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# Lunch at MacDougal's

Patrick C. O'Reilly

He was late. Not much, but it was already a little past noon as he pulled his car up alongside MacDougal's Bistro. When he had to parallel park in a tight spot behind a big black Mercedes S class sedan, at least one head at a sidewalk table anxiously turned to watch, one of a group of seven sitting at the corner table for a Saturday lunch. Seven divorce lawyers who, in John's mind and certainly in their own, were unquestionably in the top ten. If John Callahan had his way, it was also a group—whose members were ten, twenty, even thirty years older than his scant thirty years—that would eventually have to accept him as an equal.

It had been five years since John had become a matrimonial lawyer, practically overnight. That had happened in October 1982, when John took a position with a large Buffalo law firm seeking to create a matrimonial department to handle what was expected to be the lucrative practice resulting from New York's new Equitable Distribution Law. Prior to that offer, his legal experience had consisted of just two years as an assistant district attorney, a position that he had obtained through family political connections. John had enrolled in law school based primarily upon the desire to make a better living than he could by reactivating his Teamster's Union card and returning to the truck docks that had paid for his college education. He had previously had little interest in matrimonial or family law, as the legal community euphemistically referred to divorce practice. However, the recent legislation had radically altered the rights and obligations of people getting divorced in New York, and, more importantly, had brought about a dramatic change not only in the substantive law but also in the way in which lawyers would have to go about the business of divorce practice. John had been given the offer by a senior partner in the firm, who had asked him to stop for a drink after they, as adversaries, had finished the trial of a minor criminal matter during a night session of a local town court. As he sipped his drink, John's ambitious mind had fixed upon the fact that with the sea change in the law, the offer represented an opportunity to get in on the ground floor of what looked to be a new and wide open field of law. His decision, but for some wrangling about compensation, had been made in less than five minutes.

Since that time, John had worked with a passion to succeed and had worked even harder to project the appearance that it all came easy to him. As the years passed, he was involved in many cases in which he had faced one or another of the attorneys sitting at the table. Each and every time, John had over prepared.

Whether to settle well or to try the case if necessary, he had drilled himself with even the most minute factual details and every legal nuance possibly relevant to each case, in recognition that he was working with or against the best.

As he walked up to their table, he was certain they had seen him, yet they continued to talk without acknowledging him, which foretold the distinct probability of some chain jerking before he could take his seat. The group's discussion was being led by "Dr. Intrigue," Joseph Fortuna, who prided himself on being the best informed as to what went on in the legal community, and John suspected that Fortuna made some of it up as he went along. Next to him, dressed in casual clothes, which undoubtedly cost more than John's best trial suit, was Michael (a/k/a Moshe), Slotwin, who had been better than most at turning a profit with a matrimonial practice, thanks in no small part to Gloria Hassman, sitting appropriately at Slotwin's right hand. When Moshe couldn't settle, it was invariably Gloria who showed up for trial and then, despite her prim and reserved appearance, it was "hail fellow well met" and "look to yourself" in the courtroom. Sitting at Hassman's right was Wild Bill Buckingham, the elder statesman at the table, still glad to be thought of as crazy as the proverbial shithouse rat, a reputation he used to great effect. Rounding out the table were Ed (Sabby) Sabatowski, a bulldog with blinders once he decided what he thought his case is worth; Ray Fasso who despite a serious and abiding love affair with food of all kinds, still carried himself like the competitive ballplayer he was, a competitive edge that translated well into a courtroom setting; and Allen Polk, the person closest in age and temperament to John, who also shared John's penchant for cinematic reference and had made the call to invite John to lunch.

Before John even got within ten feet of the table it started with Slotwin, "Nice job parking. What's that you're driving? An Oldsmobile? We're going to have to work on that." "I thought that land barge was yours. Don't put down the Olds, it's the first brand new car I've ever been able to buy. Besides Moshe, what does your father have to say about your investment in German engineering?" Callahan said, followed immediately by Buckingham, "Never mind cars, young man, you're late. The meeting starts at twelve o'clock sharp, with the first agenda item which is 'Courthouse Gossip,' and we've already started."

"Sorry gentlemen, but I usually try to hang in at the office on Saturday mornings, at least until I can give a 'Harumph' to our managing partner so I can save my 'phoney baloney job.'" To which Polk retorted, "What, is 'Governor LePetomane' running the firm now?" "No it's still Simon Suskin, and he didn't get in till almost noon today" laughed Callahan, only to be brought up short by Sabatowski who pointedly asked, "Who the hell is Governor LePetomane?" "Don't you remember Mel Brooks' character in *Blazing Saddles*?" answered Polk. From Buckingham, "How is Simon these days?" As John was giving the obligatory response, Fortuna interrupted with a gleam in his eye, and brought the discussion back to the agenda with something he obviously had been holding back until John arrived. "On the topic of 'Courthouse Gossip',

I suspect Mr. Callahan might have an item of interest stemming from a certain appearance before the Hon. Gerald Forscythe yesterday afternoon.”

