

THE

TENTH JUSTICE

BRAD MELTZER



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For Cori, who changed my life the moment she entered it

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In a capital full of classified matters, and full of leaks, the Court keeps private matters private.

Reporters may speculate; but details of discussion are never disclosed, and the vote is revealed only when a decision is announced.

—THE SUPREME COURT HISTORICAL SOCIETY

Equal Justice Under Law

Five votes can do anything around here.

-WILLIAM BRENNAN
Supreme Court Justice

CHAPIER

1

BEN ADDISON WAS SWEATING. LIKE A PIG.

And it wasn't supposed to be this way.

In the past three hours, Ben had read the current issues of *The Washington Post, The New York Times, Law Week*, and *Legal Times*. Last night, before going to bed, he'd committed to memory every major Supreme Court case from the previous session. He'd also made a list of every Supreme Court opinion Justice Mason Hollis had ever written, and, to be safe, he'd reread Hollis's biography. No matter what the subject, Ben was convinced he was prepared for any topic Justice Hollis might raise. In his briefcase, he had packed two legal pads, four pens, two pencils, a pocket legal dictionary, a pocket thesaurus, and—since he'd heard that Supreme Court clerks typically work straight through lunch—a turkey sandwich. Without question, Ben Addison was ready.

But he was still sweating. Like a pig.

As he stood outside the Supreme Court, a half hour early for his first day on the job, he was entranced by the gleaming white columns of the nation's highest court. This is it, he thought, taking a deep breath. It's finally here. Running his hand through his recently cut brown hair, Ben climbed the wide marble stairs. He counted each step, in case Justice Hollis was curious how many stairs there were. Forty-four, he told himself, filing the information on a mental index card.

Ben dragged open the heavy bronze doors and entered the building. A security guard who sat next to a metal detector said, "Can I help you?"

"I'm Ben Addison. I'm here to clerk."

The guard found Ben's name on his clipboard. "Orientation doesn't start for another half hour."

"I like to be early," Ben said with a smile.

"Right." The guard rolled his eyes. "Go straight down the hall and make your first left. It's the first door on your right."

Lined with marble busts of past chief justices, the stark white Great Hall was as impressive as Ben had remembered. A sly smile lifted his cheeks as he passed each sculpture. "Hello, Supreme Court," he whispered to himself. "Hello, Ben," he answered.

Ben pulled open the large wooden door, expecting to see an empty room. Instead, he saw eight other law clerks. "Brown-nosers," he muttered to himself as he sat down in the only empty chair.

As inconspicuously as possible, Ben sized up his new colleagues. He recognized three of the eight clerks. On his far right was a well-dressed man with stylish, tortoiseshell-rimmed glasses who had been the articles editor of the *Stanford Law Review*. To his left was a tall black woman who was the former editor in chief of the *Harvard Law Review*. Ben had met both of them at a national Law Review conference at Yale. As Ben recalled, the Stanford man was a former reporter for the *Los Angeles Times*, while the Harvard woman used to be an Old Masters expert for Sotheby's. Angela was her name. Angela P-something. Finally, seated next to Ben was Joel Westman, a fellow classmate from Yale Law. A political analyst, Joel had spent his pre–law school years as a White House speechwriter. Nice résumés, Ben thought. Struggling to appear casual, he smiled and gave friendly nods to all three clerks; they nodded back.

Ben nervously tapped his foot against the plush carpet. Don't worry, he told himself. It'll be fine. You're as smart as anyone else. But as well-traveled? As well-heeled? That wasn't the point. Remember your lucky underwear, he reminded himself. He had bought the now fraying pair of red boxer shorts when he was a freshman at Columbia. He had worn them on the first day of every class, to every midterm, and on every

important date. During finals, if he had exams on three consecutive days, the boxers would stay on for all of them. He had worn them throughout his three years at Yale and to every clerkship interview. Today's the day, he decided, that the lucky underwear comes through in the sacred halls of the Supreme Court.

A middle-aged man in a gray, pin-striped suit came in, carrying a stack of manila envelopes. He strode to the podium and counted heads. "I'm Reed Hughes," he said, solidly grabbing the sides of the podium. "On behalf of the Clerk's Office, I'd like to officially welcome you to the Supreme Court of the United States. At the risk of repeating information you're already familiar with, I thought it would be appropriate to tell you a little bit about what your next year here at the Court is going to be like."

Within seconds, four clerks pulled out pens and notebooks.

Pathetic, Ben thought, fighting the urge to take out his own notebook.

