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## Critchley Catches Fire as Trial Bar's Shooting Star



**UP CLOSE AND PERSONAL:** Criminal defense attorney Michael Critchley reflects on a life of luck and litigation that has earned him the respect of prosecutors and claims adjusters alike.

By Walter Lucas

Even the true believers rated Michael Critchley's chances somewhere between slim and none.

His friend, David Ruhnke, told him to cut his losses: "I said, 'Mike, you've got a naked guy in an ex-wife's bed and another guy with a gun. Take a plea.'"

Critchley dismissed the counsel of his colleagues and went to trial. Three weeks later, on March 5, his client — the guy with the gun, a Newark police officer — was acquitted of murder. It was only the second outright acquittal in a murder case in the past 20 years in Morris County.

Critchley has been beating odds like those for most of his 46 years. But in the past year in particular he has been

on a roll — eight acquittals in eight very different types of criminal cases. One was the first price-fixing prosecution nationwide under the federal wire fraud law; another was the state prosecution of a white Franklin Township police lieutenant charged with failing to relay to his superiors or to prosecutors witness statements about the beating of a black motorist by a police officer.

His most celebrated victory came in 1988 when he headed up a 26-lawyer defense team that won the acquittal of 20 reputed organized crime figures after the two-year *U.S. v. Accetturo* trial in federal court in Newark.

The West Orange solo's gunslinger reputation isn't limited to the criminal courts. In 1988, he won a \$1 million

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# Critchley Catches Fire as Trial Bar's Shooting Star

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Essex County jury verdict in a wrongful discharge suit against Marsh & McLennan Co. and its corporate litigation counsel — Roseland's 116-lawyer Lowenstein, Sandler, Kohl, Fisher & Boylan.

Essex County Superior Court Judge Carol Ferentz acknowledges that she was surprised to see Critchley in her civil courtroom in a wrongful death case a few years ago. "Even after going to law school with him, and knowing him as many years as I did, I remember saying, 'My heavens, Critchley, what are you doing with a case like this?'"

Adds Peter Ryan, who shares office space with Critchley and who shared a counsel table with him in *Accetturo*, "Anyone who thinks of Mike as just a criminal trial lawyer as opposed to a trial lawyer does so at their own peril."

That reputation has caused many

"That's not to say they're all he represents," says an assistant U.S. attorney in Newark who asked to remain anonymous. "All that means is he does a principally criminal practice and they [the mob] tend to be repeat offenders."

Critchley says he can understand why people who don't really know him might think of him as a mob lawyer, though he is quick to shrug off the moniker.

"What happens is you have a major case like *Accetturo* and all of a sudden you're labeled," Critchley says. "But if you look at any of the major mob cases going on right now, I'm not involved."

That does not mean he hasn't been asked. Critchley acknowledges that he was interviewed by one of the co-defendants on trial now with John Gotti in New York federal court, but declined, advising the client to retain local counsel.

Critchley concedes, however, that he does represent his share of underworld figures. "Do I have mob clients?"

however, appear to come from his well-heeled mob clients. While Critchley may bill clients like the Newark police officer he got acquitted this month "well into six figures," he is quick to add that he is unlikely to collect much more than a fraction of that. His workers' compensation clients' fees are set by statute, and his personal injury plaintiffs pay only if he wins their cases.

Financially speaking, Critchley says he's "doing well." But he is quick to add that he can hardly be accused of conspicuous consumption. His office is a converted house on Main Street, next door to a Carvel Ice Cream store, and he lives in a Verona townhouse.

## The Secret of His Success

Those who have watched Critchley in court say that if there is a secret to his success, it's his gut feeling for jurors and the almost-instant symbiosis they have for him.

*'The wrongful death case he had before me potentially was barred by the workers' comp statute, but he was able to get a settlement for his client ... because of the [insurance] carrier's fear that he might beat them and make bad law.'*

—Essex County Superior Court Judge Carol Ferentz

"He tries his case to the jury," says retired Essex County Presiding Civil Judge Paul Thompson, who heard the Marsh & McLennan wrongful discharge case. "Many lawyers forget the jury is present and get more involved with the judge than the jury; some turn their backs on them." Thompson, now of counsel to Newark's Tompkins, McGuire & Wachenfeld, credits Critchley with having a conversation with jurors "in a dramatic fashion and with words of one syllable."

Critchley prides himself on his ability to pick good jurors. "I look for people like me, people from the streets who have worked with their hands, people not all buttoned down," he says. For jury selection purposes, Critchley has one absolute: nobody under age 35. "They live in a world of black and white and are quick to make judgments because they haven't yet been softened by life," he explains. "In criminal law, you live and die in that gray area of reasonable doubt."

