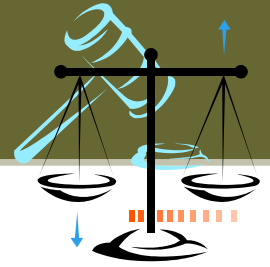




# CRIMINAL LAW SECTION MONTHLY UPDATE

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THE FLORIDA BAR CRIMINAL LAW SECTION  
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## Portrait of an Advocate, from the Defense Perspective

By: Jennifer Zedalis

Young lawyers who have had the fortune to work with a truly great advocate come into the courtroom with an advantage. The value of working alongside an outstanding defense attorney is immeasurable in terms of learning. The true heroes in our profession are unselfish. They inspire young lawyers, and encourage them to develop their own skills and understanding in this challenging area of practice. What are the qualities and habits of the best criminal defense lawyers? What are the essential characteristics of a strong defense?

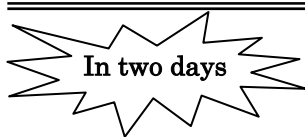
### I. Learning the Case

A lawyer is only as effective as his level of knowledge will allow. In defense work, this means devoting precious hours to learning what happened in the case, why it happened, and what it means in terms of the client's needs and rights. This means knowing more than the police, other witnesses, or the prosecution about the case. There are many skills and resources a defense lawyer must use in order to gain a full,

intelligent picture of the case.

First, advocacy begins not with talking but with listening. A lawyer should be willing to listen to the client, think about the client's perspective and concerns, and earn the trust of the client. Implicitly, a strong attorney/client relationship is focused on the client and not on the lawyer. It is not about lawyer ego or lawyer theater, but rather the client's need for representation in a complex, fast-moving criminal court system. A good lawyer listens carefully to the client and explains and counsels with patience. Clients are not always helpful. Sometimes, they are their own worst enemy. Clients may be manipulative or even hostile towards their attorneys, especially in the world of court-appointed counsel. This does not alter the obligation of the lawyer to defend to the best of his ability. It is important to establish a two-way exchange of information, questions, and viewpoints. When lawyers are making decisions that are

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## Upcoming Seminars

### Topics in Evidence

March 5, 2009 • Tampa Airport Marriott

**DON'T MISS THIS GREAT SEMINAR.** This seminar will include discussions on exploring attorney client privilege, evidence from the judicial perspective, scientific evidence at trial, expert witnesses, recent hearsay developments and effective cross examination.

It offers five (7) hours of general credits, one (1) hour of ethics, and 5.5 hours of **criminal civil and criminal trial certification credits**.

The seminar is a one-day seminar being held at the Tampa Airport Marriott. The brochure can be found on the following websites: Trial Lawyers Section at [www.flatls.org](http://www.flatls.org), Criminal Law Section at [www.flacfs.org](http://www.flacfs.org) or on The Florida Bar website at [www.floridabar.org](http://www.floridabar.org).

### Criminal Law Update

April 17, 2009 • Tampa Airport Marriott

**SIGN UP TODAY!** This seminar will feature updates in appellate, Florida self-defense, new criminal justice ethic, death penalty, DUI, Federal and Florida case law, immigration, sexual offenses and offender.

The seminar is being held on April 17, 2009 at the Tampa Airport Marriott. The brochure can be found on the Criminal Law website at [www.flacfs.org](http://www.flacfs.org) or on The Florida Bar website at [www.floridabar.org](http://www.floridabar.org).

**PORTRAIT OF AN ADVOCATE**

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essentially theirs to make, it is all the more important to keep the client informed in a meaningful way. There are decisions that belong to the client and decisions that belong to the lawyer, but communication is always important.

Second, a good lawyer dives head first into the discovery process and keeps investigating and interviewing and looking and asking questions until all the answers sound familiar. It may not be possible to achieve finality in the discovery process in a real sense, because witnesses change their minds and their testimony. New bits emerge, and sometimes parts of a case fall away when witnesses move, hide, or get their own plea deals, and so forth. The most powerful lawyers are those who have done serious, well-documented, take-nothing-for-granted discovery. It is great to think on your feet, but the best lawyer in the courtroom will be the one who knows the case and documents all the important details.

## II. Understanding the Case

Now we come to the law. A thorough understanding of the law is what separates the lawyer who just means well from the one who is truly formidable.

