

The **Jeanine** Machine

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Hudson House is an imprint of Vivisphere Publishing, 2 Neptune Road, Poughkeepsie, New York.

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Hudson House Imprint
Vivisphere Publishing
675 Dutchess Turnpike
Poughkeepsie, NY 12603
800-724-1100

Manufactured in the United States of America
Library of Congress Control Number: 2002113255

Blassberg, S. Richard

The Jeanine Machine

ISBN: 1-58776-141-6

ISBN-13: 978-1-58776-141-6



||| One |||

No Good Deed Goes Unpunished

On the morning of April 8, 2000, in the city of White Plains, NY, at 4:25AM, Lee Holt emerged from his apartment building in the downtown section of the city, heading on foot to his job at the Bellantoni Italian Bakery, more than a mile away. It was Sunday and Lee worked most Sundays at the bakery cleaning ovens, sweeping floors, moving sacks of flour and doing whatever general labor his employers might need of him, just as he had been doing six days a week for the past five years.

It was still quite dark as he crossed Mamaroneck Avenue approaching the corner of Martine, a major intersection in the low-rent, commercial district of the city. As he reached the curb, he heard the unmistakable sound of glass breaking from a point about one hundred feet behind him. He next did what few people in his situation would have done, and discovered the truth of the axiom, "*No good deed goes unpunished.*"

Fewer than ten minutes had elapsed since he had stepped out of his building as he now found himself face to face with a burglar who had kicked in the glass front door of La Mode Beauty Salon. The burglar, a young Latino, was desperately rifling the cash register in hopes of discovering Monday's opening change. As he quickly turned to run for a public phone to call police, Lee noticed a car with its engine running on the opposite curb, in a lane of traffic where parking is never permitted.

It was now 4:38AM as Lee stood one hundred and fifty feet from the scene of the burglary trying to communicate with the White Plains Police Dispatcher. The dispatcher can not know

that the guy on the line, trying so hard to do his duty as a good citizen, is both developmentally disabled and legally blind. “What street are you on?” came the dispatcher’s repeated question.

Unable to read the street sign, Lee called out to two men who had just pulled up across from where he stood. They had gotten out of a car marked “Car Service” but with no phone number, a car that only a mildly retarded person would think was a taxi, or anything other than the unmarked police car that it was. The two occupants, with tattooed forearms and baseball caps turned backward, were shining flashlights into the pizza parlor on their side, completely oblivious to the burglary in progress or the getaway car with engine running parked in a traffic lane less than 50 yards away.

Lee called out “What street is this? I can’t read the sign.” One “cabbie” responded by walking over to him and placing him in handcuffs. The phone was left hanging, the dispatcher’s question unanswered. As he was thrown into the back of the car he protested, “What are you doing? The guy is getting away!” And sure enough he was.

It was a piece of bad police work by two young, but seriously biased, plainclothes detectives. It was a simple matter of racial profiling at its worst. A man who not only had the nerve to be W-W-W-B, (walking to work while black,) but the gall to investigate the sound of breaking glass, and to report a crime in progress, was now under arrest and headed for more trouble than any poor bastard deserved.

En route to Police Headquarters, Lee pleaded with his captors to stop at his apartment for his medication. They flatly refused. He suffered two seizures in the first seven hours in police custody, the second so severe he was rushed to the hospital.

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As Project Director for a small HUD sponsored Shelter-Plus-Care program,² I was also Lee's case manager. I had worked with him for six years and understood that he was so fearful of incarceration he wouldn't so much as spit on the sidewalk. More than seventeen years earlier, he had been imprisoned for burglary. Because of his developmental disability and refusal to accept prison injustices, he served nearly ten years in nine different prisons, a warden's way of dealing with a "difficult case."³ I was very concerned when I called in for messages about noon, as I did most Sundays, to hear his weak and exasperated voice from the Westchester County Jail.

Advising them that I was a former county probation officer, I learned from jail authorities that he wouldn't be going to court for arraignment until Tuesday. I realized that he might very well not be released at his arraignment, and so I gathered clothing for several days and his medications from his apartment and headed up to the county jail, arriving before 2PM.

It was chilly and very windy as I stood in line with family members of other inmates waiting for 3 o'clock visiting hour. It did not matter that I wouldn't be allowed to see him, but merely to drop off his clothes and medications, I was compelled to wait in line in the cold. I wasn't a P.O. anymore, as I was many years ago, and I carried no badge.

Once inside, the wait was almost as long. I knew that Lee did not belong there, and I felt confident there was some misunderstanding. I thought "I'll see the arresting officers and get to the bottom of this."

