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DEFENSIVE POSTURING

DEFENSE
ATTORNEY
TOM NOLAN
HAS
ATTITUDE—
AND HEART—
TO SPARE

BY JENNY
DESAI

PHOTOS BY
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Leaning back in his leather chair, defense attorney Tom Nolan seems to want you to think he's a pussycat. But the heart that beats within his not-inconsiderable frame is anything but tamed: Like the big cats, Nolan knows enough to lie back and wait for the good prey; unlike them, he's in the business of defending that prey from the justice system. Nolan, a self-described late bloomer and champion of the underdog, has made his life and his living as a big-ticket criminal defense lawyer, defending the likes of Kenneth Fitzhugh, a Palo Alto man convicted last year of the second-degree murder of his wife; Mitch Igusa, a former engineer at Cadence who pleaded no contest to stealing computer source code from his former employer as part of the Avant trade secrets case; and, perhaps most famously, defendant Arben Dosti, a member of the so-called Billionaire Boys Club that made Southern California headlines during the 1980s.

In his Palo Alto offices — an eccentric mishmash of African art, Mission furniture and antiquarian texts on criminal law dating back to the 1700s — Nolan rails against the police, the justice system and the complacency of his fellow citizens. And it's tempting to paint Tom Nolan in broad strokes as a guy who's gotten a little too good with the gab, with massaging a question until it purrs. A guy who wears his heart on his sleeve but can more than afford the expensive suits to cover it, thanks to his well-heeled clientele. A guy who, in the equivocal tradition of the Sophists, can argue both sides of a question and come down on the winning side.

Tempting, maybe. But like most temptations, it's a little too easy: Sure, Nolan's pulling down a bit more than your average public defender; heck, the overhead on his genteelly professorial offices in downtown Palo Alto's probably more than that. But scratch Tom Nolan — if you dare — and beneath the courtroom persona there's a complicated, gentle guy who weighs his words carefully, is sometimes awed by his students, and organizes his life around his outsized sense of injustice and the will to fight it.

Just don't ask what he thinks of "Law & Order." "God, I hate that show!" he exclaims, leaning forward in his chair. "Actually, I don't hate it; I can watch the first half hour, but every episode seems to resolve itself for the prosecution: If the guy gets off, it's always on a technicality. And if any police department did the kind of investigation you see on that show, I'd be thrilled." He pauses. "You know, as a defense attorney, I'd rather see a show on TV called 'Law & Uncertainty.' I don't think the ratings would be too good, though," he laughs.

It's a moment of mirth in the midst of what can only be described as a diatribe, but a telling one: Nolan, who understands the showbiz element of the courtroom perhaps better than anyone else, is no stranger to courtroom displays of temper calculated for effect. What he doesn't like, he says, is the way the judicial system sometimes scripts his dramas — and tilts jurors' sympathies.



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"From the Fitzhugh case, I learned one very important lesson: If there's a solution to a problem that seems to satisfy enough people, that's what the solution will be; it doesn't matter who actually committed the crime, if there's enough circumstantial evidence to convince a jury that the defendant did. Jurors want to put the puzzle together: They've got a lot of complicated information in front of them, and there's this sense they have, with all the information out there and this person on trial in front of them: 'Well, if he didn't do it, who did?'"

Nolan pauses briefly for air, and the wounds from the Fitzhugh case still seem fresh. The case of Kenneth Fitzhugh, Nolan's client — who, for the record, has signed releases allowing his attorneys to discuss his case — proved a watershed for locals who seemed to think that murders couldn't take place in affluent Palo Alto, and, perhaps, a bit of a Waterloo for his attorney. Fitzhugh's wife, Kristine, was found on the floor at the bottom of her Southgate home's basement in May 2000. Just three hours after investigators came to the Escobita Avenue home, they were looking into Kenneth's Chevrolet Suburban and finding blood-spattered running shoes under the front seat; just 11 hours later, Palo Alto Detective Jean Bready was asking for an emergency search warrant and saying that she did not think Kristine Fitzhugh's injuries could have been caused by a fall alone. A report from the Santa Clara County Coroner's Office days later confirmed that Kristine's wounds were consistent with a sneak attack from behind, not a fall down 12 steps. More than 70 blood spots picked up in the kitchen using the blood-detection chemical Luminol led Palo Alto Detective Mike Denson to write in an affidavit, "Kenneth Fitzhugh Jr. killed his wife, Kristine Fitzhugh, by beating her over the head with a blunt object and strangling her."