“Joseph, I can’t imagine how you got wind of something that happened just before the close of business yesterday, a Friday afternoon, but if I’m going to explain that, at least let me get a drink order in. I can see by the color of Mr. Polk’s glass that they still have Anchor Steam on tap.” “By all means, the Irishman has to have a beer in his hand to tell a story,” interjected Hassman who was sitting with an unsweetened iced tea in front of her. “Indeed, I have a ‘terrible thirst,’” Callahan responded, playing into the stereotype. After a bit of laughter and the drink ordered, Callahan began.

“To understand yesterday you’ll need a little background. My client, the wife, came to me after her husband had chased her out of the house. When she went to the neighbor’s house for help, the bastard followed her and kept banging on the neighbor’s door until the cops came and arrested him.”

“That should have made it easier, with a protective order in place and the husband out of the house from the get go,” offered Slotwin. “You’d think,” said Sabby abruptly with an unexplained note of disgust in his voice. “As Ed can attest, that’s how it started,” Callahan acknowledged, which remark generated a few glances in Sabby’s direction. “I had him early on but had to get out,” Sabby stated to knowing looks but no comments from the others.

“Anyway,” Callahan continued, “we had a lively deposition, starting with this self-employed individual being asked to explain the non-sequitor between the \$34,000.00 W-2 he issued himself for tax purposes and the thirty nine foot Bayliner he bought for cash last year and kept at a slip in the Erie Basin Marina—”

“South Money!” Fasso offered.

“Oh yeah, and not smart about it. By the time we finished that day, we had \$130,000 run through the personal checking account in the last twelve months, personal expenses including the boat slip being paid out of the business, and a life style I only wish I could afford. All in all a good day, but later that night while I’m sitting home watching Magnum P.I. with Julia, the phone rings. Julia, who’s sitting with our six month old daughter on her lap, answers the phone, says “What?!” and then turns white as she hangs up the phone. When I ask her what happened she tells me a man on the phone said “I hope you’re enjoying tonight with your husband because he’s not going to be around much longer. He’s going to be dead!” Since there was no doubt in my mind about who it was, and being a savvy, streetwise divorce lawyer and officer of the court, what do I do?”

“Does the answer have anything to do with growing up in a steel town with a blue collar attitude?” asked Fortuna with a smirk.

“Close. I called my client’s home number and when her teenage daughter answered I got her to give me her Dad’s number and called it. The call was picked up by an answering machine and I was in the middle of leaving a

message which began 'If you ever call my home again I'll...' when I started to think."

"Yeah, you thought one Class-E felony, telephonic death threat wasn't going to justify another," suggested Sabby.

"The very thought, so I wimped out and ended with 'you're going to jail!' In any event, the case went along with the guy continuing to be a complete asshole, until he eventually did me a big favor."

At which point, Ray Fasso put up his hand signaling a halt, saying, "Wonderful story but first things first. This beautiful young lady is here to take our orders." Once the orders were taken, and Ray Fasso had somehow gotten away with giving the waitress a shoulder massage without even an annoyed look in return and had convinced his neighbor not to turn down the French fries which "won't go to waste," Callahan continued.

"The favor. Because of the protective order, the parties were using a babysitter to help out at pickup and drop off times for visitation, when on one Sunday, which called for a curbside pickup at the guy's home, he started screaming at the babysitter and getting all worked up while they were standing on the driveway. When my client got out of the car and ran up the driveway to get the kids out of there, he hauls off and smacks her." From Polk "Was she hurt?" "Not much but enough is enough. Anyway, she didn't want to call the cops and have him arrested in front of the kids, so she came to my office the next morning and we brought a contempt proceeding, which ended in the hearing yesterday afternoon."

"It couldn't have been much of a hearing," said Buckingham, losing interest. "That's what I thought, but a little less than two weeks before the hearing, Charlie McLean, the guy's fourth lawyer, sends me a report from Bob Woods, who says the guy suffers from post-traumatic stress disorder relating back to Viet Nam. According to Woods, when my client ran up the driveway at him while he was in the middle of a stressful situation, his mental disorder caused him to strike out, involuntarily. Hence, no deliberate act and no intentional contempt of the court order."

