

Darlene Madott / THE QUESTION

"When I burned in desire to question them further, they made themselves into air, into which they vanished." — Lady Macbeth

I was a young woman, then — single and without child — green in the practice of my profession, when I had this dream: A great litigator gave me a powerful secret — the one question that when asked would unlock all the secrets of another's soul, heave truth to lip, would compel any witness to tell everything. There is a cardinal rule among litigators hard to reconcile with the purpose of the question in my dream: never ask a question in cross-examination for which the answer is unknown. A litigator must never let a personal curiosity impair his control of the case. The unknown answer is dangerous and unpredictable. In the art of cross-examination, it is the questions that matter, more than the answers.

The Toronto apartment building where Edna Hamilton lived was old and dingy. As we climbed the stairs to Edna Hamilton's apartment, my winded boss said how he hated "these airless hallways." His secretary had told me to meet him down at the Y.M.C.A. at 8:00 o'clock in the morning after his exercise class. He had a file for me that "wanted a woman lawyer." We went to a door, knocked, and an old woman answered. She could have been anyone's grandmother.

There was no air conditioning, and although it was early morning, Edna Hamilton already had the venetian blinds closed and the burgundy and green floral curtains drawn across the blinds to keep out the summer's heat. Everything was meticulously neat, exactly what one would expect of an old woman's apartment. It was as if Edna Hamilton had moved in thirty years ago when the building was new and everything within her four walls had stayed still, while the building had run down around her.

My boss reviewed the statement of claim with which Edna Hamil-

ton had been served.

She was being sued by a dead man's estate for the return of some \$82,000, plus interest. The claim alleged that the money had belonged to Frank Duvaliers, Edna's dead brother-in-law. The executor was one of the many sons the dead man had collected through his many marriages. The executor wanted this money back for the benefit of the dead man's heirs, of course, of which he was one.

"The money wasn't Frank's. Frank never had two nickels to scratch. It was Jeannette Bell's. My dead sister's child. She gave it to me seven years ago — to keep it out of her father's clutches, no doubt."

"Do you have the cheque?" My boss asked the old woman.

Edna produced a copy of a cheque she had obtained from the Jefferson Bank, Louisiana. It was dated seven years earlier, was in the amount of \$82,672.35 and clearly stated that it was to the order of our client by the remitter, Jeannette Bell.

"There's your defence," the great litigator told me. "Gift from the niece. Never Frank's money. Estate has no greater claim to it than Frank would, if alive. You draft the defence," he said to me before he left, "Get the whole story."

Throughout the balance of that day, I listened to what I thought was Edna's story:

"He murdered my sister. Over my dead body will any of that crowd get one cent. Dead or alive, he was nothing but trouble...

"She was eighteen when she married him. We lived on the same street, in Perth, Ontario. Thick as thieves, we were, my sister and I. Jeannette was her first. There was a baby every year after that. I was pregnant, myself, when Frank brought me the news. 'If you ever want to see your sister alive again,' he says, 'come with me now.' I didn't know what he was talking about. I grabbed my coat. I had to run to keep up with him as we climbed the hill to the hospital. Then I saw her. A tube from every hole. Just the day before, she'd opened her front door to me, a baby on her hip. She dropped the diaper she held and we both went down to pick it up together. She smelled of milk and powder, my sister. I remember it like yesterday. A mother with three babes, and yet a babe herself. There was still breast milk on

some of the blouses I washed after the funeral. That wasn't her in that hospital bed — hair pasted to her face, eyes sunken in like she was already dead. 'Bring me my babies,' she says to me, 'one at a time.' I had time just to kiss her, no time to ask a question. I ran down the hill to the house again. I called for Jeannette to hurry now quickly and put on her coat. Jeannette was just over three.

"Jeannette came running to her at first, but when she saw the hand, she drew back. It had a needle taped to it. 'It's all right,' my sister says to Jeanette, 'Mommy's just going to sleep now,' and for the longest time, it seemed as if she had just gone to sleep. I had to take Jeannette away, finally. Just as we were leaving the room, my sister spoke to me again. 'Take care of my babies.' Those were the last words she ever spoke. She died while I was bringing her boy up the hill.

"I never knew it would kill her,' was all Frank Duvaliers ever had to say about it. That was years later. Thirty years, when I finally caught up with him. He took off, day after the funeral. He took off with my sister's kids. I paid for the funeral. I paid for her plot. I paid for the rent that was overdue on their ramshackle of a house. I washed and ironed and sold or gave away my dead sister's clothes. I paid for the debts Frank Duvaliers left behind. He got away with murder, he did. Because that's what it was. She was only twenty-one at the time."

There was a long bitter silence. Then I asked, "Why did he leave?"

"Why do you think?" Edna blinked at me through indignant eyes, as if to say, how could I be a lawyer and a woman, yet not know this?

"Abortion was illegal at the time. The hospital knew what had been done. The police were probably just waiting 'till after she'd been buried."

"How did you find him?"

