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Conviction

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Extract

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From this day forward, I no longer shall tinker with the machinery of death. . . . Rather than continue to coddle the Court's delusion that the desired level of fairness has been achieved and the need for regulation eviscerated, I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed. . . . The basic question—does the system accurately and consistently determine which defendants "deserve" to die?—cannot be answered in the affirmative. It is not simply that this Court has allowed vague aggravating circumstances to be employed . . . relevant mitigating evidence to be disregarded . . . and vital judicial review to be blocked. . . . The problem is that the inevitability of factual, legal and moral error gives us a system that we know must wrongly kill some defendants, a system that fails to deliver the fair, consistent, and reliable sentences of death required by the Constitution.

—MR. JUSTICE BLACKMUN, dissenting in *Callins v. Collins*

Justice Blackmun begins his statement by describing with poignancy the death of a convicted murderer by lethal injection. He chooses, as the case in which to make that statement, one of the less brutal of the murders that regularly come before us—the murder of a man ripped by a bullet suddenly and unexpectedly, with no opportunity to prepare himself and his affairs, and left to bleed to death on the floor of a tavern. The death-by-injection which Justice Blackmun describes looks pretty desirable next to that. It looks even better next to some of the other cases currently before us which Justice Blackmun did not select as the vehicle for his announcement that the death penalty is always unconstitutional—for example, the case of the eleven year old girl raped by four men and killed by stuffing her panties down her throat. . . . How enviable a quiet death by lethal injection compared with that! If the people conclude that such more brutal deaths may be deterred by capital punishment; indeed, if they merely conclude that justice requires such brutal deaths to be avenged by capital punishment, the creation of false, untextual, and unhistorical contradictions within

"the Court's Eighth Amendment jurisprudence" should not prevent them.

—Mr. Justice Scalia, concurring in *Callins v. Collins*

It is tempting to pretend that [those] on death row share a fate in no way connected to our own. . . . Such an illusion is ultimately corrosive, for the reverberations of injustice are not so easily confined. . . . [T]he way in which we choose those who will die reveals the depth of moral commitment among the living.

—Mr. Justice Brennan, dissenting in *McCleskey v. Kemp*

PART ONE

THE TRIAL

ONE

IN FIFTY-NINE DAYS, IF THE STATE OF CALIFORNIA HAD ITS WAY, the man inside the Plexiglas booth would die by lethal injection.

Teresa Peralta Paget paused to study him, the guard quiet at her side. Her new client stood with his back to them. He was bulky, the blue prison shirt covering his broad back like an oversize bolt of cloth. A picture of enthrallment, he gazed through the high window of the exterior wall at the San Francisco Bay, its water glistening in the afternoon sun. She was reluctant to distract him; the man's sole glimpses of the world outside, Terri knew, occurred when his lawyers came to see him.

The others were out of it now; the last set of lawyers had withdrawn after their latest defeat. The final desperate efforts to keep Rennell Price alive—what she thought of as the ritual death spasms ordained by the legal system—had fallen to Teresa Paget. This was their first meeting: but for his solitude, she could not have picked her client out from the other men huddled with their lawyers in the two rows of Plexiglas cubicles. It resembled, Terri thought, an exhibit of the damned—sooner or later, in months, or more likely years, the impersonal, inexorable grinding of the machinery of death would consume each one in turn.

But perhaps not, Terri promised herself, this one. At least not until she had burnt herself down to the nerve ends, sleep-deprived from the effort to save him.

To her new client, she supposed, Terri might appear a mere morsel for the machine, insufficient even to slow its gears. She was small—barely five feet four—and slight, with olive skin and a sculpted face, which her husband stubbornly insisted was beautiful: high cheekbones; a delicate chin; a ridged nose too pronounced for her liking; straight black hair, which, in Terri's mind, she shared with several million other Latinas far

more striking than she. There was little about her to suggest the steeliness an inmate might hope for in his lawyer except, perhaps, the green-flecked brown eyes, which even when she smiled never quite lost their keenness, or their watchfulness.

This wariness was Terri's birthright, the reflex of a child schooled by the volatile chemistry which transformed her father's drinking to brutality, and reinforced by the miserable first marriage which Terri, who had no better model, had chosen as the solution to her pregnancy with Elena. Her personal life was different now. As if to compensate for this good fortune, she had turned her career down a path more arduous than most lawyers could endure: at thirty-nine, she had spent the last seven years representing death row inmates, a specialty which virtually guaranteed the opposition and, quite frequently, the outright hostility of judges, prosecutors, witnesses, cops, governors, most relatives of the victim, and by design, the legal system itself–not to mention, often, her own clients. Now that stress and anxiety no longer waited for her at home, Terri sometimes thought, she had sought them out.

What would be most stressful about *this* client was not the crime of which he stood convicted, though it was far more odious than most–especially, given certain facts, to Terri herself. Nor was it whatever version of humanity this man turned out to be: her death row clients had run the gamut from peaceable through schizophrenic to barking mad. But this client represented the rarest and most draining kind of all: for fifteen years, through a trial court conviction in 1987, then a chain of defeats in the California Supreme Court, the Federal District Court, the Federal Court of Appeals, and the United States Supreme Court, Rennell Price had claimed his innocence of the crime for which the state meant to kill him.

No court had considered this claim worthy of belief or even, in the last five of these proceedings, a hearing. As far as the State was concerned, its sole remaining task should be to dispatch three psychiatrists to advise the Governor's office, within twenty days of the appointed date of execution, whether her client was sane enough to die: one of the niceties of capital punishment, Terri thought sardonically, was the State's insistence that the condemned fully appreciate that lethal injection would, in fact, be lethal.

