

## A TOUGH CASE

By Rudolf O. Siegesmund

Microphones waved over the police barriers in front of the Federal Courthouse. Reporters jostled shouting questions at a man getting out of a limousine.

“Roland, can you give us a statement?”

Sorenson and his attorney ignored the press and entered the courthouse for the third day of the civil trial of the “Estate of James McPherson Brown versus Roland L. Sorenson.” The press attraction to the case resulted from three facts. First, Roland Sorenson’s computer software company made him one of the richest men in America. Second, Sorenson was the sole survivor of two climbing teams attempting to summit Nanda Devi at the same time. Third, Brown’s widow, sitting at the Plaintiff’s table as representative of the estate, now dated an NFL quarterback.

James Gardner, lead counsel for the defense, led his client through security. Behind them, the clamor of the reporters rose as Jack Armstrong, lead counsel for the plaintiff, ran the gauntlet to the entrance with his client, Sandra Brown.

Testimony began at 8:45 a.m. For over two hours, Armstrong led Dr. Richard Bramlett, noted physician and mountain climber, through a description of the effects of high altitude and extreme weather on the human body. Three jurors wrapped their arms around their bodies while Bramlett described ice spicules driven by 120 mph winds striking exposed flesh. Armstrong moved on with questions about Bramlett’s report on the tragedy.

“And do you have an opinion as to why Brown and Sanders fell?”

“I do.”

“Please give us your opinion.”

“They fell because they didn’t have Mundt leading them. Given the conditions on the west ridge that day, Brown and Sanders could not see their hands in front of them. We have discussed the white out, the violent wind shifts, the intense cold, the dehydration, the fear of literally being blown off the mountain, and the psychological effects of knowing they would surely die if they did not get down to camp II. They hired Mundt for just this situation. Without Mundt, in the circumstances they faced, they did not have a chance.”

“Can you elaborate?”

“Brown and Sanders hired Mundt because he was a climber and an engineer. Mundt, the climber, had demonstrated courage and resourcefulness when retreating in the face of unprecedented natural violence on other dangerous mountains. But more than that, Mundt, the aerospace engineer, had developed an improved positioning device. That device could enable climbers to retrace almost the exact steps taken by the leader on the ascent with far greater accuracy than any commercially available devices.”

“What made Mundt’s device so good?”

“Mundt and Brown tested the device on the Matterhorn and the Eiger in Switzerland before going to the Karakorum. Brown claimed it had better than a three inch probable circle of error. The best commercial device available can be accurate within ten feet. In a white out, on Nanda Devi’s west ridge, a step in the wrong direction of a few feet could be fatal.”

“Would they have successfully retreated to camp II if Mundt had been leading them with his device?”

“Yes, I firmly believe they would.”

“Pass the witness your honor.”

Gardner stood, buttoned his suit coat, and walked to the counsel lectern in the center of the courtroom. The judge motioned for him to wait. The judge studied a message on his private monitor for several minutes while Gardner stood.

Mr. Gardner, you will have to delay your cross. A matter affecting both parties has come up. I’ll see lead counsel in my chambers in thirty minutes.

John Stevens, clerk to the Honorable Walter W. Fiske, Jr., held out a mug of fresh coffee to the judge as he entered his office. Because Stevens could monitor the trial on one display and read and send messages to the judge on another display, he read the message from the United States embassy in New Delhi, India, in his office at the same time as the judge read it in the courtroom.

Fiske sat down.

“I take it you read the message.”

“Yes sir.”

“We need to use all of our high tech courtroom today. Set up links to my computer so that I can patch in the Swiss Expedition leader and the Embassy directly to the media system.”

“There’s not much time.”

“Jim Blake’s office will give you a hand. His best computer people are standing by. ”

At 12:15 p.m. lead counsel gathered in chambers. Fiske started immediately. “I received a communication from a medical examiner in the United States embassy in New Delhi informing me that a Swiss Expedition found Mundt’s body approximately 35 hours ago and that it is now in a freezer at the embassy.”

Fiske paused before continuing. “The evidence going to tortious interference that I’ve heard involves Brown’s last journal entry stating that he and Sanders felt abandoned by Mundt, and thought Sorenson had used his wealth to buy Mundt to take Sorenson’s team down the mountain, leaving Brown and Sanders to attempt the retreat alone. Sorenson denies that allegation and says Mundt must have died with Brown and Sanders because he lost his own team mate getting down. Plaintiff’s inference is that in that extreme storm no one, not even the most skilled climber, could get down without the help of Mundt and his device.”

No one moved. “Whatever I do, I will create legal complications for both parties,” Fiske said.

Fiske looked at each attorney in turn. “I’m going to patch through the Swiss Expedition leader this afternoon from his base camp at Nanda Devi, and then I’m going to patch in the medical examiner at the embassy in New Delhi. I’ll give you each thirty minutes for both witnesses.”

“I object,” Gardner stated. “How do we authenticate the witnesses? How do we know this isn’t a hoax put on by the tabloids. I want my objection on the record and I request an immediate continuance so that I can properly research and advise my client.”

“Your objection is noted for the record; your motion for a continuance is denied.”

At 2:30 p.m. Fiske dimmed the courtroom lights. The jurors stared at the screens positioned in front of their knees in the juror box. The parties and counsel looked at a large monitor by the witness box. Fiske alone saw two men in dark suits enter and take seats in the back of the gallery.

At 2:32 p.m. Fiske finished typing instructions into his keyboard. The screens went fuzzy with snow, and then a face appeared. Intense blue eyes between a red wool cap and a blonde beard matted with ice bored into the screen.

“Hello, Hello, Matthew Grant here.”

“Go ahead Mr. Grant,” Fiske said. Grant appeared to be in a small tent illuminated by a tiny electric light. The tent walls shook violently as the notorious winds of Nanda Devi buffeted the thin fabric. Grant explained that he was leader of a Swiss Expedition to Nanda Devi, and, when prompted, elaborated on his climbing experience. On their approach to the West Ridge, one of his team spotted a segment of severed rope protruding from a crevasse. Grant’s team lowered him into the crevasse where he found Mundt’s body wedged between the crevasse walls.

Armstrong asked, “where was the crevasse?”

“At the foot of the wall below camp III.”

“How do you know the body is Mundt?”

“We found his climbing permit in a waterproof pouch around his neck.”

“Could you determine from where he fell?”

“The body appeared to have fallen straight down the wall below camp III.”

“Is it possible he could have fallen off the West Ridge?”

“No.”

Armstrong passed the witness, and Gardner said, “no questions.”

At 3:01 p.m. Fiske thanked Grant, and ended the connection. He worked the keyboard by his courtroom monitor, and this time a clear high definition picture emerged of a man in hospital scrubs. Bright lights in the room reflected off a blank wall behind the man. The man introduced himself as Lt. Col. Jack Forbes, a U.S. Army doctor currently assigned to a Special Forces counter-terrorist group. The attorneys questioned Forbes about each stage in moving the body from Nanda Devi to New Delhi and about how the Army got involved. Forbes hesitated, and then said that the Defense Advanced Research Projects Agency wanted to locate the device.

Armstrong asked “could you determine how the rope was severed?”

“No, I’m not qualified to make a determination on that. We haven’t had the rope examined by forensic experts yet.”

Gardner asked “did you find the device on the body.”

“No.”

Neither attorney asked about the cause of death. Perhaps the answer appeared so obvious after a fall of several thousand feet. After the attorneys finished, Fiske said, “thank you Dr. Forbes. I have a few questions from the court.”

“Yes sir.”

“Were you able to determine the cause of death.”

“Yes sir.”

“What did you determine?”

“Brown died from a severed brain stem. The brain stem was severed by a sharp instrument penetrating the back of his neck. The instrument forced bits of Gore-Tex® and down feathers from his parka into the wound. The parka hood had been penetrated where the hood joined the parka body. The wound size and depth were consistent with a blow from an ice hammer.”

Exactly four people in the courtroom failed to be stunned by the testimony. Fiske was one of the four.

“Can you explain the difference between an ice axe and an ice hammer.”

Both counsel stared at Fiske.

“The handle on an ice hammer is short so that the head is about six inches above a hand holding the hammer. One end of the head is flat for hammering ice screws and the other end of the head is a sharp pick for chipping away ice, usually on an ice wall. An ice axe, on the other hand, has a long handle so that it can be swung to cut steps in ice or snow and grasped in both hands and used to arrest a fall on a slope.”

“Thank you Dr. Forbes.”

Gardner and Armstrong both found Exhibit 143 on the glowing screens of their computers at the same time. Exhibit 143 was an equipment list for Sorenson’s expedition detailing both team and individual equipment. Three quarters of the way down, Sorenson’s individual equipment list specified an ice hammer. A quick check of additional Exhibits confirmed that only Sorenson took an ice hammer to Nanda Devi, and that Sorenson’s ice hammer was not accounted for on his return.

A scuffle and a grunt could be heard near the door to the courtroom. Fiske brought up the lights and looked at the defense table. Sorenson was not at the table. Gardner still stared at his computer. Armstrong, Sandra Brown, and the jurors turned toward the noise. At the door in the back of the courtroom, one of the dark suited men handcuffed Sorenson. The other man, United States attorney Jim Blake, nodded to Fiske.

“Mr. Armstrong, do you have a motion?” Fiske asked.

“Yes, your honor, but I’m not sure what to call it.”

“Let’s go with a continuance until we sort things out. Motion granted.”

Back in chambers, U.S. Attorney Jim Blake stood with John Stevens in front of Fiske’s desk. “We executed that search warrant you signed at noon,” Blake said. “We found Mundt’s device in a concealed and secure safe at Sorenson’s business along with papers connecting him to terrorist groups who wanted the device. It took folks from the National Security Agency to open the safe.”

Fiske looked at Stevens. “How much damage did I do today?”

“Armstrong will probably have to try his case again.”

“There’s one good thing,” Fiske said smiling.

“What’s that,” asked Blake.

“When Sorenson’s criminal case comes up, the District Court won’t be able to stick it on my docket!”

Stevens and Fiske laughed.

## **Black and White Thinking in a Blue and Green World**

By Alan Brooks

It had been a tough year for Sheldon Green. He had always dreamed of working for a high-powered corporate law firm, but it seemed like he had graduated from law school just in time for the job market to collapse. He had thought he was close to getting an offer from Weir, Smart, Terthan & Yu after three interviews so the rejection from them had hit Sheldon especially hard. At least he had been able to buy his wife a lovely antique tortoiseshell comb for her birthday. "I just hope she doesn't sell her hair to buy me my birthday present," he said, only half-jesting, to the antique dealer after he picked out the comb.

"Your wife must really like tortoiseshell," said the dealer.

"Oh, she likes anything made from real animals. But it's so hard to get hold of real animal products these days, thanks to all the politically correct environmental laws. Frankly I can't see what's wrong with making tortoiseshell combs as long as they're made sustainably, meaning let's not kill all the poor tortoises at once. But back in the day no one realized God didn't create an infinite supply of animals to hunt, so they were all hunted down faster than they could reproduce, which I don't agree with either, but come on, we don't have to go to the other extreme and say you can't hunt tortoises at all. Why can't we use a little common sense?"

"Yeah, common sense," agreed the dealer. "Tell your wife happy birthday for me." And it was a happy birthday, at least for Sheldon's wife. Sheldon was still a little bit depressed about his seemingly endless job search.

So when Sheldon got the phone call from the Coastal Conservation Coalition, he was elated that someone finally wanted to offer him a job. The first thing he did was run into the kitchen to tell his wife. "Honey, I finally got a job!" he shouted, barely able to contain his excitement.

"Oh, that's wonderful, dear," said his wife while stirring the soup. "Doing what?"

"I'm going to be working for the Coastal Conservation Coalition," said Sheldon. "They're working to protect the endangered sea turtles on the Gulf coast. My job is to represent the turtles."

"Turtles!" shrieked his wife. "Are you kidding me? Turtles? Don't tell me you're turning into one of those tree-hugging eco-freaks."

“I’m not,” insisted Sheldon. “I only took this job because we need the money. As soon as I get a real job the eco-freaks at the CCC are on their own. I like turtles as much as anyone but it seems like all the eco-freaks care about is protecting the environment, never mind the needs of people or the economy.”

“Well, I’m happy you got a job, dear,” said his wife. “But I don’t care about the environment at all. The only animals I care about are the ones in my closet. Oh, thank you again for the birthday comb. See how pretty my hair looks?”

