

Former crime-lab nerd, former policeman, former detective, ADA Jonathan Smith has a passion for justice. His problem is the woman he just convicted of killing her husband wants him to help overturn her conviction and he's being told to prosecute a homeless man for a homicide he is convinced the man did not commit. With both cases based on circumstantial evidence the police have stopped looking for suspects and evidence. No clues. No leads. No problem. Jonathan hopes.

Circumstantial Evidence

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Circumstantial Evidence

The background of the cover is a sketch of a crowd of people. In the foreground, a large green funnel is superimposed over the scene. Inside the funnel, a pair of green sneakers is visible. A line points from the top of the funnel to the shoes. The overall style is that of a hand-drawn illustration.

Peter Schulman

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ISBN 978-1-60910-157-2

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Printed in the United States of America.

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2010

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Chapter 1

When the clamor subsided I could hear a man's voice yelling at my answering machine. I couldn't make out the words. I hadn't answered any of his calls this morning so it would be no surprise if his words were not flattering.

This wasn't the first time I had gone running in the oppressive heat thinking I could get by without drinking enough water.

Lily describes it as my Wile E. Coyote syndrome: I rush headlong over the cliff only to discover there's nothing under my feet but air. My friends agree, so there could be some truth to it.

The phone rang again. I picked it up.

An angry voice blustered, "Jonathan Smith?"

"Yeah."

It wasn't bluster; it was his version of politeness. "Where the fuck have you been? I've been calling you for over a God-damn hour. Don't you answer your fucking phone?"

Clearly I answer my phone; he was talking to me. Was he a disciple of my grandmother? She would wait until I finally did what she wanted before accusing me of never doing it.

"I've been in the bathroom, barfing."

"Oh." His hostility dissipated. "DA says for you to get down to this crime scene."

"I'm not on call, I feel like shit and I have closing arguments this morning."

"Well, it ain't my choice and it ain't my problem. ADA on call says the DA wants you down here."

"That's *the* DA?"

"Only one I know of."

The only one I knew of too. I sighed. "Where am I going?" I'm sure the resignation in my voice brightened his day.

"Below the Walnut Street Bridge. Can't miss it."

"Thanks ever so much." My meaning was clear.

Damn. The best scenario was that this would be cutting it close. I'd have to bring a small cask of mouthwash with me.

Why did Doris want me? Another high-profile case?

Screwing up my life is a very personal matter. I lavish considerable care on not fixing whatever the hell is wrong with me. Politics should not interfere with my dysfunctional behavior.

It had been a dry summer. The ground was concrete hard. Even the weeds were struggling to survive. This early in the morning I could see the heated air rising from the rails of the tracks about ten yards from her body on the side away from the Schuylkill River.

There were no footprints around the body. Even the cops stomping around here hadn't made any.

This is why an Assistant District Attorney comes to a crime scene. I'm not here to question witnesses or collect evidence. That's somebody else's job. I come to get the gestalt of the crime.

It's different from looking at photographs or scale drawings. Being here nurtures my intuition. I assess things I'm not aware of at a conscious level.

When I question witnesses on the stand, I know what fits and what bothers me.

The victim was gorgeous and she was naked.

"Smith?" It was the voice from the phone.

I looked his way and nodded.

"You do look like shit." He had a big smile.

The uniform was around six foot three, maybe two hundred twenty-five pounds, mid thirties. If he didn't leave footprints on this ground, nobody would.

"Her name is Janet Reedy."

I looked around and didn't see any clothing or other personal effects. I gave him a quizzical shrug.

"The other guy, the one who called the DA, he recognized her."

"Who is she?" I asked.

"Don't know. He said she runs with some pretty important people. Guess that's why he called 'er."

I nodded. There was nothing more to learn from him. I looked around. No suits. Despite the delay in answering my phone I'd arrived before the detectives. It was another of too many busy nights in Philadelphia.

I walked toward the lone member of the Crime Scene Unit, unwrapped a root beer barrel from my pocket and popped it into my mouth. I shoved the wrapper back into my pocket.

“What do you have?” I asked.

He looked up. “Who are you?”

The police aren’t supposed to let a reporter by, so I had to be somebody official. I guess he didn’t want to find himself on the front page of the Daily News because he had made an assumption. “ADA.”

“Not a damn thing yet.”

