where the reception was to be held, or who to invite. Luckily, she took care of

everything. Everything to such an extent that Traitz never even thought to ask where the money was coming from.

And what an event it was. Taken from home in a British Brougham, Traitz was whisked to the courtyard of City Hall where cheering crowds escorted him directly to the magnificent City Council Chambers, filled to the brim with well-dressed, happy city employees who were given the day off if they arrived early enough to find a seat in chambers. The swearing-in itself was performed by the president judge of Court of Common Pleas Number 1, a court that claimed heritage lines directly to the first court in the colony established by William Penn (regardless of what the Supreme Court of Pennsylvania claimed and did to appropriate that designation). There followed speeches of honor by the mayor, the Council President Swartz, other councilmen, the president pro tempore of the Pennsylvania Senate from Scranton, the Pennsylvania speaker of the House from Cambria County, and several congressmen from Philadelphia, none of whom Traitz had ever met. He was impressed that they even knew who he was, let alone had such flowery things to say about him. To me, an impartial observer, the speeches were full of platitudes applicable to any occasion or person and clearly demonstrated the speakers knew nothing of the man. Indeed, I was reminded of Socrates' comment in the Apology concerning the prosecutor's speech. Socrates said he almost had to look around to try to see who the speaker was talking about, so strange was the description. Likewise, if Traitz had half a brain remaining

he would have said to himself, "Who are these people, and who are they talking about?"

The speeches were followed by readings of the commendations in Traitz's honor unanimously voted upon the night before by the Pennsylvania Senate and House of Representatives. Not to be outdone, the Council President Swartz read a commendation to be voted upon by the full council which thereafter was unanimously approved by voice vote of the assembly in the room. To me, the accolades were flattering for someone who, in truth, had, as yet, done nothing in public life.

Afterward, the public officials (myself included, being an honored soul) all rushed across the hall to the City Council Caucus Room where Miss Annie Teressa had arranged a lavish spread for everyone to lunch. I could hardly see Traitz for the throngs surrounding him, getting him plates of food, refilling his drinks, and generally giving him fascinating advice that every councilman must know, but I myself was exhausted. From the City Council Caucus Room, Traitz was taken to visit each councilman in his office (there was at that time a woman in City Council but she, being the wife of the Republican Party chairman, was not often found in her office, so Traitz was greeted there by her husband, reputed to be the real power behind her City Council throne).

Although I was ready to collapse, I followed Traitz to the 43rd Ward Club reception, to the Frankford Women's Club reception, to the State Dinner in Traitz's honor, and finally at 10:00 p.m. to the same elegant cab

that was to take Traitz home. Although he must have been exhausted and punch-drunk from the events of the day, Traitz was bubbling over about all he had learned, all he was about to accomplish, and what he wished to do in his first 100 days in office. I must admit, however, that his disjointed thoughts, incoherent concepts, and unfinished sentences reminded me more of a 21st century Twitter babbler than a serious policy maker. He did confide, with great pride, that he had already filled every job in his office with experienced aides who had waited all their lives to work for just such a reformer as him.

When we finally arrived at his home, Clemons and Bostic practically carried the exhausted, incoherent and virtually asleep councilman inside and put him to bed.
I just couldn't help wondering where the voters of the 5th Ward had been in all the shindigs, because at no time during the day did I recognize anyone from the people I had met or even the faces I had seen at Traitz's modest victory party the night he won.

CHAPTER TWENTY-FIVE

THE FALL

NOTHING CAN BE quicker or—to those who care about good government in our city—more discouraging than the fall of a well-meaning but naïve amateur politician. On the afternoon of Councilman Traitz's swearing-in, directly upon his return to his office in City Hall, the District Attorney—accompanied by uniformed officers and the previously notified photographers of all three daily papers—arrested, handcuffed, and walked Traitz down three flights of City Hall stairs, into the courtyard, and into the back of a paddy wagon, where a flotilla of police cars was staged to transport him to jail. Of course, this stage-show was designed for maximum effect. That Traitz was released within the hour upon no bail went unreported in the evening and next-day papers.

This downfall story actually begins months before in Council President Swartz' office. Traitz, the amateur naïf, never having expected to win, and having had no

prior governmental or political experience, allowed himself to be entirely captured by political operatives whose total allegiance was to others, not to him. Unsuspecting of the venality of politics and political professionals, Traitz was fêted and flattered by flunkey lackeys who, by seemingly meeting his every protocol need and seemingly providing professional advice to fill his void of governmental experience, entirely took over him. Particularly effective was the flattery that he was but a single election away from becoming mayor, if he played his cards right. All the while Council President Swartz was being kept fully apprised of everything that Traitz did, desired, or even thought.

Swanson, placed with Traitz as "Chief of Staff" by Swartz (without any knowledge or even suspicion by Traitz, so smooth was Swanson), reported Traitz's every move and thought. Others confirmed and supplemented Swanson's information. Swartz became more and more alarmed as he learned about Traitz's absurd concepts of government and more and more alarmed as Traitz received a warm response from citizens across the city. It appeared that the effect of the entirely staged events was to create a new political movement that was taking on a life of its own, especially as Traitz publicly discussed the incredible concepts of a 40-hour workweek, a living minimum wage for everyone, and (to which Swartz was heard to say in private meetings where he received daily reports, "Oh my God") anarchistic concepts like no child labor, vacations with pay, and welcoming immigrant Jews and Irish with open arms! Swartz's initial attempt at causing Traitz's downfall was to have lackeys push

Traitz into more and more radical positions. This worked wonderfully with the business community and "city fathers," who increasingly came to Swartz with outrage and horror at what the councilman was saying and with offers of money or any support needed to stop this dangerous demagogue.

Through the confluence of dripping spinal fluid, a graduation ceremony, common rumor, professional malevolence, political intrigue, and the irony of self-interest—none of which Traitz anticipated—Traitz's personal disaster became inevitable. Dr. Stokes, President of the Hospital of the University of Pennsylvania, who had learned of the human spinal fluid which leaked onto Truss's floor during Councilman Bonelli's funeral and of the oddity that the cholera-delayed autopsy exam that year at Jefferson Medical College had been performed on a body with no head, suspected the truth. Stokes called in for interviews all the scum and scraggy people his own institution used to find cadavers and learned that the underground grapevine rumored that Traitz had occasionally provided bodies to Jefferson. But none of the "usual suspects" knew anything about where or how the body that year had been procured.

Remembering that funeral director Truss had told him that Traitz provided a new substance that made the parlor smell sweetly during Bonelli's funeral, that two brothers from a family Traitz had historically helped had guarded the body, and that no viewing had been held on the morning of the funeral, Stokes correctly surmised that somehow Traitz had procured Bonelli's body—*sans*

head to preclude identification—and transported it to Jefferson.

So, as Christmas approached, and Traitz's anarchistic rhetoric became more and more a threat to the efficient workings of Stokes' hospital (for how could the blood and guts from surgery ever be cleaned without child labor?), Council President Swartz found Stokes waiting for him one day when Swartz returned from lunch. After hearing the entire story, and having thanked Stokes for his continual financial support, and having commended Stokes for the fine work the best hospital in the city continually performed both for the well-to-do and (as was, of course, necessary) for the not-so well-to-do, Swartz had only one question: What were the names of these brothers?