"Now there's a story. New Orleans. Thirty years later. I had time to kill between bus connections. I was looking through the phone book. I used to look for his name, whenever I went to a strange city. Sure enough, there it was. I called the number. Frank was curious enough to invite me over. He had them all over at the house by the time I got there. Of course, they weren't babies anymore.

"They all wanted to hear about their mother. Frank had told them she died in childbirth. But Jeannette couldn't remember any baby. Wouldn't she have at least seen the baby? She was sharp as nails, that

one. She even remembered asking at the graveside, 'What happens when she wakes up? How will she get out?' She remembered the question, but not what anyone answered. Can you imagine asking such a thing? She even remembered the hospital and the trip up the hill. She told me she had cried the first time it rained. That made two of us, I said, but by then, they'd have been somewhere in the eastern United States. It must have rained a different day.

"We were doing dishes in Frank's kitchen, me and Jeannette, when I told her the truth. Just then Frank came in the kitchen. 'I didn't think it would kill her,' he says. And I knew, then, for sure, what I'd only suspected for years."

"What did you do?"

"What do you mean, what did I do?"

"Well, did you confront him?"

"We finished the dishes. Me and Jeannette."

But what about the lives in between, the lives of the babes over which Edna was to have taken such care? Had been charged to do so by her dying sister? A deathbed request.

At fifteen, Jeannette's father made her strip in the bathroom and beat her with his belt until she passed out. Frank stopped, thinking he had killed her. The beating caused the injury that caused the plastic-vein replacement operation that ultimately killed Jeannette in later years.

Jeannette's brother ran away from home at fourteen and worked on a farm, until Frank found him and pulled him back. He left again at the legal age of sixteen.

"The boy is dead now, too," Edna tells me — "committed suicide at sixty. They found him swinging from the rafters of the barn Jeannette helped him buy."

For Jeannette made a financial success of her life — buying convenience store operations, trading in real estate. "She was sharp as nails, that one."

And then there were Frank's marriages: After Edna's sister, Frank married a diabetic widow with three children of her own, who in the end wouldn't trust Frank to give her the insulin needle. When Frank's

second wife died, Frank married her sister, who also happened to be his dead brother's wife, becoming father to more step-children. They all called him "uncle."

"Imagine marrying your brother's wife, your wife's sister? It's like incest. There wasn't a crime Frank Duvaliers didn't commit."

Thirty years of catch-up. Another twenty go by. And in the twenty, Edna takes the place of Jeannette's mother. Jeannette visits Edna in Canada, and Edna comes south. Jeannette sends Mother's Day cards on Mother's Day — becoming more of a daughter to Edna than Edna's own.

Jeannette is fifty-three years of age, Edna over seventy, when Jeanette sends the certified cheque to Canada in the amount of \$82,672.35, drawn on the Jefferson Bank. No letter. No explanation. Just the cheque. Edna goes across the hallway and shows it to a neighbour. "Do you think it's real?" Then she telephones Jeannette.

"Do what you want with it," Jeannette tells her. "Invest it, buy a house — it's yours."

A few months later, Jeannette goes into hospital for routine surgery on her leg, to have the plastic vein replaced. She dies of a haemorrhage on the operating table.

And now Frank's heirs are suing for the money. They say it was Frank's — all because of a receipt found in Frank Duvalier's safe after his death.

"How did Frank come by the receipt?"

"He stole it," Edna tells me, without hesitation. "He stole it from Jeannette. He was always stealing from his rich daughter."

"But why a receipt?"

"How should I know how Frank's mind worked? The foolish man probably thought to take some action on it during his life," she tells me.

"Where is the money now?"

Edna sits in her chair, her hands neatly folded on her lap. She gives me a level stare, looking amazingly pink and determined for someone over eighty.

"It's gone. As far as Frank Duvaliers and his crowd are concerned, there isn't a cent of it left. I'll fight this until there isn't a cent. He murdered my sister. He should have hung fifty years ago."

I am thrilled by the story, buoyed up by it all day. I return to the office in a froth of indignation — that anyone could sue Edna Hamilton, after all these years, after all she has been through. My boss listens to me speak with that cheshire smile he wears on his face for a case well matched to its counsel, and then asks the simple question that stops me in my tracks: "You believe her?"

"Of course I do, don't you?"

"Take some advice: Never believe what your own client tells you. That way, you may be pleasantly surprised, but you'll never be disappointed."

But the case is mine. I write an outraged letter to opposing counsel and tell him that if the estate of Frank Duvaliers goes away now, we'll let them off lightly; pursue this spurious litigation, we'll be looking for costs. Opposing counsel writes back demanding dates for the discovery. He encloses documents. Among the estate's documents are two inexplicable letters:

"Dear Jeannette and Frank,

"Here it is 3 p.m. & I've just gotten home from the Bank.

