

reading where Voorhees left off. He looked ahead, where the quotation ended. "Walt Whitman," he said. "CITY OF THE SEA CITY OF TALL FACADES OF MARBLE AND IRON PROUD AND PASSIONATE CITY METTLESOME MAD EXTRAVAGANT CITY WALT WHITMAN."

**All Great Problems Come  
from the Streets**



**A** REVOLUTION," JUDGE CELIA DAY SAID.  
"A revolution?" I asked.  
"A revolution."

"But who?"

"Who! Everyone, that's who! The corruption's palpable. Everyone's sitting in front of their television sets watching it. Civility! No one believes there's any anymore! Fragments—yes. But an integral part of the way that we do things? So what do you think happens when no one believes there's any real civility anymore? Politicians! It doesn't matter which side they say they're on—each of them backed by his own small army, and I mean army, too, of lobbyists and lawyers who haven't the slightest care for what is happening in people's lives."

Day straightened her body, staring at me in si-

lence. She was sitting in her burgundy leather chair behind her desk in chambers, on one of the upper floors of the new federal courthouse in lower Manhattan. She leaned over and adjusted the white tulips in a glass vase on her desk, and then sat back again, still silent. It was around four-thirty, an early November afternoon, and we'd just been over a draft of a report for the City Bar Association on political criticism of federal court decisions. Day was tallish and trim, her shoulder-length hair highlighted blond, but what you noticed first were her wide blue and green eyes set behind oval-shaped silver-rimmed glasses. Her conversation fluctuated between rushes of talk and a calm, cool deliberateness, punctuated by long silences. She looked directly at you, intent on making eye contact, and her manner was friendly, even when she was argumentative or contentious. "This time around," she added, "it's crime. Next time, what will it be? Blame the judges for not stopping a war? Drugs? Our fault! Social insanity? Our fault! As if *we* are the ones who make the laws."

Day had been a federal judge for seven years. After graduating from Georgetown Law Center in sixty-nine, she worked several years for the Federal Trade Commission in Washington. She then practiced three years with a large Washington firm before going to work, in the late seventies, in the United States Attorney's office in Manhattan. After successfully prosecuting a number of highly visible drug- and weapons-smuggling cases in the early eighties, she was named a chief assistant. She was appointed to the federal bench by President Bush, with the support of both New York senators, one a Republican, the other

a Democrat. "I belong to no political party," she made a point of saying. "Don't get me wrong," she quickly added. "That's not to say that I don't know something about politics." I asked her what she meant by politics and she answered, without hesitation, "Politics is the will to gain and keep power. There's a big difference, though," she said, "a very big difference, between appreciating politics and being a politician." I asked what the difference was. "I don't have to do anything to gain or keep power," she replied. "I am in this job for as long as I want."

"But," I said, "you exert power. Doesn't that make you political?"

"Of course I exert power," Day shot back. "I'm a federal judge. I am a member of the third branch of the government of the United States of America. But I don't actively exert power over people's minds. I do not do that. That's what politicians do. I do not. Law"—she raised her finger for emphasis—"exerts power over people's minds, no question about that. But I am not the law. My responsibility is to interpret and enforce the law. What do I do all day?" She stopped. "Discern. I am constantly discerning. I discern things."

"Doesn't interpreting and discerning involve personal, even political, judgment?" I asked.

"Of course it does," Day said. "So what? You control it, that's all. Our commission is to keep our personal predispositions under control. Sometimes people want you to, other times they don't. It usually has to do with *their* personal predispositions, not mine. Don't forget, either, that it can cut both ways—if you control what you personally feel, then there's

not much room for mercy. Politics! It never even enters your mind! Do you think I'm thinking about a congressman from eastern Pennsylvania when I'm trying to put together a jury for a three-month trial? Robert Jackson had it right—what we do is by force of our commission. We are *forced* to discern the law as we see it. We are *forced* to enforce it."