“It’s beautiful, darling,” said Sheldon.

The next morning Sheldon drove out to the Coastal Conservation Coalition office to meet with his new boss, Ben Gull. Ben explained to Sheldon that the nesting and hatching season for sea turtles was about to begin, and that the baby sea turtles were in danger from the bright lights shining from the buildings along the beach. “The baby turtles instinctively crawl toward the brightest light they see,” explained Ben. “The brightest light is supposed to be the moonlight reflecting off the ocean, and that’s how they find their way to the water. But when the buildings on the beach have their lights turned on at night, the baby turtles crawl toward the buildings instead. So the city passed an ordinance requiring beachfront property owners to turn off their lights at night during nesting and hatching season, so the baby turtles can find their way to the ocean. I’m sure you can imagine the property owners aren’t very happy about that ordinance, so they’re suing to have it struck down. The CCC is counter-suing to force the property owners to follow the law. We need you to research to find any precedent that supports our position.”

It was not the kind of assignment Sheldon would have ever imagined himself doing. Still, since it was his job, he gave it his best effort. After several weeks the long hours at the office began to wear on him, but although Sheldon remained skeptical of the entire Coastal Conservation Coalition operation, he was beginning to develop a deep respect for Ben Gull. Even though Sheldon still thought the CCC was full of eco-freaks, too caught up in black-and-white reasoning to apply any common sense to the problem they said they were trying to solve, Sheldon had to give Ben credit for his dedication to his job and the impassioned way he argued in court on behalf of the turtles. And working so closely with Ben made Sheldon realize Ben didn’t fit Sheldon’s stereotypical view of an irrational activist. Ben cared deeply about making the world a better place for both wildlife and people. Sheldon was even surprised to learn that Ben enjoyed fishing. “There’s just something about eating a fresh-out-of-the-water fish you

caught yourself,” Ben once told Sheldon. “It makes you feel a stronger connection with the fish, and the habitat the fish came from. But of course too much pollution will poison all the fish. So keeping the environment clean benefits the fish and us too.” Sheldon was amazed to hear Ben’s thoughts. They were exactly the kind of arguments Sheldon could hear himself making.

During one late night at the office, Ben knocked on Sheldon’s door and asked if Sheldon wanted to take a break. “I thought we might go for a walk on the beach,” said Ben. Bored out of his gourd, Sheldon readily agreed to join Ben.

“Tonight is the night the baby turtles are supposed to hatch,” Ben told Sheldon when they got to the beach. “I thought you might like to see what we’ve been working for this whole time.” The two of them walked out onto the sand. Sheldon thought he saw a small patch of sand moving but dismissed it. Then Ben shouted “Look Sheldon, the turtles are hatching!”

Sheldon looked where Ben was pointing. Where a minute earlier the sand had looked like it was moving, Sheldon could now clearly see the outline of a baby turtle. “Let’s get closer,” said Ben. Sheldon followed Ben over to a rock. From there Sheldon could see the mass of baby turtles coming out of the sand. “How many of them are there?” he asked Ben. “About a hundred, from each nest,” replied Ben. “They’re so cute,” remarked Sheldon. At that moment Sheldon thought he felt something crawling over his shoe. He looked down and saw one of the baby turtles crawling toward the highway instead of the ocean. “Ah,” said Ben, “this little guy’s lost. He’s confused because the lights across the highway are so bright, he thinks the highway is the ocean. We’ll carry him to that shadowy spot over there.” Ben knelt down to pick up the baby turtle. Sheldon spotted another turtle crawling in the wrong direction. He quickly picked it up and followed Ben to the spot on the beach that was cast in shadow. “If we put them down here,” said Ben, “they should see the ocean because the lights across the highway are blocked in this spot.” Sure enough as soon as the two turtles were put down they began scrambling away from Sheldon and Ben in the direction of the ocean. “Come on,” said Ben, “let’s go find some others.” The two of them approached another nest just as the first baby turtle was poking its head out of it. When Sheldon saw that turtle turn away from the ocean he carefully caught it. “Don’t worry, little turtle,” he said before he could stop himself, “I’ll help you find the ocean.” Sheldon walked to the shadowy spot with the turtle in his hands. Did I really just talk to a turtle? he wondered. When he reached the shadowy spot he set the baby turtle down gingerly and watched it scamper

away to the ocean. “Go baby turtle, go!” he cheered. He felt suddenly in awe of how such a cute little creature could so boldly venture out into the great unknown of life in the vast ocean.

Sheldon and Ben worked well into the night. As the first baby turtles began to poke their heads out of each nest, Sheldon and Ben were watching closely to make sure all the baby turtles crawled toward the ocean instead of the highway. Whenever a turtle veered off in the wrong direction one of them scooped it up and carried it to the shadowy spot on the beach where it could find its way to the ocean. After several hours of sprinting back and forth with Ben Sheldon was panting hard. But he felt happier than he had in a long time. “I can’t believe I enjoyed that so much,” he said to Ben.

“I couldn’t either at first,” said Ben. “But then I came to love the turtles. They’re so cute and so little, yet so brave and so strong. I wish more people could see them. Maybe then they would appreciate them more.” Sheldon had to agree. He felt he was coming to love the turtles too.

The next morning when Sheldon went downstairs his wife already had breakfast on the table. “You worked really late last night,” she said.

“I sure did,” said Sheldon. “Ben and I went to the beach to see the baby turtles hatching. You should have seen them. You wouldn’t believe how cute they were.”

“That’s nice, dear,” said his wife. “You got a call last night from Weir, Smart, Terthan & Yu. They wanted to know if you would reconsider taking a position with them. They didn’t say so but apparently whoever they hired before didn’t make it.”

“Gee, that’s wonderful,” said Sheldon, “but I think I’m going to stay with the Coastal Conservation Coalition.”

“What!? After you’ve tried so hard to get a corporate job you’ll turn down an offer on a silver platter to stay with those eco-freaks?”

“Ben is not an eco-freak,” countered Sheldon. “And when he and I were on the beach last night, I started to really feel for the turtles. And now I don’t think it’s too much to ask of these property owners to turn off their lights a few nights out of the year so the turtles can have some peace. After all, they must have known when they bought their beachfront property that they’re sharing the beach with wild animals. That’s part of what makes the beach so attractive in the first place. And besides, I’m so deep into this project I just hate to walk away in the middle of it.”

“Great,” said Sheldon’s wife. “Instead of a tree-hugging eco-freak, you’ve become a turtle-hugging eco-freak.”

“You know,” said Sheldon to his wife, “it wouldn’t kill you to spend some time getting to know Ben. You’d see what a great guy he really is. I know you think wild animals are only good for eating and making fancy clothes, but unlike you, Ben appreciates the value the animals have for their own sake. And there’s nothing wrong with that.”

## **Breathe In**

By Brian Tagtmeier

Deep breaths. In and out. Something simple to focus on for such a not-so-simple day.

The bathroom mirror showed a man rapidly approaching middle age. Lines etched in skin that was once smooth, grey streaks where once there was brown, bifocals where once there was near-perfect vision.

Brandon could look past all of these things. It wasn't age that bothered him today. He was nervous — in a lot of ways, today was a repeat of his first performance down at the Harris County Courthouse, as Brandon didn't know what to expect. This time his fears were centered on himself rather than what the Court may throw at him.

It had been more than five years since Brandon had dressed in his gray pinstripe suit and walked through the courthouse doors. Some things hadn't changed in that time. The echo of footsteps in the hallways still sounded too loud. The lawyers still had on fake smiles for opponents and judges that they would just as soon not see. The court staff still bustled around making things ready for the hearings about to start while trying to ignore the lawyers frantic to find out their position on today's docket.

No, if anything had changed during the last 20 years, it was Brandon himself. Gone was the arrogance that had been honed to a sharp point through years as a trial lawyer. Gone was the confidence of knowing that he could talk himself out of any corner with words that came seemingly from nowhere. The "bad days" had taken all of that from him and more.

More deep breaths. In and out. Focus. That was what he needed. Focus. Either that or more caffeine.

Unfortunately, the fear that came from the “bad days” was creeping back in. The doubts, the worries, the questions. Since the time that Brandon had realized that he was living a lie and was lost in his own mind. The medical doctors called it major depression disorder. Brandon called it his “bad days,” as it sounded less clinical that way.

Of course, the “bad days” were more realistically defined as the “bad years,” but Brandon had worked too hard with too many people to let what happened consume him again. Between the therapy, the meds, and the treatments, he’d let too much time slip away to go backward. Feeling lost in his own mind wasn’t something he wanted.

So, forward it was. Breathe in. Breathe out. Focus on what was here, what was around him. Not on the past. Not on the pain. Not on the loss.

But it was difficult. After Sherrie died, Brandon had given up. He gave up his law practice, his friends, his family, his life. He found it much easier to do than one might think. He simply stopped returning phone calls, stopped going to the office, stopped getting out of bed.

At his lowest point, he finally gave up on everything. A chance visit from my best friend, Bob Truscott, saved his life. Bob used the key Brandon had given him only to find Brandon face down on the bathroom floor surrounded by Vicodin and Crown Royal that had spilled from their respective bottles.

From there, it was a long road back filled with an unending parade of doctors and nurses, therapists and hospitals. The diagnosis of clinical depression didn’t quite describe what was

wrong. Calling it “a pain so deep that it had replaced his soul” was more accurate, but not something a psychiatrist was likely to use and definitely not something an HMO would pay for.

Brandon made it back slowly. The folks from the Texas Lawyers Assistance Program were especially helpful. Bob saved his life, and TLAP gave it back to him. Meeting with other lawyers who had depression allowed Brandon to see that he wasn't alone. To see that his problems were hardly unique. To see that there were people that wouldn't find him defective because he had a mental illness as opposed to a physical one.

Brandon firmly believed it would have been better to have cancer than to have depression. People didn't speak of cancer in the hush tones that they did years ago. Hell, they ran races for the cure, wore fancy yellow wristbands, and actively talked about being survivors.

Lawyers were known for their mental prowess, their ability to handle tremendous pressure and come up with creative solutions to their clients' problems. In other words, to use their brains, not brawn. The stigma attached to having a mental illness was something that Brandon couldn't really explain to people. He felt like damaged goods and believed that people looked at him differently even if they didn't know the whole story.

However, now was not the time to dwell on what had gone before. Now, was the time to move forward. Brandon was finally in a place where he could participate in his own life again. You didn't get many second chances in life. Brandon was determined to make the most of his.

Breathe in. Breathe out. Focus.

Brandon heard the bathroom door open and decided it was time to leave. Ready or not, staring at himself wasn't going to get him through the hearing. He straightened his tie one more needless

time. He tried his fake smile, the one that fooled most people all those years ago. He wasn't sure it would be as effective, but it would have to do.

Coming out of the restroom, the hallway was empty, all the lawyers already in their respective courtrooms waiting for their turn to argue. Brandon approached the red wooden doors and pulled them open. He prayed that he didn't see anyone he knew.

Brandon scanned the crowd, a gaggle of lawyers all decked out in yellow power ties and tailored suits. Thankfully, he saw no one he knew and could take his seat. Brandon had gotten to the courtroom early enough to secure a seat along the back wall, one he had saved with his red rope full of papers filed the week before.

Waiting wasn't good, though. Brandon needed to occupy his mind before his mind decided to occupy him. Fortunately, the bailiff stood and announced that Court was now in session before the doubts could rise up.

As the Judge walked in, Brandon stood along with the other members of the gallery. The Judge asked everyone to be seated and proceeded to call her docket. Brandon listened closely to the lawyers as they paraded up in front of the Judge with their motions and arguments. Some were good, some were bad, just like Brandon remembered.

Finally, it was his turn. The Judge called Brandon's case, and Brandon made his way from the back of the courtroom through the swinging gates separating the benches from the center of the room.

Breathe in. Breathe out. Focus. Push back the fears. Forget about the "bad days." Put on that fake smile. Live in the moment.

Brandon did just that, knowing all the while that he wasn't fixed, but he wasn't broken either.

And that knowledge would have to be enough.

Breathe in. Breathe out. Move on.

