



Evidence

FRED GUCCI, PART 6

Michael Parish

“**W**HERE DO TRUTH AND law part company? At the beginning. Make no mistake and understand that justice is not only blind, human justice, but deaf, dumb, insensate and asexual. A perfect counterpoise for the human species, one of a kind, allegedly sapiens although sap appears on the evidence much more accurate.” The lawyer folded his hands in front of him on his desk and waited for a reply.

“If I can understand you to say that there is no way they can get at that material, Mr. G., then you’re saying we’re good to go, right?” The pain for Gary of having had to bring the government’s subpoena to his attorney was nothing compared to the sense of the infinite that he felt as he waited for the answer, along with the notion that all the elasticity of time was cat’s cradled between the stubby fingers of the one and only Fred.

“One way or another, yes.” Gucci reached his right hand around to his left shoulder blade and patted himself a few times on the back, nodding his head in thanks for the gesture.

“How cool is that!” Gary said, meaning the result, not the gesture. “How cool is that.”

“It’s important to have expectations and reliable resources,” Fred continued, “but important also to maintain flexibility of thought and action.”

“As in?”

“Your backup plan – what was your backup plan if I had said there was a problem?”

Gary’s almost favorite movie of recent times was “Heist,” by David Mamet with Hackman, DeVito, Rhames, Lupone and Mrs. Mamet, among others. A point comes when Hackman, a master thief, is going out to do whatever and Mrs. Mamet, his wife, looks at him and says “Do I get the feeling there’s a backup plan involved here?” He gives her the Hackman special smile and says “Honey, I wouldn’t go to a third grade birthday party without a backup plan.”

“Who am I, David Mamet?” Gary asked and the two men exchanged long silent smiles, punctuated by snorts and muffled guffaws.

“No, much closer to Warren Buffet, I’m sure,” Gucci responded.

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“So how did they get to me to begin with?” Gary asked, playing for time while he considered whether he’d had one – thinking he must have but wanting to make sure before he answered that it wouldn’t make him look stupid or set him up for an easy putaway by Fred. The “financial community,” as it is called, consists of all the people who believe either that money is God or that it’s exponentially more important than anything else in the universe. Within that proud and variegated tribe, Gary was at most a church-going, sort of semi-tithing member. The edifice of capitalism is always in need of refurbishment, and every calling, trade, profession, religious group or organization has its collectors and bagmen. So you pay to play, pay to be in the mix, contribute to the “industry” organizations and go on about your “business” of whatever category. He thought he’d played it safe, stayed below the radar, but this subpoena had come in as part of what didn’t quite seem to be a sweep, although Gucci had called it a “fishing expedition.” But since it related to sensitive client files and Gary’s business was new – and money being the most mobile of all commodities – he had been biting his nails to the quick and hoping Fred would tell him that he wouldn’t have to cough anything up.

Because if he did, it would violate the non-disclosure provision the big accounts insisted on. They had to consent, as to which there was no requirement that they be reasonable. Their consent was not required if the response was to a valid court order, but that meant Gary would first have to fight it out of his own resources, including appeals, and that further meant the regulators would see him as a maverick with something to hide, which then meant they would spend a lot of time keeping him under the hot lights with their infinite resources while he tried to run his business. None of this was good in any

way. All of which was aside from the fact that you never entirely knew what was going on through the whole of any organization, and if someone wants to find a problem, really wants to, there will always be something to latch onto. He was married, so he knew that in spades.

“Well, I told you it was a fishing expedition, right,” Gucci said, “or at least it seemed odd because the investigation was related to a lot of shenanigans involving an area that you don’t have much to do with, as I understand your business. The one thing I hope is that your back-up plan, whatever it was, did not involve the destruction of evidence. In Boswell’s *Life of Johnson*, a clergyman is hanged for forging a check. They hanged you for a lot of stuff in those days, but Samuel Johnson remarked that forgery was the only unforgivable sin in a commercial society, meaning that money was the Holy Grail in England then, just as it is in our society today.