For that he had to know who I was? I didn’t verbalize it. I had been working on developing some restraint. Lily tells me I should be careful who I alienate. Jamie just says I shouldn’t alienate *everybody*.

“Any idea how she died?” I asked.

“Looks like her head got cracked on a rock.”

I looked around. Was there anything troubling or telling about this crime scene? Her clothing was gone.

Why had she been here? This isn’t someplace you walk by yourself late at night. There was a good chance she knew her killer, had come here with him voluntarily.

I saw no bruising on her back. There couldn’t have been much of a struggle. That increased the likelihood she knew him.

Was he someone influential? Great. We’ll lock the bastard up, but God forbid we inconvenience him while trying to prove he killed her.

I headed back to my car. The voice from the phone stopped me. “We got a suspect.”

“That was quick.”

He chuckled. “What can I tell ya? We’re good. He’s over there in the car.”

I walked toward the patrol car. Though I’m curious as the next guy, I didn’t have time to gawk. I was due in court.

He was sitting in the back seat.

“Phillip Patrick?” I said it out loud to myself in a voice too soft for anyone to hear. I looked back at the body and the area around it. This made no sense. Give him a month and the guy couldn’t leave a crime scene this clean.

He was dressed shabbily in clothing he scavenged. His hair was unruly and his thin face had a week's growth.

I glanced at my watch. Though I didn't have time, I couldn't resist. I opened the door. "Phillip, do you remember me?"

He looked at me thoughtfully. Maybe it was confusion. "You asked me questions," he said.

"Right. Do you know why you're here?"

He looked toward the uniformed officers. "The man told me to sit here."

"What did you do?"

"I sat here."

"No, what did you do that made them tell you to sit here?"

"I ... they told me I had to sit here."

I looked at my watch again. Enough. I'd find out later from the detectives why they thought Patrick did it if they agreed with the uniforms. Right now I needed to go. Judges are even less forgiving about being kept waiting than women, and I had found women none too forgiving.

"Hey," I called to my phone buddy. "I need a siren or the judge is going to make my morning so far look pleasant by comparison."

Chapter 2

It wasn't fair. I had been a prosecutor for seven years and a cop for more than a dozen years before that. This was Alfred Boxer's first criminal trial.

I had taken courses on how to influence a jury. He had never tried a criminal case before a jury. That wouldn't have been such a big deal if this had been a misdemeanor. His client was on trial for murder.

It just wasn't fair. I'm supposed to win. I try to win. But justice is even more important to me than winning. It's probably a character flaw for a prosecutor.

It was not that I thought Priscilla Caldwell wasn't guilty. I was about to tell this jury in detail why I thought she was. It was just that Priscilla Caldwell deserved better. She could certainly afford anyone she wanted to represent her.

She deserved to have somebody tell the jury what was wrong with my case; somebody to persuade them she couldn't have done it or wouldn't have done it or, at the very least, that there was some small possibility she didn't do it.

She deserved to have somebody tell them the butler did it, even though they didn't have a butler.

Alfred Boxer was the Caldwell family lawyer. He handled their business affairs quite ably. He was well-respected in the Philadelphia legal community, and deservedly so.

He certainly looked the role. He wore a different expensive, conservative suit every day of the trial. His haircut looked like he came straight from the barber, yet so natural you could believe it had never been cut; that it had always been that way.

He was a good friend of the Caldwell family. He was an experienced enough lawyer that he should have known better than to handle a criminal trial.

Alfred Boxer had given a thoroughly lackluster closing. I'm not sure an artful one would have helped.

He hadn't presented evidence of anyone else with a concrete motive. He had presented no evidence that Priscilla Caldwell was anywhere other than in their home at the time of the murder. He

hadn't hired his own scientific experts to go over the crime scene or the evidence we had collected.

Alfred told the jury my case was based entirely on circumstantial evidence; that it was unreliable, without pointing to any specifics or even giving them a plausible framework for doubting it.

Priscilla Caldwell had not invested her money wisely. Any public defender with a few months experience could have done a better job.

He should have said something like, "I'm sure Mr. Smith will graciously concede the weakness of his case. But, of course, you would have seen that even if you had been asleep for half the trial," to inoculate the jury.

"We've been working on this case together for a week now and we've just about reached the point where my involvement will end and the matter will be in your hands," I told the jury.

