

Model Lesson Plan: Criminal Law
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Criminal Law Lesson #3: Theories of Crime and Punishment
Justifications for Punishment and Plea Bargaining/Negotiation Exercise

- I. **Time:** 55 Minutes
- II. **Goals:** Discussing the social justifications for punishment and participating in a plea bargaining exercise based on a realistic fact pattern helps students:
- A. Better understand the goals of the criminal justice system and the roles that prosecutors and public defenders play within it.
 - B. Think about both the legal *and* moral obligations that exist on each side of the adversarial system.
 - C. Gain some rudimentary experience with negotiation and further develop their communication skills.
- III. **Objectives:**
- A. Knowledge Objectives – As a result of this class, students will be better able to:
 - 1. Understand the goals of two major theories of punishment:
 - a. The Utilitarian Theory
 - b. The Retributive Theory
 - 2. Develop their own opinions about the ethics and effectiveness of these theories of punishment.
 - 3. Define the legal duties of prosecutors and public defenders and understand their respective burdens at trial (e.g.: the prosecution’s burden of proof).
 - B. Skills Objectives – As a result of this class, students will be better able to:
 - 1. Conduct an effective negotiation:
 - a. Prioritize goals and objectives.
 - b. Anticipate the opponent’s strategies.
 - c. Address the interests of the opposing party.
 - d. Achieve a settlement that addresses the concerns of both parties.
 - 2. Work with a partner and communicate effectively in small groups.
 - 3. Evaluate different negotiating techniques and identify areas for improvement.
 - C. Attitude Objectives – As a result of this class, students will be better able to feel:

1. In criminal law, legal duties and moral duties do not always coincide. It is sometimes necessary for both prosecutors and defenders to make tough choices in order to meet all of their obligations and “do their jobs.”
2. Successful negotiations rarely result in one party achieving *all* of its goals, but rather each party achieving *some* of its goals.
3. *Listening* is the most important part of a negotiation.

IV. Classroom Methods:

- A. Brainstorming session: “What purpose is served by establishing a system of punishment for those who commit crimes?” Write student answers on the board and go back to them during part “B”. **(5 minutes)**
- B. Explain two competing theories of punishment: the Utilitarian Theory and the Retributive Theory: **(6 minutes)**
 1. Utilitarian Theory – Focuses on achieving social benefit:
 - a. Deterrence – In general, it has been found that an increase in the detection, arrest and conviction rate is a greater deterrence to crime than an increase in the punishment.
 - b. Incapacitation – Removing dangerous individuals from society protects society from that person.
 - c. Rehabilitation – Offenders can be “changed” into productive members of society if given proper treatment.
 - NOTE: This may be a goal of punishment, but it is not a justification for punishment and in today’s system, it has been all but rejected.
 2. Retributive Theory – Society is under a moral obligation to punish a defendant who *deserves* punishment. It is wrong to punish the innocent and we must take steps to avoid doing so, but a guilty person *must* be punished.
 - a. Assaultive – Punishment is justified by the crime. It is not necessary to look at the rights of the guilty or consider his or her “best interests.”
 - b. Protective – The guilty has benefited from the crime and society has paid the price. Thus, the guilty person owes a debt to society.
- C. Ask if there are any questions before moving on **(2 minutes)**.
- D. **Begin Peggy Lerner “Plea Bargain” exercise:**
 1. Read fact pattern aloud in class. **(5 minutes)**

2. Create 5 groups with 6 students in each group. Students in these groups will negotiate in **teams of two**. Each group will consist of 2 prosecutors, 2 public defenders and 2 observers. Each role has its own objectives:
 - a. **Prosecutors:** Serve the interests of the state in effective law enforcement by negotiating an appropriate sentence for the defendant.
 - b. **Defenders:** Represent the best interests of your client and achieve the most beneficial settlement possible in light of the evidence against her.
 - c. **Observers:** Carefully observe the negotiation. Keep track of the negotiating techniques used, what worked well and what did not. Record the settlement that was reached and turn in all negotiation worksheets at the end of the exercise.
- E. Give instructions to the class and then have them break into small groups. **(5 minutes):**
1. Once the students have moved to their places, distribute the handouts:
 - a. Fact Pattern: All students
 - b. Directions for Negotiation: All students
 - c. Sentencing Guidelines: All students
 - d. Confidential Information – Defense: defense teams only.
 - e. Confidential Information – Prosecution: Prosecution teams only.
 - f. Negotiation worksheet: One for each prosecution team and one for each defense team.
 - g. Observer memo: One for each observer team.
 2. Students will first meet with their “partners” to discuss their strategy for the negotiation. They will have 5 minutes to discuss the issues and fill out their worksheets. **(5 minutes)**
 3. Next, the teams will meet in their pre-assigned group of six to conduct the negotiation. **(10-15 minutes)**
 4. Students will reach their final settlements and the observers will collect and turn-in all negotiation worksheets. **(2 minutes)**
- F. Discuss the exercise and tally the results of the negotiations on the board. Poll the observers to determine what techniques were most effective and which justification for punishment the parties used: Utilitarian, Retributive, or a combination of the two. **(5 minutes)**
- G. Discuss the likely outcome of the negotiation in “real life” according to Washington sentencing guidelines (which utilize the “offender score” system). We expect that the settlements reached by the students will fall below the requirements of the Washington system. **(5 minutes)**

