

# ONCE IN JEOPARDY

By Lon Williams



**At the mere sight of Cynthia Bondell, Judge Steele knew the jury would bring in any verdict her heart desired. But the judge also felt that nothing in the world would be better for Flat Creek than the hanging of defendant – one to which Cynthia was rumored to be engaged!**

**J**UDGE Wardlow Steele strode grimly into Flat Creek's packed courtroom, mounted his judicial rostrum and lowered himself onto a bench worn smooth by unceasing demands for hard and inexorable justice. As usual, anger prowled in him because a murder had been committed. Crime appeared to him as an endless procession, with murder persistently in front.

He scrutinized his audience. Before him were characters of every description.

Here, too, was something new. A sprinkling of dudes in finery smiled cynically up at him, rough, uncouth gold-diggers for once looked washed, and baboons who passed as humans smirked in anticipated enjoyment. Be-consarned, a court of law, confronted by such assorted odds, seemed to him as out of place as a lily in a horse-lot. But, dang their hides, he'd show 'em a thing or two.

A gleam was in his savage blue eyes. He gave his straw-colored mustache a

couple of jerks and spat in his sandbox. "Sheriff, call court."

Sheriff Jerd Buckalew, tall, lanky and poker-faced, rapped with his forty-five. "Court's now in session; anybody thinks it ain't will mighty quick learn better."

Heavily armed deputies, stationed at vantage points, nodded and hitched up their gun-belts.

"Skiffy, call fust case."

Clerk James Skiffington rose like an animated scarecrow and adjusted his spectacles. "People versus Leander Croy. Charge, first degree murder of Robert Hungerford Drury."

Judge Steele glared downward. Below, on a puncheon reserved for scoundrels with bloody fingers, sat as sleek a killer as he'd ever seen, a slim, compact picture of arrogance; dark-haired, bright-eyed, with curved, insolent lips and even white teeth, his face smooth except for its thin black mustache.

Steele's voice was hard and accusing. "So you murdered Mr. Drury, eh?"

Croy smiled with haughty indifference.

"You got a lawyer?" demanded Steele.

A middle-sized, immaculately dressed gentleman with gray hair, a stubby gray mustache and haughty blue eyes got up beside Leander Croy. Rotund in body and puffed up in manner, he reminded Judge Steele of a Missouri toad that had been pushed around with a stick.

"I am his lawyer, suh," he announced pompously. "Professor Lexicon Hutto. For this case only, I am associated with Mr. French Demeree, who is physically indisposed, but who hopes to arrive later."

Steele's instinctive dislike of lawyers took an aggravated turn because of Hutto's obviously inflated egotism. "A professor, eh? I suppose, like Demeree, you came West for health and fortune?"

"Suh, I came West to practice law and to accept whatever of health and fortune

came my way. Ahem."

"Well, by thunder, it ain't none too healthy out hyar. What's your plea?"

"Suh, if your honor please, defendant moves for a continuance."

"A what?"

"He moves to have his trial put off until arrival of his lawyer from Philadelphia."

"He does, eh? And if his lawyer from Philadelphia never arrives, I suppose he'd like nothing better than dying of old age. Motion overruled." Steele swung left. "Whar's our man?"

A stocky redhead with pink face and broad forehead rose with unusual confidence. "Here, your honor; Wade Claybrook, prosecuting attorney."

CLAYBROOK, too, was dressed with sandbox meticulousness. Steele eyed him with a hope he knew to be fragile and fleeting. "Well, Claybrook, can you see any difference between a handsome dude and a whomper-jawed baboon when it comes to hanging a skunk for murder?"

Claybrook's expression was one of nobility. "No, your honor; I believe in equal and impartial justice, administered without fear or favor."

"Mightily spoken, Claybrook. Flat Creek should be proud of you." Steele glared at Leander Croy. "Once more, what's your plea?"

Lex Hutto arose. "Defendant excepts to your honor's denial of a continuance."

"I said, what's your plea?"

"Ahem. Not guilty, suh."

Judge Steele eyed Hutto with distaste. "Not guilty, eh? Do you expect to make a jury believe that?"

"I expect to save this worthy gentleman's life."

"By hook or by crook, eh?"

"By all honorable means, suh."

Steele grunted. "Looks like we're

getting off to a mighty noble start. Bucky, panel a jury.”

“Call ‘em, Skiffy,” said Buckalew.

Skiffington called, and in due course of wrangling and overruling, and the heaving of undesirables outdoors, twelve jurors took their seats.

