

Realities in a Criminal Case

1. There is no such thing as a case that can't be won, and, despite the best lawyer's efforts, no such thing as a case that can't be lost.
2. The purpose of going to trial in a criminal case is not to be found innocent, "tell your side of it," or be "vindicated." It's because a trial is the only chance left for you to avoid an unacceptably long jail or prison sentence.
3. If you go to trial, and lose, it's you who will be locked up, not your lawyer.

What you feel as a result from being a defendant in any criminal case can run from depression and humiliation to absolute terror. Your choice of legal counsel is critical to both your current well being and to your future. You need a lawyer that's competent, but also one that you feel comfortable with - one that meshes well with your personality and the nature of your case. Typically, 95 percent or more, of criminal cases never go to trial. They result in negotiated dispositions (plea bargains).

A particular lawyer might be an outstanding trial lawyer, but not be the best lawyer for you. Like getting a second or third opinion in a medical matter, it can be wise for a defendant to meet at least two or more lawyers before deciding on the one that he or she feels most at ease with.

The point of a criminal case is not to prove you are innocent. The prosecution either proves that you are guilty of the crime "beyond a reasonable doubt," or it does not. The jury may not approve of your conduct. Some of the jurors might dislike you and believe you probably broke the law. But if they cannot all agree on your guilt beyond a reasonable doubt they will be instructed by the judge that they must return a verdict of "not guilty."

Even if you are guilty you are still legally entitled to test the state's evidence and see if the State can prove its case. That is a right guaranteed to you by the US and Oregon constitutions. A lawyer can still defend you even if you admit your guilt to the lawyer. But you would not be able to testify. Some lawyers prefer not to take certain types of cases. Ask any prospective lawyer up front about any such limitations he or she may have.

In some Oregon counties less than 3 percent of criminal cases go to trial. That is in part a result of the harsh mandatory sentences now in effect for many crimes against persons (Ballot Measure 11) and some crimes against property (Ballot Measure 57). However the effects of these measures are balanced to some degree by public concerns about the corona virus in state prison populations, costs of incarceration and growing recognition by prosecutors and judges that it is much cheaper to provide needed substance abuse and mental health counseling to convicted persons locally rather than in state prisons. Many counties have some types of programs similar to Multnomah County's "Justice Reinvestment Program" whereby the court and prosecutor will agree to a local probationary sentence with extensive required counseling and other conditions, instead of the otherwise required prison sentence.

But just because a case will probably not go to trial your attorney still needs to thoroughly review your personal history and develop the legal and factual aspects of your case. The quality of his or her work can significantly affect the quality of the negotiated plea offer you receive. Even if you initially think you will want a plea bargain you should expect your attorney to do the proper legal preparation to take your case to trial.