



**TALES**  
from the  
**UNDERWORLD**  
and Other Stories

True Stories  
—some funny, some tragic,  
some bizarre

Roland Penner  
Norm Larsen

Tales from the Underworld  
and Other Stories

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## DEDICATION

*This book is dedicated to the 80 lawyers and judges  
who made it possible, including 52 who were  
the subject of recorded interviews and  
28 more who contributed anecdotes.  
Their names are listed at the end of the book.*

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## INTRODUCTION

THIS BOOK had its origins in an oral history project we undertook almost four years ago. We assumed that there was, likely, a wealth of stories about the practice of law not found in the Manitoba Archive and not included in Dale Gibson's "An Anecdotal Sampler" contained in *The Law Society of Manitoba 1877-1977*, a history edited by Cameron Harvey.

In November 2005 we wrote to a group of retired judges and senior litigators (that is, courtroom lawyers) asking for their participation in the proposal to record their stories and publish a selection from them. We were pleasantly surprised by the positive response although we did not then realize the time it would take to interview, record, process, edit, and refine (usually with the assistance of the interviewees) the wealth of material they provided us, namely some 2,000 pages of hard copy, some of it dramatic, some of it humorous, but often informative and, we hope, always entertaining.

Who are these "senior litigators"? More than 85 percent of them began their law practice more than thirty years ago, and many of them have been in practice for more than fifty years. The most senior by far is the legendary Harry Walsh, to whom we devote a special chapter, and include as well stories of some of his famous murder cases. The most junior of the eighty participants in this project has been in practice for seventeen years.

There's no doubt that, for technical and other reasons, the practice of law has changed significantly, and for the better, over the period of time covered in this book. As one of our interviewees, Allan Fineblit, CEO of the Law Society, put it: "The legends that we think of were big personalities, big characters, and great litigators, but the next generation of litigators might be sitting quietly in front of a computer screen." In a similar vein another of our interviewees, Hymie Weinstein, suggested that in the future "it may not be the great gladiators but the great researchers who become legends." That may be so to some extent but, in the course of this project,

we came to the conclusion that, at least in criminal law practice today, there are many lawyers who, in the art of advocacy and the skill of cross-examination, are tomorrow's legends in the making.

In the anecdotes in Part 3 there are some funny and some critical stories of a few judges of the past. But here, too, the consensus is that there have been changes for the better. As Grant Mitchell, Past President of the Law Society, put it: "Judges now are more careful and respectful in their dealings with counsel. They don't provide nearly as much in entertainment as they once did, but there is considerable improvement in judicial behavior and in their reasons for judgments."

Given the extent of material recorded, we had to develop a selection protocol in order to keep the book a reasonable length and to ensure that the stories are of interest to the general public as well as to lawyers and judges. In doing so we thought it to be of particular importance that the shorter pieces should, in addition to being entertaining, inform the general reader about some aspects of the practice of law. We think this book does that.

We ourselves have practiced law in all of its aspects, including acting as counsel in civil and criminal cases in trial and appeal courts. In the course of doing so, one or another of us has had occasion to deal with most of the people mentioned in this book. In that law practice and in this project, we have gained a greater respect not only for the all-important rule of law but also for the lawyers and judges engaged on a daily basis and in diverse ways in the administration of justice in Manitoba. It is our hope that this book, in taking readers behind the headlines and into the real life of the law as it is practiced, enhances their respect for the legal system and for law practitioners, as it did for us.

Roland Penner  
Norm Larsen  
October 2009

Tales from the Underworld and Other Stories

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PART 1

Tales from the Underworld

## Chapter 1

# The Dogs that Didn't Bark in the Night

WHEN A WINNIPEG-BORN woman was murdered in her home in Fort Lauderdale, Florida, in the early morning of February 4, 1987, the case became headline news in both Florida and Manitoba. The *Winnipeg Free Press* called it a “case too weird to be fiction.”

Margaret McGillivray Polk, one of two daughters of wealthy Winnipeg grain merchant William McGillivray Rait, was killed by a single bullet through the heart fired at close range from a .38-calibre Colt revolver.

Said one of the investigating detectives at the time: “It’s a real whodunit.”

Margaret and her sister Mary were Rait’s daughters from his first marriage. In 1950 and again in 1955, he established trust funds worth millions of dollars for them. Under the terms of the trusts, Mary and Margaret could draw only the earned interest, which, by the time of Rait’s death on March 12, 1973, amounted to about \$90,000 a year for each of them. But Rait’s daughters had no access to the capital itself because Rait intended the ultimate beneficiaries to be his grandchildren. Thus the trusts, which were administered by Royal Trust in Winnipeg, had special conditions. The 1950 trust stipulated that upon the death of each daughter half the remaining capital in her trust fund would be a gift to a surviving spouse and half to any children. However, the trust had another condition—and a crucial one, given how events would unfold: if either sister died without children, half the remaining capital in her trust would become an added gift to the children of the other daughter. The 1955 trust more sharply defined Rait’s desire to benefit his grandchildren. Unlike the 1950 trust, none of its residue would go to a surviving spouse. All the money would go to surviving grandchildren. It was the kind of arrangement that often can—and in this case did—spell trouble.

Case too weird to be fiction

LAUDERDALE WOMAN SHOT DEAD IN HER HOME

THE WINNIPEG SUN Wednesday, May 23, 1990

# TRUST TUSSLE

Murder ignites  
a family feud

Hubby  
a suspect



By 1971, two years before her father's death, Margaret was living in Fort Lauderdale, Florida, with her fourth husband, William F. Polk, a retired U.S. Army colonel. Unlike her sister Mary McKenty, who'd remained in Winnipeg and had four children before her death in 2002, Margaret was childless. When William Rait died in 1973, he left the bulk of his estate to his second wife but nothing to either daughter, reasoning that he had already looked after their financial well-being with the trusts. However, at the time of Rait's death and the subsequent reading of his will, the Polks were in serious financial difficulties, despite Polk's army pension of \$20,000 a year and Margaret's annual trust income of nearly \$90,000. And so, at Polk's urging, Margaret began a court action in Manitoba to upset Rait's will. Having no legal merit, this challenge was soon dropped, and replaced by another attempt to get income from Rait's estate under a Manitoba statute, The Testator's Family Maintenance Act. This, too, was soon dropped, having even less legal merit than the challenge to the will. But the Polks' financial difficulties continued and indeed increased over the next thirteen years. By the time of Margaret's 1987 murder, the \$323,000 mortgage on their expensive Fort Lauderdale house was seriously in arrears and the loss of their house through foreclosure was imminent. (In fact, foreclosure took place shortly after Margaret's death.) More important for Polk, by December 1986 his participation in a grandiose spa development in the Grand Caymans would end and his investment would be lost, unless he could come up with more than \$100,000.

His attempts to upset Rait's will or raise money by seeking to use the Rait trusts as collateral for bank loans having failed, the resourceful Polk decided to do an end run around the trusts. The year after Rait's death, he suggested to Margaret, then aged fifty and childless after four marriages, that they should adopt. Casting about for a suitable candidate for this adoption, he initially suggested his own married daughter, then thirty. However her mother, Polk's former wife, refused and under Florida's adoption law her consent was required. Polk then hit upon another scheme. With the help of his Fort Lauderdale lawyer, Bruno Di Guilian, he and Margaret adopted one Iva T. Ray.

In the event of Margaret's death, Ray, as a grandchild of William McGillivray Rait, would become a beneficiary of potentially



The pool and patio of the Polk residence in Fort Lauderdale

millions of dollars in the two Rait trusts. However that, in itself, would be of no help to Polk, who, by the terms of the 1955 trust (which excluded surviving spouses), would receive nothing. And so, a month before her adoption, Ray signed a document prepared by Polk's lawyer entitled *The Iva T. Ray Irrevocable Trust*. It provided that if she came into the money, she would keep only the \$20,000 fee—which she had received for her active cooperation in the adoption arrangement—and the rest, perhaps as much as three million dollars, would fall into the hands of one William Polk, the retired U.S. Army colonel.

Iva T. Ray was a woman with whom Polk had had a previous business association. She was married, and she was fifty-two years old—two years older than her adoptive mother! The document she signed—an irrevocable trust—could never be changed or challenged.

In a pre-trial examination in Winnipeg in January 1990, in a court action by Polk to get millions more of the trust money than he was entitled to as a surviving husband, Winnipeg lawyer Sid Green (acting for Mary McKenty), asked “Would it be fair to assume that as a result of Margaret’s disappointment [in being left out of her father’s will] this adoption took place?”

“Yes,” replied Polk.

“So, you were aware that if Margaret Polk died before you did, you would become the person legally entitled to the monies that were in these two trusts?”

“Yes, sir.”

The scheme, later labelled by Royal Trust’s lawyers in Winnipeg as fraudulent, clearly could work only if Margaret died before Polk.

She did.

SOMETIME EARLY in the morning of February 4, 1987, Margaret Polk, aged sixty-two, was shot to death. She and William had been living alone in a carefully secured waterfront house in Fort Lauderdale with eight Yorkshire terriers, said to be the yappiest dogs in existence.

At 4:08 that morning a call came through to 911, but the caller, William Polk, hung up before it could be answered. The operator traced the call to the Polk residence and dispatched police to the address. A moment or two later, Polk called Jane McLane, Margaret’s closest friend, and asked her to come over to help with the dogs because, he said, “Margaret has had an accident.” Then, at 4:12, he again called 911. This time he talked to the operator and asked for the police, stating that his wife had been shot. “I think these guys robbed the place and they had me knocked out.”

“Do you know who did this?” he was asked.

“Yeah, two guys. They were in masks.”

In a matter of minutes, two cruiser cars pulled into the driveway of the house, originally a bungalow but with a second-storey addition, enclosed on either side by a six-foot concrete wall. Alongside these walls was a row of trees and shrubs twenty feet high that provided a curtain of silence and invisibility. The first police officers proceeded along the north side of the house toward the backyard patio and pool, which looked out to a waterfront sea wall, fenced at either end, designed to prevent intruders from accessing the property from the north fork of Fort Lauderdale's Middle River. There they encountered Polk walking toward them, "steadily and calmly."

Entering through the open sliding doors, police made note of two observable facts: there was no immediate sign of a break-in and the dogs were barking furiously. Penetrating the house further, they found the lights and television on and Margaret, slumped in her usual chair at the dining room table, dead. As a post-mortem examination revealed, she had been shot once through the heart from close range (between two and six feet) with a .38-calibre Colt revolver. According to the medical examiner, she was likely asleep when she'd been shot. Gunpowder was found on her eyelids and her blood alcohol level, well over the legal limit for driving, was high enough to make her doze off. He further testified that there was no physical evidence whatsoever of a struggle with the killer. He placed the time of her death at between 2:30 and 4:00 a.m.

No fewer than seventeen firearms were in the house (two of them pictured), some of them in open view, and some loaded and readily accessible to the security-conscious Polk, should the need arise. But not one of the firearms, according to the police search of the premises, was a .38 revolver. However, there had been a .38 revolver in the house before the murder, Polk told police. He had built two shelves under the dining room table, neither





Police photo of Polk shortly after the murder, disheveled and with a graze wound

visible to a stranger, one at his place and one at Margaret's; each shelf always contained a gun, loaded and at the ready. The gun at his place, a Derringer, was still there. But the .38-calibre Colt was missing. It remained missing despite an intensive search, including an underwater search of the nearby river. A search of the house meanwhile revealed no signs of forced entry—no broken locks on doors, no torn screens in the bedroom windows. Nothing was open except the sliding doors at the riverfront side of the house from which Polk had emerged to meet the police and through which the police entered.

Over the next two hours Polk gave the police different versions of the facts. Most consistently, he stated that he and Margaret had a late midnight dinner, as they usually did, and that about 1:30 he had taken the dogs out to “do their business,” as he delicately put it. He had brought them back inside and was, he said, immediately attacked by a man in a ski mask. In another version, he stated that after he took the dogs out he returned, put the dogs in their pens (four baby playpens were located around the doorway from the kitchen to the dining room), but did not rejoin Margaret, who was still at the table watching TV and consuming bourbon highballs. He said that he then went to his second-floor office to read the Wall Street Journal. Shortly after, he heard a “click” on the ground floor. He came down a spiral staircase leading to a first-floor hallway, which fronted one of the two main-floor bedrooms, and was attacked by one of two men in ski masks. This man, he said, had a knife in his right hand and a metal object in his left hand. He struck Polk on the left side of his forehead with the metal object and kicked him in the groin, which, Polk said, rendered him unconscious for thirty minutes. When he regained consciousness he saw that Margaret had been shot. Following the first aborted call to 911, and after making arrangements for Margaret's friend to look after the dogs, he phoned 911 the second time.

In a variation of this version Polk said that when he was knocked to the ground he heard the sound of a gunshot, then his assailant say “Jesus Christ” before fleeing the house with the second man. At this point, Polk said, he checked on his wife and found her dead.

Aside from the blood where Margaret sat, murdered, the police found no blood anywhere in the house.

IN ARTHUR CONAN DOYLE'S short story, "Silver Blaze," Sherlock Holmes solves the mystery of the disappearance of the eponymous racehorse Silver Blaze and his trainer's murder in part by noting "the curious incident of the dog in the night-time"—the fact that the dog did not bark at the theft of the horse because the thief had been no stranger to them. Whether Colonel Polk was familiar with Sherlock Holmes is unknown, but at no time, either when being questioned at the house or later at the police station, did Polk state that the eight yappy Yorkshire terriers had barked.

The terriers were penned in two children's playpens located at the foot of a set of spiral stairs that led to the upstairs bedroom, in such a way that it was impossible for anyone to access the dining room or the upstairs without the dogs jumping and barking—enough, as they say, to awaken the dead. There was later testimony that even if someone came into the yard and approached the house the dogs would go into a frenzy. But, curiously, Margaret Polk's

murderer seemed to encounter no such frenzy. When examined in Winnipeg on this critically important point by Sid Green, Polk was very specific: "There was no noise from the dogs at all."

"If there were eight dogs barking, you would have heard them?" asked Green.

"I guess I would," Polk responded.

Yet all the police officers in attendance testified that as soon as they got near the house the dogs began barking furiously.



Sid Green

IN THE WEEKS that followed Margaret's death, Polk became increasingly uncooperative. On the morning of the murder, shortly after the investigating detectives arrived, he agreed to have his palm prints taken. That would reveal the presence (or absence) of gunpowder

from the recent firing of a revolver. But shortly after he adamantly refused. Neither would he agree to a lie detector test. He alleged that some of his wife's jewellery had been stolen—open drawers pointed to an attempt at theft—but he refused to give police a list of the items allegedly stolen. Later, he refused to claim for loss of the jewellery under their home insurance policy. Moreover, \$241 in bills was found in Margaret's purse, which was in plain view near where Polk said he had been attacked. The medical examiner who analyzed the pictures of Polk's forehead abrasion testified that he did not believe that the glancing blow depicted could possibly render anyone unconscious.

In summation, there was no sign of forced entry into the Polk household. A .38-calibre revolver was missing (and never found) while the victim was dead from a bullet wound inflicted at close range by a .38-calibre revolver. Polk's accounts of the intruder and the beatings he'd received varied, and though he claimed to have been rendered unconscious, he sought no medical attention, nor did he receive any. He also refused examination for traces of gunpowder on his hands and a lie detector test.

Did William Polk kill his wife? Legal experts say conjecture and suspicion, no matter how shrewd, is not enough to convict. The evidence was after all, purely circumstantial and, in law, circumstantial evidence sufficient to convict must be not only consistent with guilt but also inconsistent with any other rational conclusion except guilt.

Was there motivation? Certainly. "*Cherchez l'argent.*" Follow the money! But was Polk's desperate need for money sufficient to turn him into the cold-blooded killer of his wife of some sixteen years? Friends and neighbours said there was no history of domestic trouble between them. Indeed, though they lived quite separate lives for the most part, they appeared devoted to each other. Margaret's life centered around her dogs and an almost obsessive need to shop, sometimes buying two of the same garment and then not wearing either. Friends called her "the joy of Las Olas," Fort Lauderdale's ritziest shopping area. Polk's obsession was with money, the pursuit of a pot of gold at the end of a speculative rainbow.

Was there opportunity? Obviously. Most tellingly, only two people (one of them the murder victim) knew of the existence of the missing .38 and its hiding place under the dining room table—



presuming it was the .38 that killed Margaret—unless, of course, the information had been given to a third party.

Is Polk's story credible? To some extent, it is, apart from the dogs that, he said, failed to bark in the night. As shown in the police photo, he did suffer an injury, though one insufficient, as the medical examiner said, to knock him out. Unless the injury was self-inflicted, as the medical examiner said was possible, it had to be inflicted either by an intruder or, perhaps, by a hired killer who was promised a bundle from the millions expected to flow from Margaret's death. The killer, or killers, might have entered the sliding doors when Polk came in from walking the dogs. Yet if there were intruders, "strangers in the night," why didn't the dogs bark?

Fort Lauderdale homicide detectives thought Polk should have been charged with Margaret's murder, but, for reasons unknown, the district attorney did not issue an indictment. Soon after (and in almost indecent haste), Polk launched a legal action in Winnipeg against the Royal Trust Corporation of Canada as trustee of the trust funds, claiming on his own behalf and as the beneficiary of the Iva T. Ray Irrevocable Trust, the sum of approximately three million dollars. The Royal Trust claimed the Ray adoption was "a sham, a fraudulent scheme devised to provide the legal fiction of a child" to enable Polk to acquire money to which he was not otherwise legally entitled. It was noted that, under both American and Canadian criminal law, if Polk had been charged and convicted of Margaret's murder, he would have had no claim to any part of her estate.

Arising from this court action, a commission headed by Mr. Justice A.A. Herschfield of the Manitoba Court of Queen's Bench took evidence from witnesses under oath in Fort Lauderdale in January 1990. When a friend of Iva T. Ray's was called as a witness, Sid Green asked, "And did she call [Margaret] 'mommy'?" When Reeh Taylor, QC, of Winnipeg, counsel for



Reeh Taylor

Polk, suggested to a witness that the Polks treated their dogs almost as if they were their own babies, Green also interjected, "They would have adopted them, if they could." Police officers presented their evidence, much of which was incriminating, but in the absence of a murder charge against Polk, and with evidence that the Iva T. Ray adoption was legal according to Florida law, the Winnipeg litigants, including the Royal Trust, the Public Trustee of Manitoba and Mary (McGillivray) McKenty and her children, reluctantly agreed to settle Polk's claim for close to a million dollars (half of Margaret's 1950 trust) to which he, as her surviving husband, was legally entitled (in the absence of a murder conviction).

Polk died in February 2005. There is no record of what happened to the dogs. Perhaps, contrary to their natural disposition, they did not bark in the night. Perhaps, like good little babies put to bed in their two little cribs, they slept peacefully through the sounds of a stranger penetrating the house, through the beatings of their master, and through the shooting of their mistress. Who killed Margaret McGillivray Polk remains a mystery—a real whodunit. Perhaps, one day, it may be solved as a "cold case."

# BAKER CHARGED WITH MURDER

## Abraham Goodman On Trial For Alleged Hatchet Slaying



Murder headlines were a sensation.

Left: Rachel Herman



## Chapter 2

# A Sensational Murder in Winnipeg's North End

You are to be taken to Headingley Gaol and there confined as the law requires until December 27, between the hours of 12:45 a.m. and 8:00 a.m. and on that day you are to be taken to your place of execution and hanged by the neck until you are dead, and may God have mercy on your soul.

**T**H**ES**E D**REA**D**FUL** words pronouncing the death penalty—the only penalty that a Canadian judge could give following a conviction for murder before the death penalty was abolished in 1976—were uttered in a Winnipeg courtroom on October 10, 1946, to a weeping jury and to the accused, Abraham Goodman, an elderly Jew who, speaking only Yiddish, could not, without translation, comprehend what was being said.



Abraham Goodman

“What does that mean?” asked Goodman when an interpreter translated the words for him, “Please let my son tell it to me. I do not understand.” He turned to his son who was standing by his side. Goodman was almost totally deaf, so his son had to shout the words while his daughter, also by his side, wept.

Then, asked if he had anything to say, Goodman addressed the jury in Yiddish for almost an hour. He told them of a hard life in his native Poland, of his coming to Canada with his wife to start a new life, of his wife's painful

death from cancer, and of the events that brought him into a Winnipeg courtroom to tell the jury that in the killing of Rachel Herman, “I couldn’t help myself.”

RACHEL HERMAN was an attractive sixty-two-year-old woman separated from her husband and living alone in a small room in a house on Flora Avenue in Winnipeg’s North End. It was a room that Goodman himself tried to rent before Mrs. Crystal, the owner, decided to rent it to Mrs. Herman. The house was on the street that he walked every day to and from his job rolling out dough for rye bread at Winnipeg’s famous City Bread. He was curious about the new tenant. One day he came by and saw her sitting on the porch. He made eye contact and was smitten badly—and, eventually, madly. Working the night shift, he visited Rachel almost every day, sometimes, witnesses said, twice a day. At first he helped her with moving her furniture. Then he began to court her in earnest. He showered her with gifts, unaware that she was still legally wed, deluding himself into believing that her acceptance of the gifts was the equivalent of a binding engagement to marry.

Rachel discussed the situation with her son when he came to Winnipeg for a visit and told him of Goodman’s pressing her to set a marriage date. According to her son, she tried to convince Goodman that she was not a widow, that she was only separated and therefore not free to marry. But, she said, Goodman was extremely hard of hearing and refused to accept her word about her marital status. He persisted in his pleas and in his plans for marriage.

The days leading up to the murder were increasingly fraught. Arguments began and grew in intensity. One day, about a week before the murder, Goodman entered Mrs. Herman’s room through a side-door entrance with a key she had given him and threatened to kill her if she would not marry him. A few days later, according to Goodman’s account to the jury, he returned and found her standing in the doorway. When she asked if he was angry, he said, “Of course I am. You threw me out of the house, made fun of me.” She apologized, but then Goodman told the jury, “She took out a knife and said she was going to take her own life. But I talked her out of it.”

“We decided to get married on the following Sunday,” he

continued to the jury. "On Friday I bought a new hat for the wedding. She took it out of the box and put it on my head and it fitted very well. On Saturday we had breakfast and lunch together. Later in the afternoon I suggested that we make arrangements for the wedding. She refused, saying she wouldn't marry me. I went to work crying."

At 2:30 on the morning of Monday, May 20, 1946, Goodman, according to his own account, quit work, went home, and tried to sleep. But his head was pounding and his hands were shaking. He tried whisky, he said, to help him sleep. Then he went out for some fresh air. Nothing helped. He decided to plead once again with Rachel Herman to marry him. He went to her house and let himself into her room.

"At 7:15," he recounted, "something urged me and I went and killed her. I couldn't help myself. They thought I was crazy. They wanted to fleece me of my money. I couldn't help myself."

He had taken with him a small hatchet he had purchased two days before when Rachel said she would not marry him. He struck several blows, leaving her mortally wounded. Then he fled her room and threw the hatchet into a rain barrel near the side door. He made an unanticipated daytime appearance at City Bread, quickly departed, leaving behind his prayer shawl, and then went to a nearby drugstore where he purchased a bottle of carbolic acid with which he intended to kill himself.

By this time, the police had responded to an urgent call from Mrs. Crystal, who had heard the argument and Rachel Herman's screams. Having seen the body they were on the lookout for Goodman. One of the police officers spotted him near City Bread just as he was swallowing the carbolic acid. He ran to a nearby grocery store, grabbed a bottle of milk, ran back to Goodman and forced the milk down his throat as an emetic. Goodman was rushed to nearby St. Joseph's Hospital, then located at the corner of Salter Street and Pritchard Avenue, where he quickly recovered. By tragic coincidence his room was right down the hall from where the unfortunate Rachel Herman had just been pronounced dead.

Released from the hospital into police custody the following day, Goodman appeared in what was then called the City of Winnipeg Police Court and was formally charged with murder. One of

Goodman's employers, Morris Perlmutter, at first retained Joseph Zuken, a celebrated figure in Winnipeg (and later a city councillor), to represent Goodman. It was Zuken who first appeared in Police Court, but Zuken did not take major criminal cases. He referred Goodman to the McMurray, Walsh law firm and the by-then-famous Harry Walsh took the case. Following a preliminary hearing, Goodman was committed to stand trial, which took place over three days in October 1946 during the fall assize of the Court of Queen's Bench.

## **Alleged Axe-Wielder Tries To End Own Life**

**Both Sides Call Psychiatrists**      **Expert Says Goodman  
Mentally Deteriorated**

The defence team of E.J. McMurray and Harry Walsh, knowing that it couldn't refute the evidence that Goodman had killed Rachel Herman, decided instead to concentrate on the theory that, at the time of the killing, Goodman was legally insane. If the court accepted this defence, it would mean Goodman would not be found guilty of murder, but instead, he would be found "not guilty by reason of insanity" and committed to a mental institution at "the pleasure of the Lieutenant Governor in Council" (that is, the provincial Cabinet, which acted only on the advice of a medical review panel).

Much has changed with this aspect of the law since 1946. Today, Goodman might well be found not guilty by reason of insanity. But as the state of the law was then, such a verdict was extremely difficult to establish. In his hour-long speech to the jury following his conviction, Goodman said at one point, "I couldn't help myself." And perhaps he could not.

One of the most bizarre elements in this unusual case was the prosecutor's attempt to admit into evidence, as a confession, Goodman's statement to a police officer while he lay in St. Joseph's Hospital recovering from his attempt at suicide. A Jewish police officer, Patrol Sergeant Leon Elfenson, had been assigned to take a statement from the nearly deaf, Yiddish-speaking Goodman. Elfenson testified that he gave the required legal caution, namely that Goodman need not say anything but that anything he did say would be taken down in writing and could be used as evidence at his trial. In Walsh's cross-examination, Elfenson was asked to give the Yiddish equivalent of key words in that legal caution, but he was unable to do so. Goodman's statement was then ruled inadmissible as evidence, though, given the strength of the case against Goodman, that could not affect the outcome.

The crime resonated through the North End. North End-born author Adele Wiseman, whose 1956 award-winning novel *The Sacrifice* is, in part, about an immigrant named Abraham who descends into a mad act of murder, recalled the event in an interview for Harry Gutkin's 1997 history *Profiles in Dissent*.

There had been an unusual, violent crime in North Winnipeg lately. An old Jew had hacked a woman to death with an axe, and the murder had shocked the community. I was fascinated by the effort of many in the Jewish community to figure out the motives for such an act. He was *eiverbotel*, they said, senile. He was deaf, he didn't understand what was going on. They, too, were trying to get at the optimal circumstances that would explain the crime. My own purposes were a bit different. I didn't want to know what had *really* happened. I wanted to figure out how such a thing *might* have happened. The real facts might have obstructed vision.

In *The Sacrifice*, Wiseman describes a conversation between two characters discussing the murder: "They are looking into his head and finding out all kinds of things to say about a mad old man. But what do you think they would find if they could look where God looks, in his heart. What would they find?"



# **Goodman Convicted** **Sentenced** **To Be Hanged**

## **Judge to Join** **In Mercy Plea**

IN THE FACTUAL and legal circumstances of that time the jury's verdict, "guilty as charged," was inevitable as was the pronouncement of the death penalty, the only penalty then available following a murder conviction. However, the presiding judge, Jack Adamson, who had the reputation of being a strong believer in the death penalty but who nevertheless had listened carefully to the jury's recommendation for clemency, advised Walsh that he would be sending his own recommendation to the federal Minister of Justice to commute the sentence from death by hanging to life imprisonment. And so, dramatically, just ten days before the date set for hanging, Goodman's death sentence was commuted to life imprisonment and he was transferred to Stony Mountain Penitentiary, ten miles north of Winnipeg.

In prison Goodman quickly earned the quiet respect of even the most hardened criminals, becoming a kind of surrogate grandfather. Many of the inmates—never fewer than the ten (the minyan required by the Jewish religion for ceremonial worship) sat—in at

his request on his early morning prayers even though, technically, all members of a *minyán* should be Jewish. He explained to them that when he prayed he faced east “to look to the holy city of Jerusalem.” When the chief rabbi of Winnipeg’s Shaarey Zedek Synagogue brought him matzoh (unleavened bread) at Passover, at Goodman’s request, he brought enough to share with his friends in prison. They taught him, or rather tried to teach him, how to play poker. He was hopeless. However, to his delight, they let him win a few nickels. But he would not keep the money. Shoving it back across the table, he said in his limited English, “Go buy yourself some cigarettes!”

In 1953, at the age of seventy-seven, Abraham Goodman died in prison from cancer. On his tombstone (pictured) placed by his children in Winnipeg’s Shaarey Zedek Cemetery, are written the words “In loving memory: Father Abraham 1876–1953.” It might also have said, “He died of a broken heart.”



## Chapter 3

## A Fatal Duel in a Blizzard

**T**HE WIND HAD BEEN BLOWING and the snow snowing for the better part of three days and nights and what seemed to be half of Churchill's adult population was holed up in that northern Manitoba town's most popular saloon with nothing much to do except drink, drink, and drink some more, and argue. Two of those crossing words were "A." and "V." During their increasingly heated exchange, A. hurled the racist word "muckpaw" (wolf killer) at V., who was Aboriginal. Taking it as the insult that it was, and was intended to be, V. retorted: "Listen, big mouth, if we had a contest with rifles you wouldn't last very long!" Taking this as a challenge, A. replied, "You're on!"

Such were the opening words of what would become, in the early hours of November 25, 1973, the last recorded fatal duel in Canada—a dubious honour usually reserved by historians for an incident in Ontario in 1833, between two law students fighting over the honour of a young woman. Law in early nineteenth-century Canada made no special provisions for duelling—even though the winner in a fatal contest was, technically, a murderer. Combatants in duels were usually drawn from the upper crust and considered to be gentlemen, and the prevailing sentiment was that engagements with matched weapons between two men over issues of character and integrity (and sometimes the hand of a young woman) were considered matters of honour that should not be subject to prosecution. Although the victor in the 1833 duel in Ontario was charged with murder, he was acquitted by a jury, apparently in keeping with the custom of the day.

Duels became less defensible as the nineteenth century wore on. In 1844, court martial and dismissal was instituted in the British army for duelling by officers, and civilian society in the Empire began to follow suit. By 1896, duelling in Canada was specifically

prohibited by its new (and first) *Criminal Code*, which also stated that no person could consent to his or her own death.

Oblivious to either the legality or morality of what they were about to do, at about 3:00 a.m., A. and V. went into the blinding snowstorm with their rifles. Standing back to back they paced off about twenty-five feet, turned, and shot at each other. They missed, not surprisingly in the whiteout characteristic of a Churchill blizzard. But then A., as he testified under oath, heard the clicking sound of what he took to be V. reloading for a second shot. A. then fired, he said, in self-defence: “It would have been over without that click.” V. was wounded and died on the way to the hospital in The Pas.

A. was charged with murder, and because of the legally required sentence for murder at that time, he faced either a death sentence or, at best, a commuted sentence of life imprisonment. But A., like his counterpart in the 1833 duel in Ontario was—remarkably—not convicted. He was acquitted by a jury of his peers.

A. was fortunate to be defended by the widely acknowledged wizard of the courtroom, Harry Walsh, who took the unusual step of putting the accused on the witness stand. The conventional wisdom (and certainly Harry Walsh’s practice) was that unless the accused could supply a missing key element of a defence, he should not testify because, almost invariably, it provides the Crown prosecutor with a chance to destroy the witness by cross-examination. It also gives the Crown prosecutor the opportunity to call rebuttal evidence, including, in some cases, evidence of an accused’s prior convictions with which to attack his credibility. Part of the Walsh myth among lawyers (indeed one which he cultivated) was that he never put an accused on the stand. The Crown prosecutor, caught by surprise when Walsh violated his own rule in this instance by calling A. to the witness stand, said: “You son-of-a-gun, I was a student in the Law Society’s bar admission course when you cautioned us never to put an accused on the stand.”

“Well,” replied Walsh smoothly, “there are exceptions to every rule.”

And in the case of the duel in the blizzard there were.



A near white-out: Churchill in a blizzard

WALSH THEORIZED that the only possible defence in the circumstances was self-defence. It became the crux of his strategy and he determined that putting A. on the stand was the only way he could establish that defence since there were no independent witnesses to the duel. He was prompted in his decision by a number of critical factors. For one, the RCMP, who had investigated the crime and had interviewed A., had presented nothing in evidence during the Crown's case upon which Walsh could base a defence of self-defence. He also knew that even if the constables did have material in their interview notes to rebut or weaken A.'s version of the events leading up to V.'s death, they would have no opportunity to present it. He had flown with them to Winnipeg from The Pas for the weekend adjournment and overheard them saying that they had no plan

to return. He also knew that while his client had once been previously *charged* with a criminal offence, he had not been *convicted* and that, therefore, could not be cross-examined and his credibility destroyed on the basis of previous convictions.

