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Wheeling and Dealing

"You've got two choices." This was lawyer humor. In reality, Caise was telling Rex that he had no choices. "You can promptly kick Quinton off the board and revoke any potential stock options…."

"Or?" Rex asked.

"Or you can try to convince the SEC that securities fraud is not such a bad thing—that he's really just a nice old guy who was unfairly railroaded by some eager-beaver Federal Prosecutor. Just because the Feds sent him up the river for a couple of years for non-disclosure—which is, by the way, what he did to you—it isn't the worst thing he could have done. He could have, well…okay, I can't think of anything worse for a company trying to go public."

Rex listened in stunned silence as our legal counsel and newest board member, Justin Caise, painted a dire picture. "He failed to disclose his checkered past, knowing full well that if he had, you wouldn't have had anything to do with him, right? There's a pattern here."

Rex let out a sigh audible enough to let Justin know he understood.

"The bottom line is that if you don't rid yourselves of Quinton, you may not be able to go public. The SEC will make it nigh on impossible. Keep him and you can kiss your dreams goodbye—including, by the way, the investment my partners and I just made in your fine firm."

"Alright. You've made your point," Rex finally replied. "He hasn't delivered on his promises anyway. A simple goodbye letter should suffice. Besides, can you imagine a guy with an SEC conviction having the cojones to sue us?"

Justin had an answer for that one. "He can sue all he likes, but he can't win. He deceived you. Motley was the one who arranged most all of the meetings with the investment bankers, not Quinton. You can forget about his United News Service too. Word's out it's up for sale. You've got no exposure, Rex."

"You're right. Draft the letter."

"Consider it done," Justin said. "Now, have you found a CFO?"

"No luck so far." We were under no illusions. The financials required to close the $100 million valuation ULIC funding round would easily overburden our QuickBooks accounting system. We were going to need a Chief Financial Officer, and more professional books, in a hurry.

"I've come up with several candidates," Justin said. "One looks particularly promising. He lives in Charlottesville, and he's built and sold a couple of businesses. He's currently unemployed, too."

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It was a given that a CFO with the skills, stature, and experience we needed would command a six-figure salary. Even with the partners working free, we'd be cash starved until we got the union funding. But we couldn't close the union round without the services of a qualified CFO. So since we were as good as dead without such a person, Craig dialed Dean Johnson' number, not even knowing where he'd find the money to pay his salary.

Dean picked up the phone on the second ring. Craig introduced himself and gave him a five-minute overview of Value America. "Please come by for an interview."

"Sure," Dean said. "Sounds interesting. When would you like to meet? Sometime early next week, perhaps?"

Winn laughed. "We're an Internet firm. How about in fifteen minutes?"

"Please," Dean protested, "I'm wearing jeans. I haven't even shaved. I'm not dressed for an interview…."

"I don't care. I've seen suits before."

It was Dean's turn to laugh. "Okay then. I'm on my way."

An intrigued Dean Johnson arrived at the Yellow House on time, looking preppy in blue jeans and a sweater over a long-sleeved oxford shirt. He was in his late thirties but had braces on his teeth. Better late than never.

He told Craig and Rex how he had graduated from the Darden School of Business, and how he had started, built, and sold two tech-based companies. He had done his time under the big tent too. He had been one of the senior managers in Lehman Brothers' London office. Maybe that explained his polished and proper air. Dean seemed to possess a perfect balance between an entrepreneurial, roll-up-your-sleeves builder and an experienced professional manager.

The three immersed themselves in the subtleties of the arcane world of Generally Accepted Accounting Practices, audits and auditors, lawyers and venture capitalists, investment bankers and public offerings. It was like plunging into a bowl of alphabet soup. Our CEO and future EVP/CFO discussed IPOs, S1s, 10Qs, GAAP, and CTOs. They were like two peas in a pod.

Rex gave Dean a copy of Value America's business plan along with a couple of hours to read it. He outlined our plans for growth and explained our pending investment round. He described our recent meetings with investment bankers and was pleased with Dean's reactions. Johnson could certainly talk the talk, and there was every indication he could walk the walk. That didn't necessarily mean we could afford him.

"Dean," Craig finally said, "I think Justin Caise was right. You sound like the perfect CFO for a young, growing technology firm. I may not even hold your Darden MBA against you…."

Dean was about to protest that Darden was a first-rate institution, a top-tier business school, when Rex's laughter stopped him. "Don't worry about it," he said. "Just a bit of Value America lore. Ancient history. We'll tell you about it sometime. Anyway, we're prepared to offer you this job under one condition."

"What's that?" Dean figured it would have something to do with long hours or horrendous travel.