It all sounds seamless, logical even — and that's exactly what makes an attorney's defensive blood boil. Nolan, whose case rested on the theory that an intruder could have committed the murder, remains convinced that the system was stacked against his client, in a way that television never suggests. "I really thought it was a 'Law & Order'-type request, to ask the police to give an accounting of who else might

have been in the neighborhood that day, and whether there were records of other crimes. But they just said, 'No. We don't want to do that,' and that was it. Doesn't it seem logical, to try and figure out who else might have been in the vicinity, or whether there had been other break-ins in the neighborhood? But you can't present evidence pointing to a third party, unless it's more than just a theory — and you can't get that information if the agencies involved don't want to provide it. It's frustrating," he says.

"As far as I'm concerned, if you don't fight the little battles, well, when do you fight?"

Not that Nolan isn't used to a little frustration. A self-described late bloomer, Nolan was an indifferent student, he says; yet, from the age of 13, he knew he wanted to become a defense attorney. "I think I've always had a heightened sense of injustice; I tend to see it more quickly than other people," he explains. "As far as I'm concerned, if you don't fight the little battles, well, when *do* you fight? You have to call people on issues that involve unfair treatment; in this culture, this society, money has become our god, to the exclusion of individual rights."

It does seem a bit rich to be disparaging money when you're sitting in an office smack in the middle of downtown Palo Alto. But Nolan — who grew up in Sacramento as the son of parents who both worked for the state, and who is himself a product of Sacramento



City College and Sacramento State University — says he's as suspicious of money's disproportionate power as he is appreciative of its uses. And he's got the legal chops to prove it: In 1993, a Santa Clara County jury acquitted Nolan's client in a high-profile trade secrets theft case in which Intel Corp. was the alleged victim; Nolan argued that the al-

legedly secret information was neither secret nor valuable to Intel's competitors. Three years later, Nolan and co-counsel Allen Ruby made headlines again, when Santa Cruz County prosecutors dropped trade-secret theft charges against their client when it was revealed that the prosecution had accepted \$13,000 from the company that was the

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plaintiff in the case. He's still wary of the way big business and the criminal justice system intersect when it comes to trade-secret cases. "I got involved in white-collar cases not because I have a business background, but because I think it's a frightening aspect of the relationship between business and government that you can actually go to jail if you're convicted in an intellectual property case. It's a real lack of respect for the integrity of the individual; these cases should be punished in a civil court, not a criminal one. But it's another aspect of the way money rules our society, and big business protects itself at the cost of the individual," he says. He also donates a significant portion of his time to pro bono cases, he says, which are bankrolled by the clients who can afford his firm's fees.

A consulting professor at Stanford Law School, Nolan has taught advanced courses on white-collar crime, trial advocacy and criminal procedure — a passion that is part love of the law itself and part desire to impart the devotion to fairness, to the underdog, that has informed Nolan's own practice of it. "I'm just amazed by my students; they're incredibly smart," the defense attorney says. "They teach me about the law, and I teach them about the practice of law." Nolan, who graduated from UC Davis Law School in 1970, has a lot of personal practice to work with, from representing the Syanon Church in the 1980s, to free speech cases, to *People v. Tanner*, a complicated constitutional case Nolan took all the way to the California Supreme Court. He peppers his courses with examples drawn from his experience — "When I argued a pornography case before the Cincinnati circuit court, I experienced for the first time what it feels like to be treated like a criminal defense lawyer: with intense suspicion. They should know what that feels like, too, as they prepare to become lawyers." — but there's also a more personal side to Nolan's teaching methods, a kind of mentorship that colleagues say is rare in legal circles.

"Tom was my professor, and when I graduated, he said, 'Maybe we can work with each other for a couple of months.' I've been here 14 years," says Dan Barton, who is now a partner at the firm. "It's been a classic mentoring

relationship, and there aren't many people who are lucky enough to have someone who's willing to do that. But I've watched him take on that role with lawyers at Santa Clara and Stanford. He's shown them how to practice defense, and he's made it part of his life to do that. He has a real instinct."

