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I Shall Hear You No Further

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"I SHALL HEAR YOU NO FURTHER."*

Matthew L.M. Fletcher**

"Colorless green ideas sleep furiously."***

I. PERSPICACITY¹

Thomas Argos was the most persuasive person in the world. He could convince the most pious of nuns to tell bald lies and pathological liars to tell the truth. He could change the mind of the cruelest despot and the most

* Mr. Kuntsler: . . . And I think it is as important, your Honor, to protest more than some thirty thousand American deaths and Lord knows how many Vietnamese deaths that have occurred in that country as it is to mourn one man (Eisenhower) in the United States, and if courts can close for the death of one man who lived a full life, they ought to be closed for the deaths of thousands and millions of innocent people whose lives have been corrupted and rotted and perverted by this utter horror that goes on in your name and my name . . .

The Court: Not in my name.

Mr. Kunstler: It is in your name, too, in the name of the people of the United States.

The Court: You just include yourself. Don't join me with you. Goodness. Don't you and I . . .

Mr. Kuntsler: You are me, your Honor, because every citizen . . . you are a citizen and I am a citizen.

The Court: Only because you are a member of the bar of this court and I am obliged to hear you respectfully, as I have done.

Mr. Kunstler: No, your Honor, you are more than that. You are a citizen of the United States.

The Court: Yes, I am.

Mr. Kuntsler: And I am a citizen of the United States, and it is done in our name, in Judge Hoffman's name and William Kuntsler's name.

The Court: That will be all, sir. I shall hear you no further.

HOWARD ZINN, *Secrecy, Archives, and the Public Interest*, in THE ZINN READER: WRITINGS ON DISOBEDIENCE AND DEMOCRACY 516, 517 (1997) [hereinafter THE ZINN READER] (quoting an exchange between William Kunstler, defense attorney in a criminal trial in Chicago in 1969 known as the "Conspiracy Trial," and Judge Julius J. Hoffman regarding Mr. Kuntsler's request to recess the court for the October 15, 1969 National Moratorium to protest the war in Vietnam); see also In re Dellinger, 461 F.2d 389, 391-92 (7th Cir. 1972) (discussing contempt charges issued by Judge Hoffman against Kunstler, other defense attorneys, and defendants in the Anti-Riot Act case).

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*** NOAM CHOMSKY, SYNTACTIC STRUCTURES 15 (1957).

1. JOHN O'BRIEN, LEAVING LAS VEGAS 67 (1990).

To Ben, shaving is evidence that everything's fine. These few minutes of socially suggested practicality tend to convince him that he, like the rest of the normal world, is just living his life. He's just another guy that gets up and goes through a regular routine, wades through a non-spectacular day, and comes home and goes to sleep. He's a cog in the machine. He's a soma-driven epsilon who happens to be plagued with imagination. For instance, his habit is to shave around his mouth first; that way, he can sip his drink even if he's not finished shaving—his mind never rests.

Id.

paranoid conspiracy theorist. He could talk his way out of a traffic ticket and successfully retract a murder confession before two trained police officers fast enough for stopwatch timing. He could sway a bitter and stubborn bigot that gay rights contribute positively to society and that African-American professional basketball players should move in next door. He could convince Pepsi people that Coke tastes better without even taking a taste test. He could induce a stage-frightened pianist to play at the Hollywood Bowl while wearing clown makeup and holey clothes. He could talk a gutterpunk into taking a bath and being nice to his mom. He could talk J.D. Salinger into hosting a scandal-ridden television talk show. He could talk Tom Clancy into donating his entire estate to Amnesty International and Greenpeace. He could influence peace and harmony and political unification in North and South Korea, Yemen and South Yemen, Pakistan and India, China and Taiwan, and win the Nobel Peace Prize. He could write advertisements for Burger King and put McDonald's into receivership. He could convince Ralph Nader to invest in nuclear power. He could do all those things, but he didn't do any of them. He never tried.

Instead, Tom was a lawyer.²

As one might expect from a persuasion mastermind, Tom was a brilliant and successful lawyer. He worked for Berkman, Deloria & Goldman, a firm with offices in New York City, Kansas City, Oklahoma City, Atlantic City, Mexico City, Boston, Los Angeles, San Francisco, Tokyo, Hong Kong, Amsterdam, and London. The firm's clients included, without limitation, multinational corporations, environmental organizations, trade associations, media outlets, banks, public utilities, school districts, non-profit corporations, Indian tribes, wealthy individuals, foreign governments, and about eight or nine Salvadorans and Guatemalans locked up in the Immigration and Naturalization Service's Eloy Detention Facility in Arizona. The firm had litigated cases before the United States Supreme Court, federal courts, Saudi tribunals, state courts, administrative law judges, Canadian courts, tribal courts, the International Court of Justice,

2. HOWARD ZINN, *The Bombing of Royan*, in THE ZINN READER, *supra* note *, at 268, 280.

More and more in our time, the mass production of massive evil requires an enormously complicated division of labor. No one is positively responsible for the horror that ensues. But every one is negatively responsible, because anyone can throw a wrench into the machinery. Not quite, of course—because only a few people have wrenches. The rest have only their hands and feet. That is, the power to interfere with the terrible progression is distributed unevenly, and therefore the sacrifice required varies, according to one's means. In that odd perversion of the natural which we call society (that is, nature seems to equip each species for its special needs) the greater one's capability for interference, the less urgent is the need to interfere.

Id.

World Trade Organizations panels, and even before a kangaroo court on behalf of a New York Met. The firm employed many, many lawyers, more than most law firms, but Tom was by far the best one of them all. Tom won every case he had ever tried. In fact, he never lost any motion hearings or his cool. His motions to dismiss were always granted. His arguments were always dispositive. He could convince a federal district court judge to rule contrary to Supreme Court precedent and make the ruling hold up until the Supreme Court overruled itself.³ And he did. He could convince reporters from the *New York Times*,⁴ a client, not to run an article critical of one of his other clients and also get them to buy him a lavish dinner. And he did. He could convince auditors from a state tax commission to leave the firm's client alone by convincing them that there were serious flaws in the tax commission's internal controls.⁵ And he did. He could convince public interest groups that his client was not to blame for the hazardous waste found in the soil of the playground of an elementary school, 150 yards from the client's factory.⁶ And he did. He could talk FCC regulators into harshly prosecuting micro-power radio operators to protect his media clients.⁷ And he did. He could talk union bosses into pay cuts and benefits cuts.⁸ And he did. He could talk his own managing partner into huge raises and huge bonuses and long vacations. And he did.⁹

3. See, e.g., *Hubbard v. United States*, 514 U.S. 695, 718 (1995) (Rehnquist, C.J., dissenting) ("Today, the majority jettisons a 40-year-old unanimous decision of this Court . . .").

4. See, e.g., Seth Ackerman, *New York Times on Iraq Sanctions: A Case of Journalistic Malpractice*, EXTRA!, Mar./Apr. 2000, available at <http://www.fair.org/extra/003/crossette-iraq.html> (last visited Jan. 23, 2003).

Upon close examination, the *Times*' allegations bear almost no resemblance to reports by United Nations officials who administer and monitor Iraq's humanitarian program. Ironically, in misreporting the story, [United Nations correspondent Barbara] Crossette has resorted to the same type of deceptive tactics that she (falsely) accused anti-sanctions activists of using in their video documentary two years ago.

Id.

5. See, e.g., *State ex rel. Oklahoma Tax Comm'n v. Daxon*, 607 P.2d 683, 685 (Okla. 1980) (discussing an allegation that an "audit of the [Oklahoma] Tax Commission ha[d] shown that there are serious flaws in the internal controls of the Oklahoma Tax Commission which could potentially have an adverse effect upon the collection and apportionment of taxes").

6. See, e.g., *Town of Oyster Bay v. Occidental Chem. Corp.*, 987 F. Supp. 182, 188-89 (E.D.N.Y. 1997) (discussing landfill allegedly containing hazardous waste located 150 yards from elementary school).

7. See, e.g., *United States v. Dunifer*, 219 F.3d 1004, 1005-06 (9th Cir. 2000) (discussing FCC case against "Free Radio Berkeley").

8. See generally NAOMI KLEIN, *NO LOGO* 223 (rev. ed. 2002) ("General Motors has cut about 82,000 jobs in the U.S. since 1991 and expects to cut another 40,000 by the year 2003 . . ."); MICHAEL MOORE, *DOWNSIZE THIS!: RANDOM THREATS FROM AN UNARMED AMERICAN* 139-48 (1996) (describing how union leaders capitulate to management demands to the detriment of union workers).

9. HOWARD ZINN, *Secrecy, Archives, and the Public Interest*, in *THE ZINN READER*, *supra*

Tom was successful and was very pleased with his success. Like all beings, he was self-interested, but no more so than anyone or anything else. He was paid magnificently by his employers and treated with inhuman respect and admiration by the partners who didn't really work anymore, lawyers from adverse firms, clients, judges, and everyone he knew outside the firm. Whenever he rescued a practice group from certain defeat or performed a miracle by developing a new legal argument that shocked a courtroom,¹⁰ his firm made sure the *National Journal* and the *ABA Journal* knew about it instantly. His personal scrapbook was two-hundred pages long and full of reverence and approbation. The people that shared his life, his money, his time, his stuff, were always appreciative and glad to be his friends and companions. He got calls from Court TV and CNN to comment on notable trials or newsworthy legal questions. He usually turned them down because he didn't have the time or the interest. Everything was perfect.

However, the other lawyers in his firm, the normal ones, the ones that sometimes lost trials or administrative hearings or did not always receive a favorable ruling from the WTO's ministerial panel, were scared of Tom in some ways. Tom was friendly and very approachable and never rubbed it in that he was the best, but sometimes in those hallowed halls of Berkman, Deloria, the rank-and-file associates turned the other way when they saw Tom coming toward them. He thought himself approachable, always wearing jeans or cords and a Big Black or Fugazi t-shirt. Once, he wore a shirt that said, "Whitey Must Pay," as a joke, but no one spoke to him at all that day. In fact, his peers rarely spoke to him. They requested his presence for assistance whenever they were in trouble, whenever a jury was about to hand a litigation team an unfavorable five million dollar verdict, whenever an appeals court brief was due and nobody could think of anything to say, whenever the press was at the door with some wild accusation, whenever the client was ranting and raving in the managing

note *, at 516, 519.

There were few professionals in the old days. Now they are everywhere, and their skills, their knowledge, could be a threat to the status quo. But their will to challenge the going order is constantly weakened by rewards of money and position. And they are so divided, so preoccupied with their particular specialties, as to spend most of their time smoothing, tightening their tiny piece of linkage in the social machine. This leaves little time or energy to worry about whether the machine is designed for war or peace, for social need or individual profits, to help us or to poison us.

Id.

10. See, e.g., *State of Washington v. Myers*, 667 P.2d 1142, 1145 (1983) (comparing facts of another case in which a law officer's engagement in sexual intercourse with a prostitute "for [the] purposes of crime detection" did not shock the conscience).

partner's office, smashing ashtrays, and threatening to get another lawyer, whenever a rainmaker with a grudge walked in the door telling everyone she was leaving, that she was sick of it, that she couldn't take it anymore. Then they called Tom. Otherwise, they ran from him as if he were a marauder, something inhuman and scary. They worked with the premise that as long as Tom was happy, they were happy. As a lot, the lawyers at Berkman, Deloria weren't exactly happy. Who would be? Eighty hours of work a week, no weekends, rarely seeing the light of day, dressed up like leisure-wear models in sweater sets and polo shirts on casual Fridays, dealing with deadlines and arrogant legal secretaries every day, crashing computers, blurry fax copies, the fact that the ugly guy across the hall billed 50 hours more than they did last month, the client who is stupid and immoral, the fact that the networking-crazed ten-year law school reunion is next week, a day before the supervising partner hands out evaluations.¹¹

Tom succeeded whenever someone before him had failed. He picked up the ashes of a lost cause and saved everyone's careers. He was the best emergency room doctor a law firm ever had. He didn't even have to work very hard. Believably, his peers hated and feared him. Resentment. Bitterness. Competitiveness. Worry. Tom had only one friend at the firm—Dana Koala, a pot-addled, sitcom-addicted, stock market-despising, atheist, anarchist bum who worked in the mailroom, costing the firm thousands a year in wasted wages and employee benefits. Dana's favorite magazine was *Temp Slave*¹² and even though it had been years since Dana was a temp, he still planted time-bombs, lost mail on purpose, and steamed open envelopes marked in big black or red lettering CONFIDENTIAL. Dana was a very, very bad employee.

Tom didn't know any of these indiscretions about his friend as Dana would never stoop to talk about his day with anyone and Tom never traveled to the lower floors to inspect the mailroom. In fact, Dana and Tom had no idea they worked for the same company. Tom and Dana would meet after work at a bar before walking over to the arena to watch hockey. Many times Dana had talked about Canada and how it is the most evil

11. RALPH NADER & WESLEY J. SMITH, *NO CONTEST: CORPORATE LAWYERS AND THE PERVERSION OF JUSTICE IN AMERICA* xiv (1996).

Returning alumni at law schools like Harvard largely mirror the comfortable though recently less stable life at the nation's business law firms. These classmates swap family anecdotes, tell "war" stories, and talk a little politics as they catch up with one another. But underneath their successful careers there lies an unease. . . . Our society is in trouble, and most lawyers have not done their part to help right the many wrongs.

Id.

12. See *THE BEST OF TEMP SLAVE!* (Jeff Kelly ed., 1997).

nation on the planet.¹³ Being from Detroit, he had what he believed to be a unique understanding of the threat posed by the nation on the other side of the longest open border in the world.¹⁴

Tom and Dana shared almost nothing in common. Dana drank enormous amounts of beer and ate too much polish sausage and Kielbasa. Tom was vegan on Sundays and Wednesdays and never drank anything with Aspartame.¹⁵ Even when he wore his Yzerman jersey to work, Tom was clean and well-groomed. Dana always had spots on his shirts and shirts that were always yellowed for some unknown reason. Dana dropped out of junior high the day before he turned sixteen, bought some fake diplomas and identification from his older brother. On the day he was finally old enough to legally drive, Dana became an educated man with a B.A. in Creative Writing from a prestigious Midwestern college and legally old enough to drink cocktails at the finest airport bars in America. Tom graduated legitimately from a prestigious Ivy League school with a Bachelor's; another prestigious Ivy League School with a Ph.D.; and a prestigious West Coast school with a law degree coated with honors. The only substantive interest they had in common was a high-powered yearning for professional ice hockey. Tom usually got tickets from a firm partner that would have gone to some federal energy regulator.¹⁶

13. WINONA LADUKE, *ALL OUR RELATIONS: NATIVE STRUGGLES FOR LAND AND LIFE* 69 (1999).

After the story about the four Innu children found stoned out of their minds in minus-35 degree—weather broke in the Canadian press, planeloads of federal and provincial public servants, preachers, television crews, and private and public agency workers descended on the village. “No government likes to be affiliated with that kind of horror,” explained Leslie Anderson, then-director of major projects for the Department of Indian Affairs.

Id.

14. *See, e.g.*, *People v. McLeod*, 25 Wend. 483, 483 (N.Y. Sup. Ct. 1841) (discussing an invasion of the United States by armed Canadian provincial authorities which led to the sinking of an American owned ship and the deaths of the crew).

15. *See, e.g.*, Betty Martini, *The Aspartame Epidemic*, DISINFORMATION, May 14, 2001, at <http://www.disinfo.com/pages/article/id992/pg1> (last visited Jan. 25, 2003). “A worldwide epidemic is raging. The cause is a poisonous chemical sweetener, aspartame (marketed as NutraSweet, Equal, Spoonful), the most controversial food additive ever approved. In reality it is a drug which interacts with other drugs and changes brain chemistry.” *Id.*

16. Oliver A. Houck, *With Charity for All*, 93 YALE L.J. 1415, 1551 (1984).

The two major industries in Washington, D.C., are the government and the private bar, and the major industry of the private bar is to monitor the activities of the government. The law firms of Washington do not monitor these activities for Mexican-Americans or the proponents of solar energy. They monitor them for corporate clients and, in so doing, they read the Federal Register, follow agency rulemakings, and initiate more than a few actions of their own. While it is true that corporate counsel headquartered in other parts of the country may not be able to specialize in the activities of the government, that is precisely why the

While drinking beers, after a smashing Red Wings victory over the hapless Avs on Thursday, Tom asked, “Why don’t we ever talk about where we work?”

“Because we talk about work when we’re at work.”

“Don’t you like your job?” said Tom.

“Only on days I don’t have to go.”

“You don’t like your job, I guess. Don’t you want to quit or do something to make it a better place to work?”¹⁷

Dana grimaced. “Not today. When I find something that will really nail those bastards”¹⁸

On Saturday, Tom was called into the office to help the environmental law practice group finalize a brief in a lawsuit filed against the EPA opposing recently-promulgated CERCLA regulations.¹⁹ The brief was due on Monday and was complete, but the client, a failing steel company, insisted at the last-minute on having Tom’s name on the brief, if only for good luck. It was the bread and butter of Tom’s practice—he was a closer, a cleaner, an artist with a mop. He worked with the team, analyzing and re-analyzing the argument, the statement of the case, and the issues presented. When it came to persuasion, each word, each phrase, each written inflection was critical. He ordered the typist to change the font of all the quotation marks and the commas to Book Antiqua and the smart quotes to Garamond.

Washington firms flourish, and represent, and send information alerts out to corporate clients nationwide.

Id.

17. Noam Chomsky, *Introduction: Project Censored 25th Anniversary*, CENSORED 2001: THE TOP 25 CENSORED MEDIA STORIES OF 2000, at <http://www.projectcensored.org/stories/2001/intro.html> (last visited Jan. 23, 2003).

We can make a rough distinction between the managerial class and the rest. The managers take part in decision-making in the state, the private economy, and the doctrinal institutions. The rest are to cede authority to state and private elites, to accept what they are told, and to occupy themselves elsewhere.

Id.

18. OXFAM COMMUNITY AID ABROAD, JUST STOP IT: 2000 NEWS UPDATES, at <http://www.caa.org.au/campaigns/nike/news.html> (last visited Jan. 23, 2003).

In order to know whether Price WaterHouse Coopers are properly monitoring Nike factories we need to know what methods they use. In most cases workers in clothing and footwear factories in desperately poor parts of Asia and Latin America are too scared to tell strangers what is really going on in their factory, in case their boss finds out and they lose their jobs. It takes considerable skill and commitment to establish a relationship of trust in which workers know that they can speak confidentially without putting their jobs in danger. We doubt whether accounting firms like Price WaterHouse Coopers have the skills and motivation to establish this sort of relationship with workers.

Id.

19. See, e.g., *RSR Corp. v. EPA*, 102 F.3d 1266, 1271 (D.C. Cir. 1997) (finding EPA did not act arbitrarily in promulgating CERCLA based HTF (human toxicity factor) regulation for lead).

He re-wrote all the captions in twenty minutes, something the team had worked on for days. He changed nothing of substance but by the time he was finished, four hours after he arrived, the brief was a thousand times more persuasive than Martin Luther's parchment nailed to the church door and Martin Luther King's "I Have A Dream" speech put together.²⁰ The team watched Tom work with awe and confusion. On a few occasions they wondered why everyone thought he was so good, but when they read the final draft, they started to believe for themselves the arguments they had made on behalf of the client.²¹

Tom was no legal genius. He was smart but not brilliant. One could not really say he had street-smarts or book-smarts or life-smarts. When someone asked him about his opinion about the new antitrust regulations promulgated by the Federal Trade Commission, Tom would rarely respond with anything more than a blank stare. When summer law clerks got the nerve to ask him about what it was like to work for the firm full-time, Tom would just smile and offer to buy them a drink. When an admiring law professor approached him about what he felt about Critical Race Theory, Tom would say nothing. He didn't know or care or think about such things. He had a passing knowledge about the law as it related to whatever he was

20. Arundhati Roy, *Under the Nuclear Shadow*, OBSERVER, June 2, 2002, available at <http://website.lineone.net/~jon.simmons/roy/020602nu.htm> (last visited Jan. 23, 2003).

Terrorists have the power to trigger a nuclear war. Non-violence is treated with contempt. Displacement, dispossession, starvation, poverty, disease, these are all just funny comic strip items now. Meanwhile, emissaries of the coalition against terror come and go preaching restraint. Tony Blair arrives to preach peace and on the side, to sell weapons to both India and Pakistan. The last question every visiting journalist always asks me: 'Are you writing another book?'

That question mocks me. Another book? Right now when it looks as though all the music, the art, the architecture, the literature, the whole of human civilisation means nothing to the monsters who run the world. What kind of book should I write? For now, just for now, for just a while pointlessness is my biggest enemy. That's what nuclear bombs do, whether they're used or not. They violate everything that is humane, they alter the meaning of life.

Id.

21. TONI MORRISON, *Racism and Fascism*, in *IN DEFENSE OF MUMIA* 51, 52 (S.E. Anderson & Tony Medina eds. 1996).

The forces interested in fascist solutions to national problems are not to be found in one political party or another, or in one or another wing of any single political party. Democrats have no unsullied history of egalitarianism. Nor are liberals free of domination agendas. Republicans have housed abolitionists and white supremacists. Conservative, moderate, liberal; right, left, hard left, far right; religious, secular, socialist—we must not be blindsided by these Pepsi-Cola, Coca-Cola labels because the genius of fascism is that any political structure can host the virus and virtually any developed country can become a suitable home. Fascism talks ideology, but it is really just marketing—marketing for power.

Id.

asked to argue and turned that into sheer persuasive virtuosity. He was tunnel-visioned. He saw what he needed to see in order to win, and he was the best at what he did. The client paid the bills and Tom was there to service their many needs. He did what they asked, and sometimes he did more than asked. He never, ever asked why he was doing what he did. He was just an employee.²²

On Tuesday, Dana missed the article about Tom in the paper. Tom was embarrassed by it and glad his friend never mentioned it. Tom saw right through the pandering and fill that permeated the article and all the articles published about him or the firm. It was written by the same guy that always wrote about him in that paper, one of the partners who fancied himself a mysterious ghost-writing news reporter. It was hollow PR for the firm.

"I don't understand why the firm writes the articles themselves. The partner who writes them doesn't have a clue. The firm should just ask me to write the articles myself."

"Wouldn't that be a conflict of interest?" said Dana.

"How do you figure?"

"Wouldn't someone question the freedom of a press corps dominated by their corporate owners and masters?" Dana asked, quoting something he had read on the subway.

"I suppose."²³

A month later, the environmental group called Tom into their boardroom to congratulate him. The suits were smiling and the smiles were all patting him on the back and talking about getting drunk to celebrate.

22. RACHEL CARSON, *SILENT SPRING* 229 (1962).

Inquiry into the background of some of [the leading advocates of insect control through chemicals] reveals that their entire research program is supported by the chemical industry. Their professional prestige, sometimes their very jobs depend on the perpetuation of chemical methods. Can we expect them to bite the hand that literally feeds them? But knowing their bias, how much credence can we give to their protests that insecticides are harmless?

Id.

23. Carl Jensen, *What Free Press?*, in *CENSORED 2000: THE YEAR'S TOP 25 STORIES* 183 (Peter Phillips ed., 2000) [hereinafter *CENSORED 2000*].

If the media should neglect to report a story that would jeopardize some corporation's profits, that is now perfectly understandable and acceptable in capitalist society driven solely by the bottom line. We can't expect to see an NBC journalist expose the hazards of nuclear power as long as General Electric, a major manufacturer of nuclear power plants, signs the NBC paychecks. We can't expect an ABC journalist to expose some illicit activity at Disneyland. In fact, Michael Eisner, chairman of Disney, which owns ABC, once said, "I would prefer ABC not cover Disney. I think it's inappropriate." And we can't expect to see a CBS journalist expose human rights violations in important trade partners.

Id.

“For what?” Tom asked.

The practice group chairman said the brief Tom helped to finalize saved the day. The judge ruled in favor of the firm’s client, adopting much of the brief verbatim.²⁴ The lawyers, worrying about losing their jobs, the client, and about harming the firm’s and their own reputation, stopped worrying and lavished well-earned praise onto the messiah, the savior, the genius, the suspiciously suave Tom. All the crap about fonts and passive voice that Tom rammed down their throats didn’t make any more sense to them, even after the decisive victory, so they treated him like a real magician or an infomercial soothsayer with a perfect record. The firm was skyrocketing, establishing itself as the best big-case firm on the planet. No one bothered to invite the office staff.

Tom loved the attention. He felt like one of the Seven Samurai, the man with no name, or seven magnificent gunslingers. It was the part of the job that made him get up in the morning. He was a hired gun, a mercenary, a tool of law-abiding edifice, crafting a maze of paper and ink to mask his every action. He didn’t look back when he finished. There were new clients with other problems to face. There was always a need for his services. He didn’t look ahead, either.

He often said, “I go where I will and I do what I can.”²⁵ He was a wanderer, attached to no one and loyal to no organization but his own law firm or temporarily to his client. Tom didn’t care. He was punk rock,²⁶ like Mad Max.²⁷ The feeling of detachment from the client, the adversary, the

24. Audrey Hudon, *EPA Says Toxic Sludge is Good for Fish*, WASH. TIMES, June 19, 2002, at A1.

The Army Corps of Engineers’ dumping of toxic sludge into the Potomac River protects fish by forcing them to flee the polluted area and escape fishermen, according to an internal Environmental Protection Agency document.

