

Advice of Counsel

FRED GUCCI, PART 2

Michael Parish

“NOBODY INSIDE GAVE YOU any heads-up about this?” Gary Randle and his lawyer Fred Gucci looked at each other in silence in the waiting room outside A.J. Greenaway’s office, the head of Greenaway & Co., Gary’s employer. Gary shook his head. Six months had passed since Greenaway had suspended him without pay for issuing a negative analyst’s report involving a client of the bank which he had discovered was operating a fraud. That company’s stock had lost about a quarter of a billion dollars in value and the client had sued Gary and Greenaway, in separate suits, claiming misuse of privileged information and market manipulation. The fact that the report had been true and that Gary had never had access to the supposed confidential information had not stopped the lawsuit or stood in the way of Greenaway pulling the plug on Gary. Greenaway had also countersued Gary, alleging that if there was any wrongdoing it was solely his. The overall claim was in excess of \$450 million now, since the stock had sunk

further in the aftermath. Several hundred pounds of court papers had been filed, but Gary had no idea when he might get his job back or what amount of legal fees he would end up paying to defend himself for exposing the fraud. The previous afternoon Gucci had called and said Greenaway wanted to meet with them.

“The big cheese himself, the Buddha of Gouda. He’ll have his lawyer there, so I have my client, which is you,” Gucci said. “I’ll talk to you when we meet up. Eleven in the AM. You know the address. Of course you do.”

Gary could almost hear Gucci thinking, the wheels spinning fast, he felt, but at the same time he was glad not to be able to actually hear it. So far all the news had been bad and Gary now spent his days working out and trying to manage his dwindling net worth. Every day felt three hundred hours long.

Greenaway got off the elevator with a tall, thin, well dressed man who looked like he might still row competitively, although his

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short-cropped hair was steel gray. He could only have been a lawyer, even if his briefcase hadn't betrayed him. Chestnut leather, extra thick, polished – brass buttons and clasps, polished. He looked like a man who had other people iron his dreams so he could put them on fresh each evening when he slipped between the sheets. Greenaway took no notice of them as he strode to his secretary's desk to pick up a sheaf of message slips and get a reminder about his luncheon plans. He was a solid, broad shouldered six foot-four, with gray-white hair and the craggy features some people call leonine. His pearl-gray wool and silk suit was cut to sell you on the idea that there was less around the middle than a tape measure might argue for. Gary could see him playing the lead in college dramatic productions, but never a role in which suffering or dying might be involved. He would have people who did that for him.

The lawyer waved them through the door after Greenaway and closed it behind him as he followed them in. The seating area held a sofa and a coffee table with several side chairs by the window and a view of midtown. Greenaway gestured for them to sit. He took a corner seat on the sofa as he did so. The window and the light were behind him, making it harder to see his face.

"Welcome, gentlemen," he finally said as Gary and Gucci settled into chairs on the other side of the coffee table. No offer of refreshment.

You're with your lawyer, Gary told himself. This is what he's here for. Keep your mouth shut and listen.

Gucci didn't disappoint him. He ignored Greenaway completely and reached across to hand the other lawyer his business card. "You're new on our case," he said. "What's the deal with this?"

The lawyer checked with Greenaway, who gave a quick two-inch dip of his head to turn him loose, and opened up his briefcase on the

table. He pulled out three sets of legal-sized papers, each one with a blue back folded neatly over the top inch and a half and stapled in three places. "Mr. Greenaway has asked me to handle this part of things," he said. "I'm Louis Sheridan. How are you?" Gary noticed he didn't say "Nice to meet you." Sheridan pulled his own card out of the top of his briefcase and gave it to Gucci, then handed them each a copy of the papers. "Agreement and Mutual Release" were the words in capital letters across the top of the front page.

"Maybe you'd like to connect a couple of dots here for us," Gucci said. "I have no intention of reading this here, even if it's a proposal from Mr. Greenaway to give my client a ten percent interest in the business. That's a joke. We're here in the same room, so why don't we try to get a little real. Tell it to us like we're longshoremen."

Sheridan looked at his client and got the nod again. Jesus, Gary thought, so that's what goes into the price of those suits and those briefcases. A puppet on a string. It gave him hope. Gucci was made of better stuff than this, he thought.

"This is all for the purposes of settlement and off the record," Sheridan said. "Are we agreed on that?" Gucci nodded.