"Mr. Boxer told you this case is based entirely on circumstantial evidence. He's absolutely right. If that's a problem for you, you have the option of finding the Defendant not guilty. I have no problem with that.

"It's not my job to win. My job is to present the evidence and help you understand why that should compel you to find Priscilla Caldwell guilty.

"I don't get a bonus if you convict. I don't get extra vacation. If I've made a compelling case and you decide the Defendant is guilty beyond a reasonable doubt, I get something much more valuable: I get the satisfaction of helping carry out justice."

This is part of why it isn't fair. I know that by telling the jury of the weaknesses of my case, I'm dissipating the power of his argument. I'm telling them I wouldn't do anything to get a verdict I don't deserve. That isn't entirely true. It's just the impression I'm conveying.

"But you have to be convinced beyond a reasonable doubt. Don't convict if you aren't. Don't give me any consideration for putting on a good case, for acting professionally, for being a good guy, or just for being so darn charming, as difficult as that may be for you to overlook." I gave them my most winning smile and flirtatious voice. There was tittering in the courtroom including the jury.

"The benefit of any doubt must go to the Defendant." I pointed to her. "The system doesn't work if we don't do it that way.

“That being said, you should have no problem finding guilt beyond a reasonable doubt. I’ll walk you through that in a minute.

“First, I’d like to address the concern that *all* we have here is circumstantial evidence.

“Physical evidence is great to have. I’ll take all I can get. It’s usually clear. It lets us nail down certain aspects of a crime, such as the murder weapon in this case.

“Scientific evidence is especially nice. It can often prove that a defendant could not possibly have committed the crime or that he must have.

“Eyewitness evidence is often very helpful.” And frighteningly unreliable.

“But the reality is: criminals don’t want to be caught. They do whatever they can to get away with it. They usually don’t videotape their crime, though that happens now and then. They don’t invite observers.

“An essential part of their job is to get away with it. They leave as little evidence as possible. The more skillful the criminal, the less evidence we collect. The less evidence we collect, the more we need to rely on circumstantial evidence.

“That means the police and prosecutor must collect evidence and information capable of explaining to good citizens like you, what happened, when it happened, who caused it to happen and why they caused it to happen. That means, sometimes all we have is circumstantial evidence – evidence from which you can draw the correct inferences as to the what, when, who, and why of the crime.

“If our system didn’t allow that, you and I wouldn’t be safe in our homes. Any time a crime was committed without leaving a substantial amount of scientific or physical evidence, or videotape, or photographs, the criminal would go free.

“These inferences can be extremely powerful and persuade you to make decisions based on them as if you were actually able to see the events yourself.

“Suppose you park your car in the driveway. Later you come out of your house with the only key and find your car missing.

“Your car is missing.” I held up my left thumb. “There is no second key.” I added my left index finger. “You didn’t give anyone permission

to use it.” My middle finger joined the other two. “This is all just circumstantial evidence.

“Let me ask you this: Will you wait for the car to come back or will you call the police?” I paused to give them a moment to consider my question. I smiled.

“Come on,” I cajoled and moved my head in a follow-me gesture. “I know your answer. When you make that call it means you have decided it’s beyond any reasonable doubt. That is the role of circumstantial evidence in general and the nature of the circumstantial evidence in this case.”

“Let’s review what we know.

“On the evening of January 2, 2000, Prentice Caldwell was sitting in the library on the first floor of his home. That library contains over twenty-five hundred books, most of which he had read. Given the chance, he would have read them all and added to his collection. He was an educated man, a very thoughtful man.

“He was sitting in his favorite chair, reading David McCullough’s biography of John Adams. Prentice derived great pleasure from reading. He was more than halfway through. He never got to finish. He will never get to finish.

“Prentice Caldwell was a very wealthy man. He was a caring man. He gave generously of his money and his time to people and organizations in need. He supported Children’s Hospital of Philadelphia. He gave generously to Make-a-Wish. Those organizations that interrupt your dinner looking for money didn’t need to call Prentice. He helped them all.”

“He didn’t flaunt his wealth. If you stood beside him at a street corner waiting for a light to change, you would have had no idea he was one of the most prominent men in the area. He was well liked and had much more to offer our Philadelphia community.

