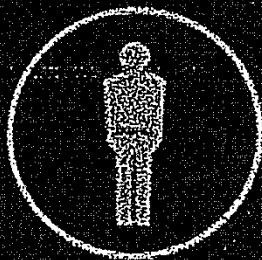
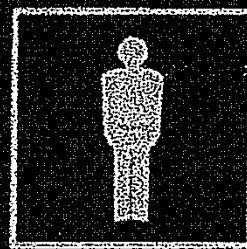


GOING TO COURT: A MOTION-GRAPHIC TOOL



You
The Defendant

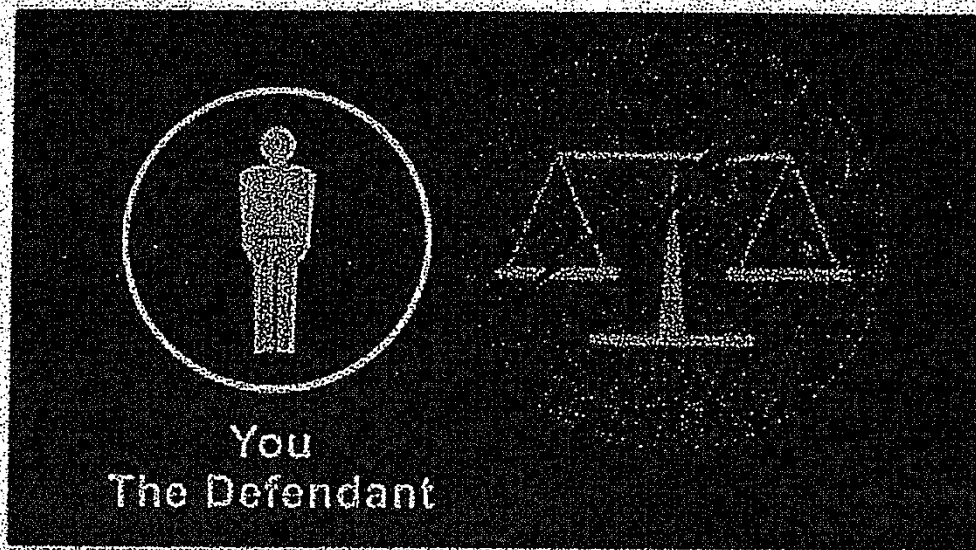


Your Lawyer
Your Attorney

UNIVERSITY OF VIRGINIA
&
THE DEPARTMENT OF BEHAVIORAL
HEALTH & DEVELOPMENTAL SERVICES

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LESSON 1: UNDERSTANDING YOUR SITUATION



SCRIPT for MOTION-GRAPHIC COMPETENCE RESTORATION LESSONS

Lesson 1:

Understanding Your Situation

You are supposed to go to court because you were charged with a crime. That means the police thought you broke the law, and then they arrested you. Maybe you remember being arrested.

In the United States, you cannot be punished just because the police think you did a crime. There has to be proof. A trial is the court's way to figure out if someone did a crime or not.

Trials are supposed to be fair. But in order for you to have a fair trial, you have to understand the court and the charges against you. You also must work with the person who is supposed to help you in court—your lawyer, or defense attorney.

At some point, the Judge decided you were *not competent*. This means that the Judge thinks you do not understand your case or cannot help your lawyer defend you. So, the Judge took a “time out” so that you can become competent. To become competent, you will need to participate in treatment and learn more about court. If you learn those things, you will understand your case better, and be able to help your lawyer. This is what we are doing right now.

Lesson 1: Understanding Your Situation

Recap: You have been charged with a crime, which is why you are supposed to go to court. However, you cannot be punished just because the police think you broke the law and arrested you. A trial is a way to look at all the evidence and find out if you are guilty or not guilty. You have the right to a fair trial, meaning that you have to understand your charges and courtroom rules and be able to help your lawyer. You are here right now because the judge thinks you are not able to do or understand these things. This is called “*not competent*.” The judge took a “time-out” in your case so that you can learn about the law and court. This is what we are going to do.

Discussion questions about “understanding your situation”

- So why are you here? What is the purpose of what we are doing?
- What is happening with your trial right now?
- Why do you have to go to court?
- What is the right to a fair trial?
 - Do you have the right to a fair trial?
- Can you name a few other rights that you have as a defendant?
- In a fair trial, you have the right to a defense lawyer. Do you have a lawyer? What is your lawyer’s name?
- What is the point of a trial?
- During a trial, does the prosecutor have to *prove* that you did the crime for you to be punished?
- What does it mean to be “competent to stand trial?”
- If a defendant is not able to help his lawyer and does not understand the crimes that he is being accused of doing, do you think he is competent to stand trial?
- Why do you think the Judge thinks that you are not ready to go to court?

Background information about “understanding your situation” for Restoration Counselors

In order to be *competent to stand trial* in the United States, a defendant must have:

“Sufficient *present* ability to consult with his or her attorney with a *reasonable* degree of *rational* understanding and whether he or she has a rational as well as factual understanding of proceedings against him or her; it is not enough that he or she is oriented to time and place and has some recollection of events.” (*Dusky v. United States*, 1960, emphasis added)

In the *Dusky* case, the Supreme Court established three necessities for competency to stand trial: 1) a factual understanding of the proceedings; 2) a rational understanding of the proceedings; and 3) a rational ability to consult with counsel. If a defendant fails to meet any one of these prongs, he is not competent to stand trial. It is important to note that these requirements apply to the defendant’s *present ability* and not ability at the time of the offense.

The question of competency can arise at many different points in a case. The Commonwealth of Virginia outlines in 19.2-169.1:

“If, at any time after the attorney for the defendant has been retained or appointed and before the end of trial, the court finds, upon hearing evidence or representations of counsel for the defendant or the attorney for the Commonwealth, that there is probable cause to believe that the defendant, whether a juvenile transferred pursuant to 16.1-269.1 or adult, lacks substantial capacity to understand the proceedings against him or to assist his attorney in his own defense, the court shall order that a competency evaluation be performed by at least one psychiatrist or clinical psychologist who is qualified by training and experience in forensic evaluation.”

If declared incompetent, the defendant must be evaluated and a formal report addressing specific issues must be written by the evaluator. The issues addressed are: 1) capacity to understand the proceedings against him; 2) ability to assist his attorney; and 3) need for treatment if found competent but restorable, or incompetent for the foreseeable future.

Competency restoration is necessary to return to court for a defendant who is deemed incompetent. This restoration could take place in the hospital, jail or community depending on the circumstances, and it is recommended that the initial competency restoration does not last more than 120 days. It is a best practice for the court to commit an individual for restoration no longer than necessary, and not for a period longer than the defendant would have served in a sentence for his/her crime.

Extra resources containing teaching material or videos about “understanding your situation” for Restoration Counselors

http://www.youtube.com/watch?v=CPmxjn_63kA

(9.5 min) Defines competency to stand trial, what constitutes competency, and restoring competency (interview with a forensic psychologist)

<http://www.youtube.com/watch?v=FwxwbkP-WK0>

(12 min) Mock initial competency hearing

<http://www.youtube.com/watch?v=gAkBqJ3DgT4>

(11 min) Mock post-restoration competency hearing

<http://www.youtube.com/watch?v=26b0k9NFXIM>

(3 min) What is a speedy and impartial trial?

