

CHAPTER 10

CRIMINAL LAW

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Criminal Defense Practice

From John Adams to Bryan Stevenson: Join the Fight for Social and Racial Justice

2021 *Learning the Ropes*

Why Criminal Defense?

- ❖ A Constitutionally Protected Role
- ❖ Guarding the Sanctity of Human Liberty
- ❖ You Are Providing Acute Care at a Time of Great Need
- ❖ You get to go to court, hold hearings and try cases. And, sadly for the system but happily for your career, it happens quick.
- ❖ The compelling stories, narratives and situations you get to be a part of.





Gideon v. Wainwright

Still being fulfilled, 50 years later.

What Life is Like on a Day to Day Basis

- ❖ Court - waiting in cattle call dockets.
- ❖ A visit to the jail.
- ❖ Client and family phone calls.
- ❖ Meeting with experts and investigators.
- ❖ Consultations and calls to law enforcement - triaging serious situations.
- ❖ Negotiating with Prosecutors.
- ❖ Doing case law research for motions.
- ❖ Preparing for hearings and trials.
- ❖ Trying to self-care through the secondary trauma.



This is Compelling, Nerve Wracking, Important Work



But How Do You Defend “Those People”?



Who You Deal With

- ❖ Clients
- ❖ Families
- ❖ Witnesses
- ❖ Social Services
- ❖ DHS
- ❖ Law Enforcement
- ❖ Prosecutors
- ❖ Judges
- ❖ The Media



Specialties

- ❖ Juvenile Delinquency
- ❖ Public Defense
- ❖ DUII
- ❖ Felonies v. Misdemeanors
- ❖ Sex Cases
- ❖ Appeals
- ❖ Post-Conviction Relief

What it Can Mean

- ❖ Standing Up for the Underdog
- ❖ Advocating for Systemic Change
- ❖ Liberty's Last Champion
- ❖ "Do it for love. Do it for justice. Do it for self-respect. Do it for the satisfaction of knowing you are serving others, defending the Constitution, living your ideals. The work is hard. The law is against you. The facts are against you. The judges are often against you. Sometimes even your clients are against you. But it is a great job – exhilarating, energizing, rewarding. You get to touch people's hearts and fight for what you believe in every day."



How to Be Most Successful

- ❖ Treat Your Clients Like Real People
- ❖ Listen Deeply To Them and Their Witnesses
- ❖ Work Hard
- ❖ Be Honest, Humble, Compassionate, Respectful, Ethical and Creative
- ❖ Train with the Best Criminal Defense Attorneys
- ❖ Ask Questions, Do Research, Slow Things Down

Guiding Ethics

- ❖ Be prepared. 3x the amount of time you will be in court at least.
- ❖ Do what you say you are going to do.
- ❖ Do not over promise because you want things to be better.
- ❖ Charge what you are worth, whether or not you are going to get it. After a while, you will get it.
- ❖ Let people know what you want to handle and what you would like to refer out.
- ❖ Treat others the way you want to be treated.
- ❖ Negotiate with compassion.
- ❖ Always have the baseball bat behind your back - go to trial!

Resources

- ❖ Oregon Criminal Defense Lawyers Association
- ❖ Local Public Defenders Office
- ❖ Federal Public Defender
- ❖ OSB Criminal Law Section
- ❖ PLF Resources
- ❖ OSB Mentor Program
- ❖ National Association of Criminal Defense Lawyers
- ❖ National Criminal Defense College



Clarence Darrow

“You can only protect your liberties in this world by protecting other people’s freedom. You can only be free if I am free.”

“As long as the world shall last there will be wrongs and if no man objected and no man rebelled, these wrongs would last forever.”



Themes, Theories, and Storytelling

- ❖ Don't forget, when it comes to trial or mitigation - you are a storyteller.
- ❖ Set the theme and theory of the case and work backwards from your closing argument.
- ❖ Write your cross-examinations and openings in order to get to that point. Don't try and pull everything from every witness.
- ❖ There are really 6 defenses:
 - ❖ 1. This didn't happen.
 - ❖ 2. It happened, but my client did not do it.
 - ❖ 3. It happened, my client did it but it is not a crime.
 - ❖ 4. It happened, my client did it, it was a crime but not this one.
 - ❖ 5. It happened, my client did it, it was a crime but he should not be held responsible.
 - ❖ 6. It happened, my client did it, it was a crime and he's responsible but that dude had it coming.



Vonnegut's Guide

To Telling All the Stories You Will Ever Dream Of

Things to Know for Your First Case

- ❖ What theories and themes help you tell the story?
- ❖ What are the charges?
- ❖ What does the statute say? The indictment? The information?
- ❖ What does the standard jury instruction say?
- ❖ What pretrial motions are available to you?
- ❖ What experts or investigation might help you?
- ❖ What are your potential defenses?
- ❖ What case law can you find on the topic?
- ❖ What does your client say?



The Hardest, Best, Most Rewarding Days of Your Life Are Ahead

