

Motion Denied

"Motion denied, Mr. *Binsteen*." Judge Harritty almost spat back to the counsel table.

David Binstein stood temporarily frozen at the bench, then involuntarily glanced down at the tile courtroom floor before him, expecting to see fresh droplets of judicial saliva pooling authoritatively below his feet.

"Miss Augustine, you may proceed. Will you be making an opening statement or calling the first witness? Let's get moving here." The grey haired old jurist barked. He had the demeanor of a bulldog and would have exactly resembled one also, but for the stiff bushes of salt and pepper "Don King" style eyebrows that peered over his reading glasses.

Before the prosecutor could answer, Bunny, the court clerk at Judge Harritty's right, whispered in his ear. All of the regulars in the courtroom knew what was coming. Binstein of course did not. The Judge looked at Judy Augustine, frowning.

"Would you mind if we interrupt this trial for Mr. Arvila's motion, Ms. Augustine?"

Judy Augustine, all 5'11" of her, made 6'2" by the Izaak Mizrahi heels on her feet, stood imperiously before the Judge. She raised her chin in her typically haughty fashion, not needing to say anything to this Judge to convey her answer to his question.

"Alright" the Judge said "I understand, but we will take a moment to dispense with Mr. Arvila and his client anyway." The prosecutor finally forced a smile, never wavering, however, from her command of the courtroom. This bombastic fool of a judge may act like he's running the show, but she had made it clear to anyone who did not already know that it was her courtroom when she stood at that bench.

The person who had not known any of this was David Binstein, novice lawyer, here on his first case. His new boss had insisted that he take some *pro bono* cases off the hands of the public defender to get his feet wet in the courtroom. This case looked like a slam dunk to him. Two guys driving in their car down Spring Street, not breaking any laws. These two were stopped by the police for no reason that could be legally ascertained, then, the cops said they thought they saw what looked like burglary tools partially hidden by a towel on the floor of the back seat of the old Buick. A lawyer experienced in stops in the petty criminal world, a guy like Arvila, who had just walked up and stood at Binstein's left side, would have recognized the ploy.

The police used that excuse to search the car (*Carroll* doctrine be damned, thought David) and found a revolver in the glove box. This arrest made mincemeat out of the 4th Amendment for sure was the impression of the fledgling new lawyer. A slam dunk, he thought again, gazing up from his sitting position. Two black guys stopped by a white cop, a bad search. If this example had come up on his Multi-State Bar Exam, he would have at least been sure of getting ONE answer right. These hoods should be walking, he thought, looking finally in their direction.

"Maybe we should excuse Mr. Binstein and his clients while this matter with Mr. Arvila is handled." The prosecutor suggested diplomatically to the Judge. Harritty looked down condescendingly at Binstein. "This won't take very long, Miss Augustine, I assure you. *Binsteen* and his ----- clients, they can bide their time right here."

Even David could sense that he was now being truly, as his clients would say, disrespected. He looked up from his seat at Augustine who simply shrugged. She was not soooo bad, he thought, she had some sense of decorum at least. Arvila and his seedy Hispanic client stood, crowded next to David's shoulder, and Arvila started to plead his case for sentencing of his client.

Instead of plotting his trial strategy, David stared up intently at Augustine, trying somehow to make her nose look more Semitic, then eventually staring beyond the prosecutor to the stark pale wall of the courtroom. This room had zero personality. The building had housed many different types of business and governmental functions in its forty-odd years, and no serious money had gone into its conversion to a court of law. This was after all only the District Court, a way-station for petty thieves and traffic offenders on the criminal side and small claims on the civil side. It was a depressing place in the eyes of any objective observer, but was morbidly depressing to this first time trial lawyer.

David Binstein had viewed himself as a trial lawyer since his first days at college when he told his advisor that he wanted to check the box "pre-law" on the advisor's intake sheet. In the seven years that had followed, he had seen TV shows and movies about lawyers, and even the goofy *Ally McBeal* kind of courtroom experience was a source of

daydream for David. None of these fictional depictions had adequately primed him for his first real taste of trial practice today.

David's problems started when he first approached the courthouse entrance at 8:15am for his 9am trial. He was amazed to find a line of about 50 mostly disheveled looking people standing in line to get through the metal detectors. After 9/11, he should have assumed that such a procedure would be standard, but he hadn't even considered it. He stood in line with the others for five minutes or so, watching the parade. Finally he realized that the other lawyers, they were the only ones in suits, were allowed to pass by without inspection. Heaving a sigh of relief, David abandoned his place in line and strode to the front, waving to the burly sheriff as he had seen the other lawyers do.

As he attempted to pass by left of the metal detector, a plastic gate shaped like a huppa, the Jewish lawyer thought, the sheriff strong-armed David, digging his fingers into the gap between the lawyer's scrawny bicep and humerus, a grip which, even through the cheap grey wool suit was a painful surprise.

"And where is your ID sir?" the sheriff demanded with a knowing sneer.

