INSIDE THE MINDS

Strategies for Defending DWI Cases in Texas

Leading Lawyers on Understanding DWI and DUI Charges, Analyzing Test Results, and Developing Negotiation Strategies

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A DWI Lawyer's Practical Approach to Defending Clients

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Introduction

I was a patrol and undercover officer for thirteen years, twelve of them in Austin, Texas with the Austin Police Department. I am now in my twentieth year of my criminal law practice. About ten years ago, I started focusing on Driving While Intoxicated (DWI) and drug-related offenses. My practice is probably 80 percent DWIs because the consequences of a DWI conviction are so great. Defense attorneys are learning to fight these cases instead of just lying down.

There is no other criminal offense (except sex crimes) that has the long-term negative consequences of a DWI conviction. My good friend and great Cajun DWI trial lawyer, Glynn Delatte, says, "If you want to enter a guilty plea to a DWI you should just hire a couple of New Orleans hookers to walk you to the judge's bench. You'll get the same punishment but look so much better in court." There is a lot of truth in those words and they have stuck with me for years.

Why We Have the Laws We Have (They Are Only Getting Tougher)

Lobbying groups are so much more important than common sense when it comes to how our politicians react when passing laws. Politicians, instead of doing what is right in every situation, will frequently bend to political pressure instead of carefully considering the far-reaching impact of hasty decisions. Take Mothers Against Drunk Driving (MADD), which is bent on the prohibition of alcohol, at least when it concerns driving. Their goal is for there to be no drinking and driving, period, and they are working their way down to it. When I started driving, the legal blood alcohol content in DWI cases was 0.15; a few years later it was lowered to 0.10. Now we are at 0.08 and they are pushing hard for .05, which they have achieved in a couple of states, and which applies to commercial drivers throughout the United States.

It sometimes appears that MADD is in a partnership with the US Department of Transportation (DOT) and they are putting a stranglehold on politicians throughout our country. After all, why would politicians want to deal with an out-of-control budget, a failing economy, and

burdensome taxes when they can keep putting social pressure on drinking drivers and marijuana smokers? MADD is now advocating a mandatory ignition interlock system or a similar device in all manufactured vehicles in the coming years. This opens up a myriad of problems, lawsuits, and liabilities. Anytime you have sugar and yeast, you have a potential for a misreading or an excessive reading. Could you see having a medical emergency with one of your children when you are without telephone communications and your car will not start because it is misreading the mouthwash or breath mints or bread particles in your mouth?

A Climate Change in DWI Enforcement

The climate regarding the enforcement of DWIs has changed over the years. The biggest national swing we are seeing is blood draws, either statutory, mandatory, or search warrant mandated. The courts have decided that there is a DWI exception to the US Constitution; they do not think taking your blood falls under the prohibition concerning forcibly providing evidence against yourself under the Fourth Amendment. The courts have decided there is a lower level of probable cause when it comes to blood search warrants and that is a huge problem. The current level of probable cause to get a blood search warrant in Texas is extremely low. If the officer sees that you have bloodshot eyes and/or the odor of alcohol on your breath, they will ask you to perform the SFST. If you refuse to attempt these "tests designed for failure" and refuse to give any more evidence against yourself, the courts grant blood search warrants.

Since when did the decision to withhold potential evidence from the police equate to evidence to be used in gaining a warrant? Could you imagine if the police were to knock at your door and say, "Well, you have a 'make marijuana legal' bumper sticker on your car and I see you are wearing a Cheech and Chong t-shirt. Can we come in and search your house for drugs?" You say no and a judge will grant a search warrant based on your refusal to cooperate. What does the odor of alcohol on your breath mean? It may mean you have consumed some alcohol but it does not indicate that you are at .08 or greater, which is the alcohol level that must be reached before a crime is committed. So

evidence that falls short of probable cause, combined with no additional evidence, now equals probable cause—again our judges have made a "leap in illogic."

A Look at DWIs in Texas

A key feature of a DWI case in Texas is that you must be operating a motor vehicle while intoxicated. To operate a motor vehicle, you do not actually have to be driving; you can just be in the car with the engine running. If the car is in "park," you are still operating that motor vehicle. If you have the car in gear and your foot is on the brake and you have not moved, that is still operating the vehicle. Though it is not actually driving, it is operating because you are in physical control of the vehicle.

In some states, if you are within a reasonable distance of your car with the keys in your pocket, that is considered operating, so in Texas we are holding on to a little bit of common sense. In Texas, a vehicle has to be in a public roadway, place, or highway, or a private road that is accessible to the public. When I first was a police officer, a person could be drunk in a parking lot of a shopping center, doing doughnuts with their car, and we could make a public intoxication arrest but not a DWI. Now the law extends to parking lots and areas where the public has access.

Gated Communities and DWI Laws

In a recent case in Texas, *State v. Gerstenkorn*,[1] the court reasoned that the level of access does not need to be complete or entirely unrestricted, provided members of the public could gain access under the right set of circumstances. This decision came about because a police officer was responding to some type of service call inside a gated community, and he came across a totally unrelated driver who was intoxicated, or at least that is what the arrest was for. Our court of criminal appeals said that the stop was a good one because the police officer had access to the gated community. But, if you think about it, a police officer in a patrol car has access to anywhere, except maybe a military base. Can you

[1] *State v. Gerstenkorn*, 239 S.W.3d 357, 359 (Tex. App.– San Antonio 2007, no pet.)

imagine a security guard using force to prohibit a police officer from entering a neighborhood?

The Letter of the Law

For a DWI in Texas, you have to be operating on a public roadway or place while intoxicated, which means the loss of the normal mental or physical faculties or having an alcohol concentration of .08 or greater.

The way the Texas DWI statute is written it applies to any substance that causes a person to lose the normal use of mental or physical faculties or alcohol at or above 0.08 BAC. These other substances include drugs, or controlled substances or any other substance, and some have suggested that if you drink too much coffee or caffeine or take too much of an over-the-counter medication, that would apply. We have not had to face that situation yet, but it might not be that far down the road.