There was no doubt that A.'s *intention* when he went outside to meet V.'s challenge was to shoot the man, although not necessarily to kill him. And it might be that in the strict application of the law, A. was not entitled to have the defence of self-defence even considered by the jury. Nevertheless, somewhat permissively, but perhaps because of the peculiar circumstances, the trial judge left that defence up to the jury. Walsh worked his magic on the jurors and A. was acquitted.

The judge in the 1833 Ontario duelling case remarked, "Juries have not been known to convict in duelling cases when all was fair." Perhaps the jury in *The Pas*, in addition to being swayed by Walsh's defence strategy, thought something along the same lines once the matter was left for them to decide. Can "fairness" in a case involving the prohibited action of duelling be a legal defence to a resulting homicide? No—but it can sometimes be the case (and, in this instance, probably was) that a jury does its own thing!

Harry Walsh and Richard Wolson, the law student (and now a leading member of the criminal bar) who accompanied him, refer to the defence as the "click defence." A. said he heard a click the second time and fired only then.

Or one might well ask, was the "click" the sound of the RCMP constables' boot heels as they left that courtroom in *The Pas* with no intention of returning? Or was it the sound of the Crown prosecutor closing his notebook in fury when he lost his chance to cross-examine an accused with a record? Whatever else the click might have been, it was and remains both important legal history and a tribute to Harry Walsh's brilliance as a defence lawyer, in this case grasping the opportunity to see and depict for a jury the outline of a defence barely visible through the whiteout of a Northern Manitoba blizzard!

## Chapter 4

## The Gold Bullion Heist: March 1, 1966

**H**ARRY BACKLIN first met Ken Leishman at Stony Mountain Penitentiary. Harry was a university student in the late 1950s and, as a student volunteer, travelled the thirty kilometres northwest from Winnipeg to “Stony”—as the Federal prison is commonly known—to speak to inmates. One of them was Ken Leishman, born in Holland, Manitoba, in 1931, who was serving a sentence for a 1957 bank robbery in Toronto that had earned him the moniker “The Flying Bandit” (because he had flown there from Winnipeg to commit the robbery where, he mistakenly thought, he could not be identified). Ken was handsome, smooth, always affable, a devoted husband and loving father to his seven children—a family he never could seem to support, either through honest employment, speculative business ventures or, for that matter, carefully crafted crime. Harry Backlin was a big man, country-born like Leishman, though a little older, with a genial nature and a head full of get-rich-quick ideas. The two men instantly took a liking to each other, and when Leishman was released from Stony in 1961, their friendship flourished. Together with an accountant, Leishman and Backlin, now a practising lawyer, formed a small consumer-product corporation (located, as it happened, not far from the Winnipeg International Airport). By December 1965, the business was on the verge of bankruptcy. But the indomitable Leishman had a plan for an infusion of fresh capital.

An experienced pilot, Leishman was familiar with certain aspects of the air traffic operation at the Winnipeg International Airport, in particular with the transport to Winnipeg of gold that was mined and smelted at Red Lake, Ontario. Though the gold’s final destination was the Royal Mint (then located in Ottawa, but now in Winnipeg), it was first transported to Winnipeg in a small plane, an old Transair DC3, which landed at the north end of the terminal.



Harry Backlin, left, and Ken Leishman, below.



Off-loaded onto an Air Canada van, the bullion was then driven to the south end of the terminal where it was placed on a jet bound for Ottawa. It was in the particulars of this transfer that Leishman saw his opportunity.

Besides Leishman and Backlin, three other men were involved in what was soon to become and still remains the largest gold heist in Canadian history. One of the five confederates was stationed in Red Lake as a lookout for a substantial gold shipment leaving for Winnipeg by air. The other two were outfitted with fake Air Canada white coveralls that Leishman had prepared (by stencilling on the Air Canada maple leaf logo) and Air Canada bills of lading that he had easily purloined from the Air Canada office when it was deserted at coffee break. On March 1, 1966, the call came from Red Lake. A very large quantity of “moose meat”—the conspirators’ code word for the gold—was on its way.

That evening the two members of the team whose job it was to take the gold drove up to the north landing area in an Air Canada van that Leishman had noted earlier was always left in an nearby open garage with the keys in the ignition. Presented with a seemingly



genuine bill of lading by two men dressed in what appeared to be official Air Canada uniforms, the air crew obligingly off-loaded twelve fifty-four-pound boxes of pure gold bars, then valued at \$315,000 (approximately \$10 million in 2009 dollars), into the Air Canada van. Offering an effusive thank you (gold robbers, unlike drug dealers, tend to be polite and non-violent), the two drove a short distance to a parked car owned by one of them, transferred the gold from the van to the car, and then drove a further short distance to the conveniently located offices of Leishman and Backlin's nearly bankrupt cleaning-supply business, where Leishman anxiously waited. The twelve boxes were then loaded into Leishman's car and Leishman drove off into the night, headed straight for Backlin's house in the Fort Rouge district of Winnipeg, not realizing that he was being tailed by one of the two who had carried out the theft.

Backlin, who was acting as the scheme's front-end financier, was in Los Angeles on a vacation with his wife and two children at the time of the theft. As he understood the plan, Leishman was to take the gold immediately to the barn of an unsuspecting uncle of his who farmed near Treherne, about 130 kilometres southwest of the city. But Leishman, reasoning that checkpoints would have been set up on all roads out of the city in the wake of the theft, decided instead to leave the twelve boxes of gold at Backlin's house, not something to which Backlin had agreed. Telling Backlin's mother-in-law, who was staying in the house during the family's absence, that he had some "moose meat" for Backlin's deep freezer, Leishman placed eleven of the boxes in the freezer. Planning to keep just a little something for himself, he hid the twelfth box above the basement's tiled ceiling.

The next morning, while newspaper headlines and TV and radio news reports thrilled the populace with this tale of derring-do, the police questioned Leishman. But Leishman, who knew his distinctive height and appearance would have been a dead giveaway if he'd actively joined in the theft itself, was able to fob off the police with an easy denial. Airport employees could not identify him at the scene when shown his picture, and, indeed, he hadn't been there. Meanwhile, that same morning, one of the two airport thieves, who had followed Leishman the previous night, turned up at Backlin's front door, and announced himself to the mother-in-law as a friend

of Harry come to get some of the moose meat. No doubt puzzled by this sudden popularity of moose meat, Harry's mother-in-law nevertheless admitted the thief who happily took off with one of the twelve boxes, later hiding it in some bushes on the banks of the Assiniboine River near Headingley when, heading west with his loot, he spotted a police checkpoint.

Once the police had left his house, Leishman phoned Backlin in Los Angeles, advising him that the moose meat had been successfully procured. For Backlin, this was excellent news, until he learned that the bullion was not in a barn near Treherne, as originally planned, but cooling in his very own freezer in Fort Rouge. Exploding with rage, he told Leishman to get the "fucking moose meat" out of the deep freeze before he returned to Winnipeg with his family on Saturday, March 5—three days hence. Rebuked, Leishman realized he had no choice but to remove the gold from the Backlin home. He decided to do it the next night, Thursday, reasoning that in any event the road checks would likely be closed.

However, what did not cooperate was the weather. Brewing off to the southwest of Winnipeg was a Colorado low, a weather system that transports warm, moist air from the Gulf of Mexico and dumps it on the northern plains of the U.S. and Canada in winter in the form of snow—lots of snow. By late Thursday evening, when Leishman was preparing for his journey, what was to become one of the worst blizzards in Winnipeg's history was quickly making the notion of a country drive impossible. By Friday morning, March 4, Winnipeg was shut down. Nobody was able to move on Winnipeg's streets or the highways leaving the city. Not even the resourceful Ken Leishman.

Though most of Winnipeg's streets remained impassable through the weekend, the main road to the airport was open and airplanes were able to land on Saturday. A very nervous Harry, with family in tow, arrived from Los Angeles via Vancouver. On the same plane was a doctor, with whom Harry, ever the smooth talker, rekindled a previous acquaintanceship that would soon prove both useful and fatal. Waiting to greet him at the airport was the unmistakable Flying Bandit himself, Ken Leishman, offering to drive the Backlin family to its home.

"Harry," Leishman said to him while they waited for the luggage

to arrive, “sorry about this, but the blizzard, you see. The moose meat is still in your deep freezer.”

Crossing Harry’s panicked brain was the vision of his wife going downstairs to the basement to pick out something for Sunday dinner and wondering what wooden boxes were doing in her freezer. Rather than have to face such troubling questions from his spouse, Harry decided he needed to move quickly.

In the very early hours of Sunday morning, March 6, a nervous but intrepid Harry Backlin silently slipped out of bed, dressed, went downstairs and removed the ten boxes remaining in the deep freezer. One by one, he took them outside and buried them in the huge snowdrifts in his backyard. Spring—and the melting that even in Winnipeg this season guarantees—was only two weeks away but it was the best he could do while he and Leishman quickly concocted an alternative plan.

The next day, with his car snowed in, Backlin walked up Balfour to the bus stop on Osborne, having placed the box of gold from the cellar ceiling (as instructed by Leishman), into his initialled briefcase, which also contained his personal stationery. At the bus stop he met his good friend Detective Manning of the Winnipeg Police. Their chat quickly turned to the heist, and while the gold resided within the confines of the black briefcase not three feet from the detective, Backlin made sure Manning knew that he had been out of town for the whole week—a fact of which Manning was already aware.

IT HAD BEEN the intention from the start that once the gold had been stolen and stashed it would be marketed in Hong Kong, where no questions would be asked about its origins and where it could be sold at a price far greater than the then Canadian fixed rate of thirty-five dollars an ounce. First, though, a sample of the gold had to be taken to Hong Kong. Backlin had been the designated courier and sales negotiator, but in applying for a passport he had neglected to include some vital data. He had recently changed his last name. He had been born and baptized “Backowich,” but thinking the name a bit awkward for a practising lawyer he had legally changed it to “Backlin.” The passport office, however, required proof of name

change, which Backlin would not be able to make available in time. As time was of the essence, Leishman became the designated courier. He already had a passport, but he was also on parole, one of the conditions of which was that that he could not travel outside Manitoba without the prior approval of his parole officer. Still, this was less insurmountable than another requirement of foreign travel: a smallpox vaccination certificate. In 1966, you could leave Canada without a current smallpox vaccination, but you couldn't get back in without a certificate saying you'd had one, and the incubation time for the vaccination certificate was five days—too long for two men in possession of a fortune in gold buried in rapidly melting snow with police working overtime on the case. This seemed a daunting setback until Harry remembered his friend, the doctor he talked to on the plane, who, he was sure, would backdate the certificate. The doctor (much to his later regret) obliged, and by Tuesday, March 8, Leishman, having wished his puzzled wife Eva a fond adieu, was on the train to Vancouver, with a Vancouver–Hong Kong airplane ticket purchased by Harry and, inside a money belt, a six-pound piece of the gold that he had cut from the bar Harry had brought to the office in his initialled briefcase.

But events were moving rapidly beyond their control. Noting the newspaper headlines he'd missed while he'd been away, the doctor immediately alerted the police to his issuance and backdating of the vaccination certificate. The police promptly checked with Leishman's parole officer, and then notified all travel agencies and carriers to give them the names of all persons booking a trip to Hong Kong, which soon revealed Backlin's purchase of a Hong Kong ticket for Leishman. By Thursday, when Leishman arrived in Vancouver, the jig was up. Responding to a public announcement at Vancouver Airport for him to report to the RCMP office (which was at first aware of only his parole violation), Leishman panicked and buried the six-pound piece of gold somewhere on the airport grounds (where, apparently, it remains undiscovered to this day).

Backlin, meanwhile, was met in his office by a squad of City of Winnipeg police detectives who had noted Harry's name on the airplane reservation for Leishman and knew that he had a business association with Leishman. Executing a search warrant, they quickly came across a black briefcase with the initials H.B. on it, casually

parked at the foot of a clothes rack, and found inside it the substantial remains for what was once a fifty-four pound bar of gold. Confronted with the damning evidence, Backlin professed shock and said, not inaccurately, "I think I know who might have put it there and if you give me a break I'll try to find out." No break being forthcoming, Backlin was taken to his house where police were executing another search warrant. Again not inaccurately, Backlin claimed there was nothing in the house, but, he continued, on the night of his return from his holiday he heard strange noises in his backyard, neglecting to add that the noises had emanated from him burying heavy boxes of gold in the snow. The gold was soon located and removed from the melting snow. Backlin, by this time completely discombobulated, was arrested.

The next morning, Roland Penner, retained by Backlin as his defence counsel, appeared before Magistrate Isaac Rice seeking bail for his client who was married, living at home with his wife and children, and working as a prominent practising lawyer. The hearing was brief, blunt, and not at all unexpected. "Bail denied!" snapped Rice. At an appeal hearing the following Monday before Mr. Justice Bastin of the Court of Queen's Bench, Penner reiterated Backlin's domestic stability and professional reputation, adding that, lacking a passport, he was no flight risk. However, the Crown presented what Penner referred to as the "secret dossier" claim (a term made famous in the notorious Alfred Dreyfus trial in France in 1890, in which a young French officer was convicted of treason based exclusively on secret but false information made available to the prosecution but withheld—illegally—from the defence). "My lord," said Crown Attorney Al Sarchuk, "there are strong reasons for denying this bail application which, however, I'm not at liberty to disclose," whereupon Bastin, smiling as he almost always did, pulled a typed document from the case file and read a judgment denying bail, a judgment that he had obviously written before hearing argument. Furious at this palpable breach of the administration of justice, Penner made a further appeal later that week, to the chief judge of the court, G.E. Tritschler, a man noted for cutting to the chase.

"Now, now, Penner," he said, "you can't really be serious in expecting me to overrule one of my fellow judges, can you?" Yes, Penner could, and recounted the Bastin incident, urging Tritschler to

remove the pre-written judgment from the file. When the judge did so, he regarded it with amazement and turned to the Crown counsel: “All right, Sarchuk, there will be bail. What do you suggest?”

Backlin was freed on \$30,000 bail.

The reason behind the Crown’s “secret dossier” may have been the missing bar of gold, the one stolen by one of the thieves from Backlin’s home and buried under a bush on a bank of the Assiniboine River. Suspecting Backlin had it hidden somewhere, police followed him everywhere once he was released on bail. When Penner began to worry his office was being bugged, he arranged meetings with his client at an outdoor golfing range on north Main Street, taking a picnic lunch with him. But the missing bar was recovered when the double-crossing thief cut a deal—getting a relatively low prison sentence of three years for revealing the bar’s location on the riverbank where he had hidden it.

BACKLIN LOST HIS HOME, his family, and his right to practise law. Despite the evidence arrayed against him, he determined to plead not guilty, elect trial by jury, take the stand in his own defence and suggest to the jury that others had buried the gold in his backyard. In the witness box, he was a commanding figure, tall, well dressed, articulate, and an accomplished orator and actor, facing the jury with the bright eyes of the innocent, using vocal intonations almost like a great composer’s variations on a theme. Tears came to his eyes as he talked about his wife and children and pleaded for the jury’s understanding. The jury couldn’t take its eyes off him, and confounded the court by taking more than a day to bring in a verdict.

He was convicted and sentenced by Judge Israel Nitikman to seven years in prison. Paroled after three years, he went to B.C. to start a new life. After a shaky start acting as a non-practising legal adviser to two of B.C.’s then “high flyers” (entrepreneurs who, it is said, sometimes operated close to the margins of the law), and realizing after a few years that this was, at best, unpromising, Harry relocated to Prince George and began a highly successful practice in commercial real estate, earning enough, he proudly boasts, to allow him to take sixty-day summer holidays on his thirty-foot fishing boat. He became so successful in arguing zoning variations before

the Prince George City Council that in 2003 he was nominated for, and almost succeeded being named, that city's "Business Person of the Year." This successful and popular reincarnated Backlin turns up at law class reunions on a regular basis.



The Winnipeg Detention Centre

Leishman's story was even more incredible. While awaiting trial, he escaped twice from detention in the notorious Vaughan Street Detention Centre in Winnipeg, the more daring involved stealing a plane and flying it as far as Gary, Indiana, before being apprehended and returned to Winnipeg. Gold robbery, prison breaks, parole violations, and several other offences netted him a total jail sentence of fourteen years—an unusually low figure which, likely, was due to Leishman's popularity. He had so captured the public imagination that if he had chosen to run for mayor, he might well have been elected. At his sentencing, which took place before two different judges, he was ably represented by Manley Rusen. (At the

end of his second escape from the Vaughan Street Detention Centre, when he knew it was all over and just before he was captured, he phoned Rusen who advised him to surrender and face the music.)

Paroled after serving less than eight years in prison, a reformed Leishman relocated with his wife and children to—ironically—Red Lake, Ontario, the very source of the famous twelve bricks of gold. He sensed that there was a different kind of gold in this prosperous mining and tourist town—the gold of commercial success. Opening up a tourist gift and clothing store, The Trading Post, with his wife Elva, Ken was so successful that in 1978 he was elected president of the Red Lake Chamber of Commerce. Running for mayor late that year he received more than 300 votes, losing the contest by only about seventy votes. He got his pilot's licence back and with it flew a number of mercy missions, taking the seriously ill to either the Dryden or the Thunder Bay General Hospital. And then the end came—not with a whimper but a bang. On Friday, December 14, 1979, flying a seriously ill woman and a nurse to Thunder Bay, only eighty kilometres from its destination, his plane disappeared from radar. Despite active searching, the wreckage and the remains of the victims were not found until May 3, 1980. The Flying Bandit had flown his last flight, this time heroically.



## Chapter 5

# Things that Go **BOOM** in the Night: Three Explosive Tales

**S**OUF IS WHAT everybody's mom makes better than anyone in the whole world (next, of course, to her apple pie).

"Soup" is also American slang for nitroglycerine, a highly explosive and unstable liquid, prepared at great risk, by mixing at a low temperature easily procured glycerol with nitric and sulphuric acids. And, just like your favourite beef barley, borscht, or cabbage-and-ham soup, it can be prepared in the kitchen—but, necessarily, in a glass tray seated on ice in the sink and never on the stove.

Nitroglycerine has a variety of uses, some good, but in the hands of the underworld, some very bad indeed, as the tales in this chapter will tell.

In the nineteenth century, Alfred Nobel invented a way of rendering nitroglycerine relatively inert until sparked by a fuse or triggered by physical shock. He called his invention "dynamite" and his patent made him the immense fortune that is now the foundation of the annual Nobel prizes, including, ironically, the Nobel Peace Prize. A form of nitroglycerine is commonly used as a dilator in the successful treatment of certain heart conditions, for example, relieving the excruciating pain of angina. In the interests of culture, we also note its use in the lyrics of popular songs designed to suggest the explosive power of sex, among them "Nitroglycerine" by the 1980s American garage punk band, the Gories (She's volatile / She's my baby / Nitroglycerine!). The remarkable female subject of the song "just blows up—like dropping a stick of dynamite into a Dixie cup." (We refrain from further elaboration.)

TALE ONE:

**About Things that go “Boom” in the Night**

B., known around town as a “rounder,” that is, a habitual criminal, was contacted by H., a prominent Winnipeg businessman, who made him an offer he could not refuse. For a handsome fee, H. asked B. to blow up his heavily insured pleasure launch, which was anchored at the Pritchard Avenue dock on Winnipeg’s Red River. At the time, H. was having a severe “case of the shorts”—his bank was demanding payment in full on an extensive overdraft. Once the contract, though illegal and unenforceable, was signed and sealed with a down payment, B. set about making soup—the kind that could blow up a boat.

B. purchased the necessary chemicals and apparatus for making nitroglycerine (glass tray, dairy thermometer, eyedropper, small bottles, and the required chemical ingredients) at two different drugstores, then arranged with a friend who lived in the Casa Loma apartment block, at the corner of Portage Avenue and Sherbrook Street, for the use of his kitchen. To make the occasion pleasurable as well as a productive, a number of friends were invited to a party. Since a fairly large quantity of ice cubes is required for cooling the soup as it is being prepared, it was thought some could be spared for drinks.

B. added the glycerol to the nitric and sulphuric acids in a glass tray nesting on a bed of ice cubes that had been placed in the kitchen sink to ensure the mixture remained below four degrees Celsius (above which it was too volatile to handle safely). Once safely mixed, the nitration completed, and excess acid poured off, the soup was then carefully taken up with an eye dropper and put into small glass containers that were then stored immediately in a cool secure place—namely the friend’s fridge.

And there it sat and sat while B. waited for H. to give the final go-ahead for the big bang. But after about a week H. changed his mind and cancelled the contract. Meanwhile, every time B.’s friend went to the fridge for a cold beer he trembled with anxiety. Finally, he insisted that B. remove the soup, the equipment, and the unused chemicals. Much too cautious to do it himself, B. hired an

eighteen-year-old “punk” who owned an old beater of an automobile. B. gave him ten dollars, a mickey of cheap rye whisky (big mistake), and instructed him to take the soup out into the countryside and bury it. But the punk was not thrilled by the idea of a long drive on country roads after sundown, carrying three bottles of volatile explosive. Instead, as he travelled south across the Maryland Street Bridge and sighted the Assiniboine River, he took the first turn right, onto Wellington Crescent (Winnipeg’s street of the rich and famous), looking for a way to get down to the river. Finding what seemed to be a promising driveway, he turned in, drove as far as he could, and parked. Taking the soup with him, he began what turned out to be a bit of a trek through underbrush on the banks of the river, but having consumed some of the rye whisky he neither cared nor was careful about noise.

Little did he know that he was on property belonging to a volunteer for the Winnipeg Humane Society. Nor did he know that because the Humane Society had an overload of dogs in its kennels that day the volunteer had taken home more than six dogs, all of them given to barking at strange sounds in the night. And bark they did. Awakened by the noise, the volunteer spotted the car and called the police. They came, as rapidly as they ever come, just in time to witness a male figure throwing something that deafeningly shattered the peaceful flow of the Assiniboine River. Boom!

The punk was arrested and told the police all he knew. B. and another man were arrested and charged with several *Criminal Code* offences relating to explosives. In due course this tale from the underworld unfolded to its inevitable conclusion. Convicted in Provincial Judges Court before Judge Ian Dubiensi, B. was sentenced to two years in jail.

The moral is: If you’re going to make soup in someone else’s kitchen, let it be borscht. Beets are better than cabbage and nitroglycerine is not a spice of choice. Another tip to the unwise and the unwary: Check for dogs that bark in the night! (See Chapter 1.)

## TALE TWO:

### **It Seems that Condoms have Many Uses**

MIKE “THE HORSE” (as the police rather fondly called him because of his size) was, without doubt, Winnipeg’s best and most notorious safecracker. It was a vocation he pursued with relentless passion, almost with a perverse sense of accomplishment. For Mike, safecracking seemed to give meaning to an otherwise sordid life.

In 1975, within a few weeks of his release on parole from the Prince Albert Federal Penitentiary where he had been serving a term of several years for—what else?—safecracking, Mike was back in April of that year at the job at which he was most adept, safecracking. He drove from Winnipeg to Brandon for a weekend binge of break-ins, getting into several business establishments and stealing various items, some from blown safes.

Blowing open a steel safe or vault in search of money or, if the safe is in a drugstore, narcotics, is both a science and an art, and often involves a combination of practical skills.

It is a science because a safecracker must find a way to manage one of the snags of the trade, which is this: the amount of explosive required to blow open modern heavy-duty tubular safe almost always burns the contents—a Pyrrhic victory, so to speak. To prevent this, the experienced safecracker matches every hole he drills along the perimeter of the safe’s door to pack in the nitroglycerine, with another hole that he packs with (usually) a child’s rubber balloon filled with water and tied at the end so that at the very instant of the explosion, the safe’s contents are doused with water. A slightly sodden fifty dollar bill when dried out is somewhat more negotiable than a scorched one.

Mike’s technological *modus operandi* was quite sophisticated. To his jobs he brought with him a long electric cord, an electric circular saw, and an ordinary screw-in female plug. On site, at the rear of the targetted business premise, he would unscrew the existing light bulb, screw in the plug, attach the cord, and start up the saw, quickly cutting an opening at the base of a standard wooden door. Mike, experienced break-in artist and safecracker that he was, steered clear of premises with steel outer doors.

The art, in Mike's case, was his fireproofing accoutrements. A Crown prosecutor must prove beyond a reasonable doubt that a person found in possession of such items as a saw, an electric cord, and plug intended them, in the words of the *Criminal Code*, "for the purpose of breaking into any place, motor vehicle, vault or safe." Such items by themselves prove no unlawful purpose, when, for instance, the police pull a car over and find them inside the car. But if a dozen children's balloons accompany them, your saying, "You see, officer, I was on my way to a birthday party," isn't going to cut it. Anticipating such a scenario, Mike had an adult alternative to balloons. He carried with him several packages of condoms (coincidentally, sometimes known as "safes").

Unfortunately for Mike, the condoms didn't provide safety in this instance. He was easily caught with goods stolen from several break-ins in or near Brandon on the same weekend, all of which were found in his car (together with the tools and condoms all alleged to be for the purpose of breaking in), and he was charged with several offences. For the Crown, it was a slam-dunk. Mike was returned to Prince Albert Federal Penitentiary and, likely, the condoms were donated to the needy.

### TALE THREE:

## Safecracking and an Unusual Ethical Problem

ONCE UPON A TIME, in the seventies, several young men who, for reasons that will become apparent, shall remain anonymous, planned several break-ins, including breaking into a drugstore, blowing open its safe, and stealing the narcotics they were certain were stored within. On the night they were arrested they had already broken into several Winnipeg businesses. At one such establishment, they had placed a length of 4" x 4" lumber between the bumper of their powerful 1957 Oldsmobile and the back door of the business's entrance and gunned the car, breaking in with little outward evidence. After successfully blowing the safe at that place, they went on to the drugstore. Mindful of nitroglycerine's instability, they had earlier hidden a bottle of soup just outside the drugstore's back

door. A short time later, around 2:00 a.m., driving down a back lane with the headlights turned off and heading for the drugstore, they were stopped by police. The police knew them well and, finding the trunk of their car full of suspicious goods, arrested them. Meanwhile, not far down the lane, a bottle of extremely deadly, dangerous, and volatile explosive sat waiting in silence.

One of the culprits, having been raised by a church-volunteer mother and a military-police-officer father, was a decent and intelligent person, aside, of course, from his involvement with property crimes. Concerned that someone, particularly a child, would find the soup and blow himself or herself and the neighbourhood to smithereens, he informed his lawyer the day after his arrest about the explosive and its whereabouts. The lawyer was caught in a dilemma. It is a crime or, at the very least a breach of Law Society rules, to conceal or keep concealed material evidence. But he also had a duty to his client, and he had a duty as well to safeguard the community. Should he rat on his client and tell the cops? Or should he break the law and dispose of the evidence himself? If he did nothing and innocent people died, he would have to live with the moral and legal consequences.

In the end, at the suggestion of the lawyer, the accused drew a map of the location of the soup and provided the lawyer with the name and phone number of someone who could be relied upon to retrieve it, take it out of harm's way, and—who knows?—either dispose of it, hand it over to the police, or use it for borscht.

In any event, this is a tale of something that, thank goodness, did not go boom in the night, but might very well have. (The ethical problem is textbook. Suggestions for its resolution can be submitted to the Law Society of Manitoba.)

## Chapter 6

# Obscenity Is in the Eye of the Beholder

**I**T IS SOMETIMES SAID that obscenity, like beauty, is in the eye of the beholder. A famous American judge, Potter Stewart, once said that he couldn't define obscenity but he knew it when he saw it. Over time, it became clear that what was "pornographic" and hence "obscene" in the eyes of the criminal law, was determined by the point of view of individual judges. In the 1960s the "community standard of tolerance" became the legal test for obscenity, though it was plainly impossible to assess such a standard particularly when, as the judges decided, the community in question was the whole of Canada. In 2005, the test for obscenity was modified to address whether the material in question caused any harm. After all, as a wise English law lord said, "The criminal law should be to get us home safely at night and not to save us from sin!" If that standard had been applied to the three tales told here, the charges might well have been laughed out of court.

### TALE ONE:

## A Coffin In The Window

IN 1966 Russell Wimbush, an award-winning student in the University of Manitoba's School of Art, created several pieces of innovative art, some of them three-dimensional, including a piece entitled *Coffin*, which was a coffin-shaped wooden box. In it lay a strangely constructed figure intended to be a self-portrait, which included a death mask very like the face of the artist. Wimbush subtitled it "Portrait of the Artist in an Incidental Environment." In June 1966 *Coffin* and several of Wimbush's other pieces were displayed in

the Yellow Door Gallery, then Winnipeg's leading private gallery, located on Kennedy Street north of Portage Avenue. The show attracted a great deal of attention and considerable critical acclaim. Jan Kamienski, then art critic for the *Winnipeg Tribune*, wrote in August 1966:

There is talent and there is the striving for new avenues. For pure shock, the artist has chosen to produce a self-portrait in—as he himself calls it—'an incidental environment.' The title of this object is *Coffin*, and if your nerves are in good order, go see it. It's quite educational. War Amps car-key tags, piranhas, bleeding hands, a plaster corpse (they tell me it really is Mr. Wimbush's likeness) in a coffin, swords, religious pictures, animal vertebrae, a kid's pistol, sunglasses, clockworks—the artist has assembled them in one compact piece which was supposed to have been done in jest and which came off as a ghoulish, macabre and rather unentertaining piece of work.

What was missing from Kamienski's review—likely due to the sensibilities of the day—was mention of a certain representation of a body part, specifically, a penis. Where the male organ would naturally be, Wimbush had placed the short end of the curved base of a rocking chair. Within a year, *Coffin* would become the focus of criminal charges.

NOT LONG AFTER Wimbush's exhibition, the Yellow Gallery went out of business when the property was expropriated for an urban redevelopment scheme. With Wimbush off to Spain on a scholarship, various pieces of his art were placed with his friends and fellow students, but *Coffin* was loaned to the three young proprietors of The Experiment, a newly opened store on Osborne Street, in the middle of what was coming to be (and still is) called "The Village." Commonly known (at least among the hippies of the day) as a "head shop," The Experiment was a place where Winnipeg's flower children could buy various devices clearly intended for use in smoking marijuana. At the time, some citizens were sufficiently alarmed by



such paraphernalia's association with drugs to register complaints with the Winnipeg Police Department, but much as the police would have liked to respond, there was little they could do since only recreational drugs and not equipment for personal drug use were illegal.

Opportunity arose, however, in the fall of 1967 when the proprietors of The Experiment, no doubt anxious to attract the anticipated Christmas trade, moved *Coffin* into the store's front window and, for good measure, put a blinking red Christmas light bulb right at the end of the conspicuous representation of that distinctive part of the male anatomy.

It attracted a lot of attention, including that of a fifty-four-year-old female nurse whose knowledge of the male anatomy could not be denied, nor, as it turned out, could her sensibilities. She was shocked, she said, and she complained to the police. In due course the proprietors of The Experiment were charged under the applicable obscenity provision of the *Criminal Code*, that they did "unlawfully without lawful justification or excuse, expose to public view an obscene thing, to wit, a coffin containing a model of a man."

The trial, with Ray Flett prosecuting and Roland Penner defending, took place in the Winnipeg Magistrates Court before Magistrate Isaac Rice. Penner relied entirely on the defence of artistic merit, which the *Criminal Code* allowed. Witnesses called by the defence were prominent in Winnipeg's art, cultural, and critical community and included George Swinton of the School of Art, Frank Morriss, art and film critic for the *Winnipeg Tribune*, and Chris Dafoe, art and film critic for the *Winnipeg Free Press*, all of whom praised *Coffin* as a work of considerable artistic merit.

In his summing up Penner referred satirically to the statue of the Golden Boy, which stands naked atop the Manitoba legislature for all to see, but unlike either *Coffin* or Michelangelo's famous statue of David, lacks the male organ. Penner argued: "The standard of decency in the exposure of the male body is not the Golden Boy! In its emasculated condition the Golden Boy may in fact be the standard of obscenity!"

Magistrate Rice was neither amused nor convinced by the expert evidence and was not persuaded of *Coffin*'s artistic merit. However, since Flett presented no expert evidence with contrary

views, Rice was not anxious to convict given the publicity that attended the case. In a rather strange twist of the law concerning criminal intention, Rice found the accused not guilty by deciding that there was a reasonable doubt that the accused knew that *Coffin* was obscene and, therefore, not knowing it was obscene they did not *intend* to display an obscene thing. Since everyone is presumed to know the law it was something of a “cop-out,” as lawyers sometimes say.

