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## **BROTHER AND SISTER AT THE BAR**

**By Tony Covatta**

Lawyers generally appear self-assured but are prone to anxiety. An inside joke—the too busy lawyer fears malpractice; the idle lawyer bankruptcy. Solo practitioner Paul Martino, alone in his office, was idle and worried about it when his phone rang one afternoon. That call brought him into, out of, and back into the life of Herb English, non-lawyer son of Herbert Denver (“HD”) English, dead now, long ago a querulous, bad-tempered local barrister. Another lawyer, Astrid Martino, Paul’s daughter, told me this story. Her father’s finest hour, she said. She worked with me for some years before the events that follow.

One of HD English’s surviving partners wanted to make a referral. English’s two daughters had hired a hot shot lawyer to sue their mother and their brother Herb. Mother and brother were sitting on the trust HD had set up as co-trustees. The girls were seeing neither reports nor money. They knew nothing of the trust’s value, its earnings or expenses.

All these lawyers!—"Everybody hates lawyers." That's how I start to deflect frustrated clients angry with some opposing lawyer or me but dodging personal responsibility for their self-inflicted wounds. Just blaming someone else? Life is seldom that simple.

Paul had seen cases like this before. Sisters suing mom and brother. It had the ring of low life cupidity that enlivens dreary everyday practice filled with helping the thoughtless repair things after making stupid mistakes. The mother was now pushing ninety. Bachelor Herb was in his early sixties. They had lived together in the family home for Mother's entire widowhood. Herb was unemployed. His sisters had left Cincinnati. Mary Rojas, eldest of the siblings, was an artist in New Mexico. Nancy Knapp, a few years younger, ran a produce business with her husband Arthur at their farm in the Ohio heartland.

Paul was a precise, thoughtful, private workman. He habitually worked alone. He would never take a case without research, carefully taking notes at the site, getting a feel for scene and characters. Herb and his mother lived in a nondescript ranch house in middle class Montgomery. The Englishes had moved there just after the 1968 Cincinnati riots. Paul wanted nothing more to do with "them." Safe from inner city fires, gunshots and mayhem Montgomery would provide a staging area for evacuation to his Highland County farm when it became necessary.

Paul was a snappy dresser, striped three-piece suits and tasseled loafers, colorful ties and dark wavy hair combed back. He looked the sharp lawyer, and a bit out of place, as he approached the English house the first morning. Herb answered the door, tall, tousled graying blond hair, attired in the frowsy white oxford cloth open collared shirt over his middle age paunch and unpressed khaki slacks he wore as long as he could dress himself. Paul met the aged Dorothy English, in her floor length dark cotton house dress, sitting alone in the den. It took Paul

perhaps ten seconds to twig to Mother English's deep dementia. Herb did all the talking. Dorothy punctuated with occasional nod or mutter of what may have been assent.

Herb presented immediate issues. He gave Paul a high decibel basso profundo tour of the house's two stories and basement crammed with bulging filing cabinets, tottering stacks of papers, and an aged copying machine, HD's diplomas, admission certificates and bogus honors covered all available wall space along with pictures of HD's graduations and group photos from the Bar Association's annual dinners. Mother and son were living in a shrine to the dead HD English. Herb was chief vestal, keeper of the flame. With stiffly formal stationery, dowdy filing cabinets, and a crude stab at voluminous record keeping, Herb presented himself in the form of the lawyer he had never become. Strikingly absent were any relics of the life or achievements of Herb, Dorothy or the daughters.

Herb was going to be a difficult client. He did no listening and had reduced daily life to rote repetition of meals, rare shopping excursions, newspapers read, television watched, all in unerring never changing patterns.

At that point Paul did not think beyond the usual motive, money, for reasons why Mary and Nancy would sue their mother and brother. At preliminary conferences Paul could feel their hostility, not only for their intractable brother—and perhaps even their mother—but also for him. Without realizing it Paul began to return their gratuitous hatred. He dropped his customary air of basic civility. No how-are-you handshakes, no holding doors, no affable goodbyes. Smiles and smirks at every stroke of discomfort his speech and actions inflicted on the sisters, whom he insinuated were selfish, grasping, thankless children. It was not his job to make their lives easier. He didn't.

As the trial itself approached other problems revealed themselves. Herb was an engineer, with a degree from Ohio State. He had worked for public utilities, retiring early to tend to ailing father and unambitious mother. While Herb proclaimed that he paid his mother rent, he produced no supporting receipts. Herb was defensive about his documents, missing or otherwise. After argument and foot dragging delay he turned over a battered banker's box of unassembled documents for Paul to reconstruct. Personal receipts continued missing, but more important, nothing identified what securities comprised the trust or showed its performance over the years. When Paul quizzed Herb about this, the disconcerting truth emerged.

