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BJECTION, YOUR HONOR! Argumentative! Asked and answered! Irrelevant! Counsel is intimidating the witness!”

“Intimidating the witness? How can a woman my size intimidate a police officer his size?” Blake was a petite, dark-haired woman in her late thirties.

There were snickers from the jury. Judge Williams’s gavel came down hard on his desk even before Bill Thompson shouted, “Objection!” again.

Defense Attorney Barbara Blake knew she had gone too far. She stopped her slow, deliberate pacing. Judge Williams liked her, but she had crossed the line. She liked him as well, and she knew he would invariably give her as much as he could, but he had his limits. She looked up at him. His face had reddened and his mouth had thinned. “Counsel, if you want to address the district attorney’s

objections, address them to the court. Otherwise your gratuitous remarks will not be tolerated in this courtroom. Is that clear?" It was a high-ceiled, wood-paneled courtroom in an old courthouse building.

"I'm sorry, Your Honor, I meant no disrespect to the court. I was just taken aback by the district attorney's outrageous remark." She was not the least bit sorry, and she had just taken another jab at the DA. And she saw that her apologetic tone and her look of innocence were working. The judge's mouth had softened and the red on his face had receded. After a few moments he added some conciliatory words. "Counsel, the court understands that in the heat of battle, tempers will rise and inappropriate remarks will be made. Nevertheless, you are a very experienced, able lawyer and I ask that you refrain from further gratuitous remarks. The district attorney's objection is sustained. Please proceed with your cross-examination."

"Thank you, Your Honor. Now Sergeant Brennan, do you recall telling us this morning that you interviewed the alleged victim, Jane Doe, on January 30, 2004, two days after the alleged sexual molestation by my client?"

"Yes, ma'am." Tall and rangy even as he sat in the witness chair.

"For the record, Jane Doe is six years old?"

"Yes, ma'am."

"And isn't it true that during that interview Jane Doe told you that she had been molested only once by my client, her father?"

"Yes, ma'am." Tolerant, permissive. He knew this was defense counsel's role.

"Well now, Sergeant, that's quite a bit different than the ten times you testified to on direct examination earlier today, isn't it?"

"Yes, ma'am."

"And as a qualified expert in child molestation cases, you told us earlier that it is not uncommon for a child to change the number of times she has been molested by an individual especially when the perpetrator is someone near and dear to her?"

"Yes, ma'am."

"You prepared a report concerning your January 30 interview with Jane Doe, didn't you, Sergeant?"

"Yes, ma'am."

"And in that report you describe Jane Doe as being calm, collected, and forthright, correct?"

"Yes, ma'am."

"How long have you been working child molest cases, Sergeant?"

"For over ten years now."

"And over the course of that time, you've interviewed hundreds of victims, haven't you, Sergeant?"

"Yes, ma'am."

"And by now you can pretty much tell when a child is lying to you and when she's not, can't you, Sergeant?"

"Not always." Irritated now.

"Does that mean never...or some of the time...or most of the time...or always?"

"Probably most of the time."

"What does the word 'forthright' mean to you, Sergeant?"

He hesitated and she could feel that familiar excitation stirring in her.

"Did you hear my question, Sergeant?"

"Yes."

"And your answer is?"

"Aboveboard."

"Does aboveboard also mean truthful, Sergeant?"

"You could say that, yes."

"It's not what I say that's important, it's what you say that counts, Sergeant. Does forthright mean truthful?"

"Objection! Argumentative, and I'd ask the court to admonish Ms. Blake to stop her editorializing."

"The objection is overruled. Proceed with cross-examination, Counsel. Please answer the question, Sergeant Brennan."

As the district attorney voiced his objection, Barbara Blake watched Sergeant Brennan. There was uneasiness in his eyes. Her stirring increased, and she could feel her blood pulsating. She knew

that her mind was clear and quick then—ready to focus and stay focused, ready to pounce. He was hers, and it was only a matter of time until she made that clear to all.

