

CHAPTER ONE



“A.B., you there? You there, bro? Are you there? Terri, would you find out from Kristin where the hell Alex is? He was supposed to be back from court fifteen minutes ago, and I need him right now.”

Nick Carlson’s voice annoyed the living shit out of me, and just about everyone else who had to perpetually listen to his absurdly amplified twang in our office on a daily basis. His insistence on buzzing in on young Associates’ intercom systems, by using his speakerphone, rather than lifting his telephone receiver compounded his abrasiveness.

“A.B., where you at, babe?” Now off the intercom, but still equally audible to the four secretaries and six attorneys in his quadrant of the office, he added, “God, people really gotta start stepping it up...”

“Nick, I’m here. Sorry about that.”

Actually, I really wasn’t sorry. I had just gotten back from a case management conference at Philadelphia City Hall and desperately needed to find out what was going on in the Phillies’ matinee game against the Cardinals. By the time that I had returned from the conference, the game was already in the seventh inning. Although Kristin Fabrizzio, our 28 year-old dynamo receptionist, shouted to me on my way back in the office that the Phils were up 3-1, I needed to know the scoring details. Had Ryan Howard belted two homeruns? Was Cole Hamels in the midst of one of his double-digit strikeout performances? Was Nick Carlson really buzzing in on my intercom, when I had gotten into the office two minutes

Adam Barrist

earlier and had just logged onto *espn.com* to check the goddamn score?

“Oh...I thought you were – never mind. My office, now!” he ordered.

When a Partner at Krauss, Carlson, Whitby, Miller and White directed an Associate Attorney into their office in such a tone, the recipient of the communication would jump to attention, straighten their tie or blouse and briskly walk down the hall to meet their fate. In the minds of Associates and support staff, Nick Carlson was the most feared of the Partners. He was what the secretaries called “a screamer.” My idea of “a screamer” was a petite, inexperienced University of Pennsylvania freshman girl who liked to loudly call out the name of The Lord while her upperclass boyfriend taught her the ways of the world. There I go, though, living in the past again.

In any event, Nick Carlson, a 63 year-old, 5’5” prick of a lawyer, certainly didn’t fit my definition of “a screamer.” He may have screamed a lot, but he wasn’t a screamer. He was just an asshole.

After walking seventeen feet, I was just about to enter Carlson’s office when his secretary, Terri, stood up from her chair, reached across her desk, grabbed my arm and whispered, “he’s in a really bad mood today – be careful.” Upon offering me my due warning, she performed the sign of the cross, followed by a solemn kiss of her crucifix.

Many Jews might have been offended by the sign of the cross, but not me. Terri’s words and gesture said to me, *“you’re such a nice boy. I hope that he doesn’t scream at you – you can’t possibly deserve it. After all, you’re smarter than him and in your six years of practicing, you have garnered a more comprehensive understanding of the law than Nick has in 37 years. May God be with you.”*

Confident that God, Jesus and the whole crew were on my side, I ventured into the Hades of Philadelphia’s Market Street legal corridor.

“Sit,” Carlson directed me without so much as removing his eyes from his computer. His pensive stare at the flat screen monitor might have suggested that the man was reading an important

e-mail concerning one of the “multi-million dollar” cases about which he frequently boasted. I could see, however, that he was surfing the internet, apparently looking at a mountain property for sale.

After two good minutes of staring at the familiar surroundings in his office, such as the plaque on his desk which read, “Lead, Follow or Get Out of the Way,” various golf trophies and plaster airbrushed models of fish carcasses, I said, “Nick, you thinking about buying another place up in the mountains?”

“Shhh, hang on, gimme a second,” he chided me, while placing an agitated right index finger to his lips. Due to the urgency of whatever inane message or task that he was about to communicate to me, I was glad that the case management conference didn’t run especially late. Nicky needed my assistance, and he needed it right away. Time was clearly of the essence.

After another minute, Carlson shook his head in disdain at his computer screen, turned to me and made eye contact for the first time, stating,

“Take a guess what Dan McDougle is asking for his place in the Poconos? Seriously. I want *you* to tell *me* what you think his place is worth. You know where they live – a quarter-mile from Lake Majestic – three bedrooms, two and a half baths, tons of warped vinyl siding that desperately needs repair.”

Considering that I had absolutely no idea who Dan McDougle was, and I was unfamiliar with the Pocono Mountains’ geography and residential dwelling values, I really didn’t know how to respond. Since everyone whom Carlson knew was either one of his schmuck, self-important golfing or fishing buddies, or a corporate executive whose ass he kissed in the hopes of gaining their company’s legal business, I figured that McDougle fit into at least one or possibly both of those categories.

“Why are you looking at me with that blank, bemused stare? Cat got your tongue?”

“Ummm, O.K. I’ll say one point four.”