Clasping both hands around the armrests of her chair, Day slowly lifted herself up. "I have a spinal problem," she said when she was standing. "I'm missing vertebrae. One day"—she smiled—"I'll be crippled. I also don't know how to sit still, which can be a problem, especially if you're a judge." She began pacing behind her desk. "Don't mind me," she said. "It's an old habit of mine. So," she asked, "you want to know what I think about lawyers?" She stopped, then started pacing again, a bemused look on her face.

"I'm at the end of a trial—yesterday there's an adjournment. So I decide to play hooky and take most of the morning for myself. I'm getting a late start—I don't plan on being in chambers until eleven—I'm on the subway when, at Fifty-ninth Street, a young woman gets on and sits down across from me, and what's the first thing I see? Her bra! There is this girl, in a very expensive black suede jacket—unbuttoned, hanging to the sides—wearing a totally sheer white blouse, I mean completely transparent, not like anything you'd buy in a store, through which you can see every detail of a very expensive, low-cut—like something you'd get in Neiman Marcus—white lace bra! Here I was in one of my contemplative moods when, suddenly, on the train at Fifty-ninth Street,

sitting down directly across from me, there is this girl in a mini-mini, gold flats, carrying a small gold leather purse, a pinkish-rose lipstick on her kewpie-doll lips, these large brown, gamine—I think that's the right word, gamine—eyes, her small breasts spilling out of a very tight, very expensive white lace bra. Ten-thirty in the morning. I'm thinking to myself, this must be seen to be believed! Shoulder-length blond braids, rhinestone barrettes, and"—Day laughed—"a straw hat. She's wearing a straw hat on the Lexington Avenue subway! Turned up at the brim, an artificial yellow flower attached to the band. She looks like Daisy Mae in the old Li'l Abner comic strip—the old Al Capp comic strip—which, I'm sure, she's never even seen. I'm looking at her, and realizing she can't be much older than my daughter—I have a sixteen-year-old daughter, she's in her junior year at Horace Mann in the Bronx. Daisy Mae is two or three years older than my daughter Susan.

"I'll let you in on a secret," Day said. "*No one* sees me and thinks 'federal judge.' I'll be in a restaurant beside a table of lawyers, all of them loud, talking at the top of their voices—the reason for most mistrials, you know. Lawyers' big mouths. When I'm on the subway, I look like who? I've got my designer sunglasses on, I'm wearing a gray suit, *The Wall Street Journal* in my lap—I look like a banker. I'm looking at this girl—she couldn't care less. She was chewing gum."

Day took a paper clip from her desk and began unraveling it as she continued to pace. "I've got a good friend who's a Family Court judge," she said. "In Brooklyn. She says there are lawyers who come

before her on the bench chewing away. *That* I do not see here. I asked her what she does about it. ‘What do you think I do?’ she says. ‘I tell them to take the goddamn gum out of their mouths!’ She said she had a lawyer come into her court once—earring, pony-tail, T-shirt, jeans, a blue pin-striped suit coat. The T-shirt had AMERICANS written across it. She said she asked him why he wasn’t wearing a tie.

“So there I am,” Day continued, tossing the paper clip into the wastebasket and then sitting down again, her shoulders back and her body forward on the edge of her chair, “not quite minding my own business, while the guy running the train’s got a heavy foot on the pedal—we’re moving psychotically fast, rocking back and forth, while I, of course, am imagining a disaster.” She tapped her finger against her head. “This is why lawyers are sick. I’m already imagining the lawsuit I’m going to bring against the Metropolitan Transit Authority. I’ve even decided who my lawyer’s going to be—a go-for-the-jugular type with an I-almost-became-a-priest choirboy look on his face, who loves money. Like Terry Gallagher. I’d hire him in a minute. *Worse*, I imagine myself dead, and how much of the wrongful-death action will go into my estate, and, among my heirs, who, in probate, will get what. All this is going through my head while my peripheral vision—on automatic pilot—is picking up every single man on the subway, of every age, staring, I mean staring at this girl, like this”—Day opened her eyes as wide as she could. “They can’t take their eyes off her! One character in particular. He’s in his late twenties, I’d say, sitting right next to her, right across from me. When this girl gets on the train and sits

down beside him he moves his head and looks at her—I mean moves it—like this, laterally, ninety degrees. He then gets up, crosses the aisle, pushes himself in right beside me, and starts staring at her. The instant I see him—I think to myself, lawyer! I’m actually smiling to myself—I do that a lot when I’m on the bench. I’m tempted to turn to him and say something like, ‘Hello, I’m Judge Celia Day of the United States District Court for the Southern District of New York. Haven’t I seen you before? You’re with Crane & Swartout, aren’t you?’ ”

