

# True Minds

*Michael Parish*

*Let me not to the marriage of true minds admit impediments.*

Wm. Shakespeare, Sonnet 116

“**A**ND WE ARE here for?” Fred Gucci’s back was to the door when Gary walked in. The lawyer stood at the window looking down into the street and twirling an unlit cigar between his large, stubby fingers. He spun around, laid the cigar in an ashtray on the window sill and came over to shake Gary’s hand. “Your voice mail said you wanted to talk about a pre-nuptial agreement? Can that be true? If so, congratulations – not about the pre-nup, of course, but about the lady in question. I assume it’s a lady, is that right?”

“A wonderful young lady,” Gary said, covering their joined hands with his free one as if solemnizing the event right then and there as well as to indicate his pleasure, genuine pleasure, to be in this office where he had solved the biggest problem he had ever faced with the help of this larger than life attorney. “Much better than I deserve.”

“Time will tell,” Gucci said. “What have you told her about yourself?”

“Everything,” Gary said. “It’s so easy to talk to her. I really feel like I can be myself.”

Gucci pulled his hand away, put his thumbs and forefingers on Gary’s earlobes and seesawed Gary’s head back and forth several times as if he were a basset hound. “Don’t get me started,” he said. “Understand this – nobody tells anyone everything. Not even themselves. Sit down and let’s get some context. My understanding is also that lunch today is on you, correct?”

Gary hadn’t covered that part in his message, but he knew that an 11:30 appointment would not be lost on a man who liked his victuals as well as Gucci did. “Some things go without saying,” he replied with the smile that only Gucci could bring to his face, the sort of smile Charlie Brown always got after Lucy took the football away once again as he charged forward and ended up on his back in the mud. Some people have other peoples’ numbers, in a basic sense, and it’s better to

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*Michael Parish is a longtime student of the interflux between law, money and ego, an avid observer of nature, a happy husband and father and a self-described raconteur and man about town. He was Fred Gucci’s first client in private practice.*

recognize that than to fight it. Then you either go forward or move on. All things considered, Gary thought, it was better for Gucci to have his number than the other way around. He wondered if Evelyn had his number – a subject maybe for lunch conversation, but not here.

"Does she have Hepatitis C? Has she ever been arrested? Changed her name? Been married before? Filed for bankruptcy?" As they sat down at the conference table in Gucci's office Gary poured himself a glass of ice water from the pitcher and took a long sip. He had known this wouldn't be any cakewalk – there was no such thing as an easy conversation with this man. Which was maybe why he had come back here even though Gucci was not a matrimonial specialist. If you're going to take a plunge, use a wet suit you already know is waterproof.

"Not that I'm aware of, Fred. These haven't been the areas I've been concentrating on over the six months I've known her. Do you have a questionnaire I should get her to fill out? Should I hire your Chinese lady detective to do a background check before we proceed? The good news is that we haven't set a date, so that part is fluid. Why am I doing this?" As always, once he entered Gucci's gravitational orbit, things he had felt were solidly affixed to the earth started dancing on the ceiling. Even the light coming in the windows seemed to take on a different shade, more red, less purple.

"Why are you my favorite client, Gary, or one of very few I would say that about? Because you cooperate. Because you know enough to trust that your uncle Fred has your best interests at heart and to get out of the way once you're in the process we laughingly call the law." He pulled a pad from the stack and a pencil from the holder in the middle of the table and wrote Gary's name across the top, followed by a lower case "v".

"What's that?" Gary said.

"This is how the court case would be titled

in the event this agreement we're here to talk about ever gets litigated. Is the lady keeping her maiden name?"

"Evelyn Hopkins," Gary said. "She's a modern type and attached to her name. The kids will use my name. She's sensible enough not to be into that hyphenated stuff."

"Marriage is the perfect subject for law, Gary," Gucci said, filling in Evelyn's name and writing "six months" under it. As an employee for many years of a Wall Street institution, Gary had mastered the art of reading upside down across many desks and conference tables. "Because lawyers can disagree about the smallest thing and make it seem like the only thing of value in the world by the time they are done. The word 'it' is also central to both. In legal negotiations or litigation, like in a male/female relationship, both parties know they want 'it' but each party tends to have a radically different definition of that simple two letter word. So imagine what can arise when you get to emoluments and hereditaments."

Gucci's phone rang. He glanced at the flashing lights and picked it up. "Who is that?" he said. "I'm in conference. OK, put him through." He waved a hand at Gary and spread his thumb and forefinger about an inch to signify this would be a short call.