When next Swanson came to report, Council President Swartz asked him to find out what he could about two of Traitz's constituents, Jonathon and Harold Rhapsod. Swanson, instantly recognizing the smile of Tyche, goddess of fortune, informed Council President Swartz that Harold Rhapsod had been on his payroll ever since Traitz ignorantly dismissed Rhapsod's job seeking entreaties. A smile appeared on Swartz's face such as had never been seen since Helen turned her visage toward Paris 2500 years before. Within an hour, a grateful Harold Rhapsod had revealed all to a grateful council president who rewarded loyalty with a new job in city government better suited to Rhapsod's obvious talent.

I had followed Traitz's campaign with avid interest, becoming a regular in his entourage as he went from ward to ward. Most ward meetings were non-

events as Traitz had been properly advised to avoid all controversial or social topics—because in Philadelphia the Republican candidate was so assured of victory he could only lose an election by saying too much. Indeed, the best advice to one who had won a Republican primary was to vacation in the Poconos until election day. So Traitz gave non-descript, boring remarks introducing himself and thanking the assembled committeemen, most of whom were city or state workers, for their support, after which he was cheered and applauded as if Cicero had emerged from the grave for a final stirring oration. Only one meeting stood out, that of ward leader O'Neil, Ward 6, the only ward led by an Irishman (in recognition of the influx of immigrants who seemingly loved the Philadelphia waterfront and thus populated the ward).

O'Neil wanted nothing of the boring speeches which had become so familiar. Instead, O'Neil held his meetings at Paddy's Pub at 3rd and Chancellor Streets and (foregoing the back room which, of course, would have been available) congregated all his people in the public section to which anyone interested was also invited to participate. The candidates were expected to buy a round of drinks for everyone—but even more significantly were demanded to sing, after buying two rounds and after O'Neil suggested the appropriate ethnic song. Thus Traitz, assumed to be German in origin, was forced to sing a German marching song to the sound of the Oomp Pah Pah band that had been put on the phonograph specifically for that purpose. I was astonished that Traitz even knew the words, even though

they were only three repeated interminably. I later learned from one of the flunkies of the Traitz entourage that he had been forewarned and told to learn the words and tune before going to the ward. Remarkable was the event, every candidate singing, however badly, in front of the assembled masses in the pub. I'd never seen anything like it before. That same aide later confided, "If O'Neil can get candidates to sing in public, think of what else O'Neil could later get them to do behind closed doors."

Council President Swartz called Traitz in for a meeting and suggested he bring his chief of staff, Swanson, along. Generously "tutoring" Traitz in the ways of City Council, the president carefully asked Traitz just what he hoped to accomplish. Prodding, cajoling, and gently suggesting the reality of life in the early 1900's, the president came to clearly understand that the newly radicalized city councilman was beyond practical redemption. Traitz had so become enamored of his radical transformative ideas that he completely failed to mention the things he truly could have accomplished, things Swartz would have gladly arranged—things like street signs and sidewalks for his neighbors, the things that originally caused Traitz to run his protest campaign. Instead, forgetting (if he ever knew) that politics is the art of the possible, without even consulting his fellow councilmen to find out what was possible, Traitz discussed a living minimum wage, child protection laws, unionization, and the unheard-of proposition that everyone should have a government-sponsored pension and income in old age. Council President Swartz clearly

understood that Traitz's destruction could be the only reasonable course of action. So, he called for Gerdania.

Malcolm Gerdania began life as the only child of a star couple in the Rittenhouse Square firmament. His father, Jerome, was believed to have made a fortune in Philadelphia real estate (although, in truth, the fortune had been made by Jerome's father, who started Jerome in business with his own branch real estate office in the newly developing areas across the Schuylkill from center city). Having the support of his father's major real estate firm, and the four properties his father gave him outright, Malcolm Gerdania increased his personal wealth dramatically. His wife, the former Margaret Comptrol, came from a family which was a prominent, albeit behind the scenes force, in the Republican party. As often occurs with an only child unfortunately born into a high-powered family inculcated with the belief that their success was entirely of their own creation, Malcolm had difficulty creating an individual identity. After private-school graduation, contributions to the University of Pennsylvania paved the way to admission both to the college and (after a two-year hiatus which failed to help him "find himself") to the University of Pennsylvania Law School, which both parents thought would create the perfect career for him. Malcolm would privately describe these lost two years as: "I went to Paris to become a failed writer and I succeeded."

Graduating from law school still without any career plans, Malcolm Gerdania found his parents arranging a position with the District Attorney of Philadelphia where Malcolm finally found himself. Sadly,

he found himself through brutality. Since there were no lawyers for indigent defendants, and most defendants were indigent, Gerdania made a career of bullying defendants into pleading guilty or (in those rare incidents when the defendant chose to go to trial) convincing the defendant that he had to testify because otherwise the judge would have to convict because he would only hear one side of the story. Needless to say, 99% of all defendants who testify convict themselves. I remember one day when a judge called me to discuss a case because he thought it was a close call. I would never tell another judge how to rule, but I would let them talk it out and would ask questions to help their own thought process. In this case, as the conversation progressed, I asked whether there had been any defense witnesses. The judge then for the first time told me that only the Commonwealth had presented its case and that he didn't know if the defense had any witnesses. I told him to call me back after the defense rested and we could talk some more. I never heard from him again. Some weeks later I ran into him on the street and asked whatever happened to that case? He said, "Oh, the defendant testified, and the decision became very easy".

So Gerdania believed he was a great lawyer, always getting guilty pleas or convictions, but the reality was that he had been born on third base and thought he hit a triple.

Council President Swartz handed Gerdania the Traitz case on a platter, and Gerdania arranged for the perfect time to make the arrest. Immediately after Traitz's swearing-in ceremony, and without any

warning, a squad of heavily armed police and District Attorney detectives swarmed into his City Council office and hauled him out in handcuffs. To make things more photogenic for the press, Gerdania had leg irons put on the councilman so that the best he could do was shuffle down the three flights of stairs. Gerdania even stopped him at a photogenic spot in the City Hall courtyard to allow the press to ask Traitz questions about the beheaded councilman and the goop that dripped from the coffin.

Trial was held one month later. Traitz' was charged with selling body parts. The key witnesses were Truss (the funeral director), Dr. Apparitus (the dean of Jefferson Medical College, who surprisingly had not been charged even though it was he who had solicited and paid for the body in question), Dr. Stokes, and most important the star witness Harold Rhapsod (who had eye-witnessed all the critical body-snatching events and who was unwilling to do anything to jeopardize his city position). What could Traitz say in defense? It was all factually true. The judge couldn't care less that no one had been prosecuted for this accepted practice in years. Being found guilty and in disgrace, Traitz was forced to resign his office, pay a huge fine which required that he sell his apothecary, and (after his 1-year probation expired and he could finally leave the city) retire to somewhere south where he was never heard from again.

Nothing can be quicker or—to those who care about good government in our city—more discouraging than the fall of a well-meaning but naïve amateur politician.

CHAPTER TWENTY-SIX

STRANGER IN MY OWN TOWN

STRANGE THINGS HAPPEN to a stranger in a foreign land, even if the foreign land is his own town of Philadelphia. Being of the bench and recognized as a judge, but not being on the bench and not presiding over trials or performing any judicial duties; being of the land, America, but not of that land, 80 years earlier; being of the law, but not the law of the present (that is, the past), meant that everyone, for some unknown reason, trusted and confided in me. Yet there were forces around, forces that perhaps always lurk, that suspected that my presence had darker meanings.

Europe was a dangerous place. Suspicion and incidents approaching war were endemic. Anarchist and communist sabotage and terror were commonplace as was royal repression in response. The newspapers bubbled with stories of intrigue, incidents, and incite, not often without insight. America and even Philadelphia

were not immune. Workers' collectives agitated and stories of anarchist or spy arrests—usually in New York or Washington but also in Philadelphia—appeared sometimes in the dailies and daily in the rag papers, especially those circulated by the "America Firsters," who unsuccessfully hoped isolation could immunize our country from the world.

