

## THE RIGHT TO REMAIN SILENT

“I hear kudos are in order.”

Mike Finnegan strode into the office he shared with Dan Marinelli, files under one arm and a battered briefcase swinging from the other. He parked the files on his desk and tossed the briefcase into a nearby guest chair. “Way to go, dude. You’re racking up an impressive record on those capital crimes.” He offered Marinelli his upraised hand. Marinelli slapped it in return, feeling Finnegan’s excessive give in response.

*Lame-ass, white-boy high five*, Marinelli thought. *No wonder the brothers make fun of us.*

“Thanks. I think I did all right.” Marinelli was having mixed feelings about the case he’d just won for the Culver City State’s Attorney’s Office. Chico Hernandez, a not-so-bright, emotionally-damaged, but sane man in his early twenties, had been accused of shooting a priest, Father Jaime Ramirez, who had allegedly abused Hernandez as a child.

“All right? You got a conviction, despite all that psychological crap the defense tried to raise. I mean, the guy’s got problems, okay. But that doesn’t mean he can go around shooting anyone who messed up his life in the past.”

Marinelli shook his head.

“Maybe it’s just me. You know how I feel about priests. Especially those pedophiles. Hell, it was all I could do to keep from slapping Hernandez on the back and saying, ‘Attaboy,’ when I saw him in court.”

Finnegan looked at him. “Dude. We’re talking about murder. Even a sick, twisted pedophile deserves better.”

“I know.”

“Besides, as the city with the second-highest crime rate in Maryland after Baltimore, don’t you think we could use the win right now?”

“Totally. Still ... something doesn’t feel right about this one. Hernandez wasn’t retarded, just kind of slow. And he only spoke Spanish. The court assigned a translator to help Baxter get his story. Even then, she didn’t get much, from what she told me. He wouldn’t deal, but he wouldn’t fight either. So she ended up relying on that psych defense.”

“Well, that’s Baxter’s problem, isn’t it?”

“Sure. So why do I keep wondering what he wasn’t telling her?”

“Again, not your problem. Defendant has the right to remain silent, doesn’t he?”

“That’s not supposed to refer to what you tell your own attorney.”

Finnegan gawked at Marinelli. “Quit worrying about it, you dumb guinea. You did your job and the public defender did hers. You won. End of story.” He grinned. “Now, sit back, smile and wait for your next plum assignment from Big Dick.”

Marinelli nodded. Big Dick Dawson, Culver City State’s Attorney. He’d be happy. There’d be good headlines in the Culver City Chronicle’s morning edition—the kind of headlines that couldn’t hurt a State’s Attorney coming up for re-election in six months. Marinelli sat back and smiled. But he couldn’t seem to stop worrying.

Three months later, Marinelli was at his desk, reviewing a new case file, when the phone rang.

In mid-greeting, the familiar voice boomed from the receiver. "Dan, it's Dick Dawson. My office. Now."

Big Dick. He could certainly live up to his nickname sometimes. Marinelli noticed that Dick Dawson never failed to use both names when identifying himself on the phone. As if there were ten other guys named Dick running around the State's Attorneys' Office who he might get mistaken for.

Marinelli stepped into the corner office furnished in dark walnut, plush beige carpeting and navy drapes. Big Dick was at his desk, scribbling something on a pad and scowling. He had a full head of short, mostly-dark hair that, as usual, appeared to be combed within an inch of its life, right down to his short graying sideburns. Without looking up, he waved Marinelli toward him and said, "Sit."

Suppressing the urge to tell the old man not to order him about like a dog, Marinelli sat and waited.

Dawson put down his pen, folded his hands on the desk and gave Marinelli a grim, steady look over his tortoise-rimmed reading glasses. "That priest-killer, Hernandez? He's asking for a new trial."

"Now? A little late in the game, isn't it?"

"Some crap about new evidence, plus the usual ineffective assistance of counsel stuff. You know how it goes."

"Usually, nowhere, especially post-sentencing, unless it's pretty compelling. Are we talking DNA evidence?"

"I don't know, but Baxter's got a bee in her bonnet on this one." Dawson sounded unusually annoyed. "I need you to nip this shit in the bud. Understand?"

"Fine. Frankly, I'm surprised she didn't do it sooner. I mean, from what I gathered, the client wasn't easy to work with. I guess Baxter must have stumbled onto something after the fact." Marinelli wondered vaguely how the overworked, underpaid public defender had managed to do that. "Plus the language barrier could provide grounds for her ineffective assistance argument."

"She had a translator! What more could she ask for?" Dawson snapped. "This unhappy childhood shit is no excuse for committing murder. We needed to set an example and we did. Let's not wreck it by letting Baxter pull some eleventh-hour bullshit."