"We have a rule around here," Craig said. "Our management team all has skin in the game. I believe our CFO should be on the board and should be an investor. So we'll need you to invest the equivalent of your first year's salary, $100,000, into the company. It aligns our interests."

The investment request was as ridiculously high as the salary was low, but a considerable quantity of stock options sweetened the pot. After an in-depth tour of the online store and a long discussion about the business plan, Dean was ready to invest, job or no job. “Yes,” he said. “Count me in.” With that, Dean Johnson stroked a check to the tune of $100,000, becoming Value America’s CFO. But it was the man, not his money, who helped pave our way.

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Craig awoke, startled. He looked at the bedside clock—a little past two. Moonlight poured through the window like warm honey. Reflecting off his lake, it danced on the bedroom walls. His head was filled with numbers. What did they mean? Had he been dreaming? He couldn’t remember.

Slowly, it all started coming back into focus. Volpe Brown had sent their letter valuing the company at $175 million. UBS had said we were worth $250 million. If the multiple of forward-looking revenues used by these investment banks went up to three or four, as they were predicting, the company could soon be worth billions. Yet as of tonight, the company was nearly broke. Building the next retail revolution wasn’t cheap. It was all becoming surreal, incomprehensible. Were we rich, or poor?

Dreaming or not, he knew the answer. We were living on a veritable shoestring. The proceeds from the pass-the-hat funding round were dwindling. Requiring new hires to invest in the company was a clever strategy, but it had its limitations. Brand presentation fees were coming in, but not fast enough to impress an investment community fixated on revenues rather than profits.

We wouldn’t be able to generate enough revenue to go public until we raised enough money to advertise. Our virtual reality was that we couldn’t generate sales until we had funding, and we couldn’t get funding until we generated sales. It made the chicken and egg thing look like a no-brainer.

His mind drifted to the odd world of Rafe Durn and Organized Labor. If we could just close the ten million dollar union round, he thought, we could launch the store, stock the “shelves,” prove the model, shake down the systems, drive revenues, and go public. But, every time we claw our way forward, the union buries us under another giant pile of reality.

Katharine rolled over beside him, making that little humming noise she did. God, she was so beautiful. Craig’s thoughts drifted away from numbers, investment bankers, and organized labor to his wife. In the midst of such turmoil, it’s good to be loved. He drifted back to sleep, troubled no more.

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“Sure,” Rafe Durn was saying. “As soon as you convince Union Privilege to partner with Value America, we’ll close the funding round.”

Craig felt his blood pressure rising. This was supposed to have been Durn’s responsibility, not his. Once more, the union was adding a burden onto this already overloaded camel, changing the terms of the deal with no apparent motive other than to flex their prodigious muscles.

This new requirement put us in a rather ticklish position. The managers of Union Privilege had crafted a piecemeal solution for providing services to union members, some of which would become redundant if our far more comprehensive program were adopted. If they supported us, they might be putting themselves out of business—something politicos and union leaders are seldom willing to do. This was just swell.

But he had to try. Without the union investment, it didn't look like we would live to see the store's grand opening.

Craig presented the merits of Value America to the leaders of Union Privilege. He explained the ways we could serve Organized Labor, especially the rank and file. We could recount the great union accomplishments of decades past. We could prioritize union-made products in the Union Privilege store. Craig proposed using the marketplace to help build union membership and enhance the lives of union members.

He shared a strategy that would enable us to give a computer with Internet access to every union member out of the proceeds from the store. "Imagine," he said, "the notoriety you'll receive when you help union families fulfill the aspirations they have for their children's education."

Winn laid it on thick.

Using the most non-threatening language he could find, consciously placing himself in a subservient role, he stressed how we could enable the mission of Union Privilege. Craig portrayed this as a symbiotic relationship. It wasn't an act; he believed it. Forget that we were as good as dead if he couldn't convince them.

In the end, Union Privilege said they would work with Value America. Another of Rafe Durn's hurdles had been crossed.

Sadly however, they never followed through with their commitment, and union families never got their Internet-enabled PCs. Despite the promises and good intentions, self-interest won out over the common good. Pity.

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"Rex, it's Justin." Rex Scatena was in his office reviewing a thick stack of vendor listing agreements.

"Yes, counselor," he said cheerfully. "What can I do for you?"

"It's about Derk. You remember he wanted an opportunity to prove that his being on our board wasn't going to be a problem for us?"

"Sure," Rex replied. "It was one of the highlights of my day. A little levity to break the routine…."

Justin chuckled. That had been his reaction as well. "I have before me that 'proof.' Actually, it's just an opinion letter from his attorney."

"I guess that proves that you get what you pay for."