One warm May day in 1914, when things were slow in City Hall, I decided to take a walk. The walk from City Hall to the park in Rittenhouse Square was much as it is today, except for the architecture, which was uniformly Victorian and generally better maintained. When I walked up to Chestnut Street, however, I needed to flatten myself in a doorway as a demonstration march (populated by the 30 known Philadelphia anarchists, the 15 known Philadelphia communists, and 120 screaming university students) marched past me on the sidewalk and halted all traffic. This motley conglomeration, for whom the annual May Day parade was insufficient to put an end to capitalist oppression, had vowed to march every day in May. This crew was not big enough, motley enough, loud enough, or even dangerous enough to cause me to hide, but those that followed were. 30 horse police rode right behind the parade, forcing the marchers to move ever faster by using the horses' noses to push those at the rear. The horse police were followed by 30 walking police carrying billy clubs in their right hands, slapping the clubs rhythmically on their thighs as if waiting for the order (or even any opportunity) to put the marchers in their place. The police purpose was not only to intimidate the

marchers but also to keep at bay the several-hundred strong, mostly drunk mob that followed the police and screamed about our flag and patriotism, hoping to teach those subversives about true American values once the formal march ended and the police disbursed. It was this last group that caused me to find a deep entranceway, and preferably one with a front staircase to hide in.

Apparently, I was not the only one who sought caution rather than bravado. As soon as the parade was over and I resumed my walk, I noticed a man two doors behind who had taken the same precautions. Oddly, I thought I had seen him before and, wondering where, I realized I had seen him not once but repeatedly. I thought I had seen him in City Hall. I thought I had seen him lingering at the drugstore on the corner in the neighborhood where I was lodged. I thought I had seen him during prior walks. In the past life I had lived in the future, before I had been transported in time, I had taken to reading mystery novels. Probably from their influence, I wondered if I was being followed.

Trying to remember the techniques revealed in my readings on how to "shake a tail," I began evasive maneuvers. I cut into an alley and retraced my steps. I stopped into Rindlaubs for pastry and tea. I even pretended to tie my shoe and ring a doorbell as if seeking entry. Finally, convinced my concern was due to either an overwrought imagination or the fear that I might never get back to where I belonged—or a total misinterpretation of actual events—I convinced myself that I must have been mistaken and hastened to a bench in Rittenhouse Square. Yet no sooner had I caught my

breath and looked up, but my compatriot reappeared and sat down directly across the path.

Taking a deep breath and remembering that the anxiety felt on the trip to the principal's office was always worse than the actual punishment received, I stood up, walked across, and sat down next to him. Without my saying a word, my seatmate introduced himself.

"Dr. Heinrich Friedrich Albert, Communications Director for the German Consulate in Philadelphia, at your service Mr. Bernstein, or should I say Judge?"

"You know who I am?"

"Judge, everyone in Philadelphia knows who you are—or at least who you claim to be. It is actually funny that you ask me if I really know who you are, because few of us do. I have made myself known to you, and today I formally introduce myself to inform you that I actually do know who you are and who you work for and to tell you, although you may have already suspected it, that you are being watched."

Needless to say, I was flabbergasted and perhaps for the first time in my life actually speechless. I'm sure I stuttered as I said, "Mr. Albert, I don't know who you think I am or what you think I am doing, but I assure you everything I have said since I mysteriously arrived has been, as they say, the truth, the whole truth, and nothing but truth."

"Oh please, Herr Bernstein, I come in friendship. I lay my cards directly before you. Please do not continue to play charades with me. I'd advise you to cease

immediately, tell your friends that you have been discovered, and return to them without delay."

And with that, and my mouth hanging wide in disbelief, Mr. Albert put his hat on his head, said "I bid you good day for now," and left.

Wow! That conversation left me staggered. I sat on the bench for over half an hour watching strolling single women, couples, children rolling hoops in a run, and (like every other time I'd been in the Square), the unfortunate homeless (who were then known by pejorative names such as bums, drunks, and beggars). Why had the German consulate been watching me and whatever did they possibly think I was involved in? It is true that I had toured the Philadelphia Naval Yard in South Philadelphia, which was busy transforming ocean-going cruise liners into armored warships, but I had taken no pictures, and I was sure I had not seen anything classified or really secret. Just who did the Germans think I really was? And what exactly was I to do? For the first time in my life I considered carrying a gun.

In the early 20th century a gun was not so easily acquired as it is today. Although murder was a frequent crime in the poor areas of the city, murder by gunshot was rare. The common method of fighting, which unfortunately usually occurred in bars or gambling halls, used knives. Fatalities were correspondingly rare. The most common form of domestic homicide was likewise in a knife fight—or occasioned by poison. Alcohol was still legal, as were most forms of drug use, so there were no mobs who had to protect their sales territory.

Indeed, by modern standards, innocent victims of "drive-by" or random violence were rare, although youth gangs of course had their designated turfs, which they protected with clubs, knives, and chains. Murder usually was occasioned by specific motive directed at the victim. (Thus, the most interesting murder case I observed during my sojourn in this other time was a rare case in that the killing at the heart of it appeared to be random. No motive could be ascertained—during investigation, during trial, or even after the verdict. Indeed, I know the judge, the jury, and the prosecutor had no clue why the killing had occurred, and I doubt whether the defense attorney knew. In fact, it was only from confidences shared with an outsider that I was able to connect the dots. I will discuss this case later.)

I decided to arm myself, lest a foreign government (which obviously was under serious misapprehension about my motivation and which operated under diplomatic immunity) might try to stage an accident or worse. However, a handgun was not to be found in any gun shop. Those few gun dealers that existed sold only rifles for hunting and could only sell them disassembled in their storage cases and then only with strict cautions that they could not be assembled until the purchaser entered a county where hunting was permitted. Possession of these rifles was subject to additional control in that for two years the seller had to keep on record the name of every buyer, his address, and his reason for purchase.

Ammunition was equally controlled, and all ammunition purchases were reported to the Bureau of

Armament Enforcement, which regularly checked the criminal arrest, mental health, and prison records of Philadelphia and surrounding counties. When the Bureau found reason to believe a weapon was possibly for criminal or antisocial use, the Bureau would summarily seize the ammunition. Although the Bureau was not permitted to seize the weapon itself, the Bureau locked the weapon's trigger mechanism. The Bureau then set the matter for a court date, at which time the purchaser could readily obtain a court order releasing the ammunition and unlocking the weapon if the purchaser convinced the judge that no improper use was intended or likely. Indeed, a special court had been established in Philadelphia for just this purpose and hearings were held within three days of Bureau action.

Thus, hunters and others with legitimate purposes were only temporarily inconvenienced while guns were significantly kept out of the hands of those likely to misuse them. Violent, gun-related injury was therefore a minimal problem for law enforcement. In fact, the policeman's billy club was generally more than a match for most knife carrying felons. Even though the police did carry guns, their use was infrequent. Police shootings occurred perhaps once a year and then almost always in a mental health situation.

