American Bar Association
Law Student Division

2015–2016 Negotiation Competition

Complete National Problem Set
(Four Rounds)

Contains Confidential Information

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Juanita Karn and Leon Morse

General Information for Both Parties

Cross Frontiers for Children, Inc. (“XFC”) is a non-governmental organization of international scope that engages in fundraising throughout North America on the basis of its charitable activities for the benefit of children in developing countries overseas.

Those fundraising activities have been seriously compromised by an audio recording that has recently emerged in a YerVidz video. The visual portion of the video is dominated by this banner:

Do you really think that this guy is for the children? If so, why do you think he crossed this frontier?!

Underneath the banner, there is smaller text specifying the conference room at XFC headquarters in which the audio had been captured, and the date and time of its capture.

The audio portion of the video is an excerpt from a conversation among three persons whom YerVidz commenters soon identified as the three highest-ranking officers of XFC. The conversation involves a series of rather nasty comments by XFC’s CEO about one of its largest individual donors. The recording clearly reflects that the other two officers responded to those comments by laughing in apparent appreciation of the CEO’s wit, though none of their words endorsed what he had said.

XFC’s donors did not appreciate the CEO’s wit at all: many of them contacted XFC personnel with blistering denunciations of the CEO’s ingratitude. Some donors, including the one who was the target of the CEO’s comments, withdrew their support from XFC altogether. To limit the damage that the affair was causing
to XFC, the CEO promptly took full responsibility and resigned. Immediately after this was announced, the video disappeared from YerVidz.

The other two officers on the recording have largely escaped censure due to a general presumption that their laughter was motivated more by their need to remain on good terms with their boss than by agreement with his comments. Both of those officers have remained at XFC, and one, Juanita Karn, has even been promoted: she is now its CEO.

From the moment of her appointment to that position, she has had two overriding goals: repairing the damage to XFC’s donor base, and locating the complete version of the audio recording. She has had substantial success in achieving the first goal, but she fears that her success will be obliterated, along with the rest of XFC’s donor base, if she fails in her second.

Locating and neutralizing the complete recording is critical because according to Ms. Karn’s clear recollection of the relevant meeting, nasty comments about other major donors were made in that meeting, and some of her own words might be taken as agreeing with some of those comments.

Her investigation into the origin of the recording revealed that the YerVidz account had been set up and used with considerable skill to avoid leaving any information that could locate or even identify the uploader of the video. Thus, the investigation focused upon the origin of the audio recording. The initial hypothesis was that the conference room had been electronically bugged, but painstaking forensic analysis of the recording determined that it had been captured via a microphone of a type that is only found on smartphones that are both very capable and very expensive.

This revelation caused suspicion to fall upon Aaron Latham, a junior executive and member of XFC’s Operations Committee. As the lowest-ranking member of that committee, he was responsible for generating and circulating the minutes of each meeting. To ensure his accuracy in doing so, he used his XFC-provided smartphone to record the meetings, with the knowledge and permission of all of the committee’s members.

The recording at issue, however, covers a time after the general meeting had ended, when the three officers had remained in the room “in executive session,” as was their habit, with no one else present. Mr. Latham could not have been in the room at that time, and in any event, none of the three would have spoken so freely in his presence.
When confronted, Mr. Latham denied having ever made any audio recordings at XFC without permission, let alone any in a location where he was not present. However, subsequent investigation turned up facts that prompted him to recall that on the relevant date, he had misplaced his phone for a time, and that later that day, he had found it on the floor of the conference room in which the meeting had taken place.

Thereafter, as was his habit, he had simply spot-checked his notes against the recording, and once he reached the point at which the meeting had been adjourned, he deleted the recording. Although he did not notice at the time that the recording was of unusual length, he has concluded that when his phone fell to the floor, its recording app must have still been running, and must have continued to do so until it reached its three-hour limit.

Uncertainty remained, however, regarding how the recording had escaped deletion, and who had uploaded part of it in the video. Mr. Latham vehemently denied having done so, a denial that no one doubted, not least because at the relevant time, he no longer possessed the phone that had made the recording. All of the executives’ smartphones had by then been replaced with upgraded models, and the superseded phones had been made available to lower-level employees for purchase at a very attractive discount price.

Further investigation established that Mr. Latham’s phone had been purchased by Leon Morse, the former “computing czar” of XFC’s headquarters, shortly before his termination for insubordination. One of the disputes that had led to his termination had involved the employee phone-purchasing program, and the CEO’s command that Mr. Latham “ensure that all company files ha[d] been deleted before making the phones available for purchase.”

Mr. Morse had responded by emailing the CEO that doing so “would be (a) yet another an unjustified burden upon my already overcommitted time, (b) unnecessary, because a reset-wipe of each phone would ensure (in addition to being quick and easy) that no company files could be retrieved from it, and (c) insecure, because mere deletion of files does not make them irretrievable, which is a real problem because whoever buys one of those phones will own everything that’s still on it at the time of the sale. I know that you’re a technical troglodyte, but surely even you don’t want that!”
Almost immediately, the CEO had replied, “I don’t give any portion of a rat’s anatomy that there’s an easier way to do it: if you don’t carry out my order, I’ll see to it that you have plenty of uncommitted time on your hands.” Mr. Morse reacted poorly to this reply, and his interactions with the CEO rapidly became more and more hostile. Shortly thereafter, the CEO fired him, and he was denied XFC’s generous standard severance package, which was customarily given, but not contractually or legally required.

Mr. Morse was also prevented from removing any equipment from XFC premises for which he could not provide a purchase receipt to prove his ownership. Both the CEO and the security personnel who escorted Mr. Morse from XFC’s premises ignored his loud, shrill protests that many highly valuable components connected to XFC’s server complex were his personal property, having been created by him on his own time by means of his own equipment.

Thus, Ms. Karn concluded that Mr. Morse had used some of the “uncommitted time on [his] hands” to explore the deleted-but-not-irretrievable files on his newly purchased cell phone, and had used part of an audio file that he found there to create the YerVidz video. To confirm this, she lured him into her office with a hint that she had significantly different computing priorities from those of her predecessor, and that XFC might want to hire him for lucrative work as an independent contractor.

When Mr. Morse arrived in her office, she introduced Mr. Morse to XFC’s chief of security, who “came to us, you may be interested to know, with an extensive record of successful experience as a private investigator.” “Both of us,” she continued, “have been inspired by your work on YerVidz to take a look at that XFC phone of yours!”

He turned to bolt from the room, only to find that an intimidatingly large and muscular security guard was blocking the doorway. “You’re not leaving here with that phone,” she said. Eventually, after making several attempts to leave—ones that the guard thwarted passively, but effectively—Mr. Morse handed Ms. Karn the phone, saying as he did so that he would get legal advice before doing or saying anything else.

“That’s a good idea,” she said, “no point in digging yourself any deeper into the hole you’re in.” She then instructed the security guard to stop blocking the door, and Mr. Moore left. He did in fact obtain legal representation, and shortly
thereafter, a series of preliminary discussions took place between the lawyers for XFC and those for Mr. Morse.

XFC’s lawyers accused Mr. Morse of electronic eavesdropping by proxy, false light invasion of privacy, and copyright infringement. Mr. Morse’s lawyers responded that the first required a previously unimagined expansion of applicable law, that the second depended upon a cause of action that no court of applicable territorial jurisdiction had ever unequivocally recognized, and that the third was simply laughable.

Mr. Morse’s lawyers countered by asserting that XFC had committed false imprisonment, conversion, and trespass to chattels, “just for a start, though we have to admit that those causes of action are far less creative than the ones that you’ve dreamed up!”

XFC’s lawyers replied that its actions were fully justified by the legally wrongful and grievously harmful nature of Mr. Morse’s YerVidz video, and they demanded to know whether Mr. Morse had copies of the full audio recording beyond the one that XFC had found on the phone that Mr. Moore had left in Ms. Karn’s office. Mr. Morse’s lawyers have not yet responded to that question.

In the last of the preliminary discussions, XFC’s lawyers raised another issue: possible sabotage of its computer systems by Mr. Morse. Lana Jorgens, XFC’s new computing czar, has reported that the XFC’s computer security systems are developing “holes”: weaknesses that outsiders might use to obtain access to confidential information on XFC’s computers.

Standard means of closing the holes have failed, and Ms. Jorgens believes that this is due to some unusual characteristics of a number of hand-crafted components that Mr. Morse added to XFC’s main server over the months before he was terminated. Mr. Morse’s lawyers have denied that he did anything to harm XFC’s computer security, but they have suggested that he may be willing to commit to helping XFC plug the holes as part of a broader agreement to resolve the dispute.

Ms. Karn has now authorized XFC’s lawyers to meet with Mr. Morse’s lawyers at a neutral location to discuss the issues that appear below, and Mr. Morse has given his own lawyers corresponding authorization. Ms. Karn has full authorization to act on behalf of XFC as its sole decisionmaker and client contact in this negotiation.
1. What will be the disposition of the original recording of the committee meeting’s executive session, as well as any extant copies of it?

2. What information about one another and their dispute, if any, will XFC and Mr. Morse make public?

3. Is Mr. Morse entitled to the phone that he bought from XFC, the equipment at XFC’s headquarters that he claims to own, and/or the standard XFC severance package?

4. What steps, if any, will Mr. Morse take to assist XFC in repairing the holes that have developed in its computer security systems since his departure?

**Note**

All lawyers are to act on these premises at all times:

(1) None of the events of this dispute have given rise to liability of any kind on the part of Ms. Karn in her personal capacity, and no entity of any kind will attempt to establish such liability.

(2) No third-party source of funding or other assistance, whether via insurance or otherwise, is available to XFC or Mr. Morse.

(3) XFC’s sale of the phone to Mr. Morse was valid, is not subject to any legal challenge, and did not (in and of itself) subject Mr. Morse to liability of any kind.

(4) No aspect of labor or employment law, whether local, Manisconsin, or federal, is relevant to this dispute.

(5) The events of this dispute have involved no violations of local, Manisconsin, or federal statutes, regulations, or other legal standards, except for ones that may have given rise to civil liability as between XFC and Mr. Moore.

(6) No person or entity will obstruct the compliance of any person or entity with the terms of the agreement that XFC and Mr. Moore execute, if any.

(7) No person or entity will assert legal liability of any kind against any person or entity as a consequence either of the execution of the agreement between XFC and
Mr. Moore, if any, or of any person or entity’s compliance with that agreement.

(8) For purposes of this Note, “any person or entity” includes (without limitation) natural, juridical, private, and governmental persons and entities.

(9) Ms. Karn’s personal interests and the interests of XFC are effectively identical, and under the laws and ethical rules governing lawyers, Ms. Karn’s serving as the sole decisionmaker and client contact for XFC in this negotiation does not pose, and will not pose, any impermissible conflict for XFC’s lawyers.

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Juanita Karn and Leon Morse

CONFIDENTIAL INFORMATION
FROM JUANITA KARN

Juanita’s primary concern is ensuring that all extant copies of the as yet unpublished portions of the audio recording are deleted irretrievably: she will insist upon this. However, she has accepted your advice that doing so via litigation would be likely to reveal more than it would conceal.

Until recently, she was greatly concerned with the problem of how she could be sure that Mr. Morse would not keep a copy of the recording despite agreeing to do so. Ms. Jorgens has adequately (if unexpectedly) reassured Juanita on this point, however. For an extended period some years ago, Ms. Jorgens and Mr. Morse worked together closely enough to get to know one another very well, and since then, she has interacted with him from time to time in various technical settings. She is confident that “if he commits to irretrievably delete all versions of a certain file, he will.”

