

THE TRUTH ABOUT HIRING A CRIMINAL DEFENSE LAWYER*

Brian Tannebaum

*The whole truth and nothing but the truth,
and not the “truth that will lead you to hire me.”

DEDICATION

*To all those who call and say
“I’m not happy with my lawyer.”*

Praise for
The Truth About Hiring A Criminal Defense Lawyer

“I’m hooked. Brian has put together the truth as any honest, competent defense lawyer knows it. “

Scott Greenfield
Former Vice President,
New York State Association
of Criminal Defense Lawyers
www.simplejustice.us

“A must-read for persons facing criminal prosecution.”

John H. Bryan
West Virginia Criminal Law Blog
wvcriminaldefenseattorney.wordpress.com

“Attorney Tannebaum is not sugarcoating his truth.”

Big Alabama Law Blog
www.alabamalawblog.wordpress.com

“Brian provides an excellent introduction to the task of hiring a criminal defense lawyer. I recommend it to anyone looking to hire his first criminal defense lawyer. Or his second, though getting the right lawyer after you’ve already hired the wrong one is much more costly than getting it right the first time.”

Mark Bennett
President, Harris County Criminal Lawyers
Association, Houston, Texas
www.bennettandbennett.com/blog

“This is good and useful stuff, much better than the usual bland "how to hire a lawyer" advice you'll find on your local bar association's web site.

Read it. Learn it. Live it.”

Mark Draughn, Software Developer
Chicago, Illinois
www.windypundit.com

This is a much needed book for the public and it is excellent. It is an easy read, written by a top of the line criminal defense lawyer that tells potential clients the real truth about how to wade through all the publicity to find the real gold; the best criminal defense lawyer for their cases.

Stephen Everhart
Professor of Law
Stetson University College of Law
St. Petersburg, Florida

“I admire the honesty and straight-forwardness of *The Truth About Hiring a Criminal Defense Lawyer*. I believe that too many people in today's fast food driven and marketing to the masses society are simply looking for cheap, tasteless, low quality product or service instead of a quality product. In truth, where a person's freedom, future, and reputation is at stake, isn't it true that there really are some things that are priceless? “

Glen R. Graham, Criminal Defense Lawyer
Tulsa, Oklahoma
www.glenrgraham.com

TABLE OF CONTENTS

Introduction	4
Money	6
Advertising	II
Prior Results	15
Expertise/ Types of Criminal Defense Lawyers	16
“Former Prosecutors”	22
Connections	24
Conclusion	26
Epilogue/Secrets to Being a Good Client	27

INTRODUCTION

Criminal defense is a “results oriented” field. I would say “results oriented *business*,” but I’ll get to the business part of this profession later.

The best criminal defense lawyer is the one who wins *your* case. A “win” of course is defined in many ways. A “win” can mean a plea to a lesser charge, a probationary sentence when there is a strong possibility of jail, the rare suppression of evidence leading to a dismissal, and even rarer, the outright acquittal at trial. Bottom line is: the determination of a good criminal defense lawyer is, in most circumstances, based on the end result.

Criminal defense lawyers are compared to many other types of professionals, but are best compared to stockbrokers. Hand over some money and based on many “market” factors, you either make or lose money. If you make money, your broker is “great,” if you don’t, he sucks.

We criminal lawyers know all of this. We know that no matter how much you tell us in the beginning that you “feel comfortable” with us, or that you’ll do “whatever” we advise, in the end how your case resolves, whether you are guilty or innocent, is how we are perceived. There are a few clients who merely appreciate the “fight,” even when the results are terrible, but those

are usually the public defender clients, who sometimes show much more appreciation for their “free” lawyer, than the “paying” client who believes that “for all that money,” they should receive a specific result.

Most people hire the wrong criminal defense lawyer for the wrong reason. There are several popular reasons that I focus on here: Money, Advertising, Prior Results, Perceived Expertise, “Former Prosecutor,” and Connections.

As I said earlier, because we as a society believe that money equals results, whether you hired the “right” criminal defense lawyer is usually determined at the end of the case. The advice here though will only help you in your initial selection.

So you just got arrested, or got a subpoena, or think you need a criminal defense lawyer. Here’s my advice.

MONEY

As a close friend and fellow criminal defense lawyer told me, if you're a defendant in a criminal case today, "they either kill you, or leave you alone, there is nothing in between."

You can't get blood from a rock. But when you are between that rock, and a real and not fabled "hard place," you need to forget about your money problems.

I know the general response to that is "but I just don't have the money." I say too bad, get it.

