Guilt, Greed, and Furniture: Using Mel Brooks’s The Twelve Chairs to Teach Dying Declarations

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**INTRODUCTION**

*Setting:* A village in Russia, some twenty years after the Revolution.¹ An elderly woman lies in bed and draws labored breaths. Suddenly, she grows agitated and calls loudly to a neighbor woman: “I’m going! Call the priest! Get my son-in-law! Hurry! I must talk to him! There’s something I must tell him before I die!”

The neighbor replies, “There, there . . . you’ll be all right,” only to be alarmed by a horrific dying gasp from the old woman.

“Quick!” the neighbor calls to a young boy, “Run to the town hall! Tell Vorobyannov his mother-in-law is dying! Tell him to hurry! I’m going to get the priest!”

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The son-in-law, Ippolit Vorobyannov, receives the message and rushes out from his bureaucratic job, muttering, “That poor woman. That poor woman.” Then, he is struck by a thought: “Who is going to take care of me?!?” As he enters his house, Vorobyannov meets the local priest, who rushes away in a suspiciously hurried manner. The neighbor tells Vorobyannov, “She just confessed.”

“How is she?” asks Vorobyannov.

Speaking loudly, the neighbor replies, “She’s doing splendidly! The doctor says she’ll be on her feet in a week!” Then, speaking in a whisper, she emphatically adds, “She’ll be dead before morning! She looks terrible!”

Vorobyannov goes to his mother-in-law, who greets him in evident relief: “Ippolit! It’s you! You’ve come!”

“Yes. I’m here. It’s me,” he replies.

“Oh, thank God! Ippolit, do you remember our dining room suite?”

“Dining . . . room . . . suite?” he responds, greatly puzzled.

“In the big house in Stargorod,” (whispering), “before the Revolution.”

“Ah, yes. Beautiful furniture,” (he clearly thinks he must humor a dying woman), “made by Hambs of London.”

“Ippolit,” his mother-in-law continues, “My jewels, my diamonds . . . I sewed them into one of the chairs!”

“What?”

“My diamonds, my jewels! I sewed them into one of the chairs! My gorgeous diamond tiara . . . I wore it when I was presented at court. My beautiful pearl earrings . . .”

“Pearls!” mutters Vorobyannov.

“My emerald brooch . . .”

“Emeralds!” whispers an entranced Vorobyannov.

“My diamond necklace . . .”

“Diamonds!” he echoes.

“A little gold cat with the ruby eyes.”

“Stuffed in a chair?!! How could you do such a thing? Why didn’t you give them to me?”

“Why should I have given them to you, when you had already squandered away half my daughter’s estate, with your parties and your horses?” she angrily replies.

“But why didn’t you take them out? Why did you leave them there?”

“I didn’t have time! You remember how quickly we had to flee! They were left in the chair!”

“Bozhe Moje! Bozhe Moje! [My God!] Fifty-thousand rubles worth of jewelry stuffed in a chair! Heaven knows who may sit on that chair, if it’s still a chair! It may be firewood by now! How could you do such a thing? How could you do such a thing? How could you do such a thing?”
“Please, Ippolit,” she begs tearfully, “I know I did wrong, but please forgive me.”

Vorobyanninov relents, saying, “Of course. Of course, Mama, of course I forgive you.” (He cradles her face in his hands, and accidently stamps “Cancelled” on her cheek with a rubber stamp he has been holding all this time from work.)

“Thank you,” she gratefully responds. “Now I can die in peace.”

II.

HOW STORY INFORMS OUR UNDERSTANDING OF LAW

Nothing beats a good story. We understand our own lives through story. Whether relating the story of our day to friends or family, or reflecting on a lifetime spanning many years, humans use stories to help understand and make sense of our experiences of living in the world. In the legal arena, the best-accepted theory explaining how jurors decide a case is the Story Model, which identifies story construction as the cognitive process central to juror decision making. And of course, we know that good lawyers have to be good storytellers (words are our tools, and our craft involves becoming master wordsmiths). What’s true in life, and in law, is also true in learning. Learning the law through the case method involves what James Boyd White describes as an “imaginative reconstruction of the process by which the text was made,” a process of reading a story and imagining oneself participating in its telling and re-telling. The process of teaching and learning statutory law (such as the Federal Rules of Evidence) in particular requires the use of stories. A skeletal outline of a hearsay exception only acquires meaning in the context of a story.

