



# OUTCOMES OF CRIMINAL PROCESS

1- **PLEA BARGAINING** (90%)

2- **PRETRIAL DIVERSION** (5% OR MORE)

3- **TRIAL**

- what a prosecutor looks for in a trial case

## ISSUES TO COVER:

1- THE IDEAL CASE

2- CONSTITUTIONAL RIGHTS

3- JURY SELECTION

4- VERDICT



## **FACTORS INFLUENCING PROSECUTOR'S PURSUIT OF CASES (AND CASE OUTCOME)**

1. SERIOUSNESS OF THE OFFENSE
2. CRIMINAL HISTORY OF DEFENDANT
3. COST OF PROSECUTION TO THE CJS
4. HEAVY CASELOADS
5. STRENGTH OF THE PROSECUTOR'S CASE
6. AVOID UNDUE HARM TO THE DEFENDANT
7. WILLINGNESS OF DEFENDANT TO COOPERATE WITH LAW ENFORCEMENT, PROSECUTOR AND/OR DIVERSIONARY EFFORTS



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## FACTORS THAT INFLUENCE PRETRIAL DIVERSION

1. OFFENSE TYPE
2. SPECIAL CIRCUMSTANCES
3. DEFENDANT (1<sup>ST</sup> TIME OFFENDER)
4. WILLINGNESS OF DEF. TO COOPERATE WITH  
DIVERSIONARY PROGRAM
5. IMPACT OF DIVERSION ON COMMUNITY
6. VICTIM CONSIDERATION

## **PLEA BARGAINING:**

**THE DISCUSSION BTW THE DEFENSE COUNSEL AND PROSECUTOR BY WHICH THE DEF. AGREES TO PLEAD GUILTY FOR CERTAIN CONSIDERATIONS/CONCESSIONS**

## **FACTORS CONSIDERED IN PLEA BARGAINING**

- 1. CASELOAD OF THE PROSECUTOR**
- 2. STRENGTH OR WEAKNESS OF THE CASE**
- 3. OFFENSE TYPE**
- 4. TYPE OF DEFENSE COUNSEL**
- 5. DEFENDANT'S PRIOR RECORD**
- 6. COMPLINANT**
- 7. PERSONAL CHARACTERISTICS OF DEFENDANT (AGE, RACE, BAIL STATUS)**



## TYPES OF PLEA BARGAINING

1. IMPLICIT BARGAINING (GOING RATE)
2. BARGAINING OVER CHARGES
  1. CONCURRENT CHARGES
  2. DROPPING CHARGES
  3. ALTERING CHARGES
3. BARGAINING OVER SENTENCE
  - SENTENCE REDUCTION OR RECOMMENDATION



## ADVANTAGES OF PLEA BARGAINING

- 1. Avoids time, expense and work of courts**
- 2. Psychological satisfaction for victim when offender pleas/admits guilt**
- 3. Avoids publicity associated with trial (for judge, prosecutor, victim, witness, defendant)**
- 4. Police “clear” case**
- 5. Police avoid time in court**
- 6. Prosecutor gets a “conviction”**
- 7. Defendant gets “concessions”**

A decorative graphic at the top of the slide consists of two pairs of circles. The first pair on the left has a solid light purple circle on the left and an outlined light purple circle on the right. The second pair on the right has a solid light purple circle on the left, an outlined light purple circle in the middle, and a solid light purple circle on the right. The text 'THE CRIMINAL TRIAL' is positioned over the first pair of circles.