Years ago, DWI meant alcohol. Then the laws were extended to cover various narcotics and drugs. It is difficult for the police and prosecutors to make a case unless the citizen accused starts giving them evidence, such as acknowledging taking a prescription medication or smoking marijuana. Nonetheless, for a successful prosecution the state has to come up with some medical evidence to support a DWI charge. If I take a medication with a dosage of one or two tablets every four to six hours and I take one tablet and start driving six hours later, the medication is probably out of my system. The state cannot say that merely because I took a medication, I was impaired. They have to prove there is a connection between the substance and the intoxication.[2]

The advertising campaign used to say, "Don't Drive Drunk," but you do not see it phrased that way anymore. Now it is "Drink, Drive, go to jail." The commercials now say, "impaired driving is drunk driving" and "buzzed driving is drunk driving." Did you notice that the term drunk works for the system when it is compared to "impaired" or "buzzed?" Prosecutors get upset when I use the term "drunk drivers" in court, insisting that I use the

[2] *Layton v. The STATE of Texas*., No. PD-408-07. -- February 04, 2009.

term intoxicated. The DOT and MADD propaganda machines are bringing the common language meaning of intoxicated down to a lower level so they can start setting up the politicians, so the politicians will then bring down the BAC level for a conviction using the *per se* laws. And do not think they will stop at 0.05 when they can go to 0.03 and then 0.00.

Working with the Jury

"Drink, drive, go to jail" is what most people think the law is. In Texas, we have jury trials in DWI cases. When I do my voir dire (jury selection), every time I ask the panel, "Drink, drive, go to…" and they reply, "Go to jail!" I ask them if they understand that that is not the law and anywhere from 75 percent to 95 percent of the jurors agree that it is the law. Then I have to explain to them that "drink, drive, go to jail" is not the law, because they come in believing the government's propaganda machine. As a result, if there is any evidence of drinking, many of the jurors will think a defendant is guilty of DWI. This is a difficult hurdle that has to be overcome when someone has been believing this is the law for years and I only have them for one or two days. It is especially tough when the jurors are tired and want to go home and the brainwashing just takes over their common sense and new understanding of the law.

Battling Preconceived Notions

Preconceptions are an enormous obstacle, so I make a strong effort to relate to the jurors. Voir dire is so important in gaining trust with the jury panel. There can be a lot of frustration because we have no control over the panel that comes into the courtroom. I call some of the members of my jury panels "rope draggers" because they show up for a lynching. In Texas, they used to hang cattle thieves and other rustlers and many panel members believe that they are there to do their duty and convict someone. When you get a panel full of these types of people, you are in trouble.

A few years ago there was a study done in California that questioned potential jury members, those that were summoned to jury duty, and thousands of those summoned participated. The "not so surprising" results to those of us on the defense bar were that 68 percent of the persons responding thought the criminal defendant (citizen accused) was guilty

before they even entered the courthouse. That is except for one crime, DWI, where the result was 78 percent voting guilty. Then the president of the polling company spoke at the NCDD Summer Seminar at Harvard Law School about the survey. He told us that when they reevaluated the data and removed those that were ineligible for jury duty the number rose closer to 78 percent guilty for those accused of DWI. That fits really close to my unofficial count of 75 to 95 percent of panel members believing that "Drink, drive, go to jail" is the law. "Rope daggers"—oh yes, those are the ones who come in ready to convict somebody.

I remember a time when I was driving to court in Austin and as I was driving to the courthouse, I was next to a Uniform Patrol Unit with a person in custody sitting in the backseat in handcuffs. I looked over at the police officer and thought, "I used to do that." When I arrived at the court I started my voir dire and I told the jury panel about what I had seen. Then I talked about the presumption of innocence, the right not to testify, and other constitutional rights that they would be dealing with in the coming days.

I told the panel that we have all seen a police car with someone under arrest, and I asked them how many of them have looked over at the police car and asked themselves, "I wonder what that innocent person has been accused of?" When that person gets to the jail and is in the cell and the door clangs shut, how many of you ask, "I wonder what this innocent person has been accused of?" When that person has been fingerprinted and taken to the booking desk and then locked up in the holding cell, I go through each of these scenarios and say, "Now do you think this person is innocent?" When the bail bondsman comes to get the person out of jail or when that person shows up for court seven to fourteen times, what then? Now how about today, I ask them. How many of you, when you walked in the front door of this courtroom, said, "That person is innocent until proven guilty."

Innocent Unless Proven Guilty

None of them. So I worked on their heads and told them that I do not want them to think it is "innocent until" proven guilty, because that

foreshadows the person will be proven guilty. It is innocent "unless" proven guilty, and I am going to do everything to keep that from happening. Then I told them to understand that was their job, too, maybe even more than it was my job. I may have a bad day and fall short so it is the jury's job to make sure that no citizen accused in our courtroom is ever convicted of a crime unless the state can eliminate one hundred percent of the reasonable doubt. The prosecutors go nuts and object when I say that, but the judge always rules in my favor. Because everything I said is true.

Presumption of Innocence

My friend and mentor, Gary Trichter, has been pressing the envelope on what the presumption of innocence should mean to the jury. I stole some of his thoughts in a trial in Del Rio on a 0.11 breath test and was rewarded with a not guilty trip home with a grateful and vindicated friend that some of you would call a client, but I call a hero. It takes a strong-willed citizen to stand up to the resources of the government and the power of the propaganda machine that has convinced our jurors to come into court aligned with the state.

The idea is to convince the jury to equate the presumption of innocence to *actual* innocence. We have to stop using the p "presumption of innocence" and continue throughout the trial using the term "actual innocence."

Recognizing Types of Jurors

When I am facing a new jury panel, I ask how many of them just do not like me. There should be no illusions about the current unpopular place criminal defense attorneys have in our media dominated society. In one recent jury selection one woman said, "I don't like you, you are the DWI dude and I have heard all your commercials and you help drunk drivers." I said, "Great! My advertising works!" and everyone else on the panel started laughing. If you can get them to laugh then they are more apt to be serious about whether they will convict someone. A popular defense saying goes something like this, "A laughing jury has a hard time saying guilty!"

I tell jurors this: there are three types of people that come into these rooms to be on a jury. One type comes to convict whoever the defendant and however weak the evidence is; one type is open and willing to listen and rule according to the evidence; and the last type came to acquit if there is any reason to doubt. The second group has to overcome prior prejudices and propaganda and the last group is the smallest percentage of the people. My job is to identify which type each person belongs to without revealing favorable jurors.

Those people who came here to acquit do not trust the government and are going to make the government go that extra step; they will readily identify themselves and they will be struck from the panel by the state with a challenge for cause (that they cannot be fair to the state), or by using their three preferential strikes. To me these are the truest of Americans and they make me proud!

Those who came here to convict are those that are willing to give up all of our rights to feel safer and more patriotic in their confusion. These people watch *Law and Order*, *CSI*, and other crime shows that portray the criminal as a guilty animal and the defense attorney as a sleazeball. Those people will shut their mouths, or give misleading answers and not answer truthfully because they want to get on the jury so they can convict someone.