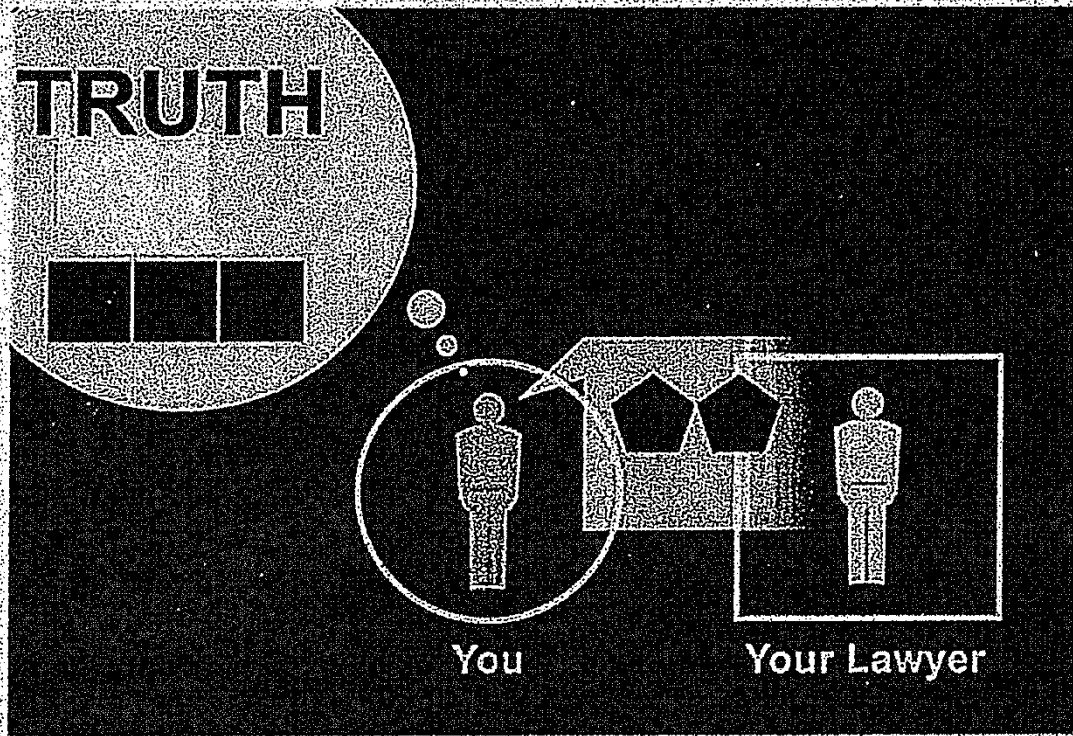
<http://www.youtube.com/watch?v=bte7aqCRg10>

(8.5 min) A civics teacher briefly walks through a criminal court case, beginning with the crime, and reviews legal terminology

<http://www.courts.state.va.us/main.htm>

Website for Virginia’s Judicial System

LESSON 2: WORKING WITH YOUR ATTORNEY



SCRIPT for MOTION-GRAPHIC COMPETENCE RESTORATION LESSONS

Lesson 2:

Working with Your Attorney

When you are facing criminal charges in the United States, you have certain rights that protect you, and these rights cannot be taken away from you no matter what you have done. Every person who is charged with a crime in the United States has these rights.

One right you have is the right to a lawyer (or defense attorney), even if you cannot pay for one. This *defense attorney* helps you with your charge. This lawyer listens when you tell what happened, looks at what was written about the charge, helps you decide what to do about the charge, explains things you need to know, and answers your questions. Even if the court pays for your lawyer, your lawyer works *only for you* and not the court. So helping your lawyer is one of the most important things you can do to help yourself.

You have a special kind of relationship with your defense attorney, called a *privileged relationship*. This means that *everything* you tell your lawyer is a secret between just the two of you. Your lawyer cannot tell anyone what you say, without your permission. This means that you can tell your attorney *everything* without worrying that what you say will get you in trouble when you go to court.

The best way you can help your lawyer is to tell the truth. Tell your lawyer everything you can about the situation that led to your charges. Lying to your defense attorney or keeping secrets makes it harder for your lawyer to help you.

If you go to trial, your lawyer will work hard to tell your side of the story. If you plead guilty, or if the court decides that you are guilty, your lawyer will try to get you the least punishment possible.

Lesson 2: Working with Your Lawyer

Recap: One of the basic rights that you have when you are charged with a crime is to have a lawyer to help you with the legal problems you are facing. Your defense lawyer works only for you and is on your side. A defense lawyer will not tell the judge or the prosecutor what you have told them and will work hard to get you the best sentence possible and possibly to have you be found not guilty. It is important to be truthful with your defense lawyer and to tell them everything you can about what led to you being charged with a crime. This will make it easier for your lawyer to help you.

Discussion questions about your defense lawyer

- Have you ever had a lawyer? If so – why did you have a lawyer? What was that like? Did you feel like you could trust your lawyer?
- Do you have a defense lawyer now?
- Who is your defense lawyer?
- What was your defense lawyer doing the last time you were in the courtroom?
- Do you know how to get in touch with your defense lawyer?
- Have you met with your defense lawyer yet?
 - If you have, what happened when you met with your defense lawyer? What did you talk about?
- Do you trust your defense lawyer? Why? Why not?

Discussion questions about “working with your lawyer”

- Is your defense lawyer trying to help you or is he/she trying to prove that you are guilty?
 - What are some ways that your defense lawyer can help you in court?
- What are some ways that you can help your defense lawyer to defend you in court?
- If your defense lawyer asks you to tell him/her what led to your arrest, what would you do? Would you tell your lawyer? Why is it important to do this?
- Can your defense lawyer tell the judge or the other lawyer what you have said? Why not?
- Is it better to tell your defense lawyer the truth, or is it better to try to convince him that you are not guilty?
- What could happen if you lied to your defense lawyer?
- Can you think of anything that you might *not* want to tell your defense lawyer? Why?
- Let’s say you were arrested for a crime that your friend committed. Would it be a good idea to tell your lawyer about your friend? Why?

Background information about criminal defense lawyers for Restoration Counselors

A *criminal defense lawyer* specializes in representing individuals who have been charged with criminal conduct. They may be either privately retained or employed by a specific jurisdiction to represent indigent defendants who are financially incapable of hiring a private attorney. These government-employed attorneys are commonly known as *public defenders*.

In order to become a criminal defense lawyer, an individual must graduate from law school (typically following completion of undergraduate studies) and pass the bar exam. The individual may then represent defendants in criminal court.

Criminal defense lawyers in the United States may be involved in many stages of a client's criminal case and trial process, including issues surrounding the arrest, investigations, charges, sentencing, appeals and issues after the trial.

The lawyer may initiate involvement in a case with review of the criminal charges and facts surrounding the crime and discovery of any constitutional violations. In addition, the lawyer typically assesses possible sentences or sentencing issues that may arise and ensures that all evidence being presented during the trial has been legally acquired.