.....
To suggest that toxic sludge is good for fish because it prevents them from being caught by man is like suggesting that we club baby seals to death to prevent them from being eaten by sharks . . . said Rep. George P. Radanovich . . .

Id.

25. HENRY FOOL (Sony Pictures Classics 1998).

26. John K. Setear, *The Barrister and the Bomb: The Dynamics of Cooperation, Nuclear Deterrence, and Discovery Abuse*, 69 B.U. L. REV. 569, 599 (1989).

Those who seek empirical confirmation of this phenomenon might consult the bevy of learned articles bemoaning the rapaciousness of corporations in which short-term performance is the gauge of managerial success. One might also note the surly uncooperativeness of the adherents of punk rock and remember that the [Sex Pistols], an early punk-rock band, had a cult hit with a song whose most comprehensible lyrics are: “No future, no future, no future for me.”

Id.

27. See MAD MAX (Metro-Goldwyn-Mayer 1979); ROAD WARRIOR (Warner Bros. 1981); MAD MAX BEYOND THUNDERDOME (Warner Bros. 1985).

court, the administrative agency, the school district, the victim, the public utility, the corporation—all of them—made him swagger, a cold-hearted snake, but that was a good thing. He suspected he would lose when he started thinking he might. He wandered the land, a man alone, looking for billable hours or paying clients or a deep pocket and an adverse party to defeat and hopefully humiliate.

On Friday, Tom was uncomfortably wearing a suit and tie. He looked like a million dollars and everyone said so. Well, not everyone, but twenty people said so in the morning before he went to the courthouse. It was the most important day of the trial because Tom was scheduled to cross-examine the plaintiff's expert witness, an engineer and a former employee of the client—a member of the disgruntled species of former employees. Tom wondered why his clients let their employees become disgruntled. They always ended up being the expert witness for some housewife plaintiff in a products liability case. This one was pretty bad and Tom was called in to do his messiah thing again, to save the litigation team from certain defeat.

Tom knew Judge Waters and knew there would be local media there to cover the day. He was a celebrity of sorts. And Tom did well, as usual. In a packed courtroom, Tom convinced the expert witness to admit that he was horrifically biased, incompetent, and morally debased in a matter of twenty minutes.²⁸ The jury loved it (Tom supposed), and the spectators went wild, as did the first chair, learning a lot that day about the art of persuasion. The plaintiff was almost hysterical with confusion and despair, as was the plaintiff's attorney. The judge had to gavel the room calm several times as Tom made his points again and again.²⁹ The judge was testy that day, having completed a politically-sensitive trial only days before involving radical elements of the housing project Direct Action Network.³⁰ One of the lawyers for the Direct Action Network kept interrupting and bringing politics into a court of law, a place where the judge believed no politics should enter. For Judge Waters, the courtroom was a sanctuary, a holy place where civility reigned and litigants put down their guards and sought

28. See, e.g., *Johnston v. United States*, 597 F. Supp. 374, 412 (D. Kan. 1984) (stating that plaintiff's expert's "obsession blinds his objectivity").

29. LENNY BRUCE, *HOW TO TALK DIRTY AND INFLUENCE PEOPLE* 116 (Fireside 1992) (1963).

The Court: All right, wait a minute, wait a minute. I have tolerated a certain amount of activity from the audience because I knew that it is difficult not to react at times, but this is not a show, you are not here to be entertained. Now if there's any more of this sustained levity, the courtroom will be cleared.

Id.

30. See, e.g., *United States v. Pyle*, 518 F. Supp. 139, 160–61 (E.D. Pa. 1981) (reversing contempt charge against low-income housing protester).

the truth, away from the hustle and bustle of the world. To him, the courthouse was a vacuum, free of outside influence, interruption and inequality, the reason why Ms. Justice's eyes were blindfolded. The room deserved respect and silence, just as the jury and the litigants had for the judge.³¹

On Wednesday, Dana asked Tom if he ever tried criminal cases.

"Yeah."

"I think if I was ever arrested, I'd represent myself, like Russell Means."

"Who?" Tom asked, thinking the name sounded familiar. It reminded him of Mickey Mouse.³²

"He's a well-known Native American activist. He says he has no use for lawyers.³³ And for good reason—over the last few decades he has faced literally dozens of criminal charges³⁴ and has been convicted only once—the one time he consented to hiring a lawyer to defend him. Pretty weird, eh?"

"I think if you got arrested, you better get a lawyer."

"I don't think so."

"Listen. I was waiting in Judge Waters' courtroom the other day, watching the tail end of a criminal trial. An African guy got into a fight with a white cabbie, calling him a racist. The African guy beat the white guy up a little bit, and the white guy pressed charges. The white guy looked racist to me, too. The African was defending himself, and the judge was

31. BRUCE, *supra* note 29, at 118–19.

At one point during the trial, a couple of 19-year-old college students were admonished by the judge; they had been distributing the following leaflet outside the courtroom:

WELCOME TO THE FARCE!

.....
Lenny has better things to do than play in this farce; the taxpayers have better uses for their money; and the little old ladies of both sexes who produce it *should* have better amusements. With a nostalgic sigh, let's pull down the curtain on *People vs. Bruce* and its genre; and present a far more interesting and fruitful play called *Freedom of Speech*. It would do our jaded ears good.

The writer and distributor of the leaflet were properly chastised by the judge.

And so the trial continued.

Id.

32. See generally POCAHONTAS (Disney 1995) (starring Russell Means, a Lakota, as the voice of an Indian leader and Pocahontas's father, Powhatan).

33. Russell Means, Address at the Arizona State Bar Minority Bar Convention (Apr. 8, 2000).

34. See WARD CHURCHILL & JIM VANDER WALL, THE COINTELPRO PAPERS: DOCUMENTS FROM THE FBI'S SECRET WARS AGAINST DISSENT IN THE UNITED STATES 7 (1990) ("None of the 40 charges leveled at Means [in the aftermath of the 1973 Wounded Knee debacle] held up in court.").

giving the guy a lot of leeway, but the jury found him guilty and recommended jail time. The judge gave it to him—six months in Leavenworth.”

“Leavenworth?”

“Uh, yeah.”³⁵

Tom’s girlfriend in college left him after his first year in law school. He could have convinced her to stay, but he didn’t really want her to. She kept telling him not to change after he started law school. She was worried he’d turn into a cold-hearted lawyer, insensitive and callous.

“Please don’t change, Tom,” she said.

“Remember where you come from, remember your friends,” she said.

“Don’t stop being a good person,” she said.

They broke up after fighting about potential income tax evasion charges relating to his girlfriend’s illicit medicinal marijuana sales.³⁶ She hadn’t been arrested or charged, and there wasn’t even a hint that any law enforcement personnel were investigating her. Tom just didn’t want to date a criminal, especially if he might have to declare it on his bar exam application materials some day. Tom figured good lawyers worked hard to deprioritize individualism or idealism in favor of being the oil that greases the cogs of their bosses. For Tom, good lawyers stopped thinking about the things their clients ask them to do, like how drug users stopped thinking about brushing their teeth or washing. Hopefully, the money will keep coming in, the days will go by quickly, the vacations to Utah will occur regularly, every few months, the walls look the same, the days are the same, the work is “intellectually challenging,”³⁷ and the money keeps coming in. It’s the easiest rut to fall into, and he couldn’t wait.³⁸

35. DANY LAFERRIÈRE, *WHY MUST A BLACK WRITER WRITE ABOUT SEX?* 62 (David Homel trans., 1994).

The judge told him that here in America we have democracy, and everybody has the right to his opinion. [The Nigerian taxi driver] yelled at the judge that the guy [he punched] was a racist bastard and started hollering his head off in the courtroom until they threw him out with a month in jail and the promise that, next time, they would take away his license. His lawyer tried to tell him if he hadn’t made such a stink, he would have gotten off with a week.

Id.

36. *See, e.g., United States v. Bencs*, 28 F.3d 555, 559–60 (6th Cir. 1994) (upholding tax evasion charges for defendant with undeclared marijuana income).

37. NADER & SMITH, *supra* note 11, at xiii.

38. DAVID SEDARIS, *Ashes*, in *NAKED* 234, 249–50 (1997).

Anything we forecasted was puny compared to the future that awaited us. You can’t brace yourself for famine if you’ve never known hunger; it is foolish even to try. The most you can do is eat up while you still can, stuffing yourself, shoveling it in with both hands and licking clean the plates, recalling every course in vivid detail. Our mother was back in her room and very much alive, probably watching

"Please don't change, Tom," she said.

"Remember where you come from, remember your friends," she said.

"Don't stop being a good person," she said.

Dana was saying he opened a privileged letter the other day, and it contained evidence of a crime—perjury or destroying evidence or some such thing.³⁹ The client had lied to a judge about shredding documents and wanted advice from the firm about how to avoid liability for that.

"Is it true that lawyers have to report crime if they know about it?"

"You really shouldn't read those letters."

"Oh, they'll never find out. I'm getting good at resealing them."⁴⁰

"Those letters are secrets. Those letters are confidential. Those letters are the lynchpins of justice."⁴¹

Dana said, "Exactly."

Tom tried another line of argument.

"But they never say much that's interesting anyway. Not much incriminating. I think they're labeled privileged and confidential so that the people the documents are intended to be shielded from get jealous and find themselves desperate to see what's in those documents. What do they have to hide? The answer, usually, is nothing."

Yet Tom knew that probably wasn't true. Tom sometimes heard about letters from clients asking their lawyer to get them out of a jam, maybe hide some documents or just give them twenty-five minutes in a room with a shredder, but it never happened to him. So, he lectured Dana.

"Most of our work is mundane, downright boring. The exciting filmmaker plot line about clients asking for help in hiding the body just doesn't happen. I mean, take a school district, for instance. Who do they kill? What do they have to hide? Our clients are just out to make an honest buck. Some of them might be bad, but if they don't tell me about it, then

a detective program on television. Maybe that was her light in the window, her figure stepping out onto the patio to light a cigarette. We told ourselves she probably wanted to be left alone, that's how stoned we were. We'd think of this later, each in our own separate way. I myself tend to dwell on the stupidity of pacing a cemetery while she sat, frightened and alone, staring at the tip of her cigarette and envisioning her self, clearly now, in ashes.

Id.

39. See, e.g., *Gates Rubber Co. v. Bando Chem. Indus.*, 167 F.R.D. 90, 127 (D. Colo. 1996) (finding that company employees who watched another employee shred critical documents were not committing perjury because the employees who watched the shredding were never asked about the incident).

40. See, e.g., *Duplan Corp. v. Deering Milliken, Inc.*, 397 F. Supp. 1146, 1192-93 (D. S.C. 1975) (describing situation where many people in a company's mailroom read confidential correspondence).

41. See, e.g., *Jaffee v. Redmond*, 518 U.S. 1, 11 (1996) (finding that the attorney-client privilege encourages "full and frank communication between attorneys and their clients").

I'll probably never know. And good business people know the law well enough to know they can't cover up crimes by telling their lawyers about it. People are fundamentally good, they won't break the law if they can help it."

On Tuesday, a complaint filed by a radical hippie citizen watchdog public interest group against Tom's client came in. Something about electric shocks caused by electronic razors or hair dryers.⁴² Tom hated those cases. Their plaintiffs were faceless, nameless entities, probably made up on the spot by some ambitious tree-hugging, pabulum-puker, not even human. The so-called public interest firms were like corporate law firms themselves, the things public interest lawyers railed against so much, because no self-respecting law firm would hire them, he believed. He and another attorney, a second-year associate, laughed about it as they began to plan the litigation strategy that first day. The second-year associate was laughing about an opinion Judge Waters just published admonishing legal aid groups and prisoners from filing frivolous lawsuits, mere fishing expeditions.⁴³

"There's no evidence anyway," the associate was saying. "The company gets rid of all those incriminating reports before anyone ever gets a chance to explode in a Pinto, don't they?" Tom kept smiling on the outside, but on the inside, he stopped. It's impossible to lay blame on a nameless, faceless, inhuman, veiled corporate vegetable. It's like trying to sue air.⁴⁴

"Is it true what they say about you?" the second-year associate asked confidentially. "That you have a gift, a gift of persuasion that no one can figure out?"

Tom never really thought of it that way, but he answered with a smile, yes.

"I can persuade people to think my way." Like a supernatural being, he thought.

"I bet you could persuade the other party to drop the case."

42. See, e.g., *Hapner v. Rolf Brauchli, Inc.*, 273 N.W.2d 822, 828 (Mich. 1978) (describing potentially defective hair dryer).

43. See, e.g., *Hadley v. Peters*, 1995 WL 675990, *10 (7th Cir. 1995) (unpublished opinion) (admonishing a prisoner for filing frivolous lawsuits and wasting the court's time).

44. ARTHUR MILLER, *THE CRUCIBLE* 66 (Penguin Books 1996) (1953).

DANFORTH: In an ordinary crime, witnesses are called to prove guilt or innocence. But witchcraft is an invisible crime; therefore who may witness it? The witch, and of course the victim. Now we cannot expect the witch to accuse herself, can we? Therefore, we may only rely upon her victims!—And the children certainly testify! Therefore, what is left for a lawyer to bring out?

Id.

"Maybe, but I'd rather prove to them in court that they have no case. They can decide what to do then. I'm still a believer in free will." Superciliousness, he knew.

The associate laughed.⁴⁵

"You work for any tobacco companies?" Dana asked on Saturday.

Tom shook his head.

"Not anymore. Just not part of my practice. I worked on a pre-trial hearing once on one of those billion dollar class action cases. I got the judge to decertify the class."⁴⁶

Dana nodded, suddenly more interested in television.⁴⁷

Tom went on. "I don't get it. Everyone hates tobacco companies now. Selling smokes to kids, killing people left and right, 500 million people alive today will die of smoking-related diseases. Lawyers represent them and get tough and jury-bash when the jury awards a big verdict. Why now? Why do all these money-grubbing plaintiffs show up now? Everyone knew smoking was bad for you, ever since the Virginian colonists started selling it to English knights in Parliament."⁴⁸

On Monday, the second-year associate kept pestering Tom with questions. "Did they tell you in law school they were going to make you think like a lawyer?"⁴⁹

45. PAULA GUNN ALLEN, *OFF THE RESERVATION: REFLECTIONS ON BOUNDARY-BUSTING, BORDER-CROSSING LOOSE CANONS* 101, 115 (1998).

My point is that it is not the radiation, toxins, electro-magnetic overkill, or holes in the ozone that are causing planetary wipe-out. It's not about immune systems failing, TV, microwaves, or chemically treated everything. It's what they signify—the adamant inability of the white world to see the reality of the sacred, to acknowledge its living presence, and to pay homage through properly constituted ceremony.

Id.

46. See, e.g., *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 740 (5th Cir. 1996) (decertifying the class in a tobacco product liability case).

47. NICCOLÒ MACHIAVELLI, *THE PRINCE AND SELECTED DISCOURSES: MACHIAVELLI* 77 (Daniel Donno ed. & trans., 1966) (1513).

[The King of Spain, Ferdinand of Aragon, was the greatest king in Europe in Macchiavelli's time because] [h]e kept the barons of Castile so preoccupied with [war] that they could give no thought to rebellion. Meanwhile he gained standing and authority over them without their realizing it. . . . Thus he has always planned and executed great things which have filled his subjects with wonder and admiration and have kept them preoccupied.

Id.

48. "I don't know why they ignored the industry's arguments," said Gregory Little, associate general counsel for Phillip Morris, "but I do know they ignored it and I think that it is inappropriate." Barry Meier, *Jury's Action Raises Concerns for Tobacco Industry*, N.Y. TIMES, Jul. 16, 2000, at 19.

49. NADER & SMITH, *supra* note 11, at 318.

Early in [the 20th] century, a Mississippi worker lost his leg due to the negligence of the railroad company that employed him. He sued and won a \$3,000 verdict

"Yeah," Tom answered, feeling clever. "But it didn't work. I still think like myself. I kept my individuality."

"Well, I think like a lawyer, and I don't like it."

Tom laughed. He was no conformist but he knew, in order to get what he wanted, he had to give in sometimes.⁵⁰

Dana asked Tom on Sunday if he voted.

"Nah. I'm a lawyer, not a citizen," Tom said, joking. "I'll go with whatever law they want to pass. As long as they tell me what it is, I'll argue it."

Dana said he didn't vote, either. "I'm thinking about running on the worker's party or something. I'd like to get my name on the local ballot. Might help me meet women. Going to the bar and spilling beer all over my nice martini shirt doesn't work."

"I'll vote for you," Tom said.

"What's the first thing you would do if you were President?" Dana asked.

"Redecorate."

"What would you do if you were king?"

"Hire someone to carry me around on my bed," Tom said.

"I'd issue an executive order to stop the DOJ from prosecuting drug cases," Dana said.

"I'd enact tort reform legislation," Tom said.

"As President?" Dana asked.

"As king."

from the jury. The judge reduced the award to \$1,000, saying to the worker standing before him: "Your disability is for life, but for life only."

The cruelty in those old judicial words is echoed in the modern tort deform drive. . . . The corporations that fund this assault on a pillar of American democracy will not be satisfied with merely curbing compensation, keeping crucial evidence secret, and superimposing one-sided legislative restrictions on judges and juries alike. Their goal is to maximize their immunities by getting rid of jury trials completely in personal injury cases. They care not for the Seventh Amendment Nor do their legal spear-carriers care.

Id.

50. JACQUELYN KILPATRICK, *CELLULOID INDIANS: NATIVE AMERICANS AND FILM 171-72* (reviewing *DEAD MAN* (Miramax Films 1995)).

That Nobody was taken as a young boy to be exhibited in a cage is also from [Jim] Jarmusch's historical research, and the attitudes of the colonizers are very clear in a flashback to Nobody's childhood, where he sits in a cage with uncaged animals next to him. That he impresses the English by mimicking them is also an interesting idea that implies that Native Americans were only considered human when they adopted the ways of the colonizers. This is certainly not news to anyone familiar with the enthusiastic efforts of the missionaries and educators to "kill the Indian and save the man."

Id.

The first-year associate across the hall from Tom was in bad spirits on Thursday. "I hate this job," she said, looking stressed like nobody's business, like a disgruntled former employee-in-the-making. "Going to law school was the worst thing I ever did."

Tom didn't know what to say, but wanted to offer support. "This is what you get when you mess with us."⁵¹

"Huh?" the associate shot back. "What's that supposed to mean?"

Tom smiled, calming the associate like lithium, like heroin, like a comforting sofa, like a care package full of cookies and love letters.

"Just a joke."⁵²

The associate wasn't having it. "Oh. I know you're trying to cheer me up, but I'm just not willing to be cheered up right now. I think I need to quit this job."

Tom shrugged, not caring either way. He liked his neighbor, but he heard her work was merely average. Maybe she *should* leave. "It's not all bad. There's nice people here, aren't there?"

"Sure there are, but the work just kills me. I feel like if I have to read another public utility hearing transcript, I'll go crazy with boredom. It's like these things are so distant from me, they might not even be happening. It's all on paper, and most of the time I lose track of what I'm doing. It's so hard to focus when I'm reading 300 pages a day of expert, scientific testimony. I don't even know what any of it means. Most of it is blather. Attorneys. Experts. More attorneys. More experts. It's like being punished for some heinous crime. Forced to listen to the collected answering machine messages left by the four most uninteresting people in America."

Tom had some sympathy for her plight. He never really had to do that kind of work anymore. He was forgetting what it was like. "Aren't you getting paid enough?"⁵³

51. RADIOHEAD, *Karma Police*, on OK COMPUTER (Capital/EMI Records 1997).

52. Norman Solomon, Media Beat: Convention Hospitality and Police Brutality, at <http://www.fair.org/media-beat/000727.html> (last visited Jan. 23, 2003).

"We are seeing the media cheerlead for the erasure and the erosion of basic human rights and civil liberties," says Van Jones, director of the Ella Baker Center for Human Rights. "If this were happening in any other country in the world, this incredible militarization of the police, the incredible expansion of police power, the increase in police weaponry, the decrease in defendants' rights, the incredible stockpiling of bodies behind prison walls, we'd be screaming."

But evasion is easier. "Much of America remains in denial about the magnitude of police brutality, reflecting a historical pattern that continued throughout the 20th century," journalist Jill Nelson observes in the introduction to the new anthology "Police Brutality."

Id.

The associate gave Tom a dirty, evil look in response, quickly erased it from her face, thanked him for his support, and went back into her office.

Tom wondered whom he should tell about the conversation. She was definitely a potential plaintiff against the firm, being a woman and all. Maybe she was over forty, too. Hmm. The managing partner needed to know. He headed up to the seventy-second floor.⁵⁴

Dana asked on Wednesday before the hockey game if law school was difficult.

“Yeah, mostly because everyone’s so ambitious and idealistic. They want everything perfect, done their own way. They spend so much time making sure they get what they want—firm interviews, recommendations from the right professors, getting into the right clinic or the right seminar, getting more time to finish a long paper, getting on law review, finding the right moot court partner—it’s a wonder they learn anything at all. On top of all that, they compete for grades like the worst grade-grubbers you have ever seen.”

Dana, not experienced with college or high school, nodded in complete understanding, thinking everyone who went to college was like that.

“My colleagues, the people by my side while we were all struggling through the demolition derby, earthquake-like, Jupiter-style gravitational pressure of law school, live and work in corporate atmospheres, high above the earth in skyscrapers, billing 2250, 2500, 2750, 3000, or 3500 hours a year or more. They don’t have time to stop and inspect their surroundings. They don’t know why they’re fighting so hard.”⁵⁵

53. Starting first-year lawyers earned \$140,000 in Manhattan law firms. See *Starting Lawyer Pay Lags: Highest Beginning Salary Just Half of Skadden Arps*, N.Y. L.J., JUN. 5, 2000, at B1.

54. RALPH ELLISON, *INVISIBLE MAN* 183 (Vintage Books 1972) (1947).

“Of course, of course. If I could only speak plainly! I’m confusing you. Such frankness just isn’t possible because all our motives are impure. Forget what I just said. I’ll try to put it this way—and remember this, please . . .”

My head spun. He was addressing me, leaning forward confidentially, as though he’d known me for years, and I remembered something my grandfather had said long ago: *Don’t let no white man tell you his business, ‘cause after he tells you he’s liable to git shame he tole it to you and then he’ll hate you. Fact is, he was hating you all the time . . .*

“ . . . I want to try to reveal a part of reality that is most important to you—but I warn you, it’s going to hurt.”

Id.

55. John Christopher Anderson, *Respecting Human Rights: Multinational Corporations Strike Out*, 2 U. PA. J. LAB. & EMPLOYMENT L. 463, 504–05 (2000).

Multinationals are in a position to have an enormous impact on human rights and have the option to choose whether to make such an impact positive or negative. Yet, the act of granting corporate charters has become a mere administrative process. Over the last few decades, both multinationals and states have largely ignored the fact that corporate form is a privilege and not a right.

Id.

"Why do *you* do it?" Dana asked.

"Because I need something to do. Plus, I get hockey tickets." Because, Tom thought, when he won, when he succeeded, when he was heralded, he felt 'that barbarity was tamed, the reign of chaos subdued.'⁵⁶

Dana had a job, but he asked on Friday if Tom could get him a job as a paralegal. "I bet I'd be better than Bennie on *L.A. Law*. I make good coffee."

"Don't you like where you work?"

"I always want something new, something different. I wish I could be a lawyer like in the movies, getting chased by mobsters and getting all the action. That'd be cool. Real lawyers would be cool if they became more like TV lawyers."⁵⁷

"My gram watches *Law & Order* all the time. It's fun and games for those guys. They're just a whimsical, melodramatic view of how people perceive lawyers,"⁵⁸ Tom said.

"What you're saying is that real lawyers are basically boring. I know that already," said Dana.

"No, they're just like anyone else. They do their work and go home. Like most people, they don't like their jobs, but they do them. It's the best we can do. It's a job."

"So, you're just like the rest of us poor slobs. Can't seem to catch a break."

"Something like that."

"Fearing and loathing the world, society, with all its cutting edges. 'Neither fear nor courage saves us. Unnatural vices [a]re fathered by our heroism. Virtues [a]re forced upon us by our imprudent crimes.'⁵⁹

56. VIRGINIA WOOLF, *TO THE LIGHTHOUSE* 43 (Susan Dick ed., Blackwell Publishers 1992) (1927).

57. Anthony Chase, *Toward a Legal Theory of Popular Culture*, 1986 WIS. L. REV. 527, 558. Since most soap operas not only include an array of professionals (especially doctors and lawyers) but are also situated in generically small-town or exurban environments, they provide an excellent popular culture format within which notions of traditional legal practice continue to be worked through and explored.

Id.

58. Jeffrey W. Stempel, *Embracing Descent: The Bankruptcy of a Business Paradigm for Conceptualizing and Regulating the Legal Profession*, 27 FLA. ST. U. L. REV. 25, 29-30 (1999).

Instead of Perry Mason, we have Ally McBeal, *L.A. Law*, and *The Practice*. *McBeal* is embarrassingly airheaded, and more focused on finding a good nightclub than practicing good law. The gang in *L.A. Law* struck a number of blows for conspicuous consumption and moral decline but relatively few for justice. The crew in *The Practice* does somewhat better, but needs its share of material goods and torrid embraces as well.

