

The Lost Chapter
(Comes between Trial Day Two and Trial Day Three)

Two Groaners and an Ombudswoman

*“To each his sufferings: all are men,
Condemned alike to groan,
The tender for another’s pain,
Th’unfeeling for his own.”*

Thomas Gray

The next morning, when I informed Chauncey about my little imbroglio with his adversary, he already knew all about it.

“Yeah,” he said. “Jeff told me that he got into it with you last night after court had adjourned. He wanted me to tell you that he apologizes for any hard feelings he might have caused. He said that the stress of the trial is getting to him, and that he probably overreacted. What’s this about the truth not having any part in the trial, though?” Chauncey grinned at me.

“OK,” I responded. “I got a little hot under the collar myself. It just ticked me off that Jeff thought that it was his business to tell me who I could or couldn’t talk to, especially after the “Pointed Lady” had finished her testimony and was done with her part in the trial anyway. What was the big deal?”

I’m sure that Chauncey, along with everyone else in that courtroom, was thinking just what I was after observing the plaintiff’s third expert in action, and he snickered out loud when I mentioned my private nickname for Ms. Kilkenny. Seated at their table in front of us, Gail and Dikembe also couldn’t help but hear this exchange, and Dikembe looked back at me.

“I heard that you gave as good as you got in that argument,” he said. “Good work. Jeff often needs to be taken down a peg at times. What exactly did you say to him?”

“Well,” I laughed, “I did get a little pompous there. But I think that he understood where I

was coming from. I'll be happy to give you the particulars any time."

"It's a deal," smiled Dikembe. "Maybe we could discuss it over a glass of wine sometime. After the trial, of course. We can't have anyone involved in the same trial talking to one another, after all."

I wasn't sure to what extent these lawyers were kidding or not in terms of just who was allowed to speak to whom in regard to the trial. Obviously, I was allowed to talk to my own lawyer. Could I talk to Dikembe? What about Gail? Naturally, Gail and I had been talking up a storm about the trial. Every time there was a break in the action and the lawyers left the room, Gail and I dissected the case and both analyzed what had previously happened and made predictions about how the rest of the case would go. We hadn't been on guard with each other in any way and, as far as I knew, had been completely honest and forthcoming. Was this a mistake? Was it even legal or ethical? Not knowing the ins and outs of the legal system precisely, I wasn't sure. I did know, however, that unless some higher authority dictated otherwise, I would continue to act as I had before. It seemed to me then, and it seems to me now, that, naive or not, the truth should be the final arbiter in any dispute, legal or otherwise, and I wasn't about to kowtow to some lawyer, least of all Jeff Peterson, the malignant St. Nick. Still, I kept my thoughts to myself at this juncture.

Right about then, the bailiff announced the entrance of Judge Proudler, and the trial started for that day. Peterson called some witnesses that I had never seen before, and, at first, I wasn't sure exactly what they were doing there. Chauncey leaned over and whispered to me that these witnesses were what was known in the trade as "groaners." This meant that they added little or nothing of substance to the case but were there primarily to elicit sympathy from the jury on behalf of the plaintiff. Basically, they would emphasize to the jurors how sad and heart

wrenching were the plaintiff's circumstances and to try to establish a strong emotional connection between the jury members and the poor sufferer who, of course, had suffered all the more because of the negligent actions of the defendants.

The first groaner was an elderly man who introduced himself as John Pelkey. Mr. Pelkey was dressed somewhat informally for a court appearance in jeans and a green and black flannel shirt. On his feet he wore a pair of black leather boots. His hair, though thinning, was neatly combed back, and he adopted a very serious demeanor. He stated that he had known Martin Wennar since early childhood. They had been hunting and fishing buddies for many years going back to their high school days. Mr. Pelkey went on at some length describing how Martin loved to get out in the woods in the fall and hunt hard for whitetail deer in the daylight hours and spend time around the fire at the deer camp, throwing the bull and eating the usual deer camp fare. He then went on to tell of Martin's decline with his illness and how hard it was to watch him deteriorate after knowing him in his prime. Once he was placed in the nursing home, Mr. Pelkey noted that he went even more rapidly downhill. He said that Martin became even more confused and looked sad and depressed every time Mr. Pelkey would visit him there. He described one incident when he visited Martin and found him to be noticeably incontinent with the sharp smell of human waste permeating the air. He was outraged that he had to speak to one of the nurses at the desk before someone came and cleaned up the mess. And that was the sum total of his testimony. Neither the lawyer for the nursing home nor my lawyer had any questions to ask on cross examination, and Mr. Pelkey left the stand.