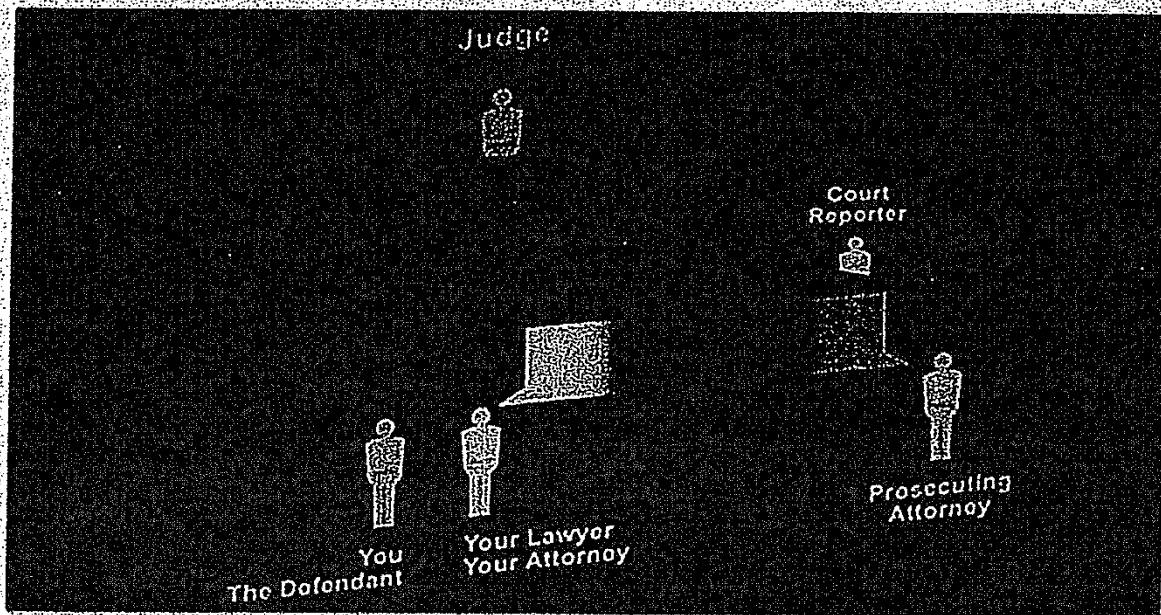
Extra resources containing teaching material or videos about criminal defense lawyers for Restoration Counselors

<http://www.youtube.com/watch?v=JH-wzxOPitI>
(1.5 min) Attorney-client privilege and confidentiality

<http://www.youtube.com/watch?v=0pUYawkmD2U>
(1.2 min) What is covered under attorney-client privilege; reasons for this privilege

http://www.youtube.com/watch?v=_4C5uWuy7rk&list=PLSAUbOBYUIN9J-iSge0BHDu7HKWepbvUE
(1 min) Criminal defense attorneys and their responsibilities

LESSON 3: WHO IS IN COURT?



SCRIPT for MOTION-GRAPHIC COMPETENCE RESTORATION LESSONS

Lesson 3:

Who Is in Court?

When you go to court, you are called the defendant. The defendant is the person who is charged with breaking the law. There are other important people in court, and each of them has a job.

Two of these people will, basically, be arguing about your case. This is because the United States justice system tries to find the truth by letting two sides argue about whether the defendant really broke the law.

The Defense Attorney

The person arguing *your* side of the case is the defense attorney. The defense attorney is *your* lawyer, who tries to get the best outcome for you. If you go to trial, your lawyer will work hard to present *your* side of the story, and show evidence that helps you. The lawyer *might* convince the court that you are *not* guilty. But if the court *does* decide you are guilty, the lawyer tries to convince the Judge to give you the least punishment. If you chose to plead guilty instead, your lawyer will still try to get you the least punishment possible.

The Prosecutor

The *prosecutor* is the other lawyer in court who argues that you broke the law and should be punished. Usually, the prosecutor will try to convince the court to give you the most punishment possible. In Virginia, the Prosecutor is also called the Commonwealth's Attorney.

The Judge

The Judge is the boss of the courtroom. The Judge sits in the front of the courtroom and listens to everything said about your case. The Judge is *neutral*, just like a referee in a sporting event. The Judge is not for you or against you. If your lawyer and the prosecutor argue about the law, or the rules of the trial, the Judge will decide who is right. It is the Judge's job to make the decisions in court.

Usually, the Judge will make the final decision about whether you are guilty or not guilty. When the Judge makes the final decision, it is called a *bench trial*. If the Judge says you are guilty, he or she will also determine your punishment.

The Jury

Sometimes a jury, not a Judge, decides whether the defendant is guilty or not guilty. This is called a *jury trial*.

SCRIPT for MOTION-GRAPHIC COMPETENCE RESTORATION LESSONS

The jury is group of twelve men or women who have been asked to listen to your case and decide if you broke the law and should be punished, or did not break the law and can go home. They are supposed to be neutral and not take anyone's side. Their job is to listen very carefully to all the evidence and *then* decide if you are guilty or not guilty. The evidence they listen to could be from witnesses, who are people who saw or heard something, or the evidence could be things like photos or fingerprints.

Other People in the Courtroom

There are a few other people in court, who are less important to your case. For example, every courtroom has a bailiff, who looks like a police officer. The bailiff is in charge of safety and makes sure that no one disrupts the trial.

There is also the court reporter who sits near the Judge and types everything that is said during your trial, so that there is a record of what happened.

Lesson 3: Who is in Court?

Recap: When you go to court, you are called the defendant, the person charged with a crime. The United States justice system is *adversarial*, which means that it tries to find the truth by letting two sides argue about whether the defendant is really guilty of a crime. The person arguing your side of the case is your defense lawyer. The lawyer arguing on the other side of the case, against you, is the prosecutor, and he is trying to prove that you are guilty of your charges. The Judge is the boss of the courtroom, makes sure everyone follows the rules, and sometimes will make the final decision about whether you are guilty or not. Sometimes a jury – twelve neutral people who listen to all the evidence – will decide if you are guilty or not guilty.

Discussion questions about “who is in court”

- Is this the first time you have been in a courtroom? If not, talk about the other times you have been in a courtroom.
 - Have you ever seen courts on television?
 - Who was in the courtroom and what did they do?
- There are always at least two lawyers in court during a trial. Who are they? Why are there at least *two* lawyers?
- When you do go to court, which of the lawyers is trying to prove that you are guilty for a crime? Who is trying to show that you are not guilty?
 - Which lawyer is more likely to be telling the police officers’ side of the story?
 - Which lawyer is more likely to be telling your (the defendant’s) side of the story?
- Is the prosecutor on your side or against you?
- Who has the bigger job? Does the prosecutor have to prove that you are guilty or does your lawyer have to prove that you are innocent?
- Let’s pretend that someone has committed a crime, and this person is now in the courtroom for the trial. How will the prosecutor try to prove that the person is guilty? What will they show to the court?
- What is the Judge supposed to do in court?
- Whose side is the Judge on?
- How is the Judge different from the prosecutor and your defense lawyer?
- What is the job of the jury, if there is a jury?

Discussion questions about “who is in court,” in your trial

- Does the prosecutor – the lawyer on the other side – think you are guilty?
 - What is the prosecutor trying to do?
- At the beginning of your trial, does the Judge think you are guilty?
- What about the jury? On the very first day of your trial as you walk into the courtroom, will the jury think you are innocent or guilty?
 - When does the jury decide if you are innocent or guilty?
- Whose advice should you listen to carefully?
- Do you think the judge in your trial will be fair?
- Do you believe that the jury will listen carefully and try to make the best decision about whether you are guilty or not guilty?

- How does the jury decide if you are guilty or not guilty?
- Is there any reason why you think that you will not get a fair trial?
- What concerns do you have about the people involved in your trial? Why?

Background information about “courtroom personnel” for Restoration Counselors

The *judge* must ensure that the trial is orderly and is conducted according to certain rules and laws addressing jury selection, arguments made by lawyers, permissible evidence and its presentation, instructing the jury, and determining the verdict. It is the judge’s responsibility to educate jurors about which issue of fact they must decide, laws that are relevant to the case, and the responsibilities they hold as jurors.

Prosecutors are lawyers who are usually elected locally by the public and are responsible for attempting to prove criminal defendants guilty. Because a defendant is deemed “innocent until proven guilty,” prosecutors bear the burden of working against the court’s presumption of innocence to prove the offense and dismantle the defense.