But Judge Steele developed doubts almost at once; a juror struck him wrong. Kobbe Hasselton was physically all right—big, smooth-faced, well-dressed. It was his uneasy facial expression Steele didn’t like. Eleven men would have rendered a verdict of guilty forthwith; Hasselton either wanted evidence, or had a trick up his sleeve. Well, consarn him, if it was a trick, he’d better keep his trick where it was.

“Witnesses come and be sworn,” Steele called sharply.

Nine men came forward. Following them came a woman, escorted by a proud deputy sheriff. Men leaned and gawked, and now Judge Steele understood that sprinkling of dudes and those gold-diggers who had taken baths.

Skiffington scarecrowed up. “Lup your right hands. Swear-tell-truth-’ole-truth-num-but-truth-selp-e-god. Go to witness room.”

All except Lady Beautiful were herded out. She, instead, was escorted out by polite deputies.

Prosecutor Claybrook got up. “If your honor please, I have one eyewitness to this murder, and nine witnesses by whom to prove deliberation and malice aforethought.”

Hutto was up promptly. “Your honor, suh, I object to his reference to this killing as murder. Murder has not been established; I suggest that Mr. Claybrook give more thought to his form of words.”

Judge Steele’s voice was barbed with satire. “Professor Hutto wants you to watch your language, Claybrook.”

“Defendant,” said Claybrook, “is charged with having killed Robert Hungerford Drury, deliberately, and with malice aforethought. I have witnesses as to malice and one who saw this alleged crime committed.”

“How’s that for language, Professor?” Steele asked disdainfully.

“That is acceptable, suh.”

“Call fust witness, Mr. Prosecutor.”

“Call Lindsey Wilson, alias Linsey Woolsey,” said Claybrook.

Wilson was conducted in, his beard scraggly and tobacco-stained, one eye gone, teeth worn down to gumlines by incessant chewing. From audience standpoint, he was a thing to be tolerated and hastily cleared away, as so much rubbish. Only one witness was going to be important here; Judge Steele, as everybody else, knew that.

Claybrook was exasperatingly deliberate. “Your name is Lindsey Wilson?”

“Yep.”

Claybrook stalled an irritating moment. “Know defendant?”

“Yep.”

Claybrook took a sidelong glance at handsome Leander Croy. “Ever play cards at Croy’s place?”

“Yep. Lost, though.”

“Ever hear defendant talking about a lady named Cynthia Bondell?”

“Yep.”

“Relate that conversation.” Faces had lighted with interest. But Lex Hutto got up. “Ahem. Your honor, suh, it is not permissible for him to tell what somebody said.”

Claybrook squared his shoulders manfully. “Witness has not been asked to tell what somebody said.”

“Ahem. If your honor please, suh, there is in law no difference between relate and tell. Mr. Claybrook cannot heave a

dead dog into our midst and cause it to smell good by calling it a pomegranate.”

Judge Steele restrained his rising displeasure. “Professor, I don’t know why, but you’re overruled.”

“Defendant respectfully saves exception, suh.”

“Consarn you, Hutto, what do you mean by that?”

“Your honor has committed error, suh. Should there be an appeal from an adverse verdict, that might be ground for a reversal—begging your honor’s pardon.”

STEELE’S lips crimped for an instant. He turned sharply to witness Wilson. “Go ahead, Woolsey.”

Woolsey waited until Lex Hutto had eased down. “Well, sir, one night afore this man was murdered—”

“Object, suh!” Hutto shouted.

“You mean before Mr. Drury was killed,” Judge Steele corrected.

“Yep.”

“Proceed,” said Steele.

“Well, Jedge, I was at Croy’s swindle-joint where this Bondell lady used to sing. I was havin’ a game. Fact is, I’d just been cleaned out by one of Croy’s slick card-slingers, when at the next table over I heard Croy blabbin’ to some fancy cronies. Croy says, says he—”

“I object, suh,” declared Hutto. “Not only is that hearsay; it is double hearsay.”

“Naturally you’d object,” said Steele edgily. “Like your friend Demeree, you wouldn’t be well-oiled if you didn’t object. Woolsey, go ahead.”

“Save exception, suh.”

“Well, sir, Jedge,” said Woolsey, “this here Croy says, says he, ‘I’m aimin’ to bring back that warblin’ oriole—’ “

Hutto sprang up. “Now, suh, I most strenuously object. In absence of *allegata*, a court may not entertain *probata*.”

Anger popped in Steele’s brain. “By

thunder, Hutto, what do you mean by that?”