"Provided you pay enough," Justin finished his sentence. The two attorneys shared a laugh. "The letter contains a thinly veiled threat of a lawsuit if we don't agree."

"Naturally."

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"Okay, Dean," Craig said. "Here's how I'd like to handle this. I'll work with Rafe Durn, handle the negotiations, and the legal documentation. Meanwhile, you work with the union's accountants. Rex will handle their obnoxious California lawyer. In time, you'll learn to love this guy as much as we do. Their in-house counsel is a fellow named Chip, and he's actually pretty reasonable, for a union lawyer."

Dean smiled. A union lawyer named "Chip." Alright.

"Now as far as accounting firms are concerned, the union is using Coopers & Lybrand. We've been using a local firm. They've been doing a respectable job, but with the union, and hopefully an IPO, we're going to need one of the big six accounting firms. Somebody other than Coopers, of course."

"Of course."

Craig explained that there was another reason he didn't want to use Coopers & Lybrand. A year or so before Dynasty's IPO, Coopers had won a bid to handle their audits and tax filings. But his idea of an accounting firm's proper role was not merely to be an auditor or historian, recording past transactions for the benefit of posterity and the taxman. He wanted a firm that could spot and report potential weaknesses, points of vulnerability in his business, while they were still on the horizon, still small enough to fix. In short, Winn wanted auditors who could help.

The Coopers team had not been willing to provide much help beyond recording history. So in its third year, Dynasty put its accounting needs, including the work that would be needed for its upcoming IPO, out to bid again. The winner, in both price and promise of managerial support, was Ernst and Young. Craig wanted to make the switch well before Dynasty went public, realizing that it is next to impossible to switch horses later.

But Coopers had other ideas. They announced that they had underbid the initial Dynasty contract in order to get their foot in the door. The implication was that this gave them the perpetual right to charge whatever they wanted. While Craig wondered what might be contributing to their hallucinations, Coopers played their trump card. They decided not to release their work papers, documents Dynasty had already paid Coopers to prepare. These files were needed by Ernst and Young to complete the S1. No papers, no S1. No S1, no IPO. It would take another payment to loosen the papers from their grasp—a "transfer fee" of $100,000.

It sounded a lot like blackmail, at least by Winn's definition. But it couldn't be, could it? A big reputable accounting firm, guardians of the public trust, would never stoop so low, would they? Call it what you like, he paid the ransom, but as the money left his hands, he swore he would never deal with Coopers & Lybrand again.

Ordinarily, major accounting firms wouldn't have much interest in working with a little fish like Value America. But our founder had learned some interesting things about dealing with big fish. The largest accounting firms, investment bankers, and lawyers are competitive by nature. Even though they might swim right past a little fish, they'll part the seas to compete against each other. So he told Dean to solicit bids from Price Waterhouse, Ernst and Young, Arthur Anderson, anybody but Coopers.

The bids Dean received were astonishingly low and all reasonably close to each other. He wanted to use Price Waterhouse, the theory being that their tech team was more expert in the Internet/technology space. Craig wanted Ernst and Young because they were retail experts. But in the end, he deferred to his new CFO, knowing that to do otherwise would hurt Dean's ability to manage. It would turn out to be a costly mistake.

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Durn sent a team down from Washington, D.C. to collect due diligence information on Value America. Rafe never actually visited the company himself. His associates were accompanied by his man Rossi. With his customary slicked-back hair and loafers with no socks, Seth regaled the team with tales of feminine conquests and a litany of colorful union stories.

Craig, still confused about Seth's relationship with Rafe Durn and ULIC, asked him to elucidate. Rossi informed him that it wasn't actually Rafe he was closest to—it was Durn's boss, ULIC's president. "You have to understand," he said, "I'm a made man, of sorts."

"Oh, you're self-made, you mean?" Ever the optimist.

"No. I mean I'm a made man," Rossi said. He explained precisely what that meant in this context as Winn stared in wide-eyed disbelief.

While Seth was educating Craig, Dean entertained the due-diligence doers. He recognized that the process could be approached in two ways. One was to fight it, nit-pick and analyze every request, asking, "Do you really need that?" Dean Johnson took the opposite approach. No matter how absurd the request, Dean was happy to comply. Even if it were going to take three thousand pages to copy all of the documentation on an issue, his response was, "Fine, no problem."

That's because he knew we had nothing to hide. There were no skeletons in our closet. And even if we had had something to hide, full—really full—disclosure would be the best way to conceal it. If your dirty little secret was on page 15,673 of 24,586 pages, what was the likelihood that anyone would spot it? No, Dean knew you never fought due diligence. If somebody wanted to look for a needle in a haystack, we'd provide not only the needle but a very nice stack of hay as well.

