

# Trial Lawyers Hall of Fame:

## *Being a Trial Lawyer*



By Cris Arguedas



Cris Arguedas

**I'**ve been a trial lawyer for more than 30 years. My practice has always been exclusively criminal, and I have defended every kind of case. We like to say, in our firm, that no case is too big and no case is too small. From murder to fraud, from white collar to no collar, from drugs to disturbing the peace, I've handled all those cases, and I still do.

After more than 3 decades, I still think I have the best job in the world.

Here are some of the reasons why — along with a few bits of advice that have come to me along the way.

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California Litigation Vol. 28 • No. 1 • 2015

— **Because it Matters** —

Criminal lawyers stand with people in some of the worst moments of their lives. Sometimes, our clients are entirely innocent. Often, our clients have made mistakes. Frequently, the consequences our clients confront are way out of proportion to what they did wrong. I think about the great number of marijuana growers and dealers I have represented over the years who would now not be prosecuted at all. Yet, not very long ago, they were treated like serious criminals.

Our clients are not only criminal defendants; they are someone's parents, children, brothers, and sisters. Often, our clients have lived long lives, but the system tends to judge them for only a tiny sliver of those lives, with freedom versus incarceration hanging in the balance.

When a corporation is charged in a criminal matter, even though no one is individually facing jail time, the company's hard earned, good reputation is still at stake. A company is made up of employees and shareholders — people who have devoted their lives to building the success of the company. So no matter who the client is, our cases are never just a matter of money.

As criminal defense lawyers, we spend our days doing something that is vitally important. That is a privilege. Our clients trust us with their lives in periods of intense crisis. The bond between the lawyer and the client is solemn and sacred. A cancer doctor once told me that the "good" thing about having a serious illness is that its treatment sheds a light so bright that all things mundane tend to fade away. I feel the same way about a criminal case.

— **Standing up for the Underdog** —

Criminal defense lawyers tend to have personalities that predispose them to want to side with the underdog. And when we stand up in court on behalf of a criminal defendant, we are representing the under-

dog. Whether your client is indigent and you are court-appointed, or your client is wealthy and elite, or even a Fortune 100 Corporation — you represent the underdog. The government's resources are limitless, and the laws are stacked in its favor. Many judges and jurors start out thinking "where's there's smoke there's fire"; and if the government has charged a crime, then the defendant must be guilty. The burden of proof is supposed to be on the prosecution, but in reality it most often rests on the shoulders of the defense.

— **Being a Constitutional Lawyer** —

When it comes to criminal justice, the government has too much power. And every politician with power wants to be tougher on crime than the next guy — including plenty of Democrats. So the best check on government overreach is in the courts. We defenders are the ones who advocate that restraint on the government. We protect the Fourth, Fifth, and Sixth amendments nearly every day. We are the only people who get paid to do that, day in and day out. After three decades, I still feel the thrill of taking up the mantle of defender of the constitution almost every time I go to court.

— **Clarity of Purpose** —

Criminal defense lawyers have the luxury of single purpose. In this confusing world where life's issues are nuanced, ambiguous, and multi faceted, one must normally weigh and balance many factors in deciding the right course of action. But we defenders have one overarching, never-ending edict. Our loyalty is to our client — plain and simple. This duty of loyalty, within the ethical rules, of course, is mandated by law. How great is that?

In Ferguson, Missouri, I could just as easily represent Michael Brown's companion on the robbery charge or the police officer

on murder charges. I would not be permitted to be affected by what that case might mean for police use of force in general or for the

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larger racial issues in Missouri and the nation. (While those larger issues would have to be understood and considered strategically during the representation, that’s different than me being affected by them.)

There is a simplicity and clarity to the duty of loyalty that is rare and precious.

— **Sex, Drugs, Money** —

A friend of mine used to say that all of our cases fall into one of three categories: sex, drugs, or money. (To which I would add mental illness and occasionally politics.) Our practice involves every kind of human behavior and emotion. We have a front row seat and automatic intimacy with people in the most difficult times in their lives. There is nothing more interesting or engaging.

Ours is not a job for people who get their news from Twitter. We dig deep and focus on every tiny detail of a case. That’s how you win. But we can’t get lost in the details either. We have to be able to sum up our case in a way that makes people care about getting to the proper outcome because it hits them in a powerful way.

— **Persuasion – Followed by Sustained, Thoughtful, Deliberation** —

For its many flaws, a jury trial is perhaps the last place in our democracy where regular people work collectively, sift through actual evidence, spend as much time as they need with details and facts, and come to a conclusion after serious and intelligent debate and deliberation. We all know that Congress doesn’t do that anymore. Political campaigns have long been reduced to negative attacks, 30-second commercials, and digital identification of “the base” to get the right people to turn out and vote. So trial lawyers are one of the last people whose goal is actually to *persuade* someone based on facts and logical arguments.

For this to remain true, the courts are going to need always to be vigilant to make sure the jury pools are diverse and inclusive — and that the seated jurors do not google. If jurors get their own information, not vetted via the Rules of Evidence, it will decimate the right to a jury trial. Judges should

be more be more worried that jurors are using the internet inappropriately. Judges must not let themselves engage in the legal fiction that jurors will simply follow the court's "don't google" instruction.

