INNOCENT UNTIL PROVEN INDIGENT

Most of us at one time or another have been trapped in the "halls of justice" by a bailiff, court reporter, or sometimes even a prosecutor, who says, "The judge would like you to talk to Mr. Jones concerning his case." And all at once, there is this sinking feeling as you remember reading in the newspaper this morning about the man who sexually assaulted a 90-year-old woman with her family looking on as four police officers charged into the room. Or you have gotten the call from the judge, asking you to go to the jail and talk to an inmate. And in some instance, we just receive a letter from a judge stating that he has appointed us to represent Mr. Jones.

When I was young and first starting my career, these were not the dreaded communications that they have become in later years. Nonetheless, the appointment to represent an indigent person in a criminal case will often ruin the best of days for an attorney. This is not something that the "rug lawyers" generally have to face in their practice. But those of us who practice criminal law often get stuck with the possibility of trying a case for very little compensation. And, in our jurisdictions out in West Texas, we are almost always called upon to carry the burden for the remainder of the bar.

In the past twenty-nine years, I have been called upon more times than I can remember to represent members of the indigent masses. And it seems that these calls seem to increase year by year. I cannot truthfully say that I look forward to these tasks thrust upon me, but I do not allow them to devastate my practice. Through the years, I have learned may ways to lessen the impact of the appointments and my exposure to claims by a dissatisfied client that I have not performed my duties in a proper manner. This article will deal primarily with handling the client and the case prior to and including a plea bargain, but there will also be references to various suggestions for use in trials. This presentation will not dwell on case law, but will approach the foregoing from a practical application standpoint.

THE APPOINTMENT

As stated earlier, the appointment may come in many forms, and oftentimes it will be one which has received a great deal of media attention. Do not despair, as there will be brighter days ahead.

On the day I am appointed, if the client is in jail, I always send out an interview sheet (included in the Appendix). Also, if I am able, will go to the jail during my lunch hour, after work, the next morning on my way to work, or on the following Saturday morning. By using these times I am not taking away from my "paying practice." The client should be interviewed as soon as possible for a number of reasons, and copious notes should be taken at the interview. In addition, I set up a file, establish an internal time-keeping schedule in the file (included in the Appendix). Also, on the day I am appointed, I send a Notice of Representation Letter to the District Attorney, with a copy to the District Clerk, and a copy to the Judge who appointed me (a copy is in the Appendix).

INITIAL CLIENT INTERVIEW

Generally, but not in all cases, by the time you are able to talk to your client after being appointed, the State has already gotten everything they want out of him including statements and a guided tour of the crime scene. Many times the client has had exposure to the judicial system through previous experiences, or his fellow inmates have educated him, and he is at this point very distrustful of "court-appointed" lawyers. It is incumbent upon you to instill as much trust as possible in your client by being fair, honest, and very limited in the advice given at this time. He at best, will be distrustful of you until you demonstrate that you have genuine concern for his welfare. **You should always keep in the back of your mind that if the verdict or plea bargain becomes unpleasant at some later date, YOU will be the scapegoat and may possibly hear from your client on a claim of ineffective assistance of counsel, or that you did not advise him of some particular matter or option which he in fact had at the time.**

Trust can be built by being inquisitive as to the client, his background, his family and his welfare while in custody. Obviously, this will not work in every instance, but you should at least try. Spend some time with the client in custody, trying to determine what he wants to do with his case, or what he expects the outcome to be. In many cases, unfortunately, the client will be totally unrealistic, sometimes belligerent, and even attempt to dominate you based upon a feeling of mistrust in all members of the establishment. You can circumvent that distrust, by demonstrating your interest in helping him. If he continues to be difficult to deal with, you should let him know that you are going to handle his case with or without his assistance, and that his help would be beneficial to him. This may be done by advising him that he does not have the right to pick and choose his court-appointed attorney, and it would be in his best interest to calm down and attempt to help you.

During this first interview you should also advise the client of the necessity of telling you the truth. He may or may not be truthful, but you should definitely spend some time explaining why he should be totally honest. More than likely, during the course of your representation of the client, you will find out that he has, at the very least, shaded his version to you.

