

THUNDER FROM HOWIE THE HORSE

No one delivered judicial thunder like Howie the Horse. He was a big man with a face fit for Mount Rushmore and an endless supply of war stories. And not just lawyer war stories, although he had plenty of those too. He proudly served in the Big One, was wounded at the Battle of the Bulge, and knew more about Von Rundstedt's Ardennes campaign than most lawyers know about torts. Lawyers loved trying cases before him not only because he had tried dozens and dozens of cases as a trial lawyer before becoming a Federal District Court Judge with lifetime tenure; it was also because he was smart, tolerant, and funny. He once told me that he loved his job because "I wake up every morning knowing that I get to tell the Government every day where they get off." My hero.

Yeah, he was funny, very funny. He was pretty compassionate when it came to sentencing too. But he was no one to mess with and he had his limits. His volcanic eruptions were slow in coming but when the acid and the ash finally started blowing no one escaped. And if the incineration of the first blast didn't do the job, the full sonic boom of his basso profundo shook what remained of your skeleton. He was otherwise, even for a judge, a fun guy to appear in front of. You just didn't want to get crosswise with him.

Bobby G. had been testing Howie's limits and patience all trial, stumbling over pointless questions and making objections based on legal theories known only to himself. Given the stakes and stories of this RICO case, where gangland bombings and hits were just part of an over long movie script, Bobby G. was pressing any luck he may have ever accumulated in his lifetime.

Bobby G. was a lawyer who had a last name but hardly anybody knew it. This was mainly and probably because it was too hard to pronounce. Or spell. Court stenographers were hopelessly

lost somewhere between the Cyrillic alphabet and their Armenian thesaurus and most judges simply went along with everybody from the coffee shop busboy to Mrs. Delvecchio, the super efficient clerk of the court who missed nothing, and everybody just referred to him as Mr. Bobby G. Even Howie the Horse, who had enough natural radar to spare and then put some on loan to NASA referred to him as “Mr. G.”

Of course, jurors and those similarly disinterested in what was going on in the courtroom all thought that the guy’s name must have actually been Gi or Gia or Gee and otherwise paid this no mind. That may also have had something to do with the fact that when Bobby G. spoke he rarely had anything of interest or intelligence to say. To anybody. This naturally was a recurring disappointment to those of his clients who understood English in the first place and this, too, was a pretty elite group. Their main and native language always seemed to be cash, a lingua franca which Bobby G. spoke fluently and understood quite well.

This time, however, what Bobby G. had just said was definitely of interest to Howie the Horse.

Bobby was summing up (brilliantly, in his opinion) and he had just said something along the lines of “If Freddie Mustico was so darn important to the Government’s case, how come they didn’t call him as a witness and you didn’t hear from him?”

Excuse me?

Those of us who had been even vaguely listening all had pretty much the same question as Howie. How could anybody with a shred of common sense, not to mention common decency, bring up Freddie Mustico?

Cutting off this Bobby G. peroration and unleashing a sudden blast of judicial thunder (while

still restraining himself mightily), Howie boomed “I’ll see counsel in chambers.”

To those of us who had previously waged battle in assorted criminal wars before Howie the Horse, this was, we knew, not just an early storm warning. This was more in the mode of the sudden computerized reverse 911 phone call informing you of the discovery of a flaming three mile wide meteor hurtling towards your house and you had, say, two, three minutes tops to clear out because your neighborhood, if not the entire planet Earth, was about to be destroyed. This was not good. Sphincters tightened and stomachs roiled. We all knew some frightening event was about to unfold. And it did.

The back story of Freddie Mustico was a pretty grim one. So grim, in fact, that it haunted Howie the Horse for the duration of his long judicial career. In their efforts to indict Mouzzone, the Feds had served a Grand Jury subpoena on Mustico on the not so illogical theory that his business as a major bookie had attracted Mouzzone’s interest and, as practically everybody knew, Mouzzone had been extorting protection money from Mustico for years. To say that Mustico was reluctant to testify against Mouzzone was an understatement. In fact, Mustico was not only scared shitless of Mouzzone (joining a fairly large group of the shitless in the Utica area), but his lawyer was equally terrified. So the lawyer goes to Howie and asks him to quash the subpoena. Recognizing that being scared shitless is not among the very limited grounds to quashing a Grand Jury subpoena, Howie explains to the lawyer that Mustico has two and only two unattractive choices: testify or sit in jail until he’s ready to testify. The lawyer is ashen and sweating profusely, not sure what is worse: having Mustico testify or telling Mustico he has to testify.

Howie remains firm and the lawyer departs. Mustico testifies in front of the Grand Jury.