Claybrook interceded with confident politeness. “I can explain, your honor. Professor Hutto means you must allege a thing before you are permitted to prove it.”

Judge Steele jerked his mustache. “You’re both overruled. Be-consarned—”

“Then,” puffed Hutto, “I further object that it is hearsay; a witness may not tell what somebody said.”

Claybrook nodded. “That is correct, your honor.”

Steele had grown blistering hot. “Claybrook, you ought to stay on our side, whar you belong. And don’t tell me a witness can’t relate what a murderin’ catamount said before he committed his murder. How are you going to prove deliberation and malice aforethought, except by what that lobo said? By thunder, if he’s brazen enough to brag about what he’s aimin’ to do, let it be shown. Be-consarned if we don’t make a few exceptions to your blasted hearsay rule. Woolsey, you go ahead and don’t pay no attention to these yapping lawyers.”

“Save exception, suh.”

“As I was about to say, Jedge,” Woolsey resumed, “this here Leander Croy says, says he, ‘I’m aimin’ to bring back that warblin’ oriole,’ meanin’ Cynthia Bondell, of course. ‘And,’ says he, ‘I’m aimin’ to take my double-barrel shotgun and blow Bob Drury’s head off his shoulders, if ever he crosses my path again.’ ”

“Move that testimony be stricken,” said Hutto.

“Claybrook, got anything to say on that motion?”

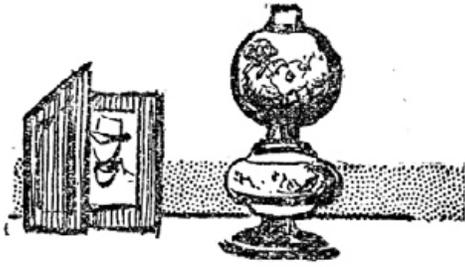
“No, your honor; I have had my say.”

“Want to question this witness?”

“He has been questioned, your honor.” Claybrook sat down sulkily.

Professor Hutto got up. “If your honor

please, suh, I should like to cross-examine."



"Proceed," snapped Steele.

Hutto waddled over and confronted Lindsey Woolsey. "So you played cards down at Mr. Croy's place, did you?"

"Yep."

Professor Hutto arched his eyebrows. "My dear suh, would you occasionally just as leave say yep-yep?"

"Now see hyar," growled Judge Steele, "leave off that draw-chain straddlin' and stick to business."

"Sorry, suh," said Hutto. He faced Lindsey Woolsey. "And you got cleaned out down at Mr. Croy's place, did you?"

"Shore did."

"Cleaned out by one of his card-slicks, eh?"

"That's how it was, sir."

"And now, to get even with Mr. Croy, you made up this cock-and-bull story about a conversation you eavesdropped and heard, didn't you?"

"No, sir."

"You didn't?"

"Shore didn't."

"Then why did you make it up?"

Judge Steele thumped indignantly. "Hutto, you stop insultin' our witness."

"Why, suh—"

"I said stop it!"

Hutto backed away. "Very well, suh; no more questions."

Woolsey wrinkled his nose and went down chewing his gums.

Claybrook got up. "Call Jamison Whim, alias Whim-wham Whim."

Whim and seven other men, one after another, testified as to Leander Croy's threats. Croy, they swore, had said he'd take his double-barrel shotgun and blow Bob Drury's head off his shoulders, if Drury ever crossed his path again.

There were picturesque variations. For instance, Croy had said he'd give this warbling oriole, Cynthia Bondell, a chance to see how her piece of ginger looked with his face blowed off. Again, Croy had said he'd make Bob Drury look like a pack train had walked on his elegant whiskers. Hutto shouted objections, saved exceptions, but got nowhere.

"Call Miss Cynthia Bondell," said Claybrook.

A DEPUTY ushered her in and seated her. Men sighed, stretched their necks for better glimpses and looked hungry-eyed.

And here, Steele suspected, was where trouble would begin. His own heart behaved badly, and a mere glance at jurors revealed that they had tumbled headlong for this dainty songbird. Hutto, too, saw what was happening, and his round-faced expression was one of grave concern.

Cynthia Bondell was a blonde. Her eyes, blue-violet, were filled with sad, sweet longing. Her hair was silk in texture, sun-mellowed flax in color, in its depths that golden luster so dear to a digger's heart. She wore a tiny black hat, turned up fore and aft. In front it bore an emerald brooch and a small, black feather. Aft, it was plain, but cozily nestled in a mass of waves and curls.