She continued, “I’ve never known him to lie about anything, and I doubt that he even knows how to lie about anything that’s even remotely related to technology. He’s an egotistical jerk, and a good candidate for the title of Most Insensitive Human Being on Earth, but he is not a liar or a cheat.”

Juanita will also insist that Mr. Morse commit never to communicate anything to anyone about his memory of the contents of the recording. For her part, she is willing to commit XFC’s personnel to silence regarding Mr. Morse’s responsibility for the YerVidz video. She is unwilling, however, to have XFC re-hire Mr. Morse, or to have any XFC personnel recommend him for employment elsewhere.

If need be, she will agree to limit XFC’s responses to inquiries about Mr. Morse to something along these lines: “XFC’s former CEO terminated Mr. Morse’s
employment, but this was not due to any shortcoming in his technical skills, which are very impressive.” If need be, she will reluctantly add that “Mr. Morse and the former CEO simply could not get along.”

She is absolutely inflexible, however, on the subject of severance: under no circumstances will she agree to XFC’s providing a severance package to Mr. Morse.

Ms. Jorgens has also reassured Juanita regarding two other points of considerable concern. First, a wipe-reset of Mr. Morse’s phone will render the recording on it irretrievable. Second, Mr. Morse did nothing to sabotage XFC’s computer system: only the replacement of the server, or a series of additional bespoke hardware upgrades courtesy of Mr. Morse, will enable XFC to close the security holes.

Accordingly, Juanita is willing to return Mr. Morse’s phone to him, but only after Ms. Jorgens has performed a wipe-reset on it. Juanita has already authorized the purchase of another server, though she would prefer to retain Mr. Morse’s plug-in upgrade modules against the possibility that the technology that they embody may have commercial value. She will give up the modules rather than keep them at the expense of any of her other goals, however.

More generally, so long as your doing so will not interfere with her other priorities, Juanita hopes that you will be creative in thinking of other steps that Mr. Morse can take to advance XFC’s interests, and in securing his agreement to take those steps. Juanita is leaving the negotiation to your discretion, and she will agree to anything that is in XFC’s best interests.

You may provide additional non-self-serving information and details that are consistent with the facts that appear above and in the General Information.

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Leon was intensely satisfied by the resignation of XFC’s former CEO, which was the outcome that Leon had hoped to achieve by publishing the audio excerpt on YerVidz. His satisfaction was overcome by anxiety; however, when he took to heart your warning that litigation with XFC would probably bring to light information that would severely limit his future employment opportunities in his chosen field.

He has also realized that his actions have hurt the other XFC officers and employees, despite his having carefully limited the excerpt to focus its impact on his target. He has to admit that some of those whom he has hurt “aren’t a total waste of space,” and unaccustomed as he is to feeling guilt, he is feeling it now.

Even so, he still sees himself as having been more wronged than a wrongdoer: “I told that tech-null troglodyte of a so-called CEO, over and over, that we couldn’t maintain proper security without replacing that obsolete server. I sent him emails, I wrote him memos, I did everything but tattoo on his Cro-Magnon forehead the simple truth that the server’s being so outdated was opening security holes.”

Leon simply could not bear the thought of holes developing in the security of a system for which he was responsible, so in the absence of proper equipment, he faced a choice between quitting and somehow plugging the holes without spending money. He chose the latter: every time the server’s performance had to be upgraded to close a hole, he brought his soldering iron and his electrical-engineering virtuosity to bear on the problem.

Working on his own time at home, the only place where he could do such intricate and creative work, he crafted an additional plug-in upgrade module every few
months to keep the server up to the task of remaining secure. By the time of his termination, five such modules were in place.

He now realizes that those modules have considerable commercial value, and that he made a major mistake in failing to document the process by which he created them. He is glumly aware that recreating them would take months, in the unlikely event that he could bring himself to make the effort at all. Thus, his highest priority is the retrieval of those five modules from XFC’s server.

He also insists upon the return of his phone, though he is willing for it to be reset-wiped first. Retrieving the phone is a matter of principle for him: “it’s my property: I bought it, I paid for it, and nobody is gonna keep it away from me. I only gave it up in Karn’s office so that nobody would get hurt. No way was I gonna arm-wrestle that gorilla at the door, so I’d have had to take out one of his kneecaps to get past him, and that would have been just too much of a hassle.”

Leon expects that Ms. Jorgens will explain to Ms. Karn and XFC’s lawyers that a reset-wipe is more than adequate to ensure that even he could not retrieve the recording from the phone thereafter: “I know Lana from way back, and she’s got her head on straight. She’s not at my level, obviously, but she comes a lot closer than most.”

He is also confident that she will “see right away that the only way to fix those holes is to replace the [expletive deleted] server.” He is willing to “help” XFC with the security holes only by giving that advice: “maybe with Lana and me both telling them that, they’ll actually buy it now. But no way, nohow am I gonna pour out blood, sweat, and solder to come up with more hardware upgrades to keep that old server wheezing along for another month.”

He is entirely willing, however, to delete irretrievably the only two copies of the recording that are extant outside of his phone, i.e., the one full-length copy that he made from that original, and the excerpt that he made for the video that he uploaded to YerVidz (he has already irretrievably deleted all versions of the video itself).

He is also willing not to communicate to anyone the contents of the portions of the recording that have not yet been published: “That’ll be easy. I don’t even remember any of that anymore. That sorta stuff just doesn’t stick in my head unless I make it stick, and I don’t do that for piddly stuff.”
In return, he will insist upon XFC’s keeping quiet about his role in publishing the video: he knows that if his responsibility for that video should become generally known in his industry, certain types of employment will no longer be available to him. Ideally, he would like to get a letter of recommendation from XFC that focuses on his technical abilities: “Just what they can say about me that’s nice and that’s true: I don’t expect anything that says I’m Mister Personality. But so far as I know, nobody at XFC was so out of it as not to know that I was one smokin’-hot electron pusher.”

In his view, a letter like that “would make everything easy for XFC: if anybody asks about me, it can just send a copy of the letter, and leave it at that: just don’t add anything, or answer any questions about anything else.” He would also like to receive XFC’s standard severance package, but not at the cost of any of his other goals.

More generally, so long as your doing so will not interfere with his other priorities, Leon hopes that you will be creative in thinking of other steps that XFC can take to advance his interests, and in securing its agreement to take those steps. Leon is leaving the negotiation to your discretion, and he will agree to anything that is in his best interests.

You may provide additional non-self-serving information and details that are consistent with the facts that appear above and in the General Information.
Juanita Karn and Leon Morse

CONFIDENTIAL SUMMARY FOR JUDGES

These tables summarize each party’s goals and priorities for the negotiation, highlighting the areas of potential agreement and disagreement.

### Issue 1: Disposition of Recordings

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<tr>
<th>Ms. Karn</th>
<th>Mr. Morse</th>
<th>Probable Outcome</th>
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<tbody>
<tr>
<td>Ms. Karn’s primary concern is ensuring that all extant copies of the as-yet, unpublished portions of the audio recording are deleted irretrievably: she will insist upon this.</td>
<td>Mr. Morse is entirely willing to delete irretrievably the only two copies of the recording that are extant outside of his phone, i.e., the one full-length copy that he made from that original, and the excerpt that he made for the video that he uploaded to YerVidz (he has already irretrievably deleted all versions of the video itself).</td>
<td>Mr. Morse will delete irretrievably all copies of the recording that are extant outside of his phone.</td>
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### Issue 2: Public Disclosures

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<td>Ms. Karn will insist that Mr. Morse commit never to communicate anything to anyone about his memory of the contents of the recording.</td>
<td>Mr. Morse is willing to commit not to communicate to anyone the contents of the portions of the recording that have not yet been published.</td>
<td>XFC will commit to preserve the confidentiality of Mr. Morse’s responsibility for the YerVidz video, and Mr. Morse will commit to maintain the confidentiality of contents of the full audio recording.</td>
</tr>
<tr>
<td>Ms. Karn is willing to commit XFC’s personnel to silence regarding Mr. Morse’s responsibility for the YerVidz video. She is unwilling, however, to have XFC re-hire Mr. Morse, or to have any XFC personnel recommend him for employment elsewhere.</td>
<td>In return, he will insist upon XFC’s keeping quiet about his role in publishing the video.</td>
<td>XFC will not commit to recommend Mr. Morse for employment. If need be, Ms. Karn will commit to limit XFC’s responses to inquiries about Mr. Morse to something along these lines: “XFC’s former CEO terminated Mr. Morse’s employment, but this was not due to any shortcoming in his technical skills, which are impressive.” If that is insufficient, she will reluctantly add that “Mr. Morse and the former CEO simply could not get along.”</td>
</tr>
<tr>
<td>If need be, she will agree to limit XFC’s responses to inquiries about Mr. Morse to something along these lines: “XFC’s former CEO terminated Mr. Morse’s employment, but this was not due to any shortcoming in his technical skills, which are impressive.” If that is insufficient, she will reluctantly add that “Mr. Morse and the former CEO simply could not get along.”</td>
<td>Ideally, Mr. Moore would like to get a letter of recommendation from XFC that focuses on his formidable technical abilities.</td>
<td>XFC will commit to preserve the confidentiality of Mr. Morse’s responsibility for the YerVidz video, and Mr. Morse will commit to maintain the confidentiality of contents of the full audio recording.</td>
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### Issue 3: Property and Severance

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<th>Ms. Karn</th>
<th>Mr. Morse</th>
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| Ms. Karn is willing to agree to the return of Mr. Morse’s phone, provided that it is reset-wiped first.  
She would prefer to retain Mr. Morse’s plug-in upgrade modules against the possibility that the technology that they embody may have commercial value. She is willing to give up the modules, however, rather than keep them at the expense of any of her other priorities.  
She is absolutely inflexible on the subject of severance: under no circumstances will she agree to XFC’s providing a severance package to Mr. Morse. | Mr. Morse’s highest priority is the retrieval of his five hand-crafted upgrade modules from XFC’s server.  
He also insists upon the return of his phone, though he is willing for it to be reset-wiped first.  
He would also like to receive XFC’s standard severance package, but not at the cost of any of his other goals. | XFC will agree to return Mr. Moore’s upgrade modules and his phone (after the latter has been reset-wiped), but will not agree to Mr. Moore’s receiving a severance package. |
### Issue 4: XFC’s Computer System

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<th>Ms. Karn</th>
<th>Mr. Morse</th>
<th>Probable Outcome</th>
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<tr>
<td>Ms. Karn is now satisfied that Mr. Morse did nothing to sabotage XFC’s computer system, and she has authorized Ms. Jorgens to buy a modern server.</td>
<td>Mr. Morse is willing to “help” XFC with the security holes only by advising it, yet again, to buy a new server: “Maybe with Lana and me both telling them that, they’ll actually buy it now. But no way, nohow am I gonna pour out blood, sweat, and solder to come up with more hardware upgrades to keep that old server wheezing along for another month.”</td>
<td>Mr. Morse will not assist XFC with its computer system, nor, with a new server, will XFC need such assistance.</td>
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Faradrive Motor Corporation is one of the newest and most innovative automobile manufacturers in North America. Its first product, the Faradrive Falcon, features a hybrid drive system: a gasoline generator supplies electric power to a motor that drives each wheel. When the brake is applied, each wheel’s motor becomes a generator, converting the kinetic energy of the wheel’s motion into electricity that is stored in a bank of capacitors for use in re-acceleration.