Jeannette, I have good news for you, the interest rate went up $1\frac{1}{2}$ a per cent today so you are getting $15\frac{1}{2}\%$ interest on your money. I can't understand your Dad. If left in the Jefferson Bank, the money would only have lain there at about 9% at most. I think you are better off with it here. You could have had it in your name if you had sent the money directly from the Jefferson Bank to my Bank here, but you would have had to pay American income tax and also the Bank would have had to deduct 15% of the interest every six months for the Canadian income tax because you live outside Canada and are drawing interest from Canadian sources. I will explain it better when I come down.

"If your Dad wants to drop in, tell him by all means to come. I am

alone and he has no need to worry about Mr. Hamilton. I am still classed as single and I don't care who he lives with or if he goes through a form of marriage. He can have a harem, if he is man enough.

Aunt Edna”

“Dear Jeannette,

“Just a hasty note asking you to send back to me the receipt I sent you. I must have it to return to the bank at the end of the term deposit. It is wise you have no papers where Frank's money has gone. Also, destroy any bank numbers regarding the book. It is only good to me, seeing it has my name only on any transactions. If these people are bent on trouble, there's no use giving them any opportunity to find out where Frank's money went. It is Frank's money. I will not give any part to anyone, only Frank, at the end of five years. He trusted this amount to me and I will honour that trust to the end.

“Did not see my grand-daughter. It was a strange thing for her to phone me, seeing I did not know her and really have no desire to be involved with any of these people. I have gotten along all these years without them. Now out of the blue they appear on the horizon. My desire for all my grandchildren is for them to retire back into the sunset and continue to forget me, as have their parents.

“Tell your Dad to drop in when he comes to Canada.

Aunt Edna”

The day before the scheduled examinations, I go again to Edna's apartment to prepare her for discovery. I show her the letters. Edna sits in her chair and reads them silently. After she has finished reading them, she looks at me calmly. Her eyes above the line that separates her bifocals are small and sharp, below the line, swollen and unfocused, like two blobs of runny jelly.

These letters, I tell her, are a problem.

You think they are a problem?

Clearly, I tell her. For example, what did you mean by “Frank's

money”? Why are you accounting to Frank and Jeannette for the interest rate? Why did you send Jeannette a receipt? What’s all this concern about the tax implications of the transfer, if the money was a gift? I rattle off a whole series of questions relevant to the lawsuit, and then I tell Edna these are the kinds of questions she will be asked on the morrow. But in my mind, there is another question that I have no excuse for asking. Why did you invite Frank to come to you? Your sister’s murderer ...

... I am alone ... I am still single ...

“Do you know what I think?” Edna tells me that day, “I think Frank stole the money from his second wife. He was involved in litigation for years, you know, with her kids. They finally got a court order to kick him out of her house. But when they went looking for her money, it was gone.”

Only afterwards do I realize I left that day without any answers. But my questions accomplished what they were meant to accomplish professionally: They prepared Edna Hamilton for discovery.

THE DISCOVERIES

- Q. Mrs. Hamilton, I am showing you a letter dated May 12, 1981. It is addressed to “Dear Jeannette and Frank.” Can you identify this, please, as your letter?
- A. I have no recollection of writing this letter.
- Q. Could you take a moment to look at the handwriting and tell me whether or not you recognize it as your own handwriting?
- A. I have no recollection of writing this at all, I am sorry.
- Q. I am not asking you whether you recollect writing it. My question to you is, do you recognize the handwriting?
- A. The handwriting can’t be mine if I can’t recollect writing it.
- Q. Do you deny that this is your handwriting?
- A. I have no recollection of writing this.
- Q. I can write a letter and not remember writing it but that does not mean it is not my writing. I am asking you if that is your handwriting?

- A. I don't think so.
- Q. Are you not sure?
- A. I have no idea of ever writing it so therefore I couldn't have written it.
- Q. Mrs. Hamilton, I am going to show you another document. Is that in your handwriting?
- A. I can't honestly say.
- Q. You neither deny nor confirm it?
- [Me] You have her answer, she cannot honestly say. She cannot identify it one way or the other as her handwriting.
- Q. Okay. Well, then, I will have to live with that for now.

But I cannot live with it. I could not live with it then. I cannot live with it now.

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- Q. Mrs. Hamilton, do you recall telling Jeannette that if her father wanted to drop in and visit that by all means he was welcome to do that?
- A. No.
- Q. Did Frank Duvaliers visit you in 1981?
- A. No, he did not.
- Q. Did Frank Duvaliers ever visit you for the purpose of collecting money?
- A. No.
- Q. He never did.
- A. Never.
- [Me] Did he ever visit you?
- A. No, never.

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- Q. Were you provided with some sort of paper from the bank at the time you bought the term deposit to show that you had a term deposit with the bank?
- A. You mean a receipt?
- Q. Yes. Were you given a receipt?