Craig and Dean were joined at the hip. They now checked with each other several times each day. "Watch your step," Johnson said, grinning. His office floor was covered with three-ring binders, each filled with compliance documents. There was a narrow pathway between them leading to Dean's chair. "Due diligence, for the union deal," he explained unnecessarily. "We've already sent some of it up. I'm going to need more of these binders."

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To the uninitiated, it would have sounded like a tempest in a teapot, much ado over the most insignificant sort of minutia. But to Value America, it was a matter of life and death. The issue was revenue recognition, or more precisely, the accounting method used to determine it. This was important because the value of the company was now based on a multiple of forward-looking revenues.

We, like every retailer, counted our revenue as the full price our customer paid us for a product. But Coopers & Lybrand, the accounting firm representing the union, said, in effect, because you are operating on a virtual inventory model, your revenue is not the price of the product you've sold but rather the profit you made selling it.

Obviously, if profit (or more precisely, margin) were the measure of revenue, we were worth a whole lot less than we'd thought. On this basis, we wouldn't be able to raise enough money for our own funeral.

The founders were livid. It wasn't hard to see where this harebrained idea had come from. They suspected that the union wanted to acquire us cheap, not recognizing that while the Golden Goose might make a tasty supper indeed, it would make infinitely more sense to keep her alive, happy, and laying eggs.

We defended our position using sound accounting principles, not blue-sky wishful thinking. The crux of his argument, ironically, was something we considered a modest liability, a necessary evil. The fact was that we incurred risk of loss while the product was in transit, from the time it left the manufacturer's warehouse until the customer accepted it. Technically, we owned the product while it was en route.

The key was risk. If the product were lost or damaged en route, we were responsible, although there was a remedy with the freight carrier. If the customer was not satisfied for some reason, we were responsible for crediting back the purchase price. We had the remedy of sending the product back to the manufacturer; but there was still the risk that the manufacturer would not honor the credit, even though we still owed them for the original sale. So technically, there was risk of loss at several points, though Value America had systems in place to minimize it.

Our newly appointed accounting firm, Price Waterhouse, explained this to Coopers. They determined that we had indeed been using the proper accounting method for revenue recognition. But neither Coopers nor ULIC accepted their assessment.

They decided the final arbiter should be the Securities and Exchange Commission. Typically, the SEC first reviews accounting policies in a pre-IPO document called an "S1." They pass judgment on this document before it is printed and distributed in the form known as the "red herring." By the time it becomes a prospectus, the SEC has sprinkled enough holy water on it to float a battleship. If the prospectus reflects a particular accounting method, it's a fair bet the SEC thinks it's gospel.

Newly christened as a public company, OnSale used precisely the same method of revenue recognition we did. The details were conveyed right there in OnSale's prospectus, just as Craig had explained it to Durn and his accountants. This was our "get out of jail free" card. Surely this would convince them.

Coopers wavered, becoming aware of how incredibly foolish they were beginning to look, but Rafe Durn held his ground. Logic had no effect on him. Indisputable proof wasn't good enough. This whole fiasco, it appeared, was nothing but a ploy to drive the price down.

So it came down to a battle of wills. "What's it going to take to convince you that we're doing this right, Rafe?"

Durn wasn't ready to give up. "The SEC is the final authority. I want an opinion letter from them confirming your policy."

"We already have that," Craig said, hoping his frustration wasn't too apparent. "The OnSale prospectus describes exactly the same method we use. The SEC's opinion is right here in black and white."

"Not good enough. I want a letter from them."

There was a long pause while Craig processed the ramifications. In order to ratchet down the company's valuation, Durn was willing to open Pandora's Box. The SEC, the supreme authority in this arena, was already struggling with astronomical dot-com valuations. But Rafe wanted us to ask them, in effect, "Are you really sure about all this?" Our request for clarification would imply we were questioning the rules upon which we would be valued.

"Rafe," Craig said at last, "this is in no one's interest. We're six months from going public. What part of this sounds smart to you?"

"Get the letter from the SEC supporting your accounting method, or we lower the valuation. Clear?"

It was clear we couldn't make it without investment capital, and we were out of time. We no longer had the option of going through the six to nine month process of raising venture capital. So here we were, at the business end of Rafe's gun. Our Price Waterhouse accountants thought it was the dumbest thing they'd ever heard of. Caise thought the same. I don't have to tell you what Craig thought.

It was a pointless, frustrating, and humiliating exercise, but we had no other options. Craig capitulated. He had our accountants send the letter, and in due time, the SEC responded. Yes indeed, rules are rules. GAAP was still GAAP. "Risk of loss" was still alive and kicking, in more ways than one. In their initial telephone response, the SEC said in essence, "Value America's method for revenue recognition is consistent with our prior rulings. Frankly, we're surprised that you couldn't figure this out for yourselves…."