Once I learned how different the past-present Philadelphia was from my previous past-future, and I discovered that a handgun could not be readily obtained, I arranged to meet Colonel Bridgers, Chief of Municipal Police, to describe my problem. Colonel Bridgers had been Chief of Municipal Police for almost a decade after

serving valiantly but briefly in the Spanish-American War. Charging up San Juan Hill, his horse stepped into a Polynesian rat hole, throwing its brave rider into a field of jungle cactus which mangled his right arm so badly that the surgeons had no choice but to amputate it near his shoulder. Undaunted, after a short convalescence, Bridgers taught himself to shoot and use his saber with his left hand and, most impressively, to switch weapons by quickly posting the prior weapon under the stub of his right arm, from which a second exchange could equally quickly be performed. Thus, Bridger retuned to battle command until dysentery, from which he suffered all the rest of his life, forced his retirement.

In recognition of his dramatic recovery from the amputation, the story receiving widespread acclamation in the press, he was appointed Chief of Municipal Police, a position expected to be limited to ceremonial appearances. But ceremonial was not Bridgers' approach to life, and despite his disabilities he transformed a slovenly, patronage-bloated force into a disciplined protector of the public. One of his first acts was to get the city government to enact sensible gun laws, so his men could not be outgunned. Next, he established a licensure bureau within the police. It was with respect to getting his help in obtaining a handgun and license that I approached him.

He was not moved by my story. He did, however, want a full description of the man who identified himself as Mr. Albert of the German Consulate. "I'm afraid, your Honor, that this encounter does not arise to the level of intimidation which would require you to be armed.

While I'm sure nothing untoward was intended, and I'm also sure this Mr. Albert, if speaking truthfully, is terribly misinformed, we are neutral in the European conflict, and I have no doubt that nothing requiring you to carry a gun will occur. Further, since you have no papers, not even a birth certificate to demonstrate your identity—although I assure you I personally believe your very peculiar story—it would be impossible for you to meet the requirements to receive a handgun permit and you couldn't very well march around with a shotgun. Might I suggest that we in the municipal police force will care for your safety as much as we do any, shall we say, more regular members of the judiciary, and that you carry a suitable knife, any kind of which we would be happy to provide your Honor. As I hope you know, we offer 'Safe Knife Fight for Defense' classes every Thursday here at headquarters which you are welcome to attend. Indeed, if it would make you feel better, I could arrange for you to audit our new policeman training classes at no charge and even issue you a formal billy club as an 'adjunct' municipal officer."

I declined his well-intended but to my sensibilities total useless suggestions. Indeed, during Bridgers' tenure as police chief the city was never safer, with the exception of the occasional riot. His only flaw (if it be called that, given that it was part of his philosophical strategy for keeping the city safe), lay in his approach to vice. He initiated the concept of "Captain's Men," the vice squads of today, as part of his safety program. (A latter chapter will discuss how this worked.)

Still concerned, and frankly worried (since I knew of the war that was about to inflame Europe and the foreordained entry by America into the war after millions had died), I confided in my judicial mentor, Judge Bachmann. I did not reveal what I knew would soon become the horror of World War I. I had resolved that my historical knowledge, if believed and acted upon, could only result in the playing out of historical changes that would have such unexpected consequences as to be beyond comprehension. But I did share with Judge Bachmann my encounter with Mr. Albert, my fears and concerns, and my entire conversation with Colonel Bridgers. Judge Bachmann assured me I had nothing to worry about. In fact, he knew Mr. Albert to be a fine gentleman, although the consulate did employ certain henchmen who frequented the German community in Philadelphia as agitators, including various unsavory longshoremen who routinely hung around the bars at the shoreline.

Nonetheless, after observing my distress, the fine judge asked if I even knew how to use a pistol. I told him I had fired a .45 in the army but that was some years back. He then reached into his desk drawer and handed me a .35 Caliber Smith & Wesson Model 1913 semi-automatic pistol—the first semi-automatic handgun ever made by Smith & Wesson—and took me to the firing range in the basement of City Hall. The City Hall basement then, as now, was a maze of hallways, alcoves, and secret passages which I will describe in subsequent chapters. But there we arrived at a shooting range where a police officer named Sauer taught me everything I

needed to know about my new gun. He required that I become proficient in its use (which took several days of practice) before he fitted me with a shoulder harness which could easily fit under my arm and be fully hidden under my jacket. Finally, when he was satisfied I would not be shooting myself, he handed me my gun. He told me that the gun was already loaded but that, if the gun was used, I would need to get replacement bullets from him.

Sauer refused any compensation, asked me no questions about why I wanted the gun, and refused to say whether Colonel Bridgers even knew of his existence or the shooting range. I thanked him later by sending him a box of Cuban cigars, and I carried that gun wherever I went, hoping never to use it.

About the secret basement shooting range, Judge Bachmann only said, "The police don't ask judges many questions."

CHAPTER TWENTY-SEVEN

WILD AGAINST SIN

IN MY NEW lifetime of 1913, Philadelphia suffered from vice. Not suffered because there was an excess of vice (though there was). Not suffered because vice pervaded the city, making certain parts difficult to live in (but not impossible). Not suffered because of the effect of drunkenness in public (or in private). Philadelphia suffered because there were no laws outlawing vice! Or so the preachers said.

Certainly, many activities such as horseracing, gambling, smoking, loitering, and baseball playing were unlawful on the Lord's day. And certainly, preachers and the Women's Temperance and Holy League demonstrated against vice in many forms. But there were no laws, the preachers said, except of course on the Lord's day, against gambling, household prostituting, numbers-running, horseracing, dog racing, bear baiting, cockfighting, fist fighting, or even opium denning.

The basement of City Hall was then, as it is today, a confusing rabbit-warren maze of storage rooms, utility rooms, and hallways seemingly running haphazardly in every direction. I don't know now whether this still exists, but back then, as one councilmember showed me, there was a doorway, deep in the catacombs, to a passage which led—in that maze of halls, I could only guess—across the street to an underground "club" that was frequented by Philadelphia's finest (and not just Philadelphia's finest policemen).

The Club, for that is the only name I ever heard it called, had a stage where a live band continuously played and a large dance area with no shortage of available lovely ladies (some dressed scantily and others to the nines) who were ready to dance or to keep company as a "gentleman" selected. The Club also had the best stocked bar in town, great food, table service around the dance floor, and side rooms where couples could take a break, take a smoke, get to know each other better, or partake in whatever other activity was desired—since every room had a locked door, stocked bar, sofa, chair, piped in music, and bed.

Since there were no vice laws (and oddly even Sunday didn't matter in the Club, except Sunday morning 9 a.m. to noon when everyone was of course with their family in church), opium was openly hawked. The air was therefore filled with a smoky film (for the record, I never inhaled) that was not exclusively related to the patrons' fat cigars. A casino operated in a large room off the dance floor. I soon learned that judges never paid anything at the Club, and although the winnings

were often modest, judges never actually lost at roulette. The flat fee charged for use of the "get to know you" rooms was also waived (though I only can attest to this through hearsay). Tipping, however, was absolutely permitted.

There must have been other underground entrances because, although the Club was always crowded, I never saw a street door. Indeed, I could never quite figure out exactly where underground the Club was located. Those with money always learned of the Club, but it remained unknown to anyone not taken first by an insider (though there were many insiders). It was also unknown to the pages of the press (though not, of course, to reporters).

Since there were no vice laws, there were of course public outcries against sin. Preachers and ministers lectured from the pulpit and held rallies against the Sodom that was Philadelphia. One major rally, promoted as the "Wild Against Sin" demonstration, occurred right in the courtyard of City Hall, with more than 1000 in attendance. As the crowd gathered, and upon seeing the numbers assembling, several councilmen ran from their City Hall offices to get on the podium to address the assembly. Even the mayor, alerted at the Club to the size of the demonstration, ran to join. Unfortunately, he arrived just as the crowd was dispersing. Quickly, ministers, preachers, church mice, and rally monitors scurried to block the four street exits of the courtyard to ensure that an ample number of decent-folk demonstrators remained to hear the mayor promise "reform of sin."