Both the motor-generators and the capacitors are of revolutionary design and unprecedented efficiency, with the result that the Falcon has by far the highest miles-per-gallon rating of any mass-production automobile to date. Unfortunately, even with its low fuel costs, the Falcon has proved to be too expensive to be sold in sufficient numbers to generate sufficient income to put FMC on a solid financial footing.

In an effort to boost sales, the CEO of FMC, Annette Browning, instructed its products-development staff to include a self-driving feature in FMC’s second product, the Forward. Most FMC personnel considered this to be a reachable goal due to another innovative feature that had been included in the Falcon: 360-degree obstacle sensors of unusual range and reliability.

In the Falcon, a directional binaural audio tone plays over the vehicle’s internal speakers to indicate the collision-threat axis when data from its sensors indicate that, absent a change in steering, acceleration, or braking inputs, the vehicle will strike an obstacle within two seconds. To date, the sensors have benefitted Falcon drivers mainly by helping them to avoid parking mishaps and minor bumper-bumping.
Nonetheless, the sensors’ range, sensitivity, and reliability are sufficient to enable the Forward to be self-driving, so long as its computer and software are up to the task. Unfortunately for FMC, as it approached the design-finalization deadline for the Forward, its designers came to have serious doubts about whether a sufficiently reliable self-driving feature could be developed in time. They realized that they had made a serious mistake in relying upon approaches that had seemed promising when used with more conventional automobiles. Also, the costs of the self-driving development program were far greater than had been projected.

With the deadline less than half a year away, Norton Oswald, FMC’s Vice-President for Research and Development, convinced Ms. Browning that the self-driving project had to be scrapped. He also convinced her that the effort formerly devoted to that project had to be re-directed to lowering the cost of FMC’s capacitors. He proceeded to fire FMC’s chief Research and Development engineer, whose specialty was control systems and software, and in her place promoted FMC’s leading engineer on electrical storage and distribution issues.

Mr. Oswald then disbanded the development team for the self-driving project, and instructed all FMC employees that no equipment or records pertaining to the discontinued self-driving project were to be kept. By way of explanation, he declared, “Cortez burned his ships so that his men would know that retreat wasn’t an option: if they didn’t conquer, they would die.”

“That’s commitment,” he intoned, “and I mean for us to be committed. I don’t want anyone to waste even two seconds thinking about self-drive, because that’s two seconds not spent thinking about how we can cut unit costs on our electricals. “Get rid of everything,” he ordered; “by next week, I don’t want there to be a single piece of paper, a single computer file, or a single piece of equipment related to the self-driving project to exist.”

Christopher Dale, FMC’s chief vehicle-safety engineer, approached Mr. Oswald privately to ask him to reconsider at least part of his order. Mr. Dale agreed that the self-driving feature could not be made sufficiently reliable by the deadline, but he fervently insisted that a less ambitious, but still valuable feature could be.

Mr. Dale explained, “The programming that you need to get a car to drive itself is complicated as hell, and the crash-avoidance subroutines are the most important and the most complicated parts of the lot. But compared to them, the subroutines you need to minimize the damage of a crash are child’s play. And nobody will be worried that glitches in those will cause a crash, because they won’t take over from
the driver until a crash is unavoidable. They’ll only kick in when there’s just no way that human inputs to the control mechanisms could be fast enough or strong enough to avoid a crash!”

Mr. Oswald refused to consider including the computerized crash-mitigation feature in the Forward, or even retaining data and equipment pertaining to that feature. Growing increasingly frantic, Mr. Dale pleaded with Mr. Oswald to keep the equipment and data that had been developed to date: “Keep it under lock and key if you have to, but don’t get rid of it! Think of the waste, and think of all the work we’ll have to repeat when we start over after the Forward!”

Mr. Oswald’s refusal was emphatic and final. In desperation, and somewhat tongue-tied, Mr. Dale approached Ms. Browning in the hope of getting her authorization to preserve equipment and files. She listened to him only briefly before telling him, politely but firmly, that she would not overrule Mr. Oswald in his area of responsibility. Shortly thereafter, Mr. Oswald confronted Mr. Dale, and did not do so politely. Mr. Oswald’s harangue began with “You should have known better, you idiot: anyone who goes over my head gets his head cut off!,” and it ended with Mr. Dale’s being fired.

Mr. Dale was stunned: he had seen his work at FMC as the culmination of the work of his entire adult life and more. He had devoted himself to vehicular safety in the aftermath of a horrific crash that he had survived, but that had cost the lives of two of his high school classmates: the car’s driver and another passenger.

Unwilling (or perhaps unable) to focus on anything else, he continued his work on the Forward’s crash-mitigation system as best he could. For this purpose, he used a version of a Forward prototype that he had constructed from a used Falcon that he had purchased in a sheriff’s sale, supplemented with parts from Forward prototypes that had been used in crash tests.

He obtained those parts via an arrangement with the owner of the junkyard to which crashed prototypes were sent, and he refurbished those parts at home, as a hobby. Shortly after he was fired, he was able to glean many parts from a nearly intact Forward prototype at the same junkyard. Better still, a device known as “the Box” was still connected to the prototype’s computer.

The Box is a monitoring and storage unit that accompanied every prototype throughout its self-drive operational testing and self-drive crash tests. The Box contains all of the data that have been generated by all of those tests. It also
contains copies of all versions of all software that has run on the prototypes that were tested. Accordingly, the Box accompanied the last self-drive prototype to the junkyard, because both the Box and the prototype fell within the scope of Mr. Oswald’s order concerning equipment and data relating to the self-driving project.

Between his cobbled-together prototype and the Box, Mr. Dale was able to continue his work in developing the crash-mitigation feature for the Forward, in the hope that he would eventually be able to sell it to FMC, or to another manufacturer of comparable vehicles. In doing that work, he decided to forgo the costs of procuring crash dummies and the uncertainties of remote-driving equipment by driving the vehicle into crashes himself.

His tests left him with considerable confidence that his approach to crash mitigation was sound. Those tests also left him with a persistent ringing sound in his ears, as well as intermittent dizzy spells and other unpleasant after-effects. But shortly after he concluded his tests, he overcame his discomfort sufficiently to participate in a panel discussion on the crashworthiness of electric-drive vehicles (on a panel for which he had been recruited long before) at a conference sponsored by a leading North American association of automotive engineers.

In response to a question on crashworthiness, he asserted that recent developments held great potential for improvement: “Independent electric motors and super-fast capacitors are different from dumb wheels and friction brakes. Really different: a computer can use the new stuff to make a crash a lot easier on occupants of the passenger compartment, even if the computer only has a tiny amount of time to work with.”

“It’s all about the angles,” he continued. “Most of you know that crumple zones and restraints work much better at some impact angles rather than others. Well, now the computer can give you the very best impact angle out of the ones that are physically possible given the forces in play. It would be a shame to have the hardware that you need to save lives already out there on the road, and people dying anyway who don’t have to.”

The undertone of bitterness in his words caught the attention of a journalist in the audience, who asked whether FMC was working on computerized crash mitigation. “I can’t say,” he replied; “I don’t work there anymore. I’m just hoping that some outfit somewhere will care about this. I mean, other car companies are working on hardware like FMC’s, and I have to hope that they’ll connect the dots, and that they’ll give enough of a damn to do something about it.”
He was asked a number of follow-up questions, but he refused to elaborate further. Mr. Dale’s responses caused the journalist’s fine-tuned news antennae to twitch, however, and she began to investigate recent developments at FMC. Surprisingly soon thereafter, she published an exposé of serious financial irregularities on the part of Mr. Oswald.

In that exposé, she presented compelling evidence that he had prevented FMC’s retention of data and equipment from the self-driving project to ensure that those irregularities would not be discovered. She also noted that, although the Forward’s self-driving feature would not have been viable in any event, the crash-mitigation feature would have been viable but for Mr. Oswald’s efforts at financial camouflage.

In response to the exposé, Ms. Browning swiftly verified its assertions, fired both Mr. Oswald and FMC’s chief financial officer, and ordered the recovery of as much as could be found of the information and equipment that had been discarded by Mr. Oswald’s order. She was particularly concerned with recovering the Box, though she feared that it had already been destroyed.

When she learned that the Box was in Mr. Dale’s possession, she was at first relieved, but then she was puzzled and worried, because it should not have been: FMC’s agreement with the junkyard, executed years before, had required that each FMC vehicle be compacted and sent off for melting and metal reclamation in its entirety, without removal of any of its parts.

The owner of the junkyard, who had bought it from the prior owner shortly before the latter’s recent retirement, told Ms. Browning that he had been unaware of any such requirement. “Anyway,” the new owner asked, “what’s the big deal? It’s not like Chris is a spy for some other outfit or nothin’—he’s an FMC engineer! Every day, he handles parts like the ones that he got from me, right?” Ms. Browning thanked him without answering his question, and quickly left.

Having learned that Mr. Dale had bought the Box and other Forward parts from the junkyard, she approached him with an offer of employment. When he learned that she intended to hire him at little more than the salary and benefits that he had earned before he was fired, he grew angry. He explained in great detail how humiliated he had been by what Mr. Oswald had said and done to him, how disappointed he was in FMC as an institution that could even consider discarding data, and how much painful effort he had expended in completing his work.
He told her that if FMC wanted to reap the benefits of that work, he would require a five-year employment contract under which he would be paid triple his former salary, with full salary and benefits retroactive to the date on which he was fired. He also demanded fifteen thousand shares of FMC stock as a bonus for executing the employment contract, as well as a provision in that contract specifying that he would receive his pay and benefits for the entire term, even if he were fired.

In return, in addition to his services, he offered to give the Box to FMC (as opposed to one of its competitors) with all of its original contents intact. He also offered to license to FMC, for five years, the data and subroutines from his post-firing work.

Taken aback by his strident tone and unexpected demands, she snapped in reply that he had “a lot of nerve demanding shares of FMC stock, given the damage that you caused my company when you let yourself be quoted as saying that FMC didn’t give a damn about safety!”

After calming herself somewhat, she noted that the Box and its contents, old and new, were FMC property, and that if he continued to be unreasonable in his demands, she could obtain what she needed by getting a court order for the return of the Box. He stated that no such order would be forthcoming, because he owned the Box and its contents outright.

He showed her a copy of his bill of sale for his most recent parts purchase, which included the Box. It was essentially a quitclaim: it conveyed to Mr. Dale all of the rights, if any, that the junkyard had acquired in the listed items. He also suggested, with a nasty smile, that she read the form that the junkyard required every seller of a vehicle to execute.

When she returned to the junkyard and viewed the form from Mr. Dale’s most recent purchase, she quickly found the language that had motivated Mr. Dale’s grin: “Moreover, Seller hereby conveys to Buyer the entirety of Seller’s proprietary interest in any and all data storage devices of any kind (including without limitation GPS navigation systems, audio playing systems, hard drives, flash drives, and integral automotive computer systems) that are in or on the Vehicle at the time of sale, as well as any and all software and data stored on those devices.”
In the form’s “Seller” signature line, she saw “Charlie Eckles, FMC experimental mechanic.” When Ms. Browning asked Mr. Eckles about the form, he admitted that he had signed it, and he confirmed that he had been authorized by FMC to sell its experimental vehicles for scrap on FMC’s behalf. He also told her that he had done so often in the past, though the form was new. He then hastened to add that before signing the form, he had both read it, questioned the new owner about.