V. Evaluation:

- A. Student's responses during the brain storming session.
- B. Participation in the negotiation exercise. As usual, instructors will "float" from group to group during the exercise to evaluate student progress.
- C. The answers written on the negotiation worksheets.

VI. Assignment:

Journal assignment: Now that you have learned the actual penalty for "Delivery of Heroin" in Washington State, do you think it is fair, too harsh or too lenient? Why?

DIRECTIONS FOR NEGOTIATION

Distribute to all students

Prosecutors: Serve the interests of the state in providing effective law enforcement by negotiating an appropriate sentence for the defendant. One of your duties is to punish those who break the law.

Defenders: Represent the best interests of your client and achieve the most beneficial settlement possible in light of the evidence against her. Your duty is to represent your client even if you believe she is guilty.

Observers: Carefully observe the negotiation. Keep track of the negotiating techniques used, what worked well and what did not. Record the settlement that was reached and turn in all negotiation worksheets at the end of the exercise. Be prepared to answer questions in class following the exercise.

EVERYONE: Remember to apply what you know about the justifications for punishment to the negotiation:

1. **Utilitarian Theory:** What would benefit society most?
2. **Retributive Theory:** Guilty people deserve punishment.

NOTES:

1. Peggy Lerner is innocent until *proven* guilty.
2. The prosecution bears the burden of proving her guilty.
3. She must be proven guilty “beyond a reasonable doubt.”

Confidential Information – Defense

Distribute to all defense teams only

You have been appointed by the court to defend Peggy Lerner who lacks the funds to hire her own attorney. As a defense attorney, you know certain details about this case that the prosecution may not know. You may choose either to share these details with the prosecution, or keep them secret depending on your view of what is best for your client and what will be most beneficial to you in the negotiation.

1. The facts at first glance do not seem to favor your client.
2. However, after interviewing the police officer, you have discovered the possibility that Ms. Lerner was not given her warning of the “right to remain silent” (a.k.a., her “Miranda Warnings”). Of course, the lack of Miranda Warnings does not mean Ms. Lerner would go free, but it does mean that you could get her confession excluded from the trial.
3. The officer is pretty confident about his identification of Ms. Lerner for the sale on January 2nd, but far less so for January 1st. That means the confession is the only reliable evidence of the January 1st charge of Delivery of Heroin. If the confession is suppressed, the prosecution will have to drop count #1, but that will not affect count #2.
4. The judge in this case is politically conservative and normally favors the prosecution. It may be difficult to convince her that the confession should be thrown out.
5. Your client, Ms. Lerner, wants to continue her drug treatment and education. The cook at the restaurant where she works is a heroin addict and dealer. He gave her free drugs as long as she brought in money by selling drugs for him. She had been selling for about three weeks before the arrest. Ms. Lerner has been doing well in school and in her new treatment program. She is finally supporting her child and for the first time in her life, feeling like she is a help to her mother instead of a burden. If Ms. Lerner goes to state prison, the gains she has recently made will be lost. If she is sentenced to one year or less, she may be able to obtain work release in the county jail and continue with her job and schooling.

Confidential Information – Prosecution

Distribute to prosecution teams only

As a prosecuting attorney, you know certain details about this case that the defense may not know. You may choose either to share these details with the defense, or keep them secret depending on your view of what is best for your side and what will be most beneficial to you in the negotiation.

