



short-story contest winner

3rd place
MICHIGAN Bar
Journal

Crapshoot

By Jeffrey Caminsky

Gray skies shrouded the crumbling, soot-stained building. Chains blocked the cracked marble stairs leading to the entrance, and a sign led visitors to the side door. On the fourth floor, Justice Holmes peered sternly from the courtroom wall as the ponderous frame of Westbrook W. Winklebinder rose for the defense. The public—the victim’s family and a journalism student on a class assignment—awaited the famed lawyer’s cross-examination, while the jury watched attentively. The judge stared at the ceiling, wondering what to have for lunch.

Winklebinder loved cross-examination, the clash of wits, the semantic traps. Sometimes, he felt guilty about humiliating people on the witness stand, but that was his job. Like the complaining witness sitting nervously on the witness stand. He bore her no ill will; he didn’t even know her. But she stood in the way of defending his client, so he had no choice. And destroy her he would, he was sure of that.

Not that he doubted his client's guilt. On the contrary, this one was quite candid about it. Winklebinder liked that; it showed the team spirit needed for a successful defense. And it let Chadwick Huntington Jones supply the details needed to sink the prosecution's case. Winklebinder had never seen a rape victim who wasn't the prosecutor's biggest liability. If pretty, she was a seductress; if ugly, the attack lacked a motive. And an ill-chosen word, on the stand or during the "unfortunate incident," always gave him plenty of ammunition.

This case was easy, though. No jury would imagine such a pretty girl stopping to help three scruffy motorists without ulterior motives. And his ne'er-do-well co-defendants helped matters by skipping bail. Seeing Chadwick's seedy friends might have sunk the case, but since mentioning the bail-jumping was forbidden, the jury would start to wonder why Chadwick was standing trial all by himself. The law was so cooperative, the lawyer chuckled to himself.

Winklebinder gazed at the witness fidgeting in her chair. Young and attractive, auburn hair caressed her shoulders and her eyes darted anxiously about the room. But on to business, he sighed.

He began genially, asking about her background and hobbies, drawing out facts which, in expert hands, would ravage her story. Bored at school; unhappy at home; no steady boyfriend, but curious about sex. Having stored enough trivia for summation, he paused before the attack. The innocent brown eyes were unsuspecting; he'd drawn his quarry to the trap.

"Miss Wilson," he began in his kindest avuncular voice. "You stopped to help my client because his car was, shall we say, in disrepair?"

"Yes."

"Do you know anything about fixing cars?" he asked, arching his eyebrows dramatically.

"No, not really."

"In fact, you circled around the block, passing a police station on your way back to 'help' them."

"Yes, but I didn't know—"

"Cars were passing left and right, all around. Any of them could have stopped to help. But you had to stop yourself?"

"Nobody was stopping. And the next service station was—"

His eyes flared in practiced indignation, his voice was crisp and demanding. "Your mother never warned you about stopping to pick up men?"

"I didn't—wouldn't—I was just trying to help. Besides, I never thought—"

"You never screamed when they pushed you into the car?"

"I was t-too scared." Her voice cracked with emotion, fear paralyzed her brain. It was coming back to her in waves of horror and disgust. Terror chilled her spine, and she flushed helplessly.

"And you never even tried escaping?"

"The car—was—moving too fast, and I—"

Winklebinder raised his hand to silence her, letting confusion flood her brain before moving in for the kill.

"You're an accomplished athlete, Miss Wilson, are you not?"

She nodded.

"Answer out loud, please," he thundered. "The court reporter needs your answer."

"Yes." She lowered her eyes.

"In high school you were a girl's track star? And basketball? And gymnastics?"

"Yes, but—"

"And," he said, pointing to the balding, overweight pillar of the community in the borrowed three-piece suit at the defense table, "my client is not in very good shape. Do you agree?"

"I don't know."

Silence rang from the lectern. The witness fought to regain her composure while the shocked attorney struggled to contain his bubbling rage.

"You don't know? You couldn't tell when he 'forced' you into the car?"

"Well—"

"Or tore the clothes from your body?"

She shook her head helplessly. Tears flowed from her reddening eyes. She wanted to crawl into her chair and hide, but all she could do was cry.

"Or 'forced' himself on top of you?"

"Your Honor!" interjected the prosecutor.

The witness looked at the judge for help. Stirring from the reveries of judicious contemplation, he called a recess and descended from the bench.

"Call me when she's ready," the wizened jurist whispered to his clerk on his way to chambers. He creaked past the receptionist and entered his cluttered office. Closing the door behind him, he ambled to the couch, his drooping eyelids anticipating a well-earned nap.





