

Alcoholic Ambush

Boozing driver propels little boy into world of mute frustration

by Cynthia Scanlon

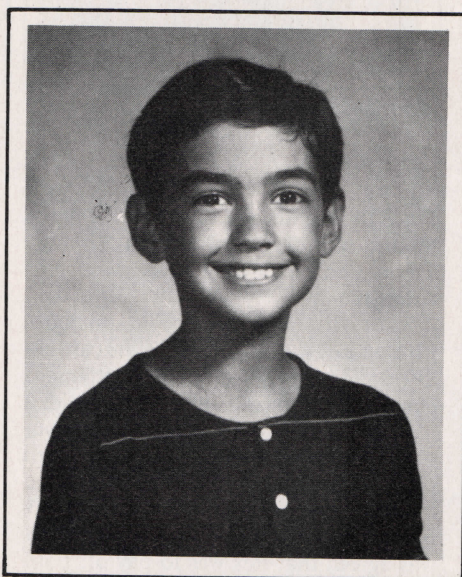
Last year, Victor Hernandez was an ordinary third-grader at Andulucia Elementary School in Phoenix. He was an intelligent, sensitive child with a lot of friends.

"He was very bright and he expressed himself beautifully," says Penina Jahoda, Victor's teacher. "He could read fluently. The larger words that the other kids stumbled over and couldn't sound out gave him no trouble. And he had excellent comprehension. He was right at the top of my class."

On Dec. 20, 1985, all that changed.

At 6:30 in the evening, Victor, now 9; parents Tina and Victor Sr.; brother Brandon, 3; and two cousins were on their way to the movies. They were stopped at a traffic light when a pickup truck driven by David Wayne Rex, 31, slammed into them doing 45 miles per hour, police say. According to Glendale police, Rex never slowed down.

The force of the impact shoved the rear bumper of the Hernandezes' Ford Fairmont into the back seat. The Ford was catapulted into the car in front of the Hernandezes, touching off a five-vehicle pileup.



Victor Hernandez Jr. before the accident.

Each member of the Hernandez family, except Brandon, was injured. Victor was the worst. He was crumpled on the floor in the back seat. His mother recalls groping behind her and feeling Victor's head. "It was crushed and bloody," she says. Because the impact jammed the doors of the car shut, the family had to crawl

through the windows. Victor was lifted out the same way and laid beside the car. "He had a seizure at the accident," says Tina Hernandez. "When we got to the hospital he had another seizure when they put him on the table."

As Tina, who is a certified emergency medical technician, tended her son and checked the rest of her family for injuries, Rex approached her. Tina says he smelled of liquor and slurred his words. A nearby witness helped him away at Tina's request. As a result of the accident, Glendale police charged Rex with aggravated assault and reckless endangerment. According to police reports, Rex's blood-alcohol content was measured at .19. State law presumes intoxication at .10.

Glendale police say Rex told the following story: After meeting his co-workers and supervisor at a bar after work, Rex left around 6

P.M. and proceeded north on 59th Avenue. A witness said Rex ran over the curb as he was turning right onto Camelback Road. He then hit the median on Camelback and drove three fourths of a mile before slamming into the Hernandezes' car. Rex and his lawyer, David Appelton, refused to talk with PHOENIX METRO Magazine about the case.

Victor was rushed to Barrow Neurological Institute at St. Joseph's Hospital, where he underwent surgery twice. "His head looked like an egg shell because there were so many fractures," says Dr. Harold Rekate, a neurologist at St. Joseph's. "There was a large section that was open on the left side of the head. Some of the skull had been driven into the brain."

For two weeks after the accident, Victor hovered between life and death. His cranial pressure had to be constantly monitored. According to Dr. Rekate, the hospital put the child on a respirator, administered drugs and "used very 20th century medical technology" to keep Victor alive.