Interestingly, the Wild Against Sin rally coincided with a suffragette rally on the apron of City Hall called "Votes for Women." Since women had no vote, no councilman or other public officeholder ran to attend. There was, however, a visible and large police presence, because some of the women involved had been known to speak loudly and act unfeminine in public. One obscure legislator, Councilman Traitz, did attend. Traitz had just been commissioned to fill a seat in the 5th Ward because the incumbent, against whom Traitz had had the audacity to run against in the primary—and beat—had accidentally killed himself shortly after the defeat by shooting himself in the back of the head with a shotgun as he was reaching for a bottle of port. Perhaps Traitz himself was seeking any port in the electoral storm he feared would descend on him in the next primary.

Traitz even knew the words to "The March of the Women" and joined in singing:

> Shout, shout, up with your song!
> Cry with the wind, for the dawn is breaking;
> March, march, swing you along,
> Wide blows our banner, and hope is waking.
> Song with its story, dreams with their glory
> Lo! they call, and glad is their word!
> Loud and louder it swells,
> Thunder of freedom, the voice of the Lord!

The singers made it through verse two as well, their voices strengthening as their confidence increased ("Strong, strong—stand we at last!"), but as they reached

verse three, with its words "comrades" and "battle," the police, who had individually been thinking of arresting these radical women for the use of the name of—or at least the thought of—"the Lord" in vain, had heard enough:

> Comrades—ye who have dared
> First in the battle to strive and sorrow!

The police charged the crowd of women with batons wildly swinging. As shrieking women fell, those in the middle of the crowd sang louder:

> Scorned, spurned—nought have ye cared,
> Raising your eyes to a wider morrow!

Until finally, their clubs having the desired effect, the police dispersed the entire crowd, some of whom, bleeding and clothing torn from the truncheons' blows, sought sanctuary in the courtyard of City Hall at the "Wild Against Sin" rally (which the police dared not enter) just in time to hear the mayor's speech—which they spontaneously interrupted with chants of "End Vice! Votes for Women!" until he stepped off the podium in fury.

Both rallies got results. But the two results converged oddly. Speeches made that week in City Council combined the two crusades. A Morality play in 1913 required joinder of the causes of Anti-Sin and Anti-Unfeminine Behavior. The halls of the city's deliberative chambers rang with condemnation of both. To my

cynical "modern" eyes, it appeared that all politicians agreed that a woman's place was in the home, not in the streets, neither as a walker nor a protester. And home also had a very stringent sexual meaning: home available to husband, alone, not home available to any man with the money to pay.

And yet..... I had seen some of the most vocal advocates of morality in the Club.... some repeatedly so, and I had chatted and gaily supped at the Club with them at length. Other moralizers retained their elected offices only through the solid electoral support of the brotherhood of brothel owners and other high-class urban purveyors, like the unlicensed beer and beverage distributors, the lottery vendors, the opium emporia, and the protection racketeers who offered not only protection against vandalism but often the assistance of a kindly tax collector who looked the other way at obviously phony sales records. These "criminal types" merged seamlessly with much of society. Those who even tried to learn every licensing requirement were generally considered "saps."

An example comes to mind. The streets were full of street food vendors. The regulations required a "commissary" for storage of all food overnight. But there were no commissaries in Philadelphia, and everyone knew it. The only citations I ever saw, however, occurred when a vendor stopped paying protection. And I saw only one such citation ever prosecuted in court. Tony Vendasqualli was charged with selling on the street without a license and, incredibly, took the witness stand in his defense. Somehow, he thought telling the truth

would help his case. He testified that in the old days, he would simply slip the inspector a bill and would be given the needed license without anyone even asking about his commissary. But one day the inspector said he would not take any more bills and that Mr. Vendasqualli had to see the supervisor. The supervisor said the new reform mayor was centralizing government and if Mr. Vendasqualli wanted to continue his license, he would have to pay the entire department. But the sum needed to support the "entire department" was way too much, so Mr. Vendasqualli forbore any license, at first apparently without distress. He'd done so for over a year without a problem until one day a second vendor appeared on the same block. Mr. Vendasqualli tried to scare him off with a baseball bat, but the new vendor had a large knife, so they found a way to coexist for a time. But apparently the newcomer wanted to eliminate the competition—despite lacking seniority!—so Mr. Vendasqualli got a citation, summons, and order to come to court, and it was so unfair.

The visitors in the courtroom that day were aghast at this testimony. Not aghast at hearing the sad tale but at how naïve Vendasqualli was. They expected to hear within days that his body had been found in the Schuylkill. The judge wanted nothing further to do with the case, gave Vendasqualli a minimal fine, suspended even that, and told the inspector to never again bring such petty matters to his court because he had important work to do.

Vendasqualli's testimony reminded me of a case I actually had in the present (that is, the present future), a

bar fight. Plaintiff Tony D'Angello sued the licensed owner of a bar claiming to be half owner, having put up the money for the purchase. Apparently, all went well until the neighborhood changed and the bar fell upon hard times. Then D'Angello's share dropped until finally he was getting nothing for his $10,000 investment. He was suing to get his money back. He took the stand and testified. His lawyer, perhaps because I was the judge (or perhaps because he was merely following the rule that if something bad is sure to come out, it would be best to bring it out on direct), asked Mr. D'Angello to explain why he had no agreement in writing to prove the investment and why his name was not on any of the licensing papers. Imagine my surprise:

> By the witness: Judge, you won't see my name on any of the papers, and I couldn't get any loan documents signed because I have one or two minor felony convictions and as you know if a felon is involved in any way with a bar you can't get a liquor license.
>
> By the Court: Do you mean that even though you put up the money and were half owner, you couldn't have your name on anything because under the law you couldn't be involved in liquor sales, because the legislature doesn't want anyone with a criminal record in the bar business?
>
> By the witness: That's it, Judge! You got it!

Needless to say, in my court he lost. But discussing the case with another judge in the past (that is, the past present future), I was struck by the empathy he expressed for Mr. D'Angello: "But he did put up $10,000, and you made him lose it?"

CHAPTER TWENTY-EIGHT

THE CAPTAIN'S MEN

THE COMBINED FORCES against vice had a much easier time of it than the forces of women's sufferage—I mean suffrage. Chief of Police Bridgers came out full force against vice and City Council quickly passed a series of laws outlawing street prostitution, household prostitution, and street lottery. Oddly, in the clamor of reform, drugs remained legal, possibly because Coca Cola really was "the real thing." In the rush to legislate, Chief Bridgers wrote editorials and spoke at countless anti-vice rallies all the while privately insisting that household prostitution was vice, but drug usage was not. Privately he argued that there was no stopping drug use because many (including upper class society) were already addicted and, to all dispassionate observers, were functioning perfectly well in society. To make these people criminals, he argued, would serve no purpose and would only create drug gangs who, having a specific

market across society, would fight over turf, instead of being good citizens who paid taxes. He correctly predicted that any "war on drugs" would simply exacerbate crime, create powerful and violent crime organizations, and fail due to the clear demands of demand and supply. Instead, he privately argued that, as a second measure, when the anti-vice clamor died down, Philadelphia should impose an "opium" tax on all drugs not provided by physicians (who in those days prescribed laudanum freely), the proceeds of which could be used to provide for those who had been rendered incompetent and for "treatment" for those who wished to rid themselves of addiction.