- A. Yes.
- Q. And do you have that here with you today?
- A. No.
- Q. What became of that?
- A. I sent it to Jeannette.
- Q. Yes?
- A. And that was the last I saw of it.
- Q. Why would you send a receipt to Jeannette?
- A. Just to show her what I had done with the money, that's all. No purpose other than that.
- Q. Did you, sometime before the term deposit matured, attempt to recover from Jeannette the receipt you had sent her?
- A. I asked her for it, yes, on the phone.
- Q. Did you also send her a letter asking for it?
- A. I don't remember sending her a letter. I phoned her all the time.
- Q. Why did you want the return of the receipt?
- A. Well, a receipt's a receipt, isn't it? No particular reason.
- Q. When the term deposit matured, did you not need that receipt?
- A. No. I went to the bank and they gave me another one, but I can't tell you where that is either.
- Q. Why would you find it necessary to send Jeannette the receipt when you had already told her on the phone what you had done with the money?
- A. Well, just to, I mean, she was like a daughter to me, we didn't keep any secrets or anything from each other, she was actually like my daughter. Her mother was my sister.
- [Me] Counsel, you might want to ask what reason Jeannette gave for not sending the receipt back to Edna Hamilton.

— DISCUSSION OFF THE RECORD

- Q. Do you recall, Mrs. Hamilton, being visited or attempted to be visited by a granddaughter?
- A. No. Granddaughter of whom? My own?
- Q. Yes. Do you have grandchildren?

- A. I have grandchildren, I don't see them.
Q. How many grandchildren do you have?
A. I would imagine ten or twelve.
Q. And you don't see any of them?
A. No. In fact, I haven't seen them, not even when they were born. I have never seen them. You may find it odd but it's true.
Q. Yes, it is strange.
A. It is strange, but —
Q. Would you like to see them?
A. No, I have no desire, not now. They're grown up and married.

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- Q. You are aware that Frank Duvaliers remarried again subsequent to May of 1981, a person by the name of Margaret Duvaliers.
A. Yes.
Q. And Margaret Duvaliers, she had been previously married to Frank's brother, is that true?
A. That's right. I don't know her, mind you.
Q. And Frank had previously been married to her sister?
A. Yes.
Q. Do you deny that she, subsequent to being married to Frank, in about 1981 or 1982, visited you here in Toronto?
A. Visited me?
Q. Yes.
A. I've never seen the lady. I don't know her, never set eyes on her, never in my life.
[Me] Let the record reflect my client's surprise.
A. I have never seen her. She was the third wife, you know. The second wife was her sister. And the third wife was married to Frank's brother before Frank. They're all dead now. Everybody's dead. Except me. [Laughter]. Aren't I awful?

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- Q. Is there any reason you know of why Jeannette would give this

- money to you by way of gift?
- A. I told you, she was like a daughter to me.
- Q. And for what period of time had you carried on a relationship with Jeannette that she was like a daughter?
- A. About twenty years.
- Q. Had she ever given you money before?
- A. No.
- Q. And did she ever subsequently?
- A. No.
- Q. Had she ever given you anything else, anything other than money?
- A. No, just, you know, cards, Christmas cards, birthday cards, things such as that. She never missed an occasion for cards. I have two or three albums here full of them if you want to see.
- Q. I would, yes, actually, if your counsel doesn't mind.
- [Me] Go ahead.
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- Q. Did you have any conversation with Frank Duvaliers after receiving these funds?
- A. No.
- Q. Any conversation at all?
- A. No.
- Q. Either by phone, any correspondence or contact?
- A. No.
- Q. None?
- A. None.
- Q. Mrs. Hamilton, you have indicated in your Statement of Defence that there is a family history here that might have bearing on the issues, arising out of the fact that Frank was married to your sister. Your sister died?
- A. Yes.
- Q. What did your sister die of?
- A. An illegal abortion.
- Q. An illegal abortion?
- A. Yes.

- Q. Did she not undergo an abortion in the hospital?
- A. No. Wasn't allowed then, young man.
- Q. Do you have any knowledge of where it was that she underwent an abortion?
- A. At home.
- Q. And where was that at the time?
- A. Northern Ontario.
- Q. And how do you know that?
- A. I lived there.
- Q. You lived with them?
- A. No. I lived with my husband up the street.
- Q. And were you present during the abortion?
- A. No. I saw her in the hospital, afterward.
- Q. And do you know who performed the illegal abortion?
- A. Yes.
- Q. Who?
- A. Frank Duvaliers.
- Q. How do you know that?
- A. He told me himself.
- Q. He told you himself?
- A. Yes.
- Q. Now, you have got here that your sister had asked you to take care of her children?
- A. Yes.
- Q. Do you have any indication that Frank was not prepared to take care of his own children at the time?
- A. I don't know. My sister asked me if I'd go down and look after her babies. He took them off to Mexico, to the States, to Mexico.
- Q. Did you ever report Frank Duvaliers to any authorities?
- A. No, because at the time I didn't know that he was the one who did the abortion.
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- Q. Now, in your Defence, you say, "It was generally known by the family that Jeannette had given this money to the Defendant."

What family are you referring to?

