

# THE BENEFICIARY

How Justice Can  
Be Savaged By A  
Biased Judge

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This novel is dedicated to those brave trial lawyers who can appear before an incompetent or biased judge and say “Your Honor” and sound sincere. Certainly the vast majority of judges, whether they are at the trial court level or appellate court level, are honest, competent and hard working. But there are those who have no feel for the true pulse of the law and instead make decisions out of bias, laziness or simple incompetence. Every trial lawyer has had to deal with them and knows what I am saying. And probably many of those judges know it themselves.

The courthouses in Los Angeles and Santa Barbara are real but otherwise, all characters and dialogue are fiction. Any resemblance of the imaginary characters to actual persons is coincidental.



# CHAPTER I

## The Lawyer

Dillon Clark was usually calm and reasoned when confronted with the unexpected problems that every trial lawyer must face, but right now he was so mad his hands were shaking and he was clenching his teeth in an effort to control his temper. It is an old axiom for trial lawyers that to be effective they must be able to quietly bleed inside, and with a smile and posture that shows everything is under control, when in fact things are going all wrong. And Dillon had been bleeding a lot the past few days.

It was late afternoon and Dillon and his client were seated in the cafeteria on the top floor of the Los Angeles Superior Court building. The building was now old and run down when compared to the newer structures which surround it, but it was still home to one of the busiest courts in the country. The judge had recessed the trial for two days so he could hear another matter and that suited Dillon just fine because things had not gone well.

Dillon was representing Gregory Gleich, a business client of the firm, in a divorce trial that had turned into a circus of accusations from the wife's lawyers. Dillon at times fantasized that he had an old medieval shield that he would hold up to deflect the arrows flying directly at his client. Gregory Gleich was a financial genius but that clearly failed to transcend into what he did in his divorce.

Dillon fixed his client with his granite green eyes and thought back over the last two weeks of testimony. He took a deep breath

before speaking and said in a low controlled voice, “Damn it Greg, in over forty years of practice, I have never seen a client so hell bent on destruction!”

Gregory Gleich said nothing and just stared out the giant picture window overlooking the city. The cafeteria was almost empty and the only sound came from two lawyers seated some distance away. Their conversation was muffled but it was clear they were laughing about something. Dillon shook his head and half laughing himself said, “You know, law schools may some day cite your case as the golden example of what not to do in a divorce!”

Gregory Gleich knew he was in trouble and still said nothing. He was a partner in some twenty or more companies that owned commercial office buildings, apartment complexes, elder care facilities and much more. The “much more” was the problem. The wife’s lawyers hired a well known forensic accountant who specialized in fraud and as the case progressed over the past two years, new business interests kept popping up. It turned out that Gregory Gleich had a serious case of forgetfulness when it came to giving an honest picture of his financial world and the trial judge had already sanctioned him to the tune of two hundred and fifty thousand dollars and it happened again today.

The morning session in court had been routine. The lead counsel for the wife was taking his accounting expert through his testimony on the values of some of the companies. The expert had not finished by the time the judge had taken the noon break. But when the trial resumed after the lunch break, the wife’s expert produced an old financial statement where Gregory Gleich had listed three more businesses that he had not disclosed. The judge, specifically the Honorable Michael O’Reilly, could be seen flipping back to a prior evidence binder and reviewing the original asset disclosure statements. The new companies were obviously not there and he looked over at Gregory Gleich with an intent stare but said nothing.

The failure to disclose assets is probably the most serious error that a spouse can make in a California divorce. The legislature has made full and accurate disclosure mandatory and has given the trial court great discretion in what penalty to impose. When Judge O'Reilly recessed the trial for two days later that afternoon, he again looked directly at Gregory Gleich, held his gaze for a moment, and said, "Mr. Gleich, you have been warned by me on several occasions about any failure to disclose assets. I want you to tell me right now, under oath, whether you have any ownership interest in these three businesses? A simple yes or no will do? Dillon had asked for time to consult with Gregory Gleich but the judge was adamant.

"Well, which is it Mr. Gleich?" the judge demanded.

After what seemed like ten minutes, Gregory Gleich finally said, "I'm sorry your honor. I have a complex set of business interests and these just got lost in the shuffle."

Judge O'Reilly was a famous divorce court judge who had heard many stories from the rich and famous. He paused and, looking at both lawyers, said, "I want it clear that I am not making an order right now, but I do want all counsel to know what I am thinking. With a pattern of nondisclosure, willful or otherwise, I am inclined to award to Mrs. Gleich the entire community value of Mr. Gleich's interest in these new companies as a sanction. From what I have heard so far, they are collectively worth seven million. I'll hear argument on this when we resume the trial in a day or two."

Dillon knew that it was only because it was the end of the court day that Judge O'Reilly made no immediate order. He had taken Gregory Gleich's arm and quickly escorted him out of the courtroom before anything more could happen. Dillon wanted some answers and they had taken the elevator to the cafeteria where they could have some privacy.

Gregory Gleich was still looking out the window as Dillon explained that the statutes gave Judge O'Reilly the power to award all or a part of the undisclosed assets to the wife or give them to

Gregory Gleich but order him to pay her up to one hundred percent of the value. Dillon was thinking that this would be a huge win for the wife. She would get this seven million plus half of everything else Gregory Gleich owned.

