

Parable #5 - Sometimes S*** Happens



Advocacy Club Parable #5: Sometimes, S*** Happens

by John Hollander, around 1,150 words

For the most part, lawyers work in a time under their control. They can spend all week or all night preparing the perfect presentation, brief, or examination. In court, they control what goes on around them. If cross-examination is a contest for control, it's usually an unfair fight that favours the examiner. But occasionally – rarely – events unfold in a flash. How you react tells you more about your make-up than all the time spent in preparation mode.

OK, let me explain a bit about how we lawyers run lawsuits – the civil procedure part. Hmm, still awake? OK, let's say you're a young lawyer, and your client hires you to sue a guy who owes it a bunch of money. Say that your client's a small credit union. A few locals formed a savings and loan to serve other locals. Local resources support local residents. Great for the community, right?

Next, you send a demand letter that gets ignored. You draw up a legal claim and issue it in court. You find and serve the debtor. In this case, say the debtor's a local lawyer who dabbles in real estate investment. Say the guy financed a seniors' residence to be operated by his regular client, the Notorious Bad Guy, or the NBG as we'll call him. Confusing? There are two guys here. The lawyer is the credit union's client, and the NBG is the lawyer's client.

Anyway, the lawyer put legal title in his own name, which he wrote as, let's keep this anonymous, shall we? "Mr. Smith, to Uses." Whatever that means. I looked it up in **Black's Law Dictionary**, every lawyer's fave. The phrase is archaic and suggests the named owner holds the property "for a relative", whatever that means. A whole lot of meh, right?

OK, let's get on with the story. Only this happened to me, so I'll stop with the fancy, second-person, present-tense storytelling. To pick up where I left off, the lawyer filed a defence that said we sued the wrong guy. We should have sued the NBG, even though no one in their right mind would lend money to him. He was notoriously bad, after all.

I scheduled a deposition, a meeting in a conference room where I could examine the opposing party, Mr. Smith to Uses, under oath. And that's where it all went south.

I was suing a lawyer, so what was there to worry about, right? Lots, as it turned out. I set up the meeting on the neutral grounds of an office of court reporters, video and audio recording equipment, the whole shebang. I arrived on time and sat patiently as opposing counsel, Mr. MacMillan, came late with his client, the lawyer who signed the mortgage. I looked to see if Mr. Smith carried any "uses". But I didn't then and still don't know what they look like. I didn't see anything unusual.

I asked Mr. Smith to Uses the usual questions. He confirmed the obvious facts and admitted, gracefully, mind you, that my client never heard the name of NBG from him, whether to Uses, or otherwise. Finally, I reached the loan agreement registered on title to the seniors' residence.

Holding it up, I asked, "Is this the mortgage to the property we have been discussing?"

"How would I know?" he said by way of answer. Can a witness answer a question with another question?

I persisted and held the document upright in front of me. “Well, is that your signature?” Helpfully, I pointed to where the type clearly read, “Mr. Smith to Uses,” and carried a signature that read only, “Mr. Smith.”

The witness squinted as he tried to read a document that was, maybe, two feet from his face. He leaned into the table to get closer. All I heard from him was a mumbled bunch of syllables. To that point, he had spoken quite clearly. The reporter could transcribe this session, easy peasy. Just not this response.

I tried again. Same question. Same mumbled response.

“Yes or no, Mr. Smith. Did you sign this document on June 12?” I still held the mortgage in front of me, trying to be helpful. And Mr. Smith to Uses took a swing at me. Really. I ordered the transcript later, and here’s how it read:

143: Mr. Murphy: Yes or no, Mr. Smith. Did you sign this document on June 12?

Mr. MacMillan: He did not hit you.

Mr. Murphy: Yes, he did hit me. He took a swing and punched me through the mortgage, right on the nose.

Mr. MacMillan: Stop feeding the record, Mr. Murphy. My client did none of those things.

Mr. Murphy: Reporter, didn’t he do what I just said?

Mr. MacMillan: Don’t involve the reporter. This is just about Mr. Smith and you. Are you the witness now, Mr. Murphy?

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That's how I recall it now, too, long after the fact. But what really happened was that Mr. Smith reached for the mortgage, maybe to rip it out of my hands, maybe to get a closer look, maybe to hit me. Who knows? His hand went too far and pushed the document into my face. My nose, not the smallest, got in the way. The impact sure felt like a punch to me. Did he mean to strike me? Beats me. Actually, it did.

After that verbal exchange, Mr. MacMillan proposed to go "off the record", meaning the tape would turn off. I refused his proposal. I almost heard my law professor bellow at me, "Never turn the damned tape off, Murphy!" I did have the presence of mind to declare an adjournment. I strode out of the room to compose myself in the washroom down the hall. A splash of water on my face did wonders. I returned feeling better and with a plan to complete the examination.

Mr. MacMillan proved his worth that day. I could imagine the lawyer-client discussion that took place in my absence. I asked more questions after returning, and Mr. Smith was as polite as possible. Subdued, even, like a child chastened by a grown-up.

Later, I brought a motion for early judgment, which succeeded, and the case drew to a reasonably rapid close.

What happened that day in the deposition? Who can say for sure? In the grand scheme of things, who cares? Mr. MacMillan and I ran into each other in other cases and remained civil, as though it was all in a day's work. My client prevailed in its lawsuit, and my nose was never bent out of shape. I had kept my cool and completed the mandate in the moment. And that was the lesson. I made good decisions in a crisis based on a moment of calm, face-washed reflection.

The end.