

## **Pretrial Activities and Court Personnel**

- Advocacy in an Adversarial System

### **The Prosecutor**

- The prosecutor is the attorney who represents the government or the “people”.
- Job duties include...
  - Investigate crimes
  - Bring charges against the accused
  - Present evidence at trial
  - Assist in determining appropriate punishment
- Prosecutors wield an extraordinary amount of discretionary power about how cases will proceed through the judicial system

### **The Prosecutor**

- A prosecutor’s decision to pursue charges in a given cases often depends on...
  - Quality/quantity of evidence
  - Seriousness of the crime
  - Odds of a favorable verdict for the prosecution
  - Court resources
  - Wishes of the victim/family members of the victim
  - Public opinion

### **The Federal Prosecutor**

- The chief federal prosecutor in the country is the U.S. Attorney General
  - Established by the Judiciary Act of 1789
  - Leader of the U.S. Department of Justice
  - Rarely argues an actual case in court
  - Appointed by the president
- One U.S. attorney is assigned to each of the 94 judicial districts
  - Prosecute criminal cases at the federal level
  - Prosecute and defend civil cases when the U.S. is a party
  - Collect debts owed to the federal government

- Appointed by the president to 4-year terms

### **The State Prosecutor**

- The titles of state attorneys vary by jurisdiction.
  - City attorney
  - County attorney
  - District attorney
  - Commonwealth attorney
- Most state attorneys are elected.

### **Prosecutorial Immunity**

- Prosecutors typically enjoy partial or absolute immunity
  - Makes it very unlikely that a prosecutor will be sued for mistakes or deliberate misconduct
- Examples of prosecutorial misconduct
  - Communicating with a defendant without a defense attorney present
  - Failing to disclose evidence during discovery
  - Ignoring conflicts of interest
  - Knowingly allowing false testimony

### **The Defense Attorney**

- The defense attorney represents the individual who has been accused of a crime and is responsible for ensuring that the defendant's constitutional rights are protected.
- Only a small percentage of defendants can afford to hire a private defense attorney
  - Alternatives include...
    - Public defenders
    - Private defense attorneys who work *pro bono* (no charge)
- Seeks to prevent the prosecution from proving their case against the defendant beyond a reasonable doubt

### **Initial Appearance and Bail**

- Following arrest, the accused must appear before a judge in an initial appearance
  - Bail decisions are made during this hearing

- Bail allows the accused (who is legally innocent at this point) to remain free until the case is resolved
- The 8<sup>th</sup> Amendment protects against excessive bail
  - There is no right to bail

## **Bail**

- Several factors are weighed when determining whether to grant/deny bail:
  - The type of offense
  - The suspect's character
  - The suspect's ties to the community
  - The suspect's employment status
  - The suspect's prior record

## **Grand Jury versus Preliminary Hearing**

- There are two processes for determining whether there is enough evidence for a case to move forward to a trial:
  - Grand jury
    - Upwards of 20+ jurors
    - Results in an indictment
      - True bill vs. No bill
  - Preliminary hearing
    - "mini-trial"
    - Results in an information

## **Grand Jury**

- Secret
- Can subpoena witnesses to testify
- Rules of evidence differ
- Only prosecutors are present in courtroom
- Information is closely guarded
  - Limits witness tampering
  - Witnesses may be more comfortable testifying

- Suspects are less likely to flee

### **Preliminary Hearing**

- Public
- Can subpoena witnesses to testify
- Involves prosecutor, defense attorney, and a judge
  - Witnesses can be cross-examined
- Rules of evidence differ
- Burden of proof is probably cause

### **Arraignment**

- The defendant is readvised of the charges against him/her and asked to enter a plea.
  - Guilty
  - Not guilty
  - *Nolo contendere*
    - “no contest”
- The defendant can also waive his/her right to a jury trial and resolve the case through a plea bargain

### **Plea bargain**

- ≈94% of criminal cases are resolved through plea bargains
  - The prosecutor has the discretion to offer lesser charges or reduce the number of charges
  - The defendant pleads guilty to avoid trial and potentially a severe sentence
  - The defendant may be required to testify for the state/government as a condition of the plea bargain
  - Plea bargain must be entered into voluntarily, knowingly, and intelligently

### **Pretrial Motions**

- Motion to suppress
- Motion *in limine*
- Motion for discovery
- Motion for recusal
- Motion for expenses of experts

## Jury Selection

- *Venire*
  - A randomly-selected list of potential jurors
    - Typically selected from a voter registration list
- *Voir dire*
  - Potential jurors are questioned under oath by the prosecutor, defense attorney, and judge.
  - “Challenges for cause”
    - Unlimited
  - “Peremptory challenges”
    - Limited
- Twelve jurors are required for federal criminal trials and for state capital cases.
  - In some states, as few as six jurors may hear non-capital cases.