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Lunch with the Lions of Criminal Defense

by Ruth Sheehan

Gather seven masters of criminal defense at a table, ask a few questions and it's no surprise the war stories soon come roaring out.

At a recent Lunch with the Lions at NCAJ headquarters, seven titans of criminal defense joked and teased, dropped a few names, and complained bitterly about mandatory minimums. But they also spoke frankly about the pressures of criminal practice on health and home, and compared their work to a "calling," a "ministry," a "brotherhood," and an "obsession."

It didn't take a full ham and cheese sandwich to understand why these seven became the so-called Lions—and why they are such an inspiration to newer practitioners.

Changing Times

The Lions reminisced about what the practice was like when each started out—Lock Clifford in the JAG corps in the Vietnam era, David Rudolf as a "gladiator" with Barry Scheck in New York City, Wade Smith as the ONLY assistant district attorney for Wake County.

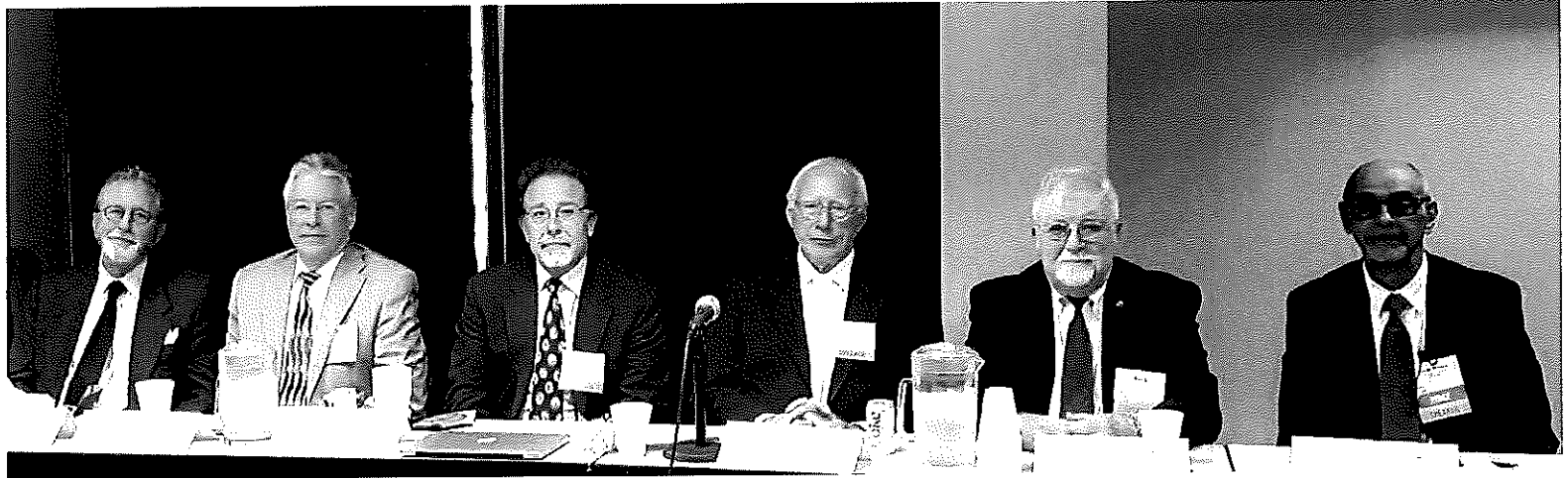
They talked about the alarming changes that have occurred in the practice in recent years, with the expansion of federal jurisdiction and the chilling role of mandatory minimum sentences. Rudolf noted that as penalties have increased, more clients feel forced to accept pleas rather than risk going to trial—and more power is consolidated in the hands of the prosecution.

Daily Practice, Decorum, and Common Mistakes

Sean Devereaux, of Asheville, a former journalist, cautioned against over reliance on legal jargon, especially in front of a jury. Let the Latin go, and speak honestly, in plain English.

