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Great Fractured Moments in Courtroom History

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Abstract

Joseph Conrad described life as birth and death separated by struggle.

Fractured

Great

Moments in Courtroom History

Charles M. Sevilla*

I. INTRODUCTION

Joseph Conrad described life as birth and death separated by struggle. For me, humor has been the lubricant to make the struggle a bit less rough, a survival instinct against life's rigors. Striving to see humor in the world in childhood helped me cope with my own manifest inadequacies: like catching a football with my mouth in the third grade (I not only failed to catch it, I lost part of a tooth), or getting picked off first base in Little League and not even knowing it, or having my fourth grade girl friend swear eternal love which lasted until the afternoon recess.

You had to laugh so as not to cry. I did both. That was all long before law school. In fact, were it not for its pre-law honing, I think that whatever sense of humor I had would have been suffocated to extinction in the numbing, obscure and far too serious world that was my law school education.

My first day of law school, I and a couple of other laugh-seeking tyros were mislead into thinking that the law might have much humor in it. Rumors swept the miscreant section of the first year class about X-rated cases which were must reads in the law library. My buddies and I descended upon the library and grabbed the books from the shelves. They were easy to find because unlike their pristine neighbors which seemed untouched by human hands, the spines of these books were dirty and tattered from clawing first year law student hands (all male) which had grabbed at them for a peek at their forbidden and naughty contents.

One of us grabbed our quarry and hurled it to a nearby desk. It fell open to the desired page. We surrounded it. Our designated page-turner found the well-marked passage and gleefully read aloud the 1943 Florida Supreme Court case of *Lason v. State*.¹ Mr. Lason was a seventy-six year

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1. 12 So. 2d 305 (Fla. 1943).

old man who had been convicted of committing an "abominable and detestable crime against nature" involving two very precocious girls.²

This case had achieved awe among the students of the law for the creativeness of the defense advocate who took Mr. Lason's conviction to the appeals court. The defense attorney took what appeared to be the case of the proverbial "dirty old man" and argued, defiantly, colorfully and perhaps even brilliantly in his client's defense:

Does the one specific crime [an "abominable and detestable crime against nature"] . . . comprehend or include the action of a 76 year old, aged Indian War Veteran, feeble physically and mentally, in, after having met the two girls of 11 and 13 years of age who solicited him, went to his residence and there they both get on the bed, pull up their dresses and drop down their panties, when he in turn on his back in the small bed allowed them to diddle with his rag-like penis, unrectable, lifeless and useless except to connect the bladder with the outside world for more than six years since the death of his wife, utterly incapable of either penetration or emission, and wad it like rags into their mouths, and then, in this feeble and aged condition impelled by the irresistible impulse, in turn he would kiss and put his tongue in their little though potentially influential and powerful vaginas?³

This was the longest, most rambling sentence I had ever read, but it was laughably inventive. And, I thought that if this was the type of case we would read in law school, my new career would at least be entertaining.

Wrong. Law school did not turn out to be a procession of odd-ball cases like the ones I read that first day. Instead, it was procession of nauseatingly overwritten rubbish like the following sample discussing the doctrine of double jeopardy:

There must be some legal necessity basic to one acquittal, not involved in the next trial, to justify a superseding conviction. We cannot permit initial trial deficiencies to be cured by subsequent trials. There are only four quarters to a football game. The exorcised double jeopardy is the constitutional eliminator of the might have beens. Puristic parallelism is not an absolute in the law of double jeopardy. Multitudinous criminal charges may spring from the same incident. The State's argument in the present case would nullify the doctrine of double jeopardy because any slight deviation in the indictment would give the State another

2. *Id.*

3. *Id.*

Monday morning quarter.⁴

This was the standard fare. The study of dirt would have been more interesting. This dulling experience only enhanced my search for humor over the years of my legal education and practice. During the last twenty or so years, I have collected transcripts of cases which either ring a funny note or are ridiculous or absurd.⁵ (For many, you had to be there, and I tried to eliminate the latter from this collection.)

The magazine column has thrived because the readers have sent me their own favorites which then became the grist for future columns. My only editing has been to remove the names of the guilty parties, to add identifying words to aid comprehension and to trim the prose (you may be surprised to learn that lawyers can be verbose, a malady which has as its source getting paid by the hour). I have added the name of the contributor of the particular selection under its title.