It is my job to find out who those people are, so I start dividing the jury panel into the three types. This is a necessary step; otherwise you have, for instance, the member of MADD whose best friend's daughter was killed in a DWI collision look you right in the eyes and say, "I can be fair." The judge will let that person stay on the panel and then I have to use one of my strikes to get the person off. I only get three strikes in a misdemeanor and ten for a felony charge. The most difficult part of voir dire is making the correct strikes or not making all or any of them. I have struggled with leaving someone on a jury only to later learn that they were the holdout that kept my hero from a conviction or talked reasonable doubt to the others until a verdict of not guilty was obtained.

The Makeup of a Jury

In a misdemeanor case, there are about twenty-four people on a jury panel but sometimes there are a few more or a few less. If there are twenty or less, I have a good chance of striking the panel and I do a completely different voir dire than if I am trying to massage the group into a grand jury. To break a panel I start talking like a prosecutor and I get them all going toward thinking guilty.

For instance, let us say there is a Mr. Johnson on the panel. I say to him, "Mr. Johnson, do you feel that a person who drinks and drives ought to be locked up," and he says he does, so now I have him locked in. I then find others that agree with Mr. Johnson's point of view and I push the panel to agree about the dangers of drinking and driving. I get them to align themselves on law enforcement issues and get them to commit to positions that set up a challenge for cause.

Once I get them locked into insisting that the accused take the stand or that police officers are to be believed over all others due to their occupation, I have them boxed in. I point out to them that if they were left on the jury for a DWI than they would not have a fair attitude for a juror and perhaps they should not sit on this jury. I get them to commit that there is something that is so ingrained in them that they cannot be sure that they could put it aside and obey the court's instructions or jury charge. By their own answers, we have to assume and presume that they would not be good jurors for this kind of case and once they agree that this is true, they get to go home. Mostly I praise them for their honesty and that they are great citizens for revealing the truth about these issues.

I will ask who else wants to go home, since there are people who do not want to be there. The judge may get on me a bit, but I tell the panel up front I am going to be honest; nothing I say is going to be dishonest either now or during the trial and if I do say anything out of line or out of order that judge will calm me down. If the judge does not call me down, I must be right. A lot of rope draggers start thinking about how boring it would be to sit in a courtroom all day when they could disqualify themselves and go home and watch reruns of *America's Most Wanted* and *Cops Gone Wild*.

Getting Charged with DWI

Here is a brief overview of how a person comes to be charged with DWI. In San Antonio, if you are pulled over for any traffic violation, whether your stop was valid or not, the officer will ask you to take a field sobriety test if you have any two of these three conditions: smelling of alcohol, bloodshot eyes, and admission of prior drinking or slurred speech.

Nobody passes the field sobriety tests as they are designed for failure. Some officers may let you go, but if you have the wrong officer then every single person who gets out of the car will be arrested. It is like zebras going through a swollen creek of crocodiles in Africa; if that officer is hungry, you are going to jail. And do not forget that there is a lot of overtime money to pay for child support, boat or motorcycle payments, and girlfriend expenses.

After you "fail" the SFST portion of the DWI investigation, you will be placed under arrest and read your *Miranda* rights. Those are the ones about having the right to an attorney, to not give evidence against yourself, and the right to remain silent. Many a DWI case is lost when the suspect starts flapping his lips or spouting off about who he knows and what he does for his community. The best thing you can do is ask for an attorney and then be quiet. And do not fall asleep during the ride to the jail. Anything bad will show up in court through a videotape or police officer testimony.

Once you have been "Mirandized," you will be read the DIC (Drivers Implied Consent paperwork for the breath or blood test), informing you that a sample of your breath and/or blood is being requested. If you refuse to provide a sample or provide a sample over the limit, then the paperwork advises you of the consequences of each. You must be under arrest to have this read to you (just like the *Miranda* rights), so do not try to talk yourself out of arrest. It is too late and you will only be adding to the evidence against you. You may be asked to blow into a Preliminary Breath Testing or Pre Alcohol Screening (PAS) device at this time. If you do so and blow over, the jury will assume that you failed it.

Using a PBT/PAS

There is a screening device known as a PBT/PAS, which stands for Preliminary Breath Test or Pre-Alcohol Screening device. Our local officers do not usually carry a PBT/PAS but the Department of Public Safety (DPS) officers are issued the handheld units. Occasionally, you will find an officer who has one, but they are not standard equipment and they cannot be admitted in Texas to establish an exact blood alcohol number—their purpose is to only recognize the presence of alcohol. But do not forget that if the jurors see you blow on one while watching the video they will think, "If he passed they would have let him go home."

PBTs are junk. They are not based on proper science so as to be exclusive of other things, so they can misidentify other things as alcohol. You see these cases where an officer pulls someone over and the person admits to having had one or two beers in the last few hours at a dinner. The officer uses a PBT, which of course proves the person had been drinking; the person already admitted it and the officer smelled alcohol on the person's breath. Since the number reading cannot be admitted into a competent courtroom, why are these units used on the streets? I believe that it is to help the officer make the arrest decision.

Logic tells us that the officer must have had reasonable doubt or he would not have even used this device; he already believed that alcohol was present.

It gets to the point of ridiculousness. It's amazing, really. You can tell which of these officers is a goon; they make a huge amount on overtime. For example, we had an officer whose base salary was in the $50,000 range, but was making $80,000 to $90,000 in overtime. "If I let him go, I don't make any overtime."

Changes in the Law

Money to change DWI laws has been coming from the federal government through the DWI STEP Program grants. This is high-profile and high-profit stuff we are talking about. What makes the current situation so difficult on responsible drinking drivers are the DWIs involving severe injuries and deaths. They are titled Intoxication

Manslaughter and Intoxication Assault and are the most serious of DWI offenses. Those are horrible and we do not want to see people hurt. I do not want my family hurt or to be hurt myself. The problem with DWI laws is the egregious case—the person stopped for a defective taillight or driving five miles over the limit with no other traffic violations, who is arrested for DWI. I am talking about the case where the driver is not committing any dangerous or reckless actions and would have made it home safe because he is not intoxicated or drunk.

Why Laws Have Changed

Drink, drive, go to jail. The rationale for these arrests is that you are protecting people from drunk drivers. People die from drunk drivers, so the public tells the police officers that enough is enough. The police get brainwashed that they are stopping the needless deaths by arresting all drinking drivers. When I was a police officer, we were not big on DWI enforcement unless you were really drunk or had an accident. But if I stopped you and let you go and you went down the street and hurt someone, there was a record that I let you go five minutes earlier. Talk about feeling horrible. But when I was an officer, we would call you a cab, we would throw your keys in the grass and say when you find them you can drive, or we would give you a ride home.