To diverge from my main story, I might add that drug taxation became a very controversial matter because of Coca Cola's ingredients. The percentage of drugs incorporated into a product became a political discussion involving medical expertise of every shaded and textured opinion. Some railed against the very concept of a "beverage tax" itself. Indeed, the politicians became so familiar with the campaign funds that were lavished at the very mention of drug taxation that the issue was raised before every election, however irrelevant to the office involved, including the Register of Wills, the Recorder of Deeds, and the Prothonotary. Needless to say, taxation of drugs never advanced beyond the "heavy discussion" stage.

This was not the case with all the vices. So prevalent was the clamor against the other "venal deadly sins" that alcohol abuse never rose to public clamor. Alcohol taxes never surfaced even in public debate,

possibly because so many of the elected officials had significant stakes in bourbon, gin, and rum and the grand old Coke sent in an army of what we now call "lobbyists" with arms full of cash. Indeed, architects began designing hotels with transoms that could be left open so that bags of cash could be "deposited" over night without any necessary attribution. Attribution was totally unnecessary anyway since everyone knew that $100 bills had not been deposited by the homeless. And what was a public official to do with a bagful of cash, they boasted to me, but to use it for the common good, apparently defined as their next election or next dinner. It appeared to my jaundiced 20th century eye that whenever the style of life to which the political class had grown accustomed diminished however slightly (one could tell because the cocktail shrimp seemed a day old and the alcohol was no longer top shelf) the discussion of taxation of drugs arose anew and the quality of the parties was restored. The discussion of these issues became known as "shaking the money tree."

So within weeks of the "Wild Against Sin" rally several poorly written and less thoughtful ordinances passed unanimously and with a flourish and—awaiting only the assemblage of leading anti-vice clergy and leaders of "Mother's Against Transgression"—were signed into law by the mayor, who, after the ballyhoo of photographs and backslapping, slipped quietly into the elaborate City Council conference room and with a chosen few (only 30, of which the President Judges and, oddly, myself were included) privately celebrated by getting roaring drunk while some guests retired to the

corners and silently nodded off. From the discussions in that room it was unclear to me whether the celebration was occasioned by the advance of righteousness under law or (more likely) by having gotten the preachers and society women off their backs for at least a time.

Chief Bridgers concluded that enforcement was needed at the highest levels. Within short order he announced the creation in each police district of "Captain's Men" whose sole function was the enforcement of the newly enacted anti-vice legislation. Since there were only three police districts, one of which had no sin (or at least no sin worthy of restriction), only two such squads of "Captain's Men" were ever created. Both consisted of two experienced officers. In fact, "experienced" actually became known as "impending retirement," which became the unwritten *sine qua non* for appointment to the squad. Experience and impending retirement invariably meant that the officers had been receiving money and other "favors" from brothel owners and lottery runners for years and were ready to augment their otherwise meager pension benefits. The Captain's Men readily added every "opium" shop and hideaway to their regular catalogue of payoff sites: the threat of being included in subsequent legislation provided great incentive. Thus, corruption and protection became centralized with all payments going straight to the Captains (or at least 80% of all payments received) and thence to Bridgers.

And so a full win-win was achieved. The anti-vice crusaders were thrilled at the apparent political and police responsiveness, the brothel purveyors and lottery

runners were satisfied that they could not be hit up by every Tom, Dick, and Beat Cop, and the opium dealers were happy to ensure that no reform bullets came their way. The only losers were the professional "protection" men. The cops declared war on the kind of assaultive behavior that was their usual mode of operation, so they could no longer collect from their major sources. In short time, they realized that they simply could not compete with extortion codified into law. But, even in the proto-capitalism of the day, they found a way to make a buck. They rapidly morphed into protecting legal businesses from the outbreak of vandalism that shortly plagued the city and facilitating the licensing of new business. For those who did not hire a facilitator, licensure delay turned into an agonizing and incredibly lengthy process. Thus, everyone was happy, particularly Bridgers, who retired just two years later to Nice in France. One could say he was just one step ahead of The Untouchables, except they were not yet a glimmer in any eye. Needless to say, the hunt for a new police commissioner became a brutal contest which enriched not only the new commissioner and the councilmen who had to vote to confirm, but also the three police captains who dropped out of contention in favor of a Jonathon Godful (who had recently lost an election for council) after their wives received large "inheritances" from unknown relatives who had recently (and sadly) passed.

While all this was unfolding to my great amusement, I was discomforted because I continued to have the sense of being followed. A second time Dr. Albrecht made contact. While I was walking down

Walnut Street to obtain a pack of cigarettes, a Coke (feeling a need for a quick pick-up), and a paper, a man quickly and silently came up behind me and surreptitiously slipped a hand in my pocket, leaving a note. I just caught a glimpse of him as he turned the next corner. By the time I ran to the corner and could see down the block there was no trace of him—he was gone. The note read, "Judge Bernstein (or however you wish to be addressed these days), please meet me at the teahouse at Strawbridge's at noon. It's a public location so you have no need to fear any untoward business, but perhaps you would be interested in 'toward' business. Yours sincerely, Dr. Albrecht." One can imagine my surprise and indeed apprehension at this approach, both in form and content.

I straightaway sought the advice of my mentor, Judge Bachmann, who immediately set up a meeting for me with the Federal Office of National Security, Naval Intelligence. He gave me a single sheet of paper with the words, "Simpson, 10:00 AM, office, third floor, 901 Market Street," and with his finger over his lips ushered me out of his chambers, mouthing the words, "Everything's going to be fine. Don't worry."

The next day, after doing my amateur best to "shake off" any tail, I arrived at 901 Market Street at 9:45. It was a building with no external markings or signs. I entered through the front doors into an elaborately decorated lobby still without any indication of what offices were in the building. Since elevators were a new invention and since those I saw looked like jerry-rigged cages, I chose to walk. At the third floor I was

greeted by a long corridor containing countless unmarked doors. Apparently, the elevator operator was supposed to tell visitors which door to enter. I innocently opened the first door and was greeted with bright lights, the clickety clack of several teletype machines, and a burly uniformed man pushing me back out the door I had just opened.

"Sir, what is your business here?" he demanded, his right hand perched on his gun and his left in my chest.

"I have an appointment with Simpson and none of these offices seem to have any designations."

"Of course not, Sir, and it is quite rude to barge in uninvited, Sir. I'll take you where you need to go and please, Sir, do not take any notes while you are on the third floor."

I followed down a long hall and up a short staircase to a mezzanine where I was ushered into a plain office with a desk without a single paper on it behind which sat a dignified, older man, with grey hair, slight build, and a bulge on one side of his chest that I presumed was his gun. "Judge Bernstein, so glad to finally meet you, I've heard and read so much about you," Mr. Simpson (for that was who I presumed he was) said. "I understand that you come from far off, in the future you say, perhaps you might want to share some of the 20th century history you recall, perhaps some stock tips?"

Oddly, he was the first to ever so brazenly ask me to foretell the future. "Are you Mr. Simpson?" I asked.

"For our purposes, yes, Mr. Future Judge Bernstein."

"I'm sorry to disappoint you, Mr. Simpson, but I once read a short story by Heinlein, an author I'm sure you've never heard of since he's yet to be born, in which he described a future world where time travel had been invented and tours were arranged. An absolute rule of traveling back in time to when dinosaurs roamed the earth was that no one could ever, for any reason whatsoever, step off the path. In the story, a visitor innocently stepped onto a single leaf of ground cover and the result of that change, 10,000 years later, was catastrophic. So when I found myself here, I made a firm resolution not to say anything about what I thought I knew about the past—that is, now the future—and I must tell you that lest I become a modern Cassandra and open a terrible Pandora's box, I will abide by my resolution."

