

# Footnote

by Carol LaHines

Sean reworked the preamble. He tried to strike the right balance between sympathy toward the plaintiffs in the cancer cluster suit, and outrage at the insult to the reputation of the international conglomerate Zyclone Pharmaceuticals gmBh, unjustified as it was. He tried to identify with the plight of cancer-stricken children, while underscoring that their tragedy, their dire prognoses, were in no way attributable to chemicals in the groundwater, diluted quantities of which had never been shown, statistically speaking, to cause harm.

It was impossible to reduce all risks, all waste, to zero. There would always be runoff—in this case, colorful leachate—that escaped detection, a molecule here or there that got into the groundwater. This was an unintended consequence, a cost of doing business, one that could not be prevented, notwithstanding the EPA's bulletins about acceptable levels of long-chain hydrocarbons in the groundwater. The evidence, the hard-and-fast p-values, showed no significant connection between parts-per-billion quantities of 1,2,3 di-chloroethylene and neurological cancers. None whatsoever.

Sean was supposed to send Gordon the brief *sometime over the weekend*. But after working on it for months, billing late nights and weekends and alienating his girlfriend sufficiently so that she moved out—Sean was reluctant to hit *send*. He was loath to allow Gordon to affix his name to the signature block, to tweak his elegantly-crafted arguments re the lack of a scientific link between Zyclone's manufacturing activities and nervous system cancers. Gordon—who would do nothing more than look the brief over, add a sentence or two about *EPA's witch hunt against*

*responsible manufacturers*—did not deserve the credit.

It seemed that after seven years of toiling at the firm, of spending Friday nights parsing cancer-cluster statistics instead of hanging out with his girlfriend (soon to be ex-girlfriend), that he was entitled to some kind of acknowledgment, authorship rights, a starred footnote thanking him for his contributions to the text. After foregoing Saturday morning sleep-ins, Sunday brunches (Gordon always wanting him to be on “stand-by,” in the event he needed an audience for his cogitations, someone to comb through the documents in the storage room searching for a memo he seemed to recollect from years ago), Sean was assuredly entitled to at least a mention.

Something to mitigate the relationship-wrecking happenstance of being recalled from a vacation in Bora Bora, a trip he had designed with the specific objective of placating the girlfriend, assuring her that she was a priority (at least until summoned, yet again, by Gordon, directed to compose an eloquent and finely-crafted indictment of the plaintiffs’ case). Having to pack ASAP, and endure twelve hours in coach (Bora Bora to Los Angeles, and a change-over from Los Angeles to New York), while his girlfriend harangued him, derided him as Gordon’s *bitch*, and, during the stopover, arranged for movers to be on the premises the next day.

He could see the associates toiling at the firm across the way. Most, like Sean, had worked on law reviews, proofreading and cite-checking and ensuring that the footnote-to-text ratio was not imbalanced. Sean watched them at their desks, staring at computer screens, clicking through hundreds of Westlaw results, hoping to find the mythical *case on point*.

He was diverted by activity on the balcony of the Hilton Towers, just across the street: hotel guests disinhibited enough to think that their terrace gropings went entirely unnoticed.

He obsessively re-ordered the clauses, re-reading the brief aloud and trying to generate synonyms for *it is contended*, *it cannot seriously be disputed*, *it is beyond cavil*. He knew from his tenure on the law review that legal writing was a form of highly florid code, interspersed with obscure Latin phrases and italicized signals, *see, e.g.*, or *passim*, or the highly controversial *cf.*, which some had incorrectly conflated with *but see*. Sean watched a couple frolicking in the penthouse of the Hilton. After fornicating on the balcony, they retreated inside and pulled the drapes, pretending that they had not just exposed themselves to pathetic office jerks like he, for whom the spectacle would provide a thrill, the only one he’d had in a while, before he packed up for the night and returned to his apartment and cold, left-over lo mein, his girlfriend’s voice still pathetically on voice mail. After watching the couple, Sean ran into the bathroom stall to jerk off, flushing the run-off down the toilet, careful not to leave a slick that could only be the evidence of a *deranged masturbator*.

He was reasonably certain that Gordon was not engaged in auto-erotic activities. Gordon, in all likelihood, was in the company of one or

both of his mistresses. Gordon liked to ruminate, to ponder theories of the case—the toxicological data utterly refutes any notion of a link between 1,2,3 di-chloroethylene and adverse health effects at the doses alleged by the plaintiffs, let alone furnish support for a cancer cluster—while lunging at women, sometimes inadvisably, on velvet banquettes.