Now no one goes home, even if you pass the breath test at the police station. You still go in the drunk tank and they claim the passed test is proof that you cannot handle your alcohol. The police officer might also claim that you must have been taking some drugs or other substance that the Intoxilyzer cannot pick up.

The change in attitude regarding DWI stems from two main reasons: MADD/politicians and the repeat offenders who have several DWIs and will not learn. Anyone who has had more than one DWI conviction and is stopped, smelling of alcohol, is going to jail and it is hard to argue against that. These people are repeatedly drinking and driving after they have been convicted a number of times or even after they have been convicted of one DWI. I advise my clients that if they have a single conviction for DWI on their record, they must not drink and drive. Not even one beer. If they get stopped and the police officer finds that on

the computer system then they are going back to jail. Subsequent DWI arrests have enhanced bond conditions such as adding ignition interlock devices and SCRAM bracelets that measure any alcohol being released through your skin by sweating.

Handling Prior Convictions

I was in court on a DWI case in Austin, waiting to announce that we were ready for trial, when the case was dismissed because the arresting officer had been fired and could not testify. I listened to two cases ahead of mine where the arresting officer was the same one, but the lawyers pled their clients guilty to DWI. Those clients now had a conviction. I got my client's case dismissed and then we expunged his arrest record. In my opinion, this is an example of poor lawyering and unethical prosecutors, unless the prosecutors had other evidence and other police witnesses. Regardless, my client was rewarded by my diligence.

How many times in my practice does someone come in with a prior DWI? Usually there is nothing I can do about the prior DWI, but when I look into some of those convictions, it makes me ill because there is no possible way the person would have gotten a DWI if I had been the lawyer. My mantra on these cases is never give up, and never forget to look at the priors, because many times there are problems with the priors and they cannot be proven up in the courtroom.

Never Plead

I was in a jury trial in San Antonio earlier this year where the judge took a quick plea while we got ready to start back up in our trial. The judge went through the plea papers with the other lawyer and his client. The judge noted that the defendant in that case had breath tests of 0.07 and 0.08 on his breath test evidence slip. This meant there was evidence he was under 0.08 but the lawyer pled him guilty. I saw the look on the judge's face when he asked, "Are you sure you want to plead guilty?" and the client said, "Yes sir!"

Ten years later, that man might have two drinks, which is not intoxicated, and be pulled over. If the police run the license and they see a

prior conviction, do you think he is going to jail? Yes, he certainly is going to go to jail if things continue down the path we are on. And what is really sad is that his lawyer thought he was doing the right thing because there was an 0.08 reading. I guess he did not know that the state has to use the lower reading and that lower reading would have meant a not guilty in my hands.

Fight Every Case

I do not care how many DWI convictions you come into my office with from the past. Every case is a new case and must be investigated thoroughly for errors on the part of the arresting officer, the breath or blood testing equipment or other constitutional areas. Good things happen when you show up and announce, "Your Honor, ready for trial."

Most first-time DWI cases will get probation if they have to plea or if they are found guilty, so there is no real risk there. Why, then, would you ever plea? Fight every case to the best of your ability. I fight every one of them unless the client forces me to plea, and sometimes they do. That is their right and their decision to make. Some clients cannot take the pressure of a trial and that is understandable. Trials take a toll on all involved but they are also a blast of emotion and excitement.

I had a case recently where the client tested at .08 and we could have won it. I even told the client I would defer his trial fee, but his wife convinced him to plea. I had to ask my associate to do the guilty plea because I just could not go through with it. Now he has to do twelve months of probation and pay DPS a $3,000 DWI surcharge fee every year for over three years. Sad but true. I have had many other clients stay the course on much more difficult cases and we won dismissals or not guilty verdicts. My hat is off to those with the character and fortitude to fight the good fight and come out the winner.

If a judge says your client will get jail time unless you plea, I understand someone pleading guilty in such a case. Personally, I have never had a judge give me the same or worse punishment that we rejected in a pretrial offer from the state after getting a guilty verdict from a trial. I

have never pled a client to jail time unless it was a statutory requirement and the client insisted. I can usually get the judge to probate the statutory jail time, so I do not understand why people plead guilty to DWI the first time. If you plead guilty or no contest to a DWI, you will be found guilty every time.

Working with a Second Offense

For a second offense, there are some mandatory provisions that take effect. Sometimes, I will offer a plea for my client if the court will strike the enhancement paragraph and treat the conviction as if it were a first-time DWI, with probation and no jail. The client will still end up with two DWI convictions and if he gets arrested again it is a felony. I usually advise a client to fight a second DWI to fight off the inherent risk of a subsequent felony arrest.

The enhancement paragraph concerns subsequent DWI convictions. A first-time DWI is a Class B misdemeanor with a punishment range of three to 180 days in jail and/or up to a $2,000 fine and other conditions of probation. If you have been previously convicted of a DWI, a second DWI is a Class A misdemeanor and has a penalty range of ten days to one year in jail and/or up to a $4,000 fine and other conditions of probation, including a mandatory ignition interlock device. If the court will accept a plea bargain and strike the prior DWI enhancement, then the second conviction is treated as a regular DWI and you face the Class B range.

DWI laws in Texas have recently changed. If you have a Class B first-time DWI with a blood alcohol level of .15 or greater, then the punishment is enhanced to a Class A punishment range, except that there is no minimum period of ten days in jail. Once you develop a reputation as someone that can win tough DWI cases at trial, you will find that you can negotiate great plea agreements from the state—ones that make your clients happy. I always say, "Make me an offer that I can't refuse and I won't refuse it." I call that my Godfather clause. If we can refuse it, then we will do so every time.

Your client must always remember to consider the DPS DWI surcharge tax I mentioned earlier. If you are convicted of a DWI in Texas, there is a tax imposed on your driver's license. For a regular DWI Class B, the tax is $1,000

a year for three years. On any DWI if you have a .16 or greater, the tax is $2,000 a year, and on a Class A (subsequent DWI) it is $1,500 a year.

I may have someone with a first-time DWI who blew a .18. If I believe the client is going to get convicted, I will convince the state to drop the breath or blood alcohol results and strike the 0.18 BAC result from the charging instrument. We plead guilty to a regular DWI and pay $1,000 a year tax instead of $2,000 a year and save the client $3,000, a nice chunk of change since the client is already having to suffer a DWI conviction.

I have had some clients, though, with horrible cases, who if convicted will lose their jobs. We have to try those cases and sometimes we win. That is why my mantra is we are always ready to go to trial. We go to trial; that is what we do.