## Channeling Steinbeck

By E. Stephanie Hebert

Without using any words at all, my father taught me that a man needs to be outdoors to be truly happy. For several years during my childhood, the “outdoors” meant our deer camp in Junction. Dad was most alive when he was with my older brother Charlie and me at the camp, and his love for the outdoors was infectious. But when I watched my father clean a deer for the first time, I puked, and I never went back. Afraid that I’d given up on the outdoors altogether, Dad bought me a copy of Steinbeck’s Log from the Sea of Cortez, and the very next day he bought us a boat.

Fishing in Texas lakes was an awesome experience because the fish were so plentiful. Our kitchen freezer was always stocked to the gills with bass, trout and catfish, so Mom bought a new freezer for the garage to accommodate our addiction. Fresh water fishing was all I knew, but after finally reading Steinbeck’s Log, I wanted to fish in the ocean. It didn’t bother me that Steinbeck’s expedition may have been considered “scientific.” He still left home, chartered a fishing boat, and sailed to Mexico. My father assured me that we’d take a trip like that one day, but I knew that Dad didn’t get paid unless he worked, so I rarely brought it up. Nevertheless, I began planning a fishing expedition in my mind, and it was just a question of when the three of us would go.

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During college, Charlie and I continued to fish with our father. Charlie attended Holy Trinity in Dallas, and I was at UT, so we’d meet in the middle at Lake Belton. Because our childhood home was in Lampasas, none of us had to drive more than an hour and a half to reach the lake. When Charlie and I arrived, we’d find Dad wearing his red windbreaker, fiddling with the rods and reels. He’d beat us to the lake every time, anxious to get the boat into the water.

Looking back, I realize that fishing was the line that kept us together during those years, and I blindly assumed that the fishing would continue indefinitely. I never knew that I’d see a day when I’d say “no” to a fishing trip, but that day happened just before graduation. Dana and I had been dating for a couple of years, and I was crazy about her because she never stopped me from fishing. Charlie called me to confirm our weekend plans, but I found myself explaining that I couldn’t go. Dana’s parents had planned a graduation party in her honor, and I had forgotten to

mention it to Charlie. It was the first time in my life that I had backed out of a fishing trip because of a girl.

While at the party, I realized that Dana hadn't decided which nursing school she would attend because she was waiting to see where I would be accepted to law school. She had offers from every nursing school in the state, and her family was patently aware of that fact. I couldn't imagine my life without Dana, and I figured that it was time to fish or cut bait. I knew that there wasn't a chance that I'd get out of law school without her by my side, so as soon as I received my admission letter, we got married.

Charlie's parish obligations and my law studies made it harder and harder to fish. Dad kept on fishing and hunting, and made requests for time that neither Charlie nor I could fulfill. After his ordination, Charlie was assigned to St. Mary's parish in Lampasas, as well as Holy Cross in Bertram, so he was busy most weekends. Charlie made time for our parents during the week, however, often stopping by their place for dinner. I continued to study every waking minute like a mad man, and I rarely took a break for anyone or anything.

After I graduated, Dana and I settled in Belton, in part because I felt like I grew up there. Life leveled out a bit after I received my bar results, but I spent an enormous amount of time at my office trying to figure out how to run a business and how to practice law.

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Ten years into our marriage, I realized that Dana and I were living separate lives. I was rarely home before nine or ten at night, and Dana started spending every weekend in San Antonio with her folks. We bought a second home in San Antonio, and after a month of coming home to an empty house in Belton, I was forced to concede that I was holding on for the wrong reasons. I paid off the mortgage in San Antonio for Dana, and then released her.

After the divorce, I threw myself into my practice as I had never done before. Even though I lived minutes from the lake, I rarely fished. Dad retired from the machine shop where he had worked for 45 years, and he had more time on his hands than ever. We'd fish during the holidays because that's the only time we were together for more than a couple of hours. We'd carve the turkey, chase it down with cold beer, and then head to the lake for a few hours.

We had learned to communicate while fishing, and it was the only language we still had in common. I'd call Dad when I had a break during trial or mediation, but that was about all I

could manage. I told myself that we could talk and fish later, and, until then, I knew that Charlie had the helm since he lived within minutes of their home. On occasion, Dad would call me.

“Life’s not about the money, son,” Dad would tell me.

“Dad, I have work to do, and I have to earn a living,” I retorted.

“I know, Matt. I just don’t want you to wake up one day, and wish you’d have spent more time fishing. It’s the one thing that you enjoy most in the world.”

“We’ve been fishing ever since you introduced me to Steinbeck.” I tried to sound grateful, but all I felt was guilt and anger.

“That’s not true, son. We stopped fishing fifteen years ago. Look, Matt, I know that you have cases and clients and a practice,” he said sympathetically, “but, lately, you just don’t seem very happy. You’re working too hard, Matt, and you need to take a break.” Tears stung my eyes. He was right, of course. When had I lost my dream? When had I lost my wife? When had I stopped caring about my family?

“Dad, I miss fishing with you and Charlie. It’s just so hard to leave the office for an extended period of time.”

“What if we planned an expedition -- like Steinbeck? You’ve always wanted to go on an expedition since reading that book. I’d love to join you if your Mom will let me go,” he said, laughing. The seed was once again planted in my mind, but I let Dad off the phone before agreeing to anything definitive. We talked of little else for the next few years; always planning, but never taking action.

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Dad turned seventy in November. After Thanksgiving dinner, we had planned on fishing, but Dad said he was too tired to fish. I looked at my mother, and then at Charlie, to see if they had any reaction to Dad’s words, but neither of them acknowledged my concern. On my drive back to Belton, I called Charlie, and we finally agreed that we needed to take the trip we had been discussing for decades.

Our plans were finalized within a week. We would fly to Cabo San Lucas during the first week of October and fish for two weeks. We had agreed on lodging, and had chartered a boat and a captain. We were anxious for our trip to begin, but the delay would give me time to settle some cases and reduce my docket.

In April, Charlie called to tell me that his diocese was moving him to the Philippines. He would be leaving in a month, but he said that he would do everything he could do to make it to Cabo in October. I promised Charlie that I would visit our parents on a regular basis after he left, but I made the drive to Lampasas only once.

...

It's 5:00 a.m., and we have just boarded a 34-foot fishing boat in Cabo. We leave the marina, and travel to the gasoline dock where a single light bulb illuminates the body of a frail man who looks like he's always been there. In that respect, he reminds me of Dad. We fill up on fuel and leave the bay behind. The smell of oil and gas is intoxicating. We buy ice and live bait from boys in a panga, and head out to the Sea of Cortez.

It is too dark to see anything, but I feel alive for the first time in many years. I check my backpack to ensure the contents are secure. In the span of a few minutes, I can see the horizon slowly appearing in the east, and in the first light of morning, I can see the hills behind me that were invisible ten minutes ago. As we head out to sea, we absorb the beauty that is becoming visible everywhere around us.

We stop briefly to set up our lines. The captain, Antonio, moves expertly about the boat, as if he has fished since birth. I begin to see colors in the water that I have never seen before, and I am unable to identify them by name. The sky has turned from black to purple to blue to gold, and then back to blue again. As the sun continues to rise, the sea and sky become a thousand shades of blue.

Ten minutes later we are moving full throttle again. Before my mind registers the sounds and the jolts of the lines, Antonio has already cut the motor, and has two of the rods in his hands. The fishing finally begins. An hour later, we have reeled in a blue marlin and what we estimate to be an eighty pound yellow fin tuna. We release the marlin, but keep the tuna, and continue trolling for another hour. When I hear the lines singing once again, I realize that there is no place on earth I'd rather be. Each of us reels in a good-sized dorado. Each of us drinks a beer to quench our thirst. Each of us takes a few minutes just to breathe.

We continue to fish for another few hours, and we're exhausted. It's time to head toward the mainland.

Antonio cuts the motor when we reach the Friars, the southernmost tip of the Baja Peninsula. I open my backpack and withdraw the container, placing it on the fillet table for

stability. I reach in my backpack again for Steinbeck's Log. I read a passage from the book about the philosophical connection between a man and a boat. And then I release the contents of the urn. I stand in silence for a few minutes, and then motion to Antonio that it's time to head back to the marina.

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Steinbeck said that a man should take two trips to unknown regions, "once to make mistakes and once to correct them." That proposition presumes that a second opportunity will one day present itself. But, what if there is no second trip? Or, even if there is, what if our mistakes are irreversible? When all else fails, we do the only things that we're capable of doing. We cry. We fish. We practice law. And, if we can find the time, we breathe.

## **Daffodil Teacups**

By Barbara Hutzler

She was almost there, but she tripped and fell. She screamed out in pain and grabbed her elbow as she scrambled to get up. With every passing moment, she grew more anxious. She just had to get back to the hospital. She felt in her heart that she never should have left. She should have stayed right there with him. But he had asked her to go. She couldn't tell him no. She wouldn't tell him no. She had to get the bracelets and get back. She got up off the floor, raced up the last three steps and ran into the game room. She had been so focused the whole way, thinking of nothing but getting the bracelets and getting back to Jake, but as soon as she opened that door, something came over her. She felt paralyzed, her mind taken back to that day – that day so long ago in their past, the day that they made daffodil teacups.

She looked over at the trunk and, for a minute, she could hear him laughing just as sure as she was sitting there with him all those years ago. She smiled just as she had that day. She went over to the trunk and pushed it to the side, exposing the big, red stain they had hidden from their parents. She slowly ran her fingers across the stain, picturing him pour the punch into their daffodil teacups and remembering the vision of the punch rushing through the petals onto the floor. She started to laugh, just as she had back then, so hard that her laughter turned to tears. This time, though, the tears eventually turned to tears of sadness.

How could it be? How could he be so sick? These questions played in her mind over and over again. She just couldn't understand. She knows, probably better than many, that people don't live forever, but Jake is different. And Jake is hers. And Jake is all she has left. The questions in her mind jerked her back from the past and into the present, to the place that demanded her focus. As much as she wanted to stay in that room and live in the past, she wanted more to get back to Jake. "Power beads. Power beads. Power beads." She just kept saying it over and over as if repetition was going to jog her memory, but box after box and drawer after drawer, she was coming up empty. She just couldn't remember where they had put them. Then, just as she had started to consider giving up, she caught a glimpse of a wooden box in the corner. It was a box they had bought as a souvenir on a trip to Oklahoma when they were kids. She grabbed it and quickly opened it. There they were – the power bead bracelets. There were two sets of every color. They had bought one set for each of them, so that both of them could have every power that they would need to get through life. That's what they thought when they bought them anyway. Things as they were now, though, she didn't really believe anymore. She guessed Jake did because he'd sent her to get them. And she was right. Jake did still believe, but he actually wanted the beads for her. He wanted her to believe again.

Tina and Jake were very close. They were only teens when their parents died. She was 18 and he was 19. They had each other, though, and that was enough for them. They both went to college and law school and both went on to practice law. All through school, they had talked about starting a firm together, but they ended up going separate ways. Tina took a job as an associate at a pretty big firm. Jake had started out with a small firm, but went out on his own after only a couple of years. Tina's practice was mostly office work. She drafted contracts and worked with firm clients on business organizational matters. Jake, though, Jake did everything. He litigated, mediated, filed bankruptcies, and drafted wills. He even handled divorces. It seemed there were far fewer areas of law he hadn't practiced than areas he had. There was one case, though, that had stayed with Jake throughout his practice. It was a case that had changed many lives and would no doubt change many more, two of which were those of Jake and Tina.

The case had first been assigned to Jake at the small firm he had joined after graduation from law school. It was a pharmaceutical case involving a little boy. The boy, Jacob, at the age of two, had been prescribed a drug for treatment of a relatively simple rash. Instead of getting better, though, Jacob got very sick. He almost died and, although he pulled through, his body had taken a toll, the likes of which caused such damage that the doctors said he would never fully recover. Jake was asked to take the case when he left the firm. The pharmaceutical companies were pouring a lot of money into their defense and had vowed to fight for years. The partners of Jake's firm didn't have the money to finance the case or the energy to commit to years of litigation. Jake didn't have the money either, but he did have the energy and couldn't have brought himself to give up on Jacob if his last breath had depended on it. So when Jake went, Jacob went with him. And, as they had said they would, the pharmaceutical companies had kept the fight going. As Jake was now himself lying in a hospital, Jacob's case was still pending some ten years later. Jacob was almost fourteen.