The trust holdings had not changed since HD's death. Over the decades, through wars, riots, floods and epidemics, good times and bad, Herb had done nothing. The antiquated portfolio was worth a few million dollars, but had clunked along, earning only a fraction of what modern holdings could. If it had been good enough for Dad, it was good enough for Herb. The sisters had hired Dwight Grossman, one of the city's top investment advisers as expert witness. Dwight, who hailed from London, Kentucky, not London, England, nevertheless made a strong impression on the witness stand. Dressed in a Savile Row suit he was always prepared, bearded, benumbed, and, with his hint of an upper-class English accent, just a little condescending to the opposition. Judges loved him. How was Paul going to rebut Dwight's withering, scornful arguments of breach of fiduciary duty?

His plan emerged from a cluster of simple ideas. While the trust nominally benefited the whole family, the primary beneficiary was Dorothy. Over the last twenty years at least her expenses were minimal. There was no capital outlay. The Highland County farm and town house were debt free. A fleeting glance at the house's peeling paint and faded weatherboard showed

that little had ever been spent on it. Paul had yet to see the farm but could not imagine that anything called upkeep had occurred there either.

Painful discussions with Herb revealed that he did not spend the trust's entire meager income. Dorothy and he lived frugally. The big event of the week was the trip to Applebee's on Friday evening, where Paul could imagine Herb making a production out of picking up the check, source of funds unknown. The main purpose of the trust, to care for Dorothy, was fulfilled. Incidental expenses to feed and shelter Herb might be ordinary and necessary outlays. At least that is what Paul hoped the Judge would think.

Perhaps this is what the sisters wanted, thought Paul, to see what Herb was spending on himself and how he was otherwise wasting their ultimate shares of the inheritance. The girls hadn't seen a penny of the family fortune since the death of HD and probably hadn't seen much while he was alive.

Knowing that the judge didn't enjoy deep dives into the emotional miseries of families, Paul deftly narrowed the issues to one: how do we take care of Mom? If the trust is devoted to her benefit and she wants for nothing (unsaid: because she wants nothing), then what's the problem? We adopt the old principle of the law: "If it ain't broke, don't fix it." When Paul unpacked this bon mot in court, worldly wise Dwight noisily dropped his Mont Blanc pen and clasped his forehead with both hands. He knew he had been dealt a low blow, an off ramp that the journeyman judge well might take instead of making difficult decisions. The rest of the way Paul beat this tired old drum shamelessly. The trust was functioning just fine. "If it ain't broke, don't fix it."

Paul pushed this hoary chestnut across the finish line past Dwight Grossman and the admittedly sharp Carolyn Denton, his opposing counsel. The judge bought it. Sharply dressed

and shapely Carolyn and the dowdy, cranky sisters, lined up like two vultures and a swan at counsel table, had also made one huge strategic error. They insisted on calling Dorothy to the stand. The frail old lady, still attired in her house dress, had trouble enough finding her way to the witness box. Carolyn's direct examination lasted three questions—name? address? were you the wife of . . . ?—before Dorothy started screaming that she did not want to be there, that she wanted to go home, that she did not want to be there, that . . . Unable to hide his distaste, the judge declared a recess, directing Carolyn, in something louder than a whisper, to “get that woman off the stand.” The proceeding never recovered. When the written decision arrived, the judge had removed Dorothy from co-trusteeship, confirmed Herb as sole trustee, and summarily dismissed all the sisters' claims. Against formidable opponents, Paul was happy to win one for Herb, but pitied his lonely, thankless life as he shook hands goodbye.

Dorothy died just before reaching the century mark. She was buried in the family plot in Highland County. Paul learned this when he took Herb's call and hesitantly accepted engagement for the inevitable struggle over dividing the trust. Paul was chiefly a courtroom lawyer. He could do family negotiations like this one, but he found them distasteful. And this parting of the ways was distasteful, difficult and sad. Herb wanted no division, only to continue administering the trust with the same splendid care he had shown the securities. Why would his thankless, disloyal sisters disagree? Paul saw that the emotional fissures were deep. Baby boy Herb must have been the favored child. HD's latent misogyny toward his daughters, perhaps toward his bland wife as well probably contributed to the girls' having left home and Cincinnati.

