

PROSECUTION AND DEFENSE COUNSEL

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[Assignment: Write a comparative essay on two subjects of your choice. Your purpose here is to add to your reader's understanding of the subjects by allowing him/her to view them in relation to one another. You are not to judge the relative merits of one or the other; you are simply to explain their interesting similarities or differences.]

(1) When one hears the term criminal court, one immediately conjures up images of elaborate, formal proceedings involving judges, juries, witnesses, and so on. The formal criminal trial is an important aspect of justice, but it is used in a small minority of cases. The majority of cases are decided rather informally, by negotiations between the attorneys in the case.

(2) Being a criminal justice major and studying the laws and people's roles in the system have made me more aware of what actually goes on. I learn the facts, not television's fiction. By getting behind the scenes, I can see the real life drama of two opposing, yet cooperating, sides working to achieve justice.

(3) The defense counsel and the prosecuting attorney share one main responsibility: they are to seek justice and work so that justice is achieved. Their responsibilities differ in that they do not represent the same side in the criminal justice system. The prosecutor represents the state, while the defense counsel represents the accused. While some of their duties appear to overlap, it's their opposition in representation that keeps them distinct.

(4) The prosecutor is a member of the practicing bar and has become a public prosecutor by political appointment or popular election. His/her general duties include: enforcing the law, maintaining proper standards of conduct as an attorney and court officer, developing programs and legislation of law and criminal justice reform, being a public spokesperson for the field of law, and, a most frequent task, representing the government while presenting the state's case to the court.

(5) To present the state's case to the court, the prosecutor needs a lot of information. He/she has to investigate the possible violations of the law and determine what the charge will be. This requires cooperation with the police in investigating a crime and interviewing witnesses. Once the facts are available, the prosecutor can figure out exactly what laws were broken and on which laws there is enough evidence to make a formal charge. In choosing criminal charges, the prosecutor will usually choose more than one charge that he believes he can win the case with because choosing multiple charges leaves room for bargaining with the

defense counsel.

(6) Another responsibility of the prosecutor is to subpoena witnesses. That means to give out legal, written orders to witnesses which tell them to appear in court to give testimony, and to offer any and all knowledge they have about the case and those involved with it. In the pretrial hearings, where the charges and initial "information" are tested for probable cause, the prosecutor has to represent the government. It is the prosecutor's job to present enough evidence to establish probable cause. In the motion procedures, when the court states its specific findings, decisions and orders, the prosecutor is again representing the government.

(7) After the preliminary hearing, the prosecution and defense engage in plea bargaining negotiations. Here the two discuss which charges the accused will plead guilty to for certain considerations. The advantage to the prosecution is that a conviction is obtained without the time and expense of lengthy trial proceedings.

(8) The prosecutor is, again, the government's representative when the case is tried in open court. If the accused is convicted (found guilty), the prosecutor is allowed to recommend sentences to the courts. The sentence can be in the form of a fine, incarceration, or probation. The prosecutor will suggest the sentence that he feels is just, but he will also consider what the public wants. Since the prosecutors are appointed to their position, they want to be sure to please society. If the defense decides to appeal the case to a higher court, the prosecutor is responsible for representing the case.

(9) The defense counsel is the counterpart of the prosecuting attorney in the criminal process. This person is an attorney as well as an officer of the court. As an attorney, he/she is obliged to uphold the integrity of the legal profession and to observe the requirements of the Code of Professional Responsibility in the defense of the client.

(10) Within the Code of Professional Responsibility there is what is called adversary presentation, which allows for the prosecution and the defense to appear as adversaries in court, each presenting his or her own side. The lawyers, particularly the defense attorney, must strive to counteract a natural tendency on the part of most people to judge too swiftly on the basis of an initial reaction rather than to come to a conclusion that has been fully proven. The attorney must prepare the facts to enable the judge and the jury to hear the case with an open mind and to give impartial judgments. It is the duty of lawyers to their clients and to the legal system to represent their clients zealously within the boundaries of the law.

(11) As an officer of the court, the defense counsel participates with the judge, prosecutors and other trial participants in a process of seeking to uncover the basic facts and elements. The elements of a crime are the words in the definition of a crime. Each element must be proven to prove guilt beyond a reasonable doubt in court.

(12) Like the prosecutor, the defense counsel is active in investigation of the incident and in interviewing the client, the defendant, in all the various prejudicial procedures such as arrest, interrogation (questioning), lineup and arraignment, where the accused is read the charges against him or her and is asked how he or she will plead. The accused is also advised of rights, after which the plea negotiations take place. The advantage to the defendant may be in the form of a reduction of the charges, a lenient sentence, or, in the case of multiple charges, dropped charges.

(13) The defense counsel must carefully prepare the case for trial, including the developing of tactics or strategies to be used. The defense can file new motions or argue against the prosecutor's legal motions with the court. Along with the prosecutor, the defense provides assistance with the sentencing. The defense, depending on the severity of the offense, most likely will try to get the client off on probation or at least argue for a shorter term of incarceration. Whenever necessary, the defense counsel determines the appropriate basis for appeal.

(14) As one can see, both jobs are very demanding of time, energy and resources. Both the prosecutor and the defense counsel must oppose each other, yet also work together, to obtain "justice for all."