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THE ROLE OF LAWYERS IN CRIMINAL PROCEEDINGS IN THE USA

In the United States, criminal defense lawyers deal with the issues surrounding an arrest, a criminal investigation, criminal charges, sentencing, appeals and post-trial issues. Often an attorney will specialize in criminal defense such as drug defense. An arrest simply means a police officer or judge believes probable cause exists that a person committed a crime. Since an arrest is usually made by law enforcement, the arrest often is for a criminal charge that has not been levied or verified by an attorney or judge. Criminal defense lawyers also deal with the substantive issues of the crimes with which his or her clients are charged. Criminal defense lawyers may also help clients before charges have been filed by a prosecuting attorney. This is done when someone believes he or she is being investigated or is arrested.

The accused may hire a criminal defense lawyer to help with counsel and representation dealing with police or other investigators, perform his or her own investigation, and at times present exculpatory evidence that negates potential charges by the prosecutor. Criminal defense lawyers in the United States who are employed by governmental entities such as counties, state governments, and the federal government are often referred to as public defenders or court-appointed attorneys.

A considerable aspect of this work requires the criminal defense lawyer to have a clear understanding of the United States Constitution. Specifically, the Fourth Amendment protects against unlawful searches and seizures while the Fifth and Sixth Amendments govern the right to remain silent so one does not become a witness against himself. All of the Amendments to the

United States Constitution are guaranteed to the criminal accused against the states via the Fourteenth Amendment. Thus, a criminal defense lawyer must understand each of these rights. Initial work on any criminal case involves review of the charges and the claimed facts, and analysis of constitutional violations, the *prima facie* burden of the prosecution, defenses, and affirmative defenses; as well as potential sentence and sentencing issues. Early stages of a criminal case may involve a grand jury or preliminary hearing to determine if there exists probable cause for the case to continue. A violation of the Fourth or Fifth Amendment, or other illegally obtained evidence could result in evidence being inadmissible at trial. Accordingly, a criminal defense lawyer often spends a considerable amount of time reviewing all documentation to determine if the case can be won on constitutional grounds due to illegal conduct by the government.

If there are no constitutional violations, much of the work of a criminal defense attorney then turns to trial preparation. Any proposed settlement agreement must be compared to the best judgment about the outcome after trial. A criminal defense lawyer will usually discuss potential plea bargains with the prosecuting attorney, as an alternative to exercising the defendant's trial right and other rights. Plea agreements, when made, can be characterized as either charge agreements (often involving a less serious charge), sentencing agreements (involving a lesser sentence), or both.

Criminal defense lawyers are typically defending people with misdemeanor or felony charges. A misdemeanor generally refers to criminal activity that is punishable by one year or less in the local jail. A felony typically refers to criminal activity that is punishable by more than one year in the prison system. Many states have "wobblers", which refers to criminal activity that is charged as a felony, but has a possibility of being reduced to a misdemeanor. In matters involving a wobbler, many times a reputable lawyer can either have the felony reduced to a misdemeanor or in the alternative have the felony appear to be a misdemeanor so that the felony can be reduced to a misdemeanor at a later date, which is good strategy since the typical felony cannot be expunged.

The process of becoming a criminal defense attorney is similar to any other legal practice area. To become a criminal defense lawyer, a person will typically complete their undergraduate degree

and graduate from a law school. After graduating law school and passing the bar examination, the new lawyer can begin practicing criminal law. However, nearly all reputable criminal defense attorneys spend some time after being admitted to the bar working under the mentorship of an experienced older attorney, often in a prosecutors office or a public defenders office.