

THE LEGAL BRIEF

The Guilty Client

by John D. Whitaker

When people find out that I do criminal defense work they frequently ask me: "How can you defend someone that you know may be guilty?" This is kind of an odd question. First of all, it assumes that I can tell when a person is guilty. The only way to know for sure if someone is guilty is to ask a jury. In our system they are the ones that get to answer this question. Second, and more importantly, this is what a lawyer is expected to do given our system of justice. It is really like asking a doctor how he can treat someone he knows may be sick. Our job is not to determine guilt or innocence, but to advocate for our client's point of view.

Our legal system is an adversarial system. What this means is that both sides in a case fight it out and the jury in the middle gets to hear both sides of the case. The lawyers are not supposed to act like the jury. The lawyers job is to point out all facts and arguments that support their side of the case. If the other lawyer in the case does the same, the jury gets to be fully informed by this process and can make fair decision based on the specific facts of each case.

I think it is also important to recognize the difference between people who may look guilty based upon a few of the facts, and those that are actually found to be guilty by a jury after hearing all of the facts. There can be a big difference. I know sometimes people make up their minds on an issue pretty quick. They hear a few facts on one side of a case



and form an opinion on how they think the case should be decided. Sometimes these opinions are based upon minimal and even inaccurate factual information. Our system was not designed to work that way. It is impossible to decide a case fairly hearing only one side of the case. Each case has two sides.

When people lose in court or when the jury decides a case in an unexpected way there is a tendency to complain that somehow the system failed. People think that some crafty lawyer has pulled a fast one and some guilty defendant avoided responsibility for breaking the law. The legal system is a complicated system with many variables. The more complicated any system is the more unpredictable the result. Predicting the weather comes to mind. Some cases have better facts than others. The quality of the lawyers can also affect the result. Then there are the rules of evidence which may work to prohibit the introduction of evidence for one reason or another that could have a dramatic affect on the result. Each juror on a jury brings a different point of view to any case. Any of these variables can affect the outcome.

So the next time you hear someone complaining that the system has failed because someone accused of a crime is not convicted, remember that under our system no one is guilty until a jury says so.

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