Many people stupid enough to become suspects and defendants still believe that because they got themselves into their situation, they can get themselves out of it. Even though you couldn't explain your innocence to the arresting officer, you believe that when you go to court, you'll talk to the prosecutor and judge and it will all go away. Either that, or you'll just take what they offer and leave. Better to pay the court costs and regret the conviction years later than come up with some money for a lawyer today I guess is the theory.

Now I'm not talking about the first time offender on a non violent minor case who has no aspirations to ever accomplish anything, like obtain credit, a mortgage, a job requiring a license, or about 300 other things that now subject people to a criminal background check. If

you are now, and will be the rest of your life, a complete nothing, forget the lawyer and just handle it yourself.

Now for the rest of you.

Criminal defense lawyers for the most part charge flat fees, and many offer payment plans. In my opinion there is no better deal than a criminal defense lawyer. Pay one up-front or payment-based fee, and other than costs (serving subpoenas, deposition transcripts, investigators, long distance calls and overnight mail to name a few), that's it. Costs are always additional, but we'll talk about that too in a while.

Why do I think it's the best deal? Civil lawyers charge by the hour. If a civil lawyer takes 4 months to resolve a case (yeah, right) you'll pay for every minute of that representation.

Let's say you get a DUI. The average fee for a "good" DUI lawyer is \$5,000.00. That is the usual fee if the case resolves in a phone call, or 15 court appearances. Trial may be extra, but you have a less than 3% chance of your case going to trial. I'll take the 97% odds. Also, criminal defense lawyers usually don't charge for phone calls, and other minimal costs.

Still, I am amazed. Amazed at the guy whose life-blood is driving a truck, the law student who is scared that his future is shot, the CEO of a public company who

fears his board of directors, and the mother of 2 who needs to drive her kids around. All of these people are the types who will scoff at a criminal defense fee. So it's not just you, the guy who makes \$800 a week and lives paycheck to paycheck.

Arrests never come at a convenient time. Here's how to handle the money part

1. After your arrest, remove from your mind that you need to hire a lawyer in 5 minutes. You usually have at least a week to make a good decision. Unless you've been lazy or had your head buried in the sand hoping it would go away, be weary of a lawyer who pressures you to make the decision immediately.

2. Find your family and friends with money and tell them that you will need a lawyer and may need \$5,000 to \$10,000 now. Check your credit card balances. Most lawyers today take credit cards, and if not, your credit card company can usually provide you with a check for a cash advance.

3. Do not ever call a lawyer you are thinking of hiring and ask how much he charges. He will immediately think you are cheap, broke, and that you will waste his time in a consultation. On that note, don't ever ask if there's a consultation fee. That's like saying "you're not going to ask me for \$500 are you? A client

who has a problem with \$500 is again, perceived as cheap, broke, and a waste of a lawyer's time.

4. Do not go to the appointment looking like you just came from the mall. Wear pants, a decent shirt, and if you're a young man, go with the tie. Show some respect, be on time, don't get lost, and don't bring your "friend."

5. Talk with the lawyer about your case, not the fee. The fee quote will usually come at the end. Make the lawyer like you. Don't play the victim and ask about suing the cops, or tell the lawyer you think your case is "simple."

6. Be *honest* with the lawyer. Tell him you want to hire him (if you do) and the details of your financial situation. You just told this lawyer you were plastered, picked up a hooker, stole something, or shot someone. This is not a time to be coy, or shy. Admit you are poor, broke, or need time to pay the fee. Tell the lawyer what you can come up with right now, today.

7. The rule of thumb (and this is my rule of thumb, not some actual rule of thumb) is that you should hire a lawyer you feel comfortable with, who charges more money than you wanted to spend. You may feel good that two lawyers quoted you \$25,000 for your drug trafficking case, and the one you're talking to now is charging you \$10,000, but that's a sign to be careful. All

lawyers are not “rich,” and most have to pay rent. You don’t want a lawyer who treats his practice like a business and is looking for next months rent or worse, this month’s rent.

8. Don’t negotiate. You are facing jail. Do you really want your lawyer to be in the mindset that you are that client who didn’t think he was worth his fee?

In sum, you’re in trouble, and you need a lawyer. You need to pay for that lawyer, and you need to pay for that lawyer now. An attorney client relationship that begins with money problems is a waste of time for you, and your lawyer.

ADVERTISING

Are you kidding me? You're going to hire a lawyer because he sent you a nice brochure in the mail that says he's "aggressive?" or "available 24 hours a day?" You are impressed that he has "flexible payment plans?" You think you have the right one because you were arrested for an offense that he lists in the ad? You like the fact that he is a member of the criminal lawyers association? That picture of him looking angry standing in front of the courthouse is exactly how you picture your lawyer? That "from \$995.00" fee sounds good?