A. Jeannette's.

Q. You are referring to her two children?

A. I think they all knew. I would imagine they would know.

Q. What evidence do you have that it was generally known?

A. Well, I would imagine they did a lot of talking. I don't know. I wasn't there.

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Q. Did you touch any part of the principal monies before the maturity date on the term deposit?

A. No.

Q. What did you do with the interest earned on the term deposit?

A. Spent it.

Q. You spent all of it?

A. Yes.

Q. Pardon me?

A. Yes.

Q. What did you do with the principal after the term deposit matured?

A. Spent it.

Q. You spent it?

A. Yes. It was given to me. It was given to me, you know. I didn't steal that money. Understand that, young man.

Q. How did you spend it?

A. Good heavens, I couldn't tell you every place I spent it.

Q. Have you made any gifts to anybody since the beginning of this legal proceeding?

A. I really don't think that is any of your concern. I can do what I like with my money, you know.

Q. Is any of the principal or interest left on the money you say was given to you by Jeannette?

A. Not one cent.

RE-EXAMINATION

[Me] You recall being asked about a receipt. What was the reason Jeannette gave you for not having the receipt available to send back to you?

A. Her father had it. He stole it out of her papers.

Q. Thank you. No further questions.

[Counsel]

Let the record show that during the period of time we were off the record, counsel had the opportunity to refresh her witness on that very evidence.

[Me] No, let the record reflect that while off the record I indicated to counsel there might be a question he would want to ask, and when he asked the question and got the same response I have just obtained from my client, he said he did not want it on the record and I told him I would ask that question in reply.

[Counsel]

We can argue this until the cows come home.

[Me] In any event, I will have my opportunity to examine Mrs. Hamilton in chief and **we will get the whole story at the trial.**

Frank's funeral must have been an animated event. It took place in Moncton, New Brunswick. After the burial, everyone returned to the house which had belonged to his third wife before her death. Those present included the sole surviving daughter of his first marriage, and the children of Frank's second and third wives. Walter, son of the third wife and executor of Frank's estate, was also there. Imagine everyone's excitement when he went down into the basement and opened the safe. There was a shoe box inside. In the shoe box, he found the letters. Upstairs, around the table, Walter read the letters aloud to the assembly. Walter took them to a lawyer the very next day. They all wanted to see what should be done about it. They all figured it was Frank's money; it should be put back. They all wanted their fair share, this greedy little bunch.

Now it is my turn to question Frank's executor, the representative of his estate:

Q. You'll agree with me, sir, that the Last Will and Testament of Frank Duvaliers appears to have been made some three years after the gift of money to Edna Hamilton.

A. Yes.

Q. Now, I note from the will that Frank was quite specific as to bequeathing certain things. For instance, his tools.

A. Yes.

Q. And he has also bequeathed a gold watch and ring to a great grandson.

A. Yes.

Q. And a truck to someone else.

A. Yes.

Q. Now, from the Statement of Receipts and Disbursements, you'll agree with me that the total funds in the estate appear to be about \$114,000.

A. Yes.

Q. And you'll agree with me that nowhere in the will is there mentioned a sum of approximately 80,000 United States dollars which Frank believed he had as part of his property.

A. No, it wasn't mentioned in the will.

Q. Don't you think that was odd?

A. Well, a little bit, yes.

Q. Why does that strike you as odd, sir, now upon reflection? Is it because it's a large sum of money?

A. Yes, right.

Q. Relative to what was in his estate at the time of his death?

A. Yes.

Q. In fact, it's larger than the sum of money that was available at the time of his death? You'll agree with me?

A. Larger?

Q. Yes. \$80,000 U.S. funds at the time he allegedly sent it to Edna Hamilton would be worth a lot more seven years later at the time of his death.

A. Yes.

Q. And yet no mention of it at all in the will.

- A. No.
- Q. Now, I'm told that at the time Frank married your mother, your mother had cancer and was, in fact, dying.
- A. Not to my knowledge.
- Q. But she died, in fact, within a year of the marriage.
- A. Yes, that's correct.
- Q. What did you think of him?
- A. Who, of Frank? You mean personally? I found him a real nice man.
- Q. So, you approved of his marriage to your mother?
- A. Yes.
- Q. Did you trust him?
- A. Yes.
- Q. Did you generally find him a trustworthy person?
- A. Yes.
- Q. Did you think he was a rich man?
- A. No.
- Q. Did you think he was a man of means?
- A. I never really thought about it.
- Q. Did you assume he had enough money to support your mother?
- A. Well, my mother could have supported herself.
- Q. At your mother's funeral, did you ever say to Frank Duvaliers, "Where's my mother's money?" or words to that effect?
- A. No. I never said that. I didn't care.
- Q. Did your mother have an estate?
- A. Yes.
- Q. What did that consist of?
- A. Her home and her car.
- Q. What about bank deposits?
- A. As far as I know, she and Frank had joint bank accounts. All the money went to Frank.
- Q. You never said to him, "What became of my Mom's money?"
- A. No.
- Q. Is it true that your family, you and your brothers and sisters, made Frank sign his pension over to your mother at the time of their marriage?