Robert Rudolph, who covers the federal courthouse for *The Star-Ledger* of Newark, wrote a book published this month on the *Accetturo* trial which documents Critchley's synergy with jurors.

Rudolph says a Critchley trademark is distancing himself from other lawyers in the courtroom. "Many lawyers come across as just that — lawyers; they're there to argue a case," Rudolph explains. "Critchley comes across as a regular guy who's there to help out a friend. Short of outright vouching for his client's credibility, he manages to make the defendant into a real person the jury can relate to, even if the defendant doesn't take the [witness] stand."

Rudolph says jurors appear to be taken especially with Critchley's sense of humor and his affinity for reducing government arguments and witnesses to absurdity. Rudolph's book, *The Boys from New Jersey: How the Mob Beat the Feds* (Wm. Morrow & Co., 1992), recounts several instances in the two-year *Accetturo* trial when Critchley was particularly effective at seizing upon the absurd.

One was a sarcastic cross-examination of Joseph (Little Joe) Alonzo, a mob turncoat. "He was a lifelong drug user, and Critchley knew it, so he asked [Alonzo] about every drug he had taken in the past 20 years" Rudolph recalls. "He walked an easel out into the center of the courtroom, picked up a black marker and began to make a list of each drug, prescription and otherwise. When the paper was filled with names of drugs, he said: 'I don't have any more room. Could we just put 'others'?' Alonzo nodded as the jury tittered."

"Critchley then turned to face the witness and asked if lying came easy to him. Alonzo said that, at one time, it was part of his life; then it came real, real easy. Critchley asked: 'Then, after you came under the eyes of the government, you acquired characteristics of truth and honesty and integrity. Is that a fact? Is that what you're telling us?' Critchley grinned at the jury, and while Alonzo fumbled for an answer, asked: 'Do you know the date you acquired all these characteristics?' Some of the jurors laughed openly."

## 'Mister Rogers of Crime?'

Rudolph recounts another stinging, marathon cross-examination by Critchley of Nicholas Mitola, an admitted career criminal-turned-government witness. "In response to a question, Mitola said he wasn't a greedy person, that he gave away more than he kept. Critchley asked him if he was the 'Mister Rogers' of crime and started to sing the theme song from the children's show, *Mister Rogers' Neighborhood*. 'Won't you be my loan shark? Won't you be my bookmaker?' When the prosecutor objected to 'at least the singing,' Critchley replied: 'Judge, I'm a frustrated Irish tenor.'"

Critchley isn't beyond barbing his adversaries as well. David Ruhnke, a close friend and frequent co-counsel, says Critchley has made a career out of making government prosecutors look foolish. "In *Accetturo*, government investigators went through [Critchley's client's] house taking photographs of what they argued was a luxurious interior," says Ruhnke, who practices with his wife at Ruhnke & Barrett in West Orange. "Mike must have spent 30 minutes asking the jury why the United States government bothered to take a photograph of his client's toilet. He asked them [the jurors] if they didn't think the prosecution was a little overzealous. Some nodded."

And, while some defense lawyers themselves have been known to overreach, Critchley is not one of them, according to Joseph Hayden Jr., founder of the New Jersey Association of Criminal Defense Lawyers. "He tells the jury in his opening exactly what he's going to prove and then proves it. He never oversells," says Hayden, name partner in Weehawken's Hayden, Perle & Silber. "He has total credibility with [the jury]."

He also has their total attention. Ever-mindful and remindful of his Irish heritage, Critchley confesses to having "a bit of the blarney" in him and always looking for a chance to let it out. "The more senses you can get working on a jury, the better, and that

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PHOTO BY BILL KOSTROUN

**THIRTY-FIVE-SOMETHING:** For jury selection purposes, Critchley has one absolute: nobody under age 35. "They live in a world of black and white and are quick to make judgments because they haven't yet been softened by life. In criminal law, you live and die in that gray area of reasonable doubt."

claims adjusters, as well as prosecutors, to unball their fists with tempting pre-trial offers.

"The wrongful death case he had before me potentially was barred by the workers' comp statute," says Ferentz, "but he was able to get a settlement for his clients — not a lot of money but above and beyond what they otherwise would have gotten because their lawyer was Mike Critchley and because of the [insurance] carrier's fear that he might beat them and make bad law."

Still, Critchley can't shake the perception that he's mainly a lawyer for mobsters.