Tina ran back downstairs and got in the car. As she raced back to the hospital, her mind drifted back again, back to memories of childhood, of Jake and their parents. She had so many wonderful memories, but they made her cry. She was so desperate for answers. She had never understood why her parents had to die, but the thought of losing Jake was so impossible to bear that she really didn't even process it. She kept her heart at some crossroad of love, anger, confusion, and denial. It was a place of emotional contradiction, a place where she felt both way too much and nothing at all. She couldn't even bring herself to understand what was killing him. She had listened to every doctor and every nurse every step of the way, but she just couldn't process it. It was as if her heart refused to let her mind take it in. All she could seem to keep in her mind was that he was dying and there was nothing she could do about it.

She also didn't understand why he had gotten so bad so quickly. When he made her go to New York two weeks ago, he was fine. What's more, he had promised her he would stay that way. He was sick, but he had been sick for about two years. She knew he was going die, but she just knew she was supposed to have more time than this. Tina had no idea what she would do. Jake was her life.

When Tina finally got back to the hospital, she grabbed the bracelets off the seat of the car, got out, and started running to get back to Jake. As she ran through the front door of the hospital, she bumped into a woman. She looked up to apologize and realized that she knew the woman. It was Camilla, Jacob's mother. "Camilla!" Tina exclaimed, "I'm so sorry. I – I – I'm here – um, Jake's here." The words just wouldn't come. Camilla grabbed Tina and hugged her tightly. "We are so thankful, Tina, so very thankful. Jake means more to us than you will ever know. We will never forget this. Never." Tina started to smile, but as she processed the last part of what Camilla had said, she became confused and the smile left her face. "What do you mean? What will you never forget?" Tina couldn't possibly imagine what "this" Camilla was thankful for. The past ten years, she would understand, but that's not how it sounded.

"Oh, I'm so sorry, Tina," Camilla responded, "please don't think we are not grateful for everything Jake ever did for Jacob – and for us – we are, but without the transplant, Jacob might not have made it to—" At that point, Camilla's voice broke and she started to cry. "I'm sorry," she said "I've got to go. Please call if you need anything, Tina, anything." Her emotions took over and she quickly left the hospital. Tina stood there stunned. She couldn't really imagine it was true, but she was quite sure that she had just learned why Jake had encouraged her to go to New York and why his health had deteriorated so quickly. Jacob had been on a transplant list for a

kidney for over a year. As hard as it was to imagine, she knew her brother. He would do anything for anybody and he would unquestionably risk hastening his own death to save Jacob.

When Tina got to Jake's room, he was sleeping. She pulled a chair up to the side of his bed and sat down. She took the bracelets out and separated them by color. She gently put one of the sets on Jake's wrist. As she was doing it, his eyes opened. "Hey, baby sister," Jake said softly smiling. "Hi," she said, holding back the tears, "I ran into Camilla downstairs. Did you do it? Did you give Jacob your kidney, Jake?" Jake just smiled and stroked her cheek. Her tears began to flow. "Put your bracelets on," he said, "we both need to be wearing them." Still crying, Tina grabbed the other stack of bracelets and put them on. Jake grabbed her hand, looked at the bracelets, and told her that they were beautiful, but not nearly as beautiful as her. She continued to cry. "Tina," he said, "I want you to know you'll be fine. I promise you will. There will be three of us looking over you now. I'll be with mom and dad and we'll stay with you. You'll never be alone. I promise." "Now?!" she asked, crying even harder, "Why are you saying 'now'?" He pulled her in to hug her and as he stroked her hair he said, "It's time, Tina, but it's okay."

Just then, a doctor came in. Tina started to cry even harder. "I love you, Tina," Jake said. "I love you," Tina said between crying gasps. The doctor looked at Jake and Jake gave him a slight nod. The doctor grabbed one of the lines hooked into Jake's arm and released the contents of a syringe into the line. He touched Jake's shoulder and left the room. Jake's gaze started to weaken and he seemed to drift away for a moment. Then, as if summoning all of the power from those bracelets on his wrist, Jake opened his eyes and looked straight into Tina's. "Tina," he said very faintly. "Yes?" she replied. He gave her one last smile and, with the last breath he had, he said to her "daffodils really are teacups."

## Dead Out of Options

By Blair Dancy

He handed me a cup, his hand dark from decay. The smells of rotting skin and steaming coffee fought for dominance, neither quite winning out.

“The receptionist said you liked coffee, black,” he croaked.

“Thanks,” I said. I took the cup, and not wanting to offend him, I took a sip. “Let’s talk over here, in the small conference room. You’re looking for representation, right?” I ushered him into the room, closing the door behind us. We introduced ourselves. I avoided shaking his hand.

“Me and a few hundred others I know,” he said. “Silo explosion.”

“What happened to you when the silo exploded?”

“I caught fire. Well, my clothes did.”

“You remember being on fire?”

We sat, the table between us. I placed my intake form in front of me, pen in hand. “Like it was yesterday,” he said. “The pain was horrible, though it got better.”

“How long before you were doused?”

“A security video shows two minutes or so.”

“Your arm and back?”

“Part of my stomach, too. My abdomen.”

“I need to know everything about your situation before our firm decides to represent you in any lawsuit.”

“Yeah, I get that.”

“I may jump around from topic to topic a bit. I’ll also have to ask about your . . . your condition.”

“Sure,” he said. “Jump around all you want.”

“When was the explosion?”

“End of February.”

“Same day you died?”

He shifted in his chair, emanating an odor of dust and old clothes to complement the decay. His skin had a gray-blue sheen like the bark on a birch in early dusk. As he moved, the silk shirt whispered against his dry skin. The rims of his eyes and soft tissue in his mouth were black from old rot, glimmering here and there under the fluorescent blue lights with the occasional flash of moisture. “Yeah,” he said. “Same day.”

“When exactly did it happen? If you don’t have a time of day, give me an event as a place marker.”

“I died in the ambulance. On the way to the hospital, after the injections.”

“I see you’re wearing blue jeans,” I said. “I’d think those would be, um, abrasive.”

“It’s okay. You can say it. My skin’s completely dead.”

“Does it flake off much?”

“No more than yours, but mine doesn’t grow back. I’m wearing silk underwear to help the chafing.”

“I bet that’s hot.”

“Doesn’t bother me at all anymore, hot or cold. I don’t sweat either.”

“I guess there’s a benefit to being a zombie.”

He grimaced. “I really don’t like the z-word. Sorry, but I just don’t.”

“Is there a term you do like?”

“Haven’t come across one yet. I’ve joined NECRA, the association to get us more rights, but they haven’t settled on a different term either.”

“What does that stand for, NECRA?”

“I don’t remember exactly. Neurological something association. We’re raising money, getting a lobbyist, that sort of thing. Personally, I think ‘resurrected’ has a nice ring to it.”

“For what it’s worth, you don’t act like one. You know, the *resurrected* I’ve seen on TV. The news, I mean, not fiction.”

“I’m a high-functioning one, yeah. Hell of a thing, isn’t it?”

I did not expect to be nervous, but my hands were trembling, my eyes were dry, and my throat itched. I looked back at my checklist. “Let’s talk about what you’d be seeking in this lawsuit if our firm were to represent you. Tell me about the pain you’ve been through.”

“Like what? Physical pain?”

“Let’s start there.”

“I don’t feel much of anything, except from time to time. They say the bacteria that replaced my neurons imitate what my body used to feel. The brain continues to function. It’s like a memory that my body feels rather than actual experiences.”

“How long after getting burned did you stop actually feeling?”

“Maybe an hour. The paramedic injected me with the bacteria to revive me, when they thought it was a way to keep people from dying. We weren’t even to the hospital when it completely took over my body. It’s not real obvious at first, but there’s this dryness, and some people have the shivers as the neurons get replaced. After that, nothing.”

“Currently, no pain or suffering?”

“Other than the occasional synapse getting triggered, no. It’s actually kind of a relief, what with the arthritis gone and all.”

“Do you miss feeling things?”

“Not many things, other than sex. But I don’t desire it either. I miss the taste of food. And getting a good beer buzz.”

“So you can’t get drunk?”

“Not on alcohol. Antibiotics can give a wicked high, but I don’t do drugs. Oh, my god!” He grimaced as crippling contortions overtook his body.

“Are you okay?”

“Just give me a moment,” he croaked. “It’s one of those pain memories, a synapse going off.”

“Take your time. Let me know when you’re ready to continue.”

His limbs and torso unbent slowly until he sat erect again. His dried eyes ogled me. “You know,” he said, “I’m not going to eat your brain.”

The thought made my stomach tighten. I cleared my throat. “I know.”

“You don’t sound convinced.”

“I’ve seen that YouTube video, the one out of Dallas.”

“Outrageous. I can hardly believe that happened. Talk about loss of self-control.”

“Then you do have urges?”

“Sure, urges. Something like in high school, when the perfume from that pretty red-head would waft over your way during math class.”

“You’re talking to the wrong guy. I’m gay.”

“You’re gay?”

“Does that offend you?”

The whirr of five o’clock traffic drifted in through the windows, like the distant song of mechanical crickets. His paper-dry fingers tapped on the glass top of the conference room table.

He avoided my gaze for a few seconds before looking back up. “No, of course not. No, not at all. Why would it?”

I took another sip from my coffee, my throat even dryer than before. “I heard about this one formerly dead guy who had ALS.”

“Lou Gehrig’s?”

“Yeah. His muscles were failing, neurons weren’t shooting, the whole bit. But after he got infected, it didn’t matter any more. He’s actually better off.”

“Lucky guy. Me, I didn’t have Lou Gehrig’s.”

“You said you had urges. Do you mean like eating brains?”

“Brains, raw meat, anything with liquids of the living in them. Preferably mammalian, though possum turns my stomach. That may just be a personal preference.”

“Why is that? I mean, I understand the need for sustenance, but why not ice cream?”

“Dairy gives me gas.”

“That’s not what I mean. I mean, why those urges at all? What’s changed physiologically?”

“How do I know? Do I look like a doctor?”

“No, I can’t say you do.”

“I can tell you it’s also changed the things that want to eat me.”

“Things want to eat you?”

“Buzzards, mostly. I guess it’s the smell.”

“The smell, yes.”

“I see you writing. Are you going to take my case?”

“I’m considering it. I’m not sure how to deal with the standing issues.”

“I don’t follow.”

“In the condition you’re in, you may not be able to file suit. The courts may not allow it.”

“I’m still a person.”

“Well, yes and no. You’re technically dead. Your brain isn’t even alive. It’s been replaced by bacteria.”

“I would think dying would be a precondition to filing a wrongful death suit.”

“You would think, wouldn’t you?”

“So who gets to sue?”

“We might be able to set up an estate to represent you, at least for the pain and suffering before you died and for medical services.”

“For the burning and the little while in the ambulance?”

“If the court limits you to events when you were alive, yes. And your family could sue.”

“Why would they sue?”

“To recover for their loss. Loss of income, loss of companionship. Things like that.”

“I’m still working. I go home at night.”

“It’s a curious thing.”

“My wife complained about the smell for the first few weeks, until the rot stopped.”

“Married,” I said. I checked a box on my form.

“Actually, that’s a bone of contention.”

“How do you mean?”

“She says she’s a widow. I say she’s still my wife.”

“Ah. I could see the disagreement.”

“She says we can’t get a divorce. ‘Until death do us part,’ she says. There’s no marriage to dissolve in the first place. That makes it hard to figure out who gets the kids.”

“So you have kids?”

“Two. I get them every other weekend. She says that’s what a court would do if I were alive. Sweet kids. They lock themselves in a separate locked building when they visit. Just in case.”

“What do you mean?”

“In case I . . . sleep walk. Something like that.”

“Like midnight munchies something?”

His dried, black-rimmed eyes fixated on me. His black tongue ran across his gray lips with the sound of wet sandpaper. I felt numb, but no fear. “Dude, they’re my kids. A little decorum wouldn’t hurt.”

“Sorry, my apologies. So, for purposes of suit, you have the kids. You could recover for loss of consortium, the smell and whatnot. Did you ever camp out with them, throw a ball around, go fishing?”

“Nothing to speak of, but the rot and all hasn’t exactly endeared them to me. Heck, even you lawyers don’t want to hang out with the likes of me.”

“Even us lawyers? Wait, how many lawyers have you seen?”

“You’d be number eleven. The problem’s been no one has stood in my shoes before. I haven’t been able to get you people to see things my way.”

“What are you talking about?”

“Take my soul. If I’m living dead, supposedly I’ve lost my soul, right?”

“Does that bother you?”

“Not really. I never was much of a church goer. But still that’s something I lost, right?”