Id.

59. T.S. ELIOT, *Gerontion*, in *THE WASTE LAND PRUFROCK AND OTHER POEMS* 17-18 (Paul Negri ed., Dover Publ'ns 1998) (1920).

“Sounds like you’re telling me bad facts make bad law.”⁶⁰

“Exactly. What I’m saying is, I don’t feel sorry for you.”

“I don’t want you to be. Just recognize that I’m no different than anyone else. I just make more money and have more power. I understand as well as anyone alive that all that power and money doesn’t mean a damn thing. I’m no different than I used to be, in high school, in college. I still ‘obey’d with great Resignation.’”⁶¹

“Ah, you ‘find it necessary to caress ‘em as Friends, and not to treat ‘em as Slaves, nor do [you] dare do other, their numbers so far surpassing [yours] in the Continent.’”⁶²

“Bad analogy,” Tom said.

“You don’t like your job? Maybe you should try something else, like being a rodeo clown or a touring demolition derby driver. You should find a job as legal counsel for a hockey team,” Dana said.

“I like my job. I’m good at it. In fact, I might be the best since Clarence Darrow.”

“Best not to think about it, especially since nothing depends on us.”⁶³

“Oh, but I *am* good. I never admit it to anyone at work or in the profession, but I *am* good.”

II. Perspicuity⁶⁴

“Mr. Argos,” Judge Waters said with a genuine smile, “it’s a pleasure to have you back in my courtroom.”

Tom knew this already. “Thank you, your Honor.”

“As for your motion to suppress, this Court hereby grants—”

Opposing counsel stood to object with a withering, desperate glance at Tom.

60. See, e.g., *Burdine v. Johnson*, 262 F.3d 336, 357 (5th Cir. 2001) (en banc) (Barksdale, C.J., dissenting) (lamenting that “[b]ad facts make bad law” in a case where the majority overturned a conviction where the defendant’s court-appointed attorney slept during the guilt phase of capital murder trial), *cert. denied*, 122 S. Ct. 2347 (2002).

61. APHRA BEHN, *OROONOKO OR, THE ROYAL SLAVE* 10 (Joanna Lipking ed., W.W. Norton & Co. 1997) (1688).

62. *Id.* at 9.

63. MANUEL PUIG, *KISS OF THE SPIDER WOMAN* 214 (Vintage Int’l 1991) (1978).

64. JAQUELINE SUSANN, *VALLEY OF THE DOLLS* 442 (1966).

She brushed her hair and freshened her makeup. She looked fine. She had Lyon, the beautiful apartment, the beautiful child, the nice career of her own, New York—everything she had ever wanted. And from now on, she could never be hurt badly. She could always keep busy during the day, and at night—the lonely ones—there were always the beautiful dolls for company. She’d take two of them tonight. Why not? After all, it was New Year’s Eve!

Id.

“Hold it, Mr. Spencer,” the judge said with a stern, but friendly wave. “You wanted this case to move at an expedited pace, didn’t you? Well, this ruling moves the case along. Frankly, any time this Court gets a chance to cut down on the number of expert witnesses, I’m grateful.”

“But, you Honor, this expert is well-qualified—”

“That will be all, Mr. Spencer. Motion granted. This Court stands adjourned.”

Opposing counsel reached over his table, as if reaching to touch a famous celebrity or religious figure, face contorted with emotion, agony, withdrawal, disgust, and, most of all, defeat. “What about oral argument?” he asked, but Judge Waters was already gone and the bailiff was eyeing opposing counsel with potential disrespect and probable cause.

Tom knew the motion would be granted summarily and hadn’t even prepared arguments. It was a well-briefed motion. His opponent sat down wearily, as if he had been preparing for argument for decades and fell back like an astronaut who had the chance to go to the Moon ripped out from under him right before lift-off by bad weather, bad politics, or bad luck. Tom felt bad for the guy, but he liked being right more than anything. He picked up his empty case and started to walk out.

“How do you do it?”

“What?” Tom said.

“You win these cases all the time, don’t you?”

“Well, I’ve never really handled—”

“Do you really know who you represent?”

“Of course I do.”

“No, you don’t.”

Tom smiled weakly and quickly exited the courtroom. He told himself it was just a job and that he shouldn’t get emotionally involved like Mr. Spencer.

On Friday, Tom asked the first-year associate if she was still leaving.

“I don’t know anymore,” she answered, sounding very tired and perplexed. “Everyone’s saying it’s crazy to leave this job. It’s a good job, they tell me. My friends say this is one of the best firms to work for. Not a sweatshop like some of the others.”

Tom nodded. “We care for the associates here, it’s true.” He had no idea if it was true or not, but he figured she would like to hear it. He knew he could easily persuade her to stay, but he didn’t do it. At once, he suddenly wanted to see how things would turn out without his influence. He wanted to see in vivid, Van Gogh-like detail how the considerable influence he exerted affected those around him. He realized his every word, sometimes thrown about casually or arbitrarily and, sometimes, cruelly,

carved like a fillet knife into people's lives and impressions and prejudices. He wanted to see how he shaped opinions by not forcing them. Just once.

"What do you think?" the associate asked, pleading for advice, for direction, giving up her own wants, her own will.

"I don't know." Tom was tempted by the opening, the plea for interference, but stayed put. He put his hands into his pockets and waited.

"You're no help," she said, putting her hands in her face, rubbing the stress and worry from her eyes. "Work sucks. I just want a job that helps people for once. I sorta just fell into this firm stuff." The first-year associate paused, looking up at the ceiling. "No. That's not true. I *worked* to get this job. I *sacrificed* so much to get this job. I moved to this place, left my family, my boyfriend, gave up on my doctorate. For *this*."

"What's bad about it?" Tom wanted to know. He didn't know anything else but the firm, but success, but certainty, always getting his way, not even sure if he wanted what he wanted.

"I don't know where to start. It's just not my thing, Tom."

"So, are you going to get a public interest job or something?"

"I don't know. I don't think so. I just need to get another career. This one is killing me."

"Take a vacation."

Tom said good-bye and went back to his office to work on a motion to dismiss against a Temporary Restraining Order. The client wanted to help a privately-owned hunting lodge (the client was a member) defeat the temporary restraining order granted by a Supreme Court judge in Mohawk country, barring members from hunting on tribal land.⁶⁵

The second-year associate walked in and Tom felt annoyed—by the firm, by the associate, by everything—but he smiled. He had to keep up his face. "What is it?" he asked.

"We got 'em! Right here. See this depo? You kicked their asses! The victim practically admits she—"

Tom stopped listening while the associate spoke about the toxic tort case filed against a big money client. He wished he could give the guy some money to get him to stop talking.⁶⁶ He waited, thinking about hockey and ski vacations, until the associate's colloquy ended. It took a while.

65. See, e.g., *United States v. Finch*, 548 F.2d 822, 834 (9th Cir. 1976) (discussing how Congress intended Indian landowners to be able to keep nonmembers off their land the same as private hunting clubs), *vacated by*, 433 U.S. 676 (1977).

66. JIM CARROLL, *FORCED ENTRIES: THE DOWNTOWN DIARIES (1971-1973)* 30 (1987).

I take it straight in the vein so as to get the maximum rush, which is something like inserting a model railroad locomotive into your bloodlines and having it run, at open throttle, directly from armpit to heart to brain, proceeding on to local stops everywhere else in the body after delivering to these prime points. The trouble is

"Am I right?"

"Sure," Tom answered, trying to sound excited. The associate was probably right. The victim had lied. The experts looked like they were reaching. The cause of action was full of holes. The plaintiff's attorney was slimy. "Sounds like we'll win that motion for summary J."⁶⁷

"Hell, yeah." The associate grinned, smelling fresh meat, victory, promotions, bonuses, partnerships. "I feel like a king, Tom. You're the man!"

The room shrunk around Tom; he was falling; he was spinning; he was dizzy; he was losing control; nerve endings communicating intense pain.

What about the cancer that would surely murder the victim? What about the victim's mother? Or her sons? Her pain and suffering? What about her lost wages? No, forget about that. Why didn't the associate care? Why didn't the firm care? Didn't they? He impulsively thought about running out of the office and telling everyone wandering around Berkman, Deloria's hallways that the firm just crushed the lives of a few more people. For once, he'd be saying something they didn't want to hear, attempts to persuade to which they would not listen.

The associate started talking again. "Let's call the client. I hear they're really worried about this one. Aren't they?"

Tom nodded. They *were*, but now that Berkman, Deloria had taken care of their problem like good little hitmen, they would sleep better.

"I love winning," the second-year associate said, grinning.

Tom excused himself and went to the men's room. It was as if the second-year associate had said, "The white man whose power you know too well has ordered this meeting to stop."⁶⁸ Tom decided he had better not stay in the room or else he would find a machete.⁶⁹

that, of late, I smell circuits burning somewhere in the tracks. Gloria seems to go on in stride, urging me to force myself to eat. I don't want to eat. I want to talk. I talk to everybody, and it pisses me off when they interrupt to talk back. I sometimes think of offering money to friends to buy their turn in a conversation.

Id.

67. *But see, e.g.,* *Gunsalus v. Celotex Corp.*, 674 F. Supp. 1149, 1152-54 (E.D. Pa. 1987) (denying summary judgment in part for defendant tobacco company even though product liability plaintiff had been stabbed in the heart previous to lung cancer diagnosis).

68. CHINUA ACHEBE, *THINGS FALL APART* 144 (1958).

69. FRANK HARRIS, *THE BOMB* 153 (1920).

"But surely the true lesson of history is the growth of the individual as a force. Every discovery of science," he went on, with a thrill of triumph in his strong voice, "strengthens the individual. In the past he had one man's life in his hand; a single oppressor could always be killed by a single slave." The whole meeting seemed to shiver with apprehension. "But now the individual has the lives of hundreds in his hand, and some day soon he will have the lives of thousands, of a whole city, then they will cease to do wrong, the tyrants, or cease to exist."

Id.

On Tuesday, a junior partner that had just been granted his partnership asked Tom to lunch to talk about a regulatory case they were going to litigate before the D.C. Circuit. They went to Subway. Tom bought a veggie sub with a chocolate chip cookie, a small bag of Cheetos, and a large lemon-flavored cold drink. The junior partner bought a turkey sandwich with too much mustard on it and a tall glass of water. They ate their meal right there in the restaurant. Tom kept up with the conversation and made it seem like he was interested and paying attention, but he was actually thinking about the New York Rangers and, alternatively, the last episode he had seen of *Police Squad* about twenty years earlier, when he was fifteen. The junior partner thought about the possibility that their privileged conversation might be overheard by a Subway employee who, by chance, read the *New York Times* and was aware of their telecommunications regulatory problem.

On the way back and with a full stomach, the junior partner felt easier about talking to Tom about what he really wanted to talk about. "I don't want any women working on this case with us."

"Why not?"

"Because they're weird. They don't focus like we do."

"Oh."

"Most of the women working for the firm are affirmative action babies. I've talked to some of them and they aren't cutting it. Probably got into law school just because they're women. I just don't trust their credentials. Who knows if they got the savvy and intelligence—the necessary BFOQ qualifications—to handle complex litigation like this case? It's too important to hand to them. I want to say no blacks, too, but that's not really a problem. There aren't that many around."

Tom doubted he could change the junior partner's mind.⁷⁰

On Thursday, Dana revealed that he was up to something, something big at the firm. "I'm afraid to tell you about it because you probably know some of those guys in my firm."

"What firm?"

"Nuh-uh. Ain't telling you yet. I think I'll be getting on *60 Minutes*, or maybe *60 Minutes II*. I'll settle for that."

70. Robert Entman, *Media Distorts Debate on Affirmative Action*, in CENSORED 2000, *supra* note 23, at 70, 72.

[J]ournalists and Americans of good will should not forget that discrimination persists, from the taxicabs on the street to the boardrooms on the top floors, that a meritocracy based purely on objective indicators has never been practical, and that public opinion is not universally hostile to this message [contrary to dominant media discourse].

Id.

Tom wanted to know. He wanted inspiration. "What are you going to do?"

Dana just smiled, smiled so broadly that he eventually started laughing and spilled his cocktail.⁷¹

On Monday, Tom decided he didn't want to work on the tort reform-lobbying project. He told the supervising partner on the project that he was busy, too busy to work on that project. He lied, of course. He was never busy.

"I'm disappointed," the partner whispered. "Let me know if you finish a project and have time to work on this one."

"Sure thing."

Tom instead went to his office and shut the door. His famous open-door, open-associate, open-partner, open-office staff policy gave way to an unspeakable urge to get away from them all. To be left alone. He checked his e-mail. The environmental defense department wanted help on a motion to dismiss a toxic tort case.⁷² The corporate litigation department wanted him to help them depose an adverse corporation's CEO.⁷³ A third-year associate with whom he got drunk with at a party four weeks ago wanted some stock tips. In fact, a couple of people wanted stock tips. He realized that he'd been asked for stock tips more than for any other favor. He didn't know anything about stocks. His tips were always based upon his "inside" knowledge from the M&A department about planned massive layoffs.⁷⁴ Usually, they came to nothing. Empty advice. He smiled, knowing he could not will the stock prices to fluctuate with a speech. He e-mailed the associate and told him to buy low and sell high.⁷⁵

71. Sherman Alexie, *Special Delivery*, in *THE BUSINESS OF FANCYDANCING* 39, 47 (1992).

"Simon explained truth to me," Thomas said. "If there's a tree in the distance and you run to get there, run across the grass with all your heart, and you make it and touch the tree, press you face against the bark, then it is all true. But if you stumble and fall, lose your way, move to the city and buy a VCR and watch cowboy movies all the time, then nothing is true."

Id.

72. See, e.g., *In re Pfohl Bros. Landfill Litig.*, 68 F. Supp. 2d 236, 241 (W.D.N.Y. 1999) (describing a case brought by multiple cancer victims seeking to recover from landfill operators).

73. See, e.g., *Miscellaneous Docket Matter #1 v. Miscellaneous Docket Matter #2*, 197 F.3d 922, 927 (8th Cir. 1999) (quashing subpoena of CEO in sex discrimination case).

74. See, e.g., *In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 988 (9th Cir. 1999) (holding that complaint of "massive" insider trading fails for lack of showing of deliberate recklessness by directors).

75. Wayne O'Leary, *Washington's 10% Solution*, in *CENSORED 2000*, *supra* note 23, at 115.

Significant advantage in the formation of government policy goes to the leading stockholders in the U.S. The non-investing public at large, the bottom 60 percent (or more accurately, 90 percent) currently has little effective representation in national politics or government. Government policies directly or indirectly reward Americans who own stock; the opposite side of the coin, of course is that

On Friday, the lead chair on a long-running trial in Atlanta introduced Tom to his star expert witness. “Well, she’s not exactly an expert witness. She’s going to be reading the expert’s deposition to the jury. She’s an actor. I think she appeared in a couple of rock videos and—”⁷⁶

The witness interrupted the fidgety lead chair. “I was in a detergent commercial and I’ve done some layouts for Sears.”

Tom asked, “You’re a model?”

“An actor slash model.”⁷⁷

“It’s a pleasure to meet you.”

The lead chair was sweating too much, as if the temperature control in the hallowed halls of Berkman, Deloria was failing, going haywire, cooking the lawyers microwave-style. He loosened his tie and smiled too broadly. “She’s got to practice reading testimony about scientific studies and lab results.”

Tom was familiar with the case. “Mouthwash?”⁷⁸

“Yes.”

The model’s teeth looked surreal when she smiled. “I’ve never been to Atlanta.”

The lead chair eagerly added, “We actually held auditions.”

“It’s good work,” the expert witness testified.

Tom added with a smile as real as an honest lawyer, “I bet this will lead to a lot more work for you.”

The expert witness nodded seriously, serenely, gravely. “It’s all in who you know.” She leaned forward and Tom could smell her hairspray. She whispered, and Tom could smell Diet Coke on her breath. “My mother was a model too. That’s how I got auditions when I was first starting out.”

On Sunday, Dana was eating polish sausage and musing about politics while watching political coverage on CNN.⁷⁹

they often simultaneously harm those who are stockless.

Id.

76. See generally Robert S. Wieder, *Lights, Camera, Justice*, CALIFORNIA LAWYER, Aug. 2000, at 96 (arguing that deposition readings by actors are entertaining and reliable).

77. See *ZOLANDER* (Paramount Pictures 2001).

78. See, e.g., *Warner-Lambert Co. v. Fed. Trade Comm’n*, 562 F.2d 749, 763 (D.C. Cir. 1977) (holding that FTC did not abuse discretion relying on experts in finding that plaintiff’s mouthwash was not beneficial for colds or sore throats in false advertising case).

79. The Bush campaign scuttled a Republican proposal today that “allow[ed] voters in all states to cast primary ballots that actually counted.” Adam Clymer, *A G.O.P. Overhaul of Primary Session is Killed by Bush*, N.Y. TIMES, July 29, 2000, at A1. Supporters of the plan have argued that if the current trend of setting primaries earlier and earlier continues, it would effectively create a national primary where only wealthy or very well known candidates could compete. Adam Clymer, *New Calendar of Primaries for G.O.P. Clears Hurdle*, N.Y. TIMES, Jul. 28, 2000, at A15.

“Why is it that we don’t find out about things until at least four or five years after they happen? I never heard about El Salvador⁸⁰ or East Timor⁸¹ or COINTELPRO⁸² at all until a few years ago. What do they teach at college?”

Tom hadn’t heard about those places at all. They were far away. Across oceans, across language barriers, across cultural barriers, across racial barriers, across temporal barriers.⁸³ He thought he could see a spot of dried makeup on George W. Bush’s lip. Maybe it was a mole or a spot on the TV screen. He wondered what Presidents do for fun.

Dana showed Tom his letter of resignation. It only had two words of text: “I resign,” the letter said. Dana looked expectantly at Tom. “What do you think?”

“I think it needs work.”

“Too late,” Dana said as he crumpled up the letter. He had something else to show Tom. “I’m going to be a whistleblower.” He handed Tom a letter.

“What’s this?” Tom did not want to read the letter. He did not want to know what the letter said. He did not want to be involved in anything that involved a whistleblower.

80. See, e.g., *Gonzalez-Deras v. I.N.S.*, 215 F.3d 1333, 2000 WL 340121, at *1–2 (9th Cir. 2000) (unpublished disposition) (Fletcher, C.J., dissenting) (discussing death squad activities in El Salvador); *Melendez v. United States Dept of Justice*, 926 F.2d 211, 213 (2d Cir. 1991) (describing background of a Salvadoran national seeking asylum in the United States, whose family was murdered by the death squad and whose life was also threatened); *Perlera-Escobar v. Executive Office for Immigration*, 894 F.2d 1292, 1294 (11th Cir. 1990) (describing Escobar’s family’s troubles with the death squad when the El Salvadoran civil war came to his town in the 1980s).

81. See, e.g., *East Timor Action Network, Inc. v. City of New York*, 71 F. Supp. 2d 334, 336–37 (S.D.N.Y. 1999) (discussing plaintiff’s attempts to protest annexation of East Timor and a 1991 massacre of East Timorese by the Indonesian government).

82. See, e.g., *Jones v. F.B.I.*, 41 F.3d 238, 240 (6th Cir. 1994) (noting that there were COINTELPRO activities against the Black Panthers and Martin Luther King, Jr.); *Hampton v. Hanrahan*, 600 F.2d 600, 605–09 (7th Cir. 1979) (describing COINTELPRO activities against the Black Panther Party in relation to the death of Fred Hampton); *Wahad v. City of New York*, 1999 WL 608772, at *1, 7 (S.D.N.Y. 1999) (denying defendant’s motion to dismiss a twenty-four year claim by a former Black Panther for violations of his Constitutional rights); *Socialist Workers Party v. Attorney Gen. of United States*, 642 F. Supp. 1357, 1384 (S.D.N.Y. 1986) (describing COINTELPRO activities against socialist and communist parties).

83. VINE DELORIA, JR., *GOD IS RED: A NATIVE VIEW OF RELIGION* 5–6 (2d ed., 1994).

Tribes were massacred to prevent them from holding their lands intact and out of reach of the gold-crazed miners. Political pressure was intense in Washington, D.C., and the California Indian treaties were never ratified by the U.S. Senate. Instead they were conveniently buried in the Senate archives, where they remained as classified documents for a half century. By the 1960s most whites in California were not aware of the treatment of the indigenous peoples and had not the faintest idea that they had made treaties with clearly defined boundaries.

Id.

“My evidence.”

“Evidence of what?” Tom immediately regretted asking the question, not knowing what the answer would be. The golden rule for lawyers is never ask a question when you don’t know the answer.⁸⁴

“Misconduct by lawyers, lawyers, lawyers, and lawyers.”

“How many documents do you have?”

“Just the letter.”

Tom breathed a sigh of relief. “*This* is what will get you on *60 Minutes*?”

Dana was perplexed. “Yeah. They did bad things.”

“So? Haven’t you ever heard about plausible deniability?”

Dana cursed. “They can’t deny this. They—”

Tom waved Dana off and, with a few words, some inflection, and the correct facial expression, convinced Dana to go get his job back and find something else worth fighting for. One letter was never enough to bring down a firm like Berkman, Deloria. Never. “Just pretend the corporation is judgment proof, like the CEO is related to the sheriff.”⁸⁵

On Tuesday, Tom filed a petition in his first-ever pro bono case for a client referred by the local prisoner rights outfit. The prisoner had been in solitary confinement for three weeks, and the client was his brother, suing on his behalf as next friend. The prisoner had been eating food loaf⁸⁶ for twenty-nine months. Tom decided it was the most worthwhile case he had ever worked on, even though the client was a part-time crack addict and the prisoner had conspired to steal forty-four cars. They were brothers and their relationship was genuinely loving and brotherly. This was the second time Tom had ever met a casually dressed client. The other time he met a client not wearing a suit was the one he met on a ski trip in Aspen.

Two months later, the magistrate judge issued a Report and Recommendation—adopted verbatim by the district court—recommending the denial of the petition on the grounds that the state prison officials had not denied the inmate due process in housing the inmate in administrative

84. “Lawyers are essentially a conservative lot. Even when what has been is very recent . . . the instinct of many lawyers is to resist change unless and until it has the force of inevitability about it.” Charles W. Wolfram, *Comparative Multi-Disciplinary Practice of Law: Paths Taken and Not Taken*, 52 CASE W. RES. L. REV. 961, 984 (2002).

85. See D. Robert White, WHITE’S LAW DICTIONARY 53 (1985) (defining “judgment proof” as “someone against whom a judgment for damages would be meaningless, either because (1) he has no assets to collect, or (2) he is related to the sheriff”).

86. See, e.g., *Johnson v. Gummerson*, 1999 WL 822523, at *1 (2d Cir. 1999) (unpublished opinion) (upholding a district court’s ruling that food loaf does not threaten the prisoner’s health or well-being); *Prince v. Nichols*, 1999 WL 701905, at *1 (6th Cir. 1999) (unpublished opinion) (denying a prisoner’s claim that food loaf was an Eighth Amendment violation).

segregation.⁸⁷ When Tom read the words “administrative segregation,” he pictured an executive secretary working in his own office because he liked to smoke, he pictured a teenage high school student sitting in a room alone because she flipped off her teacher, he pictured an Administrative Law Judge deliberating a decision in private, he pictured a man in a dark room with no light, no bed, no water, no friends. Nothing. Dead air. Empty, soulless, purgatorial nothingness, non-existence.⁸⁸

Tom filed a motion for reconsideration that same day, almost hurrying, almost trying too hard, almost caring.

Two months later, the magistrate judge filed the same denial, changing some dates and replacing legal analysis with boilerplate and the district court adopted that opinion a few weeks later, changing a few more dates.

For the first time ever, Tom was a loser. For the first time, his job was too hard to do right. Impossible. He sweat, he fret, he rubbed his hands and was victimized by ring around the collar. He called his client and told him the bad news. The client did not seem so surprised. His motivation to do corporate work declined.

On Monday, the managing partner asked Tom to lunch. They did not go to Subway. The managing partner was partial to Taco Bell. Tom ordered two bean burritos and water. He paid with a single and a quarter and got two cents back because there was a special that week. The managing partner ordered something else. They sat down and talked about the old days, when Tom did actual work for the firm.

“We miss you, Tom,” the managing partner said. The managing partner was an engaging, likeable fellow with a mind like a steel trap and the ability to persuade people to think his way. He was good at persuading people, but not quite as good as Tom. He was more than good enough to be the managing partner and to be a multi-millionaire. “We’re human,” he continued. “We lost a case the other day that will cost us a client and reputation. It’s as if they know you’re not doing work for us anymore.”

In the past six months Tom had worked on prisoner cases exclusively, losing every case, but working more than he ever did. “I’ve been billing more,” he said with the weak confidence of speaking the literal truth but also a figurative lie. The firm treated pro bono hours the same as regular billed hours, but they weren’t really the same.

87. See, e.g., *Diaab v. Terry*, 2000 WL 1006648, at *1 (8th Cir. 2000) (unpublished opinion) (finding no due process right to hearing in transfer to administrative segregation). Cf. *Hatch v. District of Columbia*, 184 F.3d 846, 847 (D.C. Cir. 1999) (comparing administrative segregation to ordinary confinement conditions for due process purposes).

