

New Fiction from “The Midnight Man” by David Eric Tomlinson



Man book cover
design by Sylvia
McArdle.

The sousetrap north of the courthouse is one of those expensive, contrived places doing its best to look like a dive—sawdust on the floor, animal pelts on the walls, microbrews on tap—and its patrons have the long-suffering air of parolees waiting out a sentence. Ingrid, the bartender, is a waifish hipster with an obvious piercing problem and a Wile E. Coyote tattoo peek-a-booing from her shirtsleeves, the once purple dye-job in her pageboy haircut paled partway to gray. When Dean bellies up to the bar she takes one look at him and pours off two shots of well whiskey, casually clinking the glasses onto a cocktail napkin placed under his nose.

“On the house.”

“I’m good.”

She turns back to the television balanced on the bar flap. "If you could see your face."

"Really, I'm okay. Just waiting for someone."

"Trust me mister, the one thing you are *not* right now is okay. Those two'll get you closer to fine."

Posted behind the carefully antiqued liquor display, tacked amongst the handbills wallpapering the corkboard paneling, is an oversized poster of a puckish Crash Lambeau in three-quarter profile, one eyebrow arched conspiratorially into the camera:

BIG GOVERNMENT IS WATCHING . . .
ARE YOU LISTENING?
WEEKDAYS, KTOK-AM 1000

Dean shouldn't be here. There are rules about interacting with a witness once the trial has started. Some people might say this is tampering. But there is a thread he has yet to pull all the way through. And it has to do with more than just this case. In what feels like an ancient gesture he cradles one of the whiskeys, rolling it slowly between his palms.

The first two whiskeys burn going down. Dean orders two more.

While Ingrid preps the shots she says, "From here on out you pay your own way."

There is an empty booth nearby and as he carries the drinks over to it Lambeau's eyes seem to follow, tracking Dean's every movement. The TV is tuned, just like every third set in town, to the O.J. Simpson spectacle in Los Angeles. A week or so ago, in what has turned out to be that trial's most captivating exchange to date, LAPD detective Mark Fuhrman denied using the dreaded n-word. And now, whenever the networks have dead air that needs filling, footage of Fuhrman's testimony can be seen looping as split-screen

accompaniment to the pundit of the moment.

When Aura arrives she stands silhouetted in the doorway, as though bent on some official or even malignant business. Dean waves her over. She has just come from court and looks great in her gray suit and heels. She slides into the seat across from his.

“What are we drinking?”

“Bourbon.” He nudges a drink across the tabletop. “I’m sorry about how Wolfman treated you up there last week.”

“Wolfman?”

“Sorry. Paxton. We all have nicknames in the office.”

She lifts her glass. “To surviving this trial.”

“To surviving.”

They drink. Aura hides her grimace with the back of a hand, eyes shining. “Still running?”

“Every day.”

“I don’t know anybody who does that anymore.”

“I might be burning out. I used to get into this zone, a kind of endorphin dream...”

“I know all about the zone.”

“...where I’d picture this invisible-type barrier between myself and the finish. Or the world, the future. Whatever.”

“It doesn’t have to compute. You were in the zone.”

“Right, so you get it. Well for the rest of that run, my job was to push through the barrier. To see what was on the other side.”

"What was it?"

"That's the thing. I never broke through."

"I hope you haven't asked me here to decipher your dreams."

He chuckles. "You did a good job against Wolfman."

"I thought the D.A. was about to shoot your boss."

"We'd have some hope of winning if he'd gone ahead and done it." Dean flashes the high sign to Ingrid and she pours two more whiskeys but makes him fetch them himself, which he does. Walking back from the bar he can hear F. Lee Bailey grilling detective Mark Fuhrman: "*...use the word BLEEEEEEP! in describing people?*"

He's settling back into the booth when she says, "What's yours?"

"What's my what?"

"Your nickname."

"Tonto."

Her disappointed face.

"I know," he winces.

They hear "*...Not that I recall, no.*"

"Carl wasn't a monster," Aura says.

"Neither is Billy."

"*You mean if you called someone a BLEEEEEEP! you have forgotten it?*"

Aura is trying hard to ignore the television.

"The way you talk about Carl, the way your boss does. It isn't

the Carl I remember. This isn't the truth of him."

"A trial has very little to do with truth."

