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Prague Spring

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“You know, I don’t recall giving you permission to dress down like that. You’re still representing the firm.”

On most days, even a gentle rebuke from Stephen Mallory, the litigation wunderkind and partner-in-waiting, would have left me stammering for an answer. But today I felt emboldened. Perhaps it was because I knew Stephen had specifically chosen me for this deposition. Perhaps it was because my instinctual fear of him was tied to the firm’s New York offices, which were now three hours and 150 miles away. Or maybe it was simply because it’s hard to be intimidated by any man, even a future partner of a distinguished law firm, when he’s about to eat country-fried steak at a Cracker Barrel.

I idly toyed with the package of strawberry preserves that had arrived with my biscuits. “I don’t know, I just thought it might be a good idea for me to stand out a little bit less. If this guy is anything like the people I grew up with, he won’t be impressed by our suits—he’ll just become more defensive.”

Stephen was busy cutting up his breaded cube steak into precise squares as he glanced around at the uniquely American combination of battered metal advertisements and handheld farm tools. “We always wore suits in West Virginia,” he observed.

I smiled wryly. “Maybe they wouldn’t have fought so hard if you’d ditched the jackets and ties.”

Stephen snorted. “I doubt it. It was never really about the civil damages for those people. If it was something that could be fixed with money, we could have cut some checks, made a few job offers, and that would have been the end of it. But when you cut the top off a mountain and dump half of it in a valley, someone’s going to get emotional about it. They know they can’t get money for that loss, but they can try to force the company to waste a bunch of time and money.”

“Driving up the billable totals for us.” I raised my glass of water in a mock toast: “Here’s to emotion.”

“Billables are nice, but emotion breeds unpredictability.” Stephen slowly shook his head. “When some yokel is out for blood and demands a jury trial, weird things can and do happen. That’s why I always advise my clients to try to win without making things more personal. Take a little risk in the short term and you might avoid inciting the next five plaintiffs to demand their own juries. A lesson those assholes in DC haven’t learned.”

A year ago, a DC firm with longstanding ties to the coal industry had tried to rebut a study linking strip mining to birth defects. Among other things, they'd asserted that the birth defects could be explained by "consanguinity," a fancy way of suggesting that West Virginians were inbred. Despite our firm's complete lack of involvement, at least two plaintiff's lawyers had told us that the insult was making it hard for them to convince their clients to take a settlement.

Even after only a couple of years in the litigation world, I wasn't surprised that a corporate lawyer had broached the subject of incest. If anything, I was a little surprised by the attempt at subtlety.

"But none of that matters," Stephen went on, now stabbing his fork in my direction, "because we're in Pennsylvania, and the gas companies aren't lopping off mountains. Why, after they've finished drilling, all that's left is a tiny little wellhead. Virtually nothing to get worked up about. And these people *consented* to this stuff! They invited the drillers in!"

The fork was moving again, tracing spirals in the gravy. Either Stephen was enjoying the respite from four star restaurants or he was too engrossed in his own thoughts to care. I doubted he would ever voluntarily seek out this commoditized shrine of agricultural nostalgia. But I was mostly relying on reputation for that assessment rather than first-hand knowledge. Maybe he had a vintage John Deere in a garage somewhere in the Adirondacks. Who knew?

"That's why I brought you along," he said to my unasked question. "You've done the grunt work around the office and I thought you might do an actual deposition. Since we had to reschedule this guy, he's the only one we have to do today, and should be easy in, easy out. What?"

He'd seen the frown spreading across my face. "The deponent's kid has severe developmental problems," I said. "That doesn't sound too easy to me."

Stephen pushed his plate away and gave me a peremptory wave. "Mothers are the tough ones. Fathers might be a bit angry and bitter, but they're too proud to lose their composure—especially in front of a few New York schmucks like us. Come on, let's get back on the road."

If a lawyer's first opening statement at trial as a first chair is like your first time having sex (or so they tell me), then your first deposition is like your first attempt to kiss a pretty girl. The stakes may be small in the grand scheme of things, but they feel pretty damn big to you in the moment and you're hoping that your inexperience in the whole affair won't prove fatal.

The story of a well-meaning law student transformed from a crusader for justice to a fungible billable hour machine has long since become a cliché, but I've always believed that my excuse is better than most. I grew up in Southwest Virginia and spent much of my childhood roaming around in the backwoods, pretending to be a U.S. Marshal in hot pursuit of one notorious bootlegger or another. By the time I entered college, the bootleggers had been displaced by meth cookers, and I decided to major in criminal justice, utterly confident

that I could find and seize every lab within forty miles if given half a chance. Whereas moonshiners fancied themselves as artisans preserving a proud tradition of government defiance, meth cookers were mad scientists whose experiments eroded their bodies when they weren't periodically blowing up their homes.