88. See LEONARD PELTIER, *PRISON WRITINGS: MY LIFE IS MY SUNDANCE* 154–56 (Harvey Arden ed., 1999) (describing author’s experience upon arrival to U.S. Penitentiary at Leavenworth, Kansas, where he was to serve two life sentences).

The managing partner smiled and said nothing.

Tom could see that the managing partner was not convinced the pro bono work was a good thing.

“We need you back on the big cases, Tom. What you’re doing is great and admirable and we’re glad you took the time off to try it. Now it’s time to come home.”

Tom hoped he hadn’t lost his persuasive abilities. He’d been worried about it ever since he lost his first prisoner petition. He’d been trying to win one, just one, so he could say he mastered that area of the law, if only for one day. He stayed away from the other firm people, working alone, doing his own word processing and filing and answering his own phones. He hadn’t checked his e-mail in seven weeks. He knew somehow he had lost it. Even the managing partner, the old man, the fellow he had in his back pocket like a corrupt judge, was no longer his.

“I’ll think about it.”

The managing partner was deeply dissatisfied with that answer, but he held his tongue. He knew his judgment was the reason he was in such a position of power in the first place. A week later, Tom appeared in court on one of his prisoner rights cases.

“Mr. Argos, enough. You have done enough today to make a mockery of this Court and I will not allow this charade to continue. This Court was created one-hundred and fifty years ago, and I will not let its dignity and usefulness erode with your legal pranks, your attitude, or your arrogance. Your argument based on the unbelievable idea that the highest court of this jurisdiction is flat wrong is an insult to this Court, and I will not tolerate it. I am an elected judge, and I will not abide contentions made by you or any of your esteemed colleagues at Berkman, Deloria. Don’t bring your sorry self into this courtroom ever again, Mr. Argos. It is the order of this Court that the government’s line of reasoning controls in this case, and I dismiss with prejudice every charge made by the petitioner in this case.”

Tom stammered, “Your Honor—”

“Say no more, Mr. Argos. I *will* hold you in contempt if I hear another word. As it is, I’ll be phoning the state bar disciplinary committee after this Court is adjourned.”

Tom closed his eyes, beaten, wiped out, pooped, exhausted, and spent.

“Mr. Argos, ‘leave the arena of the law. I am excusing you.’⁸⁹ This Court is adjourned.” In a lower voice framed with scorn, the judge muttered, “Frankly, Mr. Argos, I’m disappointed in you.” The judge exited. The government’s lawyer exited. After a few strange minutes, the

89. *In re Hague*, 315 N.W.2d 524, 534 (Mich. 1982).

stenographer exited. The clerk exited next. The bailiff waited ten minutes, then twenty. Finally, she left, too.

Tom had no idea what had happened, what had gone wrong, how he had been so wildly mistaken. He had researched the brief until his eyes turned black. He had written and re-written the brief until the wallpaper in his home fell off the wall. He had proof-read the brief until the ink on the paper was worn away. He had studied the file in preparation for oral argument until it was memorized forever. The courtroom seemed devoid of air and the lights dimmed before Tom could move a foot forward, out of the room.⁹⁰

On Saturday, Dana asked why Tom hadn't obtained any hockey tickets lately.

Tom said, "The firm's mad at me."

Tom said, "I don't do what they want me to anymore. I am a loser. I used to be able to assure a blind man that he could see. I used to have appeals court judges for lunch. I used to get my way every time."

Dana, not one to listen to whining and self-pity, tried to head it off before it got worse. "You're not a loser, Tom. We can watch the game on cable. Look at it this way." He reached for the remote. "We won't have to drive home after."

Tom had a dream that night where he was the messenger for a king in Europe, a stately man with stature and power, a man carrying forth the will of the sovereign, a man who would not hesitate to save a starving family from extinction, a man who would not hesitate to burn a village to the ground in the name of his boss, a man who would not hesitate to sue a neighbor for leaving garbage on the front lawn for more than two days. He was a good man, with a large family that he cared for with passion, respect and love. He went out of his way to watch his kids play soccer and his other kids' band recitals. His status with the king brought wealth and security few men could hope to attain. An early partnership. He was a statesman, but he commanded generals and farmers and legal assistants alike. With a word, Tom could fill a prison with serfs and a barge with slaves. What he said became law. In the dream, Tom went to the New

90. *In re Yengo*, 371 A.2d 41, 57 (N.J. 1977).

An intoxication with judicial power which would ignore basic constitutional precepts is a wholly unacceptable syndrome that cannot be tolerated in New Jersey courts. To brook it in a single courtroom would not only degrade the courts in general, but would affront the vast majority of municipal judges who perceive their courtrooms as "place[s] of justice," rather than arenas for exhibitionism by display, before an intimidated audience, of naked and illegal judicial power.

Id.

World to gather information and report back to the king in one year's time. He bid a long, teary farewell to his family and servants alike and boarded a leaky, rotting ocean vessel headed west. His treatment on the vessel rose far above other passengers and sailors. His food was fresh and his drink was exclusive. He had Internet access.

The colonists in the New World were afraid of him but shared their meager supplies with him, knowing he would order them to do so anyway. In the dream, Tom's soldiers carried his bags, and their hands never strayed far from their gun belts. In the dream, Tom slept with a nightlight and a bodyguard outside the room. The colonists told Tom stories about Indians and superhighways, their aspirations, their loves, their phobias. The colonists showed Tom their farms, their tools, their recreation, their families, their clothes, their hair, the housewarming presents they received from the locals. Tom asked where the factories and courts were, and the colonists stared at him blankly and fearfully, knowing he could order them burned at the stake with a motion of his hand. Tom and his entourage took their leave of the colonists and the colony without saying good-bye and boarded their attack helicopter to view the countryside. The Spaniards' helmets kept getting in Tom's face as he tried to view the hills and valleys and rivers and mountains and glaciers and clouds and noble savages and gold in the rivers. The pilot stopped the forward motion of the chopper and pointed out to Tom a thousand-foot high waterfall and the accompanying rainbows. In the dream, Tom wished he were a great painter, artist, portraitist, so he could bring the vision back to the king. The pilot said they were running out of fuel and the soldiers were getting airsick.

In the dream, Tom wrote an e-mail to the king saying there was gold in the rivers, the natives were tame and weak, and the land held the potential to supply the great nation for all eternity. The king responded with disbelief and disdain, asking for proof. Tom replied, "My proof is that I have seen them."⁹¹ The king did not believe Tom and told him not to come home or he and his family would be imprisoned. In the dream, the soldiers abandoned him and the colonists stopped fearing him, and the rank he enjoyed deserted him faster than light, and the Indian children laughed at him. Everyone stopped listening to Tom.⁹²

91. See FITZCARRALDO (Warner Bros. 1982).

92. Christopher Hitchens, *The Chorus and Cassandra*, GRAND STREET MAGAZINE, Autumn 1985, at <http://www.zmag.org/chomsky/other/85-hitchens.html> (last visited Jan. 23, 2003).

The gravamen of the bill against Noam Chomsky is this. That, *first*, he did euphemize and minimize the horrors of the Khmer Rouge. That, *second*, he did "endorse" or otherwise recommend a pamphlet or paper that sought to prove the Nazi Holocaust a fiction. That, *third*, he is an enemy of the Jewish state and a friend to footpads and terrorists of every stripe. This is what "everybody" knows

In the morning, Tom took the EL to work.⁹³

The first-year associate was cleaning out her office when Tom arrived at three. She was making a mess of the hall, covering the carpet with boxes and books and office supplies. Her face was masked with determination and regret, twisted in a mindless agony, a wretched understanding. She hurriedly moved her stuff, plainly aware of the eyes watching her, eyes attached to heads and minds that didn't know what to say, couldn't know what to say.

Tom's eyes were different than that. They were tired and held up bags of skin. They were bloodshot and blurry. Tom's eyes glowed, too, with envy, jealousy. Green eyes. He didn't know if she had left for a better job. He didn't know if she'd been forced out. He didn't know if she quit to escape the firm. He didn't know anything because, until that moment, he hadn't been listening. Her action, of disrupting a career, possibly jumping from one job to the next, or possibly facing unemployment, provoked Tom, prodded him into action himself.

Tom approached the former first-year associate. He needed something from her, something to take away from her, something he could use to resuscitate himself. "How did you do it?"

The former first-year associate looked up at him and put down her latest box of books and papers. She was sweating from exertion, from stress, from being the center of attention for the first time since she had been working for Berkman, Deloria, from being chased by predators and lawyers. "What?"

Tom repeated himself, speaking lower with the hope that no one would hear, but, of course, they all would, the watchers and witnesses. "How did you do it?"

The former first-year associate wasn't sure how to answer. Tom was still part of the hierarchy, the machine, the system, The Man.

about the lonely, derided linguist who no doubt blames America first and is a self-hating Jew into the bargain. Never was an open society better insulated from dissent. In Britain, he would be dismissed as "brilliant but unsound; doesn't know when to stop." In the United States, it takes a little more than that to encompass the destruction of a reputation.

Id.

93. DELORIA, *supra* note 83, at 66-67.

The structure of [American Indians' and other tribal peoples'] religious traditions is taken directly from the world around them, from their relationships with other forms of life. Context is therefore all-important for both practice and the understanding of reality. The places where revelations were experienced were remembered and set aside as locations where, through rituals and ceremonials, the people could once again communicate with the spirits.

Id.

Tom's brow furrowed like farmland. "Tell me. Tell me."

The former first-year associate answered with this: "My name is Velouria and, until today, I have not been working here. I have not ever been to this place. I have not done a single shred of legal work here. I don't even know how I got here. I only know that I must leave as soon as possible."

Tom was glad to finally know her name. She was no longer the first-year associate that worked across the hall from his office.

Tom decided not to do any actual billable work from then on and was waiting for another talk from the managing partner or maybe a simple pink slip. He still got calls from Court TV and CNN to comment on television about notable trials and Supreme Court decisions. After a few weeks, the managing partner finally came back to visit with Tom.

"Have you been thinking about doing some work for us again, Tom?"

Tom hadn't. "Yeah," he said.

The managing partner wanted to know and leaned forward, E.F. Hutton-style. "And?"

"Still thinking."

The managing partner was a good people person and held his temper, his aggression, his passive-aggression, his violent tone. "The partners have been talking, Tom," the managing partner said with leaden cheer. "They've been talking about what a great attorney you are, how you have a real chance to run this firm someday."

Tom wasn't listening. He smiled when the managing partner paused to make it look as if he were listening, however.

The managing partner believed it. "We have a very, very big employment discrimination case coming up. Possibly a \$50 million case. The complaint was filed six months ago and we're filing a motion for summary disposition on Friday. We want you to finalize the brief and make the argument before the district court judge."

Tom smiled again.

"I know it sounds cynical, but the judge is of Mexican heritage, and we think you have the best shot at convincing a fellow minority that these people have no case."

Tom nodded.

"So you're in?"

Tom heard the questioning tone and did not nod. "Huh?"

The managing partner leaned forward. "You'll do it?"

Tom smiled.

The managing partner smiled broadly and stood to go. He shook Tom's hand for reasons Tom did not know. "I'll send the team down to show you what they have." He left, his day brightened.

Tom hoped he hadn't just agreed to something that would make him sorry.

On Tuesday, the supervising partner complimented Tom on Tom's calm demeanor in the face of overwhelming pressure.

Tom had been thinking about a friend of his jailed for protesting the war.⁹⁴ "Thanks," he said without knowing why.

The supervising partner went on. "I mean, I'm truly impressed. The work you did on the brief was incredible, I think. Strange, maybe, but that's how they say you work. And tomorrow you have to appear before a judge who has been nothing less than hostile toward the client."⁹⁵ A judge that's as biased against corporate defendants as any judge I've ever seen."⁹⁶

Tom nodded. He was thinking about an article about an attorney sued for defamation because he alleged that a company had dumped toxic waste and polluted local drinking water.⁹⁷

"Someone needs to stop this judge. Too bad federal judges have lifetime appointments. He's the kind of judge that should be impeached. Makes me kinda sick. He's so inappropriate."

Tom nodded. He was thinking about an article about a man that was suing a municipality for race discrimination and environmental racism and was being harassed in retaliation.⁹⁸

94. See, e.g., *City of Cleveland v. Egeland*, 497 N.E.2d 1383, 1390 (Ohio Ct. App. 1986) (holding that lying in the street as a form of protest against nuclear war is criminal trespassing).

95. Jeffrey M. Shaman & Randee Brickman, *Judicial Reaction to Criticism*, 7 No. 3 JUDICIAL CONDUCT RPTR. 5, 7 (1985) (citing Herman Schwartz, *Judges as Tyrants*, 7 CRIM. L. BULL. 129, 129-39 (1971)).

One scholar has argued that lawyers do not speak out enough against abusive judicial behavior. Herman Schwartz described judges as insulting, abrupt, rude, sarcastic, patronizing, intimidating, and vindictive to defendants and lawyers. He asserts that none of this is particularly secret but few lawyers are willing to say such things publicly, no matter how discourteous or abusive the judge may be. He advocates that autocratic judicial conduct must be faced and remedial measures taken.

Id.

96. See, e.g., *Jackson v. Microsoft Corp.*, 135 F. Supp. 2d 38, 39-40 (D.D.C. 2001) (discussing corporation's allegation that federal district court judge has personal bias or prejudice against corporation).

97. See, e.g., *Wisner v. Harvey*, 694 So. 2d 348, 350 (La. Ct. App. 1996) (rejecting plaintiff's claim that attorney defamed him by stating over the phone that he had dumped toxic waste and polluted the local drinking water).

98. See, e.g., *Sunkett v. Misci*, 183 F. Supp. 2d 691, 718 (D. N.J. 2002) (denying, in part, a motion for summary judgment on grounds that a supervising attorney, who withheld pay raises from his employees because they filed race discrimination claims against the City of Camden, may be liable for violations of a state anti-retaliation statute).

“What do you think about the plaintiff’s attorney? What a greedy bastard.”

Tom nodded. He was thinking about Velouria.

“I think we’re going to stick it to this plaintiff. And if the judge doesn’t think so, we’ll stick it to the judge.”

Tom nodded.

“You ready for tomorrow, Tom?”

Tom nodded.

“I really admire you, my friend.”⁹⁹

On Wednesday, Tom argued the big employment discrimination case before the federal district court judge the managing partner said was of Mexican heritage. He said all the right words. He spoke all the right legal arguments. He responded to the plaintiff’s counsel’s argument with the proper words. He treated the judge with the proper amount of respect. He did nothing different from the days when he was king of the law. He knew the arguments he articulated were legitimate arguments, and they needed to be made on behalf of the client, who paid well for such a service. He knew also that the client was guilty of everything the plaintiff alleged, no matter what arguments he made. He wasn’t lying on behalf of the client; he was simply arguing that, even if everything the plaintiff alleged were true, there was no statute or common law precedent allowing the judge to grant the relief requested by the plaintiff. Tom had made the same arguments to other judges in other venues, arenas, jurisdictions, and had always convinced trial court and appeals court judges that, even if everything the plaintiff alleged were true, there was no statute or common law precedent allowing the judge to grant the relief requested by the plaintiff.

Always. Biased judges. Asian judges. Bored judges. African-American judges. Liberal judges. Latino judges. Prominent judges. Gay and Lesbian judges. Incompetent judges. Native American judges. Conservative judges. Arab-American judges. Kennedy-appointed judges. Hearing-impaired and sightless judges. Angry judges. Caucasian judges. Intelligent judges. Every judge in the whole world would have heard Tom and granted him any motion he made. Summarily.

99. David E. Rosenbaum, *Cheney Slips in Explaining a Vote on Freeing Mandela*, N.Y. TIMES, July 28, 2000, at A14.

The opposition to the [bill placing economic sanctions against South Africa in 1986] was based on the belief of the right wing of the Republican Party in the House that the African National Congress, Mr. Mandela’s party and the leading political voice against apartheid, was dominated by Communists.

Id.

However, on that Wednesday, the judge held up his hand before Tom could finish rebutting the opposing counsel's responsive argument. "I've heard enough, Mr. Argos. Thank you."

Tom smiled and sat down peacefully. The supervising attorney steamed beside him, grinding his own blood into pellets of white-hot odium, clenching his fists and pursing his lips.

"Thank you both," the judge said. "That was an extremely well-done argument by both sides and I commend counsel. However, this issue is one of extreme social importance and there are more than enough facts alleged to support a claim of employment discrimination. Therefore, the motion is denied. A memorandum will be forthcoming in a few weeks. Trial date will be set in the next few days. Thank you. It has been a real pleasure. Mr. Spencer. Mr. Argos."

The judge left. The clerk left. The stenographer left. Tom carefully put his papers away. The supervising attorney sat stonily silent, still clenching his fists.

Tom asked opposing counsel how he was doing.

Mr. Spencer beamed a grin five hundred feet wide. "Great!"

Tom felt very good. "We should get a drink sometime soon. I might have hockey tickets for Saturday's game if you're interested."

Mr. Spencer nodded, wondering what had changed in the world while he was preparing his argument the last few days.

The supervising partner stood and patted Tom on the back. "We'll get them on appeal." He stared at the floor, built by the finest union workers in the city. "Yeah, that's right. We'll get them on appeal."

Mr. Spencer turned to go. Tom wanted to yell out after him, "Congratulations!" He didn't, though. It wouldn't be competitive enough.

The supervising partner talked all the way back to the office. He was sweaty, grumpy, and plotting his revenge. He was in no way smothered by the shocking nonsense that had transpired that day and talked and talked and talked and talked.

Tom's neck was sore from nodding by the time they got back to the office. As he had hoped, the supervising attorney followed Tom all the way back to Tom's office, talking and talking, staring at the ground as if preaching to the gathered masses, worshipping at his feet. Tom handed the supervising partner his letter of resignation. For a few minutes, the supervising partner ignored the plain language of the letter and kept talking about the case, not realizing what the letter meant. Tom waited patiently for the news to sink in. The hallways were quiet, it was after hours, and the lights seemed artificially brighter than usual. The litigation boxes in the hallways sagged more than usual. The gray carpet seemed less vibrant than

usual. The chairs in the hallway seemed less comfortable than usual. The supervising attorney refused to stop talking, to stop seething. Tom grew impatient. He pointed at the letter and told the supervising partner to please read it again.

The supervising partner read the resignation letter.

It said, with Palatino text and Times New Roman punctuation, "I resign."

The supervising partner was finally smothered by the shocking nonsense that had transpired that moment and stopped talking. He stared at the letter for a long time. He furrowed his brow. He twisted his neck and looked up. He looked back at the letter. He looked back at Tom. "This needs work."¹⁰⁰

III. IMPROVIDENCE¹⁰¹

Tom walked the city for years, decades, eons, touching, smelling, tasting, feeling. He saw, he heard, he learned. He argued with homeless

100. RADIOHEAD, *New Job, on AIRBAG/HOW AM I DRIVING?* (Capitol Records 1998).

After a tortured night I awake full of determination. I review my position, and consider with circumspect gravity my inner strength. My new job demands much, and I eat my breakfast whilst wearing a serious and adult expression. I suck the hot coffee with a professionally pained mouth, and flip the pages of my broadsheet nonchalantly.

I swoop back up the stairs in my toweling dressing-gown, and fling open my wardrobe in a manner which I assume to be casual and easy. My suit hangs in front of me, full of nothing. It's up to me to fill it with myself. I pull on the trousers, and carefully fold my penis behind the zip, fastening the button with what I hope is a manly grin. I tuck my shirt into the trousers, and spend some time with my understated tie. My jacket feels slightly small under my arms, but it is nothing anyone would notice. I wonder what my new workmates will be like, and fantasise about the relationships I may possibly enjoy with other members of the organization.

I glance once again at my digital watch, and decide that I am ready. I pull on my coat, and check that I have my keys, and walk out the front door, slamming it firmly behind me. I stand outside, looking blankly ahead, realising I don't have a new job at all.

Id.

101. Noam Chomsky, *Voices of the New Left*, PUNK PLANET, July–Aug. 2000, at 74, 75.

The external institutions do not reward you for trying to undermine them. That's true whether you're trying to turn to college teaching, working in the media or whatever it may be. You can't expect to be thanked by the powerful and the privileged for trying to undermine their power and privilege, or for trying to organize other people to understand it. The punishments can range widely. For example, if you're a black activist in the ghetto, you could get murdered, like Fred Hampton was. If you're a privileged white person, you're more likely not to get a job and be out on the streets or something.

Id.

men and women and street preachers about Chopin, George Lucas, Newt Gingrich, vegetarians, pesticides, and the Talmud. He rode the bus and always stood when an elder needed a seat. He called his mother and told her about his life and that he was feeling fine. He bought the house a round. He wrote a book of vile and delightful poetry that no one must ever see. He took a job as a cashier at a local coffee shop. He kept working in the legal arenas of justice, justiciability, and jurisprudence. He helped his married friends when they felt the urge to stop being married. He represented Native American babies with no legal parents. He represented a radical newspaper when they were sued for libel and disturbing the peace and (secretly) sedition. He stopped wearing the "Whitey Must Pay" shirt and started wearing the "Officer Friendly" shirt, the one with the police officer in riot gear, armed with a machine gun.¹⁰²

On Friday, Tom bumped into the second-year associate. The second-year associate had changed his identity and had become a fourth-year associate while Tom had his back turned.

"Has it been that long?" Tom asked, scratching his beard with one hand and fingering his long-disused corncob pipe he bought from Meijer's in the other.

The fourth-year associate smiled sickly, uneasy, unnerved, worried that someone might see them together. For the remaining legal minds in Berkman, Deloria & Goldman (now Berkman, Deloria, Goldman, & Petoskey), Tom was like that guy Lazlo in *Real Genius*,¹⁰³ a burnout, someone that hangs around in someone's basement doing silly things and schizophrenically fretting about the non-discernable chemical contents of Doritos, cigarettes, Cap'n Crunch, and canned mushrooms.

102. Jeffrey B. Kahan, Note, *Bach, Beethoven and the (Home) Boys: Censoring Violent Rap Music in America*, 66 S. CAL. L. REV. 2583, 2587-88 (1993) (internal footnotes omitted).

Later, the bombast of the 1970s "glam" rock 'n roll gave way to the naked aggression of punk rock. Epitomized by bands like the Sex Pistols, the spare growling music and nihilistic lyrics of punk outraged audiences and commentators in a way unseen since the birth of rock music, twenty years before.

Thus, rappers inherit a wealthy tradition of musical fury, a legacy they have expounded upon, delivering horror-bound visions of the ghetto one shocking couplet at a time. From N.W.A.'s ("Niggers With Attitude") "[Fuck] tha Police," a vulgar courtroom fantasy of retaliation against abusive police officers, to Ice-T's "Home of the Bodybag," a paean to the violence of South Central Los Angeles, rap has expressed the hopelessness and anger of a generation of black youth.

Id.; see also Marilyn J. Flood, Note, *Lyrics and the Law: Censorship of Rock 'n Roll in the United States and Britain*, 12 N.Y.L. SCH. J. INT'L & COMP. L. 399, 428 (1991) ("Whether they were political or musical anarchists, the Sex Pistols were, at least, 'the most visible symbol of a new era of youth subculture.' This era persists, with no group in more recent years creating the type of public outcry caused by the Sex Pistols.").

103. REAL GENIUS (Columbia TriStar 1985).

"How is everyone?" Tom asked the fourth-year associate, expecting to hear that everyone with a conscience had taken off for greener pastures or that the firm was collapsing under its own neutron bomb weight.

"They're fine. The merger went perfectly and gained some seriously impressive litigation and the M&A people from Idaho and Mississippi."

"What about you?"

"I'm doing well. I just got assigned to a litigation team in St. Louis and—"

Tom nodded like he used to, for the first time since he walked away from power, nobility and strength.

The fourth-year associate talked and talked, and when he stopped, he added callously, "Boy, did *you* screw up."

Tom smiled, thinking more than he wanted to, belatedly cursed with conscience and will and understanding. He decided that lawyers must take a stand. Lawyers have to at least try; they are not excused from responsibility, as if they were children. Lawyers have to lash out and make a scene. And not just a scene before some judge in Municipal Court. Lawyers have to make a real mess. If lawyers want to stop racism, sexism, homophobia, inequality, unfairness, and keep the government from supporting killer dictatorships and armies (including itself), lawyers have to speak up. The punks and the hip-hoppers and the radicals and the feminists and the socialists and the anarchists and the sustainable capitalists and the deep ecologists say something every day, and they get nowhere, really, because they're marginalized, they're minorities without a real say.¹⁰⁴

On Sunday, Dana came back from L.A. with a cut above his eye and a strange odor surrounding his person. "It's peroxide," he explained, as if that explained everything.

Tom had forgotten why his roommate had disappeared for a week.

Dana knew this and interjected, "L.A. was a blast, in case you're wondering. My brother almost got arrested in the airport while we were waiting for our flight out of Orange County. There were some activists spray-painting the John Wayne statue when the cops arrived. We were sitting too close, and my brother, trying to move out of the way, accidentally tripped a riot cop. A close call."

"Who were they?" Tom asked.