“Beyond a reasonable doubt” is considered the highest standard of proof, and thus usually only applies in criminal cases because the defendant’s life and freedom could potentially change dramatically. This standard does not require absolute certainty, but requires that there is no other reasonable, feasible explanation or alternative to the defendant’s guilt.

Prosecutors employed by the state must also comply with rules, such as timely disclosure of evidence to the defense that could negate the defendant’s guilt. The titles of prosecutors vary between states, but in Virginia they are usually called the Commonwealth’s Attorney.

The *bailiff* is responsible for maintaining order in a courtroom while a trial is in progress. The bailiff opens and closes the courtroom and protects the security and privacy of the jury during deliberation.

The *courtroom clerk* sits beside the judge and documents the proceedings of a trial, any court orders that are made, and the final verdict. This documentation is called a docket. In addition, the clerk labels all evidence presented during a trial and administers the oath or affirmation for all jurors and witnesses. Witnesses are sworn in before they may testify, and if they fail to tell the whole truth, they can be charged with perjury.

In some cases, a recording device is used instead of a court reporter. If necessary, courts may also have interpreters for people who do not speak or do not understand English. The interpreter is responsible for translating all that is said in court.

See also: Working with your lawyer, for additional information about defense lawyers

Extra resources containing teaching material or videos about “courtroom personnel” for Restoration Counselors

<http://www.youtube.com/watch?v=6cqmPLLyog>

(3 min) Courtroom basics: attire, courtroom personnel and their locations, respect of judge, when to speak, and more

<http://www.youtube.com/watch?v=KJEf19NBJTY>

(2 min) Jury, role of jury, hung jury, reasonable doubt

<http://www.youtube.com/watch?v=z8V0CgCYsFI>

(1.5 min) Selecting a jury, voir dire

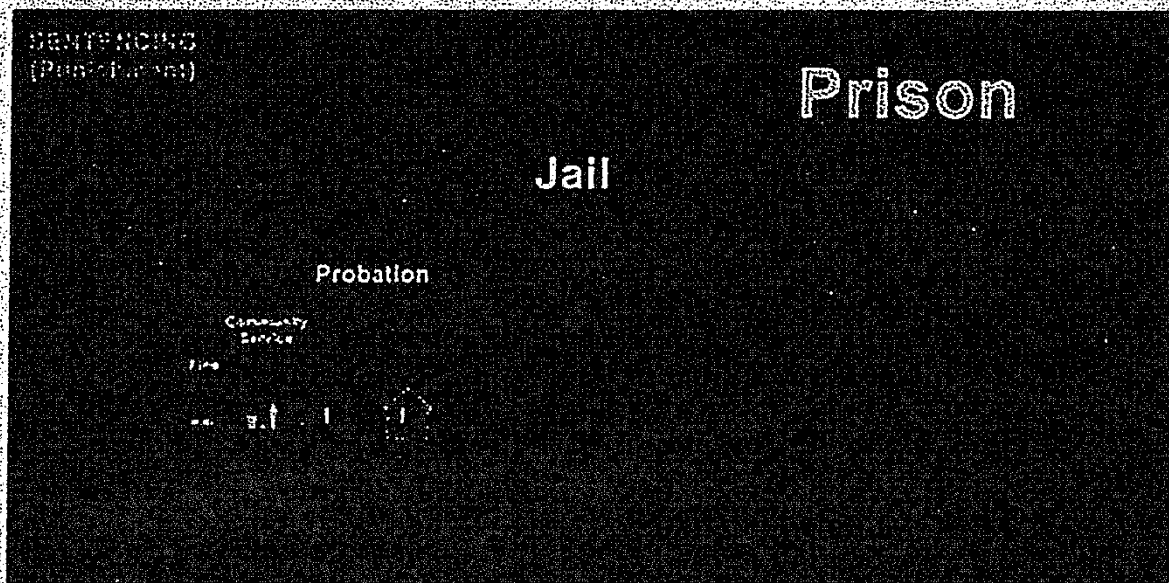
<http://www.youtube.com/watch?v=a1Oeu87eNzI>

(2 min) Prosecutors, burden of proof; defense lawyers; “beyond a reasonable doubt”

<http://www.youtube.com/watch?v=jKGKgwEOM0I&list=PLSAUbOBYUIN9J-iSge0BHDu7HKWepbvUE>

(1 min) The burden of proof

LESSON 4: CHARGES AND SENTENCES



SCRIPT for MOTION-GRAPHIC COMPETENCE RESTORATION LESSONS

Lesson 4:

Charges and Sentences

Charges

When the police arrested you, they should have told you your charges. A charge is the official name of your crime, and the charge says that somebody thinks you broke the law. You can have one charge or many charges depending on what the police think that you did.

There are two types of charges.

A serious charge is called a *felony*. A felony charge can lead to a very serious punishment, such as spending years in prison.

A less serious charge is called a *misdemeanor*. A misdemeanor can lead to a less serious sentence, such as spending a short time in jail or paying a fine. Misdemeanors can never lead to more than one year in jail.

Sentences

Charges are just what the police say you did. But if the court finds you *guilty* of the charge, and decides you really *did* do the crime, then the Judge will give you a punishment. This punishment is called a *sentence*.

Generally, the Judge tries to match the punishment to the charge against you. This is what people are talking about when they say, "the punishment should fit the crime."

There are different types of sentences that the Judge can give you. Some sentences are less serious, and some sentences are more serious.

A fine or community service are examples of less serious sentences. If the Judge gives you a fine, this means that you have to pay some amount of money to the court. If the Judge gives you community service, this means that you have to do something helpful in the community, such as picking up trash along a road.

Another sentence that is more serious is called probation. If the Judge gives you probation, this means that you can live at home but you have to check in regularly with a person called a "probation officer" who makes sure you are staying out of trouble. Usually people who break the probation rules are sent back to jail.

There are some sentences that are more serious than a fine, community service, and probation. Examples of more serious sentences are going to jail or prison. If the Judge sentences you to jail, the jail is usually near where you live and you can stay there for up to one year. If the Judge sentences you to prison, the prison is usually further from your home and you may stay for many years, or even the rest of your life, depending on your sentence.

Lesson 4: Charges and Sentences

Recap: A charge is what the police gave you when you were arrested. It is the official name of the crime and says that you broke the law. Serious charges are called felonies, and less serious charges are called misdemeanors. If the judge decides that you are guilty of the charge(s), the judge will give you a sentence that is fitting for the crime. Like charges, sentences can also be more serious, like spending time in jail or prison, or less serious, like paying a fine or doing community service. Probation is another type of sentence where you can live at home but you have to check in regularly with a person called a “probation officer” who makes sure you are staying out of trouble.

Discussion questions about “charges and sentences”

- What are the charges against you? What is/are the name(s) of your charge(s)?
- What do the police say that you did?
- Do you think these are serious felony charges or less serious misdemeanor charges? Why?
 - Can you give me an example of a charge that would be more serious than your charge? An example of a charge that would be less serious?
- What things could happen to you if you are found guilty?
 - Have you talked with your defense lawyer about what could happen if you are found guilty? What has he/she told you?
- What sentence do you hope the Judge might give you if you are proven guilty? Why?
- What sentence do you hope the Judge won’t give you if you are found guilty? Why wouldn’t you want that punishment?
- What do you think is most likely to happen?
- Who will say to the Judge that you should be given an easy sentence?
- Who will say to the Judge that you should be given a worse sentence?
- What type of sentence do you think you are *most likely* to get from the Judge if you are found guilty of the charges that you have against you?
- What types of things will the judge think about when deciding your sentence?