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The idea of a co-branded Value America Visa card was never far from the top of our wish list. So when one of CapOne's brilliant young "homo-chromos," Erik Taylor, made himself available, Craig hired him without hesitation. Erik's job? Make the card happen.

Erik, Craig, and Rex soon found themselves sitting with Terry Flynn, Vice Chairman of financial giant MBNA. They discussed a symbiotic relationship where MBNA's cardholders would receive an extra one percent bonus, rather like frequent-flyer miles, that would automatically be credited toward their ValueDollar accounts in our store, no matter where they shopped. MBNA would cover sixty percent of the cost of the program, and Value America would absorb the rest. Good for them, good for us, and good for their cardholders.

We discussed creating marketplaces for the largest of MBNA's 5,000 affinity groups. Our store would be their store. By working together, we would quadruple the amount each organization earned on their members' credit cards. MBNA's clients would be the foundation of a direct mail marketing campaign. With such an accurate, affluent, and focused customer list, our "success rate" would instantly exceed any catalog retailer. In turn, our success would translate into more business for MBNA and greater contributions to each of their affinity groups. Win-win.

During a break, the founders called Sam Abram from UBS to bring him up to speed. Since he had been the one offering to "crawl over five miles of broken glass" to lead our IPO, he'd no doubt want to know that we had finally cleared the last hurdle in closing the union funding round. With Rafe Durn's reluctant surrender on the revenue recognition issue, the deal was going to close. Value America was ready to start its push toward the IPO. We also needed to tell Abram we had parted ways with his hero, Derk Quinton.

Abram's reaction was not at all what they had expected. It wasn't, "Congratulations! This is the highest valuation any Internet company has ever achieved pre-IPO," which it was at the time. It wasn't, "It's amazing you bypassed the usual venture vultures and formed a symbiotic affiliation, with all the promise that implies." His reaction was, "This is getting too big. I just don't know if I feel comfortable…."

If our guys thought the conversation was strange, the letter they received the following morning was downright bizarre. In it, Abram announced that UBS was backing out of the deal. This presented Craig with a dilemma. UBS's high valuation had done its share in encouraging Durn to invest union pension-plan cash. With UBS no longer in the picture, did that mean that their valuation had gone poof as well? When Rafe found out—and he would find out, because we never hid things like this—there was a very good chance that the deal would be dead again.

The savior turned out to be none other than Seth "the investment banker" Rossi. He did some research into Abram's past and announced that he had done this very thing on at least two previous occasions. Chronic cold feet, apparently. We never found out where Seth got this information. We never even discovered if it was actually true. But it didn't matter. Seth's timely tidbit and his relationship with Rafe Durn made the UBS bailout a non-issue. Maybe Seth was an investment banker.

Naaaah.

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It was quickly getting to where you couldn't tell the players without a scorecard. The movers and shakers were beginning to, well, move and shake. Stan Garmin, the investment banker with Union Bank of Switzerland, was mortified by the ignominious retreat of Sam Abram, his analyst. So Garmin jumped ship, moving to Robertson Stephens to head up their Business Supply sector.

While it might not sound terribly exciting when compared with the sizzling technology sector, the business supply industry was comprised of some of the largest corporations around—supply companies like Office Depot, Staples, Corporate Express, Boise Cascade, United Stationers, and US Office Products. It also included what was known as "the channel," huge distributors of business technology, companies like Ingram Micro, Tech Data, and Merisel.

Garmin quickly arranged an appointment. Unfortunately, he missed the last connection into town. So the Robertson Stephens' team consisted of their top analyst for the office products industry along with an investment banker—both women, it turned out.

They seemed to appreciate our grasp of the challenges that permeated the office products industry, the retail world, technology, brands, distribution, and VARs (Value Added Resellers). They were amazed at our understanding of the esoteric thing they called the channel. Few outside this convoluted domain even know it exists. Fewer still know it well enough to philosophize about its problems and opportunities.

The analyst and the banker went back to San Francisco recommending that Robbie Stephens take us public—in the business-products sector. But Dale Dandridge, the technology analyst who had been too busy to see us, got wind of this and alerted Gordon Conover, a Managing Director, their investment banker for tech stocks. They quickly mobilized to prevent their teammates from running away with their prize. After all, they had not gotten where they were by letting the Business Supply sector upstage them. Heated competition, once again, had turned into a beautiful thing. It was nice having people fight over us, even if they were on the same team.