A week later, a guy carrying a shotgun and wearing a ski mask walks into a barbershop and blows Freddie Mustico away. In front of his young child. The gunman goes unidentified but generally fits the size and shape of Ernie Mouzzone. Mustico had had his own cast of sketchy competitors and people who owed him money and they too could have wielded that shotgun. But most people in the know believed it was Mouzzone, someone who had benefitted bigly from the periodic past disappearances or unexplained absences of people who had somehow gotten crosswise with him.

The Feds, of course, were (to coin a phrase) ballistic and argued strongly in support of getting proof of Mustico's demise into Mouzzone's trial. But, as guilt-ridden and remorseful as he was over compelling Mustico's GJ testimony (because under the law he had to), Howie wouldn't allow the Government to introduce evidence about this awful episode. Not a provable connection to Mouzzone. Too prejudicial.

Enter Bobby G. and his special ability to step all over himself.

So, when Bobby G. started blathering in summation about where's Freddie Mustico and why didn't the Government call him as a witness, he didn't just cross the line against the rules of appropriate trial summation. He entered Howie's Valley of Death. In retrospect, "I'll see counsel in chambers" was an unbelievably restrained interruption by Howie the Horse who wasn't just outraged. He was momentarily beside himself. .

The only small degree of relief we all felt was that we knew it wasn't us, it was Mr. Bobby G. who was about to be dipped into Howie's deep fryer. Sadly, however, this near universal sense

of dread was not shared by Mr. G. whose only response to the gathering herd of lawyers trundling onto the ramp of the abattoir waiting in Howie's chambers was, "Why'd the Judge cut me off? I was on a freakin' roll. This is bullshit."

When the seven of us were admitted into Howie's chambers, he was standing, still in his robes and at his usual station, a well worn brown leather sofa with a small nubby afghan carelessly crumpled on one side and the sports section of the newspaper covering scattered and assorted motions and briefing papers submitted for Howie's eventual attention in the other. When we were lucky enough to be invited in this room at all, Howie was usually reclining on the sofa to rest his recurrently aching back (Howie said that the briefs and pleadings made an excellent lumbar support when rolled correctly) and he would be dragging deeply on a Lucky Strike. He was, of course, smoking when we walked in but most of us knew the smoke had less to do with his Lucky and a whole lot more to do with his roiling rage at what had just happened out there. He didn't sit down and he didn't invite us to sit either.

"Would you mind telling me what the fuck you are doing out there?" This was as gentle an opening as the Horse in his fury could manage. His deep, deep voice, seasoned with a regimen of Manhattans and Luckies over fifty or so years, would ordinarily have been perfect for the late night mellowness of a jazz DJ on FM radio. This time, it was simply frightening.

Tom Flannerty, who had been doing the crossword puzzle during Bobby G.'s summation, knew that he probably shouldn't have had it actually out on the counsel table while it was going on, but he also knew that the Horse wasn't talking to him so it was easy for Tommy to maintain a puzzled look. Bob Newman had been deep in conversation with his client, Ernie Mouzzone, during Bobby G.'s summation, talking about Juror #11, the one with the big tits that Ernie had been fixated

on for the past seven weeks, but Bob didn't think that Howie either knew or cared.

Everybody looked at Bobby G. who had, in the preceding milliseconds, figured out that Howie was talking to him and that the subject must have been the last thing he was saying to jury, to wit: the absence of testimony from the late Freddie Mustico.

"Judge," Bobby G. began, "it's fair comment. They didn't call Mustico."

"Well, of course they didn't call him, you stupid asshole!," Howie roared in full stentorian blast at Bobby G.. "You know goddamned well why they didn't call him! He's dead! You know it, I know it, and your weasel client knows it. Somebody wearing a ski mask and looking just like your own fucking client blew him away in barbershop in front of his own goddamned kid. And that happened right after I made him testify in front the Grand Jury. Is that news to you for Chrissakes?"

Howie whirled around as if to stalk off but then realized he was in his own chambers. He turned again and lifted the smoldering Lucky, quickly sweeping it at the clutch of lawyers before him. "I'll tell you all this, the next lawyer who brings up Mustico, I will personally cut his balls off and get disbarred! Now all of you get the fuck out of here!"

Relieved that it was over at least for the moment and that the rest of us were safe, we all started to turn away. Unbelievably, Bobby G. didn't move. Setting a new combined world record for density and recklessness, he asked, "Well, what are you gonna tell the jury, Judge?"

Howie the Horse briefly stared and said nothing, as if composing himself and his thoughts after hearing a particularly good legal point he hadn't thought of before. He lowered his voice and spoke. A slow and even distant rumble. "Well, I was considering telling them that you are perhaps the most incompetent lawyer who's ever practiced before me but that they should forgive you because you are too fucking stupid to know it. Now get out!"

This time, we all left.

It took a while for Howie to resume the bench that day.

