

10/31/14

Courts: Introducing the Prosecutor and Defense Counsel

Prosecutor/ District Attorney, Roles:

1. Legal

- Cooperates with police to investigate violations of the law
- Determines the charges
- Interviews witnesses, talks with victims
- Reviews applications for warrants and subpoenas
- Represent the state/government in pretrial hearings and procedures
- Enters plea agreements
- Tries criminal cases
- Recommends sentences, represents government during appeal process, if any

2. Bureaucratic

- Maintains standards of conduct among staff in office
- Manages operations, supervises activities of ADAs
- Allocates resources and assigns cases

3. Political

- Develops programs, legislation for law and CJ reform
- Public spokesperson for the government on law issues in general
- Popular election/ elected official

Prosecutor's Power of Discretion

1. Determines the charges
2. May refuse to prosecute a case
3. Initiates action for criminal litigation
4. May stop the charging process at any time
5. May request the court to dismiss charges

Prosecutor Decides Not to Charge, The Factors

1. Insufficient evidence
2. Witness problems
3. Guilty plea to another charge/case
4. Due process problems
5. Referral for prosecution elsewhere
6. Deserving defendant
7. Victim participation

The Effect of Race and Gender on Prosecutors' Charging Decision

- About half of all cases are rejected at screening
- Cases involving white females are rejected the most

Prosecutor Pursues Charges

- Misdemeanor cases:
 - o Complaint: sworn written document to a court by the police and/or prosecutor alleging the individual committed the crime

- States the criminal charge, date, place, and circumstance
- Felony cases:
 - Indictment: formal written criminal accusation given by a grand jury stating the allegations (crime) for which the defendant is required to stand trial
 - Grand Jury- a group of citizens chosen to hear the testimony in secret
- In other jurisdictions...
 - Information- written accusation by the prosecutor setting the charges against a defendant

Defense Counsel

- Legal counsel for the defendant in a criminal case who represents the defendant from arrest to final appeal

Defense Counsel Duties:

- Investigates the crime
- Reviews police reports
- Insures constitutional safeguards
- Interviews client/defendant, police, witnesses, victim
- Discuss matter with prosecutor to gain insight into the strength of the state's case
- Represents client at all procedures (arrest, bail, plea to appeal)
- Enters plea on behalf of client
- Prepares case for trial and represents client during that trial
- Files and argues any motions with the court
- Provides assistance to defendant in sentencing stage
- Determines appropriate avenues for appeal, if any

Types of Defense Counsel

1. Privately Retained Counsel (86% of individuals cannot afford privately retained counsel)
2. Assigned Counsel
 - Jurisdiction assigns indigent criminal cases to private attorney on a systematic or ad hoc basis
3. Public Defender
 - Representation is provided by a public nonprofit organization with full or part-time staff of attorneys and support personnel, including: investigators, paralegals, social workers, etc.
4. Contract System
 - Jurisdiction enters into a contract with an attorney, a group of attorneys or entire firm to provide presentation in some or all indignant defendant cases

Indigent Defendant- a poor defendant without funds to hire an attorney for his or her defense (entitled to counsel under 6th and 14th amendment)

Assigned Counsel

- Oldest and most widely used method in the history of American jurisprudence
- Operates in about 52% of U.S. counties
- Type of system used in most smaller jurisdictions
- Attorneys are customarily chosen from a judge's list and desire to be chosen

Contract System

- Growing in prevalence (operates in about 11% of U.S. counties, across 6 states)

Public Defender System

- Operates in about 37% of U.S. counties
- System found in urban counties (due to the high number of indigent defendants, it is the more efficient system- cost, assignment, and processing)
- Represents the largest number of indigent defendants

Reasons why public defender may be preferred:

1. Compensation is minimal
2. Criminal cases are handled sporadically in other systems
3. Funds are limited to provide legal services in other systems (to conduct investigations, obtain expert witnesses, etc.)