Everyone in court knew the case was over.

The prosecutor, a self-conscious young man named Higgins, walked to the window and looked at the dirty gray sidewalks and smelly buses below. His mind drifted to the second-degree murder case set for tomorrow, a case even worse than this one. At least today his witness wasn't a drug addict who remembered seeing the defendant kill the victim after a two-week stay in jail. And he hoped the file surfaced today. He hated preparing cases on his way to court.

The victim's father squeezed his wife's hand. Their hearts pounded together, aching at their daughter's ordeal. The victim gratefully sipped the glass of water the court clerk had given her. Eyes still glistening, she burned with shame, resigning herself to a last humiliation at the hands of Chadwick Huntington Jones. The thought that her suffering was nearly over did little to relieve the agony, and all too soon the bailiff rose to announce that the judge was taking the bench.

The rest of the trial passed uneventfully. Like workers on the assembly line, everyone went through the motions, waiting for quitting time. Winklebinder caught several witnesses in a few meaningless inconsistencies, just for practice. But he saved his fury for closing argument.

As always, his argument was brilliant.

Touching. Poignant.

And absolute nonsense.

"I have all the sympathy in the world for Sally Wilson," the barrister said, sadly shaking his head. "A beautiful young woman. Kind. Lonely. Caught in the web of urges she's just beginning to understand. And trapped by the conventions of morality.

"Yes, trapped I say," he stormed, indignity dripping from every pore. "Trapped by a modern hypocrisy that winks and smiles at the New Morality, but crushes those caught in its snare. That beguiles us with tales of Love's sweet pains and tender passions, but condemns those too rapt with infatuation to observe the rules.

"And when those minions of the Law descended on that car to find these two in passionate embrace, what choice did she have? Her reputation is ruined if she admits surrendering to the charms of men she just met! Confronted by the police, facing a lifetime of humiliation in the disapproving looks of those she loved, what choice had society left her?"

Gravely, Winklebinder paced before the jury, his frame made heavier by grief, his voice oozing pity.

"That lonely, confused girl couldn't help responding as she did," he said, directing his remarks at the middle-aged juror with a Gothic romance protruding from her purse. "The shame, the embarrassment, were too much for any young woman to bear. And once she made the accusation, she couldn't back down. She couldn't confirm the suspicions. The whispered doubts. The dark rumors.

"But it meant," he continued with a flourish, "that the truth had to come out today. Before this court and before you." He saw several heads nod in agreement and knew his case was won, but he enjoyed oratory too much to stop when the words were flowing.

"You see, I cannot let the mill wheel of Justice grind my client to dust. A young woman's honor is important, even in these permissive days. But not as important as an innocent man's freedom." His jaw jutted and his eyes looked into the misty distance. He paused, then bowed his head as if in prayer.

"This is a sad case," he said. "A tragic case—a case flowing with tears and sorrow. But the only thing that could compound the tragedy is a guilty verdict by you.

"The chosen twelve," he whispered, his voice choked with emotion. "The jury. For a verdict of 'not guilty' is all that will free them both—my client from the Sword of Damocles dangling above him; Miss Wilson from the crushing weight of a guilty conscience."

Slowly, the portly barrister resumed his seat, bemoaning life's ironies. He'd almost forgotten that his client was guilty.

In a dreary monotone, the judge read the jury instructions from the judge's manual, explaining in detail such fascinating legal concepts as affirmative defenses and *corpus delicti*.

"Body of the crime," droned the judge as he explained the latter, leaving the jury to wonder why the prosecutor had to prove the body of a rape case when they could all see her quite clearly when she testified. But this confusion was minor, lost amid explanations and definitions they were now hearing for the first time. While both attorneys doodled on legal pads, the jurors all wondered why the judge waited until they'd heard all the evidence before telling them what to look for. But they listened in respectful silence, nevertheless.

Winklebinder peered anxiously at the clock. Hungry jurors don't convict, he told himself. Experience told him that the

quickest path to acquittal was through a dozen growling stomachs. Send them to deliberate before lunch, you senile toad, he thought, silently drawing circus animals until the jury instructions were over.

"Getting late," the judge droned, stifling a yawn. "Jury's excused. Back at two." As he started to leave, the clerk caught his arm and whispered something into his ear. Grudgingly, the judge sat down again.

"Right," he nodded. "Don't talk to anybody about the case. And don't discuss it among yourselves until you're in the jury room.

"Court's recessed." His bones creaked as he rose, and he walked slowly to the door. He felt so tired these days, and his legs stiffened if he sat too long.