“Here and now in our consumer society, which creates by far more waste than the rest of the world has in its entire history, the odd thing is that getting rid of something has been the downfall of many more people than got nailed for what they actually did. It’s funny that consumption used to be the name for tuberculosis, for which there was no medical cure, and it was called ‘the wasting disease.’ Now the major resources of the government are devoted in the area of criminal justice to going through your garbage, which seems correct enough in some ways, based on the nature of this society. It started with Gary Hart and ‘Monkey Business’ and continues through Martha Stewart and a whole host of other queens and kings of capitalism. Just remember, as to computers, because the electron is the immutable heart of nature, you cannot get rid of it. It doesn’t even know if it’s a wave or a particle, so how can you presume to mess with it? They will find some-

thing one way or another, no matter how long it takes and how much they turn your life upside down in the process.”

“Thanks for the prophylactic lecture, Fred. I had kind of figured that out already even though computers are not my forte, but I do read the newspapers and I do see people going down for obstruction of justice, and they generally don’t get to the alleged crimes themselves. Is this another day when you make me get so hungry that I offer to buy lunch? Not that I mind – it would be my pleasure.”

“What I find interesting about your answer is that you didn’t respond to my lecture by observing that to destroy evidence would be wrong, so of course you wouldn’t do it. Instead you confirmed what I laid out earlier about the difference between truth and law by saying that of course you wouldn’t do it, because you are sophisticated enough to know it wouldn’t work. That’s part of what makes you a good client.

“No, today we’re going to lunch in my conference room – I’ve been missing our old get-togethers before you became God’s gift to the money management game, so I ordered up some delicatessen – corned beef, pastrami, Cel-Ray Tonic – diet of course, cole slaw and a couple of what they call Lindsay Tarts, which in the old country are known as Linzer Tortes. But of course what they send up here bears as much relationship to the original model as the solecistic phrase ‘honing in’ bears to the more accurate and traditional ‘homing in.’ You cannot hone in, you can only hone, just as you cannot egg someone, in the sense of encouraging them, because in the original Anglo-Saxon you egg on the individual in question. I am egg-ing you on now, you know, or having you on, which reminds me that there are a couple of devilled eggs in the spread as well – as good as home made, honed by the egg man’s art. Don’t forget, by the way, that if you in-

nocently destroy documents, without intent to obstruct justice, that’s okay. It’s just that under what passes for the current rules it’s almost like you need to prove your innocence, reversing the presumption that’s supposedly built into our criminal system. I mean, I can usually win that one, but ...”

“Did you just start taking one of those statin drugs, those cholesterol reducing compounds?” Gary asked. He said so partly to recover the ground he had lost, if that were possible, in terms of integrity and virtue by answering Fred’s question about destruction of evidence in the way he’d done, but partly because everyone else he knew was taking one, so he couldn’t imagine that even the great Fred Gucci would fail to be in that bunch and it pleased him to smoke the man out on at least one item. “Does that make you the walrus, then?” he couldn’t refrain from adding in his glee. “I mean if the guy down at the deli is the eggman? Get it?”

“Beatles me,” Gucci said, “but don’t you want to know the answer to your question? I mean your real question.”

“Which was?” Gary had learned from one of their recent get-togethers to focus as hard as he possibly could on answering Gucci’s questions with questions. He found it served him well across the board in dealing with other people, most of whom were unaware of how he was aping his attorney in this regard. On the phone, he and Fred could go six or seven rounds of questions before Gucci either wore him out or got bored enough to get to some version of the point. He also realized Gucci had dodged the question about his prescription medicines and moved the conversation in a direction that would be both impolite and stupid to change since he had deferred to Gary, in the sense of refocusing him on the actual substance of why they were meeting at this moment.

“Who set you up, of course. Who put the

dogs on you. The dogs of the law. And why you have no need to worry.”

Gary had learned in the course of life that postponing the inevitable did nothing but raise the cost on a sort of compound interest scale. You always paid more than you saved by delay. The crucial question was always whether a circumstance or an action was in fact inevitable or not. But he knew in this situation that nothing was more inevitable than the fact that Fred Gucci was going to have a corned beef and pastrami sandwich. He rose from his chair and went toward the door leading to the conference room where he had spent so much agonizing time in his first encounter with Fred, during the period when he'd been suspended from his job at the investment bank where he'd been working as an analyst. That was when he'd learned from Fred how little justice had to do with the way law worked and how much depended on abrasiveness, footwork and creating as much confusion as possible in the situation. Fred had saved his bacon – he could chuckle now when he used the phrase – costing him nothing much more than his innocence and enabling him to set up the business that had gone so well thus far. In the world of commerce, it passed for a good trade, then and now.