Gregory Gleich was by now looking a little squeamish and shifted in his seat but still said nothing. He was a small man with narrow shoulders and thick jet black hair. He wore a brown tweed sport jacket, light blue shirt open at the neck and tan slacks. To Dillon, Gregory Gleich looked like a bookie at the Santa Anita Race Track instead of a wealthy investor.

“So, is there anything else,” Dillon demanded?

After a long silence, Gregory Gleich said, “Look Dillon, the judge can’t really give those to her, can he?” By now the color had drained from his face and he was slumped down in his chair. For the moment at least, his arrogance and controlling demeanor had abandoned him.

“You bet he can,” Dillon said with a certain amount of pleasure. “What on earth were you thinking? He already fined you and you just made matters worse!” Staring right at him, Dillon asked again, “Is there anything else?”

The client just shook his head indicating no but Dillon wanted him to answer in plain English. “Answer my question. Are you concealing any more?”

“Ok. The answer is no. There is nothing else,” Gregory Gleich answered. He then turned to Dillon and with partially closed eyes said, “I think you should meet with my accountants. They prepared the asset schedules and may be able to help.”

By now Dillon knew Gregory Gleich was a liar and he was considering asking the judge to let him off the case but knew O’Reilly would say no. And he had sort of made a commitment to finish the case. One of Dillon’s partners, Paul Ellis, was Gregory Gleich’s personal business attorney. Paul had been furious when Dillon made comments around the firm about Gregory Gleich’s



lack of ethics and apparent willingness to lie if it helped him get his way. Paul Ellis, a former college basketball player before he went to law school, was much younger than Dillon. He was tall, single, had blond hair and a dour no nonsense elongated face and was only interested in what was best for Paul Ellis. The two had not gotten along for years. But Dillon did agree to finish the case.

Dillon knew that Gregory Gleich was planning to blame the accountants and finally stood up, breathed in deeply and said with considerable irritation, "Have the accountants in my office tomorrow morning."

As they left the courthouse, Dillon was thinking about how to make a plea to the judge. He was already pissed off but he just might be friendlier if Gregory Gleich did a serious mea culpa. Dillon was a great lawyer but could not perform miracles when a client lies. But he would do what he could and just bleed a little more. He shook his head out of frustration and was thinking as he walked through the underground tunnel that led from the courthouse to the parking garage under the Music Center, "There has to be a better way to make a living!"

Dillon's office was on the sixth floor of an office building in Encino, California that originally was built to house one of the many banks that went broke in the last recession. It had been converted into professional offices after the FDIC forced the bank out of business. He started practicing law in Chicago but later came to California to join Phil Burnam, an old law school classmate. Together they had built a medium sized firm in Encino and they now had ten partners and eighteen associates.

Dillon was in his mid sixties, five feet eight inches tall and had grey flecked hair. He had a craggy face with deep crow feet wrinkles under his eyes. And, recalling the words of his doctor, he was carrying around a thirty-five pound bowling ball that was not

needed. He had been in good shape until his wife died suddenly three years ago. They had met when she was a witness in a trial and married four months later. She had been the spark that had made Dillon's life something special and after her death, a sadness fell over him that never left. It was like the luster and passion of life which comes when two people share things together had been sucked away from him and nothing that his friends or associates could say made that change.

Dillon was what the legal profession calls a "litigator." This means he was the one who went to court when a client got into trouble. He was good at it but where he stood out most was in his determination and work ethic. Unlike many lawyers who wished they were doing something else for a living, he had loved the law. He was known in the legal community as a tough "bull dog" trial lawyer. When in a trial he worked harder than most of his opposing counsel and that usually made the difference between winning and losing. And what his clients liked best was his determined confidence that put them at ease, knowing that a skilled lawyer was guiding the process.

But with his wife's death, the lustre of Dillon's life was gone. Before, there was a purpose to life, a life time partner to share things with, and he practiced law with enthusiasm and loved every minute of it. But without his wife, there was nothing. There was no joy and no happy celebrations when a victory happened. The whole glow of a life shared with someone you love stopped and he was really just going through the motions. He had trouble sleeping, began drinking too much and was grumpy with his associates and partners.

While Dillon was trying to salvage what he could of Gregory Gleich's assets, a letter had arrived from an attorney in Ventura, about fifty miles north of Encino. His secretary, Jeannie Davis,

knew the pressures he was under and had put the letter along with a box full of documents aside until Dillon finished the trial, for the good or bad. Jeannie was about five feet six and in her mid-thirties. She had fiery red hair, fashionable freckles on her face and looked like a well built aerobics instructor. Even with three children to keep after when she was at home, she managed to run close to twenty miles a week for exercise. She had been Dillon's secretary for over eight years, was totally devoted to him and was also happily married.

When Jeannie told Dillon about the letter and documents, he was preoccupied and had told her to organize whatever was inside and to reserve the conference room so he could spread the material out for review. Jeannie was not only a good secretary but she also was the equal to any paralegal assistant and Dillon greatly relied upon her to not only organize legal documents but to also give her analysis of whatever was involved. Dillon had tried for years to get her to become a paralegal but she always declined. "My kids take too much time" she would explain.

Dillon got to the office early the next day to work with Gregory Gleich's accountants who naturally told him that they were responsible for leaving out the three undisclosed businesses. It is magical what money can buy, Dillon thought.