"There are these things called facts."

"Facts aren't sufficient for getting at the truth. We're about to see a whole boatload of facts in the next few weeks. And in a perfect world they would all be true. But we don't live in a perfect world. If Wolfman wanted to, or if Macy did, he could hire an expert witness to testify that two plus two equals five. And everyone, basically, would believe him."

"You're exaggerating."

"In my experience, the argument with the least amount of untruth in it is usually the winner. And that's the best anybody can hope for."

"The least amount of untruth. Wow."

"I want you to assume that perhaps at some time since 1984 or 1985, you addressed a member of the African American race as a BLEEEEEP! Is it possible that you have forgotten that act on your part?"

"They can't execute Billy Grimes without you," says Dean. "If a family member asks the jury for mercy, most times they'll grant it."

"Your boss tells me I'm responsible for Carl's death. You say I'm responsible for this Billy kid's life. You two give me too much credit."

"Answer me this. If Billy gets the death chamber, who's responsible?"

"How about Billy is?"

"Nice. But it's out of his hands now."

"So the district attorney."

"No. First he has to present the evidence. Then he needs a jury to decide the case."

"So the jury then."

"All twelve of them?"

"Sure."

"Okay. But no. Someone has to carry out the sentence."

"So the warden."

"No. He needs someone to administer the injection."

"So the executioner or doctor or whoever."

"Which one?"

"What?"

Dean holds up three fingers. "There are three executioners."

"...you say under oath that you have not addressed any black person as a BLEEEEEEP! or spoken about black people as BLEEEEEEP! in the past ten years, Detective Fuhrman?"

"Each of them stands behind a cinder-block wall, finger on a button. They wear Halloween masks to hide their faces. And after Billy's last words everyone will push his button and head happily back home for dinner, secure in the knowledge that he probably wasn't the one who killed the prisoner."

"So nobody is responsible," Aura says.

"This is the genius of capital punishment. Nobody feels responsible because the responsibility is spread so thin. But the genius has a weakness. They can't do it without you, Aura. During the victim impact testimony you don't just speak for Carl. As far as the jury is concerned, you *are* Carl."

"Stop saying my brother's name, Tonto."

"Billy has a son. A son who loves him."

"I heard," she sighs. "Are they going to make him testify?"

"There'll be no point. After Willa has testified, after Billy's cellmate does . . ."

"So that anyone who comes to this court and quotes you as using that word in dealing with African Americans would be a liar, would they not, Detective Fuhrman?"

Without warning Aura slides out of the booth.

"Yes, they would."

"Wait, just hear me out . . ."

But Aura is already strolling casually over to the television set, where she bends down to tug briefly at the power cord, killing the broadcast. An enormous silence quiets the bar. For what feels like an eternity—five, eight, nine seconds—she stands there, hands on hips, staring down the patrons. She's the only African American in the place and, aside from Ingrid, the only woman.

As she makes her way back to the booth Aura's heels clap a hollow clop upon the sawdusted hardwoods. She falls back into her seat.

"Do you believe in evil?"

"I think evil is a failure of understanding," Dean says.

"I didn't ask what you think."

Dean pulls at his neck, loosening the tension clamped along his spine.

"I believe in . . . no. I believe there are evil acts. I

believe they happen when people focus on their differences instead of their similarities. But I don't believe there are evil, inherently, people."

"Well I sure as hell do. And I want to hear how evil people are reconciled into this kinder, gentler worldview of yours."

"In, again, a perfect world . . ."

"Jesus Christ, Dean. You sound like a trailer for a B movie."

"Let me finish. Because in a perfect world I could justify killing Billy. In a place where nobody lied and we understood not just the facts but the truth of every case beyond a shadow of a doubt. Because what this kid has done is horrible, Aura."

The bar banter is picking back up.

"But people are people," Dean says, "and people aren't perfect. Evidence gets manufactured. Eyewitnesses make mistakes, prosecutors bend the rules because they're just absolutely certain *this* guy is their killer. People lie to get on a jury, people lie from the witness stand, people lie to seem smarter or stronger or better than they really are. They lie to themselves about their biases, which is the most insidious kind of lying there is. And innocent men die for crimes they haven't done."

"Billy Grimes isn't innocent."

"It doesn't matter."

"It matters," she pokes herself violently in the chest, "to me."