A larger batch of these *Great Moments in Courtroom History* may be found in *Disorderly Conduct*, a 1987 W.W. Norton publication which combined my collection with those of my co-editors, Dean Gerald Uelman of the University of Santa Clara Law School and attorney Rod Jones. In 1992, W.W. Norton published my book entitled, *Disorder in the Court*, from which I now offer a few samples:

II. EXCERPTS FROM *DISORDER IN THE COURT*⁶

1. WITH SYMPATHY, BUT ON THE OTHER HAND (James Birkhold, Bradenton, FL)

THE COURT So, there are two DUIs [driving under the influence].
Sir, I very frankly am in sympathy with you in that you
say you have problems. And you turned to alcohol for
an escape, which of course is no answer, usually. It's

4. Johnson v. Estelle, 506 F.2d 347 (5th Cir. 1975).

5. For the past fourteen years I have written a column with the pompous title of *Great Moments in Courtroom History* where many of the offerings reprinted here first appeared. Those columns have been running in the *Forum and Champion* and I have many thanks to give the members of the California Attorneys for Criminal Justice and the National Association of Criminal Defense Lawyers for their continued contributions to the column and to the organizations which have kept the column in print.

6. CHARLES M. SEVILLA, *DISORDER IN THE COURT* (1987). The following excerpts are taken directly from *Disorder in the Court*.

more problem on top of [the] problem. I can fully sympathize with you.

However, I can't believe that people that came home from the Vietnam War are any different than when they came home from any other war. Unfortunately, I don't sympathize with that position. People in the Vietnam war got all kinds of treatments like going to Canada and everything else that other people didn't get. I think they got no treatment any different from people that served in World War II for four years that didn't get a choice to go to Canada. I think that it's something that the people decided, it's a cop-out and I'll use it, very frankly, is how I feel about it. I'm not a doctor, but that's my position and you're asking me to act as a doctor and I'm not a doctor. I'm not going to say that you don't have problems. I'm sure you do if you feel you do.

On the other hand, I think you're a menace to society.

2. POLICE REPORT: A STUDY IN EUPHEMISM (Jason Cox, Hayward, CA)

I then directed the suspect's head toward the pavement in order to eliminate his hand from getting under his body via this route because the suspect was resisting by holding his head up even after I attempted to direct it down with little force and I was required to use more force causing his head to impact the pavement.

3. AWARD (Louis R. Miles, Salem, OR)

- Q. Have you ever received any honors or prizes for your work in the area of child sexual abuse?
- A. Yes. I was given an award for my contribution to sexual abuse in the state of Idaho last year.

4. POLICE REPORT: DYING DECLARATION (Gary Scherotter, Palm Springs, CA)

On my arrival, I found the victim on his back, face up, and talking to two Mexican male subjects. I walked up to the victim and saw some blood on his chest and stomach area. I then removed my knife from my gun belt and cut the victim's white T-shirt to expose his injuries. Upon doing so, I saw what appeared to be four puncture wounds on the right side of his chest. It appeared to me that a projectile had entered his chest at a 30 degree angle, which would have placed the projectile going through the victim's heart. With such injuries, and in my experience investigating numerous murders over the past eighteen years, there was no question in my mind that the victim would be expiring shortly. I then attempted to get a dying declaration from the victim.

I advised him that he had been shot numerous times in the chest and that one of the projectiles had punctured his heart. I advised him he only had a short time to live and would he give me a dying declaration as to who had shot him. He replied, "Yes, I have a declaration to make." I asked him what that was. He lifted his right hand, made a fist, exposing his center finger, and stated, "Go f[***] yourself," and I ended my interview with the victim.

5. ON BEING A PROFESSIONAL (Michael Chaney, West Hollywood, CA)

DA How would your pimp tell you it was time to get to work?