I wanted a federal job and the option of becoming a prosecutor later down the road, so law school was a logical next step. As an aspiring lawman, I'd never given much thought to the economy—if criminals couldn't be laid off in a recession then I figured there'd always be a need for rookie agents and officers. Of course, when the recession set in and a tidal wave of panic about the national debt hit Washington during my 1L year, entry-level positions dried up at every federal law enforcement agency.

After watching my public service plans disintegrate, I drifted towards the private sector. I picked a large East Coast firm more or less at random and spent my summer angling for litigation work and closely monitoring my alcohol intake at social events. By the time I sat down to take the New York Bar Exam, my gun-and-badge dreams were as remote and elusive as the outlaws I had once harried along the Blue Ridge foothills.

The First Presbyterian Church didn't sit on top of its rocky knoll, it clung to it like a limpet. Squatty and less imposing than many of its small town counterparts, it sought to compensate with a brilliant white spire that appeared to quadruple its height, a spiritual transceiver guaranteed to find reception in any terrain. It was Thursday, and when I parked in one of the designated visitor's spaces just off the front steps there were three other vehicles present: a late-model Mercedes with some conspicuously fresh dings in the paint job, a generically drab compact sedan, and an appreciably older Chevy truck.

A printed sign directed us around the corner, where an abbreviated flight of steps and an unlocked door led us into the fellowship hall that had been hewn into the rock beneath the sanctuary. It was a spartan, workmanlike space, with a small efficiency kitchen at the far end, four laminated wood tables arranged in an open square, and several rows of metal folding chairs stacked up beneath a small clouded window. The court reporter had already set up her equipment at one of the tables and was smoking a cigarette off in the corner while the deponent and his lawyer stood by the kitchen counter nursing small Styrofoam cups of coffee.

The plaintiff's lawyer had a small-city air about him, a defensive posture that seems inevitable when a knight from the periphery of the legal world receives a knight from the center. Our feudal lords would not take the field for this skirmish, but we flew their banners nonetheless. His brow creased momentarily when I shook hands with him, perhaps displeased that my jacketless attire had upstaged his attempt to play the people's lawyer. Standing there with Stephen and me, his off-the-rack suit and scuffed shoes seemed more like a pale imitation of Stephen's regimented dress than a conscious attempt to emphasize his Scranton origin. The crease appeared again when Stephen

found a chair against the wall and I sat down at the table to divest my briefcase of its materials. Smaller firms might be expected to use their squires in this way, but in New York they spent years carrying the weapons and minding the horses.

Jim Hardison sat down across from me without offering or accepting a handshake. His movements were carefully measured in a manner that suggested both a steady hand and a lingering back injury. A loosely tied half-Windsor rested uncertainly at the throat of a plain white dress shirt whose seams were being tested at the shoulders and the biceps. He couldn't have been more than a few years past thirty, but his large frame already hinted of a stolen grace and power that belonged to younger days. I immediately wanted to treat him with no small measure of dignity. This might be the only occasion during this process in which he would retain it.

This was my deposition, and I was going to run it the right way.

"Mr. Hardison, thank you for joining us. I'd like to start this proceeding off the record by talking a little bit about my role in this process. I obviously represent the defendant in your suit, but I will not be the one defending the company in court. I'm not here to try to deceive you or trip you up in any way, just to gather some important information about this case. I realize that some of this may seem tedious or confusing to you, so if you need to stop to ask a question or take a brief break just let me know. Do you have any questions right now before we begin?"

"Why aren't you wearing a suit like the others?"

I shrugged off his query to cover for my inward smile. "Don't care for 'em. If I can get by without one, I'll do it."

If Stephen had been less of a professional, he would have rolled his eyes. The plaintiff's lawyer was, in fact, less of a professional, but Jim didn't notice his reaction.

I nodded to the court reporter and began.

"Please state your name for the record."

"Jim Hardison."

"Your wife is Mary Hardison, the mother of the plaintiff Hunter Hardison?"

"Yes."

"And that would make you the father of the plaintiff?"

"Are there any other contenders?"

I made a show of suppressing another smile. "The court reporter needs a 'yes' or 'no' for the transcript, Mr. Hardison."

"Yes, I am Hunter's father."

We briefly glossed over work histories and previous legal actions involving the family (unremarkable and nonexistent, respectively, save for the fact that Jim was currently on disability) before I started to probe into the events that had brought us together.

“Mr. Hardison, were you ever contacted by a representative from Omega Natural Resources?”