“You don’t get a jury blank on ‘loss of soul,’ but there is mental anguish. What about sleepless nights? Upset stomach? Anything else physical?”

“I don’t sleep anymore, which lets me take two shifts at work, though they claim they don’t have to pay overtime to the resurrected. But then again, I’m eating cheaper food. Sometimes it’s free. Except no possum.”

“How exactly did you get my firm’s name?”

“I saw it on the internet, and I remembered your sister from high school.”

“Charlotte?”

“Yeah. She and I had a few classes together. I heard she got divorced from Gary. Last year, was it?”

“Yeah, but she’s doing fine. Just one of those things.”

“No, I get it. Same sort of thing with me. Reverse widower.”

“Sure.”

“So, is she seeing anyone?”

“Let me stop you right there. Can I be frank?”

“Shoot.”

“It sounds like you don’t mind being a zombie so much.”

“Not my favorite word, the z-word.”

“Sorry. A *resurrected*.”

“How much do you like it?”

“What do you mean? You seem a fine guy.”

“Not me. You.”

He glanced at the cup of coffee he had given me. The numbness had taken me head to toe. “What have you done to me? I thought I couldn’t catch it from casual contact.”

“We made a decision. None of us have been able to find a lawyer. Heck, some of us lost the ability to talk.”

“You can’t do this to me.” My throat was drier than before, but now there was no discomfort.

He gestured at the coffee cup. “We found the bacteria can survive a while in warm liquid. It’s really a subtle change, isn’t it? Quick, too. We figure if a lawyer really knew, really understood who we were, he’d take my case, *all* our cases. We’d see justice.”

“You’ll never get away with this. You’re going to see a justice you didn’t see coming.”

“Really? I thought only a living person could be charged with a crime. What would they do to me anyway? Kill me?”

## **Into the Abyss**

By Paula Goodhart

There he was. From where he was standing below me, I could see the iris of his eyes barely peering over the edge of the bench inside the bar normally reserved for lawyers. The blue of his eyes was so transparent; the beauty of it almost belied the pain. He was still slight, almost on the verge of appearing malnourished. Maybe he was malnourished.

It had been two weeks since I first saw his name on an affidavit of probable cause in support of an arrest warrant. The police wanted me to authorize his arrest with the stroke of my pen. Surely this can't be the same boy. It hasn't been long enough for him to grow into a man capable of being charged with a crime as an adult. I looked at the address listed for the suspect on the paperwork. It was the same as it was years ago. I wondered if the rickety paint-spattered wooden bench still sat next to the curb in front of his dad's house. It was just large enough for me to sit my much younger backside next to that of a small 11 year old boy as we spoke so many years ago.

It was 1999, I think. Over time the years and cases blended together. The retrospective fog is a prosecutor's coping mechanism of sorts — sometimes. I was a young prosecutor. If you had asked me then, I would have considered myself pretty experienced considering I had been working as a prosecutor for 6 years by 1999, I think. But, looking in the rearview mirror, I didn't know "nothin'," as they say at the Criminal Justice Center. I certainly didn't know any of the pain the boy had experienced in his short 11 years. I was about to find out.

I didn't yet have children of my own so I didn't generally feel comfortable interviewing children. They didn't always warm up to me. I think I was scary. Something in my expressions didn't put kids at ease. That still happens on occasion even though I wish it didn't now that I have children of my own. I would have made a horrible 2<sup>nd</sup> grade teacher. This boy was different. He had no reservations about talking to a total stranger about some things. Perhaps that is why he had been the perfect victim for his predator. He had no inhibitions. He was *naturally* sweet and innocent. We had an upcoming trial setting where the boy would have to testify and I wanted to be prepared. The accused was pleading not guilty. He said the boy was lying.

The first time I went to the boy's home, my plan was to just chat before we got into the details of his case. At that time, what did I know about what 11-year-old boys talked about? The last 11 year old boy I knew was my brother and he was only interested in hocking loogies,

threatening to spit them my way. Would it really be appropriate to discuss loogies with this child in order to break the ice? It probably would have worked but something was telling me that was probably not how the instruction manual would tell me to do it, if there had been an instruction manual on child sexual assault victims. I didn't have any real training on how to talk to child victims. Thankfully he made it easy for me.

When I drove up to the house in my old blue compact car, the only one I could afford on my ADA salary, I saw a sad and neglected house in an older lower class neighborhood in Pasadena. I was familiar with the area because my people (ne-family) were from "Pasa-get-down-dena." As I sat in front of the house, I couldn't have been more detached from my roots. The house was tiny with a sagging roof. The siding was thirsty for a fresh paint job. The stoop was cracked concrete that supported plant pottery that hadn't seen green in months. In the yard was an old bicycle with a banana seat. I hadn't seen one of those since my brother rode one as he pulled me behind him on a skateboard holding a water-ski rope. And then there was the wooden bench. It sat by the curb all by itself. In other neighborhoods, it may have been mistaken for a piece of furniture that the owner no longer wanted and was free to whoever was willing to take it away. In this neighborhood, it was a fixture in the yard.

As soon as I got out of my car, my eyes caught two boys exiting the house and running into the yard. The screen door slammed behind them as if they were running to greet their grandmother who was bringing presents at Christmas. I doubt they had a grandmother who brought treats at Christmas but they sure seemed excited to see me. I knew the boy had a twin brother from reading the offense report but I didn't know he was an identical twin. There they stood - identical in their high-water jeans and dirty tennis shoes. Both of the boys had unkempt blond hair and toothy grins. They didn't yet seem inhibited by the fact that they hadn't ever seen a dentist for a regular six month cleaning. They were precious. I instantly liked them. They bounced and circled around me both saying hi. A man stood at the front door holding the screen door with one hand and a cane with the other. He smiled and said hello. The man introduced himself as their father and invited me into the house. I walked in and smelled cigarettes. The boys eagerly followed behind me. The dad offered me something to drink. I politely declined. There was no mother in the home. She died when the boys were toddlers. The boys were very curious about why I was paying them a visit. As it turned out, their dad who had clearly not given a second thought to the warnings about second hand smoke's effects on children, did have

enough sense to cooperate fully with the police when his son's abuse was discovered. He had prepared them for my visit. "Boys, this is the lady D.A. I was telling you about," he said with his husky smoker's voice. "You need to tell her what happened with Mr. Wolf and for goodness sakes, be nice to her!"

I knew prior to my arrival from reading the police reports that the dad had not only cooperated with the police but he had all but made their case for them. Mr. Wolf was the across-the-street neighbor to the boys and their dad. Dad and Mr. Wolf were drinking buddies. Dad received a disability check every month and Mr. Wolf had a job with flexible hours so many a day was spent in lawn chairs in Mr. Wolf's garage drinking beer, and whiskey. Because of this neighborly relationship, the boys would flit in and out of the garage while they were playing. After awhile, the boys started going to Mr. Wolf's house when their dad was not around. Mr. Wolf was nice to the boys. He made them laugh. He gave them food that they did not get to eat in their own home. He paid them to sweep his patio. He earned their trust. He was a pedophile.

One night over beer and whiskey, Mr. Wolf began to speak of his proclivities to another of his drinking-buddy neighbors. Mr. Wolf was drunk. He was very drunk. The neighbor thought it was just "drunk talk" but told the dad nevertheless. The dad was alarmed by what he was told about Mr. Wolf's drunken confessions. While the boys were at school one day, the dad drove to the nearest Radio Shack and bought one of those mini-recorders. In 1999, mini recorders were expensive and the only way for a lay person to surreptitiously record a conversation. The dad then paid Mr. Wolf a visit, with his tape recorder concealed in a pocket. As Mr. Wolf talked, the dad mentioned what the neighbor had revealed and Mr. Wolf admitted to the dad that he had molested one or both of the boys. He wasn't sure because he couldn't tell them apart. This was the type of revelation that was so unbelievable in its manner of disclosure that had in not been recorded it would be hard to sell in a criminal courtroom. Who admits to a victim's father over casual drinks in the garage that he molested another man's child?

Where most men would have done grievous bodily injury to Mr. Wolf, the dad continued to record the information until he had what he thought he needed to make a police report. The dad called the police and turned over the recordings. Mr. Wolf admitted unspeakable crimes against one or both of the boys on the tapes. He had paid them for sexual favors. The boys had never breathed a word of their abuse to anyone, including their father. Despite his faults, the dad had stood up for his children. By the time we went to trial, the recordings still revealed more than

what the boy had revealed when interviewed by skilled social workers. His twin never revealed abuse although it is highly likely he suffered as did his brother. I learned that this phenomenon of silence and partial disclosure is very common in children of sexual abuse for all kinds of reasons. The phenomenon is greater in boys than girls. In a cruel and unjust twist of fate, it is not uncommon for pedophiles and batterers to report a history of sexual abuse.

I sentenced the young man who had once been that innocent little boy, to a jail term for burning his lover with a cigarette. His attorney stepped away and allowed us to talk privately because he knew that I had once known the boy. I had been his advocate. I was his voice when I asked twelve men and women to sentence Mr. Wolf to life in prison for what he had done to the boy. Now, I was sending the boy to jail and I was heartbroken. I asked if he remembered me. Gone was the toothy grin and in its place was a voice full of hopelessness. He remembered me. I asked if he had graduated from high school. He had not. I asked about his father. He told me he drank too much. When I asked about his brother, he said “the same.”

“And what about you,” I asked.

“The same,” he replied.

I did my best to give him hope for a better future by telling him his past did not have to define his future. He politely thanked me but deep down I knew that he felt the vast chasm of hopelessness and pain he felt was insurmountable. I wished him luck and released him to the bailiff who took him to the holdover tank reserved for criminals. I excused myself from the bench and went to my chambers and wept unabashedly for the loss of innocence and for what could have been.

## QUANTITY MAKES QUALITY

By Josh Speirs

“Daddy, can we go outside and catch some lightning bugs?” It was a beautiful summer twilight with crickets beginning to chirp and a warm breeze bringing with it the smell of a distant rain. The energetic seven-year old had been waiting all day to spend some time with his dad. He waited patiently for his dad’s reply, hoping that he would look up from his computer screen with a smile and say, “Sure! Last one to the door is a rotten egg.”

Instead, his father replied with a slight tone of annoyance, never looking up from his computer screen, “Ben, I already told you, as soon as I am done typing this up, we can do whatever you want.”

The boy walked away looking down with disappointment at the Mason jar in his hands, knowing that there would be no lightning bug catching that night. Ben had become accustomed to such responses and to the accompanying disappointment ever since his father took that position at the big law firm downtown. In fact, Ben had seen little of his father since he was born. The earliest memories Ben had of his father were of him during law school, intently reading what Ben thought must have been the biggest books in the world. Ben loved when his dad would look up from his books once in a while, take a break, and let Ben play with the highlighters his dad had been using to color the pages of those enormous books. But ever since he started at that big law firm, even those moments had become few and far between. Now it was mostly staring at a computer screen or typing up this motion or researching that issue.

Ben lay on the bed in his room, staring up at the ceiling, thinking of how he could get his dad to notice him. He realized the only way to get through to his dad would be to reach him on the only devices to which he paid any attention. Ben went downstairs and got on the family computer.

He asked his mom, “What’s Dad’s e-mail address?”

His mom looked at him quizzically, “Why on earth would you need that, Ben?”

Ben explained to her, “I wanna talk to Dad and I think this is the only way to do it.”

Ben's mom realized at that moment that it was time to have a frank discussion with Ben's father. She walked into the office and closed his laptop. He looked up, almost as if he were snapping out of a trance.

"What did you do that for?" he asked.

In a chastising tone, she replied, "Do you want to know what your son is doing right now? He is sending you an e-mail because it's the only way he thinks you'll pay attention to him."

Just then his phone buzzed. Sure enough, he looked at the e-mail and it read, "Dad, I know you're busy working at the big law firm, but I miss you. Love, Ben"

Ben's father rationalized his behavior, saying, "I know I don't spend much time with him, but the time we do spend together is quality time. In fact, just last week we went to the zoo together and Ben had a great time."

Ben's mom just looked at him, crossed her arms and raised her eyebrows as if to say, "Do you *really* believe that?"

