



## P E R S P E C T I V E

# Associates Experience Human Side of Criminal Trial

BY PAULA L. MILLER AND RICHARD I. HADDAD

Three weeks into a four week homicide trial, our client, Frank, told us that he wanted to take a deal. Although the case was going well, Frank's confidence had given way to increasing nerves. As his anxiety mounted, he began responding to our perpetually-optimistic assurances with exasperated declarations that it was *his* life on the line.

That anxiety reached its pinnacle when we promised him that our case would come together on summation. "Summation?" Frank roared, angry and scared. "Summation means the end, no more bargaining, no more alternatives. Summation means I go home with my wife or I die in jail."

That day, six months after we had joined Jack Litman to prepare for trial, we realized that Frank was going to plead guilty. As we left Jack's office, he noted that although we may not have learned much law that day, we amplified our understanding of the human element of criminal practice.

Our involvement in Frank's case was fortuitous. Many months ago, our firm, Proskauer Rose, invited criminal defense attorney Jack Litman to speak on a criminal justice panel. Jack made his name running the Manhattan District Attorney's homicide division. He went on to command national attention defending Robert Chambers (the "Preppy Murder" case), David Tse, who the jury found had acted in self-defense when he reloaded his revolver twice to shoot a Chinatown gang member 18 times, and others.

When the chairman of our pro bono initiative thanked Jack for his participation, Jack offered that if the firm was serious about public service, it could lend him two associates to help defend Frank, Jack's pro bono client, against the charge of murder. The firm accepted, and as the designated associates-on-loan, we soon met with Jack to discuss the defense. Our case was self-defense.

On July 11, 2002, Frank received a phone call from his neighbor Elizabeth: a man was beating up Ann, Elizabeth's mother and Frank's former girlfriend. Frank's reaction provided the best fact in our case: he called the police.

Frantic, Frank told 911 that a man was beating a woman on Mahan Avenue in the Bronx; he begged the police to help. But when Elizabeth called again, and gave him the name of Ann's attacker, Frank decided to go to Mahan Avenue himself. He took a gun for protection because that attacker, Tommy, had once tried to stab Ann's son.

Frank arrived to see Tommy pinning Ann to the ground. He pulled Ann away, and after he and Tommy exchanged blows, Frank thought the altercation was over. Instead, Tommy lunged at Frank with a blade and threatened, "now I'm going to kill you, too." Stumbling to retreat, Frank chambered a bullet. At the last moment, with Tommy on top of him, Frank managed to fire a single, fatal shot into Tommy's stomach.

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*Our mentor taught us to know the facts cold, because a lawyer's exhibition of such knowledge earns the witnesses', the judge's and the juror's respect. He also taught us to establish ourselves with the jury, and to humanize our client.*

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Five years later, we joined Jack to prepare for trial. From our first meeting last August, Jack instilled in us the basic tenets of trial law.

We had to know the facts cold, Jack instructed, because a lawyer's exhibition of such knowledge earns the witnesses', the judge's, and the jurors' respect. Jack proved this when an NYPD sergeant doubted whether Frank had driven the fastest route to the scene. On cross-examination, with his mastery of a detail as seemingly-insignificant as the direction of an obscure one-way street, Jack showed that the sergeant's proposed route required an illegal turn into oncoming traffic. This shattered the sergeant's credibility; the jury was stunned.

Jack further imbued us with the import of establishing yourself to the jury as the courtroom's teller of truth. Early on, he used documentary evidence to get multiple witnesses to retract their previously-vehement denials. After that, the jurors absorbed Jack's questions, regardless of the witnesses' answers.

Finally, Jack impressed upon us the importance of humanizing our client. During jury selection, he asked the potential jurors to look at Frank's face and tell us whether they could give him a fair trial. Their reactions spoke volumes, but the larger purpose was to force them to view Frank as a person.

After months of trial preparation, Frank became more than a client: he became our friend. Each time we met, Frank brought us pastries, heroes or fresh mozzarella. During trial, he packed our lunches to spare us the trouble and expense of going out. And, one happy, hopeful night on the eve of trial, he had us over for dinner. We lingered for hours, savoring Frank's hand-caught bass, his wife's signature lasagna, and a favorable pretrial ruling.

This friendship made the trial's conclusion that much more painful. After fighting the charges for more than five years, days before his own testimony, Frank decided to plead guilty. Against our wishes, he agreed to a sentence of six years and avoided a possible 15-year penalty. As he stammered through his allocution, we could not mask our disappointment. We bit our tongues as he admitted to intentions that he never harbored, to a crime that he did not, in his view, commit.

Our post-plea interview with the jury confirmed that our optimism had not been misguided. But in light of his motivations, Frank made the right choice. Frank pled guilty because he could not bear the uncertainty of leaving his fate to the jury. We could not promise Frank a sure thing, but in taking a deal, he got one.

Near the end of trial, we attended an event honoring Jack's career. In accepting his award, Jack told the audience that his life's endeavor was to help human beings. Criminal defense is about improving the life of one person at a time, Jack said, and "if you don't do this with all your heart, you shouldn't do it at all."

Our experience defending a homicide ended in anti-climactic discontent. Despite its conclusion, we cherished the opportunity to learn from a legend, and we take comfort in knowing that, to the end, we gave it all our heart.

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**Paula L. Miller** is a fourth-year associate and **Richard I. Haddad** is a second-year associate at Proskauer Rose.

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