

# **An Insider's Guide to**

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## **Criminal Defense Lawyers**



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## ABOUT THE AUTHOR

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David Crum is the Managing Partner of New Mexico Legal Group, P.C., an Albuquerque-based criminal defense law firm. He is a graduate of The George Washington University School of Law in Washington, D.C., and he has been practicing criminal defense since 1996. David engages in a broad criminal defense practice, ranging from first-offense DWI to serious felony offenses.

He has served on the Finance Committee of the New Mexico Criminal Defense Lawyer's Association (NMCDDLA) and was chairman of the New Mexico Bar Criminal Section in 2003 and 2004.



His teaching credits include the legal education seminars “364: Defense of Drunk Driving Cases in Courts of Limited Jurisdiction” and “Nothing to Lose: Sharpening Your DWI Trial Skills.”

In addition, David is a frequent lecturer to the New Mexico Bar, and he has lectured at the UNM School of Law.

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# INTRODUCTION

**Being** accused of a criminal offense can be scary and confusing. Your reputation, job, and relationships can be affected significantly by the outcome of your case. Whether you are facing a misdemeanor or felony charge, your choice in lawyers is of paramount importance. If your case is not handled properly, you could end up with a criminal record that results in unfair punishment, jeopardizes your freedom and your career, and complicates your life forever. You could even spend time in jail or prison.

## **WHY I WROTE THIS HANDBOOK**

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**You** have many choices when it comes to hiring a lawyer. The purpose of this booklet is to provide you with an insider's look at what you should expect from your criminal defense lawyer. Hopefully, this information will demystify the process for you and let you know how to be prepared when you meet with a lawyer. Being well prepared will give you peace of mind, save you unnecessary emotional turmoil and legal fees, and help you obtain the best possible outcome.

There is a wide range of ability among lawyers who claim to practice in the area of criminal defense law. If you hire a lawyer who doesn't know what he or she is doing, mistakes can be extremely costly for you—financially, emotionally, and even professionally. You should hire a lawyer who is dedicated to helping you resolve your case with the fewest negative consequences possible, not one who is looking for shortcuts that make it easy for the lawyer. I wrote this booklet to help you hire the best criminal defense lawyer possible.

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# 1

## Not all lawyers practice or even understand criminal law

**Law** school does not prepare lawyers to practice competently in the area of criminal defense, and it is only through experience that criminal defense cases can be handled properly. Plenty of lawyers will agree to take your criminal case, even if they don't have extensive experience in this area. Many lawyers add criminal defense onto a long list of other practice areas they handle. If you have been accused of a crime, you should look for a lawyer who practices primarily in the area of criminal defense. Ideally, criminal law should be the only type of cases your lawyer handles.

Before you choose a defense attorney, you should check his or her years of experience in your particular type of criminal case. This is especially true in DWI cases.

Before you hire a lawyer, you should ask how many cases the lawyer has handled involving your specific type of charges and how often that lawyer has actually gone to trial. If you do not get a satisfactory answer, you should keep looking.

# 2

## Why your lawyer should have experience in your jurisdiction, in your courthouse, and in front of your judge

**The** law is not black and white. It serves merely as a starting point, so your case may be handled much differently than similar cases if it ends up going to trial. All judges look at the law differently, especially rules of procedure, so it's very important for your lawyer to have experience in your jurisdiction (county), in your courthouse, and in front of your judge. A lawyer who knows your judge will do a better job of determining how certain issues should be addressed, what kind of plea the judge might accept, and how the judge might sentence you if your case goes to trial.

Always make sure the attorney you choose has regularly argued criminal cases in New Mexico and knows the judges in Albuquerque and Rio Rancho and in Valencia and Sandoval Counties. If your case is outside of the counties and cities around Albuquerque, ask your attorney how he or she will be able to get the information needed on the judge hearing your case in that distant county. If they do not have a network of advising attorneys in those other jurisdictions, you should immediately look for new counsel. When you interview a lawyer in a criminal case, a good question to ask is "What do you know about this judge?" If they are unable to answer this question quickly, find another attorney. Your case could be severely compromised.