Gucci followed him in and waved magnanimously to the several brown paper bags on the credenza lining the wall underneath the English hunting prints he had always believed must have been in the office when Gucci leased it, because they bore so little relation to the man himself. If Gucci rode a horse, that horse was in big trouble.

“Who loves you, baby? Nothing but the best for the big man. I mean me, of course, but also the best for you, compadre. Dig in.” He was in his shirtsleeves, which he proceeded to roll up before opening the bags and laying out their contents. “You can't do this in a res-

taurant, roll up your sleeves – it'd be frowned on, isn't that funny when you think about it? Because most restaurants, they're not really about food but about the way people relate to each other, and food is just a context, a premise. Restaurants are all about behavior. When I was a young lawyer I had the chance to go to lunch at Lloyd's of London, in the executive dining room. I was on a mission for my senior, who was well-respected there, and he told me that they would encourage me to order the Dover sole, not because it was a delicacy but because they served the whole fish and they would want to see whether I knew how to bone it myself in the proper way. So I worked on that until I was pretty good at it, but he forgot to tell me what I guess to him was obvious.

“I had just gotten my first big bonus and I went to a fancy men's store and bought myself a beautiful brown tweed herringbone suit with alternating red and blue pinstripes. It was nipped in at the waist in a stylish way, don't laugh, and the fabric felt like it was made of some combination of iron and silk. Canadian weave, as I remember, a very fine wool. So before you go into the executive lunch room at Lloyd's, you stop of course in the men's room, where stands a man with a small whisk broom whose only goal and role in life is to make sure that, as the members and guests leave to dine, the shoulders of their suits are free from dandruff. As we passed that honorable gentleman, my host asked me if I cared for a dustoff. When I cheerfully declined I could hear him say, *sotto voce* but loud enough to be heard by me, ‘No, don't suppose you'd need one with that sort of suit, would you?’ As I looked around, I noticed for the first time that all the other men in the place were in navy blue and charcoal gray. Didn't much matter about the fish after that, I was cooked with that crowd. I had the curry and worked on other clients going for-

ward. Curry was excellent, by the way, but I did get a start on being more sensitive to the sensitivities of others.”

“Great story, Fred. I’ll pass on the devilled eggs, if that’s okay, but for old times sake it’s good to be back in this room under much better circumstances.”

“So you know. No, you don’t – it’s just a coincidence. Scientific sample of one.”

“Know what?”

“As I thought. Hold your horses and eat your meat. You can’t have any pudding if you don’t eat your meat. Know why we’re having lunch in here.”

“Because you just got a prescription for statins.” What a coup! He’d worked the conversation back to get an answer to his question. He’d cornered him finally.

“No, no, no – I’ve been on those forever. A friend of mine used to do drugs – not like you think, he was the lead analyst for several banks on the development of new drugs. Not only did we make some decent money together, he turned me on to that line of pharmaceuticals in particular at a very early stage. No, Greenaway.”

“What about Greenaway?”

“This concerns money, correct? Of course. And where there is money, where money has abided for awhile, two things inevitably flourish, greed and a sense of entitlement. And part of a sense of entitlement is the idea that what’s mine is never by any means yours. You remember the famous ‘Pig Pool’ at Skadden Arps, the estimable merger law firm? It was when the members of the bonus committee decided that the fairest way by far to distribute the money was to give it all to themselves and three of their proteges. Out of a firm of hundreds of lawyers! That’s some high octane lawyering, or what gives a bad name to lawyering, whichever you prefer. So I put my mind to thinking along those lines. The more intelligent parasites are ones who ‘farm’

their hosts, keeping them alive so as to have a continued source of nourishment or wealth, but the more typical ones are mean and brutal, growing to the point of killing both their hosts and themselves, like cancer as a prime example. Do you recall what our backup plan was with Greenaway if the SEC hadn’t started looking into the matter – based on a phone call from guess who, of course, and if Greenaway hadn’t volunteered to make you a sacrificial lamb at a very handsome, by the time I was done with them, price? Do you?”