According to the new owner, the language about devices and data had been added because the old owner had told him about “catching hell about ‘invasion of privacy’ when some dimwitted public official forgot to erase his car’s onboard GPS navigation computer, and some nosy newsy pulled data off of it that showed he’d regularly visited people and places that his wife and his constituents weren’t happy about.”

Mr. Eckles added that he had assumed that the Box would be destroyed along with the rest of the vehicle. Also, he had thought that the Box wasn’t covered by the disclaimer anyway, because it was not an integral automotive computer system, but rather an external, plug-in recording monitor that was only for temporary use in conjunction with the vehicle’s computer.

Armed with that argument, she confronted Mr. Dale once again. She repeated her assertion that the Box belonged to FMC, but she offered him a one-year contract and a raise of twenty percent. His response was strongly negative, and rather profane. As she left the confrontation, she told him to expect to be contacted by FMC’s lawyers, and he vowed to have lawyers of his own waiting for them.

Ms. Browning and Mr. Dale have authorized their lawyers to meet at a neutral location to discuss the issues that appear below. Ms. Browning has full authorization to act on behalf of FMC as its sole decisionmaker and client contact in this negotiation.

1. **To what extent, if any, will FMC possess and/or own the Box and its contents?**

2. **What will be the terms and conditions of Mr. Dale’s employment contract with FMC, if any?**

3. **How many shares of FMC stock, if any, will Mr. Dale receive?**
4. What steps, if any, will Mr. Dale take to assist FMC’s efforts to repair its public image?

**Note**

All lawyers are to act on these premises at all times:

(1) No third-party source of funding or other assistance, whether via insurance or otherwise, is available to FMC or Mr. Dale.

(2) No aspect of labor or employment law, whether local, Manisconsin, or federal, is relevant to this dispute.

(3) The events of this dispute have involved no violations of local, Manisconsin, or federal statutes, regulations, or other legal standards, except possibly for ones that may have given rise to civil liability as between FMC and Mr. Dale.

(4) No person or entity will obstruct the compliance of any person or entity with the terms of the agreement that FMC and Mr. Dale execute, if any.

(5) No person or entity will assert legal liability of any kind against any person or entity as a consequence either of the execution of the agreement between FMC and Mr. Dale, if any, or of the compliance of any person or entity with that agreement.

(6) For purposes of this Note, “any person or entity” includes (without limitation) natural, juridical, private, and governmental persons and entities.

(7) Ms. Browning’s personal interests and the interests of FMC are effectively identical, and under the laws and ethical rules governing lawyers, Ms. Browning’s serving as the sole decisionmaker and client contact for FMC in this negotiation does not pose, and will not pose, any impermissible conflict for FMC’s lawyers.

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Annette is glumly aware that her misplaced trust in Mr. Oswald has caused great harm to FMC. She also regrets the harm that her poor decisions have inflicted upon Mr. Dale, not least because in her recent encounters with him, he seemed not only ill-mannered, but also much the worse for wear.

But her primary focus must be repairing FMC’s situation, including successfully launching the Forward. Toward that end, she has been relieved to discover that much of the money that was discovered to be missing in the wake of the exposé is recoverable. She is willing to give Mr. Dale a fair portion of that money in one form or another, if he will be reasonable about terms and conditions.

She certainly hopes that he will be reasonable, because “FMC urgently needs him back on board, quickly and voluntarily. We took a major black eye from that exposé and the ‘give a damn about safety’ thing. If he comes back to FMC, that’ll go a long way toward repairing our public image, but not if we sue him to get him back, or to even get the Box back.”

And although the public-relations damage from suing Mr. Dale would be all but certain to result from litigation, she knows that getting the Box back would not be. She has accepted your advice that, given the execution of the disclaimer by an authorized employee of FMC, and given Mr. Oswald’s explicit orders to purge FMC of all equipment and data from the self-driving project, FMC has at best a rather shaky claim to ownership of the Box and its original contents.

She also accepts that FMC’s claim to the Box’s new contents, the data and subroutines that Mr. Dale has created, is even shakier. And she needs those contents: both for public relations and for marketing the Forward, Mr. Dale’s
crash-mitigation subroutines are just what the doctor ordered. Thus, she will insist upon FMC’s absolute, outright ownership of not only the Box, but also its contents, old and new.

Given Mr. Dale’s recent experience, she understands why he wants a specified-duration employment contract, and she has no problem with ensuring that his benefits will be the same as if he had not been fired. But the “pay me even if you fire me” proviso worries her. If he insists upon that proviso, she will agree to a contract of no more than three years, at a salary that is no more than doubled. Absent that proviso, she is willing for the term to be up to five years, and for his salary to be up to two and a half times what it was before he was fired.

Despite her initial reaction to his demand for shares of FMC stock, she rather likes the idea of his having additional motivation for wanting FMC to prosper. Fifteen thousand shares’ worth of motivation is too much of a good thing; however, she will not go above eighty-five hundred. But his receiving any shares will necessarily be contingent upon his helping FMC with its image problem, at a minimum by publicly praising the Forward’s crash-mitigation feature, and by implication, FMC’s concern for the safety of its customers.

More generally, so long as your doing so will not interfere with her other priorities, Annette hopes that you will be creative in thinking of other steps that Mr. Dale can take to advance FMC’s interests, and in securing his agreement to take those steps. Ms. Browning is leaving the negotiation to your discretion, and will agree to anything that is in the best interests of FMC. You may provide additional non-self-serving information and details that are consistent with the facts that appear above and in the General Information.

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Annette Browning and Chris Dale

CONFIDENTIAL INFORMATION
FROM CHRIS DALE

Chris is ashamed of his demeanor in his most recent encounters with Annette: “Yeah, she should have done things differently, especially with that jackass Oswald, but I shouldn’t have barked at her like I did.” He attributes his ill temper to the headaches that he has been having lately. Like the ringing in his ears and his dizzy spells, his recent headaches have been more intense than any he had ever experienced before he repeatedly served as his own crash dummy.

He would like to make things right with FMC, and if FMC will do the right thing by meeting his terms, he’ll be happy to equip the Forward with the crash-mitigation subroutines that he has developed, and to tell anyone who’ll listen about how wonderful they are, and how wonderful FMC is for caring enough to use them.

Chris is very worried at the prospect of litigation over the custody of the Box, however, because some troublesome facts would almost certainly come out in court. First, Chris was well aware that the junkyard should not have been selling parts from FMC’s prototype vehicles. In fact, he only attempted to purchase FMC parts there after the new owner took over.

Chris hoped that the new owner would either not be aware of the parts-sales proscription, or would be more willing than the old owner, who had been a cranky character, to overlook that proscription in light of Chris’s status (at the time) as an FMC engineer. As it turned out, his interactions with the new owner proved to be both pleasant and successful.

Another result of Chris’s good relationship with the new owner was the addition of the devices-and-data language to his disclaimer form. Chris had heard the new
owner express concerns about GPS-module data, and when Chris learned that FMC would be getting rid of its self-driving project’s equipment and data, he quickly found appropriate disclaimer language on the Internet, and gave it to the new owner with the suggestion that he include it in his form ASAP.

In retrospect, Chris realizes that the language might not have been so appropriate after all, not least because of the uncertainty brought about by the inclusion of the word “integral.” He has also accepted at face value your warning that, under Wisconsin law, he may have committed the tort of trade-secret misappropriation. He understands that the contents of the Box at the time of its purchase were very probably trade secrets that belonged to FMC, and that his actions may well constitute improper means of obtaining those secrets.

But subject to his priority of staying out of court, he wants to ensure that he gets a good enough deal from FMC to enable him to take care of his familial obligations and personal needs, even if his health fails him even worse than it appears to be doing now. Toward that end, he will insist upon at least a three-year employment contract with at least a seventy-five percent raise over his former salary. A longer term and a higher percentage would, of course, be better.

He also insists that on full benefits, with retroactive continuity so as to prevent any lapse of coverage due to his having been fired, and he insists that the pay and benefits continue to the end of the contract term even if FMC no longer needs or wants his services. He would like to receive fifteen thousand shares of FMC stock as a signing bonus, but if need be, except as indicated below, he will settle for as few as four thousand shares.

For his part, Chris is willing to return the Box to FMC, and to license FMC to use the data and subroutines that he created via his post-firing efforts for the duration of the employment contract. If FMC insists upon owning those data and subroutines, then he will not settle for less than six thousand shares as his signing bonus.

More generally, so long as your doing so will not interfere with his other priorities, Chris hopes that you will be creative in thinking of other steps that FMC can take to advance his interests, and in securing its agreement to take those steps.

Chris is leaving the negotiation to your discretion, and will agree to anything that is in his best interests. You may provide additional non-self-serving information and
details that are consistent with the facts that appear above and in the General Information.

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Annette Browning and Chris Dale

CONFIDENTIAL SUMMARY FOR JUDGES

These tables summarize each party’s goals and priorities for the negotiation, highlighting the areas of potential agreement and disagreement.

Issue 1: The Box and its Contents

<table>
<thead>
<tr>
<th>Ms. Browning</th>
<th>Mr. Dale</th>
<th>Probable Outcome</th>
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<tbody>
<tr>
<td>Ms. Browning will insist upon FMC’s absolute, outright ownership of not only the Box, but also its contents, old and new.</td>
<td>Mr. Dale is willing to return the Box to FMC, and to license FMC to use the data and subroutines that he created via his post-firing efforts for the duration of the employment contract. If FMC insists upon owning those data and subroutines (rather than licensing them), he will agree, but he will not settle for fewer than six thousand shares as his signing bonus (see Issue 3, below).</td>
<td>FMC will have absolute, outright ownership of not only the Box, but also its contents, old and new.</td>
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## Issue 2: Employment Terms and Conditions

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<td>Given Mr. Dale’s recent experience, Ms. Browning understands why Mr. Dale wants a term-governed employment contract, and she has no problem with ensuring that his benefits will be the same as if he had not been fired. But the “pay me even if you fire me” proviso worries her. If he insists upon that proviso, she will agree to a contract of no more than three years, at a salary that is no more than doubled. Absent that proviso, she is willing for the term to be up to five years, and for the salary to be two and a half times what it was before he was fired.</td>
<td>Mr. Dale will insist upon at least a three-year employment contract with at least a seventy-five percent raise over his former salary. A longer term and a higher percentage would, of course, be better. He will also insist upon full benefits, with retroactive continuity so as to prevent any lapse of coverage due to his having been fired, and he insists that the pay and benefits continue to the end of the contract term even if FMC no longer needs or wants his services.</td>
<td>Mr. Dale will be given a three-year employment contract, with full benefits as if he had not been fired, with a raise of between seventy-five and one hundred percent, and with a “pay me even if you fire me” proviso.</td>
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### Issue 3: Stock Bonus

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<td>Despite Ms. Browning’s initial reaction to his demand for shares of FMC stock, she rather likes the idea of his having additional motivation for wanting FMC to prosper. Fifteen thousand shares’ worth of motivation is too much of a good thing, however: she will not go above eighty-five hundred.</td>
<td>Mr. Dale would like to receive fifteen thousand shares of FMC stock as a signing bonus, though if need be, except as indicated below, he will settle for as few as four thousand shares. If FMC insists upon owning his newly created data and subroutines, rather than licensing them, then Mr. Dale will not settle for fewer than six thousand shares as his signing bonus.</td>
<td>Mr. Dale will receive between six thousand and eighty-five hundred shares of FMC stock.</td>
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## Issue 4: Public Relations

<table>
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<td>Mr. Dale’s receiving any shares will necessarily be contingent upon his helping FMC with its image problem, at a minimum by publicly praising the Forward’s crash-mitigation feature, and by implication, FMC’s concern for the safety of its customers.</td>
<td>If FMC will do the right thing by meeting Mr. Dale’s terms, he’ll be happy to equip the Forward with the crash-mitigation subroutines that he has developed, and to tell anyone who’ll listen about how wonderful they are, and how wonderful FMC is for caring enough to use them.</td>
<td>Mr. Dale will cooperate with FMC’s public relations efforts, at least to the extent of publicly praising both the Forward’s crash-mitigation subroutines, and FMC’s safety-consciousness as indicated by its use of them.</td>
</tr>
</tbody>
</table>

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Over the past forty years, Jeremiah Berenger has become known as the preeminent freelance political consultant on Manisconsin legislative matters. He has never held public office, but as a keen and constant observer of legislators and their foibles, he has developed an unrivaled understanding of how things are done in the legislative process, and how outsiders can influence that process.

