

Lessons Learned

Criminal Defense Edition

BY LARRY POZNER

I went to law school to become a public defender and will always think of myself first as a criminal defense lawyer. In fact, I receive many solicitations to buy plaques and certificates that say I am a criminal defense lawyer. (How good I am seems to depend on the level of check I am willing to write!) But if it is true that we learn from our mistakes, I ought to be considered a genius by now. I've learned each and every one of these lessons the hard way:

1. Lawyers who don't have to try the case are the first ones to bravely advise you "I'd take it to trial."
2. Judges' rulings are not debatable, only appealable.
3. Of your 10 greatest victories, seven will be deals. Nobody will hear about the deals, but they count just as much.
4. Never act on a brilliant inspiration in the midst of trial.
5. Do not interrupt a judge who is ruling your way.
6. Your worst disasters will be caused not by bad facts, but by surprises.
7. If we were as dedicated to our families as we are to our clients, both would be better off.
8. Preparation is still the greatest technique for winning.
9. Lawyers of high ethical standards never brag about it.
10. The private bar has no right to look down on public defenders. Public defenders have no right to look down on the private bar. We all lose when this happens.
11. If you steal a great deal, shut up about it, or you will never steal another.

12. If the press finds out you stole a great deal, protect your prosecutor.
13. Don't ever take a case for the publicity. When press coverage becomes your pay, you will be tempted to make tactical decisions that ensure you will "get paid."
14. Clients benefit from your reputation. It's not in their interest or yours to do anything questionable, even if they think it is.
15. Your reputation for integrity will win you more motions than the case law.
16. Be as quick to publicly praise honesty in your opponents as you are to scorn dishonesty.
17. When the client is yelling at you, remember that you would be scared too if you were in their shoes.
18. It is flattering and lucrative when the corporation hires you to represent one of its executives or employees. But your client is still the individual and that is who you must protect.
19. Press coverage develops its own path and momentum and you have about as much chance to change the coverage as you do to change the path of a comet.
20. Criminal defense lawyers who also work as paid commentators can still be your friend—but remember, they now have divided loyalties.
21. Be wary of lawyers with divided loyalties.
22. Criminal defense lawyers who accept work as commentators rationalize it a thousand ways. But ego gratification is always a major, if unspoken, factor. I know.
23. You will seldom sign a document that more affects your clients' rights and attorney-client privilege than a joint defense agreement. Don't rush to join.

24. Joint defense strategies last only until someone is offered the deal they need.
25. Do not develop a true friendship with the judges or prosecutors with whom you regularly work. One day you will have to protect your client or protect your friendship and you are going to have to kiss off the friendship.
26. When a defendant wants to fire his or her current lawyer to hire you, be reluctant to say yes. When the other lawyer is your friend, be adamant in saying no. I forgot this and it cost me a friend. It wasn't worth it. It never is.
27. You will exercise your worst judgment when money is tight.
28. There will be an opponent you truly despise. Don't let your hatred affect your tactics or your ethics.
29. The surest way to combat an unethical opponent is to remain completely ethical. Take away their argument that "they did it too."
30. Lawyers who turn in solid results day after day are more to be admired than lawyers who turn in dazzling results every now and then.
31. Be proud of yourself when you take the time to help another defense lawyer with a problem. Be prouder when another defense lawyer takes the time to help you. Our sharing of strengths is what distinguishes the criminal defense bar.
32. The arch of the moral universe only bends toward justice if we pound on it. Our defense of the accused is our hammer. **CL**



Larry Pozner is a trial lawyer, author, and lecturer. He co-authored (with Roger Dodd) *Cross Examination: Science and Technique* (3d ed. LexisNexis 2018)—lspozc1e@gmail.com.

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