Her face was fair, flawless, gentle, and bore a frightened, troubled expression. Round her small slant-away neck glittered a string of emeralds, its pendant a gold lacework bearing a large emerald for its center-piece. She was slender, tightly laced. Her bosom rose and fell slowly. In

consequence, emeralds cast their gleams this way and that, and her aliveness and beauty were accentuated. Dressed in black, she looked pale, lonely and lost. Her character was what men imagined it to be and, being imaginary with them, registered her in their wide-open minds as anything from a jelly bean to a wingless angel.

But one thing was certain and of unvarying pattern. In her hand, so understood all, she held a man's life. In contemplation of that truth, men inhaled deeply and exhaled in sighs.

Judge Steele observed with misgiving and conditioned his attitude for a battle. Lex Hutto glanced at Cynthia Bondell, then at his hands. Fate, he apparently knew, hung in delicate balance. Which way would this dainty, exquisitely-entrancing songbird tip its scales? If she wanted Leander Croy set free, she had but to let it be known; jurors would turn him loose, even if they hung for it.

Wade Claybrook, aware of his great moment and fancying himself equal to it, commenced dispassionately, "Your name, please?"

Cynthia took a tremulous breath and looked up, not at Claybrook, but at Steele. "Judge Steele, do I have to go through with this?"

Here, suspected Judge Steele, was a panther that purred like a kitten.

He replied coldly, "Lady, in Flat Creek we've learned to take life as it comes, to face every obligation with determination, to flinch at nothing."

Her spirit, feline or angelic, appeared to draw inspiration from his resolute manner. "Thank you, Judge; I shall do my best." She faced Claybrook unemotionally. "I am Cynthia Bondell."

"What is your occupation?"

"I am a singer."

"How old are you?"

Judge Steele was instantly a savage.

"Consarn you, Claybrook, that's no question to ask a lady; you get down to nut-crackin', and don't be impertinent."

Claybrook's noble face pinked, his lower lip stuck out.

Cynthia cast Judge Steele a grateful look. She was young, possibly twenty, yet her age was but one of many secrets respectfully her own. "Thank you again, Judge Steele."

Claybrook held onto his resolution, such as it was. "Miss Bondell, you were acquainted with Robert Hungerford Drury, were you not?"

Her voice was low, emotionally restrained. "I was."

"In fact, you and he were close friends, were you not?"

"Mr. Drury was very nice to me."

"In what ways?"

"Consarn you, Claybrook, I told you not to be impertinent; ask her what she knows about this murder."

"Miss Bondell," said Claybrook, "what do you know about—about Mr. Drury's death?"

Hutto had started to get up. He eased back.

"I know that Mr. Croy killed Mr. Drury," Cynthia answered unhappily.

"Under what circumstances?"

"He just shot him."

"In your presence?"

"Yes."

"Relate in detail."

"Mr. Drury and I had gone horseback-riding to visit Mr. Drury's mine. As we were returning through Sango Gulch, two horsemen pulled into our path, drew their guns and pretended they meant to shoot us. We stopped, and Mr. Drury said—"

Hutto shouted, "Object to what Drury said."

Savagery in Steele's eyes intensified. Here, in his opinion, was a meaner lawyer than French Demeree. "Hutto, set down."

Hutto saved exception and eased down.

“Proceed, lady,” said Steele.

Cynthia appeared frightened but soon restored her courage. “Mr. Drury said, ‘This looks like trouble. You’d better head back—’ ”

“Object,” said Hutto.

“I fear Mr. Hutto is right,” said Claybrook.

Judge Steele became angry. “Claybrook, you’re supposed to be on our side. Why in tarnation are you taking up for this Roly-poly Hutto?”

“I beg your honor’s pardon; I was merely interested in upholding legal principles and rules of evidence.”

“Lady,” said Steele, “it looks like these lawyers don’t want you to tell what you know about this murder.”

“I’d be so happy not to,” returned Cynthia with dubious optimism; “it is all so bewildering anyway.”

“But I’ve got different idears,” said Steele. “You go ahead with your story, and Sheriff Buckalew will have these lawyers throwed out if they interrupt again. Be-consarned if I see why we allow lawyers in court anyhow.”

CYNTHIA put her right hand to her right cheek, as an aid to concentration. Her fingers sparkled with gems. “It was but a moment after we’d stopped,” she said. “A premonition, sound, shadow, or something else caused me to glance up quickly. And there was Mr. Croy, crouched between boulders, a shotgun in his hands aimed at Mr. Drury. I tried to scream, and did, but too late. Mr. Croy fired twice—”

Cynthia covered her eyes.