"I see you are a classical scholar. Can you tell me where you received your classical education? Sadly, modern philosophy seems to think mythology is false religion and shouldn't be taught. I on the other hand believe the Greek myths to be true reflections of our world, reflecting out internal psychology. But that makes me a Trilobite…. Next thing you know those 'educators' will eliminate all the requirements and allow naïve children to design their own course of study. But I'm sure this is not why my friend Judge Bachmann sent you to me. Why are you here?"

"Well, Judge Bachmann thought you could be useful because I've been approach twice by Dr. Albrecht of the German Consulate and he wants to meet today at

noon, and I feel like I've been followed since he first spoke with me."

"I know. We've been following you."

"What? It's been you guys?"

"Oh yes, and your techniques for losing a tail definitely need work. I don't know what you have in the 1980s or wherever you come from but hopping onto a horse-drawn streetcar doesn't lose anyone. Our guys are in great shape, and they can keep up with any horse pulling a 2½ ton wagon. Oh, and jumping off to grab a horse in the other direction just tells the tail that you know you're being followed, and another agent picks up isntead. We'll give you some pointers as we go on."

"As we go on?"

"Yeah, we'd like you to meet Albrecht, or whatever name he's using these days, and agree to do exactly what he wants."

"What?"

"Yeah, he's the top German spy and in case you haven't noticed things in Europe are getting dicey. So, we'd like you to tell us what he says and agree with him. Then we'll keep you in the loop."

"What loop?"

"Why your loop of course. Don't worry about a thing. Just meet with him and we'll reach out to find out what he says. Agree to do as he asks and we'll see where we go from there."

"Should I come back here?"

"Oh, that won't be necessary. We'll find you. You won't find us here anyway. Need to move around you know."

"Do you want me to record the conversation or something?"

"What? Oh no, if you take notes they'll know something's wrong. Just play a little hard to get, then agree."

"Oh, of course, pocket recordings haven't been invented yet."

"So, if you'll excuse me, I look forward to the results of our conversation. Just understand that you'll be doing our country, now and whenever you get back to wherever you came from, a great service. Oh, and keep that gun with you at all times. One never knows in these troubled times."

He must have pressed a button or something because a uniformed soldier entered and said, "Allow me to escort you out the backway, Judge." Baffled, and somewhat disoriented, I followed the soldier through a long underground passage that went through The Club and eventually up into City Hall Room 143.

CHAPTER TWENTY-NINE

STRAWBRIDGE'S TEA EMPORIUM

NOON ON SUNDAY, May 29, 1913, saw me seated at an outdoor table on the porch roof of Strawbridge's Tea Emporium. I had just sat down and was reviewing the menu when Dr. Albrecht appeared.

"Gotta afternoon, Herr Bernstein—or should I say Judge?"

"Judge would be fine, thank you, and" (thinking of the German approach to Jews in the coming—or maybe hopefully not coming—Second World War) "Herr, I think, is inappropriate."

"Very well, Judge. Have you been here before?"

"No, I haven't. What do you recommend?"

"The Borscht is very good even though it is the signature dish of Russia."

"Then that's what I'll have."

"Gott. How has your day been, this wonderful spring morning?"

"Mr. Albrecht, can we skip the small talk and tell me why you asked to meet?"

"But of course, but of course, it never hurts to get to know each other does it?"

"You claim to know the truth about me and even though I have told everyone only the truth, you call me a liar, and I think I know more than enough about you, Mr. Communications Director. What do you want?"

"Yes, to the point, you know Europe is, shall we say, bubbling over, in convulsions, and being torn apart by anarchists and communists. The French are planning war on Germany and Russia is planning to occupy the Polish part of Austria-Hungary. You know we cannot allow this. Judge Bernstein, if you have been reading the papers lately, America has made itself great by keeping its nose unto itself, as you say. Why would you get involved and waste your fortunes? Besides, Germany has 1,000,000 men in arms, France a comparable number, and America? What? 21,000? What would it mean to this beautiful country to hurl its youth to be killed in a fight that is none of your business? America is becoming great, your country must mind its own business, build, grow, and remain isolated."

"I think the world is becoming more and more connected, but what does this have to do with me?"

"There are 30,000 Germans in Philadelphia and almost 500,000 in the United States, and we are building every day a greater constituency for America to keep its nose in its own business. Why do you want trouble when you are in no danger and ocean protects everyone? And do you know how many Irish there are in America?

Another 300,000, each of whom has a dozen reasons to hate the British and therefore are natural friends of Germany should war break out—I should say *when* war breaks out. All we want to do is build on their natural proclivities to protect your country."

"So, what does all this have to do with me?"

"Because of your very strange circumstances, which I may add, I don't believe for 30 seconds, but nonetheless you have managed adroitly to pull off, you have access to everyone and everywhere. We must of course learn as much as we can about American preparedness and whether your country has designs against us. And you must realize that the more we know, the less likely war will happen."

"If you don't believe I am who I am, who do you think I am?"

"Michael Amberstone. Your father was a Common Pleas Judge who virtually ran Lancaster County where you grew up. That's how you know enough about law and courts to fool people. But 'Judge Bernstein,'" he added sarcastically, "you got into a little juvenile trouble, just a few buggy cart thefts, oh, and shoplifting too, so your father had to import a judge from York County to deal with your case. And when you got out of Juvie Hall, your father disowned you, as he had to do. Since your mother had died two years before, you were on your own. And when your father died just one year later, and his will left you nothing, you most dramatically invented this most excellent persona. Oh, 'Judge'—don't look so astonished. Your secrets are safe, or are you just astonished at how much we really know about you?"

My expression of astonishment was totally involuntary. The Germans had invented an entire imaginary person and seemed to believe it.

"Do I need to explain the other conman personas you've previously adopted, 'Judge,' none of which, I might add, have succeeded anywhere as well as this one? So, you see, we have strong common interests. And aren't you tired of living in that old fart Judge Bachmann's house, with no prospect of ever leaving? No one is willing to let you work. But you gadding around, asking questions, and gathering information is exactly what you and I both need. So, what do you say if $500 a month anonymously posts to your meagre bank account? And all I need is some pictures of the Naval Yard in south Philadelphia which you are visiting next Thursday."

I was speechless from this brazen bribery attempt and undisguised solicitation to spying. Yet, in the back of my mind was the comment from Naval Intelligence that morning, "We want you to do as he asks."

"Mr.—or should I say Herr?—Albrecht you are absolutely wrong. I am precisely who I say I am, and if you knew what I know about how you Germans treated—or will treat—my people you wouldn't have dared ask me to do anything for you."