Monday morning brought the first chance to speak with Lee. He phoned my office from the jail and explained all that had happened. He had already called the bakery to reassure his em-

ployer. He was frightened, very upset, and frustrated.

I contacted Butch, one of his bosses. We agreed to meet at City Court Tuesday morning for the arraignment. He knew Lee well after five years of employment. He, too, had welcomed him into his home and trusted him as I did. He agreed “there must have been some mix-up here.” I had reached the Legal Aid Society of Westchester, earlier, and assured Butch that Lee would have legal representation at his arraignment.

Tuesday morning brought disappointment. Butch and I came to court expecting that Lee would plead innocent to the charges and would either be released on his own recognizance or bailed for a nominal sum, which Butch was prepared to deal with. Instead, he was returned to jail because having had a prior conviction, it would be necessary to conduct his bail hearing in County Court on Thursday.⁴

Following the arraignment, Butch and I spoke with his Legal Aid attorney, a Mr. Arthur Doran. Doran and I had spoken at some length on Monday, and he came to court with a pretty complete picture of his client and sufficient reason to accept his innocence. Now, having met and spoken with Lee in the holding pen, he seemed pretty confident in that belief.

As we were about to part company, Doran informed us that he wouldn't be seeing us at the bail hearing on Thursday. Realizing that I would have to re-explain to another attorney all that I had explained to Doran, I inquired as to why he wouldn't be in County Court. What Doran now said opened my eyes to a system which I had serious questions about more than thirty years earlier when I served as a Westchester County Probation Officer.

Doran explained that, in Westchester, Legal Aid attorneys move from court to court and that it was unlikely that a defendant

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who appeared twice or more in the same court, or who went from one court to another would have the same attorney representing him at every appearance. He further explained that the only time a defendant using Legal Aid would have the services of the same attorney all the way through a case was when he refused to plead out and went to trial. Then, and only then, would the attorney be pulled out of the pool and assigned to work on that case.

The city court building also housed the police headquarters. On the floor above the courtrooms I found the Detective Division and the two plainclothes detectives who had arrested Lee. I spent some forty-five minutes detailing for them what Lee was really all about.

I told them of his desire to do the right thing at all times. I explained how he had introduced seven other of my clients to his employer, and that two were still working at the bakery. I explained that he was on the street at 4:30AM “because that’s the time he goes to work every day,” and that he was “so fearful of prison he wouldn’t dream of committing a crime.”

Finally, I explained that when they arrested him he was actually on the phone reporting the burglary to their dispatcher. “Why didn’t you check the tape of his 911 call?” I pleaded. They wouldn’t give an inch. They couldn’t admit that they had made a bad mistake and that their account was a fiction. They were two bad cops, period!

Thursday came and I made a point of arriving at court early, in hopes of speaking with the young woman I was told would be representing Lee. She was sharp, understanding and compassionate. She absorbed all that she needed to know in less than ten minutes, and accurately recited the details to Judge Kenneth Lange. The judge, for his part, saw humor in the situation, as Lee stood

before him in “cola bottle” thick eyeglasses. With a smile, he said to the young assistant D.A. who had just demanded \$10,000 bail, “You know you don’t have a very good case here. You are charging a man who is legally blind with Burglary 3rd as the look-out in a burglary.”

As Lee stood expressionless, a sense of relief came over me as the judge said “I’m releasing you on your own recognizance and to the supervision of your case manager.” Unfortunately, the good judge’s words were wasted on the D.A.’s office, and specifically on Bureau Chief Paul Scharf and his boss, Jeanine Pirro.

Two weeks later we were back in City Court only to discover that the actual perpetrator had been apprehended by the New Rochelle Police because the car he used in the burglary had been stolen there, and that he too was appearing and was also represented by Legal Aid. The Court was now confronted with a situation which was a conflict of representation and which required Judge JoAnn Friia to appoint counsel. Normally, I8b Counsel, as they are referred to, are reserved for misdemeanor cases where clients can not afford a private attorney. This case, a felony, was the exception.

The actual perpetrator, a fellow named Miguel Alvarez, came into the courtroom in handcuffs and leg irons and refused to address the judge, even when spoken to directly. He was assigned an attorney named Jeffrey Cohen who accompanied him back to the holding pen to try to talk some sense into him. Lee was assigned another attorney who spoke down to him and took no time to determine the facts of the case, or whether his remarks were fully understood.

As we stood in the corridor of the court, I could see exasperation in Lee’s face as this fellow was giving him short shrift.

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Walking back to my office he turned to me and said, “If I have to use that lawyer, they may as well lock me up right now!” Lee was scheduled to return to court in two weeks, but there was no way it would be with this lawyer.

