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The Avocation of Criminal Law

When I was very young and someone asked what I wanted to be when I grew up, the answer was inevitably directly related to what I had spent the earlier part of the day doing.

If I had seen a *Perry Mason* rerun on TV, the answer was “lawyer”; if I had been playing with my toy animals, the answer was “zookeeper.” Some 35 years later, and more than 15 years into the practice of Criminal Law, it appears I made the correct choice. I have not even been to a zoo in two decades and my cat recently ran away from home.

Law, on the other hand, has proved to be a challenging, generally rewarding, and even sometimes satisfying career choice. I genuinely look forward to coming to work in the morning and usually leave the office at the end of the day feeling as if I have accomplished something, if not necessarily anything of great consequence.

Criminal Law, like all types of law, primarily consists of attempting to help people solve or ameliorate problems. Unlike many other types of law, Criminal Law of necessity requires that the lawyer act as usually the only buffer between the vast powers of the state and the client.

Most clients seek out the services of a criminal lawyer in a time of crisis, when their liberty and/or livelihood is directly threatened. This makes the relationship between criminal lawyer and client somewhat unique. In part, the criminal lawyer must attempt to absorb the client’s stress and worry. As long as one does so with the appropriate level of professionalism and, indeed, professional detachment, there is no problem. I believe, however, that criminal lawyers suffer from a greater degree of “burnout” than most other lawyers as a consequence of this necessary part of their work.

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Most criminal lawyers tend to spend more time in court than their civil litigation counterparts. The amount of time spent in court, however, is not nearly as much as one might expect. As a general rule of thumb, good criminal lawyers tend to spend an hour preparing for every hour in court. Beyond that, a good deal of time is spent simply consulting with clients, meeting new prospective clients, consulting with and negotiating with Crown Counsel, and dealing with various other (generally mundane) office duties.

Thus, it is a good bet that most criminal lawyers spend approximately two-thirds of their time out of court and less than one-third of their time in court. Indeed, the vast majority of the “problem-solving” aspect of a criminal lawyer’s job occurs outside the courtroom. What might be considered a successful plea negotiation and sentence, which takes 30 to 60 minutes of court time, will often be the result of countless hours of consultation, persuasion, and negotiation.

Actual trial work, while still common, is not as prevalent as one might suppose. By the time a criminal case gets to trial, presumably effort at resolution has been made and failed and either one or more genuinely triable issues has emerged or one simply has a client who, despite an absence of triable issues, wishes to have his or her proverbial “day in court.”

Fortunately, the former situation is much more common than the latter. Most clients tend to listen to reason when the case against them is overwhelming and their evidence, if tendered, would provide no viable defence.

Occasionally, however, one must take a case to trial against great odds, acting on client instructions. Those cases provide certain unique challenges, inasmuch as the lawyer has a sworn duty to do his or her best to ethically advance any position or evidence that might assist the client.