Jane Doe's parents were locked in a bitter divorce battle. One of the court's temporary orders gave the father visitation rights that allowed the child to spend every other weekend with him. After each visitation, Jane Doe's mother questioned her in detail about her visit. Some three months into the visitation Jane Doe revealed that on some nights she had slept with her father. The mother was outraged and threatened to have the father's visitations terminated if the practice continued. The father's response was that the child had always slept with them. Soon Jane Doe began resisting the court-ordered visitations, telling her father that she had no one to play with at his house...that all her friends lived far away near her mother's house. The mother began questioning the child even more closely, specifically asking after every visit if her father had touched her "privates." After several weeks of that questioning, Jane Doe answered yes. Her mother called the police, and her father was arrested.

As part of police protocol Jane Doe was introduced to Mary Atkins, a social worker from the Child Protection Agency who met with her and began regularly taking her to a "child-friendly room" at the agency. There she was given snacks and treats and encouraged to play with stuffed animals and other toys while Mary Atkins attempted to question her about the illicit touching. Sergeant Brennan and the child's mother watched unseen behind a two-way mirror in an adjoining room into which every word of the child and Mary Atkins was transmitted. Ostensibly all of the sessions between Jane Doe and Mary Atkins were videotaped, but as it was later shown, the switch for the recording device was not always turned on. There were ten sessions recorded and at least five other sessions that were not recorded. All the recorded sessions had the child saying that her father had touched her private parts. The number of instances varied from one to ten and to an unspecified number beyond ten. The ten recorded sessions were

turned over to the defense as part of the standard discovery packet. It was only during the cross-examination of the mother that Barbara Blake was able to establish that on some of the unrecorded sessions the child had maintained that her father had not inappropriately touched her.

On the afternoon that Barbara Blake was cross-examining Sergeant Brennan, she had already been practicing as a criminal defense attorney for almost fifteen years. Over that period she had developed a unique style of cross-examination that had drawn the attention, if not the admiration, of judges and fellow attorneys alike. So much so, that young public defenders and even deputy district attorneys and seasoned criminal defense attorneys would often come into the courtroom to watch her cross-examination of principal prosecution witnesses. There were times during those cross-examinations that Barbara Blake underwent a transformation in the courtroom. She was a small, soft-spoken woman who was courteous and polite to all until she felt that her client was in danger. Then she became loud and assertive, pouncing and attacking, even accusatory when she found it useful or necessary. She was acutely aware of the transformation and other attorneys made endless references to it. But she never discussed her cases with anyone—once a case was over, it was over. Nor would she talk about the transformation itself. But she thought of it often, prided herself in it, and explained it to herself as, "This is where I live."

She would rise from her chair at counsel table whenever the witness to be cross-examined was an important one, because she knew she would not be able to sit still when and if that surge, that excitation, came. Better to be standing, pacing, and moving—easier to spread the tension—than to be confined to a chair. During those times her mind seemed white hot. She did not need her notes, did not need the counsel table; her mind could do it all, calling up anything and everything of any importance to challenge and demolish the witness. It was far from her everyday state of mind, which would flit and flutter from image to image, from thought to thought in instants. This was truly where she lived.

When she stood, she paced with slow, deliberate steps about the courtroom, sometimes beyond the counsel table a few feet closer to the witness than the table would permit, but usually farther from him than the table allowed, along the railing, into the courtroom corners, next to the jury box and the captivated jurors, as she questioned. When the witness would begin to reel, her voice grew louder and her questions came in rapid-fire succession, and her movement about the courtroom became more pronounced, not faster, rather more definite, more certain, as if every inch of that courtroom floor was hers. She would turn her back on the staggering witness, walk away slowly, and, as she did, fire another question at him in a voice so loud as to be nearing a shout. Then she would watch the mesmerized faces of the audience and that spurred her on all the more. And when the witness's answers came back weak, thin, quiet, and confused, she would spin and come back at him again and fire still another question, another blow, and watch as he reeled even more, about to fall.

As ready as she was to dismantle Sergeant Brennan, she reminded herself not to lose control.