Background information about “charges and sentences” for Restoration Counselors

A **criminal charge**, also known as a *count*, is a formal accusation that the defendant committed a particular crime. The charge initiates a criminal court case, but in order for the defendant to be proven guilty in court, the charge must be proven “beyond a reasonable doubt.” In other words, the defendant must have committed the crime, the charges are proven true, and there is no alternative explanation. A defendant must be prosecuted in the state in which the charges were issued.

The United States Constitution gives certain rights to anyone facing a criminal charge. Among the rights are the right to an attorney, right to remain silent, and habeas corpus (a petition used to determine if detention of the accused is lawful and valid).

With regard to *sentencing*, there are trends and guidelines that judges typically follow. These *sentencing guidelines* specify the range of punishments that could be assigned for a certain charge. While it may be misleading to associate a specific sentence with a specific crime (such as a misdemeanor with community service or a fine, or a felony with a sentence to prison), these associations represent *typical* charge-sentence guidelines for judges. However, a defendant might get more than one type of sentence, and factors other than the current charge can affect sentencing, such as offense history. For example, an *armed career criminal* or *habitual offender* may be subject to more serious punishment, particularly for repeat offenses of certain crimes. In addition, probation could be given prior to rendering of a guilty verdict and, if successfully completed, result in dismissal of charges.

For minor crimes, the judge typically issues a sentence immediately after the hearing. For more serious crimes and felonies, a separate hearing and more lengthy process ensues in order to assign a sentence.

If a defendant is imprisoned for more than one crime, a consecutive sentence or a concurrent sentence, or something in between, may be served. Imprisonment with a *consecutive sentence* represents the sum of each individual sentence added together, consecutively. In a *concurrent sentence*, sentences are served simultaneously. Other types of sentences include intermediate (served on the weekend), determinate (a specific number of days), and indeterminate (the sentence has a minimum and maximum length, such as 80-100 days). It is possible for a sentence to be *mitigated*, or reduced to a less serious punishment. A sentence may also be appealed to a certain degree, and the sentence given by the highest Appeal court becomes final and supplements any other sentences not appealed by the defense or prosecution.

Extra resources containing teaching material or videos about “charges and sentences” for Restoration Counselors

http://www.youtube.com/watch?v=ZQ_yQ49e6RU
(1 min) Felony vs. Misdemeanor and examples of each

<http://www.youtube.com/watch?v=q2UN8sGhAj8>
(3 min) Miranda Rights, admissible evidence, search and seizure

<http://www.youtube.com/watch?v=Yw0oGNm9KC0>
(8 min) Process of going to court, some rights of the accused, courtroom personnel and proceedings.

http://www.youtube.com/watch?v=BTJInwhwG_I
(1.5 min) What is a criminal appeal?

http://www.youtube.com/watch?v=2_6upP-kM9E
(1 min) Sentencing in a criminal case; types of sentencing to be considered

<http://www.youtube.com/watch?v=TuJjgNa2lqM>
(3 min) Consecutive sentences, when a consecutive sentence might be used

<http://www.youtube.com/watch?v=9KSFbD9EIUU>
(2 min) Concurrent and consecutive sentences

<http://www.youtube.com/watch?v=EZhdpn2Q-Rw>
(45 sec) Miranda rights: right to remain silent

LESSON 5: PLEAS

PLEA

You
The Defendant

Your Lawyer
Your Attorney

YOU PLEAD GUILTY

YOU PLEAD NOT GUILTY

PLEA

SCRIPT for MOTION-GRAPHIC COMPETENCE RESTORATION LESSONS

Lesson 5

Pleas

When you go see the Judge you have to *enter a plea*. Entering a plea is how you tell the court if you agree with the charges or plan to fight the charges.

If you plead *guilty*, you are agreeing with your charges and saying you *did* break the law. If you plead guilty, you are saying that you do *not* want to fight the charges and do *not* want a trial.

But if you plead *not guilty* you are saying that you *did not* break the law. Pleading *not guilty* is *disagreeing* with the prosecutor about your charges; this is the first step in fighting your charges.

Defendants can still plead *not guilty*, even if they *really did* break the law. That is because pleading not guilty is just saying, "I want to fight my charges in a trial." Defendants might plead not guilty because they think there is not enough proof that they did the crime. Basically, pleading *not guilty* is a way of saying that the prosecutor needs to *prove* that you committed the crime.

So, if you plead not guilty, you are disagreeing with the prosecutor and saying that you are going to fight your charges in a trial. But if you plead guilty, you are agreeing with the prosecutors and saying that you will accept punishment for the charges.

There are other pleas that are not used very much called an Alford plea and a No Contest plea. You can ask your attorney about it if you would like to know more.

Lesson 5: Pleas

Recap: A defendant must enter a plea to the judge. The plea is a statement to the court either saying you (the defendant) agree with the charges (a guilty plea) or plan to fight the charges (a not guilty plea). A *guilty* plea means you say that you committed the crime, or that you believe there is enough evidence to prove that you committed the crime. When you plead *guilty* you say that you will accept punishment for the charges. A *not guilty* plea means you say that you did not commit the crime or disagree with the prosecutor about your charges. If you plead *not guilty*, the prosecutor must prove that you committed the crime in a trial.

Discussion questions about “pleas”

- How do you decide what you will plead?
 - What did your lawyer say about it?
- Do you want to plead guilty or not guilty? Why do you want to do that?
- Let’s talk more generally about pleading guilty or not guilty. Let’s look at an image that shows evidence for and against a person (scales of justice). If there were a person with a lot of evidence against him or her, would you tell them to plead guilty or not guilty? Why?
 - If someone knows there is a lot of proof that they did the crime, should they plead guilty or not guilty? Why?
- Now, if we look at a different image, where there is very little evidence that the person committed the crime, would you tell them to plead guilty or not guilty? Why?
 - If there isn’t very much proof that a person did the crime, should they plead guilty or not guilty? Why?
- If you plead guilty, is there still going to be a trial?
- If you decide to plead guilty, what would you like your lawyer to work out with the prosecutor? What kind of charge? What kind of sentence?
- What are the benefits of pleading *guilty*?
- What are the drawbacks of pleading *guilty*?
- What do you give up when pleading *guilty*?
- What are the benefits of pleading *not guilty*?
- What are the risks of pleading *not guilty*?

Background information about “pleas” for Restoration Counselors

A *plea* is the defendant’s answer in response to his/her charges at *arraignment*, the formal reading of criminal charges to the accused. In the United States arraignment takes place in two phases. In the first, *initial arraignment*, which must occur within a few days of arrest, the judge informs the defendant of the charges and the right to retain counsel. If applicable, the judge also sets the bail amount. The second phase, called *post-indictment arraignment*, is when the defendant enters a plea. Possible pleas include guilty, not guilty, no contest (“*nolo contendere*”) and the Alford plea.

The defense and prosecution will often make an agreement known as a *plea bargain* accompanied by a guilty plea from the defendant. Plea bargains usually result in less serious

punishment or dismissal of some charges in exchange for the defendant's guilty plea. *For more information about plea bargains, see Lesson 6.*

A *plea of no contest* indicates that the defendant neither argues against nor agrees with the charges against him/her. This type of plea leads to the same outcome as a guilty plea, but without the defendant admitting guilt. There may be some restrictions on when a defendant can use a no contest plea.