When he finished preparing the accountants to testify, Dillon grabbed a cup of coffee and he and Jeannie rode the elevator to the floor below. As they exited the elevator and began walking down to the conference room, he asked Jeannie, "So what's the new case about?" She told him it involved a lawsuit to set aside a huge estate up north in Santa Barbara County.

When they entered the conference room, Dillon noticed that Jeannie had done her job. The documents were all organized and she had prepared an index of what had been sent. Dillon got only as far as reading the cover letter from the attorney, who introduced himself as Paul Craft, when Jeannie rushed into the conference

room and said, "Judge O'Reilly just called. He wants to start the Gleich trial this afternoon right after lunch."

Fortunately Dillon had anticipated the judge might call and was wearing his typical trial suit. When you walk the halls of a courthouse and look at what the lawyers are wearing, you will mostly see dark grey or black suits, white shirts, conservative ties and of course, shined shoes. A jury study done many years back had monitored jury deliberations and it was discovered that juries actually discussed what the lawyers were wearing and whether they had shiny shoes when they talked about who to believe. Since then every trial lawyer worth his salt pays attention to clothing.

A suit and tie was clearly never Dillon's dress of choice. But it was the costume of a trial lawyer and whether he liked it or not, he was stuck with it. This day Dillon was wearing a grey suit, white shirt, and a tie with red and blue stripes in the British fashion and matching braces. The red English style braces were a bit unique because they had gone out of style some ten years back but Dillon was superstitious. He had won many trials with his braces and was not about to change. As a way of at least pretending to be casual, he had his shirt sleeves rolled up above the elbows and his top shirt button undone.

Dillon quickly went back to his office, grabbed his brief case and on his way out told Jeannie to call Gregory Gleich and the accountants with the good news, and he headed for the courthouse. Although it was only a thirty mile drive to the downtown courthouse in Los Angeles from his office, Dillon knew that the mid day traffic could be terrible and he wanted to get to the courthouse before the lunch crowd was out and about. Being late would not be a good start with an already irritated judge.

When Judge O'Reilly took the bench after the lunch break, he was still in a foul mood. At first he gave Dillon a bad time and almost wouldn't hear from the accountants, but finally relented. He knew, as well as Dillon did, that Gregory Gleich had pressured

the accountants to testify but he was the type of judge who still believed a fair trial meant hearing all of the evidence before ruling.

Dillon had loved the idea of being a lawyer but had grown cynical over the years. In his mind, the heart and soul of the justice system was to give everyone a fair trial but this goal gets corrupted when certain things happen. One is where the witnesses are not truthful. The other, which is all too prevalent, is where the judges themselves corrupt the system.

Dillon knew most judges are honest, hard working and dedicated, but he had had too many first hand experiences with others who are either incompetent, lazy or just don't give a damn. They are the ones who are prejudiced, quick to dislike one side or the other and who reach conclusions without bothering to evaluate the evidence. This is why trial lawyers are constantly faced with the fear of not knowing what is really going on in the judge's mind. And Dillon, more than once, thought this fear factor was why trial lawyers usually drank too much.

In the Gleich case, it was the client who was trying to corrupt the system. Dillon was angry with Gleich and would of course get rid of him as a client, but beyond that he just didn't care much anymore about the system working or failing. This was part of the passion he lost when his wife died and he became entombed in a system where he just went through the motions. If justice wasn't done he would be irritated but he was no longer the champion of fair play as he had been for so many years.

When the Gleich trial finally concluded, Judge O'Reilly had requested both counsel to file legal briefs on the issue of fraud and what remedies were available if he found Gregory Gleich to have acted fraudulently. The law was very clear that the court had almost unlimited discretion so the end result would depend on how the judge reacted to the final testimony.

The judge's decision came two weeks later and it was, all considering, a victory of sorts. He found that he could not impose sanctions if in fact the errors were made by the accountants. But Gregory Gleich was not off the hook completely. The judge found that he had previously failed to disclose two of his investments and sanctioned him one million dollars. He also ordered Gregory Gleich to pay his wife's legal and expert fees which were over two million to date, and valued her half interest in the community property at thirty-seven million. He also ordered Gleich to pay his wife, in cash, within the next ninety days. An interesting side note is that in family law, the wife gets her share tax free when the assets are awarded to the other spouse.

When Dillon called Gregory Gleich to give him the news, instead of being pleased, he just grumbled and said he wanted to appeal. Dillon's reply was polite but firm. "You can certainly appeal but not with this firm. I will send you a list of appellate specialists," and hung up the telephone.

After his conversation with Dillon, Gregory Gleich of course had quickly called Paul Ellis and told him what Dillon said. After their telephone conversation, Paul Ellis charged into Dillon's office and confronted him. "You have no right to fire one of my clients. He has paid this firm hundreds of thousands of dollars every year and he's now threatening to take his work somewhere else. God damn it Dillon, call him back and apologize!"

Things went downhill from there and their shouting could be heard by the whole firm. Dillon refused to apologize and Paul Ellis stormed out of his office, slamming the door shut behind him.