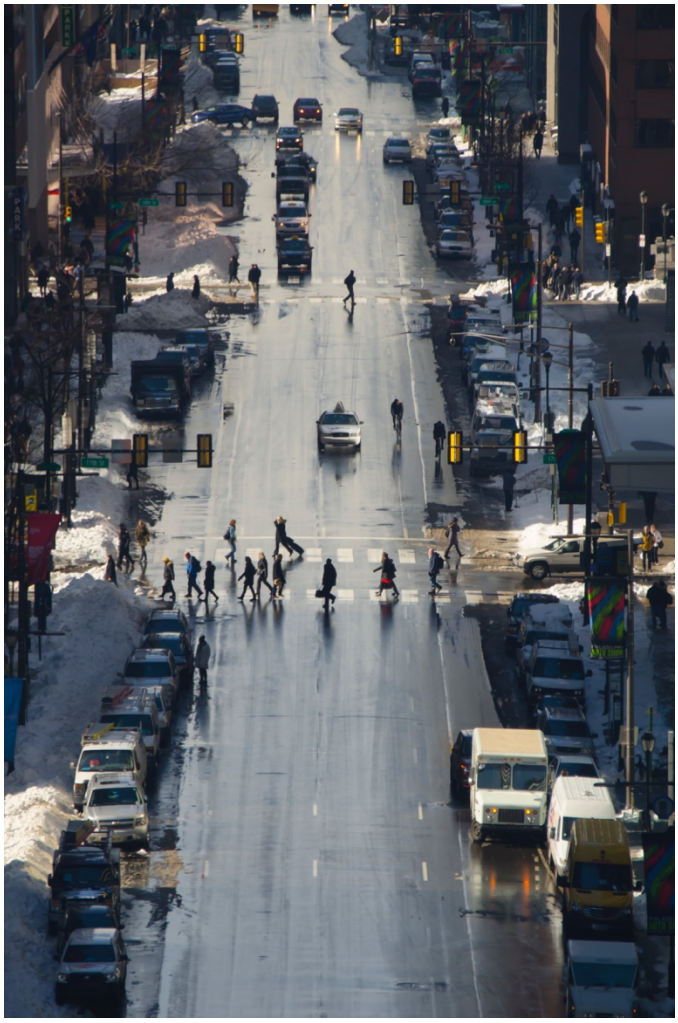
"Herr Amberstone, if you reference the Judaism which you so cavalierly discarded in your youth, I want you to know that many of your tribe now serve honorably in our armed and naval forces, many are officers, and several have already earned Iron Crosses for bravery and leadership, so I don't know what you have

heard but I assure you, the German people are good friends of the Hebrew nation."

Although I was ready to punch him in the face, or better yet draw that weapon which hung heavily in its holster inside my suit jacket, I again heard the words of Naval Intelligence, "We want you to do as he asks." So, I said, "Where do I get back to you?"

"Oh, you don't have to worry about that. We are watching. One morning, when you are ready to say yes, carry an umbrella on a sunny day (just in case you know it starts to rain), and we will find you. Oh, and bring a check so we know where to deposit. Good day, Herr Amberstone."

And with that he left, leaving a not amused Judge Bernstein staring behind him wishing Herr Amberstone was more of a man of action than of thought.



CHAPTER THIRTY

INVENTIVE PHOTOGRAPHY

I CANNOT RECALL the details of how Naval Intelligence contacted me after this lunch with Dr. Albrecht. I remember reaching into my pocket and finding a note that gave me another address to meet them. Had they given me the note when I last saw them? Did they make it appear in my pocket—by magic? Or was it slipped into my pocket by someone following me? On my way back to City Hall, I casually passed by the building on Market Street where I had earlier met them—even though they had told me they wouldn't be there. Sure enough, I found that the entire building was shut down tighter than Fort Knox. The note directed me instead to a West Philadelphia address in what now is called University City.

That night I dreamed of modern Philadelphia, its skyscrapers and buses and taxis, and of being tailed through its streets by the men of my formerly past now

present. I tried to lose these men, doubling back on a side street, jumping on a trolley at the last minute and traveling for miles, then returning by regional rail, and on one occasion even hailing a gypsy cab mysteriously called an "Uber." Nonetheless, whenever I got out of transportation, one of the men would be leaning against a wall, smiling, and saying, "Welcome, Judge Amberstone." When I jumped out of the Uber, ready to run for an alley, there was Albrecht himself, sitting at the outdoor table of a café near a building called the "Thomas R. Kline School of Law." Albrecht said, "Welcome. I've been waiting for you." I woke up in a sweat with a jolt. Vainly, I hoped that my entire travel in time had been merely a nightmare. But when I looked for the clock, I saw only the holstered gun on the nightstand reminding me I was still stuck in the past. And so, at 10:00 that morning, I appeared in West Philadelphia at the office of "U.S. Naval Operations," or so read the sign above the door to Room 109.

As I entered, a naval officer, as I presumed from his fancy dress uniform and combat ribbons, said, "Welcome, Judge Bernstein. Allow me to show you to Commander Peterson."

There seated behind an elaborate desk was the man I had met before as Mr. Simpson. He greeted me with a chuckling smile and said, "So we meet again Judge Bernstein, or should I say, Mr. Amberstone?"

Astonishment upon astonishment. "Where did you get that name from?"

"Oh, really, Judge, do you think we would send you to meet with that shark Albrecht without knowing

everything that goes on between you two? Modern technology is amazing—it will never get any better I assure you—but the human touch is always the best. Oh, I would have liked you to meet your waitress, Ensign O'Neil, but she is preparing for her next mission. And, by the way, how do you think the Krauts got all that truth about you?"

"Excuse me," I said, "but the truth is exactly as I have said since I got here, and I really don't appreciate…"

Commander Peterson cut me off (which I assure you is not the easiest thing to do). "Whatever you say. If you want to be called Bernstein, that's fine by us. What do you intend to do?"

"What do I intend to do? Just what have you gotten me into! I'm no spy. I'm an intellectualizing judge from a totally different era—who happens to know it will be a long and difficult time in Europe before we get involved. Oh, I mean, I believe it will be a long and difficult time in Europe before we get involved. Well, I want you to arrest Albrecht and whoever he's working with, that's what I intend to do."

"Oh, no, Judge, that won't do at all, we want you to do exactly as he asks. Go on your tour of the Navy Yard and take pictures. Have them developed at 'Inventive Photography' on Chestnut Street and deliver to him precisely the pictures you get developed, the ones you took perhaps, or at least the ones we want you to show the Krauts. Here are three. Be sure you include them. You look so skeptical. Don't worry. These three pictures will look exactly like the ones you take on your

visit. Inventive Photography is very……inventive. And please understand, you are perfect for this task. We understand that except for a brief stint in the Army National Guard you are not a military man and therefore you will have no understanding of what you are seeing and photographing, and no ability to interpret anything. Perfect. You truly will have no ability to answer any questions beyond the photos. Oh, and by the way, 'Mr. Amberstone' also had no military knowledge. In fact, he had never even seen the Atlantic Ocean until he arrived in Philadelphia as Judge Bernstein, just in case you were wondering."

"What have you gotten me into?!"

"Just do your duty as an American citizen to keep our country safe and out of war. Oh, don't worry about a thing. We always have you covered. Have a good day, Judge." But, as I turned to leave, he added, as if only a passing thought, "You keep your gun loaded right?"

"I don't have it with me."

"Oh, Judge, really, I know a hidden holster when I see one."

I checked for the gun at my side instinctively and he laughed. "You know how to put a bullet in the chamber, don't you? And you know how to remove the safety? One never knows when one might need protection, does one?"

"Well," I said, "I learned how to fire a .45 in the National Guard, as you say, but that was many years into the future ago. Officer James Sauer of the police firearms unit trained me on this smaller gun I carry, so I do know where the safety is. But since Amberstone had no

military experience, how did you know I had been in the National Guard?"

"Oh, Judge, really, the judiciary can be so naïve at times. We all do have our secrets, don't we?" At which point he raised an eyebrow and indicated, with his hand, that the naval officer could escort me out of the office.

I was ushered out and again taken through a basement. After a confusion of twists and turns, the naval officer opened a door and I found myself, once more, in City Hall Room 143, where, astonishingly, Officer Sauer was waiting, offering a shooting lesson and perhaps an even smaller gun. I declined both.

So, I planned to go to the Naval Yard, as scheduled, the next morning.