She nodded to the guard.

He rapped sharply on the Plexiglas. With a twitch of his shoulders, as though startled, the black man inside the cage turned to face them.

His eyes were expressionless; for him, Terri thought, the highlight of her visit–a view of the bay–was already over. With a resignation born of fifteen years of meeting lawyers in these booths, he backed toward the door and, hands held behind his back, thrust them through an open slot.

The guard clapped on his handcuffs, closing them with a metallic click. Then Rennell Price, shackled, stepped away from the door.

The guard opened it, admitting Terri.

The door shut, and Rennell stood over her. As he backed to the slot again, waiting for the guard to uncuff his outthrust hands, Terri had an involuntary spurt of fear, the reflex of a small woman confined with a hulking stranger who had, in the estimate of twelve jurors, done a terrible thing to someone much smaller than she.

She held out her hand. "I'm Terri Paget," she told him. "Your new lawyer."

His expression was somewhere between sullen and indifferent–she might as well have pronounced herself an emissary from Pluto. But after a moment, he looked up at her and said in a monotone, "My name Rennell."

She searched his eyes for hope or, at least, some instinct to trust. She saw none.

"Why don't we sit," Terri said. "Get acquainted a little."

With a fractional shrug, her client turned, slid out the orange plastic chair on the far side of a laminated wood table, and sat, staring past Terri. Settling across from him, Terri saw the inmates in the next two cages huddled with their lawyers, lips moving without sound.

Rennell's face, Terri decided, was more than inexpressive–it had no lines, as if no emotion had ever crossed it. She reminded herself that he had been only eighteen when convicted, now was barely thirty-three, and that the fifteen years in between had been, were this man lucky, mostly solitary, and unrelentingly the same. But not even Terri's presence–a novelty, at least–caused the line of his full mouth to soften, or his wide brown eyes to acknowledge her.

Terri tried to wait him out. Yet the broad plane of his face remained so impassive that he seemed not so much to look through her as to deny her presence. It was hard to know the reasons. But one of the hallmarks of an adult abused as a child, Terri reflected, was an emotional numbing to the point of dissociation–a willful process of going blank, of withdrawing mentally from this earth. Jurors often thought such men indif-

ferent to the crimes their prosecutors described so vividly; in the case of *this* crime, that could hardly have helped Rennell Price.

"I've taken over your case," Terri explained. "Your lawyers at Kenyon and Walker thought you deserved a fresh pair of eyes."

This drew no reaction. Mentally, Terri cursed her predecessors for their absence, the ultimate act of cowardice and desertion–leaving her to build a relationship with a sullen stranger, the better to save his life, or prepare him to die. Then, to her surprise, he asked, "You know Payton?"

"Your brother? No, I don't." Terri tried to animate her voice with curiosity. "How's he doing?"

"Fixing to die. They're going to kill him. Before me."

Oddly, Terri thought, this last detail about Payton seemed to carry more dread than his own fate. "How do you know?" she inquired.

He slumped forward on the table, not answering. "I can't be there," he said dully. "Warden told me that."

Struck by the answer, Terri chose to ignore its unresponsiveness. "What else did she tell you?"

"That I can pick five people. When my time come."

Five witnesses, Terri thought, granted the condemned by the grace of the State of California. But from what Terri knew, it would be hard to find five people, outside the victim's family, who gave enough of a damn to watch. Rennell Price's death, if it came, would be a very private affair.

"You don't have to worry about that yet." Pausing, Terri looked hard into his eyes. "We'll have a lot of help–my husband, Chris, who's a terrific lawyer, and a team of investigators to look into your case. You'll meet them all soon. We'll be doing everything we can to save your life."

For almost half that life, he had heard this–Terri could see that much in his face. And each time, she already suspected, whoever said it had been lying.

Slowly, his eyelids dropped.

"I didn't do that little girl," he said. "Payton didn't do her."

The denial sounded rote, yet etched with fatigue. "How do you know about Payton?" Terri asked.

"He told me."

What to make of that, she wondered. As either a reason to believe his brother or a statement of truth, it was implausible to the point of pitiful, and she could not divine if this man knew it. "Who do you think 'did' her, Rennell?"

He gave a silent shrug of the shoulders, suggesting an absence of knowledge or, perhaps, a massive indifference.

"The day she died," Terri persisted, "can you remember where you were?"

"I don't remember nothing."

As an answer, it was at least as credible as the alibi the defense had offered at the brothers' trial. But one or the other could not be true, suggesting—unhelpfully—that neither was.

Terri simply nodded. There was little else to ask until she combed the record, little purpose to her visit beyond starting to persuade Rennell Price—against the odds, given his life lessons—that someone cared about him. "I'll be coming to see you every few days," she assured him. "Is there anything you need?"

Rennell gazed at the table. "A TV," he said at last. "Mine's been broke for a long time now."

"Before it broke, what did you like to watch?"

"Superheroes. Especially Hawkman. Monday through Friday at four o'clock."

She could not tell if this commercial announcement was a statement of fact or suggested an unexpected gift for irony. Whatever the case, given the size of his cell and the cubic footage limitations on his possessions, a new TV would not bankrupt the Paget family. And fifty-nine days of Hawkman was not too much to ask—though it was not easy for Terri to imagine the waning existence which would be measured out, hour by hour, in images on the Cartoon Network.

"I'll get you a new one," she promised.

Her client did not answer. Maybe, Terri thought, he did not believe her. Even when she stood to leave, he did not look up.

Only as the guard approached did Rennell Price speak again, his voice quiet but insistent.

"I didn't do that little girl," he told his lawyer.