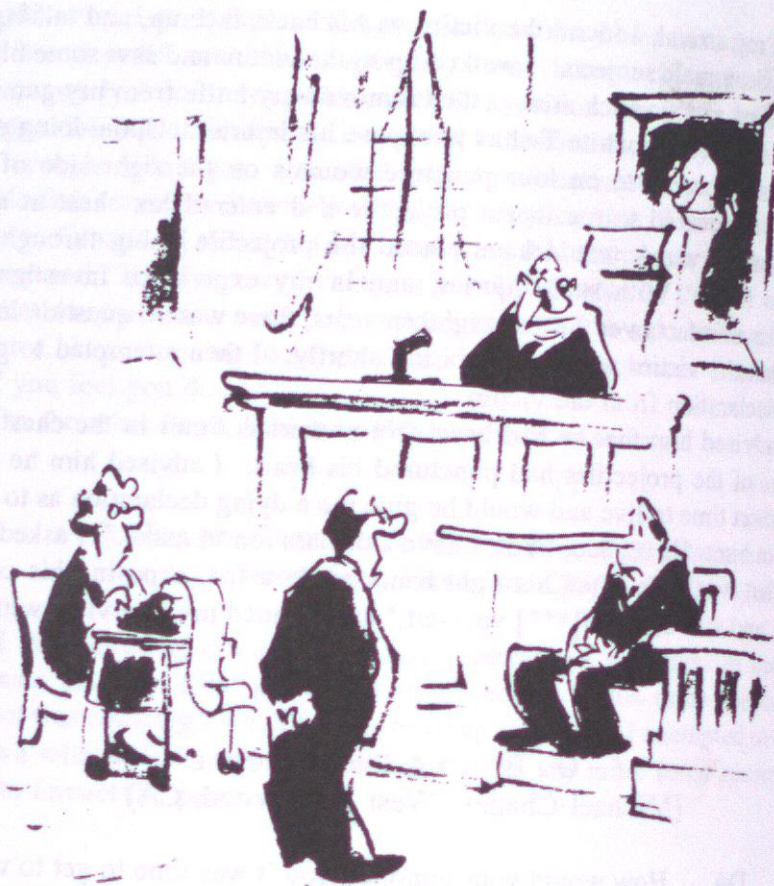
A. It would depend on his attitude that day, how he was talking to whomever he was talking to in particular. Like one morning in particular he said something like, "It's time to get up and start whoeing."⁷

DA Whoeing? And what does whoeing mean?

A. It means going to work as a prostitute. Some people refer to it as "whoring," but women in our profession don't refer to it as "whoring." We refer to it as "whoeing." There's a big difference.

DA And what is the difference between whoeing and whoring?

7. Pronounced "hō-in."



"Perhaps the witness would like to reconsider his answer to my question."

* CHARLES M. SEVILLA, DISORDER IN THE COURT 126 (1987) (Illustration by Lee Lorenz).

A. Well, we consider ourselves professionals, and we're doing it for money. Any normal woman can go out and be a whore and not receive any money for it.

DA So the distinction is that whoeing is for money?

A. And whoring isn't.

DA Did you ask your pimp how far police could go in making arrests?

A. Yes, I did.

DA What was said?

A. I asked how can a police officer get naked and then arrest a working girl?

DA What did he say?

A. He said that they were cold-blooded and that they loved their jobs because they probably just wanted to see some [*****].

DA What did he tell the other girl that she had to do?

A. He told her it was time to rise and shine and get whoeing.

DA Get whoeing. Okay.

THE COURT How is that spelled?

DA Whoeing?

THE COURT H-O-W-I-N-G? I think we need that clarified for the record.

WITNESS W-H-O-E-I-N-G.

THE COURT W-H-O-E-I-N-G. Thank you.

6. THE BIG SLEEP WALKER (Milton Hirsch, Miami, FL)

Q. Bringing your attention to an incident that occurred that night near the intersection of West 8th and Okeechobee, can you tell us what you saw that night regarding the death of a man at that location?

WITNESS Okay. I witnessed when the dead man was crossing the street.

7. INSUFFICIENT IQ TO ARREST
(Ezekiel Perlo, Encino, CA)

- COUNSEL Officer, at this point in your own mind, did you consider him to be a suspect in the homicide?
- OFFICER No. I really did not have enough intelligence to make that decision.

8. DEATH PENALTY CASE SECURITY
(Mark Kaiserman, Los Angeles, CA)

- COUNSEL Sheriff, what concerns would you point to specifically that would require increased security during that period of time?
- SHERIFF I did mention concern for the defendants themselves and they are here present.
- Q. You have concerns for the defendants themselves?
- A. I do.
- Q. That they might be killed?
- A. Yes.
- Q. Isn't that what you're seeking in this prosecution?

9. PROBATION REPORT
(John Aquilina, Riverside, CA)

For the past four years, the defendant and six companions earned from \$500 to \$4,000 a week stealing and selling cars. He intends to marry the mother of his two children in the near future and would like to eventually start his own repossession business.

10. STOLEN SEEDS
(Edward F. Novak, Phoenix, AZ)

- Q. To this day you deny paternity, don't you?
- A. I don't deny paternity. I've acknowledged the child and I admitted it judicially in a pleading.
- Q. How is it possible that you could be the father of this child without having had sexual contact with the mother?
- A. There are a number of ways. One is artificial insemination.

