Literary Trials

Slouching Towards Bethlehem

by Joan Didion

Editor's Note: This excerpt leads to the trial of Lucille Miller in Joan Didion's essay "Some Dreamers of the Golden Dream," in which Didion reports on 1960s California lifestyle. In "The Second Coming," the W.B. Yeats poem upon which her book Slouching Towards Bethlehem *is based, "Things fall apart; the center cannot hold; mere anarchy is loosed upon the world."*

This is a story about love and death in the golden land, and begins with the country. The San Bernardino Valley lies only an hour east of Los Angeles by the San Bernardino Freeway but is in certain ways an alien place: not the coastal California of the subtropical twilights and the soft westerlies off the Pacific but a harsher California, haunted by the Mojave just beyond the mountains, devastated by the hot dry Santa Ana wind that comes down through the passes at 100 miles an hour and whines through the eucalyptus windbreaks and works on the nerves. October is the bad month for the wind, the month when breathing is difficult and the hills blaze up spontaneously. There has been no rain since April. Every voice seems a scream. It is the season of suicide and divorce and prickly dread, wherever the wind blows.

The Mormons settled this ominous country, and then they abandoned it, but by the time they left the first orange tree had been planted and for the next hundred years the San Bernardino Valley would draw a kind of people who imagined they might live among the talismanic fruit and prosper in the dry air, people who brought with them Midwestern ways of building and cooking and praying and who tried to graft those ways upon the land. The graft took in curious ways. This is the California where it is possible to live and die without ever eating an artichoke, without ever meeting a Catholic or a Jew. This is the California where it is easy to Dial-A-Devotion, but hard to buy a book. This is the country in which a belief in the literal interpretation of Genesis has slipped imperceptibly into a belief in the literal interpretation of *Double Indemnity*; the country of the teased hair and the Capris and the girls for whom all life's promise comes down to a waltz-length white wedding dress and the birth of a Kimberly or a Sherry or a Debbi and a Tijuana divorce and a return to hairdressers' school. "We were just crazy kids," they say without regret, and look to the future. The future always looks good in the golden land, because no one remembers the past. Here is where the hot wind blows and the old ways do not seem relevant, where the divorce rate is double the national average and where one person in every thirty-eight lives in trailer. Here is the last stop for all those who come from somewhere else, for all those who drifted away from the cold and the past and the old ways. Here is where they are trying to find a new life style, trying to find it in the only place they know to look: the movies and the newspapers. The case of Lucille Marie Maxwell Miller is a tabloid monument to that new life style.

Imagine Banyan Street first, because Banyan is where it happened. The way to Banyan is to drive west from San Bernardino out Foothill Boulevard, Route 66: past the Santa Fe switching yards, the Forty Winks Motel. Past the motel that is nineteen stucco tepees—"SLEEP IN A WIGWAM—GET MORE FOR YOUR WAMPUM." Past Fontana Drag City and the Fontana Church of the Nazarene and the Pit Stop A Go-Go; past Kaiser Steel, through Cucamonga, out to the Kapu Kai Restaurant-Bar and Coffee Shop, at the corner of Route 66 and Carnelian Avenue. Up Carnelian Avenue from the Kapu Kai, which means "Forbidden Seas," the subdivision flags whip in the harsh wind. "HALF-ACRE RANCHES! SNACK BARS! TRAVERTINE ENTRIES! $95 DOWN." It is the trail of an intention gone haywire, the flotsam of the New California. But after a while the signs thin out on Carnelian Avenue, and the houses are no longer the bright pastels of the Springtime Home owners but the faded bungalows of the people who grow a few grapes and keep a few chickens out here, and then the hill gets steeper and the road climbs and even the bungalows are few, and here—desolate, roughly surfaced, lined with eucalyptus and lemon groves—is Banyan Street.

Like so much of this country, Banyan

(Please turn to page 63)

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Literary Trials

(Continued from page 68)

suggests something curious and unnatural. The lemon groves are sunken, down a three- or four-foot retaining wall, so that one looks directly into their dense foliage, too lush, unsettlingly glossy, the greenery of nightmare; the fallen eucalyptus bark is too dusty, a place for snakes to breed. The stones look not like natural stones but like the rubble of some unmentioned upheaval. There are smudge pots, and a closed cistern. To one side of Banyan there is the flat valley, and to the other the San Bernardino Mountains, a dark mass looming too high, too fast, nine, ten, eleven thousand feet, right there about the lemon groves. At midnight on Banyan Street there is no light at all, and no sound except the wind in the eucalyptus and a muffled barking of dogs. There may be a kennel somewhere, or the dogs may be coyotes.