Day put both her palms flat on her desk, slowly pushing her body up again. “How,” she asked, standing, “could I tell he was a lawyer? Do you know how many lawyers I’ve seen in my life? Thousands. Tens of thousands. Well”—she smiled to herself—“after a while you know one when you see one. A doctor I know”—she was pacing again—“a ranter and raver, a scientist at heart. His latest thing—phenotypes. Do you know what a phenotype is?” I said that I didn’t. “A phenotype is how an organism appears. The observable characteristics of an organism as they appear as a result of the interaction between the organism’s genetic structure and its environment.”

Day stopped, with a look on her face as if she’d suddenly remembered something. She went over to her desk and took a fountain pen—a Montblanc—from a drawer. She carefully unscrewed the cap and then took a piece of stationery from another drawer, on which she wrote, in large script, while standing, a half page of words.

“There,” she said, putting the cap back on, leaving the pen on top of the piece of paper. “Anyway,”

she said, “a phenotype is what you get when the genotype—a genotype is the genetic constitution of an organism—interacts with its environment. It’s really the expression of what the genotype is—the characteristics of the genotype in a certain place, at a certain time. My doctor friend is the theoretical type—he makes all of this into a theory. One phenotype—one expression of the human genotype—is what he calls the ‘nineteen-nineties American urban drug addict.’ Heroin, crack, methamphetamine, nicotine, alcohol addiction, more or less at one time or other, *plus* AIDS, hepatitis, diabetes. Caffeine, too, I’m sure,” Day said, then laughed. “I saw a beggar the other day in front of the new Federal Building on Broadway—in one hand, a Starbuck’s paper coffee cup for you to put money in, in the other, a Starbuck’s cup filled with, probably, something like a double mocha with a touch of cinnamon. Another of the doctor’s phenotypes?” Day asked. “The doctor phenotype. Observable characteristics? First on the list, an absolute terror of death. Then, an absolute terror of contracting a viral disease, and—this I like—a propensity toward patriarchy. Then there’s his lawyer phenotype. Characteristic number one? Liars. Liars! He says he had an uncle from Scotland who used to pronounce lawyer ‘lie-arr-err,’ and then scratch himself like a baboon. He imitates his uncle—‘lie-arr-err, lie-arr-err.’ I really don’t know how he expected me to respond. What was I supposed to say? ‘Oh, that’s nice?’”

Day stopped and pressed her hands against her lower back. “The nice lawyer fellow on the subway? The phenotype. Hair slicked back just a bit—

moussed. Conservatively moussed hair. He was carrying a five- or six-hundred-dollar trench coat. Wearing a beautiful soft navy-blue Italian designer suit, a silk print tie . . .”

“No suspenders?” I asked.

Day arched her eyebrows. “No,” she said, with mock weariness. “No. Though the phenotype could be wearing suspenders. Red, I’d say. Red-patterned. Or dark blue with a maroon stripe. His shoes were wing-tips—five hundred dollars, easy. He had a soft black leather briefcase, which he put between us on the subway seat—the kind you really can’t put very much into. There was a similar type—a different phenotype, but a similar type—when I was that age. Harold Rock—honest to God, that was his name, Harold Rock. Well, this young man—phenotype was written all over him! Relaxed and assured, yet at the same time that look of lust and abandon—it’s hard to describe—but you know what I mean. I looked at him through the corner of my left eye—he was looking straight at the girl with enormous confidence. You know, that look—and letting you know it—of knowing something you don’t. Of being above, somehow—it’s not quite power. I don’t know what it is—it’s more than confidence. Then there’s the girl! What’s *her* phenotype? There’s clearly a thing going on between them—he knows that she knows that he has every intention of getting what he wants—after, of course, they decide what it is he wants. All this is happening in a four- to five-minute time span. We stop at Grand Central, then Union Square. The subway doors open, Daisy Mae gets up, Crane & Swartout follows—ten forty-five in the morning! I can see

