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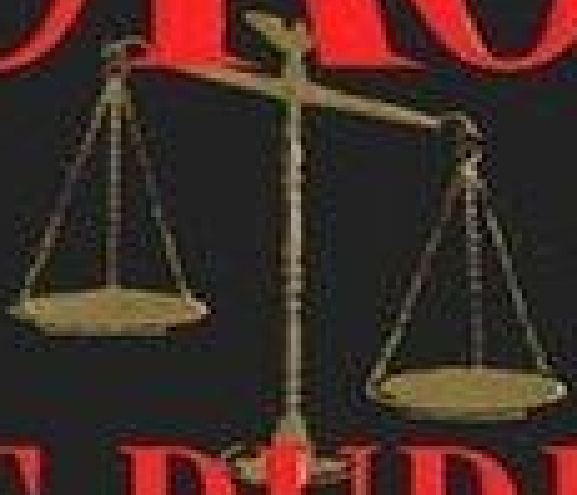

THE BURDEN OF PROOF

"If you liked *Presumed Innocent*, you're going to love THE BURDEN OF PROOF."—Jonathan Yardley, *Washington Post*

The Burden of Proof by Scott Turow

Also by Scott Turow

PRESUMED INNOCENT

For Annette

WARNER BOOKS EDITION

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[Our] decisions have respected the private realm of family life which the state cannot enter.

Prince v. Massachusetts, 321 U.S. 158, 166 (1944), an opinion of the United States Supreme Court

I once undertook to improve the marriage relations of a very intelligent man .... He continually occupied himself with the thought of a separation, which he repeatedly rejected because he dearly loved his two small children ....

One day, the man related to me a slight occurrence which had extremely frightened him. He was sporting with the older child, by far his favorite. He tossed it high in the air and repeated this tossing until finally he thrust it so high that its head almost struck the massive gas chandelier .... [The child] became dizzy with fright .... The particular facility of this careless movement . . .

suggested to me to look upon this accident as a symbolic action ....

There was indeed a powerful determinant in a memory from the patient's childhood: it referred to the death of a little brother, which the mother laid to the father's negligence, and which led to serious quarrels with threats of separation between the parents. The continued course of my patient's life, as well as the therapeutic success, confirmed my analysis.

SIGMUND FREUD,

The Psychopathology of Everyday Life

PART ONE

They had been married for thirty-one years, and the following spring, full of resolve and a measure of hope, he would marry again. But that day, on a late afternoon near the end of March, Mr. Alejandro Stern had returned home and, with his attache case and garment bag still in hand, called out somewhat absently from the front entry for Clam, his wife. He was fifty-six years old, stout and' bald, and never particularly good-looking, and he found himself in a mood of intense preoccupation.

For two days he had been in Chicago that city of rough souls on behalf of his most difficult client. Dixon Hartnell was callous, self-centered, and generally full of his lawyers' advice; worst of all, representing him was a permanent engagement. Dixon was Stern's brother-in-law, married to Silvia, his sister, Stern's sole living immediate relation and the enduring object of his affections. For Dixon, of course, his feelings were hardly as pure. In the early years, when Stern's practice mounted to little more than the decorous hustling of clients in the hallways of the misdemeanor courts, serving Dixon's unpredictable needs had paid Stern's rent. Now it was one of those imponderable duties, darkly rooted in the hard soil of Stern's own sense of filial and professional obligation.

It was also steady work. The proprietor of a vast commodity-futures trading empire, a brokerage house he had named, in youth, Maison Dixon, and a series of interlocked subsidiaries, all called MD-this and -that, Dixon was routinely in trouble. Exchange officials, federal regulators, the IRS--they'd all had Dixon's number for years. Stern stood up for him in these scrapes.