Gordon Conover's boss, firm co-founder Sandy Robertson, had been instrumental in persuading many of the nation's leading technology executives to help fund the presidential campaigns of one William Jefferson Clinton. And the man who had arranged the meetings between Sandy Robertson and these influential and moneyed tech magnates was a gentleman named Miles Julian, who subsequently spent the first three years of Bill Clinton's presidency in the White House managing technology initiatives and granting presidential access to the favored few, especially dot-com founders. After leaving the Clinton administration, it was only natural that Miles would join Robertson Stephens.

That was how the experienced and financially savvy Gordon Conover and the extremely well-connected Miles Julian found themselves sitting in the modest office of Craig Winn, CEO of an up-and-coming (well, not quite up yet) Internet store in Charlottesville, Virginia. Rex once again explained the plan, showed off the store, and expounded on how Value America would be good for brands and customers alike. Then Craig outlined the union deal, which was within days of closing. He also explained the merits of the strategic alliance.

"This partnership with Union Privilege could be the prototype for strategic partnerships with a whole broad range of groups, from commercial affiliations like credit card issuers to organizations of like-minded people—university alumni, for instance, charities, and faith groups."

Miles liked the sound of that.

"The beautiful thing about it," Craig continued, "is that these strategic partnerships do something good for everyone in the loop. They're the classic win-win scenario. We spend a whole lot less on advertising and help great organizations raise money."

Miles Julian's political background brought a fresh insight. "I don't know much about being an investment banker, and I have no conception of what it takes to win in the retail business. But I know a great deal about politics, about building relationships, and about perceptions, and I can tell you this. You folks hold the high ground here. This concept is the most worthy idea to come along in a long time."

"That's been the idea since day one, Miles," Rex replied.

"The real question is how to present your store to the world. The way I see it, there's really very little difference between your store and a political candidate. Both have a story to tell, a message to get across. Now, it's my experience that the message will be best received if there is a personality the audience can identify with.

"In politics, this would be the candidate. They're carefully positioned as champions of the greater good. But it works in the commercial world too—Virgin Atlantic had Branson; Chrysler had Iacocca. I'm not talking about a spokesman here, mind you, a mere talking head. I'm talking about a symbol, the founder, someone who can honestly say, 'This is a good thing; I built it and I'm proud of it.' For Value America, Craig, that's you."

Winn wasn't comfortable with this. He didn't want to be in the spotlight. For a multitude of reasons, he had come to mistrust the media. Julian went on anyway. "Here, reality and perception are the same. Heck, with politicos, the perception itself is usually all it takes. Reality is just a bonus. But you? You're the real deal—you're doing well by doing good. This is the stuff of heroes."

Miles had nailed it. "Doing well by doing good" was really what Value America was all about.

Gordon Conover grinned. “See, guys? That’s why you want Robertson Stephens in your corner. We know how to position you, how to market you. Choose us to lead your IPO.”

“Getting the message out is a big reason we’re going public,” Rex explained. “There’s not enough money on earth to advertise our way into the national psyche. Public dot-coms have gained prestige by virtue of the free media coverage they’ve received.” Scatena had learned his craft.

“That’s quite right,” Gordon said.

“But the press hardly ever reports on privately held companies,” Craig said, “no matter how successful or innovative they are. Know why?”

Gordon and Miles looked at each other.

“It’s because they’re unwilling to do the research to tell a credible story about a private company. Private firms are allowed to have secrets. They don’t have to make a public announcement every time the CEO takes a pee. It takes real investigative journalism to find out what makes a private company tick. I can assure you, their stories are no less compelling.

“Ah, but with a public company, the research is easy. Just look at the public reports or call the analyst. It’s all there in black and white, mandated by the SEC. That’s why we have to go public,” Rex completed the thought.

“We’re the right guys to get you there,” Gordon stated again. “Our analyst, Dale Dandridge, is the biggest promoter of Internet stocks. You can trust us to do the job right.”

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rex was all smiles. “So Robertson Stephens and Volpe Brown Whelan are going to co-manage our IPO.”

“Right,” Craig replied, “and FBR will assist. I’m pretty sure we’ll get H&Q on board too.”

“Robbie Stephens; Volpe Brown; Hambrick and Quist; Freedman, Billings, Ramsey—the number one, two, and three pure tech investment bankers in the country along with the hottest and fastest growing regional firm. This is a dream team. No doubt about it.”

“Rex, old buddy, it looks like this is actually going to happen. Now if we can just get the ULIC round closed, get the store turned on, and generate some sales….”

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Okay, here’s the plan. We take over Times Square. Set up a computer that’s hooked up to the mega-screen TV, so everyone can see what’s happening. Then we get La-Z-Boy recliners set up all over the place, and people sitting in ’em with laptops, shopping online at Value America. And all this happens on the Friday after Thanksgiving—it’s the biggest shopping day of the year, so all of the networks will have to come up with some kind of news on the shopping scene. We can have all the big reporters there because this year, you’re what’s happening. Everything is dot-com this and online that. Value America will gain national notoriety overnight!