Get names and addresses of family members, employers, and friends who might be helpful as not just fact witnesses but character witnesses as well. In a major impact case, I often record the interview and have it transcribed for my file.

During the initial interview, I always lay out the ground rules concerning:

1. Visitations at the jail
2. Collect telephone calls from the jail
3. Correspondence
4. Discussing his case with anyone other than you.

I usually take two or three self addressed stamped envelopes to the client, so he can write me if he

wishes to contact me or furnish me with any additional information. It is at this time that I tell him I will not accept collect telephone calls from him. I further advise him that if he wishes to contact me, to use the envelopes I have provided to drop me a note and I will come and see him. I also tell him at this time that I do not have the time to come out and hold his hand. I explain that I will come to the jail, when he requests me to do so, OR I have something to discuss with him concerning his case.

Another item I always address during the initial interview is for him to **KEEP HIS MOUTH SHUT ABOUT ANYTHING INVOLVING HIS CASE.** I tell him not to talk to anyone (and I emphasize **anyone**) including family members, other inmates, jailers and obviously any law enforcement officers including parole and/or officers. I explain to the client that all too often a talkative client has talked himself into an extended prison sentence.

At the initial interview, I always advise the client of the full range of punishment which the offense or offenses carry. It is amazing the number of clients that do not know, nor has any attorney ever told him the full range of punishment in any case.

After concluding the interview, I keep a record of the time spent, and record same on my time sheet. I then write the client in jail to confirm that I have spoken with him and that I will be advising him of all settings and developments in his case (a copy of this letter is in the Appendix). I generally will write a letter to the Sheriff, Police and District Attorney advising that I have been appointed to represent the client and I am hereby invoking my client's right not to be interviewed, questioned, interrogated or examined for any purpose unless I am present for same (a copy of this letter is in the Appendix).

WHAT DO I DO NOW?

At this point, I generally suggest that you go to the prosecutor handling the case, if you know who it is, to discuss the case. In some instances you may be appointed before the case is assigned to a prosecutor. If that is the case, you may have to talk to more than one prosecutor during your representation.

I have found that except in the major impact cases, most prosecutors can be helpful in providing some short cuts to the investigation of your case. You can oftentimes use your "appointed" situation to your advantage by playing the part of the beleaguered attorney who is having this case detract from a paying practice. The prosecutor will generally give you a copy of your client's statement without a motion. Most of the time if you handle it with some creative psychology, you can get them to give you names and addresses of witnesses, copies of scientific reports, autopsy reports, lab analyses and sometimes get the prosecutor to summarize what the witnesses have said without filing motions. **CAVEAT: Always double check what the prosecutor says the witness or witnesses will say!** I have found many times either the prosecutor was not totally honest with me, or the officer taking the statement was not completely honest, or the witness will testify totally differently from what the statement says. Remember, most of these statements were made out by officers trying to make the case against your client.

It is at this point I begin to make determinations concerning the need for investigators, expert witnesses, etc. Great strides have been made since my early years of practice to provide not an equal, but better footing for the indigent in the preparation and presentation of his defense or defenses. In addition you may be able to show "harm" if the Judge denies you the ability to adequately prepare for your case by denying an investigator or expert witness.

EXPERT WITNESSES AND INVESTIGATORS

Often, expert witnesses can be difficult to locate and can be expensive. But in many cases they may be extremely beneficial to your client. I have had a great deal of success using college professors as experts. If approached properly, they can generally be used to gain knowledge of useful technical data. They are quite often better at testifying because, they do not usually get involved in the "intriguing world" of criminal law. Many times their credentials will by far surpass the State's experts' by a mile. As a matter of fact, it is amazing the number of amateur "gumshoes" who are out there in the teaching field. I have found them very willing to get involved in the excitement of a criminal case. Some of them really get into the fray and are very helpful. Another factor, which I personally like, is that very few of them are known to the prosecution and when their names appear on your subpoena list, will totally dumbfound the State's investigators.

If you intend to use professors or teachers to testify, be prepared to spend some additional time preparing them for their testimony. Make sure they understand the "ins" and "outs" of being on the witness stand. I have found most of them to be a little nervous, but most were extremely helpful.