## TALE TWO:

### The “Erotic Professor” and “Slippery Jack”

IN THE LATE 1960s Prairie Schooner News Ltd., an Ontario-based book and magazine distributor, was seeking to expand its business into Manitoba. To do so, it was required to register with the Companies Office of the Manitoba government. To effect the registration, Prairie Schooner’s counsel, Aubrey Golden, then one of the Toronto’s most renowned litigation lawyers, retained Roland Penner of the law firm of *Zuken, Penner and Larsen* to prepare and file the standard incorporation forms, which then required the listing of three Manitoba residents as incorporators. In accordance with standard practice, three members of the law firm were named, with Norm Larsen, lately added to the firm as partner, as president.

At the time of incorporation neither the firm nor Larsen knew that the exclusive business of Prairie Schooner was the distribution of pornographic magazines and pulp fiction imported from the U.S.—until one of the attorney general’s most famous and much admired Crown prosecutors, Jack Montgomery, known as “Gentleman Jack,” courteously phoned Larsen with the information that Prairie Schooner was about to be charged under the *Criminal Code*’s obscenity provision with “possession for the purpose of distribution of 250 obscene books.” He suggested Larsen might want to remove his name from the corporate record, which he promptly did, thus removing the opportunity to become even more famous than he then was.

The trial took place in the summer of 1970 in the County Court of Winnipeg before senior County Court Judge C. Irving Keith, famously known to litigation lawyers as being no-nonsense, rough of tongue, and impatient. No sooner had the trial commenced when Keith called Penner, then a professor in the Faculty of Law, who had been retained to defend Prairie Schooner, and Jack Montgomery, the Crown prosecutor in the case, into his private chambers. He said: “Listen, you two. You can’t really expect me to read all of this shit.”

Montgomery and Penner, somewhat taken aback, consulted for a few minutes and then advised Keith that since, for legal purposes, all of the books were the same (they were nothing more than advanced “bodice rippers,” none of them illustrated, and each containing about the



Irving Keith

same number of ecstatic moans and groans), they would select two of the 250 and accept his judgment on that basis. He readily and happily agreed. After a short recess for the selection process, Montgomery and Penner proposed—with satirical intent—two “signature” pieces: *The Erotic Professor* and *Slippery Jack*, the latter a book that featured ex-Marine Jack Doyle, referred in the book as “Slippery Jack” (close enough to “Gentleman Jack”).

As expected in light of the law as it then was, Judge Keith convicted in short order and fined Prairie Schooner a hefty \$10,000.

The judgment was appealed by Prairie Schooner to the Manitoba Court of Appeal, but in vain. In his principal judgment for the Court of Appeal, Mr. Justice Samuel Freedman, then Manitoba’s most famous judge, accurately summarized the then applicable law by stating: “It is not for the court to determine whether publication of this kind hurts anyone or does any demonstrable harm.”

Freedman, known for his skepticism about the obscenity law of the day and known, too, for his own often bawdy (but always decent) sense of humour, set a precedent that distinguished this case by quoting—much against the opposition of the appeal panel's two other members—several paragraphs of *Slippery Jack* that were typical of the genre:

“No! No!” [Mary, a hotel chambermaid, cried to *Slippery Jack* after several bouts of sex in rapid succession]. “Keep doing it. I’ll make it again.”

Jack shrugged. He figured this chick must be what they called a nymphomaniac. As his rhythm gained momentum ... faster and faster they went. Then they blasted off into space ... convulsing time and time again ...

And then, memorably, after quoting this, Freedman noted in his written decision: “I pause only to note that Jack Doyle’s age is not given ...” (Now inscribed for all time in published law reports.)

*Prairie Schooner*’s conviction was upheld, but its fine was drastically reduced, to \$2,000. The whereabouts of the 250 volumes of pulp fiction are unknown, though they are unlikely to be found in any place reserved for work of artistic merit.

## Chapter 7

## Murder We Write

**N**OT ALL HOMICIDES (the killing of a human being) are “culpable”; that is, criminal. Some are accidental, some are suicides, and some take place by the withdrawal of life support from a terminally ill person. Some homicides, which might otherwise be culpable, are, in effect, excused by the law; for example, self-defence as narrowly defined in the *Criminal Code*. And in the very special (and almost always controversial) killing by a person who is seriously mentally ill, the verdict may be “not guilty of murder” because “not criminally responsible.” The accused is then committed to a secure mental hospital, subject to an annual review by an independent provincial mental health review board, authorized by the *Criminal Code*.

Of all of the culpable homicides, the most dramatic (and on stage, screen, and television, the most dramatized) is murder. This is mainly because, until as recently as 1976, the only possible sentence for murder in Canada was death by hanging—“capital punishment”. (You can read the terrible words of that sentencing in the first paragraph of Chapter 2 as they were pronounced on Abraham Goodman.)

Before 1976, when Parliament abolished the death penalty by a narrow margin of six votes, 710 convicted murderers were executed in Canada. Of these, fifty-one took place in Manitoba. At first, Winnipeg’s Vaughan Street Detention Centre was the site of the hangings; after 1928, it was at Headingley Gaol, as it was then called. The last hanging in Manitoba took place on June 17, 1952.

Although the death penalty wasn’t formally abolished in Canada until 1976, some death sentences were commuted to life imprisonment. In 1967, as a political compromise, the offence of murder was divided between capital and non-capital murder. Capital murder, including a planned and deliberate murder, still required the death penalty, whereas a conviction for non-capital murder applied

to a spontaneous killing and resulted in a sentence of life imprisonment. The distinction between capital and non-capital murder often became very difficult to apply.

An attempt to reintroduce the death penalty in 1987 was defeated in the House of Commons. Since 1982 the death penalty has been, effectively, constitutionally barred because of the ban in the *Charter of Rights and Freedoms* of “cruel and unusual punishment.”

## Harry Walsh Describes His Murder Cases

THE ASTONISHING CAREER of Harry Walsh, the leading mentor and role model for many of today’s leaders at the criminal bar, is described in Chapter 9, and two of his many famous murder trials are the subject of Chapters 2 and 3. What follows are additional stories and some anecdotes in Walsh’s own words, beginning with the Dorothy Christie case, which he and many other consider his best.

### *The Queen v. Christie (1957)*

The most memorable case I ever handled—from any aspect, including the publicity the case attracted and the result achieved—is the case of *The Queen v. Dorothy Christie* in 1957. Christie, who was about twenty years old, was charged with murder in connection with the death of her husband, and faced the death penalty if convicted.

#### The facts

Dorothy Christie and her husband lived in one room in a rooming house in downtown Winnipeg. There was evidence that he was a crude person who often mistreated her. He weighed about 180 pounds and she weighed about 95 pounds, a petite and pretty woman. He had a habit of pointing to a loaded rifle that he kept in the corner of the room and saying, “If you misbehave, you know what’ll happen to you.”

On the night in question, she awoke and saw a hole in his forehead from which blood was oozing. She shook him but he didn’t move. The rifle was on the bed between them. She decided that

since the door was bolted shut from the inside she must have killed him. She had never loaded or shot a gun in her life, but she then took the rifle and attempted suicide by shooting herself in the abdomen, after which she called the police and said, “I’ve shot my husband.”

### **A unique defence**

The defence was that she was in a state of automatism, an unconscious state, sometimes popularly, but erroneously, known as sleepwalking. But if she was in a state of automatism, how was she able to load and shoot the gun twice when she had never done it before? When the police took her to the station, they did not take a statement from her.

I agonized for a long time as to whether to put Christie on the witness stand. It can happen to people who are absolutely innocent that they make a mishmash out of their testimony and inadvertently convict themselves. That’s the danger, but I decided that she had to testify in spite of the dire consequences if she was convicted—death by hanging—because, after all, she had confessed to the killing in her telephone call to the police.

### **Direct examination**

The trial took place in the huge Courtroom No. 1 in the Law Courts Building. The courtroom looked impressive (it still does), but in those days the acoustics were bad, the lighting was bad, and the large marble witness box was bad. Everything about that room was bad.

Christie had recovered from her self-inflicted wound. She stood in the witness box, shivering all the time; I took her through her testimony. She told her story and she told it well. Of course I had gone over it with her, but no matter how many times that is done, you never can tell how a witness is going to measure up on the witness stand. She told me about such things as taking about eleven pills that night, but I did not refer at all to exhibit five, the rifle. I did not ask her how she loaded or unloaded it. If she had indeed been in a state of automatism, obviously she could not explain anything.

I turned to Crown Prosecutor Gordon Pilkey and said, “Your witness.”



“Courtroom No. 1” in the Law Courts Building in Winnipeg. The prisoner’s dock is in the right foreground, the jury box is in the left background. The witness box is also in the left background, marked with an x.

### Cross-examination

Pilkey was seated at the other end of the counsel table. The many exhibits that had been filed during the trial were piled up on the table, between us. He always made sure that the rifle was in front of the other exhibits so that the jury had it in plain view.

Pilkey got up and asked Christie two or three questions from his place at the far end of the table away from the witness stand. Then he picked up the rifle and began to approach her. Why would he approach her with the rifle unless he was going to hand it to her and ask her to show how she loaded it and used it? He had to walk the distance of the counsel table to go around the back of me, and pass between me and the jury box to get to her. He walked holding the rifle high so that everyone could see it.

Dorothy Christie was watching him. I was watching her. All of a sudden, as Pilkey was walking past the jury toward her, she let out a



shriek and started to cry and then keeled over, hitting her chin on the marble top of the witness box as she collapsed onto the floor. One of the jurors said to Pilkey, in a loud, threatening voice, “You son of a bitch!”

She lay on the floor. Sam Freedman was the judge. Some people recall, although I don’t, his saying, “Mr. Pilkey, was that really necessary?” Court was adjourned; people rushed up to Christie, propped her up, and eventually carried her out of the courtroom. Some minutes later the trial resumed. She returned to the witness stand, but Pilkey didn’t ask her any more questions.

### **Verdict**

After the charge by Justice Sam Freedman, the jury retired and soon brought in a verdict of not guilty. If she is still alive, Christie is now about seventy-two years old. I have not seen or heard of her since the day she was acquitted. I don’t know of any other murder cases in which the defence of automatism succeeded.

## **A Murder Case in Minnedosa (1950s)**

I had a murder case in Minnedosa in the 1950s. The accused was an Aboriginal man who was married with two children and had a regular job in Minnedosa.

### **The facts**

The man and his wife quarrelled about something that the children had done and she decided to go home to her parents, who lived near Minnedosa. She took the children with her, which devastated him. After some time, he wanted to see them, so he took his rifle, which he always carried when he went into the bush, and went to his in-laws’ home. He knocked, and his mother-in-law came to the door. She held it only partly open and wouldn’t let him in. He pushed the door open and got into a struggle with his father-in-law, who, in the struggle, was shot dead. The man was charged with murder, and released on bail.

When the case came to trial in Minnedosa, it was the only one on the docket. On the day it started, the accused man, still on bail, was waiting outside the courtroom. The judge, Justice Ralph May-

bank, was in his office and wanted to have a chair moved from one place in his office to another. When he went looking for somebody to move the chair he saw the accused. The judge said, "How do you do?" And the accused replied, "Fine, how do you do?" Maybank asked the accused a few friendly questions, but did not ask him why he was there. He then asked the accused to move the chair, and the man moved it. Later in the morning, the accused stood up in court and the charge was read to him. Only then did Maybank with some obvious consternation realize that the man who moved the chair was the accused.

The Crown called a witness who had seen part of the struggle that resulted in the death of the father-in-law. He was a straightforward fellow, about twenty-one years old, and sounded like a credible witness. But he was naturally on the side of the parents-in-law and not friendly to the accused man or to me. I got up to cross-examine him and started with, "How old are you?" No answer. I said, "Where do you live?" No answer. "Were you at this house on such and such a date?" No answer. I said, "Can you hear me?" He said, "Go to hell!" I said, "Just before I take your advice and go, I want to ask you a few questions and you are obliged to answer them."

I kept asking questions, but the witness wouldn't answer. So I said, in the presence of the jury, "My lord, I am stopping my attempt to cross-examine this witness. The law requires that all of his testimony be erased and not considered by the jury." Maybank said, "Is that the law, Mr. Walsh?" I said, "Yes, my lord." Usually a question of law is argued in the absence of the jury, but the jury heard all of this. When the judge charged the jury he told them to disregard all of the man's testimony.

I especially remember this case as the only one in which a witness told me to go to hell!

The facts showed that there had been no hostility between the accused and his in-laws before the event in question, and that the problem had arisen owing to the man wanting to see his children.

The man was convicted of manslaughter and was sentenced to a few years in jail. If he had been convicted of murder, I sometimes wonder whether I could have had it set aside on the basis on the judge having had a conversation with the accused before the case started. Of course, we will never know.

## A Murder in the Interlake

I had a case in the Interlake area of Manitoba in which my client was charged with murdering his father on the family farm. The mother had received a telephone call from her husband, who was in a pub. He was something of a rogue, with a bad reputation in the community. He told his wife he was about to come home and he was going to kill her. He had beaten her up several times before this. She told her son that she was afraid that this time the father would indeed kill her. The son assured her that his father would not touch her.

When the father arrived home in his truck, the son thought that his father was hiding a rifle as he approached the house. As the father entered the house, the son shot and killed him with a rifle in order, he said, to defend his mother. The prosecutor contended that the son should have called the police, that he had no reason to be worried because he had the only firearm on the premises, and that self-defence does not include defending someone other than oneself. He was wrong about that.

The RCMP took photographs around the property. When I looked closely at the page-sized photographs of the inside of the garage, I saw something in a corner that looked as if it could be the barrel of a rifle. I showed it to my client who said it was one of the rifles his father always kept loaded. He said he thought his father had it with him on the fateful night.

When I cross-examined the RCMP officer, I asked whether he had examined the garage thoroughly and whether he had looked for firearms. Yes, he had. “Did you see any firearms in the garage?” No. “You’re absolutely certain?” Yes. “In this picture, what is this sticking up?” He said it was the barrel of a rifle. The verdict was not guilty.

## Defending Santa Claus

I acted in a case that quickly became known as the Santa Claus Murder Case. There was a Christmas party at Norway House in Manitoba at which four or five men were dressed as Santa Claus. Someone at the party was stabbed and killed by “Santa Claus”—but

which one? I had just asked the prosecution's witness my first question in cross-examination when Justice Adamson said, "Mr. Walsh, was that any reason for this murderous assault?" I replied, "My lord, I resent your using that terminology." (That is, referring to it as an assault and a murder when the purpose of a trial is to determine what happened.) He said, "Get on with it! Get on with your cross-examination!" It kept going that way: he would interrupt me, I would turn from the jury to look at him, and he would say, "Get on, get on with it, Mr. Walsh!" Of course, the jury saw me continually looking from them to him and his telling me to get on with it. The verdict was not guilty because, clearly, there had to be at least a reasonable doubt as to the identity of the killer. It has been my experience that juries sometimes pass judgment on judges. It might also be said that Santa doesn't always bring nice gifts.

### The Case of the Confused Foreman

I had a case of capital murder in Brandon in which the jury deliberated for quite some time. I had indicated to them that, as far as I was concerned, if they did not acquit the accused the most they could make out of the facts was a verdict of manslaughter. When they came back into the courtroom after deliberation, the foreman was asked in the usual way whether the jury had arrived at a verdict. He stood up and said, "Yes." "And what is your verdict?" "Guilty." There was an absolute hush, but one of the jurors looked at me and began to fuss around. I said, "My lord, it appears that is not the verdict of the jury." The juror who was looking at me said, "It sure as hell is not!" The foreman said, "I'm sorry. We find the accused not guilty of murder, but guilty of manslaughter." My advice to young lawyers just learning the ropes has always been: "Never take your eyes off the jury!"

## Greg Brodsky: Cases that Made Legal History

Greg Brodsky articulated with Harry Walsh from 1959 to 1963 and was then called to the bar. He practised with Walsh, first as an associate and then as a partner, until 1999 when the Walsh firm dissolved. His thirty-six years with Walsh was by far the longest such association in that firm. In his interviews for this book, Brodsky was unstinting in his praise of Walsh, from whom, he says, he learned trial tactics and, above all, how to win the confidence and respect of a jury.

Once described in a newspaper article as a “murder-case machine,” Greg Brodsky, principal of his own law firm *Brodsky & Company* since 1999, has defended in more than 700 homicide cases, a national if not a North American record. But that number, while no doubt impressive, tends to detract from something far more important, namely that in the course of his career he has been instrumental in court-based criminal law reforms of lasting significance, as the following two cases illustrate.

### Brodsky and the “Battered Woman Defence”

The “Battered Woman Defence” is an example of the limited defence of self-defence which, in cases of an assault causing death that might otherwise be murder or manslaughter, is a complete defence if, but only if, the accused caused the victim’s death “under reasonable apprehension” of his or her own death or serious bodily harm from an immediate assault by the victim. The “battered woman” is a woman who has suffered a history of physical assaults by her husband (or partner or spouse) such that a judge or jury may decide it was “reasonable” for the accused woman, in light of events that led to the killing, to defend herself.

*Lavallee* is now the leading case on this issue. It was argued in 1990 before the Supreme Court of Canada by Brodsky acting for Angélique Lyn Lavallee who in 1986 had shot and killed her common-law spouse in the back of his head as he was leaving her room. The prosecution argued that the fact that he was leaving clearly ruled out the essential requirement for the defence of self-defence, namely that she was under “reasonable” fear of her own



Harry Walsh and Greg Brodsky

death or grievous bodily harm at the time she shot him.

The case argued by Brodsky consisted of two essential elements: first, the recognition of a state of mind called “battered woman syndrome” and, second, the admissibility at trial of psychiatric evidence to explain the meaning and effect of that syndrome and its applicability in a particular case.

The battered woman syndrome is, first, the seemingly inexplicable tendency of many battered women both to attribute their spousal abuse injuries to household accidents (such as bumping into a door or falling down stairs) when coming to emergency medical centres for treatment and, second, the battered woman remaining in the relationship despite such abuse. On both of these issues the evidence of psychiatric experts is very important, and in an unusual move, Brodsky called psychiatric evidence on behalf of Lavallee. Brodsky correctly evaluated issues surrounding battered women to be of general importance to the fair administration of the criminal law when abused women are involved. He also refused to accept a plea bargain proposed by the prosecution in which he would trade his argument for an acquittal based on self-defence for

a verdict of manslaughter and a short prison sentence. Though the jury acquitted Lavallee based on its acceptance of the psychiatric evidence, on a Crown appeal against that verdict the Manitoba Court of Appeal held that the psychiatric evidence on the behaviour of battered women should not have been admitted in evidence and, with one judge, Charles Huband, dissenting, quashed the acquittal and ordered a new trial. Brodsky then appealed that decision to the Supreme Court of Canada.

Lavallee was clearly, on the evidence, a battered woman in a volatile common-law relationship. The shooting occurred after a violent argument during which Lavallee was seriously physically abused, as she had been many times before, and, moreover, feared for her life after being threatened by her common-law husband, that either she kill him or he would get her. She had frequently been a victim of his physical abuse and had concocted excuses to explain her injuries to medical staff. A psychiatrist with extensive professional experience in the treatment of battered wives prepared a psychiatric assessment of Lavallee that was used in support of her defence of self-defence. He explained her ongoing terror, her inability to escape the relationship despite the violence, and the continuing pattern of abuse that put her life in danger. He testified that in his opinion Lavallee's shooting of the deceased was the final desperate act of a woman who sincerely believed that she was going to be killed that night.

On the basis of these findings the Supreme Court restored the trial jury's verdict of acquittal and vitally important legal history was made.

### **Brodsky and the Case of Confabulation**

Dictionary.com defines "confabulation" thus: To fill in gaps in one's memory with fabrications that one believes to be facts.

Brodsky believes that the strangest case he ever had involved "confabulation." It was a case in 1984 in which a woman, accused and tried for the murder of her husband, was acquitted even though she confessed to killing her husband to the police in Winnipeg, where she was arrested, and to the police and a justice of the peace

in Kenora, where the murder took place. But Brodsky never believed she killed her husband. Despite evidence to the contrary, she believes to this day that she did.

### The facts

The accused and her husband, after a lot of drinking with two other men in a tavern in Kenora, went to a motel room after closing hours to continue the party. One of the two men had a knife. The accused soon passed out. When she came to she saw that her husband, lying alongside her on the bed, was dead. He had been stabbed several times. With no one else around and the door locked from the inside, she assumed she was the killer. She called the police and confessed to the killing. But when the police searched the motel room they found no knife. Moreover, they found a cut in the window screen large enough to let an individual either in or out of the room. Evaluating the evidence, Brodsky didn't believe his client had killed her husband, even though she believed she did.

In researching the case, Brodsky found a medical work entitled *Confabulation* that provided a psychiatric explanation for the phenomenon of believing something to be true that could not possibly be true. He kept the book beside him at the counsel table and in plain view of the jury. When the Crown's pathologist gave evidence about the stab wounds and the cause of death, Brodsky asked about the phenomenon of Confabulation, and the pathologist had enough expertise to explain it.

Brodsky's address to the jury was classic Brodsky, straightforward common sense:

Yes, she believes she killed him. We don't argue about that. But it's your job to determine whether she really is guilty or is just putting it together. He went to sleep, she woke up, her husband is dead. It must have been me. But, ladies and gentlemen of the jury, where's the knife? And what does the large hole in the screen suggest?

The jury acquitted the accused. Was the jury itself collectively seized by confabulation?



## Other Murder Tales from Inside And Outside the Courtroom

### Robert Tapper: One Lawyer v. Three Detectives

In 1984 I got a call from a hysterical lady who was obviously very drunk. She said she was in an apartment with another person who wasn't breathing. I called the police and said, "I believe my client is at such and such address, and I believe there is a dead body there. I will meet you there." The officer replied, "We are kind of busy right now. Why don't you go over and check it out and let us know?" I said, "Are you serious? I'm telling you there is a dead body!" He said, "Check it out and let us know."

Greg Brodsky and I went to the apartment building on the corner of River Avenue and Donald Street. There was blood on the elevator, in the hall, and on the apartment's carpets, walls, and ceiling. I told Greg to call the police and tell them to move their keisters. I found my client with a knife in her hand. She said, "Here, you take this." No thanks. After the police arrived, Greg and I went to the police station to make statements because now we were witnesses.

In a small interview room at the Public Safety Building, a detective asked me what my client had told me on the telephone. I said, "I can't tell you that. It's privileged." "Ah," he said, "but you are a witness, so there is no privilege." I said, "I'm a witness from the time I got to the apartment, but before that I was her lawyer. I cannot tell you what she told me on the phone." The detective left the little interview room and returned with his partner. There I was, with two burly cops, all 130 pounds of me at the time.

Again they asked me what my client told me on the phone, and again I refused to tell them. Then they brought in their sergeant. The guy was huge! He started poking me in the chest with his finger and said, "One more word out of you and you're under arrest!" I poked him right back and said, "You're arresting me? I'm arresting you!" Greg was in the next room and heard the commotion. He opened the door. The sergeant turned to him and said, "Get this asshole out of here before I arrest him."

My client's trial took place before Justice John Scollin. When I testified, the prosecutor went after me for not cooperating with the

police, but Scollin, who had a reputation for never mincing words, ripped into him and said that I had “performed admirably, in the highest tradition of the bar.”

### **Joe Wilder: a Murder Case in the Interlake**

Around 1962 I assisted David Bowman (a prominent defence lawyer at the time, since deceased) on a case in the Interlake in which our client was accused of murdering his wife. The two of them had been drinking at their farmhouse with two men who were brothers and local farmers. Our client said that at a certain point he went to the outhouse and when he came back, the three of them were gone. He went from neighbour to neighbour looking for her and saying, “When I find her, I’ll kill her.” Our client said that he failed to find her and when he returned home a few hours later he discovered her nude body beaten and burned. The evidence of the brothers was that our man and his wife were fighting so much that they had left. The men said they had nothing to do with her death.

The deceased woman was not wearing her false teeth when her body was found, and, after intensive search of the house, the police had not found them. The theory of the defence was that no woman would ever leave home without her teeth and the fact that the teeth couldn’t be found in the house indicated that she had probably left the house to go somewhere, presumably with the two men. At the jury trial in Winnipeg, we questioned the RCMP officers about the missing teeth, and how they hadn’t found them in spite of what they testified was a thorough search.

It was unusual for a person accused of murder to be released on bail, but it was the fall of the year and our client, who had a good reputation in the community, was given bail so that he could harvest his crops. At the beginning of the fourth day of the trial, our client came running up to us and gleefully proclaimed, “I got them! I found the teeth! They were at home in her drawer.” He didn’t understand the significance of the missing teeth and that their discovery destroyed our defence, namely that she had left the house. Dave Bowman and I discussed the dilemma we were in and concluded

that we could neither ethically disclose this information nor comment on the absence of the teeth. From that point on we said nothing about the teeth, even though we had mentioned them incessantly for three days. In our summation to the jury, we didn't mention them at all. The jury must have wondered what was happening. They quickly convicted our client and he was sentenced to life imprisonment.

### Harvey Pollock: My First Murder Case, with a Perry Mason Twist

When I took my first murder case in the early 1960s, the trial



Harvey Pollock

was in Portage la Prairie with Justice Brian Dickson presiding. The case involved two men and two women who went out partying on a Saturday night near Portage. The accused man allegedly shot and killed the other man with a rifle. One of the women said that she had just finished having intercourse with the deceased when the accused man came along and shot him. Her story was fishy because the zipper on the dead man's pants was done up and

there were no traces of anything of a sexual nature on his clothing. At the trial I cross-examined her for an afternoon and into the next morning. At about 11:15 that morning, she put her head down and yelled, "No! Don't ask me any more questions! It was me! I killed him!"

There was consternation in the courtroom. I didn't know what to do next. I asked a couple more questions and then asked Justice Dickson to direct the jury to bring in a verdict of not guilty. He thought about it and said, "Mr. Pollock, what if the jury doesn't believe her? We will take a recess. We have to appoint a lawyer for this lady." In the meantime the witness was held in custody. She attempted

suicide but was later released on bail. She was not charged with the murder because her confession on the witness stand was viewed as having been elicited under duress, and because the Crown had used all of its evidence to try to prove the guilt of the man charged.

The trial continued for a few days and my client was acquitted. Up until then I thought this kind of thing happened only in the movies!

### Harvey Pollock: in the Days of Capital Punishment

I had another murder case in Portage la Prairie in which Justice Brian Dickson presided. Jack London, my articling student, accompanied me.

This case was in the 1960s, when capital punishment was still the penalty for murder. The facts of the case indicated there was a good chance the accused man would be convicted and sentenced to hang. When the jury retired to deliberate, Dickson invited me and my student to join him in his office. We drank coffee and talked for about two hours until the sheriff came to the door to say, "The jury's in."

As we prepared to enter the courtroom, the sheriff said to Dickson, "My lord, do you have a date?" Dickson said, "What do I need a date for?" The sheriff said, "For the hanging." Dickson turned white. Sentencing someone to hang was the last thing a judge such as Dickson would ever want to do. He said, "I will need some time." So he went back to his office and I suppose he looked at the provisions in the *Criminal Code* on how to pronounce the death penalty.

After Dickson and the jury came back to the courtroom, the clerk asked the foreman of the jury, "How do you find the accused?" Until that moment, we did not know that the foreman stuttered. He answered, "G-g-g-guilty." After a dramatic pause that seemed to last forever, Dickson said, "Guilty of what?" The foreman said, "Guilty of m-m-m-manslaughter." At that moment, Jack excitedly whirled around from looking at the jury to look at our client. With a sound that ripped through the very quiet courtroom, he tore his pants from the crotch to the ankle!

### **Norm Larsen: a Confessed Murderer and The Third Man**

As duty counsel at the Public Safety Building in 1968, I interviewed one of three men accused of murdering a man in a room in which they and several other men had been playing cards. The man I interviewed said that three men were indeed involved in the murder, but he wasn't one of them, and he knew the face but not the name of "the third man." I was skeptical because he had signed a detailed confession, which he said the police had beaten out of him.

I suggested to the man that since he was in the same cellblock as the other two men, he should try to get them to name the third man. A few days later he surprised me by giving me a name. When Legal Aid appointed Harry Walsh to defend the man, I called Walsh and told him everything I knew about the case. Months later a newspaper article reported that the charge had been dropped against Walsh's client and a new murder charge laid against "a third man." There was no mention of the innocent man's signed confession.

### **Richard Wolson: a Jury Trial as a Formal Occasion**

One of my colleagues represented a fellow on a murder charge. He was heavily tattooed, dressed in jeans and looked like a biker. His lawyer said to him, "I want you to cover up those tattoos. Wear a long-sleeved shirt and come to court dressed appropriately." The man, who had been out on bail, arrived at court dressed in a rented brown velvet tuxedo with a yellow ruffled shirt and bow tie. He was almost certainly the best dressed accused ever convicted of murder!

### **Jay Prober: a Lifer's Sense of Humour**

I acted for a man who was serving a life sentence for murder. He and three other inmates were charged in connection with a murder in the penitentiary. On the day the trial began, there was very high security at the courthouse, including metal detectors and a SWAT team inside and outside the courtroom. The courtroom was packed. It was a very tense scene when the four accused men

were brought in wearing handcuffs and leg irons. After they sat down in the prisoner's box, the judge made an announcement: "If there is anyone here who doesn't think he can be quiet and well-behaved during this trial, you can leave now." One man stood up. He was wearing a bandana around his head and dark glasses, and was covered in tattoos. He said he would leave, but he couldn't. He was my client!

### Norm Larsen: How Robinson Crusoe Lost Two Murder Cases

In 1982 I watched D'Arcy McCaffrey address a jury in a murder case in which the body of the victim was never found. D'Arcy's speech as defense counsel was along these lines:

Ladies and gentlemen of the jury, you will recall the story of Robinson Crusoe. He was stranded on an island and thought he was alone—until the day he saw a footprint in the sand. He immediately knew beyond any doubt whatsoever that someone else was on the island. The footprint was circumstantial evidence, but it was conclusive evidence that could be interpreted in only one way. In this case—a case without a body—we have circumstantial evidence, but I suggest to you that the evidence is not at all conclusive . . . .

Later that day, I ran into criminal lawyer Jeff Gindin and mentioned that I had just watched D'Arcy address a jury on circumstantial evidence. Jeff interrupted me:

Was it Robinson Crusoe? Well, that speech doesn't always work. Years ago, D'Arcy used it in a case in which a man had been strangled with a rope. After he gave his Robinson Crusoe pitch to the jury, Stan Nozick—the prosecutor—walked over to the table where numerous exhibits were laid out. He said to the jury, 'Do you want to see footprints in the sand?' He picked up the rope with one hand, pointed at it with the other hand, and said 'Footprint!' He did that with each and every one of the exhibits. The jury convicted.

The jury convicted as well in the case I observed, but when I later ran into D'Arcy and asked about his friend Crusoe, he laughed and said he still liked to use the story in jury trials.

### **Jeff Gindin: Sometimes a Cigar is Just a Cigar**

I had a first degree murder case in which the defence was insanity. The accused man thought there was a conspiracy to kill him. He told police he had been hearing voices in his apartment. In court I asked a police officer if he noticed anything unusual about the apartment. He answered, "Yes. All the furniture and appliances were about six inches from the walls." Several psychiatrists testified about its possible significance. For example, one suggested that if a person were hearing voices coming from the walls, he might want to move things away from the walls. He said, "This could be an indication of paranoia."

I later asked my client privately during one of his more lucid moments if he could remember why the furniture and appliances were moved away from the walls. He said, "I did it for the exterminators. The building had cockroaches."

### **Roland Penner: a Chief Justice Gets to the Point**

In 1968 I defended a twenty-year-old man charged with capital murder, for which the only penalty was death by hanging. He had no previous record. After a jury convicted him of non-capital murder (for which the penalty was life imprisonment), both the prosecution and I appealed all the way to the Supreme Court of Canada, where I argued for a verdict of manslaughter and the prosecution argued for a verdict of capital murder.

When prosecutor Gordon Pilkey stood up to present his argument, he barely said a word before Chief Justice Fauteux interrupted, "Mr. Pilkey, do you want this young man to hang?" Pilkey, completely flabbergasted by the question, said, "Well, no my lord, but it's a question of clarifying this new law and—" Again the Chief Justice interrupted: "No, no, Mr. Pilkey. Answer my question: do you want this young man to hang?" Pilkey, by now very red in the

face, said, “Well, you see my lords—” The Chief Justice interrupted: “You may take your seat, Mr. Pilkey. Both appeals are dismissed. The jury’s verdict stands.” This was a rare example of judicial humanism trumping legal argument.