Steele’s voice was sympathetic, but firm. “Go ahead, lady.”

Cynthia removed her hands. Her eyes were moist. “Mr. Drury fell from his

horse—dead. Clattering hoofs were to be heard in Sango Gulch. They rode away then—Mr. Croy and those others—as strange riders loped into view.”

Judge Steele leaned toward her. “Lady, could you identify those two riders with Croy?”

“Not by name, though I do know their faces.”

“See them in this courtroom?”

“N-no. Not just now. They are among—”

Hutto was up, smiling an apology. “If your honor please, suh, they will be produced in due time.”

Judge Steele’s eyes narrowed. Maybe Hutto knew what he was doing, but in Steele’s opinion two men besides Croy were fated to be hung. Steele glanced at Claybrook. “Got anything to say?”

Claybrook was hunched down with a pout on his lips. “No, your honor.”

“I’d like to cross-examine,” said Professor Hutto.

“It’s your privilege,” said Steele grudgingly. For now, he figured, this pompous, learned Hutto was sure to try some sneaking trick.

Courtroom stirs and whispers stilled to silence.

Hutto adjusted his bow tie, treated himself to a moment’s dreamy contemplation of Cynthia Bondell’s charms. “Ahem. Miss Bondell, you say you are a singer?”

Cynthia replied modestly, “That is my calling, Mr. Hutto.”

“If I may say so,” said Hutto with suffusive gallantry, “I hear you sing with rapturous sweetness.”

Cynthia’s eyes were pensive, cautious. “It is gracious of you to say so.”

Claybrook rose sulkily, “Now, your honor, this is no place for a mutual admiration contest; Professor Hutto should know that.”

"My profoundest apologies," said Hutto. He studied briefly. "Miss Bondell, at first you sang for Mr. Croy, I believe?"

"I did."

"Then Mr. Drury gave you a more attractive offer?"

"Yes."

"Miss Bondell, had you known Mr. Drury before you came to Flat Creek?"

She cast him a puzzled glance. "Why, no."

"Had you previously known Mr. Croy?"

Her head moved slowly. "I had not."

A gold watch chain ran from Hutto's left vest pocket through a buttonhole and into his right vest pocket. He lifted its right end, from which dangled a small diamond ring. This he twirled conspicuously several times, then replaced it.

*Consarn him*, thought Steele. He was trying to make that jury believe this was Cynthia Bondell's ring, given her by Croy and for a time worn as an engagement ring. If ever there was a double-dyed rascal—

"Miss Bondell," said Hutto, "a moment ago you observed that Mr. Drury had been very nice to you. Was not Mr. Croy, also, very nice to you?"

"He was willing to be, according to his standards."

Smiles rippled across numerous faces.

Hutto frowned vaguely. "Ahem. Did Mr. Drury propose marriage to you?"

"Yes."

"Had Mr. Croy proposed marriage to you?"

"Yes."

"Did you not, indeed, for a time wear an engagement ring given you by Mr. Croy?"

*Consarn him!* thought Steele.

"I did not," said Cynthia. There was a remote hint of indignation in both voice and manner.

Hutto twirled his watch chain again. "Had you promised to marry either of them?"

Cynthia gave this question some thought, then shook her head. "Not definitely."

"Indefinitely, had you not promised *both* of them?"

Judge Steele drew a quick breath. "Hutto, are you trying to insult this lady?"

"Nothing is farther from my mind, suh."

"All right, lady," said Steele, "answer that or not, as you like."

Cynthia lifted her left hand in sweet unawareness of what she did and touched her emerald pendant. No engagement ring was evident, though a finger ruby gleamed blood-red and a bracelet of diamonds glittered.

She glanced at Judge Steele, blue-violet eyes filled with tender uncertainty. "I assured both men that I had made no promise to anyone."

"Then," said Hutto, turning suddenly hostile, "you let them pursue their rivalry, each inspired by hope?"

Judge Steele followed Hutto's glance and instantly understood his trickery. Jurors were looking at Cynthia Bondell, telling themselves she was worth a murder, ready to sacrifice their souls on her love altar.

Steele was furious. "Don't answer that question, lady."

"Your honor, suh," said Hutto, almost reproachfully, "this worthy gentleman I am endeavoring to defend has been charged with having killed a rival in love, deliberately, and with malice aforethought. It is my theory that malice and love do not, and cannot, abide together. Hostility of lovers goes deeper than maliciousness of spirit; upon Miss Bondell's answer to my question, accordingly, hangs a man's fate. That they were rivals for this beautiful

lady's affection meant that they were enemies—deadly enemies, one no more ready to kill than another.”