Wake up! Advertising works.

Here's the truth:

There are good lawyers who advertise, and there are lawyers who advertise who are, well, not so good, but look good in the yellow pages or in a 4 color brochure in your mailbox. We're all "available 24 hours," and we can all write a check to the criminal lawyers association. Most of us are aggressive when we have to be, and can take a good photo.

Here are my thoughts on hiring a lawyer based on advertising:

1. If you are considering hiring a lawyer through an ad you saw, go ahead. Make the appointment. Go to his office and talk to him.

2. Before you follow the advice above, find the person you respect the most. Ask them for a referral to a criminal defense lawyer. I know, you're embarrassed. So lie, say it's for a friend. Ask a family member, doctor, accountant, teacher, or lawyer in another field. Determine that the referred lawyer is not one you received a brochure from or one who has a huge ad in the yellow pages. See that lawyer too.

3. Before you visit either lawyer, research both of them. For information on whether the lawyer has any prior discipline, go to the Bar's website. To see what press he's received or find his website, use Google or Yahoo, or any other internet search engine. Determine how long each has been practicing criminal defense. Generally, time in practice is a bunch of crap. There are some great 5 year lawyers, and some terrible 25 year lawyers. There is a difference though in a lawyer out 2 years, and a lawyer out 10, especially if you are charged with a serious felony. Forget the "greybeard" stuff. Many times younger lawyers are more in touch with day to day happenings at the courthouse and pay much more attention to recent developments in law.

4. If after that minor research you decide to see both lawyers, ask the following questions at the consultation:

- A. Who will be working on my case.?
- B. Right now, do you see any motions you may consider filing?
- C. How much of your practice is criminal defense?
(Anything under 50%, leave, now)
- D. If known at the consultation, what can you tell me about the judge?

Additionally, if it is not clear that the consultation is free, offer to pay. If the lawyer does charge a consultation fee, normally he will waive it if he is hired.

5. Don't ever ask about wins/losses. That is a sign of too much TV and immaturity. If a lawyer tells you he wins all his cases, again, leave now. Wins and losses are always in perspective. Few cases are tried, and a "win" can mean many things.

6. About that "have you ever handled a case like this" question: That's a toss up. Criminal defense is about finding reasonable doubt, and protecting the constitutional rights of defendants. This is true whether they are charged with DUI, theft, mortgage fraud, or murder. No, you shouldn't hire a "DUI" lawyer to handle a murder case, and you shouldn't hire a "ticket" lawyer to handle a white collar fraud case. However, a

practitioner who does not specialize in a specific type of criminal defense is just as good in a theft case as he is in an assault case.

PRIOR RESULTS

The lawyer you want to hire for your self-defense murder case just won a self-defense murder case. Dumb move. The heart surgeon who just lost a patient in surgery was probably hired by someone with your boneheaded thought process.

No two cases are the same. Cases are resolved in certain ways because of many factors: a good jury, change in witness testimony, weak evidence, lazy prosecutor, and yes, luck. I've won cases I thought I would lose, and I've lost cases I still can't understand why I didn't win. Your case is your case, not the other client's case. More on that in the next chapter.

The other aspect of this advice is this – do not fire your lawyer because he couldn't get you a bond. Here's some news, if you didn't get bond, you probably weren't eligible, or are such a flight risk or danger that no lawyer could have helped.

Those clients who fire their great lawyer because they didn't get a bond are stupid and short-sighted. Sure, if your lawyer shows up for the bond hearing unprepared, or it's clear he is not competent to handle the case, dump him. Know though that when you go to the next lawyer, he will know that you've already fired one lawyer. So will the prosecutor, and so will the judge.

EXPERTISE/ TYPES OF CRIMINAL DEFENSE LAWYERS

There is not a criminal defense lawyer who has ever handled “your” case. No two cases are the same. Just because a criminal defense lawyer has never handled a case exactly like yours, does not make him unable to represent you. I do believe though, that clients with certain types of cases should seek out criminal lawyers who specialize, with one caveat that I’ll explain later.

Criminal defense lawyers are categorized as practicing in the following areas:

1. Ticket Lawyers (not really criminal, but involves a cop and court)
2. DUI Lawyers
3. Death Penalty Lawyers
4. White Collar Lawyers
5. Federal Lawyers
6. Everyone else

Ticket Lawyers

I'm a huge fan of ticket lawyers. People always ask me "should I hire one of those ticket lawyers?"

Yes.

They know statutes and the intricacies of traffic law like no one else. They also know most of the officers who spend their days giving tickets, and the judges who decide the sentences. You get a ticket, hire one.