A good lawyer looks at all that has happened in a case with the Bill of Rights in mind. This is not a platitude. Everything that somehow contributed to a client's detention, search, arrest, interrogation, or the collection of evidence in the case must be scrutinized in terms of the 4th, 5th, 6th, and 14th amendments to the Constitution of the United States and any other statute, rule, or state constitutional provision that might apply. A good lawyer continually asks these questions: Where is the founded suspicion? Where is the probable cause? Can the government show an exception to the warrant requirement? Is the evidence sufficient as a matter of law? Is the evidence credible? Is the client competent? Is the client mentally ill? The list could go on and on, including things like statute of limitations, speedy trial, and sentencing procedures. These are basic principles of criminal defense, and they inform the important strategic decisions lawyers must make on behalf of clients.

Next, we consider case law. Most judges want more than a copy of the constitution when the suppression hearing or trial is underway. A good lawyer is faithful in his habit of reading the advance sheets. Laws are interpreted. Rules and statutes and jury instructions are interpreted, applied in various ways, and amended. Lawyers must be knowledgeable in order to defend. It is important to have the basic principles in

mind and to make effective use of case law when the occasion calls for it.

We all wish we had the benefit of experience and wisdom from the outset. A practical advantage to be gained from all this research and thought is that it is portable. It can be carried from case to case and refined and developed. It is an essential part of the craft.

Too often, young lawyers put research at the very bottom of their list in terms of time management. Good lawyers do otherwise, because a knowledgeable lawyer can figure out what needs to be done in a case much quicker than one who can't spot issues. It is much easier to screen cases and figure out how to get them resolved in the client's best interests with true knowledge of the law and a realistic view of the issues in the case.

The evidence code deserves special attention. Lawyers who understand the evidence code are formidable. Lawyers who do not are destined to misjudge the strength of the government's case. The case is only as strong as the admissible evidence. In trial, lawyers who cannot make and meet objections are at an extreme disadvantage. They may permit jurors to hear damaging evidence that should have been excluded. Failure to "pre-try" the case with an intelligent evidence analysis may also prevent jurors from hearing important, admissible evidence on a client's behalf. For example, many out-of-court statements are not hearsay, either because they are not assertions in the first place or because their relevance does not depend upon whether the speaker was truthful. Lawyers who truly value the client's right to a fair trial will be well prepared when it comes to issues like these. Skillful handling of issues in trial is also critical to protecting a client's right to appeal. Failure to adequately preserve an issue is the easiest way to lose an appeal.

Cross examination deserves special attention in defense work. Defendants have no burden of proof, and defense attorneys are generally concerned with challenging the government's witnesses as opposed to calling their own. Reasonable doubt exists behind every well thought-out and well-drafted cross examination question. The purpose of cross examination is to take away from, and not add to, the government's case. Cross examination is sometimes like editing, letting the jurors know that the witness is biased or lying (so their testimony should be rejected) or the test is fallible (so the results should be rejected) and so on. It is also useful to think of it as an x-ray. When we cross examine the government's witnesses we should be showing the

jurors what lies beneath the surface so they can get the whole picture, and not just the prosecution's layer. This is what a true advocate understands. The hallmark of an adversarial system is the defendant's right to challenge the government's case. This right means very little unless a lawyer develops skill in cross examination.

### III. Communication (Conveying the Case)

Many of us were drawn to the study and practice of law because of our love of words-- storytelling, drama, debate, journalism. A good lawyer develops the skill of communication. Lawyers must understand not only what their own words mean, but what the witnesses' words mean as well. Sometimes lawyers are translators. Sometimes they are editors, carefully choosing the precise words that will work to move or persuade. It is also important to use words to help jurors rather than frustrate them. Simple words and common language are a gift for jurors and judges alike, and it much easier to convey meaning with plain language than it is with law-speak or cop-speak.

We also need to consider delivery. Like anyone else, lawyers convey things like confidence, doubt, indifference, animosity, nervousness, and so forth through body language. For the client's sake, a lawyer must be aware of the impressions that are formed by jurors when watching and listening to the trial. Is the tone sarcastic or arrogant? Monotone? Are the physical habits distracting or even annoying? A good lawyer stands up straight and addresses the judge or jury in pleasant, conversational tones without resorting to slang or slogans.



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*We're on the Web! Visit us at: [www.flacfs.org](http://www.flacfs.org)*

**2009 Annual Florida Bar Convention**  
**Criminal Law Section Executive Council Meeting**  
 June 26, 2009  
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