

THE DEVIL’S ADVOCATES
Greatest Closing Arguments in Criminal Law
Michael S. Lief, H. Mitchell Caldwell
New York: A Liza Drew Book/ Scribner, 2006. Pp. 1, 436.

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*“All persons born or naturalized in the United States,
and subject to the jurisdiction thereof,
are citizens of the United States and of
the State wherein they reside.
No State shall make or enforce any law
which shall abridge the privileges or immunities
of citizens of the United States;
nor shall any State deprive any person of life, liberty,
or property, without due process of law;
nor deny to any person within its jurisdiction
the equal protection of the laws.”¹*

The United States of America (USA) is admired for its criminal justice system. It is not denied that this system embodies unique rights of both victims and accused which have been adopted and incorporated by nations or States to their own justice system, an example of which is the Philippines. But how did the USA bring about the kind of criminal justice system that it now has? Was it a product of the brilliant ideas of its legislators?

The *Devil’s Advocates* provides a detailed historical background of cases that honed and changed the face of America’s justice system. It depicts how the right to sanctuary, right against unreasonable search and seizure, right against self-incrimination and right to be left alone, among others, came about. It further illustrates how circumstances, lawyers, judges and legislators made possible the evolution of rights that would effectively protect an accused. The book shows how experience became USA’s best teacher in shaping its system.

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¹ U.S. CONST. Amendment XIV, §1.

A lawyer or law student who wants to enrich himself with trial techniques in criminal cases should read the book. The manner how lawyers in each chapter dealt with their case offers effective strategies on how a lawyer can win, or at least draws the Court's attention to consider his case. The *Devil's Advocates* provides an inspiration and challenge to lawyers and future lawyers to engage in litigation. It describes the courtroom as the real place for passion and persuasion.

This work is divided into eight chapters which clearly demonstrate the transformation of one right to another. Each chapter also exhibits the challenges and hardships which lawyers encountered in defending their clients. The chapters reveal how discrimination, public's expectation and tradition create barriers towards the attainment of a fair trial. Moreover, they expose the inability of public officials to carry out their duties and responsibilities. This explains that the abdication of these officials of their duties result in the failure of the system itself. Public officials, considered to be in the fundamental level, are so essential to the success of the whole system that once they fail, the whole system would collapse.

The authors used some of the notable cases in America in order to effectively discuss the arguments in criminal law. In addition, they provided a correlation of the facts of the case and basic principles of law in order to make it easier for the readers to comprehend the matters being discussed in each chapter. Most of the cases cited have set precedent which guided lawyers and judges in handling criminal cases. Furthermore, said cases have served as foundation in the advancement of the rights and freedom of an accused.

Among the cases cited in the book is *Mapp v. Ohio*, where the Court, through Justice Clark, ruled that the "exclusionary rule is an essential part of both the Fourth and Fourteenth Amendment" and "the use of the seized evidence involved a denial of the constitutional rights of the accused." It has also recognized that the right to privacy is a right which is enforceable against the State and its officers.

The right to believe is also one of the rights guaranteed by the Constitution. The exercise of this right is absolute as long as the belief is not carried out and there is no right violated. Thus, the government is precluded from interfering when a person acts within the realm of his right. Moreover, the use of force may only be justified in the presence of imminent danger and clear violation of the law. These fundamental principles pertaining to the right to believe were elucidated and applied in the story of the life of Randy Weaver and Kevin Harris. Weaver and Harris were captured using drastic means by government officers because they were viewed as members of the Aryan Nation who have plans of destroying the government. They were later acquitted for the reason that use of force by the government was unreasonable as there was the absence of any imminent danger to the security and safety of the people.

The case of *Miranda v. Arizona* was thereafter discussed by the authors. It basically gave emphasis on the right against self-incrimination, right to remain silent and right to be assisted and represented by a counsel. It further tackled the admissibility of confessions made in the course of custodial investigation and in the absence of a counsel. The Court, in this case, had the opportunity to set guidelines as to when the right against self-incrimination and right to counsel start to attach.

