

CRIMINAL PROCEDURE - Arraignment and Discovery

I. Arraignment: A formal event for taking the plea after the formal charging document (indictment, information, complaint) has been filed. The defendant is informed of the exact charges against him, and given an opportunity to enter a plea

A. Pleas:

1. Guilty
2. Not guilty
3. no contest (nolo contendere)
4. insanity
5. prior jeopardy

B. Appointed counsel

C. Procedure:

D. Bench warrants and bond revocation

E. Significance: Formal charges lead to minimal discovery, that is, copy of the formal charges, witness list, police investigative report, exculpatory material

II. Plea Bargains:

A. Charges are dropped in return for guilty or no contest plea.

1. Critical state: right to attorney attaches.
2. Waiver of rights: jury trial, burden of proof, compulsory process, confrontation of witnesses.
3. Factual corroboration. (corpus dilecti)

B. Prosecution may make recommendations to the court, only, for the sentencing part.

1. Defendant can withdraw bargain if the judge declines to accept recommendations

2. Court may enforce bargain against the prosecution, but not the defendant.

C. Incentives

1. expense of time and money
2. questionable case.

D. Only the defendant and prosecutor can agree, not the defense attorney.

E. Bench conferences:

F. Procedure: All on the record

1. Outline the deal and the charges to the judge, with the prosecutors recommendation of the bargain to the court, and a summary of prior record and other sentencing issues.
2. Judge will indicate if will accept the prosecutors recommendation or not. If not, the defendant may withdraw from the bargain. If the judge accepts, then the prosecution goes ahead.
3. Defendant is asked a series of questions to determine that the pleas is knowing and voluntary.
 2. If so, plea is accepted and a guilty finding is entered on the record, and the matter goes on to sentence. If sentence at the time, defense may speak in mitigation. If sentencing is held for later, may order a separate investigation and bond to continue.

III. Pre-trial discovery; Refers to mandatory sharing of information between both sides. Very limited, as compared to civil cases. Trial by ambush

- A. Brady materials: both exculpatory and in mitigation
- B. Reciprocity.
- C. Bill of particulars:

D. Discovery from state: indictment, witness list, written witness statements, recorded statements of the accused, criminal record, scientific reports and tests, documents and tangible things, access to tangible evidence.

E. Discovery from the defendant: alibis.

F. Non-discoverable:

1. work product
2. witness criminal records

G. Procedure: motion and in camera inspection

IV. Motions

A. Motion to suppress

B. Motion in limine

C. Motion to reveal the deal

D. Motion to sever trials of co-defendants

E. Motion for change of venue

F. Motion to dismiss/quash: (jurisdiction, failure to state a crime, double jeopardy)

G. Procedure on motions:

1. argument: oral or on briefs
2. Decision: grant, deny, take under advisement
3. winner drafts the order, loser approves form.