"The SEC is about to commence an investigation into the circumstances surrounding Diktron's famous quarterly report," Sheridan said. "This will, of course, also involve looking into Mr. Randle's activities and those of Greenaway."

"That's dot number one." Gucci said. "Thank you. We understand that dot." He waved the blue-backed document in front of him. "And dot number two here?"

"We would like to resolve this matter in a way that's best for all concerned," Greenaway said. "Louis here has put a certain element of the solution to this problem down on a piece of paper, in a manner of speaking. Louis, why don't you take them through it."

"You won't mind if we reserve our response until we've heard you out, I hope," Gucci said to the men on the sofa, making sure Gary understood that this was a message for him to keep his mouth shut. "This is a fifteen page single-spaced document and I'm sure Mr. Sheridan hasn't wasted more than one or two words, so it will reward close reading after we part company, but go ahead."

"Thank you," Sheridan said. "We want to put our cards on the table here and let everyone get on with their lives. This SEC action provides us an opportunity to do that. As you know, gentlemen, Greenaway & Co. has every interest in trying to achieve a proper conclusion of this matter. The more clearly the blame is placed on Diktron, the easier it will be for us to have their claims against us, and your client, determined favorably."

Gary wished for the first time in his entire life that he was a lawyer, so that he could unweave the threads of the web this man was so obviously creating. It wasn't like him to trust other people with things that were this important. As much as he was impressed by Gucci, he also could not forget that the man was in every sense a professional, which meant that Gary was at his mercy. It was getting much harder to breathe.

Sheridan continued, "So, while it is in our interest, and your interest, for the case against Diktron to be made as compellingly as possible, there are better and worse ways, and times in the process, for that to occur. For one thing, while the government appreciates, and expects, cooperation, that cooperation could, at some level, be troublesome to clients and potential clients of this firm. Word will get around. Our competitors will see to that, you can be sure, and they will paint a picture of our involvement in this matter in the most distorted and negative way possible. Not to mention that a full investigation will require us to produce documents and records through a process that will use up otherwise productive

time and represent a significant distraction from our business."

"So," Gucci interrupted, extending his hand and rotating it at the wrist in a circular motion that went from slow to fast, like a propeller getting up to take-off speed, "you want Gary to take the rap for you, do the cooperating while you sit back? Am I wrong?"

"I think that's something of a distortion," Sheridan responded with a chuckle that tried to sound folksy but was as hollow as a piece of pipe. "Cooperation from Mr. Randle, given his level of command of the material and the history of how he unearthed this wrongdoing, would speak volumes. Until now, the result of Diktron's lawsuit has been for each of us to attempt to fix whatever blame there might be on the other. That's only natural. That's what people do in these situations. We claim the market letter was released without proper compliance with our procedures ..." Gucci started to interrupt but Sheridan held up his hand like a traffic cop, no not a cop, a police captain. Gary noticed his watch, thin like him and gold, with a black lizard strap. Swiss, without question.

"No, no, no, Mr. Gucci. This is explication, not argument. Please just let me finish and then by all means have your say. To repeat, that is our position, and your position is that the Diktron advisory assignment was not correctly communicated to Mr. Randle, or that even if it was, he had an overriding duty to expose the fraud. Is that a fair summary, Mr. Gucci, of the legal postures?" Gucci didn't disagree. If you were watching closely you might have seen him nod.

Sheridan got up from his seat and started to walk around the room. Gary had the feeling he was being projected into a courtroom, but he didn't know if he was a witness, a defendant or the audience. The one thing he felt clearly was that none of the positions of power belonged to him. None.

Gucci got out of his seat and moved over so

that he was sitting on the arm of the sofa, near where Sheridan had been sitting. As he did, he pointed a finger at Greenaway. "What your lawyer means, Mr. Greenaway, is that your people know my client never did anything wrong, and that his help will knock these bozos out of the box in the shortest, cheapest amount of time, in terms of lawyer fees and lost opportunities. But more than anything, you don't want the SEC crawling all over your people and your records, because without doubt – without doubt, let me repeat – they will trip over some other bag of shit somewhere in this operation that somebody has so far managed to bury, and it will smell to high heaven when it's opened up. That's what you're trying to prevent. You don't have to agree with me, I just wanted to get it out on the table. Let's say, for the sake of discussion; let's say we agree a deal might be possible. What would it look like, this deal?"

"Sit down, Mr. Gucci, sit down!" Greenaway barked. "Louis, come back over here. This is not a goddamned movie set." Gary felt better all of a sudden. The head of this giant investment bank was as much at the mercy of these lawyers as he was, and he hated it even more than Gary did.

