

# **The Case Runner**

by

Andrew Kass



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*PROLOGUE*

The funny thing is, my folks wanted me to be a lawyer.

*It's a profession. You'll always make a living. Like Uncle Mike.*

That was before Uncle Mike, my father's older step-brother, went to prison for skimming trusts. He died there, in pretty short order.

I wasn't interested in law. I majored in computer science, with a minor in bookmaking, as a runner for Sweet Pete Sojack. I had a little credit card harvesting going on the side, but I was better at getting the info than covering my tracks, so I also did a little time. Unlike Uncle Mike, I not only got out in 18 months, but emerged with a profession, funnily enough related to law, in about the same way as I was related to Uncle Mike.

You can learn a lot of things in prison. Some, a lot, we'll leave unsaid. But you meet people who, how to put it, see things just a little differently, the spaces between the itch and the scratch where money can be made.

Simon Vann had been a plaintiffs' attorney until a case where his plaintiff class read like the roll call at Havenwood Cemetery. The houses, the cars, the boat, the sugar on the side, were all gone in a flash. He blamed himself for one thing and one thing only.

"I called the wrong case runner. Tried to save a few bucks." He waved liver-spotted hands around the prison library. "Worked our great, huh?"

I asked him what a case runner was.

“See, there are laws against an attorney cooking up a cause of action and then trolling for warm bodies. So there’s a service, people who generate leads, bringing together people whose issues jibe with what the attorney needs. For a small fee per head, the attorney gets parties already qualified by the case runner.” Simon stared at the book in his hand, a history of boats. “He hopes.”

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I had the computer skills to sift data, once I found it, and the research skills to find where the records were kept. Simon helped with that last, along with some attorney contacts who might still acknowledge him.

Fortunately, I’m pretty handy with computer hardware and software, especially back then, so I made a living in a computer shop in a Pompano Beach strip mall. I put together my plan.

My parents meanwhile had moved across Florida to the Gulf Coast, which was all they would share except “Don’t look us up.”

So I stared on a shoestring, an orphan. It was freeing, every day just dealing with detailed little problems in circuits and software, and at night mapping out a new life. I had no interest in drugs, guns or booze, so I was my parole officer’s star pupil. I let on that I was interested in studying paralegal work, so he put me onto some background sites about procedure that came in handy.

One day there was an article in the second section of the *Sun Sentinel* about a guy who’d lost a thumb and forefinger to a brand-name circular saw. He was suing the manufacturer. His lawyer, Victor Lashay, said it was a clear design flaw, but an uphill battle against a well-funded opponent.

Fortunately, that was the library's late night. I looked through as many back issues of the *Sun Sentinel*, the *Palm Beach Post* and the *Miami Herald* as they had, and by closing time had turned up three more accidents involving the same saw. That night I went to public health emergency room reports for Dade, Broward and Palm Beach counties, and found a dozen more statistically.

The next day I called in sick and tracked down addresses and phone numbers for the names I had. Then I took a still jolt of grapefruit juice and made my first call.

In truth, my recollection is a little foggy. I introduced myself as a researcher from Jasme Associates (combining my first and last names, naturally), looking into a series of accidents involving a certain brand of circular saw. Did you use that saw?

Yes.

Were you in any way impaired or otherwise using the tool in a manner not recommended by the instructions?

No.

Are you at present represented by counsel or contemplating an action against the manufacturer?

No, a little shaky this time.

I thanked the man, and expressed sympathy for his injury.

Two more calls: the first was okay, the second sounded a bit blotto at 10:00am, possibly a result of his damages, but I struck him from the list anyway.

Then I called the hospitals, as Jasme Research LLC, to discuss a survey of trauma from power tool injuries. I always asked for the research or teaching division, not patient records, and usually found someone chatty willing to discuss these gruesome injuries. I

learned more about the ways hardware can violate the human body than I had ever considered. Then talk about circular saws. Oh, golly... What about the safety guards around the blade? Oh, theirs could be overridden that easily? Would it be possible to talk to people who have had this experience?