Recently, however, he has faded from public view. He has been absent from his usual haunts, and he has failed to attend, for the first time in decades, a number of high-profile annual events that are always well-attended by legislators. Just as speculation concerning his whereabouts was becoming particularly intense, two significant members of the Manisconsin political scene each received a copy of a jointly addressed letter from him.

The first addressee, Nathan Orloff, is the sole surviving member of the Orloff political dynasty, and a rising star in the governing party. He was recently elected to the seat in the legislature that was vacated by the death of his mother, who had been the single most influential member of the legislature since the turn of the millennium.

The second addressee, Paula Quincy, is a former legislator for the opposition party. She now runs Twelve Tables Communications, Inc., a politically oriented publishing house that is well-known for promoting works that are antithetical to the agenda and interests of the governing party.

The body of the letter reads as follows:
I write to inform you both of actions that I have taken that will affect your interests substantially, and of choices that now lie before you as a result. It is my hope that the circumstances that I have created will cause you both, in shaping those choices to serve your own interests, to serve Manisconsin as well by helping to cure some of the chronic pathologies in its political process.

I imagine that, familiar as both of you are with my reputation, you are surprised by my professing such a goal: who would expect an éminence grise to abandon gray for black and white at this late date? Well, why not? After all, I evaded Death’s bony white fingers by only the narrowest of margins a few months ago, and I expect my flickering candle’s light to disappear into the Final Black before long.

With that prospect before me, I have had to face something that, I now realize, I have been studiously avoiding for most of my adult life: I may well be the best at what I do, but what I do should not be done at all. It amounts to corruption that is all the more effective and pervasive because it is legal, and that usually results in lawmaking—usually bipartisan lawmaking—that benefits a few at the expense of many.

I have specialized in amassing information concerning which legislators owe what favors to whom, and how the almost infinitely complex web of favors owed and favors needed could be aligned and influenced to achieve my clients’ ends. And in doing so, I have developed a reputation for being not only highly effective, but also utterly honest! How ironic, and how erroneous.

I was utterly law-abiding, in that I would refuse to discuss any illegal course of action, nor would I permit any discussion of illegal action to take place in my presence. But I was law-abiding primarily to avoid subjecting myself to extortion, and thereby, having my freedom of action limited. Moreover, my legality scruple did me little harm: as I was able to demonstrate time and again, nearly any objective that can be served by breaking the law can be served better (and usually less expensively, and often more easily) by changing the law.

Another aspect of my purported honesty was my fidelity to my word. Again, this was a matter of practicality rather than principle. I knew
that if I broke my word, every deal thereafter would be less favorable than it might have been, because the other side would necessarily factor my unreliability into its calculus of advantage.

Oddly, though, among all of the myriad promises that I made, there was never one that bound me to silence. When asked for one, I always replied simply that I had never betrayed a confidence. It was always true, but why did I refuse to promise, when doing so would often have made the encounter go more smoothly (early in my career, at least)? Did I know even then that I would eventually betray such confidences, and on a massive scale?

And massive that betrayal will be, eventually, because I have taken steps that will lead to the worldwide disclosure of my diary, in all of its unexpurgated glory. Throughout my career, I have been a compulsive diarist: never having trusted anyone enough to discuss my private thoughts, I have clarified and refined them by writing extensive entries in my diary.

I have now ensured that my diary will be published in its entirety, eventually. Toward that end, I have made arrangements with reliable agents in multiple data-haven jurisdictions to upload copies of my diary to hundreds of Internet aggregation and storage sites on the third anniversary of my death. When that day comes, the Manisconsin electorate will learn a great many things that are all but certain to result in political upheaval.

But that upheaval may well be unpredictable in its effects if the electorate is not prepared for it in advance. My objective is to ensure that lawful corruption will be made unlawful. Thus, I must avoid fostering political chaos that may well prevent such reform from taking place. And that is where the two of you come in.

As you know, Paula (and as you now need to know, Nathan), you and I shook hands on an agreement, not long before I became ill, that I would write a political memoir for Twelve Tables. In exchange for Paula’s very generous advance, which I do of course plan to retain, I was to include in my memoir plenty of “juicy stuff” to ensure good sales, though she expected that my protection of confidences meant that much of the juiciest stuff would not be included.
Well, there will be considerably more “juice” in my memoir than you expected, Paula. It will consist of excerpts from my diary organized into fifteen chapters, each one of which will be devoted to a legislator, all but one of whom are still in office. Of the ones still in office, seven belong to the governing party, and eight belong to the opposition party. The one who is not still in office, Nathan, is your late mother.

If you would like to know what to expect from those chapters, I suggest that you read Amanda Wallop’s recent article in the *Manisconsin Political Review* about a gentleman who, until his very recent resignation in the wake of that article, was a governing-party legislator. You will note that, despite the furor that led to his resignation, the article does not accuse him of a single unlawful action.

Ms. Wallop based that article on a compilation of excerpts from my diary that strongly resembles, in form and content, each of the chapters of my memoir. The one condition that I imposed upon her was that she work my name into the article in a way that would not be obvious, but that I could use to prove, if need be without her assistance, that I was her primary source.

You will note that the last letter of the last sentence in the article is “p,” and that the second-to-last letter of the second-to-last sentence is “r.” If you keep following that progression, you’ll find that it spells out “primary source” and my full name. I’ve also enclosed with this letter a large envelope containing the original version of the document that I provided to Ms. Wallop as source material for her article.

Thus, you can both easily determine the sort of impact that my memoir will have when it is released. The timing of its release will be up to the two of you, in large part. In a small red envelope enclosed with this letter, each of you will find the means of affecting that timing, namely one of two long alphanumeric codes, and a set of instructions for transmitting your code, either by itself, or together with the other one.
If neither code is transmitted within thirty days, the memoir will be released generally, i.e., it will be transmitted to hundreds of internet aggregation and storage websites, both within and outside of Manisconsin. If both codes are transmitted together, as I hope, the memoir will be transmitted immediately to Paula only. If either code is transmitted alone, at any time (even after both codes have already been transmitted together), the memoir will immediately be released generally.

You will find that the circumstances that I have created are ones in which you will fare better by cooperating. Paula, you know that general release of my memoir will deprive Twelve Tables both of most of its financial value, and of much of the prestige that Twelve Tables would otherwise have earned from publishing it (prestige upon which I know you are counting).

Nathan, although my memoir says nothing about you, one of its chapters is devoted to your late mother, and you are quite unlikely to win your first re-election bid eighteen months from now unless you learn well in advance of its publication what her chapter contains, and make strenuous efforts insulate yourself from its effects before election day.

Those efforts will necessarily cast you in the role of a reformer, and as a rising star of the governing party, you will be an influential one. Paula, your influence with the opposition party is more subtle, but you will find it to be considerably enhanced by your possession of the memoir. And you will doubtless wish to use that influence to ensure that the governing party will be unable to make any plausible claim of being the sole champions of reform.

Thus, I will leave the two of you to work out the details of your cooperation. Despite your opposing political affiliations, I can in this sense recommend you to one other: I am entirely confident that the word of each, once given, will never be broken.

My final recommendation is that neither of you should waste time in any efforts aimed at gaining sole control of either my memoir or my diary by technical means. I have made very thorough, very expensive, and very redundant arrangements to ensure that they will be released.
exactly and only as I have specified. And while I doubt that either of you is clumsy enough to attempt to coercion, by legal means or otherwise, I will note that I have permanently left North America, and before you could realistically hope to find me, I shall have passed beyond any terrestrial jurisdiction.

Good luck,
/s/ Jeremiah Berenger

Ms. Quincy responded to the letter by immediately contacting Mr. Orloff. Upon learning that he had also read Mr. Berenger’s letter, she demanded that Mr. Orloff give her his code. Mr. Orloff coolly responded that he might well do so, but that a number of conditions would have to be met first. Ms. Quincy hotly denied that either Mr. Berenger or Mr. Orloff could be entitled to impose conditions upon the publication of the memoir, because Twelve Tables owned it outright.

Mr. Orloff responded that he doubted that its ownership could be established in any way that could legally bind him, as opposed to Mr. Berenger: “Can you provide documentation establishing ownership of the memoir’s copyright by Twelve Tables? Or documentation of an assignment of the author’s copyright interest, or even a valid work for hire provision? That would be quite an accomplishment in a transaction that he called a ‘handshake agreement,’ wouldn’t it?”

Ms. Quincy replied that even absent copyright ownership, Mr. Berenger’s avowal of his contractual obligation in a signed writing would be enough to establish in court the right of Twelve Tables to control the release of the memoir. “And anyway,” she continued, “if I use my code, your political life is over: you’re in no position to make demands! It’s not like you have any other life, but for me, there will always be other books!”

At this point, Mr. Orloff lost his temper: he did not stop making demands, but he did start shouting them. Taken as a whole, after disregarding various fulminating epithets, his words expressed willingness to give her his code so long as Twelve Tables (1) immediately shares with him the full text of the memoir, (2) shares no part of the memoir with anyone other than himself before the memoir is published, and (3) delays the publication of the memoir until after his re-election. Ms. Quincy’s reply to those demands was terse, unkind, and uncompromising.
Since that conversation, no constructive communication has taken place between them. Now, Ms. Quincy has authorized the lawyers of Twelve Tables to meet with Mr. Orloff’s lawyers at a neutral location to discuss the issues that appear below, and Mr. Orloff has likewise authorized his lawyers. Ms. Quincy has full authorization to act on behalf of Twelve Tables as its sole decisionmaker and client contact in this negotiation.

1. When, to what extent, and under what circumstances will Twelve Tables share the Berenger memoir with Mr. Orloff, if at all, before the memoir’s publication?

2. When, to what extent, and under what circumstances will Twelve Tables share the Berenger memoir with anyone other than Mr. Orloff, if at all, before the memoir’s publication?

3. When will Twelve Tables publish the Berenger memoir?

Note

All lawyers are to act on these premises at all times:

(1) The events of this dispute have involved no violations of local, Manisconsin, or federal statutes, regulations, or other legal standards, except for ones that may have given rise (or may still give rise) to civil liability on the part of Ms. Quincy, Twelve Tables, and/or Mr. Orloff.

(2) No third-party source of funding or other assistance, whether via insurance or otherwise, is available to Ms. Quincy, Twelve Tables, or Mr. Orloff.

(3) No person or entity will obstruct the compliance of any person or entity with the terms of the agreement that Twelve Tables and Mr. Orloff execute, if any.