When I teach the dying declarations hearsay exception in my Evidence course, I always show the opening scene from Mel Brooks’s darkly comedic film, The Twelve Chairs. A film clip is a particularly dense piece of storytelling, in that it presents story information in a visually and aurally rich manner (including such varied aspects as images, colors, tone, soundtracks, special effects, edits, montage, etc.). Yet, we are able to take in and process a whole series of nuanced and complex messages in a film clip in a relatively efficient manner. Simply put, we are good at “reading” visual stories from

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5. THE TWELVE CHAIRS, supra note 1.
6. For a classic text on reading films, see JAMES MONACO, HOW TO READ A FILM: MOVIES, MEDIA, MULTIMEDIA (3d ed. 2000).
television and film. Further, showing the excerpt from *The Twelve Chairs* not only is fun, it’s good learning pedagogy.

This short scene enhances class discussion in three principal ways. First, the scene serves as an engaging mini-review of the elements of the hearsay exception for dying declarations. Second, it serves as a springboard for the class to think critically and articulate some unspoken assumptions underpinning the rationale for the rule (the short scene raises issues about our assumptions governing family dynamics, gender, class, politics, and religion, among other matters) and consider the possibility of drafting a different (and perhaps better) rule. Third, the nature of the example (a film clip, and a comedic one at that), surprises and delights the students who are used to the usually bleak and violent fact patterns in many evidence casebooks. Thus, their attention level is high and they are very engaged in the analysis. A more full discussion of each of these three aspects follows.

III.

**USING *THE TWELVE CHAIRS* TO TEACH THE DYING DECLARATION EXCEPTION**

Trustworthiness is one of the chief reasons, historically, for creating exceptions to the general prohibition against hearsay. If a piece of evidence is particularly trustworthy, then it may be worthwhile having an exception for it. But trustworthiness is a difficult concept, and it is frequently tied to particular social and cultural assumptions about human nature which may be questioned or even become discredited over time. Assumptions about human nature underlie many of the hearsay exceptions in the Federal Rules of Evidence, including most notably the exception for dying declarations. This venerable hearsay exception is based on the assumption that there is something particularly trustworthy about things people say when they know they are dying. I first use *The Twelve Chairs* to teach the basic elements of the exception for dying declarations, and then follow this with a discussion where I have the students articulate some of the unspoken assumptions underpinning the rule.

FRE 804(b)(2) sets out a hearsay exception for dying declarations, defined as follow: “In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant’s death to be imminent, made about its cause or circumstances.” After showing the film clip, I tell the class to assume

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7. For a discussion of the principles of necessity and trustworthiness, see generally 5 JOHN HENRY WIGMORE, A TREATISE ON THE ANGLO-AMERICAN SYSTEM OF EVIDENCE IN TRIALS AT COMMON LAW § 1422, at 202 (3d ed. 1940).

8. FED. R. EVID. 804(b)(2) (restyled rules). There has been a resurgence of interest in the dying declarations exception lately, ever since the Supreme Court in *Crawford* suggested that such statements may constitute a special category for Confrontation Clause purposes. *Crawford* v. Washington, 541 U.S. 36, 56 n.6 (2004). Justice Ginsburg, in her dissent in the *Bryant* case, is one among many who call for the Court to consider whether dying declarations are an exception to the *Crawford* doctrine. *Michigan v. Bryant*, 131 S. Ct. 1143, 1177 (2011). For an excellent discussion of the feminist implications of dying declarations, see Aviva Orenstein, *Her Last Words: Dying Declarations and Modern Confrontation Jurisprudence*, 2010 U. ILL. L. REV. 1411 (2010).
that the mother-in-law’s statement is relevant to some civil suit (such as a
breach of contract action brought against the son-in-law by his rascally partner
after they have engaged in an epic quest for the chairs all over Russia).

