

INSIGHT: Defense Counsel's Role in Democracy —Representing Those Accused of Heinous Crimes

By Jeffrey S. Leon

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Defense attorneys perform a vital job of protecting the rights of the accused, regardless of how heinous the allegations might be. Jeffrey S. Leon, president of the American College of Trial Lawyers, says this role is critically important to a free and democratic society and in upholding the rule of law.

Recent events at Harvard College raise important issues concerning the role of defense counsel in criminal cases.

Specifically, a Harvard College residential dean faced protests and public criticism for his decision to join the legal defense team for a high-profile defendant accused of sexual assault. In the view of the American College of Trial Lawyers (ACTL), this criticism was unjustified.

The criticism failed to recognize the historic and indispensable role that criminal defense counsel play in protecting the rights of *all* those accused of crimes, regardless of how heinous the allegations might be. Indeed, such criticisms threaten to undermine the fundamental principle that all defendants in a criminal case—regardless of how unpopular or even loathed they might be by the public—are entitled to counsel of choice and due process of law.

Crucial for Democracy

Criminal defense lawyers serve a critically important role in a free and democratic society and in upholding the rule of law. They are required to represent their clients zealously and honorably within the bounds of the law. This includes the duty to raise fearlessly every good-faith issue and argument available to defend their clients against allegations that the prosecution must prove beyond a reasonable doubt.

Indeed, defense counsel's vigorous representation of people accused of even horrific crimes is one of the cornerstones of a fair and effective criminal justice system. Moreover, by agreeing to represent a defendant in a criminal case a defense lawyer is by no means endorsing, supporting, or even sympathizing with the unlawful conduct alleged.

Rather, defense counsel is playing his or her role in fulfilling the bedrock principle that the accused is presumed innocent and remains so unless and until the prosecution has proven his or her guilt beyond a reasonable doubt. And, even if a defendant is found guilty, defense counsel plays an equally vital role in advocating for an appropriate sentence and protecting appellate rights.

Before the Constitution

To illustrate this point, one need only look to the example of John Adams. About 250 years ago, he defended several British soldiers who were accused of firing on American patriots at the Boston Massacre. There could not have been a more publicly reviled group of clients. But through his representation the soldiers were acquitted, and Adams went on to call it “one of the best pieces of service I ever rendered my country.”

Of course, it makes for a better story that the soldiers were acquitted, but the fact is that Adams’ service would have been no less noble had they been convicted. He would still have played his part in assuring that the soldiers’ rights were protected, that those rights were not trampled on by the often blind eye of public outrage, and that the power of the state was not allowed to ride roughshod over the rights of the individual.

It is in keeping with the spirit of John Adams that the ACTL regularly presents an award for Courageous Advocacy. The award is conferred on an individual trial lawyer who has persevered despite substantial personal danger, fear, or unpopularity. Many of the recipients of this award have been criminal defense lawyers, whose clients have included the likes of the Boston Marathon bomber, alleged Al Qaeda operatives, and others accused of despicable acts including the shootings at the Tree of Life Synagogue in Pittsburgh.

Indispensable Function

The ACTL honors these lawyers—despite the horrific charges lodged against their clients—because it respects and reveres the indispensable role of defense counsel in criminal cases. In the ACTL’s view, the vital work of these lawyers should be applauded, and not condemned.

The ACTL—whose members comprise the best of the trial bar from the United States and Canada—strongly supports the independence of the judiciary, trial by jury, respect for the rule of law, access to justice and fair and just representation of all parties to legal proceedings. One of its key missions is the improvement of the administration of justice through education and public statements on important legal issues.

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