# THE CRIMINAL TRIAL

## A REVIEW:

1. 'STRONG, SOLID, GOOD CASE' FOR TRIAL
2. CONSTITUTIONAL RIGHTS
3. JURY SELECTION
4. THE VERDICT

# ADJUDICATION-

THE DETERMINATION OF, & PRONOUNCEMENT OF A JUDGEMENT  
IN A CRIMINAL TRIAL; THE FORMAL ADJUDICATION OF THE FACTS

## 1. PROSECUTORS IDEAL CASE FOR TRIAL

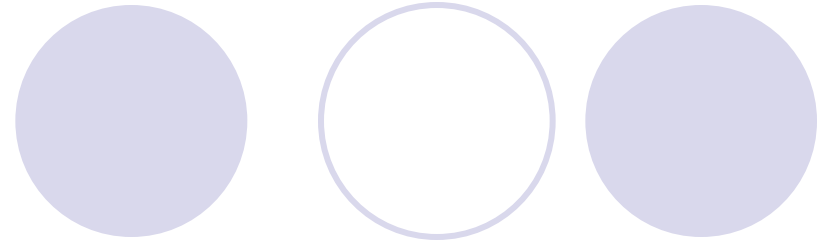
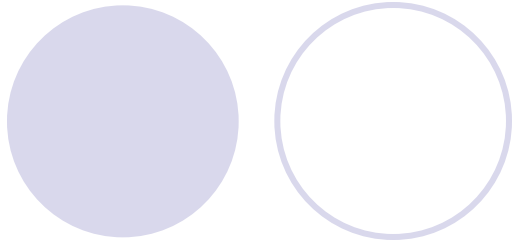
### 1. 1. SERIOUSNESS OF THE OFFENSE

- INJURED VICTIM, WEAPON USE, FELONY

### 2. 2. EVIDENCE

TYPES:

- REAL: OBJECTS OF ANY TYPE (WEAPON, CLOTHING, FINGERPRINTS, DNA)
- TESTIMONY: SWORN STATEMENTS, WITNESSES
- DIRECT: STATEMENTS BASED ON OBSERVATIONS BY EYEWITNESSES TO CRIME
- CIRCUMSTANTIAL: INFORMATION THAT IMPLICATS



## **IDEAL CASE CONT.**

### **3. DANGEROUS AND CULPABLE DEFENDANT**

- PRIOR RECORD, WEAPON USED

### **4. “STAND-UP” VICTIM:**

- A PERSON WHO THE JURY WILL CONSIDER IS UNDERSERVING OF VICTIMIZATION
- BELIEVEABLE
- CONSISTENT IN STATEMENTS AND TESTIMONY



# CONSTITUTIONAL RIGHTS OF THE ACCUSED

- 1- RIGHT TO CONFRONT WITNESS (6<sup>TH</sup> AMENDMENT)
  - RIGHT OF A CRIMINAL DEFENDANT TO SEE AND CROSS-EXAMINE ALL THE WITNESSES AGAINST HIM/HER
- 2- RIGHT TO JURY TRIAL (SUPREME COURT RULING IN DUNCAN V. LOUISIANA)
  - 6<sup>TH</sup> AMEND. GUARANTEES RIGHT TO JURY TRIAL, DEFENDANT CAN WAIVE THAT RIGHT

# CONSTITUTIONAL RIGHTS CONT.



## 3. RIGHT TO COUNSEL AT TRIAL

- BILL OF RIGHTS PROTECTS CITIZENS AGAINST FEDERAL ENCROACHMENT
- 14<sup>TH</sup> AMEND. PROVIDES NO STATE SHALL DEPRIVE A PERSON OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW (I.E., DUE PROCESS CLAUSE)
- 6<sup>TH</sup> AMEND. REQUIRES RIGHT TO COUNSEL IN FEDERAL COURT

## 4. RIGHT TO SELF-REPRESENTATION (SUPREME COURT DECISION IN FARETTA V. CALIFORNIA 1975)

- DEFENSE OF "PRO SE" (LATIN FOR HIMSELF)



## CONSTITUTIONAL RIGHTS CONT.

### 5. RIGHT TO SPEEDY TRIAL

6<sup>TH</sup> AMEND. STATES RIGHT TO SPEEDY TRIAL IN FEDERAL PROSECUTION (APPLICABLE TO STATES VIA KLOPFER V. NORTH CAROLINA 1967)

