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Humanizing criminal defendants.

Courtesy Sunwolf: A criminal defense lawyer's criminal defense lawyer, showing lawyers the powerful path to humanizing our clients, through storytelling, kindness to all, summoning our inner magic, and a reminder that "reality is no obstacle." When I started practicing criminal defense over fifteen years ago, a repeated theme during training and trial seminars was the necessity of humanizing our clients to juries and judges (and prosecutors, when trying to negotiate the resolution of a case), lest they be mistreated as nothing but numbers or statistics. Many prosecutors and police -- and sometimes probation and parole agents -- repeatedly try to dehumanize criminal defendants, and crushing court dockets often add to the dehumanization by courts' constant processing of criminal cases, rather than focusing on each criminal defendant on an individual basis. Many lawyers -- sometimes due to public defender offices with client loads too high and resources too low, private lawyers relying on court-appointed fees in jurisdictions that grossly underpay, and private lawyers accepting too many clients than they can effectively defend (the goal must not be to line one's pockets but to serve one's clients) -- have serious resource handicaps being able to humanize their clients. Some lawyers have psychological barriers to humanizing their clients; if they cannot overcome those barriers, they should not be practicing criminal defense. If criminal defense lawyers will not humanize their clients, nobody else will. The starting point is to want to care about and humanize one's client. If the criminal defense lawyer and client have walked very different paths in life, the lawyer ultimately needs to take a crash course and then a longer-term course not only in relating well with the client -- and assisting the client in relating well with the lawyer -- but in helping the judge and jury relate with and identify with the client. A critical ingredient of all this is to spend time with the client face-to-face, to immerse oneself to understand one's client, and to walk in the client's shoes. Patience often is a critical ingredient in the mix. When plotting my transition into criminal defense and away from a corporate law firm, I attended the mandatory training session for new court-appointed criminal defense lawyers in Washington, DC. The trainer was -- and still is -- a seasoned, excellent, and caring criminal defense lawyer. He has been one of my role models for connecting and relating with clients. Even if he had not financially and personally struggled himself, somehow he had become able to enter his clients' minds, souls and bodies so well that he felt instinctively what it was like to be his clients. I was on the path to bridging gaps in relating to indigent clients, when I had not experienced indigency nor other serious personal crises myself, short of such self-imposed deprivations as living in a tiny closet of an apartment in New York City, which hardly fit the bill. At one point, the training lawyer told us about being assigned to defend a man who was arrested in the act of sexually defiling a person's corpse, and was prosecuted as the alleged murderer. He said that if there is ever a time when a criminal defense lawyer knows whether s/he's cracked up to defend any criminal defendant without limitations, this is such a time. This gave me cause for pause at the time about whether there might come a time that I would feel unable to defend a client who very likely committed indescribably heinous violence. (With that experience in mind, it is folly to believe that jurors always acquit merely because they have reasonable doubt rather than substantial doubt that the defendant committed the alleged crime). However, that thought came when being on the outside of the criminal defense practice looking in. Moreover, I felt so committed to helping to equalize the quality of criminal defense provided to indigent clients as to paying clients that this goal -- but certainly not this goal by itself -- assisted helping me look well beyond such concerns about defending people accused of heinous violence, even when it seemed clear that the client had done the alleged act. With the help of such role models as this indigent defense trainer, I never hesitated for more than a moment about defending people charged with unspeakably despicable acts. One despicable accusation that particularly stands out of for me involved my defense of a man who had been convicted a few years before of breaking into his grandmother's house and raping her: I obtained a reversal of his conviction due to faulty jury instructions and defended him through the final resolution of his case. Before beginning my criminal defense practice, I would have struggled profoundly about defending this man had I thought he committed the alleged crime. By the time I started defending him, I was able to look at the bigger picture of the struggles that he experienced that would have led him to rape his grandmother, if he had indeed done that, without losing sight of the horrible crime he was alleged to have committed. Another man I defended was accused of burglarizing a woman's house, and locking her in the closet to keep her out of the way (rather than to kill her), where she stayed until she died of dehydration. Then, I have defended people accused of some of the most unspeakable rapes and sexual assaults. The list goes on. It is not enough intellectually to want to represent criminal defendants. If one's heart is not into helping the client, the client suffers. As another early criminal defense teacher admonished: "Love your client." "Even if your client smells, love your client, and stick close to your client." Who else will? Idealism may help pave the way to successfully defending criminal defendants, but nothing beats connecting with and caring about them, and developing the skills and experience necessary to successfully fight for them. Although it was but a movie, Joe Pesci in the title role in My Cousin Vinny exemplifies that caring is more important than idealism when it comes to criminal defense; otherwise, he would not have won his cousin's murder trial. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:00