DUI Lawyers

DUI is a specialized field. A field that other criminal defense lawyers make fun of, but in which they wish they were experts.

Now, for DUI, there are two types of lawyers. Plea mill and geeks. Plea mill DUI lawyers send you the brochure, take a little bit of money (usually \$500 to \$2500), show up to court a couple times, do no work on the case, and then convince you to take a plea.

Save your money or hire a geek.

The geeks charge \$5,000-\$10,000, research the breath machines, pull the time sheets of the officers, file motions, and take so much time with the case that you think it will never end. When it does, you may be

convicted of DUI, but if you are, it's because there really was no alternative.

Death Penalty Lawyers

Murder is no time to be shopping around for a deal or someone with no experience in the death penalty (even if you are not facing the death penalty). Find one and mortgage your home. Murder is a six-figure world.

White Collar Lawyers

No one seems to understand what “white collar” means.

It does not mean that the lawyer represents a lot of professionals. Representing a lawyer in a DUI case is not “white collar.” Nor is representing a doctor in a battery case.

“White collar” lawyers are either criminal defense lawyers who work in big firms and never go to court but their firms want the big corporations to retain them for “criminal” type work such as grand jury subpoenas, or they are lawyers who mainly handle fraud cases.

“White collar” is generally a moniker that criminal defense lawyers use when they don't want people to think they represent criminals. Look on any big firm website and you'll see “white collar.” Sometimes they

add “corporate investigations.” Those lawyers are not the ones to call at 2 am, they’ll readily admit that.

Federal Lawyers

Be careful here.

Almost every single federal case ends in a plea. The conviction rate is astounding. The chances are great, immense, that if you are charged in federal court, you are pleading guilty. If you think you are “going to trial” no matter what, you have work to do in finding a lawyer in this area.

You cannot hire a criminal defense lawyer who does not have experience in federal court. You cannot expect to get any type of respectable representation in federal court for \$5,000. You generally cannot get a payment plan for a federal case, and if you can, you’re probably dealing with an inexperienced federal lawyer. If your potential federal lawyer cannot have an intelligent detailed conversation about the Federal Sentencing Guidelines at the initial consultation, it’s a good sign to say “thank you” and leave.

There is little similarity between state and federal cases. Federal cases move quicker, and everything is up to the judge. Prosecutors and defense lawyers can make all the deals they want, but unlike a typical state court

situation, federal judges make the absolute determination.

There are plenty of lawyers who practice in both state and federal court, so you don't need to hire someone who brands themselves a "federal lawyer." Federal court is, however, no place for a criminal lawyer to get experience unsupervised, especially when he is representing you. Many lawyers want federal cases because the fees are higher. Watch for that, and make sure you ask "what's your experience in federal court?"

Everyone Else

Earlier I said that you should seek out criminal lawyers who specialize, with one caveat.

Here's the caveat: Do not discount that really great "general" criminal defense lawyer because you think you have a case that needs a particular "type" of criminal defense lawyer.

There are plenty of criminal defense lawyers who don't practice solely in a particular area who are great. Remember, you are looking for the best lawyer you can find. A case is a case. Any lawyer can read the law and research your issues.

If you are considering hiring a "general" criminal defense lawyer based on reputation and are that

concerned about his qualification to take your particular case – ask. “I know you don’t specialize in this area, but do you feel comfortable handling a case like this or would you rather refer me to another lawyer?” A good criminal defense lawyer not just looking for a fee will tell you to see someone else if he is not comfortable handling your case.

FORMER PROSECUTORS

Ads in the yellow pages are filled with the “FORMER PROSECUTOR” and “AGGRESSIVE FORMER PROSECUTOR” tag line.

I quip that there is a difference between a former prosecutor and a criminal defense lawyer.

This “I am a former prosecutor” line is my favorite reason people refer and hire criminal lawyers. The prevailing thought is that if someone used to put people in jail, they are the best person to hire to keep someone out of jail.

Listen, are you that gullible?

No, I am not a former prosecutor, and if I were, you bet I’d prominently display this somewhere. Not because it actually matters, but because the public eats it up.

Now let me ask you this? Is a former prosecutor a better defense lawyer? Do you know? Do you care? I know what you think. He worked in the office, he knows the inside/out of the system, and he has “juice” in the prosecutor’s office.

Maybe.

First, most prosecutors are in the office 3-5 years. When they leave, most of their “connections” leave or have left as well. Sure, they know the staff, and may get a call taken here and there, but they don’t own the place. And I’m not even talking about the prosecutors who leave, go to civil firms and “take” some criminal cases. Stay far away from them. They’re about as committed to criminal defense as the real estate lawyers in the firm. Also, many prosecutors leave the office to become defense lawyers for “the money.” They are about as passionate about representing criminal defendants as a kid who is ordered to clean his room.