But the present order of business was of greater concern. A federal grand jury

sitting here in Kindle County had been issuing subpoenas out of town to select MD clients. Word of these subpoenas, served by the usual grim-faced minions of the FBI, had been trailing back to MD for a week now, and Stern, at the conclusion of his most recent trial, had flown at once to Chicago to meet privately with the attorneys representing two of these customers to review the records the government required from them. The lawyers reported that the Assistant United States Attorney assigned to the matter, a young woman named Klonsky, declined to say precisely who was under suspicion, beyond exonerating the customers themselves. But to a practiced eye, this all had an ominous look. The out-of-town subpoenas reflected a contemplated effort at secrecy. The investigators knew what they were seeking and seemed intent on quietly encircling Dixon, or his companies, or someone close to him.

So Stern stood travel-weary and vexed in the slate foyer of the home where Clara and he had lived for nearly two decades. And yet, what was it that wrested his attention so thoroughly, so suddenly? The silence, he would always say.

Not a tap running, a radio mumbling, not one of the household machines in operation. An isolated man, he drew, always, a certain comfort from stillness. But this was not the silence of rest or interruption. He left his bags on the black tiles and stepped smartly through the foyer.

"Clara?" he called again.

He found her in the garage. When he opened the door, the odor of putrefaction overwhelmed him, a powerful high sour smell which dizzied him with the first breath and drove up sickness like a fist. The car, a black Seville, the current model, had been backed in; the driver's door was open. The auto's white dome light remained on, so that in the dark garage she was warmly spotlit. From the doorway he could see her leg extended toward the concrete floor, and the hem of a bright floral shirtwaist dress. He could tell from the glint that she was wearing hosiery.

Slowly, he stepped down. The heat in the garage and the smell which increased revoltingly with each step were overpowering, and in the dark his fear left him weak. When he could see her through the open door of the car, he advanced no farther. She was reclined on the camel-colored leather of the front seat. Her skin, which he noticed first, was burnished with an unnatural

peachish glow, and her eyes were closed. It seemed she had meant to appear neat and composed. Her left hand, faultlessly manicured, was placed almost ceremonially across her abdomen, and the flesh had swollen slightly beneath her wedding rings. She had brought nothing with her. No jacket. No purse. And she had not fallen back completely; her other arm was rigidly extended toward the wheel, and her head was pinned against the seat at a hopeless, impossible angle. Her mouth was open, her tongue extruded, her face dead, motionless, absolutely still. In the whitewashed laundry room adjoining the garage he was immediately sick in one of the porcelain basins, and he washed away all traces before calling in quick order 911 and then his son.

"You must come straightaway," he said to Peter. He had found him at home. "Straightaway." As usual in stress, he heard some faint accentuation of the persistent Hispanic traces in his speech; the accent was always there, an enduring deficit as he thought of it, like a limp:

"Something is wrong with Mother," Peter said. Stern had mentioned nothing like that, but his son's feeling for these things was sure. "What happened in Chicago?"

When Stern answered that she had not been with him, Peter, true to his first instincts, began to quarrel.

"How could she not be with you? I spoke to her the morning you were leaving."

A shot of terrible sympathy for himself tore through Stern.

He was lost, the emotional pathways hopelessly tangled.

Hours later, toward morning, as he was sitting alone beneath a single light, sipping sherry as he revisited, reparsed every solemn moment of the day, he would take in the full significance of Peter's remark. But that eluded him now. He felt only, as ever, a deep central impatience with his son, a suffering, suppressed volcanic force, while somewhere else his heart read the first clues in what Peter had told him, and a sickening unspeakable chasm of regret began to open.

"You must come now, Peter. I have no idea precisely what has occurred. I believe, Peter, that your mother is dead."

His son, a man of thirty, let forth a brief high sound, a cry full of desolation.

"You believe it?"

"Please, Peter. I require your assistance. This is a terrible moment. Come ahead. You may interrogate me later."

'For Chrissake, what in the hell is happening there? What in the hell is this? Where are you?"

"I am home, Peter. I cannot answer your questions now.