1. Your office is very busy and your superiors have ordered you to plea bargain rather than go to trial.
2. The officer is now less confident about his identification of Ms. Days for the first count of Delivery of Heroin that took place on January 1st. He is very confident about his identification for the second count (on January 2nd).
3. The business community and political leaders are fed up with drug crimes in that area and are pressuring you to “throw the book” at drug offenders. You are also getting pressure from your boss, the County Prosecutor, who is running for re-election on a campaign of “zero-tolerance” drug enforcement.
4. The defendant has quit her restaurant job and has gone to work in a hotel. She has started a new drug rehabilitation program and is doing well. She has also resumed her college courses.
5. It is possible that the officer forgot to read Ms. Days her **Miranda warnings** (i.e., “You have the right to remain silent...”) before she confessed to her involvement in the crimes. Of course, that does not mean Ms. Days will go free, but it could mean that the Judge will **suppress her confession**. This will not affect the second count of Delivery of Heroin from January 2nd, because the officer’s identification of Ms. Days for that charge is very strong. But on the first count, from January 1st, the officer is in doubt. So the confession is the only real evidence you have for that count. If the confession is suppressed, you will be forced to drop the first count of Delivery of Heroin. You feel it would be better to reach a settlement with the defendant and perhaps use the first count as a bargaining chip rather than risk having it dismissed at trial.

FACT PATTERN – THE CASE OF PEGGY LARNER

Distribute to all students

Defendant Peggy Larner is charged with two counts of **Delivery of Heroin**. On **January 1st 2001**, she sold \$20.00 worth of heroin to undercover officer, **Andrew Wiggin** on a street corner in downtown Seattle. **She was not arrested on that date**. However, on **January 2nd**, Officer Wiggin saw Ms. Larner on the same street corner. He again purchased \$20.00 worth of heroin from her. She was placed under arrest immediately. **She confessed to both offenses of Delivery of Heroin.**

The defendant, Ms. Larner, is a 29-year-old woman and is the oldest of 3 girls. She was 11 years old when her father died. One sister is a nurse and the other is institutionalized in a mental hospital. Ms. Larner's mother supported the family through domestic labor, unskilled factory work and welfare.

The defendant has a high I.Q. and did well in high school. She is now attending college during the day. She committed several offenses as juvenile, included marijuana possession, shoplifting, and one incident of stealing money from her teacher's purse at school. She began using marijuana at age 15 and later started using heroin. Her offenses as a youth were all related to her heroin addiction—she was stealing to finance her drug habit.

In **1997**, she was sentenced to prison where she spent the ensuing **15 months** in drug treatment. Prison officials praised her active involvement in the **drug treatment** program. She managed to stop using drugs for **3 years** after her discharge from prison and has committed no new offenses until now.

Ms. Larner became pregnant at age 18 and had a son who is being raised primarily by his grandmother (Ms. Larner's mother). She accepts full responsibility for her shortcomings as a parent. Since her release from prison, she has re-established her relationship with her son and made every effort to contribute to the financial and emotional support of her child. For the last 3 years, she has been working as a waitress at night while attending school in the day. She has completed 3 and one-half-years of her 4 year college computer degree. Her academic record is outstanding.

The Defendant's prior criminal record follows:

PRIOR CRIMINAL HISTORY

DATE	CRIME	SENTENCE
1986-88	Juvenile Offenses – Theft, Possession of Marijuana	Probation
1990	Theft	5 Days County Jail
1992	Burglary	30 Days County Jail
1993	Theft	180 Days County Jail
1997	Delivery of Heroin	15 Months State Prison
2001	Present Offense – TWO Counts Delivery of Heroin	?????

SENTENCING GUIDELINES

Distribute to all students

1. The sentencing range for **each count** of delivery of heroin is **0 to 10 years**.
2. Options you may consider include:
 - a. **Fine or probation** (no jail time)
 - b. Short term imprisonment in **County Jail** (under one year):
County jail allows work release or home detention but has NO facilities for vocational training, drug treatment or other rehabilitation.
 - c. Longer Term imprisonment in **State Prison**:
State prison has good rehabilitation, vocational and drug treatment programs but no home detention or work release options.
 - d. **Other options**: Special drug rehabilitation programs involving some combination of confinement, probation, medical and psychological treatment and community service.

Note: Sentences on the two separate counts Delivery of Heroin may be handed out:

1. **Concurrently**, so they are served at the same time or,
2. **Consecutively**, so they are served one after the other.