“At approximately eight o’clock, someone went to Prentice and Priscilla Caldwell’s bedroom, put on a pair of winter gloves, removed this nine millimeter Beretta from the nightstand and walked down the stairs to the first floor.

I turned and pointed at the Defendant, my arm fully extended. “That person was Priscilla Caldwell.

“She walked into the study and removed this throw pillow from the sofa. She then walked to the chair where Prentice Caldwell was

sitting, raised the pillow in front of the muzzle of the gun, like this, and fired a single shot into the back of his head, killing him. She dropped the pillow,” I dropped the pillow, “wiped the gun clean of prints, perhaps with her dress, and dropped the Beretta on the floor where she stood.”

I dropped the Beretta on the floor where I stood.

“She removed the gloves and dropped them as well.

“She then went upstairs to the second floor master bathroom, removed her dress and dropped it down the laundry chute. She showered, dressed, and left the house. When she fired the fatal shot she was wearing a long-sleeved, black dress, Commonwealth Eight, which we know because there was gunshot residue on the right sleeve.

“The Assistant Medical Examiner told you the time of death was between seven thirty and eight thirty p.m. He told you the position of the body indicated Mr. Caldwell was unconcerned with whoever was in the house and what she was doing. He knew and trusted his killer.

“The housekeeper testified she called 911 when she returned from the movies. You heard others testify she was with them at the time of the murder.

“The alarm company testified the alarm had not been tampered with, yet they received no signal of any unauthorized entry or movement. The killer had to know the alarm code or have been admitted.

“The killer knew the location of the murder weapon.

“The killer knew about the laundry chute in the master bathroom.

“No unidentified fingerprints were found on Prentice Caldwell’s night table where the gun was stored.

“And where was Mrs. Caldwell when *the killer* was doing all this?” I shrugged and raised my palms upward.

“She offered no alibi.

“Finally, Melanie Chambers has admitted to having a sexual relationship with Prentice Caldwell. We must infer that this relationship did not make Priscilla very happy.”

I know. “Must infer” overstates the significance of this evidence. But I *am* the prosecutor. While the vast majority of things in life can best be interpreted by applying, “It depends on how you look at it,”

I'm not about to suggest this jury has any choice other than to convict.

I should not have referred to the Defendant as Priscilla especially in juxtaposition to using both names for Melanie and Prentice. Omitting her last name diminished her stature.

"We have shown you her motive. We have shown you the means. We have shown you how difficult it would have been for anyone else to have had that opportunity."

I walked slowly up to the rail of the jury box. I leaned on the rail with both hands and bent slightly toward them to suggest even more intimacy than we had already shared. I looked each of them in the eye. From the start, my tone had been conversational and personal, as if these jurors were friends sitting in my living room discussing whether the Eagles were going to have a successful season.

"You would be entirely reasonable to find that Priscilla Caldwell murdered her husband as I have described. I don't think you can find any reasonable doubt of that on the evidence that has been presented.

"On that evening, Prentice Caldwell was cheated out of the rest of the life he had coming to him. His library will never grow to include all those books he would have read and enjoyed. Never again will he have the satisfaction of helping all those people in need as he did so often in the past. Never again will he have the chance to share his wisdom and his judgment with high officials in city government.

"These and countless other things were taken away by the actions of the Defendant." I turned and pointed at her. "The killer is Priscilla Caldwell. You owe it to Prentice Caldwell to hold her accountable for all she has taken away from him, from us.

"Let me sweeten the deal. If you can wrap this up with a guilty plea before the weekend, you're all invited to a barbecue at my place on Saturday. I'll provide the food and drink, even the entertainment. So let's get this over with and move on with our lives."

I have somewhat of a reputation for pushing the boundaries of what is acceptable, of what is legal. That's not what I'm trying to do. What I'm doing is questioning the common understanding, the way "it's done", whether that's really the way it is. Just because something has come to be accepted doesn't mean it ought to be accepted.

My barbecue invitation to the jury was a fantasy. Of course I didn't say it. The judge would have found me in contempt and I could have waited in jail for the Disciplinary Board to make an example of me.

But why should they? Would it be a far cry from the pandering I did to the jury's emotions sandwiched around the logical reasons they should convict?

Though it made me uncomfortable to resort to such tactics, the research is very clear: the impressions made by the attorneys and the witnesses often weigh more heavily in the minds of the jury than the evidence.