The *Alford plea* is a guilty plea in criminal court in which the defendant asserts innocence and does not admit to committing the crime, but agrees that the prosecution's evidence would probably elicit a guilty verdict in court "beyond a reasonable doubt." This type of plea derives its name from *North Carolina v. Alford*. The defendant, Alford, would have faced the death penalty if convicted of first-degree murder by a jury trial, but would receive a life sentence if he pled guilty. The defendant did not want to admit guilt, but feared the death penalty if he fought the charge. The case was appealed to the Supreme Court, which held that it is permissible for a defendant to enter an Alford plea "when he concludes that his interests require a guilty plea and the record strongly indicates guilt." Thus, because the evidence against him probably would have led to conviction, Alford's guilty plea in attempt to avoid the death penalty was allowed even though he simultaneously asserted his innocence.

Though not technically a plea, a defendant can plead *not guilty*, then argue *not guilty by reason of insanity*. This is an "affirmative defense," in which the defendant essentially admits committing the crime, but then argues he was not guilty for doing so because of his psychiatric illness. Specifically, the insanity defense requires that the defendant was so impaired by a "mental disease or defect" (i.e., severe psychiatric illness or intellectual disability) that he could not understand "the nature, character, or consequences of the offense" or could not understand that the offense was wrong, or could not resist the impulse to commit the offense. Overall, few defendants pursue an insanity defense, and of those who do, very few are "successful."

Extra resources containing teaching material or videos about "pleas" for Restoration Counselors

<http://www.youtube.com/watch?v=iYqpoylpk-o>

(3 min) Stages of a typical criminal case -- including the arrest process, plea bargains, and sentencing options

http://www.youtube.com/watch?v=u4q_0OgBZ5g

(1 min) Agreeing on a sentence, resolving cases, pleas; plea bargaining

http://www.youtube.com/watch?v=xw_8bhXp-lo

(45 sec) Pros and cons of a plea bargain

<http://www.youtube.com/watch?v=J-k1s-zpXmk>

(1 min) Types of pleas explained: guilty, not guilty, no contest

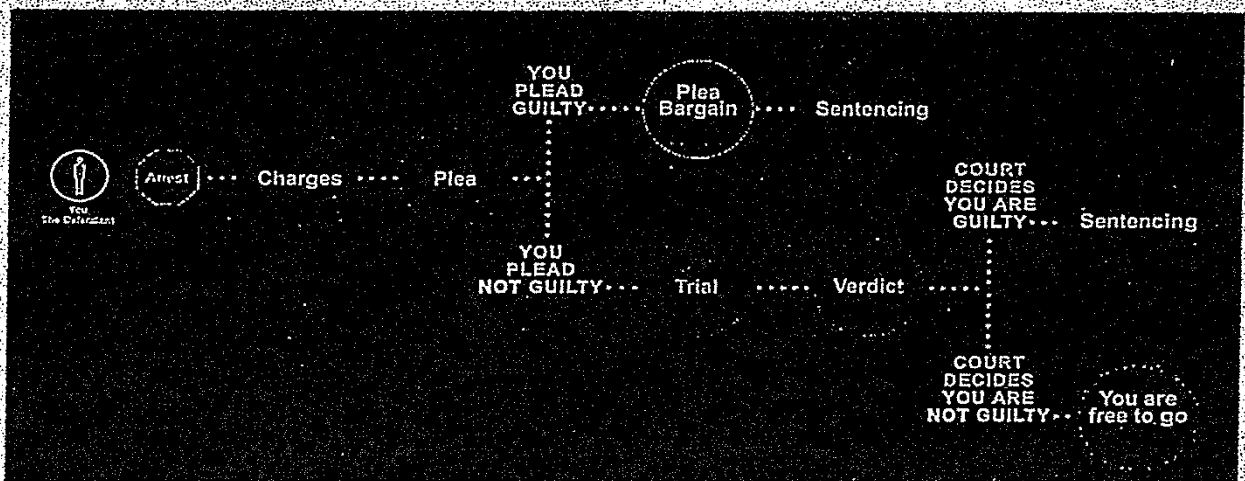
<http://www.youtube.com/watch?v=Pgj2OG1yfLo>
(2 min) Arraignment and types of pleas

<http://www.youtube.com/watch?v=hJKC9zq1XTg>
(3.5 min) What is "not guilty by insanity"?

<http://www.youtube.com/watch?v=Yw0oGNm9KC0>
(8 min) Process of going to court, some rights of the accused, courtroom personnel and proceedings

http://www.youtube.com/watch?v=GaEvviZ_u58
(1.5 min) Defending criminal charges

LESSON 6: THE PROCESS



SCRIPT for MOTION-GRAPHIC COMPETENCE RESTORATION LESSONS

Lesson 6

The Process

What happens in court is different depending on whether you plead guilty or not guilty. The way you plead determines which of two paths your case will go down.

After pleading *Not Guilty*

Remember that if you plead not guilty, you are saying that you did *not* do the crime. The lawyer on the other side--the prosecutor--is going to say that you *did* do the crime. When this happens, there must be a trial. Remember that a defendant has certain rights that cannot be taken away. One is the right to a trial, to present your side of the story. At the trial, you get a chance to prove that you did not do the crime, and the prosecutor gets a chance to try to prove that you did do the crime.

At the trial, the prosecutor will try to present proof that you broke the law. This is called *evidence*. Evidence can be photos, fingerprints, or people. If someone saw something, the Judge might call them up to talk about it. Both your side and the other side can show evidence, or proof, during the trial.

After both your side and the prosecutor's side are done talking about the evidence, then either the Judge or the Jury will take some time to decide if you are guilty or not guilty.

If they decide that you are *not* guilty then you are free to go home. That is the end of the case against you!

But if they decide that you are *guilty*, then the Judge will decide the sentence, or punishment, that fits your charge. Once the sentence has been decided, you will be taken to the place where you can begin serving your sentence. Remember, this is what happens if you plead *not* guilty.

After pleading *Guilty*

If you plead guilty, what happens next is very different.

Remember that pleading guilty means you are *agreeing* with the charges against you. So if you agree with the charges by pleading guilty, you do not need a trial, because trials are only needed for disagreements. When you plead guilty, you *give up* the right to tell your side of the story at a trial. Everyone agrees that the charges are right, so you move straight to sentencing.

Often, when a defendant decides to plead guilty, the defense attorney will try to make a deal with the prosecutor. That deal is called a *plea bargain* or *plea agreement*. In a plea bargain, the defense attorney will tell the prosecutor that the defendant is willing to plead guilty if the defendant can get a less serious charge or a less serious sentence. You make the decision to take a plea bargain or not.

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If the two attorneys—the defense attorney and the prosecutor—can agree on this deal, then they take it to the Judge. If the Judge approves the deal, then the Judge will announce the sentence and the defendant will start serving the sentence.

In many cases, defendants choose to accept this type of *plea bargain*, because they know what will happen. In a trial, they might get a better sentence, but they could also get a worse sentence. So, a plea bargain may seem less risky. Attorneys also like plea bargains because then they know for sure what will happen.

You get to decide if you want to accept a plea bargain that has been offered. Just remember that plea bargains can happen only when you choose to go plead guilty. That means you have to give up your right to fight your charges, but you will know what punishment you will get.

Lesson 6: The Process

Recap: The way you plead determines which of two paths your case will go down. If you plead *not guilty*, you are disagreeing with the prosecutor, so there must be a trial to determine which side is correct. After both the prosecutor and your lawyer have finished talking about all the evidence, then either the Judge or the Jury will take some time to decide if you are guilty or not guilty. When you plead *guilty*, you give up the right to tell your side of the story at a trial and everyone agrees that the charges are right, so you move straight to sentencing. Often, the defendant and his lawyer will make a deal, called a plea bargain, with the prosecutor, where the prosecutor will agree to less serious charges and/or punishments if the defendant will plead guilty. In a plea bargain you have to *give up your right to fight your charges*, but you will know what punishment you will get.