Other areas that can be easily overlooked are the areas of psychology and intelligence evaluation. Normally, psychology professors at the college level will be most helpful in determining various factors concerning the psychological evaluations secured by the prosecution. Once again, the college professor's credentials may be more impressive than the hired guns used by the State.

Most college psychology and education departments have people working on psychological and/or intelligence testing. You know that most times the police have prepared the statement with words of which your client may not even know the meaning. I have had more than one instance where my client has signed a confession prepared by the police, and with a little snooping and testing, I proved that my client's intelligence level was such that he could not write those words, much less understand them in a statement read back to him and thereby created a method of attacking the statement.

College professors may also be of value as translators. I do not want to be at the mercy of some Deputy, to translate for me in an instance where my client could not speak or read English. Furthermore, in order that my client have a complete understanding of the proceedings or options in his case, I have had success in gaining assistance from college professors in translations of not only attorney-client communications, but also court proceedings. I have always been more than a little suspect about a member of the courthouse staff or law enforcement officer acting as my interpreter. Another reason for using a translator is to protect you from any future claim that the client did not understand what was going on, or what his options might be in his particular case. I have even used

professors to translate my correspondence to my client in his native language, so that I would have a record of an explanation that the client would understand. Another consideration, in a marginal case of needing a translator, is that you can seriously destroy the effectiveness of the prosecution's cross examination of your client, by using a translator who is sympathetic to your side of the case.

Today, a lot of colleges and junior colleges are offering courses and degrees in the Criminal Justice field. In this field they train individuals to be law enforcement officers or prison guards. Many times these professors have impressive credentials and can be very helpful in examining procedures for issuance of search warrants, searches and seizures, and even warrantless arrests. You may never use them to testify, but I have found them most enlightening in leading to other information regarding procedural guidelines which **should** be used by officers in certain situations. This can be very beneficial in preparing the cross examination of police officers as to proper procedures, etc. I have even had one of these professors appointed as an investigator in a case I was handling.

Most of the people I have discussed to this point will help you without any cost on your part. If you handle them with the right approach, and explain that you are being less than adequately compensated, most are sympathetic and will lend their services for little or no fee. And, many are genuinely intrigued with a departure from academia.

At some point, you make the determination that you will need some assistance in investigating the case. You will probably have to file a motion for financial assistance (copy in Appendix). There are several cases dealing with your client's rights in this matter. See Ake v. Oklahoma 105 S.Ct. 1087; Britt v. North Carolina, 92 S.Ct. 431; Rey v. State, 897 SW2d 339; De Freece v. State, 848 SW2d 150 along with many others. The biggest problem that you will face is the judge is going to try to put a limit on the amount you can spend. If you handle it with a formal motion, describe the need, what constitutional (STATE and FEDERAL) grounds you are relying on, a definite indigence on the part of your client, and make your record and show what harm your client is incurring by the judge's refusal or limitations.

Some tips on getting what you want:

1. Have the areas outlined where you need assistance and present them to the court, to demonstrate the need of having the expert or the investigator appointed..
2. Be brief and general as possible in your outline and presentation in order to preserve the integrity of your investigation into any possible defenses.
3. Another approach is to prove up what the State has spent in investigating the case, using man hours, minimum wages etc. Call officers, chemists, etc. as witnesses during the hearing on your motion to demonstrate the amount of time that the State has used in the case and the amount of money used by the State.

AFTER COMPLETING YOUR INVESTIGATION

Prepare yourself to be conversant in all the facts of the case and discuss them openly and honestly with your client. You duty here is not only to show him what your investigation has revealed, but also what evidence you have received from the State and have been able to uncover or not uncover through your investigation. Do not be afraid to confront him with his misuse of the truth or faults in his story. But always point out the good points of his case, if there are any.

I generally at this point have not gotten a plea bargain recommendation, but now will talk to my client, concerning whether to approach the prosecutor concerning a plea bargain. Some of my clients have not wanted any offers. I would suggest that this is the point where if your client is interested in a plea bargain that you discuss the range he would be willing to accept. I generally confirm this conversation with a short letter to the client, putting in the subject matter we discussed. Now is the point that I talk to the prosecutor about what type of plea bargain can be reached in the case. Be realistic in your discussion concerning lengths of a sentence and what is actually available to your client.

