

EXTRACT – The Proving Ground

To some it's a stage. A place where carefully choreographed drama takes place. To others, a chess match with moves designed and practiced weeks and sometimes months in advance. Where nothing is left to chance. Where the wrong moves have grave consequences and finality. Where the recruited audience sits in silent judgment with their hidden biases and contempt.

I have never thought of it that way. To me it's the Octagon, where mixed martial arts are deployed in brutal combat. Two go in; one comes out the victor. No one is left unbloodied. No one is left unscarred. This is what the courtroom is to me.

The hearing on this day was in civil court, a misnomer if there ever was one. There was nothing remotely civil about this fight. Randolph versus Tidalwaiv Technologies LLC was one of those rare cases where the stakes went far beyond the walls of the courtroom or even the reach of the federal court for the Central District of California. This was a fight for the future of everyone — or at least that was how I would argue it.

It was a pretrial hearing before US district court judge Margaret Ruhlin. I had known her since her days as a member of the local defense bar, back when she was called Peggy Ruhlin and hung out after court hours at the bar at the Redbird. She was now a veteran and much respected jurist appointed to the bench during the Obama years. She had consolidated cross-complaints from the parties and was attempting to avoid a trial delay by refereeing the disputes. I was in favour of that but the lawyers at the other table, the Mason brothers, would have liked nothing better than to push the trial off for another few months or more. Tidalwaiv was for sale and its investors were hoping one of the big techs would swallow it. The three Ms were circling — Microsoft, Meta, and Musk. This trial and its outcome could be the difference between millions and billions.

I was determined not to let them delay. Tidalwaiv had turned over twelve terabytes of discovery — enough when printed out to literally line the walls of a warehouse with file boxes. But what was important in those thousands and thousands of pages was heavily redacted, making the documents virtually useless to me. I needed to find what they were hiding in those pages or I was going to lose the most important case of my life.

The judge was patiently waiting for my response to one of the Masons, who had stood up and claimed that the redactions in the discovery materials were necessary because of proprietary protections in the very competitive world of generative artificial intelligence. He said that the information withheld from me amounted to the keys to the kingdom. And they weren't going to give them away.

“Mr. Haller,” the judge prompted. “Your response, please.”

“Yes, Your Honor,” I said.

Following the judge's courtroom protocol, I stood and went to the lectern located between the tables for the plaintiff and the defendant.

"Your Honor, the defense's argument is specious at best," I began.

"We are not talking about the keys to the kingdom here. We're talking about key evidence that is being withheld because, as Mr. Mason well knows, it is inculpatory. It supports the plaintiff's case. Tidalwaiv's creation told an impressionable young man to take his father's gun to school and — "

"Mr. Haller," the judge interrupted. "It is not necessary for you to repeat your cause of action with every objection. I am sure the media you invited here today appreciates it, but the court does not."

The judge gestured toward the front row of the gallery, where members of the media sat shoulder to shoulder. Cameras and recording devices were not allowed in federal court. Each reporter, even the TV people, was reduced to taking notes by hand. And at the end of the row was a courtroom artist sketching yours truly for CNN. Pen and paper seemed so antiquated in a world where the electronic media reigned, along with its co-conspirators artificial intelligence and the internet.

"Thank you, Judge," I said. "The point is, this case is about guardrails. Tidalwaiv says they had guardrails in place but won't reveal them, because they are allegedly proprietary. That doesn't wash, Your Honor. The plaintiff is entitled to understand how Tidalwaiv's artificial- intelligence- generated creation jumped those guardrails and told a teenager it was okay to shoot people."

The Masons stood up in unison to object. They were alone at the defense table, their client choosing not to send a representative to court for these pretrial skirmishes.

The twins conferred and then Marcus sat down, leaving Mitchell to state their argument.

"Your Honor, the plaintiff's attorney is once again misstating the facts and evidence," he said. "He is talking to the media, not the court."

I quickly shot back, since I was still at the lectern.

"How do we know the facts and evidence if they won't provide complete discovery materials?" I asked, my arms out wide. Ruhlin held her hands up in a signal for silence.

"Enough," she said. "Mr. Mason, please move to the lectern."

I retook my seat next to my client, Brenda Randolph, who had tears on her cheeks. Any reference made in court to her murdered child brought tears. It wasn't a show. It wasn't coaching. It was genuine loss and grief that would never go away no matter what happened down the line in this courtroom. I reached over and put my hand on her arm to console her. I needed to pay attention to the judge and my opponents but knew how

difficult these moments were for her and that they would only get harder as the trial proceeded.