I didn't always get names, even then, but I got some. Enough. By the end of the day, I called the Victor Lashay to make an appointment.

Lashay & Felco was located in a plain white office block just off Broward Boulevard in Fort Lauderdale. It was May, and already hot, but I made it from the multistory parking garage to the lobby before I started to sweat. Good thing, I only had the one English cut tan suit and it showed the least trace of moisture. The office was on the sixth floor, just below the roof and at the very limit of the central air conditioning. I opened a plain wooden door next to their plaque, and met desks framed by file cabinets, with doors to three offices on the opposite wall and a double-doored conference room to the left.

I announced myself to the one clerk paying attention, and she stuck her head in to the far corner office. There was a conversation. She looked at my freshly-printed card. Finally, she waved me in.

Victor Lashay stood as I entered; he probably did so out of long habit. He had a tennis player's lean build and even tan neatly wrapped in teal linen shirt and a cobalt silk tie, bushy gray eyebrows matched by hair of the same color and texture. His grip was instructively firm, and his brown-eyed gaze harder than that. He waved me to a faded green leather seat.

"Mr. Smerlow. What is the business of Jasme Associates?"

“You are plaintiff’s counsel in *Tate v. Hardy Tool*. It’s a manifest defect, but a hard fight. How much would it help your client’s case to have a half-dozen more injury claims – validated injury claims – against the same product?”

He settled back into a rich brown swivel with some complicated squeaking, steeping long-fingered hands before him.

“So, you’re a lead generator. Before we go any further, do you have any references?”

“Simon Vann, for starters.”

“That’s hardly a reference.”

“On the contrary – can you think of anyone better to evaluate a reliable resource? He’s been down that road.”

“And have you been down that road, Mr. Smerlow?”

“I learned how to apply my talents for good and legal purposes, Mr. Lashay. That is supposed to be the purpose of the exercise, am I right?”

He sniffed a laugh, and reached out a hand.

“Let’s see what you’ve got.”

Two hours later, Lashay had six additional clients, and I had a check from Lashay & Felco and another complaint to research. I walked over to Los Olas Boulevard and bought two new suits, with shirts and ties and a pair of Italian loafers.

I became a case runner.

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< 1 >

The first lie about South Florida is that it's always tropically warm and sunny. That's usually true, but in addition to big storms and those freak rains that drown your wipers at the stoplight while the sun shines on your rear window, there are winter days where you need a scarf and jacket, and the palm trees shudder in a gray chill. Snowbirds walk around in windbreakers or rugby shirts chirping *You should see what it's like back home!* And the weather does improve, eventually to excess.

The second lie is that people and events move slowly because, well, it's the South. We may not walk like New Yorkers or drive like Atlantans, but business is business: move quick or go home.

The name JASME RESEARCH LLC on the wall outside our office door comes from my name, Jaden Smerlow. It's there because I do my homework, move fast, and continue to punch above my weight in high-stakes litigation. And there is the fact that, for the past eight months, I'd had no home to go to.

At least Delia had been good enough to put a POD box in the driveway before my suits, shoes and stuff were put out there. Delia liked neat solutions. I no longer qualified.

So it was that on a grim late February evening I was at my desk when Kyle Wayland called. Her transplanted coastal Carolinian drawl was a welcome break from tax preparation.

"Jaden! I didn't expect to get you in at this hour."

"Then why'd you call?"



She laughed. Another welcome sound.

“There’s this matter I’m startin’ on and could use your help. I have taken on three Jane Does in a kind of medical products liability case. From just the little I’ve seen, this ain’t but the hog’s snout in the silo. The plaintiff class could run to the thousands, with significant provable damage.”

“Damn, Kyle, that plays like porn here. What’s the product?”

“It’s a tissue replacement and regeneration therapy called Second Skin, manufactured by Nuvoco, a closely-held company registered in Florida.”

“Hm.” I wrote the details in an outline on a pad, with marginal questions – *Where HQ? Who owns? Prod history? How dispensed?* “What kinds of effects are you seeing?”