"When I told the children in class [about the accident], they were very upset," Victor's teacher, Jahoda, says. "At the time I told them, Victor was still in a coma, and they weren't sure what coma meant. I explained to them that it was like sleep, but it wasn't natural sleep. I told them it was something he might eventually wake up from and he might not. Some of them got the impact of it. . . . Some of them cried."

At the hospital, Tina slept in a bed beside Victor. The rest of the family visited in shifts. "[Hospital officials] gave us a 50-50 or poorer prognosis at first," Tina says. "Then, as time went on, Victor stabilized, and they were more hopeful."

Gradually, Victor's condition improved. Weeks after the accident, the Hernandezes were finally able to take him home. Today, Tina takes Victor to the hospital four days a week for speech, physical and occupational therapy.

The extent of Victor's brain damage is unknown. It is clear, according to Dr. Rekate, that Victor's speech and learning centers are critically impaired. Victor tries to mouth words, but only makes noises. He is being retrained to hold a glass and eat. Sucking on a straw is difficult. "They think his motor skills are going to be good, and he walks beautifully," Tina says. "But he doesn't have fine movement of his tongue and lips."

When asked about David Wayne Rex, Victor's mother is surprisingly calm. "I don't hate the man, you understand?" she says. "I feel sorry for him. He has to live with what he's done. But I don't hate the man; I just don't want him hurting anybody else."

Rex's driving record for the past five years shows a man familiar with trouble. In September 1980, Rex, then a 25-year-old staff sergeant at Davis-Monthan Air



Victor and his mother, Tina, last month.

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Force Base in Tucson, was arrested in the hit-and-run death of Dennis Timothy Tierney, a 22-year-old University of Arizona student.

Through a telephone tip, Tucson police learned Rex was the driver of the car that killed Tierney. Rex subsequently was charged with manslaughter, but pleaded guilty to negligent homicide. He was put on four years' probation and ordered to pay \$2,100 in restitution. Rex also entered into a separate agreement with Tierney's parents to pay \$50,000 in restitution. It was agreed that Rex was to pay off both obligations in monthly increments of \$100 to Tierney's parents, who now live in Kentucky. Rex also was ordered to receive treatment at an alcohol-treatment facility.

In September 1983, while still on probation for Tierney's death, Rex was picked up by Tucson police, this time on charges of driving while intoxicated. He was convicted and fined \$373. His license was suspended for 30 days and restricted for an additional 60 days to driving to and from work. When the probation department was advised of the arrest and subsequent conviction, a petition was drawn up to revoke his probation. The petition was later dismissed.

For unknown reasons, the state did not order Rex to attend traffic survival school, as required of all convicted drunken drivers, until 1984. According to his driving record, however, he has never attended the school, which should have meant an automatic 60-day suspension of his driver's license. That suspension never was imposed.

In February 1985, Rex was to be released from probation. But because he was \$925 behind in his court-ordered restitution to the Tierneys, he was ordered to

serve another year of probation.

Today, Rex is still behind in his court-ordered payments. "The checks trickle in," says Sidney Wolitzky, the Tierneys' Tucson attorney. He adds, "If he goes to jail, he won't be able to pay my clients at all."

Rex, who is a delivery person for a local electronics manufacturer, was still on probation in Tucson for killing David Tierney when he was accused of driving the truck that maimed Victor. The Pima County Adult Probation Department in Tucson was unaware of the Hernandez accident. In Phoenix, the Maricopa County Attorney's Office was unaware that Rex was on probation. As a result, Rex was released from probation in February of this year.

"There's no system for one jurisdiction to notify another jurisdiction," says Berney Snyder, supervisor of the Special Services Division of the Pima County Adult Probation Department in Tucson. "A person could very easily escape. I'm not going to deny that."

According to Patricia Scott, a prosecutor for the Maricopa County Attorney's Office, Rex does not appear anywhere in the county computer system. "I was not even aware he had a prior," she says.

