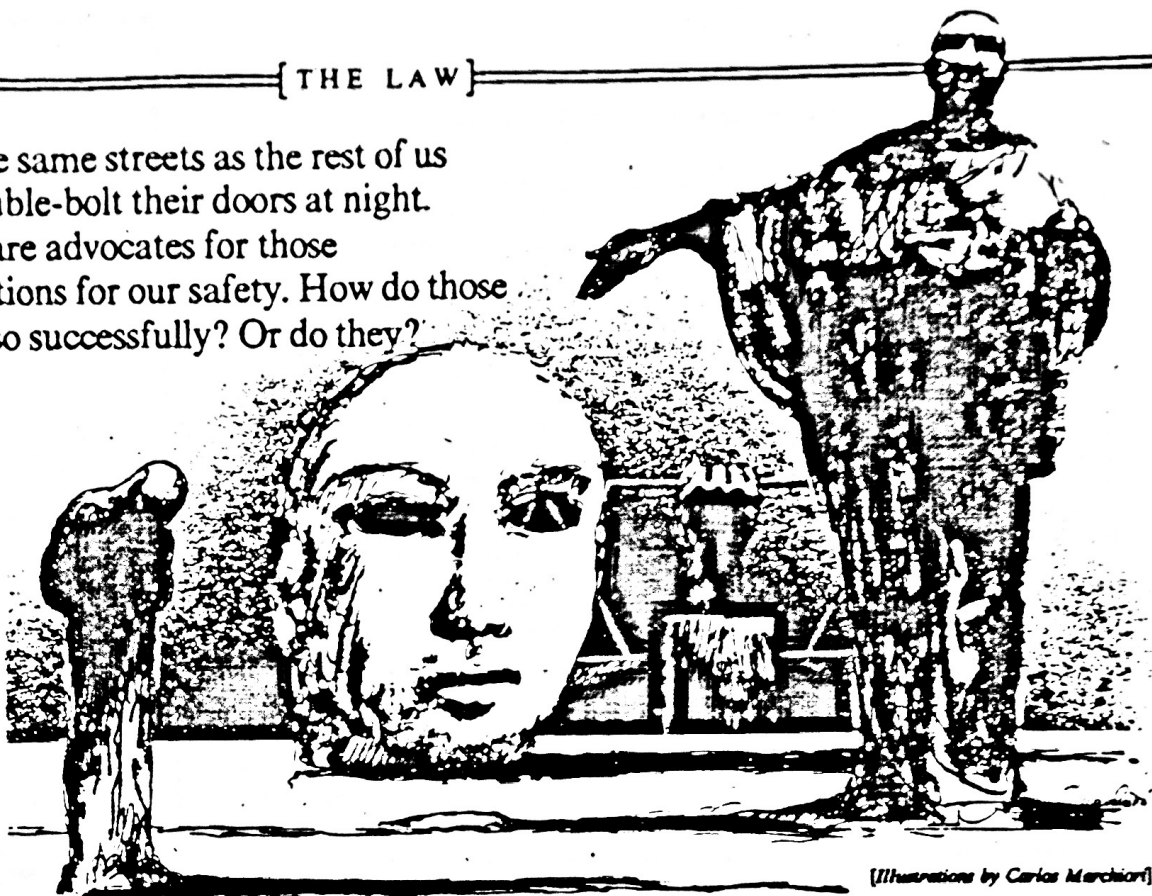


Criminal lawyers walk the same streets as the rest of us and, presumably, also double-bolt their doors at night. But during the day, they are advocates for those who make us take precautions for our safety. How do those lawyers divide their lives so successfully? Or do they?

How can you represent people who are guilty of committing terrible crimes?" Lawyers are asked the question so often, the answer comes as automatically as saliva from Pavlov's dogs: The accused has a constitutional right to a defense no matter how heinous the crime or how contemptible he is. The accused is innocent until the state proves him guilty and lawyers are there to protect his rights and to stand beside him against the awesome power of the People.

Although the response is based on principles of individual liberty we all



[Illustrations by Carlos Marchiori]

CRIME & CONSCIENCE

hold dear, the answer nonetheless seems glib to those of us who still think the true guilt of a killer has little to do with how many times his Miranda rights were read to him after he pulled the dagger out of his victim's body.

And while we're barricaded behind iron gates and double-bolted doors, saddened by the pain and suffering of friends or family who have been raped or robbed or worse, we often wonder, how can those lawyers sleep at night? Apparently, some of them can't.