(4) No person or entity will assert legal liability of any kind against any person or entity as a consequence either of the execution of the agreement between Twelve Tables and Mr. Orloff, if any, or of any person or entity’s compliance with that agreement.

(5) For purposes of this Note, “any person or entity” includes (without limitation) natural, juridical, private, and governmental persons and entities.
(6) Ms. Quincy’s personal interests and the interests of Twelve Tables are essentially identical, and under the laws and ethical rules governing lawyers, Ms. Quincy’s serving as the sole decisionmaker and client contact for Twelve Tables in this negotiation does not pose, and will not pose, any impermissible conflict for the lawyers of Twelve Tables.

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Nathan Orloff and Paula Quincy

CONFIDENTIAL INFORMATION
FROM NATHAN ORLOFF

Nathan is very nervous, because he entirely agrees with Ms. Quincy’s assessment that Mr. Berenger’s apparent sudden-onset insanity has placed Nathan’s political career in her hands. Nathan is also glumly aware that, insane though he might be, Mr. Berenger has lost none of his legendary cleverness. The circumstances that he has created have ensured that Nathan can best preserve his career by repositioning himself, as quickly as possible, as a crusader against the sort of legal-but-unpopular favor exchanges that the publication of the memoir will reveal.

Thus, to have any realistic hope of winning his next election, he must obtain the memoir’s chapter on his mother as soon as possible, and have as much time as possible to reposition himself so as to neutralize its revelations. Moreover, he has accepted your advice that any resort to litigation would probably be both unhelpful and counterproductive. Thus, he is willing to provide his code to Ms. Quincy if he receives a complete copy of the memoir in return. He suspects that Ms. Quincy will not be that forthcoming, however.

Less helpful, but still highly desirable, would be his receiving all seven of the chapters on governing-party legislators. If need be, however—at an absolute minimum—he will settle for receiving a copy of the chapter on his mother, plus the names of the six governing-party legislators to whom chapters are devoted in the rest of the memoir. Regardless of how much information from the memoir he receives, he will under no circumstances wait for it: he will insist upon receiving that information as soon as possible.

He would strongly prefer that Ms. Quincy and Twelve Tables commit to preventing anyone other than himself from learning anything about the contents of the memoir before it is published. If need be, however, he will insist only that the
memoir’s contents regarding governing-party legislators be kept confidential until the memoir’s publication.

Nathan would also strongly prefer that the memoir be published after his re-election, i.e., at least eighteen months from now. The absolute minimum delay in publication that he will accept is eight months from when he receives the memoir’s chapter on his mother, but longer is most definitely better.

More generally, so long as your doing so will not interfere with his other priorities, Nathan hopes that you will be creative in thinking of other steps that Ms. Quincy and Twelve Tables can take to advance his interests, and in securing their agreement to take those steps.

Nathan is leaving the negotiation to your discretion, and will agree to anything that is in his best interests. You may provide additional non-self-serving information and details that are consistent with the facts that appear above and in the General Information.

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Paula is furious that Mr. Berenger has reacted to his brush with death by having a belated crisis of conscience at the expense of Twelve Tables. She has built that company up from nothing over many years, and it is poised on the verge of becoming both financially viable and a political force to be reckoned with. Until she received Mr. Berenger’s letter, she was serenely confident that the Berenger memoir would put Twelve Tables across both of those thresholds.

Now, she is confident of nothing. No other forthcoming publication has the potential to do nearly as much for Twelve Tables as the memoir. And Mr. Berenger has enabled “that pretentious, snot-nosed, stunted twig off of the crooked Orloff tree” to release the memoir prematurely, and thereby deprive Twelve Tables of nearly all of the money and prestige that it would enjoy if the memoir were published in the proper time and manner.

She has reluctantly accepted your advice that litigation will afford no sufficiently reliable options, and thus has also accepted that she will have to reach an agreement with Mr. Orloff. But the notion of waiting to publish the memoir until after Mr. Orloff’s election is out of the question: she will agree to a delay of no more than ten months after she receives the memoir. A shorter delay would be better, but only down to a minimum of six months: promotion and distribution arrangements for the memoir will take that long.

Paula wants to share as little of the memoir as possible with Mr. Orloff before its publication date, not least because she suspects that he will use any and all information that he receives to improve his position within the governing party, and to improve that party’s position at the expense of the opposition party. She does accept, however, that whatever “as little as possible” proves to be, she will
have to give it to Mr. Orloff as soon as possible, and that it will have to include the chapter on his mother.

She has emphatically rejected, however, the idea that “as little as possible” might include any of the other chapters. In fact, she is unwilling even to share any of the information in those chapters with him except, if absolutely necessary, the names of the six currently serving governing-party legislators to whom chapters in the memoir have been devoted.

She is willing, however, to commit both herself and Twelve Tables to maintain the confidentiality, as against every one other than Mr. Orloff, of all information in the memoir concerning his mother and the other six governing-party legislators until the memoir’s publication.

She will not agree to similar confidentiality regarding the eight opposition-party legislatures who earned chapters in the memoir, however. In fact, she intends to reveal their chapters to a very reliable and tight-lipped member of the opposition party’s governing council at her earliest opportunity.

More generally, so long as your doing so will not interfere with her other priorities, Paula hopes that you will be creative in thinking of other steps that Mr. Orloff can take to advance the interests of Twelve Tables, and in securing his agreement to take those steps.

Paula is leaving the negotiation to your discretion, and will agree to anything that is in the best interests of Twelve Tables. You may provide additional non-self-serving information and details that are consistent with the facts that appear above and in the General Information.

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Nathan Orloff and Paula Quincy

CONFIDENTIAL SUMMARY FOR JUDGES

These tables summarize each party’s goals and priorities for the negotiation, highlighting the areas of potential agreement and disagreement.

### Issue 1: Sharing Information with Mr. Orloff

<table>
<thead>
<tr>
<th>Mr. Orloff</th>
<th>Ms. Quincy</th>
<th>Probable Outcome</th>
</tr>
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<tbody>
<tr>
<td>To have any realistic hope of winning his next election, Mr. Orloff must obtain the memoir’s chapter on his mother as soon as possible, and have as much time as possible to use its contents to reposition himself so as to neutralize its revelations. Thus, in exchange for providing his code to Ms. Quincy, he hopes to receive, immediately after Ms. Quincy receives it, a complete copy of the memoir. He suspects that Ms. Quincy will not be that forthcoming, however.</td>
<td>Ms. Quincy wants to share as little of the memoir as possible with Mr. Orloff before its publication date, not least because she suspects that he will use any and all information that he receives to improve his position within the governing party, and to improve that party’s position vis-à-vis the opposition party. She does accept, however, that whatever “as little as possible” proves to be, she will have to give it to Mr. Orloff as soon as possible, and that it will have to include the chapter his mother.</td>
<td>As soon as possible, Ms. Quincy will provide Mr. Orloff with the memoir’s chapter on his mother, as well as the names of the six other governing-party legislators who appear in their own chapters.</td>
</tr>
<tr>
<td><strong>Mr. Orloff</strong></td>
<td><strong>Ms. Quincy</strong></td>
<td><strong>Probable Outcome</strong></td>
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<tr>
<td>Less helpful, but still highly desirable, would be his receiving all seven of the chapters on governing-party legislators. If need be, at an absolute minimum, he will settle for receiving a copy of the chapter on his mother, plus the names of the six governing-party legislatures who are covered in the rest of the memoir. Regardless of how much information from the memoir he receives, however, he will under no circumstances wait for it: he will insist upon receiving that information immediately after Ms. Quincy receives her copy of the memoir.</td>
<td>She has emphatically rejected, however, the idea that “as little as possible” might include any of the other chapters. In fact, she is unwilling even to share any of the <em>information</em> in those chapters with him except, if absolutely necessary, the names of the six other governing-party legislators who, like his mother, appear in their own chapters.</td>
<td></td>
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**Issue 2: Sharing Information with Others**

<table>
<thead>
<tr>
<th>Mr. Orloff</th>
<th>Ms. Quincy</th>
<th>Probable Outcome</th>
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</thead>
<tbody>
<tr>
<td>He would also strongly prefer that Ms. Quincy and Twelve Tables commit to preventing anyone other than himself from learning anything about the contents of the memoir before it is published. If need be, however, he will insist only that the memoir’s contents regarding governing-party legislators be kept confidential until the memoir’s publication.</td>
<td>Ms. Quincy is willing to commit both herself and Twelve Tables to maintain the confidentiality, as against every one other than Mr. Orloff, all information in the memoir concerning his mother and the other six governing-party legislators until the memoir’s publication. She will not agree to similar confidentiality regarding the eight opposition-party legislators who earned chapters in the memoir. In fact, she intends to reveal those chapters as soon as possible to a very reliable and tight-lipped member of the opposition party’s governing council.</td>
<td>Ms. Quincy will commit herself and Twelve Tables only to preventing anyone other than Mr. Orloff from learning anything about the memoir’s contents regarding governing-party legislators until the memoir’s publication.</td>
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</tbody>
</table>
## Issue 3: Delay in Publication

<table>
<thead>
<tr>
<th>Mr. Orloff</th>
<th>Ms. Quincy</th>
<th>Probable Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nathan would strongly prefer that the memoir be published after his re-election, i.e., at least eighteen months from now. The absolute minimum delay in publication that he will accept is eight months from when he receives the memoir’s chapter on his mother, but longer is most definitely better.</td>
<td>The notion of waiting to publish the memoir until after Mr. Orloff’s election is out of the question: she will agree to a delay of no more than ten months after she receives the memoir. A shorter delay would be better, but only down to a minimum of six months: promotion and distribution arrangements for the memoir will take that long.</td>
<td>Twelve Tables will publish the memoir between eight and ten months after Ms. Quincy receives it.</td>
</tr>
</tbody>
</table>
Ella Frank and Gabriel Hart

General Information for Both Parties

As the daughter of a consular official, Ella Frank spent most of her pre-teen years overseas in a developing country. After her return to North America, she spent her high-school summers volunteering at organizations that were dedicated to improving the standard of living in countries like the one where she had spent so much of her childhood. Thanks to her pleasant manner and her knack for getting people to speak freely with her, she was able to learn a great deal from the organizations at which she worked.

To her dismay, one thing she learned was that the people who were the most experienced in efforts to change conditions in the target countries tended to be deeply cynical and pessimistic about the effectiveness of most of those efforts. She learned that, all too often, little of the aid intended for the most needy population groups actually reached them, or stayed with them very long.

“Gangster governments” was how one of her most experienced advisors summed up the main obstacles to progress: “The national government will skim a lot off the top before our aid even gets to the right part of the country, and then the local government will do the same before it gets to the people who need it. And unless you’ve got a lot more clout than we do, there’s no stopping that—going up against any government is like wrestling with Superman. What’s worse, even what reaches the people we’re targeting doesn’t really help all that much, because they don’t have what they need to make sustainable use of it.”

Hoping to find a solution for such problems, Ms. Frank chose her undergraduate institution and coursework carefully. She majored in developmental economics, which became her passion, but she also did substantial coursework in mathematics. She found the latter to be refreshing, because it almost always enabled her to find
answers that were unequivocally correct and universally applicable. Such answers were often unavailable in her branch of economics.