Tools for DWI Lawyers

There are tools of the trade for defense attorneys defending in DWI cases. No defense attorney should even advertise or accept DWI cases unless that attorney has taken the standardized field sobriety testing course. I recommend Lance Platt[3] for this type of training. I have recently hired some new staff members, so I am going to have to get them trained, because I want everyone trained, even the receptionist, so they can all help me. I have received my certification as a practitioner and instructor of the SFSTs. No police officer can pull the wool over my eyes as I am better trained and prepared than they are for trial.

Dr. Platt also testifies in my DWI trials and can pick apart the mistakes the officer made. Dr. Platt ran the Texas DWI SFST program for a number of years, so he knows it inside and out. Sometimes it is necessary for the client to meet Dr. Platt to understand just how difficult the case will be to win and what has to be done to advance those chances.

I have received my certification as a breath test operator and maintenance technician for the Intoxilyzer 5000 6800EN. This is the

[3] See www.plattandassociates.org.

Texas breath test machine that is used throughout the state. How can you defend a breathalyzer case if you have not taken the breathalyzer course? I have attended the training course at least four times and can take the machine apart and put it back together. I keep a working Intoxilyzer 5000 6800EN in my lobby and test clients on it when we need to check out potential defenses.

Tools that Law Enforcement Uses

There are tools law enforcement can use to put together a case against your client. We are seeing blood draws all over Texas with "No Refusal Weekends" and "No Refusal Everyday" programs in my practice areas. I went up to Chicago to the Axion Labs and took the forty-hour course on blood draw instruments. I learned all about how the blood lab technicians can invalidate the tests by deviating from the protocols, and how they can double your blood result. The technician on the keyboard can change one number on a different substance and it changes the whole baseline and pushes a low blood result into evidence that can convict (*see* www.axionlabs.com).

Dr. Lee Polite can change the way you practice in regard to blood alcohol cases once you go through his course. We spent hours learning about gas chromatography and mass spectrometry. Dr. Polite told us as we graduated the course that we knew more about this science than 95 percent of the lab techs working at police labs in the United States.

Cooking Results

In San Antonio, we found out that the semi-retired technical supervisor who has been in charge of all the breath testing machines for over twenty years was not giving accurate data to defense attorneys. When he ran maintenance tests, he would delete inaccurate readings until he got one to "prove" that the machine was working properly. Any evidence that would have helped the defense was hidden or deleted. This is a criminal offense and will be investigated by our experts to develop a case to present to the district attorney's office.

The Texas Department of Public Safety had an employee who quit and opened up his own business. He saw that technical supervisors and police officers were cheating and that the director ordered that the records that would reveal that fact no longer be kept. That employee had ethics so he quit and he opened his own company. We brought him in to review test results in San Antonio and he is the one who found out that the technical supervisor was deleting Brady material. There is no reason to delete these results unless you want to hide errors from the defense.

The High Cost of Expert Witnesses

The hard part about bringing in expert witnesses to train you is it costs money, and this brings up one warning sign for clients. If an attorney is charging under $5,000 for a DWI breath or blood case trial, that attorney is a hack. If I charged $5,000, I would go out of business. My time, the staff, expert witnesses, all the training we do—it costs a tremendous amount of money. You have to go the extra mile to be qualified to defend your clients. Good trial lawyers are not cheap and cheap trial lawyers are not good!

Facing Appeals

The bad laws we get come from cases that are taken up on appeal. We have horrible laws because unqualified lawyers did a mediocre job at trial and then they filed an appeal with poor effort. All of a sudden we have case law that says bad science is good science. Forget that we all know junk in is junk out. When the wrong lawyer takes the wrong case up on appeal, we all lose.

Non-Expert Lawyers

There are appellate lawyers who get a DWI case and all they have ever done is appeal murder or sex crimes cases. These lawyers call DWI lawyers and ask what they should look for, such as the results of the *Emerson* case.[4] *Emerson*, a seminal case in Texas, says that horizontal gaze nystagmus, HGN, is admissible only if it was done properly by a certified officer.[5]

[4] *Emerson v. State*, 880 S.W.2d 759 (Tex.Crim.App. 1994).
[5] *Emerson v. State*, 880 S.W.2d 759 (Tex.Crim.App. 1994).

HGN was reported to be 77 percent accurate in identifying intoxication. In *Emerson*, evidence based on the walk-and-turn test, which is 68 percent accurate, and the one-legged stand, which is 65 percent accurate, was admitted, even though those tests are usually administered in violation of the protocols.

The trial lawyer and the appellate lawyer had not taken the HGN course and they did not understand the field sobriety tests. Why do we exclude polygraph tests in criminal courts? Because they are only about 90 to 95 percent accurate and the courts do not want to punish the 5 to 10 percent who would be wrongly convicted. But they are comfortable with the 35, 32, and 23 percent wrongfully arrested (false positive rates) in DWI cases.

A Brief Review of Field Sobriety Tests

The National Highway Traffic Safety Administration (NHTSA), under a grant from the US Department of Transportation, awarded a grant to the Southern California Research Institute (SCRI) to review the eight common field sobriety tests used in the late 1970s and in the early 1980s. SCRI researched the tests using individuals who were, for the most part, males from twenty to thirty-five years old. They did not bring in fat guys, nor did they bring in guys with bad ankles, bunions, or knee operations or who drove a truck for eight hours a day. They gave the subjects all the tests and determined that every test, except one leg stand, walk-and-turn, and HGN, were about 50 percent accurate for measuring intoxication. You might as well flip a coin. The following are the three tests that survived the scrutiny.

Error Rate for the HGN

Most people, on hearing the test accuracy numbers, would not do those tests. With the HGN, this error rate is a whole topic. Officers cannot differentiate between the forty-seven types of HGN or the thirty-eight causes of HGN, so how can they say that a test result is alcohol induced?

Officers are only trained to identify alcoholic intoxication. That is like saying there are ten causes for a toe to swell but I have only been trained on bumping your toe into a stool, so if I see a swollen toe, then I say that has been bumped into a stool. I do not know that the person did not drop a

hammer on it, because I have not been trained to identify that, so it must have been bumped on a stool.

My colleague, Gary Trichter, said years ago that HGN stands for "here goes nothing." In voir dire, when I mention the HGN test, I say, "Here goes nothing," and I am looking at the jurors and the jurors are looking at me. Anything that is going to come out in court you have to address in voir dire and in your opening statement; you have to hammer the prosecution's witnesses in direct examination and bring it back up in close. In a recent trial I used the "here goes nothing" slogan and when the officer started testifying about HGN I saw jurors mouth, "Here goes nothing," and smile. That is how you get not guilty verdicts.

