

# Criminal Pre-Trial Procedures

**Unit:** Litigation

**Problem Area:** Criminal Case Procedures

**Lesson:** Criminal Pre-Trial Procedures

- **Student Learning Objectives.** Instruction in this lesson should result in students achieving the following objectives:

- 1 Summarize the criminal pre-trial process and procedures.**
- 2 Summarize the roles of the criminal paralegal at the pretrial stage.**

- **Resources.** The following resources may be useful in teaching this lesson:

E-unit(s) corresponding to this lesson plan. CAERT, Inc. <http://www.mycaert.com>.

"The 17 Steps in the Criminal Justice System," Warnken, LLC. Accessed May 29, 2014. <http://www.warnkenlaw.com/17-steps-criminal-justice-system/>.

"How Courts Work: Steps in a Trial," American Bar Association. Accessed May 29, 2014. [http://www.americanbar.org/groups/public\\_education/resources/law\\_related\\_education\\_network/how\\_courts\\_work/casediagram.html](http://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/casediagram.html).

"How Does a Lawsuit Work? Basic Steps in the Civil Litigation Process," Stoel Rives, LLP. Accessed May 29, 2014. <http://www.stoel.com/showarticle.aspx?Show=963>.

Kunsch, Kelly. "Drafting Legal Documents: A Resource Guide," Seattle University Law Library. Accessed May 29, 2014. <http://lib.law.washington.edu/btg/2003/drafting2003.htm>.

McCord, James W.H. *The Litigation Paralegal: A Systems Approach*, 5th ed. Cengage Learning 2008.

National Association of Legal Assistants. *NALA Manual for Paralegals and Legal Assistants*, 5th ed. Cengage Learning, 2010.



Statsky, William P. *Introduction to Paralegalism: Perspectives, Problems, and Skills*, 7th ed. Cengage Learning, 2009.

"U.S. Civil Court Process," *IIP Digital: U.S. Embassy*. Accessed May 29, 2014.  
<http://iipdigital.usembassy.gov/st/english/publication/2008/05/20080522223236eafas0.2138025.html#axzz33Aherjma>.

## ■ **Equipment, Tools, Supplies, and Facilities**

- ✓ Overhead or PowerPoint projector
- ✓ Visual(s) from accompanying master(s)
- ✓ Copies of sample test, lab sheet(s), and/or other items designed for duplication
- ✓ Materials listed on duplicated items
- ✓ Computers with printers and Internet access
- ✓ Classroom resource and reference materials

## ■ **Key Terms.** The following terms are presented in this lesson (shown in bold italics):

- ▶ arraignment
- ▶ bail
- ▶ grand jury
- ▶ indictment
- ▶ plea bargaining
- ▶ preliminary hearing
- ▶ public defenders

## ■ **Interest Approach.** Use an interest approach that will prepare the students for the lesson. Teachers often develop approaches for their unique class and student situations. A possible approach is included here.

*Present the following to your students: While criminal lawsuits can be of any of a thousand different topics and involve any of thousands of laws, they all share common basics. For example, all criminal cases begin with "bringing the charge." What do you think this means? Post the answers on the white board. Then transition into the lesson plan.*

# CONTENT SUMMARY AND TEACHING STRATEGIES

**Objective 1:** Summarize the criminal pre-trial process and procedures.

**Anticipated Problem:** What are the criminal pre-trial processes and procedures?

- I. Criminal pre-trial processes and procedures
  - A. Bringing the charge means criminal charges are brought against a person in one of three ways:
    1. An **indictment** is a formal document issued by a grand jury accusing the defendant of a crime. It is voted on by a **grand jury**, which is 12 to 23 people convened in a private session to evaluate accusations against people charged with crime(s) and to determine whether the evidence warrants a bill of indictment. While all states currently have provisions for grand juries, approximately half of the states employ them. Many require their use to varying extents.
    2. Criminal charges may be brought by the filing of information by the prosecuting attorney (county, district, or state's attorney) alleging that a crime was committed. Sometimes charges are pressed through the filing of a criminal complaint by another individual, which is essentially a petition to the district attorney asking him or her to initiate charges.
    3. Criminal charges may be brought through a citation by a police officer for petty misdemeanors and other minor criminal matters.
    4. The charge must tell the time, date, and place that the criminal act allegedly took place, the alleged involvement of the accused, and the details of the crime.
  - B. Once in custody, the individual is read his or her Miranda rights and is allowed to consult with or have a lawyer appointed.
    1. **Public defenders** are full-time attorneys employed by a governmental organization to exclusively represent indigent defendants.
    2. Assigned counsel are private attorneys appointed on an as-needed basis by the courts.
    3. Private attorneys may be retained and hired for representation.
  - C. Pre-trial court appearances and steps in a criminal case can be summarized, but they vary state by state and by charges filed.
    1. When a prosecutor files charges without a grand jury:
      - a. Misdemeanors involve the first step of an initial appearance before a judge of a lower court or magistrate. Charges are read; penalties are outlined; the defendant is advised of the right to trial (and right to trial by jury) and right to counsel; a plea is entered; and bail is set (if a plea of not guilty is entered).