"Woods is a really good psychiatrist and hard to beat on the witness stand," remarked Polk. "I know," said Callahan, "I've used him as my own expert which, of course, Charlie had him point out during his direct testimony, but I'm getting ahead of myself. The report said that he spent his twelve-month tour with a recon unit out in the boonies, and during that time 'in country' he saw a number of friends killed and later was with the patrol, which found their heads propped up on spikes the VC had set out in the jungle. When I asked my client about it, she said he never told her anything like that, but said that the guy had been married to someone else at the time."

"Did you subpoena his service record?" asked Hassman whose interest had been piqued much more by the litigation problem than the rest of the story.

"I did, but because it was the Army, I had to get the judge to sign a judicial subpoena, and due to the short notice, it had to be made returnable in the

courtroom on the day of the hearing. I couldn't get it any earlier." "Ouch, so you had to prepare two crosses for Woods?" Fasso interjected, getting a nod from Callahan. "In any event, I got to Forscythe's courtroom just before two o'clock yesterday. The court reporter was already there, and Forscythe's deputy, Joe Burke was sitting in the jury box reading the newspaper. When I checked in with the court clerk, she handed me an envelope which had been delivered by the United States Army. It contained a nice blue booklet bearing the sworn certification of the record keeping officer, accompanied by a raised golden seal and a bright red ribbon." "A self-authenticating document," Hassman stated, enthusiastically referring to the relatively rare type of document that could be offered into evidence without calling a witness to identify and authenticate it and without asking opposing counsel to stipulate to its admission.

"Gift wrapped," offered Fasso. "And what a gift," smiled Callahan. "While I was reviewing the record, just as I got to the part that says the guy served his entire tour in the Army Press Corps as a cameraman in Saigon, and before Charlie even got a chance to look at it, the judge comes in, takes the bench and says, 'It's Friday afternoon, so let's get going. Mr. Callahan it's your application.' I did bare bones. They stipulated to his knowledge of the protective order, and I put my client up just to establish that she was punched, without putting anything on concerning the defense. I didn't even do any redirect after Charlie cross-examined her about running up the driveway. I just rested in order to shift the burden to Charlie as quickly as possible. Then to top it off, Charlie who's a little off his game because we're moving so fast, points out that Dr. Woods, 'whose time is valuable,' is already out in the hallway, and asks if we can put him up out of order, even before Charlie's client testifies as to the facts."

To which Hassman observed, "And with the service record sitting on your counsel table, you're more than happy to accommodate him, nice guy that you are." "You can say that again! It set up a cross which was right out of Woody Allen's 'don't you wish life was like that' scene with Marshall McLuhan in *Annie Hall*," which comment, to Callahan's surprise, got a rise out of more than just Polk.

"I can give you a short version of the play by play if you're interested." And as everyone else seemed content to eat and listen, Callahan recounted as if he were reading the reporter's transcript:

"Q: Doctor, as I understand it, it is your opinion that the defendant's act of hitting his wife was the involuntary result of post-traumatic stress disorder?"

"A: Yes.

"Q: And is it correct that your opinion is based upon the stress the defendant suffered while serving with a recon unit in the jungles of Viet Nam?"

"A: Yes, and the severely harsh things he experienced during those times.

“Q: That would include seeing his friends killed and later finding their heads impaled on spikes, as you recount in your report?”

“A: Yes, such experiences would understandably put him at great risk for disorders resulting from such emotional and psychological trauma.

“Q: Where did you get the facts you relied upon Doctor?”

“A: The defendant related his history to me.

“Q: Did you do anything to independently verify the story he told you?”

“A: No, nor is it my practice to do so unless there’s some question about it?”

“Q: Your Honor, at this point I would offer what I’ve had marked as Plaintiff’s Exhibit 1 into evidence. It consists of defendant’s service record in self authenticating form, as it bears the sworn certification of the record keeping officer, the seal of the United States Army and was delivered to this court pursuant to the court’s own Judicial Subpoena.”

“Did Charlie try to object?” asked Hassman.

“All he could do was ask for time to review the record and Forscythe looked at the clock and said he’d get that if he wanted to do any redirect. So the cross continued:

“Q: Doctor, on page two of Defendant’s service record in evidence, there’s only one paragraph concerning Viet Nam, correct?”

“A: It would seem so.

“Q: That paragraph reveals that Defendant spent his entire tour as a cameraman in Saigon, correct?”

“A: Yes.

“Q: No recon platoon?”

“A: No.

“Q: No severed heads in the jungle?”

“A: No.”

“I love it when a plan comes together,” offered Polk.

“Wait! It gets better,” Callahan added.