Junk Science

Law enforcement methods for apprehending suspects have changed in recent years. Officers are using the PBT, a test called the HawkEye Field Sobriety Test, and now they can use the HGN. It is incredible what goes on out here. What we see officers doing is using junk science to wrap the shroud of legitimacy around these various testing angles. We send actual peer-reviewed articles to the police witnesses to discount their so-called theories, but they refuse to read them or they minimize their importance from the stand. Usually the jurors get it and understand that the police scientists do not want to know the truth or anything that counters the standard police science line.

Testing by Amateurs

Cops are still doing the testing. They are cops; they did not go to MIT. I do not mean to be ugly. These officers are not trained clinical psychologists, they are cops. They take a twenty-four hour class and if you gave any one of them a proficiency test a year later, you cannot guess how many would fail. The only ones who would pass are the DWI task force officers and they would not all pass.

I get these officers in court every trial, messing it up. I ask them to list the eight clues on the walk-and-turn test and they want to cheat and look at the list. I ask them to tell me from memory, since every test has to be done

the same way every time, what are the eight clues, and they will give me seven. When I remind them that there are eight and they forgot one, they will give me seven again, but they add the one they missed and leave out one they had already gotten right, and it is embarrassing. I have only had one officer give me the eight clues correctly for the walk-and-turn, but he did it wrong on the video of the arrest.

I will ask officers to demonstrate the walk-and-turn test in court and they will start with the wrong foot. I won a not guilty verdict last month because the man who was demonstrating the HGN to the jury did the wrong eye first, which changes the results of the testing. This was the strongest reason to support his arrest and he did it wrong. But no one apologized to the client. I ran into the prosecutor the other night at the mall and he told me, "I still think your client was guilty." Of course he did, or he would have to question all of the poor cases that he was taking to trial.

Designing a Test for Failure

Suppose I say to you that I want to create a test that would cause people to lose their balance. First, do we want them to stand on two legs with their feet at shoulder width? They can even crouch their knees down a bit like a football player. Or would we want them to stand on one foot with the other leg in the air? Which do we want to do if we want them to lose their balance? You would say they should stand on one leg.

Let us take this further. If a person is standing on one leg and we want that person to lose their balance, how about if the person stands rigidly on one leg for thirty seconds. What might happen if we do that? If you start to lose your balance in the least, you might sway, as you will see with someone walking on a tightrope. It is natural to raise your arms. So we want our test subjects to lose their balance. Do we want them to raise their arms or keep them at their side? We are going to have them keep their arms at their sides.

When they start to lose their balance and they cannot move their arms or put a foot down or sway, to stay upright they might hop. Since our object is

to have them fail the test, we do not tell them they cannot hop but we score it against them if they do hop.

Explaining Failure to a Jury

Here are the four clues in a one-legged stand that a police officer looks for in a suspected DWI: the subject sways, uses arms for balance, hops, or puts a foot down. I point this out to a jury panel and tell them that the police consider a person who does any two of those four things to be intoxicated. Then I ask the panel members a few questions about themselves. Do you, I ask, stand on one foot for thirty seconds every day? Do you do it once a week? How about in the last year? Nobody raises a hand.

What is even worse, I tell them, is that during the instructions the police tell suspects that if they put their foot down, just pick it back up and continue. What does that say subliminally? It says it is acceptable to put your foot down and pick it back up during the test, but it is not. I get the jury panel to agree that if they lift their foot up and either hop, sway, lift their arms or put their foot down, I score those as points and two points means intoxicated. And then I remind them that I did not tell them what counted against them or let them practice even one time before the test was started.

Next, I take the panel through the walk-and-turn test. When was the last time in your everyday life, I ask, that you have seen anyone standing heel to toe with their arms at their side? Probably never. Now how about if this same person started walking heel to toe, like a penguin? They crack up laughing. If a police officer saw someone walking down the street like that, that is the one they ought to pull over and investigate. The panel understands, then, that nobody passes this test. The test is designed for failure. And again, no practice test and no warning about what is counted against you. A test designed for failure!

Why Are People Convicted?

People are convicted because, yes, some of them are drunk. But another factor is how many lawyers know how to defend a DWI case properly. The quality of the defense bar is rising exponentially; a lot of younger

lawyers are starting to plea their clients not guilty. People say to me, "Balagia, you got another 'not guilty.' How?" and I tell them to come and watch and start getting the training and take their cases to trial. The old dogs are still the best trial lawyers but the young Turks are catching up fast.

Things to Take Advantage Of

The sense of smell is a point to take advantage of in defending a DWI. Arresting officers always say they smelled alcohol on the suspect's breath. If you take one sip of alcohol, you will have the smell on your breath. Let me tell you a story about smell.

I have some cattle and horses. Five years ago, I was heading to court to pick a jury and start a jury trial. I was just about to get in my car and drive to court from my home. I had just enough time to get to court and prepare before we started picking a jury. When I went outside, I saw two baby calves had squeezed through the fence and were near my pool. Now, if they get into the pool, they will drown or make a mess on the patio, so even though I am in my suit and boots, I chase these calves and I get them back to their pen. Naturally, I was sweating and disheveled, but instead of getting flustered I used the situation to my advantage.

When it was my turn to face the panel, I talked about my theory of my case, which is how unexpected events can lead to a wrong result. I told the panel the story of what had happened to me that morning. Then I picked out someone on the panel who likely did not have cattle and said, "You are aware that I was talking about the cow patties, and you know what that is, right?" She said she did. I said, "Let's say I stepped in one of those piles this morning. When I walked in here, you would have all smelled it, right?" She agreed, so I went on. "Let me ask you some questions about the odor coming off my boots. Was it a bull or a heifer?" She did not know what those were, so I explained and she said she did not know if what I stepped in came from a bull or heifer, based on the smell. I asked the next person if the cow was black or brown, and the next person whether it was a baby or an adult? I asked the next person after that one, "What did the cow eat?" and now they are laughing and going along with me.

Next, I said, "So what if I walked in here this morning and I smelled of alcohol on my breath and I ask if you smell the alcohol on my breath.

Did I eat before I drank?" I asked another person, "Did I drink a Coors or a Bud? Tequila or gin?" He said he did not know. I said, "Exactly. You do not know anything from the odor of my breath or the poop on my boot." When the officer said during the trial that he smelled the odor on the suspect's breath, the jury started laughing. I can still imagine the picture in their minds when the officer said he smelled the odor of alcohol. That was one of many not guilty judgments.

