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DUTIES OF A CRIMINAL DEFENSE LAWYER

*Cristina C. Arguedas**

One of the simplest questions in the universe is the one posed to me by the *Loyola of Los Angeles Law Review*: “What are the duties of a criminal defense lawyer?”

The duty of a criminal defense lawyer is to defend his or her client vigorously, aggressively, and completely, within the bounds of the law. I think one of the first things that attracted me to the practice of criminal law is the clarity of the mission of a criminal defense lawyer. There is but one duty, one loyalty. That is to defend the client.

I consider it a great luxury to spend my life’s work in a setting where my responsibilities are utterly unambiguous. There are very few aspects of life in which a person does not have divided loyalties or competing interests that need balancing. In contrast, the obligation of a criminal defense lawyer is absolutely simple and clear. We have one focus, one responsibility, and one loyalty: it is to our client without regard to any other fallout from the result of our case or our actions. Not only is our responsibility clear, it is noble. We have one of the few jobs in the world which is mandated by the United States Constitution.¹

Describing the duty of a criminal defense lawyer is easy. It is perhaps more interesting to talk about the duties that are *not* placed on a criminal defender. First and foremost, it is not our responsibility to concern ourselves with what society, our friends, or our neighbors think or do when we defend our clients. If there is reason to think that the people of Los Angeles will riot if the police officers that assaulted Rodney King are found not guilty, that

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1. U.S. CONST. amend. VI.

is not our problem. If we succeed in getting Judge Baer² to suppress evidence in a cocaine case in New York City, it is going to bring general disdain for the Fourth Amendment and possibly even affect the presidential elections; however, that is not our problem either. Our job is to do the best we can for our client, plain and simple. I might argue that we have a moral duty as people to try to stem the tide of racism or regressive attacks on the Constitution, but that is not the duty of the criminal defense lawyer.

It is not our job to promote ourselves on the backs of our client. These days press attention can suddenly turn toward the lawyer if the client is newsworthy. The lawyer must keep in mind that the press is being generated by the client, and the lawyer has to take necessary precautions to put the client's interests first. Most of the time the client does not need or want more press, and it is the lawyer's job to try and deflect the press to the point where the attention shifts to another story. If press attention is inevitable, the lawyer must focus on putting the client in the best possible light. California law requires that a lawyer must never take any action that is not in the best interest of the client.³ It is a broad prohibition. It should be.

Moreover, it is not our job to break state bar rules, laws, or court orders in defending our clients. A defense lawyer needs to be aggressive, smart, and gutsy. We need to know where the lines are that define appropriate behavior and be willing to go right up to, but not over, these lines. Our clients have a right to expect that we will find and use every advantage within the law that is available to them. The courts have a right to know that they can trust us to never step over the line. It is not that complicated really, and most defenders conduct themselves in an entirely honorable fashion. The public perception that defense lawyers are "a little shady" is based on a misunderstanding of our obligations and a hatred for our clients.

In describing the responsibilities of a criminal defense lawyer, it makes sense to point out certain aspects of our work. First, our responsibilities demand that we commit to our work completely. If we are holding ourselves out as people who will be the last line of defense between an individual and a government trying to im-

2. Judge Baer is a United States District Court judge presiding in the Southern District of New York.

3. See CAL. BUS. & PROF. CODE § 6068(f) (West 1990 & Supp. 1996).

prison that individual, our efforts must be wholehearted and unending on behalf of our clients. If there is something about the client or the issues which prevent us from making that commitment, then we have an obligation to decline representation.⁴

Our job carries with it a great deal of stress, but very little boredom. It is fast paced, dynamic work where everything is always changing, and every move we make has the very real potential of seriously affecting the future of our client. The stress of being responsible for someone else's freedom where there is no defined path to follow is difficult to calculate. The feeling of satisfaction when you make a positive difference is difficult to describe. Together, these factors make up a stressful, yet interesting job in which the lawyer has the responsibility to manage the stress and enjoy the rewards in a way that avoids burn-out, which could eventually hurt the client.

Defense lawyers fight for the dispossessed, the disadvantaged, the poor, and the powerless. For the most part, the people charged with crimes are people who live in poverty. They are disenfranchised to begin with, and when they get arrested they become part of a group that has *no* allies. As their defense lawyers we are their advocates. Even the few wealthy or powerful people who get charged with crimes quickly find out that when they become criminal defendants, they face a deck stacked in favor of a powerful government with enormous resources.⁵ We are David against Goliath. But David was a hero in the eyes of the world, and we are viewed as quite the opposite.

Criminal lawyers do a job that few people understand and many people revile. When I started out as a lawyer, the television images for our work were E.G. Marshall on *The Defenders* and Raymond Burr in *Perry Mason*. Both were friendly, regular guys who usually represented decent people who were falsely accused. Now we are portrayed on television as greedy sharks in shows like *L.A. Law* or *N.Y.P.D. Blue*. The nightly news carries stories showing only the most violent criminals in shackles with some criminal lawyer standing at their side. The question posed to us at every dinner party is, "How can you represent 'those people'?"