"Hello, Mr. Darby, how are you? Good. Yes, it does look like we've got a bit of a problem on our hands here. The fact that it's with you in the bank's law department makes that clear enough, doesn't it? No, I don't think it's that complicated – your guys dropped the ball big-time and my client is out seven million four hundred thousand dollars because they rejected his stock option exercise and subsequent sale order on the last day it was good despite the fact that he had all the paperwork in. Does what they gave you show that the reason for the rejection was that the vice president who had cleared the transaction left on vacation and took the file with him so no one had the information and he was hiking in

Nepal? Yes, I realize your form exculpates the bank for simple negligence – we recognize that's the standard because of the nature of your workforce. But this was gross negligence, Mr. Darby, plain and simple, and the fact that it was at the VP level turns it into a different animal. Have you read *Gitter v. Sable*?<sup>95</sup> New York Second 333? Listen, do me a favor and read the case and call me back this afternoon. I'm working on a major transaction and have people in my office but I did want to give you the chance to get this taken care of before we go public on it, and save the bank a lot of embarrassment. This is like leaving the stethoscope in the chest cavity, frankly. You're very welcome. I look forward to hearing from you."

The lawyer turned back to Gary. "What I like is I don't get the everyday screw-ups, I get the monumental ones. It's a perfect case – the VP was so conscientious he made sure he had the info with him in case any question came up, but he forgot to put anybody else in the picture before he left. They won't want this news to get around the Street. So speaking of things monumental, I guess business must be pretty good, to be going for the pre-nup on the first marriage. Or is she rich and she's the one who suggested it?"

"Actually Fred, we haven't really talked about it but yes, business is super – I'm a hero of the collapse of investor confidence in "the investment community" and I've got three people working for me to handle all the accounts now. What's funny is that when you have lunch with really rich people like my new clients, they normally buy, so they won't owe you anything even in their own minds. The ones who don't buy lunch never come back, which only means there are freeloaders at every level. It's just that my college roommate suggested I ought to think about a pre-nup, so that's why I'm here. She's an actress, by the way. Although right now she's the hostess at a restaurant in Midtown, which is where I met her."

"Proving my point," the lawyer said, "that nobody tells anybody everything. Although I bet she told you she was an actress right away. Here's what you need to know about a pre-nup in two simple takes. Pre-nups, or ante-nups if you're in the \$5 million and up category because then you can pay for the latinization the white shoe firms like to charge extra for, are a perfect microcosm of the law in all its majesty and perversity. First, you have no obligation to tell her anything. The leading case in New York on this involves the not so ever-loving Ecksteins – married a little over a year, so aren't you glad you missed that movie? The husband sued for divorce and his wife's lawyer found out he had concealed some of his assets when they cut the deal. The court said no problem, because it doesn't say anywhere in the document that he was telling the whole truth – just that he truthfully answered the questions his fiancee's lawyer asked him. Since they weren't married at the time, there was no confidential or special relationship that obliged him to tell the whole truth. That's why I asked what you had told her. So we're on good grounds there because for the most part you have probably told her as little as she seems to have told you. Let me make this concrete. When I asked my wife, when I finally got around to getting married, about her cooking, she said that nobody ever complained about what she put on the table. I learned afterwards that she never put anything on the table, didn't cook a lick, but her answer was *perfecto*, in the legal sense."

"That must have been hard on a man who enjoys food as much as you do," Gary said. It was good to know that there was someone who could outmaneuver Gucci, and that his Achilles Heel was located the same place as every other man's.

"She got to be a very good cook, in fact," Gucci replied. "Over time she got to be an excellent cook. You don't have anyone in your life that you're particularly fond of, do you, by

the way? After we were married I found that my Chinese laundry was not up to the appropriate standard, nor were my cleaning lady, my dry cleaner, the place I garaged my car, my primary care physician or my dentist. I think I won on the dentist, but I had to get a new car as the trade-off. I think you see where I'm going with this."

"You said there were two things," Gary said. He had taken a pad of his own and was making notes, trying to create an outline, some sort of logical structure for analysis and discussion.

"The other thing is easy. The agreement will only be enforced if it is fair. This is unlike almost every other area in the law of contract, where the glee of a judge is compounded if he can confirm to some poor sucker that he's been screwed and say you should have known better. Judges love to feel superior. Look at Eckstein – what it says is that somewhere between you should have had a better lawyer and you should have known this guy was a sleaze ball – where's your due diligence? Do you really want me to hire Ling to investigate your girlfriend? Wouldn't be the worst money you ever spent. Peace of mind has no price, just like ..."

"Just like your fees, costs and expenses. I remember. But doesn't that seem like the law in the pre-nup area is better than the rest of the law of contract, then? Shouldn't fairness be a part of how things work between married couples? I mean it should be a part of how things work for everybody, but I guess that's too much to ask. Even based on my little experience with lawyers, I can see that things get so complicated it might be the right thing for the court not to try to legislate about what the intent of the parties should have been if they were trying to strike a fair bargain."

