

Thursday, July 5, 2007

What drives criminal defense lawyers to fight for the accused?

Â Bill of Rights.Â (From the public domain.)Â What drives criminal defense lawyers to fight for the accused? I am not talking about the mere willingness to do such work, but about the very thirst to represent such clients and to do it excellently. Here is my brief story; I welcome the stories of all other criminal defense lawyers. Â When plotting my transition into criminal defense and awayÂ from a corporate law firm sixteen years ago, I attended the mandatory training session for new court-appointed criminal defense lawyers in Washington, DC.Â Whether or not he had financially and personally struggled himself, somehow our lawyer instructor had become able to enter his clients' minds, soulsÂ and bodies so well that he felt instinctively what it was like to be his clients.Â Â 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. Â 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 whoÂ very likelyÂ committed indescribably heinous violence. 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. Â One despicable accusationÂ that particularly stands out of for meÂ involved my defense ofÂ a manÂ prosecuted for allegedly breaking into his grandmother's house and raping her. Before beginningÂ my criminal defense practice, I would have struggled profoundly about defending this man had I thought he committed the alleged crime.Â By the time IÂ started defending him, I was able to look at the bigger picture of the problems and 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. Â Another man I represented was accused of burglarizing a woman's house, and locking her in the closet to keep her out of the way, where she stayed until she died of dehydration, because he allegedly ran out focused on getting away rather than taking the time to release her.Â I also represented a man accused of raping his minor daughter, which led to her giving birth to a girl who at once was my client's daughter and granddaughter. Â The list goes on of cases that would challenge my resolve to defend any criminal defendant. 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? Â Perhaps it does not hurt that I was sometimes on the unfair end of "J'accuse...!" ("I accuse...!"). My zeal for fighting for criminal defendants goesÂ as far back as the age of nine (probably earlier) when the adjacent fourth grade teacher had the audacity to accuse me of trespassing on the apartment grounds across the street for no other reason than that a brown-haired boy around my age in a blue coat was allegedly seen there. In one of my earlier instances of self-advocacy, I retorted contemptuously: "Not only have I never been to that property, but I am angered that you have singled me out just because I have the same color and type of coat that most boys my age wear," and walked away from this precursor to the DARE soldiers. So this is what misidentification and j'accuse is all about. I want nothing of it.Â Fortunately, the man never wonÂ out withÂ me whoÂ -- when I was five and trying to make sense of someone being arrested near a bank -- admonished me: "Crime does not pay." (What happened to innocent until proven guilty beyond a reasonable doubt before a jury? On the ironic and tense side, crime -- or more succinctly my defense of alleged criminalsÂ - - leads to my being paid very well. Of course, nothing is preventing me from following Tony Serra's much more pro bonoÂ and low bono path.)Â Plenty of my clients are accused of crimes that I think either should not be crimes in the first place, or should not be treated so severely. Many of my clients in that category are charged with offenses involving marijuana, which I advocate being legalized. Not having smoked marijuana more than a handful of times, I rely all the more on my marijuana clients to help me fill in the gaps of my limited smoking experiences and the gaps not filled in by previous marijuana defense. Many times, I have enjoyed living vicariously through their marijuana experiences; the marijuana smoking, growing and lifestyle culture fascinates me. Â In any event, people come from many paths to have a passion for fighting for criminal defendants. I originally came to criminal defense through my anger and obsession over rampant government civil liberties violations, and as an offshoot of my human rights activism that began soon after I started college. Some have come to criminal defense from a life of decency, fair play, and devotion to peace and non-violence. Some might haveÂ struggled against the criminal justice system as defendants themselves or experienced close ones victimized by the criminal justice system. Others might have grown up feeling oppressed by poverty or by the power establishment in general, ready to fight for individual rights.Â A critical unifying thread for being a powerful and effective criminal defense lawyer is to care deeply about each client. Although he was just acting in a movie, Joe PesciÂ in the title role inÂ My Cousin VinnyÂ exemplifies that caring is more important than idealism and a

stellar grade transcript 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 00:20