“Mr. Mason, the court tends to agree with Mr. Haller in this matter,” Ruhlin said. “How do you propose we rectify this issue? He is entitled to full discovery.”

“We can’t, Your Honor,” Mitchell Mason replied from the lectern.

“Rather than reveal our proprietary sciences, codes, and methods, we have offered the plaintiff a generous settlement package, but that was rejected so that the plaintiff’s attorney can continue to grandstand in front of the media with his wholly unsubstantiated claims and — ”

“Let me stop you right there, Mr. Mason,” the judge said. “Every plaintiff has the right to a trial. We’re not going to go down the road of judging motivations for settling or not settling this case.”

“Then, Your Honor,” Mason countered, “we are happy to submit to a court- appointed special master to review the materials we have provided and determine what is discoverable and what should remain redacted as proprietary.”

Now I stood to object, but the judge ignored me.

“I will reluctantly consider the offer in light of what that would mean to the court’s calendar,” Ruhlin said. “But for now, let’s move on to our next issue. Mr. Mason, you — ”

“Your Honor,” I said. “Before moving on, may I respond to the defense’s proposal of a special master?”

“Mr. Haller, I know your response,” Ruhlin said. “You object because you want to keep this case on course to trial. If you wish, you may electronically submit a cogent objection, and I will take it into consideration before I rule. For now, let’s move on. The defense has a motion before the court to strike one person from the plaintiff’s preliminary witness list. A person named Rikki Patel, who is a former employee of the defendant, Tidalwaiv. Mr. Mason, do you wish to state your claim for the record?”

Mitchell Mason was wearing a blue- black Armani suit with his signature patterned vest to complete the power ensemble. He had styled but short brown hair and a close- cropped beard just beginning to show some distinguished gray. That was how I told them apart. Mitchell had the beard. Marcus did not.

“I do, Your Honor,” Mitchell said. “As stated in the motion, Mr. Patel is a former employee of Tidalwaiv and upon leaving the company’s employ signed a nondisclosure agreement, a copy of which was submitted with the motion. Your Honor, very simply, this is the plaintiff’s attempt to do an end run around us and get proprietary company data and information, and we object strenuously to Mr. Patel even giving a deposition, let alone testifying in open court in this matter.”

“Very well, you may take a seat,” Ruhlin said. “Mr. Haller, I notice that you didn’t file a response to the motion. Are you withdrawing Mr. Patel from your witness list?”

I moved back to the lectern.

“On the contrary, Your Honor,” I said. “Rikki Patel is a key witness for the plaintiff. He was in the lab when this company birthed the AI companion they call Clair and set her loose on unsuspecting — ”

“Enough with the sound bites, Mr. Haller,” Ruhlin barked. “I have warned you. You play to me, not the people in the first row.”

“Yes, Your Honor.”

“Now, why should the court not enforce the nondisclosure agreement signed by your intended witness?”

“Your Honor, in essence, this is a product- liability case and it is contrary to the public interest to bar a former employee from testifying about Tidalwaiv’s recklessness regarding the safety of its product. California courts routinely refuse to enforce nondisclosure agreements, because they violate fundamental public policy. My client and the public are not party to the NDA and they have an interest in learning the facts and circumstances regarding how an AI companion encouraged a teenage boy to kill his ex- girlfriend. Rikki Patel isn’t a witness who will divulge trade secrets or privileged information; he will testify about Tidalwaiv’s failure — ”

“But last I checked, we were in federal court, Mr. Haller. Not California court.”

“That may be so, Judge, but the court should also know that the NDA was signed under duress. Mr. Patel was fearful that if he did not sign it upon leaving the employ of Tidalwaiv, there would be consequences for himself and his family.”

Marcus Mason stood and objected, raising his hands, palms up, in a Where did this outlandish claim come from? gesture.

“Hold right there, Mr. Mason,” the judge said. “That is a very strong statement, Mr. Haller. Again, I warn you, meritless statements made for the benefit of the media and the jury pool will not be tolerated by this court.”

“Your Honor,” I said, “Mr. Patel is ready to testify in chambers or in open court about the fears and pressures that led him to sign an NDA with language that is threatening in and of itself. He should not be bound by the document, and I can assure the court that his purpose as a witness is not to reveal the proprietary information the company seems so concerned about. He will testify about the objections he raised about the Clair project from the very start. Objections that were overruled and that the company clearly doesn’t want the public to know about.”