Gucci reached across the table and punched Gary in the shoulder. "Now he's looking like he can think while hanging by his toes from the slowly swinging bar of justice! That's my boy! You're half right, Gary. You're making

headway. Here's the other half. Everything in this process gets examined piece by piece. Remember again the word "it." Otherwise you can find yourself believing you're on solid ground only to find that someone else owns the ground and you owe them years of rent plus penalties and interest. The other half is that whether the contract is fair must be determined – not at the outset, but at the time of the divorce in the light of all the circumstances."

Gary frowned. He wrote down "fair at the time of divorce," on his pad and underlined it twice. "So what does that mean, Fred?" he asked. "What do you get out of a pre-nup anyway, if that's the way it plays?"

"You get the appearance of peace of mind," Gucci said. "Which we recognize is different from actual peace of mind. And you get to draw the battle lines a little bit differently from what the law provides, which in New York, I don't need to remind you, is basically fifty-fifty on everything you acquire after marriage, no matter from what source except inheritance. But where the battle lines start is not where the battle ends. By entering into this agreement – which you will need to negotiate with another lawyer representing the fair Evelyn, and which you will need to explain to her on what I'm sure will be a variety of occasions more enjoyable if another subject had precedence – you become the owner of an illusion, except that since you're here talking to me you get to know up front that it's an illusion. What we have – it's perfect if you stop to think about it – is that marriage contracts have become like contracts in the entertainment business, which is that they represent a ticket to bring a law suit when things change. Another way to look at it is that judges, being former lawyers, have worked to increase the number of ways in which lawyers get to make money. So when is the happy day?"

"Actually, Fred, we haven't set a date. It's just that she's started mentioning getting married. She's mentioned it a couple of times in the last

month, and I don't have any trouble seeing myself making a life with her, so I'm thinking maybe this is the time for my big move. Anyway, I realized I ought to be thinking all this through and my buddy suggested a pre-nup, so I came to you."

"Never a bad move. You know, when the chair – that's her, not you – puts that motion on the table, you need to be ready to respond in the affirmative or move on. I had a friend, very clever guy, very creative with legal theories in litigation and otherwise fast on his feet. He had a girlfriend who wanted to get to the altar in the worst way – as they basically all do – and he thought he was handling it nicely by being on the road a lot, so that when they got together they would need to spend their time catching up, if you know what I mean. One day he comes back from a trip, they have dinner and she says she's been looking at halls for the reception. What reception, he asks. Ours, she says, or mine with this other guy who is asking me out. My man is Orthodox, okay? So on any given day he will question his own middle name and he won't stop there. He says to her, sure, what guy, and she gives him the name of a cousin of his who has his own CD factory, and smiles. He told me now when he feels hot, in the summer on the golf course or whatever, all he needs to do is remember how cold that smile was. So he caved and he has four children and a house in Connecticut. But no regrets, except he's still trying to figure out how she engineered the cousin into making his move when he thought he had the situation locked up. I tell him she just recognized the power of her argument."

"Well, what's your advice, Fred?" Gary wondered what would happen if he ever came into Gucci's office with a situation he was sure of – would the lawyer confirm his conclusions or would he find himself, as always, in a state of confusion and feeling like any decision he might come up with would be no match for Gucci's plan.

Gucci put his pencil down. Then he picked it up again and flipped it so it stuck in the acoustical tiles in the ceiling. "Amazing, right? You would think the odds would be fifty-fifty between the point going in and the eraser, but it's about one out of ten. Those are your odds of making this pre-nup a successful undertaking. If you had kids, or real money like a Jack Welch or somebody in the fifty million and up category, it might be worth the pain. Might. But for someone in your situation, a relatively young man with his own business, even though it's doing very well – try working through the monologue where you tell her you're not really equal partners and watch certain favors go the way of the great auk and the dodo. I have a story I'm always looking to get into a conversation, Gary. This is a perfect opportunity.

"When I was in law school, I was privileged to be part of a seminar led by Professors Bickel and Bork. Bork you know. Bickel was from Romania, naturalized, a machine gunner at Anzio and one of Felix Frankfurter's favorite clerks. Died young of brain cancer. A terrible loss. Our subject was Constitutional law, and the topic of the week was privacy. That was before they got into his credit card records and went through his history of video rentals. A statute got passed about that later, the Video Privacy Protection Act. But at this point he hadn't had the blessings that being nominated for high office bring to you, like people going through your garbage. You know how professors like to use hypotheticals, right? His was as follows.

"Suppose," he says, "that I'm having my regular lunch at Mory's and preparing for this class by knocking back a couple of martinis, and I stop at the men's room on the way and forget to rezip my trousers. Then suppose there's a photographer from a magazine waiting in front of the law school with a telephoto lens and he spots me and takes a picture, focusing on my open fly. Is that an invasion of my privacy?"

"Bickel reaches over and puts his hand on Bork's arm. Then he says 'Of course not, Bob, De minimis non curat lex. Some things are too small for the law.' Not to cast any aspersions on your honorable member, Gary, but I think that sums up our situation here, and just at 12:30 as it happens. Where do we eat?" *GP*