

Magazine | HOW TO

HOW TO; Defend Someone You Know Is Guilty

By DAVID FEIGE APRIL 8, 2001

I loved Kevin. He had a rap sheet that ran to 30 pages and a crack addiction to which he had completely surrendered -- but to me, he was wonderful. Kevin was bald with the thin, resilient frame of a man who has spent many nights seeking shelter in out-of-the-way places. I remember the night I met him. Back in the pens behind the courtroom, amid three dozen men, stood Kevin, shot by the cops, clad only in a green hospital smock and a big bandage. Having shot him, the police seized his clothes and charged him with trying to rob an undercover police officer.

Most people suspect that criminal-defense lawyers, especially canny ones, help their clients come up with a defense. They introduce themselves and in sonorous tones say: "Kevin, you have been charged with robbery in the second degree. Before you say anything let me tell you this: There are three defenses to robbery. . . ." While some lawyers do this, it couldn't be further from my approach.

Imagine for a moment that you are poor, poorly educated, black and charged with a crime. A big loud white lawyer you've never seen before comes in telling you he has been assigned by the court to defend you. Almost no one would admit their guilt or even tell much of the truth to such a stranger. So when I sit down, for the first time, across from someone charged with a serious crime, I rarely bother with "the facts."

Instead I spend my time trying to build trust -- explaining who I am and why the hell I'd be in a windowless place that smells of urine, defending someone who

supposedly robbed someone else. I explain how I work, what the client can expect and what the charges are. I try to learn about them, their families, their living conditions. In certain cases, I will try to get the names of witnesses so I can start an investigation. But I will rarely address their participation directly at this point. I have spent too long in the system to believe that people tell me the truth at first anyway. The truth is often the only thing my clients have left once the handcuffs go on. It's precious, not something they part with often or easily.

Eventually, of course, the facts become critical. By the time we reach the trial, I need a clear defense that I can explain to a jury in a sentence or two. Ultimately, there are only two basic defenses -- the ID" (they have the wrong guy) and the "what happened" (it was self-defense; it was a fight, not a robbery) -- and which one I use depends on what my client eventually tells me. I take the defenses as I take my clients -- as they are.

That goes for appearances, too. My office has a closet full of secondhand suits and ties to share with clients who can't afford them, but in Kevin's case, as in many others, putting him in a suit would look like a lie. Kevin was a homeless crack addict. He walked and talked and dressed like exactly what he was. So rather than try to "fix" Kevin, I try to make a jury understand him.

During our first conversation, more than anything, Kevin was confused. All he wanted to tell me was that he had just bought some crack and was on his way to smoke it when, out of nowhere, he was shot. The police, on the other hand, had a detailed description of a drug deal gone wrong -- an undercover cop attacked with a screwdriver and forced, in self-defense, to open fire. Kevin's case presented a nice defense: the police were lying to cover up a bad shoot. But the fact that there was a plausible defense -- even the fact that the cops had shot Kevin -- had little to do with my connection to the case. Like all of my clients, I'd defend Kevin happily, guilty or innocent.

Few public defenders have ever escaped a cocktail party without being confronted with "the question": How can you defend someone who is guilty? And out in the world, in public, we lie all the time. We offer abstract answers full of half-truths. I do this too. I do it because the truth is too hard to explain. I say that I

choose sides based on politics and ideology. I believe in the Constitution, and I think in terms of proof, not guilt. I tell them that trial work is fun, and that like most longtime public defenders, I can't imagine incarcerating people for a living.

But the half I don't tell is that having chosen sides, it becomes easy for me. It's as simple as this: I care about the person I know. In most cases, the complainant is an abstraction to me. His victimization is an abstraction. My client, on the other hand, is very human and very real. It is his tears I see, his hand I hold and his mother I console. I know my clients like no one else in the system. I empathize with my clients the way everyone else in the system empathizes with the complainants. And ultimately, I do to the complainants what the rest of the system does to my clients. I dehumanize them. I learn their facts and statistics in a police report, but I don't linger over their faces. "At TPO" -- time and place of occurrence -- perp did threaten UC#4225 with a screwdriver." That's the victim. Somewhere behind that language is the person that prosecutors and cops and judges and politicians and friends and family all rally around.

What I see instead, through the bars of the cramped interview booth, is Kevin: a 46-year-old man who lives from day to day and pipe to pipe by stealing car radios, who has a family he loves but is too embarrassed to visit and a girlfriend whose addiction he feels responsible for. And as he sits there and we talk and I learn about what he likes and where he sleeps and how he recently lost his favorite uncle to gunfire, that's when the battle lines are drawn. That's when he becomes real and the victim abstract. Ultimately, the thing I have so much trouble explaining is that when I get to know them, I just really, really like my clients.

So defending the reviled, even those who are guilty, is not some mental trick, nor even a moral struggle for me. I don't lack imagination or willfully close my eyes to another's suffering. Rather, the reality of my clients -- their suffering, their fear -- is more vivid to me than that of the victims. My clients are the ones left exposed. They are the ones who are hated. They are the ones who desperately need my protection. Everyone else can look out for the victims. And they do, of course.

And that leaves me to look after Kevin.