Banyan Street was the route Lucille Miller took home from the twenty-four-hour Mayfair Market on the night of October 7, 1964, a night when the moon was dark and the wind was blowing and she was out of milk, and Banyan Street was where, at about 12:30 AM, her 1964 Volkswagen came to a sudden stop, caught fire, and began to burn. For an hour and fifteen minutes Lucille Miller ran up and down Banyan calling for help, but no cars passed and no help came. At three o'clock that morning, when the fire had been put out and the California Highway Patrol officers were completing their report, Lucille Miller was still sobbing and incoherent, for her husband had been asleep in the Volkswagen. "What will I tell the children, when there's nothing left, nothing left in the casket," she cried to the friend called to comfort her. "How can I tell them there's nothing left?"

In fact there was something left, and a week later it lay in the Draper Mortuary Chapel in a closed bronze coffin blanketed with pink carnations. Some 200 mourners heard Elder Robert E. Denton of the Seventh-Day Adventist Church of Ontario speak of "the temper of fury that has broken out among us." For Gordon Miller, he said, there would be "no more death, no more heartaches, no more misunderstandings." Elder Ansel Bristol mentioned the "peculiar" grief of the hour. Elder Fred Jensen asked "what shall it profit a man, if he shall gain the whole world, and lose his own soul?" A light rain fell, a blessing in a dry season, and a female vocalist sang "Safe in the Arms of Jesus." A tape recording of the service was made for the widow, who was being held without bail in the San Bernardino County Jail on a charge of first-degree murder. □

From the Bench

(Continued from page 4)

course, in briefs in the courts of appeals, a summary of argument is required by the Federal Rules of Appellate Procedure. There is no comparable requirement in the district court in most places. As a lawyer, I found the inclusion of summaries formulaic. But of course, I knew the case. A few months as a judge have shown me how indispensable such summaries are. Judges, unlike the lawyers, don't know the case, and a summary is a wonderful device to educate the judge. Without one, the judge's task is made appreciably more difficult.

Of even greater importance is a comprehensive factual presentation. Even so gifted and self-sufficient a judge as Richard Posner has said that one of the great failings in briefs is the assumption by the lawyers of too much factual knowledge on the part of the judges, and has stressed the necessity for counsel to educate the judges about the underlying facts of the case. *See* 22 LITIGATION, *supra*, at 31. Judge Aldisert concurs: A good legal argument, he has said, may be perfected in an afternoon, while a good statement of facts may take entire days, even weeks, to complete, since "[c]ases turn far more frequently on their facts than they do on the law." Ruggero J. Aldisert, *Winning on Appeal* 158 (1992).

And yet, in too many of the cases that I have seen even in the short time I have been a judge, not enough attention is paid to careful factual development. Indeed, I can think of several cases in which the final result differed from my initial impression once the facts were fully explored. The problem was that neither side had bothered much with the underlying facts, and I was forced to find them on my own. Ultimately, the accuracy of the decisional process in these cases may have been better served by the equally underinclusive presentations. But that's not the point, and I readily concede that perhaps because I didn't have the requisite input, I may well have overlooked something that might have changed the outcome had it been brought to my attention.

Finally, there is the matter of case selection and usage. In this regard, what I have seen is either unnecessary, lengthy string-citing of cases standing for propositions that either are not disputed or are indisputable, or reliance on inapplicable cases. It's unnecessary and distracting to articulate a proposition and then string-cite numerous cases, all containing parentheticals with virtually identical quotations. The larger and the more substantive problem is the citation of cases that, upon even superficial analysis, don't support the propositions for which they are cited, or do so only by excising the language from the informing context of the opinion. "Judges expect their pronunciamentos to be read in context," *Wisehart v. Davis*, 408 F.3d 321, 326 (7th Cir. 2005), and taking sentences out of context is not helpful to a judge who is genuinely looking to the briefs for assistance. *Cf. Cohens v. Virginia*, 19 U.S. 264, 399 (1821) (Marshall, C. J.); *United States v. Gerke Excavating, Inc.*, 412 F.3d 804, 808 (7th Cir. 2005).

A few months ago I was presented with a case that vividly illustrates the point I am trying to make. The plaintiff had filed a civil rights suit alleging unlawful discrimination. The defendant-municipality filed a one-page motion to dismiss for want of subject matter jurisdiction on the grounds that the plaintiff, in an earlier bout of litigation as part of the settlement, had agreed to arbitrate any future claims of discrimination. No case was cited, and the provision in the earlier settlement agreement was, as it turned out, badly misquoted in the motion. The plaintiff's response was little better. It cited only one case to support the proposition that a party in civil rights litigation cannot waive legal fees. The case was not explained, and there was only the *ipse dixit* that the earlier settlement agreement prohibited an award of fees in arbitration—a construction that was anything but self-evident.

Incredibly, the one-and-one-half-page reply brief ignored the lone case cited by