Clifford urged attorneys heading into court to remember to change their mind mindset from "pre-trial preparation" to "in-court presence." "Pre-trial preparation' is detail-oriented, time-consuming, tedious examination, great frustration," opined Clifford. "It usually leaves the defense counsel with many unanswered questions, and in a general state of anxiety. 'In-court presence,' on the other hand, is the polar opposite; it is an optimistic, confident state of mind. The difficulty is in letting go of the "preparation worries", before jury selection begins. In the courtroom you may not allow yourself to worry about anything but must simply rely on your training, experiences, and instinct. If you are worried, fretting or snappy, it will come across to at least one juror that you are afraid, which is deadly to your case."

Several of the Lions urged newer lawyers to adopt a more humble and genteel demeanor. Joe Cheshire of Raleigh noted that the biggest mistake lawyers make in the courtroom is "thinking that they are more important than anyone else rather than realizing that the criminal defense lawyer is perceived as the least important person in the room, and, as such, has to treat everyone in a manner that wins grudging respect and leads to success, starting with the clerk, the court reporter



Flanked by the Honorable Judge Mary Ann Tally and the Honorable Judge Gregory Weeks, the Lions from left to right: Steven Bernholz, Lock Clifford, Joe Cheshire, Sean Devereaux, David Rudolf, Wade Smith, Barry Winston

and the bailiff.” He also warned against attorneys thinking they are more important than their client; never forget, “the most important single thing is client relations which always includes massive amounts of empathy and caring.”

Devereaux noted that too many attorneys are unnecessarily antagonistic. Pick your battles, he advised.

Smith, known for his courtly manner as well as his ferocious track record, suggested that being gracious is not only good, but good courtroom strategy.

“Each lawyer has to have his or her own voice and style. I admire so many lawyers and especially young lawyers. I marvel at them and at their skills. I do believe there is a feeling out there that you must be a warrior. But for me the warrior is inside. Outside you don’t have to have on a suit of armor and be strident and tough. My favorite Bible verse is the one that moves me in court. “The words of his mouth were smoother than butter, but war was in his heart.”

Cheshire also referenced the Bible. He said law schools are training young lawyers to be sons of bitches—men and women. “But that’s exactly the wrong thing to do,” he said. You fight when you have to fight. Until then, if your enemy is hungry, feed him; if he is thirsty, give him something to drink.

What it Means to Practice Criminal Defense

Several of the Lions remarked on the long hours and low pay, and the toll criminal defense practice has taken on their families and health. Rudolf had a heart attack and open heart surgery. Cheshire is staring down retirement with the realization he has very few friends in Raleigh outside of work.

But Steven Bernholz of Chapel Hill said he and his wife Dottie, also an attorney, talked about legal issues, and their social justice import, around the family dinner table. Perhaps it’s no surprise their daughter Blair, graduate of Harvard Law,

went on to become one of the nation’s most-respected criminal defense lawyers.

Bernholz said he has no regrets about bringing that passion for his work into his home. One truism he conveyed: “The general public despises us – until they need us.”

Smith, whose clients have included Jeffrey MacDonald, Ann Miller Kontz and one of the Duke Lacrosse players, said the biggest cases posed their own challenges, but “I was defined by misdemeanor cases and simple cases.” All cases are big cases, he said: “Any case that has kept my client awake at 3:00 AM is a big case for me.”

The Lions credited their success as criminal defense attorneys to persistence, integrity, courage, compassion and perhaps, just a bit of luck.

Smith summed up the most important quality of criminal defense work as simply: The power to touch the human heart.

Cheshire said he still considers criminal defense not a job, but his mission.

Cheshire recalled his grandfather’s deathbed admonition that every person is born with the duty to help somebody—some only one, some will help many. “I want to be able to help as many people as the Lord gives me the opportunity to help.

“My approach to the practice of criminal law is as a ministry. Every person who comes in our door, I want to make their life better, or their family’s life better.”

Barry Winston, of Chapel Hill, spoke directly to the younger attorneys at the NCAJ lunch: “The defense of persons accused of crimes is a calling. If there is any one of you who doesn’t see it as a calling, then you should look for another line of work.

“If you do see it is a calling, then I say come on in, the water’s fine.” ♦