“Close. Not bad. He wants one point two for that piece of shit! God, what an ass. I used to play golf with him all the time when he was just a bottom of the barrel V.P. at SynergyUniverse

Adam Barrist

Pharmaceuticals. Now that he's hot shit, it's as if I don't exist. You know, he didn't even acknowledge my presence last week when I was sitting three bar stools down from him at the Lumberjack Tavern up in the mountains?"

Bingo and bango. God, was I good. It took me a little while, but I eventually got the point: McDougle had a *three* bedroom vacation house *a quarter-mile away* from Lake Majestic. Carlson had a *five* bedroom vacation house *on* Lake Majestic. Nick knew that I was aware of the specs of his house, since I had visited there on several prior occasions during the annual firm attorney retreat. Gosh, I'm no real estate analyst, but could that mean that Nick's vacation house was worth more than \$1.2 million? Could it even mean that his vacation house was worth *substantially* more than \$1.2 million?! Bravo, super lawyer! You have stuffed sea creatures adorning the walls of your office *and* you have a house in the mountains worth more than the GDP of some Third World countries. You must just wake up every day and have to pinch yourself to make sure that it's not all a dream. Now what do you want from me and why are you keeping me from figuring out how the Phillies scored their runs?

"Alright, here's the story," he began, as he stood up, put his hands together as if he were in a tee box and began playing air golf, "I played Wissahickon Valley today, and had an unbelievable round."

That he was wearing tan khakis and a striped golf shirt in an office full of suits and ties caused me to be not shocked when he indicated that he had hit the links earlier in the day. That he had played his round at the virtually all Jewish Wissahickon Valley Country Club was somewhat surprising. This emotion was tempered by my annoyance at his decision to, yet again, play air golf in my presence. Neither I, nor anyone else in the office deemed Carlson any more hip for swinging an imaginary golf club and staring out his window as if his ball had bounced off of the Criminal Justice Center 46 flights down and three blocks away.

"Rosenberger is really not a bad player, but I – I shot a friggin' 71 today," he enlightened me, almost with a twinge of annoyance

that I hadn't cut him off mid-sentence to ask him what his score for the day was.

Now it made sense. I knew that prominent Philadelphia podiatrist, Barry Rosenberger, had retained the firm a few years ago to sue one of his former medical practice members for breach of a covenant not to compete. Carlson won the case, and with it, a multi-million dollar verdict and a shot of his ugly mug on the front of the city's daily legal bible, *The Legal Intelligencer*. Because of that great trial result, Rosenberger and many of his doctor friends were clients for life.

As for the "ugly" part about Carlson's mug, I have to admit that as much as I despised him, he wasn't ugly at all. What he lacked in size, he made up for with his bark and polished appearance. He was, objectively, a handsome man who commanded respect for his perfectly coiffed graying blond hair and his meticulously-appointed wardrobe. Those details caused him to exude a decidedly intelligent and successful glow.

In conjunction with his commitment to grooming and clothing, Nick made certain that he was never short changed because of his diminutive physical stature. Those doubting his greatness were presented with his ego wall of golf and fishing memorabilia and were often treated to discussions – or rather, soliloquies – about those hobbies. In Nick's mind, those harboring doubts as to his magnificence were easily reformed by those stimuli.

Nick continued, "While we were teeing off on 12, Barry tells me that he just got dismissed from some frivolous medical malpractice case, and he wants us to file a *Dragonetti* action against the Plaintiff and the Plaintiff's attorney. I told him that it was a slam dunk and that I would put one of my main men on the job."

He paused and smiled at me with his perfectly straight and snow white bleached choppers.

"That's you, ma' man! You ma' main man, aren't ya'?"

Managing a fake smile, pondering whether I was *one of* his main men or, rather, his *main man*, I shot back, tentatively,

"Indeed, Nick, I am your *main man*."

Adam Barrist

“Damn right! We (read: you) will mop the floor with that scumbag and his attorney.”

Phew! I really was his main man.

Pennsylvania’s *Dragonetti* or Wrongful Use of Civil Proceedings Act provides a legal cause of action to aggrieved parties who are successfully terminated from a lawsuit in which they have been named. In order to recover damages in a *Dragonetti* case, a party has the difficult burden of proving that the original suit was commenced and maintained without probable cause. Most frequently, *Dragonetti* cases are pursued by physicians unsuccessfully sued in medical malpractice suits.

“Here’s the file. What do you think?” Carlson demanded.

After perusing the inch-thick materials for a minute or two, I was able to gather that in the case, Dr. Rosenberger had been accused of failing to diagnose a particular condition on a diabetic woman’s foot which ultimately resulted in the woman being forced to undergo an amputation of the foot. It was immediately apparent to me that Dr. Rosenberger was voluntarily dismissed by the Plaintiff from the lawsuit without his insurance company having paid any consideration for the dismissal. However, it was further apparent that before the Stipulation of Voluntary Dismissal was executed, the case had survived a Motion for Summary Judgment filed by Rosenberger’s insurance company-appointed counsel. This meant that the court had determined, as a matter of law, that a genuine issue of material fact existed, such that the case could proceed to a jury to determine whether or not Dr. Rosenberger was liable for malpractice.

