
The practice of criminal defence: why we fight and defend those most imperilled, every day...

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Abstract: Being a criminal defence lawyer is a special calling. Aside from dealing with the human element discussed above, they fight daily to see government acts within the bounds established by the Bill of Rights. Who else fights against warrantless searches? Confronts accusers? And who else jealously guards your right against self-incrimination, the right to counsel and the right to a speedy and impartial trial? No one other than the criminal defence lawyer, and this is how and why we do this work, for those most in need.

Keywords: rights of victims; crime right to counsel; professionalism; criminal defence; counsel; representation; innocence; accused; wrongfully; moral; lepers; guilty.

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Biographical notes: André Bélanger is a partner with the law firm of Manassah, Gill, Knipe & Bélanger. After law school, he served as an Assistant District Attorney in Orleans Parish for Harry Connick and quickly became a Senior Felony Prosecutor. During his tenure as a Prosecutor, he handled thousands of cases, brought nearly 200 cases to trial, and argued before the Louisiana Supreme Court. He is a graduate of Loyola University School of Law and is admitted to practice in Louisiana, the US Fifth Circuit Court of Appeals, and all federal district courts in Louisiana.

Beau James Brock practices with the firm of Manasseh, Gill, Knipe & Belanger. His primary areas of practice include criminal defence, environmental law, and governmental relations. He is a graduate of Louisiana State University and from the LSU Law Center and has been a member of the Louisiana state bar since 1991.

Rick asks Victor "Don't you sometimes wonder if it's worth all this, I mean what you're fighting for." Victor responds, "You might as well question why you breathe. If you stop breathing, you'll die. If we stop fighting our enemies, the world will die."

In order to sustain oneself and the rights of an accused against the power of the government, no less than a tiger's courage must be had. Clarence Darrow said it best, when asked how he could represent a man accused of a crime by stating, it is the man who is most *perceived* to be guilty who needs me.²

Upon entering the hallowed halls of Orleans Parish District Attorney's office, Harry Connick explained to me, André, "Welcome to the greatest show on earth!" and counselled me by exhorting, "Son, promise me one thing, that you'll never send an innocent man to jail." For me, Mr. Connick's words were prophetic on the first point. My experience in the courthouse at the intersection of Tulane and Broad was like no other. But, it's the second point I carry with me to this day. As a prosecutor, I viewed Connick's statement as a mandate and did what I could to see justice was given especially to those either wrongly accused or arrested with illegally gathered evidence – even those whose criminal history may have been checkered with past misdeeds. Years later, Connick's comments would be fully developed into a personal philosophy that I hold dear which helps to explain why I effectively am able to defend those whom society has deemed 'criminals'. By the way, I *hate* that word; it presupposes that everyone arrested did something wrong and I know it is not the case. Everyone assumes anyone arrested is guilty which includes most of our clients, which is decidedly not true.

Beau began his legal career as an Assistant District Attorney at the East Baton Rouge Parish District Attorney's Office in 1991 under Doug Moreau. There, he was taught the art of vertical prosecution which is still practised there today. In vertical prosecution, each prosecutor decides from the genesis of a criminal file's arrest reports who, what and how a case is to be prosecuted and then follows the file through the entire process through trial and appeal. He learned from supervisors like Tom Walsh and Sue Bernie the importance of placing the rights of victims and their families in the centre of his charging decisions and to never neglect their interests throughout the process. It is their cause, not a game of ego or individual accomplishment without consequence. The responsibility of placing men and women in cages was always a grave one and reserved for those whose crimes were most heinous. This same zealous commitment to the needs of families in jeopardy he has taken ascribed to while practising criminal defence along with André and the entire firm.

