

A Day of Legal Bungles

A fun-damental factual fictional story
about things that go wrong, and the legal solutions
for making them right

By J. R. Wilder

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Dedicated to R. L. Wilder

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Preamble

“As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession...and work to strengthen legal education... .

In addition, a lawyer should further the public’s understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.”

*Rules of Professional Conduct, Preamble:
A lawyer’s responsibilities, Indiana Code, Title 34*

Disclaimer

This book is not intended to provide legal advice. The story takes place in the past. The law is current as of when the book's story took place. The law is constantly changing. Consult a licensed attorney for legal advice.

Preface

My intention in writing this book was to fulfill a dream I have had for the last twenty years (ever since teaching a first year law school legal writing course) of writing an educational book on legal subjects for consumers. The final product has a slightly different twist. I have written the book for lawyers, law students *and* the general public about the legal challenges that lawyers face, both when representing clients and in their own lives. The work is fictional, and is the quirky result of my imagination, and that of my story consultant, Anne Murphy. I am tired of the lack of public gratitude towards the legal profession, as indicated by lawyer jokes. My intention is to show a more sympathetic view of lawyers.

The book has been fun to write. It has made me chuckle many times. No client confidences have been revealed in the book. All characters and events are fictional, although the law is accurate to the story. Any resemblance to real people or events is unintended and is merely coincidental. Although several people have helped me successfully complete this book, I retain sole responsibility for the contents.

The source of most of the material in this book is selected sections of the Indiana Code. You can find these laws on the Internet at www.indiana.gov.

The book is comprised of dialogue between characters and a narrator (me).

I hope you enjoy and learn while reading the book. I hope you will contact me to share your thoughts.



Jill woke up to sunshine coming through a crack in the blinds. It was a Tuesday morning like any other, except she noticed the smell of dirty socks as she worried about taking today's torts exam at school. Jill leaned over to check the clock on the small table. The bed took up nearly the entire room. It was 7:05 a.m. She saw the socks lying near her on the blue and green comforter. "Jack!" she yelled, "you left your dirty socks on the bed!" Through the thin wall she heard Jack sing back to her: "Honey, I love you. I'm shaving right now. I'm keeping my eyes on the mirror." Jill thought about how to handle this. This was about relationship maintenance. Should she accept that Jack the lawyer drops his dirty socks wherever he pleases?

Jill sank back into the sheets for a moment. Torts, torts everywhere. All she could think about was people carelessly making mistakes and hurting other people. That's what a tort is. Sometimes they did it intentionally. *Some people refused to admit or pay for their mistakes, so you had to pursue them in court.* Jill stroked her striped dusty-colored cat, Beijing, who started purring. Her other cat, Tibet, was swatting at Beijing's tail. Jill thought about torts and realized that all her studying had caused her to be consumed by law. She looked forward to classes being over.

After a quick breakfast of muffins and apple butter with Jack, Jill began writing the day's entry in her journal while Jack went back to shaving: *One day, when I was eight years old, I answered the telephone. The moment after I said "Hello," an adult female voice on the other end said,*

"Mr. Tadd, Mr. Tadd, Joe beat me." I don't remember the rest of the

conversation. My dad took over the phone call at that point. I remember my dad saying that no-fault divorce was unfair to women and was causing hardship and tragedy.

As women became established in the workplace, they started filing for divorce, just like men. No one challenged the wisdom or legitimacy of divorce.

Dad practiced law when few lawyers advertised on television. I went with my dad to the county jail to visit a client. Inside the jail cell, someone had written on the wall "Call Mr. Tadd, phone #."

Suddenly Jill's reverie was shattered by the sound of breaking glass. Jack stuck his bleeding head out of the bathroom door frame and said, "Call Mr. Rentworth. Tell him he needs to fix the mirror before I shave for my next trial, or he may be the next defendant."

Jack told Jill that he was shaving with his electric razor, and suddenly there was a flash of light and the mirrors on the wall broke. The falling glass struck him on his left ear, cutting it slightly. Unfortunately, it was a place that bleeds heavily from a small cut. Mr. Rentworth lived next door. He heard the glass break. Jill ran to get him. Jill started to explain to Mr. Rentworth what had happened. "Your name is not on the land contract (a contract to obtain possession of a house immediately, and to obtain the deed at a later date after the full amount of monthly payments is paid by the buyer to the seller) and this is none of your business," he shouted at her. Jack piped in but Mr. Rentworth said, "You accepted the house in its present condition. You broke the mirror so you fix it."

