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I am very much complimented by the remarks of your toastmaster. I am also highly complimented that in recognition of my vast knowledge of the law your association should invite me here to speak on a subject peculiarly suited to my personality and attainments, abnormal jurisprudence. Your recognition makes me feel that at last I am becoming a lawyer's lawyer. Blessed be he who serves the poor! I shall not hesitate to speak freely.

Your program committee has specifically requested me to review a certain case I tried here several years ago, my famous case of *Daisy Whiffle v. The Twitter Bird Seed Company*. Of course, the members of the local bar are completely familiar with the details of that case. It created quite a sensation here at the time in justice court circles. As I recall I tried it in 1935. Let me see—yes, it was in the spring of 1935. For the benefit of our out-of-town guests and visitors, let me explain that that is not my most recent case, but I wanted to bring up one where I had been successful. So I am very grateful for the happy coincidence or rare tact, whichever it was, that inspired your program committee to select that old case, *Whiffle v. The Twitter Bird Seed Company*.

Although I realize that to many lawyers it is the most important consideration of all, I am not going to tell you at this time how I got the case. Suffice it to say that it came to me under rather extraordinary circumstances—practically an act of God. Indeed, if it hadn't been for the pluck and the remarkable perseverance of my client, Daisy Whiffle, a perseverance that sent her around from one law office to another even after twenty or thirty lawyers had turned her down, I might not have represented her at all. Such are the ways of chance.

The facts of the case are comparatively simple. Daisy Whiffle was a professional woman, a snake charmer in a circus. She owned in her own right a baby rattlesnake, for which she felt the deepest affection, and which she generally carried coiled around her neck. Now, on the day of the misfortune I am about to relate, Daisy was out riding in an open touring car with her beloved pet encircling her neck as usual. The day was rather wintry and as a result the little snake became cold and stiff. Daisy happened to glance down and thought the poor creature was dead. Well, horrified and womanlike, she released both hands from the steering wheel and clutched the snake to her bosom. Meanwhile, the

*Of the Kansas City, Missouri, bar. From an address delivered before the regional conference of the American Bar Association in Kansas City on April 18, 1942. Reprinted by permission from the MISSOURI BAR JOURNAL.

driver of another car, approaching from the opposite direction, in an effort to avoid a collision, drove upon the sidewalk and tried to scale an adjoining building, but gravity forced him down again in the path of the oncoming car, with the resulting collision. Neither driver was hurt, but Daisy's rattlesnake, frozen and stiff as it was, and therefore unable to relax, was fatally cracked in three places. So that by a strange twist of fate the illusion of death which caused the accident now became a hideous reality.

Now, I saw in these facts some of the elements of a perfect case. There was Daisy Whiffle, a woman. I looked at her and for the first time I saw she was beautiful—all clients look beautiful to me. There was a strong emotional appeal, a woman's love for her deceased pet. Plenty of damages—after all, you can't buy a live rattlesnake every day. But what it obviously lacked was a corporation defendant. In order to remedy this defect I took the deposition of the driver of the other car. I found that he owned his own car, that he was unemployed at the time of the accident, and that never in his entire life had he worked for a corporation. I also discovered, however, that eleven years prior to the accident in question, he had purchased a package of bird seed from The Twitter Bird Seed Company. It was a simple little transaction, and yet I thought I saw in it a sort of embryonic master and servant relationship, and I thought of that great maxim of law, *"olim proquerator semper procurator,"* or once an agent always an agent, and that other even more useful maxim, *"quid juores non facient,"* or what won't a jury do; and I knew I had my corporation hooked.

I immediately filed suit against The Twitter Bird Seed Company. This company was represented by a very able corporation lawyer, a member of what in certain respects was the largest firm in our city. I say in certain respects, because of the seventeen partners in his firm only two were actually living, so that the size of his firm depends upon your point of view, heaven or earth. But any way you look at it, my distinguished adversary, through his contacts with the departed, was in an excellent position to secure divine guidance in handling cases.

Handicapped as I was, I was confident of the result. I felt that I had in this case a natural, as we say in the law—one of those cases which comes to a lawyer, if at all, only once in a lifetime, and which, if correctly tried, brings him everlasting fame and fortune.

I waited the day for the trial with calm confidence. Only one thing happened to disturb my equilibrium, and that only temporarily. The defendant offered to settle for $10.00. Immediately I was precipitated into a great emotional conflict. Did I want a trial reputation or did I want $10.00 cold cash? That was my dilemma. For several days I was in the throes of agonizing indecision, and even now I don't know how I would have decided if again fate had not intervened, as it so fre-

quently does in the lives of men of destiny. The choice was taken from my hands. The defendant withdrew his offer! The case had to be tried.