4. CAL. BUS. & PROF. CODE § 6068(c) (West 1990 & Supp. 1996).

5. Of course a wealthy defendant can retain more lawyers, investigators, experts, graphics, databases and other resources to launch a defense. Money can make a huge difference in the legal system—just as it does in every other aspect of life in America.

It is part of our duty as criminal defense lawyers not to be derailed by this question. We know the answer even if we tire of giving it. We often see the good in people who are accused of crimes, and our constitutional duty requires us to represent them vigorously, even if we see no good in them at all.⁶ Representing "these people" is not as personally difficult as one might think. The closer you get to someone, the more you realize that the person's life and character is complicated. As soon as you know a defendant and a defendant's family, you begin to see the individual, not just the criminal act. As our death penalty lawyers know so well, most people who victimize others have also been victims themselves. The question for the criminal lawyer is not "Did this person commit the crime?" This is an important question, but it is for the judge or the jury to answer. Our question is, "Can the government *prove* that this person committed the crime?" Our nation does not want to imprison people unless their guilt is proven in court. That is the way it should be, and criminal lawyers help make it possible to rely on the results our courts produce.

Moreover, it is our duty to defend the Constitution.⁷ It is just as accurate to call us "constitutional lawyers" as it is to call us "criminal lawyers." In addition to our constant efforts to give meaning to the Equal Protection Clause and Due Process Clause of the Constitution, we are the sole defenders of the Fourth, Fifth, and Sixth Amendments. We frequently invoke the First, Second, and Sixth Amendments. We litigate these issues every day from the lowest courts to the highest courts. When police officers are considering how much deference to give to an individual's constitutional rights, they know their actions will be reviewed and challenged by a defense lawyer. We keep the Bill of Rights alive, and we protect every individual's right to be free from an overbearing government. I do not know of a more important job a lawyer can perform.

As a consequence of defending individual clients, criminal lawyers also preserve and protect one of the most democratic institutions in our society. Although there are plenty of problems with our jury system,⁸ which criminal lawyers are diligently trying to

6. U.S. CONST. amend. VI.

7. CAL. BUS. & PROF. CODE § 6068(a) (West 1990 & Supp. 1996).

8. Examples of problems with our jury system include nonrepresentative jury pools, biased jurors going undetected, and lopsided resources available to one side, usually the prosecution.

improve, it is still among the most democratic of any of our institutions. In essence, twelve people are semirandomly selected to listen to evidence and render a just decision. Day in and day out, jurors do an excellent and thorough job. When I see politicians trying to reduce complex issues into sound bites, I think of how lucky we are that our courtrooms give us the time and the atmosphere to deliver complex facts to intelligent people who reach a conclusion after talking it over in great detail.

Criminal lawyers deal with the pressing social and political issues of the day, usually in an ill-equipped setting. Should the recovered memory of an incest survivor be the basis for a murder conviction? When should a criminal defendant be subjected to mandatory HIV testing? When is a mental illness so severe that a person is not responsible for their actions? Issues that involve our clients are on the front pages of every morning paper, and we have an obligation to understand them, know how they affect our clients, and figure out how they will be viewed by a jury or judge. We are always focused on people—what they do and why they do it. Whether it is our client, the witnesses, the prosecutor, the judge, or the jury, we have a responsibility to understand what motivates people to do or think certain things so that we can obtain the best result for our client.

A criminal defense lawyer is a combination warrior and social worker. You can not practice criminal defense law at the highest level unless you can operate in several distinctly different modes. There are many times, particularly during trial, when we must be brave, strong, and unflinchingly confrontational. There are other times, particularly in negotiations, when we must beg, cajole, or amuse to get the desired disposition for our clients.

Sometimes our clients and their families have problems such as drug addiction, poverty, homelessness, mental illness, or certain psychological characteristics. Denial or impaired judgment is a typical element of the psychological make-up of many of our clients. We have a responsibility to be compassionate and understanding, and we must find a way to communicate through these impairments in order to help the client make difficult decisions in a way that is best for them.

The work of a criminal defense lawyer is unquestionably difficult. There are easier ways to make a living than fighting to protect the constitutional rights of people who are despised. Self-confidence is a critical job requirement. This is work in which the

results obtained are not a true measure of performance. A great job by the defense lawyer will not usually overcome strong evidence by the prosecution. Very often, no one thanks us when we do a good job. Certainly society does not appreciate our work, much less our best results. Often a good job still results in a jail sentence for our client, and he or she is understandably not brimming with gratitude. Even when we win, sometimes the client just wants to get away from the whole system as fast as possible. In my first trial a young woman was accused of stealing a package from the mail. When the jury came back and announced "Not Guilty," I was stunned. By the time I turned to my client to congratulate her, all I saw was the swinging doors of the courtroom! I would have liked to shake her hand, but I was still jubilant about the verdict.

While the duties of a criminal defense lawyer are simple, the job is complex. The work affords regular opportunities to defend the Constitution, fight for the underdog, help people who desperately need it, and deal with important issues. Above all, it is a job that is crucial to preserving a free society. It is a job that will hold your interest, a job that you can be proud of doing for an entire lifetime.