Another Approach

Here is another tactic I have used successfully. When I am questioning the arresting officer in court, I say that I am going to ask you some questions. If you do not understand, let me know and I will rephrase them. Is that fair? I already used "is that fair" in voir dire. The officer will say yes, that is fair.

Then I continue. I say that I noticed you reviewed your report earlier and testified from it. Did you get a chance to read it thoroughly, yes or no? If the officer says no, I say that I would like you to take the time to review it thoroughly; I have some pens here and I would like you to scratch through the mistakes and make any corrections or any deletions that you need to make on your report. Do you think any police officer has ever taken me up on that?

I ask if the report is complete. Is it truthful? Is it accurate? They always say yes, so then I give them statements from the report for them to agree to, starting from when they approached the vehicle and started talking to the defendant. I say he, the defendant, rolled down the window, you, the officer, asked for his information, and the officer says yes, he provided his information. In earlier questioning, I ask if the officer has been trained to make a police report, because the report did not say the defendant fumbled with his license. We know he handed it over with no problem. By doing this, I am establishing finger dexterity.

If the officer tries to add anything, then I say, "Officer, I asked you if it was a complete, accurate, and honest report and you said it was, but now you are adding something. Let's take a few minutes for you to make some additions or deletions. Do you need to do that?" The officer says no, but later, if I have to ask that again and he says he just remembered that the defendant stumbled when he got out of his car, I already have the jury

ready. I ask the officer if he wants to make up any more testimony and the prosecutor objects but the jury gets it. And they discount the testimony because the officer has lost his credibility.

Establishing Intoxication

The state goes through with the jury how to establish intoxication, which is the loss of normal mental or physical faculties. Texas law does not let you talk about, or let the jury consider, what a normal person is. I can show in evidence that my client has had back surgery or two knee operations, but what a normal person is and what constitutes the loss of normal faculties, that is up in the air.

What Is "Normal?"

We are returning to the tests designed for failure. Why would the police give a person an abnormal test to try to figure out if that person has lost normal faculties? There may be, for instance, a video showing a male suspect getting out of his car and walking normally. He only has problems when he is doing the one-legged stand and walk-and-turn tests. Now, I argue to the jury, the police are asking if he has lost his normal faculties. How did he stand? How did he talk? How did he walk? His speech was slurred? Oh, so have you met him before and you know how he talks? He told you where he lived, his phone number, his driver's license number, and many other pertinent facts when you asked him questions. Well, maybe you did not understand him, but we all did. We heard the video.

I attack and attack. I ask the officer about training with speech therapists so the officer can identify the difference between alcohol slur and fatigue slur. The police department does not provide such training. I keep piling it on; what you want the jury to take from all of this is that it is unfair. That they have not proven guilty beyond a reasonable doubt because innocence is presumed.

How to Get the Best Deal

When it comes to recommending how my client pleas, I use the Godfather clause: make me an offer I cannot refuse. We do not want a DWI conviction. Picture a ladder, with the top rung being the worst

possible outcome—going to prison on felonies. We do not want to go there. Next rung, we do not want to go to jail for misdemeanors. Next, we do not want horrible conditions of probation, and next, we do not want a DWI conviction. I might do a weekend in jail if you will give me a reckless driving conviction instead of a DWI. Make us an offer we cannot refuse, with the first choice being a non-DWI, and then we will not refuse.
I have talked the state into giving my client a Class A deadly conduct, which could be up to a year in jail. A Class A deadly conduct sounds horrible, but if my client were convicted of a Class B DWI, he would lose his commercial driving license. I asked the state to give my client deadly conduct and put an ignition interlock on his steering wheel. He has four children and he would lose everything with a DWI. The state made us try the case and we got a mistrial. I asked for deadly conduct again and they wanted to try it again. We got another mistrial. Before the third trial in the same court, the judge agreed with me and forced the state into a deadly conduct plea. Job saved, house saved, children fed, family happy, Dude wins another one—by entering a plea to a higher class.

I had one client who was offered a speeding ticket instead of a DWI, but my client was so angry at how the police officers treated him, he refused it. To him, that was not an offer he could not refuse and I had to try that case. It was the worst misdemeanor case I ever tired because I turned down a speeding ticket. We got a not guilty verdict, but it took three days. I was scared to lose the trial the whole time and went bananas when we heard not guilty.

Jury Trial vs. Bench Trial

I always prefer a jury trial. I have tried two bench trials and they did not go well. In one case, I thought there was no way anybody was going to convict my client, who was a police officer. We tried it to the judge, because my client had to have a resolution immediately and a jury trial would take months. The judge reviewed the arrest video three times and said she saw some slight swaying during the one-legged stand and she thought my client slurred a couple of words during the video, so she found him guilty. Thank God she is no longer on the bench.

In another case, I had a good case and tried it to the judge, who found my client guilty. She did not believe my client's statement about having had only one beer, which did not make my client guilty of DWI, it made her guilty of lying about having had only one beer. When I get a bad verdict from a judge, then I am mad at the judge. Give me a jury every time instead of someone scared to offend MADD or that the press might say they are soft on DWI cases.

Gaining Integrity in Science

We are finally getting serious about bringing some integrity in with the science used in DWI offenses, because science without integrity is junk. Many individuals have spent decades in prison for crimes they did not commit, so we are finally starting to open our eyes in Texas to the issue of scientific integrity. We have had a number of laboratories get into trouble for falsifying documentation, both in the breath testing and blood testing of DWI cases. We now have the Texas Forensic Science Commission, so we are going to see things tighten up a bit. What I would like to see is a lying lab tech go to jail for several months or even prison if a citizen went there due to purposeful deception by a lab tech.

It has been proven without any shadow of a doubt that police laboratories were, and we must assume are still, falsifying documents and not doing their job as a true scientist should. People were convicted, because that is the only goal when police scientists fudge data. I have never heard of a police scientist messing up evidence so someone would be found not guilty. As a result of some horrible exposure that the laboratories had received and what came out through the Innocence Project and other court proceedings, the public started saying this has to stop. If we allow it, we are just as guilty as the lying, cheating lab tech.

If I get sent to prison for a rape I did not commit, that is bad for me. But it is also bad for you because we have the real rapist still running around loose. If I get convicted of a DWI, that is bad for me but how is it bad for society? It is bad for society because when an innocent person is convicted of a crime, we all die just a little.

People are finally starting to come around to the fact that just because the police say it is so does not mean it is true. People are paying a severe price because the consequences of a DWI have gotten so bad. That is why we have had to bring our bar up on the defense side. It is no longer just a little DWI, no big deal. It is a big deal. It never goes away, the conviction stays forever and the consequences are horrible. And a lie is a lie, especially if the government tells it.