Upon receiving the offer from the prosecutor, **ALWAYS,** confirm the offer by letter to the prosecutor (copy of letter in Appendix). There are many reasons for confirmation. First, if it is a large prosecutor's office, prosecutors come and go, cases get transferred, prosecutors move up or down, and verbal agreements are hard to enforce with the judge. I have had many instances where the confirmation, when shown to the judge, was required to be followed.

The next phase can be the trickiest of all-----the discussion of the plea bargain offer with your client. Here, unfortunately, a large percentage of attorneys make major blunders which deal them grief later on down the road. Also, many of these indigent clients are not eligible for probation or any other type of alternative sentencing, and as a result, the plea offer may be dealing only with serving time in custody. This may or may not be acceptable to your client.

Some major DON'TS ARE:

1. Don't tell him he has to take the offer;
2. Don't tell him if he doesn't accept the offer, you will withdraw;
3. Don't tell him that he should accept the offer;
4. Don't tell him he should accept the offer, because his family wants him to;
5. Don't tell him he has to accept the offer because he will only have to serve anything less than the total number of years assessed as punishment;
6. Don't tell him that he will only have to serve a certain portion of his sentence;
7. Don't forget to tell him about the ½ time flat in a 3g offense.

I suggest that you explain the offer as one of the following options:

1. He can accept the offer, and you can guarantee the outcome; OR
2. He can reject the offer, proceed to trial before a jury to decide his guilt or innocence, and also for punishment if he so desires. Admonish him as to the risks of this option; OR

3. He can reject the offer, proceed to trial before a judge, for guilt or innocence and punishment without a plea bargain, whereupon the judge may assess punishment within the full range of punishment for the offense.

Explain to the client you cannot make the decision for him. Tell him that if he wants a trial, he can have one, as long as he acknowledges the risks involved. Tell him that you can advise him as to the consequences of any decision he makes, but you are not in a position to tell him which of the options he should take. I he presses you for a recommendation, then you can state that your "personal opinion is _____," and upon what you base your personal opinion. Whether your client accepts or rejects the offer, is his decision not yours, and you must make your client understand. You do not have to serve the time. If he wants to "talk the talk" then he has to be able to "walk the walk," when it comes to a prison sentence. Regardless of what your client decides, you should confirm his decision by letter to him, setting forth in exact terms the plea bargain, fines, costs, restitution, community service, and all terms of the offer.

If your client accepts the plea bargain, get in touch with the court immediately and set it for a plea as soon as possible. Notify your client of the exact date and time of the plea and tell him that you will go over all the plea documents with him prior to court (copy of a letter in Appendix).

Another piece of advice deals with going over the plea papers with your client. If your client is in custody, have the bailiff, or the deputy present while you explain the plea papers. He could be a witness in your behalf at a later time if your client is trying to claim that you did not explain the plea papers or admonishments to him. And guess who the deputy or bailiff is going to be friendly to, you or the defendant trying to get out of the conviction?

IMPORTANT AREA AT THIS POINT

Every time I have done something on an appointed case, I have recorded it on my time sheet in the file. Prior to going to court, I prepare a letter to the court advising that I have kept a record of my time expended and expenses incurred in this case. In the letter I itemize precisely these items. Many times, I will enclose a copy of my time sheet. It is amazing how much more I have been able to get paid, just by spending the time to give the court something with which to justify payment of more than a "scheduled rate" for a plea. I never set an hourly fee, I just give the court a listing of my time and expense and allow the judge to arrive at the fee (see letter in Appendix).

