

Wednesday, July 25, 2007

It's not how you dress, but how you persuade.

Adam Levin at Southern Criminal Law e-mailed criminal defense lawyers "whose blawgs I frequently read" for tips on practicing criminal law for newer lawyers and for those transitioning to solo practice. Here are my replies in CAPS: Philosophy What practical advice do you have for maintaining boundaries in your life? A SELF-EMPLOYED LAWYER CAN CONTROL THE NUMBER OF CLIENTS S/HE HAS BY RESISTING THE TEMPTATION TO ACCEPT EVERY CLIENT, PARTICULARLY WHEN THE LAWYER'S PLATE IS OVERFLOWING. PUBLIC DEFENDER LAWYERS NEEDS TO BAND TOGETHER WITH COLLEAGUES WITH BACKBONES AND WITH THE NLADA AND NACDL TO KEEP CASELOADS SUFFICIENTLY LOW TO PROVIDE QUALITY DEFENSE. What are some must-read books for the burgeoning criminal defense attorney (non-fiction or fiction)? FOR SELF-EMPLOYED LAWYERS, JAY FOONBERG'S HOW TO START AND BUILD A LAW PRACTICE. FOR EVERYONE, RAM DASS BE HERE NOW. How about films? TWELVE ANGRY MEN. FOR DIVERSION, ANY FILMS BY TAKESHI KITANO OR JOHN WATERS. Do you perform volunteer, pro bono, or low bono work? Why or why not? YES. LAWYERS HAVE A DUTY TO CONTRIBUTE TO EQUAL ACCESS TO JUSTICE, PREFERABLY THROUGH PRO BONO WORK, BUT AT THE VERY LEAST THROUGH FINANCIAL CONTRIBUTIONS TO ORGANIZATIONS ASSISTING EQUAL ACCESS TO JUSTICE NOT JUST TO POOR PEOPLE BUT TO CAUSES THAT RELY ON DONATIONS FOR LEGAL REPRESENTATION. EVEN GOVERNMENT LAWYERS AND JUDGES -- IF OTHERWISE PREVENTED FROM PERFORMING OUTSIDE LEGAL WORK -- CAN DO PRO BONO WORK THROUGH SUCH ACTIVITIES AS PROVIDING LEGAL INFORMATION AND TIME TO NON-PROFIT ORGANIZATIONS, AND BY DISPELLING THE MYSTERIES OF THE LAW THROUGH PUBLIC SPEAKING AND THROUGH PUBLISHING IN THE MASS MEDIA. FROM A MORAL PERSPECTIVE, LAWYERS' PRO BONO DUTIES ARISE BECAUSE IT IS THE RIGHT THING TO DO. FROM A PRACTICAL PERSPECTIVE, THE PRO BONO DUTY ARISES BECAUSE LAWYERS ARE ECONOMICALLY PROTECTED AGAINST COMPETITION THROUGH ETHICAL RULES BARRING NON-LAWYERS FROM PRACTICING LAW; LAWYERS MUST SOMEHOW PAY FOR THIS PRIVILEGE, WHETHER OR NOT IT IS A JUSTIFIABLE PRIVILEGE. MOREOVER, FROM A BENEFICIAL PERSPECTIVE FOR LAWYERS, PRO BONO SERVICE IS AN OPPORTUNITY TO GAIN REWARDING PRACTICAL EXPERIENCE, CAN MAKE A DIFFERENCE FOR THE PRO BONO CLIENT AND FOR JUSTICE, AND CAN MAKE FOR A BETTER LAWYER. How important is it to be involved in local politics or the local bar? DON'T GET INVOLVED IN POLITICS UNLESS THE PURPOSE IS PURELY ALTRUISTIC. TOO MANY POLITICIANS AND POLITICALLY INVOLVED PEOPLE INFLICT TOO MUCH MISERY ALREADY, THAN FOR US TO HAVE PEOPLE GETTING INVOLVED IN POLITICS IN AN EFFORT TO GET CLIENTS. DON'T GET INVOLVED IN THE LOCAL BAR UNLESS YOU'LL STAND UP FOR JUSTICE, RATHER THAN FAWNING OVER JUDGES AND BAR LEADERS ON THE BASIS OF THEIR TITLES (OR ABILITY TO REFER YOU CLIENTS) RATHER THAN ON THE BASIS OF THEIR QUALITIES, ABILITIES AND ACTIONS. If you won 10 million dollars, how would your practice change? I WOULD FEEL AN OBLIGATION TO SHARE A SUBSTANTIAL