Discussion questions about "the process"

- What happens if you plead *not guilty*?
- If you thought there was not enough evidence against you to convict you of the crime, would you plead not guilty?
- Can you plead "not guilty" even if you really did commit the crime?
- During the trial, who tries to show proof that you did the crime?
- During the trial, who tries to show proof that you didn't do the crime?
- Once the prosecution and the defense are finished presenting this proof, called evidence, who decides whether you are guilty or not guilty?
- Why might someone plead *not guilty*?
- In your case, can you think of evidence to show you might be *not guilty*?

- What happens if you plead *guilty*?
- ○ If you plead guilty, will you have a trial? Why not?
- If you thought there was not enough evidence against you to convict you of the crime, would you plead guilty?
- What is a plea bargain?
 - Why is a plea bargain good for the prosecutor?
 - Why is a plea bargain good for the defense lawyer?
 - What are some reasons a plea bargain could be good for you, the defendant?
 - Do you have to take a plea bargain? How do you decide?
- Why would the prosecutor agree to give you an easier sentence if you decide to plead guilty?
- If you decide to say no to a plea bargain, what can happen? Could this be risky?
- Who must approve the plea bargain after the prosecutor and the defense lawyer agree on the bargain?
 - If the Judge approves the plea bargain, what does the Judge do next?
- What are some reasons that someone might plead *guilty*?
- Let's pretend that the prosecutor offers you a plea bargain that involves a small sentence. Your defense lawyer tells you that you probably have an equal chance of winning or losing a trial if you go to trial, and your punishment might not be as small if you go

trial. What would you decide to do – would you accept the plea bargain and plead guilty, or would you plead not guilty and go to trial? Why?

- What are some of the benefits of a plea bargain?
- What are some of the drawbacks of a plea bargain?

Background information about “the process” for Restoration Counselors

Approximately nine out of ten criminal cases in the United States end with *plea bargaining* and never involve a trial. This is usually a mutually beneficial agreement for all parties; the judge is not as overwhelmed with the quantity of cases going to trial, the court is not burdened with every crime that is committed, the prosecutors are successful in prosecuting the defendant and save on trial costs, and the defense attorney and defendant know exactly what the charges and punishment will be. Both the prosecution and defense avoid a potentially risky trial for which the outcome would be unknown.

The prosecution often makes a plea bargain more attractive by agreeing to drop some of the charges, reduce the severity of charges, or suggesting a reduced punishment for the defendant. Sometimes both attorneys can communicate with the judge to prearrange hypothetical sentences that would result from a bargain. Despite recommendations from the attorneys in the bargain presented to the judge, the judge still holds final authority over sentencing decisions, or may not approve the bargain at all.

In *any* plea bargain, the defendant waives three rights that are legally protected in the Constitution: the right to a jury trial, the right against self-incrimination, and the right to confront hostile witnesses. However, plea bargaining itself is not unconstitutional, and the U.S. Supreme Court has upheld this consistently, provided that a guilty plea is not forced from the defendant.

If either the defendant or the prosecutor does not uphold the terms of the plea bargain and breaks the deal in some way, the judge may intervene. For example, the judge may allow withdrawal of the guilty plea or force the prosecutor’s compliance with the plea bargain. If the defendant does not uphold the terms, the prosecutor does not have to continue to comply with the plea bargain.

Some alternatives to plea bargains exist and are used in various jurisdictions that avoid certain formal, lengthy criminal justice system procedures. For example, *diversion programs* are often encouraged and used in conjunction with probation for less serious crimes. In such programs the defendant must complete a rehabilitation plan and/or some sort of service assignment, after which the crime may be removed from the defendant’s record.

See also: Lesson 5 – Pleas, including information about arraignment

Extra resources containing teaching material or videos about “the process” for Restoration Counselors

<http://www.youtube.com/watch?v=iYqpoylpk-o>

(3 min) Stages of a typical criminal case -- including the arrest process, plea bargains, and sentencing options

http://www.youtube.com/watch?v=GaEvvIZ_u58

(1.5 min) Defending criminal charges

<http://www.youtube.com/watch?v=PmdvZU-pRxY>

(2 min) Diversion Programs

http://www.youtube.com/watch?v=u4q_0OgBZ5g

(1 min) What is a plea bargain? Agreeing on a sentence, resolving cases, pleas

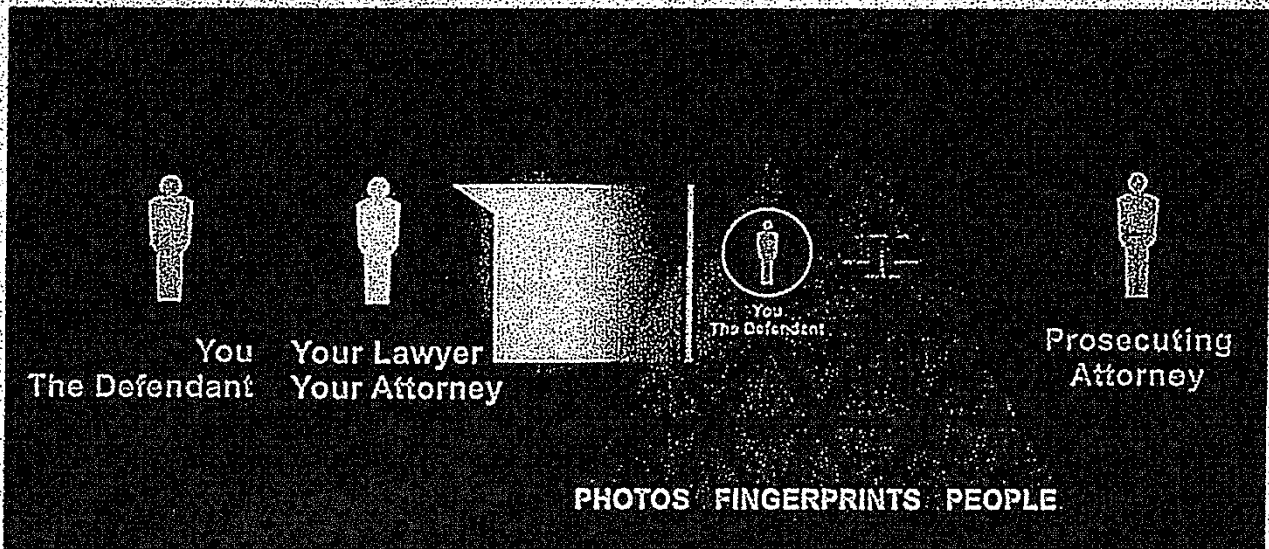
<http://www.youtube.com/watch?v=09wuDynoq5A&list=PLSAUbOBYUIN9J-iSge0BHDu7HKWepbvUE>

(45 sec) Deciding to accept or reject a plea bargain

<http://www.youtube.com/watch?v=N7P4-BTxi-k&list=PLSAUbOBYUIN9J-iSge0BHDu7HKWepbvUE>

(1 min) Plea bargains and what happens after plea bargains

LESSON 7: THE TRIAL



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Lesson 7

The Trial

Remember that if you plead guilty, there is *no* trial because you agree with the charges, so there is no reason to argue about what happened. But, for defendants who plead *not guilty*, the court must hold a trial to try to find the truth about the charge.