When Dillon parted company with Gregory Gleich, he had taken a week off and drove down to his condominium in Palm

Springs. He and his wife purchased it some twenty years back and it had been their favorite escape hideaway. It was a large three bedroom place located in a golf resort. The living room looked due east directly onto a lake. In the evening when the sun set, the sand dunes across from the lake turned golden brown and orange. Dillon and his wife had no children so for Dillon the condo was an important attachment to the life that was no more. His wife's medical bills had used up their savings and he knew he should sell it but just could not bring himself to do it.

After a few days in the desert, Dillon decided to return to work. He called Jeannie and asked her about his schedule. Jeannie said, "Nothing much pressing this week. But remember, you need to finish reviewing the documents sent by the Ventura lawyer. He seemed anxious to know if you would help his client."

Still suffering from his disgust with Gregory Gleich, Dillon had no desire to get into another major lawsuit. He hesitated, sighed quietly to himself and asked, "Have you read the material? What do you think?"

"It looks like something right up your alley. I only glanced at things but it apparently involves a large estate up in Santa Barbara County. The husband was very old, very wealthy and left a very young wife as his heir. It would be a good case for you." What no one knew was how the case was to change Dillon's life forever.

Dillon got to the office early the next day. Jeannie had put the letter and the materials that the lawyer had sent on the conference room table along with a steaming cup of coffee. It was a large table of solid oak that was some forty feet long and was intended to seat all of the lawyers in the firm until they outgrew it.

Dillon had been reading for almost three hours and slowly rose from his chair and stretched. He walked over to the window which looked out across the San Fernando Valley. On a clear day you

could see across the whole valley to the mountains above Pasadena. It was especially appealing in the winter when Dillon could see the snow capped mountains which shielded the Los Angeles basin from the desert.

But today was more typical. It was early June and the smog was like a blanket hanging over the valley. Dillon looked down to the street and saw that the traffic was already heavy. Cars were creeping along Ventura Boulevard curb to curb and he could hear the frustrated drivers hopelessly honking their car horns.

The letter from the Ventura lawyer explained that he represented Dani Germain. Her husband had recently died and she had been made the trustee on his trust and a major beneficiary several years before they married. Although the lawyer did not say it in these words, the catch was that the wife was fifty-eight years old and her husband was ninety three when he died and his relatives were suing to keep her from inheriting. Dillon had been the lawyer in several high profile trust and will contests and the lawyer explained that he had obtained his name after calling a number of firms in the Los Angeles area. He wanted a lawyer who had experience in the Santa Barbara courts but was not from Santa Barbara.

Other than the letter, the box contained newspaper articles, a copy of the complaint that had been filed, a copy of the trust and various other documents and amendments to the trust. The most recent article was from the Santa Barbara Gazette. In bold type, the headline read, "RELATIVES OF ELDERLY MAN SUE WIFE OVER TWO HUNDRED MILLION DOLLAR ESTATE."

The reporter had obtained most of the information from the complaint. It is common for reporters who cover legal matters to keep track of recent filings so their paper can keep the public informed. Dillon noticed that the article said that the husband, Charles Niven, had been a wealthy real estate developer in Los Angeles and that he had married someone thirty years younger. The wife, Dani Germain, had been a successful Hollywood movie star



in the 50's but had eventually become a real estate agent. Germain had been her stage name.

Dillon noted that the article went into great detail on the allegations against the wife. About five years after his wife died, Dani Germain began helping Charles Niven with his real estate investments and had eventually given up her career and worked for him full time. Charles Niven initially lived on a large horse ranch in Ventura County, just a few miles north of Los Angeles and after several years, Dani Germain had moved into his home and they eventually bought an estate in Santa Barbara and later got married. The article said that when Charles Niven died, he left an estate valued at over two hundred million dollars.

The article continued by explaining that Charles Niven had been a sophisticated businessman and had been represented by a major law firm in Los Angeles. When Charles' wife was still alive, the firm had prepared what is called a "Living Trust" to hold all of their assets. For reasons not explained in the newspaper article, even before Charles Niven married Dani Germain, he had somehow modified the trust to make Dani Germain his trustee and a major beneficiary.

The thrust of the lawsuit, according to the article, was that Dani Germain became a trustee for Charles Niven by fraud and by what the law calls exercising "undue influence." His relatives were the plaintiff's and they were asking the court to set aside the amendment to the trust that made Dani Germain the trustee and a beneficiary.

The lawyer had also included a copy of the trust and several amendments in the package he sent. The earliest amendment was actually an amendment of an original trust which presumably was the one that had been done for Charles Niven and his wife before she died. The trust was entitled "Restatement of the Charles Niven Living Trust." He flipped through the pages and it looked fairly normal but for one unusual provision that Dillon had never seen

before. There was a provision that said the trust could never be amended without the trustee's consent. Dillon made a mental note of this because that meant Dani Germain had to consent if Charles Niven had ever wanted to make any changes.

The part that especially caught Dillon's attention was the reference in the article to an investigation by the local District Attorney. He searched through the other documents on the table and found a second newspaper article. The article was from the same newspaper but was ten years old. The headline read, "DISTRICT ATTORNEY HAS GRAND JURY INVESTIGATE FORMER ACTRESS IN MILLION DOLLAR FRAUD SCHEME." The article did not say how the District Attorney's Office had got involved, but Dillon assumed that one of the relatives who were now suing may have instigated the process.