Jack had a trial today. He was already late. Jack thought, *Only judges can be late*. In a hurry to get to his car, Jack put his dirty socks back on. Jill smiled. She called her mother on her cell phone. "Oh yes, the first week living with Jack in his house has worked out pretty well."

As he drove to work, Jack missed Jill. He, too, worried about her torts exam. Jack thought, *I want Jill to practice law with me. We'll get married on the day she is sworn in. No other couple has done that*. Sitting at a long stoplight, Jack dialed Jill's number. Jill saw who was calling and answered the phone. "Jill Bungle," she said. Jack's face lit up, as if getting a green light.

"Honey," he said, "here's a review for your exam. Laws are to make the world sensible and orderly, but that's only until the next case comes along, because people are constantly finding new ways to offend. There will never be enough lawyers to keep up with it. Some people may have to simply live with the problem, or find non-legal

solutions. Remember, lawyers aren't miracle workers."

Jill countered: "I know, the law is really a roadmap to finding creative solutions to problems. The law, ideally, should be self-executing. If everyone knew the law, and followed it, civility would increase. The costs from peoples' misbehavior would decrease. Regular people need legal education but lawyers have never promoted it. They want to keep the field to themselves. When your son gets a little older, he should take classes on the basic foundations of law that are taught during the first year of law school. This is the general wisdom of common law handed down from courts for centuries. You know, I mean torts, contracts, property and criminal law. The widespread study of torts (peoples' duties to treat other people with care), contracts (peoples' promises to each other), property, criminal law, legal writing, and legal procedures (rules of civil and criminal courts) would help people develop that rich dividend of civility. If a few legal electives were also offered, such as wills and trusts, and environmental law and constitutional law, our lives would work better. People would be happier."

Jack agreed. "Yes, you're right. The main purpose of the law is to promote certainty in people's lives. But, in reality, it puts you in the ballpark. No one controls how quickly the players run around the bases, or how well they hit; or, if they drop the ball."

It occurred to Jill, *I've never considered law to be a sport*. There was silence. Jack said to Jill ruefully, "If you read the Indiana Constitution carefully you'll see why our society is so litigious and law-oriented. The constitution creates individual rights and mechanisms for making laws. It establishes courts that are available with few barriers for speedy use. There is emphasis on commerce, education, and religion. There is no reference to family."

Jill heard screeching tires, a bang, and the phone went dead. She sent Jack a text message: "What's wrong?"



Jack was driving the younger of the two twins, Ramona. The twins were Jack's 1966 and 1967 red Ford Mustangs. He saw the green light on the traffic signal and then he noticed his client Melanie standing in front of the courthouse, and he started braking. The car behind him rammed into Ramona, who grazed the car in front, with the angle of a pool ball off the bumper. Ramona veered across the center line, on to the courthouse lawn and hit the barrier surrounding the statue of lady justice near the building, triggering an evacuation. After she came to a stop, Jack wondered why Ramona's airbag didn't deploy. Then he remembered that airbags hadn't been invented back then, although the single bar suspension on that year's Mustang made it unstable in a wreck. Since Ramona's door would not open, Jack broke the glass to get out. He tore his clothes as he climbed out. "I can't believe I did this to Ramona!" he yelled. "You did this!" he corrected, glaring at the driver in the rear car. Jack was visibly agitated. The other two drivers had started talking to each other. They kept their backs turned to Jack.

Thoughts started bubbling inside Jack's head. *When only a vehicle is damaged, each driver must give the other driver his name, address and registration number of the vehicle, and driver's license if requested. If a person is found to be driving without a valid license, the case will be forwarded to the prosecutor's office. If they don't have insurance, their license will be suspended.*

Jack called an attorney friend, Karen Coelho. Luckily she answered. "What's wrong, Jack? You never call me in the morning."

"Even though it's only 8 o'clock, this is what daylight savings

time has done to my schedule. You're not going to believe this. My car just crashed in front of the courthouse. I'm afraid I need you to call the court clerk in Superior I and tell him what happened. Tell him I'll be late for the early bird court session."