Credibility with the courts and the judges in New Mexico is vital in ensuring the successful outcome of your case.

During your legal proceedings, you have the right to ask that the first judge assigned to your case be excused. While this is not a common practice, if the particular issues in your case warrant it, your attorney must be prepared to exercise this right to another judge on your behalf. Having this right as an option makes it that much more important for your attorney to have significant knowledge about the judge who will be hearing your case.




# 3 Why you need a trial lawyer even if your case does not go to trial

**The** majority of all criminal cases end in a plea and do not go to trial. That means that the defendant agrees to plead guilty to a specific charge in return for some kind of concession from the prosecutor. For example, you might plead guilty to a less serious charge in exchange for dismissal of other charges, or you might plead guilty to the original criminal charge in return for a more lenient sentence. A plea bargain allows you and the prosecutor to avoid a time-consuming criminal trial. Also, it may allow you to avoid the risk of conviction at trial on a more serious charge.

If you and your lawyer do not feel the plea deal you are offered is favorable, you may turn it down and continue to negotiate, or you may take your case to trial. At the beginning of your case, it is impossible to tell whether your case will be among the small percentage of cases that end up going to trial. But the best defense in a case is being willing, able, and prepared to go to trial if necessary. Being prepared for all options from the beginning allows you and your lawyer to work from a place of strength and leverage.

I have seen many lawyers desperately seeking a plea bargain because they are afraid to go to trial. This severely limits your options. In some cases, people plead guilty when a good trial lawyer might have won an acquittal at trial. Only an experienced trial lawyer knows how to fully prepare a case for either plea or trial.



An example of this trial-based preparation is witness interviews. When attorneys interview witnesses in criminal cases, they interview them based on how they anticipate cross-examining them at trial. They know from the beginning what they need to get out of the witness at trial, so their interview questions are carefully tailored for that outcome. What the attorneys are doing may not be relevant until months later, but it puts them in a powerful position to either negotiate a better plea or prevail at trial. As you interview lawyers for your case, ask these questions: “How many cases like mine have you taken to trial?” and “What were the outcomes?”


Proceeding as though you’re going to trial will direct how the investigation of your case is conducted. Also, it will keep you from being forced into a bad plea offer. If you hire a lawyer who is afraid or unprepared to go to trial, he or she is most likely going to try to convince you that the deal you have been offered is a good deal. In other words, this type of lawyer will be less objective than trial lawyers about whether or not you have a good deal on the table.

# 4

## Beware of serial plea bargainers

**Unfortunately**, some law practices are set up to plead the vast majority of their cases, regardless of the facts and specific issues in the case. I call lawyers who accept lousy plea deals just to get rid of the case “serial plea bargainers.” How can you identify them? One way is to look at their pricing structure. If a lawyer you are talking to is charging significantly less than what other qualified lawyers are charging, there’s a possibility that his or her goal is to get your business and plead your case as quickly as possible. Why? Because accepting an early plea allows the attorney to avoid really working on the case or getting ready to go to trial. A rock-bottom legal fee makes it impossible for that attorney to do much more than the bare minimum of entering a plea deal on your behalf, whether it is in your best interest or not.

You should also be aware of young lawyers coming out of law school or lawyers who have recently left the Public Defender’s office or District Attorney’s office. Many of these lawyers are desperate for work and will lower their prices to get business in the door. Price can often be an indication of a lack of experience or expertise.



I would ask any lawyer this question: “What would be your strategy if we had to go to trial?” They should know that at the first meeting. Of course they won’t know all the facts at the beginning of a case—no lawyer does—but he or she should be able to describe an overall strategy to you. A good defense lawyer will tell you in your first meeting how he or she might defend your case.


# 5

## Even smart lawyers can be terrible at case management

**One** of the secrets of legal practice is that it's not the brilliant lawyers who win cases; it's the prepared lawyers. The lawyers who are the most prepared and the most adept at case and practice management usually get the best results.

But lawyers do not study case or practice management in law school; they study theoretical law, so that's what they know when they graduate. Most do not know how to run a law practice or how to create the proper systems for information management. Most lawyers get out of law school without any experience in case or practice management, business management, or relationship management. You need to be aware of this from the moment you call a lawyer's office to schedule your first appointment. Notice how organized they are. Ask them how they handle calls and how many staff members they have.