“Your Honor?” Mason said, in case the judge had forgotten he was standing in front of her.

“Go ahead, Mr. Mason,” Ruhlin said.

I went back to my table and Marcus Mason took the lectern. He was the clean-shaven twin who wore bow ties rather than patterned vests with his Armani.

“Your Honor, this is trial by ambush,” he said. “Nothing more, nothing less. Mr. Haller, when he was defending criminals, was known as an attorney who wielded the media like a club. He is doing it again here. Of course he did not respond to the motion electronically. Why should he when he could invite a media audience into US district court to hear his exaggerated claims and outlandish lies? There is no threat in the wording of the nondisclosure agreement beyond what is in every NDA ever signed. There was no threat to Patel and there is no legal argument that supports his being able to break the agreement in order to testify in this matter.”

I had to hold back a smile. Marcus Mason was good. He was clearly the smarter of the two brothers and the one I had to key in on. The bow ties served to soften his image as a killer in the courtroom. But that was okay, because I was a killer too. The smile I held back was brought by his mentioning my days in the criminal defense bar as a pejorative. It was true I had made my name in crime. From billboards to bus benches, from the criminal courts to the county jails, I was known as the Lincoln Lawyer. Have case, will travel. I promised reasonable doubt for a reasonable fee. It was rough-and-tumble work. The California Bar waited for me to trip up ethically. The cops waited for me to trip up criminally. Everybody waited for me to fall. That was the legacy that followed me in this town. But I'd had my fill of it and moved on. And in the two years since I left the crowded and grimy halls of criminal justice, I had found new levels of dirty work and dangers in the supposedly genteel high-ceilinged courtrooms of civil practice. I was at home, and the Mason brothers had no idea what they were in for.

The judge closed the hearing by saying that she would take the oral arguments and written submissions under consideration and issue rulings on both matters the following Monday.

“Court is now adjourned,” she said.

The judge left the bench and headed to her chambers. The Mason brothers packed up their documents and law books while the representatives of the media started to file out of the front row. I returned to the plaintiff's table and took a seat next to my client. Brenda Randolph was a small woman with haunted eyes that would never see happiness again. She worked as a lens grinder at an optometry lab in the Valley. She was using all her vacation and comp time to attend every hearing related to what she called her daughter's case.

“You okay, Brenda?” I whispered.

“Yes,” she said. “I mean, no. I’ll never be okay. Every time her name is mentioned or anybody talks about what happened, I lose it. I can’t help it. I’m sorry.”

“Don’t be sorry. Just be yourself.”

“Do you think the judge will rule in our favor?”

“She should.”

The Masons left their table and went through the gate. They said nothing to me as they passed.

“You guys have a good weekend,” I called out.

I got no response.

Outside the courtroom door, a man waited for me in the hallway. I had seen him inside during the hearing, sitting by himself in the back row of the gallery. If he was a journalist, he was unfamiliar to me. I knew most of the court reporters in town by sight, if not by name and acquaintance. But the lawsuit had garnered a fair amount of national attention and I had heard from and seen some members of the national media tribe for the first time. This man carried a backpack over his shoulder and wore a sport jacket but no tie. That told me he probably wasn’t a lawyer — at least not one with business in the building.

He stood back while I whispered a goodbye to my client and told her I would be in touch the minute I received a ruling from the judge on the motions just argued. As soon as we separated, the stranger approached.

He looked to be in his early fifties and had a full head of brown- going gray hair. He looked like an aging surfer. It took one to know one.

“Mr. Haller, I was hoping to buy you a cup of coffee,” he said.

“I don’t need coffee,” I said. “I’m jacked from that hearing. Do I know you? Are you a journalist?”

“Uh, a writer, yes. I wanted to talk to you about something that could be mutually beneficial.”

“What kind of writer?”

“I write books about technology. And how it can be turned against us. I also write a Substack column. Same subject.”

I looked at him for a long moment.

“And you want to write about this case?”

“I do.”

“And what’s the part that would be beneficial to me?”

“Well, if we could sit down for a few minutes, I could lay it out for you.”

“Where? I’ve got a meeting across the street in” — I raised my wrist to check my watch — “twenty minutes.”

It was a lie. I just wanted to put a time limit on this conversation in case it wasn’t to my liking. I was planning to go across the street to the district attorney’s office, but I had no appointment. I intended to talk my way in.