I was finished writing, then waited a little longer, before Kyle responded.

“It’s ... unusual. We should probably talk in person?”

Also not an unwelcome prospect, though Kyle was still very married.

“Sure. My office? Yours?”

Another empty hum.

“Um, sorry, just trying to wrap my head around this material myself. Say y’all meet me at the Starbucks at Federal Highway and Broward in a half-hour. I’ll tell you what I got.”

We rang off. I glanced at the pay records and closed the folder, locked it in the lower drawer under the desk’s return, then turned to the whiteboard calendar on the wall to my left. The lead came at a good time. I’d run the kids, Janique and Tommy and the new kid Wyatt, pretty ragged running up to the January court session, and had let them out a little early the past week or so. Time to feed the bear again.

I drummed my fingers on the polished chestnut desktop and consulted my one good watch, a silver Victorinox from a Swiss Army officer's kit, my last birthday gift from Delia. About 8:30. I pushed up from the desk and turned to look through the blinds and polarized windows at East Las Olas Boulevard. Nighttown was in swing, the galleries and shops and cafes open, but no one was dawdling on the sidewalks and there was a peachy damp sheen on the pavement.

I hooked my suit jacket from the back of my desk chair and whipped it on. It was a blue pinstripe on ash grey with the fabric and drape of a better suit. I paused at the calendar to note *Wayland* for tomorrow, and grabbed my black raincoat from the back of the door. Hit the light, out to the reception hub, past Tommy's desk, and made sure everything was off in The Pit, the conference room and the war room/kitchen. The Pit still had a scent of Janique's sandalwood perfume mixed with a greasy note of Wyatt's onion rings. The Matrix poster was peeling away at the top corner; I patted it flush for the moment, and stepped back out to the hub, where there was just sour silence, waiting.

Cream walls, chrome and maple chairs at a small table with select back copies of *Law Technology News*, Tommy's plain maple desk below the company name lettered out in maple, a framed poster of Fort Lauderdale Beach above the visitors, that was it. Fifteen years' work, eight hundred square feet that could be anything or anybody's with no makeover should I one day not return.

I shut the light, stepped out to the hall, popped the latch and locked the deadbolt. Faced the satin steel *JASME RESEARCH LLC*. A life's work.

I turned my blues down the hall, past the restrooms and the closed door of CodeBurgers, whose small back office was pulsing with roots reggae. Lionel Hendry had

taken my word to the wise and stopped toasting herb in his software development shop, which made no sense on any level. He had even done a few jobs for me where an extra level of access proved helpful.

At the end of the hall I turned again and descended the long flight of stairs to the vestibule, and the street.

L'Etoile Jewelers was still open, but not for much longer. I waved at Marcus LeVine through the windows as he removed the display pieces to his vault. He nodded. Having two business with odd hours upstairs was a security benefit to him, and he was good about carrying up a bottle of wine for us and for Lionel around the holidays. It allowed me to ignore that his markups were appalling.

I buttoned up my raincoat and walked west on Las Olas toward Federal Highway. It wasn't far from S.E. 9<sup>th</sup>; the New River Tunnel mouth separated my small-scale part of Las Olas from the business district, where some of my better clients were located, including Kyle Wayland. The wind was luffing, now cold in my face, then damp at my nape, a sure sign that rain was lurking.

I cut right on S.E. 8<sup>th</sup> to do the four blocks to Broward Boulevard without the traffic noise. My steps paced a beat for my thoughts.

Kyle Wayland was a bright, blonde, skinny South Carolina gal, too bright to stick around with Donagher & Lyle any longer than it took to get her name out about the South Florida trial bar. She mostly did construction defect cases; I'd worked with her and Jack Lyle on the USF dorm case, then with her on the Rivergate mold matter after she'd put up her shingle. She was reaching the plateau where her name on the complaint was a good reason to consider settling. We'd sent her the good brownies for Christmas.

If Kyle was branching into product liability, we'd be sending more than brownies next time.