The number one complaint about lawyers is that they often fail to call clients back. An organized attorney with sufficient support staff will have procedures in place to have your calls addressed promptly by the attorney or an appropriate staff member. If you must speak with the lawyer directly, procedures should be in place for scheduling the call and letting the lawyer know exactly what you need to discuss before the phone call takes place. If you hire a lawyer who doesn't have a large enough staff or doesn't have good practice-management procedures in place, it is unlikely that you will be happy with your representation. A good attorney will let clients know what it's like to work with his or her



firm, not only by discussing it in the consultation, but also by providing them with a working client binder. If you call with a scheduling question, a simple legal question, or about your bill, for example, you should be able to speak with a legal assistant or paralegal who can assist you. This allows your attorney to focus on the more substantive work that requires his or her expertise.

# 6

## Your lawyer needs your help to resolve your case successfully

**Your** lawyer needs your full cooperation and help in resolving your case in the most favorable way possible. You can help with the investigation of your case by gathering any documents that are helpful to your defense, identifying defense witnesses and providing your attorney with their contact information, and cooperating with any defense investigators who are working on your case. This may include visiting the physical location of the alleged crime and helping defense investigators map and photograph the area.





# 7

## The “model defendant strategy” that can save your case

I cannot stress this enough—it’s important to show your judge, by your actions, that you are taking your allegations seriously, and sometimes, working to change your behavior. This is true even if you are challenging the charges against you and intend to go to trial. Your attorney should begin work on lessening the consequences of your case from the very start.

You can be a model defendant by showing the judge that you’re being proactive. For example, if you have been charged with domestic violence, your lawyer may advise you to go to counseling. If you have been charged with DWI, your lawyer may advise you to attend Alcoholics Anonymous (AA) meetings or you may need to undergo drug testing. You should talk to your lawyer about these activities before you do them, but they can work wonders in helping your lawyer negotiate a better plea for you, and they can assist you in sentencing if your case ever gets to that point. Sometimes this can also be the tipping point in getting a case dismissed by the judge.

We recently represented a client with a very complicated case involving a DWI and some other felony behavior. This client took his charges very seriously, took a proactive approach, and attended more than one hundred AA meetings from the time of his arrest. In negotiating his plea, this behavior went a long way in convincing the judge and the

prosecutor that the client deserved a break, and he received a great plea deal, in part, because of his own behavior. This is, of course, an extreme example, but it illustrates just how important the client's role can be in resolving a case.

Many people are worried that if they have a domestic violence case and they go into counseling (or if it's a DWI case and they go into alcohol counseling), they are admitting their guilt. This is absolutely not the case. In more than fifteen years of practice, I have never had a client suffer a negative consequence as a result of going to counseling or to AA meetings. This behavior has only resulted in positive consequences.

Another way you can be a model defendant is to be extremely careful with your interactions on social media. You should not post anything on Facebook about your pending case. And you should definitely not post any photos or comments suggesting questionable behavior (like pictures of you drinking at a party).

Finally, you can be a model defendant by staying out of trouble and avoiding further charges while your case is pending.

**Facing** criminal charges in New Mexico can be a serious matter that should be handled by experienced criminal defense attorneys. Every person deserves to have highly qualified legal representatives support them and protect their rights when they are dealing with a criminal prosecution.

Hiring an experienced attorney early in your case puts a strong defense team on your side and allows them to begin the investigation of your case immediately. Doing so is crucial to the successful defense of your charges, which involves evidence analysis, witness interviews, legal analysis, motions practice, trial preparation, and many other legal skills that your attorney has spent years developing.

Your attorney will explain your rights and guide you through the entire legal process so that you go into the process with a full understanding about the legal and practical aspects of your case.

Please let us know if you have any questions, and we will be happy to answer them for you.