**Being in Foxholes with Smart, Good People**

When you represent a person accused of a crime, it often feels like a battle; and sometimes like a war. If you are lucky, you get to wage the battle with people at your side who are committed, talented, and who have the hearts of social workers and the laser intensity of linebackers. Men talk about the guys in their army units who became their lifelong friends based solely on a short stint together many years before. That's how I feel about the people with whom I've tried cases.

Criminal lawyers have plenty of stress. The weight of someone else's freedom is on our shoulders. But we are almost never bored. There are very few jobs where that is true.

**A Chance to Be a Hero – A Worthy Career**

We interact with people who are in terrible, tragic situations. We have the skills and commitment to help them weather that storm. If we succeed, our clients often go on to lead productive lives. We occupy a special place in their lives, and as the years go by, we can look back with pride knowing that our work has made a difference. That is a gift.

I offer the following nuggets of advice from my decades of practice.

**— Keep up with Technology —**

You will be most familiar with the technology you learned in college and law school. I guarantee you that it will soon be superseded. Stay current. Or become a dinosaur. Technology is a great leveler for smaller firms — it enables us to evaluate megabytes

of data and to organize it in ways that facilitate trial work. In my firm, we try to promptly embrace every new advantage that technology develops.

But there comes a time in my trial preparation when I reduce the technology. When I do serious work, I plug in Freedom which is a program that detaches my computer from the internet for the period of time that I select. When I'm super serious, I shut the door, turn off the computer, and go back to pen and paper.

**— Take Real Breaks; Handle Stress —**

Take care of yourself. Take real vacations, without email. Turn off your phone at a reasonable time of night every day. Be with your family, nurture your friendships, do yoga, get exercise, read a book. Play golf, if you have a high tolerance for frustration. Guarding your private time and personal interests is the only way to be in this practice over the long haul.

**— Don't Try to Do It Alone —**

Our work is too hard to do by yourself. Get partners, colleagues, friends to work with on the tough cases, and even the simple ones. In my office, we talk over each of our cases. We discuss strategy, weaknesses and strengths. Having another person's perspective is invaluable. Colleagues help talk you back from ill considered, impulsive reactions. In the long run, shared responsibility and experience are the keys to handling a lifetime as a criminal defense lawyer.

**Resilience, AKA the "No Whining" Rule**

You will get knocked down a lot. You will lose heart-breaking cases. Judges will deny motions that you should win. You will appear before judges who are decidedly pro-prosecution. You will face juries who are biased against your clients. You will talk to prosecu-

tor who have immense power over your client and a much lesser amount of good judgment. As one of my friends put it, "It's a good thing we have a strict no whining rule, because otherwise there would be a lot to whine about."

You need to learn to get up off the mat when you are knocked down. Some of these other bits of advice are aimed at developing resilience. But mostly, remember that we signed up to represent the underdog — that is where we live. As Hyman Roth said in the *Godfather*, "This is the business we've chosen."

### **Stay in Touch with All Sides of Every Argument and Issue**

We have to understand people, and we have to be able to persuade them. Whether it's the judge, the prosecutor, or the jury, we are faced every day with people of all different political, religious, and cultural points of view. If all I did was watch MSNBC and read the *New York Times*, I guarantee I would not understand more than half the people I need to persuade to be successful.

As a young lawyer, I started reading *People* magazine so I would know about things that didn't interest me. I still do. And I listen to Fox, Rush, Rachel, and NPR. These days it is more important than ever to make an effort to receive diverse opinions because most outlets offer up only one point of view. When we face a jury (or a prosecutor or a judge), we need to know as much as we can about the cultural influences potentially framing their perceptions.

### **Social Media**

So far, I am still a non-participant. It's not that I condescend toward it, I just want less screen time in my life (see "Take Real Breaks" above). All I can say is, be a serious person. Jurors will find and read everything you post. So will clients and co-counsel. Make sure you can live with your public persona for a long time, and maybe forever.

### **Keep Your Eye on the Money; But Not too Much**

If you are in private practice, you need to put systems in place to ensure that you set the right fee, bill properly, collect all of it, and keep your overhead down as much as you can. Those systems should be models of simplicity. That way, the time and attention you spend on finances will be placed in a small box.

Once you are comfortably in the black, don't focus very much on the money. If you do, you'll be a business person rather than a lawyer. Instead, pay attention to the cases as if money is not even part of the equation. That is how to have fun. And how to succeed for your clients.

### **Defending [Not Judging] the Client**

People always ask me "how can you defend the guilty? What's that like?" I tell them it is a privilege and solemn responsibility to represent a person accused of a crime.

When someone with a bullet wound is rushed to the emergency room, we don't want the doctor to first determine if it's the bank robber or the police officer before treating the patient. Judgment is the job of someone else, not the doctor.

Our job is the same. We defend our clients. With loyalty. With skill. With compassion. With strength. Justice depends on it.

It's someone else's job to judge.

If you sign up to be a criminal defense lawyer, and you do it alongside people you like and respect, your professional life will be meaningful, rewarding and enjoyable. To younger lawyers out there: come join us on the barricades. We need you, society needs you, and you'll like it.

*Cristina C. Arguedas practices criminal law at Arguedas, Cassman & Headley, LLP in Berkeley. She was inducted into the Trial Lawyer Hall of Fame, along with Penny Cooper, in 2010.*