It did not make me uncomfortable enough to risk their letting guilty people go free because I didn't take advantage of tactics which had no evidentiary value whatsoever.

"Thank you, ladies and gentlemen of the jury, for your attention and for your service to the community. I'm sure Prentice Caldwell would thank you if he could. Service to the community was a hallmark of his life."

I was conversational and personable, without a hint of histrionics.

On TV you see the prosecutor pounding his fist as he passionately demands justice for those who can no longer speak. Real juries have been questioned and the results are unequivocal: the more you carry on, the less they trust you.

Judge Minor charged them on the law applicable to the issues and off they went to deliberate.

I walked out into the corridor of the Criminal Justice Center. The hallway had a stately look of marble, and conveyed the impression that this was a place where great things were done. There were somber quotations on the walls. The atmosphere was one of solemnity. It said we took the legal system very seriously.

That might have been the perception before the O.J. case let the public in on our dirty little secret: everything is not as precise and just in our system of justice as they had supposed.

There was a sticky note on my office door directing me to see the District Attorney. I'd never been summoned directly from a trial. It was disquieting.

I plucked it off and headed for her office.

Chapter 3

Doris Gold sat behind her desk. She was approaching her mid-fifties. The stress of her job made her look every day of it. She was five four, around one hundred forty pounds. She had gray hair and intense green eyes surrounded by tiny wrinkles. Her face was rounder than when she was young, I'd seen pictures.

Her warm smile today was welcoming, but it wasn't clear whether it welcomed a friend or a meal. I opted for caution.

"Jon, how are we doing on Caldwell?"

"Jury's out."

"Are we winning?"

I shrugged. "You know juries. Sometimes you win a case you shouldn't even have brought. Sometimes you lose when you have everything including videotape."

"Is there anything to make you think this jury won't follow the evidence?"

"I don't read them that way. But you never know. I've seen professional basketball players miss a slam dunk and this case is not a slam dunk. I wouldn't want to bet my house on either result."

"You must have a sense of how it went," she said, growing ever more annoyed by my evasiveness.

"I don't know. Lots of people tell me I don't have the sense I was born with."

"Is everything a joke with you?"

"No. Yes. No. That's what gets me through the day. I can't do anything to influence the jury now, but I'd say we're likely to win."

I joke all the time. Sometimes when I'm uncomfortable, as I was now, the quality suffers.

Doris wasn't given to this kind of chit chat. We had never discussed a case this way. Caldwell was just foreplay. I waited for the other shoe to fall.

"Good. You know I like to move your career along with successes like this. Maybe someday you'll be a famous defense attorney."

My career? The last election had been a lot closer than it had any right to be. Philadelphia is so heavily Democratic that winning the primary is akin to ordination.

I might well have believed it when I told the jury it was not my job to win. Doris did not share the sentiment.

"I want you to handle the Janet Reedy case," she said.

Ah, the other shoe. I winced. "I kind of guessed when I was ordered to the scene. I don't know what's happened since I left, but I have to tell you, they had the wrong guy in custody when I was there."

"We've got a confession." She handed me a copy. "You have the chops to win this case," she said.

I scanned the file. "Doris, I don't think we should win this case." I wasn't just pandering to the jury in my closing. I really do believe in the importance of beyond a reasonable doubt.

"I interviewed Phillip Patrick for over an hour on a case about ten years ago. He had real trouble following what I said. He had major difficulty connecting cause with effect. At the time, I talked to other street people about him and they confirmed his lack of abilities.

"He didn't make this confession. He doesn't have the capacity. It's not his language. He barely has the ability to sweep floors with careful direction. Handyman is way too advanced for him. The detectives wrote this confession and confused him into signing it.

"Plus, I saw the crime scene. He couldn't possibly have left it so clean. That took some understanding and skill. I doubt he can understand why he shouldn't leave evidence at a crime scene, let alone what evidence or a crime scene is."

"That's for a jury to decide, not us," Doris said.

Technically, yes, if we abdicate all responsibility for using our reasoning and judgment. But then we might just as well toss the defendant into the Schuylkill River. If he floats he's guilty. If he drowns he's innocent.

"We're officers of the court, Doris. If we know an injustice is being perpetrated, don't we have a responsibility to prevent or correct it?"