our dashing young officer of the court calling his secretary to say he won't be in until after lunch—that he's been 'detained.' Me? My little morning show is over. I get to chambers and there are twenty phone calls on my desk and one of my law clerks in a panic—which she ought to be—because she's missed a deadline I told her was absolutely absolute—which it was."

Day glanced at her watch, then asked if I'd like something to drink. I said no. She picked up her phone and asked whoever answered it for a glass of ginger ale, which her secretary then brought in to her with a glass of ice. She sat down again slowly, careful of her back. She poured some ginger ale into the glass and left it there on her desk.

"My problem is," she said, "I get into things too much. I talk too much, too, which"—she shrugged—"used to bother me, but doesn't anymore. I know how to listen, too—I'm an extremely attentive listener. People who say 'I'm not a talker, I'm a listener,' it's nonsense. If you know how to talk, you know how to listen. If you know how to talk, you're listening to what you're saying. It's those who don't listen to what they're saying who are the most insufferable people on earth—it doesn't matter if they talk a lot or not. My problem isn't how much I talk—my problem is that the older I get, the more I find myself over this line in my head, where I'm just watching. Perhaps the finest lawyer I've ever known used to say—it was one of his cardinal rules—if you look hard enough for an answer, you'll find it. Everything's there, you just have to look for it. That's how my memory works. Events, entire pieces of testi-

mony—I see them. As if they're part of a picture. Have you ever seen *One-Eyed Jacks*? Marlon Brando, Karl Malden, Katy Jurado? It's one of my favorite movies. Nineteen sixty-one. There's a scene where Brando's face, in full color, fills the entire screen, while he moves a toothpick from one side of his mouth to the other. That's the sort of thing that's really interesting in a courtroom. The things that go on in a courtroom! Someone once asked me what the strangest thing I'd ever seen in my courtroom was. Well, I've seen a lot of strange scenes, but do you know what came to mind? A government witness on the witness stand snorting cocaine. Matted hair, bloodshot eyes, specks of something or other on his shirt, he's sitting five feet away from me making this snorting sound into his handkerchief. He'd put the coke in his handkerchief. There he was, inhaling away. I have a nervous habit—I scratch my cuticles. If I get bored, I don't even know I'm doing it. I look over and there's a juror staring at me. What goes on in people's minds in a courtroom—that you don't see in the movies or on TV! The people who aren't talking are looking—and when you're looking you're either listening or your mind is wandering—God, how the mind wanders! I've never fallen asleep on the bench, though I have colleagues who have. Their heads fall back, their mouths open, they start falling out of their chairs. I can remember . . ."

Day stopped and smiled. "I'd better not," she said. "There's a story I could tell, but my better judgment tells me I'd better not." She then stood up again. "I'm sorry about all this getting up and down," she went on, "but it really hasn't been a very

good day for my back.” She rotated her neck several times, then shook both her hands. “So,” she said, “what do you think? What my doctor friend said about lawyers. I don’t think it can be disputed, do you?”

“I’m not really sure I want to answer that,” I said.

