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The Cyanide Canary

**BEYOND
REASONABLE
DOUBT**

**ROBERT
DUGONI**

 **THOMAS & MERCER**

This is a work of fiction. Names, characters, organizations, places, events, and incidents are either products of the author's imagination or are used fictitiously. Otherwise, any resemblance to actual persons, living or dead, is purely coincidental.

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Published by Thomas & Mercer, Seattle
www.apub.com

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ISBN-13: 9781662517990 (hardcover)
ISBN-13: 9781662500220 (paperback)
ISBN-13: 9781662500237 (digital)

Cover design by Jarrod Taylor
Cover images: © Katsiaryna Chumakova / Shutterstock; © Greens87 / Shutterstock

First edition

*To my wife, Cristina, for giving me the best life a husband
and father could ever ask for. You deserve all the credit.*

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It is better to risk saving a guilty person than to condemn
an innocent one.

—Voltaire

Prologue

Five Years Ago
Seattle, Washington

Erik Wei did not choose the South Lake Union restaurant for its eclectic ambiance, nor for the excellent food, nor even for its location—walking distance from work; he chose the restaurant because it was popular, which would ensure a crowd, even on a weeknight.

He chose it because he'd feel safe.

He made an eight-thirty reservation for two. Then he scanned his pass in the secure building lobby, registering the exact time he left the office. Once outside, Wei walked several blocks in the comfortable, seventy-degree temperature before he pressed the send button on his cell phone and deployed his text bomb to Jenna Bernstein, his CEO at Ponce de León Restorative Technology. He didn't want to be anywhere near the office when she imploded.

Wei worked as chief scientist at PDRT, one of the dozens of biotech companies centered in South Lake Union. He'd earned his PhD from the University of Washington in biotechnology and nanotechnology and had fulfilled his desire to work in “the neighborhood Paul Allen built.” Allen, the deceased Microsoft cofounder and *Star Trek* fan, had formed Vulcan Inc. and used some of his billions to demolish old buildings and develop a state-of-the-art office and residential area, which attracted innovative start-ups and research institutions that might just change the world.

PDRT sat atop the list.

Wei's work cell phone buzzed. A text.

Where are you?

His text bomb had landed. Bernstein. Curt. Did not sound happy.

He did not reply. His text had been clear about where he would be.

He tried to curb his imagination. He half expected to hear tires screech and see the black Escalade speed down the block and skid to a stop alongside him. PDRT security would jump from the car, hustle him inside, and whisk him away, never to be seen or heard from again.

But that only happened in the movies; didn't it?

He picked up his pace.

In his text, he had told Bernstein his concerns and his intentions, but he also gave her the chance to meet, should she have something to change his mind. She deserved that much. Bernstein had given her blood, sweat, and tears to PDRT, and she had given Wei's career a start.

She'd meet him at the restaurant.

He'd given her little choice.

If she didn't, he'd speak with the regulatory agencies. It would cost him his job, and he'd likely be sued for breaching the strict confidentiality clause in his employment contract, but he no longer cared. PDRT wasn't developing an app with bugs that could cause users minor inconveniences. PDRT sought to revolutionize medicine by commercializing tissue nanotransfection (TNT). PDRT's product, the LINK, had the potential to inject genetic material directly into a person's skin cells, thereby altering them, without invasive medical procedures. The applications were endless—curing or alleviating the world's deadliest diseases and regenerating failing organs. Heretofore, *Star Trek* science-fiction fantasy.

Then again, flip phones and MRI machines were once *Star Trek* science-fiction fantasies. Technology had made those fantasies realities.

PDRT boldly touted the LINK as the "Fountain of Youth," and the device had generated unprecedented excitement from pharmaceutical companies who desired to sell it, insurance companies hoping to dramatically cut their insureds' medical costs, independent investors looking to make millions, and the US military, which sought to quickly cure its wounded. Just twenty-two years of age and a new University of Washington graduate, Jenna Bernstein had procured \$12 million during PDRT's first round of financing. The second round she received \$150 million, the bulk coming from biotech and nanotech entrepreneur Sirius Kohl. For his financial commitment, Kohl became PDRT's COO and

CFO and a 48 percent owner. Bernstein was currently in the process of raising an additional \$450 million to bring the LINK to market.

There was just one problem.

The LINK didn't work.

Not as PDRT advertised.

Not even close.

It remained *Star Trek* science-fiction fantasy.

After eight years as PDRT's chief science officer, Wei had caught wind of Jenna's representations to this round of potential investors, and he could no longer stomach the "fake it until you make it" start-up mentality.