- A. No.
- Q. So, you deny that.
- A. Yes.
- Q. In fact, the children of Frank's third wife did quite well by Frank's will.
- A. Not really, because a lot of that money was my mother's.
- Q. When you say a lot of the money was your mother's, what percentage would you have in mind?
- A. I'm not really sure, but when Frank came to Canada, he didn't have that much.
- Q. How much did he bring?
- A. About \$11,000.
- Q. \$11,000. So, if we've got about \$100,000 in bank deposits at the time of his death, only about 10% of that would have been his. The rest was your mother's? Is that a fair statement?
- A. Yes.
- Q. So, this is a man who comes to Moncton with about \$11,000 to his name. And a few years later he's making a will. And according to your theory of the case, he believes that there's a woman holding \$80,000 U.S. of monies that belong to him. And he doesn't say a thing about it in his will. Would you agree with me that's a pretty significant omission?

[Counsel]

I object to that. It's not omitted from the will. Specific reference is not made, but it's not omitted and that's a question of law, which my client is not going to answer.

- Q. Do you have any explanation, sir, for Frank's delay — no, it's more than delay — for his *failure* to ever institute legal proceedings to get this money back during his lifetime, during his remaining seven years?
- A. No, I don't.
- Q. No explanation whatsoever.
- A. No.
- Q. Let me put this proposition to you: If those monies were dirty monies, if those monies were stolen, or if those monies would

have attracted a criminal charge if the late Frank Duvaliers instituted proceedings to get them back, is there any reason why the estate should be able to prosecute this action with impunity?

[Counsel]

That calls for speculation on the part of my client, and I refuse to let him answer that question.

Q. I would like to know why Frank Duvaliers did not institute proceedings for this money during his lifetime.

A. The man to answer that question is not here on the earth today.

Q. The man to answer that question is not here on earth, but he apparently has quite a number of spokespersons, judging by the number of people talking after his funeral.

[Counsel]

We'll undertake to provide you with any information we can obtain as to whether the monies were dirty monies. This is the first we've heard of it.

[Me] Well, no, the first you heard of it was from your own client's mouth, that he was told by Jeannette's sister that Frank was worried about criminal charges.

A. No, I didn't say that. Edna told him that. Jeannette's sister told me that when Frank come to get the money from Edna, Edna threatened him that she would lay charges against him for smuggling his money or taking it out of the States or something.

Q. The fact remains, sir, that for seven years, to the best of your knowledge, no steps whatsoever of a legal nature were taken by Frank to obtain the return of those monies.

A. Not that I know of.

Q. And you think you can come to court behind the smoke screen of an estate, where Frank couldn't come in his lifetime?

[Counsel]

Don't answer that.

Q. I have information that there was a bank pass book of Frank's second wife among the papers in Frank's shoe box, and that pass book unlocked the mystery that had been tormenting her

kids for years and which was probative of the sum of \$80,000 having been, in effect, stolen from his second wife's bank account prior to her death. This bank pass book of the second wife shows the withdrawal of \$80,000 just prior to her death in hospital. Did such a pass book, to your knowledge, show up in the shoe box?

A. Not to my knowledge.

Q. Now, there is a statement which is attributed to Frank's only surviving daughter of his first marriage, regarding the tone after the funeral of Frank Duvaliers — and I quote this roughly: "You should have seen them all arguing like cats and dogs." Would you describe the tone following Frank's funeral as analogous to the arguments of cats and dogs?

A. That's all news to me. I couldn't have been there. I must have been asleep.

Q. How would you describe the tone after the funeral?

A. No different than after any funeral — everybody just sitting around the table talking and drinking tea.

Q. So, there was no dismay about the will? There were no hard feelings?

A. Well, I wouldn't say no hard feelings. Somebody's **always** bound to be **disappointed**.

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Q. You indicated that your wife received the will from Frank at the time she took him to hospital.

A. Yes.

Q. When he gave it to her, did he tell her that, in addition to this will, there's also the money Edna Hamilton is holding for me?

A. I don't think he did, because I never heard her mention anything like that.

Q. Did he ever, in the time he was in hospital — how long was he in hospital?

A. Three or four days.

Q. Did he, at any time he was in hospital, mention Edna Hamilton?

A. Not to my knowledge.

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Q. You indicated that there were some photographs that you came across when you went through the papers. Is that right?

A. Yes.

Q. Were any of those photographs of Edna Hamilton?

A. No.

Q. Or Frank Duvaliers?

A. No.

Q. If you come across any photographs of Edna Hamilton, will you produce them for me?

A. Yes.

[Counsel]

How is this relevant?