Please do as I ask. I cannot attend to this alone." He hung up the phone abruptly. His hands were trembling and he leaned once more against the laundry basin. He had seemed so coldly composed only an instant before. Now someterrible sore element in him was on the rise. He presumed he was about to faint. He removed his tie first, then his jacket. He returned for an instant to the garage door; but he could not push it open. If he waited, just a moment, it seemed he would understand.

The house was soon full of people he did not know'. The police came first, in pairs, parking their cars at haphazard angles in the drive, then the paramedics and the ambulance. Through the windows Stern saw a gaggle of his neighbors gathering on the lawn across the way. They leaned toward the house with the arrival of each vehicle and spoke among themselves, held behind the line of squad cars with their revolving beacons. Within the house, policemen roamed about with their usual regrettable arrogance. Their walkietalkies blared with occasional eruptions of harsh static.

They went in and out of the garage to gawk at the body and talked about events as if he were not there. They studied the Sterns' -rich possessions with an envy that was disconcertingly apparent.

The first cop into the garage had lifted his radio to summon the lieutenant as soon as he emerged.

"She's cooked," the officer told the dispatcher. "Tell him he better come with masks and gloves." Only then did he notice Stern lurking in a fashion in the dark hall outside the laundry room. Abashed, the policeman began at once

'to explain. "Looks like that car run all day. It's on empty now. Catalytic converter gets hotter than a barbecue-six, seven hundred degrees. You run that engine twelve hours in a closed space, you're generating real heat. That didn't do her any good. You the husband?"

He was, said Stern.

"Condolences," said the cop. "Terrible thing." They waited.

"'Do you have any idea, Officer, what occurred?" He did not know what he thought just now, except that it would be a kind of treachery to believe the worst too soon. The cop considered Stern in silence. He was ruddy and thick, and his weight probably made him look older than he was.

"Keys in the ignition. On position. Garage door's closed."

Stern nodded.

"It dudn't look like any accident to me," the cop said finally. "You can't be sure till the autopsy. You know, could be she had a heart attack or somethin right when she turned the key.

"Maybe it's one of them freak things, too," the cop said.

"Turns the car on and she's thinkin about somethin else, you know, fixin her hair and makeup, whatever. Sometimes you never know. Didn't find a note, right?"

A note. Stern had spent the moments awaiting the various authorities here in this hallway, keeping his stupefied watch beside the door. The thought of a note, some communication, provided, against all reason, a surge of hope.

"You'd just as well stay out of there," the policeman said, gesturing vaguely behind him.

Stern nodded with the instruction, but after an instant he

took a single step forward.

"Oncemore," he said.

The policeman waited only a moment before opening the door.

He was known as Sandy, a name he had adopted shortly after his mother and sister and he had arrived here in 1947, driven from Argentina by unending calamities--the death of his older brother, and then his father; the rise of Peren.

It was his mother who had urged him to use this nickname, but he was never wholly at ease with it. There was a jaunty, comic air to the name; it fit him

poorly, like someone else's clothing, and, therefore, seemed to betray all that helpless immigrant yearning for acceptance which he so ardently sought to conceal, and which had been in truth perhaps his most incorrigible passion.

To be an American. Having come of age here in the 1950s, he would always hear the whisper of special obligations in the word. He had never bought a foreign car; and he had forsaken Spanish years ago. Occasionally, in surprise, a few words, a favored expression might escape him, but he had arrived here determined to master the American tongue.

In his parents' home there was no single language--his mother addressed them in Yiddish; with each other, the children used Spanish; his father talked principally to himself in windy high-flown German, which sounded to Stern as a child like some rambling machine. In Argentina, with its deep Anglophile traditions, he had learned to speak the English of an Eton schoolboy. But here the idioms of everyday life flashed in his mind like coins, the currency of real Americans. From the first, he could not bear to use them. Pride and shame, fire and ice, burned away at him always; he could not endure the sniggering that seemed to follow even the slightest accented misuse. But in his dreams he spoke a rich American argot, savory as any jazzman's.