Dana was unpacking and refused to answer truthfully, committing perjury right there in the apartment in front of a bar-licensed lawyer. "Hippies."

104. See LANI GUINIER, *THE TYRANNY OF THE MAJORITY* 2 (1994) ("The numerically more powerful majority choice simply subsumes minority preferences. In the conventional case, the majority that rules gains all the power and the minority that loses gets none.").

"You know what your problem is? You hate hippies."

"They're just wannabe Indians."

"They weren't really hippies, were they?"

"No, they were just some pro-Indian college students. No big deal. The cops let them go without a chase."

"I can't believe people still like John Wayne enough to name an airport after him."

"Only in Orange County. They're still afraid of Indians."¹⁰⁵

Tom remembered the hierarchical structure at the firm. He thought about the hierarchical structures of the corporations he had studied in law school. He thought about the corporate hierarchy of the law firm he used to work for. He thought about the hierarchies of the companies he used to represent. He thought about military structures and how questioning authority is a terrible offense. He thought about how, during wartime, questioning authority is a crime.¹⁰⁶ He thought about the usefulness of questioning authority and how hierarchical structures ensure that questioning goes unnoticed or is repressed. When he thought about all those things, his lungs clenched, his heart raced, and he couldn't breathe. Recognizing the reality of corporate tyranny, pervasive and cold economic inequality; a lawyers' role as accomplice in the takeover of the world really hurt, hurt like open-heart surgery without anesthesia. The world is ripe for takeover. No one seemed to notice what was happening. Tom noticed, but he wondered if he was seeing things. Could Taco Bell really be so pernicious?¹⁰⁷ Could Hewlett Packard really hurt anyone?¹⁰⁸ Could Time Warner actually control TV?¹⁰⁹ Could Unocal be that malevolent?¹¹⁰ Did

105. Sherman Alexie, *The Sin Eaters*, in *THE TOUGHEST INDIAN IN THE WORLD: STORIES* 76, 101 (2000).

A nervous white soldier gently placed the muzzle of his rifle against the large Indian man's forehead. The man was suddenly quiet. Though he had never fired a gun, had never been threatened with a gun, had never had the desire to use a gun, that Indian man understood the meaning of a gun held in white hands and pointed at a brown face. Genetic memory.

Id.

106. See, e.g., *Debs v. United States*, 249 U.S. 211 (1919) (upholding conviction of World War I protester and Socialist Party leader); *Schenck v. United States*, 249 U.S. 47, 52 (1919) ("The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.").

107. See, e.g., *Marzocco v. Taco Bell Corp.*, 2000 WL 20879, at *3 (Ohio App. 2d 2000) (dismissing food poisoning case for lack of expert testimony).

108. See, e.g., *Cleese v. Hewlett-Packard Co.*, 911 F. Supp. 1312, 1315 (D. Or. 1995) (describing the results of a health study Hewlett-Packard circulated to its employees that found that "women who worked in semiconductor fabrication facilities (clean rooms) had an increased rate of miscarriages and took longer to conceive than women who did not work in such areas").

109. See, e.g., *Time Warner Entm't Co. v. F.C.C.*, 93 F.3d 957, 983 (D.C. Cir. 1996) (upholding constitutionality of two federal statutes regulating cable television despite challenge by Time Warner).

anyone really know? Tom suspected the corporate veil worked on many levels. He suspected that an employee asking questions of corporate bosses would lead to, at best nothing or worse some sort of retribution. He shuddered. He felt cold and manipulated.¹¹¹

On Monday Tom was asked to sit on a panel for a bar convention in Michigan. He agreed, thinking Michigan in the fall would be a beautiful thing. He didn't have a paper to present. He wasn't famous anymore. He didn't really know anything about the subject—Citizen Group Litigation in Federal Courts. He wasn't sure what he would say when his name was announced, and he hoped he wasn't expected to wear a suit. He didn't know if he would have to sing, dance, or testify. In fact, on Friday, Tom was staring out the window looking at the brown leaves. It was a gusty, hearty day, and he was thinking about lunch, when his name was called by the panel moderator. Tom talked about his latest client, the professor who was hit by a pie thrown by a blindfolded prankster in a student meeting.¹¹²

A young student at the microphone had a question after Tom was finished with his three-minute talk. "Can you tell us a little about the Beja McCabe case?"

Tom shrugged. "I'm sorry. I don't remember that one."

There was a hush in the crowd. The student seemed shocked. "Well, it was about four years ago. The plaintiff was fired from her job at a high-tech manufacturing plant when she failed a drug test. She filed a complaint alleging the unconstitutionality of drug tests."¹¹³

"Oh, yeah," Tom said vaguely, remembering almost nothing.

"You argued that case before the Second Circuit, didn't you?"

"Yeah."

The student paused, waiting for enlightenment.

110. See, e.g., *Unocal Corp. v. United States*, 222 F.3d 528, 531–33 (9th Cir. 2000) (discussing Unocal's involvement in a Norwalk, California oil spill).

111. ELAINE SCARRY, *THE BODY IN PAIN: THE MAKING AND UNMAKING OF THE WORLD* 128 (1985).

Although at a distance human beings take pride in being the single species that relentlessly recreates the world, generates fictions, and builds culture, to arrive at the recognition that one has been unselfconsciously dwelling in the midst of one's own creation by witnessing the derealization of the made thing is a terrifying and self-repudiating process.

Id.

112. See, e.g., *Goldfarb v. Baker*, 547 S.W.2d 567, 569 (Tenn. 1977) (affirming dismissal of a tort claim which alleged that a professor falsely accused a student of hitting the professor with a pie).

113. See, e.g., *Nat'l Treasury Employees Union v. Von Raab*, 649 F. Supp. 380, 387 (E.D. La. 1986) (holding mandatory employee drug testing unconstitutional), *vacated by* 816 F.2d 170, 182 (5th Cir. 1987), *aff'd in part and rev'd in part*, 489 U.S. 656, 679 (1989).

The moderator, a trial court judge from Detroit, nudged Tom with her elbow.

“Uh, well, I don’t remember much about it. I guess it was one of those cases that the firm asked me to make the oral argument, is all. Um, that’s about it. It was like taking a test. I crammed and then forgot about the whole thing a few days later. That’s the way I worked back then. I didn’t have any real clients. I just floated from case to case. If they needed me to help them finish a brief, I did that. If they wanted me to cross-examine a witness, I did that. I did a lot of closing arguments in jury trials. Sometimes, the only day I showed up for a trial was on the last day.”

The student sat down.

Another student took his place. “Is that what working in a firm is like?” she asked.

Tom smiled. “Not usually. I was different. They wanted me to float. I used to be very persuasive and had a knack for tricking judges and juries into believing our case.”

“Tricking?” the student prodded. The judge and the two others on the panel, a law professor from Chicago, and a lawyer from New York City seemed keenly interested as well.

“Well, yeah,” Tom answered. “Mostly, I had to trick them like a stage magician. You know, look at this hand while I hide the incriminating evidence behind my back. That’s what you have to do when you work for corporate law firms or for any law firm, I suspect. Mostly, the clients are doing things they shouldn’t be, and they pay law firms to cover their butts when someone sues.”¹¹⁴

The lawyer from New York City smiled. “That’s simplifying things a bit, I’d say.”¹¹⁵

114. Robert Hinkley, *How Corporate Law Inhibits Social Responsibility: A Corporate Attorney Proposes a Code for Citizenship in State Law*, 16 BUS. ETHICS: CORP. SOC. RESPONSIBILITY RPT. (Jan./Feb. 2002), available at <http://commondreams.org/views02/0119-04.htm> (last visited Jan. 24, 2003).

After 23 years as a corporate securities attorney—advising large corporations on securities offerings and mergers and acquisitions—I left my position as partner at Skadden, Arps, Slate, Meagher & Flom because I was disturbed by the game. I realized that the many social ills created by corporations *stem directly from corporate law*. It dawned on me that the law, in its current form, actually inhibits executives and corporations from being socially responsible. So in June 2000 I quit my job and decided to devote the next phase of my life to making people aware of this problem.

Id.

115. Vine Deloria, Jr., *Revision and Reversion*, in READINGS IN AMERICAN INDIAN LAW: RECALLING THE RHYTHM OF SURVIVAL 146, 147 (Jo Carrillo ed., 1998).

Some years ago I was working with Elliot Arnold on a TV scenario for Marlon Brando. I favorably mentioned Thomas Marquis’s fine book, *Keep the Last*

Tom said, "Thanks. I spent so much time with the firm trying to complicate issues and obfuscate facts that I find myself talking unintelligibly all the time now."

The audience giggled.

The lawyer from New York City smiled again, but it was a different kind of smiling. "Firms represent companies much of the time, that's true, but few companies do anything wrong. It's not my fault they usually have a good, legitimate argument whenever someone sues them."¹¹⁶

Tom felt surprised by the lawyer's blithe pronouncements and asked, "Do you take your client's word for it whenever they tell you they're completely innocent or that they did nothing wrong?"

The New York City lawyer did not answer. He looked guilty to Tom, and Tom wondered if anyone else saw that, too. Tom added, "Law firms get paid an enormous amount of money to defend the corporations when they dump dioxin in the ocean or fire their employees *en masse* or fail to pay their income taxes on time. Companies get the benefit of the doubt many times because they have such good representation. As everyone who reads knows, companies get away with torts and violence. I know because I used to help them. I never thought about what I was doing because I got paid a ton of money and got a lot of attention from people that depended on me to help them make a profit. Lawyers affirmatively fight for corporations, even when they don't deserve it."

The New York City lawyer smiled more. "That's your opinion."

A student asked a different question, changing the subject.¹¹⁷

Bullet for Yourself (1976), in which Marquis suggested that Custer's green troops, fearful they might fall into the hands of the Sioux and be tortured, fired a few shots and then killed themselves. When I began to talk about Marquis's evidence, Elliot's hands began to shake. He screamed that he would not discuss Marquis under any circumstances. The idea that American soldiers might consider this measure was beyond the scope of his emotional conception of western history.

Id.

116. Keith Bradsher, *Michigan Pact Resolves Battle over Limits on Indian Fishing*, N.Y. TIMES, Aug. 8, 2000, at A16.

For whites like John Lindenau, who stood on the dock in Leland this morning next to his thirty foot charter fishing boat, the Infinity, the dispute [between Native Americans and Whites over fishing rights] has been all about imposing the same rules on Indians that white fishermen must meet. "We won the Indian wars and gave it all away," Mr. Lindenau said.

Id.

117. ALLEN, *supra* note 45, at 99-100.

A careful examination of the process by which the indigenous inhabitants of this hemisphere were dehumanized and made into Disneyesque characters, villainous or noble, will demonstrate how destructive of rational thought and consciousness stereotyping is. It is not only the target group that is distorted and dehumanized.

* * *

On Wednesday, Tom was selected for a jury in a criminal case—felony murder. He couldn't believe it. He answered questions with "I just plain don't like cops or prosecutors," and "I'll vote not guilty if my vote prevents an obviously guilty defendant from going to the chair," and "I'm an unemployed lawyer," and "We live at the sufferance of European-descendent-controlled corporations, and as soon as our interests conflict with theirs, all our gains and progresses will turn out to be illusory."¹¹⁸ During jury deliberations Tom asked the other jurors if they ever heard of jury nullification. They liked the idea. Tom instructed them to never mention that they found the defendant not guilty in spite of strong evidence to the contrary. They agreed.¹¹⁹

On Saturday, Dana was impressed by the story. "Jury nullification, huh? So, you break the law, and then tell *me* about it?"

"Yeah, but I'm not sure we broke the law," Tom answered. "Jury nullification's not illegal unless someone talks. You can see why lawyers hate it though. It takes away their sense of control over a proceeding. While it is a whole lot of fun, it's still something not many people respect and treat with a good attitude. Most middle-class people—even people of

The users of the stereotype are greatly harmed psychically as well, and they haven't any means of noticing or assessing the psychic damage done to themselves because they lack any outside reference.

Id.

118. See, e.g., DERRICK BELL, *The Space Traders*, in *FACES AT THE BOTTOM OF THE WELL* 159 (1992) (postulating that the United States would sacrifice people of color if the price were right); Richard Delgado & Jean Stefancic, *Derrick Bell's Chronicle of the Space Traders: Would the U.S. Sacrifice People of Color if the Price Were Right?*, 62 U. COLO. L. REV. 321, 321–22 (1991) (discussing *The Space Traders*).

119. Robert C. Black, *FIJA: Monkeywrenching the Justice System*, 66 UMKC L. REV. 11, 22 (1997).

[Fully-Informed Jury Association]-friendly writings are especially likely to appear in the daily or weekly newspapers which service smaller cities and towns, and especially (but not only) in the South, Midwest, and West. However, they have also often appeared in left-leaning alternative weeklies such as the Chicago Reader and the Village Voice. Surely no other cause has gotten sympathetic publicity from (to name but a few) the Whole Earth Review (techno-hippies), Machine Gun (pro-gun machine-gun enthusiasts), Backwoods Home Magazine, Joint Consensus (anarchist), Healthy Alliance Journal (New Age), Conservative Consensus (conservative, of course) and Maximum Rock 'N Roll (radical left punk rockers). What all this should tell the criminal justice establishment is that it is very, very unpopular across the ideological spectrum (this is probably no great surprise).

Id.; see also *United States v. Ippolito*, 10 F. Supp. 2d 1305, 1307–08 (M.D. Fla. 1998) (discussing Fully-Informed Jury Association); *Turney v. State*, 922 P.2d 283, 293 (Alaska Ct. App. 1996) (affirming disorderly conduct conviction of Fully-Informed Jury Association member protesting courthouse).

color—far from the violence of the inner city or public high schools, still fear minorities from watching TV and reading newspapers. And yet they're conflicted. I think people dislike cops as much as they dislike criminals."

"I like the idea," said Dana. "I might get charged with something some day, and I hate cops too."¹²⁰

"Don't rely on jury nullification. If you get charged, you might not get a trial.¹²¹ And what happens when no one follows the rules? What if the law is meaningless to everyone?"

"Deep thoughts, Tom? That's not like you. Usually, you just flow with the rest of us. Let it go. Have a beer, watch some hockey on television, relax."

That evening Tom watched three-and-a-half hours worth of professional hockey and eighty-seven commercials. He watched them all carefully, and his eyes hurt badly afterwards. He did not feel the urge to visit Burger King for a Whopper and he did not feel the urge to call a 900 number either to seek his fortune or to learn of his future wild and varied sex life. He did not feel the urge to slurp a Colt .45, and he did not feel the urge to test drive a new Pontiac Sunbird. He did not feel the urge to watch the Knicks and the Lakers on Tuesday night, and he did not feel the urge to chew on some Planters peanuts. He did not feel like subscribing to the Stephen King book club and he did not feel like giving money to the Ronald McDonald house. He did not feel like ordering America Online software, and he did not feel like phoning in his order to Sports Illustrated. He was burdened by the feeling that he did not want anything, overwhelmed by choice, overwhelmed by the weight of abundance. He wondered why it seemed like he could get a hold of all things he wanted in life but couldn't seem to get his hands on anything he needed.¹²²

It was late, and Dana was saying, "Let's go get a taco."

It was later, and Dana was saying, "Let's order a pizza."

It was the next day, and Dana was saying, "Let's go shopping."

120. Angela P. Harris, *Criminal Justice as Environmental Justice*, 1 J. GENDER RACE & JUST. 1, 17 (1997) (internal footnotes omitted).

Consider the common reference to criminals as animals. Not all the people described in such ways are black. The widespread dehumanization of criminals draws not just on a hatred of black people—although it clearly does that—but also on an identification of the police as law enforcers in a community of savages, as outposts of the law in a jungle. The whiteness of the police is not just a whiteness of the body, but a symbolic whiteness that can be defended even by black cops.

Id.

121. See, e.g., 'The Awful Truth,' *Starring Officers of the Court*, S.F. DAILY J., July 21, 2000, at 2 (highlighting episode of *The Awful Truth* regarding the Nevada County public defender's office and its failure to take enough cases before a jury).

122. MULE, *Lucky*, on MULE (Quarterstick Records 1992).

Tom didn't want to do anything but break a few laws.¹²³

Tom had lunch with a guy he met at the 2000 Democratic National Convention. The man told him: "Many lawyers and commentators firmly believe in the notion that everyone deserves zealous representation and that representing corporations that sexually harass their employees, dump toxic chemicals, and generally wreck the world is a necessary component of fundamental fairness in this system of justice. I got sick of it, so I blew the whistle."¹²⁴

"I never saw any stuff like that. I was representing polluters and tax evaders but I never cared. I still don't, really."

"Well, you're lucky. I'm blacklisted for life,"¹²⁵ the man said.

On Friday Tom met the lawyer from New York City as they were both exiting a courthouse. "What are you working on Tom?" the lawyer asked.

"Not much. I just came here to file a document."

"What case?"

"Prisoner rights case."

The lawyer laughed. "Bet that doesn't pay much."

"What about you?"

"A hearing. Summary judgment of an employment discrimination case. The plaintiff made a bunch of wild allegations, completely unsupported by the evidence. No reasonable person should listen to that crap. I'll get it dismissed."

"Why would you want to do that?"

The lawyer from New York City gave Tom a strange look. "What do you mean by that? I have an obligation to defend my client. A plaintiff should work a little harder than they did in this case. If they did their homework, they'd probably have more to go on. They're just conducting a fishing expedition. Why should the company have to do all the work?"

"Doesn't the company have all the documents? Employ all the witnesses?"

123. GUNIER, *supra* note 104, at 9-10.

The fundamentally important question of political stability is how to induce losers to continue to play the game. Political stability depends on the perception that the system is fair to induce losers to continue to work within the system rather than try to overthrow it. When the minority experiences the alienation of complete and consistent defeat, they lack incentive to respect laws passed by the majority over their opposition.

Id.

124. See Whistleblower Protection Act of 1989, 5 U.S.C. §§ 1201-1222 (2000).

125. See Geoffrey C. Hazard, Jr., *Ethical Dilemmas of Corporate Counsel*, 46 EMORY L.J. 1011, 1015 (1997) ("The ultimate risk [of disagreement with top management in any corporate setting] is not only being fired, with loss of employment, fringe benefits and pension rights, but the possibility of being professionally blacklisted.").

"The plaintiff didn't ask the right questions. Not my fault they made my job easier."

"I think that's the same as hiding evidence."

"No way."

"Think of it this way. You know there's documentary evidence and witnesses with relevant information," Tom explained.

"No, I don't."

"Of course, you do. The client is a big company. The supervisor knows stuff. The board of directors knows stuff. Co-workers know stuff. Disgruntled former employees know things. All those people can tell you where to look to find the relevant documents. I bet there are good documents out there that would clear your client too. You're afraid to look for them. You might find your client actually did something awful. Filing pre-trial motions to dismiss allows you to avoid true discovery."

"That's your opinion! Besides, who are you to criticize me? I haven't broken any ethical rules. You degrade the profession by criticizing those who simply do their jobs competently. You're an officer of the court and you should behave as such."¹²⁶

Tom shrugged. "That sounds crazy. I don't even know where to start with that one. I guess if your argument were true, this whole conversation, and every other statement of sedition, against lawyers by lawyers, both diminishes the profession and our American notion of justice because criticism of lawyers that represent bad, tyrannical corporations, or bad, tyrannical people is completely illegitimate. I'm talking from the perspective of an outsider, these days, anyway. I'm a lawyer, that much is true, but the law I practice is often considered to be a second-class type of law—public interest law. Free law. Street law. I work in small claims courts, federal district courts, federal magistrate courts, and tribal courts.¹²⁷ I have not represented a corporation in years. I have never worked in a public defender's office, or a small law firm, or a public agency such as the

126. Madeleine C. Petrara, *Dangerous Identification: Confusing Lawyers with Their Clients*, 19 J. LEGAL PROF. 179, 206 (1994).

Activist lawyers should refrain from criticizing colleagues who, in accordance with the Rules of Professional Conduct, have not only the right, but the duty, to provide legal representation to all. It is important that lawyers be regarded, by the public as well as members of the bar, as independent professionals who provide zealous advocacy without being influenced by personal opinion of client and cause. When the public or legal profession itself identifies lawyers with their clients, the professional character of the bar is diminished. Also diminished, it can be argued, is the notion of justice.

Id.

127. See, e.g., *Nevada v. Hicks*, 533 U.S. 353, 385 (2001) (Souter, J., concurring) (noting that tribal law is "unusually difficult for an outsider to sort out").

Environmental Protection Agency or the Committee to Re-Elect the President. I do have the perspective of experience in both a large firm and no firm otherwise known as unemployment. But I've learned some things."

"Like what?" questioned the lawyer from New York City.

"Okay. Although the United States Constitution only guarantees indigent defendants representation, you interpret the ethical rules to mean that *all* persons and entities are guaranteed legal representation. Right?"

"Yeah, when they seek it."

"And you also would agree that 'lawyers are agents, not principals, and they should not be criticized for the clients whom they represent?'"¹²⁸

"Absolutely!"

"So, this sentiment is based on the notion that each and every person and entity has an absolute right to representation. Presumably, because lawyers are officers of the court, they are different than everyone else. Everyone else lives under a regime of being responsible for the people they back or work for. When someone leaves a job or leaves school to work for the David Duke for Governor campaign, that person is fundamentally identifying with the political platform of the David Duke for Governor campaign, whatever that might be. When someone joins the National Wildlife Federation as a grass-roots organizer, that person is fundamentally identifying with the pro-environmental regime of the N.W.F. Why are lawyers different? The ethical rules? Is not Michael Eisner fundamentally identified with Disney; Steven Spielberg with *Saving Private Ryan*; and Colonel Sanders with Kentucky Fried Chicken? They are all people that work on projects and contribute mightily to them, so much so that they are identified with the output, the production, the essence of the cartoons, World War II movies, and greasy fast food, respectively.¹²⁹ Members of

128. Petrara, *supra* note 126, at 206.

129. CLERKS (Miramax Films 1994) (referencing RETURN OF THE JEDI (Lucasfilms 1983)).

Dante: My friend is trying to convince me that any [independent] contractors working on the uncompleted Death Star [in Return of the Jedi] were innocent victims when the Space Station was destroyed by the rebels.

Blue-Collar Man: Well, I'm a contractor myself. I'm a roofer. . . (digs into pocket and produces business card) Dunn and Reddy Home Improvements. And speaking as a roofer, I can say that a roofer's personal politics come heavily into play when choosing jobs.

Randal: Like when?

Blue-Collar Man: Three months ago I was offered a job up in the hills. Beautiful house with tons of property. It was a simple re-shingling job but I was told that if it was finished within a day, my price would be doubled. Then I realized whose house it was.

Dante: Whose house was it?

Blue-Collar Man: Dominic Bambino's.

boards of directors are identified with the corporations and organizations they sit for, aren't they? Look at Vernon Jordan and Revlon¹³⁰ or Mary Frances Berry and the Pacifica Radio board.¹³¹

"Why are lawyers different?" Tom asked. "When they graduate from law school, don't lawyers choose their careers? No lawyer is conscripted to work for the United States Attorney's Office in Billings or the D.C. office of Dorsey & Whitney or the Lexington public defender's office or the underfunded Cambodian Legal Aid Organization. Lawyers *choose* their employers, be it as outside counsel for Exxon or lead speechwriter for Strom Thurmond's re-election campaign. The notion that lawyers are just Mongo-like pawns in the game of life,¹³² duly representing everyone who needs legal help, is extraordinarily dangerous. While it is true that every criminal defendant is constitutionally deserving of legal representation, it is not true that every corporation deserves legal representation. Is every citizen that wants to sue Dow Chemical or British Petroleum under the citizen suit provisions of the Clean Air Act¹³³ constitutionally entitled to legal representation?"

"Of course not!" the New York City lawyer exclaimed.

"Well, your theory that the lawyer is a pawn allows lawyers to avoid responsibility for what they do. And lawyers can do a whoooooole lot of damage, all in the name of zealous representation."¹³⁴

Randal: "Babyface" Bambino? The gangster?

Blue-Collar Man: The same. The money was right, but the risk was too big. I knew who he was and, based on that, I turned the job over to a friend of mine.

Dante: Based on personal politics.

Blue-Collar Man: Right. And that week, the Foresci family put a hit on Babyface's house. My friend was shot and killed. He wasn't even finished shingling.

Randal: No way!

Blue-Collar Man: I'm alive because I knew there were risks involved taking on that particular client. My friend wasn't so lucky. (pauses to reflect) You know, any contractor willing to work on that Death Star knew the risks. If they were killed, it was their own fault. A roofer listens to this (taps his heart), not his wallet.

Id.

130. See Jeff Leen, *A Powerful Generous Mentor: Jordan Has Aided Many Job Searches, but Extent of Lewinski Effort Was Unusual*, WASH. POST, Feb. 20, 1998, at A8 (describing Vernon Jordan's relationship with various corporate boards of directors).

131. See Nat Hentoff, *Censorship at Pacifica: No Dissent Allowed by Management*, WASH. TIMES, Feb. 21, 2000, available at <http://www.commondreams.org/views/022200-103.htm> (last visited Jan. 25, 2003) (describing strike of radio journalists protesting censorship of Pacifica Network News by the Pacifica management).

132. BLAZING SADDLES (Warner Bros. 1974).

133. 42 U.S.C. § 7604 (2000).