It took all Paul's skills to work things out. Money divides by three. But the house going to Herb and the farm to the girls was a bitter pill for Herb. Like a fly caught in ancient amber, Herb could not change, his life the immovable, irretrievable past. He grudgingly gloomily

assented to the split. One cloudy day, under Paul's uneasy supervision, the girls took their skimpy share of personal property from the house—personal items of their mother's, a doll house, a few sticks of furniture, loaned photographs to copy at their own expense. Then all drove out to the farm where Herb got an equally sparse distribution. Paul was there, observing Arthur Knapp, Nancy's husband, serve as referee. Paul immediately liked and respected him. Art saw things fairly, He cheerfully refused to be drawn into invidious discussions. Largely because of his participation, the day went smoothly. Paul said goodbye that night to the whole lot of them, he hoped forever.

As the years went by. Paul heard little about Herb. While he still got more than his share of “interesting” cases there were fewer DUIs, fewer family tiffs between redneck fathers and pimply faced suitors of their teenage daughters. When these cases appeared, Paul would either simply reject them, or pass them along to his daughter Astrid. Such referrals soothed one of the rough patches in Paul's conscience. He needed to work alone but regretted that he had not included Astrid in his life more. She was as gregarious as Paul was solitary, as social as he was a loner. A handsome, athletic young woman toned and tan, she jogged, played tennis and pickleball and was part of every important social group in town. That included the Montgomery Women's Club,

Astrid stopped by his office one afternoon on her way to a Women's Club meeting with news of Herb English. She had been fascinated with the English family struggle and Paul had not been bashful, crowing about his victory. Montgomery was abuzz with news and rumors about Herb. He was neither paying his bills nor answering the phone. His municipal water had been cut off and neighbors saw him carrying buckets in from a creek running through his backyard.

Electric service would stop in some days according to the sign posted on the door. Paul was in one of those slack periods when bankruptcy loomed. It occurred to him that he could do something for Herb that would also profitably fill hours in a lean year. He hesitated but only a moment before deciding to go out to Montgomery to check things out. Astrid decided to tag along.

When Herb answered the door for Paul and Astrid, Paul thought he saw Herb's regarding him as a savior, someone who could get him out of a tight spot. In only a few days, wrestling with bureaucrats over the phone and in person, Paul got Herb's water service restored--no more creek water--and forestalled the power shutoff. Paul enjoyed such administrative chores but saw too little of them in his trial practice. It took longer to untangle the finances. Herb had stopped paying bills and depositing checks six months before, perhaps as the result of a stroke. Here Astrid came in handy. Paul saw right away that her spontaneous, easy charm went down more easily with Herb than his own no nonsense approach. She had a nice touch with Herb. While Herb would never articulate it, he reached for his checkbook much more quickly responding to Astrid than to Paul.

Rooting through the accumulated mess in his basement-wide office required paralegal help. Or Astrid, who could use the work. Tossing excess copies of years of correspondence, the hundred or so plastic empty gallons of skim milk and an equal number of empty vanilla ice cream cartons wasn't easy either. Herb had to be lured to another part of the house so he would not see the empty containers and copies spirited out to the dumpster on Tuesday mornings. And on those occasions when he noticed, shouting, chest pounding, terrible displays of meaningless anger ensued. This cowed Paul's assistants. The rescue crew gradually boiled down to only Paul

and Astrid. She took an empathic, unlaywerly interest in the stricken Herb, now not so much client as patient.

Paul and Astrid interviewed maid and caregiving services, patching together a plan for Herb's care and comfort—none of which was accomplished without loud, senseless objection from Herb. Why did Paul not probate Herb, seek to have a guardian appointed? He would have lost control of the case, not to mention the fees. A more direct reason—no one who knew Herb wanted him, as his guardian or not. His few friends seldom appeared. His sisters had nothing to do with him. Taking Herb under their wing was the only practical thing to do. Paul lived alone in the house. Well, there was the cat Astrid found him. Astrid and Paul each visited weekly on separate occasions. Paul received sizable fees for supervising Herb's upkeep, passing a share along to Astrid. He placed Herb's stock portfolio with a reputable Cincinnati investment firm.

Paul suggested as clearly as he could that Herb consider changing his will, made when he was in his teens, drafted of course by HD. Upon bachelor Herb's eventual death, his estate would go to the hated sisters. Herb could not galvanize himself to change the will. As Herb's lucidity declined, the prospect of change disappeared. Meanwhile, after consulting authorities, Paul kept the sisters informed of Herb's general condition, the decent thing to do. They were interested in that much, and it involved no betrayal of client confidences. At this point Herb had no confidences to share.