- b. Felonies are similar to the steps above, except a preliminary hearing is added because of the more serious charges. The first step is an initial appearance or **arraignment** before a judge of a lower court or magistrate. The charges are read, and the penalties outlined. Then the defendant is advised of the right to a preliminary hearing as well as his or her right to trial (and right to trial by jury in trial court) and to counsel.
  - c. With a felony, the defendant does not enter a plea. The matter is set for preliminary hearing where it is established if a crime has been committed and if there is probable cause to believe that the defendant committed the offense(s) alleged in the complaint. The judge or magistrate sets the bail amount.
- 2. At the **preliminary hearing** (probable cause hearing), the government must demonstrate to a judge or magistrate that sufficient evidence (probable cause) exists to believe the suspect committed the crime for which he or she is charged. If the court finds no probable cause, the matter is dismissed. As a result, the defendant is released. If the court finds probable cause, the matter is transferred to trial court.
- 3. The discovery process begins as soon as counsel is involved and is used to influence bail setting, plea bargaining, and the case itself as well as its outcomes.
  - a. Discovery information includes depositions, interrogatories, requests to admit, document production requests, and disclosures, including disclosures of any special defenses (e.g., insanity).
  - b. **Bail** is money or other property deposited with the court as security to guarantee the appearance of the defendant at a specified time. The defendant is released when the required security is posted. Failure of the defendant to appear forfeits the security.
  - c. **Plea bargaining** is negotiations in which an accused pleads guilty to a lesser included offense (or to one of multiple charges) in exchange for the prosecution's agreement to support dismissal of some charges or a lighter sentence.
- D. Pretrial motions are prepared. The attorney has the opportunity to exclude some of the evidence against the defendant. The ruling made during this stage of the case can be issues for appealing the case later.
- E. Voir dire is conducted (when a jury is involved). It is a preliminary examination of prospective jurors for the purpose of selecting people qualified to sit on the jury.
- F. Then it is necessary to prepare and draft pre-trial orders. (Show students a sample at <http://www.formsworflow.com/d98240.aspx?partnercode=Justia>.) This form outlines the issues, witnesses, evidence, etc. to be presented at trial.

**Teaching Strategy:** Use VM–A in a discussion. Ask that the students research the use of grand juries in their home state and that of a neighboring state. Have them create postcard-sized summaries of each state's use. Select a few volunteers to place summaries on the white board for discussion.

## **Objective 2:** Summarize the roles of the criminal paralegal at the pretrial stage.

**Anticipated Problem:** What roles does the criminal paralegal play at the pretrial stage?

- II. During the pretrial stage, paralegals working at criminal defense firms and/or for a public defender's office will play various roles.
  - A. They will conduct and organize investigations, including preparing discovery requests, responses, and other fact-finding assignments.
  - B. They will draft pleadings, including motions and discovery requests for attorney review.
  - C. They will summarize and organize facts in preparation for the creation of the trial notebook.
  - D. They will prepare, organize, and assign professional preparation of trial exhibits, graphics, and other presentations.
  - E. They will conduct legal research.
  - F. They will evaluate prospective witnesses and attend voir dire sessions.
  - G. They will complete other related duties as assigned by the supervising attorney.

**Teaching Strategy:** Ask the students to create criminal trial proceeding maps beginning with the criminal act or alleged act through the pretrial motion stage. Share the maps with the class. Assign LS–A.

- **Review/Summary.** Use the student learning objectives to summarize the lesson. Have students explain the content associated with each objective. Student responses can be used in determining which objectives need to be reviewed or taught from a different angle. If a textbook is being used, questions at the ends of chapters may be included in the Review/Summary.
- **Application.** Use the included visual master(s) and lab sheet(s) to apply the information presented in the lesson.
- **Evaluation.** Evaluation should focus on student achievement of the objectives for the lesson. Various techniques can be used, such as student performance on the application activities. A sample written test is provided.
- **Answers to Sample Test:**