Lincoln Mintz is a successful Oakland attorney who, in his twenty years of practice, has tried more than 3,500 criminal cases, representing clients who have included Symbionese Liberation Army member William Harris and Joseph Egenbrook, the man convicted of killing UC student Judy Williamson. He is cur-

By Nikki Meredith

rently representing convicted North Oakland rapist Marvel Wright, who is awaiting an appeal hearing.

Mintz comes on tough and confident — the prototypical criminal lawyer from whom you'd expect the party line. Yet when asked if his work as a lawyer conflicts with his values as a private citizen, he admits that the question has plagued him for years. Referring to his brethren as a "breed apart," he acknowledges that the profession of criminal law is frequently at odds with the mainstream.

"I was raised to know that crime is bad and good works are nice; that truth is good and falsehood is bad; that to steal deserves punishment. But because I believe in this system of justice, I stand up day after day, representing people who willfully, deliberately and with premeditation commit serious acts injurious to their fellow human beings, day after day I stand up and say this case is an exception, in this case there are extenuating circumstances — every day I ask for individ-

ualized treatment for my clients."

And sometimes when he succeeds in getting it, his triumph is less than joyful. Like most lawyers, Mintz hates to lose, but he says he occasionally suffers more when he wins. "When I've gotten acquittals where my gut told me it shouldn't have gone down that way, I leave the courtroom in an emotional belly crawl."

A few years ago Mintz won an acquittal in a murder case, after which his client shot someone else. "While the victim's life hung in the balance, I was emotionally devastated. If that person had died, I don't know what I would have done. I knew that because of me he was not in jail," Mintz says.

Many lawyers are haunted by such memories. Ray Beitz represented Darlin June Cromer five years ago after she attacked a mother and her baby with a wine bottle in Golden Gate Park. Beitz worked very hard to keep Cromer out of jail, bringing in psychiatrists to convince the court that it would be safe to release her as long as

she took her anti-psychotic medication. Two years later, Cromer kidnapped and murdered a five-year-old child from Alameda. "I felt terrible, even though at the time of the first offense, it seemed like the psychiatric program would work," Beitz says. "Things like that just keep hanging over you in this business." (Cromer was convicted of first-degree murder, found legally sane and sentenced to life in prison.)

This agonizing is not shared by all lawyers. Some adopt a professional detachment which precludes feelings of personal responsibility or regret over the outcome of a trial. "The lawyer is not the arbiter of fact," says Doug Schmidt, the attorney for Dan White who was convicted of manslaughter instead of first-degree murder for the assassination of George Moscone and Harvey Milk. "If the People fall down on their burden of proof, I don't think a lawyer should feel any personal responsibility — that's the system."

So goes the rhetoric, but what is his gut feeling as he watches a guilty-in-

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lay-terms (lawyeresque to describe the judgment of those of us who think guilty is guilty) murderer or rapist who's just been declared "innocent" hit the streets? "I've represented some pretty reprehensible characters — some of the crimes I've seen floating through this office are cruel beyond belief. But I don't seek to protect society from these fellows. I don't think I can and properly represent them."

Tony Serra, the attorney who won an acquittal for SLA member Russell Little, the man charged with killing Oakland School Superintendent Marcus Foster, says it is not a lawyer's function to be concerned about the welfare and safety of society. "We're not social workers. Whether or not our clients did it is irrelevant. During a trial we are building an ideological castle based on precedent and symbolic justice. To do this, we come out of the sky with our law books to apply justice and then we return. It is immaterial what happens after. If a client repeats a crime, that's not our problem."

This kind of professional detachment is often made difficult by the realities of living in our society. San Francisco attorney Dennis Roberts came out to his car one morning and found a window shattered and the tape deck removed. "I felt enraged and violated," says Roberts, "but I had to get into the car and drive to court to represent a kid who had broken into a BMW just like mine. After court, I imparted a little folk wisdom of my own. I said, 'If I ever hear of you breaking into a car again I'll break your arm.'"

A recent event in Mintz's life has, as he says, forced him to "face another god." His sixteen-year-old daughter was recently a key prosecution witness in a first-degree murder case: The accused had unsuccessfully tried to pick her up. "I have an emotional response to that even though he didn't even hurt my little girl. He is the enemy. I don't want the enemy treated; I want him hurt, punished, destroyed. Those are all human emotions and that's why we have a criminal justice system which seeks to impose a veneer of civilization on very emotional situations."