The next day Ben's father awoke, ate breakfast, and started toward his laptop to finish the research he began the night before. As he went to open the laptop, he saw a picture on the nearby bookshelf that showed him as a proud father, holding Ben on the day he was born. He remembered telling Ben in that moment, when Ben had just arrived in their life, that he would always be the best dad he could be. He couldn't believe how that could slip away so easily, little by little, as he began to forget what he had once considered most important in his life. "*When did I stop being Ben's dad?*" he thought. At that moment, he took his hand off of his laptop and reached for the phone.

"Yes, I have decided to take a few days off," he told the Managing Partner on the other end of the line. "I have some very important things to do."

He hung up the phone and walked to Ben's room. He looked at Ben and Ben looked back at him. He got down on Ben's level and said to him, holding back tears, "Ben, I know I haven't been paying enough attention to you lately, and I'm sorry for that. But, I want you to know that

nothing will ever be as important to me as you and mom.” Ben hugged his dad as tight as he ever had, and his dad said to him, “Now how about we go see a movie?”

“But you have work, don’t you Dad?”

“Not today,” he said, a big grin spreading across his face.

Ben smiled, jumped up and said, “Let’s go!”

Over the next few days, Ben and his dad flew kites, went fishing, and did all of the things dads and their sons do. For Ben, it was a magical few days. As the last day of his dad’s time off drew to a close, around twilight time, Ben was sitting on the couch reminiscing on the wonderful few days he spent with his dad when he saw his dad walk up with something in his hands. He held it up and said, “Well Ben, this Mason jar isn’t going to fill *itself* up with lightning bugs. C’mon, last one to the door is a rotten egg!”

As Ben lay down to sleep that night, a faint smile graced his lips, his room glowing softly from the jar full of lightning bugs on his dresser. “I love you Dad,” he whispered to himself as he laid his head down and fell asleep.

As Ben’s dad lay down for the night, he looked over at his wife and said, “I’ve always heard that it’s the quality of time with your child, not the quantity that matters. But you know honey, thanks to Ben, I have come to know that it’s the quantity that makes the quality.”

## Representing Rita

By Angela Dixon

It was just like any other day at Preston Miles' law office. Since he handled so many criminal cases, you never knew who would walk through the door. He had a reputation of handling high profile cases and many considered him to be the best attorney in the city. Therefore, it was no surprise when Rita Davis showed up after being charged with murdering her husband. "Is Mr. Miles here?" she asked. "Do you have an appointment?" I said. "No but he will want to see me because this is a high profile case and I have heard how much he likes a challenge," she said. "My name is Rita Davis and I need him to represent me because I have been charged with an unspeakable crime."

Rita was no ordinary woman. She was flashy yet she seemed a bit odd, cold even. I had seen her on the news when she was arrested the other day, Versace suit, shoes, handbag and shades to match. If nothing else, she had good taste. Money certainly wasn't one of her worries. I thought to myself, if she did do this at least she did it in style. I snapped back to reality and told her that my name was Juliet, and that Mr. Miles was out but would be back shortly. "You can wait if you like," I said to her. She slid into the leather couch in the corner and began flipping through a magazine. While she waited, I went back to my routine, as a secretary I was in charge of many office tasks. Without me the office would be in complete shambles. We handled a lot of clients and someone had to keep everything in order and running smoothly. As I looked at Rita, I wondered what kind of story she would tell Mr. Miles. Perhaps some stranger entered the house to rob the place and it was a burglary gone wrong. Maybe she came home to find her husband engaged in activities unbecoming of a married man and had a fit of rage. Whatever the case may be, she chose our office to represent her and whatever her story I knew Mr. Miles would make her out to be the victim and not the criminal. While Rita waited, I decided to do a little research to see what the alleged theory behind her husband's death was. According to the news reports, Rita had killed her husband by poisoning him. Each day she would slowly add more and more poison to his food and drinks. Oh well, I thought, so much for my theories.

"You said Mr. Miles would be back shortly," Rita demanded. "I've been waiting here over an hour." "I am sorry, I quickly answered. I will call to see if I can get a hold of him." I knew Rita

was growing impatient and this was one lady I didn't want to get away. "Ma'am you are in luck," I said, "Mr. Miles is coming up the elevator now and I informed him you were waiting." Mr. Davis was a tall, lean gentleman. He entered law school right out of college and had practiced criminal law only for over 30 years. While he was well into his 50s, he could pass for much younger. Many of his female clients became smitten with him but he always kept it professional. "Hello, Mrs. Davis," Mr. Miles said, "give me a minute and I will be right with you." Now I know I wasn't supposed to do this, but once Rita entered the office, I quietly turned on the intercom because I was so intrigued and wanted to hear what she had to say.

"So what brings you here today Mrs. Davis," Mr. Miles asked. "Well I am sure you have seen my case on the news. They are charging me with murder and I did not kill my husband" she adamantly said. "I loved him dearly with every fiber of my being and I would never cause him harm." She went on to say her husband had given her and her children so much and they had the perfect life. Rita was certainly right about that. From what I read, she had the best of everything, house, cars, clothes, vacations, and a country club membership, basically everything a high society wife would want. "Yes, I heard about your case," Mr. Miles said. "But why do you think I can help you." Rita stated that she did her research and learned Mr. Miles was the best defense attorney in town. "I need you to represent me, to clear my name," she said. As she told her story, she detailed how she and her husband met in college and started off with nothing. They both worked long hours in the beginning until he was able to establish himself as a financial wizard. She was supportive and helped him build his career and business and he ultimately became one of the most sought after stockbrokers and investment advisers in the city. Rita said she and her husband had built a strong solid marriage and had three wonderful children and things couldn't have been better. I then heard Mr. Miles ask, "Mrs. Miles, why then is your husband is dead". She shed a few tears and said she did not know and that is what she needed him to help her figure out. Rita denied having anything to do with her husband's untimely death and presented herself as the grief stricken wife who had been framed.

After what seemed like hours of discussion, she emerged from his office with a sense of hope. I listened to the entire conversation and was convinced that Rita was telling the truth. She had nothing to do with her husband's death. After she left, Mr. Miles came out and told me we

would be representing her. I asked him if he believed what she said and he said “yes.” Mr. Miles was a very good judge of character and no one could really get anything past him.

Like any high profile criminal case, it would take some time before the case went to trial. The media would update on occasion so it was good publicity for Mr. Davis and the office but sometimes all of that would take its toll. Rita was always available when we needed to question her about what she recalled the day of her husband’s death. She even allowed her children to speak with us on numerous occasions and they corroborated her story about their family environment and their relationship. Mr. Miles just had to show there was reasonable doubt and based on their testimony and that of other witnesses including a physician that would rebut the prosecution’s theory; everything looked well for Rita.

As the trial grew nearer, the prosecution kept offering Rita a deal but she refused to plead guilty. She was sure a jury of her peers would find her “not guilty” and so did Mr. Miles. He told me it was rare to find someone of Rita’s caliber and that there is no way she could have done what they alleged. Mr. Miles had spent numerous hours with Rita going over her defense and questioning her sometimes harshly because he wanted her to be prepared for the prosecution. In his investigations, Mr. Miles had learned that while Rita thought her husband was the perfect gentlemen, there were a few people that he had dealings with that led him to believe that Mr. Davis lead two separate lives. For instance, Mr. Davis had a serious gambling problem. Rita had no clue and seemed in shock when Mr. Davis divulged this information to her. Mr. Davis would bet on races, fights, sporting events, heck he would have bet on the gender of his children if someone would have taken him up on the bet. Mr. Miles was able to get some evidence to show that Mr. Davis had a number of outstanding debts that he would not pay which certainly angered those he owed money to. Also, Mr. Miles learned that Mr. Davis had dabbled in drug use for years and even found a couple of his suppliers. Perhaps Mr. Davis had an overdose but since the drugs found in his system were those that are typically associated with poisoning, the prosecution refused to see that as a viable reason for his untimely demise.

After months of preparing and waiting, the trial finally commenced in early spring. “Are you nervous Rita?” I asked. “No, I have the truth on my side.” she said. This trial brought out all kinds of people. Not only was the news media interested, but Rita had a loyal following of her society wives. They would show up like they were going to afternoon tea. They spoke highly of

Rita and couldn't fathom why she was being charged with such a heinous crime. As the trial began, I could sense that Rita was nervous. Normally she exuded such confidence. Now, as I looked at her at the defendant's table, I regretted what I initially thought of her. She wasn't a cold woman, she had heart and feelings and she had lost the love of her life.

The prosecution put forth their case, which seemed somewhat convincing. They alleged that Rita was a woman scorned and that her husband had been having affairs for years and she was fed up with it. I recalled that was one of my initial theories and had a chuckle thinking I could have been on the prosecution's team. The prosecutor kept calling Rita, that woman, as if mentioning her name was beneath her. She outlined how easily it was for Rita to poison her husband. He only ate home cooked food and Rita had free range to spice it up as she liked however in this case, the spike was poison. As the prosecutor rested her case, I perked up because I knew Mr. Miles would do what he did best; those jurors didn't have a chance. Mr. Miles put forth testimony of Mr. Davis' secret life unbeknownst to any of his family. He argued that the drugs found in his system were from his own doing or from one of those persons he owed money to. Watching Mr. Davis in action made me proud to work for him. I was surprised that he did not let Rita testify considering all that preparation he put her through. Perhaps he thought she was too emotionally drained or perhaps jurors would draw conclusions about her as a society wife. Whatever the reason, once he was done, I was convinced. After several days of testimony, the jury returned a verdict of "not guilty." Rita was elated and so were we. "Mr. Davis," she said as she hugged him tightly, "there are no words; you have given me my life back." Of course our clients are always innocent in our eyes and we especially felt that way about Rita. I must admit some of our clients are suspect but the more I got to know Rita, the more I knew she wasn't capable of such a crime ... murder, Rita, never in a million years.

A few weeks after the trial, Rita stopped by to thank us again and brought us some homemade chocolate fudge. Apparently she is a wiz in the kitchen and fudge was one of her specialties. Her children mentioned how much their father enjoyed the fudge and would have some on a daily basis. Rita thanked me for all of my help and as she placed the fudge on my desk, she leaned forward with a smirk on her face and whispered in my ear, "You don't have to worry, your fudge is poison free."

## The Brothers Grimm

By Thad “T.W.” Davidson

Today I watched a client commit legal suicide. He did so against my avid, urgent (and correct) advice.

He is one of three brothers in a tale much different than the *Brothers Grimm* story (or any other) we were forced to read in high school. Brother A (my client) is charged with the murder of Brother B (yes, his own brother). Brother C was somewhere nearby when the, ah, disagreement between Brothers A and B went down. All three brothers are convicted felons on parole—one big happy family! Brothers A and B shared a double-wide in the deep woods near a steep canyon with a river. (Think *Deliverance*, complete with banjo and at least one gap-toothed idiot.) Brother C lived in the tires-rotting-off, foundation-sinking-into-the-earth, stolen travel trailer nearby.

The Brothers Grimm hatch from a tall family tree with no branches. Americans interested in cannibalism need not seek out lost tribes along the Amazon, nor flirt with the friendlies (carrying shrunken heads) in the wilds of Papua New Guinea. The foolishly inquisitive need only venture—however stupidly—into the “Big Thicket” woods wasteland the Brothers Grimm view as home. To become lost in Brothers Grimm territory is to transcend from present to past, flesh to bone, to be another’s Supper Time.

One dark and stormy night—in the refuse that is their lives, every night is dark and stormy—the Brothers Grimm imbibed “nectar” (from 12-ounce cans and 40-ounce bottles) which damaged brain cells and enhanced—in a negative way—the already minimal feelings of love and loyalty between the three. Brother B, with a history of assaulting Brother A with a deadly weapon—usually a noose—allegedly did so again, knife in hand, in the long narrow main hallway of the double-wide.

Brother A, feeling, you know, *alarmed* by the possibly less-than-loving approach of Brother B, suddenly procured himself a .22 magnum S&W revolver.

“Gun came out of nowhere,” said Brother A. “Little prick was fixin’ to kill me.”

A may have fired a single round. A 40-grain hollow point center-punched B’s Cro-Magnon forehead and zipped and tore through his Little-Engine-That-Couldn’t brain before bouncing off the interior of his skull.

(The average IQ level in that part of TX rose a notch.)

Momentum encountered gravity. Down the body plopped and bounced, in close proximity to the burning fireplace in the double-wide. Two hundred and twenty pounds of cooling, decaying—and soon to be roasted—meat.