“Do you think it really can’t be disputed?” asked Day. “It’s inherent in the process.” The tone of her voice was matter-of-fact. “Those who aren’t part of it—who don’t do it—are incapable of understanding it. Lawyers know too much. If you know too much, how don’t you lie? Everything you say has another meaning. The posturing, the playacting, arguing over the smallest things, the narcissism, the beyond-belief egomania—it’s all part of that. Too much meaning. I once had a rather unpleasant argument with quite an eminent philosopher—a political philosopher, to be precise—a chaired professor at Columbia. I got really carried away—I have a bad habit of jabbing my finger when I argue and he told me to stop. You know when you get carried away and you get embarrassed? But I was angry. I don’t get angry often, but once I am, I get very angry. This guy’s written several books on political theory, one of them won—I think it was—a National Book Award. I don’t remember. He was the one who was confrontational. The legal system—his voice was extremely loud—is corrupt. It has nothing to do with truth! So I ask him—I was trying to keep my voice as composed as I could—what is truth. He laughs at me. He stands right there and laughs at me! ‘Who are you,’ he says, ‘Pontius Pilate?’ Pontius Pilate! Like I’m his graduate student!”

Day paused. When she continued, her voice was slower, more even. “The patronizing son of a bitch,” she said. “I remember reading an article somewhere about how spooky—that was the word used—how spooky lawyers are. Lawyers are spooky because they have no idea what real people—those were the words used, real people—think about them. Lawyers have no idea what real people think of them—when, for example, on TV, they, the lawyers, while the whole world is watching them, there, on TV, they manipulate the truth. On TV! God forbid that a real lawyer, on or off TV, doesn’t really care if ‘real people’ think he’s spooky or not. That a real lawyer has an ethical obligation—I repeat, an ethical obligation—to defend his or her client, and when you’re a public servant, which I have been most of my career, your client is the people. You have an obligation under oath to defend your client within the boundaries of the law. I love it! You’re not a real person if you’re a lawyer! Real people know what real truth is! I asked this jerk how he would set up a truth-finding process in a court of law. You should have seen the look on his face. Everything shifted. I used as an example an antitrust case—I walked him through the statute and presented him with the issues. Suddenly I’m someone with an idea—some idea—of the real world, aware of things this clown’s never even imagined. It’s such a strange business. On the one hand, you’re treated like someone special. On the other, like you’re an idiot.”

Day looked at her watch again. I said that I should be going. She said to wait, that she had something to tell one of her clerks, and left for a few minutes. “No, I think this is worth talking about,” she said when



she returned. "The lying." She sat down. "The deception. It's not easy to talk about, nor is it easy to explain. Remember, lawyers are the ones who invented spin. Spin's a public-relations term for what every lawyer knows how to do—if you have to, you change the story. How low is spin among the circles of deceit? I'd say lower than keeping your own counsel—when what you're really doing is not providing information to a person who trusts you to do so. How about, 'I didn't do that,' when, in fact, you did? In my judicious opinion? A very low form of deceit. It's one thing to say, 'That's not what I said'—which is going on a lot these days, everyone covering, pardon my language, their proverbial asses. But it's an altogether different thing to say that a document never existed when, in fact, it did, and you, or your client, destroyed it. That I don't recommend. Double-talk, triple-talk, saying you're going to do something when you know you're not going to"—Day shrugged—"what can you do? But saying that something happened when it didn't? Saying that something didn't happen when it did? This is a business in which everyone relies on representations. This is a business in which no one ever forgets, no one ever forgives—a business in which no one *ought* ever to forget or forgive anyone who goes beyond those extremely tolerable thresholds of deceit into one of those morally . . ." Day stopped. "Let's just use the word 'wrong.' When you do something no one would argue is wrong. My experience is, when you do something no one would argue is wrong, you don't want another lawyer having that on you because—here, if you ask me, is the mind-set—a lawyer will get even. It's how the

system—is there a verb *retribute*? That's how the system retributes itself. It really does. How do they say it on the street?—"what you do comes back on you." It may take a while, but you make a material misrepresentation of fact to another lawyer, you'd better be prepared to be hit, and I mean hit, and hit hard. The equivalent of being, at the very least, blindsided with a crowbar.

