

Taking Your First Appointed Criminal Law Case

BY BRAD JOHNSTON, ESQ.



We are all familiar with the landmark case of *Gideon v. Wainwright*, 372 U.S. 335 (1963), where Justice Hugo Black, writing for the U.S. Supreme Court, stated that the “noble ideal [of fair trials before impartial tribunals] cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist.” This statement rings true today, just as it did in 1963; yet the criminal justice system still struggles to provide counsel to indigent defendants. We can all help address this struggle, and private-practice attorneys should help by accepting court-appointed and pro bono criminal cases. This is true even if you think your lack of criminal experience stands in the way, because it does not.

My career has been focused on commercial litigation and business law from its beginning, but it was inevitable once I moved from Reno to one of Nevada’s rural counties – Lyon – that I would be asked to take a court-appointed criminal case. It first happened about five

years ago when the Yerington Municipal Court’s public defender had a conflict, and the court asked me to take a rather straightforward misdemeanor battery case. I was reluctant. Racing through my mind were excuses not to take the case, but as the court clerk requesting assistance reassured me and, more persuasively, pleaded for help, I realized that I needed to step up, take the case and do my part as a member of the legal community.

So, I took the case (to trial nonetheless), took subsequent appointed cases and ultimately filled in as a Lyon County public defender for one year when the county was in desperate need for another defense attorney. It has been an extraordinary experience having now tried to verdict cases ranging from murder and sexual assault to grand larceny. Literally hundreds of felony cases came into the office as we filled a public defender role, and I came to learn and appreciate the difficult task our public defenders face each and every day.

I also came to learn firsthand that unless attorneys are willing to help indigent defendants, there is no real criminal *justice* system. Most importantly, I learned that all lawyers can, in fact, help address the continuing

need for defense counsel. With the hope that some of you reading this article will help address that need, I offer some of the following lessons, encouragement and observations.

You Don’t Have to be a Forensics Expert

Prosecutors lament on what is commonly referred to as the “CSI Effect,” which is a claim “that television shows

based on scientific crime solving have made actual jurors reluctant to vote to convict when, *as is typically true, forensic evidence is neither necessary nor available.*”¹

In fact, you may even hear a prosecuting attorney address this phenomenon during jury selection, because forensic evidence will not be part of the state’s case. As a result, despite contrary perceptions, you do not need to be well-versed in

DNA or other forensic issues to accept criminal cases. In all likelihood, there will be no such evidence. You will be focused on witness statements, police reports, body camera footage and other non-scientific data where critical factual and legal analysis, rather than crime-scene

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forensics, will be the key to the successful representation of the client.

Expert and Investigative Services are Available

You might think that if you accept a criminal case, you will have to go it alone. This is false. NRS 7.135 provides a mechanism by which court-appointed attorneys can secure funds on an ex parte basis for “such investigative, expert or other services as may be necessary for an adequate defense.” You can accordingly follow a very simple process to obtain the funds you may need to hire a private investigator to, among other things, interview witnesses. You can also use the same process to hire any experts you may need whether or not they ultimately testify. Rest assured that not all cases require a private investigator and experts, but if they are needed, you can easily obtain their assistance to prepare the defense.

Experienced Defense Attorneys are Eager to Help

When I started accepting criminal cases, I was used to scheduled hearings in civil cases that were stand-alone hearings or, as in Las Vegas, part of the judge’s civil law and motion calendar. My experience was (and continues to be) that most civil cases move rather slowly in an orderly way. Consequently, I had not experienced the pace and energy of a criminal calendar in either a justice court or a district court, which is like another world in comparison to civil litigation. Some defendants are in custody, defense lawyers are meeting with their clients inside and outside of the courtroom and lawyers are meeting with each other to negotiate plea deals. It can almost appear as organized chaos to the new lawyer because it is so different.

But what you will find in this unique environment are experienced defense attorneys who will help you with advice, assistance and explanation. All you have to do is ask. We are all reluctant at times to ask questions, because we are fearful it is a sign of inexperience or ignorance, but we should not be. Experienced lawyers will help you if you accept a court-appointed criminal case and you will find that with their assistance and your own professional

diligence, you can successfully represent an indigent defendant and help address a critical need in our criminal justice system.

You Can Learn Quickly

Unlike other areas of the law, criminal law is largely statutory. First and foremost, statutes define what is criminal conduct. To be sure, courts interpret these statutes, but you can immediately begin any criminal case by examining the statute under which your client is charged and any case law interpreting that statute. In addition, criminal procedure is also largely statutory. For instance, NRS Chapter 171 covers the right of the accused to be brought before a judge after arrest, the procedure for the appointment of counsel, the timing for a preliminary hearing (i.e., the 15-Day Rule) and the defendant’s right to discovery prior to that preliminary hearing. NRS Chapters 173, 174 and 175 then address how felonies and gross misdemeanors proceed in the district court following a preliminary hearing (or a waiver thereof) leading up to and including trial. These statutes even provide you with the form that a written plea agreement must follow and further provide checklists of items that you cover with your client when entering into a plea agreement.²

If you study these statutory frameworks and observe court proceedings, what appears to be complex (or organized chaos) quickly becomes second nature. In fact, I suspect that most civil litigators who take criminal cases will immediately appreciate the speed and efficiency at which criminal cases can proceed in contrast to civil lawsuits.

You Get to Help People

We all get to help people through legal (and sometimes difficult) issues on an almost daily basis. This occurs in a variety of ways – helping someone start a business, guiding a client through a divorce, or representing a plaintiff or a defendant in a civil case – and each, in their own right, are gratifying on a professional level. However, if you have never taken the opportunity to represent individuals (even guilty persons) in criminal cases and guide them through the process where their freedom is literally at stake, you are missing out on an

extraordinary professional and personal experience.

Going back to my first misdemeanor case, the stakes were not high, but the client then and to this day thanks me profusely for his acquittal. I have seen former clients back at work, expressing their gratitude for the small role I played in getting their lives back on track. And I have also spent time visiting a former client in prison because he asked me if I would. All these experiences have made me a better lawyer and person and stem from a simple phone call from a municipal court clerk looking for an attorney willing to take a case. We all need to be willing.

I began writing this article before the murder of George Floyd. I completed the article after Floyd’s murder, the resulting protests, the subsequent rioting, the heated debates on policing and public statements from law firms around the country that they would do their part to combat racism and promote equal justice for all. Tellingly absent from the statements I saw from global, national and regional law firms, however, was a simple firm commitment to fighting for the accused in everyday criminal cases that garner no media attention. I saw and heard no commitment to help address injustice by simply doing what we can all do right now – represent indigent defendants. I hope this article will encourage those who have previously been reluctant to now reach out and take your first criminal case, knowing you can do it and do it well.

1. https://www.law.cornell.edu/wex/csi_effect (emphasis added).

2. NRS 174.063

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