Sheridan came back to sit down and Gucci rumbled back to his chair, pausing to pat Gary with the back of his hand between the shoulder blades in a way you couldn't see if you sat where the other side did. "Mr. Gucci," he said, "your client is finished on Wall Street. He's made himself famous in a way nobody wants to be famous. His business involves getting information and analyzing it. Most of the information these companies give to the public is incomprehensible unless you can call them up and ask them about it, and who in the future will talk to your client? No one. No one in their right mind or with even an eighth of a brain. So he has most value, by far, as a sacrificial lamb. By far. We may be prepared to reward that sacrifice. It needs to be seen."

"Well, you have the money, Mr. Greenaway," Gucci responded. "We're all ears. At the risk of being a pain, let me ask again if we could hear what the deal is?" Sheridan folded his hands in front of him like a steeple and then pointed his index finger at Gucci.

"Your client goes to the SEC and withdraws his denial that he actually did use the confidential information provided to us by Diktron. He doesn't have to admit it, he just ceases to deny it. For the moment, that removes it as an issue. He becomes part of the solution, not part of the problem. The real problem, the remaining problem, is Diktron's fraud, and we all benefit because everyone, the SEC particularly, will focus on that."

"But that's bullshit!" Gary exploded. "I figured the whole thing out entirely on my own and I never looked into anybody else's motherfucking files. Who the fuck do you think I am?" Gary was surprised at himself. He never swore like this. But enough was enough.

"It's a question," Sheridan replied, narrowing his eyes like a large cat, "of who you once were. Now, you are nobody, except a witness in a case and a candidate for the job retraining market. Calm down. We want to help you here. You can help us. Focus on the positive."

Gary looked at Gucci. "Hear them out, Gary. Hear them out. Then we can decide what to do. But you can't respond to half an offer. What's it worth to you?" Gary took a deep breath and twisted his head back and forth to loosen the tension that was working its way toward a spasm in the area of his neck.

"If you cooperate," Sheridan continued, "it will have real impact. You can help the SEC understand – better than anyone else I might add – what Diktron did and how deeply and thoroughly fraudulent it was. Your own transgression, moreover, if there was one, will be seen in the proper light, which is that you were trying to get at the truth and expose an attempt to hoodwink the investing public."

Because of this it will cease to be an issue, or at least become the subject of the mildest possible censure. Which of course doesn't matter to you at this point. Because, to be boring for a moment, you have no, repeat no, employment future in this business whatsoever."

Gucci waved his left hand in front of him like he was fighting off a cloud of mosquitoes. "Hold it. Let me just ask one question, Mr. Sheridan. Louis? Okay, Louis, I see where you're going. Why doesn't this admission put him at risk of biting the big banana on Diktron's damage suit? It does the trick for you types, but why isn't this just how you make Gary your fall guy?" This was not exactly the question Gary expected – he wanted to hear some defense of his honor and motivation, even if that might seem a little out of place with this cast of characters.

"That's what is so satisfying and elegant, if you will allow me that, about this solution," Sheridan responded. "Because by setting himself up to take the bullet in this way, he deprives the bullet of any power to injure. It's the 'So what' defense. 'Okay, even if I did what you say, so what? Look at what's really going on here!' That essentially is what Mr. Randle needs to say." Sheridan paused.

"The best cases the government makes are generally the ones they get handed on a platter – like when they finally nailed Boesky and Milken. Once Mr. Randle lays out the whole scheme for the SEC, Diktron loses any basis to support recovery in their action, including against Greenaway – or against your client, let me emphasize – because it will by then be so clear that Diktron is eyeball deep in wrongdoing. All alone in the wrong. It's like a murderer not being able to inherit from the person he killed. This may sound odd coming from a fellow member of the bar, Mr. Gucci, but what we have here is a good old-fashioned case of right and wrong. And once we can show they are wrong, they are wrong for all purposes. Which means, being right,

we win." He reached across the coffee table and tapped on Gary's knee twice, almost like he was a favorite nephew.

"We win, Mr. Randle. And you can go on with your life and do whatever else it is you may want to do, instead of spending two or three years paying Mr. Gucci here for his time and effort and living in conference rooms, and on witness stands, with people whose only goal in life is to trick you into saying something you know you didn't mean." Gary sat and looked at him. There was so much in his mind that there was nothing in his mind. He felt like he was a blackboard where three successive classes had done calculus, statistics and geometry and no one had erased any of the work. Gucci said nothing.