"I probably shouldn't be telling you this," Day said. "A lawyer I worked with when I practiced in D.C.—he's a managing partner now, the same firm. He lost—his client lost—real money because of a remarkably foul lie by the lawyer on the other side, who, at the time, was very powerful, a big shot, around fifty. My friend was thirty. This was twenty years ago. My friend waits. The other lawyer is in intensive care dying of stomach cancer—he's served with papers. 'Of course,' my friend says—he's very quiet, mild-mannered—"it's a perfectly valid lawsuit," and"—Day smiled—"I'm sure it is. In fact, my friend's firm isn't bringing it. Another firm is. There are tubes in this now old man's nostrils. He can't move, but he still can see, and he still can read—he's being sued individually for five million dollars. Paul—my friend—says, 'What a shame—just think, he's going to have to go out now and hire a lawyer.' Paul said he heard that when the other lawyer saw the complaint—remember, he was in intensive care—he started pulling the tubes out of his nostrils. I think Paul was joking about that," Day said. "You never know about Paul. He sounds so sincere—the way he looks and talks—and he is, but sometimes you don't know when he's kidding you."

Day took her glasses off. "I probably shouldn't be telling you this, either. I'm sure that you know who he is. A very prominent retired circuit judge. Quite distinguished. Extraordinarily savvy. Most of my colleagues—though they'll deny it—don't like him. Actually, they hate his guts. I'm not sure I like him, either—but, finally, I respect him, which, these days, is saying a lot. He was a friend of Lyndon Johnson—knew him well, in fact, and had real misgivings about him, but he always repeats two Lyndon Johnson stories. One was Johnson's remark about then House Minority Leader and—let me add—political point man for the movement to impeach William Douglas, Gerald Ford—I should say President Ford. That Ford couldn't walk and chew gum at the same time. The impeach-Douglas thing was, by the way—pardon the parenthesis—later. The Republicans loathed Douglas the way the Democrats loathe Clarence Thomas now. Douglas was letting everyone in Washington know that he thought Nixon—whom he'd despised since World War II when Nixon was a lawyer for the Office of Price Administration, before his House Committee on Un-American Activities days—was a fascist. He'd use the word, too. End of parenthesis.

"Well"—Day took a piece of tissue from her desk drawer and began cleaning her glasses—"this Second Circuit judge used to say that a good lawyer must be able to walk and chew gum at the same time. He'd then add that Gerry Ford was a graduate of his alma mater, the Yale Law School, and, from what he knew, never chewed gum. He also reminded you that Ford's Attorney General, Edward Levi, was one of the most

respected lawyers in the country at the time, and that Ford appointed John Paul Stevens, another superb lawyer, to the Supreme Court. The other Johnson story—Lyndon Johnson! Now *there*"—Day folded her glasses and put them in a case, holding it as she spoke—"was someone who wasn't a lawyer with the ultimate lawyer's mind. Johnson told one of his minions to spread the rumor around Washington that one of his enemies slept—literally—with hogs. When the young politico—a Bobby Kennedy protégé type who'd never even seen a real hog in his life—told the President that the story just wasn't true, Johnson looked at him through those slitty eyes of his and said, 'I know it ain't true. I just want to watch the prick deny it.'

"We should start getting out of here," Day suddenly said. She stood up and walked over to her credenza, and began rummaging through a pile of papers and books. "Take a look from here before you leave," she said, motioning me over to the windows, while she paged through a document. "The buildings in Chinatown"—she looked up—"are mostly from the end of the last century and the beginning of this one. It looks like a small town from up here, doesn't it? Those clouds over the East River—sometimes the sky will turn dark green, dark gray, black, all within a minute or two. You can actually watch a storm—snowstorms, too—blow in off the ocean.

"We can keep talking while I'm getting my things together," she went on. "I'll tell you what I think the question ought to be," she said. "Why. The question ought to be why. *Why* the law is what it is."

I said I wasn't sure what she meant. "No one ever

asks why," she said. "Why is the law what it is. That lawyer I mentioned earlier to you—the one who said that if you look hard enough you'll find what you're looking for. He also used to say *don't* count on the courts. That real power exists outside the courts. Put pressure on a court, all the pressure that you can, and if you win, fine, take it, and if you lose, fight it—do whatever you can to achieve your objective, but don't ever count on a court. Real power doesn't exist in the courts. He was so right. You have discretion in this job, but you'd be surprised how little. It's taken me an embarrassingly long time to realize that there's a big difference between having a bit of discretion and having real power. It is a very important distinction. A very, very, very important distinction.