- Q. Did that happen in this case?
- A. I don't know.
- Q. You don't know whether artificial insemination happened?
- A. That's correct.
- Q. Are you a donor at a sperm bank here in town?
- A. No, I'm not a donor.
- Q. How would she artificially inseminate herself with your sperm?
- A. I'm not quite certain if it even did occur, but there was the possibility of it occurring.
- Q. How would she get ahold of your sperm?
- A. She cleaned my office on several occasions, and there was refrigerated sperm in the refrigerator during that period of time.
- Q. So your theory is, she got into your refrigerator and inseminated herself with your sperm. That's your testimony?
- COUNSEL Object to Counsel's manner of asking the question—laughing.
- Q. I'm not trying to be facetious. Is that your testimony?
- A. I don't have any theory. You're asking how it's possible and that's what I told you.
- Q. What would the other things be?
- A. I told you that I don't recall having any sexual contact with her and that's the truth. I don't have any recollection of it. If this could occur at a time when I was comatose, that's a possibility.
- Q. Were you comatose in February or March?
- A. There was a period of time when I was under very heavy sedation for what has really never been truly diagnosed, but something that kept me from being able to walk.
- Q. And you were sedated and she had access to your body? So that's a possibility? She may have what—raped you without your knowledge? Is that what you're telling us?
- A. I don't know if you want a technical definition of rape. I'm guessing. If, in fact, the child is mine, that's another possible way it happened.
- Q. That she had sex with you without your knowledge?
- A. Without me being aware of it, correct.

11. PRO PER MOTION (E. Grossman, Berkeley, CA)

- THE COURT Do you understand, sir, that if I permit you to represent yourself, it will be without the assistance of an attorney and that you're going to be held to all the technical rules of evidence in criminal procedure?
- DEFENDANT Yeah. I'll have to stop at the library and get a book on law.
- THE COURT And you understand you will get access to the jail library?
- DEFENDANT Yeah.
- THE COURT Do you understand that the case as presented by the State will be handled by an experienced district attorney who's very specialized in the area of criminal law, who has had extensive court trials and jury trials, and that you won't be entitled to any special consideration?
- DEFENDANT All I really need is the Constitution, the Bill of Rights, a Holy Bible and a handgun.

12. THE ORDER (N.Y. *Newsday* (10/16/90))

A prominent Manhattan lawyer was arraigned in Manhattan Criminal Court yesterday on charges of impersonating Lenox Hill Hospital doctors and ordering unneeded enemas for patients Hospital personnel followed [his] orders.

13. THE ENVELOPE, PLEASE (Danny Fabricant, Ventura, CA)

- THE COURT I have a document, an envelope within which were contained two envelopes. I have now separated them. They are from the custodian of records of the Los Angeles Police Department. I cannot discern any difference between the two documents. Is there any objection to my opening these to see what they are and then move from there?
- DA Not at all.
- MR. F. None, your Honor.

THE COURT Within the first packet—first packet says, "We have no records."
MR. F. What does the second packet say?
THE COURT "See the first packet."

14. DIRECTION EXPERT
(Andrew Rubin, Santa Monica, CA)

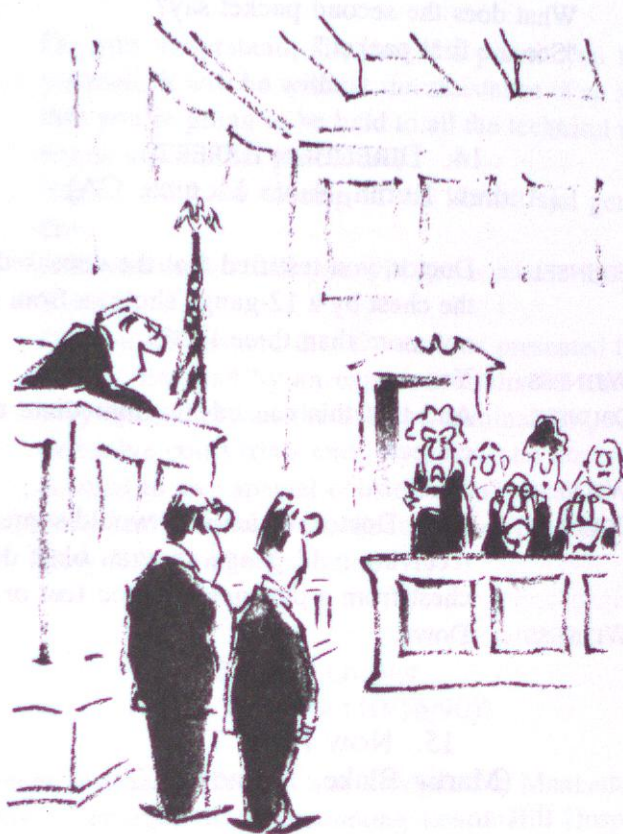
DEFENSE COUNSEL Doctor, you testified that the deceased was shot in the chest by a 12-gauge shotgun from a distance of not more than three feet?
WITNESS Yes.
DEFENSE COUNSEL And that this caused his immediate death, is that correct?
WITNESS Yes.
DEFENSE COUNSEL Now, Doctor, which way would someone fall after receiving a 12-gauge shotgun blast directly in the chest from a distance of three feet or less?
WITNESS Down.