Grand Jury proceedings are confidential so Dillon knew someone had broken the law by giving information to the reporter. The article was short but did identify Dani Germain as a former actress who married Charles Niven, a wealthy man thirty years her senior. The reporter had managed to check local records and found a Power of Attorney that Charles Niven had given to Dani Germain to act on his behalf. This had been recorded in the Santa Barbara County Recorders Office. It was dated June 6, 1996, which was the same date the Charles Niven trust had been amended.

As Dillon thought about what he had read, he recalled with fondness the last case he had tried in Santa Barbara. He represented a lady who was a famous breeder of Peruvian horses. A jealous competitor had slandered her good name and that had been a big mistake. She sued and the jury awarded her four million dollars in damages. The defendant appealed the case all the way to the California Supreme Court and lost. It was this case that sealed Dillon's reputation as a big time trial lawyer in that area.

Since trials were what Dillon did for a living, he had agreed to at least meet with the potential client. When Dani Germain

arrived a few days later, Jeannie brought her into Dillon's office. He saw that she was obviously nervous and distressed. The newspaper article said she was in her late fifties but she looked younger. She was about Dillon's height, had short brown hair, bright dark brown eyes, a well proportioned but heavyset body, tanned arms and legs and was wearing a stunningly beautiful dark green St. Johns knit dress. Not many women can wear a St. John because of the way they hug the body and leave nothing to imagination. But on Dani Germain it looked great.

Despite her nervousness, Dani Germain walked over and shook Dillon's hand and said, "Thank you for seeing me Mr. Clark. I understand you have a lot of experience in the Santa Barbara courts?"

"My pleasure, Mrs. Niven. May I call you Dani?" Dillon asked.

"Of course. I've been called Dani all by life. My real name was Danille but I cut it short when I worked in Hollywood. And I still use Germain as my name. Charlie never cared and that is what I had been known by so I never changed it. Anyway, what do you think?" she asked.

Dillon had a small round conference table in his office and they both walked over to the table and sat down. He thought for a moment and said, "Please understand Dani, all I have seen is what your lawyer sent me which wasn't much. I've read the complaint, the trust and amendments and a few newspaper articles. Just on that basis it looks like the plaintiffs have a pretty good case. What do you think?" Dillon asked in a rather serious tone.

Dani's face flushed for a quick second and she hesitated before she spoke. She took a deep breath, seemed to relax a little, and said, "I know how it looks in the newspapers, but Charlie and I loved each other Mr. Clark. Charlie figured there would be a lawsuit when he decided to cut out some of his relatives, but that's what he wanted. I even tried to talk him out of it, but he was very upset with

part of his family.” She smiled and added, “He was a strong-willed man and when he said ‘no’, he meant no.”

Dillon leaned back in his chair and said, “So, as a fifty percent beneficiary you have a lot to lose if the plaintiffs win. Are you sure you want this type of fight?”

Dani looked resentful at Dillon’s question and said, “You need to know one thing at the start. I never really cared about the money but Charlie made me promise not to give in to them. The ones he cut out never lifted a finger to help him or even say hello at Christmas. I think they were just waiting for him to die. But his nieces and nephews, and of course his sister, are different. They get half of his estate. So my answer to your question is yes. I am here to make sure things go the way he wanted.”

“I understand how you feel,” Dillon said, “but part of my job is to make sure you understand that the complaint claims you acted fraudulently and took over control when your husband was, shall we say, under your influence. If they can prove this charge, you risk losing your entire share. Can you take that risk?”

Dani had a quizzical look on her face and asked, “I thought the trust was irrevocable and could not be changed without my consent as trustee?”

Dillon was momentarily taken back by Dani’s use of technical legal terms. This could mean she was deeply involved when the trust was amended to make her a beneficiary and trustee. He wanted to be harsh with her to see how she reacted, and quickly snapped back and said, “You thought wrong.”

The expression on Dani’s face hardened. Her eyes narrowed and in a soft voice she asked, “What happens if the trust is set aside. Who gets Charlie’s estate?”

Dillon had been thinking of this very question before Dani Germain arrived for the meeting. “That’s a tough question,” Dillon answered. “The plaintiffs have no doubt included fraud in the

complaint so if they win you would be totally excluded. It is an old maxim of law that a person cannot benefit from their own wrong.”

Dani looked at her watch and quickly got up from her chair and said, “I’ve read the complaint, Mr. Clark. It says that I defrauded Charlie because I convinced him to amend the trust and make me a major beneficiary and get married. Well, I did help Charlie. That’s what he wanted.” After a pause, she asked, “But what will happen if we fight this?”

“It’s too early to tell,” Dillon replied. “The trouble with cases like this is that you have to sometimes spend hundreds of hours sorting out the facts and talking to all of the witnesses before you can even have a fair chance at deciding what the end result will be. Some witnesses are of course more important and in this case that will be the lawyer who drafted the amendment to the trust that made you the trustee. I know this doesn’t answer your question but that’s about all I can tell you for now.”

“I appreciate your honesty, Mr. Clark,” Dani said. “As you might expect, I have very little money myself. Charlie asked me to stop working when we got serious and I probably have only twenty some thousand dollars in my personal account.” She hesitated for a moment and asked, “My lawyer said to ask you whether the trust can pay for the lawsuit?”

