The Magician of HOPELESS CAUSES

WELCOME TO THE WINSTON MCKESSON FILES OF FORMERLY LOST CASES

by JOE MULLICH

PHOTOGRAPHY BY ROBERT PACHECO

In the parking lot of the swank Pacific Dining Car restaurant, as red-vested valets stare off into the distance, attorney Winston "Kevin" McKesson suddenly inches toe-to-toe with me and points a shotgun at my chest. It's not a real shotgun, mind you, just McKesson's pantomime of a trial he handled five years ago in Visalia, Calif., when a group of black kids was charged with attacking a group of mostly white kids.

For a moment, though, the shotgun sure feels real to me; a frenzy of sharp-toned words tumble out of McKesson, describing the key event in the case, as he edges closer and closer, and then …

"BOOM!" he yells.

I grab my chest, instinctively feeling for blood.

"And that," he snaps, "is what they called a warning shot in the air."

Or maybe he says something a little different; the scene is too intense and sudden to remember in detail. The boom of the "shotgun" is followed by McKesson's booming laugh and bright smile, bringing us back to the safety of the posh diner. Then McKesson, the 24/7 man, with an always-ringing cell phone, jumps into his shiny black BMW and heads off to court.

Linda Fontanilla, an alternate juror on that case, later says, "This is a small community, a rural community, with a lot of poor people. You could see there were a lot of racial implications in this case, but the lawyer didn't come out and play the race card, which would have been offensive to a lot of people. He was professional and stuck to the facts. But if these kids had gotten a hold of another attorney who wasn't as sensitive to their needs, that would have set a very different tone in the courtroom, and I believe they would be in prison now instead of free."

The Visalia case, which he handled with co-counsel John Sweeney, is the one that McKesson considers his most memorable, filled with undercurrents of race and injustice, but it's not what made his reputation. Among his several headline-making cases is one where a city manager was charged with skimming from his constituents; another where four people were accused of hatching terrorism schemes against Jewish facilities; and perhaps his most famous, in which he defended a cop accused of filching cocaine from a police evidence room.

"I could never defend a policeman accused of violating someone's civil rights," McKesson says. "But a policeman accused of stealing cocaine? I can get with that."

McKesson is the defender of lost causes, the man who will take—and win—the cases that no one else will touch. As with any good story about lost causes, this one brims with irony. Consider the fact that McKesson—the crusading civil rights attorney and Johnnie Cochran protégé, who regularly handles cases charging police with misconduct—has been married for two decades to a Los Angeles district attorney who calls his clients "crooks."

Growing up, McKesson got the nickname "Question Man" for inquiring about unfair treatment from police.

An Island Among Crips

McKesson was born in south central Los Angeles, in a small neighborhood bordering the territory of the then-emerging Crips street gang. His father was a skycap at Los Angeles International Airport. "In my neighborhood, everyone had their mother and father present," he recalls. "All the kids had the same last name. It was a six-block *Leave It To Beaver* existence surrounded by this huge crime area."

A ready talker even then, he was known as "the Question Man," and, he adds, "not in a complimentary way." One of the questions he continually asked was about the treatment he received from police officers. "From the time I was 15 until I was 22, I had 15 contacts with law enforcement, and 13 of them were unpleasant. I was a good student who was never in trouble and didn't dress like a gang member, but was constantly harassed."

The event that stings most is when he and a friend went to Zuma Beach and an L.A. county sheriff told him to "go back to L.A. where you belong"—neither the first nor last time he would hear those words.

The Question Man had already decided to become a lawyer by the time he was in fifth grade, largely because he wasn't good at math or science. So when he got a little older, he'd called lawyers he'd read about—like Johnnie Cochran—and asked if he could meet them and talk about their cases. "I learned that lawyers loved to talk about themselves, so that was never a problem," he says with a smile.

After graduating from UCLA Law School in 1982, McKesson set off on a course that suggested he'd become a high-priced corporate attorney, not a man who would gain fame defending a dirty cop. He worked for an insurance defense firm and then a boutique law firm, representing musicians.

He bailed after less than a year. It was bad enough to be at the beck and call of nocturnal artists who would phone at 3 in the morning. The breaking point was the day McKesson spent with a client, brainstorming how the musician could get his kid to play on the same baseball team with another celebrity's kid.

That brought him back to the lawyer that became his mentor, Johnnie Cochran, with whom he worked for five years. "He was a proudly religious man with a deep sense of right and wrong," McKesson says. "He liked to enjoy the good life, but I can honestly say that 99 percent of what he did was right."

McKesson was impressed that someone could carve out a practice consistent with his personality and spiritual mission—and

still make a buck. McKesson handled the clients that covered Cochran's overhead, such as a couple of insurance firms. Occasionally, McKesson would pitch in as a "designated hitter" when another lawyer couldn't go to trial on one of the police misconduct cases that Cochran's firm was well known for.

"I could see in him then a zeal," the late Cochran said about McKesson in the *Los Angeles Times*.