Below are the 11 principles which Beau and I believe in that make it an honour for us to defend some of our society's most feared; and often, most neglected members:

- 1 Nothing is as it first appears: There is always another side than reported by the police. We recently represented the president of an "outlaw motor cycle gang" accused of shooting a former member in a bar. If all we knew about the case was the "gang's" reputation as documented in books and television, we would draw the conclusion that he should rot in jail and probably offer to act as special prosecutors. But, nothing is as it first appears. We now know the other side and, in coming to that knowledge, realise that an injustice had occurred. Our client was not the monster reported in the newspapers; rather, he is a hard working loving husband and father who found himself the victim of circumstance. Our client was not the hunter, and was actually the hunted. We now know the state's victims came armed and provoked the fight.
- 2 Prosecuting only the right person: Anyone should be able to defend an innocent man. Nobody should seek to imprison the innocent. As stated earlier, an arrest is just that; an arrest. It does not mean the person is guilty. Any person can be arrested merely by

words even when those words are not rooted in truth. This simple statement can involve the complicating of inquiries, and where it is abrogated, the grossest miscarriages of justice in all human history are to be found. Unfortunately, even these innocents are forgotten by the next news cycle in our society. Who among you have ever even heard of men like Alfred Dreyfus?

- 3 Responsibility is to charge only crimes that can be proven: There is no need to “overbill.” It frustrates us to see offices charging people with the highest theoretically possible crime. Why not prosecute them for the highest crime you can realistically achieve a conviction? Jury trials aren’t cheap in many rural parishes, and both victims’ and defendants’ families are caused to suffer from the lengthy process without closure overcharging creates. For them, the courtroom is foreign terrain, forbidding and without mercy, with *citizens* on all sides hoping for the opportunity for timely efficient justice. It is fundamentally wrong and unethical to overbill without realistic belief in proving the case merely to intimidate, coerce or threaten those whose liberty is most jeopardised.
- 4 Proportionality in sentencing is essential to justice: We hate the federal sentencing guidelines. Is not justice best served when a particularised sentence is imposed based upon the character of the convicted and the seriousness of the offense? We can do a great service to our clients by making sure the penalty they receive is just. We can go on and on about the injustices that occur with overreaching guidelines ranges and mandatory minimums; but, save that for another day. Suffice it to say, good people do make really poor decisions, sometimes. Mandatory incarceration for first offenders in such cases is not the answer to societal woes.
- 5 All of us are sinners, and we are proudly called to stand for the leper, the adulterer and the thief: The human condition demands we not merely inquire into what and where, but also, unlike the Light Brigade of Tennyson fame, ask why. We have all heard of Biblical personages who chose to stand for those accused of capital crimes, risking their reputation and more. Lepers, in particular, were thought to be afflicted with their disease due to their unclean spirit or that of their fathers, and He reached out to them as well. Who are the pariahs of today’s society, and will we have courage to hold out our hand to them as defence lawyers? This principle also applies to people we represent that we *know* are guilty. Think of a person accused of online solicitation. No doubt the perpetrator attempted to solicit and, if given the opportunity, would have attempted to entice a minor into sexual misconduct. Who can or will delve into the mind of the darkest predators? But, is there another side as to the why, and does it matter? If we fail to ask, we never will know. André has seen a pattern emerging with our client base charged with these offenses. Some are intellectually slow or MR/DD, suffering from a total or partial lack of impulse control, or can be classified as social dwarfs. They may have grown up mocked and ridiculed for their deficiencies and the computer is the first time they can communicate to anyone without the various social stigmas given to them by their peer groups. This does not mean their conduct should be excused, or the horrors of any completed acts minimised; however, recognising their humanity and their frailties and communicating with them, with understanding, allows for an amazing perspective into who they are as individuals and to attempt to find workable solutions for them and their families.