“Now look hyar, Hutto, are you testifying, or making a jury speech?”

“Suh, I am saying that each of those mad rivals was possessed of an *animo furandi*, which gave to each man a right, not merely *in foro conscientiae*, but also *juris et de jure*, to commence measures of self-defense immediately upon sight of his deadly rival.”

CYNTHIA BONDELL gasped in astonishment. “Why, sir, that is not true. Mr. Drury entertained no criminal intent toward Mr. Croy. Of law and from law, nor in the tribunal of conscience, did Mr. Croy have any right or occasion to take Mr. Drury's life.”

Hutto gasped. “Ahem. Your honor, I move that her statement be stricken. I t was not in response to any question.”

Judge Steele suppressed a smile. “Be-consarned if I can blame you, Hutto, for making that motion. Way I see it, you stuck your neck out and got it whacked off. I don't know what either one of you was talkin' about, but your motion is overruled.”

Hutto's face was red. “Save exception.” He glared at Cynthia Bondell—probably wondered where she went to school. His manner became vindictive. “Lady, I believe you said you are a singer?”

“That is right.”

“Did you come to Flat Creek to sing, or to marry a rich mine owner?”

Cynthia's breath went out in a puff, but she regained her poise quickly. “I came to sing.”

There was a hurt in her voice that put Hutto's life in peril. That angry puff of hers was instantly forgotten. Jurors frowned; spectators murmured ominously.



Hutto persisted. “But you did accept presents from both men, didn't you?”

“No.”

“Only from Mr. Croy, eh?”

“Only from Mr. Drury.”

Hutto advanced so close he could have touched her nose with a pudgy finger. He gave her a fierce look and said with bitter accusation, “Miss Bondell, there is but one reason why you did not marry Bob Drury. It was because you are in love with Leander Croy, wasn't it?”

Judge Steele lunged to his feet. Here was about what he'd been expecting. “Hutto, you connivin' polecat, you knowed better than ask that question. You figured if she said she was in love with that drygulchin' hyena these jurors would turn him loose just to please her. Well, by thunder, we'll proceed on an entirely contrary assumption; namely, that she hates him and would like to see him strung up.”

A hard, icy glitter had formed in Cynthia's incomparable eyes. “But, Judge Steele, I'd like to answer that question, if I may.”

“Lady, if you think bein' in love with a murderin' polecat will save his neck, you're doomed to a life of heartbreak.”

“But I had no such thought. It was Mr. Drury I loved.” Her manner turned to scorn. “As for Mr. Croy—”

“Objection!” shouted Hutto. “You cannot make that statement, lady.”

“All right, Hutto,” said Steele, “so she can't. Have you got any more questions?”

“Suh, I have not.”

“Then you are excused, lady,” said Steele. “Bucky, have her escorted out in a

proper manner.”

Men held their breath as deputies made a path for her down a crowded aisle. Then they sighed. It was suggested in their longing looks that they envied Mr. Drury—that death was a small price to pay for having been loved by a woman like this one.

“Professor Hutto,” said Steele, his voice full of satire, “I’d say your client’s goose is cooked. Do you want to give up?”

“Suh, I do not,” Hutto replied indignantly.

Steele looked at his watch, noted that it was noon. “Bucky, recess court till one o’clock.”

Bucky rapped with his forty-five. “Court’s in recess till one o’clock. Jury will stick together and talk to nobody.”

**A**N HOUR later he rapped again. “Court’s now in session. Anybody disturbin’ same will be woke up by Gabriel’s trumpet.”

Judge Steele smoothed his mustache contentedly, then a big deputy sheriff stepped up and faced him mysteriously.

“Dan Trehwitt, what do you want?”

“ ‘Fraid I got bad news, Judge. I had charge of this jury, and I done my best to keep ‘em pure and holy; but somebody eases up in that jam of people and slips a letter to juror Kobbe Hasselton. Here ‘tis, Judge; I slipped it out of his pocket. It’s from Leander Croy. Says he’ll pay Hasselton a thousand lizard skins for a hung jury. And comin’ back over here, I sees Croy’s messenger ease up to Hasselton, and Hasselton says, ‘Tell Croy it’s a deal.’ I guess it’s my fault, Judge, and I’m as sorry as a sick yearlin’.”