### **Hymie Weinstein: A Homicide Results in a Suspended Sentence**

My client was charged with the murder of her abusive husband in what might well have been an accidental shooting. Because of this, the charge of murder was reduced to manslaughter at the preliminary hearing. The jury trial that followed was presided over by Judge John Scollin who was irrepressible, highly intelligent, often highly scathing in rejecting legal arguments, and almost always unpredictable. Neil Cutler acted for the Crown. Scollin’s charge to the jury was, in my view, clearly defective because he did not leave to the jury the possibility of finding my client not guilty. After the jury retired I stated my objection in strong terms while, of course, Cutler said Scollin’s charge to the jury was simply wonderful. Scollin said, “Well, Mr. Weinstein, I’m not going to re-instruct the jury.” In my mind I was beginning to prepare an appeal to the Court of Appeal. Now it’s very rare for a sentencing to take place immediately, but Scollin insisted on hearing submissions then and there. Cutler began his submission for a stiff sentence (the usual for manslaughter is six to ten years imprisonment) when Scollin stopped him dead in his tracks, turned to me and said: “Mr. Weinstein, would you have any objection if I imposed a suspended sentence?” I replied, “Only if I were insane, my lord.” And that was the sentence!

That night, there was a Manitoba Bar Association function and I chanced upon Judge Scollin. I knew him well enough to say, “You know, John, that charge to the jury was so pro-Crown, so favourable to the prosecution, I couldn’t believe it.” And, with a glint in his eye he said, “Hymie, you did such a good job in your address to the jury I thought Cutler needed a hand!” And he was serious! Even with the most unusual suspended sentence I wanted to appeal, but my client, probably quite rightly, didn’t.



Tales from the Underworld and Other Stories

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PART 2

## Two Courtroom Legends

## Chapter 8

# Sam Freedman: Everyone's Favourite Judge

**I**N THE INTERVIEWS conducted for this book, almost all of the lawyers and judges who were asked to name their favourite judge named Sam Freedman (1908–1992). Jack London summarized the reasons why:

Sam Freedman was in a league of his own, not only because of the clarity of his judgments but also the grace and courtesy with which he conducted a case.

Freedman was born in Russia in 1908 and in 1911 moved with his parents to Winnipeg's North End. After his call to the bar in 1933, he practised law until his appointment to the Court of Queen's Bench in 1952. He was elevated to the Court of Appeal in 1960, and was Chief Justice from 1971 until his retirement in 1983. For details of the Chief Justice's illustrious career on and off the bench, see *Chief Justice Samuel Freedman: A Great Canadian Judge* (1983), edited by Cam Harvey.

The following stories show why Sam Freedman was indeed "everyone's favourite judge."

## Sam in the Classroom

### Vern Simonsen: definitions

When Sam Freedman taught Domestic Relations at law school, he gave us these definitions: if a married man has intercourse with a single woman, that is adultery. And if a married woman has intercourse with a single man, that too is adultery. But if a single man has intercourse with a single woman, that is sport!



Sam Freedman in his office

### **Harold Buchwald: a mere student outwits the professionals**

One day in Sam Freedman's course on Domestic Relations, the topic was annulment of marriage. One case was about a young couple who dated from about the age of fourteen until they were married at twenty-four. Early in their relationship they promised to save themselves for each other until their wedding night. After they married, the husband was not able—as Sam delicately expressed it—“to perform the ultimate act.” The couple tried everything to solve the husband's problem, including consultations with medical doctors, psychiatrists, social workers and therapists. When all that failed, the wife reluctantly sued for an annulment.

A psychiatrist testified in court that the husband was healthy and normal in every way, except when it came to his wife. The psychiatrist suggested that the anticipation over some ten years had been too much for the husband, who now thought of his wife more

as a sister than a lover. The psychiatrist said that if the man were with another woman, such as if he were to go to a brothel, he would perform as well as any man, but he would never be able “to perform the ultimate act” with his wife.

When Sam said that the judge had sadly granted an annulment, my classmate Irving Slusky—who had a quick sense of humour—put up his hand. “Hey Mr. Freedman! What’s the big deal? I could have solved the guy’s problem!” Sam replied, very sarcastically, “Oh, Mr. Slusky, let me understand this! All kinds of professionals could not find an answer to the problem. But YOU, Mr. Slusky—a mere student of law who first heard of this case in the last five minutes—YOU have the answer!” “Sure, Mr. Freedman. No problem. The guy should have taken his wife to a brothel!”

Note: We recently asked Irving Slusky whether he is still as sharp as he was on that day in law school, more than fifty-five years ago. He replied, “I’m just as sharp—but shorter.”

## In the Queen’s Bench

### **Colon Settle: a man and woman in a hotel room**

In the 1960s I heard the story of a case in which Morris Erin’s client petitioned for a divorce based on her husband’s adultery. The husband was found in bed with another woman in a hotel room, but they both denied that adultery had taken place. When the case came before Justice Sam Freedman, he said to the husband’s lawyer, “What do you suppose your client was doing in bed with that woman in the hotel room—playing checkers?”

### **Sid Green: clarifying an event**

Before 1969, a divorce could be obtained only by proving adultery. It was usually proved by calling the respondent as a witness, but before any questions could be asked about adultery, the witness had to be advised that under the law a witness had the right not to answer any questions about adultery unless he or she was willing to give up that right.

Justice Sam Freedman heard the case. I acted for the wife.

When her husband was in the witness box, he agreed to my asking him about adultery. So I said, "Did you occupy the same bed?" He answered, "Yes." "Did you have intercourse?" He answered, "Yes." Sam turned to him and said, with a twinkle in his eye, "*Sexual?*"

## Sam at Social Events

### Sam Wilder: Sam on the green

I was playing golf in a tournament for lawyers and judges. One of my foursome was Lyle Smordin. As Lyle was about to make a putt, he said—in Sam's speaking style—"I am now ... going to hit this ball ... into the hole." He missed. Just then, out of some nearby bushes came Sam! He said, "Mr. Smordin ... the only difference between us ... is that ... I would have made the putt!"

### Richard Wolson: Sam identifies himself

At a golf tournament Sam Freedman was wearing a cap bearing the colours and the letters ("SF") of the San Francisco Giants football team. I said I didn't know he was a fan of the Giants. He replied, "I'm not. The letters stand for my name."

### Mel Myers: a list takes precedence

I was at a banquet at which Chief Justice Freedman presided. At a certain point he stood up and said, "It is now my pleasant duty to introduce the people sitting at the head table. I have been given a list of their names. In case of any discrepancy between the list and the head table, the list shall prevail."

### Ed Kimelman: a limit to informality

Sam Freedman and I were members of Glendale Golf and Country Club. Our lockers were in the same row. When I greeted him, I would always say, "Good morning, my lord" or "Good evening, my lord." He would always reply, in his slow and distinctive way, "Please ... call me ... Sam." But I just couldn't do it. I kept referring to him as "my lord" until one day I walked by him sitting there completely naked. I said, "Good morning, *sir*." Quick as a wink he said, "Why so informal?"

## In the Court of Appeal

### **Jeff Gindin: arguing semantics**

Sam Freedman was the first appeal court judge I appeared before. He overwhelmed me! From one brief appearance in his court, he would know your name. He knew everybody's name! And he was the kind of guy who would remember you if he saw you at Safeway two months later.

In a criminal matter before Chief Justice Freedman, I suggested that the prosecutor was being very picky. I said, "He is just arguing semantics." Freedman replied, "Mr. Gindin, I didn't know you were anti-semantic!"

### **Richard Wolson: let down easy**

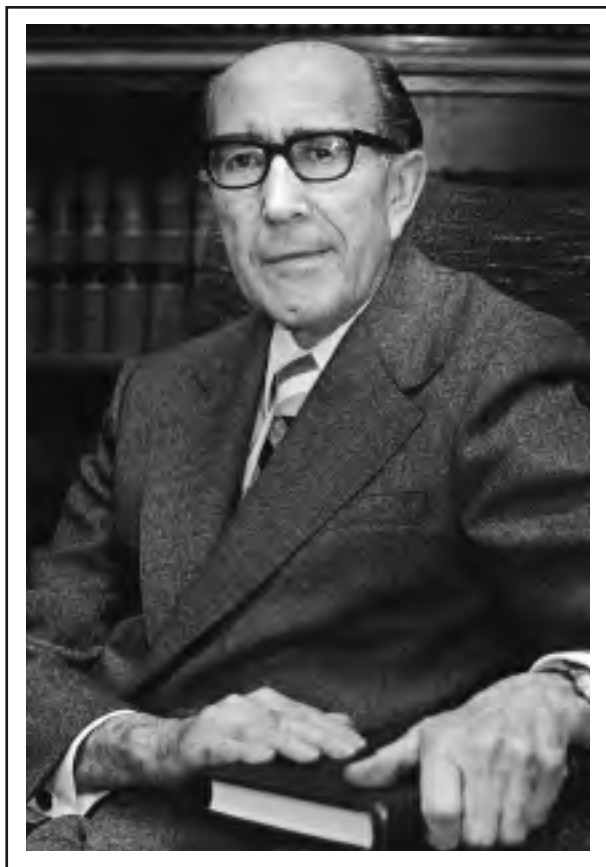
In my first case in the Court of Appeal, Chief Justice Sam Freedman presided. It was a sentence appeal, and I had a tough time with the panel of judges. They retired to consider their decision. When they came back, the Chief Justice said, "Mr. Wolson, I am sure you will have many great days in this court. Unfortunately, today won't be one of them."

### **Charles Phelan: windy lawyers belong in a chamber**

My late partner, Ron Goodwin, told me this story many years ago about the senior partner in the firm of *Monk, Goodwin*, the legendary Henry Monk. In his day there was often a question of whether certain court-related matters should be argued formally in court or more informally in what was referred to as "chambers." Mr. Monk was arguing a motion in the Court of Appeal courtroom with Chief Justice Sam Freedman presiding when, in the middle of his presentation, he paused and very audibly passed wind. After a long silence, Freedman said, "Mr. Monk, motions of that nature are more properly brought in chambers."

### **Mel Myers: Sam recommends himself**

After the Chief Justice retired, he joined the firm of *Aikins MacAulay*, where his son Martin (now a Judge in the Court of Appeal) was already practising. One day I called Aikins and asked for Mr. Freedman, intending to speak to Martin. The receptionist asked,



Sam Freedman, Chief Justice of Manitoba

“Which Mr. Freedman do you want—Martin or the Chief Justice?” I asked for Sam, and when he answered, I told him I had a dilemma: when I called the firm, which Mr. Freedman should I ask for? He replied, “It’s best to ask for me. I charge much less.”

### **Roland Penner: Sam’s approach to decision-making**

In an article he wrote for the *Winnipeg Free Press* in 1975, Sam Freedman referred to two kinds of judges: judges of caution and judges of valour. He wrote that a judge of caution is inclined to decide a case by looking backward to find a precedent, while a judge



of valour sees the law “as an instrument that is capable of adaptation and growth, one that has developed through wise judicial use.”

There is no better illustration of Freedman as a “judge of valour” than his decision in *Harrison v. Carswell*, a famous case in the 1970s that pitted labour rights (the right of a union member to picket on the property of a shopping mall) against property rights (the right of the owner of the mall to treat a picketer as a trespasser). Sam’s decision, for a majority of the judges in the Court of Appeal, was in favour of labour rights, but when the case was appealed to the Supreme Court of Canada, Justice Brian Dickson wrote a majority decision reversing Freedman’s decision and ruling in favour of the property rights of the property owner.

Not long after the Supreme Court’s decision, Freedman spoke to students of the Faculty of Law at the University of Manitoba and used the case as an example of the influence of a judge’s personal values when legal issues are not clear-cut. He said, “This was a case in which there was a clear conflict between labour rights and property rights, requiring a judge to make a choice no doubt influenced by his values. In the Supreme Court my friend Brian Dickson sided with property rights—but then he has so much of it!” He was referring to Dickson’s private wealth, which was well known in the legal community. Sam’s comment was made with tongue in cheek, and of course the students loved it. Sam taught them something that day about the place of personal values when a judge is required to consider complex legal issues.

## Chapter 9

# Harry Walsh: A Criminal Lawyer's Lawyer

**A**LL OF THE LAWYERS interviewed for this book were asked to name their favourite lawyer, or the lawyer they would consult if they needed one. The names most often mentioned include Solomon Greenberg, D'Arcy McCaffrey, Keith Turner, Roy Gallagher, Ken Houston and Randy McNichol. But when the question was narrowed to just criminal lawyers, the overwhelming choice was Harry Walsh.

Harry Walsh was born on August 14, 1913, in Old Kildonan, then just north of the City of Winnipeg. He articulated with E.J. McMurray for the required four years from 1933 and was called to the bar in 1937. On the day of his call, the name of the law firm changed from *McMurray and Greschuk* to *McMurray, Greschuk and Walsh*.

The firm was then located in the Childs Building on Portage Avenue, just off Main Street in downtown Winnipeg. Mr. Walsh has practised in the vicinity of Portage and Main for over 70 years, less the three years he served in the Royal Canadian Artillery as an Artillery Surveyor (1942 to 1945). Since the thirty-member firm of *Walsh Micay and Company* dissolved amicably in 1999, Harry has practised with his son Paul—still on Portage Avenue—as *Walsh & Company*.

In this chapter, Harry recalls stories from his career—and then other lawyers tell their stories about Harry.



Harry Walsh in his corner office with a view over Portage and Main.

## Harry Recalls His Youth and Education

### Selling newspapers at Walsh Corner

I became a “newsie” (newspaper boy) at age twelve, when my younger brother Ernie and I acquired the “rights” of a newsie on the southeast corner of River Avenue and Osborne Street, in what is now called Osborne Village. Those “rights” cost us fifty dollars, payable to the previous “owner” of the corner at the rate of ten dollars per month for five months. The distributors of the two Winnipeg newspapers respected the unwritten code of ethics that prevailed among the newsies, which gave the corner’s owner the right to sell all newspapers on that corner.

For many years, that corner at River and Osborne was known to newsies, distributors and customers as “Walsh Corner.” I was still

selling newspapers there when I obtained my Bachelor of Arts in 1932. I had to delay going to law school for one year in order to earn the annual tuition fee of \$125.

### **A lesson in identification**

It was on the Walsh Corner that I first met Bill Palk, a law student. Bill and I used to see each other in the common room at the downtown campus of the University of Manitoba on Broadway. One day Bill said, "Harry, I often see a fellow at the corner of River and Osborne who bears a remarkable resemblance to you." I asked if he ever talked to the fellow. Bill said he would say only a word or two to him while buying a paper. I suggested that he talk with the fellow a little more the next time he saw him.

A day or two later he bought a paper from me and started to say that there was a fellow at the university who looked exactly like me! I interrupted him: "Bill, I am that fellow!" He was overwhelmed. I found this interesting. He thought two people looked exactly alike, and it never occurred to him that they could be the same person. He also could not fathom that a university student had to sell newspapers in order to pay tuition.

### **A judge's steep learning curve**

In the 1930s, Justice John Adamson of the Court of Queen's Bench lectured on Criminal Law to our class of thirteen students. One day he came to class and said, "You might wonder where I've been in the last couple of weeks. I had a very interesting time. I had six capital murder cases. I passed the death sentence in every one of those cases ha ha ha ha ha." That was the way he related it. But I'll say this for him: when he was promoted to the Court of Appeal, he became an excellent judge.

## **Harry Recalls Days in Court**

### **Arthur Martin and the case of the suggestive pepperoni**

Arthur Martin (1913–2001) of Toronto was the editor of *Martin's Criminal Code*, which has been every defence lawyer's bible since the 1950s. Arthur was a wonderful lawyer, a good friend of

mine and about one year my junior. He was the only lawyer I knew in those days who practised only criminal law. He was a bachelor for whom the law was his life.

Around 1970 in Thunder Bay, Ontario, four members of a hockey team were charged with what is now called sexual assault. At the jury trial, Martin acted for two of the accused and I acted for the other two. The team had won a cup of some kind and had a party to celebrate the victory. The female complainant was invited to the party. In my cross-examination of her, she said she had sent a letter to one of the hockey players some time *after* the alleged assault. We did not know about the letter until she mentioned it. Arthur and I decided that he would question her about the content of the letter.

After Arthur asked a number of questions, I whispered to him, “Ask her if she sent anything with the letter.” He put the question and she replied that there was something—a pepperoni. Arthur turned to me and said, “What the hell is a pepperoni?” I whispered, “A small sausage that looks like a penis.” He asked the witness whether the pepperoni was intended to suggest that she was complaining about the size of the fellow’s privates. From that point on the case went our way and the jury did not take much time to return a verdict of not guilty.

Arthur and I acted together on a number of cases and he never missed an opportunity to regale listeners with the story of “The Pepperoni Case.”

### Getting cozy with a jury

In jury trials, I always sat in the place at the counsel table that was closest to the jury box. I managed to do it by virtue of my seniority. I used to hear some argument that the prosecutor always sits on the left side of the table, but I would ask, “Where do you get that idea?” and of course they were stymied, because it was a mere practice and not a requirement. So it became my seat and that’s where I sat in all my years in court. If a prosecutor ever sat on that side, I would say, “This seat is reserved for me.” What I did not say is that it was reserved *for me by me!*

The reason for sitting there is that it was close enough for me to establish a relationship with the members of the jury, and to see their reactions to the testimony of witnesses. At the beginning of

each day I would say “Good morning” to the jury, and they would always respond with a grin or a smile.

Some lawyers disagreed with my practice of saying to each member of a jury, “You are a carpenter, you are an electrician” and so on. I did that to show that I knew something about them—not to sway them with non-arguments, but to sway them with *good* arguments and in effect to say that I was seeking a true verdict “according to the evidence.”

### Watching the jury, not the judge

Another practice I had was to always watch the members of the jury, even while questioning a witness, in order to see their reactions. That practice once got me into trouble with Justice Arnold Campbell. In the midst of a case he said, “Mr. Walsh, you’ve got your back to me.” I said, “Well, my lord, it’s a matter of choice: either I have my back to you or to the jury.” And I would see the jury look at me and appear to think, “This fellow knows how to deal with the judge!” Of course, I would always add something like “With apologies, my lord,” and again turn my back on him and face the jury.

### A friendly police officer reads the *Criminal Code*

In the days of capital punishment, four juveniles (under the age of twenty-one) were accused of sexually assaulting a woman. At that time that offence under the *Criminal Code* called for the death penalty. That penalty was seldom applied, but it was still in the *Code*. The case hinged on the testimony of a police officer who was quite open about his dealings with the juveniles. He testified that he had told them that they would be charged with sexual assault and that it was a serious offence.

In cross-examination I said, “Of course, since you recognized that these were juveniles who had no court record of any kind whatsoever, and who had good educations, and whose parents would be out of their minds in connection with a charge of this kind, you must have treated them very well.” He said he thought he had. I said, “You told them what sexual assault was?” Yes, he had. “And you read to them the section of the *Criminal Code* on sexual assault?” Yes, he had. I said, “Here is the *Criminal Code*. Would you please find the section?” He found it and I asked him to read it out loud, which he



The legendary Harry Walsh

did. Then I said, “Of course, you read every word of it, didn’t you?” He said he had. I said, “Did you read to them the part about the penalty being death by hanging if they were convicted?” He said, “Yes.” The law did not allow anyone to tell a jury what the penalty could be if they convicted someone, but I did it through the police officer.

The jury came in with a verdict of not guilty. Of course, I don’t know whether the police officer actually read all those provisions of the *Code* to the juveniles, or whether he just being agreeable.

### **Funny business**

I defended a charge of what is now called sexual assault in a trial before Police Magistrate D.C.M. Kyle in the late 1950s. The female complainant testified that she used to go by herself to a bar on

Main Street, but on the evening in question she didn't see anyone she knew, so she went to another nearby bar. She sat down at a table by herself. In cross-examination, I asked her, "What were you doing there alone? What was your interest in that room?" She said, "That's my business." I said, "And apart from your business?" That brought the house down.

### **Preparation + experience = success**

I have been successful in many cases in which preparation was the key. An example that comes to mind is a case in which my client was charged with stealing a .22-calibre rifle from his neighbour. The neighbour had somehow lost track of the rifle but when he saw his neighbour's .22-calibre rifle, he was convinced that it was his. My client claimed that he had owned the rifle for many years, but the RCMP seized the rifle and charged him with theft.

I always made it a practice to arrive at the courtroom about half an hour before a trial was scheduled to begin, and I would check the exhibits laid out on the counsel table. In this particular case I had the advantage of having been in the artillery during the Second World War. From my training at Camp Shilo I knew how to get the back end of the butt of the rifle open. When I did that, I saw a part known as a "pull-through," which was very new and clean and suggested that the rifle had never been used. I pulled it out and saw that a tab on it was green. I closed up the rifle and put it back on the table.

In the course of my cross-examination of the accused's neighbour, I said, "What colour was the pull-through on your rifle?" He said it was yellow. I said, "You're sure about the colour?" Oh yes, he was sure. I said, "Please open up the rifle and take out the pull-through." He opened it and took out the pull-through. I said, "What colour is it?" He said, "Green. It's not my rifle."

## **Other Lawyers Share Memories of Harry**

### **Marty Tadman: becoming "a lawyer-like-Harry Walsh"**

From the age of about ten, I was enthralled with the Perry Mason books. I read them all and decided that nothing in life could



be more exciting than being a lawyer outwitting bad guys.

In addition to that, many young Jewish boys were programmed by their parents to become a doctor or a lawyer. I was no exception. My mother said, “Either you can be a doctor or a-lawyer-like-Harry-Walsh.” She was incapable of saying the word “lawyer.” She could only say “a-lawyer-like-Harry-Walsh.” In my mother’s lexicon, those five words were one word—and the only kind of lawyer to be.

I asked my mother whether it was a good thing to be “a-lawyer-like-Harry-Walsh.” She replied, “If you become a lawyer, you will make so much money that you will never have to worry again!” (This was 1957, I was ten years old, and I wasn’t worried about a thing.) I asked how much money would that be. She said, “You might someday make \$20,000 a year! That’s a lot of money!” She was right! From time to time since then I have managed to earn \$20,000 in a year, and then some, by being—as much as possible—“a-lawyer-like-Harry-Walsh”!

### **Joe Wilder: everybody knew Harry**

Harry was known far and wide. In other places, two people in an argument might say, “You’ll hear from my lawyer!” In Manitoaba in the 1950s or 1960s, it would more likely be, “You’ll hear from Harry Walsh!” or “I’ll fix you—I’ll get Harry Walsh!” Of course, Harry couldn’t possibly handle all the people who came to see him. Most of them would end up with one of the firm’s current crop of young lawyers, which at times included such excellent lawyers as D’Arcy McCaffrey, Greg Brodsky, Richard Wolson and Jeff Gindin.

### **Norm Larsen: watching the great man in action**

I knew Harry Walsh’s name when I was a student at Daniel McIntyre High School in the early 1950s, probably because he was defence counsel in several sensational murder cases, including a couple in which boys around my age were murdered not far from where I lived.

Soon after I started law school in 1957, my class heard that the famous Harry Walsh was on a jury case in the Queen’s Bench in the Law Courts Building. A bunch of us skipped classes and went to

watch the great man in action. As I sat down in the courtroom, I said to myself, "All right, Mr. Walsh, show me whether you deserve your lofty reputation." By the end of the day, he had proved to me that he did. I was particularly impressed with how he kept an eye on everything going on in the courtroom, including the comings and goings of spectators. In that courtroom, he was more dominant than even the judge and the prosecutor.

### **Manly Rusen: a police officer and a coffee cup**

While I was at law school in the 1960s, I saw Harry Walsh defend a murder charge. At one point, he cross-examined a detective who had identified various exhibits sitting on the table between Harry and the prosecutor. One of the items in front of Harry was a coffee cup from a Salisbury House restaurant. He said to the detective, "Did you find this coffee cup at the scene?" The detective answered, "I think I did." Harry asked more questions about the cup, all of which amounted to nothing. It turned out that the cup belonged to Harry and had nothing to do with the case—but he had the jury and me completely fascinated by it.

### **Mel Myers: making mincemeat in court**

In the 1960s Harry was acting for a man charged with break and enter. The Crown's main witness was a police officer who testified that casts were made of footprints found at the scene of the crime. In cross-examination, Harry asked the officer why he had not brought the casts to court. The officer replied, "Because the footprints are not the same size as the shoes of the accused man." Mr. Walsh then proceeded to make mincemeat of the witness and his testimony.

### **Harold Buchwald: Harry makes an officer's dream come true**

Harry had a heavy foot and would often drive at a speed of about 110 miles—not kilometres—on the highway. In the 1950s, we were driving home from Kenora when a police car pulled us over. The officer walked up to the driver's window and said, "I clocked you at 120 miles an hour for several miles." Harry, stoic as always, looked straight ahead as he handed over his driver's licence. The officer started to write a ticket, but when he saw the name on the licence, he said, "Harry Walsh! I've been lying awake at night

dreaming of a chance to do this to you! Do you remember how you treated me when I was a witness in the X case?” Harry remembered the case and they talked about it for a while. The officer said, “By the time you were through with me, even I didn’t believe myself! Look, Mr. Walsh, please don’t drive so fast.” He tore up the ticket and we continued on our way.

## Learning the Law at Harry’s Firm

### Len Weinberg: how it was at *Walsh Micay*

I practised with *Walsh Micay* from when I was called to the bar in 1960 until 1967. When I joined the firm, Archie Micay told me that I would never be a partner in the firm but that when I left it in a few years, as he expected almost every lawyer to do, I would know how to practise law. I did criminal law and family law during the day, and civil cases until midnight—every night and weekends. That’s how everybody worked at *Walsh Micay* in the 1960s.

In those days, the students and young lawyers often learned by being thrown into a situation. One morning soon after my call to the bar, I was stepping off the elevator at my office just as Mr. Walsh was walking by. He handed me a file I had never seen before and said I was due in court on that file at two o’clock! On another memorable occasion, I was sent to argue a case in the Court of Appeal—before I had even handled a trial of any kind.

### Richard Wolson: always be prepared!

In the 1970s I was Harry’s junior in a jury trial. In the midst of the trial, as a relatively insignificant Crown witness took the witness stand, Harry said, “You cross-examine this witness.” I hadn’t prepared, and I immediately started to sweat. I got up and asked questions that I would never ask today, and I was soon spinning my wheels and mumbling. At one point, Harry said, “Speak up!” The jury laughed because they knew I was young and inexperienced. Harry gave me that witness because he knew I couldn’t harm his case. Never again did I go to court unprepared to cross-examine a witness. I don’t recall that Harry ever put me on the spot like that again, but I was always prepared!

### **Norm Gould: two lawyers receive low grades**

Harry was a great teacher. When I was a first year lawyer in his firm, he always took the time to correct my work. On one occasion he said to me, “Who drafted this document?” I said I did. He said, “A grade eleven student could do better than this!” I was rather upset until I happened to see a note Harry had left on a file on the desk of a senior lawyer: “A grade ten student could do better than this!”

### **Yude Henteleff: students meet a bootlegger**

In the 1950s Harry Walsh had clients who made home brew. One of them offered to give the firm's three articling students a tour of his illegal operation. There was a peephole in the front door, which was made of iron to withstand a police battering ram. While we were there, Harry got a call from a police officer who told him the bootlegger's establishment was under police surveillance and we had been seen going in. He said, “Get your bloody students out of the place!” When we got back to the office, Harry gave us absolute hell.

### **Sheldon Pinx: interviewed by Harry**

In the early 1970s, Harry interviewed me about an articling position. When he asked how many languages I spoke, I told him that I used to speak two, but I had lost my fluency in Hebrew. He replied, “Sheldon, we are not yet planning to open an office in Tel Aviv.”

### **Yude Henteleff: a student does too well**

One day Harry Walsh sent me to court for a preliminary inquiry on a charge of theft. Lo and behold, the case was thrown out, which seldom happened. When I got back to the office, Harry said, “What are you doing, getting him off—when he hasn't paid yet!” I think he was joking, but I'll never know for sure!

### **Sam Wilder: jousting with a judge**

Harry introduced me to a client and immediately sent me to court with the man to enter a plea of not guilty and set a date for trial. The judge was Isaac Rice, who informed me that the man's trial would begin in fifteen minutes. I told the client that he should tell

the judge, “I have just fired my lawyer.” When he said that in court, Rice said to me, “You told him to say that! You will not appear before me in this courtroom ever again—and you can tell Harry Walsh I said so!” I reported all this to Harry. He said, “Well, Mr. Wilder, when you walk into Magistrate Rice’s courtroom in future, I guess he is going to have to leave.”

### **Norm Gould: just doing the expected job**

One day in my early days at Harry Walsh’s firm, he called me into his office. “Mr. Gould, I want you to go down to the Family Court. There is a lady there who has been charged with child neglect, and they have taken her child away from her. The hearing starts at two o’clock.” I said, “But Mr. Walsh, it’s 2:10!” He said, “Well, I guess you’re already late.” I asked if he could tell me something about the case. He said, “Here is the file. You can read it on your way to court.”

I got to the courthouse around 2:30 and asked the peevish judge for a few minutes to interview the client—my client! After the hearing, in which I cross-examined several witnesses, including doctors, I went back to the office. Mr. Walsh saw me but didn’t say anything. I put the file on his desk with a note on top: “Got the child back.” He never again talked to me about the case. I have never forgotten that wonderful experience in which I learned so much in a very short time.

### **Jeff Gindin: forgetting to say when**

Early in my days with *Walsh Micay*, I sat in the audience and watched Harry Walsh defend three brothers charged with sexual assault. Beside me sat John Bowles, who had just come from Ontario to join the firm. He wanted to see Harry in action.

In Harry’s address to the jury, he would talk a bit about the evidence and then point to the three accused men and say, “Send these boys home!” Then he talked some more, walked over and put his arm on the shoulders of their mother sitting in the front row and said, “Send these boys home to their mother!” Every five or ten minutes he would stand near his clients and repeat the phrase “send them home” as he glanced at their mother’s sad and anxious face. In the end, all three were convicted and sentenced to three years

in prison. John Bowles said, “Harry forgot to tell the jury when to send the boys home!”

### **Norm Gould: Walsh corrects Walsh**

As a first year lawyer in Harry Walsh's firm, I prepared a petition for divorce by copying the wording from a petition that Mr. Walsh had done. When I gave the draft to him, he began correcting it. He asked what precedent I had used, and I told him it was one of his. He said, “Every pleading can be improved” and continued correcting his own work.



During the so-called “Golden Age of Advocacy” in England and the United States, which ended around 1960, juries in criminal cases expected theatrics and rhetoric from defence lawyers. The Canadian style was more flamboyant than in England and less flamboyant than in the U.S., but Harry Walsh gave juries everything they expected from a man with his reputation. He was the leading criminal lawyer in Manitoba for decades, and the only one whose name was known far and wide among the general public.

Walsh's influence on other lawyers has been immense, and though the style of advocacy in courtrooms has changed since his heyday, his influence on the criminal justice system continues through lawyers who were once with his firm. It is estimated that at least 150 lawyers have practised in a firm headed by Mr. Walsh. Many of them are now leading criminal lawyers. When a large number of Winnipeg lawyers gathered to honour Harry a few years ago, Yude Henteleff spoke fondly of his experience with the Walsh firm and said, “If they had paid me more, I'd still be there!” Dozens of hands shot up—indicating that many other veterans of the firm felt the same way.

Harry Walsh had a unique and wonderful career. It seems unlikely that any lawyer will ever match it.



PART 3

Lawyers and Judges  
Tell Their Stories



## Chapter 10

# Clients and Cases

## **S**HELDON PINX: a compassionate client

In 1973 I was at a Legal Aid office in my first year of practice when I helped an older man fill out an application for legal aid. When we got to “Choice of Counsel,” I told him that he could choose any lawyer to act for him—including the famous Harry Walsh, who had previously acted for him. The man replied, “I know I can choose Harry, but I choose you. You need the experience.”

## **An anonymous lawyer receives a compliment**

A woman came to see me about a legal problem. She said a friend of hers was a former client of mine and had recommended me. That made me feel rather good, and so I decided to stretch the compliment by asking what her friend said about me. The woman replied, “She says you’re an asshole but you did a good job.”

## **Len Weinberg: who owns the contents of a septic tank?**

In the early days of my career in the 1960s, I had a client who carried on the business of cleaning out septic tanks. My first retainer was to register his business name, “Honey Wagon.” A short time later he received a letter from the Motor Vehicles Branch advising that his truck required a Public Service Vehicle (PSV) licence because he was hauling “goods” that belonged to other people.

The legal question was whether the “goods” pumped into my client’s truck from the septic tanks were still the property of the owners of the tanks, or whether the goods became the property of my client when they were pumped into his truck.

I called the Registrar of Motor Vehicles and argued that the goods hauled by my client could not be separated or identified as the property of any of his customers, and even if the goods could be identified, the customers would never want them back! I also suggested that the fact my client could dispose of the goods without the

consent of his customers was another indication that he was the owner of the goods.