Over time, however, as she studied the success of microcredit programs overseas, as well as the work of economists like Hernando de Soto Polar on liquidity bottlenecks in developing countries, she came to believe that the most efficient way to help the poorest of the poor, at least in urban settings, would be to reduce unemployment by enabling the expansion of small businesses in urban areas. She also realized that advances in technology might have made possible a new and better answer to the most important surmountable obstacle to development.

That obstacle, she became convinced, was the limited availability of efficient, secure, and stable means of storing and transferring value. She knew that, in the developing countries that she most wanted to help, conducting business in cash was an invitation to theft by criminals or payoff demands by petty officials. Perhaps worse, the relevant population tended to trust neither local currency as a store of value, nor banks as a means of safeguarding and transferring value. Thus, much of the economic activity among the relevant populations consisted of barter, and was highly inefficient as a result.

Inspired by the technical success of a number of crypto-currencies, Ms. Frank envisioned providing an alternative to local currencies and banks that would displace barter, and thereby spark a self-sustaining improvement in entrepreneurial efficiency, which would in turn improve the prospects of the urban poor.

She named her vision the KrypThaler Project, after the “thaler,” a coin that was also known as the “Joachimsthaler,” and was the linguistic origin of “dollar.” The thaler accelerated the Renaissance by diffusing relative prosperity throughout much of Europe as a consequence of the coin’s being a comparatively reliable medium of exchange, store of value, and unit of account.

Even before she graduated, Ms. Frank was able to use the contacts from her summer work to line up donors to provide seed funding for her project. To ensure its real-world feasibility, she also made extensive use of governmental and business contacts that were suggested by her parents and professors. By the time she graduated, she had even recruited some of the best mathematical and computer-programming talents among her classmates to serve as the first technical employees of the KrypThaler Project Foundation.
Those employees, who called themselves the Kryputer Guys, faced three serious technical hurdles from the start. The first hurdle was that the computing infrastructure available to the target population consisted almost entirely of smartphones. Fortunately, recent advances in capability per unit price among developing-word smartphones ensured that they would have adequate computing power, at least in theory, to run the KrypThaler app.

But to turn the theory into actuality, the Kryputer Guys needed to supply coding for the app that would be mathematically elegant and computationally efficient. Gabriel Hart was the Kryputer Guy who supplied most of the elegance, and much of the efficiency. He was also probably the most ardent proponent of the KrypThaler project other than Ms. Frank herself, having signed on with KPF despite job offers from eminent Silicon Valley technology firms, as well as the U.S. National Security Agency.

The second hurdle was ensuring that theft of a smartphone would not enable the thief to access the owner’s funds: ordinary smartphone security and passwords were insufficiently reliable. But the camera features of those smartphones were reliable, and more than sufficiently capable to enable security based upon identification of the iris of one of the user’s eyes.

To take advantage of that capability, Mr. Hart developed a highly efficient algorithm that created mathematical models from iris photographs. The KrypThaler user would photograph both irises, and the app would combine the iris models to create a highly secure identification challenge that could be satisfied only by the user’s own, living iris (a photo of either iris would suffice to unlock the app).

The third hurdle was related to the second: Ms. Frank insisted that there be a strict cap of 100 Kryptals (the KrypThaler currency unit) that any user could transfer in a day. She believed such a limit to be necessary to ensure that KrypThaler could be used efficiently only for comparatively small transactions. This in turn, she fervently hoped, would allow KrypThaler to operate “below the radar” of criminals seeking victims, national governments seeking control, and petty officials seeking bribes.

Ms. Frank knew that, to effectuate such a limit, KrypThaler would have to prevent users from circumventing the daily transfer cap. The iris-based security proved to be effective in preventing circumvention by users’ creating multiple accounts for that purpose, but preventing other forms of circumvention proved to be more
difficult. Eventually, the Kryputer Guys were able to write a series of anti-circumvention algorithms that all but one of them found to be acceptable.

The holdout was Mr. Hart. He admitted that the algorithms would prevent circumvention of the cap, but he contended that they would also introduce a weakness into the encryption scheme, and that the weakness could eventually allow cybernetic counterfeiting of Kryptals. When Ms. Frank and other Kryputer Guys asked him to explain how, he responded with a flurry of mathematical terminology and notation that they were unable to follow.

In response to their pleas that he simplify his explanation, he told them that there were three mathematical steps to counterfeiting Kryptals by exploiting the effects of the anti-circumvention algorithms. “Call it the Rho vulnerability problem, with a series of three steps to solve it: Alpha, Beta, and Gamma. Rho Alpha is a conjecture: it hasn’t been proved, and so far as I know, I’m the only one who has ever formally stated it. Certainly nothing like it, let alone a proof of it, has been published to date. But if it is proved, Kryptals can never be secure: the proof will establish that at least one practical means of counterfeiting them must exist.”

“Once the Rho-Alpha conjecture is proved,” he continued, “anyone who understands the proof will be able to start working efficiently on the Rho-Beta selector, which is a way of determining which categories of mathematical operations are able to defeat KrypThaler’s encryption, at least in theory. Once Rho Beta has been solved, anyone who understands its solution will be able to start working efficiently on the Rho-Gamma optimizer, which will determine the most efficient means of defeating the encryption. And once Rho Gamma has been solved, it’s game over: counterfeiting Kryptals will be child’s play.”

Thus, he concluded, KrypThaler should not be launched in its current form, because the security of Kryptals could not be certain. With Rho Alpha proved, “the fuse would be lit: Rho Beta and Rho Gamma would follow; the only question is how soon. And don’t bet that the fuse will stay unlit: I haven’t been able to prove the Rho Alpha conjecture yet, but I’ve come up with a number of promising approaches that might get me there.”

“But even if those approaches don’t work out,” he continued, “the conjecture feels true to me, and when something has felt that way in the past, a proof has usually followed: either I found it, or someone else did. So we need get rid of the transfer cap, or completely re-work the encryption protocols.”
Ms. Frank absolutely refused to delay the launch of KrypThaler, because she doubted that as favorable a moment for launching it would ever come again. Central to her judgment on this point was the agreement that she had just concluded with the Promethean Spark Concordiat, an association of former technology magnates turned techno-visionary philanthropists.

The agreement provided that, for two years from KrypThaler’s scheduled launch date, PSC would accept payment in Kryptals in exchange for smartphone data service, at highly subsidized rates, to users in developing countries. That service would be beyond the control of national governments, delivered to users of ordinary smartphones via satellites with uplinks provided by long-endurance aircraft flying outside of national boundaries.

The agreement with PSC solved some of the biggest problems that Ms. Frank had expected to face. She was particularly pleased that the agreement would give Krypthals a form of intrinsic value, thereby reducing the difficulty of achieving a critical mass of KrypThaler users. She also hoped that the extra-national nature of PSC’s service would limit governments’ ability to interfere with KrypThaler use, particularly when combined with the reduced incentives for such interference ensured by the daily cap on Kryptal transfers.

PSC warned Ms. Frank, however, that its service depended upon conditions in the communications and aerospace industries that might well not last beyond the two-year period, and that she should not expect a renewal of the agreement. Thus, she concluded that she could not delay the launch of KrypThaler. As she explained to the Kryputer Guys, “the Rho Alpha problem is only theoretical, and we’ll keep working on alternative encryption protocols so that if it rears its ugly head at all, we’ll be able to deal with it. But the encryption is moot unless KrypThaler takes off, and takeoff is now or never!”

Mr. Hart was unwilling to accept this, because he “couldn’t bear to be part of an effort that would, metaphorically speaking, launch a boat without being sure that it’s watertight,” and he regretfully submitted his resignation. Ms. Hart accepted the resignation with equal regret, but also firmly reminded him of this language in his employment contract:

The undersigned agrees and solemnly vows never to disclose, without KPF’s permission, to anyone who is not a current KPF officer or employee, any information of any kind to which the employee obtains
access as a result of working for KPF, including information that the employee discovers or creates.

Mr. Hart acknowledged that obligation, but he also demanded that his name not be associated with the KrypThaler encryption protocols. Ms. Frank pointed out that he should still be given credit on the KrypThaler website for the iris-identification protocols, and he agreed.

KrypThaler launched on time, and in the eighteen months since then, it has succeeded beyond Ms. Frank’s hopes. To her surprise, KrypThaler rapidly achieved the necessary critical mass of users to ensure its initial viability, largely because it quickly became a popular means for guest workers to send remittances to their families in their home countries, and for churches to support missionary efforts overseas. Since then, Kryptals have proved to be secure and reliable as a medium of exchange, a store of value, and a unit of account.

Their security may soon be called into question, however. One of the Kryputer Guys, Anna Trilby, has discovered some bad news about the Rho Alpha conjecture. Ms. Trilby has informed Ms. Frank that Mr. Hart, who now has a position at the prestigious Center for Advanced Mathematical Studies, has published a paper that states the Rho Alpha conjecture. Moreover, Ms. Trilby has become aware of rumors suggesting that Mr. Hart has actually proved that conjecture, or may soon do so.

Upon hearing this, Ms. Frank immediately called Mr. Hart. When he confirmed that he had in fact published the Rho Alpha conjecture, she accused him of violating the nondisclosure agreement, and of “committing an act of gross disloyalty to the entire KrypThaler project! How can you look yourself in the mirror when you’ve endangered the best hope of so many impoverished people around the world?!”

He hotly denied having violated the nondisclosure agreement, demanded that she “get the facts straight before making any accusations,” and hung up. Ms. Frank and Ms. Trilby were soon able to verify that he had submitted the paper before he had signed the nondisclosure agreement, and in fact before he had graduated. The pre-publication review process had been protracted due to the paper’s unusual and innovative content, and it had only recently been published.

Ms. Frank called Mr. Hart again, and after apologizing for her intemperate remarks, she admitted that the publication of his paper had not violated the
nondisclosure agreement. But then she asked him to deny the rumors that he had proved the Rho Alpha conjecture. “I have made no such claim,” he replied.

When pressed, he asked what business it was of hers to know whether he had found a proof for the conjecture. She retorted that that if he had, he must have done much of the work for the proof while he was employed by KPF, and the nondisclosure agreement did apply to all such work.

“So I’ll ask you again,” she said firmly, “Have you found a proof for the conjecture, and if so, does the proof include any of those ‘promising approaches’ that you developed while you were working at KPF?” “I don’t know why you’re so worried about this,” he said (sounding rather worried himself). “Because all you have to do is get rid of the transfer cap. With the anti-circumvention algorithms gone, the Rho vulnerability won’t apply anymore: Kryptals will be safe from counterfeiting!”

“Quit trying to change the subject,” she replied. “You can’t publish your proof without violating the nondisclosure agreement, and I’m going to hold you to it. So you can either find a completely new approach to proving the conjecture, which it sounds like you can’t, or you can find a way to protect Kryptals from the Rho vulnerability, and publish your proof with my blessing.”

Mr. Hart replied that “the way” to which she so blithely referred would be an entirely new set of encryption protocols for KrypThaler, which “would be grossly disproportionate to what I’d get in return—permission to publish my own work! And it wouldn’t just be new protocols: it would be all the coding needed to ensure a seamless transition from the old protocols. Even with the Kryputer Guys doing most of the coding, that would take a lot of work!”

Ms. Frank expressed a willingness to pay him as a consultant during the coding process at the equivalent in Kryptals of his usual consulting fees. “For this kind of work,” he said, I’d charge three times my usual rate in U.S. dollars, and double that if I had to accept payment in a limited-transfer currency like Kryptals: I’d want that much protection against exchange-rate fluctuations.”