"Now," Sheridan continued, "to complete our 'deal' as you like to call it, we are prepared to pay Mr. Gucci his reasonable, or rather let me say regular, fees, and to provide you with reinstatement to full pay, retroactively, for these special duties. And the bonus you would have earned but for this unfortunate lawsuit. Which I'm sure you realize would have been a very handsome one. And which we were thinking of making two hundred thousand dollars, in case I didn't mention it."

"Plus extended health benefits," Greenaway interjected. "Everyone focuses on that issue these days, so we'll add that to the package."

"We realize it's not perfect from Mr. Randle's point of view, Fred, if I might call you Fred," Sheridan said. "But it leaves him much better off than he is right now, or than he has any prospect of being for the foreseeable future. And it makes him useful to the right people, which at the moment he is very far from being. Moreover, we will indemnify your client against civil liability in the Diktron suit. We realize the offer wouldn't be seaworthy otherwise."

At some time an offer of a two hundred thousand dollar bonus would have had Gary dancing on the ceiling and calling his

girlfriend on his cell phone to tell her the news. Now he didn't know whether it was a good deal or another wrong turn.

"So that's the offer," Sheridan said, touching his palms together again. "And a very generous one under the circumstances, I would suggest. I suppose you gentlemen will want to talk this over. Would you like Mr. Greenaway's private conference room here?" Gucci shook his head.

"No thanks, Louis. If it's okay with you I think we'll take a little walk and have a spot of lunch, as you might say, and see you back here at, how does two-thirty sound? That ought to give us enough time."

Gary couldn't tell if Sheridan's look of surprise at the delay, mirrored by Greenaway, was genuine or if it was just a continuation of the sales job they had cranked themselves up to do. Did they really believe this offer was so good he would just sign on the line? Was it? As he allowed himself that thought, he realized they had won this round. He was letting them frame the issue – would he betray his own sense of honesty and integrity for back pay, medical benefits and two hundred thousand pre-tax dollars? They had put an offer on the table. Now the dynamic was that he and Gucci had to respond to it, instead of proposing something totally different. Not that they had much leverage for any second option. Gary felt lost as they walked in silence back to Gucci's office.

They went into a conference room and sat down. Gucci put his feet up on the table. "Have our meeting in Greenaway's private conference room!" he said with a snort. "Who does he think he's across the table from? If I'm going to have myself bugged and videotaped, I want to be changing into the clean shirt I keep in the inside pocket of my briefcase so they can see the wire I was wearing during the meeting. Joke, Gary, but not bad, right? Is this a deal even a mother would have to love? How about that indemnity?"

"They want me to lie, Fred, and part of the

lie is that I make myself out to be a sneak and a thief."

"Not to mention a violator of company policy," Gucci said, bugging his eyes and pursing his lips so that he looked even more like a frog than usual. Then he blew his nose, checked the handkerchief and smiled. "Listen to me, Gary," Gucci said. "I lost my virginity a long time ago and so did you. Let me break it down for you, because you are seeing this in emotional terms. You don't ask yourself 'Can I tell the truth?' No. What you ask yourself is 'Can I avoid telling a lie,' or, more accurately for most people, 'Can I avoid telling a lie the other guy will catch me in.' That's business. The morals of the marketplace. Sheridan is sharp. He understands. That's why he's not asking you to lie, just to tell your piece of the truth in a convenient and helpful way. And the indemnity? I love that!"

Gary looked confused. Gucci reached over and punched him in the shoulder.

"If your testimony gets them off the hook, which it will, then the indemnity is cost-free. How beautiful is the practice of law at the highest levels!"

"What are you saying to me here?" Gary asked. "Isn't truth any part of the equation?"

"Take truth off your list, Gary. Be as smart as you were when you put this caper in motion, Mr. former wizard of Wall Street. You're missing my point. This isn't a freaking philosophy seminar. We're dealing with the business sleaze that rings the cash register and runs the show. Not just in the world of finance, but here above all. Above all. Look. Greenaway was doing the wrong thing by not backing you up, right? You can help them do the right thing now, and take care of your own problems. Plus, the ultimate blame gets focused where it belongs, on the assholes at Diktron who lied to the public – and took some King Dick salaries and bonuses while they were at it."

"The end justifies the means? Is that what you're telling me?" Gary said.

