

TRIAL =BY= JURY

A TRIAL LAWYER
RECOUNTS HIS FAVORITE
COURTROOM BATTLES



LAWRENCE ROOKHUYZEN

Trial By Jury chronicles the experiences of a young attorney who is assigned to try his first civil jury trial and has to learn quickly how to fight to win the case for his client in and out of the courtroom against older, more experienced adversaries. The book follows his account of twenty-two real life jury trials and the lessons he learns.

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A Trial Lawyer Recounts His Favorite Courtroom Battles

by Lawrence Rookhuyzen

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DISCLAIMER

This non-fiction work is the author's recollection of real people and events. He has related those facts to the best of his knowledge. The author understands that the recollection of the same events by others may differ from his own. If there is distortion, he is not only open, but eager, for correction.

The author has not intended in any way to distress, insult, defame, embarrass, and or invade the privacy of any person mentioned. The opinions expressed herein are those of the author.

Hemingway once said that for him there was only one way to account for things—to tell the whole truth about them, holding back nothing; tell the reader the way it truly happened; the ecstasy and sorrow, remorse, and how the weather was, and, with any luck, the reader will find his or her way to the heart of the thing itself.

This is what the author has tried to do.

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The Stalker

Adams v. Fernandez (SBSC-R.C./Verdict 11/16/2007)

Despite the serious nature of this matter, I enjoyed working this case up for trial for several reasons. There were definitely some interesting twists and turns. This case had what attorneys call *sex appeal*—and how. It is the story of a hero and a villain. It is a tale of passion and unrequited love.

The plaintiff Paul Adams and the defendant Mike Fernandez were both attracted to the same woman. I'll call her *Summer* (not her real name). The problem is, Summer wasn't interested in Adams—and as the lyrics to the popular hit song *The Power of Love* says—"Love can make one-man weep and another man sing."

Adams wasn't singing. He was way out of his league

and he let Summer's rejection get to him. He was clearly fixated and began stalking her. She got a restraining order and he would violate it. She got another. He violated it and was arrested.

Summer moved on and began a relationship with my client. It all came to a head when Fernandez, Summer and Adams came face-to-face at the wedding of a mutual friend held at the bride's home.

Approximately six weeks before the confrontation, Adams was arrested twice for stalking Summer and had been ordered to stay away. When she moved, he would find her. When she changed her phone number, he would find that too. She had no peace before and now he was angry for being arrested and threatening her. Summer had good reason to be afraid.

The day of the wedding, Adams told another guest he was going to "get even" with Summer for having him arrested by running her car off the road.

Summer had only agreed to be the bride's maid-of-honor on the condition Adams was not invited. Unbeknownst to Summer and the bride, the groom had invited Adams. Upon their arrival at the wedding, Mike and Summer were surprised to see Adams. He was already intoxicated and in a rage came right up to them making crude remarks and threats before the wedding

started.

Concerned about Adams's aggressiveness, Mike and Summer decided to skip the reception and leave immediately after the wedding ceremony. As they were departing, Adams walked out to his pickup truck and removed two long-neck bottles of beer from an ice chest. He approached the couple in a threatening manner, shouting epitaphs, while raising the beer bottles into a striking position. But before Adams could harm him or Summer—Fernandez with a single blow—knocked Adams down, breaking his nose and inflicting a gash on his cheek. Adams and Fernandez were both arrested at the scene for assault and battery, but the D.A. later dismissed the charges on the grounds of *mutual combat*.

Adams wasted no time filing a civil suit against Fernandez for assault and battery, false arrest, emotional distress and punitive damages. In our answer to Adams's complaint, we asserted the civil law affirmative defenses of *self-defense* and *defense of others*.

During pre-trial discovery, the attorney for Adams subpoenaed Summer for deposition. Normally the plaintiff is entitled to be present when a witness is questioned by his attorney. But after I received a phone call from Summer advising me she was scared to death to be in the same room with Adams, I filed a motion for a

protective order. We asked the judge to exclude Adams from Summer's deposition under the circumstances, citing the previous harassment and violation of the restraining orders. The judge agreed that Adams should be excluded, but he could watch the deposition at another location via closed circuit video.

As I suspected all along, setting Summer's deposition was just a *pre-text* by Adams to get close enough to intimidate her. As a result of the court's exclusion ruling, his ruse failed, and Summer's deposition never went forward.

Adams's attorney also set up the depositions of other wedding guests. One of those guests was a recently retired L.A.P.D. detective, whom I will call *Felix* (not his real name). I arrived early for Felix's deposition and bumped into him waiting outside the plaintiff attorney's office. I had not been able to locate or take Felix's statement since the police department doesn't give out officer information without a court order. So, I didn't know what he was going to say about the incident.

Fortunately, before his deposition started, Felix told me that he was one of the groomsmen at the wedding and observed Adams's conduct leading up to the incident. In fact, Felix was standing next to Fernandez and Summer when Adams approached them with the

beer bottles raised in a threatening and aggressive manner.

In Felix's opinion, Fernandez and Summer would have been in *reasonable fear* of serious bodily harm, justifying Fernandez's action to defend himself and Summer. How lucky can we be? Felix also just happened to be a police expert in *stalking* cases, and in his opinion, Adams fit the classic stalker profile.

If we were making a movie, we could not have ordered a better witness from *Central Casting*. Felix's testimony came across extremely credible at trial. If the jurors hadn't already made up their minds about Adams, this was the so called *icing on the cake*.

Unfazed, Adams's attorney asked the jury to award his client half-a-million dollars, plus his medical bills, and the cost of a lost job contract. After eight days of trial, the jurors deliberated for two days before returning a *unanimous* 12-0 verdict in favor of the defendant.

Post-trial: As the prevailing party we sent Adams the bill for our trial costs.

Once again, this case reinforced the lesson that you can never anticipate everything that might happen in pre-trial discovery or during trial. In addition, I was learning to read *body language* and I could tell the jurors were turned off by Adams's conduct—not to mention

him wasting their valuable time with a frivolous lawsuit.

The jury rightly concluded that Mr. Adams was the *villain* and Mr. Fernandez was the *hero* of this story.

This case was tried in the San Bernardino Superior Court-Rancho Cucamonga before the Hon. Martin Hildreth. I think it noteworthy to mention that the day before Summer came into court to testify for the defense, Judge Hildreth on his own motion (*sua sponte*) and outside the presence of the jury, sternly admonished and ordered Mr. Adams not to approach, speak to, stare at, or in any other way try to intimidate her.

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