



Jun 29, 2016 by Scott Greenfield

Cross: Roy Black, The Lawyer You Hope To Be

June 29, 2016 (Fault Lines) — *Ed. Note: Scott Greenfield and David Meyer-Lindenberg cross renowned Miami criminal defense lawyer Roy Black.*

Q. You earned your bachelors degree in the radical Stone Age, 1967, at University of Miami. What was your major? Was law the plan for the future? Were you out to change the world, spread peace and love, or did you have more banal concerns at the time? What did 1967 Roy Black plan to do with the rest of his life?

A. I experienced (or suffered through) a diverse and bizarre education which directly impacted my choice to become a criminal lawyer. I started out in New York, New Jersey and then Connecticut at typical American public schools. Then my British step-father moved us to the top of the tallest mountain behind Kingston, Jamaica. I went to an English prep school, grandly called Jamaica College, mainly designed for the rich kids who couldn't make the grade at the upper class English schools like Eton and Rugby. It was a sobering experience both educationally and culturally.

I had a black math teacher who detested me because I was either American or white or both. He tortured me at the blackboard almost every day forcing me to perform the intricate arithmetic of English currency: pounds, shillings, guineas and pence (of which I was profoundly ignorant). While he never taught me any useful math skills, he inadvertently taught

me the more valuable lessons of pain, humiliation and prejudice. From him I learned to hate prejudice, support the underdog and always question authority. This led to my mission in life — law school and criminal defense.

Q. You stuck around Miami for law school. When did you come to the realization that you wanted to practice criminal law? Were you always on the side of truth and justice, or did you ever consider being a prosecutor? Other than crim law, were there any other practice areas that interested you? Could you have ended up in a windowless office of Biglaw doing contract review? Even if the price was right? If things didn't work out doing criminal defense, where would you have ended up?

A. I have never felt the need to be popular, so prosecution was out. I loved the concept of the lone wolf defender as the last resort against the brutal minions of government. Where else can you find that other than in an urban Public Defender office?

I loved the job from the first to the last minute. It was like working at an inner city trauma hospital – we saw everything from the best to the worst of humanity. I owe the office a large debt for providing the education to be a trial lawyer.

Q. Your first job out of law school was as a public defender, working under Phil Hubbart, from whom you took criminal evidence in law school. That was back in the early 70s, when the Burger Court still mattered and concern for the constitutional rights of the accused was about as good as it gets. Was public defense different then? More respected, more appreciated? What about your first trial, almost always a great opportunity to come to grips with reality. How did your first jury trial go? Looking back, were you the lawyer you thought you were at the time? Any mistakes that make you cringe today?

A. When I became a public defender, the legal system was far different than today. *Gideon* had been decided only a few years before and the system was not ready to accept real defense for the permanent American underclass; the poor, the uneducated, the inconsequential. Our budget was a measly \$125,000 and we were paid \$8,500 a year.

Before Hubbart was elected, being a public defender was a part time job. They waived jury in almost every case and tried them on Tuesdays and Thursdays. The other days were spent in their private law offices. There were only ten of us, and we swore to work full time (this became seven days, 18 hours) and to give the clients a real defense, including demanding a jury in every case.

This caused the system to grind to a halt. The judges were outraged. Tee times were cancelled. They brought in judges from around the state to try every case in an attempt to break us. After two years of outright civil war,

they capitulated and our clients grudgingly got some semblance of equal treatment.

A large part of our success was due to the Warren Court criminal law revolution. Our clients actually had rights we could enforce. We used these newly-minted rights to slow down the trains. Unfortunately, the Warren afterglow soon faded into the blasé Burger court and then to the Rehnquist and Ronald Reagan, who tag-teamed our constitutional rights into the toilet.

Q. You started teaching criminal evidence at Miami as an adjunct, which you continue to do today. Have things changed? Are the old “Paper Chase” days gone? Is that a good thing? Students today suffer every insult from debt to joblessness to bar failure. Is it their fault? Are they now too soft, too entitled, to be tough enough for the law? Have you changed the way you teach in order to avoid any potential “offense”? Have you caught any flack for being insufficiently sensitive as a law professor?

A. I have taught the same course since 1973, albeit slowly morphing it from a traditional evidence course into more trial advocacy. I basically teach my idiosyncratic ideas about trial skills. I teach for two reasons. It has made me a much better trial lawyer. Each class, I confront the critiques of young and bright kids who think they know it all. I am invested in the principle that one doesn't know a subject well until they can explain it simply to another.

The second is to find potential great trial lawyers. When I find one, I do everything to nurture them from finding trial work to the best post law school training. I have had a few over the forty plus years, and believe they impact the system of justice.

Q. Long before you hit the national consciousness with a vengeance in the William Kennedy Smith (whom you called “Will Smith” at trial) case, you were already one of the most respected criminal defense lawyers in Florida. What gave rise to your appreciation of detail, tactics and preparation? Were you just that rare lawyer who appreciated the virtue of hard work, or were you better at it than others? To what do you attribute the reputation you earned as “the Professor”?

A. My only real skill is cross-examination; when I was a PD, that was all we had. We learned trial skills as a matter of self-defense. I spent five years cross-examining lying cops, biased expert witnesses and outraged victims.

I am a believer that our failures are more instructive than our successes. When I cross examine I need to get something out of the witness to use in my final argument. It doesn't always work out. In a tax case I cross examined the case agent for 5 1/2 days. It took so long because I never got anywhere with him.

Cross-examination is a zero sum game; either you or the witness wins. No law school course can teach that. No colorfully produced videos, no pontificating judges, not even entertaining lectures like Irving Younger's Ten Commandments (and don't even consider law review articles).