Is the mother-in-law’s statement hearsay or does it fit within the dying
declarations exception? The answer depends on four main elements: (1)
whether the testimony is unavailable (all the 804 exceptions require a showing
of unavailability), (2) whether the statement is being used in the correct type of
action (either a homicide trial or any civil proceeding), (3) whether the
declarant believes that death is imminent, and (4) whether the statement relates
to the cause or circumstances of the death. Since the mother-in-law has died,
her testimony is unavailable and the first element is met. (This part of the
analysis offers the chance to discuss the broad definition of “unavailability"
under the Federal Rules, since a declarant need not have actually died to satisfy
the exception.) Next, since the statement is offered in a civil trial for breach of
contract, the second element is satisfied. The third element—that the declarant
believes her death is imminent—requires a closer analysis of the circumstances.
The mother-in-law says, “I’m going!” and calls for a priest. Courts and
commentators consider the fact that a declarant requests a priest as strong
evidence that she believes she is dying. The mother-in-law also calls for her
son-in-law and she shows a sense of urgency in her request, crying, “Hurry!”
Her actual words indicate she believes she is dying, as she says, “There is
something I must tell him before I die!” But consider the fact that her well-
meaning neighbor loudly proclaims, “She’s doing splendidly! The doctor says
she’ll be on her feet in a week!” Does this affect the declarant’s belief in
imminent death? The proponent of the statement would have to show that the
mother-in-law actually heard it (it’s spoken in another room) and that she
actually believed it. Since the mother-in-law goes on to confess her secret to
her son-in-law, it’s unlikely that she believes the neighbor’s reassurances, even
if she heard them. So far, the statement seems to fit the dying declarations
exception. But what about the fourth requirement, that the statement relate to
the cause or circumstances of death? This is an element that students often
overlook in the excitement of recognizing that something looks like a dying
declaration. In a homicide case, we might look for a statement by a dying
victim identifying the murderer. In a civil suit, we might look for a statement
from someone injured in a car crash describing the accident. But here, the
mother-in-law’s statement about hiding the jewels in a chair has nothing to do
with the cause or circumstances of her death. Thus, it will not qualify as a
dying declaration! But it seems so trustworthy! If it is trustworthy, shouldn’t it
come in to evidence? Should we change the dying declarations exception? Or
could the proponent get the statement admitted as evidence some other way,
perhaps under the catchall exception of FRE 807? Such a statement is clearly

9. See Carver v. United States, 164 U.S. 694 (1897); 5 Weinstein’s Fed. Evid. § 804.05[4][b]
(Joseph M. McLaughlin ed., 2d ed. 1997).
trustworthy, isn’t it? These questions lead to the second way I use the film clip: to explore the rationale for the rule and have the students consider whether and how they might revise the exception.

IV. USING THE TWELVE CHAIRS TO CRITICALLY EXPLORE THE RULE’S RATIONALE

I begin this part of class discussion by asking the class, “Why do you think the mother-in-law’s story about hiding the jewels in the chair is trustworthy?” Usually, a student will respond that it’s just a matter of simple human nature—no one wants to go to her Maker with a lie upon her lips! But are such assumptions correct? Whose “human nature” are we talking about, anyway? Can any single concept of “human nature” account for all the particularities (including class, gender, race, religion) of an individual’s lived experience? What is there about the approach of death that compels truth-telling? Does the declarant have to believe in God? Is there any reason someone might be untruthful in a dying declaration? And what is the effect of family dynamics on deathbed pronouncements? The Advisory Committee suggests that, “While the original religious justification for the exception may have lost its conviction for some persons over the years, it can scarcely be doubted that powerful psychological pressures are present.”

Class discussion about trustworthiness often begins with someone commenting that the mother-in-law wants to confess her sins and make things right before she dies. But why does she have such a guilty conscience, not only requiring absolution from the priest but also forgiveness from her son-in-law? What has she done that is so wrong? And why has she kept her secret all these years? Class discussion concerning possible answers to these questions raises the inter-related topics of gender roles, economic and political pressures, and religious beliefs. First, whose wealth is this, anyway? To whom did the jewels belong? Under the law of coverture, a husband and wife were one and the husband was the one in the eyes of the law. The daughter seems to have been the one who brought the wealth into this marriage (the mother-in-law angrily comments to her son-in-law, “[Y]ou had already squandered away half my daughter’s estate, with your parties and your horses!”). The mother-in-law surely resented having to stand by and watch her daughter’s fortune being spent by her son-in-law. Additionally, what is the position of a mother-in-law in her married daughter’s household? In a patriarchal society, the role of mother-in-law can be precarious. (Small wonder that she wants to hang on to her jewels.) What has this particular woman’s household role been after the Revolution? Apparently, the daughter has died, and the mother-in-law has been taking care of the household duties for her son-in-law. (One of the first things the son-in-law says, upon hearing that his mother-in-law is dying, is “Who is going to take care of me?”) The mother-in-law must have felt put-upon in her old age, a time