"That's no problem. Are you okay? Should I call 911?"

"Yeah. Oh, never mind. The police just arrived. They were parked at the Subway."

"Subway?"

"The restaurant. There's a news crew. My ex, who works at the TV station, found out about this from a video cam that recorded the crash. The courthouse evacuation was fair game for news."

"Stay calm. Let me tell you a few things you need to know before you leave the scene. Was anyone injured?"

"I'm not. And the other two guys are standing up talking."

"Okay. If there's no personal injury, you're lucky. Let's hope nobody claims injury later. Ask to see each driver's license and proof of insurance. Write down each license number and policy number. Write down addresses and phone numbers. Remember to carry a spare notebook and pen in your glove compartment for times like this. Get the car registration information, too. The law says the drivers must give you this information if you ask. The police will help you."

"My clothes are a mess," said Jack. "This day started out so well, except for a broken bathroom mirror."

"Don't feel bad. If this is the greatest risk you face all day, you're home free."

"I'll call that number on my insurance card right now. Let me do a three-way call. 'Hello? I'm reporting a claim.'"

"What is your policy number?...I'm sorry to tell you that your policy lapsed on December 10th."

"That was yesterday. Why?"

"Non-payment of premium."

"That's not possible. I always buy the cheapest insurance, Karen. All of the policies are approved by the state regulators. They are generic. The companies price them differently because of their own internal costs. But I'm sure I was paid up."

"Maybe you got the cars mixed up," Karen responded. "Your two red Mustangs look just alike. Pay the premium today and get the policy reinstated. It should give you continuous coverage. If not, file a consumer complaint with the state department of insurance."

"Of course the insurance company will resist this when a claim

has been filed for a collision occurring after the policy was cancelled,” she added.

“I’m the claims representative. May I say something?”

“Go ahead,” Jack said.

“The computer says we sent you a notice of cancellation a week ago.”

“The law requires a 10-day notice for non-payment of premiums. I never got it,” said Jack.

“We’ll see what we can do. Were you at fault?”

“No, of course not,” Jack asserted.

“Go ahead and process his claim,” Karen said. “I’ll send a follow-up letter for you, Jack.”

“Thanks, Karen. Goodbye.”

“As your claims representative, I need to know if you made a statement at the scene.”

“Oh, I think I yelled something,” Jack admitted. “It was like when you stub your toe. I said I couldn’t believe I had hit my car and that those guys did this to me. I guess I should apologize.”

“Jack, I’m still on the line,” Karen said. “That’s an excited utterance. You know the rules of evidence. It’s admissible against you even though it’s an out-of-court statement. Most statements like that, of course, are hearsay. They aren’t allowed. But this is considered more credible since you made it immediately following a traumatic incident. It gives it some truth.”

“Truth of what? I was just upset looking at my car. My car has a name. Not that anyone else cares.”

“Jack, remember who you are,” Karen said warmly.

“I have to go now,” Jack answered. “The police want to talk to me. I’ve gotta ask the other guys for their information before they leave. Everyone’s in a hurry.”

Driver number one came over to Jack and said, “I hope we can settle this. Do you need help?”

“You obviously know you can say that without admitting anything.”

“I didn’t know that,” the driver said.

“I’m from the local police department,” said the officer. “I need to see your driver’s license and insurance card. All of you.”

Driver number two said, “I lost my license because I’m behind on child support. I *have* to drive because I can’t afford to miss work.”

Jack’s phone rang. “Karen, thanks for calling back.”

“Jack, I just talked to the general counsel at your insurance

company. He said they will reinstate your policy. What does the police report say?”

“It’s not available yet,” Jack responded. “The skid marks indicate the guy behind me was at fault. He said he’s going to challenge the police report, however. He says the officer wasn’t there to witness the accident so the officer’s report is invalid.” The words ached inside Jack’s head: *My client Melanie was probably a witness.*

“The best the other driver can do is use a rebuttal witness from the scene of the accident to challenge the police report,” Karen responded.

“One of the drivers doesn’t have proof of insurance and the other doesn’t have a license,” Jack added.

“You have uninsured motorist coverage.”

“I want my car repaired.”