SPECIAL SITUATIONS

This portion of the paper deals with suggestions concerning the **DIFFICULT CLIENT.** This is the client that "knows the law," knows more than anyone else, is uncooperative, will not agree to anything, will not accept a plea bargain, and is destined to make your life miserable. Normally, the client profile is a Defendant who has been "down" before, or doesn't like you because of your race, gender, lifestyle, or just will not follow any advice. These are the clients that you will have to spend a lot of time covering all angles. Believe it or not, some of these clients who are actually trying to set you up for a claim of ineffective assistance of counsel or a lawsuit or a grievance. But there are ways to handle these individuals, which will go a long way to protect you from these claims several months or years later. I have what I call the TEN COMMANDMENTS of representing these truly wonderful persons, and they are as follows:

1. THOU SHALT KEEP YOUR CLIENT ADVISED OF EVERYTHING. Everything that you file in his case, give him copies.
1. THOU SHALT HAVE YOUR CLIENT SIGN EVERY DOCUMENT YOU FILE. Every document that you file in his case, put a signature line for him to sign. It makes him feel like he is a lawyer too.
2. THOU SHALT INTERVIEW YOUR CLIENT THOROUGHLY AND ANY WITNESSES HE CLAIMS ARE IMPORTANT TO HIS CASE.
3. THOU SHALT SUBPOENA EVERY WITNESS HE WANTS WITHIN REASON. Have the witnesses there. You don't have to put them on. Even if they are unusable, have them there. The only exception would be if the witness was harmful to your client's case. In that regard, make a notation in your file of why you don't have him there.
4. THOU SHALT HAVE YOUR CLIENT SIGN A STATEMENT THAT HE REFUSES TO FOLLOW YOUR ADVICE. If he refuses to follow your advice and won't sign a statement stating what advice you have given him and that he is refusing to follow same, then confirm it by letter to him and keep a copy in your file.
5. THOU SHALT KEEP A RECORD OF ALL TIME AND EXPENSES SPENT ON YOUR CLIENT'S CASE. These record can be handy two years down the road when he makes a claim that you did not do anything on his case.
6. THOU SHALT NOT ALLOW YOUR CLIENT TO LANGUISH IN CUSTODY WITHOUT WORD ON HIS CASE. Write him a short letter telling him that nothing new is happening on his case, or advise him of settings, or advise him of what you are doing on his case.
7. THOU SHALT CONDUCT A PRIVATE HEARING, IF THE CLIENT REFUSES A PLEA BARGAIN. Conduct a hearing and make a record of your admonishments to your client and of his refusal to accept the plea bargain, and make sure he knows what he is facing upon his refusal. Do this prior to trial. Request the Court to conduct this hearing at the earliest

possible time.

8. THOU SHALT HAVE YOUR CLIENT PLACED UNDER OATH DURING THE PLEA. I do this more often than not. Furthermore, I usually the Defendant on the witness stand and make a record that I have advised him of the consequences of his actions, voluntariness of the plea, judicial confession to the offense, etc. It is very important that you have the client, under oath, admit the offense. It will help immensely later on down the road.
9. THOU SHALT KEEP RECORDS ON THE CASE FOR AT LEAST FIVE YEARS. This will give you something to look back on if the client ever attempts to come back on you for any reason.

CAVEATS

In representing this type of client, who is difficult to say the least, and in an appointed capacity, there are some pitfalls which need to be discussed:

1. Charges in other jurisdictions;
2. Coercion of a client to accept or decline a plea bargain offer;
3. Failure to investigate your client's case;
4. The client who wants to represent himself;
5. The client who will not follow your advice.

CHARGES IN OTHER JURISDICTIONS

A frequent problem in appointed cases confronting the attorney is that the client may have other charges pending against him in other counties or states, which he may or may not know about. **ALWAYS** ask your client about the other charges in other jurisdictions, but **ALWAYS** check with the Sheriff's Department or the jail to see if there are any "holds" on your client. This should not just be done at the beginning of your representation, but also prior to entering a plea in the case, at the very least. Your plea negotiations or actions could have massive consequences against your client in other jurisdictions. If you determine that there are other charges pending, I am of the opinion that your duty extends to attempting to work those charges in conjunction with the case in your jurisdiction. The result of your actions in your county could seriously impair the actions of another attorney, or subsequent attorney who is appointed in another jurisdiction in attempting to dispose of the out of county charges. Generally, I have found that if you learn of additional charges, you can contact the Court in which those charges are pending and have the Court appoint a local counsel, or I have been able in many instances to have that Court appoint me to dispose of the cases on its docket, and pay me for it. In a lot of instances you can wrap up a package deal on all of the cases, but it will take some time and some effort on your part. If you can work out the multi-jurisdictional problems, you have gone above and beyond what your client expects of you. I would point out at this point that this would include Parole violations, and "blue warrant" holds. Furthermore, I would suggest that you discuss these other charges with your client, the effect of the local charges in relation to them and let him know what you are trying to do for him. It will instill additional trust in you by the client.