AMOUNT OF THAT MONEY WITH PEOPLE IN NEED. THE MONEY I KEPT WOULD HELP ME SELECT CLIENTS BASED MORE ON WHICH CLIENTS AND CASES I WANTED AND ON THEIR NEED, RATHER THAN ON THE CLIENTS' ABILITY TO PAY. Clients Is it necessary to like your clients? NO. HOWEVER, I LIKE THE VAST MAJORITY OF THEM. Maintaining client confidentiality is obviously important. What advice do you have for maintaining it? MY LAW PARTNER AND I HAVE NO PROBLEM WITH THAT OURSELVES. FOR SUPPORT STAFF, WE'RE CAREFUL IN THE HIRING PROCESS TO SELECT STAFF WHO WILL TREAT CLIENT CONFIDENTIALITY AS IF WE WERE THE DREADED CIA. Is it ever appropriate to sugar-coat a situation for a client? NO. HELP THE CLIENT TO HAVE A REALISTIC VIEW OF THE CASE, AND TO HAVE OPTIMISM TO PURSUE THE BATTLE FOR VICTORY. Do you always return calls within a set period? I MAKE SURE TO GET CLIENTS' CALLS RETURNED PROMPTLY, AND FOR MY STAFF TO LET CLIENTS KNOW OF ANY DELAY IN CALLING BACK (E.G., VACATION, OR A LENGTHY TRIAL). I HAVE NO OBLIGATION TO CALL BACK A COLD-CALLING SALESPERSON. What advice do you have for dealing with difficult clients? A DIFFICULT CLIENT SITUATION IS A TWO-WAY STREET. SOMETIMES PROBLEMS CAN BE SOLVED BY LISTENING CLOSELY AND DEEPLY TO THE CLIENT, BY HANGING OUT SOCIALLY WITH THE CLIENT WITHOUT DISCUSSING THE CASE OR THE LAW, AND BY SHARING SOME BELLY LAUGHS. SOMETIMES AN INTERMEDIARY IS NEEDED. SOMETIMES, A PSYCHODRAMATIST, STORYTELLER, OR OTHER PROBLEM SOLVER IS NEEDED FOR INTERVENTION. HOWEVER, WHEN NOTHING WILL FIX THE PROBLEM, SOMETIMES LOSSES NEED TO BE CUT, EVEN IF THAT MEANS GIVING UP MUCH OR ALL OF THE ATTORNEY'S FEE. What is your thought process before deciding whether a particular client will testify at trial? PREPARE THE CLIENT TO TESTIFY. ONLY AFTER THE PROSECUTOR RESTS WILL THERE BE A CLEARER PICTURE WHETHER TO TESTIFY. FURTHERMORE, THE CLIENT WILL BE MORE INCLINED TO ACCEPT YOUR ADVICE TO TESTIFY OR NOT TO TESTIFY IF YOU PREPARE THE CLIENT'S TESTIMONY. THEN, THE DECISION

WHETHER TO TESTIFY WILL BE BASED MORE ON THE CLIENT'S HAVING A REALISTIC SENSE OF THE POTENTIAL QUALITY OF HIS TESTIMONY THAN OUT OF A CONCERN THAT THE LAWYER MERELY DID NOT WANT TO PUT IN THE TIME TO PREPARE TESTIMONY. In your mind, what are appropriate reasons to turn away a potential client? ASIDE FROM IRRECONCILEABLE CONFLICTS OF INTEREST, WATCH OUT WHEN A POTENTIAL CLIENT IS LOOKING TO REPLACE HIS OR HER LAWYER, AND MAKES COMPLAINTS ABOUT PREDECESSOR COUNSEL THAT ARE LIKELY TO DOG YOU IF YOU TAKE ON THE CLIENT. Do you subscribe to a "client centered" approach to your work? If so, what does that entail? I SEEK POWERFUL HARMONY IN EVERY ASPECT OF MY LIFE AND WORK. FORTUNATELY, ACHIEVING HARMONY FOR MY CLIENT ORDINARILY CARRIES WITH IT MY OWN HARMONY. Investigation What is the most over-looked tool of investigation? CLOSE AND DEEP LISTENING, AND WORKING WITH INVESTIGATORS WHO DO THE SAME (AND WHO HAVE GOOD RELEVANT EXPERIENCE, GOOD HEARTS, AND GOOD HEADS ON THEIR SHOULDERS). If you live in a