“Yes, I was.”

“Can you elaborate?”

“About four years ago this spring a guy in a brand new pickup truck pulled up in my driveway. He told me he was a kind of ‘land scout’ for an oil and gas company and he was looking to obtain some mineral leases in the area. He asked me for the names of some of my neighbors and wanted to know if I thought any of them would be interested in hearing him out.”

“What did you tell him?”

Jim grimaced. “I told him that it was hard times all around, but that there were a lot of prideful people who might not take up on his offer even if they were living hand-to-mouth.”

“Were you giving him your honest opinion?”

“Objection. Relevance,” Scranton chimed in on cue.

I nodded impassively. “That’s fine. Mr. Hardison, you can answer the question.”

“Yes, I told him the truth.”

“Did the representative tell you what price he was offering?”

“Yeah, I asked him. He told me fifty bucks an acre.”

“Did you tell him at that time you were interested?”

“I told him I’d have to think about it.”

“Did he contact you again after he left?”

“No, but I called him.”

“Why?”

“Mary told me later that week that she was pregnant. I knew she’d lose at least some time at work, and my disability checks weren’t going to be able to take care of her and the baby, so I needed the money.”

“What did you say when you called the rep?”

“I asked him if he was still looking for land and what his current price was. He told me that he was temporarily paying a hundred bucks an acre, but that if I wanted a deal I better make it before headquarters tightened up on money.”

Somewhere in the bowels of the church, a heater groaned to life. I raised my voice. “Did you make a deal with him?”

“Yeah, he came over the next day, gave my property the once-over, and I signed a contract that day.”

“How much of your property did you lease?”

“All forty acres. Every stinkin’ bit of it.”

“Did they come in and drill right away?”

“No, I didn’t hear or see any sign of that company for months. Then that professor figured out how much gas was underground and there were company reps everywhere, Omega included. Drove up the bidding to the point where virtually everyone around felt obligated to cash in.”

I’d already seen the local transaction records. Plots that would have leased for forty or fifty dollars an acre went for two thousand or twenty-five hundred dollars a week later. A lonely Penn State professor, with a few back of the envelope calculations, had triggered a speculation frenzy when his conclusions were flashed across the country. I’d seen depositions of other locals involved in litigation against Omega, and many of them talked about what that money had done to their towns—the suspicion and resentment it had bred in the pews and at the grocery stores. And that was before the real problems emerged.

“So what happened when they did decide to drill?”

Jim snorted. “They set up their drill pad on my neighbor’s land, hard up against my property line. Told me the gradient wasn’t ideal or something and that the spot they’d picked required the least preparation.” He didn’t continue but I knew he wanted to. *Would it have killed them to move it another thirty yards?* I’m sure he had been coached by the lawyers not to reference the potential royalties he’d lost when they’d chosen a well site off his property. A jury might not understand how a father alleging that a well had permanently damaged his son could want that well even closer to his house. I did, though.

We kept trudging through the facts. The way the initial cacophony of the drilling had left behind only a neat well cap and a containment pond for the used chemicals. The day Jim stepped outside the house and found that soapy puddle with the rainbow film creeping away from the containment pond. The phone calls to Omega, trying to convince them that there actually was a problem to be dealt with. The weeks of smaller spills and the incessant fights with Omega to get them to come back out again and again.

And then there were Hunter’s problems. The incessant wailing that only stopped when the seizures set in. The occasional bouts of silence that were all the more terrifying for his lack of responsiveness. As Stephen had predicted, Jim never fully broke down, although the strain in his voice became so pronounced that I unilaterally stopped the proceedings to let Jim take a walk outside.

When I abruptly announced that I was the one who needed a break, Stephen’s reproachful stare told me that I had crossed the line from communicating sympathy to actually feeling it, but I didn’t care. Letting the man collect himself away from our presence wasn’t going to hurt our efforts, and I was still trying to gain Jim’s confidence. It worked, at least a little.

This was a good thing, because now I had to cover all the possible environmental factors that might explain Hunter’s condition and exonerate my client. We talked about every conceivable vice: drugs, alcohol, smoking, even poor diet. I deliberately omitted the question of incest. Then it was on to the less obvious suspects—food borne illnesses, diseased animals, and poor

air quality. My firm didn't need to convince a jury that any of these unlikely culprits were actually responsible for Hunter. The plaintiff's case could be drowned out by the sheer number of the alternatives presented. That was how the tobacco companies had staved off lawsuits and delayed their reckoning for decades, and their long winning streak had validated a generation of drawn out discovery periods and padded bills. Even the most obscure and seemingly ludicrous arguments had their value.