The Starbucks was planted at the intersection of two six-lane thoroughfares. It seemed placed to defy pedestrian walk-ups. Once inside, I looked past the barista counter and snack cooler to the dim tables. I was five minutes early, but Kyle was already there with a coffee cup. I bought a bottle of orange juice and tracked her eyes to a bistro table in the back corner.

Kyle rose slightly to shake hands, a strong tennis player's grip surprising from a slight frame. Her pale blue jacket looked pretty dry, so her car would be out back. I settled in, studying the pale spotlight on her short drape of blonde hair and high cheekbones. Her eyes were fixed on the door.

"Thanks for coming, Jaden," she said quietly. "This folder on the table, don't open it now, take it when you leave. It should be enough to get you started. Usual terms?"

My finger traced a drop of condensation along the tabletop away from the folder.

"That depends on what it takes to turn up fully qualified leads. From where we are and the tone of your voice, I'm thinking more like \$695 per."

That got those doe eyes on me, for a moment. She smiled ruefully into her latté.

"Yeah, well, I guess it could be that kind of case."

She sipped the drink, her eyes returning to the door.

"What do you think is going to come in through there?" I asked.

She smiled to dimples this time.

"Oh, I don't know. I guess I'm picking up on my clients. They're kind of spooked."

"About litigation? That's sanity."

“Naw, about the defendant product. The manufacturer. And the doctor is kind of unpleasant.”

“Go back. What is this stuff – you called it Second Skin?”

She nodded and dropped her voice further.

“The company’s Nuvoco. Privately-held, completely dark. I asked an investment banker friend about them and he drew a blank. This guy knows the medical products market like he knows the bunkers at Doral. He said he’d look into the company. All he was able to turn up was a redacted FDA experimental approval and a reference to a classified DARPA project.”

I drank orange juice, which was sweet and tangy and real, and resisted the sudden urge to look over my shoulder.

“What about the product?”

“Second Skin was approved as an experimental, doctor-administered therapy for restoration of dermal tissue in the treatment of burns, large-scale abrasions and moderate lacerations. Patients had to sign releases, but the use cases were very clearly defined. For those cases, the studies bore out that it was an effective treatment.”

“Thus the military’s interest.”

“Uh-huh.”

“So where do you—we, come in?”

Kyle seemed to consider, then focused on me, talking low and fast.

“At least one doctor apparently thought, if it can repair skin, why not organs? A liver, kidneys, lungs, even heart muscle. Find a few desperate patients with ready cash, and splice in the material.”

She drew a breath and sat back with her mug.

“Did it work?”

“For a while. But there’s a catch with organ tissue that doesn’t happen with skin. Skin is exposed to air, regenerates, and that’s pretty much it. With organs, though, you need booster shots.”

“For how long?”

“As near as we can determine, forever.”

I finished the juice, feeling it merge into my body.

“How often?”

“Not less often than once a week.”

“And your clients are suing the source? That’s pretty tough, for them and for me.”

“They were sold booster packs for six months, to self-administer.”

“That won’t be long enough for a class action. Your adversary will know that. It also puts me on dicey ethical ground.”

That got a smile. My saying that word generally has that effect.

“Just get me the leads, sugar. The more plaintiffs I have, the sooner the company will settle so it can return to the shadows, and leave the doctor hanging with a growing class lined up against him.”

“What about the releases?”

“Not worth the paper they’re written on. The therapy is strictly targeted at skin regeneration. The doctor’s over his head, and the company failed to monitor.”

“I leaned back in the uncomfortable cane chair, staring at the mute folder. I folded it and slipped it into an inner pocket of my raincoat.

“I’ll see what I can do.”

Kyle finished her latté and dabbed a shapely upper lip with a napkin.

“I knew I could count on you, Jaden. Thanks for meeting me here.”

“I’ll walk you out to your car.”

