The Defense Lawyer’s Role As An Advocate

The role of the advocate is a vital part of a defense lawyer’s job. While a prosecutor, judge, or jury may be tasked with deciding the fate of the accused – the defense lawyer is tasked with becoming an expert about their client and presenting a narrative that most speaks to a prosecutor, judge, or jury.

Particularly with criminal law - lawyers decide fairly quickly whether they are going to be prosecutors or defense attorneys. Each must advocate for their respective clients – the defense attorney for the accused and the prosecutor for the government or the alleged victim. Both, however, play patently different roles within the criminal justice system. On April 1, 1940, at 10:00 A.M. in Washington D.C., Robert H. Jackson, Attorney General of the United States, delivered an address to a great hall full of federal prosecutors. In it, he proclaimed:

The prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous. He can have citizens investigated and, if he is that kind of person, he can have this done to the tune of public statements and veiled or unveiled intimations. Or the prosecutor may choose a more subtle course and simply have a citizen's friends interviewed. The prosecutor can order arrests, present cases to the grand jury in secret session, and on the basis of his one-sided presentation of the facts, can cause the citizen to be indicted and held for trial. He may dismiss the case before trial, in which case the defense never has a chance to be heard. Or he may go on with a public trial. If he obtains a conviction, the prosecutor can still make recommendations as to sentence, as to whether the prisoner should get probation or a suspended sentence, and after he is put away, as to whether he is a fit subject for parole. While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst.

I am asked frequently “how do you defend a person who you know is guilty?” Much less often, prosecutors are asked, “how do you send a man to prison unless you are absolutely sure he is guilty?” I subscribe to the idea that it is better to allow ten guilty persons to escape than to allow one innocent person to suffer. That idea is often uttered in the midst of a spirited discussion surrounding the tragedies of the execution of innocent people. No appeal counts after the state takes a life. In that way, my worldview is more in line with that of a defense lawyer.

I aspire to give people the benefit of the doubt, to recognize my innate biases and prejudices and attempt to hold them in check. I often meet people at their worst – but a person’s worst moments should not define them.
experience may have a longer lasting impact. People come from all walks of life. As a public defender, I represented people facing unimaginable obstacles – those who end up in the system primarily due to some combination of mental illness, drug addiction, or poverty. Others still, have made one wrong turn in an otherwise charmed life and face the looming possibility of an immensely different lifestyle. The truth is that one bad decision could turn a defense lawyer, a prosecutor, or a judge into a defendant.

With that in mind, I must encourage the people deciding my client’s fate to step into my client’s shoes and afford them full and fair reflection in exercising often broad discretion. That is what being an advocate means to me and while it is but a single facet of my job, it is a vital one.

No two people are alike. Every case requires an individualized approach with goals of representation tailored to account for a person’s history, their future, and their current needs. This is especially true with young people. It is the honor and privilege of the defense attorney, as an advocate, to explain their client’s unique set of circumstances and give their clients a voice. After all, that attorney may be the only barrier between their client and a vastly powerful criminal justice system.