I did not hear back from the Registrar, and my client did not purchase a PSV licence.



The frieze on Winnipeg's Law Courts Building shows Justice with her sword and unbalanced scales

### **Brian Pauls: the client who found God and lost his case**

I had a case in which my client was being sued for committing a fraud. He insisted that there had been no fraud. The case went to trial, and the plaintiff completed his case on the first day. We were set to begin the defence the next morning. As we prepared in my office that afternoon, my client told me that it was his fiftieth birthday and he had been spending a lot of time meditating on “the meaning of it all.” The next day, on the witness stand, he testified as I expected him to, but in cross-examination he suddenly admitted that he had

indeed committed fraud. I obtained a recess and I asked him why he had never told me the truth. He hung his head and said, “Yesterday I found God.” The case was settled out of court with my client having to pay about ten times more than what he would have paid if we had settled sooner. When the case was completed, my client declined to pay my bill. Apparently his new belief in God required him to tell the truth but not to pay his lawyer!

### **Norm Larsen: an old joke served up for real**

Soon after the first Legal Aid office opened at 95 Isabel Street in Winnipeg in 1972, Norm Sundstrom and I were working late. Around midnight, the telephone rang. Norm answered it and said to me, “The man on the phone wants to know the penalty for bigamy.” I didn’t hesitate: “Two mothers-in-law.” Norm relayed my answer and asked the caller what made him think there would be anyone in the office at such a late hour. The man replied, “This is Legal Aid, isn’t it?”

### **Len Weinberg: where there’s a will, there’s a way**

Years ago I was consulted by a prominent businessman who came to my office with his mistress. He instructed me to prepare a will that included generous provisions for her. I prepared the will and the client returned to the office with his mistress and signed the will in her presence. About a week later, he came back by himself and revoked the will.

### **Sheldon Pinx: an accused man helps his prosecutor**

I acted for a man on a charge of selling a bottle of liquor contrary to *The Liquor Control Act*. At the office, I suggested to him that he consider pleading guilty and pay a small fine, but he said he wanted to fight the charge. At court I explained to him that the prosecution’s witnesses were present, including the man who had bought the bottle from him, and that he was likely to be convicted. But again he said, “I want to fight it.” So I told him his only hope was that the guy who bought the bottle from him would not be able to identify him. I directed him to take a seat at the back of the courtroom in order to make identification more difficult for the witness. Crown Prosecutor Chris Stefanson proceeded to put in his case, with Judge Charles Rubin presiding.

The Crown's last witness was the man who bought the bottle. Stefanson asked him, "Do you see the man who sold you the bottle?" The witness looked at the people to his left. Then he looked at the people to his right. He looked carefully at me. He looked carefully at Stefanson. He even stared at Judge Rubin, who started to chuckle. Suddenly a hand shot up in the back of the courtroom and my client blurted out, "Here I am!"

In the end, my client was acquitted—but no thanks to him!

### **Len Weinberg: choosing between a liar and a thief**

Some years ago I acted on behalf of a client who wanted to expand his business into the United States. He was looking for a business associate to be involved with the U.S. operations. Two groups were interested, one from Toronto and one from New York. My client and I attended a meeting with both groups in Toronto.

Negotiations were hot and heavy with the two groups making various representations and promises to my client. Finally, the head negotiator for the New York group stood up, pointed at the people from Toronto and said, "Look, those people are liars. You can't believe anything they tell you. Me, I am a thief. Come with me and you will make money." My client chose to do business with the alleged liars.

### **Roland Penner: some clients are hard to please**

In the 1960s I had a client who was the proprietor of a small cafe in a low-income, crime-ridden area of Winnipeg. After the uninsured premises were broken into half a dozen times, he moved a couch into the back and brought with him one of his shotguns. In the middle of the first night that he slept in the place, he heard the sound of breaking glass on a cigarette machine and shouted, "Stop, thief!" He ran after a shadowy figure through the store and out the front door. As the thief ran down the street, the proprietor shot and wounded him in the leg. Both men were charged with criminal offences, but my client faced the most serious charge of attempted murder.

I discussed the charge with Crown prosecutor John Enns, a reasonable and good-hearted man. He suggested reducing it to assault causing bodily harm in exchange for a guilty plea. I said that

wasn't good enough. John then suggested a plea of guilty to common assault, a fairly minimal charge, but still a criminal offence. I suggested a plea of guilty to discharging a firearm within Winnipeg, contrary to a city bylaw. John agreed, and a very sympathetic judge sentenced my client to a fine of four dollars!

I sent my client a bill of fifty dollars, which I thought was rather modest, given the results of my efforts on his behalf. A few days later, he stormed into my office, waving the bill and shouting, "What is this? Fifty dollars! And I thought you were a lawyer for the poor!"

### **Jeff Gindin: a fictional detective proves a man's innocence**

A man was charged with breaking into a house and committing a sexual assault. He was arrested on a snowy Sunday afternoon and I interviewed him that evening at the jail. He swore that he was innocent, and he was so adamant that I believed him. He said he had been at home alone watching television and decided to go out and buy cigarettes. Driving a short distance from his home, he slid into a snowbank. Just then a police car drove up. The officers told him that a woman had been assaulted just a few minutes before and he fit the description of the perpetrator. They asked if he would come to the police station and be part of an identification lineup. He was a decent guy with no criminal record, and decided he would cooperate in order to get it over with. The woman looked at the lineup and identified him as the man who assaulted her!

The police picked up my client only ten or fifteen minutes after the assault. I asked him what he was doing before he left his house. He said he had watched an episode of the television show *Columbo*. It turns out that he was a fanatic about watching *Columbo*. I asked him whether it was a new episode or a repeat. He said it was new, and proceeded to tell me the whole story—in detail. The assault clearly occurred during that episode.

I contacted the television station, which confirmed that it was a new episode. I told one of the police officers that my client knew the details of the show, which was possible only if he was at home during the broadcast. Based on this information the police agreed to arrange a polygraph test and drop the charges if he passed. The results of the polygraph and his "Columbo alibi" proved he was innocent. The charges were stayed and he was released.

It is interesting to speculate what might have happened if the *Columbo* episode had been a repeat, or if I hadn't interviewed the man until the next day.

### **Sheldon Pinx: a client calls for order in the court**

Hersh Wolch had a client named Joe who was charged with fraud. He had found a lawyer's wallet and used the credit cards to go on a spending spree. Joe showed up at the office on the day he was scheduled to be sentenced. He knew he was facing jail time, so he had decided to take some liquor with him by drinking plenty of it. When I told Joe that Hersh wasn't in, he used some colourful language to complain that Hersh was keeping him waiting. Hersh arrived and immediately saw that Joe was completely hammered. He took the guy into his office and said, "Joe, you are very drunk. Whatever happens in court, don't say anything. You will only make things worse." Joe slurred, "I know, Hersh. Just do your best."

They walked to the courthouse, which fortunately—given Joe's condition—was close to our office on Broadway. In the courtroom, Joe stood beside Hersh as they waited for the judge to arrive. The door of the courtroom opened and in walked the clerk with the judge right behind him. In the usual way, the clerk called out, "Order in the court!" Joe shouted back, "Cheeseburger and fries to go!"

### **Sam Wilder: the case of the Jewish Indian**

I acted in a case in Arborg for an old Jewish storekeeper. He had been harassed and pushed around a bit by some people, and so I laid an assault charge against them. When my client testified at the trial before Judge Wally Darichuk, I asked whether he had ever used a gun. He said, "What does a Jew know about shooting?" I asked whether he was in fact a Jew. He answered sarcastically, "No, I'm an Indian!" The spectators in the courtroom, most of whom were Aboriginal, burst into laughter.

### **Roland Penner: the client who always looked impaired**

Before breathalyzers came along, I defended a farmer charged with impaired driving. The only witness for the prosecution was the police officer who made the arrest. He described the farmer's condi-

tion at the time: “He smelled of alcohol, he stumbled, his face was red, and his speech was hard to understand.” The officer admitted that he could not tell how much alcohol a person had consumed just from his breath. When I called my client to testify, he stumbled to the witness box with an obvious and genuine limp. His face—with a so-called “farmer’s tan”—was very red, and his answers to my questions were hard to understand because of his thick Ukrainian accent. Acquitted!

### **Robert Tapper: clients having fun with the police**

In 1981 I acted for two men charged with bringing a lot of marijuana from Central America, through the U.S. and across Lake Superior into Thunder Bay. They didn’t know that the police were following them the whole way. As my guys were crossing Superior, a fog rolled in and they ran the boat aground. A minute or two later the Coast Guard cutter that was following them also ran aground, with the police falling off the bow into the water. My clients’ first words were, “Our hands are in the air, don’t shoot, we are peace-loving folk!”

The case got quite funny, based on my clients’ cooperation with the authorities in order to reduce their sentences. During the preliminary inquiry, they asked the police if they could recover the luggage that had been seized from them. The police said, “No problem.” That evening, I’m at the hotel when my clients show up laughing so hard they are crying. One of them had a paper bag that he opened up and showed me what he said was a pound of marijuana! The police had not searched the zipper pocket of one of the suitcases! I called the prosecutor and told him what we had, and our intention to



Robert Tapper

turn the bag over to the police—but only after we had some fun with it.

Earlier that day, one of the police officers had testified about the amount of marijuana seized, in pounds. When he was instructed to convert his figures into metric, he really had to struggle to get the decimal point in the right place.

On the following day, my clients gave the bag of marijuana to the officer, along with a poem that one of them wrote, “Ode to an Exhibit Officer”:

We don't wish to embarrass you in front of a judge.  
And far be it for us to hold any grudge.  
We're returning this package with its ramifications  
Based on yesterday's miscalculations,  
And although we pondered on rolling a joint,  
We'd sooner solve for you the floating decimal point.

The officer's face was so red!

We made a deal. My clients were sentenced to four years in prison—but the police made representations on their behalf, and they were out in eight months.

### **Marty Tadman: bikers having fun with the police**

In the 1980s I acted for members of a biker club. They had a clubhouse on Salter Street near Selkirk Avenue, an impoverished neighbourhood at the time. One day in late August an air conditioning installation truck parked in front of a house across the street from the clubhouse. Two men got out, climbed onto the roof of the house and supposedly began installing air conditioning. The bikers weren't stupid. No one in the neighbourhood could afford central air conditioning, and nobody installs air conditioning at the end of August. When the men left, the bikers went across the street, climbed to the roof of the house and found a remote control surveillance camera pointed at the clubhouse. They dismantled the camera and took it with them.

The RCMP immediately realized what had happened and demanded the return of the camera. The bikers said they had no



knowledge of its whereabouts but, as concerned citizens, they would help look for it. There was a rumour that the camera was worth about \$75,000 and the local RCMP were taking a lot of heat from Ottawa for having lost it.

There were negotiations. The Bravos requested that in exchange for their help in finding the camera, the police drop all existing criminal charges against them. The RCMP declined. The bikers, ever willing to be flexible and reasonable, then proposed that the Mounties arrange to drop all charges except those under *The Highway Traffic Act*—most of which related to riding without helmets. And that's the deal we struck. Within forty-eight hours, as a result of an intensive search by the bikers, the missing camera was found and we had the rarest of outcomes in law, a “win-win.”

### **Robert Tapper: police having fun with lawyers**

A few years ago I got a call from a former client who said that the famous police detectives Pete VanderGraaf and Jack Taylor told her they were going to arrest her husband when he got off a plane that evening. Jack was a grandfatherly kind of guy with a soft voice and glasses that often perched at the tip of his nose. I called him and suggested that I would pick up the guy at the airport and bring him to the Public Safety Building for booking, and then apply for bail. He said, “Sure, no problem.” I knew his reputation for pulling tricks on lawyers, so I said, “No tricks?” He said, “Robert! Why would you suggest such a thing?”

I picked up the guy at the airport. As we drove downtown, a police vehicle pulled us over. An officer came to my window and said, “Are you Robert Tapper? You're under arrest for harbouring a fugitive.” My client started to laugh. I asked the officer a few questions, and his answers showed that he didn't realize he was part of Taylor's idea of a joke. I told the officer what was happening and I urged him to call the duty inspector at the PSB to confirm that I was on my way to surrender my client. He made the call and soon let us go.

When we got to the PSB, VanderGraaf and Taylor were waiting. Jack, with his glasses at the end of his nose, ever so innocently said, “Robert, you're late. What took you so long?”

### Sheldon Pinx: the guilt-edged client

My client was charged with possession of marijuana for the purpose of trafficking. During the preliminary inquiry, all the exhibits—including a bag of marijuana—were tagged as Exhibit 1, Exhibit 2 and so on, and placed on a table. We took a lunch break. When we came back the marijuana was gone. Somebody said my client was at the table during the break. He was found to have the bag in his pocket—still tagged! He was charged with theft.

### Robert Tapper: revisiting *The Gift of the Magi*

I have acted for my client Johnny since the 1970s. Every time he comes to see me he has a story that is too bizarre to be true—but always turns out to be true. In one case, he was sued by a woman he met on the telephone. She was a long-distance operator and he liked the sound of her voice. When they met, they each saw room for improvement in the other: he saw that she was large, and she saw that he was bald. He bought her a gift certificate for a weight-loss spa and she bought him a gift certificate for a hair transplant. The relationship soured, and she sued him for \$2,000, the value of her gift to him. I called her lawyer and suggested he must be joking, but he said it was a serious claim.

I prepared a Statement of Defence in the usual way, but my sense of humour kept getting in the way. Before I filed the document in court, I called the Chief Justice and asked him for assurance that he would not try to have me disbarred if I filed it. I read it to him and he said I could go ahead and file it.

This is part of the Statement of Defence:

The Plaintiff requested that the Defendant undergo a hair transplant and offered, as an *outgrowth* of their friendship, to fund it. The idea, *hair-brained* or otherwise, was entirely that of the Plaintiff . . . Going to the *root* of the problem, the Defendant spent hours in *hair-raising* pain to accord the desire of the Plaintiff. The Defendant states that the Plaintiff has confused her suit with *hirsute*. In *further* alternative, the Defendant states that the Plaintiff has failed to *keep a lid* on frivolous suits.

The case just went away. Perhaps the other lawyer came to realize how silly it was.

**David Newman: a lawyer spends the night with a client**

In 1992 I appeared in the Supreme Court of Canada in *The Queen v. Butler*, now a leading case on pornography, censorship, and freedom of expression. I went to Ottawa with a female representative of the anti-pornography group that I was acting for. She was older, very moral, religious, married, and she had a wonderful sense of humour. We arrived at the hotel around midnight. I had reserved a room, but she hadn't, and there were no other hotels within a reasonable distance. My room turned out to be a suite with a bedroom and a pull-out couch. So we agreed to "sleep together" in the suite, she in the bedroom, and me on the couch in the living room. We laughed and laughed when we used those words. Word got around, and it has been a running joke for me and my client group ever since.

## Chapter 11

# Judges

### **R** **ROLAND PENNER: retroactive ambition**

In the 1980s Jack Drapack, a prominent lawyer practising in northern Manitoba, was sworn in as a provincial court judge in Thompson. The ceremony included congratulatory speeches from several dignitaries, including the attorney general and the president of the Law Society. After hearing all the dignitaries sing his praises, Judge Drapack responded: “If I had realized that I’m as good as everyone has just described me, I would have held out for the Court of Queen’s Bench!”

### **Perry Schulman: having the last laugh from on high**

I ran against Roland Penner in the Constituency of Fort Rouge in the provincial election of 1981. It was a very pleasant contest, with both of us taking the high road all the way to election day, when he was elected and I was defeated. When I was sworn in as a judge of the Queen’s Bench in 1993, Roland was present as the Dean of the Faculty of Law. Several dignitaries spoke, including Roland. In his remarks he mentioned having defeated me in the election and said that he deserved credit for my being appointed a judge. When it came my turn to speak, I addressed him from the raised dais on which a judge sits: “Yes, Roland, you won the election, but the view from up here is pretty good.”



Perry Schulman, minutes after being sworn in as a judge

### **Sam Minuk: a mother refuses to stand for a judge**

In 1972 my elderly mother, five feet tall and about ninety pounds, attended the courtroom ceremony in which I was to be sworn in as a judge. She was seated in the front row. When I walked into the courtroom, everyone stood up—except her. She sat with her skinny arms folded across her chest. A security guard walked over to her and said, “Look lady, when a judge walks into a courtroom, everyone is supposed to stand up.” My mother remained seated, and said, “I’m his mother. I don’t have to stand up for him. He has to stand up for me!” The guard looked at me for directions. I said, “It’s OK, she really is my mother—but keep an eye on her because she can become quite unruly!”

## **Learning on the Job**

### **Manly Rusen: a cute little boy instructs a judge**

As a part-time Provincial Court Judge over twenty-four years, I made many trips to various northern communities. I have often questioned the usefulness of flying a court party into those communities. The reason is illustrated by a case I dealt with on one of my first trips. I sentenced a cute little thirteen-year-old boy to probation for some offence, and then I filled in the required form. It was one page, with three extra copies on different coloured paper. I explained the form to the boy, gave him a short cautionary speech (to which he didn’t appear to listen), and handed the red copy to him. He said, “Judge, I’m supposed to get the blue copy.”

### **Richard Wolson: the first judicial act should be a tour**

In a speech at a swearing-in ceremony in 1973, Chief Justice Freedman mentioned that some judicial appointments can provoke a question among lawyers: “But does he know where the courthouse is?” I was reminded of that when a lawyer was sworn in as a criminal court judge one morning. He was not a criminal lawyer. That afternoon he presided in court at the Public Safety Building. When he called for a recess, he walked out the nearest door. Then a knock was heard from inside the door, which had locked behind him. He had walked into the holding area for prisoners! He was with all the men who were going to appear before him after the break!

## Judges and Lawyers: Their Warm Relationship

### Ed Kimelman: humorous judge v. humorous lawyer

I presided at a trial in which lawyer Hymie Weinstein appeared for one of the parties. He came into the courtroom followed by a student carrying a stack of law books. I said, “Mr. Weinstein, I thought you had all the law in your head!” He replied, “I do, your honour. The books are for you.”

### Norm Larsen: why lawyers “approach the bench”

During a hearing in the 1970s, I was in the middle of cross-examining a Crown witness in a serious criminal matter when Judge Laurie Mitchell asked that counsel “approach the bench”—a practice I had seen only in American movies and television shows. Prosecutor Neil Cutler looked as puzzled as I was as we approached the bench. Mitchell leaned over his desk, looked me in the eye and whispered, “You’re doing fine, but don’t lean on the counsel table.”

### Joe Wilder: a brash judge and a brash lawyer

I had an interesting experience with Justice Jimmy Wilson, a judge I enjoyed immensely. He was great but he could be quite curt. One of the lessons Joe O’Sullivan taught us at *Walsh Micay* was the need for lawyers to be independent. That is, be polite and respectful to judges, but stand your ground. I still get upset if I see a young lawyer kowtowing to a judge, attempting to curry favour.

In a case before Wilson one morning, I was in the middle of presenting my arguments when he said, “Mr. Wilder, I’ve heard all you need to say, thank you.” I said, “My lord, I’m not finished. There’s more I would like to say.” He said, “I have heard everything that you are going to say. Please sit down.” I said, “But my lord... .” “Sit down!” I said, “My lord, I will not sit down. I am leaving.” I picked up my books and walked out of the courtroom. My poor client followed me, saying, “What have you done?” I said, “Don’t worry. It’ll be OK.”

About an hour after I got back to my office, the phone rang: “Hello, Joe. It’s Jimmy Wilson. Can you get back here at two o’clock? I would like to hear the rest of what you have to say.” I went back and had my say. Of course I lost the case, but he heard me out.

### **Walter Ritchie: from one father to another**

Justice Roy Matas (1920–1986) was quiet, gentle and capable, a very fine judge. I recall going to see him about a case that had been delayed several times. He said, “Walter, this case *must* go to trial on X dates!” I said I hated to see the trial delayed again, but I had a problem. He asked what the problem was. I said, “My son is playing hockey in Toronto and Ottawa on those dates.” He said, “Scrap those dates I gave to you. What later dates do you have available for trial?” He went on to tell me that he recently received a letter from his son, along these lines: “Dad, you have been just wonderful, coming to all my sports events.”

### **Ron Meyers: a naughty lawyer is reported to his mother**

One day in the 1980s I ran into Marty Minuk at the Oasis Restaurant on north Main Street. He was just a few years out of law school and was practising with Legal Aid Manitoba. He said he was in trouble with Judge Ed Kimelman for being late for a trial. Marty said, “He could have reported me to the Law Society, and I wouldn’t have blamed him if he had done that. But he phoned my mother and she has been bugging me for weeks because Judge Kimelman is one of her heroes. Could you ask him to report me to the Law Society and not phone my mother if I screw up again?” I relayed this to Ed, who promised he would never again report Marty to his mother.

### **Perry Schulman: long hair, mauve suit**

When I was a young lawyer in the 1960s, I wore my hair long in the style of the time. One Monday morning I appeared before Justice Israel Nitikman in the Queen’s Bench. He said, “Mr. Schulman, your case will be heard on Thursday. That will give you time to get a haircut.”

In those days I also dressed in the latest style. One day I was in the courthouse wearing a mauve polyester suit when Justice Nitikman—my father’s lifelong friend—literally grabbed me by the ear and pulled me into Chief Justice George Tritschler’s office and said, “Look at how he is dressed!” Later that summer I wore the same suit when Frank Allen, Art Rich and I drove to a meeting in Morden. As we approached the meeting place, Art asked me to walk the rest of the way so that he and Frank wouldn’t be seen in public with that suit.

## Making Decisions

### **Marty Tadman: judge not—unless it’s your job**

I remember appearing in a child protection case in the Court of Appeal in the 1980s and Justice R.D. Guy saying to me, “Children’s Aid says the woman is a terrible mother and can’t look after the children. The mother says she is a good mother and always takes good care of the children. Who are we to judge?” That rather odd comment from a judge has stuck with me.

### **Norm Larsen: reasons for judgment**

In 1981 Justice Roy Matas of the Court of Appeal was late for a meeting at the Law Society. As he unpacked his briefcase, he said, “Pardon me for being late. We were busy reversing a decision of Judge X—and I hurry to add that we did so for reasons other than the fact that it was one of his decisions!”

### **Roland Penner: judicial Plain English**

Judge A.R. Macdonell of the County Court was sometimes a bit crude in his speech. He was known for interrupting lawyers in the middle of their arguments, pointing out the window of the courtroom, and commenting, “Counsel, your argument isn’t worth as much as the pigeon shit on that windowsill!”

### **Mel Myers: judicial nicknames**

It’s an old joke about judges, but there really was a judge in Winnipeg who was known to lawyers as Judge Necessity because, as the sayings go, “Necessity knows no law” and “Necessity is the mother of invention.”

### **Mel Myers: clean office and empty desk**

When I was a prosecutor in the early 1960s, I was handed a stack of files relating to husbands who were not paying maintenance in accordance with court orders. I developed a proposal for dealing with the backlog of cases and went to the courthouse to discuss it with a certain judge who shall remain nameless. When he invited me into his office, I noticed a clean desk and no paper anywhere. I





told him about my plan to enforce the court orders. He took his feet off the desk, opened the drawers, and said, “Nothing goes into these drawers—and that’s the way it’s going to be!” He was definitely right about that because the drawers were installed upside down!

Mel Myers

### **Sam Minuk: only in Canada**

One spring day a man pleaded guilty before me on some minor offences under *The Highway Traffic Act*. Because of the number of offences and his previous convictions, I sentenced him to one month in jail. He asked whether I would do him a favour and increase it to *two* months. I asked why. He said he had been told that inmates in the jail were allowed to watch television and that with a two-month sentence he would be able to watch all of the Stanley Cup playoff games. I asked why he couldn’t watch the games at home. He said his wife hated hockey and would not let him. I said that while I sympathized with him, I couldn’t bargain with him on the sentence. He looked quite disappointed.

### **Roland Penner: impatient judge walks the walk**

Judge William Molloy of the County Court was notorious among lawyers for pushing them to settle cases and avoid trials. They nicknamed him “50-50 Molloy.” In a trial at which he presided in the 1960s, I acted for a farmer who was suing a neighbouring farmer in an action involving years of minor transactions between them, recorded in English and Ukrainian on scraps of wrapping paper. During a break, Molloy urged me and the other lawyer to settle the case, but we were not able to do so. He then called us into his office and asked how much money stood in the way of a settlement. We said fifty dollars. He said, “Oh, for god’s sake!”—pulling out his wallet and smacking fifty dollars on his desk. “Take this and put an

end to this misery!” We declined to take his money but managed to persuade the farmers to split the difference.

### **Jack Chapman: bedsheets and straight-lace**

I acted for a woman in a divorce case in the days when adultery was about the only ground for divorce. Justice Arnold Campbell (1915–1998) presided at the hearing.

Our evidence of the adultery of the husband was the testimony of a law student who had walked in on his apartment-mate, who was the husband. The student testified that he saw the husband and a woman who was not his wife having sexual intercourse on top of the bed sheets. The case seemed simple enough, but the judge reserved his decision. Three months later I got a telephone call that he was ready to deliver judgment.

In court, in front of several lawyers who were there on other cases, the judge said, “Mr. Chapman, I’m dismissing the petition.” I asked why. He said, “I just can’t believe that people would be naked and have sex on top of bed sheets”!

I took the case to the Court of Appeal. Five judges heard the case and unanimously granted the divorce.

### **Jack London: the two worst legal arguments—ever**

The first civil case I had in court was with Walter Newman on the other side. We argued the case before Justice Israel Nitikman. I thought I had an ingenious argument, but the judge said, “Mr. London, that is the worst argument I have ever heard. If you are right, I have to go back to law school!” Walter then argued his side of the case, and the judge said he would deliver his judgment at a future date.

Eight months later we were still waiting for a judgment, and so I called the judge. He said he had lost his notes and Walter and I would have to re-argue the case. And so we did it all over again. When I finished my argument, Justice Nitikman didn’t say anything, but when Walter finished his, the judge said, “Mr. Newman, that is the worst argument I have ever heard. If you are right, I have to go back to law school!” I won the case!

### **Patrick Riley: translating a judge's translation**

In the 1970s I was one of the few lawyers at Legal Aid who spoke French, and so some of my clients were unilingual Quebecers. One guy snatched someone's purse and was charged with robbery. He had charges pending in Quebec, where he would likely have been sentenced to about seven years in prison—much more than what he was likely to get in Manitoba. We had the Quebec charges transferred to Winnipeg in exchange for guilty pleas to all charges. Judge Ian Dubiensi sentenced him to six months in prison, about a tenth of what he would have been given in Quebec. But the judge decided to be helpful by translating the sentence into French. He said to my client, "Six ans"—six *years*! I quickly explained to the judge that his translation wasn't quite right.

## **Dozing Judges**

### **Norm Larsen: eyes closed, brain asleep**

The tendency of Judge Mike Baryluk to sit in court with his eyes closed and to "go with the Crown" (as we defence lawyers saw it) was demonstrated one day in court in the 1970s. When the prosecutor and I finished our submissions, the judge just sat there with his eyes closed. There was complete silence in the courtroom for what seemed an eternity. Suddenly the judge awoke with a jerk and said, "I sentence the accused to six months..." The prosecutor interrupted: "Excuse me, your honour. You will recall that this is a bail application."

### **David Marr: how to wake a dozing judge—#1**

I assisted Charles Huband in a trial in the Queen's Bench, with Justice Israel Nitikman presiding. The many parties involved in the case were represented by several senior counsel. At one point in the trial, the judge fell asleep. Charles said to the other lawyers, "Let's all tiptoe out of the courtroom." Walter Newman said, "Okay, Charlie, but you go first." Then Wilf DeGraves picked up a law book and threw it on the floor. Bang! The judge woke up and the trial continued.

### **From various lawyers: how to wake a dozing judge—#2**

A civil case on a hot summer afternoon before Justice Israel Nitikman involved a number of lawyers, including (depending on who is telling the story) Charles Huband, David Marr, Walter Newman, Michael Phelps, Derek Lloyd and Ken Klein. At one point in the trial, as Newman was cross-examining one of Klein's witnesses, the judge was seen to be dozing. Newman suggested to Klein that he do something to wake him up. Klein shouted, "Witness! Speak up!" Nitikman snapped to attention and said, "You don't have to yell, Mr. Klein!"

In another version of this story, Justice Nitikman snaps to attention and sternly says, "Yes, witness! Speak up! I can barely hear you!"

### **Frank Bastin (1925–1986)**

#### **George Dangerfield: a judge invents a few facts**

I rather liked Justice Frank Bastin of the Queen's Bench, and I had an unforgettable case with him in the 1970s. A young girl was charged with killing her father by shooting him in the back of the head as he was leaving their home, which was located on a reserve. She was angry with him for not moving from the reserve to Winnipeg. Bastin was very sympathetic to native people. He felt that they were mystified by a lot of the law and didn't understand it, which was probably true. When he summed up the case for the jury, he referred to the girl having shot her father while defending herself from a sexual assault.

When the jury left the courtroom, I stood up and said, "My lord, in your summing up, I'm afraid you were mistaken in the way you described the shooting. There has been no evidence of a sexual assault, and the evidence shows that the man was shot in the back of his head, which is hardly consistent with his assaulting her." Bastin replied, "Oh, Mr. Dangerfield, we all know that a young woman like her isn't capable of forming an intent to kill!" The jury returned a verdict of guilty of manslaughter. There was no appeal.

**David Marr: be prepared—but wait for the evidence**

Justice Bastin's nickname among lawyers was "Quick Gun." The reason for the nickname is illustrated by a case I had before him in the 1970s, in which I was acting for the defendant. In the morning, the plaintiff presented his case. After lunch, the judge started the proceedings by saying, "I am now prepared to deliver judgment"—and pulled out a written judgment! I said, "But my lord, the defence hasn't presented its case!" He replied, "Oh yes, of course. Proceed." I put in my case, and then he pulled out the same judgment and read it. The amount of money involved was too small to justify the cost of going to the Court of Appeal.

**Louis Deniset (1919–1983)**

**Ron Meyers: a coffee club judgment**

I had a case before Justice Deniset in which the issue was the custody of a child. He adjourned the case to consider his decision, and we all expected a lengthy written judgment because of several unique issues in the case. A short time later, I was walking by his office in the courthouse when he called me in. He said he had described the case to his wife's coffee club and they all agreed on what his decision should be. He told me what their advice was, and he later delivered a written decision that was consistent with their advice—and only four lines long.

**Richard Wolson: the judge enjoyed baseball**

I had a criminal trial in which Justice Deniset instructed the jury on the concept of reasonable doubt by referring to a baseball term: "Tie goes to the runner."

**George Dangerfield: the judge loved hockey**

Justice Deniset loved to referee hockey games in the Law League, in which all the players were lawyers. One day the lawyers told the judge that they didn't know how to address him when he was a referee. He made an announcement: "In court, I am *my lord*. On the ice I am *Louis*. Now let's play hockey!"

### **Ken Filkow: the judge loved the superstar**

Art Rich and I acted for the wife of the famous hockey player Bobby Hull. The trial was before Judge Deniset, who adored Bobby Hull and was obviously in awe of the fact that Hull was standing right there in the witness box, next to him. My first question to Hull in cross-examination was, “Is it fair to say that you are an accomplished professional hockey player?” The judge leaned forward and said, in his delightful French accent, “Mr. Filkow! He is a superstar!”

## **Irving Keith (1908–1989)**

### **David Marr: reading minds**

Judge Keith was a nice guy outside the courtroom, but in court he could be scary. I defended a young man on an assault charge in a trial in which Judge Keith presided in the old County Court. I was cross-examining a doctor, trying to show that the markings on the complainant were consistent with an accident as well as an assault. The doctor was agreeing with all of my suggestions to her when suddenly the judge said, “You are badgering the witness! Stop badgering the witness!” I said to the doctor, “Am I badgering you?” She said, “No.” The judge went ballistic. He jumped up and stormed out of the courtroom. I was overwhelmed by his antics and it must still have been obvious when he came back. He said, “Why are you looking at me like that? Do you think I’m crazy?” At that moment I thought he could read my mind!

### **George Dangerfield: a “sainted mother” not welcome**

I prosecuted a case of robbery before Judge Keith. At the trial, an elderly witness came to court in a rather worn blue blazer with an Air Force badge on the lapel, indicating that he was a war veteran. As he testified, he sat rather humbly with his hands between his knees. All went well until he was asked, “How can you remember so precisely the date of this particular event?” He replied, “It was exactly three weeks after my sainted mother passed away.” Keith yelled at him, “I don’t give a damn about your sainted mother!”