“But that wouldn’t be enough,” he continued. “Because if you insist on my giving you new encryption protocols for KrypThaler, then I want to own the old ones: I might be able to make some use of them once I take that %#^&! transfer cap off! And I’d want to be given credit as the sole designer of the new protocols.” Ms. Frank replied that Mr. Hart was asking too much, given that his failure to disclose
his pending publication had unfairly denied KPF timely warning that the Rho problem’s “rearing its ugly head” was all but certain, not merely possible.

“You’re forgetting two things,” he snarled. “First, I told you that I had ‘formally stated’ the conjecture. What on Earth did you think that meant? Second, now that the conjecture has been published, someone is going to prove it, sooner or later. If you keep the cap in place, KryptThaler’s days are numbered. I can just sit back and wait, as I watch your whole world come apart, honoring your precious nondisclosure agreement all the while!”

With those words, Mr. Hart terminated the call, and no constructive communication has taken place between him and Ms. Frank since then.

Ms. Frank has now authorized KPF’s lawyers to meet at a neutral location to discuss the issues that appear below, and Mr. Hart has likewise authorized his own lawyers. Ms. Frank has full authority to act on KPF’s behalf as its sole decisionmaker and client contact.

1. **Under what conditions, if any, will Mr. Hart receive KPF’s permission to publish a proof of the Rho-Alpha conjecture?**

2. **On what terms, if any, will Mr. Hart and KPF exchange ownership of the new and old encryption protocols?**

3. **What other compensation or consideration, if any, will either party provide to the other?**

**Note**

All lawyers are to act on these premises at all times:

(1) The events of this dispute have involved no violations of local, Manisconsin, or federal statutes, regulations, or other legal standards, except for ones that may have given rise (or may still give rise) to civil liability on the part of Mr. Hart, KPF, or both.

(2) No aspect of labor or employment law, whether local, Manisconsin, or federal, is relevant to this dispute.
(3) No third-party source of funding or other assistance, whether via insurance or otherwise, is available to Mr. Hart or KPF.

(4) No person or entity will obstruct the compliance of any person or entity with the terms of the agreement that KPF and Mr. Hart execute, if any.

(5) No person or entity will assert legal liability of any kind against any person or entity as a consequence either of the execution of the agreement between KPF and Mr. Hart, if any, or of any person or entity’s compliance with that agreement.

(6) For purposes of this Note, “any person or entity” includes (without limitation) natural, juridical, private, and governmental persons and entities.

(7) Ms. Frank’s personal interests and the interests of KPF are essentially identical, and under the laws and ethical rules governing lawyers, Ms. Frank’s serving as the sole decisionmaker and client contact for KPF in this negotiation does not pose, and will not pose, any impermissible conflict for the lawyers of KPF.

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Ella Frank and Gabriel Hart

CONFIDENTIAL INFORMATION
FROM ELLA FRANK

Now that the Rho-Alpha conjecture has been published, every day that passes means that KrypThaler is that much closer to a crisis of confidence. Once a proof of the Rho-Alpha conjecture has been published, the public will soon become aware of the prospect of Kryptals being counterfeited, and in all likelihood, that awareness would damage their value beyond repair. Consequently, Ella is very worried about the future of the KrypThaler project.

Nonetheless, she has accepted your advice against litigating the nondisclosure agreement as a means of preventing Mr. Hart’s publication of a proof of the Rho Alpha conjecture. She realizes that doing so might well reveal information that would trigger the very crisis of confidence that Ella desperately wants to avoid. She has also accepted that, although she strongly suspects that Mr. Hart’s proof rests upon work done during his employment with KPF, proving that in court of that might well be difficult at best.

Of course, if Mr. Hart equips KrypThaler with new encryption protocols that avoid the Rho vulnerability while preserving the transfer cap, she will gladly give KPF’s consent to his publishing his proof (but only once the new protocols have been successfully substituted for the old ones, of course). The remaining Kryputer Guys are unanimous in advising Ella that if Mr. Hart says he can provide such protocols, he can and will. For their part, they are confident that, with a reasonable amount of consulting help from him, they will be able to do the necessary implementation and transition coding.

Ella has no problem with giving Mr. Hart credit as the sole designer of the new protocols—in fact, as she sees the matter, the more publicly he is associated with KrypThaler, the better. That is part of the reason why she will absolutely insist
upon paying his consulting fees in Kryptals rather than U.S. dollars—what better evidence of their security could there be than their acceptance as payment by the foremost expert on their security?

Given the transfer cap and some degree of exchange-rate risk, Ella admits that Mr. Hart should be given a premium over his normal fees, but she regards the sixfold multiplier that he mentioned as having been no more than bluster. She will gladly pay him the equivalent in Kryptals of twice his normal fee; far less gladly, if need be, she will pay the equivalent of 2.5 times his normal fee; and if doing so is absolutely essential to obtaining her other goals, she will pay the equivalent of three times his normal fee.

Regarding Mr. Hart’s demand for ownership of the old encryption protocols in exchange for the new ones, Ella would prefer that KPF receive at least fifteen percent of the gross profit that Mr. Hart earns from licensing or selling the old protocols. Ella is reluctant to agree to a simple swap of the new protocols for the old, though she will do so if need be to secure her other goals.

More generally, so long as your doing so will not interfere with her other priorities, Ella hopes that you will be creative in thinking of other steps that Mr. Hart can take to advance KPF’s interests, and in securing his agreement to take those steps.

Ella is leaving the negotiation to your discretion, and will agree to anything that is in KPF’s best interests. You may provide additional non-self-serving information and details that are consistent with the facts that appear above and in the General Information.

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Within minutes of ending his last conversation with Ms. Frank, Gabriel was sick with dismay at his own words. He certainly could not be unmoved, as he had suggested, by the demise of KrypThaler. He had been a true believer in it, and he had only left KPF because he thought that by ignoring the Rho vulnerability, Ms. Frank was taking an unwarranted risk, one that might cause KrypThaler to fail.

Now that it is succeeding impressively, he would very much like to see it continue to do so, but he has other priorities as well. One is establishing his reputation as the sort of mathematician who deserves a place at the Center for Advanced Mathematical Studies. That is not easy. Many of his colleagues there are so gifted and energetic that, for the first time in his life, he is experiencing serious intellectual intimidation.

Publishing his proof of the Rho-Alpha conjecture will go a long way toward proving that he belongs at CAMS. He is quite uncomfortably aware, however, that many of the equations and transformations on which the proof depends are ones that he perfected while working at KPF. He has accepted your advice that the nondisclosure agreement might well not hold up in court, but he also sees that advice as irrelevant, because he thinks of himself as a man of his word. And in any event, he strongly suspects that litigating with KPF would be a course of action that most of his CAMS colleagues would disapprove.

Thus, he must elicit KPF’s voluntary permission for him to publish his proof, and preferably right away. He suspects, however, that Ms. Frank will insist upon withholding permission until the new encryption protocols have been integrated successfully into KrypThaler, and if need be, he will reluctantly agree to this.
Fortunately, the new protocols are ready to go: ever since he left KPF, he has been unable to refrain from going back to the problem of maintaining the security of Kryptals while keeping their transfer subject to the daily cap, and recently, he finally solved it. In fact, he suspects that his solving that problem was somehow responsible for breaking the mental logjam that had been preventing him from finding a proof for the Rho-Alpha conjecture. Within days of his completion of the new protocols, he found the last necessary step to completing the basic outline of the Rho-Alpha proof.

Ironically, contacting KPF about the new protocols had been on his to-do list for some time when Ms. Frank first called him: he simply hadn’t reached that item yet because he was in the throes of buttressing his proof against probable scholarly challenges. When Ms. Frank began that call with accusations of bad faith, however, Gabriel was offended, and he kept his completion of the new protocols to himself.

He now thinks that this may have been just as well, because after that call, he became aware of an opportunity for a highly advantageous double play. First, if he exchanges the new protocols for KPF’s transferring ownership of the old ones to him, that trade should be quite lucrative for him. He has identified a way to use the old protocols (minus the transfer cap, of course) to provide improved security for certain types of large, highly sensitive, and extremely high-speed financial transactions.

The new protocols, which have the transfer cap embedded in their matrix, are totally unsuited to protecting such transactions. Thus, while he hopes for a simple, even trade of the new protocols for the old ones, if need be, he is willing to sweeten the deal by offering KPF up to ten percent of his gross profit from the sale or licensing of the old protocols.

The second part of the double play will be the enhancement of his reputation that will come from his status as the designer of KrypThaler’s new encryption protocols, a status that he will insist upon KPF’s acknowledging publicly. So long as KPF does so, he is willing to work with the Kryputer Guys on a consulting basis to integrate the new protocols.

The issue of consulting fees is less important to him overall, though he will still insist upon being paid. Because the new protocols are already finished, and because he is well aware of the abilities of the remaining Kryputer Guys, he is
willing to do the necessary consulting work for KPF at his customary rate, so long as that rate is paid in U.S. dollars.

He does not want to accept Kryptals for his work “because they are the wrong tool for this job: KrypThaler’s built-in limitations make it well-suited to certain categories of developing-country transactions, but I’m not in a developing country, and Kryptals are needlessly cumbersome for larger transactions.” If KPF insists upon paying in Kryptals, he will in turn insist upon his being paid enough of them to at least triple his customary rate.

More generally, so long as your doing so will not interfere with his other priorities, Gabriel hopes that you will be creative in thinking of other steps that KPF can take to advance his interests, and in securing KPF’s agreement to take those steps.

Gabriel is leaving the negotiation to your discretion, and will agree to anything that is in his best interests. You may provide additional non-self-serving information and details that are consistent with the facts that appear above and in the General Information.

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Ella Frank and Gabriel Hart

CONFIDENTIAL SUMMARY FOR JUDGES

These tables summarize each party’s goals and priorities for the negotiation, highlighting the areas of potential agreement and disagreement.

Issue 1: Publishing the Proof

<table>
<thead>
<tr>
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### Issue 2: Terms of Ownership Exchange

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<td>Mr. Hart hopes for a simple, even trade of the new protocols for the old ones, but if need be, he is willing to sweeten the deal by offering KPF up to ten percent of his gross profit from the sale or licensing of the old protocols.</td>
<td>The ultimate agreement may contain no profit-sharing provision at all, but if there is one, it will entitle KPF to no more than ten percent of Mr. Hart’s gross profit from the sale or licensing of the old protocols.</td>
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## Issue 3: Other Compensation

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<td>Ms. Frank has no problem with giving Mr. Hart credit as the sole designer of the new encryption protocols—in fact, as she sees the matter, the more publicly he is associated with KrypThaler, the better.</td>
<td>Mr. Hart will insist upon KPF’s acknowledging publicly his status as the designer of KrypThaler’s new encryption protocols.</td>
<td>KPF will pay Mr. Frank in Kryptals, in an amount sufficient to triple his customary rate.</td>
</tr>
<tr>
<td>Ms. Frank will insist upon paying Kryptals, rather than U.S. dollars, for the consulting fees that Mr. Hart will charge for helping to integrate the new protocols into KrypThaler. She will gladly pay him the equivalent in Kryptals of up to twice his normal fee; far less gladly, if need be, she will pay 2.5 times his normal fee; and if it is absolutely essential to obtaining her other goals, she will pay three times his normal fee.</td>
<td>He is willing to do the necessary consulting work to help implement the new protocols at his customary rate, so long as that rate is paid in U.S. dollars. If KPF insists upon paying in Kryptals, he will in turn insist upon his being paid enough of them to triple his customary rate.</td>
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