On the 911 tape, the sound of ammo cooking off was clear and distinct, as was Brother C, who denied making the call. C claimed to have been asleep in his trailer next to the double-wide while one brother vacated it in spirit, the other did so in person, and the all metal double-wide mysteriously turned apocalyptic fireball and became no more.

Ashes to ashes. Dust to dust.

Shit to shit.

Two days later, grifters sifting through the debris looking for copper to steal instead found a severely barbecued Brother A.

A day later a deputy fire marshal discovered the remains.

“Possibly human,” said a detective, “although ‘sub-human’ is also a definite category out here.”

A week later the medical examiner, busy with saw and blade, discovered the hole and bullet.

Two days later, Brother A admitted to various persons (including those with badges) that he had, ah, “stopped”—as in, “I stopped his sorry ass”—Brother B from causing him (Brother A) serious bodily injury or death.

“Hard to say whether he went up or down,” Brother C later said, referring to Brother B. “But I ain’t thinkin’ up.”

“Son a’ bitch was ‘bout to kill me,” said Brother A to the grand jury, which noted the indirect reference to the brothers’ common mother. Brother A hadn’t shaved in days and needed a belt sander to his face, but he wore his best overalls for the occasion—they’d hung outside in the rain next to a pig on a hook, then dried in the sun. One leg of the stained overalls covered a filthy boot. The other was tucked inside the remaining boot. Both boots were dotted with dried blood.

The grand jury foreman suggested that someone take samples.

A detective later told the media, referring to the blood on the boots, “Pig, human and hell—we have no idea.”

Brother A told the grand jury he had tried to pull Brother B from the inferno that had been their den. He pointed at the blisters on his hands and arms. “Tried to save him,” he explained.

The grand jury foreman asked Brother A about the hole and bullet in Brother B’s skull.

“Self defense,” said Brother A, before spitting most of a giant wad of chew into a cup. (The rest dribbled down his knee.) “Him or me.”

My private investigator and I went to the scene and spent two days sorting through the wreckage. It was filthy, dangerous work. Ash piles three feet tall, hidden hot coals, sharp edges, the smell of rotting meat. The stench was everywhere, inescapable, although admittedly it was difficult to discern, vintage-wise, between pig and human.

“Might be sub-human,” said a detective, who had come to watch. He nodded toward the dark, uninviting woods and gripped his 12-gauge a little tighter. “Out here you never know.”

On the second day we detected a slight hum in the air—and eventually discerned maggots at work in and on the pig, which had become pale white with them.

Everyone gagged. I vomited. The detective departed.

My PI and I incurred cuts and bruises from sharp objects and hard things in the debris field. We located dozens of rounds of cooked-off ammo, but no knife.

I took my Ruger .22 magnum pistol and spent a week conducting ballistics and penetration tests on site. (There was no shortage of skulls in Brothers Grimm/*Deliverance* territory, ample test materials were locally available.) I researched the latest science on arson. Studied case law across the country in similar cases. Thought a lot about Brother C.

My legal assistant contacted Brother C’s parole officer, told her the situation, and asked when Brother C’s next parole office visit was.

The next day, my legal assistant, my PI and I went to parole and waited for Brother C to show up for his newly scheduled appointment. He was displeased to see us. Told us he had no idea what happened and didn’t know why Brother B was dead.

“Ask Brother A,” he said. “Bet he had somethin’ to do with it.”

Brother C displayed the frenzied eyes, rotting teeth, yellow-green thick fingernails, gray pallor and intense paranoia of a long-term meth addict. An escapee from *Night of the Living Dead*. I thought of lost souls and cannibalism in the Brothers Grimm woods.

My PI said, “Skank, he’s dead because you or your brother shot him in the head. Why were there no valuables found on scene? Did you steal all the shit to support your habit—you freak—before torching the place?”

Brother C’s eyes zigged wildly. He urged each of us to do an anatomically impossible act.

“You A-holes can all take a train ride straight to hell,” he also opined.

My legal assistant smiled. “Isn’t that where your brother is?”

The response was Brother C’s middle fingers, one of which was a yellowish stub. My PI and legal assistant noted that beneath the grime, the undamaged finger was covered with blisters, as was the hand it was attached to.

A few minutes later the parole officer arrested Brother C for popping positive for meth on a piss test. We sent the results to the DA. Along with pictures of Brother C’s no-missing-fingers blistered right hand.

One day while visiting the DA, comparing notes and chatting, my sharp-eyed legal assistant discerned in a crime scene photo the blackened claw of what had been Brother B’s right hand. She pointed. An inch from the claw, half buried in ash, lay a burnt-gray knife blade, handle gone up in smoke.

My legal assistant made copies of the photo. She marked them as “Defense Exhibit A.”

I was eventually able to display and argue various semi-solid facts and hard-solid science to intelligent people with badges and the DA. I persuaded the DA to think less about murder, to think almost not at all about arson, and to ponder the one crime that no defense lawyer can defeat in this case: felon in possession of a firearm. True, Brother A’s self-defense tool—the .22 magnum S&W—was never found, but Brother B’s skull certainly became lead-copper toxic that night—a known cause and effect when a bullet blasts into one’s skull—and Brother A, while explaining he acted in self defense (never mind the Chernobyl-like transformation of the double-wide), admitted to, ah, having "stopped" Brother B.

“Kilt his ass,” said Brother A. “Had to.”

Before Christmas of last year, I took a written offer from the DA to Brother A—who had been in jail for nearly a year by this point—which showed the murder charge being dropped and fifteen to do on the felon in possession charge.

Brother A cursed me out, claimed I was incompetent, told me I was fired. I said I was court-appointed. Told him I would be happy (“overjoyed” was the exact word I used) to file a motion to withdraw, but the judge would have to let me off the case, not Brother A. I also said the DA could still prosecute him for murder, that arson could still be thrown into the mix, and even worse news was a possibility in his case unless he stopped being stupid.

“Think about life behind bars,” I said. “Or a needle.”

Nothing mattered. Out the door I went. In the jail Brother A stayed.

Today, as the court convened to hear my motion to withdraw, the DA approached and conveyed an even better offer for my about-to-be-ex-client. The new offer was no murder charge and ten to do on the felon in possession charge (for which Brother A was recently indicted by another grand jury). No enhancements, no 25-to-life, no arson, just ten to do.

The DA and I did the math. We agreed Brother A would finish his revoked parole, serve the FIP charge and be out somewhere around five years down the road, maybe a little less.

Professionally speaking, I felt great. Though Christmas had long since passed, Santa was still passing out gifts, even to very-not-good-at-all kids, and Brother A had just received the best present of his life.

Which, ten minutes later, he rejected.

The judge couldn't believe it and, rare for any judge in such circumstances, painstakingly explained the entire plea offer to Brother A again—who had already heard it from me and, separately, from the DA (with my consent).

The judge's face said it all. I could almost hear him whisper, “*Fool. Moron. Take the deal. Save your life.*”

But Brother A stood firm. Told the court how much he hated me and how crappy a lawyer (he thinks) I am.

Everyone in the courtroom heard the prosecutor announce, “[Brother A], you've just committed legal suicide.”

And he has, and he did.

Now the DA is going to take Brother A to trial for murder, for felon in possession, maybe arson too. If the DA is really inventive, he might think "Capital," the Lone Star State's fast track highway to hell.

With Brother C, now back in the pen, as co-defendant.

But even if the DA doesn't go the Capital route on Brother A, any conviction on any charge will be enhanced 25-to-life, no parole, *adios, pendejo*. Then it will be Brother C's turn.

Somewhere in the distance, a banjo is playing softly.

Echoed by two guitars.

## The Last Memorandum

By Frank J. Gonynor

We all hastily returned to the firm's offices that hot summer afternoon, directly from the memorial service and luncheon for Cole Dayton. I drove back with Mr. Dayton's long time secretary, Ms. Jeanette Perry, who, clad in a charcoal grey tweed suit, sat ramrod straight in the passenger seat, staring out at the passing scenery, her face looking like an opaque mask, occasionally her dabbing at the corner of her eyes with a Kleenex; saying nothing.

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Cole Dayton had been the last, living 'founding' partner of the firm, and was known as a lawyer of legendary talents, locally and throughout the state. His stellar reputation had attracted a team of talented young associates, and so eight years ago when I joined the firm, I eagerly became part of 'Team Dayton', entering that heady world of big cases and big trials, that likewise garnered big fees for the firm. I thought my future at the firm was secure and bright, enhanced by my training and hard work under the 'great' Cole Dayton.

But then, four years ago, Mr. Dayton was diagnosed with an incurable, progressive pulmonary disease, that soon sapped his strength and impaired his ability to work the long, intense hours, which was his part of his method. The firm management then started to funnel major new cases - those that would in past years would have been assigned to him - to other partners and their 'teams'. The bevy of associates that had been the symbol of his status and standing in the firm was quickly whittled away. In the last year of his life, 'Team Dayton' consisted of a mere three - Cole Dayton, Ms. Perry, and myself.

My friends had told me that I needed to either find another slot in the firm, or go work elsewhere - their collective advice could be summed up as: "don't keep aboard a sinking ship". But Mr. Dayton was still a great lawyer - that had not changed. I had learned so much from him - he was a great teacher, and it was that very skill that made him so effective in the courtroom.

Loyalty, I've been told, is one of my best qualities, and while I realized it might be hurting my own career, I simply would not abandon Mr. Dayton. I figured if the firm didn't keep me on after Cole Dayton died, I could always get a job somewhere else.

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Ms. Perry and I walked from the hot and humid garage of our building into the welcome cool of the plush confines of the firm's offices, quickly arriving in the foyer outside Mr. Dayton's office. She then turned to me and said: "Jim, Mr. Dayton left a letter for you, to read after his death. It's in an envelope on his desk; please go in and read it." She then sat down at her desk, expressionless.

I walked into Mr. Cole's wood panelled office, his professional sanctum and, in years past, the scene of so much activity, now hushed and still. His presence was still palpable to me, though, borne in the scent of leather and polished wood, the orderly rows of law books on shelves to the ceiling, and the degrees, awards, and plaques displayed on the walls, all bearing his name.

Atop the middle of his mahogany desk was not one, but three envelopes. One had written on it, in Mr. Cole's cursive script, 'Open first'. Inside, on a two sheets of firm bond paper, was neatly typed the following:

**Bennett, Berretto, Dayton and Kent, LLP**

**Memorandum / Confidential**

**To: James Gittings**

**From: Cole Dayton**

**Date: ?**

**Re: Your Future**

*Young Jim:*

*Although I am gone - one last lesson and one final assignment.*

*Good litigators can be divided into 2 'tribes'. One group contains the extroverts, the ones that can enthral a jury, persuade a judge, and entertain a client, all with equal ease. They rapidly identify the issues in a case, but they also miss small but critical details, as they are apt to become easily bored by the tedious nature of evidence gathering. The second group are those who totally lack the charisma with folks, but who possess the focused intellect to not only grasp the issues in any given case, but then to ferret out any hard-to-find evidence or case law to support a position. But, through no fault of their own, they just can't persuade others well, and as far as developing new clients, well, it's painful to watch them try.*

*When I got sick, and my practice started to shrink, the firm management gave me a choice as to whom I'd keep on, and I chose you, Jim. The prime reason was that you were the only one, out of the whole team, who had the uncommon distinction of being a member of both of the aforementioned 'tribes', not unlike myself, carrying with it the potential of not just being a 'good' litigator, but a 'great' one. So, I knew you could assist me the best. But I then realized it was selfish on my part, because as my power and prestige in the firm lessened, your future here might also fade. My guilt about dragging you down grew as I got sicker, and I have struggled to find a solution.*

*You never wavered in your commitment in working with me. I knew you were getting calls from 'head hunters', and advice from them and others to leave working for me and/or the firm, but you never listened to that talk. I learned you possessed the highest level of loyalty, a thing that perhaps is the rarest of attributes in lawyers, since, after all, it is a profession that openly promotes and praises the ability to argue 'in the alternative', adopting contrary positions*

*between different lawsuits and changing law firm employment like changing shirts – sometimes I think our profession’s mascot should be the chameleon.*

*But you are different, Jim, and I am counting on that quality of loyalty today - that will be key to the last assignment I give you.*

*On my desk you will see there are two other sealed envelopes. One, discretely marked ‘A’, contains a sworn statement, written and executed by myself, addressed to the managing partner, that in strongest terms recommends to my fellow partners that you, James Gittings, should be immediately given my small remaining equity share in the firm and therefore be made a partner, with all of the privileges that come with that, including moving into this office.*