15. NOW HEAR THIS
(Martin Blake, Torrance, CA)

COUNSEL May I interrupt for a moment? There seems to be a member of our audience who is mouthing obscenities at our witness and other things, and I would like that she be admonished.
THE COURT All obscenities must be directed to the Court. You may proceed.
COUNSEL Thank you, Your Honor.

16. JURY POLL
(Dale Cobb, Charleston, SC)

COURT "If that be your verdict, so say you all."
TWO JURORS "You all."



"We find the defense incompetent, the prosecution arrogant, the food inedible, the accommodations insufferable, and the defendant guilty as Hell."

* RODNEY R. JONES, ET AL., DISORDERLY CONDUCT 157 (1987) (Illustration by Lee Lorenz).

17. JURY VIEW
(K. Ronald Bailey, Huron, OH)

DA All right, Mr. C, is it not a fact that this witness came into this Court here and admitted having sexual relations with you in open court, in front of the jury?

18. FROM A POLICE REPORT
(Fred Herro, Monterey, CA)

CONTACTED Small informant, approximately two years old.

19. PROBATION REPORT
(Jean Farley, Ventura, CA)

Regarding an appropriate sentence, Officer C. felt that missing a couple of Grateful Dead concerts would probably hurt the defendant more than anything.

20. NO SELECTIVE RECALL
(Eleanor Schneir, Los Angeles, CA)

Q. Are you being selective about what you remember and what you don't remember as to the details of your previous record?

A. I don't remember.

21. CLOSING ARGUMENT
(Don Holt, Florence, AL)

DA Ladies and gentlemen, the defendant in this case can be analogized to a duck because there's an old saying that if it walks like a duck, quacks like a duck, and looks like a duck, it must be a duck, and the same argument can be made as it would relate to drunks and that's what the defendant in this case is.

COUNSEL

Ladies and gentlemen, I deeply resent the characterization that the prosecutor has made of my client. My client is neither a duck nor a drunk. What the prosecutor has done in this case is create a hybrid bird that is a cross between a pheasant and a duck. I cannot pronounce the name of the new species but it is spelled P-H-U-C-K, and that is exactly what the prosecution is trying to give my client in this case.

22. MEANING OF THE CONSTITUTION (Steven Wax, Portland, OR)

Q. In the course of your years practicing as an attorney, did you have problems with alcohol from time to time?

A. Yes.

DA Objection. Move to strike.

THE COURT On what grounds?

DA It's irrelevant. And I might define for the Court, since I think there are going to be a substantial number of these objections, that it's the State's position that an attorney who has an IQ of 41, who has barely passed the Bar, and who has fouled up every other case they have ever tried is still perfectly capable of giving adequate legal services within the meaning of the Constitution.

23. THE SUBPOENA (Stephen Hauser, Santa Monica, CA)

DA What happened next, ma'am?

WITNESS He unzipped his pants and pulled out his subpoena.

THE COURT Any motions, Counsel?

MR. K. I move to dismiss, Your Honor. All my client did was pull out a subpoena. There's no law against that.

THE COURT Counsel, if the witness doesn't know the difference between a penis and a subpoena, that's her problem. Held to answer!

24. I AM THROUGH
(George Taseff, Bloomington, IL)

THE COURT

All right. The defendant is now back before this Court having not only ceased to make any effort to correct himself but having committed further criminal offenses within the Correctional Center and the defendant has come here to this Court today—

DEFENDANT

And told you you are a homosexual.

THE COURT

And affronted the dignity of this Court.

DEFENDANT

You have no dignity, you punk.

THE COURT

And has threatened to commit further acts of violence within the Department of Corrections.

DEFENDANT

Sure.

THE COURT

The Court can only conclude this defendant is a recidivist of the worst nature.

DEFENDANT

And so is your mamma.

THE COURT

I'm going to sentence you to an extended term of ten years imprisonment. Do you have any questions?

DEFENDANT

Yes. Can I kick your ass?

THE COURT

No, you may not. You may take him away.



"I UNDERSTAND HE SPECIALIZES IN FREAK ACCIDENTS"

* Illustration by Bill Berger © 1993.