Fighting the Good Fight: The Writer Soldiers On

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This is a Texas contract case masquerading as an Arkansas franchise case. Although it mistakenly retained authority over the case despite the parties' explicit choice of another forum, the trial court should have recognized that the clear and unambiguous written contracts between the parties fell outside the plain language of the Act. These written contracts were appropriately determined by the lower court to be unambiguous. They undisputedly establish an independent contractor relationship between Acme and Smith. The contracts also expressly prohibited Smith from selling Acme products in any fixed retail establishment. They did not assign Smith any particular geographic territory. Even assuming, arguendo, that the Act applies here, Smith's repeated misrepresentations and fraudulent activities involving Company Managers, Company Workers, and potential recruits, and her repeated attempts to defraud Acme, so compromised the company's trademark and trade name that Acme was free to end its association with her on the terms set out in the employment contracts. In short, the lower court should have enforced the unambiguous contract terms by either dismissing this case on jurisdictional grounds or entering judgment for Acme. [181 words]

I'll never understand why the lawyer in charge made me file this when I'd sent her something crisp and clean. But she's not alone. I'm startled almost every day by the breezy confidence with which other lawyers shoehorn their work into mine.

Now, don't get me wrong. I'm happy to hear from the lawyer who's running the file. I want him to tell me his theory of the case, to help me understand what's important, to alert me to the points on which the client believes we must hold firm. I just don't want him tinkering with my work. I'll do the tinkering; his job is to tell me whether I've captured the arguments he wanted me to make. And if he says I haven't, then I'm happy to keep at it until I've told the story he had in mind.

Lawyers sometimes forget that even a strong argument, if badly stated or poorly positioned, will lose its power to compel. Composed for maximum effect, however, it can win the point. The case. The day. And that's where I come in: I compose for maxi-

mum effect. My brief is designed to make the court conclude that our client must prevail. Everything about it, from architecture to diction, is meant to achieve that end. A hundred professional judgments go into the final design, and because not even I can see them all later, the lawyer who impetuously substitutes words may pull the thread that unravels the whole damn thing.

That's the hard part of writing, the annoying part, the part that makes me curse and sigh. But then there's the other part, the better part, the part that keeps getting better, in fact, as I work on getting better at what I do. That work is difficult — sometimes daunting — and the tangible rewards are few. Almost no one notices, and fewer still really care. But when I'm writing, I don't think of that. I don't think about anything else at all. I see the story take shape as I work, and I hear my words singing in my ear. "Crony," I type in for "companion," and then I murmur it aloud. It's perfect. And all at once I'm smiling as I write.

I sometimes wish, of course, that I were a trial lawyer. Or an IPO specialist. Someone whose work is recognizably valuable and important, and who has an income to match. But I'm not, and my work isn't, and this is the path I chose. I curse and sigh, and then I shrug, and more often than not, I smile as I write.

So my advice to the associate who's serious about writing is Churchill's: fight on the beaches, fight on the landing grounds, fight on the fields and in the streets. Never surrender, for you may someday have the chance to file something crisp and clean, something that looks, perhaps, a lot like this:

> *This is a Texas contract case masquerading as an Arkansas franchise case. Although it mistakenly retained authority over the case despite the parties' choice of another forum, the trial court should at least have recognized that their agreements were beyond the reach of the Act. And even if the Act applies here, Smith's routine abuse of the other managers and workers in her division and her repeated attempts to swindle Acme so compromised the company's trademark and trade name that Acme was free to terminate her. In short, the lower court should have either dismissed the case or entered judgment for Acme.* [102 words]