Pennington was one of the biggest PR firms around, and when they had proposed this grandiose scheme two months before, it had all seemed doable. Even the price, $250,000, including pre-event publicity, hadn't seemed out of range.

But Craig, ever the pragmatist, knew there was a vast difference between conception and execution, between saying and doing. He suspected that once the contract was signed, we would be turned over to the underlings, the $15-an-hour worker bees, who wouldn't have a clue how to pull it off. So he had put a caveat into the contract that made our relationship with the PR firm dependent on the success of this event. It had to be delivered as promised and as priced.

It's no fun being right when right is wrong. The grand event became a comedy of errors. We had given them every scrap of material we had on the store, its operation, and its philosophy. Pennington's worker bees had proceeded to butcher it. Their presentation came out incomprehensible, or worse—repellent. They couldn't even get the publicity right. Neither could they get the technological wrinkles ironed out in Times Square. They couldn't figure out how to get proper connectivity to the site, couldn't get access to the giant TV, and couldn't seem to understand that Times Square was an outdoor venue—what happened if it rained? They had no contingency plan. And the budget? Well, ah, we're running a little over….

Disappointed, we invoked the escape clause Craig had wisely put into the contract and said goodbye. But we wondered how we were ever going to publicize this thing if someone as prestigious as this firm couldn't pull it off.

Now, in November, it seemed the Julian approach might be the ticket. Reluctantly, and now out of options, Craig began to think in terms of publicizing the store as one might build a political campaign—structure it around a press conference. That would give us a sense of being real, which was always an uphill battle when talking about a virtual business, and give us a focal point (though Craig characterized it as being a lightning rod) with which people could identify.

We hadn't solved all the technical problems with the store, but we had gotten it to the point where it would at least work. One could visit us online, choose from among a couple hundred thousand products, and buy them. We were ready to launch the store, to announce our presence to the world, to spread our wings and fly.

Capstone was a public relations firm specializing in promoting political candidates. Their specialty seemed to dovetail nicely with the Miles Julian-inspired marketing strategy. We decided to hold a political-style press conference. The venue would be, as they say, fraught with portent: the National Press Club in Washington, D.C., where many a high-ranking notable had made monumental pronouncements.

Capstone set it up for the first week in December and promised to have a hundred or more journalists in attendance, who would, it was expected, generate dozens of articles on the future of retail. For our part, we would have banks of computers set up so the audience could try the Value America shopping experience for themselves. Every shopper would have a "coach," someone on our staff who could guide them through the store, answer their questions, and keep reporters from floundering. The store was pretty deep, after all, and if you weren't used to surfing the Web, you could get lost.

Craig chose for a theme, "Let's go shopping now, everybody's learning how, come along and shop with me," a shameless appropriation of a great old Beach Boys surfin' song. It made great sense to tie shopping to surfing, the universal metaphor for exploring the World Wide Web.

The only problem was that the media event was a bust. Only a few actual reporters showed up, mostly for the free lunch. The room would have been virtually empty were it not for thirty or so Value America staffers (virtually all of us), a large group of vendors who had been invited, and a motley collection of fringe players who had crashed the party hoping to sell us one thing or another.

The post-game analysis revealed that not a single story ever appeared in the press as a result of our big coming-out party at the National Press Club. Value America's virtual doors were open at last, but we were still a secret.

That's not to say nothing exciting happened that day. Chip, the union's in-house attorney, called on behalf of Rafe Durn. "Craig," he said, "Mr. Durn has decided how he wants you to handle your dismissal of Derk Quinton."

"What are you talking about, Chip?"

"We found the dismissal letter in the books of documents you sent us."

"So you're saying that because we were good guys and gave you a copy of his veiled threat, you're going to hold it against us?"

"Not hold it against you. Rafe just wants it resolved."

This wasn't going to be pretty. "Resolved? Derk Quinton is an ex-con whose very presence has the potential to sink any chances we have of going public. Quinton is history."

"Not quite," Chip said. "Our lawyer is drafting a clause that says you will guarantee to resolve the Derk Quinton issue to Mr. Quinton's satisfaction within sixty days."

There was a long silence. The words "Mr. Quinton's satisfaction" hung in the air like the smell of rotting fish. Craig thought perhaps he had misinterpreted what he had just heard, so he asked Chip to repeat it. No, he had heard correctly. Stifling the urge to scream, he tried to calm himself enough to enumerate the reasons why this was the dumbest demand yet in a long series of dumb demands.

