"LOOK, KID"

"OUR YOUNG MEN DON'T HAVE A PRAYER IF THE IDS HOLD UP."

"ENOUGH ALREADY."

"NO FURTHER QUESTIONS."

ANNALS OF JUSTICE

THE ART/ACHE OF CROSS-EXAMINATION (1959)

By Stephen R. LaCheen

I was seated in the anteroom of Courtroom A at the Family Court building, waiting with my first domestic relations client for her case to be called – she was seeking an attachment order against her ex-husband, who was seriously in arrears on his support payments – when I was approached by a court crier from another courtroom.

"Counselor," he said, "my judge needs a volunteer in Courtroom B, and I don't see any other attorneys here, so come with me." I started to protest, but he interrupted. "Don't worry, we'll see your case here won't be called until you get back, and you'll get on right away when you do."

I tried to explain that I was only just admitted to practice, and had never tried a criminal case. "Not to worry," he said, "this isn't a trial, it's a preliminary hearing. And it's juvenile court, not adult court; so you probably won't have anything to do but stand there. All that happens is the DA proves probable cause and the defendant gets held for court. I'll make sure you don't get stuck with the case if you don't want it."

I explained to my client there would be a slight delay because I was wanted in another courtroom, and followed the court crier. The calendar list in Courtroom B was comprised of a number of preliminary hearings involving juvenile defendants, in which a Family Court judge would determine whether there was probable cause to hold the juvenile arrestee for trial.

The case for which I was being impressed into service involved two 17-year-olds, who were charged with the robbery and vicious beating of an elderly woman who owned and operated a ladies hosiery store directly across the street from the east side of City Hall.

The court crier handed me the court file folder and pointed in the direction of the juvenile defendant seated in the anteroom of Courtroom B, saying, "We called the lawyer the perp said was representing him, but he said he hadn't been retained, and the judge wants to get this hearing on. It's been continued twice already, and the victim – she's in the D.A.'s prep room – is not in good health, so don't even think of asking for another postponement. It's only a preliminary hearing, anyway; so talk to your client and let me know when you're ready. The co-defendant's got the P.D., so they're already ready to roll."

I reviewed the few documents in the file, which consisted of the initial police report, the victim's statement, the circumstances of the arrest based on an informant's tip, the forms on which the defendants invoked their right to silence, and a report of the lineup which indicated in conclusive language that the defendants had been identified by the victim.

I introduced myself to my client, explained that I would be representing him at the proceeding that day, and said I wanted to hear anything he wanted to tell me. The young man, who looked more like an NFL lineman than a juvenile, made it clear, without saying a word, that I was part of a system that he was not.

"Let's get it on," was all he said.

The public defender representing the co-defendant was an older attorney, obviously far more experienced than I, especially with regard to such matters, as this was the courtroom to which he was generally assigned.

"Look, kid" he said, "I'm not pulling rank, but it might be better if you cross the witness first, so I can have an opportunity to see how she testifies. Then I'll go after you, like batting cleanup; although the only thing getting cleaned here is our clients' clocks. Did you read the victim's statement? Brutal! Our young men don't have a prayer if the IDs hold up. They'll be her age when they get out if they get certified to adult court. But that's for the next hearing, not today."

I was a little put off by what I thought was his heavy-handed cynicism, but I had to agree that the evidence was devastating. The crime was atrocious, and the perpetrators would be

entitled to no sympathy whatsoever.

According to the victim, a woman in her mid-60s, she was alone in her shop when two young men entered the store. One approached the counter, while the other stood just inside the doorway, with his back to the glass front door, blocking the view of any passers-by. The young man at the counter ran behind it, grabbed her, and dragged her into the back-room storage area, where he punched her repeatedly with his fists about the head and body, until she was knocked unconscious. She was discovered on the floor by a customer who entered the store, heard her moaning in pain, and called to police officers standing across the street. The report went on to describe the extent of her injuries, for which she had been hospitalized for 10 days and unable to work for more than two weeks after.

I had never had such a case before. My practice up to that time had involved accident cases, domestic disputes, bankruptcy and some non-violent criminal matters. I had never had such a case, and had hardly a clue as to how to deal with it. Frankly, I had hoped co-counsel would proceed first, so I could follow his lead. Instead, I was leading off.

The actual hearing was far worse than anything I imagined. We were all standing at the bar of the court, the victim and assistant district attorney on one side; defense counsel on the other, with our clients behind us. When the victim was sworn in to testify, I was the person standing closest to her on her left. Her testimony was devastating. I was sickened at the unnecessary brutality of the offense and saddened to the point of tears over the pain and humiliation she had suffered, as well as overwhelmed by the sheer willpower that enabled her to swallow her terror and testify.

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The ADA was relentless in extracting from the woman every excruciating detail. At one point, she seemed to sag, her knees giving way, and I reflexively reached out to steady her, until the court officer brought her a chair. When she had regained her composure, she resumed her testimony.

"Enough," I said to myself. "Enough already." But, the prosecutor pressed on.

The more she testified, the more upset she became. She didn't whine; she didn't wail; she just told her story with dignity, which somehow made it even more devastating.

"Take my money, I told them," she testified. "Take my money. I'll never tell. I won't even call the police. I'm not even looking at you, I said, but he kept beating me. At one point, he seemed to become infuriated because there wasn't more money there. While he was beating me, I just kept thinking about my granddaughter, thinking I might never see her again. The last thing I heard before I passed out was the sound of my cheekbone breaking."

When it came time for the prosecutor to have the defendants identified on the record as the perpetrators, instead of having the witness look at them in the courtroom, he simply asked her if she had made such an identification at a lineup. Counsel for the co-defendant objected on the basis of hearsay; but the judge overruled the objection when the prosecutor argued that hearsay evidence was permitted at preliminary hearings; and the witness testified that she had indeed made such identification. It was obvious that the witness was avoiding looking directly at the defendants, and everybody, including me, understood why. All I could think was how could I cross-examine this woman who had suffered so much. How could I make her re-live the horror she had experienced yet again? And, I had no idea how to cross-examine her in a way that would not simply reinforce her testimony on direct.

The prosecutor said, "Your witness," and the judge said, "Do you wish to cross-examine, counselor?" Do you need a break to compose yourself, or just a tissue?" I realized then that I had also been crying. I will proceed, Your Honor," I said, teary-eyed.

"Ma'am," I said, "I'm so sorry that you were subjected to that brutality. I can't imagine the horror you suffered, or your ability to see through your tears and terror." "Oh," she said, "as soon as he started hitting me, I put my hands over my eyes, so I could tell him, 'I'm not looking at you. You won't have to kill me because I can't identify you.'"

She paused, but then, just as I was trying to formulate my next question – actually my first question – she continued.

"If the detective hadn't told me they were the ones, I could not have identified them."

I could hardly get out of my mouth the words, "No further questions," when I heard my co-counsel say, "No questions, Your Honor. The defense moves for dismissal."

"Motion granted. Case dismissed," said the judge. Just like that, it was over.

Outside the courtroom, my client asked whether the case was over for good or could he be re-arrested. I said I would discuss it with him, but I needed to make a pit stop first. I headed for the men's room, and barely made it there before throwing up.

When I returned to the waiting room, my client and his erstwhile co-defendant were gone. Relieved to be able to avoid the possibility of a congratulatory handshake, I headed for the curbside lunch wagon, looking for something to take away the bad taste in my mouth. ■

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