Judge Steele wasn’t looking at Dan Trehwitt; he was looking at juror Kobbe Hasselton. Anger so blurred his vision, he could see nothing distinctly. “Everlastin’ polecat!” he growled. “I knowed he was a

crook. Bucky!” Five deputies were already on their way. “Drag him out of hyar,” Steele fumed.

Deputies dragged him out. A commotion took place outside, but when men began to shuffle and twist their necks, Sheriff Buckalew rapped for order.

Hutto got up; a look of elation in his fat face had changed to one of solemnity. “You honor, suh, defendant objects to expulsion of juror Hasselton.”

Steele’s eyes glinted. “That from you, Hutto, took plenty of gall. Bucky, call another juror.”

Clerk Skiffington called, “Rufus Harge.”

A lanky, bearded gold-digger scrouged forward, raised his hand before Skiffy, then took his seat as a juror. Steele felt better. In Hasselton’s place he had a tough, ruthless Vigie.

“Defendant objects,” said Hutto, but for obscure reason only halfheartedly.

Judge Steele smothered down his anger. “Objection overruled.”

“Exception, suh.”

“Claybrook,” said Steele, “got any more witnesses?”

“No, your honor.”

“Hutto?”

“I have a motion, your honor.”

“A what?”

“A motion, suh. I move that defendant be discharged.”

Judge Steele was too astonished for anger to reach full fury. “Hutto, you don’t mean that?”

“I most certainly do, suh.”

Steele’s blood pressure rose dangerously. “Hutto, you’re worse than Demeree. Of all lowborn scum and unmitigated impudence, you’re tops. Do you mean to stand thar and insult this court by asking we turn that murderin’ varmint loose?”

“I certainly do, suh. That was my

motion, and it is supported by fundamental law, authority being no less, suh, than our constitution, which says that a man shall not for one offense be twice put in jeopardy of life or limb.”

Steele’s breath spewed at distended nostrils. He was speechless.

Claybrook got up, his pout abated, his pink face so earnest as now to appear devout. “Your honor, as much as I regret to say it, I fear Professor Hutto is right.”

STEELE found his voice. “Claybrook, you traitor! What are you lawyers talkin’ about anyhow?”

“I can explain,” said Claybrook.

“Our constitution forbids double jeopardy. When a prisoner has been arraigned and has pleaded not guilty, and a jury has been empaneled and sworn, said prisoner is then in jeopardy. If, before verdict, a juror is kicked off and a new juror is put in his place, that amounts to starting over with a new jury; it means putting your prisoner in jeopardy a second time, and that is forbidden. I’m sorry, your honor, but no constitutional principle is more sacredly established than that.”

Judge Steele eased up, his face hot, anger intensified to pure savagery, “By thunder, Claybrook, nothin’ is goin’ to be more sacredly *unestablished* than that.” He glared at Claybrook, then at Hutto. French Demeree had been trying enough; this Lexicon Hutto was intolerable.

He blinked, then glared down at Leander Croy, who was confidently smiling. “You got a clever lawyer all right, Croy, but he’s a connivin’ pole-cat who ought to be hung.” Steele’s eyes roved, searched. “Hyar we got a murderer, guilt proved beyond shadow of doubt, and these lawyers tell us we got to turn him loose. Well, by thunder, he ain’t goin’ to be turned loose. By all horse sense, he ain’t been tried to a dead finish; he ain’t been in

jeopardy in no finished-up fashion. If this jury says he’s not guilty, then he’s free; but, be-consarned, as long as we’ve got our hooks in him, we’re goin’ to try him. Lawyers don’t do anything but make trouble anyhow. We ought never—”

He paused. His gaze had fixed itself upon a big six-footer who had a few seconds before come in from outdoors. “Bill Hacker, git yourself up hyar.”

“Coming, Judge.” Bill Hacker, wearing twin six-guns, strode forward. He was solidly-built, with cold, black eyes, black hair, and close-cut mustache. He eased up and pulled Judge Steele down beside him.

“What’s wrong, Wardlow?”

“Bill, this new lawyer called Professor Hutto has got me whupped. Double jeopardy, he calls it. Defendant Croy corrupted juror Kobbe Hasselton. When I put another in Hasselton’s place, up pops Hutto and says it’s unconstitutional. Then up pops our man Claybrook and agrees with him. As a judge, I’m just no good, Bill.”

“Don’t say that, Wardlow; you’re a fine judge. Did Hutto object to your putting on a new juror?”

“In a puny manner, but no fight.”

“Then did he move that defendant be discharged completely?”

“Yeah, Bill. And that’s what’s now stewing.”