## Joe O’Sullivan (1927–1992)

### Harry Walsh: Joe knew all the civil law

Joe was a partner in our firm. He never took on a criminal case, but as a civil lawyer he was tops. He worked day and night. He was a bachelor who read law all the time. He even read all of the Blackstone’s *Commentaries* from the eighteenth century and made notes on them—just for his own information. He knew the law inside out. When he became a judge, his problem was that he wanted lawyers to know that he knew all the law.

### Sam Wilder: a student takes on his teacher

I appeared in the Court of Appeal on a case in which the panel of judges included Joe O’Sullivan and Roy Matas. Joe gave me such a rough time that Justice Matas intervened and suggested he was being too hard on me. Joe replied, “He worked with me, and I taught him well. He can handle me.”

### Jeff Gindin: feel free to keep disagreeing with me!

I had a case in which the prosecutor and I jointly recommended to a provincial court judge that my client be sentenced to a prison term of *three* years. The judge gave the guy two years, and so the Crown appealed. In the Court of Appeal I had to argue that the sentence of two years was appropriate. Justice Joe O’Sullivan barked at me, “How can you stand there and argue for two years, when you yourself agreed in the previous court that he should get three?” I replied, “My lord, you have often disagreed with the position I have taken in the previous court. Why stop now?” In the end, the sentence was left at two years.

### Colin MacArthur: echoes of *Great Expectations*

In the summer of 1967 I was planning to enter third year at the Manitoba Law School when I ran into a financial problem. I told Dean Cliff Edwards that I would not be returning for financial reasons and I got a job at the Great West Life Assurance Company. A few weeks later D’Arcy McCaffrey called me. I had met him a few years before. D’Arcy said he had heard about my withdrawing from law school and asked how much money I needed in order to return. I estimated \$5,000.

Within a few days D'Arcy called to advise that he had the money and it was a gift on condition that I return to law school. He said the money was from a person who insisted on anonymity. I gratefully accepted the money and returned to law school.

Over the years, I occasionally asked D'Arcy to tell me the name of my benefactor but he always said he couldn't tell me. But there came a day when he said he would tell me—if I promised not to tell anyone, and not to approach my benefactor. I promised, and he told me my benefactor was Joe O'Sullivan.

Because of my promise to D'Arcy, I was never able to thank Joe O'Sullivan for his kindness. He died in 1992 and D'Arcy died in 1998. I attended D'Arcy's wake, as did Joe's family. That evening, I told this story to both families and thanked them for D'Arcy's thoughtfulness and Joe's kindness.

## Robert Trudel

### **Clyde Bond: a strange day in court**

In the 1980s I prosecuted a man in his fifties for impaired driving, with Judge Trudel presiding. The accused didn't have a lawyer, and wanted to plead guilty. The judge, who was well known for being hard on liquor offences, began berating the man about the dangers of drinking and driving. I'm always embarrassed when a judge does that sort of thing, and so I had my head down. Suddenly I heard a crash. I looked up to see that the accused man had fainted. He had fallen down, face first. When the police turned him over, it was obvious his nose was broken. There was blood everywhere. Judge Trudel stood up and yelled at the man, "If you think this is going to reduce your sentence, you're crazy!" When the matter came back to court some days later, Judge Trudel sentenced the man to a year in jail.

### **Clyde Bond: a short word and a long sentence**

I prosecuted a man on a charge of what is now called sexual assault. The trial took place in front of Judge Trudel. The victim was a grandmotherly native woman who testified through an interpreter. Since there were no words in the woman's language to describe pri-



vate parts, she had a hard time giving details of what had happened. The judge kept saying to her, “You have to say what it is!” Finally she blurted out, “He fucked me!” Everyone in the courtroom was shocked.

The defence counsel immediately asked for a break, after which the accused man pleaded guilty. I think he realized the pain he had put the woman through and felt bad about it. I asked for a prison sentence of seven to nine years, while the defence lawyer asked for three to four years. The judge began to berate the accused while I kept busy making notes. Suddenly two police officers dove under my table and grabbed the accused just as he was reaching for the judge’s neck. The judge ordered an adjournment. The accused man was upset, the victim was crying, and the defence lawyer was outside throwing up. Even the judge had tears in his eyes, but when court resumed he sentenced the man to nine years.

### **Grant Mitchell: D’Arcy up close**

I was with D’Arcy McCaffrey on a criminal matter before Judge Robert Trudel. D’Arcy was cross-examining a witness when the prosecutor objected to his being too close to the witness. The judge ordered D’Arcy to step back. D’Arcy backed up a step or two and asked whether that was far enough. The judge said, “Oh, get on with it! This isn’t Perry Mason.”

## **Humour in Court**

### **Norm Sundstrom: using humour**

I like the way Judge Sam Minuk used humour in the courtroom—not to belittle or embarrass anyone, but to lighten the proceedings. One example is the day that about twenty women appeared before him charged with “vagrancy,” which was then a euphemism for prostitution. The women were seated in the gallery when the judge explained that there was no need for each of them to walk up to the front of the courtroom to plead guilty or not guilty that day, but he had to know that each of them was present. He therefore asked that as each of their names was called, they should stand up and wave at him and say “Hi.” It was very cute and effective as they stood up, one by one, and waved to him as he waved back.

### Sam Minuk: a new approach for hopeless cases

“Kaddish” is a Hebrew prayer customarily recited by Jewish mourners in memory of a loved one. It begins with the words “*Yees’gadai v’yees’kadash sh’mey rabba ...*”

I was the judge in a case prosecuted by Brian Kaplan and defended by Sheldon Pinx. At the end of the trial, Sheldon began to argue that the charge should be dismissed. After a few minutes, he said, “Your honour, I gather from your body language that you are not too impressed with my presentation. I wonder if you would be so good as to tell me how I’m doing.” I asked Sheldon and Brian to approach the bench. I said, “Mr. Pinx, you want to know how you are doing?

Repeat after me: *Yees’gadai v’yees’kadash sh’mey rabba ...*”

Sheldon knew the prayer. He returned to the counsel table and whispered something in his client’s ear and sat down. I then found his client guilty.



Sam Minuk

### Clyde Bond: an omen from on high

I prosecuted a case one fine June day in the early 1990s before Justice John Scollin and a jury in Winnipeg. The accused was charged with possession of marijuana. He looked like Jesus, with a long beard, braided hair, sandals, and a long robe. He acted as his own lawyer and argued in front of the jury that the Bible allows the use of hemp and that human law therefore could not prohibit it. As I stood up to reply, there was a loud thunderclap and the lights

flickered. Justice Scollin said, “Ah, Mr. Bond, an omen from above for you to keep it short.” I did, and it took the jury just seventeen minutes to convict.

### **Norm Sundstrom: thunderbolts in the courtroom**

In 1998 I was the judge in a trial in Small Claims Court in Winnipeg. After a witness was sworn in, he added something: “May God strike me dead if I should lie!” I couldn’t resist. I leaned away from him and said, “Let’s not have any more of that! We’ve just finished repairing this courtroom after the last thunderbolt!”

In the summer of 2007 a similar thing happened during a storm. After a witness was sworn in, he added, “And may the lord strike me with a thunderbolt if I tell a lie!” I said, “Please don’t say that during a thunderstorm!”

### **Sam Minuk: we’ll always have *Casablanca***

I was the judge in a case in which a prosecutor and defence counsel Ken Zaifman argued about whether a charge against Zaifman’s client had been stayed (dropped) by some other judge. After several minutes of arguing back and forth, Zaifman turned to me and said, “Stay it again, Sam!” It was a pretty good imitation of Humphrey Bogart!

### **Norm Larsen: bad will hunting**

Chief Judge Harold Gyles of the Provincial Judges Court enjoyed funny stories. His sense of humour is nicely illustrated by an incident in the 1980s. A program that he was supervising was the subject of a rather critical report written by a sociologist. Gyles, a well-known outdoorsman, made no secret of how unhappy he was about the report. Nonetheless, when the sociologist was suddenly taken ill and hospitalized, I asked Gyles to send her a get-well card. He did. This is what he wrote:

I hope you are doing well. I want you to know that I have no hard feelings about your report. In fact, when you are well, I would like to take you hunting—if you are game.

### **Harold ff. Gyles: extreme customer service**

When Wally Darichuk was a judge of the Provincial Court, he presided at the trial of a man charged with attempting to rob a bank. As the facts came out in court, the man stepped up to a bank clerk and said, “This is a holdup.” He handed her a note that instructed her to put all the bills from her till into a paper bag. The clerk nodded, left her wicket and went to look for a paper bag. She was out of the man’s sight for about four minutes, which for most bank robbers is an eternity. But he waited until she came back and told him she couldn’t find a paper bag. He said, “Any bag will do.” She went away and came back with a plastic bag. She filled it up and handed it to him. Another employee sensed that something was wrong and pushed a silent alarm. The robber was caught at the door. The clerk probably got some special instructions on how to deal with robbers.

### **Ron Meyers: an invitation to try something else**

I was a sports writer for many years, even after I began practising law. Apparently some judges knew that, because in the 1970s I was arguing a difficult case in the Court of Appeal when Justice Brian Dickson interrupted me and said, “Is that sports-writing job at the *Winnipeg Tribune* still available to you?”

### **Sam Minuk: a brave judge lectures a mean man**

I was presiding in court one day when a man pleaded guilty to a number of serious offences, including robbery and attempted murder. He had a long record of previous offences. He was a mean-looking guy, not someone you would want to meet in an alley. I told him that because of the serious nature of the offences and his previous record, I had to impose a heavy sentence, namely ten years in the penitentiary. He glared at me and in a belligerent voice said, “You S.O.B. I’m going to get you when I get out!” Noticing that he was in handcuffs and watched by two burly guards, I bravely said to him, “You might have intimidated and frightened other judges, but you are not going to scare me!” He replied, “Oh yeah? Well if you’re so brave, tell me your fucking name!” I said, “You want my name? I’ll give you my name! My name is Mike Baryluk!” Then I waved my hand in a cavalier fashion and said to the guards, “Take him away, boys!”

When Judge Baryluk heard about this, he was not pleased.

I told him not to worry because by the time the fellow got out of prison he would have forgotten Mike's name and my face.

**Caroline Barrett-Cramer: a judge decides his own case—and wins!**

My husband, Raymond Barrett-Cramer (1930–2003), was appointed to the Juvenile and Family Court in 1972. The court was then located at the old Fort Osborne Barracks at 139 Tuxedo Boulevard, where he was given an assigned parking spot. Soon after his appointment, he had a meeting with Chief Judge Harold Gyles at the Law Courts Building downtown. Ray parked in a spot that was reserved for court officers, but his car did not yet display the sticker required for that parking lot. After the meeting, he found a parking ticket on his car. It was after five o'clock, but he returned to the Law Courts Building and went to Courtroom 124, where traffic tickets were then dealt with.

Alone in the courtroom, Ray sat in the judge's chair and called for the case of Raymond Barrett-Cramer. He answered that he was present and ready for trial. He then addressed the place in the courtroom where the prosecutors usually sat, asking whether the prosecution was ready to proceed. Since there was no prosecutor, no one spoke. Ray therefore dismissed the charge. In those days, he probably got away with it! He was hilarious.

**Evan Roitenberg: a not-so-innocent accused**

It is sometimes said that the farther you move up the ladder of courts, the farther removed the judges are from the street. But I very much respected Charlie Huband [of the Court of Appeal] for his humanity. You always got the impression from him that while the case was about the law, and we were in a legal forum, we should not forget that the case is about people.

Justice Huband headed a panel of three judges when Sheldon Pinx and I appeared in the Court of Appeal on a case in which our client had an unopened package that was found to contain illegal drugs. The issue was whether our client knew, or ought to have known, what was in the package. After the Crown prosecutor presented his arguments, the judges took a recess. When they came back, Huband said, "Mr. Pinx and Mr. Roitenberg, we need not hear from you. Tell your client not to do it again."

### **Norm Sundstrom: the meaning of hot pants**

In the 1990s I acted for a man who molested a woman in broad daylight at the corner of Portage Avenue and Donald Street, right in front of a police officer. The woman was wearing a brief style of shorts known as “hot pants.” The man, who was rather drunk at the time of the offence, pleaded guilty. Judge Ian Dubiensi gave the man a suspended sentence, saying, “In my day, hot pants referred to a condition. Now it’s a fashion!”

### **Ken Hanssen: a man robs his favourite convenience store**

I presided at the trial of a man charged with attempted robbery at a convenience store in Transcona. I didn’t know until after the trial that he had been convicted of robbing that same store on four previous occasions. This time, fearing that he would be recognized, he disguised himself by placing a paper bag over his head. This created a problem because he couldn’t see through the bag. So he cut a large round hole in it. Now he could see, but apparently it didn’t occur to him that his face would be visible to anyone looking at him.

With the paper bag over his head, he entered the store and threw a second paper bag on the counter, demanding that the clerk fill it with money. When the clerk refused, he fled—forgetting to take the bag with him.

When the police arrived at the bank and looked into the paper bag, they found a name tag from a prison uniform. The man’s belongings had been placed in the bag at the time of his release from prison two days earlier. When he got back to his residence in downtown Winnipeg, the police were waiting for him.

### **Brian Pauls: criminal law is no laughing matter**

Early in my career I was defence counsel in a case prosecuted by Hersh Wolch. After Hersh completed his case in court, the judge called us into his office. He said he thought the prosecution’s case was very strong and that if he convicted my client, a prison sentence of six months would be reasonable. I agreed, and I gave this information to my client. He reluctantly changed his plea to guilty and the case was put over a week for sentencing.

A week later, as we waited for the judge to come into court, Hersh said, “Wouldn’t it be funny if the judge gave your client a

year in jail?” I said, “How could he do that? You heard what he said last week about six months being reasonable.” But to my surprise the judge indeed said, “One year in jail.” Hersh turned to me and laughed. I regret to say that I laughed too. A few days later I received a letter from my client:

Dear Mr. Pauls: I didn't mind that you convinced me to plead guilty when I didn't want to. I didn't even mind getting a year in prison instead of the six months you promised me. But why did you have to laugh?

It was a tough lesson for a young lawyer. My client was right. Since then I have done everything in court with a straight face.

## Chapter 12

# Lawyers

## Law School and Articling

M

### MARTIN GLAZER: choosing a career at age nine

When I was in grade four my teacher asked me what I wanted to be when I grew up. I said, “A lawyer.” The only lawyers I knew anything about were criminal lawyers, and so that’s what I wanted to be. I remember reading Bill Trent’s book *The Steven Truscott Story* (1971) when I was a teenager and being horrified that a fourteen-year-old boy could be sentenced to hang. The book upset me, but it also strengthened my resolve to become a lawyer.

### Alan Scarth: reconsidering during the Blitz

In my family there were four generations of lawyers before me. As a young man I thought that was quite enough, partly out of a youthful inclination *not* to do what one’s father does and partly from my experience as a kid in the 1930s, when I ran messages for my father’s firm. The firm’s office had an overwhelming feeling of dustiness that turned me off. And Brian Dickson, the articling student and later Chief Justice of the Supreme Court of Canada, was a serious young man who didn’t seem to be enjoying himself. So I took a degree in marketing and planned a career in advertising. But all that changed in a courtroom in London in 1944.

I was in the RAF in the Second World War and was on leave in London soon after D-Day, June 6, 1944, a time when the V-1 flying bombs—the Buzz Bombs—were landing in and around London. I was looking for something to do when I read in the *Times* that the Judicial Committee of the Privy Council was hearing cases. I decided to sit in.

The courtroom was extraordinary, with a high ceiling and floor-to-ceiling framed windows overlooking a lovely garden. The



case being heard was an appeal of a decision by a court in India. I was amazed. Here we were in the middle of London, arguing a point of law from a colony that was still fighting to survive against the invading Japanese. At one point during the hearing, a buzz bomb could be heard approaching and it occurred to me that if it landed near that building those huge windows would be blown in. The Law Lords continued as if that couldn't possibly happen in an English court of law. I thought, "There is something durable in this justice system. I must take another look at it."

When I returned to Winnipeg in 1945 I enrolled in law school.

## Law School Days

### **Caroline Barrett-Cramer: attending the Dean's personal law school**

Soon after I began attending law school in 1957, I was called to the office of Dean G.P.R. Tallin. He said he wanted to make it clear to me that "I don't like women in my law school." I particularly remember the phrase "*my* law school." I was the only woman in the class, which included Howard Pawley, Mel Myers and Roland Penner. In spite of the Dean's comment, I felt no discrimination from him or any classmate throughout my legal education, though there were minor problems, such as the lack of a changing room for women, and the rather uninviting atmosphere for women in the common room.

### **Norm Larsen: "Q.C." explained**

In 1957 the irrepressible and often irreverent Jimmy Wilson (later a judge of the Queen's Bench) was appointed a Queen's Counsel by the government of Manitoba. A student in Wilson's class on Civil Procedure asked what the appointment meant. Perched as always on one leg (with the other one curled up inside the lectern), Wilson replied in his usual boisterous way:

What does it mean? I'll tell you what it means! I have to trade in my cotton gown for a bloody new one that's made of silk and costs hundreds of dollars! I have to buy a fancy bloody frame for the bloody huge certificate! And I have

to throw huge parties at my home and office for masses of people, most of whom I don't even know! It's costing me an arm and a leg! That's what it means—and I love it!

**Aaron Berg: a younger professor instructs an older gentleman**

This story was told to me by Professor of Law Paul Thomas. One morning in 1975 Dean Cliff Edwards of the Faculty of Law was desperately looking for someone to represent the law school at a luncheon that was being hosted by Ernest Sirluck, President of the University, on that very day. With that short notice, Professor Thomas attended and was seated next to Mrs. Sirluck. On the other side of her was a distinguished looking gentleman who said to Paul, "I hear that you teach at the law school. What do you teach?" Paul replied, "Conflict of Laws." As Paul tells it, "I went into my standard *Explanation of Conflict of Laws for Idiots*. After I talked for a few minutes, Mrs. Sirluck said, 'Professor Thomas, I don't believe you have been introduced to Justice Brian Dickson.'" At the time, Dickson was Chancellor of the University and a judge of the Supreme Court of Canada.

**Jack London: Dean is good, but M.D. is better**

I was selected to be Dean of Law in 1979 at the age of thirty-six. As soon as I heard the news, I telephoned my mother and told her that not only was I the new dean, I was also the first Jewish dean of law in Manitoba history. She replied, "Does this mean you won't be going to medical school?"

**Norm Larsen: the professor and the Hollywood glamour girl**

When a fact is so obvious that it does not have to be proven in court, lawyers plead "res ipsa loquitur", which is Latin for "the thing speaks for itself." It is one of the few Latin phrases still used by lawyers. The phrase took on a new meaning for me when I had an office next door to Professor Keith Turner (1927–1987) at the Faculty of Law in the 1980s.

When Turner taught Evidence, he would show his classes the movie *Anatomy of a Murder* (1959), which raises several issues in evidence and legal ethics. When he introduced the movie, he would comment along these lines: "The two male leads are James Stewart

and Ben Gazzara, who do a wonderful job. As to the rather shapely female lead, Lee Remick—*res ipsa loquitur!*”

In January 1983 the forty-three students in Turner’s class signed and sent a letter to Lee Remick in Hollywood to inform her of Turner’s annual comment. In March the class presented Turner with her reply—a glamorous photograph of herself on which she had written, “For Professor Turner from Lee Remick (‘res ipsa loquitur’).” Turner was really thrilled. He hung the picture on the wall of his office, and wrote a thank you letter to the class and Lee Remick.



Professor Turner’s autographed photo of Lee Remick

## Articling

### **Larry Ring: mistaken for a carpet salesman**

In the spring of 1968 I was about to graduate from law school and had to find a law firm in which to serve the required one year of articles. In those days, there was no structure to the process. You just knocked on doors. I telephoned *Pollock Nurgitz* and obtained an appointment with Ben Hewak.

Dressed in my best and only suit, I introduced myself to the receptionist and told her I had an appointment with Mr. Hewak. I waited nervously for what seemed like a very long time. Finally Ben came out and motioned for me to go into his office. Before I could introduce myself, he shoved a large book of carpet samples at me and said, "I'll take the Spanish Gold." He then ushered me out the door and closed it behind me. I found myself standing in the secretarial pool with my jaw hanging open and the book of carpet samples in my arms. The receptionist took the book from me. I mumbled something and left.

The next day I got a phone call from a very apologetic Ben Hewak, who invited me to meet all five partners the next day. They offered me an articling position and I instantly accepted. I was with the firm for twenty-seven years, until I left in 1987 and was sworn in as a Master of the Court of Queen's Bench by Chief Justice Ben Hewak.

### **Aaron Berg: book learning meets reality**

An incident that taught me something about the value of a legal education occurred at a meeting of lawyers in the office of County Court Judge William Molloy. I was there as an articling student who had researched some of the legal issues in the case. The lawyers made their arguments on the facts and then I began to offer the result of my research into the law by referring to a couple of cases. Judge Molloy dismissed me with one sentence: "Case law is like the Bible: you can find support for anything in there." I later learned that he was right.

### Ron Meyers: a unique articling experience

Unlike most parents in the North End of Winnipeg, my father and mother never urged me to be a doctor or lawyer. My father wanted me to be an optometrist and my mother wanted me to be a good boy. When I announced that I wanted to be a lawyer, my father put me in touch with his lawyer friend, Earl Solomon. Earl was a real character and a very nice man. His office was in the Royal



Ron Meyers

Bank Building on the corner of Main Street and William Avenue. When I arrived there one day in 1955 to begin articling, he handed me a wad of money and a list of numbers and told me to take them to Boston Abe at the Boston Hat Works, located nearby. I was running numbers to a bookie!

Later in the year, I was leaving the office at the end of the day just as two RCMP officers got off the elevator. They directed me back into the office. Earl was later charged with a criminal offence and that was the end of my articles with him. He was suspended by the Law Society but later reinstated. I then articulated with *Campbell Driscoll*. When they interviewed me for the position, the first question was, “Can you type?” I proudly said that I was a master typist in high school, and so a major part of my articling experience was typing documents. At least I didn’t have to run numbers to a bookie.

### Al McGregor: a dutiful student

I was in the middle of a hearing being held at my office when someone came to the door to tell me that my articling student urgently needed to talk to me about a hearing set for the next day. He

was a very efficient student and became an excellent lawyer, but I was irritated that he had interrupted what was no doubt one of my many brilliant cross-examinations. He told me that he had reviewed everything with our client, a police officer, to prepare him for the hearing, and asked whether there was anything else he should do. I quickly and rather caustically said that the only thing left to do was to make sure the client was properly dressed and made up for the hearing. The next day, my first view of the client's face took me aback. He had obviously been given a professional makeup job! When I asked why he had done that, he said he followed the instructions I gave my student.

### Harold Buchwald: an articling student turns into an article



Harold Buchwald

As an articling student I was sent to court by Sam Freedman to speak to a matter in the Queen's Bench. I was quite nervous as I sat waiting for senior counsel to deal with their matters before the clerk called my case. It is customary for counsel to begin by introducing themselves, but when I stood up I immediately started to argue my motion. Justice Arnold Campbell interrupted me. "Just a minute, young man. Who are you?" I said, "I am Mr. Freedman's article." Everyone in the courtroom burst out laughing. Justice Campbell chuckled and said, "No, young man. Just your name."

### Roland Penner: judicial arithmetic

In 1957, when I was articling with Joe Zuken in the Confederation Building at 457 Main Street, I parked my car on vacant property on which the Centennial Concert Hall now stands. I ignored a sign that read "Private Property No Parking" because I knew the property had been expropriated and was owned by the City of Winnipeg.

When my car was ticketed, I pleaded not guilty and conscientiously prepared for trial. I was my own lawyer in the trial before Magistrate Isaac Rice. He listened intently to my brilliant arguments but quickly found me guilty and ordered me to pay a fine of two dollars. I believed so much in my carefully crafted defence (which included maps and photos) that his judgment left me rather crestfallen.

That afternoon I saw Rice in the coffee shop in the Confederation Building. I asked him how he could find me guilty in the face of my solid legal arguments. He said, “Roland, you have to understand the system. The prosecutor had lost three cases in a row before your case came up, and I just couldn’t hit him again!”

### **Aaron Berg: working for a really important man**

When Roland Penner was Minister of Justice for Manitoba in the 1980s, I had a meeting scheduled with him early one morning. As I put on my coat, my four-year-old son Brendan ran to the door and asked where I was going. I told him I was going to meet with my boss. He asked, “Who is your boss?” I said, “Mr. Penner.” His jaw dropped and he turned to my wife Louise and said, “Mom! Dad works for Fred Penner!” [Note: Fred Penner is a popular children’s entertainer from Winnipeg.]

### **Norm Larsen: Manly’s little black book**

Manly Israel (1926–2001) was well known among lawyers for the tiny notebook in which he somehow managed to keep detailed information about the vast number of clients he had as a criminal lawyer. One day in court in the 1970s, Manly and his client stood before a judge. A charge was read and the client pleaded guilty. Manly began to read from his notebook: “Your honour, Mr. Smith is forty-seven years old and lives with his wife and children in an apartment in Winnipeg...” He stopped as his client leaned over and whispered in his ear. Unfazed, Manly turned a few pages and began again: “Your honour, Mr. Jones is thirty-nine years old. He is a single man and lives with his mother...”

### **Norm Larsen: a lawyer recommends another lawyer to his wife**

A Winnipeg lawyer told me he had been happily married for decades, but during a time when he and his wife were having some

problems he made a point of regularly telling her how great a particular lawyer was in handling divorce cases. I said I didn't know the recommended lawyer had any expertise in divorce cases. He replied, "In fact he has none at all—but if my wife and I had separated, I wanted her to go straight to him!"

**Perry Schulman: a famous fire with a surprise ending**

My father, Hy Schulman (1906–1975), practised law in Winnipeg. In 1954 his law office was on the third floor of the seven-storey Time Building at 333 Portage Avenue, on the north-west corner of Hargrave Street. Around four o'clock in the morning of June 8 of that year, the building burned down in what the Winnipeg Fire Department still describes on its web site as "the biggest



The day after the Time Building fire of June 8, 1954.





Hy Schulman finds his files intact.

and most memorable fire in Winnipeg’s history,” the result of faulty wiring. The building was completely destroyed, but no one was in it at the time of the fire. My father feared that he had been wiped out. It is the only time I can recall seeing him cry.

A few days after the fire, the firemen made a surprising discovery in the debris. The two safes in which my father stored his files had crashed from the third floor into the basement. The cabinets were intact, and the files inside them were barely singed. A few months later, a photograph of my father—with a joyful look on his face and standing next to one of the open safes—appeared in an advertisement in *Time* magazine on behalf of Chubb Safes, which is still in business as a multinational corporation.

### **Joe Wilder: a lawyer leaves the courtroom and wins the day**

Joe O’Sullivan and I appeared in a case in the Queen’s Bench with Jim McLaughlin on the other side. Jim began by arguing that we had failed to file a certain document in the court, and that our case therefore had to be dismissed. Joe said to me, “Hold the fort” and left the courtroom. Jim had a tendency to go on at length, which was lucky for me because I had no idea what to say if he sat down. I was in a cold sweat.

After about fifteen minutes, Joe came back. When Jim finished his argument, Joe stood up and said, “My lord, Mr. McLaughlin is right. Our failure to file the document would be fatal to our case, but I have just filed it in the court office, and here is a copy for you.” He had gone downstairs, typed the document and filed it in the court office.

### **Serge Radchuk: a luncheon technicality**

Two Winnipeg lawyers were in Beausejour. They both had brought a sandwich from home and decided to eat them at a local restaurant so they could order something to drink. As they ate lunch, the manager came by and said, “You cannot eat your own sandwiches here.” The lawyers traded sandwiches and kept eating.

### **Allan Fineblit: researching and carrying the law**

My first case in court involved the expropriation of property on the southwest corner of Portage and Main for what became the



Allan Fineblit

Trizec building. In those days lawyers would pick up all the law books they needed for their cases from the Great Library and take them to the courtroom. There was a lot of law involved in this case, and I did scads of research. I remember trudging along from the library to the courtroom with four briefcases full of books. When the trial began, Yude Henteleff—the lawyer on the case from my firm—stood up and addressed the judge: “We are representing the plaintiff in this matter, and with me is a young lawyer

I want to introduce—Allan Fineblit. I hired him because I thought he was good at looking up the law. It turns out he is also very good at carrying it!”

### **Norm Larsen: Joe Zuken’s favourite story**

Joe Zuken (1912–1986) is remembered by many people as an extrovert because he was so often in the news. But in fact Joe was a very quiet, self-effacing man who enjoyed other people’s stories but seldom told one. The only funny story I ever heard him tell was about a ninety-year-old client who wanted a divorce after being separated from his wife for several decades. Joe asked the man why he wanted a divorce after such a long separation, given that he and his wife were living in separate nursing homes and had no property to divide. The man replied, “Enough is enough!”

### **Harold Buchwald: ignorance is not always bliss**

I acted in a divorce case for a woman who alleged her husband had committed adultery. A witness who was a friend of the husband testified in court that he had seen the husband in bed with a woman who was not his wife. Suddenly the judge began to vigorously cross-

examine the witness. The tension escalated as they went at each other like cat and dog, until the judge angrily said, “Mr. Buchwald, I am disallowing all of this man’s testimony!”—which meant that he would not be granting a divorce to my client. The judge stormed out of the courtroom, as did my witness. I was completely stunned. My client asked what was happening. I told her I had no idea. I asked the court clerk. He said, “I guess you don’t know. Your witness and the judge once dated the same person.”

### **Grant Mitchell: predicting the future**

I had a case in the Queen’s Bench with Sid Green on the other side. Early in the trial, the judge made a ruling in his favour on quite a minor matter, but in terms that Sid didn’t like. When the judge took a break, Sid said, “I’m going to appeal that decision to the Court of Appeal!” I replied, “You can’t. You haven’t lost yet.”

### **Perry Schulman: looking up the right word**

I had a trial in the Queen’s Bench before Justice Gordon Barkman in Courtroom No. 1 in the Law Courts Building in Winnipeg. That courtroom has a very high domed ceiling. At one point during my argument, I paused as I struggled to come up with a word that I just couldn’t remember. As I stood there, I kept looking up at the dome—until the judge asked whether there was a leak in the roof.

### **Eugene Szach: a reason to give up sausage**

When Roland Penner was Attorney General of Manitoba in the 1980s, I worked with him on a number of legislative initiatives. Some time later, I spoke at a roast of Roland and quoted the famous remark of Otto von Bismarck: “People should not know how their sausages and laws are made.” I added this: “After helping Roland make laws for five years, I gave up eating sausages.”

### **Yude Henteleff: embarrassed and elated**

Shortly after I was called to the bar, I made my first appearance in the Court of Appeal. Harry Walsh came along to lend some encouragement. After I finished my argument, Harry whispered to me, “Don’t forget to ask for costs!” He didn’t mean that I should ask

at that very moment, but I immediately jumped up and said, “My lord, I would like to address you on the matter of costs.” The presiding judge said, “You are really a presumptuous young man! Don’t you think the prosecutor should be given a chance to present his argument, and we judges should make a decision?” Everybody in the courtroom laughed, and of course I was embarrassed—but I won the case, and it was reported in a law book. What a joy for a young lawyer!

### **Rodney Mykle: offending thousands with song titles**

When I started practising law in Brandon in the 1970s, I played the organ at the games of the junior hockey team, the Brandon Wheat Kings. In spite of the fact that it was a non-paying position, I was fired twice in one year for my selection of tunes.

The first time involved a game between the Wheaties and a Winnipeg team. In the third period a hard shot by a Brandon player caught the Winnipeg goalie square in the groin. He pitched forward on the ice. The crowd went completely silent. I had to play something. The only tune I could think of was “I’ve Got a Lovely Bunch of Coconuts.”

I didn’t stay fired for very long, but my reinstatement also didn’t last very long. At the Brandon Winter Carnival that year, Miss Canada dropped the puck to start a game and during an intermission ten Carnival Princesses filed onto the ice, with the loveliest of them crowned as Carnival Queen.

I met Miss Canada before the game. She was a coarse and outspoken woman from an eastern city that we Westerners love to hate. When I asked how she liked Brandon she said, “I shudda been in Tokyo this week, but my agent screwed up.” I was also unimpressed with the candidates for Queen. And so when Miss Canada made her appearance to drop the puck, I played “The Lady Is a Tramp.” No one seemed to mind that, but my demise came with what I played as the princesses filed onto the ice: “How Much Is That Doggy in the Window?”