"There!" Day snapped her briefcase shut. "All set. Let's get out of here."

On our way out, she stopped to speak with both her clerks. "One is shy," she said as we walked to the elevators. "The other's not. You have to teach them to say what they think. Some get it right away. Others, it takes time. Then there are those who never get it."

Outside, she asked if I'd walk her to the subway. We walked on Pearl Street beside the old federal courthouse—the New York State Supreme Court building was across the street—toward Foley Square.

"I'll tell you, too, who I think a lot about," Day said. "Children. I know"—she quickly added—"everyone does. But that's not how I mean it. I see so many kinds of people in my line of work, all sorts of different people. The one thing I can tell you for certain is there are a lot of people living in the ex-

treme. Under circumstances that astound me. All that I'm saying is, children see. Don't think for a second they don't. We did. They do, too. Is anyone thinking about what the children are seeing? You've got these kids—kids in their late teens, early twenties—they're in my court for God knows what. Counterfeiting. I had a case—kids passing counterfeit twenty-dollar bills downtown here, around Wall Street. They've got this air of banality about them—and know what? It stinks. It really stinks. You try to figure out what they're thinking. You can't. It's impossible. You know you're going to put them in prison, and they know you know it, and they try to look right through you, they stare at you, you've got no idea what's going on in their minds—they're sullen. No, that's not the right word. Insolent. That's the word I want. Insolent. Toward you, toward themselves, toward life itself. Even their peers on Wall Street—the young financiers, the ones right out of school, the younger ones—they think they're the first ones ever to be financiers. Insolent. Do you know what else? Scared. That's what I think. A lot of it going around these days—insolent and scared."

We walked to the subway entrance under the arch of the Manhattan Municipal Building. It was getting dark. The air had turned damp and cold. It had begun to rain.

"Let's go over here and talk," Day said. We stood beside a large pillar, away from the flow of people on their way to the subway. Day looked directly at me. "Another thing," she said, "is liberty. Americans love their liberty. Every one of us with our own sense of liberty. Everyone with a different sense of when

the law should protect our liberty. Always—though this, no one thinks about—at the expense of someone else’s. No one in complete agreement with anyone else about any of it, either. Part of this country’s fundamental law is a Bill—it’s a *Bill*—of Rights. The first time in the history of the world a government provided its citizens with the right to use government—through its courts—to protect their rights *against* the government! You wonder why we’ve had our problems! Know what else? People will fight for liberty. They’ll kill for it. Think of how much of human history is people killing in the name of liberty. People will fight in the streets over liberty. I don’t remember who said it—that all great problems come from the streets. Do you know what the definition of justice is on the street? You get what you deserve, that’s what it is. You get what you deserve. Now, isn’t that interesting?”

Day folded her arms around her trench coat. “It’s gotten cold,” she said, shaking her shoulders. She looked at me again, almost staring. “What if,” she said, “just what if the law we have is the law we deserve?”

She broke into a smile. “You’re looking at me as if I’m out of my mind! I’m serious! It’s a rather democratic concept, actually. I can see it on talk TV. ‘Is the law we have the law we deserve?’ How does it go—from the Pledge of Allegiance? ‘One nation, under God, indivisible . . .’ But what if”—Day’s voice changed tone—“it isn’t indivisible? What if, in fact, it’s very divisible—divided, dividing, all over the place? What if, instead, it’s one nation of private militias, one of police, one of women, one of men, an-

other of whatever race you are, still another one of your religion, one nation of armed forces, another of employers, one of employees, another of those who drug themselves, one nation of unemployed, of those who have had abortions, another of those who haven’t, and then, of course, all those nations comprised of those either of upwardly mobile or mobilely downward economic status. What, then, would be the law that we deserve? You tell me.