Sure," Critchley asks and answers. "But I also have white-collar clients, workers' comp claimants and PI [personal injury] plaintiffs." By his reckoning, his caseload is 50 percent criminal (some of it white-collar, including defense of the chief executive officer of an asbestos respirator manufacturer in the wire fraud case), 40 percent civil (including 130 to 140 PI files and more than 200 workers' comp claims of Newark and Bloomfield firefighters), and 10 percent governmental, stemming from his position as the attorney for the City of Orange.

The bulk of his paid receivables,



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includes their sense of humor," he says. But only in the right cases, he cautions.

Critchley says he could have gone for a few belly laughs in his most recent trial, that of Newark Detective Kevin Schneider who was acquitted of murdering his ex-wife's lover, but didn't. "I took them to a point where they were smiling and left them there," he adds. In that trial, Critchley portrayed his client's ex-wife as a "wicked woman" who cuckolded her husband while he worked two jobs to support her and their two children. "How could they believe her version of the shooting, a woman who lied about her infidelities?" he asked.

They couldn't, says Edward Zawada, one member of the seven-woman, five-man jury. "She admitted under questioning by Mr. Critchley that she had lied about her whereabouts all the times she was with [her lover]," the juror explains.

As for his assessment of the lawyers in the trial, Zawada says he "definitely

*'What upsets government attorneys is when he invokes wholesome values and wholesome themes to portray a struggle between a poor schnook and the big, all-powerful government. Of course, it's totally appropriate under our framework, but it's misleading.'*

—Joseph Braunreuther, one of the *Accetturo* prosecutors.

felt like Mr. Critchley spoke to me, as opposed to at me. There was a lot of eye contact. At one point, he was staring right at me."

John O'Reilly, the first assistant prosecutor who tried the state's case, did not return telephone calls for comment, but Critchley says the two spoke after the trial — at a testimonial for Critchley as "Irishman of the Year" — and that O'Reilly also felt that "the jury just didn't buy the wife's word."

The wife said her former husband, a martial arts expert, came to the home looking for her lover, who had spent

the night. She said her ex-husband pistol-whipped and shot the victim as he tried to put on his pants. Critchley's client said he went up to the bedroom to get bank records he needed for a meeting and was attacked by the victim, who was shot when, during a struggle for the detective's 9-mm police pistol, the wife jumped at her former husband, pulled him away and the gun discharged.

Another adversary, one of the three assistant U.S. attorneys Critchley bested in *Accetturo*, has nothing but praise for his skills as an advocate. "He is, truly, a great trial lawyer," says Joseph Braunreuther, now a commercial litigation associate with Manhattan's Watson, Farley & Williams.

Braunreuther acknowledges, however, "a larger philosophical question" — one that he says may or may not be relevant, but one that plagues prosecutors. "Clearly, he [Critchley] is not on a search for truth," Braunreuther explains. "Rather, he is fulfilling an ethical responsibility recognized by our constitution to give a defendant his day in court."

Although Braunreuther says, "in our system, that makes him good," he adds: "What upsets government attorneys is when he invokes wholesome values and wholesome themes to portray a struggle between a poor schnook and the big, all-powerful government. Of course, that's totally appropriate under our framework, but it's misleading."

Critchley makes no apologies for his advocacy techniques. As for his clientele, he says he'd love to graduate to the bigger-issue type cases, "but the bottom line for most attorneys is paying the bills. You are as selective as you can be based on your ability to afford it. Obviously, every attorney would like to upscale their practice, but the reality is we can't." Critchley does lay claim to some moral high ground, however. "There are people that I do not represent, either because I don't like them or I don't like the case," he says. "For example, when you feel you have to savage someone [like a rape victim] to make your case."

#### 'School of Hard Knocks'

Balding but still youthful, Critchley credits "the school of hard knocks" rather than law school with teaching him his craft. Born in a cold-water flat less than a mile from the Essex County Court House, he moved in with one of his six older brothers after his mother died when he was 17. After graduating from Essex Catholic High School, he took up roofing with some of his brothers and signed up for a few courses at Bloomfield College. He was still roofing by the time he started law school at Seton Hall at night years later. He also was married and had the first of his two sons.

To keep up with the overwhelming amount of law school work, he used the political contacts of two other brothers in the Newark police and fire departments to land a job as a sheriff's officer in Essex County. He started in the detective's bureau, where he learned criminal investigation. Later, he got closer to the courtroom when his brother got him a job as a uniformed court attendant to Superior Court Judge Brendan Byrne.

"He treated me like a law clerk, letting me sit in on settlement conferences, and research and draft many of his opinions," Critchley says. "Sometimes, in the middle of open court, he'd ask: 'Mr. Critchley, what do you think?' I knew he relied on me so I made sure I read all the advance sheets so I could answer him."

