

The Devil's Advocate

The older one gets, or the younger he is, the more likely his musings will be autobiographical. For the child, egocentricity may be a diversion; for old-timers it is asserted as a privilege. However, at the risk of being banal, the Devil's Advocate will briefly trace his rapid descent from academia's ivory tower to the nadir of private practice — the Family Court. It is a different world out there!

My first litigated divorce case illustrates the transition from teaching to doing. Book learning and jurisprudential theory turned out to be entirely irrelevant. There was time only for *ad hoc* or "off the top of the head" responses. As a trouble-shooter, to survive one must develop a quick draw and learn to shoot from the hip. Mental agility and a loud voice are the stocks in trade.

The divorce client was an attractive middle-aged wife who was the family breadwinner. She worked for the telephone company as a customer relations person handling complaints, so she didn't relish the ones she got after hours from her husband. They had been married for some twenty years, and he was a former bartender and tavern manager, who, following two heart attacks, drew \$190 a month from the government as disability pay. Since he was an ambulatory patient, he used that income for personal "walk-around" money, and his wife paid all family expenses, including the support of two teen-aged sons.

This modest couple lived in Queens, that open space some know as "Archie Bunker country." The husband knew, knew of, or had contact with, all of the operators in Queens who were not employed by the telephone company. To adjust that imbalance he took to making dozens of local and long distance calls each month, the phone bill running to several hundred dollars, which the wife was forced to pay to keep her job. Two or more of his favorite subjects were widows whose names he had secured from a "lonely hearts" club. In addition to suggesting romance, he tried to seduce them with various "get rich quick" schemes which previously he had peddled only locally.

The wife's zones of contention included the phone bills, the husband's forgery of her signature to get loans from banks and on insurance policies, his constant harassment, and his threats of violence. On two occasions she had called the police after physical assaults, and the third time he beat her to the phone, called the police, and asserted that she had kicked him in a spot that genteel gentiles call the "groin." He did not mention that the wife's *coup de grace* had been delivered to free her from his strangle-hold around her neck, nor that since he was impotent, no great damage had been done. *De minimum non curat lex.*

The wife told me she wanted two things: (1) to get that man out of the house

and (2) get me a divorce. There was enough material to get her a divorce in New York on the cruelty ground, but the first objective presented problems. After all, the husband was a cardiac patient and an object of pity, not only to himself, but to all who would listen. Would a judge from the *machismo* culture of Queens throw the bum out into the streets?

Help came almost immediately from an unexpected quarter: the husband. In retaliation for the wife's *chutzpah* in suing him for divorce, he struck back. The day after he was served with the divorce complaint, he made the fatal mistake of petitioning the Family Court for a protection order against the wife's alleged brutality in kicking him in the groin. As it turned out, he was fighting fire with a flicker. We filed for a court order of protection and for his exclusion from the marital premises.

On the morning of the scheduled Family Court hearing the husband was shocked when his wife appeared with counsel and he had none. After all, he had commandeered justice; this was supposed to be his show, and now he might be outgunned. He decided he had to have a lawyer. During the morning and early afternoon he made repeated phone calls to friends and politicians trying to get a lawyer for immediate delivery. All to no avail. It was like trying to get a doctor to make a house call on New Year's Eve. In desperation, the husband then turned to persons in the courthouse, narrating to all who would listen his soap opera about his heartless wife who was persecuting a heart patient. Eventually, the husband picked up two gullible hangers-on who agreed to champion his cause. One of these hangers-on was an unbusy woman attorney who appeared to have had lunch at the bar down the street; the other was a sentimental process server who was outraged by the husband's story of female duplicity.

We were in a filled anteroom all day long, waiting our turn. Most of those present were there for delinquency or non-support cases, and with few exceptions, they were appearing *pro se*. Finally, at 4:45, we were called and entered a courtroom presided over by a woman judge. I breathed a sigh of relief, but lost my confidence when I saw how she ran her courtroom. It was absolute pandemonium. She had no control over anybody. People talked at the same time, including the process server, but finally I obtained center stage and told the judge about the husband's threats and violence and that the wife was at risk if the husband was permitted to stay a single night in the home. Wanting to get out of bedlam by five o'clock, the judge issued a temporary order of mutual protection and ejected the husband from the house.