“I heard part of it before I went out, Wardlow; just needed a bit more information. What they say is sound constitutional law, as an expression of general principle. But judges with what you call horse sense have laid down a few exceptions. Where inexorable necessity requires, a judge may kick off a juror before verdict is reached, and put on a new juror, and it will not be double jeopardy. One situation in which that necessity is held to exist is where defendant, by his

own wrong, has disqualified a juror from continuing to sit as such. In that event, defendant is in second jeopardy, but because of his wrong he is deemed to have waived his constitutional privilege. That is what has happened here. So you are not in error, Wardlow. Go right—” Bill Hacker paused, his eye riveted.

“What’s wrong, Bill?”

“Hold it, Wardlow. French Demeree has just come in. Let’s wait until he’s brought up to date by Hutto, then see what he has to say.”

**T**HEY WAITED. Officers, Vigies and rope-minded gold-diggers waited with them. Silence that prevailed was ominous. Its only break was whispering between Hutto and Demeree. From time to time Demeree nodded. Then, at something Demeree said, Hutto’s eyes bugged with fear.

Demeree got up. “Your honor, my associate Mr. Hutto has just informed me of what has happened, including Mr. Hutto’s motion that defendant be discharged. As chief counsel for defendant, I withdraw Mr. Hutto’s motion and express his apology and mine for what has happened. I assure you that both he and I are blameless of any complicity in this shameless attempt of our client at perversion of justice.” Demeree, pale either from fright or illness, sat down.

Steele turned to Bill Hacker. Now what, Bill?”

“Let proceedings resume, Wardlow.”

Steele faced front. “Demeree, I’m afraid I’ve had wrong opinions of you. That was a fine thing you just done.”

Demeree nodded, rose. “Thank you, your honor.” He resumed his seat.

“You got any witnesses, Demeree?”

“I have, your honor; two eye witnesses who will swear that Mr. Croy made no hostile move against Mr. Drury, until

Drury had fired on him. Call Hank Mallicoat.”

Deputy Dan Trehwitt stood in front of Judge Steele again. “I’m as sorry as a caught sheep-killer, Judge, but both of Demeree’s witnesses have skipped town. Left like scalded dogs. Deputy Hornhill saw ‘em ridin’ out durin’ recess, going like a house afire.”

Bill Hacker pulled Steele’s sleeve and whispered, “My boys caught ‘em at Logan Gap, Wardlow, and hung ‘em. Those two were with Croy when he murdered Drury. Accomplices.”

Steele studied Hacker’s face, prompted by sudden suspicion. “Bill, that juror, Hasselton—”

“We hung him, too, Wardlow. Got to teach crooks a lesson, or we’ll never have a law court in Flat Creek.”

Steele sighed gratefully and faced Demeree and Hutto. “You gentlemen ready to call it quits?”

Demeree got up again. “If your honor please, I move for a continuance until our two witnesses can be apprehended and brought in.”

“I’m afraid that’s impossible, Mr. Demeree; they have passed beyond our jurisdiction.”

Demeree was puzzled, then his eyes opened wide with understanding. He sat down, pale and resigned.

Steele swung left. “You jurors go out and bring in a verdict; this trial’s over.”

They shuffled out and back. A grizzled miner remained standing. “Guilty of first degree murder, Judge.”

Steele nodded at Sheriff Buckalew. “Your man, Bucky. Hang him.”

•

Out of ensuing chaos came an empty courtroom, except for Judge Steele and his friend Bill Hacker.

Hacker filled his pipe with tobacco crumbs and fired up. "Let's go, Wardlow."

Steele kept his seat. "Bill, I've got two questions on my mind. First, suppose some lame-brained jury acquits a murderer, then it becomes clear to everybody that he was raw-meat guilty. Do you mean to tell me we couldn't drag him in and try him again?"

Hacker thumbed his burning tobacco and drew a long pull on his pipe. "That's right, Wardlow. Where a convicted criminal asks for them, he can get as many new trials as courts will allow him, but we on our part get only one whack at him. Once a jury acquits him, he's home free,

though afterwards his guilt becomes certain."

"Be-consarned if I ever heard of anything so stupid."

Hacker grinned and kept silent.

"Another thing, Bill. What about Demeree?"

"You've got me there, Wardlow. But for once, I'd say, Demeree acted like a pretty honorable fellow."

Steele slid down and straightened his gun belt. "I wonder," he said. "It wasn't like Demeree. I'm thinkin' he wasn't speaking so much in behalf of honor as he was in behalf of Hutto's neck."