He entered the restaurant to the sound of crackling techno music from overhead speakers and the cacophony of animated voices from the mostly twentysomething crowd seated at metal tables or gathered at the bar. He smelled the familiar grilled shrimp quesadillas, smoked brisket enchiladas, and his favorite—tequila-lime grilled chicken. But he wouldn't eat tonight. His stomach wouldn't allow it.

The hostess—they all seemed young since Wei had celebrated his fortieth birthday—greeted him by name. "Good evening, Mr. Wei. Another late night?"

"Aren't they all?" he said.

"Seems that way," she said. "Will it just be you, again?"

Ouch. Forty and alone. He'd aged twenty years working ridiculous hours under intense pressure. "No. Tonight there will be two."

"A date?" A faint smile—or expression of doubt—creased the woman's lips.

"It's a working dinner."

"Of course. Right this way." She gathered two menus and led him into the lively restaurant, the tables nearly full. She appeared to be headed for the back. Wei stopped her at a table in the center of the dining area, though it was not yet cleared of dirty plates, used napkins, and silverware. "What about this table?"

"It's quieter in the back."

"No. This will be fine," he said.

"I'll get the busboy to clean and set it," she said.

Wei chose the chair facing the restaurant's picture window, which provided a view of the street. The hostess handed him the menu as a

busboy quickly cleared the table, and a waitress set fresh silverware and asked if he cared for a cocktail.

He knew that Andy Saiki, the head bartender, worked tonight. Seemed he knew all their names and schedules. “Have Andy make me an old-fashioned,” Wei said. “Tell him it’s for me.”

The waitress departed. Wei checked his watch: 8:23 p.m. The butterflies in his stomach fluttered again. He told himself he was doing the right thing.

Promptly at 8:30 p.m., the black Escalade stopped outside the restaurant windows. Wei sipped his drink. The head of PDRT’s security team stepped down from the front passenger seat and looked up and down the block before opening the back door. Jenna Bernstein exited, seemingly all legs. She considered her Apple Watch, said something to her security officer, and entered the restaurant’s front door. Several people seated at tables and standing at the bar turned their heads, recognizing the tall woman who’d recently graced the covers of prominent business magazines and been touted as “One to watch under thirty” and “One of the world’s most influential people,” but who rarely ventured out in public.

Wei stood as the hostess guided Bernstein to his table. He didn’t want the CEO, nearly six feet tall in flats, to look down on him. She was dressed in blue jeans and a crisp white blouse. She carried herself as if she were much older than her peers—her demeanor decidedly serious and seemingly impervious to frivolity.

Bernstein gave Wei the cobalt-blue, ice-cold glare PDRT’s employees said could cut diamonds before she sat across the table from him. The waitress offered a menu. Bernstein waved it away. She eyed Wei’s drink, then said to the young server, “Water. With a lemon. No ice.”

The waitress looked to Wei. He shook his head and handed her his menu.

Once alone, Bernstein wasted no time. “What is this about, Erik?” she asked, her voice controlled.

Wei cleared his throat. She knew what it was about. “I have concerns PDRT is rushing the LINK to market prematurely,” he said diplomatically. Wei had told himself he wouldn’t let Bernstein intimidate him. He was older by a decade and, because he’d started at the

company's inception, he knew the LINK's capabilities better than anyone. He'd poured his own blood, sweat, and tears into the technology, and his reputation as a scientist was riding on the product's success. If he didn't get the concessions he sought, he'd quit. He wasn't about to let the LINK's inevitable failure taint his career.

"I read your text. Tell me why."

For the next half hour, Wei told Bernstein his specific concerns. She listened quietly, her intense gaze never wavering, not even for a moment.

"I can't not say something," he concluded. "People's lives could be at risk."

Bernstein sipped her water and set down the glass. "You're PDRT's chief science officer and chief biomedical engineer. If the LINK is not progressing to your satisfaction, why didn't you tell me about this before?"

He stifled an urge to scream. "In-house, we discuss what we are *striving* to achieve. I wasn't privy to your discussions with outside investors regarding the LINK's development. I only recently learned what you were representing to this third round of investors. Nothing, at present, can perform to the level you have represented. It is simply not yet scientifically possible. We may get there. I hope we do. But the LINK is not there, not at present. Far from it."

"Technology is constantly evolving. Look at the Apple iPhone and watch. Today's dreams become tomorrow's realities."

It was one of her sales pitches. "Yes, but the comparison isn't apples to apples. We're making representations that give people with illnesses the false belief they're being treated when they are not."

Bernstein sat for several seconds without speaking. Wei had done this dance before, in her office and in his lab. He'd spoken his mind. Now it was a game of chicken. He waited.