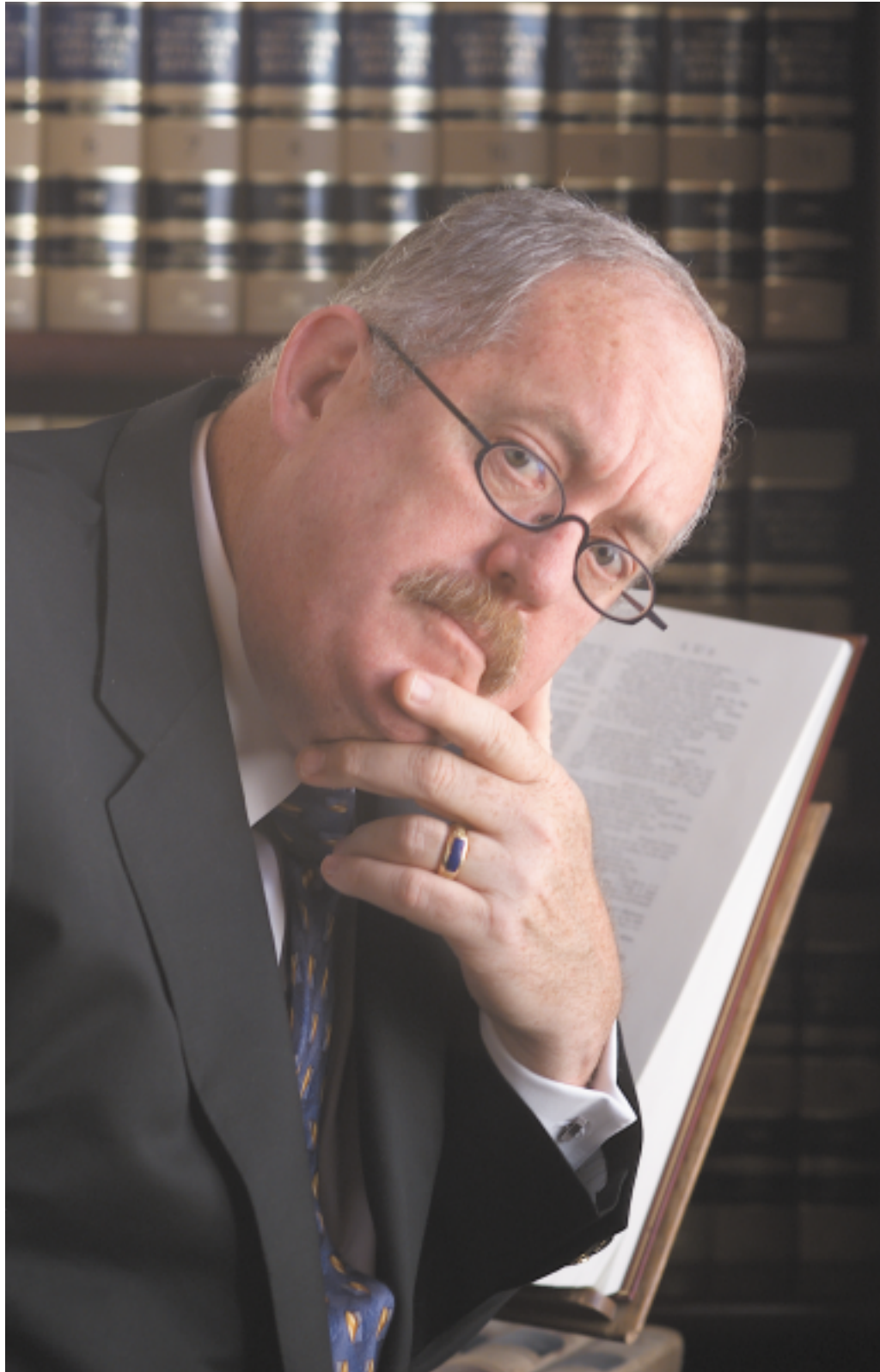
Instinctive as his sense of mentorship may be, Nolan's distrust of authority — particularly police authority — seems just as deep-seated. It enrages him that police can lie to suspects during interrogations and use confessions derived during those interrogations; the day he meets us, the local paper's front page details a recent rape case in which a suspect confessed to the crime under just such an interrogation, and was subsequently exonerated by DNA evidence. And it disappoints and frustrates him, evidently, that ordinary people — even people who watch 'Law & Order' — don't seem to care about protecting the rights of the accused. At least not as much as Tom Nolan.

"People have no idea how the system works, and I think they think it's better not to know. That way, you can think, 'I could never end up in a situation like that.' Why do you think we want African Americans on our juries? They know how unfair the system can be. Everyone else thinks, 'That could never happen to me.' And denial isn't just a river in Egypt."

He pauses, gesturing toward the antiquarian tomes that line the office. "I'm fascinated to see how we treated criminals in the 1700s, the 1800s. I can tell you, that treatment hasn't evolved much. 'Evolved' is generous; we're paying far less attention to the dignity of the individual. And it's tragic, really. Tragic," he repeats.

It's a courtroom moment, a summing-up of

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Nolan's case. And for a moment, it's as though Nolan's own life is on trial: the questioning of authority; the sense of swimming upstream against a public that wants to believe the system always works; the long, long hours. "I just love the underdog," he says. "I always have. Take me to a game and tell me who's behind. That's who I'll root for." He smiles, leans back in the chair. The jury's in — his jury — and the verdict, yet again, is in his favor. **SJM**