



# SCREENING, CHARGING AND PLEA NEGOTIATIONS

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# What is your role in Prosecution?

## Primary Responsibility

Independent administrator of justice by representation and administration of the truth

1. Ensuring that the guilty are held accountable

2. Protecting the innocent

3. Respecting the rights of all participants



# Participants:

- Victims
- Defendants
- Witnesses
- Officers



# Protect the Rights and Interests of Society

- Zealously protect the rights of individuals (without representing an individual as a client)
- Use prosecutorial discretion to protect the interests of society



# MECHANISMS TO FULFILL RESPONSIBILITIES

- GOALS:
  - Obtain appropriate accountability from defendants
  - Work to ensure the defendant discontinues criminal behaviors
- FACTORS:
  - Law enforcement
  - Staffing
  - Defense bar
  - Judicial support
  - Community resources
  - Victim impact
  - Societal impact
  - Societal perceptions
  - Commission support

# SCREENING/CHARGING

- Legal standard vs. Office standards
  - Probable cause vs. Proof beyond a reasonable doubt
- Prosecutorial Discretion or Just because you can, doesn't mean you should
- Considerations:
  - Sufficiency of evidence
  - Nature of the offense
  - Probability of conviction
  - Potential deterrent to accused
  - Potential deterrent to society
  - Cooperation of the accused
  - The accused's relative amount of culpability
  - Law enforcement cooperation/follow-up

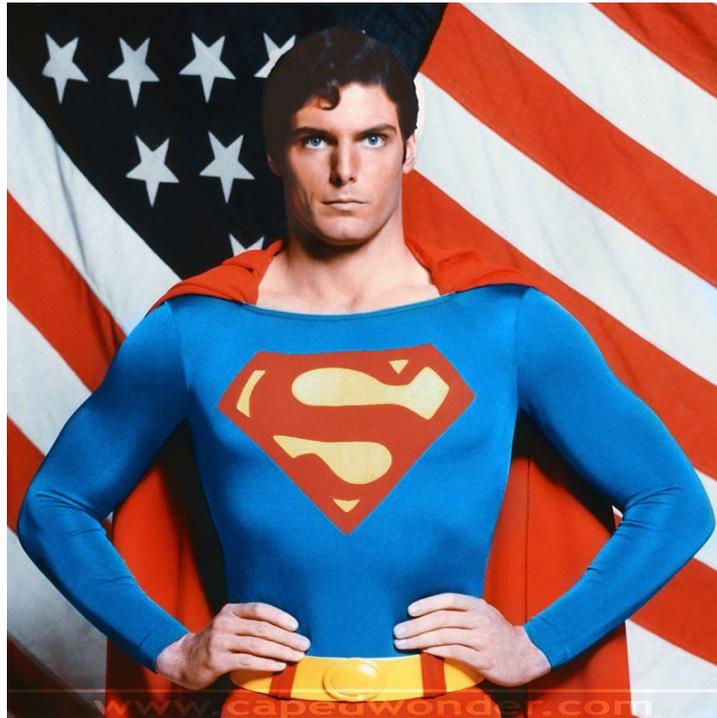
- The victim
  - Age
  - Vulnerability
- Accused's position of trust
- Cost of prosecution relative to the seriousness of the offense
- Recommendations from law enforcement
- Impact of the crime on the community
- Any aggravating or mitigating circumstances

- Factors to Consider:
  - Questions about the accused's guilt
  - Sufficiency of admissible evidence
  - Impact of prosecution on victim
  - Availability of programs
  - Attitude of accused
  - Hardship if prosecuted
  - History of accused
  - Civil implications
  - General character of accused
  - Has accused already suffered substantial loss
  - Is loss sufficient to warrant a criminal sanction



# BOTTOM LINE

- What charges are appropriate for the actions
- What charges best serve the interests of justice



# PLEA NEGOTIATIONS

- Types of Plea Negotiations
  - Reduce charging levels
  - Dismiss charges
  - Making sentencing recommendations
  - Agree to not make argument at sentencing
  - Agree to not file additional charges
  - Offer a diversion
  - Offer a plea in abeyance
  - Recommend programs
  - Sery plea

# EARLY CASE RESOLUTION

- Pilot program
- Goals:
  - Increase speed of processing cases through the system
  - Reduce jail overcrowding
  - Reduce caseloads for all parties
    - Courts
    - Prosecutors
    - Defense Counsel
  - Provide defendants with timely sentencing

# Why Negotiate?

- Preserve resources/case management
- Craft desired outcomes
- Certainty of conviction
- Spare victims from the court process



# Factors to Consider

- Nature of the offense
- Degree of offense(s) charged
- Mitigating/aggravating factors
- Age, background and criminal history of the defendant
- Remorse/willingness to accept responsibility
- Sufficiency of admissible evidence
- Undue hardship on the defendant
- Assistance with other prosecutions
- Impact of legal rulings
- Probable sentence (know your judge)
- Societal interest in an open jury trial

- Defendant's cooperation
- Potential prosecution in other jurisdictions
- Availability of civil relief and/or restitution
- Waiver of defendant's right to appeal
- Witness Issues:
  - Availability of witnesses
  - Impairment of witnesses
  - Identification issues
  - Witness credibility
  - Witnesses' relationship with the defendant
  - Improper motive(s) of witness
  - Age of the witness
  - Undue hardship to having witness testify

# Victim Issues

- Victims' rights: 77-37-1 et seq.
  - Victim has the right to be informed
  - Victim has the right to seek restitution and reparations
  - Victim has the right to a speedy disposition
  - Victim has the right to let court know if they disagree with the plea agreement: *State v. Casey*, 44 P.3d 756 (Utah 2002)

# Do Not Consider:

- Office or individual conviction rates
- Personal advantages for prosecutors or prosecution office
- Political advantages or disadvantages
- Information not relevant to the elements or motives
- The impact of any forfeiture
- Numbers of declinations

# The Press/The Public

- Utah Rules of Professional Conduct, Rule 3.6
  - Prosecutors should not make any extrajudicial statement that a reasonable person would expect to be disseminated if that information has a substantial likelihood of prejudicing a case
  - Prosecutors can state:
    - Information in the public record
    - The parties involved
    - That an investigation is in progress
    - The scheduling of a matter
    - A request for assistance
    - A warning if there is reason to believe the person is a public risk
    - Information to protect a client
    - Keep those associated with prosecutors from violating this rule
      - Rule 3.8(e)



*That's all Folks!*

# References:

- Evaluation of Early Case Resolution, [ucju.Utah.edu/adult-offenders/ecr](http://ucju.Utah.edu/adult-offenders/ecr)
- NDAA, National Prosecution Standards
- ABA Model Rules of Professional Responsibility
- *State v. Casey*, 44 P.3d 756 (Utah 2002)