## HOW WE CAN HELP YOU

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**We** are a full-service law firm that protects the accused in the following areas of criminal law:

- DWI
- Battery
- White-collar crimes
- Fraud
- Embezzlement
- Homicide
- Sex crimes
- Domestic violence
- Pre-indictment cases
- Drug crimes
- All other misdemeanors
- All other felonies
- Grand jury proceedings



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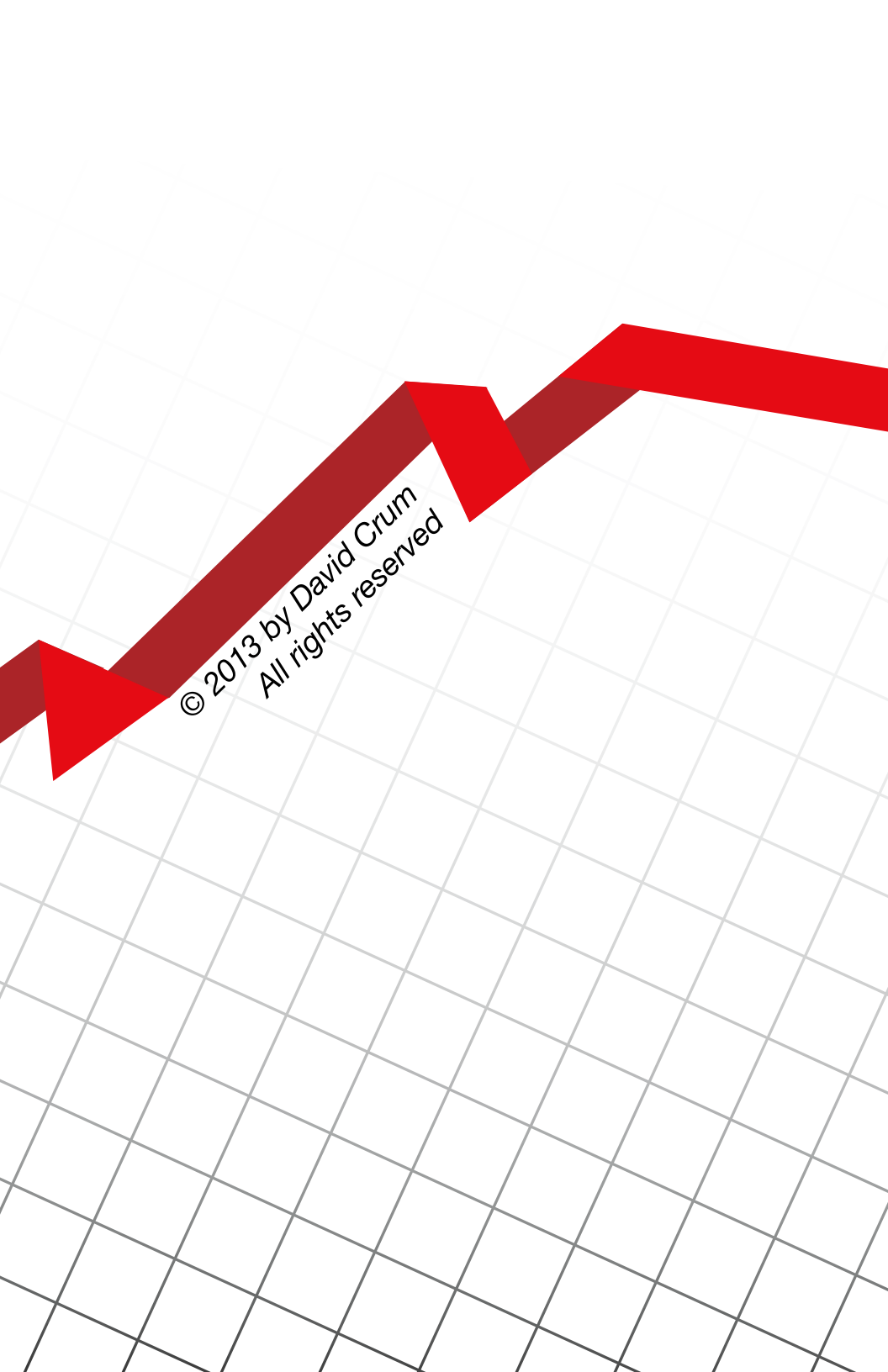
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