The doctrine that “a man’s home is his castle” was expounded in the case of eleven African Americans who were charged with murder for the death of a white American. Dr. Ossian Sweet and his wife, together with their friends, were charged with murder for the death of Leon Breiner, a member of the Waterworks Park Improvement Association, a group whose purpose is to maintain the segregation of the blacks and the whites. The members of the association gathered and threw stones at Sweet’s house. A gun was fired and the bullet hit Leon Breiner. The police officers entered Sweet’s house and inquired why he fired. He answered, “They were destroying my home and my life is in imminent danger.” In the closing argument of Clarence Darrow, defense counsel, he used the “castle doctrine” where he stated that “a man has a right to kill, either in defense of the home or in the defense of themselves.” He further stated that such right is universal and applies whether a person is black or white. A verdict of not guilty was rendered by the jury.

Insanity was one of the defenses available in criminal cases. However, it was in the case of Daniel Sickles that temporary insanity was raised as a defense. The Court ruled in that case that during the commission of the crime, Sickles was deprived of sufficient reasoning to determine what is right and wrong.

The crime of treason using the case of Aaron Burr was also discussed in the book. Chief Justice Marshall, in the said case, set principles to guide treason trials. First, he pointed out that in the crime of treason, all participants are considered principal. Second, the guilt of the accused is not determined by his presence at the time the overt act of war was levied. Lastly, an accused should be afforded reasonable means to be informed of the precise nature of his criminal conduct.

The cases discussed in the chapters of the book have left an indelible mark in the transformation of America's criminal justice system. They have also served as precedents of some nations and States in improving their own system. The so-called "Miranda rights" which include the right to remain silent, right against self-incrimination and right to be represented and assisted by counsel were adopted in Article III of the 1987 Philippine Constitution. The Philippine Bill of Rights has also provided that "no person shall be held to answer for a criminal offense without due process of law." Furthermore, "the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusations against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf."²

Section 2, Article III of the 1987 Philippine Constitution is likewise an adoption of the right against unreasonable search and seizure. It provides that "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon

² CONST. art. III, §14.

probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.” This provision is related to the decision of the US Supreme Court in the case of *Mapp v. Ohio* which laid down the requirements for a valid search warrant.

America’s criminal justice system has also significant influence in Canada. In Canada, Section Eight of the Canadian Charter of Rights and Freedoms protects all individuals from unreasonable search and seizure. For a search to be “reasonable” it must be authorized by law, the law itself must be reasonable, and the manner in which the search was carried out must be reasonable (*R. v. S.A.B.*, 2003 SCC 60).³ Moreover, Section 11 of the same charter affirms the right of a person charged of an offense not to be compelled to be a witness in proceedings against the person in respect of the offense.⁴

The *Devil’s Advocates* offers not just the history of America’s criminal justice system but likewise provides a picture of the dramatic trials of criminal cases in the US that primarily shaped its criminal justice system. It also includes a narration of the life of the people involved in a case and the various issues surrounding a particular era. It is a book which enriches the mind of its readers with countless knowledge on criminal law and trial technique.

This work demonstrates the need for effective and efficient lawyers to handle criminal cases for the reason that what is at stake in such cases are the lives and freedom of the persons accused. The book hails lawyers like John Adams, Clarence Darrow and Gerry Spence who selflessly fought for the rights of their clients. They were not afraid to defy the belief or judgment of the majority and did what they thought is right.

The authors emphasize that lawyers should have the competence and courage to fight for their beliefs and principles. Otherwise, it would be easy for

³ http://en.wikipedia.org/wiki/Search_and_seizure (last accessed 31 January 2009).

⁴ <http://en.wikipedia.org/wiki/Self-incrimination> (last accessed 31 January 2009).

them to be influenced by other's judgment. Despite this caveat, the book still reminds lawyers that when circumstances warrant, lawyers should learn to forego their personal biases in order to fully respond to the needs of their clients.

The *Devil's Advocates* reminds all readers that change is a process that cannot be achieved overnight. It is something which should undergo several processes or procedures. An almost perfect criminal justice system may prove to be ineffective and inefficient in the end. But through trial and error and experience, a nation can craft an ideal system.