Bernstein let out a sigh and broke off her gaze. "Why didn't I know about this?"

Her words stunned him. "You didn't know?"

It seemed unlikely. Then again, given the strict compartmentalization at the company, another of PDRT's paranoid security measures, Wei didn't put it past Sirius Kohl to keep the LINK's progress, or lack thereof, under wraps from the sales team.

But from the CEO?

“I understood the technology was evolving and believed we were moving forward. I didn’t know we were so far from being commercially viable,” she said.

She sounded wounded and sincere. Could Kohl have misled her?

“What do you recommend?” Bernstein asked.

Wei breathed a sigh of relief, though still cautious. He knew of Bernstein’s marketing genius. If anyone could save the company, she could. But this was an all-or-nothing proposition that could derail the multibillion-dollar idea.

“Pull back and tell this round of investors, all our investors, the truth. Tell them the dream is alive but requires more research and testing before it can go to market. Tell them we remain committed to the technology. Tell them the LINK will do all we’ve represented, but the technology is not yet there. We need more time for research and to conduct human trials. Investors won’t want to jeopardize lives. They will appreciate that we’re being prudent.”

“That’s the problem. This round of financing is critical. I’ve already raised close to three hundred million dollars in commitments. If I go back to those investors now . . . it will kill the deal. It will kill PDRT. We need to give our investors something more than a dream to make them believe our product will be commercially viable.”

“It’s not.” Wei shook his head. Part of him empathized with the young entrepreneur. PDRT was her baby. “I’m sorry, Jenna. To go to market now would be morally and ethically unconscionable.”

Bernstein sat back from the table. For the first time Wei could recall, she looked stricken, vulnerable. She’d always been poised and self-confident, the picture of calm no matter the turbulence of the waters in which she swam. She sipped from her glass and set it down.

“Who else have you told of your concerns?” she said.

“No one, yet,” he said. “I hoped you would do the right thing.”

Part I

Chapter 1

Seattle, Washington Present Day

To those seated in the packed courtroom gallery, the jurors looked attentive, unbiased, and open to what Keera Duggan was about to say in her closing argument.

Keera knew better.

She'd spent six weeks reading each juror's facial expressions and body language until she knew each intimately. Juror number six, the housewife from Renton with two teenage daughters, smirked, still skeptical. Juror number five, the mother of four, rarely met Keera's gaze. She also had her mind made up. Juror number nine, the thirty-three-year-old mechanic from Belltown, glanced at Keera's client with an expression of disgust and disbelief, as if to say, *You might not be guilty, but, man, you are a stupid son of a bitch.*

Which meant Keera still had her work cut out for her. The evidence had gone in as she'd wanted. Her direct and cross-examinations had been better than good. Some had been excellent, even by her high standards.

All that was left was to give her closing argument.

Keera ignored those seated in the gallery, the judge, and the prosecutor. Her closing would be between her and the jurors. She brought a singular focus she had honed playing competitive chess, her attention always on the next move. Her father had taught her to think ahead. "Your next move is always the most important."

At the lectern, she thanked the jurors. "The judicial process could not go forward without a jury of the defendant's peers. This is the legal system upon which our country was founded, a system in which Mark Strickland comes before you presumed innocent. A clean slate. It was the

State's job to prove, with solid evidence, Mark's guilt, *beyond reasonable doubt.*"

She strayed to the jury railing and looked juror six in the eye, as if to say, *But you didn't give him a presumption of innocence; did you?* The woman's smirk faded. Keera stepped down the row. "When first asked to defend Mark, I realized I was looking at his case through my eyes and my life experiences."

She paused and scanned the jurors. "That was wrong."

"For you to truly be a jury of Mark's peers, you must see this case not through your eyes and experiences but through the eyes of an eighteen-year-old young man, a college freshman away from home for the first time and living in a fraternity. Each of you agreed that you could do that. You each agreed that you would see this through Mark's eyes." Keera looked at juror five. This time, the mother of two sons met Keera's gaze. She was willing to listen.

Keera stepped to counsel's table and deliberately put a hand on her client's shoulder to let the jurors know: *This young man was not to be feared. He was not a pariah.*

"Mark had never rushed a fraternity. He had never been much of a partyer." She pointed to the witness stand. "Members of his fraternity sat in that very chair and told you how they had hazed Mark, a pledge. They told you the amount of alcohol Mark and his fellow pledges were forced to consume before the young women arrived."

She spoke to juror nine, the mechanic. "Mark and his fellow pledges wanted to become fraternity members. I know many believe the fraternity and sorority systems are antiquated and Neanderthal, that the system promotes an unhealthy perspective of young women and young men. But the system exists, through no fault of Mark's."