“Your insurance company will pay you and sue the other driver. You don’t have to bother with filing the lawsuit yourself,” Karen explained.

“Thank God I wasn’t at fault. I had one of those accidents once. The insurance company lawyers sold me down the river. It was unethical. The ethics rules say that a third party, such as an insurance company, can pay for your attorney, but that the client still has the power to control how the attorney handles his case. It was *my* case but *they* controlled it. The way they get around the ethical rule is by exercising their right of subrogation. That means that after my insurance company agreed to defend me with their company attorney under my coverage, and to pay the other party if I was liable for his loss, they pursued *my* case as if it was *their* case. They stepped into my shoes. They decided I was at fault and settled. That’s the way it works. You can’t fight the insurance companies.” After looking at his watch, Jack said, “Karen, thanks again. We’re lucky we can barter our services. Now I have to notify the courthouse that my car hit their property.”

“Talk to you later, Jack. Don’t forget, if there is more than \$750.00 in damage to a vehicle, you must submit a written report to the state police within 10 days of the date of the accident.”

“Mr. Bungle, one more thing,” said the claims examiner. “One of the drivers has reported severe pain in his abdomen. It may just be a soft tissue injury. The adjuster will review medical treatment records. They will evaluate records of lost wages from work missed due to the accident and personal injury. Normally a claim may reasonably take up to 30 days to settle. A personal injury claim should not be settled until the patient has completed his medical recovery.”



Jack walked his two feet to the courthouse, hoping he wasn't late.

During Jack's insurance claim discussion, Melanie was standing in front of the courthouse on the tree-lined street talking with the opposing counsel. Her long blond curls had been magnificently coifed into a mountain of hair, using clips with painted miniature wildflowers of many colors. Her legs displayed a long flash of flesh due to an unusually short skirt. She wore a new outfit that made her look more stunning than ever before. She attracted the attention of Attorney Manion like a bee to nectar. Melanie was Jack's old flame.

After the wreck, Jack tried to remember if he and Melanie had started seeing each other before or after Jack began representing her. *The disciplinary rules say that I may not have sex with a client unless there was already a consensual sexual relationship when I became Melanie's lawyer. That would be messy to prove one way or the other. Thank goodness we ended the sex. Now we have a strictly lawyer-client relationship. Melanie is showing personal interest in Manion. If Melanie is happy with a new boyfriend, she's less likely to report me to the disciplinary commission. She must like lawyers.*

Although Melanie could see Jack across the lawn, she coyly called him on her cell phone. Jack's phone rang, and he acted like this was normal behavior. "Hi, Melanie. I've been waiting for your call."

"Jack, I have to keep my voice down. I'm talking with the opposing counsel, but I've turned my head away to call you. Isn't there some rule that he isn't supposed to flirt with me? Or at least not talk to me without you being here?"

Jack responded, “The rules state that a lawyer may not communicate with a person known to be represented by another lawyer, for the purpose of addressing the issues in a case.”

“His name is Frank. We’re not talking about my case. He laughed and said he’d call me if he needed any more information about you.”

“Why about me? I’m not part of the case at all. Did he try to give you any legal advice? It would be unethical if he did.”

“We were kind of thrown together due to the commotion.”

“Commotion?” Jack inquired.

Melanie said, “Some idiot’s car hit the statue right outside the building. We evacuated the courthouse.”

“Oh,” Jack stammered. Then he continued, “What did he want to know about me?”

“I’m trying to remember what he said,” Melanie responded.

“Don’t talk to him again—at least not until the case is over,” Jack admonished.

“He was just the guy standing next to me. We were like a herd of animals standing close to keep warm. Then we were called back in by the bailiff. It was a short conversation.”

“Did you learn anything?”

“About you. He said he did a Martindale-Hubbell search. He apparently wanted to psych you out. He said you attended Wabash College. You were on the debate team. You transferred from Wabash to DePauw, so you could study with girls. You graduated from IUPUI law school and were active in a student-run legal clinic for poor and homeless people in Center Township.”

“He probably thought the case would settle,” said Jack.

“You mean he wanted to be chummy and talk about something common in your background?” Melanie asked.

“Maybe. What did he say about my legal assistant, Jill?”

“He said he thought you two were an item,” said Melanie.