"As you know, each justice is permitted to hire two clerks to assist in the preparation of decisions," Hughes explained. "The nine of you starting today will join your nine co-clerks who started one month ago on July first. I realize that all eighteen of you have worked extremely hard to get where you are today. For most of your lives, you've been running a never-ending race to succeed. Let me tell you something I hope you'll take seriously. The race is over. You've won. You are law clerks of the Supreme Court of the United States."

"Did you get that down?" Ben whispered to Joel. "We're the clerks." Joel shot Ben a look. "No one likes a smart-ass, Addison."

"The eighteen of you represent the best and the brightest of the legal community," Hughes continued. "After screening thousands of applications from the country's top law schools, the justices of this Court selected you. What does that mean? It means your lives are forever changed. Recruiters will offer you jobs, headhunters will take you out to expensive dinners, and potential employers will do everything in their power to hire you. You are members of the country's most elite fraternity. The current secretary of state was a Supreme Court clerk. So was the secretary of defense. Three of our nine Supreme Court justices were former Supreme Court clerks, which means that someone in this

room has a pretty good shot at becoming a Supreme Court justice. From this moment on, you are the hottest property on the board. You're Boardwalk *and* Park Place. And that means you have power."

Easing back in his seat, Ben Addison was no longer sweating.

Hughes scanned his captivated audience. "Why am I telling you this? It's not so you can impress your friends. And it's certainly not to boost your ego. After dealing with clerks year after year, I know none of you has an ego problem. My goal is to prepare you for the responsibility you're about to encounter.

"This is an important job—probably more important than any job you'll ever have. For over two hundred years, the Supreme Court has steered our country through its greatest controversies. Congress may pass the laws, and the president may sign the laws, but it's the Supreme Court that decides the law. And starting today, that power is yours. Alongside the justices, you will draft decisions that change lives. Your input will constantly be sought, and your ideas will certainly be implemented. In many instances, the justices will rely entirely on your analysis. They'll base their opinions on your research. That means you affect what they see and what they know. There are nine justices on this Court. But your influence, the power that you hold, makes you the tenth justice."

Ben slowly nodded his head. He was mesmerized.

Hughes paused, carefully adjusting his glasses. "You are now charged with great responsibility. You must exercise it wisely. With that said, I know you'll take this commitment extremely seriously. If you have the right attitude, our clerkship program can change your life. Now, are there any questions?"

Not a single hand went up.

"Fine," Hughes said. "Then we can get you to your offices." As he distributed the envelopes, he explained, "Take the one with your name on it and pass the rest on. The envelopes contain your security card and your Court password. The card will let you into any Court entrance, while the password will get you on to your computer. Your secretary will show you how to log on. Any questions?" Again, not a single hand. "Good," Hughes said. "Then feel free to go to your office. The number is written on the front of the envelope." As the room emptied, Hughes called out, "If you have any questions, feel free to call me."

Ben headed for his office, the only one on the second floor. He had met Justice Hollis's former clerks there during his interview last year. Weaving his way back through the Great Hall, he raced toward the elevator. The elevator operator was an elderly woman with dyed, jet-black hair. Wearing a Court uniform that was too tight for her large frame, she worked a jigsaw puzzle on a small table outside the elevator.

"Second floor, please," Ben said. When the woman didn't respond, he added, "Ma'am, I'm trying to get upstairs. Can you please help—"

"Don't get in an uproar," she drawled, without looking up. "I'll be right with you." After finding a place for the puzzle piece in her hand, she finally looked up at Ben. "Okay, now, who're you here to see?"

"I'm clerking for Justice Hollis. I'm Ben Addison," he said, extending his hand.

"I don't care who you are, just tell me what floor you want to go to," she said as she walked into the elevator.

"Second," Ben said, dryly.

The second floor hallway was all marble, with red and gold carpet, but Ben barely noticed it. He was too busy looking for the room number that was written on his envelope. "Nice to see you, Justice Hollis," he said to himself. "Hi, Justice Hollis, nice to see you. How's everything, Justice Hollis? Nice robe, Justice Hollis—it fits great. Can I kiss your butt some more, Justice Hollis?" Finally, he saw room 2143. Outside the intricately carved mahogany doors, Ben wiped his hand on his pants hoping for a dry handshake. He grabbed the brass knob, opened the door, and stepped inside.

"I guess you're Ben." A woman in her late twenties peered over the newspaper she was reading. "Sorry you wasted the nice suit on me." Dressed in khaki shorts and a forest-green T-shirt, the woman tossed aside the paper and approached Ben, extending her hand. "Nice to meet you. I'm Lisa, your co-clerk for the year. I hope we don't hate each other, because we're going to be spending quite a bit of time together."