jurisdiction that uses optional reciprocal discovery, do you recommend its use? NOT APPLICABLE WHERE I PRACTICE. Do you have any tips for using your investigator effectively? INTEGRATE THE INVESTIGATOR INTO THE WHOLE CASE PREPARATION. OTHERWISE, THE INVESTIGATOR IS BEING INSTRUCTED TO FETCH SOMETHING WITHOUT KNOWING THE PURPOSE FOR THE FETCHING, AND WITHOUT BEING ABLE TO ADD INDEPENDENT VALUE TO THE CASE PREPARATION. Trial What do you do before trial to calm your nerves (assuming you still get nervous)? Tai CHI. Is the old advice about starting with your closing statement and working backwards still good advice for preparing a case for trial (it's what they were selling at my law school)? ONE NEEDS TO WORK BACKWARDS FROM THE ANTICIPATED JURY INSTRUCTIONS IF THE CASE IS TO GO TO A JURY, AND WITH THE APPLICABLE LAW IF THE CASE IS TO BE A BENCH TRIAL. IN THIS WAY, THE CRIMINAL DEFENSE LAWYER STARTS WITH THE ROADMAP TO PREPARING ALL PARTS OF THE TRIAL. AS THE TRIAL LAWYER DEVELOPS THE CASE, IT BECOMES IMPORTANT TO WORK BACKWARDS FROM THE CLOSING ARGUMENT, AS WELL. THE CLOSING ARGUMENT WILL RELATE THE DEFENDANT'S CASE THROUGH A PERSUASIVE STORY THAT WILL BE TOLD THROUGHOUT TRIAL, FROM VOIR DIRE TO OPENING TO DIRECT AND CROSS TO CLOSING ARGUMENT. THIS IS NOT TRIAL ADVOCACY CLASS; THIS IS YOUR OPPORTUNITY TO PERSUADE. Other than trying cases, where should an aspiring criminal defense attorney look to improve his or her trial skills? Tai CHI. LAUGHTER AND COMEDY. Any quick tips for Direct Examination? THE WHOLE TRIAL IS JURY-FOCUSED (AND JUDGE-FOCUSED, FOR BENCH TRIALS). TELL A PERSUASIVE, COHERENT, AND MEMORABLE STORY AT EVERY STAGE OF THE CASE. HUMANIZE THE WITNESS AND HELP THE JURY RELATE TO THE WITNESS. Any tips for Cross Examination? TELL THE PERSUASIVE STORY THROUGH CROSS EXAM, TOO, TO THE POINT THAT THE CROSS EXAMINER IN MANY WAYS IS TESTIFYING HIMSELF, AND NOT GETTING TOO CONCERNED WHEN THE EXPECTED ANSWER IS NOT OBTAINED. OFFER THE WITNESS THE CHOICE BETWEEN ANSWERING EACH QUESTION DIRECTLY, OR ELSE GOING THROUGH THE PAIN OF ENDURING INFINITELY MORE SUBQUESTIONS TO GET TO THE EXAMINER'S GOAL. A SOFT CROSS EXAMINATION CAN BE MORE POWERFUL THAN A HARD CROSS EXAMINATION, JUST AS Tai CHI'S POWER IS DERIVED FROM USING THE OPPONENT'S ENERGY AS MUCH AS POSSIBLE. How important is it to get your client into a nice set of clothes? THE CLIENT'S CLOTHES SHOULD BE COMFORTABLE AND PRESENTABLE, TO THE POINT THAT THE JURY DOESN'T NOTICE THE CLOTHES EITHER WAY. What pointers do you have regarding appropriate attorney attire in the courtroom? BE YOURSELF, BUT STILL DRESS SO THAT THE JURY DOESN'T NOTICE YOUR CLOTHES ONE WAY OR THE OTHER. BE WELL-GROOMED. MUCH MORE IMPORTANT THAN ATTIRE IS PERSUASION. ONE OF THE GREATEST CRIMINAL DEFENSE LAWYERS IS TONY SERRA, WHO WEARS SECOND-HAND SUITS, AND REPAIRS THEM WITH STAPLES. WE NEED TO FOCUS ON CULTIVATING AND IMPROVING OURSELVES MUCH MORE THAN ON FOCUSING ON GROOMING. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00