"From January 30, 2004, the date of your first interview with Jane Doe, until the beginning of this trial on April 16, 2004, some seventy-five days, how many times was Jane Doe interviewed by law enforcement, and that includes Mary Atkins?"

"At least ten."

"Meaning the ten tapes that were turned over to the defense?"

"Yes."

"What about the five unrecorded interviews testified to by Jane Doe's mother? You know the ones that included denials of any inappropriate touching. You're aware of those aren't you, Sergeant?"

"Yes."

"And you interviewed Jane Doe alone a second time, which was not recorded?"

"Yes."

"So that would make it sixteen, wouldn't it, Sergeant?"

"Yes."

"And during the two weeks immediately preceding the start of this trial Jane Doe was interviewed by the district attorney, wasn't she?"

"Yes."

"How many times?"

"Three."

"And you were present during those interviews, weren't you, Sergeant?"

"Yes." He was flustered. His eyes were shifting constantly. His head jerked from place to place. Twice he looked over at the district attorney, but Bill Thompson was hunched over a legal pad, apparently taking notes.

"So if there were nineteen interviews, why did you tell the jury that there were 'at least ten'?"

Now Sergeant Brennan's eyes latched onto Bill Thompson, but Thompson wouldn't look up. Barbara Blake's eyes were on the sergeant, but he wouldn't look at her. Her mind was clear, controlled now, ready.

"...I don't know. I guess I thought you were asking how many tape-recorded interviews there were."

"Sergeant, my question was very specific. I asked for the number of interviews with Jane Doe over a seventy-five-day period. The court reporter can read back my question if you like. Would you like that? Would that refresh your recollection?"

"No. No. I was just confused."

"So how many interviews were there with Jane Doe over that seventy-five-day period?"

"Nineteen."

"Why were nineteen interviews with Jane Doe necessary?"

"It's difficult interviewing six-year-olds. Their attention spans are very limited. They can't sit still for very long. A complete stranger has to gain the child's trust and confidence so that the child can be comfortable in that setting. They're not used to talking to adults about serious matters like these over long periods of time." Looking at the jury, he nodded through his explanation.

“How long were these interviews?”

“They varied. Some were thirty or forty minutes long. Others were two or three hours long.”

“Could we say that some twenty hours were spent interviewing Jane Doe?”

“You could say that.”

“What did you hope to gain? Why was it necessary to interview this child, some twenty hours about the facts of this case?”

“We were trying to get at the truth.”

“What is the truth in this case, Sergeant? Is it ‘Daddy never touched me’ or is it ‘Daddy touched me one, three, five, seven, or ten times or beyond? Take your pick, Sergeant.’”

There was something resembling a weak smile, a sneer, a scoff on Sergeant Brennan’s face as he looked directly at Barbara Blake for the first time in a while. It was a look of contempt, one you saved for a scum who was unashamedly trying to deceive you, take advantage of you. He held that look for several moments before he answered, meeting his persecutor’s challenge for the first time. Then he said evenly, firmly, “Your client touched his daughter’s vagina ten times.”

“How did you make that determination, Sergeant?”

“His daughter said so.”

“Didn’t she also say that he touched her but once?”

“Yes.”

“Three times?”

“Yes.”

“Five times?”

“Yes.”

“Seven times?”

“Yes.”

“More than ten times?”

“Yes.”

“And didn’t she say in at least three of those interviews that he had not touched her at all?”

“Yes.”

“What was so captivating about the number ten, Sergeant?”

The sneer was gone, and his eyes were shifting. He was the hunted again. “It made the most sense.”

“How so?”

“The visitation period was a little more than five months. He slept with the child on numerous occasions during that time, even after the child’s mother threatened to take him to court. If he molested her once he certainly molested her several times over those months, and ten makes the most sense.”

“So was she lying to you when she said he had molested her only once?”

“I wouldn’t say she was lying.”

“What would you say, Sergeant?”

“That she was confused.”

“Was she confused when she said three times?”

“Yes.”

“Confused when she said five, seven, and beyond ten times?”