We went out the back door to the parking lot. Kyle’s red Miata waited just in from the lights of Broward Boulevard. The rain was picking up. The chill was catching. As Kyle’s Miata took a right toward the beach, I went left and walked back to Las Olas along Federal Highway, where I could see anyone stopping abruptly, and paid attention to every stranger and shadow along the highway. The walk stayed level as I approached the river and the roadway ducked underneath. The streets above the tunnel mouth were dim and empty tonight. I walked right down the middle stripe, laughing to myself.

*You’re not Philip Marlowe. You’re not investigating anyone. No one’s interested in you, who are too dumb to even wear a hat in a downpour.*

To confirm the point, the Riverwalk was bare, probably owing to gale force sheets of rain pounding in from the southeast. I had reached the level of saturation that I no longer hurried, content to cut the tangent over tile and through puddle to the welcoming lights of Rivergate.

Saul the night man looked up from a futbol match playing low on the desk behind his counter. His jowly, rough-hewn face registered sympathy with an economic lifting of heavy eyebrows.

“It is a wicked night, Mr. Smerlow.”

“It is that, Saul.”

“May I offer you some paper towels?”

“That’s a start. Thanks.”

I stood on the door mat and wiped at my face and hair, then skimmed off the excess on my raincoat. I slipped off my loafers and poured out more water, then dabbed at them while my trousers dripped on my stockinged feet.

“Quiet?” I asked.

Saul gestured at the game. The pace there too sounded slow in Spanish. He held up a wastepaper basket for the wet ball of paper. I thanked him and stopped to collect from my mailbox, then took the elevator up to 14.

This was the same Riverwalk where I’d worked with Kyle generating leads on the mold case. Several lines of apartments facing the river had been improperly sealed. To compound the problem, the builder had cheaped out on the drywall, which had to be replaced, with cleaning and painting and monetary damages as part of the settlement. One of my leads told me he was getting a place on the Pacific Coast of Costa Rica, and so was looking to lease his condo just as Delia was tossing my stuff into a POD. I jumped at it, moving into 14D just as the repairs were complete.

I stepped off the elevator and stopped at the blue metal door on the opposite wall ten paces to the left. Opened the two locks, opened the door a crack, and immediately turned on the light.

No Mary Astor on a settee, no Sydney Greenstreet in the armchair, no Peter Lorre or baby-faced gungel Elisha Cook Jr. on the sofa just past the kitchen alcove and counter, just the familiar antiseptic silence. I slipped off my shoes and left them on the mat as I crossed to the counter and opened my coat. The folder was wet but not saturated. I laid it and the



mail on the counter, slipped off my raincoat and, grabbing a hanger from the front closet, went around the counter left to the short hall, turning on lights as I went. Still alone.

In the bathroom left of the short hall I hung up the raincoat from the shower head. I then went across to the bedroom to undress and hang up my suit, grabbing a towel from the linen closet on the way. The pants would need a pressing for sure; the jacket was just damp. I shucked my tie, fortunately not pure silk, and peeled off the socks, shirt and briefs, tossing them all into the tall hamper basket between the dresser and the window wall. On second thought I fished out the socks and hung them from the bath faucet, then took the terry-lined cotton robe from the hook behind the bedroom door.

Not warm but dry, I padded out to the kitchen. The folder sat on the counter with one wing up, waiting. I decided on pairing it with a finger or two of Gentleman Jack, then realized I'd missed dinner. I didn't feel up to the contact and guilt involved in ordering up, and sure as hell wasn't going back out, even to Tiso's downstairs. The fridge held half a bottle of club soda, which I took out as a chaser, a bottle of lemon juice, half an onion in a baggie, half a browning avocado, a couple of yogurt cups and the remains of a container of hummus. At least scurvy wouldn't be an issue for a while. I took out the hummus, and in the cupboard found half a bag of pita chips and a couple of browning bananas to go with it.

I perched on a stool at the counter, sipping and nibbling on dinner, and read through the file on Second Skin.

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The basic story the file told was not uncommon: people with money can afford any treatment they want, and there is a rich assortment of quacks, cons, and actual doctors available to convince them they are getting what they paid for. It also made sense, on a number of levels, that these were Jane Does to start with; even if the doctor knew who was coming after him, the papers wouldn't know. And these three probably would try to keep it that way.