- REQUIRES INDICTMENT/INFO WITHIN 30 DAYS OF ARREST
- TRIAL BY 70 DAYS IN FED. COURT; 90/120 DAYS FOR STATES

### 6. PROTECTION AGAINST SELF-INCRIMINATION (5TH AMEND.)



## **JURY SELECTION**

**ELIBILITY: VOTER REGISTRATION;  
DRIVER LICENSE OR RESIDENCY**

**QUESTIONING BY PROSECUTOR AND DEF.  
ATTORNEY TO REVEAL JUROR BIAS**

- **PURPOSE- OBJECTIVE JURORS**



## **AVENUES TO REJECT JUROR**

### **TWO WAYS:**

#### **1- CHALLENGE FOR CAUSE:**

**CHALLENGE AGAINST PROSPECTIVE JURORS BASED ON THAT PARTICULAR JUROR'S ABILITY OR WILLINGNESS TO REACH AN IMPARTIAL DECISION IN THE CASE**

#### **2- PEREMPTORY CHALLENGE:**

**CHALLENGE IN FORM OF REQUEST TO THE COURT TO EXCLUDE PROSPECTIVE JUROR WHERE NO REASON IS STATED OR DISCLOSED**

- **EXCEPT IF JUROR IS MINORITY**
- **LIMITED TO (6) [THREE FOR PROSECUTOR/3 FOR DEF ATT]**



# THE VERDICT— FINDING BY A JURY OR JUDGE

## 1. IN CRIMINAL TRIALS...

### **BEYOND A REASONABLE DOUBT**

STANDARD OF PROOF NECESSARY IN ALL CRIMINAL TRIALS IN ORDER  
TO ADJUDICATE THE GUILT OF THE DEFENDANT

- CONCLUSIVE AND COMPLETE PROOF
- LEAVING NO REASONABLE DOUBT

## 2. IN CIVIL TRIALS...

### **PREPONDERANCE OF THE EVIDENCE**

STANDARD OF PROOF NECESSARY IN ALL CIVIAL TRIALS

- PERSUASIVE AND CONVINCING
- GREATER WEIGHT OF EVIDENCE



# THE JUDGE

ENSURES JUSTICE

● DUTIES:

1. SET BAIL
2. ASSIGN DEFENSE COUNCIL
3. RULE ON MOTIONS AND OBJECTIONS  
BEFORE, DURING AND AFTER TRIAL
4. SENTENCING OF DEFENDANTS



# **THE JUDGE FACTORS THAT INFLUENCE SENTENCING**

1. OFFENSE SERIOUSNESS
2. PRIOR RECORD
3. AGE: OLDER DEFENDANT LESS OF THREAT TO SOCIETY
4. SEX: JUDGES FAVOR WOMEN IN SENTENCING
5. SOCIAL CLASS: HARSHER SENTENCE FOR POOR (INABILITY TO RETAIN PRIVATE ATTORNEY, AFFORD BAIL)



## SENTENCING FACTORS CONT.

### 6. RACE:

NO RACIAL DISPARITIES IN PROPERTY CRIMES  
SIGNIFICANT DIFFERENCES IN VIOLENT CRIMES  
(PARTICULARLY IN VICTIM IS WHITE)

### 7. PRETRIAL RELEASE

### 8. TYPE OF DEFENSE ATTORNEY

### 9. PROBLEMS WITH CONTINUANCES

### 10. STRUCTURE OF SENTENCING GUIDELINES



## SENTENCING GUIDELINES: TYPES

- **FLAT-TIME SENTENCE:** LENGTH OF SENTENCE IS FIXED BY STATUTE AND CANNOT BE CHANGED BY TRIAL JUDGE OR PAROLE BOARD
- **DETERMINATE SENTENCE:** JUDGES ARE ALLOWED TO FIX SENTENCE WITHIN A MAX./MIN. RANGE SET BY LEGISL.



•**INDETERMINATE SENTENCE:** JUDGES IMPOSE SENTENCE WITHIN WIDER RANGE AND DECISION WHEN TO RELEASE INMATE CAN BE MADE BY ADMINSTR. AGENCY (PAROLE B.)

**PRESUMPTIVE SENTENCE:** STANDARD SENT. SET BY LEGISL. BUT JUDGES CAN VARY SENTENCE BY OFFENDER'S CRIME AND HISTORY

**MANDATORY MINIMUM:** SENT. SET BY LEGISL.; NO PAROLE OR CONDITIONAL RELEASE BEFORE THAT SET PERIOD OF TIME