If you are not able to work out a multi-jurisdictional plea bargain, the pending charges in other jurisdictions should be discussed at length with your client. I further suggest that you back this up with a letter to him explaining the situation and any pitfalls that may arise in not only the case in your jurisdiction, but also in the other jurisdiction or jurisdictions as well. Charges pending in other jurisdictions are easy to overlook, but may cause your client a great deal of problems if not taken into consideration while you are representing him.

COERCION OF YOUR CLIENT

The instinct that we all have to try to talk our client into accepting a particular plea bargain, for whatever reason, can and has been construed to be coercion. Be careful when you are attempting to recommend a plea bargain. You do not want to place yourself in a position whereby you are giving an ultimatum, or placing undue influence upon a client to accept a particular plea bargain. I do not understand why so many attorneys actually lean on their client to get him to plead. It should not make any difference to the attorney. He is not the one that has to do the time. Granted, in many instances refusal to accept a plea bargain by a client may not be in his best interest. But it is his case and his liberty which are on the line. My advice in this instance is to recommend the plea bargain in such a way as to point out the consequences of his failure to follow the plea bargain. This can be done in such a way that even a complete idiot can see what he probably should do. Nonetheless, if your client does not want to follow the plea bargain, there are several things I would recommend:

FIRST: Confirm in writing to your client that he has chosen not to follow the plea bargain, and in the letter point out specifically where the consequences of his refusal may lead (copy of letter in Appendix). Many times after putting his refusal in writing to him, the client will change his mind and accept the plea offer.

SECOND: I always attempt to get the client to sign a statement rejecting the plea bargain, which I file in the official records in his case (see copy in Appendix). Sometimes, however, the client will refuse to sign such a document. In such a case, I proceed to step three.

THIRD: I request the court to allow me to make a record of my client's refusal by conducting a short hearing, whereupon I put on the District Attorney to prove up the offer was made, and I put on my client to prove up that he rejects same.

Many times by going through these procedures your client will change his mind. A major warning in claims of coercion by a client, is a representation by the attorney on how much time the client will have to serve on his sentence. Unless you have an inside track with the Board of Pardons and Paroles, **DO NOT MAKE ANY TYPE OF REPRESENTATION IN THIS AREA.** I usually tell the client that I cannot make any representation of the length of time he will have to

serve, but that it will depend upon him, the available bed situation, and the Texas Board of Pardons and Paroles. **THE ONE EXCEPTION** to this rule is that if it is a 3g offense. If that is the case, you should tell him about the "flat time" he will be facing. I always point out that he will have to serve one-half of his time, day for day, before he is "eligible" for parole, BUT that does not mean that he will be paroled at that time.

FAILURE TO INVESTIGATE

Most of the ineffective assistance claims I have seen in noncapital cases arise out of a claim that the court appointed attorney failed to properly investigate the case, or that he did not investigate the case at all. Some attorneys do not want to put the time into checking out the client's story, the client's witnesses, the State's witnesses, etc. I suggest that you request investigators in cases, or conduct your investigations on non-office time such as Saturdays, Sundays or after work. If you get an investigator, outline what you want him to do, so that you get maximum return on his service. Most judges will at least lend an ear to your request for an investigator without a motion. But most judges will try to limit the amount spent. If you need more, do not be afraid to ask for it even through a hearing, if necessary. If a Motion is needed, I have included one in the Appendix for your use. To be frank, I have never been denied an investigator, if I went to the trouble to request one formally by motion, and show the court my need for same. Another factor that you should consider, is if you want to limit your appointments, is that the Judge will generally not appoint you as often, if you are going to require investigators, experts, file motions, have pre-trial hearings, and the like.

Regardless, you do have a duty to investigate the facts of each case to which you are appointed, and you do owe that to your client.