"Chip, listen to me. This is insane. First, there is absolutely no risk here. None. Even if Quinton had performed on our behalf, which he didn't, even if he had spent a single hour sitting in on a board meeting, which he hasn't, there would still be the little matter of non-disclosure. He committed securities fraud, got caught, got sent to prison, and then tried his best to hide his background from us. Sure, he can sue us, because anybody can sue anybody for anything. But he can't win. There's not a judge or jury in creation gullible enough to find in his favor, and you know it."

Chip sounded apologetic. "It doesn't matter. Rafe's decided."

Craig tried again. "Look. Rex and I will personally indemnify him, the company, ULIC, and God knows whomever else you want, for both the legal costs associated with a potential case and whatever hypothetical settlement might be awarded. We'll put it in writing that if Quinton, by some unbelievable twist of fate, gets a judgment, we'll give him any stock he's awarded out of our own holdings. If you don't want to get stung, don't kick the beehive."

"That's not going to be good enough," Chip countered. "You either sign the clause or there'll be no investment."

Winn grit his teeth and tried one last time. "Chip. This is suicide. You've got to make him understand that if we sign off on that clause, it becomes part of our public record!

The SEC will spot it when we prepare the S1, and they'll have a field day. If we don't go public, what happens to your investment? Nothing, that's what. Quinton will see it too—you're inviting a suit. What part of 'crazy' don't you guys see here?"

"I'm sorry. I can't help you…."

As he hung up the phone, Craig felt as if he'd been kicked by a mule, and not just figuratively. He was still sitting quietly, rubbing his temples, when Rex walked in. He told him what had just transpired.

Rex sat down and tried to think like a lawyer. "I've got a theory, but it sounds…." He scratched his head. "Well, anyway, let me tell you what may be going on. You've told me, and my experience bears this out, that Rafe Durn won't make a move without his lawyers, right?"

"Right."

"So his lawyers know it, and they're feathering their nests. All the while, they're on the clock. That means billable hours."

The revelation didn't make him feel any better. "First they spend time creating the problem, and then they spend more time rectifying it."

"And don't forget, Durn won't be paying the bill. We will. Their fees come out of the investment funding. Pretty slick, eh?"

During the next twenty-four hours, Scatena and Winn called everybody they could find to get their take on the issue. Dean Johnson, John Motley, Justin Caise, and yes, even Seth Rossi. They all just rolled their eyes heavenward. How could you reason with the unreasonable?

They called Rafe, but he predictably said he wasn't doing anything contrary to the advice of counsel. Finally, they traded words and faxes with the lawyers—proposals and counterproposals. But nothing worked. ULIC's lawyers wouldn't budge. You could almost see them smiling in their plush California law offices. They probably enjoyed this.

Finally, Rex said, "Let's call their bluff. No one's this stupid."

"Weren't you the one who taught me that you couldn't play chicken with unions? Weren't you the one who told me that expecting reason to prevail with these guys is a fool's errand?"

"Call his bluff," Rex repeated. "He'll blink."

Craig wanted desperately to believe his friend was right. He took a deep breath and dialed Durn's home, for it was now late. Craig told the union executive that they couldn't in good conscience sign the "Quinton clause." He told Durn that it was not only bad for Value America, but it was bad for him as well. He listened for a moment and then hung up the phone.

"What did he say?" Rex asked.

Craig appeared calm. "What did he say? He said, 'Thank you very much. We will not be investing in your company.' That's what he said."

Rex looked stunned. "I was sure he'd blink. Nobody's that dumb."

"Well, one guy is," he said as he picked up the phone and hit re-dial. "Rafe, Craig. Please accept my apology. We would be pleased to sign the clause. Yes, we'll fax it to your lawyer immediately and UPS-overnight the original tomorrow. Yes. Thank you. Good night." Crow `a l'Orange.

The founders signed the document with scrawls no handwriting expert would have recognized as theirs—angry, steaming scribbles, but on the proper lines. They both felt as if they had just sacrificed their second-born child in the hope of saving their first. Rex turned to his ashen-faced partner and said, “This will cost them. I don’t know how, and I don’t know when, but if there is any justice in the world, they will live to regret this.”

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On December 20, 1997, Value America was the recipient of a wire in the amount of $10,000,000 from the Union Labor Investment Corporation. After half a million had been deducted to cover the cost of Seth Rossi’s “investment banker’s fee,” $350,000 had been paid for the masochistic pleasure of the union’s lawyering, and Caise’s legal fees had been paid, a little over $9 million remained.

For the first time in our young life, the gas tank was full and the open road beckoned. Only Craig and Rex knew that the vehicle we were driving had a time bomb in the trunk.