“That’s the good part,” Dillon explained. “Because you are the trustee, you are permitted to use trust assets to defend the trust from any lawsuit, including this one. The potential downside is that if you lose, the court could require you to reimburse the trust.”

“I’ll take my chances,” Dani said. “I had very little when I met Charlie so what the heck,” she added with a smile.

They talked for awhile about the litigation process and how much the firm charged on an hourly basis, and Dani Germain asked, “I know you will say it is too early to tell, but what do you think this lawsuit will cost?”

Dillon had already considered this question. “Your right,” he replied, “it is too early to tell but I can give you a general idea. With medical experts to support Mr. Niven’s mental competency and the costs of deposing all of the witnesses, I think we are talking about three or four hundred thousand dollars. And of course it could be a lot more depending on how vigorous the plaintiffs are. It could go as high as a million.”

Dani listened to Dillon’s explanation and just nodded her head without saying anything. Dillon finished with some comments about the plaintiff’s lawyer because he had had some prior dealings with Marvin Stein, the lawyer representing the plaintiffs. “Marvin Stein is an aggressive and stubborn lawyer and how he handles the case is what makes the costs unpredictable. I’ve tangled with Marvin before and he probably has taken the plaintiff’s case on a contingency basis. He’ll get maybe forty percent of what he gets for his clients. From what I see from the complaint and newspaper articles, he no doubt believes he has a great case and he will not settle cheaply.”

Dani started to fidget somewhat in her chair. “Are you sure the trust can pay the fees?” she asked.

With so much at stake Dillon understood the importance of this question and he reassured her that the trust could pay.

“You came highly recommended,” Dani finally said. “Will you take the case?”

“As I read the trust, Mr. Niven left half of his estate to a niece and nephew and some to his sister. Will they support you or side with the plaintiffs?”

This was friendlier territory for Dani Germain. She relaxed a little, crossed her left leg over her right knee and said, “Jeff and Kathy were close to Charlie. They’ll certainly help. They also know that the other family members ignored Charlie for years.”

“What about the sister?” Dillon asked.

Dani smiled at this question and after a few seconds replied, "She'll be your best witness. She lived with Charlie before I moved in and she stayed on for awhile afterwards. She even went on vacations with us. We all got along fine. Charlie even bought her a condo after we got married."

The meeting with Dani Germain took the entire morning. Before she left, she gave Dillon a list of relatives and friends and she promised to bring in pictures and letters that might help. Dillon told her he would think things over and call her the next day and let her know if he would represent her.

After the meeting, Dillon went to lunch at the restaurant in the building next door. He brought with him some of the other newspaper articles. Several articles focused on the size of the estate which the reporter speculated at over two hundred million. One article in particular caught his attention. It was another newspaper from the Santa Barbara area that came out right after the lawsuit had been filed. The headline read, "RELATIVES CLAIM YOUNG WIFE MARRIED HUSBAND FOR HIS MILLIONS."

Dillon sighed and said to himself, "The inflammatory facts are being fed to the newspapers and that is not going to bode well for Dani's chances."

After lunch, Dillon decided to kick the issues over with his good friend and partner, Phil Burnam. Phil had a large corner office that was decorated with expensive antique furniture. His desk, built out of solid black oak, dominated the room. One wall was all glass and in front there was a large sofa and four over stuffed easy chairs placed in a circle surrounding a coffee table. Phil Burnam was on the telephone when Dillon stepped into his office but when he saw Dillon, he waived for him to come in and sit down.

Dillon dropped his bigger than needed frame into one of the easy chairs and waited. When Phil's telephone call ended, he came over and sat next to him on the sofa. Dillon had brought the most

recent newspaper article, handed it to Phil and said, "Our next client if we want it. The fees could be hefty."

Phil read the article's headline and when he saw Santa Barbara County he looked up and said, "You've been pretty lucky up there, but do you really want another big case right now?" He knew that Dillon had been handling a series of difficult cases and had not taken a vacation since his wife died.

"It keeps me busy," Dillon replied. "And anyway, I could use the money. I'm pretty tapped out and you know our system here. Most of what you earn is what you bring into the firm. And Dani Germain can certainly afford to pay our bills."

They both sat in silence for a moment. Phil really wanted Dillon to ease up and relax but he also knew he really did need money. After a moment he smiled and got up from the sofa and walked over to a counter and opened the drawer and pulled out a bottle of Macallan scotch. Phil was not high on scotch but he kept it there for his friend and partner. "Well Dillon, if you're gonna take the case, we can at least start out with a cheer," he said. As friends often do, they sat sipping scotch for the next hour or so and talked about the firm politics.

Paul Craft was on his way to lunch when he got a call from an estate planning attorney in Los Angeles. He had called a dozen lawyers after the lawsuit had been filed against Dani Germain looking for a trial attorney to defend her. Paul Craft had been Dani Germain's lawyer for over fifteen years and he vividly remembered when she called him some ten years back and asked if he could help revise a trust and will for Charles Niven, one of her clients. He was a small single practitioner who handled divorces, small wills and contract disputes. But when it came to sophisticated estate planning with trusts, he was way out of his league.