My tactfully edited explanation for this laundry list mollified Jim for a time, but as our deposition dragged on past two hours he grew weary of me. When I started in on Mary's former fast food employer and any chemicals she might have handled as part of her work, a combination of fatigue and incredulity finally ended his cooperation.

"Do I really need to sit here and answer all this crap? Why does it matter how many cattle my brother has or where I shop for groceries? What's it to you if my wife was working double shifts before Hunter came? What is the point of all this?"

The outburst pressed me into the concave shell of my chair. "Mr. Hardison, I'm sorry that this is taking so long, but as I told you we don't always come into these things knowing what facts might be important and we want to be thorough so that we don't have to—" I stopped and stared at the cramped handwriting of my notes, realized that I had heard nothing about double shifts before "—come back."

Instinct was not among the things I learned in law school, and God knows it wasn't part of the sporadic and half-hearted formal training at the firm. As a result, I had nothing in the way of legal instincts, and I wouldn't have trusted any that I did possess. But here in this rural church, half-entrenched in a rocky hillside, older patterns of thinking reemerged.

"Mr. Hardison, a few minutes ago I asked you if you or your wife had ever abused drugs. How did you interpret that question?"

"I already told you, 'No.'" Distrust was creeping into his voice, and in a few minutes I would lose any remaining rapport I had with him. I had to move quickly.

"I understand, sir, and I'm not trying to trip you up or suggest that you were lying. I just want to know what you understood yourself to be saying 'no' to."

Over in the corner, the soft clicking of the Blackberry abated.

Jim stared blankly back at me without comprehension.

"I'm sorry, Mr. Hardison, I'll try to be more specific. Typically, when we talk about drug abuse, we use it in the sense of recreational use or addiction. And when you told me that you and your wife had never abused drugs, you meant that you never struggled with addiction or otherwise used drugs on a regular basis, correct?"

Jim slowly nodded without taking his eyes away from mine.

“On our way here, Mr. Mallory and I stopped at the interstate exit where your wife’s former employer is located. It took us a good 45 minutes to get here from that point.”

“I’m sorry, Mr. Galloway, but are you trying to offer your own testimony?” The plaintiff’s lawyer had roused as well, and now every eye in that little fellowship hall was fixed squarely on me. “I don’t see any question in there, let alone one that Mr. Hardison should have to answer.”

I tried to steel my voice, to convey a sense of purpose. “Mr. Hardison, when your wife was working double shifts, how many hours passed between the time she left home and the time she returned?”

“Fourteen hours, give or take.”

“And this was right before she found out that she was pregnant and quit, right?”

“Yes.”

“That must have been difficult.” I almost added that I had personal experience with such a punishing schedule, but I doubted that my hours would evoke much empathy from Jim. “How did she manage that?”

Another blank stare, and then abruptly it was not blank but frozen, frozen as if he had blindly stumbled across something terrible and sought to remain perfectly still in order to keep that thing from seeing him. Even his lawyer, previously lulled into complacency by my callow bearing, sensed that something was amiss. Stephen, however, now grasped the thrust of my inquiry and exuded an unconcealed eagerness that threatened to suffocate me.

“Mr. Hardison,” I gently continued. I could hear Stephen’s telepathic instructions to me: *Tear him apart! Stake him to the ground!* But I was not about to defer to him now and besides, it was unnecessary. “Did your wife ever use methamphetamine before working those double shifts?”

Jim clasped his hands in front of him, then raised his intertwined fingers above his head. He held them there a minute and blew out a sigh before slowly lowering them to rest just above his waist. His brow was set, but when he finally acknowledged my question he did it so softly that I turned to Stephen for corroboration.

At least I tried to—Stephen had already flashed across the room to stand over the court reporter’s shoulder. “Did you get that?” he asked. The reporter, perhaps sensing the implied threat of Stephen’s looming presence, bobbed his head with slightly more motion and emphasis than necessary.

I released a breath I hadn’t known I was holding. Stephen silently regained his seat and readdressed his smartphone, his surge of energy ebbing away into his counterpart’s extremities, which were demonstrating noticeably less discretion than their owner’s face.

My brain rattled with a concussive blast of triumph as I took in opposing counsel’s ill-concealed distress and the witness’s paralysis. In my very first assignment in the field, with virtually nothing in the way of expectations or

reliance upon my performance, I'd single-handedly broken the case. Out of routine and monotony, I had conjured up a dramatic victory while putting my own stamp on the whole affair. I hadn't prevailed through some prefabricated legal trick or interrogation technique; to the contrary, I'd demonstrated the kind of improvisation and instinct that separated competent counsel from the truly great advocates. Against all odds, the three years of document review and due diligence that had consumed my evenings and hollowed my weekends had failed to extinguish my drive and initiative. Today I was a lawyer, not some glorified secretary. And I had accomplished that transformation without exhibiting any of the character defects or sociopathic tendencies that had inspired a million jokes and dozens of novels. Despite being steeped in a cutthroat and increasingly business-driven profession, I could now take credit for a perfectly clean operation.