### **Part One: Matching**

- 1. a
- 2. c
- 3. e
- 4. d

5. f
6. b
7. g

### Part Two: True/False

1. F
2. F
3. T
4. F
5. T
6. T

### Part Three: Short Answer

1. Answers will vary but should include the following bulleted items in some fashion:  
Bringing the charge is criminal charges being brought against a person in one of three ways:
  - a. An indictment (formal document issued by a grand jury accusing the defendant of a crime) voted by a grand jury (a jury of 12 to 23 people convened in private session to evaluate accusations against people charged with crime and to determine whether the evidence warrants a bill of indictment). While all states currently have provisions for grand juries, approximately half of the states employ them. Many require their use to varying extents.
  - b. Charges may be brought by the filing of information by the prosecuting attorney (county, district, or state's attorney) alleging that a crime was committed. Sometimes charges are pressed through the filing of a criminal complaint by another individual, which is essentially a petition to the district attorney asking him or her to initiate charges.
  - c. A charge may be brought through a citation by a police officer for petty misdemeanors and other minor criminal matters.Also, the charge must tell the time, date, and place that the criminal act allegedly took place, the alleged involvement of the accused, and the details of the crime.
2. Answers will vary but should include the following bulleted items in some fashion:  
During this pretrial stage, the paralegal working at a criminal defense firm and/or for the public defender's office will play the following roles:
  - Conduct and organize investigations, including preparing discovery requests, responses, and other fact-finding assignments
  - Draft pleadings, including motions and discovery requests for attorney review
  - Summarize and organize facts in preparation for the creation of the trial notebook
  - Prepare, organize, and assign professional preparation of trial exhibits, graphics, and other presentations
  - Conduct legal research
  - Evaluate prospective witnesses and attend voir dire sessions
  - Other related duties as assigned by the supervising attorney



# Criminal Pre-Trial Procedures

## ► Part One: Matching

**Instructions:** Match the term with the correct definition.

- |                |                        |
|----------------|------------------------|
| a. arraignment | e. preliminary hearing |
| b. bail        | f. plea bargaining     |
| c. grand jury  | g. public defenders    |
| d. indictment  |                        |

- \_\_\_\_\_ 1. An initial appearance before a judge of a lower court or magistrate
- \_\_\_\_\_ 2. A jury of 12 to 23 people convened in private session to evaluate accusations against people charged with crime and to determine whether the evidence warrants a bill of indictment
- \_\_\_\_\_ 3. A probable cause hearing
- \_\_\_\_\_ 4. A formal document issued by a grand jury accusing the defendant of a crime
- \_\_\_\_\_ 5. Negotiations in which an accused pleads guilty to a lesser included offense (or to one of multiple charges) in exchange for the prosecution's agreement to support a dismissal of some charges or a lighter sentence
- \_\_\_\_\_ 6. Money or other property deposited with the court as security to guarantee the appearance of the defendant at a specified time
- \_\_\_\_\_ 7. Full-time attorneys employed by a governmental organization who exclusively represent indigent defendants

## ► Part Two: True/False

**Instructions:** Write *T* for true or *F* for false.

- \_\_\_\_\_ 1. A defendant enters the criminal system exclusively by arrest.



- \_\_\_\_\_ 2. Discovery refers to juror selection.
- \_\_\_\_\_ 3. Bail can be forfeited.
- \_\_\_\_\_ 4. A public defender prosecutes the accused.
- \_\_\_\_\_ 5. A private attorney can be appointed to defend.
- \_\_\_\_\_ 6. A case can be dismissed at the preliminary hearing.

### ► Part Three: Short Answer

**Instructions:** Answer the following.

1. Explain what is meant by “bringing the charge.”
2. Explain at least three tasks a paralegal may face when working in criminal law at the pretrial stage of a case.



# SAMPLE CRIMINAL TRIAL PROCEDURES ABA

As a class, review samples on the following sites:

- ◆ [http://www.americanbar.org/groups/public\\_education/resources/law\\_related\\_education\\_network/how\\_courts\\_work/casediagram.html](http://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/casediagram.html)
- ◆ [http://www.winneshekcounty.org/uploads/PDF\\_File\\_73263230.pdf](http://www.winneshekcounty.org/uploads/PDF_File_73263230.pdf)



# Criminal Pretrial Processes

## Purpose

The purpose of this activity is to examine criminal pretrial processes and the key players.

## Objective

Research the role of the public defender and those working as such in your home state and create a presentation of your findings.

## Materials

- ◆ computer with Internet and PowerPoint
- ◆ paper (preferably a notebook)
- ◆ writing utensil

## Procedure

1. Research the role of a public defender on several Web sites, including the state page for your home state.
2. Create outlines for each data source you research.
3. Research how a public defender is assigned to a case, including the specific case conditions (not just financial) and other pertinent information.
4. Research why highly skilled attorneys choose to work as public defenders.
5. Organize your information into a format that you can use to create a PowerPoint presentation.
6. Draft a 10- to 12-page slide presentation.
7. Tweak and edit your presentation as needed.
8. Share your presentation with the class.
9. If this field is interesting to you, place a copy of the PPT into your senior portfolio and/or ICP folder.