I made no preparations for the trial. It is not my policy to look up law in advance of the trial of a lawsuit. I have learned from experience that no matter how strange and fantastic is my own notion of the law, it is safe to assume that somewhere in the reports there will be a decision that will support it. And maybe I won't have to look it up at all. I really have, I must confess, a singular aversion to looking up law. At one time I seriously considered specializing exclusively in a certain class of cases dealing with what is commonly referred to as "the unwritten law," but I didn't seem able to work up that type of practice.

For a long time I was very discouraged about my laziness—or shall I call it my love of profound inactivity? I was so discouraged that I went to a psychiatrist for treatment, Dr. Elmer Good. Maybe you have heard of him. He is the author of several well-known books, *Good on Emotions, Good on Hallucinations* and *Good on Everything.*

At first this great doctor had difficulty diagnosing my case. He couldn't locate my unconscious mind. He said he didn't know where to draw the line. But, after he talked with me a while, he said he didn't think it made any difference. Then he located my complex, the cause of my trouble. He said I was suffering from a suppressed desire to be President of the United States. Well, of course my presidential ambitions are no secret. My mother raised me to be President. I selected my studies at high school and at college with this goal in mind. And now, here I am of presidential age, fully trained and fully equipped, but there isn't any opening. And, God knows, Roosevelt may live to be ninety!

Then the doctor, this psychiatrist, told me: "In a case of an ordinary individual with such an emotional thwarting as yours I recommend a substitute activity. For instance," he said, "if a man is jilted by a girl, he marries another girl and what is the difference. Or if he fails at a profession like the law, he goes to the Lake City Munitions Plant and finds solace in the increased remuneration the government pays for that sort of work. But," he said, "when a man has a magnificent ambition like yours, there isn't any adequate substitute. And rather than desecrate such a fine, noble impulse with an unworthy substitute, I think you are justified in doing nothing."

Well, I tell you, that opened up a new world for me. To think that, like the story in the Bluebird, I should find my supreme happiness in what I was already doing—nothing! If the doctor had recommended any alteration in my character, it would have implied dissatisfaction with myself as I was, and, consequently would have been a blow to my ego. But here he was able to restore my self-esteem without prescribing the slightest change in my character.

Now, to get back to my subject—there comes a time when every

speaker must get back to his subject. We are trying the case of *Daisy Whiffle v. The Twitter Bird Seed Company.*

I didn't coach Daisy for the trial. I didn't have to. When she stalked into that courtroom with her superb animal magnetism, she was a sensation. She was dressed in canary yellow and sheer nerve. Immediately she started broadcasting certain feminine psychical waves that made contact with the jury and the judge with devastating effect.

As I recall she was rather quick at repartee, too. I remember one instance in cross-examination. Opposing counsel, trying to ascertain the market value of her dead rattlesnake, very properly asked her whether it was a male or a female, and she turned to him and said, "Sir, that is a question which should be of interest only to another rattlesnake."

But I know this learned audience is interested not so much in the wit and humor displayed at the trial, as in the judicial significance of the case itself, and its place in the history of jurisprudence. I don't think there is any case that has gone as far as this one to clarify the law of negligence relating to personal injuries.

The judge issued only one instruction, but it was unusually lucid and comprehensive. He charged the jury in effect that, "If you find from the evidence the plaintiff was a woman and the defendant was a corporation, your verdict will naturally be for the lady." And it was. But isn't that a masterful instruction? Doesn't it completely express the realities of modern law? The law is ever striving for certainty and simplicity, and there we have it in that simple little instruction.

I believe we have here tonight several educators, several great law teachers. I wish they would read the opinion of the justice in this case, *Whiffle v. The Twitter Bird Seed Company.* Let them read and reread it, and go back and tell it to their students, because, if they will pardon my saying so, it seems to me that our young law graduates commence the practice of the law with a most grotesque conception of what constitutes the law of negligence. In their misguided zeal, they will read a great mass of authorities, trying to ascertain what a certain mythical figure they call the reasonable man would do under these or those circumstances. What an unnecessarily tedious way to practice law! They are also mastered by a fear, amounting almost to a phobia, that there won't be sufficient evidence to take the case to the jury. Let them cross that bridge when they come to it. There are lawyers who have traveled for years without sighting the bridge.

Now, in closing I want to point out that, if there are present here tonight any unusually erudite individuals, students of higher jurisprudence, who want to consult with me in private after the program is over, I shall be happy to place my learning at their disposal. It is my considered opinion, based on a certain amount of actual experience, that I am not likely to be invited back again, and I want to do as much for them as I can while I am here.