“So...?”

“He wanted to deal with you, not Jill.”

“That’s because Jill is not an attorney yet,” Jack said.

“I don’t think that’s the reason. He checked Jill’s background, too,” Melanie added.

“He probably knows more about Jill’s background than I do. I’ve always taken her at face value. I never took an application from her. A background check on a significant other is useless and misleading at best,” Jack said.

“Frank says Jill has an unstable background. She grew up in Evansville.”

“Is that all?”

“She had no extracurricular activities listed in her high school yearbook,” Melanie added.

“She was taking care of her alcoholic parents,” Jack said.

Melanie continued: “She attended UC Santa Barbara and took a year off to surf. Six years later she got her degree from UCLA.”

“Riding a surfboard is unstable,” quipped Jack, with a smile. “She started at Fordham law school in New York but dropped out before the first semester ended,” Jack continued. “She then worked in Boston and in Washington, D.C.”

“Frank said it was odd that she moved back here and thought she could fit in doing bread and butter legal cases,” Melanie added.

Jack responded, “Jill wants to experience a normal and ordinary life. She likes the IUPUI law school and she decided to give a legal career a second chance. She can work during the days and attend law classes at night.”

“We’ve been talking for five minutes and we haven’t talked about how you are. I need a report,” Melanie asserted.

“You saw the car in front of the courthouse?” Jack asked.

“Yes. So?”

“It was mine. They just towed it away,” Jack admitted.

“Are you OK?”

“Oddly enough, I hurt my tailbone. The shock traveled down my legs.”

“Is this a good time to talk about my case?” Melanie asked.

“Probably. What’s on your mind?”

Melanie said, “I’m expecting this verdict to be my future income. You know, so I can be free to travel and maybe write a children’s book. I want to take a class at the art center so I can do my own book illustrations.”

“Your case is all but settled, except for one issue. We’ll need to start the trial, then wait for the other side to fold. We’ll move to get your attorney’s fees paid, so the trial won’t bite into your dream.” Jack quickly reviewed the disciplinary rules in his mind. Melanie didn’t know what he was thinking. He didn’t say anything to her. *A lawyer must make reasonable efforts to pursue litigation on a prompt timetable, without delay solely for the scheduling convenience of the lawyer. The case was only filed six months ago. I feel comfortable that I*

have complied with that rule. The lawyer must deposit legal fees and expenses into a client trust fund account, rather than into the lawyer's pocket. This is for fees the client paid in advance. The money can only be withdrawn by the lawyer as the fee is actually earned through services provided. I have to think about this one. I send Melanie a bill every month, showing her what I have taken from her portion of the trust account. Melanie didn't like my settlement advice. She wanted to go for the big prize that only a jury could award.

Jack knew he could lose it all, through no fault of his own, because a jury trial was like spinning a roulette wheel. Melanie didn't understand this, although Jack had tried to explain. *The disciplinary rule states that when the representation terminates, the lawyer must give reasonable notice to the client, and give her time to employ a new lawyer.* Jack would have to return the unearned fees. He didn't want to do that. If the settlement was good enough, Melanie would be happy and it wouldn't be an issue. But she wasn't happy. The complaint that Jack filed in court requested a million dollars in damages for Melanie. Jack was now recommending that Melanie settle for \$445,000 to avoid the trial. Jack knew he couldn't just refuse to do the trial. Since he had entered an appearance in litigation, he would need to file a motion and get a court order allowing him to withdraw from Melanie's case. What a mess. The judge probably wouldn't allow that anyway. It was too close to trial.

Jack talked to Melanie for a while. He appreciated Melanie's flair for the dramatic and thought he could turn her case into a movie and write the screenplay himself. A well-written story could earn Jack more in royalties than he would get in legal fees for the trial. He could write the ending he wanted, for the sake of a good story. Then he remembered the ethical rule. *Before we finish a legal case we aren't allowed to acquire literary or media rights to our client's story if it is based 'in substantial part' on the representation.* Today's pre-trial hearing of Melanie's case was continued because another trial was taking longer than expected and the courtroom wasn't available. *Thank goodness being late has not damaged my reputation.* Jack looked at his watch. He had a hearing in another court and an appointment at his office. He told Melanie he would call her later. It was 8:45 a.m.