### **Norm Larsen remembers Graeme Haig (1936–1998)**

At a Bar Association banquet at the Fort Garry Hotel in the 1970s, the head table was on a high dais, with Dean Cliff Edwards

seated at one end. During the banquet, he was adjusting his chair when one leg went over the side. The chair tumbled off the dais and onto the floor, and Cliff barely managed not to fall with it. The master of ceremonies was Graeme Haig, who had a great sense of humour. When he later introduced the head table, he said, “At the far end of the table to my right is Dean Cliff Edwards, who is still with us—despite our best efforts.”

**Patrick Riley remembers D’Arcy McCaffrey (1936–1998)**

D’Arcy McCaffrey started in the *Walsh Micay* firm, where one of his mentors was Joe O’Sullivan. Joe would occasionally throw D’Arcy into the deep end, such as by telling D’Arcy in court, “You handle the next witness” — with no previous warning. Coming from that kind of culture, D’Arcy wouldn’t necessarily spend a lot of time preparing for a case. Sometimes he would show up at court and not know even the name of the client, but he would pick up on a case pretty quickly. Some opposing lawyers said he was particularly dangerous on the second day of a trial, because he would by then have his head into the case. He had some remarkable victories over the years.



D’Arcy McCaffrey

**Grant Mitchell: setting it up for D’Arcy**

D’Arcy McCaffrey had been retained to defend two of three men accused of an assault in a barroom brawl about which the evidence was contradictory and complex. On the day the trial was set to begin before Judge George Lockwood in the Winnipeg County Court, D’Arcy was required to put in an appearance in another

matter in Selkirk, Manitoba, an hour's drive north of Winnipeg. I was instructed to appear for the beginning of the Winnipeg assault case and, said D'Arcy, "Just take notes until I get there." And D'Arcy did get back, but not until the prosecutor was midway through direct examination of the Crown's main witness.

When the prosecutor was finished, D'Arcy, who had just sat there listening without taking a note, turned to me and said "You cross-examine!" "Me?" I questioned. "Yes, you," he replied. I had no choice and, more than somewhat nervously, I did a pretty weak job of it. D'Arcy then rose to continue the cross-examination. "Just a minute, counsel," said Lockwood, "this witness has already been cross-examined." "Ah yes" replied D'Arcy, "that was on behalf of one of the two accused we represent. I rise to cross-examine on behalf of the other." And although more than somewhat doubtful about it, Lockwood allowed D'Arcy to continue and, almost completely on the ad lib basis for which he was famous in the profession, he did such an effective job that our two clients were acquitted! I later apologized for my weak effort. "Not at all," he replied, "it gave me time to remember what the case was all about!"



Grant Mitchell

### **Manly Rusen remembers Art Rich (1922–2000)**

At the funeral service for Art Rich, I told a story about the two of us driving to Minneapolis to see a baseball game. As we approached the city, Art was driving and he kept ignoring the signs that clearly indicated it was time to turn off the main highway. When we finally arrived at our hotel, hours later than we had planned, I said, "Art, let me ask you a question. You were a navigator in the air force in the Second World War. Right? And you flew thirty-five sorties. Right? So tell me this: whose side were you on?"

### **Ken Filkow remembers Ken Houston (1932–1991)**

Ken Houston was an extraordinary counsel, and fearless. I recall he was questioning his own witness in a proceeding before Justice Gordon Hall when Hall interrupted and began to question the witness, a practice by judges that is generally frowned upon. After this went on for some time, Houston sat down, ostentatiously opened a newspaper and apparently began to read it. Hall said, “What are you doing, Mr. Houston?” Houston replied, “Well, my lord, I thought I would read the paper while you’re running my case.”

### **Jay Prober: formal dress on the telephone**

Rees Brock, who is now practising in Vancouver, began practising law in Winnipeg. He was known as a good lawyer and for always dressing impeccably in a jacket and tie. Ken Houston was once called to the phone by his receptionist who said it was Rees Brock. When he picked up the phone he said to Rees, “Just a minute, I’m going to put on my tie.”



Jay Prober



## Henry Monk (1909–1996)

### Mark O'Neill: the last harrumph

When I started at *Monk, Goodwin* in the 1980s, I worked with Henry Monk. He was a lawyer's lawyer and actually "harrumphed" from time to time. I was working on a case with him and at a certain point suggested that it was time for us to dig in our heels. Henry, then about eighty years old, looked at me with a twinkle in his eye and said, "Well, old boy, you know what I like to say: Why be difficult when, with a little bit of effort, harrumph, you can be impossible!"

### Alan Scarth: the one time Henry had no answer

As a student I often watched Henry Monk in court. I admired his Roman Senatorial style. Henry considered it blasphemy for the general public to challenge the edicts of his main client, the Canadian Wheat Board. In court, he usually ended his submissions by saying, "I am available for any questions on any points I have not made clear"—but he would say it in such a way as to imply that it was impossible for anything he said not to be clear.

Henry had a case in the Court of Appeal one afternoon. In the morning of that day, the judges heard a case involving Winnipeg lawyer Jake Morton, who had challenged the *Lord's Day Act* by shooting two ducks on a Sunday. One of the judges was still thinking about that case in the afternoon, as Henry finished his argument and made himself available for questions. The judge said, "Mr. Monk, what became of the ducks?" For once, Henry—with no knowledge of the morning's case—had no answer.

## Jack Powell (1903–1976)

### Sid Green: a practical approach to law

In the 1950s I started practising on my own by sharing space with Jack Powell in the Confederation Building. He was a very shrewd individual who practised law in a style that I'd never seen before or since, and which no one else is ever likely to adopt. He was very effective, and something to behold. I was there for perhaps

six months, but I learned from Jack Powell that you don't always play by theoretical rules. There are practical things you can do that are effective, even though they are not taught in any law school.

One day, I noticed that Jack had two men in his office for a couple of hours. He was going back and forth as he drew up an agreement between them. After the men left, he showed me the agreement, which said they would not assault each other. I commented that the agreement was meaningless and useless, but Jack said, "They've been fighting for years. You watch. They'll stop now that they have this agreement." He was right. They *did* stop! It was the kind of thing that could come only from a guy like Jack Powell.

### Sid Green: Jack and the widow

Jack Powell was retained by a widow who had been defrauded of \$150 by a young man who had given her a postdated cheque. Jack telephoned the fellow and said, "If you're not at my office with \$150 before four o'clock this afternoon, I'm going to take a walk to the police station." The guy must have said something like, "You can't criminalize me for giving a postdated cheque" because I heard Jack say, "Oh you think that's the law? That's the *old* law. If you're not here by four o'clock, I'm going to take a walk to the police station."

When he got off the phone, I said, "He hasn't committed any offence. It's a post-dated cheque!" Jack said, "Well, I told him that was the *old* law. I didn't say that it's also the *current* law." I said, "But what about telling him that you're going to the police?" He said, "I didn't say I'm going to the police. I said I'm going to *take a walk* to the police station!" The guy came in with the money and Powell gave it all to the widow. I was flabbergasted.

## Chapter 13

### Crown Prosecutors

**R**UTH KRINDLE: the first female prosecutor in Manitoba  
Soon after Manitoba's first NDP government was elected in 1969, they passed human rights legislation. Apparently it slowly dawned on them that while it was fine and dandy to guarantee equality in the workplace, not one woman lawyer worked in the Attorney General's Department [now the Department of Justice]. I got a call from Gil Goodman, then Director of Prosecutions, who at that time was unknown to me, asking me to come for an interview. The interviewers asked if I would like to be a prosecutor in Juvenile Court, as it was then called. I said no, I would not like that because I wanted to be a "real" prosecutor. Gil said, "Everyone has to start somewhere." I said I was concerned that I would never get out of Juvenile Court. He gave me his word that if everything went all right for nine months, I would be moved out of Juvenile Court. I took the position.

The promise was kept. After nine months I was moved to Magistrates Court in the Public Safety Building. Gil called me into his office and said that he wanted me to succeed because he had two daughters, and it was important to him that if they wanted to be a prosecutor like their father, they should be able to do so. He also suggested that I be careful about trusting some of the prosecutors and that if I needed any advice, I should call him or go to the Detectives' Office in the PSB and ask for the oldest detective on duty. As it turned out, I didn't have to act on that advice because the other prosecutors had no problem with having a female colleague. After all, I was just working with them, not marrying them!

### **Heather Leonoff: doing what others wanted to do**

In the 1980s I was in the Court of Appeal as defence counsel. I forget what the case was about, but George Dangerfield was the prosecutor. This was at a time when it was no fun appearing in that Court because of the often-rude behaviour of a couple of the judges. In this case, one of the judges kept interrupting George with rude remarks, while the other two judges carried on a private conversation. George suddenly stopped speaking, walked across the courtroom to a window overlooking Broadway, and gazed out. The presiding judge said, “Mr. Dangerfield, what are you doing?” George turned and said, “When the judges of this court are prepared to treat me with the courtesy that I deserve in this courtroom, I will continue to argue my case.” He turned around and continued to gaze out the window. After a long silence, he walked back to the podium and continued his argument—without interruption.

I really admired George for what he did. I wish I’d had the nerve to say something like that in the years when the judges were treating lawyers badly. However, in the years that followed, there was a remarkable turnaround. It became a pleasure, and it still is a pleasure, to appear in the Court of Appeal.

### **Hymie Weinstein: mixing metaphors**

In the 1970s I prosecuted a case in which a man was charged with assaulting a fellow employee. The accused man testified that he called the other man a “brown-noser.” When I stood up to cross-examine him, I decided to start by asking about that term. But when I spoke, it came out this way: “Why did you call him a c--- s-----?” There were lots of people in court that day, and every one of them gasped. Judge Mike Baryluk quietly said, “Mr. Weinstein, I don’t think he used that term.” This happened early in my career, but after more than forty years of practising law it is still my most embarrassing moment in a courtroom.

## “Gentleman Jack” Montgomery (1927–2004)

### Stan Nozick: the son of a missionary

Jack Montgomery was once described as a combination of Clarence Darrow and Jimmy Swaggart because he had a flair for the dramatic and a habit of quoting from the Bible. This was not so surprising to those of us who knew that he was the son of a medical missionary. Born in Rhodesia, he had several nicknames, including “Hollywood Jack,” “Broadway Jack,” and “Gentleman Jack.”

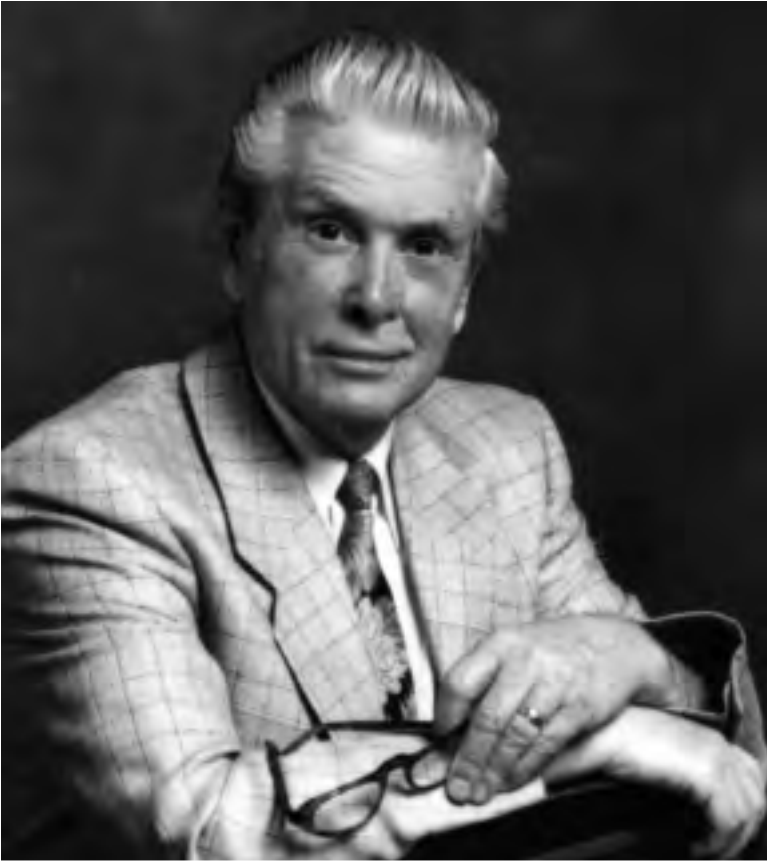
Jack prosecuted and I defended a man charged with murdering his wife. The defence was that she had killed herself. A doctor testifying for the defence said that the deceased woman had hallucinations and often believed that she was the Virgin Mary. In cross-examining the doctor, Jack referred to several biblical characters and events as suggesting that the woman’s hallucinations were not so unusual or necessarily a sign of mental problems. It was very interesting—but it didn’t work.

### Richard Wolson: the inimitable Jack

A newspaper article once referred to Jack as “the province’s—if not the entire country’s—most flamboyant prosecutor.” An example of his flamboyance—and one of the greatest jury addresses I have ever witnessed—was in the famous axe murder case in which two men were charged. Jack picked up the axe and rushed it to the jury box, with his robes billowing out behind him. Standing in front of the jury, he bellowed, “The blade of this axe cut through the scalp and skull of the victim and stopped his heart from beating forever! But by divine providence, the brother of the deceased lived to come here and point the finger at the executioners—and [pointing at the two accused men] *there they are!*” Both men were convicted.

### Harry Walsh: a prosecutorial paragon of virtue

I was defence counsel at a trial in which Jack Montgomery made some comments to the jury that I thought exceeded the boundaries of law and decency. In my address to the jury, I referred to him as “a self-appointed paragon of sanctimonious virtue.” Jack’s wife Jennifer was sitting in the audience that day. She later told me that from that day forward she called Jack “my paragon.”



“Gentleman Jack” Montgomery

**Mel Myers: prosecutorial astonishment**

“Gentleman Jack” prosecuted, and I defended, a man charged with perjury in connection with a divorce case in which the man testified that he saw the husband in bed with “Madam X” in a hotel. The husband denied that he had ever been in the hotel, and denied that he had committed adultery. At the perjury trial, I called Madam X as a witness. She said she was the woman in question and that she had indeed slept with the husband at the hotel. Jack sounded aston-

ished as he began his cross-examination: “Are you telling me that you went to the hotel and slept with a man you had never even seen before?” She had a great answer: “Mr. Montgomery, we weren’t having tea at Eaton’s Grill.”

### **Brian Pauls: Jack argues both sides—and the defence loses**

In the 1960s I was in my third year of law school and articling in an office in the afternoons. One day out of the blue I was sent to court to defend a man I had never met before. He was charged with assault. At court, I introduced myself to prosecutor Jack Montgomery. He said he hadn’t seen me in court before, and I replied that I had never been there before. He said, “Don’t worry. I’ll look after you.” He called a witness who described the incident in question. When Jack finished his direct examination, he addressed Judge Harold Gyles: “Mr. Pauls is representing the accused and is quite inexperienced. With the court’s permission I will now cross-examine my witness”! And he did just that. I can’t remember how the case turned out, but Jack did a great job—on both sides! He was an amazing guy.

### **Jack London: Jack argues both sides—and the defence wins!**

I had my first criminal case when I was a second year law student in the 1960s. It was a minor case of theft. Jack Montgomery was the prosecutor. When I started to cross-examine his first witness, it was obvious even to me that I didn’t know what I was doing. Jack stood up and said, “Your honour, could we have a moment?” He whispered to me, “Maybe you should let me do this for you.” And so Jack cross-examined his own witness, and then continued to put in his case and my case—and my client was acquitted!

### **Jack London: the prosecutor rescues a student**

I was a law student on the afternoon I went to the Rupert Street Jail to act for an Aboriginal man who had been sentenced that morning to thirty days in prison because he could not pay a fine on a charge under *The Highway Traffic Act*. Jack Montgomery was the prosecutor. I pointed out to the judge that the man should be given time to pay, because *everyone* was given time to pay. The judge said, “I’ll be damned if I am going to do anything more *for these people*.” I

blurted out, “Your honour, that’s racist!” He immediately found me in contempt of court. I thought, “There goes my career. I’ll never be called to the bar!” Jack jumped up and said, “Your honour, I wonder if we could take a ten-minute recess.” He followed the judge into the judge’s office while I sat and stewed.

When court resumed, the judge addressed me: “I have spoken with the prosecutor, and I am lifting the contempt citation, but I don’t ever want to see you in my court again.” Then he gave my client thirty days to pay. I appeared before him only once after that, when he wrongfully convicted my law school classmate and client, Yale Lerner, on a parking ticket.

### **Ruth Krindle: Jack rescues another student**

In 1968 I was one week out of law school when Sid Green sent me on my first excursion to a criminal court. Some fellow was in jail and was about to have his first appearance in court. Sid told to go to court, introduce myself to the judge, tell him that I was there on Sid’s behalf, and that I wanted the case remanded for a week. Sid said, “Don’t worry! Nothing bad will happen.” Little did he know.

I had no idea who the judge was, but I later found out he was Isaac Rice, and he was *not* a fan of Sid Green’s, to say the least. I said, “How do you do, I’m Ruth Krindle and I’m here on behalf of Sid Green and...” The judge suddenly turned his back to me and hollered, “I will not hear you!” So I dutifully walked back to the office and reported to Sid that “I lost!” He said, “You have the right to be heard! You go back there and *demand* to be heard!” I thought, “I’m going to be found in contempt of court and be disbarred *before* I’m even called to the bar!”

I went back to court, stood up and said, “I demand to be heard!” Judge Rice again turned his back to me. The prosecutor, Jack Montgomery, came over and quietly said, “What do you want?” I told him I wanted a remand. He said, “You go outside. I’ll look after this and I’ll see you after court.” And that’s what happened.

You learn from your mistakes, and one of my biggest mistakes—one that I could not have avoided—was mentioning the name of Sid Green to Isaac Rice!



## chapter 14

# Defence Lawyers

### **RICHARD WOLSON: a full service lawyer**

My client was charged with a serious offence. I told him, “If you ever need any help, call me.” One night at three o’clock in the morning, my phone rang. It was my client. He said he had a



problem: “I just swallowed a quarter.” I asked why he was calling me. He said, “You told me that if I ever needed help I should call you.”

Richard Wolson

### **Jay Prober: an MLAs’ barbecue with pot and coke**

In the 1980s I acted for a very conservative member of the Legislative Assembly from a rural area. The police wiretapped a conversation between him and another member of the Legislature being investigated for importing drugs. My client was asked by the rural (and very straightlaced) member of the legislature to bring “pot” and “coke,” which the police thought could relate to drug trafficking. But it turned out that my client was just being asked to bring a cooking pot and Coca-Cola!

### **Ruth Krindle: admitting the client could be a crook**

In the early 1980s I had a case in the Court of Appeal as a defence lawyer. About two minutes into the hearing, Chief Justice Fred Monnin confronted me: “Your client is a crook!” I replied, “He might well be a crook, but it is not a crime to be a crook! He is charged with a specific offence and that has to be proved beyond a reasonable doubt!”

### **Sheldon Pinx: a crime-fighting lawyer**

When I joined Hersh Wolch in practice in the 1970s, our office was in the downtown Lindsay Building. We parked our cars in a nearby lot. One dark winter evening, Hersh left the office and walked to his car. Just as he put the key in the door, he heard a voice behind him: “Give me your money—now!” Hersh turned around and said, “Ernie! I’m your lawyer! Go away!” Ernie went away.

### **George Dangerfield: a five-dollar fine *or* life in custody**

In my thirty-five years as a prosecutor I saw plenty of criminal lawyers who were intelligent and concerned individuals, but some of them would occasionally say or do odd things in court. One example is a lawyer who represented a man on a minor charge before Magistrate Isaac Rice. The lawyer said his client wanted to plead not guilty by reason of insanity. Rice asked the lawyer if he was absolutely sure he wanted to do that. The lawyer said he was. Rice said, “Well, I was going to give him a five dollar fine, but if the plea is insanity, I have to send him to Selkirk Mental Hospital for the rest of his life.” Of course, the lawyer then changed his mind.

### **Roland Penner: one fact can change everything**

In the 1960s I defended two men charged with possessing stolen goods. The police searched their rather squalid rented rooms and found a whole case of very expensive single malt scotch. A case of scotch and some other items had recently been reported stolen from the Wellington Crescent mansion of G.W. Harris, president of the Great-West Life Assurance Company.

I thought the trial was unfolding rather well when a senior police officer agreed with me in cross-examination that it was possible the two men had purchased the scotch legally. But after a brief

adjournment to examine the exhibits, prosecutor John Enns stood up with a bottle of the scotch in his hand and said, “Your honour, may I point out that every bottle in the case has a label on which appears the following words: ‘Bottled especially for G.W. Harris of Winnipeg.’” Oops! End of trial.

### **Robert Tapper: a lawyer is defamed as “Spanky”**

I do a fair number of defamation cases. One of the funniest ones is a classic. It involved criminal lawyer Sheldon Pinx. He acted for a fellow charged with assault in connection with a sexual escapade with his girlfriend that got out of hand. He spanked her with the leg of a chair. The client pleaded guilty and was given a discharge. The *National Post* ran the story, but the names got confused and Sheldon was reported as being the accused. The newspaper nicknamed him “Spanky.” He was mortified.

Sheldon phoned me on the morning the story was published in the *Post* and told me to read it. He held on as I read. He was angry but I was trying not to laugh. I phoned the editor of the *Post* in Toronto and said, “We have to talk about this article.” He said, “It’s a good piece.” I said, “No, it’s *not* a good piece. You have one little problem. Mr. Pinx isn’t the accused. He is the accused’s lawyer.” I still remember his next words. After a pause, he said, “Fucking brain fart!” We settled for an apology that was published for seven consecutive days, and for a confidential amount of money. It was hysterical.

### **Ken Filkow: a fast-learning victim**

I acted for two men accused of robbing a taxi firm by walking into the dispatch office, seizing cash, and ordering the dispatcher to climb into the trunk of a taxi. He was later released unharmed. The robbers were never identified, and the charges were dropped for lack of evidence. Some time later, the taxi firm was robbed in the same way, and the same two fellows were charged. They told me that when they robbed the taxi office, the dispatcher was the same man as in the first robbery. He handed them the cash on hand and, without any prompting from anyone, walked out of the office and climbed into the trunk of a taxi!

The two men were convicted and sentenced to seven years in prison.

### **Bob Kopstein: a noisy voluntary statement**

The old courtroom number 139 in the Law Courts Building was situated next to an office used by the RCMP. One morning I was presiding over a criminal trial in which Hersh Wolch was defence counsel. Suddenly there was loud banging coming from the RCMP office. None of us spoke. When the banging stopped, Hersh said, “That’s the RCMP taking a voluntary statement.”

### **Brian Pauls: what’s in a name?**

You might think that my client Eurelia was female, but in fact he was a large black man, in the range of 300 pounds. He was charged with leaving the scene of an accident. He had gone to a shopping mall, parked his car, made purchases and left. Weeks later, the police came to his house to tell him that a woman alleged he had backed into her car in the mall’s parking lot. Eurelia insisted there had been no accident, and he pleaded not guilty. On the day set for trial, Eurelia waited for me outside the courtroom while I spoke to the prosecutor about the case. The prosecutor told me he was dropping the charge. I asked why. He said, “The witness can’t identify her. She thinks it was a big black guy.”

### **Marty Tadman: a lovable derelict**

In the early 1980s I was in court when an old derelict was brought in from jail. He was charged with drinking liquor out of a bottle in a brown paper bag while sitting in Central Park during a sunny afternoon in July. His record showed that he had been convicted several times for having open liquor, but not in the previous five years. Judge Charles Rubin said to him, “I see you haven’t been arrested over the last five years. Have you been out of town?” The man replied, “As a matter of fact I have!” The judge asked, “When did you get back?” The derelict answered, “Yesterday.” The judge said, “Aren’t you ashamed of yourself? On the very first day back in town you get caught with open liquor.” The man said, “I give you my word, your honour, if I had thought for one moment that I was going to get caught, I would never have done it!”

### Jeff Gindin: grandfather helps grandson win a case

My grandfather, Gedale Saperstein, was my biggest fan. After he retired, he often came to court to watch me. He was born in Poland and lived there until he was over fifty years of age. He couldn't speak English very well, but he would sit in the back of the courtroom and tell the people around him, "That's my grandson!" The judges and court staff got to know him and treated him very well.

In the mid-1970s my grandfather was in court when I had a case in front of Magistrate C.C. Sparling. After the prosecutor completed his case, I made a motion that the case be dismissed. I did that because I couldn't decide whether to call my client to the witness stand to testify, and I was hoping to get a sense of what the judge thought about the strength of the prosecution's case. The judge said he would consider my motion only if I told him whether or not I intended to call any evidence if he denied my motion. I argued, to no avail, that the law did not require me to disclose that ahead of time.

It had been a long trial, and I figured that if I said I was going to make it even longer by calling more evidence, the judge was more likely to dismiss the charge. So I said that I would indeed call evidence if he dismissed my motion.

He said, "I agree the evidence is quite weak, but there is some evidence, so I have to dismiss your motion. Call your evidence."

The judge's comments clearly indicated that he was going to acquit my client. I didn't want to snatch defeat from the jaws of victory so I sheepishly said, "What would your honour think if I changed my mind about calling evidence?" The prosecutor, Richard Israels, jumped up and ranted about my making a



Jeff Gindin

sham and a mockery of the law, and the judge agreed that I must now do what I had promised to do. So I said, "In that case, I call Gedale Saperstein to the witness stand!"

My baffled grandfather walked to the front of the courtroom. As he passed me, I whispered in Yiddish, "Whatever I ask you, just say no." After he was sworn in as a witness, he turned to Sparling and said "He's my grandson!" I asked, "Mr. Saperstein, do you know anything about this case?" He answered, "No." I said, "Thank you. Your honour, that's the evidence for the defence." The judge of course had no choice but to dismiss the charges owing to his earlier remark that the prosecution had a weak case.

## Chapter 15

# Witnesses

### **K**EN FILKOW: score one for the witness

I was cross-examining an elderly witness about a financial matter involving him and his son Michael. I said, “Since you are Michael’s father, I suppose it is fair to say that you have known him all your life?” He replied, “No, Mr. Filkow. I have known Michael all *his* life!” Touché!

### **Harold ff. Gyles: the masseuse who didn’t discriminate**

I was the judge at the trial of a man charged with living off the avails of prostitution. A woman testified that she worked for the man, but that she was only a masseuse and had never done anything improper. The prosecutor did not hide his sarcasm as he questioned her: “You say you have never done anything improper. So tell me, witness, how much do you charge to massage genitals?” She hesitated and then replied: “The same as I charge Jews.”

### **Sam Minuk: a witness meets a good Ukrainian judge**

I grew up in the North End of Winnipeg among people of various nationalities and ethnic backgrounds, including Ukrainian, Jewish, and Polish. As a result, I developed a deep affection for these people and an appreciation of the difficulty some of them had in expressing themselves in English.

I was the judge in a case in which an elderly Ukrainian man was a witness. He apologized for his thick accent, but I had no trouble understanding him. When he finished giving evidence, he turned to me and said, “Judge, you are a nice man. Tell me please what is your name?” When I said *Sam Minuk*, he must have thought I said *Semeniuk* because his eyes lit up and he said, “You Ukrainian?” I’m not Ukrainian, but not wanting to disappoint him I said, “Sure, why not?” He said he was going home to tell his wife he met “a good Ukrainian judge.” The lawyers who were in court that day still refer to me as “Semeniuk, the good Ukrainian judge.”

### **Hymie Weinstein: a compliment from a witness for the prosecution**

I was defence counsel in a case in front of Provincial Judge Heather Pullan. During my cross-examination of a prosecution witness, I asked the judge to



Hymie Weinstein

give me a few moments to check my notes. While I was doing that, the judge saw the witness say something to the prosecutor. She spoke to the witness: “Mr. Smith, anything you have to say as a witness cannot be said just to the prosecutor. You have to say it so that all of us can hear. Please now repeat what you just said to the prosecutor.” The witness said, “Your honour, I just said to the prosecutor that Mr. Weinstein is really doing a number on me!”

I laughed so hard that the judge called a recess to give me time to compose myself.

### **Walter Ritchie: a lawyer makes a splash**

I’m sure I made an unforgettable impression on Justice Brian Dickson when I appeared before him as a witness in a trial. When I talk I often wave my hands around, as I did that day while testifying. I managed to knock over a glass of water, which spilled all over the judge. But he wasn’t at all ruffled. He just said, “We will have an adjournment to allow Mr. Ritchie to refill his glass.”

### **Mel Myers: a premier refuses to tell the truth**

At a public inquiry in 1999, Premier Gary Filmon was called as a witness. When I cross-examined him, I started with this question: “Mr. Filmon, you are the premier of this province and you have sworn to tell the truth, the whole truth and nothing but the truth.



Is that correct?” He agreed that it was. I put my next question: “All right then, what is the date of the next provincial election?” Everyone laughed, including the premier. He didn’t answer the question.

**Len Weinberg: a suspicious mind**

I acted for the wife in a divorce case. When her husband testified in court, he accused me of having an affair with his wife. I asked what made him think that. He answered, “She has no money. She’s got to be paying you somehow.”

**George Dangerfield: a man fails arithmetic but wins acquittal**

I prosecuted a case of robbery in which a man was beaten up for the seven dollars he had in his pocket. The police found exactly seven dollars on the accused man. He testified that seven dollars was the change from a ten dollar bill he had used to buy a bottle of wine earlier in the evening. I asked him how much the wine cost. He said four dollars. I said, “If you subtract four dollars from ten dollars, you have six dollars. How come the police found seven dollars in your pocket?” He said, “I left a tip.” Everyone laughed at his poor arithmetic, but the judge later acquitted him.

**Marty Tadman: the agony of child protection cases**

In all the years I acted for the Children’s Aid Society in its applications to take custody of a child from its parents, only once did I hear a parent say, “I don’t love my child.” In that case, the mother was opposing the CAS application, but in the middle of testifying she suddenly said, “I give up. You can have the child.” I asked her why she was giving up. She said, “He looks like his father. I have no love for him.” There was a long silence in the courtroom. Without further evidence, the judge pronounced the permanent order of custody.

**David Marr: cross-examining a mother**

In my first year as a lawyer, Legal Aid asked me to take a case on very short notice. A jury trial was about to begin for two men charged with break and enter. I acted for one of them while Chris Pappas acted for the other. My client had some previous experience in the criminal courts and it irked him that his co-accused was

claiming to be innocent while pointing the finger at him. He asked only that if he was to be convicted, his co-accused should be convicted too.

The mother of Pappas' client had testified at the preliminary hearing, but I had not been involved at that stage and now I met her in court for the first time. Her testimony was to the effect that she was a single mother, had always worked hard, and while her son was no angel, she was sure he would not do what he was accused of doing. When I cross-examined her, she agreed with my suggestions that she loved her son very much and would do anything for him. And then I asked, "Do you love him enough to lie for him?" She burst into tears and the judge called a recess to allow her to compose herself. An older sheriff's officer came over to me and said, "Young fella, you were doing great—but you don't make a mother cry!"

The jury convicted both men, but I later received a letter from my client in Stony Mountain Penitentiary congratulating me on my performance. He said I was even better than Harry Walsh and he would recommend me to all his friends!

### **Stan Nozick: a witness answers all questions**

I prosecuted a murder case in which the judge suggested that fairness required me to interview a woman and to call her as a witness for the prosecution. I told the judge that I had already interviewed her but I would not be calling her as a witness. He asked whether she had answered all my questions. I said indeed she had. The judge asked why then I wasn't calling her as a witness. I said, "Because, my lord, she had the same answer for every question: fuck off."

### **Ken Hanssen: a lawyer's future flashes before his eyes!**

I had a case in Minnedosa in which my client was charged with assault. The defence was self-defence. At the trial before Judge Fred Coward, the two men told conflicting stories about what had happened between them. The only other witness was my client's eleven-year-old nephew. Of course, I interviewed him before the trial to hear his account of the incident, which supported my client's version. After the boy testified in chief, Crown Counsel cross-examined him. He asked the boy whether he had discussed the story

with other people. Yes, he had. And had he discussed it with Mr. Hanssen? Yes, he had. Crown counsel then asked, “And did Mr. Hanssen tell you what to say?” Yes, he did. “And what did Mr. Hanssen tell you to say?”

I couldn’t believe what I was hearing. I was positive I hadn’t told the boy what to say. I couldn’t even imagine what his response was going to be. Judge Coward leaned forward to hear the boy’s answer, the courtroom became quiet, and I held my breath as my legal career and my future disbarment flashed before my eyes! It seemed an eternity until the boy said, “He told me to tell the truth.” The judge leaned back in his chair, I breathed a sigh of relief, my client was acquitted, and my legal career continued. From that day forward, I was always very careful to advise any potential witness it was important to tell the truth!

### **Doug Abra: the whole truth in one answer**

Prosecutor Stu Whitley was cross-examining a man accused of some offence. Stu was getting nowhere until he bluntly said to the guy, “Isn’t it true that everything you’ve said here today is a lie and you’re guilty?” The guy answered, “Well, as a matter of fact, yeah!”