David excused himself, set down his briefcase and fumbled into his left rear pants pocket, secretly cursing his great aunt for giving him this massive wallet as a Chanukah gift the previous year, as he struggled to pull the wallet out and expose his "ID" which, of course, he assumed required production of the ubiquitous Maryland drivers license.

The sheriff looked over the license, saying "Well, that's very nice Mister....."

"*Binstein*" David quickly interjected, knowing from experience that this goyim would mispronounce his name either ignorantly or on purpose.

"Yes, Binstein, now sir, let me ask you this...how many of these fifty---sixty people in this line might have one of these in their wallet?"

David vacantly stared down the line while the sheriff, who obviously was loving this act, paused for what he had learned from years of watching sit-coms counted as comedic effect. The sheriff then re-positioned himself between David and the interior of the courthouse, a "human shield" he might have called it, protecting the public from this lawyer who was obviously just too green to know the real protocol.

"I---I am a lawyer, I have a case today, like all of the other lawyers who have passed by here today." David mustered the courage to argue.

"Yes, but Mr. Binstein, do you have a *Sheriff's office issued Courthouse ID*? That is the identification which you must display in order to by-pass these metal detectors."

"Oh, I was unaware." David replied meekly.

"Can we *please* move on here officer?" The next lady in line asked impatiently. The whole line had been held up from passing though the x-ray huppa while the Binstein matter was being addressed.

David got the hint and slunk back to his place in line, just in front of a massive, 40-ish black woman. She glared up at him and then looked back at the extended line waiting behind her.

"And what in the heck do you think YOU are doing?" The obese woman demanded. "You don't mean to tell me that you think you're gonna just pop yourself back in this here spot in line after you've done made a simple fool of yourself up there and cost us all an extra ten minutes in line? Who the hell do you think you are anyway?" she went on.

David, clearly embarrassed but at the same time very apprehensive that he needed to be in court on time for his first appearance, mumbled quietly to her. "I'm just a lawyer who has a case today, and I have to get in there on time."

"Look, Perry Mason, we all gotta get in there too, ya hear, you ain't got no rights over us 'nless you got that fancy badge the real lawyers got, right girls?" Now she was playing to the crowd, in particular some friends she had made in line while they had made fun of David together watching him argue with the Sheriff. "You shot your wad, honey, it's the back of the line for you?" She declared to the giggles of her new comrades.

Defeated, David lifted his briefcase and went back to the end of the line, absorbing the smug stares of those who would enter ahead of him.

It was Arvila's latest over-emphasis of put-on Latino dialect that finally brought David back to the courtroom and Judge Harritty. While Arvila was obviously genuinely of an Hispanic background, David had overheard the lawyer talking to other lawyer friends in the courtroom corridor and knew that he easily spoke what one might call the "king's English." Nevertheless, here he was in court representing some down and out client from El Salvador and playing a broken English accent before Harritty. David wondered if Harritty knew it was all a show. Finally, Arvila's case was over, his clients free on bail to prey on other victims, and the judge refocused on Binstein's case.

"Ms. Augustine, may we now proceed? Will you be making an opening statement?" Harritty quizzed.

"Your honor....." Binstein interrupted. "May we have a short recess to..." The judge cut him short saying "You will please stand when you address this court, *sir*."

David rose, embarrassed. He knew he had to stand while addressing the court, but it wasn't second nature to him yet, and a part of him felt as if he should stay seated with his clients, a show of solidarity.

Standing, David made his request. "Given the court's ruling on the suppression motion, your honor, my clients may be inclined to want to discuss a change to their plea, and we may wish to discuss it again with the state." He looked over at Judy Augustine, hoping for support for the delay. Instead, she stood there and began what was surely a canned speech that she had given many times before in this circumstance. As soon as she began, David lost focus on the words. He slowly sat down again and found himself almost hypnotized by the sight of a large housefly lazily circling her head while the prosecutor rambled on. He was reminded of the scene in *King Kong* when the planes circled the top of the Empire State Building. Augustine had become a giant merging of the feminine heroine, the stoic NY skyscraper and the angry, monstrous ape.

He smiled to himself at his mother's advice on the phone last night. He had been telling her all about his first "case" and how he had prepared for his suppression motion. She, of course, wanted him to focus on real estate or business law and get a real job with a big firm. She was clearly disappointed that he would have such an inauspicious start. "Well, David, at least be smart enough not to wear some expensive cologne tomorrow. With the riff-raff in that courtroom, you will stick out like a sore thumb." She had opined. He had thought it was pretty dumb advice really, at least the rationale of it seemed to him to make no sense, but when he went to splash his usual fragrance this morning, he had stopped and refrained. Now, watching the fly lighting briefly then circling his adversary's head once more, he finally felt superior to her. She, with all her

experience, had probably attracted the fly with her spray of *Coco* this morning. If not for his mother's admonition, David would probably be suffering this further humiliation.

Just as the judge had uttered the expected denial of the postponement, David received an unexpected reprieve. Bunny, the court clerk, once again leaned over to Harritty and told him that the tape in the recorder had run out and they needed to take a break to switch the tapes.

"Looks like this is your lucky day after all, *Binsteen*, we will reconvene this court in fifteen minutes."

THE END

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