Keera paced and spoke of stories of hazing and of alcohol poisoning, even deaths, all around the country, and about young women being mistreated. She increased her volume to gain attention. "While you may be outraged and offended, it is not your job *in this case* to send the university system a message that you disagree with the presence of fraternities and/or sororities on college campuses. The university is not on trial here. The Greek system is not on trial here. Mark is on trial."

She moved to the middle of the jury box, emphasizing her words. "Your job here, the job you swore to do, is to decide whether the State

has proven, beyond reasonable doubt, that Mark had intercourse with Beth after she asked him to stop.”

Keera heard the hum of the 109-year-old building’s air-conditioning system and smelled the buttery aroma of popcorn permeating from the ground-floor snack shop. Familiarity gave her comfort. “Beth Mendoza told you what she *believes* happened, but, given the amount of alcohol she said she also consumed that night, her recollection is not trustworthy.” Keera read from a sheet of paper—the daily court transcript: “She testified, ‘things are a bit hazy.’”

Keera lowered the transcript and tapped the railing with one finger. “So, what do we know *for certain*? What do we know to be *fact*?”

For the next hour, Keera went through the evidence, gently picking apart Beth’s testimony and highlighting the testimony of others present at the party who said Beth went willingly into Mark’s room. Then she said, “We don’t know what happened *in* Mark’s room. Some of you, I’m sure, wanted to hear from Mark. You wanted him to tell you what happened.” Keera pointed to the bench. “But as Judge Constantino advised, every defendant has a constitutional right not to testify, and you cannot infer anything from Mark’s decision not to testify, certainly not that he is guilty.

“So, I ask, ladies and gentlemen, have you heard evidence, beyond reasonable doubt, that Mark and Beth Mendoza had intercourse *after she told him to stop*? Or did two intoxicated college students—adults—have consensual intercourse, and one of them regretted it?”

Thirty minutes later, Keera had finished. The State took ten minutes to offer rebuttal. Judge Constantino read the jury instructions, then dismissed the jurors to deliberate. Keera, Mark Strickland, and his parents returned to a conference room at Duggan & Associates, where Keera’s sister Maggie had ordered sandwiches and salads, as she had each day of trial.

“Your closing was brilliant.” Mark Sr. bit into half a turkey-and-cranberry sandwich and munched on potato chips. The other two sandwiches on the table remained unwrapped. Mark Jr. paced near the conference room windows, looking pained. He flexed his hands as if to restore circulation. His mother sat quietly, gaze fixed on the tabletop, disappointment etched on her face.

“There’s going to be anti-fraternity sentiment,” Mark Sr. said. “I heard the same crap when I was in college. Everyone wants to condemn the Greek system, but no one wants to discuss the housing that system provides, the school spirit it fosters, the lifelong friendships and business relationships it forges.”

Keera had suspected Mark Jr. rushed the fraternity at his father’s urging. She also knew Mark Sr. hired her because she had successfully defended Vincent LaRussa for the murder of his wife. The senior Strickland believed a female attorney would play better to the jury.

Mark Jr., for his part, seemed like a good kid, truly contrite about what had happened. He steadfastly maintained he did not rape Beth Mendoza. He steadfastly maintained their sex had been consensual.

But Beth Mendoza sounded just as sincere that she had asked him to stop.

Mark Sr. placed his sandwich down and wiped mayonnaise and cranberry from the corners of his mouth with a napkin. “I’m saying this case is about much more than whether two young people willingly engaged in sexual intercourse.”

“Then you missed the point of my closing,” Keera said, not pulling her punches. “That is all this case is about.”

She found the boy’s father arrogant and insolent. But being a defense attorney didn’t always give her the luxury of liking her clients.

“Right.” Backtracking. “But everyone knows what happens in college.” Mark Sr. gulped down his soft drink, then spoke as if out of breath. “People experiment with alcohol, smoke a little weed, and have sex. We all did it. It’s a part of growing up.”

“Rape is not a part of growing up. And it is not sex. It’s a violent criminal act,” Keera said.

“Right,” Mark Sr. said. “But Mark didn’t rape her. I just—”

“Dad.” Mark Jr. stopped pacing. He turned to the table and beseeched his father. “Let it go, okay? Please. Just . . . let . . . it . . . go.”

His mother looked like she had a stomachache. A tear rolled down her cheek.