An Expensive Sort of Law

McKesson says he loved handling the police misconduct cases, but "it's an expensive way to practice law. It's on contingency, so you're working for two years without knowing if you're going to get paid." He smiles. "My dad once asked me why I don't like to gamble. I told him, 'I gamble all the time on contingency. I just don't like Vegas odds.'"

McKesson started his own firm with another Cochran lawyer, John Sweeney, dubbing themselves "Johnnie Cochran West." They now share office space and expenses. "We don't share profits, because it's better for the friendship. Sharing expenses is one thing. But someone will be mad if you share profits and you don't each make the exact same amount of money."

He says he found "his calling" thanks to the unlikely personage of Rafael Perez, a Rampart division police officer who made newspaper headlines in 2000 for stealing a dozen pounds of cocaine from police evidence facilities, while admitting that he and his former partners framed innocent people and shot suspects for no good reason. Perez was just the sort of renegade cop McKesson loved to file cases against, but this time he was McKesson's client. A bemused Johnnie Cochran said that his protégé defending a police officer was "the ultimate irony." Irony aside, McKesson engineered a mind-boggling plea bargain. Despite the fact that Perez helped frame more than 99 people, many of whom went to prison for years, the arrangement allowed him to walk free in as little as 18 months.

"I think some people would call it a pretty sweet deal," Laurie Levenson, a professor at Loyola Law School and a former federal prosecutor, told the *Los Angeles Times* after the sentence was announced.

"We became friends," McKesson says of Perez. "He did a lot of things he's not proud of, but with me he's been an honest and caring individual and one of the smartest people I've ever met. He was probably too smart to be a regular patrol officer. He should have gone to college and become an accountant or something like that."

The case drew so much attention that when the United Press International reviewed the movie *Training Day*, in which Denzel Washington played a corrupt Los Angeles narcotics cop, the reviewer asked McKesson to compare the movie to the real-life case and included his comments in the review.

That same year, the Century City Bar Association named McKesson "Criminal Defense Attorney of the Year." Later, *Savoy* magazine called him one of the 15 most influential black lawyers in the country, while Forbes In-Flight Radio included him as "one of nine lawyers profiled as a tribute to the great American Lawyer."

Since then, McKesson's résumé has filled with cases most lawyers wouldn't touch. He provided free legal advice to former Torrance police officer John Brumbaugh who spent seven years trying to get

his conviction overturned for battering his ex-girlfriend and trying to dissuade her from testifying against him. Brumbaugh and his parents and grandparents had spent $150,000 on his defense, filing nine appeals to the court, and losing each time. The 10th appeal, this time with McKesson at his side, happened last May and they hit the jackpot—the appeals court ruled that the trial judge's jury instructions were unconstitutional, and Brumbaugh won his case.

In 2003, he represented Compton city manager John Johnson in an embezzlement case in which, as the district attorney's opening jury statement put it, the defendants "used the city's treasury as their own personal piggy bank, their own revolving charge accounts."

"Criminals Are More Honest"

McKesson says he and his wife of 20 years, a district attorney, "argue all the time. She tells me my clients are crooks. I tell her the people investigating the cases for the D.A. are crooks."

They started dating in college, when she was the progressive political science major studying Marxism and he was the budding capitalist set to take over the world. "On business matters, I moved to the left, she moved to the right," he says.

And now?

"I prefer dealing with criminals," he says. "They're more honest than businessmen."

Come again?

"If you're facing your liberty, you are more humble and honest than if the issue is just about money."

Imagine, he says, a CEO of a Fortune 500 company who hires an attorney on a business matter. "The meeting will be in the CEO's office. He will advise the lawyer how much he is willing to pay on an hourly rate and what activities he is willing to pay for. He will say how often he expects to be billed." Now imagine the same CEO has a son at USC who is accused of rape. "The CEO will meet in the criminal lawyer's office. The lawyer will tell how much he will be paid, under what terms, and will call the shots." McKesson explains this is not about being a "control freak," as much as allowing the lawyer to provide proper advice and counsel.

Like any good orator, McKesson has his hot-button topics that release an onslaught of fiery words. Don't talk to him about how the Bill of Rights keeps people safe from unreasonable searches or guarantees the presumption of innocence. Juries today, McKesson insists, presume guilt and require defense attorneys to prove innocence unless the defendant is a celebrity they like.

Don't believe it? He tells you to sit in traffic court and watch case after case where a citizen says he didn't run a red light, and a cop says he did, and the judge always rules in favor of the cop. "If there is a presumption of innocence, the cop's word shouldn't be taken without corroborating evidence," he says. "Some people will tell you the cop's word should count for more because he has no vested interest in the case, but that's not true at all. Police officers are rated by their productivity. If you're a street cop who's not making arrests, you're a slug."

He pauses, for dramatic effect.

"No group of people commit perjury more than police officers," he says, firmly. A tiny smile plays on his face and he lets loose with his booming laugh. "Now, the defendants probably would commit more, except they usually don't testify."