“Give me ten minutes,” the writer said.

“Do you need coffee?” I asked.

“Not if you don’t.”

“Okay, let’s go into one of the attorney rooms down the hall here.

That would be quickest and quietest.”

“Lead the way.”

I started down the hall, then stopped.

“What’s your name?” I asked.

“Jack McEvoy,” he said. “Nice to meet you.”

He held out his hand and I shook it. He had a strong grip and met my eye without hesitation. My impression at that moment was that this might be the start of a good thing.

The attorney rooms in the federal courthouse were tiny and furnished with only a small table and four chairs. They were designed for lawyers to confer with clients and witnesses before entering court. I found one that was empty and slid the red occupied placard across the available sign. I opened the door and signaled McEvoy in first. We sat on opposite sides of the table. I took a notebook out of my briefcase and started the meeting by asking him to spell his last name. He did.

“That name and the spelling are familiar,” I said. “Should I know your work?”

“I’ve published three nonfiction books in the past twenty or so years,” McEvoy said.

“They hit bestseller lists. Briefly. But they all have L.A. connections.”

“What are the titles?”

“*The Poet* was my first one. It was about the internet.”

He paused in case I was going to exclaim that I’d loved the book. I said nothing.

“Uh, then a lot of years went by before I did a book called *The Scarecrow*,” he continued. “That was about data mining. And then my last book was called *Fair Warning*. That was a few years ago. It was about the unregulated DNA industry.”

I nodded.

“*Fair Warning*. Yes, I remember that,” I said. “That was the one about the killer who used DNA to find his victims. I know some of the attorneys who were mentioned in that one.”

“All my books deal with technological advances,” McEvoy said.

“Advances that were taken advantage of by criminals and other unscrupulous people.”

“And it was like a magazine or something, right? *Fair Warning*, I mean.”

“It was based on a news site focused on consumer protection, but the owner- editor retired and it shut down. But I bought the brand rights to the name. Now it’s a Substack that I write.”

“Of course you have a Substack. It’s called *Fair Warning*?”

“That’s right. It’s about the follies of technology. The Substack, I mean.”

I nodded and studied him. I was more than interested but didn’t want to show it yet.

“I’m beginning to see why you want to be involved in this case,” I said.

“I thought you would,” he said.

“So, what is this case to you? A Substack or a book?”

“It could be both,” he replied without hesitation. “And a podcast. And a movie. Your case encapsulates everything I’ve been researching and writing about generative artificial intelligence. There are new lawsuits filed against AI systems every week, but this is the case that is going to trial, it seems. I think it brings everything together, the good and bad of this world- changing technology. It’s a home run, if you ask me.”

“Okay, so you get a home run out of it. What does my client get?”

“My research. My expertise. I have connections that I think can help you. Bring me inside the case and let me work for you. I won’t write a word about it until there’s a verdict.”

I tried to keep a skeptical look on my face, but what McEvoy didn’t know was that I was drowning. I was overwhelmed by discovery and lacked the wherewithal and expertise to

deal with it. By that, I mean I lacked time and understanding. Much of the science sailed over my head. It left me scared that I would stumble into trial uninformed and unready.

I already had an investigator, and he was great at finding witnesses and conducting field investigations. But he was not great at wading through terabytes of code and Silicon Valley memos. It had recently dawned on me that I was in over my head with this case. In the courtroom I was a killer, but I needed weapons to kill with. What McEvoy was presenting to me seemed like a lifeline thrown to a drowning man. I was trying not to give anything away but knew that if I let McEvoy spend just fifteen minutes at the warehouse, he would understand my situation and how dire it was.

“Let you work for me — what does that mean?” I asked. “I took this case on a contingency basis. I don’t win, I don’t get paid. Right now, there’s no money for a researcher.”

“I’m not asking to be paid,” McEvoy said. “Just let me inside the wire. Let me be a fly on the wall. I help you and you help me.”

“I have to talk to my client.”

“Of course.”

“How do I reach you?”

McEvoy was ready with a business card. I noticed that the logo for his Substack underlined its focus: The ai in Fair Warning was embossed in red.

Jack McEvoy

Writer

FAIR WARNING

Tidalwaiv did the same thing with their logo, though the ai in Tidalwaiv was in a soothing blue tone. I put the card in my pocket and told McEvoy that I’d think about his proposition and be in touch after discussing it with Brenda Randolph.

Extracted from *The Proving Ground* by Michael Connelly