Next to testify was a good looking young woman who, like the first groaner, was informally dressed. She wore a purple tank top that left a good three inches of her midriff bare and exposed among other things a gold belly button ring. Well below the ring was a wide brown leather belt

with a huge round gold buckle that advertised “Coors Beer” and surmounted a pair of jeans that fit like a second skin. This woman introduced herself as Natalie Deslauriers and said that she was a “friend of the family” who had also known Martin Wennar for a number of years. It wasn’t specified just what that number was, but she did allude to the fact that when she was a child she had often gone over to the Wennar house to ride her bicycle in the driveway while Martin and her father worked on the restoration of one old car or another. She told how Martin always had a kind word for her and would often provide her with snacks or soft drinks. As she got older, she remained on friendly terms with him and would often go to him for advice when some tricky personal problem came up that she felt awkward discussing with her parents. Apparently, Martin served the function of wise old uncle in Natalie’s life and was a mentor and advisor to her. She also described how devastating it then was to have her good friend become mentally incompetent over a short number of years and then be institutionalized. Like John Pelkey before her, she blamed the nursing home for accelerating that mental deterioration, and she related how he became more and more helpless and incompetent during his nursing home stay. Peterson drew the testimony out as long as he could, but eventually even he had to bring things to a close. Once again, neither of the opposing lawyers had any questions on cross examination, and the last we saw of Natalie Deslauriers was her cute little behind disappearing through the large door at the south end of the courtroom. Neither John Pelkey nor Natalie Deslauriers were seen in court for the remainder of the trial.

It was difficult for me to imagine that either one of these witnesses had helped the prosecution very much. I was sure that even without medical testimony the jurors would understand that the natural history of Alzheimer’s Disease was an inevitable mental deterioration, and that it really didn’t matter where Martin Wennar had been at the time he was deteriorating. How could any

reasonable human being conclude that it was the fault of the nursing home or the attending physician that this man continued to deteriorate under their care? It was like blaming the doctor because in time all of his patients died.

The last individual (or so I thought at the time) to testify for the prosecution was a crunchy granola sort of person named Erica Michaelson. She was introduced as an ombudswoman for the state of Vermont in regards to nursing home patients and was employed by the state government to assist nursing home patients or their relatives if any problems occurred while they were staying in any of the nursing homes that the state oversaw. She had been asked by Kathy Wennar at one time to speak to the nursing home concerning her husband's care which she felt was substandard. Ms. Michaelson, looking like some hippy out of the sixties with granny glasses, a long white peasant skirt and high brown leather boots, stated that she had spoken to nursing home personnel on at least two occasions and emphasized to them that Martin Wennar was continuing to fall and was in danger of hurting himself. She had also mentioned to them that specific measures such as placing a mattress on the floor by the side of the bed to cushion any falls should be undertaken. She expressed surprise and amazement that this had never been done and exhibited some outrage that no one at the nursing home had taken this advice. It was her firm opinion that this simple action might very well have prevented the crucial injury of the fractured hip. Once again, there were no questions at all on the part of Dikembe and Chauncey, and the plaintiff's case sputtered to a close.

At this point, I was feeling pretty good about the trial, not only as far as I personally was concerned but also in regard to the nursing home. The prosecution had done their worst and, in my opinion, it was a pretty pathetic effort. Did we even need to put on a defense at this point? I expressed my feelings to Chauncey who did not seem to share my sense of optimism. He gave

me a pained expression as if to intimate that I was out of my mind and said that it was important that we clarify some matters before the case went to the jury, specifically the questions of the stage four ulcers, the state of Martin Wennar's arterial circulation and the fact that I had not commented on the existence of a pressure ulcer that was demonstrably there at the time that I had written that progress note. I responded that while it was true that the clarification of the first two matters should help the nursing home's defense the opposing lawyers had not even mentioned any discrepancy between my progress notes and what was happening with the patient. So why bring it up at all? Their case had ended, after all, and the only way they could even get such evidence in would be by cross examining me. Chauncey quickly disabused me of that notion, however, and told me quite appropriately that Jeff Peterson could still get the evidence of the progress discrepancy in by cross examining the witnesses for the nursing home and reviewing the nursing home records with them. I had to admit that that certainly was a possibility, but I also felt that we simply could wait and see in that regard. He agreed to reserve judgement at that point.

The prosecution having rested their case, Dikembe Nkomo without pause called the first witness for the defense.