At 2:18 p.m., the judge sent the jury to the jury room to deliberate.

At 3:15 p.m., the jury returned to announce its verdict. The jury foreman rose, a plump, balding man of 50, who could have passed for Chadwick's brother.

"Don't worry," Winklebinder winked at his client.

"The defendant will rise," said the bailiff.

Chadwick Huntington Jones stood to face judgment, conscience beating his heart like a kettledrum. But he'd seen his victim destroyed on the witness stand. He could taste the steak and beer dinner he'd order that night, and hear the sounds of the strip club where he'd go to celebrate. He could even smell the fresh air of freedom, which seemed musty ever since his release on bond.

"Mr. Foreman, what is your verdict?" asked the judge.

"Guilty as charged, your Honor."

Winklebinder's eyes bulged as if he were choking. Chadwick sank into his chair with a thump. In the back of the courtroom, Sally Wilson burst into tears, and her parents led her into the hall.

Nobody'd miss him, and he'd earned the extra time off. He didn't relish tomorrow's trial, but at least he could savor today's unexpected victory.

"Bond's revoked, defendant's remanded to custody pending sentencing on..."

"October 29th," said the clerk.

"October 29th," repeated the judge, and he banged his gavel. "Court's adjourned."

"The jury, your Honor," the clerk whispered.

"Right," said the judge. "Jury's excused. Good job. Thank you." He rose and left the courtroom, leaving a mass of books and papers for his secretary's ministrations.

Seated at his table, the prosecutor exchanged nods with the jurors as they filed out the door. Hungry and tired, he had a major case to try the next day with no preparation, and the room's heater was making him sweat. He was also the most astonished person in court.

He wondered what he'd done right.

Alone in the ancient room, Higgins stuffed papers into an old leather briefcase as the clock ticked silently on the wall. It was four o'clock; he could leave for home now. Nobody'd miss him, and he'd earned the extra time off. He didn't relish tomorrow's trial, but at least he could savor today's unexpected victory.

Winklebinder returned to the courtroom, muttering angrily. He carried dignity well, but consternation turned him into 300 pounds of sputtering obesity. Glowering at his adversary, his jowls were set like steel. But not wanting to seem a bad sport, he sighed and even extended his hand in congratulations.

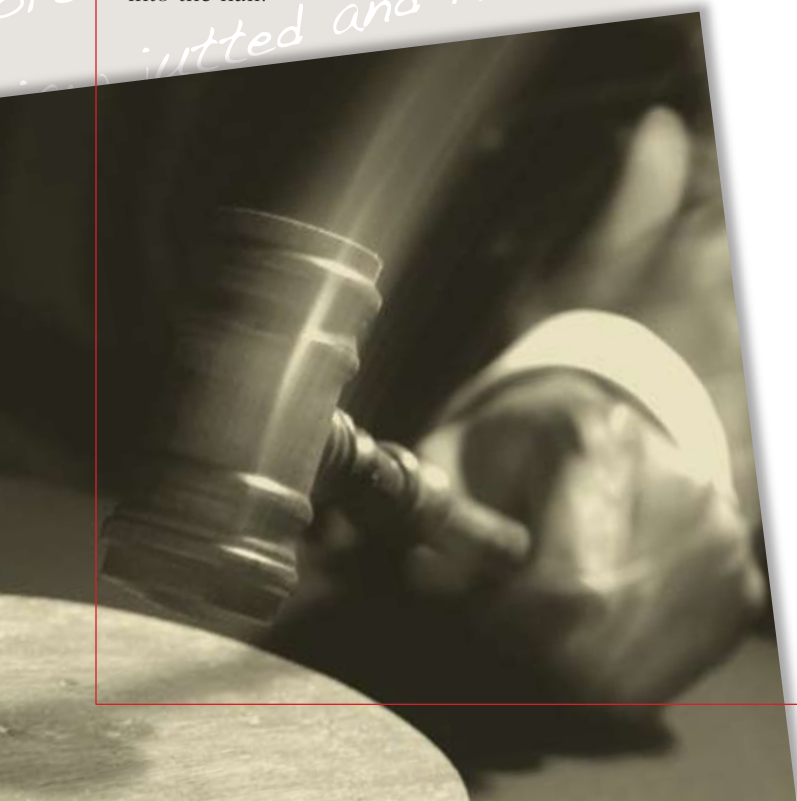
"Thought I had a winner there, Higgins," he said, mustering all the good nature that such an obvious miscarriage of justice allowed. "I guess the better man won."