134. NADER & SMITH, *supra* note 11, at 34.

“That’s your argument, I suppose, but it doesn’t make sense. The law is what it is. As lawyers, we are obliged to follow it, and we do, no matter if we represent an oil-spilling mega-corporation or a child-molesting serial murderer. Are public defenders bad too because they represent bad people? Of course not,” the New York City lawyer remarked.

“I agree, although I suppose a lot of people think public defenders should be shot. Yet, I think there’s a huge difference between representing criminal defendants and bad companies. For instance, a criminal defendant *must* be represented.”

“Ah, but no one is conscripted out of law school to be a defender,” the New York City lawyer said.

“True, but if no one chooses to be a defender—no lawyer in the whole jurisdiction—the government would have no choice but to conscript somebody. And that’s my second point. The plaintiff in the criminal case is the government.¹³⁵ And, if the criminal defendant is convicted, the result is some sort of harsh social control—incarceration, probation or forced community service. However, when the government sues a corporation or when an individual or group of individuals sues a corporation, the board of directors does not go to jail. There isn’t the same kind of sovereign authority and power at stake,” Tom said.

“Yes, but people choose to work for corporations because they receive fair compensation. And that’s a right for everyone—to get paid as much as possible. Surely, you wouldn’t take that away.”

“No, but lawyers must realize what they are choosing. They choose the highest compensation package without any thought as to what the

In one of [an employment discrimination plaintiff’s] depositions, [the plaintiff] was asked whether she had ever been abused by a family member. She answered, truthfully, that she had been abused when she was ten. Once this painful episode was uncovered, the [California Casualty’s defense] lawyers tried to use [the plaintiff’s] childhood tragedy against her [in front of the jury], claiming that her emotional distress was not caused by the firing, but rather due to her childhood abuse. . . .

. . . [The plaintiff’s] attorney, Gary Gwilliam of Oakland, denounced the tactics: “It was harassment, pure and simple, a vendetta to punish her for standing up for her rights.”

Id.

135. *Detroit Free Press v. Ashcroft*, 195 F. Supp. 2d 937, 944 (E.D. Mich. 2002).

It is important for the public, particularly individuals who feel that they are being targeted by the Government as a result of the terrorist attacks of September 11, to know that even during these sensitive times the Government is adhering to immigration procedures and respecting individuals’ rights. Openness is necessary for the public to maintain confidence in the value and soundness of the Government’s actions, as secrecy only breeds suspicion as to why the Government is proceeding against Haddad and aliens like him.

Id.

consequences of their jobs might be. Imagine if a soldier on the front lines of the Vietnam War made a \$100,000 starting salary. They put their lives on the line. Why isn't their service compensated better? Why do lawyers—sitting around reading regulations and cases off of Westlaw¹³⁶ and taking clients to gaudy lunches¹³⁷—get paid so highly?" Tom said.

"That's the market. It's unfortunate, but there it is. Simple."¹³⁸

"Yes, but what if the market is fundamentally evil?" Tom said.

"Are you saying capitalism is evil?"

"Not by itself, but it's operation and practical aspects have historically been something awful," Tom replied.

"Better than socialism, or Marxism, or totalitarianism."¹³⁹

"Better in some ways and worse in others, I guess. Capitalism isn't the point. The practical application of capitalism is what gets us into trouble. The market forces corporations to do bad things to people to make profit. The market tells a corporation that the cost of the product liability lawsuits multiplied by the number of likely accidents is the figure to decide whether or not to recall the flammable children's toy.¹⁴⁰ The potential for the

136. See, e.g., *In re Media Vision Tech.*, 913 F. Supp. 1362, 1371 (N.D. Cal. 1996) (awarding computerized legal research expenses to prevailing party).

137. Cf. *In re Yaccarino*, 564 A.2d 1184, 1186 (N.J. 1989) (referring to *In re D'auria*, 334 A.2d 332 (1995), in which a judge was disciplined for having lunch with attorneys who were representing clients in his court).

138. SCARRY, *supra* note 111, at 306.

First, human indifference to other persons is often explained and implicitly excused by pointing out that those who are indifferent are absorbed by their material wealth. But it is a deconstruction of the very nature of material wealth to permit, let alone excuse, this inattention. We sustain this deconstruction by simultaneously surrounding ourselves with material objects in everyday life while philosophically divesting ourselves of them, verbally dismissing and discrediting the importance of the material realm. This act of philosophic divestiture does not work to diminish or even regulate our own desire for objects but only works to permit us to be free of worrying about the objectlessness of other persons.

Id.

139. Compare *Communist Party of the United States v. Subversive Activities Control Bd.*, 223 F.2d 531, 568 (D.C. Cir. 1955) (describing the Soviet Communist threat as the intention to destroy capitalism), *rev'd*, 351 U.S. 115 (1956), with GEORGE ORWELL, *HOMAGE TO CATALONIA* 56 (1938) (describing the Communist Party in Spain as conservative and non-revolutionary).

140. CHUCK PALAHNIUK, *FIGHT CLUB* 30 (1996).

If a new car built by my company leaves Chicago traveling west at 60 miles per hour, and the rear differential locks up, and the car crashes and burns with everyone trapped inside, does my company initiate a recall?

You take the population of vehicles in the field (*A*) and multiply it by the probable rate of failure (*B*), then multiply the result by the average cost of an out-of-court settlement (*C*).

A times B times C equal X. This is what it will cost if we don't initiate a recall.

If X is greater than the cost of a recall, we recall the cars and no one gets hurt.

If X is less than the cost of a recall, then we don't recall.

Id.

burning of one child or house is not the prime mover as it should be. A corporation is willing to allow the death or maiming of people if it's more profitable.¹⁴¹ Is that what we want from capitalism?" asked Tom.

"Well, society needs profit. It's something we as a society have chosen, even, apparently, over safety," the New York City lawyer said.

"We have not chosen that at all. No one chooses that, believe me. The best example about how capitalism operates in American history is the forced removal of Native Americans. In the early nineteenth century, poor, rural, white settlers lived on the east side of the Appalachians and the Native Americans were on the west. The whites had fresh memories of the horrors of the Revolutionary War and the War of 1812 and were not

141. The White Stripes, *The Big Three Killed My Baby*, in *THE WHITE STRIPES* (Thirdman Records/V2 1999).

The big three killed my baby
no money in my hand again
the big three killed my baby
nobody's coming home again

Their ideas made me wanna to spit
a hundred dollars goes down the pit
30,000 wheels are rollin'
and my stick shift hands are swollen
everything involved is shady
the big three killed my baby

.....
Why don't you take a day off and try to repair
a billion others dont seem to care
better ideas are stuck in the mud
the motor's runnin' on trucker's blood
don't let them tell you the future's electric
cause gasoline's not measured in metric
30,000 wheels are spinnin'
and oil company faces are grinnin'
now my hands are turnin' red
and I found out my baby is dead

.....
Well I've said it now, nothings changed
people are burnin for pocket change
and creative minds are lazy
and the big three killed my baby

And my baby's my common sense
so dont feed my planned obsolescence
yeah my baby's my common sense
so dont feed me planned obsolescence
im about to have another blowout
im about to have another blowout

Id.

interested in fighting Indians for the rest of their lives. The Indians were still fairly numerous and strong militarily. No one wanted fighting. However, the forces of profit and greed were more powerful. They pushed the poor, white settlers west."¹⁴²

"Well, Tom, I'm no pawn. I think for myself. I choose this over whatever theories you have. This is real and it works, even with the disadvantages."¹⁴³

"Unfortunately, too few lawyers representing bad guys and bad corporations agree with you. They actively adopt the opinions of their clients, even when they represent the bad guy," Tom said.

"I don't know anything about that."

"Well, when you litigate, I bet you find yourself disagreeing vehemently about the opposing party's brief, or the judge's ruling, or something. Litigation is emotional; it's an adversary proceeding and people get high-strung. You are adopting your client's attitude. You don't want to lose. You have to adopt your client's attitude. You have no choice,"¹⁴⁴ Tom said.

142. HOWARD ZINN, *A PEOPLE'S HISTORY OF THE UNITED STATES: 1492—PRESENT* 136 (Perennial 2001) (1980).

The forces that led to removal did not come . . . from the poor white frontiersmen who were neighbors of the Indians. They came from industrialization and commerce, the growth of populations, of railroads and cities, the rise in value of land, and the greed of businessmen. "Party managers and land speculators manipulated the growing excitement. . . . Press and pulpit whipped up the frenzy." Out of that frenzy the Indians were to end up dead or exiled, the land speculators richer, the politicians more powerful. As for the poor white frontiersmen, he played the part of a pawn, pushed into the first violent encounters, but soon dispensable.

Id.

143. EDUARDO GALEANO, *UPSIDE DOWN: A PRIMER FOR THE LOOKING-GLASS WORLD* 81 (Mark Fried, trans. 2000) (1998).

States stop running business and concentrate on running jails.
 Presidents become local managers of foreign companies.
 Finance ministers make good translators.
 The captains of industry become importers.
 The many more depend more and more on the leftovers of the ever-fewer few.
 Workers lose their jobs.
 Peasants lose their plots.
 Children lose the right to be children.
 Youth lose the capacity to believe.
 Old folks lose their pensions.
 "Life is a lottery," say the winners.

Id.

144. Tanina Rostain, *Ethics Lost: Limitations of Current Approaches to Lawyer Regulation*, 71 S. CAL. L. REV. 1273, 1335 (1998).

[A] client asked an attorney what to do about business profits that were left outside the country and not taxed in apparent violation of the law. The attorney

“Zealous representation. I’m still not violating any rules.”

“C’mon. The ethical rules are the bare minimum. When lawyers give themselves over to the zealous representation aspect of their jobs completely, they become yet another minion, culpable like any criminal accomplice, getaway drivers for the rich.”

The lawyer laughed. Tom continued. “I’m not a minion, either. And I live in the City, so I don’t need to know how to drive.¹⁴⁵ I think that, like anyone else, lawyers should be subjected to their people’s opinions based on whatever lawyers choose to do. Lawyers should not cry foul when they are criticized. The ethical rules are not a shield; they are the bare minimum and no more. A lawyer can choose to abide by more stringent, personally-imposed, ethical rules. Lawyers that work for bad guys, and bad corporations, choose not to abide by more stringent, personally-imposed, ethical rules, and instead spend too much time trying to lower the level imposed by the rules. ‘[T]he most difficult laws are a man’s own.’¹⁴⁶ So why stop at the bare minimum?”

“Because that’s the law. And profit still runs the world. Not communal hippies or communists or whatever. Not even Indians.”¹⁴⁷

responded, “That’s not a crime until the government gets a conviction, and as long as that has not happened, there is no crime there, as far as I have to conclude.”

Id.

145. Leroy D. Clark, *All Defendants, Rich and Poor, Should Get Appointed Counsel in Criminal Cases: The Route to True Equal Justice*, 81 MARQ. L. REV. 47, 60–61 (1997) (internal footnotes omitted).

It is fairly difficult to believe that the lawyers—even those who are not manipulated by organized crime—do not know that their clients are continuing their involvement in or supervision of such criminal activity during the defense of the charges. . . . Lawyers have, if not a legal obligation, a moral obligation to dissuade a client from committing offenses in the future and a clear ethical obligation to report to the authorities when they learn that their client poses a risk of physical injury to another individual. Even corporate attorneys may be representing clients who are continuing activities that pose a risk of physical injury, such as violations of environmental regulations or work-safety health measures. How many privately retained lawyers who receive high fees to represent organized crime figures or major corporations are fulfilling this moral obligation to dissuade their clients from prospectively engaging in criminal activity?

Id.

146. FRANK WATERS, *THE MAN WHO KILLED THE DEER* 164 (1942).

147. N. MAGOWAN, *A Cherokee Explains the Indian Movement*, in *CHRONICLES OF AMERICAN INDIAN PROTEST* 316, 321–22 (Council on Interracial Books for Children 1971).

Q: Don’t the Natives have someone in Washington to fight for them?

A: Yes, there are a few. But let’s be very realistic about this. Under existing conditions, it’s money that talks; not just determination. We do not have the money to fight. Let’s be very clear just who the enemy is. Big business and bigots. Bigots are incurable, and a danger to society because they tend to act like

“Indians do not chase after the same things, possessions, honors, and ideals as the non-Indians that occupy this land.”¹⁴⁸

“Baloney. If the Indians were rich, they’d be doing the same things. Look at the rich casino tribes.”

“I’m not sure what you mean, but if rich casino tribes were polluting the rivers and treating their workers like trash and destabilizing foreign governments, then that’s understandable to you because they do so in the name of the market, of free trade. The free trade, for-profit paradigm we operate under right now is primarily European in origin. It’s so dominant no one has a choice anymore. Even rich casino tribes have to follow it. There are no other models to follow because the WTO will come along and vacate them, like the Clean Air Act,”¹⁴⁹ Tom said.

mad dogs. Money runs the politics of your country, it has nothing to do with morality or anything else. So, all the slick-talkers in the world really can’t overcome the existing situation without bags of money. Face reality; we, The People, have been very aware for many moons that big business doesn’t give a hoot about the people. This means YOU and US! Big business is interested ONLY in BIG money. People are of value only so long as they produce for big business. We, The Native People, are a dead-loss to big business because we, as a race are not on their money-trip. We are further a dead-weight because of our love of the land. We have reached the point that we are fighting to preserve this land. Big business views that land as something to strip! Look at what Crown Zellerbach has done right here; where they have strip timbered the land. Look where big business has strip mined the land, ravaged the vegetation, polluted rivers and reduced water tables to well below the danger point. This is big business, and unless things change, YOU will see this land ravaged into a total desert, and all for big business. In reality, our enemy is the same as yours. WE are not enemies.

Id.

148. LADUKE, *supra* note 13, at 123.

The sports-fishing and hunting industries were some of the most vocal proponents of anti-Indian sentiments. Bumper stickers that read “Save a Deer, Shoot an Indian; Save a Walleye, Spear an Indian” began appearing on cars. Paul Mullaly from Wisconsin claimed that the [Lac Courte Oreilles Band of Lake Superior Chippewa Indians v.] Voigt[, 700 F.2d 341 (7th Cir. 1983)] decision “discriminates against white people in the area and is not the kind of thing that should occur in a democracy.” Mullaly founded the anti-Indian organization Equal Rights for Everyone, which claimed 31,000 members, many in Minnesota.

The racial slurs, intimidation, and threats Native people experienced led the FBI to investigate the potential for violence. Resort owners were investigated to determine if they might be implicated in threats to “kill Indians if they came on certain lakes.”

Id.

149. See WORLD TRADE ORGANIZATION, UNITED STATES—STANDARDS FOR REFORMULATED AND CONVENTIONAL GASOLINE, available at <http://wto-law.net/gasoline.htm> (last visited Jan. 26, 2003) (discussing an appeal by the United States to a Venezuelan challenge to the validity of the Clean Water Act).

"Well, it's a free country. You're free to do what you want. I want to be a winner," the New York City lawyer replied.

Tom shrugged. "I don't think you realize what you're winning."¹⁵⁰ There are many ideas out there and they have value that lawyers might never dream of. Lawyers think about things like a two-week-old Supreme Court case, directly on point, supporting that Petition for a Writ of Mandamus; an offer from the Attorney General's office to use against the partners who are thinking of only giving you a ten percent raise; a corner window office accompanied by the finest legal secretary in the firm, and a superfast computer that never crashes. Hell, lawyers don't know what they want any more than a 16-year-old high school student with a bad chewing tobacco problem."

"I know what I want," the New York City lawyer said.

"Does money make you happy?" Tom asked.

"Can't buy me love, but that's all."¹⁵¹ See you later, Tom."

"Though he had right on his side, he lacks Compassion, the deeper justice."¹⁵² Later."

The men parted.

* * *

On Friday Dana asked Tom what he would do if he ever got arrested. "I sure as hell wouldn't tell them who I am," Dana added.¹⁵³ "They can't

150. Gerald Vizenor, *Reservation Café: The Origins of American Indian Instant Coffee*, in *EARTH POWER COMING: SHORT FICTION IN NATIVE AMERICAN LITERATURE* 31, 36 (Simon J. Ortiz ed., 1983).

Shaman Truth Lies pinched his last bean and then he announced a ceremonial coffee break, time enough to sip his cider brew and dance backwards through the auditorium holding out his cap.

The deans at the conference on academic assessorization were so pleased with the entertaining benediction that they voted to name the trickster the honorary dean of a college of his choice.

The trickster returned the gesture, he named all the deans honorary tricksters, members of an urban reservation of their choice.

Id.

151. BRUCE LEE, *TAO OF JEET KUNE DO* 19 (1975).

Acceptance, denial and conviction prevent understanding. Let your mind move together with another's in understanding with sensitivity. Then, there is a possibility of real communication. To understand one another, there must be a state of choiceless awareness where there is no sense of comparison or condemnation, no waiting for a further development of discussion in order to agree or disagree. Above all, don't start from a conclusion.

Id.

152. WOLE SOYINKA, *THE BACCHAE OF EURIPIDES: A COMMUNION RIGHT* 93 (1973).

153. See Monica Yant Kinney & Linda Loyd, *Bail Reduced for Leader of GOP Convention Protests*, *PHILA. INQUIRER*, Aug. 8, 2000, at 301 ("A total 391 people were arrested Of those 153—91 men and 62 women—remained behind bars yesterday at the city's prison complex in Northeast Philadelphia for refusing to reveal their identities.").

keep me in administrative detention—or whatever it is you call it—forever. Could they?”

Tom nodded. “I think they can, Dana, or at least long enough to seem like forever.”

“That doesn’t seem right. How can a person guilty of simply not identifying himself or herself be held indefinitely like a murderer? There is no law saying the government can force a person to identify himself or herself. Is there?”

Tom shrugged. “There probably is.”

“But you can’t be held forever, can you?”¹⁵⁴

Tom hoped not.

“I think there’s a hole in the law. What a load of crap!”¹⁵⁵

On Monday night, Tom dreamed about his small childhood home which his parents rented in Cutlerville, Texas and moved out of when he was five. In Tom’s dream, that house seemed so big there was no way he could own it all. His small stature forced his perception—the house was a huge castle, with high, unexplored areas and a deep, dark basement that was limitless, bottomless, where only his father could tread with safety and knowledge. Tom knew in his mind the ceilings were so low that his parents could have jumped and bashed their heads, but in Tom’s memory, everything was different. He was a bug, crawling on the ground, perceiving the world as a child again. In Tom’s dream, he spied the bottle of Flintstones vitamins on the top of the refrigerator, high, high, high, high above the land. Tom never saw what lay beyond the vitamins. He wanted to see. He wanted to discover. He wanted to take those vitamins and hide them, because when he was required to eat them, the taste was like sucking on a rotting tooth. He waited for his mom or dad to take a nap, or maybe it

154. AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL:REPORT 2002: UNITED STATES OF AMERICA, *available at* <http://web.amnesty.org/web/ar2002.nsf/amr/usa!Open> (last visited Jan. 23, 2003).

[Amnesty International]’s concerns relating to measures following the 11 September attacks included reports of incommunicado detention; ill-treatment in custody, government powers to detain foreign nationals indefinitely on the basis of mere suspicion of involvement in “terrorism,” new powers to monitor communications between lawyers and detained clients on national security grounds, and the potential use of secret evidence.

Id.

155. ALLEN, *supra* note 45, at 35.

[S]uppose all the free creatures are finally exterminated—dead or changed beyond all recognition; suppose all this Turtle Island is reduced to a wasteland of dead waters and dead plants and dead mountains. Will America have finally succeeded in realizing her dearest dream? For then America will be alone, with only death and terror for comfort and companionship.

Id.

was morning before they awoke. He smuggled himself out of his bedroom before they woke up. He pushed a chair up against the refrigerator door. He stood on the chair and reached as high as he could, not even coming close. He found a box or a toy and put it on the chair for more height. Still not enough.

In his dream, Tom thought about a cat and mouse cartoon. Stacking and stacking and stacking and stacking. Still not high enough. The pile swayed precariously left and right. He put another box on top of the first box and he could reach the edge of the top of the refrigerator. He tried to pull himself up, grunting and groaning, trying so hard. He would climb a little way and the boxes below fell to the ground. He had no choice then. He had to pull himself up or fall to whatever lay below: He thought about how his parents would react when they woke up and found their child sitting on top of the refrigerator, hungry and munching on a few Flintstones vitamins, waiting for someone to wake up and make him breakfast. Would they be angry and laughing simultaneously? Terrified and screeching hysterically? He got back to work trying to pull himself up but his fingers slipped and he fell, fell, fell, fell, fell, fell and landed solidly back on the padding of the kitchen chair and felt nothing. He pushed the chair back to the table and replaced the boxes and toys. Then he went to the living room to watch cartoons. Tom never thought about that time until he was thirty-four and floundering.¹⁵⁶

156. LADUKE, *supra* note 13, at 197.

The writing is on the wall, in big bold letters. There is no easy answer, and even scientists themselves seem to recognize the necessity of finding new strategies and understandings. In an unusual gathering in late 1998, for instance, NASA scientists met with Indigenous elders to discuss global warming and to hear the elders' suggestions on possible solutions. The response the scientists received may have only been part of what they had hoped for. As one observer summarized, the elders pretty much responded, "You did it, you fix it."

Id.

IV. DÉTOURNEMENT¹⁵⁷

Two years later, and Thomas Argos had not won a case, or received a favorable decision on a motion, or billed a single hour since leaving Berkman, Deloria.¹⁵⁸ He took a job at a small, upstart, liberal law school in Traverse City, Michigan called the Mamagona Law School. He taught legal writing and research to first-year law students. He taught brand-new law students how to write in the IRAC method and how to find the latest amusing Judge Kent opinion in the Grand Traverse County law library.¹⁵⁹ He felt like he was starting out at the beginning again. He hadn't touched a case since a federal court dismissed his last prisoner rights case eighteen months earlier when his client, frustrated with the proceedings, moved the court to kiss his ass.¹⁶⁰

The teaching gig didn't have the same prestige as working at the big law firm, making tons of dough and getting calls from cable TV to comment on sensational legal events. Tom missed the adrenaline rush from developing an argument that would persuade judges, witnesses, and juries of the truth—the truth he propounded regardless of its authenticity. Even later, when he was losing all those prisoner cases, reading the same opinion written again and again by the same magistrate judges, he had that rush. He didn't notice the swells of pride, the reason to get up in the morning, until it was gone.¹⁶¹ He woke up weekdays during the school year and walked to

157. JOY HARJO, *Mourning Song*, in *THE WOMAN WHO FELL FROM THE SKY* 20, 21 (1994).

Once far down the sidewalk I spotted two Indian men who were asking passerby for money. I tried to make myself invisible so I wouldn't have to confront the pain, but they saw me anyway. I was shocked to recognize my old friend, a tall good-looking Navajo who always had a good story. . . .

Knowing him the way I did I couldn't help but think he'd made a choice to be a modern warrior, and could gather more crucial knowledge from the streets of this city than he could on a track called success by the colonizers.

Id.

158. TENNESSEE WILLIAMS, *CAT ON A HOT TIN ROOF* 24 (1955).

Of course, you always had that detached quality as if you were playing a game without much concern over whether you won or lost, and now that you've lost the game, not lost but just quit playing, you have that rare sort of charm that usually only happens in the very old or hopelessly sick people, the charm of the defeated. You look so cool, so cool, so enviably cool.

Id.

159. See generally Steven Lubet, *Bullying from the Bench*, 5 *GREEN BAG 2D* 11 (2001) (discussing several of federal district Judge Samuel B. Kent's published opinions that were highly critical of lawyers, yet very entertaining).

160. See, e.g., *Washington v. Alaimo*, 934 F. Supp. 1395, 1396 (S.D. Ga. 1996) (imposing Rule 11 sanctions against pro se claimant for filing a motion entitled "Motion to Kiss My Ass").

161. *LE TIGRE, Empty*, on *LE TIGRE* (Mr. Lady Records 1999).

The stars are getting in and out of automobiles

school. Nothing inspired him to return to the practice of law. He watched more television and read fewer books.¹⁶²

On the first day of Tom's fifth semester at the law school, he arrived early to the library classroom where he would introduce himself to the ten beginning law students assigned to his class. He dressed casually, like always. That day he wore a faded tee shirt that he bought at a 1989 Pixies show at the Metro in Chicago, underneath a flannel shirt he bought in 1992 at the mall; and green Chuck Taylor hi-tops.¹⁶³ He sat there, staring at the ceiling while his ten students slowly filed into the room, on time for class both the first and last time in their law school careers. He must have blended in with the students because one of them asked him his name with no hint of brown nose. She looked calm considering it would be her first law school class. She reminded Tom of the way he was on his first day of law school. He knew even then he was born to persuade.

The woman introduced herself. Her name was Isabella Andrea.

She scared him to death.

"So, Tom, what do you think of Traverse City so far?"

Tom stammered. He did not recall ever stammering before. He'd never been that nervous. She had him on the defensive, and he didn't know why. "It's okay, I guess," he finally managed.

And we keep wondering when we're gonna feel something real
 Keep waiting for a Santa that'll never come
 A real party not just people who're faking fun
 But everything gets erased before it's even said
 And all that glitters isn't gold when inside it's dead

Id.