We had to go back twice again before the mutual order of protection was made "final" for six months. Each time we had a long wait, but at the final session the court did arrange for a psychological evaluation of the husband, the wife and the teen-age sons. The staff psychologist, in the presence of counsel, made his report and recommendations to the court. Although he was not sure that the wife was in any immediate peril, he did report that the husband had made serious threats, was capable of violence, and that the parties would be better off separated. The judge gave the husband a few days to pick up his things and to find a new place to live, after which he was barred from the premises.

Objective (1) had been achieved. The husband was out of the house. As I

modestly told my client: "You don't need a smart lawyer as long as you have a dumb husband!"

We thereafter ignored repeated violations by the husband of the order of protection, conserving our ammunition for objective number two. The husband resumed his warfare in *savoir faire* fashion, by having a boy deliver two bunches of flowers to the wife at work. It was the first time she had received flowers from him in twenty years, and he stood in the corridor looking into her office, grinning and peeping to see how she would take it. She dumped the flowers (and a sarcastic note about her "great court victory") into the wastebasket. He had, after all, never promised her a rose garden. Faint heart never won fair lady.

Less subtle forms of harassment ensued. Threats of physical violence, repeated phone calls, tampering with new locks on the door and mail box, and the intimidation of a potential witness in the divorce case were a few of the diversions he concocted. Of course, there were no eye-witnesses to most of the things he undoubtedly was responsible for, as for example, when someone threw a rock through the potential witness' windshield and filled the gas tank with brown sugar. Repair cost was over \$250.00.

Since he had learned a lesson in Family Court the husband needed counsel for his divorce case. None of the three lawyers, nor the process server, would defend the divorce case for him, or perhaps he was unable to advance an adequate retainer. In any event, he sought and obtained free assistance from legal aid. Fearing that insufficient attention was being given to his important case, the husband had a city councilman and the A.C.L.U. intercede with legal aid to make sure he would receive red carpet treatment. Predictably, the legal aid staff came to regard his repeated phone calls, complaints, and appeals to higher authority, as negatively as professional reasonability would permit. They did convince him, finally, that a contest was futile and in exchange for a few fringe benefits he wanted, his answer to the complaint was withdrawn.

Although many examples could be given of this husband's *modus operandi*, a few may be sufficient. Just before the divorce hearing he charged a new suit to the family account at a department store. At the time he did not know that the wife had closed the account and had opened a new one in her name alone. He also had an inordinate curiosity about how much the divorce was costing his wife. She wouldn't tell him, so he called our law firm, gave a fictitious name, arranged an appointment, and then asked and was told what the usual retainer would be. The first time he met the amiable Devil's Advocate (at Family Court) he walked over, glared, and asked "What kind of an animal are you?" The one-word reply was: "Litigious."

The husband also had his psychiatrist call me after the wife refused to come in and talk with the psychiatrist about their marital problem. The good doctor demanded that I tell him why I had instructed the wife not to cooperate. I tried to explain the ethics and conflict of interests inherent in the situation where a divorce action was pending, but he failed to grasp the idea. Probably his conclusion was that the Devil's Advocate was irresponsible and the legal process was inhumane. I doubt that the psychiatrist realized that he was being manipulated by the husband, and I suspect that he was not aware that the husband was a pathological liar.

It should come as no surprise that the divorce decree didn't end matters. The exhusband continued his harassment, so we installed a recording device to preserve his telephone calls to his former wife. Sure enough, he made threats to kill her, the Devil's Advocate, and others he believed to be in the conspiracy against him. Recently, he caught his ex-wife when she was returning home from work and slugged her on the jaw. We obtained a summons and had him served, and after a preliminary hearing a complaint was issued. He is scheduled to appear in criminal court on assault or harassment charges, and there is sufficient evidence to sustain a conviction. Our hope is not that a so-called first offender will serve time, but that the experience may give him an incentive to move to Florida and stay there, where he can find new listeners, including susceptible widows, who will weep with him as he tells his story about hearts and flowers and the lack of justice in New York.

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