

Prevention and Successful Prosecution of Theft:

Overview of Financial Crimes & the Criminal Justice System
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What is the District Attorney's Office?

- ▶ The prosecutor “is the representative not of an ordinary party to a controversy, but of a sovereignty...whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that **justice shall be done.**”
 - Berger v. United States, 295 US 78 (1935)



What is the District Attorney's Office?

- ▶ Represent the People of the State of New York
- ▶ Mission = do the right thing
- ▶ Ethical obligations:
 - ▶ Seek justice
 - ▶ *Brady* information: information that is exculpatory or favorable to the defendant



Players in the criminal justice system

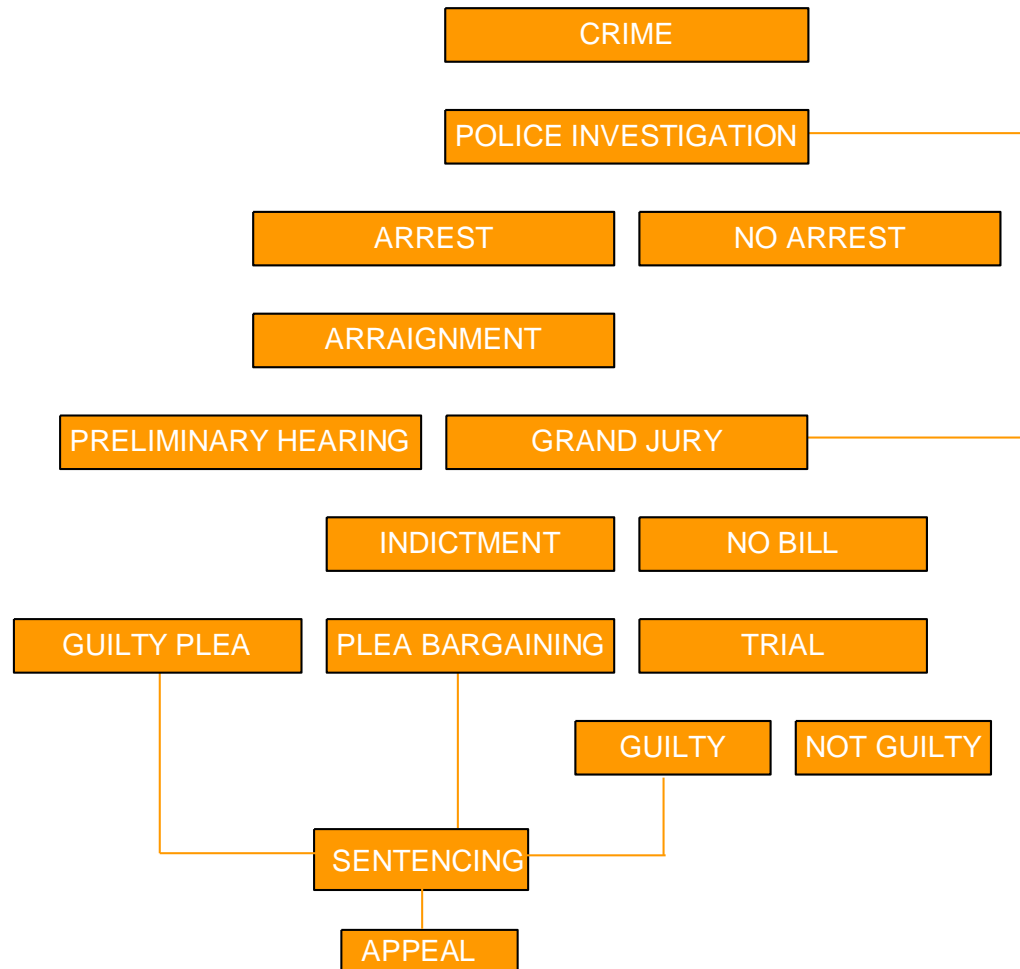
- ▶ Prosecutor
- ▶ Judge
- ▶ Defendant
- ▶ Defense attorney

Still, the pressure faced by many practitioners to take a position contrary to what their client wants is undeniable. “It’s nice to have these new systems,” says Lawrence Vogelmann, an Exeter, N.H., lawyer who is on the board of NACDL. [National Association of Criminal Defense Lawyers]

But, he says, the obligation of defense lawyers is to fight for their clients. Prosecutors and judges have the additional obligation to ensure justice is done, but defense lawyers must single-mindedly represent clients—the innocent as well as the guilty. “People can’t lose sight of the fact that the defense attorney is the only person in the room whose obligation is *not* to do justice.”