"Is the justice-"

"Let me show you our office," Lisa interrupted, pulling him into the room. "This is just the reception area. Nancy's out today, but she usually sits here. She's Hollis's secretary."

Lisa was petite with an athletic build, compact but elegant. A tiny

nose balanced out thin lips and blue eyes. Lisa opened the door to a smaller room. "Here's our office. Pretty crappy, huh?"

"Unbelievable," Ben said, standing in the doorway. The office wasn't large, and it was sparsely decorated, but the intricate dark wood paneling that covered the walls gave it an instant sense of history. On the right-hand side of the office were built-in bookcases, which housed the clerks' personal library. Stocked with volumes of cases, treatises, and law journals, the room reminded Ben of the libraries that millionaires have in cheesy movies.

On the back wall hung the room's only picture—a photograph of the current justices. Taken when a new justice was appointed to the Court, the official photograph was always posed the same way: five justices seated and four justices standing. The chief justice sat in the middle, while everyone else was arranged according to their seniority on the Court. The oldest justice sat on the far left; the newest justice stood on the far right. Although the photo was only six months old, the justices' identical black robes and stoic stares made the current portrait almost indistinguishable from the dozens taken in years past.

Arranged on the navy and gold carpet were two antique wooden desks facing each other, two computers, a wall of file cabinets, a paper shredder, and a plush but well-worn scarlet sofa. Both desks were already submerged under a mountain of paper. "From what I can tell, the desks are from the early colonial period," Lisa explained. "They might've been used by some old justices. Either that, or they're replicas from someone's garage. What the hell do I know about antiques?"

As he followed her into the cramped but sophisticated office, Ben noticed Lisa was barefoot.

"I guess the justice isn't coming in today?" Ben pushed aside some papers and put his briefcase down on one of the desks.

"That's right. I'm sorry, I was supposed to call you last night. Most of the justices take off for the summer. Hollis won't be back until next month, so it's as casual as you want." Lisa leaned on Ben's desk. "So, what do you think?"

Ben surveyed the room. "The sofa looks comfortable."

"It's average at best. But it's more comfortable than these old chairs." Darting to the side of one of the gray metal file cabinets, Lisa said, "This, however, is the best part of the office. Check it out."

Pulling the cabinet away from the wall, Ben saw eighteen signatures written in black marker. "So these are Hollis's old clerks?" he asked, reading through the names that covered half of the cabinet.

"No, they're the original Mouseketeers," Lisa said. "Of course they're the old clerks."

"When do we sign?"

"No time like the present," Lisa said, pulling a black marker from her back pocket.

"Aren't we eager?" Ben laughed.

"Hey, you're lucky I waited for you." With a flourish, Lisa wrote her name on the side of the cabinet. Ben signed just below and pushed the file cabinet back against the wall. "I guess you started in July?" he asked.

"Yeah. I wish I could've traveled more."

"That's where I've been," Ben said. "I just got back from Europe two nights ago."

"Bully for you," Lisa said as she flopped down on the sofa. "So give me your vital stats—where you're from, where you went to school, hobbies, aspirations, all the juicy stuff."

"Do you want my measurements too, or just my shoe size?"

"I can see the measurements," Lisa shot back. "Small feet, medium hands, average build, big ego."

Ben laughed. "And everyone said my co-clerk would be a stiff," he said, taking off his jacket. Ben had an oval face and a less-than-impressive jaw, but he was still considered handsome, with intense deep-green eyes and light-brown hair that fell over his forehead. Rolling up his sleeves, he said, "I'm from Newton, Massachusetts; I went to Columbia for undergrad and Yale for law school; last year I clerked for Judge Stanley on the D.C. Circuit; and I eventually want to be a prosecutor."

"Boorrrrrrring!" Lisa said, slouching back on the sofa. "Why don't you just give me your résumé? Tell me about yourself. Loves, hates, favorite foods, sex scandals, what your family's like. Anything."

"Are you always this nosy?" Ben asked as he sat on the corner of his desk.

"Hey, we're going to be living in this room for the next twelve months. We better start somewhere. Now, are you going to answer or not?"

"My mother is an executive for a computer company in Boston. She's the aggressive, street-smart power-mom who grew up in Brooklyn. My dad writes a liberal op-ed column for *The Boston Globe*. They both went to the University of Michigan and met in a sociology class. Their first conversation was a fight: My father went crazy when he heard my mom say that salary level had a direct correlation with intelligence."

"All right! Controversy!" Lisa said, sitting up straight.

"They get along really well, but we can't discuss politics in the house."

"So where do you fall politically?"