"Don't go soft upstairs on me, Gary," Gucci responded. "Think about this. When you put the knife in Diktron, how did that work? You did it to make some money the good old-fashioned way. By taking it away from Diktron's existing shareholders. You tanked their stock – and your clients, the guys you made money for, got their slice by hosing the people who held the stock when you nuked it. In the world of perfect ethics, would you have sent out a market letter to your customers and laughed all the way to the bank while some innocent shareholders got slaughtered? If you were the Saint Gary of Assisi you're trying to sell me on right now, wouldn't you have called up the management and said hey, it looks like someone in your operation has screwed up big time, and let me give you a chance to fix it? Of course you would. But you were comfortable with the approach you used then, because those are the rules of that game. Which has nothing to do with ideals and everything to do with money.

"Take the deal. If you don't, you're a schmuck with a capital S. That's a technical legal term. You'll have the pleasure of congratulating yourself on your highly evolved moral state, but you will enjoy that version of bliss about a nickel's worth as you try to deal with your bills – including my own – and spending hours that feel like decades answering questions from people who are not – repeat not – your friends. Come down off the cross while you have the chance to avoid some ugly marks and scars."

"And Greenaway gets to buy their way out of it at the expense ..."

"At the expense of what, Gary? Expense my ass." Gucci pounded his fist on the table. "You're an intelligent man. Buy yourself a set of brains with some fresh simoleons from the Greenaway ATM, for Christ's sake. Plus full back pay."

Gary looked across the table at his lawyer. "I hung those cocksuckers at Diktron out to

dry because they were defrauding the public, Fred. They took on a responsibility when they accepted the money the investing public put into their trust, and they violated that trust. How can I not follow through?"

"Gary, I would tell you that I wouldn't want to be involved in a miscarriage of justice, but that would be sanctimonious bullshit. It's your life. I'm just your lawyer. Half a loaf is better than none, particularly when it's buttered up the way Sheridan has done for you here. If you think you're the stuff heroes are made of, if you want to follow through on that at your own risk, God bless you. And save you. At this point I'm just your humble and obedient servant. You tell me what you want to do. Here's the menu from the deli, by the way. Pastrami special again?"

The thought of another one of those sandwiches made Gary feel like stabbing himself in the eye with a pencil, and having Gucci cave in so easily made him so uncomfortable he felt like he never wanted to eat again. Gucci's detachment was unnerving. It put the whole thing back entirely on Gary's shoulders. It was one thing to argue with your lawyer and take the moral high ground. It was another thing when the moral high ground was all you had. Once you find the angle, use it but don't get cute with it, his father had said time after time when Gary was growing up, as they worked together to solve some math problem he couldn't do on his own. Where was the angle in this situation? Was he doing a number on himself instead of simply solving the problem? It was so much easier when numbers were involved, to work with them and have them signal to you unmistakably when you were lost in the space of your own wrong thinking. Sheridan had irritated the living hell out of him, with his suit, watch, briefcase and the eyelids that flashed Yale and Harvard when he blinked. Plus Greenaway had an ego the size of the Chrysler Building and a conscience no bigger than a cashew nut. He was being used,

and he hated that. "Helping the right people," Sheridan had said. Now, even Gucci was pushing him around.

"Yeah," he suddenly heard an unmistakable voice say from behind him, "and you're ticked off because you didn't think of it first, because it's actually pretty good, and you're uncomfortable because what you have now works just fine, but puts your idealism on the shelf." It was his own voice, coming from inside.

"So be smart, Gary," the voice continued. "That's you at your best. Your life is yours again. You are out of the law business if you do this, and what's better than that? You can be a person again." It wasn't his voice, it was a voice Gucci had grafted into him in some way during the time they had spent together. Free will was out of the question. Better to accept that fact and move on. He looked

around at the hunting prints from England on each of the four walls, and the books on the shelves, every one of which looked like the ones next to it on either side. Then he looked across at Gucci.

"Take the deal," he said after a moment. "Take their expletive deleted deal. Two hundred thousand in the hand."

"No," Gucci said. "We hold out for four. Four plus. They had the money and now it's ours. Honor has its price. They opened the door and you walked in with Fred Gucci. End of story. Good man. Hey, your order? Fruit plate and diet ginger ale? Do you have a bumper sticker that says 'I brake for whales?' Screw the soda. Champagne on me. Got a bottle in the fridge by my desk. One glass now and another when we come back with the bacon. Four fifty, I'm thinking now. Geronimo!" *GB*