"I wouldn't worry," Marinelli said. "Judge Gardena won't grant a new trial."

"That's another thing." Dawson picked up the pen and tapped it on his legal pad. "Baxter's making noises about asking Gardena to recuse himself."

Marinelli issued a harsh laugh. "Good luck! On what grounds?"

"Some kind of bias argument, I'd guess. Gardena's been hearing some of those priest molestation cases. He also denied all her evidentiary motions and used your jury instructions practically verbatim."

"Those aren't grounds for bias, and she knows it. As long as he wasn't assigned to Hernandez's molestation case, I can't see any conflict. If anything, it should make him more sympathetic to the defendant. As for his rulings, he's a law-and-order judge, no different than half the bench in this town."

"Just be prepared." Dawson tapped out a Morse Code rhythm on his pad. "We'll be getting some pressure on this one."

The Archdiocese, Marinelli thought. Naturally, they'd want to make sure the verdict in this case stood. He wondered how many child molesters they were trying to protect from the Hernandezes of the world. The sour thought put his teeth on edge.

Marinelli saw Leslie Baxter roaming the hall between court dockets later that day, a stack of files on one arm. He pulled her aside.

"Talk to me about the Hernandez case," he said. "What's your new evidence?"

Baxter sighed and shifted the files to the other arm. She was a short, chubby woman with cropped black hair and cinnamon-brown skin. "Got a minute? I'd like to drop these at my office. We can talk there."

Marinelli checked his watch. He had a hearing in an hour, so he nodded and followed her to the small windowless room she shared with another public defender, who wasn't there at the moment.

Baxter lowered the files onto a side table with a grunt, sat down and waved Marinelli into a guest chair. "Hernandez lied. He's taking the rap for someone else."

"And you know this ... how?"

"Inconsistencies, mainly. Things I didn't catch at the time." She yanked a file from the middle of a stack, pulled out some papers and lay three documents like playing cards across the top of her state-issue metal desk.

"The police report and the autopsy show Ramirez was shot in the chest, point-blank, with a nine-mil Glock. A semi-automatic handgun."

"Right."

"In his statement to the police, Hernandez admitted that he had shot Father Ramirez with a pistol he got on the street. He said the same thing when I interviewed Hernandez through an interpreter. In fact, he told me very little he hadn't already told the cops. But, at one point, the interpreter referred to the gun as a revolver. When I asked him about that, the interpreter said something to Hernandez. Both of them seemed to get very agitated. Then, the interpreter said he'd made a mistake in his translation. He told me it was a revolver, when he should have called it a handgun."

"And you didn't think to question his story at the time?"

"I did—believe me, I tried my best—but the interpreter insisted it was his mistake and Hernandez wouldn't change his story."

"So what makes you think it wasn't just a mistake?"

"As you know, Ramirez was shot at St. Ignatius Church after hearing confessions on a Saturday night. According to his statement, Hernandez waited for everyone to leave, then ran up to the communion rail and shot Ramirez as he was crossing the altar. Then he tried to move the body. He'd gotten as far as the rear of the altar when he was caught by the maintenance man, who'd heard the shot. I went through this version with the interpreter to make sure it was right. I go through a series of questions. Where were you standing? Where was he standing? Yada, yada, yada. I couldn't get a straight answer on why he moved the body, but the man isn't exactly the sharpest tool in the drawer, so I figured maybe he panicked. The bottom line is, Hernandez confirmed shooting Ramirez, standing outside the communion rail."

"And got caught by a witness. Pretty damaging."

"Yes and I didn't think much more about it. Two weeks ago, I happened to be in the neighborhood to speak to a witness on another matter. I was near the church, so I stopped in. I noticed the dais is raised. So if Hernandez only ran up to the communion rail, the bullet would have entered at more of an angle." She pointed a finger in an upward slant to

demonstrate. “So I rounded up the interpreter again and went to see him, to ask some more questions. I go over it again—where he was, where the priest was, why he tried to move the body. The more I questioned him, the more rattled he and the interpreter got. Finally, Hernandez refused to say anything more.”

“So why didn’t the police catch this?”

“Cause they were too busy listening to the maintenance man and my own client’s confession. A story he continues to stick by, but I don’t believe it. I think he’s lying to cover for someone else. And I think the interpreter knows that.”

“So, you don’t actually have any new evidence. You have a new theory based on old evidence.”

“I know I have a snowball’s chance in hell of winning this.” She heaved another sigh. “But unless Hernandez stepped onto the dais or Ramirez came out from behind the rail, the forensics don’t make sense. Something is wrong here. So I’m taking a shot.”

“Why would he lie?”

“Two possibilities.” She held up a finger as she counted each. “To take the fall for someone he cares about. Or because he’s afraid to tell the truth.”