American optimism, on the other hand, he had never absorbed. He could not leave aside the gloomy lessons of foreign experience, of his parents' lives--emigrants, exiles, souls fleeing despots, never at rest. Certain simple propositions he took as articles of faith: things would often turn out badly. Seated in the living room in an overstuffed chair, amid Clara's raiku vases and Chinese tapestries, he accepted this like the coming true of an evil spell. He had the inkling of various tasks that were somehow imperative, but for the time being he had no thought to move; his limbs were weak from shock, and his heart seemed to labor.

Peter arrived not long after the paramedics. They had already rolled their White-sheeted cart into the garage to remove the body Wiry and always intense, Peter had burst into the house, disregarding the policemen at the front door. Why was it, Stern wondered, that he was so appalled by his son's hysteria, this hyperthyroid look of uncontrollable panic? Peter?was immaculately kempt, a bonethin young man with a highly fashionable hairdo. He wore a blousy French shirt with broad turquoise stripes; his pants were

olive, but of a style never worn in any army, ballooning widely near the knee. Stern, even now, could not restrict a critical impulse. It was remarkable, really, that this man whose face was rigid with distress had taken the time to dress.

Rising finally, he encountered his son in the hallway leading from the foyer to the kitchen.

"I just can't believe this." Peter, like Stern, seemed to have no idea how to behave; he moved a single step toward his father, but neither man reached out. "My God," he said, "look at it. It's a carnival outside. Half the neighborhood's there."

"Do they know what happened?"

"I told Fiona CawIcy." The Cawleys had lived next door to the Sterns for nineteen years. "She more or less demanded it. You know how she is."

"Ah," Stern said. He battled himself, but he found that a selfish shame, juvenile in its intensity, struck at him.

This terrible fact was out now, news now, known. Stern could see the canny deliberations taking place behind Fiona Cawley's deadly yellow eyes.

"Where is she'?." Peter demanded. "Is she still here?"

As soon as Peter had gone off to the garage, Stern recalled that he had meant to speak with him about calling his sisters.

"Mr. Stern?" The policeman ho had gone into the garage was standing there. "Couple of fellas wanted a word, if you don't mind."

They were in Stern's first-floor den, a tiny room that he kept largely to himself. Clara had painted the walls hunter green and the room was crowded with furniture, including a large desk on which certain household papers were carefully laid. It disturbed Stern to see the police stationing themselves in this room which had always been his most private place. Two policemen in uniform, man and a woman, stood, while a plainclothes officer occupied the sofa. This third one, a detective apparently, rose disorderly to offer his hand.

"Nogalski," he said. He gripped Stern's hand tepidly and did not bother to look at him. He was a thick man, wearing a tweed sport coat. A hard type. They all were. The detective motioned to a facing easy chair. Behind Stern,

the female officer mumbled something into her radio: We're talkin' to him now.

"You up to a few questions, Sandy?"

"Of what nature?"

"The usual. You know. We got a report to make. Lieutenant's on the way. Gotta fill him in. This come as a big

surprise to you?" the cop asked.

.Stern waited.

"Very much," he said.

"She the type to get all depressed and unhappy, the missus?"

This survey of Clara's character, to be attempted in a few sentences, was for the moment well beyond him.

"She was a serious person, Detective. You would not describe her as a blithe personality."

"But was she seeing shrinks, you know, anything like that?"

"Not to my knowledge. My wife was not of a complaining nature, Detective. She was very private. " "She wasn't threatening to do this?"

"No."

The detective; mostly bald, looked directly at Stern for

the first time. It was evident he did not believe him. "We haven't found a note yet, you know."

Stern stirred a hand weakly. He could not explain.

"And where have you been?" one of the Cops behind Stern asked.

"Chicago."

"For?"

"Legal business. I met with a number of lawyers." The fact that Dixon might be in very serious difficulties, so sorely troubling only an hour ago, recurred to Stern now with a disconcerting novelty. The urgency of that situation