"I guess I'm somewhere between moderate and liberal," Ben said, drawing an imaginary line with his hands. "I'm the product of a bipartisan marriage."

"Any girlfriends?"

"No, I think my dad's pretty much narrowed it down to my mom."

"Funny."

"I live with my three best friends from high school."

"You ever been in love?"

"You ever been called intrusive?"

"Just answer the question," Lisa said.

"Only once, though I'm not sure I can call it love. After law school, I took a two-month trip around the world—Europe and Asia, Bangkok and Bali, Spain and Switzerland, everything I could see."

"I take it you like to travel."

"Very much. Anyway, in Spain, I met this woman named Jacqueline Ambrosio."

"How exotic. Was she a native?"

"Nope. She was a marketing consultant from Rhode Island. She was starting her travels in Spain, and I was at the end of my trip. We met in Salamanca, took a weekend trip to that beautiful little island, Majorca, and parted ways five days after we met."

"Please, you're breaking my heart," Lisa moaned. "And let me guess, you lost her address, could never find her again, and to this day, your heart aches for her."

"Actually, on my last day there, she told me she was married, and that she'd had a great time revisiting the single life. Apparently, her husband was flying in the next day."

Lisa paused a moment, then asked, "Is that story bullshit?"

"Not a bit."

"Wasn't she wearing a wedding ring?"

"Not when we were together."

"Well, then, it's a good story. But it definitely wasn't love."

"I never said it was," Ben said with a smile. "How about you? What's your story? Just the juicy stuff."

Lisa swung her feet up onto the red sofa. "I'm from Los Angeles, and I hate it there. I think it's the toilet of the great Western rest room. I went to Stanford undergrad and Stanford Law only because I enjoy being near my family."

"Boorrrrrrring!" Ben sang.

"Don't get your panties in a bunch. My dad is originally from L.A.; my mom's from Memphis. They met, and I swear this is true, at an Elvis convention in Las Vegas. They collect Elvis everything—plates, towels, napkin holders, we even have an Elvis Pez dispenser."

"They have Elvis Pez heads?"

"Some lunatic collector in Alabama put sideburns on a Fred Flintstone Pez, filed down the nose, and painted on sunglasses. My parents went nuts and paid two hundred bucks for it. Don't ask; they're total freaks."

"I don't suppose your middle name is . . ."

"You got it. Lisa Marie Schulman."

"That's fantastic," Ben said, impressed. "I've always wanted to scar my kids with a really funny name, like Thor or Ira."

"I highly recommend it. Being taunted throughout childhood is great for your self-esteem."

"Let me ask you this," Ben said. "Do you twirl spaghetti?"

Lisa raised one eyebrow, confused.

"I think there are two kinds of people in this world," Ben explained,

"people who twirl spaghetti on their fork to make manageable bites, and those who slurp it up, getting it all over themselves. Which are you?"

"I slurp," Lisa said with a smile. "And when I was little, I didn't eat anything white, so my mom had to dye my milk and my eggs with food coloring."

"What?" Ben asked, laughing.

"I'm serious. I used to hate the color white, so she used to make my milk purple and my eggs red. It was tons of fun."

"You used to cut the hair off your Barbie dolls, didn't you?"

"As soon as I pulled them out of the box," Lisa said proudly. "The little bitches asked for it."

"Oh, I can see it now," Ben laughed. "We're gonna get along great."

After a ten-minute Metro ride to Dupont Circle, Ben climbed one of Washington's many oversized escalators and headed home. A block from the subway, he spotted Tough Guy Joey, the neighborhood's angriest street person. "Hey, Joey," Ben said.

"Screw you," Joey snapped. "Bite me."

"Here's some dinner," Ben said, handing Joey the turkey sandwich he had brought to work. "Lucky me, they feed you on the first day."

"Thanks, man," Joey said, grabbing the sandwich. "Drop dead. Eat shit."

"You got it," Ben said. Passing the worn but cozy brownstones that lined almost every block of his neighborhood, Ben watched the legion of young professionals rush home to dinner down Dupont Circle's tree-lined streets. Almost home, Ben inhaled deeply, indulging in the whiff of home cooking that always flowed from the red-brick house on the corner of his block. Ben's own house was a narrow, uninspired brownstone with a faded beige awning and a forty-eight-starred American flag. Although it was August, the front door was still covered with Halloween decorations. Ben's roommate Ober was quite proud of his decorating and had refused to take them down before they got another year's use out of them. When Ben finally walked through the door, Ober and Nathan were cooking dinner.

"How was it?" Ober asked. "Did you sue anybody?"