Beside the consolation of his own fees, Paul was pleased to involve Astrid in this nice piece of business. Giving her the opportunity to care for and emotionally support the more and more benighted Herb, so much the better. She was clearly more suited than he to the human tasks involved in caring for a helpless aging man. Here she took the lead. Before, Paul had not seen it so clearly. The girl had a nice touch, befriending caregivers, dealing with the other personnel

involved in Herb's care, with Herb himself. A series of falls, a broken hip, trips to hospitals and rehab centers led to eventual stabilization in a care facility.

Sister Nancy and Art Knapp reappeared. Astrid chaperoned their visits and became an amiable acquaintance. Nancy fell into the habit of bringing fresh eggs, onions, asparagus and lettuces from the farm for Astrid and Paul along with her delicious chocolate chip cookies for her brother.

Eventually the final call. Paul contacted the Knapps, who quickly made arrangements for removal of Herb's remaining possessions from the nursing home and the funeral. Herb was back in the family.

Paul initiated an estate file. He informed the sisters, much to their surprise, that they were Herb's co-executors and sole heirs of an estate amounting to some millions of dollars. They needed to choose a lawyer to handle things. While this could only have been happy news, the response was ominous silence. Of course, Paul wanted the work. It would generate a pleasant fee. And if not for him, why not for Astrid? After a few days of silence from the sisters, Paul fought off his better instincts and called the Knapps. Art told him the girls were having difficulty deciding how to proceed. While Art admired Astrid and wanted her to administer Herb's estate, the sisters themselves would decide.

Herb's funeral and interment in Highland County loomed when Art finally called. Mary insisted that the estate go to the successor of Carolyn Denton, who had moved on to a large Chicago firm, a young lawyer named Mirka Slavic. Paul was displeased for himself and more so for Astrid, to whom he had to break the news. Her level of disappointment surprised him. He did not think her feelings stemmed so much from the financial loss—although he sensed that was

part of it—as from a sense of entitlement. It was she who had led the motherly charge of caring for Herb during his final years. Couldn't there be some recognition of that?

Paul had similar feelings. But a voice from deep within took him back to those days in the courtroom, when he had taken pleasure in torturing Nancy and Mary, who—now he saw it—had somehow wanted to establish even minimal contact with their aged mother and crazy brother.

The wake of Herb English took place on a sweltering Saturday afternoon in a stuffy funeral parlor in the Highland County seat. Astrid and Paul were there. Mirka was not. Nor Mary. Father and daughter knew almost no one but together did their best to make small talk with the smattering of friends of the Knapps' and childhood acquaintances of Herb's who stopped by. After hours of tedious but mannerly display, all repaired to the county cemetery for a lengthy burial ceremony under searching sun, with military salute. Who knew that Herb had been in the army reserves?

Driving together back to Cincinnati, disappointed Astrid noted caustically the absence of counselor Mirka—not there to console Nancy, if not in Nancy's grief, at least in Mirka's gratitude for a nice estate, minimal work for handsome fee. Paul apologized, wishing he had beaten the sisters all those years ago without so much visible glee. Maybe the girls' finally coming into two thirds of the estate their unloved and unloving father had not designed for them would salve their wounds. Not a bad thing. Paul was lucky to have failed there. He had made that part of the world a better place. Paul remarked that much of the sorrow and dysfunction they had witnessed must have stemmed from the febrile brain and dictatorial manner of HD English.

Astrid thanked Paul for caring. She too was sorry about Herb's wasted life. She did not share more of what I sense was an emotional exchange with Paul. She did tell me that Paul asked her

to dinner with her mother and him that night at Winslow's, a roadhouse they all enjoyed. She turned to her cell phone to make the reservation.

As Paul settled peacefully into the drive home through the southern Ohio farmland, Astrid on the phone, coats and briefcases in the back seat, his remaining thoughts may have fixed on the years of helping Herb through the mess of an inadequate life. He may have wondered why he had endured the rages and intransigence, the many visits to comatose Herb in the nursing home. Other work always came along. Most of this job had not been trial work, his primary passion. Had what he had done been at least partially for love of his daughter, or just for money. Had something in Herb's futile lawyer-like display, his hopeless emulation of a distant father connected him with Paul from the beginning.

Astrid regained his attention. "Dad, we've got the res—7:30. I can't wait."

"Well done, sugar. Your mother will be pleased. A nice way to end a difficult case. Who knows? Maybe we can do something like this again. Let's look forward."

They did. But for the moment they had the pleasant car ride together, father and daughter, brother and sister at the bar.

THE END