Critchley recalls talking with young

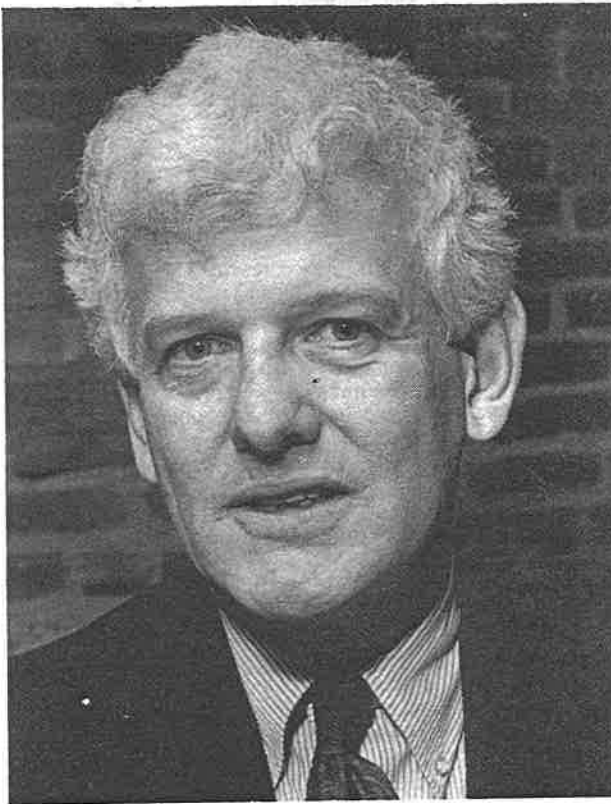


PHOTO BY BILL KOSTROUN

**SOLO SUPPORT:** David Ruhnke, a close friend and frequent co-counsel, recalls how Critchley made federal prosecutors look foolish in front of the *Accetturo* jury for taking pictures of his client's toilet.

assistant prosecutors like David Baime, now an Appellate Division judge, and Joseph Falcone, now presiding criminal judge in Essex County. "Then when the courtroom was empty, I'd make my own opening statement to the [empty] jury box, and the judge's court reporter used to take it down for me," Critchley adds.

He remembers the advice of his sergeant-at-arms, Woody Laurie: "Make it simple and then get out of the way. Just say, 'What happened next?' and 'After that, what occurred?'"

Judge Ferentz, his old classmate, attributes much of Critchley's success to being able to incorporate "the abstract theories we learned in law school at

night to the tangible cases he observed during the day."

When he graduated law school in 1972, Critchley asked Byrne to help him get a job as an assistant prosecutor, which Byrne did. Critchley worked under Essex County Prosecutor Joseph Lordi for about a year. When Byrne was elected governor, Critchley became his assistant staff counsel. A year later, he hung out his own shingle.

#### Support Network

Although a solo practitioner, Critchley rarely works alone. The basement of his office is usually filled with the buzzing of an army of part-time law clerks — one of whom is his son, Michael Jr., currently attending his father's alma mater, Seton Hall Law School. The elder Critchley also has a telephone support network whose names read like a "Who's Who" of New Jersey's criminal defense bar: Hayden, Atlantic City's Edwin Jacobs, Cherry Hill's Carl Poplar, and West Orange neighbors Ruhnke, Harvey Weissbard, also a co-counsel in *Accetturo*, and Alan Zegas.

"We're all in practice by ourselves or in small practices so we're not shy about asking each other questions, sharing briefs, whatever," says Critchley.

Zegas, a solo who did a lot of motion and appellate work for Critchley in the *Accetturo* trial, says he is impressed with his colleague's instinct for finding the Achilles heel in an adversary's case. "He will focus on and magnify a hundred times the smallest weakness," Zegas explains. "And he's willing to take risks, to ask questions he doesn't always know the answers to."

Cynthia Jacob, who handled the appeal of the Marsh & McLennan verdict, which was eventually reversed by the Appellate Division and Supreme Court, says that in poring over the thousands of pages of the trial transcript she could feel the jury becoming entranced by

Critchley. "He had an absolutely magical way of conjuring up this humongous conspiracy out of one of the most improbable theories I'd ever heard," says Jacob, a veteran employment litigator and name partner in Somerset's Collier, Jacob & Sweet. "But he made them buy it."

These days, Critchley is painfully aware that he may not always be able to pull a rabbit out of his hat. "This can be a bad time for me unless I remember that you're only as good as your last loss," he says. "And I have to resist my natural inclinations. Sometimes, if I see a light through a keyhole, I'll try to drive a truck through it. This is not the time to get loosey-goosey." ■