The two lawyers chuckled.

"How do you figure juries?" began the prosecutor. "I could have sworn—"

"Well, must be off," Winklebinder interrupted. He looked at his watch, having no real interest in bantering with a post-pubescent twit. "See you on the 29th." As he left, the court clerk entered.

"Charlie," the prosecutor tried again. He often had problems getting people to listen to him, which sometimes made him wonder if he was cut out to be a trial lawyer. "I'll never understand juries. I thought that case was a dog the minute I opened the file. Guess you never know."



The clerk frowned, unsure how to begin. He looked to see if anyone was listening.

"Mr. Higgins," he whispered, "we have a problem."

The prosecutor blinked.

"When I was going to the second floor to return the file to the records room, I rode the elevator with two of the jurors."

"So?"

"I know why they convicted him."

The prosecutor smiled beneficently. Laymen panicked so needlessly, he thought. "Charlie," he said reassuringly. "Jurors are free to talk when the case is over. You know that."

The clerk shifted his weight uneasily and lowered his voice even further. "They said that while eating lunch in a local restaurant, one of them heard a cop talking about a rape trial finishing up today. Knocking a judge for suppressing somebody's record. Five rapes this guy committed. They didn't want to turn a rapist loose, so they convicted Chadwick."

The prosecutor squinted in disbelief. "Charlie, Chadwick has no record."

Charlie closed his eyes and nodded.

* * *

The elevator door closed, and the cage jerked noisily toward the ground floor. *People versus Glichmeister*, thought Higgins. Eighteen seventy-six. Juries can't impeach their own verdicts, the court had decreed. The facts were similar to this case, but it was more than a hundred years ago. Back in the dark ages, as far as the criminal law goes. No telling what courts would do today.

He sighed bitterly. He hated to cloud his moment of glory—they did come so infrequently—but the State Bar frowned on prosecutors withholding favorable evidence from the defense. He'd tell Winklebinder tomorrow; the Law giveth, and the Law taketh away. The elevator stopped on the third floor and Gary Hartman entered, muttering angrily.

"Hello, Gary," Higgins said to his colleague, the top trial lawyer on the staff. Like Winklebinder, Hartman's ability was exceeded only by his ego, but Hartman's ego was leavened by his intolerance for ability, or its lack, in anybody else.

"Damn juries," snorted Hartman, plopping his briefcase on the floor. The door eased shut and the cage creaked as it resumed its journey earthward. "That case was a lead pipe cinch. Six eyewitnesses, two doctors, a bloody victim, and a defendant who brags to his buddies. So the jury lets him go. It's quite a system we have, Higgins. Quite a system."

Higgins nodded sympathetically. The same thing had happened to him. Actually, it happened rather often.

"The guy commits five, six rapes, see? But the judge thinks it's too prejudicial to let it in. Inflames the jury, don't you know. And somehow the Twelve Turkeys get it into their collective heads that this victim likes the rough stuff, that she likes getting slapped around. But the defendant looks like a goddamn choir boy, so they acquit him."

Hartman grunted. He hated discussing his failures, even for the therapeutic value it gave him. He especially hated discussing

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them with the worst trial attorney on the staff. Some found it hard to dislike Higgins because he tried so hard, but last year the man had set an office record by failing to convict anyone for the whole month of July. And that included two weeks spent in misdemeanor court, trying shoplifters.

Still, everyone knew the kinds of cases the front office gave Higgins. Talking to him was always good for a few laughs, and Hartman felt the need for some cheering up.

"How did Chadwick go?"

"Tough case," came the gritty reply. "But we managed a conviction."

Hartman's face reddened.

"As charged," added Higgins. They rode the rest of the way in silence.

The elevator jolted to a halt on the first floor, and the door opened into the lobby. The two men left the building and walked into the open air. Hartman turned right and headed to the parking lot, glad that tomorrow was Friday. Higgins paused a moment, then turned left, toward City Hall.

The sun had just broken through the clouds, lending a bracing warmth to the crisp October air. Higgins decided to try to find the missing murder file once more, before going home. Justice had triumphed, if only for a day, and he wanted to keep the streak going. And if tomorrow snatched away his victory, at least he'd known a moment of glory. He whistled as he crossed the street, drinking in the sunlight and bathing in the golden glow of autumn. ■



Jeffrey Caminsky, a long-time assistant Wayne County appellate prosecutor, lives in Livonia with his family. He enjoys a variety of interests, including music, sports, camping, photography, and reading. (He used to enjoy politics and current events, until they started to depress him; now, he finds both to be a lot like following the Lions).