“Of course, Fred. It involved the way he was using the firm’s charitable foundation to populate his wine cellar and fund some of the expenses he didn’t want people to know about or have to pay taxes on. When I went to one of the benefits, I noticed that there was a lot of wine that was different from what was being served and that stayed in cases in the delivery area. As an analyst I always like to look behind the scenes – you know there’s nothing more boring than speeches at benefits, and there’s always the chance you’ll meet possibly an unemployed actress who might be worth dating. They loaded the full cases into the truck that took away the empties, which struck me as strange, so I did a little detective pursuit and discovered that they dropped the full cases off at his town house before heading off to the recycling plant. Then I got one of my cronies in accounting to let me look at the foundation’s books, made some copies and put two and two together.”

“And made between five and seven, as a good money manager should do,” Gucci responded with a smile.

“Are you telling me it’s Greenaway? Why would he want to come after me at this late date? It’s been at least three or four years. I have trouble imagining he would even remember my name.”

“How could he forget you, Gary? First

of all, you ended up with some money he thought was his – remember how much he had to increase his offer by the time we got done? You couldn't forget. And accordingly, how could he? My key question was, who would want to do you wrong. You're a nice guy and a straight shooter, even a little bit of a Boy Scout. So I didn't think it would be any of the usual suspects, competitors, disaffected employees or the like, because you are unusual on Wall Street in that you treat people fairly and like human beings. That alone might get you put on a special Richard Perle death squad list, but you're not high enough profile to be taken down as an object lesson to future offenders of the Wall Street Code of Ethics, which by the way if you've seen it is a book full of blank pages. Therefore, I knew that it was personal, and mean-spirited, which is how I knew Greenaway was our jack in the box.

"You're an upstart to him, and it's even worse that you are successful, not like he is, because he inherited everything, but because you made it on your own. You might say, in this age of increasing rigidity and lack of opportunity in this country – I just read this in *The Economist*, therefore it's well beyond true – that he was protecting his people from the likes of you. Class warfare in its highest sense, the rich against the nouveau riche. Putting them back in their proper place down below. As a good bulldog, he wanted to take a chunk out of you, plain and simple."

"But the subpoena is already out, so if we turn Greenaway in, how does that help our cause, and isn't there a statute of limitations problem here?"

"Good first year law school answer, son. Not law review, but good enough to get a passing grade, maybe even a B. Which is because it is direct and rational, although I thought I taught you that is not the way the law works. There is no statute of limitation

on tax fraud in the case of failure to report income, here in the form of wine and expenses related to various other forms of not quite legal entertainment, if I'm remembering correctly." Gucci waved a meaty hand at Gary, signaling a brief recess while he plowed into his sandwich and took a healthy pull on his soda. Gary had no choice but to do likewise and wait for the other shoe to drop, the rest of the story to unfold. When Gucci wiped his mouth with a napkin Gary asked "Okay, professor, then how does that information help us now?"

"You remember Louis Sheridan, Greenaway's lawyer?"

"You mean the rowing guy, the guy who fluttered his eyelids Harvard/Yale, Yale/Harvard?"

"The one and only. As a member of the profession, I thought it might be a good idea to give Louis a heads up that his client seemed to be engaged not only in actionable behavior toward you, but that it might blow up in his face and cover him with something that looked like blood but smelled distinctly like Chateau Ducru Beaucaillou."

"What do you mean actionable behavior? Where's the wrong in what he was doing?"

"You're both in the money business, and he really has no idea if there's anything wrong with your operation, he just had the 'bright' idea to use these recent investigations to try to stick it to you. There's a legal concept called 'trade libel,' which makes it actionable for someone to maliciously accuse someone else of wrongdoing or otherwise cast aspersions in order to disadvantage them in their business. Very little used in these strident and boorish times, but still a part of the living law. Like a version of malicious prosecution or abuse of process. We could make out a case, a very thin case, for something along those lines – something that would stand up to a summary judgment motion, and then

it's all about his reputation and character. In the money business that is critical – which is why he took the shot at you. Remember E.F. Hutton, the brokerage house that was kiting checks to earn some money on the float? As soon as other firms learned of it, they cut them off, and money represents among other things oxygen, so they suffocated in a remarkably short time, like the Sultan's son who tried to depose him and was ordered strangled with a silken bowstring so as not to shed a single drop of royal blood.