"You're trusting a bunch of guys who put on masks when they get dressed for work in the morning. A man wears a mask because he has something to hide. I know a little about this, Aura. A bank robber wears a mask. A rapist wears a mask. The KKK..."

“Did you really just say KKK?”

“There’s a double standard at work here. You’ll see, what, hundreds of pictures in this trial? Pictures of Carl’s dead and bloated body. Pictures of discrete wounds. Bloodstains and bodily fluids and weapons and hemorrhages. But you’ll never see a picture of someone gasping for air in the death chamber. You won’t see a picture of the guy that swallows his tongue or shits himself or takes forty-seven horrible moaning minutes to die because they punched through a vein and injected the poison into his soft tissue. The guy whose head explodes because one of the executioners was drunk and forgot to wet the sponge in his electric chair. Oops. The guy who’s allergic to the cocktail, his convulsions so intense he snaps his spine like a twig, even with the restraints.”

Aura begins clapping. Slowly, ironically.

“You talk as though you have it all figured out. Righteous Mr. Goodnight against the whole jury-rigged system. Everybody and nobody is responsible.”

“The court wants you to believe the responsibility for Carl’s murder lies solely with Billy Grimes. But it won’t own up to the murder it’s about to commit. It wants you to believe this is as routine as putting the kids down for a nap. But it’s a premeditated, a cold-blooded, a deceptive kind of killing. And you’re being recruited into it.”

“There’s a big glaring error in your logic, Tonto. If everyone is responsible on the other side, who’s responsible on yours?”

“My boss.”

Aura jabs the tabletop with her index finger. “One person.”

“He’s the one making the argument.”

“And why is that? You aren’t smart enough? You’re an Indian, just like this Grimes guy. You apparently understand him

better than this Wolfman fellow. Sound pretty convincing to me. So why hasn't Dean taken the trouble to get that law degree? Find out if he has the chops to save some of these poor wayward souls?"

She has caught him out, seen into Dean, the way he does his clients.

"I'll tell you why." She points the finger at his chest. "Because you're too scared to argue one of these cases."

"Don't get back in that witness box with an agenda, Aura. Or . . ."

"You don't want the responsibility that comes with losing."

His hands are shaking under the table.

"What are you going to do?"

"You keep asking me that."

"You keep not answering."

She lifts her shot glass. "To answers."

They toast.

"Answers come cheap," Dean says. "To understanding."

About *The Midnight Man* ([Tyrus Books/Simon & Schuster 2017](#))

**Oklahoma, 1994. The Waco siege is over;
the OJ trial isn't.**

Dean Goodnight, the first Choctaw Indian employed by the Oklahoma County public defender's office, pulls a new case—the brutal murder of a once-promising basketball star. The only

witness is Caleb, the five-year-old son of the prime suspect. Investigating the murder, Dean draws four strangers into his client's orbit, each of whom becomes deeply involved in the case—and in Caleb's fate.

There's Aura Jefferson, the victim's sister, a proud black nurse struggling with the death of her brother; Aura's patient Cecil Porter, a bigoted paraplegic whose own dreams of playing professional basketball were shattered fifty years ago; Cecil's shady brother, the entrepreneur and political manipulator "Big" Ben Porter; and Ben's wife Becca, who uncovers a link between the young Caleb and her own traumatic past.

As the trial approaches, these five are forced to confront their deepest disappointments, hopes, and fears. And when tragedy strikes again, their lives are forever entwined.

THE MIDNIGHT MAN is filled with joyful, vividly drawn details from the basketball games serving as backbeat to the story. With great compassion and grace, author David Eric Tomlinson explores the issues underpinning one of the most dramatic events in our recent history.



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About [David Eric Tomlinson](#)

David Eric Tomlinson was born and raised in Oklahoma. He grew up in the manufacturing town of Perry, where, in April of 1995, one hour and eighteen minutes after detonating a truck bomb that killed one hundred and sixty-eight people, domestic terrorist Timothy McVeigh was apprehended. David earned an undergraduate degree in creative writing from the University of California, San Diego, and has worked as an illustrator, copywriter, art director, web designer, usability consultant, product manager, Kenpo karate instructor, and stay-at-home dad. David lives in Dallas, Texas with his wife and two daughters. ***THE MIDNIGHT MAN*** is his first novel.