How does the trial process work?

First, the court will set your trial date. Then you decide with the help of your lawyer if you want a jury to listen and decide about your charge or you only want the Judge to listen and decide.

Remember, a jury is those 12 people who listen to the whole trial and make a decision in the end. If your trial has a jury, then first the jury members are picked. Both the prosecutor and the defense attorney are involved in picking the jury.

When the trial begins, it starts with opening statements. First, the prosecution, then the defense, each get to talk for a few minutes to tell the Judge and jury the main point of their argument.

After these opening statements, the prosecution has to argue their side. The prosecution always goes first, because it is their job to prove you really did break the law. The prosecution will use evidence to make their case. Evidence can be almost anything that shows you did the crime; this might be your fingerprints, video of you or the crime scene, or even materials from a crime scene, like a weapon or stolen property. Evidence can also be people, like witnesses who saw some part of the crime, or heard something about the crime.

After the prosecution argues their case, the defense presents their side. This is when your lawyer gives evidence that you did not do the crime. Remember, evidence can be almost anything or anyone that you can use to support your argument, and show that the prosecution is wrong about you. Your attorney can help you choose the best evidence in your case.

As part of presenting your case, you may testify yourself. Testifying means you speak to the court. But you do not *have* to testify; it is your right to choose. If you do testify, the prosecution will have a turn to ask the questions they want to ask. Your attorney can help you decide whether it is a good idea for you to testify in your case.

During the whole trial, each side has to play by certain rules. The Judge is in charge and makes sure that everyone follows the rules.

Near the end of the trial, after each side has had the chance to present their evidence, each side gets to make a closing statement. They give their final message, or argument, to the Judge and jury.

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Then, there is a break called deliberation. During this break, the Judge or jury will think about all the evidence they heard and will make a decision about whether you are guilty or not guilty.

They will come back and read their decision, called the *verdict*. If they decide that you are *not* guilty, you may go home. But if they decide that you *are* guilty, you will be sentenced by the Judge or the jury. This may happen immediately, or may happen at a later date during a sentencing hearing.

Lesson 7: The Trial

Recap: If a defendant pleads guilty, the court must hold a trial to find the truth about the crime. Either a judge or a jury – 12 neutral people who listen to all the evidence – will make the final decision in a case. First, the prosecutor and your lawyer will give their opening statements to the court, which is when they present their main point. Next, they will give evidence, or proof, to the court. The prosecutor will try to prove you did the crime, and your lawyer will try to prove that you did not. The evidence could be people (called witnesses), fingerprints, a weapon, or something else from the crime scene. Next, the prosecutor and your lawyer give their last speech to the court, called closing statements. Finally, the judge or jury will take a break and decide whether or not you are guilty, and then they will read their decision, called the verdict. If you are guilty, the judge will start deciding on your sentence.

Discussion questions about “the trial”

- Why do we have trials?
 - What does the court want to find during a trial?
- What does it mean if there is a jury deciding your case?
- Who are the people in the jury? Are they supposed to be neutral before the trial or already have an opinion before the trial?
 - When do the people on the jury decide if you are guilty or not guilty?
- Does the trial start with opening statements or closing statements? Which is at the end of the trial?
 - Who gives these statements?
- What is evidence?
- What are some examples of evidence in *your* case?
- After the opening statements, who starts showing evidence?
- Can evidence be for you or against you? Both?
- Do you have to testify, or speak, in court? Who can help you decide whether or not you should testify yourself?
 - If you do testify, can the prosecution ask you questions they want to ask?
- If the prosecutor cannot prove that you did the crime, should the court assume that you are innocent, or should they assume that you are guilty?
- Who is in charge in the courtroom?
- After the closing statements, the Judge or Jury will start deliberation. How long does this usually take?
- What is a verdict?
 - After deliberation, a verdict will be given. If you are found not guilty, where do you go? If you are found guilty, what happens next?
- What concerns do you have about a trial in your case?

Background information about "the trial"

Presentation of evidence is central to the trial. Two types of evidence may be presented. *Direct evidence* tends to be more straightforward and links clearly to the crime, such as a weapon found at the scene, a clear confession to the crime, or an eyewitness of the crime. *Circumstantial evidence* is less objective; rather, it may suggest facts of the crime based on deduction, inference or connection. Examples include a testimony that proposes an association to the crime or concrete objects that suggest relevant criminal actions. Most often, circumstantial evidence is more available and easier to gather, and this is the type that is most often presented in court. There are stringent laws that filter the kinds of evidence allowed in court and the ways in which it is presented.

Direct examination is when a lawyer questions a witness that he has called and prepared. Witnesses may testify to factual evidence and occasionally offer opinions. Typically only expert witnesses in a specific field, such as a forensic psychologist or psychiatrist, are permitted to offer personal conclusions and opinions that must be rooted in factual evidence.

During direct examination, lawyers are not permitted to ask their witnesses *leading questions* that prompt a certain answer, such as those beginning with "Don't you think" or "Isn't it true that." If the other lawyer has a legal reason that a question should not be allowed (for example, a leading question or a question that prompts the witness to give an opinion), he can raise an objection before the judge. The judge considers the reason and may either sustain or overrule the objection. If the objection is sustained, the lawyer must change the question or move on to the next question. The judge's decision is based on legal precedent and law and is not based on opinion about the case.

Cross-examination is when a lawyer questions a witness called by the opposing counsel. Leading questions are allowed during cross-examination in order to test the credibility and testimony of a witness. The lawyer's goal is to reduce trust in and credibility of the witness through a variety of strategies, such as undermining moral character or revealing prejudice. Objections may also be raised during cross-examination if a question is not relevant to information explored during direct examination or breaks a law related to presentation of evidence.

In a jury trial, the judge instructs the jury before deliberation about pertinent laws and precedent that should guide their decisions, standards such as "beyond a reasonable doubt," and the issues of fact that must be decided. This is called the *charge* given to the jury. Jurors are required to follow and interpret these laws while making their decision and come to conclusions solely based on evidence and arguments presented during the trial.

Extra resources containing teaching material or videos about "the trial" for Restoration Counselors

<http://www.youtube.com/watch?v=dxANoPEbzmQ>

(4 min) What is evidence? What are the different types of evidence?

<http://www.youtube.com/watch?v=iYqpoylpk-o>

(3 min) Stages of a typical criminal case -- including the arrest process, plea bargains, and sentencing options

http://www.youtube.com/watch?v=nV8_WkJ1j54&list=PLSAUboBYUIN9J-iSge0BHDu7HKWepbvUE

(1 min) Typical criminal trial procedures

<http://www.youtube.com/watch?v=6cqmPLLyozg>

(3 min) Courtroom basics: attire, courtroom personnel and their locations, respect of judge, when to speak, public seating, and more

<http://www.youtube.com/watch?v=EMPOyX4w0hY>

(1.5 min) What is an opening statement?

<http://www.youtube.com/watch?v=qHqfiVfA1ak>

(13 min) Live opening statement in murder trial

<http://www.youtube.com/watch?v=z8V0CgCYsFI>

(1.5 min) Selecting a jury, voir dire

<http://www.youtube.com/watch?v=KJEf19NBJTY>

(2 min) Jury, role of jury, hung jury, reasonable doubt

<http://www.youtube.com/watch?v=zfdO9Tt9RDA>

(1 min) What is direct examination in criminal trials?

<http://www.youtube.com/watch?v=8QvLVAUV6rI>

(40 sec) Cross-examination and leading questions

<http://www.youtube.com/watch?v=BVAMID5EIRE>

(1.5 min) What are closing arguments?