"We don't know. We just have some reason to suspect."

I shook my head at the notion. “We’re looking at compelling circumstantial evidence. The inference from our knowledge of his limited capacity is crystal clear. I just told this jury circumstantial evidence could be as unequivocal as scientific evidence.” My voice had grown a little more strident than perhaps it should have. This was my boss, after all.

“There is supporting evidence, Jonathan. It’s not just the confession. This is why we have an adversarial system. The jury is supposed to decide impartially on the facts. The public has a right to feel safe.”

“The public has a right to *be* safe.”

“Part of being safe is feeling safe. We’ll just let the system sort this out.”

“How can I prosecute a man I’m convinced is innocent?” I had the silly notion I had some say in the matter. I should have paid better attention to her body language.

“It’s a very important case. I need my best people on it. The public wants a District Attorney who gets things done. And, in case you’ve forgotten, this is not a democracy.”

“When did I lose the right to vote?” I asked.

“When you took this job.”

“Damn. I always forget to read the fine print.” But I never seem to forget to dash right to the edge of insubordination.

There were more really clever and penetrating things I could have said, but I wasn’t sure I was ready to be fired this time. I settled for, “Is that all?” with an edge in my voice.

Doris pretended it had been cordial. She leaned back in her chair and straightened up. Her demeanor was regal. “Good luck on Caldwell.” She was in charge. All discord was forgotten.

By her.

“Thank you.” Your Royal Highness.

Chapter 4

I wasn't sure I was ready to be fired. Neither was I sure I was not ready to be fired. Injustice keeps me up at night.

I've done things in my job I don't believe in. I've gotten a few death penalties even though I don't think it deters anyone or makes the public any safer. But it was my job, and appropriate, given the state of the law. Prosecuting an innocent man is another thing entirely.

It was four in the afternoon. The jury had been out little more than an hour. God had never spoken directly to me, but that was more likely to happen than this jury returning a verdict before we adjourned for the night. I dialed Jamie.

"Jamie Roarke."

"Are you busy tonight? I could use a friend to talk to."

"Who did you have in mind? I wasn't aware you had any friends."

"That's 'whom,' and could there be anyone but you?"

"What was I thinking?" She feigned contrition. "You're in luck. We just adjourned for the day. How did Caldwell go?"

"I'm optimistic."

"You don't have to gush. Are you about to be the number two man?"

"That's sort of what I'd like to talk about. And that would be number one man; number two person. But, I can't imagine any circumstances under which that would happen. You know my aversion to bureaucracy and paperwork."

"You don't sound very enthusiastic," she replied. "At the very least, a favor of this magnitude requires you to provide dinner."

"So Ordered, Counselor. My suburban office, six thirty."

I walked to LOVE Park and descended to the underground garage. Where was my car? I covered about half the first level when it occurred to me that I might have parked on the second level. I got in late, but that gave me no clue as to where my car was likely to be.

I finally located my sedan on the second level in the midst of a sea of SUVs, RVs and large foreign cars. Where were my keys? They

weren't in my pants. They weren't in the side pockets of my jacket. This would not have been the first time I had forgotten them.

I located them in the left inside pocket nestled against a root beer barrel. I unwrapped it and popped it into my mouth.

Rebel though I am, I held onto the wrapper until I could find a trash can. Littering affects everybody.

I paid at the exit and gazed at the seven-story mural, Freedom, adorning the opposite corner of Fifteenth and Arch. It featured a well-built young man leaning against a column, atop which is perched a sphere with a banner around it labeled "Declaration of Independence."

Had there been a real young man leaning against a similar column, we would probably have called him a slacker and arrested him for loitering.

Three rights and a jug handle put me on Vine and I left Center City for Germantown.

I parked across the street from the Rib Crib on Germantown Avenue. The trip took just eighteen minutes because I had been able to speed, which on the Schuylkill Expressway around rush hour was any speedometer reading that reached double digits.

I crossed the street, walking over cobblestones and trolley tracks.

There were no other customers. In less than five minutes I was making an illegal u-turn, all the while savoring the mouth-watering aroma of the slab on the seat next to me.

I drove back across the river. At Fifty-Fourth Street I turned right from City Avenue out of the city limits, and made a left at Graves Lane to my corporate office/second home at One Fifty.