## THE BENEFICIARY

He knew he should have said no when Dani Germain called, but he wanted to help and that's when everything started going wrong. He had called a lawyer friend who did estate planning and the lawyer had faxed him a master form for a trust amendment which he explained is what is used when major changes are made. Dani Germain had brought to his office several pages of notes of the changes Charles Niven wanted to make. They spent most of the afternoon going over the changes and Paul Craft used the master form to create what he entitled the "Amendment to the Charles Niven Family Trust." Because of this, six months or so later he found himself under subpoena to testify before the Santa Barbara Grand Jury in an investigation by the District Attorney.

"Good news," the lawyer had said when Paul Craft took the call. "We've asked around and it looks like Dillon Clark is the best man to defend the trust. Send him whatever you have to review." The lawyer gave Paul Dillon's address and Paul sent out a package of materials later that day.

Although Paul Craft wasn't a trial lawyer and he didn't know who Dillon Clark was, he still felt relieved. He knew that both he and Dani Germain, as he had known her for years, were on the hot seat because Charles Niven had made her a major beneficiary and his trustee. Paul Craft's instincts were good. While he sensed trouble, he knew so little about how trusts operated that he didn't even know the things he really did wrong.

"God, it's amazing the things people do that can screw up their lives," Paul Craft said to himself with a feeling of foreboding helplessness.

Pete Dawson had been the District Attorney of Santa Barbara County for over twenty years and recalled with considerable bitterness the decision by the Grand Jury not to indict Dani Germain.

As he sat in his office, Pete Dawson recalled the strange telephone call he had received from a local Santa Barbara minister. The minister expressed concern that one of their members may have come under the influence of a local real estate agent. The minister explained that the church member, Charles Niven, was widowed and very wealthy and had just recently changed his trust to make the real estate agent a beneficiary and his trustee. The minister also explained that he had received an anonymous note in the mail which said, "YOU NEED TO CALL CHARLES NIVEN AND PROTECT HIM FROM DANI GERMAIN."

When the minister called Charles Niven's home, the real estate agent, Dani Germain, answered and told him "Charles is not feeling well." The minister knew Dani Germain because Charles Niven had escorted her to church on several occasions so he decided to ask whether she knew anything about Charles making changes to his estate plan. After a brief pause, she replied, "It's none of your business," and hung up.

Pete Dawson later learned that other members of the church had tried to call Charles Niven, who was then in his eighties, but each time Dani Germain had answered the telephone and gave some excuse. This was the primary reason he had decided to conduct a Grand Jury criminal investigation.

When the investigators from the District Attorney's office tried to talk to Charles Niven, Dani Germain or Charles' sister, Alma Jensen, they were told to mind their own business. The investigators did manage to locate a recorded Power of Attorney that Charles Niven had given to Dani Germain in her capacity as trustee which showed a return address of Paul Craft, an attorney in Ventura.

The District Attorney's lead investigator was Chris Donaldson. He was a little over six feet tall with a huge burly body and spoke with a deep gravelly voice. He was a retired Army Master Sergeant and had been with the District Attorney's Office for ten years.

When he called Paul Craft's office to make an appointment the attorney answered the phone himself.

"Mr. Craft, I'm an investigator with the Santa Barbara District Attorney's Office. We're conducting an investigation and want to ask you some questions about Charles Niven," Chris Donaldson had explained.

Paul Craft hadn't heard much about Charles Niven since he helped revise his trust a few years ago but knew it must have something to do with Dani Germain. "Well, what can I do for you," he asked.

It was agreed that Chris Donaldson would meet Paul Craft at his office in Ventura that afternoon. Before he arrived at Paul Craft's office, he called the Ventura County Bar Association office and learned that Paul Craft was primarily a divorce lawyer but also did some real estate and contract work for local businesses. He also secured a subpoena for any records Paul Craft had regarding Niven's trust.

When Chris Donaldson arrived, Paul Craft escorted him into his office. There was a reception desk out front but no one was present. Chris Donaldson handed Paul Craft the subpoena before they even sat down. This is an old trick to throw people off guard and it certainly had that effect on Paul Craft.

Paul Craft stared at the subpoena for a good thirty seconds before he spoke. He of course had issued subpoenas for records himself but it was quite another matter to get one yourself in a criminal investigation. He finally licked his lips and said with a half-hearted smile, "What's this all about?"

Investigators rarely inform witnesses what they are investigating and Chris Donaldson replied, "As I said on the phone, we are looking into the financial affairs of Charles Niven. We know you did a Power of Attorney for him giving Dani Germain authority to handle his finances as trustee so, as the subpoena says, we want any documents you have pertaining to Niven."

“I really didn’t do much,” Paul Craft said in a hurry. “Dani Germain had been a client when she was doing real estate and she asked me to help revise a trust for one of her clients. She told me what he wanted and I did a major amendment for him.”

Paul Craft got up from his desk and walked over to a filing cabinet. After shuffling through some files, he pulled one out and said hurriedly as he handed it to Chris Donaldson, “This is the trust. I have never seen Mr. Niven since he signed it.”

Chris Donaldson carefully read the trust and the other papers in the file. He knew from experience that the whole thing did not pass the smell test. It did not take a lawyer to see that Dani Germain was a big time winner with the new trust changes. Not only was she appointed the trustee while Charles Niven was still alive, but she also got twenty-five percent of the estate on his death. But what caught his attention most was a clause that said Charles Niven could not modify or cancel the trust without Dani Germain’s consent. The clause read:

“Modification of Trust Terms: Notwithstanding any other provision of this Trust, Trustor expressly declares that the Trust can only be modified or cancelled with the advance written consent of the Trustee.”