*However, Jim, there’s one unwritten condition if you exercise that option, which is – you must keep Ms. Perry on here, as your secretary, at her current salary level and benefits, until normal retirement.*

*If you don’t want to take on this last assignment, I perfectly understand, Jim, and I’ve provided for that. Inside the other envelope, marked ‘B’, there’s a glowing letter of recommendation for you, which should open doors and help land you a good position, at most any law firm in this state.*

*But going to a new and different law firm has its many risks and uncertainties, and there’s one thing I know that move would lack, and that would be Ms. Perry. I’ll be clear why that is so, and why it should matter to you.*

*I know younger lawyers were raised using computers, and so do almost all of their own typing, making their own appointments by e-mail, doing their own case scheduling, file their own pleadings electronically, etc., and so they see almost no need for a legal secretary, a position that may seem today almost like a quaint anachronism. But nothing could be farther from the truth, particularly if you have a good one, and I think you know that Ms. Perry is one of the best.*

*You’ve seen that an experienced legal secretary can help you with things that aren’t on the internet or in some piece of computer software, but that are the very things that can make you look like an outstanding lawyer – getting you that quick motion hearing by calling the court clerk she’s known for years, making sure your courtroom demonstrative exhibits look great, that your files are in impeccable order, and, most importantly, handles client calls with familiarity and poise, that makes every client believe their case is ‘your top priority’. Those are valuable abilities that cannot be taught, and come only with years of experience.*

*Ms. Perry has been my secretary since I helped establish this law firm, 30+ years ago. In many respects, she knows legal procedure and forms better than I do. But more importantly, she knows every judge’s clerk and secretary, every mediator we’ve ever hired, every expert we’ve used, and lastly, here’s the most important thing, Jim:*

*Ms. Perry knows every ‘skeleton in the closet’ of this law firm and where they’re all ‘buried’.*

*If you choose to remain, I know Ms. Perry will be your best ally here, an invaluable counselor in the byzantine politics of this law firm, essential if you want to move up higher.*

*You might be thinking – why will the firm’s partners abide by my request, not legally binding, contained in envelope ‘A’?*

*One simple reason – if they know that Ms. Perry supports you, they’ll do as I request - for fear of what she knows, and what both she, and you, could do with that knowledge if they don’t do as I request (f.y.i. – she keeps a ‘special file’ for me, that backs up on paper much of what she knows). And it’s not that you’d have to go through with it – the threat alone will certainly be more than sufficient.*

*Ms. Perry shares with you that uncommon virtue in lawyers and in law firms – loyalty. Plus, she typed up this memorandum, and the documents in the other two envelopes, so she knows the choice I am giving you, and what is at stake for her. If you take envelope ‘B’, she’ll have no hard feelings, Jim. But she’ll have to leave the firm and work somewhere else – I am confident she’ll land a good job, but the supreme value, to her and to you, of what she knows within this firm, would be lost forever.*

*Whatever your choice, please return this memorandum, in the envelope, to Ms. Perry, who will dispose of it.*

*Young Jim, I wish you the very best!*

*-CD-*

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I folded the memorandum and put it back in the envelope, then after a few minutes of thought, picked up one of the other envelopes from the desk, and exited Cole Dayton’s office.

Ms. Perry was still sitting at her desk, and glanced up at me as I emerged from Mr. Dayton’s office, her facial expression a mix of both the expectant and the quizzical. “Well, Jim?” is all she said.

“Ms. Perry,” I replied, “please shred this envelope and its contents,” handing her the one with the memorandum, “and get me an appointment today with the managing partner.”

With a little deferential tilt of her perfectly coiffed head, and revealing the slightest, sort of Mona Lisa smile, she quickly said, “Yes, sir”, and with a practiced ease perfected with years of experience, in what seemed like a single movement, she put the memorandum in the shredder, place envelope ‘A’ in the box for the office messenger, and simultaneously picked up the telephone, a few seconds later saying into it: “Hi...yes...thanks so much...yes, it was a beautiful memorial service. Listen, James Gittings needs an appointment with him this afternoon...oh, I see, he’s that busy?... hmm, well, I know you can squeeze him in for me, say in an hour?...thanks...yes, let’s do lunch tomorrow.”

She turned to me, this time showing a bright, full smile - something I had not seen in the last few months of Cole Dayton’s life - and said, “You’re all set, Jim.”

“No, *we’re* all set, Ms. Perry,” I replied.

## THE PALLADIUM OF LIBERTY

By Margaret D. Tagliavia

Monica was stunned by the news. Although she was still holding her cell phone, she was slow to become aware that it was reiterating the first few notes of a Bach fugue. In a muddle she answered, “Hello?”

“Hello,” said a man’s voice. “Is this Monica Caldwell?”

“Yes,” she said.

“My name is Steven Parks,” he continued. “Ms. Caldwell, I would like to make an appointment with you to discuss a legal matter. Do you have any time available this afternoon?”

Monica fumbled for her calendar and, upon finding it, was able to muster the presence of mind to arrange to meet Mr. Parks at four o’clock.

Mr. Parks arrived at Monica’s office precisely at four, and once seated, immediately stated the reason for his visit. “Ms. Caldwell I want to discuss with you the prospect of your filing a writ of habeas corpus on my behalf. Doubtless my request is highly unusual and perhaps unfeasible. But, allow me to explain. The writ has been called the palladium of liberty, whether deservedly so or not. It is, however, perhaps the only vehicle with which I might accomplish my objectives.” Mr. Parks shifted his position in his chair slightly and looked directly at Monica, continuing, “My objectives are threefold. I want to commit suicide—to shed these mortal coils. I want to do so as painlessly as possible. Finally, I want it to be understood that I believe it is my sovereign right—the most profound of human liberties—to make this decision without government interference. It is my belief that no government has the moral right to mandate my continued existence on this earth or to determine the manner in which I may die.”

“Are you very ill?” asked Monica almost too quickly.

Steven Parks hesitated before answering, casting a penetrating glance at Monica and absorbing something that caused him to continue carefully. “No...that is just it. I am not ill at all. I have simply concluded after much thought that my life no longer holds out any promise or intrigue and I wish to end it rather than remain an unhappy earthly captive.”

“But, surely, Mr. Stevens,” said Monica, “if you are not ill, there is reason to hope that whatever circumstances have led you to conclude that you wish to end your life might change....”

“Ms. Caldwell,” Paul Stevens interrupted, “don’t think that I have not carefully measured my prospects. I am not destitute; but I am nonetheless severely constrained. Some of the constraints, Ms. Caldwell, are of my own making; some are cultural. The latter are unlikely to change during the balance of my so-called natural life, making it unlikely that I can reverse or ameliorate the conditions that are a result of my own actions.”

After a brief pause, Paul Stevens continued to explain. “The repugnance of younger men and women toward me at first took me by surprise. During my wife’s final illness, I resigned my last position of any substance in order to be with her. Several months after her death, I made a series of doomed attempts to re-enter the workforce. At the time, I had resumed a running regimen and considered myself both mentally and physically robust. Nonetheless, on one occasion I was approached by a young professional assigned the task of escorting me to an interview who asked condescendingly if I were able to walk up a simple flight of stairs! I was utterly astounded. I imagine care giving and grief had brought the appearance of age to my face. And, Ms. Caldwell, our culture abhors age. I ultimately was unable to secure employment in my field or other employment of any substance. It is not so much that those of us fifty-five or over dwell in the past as it is that we are consigned to the past by virtue of being excluded by our culture from the present. That, Ms Caldwell, is not a culture I can embrace or one that holds out much hope for a life worth living.”

Paul Stevens leaned forward in his chair, shrinking the distance between him and Monica, and went on. “I will take my cue from cultures older than ours. I was once told as a child that elder members of certain American Indian tribes simply walked off into the wilderness when the time had ripened for them to die. I have been unable to verify the tale, but in attempting to do so, I came across an informative Jicarilla Apache legend. The Jicarilla, according to my source, believed that in the process of dying, an individual’s spirit is conducted northward to the edge of the earth where it is offered fruit. If the spirit refuses the fruit, it returns to the

individual's body and to life; but if it accepts the fruit, it falls over the edge into death. Because I am not a lawyer," Steven Parks continued, "I have come to you for technical assistance in demanding the liberty to make precisely that choice."

Under ordinary circumstances Monica might have been tempted to dismiss Mr. Parks as a lunatic. But his demeanor and her own circumstances demanded otherwise. "Mr. Parks," she said, "I am not sure that what you ask is feasible. Your reference to a peaceful passage implies drugs. If that is the case, who would be the respondent of a writ--the State's executive officer ultimately charged with the execution of laws prohibiting illegal possession of controlled substances or of laws prohibiting assisted suicides? And, if so, should the writ be accompanied by some sort of mandamus allowing you to come into possession of the controlled substance of your choice? Moreover, upon what constitutional prerogative would we rely to justify such a writ or mandamus?"

"Surely," Steven Parks replied, "the right to choose to be or not to be is an unalienable right. Rights retained by the individual are recognized as such under our Constitution."

"Even if that were the case, Mr. Parks," Monica continued, "and even if a court did not dismiss our request for a writ and relief as frivolous, I am afraid I would not in good conscience be able to assist you."

Once Monica had made her decision known, Steven Parks rose from his chair and said, "Well, Ms. Caldwell, I hope upon reflection, you will have cause to reconsider. I am taking a trip to Mexico with a friend and will contact you upon my return in about a week." With that he thanked her, wished her well, and left.

A week or so passed, but Monica heard nothing further from Steven Parks. Becoming apprehensive, she called him on his cell phone. He did not answer. Monica then called his home number. Much to her consternation she was told by a niece who answered the phone that once her uncle had returned from Mexico, he had gone on to Taos, had checked into a bed and breakfast on the outskirts of town, and, after leaving the bed and breakfast a day or two later, had not been heard from again. Monica hung up the phone, and, from an odd compulsion, decided to drive to Taos immediately. She desperately needed to find out what had become of Steven Parks. She desperately needed to grasp her own predicament.

It was about ten o'clock in the morning when Monica arrived at the Coyote Inn on the outskirts of Taos. She walked into the lobby and up to the front desk, introduced herself as counsel for a Texas resident by the name of Steven Parks, and asked if anyone by that name had registered at the inn in recent weeks.

"Yes Ma'am," came the terse response from a middle-aged man behind the desk. "Are you by any chance Monica Caldwell?" he asked.

"Yes," she answered surprised by the question.

"Mr. Parks left this packet for you in the event you should drop by the inn. I assume that you know that he has gone missing."

"Yes," she replied taking the packet. "Do you have any idea where he went when he left the inn?" she asked.

"He left the morning of January 14," said the man. "He didn't say where he was going, but his car was found the next day abandoned near the trailhead at Twining Campground above Taos Ski Valley."

Monica thanked the man for the packet and without opening it headed for the Wheeler Peak Wilderness area and the trailhead that was its most popular access point. There had been a major snow storm on the night of the 14<sup>th</sup>. Monica suspected that Steven Parks' departure that particular morning had not been accidental.

When she arrived at the campground, she parked her car in an adjoining lot and opened the packet. In it was a note and a DVD. The note read, "Ms. Caldwell, perhaps in the solitude of this splendid wilderness you will find peace. The enclosed is 'just in case.' Best wishes." The note was signed "Steven Parks."

Monica got out of her car and found her way to the point at which the trail approached the wilderness boundary, her heart heavy. How had he known, she wondered? He had evidently guessed. He had also surmised that she would follow him to New Mexico.

The snow pack along the trail was not as difficult to negotiate as Monica had imagined. The intense New Mexican sunlight felt strangely soothing. She wondered how far into the

wilderness Steven Parks had gone. Had he reached the “edge of the earth?” Was he offered fruit, and had he, in the end, elected to accept it?

Monica had no idea how much time had passed since her entry into the snow covered expanse of the trail and wilderness when she stopped walking abruptly and gazed at the DVD in her hand. It was a documentary about a man dying from an incurable disease who had gone to Switzerland with his wife and there, under Swiss law, engaged medical personnel to assist in his suicide. Monica grasped the DVD tightly, turned and resolutely headed back toward her car. “No!” she said out loud. She would fight — what had her doctor’s office said — “exocrine pancreatic carcinoma”? — she would fight it with all that was within her.