10. FED. R. EVID. 804(b)(2) (advisory committee’s note).
when she had anticipated being cared for rather than having to care for others. Natural resentment on her part may have kept her lips sealed concerning the jewels. But when she knows she is dying, familial emotions come to the fore and she feels the need to disclose her secret and ask forgiveness.

Is there another reason the mother-in-law has kept silent, and experiences a guilty conscience? Politics and economics come into play. After the revolution, private property (such as the jewels and even the chairs) belongs to the State. In fact, the State has already nationalized the family estate. In hiding the jewels, the mother-in-law has potentially committed a crime against the State. No wonder she feels guilt at her actions, both from a personal/family dynamics perspective, and from a societal/juridical perspective.

A third possible reason for her guilt is theological—the sin of avarice. (Greed is a prevailing theme in the story.) The mother-in-law’s desire to keep the jewels for herself, in spite of potential claims from the State or from her son-in-law could be considered sinful. She could go to Hell for her sins. She has done wrong to her son-in-law, to the State, and perhaps to God. Hence, she feels the need to send for the Russian Orthodox priest (played by Dom DeLuise) to hear her confession.

V.

USING COMEDY TO TEACH DYING DECLARATIONS

So much of an Evidence course involves the bleak and the tragic in life (murders, assaults, car crashes, injuries). Every now and then a little humor is in order. A sense of humor can serve as a useful coping mechanism for lawyers in what can sometimes be a stressful profession. Can what is perhaps the ultimate tragedy (death) provide fodder for humor? Freud (and others) might respond that the great taboo subject of death lies at the root of most humor.11 The opening scene from The Twelve Chairs, although it is a deathbed scene, is darkly humorous. Consider the neighbor woman, at one moment stoutly reassuring the mother-in-law that she will be better in no time, and in the next moment predicting “she’ll be dead before morning.” Or consider the great Dom DeLuise as the venial Father Fyodor, who is in such a hurry to hunt down the jewels after hearing the deathbed confession that he tries to leap over the fence and in the process injures his own family jewels. Or consider the moment Ron Moody as the son-in-law leans down to give his mother-in-law a kiss and accidentally stamps a “cancelled” stamp on her cheek. We have to laugh at the sheer bravura display of such dark humor. I always make sure to continue showing the opening credits, so that the class gets to hear the theme song Mel Brooks wrote (set to a rousing Brahms melody, and sung by a lusty, full-throated men’s chorus). The cheeky refrain says it all: “Hope for the best,/ expect the worst./

Some drink champagne,/ some die of thirst./ No way of knowing/ which way it’s going./ Hope for the best,/ expect the worst.” We as lawyers so often have to deal with the tragic side of life in our daily jobs, that a good sense of humor can serve as a survival mechanism. We need to be able to laugh (instead of to cry), even if that laughter is tinged with a bit of melancholy.

CONCLUSION

“I would ask you to remember only this one thing,” said Badger. “The stories people tell have a way of taking care of them. If stories come to you, care for them. And learn to give them away where they are needed. Sometimes a person needs a story more than food to stay alive. That is why we put these stories in each other’s memory. This is how people care for themselves.”


Stories never go out of style. Telling stories, listening to stories, and thinking about stories are at the heart of what we do as lawyers and as teachers. A good story, like The Twelve Chairs, does a great deal more work than a bare statute or even a hypothetical. It provides depth and complexity and nuance. It helps prepare students for the complexities and ambiguities of practice in an imperfect world. A good story reminds us of who we are and helps us reflect on who we want to be.

12. BARRY HOLSTUN LOPEZ, CROW & WEASEL 60 (HarperPerennial 1993).