162. GALEANO, *supra* note 143, at 223.

A bridge with no river.
 A tall façade with no building.
 A sprinkler on a plastic lawn.
 An escalator to nowhere.
 A highway to the places the highway destroyed.
 An image on TV of a TV showing another TV on which there is yet another TV.

Id.

163. PIXIES, *I've Been Tired*, on COME ON PILGRIM (4AD/Elektra Records 1987).

One, two, three She's a real left winger 'cause she's been down south
 And held peasants in her arms, She said
 "I could tell you stories that could make you cry. What about you?"
 I said, "Me too. I could tell you a story that would make you cry."
 And she sighed, "Ahh."

I said, "I want to be a singer like Lou Reed."
 "I like Lou Reed," she said, sticking her tongue in my ear.
 "Let's go, let's sit, let's talk, politics go so good with beer."
 "And while we're at it baby, why don't you tell me one of your biggest fears?"

Id.

"I think it's lame."

Tom felt himself being persuaded by Isabella's judgment even though he thoroughly enjoyed living in Traverse City and had several good friends in the area. Tom nodded, giving in.¹⁶⁴ She had such confidence.

Isabella nonchalantly inspected the other nine students in the class. Tom recalled how he had mentally scouted each of his classmates that first day in law school, noticing certain weaknesses in them that he somehow exploited, even then. He recalled observing the nervous social outcasts who would be bookish and likely to fail to crack the top of the class; the falsely confident rich kids who'd have all the advantages like private tutors and laptops but wouldn't have the drive to succeed; the pretty boys and girls who'd never study and nurse a three-year hangover until the end of law school; and the most dangerous of the lot, the nerdy-but-not-too-nerdy dressers with square-but-fashionable haircuts who behaved as though they scored in the ninety-ninth percentile on the entrance test¹⁶⁵ and would populate the law review editors desks and best clerkships after graduation.

Tom wondered where his perception had gone. He felt foggier every day. He looked around and couldn't tell who would do better than the rest in class participation, who'd be a great extemporaneous public speaker and win the moot court competition, or who'd linger just under the surface all three years, not blowing anyone away with their intellect, but still graduate in the top five of the class. Nothing made perfect sense anymore. His senses had disappeared. He realized the clothes he wore were outdated. Flannel shirts had gone the way of Kurt Cobain.¹⁶⁶ The Pixies had broken

164. IRA LEVIN, *THE STEPFORD WIVES* 82 (1972).

In her immaculate kitchen [Bobbie] said, "Yes, I've changed. I realized I was being awfully sloppy and self-indulgent. It's no disgrace to be a good homemaker. I've decided to do my job conscientiously, the way Dave does his, and to be more careful about my appearance. Are you sure you don't want a sandwich?"

Id.

165. Lani Guinier, *Confirmative Action*, 25 *LAW & SOC. INQUIRY* 565, 581-82 (2000) (footnote omitted).

This study suggests that if a school wishes to choose students who will have successful legal careers, true to the spirit of a publicly funded university, affirmative-action-type admission processes are far superior to generic test-based ones. In that context, the study confirms the opportunities of affirmative action. What is so interesting is who the beneficiaries of those expanded opportunities are. It is the white students at the school, who increasingly benefit from a diverse learning environment. And it is the public at large, who gain leaders and community-service-oriented professionals, as well as the students who are considered the more traditional beneficiaries. It is also the legal profession and those committed to legal education, who profess a commitment to law as a public profession.

Id.

166. KLEIN, *supra* note 8, at 83.

up eight years earlier, in 1994.¹⁶⁷ He would have looked cool ten years earlier and felt self-conscious about his appearance for the first time since seventh grade.

After Tom counted ten students, he introduced himself and received a couple initial looks of surprise from the class. He figured two students were probably older than he. Isabella did not look at him at all and he knew, just knew, that she had figured him out all along. She had him pegged and would wrangle an A-plus out of him like nothing. She owned him, like she would own the rest of the class and likely the whole school by the end. She was Tom ten years earlier and would never lose a case, would never break a sweat, would reign as the most celebrated lawyer of her generation, even though she went to lowly, fourth-tier Mamagona Law School her first year. Surely she would transfer to Harvard or Stanford as soon as she realized her potential. She was the upcoming prodigy in the institution of the law. Tom recognized Isabella's endowment because he himself had once been the most persuasive person in the world. She would replace him as the bar's shining beacon of hope, excellence, and (perhaps) domination.

Tom could never determine how it was that he could do so well in law school and then in private practice, but lose every single motion hearing once he began representing clients with no resources, clients in prison, and clients without the backing of shareholders and tax shelters. Thinking about Isabella and talking to his new class, he started to mull over the concept that the winners set themselves up to be in the position to win. The law was only rarely a mystery. Courts quickly dispose of the vast majority of cases because the applicable law is unambiguous and is settled by people and organizations with interests and influence, which few lawyers or "real people"¹⁶⁸ ever considered carefully. The public's understanding of the justice system was replete with inaccurate assumptions.

[Y]et in the case of Cobain, and even Vedder, many in its scene possessed a genuine, if malleable, disdain for the trappings of commercialism. What was "sold out" in Seattle, and in every other subculture that has had the misfortune of being spotlighted by the cool hunters, was some pure idea about doing it yourself, about independent labels versus the big corporations, about not buying into the capitalistic machine. But few in that scene bothered to articulate these ideas out loud, and Seattle—long dead and forgotten as anything but a rather derivative fad—now serves as a cautionary tale about why so little opposition to the theft of cultural space took place in the early to mid-nineties.

Id.

167. See *A History of the Pixies*, at <http://4ad.com/artists/catalogue/pixies/hist.htm> (last visited Jan. 25, 2003).

168. *RESERVOIR DOGS* (Miramax 1992).

Tom wanted to inform Isabella that she wasn't anything special, that the laws were designed to make it easier for certain clients to get their way, and that she could use her skills for worthwhile causes, but he thought it best to forget about those sorts of things.

The months passed and Isabella's work placed her far above any of her nine classmates in Tom's legal writing and research class. Tom confirmed with Isabella's contracts and criminal law professors that she had established herself as an excellent student. Her constitutional law professor, eager to publish a powerfully reasoned and groundbreaking law review article that would surely confirm his status as a leading legal scholar, enlisted Isabella's assistance in writing his article and even confided to Tom that she had already talked him into listing her as a co-author.¹⁶⁹ He was also talking about a co-authoring a book with her.

Tom's prediction held true. Isabella spoke to him in mid-January after her grades had been posted about a letter of recommendation for a transfer to Yale Law School. He said, "I'll think about it."¹⁷⁰ He envisioned Isabella wowing them at Yale, clerking for a D.C. Circuit judge, and then actually spurning a Supreme Court clerkship for the chance to litigate an antitrust case from beginning to end with the finale being a brilliant argument in front of the same Court she had spurned, igniting the revision of a hundred years of precedent.¹⁷¹ He pictured her winning several cases in several state and federal courts, opening the door to the transportation of nuclear waste across thousands of miles of railroad, through nearly every state in the continental United States.¹⁷² He saw her winning a case invalidating a women's rights statute in favor of states' rights.¹⁷³ He

169. See, e.g., A. Leo Levin & Anthony G. Amsterdam, *Legislative Control Over Judicial Rule-Making: A Problem in Constitutional Revision*, 107 U. PA. L. REV. 1, 1 n.r1 & n.d1 (1958).

170. MILLER'S CROSSING (Twentieth Century Fox 1990).

171. KLEIN, *supra* note 8, at 161-62.

In less enthusiastic eras than our own, other words besides "synergy" were commonly used to describe attempts to radically distort consumer offerings to benefit colluding owners; in the U.S., illegal trusts were combinations of companies that secretly agreed to fix prices while pretending to be competitive. And what else is monopoly, after all, but synergy taken to the extreme? Markets that respond to the tyranny of size have always had a tendency towards monopoly. Which is why much of what has taken place in the entertainment industry during the last decade of merger mania would have been outlawed as recently as 1982, before President Reagan's all-out assault on U.S. anti-trust laws.

Id.

172. See, e.g., ASSOCIATED PRESS, *Bush Signs Yucca Mountain Bill*, July 23, 2002 at <http://www.foxnews.com/story/0,2933,58506,00.html> (last visited June 4, 2003). "Environmentalists dubbed the planned waste shipments 'mobile Chernobyl'—a reference to the nuclear disaster in the former Soviet Union. They see a disaster in the making as the radioactive cargo moves past major cities, over bridges and through tunnels on its way to Nevada." *Id.*

173. See, e.g., *United States v. Morrison*, 529 U.S. 598, 616 (2000). "We accordingly reject the

envisaged much more. He feared her for these reasons, reasons he did not himself acknowledge ten years earlier.

At that moment, Tom decided to destroy Isabella.¹⁷⁴ He decided that she and her kind had to be stopped.

The next morning, Tom called his friend Dana who was temping for a law firm in Birmingham. "I need your help, Dana."

"Who do you want me to destroy this time?" Dana responded.

"A student."

"Yours?"

"Yes."

"That's tough. You law professors are always trying to destroy students. You have a strong motive, especially considering that the students will eventually graduate and replace you as professors."¹⁷⁵

"That means we have to work on a good alibi."

"Not so easy. What do you propose?"

"Something quick and efficient. I want her expelled and disqualified from applying to any other school. I want her buried, unable to ever practice law, unable to surface, to recover, or to persuade anyone of anything. I want her utterly destroyed."

"Cheating on tests?"¹⁷⁶

argument that Congress may regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce. The Constitution requires a distinction between what is truly national and what is truly local." *Id.*

174. Phyllis Bennis, *All the Facts about Iraq*, Aug. 15, 2002, at <http://altnet.org/story.html?StoryID=13859> (last visited Jan. 23, 2003).

The most recent leaked military plan for invading Iraq, the so-called "inside-out" plan based on a relatively small contingent of U.S. ground troops with heavy reliance on air strikes, would focus first and primarily on Baghdad.

The Iraqi capital is described as being ringed with Saddam Hussein's crack troops and studded with anti-aircraft batteries.

The report never mentions the inconvenient fact that Baghdad is also a crowded city of four to five million people; a heavy air bombardment would cause the equivalent human catastrophe of heavy air bombardment of Los Angeles.

Id.

175. *But see* Ronald H. Silverman, *Weak Law Teaching, Adam Smith, and a New Model of Merit Pay*, 9 CORNELL J.L. & PUB. POL'Y 267, 301 (2000). "Especially where a student establishes a claim to intellectual ability and professional skills, in the classroom or on exams or papers, that student may be afforded more time and deference than less achieving students." *Id.*

176. *UVA Investigating 72 Cheating Cases*, Nov. 26, 2001 at <http://www.cnn.com/2001/fyi/teachers.ednews/11/26/uva.ap> (last visited Jan. 23, 2003).

Since 1842, University of Virginia students have had the power to dismiss others who are caught lying, cheating or stealing. It's part of the school's strict honor code, which everyone agrees to uphold when they sign their university application letter.

....

According to school legend, people realized the need for one in 1840 when a

“Maybe. That’s effective, I suppose,” replied Tom.

“Plagiarism?”¹⁷⁷

“That’s better. But she’s too good a writer. I’ve seen her stuff. She writes better than Raymond Carver,¹⁷⁸ Catharine MacKinnon,¹⁷⁹ Paul Thomas Anderson,¹⁸⁰ and Frank Pommersheim¹⁸¹ combined. She writes amazing stuff. I don’t know how we could make a fake document convincing to anyone with half a brain. I don’t have much faith in our chances.”

Dana interrupted, annoyed. “Hey, if you want to be a Negative Nancy,¹⁸² then I’m out.”

“We have to think of some way of stopping her.”

“Why? Is this some sort of Dead Zone thing, where you can see the future?¹⁸³ Is she going to ruin the whole world, bring the apocalypse down on us? What is it? This better be good.”

“I assure you, it is.”

“Who is this student?”

“Isabella Andrea.”

“Did you say Isabella Andrea? That name sounds familiar. I met someone once named Isabella Andrea. Is she Italian?”

“I don’t know.”

“Isabella Andrea used to be in an anarchist organization in Italy. Geez, what was their name?”

Tom scrunched his face, concerned that his friend and co-conspirator had gone off on some useless tangent.

“I got it! If this Isabella Andrea is who I think she is, then we got her! We can crush her! Isabella Andrea is the alter ego of Ilaria Aliani, the famous Italian anarchist from Torre del Greco. She used to be the leader of some underground anarchist movement,¹⁸⁴ one where all the members got

professor was shot by two students riding horseback on the campus lawn. As the wounded instructor lay bleeding, he told students and teachers gathered around that his killers would come forward if they were “honorable” men. They never did.

Id.

177. See, e.g., *Cheating Scandal Met Its Foil in U. Va. Leader*, UNIV. VA. NEWS, May 6, 2002, available at <http://www.Virginia.edu/topnews/releases2002/hall-may-6-2002.html> (last visited Jan. 23, 2003).

178. E.g., RAYMOND CARVER, *WHERE I’M CALLING FROM* (1988).

179. E.g., CATHARINE MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* (1979).

180. E.g., *MAGNOLIA* (New Line Cinema 1999).

181. E.g., FRANK POMMERSHEIM, *HAIKU FOR THE BIRDS (AND OTHER RELATED STUFF)* (2002).

182. See *South Park: The Simpsons Already Did It* (Comedy Central television broadcast, June 26, 2002).

183. See *THE DEAD ZONE* (Paramount Pictures 1983).

184. Federation of Anarchist Communists, available at <http://www.fdca.it> (visited Jan. 23,

arrested for bombing fascists and the like. I met her once when I was in Amsterdam, back when I was hanging out with those Black Block guys from Eugene.¹⁸⁵ Remember?"

"Nope. This sounds pretty crazy."

"No, it's not, because this Ilaria used to talk about being an American lawyer all the time. She loved American TV shows about lawyers and cops. And she spoke absolutely perfect English. She was some sort of genius, I think. She's wanted by INTERPOL, I'm sure of it. She's been to the protests in Quebec, Genoa, Seattle, D.C., all that stuff, I bet. She's gotta be some sort of illegal alien. Don't they deport anarchists?¹⁸⁶ We can nail her with that stuff. Man, we'll be known as national heroes."

Tom did not believe that Dana's hunch would pan out, but a week later, Dana showed up at his house with a copy of the liner notes to a disc produced by an Italian punk rock band. And right there, next to the bald singer, stood Isabella Andrea, unmistakably, holding a big sign that said, in handwritten English, "I DON'T WANT TO WORK."¹⁸⁷ He couldn't believe it. It was actually his student, the woman he wanted to destroy. Underneath the photo, the caption stated that the woman's name was Ilaria Aliani. Dana showed Tom a few articles he downloaded from the Internet

2003).

La Federazione dei Comunisti Anarchici nasce da una progressive aggregazione di gruppi a Federazioni a carattere regionale che hanno la loro origine nelle lotte del 1968 in Italia. Partecipano a questo processo organizzativo militanti della lotte di classe che si collocano nella tradizione del movimento comunista anarchico italiano con il fine di costruire progressivamente un punto di riferimento libertario per tutti coloro che si riconoscono nella teoria, nella strategia e nel programma dell'organizzazione.

Id. The translation is as follows:

The Federation of Anarchist Communists was born out of the progressive coming together of groups and regional Federations originating in the struggle of 1968 in Italy. They take part in this organizational process as class-struggle activists rooted in the tradition of Italy's anarchist-communist movement with the aim of progressively building an organizational point of reference for all those who identify with the theory, strategy and programme of the organization.

Id., at http://flag.blackened.net/revolt/inter/trans_fdca_indx.html (last visited Jan. 23, 2003).

185. See, e.g., L.A. Kaufmann, *Who Were Those Masked Anarchists in Seattle?*, SALON, at <http://www.salon.com/news/feature/1999/12/10/anarchists> (last visited Jan. 23, 2003) (describing the "black bloc" as an activist group who advocates damaging corporate retail outlets and harming sales).

186. See, e.g., *Kleindienst v. Mandel*, 408 U.S. 753, 761-62 (1972).

We thus have almost continuous attention on the part of Congress since 1875 to the problems of immigration and of excludability of certain defined classes of aliens. The pattern generally has been one of increasing control with particular attention, for almost 70 years now, first to anarchists and then to those with communist affiliation or views.

Id.

187. '77 SPREADS, *Never, on JUNKS* (Dumbo 1996).

that confirmed the notoriety of the infamous Ilaria Aliani, who was wanted for masterminding plans¹⁸⁸ to blow things up, playing practical jokes against Italian and other European leaders, and the like.

Fatefully, Isabella called upon Tom in his office hours a few days later. He hurriedly tossed some papers on the floor, plans he had drawn up with Dana for Isabella's professional demise, plans she should not see. He sat back in his desk chair, looking relaxed, but mentally preparing to battle her and to crush her if she resisted.

"I just wanted to let you know that I don't need a letter of recommendation anymore," Isabella said.

Tom sat up, genuinely surprised. His plans to topple Isabella from her throne depended on the application to Yale or wherever. He'd have to change them. It would make Mamagona Law look bad, he thought, to tear down its best and brightest. Oh, well.

"Professor Argos?"

Tom jerked his head up again. He felt flustered. "Yes?"

"Did you hear me?"

Tom nodded, trying to look vaguely uninterested and surprised at the same time, trying to look cool. "Why not?"

Isabella thought about that one. She looked up at the ceiling and at her feet and out the window behind Tom's desk. He realized she didn't have the same crushing confidence he remembered. "I did some research," she said, almost looking embarrassed. "We have those free accounts to do computerized research ... and I looked you up."

"Me? What for?" But Tom knew that the same as she scouted her classmates, surely she would eventually get around to scouting the people who taught her to learn who would have the best credentials to give her recommendations. He should have known she would scout him, too. And apparently, she didn't like what she found. It would complicate his plans further.

"Just curious," Isabella said. "I wanted to see what you had done."

Tom knew what he had done, but Isabella gave him a rundown anyway. He only pretended to listen as she talked. She talked for a long time. It seemed to be hours and hours.

Isabella concluded with, "There are 2,878 law review articles criticizing opinions and judgments in cases you litigated."

Tom nodded, not happy with being reminded of his sordid history. "And here I am. See? Law reviews are devastating. They can shoot down the high-flyers." He laughed nervously.

188. See *BOTTLE ROCKET* (Columbia Pictures 1996).

Isabella sat down and folded her hands. And then she looked at them, anything to not look at Tom. “I talked to some of the other professors and they said they’d write my recommendation letters.”

Tom felt pathetic, like a fallen star people mock and whisper about in hushed tones when he enters the room. Tom was going to run his own multinational law firm some day. Tom was going to be Chief Judge of the D.C. Circuit some day. Tom was going to be Solicitor General some day. Tom might even get nominated for ... (hush) ... the Supreme Court. But Tom blew it. He gave up on the career path and disappeared into the black hole of prisoner torts and civil rights cases. He turned his back on his firm. He spit on the shoes of his partners. He insulted the very institution that had laid the foundation for his grand ascent. Most importantly, Tom had betrayed his clients by walking away. Tom had failed and thrown it all away for ideologies that no one understood. “It’s true. ‘A recommendation from me might do you as much harm as it does good.’”¹⁸⁹

Isabella nodded, back to her usual form. She had received what she came for and would leave with all her faculties intact. She started to walk away.

Tom needed to do something, to not let her get away with it. “Tell me about La Federazione, Ilaria.”

Isabella stopped. She turned around. “I couldn’t begin to even think about knowing how to answer that question.”¹⁹⁰ You researched me, too?”

Tom smiled. He felt the upper hand and decided to squeeze.¹⁹¹ “Yes. I have a good friend named Dana Koala who says he knows you.”

Isabella thought about it for a moment. “Never heard of him. Should I have?”

Tom knew she was lying, but she seemed to be telling the truth. She seemed to him to be the epitome of truth, the goddess of credibility. He

189. HENRY FOOL (Sony Pictures Classics 1998).

190. THE ROYAL TENENBAUMS (Touchstone Pictures 2001).

191. SUZAN-LORI PARKS, TOPDOG/UNDERDOG 105-06 (1999).

How you know? She coulda been jiving you, bro. Jiving you that there really was money in this thing. Jiving you big time. Its like thuh cards. And ooooh you certainly was persistent. But you was in such a hurry to learn thuh last move that you didnt bother learning thuh first one. That was yr mistake. Cause its thuh first move that separates thuh Player from the Played. And thuh first move is to know that there aint no winning. It may look like you got a chance but the only time you pick right is when thuh man lets you. And when its thuh real deal, when its thuh real fucking deal, bro, and thuh moneys on thuh line, thats when thuh man wont want you picking right. He will want you picking wrong so he will make you pick wrong. Wrong wrong wrong.

Id.

wanted to believe her, but he shook his head, bluffing. “Now that I know for sure, I can detect the faint Italian accent. Is it Napoli or Tuscany?”

“I can see there’s no fooling you, Professor,” Isabella said. She sat back down and looked directly into Tom’s eyes.

“Call me Tom.” He was mesmerized and could barely move his lips.

“This is no big conspiracy,” Isabella began as if in explanation. “I am here to do the same as every other person who goes to law school. I’m here to win. Sure, the rest would say they are here for other reasons, like to make a living or carry on some weird family tradition of being an attorney.¹⁹² Ultimately, though, they’re in training for an adversarial profession, and they’ll want to win, even if they don’t know it yet. You were the same. I know about the cases you won. I know you were cutthroat and did everything you could to win. I know you’d have crushed a close friend to win a big case, or even a little case just to keep your personal undefeated streak alive. Remember that speech you gave at the Michigan Bar Convention where you basically said so? I have a copy of the transcript in my room. You did a lot of damage.”

Tom interrupted. “And so will you.”

“No. Not me. I’m here to attack the core of the problems in this world. I’m going to represent the asylum seekers and assist organizations that are trying to have corporate charters revoked. I want to represent criminal defendants and get political prisoners back out on the streets so they can wreak political havoc. I’m going to represent poor countries and Native American tribes in the World Court. That’s what I want. I can’t do any of those things from Torre del Greco or Amsterdam. I’m known there. I’m a new person here, a totally unique individual, and when I get into Yale, I’m going to have the credentials to eventually get people to listen to me. I want to be like you were, only on the other side. I want to win.”

Tom nodded, quieted by what she said, and Isabella left his office. She did not speak to him again and transferred at the end of the semester. Tom did nothing to prevent her from doing as she pleased. He had hope she would do as she promised, but he had doubts.

“You let her get away,” Dana said, sad to see his preparation for Andrea’s destruction wasted.

“Why shouldn’t I?” Tom asked. “She’s got her own life to lead and I have no business interfering and deciding who gets to achieve and who must fall short. I am no deity, and paternalism does not behoove me.”

192. See, e.g., Jack Greenberg, *Affirmative Action in Higher Education: Confronting the Condition and Theory*, 43 B.C. L. REV. 521, 536 (2002). “Ivy League colleges admit legacies at rates higher than the rates at which other applicants are admitted, ranging from more than double (Harvard, Yale, Princeton) to 20% (Cornell).” *Id.*

"You just gave in," Dana said, muttering under his breath.

Tom pretended not to hear. He kept teaching legal research and writing at Mamagona Law School, but he also kept a keen eye on Isabella Andrea from a distance via computerized legal research tools and the Internet. She had performed extremely well in the meritocracy.¹⁹³ Prestigious law reviews and law journals published her articles that seemed to arrive in the law school library almost monthly. Prestigious university publishing houses published her books, the first supposedly co-authored by her old Mamagona Law School professor, but the rest she wrote by herself. She finished at or near the top of her graduating class, won the moot court competition her last year, and won several awards "for outstanding achievement in the field of excellence."¹⁹⁴ She had to fight off the D.C., Second, and Ninth Circuit judges competing for her attention. A waterfall cascade of "movie stars and power players,"¹⁹⁵ including law firms, corporate in-house counsel, and think tanks from all sides of the mainstream political spectrum, and political campaigns clamored for her services.

Meanwhile, Tom's mysterious legend amongst the leading establishment lawyers grew. The typical spin in legal journal gossip columns about Tom surmised that he had done all he wanted and did not desire to accomplish anything more. Commentators treated his dropping off the planet to teach remedial legal skills in a northern lower Michigan summer resort town as a glorious early retirement akin to Greta Garbo, Socrates, Jim Brown, and Bikini Kill. No declining legal skills for Tom. The brief, the failed detour into prisoner rights, and other pro bono cases were all graciously forgotten.

Dana compiled a dossier about Ilaria Aliani/Isabella Andrea in his spare time. He found references to her in Disinformation, The Smoking Gun, Anarchy Archives, and Google searches that could return 3000–5000 hits any given moment. Ilaria Andrea was indicted several times in Italy, Germany, Spain, England, Morocco, and Canada, but no law enforcement agency ever captured her. Dana kept Tom informed about the various components of his research over the years—major events and interesting twists to the story.

However compelling the evidence, Tom refused to act.

* * *

193. See, e.g., *Carpenter v. Fed. Nat'l Mortgage Ass'n*, 165 F.3d 69, 70 (D.C. Cir. 1999) (dismissing plaintiff's sex discrimination complaint alleging that the company "meritocracy" was a pretext for sex discrimination).

194. *The Simpsons: Brother, Can You Spare Two Dimes?* (FOX television broadcast, Aug. 27, 1992).