– ABA Journal, February 2003

Felony Case Path in Criminal Court



Investigation

- ▶ Investigative/Police agencies
- ▶ Purpose is to identify:
 - ▶ WHAT happened?
 - ▶ WHO did it?
- ▶ Gather evidence



Evidence

- ▶ **Types:**

- ▶ Direct evidence
- ▶ Circumstantial evidence
- ▶ Forensic analysis of collected items

- ▶ **Purpose:**

- ▶ Prove the WHAT and WHO
- ▶ Anticipate and disprove excuses or defenses



Corroboration



Corroboration



Arrest vs. No arrest

- ▶ Probable Cause standard
- ▶ Cannot use arrest as a tactic to intimidate someone into repayment



Arraignment

- ▶ Advise defendant of charges
- ▶ Attorney assignment
- ▶ Bail



Bail

- ▶ Purpose is to ensure defendant's return to court
- ▶ Permissible factors to consider:
 - ▶ Defendant's character, reputation, habits and mental condition
 - ▶ Financial resources
 - ▶ Ties to the community
 - ▶ Criminal record
 - ▶ History of responding to court
 - ▶ Weight of evidence
 - ▶ Possible sentence
- ▶ Purpose is **NOT** to ensure public safety



Plea negotiations

- ▶ Purpose is to buy control over outcome
- ▶ Agreement between three parties
- ▶ Factors to consider
 - ▶ Misdemeanor vs. Felony
 - ▶ Amount of theft
 - ▶ Defendant's ability to repay
 - ▶ Sentence
 - ▶ Victim input (but not control)
 - ▶ Judge's likely position



Grand Jury

- ▶ Elevates felony to County Court
- ▶ Procedure
 - ▶ Secret
 - ▶ Non-hearsay
 - ▶ Jurors can ask questions
 - ▶ No “closing argument” by ADA
 - ▶ Defendant can testify and cause witnesses to be called
- ▶ Results in indictment or no-bill
- ▶ Reasonable cause to believe standard



Trial

- ▶ Beyond a reasonable doubt standard
- ▶ Burden on the People
- ▶ Prove case with evidence
 - ▶ Witnesses
 - ▶ Documents
 - ▶ Forensic analysis
- ▶ Defendant “confronts” witnesses against him
- ▶ Jurors cannot ask questions
- ▶ Opening and closing statements
- ▶ Result = Guilty, not guilty, or hung jury



Sentencing

- ▶ After trial verdict, Judge sets sentence
- ▶ Input by People, Defendant, and victim
- ▶ Restitution order = civil judgment
 - ▶ How to execute a civil judgment?



Practical Issues Regarding Prosecution

- ▶ **Victim bill of rights: victim has a right to:**
 - ▶ Information about a case
 - ▶ To be free from harassment and intimidation
 - ▶ To financial assistance or compensation
 - ▶ To be heard concerning sentencing



Practical Issues Regarding Prosecution

- ▶ Following the prevention tips create the backbone of successful prosecution



Proving a case

- ▶ Evidence of wrongdoing
- ▶ PLUS
- ▶ Corroboration



Direct/Circumstantial Evidence of Wrongdoing

- ▶ Documents
- ▶ Video
- ▶ Electronic records
- ▶ Forgeries
- ▶ Witnesses
- ▶ Co-conspirators



Corroboration

- ▶ Living beyond means
- ▶ Unexplained sources of income
- ▶ Follow the money
- ▶ Follow the lies
- ▶ Consciousness of guilt
- ▶ Motive
- ▶ Molineux evidence (MIMIC)
- ▶ CANNOT USE PROPENSITY



Good Practice Creates Good Evidence

- ▶ Multiple persons responsible = witnesses
- ▶ Consistent internal record-keeping = business records
- ▶ Written memorandum = defendant's knowledge of policy
- ▶ Confrontation/reeducation = defendant's knowledge
- ▶ Consistent policies = easy id of discrepancies
- ▶ Regular review = quickly identify problems



Consistent Policies and Review

- ▶ Identify problems early and
 - ▶ Stop theft; or
 - ▶ Establish knowledge and intent



Confrontation and Written memorandum

- ▶ Intent to steal vs. disagreement over policy
 - ▶ Commission theft cases
 - ▶ Time sheet falsification vs. “everyone leaves early”
 - ▶ Counsel not to use office tools at home



Multiple Persons Responsible

- ▶ POA policy required double signatures
 - ▶ Elderly victim stalker (Emmy and Julie)
- ▶ Double counting deposits/division of labor
 - ▶ Cash intake versus cash deposit (Rose)
- ▶ No policy, multiple persons handling \$
 - ▶ Cannot identify amount lost or identify thief (Tom)



Record-keeping

- ▶ **Follow money and identify departures**
 - ▶ Perpetrator records theft as legit payment (Dudas)
 - ▶ Forged bank statements to cover theft (Shelly)
 - ▶ No records, no receipts, etc. (Little League)



Thank You For Your Attention