As Jim continued to fold in upon himself, I even felt a twinge of indignation. Did he even appreciate the significance of this moment? He had likely walked in here thinking all manner of dark thoughts about that most reviled species of human being, the defense lawyer, and against all expectations I had not only expressed some genuine solidarity with him, but carried out my business without cheating him or his lawyers. I'd even saved him the anxiety and strain of a protracted trial by excising the hope of a windfall before it could metastasize. Obviously, Jim would have preferred to avoid pain altogether, but this fit of debilitating anger or depression or whatever he was exhibiting was pointless.

Jim ceased his scrutiny of his hands and looked back up at me. What I saw was neither rage nor sorrow but confusion, a bemusement that rendered his rough features soft and childlike. For whatever he had previously believed me to be (an emissary of a sprawling empire, an enforcer for some industry capo, or a simple New York schmuck), I had now revealed myself to be something else, a herald for a conspiracy whose provenance neither of us could explain. The presumed antagonist, who had (allegedly) cheated Jim out of a fair price for his land and a safe environment for his son, had in fact been subordinate to some higher power or collection of forces which had intervened at an earlier point.

My self-coronation froze in place. A warm, sickly wave of shame swept into the back of my throat. This wasn't about me. All those law school classes and imposing corner offices and fast-paced novels had left me with a twisted sense of legal solipsism, but I wasn't even the protagonist in this drama. In Jim's case—Jim's life—I was a bit player, "Lawyer #3" in the credits list, a character whose motivations and machinations were irrelevant. Jim wasn't thinking about my particular code of ethics or professionalism. He was struggling with the full weight of responsibility for a life, a weight that had already frightened him even before his son's problems became manifest. My desire for decency wouldn't return a penny of the million dollars or more he'd just watched slip out of sight, and if anything my lack of offense merely deprived him of a natural target for his anger and incomprehension.

I should have been a bigger schmuck.

Ironically, at this moment I felt that Jim was more convinced of my client's innocence than I was, but that difference was immaterial. Even Jim, the only man present who was not initiated in the dark arts of litigation, understood what defense counsel could do with a mother who took meth while she was pregnant. The pall on her credibility alone might be enough to prevent a favorable verdict, even if the potential consequences for her son were not so apparent. Our firm wouldn't even have to portray Jim's family as hillbillies looking for a quick buck; we could pace and sigh and express our regret that this tragedy had no true villain worthy of a jury's wrath. Well, Stephen might do that, at least. Some of the other trial lawyers might decide to use the occasion to practice their best fire-and-brimstone routines. "Mount Sinai moments," as some of their more slavish acolytes called them. Regardless of who was ultimately assigned to make those final arguments, it would not go well for the Hardisons.

It only took me another fifteen minutes to finish up my list of questions. I discovered that Jim had not been told about Mary's drug use but had once found drug paraphernalia in the house, which ensured that we could use his testimony at trial without fear of marital privilege. I rushed a bit and probably failed to ask for some clarifications, but no one cared. There was a brief flurry of activity as materials were organized and packed away, a few perfunctory handshakes, and then Stephen and I walked out ahead of the others. We got in our rented SUV and drove back toward the highway. For the first twenty miles the only sound in the car was the rumbling of the tires over the rugged isthmus of asphalt that carved its way through the hills.

"You did good today," Stephen finally offered as he waited for his Blackberry to find a signal. "Really stuck the dagger in that guy."

"I'm sure you could have done an even better job in there." I said it almost as a plea. But Stephen smiled and gave a small shake of the head.

"As a matter of fact, no, I couldn't have."

No, I couldn't have. For a wild moment I pictured myself seizing that dagger I had used against Jim and decapitating Stephen with it, severing that self-satisfied smile from the rest of his body. But even in my homicidal fantasies, I could not win; Stephen merely sprouted seven new heads, each one smiling and talking and billing a client for its valuable time. Now that it was over, he didn't mind letting me know what he had done, what I had done for him, and that any further effort to distance myself from him would lead to the same result.

There was nothing for me to do but drive on toward New York and hope that I would not be accompanying Stephen again anytime soon.

"Hey Galloway, are you doing anything this weekend?"

I shook my head. It was a rhetorical question.