After reading the trust, Chris Donaldson asked, “Was it your idea to restrict Mr. Niven’s ability to modify his own trust?”

“I don’t know whose idea it was,” replied Paul Craft. “I prepared the trust from the notes Dani Germain gave me.”

“Did you consider Dani Germain your client when you did this trust amendment?” Chris Donaldson asked.

Paul Craft fidgeted in his chair a little before he said, “Charles Niven was my client.”

“Did you ask him if he wanted his ability to modify the trust to be restricted?” Chris Donaldson asked with an obvious look of disbelief on his face.

“Well, I think I talked to him about it the day I went to his house to sign the trust,” Paul Craft said.

“Wait a second. I don’t think I understand,” Chris Donaldson said with an incredulous look. “Are you saying that you only spoke with Charles Niven the day he signed the trust?”

“Well, ah, yes,” Paul Craft answered.

Looking even more aghast, Chris Donaldson asked, “So what did Mr. Niven say when you asked him?”

“If I recall right, he just nodded and said, ‘Dani’s a good woman.’ That’s what he wanted to do and it was his estate so I didn’t pursue it further,” Paul Craft answered.

The District Attorney of Santa Barbara, Pete Dawson, was a very tall man by any standard. He was almost seven feet tall and had been a basketball player in his college days. He had put on considerable weight over the years and now was pushing three hundred pounds. As he sat in his office in the old historical area of Santa Barbara, he thought back to the Grand Jury investigation and suddenly slammed his fist down on his desk and said to himself, “It’s about time that bitch gets caught.”

Pete Dawson had received a telephone call from a local attorney, Marvin Stein, who he knew only casually. He was a well known local plaintiff’s lawyer but because he never handled criminal matters the two had never actually met. Marvin Stein told him he was filing a lawsuit to set aside the Charles Niven trust and to remove Dani Germain as the trustee and beneficiary. He explained that he knew that the District Attorney’s Office had conducted a Grand Jury investigation over the trust some ten years ago and

asked if he could obtain copies of any of the reports from the investigators. Pete Dawson was sympathetic and said he would see what could be released.

After the telephone conversation, Pete Dawson walked out to his secretary's area. His secretary, Pauline Brown, had heard him when he slammed his fist on his desk. She had been with him for over fifteen years and was used to his fits of anger. "What's bugging you today?" she asked.

"Pull the old Charles Niven investigative file and send a copy to Marvin Stein. I think his office is on State Street. Anyway, he's going to try to set aside the Charles Niven trust. Remember, that's the one where the Grand Jury wouldn't issue an indictment against Dani Germain." A Grand Jury investigation is supposed to be secret but in this case he felt justified in making the file public. He had believed for years that Dani Germain was a con artist and he was going to make sure she didn't escape twice.

After his secretary retrieved the Charles Niven investigative file, Pete Dawson flipped through the papers and the Grand Jury reporter's transcript. When he was satisfied that it was all there, he reached over and grabbed his telephone and buzzed his secretary. "Pauline, get me Marvin Stein on the phone."

When Marvin Stein came on the line, Pete Dawson said, "Marvin, Pete Dawson here. Listen, I want to help so we're sending over the Grand Jury material. Everything's there so use it in good health."

"Thanks Pete," Marvin Stein replied. "I owe you one."

A few weeks later when Marvin Stein filed the lawsuit in the Santa Barbara Superior Court, Pete Dawson had his secretary go to the clerk's office and get a copy. He read the complaint over in detail and with the material he had given Marvin Stein, it sounded pretty grim for Dani Germain. Even after ten years, the case still irritated him. He grimaced when he recalled how she and Charles Niven, who by then was in his eighties, had ran off to Las Vegas and got

married just after they testified before the Grand Jury. In a criminal proceeding, a spouse cannot be forced to testify against the other spouse and he had no doubt that was the reason for the marriage.

Pete Dawson buzzed his secretary and said, "Pauline, send a copy of this complaint to the reporter covering the courts for the Gazette." So much for keeping Grand Jury matters confidential he thought to himself.

After his meeting with Phil Burnam and a few glasses of Macallan scotch, Dillon decided to go ahead and represent Dani Germain. The money would be good and free time just made him think of his wife.

Dillon had Jeannie call Dani Germain and they met the next day. She signed a fee agreement which, as is standard with almost all law firms, laid out the firm's hourly rates. Dillon's rate was four hundred dollars an hour and he billed his paralegal at one hundred and fifty and associates at two hundred and fifty. Dani Germain gave Dillon a retainer check drawn on the trust's account for fifty thousand dollars.

They talked about the issues and how it will be important to prove that Charles Niven was competent and that he knew exactly what he wanted to do when he signed the modified trust. Dani said she would bring in the names of Charles Niven's doctors and she thought she still had the notes made in the weeks before Paul Craft made the changes. She also promised to bring in Charles' sister, Alma Jensen, who would give Dillon the best evidence that she and Charles Niven really loved each other. Dani explained that Alma Jensen lived with Charles during the time he first amended his trust and traveled with them after they were married.

It appeared to Dillon that Alma Jensen was going to be a critical witness and he put a big star by her name on his list of potential witnesses.