Even more striking, the file revealed that the case had proceeded to a jury trial, which ended in a mistrial, as the result of the jury being unable to reach a verdict. The *coup de grâce* was that the Stipulation of Voluntary Dismissal was signed and filed only after the Plaintiff, disheartened at the hung jury, permanently relocated to Brazil, and as such, decided that she did not want to pursue the case any longer.

Translation: not only was the case against Rosenberger patently not frivolous, but he should have been thanking his lucky stars that this woman, whose foot he was responsible for causing

to be amputated, tired of the legal process and decided to move on with her life.

“Uhh, Nick, I’m not sure how ‘frivolous’ this case is. In fact, I’m not sure that we can...”

“Like hell we can’t! I told Rosenberger that the case was a slam dunk. Rosenberger trusts me and loves me. Why is the underlying case not frivolous? What the hell do you know? How long have you been out of law school, like, a week? Would you care to enlighten me with a few more of your pearls of wisdom?”

I presumed that my initial impressions of the case instantly relegated me back to being *one of his main men*, and that I was no longer his *main man*.

“Nick, the case survived a Motion for Summary Judgment, went to trial, the jury was hung, and the Plaintiff just dropped the case because she moved to Brazil.”

Looking like a beaten man, primed to admit the error of his ways, Carlson paused for a few moments with his miniature jaw open. He abruptly snapped out of his daze and shouted,

“Well I don’t give a fuck! We’re dealing with Barry Fucking Rosenberger, one of my only clients who both pays me my full, undiscounted rate of \$550.00 per hour and has never questioned a single one of my bills. It’s because of people like him that allow your little Julie to drive her Mercedes SUV. You say the case ain’t frivolous. I say, get your ass in your office, close the door, open that Ivy League brain of yours and think of a brilliantly creative way to make it frivolous. *Comprende?*”

“Yeah, Nick, I understand. I’ll get to work.”

“Hey, A.B., while you’re *getting to work*, why don’t you also *get to work* on bringing in some of your own business to this firm? I’ve been meaning to talk to you about this for a long time. Any trained monkey can write a brief or do the song and dance in front of some dumb ass jury. If you really want to be valuable to this firm, you’re going to have to build your own book of business – do you catch my drift?”

“I’ve got a few things in the pipeline, Nick – it’s just that...”

“You just keep tellin’ yourself that, kiddo.”

Kiddo?

Adam Barrist

“With that attitude, you’ll be making the kind of money that Julie makes now, in, well,” Carlson said mockingly, while looking at the ceiling, “I’m not too good at math, but, I’d say you’re on pace to catch up with her current salary in about seven years. How does that make you feel as a man?”

It made me feel like grabbing the fishing reel on his desk that he used as a paperweight and bludgeoning his face with it.

“Not so great, Nick. I guess that I’ve got some room for improvement.”

“Well, Alex, I’m glad that you agree.”

Was he going to can me right there?

“I’m sorry?”

“The firm’s Partners – we also see a great deal of room for improvement from you. And with the economy, and all, we’re just not going to be able to give you the same raise and bonus this year.”

“Nick, I’m a little confused. I know for a fact that I had the highest billable hour total of any Associate this past year – that means that I made more money for the firm than any of your other employees.”

“Whoa, whoa, whoa, don’t get so defensive there, Tex. Last time I checked, this was a team – and I expect you to be a team player. That means taking one for the team when the team’s on a five game losing streak. Do you see what I’m saying?”

I saw exactly what he was saying. Irrespective of my job performance, in light of the sluggish legal employment market, they were banking on their slighted Associates not finding employment elsewhere.

What’s the difference about a smaller bonus and raise? I was pretty certain that my financial institutions would understand when I asked them if I could decrease my monthly mortgage, car lease and student loan payments. Plus, I wasn’t in it for the money. I was in it for my lifelong idealistic goal of padding the bank accounts of fat cat law firm partners.

“Yeah, Nick, I see what you’re saying.”

“Good. You know why I love you, A.B.?”

I’m waiting with baited breath. Please tell me, Nick.

“Because I know that when I see you next, you will have a shit eating grin on your face, telling me the most brilliant theory in the world as to how we can overcome the slight difficulties presented by the factual scenario in Rosenberger’s case. By the time you’re done, I’ll be fully convinced that Rosenberger stands to make millions off of this suit.

“By the way, since I’m trying to build up my corporate practice and distance myself from this lower end – I mean – individual client stuff, don’t put my name on the pleading – just put yours.” (Read: “Alex, when the attorney whom you sue is so repulsed that he elects to make it his life goal, henceforth, to ruin the legal career of the person who sued him, that person will be you and not me. Since I sign your paycheck, you really shouldn’t have a problem with this prospect.”)

As if in full agreement with everything in his statement, I nodded, smiled and said, “Will do, Nick, I’m all over it.”

God, was I a pussy. Anything for money, Alex, anything for money.

“Well, O.K., then – off you go!”