I had a nice apartment in the city, as is required of a city employee. Well, nice isn't required; a residence is.

I opened my gate with the remote and drove under the stone arch connecting the house and the garage. Both were made of stone as well. Above the arch was a hallway that provided access, unexposed to the elements, between the house and garage. I parked in back on the blacktop which could accommodate around a dozen cars.

I entered through the back door and crossed the mud room to disable the electronic alarm. The biological alarm was still going off.

Bob was barking enthusiastically. He spun around several times. It didn't matter when I came home. Bob took that as the obvious time to ask for dinner.

He was a mix of Chihuahua and some kind of terrier, though it was possible he had some Rottweiler, mostly black with small areas of white and brown and had a serious under bite. His ears pointed up proudly. Taken altogether, you could have mistaken his face for that of a bat.

Pocahontas sat alertly, awaiting developments. She was a thoroughly-trained guard dog, forty-seven pounds of muscle and purpose. She had been a shy mix of Belgian Shepherd and Chow-Chow desperately seeking love when I found her at the SPCA. Pokey was mostly black with some patches of brown and white and her tongue bore a purple birthmark.

I hung my keys on the key caddy so I could find them later.

"Pokey, come."

She bounded to me and licked my face enthusiastically as I bent to pet her.

I didn't see Marble.

Bob was right. It was time for dinner so I brought them some Iams Minichunks from the pantry. Their water was dispensed by a gadget I had seen advertised on TV. I had one for their food as well, but I prefer to bring it to them myself.

A buzz announced someone at the front gate. I saw Jamie waving in the security monitor next to the alarm keypad. I buzzed her in.

Jamie was always a savory sight to behold: five four, one hundred eighteen pounds, blue eyes, pale skin with freckles that accompanied her classic, naturally-curly, red hair. She was model beautiful, yet somehow had the girl-next-door look going for her.

She wore jeans and a dark blue sweatshirt that said "Old Navy".

"I took a wild guess you'd pick up ribs. I'll set up while you change into something you don't mind getting stained," she said. She'd seen me eat ribs before.

Pocahontas stopped eating and watched attentively as Jamie set up. Her tail was wagging – Pokey's, not Jamie's. Though Pokey knew

her well, this might finally be the time Jamie would attack and Pokey would need to protect me.

Jamie was just sitting down at the dining room table after putting out glasses filled with ice and diet orange soda when I returned. A two-liter bottle sat between us on the table.

"You're wearing my sweatshirt," she said, pleased. She bought me the matching blue Old Navy sweatshirt for my forty-second birthday two months previous.

"Don't you always bring out the knick knacks the relatives bought you when they visit?"

"That's not nice," she said.

"And not true in this case. For you, it's a way of showing my appreciation for your thoughtfulness. For my cousin, it would be what I do to show her how much I appreciate her hideous gift after I'm no longer able to persuade her I have it in the other house."

"How can I tell the difference?" she asked.

"I never told you the sweatshirt was in the other house."

"Where are the sneakers I gave you?" Jamie plays well with others.

"They're in the other house."

She was at the end of the table and I sat to her right. It was long enough to seat a dozen.

"Where did you get this awful table?" she asked.

"It's an antique."

"Is antique the new word for junk?"

"All right, le Salvation Army."

She giggled, pleased with herself, and savaged another rib.

She started another with gusto. There were flecks of sauce all around her upper lip. I was tempted to lick them off.

"I have to ask, my curiosity just won't let me ignore it," she said. "What is the salad spinner doing in the middle of the table with the big vegetable knife on top?"

"It's to remind me to get red peppers from Produce Junction."

She thought about it. "Of course it is. Why not just a note?" she asked, clearly amused.

"I have trouble with notes. There's something about writing it out that makes me uncomfortable. Even when I write one, I usually forget where I put it, or that I even wrote it. But, the spinner and the knife are so out of place here, they jog my memory."

"Why not a notepad by the phone? Then you'd always know where the notes were."

"I'd need one by each phone," I answered. "I might need a kitchen note in my office to do something with it. Once I started moving notes, I wouldn't know where anything was."

"Hence the salad spinner. How can you be so disorganized, yet so focused in court and when you're doing preparation or investigation?" she asked.

"I'm not always organized, I just fake it well. And if I could figure out why I wasn't, I'd do something about it."