I reached Butch at the bakery. He appeared anxious for good news. He asked, “How did it go?” half expecting me to tell him that the whole thing was just a big misunderstanding and that the charges had been dropped. Instead, I shared the problem about the assigned counsel and told him that we needed to find Lee his own lawyer, and needed to figure out how to pay for it. I explained that the next court appearance was two weeks off and asked him to get back to me with any suggestions.

About a week later Lee came to my office with news from Butch. Butch had agreed to lay out one thousand dollars to retain Peter Goodrich, his own lawyer. Lee would pay Butch back from his wages over a period of weeks, possibly months. I reached Butch the following day to thank him for his kindness to Lee and also to learn a little about Mr. Goodrich, a name I didn't think I recognized.

Lee felt better knowing he would have his own attorney, and even a little hopeful that the whole mess would soon be over. We had already been to court three times and nothing encouraging had come from the D.A. He was both worried and indignant that he was being prosecuted not only for something he didn't do, but for reporting the crime! It was hard not to agree with him — and harder yet, to tell him he should have kept walking.

For my part I was angry, first with the officers responsible, and then with the D.A.'s office which surely had the tape of Lee's “911” call and had to know he was innocent. My feelings about the detectives were based upon my own investigation of the scene and

the surrounding area the day after the incident as well as my encounter with them at headquarters the following day. Based upon the information Lee had given me from the jail on Monday, the day after the incident, I had a few questions that only a field investigation might answer.

Lee had mentioned that while he was on the phone trying desperately to tell the police dispatcher where he was located and the two plainclothes cops pulled up across the street, they immediately began shining their flashlights on the pizza parlor windows. I wondered what the possible connection was.

As I approached Sunshine Pizza I found no less than four separate broken windows, with low level impact shatters, as though someone had tried unsuccessfully several times to kick in a window and perhaps break in. A picture of what probably had happened emerged. The burglar had, at first, tried to break into the pizzeria, and making several tries, might very well have been spotted either by a passing motorist with a cell phone, or possibly a resident of the apartment building directly across the street. Either way, a phone call might have been made to 911, just minutes before Lee's call, directing police to the pizzeria. This might explain the appearance of the unmarked car as Lee was calling in the beauty salon break-in. Maybe the burglar just kept kicking windows until he broke one and entered.

Oblivious of the action at the beauty salon just 50 yards up the street, as they were arresting an innocent man, and too cocky to even check out his story with their dispatcher, the two cops blew it big-time. Naturally, as the facts came to light, they concocted a total fiction for their arrest report, hoping to cover their collective asses.

I arrived at City Court before Lee, intending to meet with

Mr. Goodrich to fill him in on events so far; all the things he needed to know about his new client. I was seated for a few minutes when Goodrich entered the corridor. We instantly recognized each other from a time more than thirty years earlier when I was a probation officer and he was an assistant D.A. We briefly exchanged personal updates and quickly turned to the case at hand. I was comfortable and confident that Lee would be well represented.

Our conversation centered on the fact that the D.A. certainly had a copy of the 911 tape, and that given that evidence, must surely realize Lee's innocence. "If it's clearly exculpatory, and they have it, why are they continuing to prosecute him?" I asked. Peter shrugged his shoulders and said, "We'll see when we get a copy of it." Fortunately, we were one of the early cases on the calendar. Peter made the necessary motion for transfer of the case from the appointed attorney, received the file, and was given a new date several weeks later.

Walking out of the courtroom, Lee turned to his new attorney and thanked him for taking the case. Peter graciously acknowledged him and assured him that everything would work out okay. As we shook hands he assured me that he would get a copy of the dispatcher's tape, if it existed, along with some other information on a discovery motion he would file within the next few days.

Several weeks would pass before Lee would appear in court, for the fifth time. He was nervous and needed constant reassurance. He wasn't certain if his sister or his aunt really believed him. The whole affair reminded him of a period in his life he really wanted to put behind him: the time he spent in prison when no one came to visit and no one seemed to care if he was alive. He

understood that over all those years the lack of visitors and correspondence contributed to the abuse he suffered at the hands of prison guards and officials.

It was now early August, and Mr. Goodrich called to be certain that I would remind Lee that he was due in court the following Tuesday. Almost as an afterthought, as he was about to take another call, he said, “we received a copy of the tape yesterday. I haven’t had a chance to listen to it yet.”

I arrived later than I had planned at court. I had gotten an urgent message from the landlord of another client that there had been “another incident with Howard and his neighbor,” and he was ready to evict Howard. A brief stop at the neighbor’s apartment patched things up for the moment.