Perhaps out of everyone, Victor's friends have been the most profoundly affected by the accident. "The class wrote Victor at the end of the year, and we told him what we had done all year," Jahoda says. "The children talked about him the rest of the year. They asked, was he coming back to school and why wasn't he in school? I really didn't know the answers to those questions."

Ten-year-old Shannon Chavez was the first classmate to visit Victor after the accident. "I was afraid to go over because I didn't know what he was like," she says. "When I first went to visit him, I felt weird because he looked different. He didn't have much hair and he was real skinny. He just looked strange."

Victor and Shannon played with one of his video games that afternoon. "His mom kept saying he was getting better at it, and I hardly knew how to play it," Shannon says. "At the end of the game, he won. I felt that he was getting smarter and he was learning more."

Shannon beamed as she spoke. Then, suddenly, she became solemn. "A new kid came to school [after the accident] and everybody saw that she [Jahoda] put him in Victor's seat," Shannon says. "And everybody was mad because it was Victor's seat. Everybody thought he was coming back. But when Mrs. Jahoda put somebody else in his seat, everybody knew Victor wasn't coming back."

Since Shannon's visit, many of Victor's other friends have dropped by to play, although some have been scared away. "But a good many of them still come back, and they play," Tina says. "He does real good

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Victor

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with them."

Victor Sr. and Tina have paid their own price for the accident: They have separated and are now getting a divorce. "We were having problems before, but right before the accident we thought we were going to be able to work things out," Tina says. "We went on a second honeymoon the week before the accident, [but] the strain, the pressure and the stress of the accident definitely contributed to our problems reoccurring and this time not being able to straighten them out.

"The word divorce came up and Victor pointed to me and then pointed to his father and then pulled his hands apart. [Victor Sr.] will come over and Victor will try and take off his shoes to stay or point to the bedroom to go and sleep with mom. It makes it so hard on [the children's] dad because he still has to leave. It's even brought him [Victor Sr.] to tears."

Now that Tina has returned to her midwifery practice full time, she spends her off hours helping Victor relearn skills he once excelled in. "The speech pathologist at the hospital gave me a lot of tips and loaned me the books so that I could really work with him at home," she says. "In the

last two months, he's only added three vocabulary words, so it's going to be very slow. He can add almost anything on his fingers."

Subtraction, a skill Victor once fully understood, now eludes him. And, prior to the accident, he was reading at a fifth-grade level. "Of course, he can't come anywhere close to that now," Tina says. "That frustrates him because reading was his favorite thing and going to the library was his favorite pastime."

Tina says that although Victor can write his name now, that's the only thing he writes legibly. "It's frustrating because his brother is starting to learn things now, and in ways, his brother is surpassing him," Tina says. "And it frustrates [Victor] that a 3-year-old is doing things as good or better than him. He wants to do all the things a normal 9-year-old wants to do."

As Tina speaks, Victor looks on, occasionally making noises in an attempt to contribute to the conversation. "He gets angry very easily," Tina says. "He'll point things out and try to make noises, and I'm pretty good at deciphering what he's trying to say. I've become really good at charades.

"But, there are times, no matter what he says, I just cannot understand. And he gets frustrated. Sometimes, he'll cry, and I just have to say, 'I'm sorry, but I don't know what you're trying to tell me.' He'll go away and an hour later he'll come back and we'll try again."

The Hernandezes are checking into special schools that will help Victor progress. They also are going to take classes in sign language in the hope that he will be able to pick up the hand signals.

As Tina gets up to answer the phone, Victor sits down beside me. I find myself wanting to hold him and make him all better. Instead, I ask him how he's doing. A smile spreads across his face and into his eyes. He puts his thumb and forefinger together and gives me the 'high sign,' signaling that he has not given up.

* * *

On June 27, 1986, David Wayne Rex pleaded guilty to "aggravated assault-dangerous," a crime one step more severe than aggravated assault. At press time, he had yet to be sentenced, but the minimum jail time for being convicted of the crime is five years; the maximum, 15 years.