As if a picture could tell: Who was Edna Hamilton? Who was Frank Duvaliers? What power did he have over women? Such a power that his first wife had not accused him of her death. Was she like that lady in the newspaper I read about, so in love with her murderer that when her own dying daughter asked her "Why did you let him do it Momma, why did you let him douse us in kerosene and light a match?" she answered, "I don't think he knew it was kerosene." Such a power that a dying woman signed a cheque to Frank Duvaliers in preference to her own flesh and blood? Such a power that the dead woman's sister took him in when her sister's children got a court order kicking him out of her dead sister's house? Such a power that the daughter he had stripped and beaten in a bathroom at the age of fifteen helped him get the money out of Jefferson, away from people "bent on making trouble?" Such a power that Edna invited him, her sister's murderer, to herself. "... *tell him by all means to come. I am alone and he has no need to worry about Mr. Hamilton. I am still classed as single ...*"

Why had Edna Hamilton not reported Frank Duvaliers to the authorities? Why had she searched for him for thirty years? Why had she written those words in her letter — "I am alone ... I am single ..."

— words meant for a man she believed had murdered her sister? Was it love? Was it hate? Was it revenge? Was it anything one question could illuminate?

Here's what I think must have happened: Edna Hamilton did not take Frank's money. It wasn't Frank's money. It wasn't Jeannette's. It was the money of the dead second wife. Edna was right about that. Because she knew Frank. She knew how Frank lived off women. He'd got his sickly diabetic wife, the wife who didn't trust him to give her the insulin needle in the end, to sign a cheque to him while in hospital. He had to get the money out of Jefferson, using the only people he could trust. He sent it to Edna, using Jeannette. *He sent it to Edna. Edna was someone he could trust.* How did he know that? Why did he think he could trust Edna Hamilton? Why did Edna take the money? Why did she write Jeannette, "tell him by all means to come"?

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The afternoon after her sister's death, Edna went to meet him. No one ever knew. She went to him to ask him a question, but all the way there, all the way to that ramshackle of a rented house her dead sister had scrubbed and curtained and filled with the smells of babies and milk, all she could think of was the two of them, Frank and her sister, how they had looked at each other their first summer in love, what their love had done to her, how it had tormented her in bed at night through a whole summer of restlessness, uncovered on the creased sheets, tossing for loneliness until the sound of geese going south released her, a season dead, the earth cooling and only beginning to hunger. She married Mr. Hamilton the next spring.

Edna is sitting on the couch; Frank is at the window. It is the first day after her sister's death. Frank pauses with his hand holding back the curtain, watching something in the street. His lengthy body with its thick thighs and low sex, weight poised on one hip, arms crossed on his sloping chest with the sleeves rolled up; his presence, so physical, with its unaroused sensuality. They are both young. He pours them a drink. Edna is three months pregnant and knows she shouldn't take it.

But she does. As he hands the glass to her, their hands touch.

He stands with one hand in the pocket of his pleated pants, his face in profile as he stares out the window at something in the street. Suddenly, he tugs on the chord of the venetian blinds, sending them crashing. For no reason at all, Edna gives Frank a memory. It isn't even real:

— When I was a little girl, I used to imagine this dark man who'd come to the house while my father was at work. I'd feel him in the house like a shadow — someone who had always just gone, who had waited for me, who I always missed by staying out a minute longer.

— Was there?

— Was there what?

— A man.

— No ... I don't think so.

Frank stares now at the floor as if he can see through it, or is listening intently to something in the next room. Edna listens too. They hear only the kitchen clock. A neighbour is taking care of the kids.

— I don't know what I'm talking about. She sounds drunk.

— There's a lot you don't know.

— Look, I didn't come here to —

— Why did you come?

— Because my sister is dead.

Frank laughs. She listens to his laugh, the sharp cynicism of it driving furrows through the silence, turning her words over like clods of freshly exposed earth.

— You came because you're guilty.

— Why should I feel guilty? What did I have to do with this?

— You tell me.

Edna has risen, looks around the room for her coat. The suddenness of her rising throws her off balance.

Frank puts his hands on her shoulders and pushes her back into her seat.

— Sit down, for Christ's sake. Besides, you don't want to go yet, and I don't want to be alone.

Edna accepts his hands on her shoulders, feels herself grow pink.

— What did you do to my sister, Frank?

All of a sudden, the risk she has taken in coming occurs to her, makes her want to vomit. Trapped, by this dark front room with its empty traces of her sister still lying about, by the possibility of Frank's violence, by his maleness.

As if he knows why she's frightened, Frank automatically softens. He puts down his glass, and when he looks at her again, the expression in his eyes is completely different, gentler, reassuring, as if he wants her to stay, as if the moment before hasn't happened. She can't believe it.

— Why don't you stay?

— I can't ...

But she doesn't go. She rises again and stands in the middle of the room, staring at the slates of light in the covered window, waiting, her mind unsettled, as if to go now would leave everything unfinished, as if somehow this isn't enough.

— I feel, I don't know ...

— I know, I feel the same.

For a moment they stand together, not talking.

— Oh God, he says.

Edna believes she can feel him trembling. The weight of his pain draws her to him.

And then the most unexpected thing begins to happen. Standing together in that room, the absurdity of their standing together, after what has happened, suddenly breaks in on them. Frank and Edna begin to laugh. Caught by each other, laughing almost to tears, avoiding eyes at first and then, the one bitter glance through each other that sobers them both.