Most criminal trials, especially those involving violent offenses, are emotionally charged and sometimes sympathy for a victim or the circumstances of a crime strike a personal chord which makes performance during a trial difficult. Lawyers say they won't gratuitously badger a victim/witness during cross-examination under any circumstances because juries don't like it, but deftly casting doubt on the credibility of a victim's testimony is intrinsic to the adversary process. Hence, the victim is once again a victim.

When Oakland attorney Roger Patton worked in the Alameda County Public De-

fender's Office he was assigned to defend a man who had broken into an 85-year-old woman's bedroom and raped her. Patton had tried grislier crimes, but something about this situation — the age of the woman, the terror of the ordeal — made the prospect of cross-examining her extremely upsetting. "I was in absolute agony. I got the shakes, I couldn't sleep at night and the morning I was to cross-examine her I was close to a breakdown. I'd been through a lot and I thought I could handle anything, but this was terrible." (Patton pulled through and was able to perform his job. It is encouraging, however, that in spite of the counselor's recovery, the culprit was convicted.)

Despite the numbers of lawyers who "confess" to having similar reactions at some point in their careers, Serra says such feelings are forbidden to the legal professional. "A doctor operating on a bloody leg doesn't have license to emot; neither do we. No compassion, no empathy — it's clinical, it's objective. I couldn't function if I did a lot of worrying about these issues. There's no time to cry over man's inhumanity to man," he says.

Mintz agrees that lawyers are resistant to exploring the emotional and moral conflicts inherent in the profession, choosing instead to "avoid, rationalize and hide from" their feelings. "Some of my fellows turn to alcohol, others slip out and some, when they finally take the time to examine their feelings, declare themselves burned out." Mintz says his experience has been the opposite: "I'm better at my work and healthier now that I recognize the emotional aspects of my job."

In the everyday practice of law, most criminal attorneys are well-defended against personal feelings. Greg Pagan, a San Francisco public defender who in 1981 defended one of a gang of men convicted of raping a Golden Gate University law student and then running her over with a car, says a gradual process of desensitization takes place when you work in a public defender's office. "You start out with robbery cases, then you graduate to assault cases, then you proceed to assault with intent to commit great bodily injury. By the time you get to murder, you're immune to the lurid details."

For some, however, "lurid details" continue to be a problem. Pagan describes a former colleague who was called upon to represent a man accused of the mutilation murder of a child. The lawyer was afraid he would reveal his emotions in court when the prosecutor showed the jury pictures of the dead child, and to prepare himself, he plastered the walls of his office with enlargements of the mangled body.

In private practice, some lawyers minimize

moral and personal conflicts by refusing to represent people who have committed certain crimes. Dennis Roberts, who has represented many clients in well-publicized cases, says he will not represent rapists he believes to be guilty. "I don't like recidivists. I don't represent them so I don't have to go around agonizing about what they're doing on the streets."

San Francisco attorney Ellen Chaitin defends people who have been charged with a variety of crimes, including ones involving violence, but she won't represent rapists either. "That poses too much of a contradiction for me. I like women too much and I view myself as a feminist. Everyone accused of a crime is deserving of a vigorous defense, but I think I would have real difficulty providing one [for a rapist]," she says.

Like rape, drunk driving poses a problem for some lawyers because it is an offense which, statistically, has a good chance of being repeated. "When I first started my practice, I wouldn't defend drunk drivers," says Marin County attorney Aron Kamins. "But with most of us there comes a transition from adolescent idealism to professionalism. I haven't changed my personal beliefs but I have separated them from my practice; I'm not in court as a citizen, I'm in court as an advocate," he says. Then he adds, "While I do represent drunk drivers, I'm not completely divorced from the implications of the crime. When a drunk driver leaves the courtroom, I do think, next time it could be my wife or my daughter he hits. That issue keeps cropping up."

Although Kamins has made the decision that his personal beliefs and ideals will not enter into his practice of law, he says the one thing he will no longer do is go to San Quentin to represent people at parole hearings. "I just can't bring myself to argue to the parole board that these people are not dangerous to society and that they deserve parole dates."

Sometimes the selection process reaches fine-line distinctions. Roberts, whose current practice consists primarily of drug cases, including heroin, will not represent PCP (angel dust) cases "for reasons I don't completely understand." One criminal lawyer tells about a former colleague who refused to defend heroin addicts unless they were minorities. "He believed that those people had more reason to turn to drugs than did other people."