THE CLIENT WHO WANTS TO REPRESENT HIMSELF

These wonderful individuals will attempt to make your life miserable, but will inevitably do himself in. I divide these "rocket scientists" into two categories "The Part Timer" and the jailhouse "Clarence Darrow."

THE PART TIMER. This is the client that with or without your knowledge files his own motions with the Court, and maybe for other inmates as well. He will also write the District Attorney asking to negotiate his own plea bargain, or the judge complaining about you, or the victim apologizing for the crime. This guy can file some of the most unbelievable motions, complete with citations and statute cites that have absolutely nothing to do with the facts or law in his case. He may or may not tell you that he has filed them. I have had the first notice come from the judge or court administrator telling me that my client has filed a motion or group of motions. When this happens, I usually require the court to hear each and every one of them, and will even argue them for my client. Why not? You can charge the court for another court appearance. I have never had one granted by the court, but what can it hurt? Another approach, is to get copies of the motions, take them to your client and tell him you will file the proper motions trying to get what he wants, but that his motions are improper and will most likely be denied. These problems can sometimes be eliminated by filing your own motions, by having your client sign them, and sending him copies. (I

have even made up a case file mirroring my file for a client on occasion). Take the time to explain what you can get and what you can't. For instance, if your District Attorney has a closed file policy, you may not be able to get the State's witness statements until after the person has testified.

THE JAILHOUSE CLARENCE DARROW: This guy is my absolute favorite. He is going to do everything possible to make life miserable for you, the prosecutor and the Court. If you ever have the luck to get one of these wonderful clients, "who knows the law, cuz I studied it last time I was in the joint," I suggest a total attitude adjustment. I always advise him that it would not be in his best interests to represent himself, but if he insists, I will ask the court for a hearing to allow him to do so. At this point, the Court cannot deny him that right, and will generally appoint you to advise him and assist him during the various hearings, or trial of the case. In two of these instances, I had more fun than in all the other cases I have ever tried. Your client's knowledge of the law and procedure is generally weak at best, and filled with pitfalls. I suggest that you keep detailed notes of your interviews and hearings with the client. Be prepared for your client to do anything, attempt anything, and request anything from the Court. If you have the right attitude, you can sit back, smile at the judge and say "I told him he couldn't do that!"

THE CLIENT WHO WILL NOT FOLLOW YOUR ADVICE

This client demands to take the witness stand in his own defense against your advice, refuses to cooperate with you in the preparation of his case, or turns down a plea bargain which would be in his best interests.

If, against your advice, your client is demanding to take the witness stand in his own behalf, I suggest that you prepare a statement for him to sign, that you have advised him not to take the stand, setting forth your reasons, and stating that he wishes to testify against your advice (see copy in Appendix). I will generally go one step further. At the trial on the merits, I request that the jury be removed, just prior to my client taking the stand, and put him on the witness stand outside the hearing and presence of the jury, and admonish him again as to the consequences of his actions. I always have him state that he has been advised against taking the stand, but that he does not want to follow my advice. More than likely, the Court will join in and make sure that the client understands what he is doing. All the while, the prosecutor is sitting there drooling and licking his chops for the kill. In many instances, when faced with all of this, the client will back out of testifying, but if he doesn't, you have done your job, and put him through his paces.

I use this procedure whenever my client refuses to follow my advice. You can use the procedure for each instance, and modify it to fit. I actually tried a case, wherein, after each segment of the trial, after each witness, etc. I removed the jury and put my client on the witness stand and asked him if he was satisfied with what I had done, did I ask all he wanted, did I leave anything out, etc. It made a two-day trial last for more than five days, but the record was protected to the infinite degree. My client in this case actually agreed with everything that I did, and he had no complaints about my representations. He did receive 99 years for raping the Sheriff's wife, but he still filed a writ claiming ineffective assistance of counsel against me, to which I had to respond.

CONCLUSION

It would seem that in representing indigents that I do a lot of paper work. Actually, most of it is form work, which my secretary generates off the computer. I have provided some of the forms for your use so that maybe they will assist you as well. It is well worth the extra effort, and for the most part, I have been able to circumvent claims of ineffective counsel and receive payment above the norm, because I document all my work.

If I can ever be of any help to any of you do not hesitate to call on me at your convenience.