Gordon selected his mistresses and sometime lovers from among the ranks of associates and legal assistants and temporary office help, oftentimes relying on Sean as a lure. Sean crunched well-water data, painstakingly filled in exhibit cites, and in addition arranged, one evening, for his classmate Amber to join them at Fizz, an upscale champagne bar near the office. Sean, at the time co-habiting with his girlfriend, would not dream of seducing Amber (though masturbating after the fact, in one of Fizz's cavernous bathrooms). Gordon, married with two other love interests in the office, had no such qualms. He relied on Sean to strategically absent himself when it became clear that he was intent on possessing Amber *that very evening*, on the self-same banquette.

Sean honed the preamble, striking the right tone between concern for cancer-stricken children and firm disavowal of any legal responsibility for their condition, incidentally noting Zyclone's history of community outreach and health and preventative cancer screenings. Zyclone had installed a billion dollar pump-and-treat system to extract contaminated water from the ground, filter it, and return it to the Cohansey basin. Zyclone had carted off 300,000 cubic meters of contaminated soil. Zyclone had installed air scrubbers that could remove any toxin from the atmosphere.

Who knew what little Grace had been breathing during her short life? Who knew what she might have stumbled over on the beach, what had washed up in the seawater, what little Grace's mother, a shiftless, sporadically employed cocktail waitress (according to Zyclone's investigator), had smoked throughout her pregnancy—tar, nicotine, formaldehyde—directly into the bloodstream, passing through the placenta in concentrated doses. *How dare they* assert that Zyclone was responsible for their tragic losses.

Sean had been directed to send Gordon the brief *sometime over the weekend*, so Gordon could look it over before it was filed on Monday, intersperse a sentence or two about good corporate citizens being unfairly blamed for cancer clusters, *we're talking minute quantities of these chemicals, on the order of parts per billion*, and sign off on the final version. Gordon owed his reputation, his stellar work product, as well as \$1,000—lent during a drunken night at Fizz—to Sean. Sean had foregone Amber out of loyalty to his girlfriend (soon to be ex-girlfriend); out of deference to Gordon, his superior, the partner in charge, though he could take issue with Gordon's brazen seduction methods and overuse of the signal *see generally*, technically a means of signifying general support for the proposition, and not to be used interchangeably with *see e.g.* or *see passim*.

Gordon relied on Sean for his thorough research skills, understanding

of groundwater fate and transport, and ability to find the mythical *case on point*. Sean was mum when needed, diverted mistresses when the wife was en route, and acted as sounding board for some of Gordon's crazier theories regarding the connection between standard morbidity ratios and minute quantities of 1,2,3 di-chloroethylene. Gordon relied on Sean never to be flummoxed when Gordon showed up with yet another woman (Gordon convinced, however wrongfully, that temps were outside the purview of Title VII), or changed his tack mid-way through cross-examination, relying on Sean to intuit what document he needed among the hundreds of marked exhibits, and to summon it instantaneously. This was Sean's function, his *raison d'être*.

Yet Sean was a non-entity. Consigned to labor twelve hours a day in a midtown Manhattan office tower, his reflection (unflatteringly pale) staring back at him. A grunt, a lackey. Expected not to complain; expected to tolerate late-night telephone calls and cancelled vacations. An overpaid mid-level associate with an Ivy League degree, someone expected to bill hours to *Draft pre-trial brief*, to stand aside as Gordon claimed credit for every footnote and citation *see passim*, every clever argument regarding general and specific causation and the abnegation of all corporate responsibility re same.

He typed his name into Westlaw, yielding two hits, his student note on search-and-seizure law and his pro-bono brief in *People v Malchizedek Spencer*. The former had been cited once, in another obscure law-review article on the subject; the latter had been distinguished on its facts, its *overruling implicitly recognized* by subsequent cases. There was no record of him; he did not exist.

He had failed to make strategic alignments. He hadn't engaged in early-morning banter by the coffee machine or chatted with other partners during Friday-evening cocktail hour. He hadn't worked for others, thereby broadening his base of potential support or at least reducing the number who could say *nay* when he was up for partnership. No one knew what he had accomplished; no one knew who he was, other than some vague business about an associate who was rumored to jerk off in the bathroom stall on the twenty-eighth floor.

Anyone who actually bothered to read the narrative descriptions in the DTE system would know that he had spent the summer immersed in the study of groundwater fate and transport, the fall reviewing spill-incident reports; the winter reviewing and digesting the Swiss corporate minutes. That it was *he*, after parsing statistics, and studying epidemiological data, who formulated the theory that would ultimately absolve Zyclone of liability. *He* who discerned that the lack of a statistically significant connection between 1,2,3, di-chloroethylene and nervous system cancers conclusively refuted any notion of causation. But no one would bother to review the narrative reports, or to read the hundreds of memos he had drafted, *memo to the file re characteristics of organic hydrocarbons*, *memo to the file re standard morbidity*

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What hope did he have for survival when the cancer-cluster case had been tried, the verdict rendered? He would be *persona non grata*, just another name in the WIP reports, someone with a de-activated card key.

Sean sighed and called a car. Staring at his reflection in the monitor, he pressed DELETE.

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