Something of the sneer reappeared, but weakly. He was no longer challenging, standing his ground; he was no longer sure. He held the look for a few moments before he answered, “Yes.”

“Was she confused when she said that her father had never touched her?”

“Yes, and there, as I said earlier, she was probably trying to protect her father.”

“Was she confused, Sergeant, when she said that he had molested her ten times?”

There was shifting in the jury box, and Sergeant Brennan turned and saw the look of concern on some of their faces. “No.” But it was a barely audible no.

“What was that again, Sergeant? I’m sorry, but I just couldn’t hear your answer.” She wasn’t sorry and she had heard his answer.

“No.” Louder.

“Sergeant, you just told us that Jane Doe was confused when she said that there had been no touching and when she gave numbers other than ten, is that correct?”

“That’s correct.”

“Could you tell us what that confusion looked like? I mean, when a person is confused, he’ll usually have a confused look on his face. Could you tell us what the girl’s look was like when she recited any number, or non-number, other than ten?”

“No, I don’t remember what she looked like then.”

“Well, in your report of the January 30 interview when she told you that her father had molested her once, you describe her as calm, collected, and forthright, correct?”

“Yes.”

“So, you did not see any confusion then, did you, Sergeant?”

“No, apparently I didn’t.”

“How about when she said it was ten times. You told us there was no confusion then. Did her look differ in any way from the look you described seeing on January 30?”

Sergeant Brennan paused. He looked down and around at the courtroom floor. He sighed audibly and then looked in the direction of Bill Thompson, but Thompson was still focused on his notepad. Most of the jurors were not looking at the witness. Some were busy looking through their notebooks in the absence of any testimony; others had their eyes downcast, perhaps embarrassed for the Sergeant; and two were looking stoically across the courtroom at the opposite wall. Those who did look at him did so only intermittently with puzzled, frustrated looks—puzzled by the pathetic testimony of a sworn law-enforcement expert in child molestation cases and frustrated because they took their seats as jurors fully expecting to convict the defendant of those dastardly crimes charged. But now they found themselves stymied instead of aided by this awkward garbled evidence.

“Did you hear my question, Sergeant?”

“Yes.”

“And your answer is?”

“I don’t remember.”

Barbara Blake’s mind was at its keenest now. One question suggested two or three more; one answer raised even more. The

questions came from everywhere: from her voluminous case file, from her life experience, from common sense. They arrived instantly and queued-up like a deluge of water about to spill over a dam, lapping for a chance to be spoken. Sergeant Brennan had testified at a preliminary examination some eight weeks before that in his opinion Jane Doe had been molested five times. Barbara Blake reminded him that he had been under oath then as he was now, and then she led him step by painful step down the path that brought about his change of position and again proved to be based on the changing numbers given by Jane Doe over the course of nineteen interviews.

Barbara Blake then explored the importance of the parents’ bitter, ongoing divorce. Sergeant Brennan saw little consequence in the parents’ dispute and said that divorce was often in the background of molestation cases. But it wasn’t long before Barbara Blake had him backpedaling again. Yes, he admitted, the mother’s questioning after every visit was excessive and suggestive, especially in the latter stages. Yes, he was aware that Jane Doe had slept with her parents for years and there had never been any indication of molestation on the father’s part. Yes, it was perfectly normal for a child to resist visiting a parent every other weekend when that parent lived far from the child’s friends and normal social activities. Yes, he reluctantly admitted, now looking sheepish and worn, a child of six in Jane Doe’s situation might conclude that she should answer yes when her mother asked over and over whether her father had sexually molested her.

By this stage in the cross-examination, Sergeant Brennan seemed battered and dazed, but Barbara Blake wouldn’t let up. Everyone in the courtroom now looked at each question, no matter how innocuous on the surface, as a building block for the next blow. Deputy District Attorney Bill Thompson was also being humiliated by Barbara Blake’s lethal cross-examination. Sergeant Brennan was not just a witness, he was Thompson’s expert witness. He had strutted Brennan’s credentials before the jury during his opening statement. He had assured them Brennan would explain