Jane Doe Number One, a homemaker from Palm Beach Shores, had presented advanced cirrhosis of the liver. When being treated for sun poisoning by Dr. Randall Carlstadt at his Pompano Beach office, she informed him of this fact and he suggested a Second Skin treatment for her liver as well. One presumes he also advised her to stop drinking. Within a week, following a booster, she felt like a new woman. For about a week, when another booster was required, and so on.

Meanwhile, during that first week, feeling refreshed and probably in her cups, she told her friend Jane Doe Number Two about it while drowning Number Two's remaining kidney. Ms. Two made an appointment with Dr. Carlstadt, driving all the way down to his Dadeland office. Within a week she had not one but two functioning kidneys, until they began to fail about seven days later. Number One had not told Number Two about her experience and the booster, so she went to the local hospital's emergency room, where they wanted to admit her. She called Number One, who confessed, and to make up arranged an emergency appointment with Dr. Carlstadt.

Jane Doe Number Three was a little different. She was stuck at home up in Jupiter, requiring a constant oxygen supply to breathe. The diagnosis was pulmonary fibrosis, a chronic and progressive condition. At age 50, she was a candidate for the only known cure, which was lung transplant. Unfortunately, her blood profile was a tough match. She was stuck, until she saw a small classified ad in the *Palm Beach Post* promising tissue regeneration, *Call for appointment* with a Broward number that would be an answering service.

The ad was taped to a piece of paper inscribed *Palm Beach Post, 10/25/13, page C7, col.3.*

That was information I needed, the ad and the service number. But that would be relatively easy for Kyle to subpoena as it would be challenging for me to worm out. I'd have to think about that.

There was also Dr. Randall Carlstadt's patient records, which he undoubtedly would be loath to part with. He would be further shielded by HIPAA, the Health Insurance Portability and Accountability Act, but that only covered personally sensitive information such as social security number and birthday, medical history and payment details, not necessarily names or phone numbers.

I poured another finger of Gentleman Jack for dessert and considered:

A Google ad pulling searches for Second Skin, organ placement and tissue regeneration.

A look into the manufacturer Nuvoco's clinical trial, which should indicate authorized practitioners.

A smooth burn of whiskey opened one more possibility:

911 or ER reports of acute organ failure, starting with Number Two's local hospital, Palm General.

In for a penny, in for a pound.

I put the notepal into the file and closed it, revealing the mail. I separated out the pieces for Hugh Breyer, my Costa Rican expat landlord, and tossed them into a tote in a counter cabinet where I gathered a batch for weekly forwarding via parcel post. That didn't leave much: a cell phone bill, a men's store flyer, and a letter from Delia's lawyer.

I sipped dessert, and opened the envelope from Mark Ostrower, Attorney at Law.

The key part went, "*Upon review of the parties' accountings, my client will assert the attached Schedule of Assets as material consideration for settlement of divorce.*" There was a date, a week away, for filing comments, and a hearing two weeks away. The signature line was on a separate buff-bond page embossed with Ostrower's slug line for no apparent reason.

I finished my drink and looked at the attachment.

The house: she and kids stayed, I paid the mortgage, I got the tax write-off. She paid utilities.

Child support through emancipation or prior remarriage, in latter case halved.

Alimony ... steep, but what I'd figured.

Furnishings: hers.

Cars: She kept the Highlander, I kept the payments. My Altima was leased through the business, so no dispute there.

It was all so Delia-balanced that my pulse settled until I got to the last line:

*“The limited liability company Jasme Associates LLC: In recognition of my client’s parents’ initial investment and her financial acumen in setting the business on a sound footing, a forty percent (40%) share of the same character as current ownership.”*

I smiled. That was Delia: calculating exactly how deeply to cut while still getting everything I owed her. Not taking the business, just getting to see the books, making sure I wouldn’t ever get ahead or get away. It was there to get me angry, and get what she could out of my sorry ass.

It didn’t. She wouldn’t.

I shut the light.

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