### **Robert Tapper: marriage as an exchange of favours**

In the 1990s I acted for the estate of a man who had made a pile of money in business. He had married for the first time at the age of sixty and had provided for his wife in his will, but she sued his estate for more. She was from Paris but looked like a Hollywood B-film babe with funny hats and crazy dresses. She was rather strange but also entertaining when she testified in the Queen’s Bench.

In court, the clerk handed her the Bible and said the usual words: “Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?” She replied, “I’ll tell the truth, but not the whole truth—we don’t have time!”

When her lawyer asked about the marriage, she said, “It was very simple. He was sixty and I was fifty-six. We decided to combine our solitudes. I would teach him French culture and gastronomy and he would [turning to the judge] ... at age sixty, he was still operational.”

### **Jack Chapman: under straw and law**

At an arbitration hearing in a rural area, Roland Penner asked a farmer what he thought of the arbitration process. The farmer replied, “It reminds me that under every pile of straw is a bigger pile of manure!”

## **Police Witnesses**

### **Harold ff. Gyles: an honest man**

I presided at a trial in which an RCMP officer testified that he was on patrol in a rural area when the car ahead of him drove into the ditch, back onto the highway, back into the ditch and across a field into a tree. The officer walked across the field to the car and said to the driver, “Have you been drinking?” The man replied, “Of course I’ve been drinking, officer! Do I look like a fucking stunt driver?”

### **George Dangerfield: an honest cop**

Jack Montgomery and I prosecuted a case involving magazines that were allegedly pornographic. Sergeant William Hrycyk had seized the magazines. When he testified in court, he was asked what feelings he had when he read the sexually explicit material, and especially one magazine that showed a naked young man seated on a motorcycle with his private parts draped over the saddle in front of him. Hrycyk’s reply was expected to be something like “shock” or “disgust,” but he answered, “Jealousy.” Everyone in the courtroom broke up.

### **Harold ff. Gyles: signs of impairment**

Before breathalyzers were used, a man was charged with impaired driving. At the trial, a bright young police officer testified that the man had the usual signs of impairment, including glassy eyes and slurred speech. He added that the man walked in a “somewhat loose-jointed manner.” The prosecutor asked what he meant by that. The officer said, “Every time one of his feet moved, it seemed to come as a complete surprise to the rest of his body.”



Harold Gyles

### **Harold ff. Gyles: supporting the police**

A man was charged with impaired driving. A police officer testified that he had noticed the man driving erratically and had pulled him over. When he asked the man for his driver's licence, the man fumbled around and handed over his medical insurance card. When the man testified in court, he insisted he had not been impaired. The prosecutor said, "Then why did you hand the officer your medical insurance card?" The man

replied, "I thought that while he was waiting for me to find my driver's licence, I would give him something to read."

### **Harold ff. Gyles: an officer discovers 8-Up**

In the 1960s an RCMP officer told me a story about being on patrol with another officer. On a quiet Sunday morning they were driving near Winnipeg's Perimeter Highway when the other officer said, "Look at that truck parked on the side of the exit ramp. He's obstructing traffic." The truck driver was on the road and waving his arms toward the highway that he had just exited. The officer refused to listen to the truck driver's explanation and gave him a ticket for obstructing traffic—even though there was no traffic to obstruct.

But that was not the end of it. As the officer left the truck, he noticed a plastic jug with contents that he thought could be homebrew. At the trial, the accused man testified as follows:

After the officer gave me a ticket, he grabbed a plastic jug out of my truck and poured some in his hand and licked at it like a dog. Let me tell you, if he knew what I carried in that bottle, he wouldn't have licked it. I breed horses and I take their urine to the vet all the time, and that's what I use the bottle for. That's the honest-to-God truth. I guess it tasted good. He wanted to know where I lived, so he could get more.

The judge said, "Thank you very much. I am going to acquit you."

## Chapter 16

# Jury Trials

### **S**AM MINUK: creating a diversion

I articulated with Louis Morosnick (1892–1956), a prominent criminal defence lawyer who had several nicknames, including “Louis the Weep,” “the Silver Fox,” and “the John Barrymore of the Courtroom” (based on acting ability, not looks). I sat with him during a jury trial. When a witness for the prosecution was giving damning evidence against his client, Louis took out a pair of spectacles and a handkerchief. He blew on the spectacles and was apparently cleaning the lenses by rubbing them with the handkerchief, all the while smiling sweetly at the jury—until he ran the handkerchief through the frames, which had no glass in them! This might have contributed in some way to the jury’s verdict of not guilty.

### **Hymie Weinstein: a jury sees Darth Vader**

I defended a man on a serious charge in a jury trial that was adjourned from a Friday afternoon to the following Monday. On the weekend, I ran into a lawyer who said, “I just met one of the jurors on your case. He told me—” I said, “Stop! You know the law prohibits a juror from telling anyone what goes on in the jury room!” He said, “I know, I know, but this is not a problem. Do you have any idea what the jury talked about in the jury room during the break on Friday afternoon?” I guessed that they talked about the great job I was doing, but the juror said they discussed whether my robes made me look like Darth Vader. And some of them said my profile reminded them of Ed Sullivan.

### **Richard Wolson: a verdict based on suggestive music**

I had a sexual assault case in which the defence was that the complainant had consented to what happened. During the evening in question, some amorous music was played. It was an album called “Music to Make Love By,” issued in 1975 by a fellow named

Solomon Burke. I was able to convince Justice Jimmy Wilson to let me play the record for the jury. The music is extremely suggestive. The jury smiled and smirked as it played, and they ended up acquitting my client. After the court closed, the clerk asked if she could have the record so that she could play it for her boy friend. I gifted it to her.

### **Roland Penner: a judge's head and a jury's heart**

In the 1980s three eighteen-year-old men from a rural community near Winnipeg went to a rural court without a lawyer and pleaded not guilty to a charge of possessing open liquor in a car. It was their first involvement with the legal system. Acting on a tip, the RCMP had stopped their car and found an open beer bottle on the floor of the back seat. The open bottle contained only a few drops and had been kept as a souvenir because one of the boys had opened it with his teeth!

At their trial on the charge, all three accused testified under oath. In cross-examination, the prosecutor asked where they got the beer—a question that was not relevant to the charge. Not wanting to “snitch” on the local bootlegger, they all swore that they got it from a friend. The prosecutor knew that wasn't true, because an off-duty police officer had seen them carrying a case of beer from the house of the well-known bootlegger.

In those days a charge of having open liquor in a car usually resulted in a fine of about twenty-five dollars. But now the young men were astonished to find themselves charged with the very serious crime of perjury (not telling the truth while under oath) and facing a maximum sentence of ten years in prison. This was for not telling the truth about an issue that had nothing to do with the charge! I was retained to defend them.

The jury trial took place in Winnipeg with Justice Jimmy Wilson presiding. After he and the jury heard witnesses for the prosecution describe how the accused had been led into a trap, he virtually directed the jury to acquit the accused. When the jury returned in just twenty minutes with a verdict of not guilty, the crowded courtroom erupted in cheers.

The twelve members of the jury looked happy as they left the jury box. Some of them shook hands with the three young men.

One of them, the short and rotund owner of a grocery store in the North End, playfully pinched their cheeks while saying, “Tell me you won’t do it again, bubbala!”—a loving Yiddish word for a young child. I could almost hear a “fiddler on the roof.”



Stained glass depiction of Justice at the Faculty of Law,  
University of Manitoba



## Participants

**Doug Abra** Born in Winnipeg, 1947. Called to the bar in 1973. Crown Attorney, 1974 to 1980. Joined *Thompson Dorfman Sweatman* (1980 to 1989) and then *Hill Abra Dewar* (1989 to 2007). Bencher of the Manitoba Law Society (1988 to 1994) and President (1993 to 1994). Appointed to the Queen's Bench in 2007.

**Larry Allen** Born in Winnipeg, 1950. Articled with the Crown. Called to the bar in 1976. In private practice until he joined Legal Aid in 1984. In 2009 he was appointed as a Provincial Court Judge.

**Caroline Barrett-Cramer** Articled with her father, Ernest Brotman. Called to the bar in 1962. Practised law with her husband, Raymond Barrett-Cramer at *Brotman and Cramer*, until he was appointed to the Provincial Bench in 1972. Caroline was with *Christie Mackay* from 1985 to 1990, when she re-activated *Brotman and Cramer*. In 1999 she established *Estate Attorneys of Manitoba*, focusing on wills and estates.

**Aaron Berg** Born in Sexsmith, Alberta, 1948. Articled with *Tupper Adams*. Called to the bar in 1977. He initially practised in Winnipeg, then in Neepawa. Since 1985 has been with Civil Legal Services, Manitoba Justice, specializing in public administrative law including human rights.

**Clyde Bond** Born in Winnipeg, 1955. Articled with Manitoba Justice and was called to the bar in 1980. He was a prosecutor with the Province until he joined the federal Department of Justice in Winnipeg in 1987. He is still with that Department, and now lives in Ontario.

**Greg Brodsky** Born in Melville, Saskatchewan, 1940. Articled with Harry Walsh. Called to the bar, 1963. Practised with *Walsh Micay* until the firm dissolved in 1999. Since then he practices with associates as *Brodsky and Company*. He has always specialized in criminal law.

**Harold Buchwald** Born in Winnipeg, 1928. Articled with David Golden and then Sam Freedman and was called to the bar in 1952. He and two friends founded *Buchwald Asper Henteleff*, now *Pitblado*. Harold died in Winnipeg on April 17, 2008.

**Jack Chapman** Born in Winnipeg, 1930. Called to the bar in 1954. Practiced with *Gallagher and Co.* from 1970 to 1980, *Simkin Gallagher* from 1980 to 1989, and *Taylor McCaffrey* from 1989 to 1994. Has practised on his own since 1995. Has specialized in labour relations since 1970.

**Syd Cohan** Born in Winnipeg. Articled with *Walsh Micay*. Called to the bar in 1957. He practiced with that firm, then with *Shinbane Dorfman*, and later in association with Ed Kimelman and Bob Kopstein. A sole practitioner since 1970. Served as a part-time judge of the Provincial Judges Court from 1976 to 1997.

**George Dangerfield** Born in 1933. Graduated in Engineering in 1958. He went to law school in 1962. Articled with *Robertson and Long* and then *Tupper Adams*. After his call to the bar in 1965, he was a Crown Prosecutor with Manitoba Justice until he retired in 1996. In recent years George has appeared in some plays and movies, notably the movie *Capote* (2006), in which he played the foreman of a jury.

**Cynthia Devine** Articled with *Wolch Pinx Tapper Scurfield* and practised civil litigation there from 1993 until 1998 when she joined the Constitutional Law Branch in Manitoba Justice.

**Ken Filkow** Born in Edmonton, 1941. Articled with *Maurice Arpin* and practised with *Arpin and Company* after his call to the bar in 1966. Since 1994 has been with *Darcy Deacon*.

**Allan Fineblit** Born in Winnipeg, 1949. Articled with *Buchwald Asper* and called to the bar in 1974. In 1976 he went to Legal Aid Manitoba where he began his unique career as an administrator. He became Legal Aid's Executive Director in 1986 and in 1996 he took a two-year secondment to serve as the Assistant Deputy Attorney

General in charge of prosecutions. He has been Chief Executive Officer of the Law Society of Manitoba since 1998.

**Bill Gange** Born in Winnipeg, 1951. Called to the bar in 1980 and practised with *Aikins MacAulay & Thorvaldson* from 1979 to 1982, *Twaddle and Dawson* from 1982 to 1985, *Dooley Olson* from 1985 to 1987, and *Thompson Dorfman Sweatman* from 1987 to 1996. In 1996 he started his own firm, which is now *Gange Goodman & French*.

**Jeff Gindin** Born in Austria, 1946, and moved with his family of Holocaust survivors to Winnipeg in 1951. Articled with *Walsh Micay*. Called to the bar in 1971. He has always specialized in criminal law, first with *Walsh Micay* from 1971 to 1978, then *Gindin Soronow Malamud* from 1978 to 1989, and *Gindin Smith Pearlman* from 1990 to 1995. In 1995 he and two other alumni from *Walsh Micay* established *Gindin Wolson Simmonds*.

**Martin Glazer** Born in Winnipeg, 1957. Called to the Bar in 1982. Practises criminal law exclusively as the *Martin Glazer Law Office*.

**Marilyn Goldberg** Born in Winnipeg. Called to the bar in 1973. Practised with Manitoba Public Insurance Corporation, the Public Trustee and the Law Society before being appointed a Master of the Court of Queen's Bench in 1984. In 2002 she was appointed to the Queen's Bench.

**Norm Gould** Born in Winnipeg, 1930. Graduated with a degree in Pharmacy and then went to law school at Queen's University. Graduated in 1966 and called to the bar in Winnipeg in 1968. He is proud to be Winnipeg's longest-practising family law lawyer.

**Sid Green** Born in Winnipeg. Articled with Joe Zuken. Called to the bar in 1955. He tells the story of his political life in *Rise and Fall of a Political Animal: A Memoir* (2003). Herb Schulz devotes a chapter to him in *A View from the Ledge: An Insider's Look at the Schreyer Years* (2005)—though Mr. Green says, "Schulz does not have everything right."

**Harold ff. Gyles** Born in Winnipeg, 1927. Articled with his father and called to the bar in 1951. He and his father had a general practice as *Gyles and Gyles* from 1951 to 1967, when Harold was appointed to the Provincial Judges Court. He was Chief Judge of that court from 1969 until his retirement in 1981 and now lives in Keewatin, Ontario. His middle name is pronounced *foliat*.

**Ken Hanssen** Born in Winnipeg, 1945. Articled with *Duncan and Duncan* in Morden and was called to the bar in 1969. He practised in Morden until his appointment to the Queen's Bench in 1984.

**Yude Henteleff** Born in Winnipeg, 1927. Articled with *McMurray Greschuk Walsh Micay MacDonald Molloy* and called to the bar in 1951. Practised criminal law with that firm for four years and then with *Shinbane, Dorfman, Kanee, Henteleff* until 1965 when he established *Buchwald Henteleff*. In 1970 he and two famous friends founded *Buchwald Asper Henteleff*, now *Pitblado*.

**Aubrey Herschfield** Born in Winnipeg, 1924. After his call to the bar in 1951, he established a succession of law firms in several rural communities, including Brandon from 1969 to 1985. "Oz" was a judge of the Queen's Bench from 1985 until his retirement in 1999. He died in Winnipeg on April 28, 2008.

**Ben Hewak** Born in Winnipeg, 1935, and called to the bar in 1960. Practised with *Pollock Nurgitz* until his appointment to the County Court in 1971. In 1977 he was appointed to the Queen's Bench and was Chief Justice of that court from 1985 until his retirement in 2002.

**Ed Kimelman** Born in Fairlight, Saskatchewan, 1925, thereby increasing its population by 2%. When he was five years old his family moved to what he called the "famous and fabulous North End of Winnipeg." Called to the bar in 1950 and practised for some years with *Kopstein, Kopstein and Kimelman*. Appointed a judge of the Provincial Court in 1978 and later became Associate Chief Provincial Judge, retiring in 1996. He died in Winnipeg on September 2, 2007.

**Bob Kopstein** Born in Winnipeg, 1932. Called to the bar in 1958 and practised with his father and others until he was appointed to the Provincial Judges Court in 1971. Retired in 2006.

**Christina Kopynsky** Born in Winnipeg, 1956. Articled with the Attorney General's Department and was called to the bar in 1982. She has practised as a prosecutor ever since, specializing in trial work.

**Ruth Krindle** Born in Winnipeg. Called to the bar in 1968 and practised with *Pollock Nurgitz* from 1969 to 1971 before becoming the first female prosecutor in Manitoba (1971 to 1976). Appointed to the County Court (1980 to 1984) and then to the Queen's Bench in 1980. Retired in 2002.

**Heather Leonoff** Born in Winnipeg, 1953. She graduated from Osgoode Hall Law School in 1977, articled with criminal lawyer Hersh Wolch, and was called to the bar in 1979. She practised with *Wolch Pinx Tapper Scurfield* from 1980 to 1998, and then joined Manitoba Justice where she is now Director of the Constitutional Law Branch.

**Jack London** Born in Winnipeg, 1943. Articled with Montague Israels for one year and Harvey Pollock for three years, and was called to the bar in 1966. He did tax litigation with the Department of Justice in Ottawa from 1966 to 1968 and then returned to Winnipeg to practise with Izzy Asper from 1968 to 1970. He taught at the Faculty of Law from 1971 to 1999 and served as Dean from 1979 to 1984. Since 1999 he has practised with *Pitblado*.

**Colin MacArthur** Born in Owen Sound, Ontario. Articled with *Aikins MacAulay & Thorvaldson* and has been with the firm since his call to the bar in 1969. He continues to specialize in litigation.

**Sam Malamud** Born in Chicago in 1949 to Canadian parents. Articled at *Walsh Micay* and was called to the bar in 1974. With Legal Aid from 1974 to 1978, *Gindin, Soronow, Malamud* until 1989, and *Wolch Pinx Tapper Scurfield* until 1999. He was with *Cassidy Ramsay* until 2007, and has been with *Booth Dennehy* since 2008. He has always specialized in family law.

**Bill Malcolm** Born in 1944 in Calgary. Articled with *Pitblado Hoskin*. Called to the bar in 1970. Practised with *Christie, Turner and DeGraves* from 1970 to 1973 and then on his own before joining Legal Aid Manitoba in 1977. He retired in 2008.

**David Marr** Born in Winnipeg in 1944. Called to the bar in 1969 and has specialized in civil litigation. He was a part-time judge in the Provincial Judges Court from 1977 to 1996. He is now the senior partner in *Campbell, Marr*.

**David Matas** Called to the Manitoba bar in 1971. Since 1979 he has maintained a private practice in refugee, immigration and human rights law.

**Al McGregor** Born in West Wickham, England, in 1942. Articled with Roy Gallagher at *Bowles Pybus Gallagher*. Called to the bar in 1968, and practised with that firm and then with *Gallagher Greenberg McGregor and Sheps* from 1970 to 1981. He was with *Simkin Gallagher* from 1981 to 1993, and *Buchwald Asper Gallagher Henteleff* until 2001. He has been a sole practitioner since 2001.

**Ron Meyers** Born in Winnipeg in 1933. After his call to the bar in 1960, he managed the new Polo Park Shopping Centre until 1962. In 1963 he became a partner in *Hunt, McLaughlin and Meyers*, and in 1969 he joined *Arpin and Company*. He left the firm in 1972 to become the first Executive Director of Legal Aid Manitoba. Appointed to the Provincial Judges Court in 1977. Retired in 2009.

**Sam Minuk** Born in Winnipeg in 1927. Articled with Louis Morosnick. Called to the bar in 1955. Was a member of *Mitchell, Green and Minuk* until 1969. He then practised mostly criminal law on his own until he was appointed to the Provincial Judges Court in 1972. He retired in 2005.

**Grant Mitchell** Has been a partner at *Taylor McCaffrey* for almost 30 years, specializing in labour, employment and human rights law.

**Mel Myers** Born in Winnipeg in 1936. He articulated with *Sokolov Wolinsky*. Called to the bar in 1961. Premier Duff Roblin then made what Mel calls “Roblin’s greatest political decision” by hiring Mel as a prosecutor. In 1964 he joined *Pollock Nurgitz Bromley* and practised criminal law for about 10 years before becoming a labour lawyer. He left practice in 2000, and now serves as Chief Commissioner of the Automobile Injury Compensation Appeal Commission.

**Rodney Mykle** Born in Portage la Prairie in 1945. Articled with *Clement, Pearson and Williams* in Brandon and remained with the firm after his call to the bar in 1970. Appointed to the Provincial Judges Court in 1975 and then to the Queen’s Bench in 1989. Retired in 2007.

**David G. Newman** Born in Winnipeg in 1944. He attended Dalhousie Law School and was called to the bar in Winnipeg in 1969. He practised with *Newman, MacLean* from 1968 to 1978 and then established *Newman & Company*, which merged in 1985 with what is now *Pitblado*. Served as member of the Manitoba Legislature from 1995 to 1999, holding several ministerial portfolios. David’s practice was primarily in labour relations and employment law, but since 1999 he has been involved in restorative justice and the culture of peace movements.

**Stan Nozick** Born in Winnipeg in 1943. Was called to the bar 1968 and was a Crown prosecutor until 1976. He practised on his own until he and Barry Sinder established *Nozick Sinder* (1979–1998). He moved to Vancouver in 2005, where he continues to specialize in criminal law.

**Mark O’Neil** Born into a family of twelve children in Hamilton, Ontario. He was called to the bar in Winnipeg in 1983 and has since practised with several private firms as well as Centra Gas and MPIC. He is now with the City of Winnipeg’s Law Department.

**Brian Pauls** Born in Winnipeg in 1940 “with a silver spoon in my navel.” He was called to the bar in 1965 and practised with a number of firms and then alone for many years before finding

jurisprudential happiness in the firm of *Smordin Pauls* in 1992—and ever since. He has an almost irrepressible sense of humour.

**Arne Peltz** graduated in 1975 and, he says, prepared himself for law practice by spending a year at such pursuits as cleaning chicken coops in a kibbutz in Israel. Called to the bar in 1977. Practised with Legal Aid Manitoba until 2003, heading up the Public Interest Law Centre (PILC) from 1982 to 2003 when he established the *Arne Peltz Law Corporation*, specializing in labour arbitrations. Joined *Orle Davidson Giesbrecht Bergen* in 2009. Specializes in mediation, arbitration, Aboriginal claims and civil litigation.

**Charles Phelan** Called to the bar in 1967 and has practised general litigation with *Monk Goodwin* ever since.

**Sheldon Pinx** Born in Winnipeg in 1947. After his call to the bar in 1973, he practised with Legal Aid for three years and then joined Hersh Wolch in private practice. The firm lasted twenty-two years (1975 to 1998), ending as *Wolch Pinx Tapper and Scurfield*. He established *Pinx and Co.* in 1998 and has always specialized in criminal law.

**Harvey Pollock** Born in Winnipeg in 1934. Called to the bar in 1958. Worked for a year with Hart Green Sr. and Jr. before starting his own practice. He now practises with his son Marty and others as *Pollock & Company*. Harvey has specialized in litigation, both civil and criminal, including twenty-three murder cases.

**Jay Prober** Born in Winnipeg in 1943. He graduated from the Manitoba Law School in 1967 and then obtained an LL.M. from the London School of Economics in 1968, and clerked for Justice Ronald Martland at the Supreme Court of Canada (1970 to 1971). Articled with *Thompson Dilts* and practised there after his call to the bar in 1970. In 1982 he established *Prober Law Offices* where he specializes in criminal law and administrative law .

**Serge Radchuk** Born in 1926 in what was then Poland and is now Ukraine. Came to Canada in 1948, articled with *Solomon Baryluk* and was called to the bar in 1955. Since January 1, 1967, he has had



a solo general practice (“I prefer to know a little about much rather than much about little”). He is knowledgeable in five languages, including he says, “a little English.”

**Patrick Riley** Born in Montreal in 1952. He lived in Ottawa, Toronto, and Winnipeg before attending Atlantic College in Wales and Queen’s University in Kingston. He returned to Winnipeg in 1973. Articled with Legal Aid Manitoba and was called to the bar in 1977. He practiced alone in what he calls “a hole in the wall on Hugo Street” from 1977 to 1985 and then joined *Taylor McCaffrey* where he specializes in commercial litigation.

**Larry Ring** Born in Winnipeg in 1942. Called to the bar in 1969 and practised with *Pollock Nurgitz* from 1969 to 1987. He was a part-time Provincial Court Judge from 1977 to 1987 and has ever since been a Master of the Court of Queen’s Bench.

**Walter Ritchie** Born in Vancouver in 1928. He has been with what is now *Thompson Dorfman Sweatman* since he joined the firm as a student in 1949, specializing in litigation and labour law.

**Evan Roitenberg** Born in Winnipeg in 1966. Articled with *Wolch Pinx Tapper Scurfield* and was called to the bar in 1992. He left the firm in 1998 to establish *Pinx Roitenberg Campbell*. In 2003 he joined *Gindin Wolson Simmonds Roitenberg*, a firm that specializes in criminal law.

**Manly Rusen** Born in Winnipeg in 1930. Articled with his father, I.D. Rusen, and was called to the bar in 1955. He practised as a sole practitioner for fifty-two years and retired in 2008. Served as a part-time judge in the Provincial Judges Court from 1975 to 1999.

**Sam Sarbit** Called to the bar in 1969 and practised with *Parker, Sarbit and Company* until 1982. Since then he has been with *McJanet Rich*.

**Alan W. Scarth** Called to the bar in 1948. Well known as an advocate for environmental conservation and sustainable development. He established the Wildlife Foundation of Manitoba and the Fort Whyte Centre in Winnipeg.

**Perry Schulman** Born in Winnipeg in 1940. Articled with his father, Hyman Schulman, and was called to the bar in 1963. Practised with his father and brother Mark from 1963 to 1975, when his father passed away, and with Mark until 1993 when Perry was appointed to the Queen's Bench.

**John Scollin** Born in Edinburgh in 1927. Called to the bar in Scotland in 1950 and in Winnipeg in 1958. His career included stints in East Africa, Ottawa, and with the Winnipeg law firm *Pitblado* before his appointment to the Queen's Bench in 1981. He retired in 1999.

**Colon Settle** Born in Winnipeg in 1932. He has been with the same firm—now called *Inkster Christie Hughes*—since he began articling in 1955. Called to the bar in 1959 and is now the senior partner in the firm. His specialties are bankruptcy, estate work, and elder law.

**Vern Simonsen** Born in 1931 on a farm near Alida, Saskatchewan. Called to the bar in 1959 and practised with *Scarth Honeyman*—later *Scarth Simonsen*—from 1959 to 1982, when he was appointed to the Queen's Bench. He retired in 1998. He says he is now doing less and less and getting better at it.

**Lyle Smordin** Born in Winnipeg in 1938. After his call to the bar in 1965, he practised with *Cantor Matas Simkin*, BACM Industries Ltd., and Qualico Developments. In 1992 he and classmate Brian Pauls established *Smordin Pauls*.

**Rod Stephenson** Born in Saskatoon, 1945. Articled with Lorne Campbell at *Aikins, MacAulay & Thorvaldson* and was called to the bar in 1971. He has been with the firm ever since, specializing in civil and commercial litigation.

**Norm Sundstrom** Born in Winnipeg in 1941. Articled with Legal Aid Manitoba and was called to the bar in 1973. He had a solo practice for many years before his appointment as a Judicial Justice of the Peace in 1991.

**Eugene Szach** Born in Winnipeg in 1950. Graduated from law school in 1974 and was called to the bar in 1999 (“the longest articles in legal history”). He has been with the Constitutional Law Branch of Manitoba Justice since 1987. Retirement could happen at any moment, he says.

**Martin Tadman** Born in Winnipeg in 1947. Articled with Legal Aid Manitoba and called to the bar in 1973. He practised criminal law for twenty five years, but now specializes in family law with *Levine, Tadman, Gutkin and Golub*.

**Rae Tallin** Born in Winnipeg in 1927. Called to the bar in Winnipeg in 1952. He joined the office of Legislative Counsel in 1956 and was the Legislative Counsel for Manitoba from 1962 to 1984. He wrote legislation for another thirteen years in Ottawa before retiring and returning to Winnipeg in 2006. Rae died in Winnipeg on September 8, 2009.

**Robert Tapper** Born in Winnipeg in 1950, called to the bar in 1974. He practised with Manly Israel, “the single best teacher I have ever known,” until 1981 when he joined *Wolch Pinx Scurfield*. He is now with *Tapper Cuddy*. He once practised only criminal law, but now specializes in civil litigation.

**Reeh Taylor** Born in 1924 in Forest, Ontario, and raised in England. After about five years in the British Navy, he arrived in Winnipeg in 1946. Articled with *Johnston Garson Forrester*. Called to the bar in 1951 and practised with that firm until 1965. He then joined *Richardson and Co.*, which merged with another firm in 1997 and became *Taylor McCaffrey*. Reeh is particularly proud to have been the founding President of the Manitoba Chamber Orchestra in 1972.

**Paul Teskey** Born in 1950. He articulated with Roy Gallagher and was called to the bar in 1979. He practised with several firms before establishing *Teskey Legal and ADR Services* in 2001, specializing in labour arbitrations. He died in Winnipeg on December 12, 2008.

**Harry Walsh** Born in 1913, his unique career as a renowned criminal lawyer, which is the subject of Chapter 9, includes mentoring dozens of lawyers who are now leading members of the bar. Seventy-two years after his call to the bar in 1937 he continues to go to his office every day. When he agreed to be interviewed for this book, his many stories and anecdotes changed the expected single interview into three lengthy and always interesting interviews.

**Sherri Walsh** Born in Winnipeg. She articulated with *Aikins MacAulay & Thorvaldson* and was called to the bar in 1986. After a stint with the Law Reform Commission, she and Dave Hill established *Hill and Walsh, Litigation Counsel*, Winnipeg's first litigation boutique firm, in 1988. She specializes in civil litigation.

**Len Weinberg** Born in Winnipeg in 1934. Attended St. John's High School in the North End where, of the 24 boys in his class, only two did not end up in a profession. He was called to the bar in 1960, practised with *Walsh Micay* from 1960 to 1967, and then in a succession of firms leading to *Myers Weinberg* (since 1994) where he specializes in corporate and commercial transactions.

**Hymie Weinstein** Born in Winnipeg. Articled with Montague Israels, was called to the bar in 1968, and was a Crown prosecutor until 1972. He then joined *Myers Weinberg* and became one of the best known criminal defence lawyers in the province. At six feet, five inches, he is the second only to his son Josh (six feet, eight inches) as the tallest lawyer in the province.

**Joe Wilder** Born in Winnipeg in 1935. Called to the bar in 1960 and practiced with *Walsh Micay* until 1967 when he and brother Sam established what is now *Wilder Wilder & Langtry*. Joe is proud to have served on the executive of the Winnipeg Blue Bombers (for twenty-five years) and the Royal Winnipeg Ballet (for ten years).

“Both organizations involve very fit young people doing unusual things with their bodies.”

**Sam Wilder** Born in Winnipeg in 1940. Articled with *Walsh Micay* and was called to the bar in 1965. After two years as a prosecutor, he and his older brother Joe established what is now *Wilder Wilder & Langtry*. Sam specializes in civil litigation.

**Richard Wolson** Born in Winnipeg in 1947. Called to the bar in 1973 and soon after joined *Walsh Micay*, where “Harry Walsh became like a father to me” over a twenty-one-year association (1974 to 1995). Richard then got together with two other alumni of the Walsh firm and formed *Gindin Wolson Simmonds*, where he continues to specialize in litigation. Has served as counsel in several public inquiries, most recently the Oliphant Inquiry into the relationship between Brian Mulroney and Karlheinz Schreiber.

**Scott Wright** Born in Winnipeg. Called to the bar in 1955. He practised with Richardson and Co. until his appointment to the Queen’s Bench in 1973. He retired in 2004.

**Ken Zaifman** Articled with *Richardson and Co.* and was called to the bar in 1976. Since the 1980s he has specialized in immigration law with *Zaifman and Associates*.

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Roland Penner and Norm Larsen

**Roland Penner** Born in Winnipeg in 1924. Practiced law with *Zuken and Penner* (later *Zuken Penner and Larsen*) 1961 to 1981. Member of the Manitoba Legislature from 1981 to 1988. Served as Attorney General and Minister for Constitutional Affairs. Dean of the Faculty of Law at the University of Manitoba 1989 to 1994. He retired in 2009. Awarded Order of Canada 2000. The author of an award-winning memoir, *A Glowing Dream* (2007).

**Norm Larsen** Born in romantic Moose Jaw, practised law for 30 years in Winnipeg, starting with *Zuken, Penner and Larsen*, then with Legal Aid Manitoba as its first staff lawyer, and finally with Manitoba Justice as a legislative drafter. He retired in 2000.





# A glimpse into life of the law behind the headlines

Roland Penner  
& Norm Larsen in  
the Prisoner's Dock,  
in the Law Courts  
Building in Winnipeg



More than **200** true stories and anecdotes gathered from **80** lawyers and judges

*Tales from the Underworld and Other Stories* is a unique and fascinating collection of real life stories and anecdotes—some funny, some tragic, some bizarre. Included are chapters about a legendary judge and criminal lawyer, the mysterious murder of a Winnipeg heiress in Florida, and a fatal duel in a blizzard in Northern Manitoba—as well as anecdotes on the often humorous, and sometimes testy relationship between judges and lawyers, and lawyers and their clients.



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