Marinelli took his role as officer of the court seriously. Even after years of contact with the criminal justice system, he hadn’t become so jaded he was willing to settle for anything less than a clean conviction. He knew about police corruption—the occasional use of “throw down” weapons to “prove” an officer had shot someone in self-defense, the overzealous interrogation tactics that were sometimes employed to break a suspect down. He knew these were the exception, not the rule, and that most cops played it as close to the book as they could. Cops had a tough job and he felt empathy for them, even for the ones who crossed the line thinking they were doing it for the right reasons.

That night, he kept going over what Baxter had said. *You did your job*, he told himself. *And it wasn’t your job to show inconsistencies between the defendant’s story and the forensic evidence. But it is your job to prosecute bad guys, not put away innocent ones.*

So what to do? Baxter will file her motion. She has no new evidence, so that argument will fail. She could prevail on the ineffective assistance of counsel argument, but then again, maybe not. You could never tell how a judge would rule and Judge Gardena tended to side with prosecutors anyway. And Judge Gardena wouldn’t recuse himself from the case. There simply weren’t grounds for it.

But Baxter’s words stayed with him and refused to go away, until it was Marinelli who had a reasonable doubt about the guilt of the man he’d successfully put behind bars.

So Hernandez could be covering for someone else or could have been threatened into lying. If the latter, Marinelli had a good guess who might have threatened him. He knew there were gangs who ran the Culver City drug trade who’d intimidate witnesses to beat charges against them. Could a gang member have murdered Father Ramirez, then framed the simple-minded Hernandez, assuring his cooperation through threats? If so, why would the gang want the priest dead?

The next day, Marinelli put in a call to a detective he’d worked with in the Culver City Police Department’s Violent Crimes Division. He told the detective he was looking for some information on the street about Father Jaime Ramirez, just to confirm a few matters, since the defense intended to seek a new trial.

He told no one in his office about these inquiries, as he knew Finnegan and the others would just give him shit. It wasn’t his job to do the defense attorney’s work. But he burned with silent anger and humiliation at the notion of being a tool for a guilty party who’d let someone else take the blame for a murder.

The detective put him in touch with one of his CIs, a former Crip member, who agreed to be contacted at a designated pay phone. Marinelli put the question to him directly—could any of the local gangs be behind Father Jaime Ramirez’s death?

“Yo, anything possible,” said the raspy-voiced man on the other end. “Specially since da man had old connections.”

“Connections? To whom?”

“Connections from his days in Salvador. To Los Diablos.”

Marinelli felt his hands go damp and gripped the receiver tighter. Los Diablos was one of the biggest and most dangerous Salvadoran gangs in Culver City and all along the I-95 corridor. There were no means too violent for them to use in protecting themselves.

“Do you know if the guy who shot him, Chico Hernandez, had connections to Los Diablos?”

“I dunno from Chico Hernandez, man. I do know that neighborhood there be all spics. And them spics like to stick together, see what I’m sayin’?”

Especially when to speak out against Los Diablos meant you could get your tongue cut out or worse, Marinelli thought.

“I wonder how Hernandez got pulled into this thing?” he asked aloud, but talking to himself.

“I dunno, man.”

“Tell me more about Ramirez’s connections with Los Diablos.”

“I can tell ya what I hear, but you ain’t hear it from me. Ya feel me?”

“Okay. Give.”

“Word is the good father been handing out more than holy hosts, see what I’m sayin’?”

Marinelli let this sink in. “Drugs? Are you saying Los Diablos supplied Ramirez with drugs?”

“Truth.”

“Are we talking meth? Heroin?”

“Meth, mostly. He had people dealing for him to fancy folks wit’ da cheese to make it worth his while.”

“Any word that Ramirez might have double-crossed the Diablos? Done something that led them to kill him?”

“Don’t know ‘bout dat, but like I say, anything possible.”

Marinelli hung up and leaned back in his chair. This could be good, he thought. If one of the Diablos could be made for the killing, it would be a big win for both sides. And the Ramirez connection could lead to bigger things, too. Possibly exposing a Diablos drug ring, run by the priest. It would be a huge coup not only for himself, but for the State’s Attorney’s Office.

“Are you insane?” Dawson’s nostrils flared. “Have you forgotten whose side you’re on?”

Marinelli was stunned. “Sir, this is an opportunity—.”

Dawson peered at him. “We’ve successfully prosecuted a case and the defense is filing a late motion for new trial. It’s your job and your duty to fight that motion.”

“With all due respect, sir, it’s my job to prosecute criminals. Not put innocent people behind bars.” Marinelli pointed toward the window. “Out there is the real killer with Diablos connections. If we can find him and prosecute him, it’ll be a huge victory. Plus ...” He paused, not willing to discuss the details of his conversation with the CI yet. “I have reason to suspect the priest was running a drug ring.”

