

DAs & Criminal Defense Attorneys

“WHAT KIND OF LAWYER ARE YOU?”

Recently, I was in a courthouse for an 8:30 am meeting with a judge. As is often the case, there were many early arrivals in the hallway waiting for a variety of reasons, such as jury duty, a court appearance, or an appointment with a lawyer or court official. As I stepped onto the elevator, two ladies followed me and seemed to stare at my coat and tie. When I said, “Good Morning” and asked them which floor they wanted, one of them responded by saying, “What kind of lawyer are you?”

What would you have said? “I am a great lawyer.” “I am a kind lawyer.” “I am a brilliant lawyer.” “I am a struggling lawyer.” These ladies had a question and were hoping to find a criminal defense lawyer or an assistant district attorney who could help them. However, to the average person, it would not have mattered, because to them, all lawyers are basically the same. But are all lawyers basically the same? And particularly, for the purpose of this article, are district attorneys and criminal defense attorneys basically the same?

For the first three years of legal training, our law school experience is the same. We all take the same criminal law courses and use the same textbooks. We argue both sides of moot court and trial advocacy cases. We learn to review constitutional issues free of theoretical and analytical bias. But does our impartiality end with Law School graduation? When we come to the “Y” in the road, and chose either the prosecution or defense, do our attitudes and feelings start to change?

A young lawyer called me a few years ago to tell me that he was disturbed by a situation which had just occurred in a local restaurant. He said he was sitting at a table with one of the senior lawyers in his firm, when one of his law school classmates walked by with her tray. He had not seen her in several months, in fact, since they finished law school and passed the Bar Exam. He asked her to join them. She said that she would like to, but the District Attorney in that district had told the new assistant district attorneys not to socialize with criminal defense attorneys.

Perhaps the District Attorney thought it was easier and safer to tell the new assistants not to associate with criminal defense attorneys for fear of confidentiality and fraternizing issues. If they ate lunch, and the criminal defense attorney picked up the tab, would that same lawyer later try to curry favor with criminal and traffic cases? Did prohibiting assistant district attorneys from associating with law school classmates send the right message or did it further widen the divide between these two camps?

During the 1996 election, Senator Bob Dole was questioned by the media about a comment Bill Clinton made. Senator Dole said that Bill Clinton was his adversary, not his enemy. This was a great sentiment expressed by one attorney about another. The Preamble of the North Carolina Rules of Professional Conduct says that we are not to be just zealous advocates but honorable advocates as well. (Paragraph # 13)

In today's world, many of us suffer from the same problems. Criminal defense lawyers and prosecutors both abuse alcohol and get charged with DWIs, deal with stress and depression, struggle with cross-examinations and final arguments, and want to serve their clients by bringing each case to a just and fair resolution. So why do we push so hard to win at all costs? Why do we allow society and the media to convince us that Second Place or a contrary verdict equates to failure? Many older members of the Bar grew up hearing the saying of "It is not whether you win or lose, but how you play the game." Do the majority of North Carolina trial attorneys live by this admonition? Preparation and respect for all associated with our system are paramount to a better understanding and appreciation of the roles of both sides.

Criminal defense attorneys and district attorneys are basically the same. Although the requirements of their respective jobs are different, both sides are seeking justice. In that regard, I am happy to report that on July 13, 2011, the Second Annual Gathering of Criminal Defense and District Attorneys was held in conjunction with the State Bar Summer Meeting. Representatives of the Conference of District Attorneys, Advocates for Justice, Bar Association, State Bar, and the Chief Justice's Commission on Professionalism joined together to discuss common issues and possible solutions. We made progress, but only you can ensure that unprofessional conduct will not be an issue in cases in which you are involved.

So, "What kind of lawyer are you?" You are a North Carolina lawyer, and North Carolina lawyers can try either side of a case. You know the law, are dedicated to your clients, and always try to assist the Judge or Jury in making the right decision. However, practicing law is an imperfect science, and there is always room for improvement. Therefore, keep up the good work you are doing and keep working on the areas that need improvement – it is the North Carolina way.

(List my name and contact info at the end if there is a problem with unprofessional conduct.)