Beefing up the Defense Bar

The defense bar is preparing itself by getting training. There are probably eight of us now in San Antonio and a few in Austin who have taken the gas chromatograph course in Chicago. Had I toured the San Antonio police laboratory a year ago, I would have thought it was a good laboratory. After taking the best course in the nation, I went to the San Antonio laboratory and was stunned at the low bid equipment. The government does not always buy the best equipment, because they go low bid. Only when the government scientists care about our clients as much as we do can we start to believe that we are turning the corner. If they are true scientists, then there should not be any question that they would err to the side of caution before ever using questionable evidence to convict an innocent person.

Why Hire a DWI Expert?

We are also increasing public awareness of what DWI attorneys do by showing that not every defense attorney can do what we can do. If an attorney has a general criminal practice or specializes in criminal murder, do not hire that attorney for a DWI. Hire a DWI specialist or bring in someone who is a specialist in DWI as co-counsel. Ask the lawyer about his track record on DWIs and ask him to give you the names of six clients that you can call for a reference.

What a DWI Lawyer Should Know

There are essential differences between a DWI case and other criminal cases. You have to understand the science of the Intoxilyzer to do a breath test and to understand fully and completely how that number came out of a machine if you want to have any hope of attacking that number. How did I

know the supervisor in the San Antonio laboratory was deleting inaccurate test runs if I had not hired an expert? How do I know a police officer did the HGN incorrectly if I had not been certified in the course? How can I try a blood case if I do not understand the science and the machine used to create the evidentiary BAC number?

New people entering DWI practice must know the DWI laws. In Texas, that means they have to get into Chapter 49 of the Texas Penal Code and absorb it. They have to learn about the Transportation Code and about driver's license suspensions. They have to know the penal code on intoxication and the different rules for the different intoxication numbers in relation to punishment issues and surcharge penalties.
They also must know the traffic code and whether a stop was a legitimate and valid traffic stop. We had a case that we would have lost miserably on the intoxication facts, but it was thrown out because the judge ruled the traffic stop was bad. If my associate lawyer had not researched the traffic code, she might have pled our client guilty or taken the case to trial and lost. Good lawyering results in good results.

Lawyers handling DWIs must either get training in both breath and blood testing or not take those cases. Take the courses or hire an expert or hire the Dude to try the case with you.

In Case You Missed It the First Time, Never Plead Guilty

The last rule is that you should almost always go to trial. If your client is going to get the same punishment for going to trial and losing or pleading guilty, why not go to trial and hone your trial skills? I have tried cases before and gotten a guilty verdict and the next time I went to trial with that same officer, he did not show up. He did not want any more of me because I had the right training and he did not want to be embarrassed again because this time the jury might get it right and find my client not guilty.

Conclusion

In concluding this chapter, I think it is important to make two opposite predictions about the future of the DWI practice for trial attorneys. First, we have to stay ahead of the scientific curve because law enforcement will continue to use junk science or will junk up science unless and until they

change their attitudes and respect true evidentiary science. Drinking drivers will continue to be wrongfully charged, so we have to be prepared to outwork and outperform the prosecution, so those citizens are not wrongfully convicted.

MADD and other political action groups that favor strong law enforcement at the expense of the Constitution will continue to find ethically and morally weak politicians to erode our rights as free American citizens. We must fight that battle by keeping the public informed about important legal concerns and issues. It is easier to defend against bad laws ever coming into existence than to have them removed from the books.
Secondly, there is a coming battle between those opposed to stronger police power and those that favor strong civil liberties. The more people find out about wrongful convictions and poor police science, the better able we will be to fight off government propaganda. We must keep the dialogue open about the separation of police departments and scientific forensic laboratories. We must begin to educate judges so that their training is not monopolized by the NHTSA and prosecutorial seminars. We must go the extra mile to show so many former prosecutors, now serving as judges, that they were misled by the DWI professional lobbyist; it is time to turn back to the days when evidence held an honorable position in our courtrooms.

Key Takeaways

- Know everything about DWI. That means learn all about the physical and scientific tests, including how they are done and what the results really mean. Know more than your opponent and catch them in their lies.
- If you cannot be an expert, hire one. Expert witnesses may be expensive, but a DWI conviction is forever.
- Never plead guilty. If you risk getting the same sentence whether you go to trial or accept a plea, go to trial. You have nothing to lose and you will gain some trial experience and teach real science to the judges.
- Because of groups such as MADD, DWI is seen as an abomination. That is the public perception you have to fight to keep this discussion alive.

- Get the jury you want. Make full use of voir dire and your strikes. Your chances of success are appreciably lower if you have any prejudiced jurors to work around. Learn from the masters of this trial area.
- Field sobriety tests are designed for failure. Make sure your jury understands that point, no matter how many times you have to repeat yourself. Expose that the emperor has no clothes.
- Take the professional training courses for blood and breath cases and learn the science, period, so that you will not be fooled again.

Jamie "Dude" Balagia is the owner of Law Offices of Jamie Balagia. Born and raised in Austin, Texas, Jamie "Dude" Balagia worked for the Austin Police Department for twelve years before attending the School of Law at University of Texas. Licensed in 1992, criminal law was a natural for Mr. Balagia and within five years he had one of the busiest criminal practices in Austin. In 2002, Mr. Balagia began transforming his practice into a DWI trial machine, and in 2005, San Antonio was added to the "Territory to be conquered list." Mr. Balagia practices in state and federal courts in Central and South Texas.

Mr. Balagia is a certified instructor and practitioner of the Standardized Field Sobriety Tests (SFST), certified as a breath test operator, an Intoxilyzer 5000 technician, a phlebotomist, DRE trained, Axiom Laboratory trained in the GC/MS for blood alcohol cases, a Terry MacArthy Cross Examination Course graduate, and has spoken at the top DWI Seminars in Texas and across America. Mr. Balagia is a Sustaining Member of the National College of DUI Defense and attends every top DWI seminar in the country.

Acknowledgment: *My firm's trial success is due to the Austin Crew led by Stacy O'Brien, who has been my loyal secretary for 14 years. The San Antonio Crew is as good as it gets and is getting great results in a tough practice area. Twenty trial lawyers have trained under me over the years and have helped us to be the most successful DWI trial firm in Central/South Texas.*

Dedication: *I would like to offer special thanks to my lovely wife, Masae Balagia, owner of* WarhorseMarketing.com, *and our kids, Kalista and Cainan. And to Jesus be all the glory, honor, and praise.*

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