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The Tenth Case

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Extract

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A SPONTANEOUS ACT OF GRATITUDE

"We turn now to the issue of what constitutes an appropriate punishment for your various infractions," said the judge in the middle, the gray-haired one whose name Jaywalker always had trouble remembering. "Disbarment certainly occurred to us, and would no doubt be fully deserved, were it not for your long years of service to the bar, your quite obvious devotion to your clients, as well as your considerable legal skills, reflected in your current string of, what was it you told us? Ten consecutive acquittals?"

"Eleven, actually," said Jaywalker.

"Eleven. Very impressive. That said, a substantial period of suspension is still in order. A very substantial period. Your transgressions are simply too numerous, and too serious, to warrant anything less. Bringing in a lookalike for a defendant in order to confuse a witness, for example. Impersonating a judge to trick a police officer into turning over his notes. Breaking into the evidence room in order to have your own chemist analyze some narcotics. Referring to a judge, *on the record,* as—and I shall paraphrase here—*a small portion of excrement.* And finally, though by no means least of all, receiving, shall we say, a 'sexual favor' from a client in the stairwell of the courthouse—"

"It wasn't a sexual favor, Your Honor."

"Please don't interrupt me."

"Sorry, sir."

"And you can deny it all you want, but my colleagues and I have been forced to watch the videotape from the surveillance camera several times through—complete, I might add, with what appears to be you *moaning.* Now I don't know what *you* would call it, but—"

"It was nothing but a spontaneous act of gratitude, Your Honor, from an overly appreciative client. She'd just been acquitted of a trumped-up prostitution charge. And if only there'd been a sound track, you'd know I wasn't moaning at all. I was saying, *'No! No! No!'*"

Actually, there was some truth to that.

"Are you a married man, Mr. Jaywalker?"

"I'm a widower, sir. As a matter of fact, I'd been distraught over my wife's death."

"I see." That seemed to give the judge pause, though only briefly. "When did she die?"

"It was a Thursday. June ninth, I believe."

"This year?"

"Uh, no, sir."

"Last year?"

"No."

There was an awkward silence.

"This *millennium?*"

"Not exactly."

"I see," said the judge.

Sternbridge, that was his name. Should have been easy enough for Jaywalker to have remembered.

"The court," Sternbridge was saying now, "hereby suspends you from the practice of law for a period of three years, following which you shall be required to reapply to the Committee on Character and Fitness." He raised his gavel. But Jaywalker, who'd been to an auction or two with his late wife, back in the previous millennium, beat him to it just before he could bring the thing down.

"If it please the court?"

Sternbridge peered at him over his reading glasses, momentarily disarmed by Jaywalker's rare lapse into court-speak. Jaywalker took that as an invitation to continue.

"In spite of the fact that I knew this day of reckoning was coming, Your Honor, I find I still have a number of pending cases. Many involve clients in extremely precarious situations. These are people who've put their lives in my hands. While I'm fully prepared to accept the court's punishment, I beg you to let me see these matters through to completion. Please, *please,* don't take out your dissatisfaction with me on these helpless people. Add a year to my suspension, if you like. Add two. But let me finish helping them."

The three judges mumbled to each other, then swiveled around on their chairs and huddled, their black-robed backs to the courtroom. When they swung back a minute later, it was the one on the right, the woman named Ellerbee, who addressed Jaywalker.

"You will be permitted to complete five cases," she said. "Provide us with a list of those you choose to retain by the end of court business tomorrow, complete with a docket or indictment number, the judge to which each case is assigned, and the next scheduled court date. The remainder of your clients will be reassigned to other counsel. As for the five cases you'll be keeping, you'll be required to appear before us the first Friday of every month, so that you can give us a detailed progress report on your efforts to dispose of them."

Dispose of them. Didn't she understand that these weren't diapers or toilet paper or plastic razors? They were *people.*

"Understood?" Judge Ellerbee was asking him.

"Understood," said Jaywalker. "And—"

"What?"

"Thank you."

