

# STRANGER THAN TRUE

Why I defend guilty clients

By Barry Winston

Let me tell you a story. A true story. The court records are all there if anyone wants to check. It's three years ago. I'm sitting in my office, staring out the window, when I get a call from a lawyer I hardly know. Tax lawyer. Some kid is in trouble and would I be interested in helping him out? He's charged with manslaughter, a felony, and driving under the influence. I tell him sure, have the kid call me.

So the kid calls and makes an appointment to see me. He's a nice kid, fresh out of college, and he's come down here to spend some time with his older sister, who's in med school. One day she tells him they're invited to a cookout with some friends of hers. She's going directly from class and he's going to take her car and meet her there. It's way out in the country, but he gets there before she does, introduces himself around, and pops a beer. She shows up after a while and he pops another beer. Then he eats a hamburger and drinks a third beer. At some point his sister says, "Well, it's about time to go," and they head for the car.

And, the kid tells me, sitting there in my office, the next thing he remembers, he's waking up in a hospital room, hurting like hell, bandages and casts all over him, and somebody is telling him he's charged with manslaughter and DUI because he wrecked his sister's car, killed her in the process, and blew fourteen on the Breathalyzer. I ask him what the hell he means by "the next thing he remembers," and he looks me straight in the eye and says he can't remember anything from the time they leave the cookout until he wakes up in the hospital. He tells me the doctors say he has post-retrograde amnesia. I say of course I believe him, but I'm worried about finding a judge who'll believe him.

I agree to represent him and send somebody

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for a copy of the wreck report. It says there are four witnesses: a couple in a car going the other way who passed the kid and his sister just before their car ran off the road, the guy whose front yard they landed in, and the trooper who investigated. I call the guy whose yard they ended up in. He isn't home. I leave word. Then I call the couple. The wife agrees to come in the next day with her husband. While I'm talking to her, the first guy calls. I call him back, introduce myself, tell him I'm representing the kid and need to talk to him about the accident. He hems and haws and I figure he's one of those people who think it's against the law to talk to defense lawyers. I say the D.A. will tell him it's O.K. to talk to me, but he doesn't have to. I give him the name and number of the D.A. and he says he'll call me back.

Then I go out and hunt up the trooper. He tells me the whole story. The kid and his sister are coming into town on Smith Level Road, after it turns from fifty-five to forty-five. The Thornes—the couple—are heading out of town. They say this sports car passes them, going the other way, right after that bad turn just south of the new subdivision. They say it's going like a striped-ass ape, at least sixty-five or seventy. Mrs. Thorne turns around to look and Mr. Thorne watches in the rearview mirror. They both see the same thing: halfway into the curve, the car runs off the road on the right, whips back onto the road, spins, runs off on the left, and disappears. They turn around in the first driveway they come to and start back, both terrified of what they're going to find. By this time, Trooper Johnson says, the guy whose front yard the car has ended up in has pulled the kid and his sister out of the wreck and started CPR on the girl. Turns out he's an emergency medical technician. Holloway, that's his name. Johnson tells me that Holloway says he's sitting in his front room, watching television, when he hears



a hell of a crash in his yard. He runs outside and finds the car flipped over, and so he pulls the kid out from the driver's side, the girl from the other side. She dies in his arms.

And that, says Trooper Johnson, is that. The kid's blood/alcohol content was fourteen, he was going way too fast, and the girl is dead. He had to charge him. It's a shame, he seems a nice kid, it was his own sister and all, but what the hell can he do, right?

**T**he next day the Thornes come in, and they confirm everything Johnson said. By now things are looking not so hot for my client, and I'm thinking it's about time to have a little chat with the D.A. But Holloway still hasn't called me back, so I call him. Not home. Leave word. No call. I wait a couple of days and call again. Finally I get him on the phone. He's very agitated, and won't talk to me except to say that he doesn't have to talk to me.

I know I better look for a deal, so I go to the D.A. He's very sympathetic. But. There's only so far you can get on sympathy. A young woman is dead, promising career cut short, all because somebody has too much to drink and drives. The kid has to pay. Not, the D.A. says, with jail time. But he's got to plead guilty to two misdemeanors: death by vehicle and driving under the influence. That means probation, a big fine. Several thousand dollars. Still, it's hard for me to criticize the D.A. After all, he's probably going to have the MADD mothers all over him because of reducing the felony to a misdemeanor.

On the day of the trial, I get to court a few minutes early. There are the Thornes and Trooper Johnson, and someone I assume is Holloway. Sure enough, when this guy sees me, he comes over and introduces himself and starts right in: "I just want you to know how serious all this drinking and driving really is," he says. "If those young people hadn't been drinking and driving that night, that poor young girl would be alive today." Now, I'm trying to hold my temper when I spot the D.A. I bolt across the room, grab him by the arm, and say, "We gotta talk. Why the hell have you got all those people here? That jerk Holloway. Surely to God you're not going to call him as a witness. This is a guilty plea! My client's parents are sitting out there. You don't need to put them through a dog-and-pony show."

The D.A. looks at me and says, "Man, I'm sorry, but in a case like this, I gotta put on witnesses. Weird Wally is on the bench. If I try to go without witnesses, he might throw me out."

The D.A. calls his first witness. Trooper Johnson identifies himself, tells about being called to the scene of the accident, and describes what he found when he got there and

what everybody told him. After he finishes, the judge looks at me. "No questions," I say. Then the D.A. calls Holloway. He describes the noise, running out of the house, the upside-down car in his yard, pulling my client out of the window on the left side of the car and then going around to the other side for the girl. When he gets to this part, he really hits his stride. He describes, in minute detail, the injuries he saw and what he did to try and save her life. And then he tells, breath by breath, how she died in his arms.

The D.A. says, "No further questions, your Honor." The judge looks at me. I shake my head, and he says to Holloway, "You may step down."

One of those awful silences hangs there, and nothing happens for a minute. Holloway doesn't move. Then he looks at me, and at the D.A., and then at the judge. He says, "Can I say something else, your Honor?"

All my bells are ringing at once, and my gut is screaming at me, Object! Object! I'm trying to decide in three quarters of a second whether it'll be worse to listen to a lecture on the evils of drink from this jerk Holloway or piss off the judge by objecting. But all I say is, "No objections, your Honor." The judge smiles at me, then at Holloway, and says, "Very well, Mr. Holloway. What did you wish to say?"

It all comes out in a rush. "Well, you see, your Honor," Holloway says, "it was just like I told Trooper Johnson. It all happened so fast. I heard the noise, and I came running out, and it was night, and I was excited, and the next morning, when I had a chance to think about it, I figured out what had happened, but by then I'd already told Trooper Johnson and I didn't know what to do, but you see, the car, it was upside down, and I did pull that boy out of the left-hand window, but don't you see, the car was upside down, and if you turned it over on its wheels like it's supposed to be, the left-hand side is really on the right-hand side, and your Honor, that boy wasn't driving that car at all. It was the girl that was driving, and when I had a chance to think about it the next morning, I realized that I'd told Trooper Johnson wrong, and I was scared and I didn't know what to do, and that's why"—and now he's looking right at me—"why I wouldn't talk to you."

Naturally, the defendant is allowed to withdraw his guilty plea. The charges are dismissed and the kid and his parents and I go into one of the back rooms in the courthouse and sit there looking at one another for a while. Finally, we recover enough to mumble some Oh my Gods and Thank yous and You're welcomes. And that's why I can stand to represent somebody when I know he's guilty. ■

*A young woman is dead, promising career cut short, all because somebody has too much to drink and drives*