The next instant exists in outline, like the cartoon of an inspiration which waits only its execution. For a moment they face each other in silence. The alternative is boredom. The alternative is the years with Mr. Hamilton and five small children, and the long years that follow Hamilton's desertion, of working at three jobs around the clock just to feed and clothe them — the ungrateful kids who will grow up anyway, who will grow up on their own and leave her too, not knowing who Edna Hamilton was, until it almost doesn't matter that she was ever their mother. The alternative is boredom. But Frank and Edna are not bored. They both know it.

She had known then. And wasn't horrified. Intrigued, rather, that such a thing could happen, might even still happen; so fascinated, that standing at the door, they are lost in possibility.

He might close the door again ... He might take her coat and sling it over the chair; and take her, not scooped under as you'd hold out an offering, but one arm wrapped over her legs, closing her in so that her whole body was turned and hidden from itself against him, molded around each rhythmic movement of his body toward the bedroom; the first cold contact of sheets, his unfamiliar nakedness, undressed clumsily against her, mouth finding her breasts, her stomach, not leaving her a moment; Edna closing her eyes as he undressed her, and then seized by a sudden panic, struggling underneath him, wanting to hurt, to bite hard, unable to go with his fierce increase of pleasure, finding herself parted — Frank, groaning, lowering the whole force of his weight into her, thrusting up into her stomach. She rises and wraps her legs around his back, her mouth open over his shoulder; his arms curled under her back, hands tugging down on her shoulders; she curves like a cup bent under his frightening strokes coming down into her until they both reach what she has come for

Running, running back up the hill, three months pregnant with Hamilton's child, running back to her own safe life. For this is Frank's power — not the body's seduction, not just that for the few years he was married to her sister, Edna had touched him over and over again without really touching, not just sex, the need for which would die eventually, which would have made such a moment, had it really happened, seem ridiculous in retrospect to one as intelligent as Edna, such a waste of time, but that he, Frank, knew her. How had he known he could trust her? He — not bound to Edna's fantasies, the dreams she summoned for herself, the tricks she pulled to get herself privately through the years — Frank showed her, in his eyes, what she was up to all along. He was prepared to be whatever she wanted. He is the knower, Frank Duvaliers, one of her kind — devastating the mask in one instant of mutual recognition. Who is this Frank Duvaliers? Who, but herself, the mirror of her own possibility?

Until he brought another sister to Canada. Until he chose another sister as his third and last bride. Until she lost the power to self-deceive.

She had never forgiven him that. He ought to have hung fifty years ago.

"The money's safe with me. I will not give any part of it to no one. Only to Frank at the end of five years." Edna took the money because she knew that Frank would follow it to Canada, that eventually he would come. And he did come. He came to her en route to Moncton. Only he came with a bride, the sister of his dead second wife. It was that — not the murder of her own sister, not the beating of the sister's child, not anything but that — his choice of a different sister when **this time she was free**, that dissipated his power over her. ... *I am alone ... I am single.*

That must have been some moment, when he asked for his money. When she told him he wasn't going to get any of it, not one red cent. And if he tried to make trouble for her, she'd make trouble for him. She'd report him to the authorities, for trying to defraud Internal Revenue. So Edna Hamilton had settled for Frank's money. She had let Frank trust her and, in one way anyway, the trust had paid off.

Did any of it happen? Did it happen that way?

I thought I would get the whole story at trial. But there never was a trial. The out-of-province estate failed to post security for Edna Hamilton's costs and the claim was struck out against her. A strictly procedural conclusion. A perfect result, from a professional perspective. The ones who would ask questions of Edna Hamilton vanished into air.

But had they been permitted to ask, would truth have been the result? In cross-examination, it is the questions that matter, more than the answers. To control the witness, to advance one's own theory of the case, that is the purpose of cross-examination which cannot be reconciled with the purpose of the question of my dream. Was there a single question which would have unlocked Edna's truth?

The last I ever heard from Edna Hamilton was her response to a letter I sent to her niece when I had gone looking for Edna Hamilton and learned she had moved:

"I am at a loss to hear from my niece that you were looking for me." (As if my very curiosity were an impertinence.) "I moved to Regina, having heard that my apartment was going to be taken down and there being no reason to stay in Toronto anyway.

"I would very much appreciate it if the balance of funds in trust were sent to me direct, since I have no need to go to Toronto at the present time. Thanking you for your kindness to me and trusting to hear from you soon about the money, yours truly, Edna Hamilton."

At eight-five years of age, alone and single, Edna had packed up and left.

The hand that wrote to me was rounded and firm. The proportions and shape of the letters appeared to my eye what the handwriting expert had said of exhibits "A" and "B" when examined against the sample of handwriting given at Edna's discovery: "significantly similar ... consistent with the conclusion that the sample was written by the same person years earlier."

But who was that person? Who do my questions of her reveal but her questioner — possibilities of self only I have been able to conceive?