* * *

That night, working in his cramped, poorly lit office well past midnight, Jaywalker did his best to pare the list down. But it was like having to choose which people to throw out of a life raft. How could he abandon a fourteen-year-old kid who'd trusted him enough to accept a year-long commitment to a residential drug program? Or an illegal alien facing deportation to the Sudan for the unforgivable crime of selling ladies' handbags with an expired vendor's permit? Or a homeless woman fighting for the right to visit her two small children in a shelter once a month? How did he tell a former gang member that the lawyer it had taken him two years to open up to and confide in was suddenly going to be replaced by a name chosen at random off a computer-generated list? How would he write to a completely innocent inmate doing fifteen-to-life in Sing Sing to say that he wouldn't be getting an attorney's visit any longer, come the first Saturday of the month? Or a retarded janitor's helper that his next lawyer might not be willing to hold his hand and squeeze it tightly each time they stood before the judge, so the poor man wouldn't have to shake uncontrollably and wet his pants in front of a courtroom of laughing strangers?

In the end, with a great deal of difficulty, Jaywalker managed to get the list down to a pretty manageable seventeen names. He printed it out and submitted it to the judges the following afternoon, along with a lengthy apology that it was the best he could possibly do, followed by a fervent appeal to their understanding. A week later, a letter arrived from the court, informing him that the court had trimmed the list down to ten, and warning him not to drag out any of the cases unnecessarily.

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JAYWALKER

His name wasn't really Jaywalker, of course. Once it had been Harrison J. Walker. But he hated Harrison, which had struck him as overly pretentious and WASPy, for as long as he could remember being aware of such things. And he hated *Harry* even more, associating it with a bald head, a potbelly and the stub of a day-old cigar. So, long ago, he'd taken to calling himself Jay Walker, and somewhere along the line someone had blurred that into Jaywalker. Which had been all right with him; the truth was, he'd never had the patience to stand on a curb waiting for a light without a pair of eyes of its own to tell him whether it was safe to cross or not, or the discipline to walk from midblock to corner to midblock again, all in order to end up directly across from where he'd started out in the first place. He answered his office phone (his soon-to-be *former* office phone) "Jaywalker," responded unthinkingly to "Mr. Jaywalker," and when asked on some form or other to supply a *surname* or a *given name* (for the life of him, he'd never been able to figure out which was which), he simply wrote "Jaywalker" in both blanks, resulting in a small but not insignificant portion of his mail arriving addressed to "Mr. Jaywalker Jaywalker." It was sort of like being Major Major, he de-

cided, or Woolly Woolly. Names, he'd come to believe, were vastly overrated.

His office wasn't really an office at all. What it was, was a room in a suite of offices that surrounded a center hallway, which in turn served as a combination conference room, library and lunchroom. The arrangement, which was repeated throughout the building and a dozen others in the area, enabled sole practitioners such as himself to practice on a shoestring. For five hundred dollars the first of the month, he got a place to put a desk, a couple of chairs, a secondhand couch, a clothes tree, and some cardboard boxes that he liked to think of as portable file cabinets. On top of the desk went his phone, his answering machine, his computer, various piles of paper and faded photos of his departed wife and semi-estranged daughter. For no extra charge, he got the use of not only the aforementioned conference/library/lunchroom, but a modest waiting room, a receptionist, a copier and a fax machine, all circa 1995, except for the receptionist, who was considerably older.

There was no restroom in the suite, only a MEN'S and a WOMEN'S down the hall and past the elevator bank. On nights when Jaywalker ended up sleeping on the sofa—and since there was nobody back at his apartment to go home to, those nights were more than occasional, especially when he was in the midst of a trial—the men's room was where he brushed his teeth, washed his face and shaved. It was only the absence of a shower, in fact, that forced him to go home as often as he did.

Jaywalker's suitemates (a word he'd grown especially fond of, ever since the spellcheck feature on his computer had tried to correct it to *sodomites*) included two P.I. lawyers (the initials standing for *personal injury,* a considerably more polite designation than the also-used A.C. for *ambulance chaser*); an immigration practitioner named Herman Greenberg, who, in a stroke of marketing genius, had had his business cards printed on green card stock,

forever earning himself the aka Herman Greencard; a bankruptcy specialist known in-house as "Fuck-the-Creditors" Feinblatt; an older guy who did nothing but chain-smoke, cough, read the *Law Journal* and handle real estate closings; and a woman who didn't seem to do much of anything at all but wait for her next Big Case to walk through the door, her last Big Case having walked out the door fifteen years ago.