As I walked into the courtroom, Lee was still seated, waiting to be called. There were an unusually large number of arraignments to be dealt with and it was already approaching 11AM. Lee would likely not be called for another half-hour. Peter had been looking through a file folder in the attorney’s section as I entered. He looked up as I sat down next to Lee and motioned to me to step into the corridor.

Peter came out behind me. I could sense the disgust in his voice as he began to relate his earlier conversation with Paul Scharf, the Bureau Chief, who at this point had been prosecuting the case for more than four months. Having received and listened to the tape, Peter had come to court expecting Scharf to be willing to dismiss the charges. “The tape is clear and it corroborates Lee’s story,” he said flatly.

“So what’s the problem?” I asked.

“They want him to plead to a misdemeanor,” he snapped.

We reentered the courtroom. As I sat down next to Lee he was looking at me with an expectant expression. I was thinking, “the D.A.’s a bastard,” but I whispered “It’s all right.”

The case was called. Judge Leake, a tough, no-nonsense black woman inquired as to what, if any, progress had been made between the sides, each responding that their positions were unchanged and that they were ready to move forward. The judge set a date for a pretrial hearing.

As the three of us parted company outside the courtroom, we agreed to get together at Peter’s office before the next court date. Walking back toward my office, Lee was agitated and very vocal. He was having trouble paying Butch back as quickly as he had hoped.⁵ “More court appearances are going to cost even more,” he groaned. “I’m not goin’ to plead guilty to nothin’, no way, no how.”

Back at my office I couldn’t help commenting to my assistant about the frustration and anger I felt. “Here we have a man, mildly retarded and legally blind, being mercilessly prosecuted by a DA who surely must know he is innocent and is, in fact, the person who reported the crime. Yet this same D.A.’s own husband was convicted on all counts by a federal jury for massive tax fraud just six weeks ago after a trial for which she publicly castigated the United States Attorney for prosecuting him.”

In the weeks that followed I couldn’t get Lee’s circumstances off my mind. Paul Scharf was no low-level assistant D.A.. He was a Bureau Chief and taking his “marching orders” from Jeanine Pirro. In my frustration over my client’s situation, I started thinking about Miguel Alvarez, the actual perpetrator. We hadn’t seen him since he was assigned Mr. Cohen.

On a hunch, I called Peter Goodrich and asked him to

check into what had happened to him. A few days later Peter came back with the news that “Alvarez had pled out.” Instinctively, I asked, “can you get a transcript of his pleading?” I wasn’t sure what, if anything, we might find, but I thought, “from Jeanine Pirro’s Office, anything is possible.”

Several weeks passed before Peter called to say he had the transcripts from Mr. Cohen, and “why don’t you come by my office with Lee next Friday so we can discuss things before we appear in court again.” I was anxious to see what was in the transcripts and Lee certainly needed to make some decisions before his next appearance.

It was now October and Lee had been to court five times. The whole ordeal was taking a huge emotional and financial toll on him. In trying to pay back his employer for the retainer, he was neglecting other bills. His phone had been turned off. He felt very upset and put out. His family, who at first seemed not to believe him, were now calling me up and running their mouths about going to Al Sharpton for help. It was becoming more than Lee could deal with.

As we entered Peter’s office, he could see that things were really beginning to get to Lee. He came toward us, placing his arm on Lee’s shoulder as he handed me a copy of the transcript from Alvarez’ pleading, almost two months earlier. As I quickly read through it, Peter asked Lee if he had decided what he wanted to do. Before Lee could respond, Peter said, “Look, I know this has been rough on you, and you are free to do what you think is best for you. But if you take a plea, I won’t stand next to you.”

I had stopped reading as Peter’s tone became stern. I looked into Lee’s face as he got the message. He needed to go forward, no matter what the risks or cost.

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There was a deafening silence as I continued to examine the transcript. Lee said not one word but moved his head from side to side with a tight-lipped expression. Peter broke the silence, “Is that what you were expecting?” I glanced up, “Is there no limit to their cruelty?”

The court transcript revealed that nearly two months earlier, in County Court, as Alvarez stood under oath, pleading guilty to a lesser charge, Assistant D.A. Bernhard, clearly under orders and with the full knowledge of Jeanine Pirro, approached the defendant. “You admit that on April 8, 2000, in the City of White Plains, County of Westchester, State of New York, while being aided, abetted and acting in concert with another person, that you knowingly entered unlawfully into a building with the intent to commit a crime therein?” (Whereupon Mr. Cohen and Alvarez conferred off the record.)