Keera departed the conference room to catch up on other cases she had ignored, but also to get away from Mark Sr. This was not a case she had wanted, but Ella, her sister and the managing partner of Duggan & Associates, made it clear that while Keera’s defense of Vince LaRussa

had generated a lot of publicity and brought in new cases, helping the firm to claw a little higher out of its financial hole, it still remained in the red. Duggan & Associates no longer had their father's reputation to pull clients through the firm's doors. For decades, the Irish Brawler's victories in the courtroom spread his notoriety by word of mouth. But Patsy's drinking had caught up to him, and he was no longer the trial lawyer he had once been—though he could still turn it on for short bursts, like his brilliant cross-examination of Detective Frank Rossi in the LaRussa trial.

At present, Keera was Duggan & Associates' trial attorney, and as Ella liked to say about the LaRussa case, "One case does not a reputation make."

Nearing the day's end, Judge Constantino's clerk called. Keera expected the clerk to advise that the judge had sent the jury home, and it would resume deliberating in the morning. Instead, the clerk said, "The jury has reached a verdict."

Keera retrieved the Stricklands from the conference room, and they hurried from Pioneer Square back to the King County Courthouse. Mark Sr. peppered her with questions about what such a quick decision could mean. She dodged answering. A quick verdict was usually not good for the defense.

Inside the courtroom, the attorneys for the State and Beth Mendoza sat quietly, waiting. Judge Constantino entered the courtroom and retook the bench. Keera thought he looked harried, like he, too, hadn't expected the verdict this quickly. He asked the bailiff to bring in the jury. Keera felt the familiar rush of adrenaline. She read the jurors' facial expressions and their body postures.

She knew what was to come.

Judge Constantino spoke to the jurors. "Has the jury reached a verdict?"

Juror number six stood—not a surprise the jury chose her to be foreperson. "We have, Your Honor."

"Please hand the verdict to the clerk."

The clerk then gave the document to Judge Constantino, who briefly studied the form before handing it back.

"The defendant will rise," the judge said.

Mark Jr. looked stricken. He whispered to Keera, “I don’t think I can.”

Keera helped her young client to his feet. She told him to grip the table to keep from flexing his hands.

“The foreperson may read the verdict,” Judge Constantino said.

The woman cleared her throat, then sipped from a glass of water and set it down. Seconds felt like minutes. “In the matter of the State of Washington versus Mark Thomas Strickland Jr. as to the count of rape, we the jury find the defendant not guilty.”

Behind her, Mark Strickland Sr. let out an emphatic “Yes!” and pounded his fist on the railing, drawing a rebuke from Judge Constantino. Mark Jr.’s shoulders slumped and he dropped back into his chair, tears streaming down his cheeks. Across the courtroom, Beth Mendoza also sobbed, but for a wholly different reason, and was consoled by the prosecutor and her parents.

Keera diverted her attention from the young woman, not wanting to see her pain.

Judge Constantino concluded matters and dismissed the jury. Juror number nine raised a fist to Mark. The young man ignored it. His father returned the gesture.

“Can we talk? In private?” Mark asked Keera, wringing his hands.

Keera shook her head. “I don’t think this is—”

“It’s important.”

Keera warded off Mark Sr., who was clearly worried as to what his son might say, or admit, in private. She led her client from the courtroom to a familiar, windowless room, shutting the door. The room smelled of stale coffee.

Mark Jr. cleared his throat. “Thank you,” he said.

“You’re welcome, Mark.”

She waited. Mark looked worn out, troubled. He wept. “My father told me not to say anything to anyone.”

“I think that’s good advice, Mark,” Keera said.

“But I feel terrible about what happened—”

Keera raised her hand to stop him. Had Mark Jr. intended to rape Beth Mendoza? She doubted he did. But had Beth said no and Mark persisted? She also suspected that to be true, and that it had eaten at Mark’s conscience every day.

Her father told her a defense attorney's job was not to find guilt or to exonerate. That was the jury's job. Trials were not about determining the truth, only what the evidence could support. Her job was to ensure the defendant's constitutional guarantees were respected. All well and good in theory. Seeing the result in practice, as here, was another matter altogether. A former prosecutor, Keera wrestled with the concept—and with her conscience. She still had to go home and live with herself. She wouldn't soon forget Beth Mendoza's sobs.

Mark Jr. also had to live with himself.

He'd been wrongly absolved, and guilt could be as crippling as serving time behind bars. Mark wanted to unburden his soul and to have someone, other than his father, tell him his sins were forgiven.

It wasn't going to be Keera. Absolving sins was not her job.

They'd both have to live with this verdict.

"I'm not your priest or your preacher, and I'm not your psychiatrist. Get counseling, Mark," she said. "Find someone to help you reach some resolution. I did my job. I have my own conscience to deal with."