- 6 When we stop to help someone on the side of the road, we don't judge them first: Have *you* ever stopped to help someone broken down on the side of the road? When you got out of your car, you did not ask them if they sinned that day, before you helped them, did you? Likewise, people in the criminal system are broken down and trapped going nowhere. Criminal defence attorneys help them get back onto the road of life. People aren't born evil. Instead, circumstances of youth dictate whether a young person will understand responsibility, have resources to succeed, and if hope and faith are able to burn within his heart and mind. Some people have been fortunate to win "God's lottery" as Mark Twain put it, by being born into the right family in the USA, and sometimes we represent some of them too, but all too often, we are called to help those who have been born into despair.
- 7 We represent families and our service for their needs is paramount: In many ways, criminal defence requires an almost Jesuit discipline to each case as each case represents a unique soul in crisis. One must adopt the line from "The Verdict" when assisting in every family's situation, "there are no other cases. This is the case!" If the government turned its icy glance towards you or your family what would you expect from your counsel? Visit you in jail? Accept collect phone calls from the bowels of a prison cell? Provide you with regular communication and copies of all motions and reports in your case? Of course you would, and this is our pledge to our families, to never stop working for them, eight days a week.
- 8 The more guilty a man appears, the more he needs me: This is borrowed from the renowned "attorney for the damned," Clarence Darrow. It is as real today, if not more so than it was in the 1920's and 1930's era of the radio and newspaper with instantaneous internet news applications. Your client will be seen to be guilty when accused even before the police have removed the evidence bags from his residence. It is at times like these he needs an attorney unafraid of the hazards the criminal process entails, but also one who will maintain clarity of judgment in determining strategy and tactics in mounting a successful defence. Nothing worthwhile in this world was ever easily accomplished, and it is in the struggle against such opposition we, as attorneys, need to find ourselves and be prepared always to shield those clients whose causes are already deemed lost. If we are to have faith in justice we need only to believe in ourselves and act with justice.³
- 9 Be prepared: Jury trials are not won by sizzle, superstition, or sensationalism. They are won by thorough preparation, and steadfast organisation. Even more so, clients are best served in the criminal process by the earliest possible intervention on their behalf by counsel with law enforcement agents and prosecutors. This work is performed by systematic and detailed research into the law of every case, taking the time to investigate all sides of issues, and the courage to make a stand before a jury, when necessary.
- 10 The cause is a professional one, not a personal one: Candor to the court, the prosecutor, and your client is the inherent requisite to professionalism in the practise of criminal defence. Being able to separate passion for the case or cause from the personalities of prosecutors is just as essential to maintain continuing success in this field. Many clients' causes are best served by diplomatic communications, seeking *individual* solutions for your client, and even being able to firmly disagree, at times, in a manner that does not destroy the relationship with the prosecutor. The same

prosecutor who has the power to decide who, how and what to criminally charge under Louisiana Code of Criminal Procedure Article 61.

- 11 Our republic is defined by ordered liberty, and only criminal defence attorneys defend the rights of those whose life and liberty are most threatened by the power of the government: Being a criminal defence lawyer is a special calling. Aside from dealing with the human element discussed above, we fight daily to see government acts within the bounds established by the Bill of Rights. Who else fights against warrantless searches? Confronts accusers? And who else jealously guards your right against self-incrimination, the right to counsel and the right to a speedy and impartial trial? No one other than the criminal defence lawyer, you do *need* us on that wall for you, and our Republic.

Why do we perform this work?⁴ How do we manage to defend the rights of those oppressed whether they are truly innocent, or unfortunately guilty? We *can* look to modern rules of responsibility or should we look deeper into ancient tests like the Bible which sets forth their inherent mission to “bring out the prisoners from the dungeon, from the prison those who sit in darkness.”⁵ We do this work and invite you to join us in defending one single person whose liberty is threatened. This work we do, we do for you, our city, our republic; the front line and paradoxically the final redoubt of our fervent prayer for ordered liberty for USA, our country, and our entire globe’s inspirational model.

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Notes

- 1 *Casablanca* (1942) – movie.
- 2 King Henry V: Once more unto the breach, dear friends, once more:
Or close up the wall with our English dead.
In peace there’s nothing so becomes a man
As modest stillness and humility;
But when the blast of war blows in our ears,
Then imitate the action of the tiger...
- 3 *The Verdict* (1982).
- 4 Frank Capra was the filmmaker responsible for the ‘Why We Fight’ series of wartime films shown to US soldiers during World War II. Our article’s title is taken in part from this patriotic series. Our liberty today is still threatened by ever increasing governmental tyranny, and the only checks to these forces are the courts and trial lawyers zealous in their defence of our Bill of Rights. An abridged version of this article will be published in the September edition of the Baton Rouge Bar Association’s local legal periodical, *Around the Bar* under the title, ‘The practice of criminal defense: the eleven principles of why we fight.’
- 5 The Bible, *Book of Isaiah*, Chapter 42:7.