Jaywalker was the only criminal defense lawyer in the suite. For one reason or another, criminal defense lawyers have always been pretty much solo practitioners, and those who've attempted to organize them into groups or associations, or even gather them under a single roof, have tended to come away from the experience feeling as though they've been trying to line up snakes single file.

But flying solo had always suited Jaywalker just fine. He'd spent two years at the Legal Aid Society, where he'd found quite enough collegiality, and nearly enough bedmates, to last him a lifetime. There he'd also learned how to try a case—or, more precisely, how *not* to.

Once he'd cut the cord and gone out into private practice, Jaywalker had gradually retaught himself. Over the next twenty years, he earned a reputation as a renegade among renegades. It was almost as though he was determined to give new meaning to the term *unorthodox.* He broke every rule in the book, defied all the axioms ever preached about how to try a case, and in the process managed to infuriate at least a score of seasoned prosecutors and otherwise unflappable judges. But he also built a record unlike anything ever seen outside Hollywood or television land. In a business where district attorneys' offices routinely boasted of conviction rates of anywhere from sixty-five to ninety-five percent, and where many defense lawyers heard the words *Not guilty* only at an arraignment, Jaywalker achieved an acquittal rate of just over ninety percent.

How did he do it?

If asked, he probably couldn't have explained it nearly as well as he did it. But those who watched him work on a regular basis—and there was a large and growing number who did—invariably pointed to a single phenomenon. By the time a Jaywalker jury retired to deliberate on a case, they'd come to understand, *truly* understand, that it wasn't their job to figure out whether or not the defendant had committed the crime. Rather, it was their job to figure out whether, based upon the evidence produced in the courtroom, or the *lack* of such evidence, the prosecution had succeeded in *proving* that the defendant had committed the crime, and whether it had done so beyond all reasonable doubt.

The difference proved to be staggering.

By the time he stood before the three judges who would deliver his punishment, Jaywalker had become something of a legend in his own time at 100 Centre Street. But his success hadn't come without a price. For one thing, he drove himself relentlessly, demanding of himself that he come into court not only better prepared than his adversary but *ten* times better prepared, *fifty* times better prepared. He slept almost not at all when he was on trial, and when he did, it was with pen and paper within reach, so that he could jot down random thoughts in the dark and try to decipher them come morning. He planned for every conceivable contingency, agonized over every detail, and organized with the fanaticism of the obsessive-compulsive he was. Walking out of the courthouse after yet another acquittal, he would look upward and utter thanks to a god he didn't believe in, followed by a prayer that he might never have to go through the ordeal another time.

But, of course, there always was another time.

His remarkable record, even as it earned him the admiration of his colleagues in the criminal defense bar, also created a problem for them, in much the same way that the acquittal of a former football star and minor celebrity, three

thousand miles away and a decade earlier, had created a problem for them. "If he can do it," their clients demanded to know, "why can't you?" It was perhaps no surprise, therefore, that many of those who'd attended Jaywalker's punishment hearing, almost all of whom admired him on a professional level, liked him personally and in most respects truly wished him well, also secretly rejoiced at the thought of being rid of him, if only for a while.

But even to the most relieved of them, three years had seemed like a rather stiff suspension for blowing off a few rules and succumbing to something that didn't sound so different, when you got right down to it.

All of that had been back in September.

It had taken Jaywalker until the following June, and the ninth first-Friday-of-the-month appearance before the three-judge panel, to report that he'd succeeded in *disposing of* virtually all of his remaining clients.

The fourteen-year-old kid in the drug program was now fifteen, drug-free and in aftercare. The Sudanese handbag salesman had been granted permanent residence status, thanks to a little help from Herman Greencard. The homeless woman had an apartment of her own, a job and custody of her two children. The former gang member had relapsed, jumped bail and fled to southern California, from where he sent Jaywalker postcards picturing scantily-clad (or nonclad) sunbathers. The Sing Sing inmate's appeal had been heard, and a decision was expected shortly. The pants-wetter's case had been dismissed. A drunk driver had pleaded guilty to operating a motor vehicle while impaired. A minor drug dealer had settled for a sentence of probation. And a three-card-monte player had been acquitted once Jaywalker had convinced a jury that the man's skill in conning his victims was so consummate that it completely negated the "game of chance" element required by the language of the statute.

Nine months, nine cases, nine clients, nine pretty good results.

Leaving exactly one.

Samara Moss.

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