Mr. Cohen: “He says he did it himself. He did not do it with anybody else. That’s his statement.”

Not satisfied with that answer, Bernhard went further, “Were you present at that location, on April 8th, at the beauty salon?”

Alvarez: “Yes, I was present. I was with nobody else.”

Bernhard: “Was Lee Holt with you?”

Alvarez: “No. I told the police then.”

Bernhard: “Lee Holt already pleaded guilty to acting in concert. I don’t know who he is protecting. It’s already a done deal.”

As I looked up from the transcript, Goodrich was smiling. In that moment, we both knew that we had found the solution to Lee’s problem. His agony would soon be over. If necessary, we would hang the D.A.

Peter Goodrich was a gentleman of an attorney, and, as far as I could tell, not given to wild outbursts or accusations. As outraged as he might have been with what Mrs. Pirro and her office had tried to pull on his client, and armed, as he was, for bear, he walked into court planning to reason once again with Bureau Chief Scharf. He would ask him to dismiss the charges against Lee because Lee was innocent, as evidenced by the tape of the 911 phone call, which clearly corroborated his account of his activities at the time of the burglary, and, because the actual perpetrator had already been disposed of under a plea agreement.

As Lee's case was called, I took up a position close to where Peter and Scharf would confer before each was addressed by Judge Friia. Peter was very controlled and proceeded as he had planned. Paul Scharf was cold and unmoved. He was there to get a conviction, possibly only to a violation, but a conviction nonetheless!

Excusing himself to the court, Peter stepped around the partition and approached me. "He's not willing to be reasonable." "You don't have a choice, - put the transcript in his face," I whispered in anger. With Judge Friia looking on, Peter did precisely that. The prosecutor's face turned ashen as a forced smile came over it.

Before the Judge could solicit a response, Scharf broke the awkward silence. "Your honor, the People move to dismiss the charges against the Defendant, provided he agrees not to civilly prosecute the State of New York, the County of Westchester, or the City of White Plains."⁶

Peter asked the Court for a moment to confer with his client. Lee stepped out of the box to speak with Peter and me. He was relieved and confused at the same time. Peter explained his options and his rights. It was more information than he was pre-

pared to handle. He turned to me, “what do you think I should do?”

His question caught me a little off guard. I had expected we would get a dismissal, armed as we were with the Alvarez transcript. But I never considered the possibility that Scharf would attempt to get Lee to waive his right to sue for malicious prosecution and false arrest, as a condition of granting the dismissal!

I had mixed emotions. On the one hand, I wanted reprisal for what the D.A. had been doing to him for months but, on the other hand, I just wanted to see him free of the whole ugly mess. The words just came to my mouth. “Look, you need to be free of this. You’ve suffered enough already.”

Lee walked out of the court a free man, more than seven months of prosecution, harassment and grief behind him. There was relief but no satisfaction. No one in the courtroom other than Scharf, and the three of us, knew why the charges were dismissed, not even the judge.

There would be no apology, and no acknowledgment from the District Attorney, whose sworn duty it was to protect the innocent, that a grievous mistake had been made. There would be no sense that some terrible wrong had been righted, or even that a truly innocent man would be set free. For all anyone knew, Lee might have been dismissed on a procedural technicality.

I thought to myself, “what if Lee had not had such a caring employer and competent, dedicated lawyer? What if the deceit and maliciousness of the D.A.’s office exposed in the transcript had never been uncovered?” A decent citizen who took the time and the personal risk to observe and report a crime in progress might well have been convicted as a participant.

I could not help the anger and outrage with which I came

away from the whole affair. It was knowing that the D.A. of Westchester County had no problem sending a clearly innocent man to prison, but could vilify the United States Attorney for prosecuting her husband, one of the most outrageous white collar criminals in the county, and her co-conspirator in a massive, ten-year tax fraud. The only satisfaction for me came from the knowledge that, by our wits and our persistent effort, we had foiled a corrupt and jaundiced prosecutor's attempt to convict and incarcerate an innocent and powerless citizen merely to notch one more conviction on her record. And, while it was Paul Scharf who carried out the cruel game, it was Jeanine Pirro who was calling the shots. As any knowledgeable defense attorney knows, every decision, every disposition from her office always comes through her.

It is important to recognize that when Lee appeared in court in October of 2000, the actual perpetrator Miguel Alvarez, had four times denied any involvement by Lee in the April 8, 2000 burglary – once at his arrest, and three times at his pleading to reduced charges. Those four denials constituted significant exculpatory information,⁷ which was intentionally withheld by Jeanine Pirro in her cruel attempt to obtain the conviction of a clearly innocent man.