"Maybe they make a pill for that."

I rolled my eyes though I wasn't sure she was joking.

"Would it be rude to ask what you wanted to talk about?" she asked.

"Would that stop you?" I asked back.

"What did you want to talk about? Us?" She fluttered her eyelids.

"I'm saving that conversation for when I grow up."

"If you grow up."

"If I grow up," I conceded. "Doris assigned Reedy to me."

"And you didn't say no?"

Lawyers love double negatives. It's like spinach to Popeye. Jamie was also partial to irony.

"Not after she said she was the boss and this was not a democracy."

"That's harsh. What did you say to get to that point? Did you ease into it or just blurt it out?"

"I forgot to use tact."

"I'm impressed you know what tact is."

"Patrick didn't do it," I said.

She savored a rib. It wasn't the reason for the pause. "Are you sure?"

"Beyond a reasonable doubt."

"That will come out at trial," she said.

"Then why have a trial?"

"That's what we do. We prosecute and the jury works it out."

"Right now I'm all that stands between Phillip Patrick and a lifetime in prison. And I'm the prosecutor."

"So what can *you* do?"

"I'm thinking of leaving."

"Why on earth would you do that?" Jamie was incredulous. This was her first job out of law school. She was twenty-eight and had been with the DA's office four years.

"This is the best job on earth," she said. "We get paid for the privilege of taking bad people off the streets. We get paid for helping people get their lives back by bringing them vindication. We get paid for helping people feel safe to go about their daily lives. How could you possibly leave that?"

"The fact that I was a cop doesn't prevent me from recognizing they sometimes take the wrong guy off the street just to close a case. That gives the public a sense of safety, but it's a false sense.

"We do it too. We'll prosecute some junkies to make people feel their neighborhoods are safer. They aren't.

"Now and then we'll nail the wrong guy for something serious. But, hey, it's not our fault; he was given full access to the system – a 'fair' trial."

"That's the system and mostly it works," she said.

I winced at "mostly."

"It doesn't work if you're the guy sitting in jail for something you didn't do. It really doesn't work for the next victim of the guy who did do it, because we didn't bother to look for him.

"Many of these drug prosecutions are just sizzle. I'm getting uncomfortable with our prosecuting politically attractive cases.

“And Patrick is innocent, Jamie. Not not guilty; innocent. This could be the last straw for me. I can’t see myself leading the charge to jail an innocent man for life.”

“Are you sure this isn’t just your reckless side acting up?”

“I don’t know.”

“Somebody else will prosecute him even if you don’t,” she said.

“I know.”

“What would you do if you quit?”

“There must be some defense firm that would happily pay me more than I’m making now. If I go out on my own I’m sure I can find people to defend.”

“People you would want to defend?” she asked.

“I’m sure I can pick up some accident cases.”

She didn’t want to, but she laughed. “You’re impossible.”

“You want me, don’t you?” I moved my eyebrows up and down and flicked a fake cigar. All I lacked was the glasses and the moustache.

“Was I that obvious?”

“Only to the trained eye,” I confided.

She may, in fact, have wanted me, but somehow, against insurmountable odds, she surmounted.

It often helps me to talk things over with someone. It hadn’t helped this time. I still didn’t know what to do. I didn’t relish either option.

Jamie was right about one thing: it was a privilege and a joy to help protect the people of “We the People.” It was not an unmitigated joy, and I didn’t have much time to decide.

After dinner we listened to *The Planets* by Holst and by the time we reached *Jupiter* my arm was around her shoulder and she was teetering on the edge of sleep, her head against my chest. Not long after that she left.

I went down the basement for a martial arts workout. I burned off enough energy to reduce the tension of my impending decision.

When I finally got into bed Bob burrowed under the covers and curled up behind the crook of my knee. That said, “Don’t worry; I’ll

still love you no matter what you choose.” At least that’s how I interpreted it.

Former crime-lab nerd, former policeman, former detective, ADA Jonathan Smith has a passion for justice. His problem is the woman he just convicted of killing her husband wants him to help overturn her conviction and he's being told to prosecute a homeless man for a homicide he is convinced the man did not commit. With both cases based on circumstantial evidence the police have stopped looking for suspects and evidence. No clues. No leads. No problem. Jonathan hopes.

Circumstantial Evidence

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