Dawson stared at him for several seconds. “What in blazes leads you to that conclusion?”

“Some information I’ve picked up. I’m checking into it further, before I do anything official with it. Frankly, I think Ramirez’s murder was just the tip of the iceberg. I can feel it.”

“I don’t care what you feel. With the crime rate sky-rocketing and an election right around the corner, this office will not simply toss away a successfully prosecuted murder. You will fight the motion for a new trial, if you want to keep your job.”

Marinelli’s mind reeled. He felt overwhelmed with disgust that statistics and Big Dick’s reelection could matter more than the truth. “What about the forensic evidence? Are we just going to conveniently ignore that?”

“Those arguments should have been raised earlier. Baxter’s waived the right to raise them now.”

Big Dick was right. But Marinelli still didn’t like it. He had to think this through. To buy time, he simply said, “Fine. Whatever,” and left it at that.

Marinelli prepared a standard response to Baxter’s motion, but put off filing it. Meanwhile, he continued investigating Father Ramirez. He wondered why the cops hadn’t investigated Ramirez before, if there was word on the street of his gang connections. The Archdiocese, he thought. He’d lay odds someone in the Archdiocese pressured the police to leave Ramirez alone.

Marinelli asked his detective friend to set up another call with his CI. He promised confidentiality in exchange for names—Ramirez’s contacts in Los Diablos, his biggest buyers, whatever he had. Once he had some names, maybe he could prod someone on the force into investigating the connection, seek warrants to obtain some hard evidence. If a case could be made against someone in Los Diablos for the murder, he wanted to make it. If it led to more, so much the better.

Marinelli was eating dinner at home, when he heard a tap on his door. When he looked through the peephole, he was surprised to see Dawson. He opened up.

“Sir?” he said. “What brings you here?”

“Bad news, I’m afraid. May I come in?”

“Of course,” Marinelli said. Dawson, looking dapper in a camelhair coat and matching kidskin gloves, stepped inside and closed the door quietly behind him. Marinelli turned and led Dawson to the kitchen.

“I was just having dinner. I made a lot of spaghetti—too much. Would you like some? Or something to drink?”

“This won’t take long,” Dawson said. “I’m sorry.”

Marinelli turned. Dawson was pointing a gun with a silencer at him.

“You’re fired,” Dawson said and shot twice.

Dawson called an impromptu staff meeting to announce that someone had apparently forced his way into Dan Marinelli’s apartment and killed him. It looked like a professional hit, possibly ordered by someone involved in one of his high-profile cases. Marinelli’s cases would be reassigned. Finnegan volunteered to take the Hernandez case, since as he put it, “it’s such a slam-dunk for us.” Dawson said he knew the case would be in good hands.

That night, Dick Dawson left the office late and went directly to an out-of-the-way cocktail lounge that featured low lighting, scantily-dressed waitresses and a privileged

customer base. It was the opposite of a networking venue, Dawson thought. A place one went so as not to see or be seen.

Dawson slid into the back room booth and ordered a double scotch, straight up. "It's done," he told the man across from him.

"You're sure? No loose ends?"

"No, sir. No loose ends. The gun's in the river. Even my nice new gloves went in the drink." He shrugged.

"And you're sure your new man on the case won't go digging into Father Ramirez's life?"

"Yes, sir, I'm sure. Finnegan is a 'yes man.'"

"Glad to hear it." The middle-aged man across from him was half-hidden in shadow. The parenthetical lines creasing the sides of his mouth and the tangle of crow's feet around his eyes were deepened by the gloom, but his teeth gleamed as he spoke. They were big teeth, Dawson thought. "I told Ramirez I couldn't make those molestation suits just disappear. Would he listen? No, that sick padre started blackmailing me. When he threatened to expose my part in his drug operation, I had to get rid of him." He downed half his drink in one swallow and added, "He was ready to go after you, too, you know."

"I know that, sir. About Hernandez ..."

"He won't be missed and he won't give us up. Once I told him I was doing it to protect the Diablos and he had to take one for the team, the poor sap was scared shitless to say otherwise. Even put the fear of God in the interpreter. And with what happened between Hernandez and the priest, he was as good a scapegoat as any."

"Was he, your honor?"

Judge Gardena leaned forward and gave Dawson the look he'd reserved for many a defendant when pronouncing sentence. "When I heard from our friends what your boy Marinelli was up to, I don't have to tell you how much heartburn it was giving me. And you know what would have happened if he'd started looking too closely at who Ramirez was using to sell that shit."

"You and I would both be out of a job."

"Then we'd actually have to work for a living." Judge Gardena bared his big teeth and laughed. He laughed for what seemed to Dawson like a full minute. And Dawson forced himself to smile in response.