“Q: Doctor would you look at the paragraph previous to the one we’ve been discussing?”

“A: Yes I see it.

“Q: That relates to an incident at Fort Bragg which occurred before the Defendant was even posted to Viet Nam, doesn’t it?”

“A: Yes, by the date, yes.

“Q: What does it report?”

“A: It says that the Defendant was taken into custody by MP’s who had responded to a domestic violence call, but that his wife declined to press charges.

“Q: Viet Nam couldn’t explain that away could it Doctor?”

“A: Obviously not.

“Q: Doctor, if the truth concerning the defendant’s military service is that contained in his official service record as opposed to what he told you after he punched his current wife and was being called upon to account for it, would that change your opinion?”

“A: Well, yes. I couldn’t conclude that he suffers from post-traumatic stress disorder.

“Q: And you could not give this court any psychological explanation which would in any way mitigate the reprehensible nature of defendant’s conduct when he punched his second wife, the plaintiff here, could you?”

“A: No.”

“Don’t you just love an expert with professional integrity?” Polk said again. Followed by Dr. Intrigue Fortuna, who said, “But I heard the best part of the story is yet to come.”

Smiling, Callahan took the cue, “Actually, that’s when the defendant, whether he was trying to demonstrate how threatening it is when someone runs at you or whether he really wanted a piece of me, jumped up from the counsel table and came running across the courtroom directly at me. And there I was standing next to the witness box, which is in a dead end corner in Forscythe’s courtroom, and I’m thinking about the look on Julia’s face the night of the phone call, and that if he beats the Deputy and gets to me, I can give him my best shot before the Deputy grabs him. So I just squared off and waited.”

At which point Fortuna, at his mischievous best, said “Hmm . . . maybe you can’t take the steel town out of the boy,” and Fasso followed with, “Did he make it?”

“No. That Joe Burke is quick as a cat. He literally hurdled the jury box rail and had the guy pinned against the evidence table before he got within five feet of me.” “What did Gerry Forscythe do?” asked Buckingham. “Without even raising an eyebrow he simply told Burke to sit the guy back down at the counsel table, said goodbye to Dr. Woods and called a five minute recess. After the break, which included a really heated discussion between Charlie and his client, that I can only assume had something to do with the prohibition against suborning perjury, the defendant declined to take the stand, and Judge Forscythe gave him thirty days to start immediately.”

“Feel good?” inquired Fasso. “Are you kidding? When Burke hooked him up and was leading him out, I blew him a kiss,” Callahan answered.

“Good story,” Slotwin said but then reflected, “You should probably call Charlie Monday and see if he’ll agree to jointly ask Forscythe to let the guy do

his thirty days on weekends.” “Let him rot!” said Callahan, to which Slotwin replied, “Understandable, but he’ll claim that the business went to hell without him there to work it for a month, and worse that he no longer has the income needed to pay temporary support or your fees.” Callahan paused, “I didn’t think of it that way.”

“See, you learned something today,” interposed Sabby, “and besides, think about the bastard having to force himself to walk into the holding center on ten to twelve Fridays before he finishes his thirty days!” “More to the point,” said Fasso taking on a professorial tone, “The true moral of the story is—Get an unlisted home phone number!”

Fortuna then resumed control of the discussion, and after having dominated their time, Callahan thought it best to keep quiet and eat his sandwich during “current events” and “local politics,” but met Buckingham’s sports question of “Who is this Cornelius Bennett?” with a comment about how good it felt to see John Elway have to call a time out when Bennett first took the field during the Denver game. When the discussion had run its course and the check came, Callahan made a move for his wallet but was stopped by Fortuna, who explained that responsibility for the check as well as the choice of the restaurant floated. That day’s lunch was on Buckingham. Then Fortuna interrupted Callahan as he was thanking Buckingham and getting an earful about the benefits of Buckingham’s new platinum Am Ex card, with, “Wait a minute, the best thanks is a generous reciprocation. Assuming everyone can make it next week, where will you have your first lunch, John?” With that one question, Callahan knew he had arrived. He had gained the acceptance and the recognition his ambition had driven him to crave from the professionals whom he most respected.

As the group was breaking up, Polk put his hand on Callahan’s shoulder and quietly suggested, “I’d say a stop at the bar might be in order.” After Callahan advised that he was on a “short leash,” Polk rejoined with exaggerated formality, “Would that still be a problem, sir, if we were to stay within the confines of Thomas Mitchell’s concession at the end of ‘Stagecoach?’”

Buoyed by pride in what he perceived to be the success of the day, a perception that Polk without saying it seemed to share, Callahan gave the only possible response: “Just one!”