One may wonder how someone can justify excluding drug dealers or rapists while representing murderers. But because it is so often a crime of passion involving friends or relatives, and one of the offenses least likely to be repeated, murder seems to be the least problematic category for most criminal lawyers.

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In fact, attorneys are generally more concerned about the attitude and personality of their clients than about the crime they committed. The ideal client is one who is cooperative and easy to get along with, and lawyers in private practice will refuse clients who are too difficult. Mintz says the client's perspective on the crime is also important to him. "I was once asked to represent a man who was charged with raping a woman he knew who had refused his sexual advances. He told me he did it and what's more he was entitled to do it because no woman had the right to say no to him. I wouldn't represent him."

Indeed, it is the personal connection with the client that best enables lawyers to put the horror of the crime he committed in the background. "I've represented murderers where I had nothing but contempt for what they did," says Mintz, "but when I get to know them I just see them as human beings who care and feel and hurt the same as you and I."

Patton, who has tried many death penalty cases, says that, almost by definition, murderers are the people in society with the least redeeming social value. "Standing up for those people is quite an experience, but after all is said and done you say to yourself, yeah, sure he's done horrible things, but the bottom line is this person is a human being — he's got blood in him."

Patton also says that representing these men is humbling. "I feel so fortunate about the kind of life I've had, that I had parents who cared about me. I represent people who were stomped on as children and discouraged and abused. I just don't know but that there for the grace of God go I."

It is the belief that most of their clients have not been given a fair chance, that they are society's backwash, which motivates many criminal lawyers and provides them with the moral justification to act as strong advocates for criminals. "This work does not really try your conscience a great deal if you have the

basic orientation, as I do, that people are committing crimes because of situations they by and large don't have much control over," says Chaitin. "Most criminal law does not involve murder. It involves mostly theft and drugs — people who are victims of their own addiction and who have come from a pattern of life where crime is the only alternative."

Despite dramatic movie and television scenes where lawyers scream at their clients to tell them the truth and threaten to drop the case if they don't, real-life attorneys don't even ask their clients if they're guilty. "Tell me what happened," is the standard introductory remark, enabling the client to tell his story and the lawyer to determine if it will sound plausible on the stand. Lawyers can't support perjury so they don't want a confession. What's important is how much evidence against their client is available to the other side.

Some lawyers estimate that as many as 99 percent of their clients have been guilty of something (not always with what they're charged, since the prosecution often overcharges in preparation of plea-bargaining). But the conviction rate in California is also high; 85 percent of those charged with felonies are convicted.

While odds are stacked against defense attorneys, most are exhilarated by the combative aspects of the job. "During the critical moments of the trial, your blood is pounding, your heart is thumping — you know you're alive," says Patton. "You're like Don Quixote charging windmills. You get on your stallion and charge and get knocked off and trampled over and get up and do it again." Serra refers to lawyers as "semantic warriors": "Our heritage is combat; our weapons are words."

Although the contest is energizing, some lawyers acknowledge that the truth often gets lost somewhere on the battlefield. Berkeley Municipal Court Judge Ron Greenberg, once a criminal lawyer, says he's more comfortable on the bench than he was on

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the defense because of what happens to the truth-seeking process in the adversary position. "The first five cases I tried as a public defender, I gave factual presentations of the cases and each time the jury came back in twenty minutes with a guilty verdict," he says. "As I developed more techniques, as I got more theatrical and away from truth-seeking, the more cases I won."

So why do they do it? Most non-lawyers would probably say they do it for the money, but civil law is much more lucrative. Despite the mental anguish associated with their work, these criminal lawyers all say they believe in the system. "I've been in other countries and observed other legal systems at work and there's no doubt in my mind that ours is the very best," says Patton.

In his book, *Lawyer's Ethics in an Adversary System*, Monroe Friedman points out to critics of our system of justice that totalitarian countries do not have an adversary process. In those countries, the defense attorney acts in concert with the prosecutor and judge in pursuing the facts and resolution of criminal cases, all parties working in the best interest of the state. "The essential humanitarian reason for an adversary system," he writes, "is that it preserves the dignity of the individual even though that may occasionally require significant frustration of the search for truth and the will of the state."

Lawyers who are sensitive to the contradictions between higher principles and human feelings will always suffer to some degree under our system. Even a hard-liner like Tony Serra with his symbolic justice and cold, clinical perspective admits that his philosophy takes its toll. "A lot of us are alcoholics and drug fiends, and statistically, we're not supposed to live past 55. Those of us who survive wean ourselves from human frailty — but sometimes it makes you very lonesome." □