One learns these skills only by doing. Most lawyers suffer from a knowing/doing gap. They intellectually know how to do it; they just can't put it into action. As a result, I teach both law students and lawyers through mock trials as the only way to learn through doing.

The five-year public defender battle with the judges inadvertently provided me with an invaluable asset. I estimate I tried 125 jury trials in those five years. I once tried three in one week. We worked from 8 a.m. to midnight, but youth and inexperience made it all seem possible. For five years I had no private life – but it was all worth it.

Q. Few lawyers will ever experience a case with the same extent of media interest as the Kennedy case. What impact did the media have on your ability to prepare, to go about your practice of law, to advise your client? How intrusive was the media in your personal life? Was there a point in time that it was, for lack of a better word, fun? Was there a point where it turned into a nightmare? For those lawyers who dream of that high profile case, what advice would you give them?

A. The Kennedy Smith case was the first nationally televised trial. Court TV had debuted only a couple of months before and we made the network a success. OJ greatly eclipsed it a few years later, but our trial spawned a new class of lawyer – the trial analyst. They ensure every step you make will be criticized.

Perhaps the most memorable event surrounding the Smith trial was that my jury selection tactics were spoofed as the opening act of Saturday Night Live. At least I didn't suffer the embarrassment of being in the Dancing Itos.

Since I have done work as a TV analyst, I know how the game works. We utter opinions without knowing all the facts and assure the audience we could do much better. Of course, it doesn't always work out the way you want. The commentary which didn't work out related to the OJ case. Almost all of us commenting on the case thought Lee Bailey didn't get much on cross from Mark Fuhrman. Then the tapes surfaced and Fuhrman's cross became the key to OJ being acquitted.

Q. Many young lawyers today believe it effective to create a social media presence that gives the appearance of competence beyond what they possess, if for no other reason than to make a living. Is this a mistake? What's wrong with over-promising and under-delivering? From a

lawyer who did the heavy lifting, what should young lawyers be doing if they want to have a reputation like yours some day?

A. I have no judgment on lawyers seeking to be noticed through social media or any other alternative means. Lawyers have always sought ways to garner public attention. When I started practicing law, there were strict ethical rules about advertising or self-promotion. So many lawyers ran for political office to get their names out to the public. Or taught Sunday school (one of my professors pushed that) and criminal court judges, pre-*Gideon*, appointed callow lawyers, right after swearing them into the Bar, to defend murder cases.

The method I used, trying cases, is no longer available to young lawyers. We failed the new generation of trial lawyers by not acting while the government dismantled the adversary system of justice. As a result there are far fewer trials and diminished chances of being noticed. Lawyers seek advancement through numerous venues. Some become AUSAs and ascend to a Wall Street partnership by convicting Martha Stewart (or her analogue). Others network through the bar associations.

I particularly enjoy those lawyers who exercise their writing skills on the internet. Going through my email each morning is like a legal seminar. I love to read blogs, e-newspapers, Facebook posts, even twitter aphorisms and clichés. I write an [occasional blog](#) (shameless plug) when I find a trial to use as a concrete example to explore some trial skill.

Q. Aside from the Smith case, you've represented a slew of other high profile defendants. How does it happen that they find their way to you? Is there anything you do to court high profile cases, or do they find you no matter what? Is this a good thing, to have clients who are in the spotlight, subject to intense scrutiny beyond that of the ordinary criminal defendant?

A. My so-called success is mainly a function of luck, being in the right place at the right time. All the clients I have represented over the years came to me because of publicized trials. I was fortunate to try high profile cases even when I was a public defender. They caused me a modicum of notoriety and brought in clients. My blog is limited to trial skills, hardly an effective advertisement. I have never been a good businessman. It doesn't interest me.

Q. There is no serious criminal defense lawyer who doesn't love trying cases. What part of a trial gets your blood pumping the most? Are you a cross guy, a closing guy, voir dire perhaps? What trial skill is most neglected, most in need of work by lawyers these days? What can be done to improve skills? What is the impact of so few cases being tried anymore? What will it mean for criminal defense when it's all pleas, no trials?

A. I was sworn in as PD on January 5th, and on the 6th, I started a second degree murder trial. There was no training, no assistance and mainly disdain from the bench. For some reason, lost in the midst of history, my client was acquitted, no doubt more to do with my enthusiasm than my meager trial skills. I feel sorry for the young lawyers of today because they will never get this experience. Instead, they are left to plea bargaining and sentencing.

The only real talent I have is cross-examination. When I was a public defender, we had no resources. No investigators, no trial consultants, no time. I typed up my own subpoenas and did all the legwork out in the worst ghettos of Miami. Our only real weapon was cross-examination. You either mastered it or failed.

Q. Without getting into the particulars, you married a juror from the Smith trial. Most lawyers would consider themselves lucky to get the opportunity to talk to their jurors, to get a firm sense of what worked and what didn't. You got a telephone number. Is there a lesson here about lawyers being endearing to their jurors? Was this a matter of tactics, of focusing on every detail that could have any potential impact on the jurors' perception of you and your client? Was this about the jurors liking Roy Black, because he's just a good guy, or was this a fortunate additional benefit of a lawyer being what he had to be to best serve his client?

A. Think of the advantages of dating a former juror. I had individual voir dire and a twelve-page questionnaire. So I got a raft of personal material and then questioned each juror for two to three hours under oath. And don't overlook the benefit of her voting for me (all lawyers know their ego is on trial, not the defendant!).

I didn't save her phone number from the trial, nor did I question her about the case. I had other ideas in mind. We ran into each other at a restaurant one night about a year later. Things developed quickly from there. In any event, where does the solitary, unsocial criminal lawyer find love?