"The main thing, though, is the phony foundation. You know how lawyers always like redundancy, like belt and suspenders, or ... a backup plan?" Gucci got up and did a buck and wing, at least that's what Gary thought it must be, sashaying back and forth along his side of the conference table and flapping his arms like an ostrich. Gary stood up and waved his own hands like a quarterback changing a play at the line of scrimmage. Or a roller derby participant "calling off the jam."

"Hold it, Fred, hold it. How does calling Sheridan get us to the finish line? That trade libel and the other stuff sounds like bullshit."

"Please don't tell me that law and bullshit are incompatible, but you are now bucking for a B-plus, young man. Tell me why I threw that piece in. Take a moment and reflect. While you are thinking, let me tell you how a lawyer constructs a case. He takes a balloon and blows it up – trade libel. He takes another balloon, blows it up and, shazam, you have malicious prosecution. A third balloon called abuse of process is filled in its turn, then the lawyer twists the three balloons together so they form an animal, in this case a barking dog. Why did I put this in front of the very intelligent, very experienced, Louis Sheridan?" Gucci stayed on his feet while he spoke, making the hand gestures that went along with his narrative. He reached across

the table and pantomimed handing it to Gary, producing from behind his back a Lindsay Tart which Gary found himself in no position to refuse. Gary tossed the Lindsay Tart, wrapped in shrink film, back and forth between his two hands while he pondered the problem. The pastrami corned beef combo was better than he had remembered. When it came to him he laughed out loud.

"Because you had to give Sheridan a backup plan as well. Because if you only gave him the foundation piece and he had to explain to his client why they needed to undo what they did, Greenaway would know that Sheridan had something bad on him that he might be under some duty to report, or that would give Sheridan the upper hand in a way that Sheridan knew would make Greenaway so uncomfortable he might lose that big fat client. Am I right? I know I am. You both knew Greenaway would get spooked enough by the balloon dog that he would do as he was told, but it wouldn't be something that made him uncomfortable. You are the dog, Fred, the big dog, the biggest. I love it, love it, love it! But Sheridan is not the government, so how does that part of the problem get solved?"

"That's not exactly right, dear boy, but you've earned your A. In these days, when all Republicans bark at the government together with the stentorian voice of one colossal bloodhound, there is no meaningful difference between the senior legal counsel to a big contributor and the government, except that the attorney for the contributor has more power, because if he doesn't get what he wants he can go up the chain much faster and much higher than any poor schmuck government lawyer. As soon as the right people heard from Sheridan to call off those dogs, they acted on it like it was orders from the right hand, and I use the terms advisedly, of the Almighty. Greenaway is a major con-

tributor for sure. I checked on it. That's why he has to steal from the tax funds belonging to the people in order to have every single item he believes belongs in his portfolio of entitlements. To show there is still honor in the profession, Sheridan did as he promised, and called me back to confirm that all of this would just go away – had already gone away, and I believe we can rely on his word, just as he can rely on my word that we'll let the foundation thing sleep with the fishes. So where's the irony?"

Gary decided that the Lindsay Tarts must be better than they looked and felt like he needed a sugar jolt, so he took a big bite out of it. It was so dry he needed to wash it down with some diet Cel-Ray before he could even speak, providing a culinary experience he was sure he would never be able, or want, to duplicate. "I give up, Fred, where?"

"In the legal sense, it's only true if you can prove it. If you can't prove it according to the rules of the game, of evidence, it's not only not true, it doesn't even exist. It's not a legal fact, and the system in this sense, although not in others, is very much a closed one.

Knowing you, I have a relatively high level of confidence that while there are always things wrong in any business operation, there's unlikely to be anything in yours that really deserved this kind of scrutiny and investigation. It's a fact of life that millions of people break the law every day in a multitude of ways, that's the essence of human nature as I see it anyway, and very few get called to account. A lot of that, particularly in this lawyer-bedevelled country, is because there are so many laws that are so stupid or just plain wrong. Mostly because those in power see that as a way to enhance their control of others or enrich themselves or their patrons, not because there is any justification in policy or morality.

"So the irony is that here we have a coincidence, which maybe should be pronounced co-in-side-ence, of actual and legal truth. A rarity, but all the more worth savoring for that, although not to be taken as either indicative of a basis for future conduct, make no mistake. Hey, did we have a great lunch or what? You're my guy. Keep bringing me more of these." *GP*