195. *THE PLAYER* (New Line Cinema 1992).

On Monday Dana asked, "What if Isabella gets nominated for something?"

"Like what?"

"Attorney General."

"So?"

"What about Solicitor General?"

"Never happen."

"Or federal judge?"

"Nah."

"A Tower Commission or the Civil Rights Commission or something?"

"Who cares?"

On Thursday, Dana asked, "What about if she runs for public office?"

"Like what?"

"Governor."

"So?"

"Or United States Representative?"

"Never happen."

"Senator?"

"Nah."

"President?"

"Who cares?"

Dana's dossier grew to dozens of pages of carefully researched hearsay, rumor, and innuendo and he had to buy another scrapbook. "I'm ready to testify," he said several times to Tom. "Just say the word."

"I know," Tom said, deciding to let the years pass before he would stoop to judge Isabella Andrea.

Over those years, Isabella helped to start a non-profit, impact litigation firm loaded with superstars of the likes not seen since the 1950s and 1960s Legal Defense Fund. The firm sued landlords, prison wardens, county prosecutors, investment bankers, corporate CEOs, racists, sexists, homophobes, and other all-around bad people and tortfeasors. The firm hired only the top law school graduates with only the finest credentials and took only the cases with the greatest social and monetary impact. She and her collaborators (the firm was non-hierarchical) won huge cases, cases that no legal commentator predicted could be won, started appearing on talk shows and became famous fighters for the working class, racial minorities, and a large section of the non-voting public. Celebrities, billionaires, politicians, and attorneys for the rich and powerful grew to hate Isabella's firm, and particularly, Isabella.¹⁹⁶

196. BIKINI KILL, *Rebel Girl, on PUSSYWHIPPED* (1993).

Over the next ten years after Isabella left Mamagona Law School, Tom collected clippings about Isabella, writings about her successes, criticisms of her methods by sore losers, and legal writing about the new trends in law she helped to create. These he kept in a scrapbook, completely opposite from Dana's dossier.

And yet as Tom's scrapbook about Isabella grew quickly, Dana's dossier about Ilaria grew just as fast.

On Friday, Dana said, "She planned kidnappings in Germany."

"So?"

"She planned bombings in England."

"Never happened."

"She planned assassinations in Italy."

"Nah."

"She is a murderer, an arsonist, a terrorist, a thief, a kidnapper, and a conspirator."

"Who cares?"

"You're the one who told me she needs to be stopped."

That girl thinks she's the queen of the neighborhood
 Shes got the hottest trike in town
 That girl, she holds her head up so high
 I think I wanna be her best friend

Rebel Girl Rebel Girl
 Rebel girl you are the queen of my world
 Rebel Girl Rebel Girl
 I think I wanna take you home, I wanna try on yr clothes too

When she talks, I hear the revolution
 In her hips, there's revolution
 When she walks the revolutions coming
 In her kiss, I taste the revolution

Rebel Girl

That girl thinks she's the queen of the neighborhood
 I got news for you
 SHE IS!
 They say she's a dyke, but I know
 She is my best friend

Rebel Girl Rebel Girl Rebel Girl Rebel Girl
 I really like you, I really love you
 I really wanna be yr best friend
 Love you like a sister always
 Soul sister, blood sister,
 Please be my rebel girl

Id.

“Changed my mind.”

On Tuesday, a man who identified himself as Special Agent Leonardo called on Tom at his office. He asked questions about Isabella Andrea’s work in law school. Tom told the truth.

“Her work was exemplary.”

The agent asked about Isabella Andrea’s political activities and what he knew about her background.

Tom paused for exactly four seconds. In that span, he imagined telling Special Agent Leonardo that there was no such person as Isabella Andrea, that she was an illegal alien posing as a lawyer, a fugitive from justice, a danger to society, that her real name was Ilaria Aliani and she was an anarchist, that under no circumstances should she be allowed to serve as a federal judge, Solicitor General, Attorney General, cabinet member, or anything else and that she should be jailed immediately.

And in that same four seconds, Tom recalled reading about Isabella Andrea’s brilliant oral argument in favor of a sexual harassment victim,¹⁹⁷ her incredible brief preventing an African American convicted of murder from being executed,¹⁹⁸ her articles and testimony inducing legislatures to adopt progressive changes in law,¹⁹⁹ and the four times she bested the

197. BELL HOOKS, *FEMINIST THEORY: FROM MARGIN TO CENTER* 59 (1984).

[I]t is evident that large numbers of individual white women (especially those from middle class backgrounds) have made economic strides in the wake of feminist movement support of careerism, and affirmative action programs in many professions. However, the masses of women are as poor as ever, or poorer. To the bourgeois “feminist,” the million dollar salary granted newscaster Barbara Walters represents a victory for women. To working class women who make less than the minimum wage and receive few if any benefits, it means continued class exploitation.

Id.

198. TONI MORRISON, *THE BLUEST EYE* 97 (1970).

The first twigs are thin, green and supple. They bend into a complete circle, but will not break. Their delicate, showy hopefulness shooting from forsythia and lilac bushes meant only a change in whipping style. They beat us differently in the spring. Instead of a dull pain of a winter strap, there were these new green switches that lost their sting only after the whipping was over.

Id.

199. JIM HARRISON, *The Woman Lit by Fireflies*, in *THE WOMAN LIT BY FIREFLIES* 175, 217 (1990).

The . . . psychiatrist had offered nothing when she had gone to him, troubled about Donald Jr.’s apparent lack of morals in school. He seduced innocent, homely girls and kept a tally, cheated whenever possible on school work, plagiarized term papers and, as a school leader, made problems for teachers who didn’t give him good grades. The psychiatrist had dismissed all of this as Donald Jr.’s effort to take short cuts into his father’s world, and when sufficient negative reinforcement came from his “peer group” the behavior would cease.

Id.

United States government before its own Supreme Court in favor of the homeless, poor minorities, American Indians, and the freedom of speech.

At the end of the four seconds, Tom said, "Nothing, really."²⁰⁰

V. Desinence²⁰¹

On Tuesday, one year later, Tom awoke in a cold, dank jail cell in Allegan County, Michigan. His stiff, gray blanket scratched him as he slid it off his legs and sat up, shaking his head. He felt horrible, as if he'd fallen down the stairs into a poorly ventilated basement which was used for testing pepper spray. He coughed a few times, the spasms tearing pain through his skull. He rubbed his eyes, his vision still blurry. He took very shallow breaths, his lungs unable to fill with air, and recalled the day and night before—the peace vigil in Grand Rapids degenerating from a verbal conflict with a few drunk white males in support of invading Iraq to a full-scale street riot replete with a line of police in black body armor and clouds of tear gas and pepper spray.

Two other men lay in cots nearby in Tom's cell. They both slowly awoke as Tom wearily watched. He did not recognize either one of the men. Neither appeared battered or bruised, but both give the impression of being newcomers to county lockup and certainly the criminal justice system. He waited until they spoke before approaching them. Tom introduced himself and the men said their names were Zephren Manager and Wilson Patterson.

200. LESLIE MARMON SILKO, *Notes on Almanac of the Dead*, in *YELLOW WOMAN AND A BEAUTY OF THE SPIRIT: ESSAYS ON NATIVE AMERICAN LIFE TODAY* 135, 135–36 (1996).

I read about the great culture of the Maya people, who had invented the zero and who had performed sophisticated mathematical calculations so that they could predict the positions of the planets and the stars. What interested me about the Mayas was their notion of time; they believed time was a living being that had a personality, a sort of identity. Time was alive and might pass, but time did not die; moreover, the days and weeks eventually would return.

Id.

201. ROBERT M. COVER, *JUSTICE ACCUSED: ANTISLAVERY AND THE JUDICIAL PROCESS* 202 (1975).

To the extent [an antislavery judge] saw law "moving" in a direction that would converge with his moral beliefs, the conflict generated by the gap at a particular point in time was lessened. Conversely, as legal doctrine grew apart from antislavery morality, the conflict was accentuated. (Divergence of law and morality suggested a sense of loss, and with loss frustration.) In the face of "divergence," the individual judge may have felt that any course of action entailed unpleasant risks. To strike out against the tide raised the specter of futility; to swim with the tide raised that of complicity.

Id.

“What are you in for?” Tom asked Wilson, a middle-aged white man wearing a brand-name undershirt and pants that would go nicely with a three-piece suit. The man gaped at Tom angrily. “Don’t talk to me that—like I’m some sort of criminal.”

Tom, wearing dirty jeans, a ratty Pixies tee shirt, a flannel, and green Chuck Taylor’s realized that Wilson must be a lawyer and nodded. He turned to the other man, younger, stronger, and with a head full of preemptive male-pattern baldness, and asked him the same question. Zephren answered with squinted eyes and a look of mild confusion.

Tom could see Zephren did not speak English as a first language. “Why did the police arrest you?”

Zephren nodded, getting the question. “Sometimes I do not understand American euphemisms. I write much better than I speak the language. Regardless, I am here because I am wanted in Mexico for questioning, as you Americans say. Plus, I got pulled over by the police for driving without a valid license.”

“Interesting. What did you do in Mexico—allegedly?”

“I’m a lawyer representing a few captured Zaptista people in Chiapas. I’m very unpopular with the government in Mexico so I traveled here to take some time off, give a few talks, maybe raise a little American cash for my expenses, and so on. It seems like Le Migra does not want me here. Local police arrested me late last night after I gave a short talk in Kalamazoo, Michigan. They must have been asked by INS to hold me.”

“Were you on the way to Grand Rapids for the peace vigil?”

“Yes, I was.”

“Too late. It’s all busted now, all gone.”

“Well, that’s too bad.”

“Yeah, I was there. Some cop ripped off my gas mask and maced me right in the face. It was one of those things where the peaceful demonstrators got pushed too far by the police—intentionally, I would add—and the result was what we call a police riot. It got ugly quick and a bunch of people got arrested. That’s why I’m here in Wayland, or whatever it’s called. There were so many people arrested by the police, they ran out of room in Kent County jails.”

“That sounds like Oaxaca.”

Wilson had rolled out of bed and gotten his bearings. “What are you two people talking about? Can’t you just shut up and let people think for a minute?”

“Hey, Wilson,” Tom said, “relax. We’re just talking about how we got here.”

“Well, you radicals deserve to be here, disturbing the peace, acting unpatriotic. Don’t you have anything better to do than criticize the government, the country, that keeps you alive?”²⁰² You should be celebrating your unbelievable luck for being born here. I’m not so sure about your friend—”

“Oh, believe me, Wilson,” Tom started to say, “I feel lucky, but—”

“No, ‘buts’, pal. You people make me sick. You deserve to be here. That’s that. I hope they lock you up and throw away the key.”²⁰³

“Okay, Wilson. What are you in jail for, my friend? Some horrible mistake?”

Wilson grunted angrily and rolled over back onto his bed. “Just leave me alone.”

Tom and Zephren spoke for a little longer, keeping relatively quiet, talking about their experiences as activists. Tom was impressed by what Zephren had to give up in order to do the things he wanted to do.

“If I hadn’t left the firm in Ciudad de Mexico, I would never have been able to represent so many improperly jailed people. The firm would never let me do it, they would have fired me instantly. So I quit. My conscience would not allow me to do otherwise. ‘It’s mainly a matter of whether you can look yourself in the mirror, I think.’”²⁰⁴

“So you gave up your practice, your very lucrative practice representing PEMEX. You could have rose high into the government, become a powerful bureaucrat, lived the high life, what with your background. Your law degree’s from where?”

“Georgetown.”

“Must have been hard, not knowing the language.”

202. Susan Sontag, *WAR? Real Battles and Empty Metaphors*, N.Y. TIMES, Sept. 10, 2002, at A25.

America has every right to hunt down the perpetrators of these crimes and their accomplices. But this determination is not necessarily a war. Limited, focused military engagements do not translate into “wartime” at home. There are better ways to check America’s enemies, less destructive of constitutional rights and international agreements that serve the public interest of all, than continuing to invoke the dangerous, lobotomizing notion of endless war.

Id.

203. HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 385 (1979).

The outstanding negative quality of the totalitarian elite is that it never stops to think about the world as it really is and never compares lies with reality. Its most cherished virtue, correspondingly, is loyalty to the Leader, who, like a talisman, assures the ultimate victory of lie and fiction over truth and reality.

Id.

204. *MANUFACTURING CONSENT: NOAM CHOMSKY AND THE MEDIA* (Zeitgeist Video 1993).

“Ironically, I had a good friend there who also spoke Spanish. He was always very vague about his past. A good guy, big supporter of America.²⁰⁵ He was from Colombia. A few years ago, somebody told me that guy was a graduate of the School of the Americas—now it has a different name—but he used to participate in paramilitary activities in Bogota.”

“Sounds like death squads.”²⁰⁶

“Exactly. He was so good at it, the Colombian military promoted him and sent him to college in the United States. Harvard, then Georgetown for law school.²⁰⁷ He’s a very, very smart guy. He’s very powerful in the

205. KURT VONNEGUT JR., *In a Manner that Must Shame God Himself, in WAMPETERS, FOMA, AND GRANFALLOONS (OPINIONS)* 185, 196–97 (1974).

I saw ten American Indians sitting all by themselves on overstuffed furniture in the lobby. Nine were big male Indians.

One was an Indian boy.

They had a coffee table all to themselves. On it were mimeographed copies of a message they had come great distances to deliver. They were from many tribes. As I would later discover, the message was addressed as follows: “Att’n: Richard M. Nixon, President USA.” The message said this in part:

We come today in such a manner that must shame God himself. For a country which allows a complete body of people to exist in conditions which are at variance with the ideals of this country, conditions which daily commit injustices and inhumanity, must surely be filled with hate, greed, and unconcern.

Id.

206. Richard White, *How Andrew Jackson Saved the Cherokees*, 5 GREEN BAG 2D 443, 452 (2002) (reviewing Robert V. Remini, *ANDREW JACKSON AND HIS INDIAN WARS* (2001)).

“To his dying day . . .,” Remini concludes, “Andrew Jackson genuinely believed that what he had accomplished rescued these people from inevitable annihilation. And although that statement sounds monstrous, and although no one in the modern world wishes to accept or believe it, that is exactly what he did. He saved the Five Civilized Nations from probable extinction.”

Remini is wrong on nearly all counts. He is wrong because there is no evidence that it was removal that insured the survival of the “Five Civilized Tribes.” It is an assertion that he doesn’t even bother to support in any systematic way. He is wrong that no one wishes to believe this. There are, unfortunately, plenty of people in the modern world who would be more than happy to believe that removal insured the ultimate survival of the Indians of the Southeast. And it is a comforting lesson for those contemplating similar policies elsewhere. His statement not only sounds monstrous, it is monstrous.

Id.

207. Dave Mulcahey, *The Slacker Dictator*, IN THESE TIMES, Sept. 2, 2002, at 6.

Recent times have not been good to A-list dictators. Blue-chip strongmen have been deposed, hauled before tribunals, and confined to house arrest by the dozen. But a special kind of ignominy has been reserved for Valentine Strasser. He once wielded the rod of state in Sierra Leone; now he lives in his old room at home.

Ten years ago, at the tender age of 25, Strasser led a bunch of Gen-X officers in a junta that controlled the country for four years, before he in turn was overthrown in 1996. He went into exile in England, briefly trying law school in Coventry before dropping out and drifting to London.

Id.

Colombian military now, maybe in line to be President. Very dangerous. I hope I never see him again. He probably knows how to kill me in twenty different ways with his bare hands.”

“Especially if he knows what you do now. I’m a lawyer, too. Or, at least, I used to be.”

“When I represented PEMEX, we had some dealings with American oil companies. Maybe your firm represented the oil companies. They were intelligent people, but seemed a little lifeless. In another life, we might have seen each other around and got to be friends.”

“Maybe, but I doubt it. The whole time I was there, it seemed like I was walking through a fog. I worked for a firm called Berkman, Deloria—”

“That’s my firm!” Zephren cocked his head and looked more carefully at Tom in the dark cell. “You’re not Thomas Argos, are you?”

“Well, I used to be.”

“¡Dios mio! I can’t believe you are in a jail cell with me. You’re one of the reasons I quit my firm job. I worked in the Mexico City offices of Berkman, Deloria. You were so famous, and all my colleagues looked at you like some sort of rock star or futbol player. They all wanted to get the kind of attention you got. It made me sick. What are you doing here now?”

“I quit, too. I got sick of winning every case and getting all that attention. I started thinking about the consequences of my advocacy. I was just taking orders. I started meeting some other attorneys that were my opposing counsel and they were scared to death of me. I buried them. Some of them in the public interest gave up on the law because the judges seemed to go along with whatever I said, even if the law wasn’t on my side. I was so persuasive; it was almost like science fiction. And, frankly, I was the bad guy. My client was the bad guy, and I ran interference for them. I worked for them very hard and very effectively. Then I took some new clients, some poor clients, and I started losing. I lost with the poor clients, and then I started losing with the rich clients, maybe intentionally—unconsciously, of course. Eventually, I just quit my firm. Now I represent poor clients—prisoners, some small environmental groups, public interest groups, media groups. It’s much, much harder to win on this side. I’m waiting for the day when one of my old co-workers is sitting on the other side, waiting to bury me like I used to bury people.”²⁰⁸

208. NANCY OESTREICH LURIE, *Epilogue*, in READINGS IN AMERICAN INDIAN LAW, *supra* note 115, at 82, 86.

Even where there were Indian witnesses with a reliable grasp of tribal oral tradition, they tended to digress from matters directly related to their claims and wanted to talk about grievances not included in the claims petitions prepared by

Wilson interrupted again. "Neither of you guys deserves the right to practice law. You both sound like a couple of hooligans, a couple of violent revolutionaries, not lawyers sworn to uphold the law, not reasonable people."

"And what are you, Wilson?" Tom asked.

"As it happens, I work for Morley, Straitham, Billingsley, Slaverly, Bishop & Terwilliger." Wilson sounded more than proud to be associated with that firm—he sounded righteous, justified.

Tom knew who they were. "I've heard of your firm, Wilson. You represent QuadWorldTeleCom, the company that just got caught for breaking every law ever passed by the federal government."²⁰⁹

"I resent that assertion. That's a blatant lie. That's slander, my friend."

"Did you break the law, too, Wilson? Is that why you're here?"

Wilson grunted. "Hardly." He turned away without saying anything else.

their attorneys. I am reminded of a claims attorney . . . who told of taking testimony from an aged Indian in the Southwest. The old man wanted to tell the entire tribal history from the time of creation and would respond through his interpreter to repeated interruptions to move his testimony along to points at issue, "But I ain't been born yet!"

Id.

209. James K. Galbraith, *Enron May Spark Revolt of Professionals*, *NEWSDAY*, Jan. 25, 2002, available at <http://commondreams.org/views02/0125-01.htm> (last visited Jan. 25, 2003).

In details complex, the scandal is essentially simple. A handful of rich people, closely tied to the Texas Republican Party led by Gov. George W. Bush and Sen. Phil Gramm, decided to become richer still. Their grand strategy included deregulation of energy, deregulation of derivatives (an arcane financial device), corrupt accounting practices, overseas tax scams, U.S. diplomatic pressure (delivered in 2001 by Dick Cheney himself, on India, where Enron had sold a white elephant power plant). And then, as the game unwound, they sold their own stock while freezing employee pension accounts. In the end, the gang made off with more than a billion dollars, that we know of.

Enron's real business was politics. Energy deregulation helped create the web of commodities in which Enron traded. Derivatives deregulation (courtesy of Gramm and Rep. Richard Arney) shielded that market from review. Consulting contracts to the auditors bought complicity; payments from auditors to politicians fended off the Securities and Exchange Commission. Enron paid for favors promptly: \$100,000 to the Democrats in 1997 to push the Indians around, \$25,000 to Texas Gov. Rick Perry one day after Enron's Mexico chief got to run the Public Utilities Commission in Texas. Wendy Gramm, who chaired Enron's audit committee, got nearly \$2 million. We still don't know exactly what Enron contributed, in intellectual terms, to Cheney's energy policy, or to Treasury Secretary Paul O'Neill's defense of overseas tax shelters. But it paid well for it: over time, the big boss George Bush got more than \$600,000 in Enron cash. That we know of.

Id.

After their breakfast of runny oatmeal and acidic orange juice, their jailers took them to Grand Rapids for arraignment. There were dozens of criminal defendants in the room and each of them had to be arraigned. Tom, Zephren, and Wilson spent several hours sitting outside the courtroom together with many other defendants. A woman with dark hair approached, sat next to Tom, and asked him how he was doing.

"What did they nab you for?" Tom asked.

"Oh, I'm not here because I'm in trouble with the police. Not yet anyway."

"No?"

"Nope. You don't recognize me, do you." It wasn't a question.

Tom immediately felt embarrassed, as anyone does when they forget an acquaintance's name or forget when they've met someone. "Guess not. Sorry."

"No, that's okay. I once asked you a question about a case you had argued before the Second Circuit. It was at a conference in Ann Arbor. I was just a face in the crowd. Funny thing is, you couldn't answer the question because you forgot about the case. You must have had a lot of cases."

"Yeah, and I forgot about a lot of them. I guess I wanted to forget. So why are you here?"

"Well, I was at the peace vigil yesterday, and I'm representing a few of the arrested protesters, some of my friends. I just happened to be back home visiting my friends in Eastown when all this happened."

"So where do you work?"

"New York City mostly, but I work all over."

"You don't work for Berkman, Deloria, do you?"

"Uh, no."

And then Tom remembered. "Wait a minute! Isabella! My old student." Their last meeting all but forgotten.

"So, you remembered." She smiled and then laughed out loud. "Do I look that old?"

"No, it's just you look more human than you did when you were my student, more real."

"Well, I was trying to play the game back then. I thought I was supposed to be that way."

"You reminded me of myself when I worked for Berkman, Deloria. I sized people up, I scouted them, I exploited weaknesses, I fought to the death on everything. I did very well, too, just like you."

"Well, that's true, but I had to change when I started my practice. My collaborators don't like being told what to do. I'm worried about you. You

gave it all up. You haven't done anything since you started teaching. It's a waste of talent and experience."

"Remember, I haven't won a case since I left the firm."

"That's unfortunate but misleading. Maybe you should work for us. We'd love to have you. That's why I came over here, really, when I saw you—to ask you to help us out. You've got more experience than almost all of us, and you know what the monied interests are thinking. You were there in their highest councils, you were their strongest spear-carrier. The things you can teach us are incomparable."

Tom felt renewed, hopeful, and deeply flattered. "I appreciate the offer, but my acceptance is heavily dependent upon what happens to me in this court."

Isabella laughed.

A few hours later, the circuit court judge dismissed Tom's case along with over 100 other similar cases and the courthouse cleared. When Tom walked out of the courthouse and looked up at the bright sky, he decided to try again, to care, to do something to make a difference, to take down The Man every chance he could. He decided to accept Isabella's offer.²¹⁰

Inside, Wilson Patterson and his criminal defense attorney, retained for \$250,000, fought tooth and nail with state assistant attorneys general to convince the court to let him out on bail. The state attorneys successfully proved that the wealthy attorney who had already attempted to escape law enforcement officials, the United States Senate, and his own partners was a clear flight-risk and talked the judge into holding Wilson without bail.

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210. KLEIN, *supra* note 8, at 452.

By far the most important role for those concerned with the explosion of corporate power is not to act only as voices of opposition but also as beacons—beacons of other ways to organize a society, ways that exist outside of the raging battles between "good" and "evil." In the current context, this is no small task. The attacks on the U.S. and the U.S. attacks on Afghanistan have ushered in an era of ideological polarization not seen since the Cold War. On the one hand, there is George W. Bush claiming "You are either with us, or you are with the terrorists"; on the other, there is Bin Laden, asserting that "These events have divided the world into two camps, the camp of the faithful and the camp of the infidels." Anti-corporate and pro-democracy activists should demonstrate the absurdity of this duality and insist that there are more than two choices available. We can spread rumors about the existence of routes not taken, choices not made, alternatives not built. As Indian novelist and activist Arundhati Roy wrote after September 11, "the people of the world do not have to choose between the Taliban and the U.S. government. All the beauty of human civilization—our art, our music, our literature—lies beyond these two fundamentalist, ideological poles." Confronted with a deadly multiple-choice exam, the answer should be "None of the above."

Id.

Two years later, Tom stood up before a Sixth Circuit panel and began to explain why his client, Zephren Manager, should not be deported and was entitled to protection under international asylum laws. When he looked into the eyes of newly-confirmed Judge Waters, he saw the old gaze, the old look, the look that said the court was already persuaded by the brief with Times New Roman text and Palatino punctuation, and he knew what the twinkle in Judge Waters' eyes meant. Mr. Manager would go home a free man.

So long as discontent and unrest make themselves but dumbly felt within a limited social class, the powers of reaction may often succeed in suppressing such manifestations.

* * *

[W]e become conversant with the larger phases of human expression manifest in art, literature, and . . . the modern drama—the strongest and most far-reaching interpreter[s] of our deep-felt dissatisfaction.²¹¹

211. EMMA GOLDMAN, *The Modern Drama: A Powerful Disseminator of Radical Thought, in ANARCHISM AND OTHER ESSAYS* 241, 241 (Dover Publ'ns 1969) (1917).