“A former clerk of mine—he works down here. At the same firm, perhaps, as our subway lothario. Six months into his clerkship he says—he’s quite agitated about it—that there no longer is a nation. What is really going on is that we’re in a state of civil wars. A young lawyer who thinks about the society he lives in—a Generation X lawyer has thoughts like this? Well, I can tell you, just because they may be insolent, and they are scared, doesn’t mean that there aren’t some very serious sorts in their twenties roaming around out there. So I asked him—nice image, isn’t it, a state of civil wars?—if what he says is true, then what happens, I asked him, to the law, to lawyers? What kind of law, what kind of lawyers, do you have when your civil order is, in fact, in a state of civil wars? What, for example, would have happened if the truck that exploded under the World Trade Center had been about two hundred feet away from where it was, and an entire tower—all one hundred ten floors—collapsed? How many legal relationships—civil, criminal, federal, state, municipal, international—would have been affected? Tell me—who among those affected would have gotten what he deserved? Who would have gotten it for him? All great

problems come from the streets? What happens when one of them—one small fraction of just one of them—enters the office of the United States Department of Justice? It can happen, you know. One day an Assistant United States Attorney receives a package in the mail. In it there's a briefcase—just like this one I've got. Inside it, a sawed-off shotgun rigged to a device."

Day propped her briefcase on her knee and snapped it open. Her eyes widened. "Like this!" she said. "In the stomach! Do you know what happens if you're shot in the gut, a foot away, by a sawed-off shotgun? What if the briefcase is just a bit slanted—like this?" She turned her briefcase toward me. "*Whoosh!* There's not going to be much of your government attorney's head left, now, is there? It's what happened to Judge Lowenstein. The same way. Fortunately, in our case, an F.B.I. agent was with this assistant at the time. He told her that he'd better open it, that you never know. He opens it from the side—*pow!* A huge hole in the office wall."

Day closed her briefcase. "Tomorrow, first thing," she said, then paused to catch her breath. "A sentencing. Can I run it past you? Is that all right? Then I've got to be going. I know I'm keeping you." She shook her shoulders. "I should have worn my winter coat," she said. "Look. I appreciate it. I'll be fast. The facts." She took another breath. "A forty-year-old woman. She's—well—let's just say she's a citizen. She pays a lot of money to have her husband killed, but it doesn't come off. She's arrested and pleads guilty to conspiracy to murder. Under the sentencing guidelines I've no choice—nine years, no pa-

role. I can reduce her sentence if there are mitigating circumstances. But I have to have really good reasons."

Suddenly a gust of wind blew rain near where we were standing. We moved farther under the Municipal Building arch, beside another pillar. Day continued. "Her lawyers have a psychiatric report done," she said. "First-rate. One of the best psychiatrists in the country. University of Chicago. Excellent. It so happens that this woman's marriage was arranged. It so happens, too, that every time this woman has sex with her husband, it's forced on her. The violence is graphic—you could even say perverse. Ugly stuff—sodomy, rape. This is on the record—the woman's never had an orgasm, which her husband attributes to her having affairs. So what does he do? More violence, under the guise of sex."

"Battered woman's syndrome," I said.

"Maybe that's what it is. I don't know. I've got to sentence her. This woman's pled guilty to conspiracy to commit murder. She's going to go to prison. I have to decide how much of the next—at a minimum—nine years she's going to live in a federal penitentiary. But that's not all. There's more. Every single time the woman's been in court her husband's been with her. They sit beside each other. They talk. You'd think they were just like any other husband and wife. Oh, I almost forgot. The husband has never denied his wife's allegations."

"He's never denied her allegations?"

"Never. That's not all, either. Husband and wife are in business together. A very lucrative three-, four-million-dollar-a-year import business. There's a five-

million-dollar life-insurance policy on the husband's life. Since the wife's been in jail, the business has been falling apart. She's the brains of the operation. Without her, the husband doesn't know how to run things. Finally—children. A boy and a girl. A ten- and an eight-year-old. Beautiful children. There are pictures of both of them. They're part of the record."

Day stopped. She started walking toward the subway. "Let me know," she said over her shoulder, "when you're ready to go over the next draft of the report."

## Transactional