If you choose to hire a former prosecutor, make sure you hire him for his defense experience, and definitely make sure if he has recently departed from the office, you ask why he left (no one ever does).

CONNECTIONS

“I’m looking for a lawyer who knows this INSERT (Judge, prosecutor, police officer).”

Listen, this is not a third world country. You are not going to win your case because your lawyer drinks with the prosecutor, or knows the officer, or gave money to the judge’s campaign. All of those things give you one thing, credibility, not a victory.

Yet, I’ll never forget those clients who call to apologize for not hiring me because “this other lawyer says he knows the cop.” (Yeah, I know that cop too, he was at my house last week for dinner, but I don’t use that to get a case.)

“Knowing” people in the system never hurts, but no otherwise incorruptible judge is going to suppress evidence because she’s friends with the lawyer, no prosecutor is going to “take a dive” in court because he’s on the defense lawyers basketball team, and the most you can expect from a police officer is that because he knows the defense lawyer (and if he doesn’t hate the client for telling him to screw off at the arrest scene), he may tell the prosecutor to give you a break.

Those of you hiring a lawyer solely on his connections are dreaming. A talented, respected lawyer is perfect for your case. Discussions about connections

simply cause expectations, and disappointment when they result in absolutely nothing.

A good criminal defense lawyer with a great reputation has serious connections in the courthouse, and doesn't talk about them.

CONCLUSION

This decision is not easy. The best you can do is to take some time, do some research, and make an educated decision. The first lawyer who tells you something you want to hear is not necessarily the lawyer to hire. Seriously consider the lawyer who is honest to a fault and tells you that you have “a tough case.” Any lawyer can tell you that everything will be fine, but it does no good if he’s lying.

The best referral source, without question, is a former client. If you can find a former client of a criminal defense lawyer, take him to lunch, buy him a cup of coffee. Ask him not only about the result (which if he is having lunch or coffee with you means he’s not in jail), but also about the process. Ask him how the lawyer handled his calls, how he was in court, and most importantly, if the former client would hire him again.

This is your life, treat it that way.

EPILOGUE

SECRETS TO BEING A GOOD CLIENT

The problem with hiring a criminal defense lawyer is that your expectations may not be met. You may have already convinced yourself that you were “wronged,” and that the system should apologize to you. You may be thinking that hiring a criminal defense lawyer is like buying shoes. You see the shoes, you pay for them, and you take them home.

Hiring a criminal defense lawyer is nothing like buying shoes. You are hiring an advisor, counselor, and technician. You are not paying for results, even though you think just that. Hiring a criminal defense lawyer to “make it go away,” is like hiring a doctor to “make it go away.” He can try, but success is far from a guarantee.

So the best you can do is make an educated decision, and be a good client.

Be a good client by:

1. Never calling your criminal defense lawyer on a Monday morning for an update. Wait until Tuesday afternoon. Especially if you just spoke to him Friday.

2. Stopping yourself every time you think you want to tell your lawyer about your “friend’s case” or what your “lawyer friend from New York” or other state told you.
3. Always bringing a “little something” for the staff when you come to the office. Candy, a bottle of wine, a token, something. The lawyer’s staff can make your life a living pleasure.
4. Making appointments to see the lawyer before or after a court appearance, instead of making him late to his next court appearance while asking too many questions in the hallway.
5. Paying costs immediately.
6. If the case is taking much longer to resolve, asking the lawyer if he needs additional funds. If you’ve made the right choice, he’ll say “no thanks.”
7. When the case is over, regardless of outcome, show your appreciation. You will be certain to have issues come up after the end of the case, and when you do, your lawyer will remember that great big basket, case of wine, or flowers you sent to the office with the handwritten note of thanks.

AUTHOR



Brian Tannebaum will take the reins as President of the 2,000 member Florida Association of Criminal Defense Lawyers (FACDL) in 2010, at the age of 40 having previously served as President of the Miami Chapter. He is a Martindale-Hubbell AV rated lawyer, and listed in the Bar Register of Pre-Eminent Lawyers. He practices state and federal criminal defense and represents lawyers and law students in Florida Bar admission and grievance defense.

He obtained his law degree from Stetson University College of Law and began his career as an Assistant Public Defender. He is a member of both the Florida Bar's Criminal Law Section Executive Council and Criminal Procedure Rules Committee. He also serves as Editor and authors a quarterly column in *Florida Defender*. His commentary on criminal defense can be found at www.criminaldefenseblog.blogspot.com.