



CELEBRATE KANSAS CITY

2024 FBA Annual Meeting and Convention

Keys to Successful Federal Criminal Outcomes: Relationships That Encourage Negotiation and Cooperation in Discovery and Issue Identification

#FBACon24

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KEYS TO SUCCESSFUL FEDERAL CRIMINAL OUTCOMES: RELATIONSHIPS THAT ENCOURAGE NEGOTIATION AND COOPERATION IN DISCOVERY AND ISSUE IDENTIFICATION

**Federal Bar Association
2024 Annual Meeting**



MEET YOUR PANEL

MODERATOR:
LUCINDA H. LUETKEMEYER, PARTNER, GRAVES GARRET,
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- Western District of Missouri, United States Attorney's
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- Berkowitz Oliver LLP



TOPICS WE WILL COVER TODAY

THE ROLE OF
RELATIONSHIPS
IN CRIMINAL
PRACTICE

EDISCOVERY

SENTENCING

PRE-
INDICTMENT
INTERACTIONS

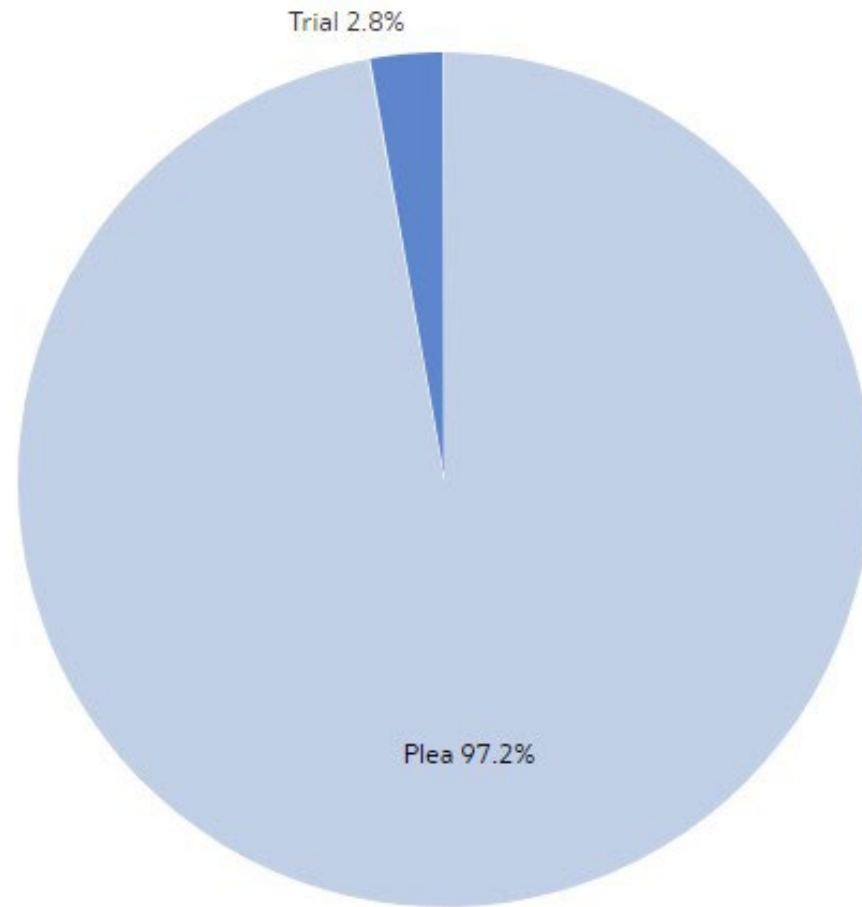
POST-
INDICTMENT
DISCUSSIONS



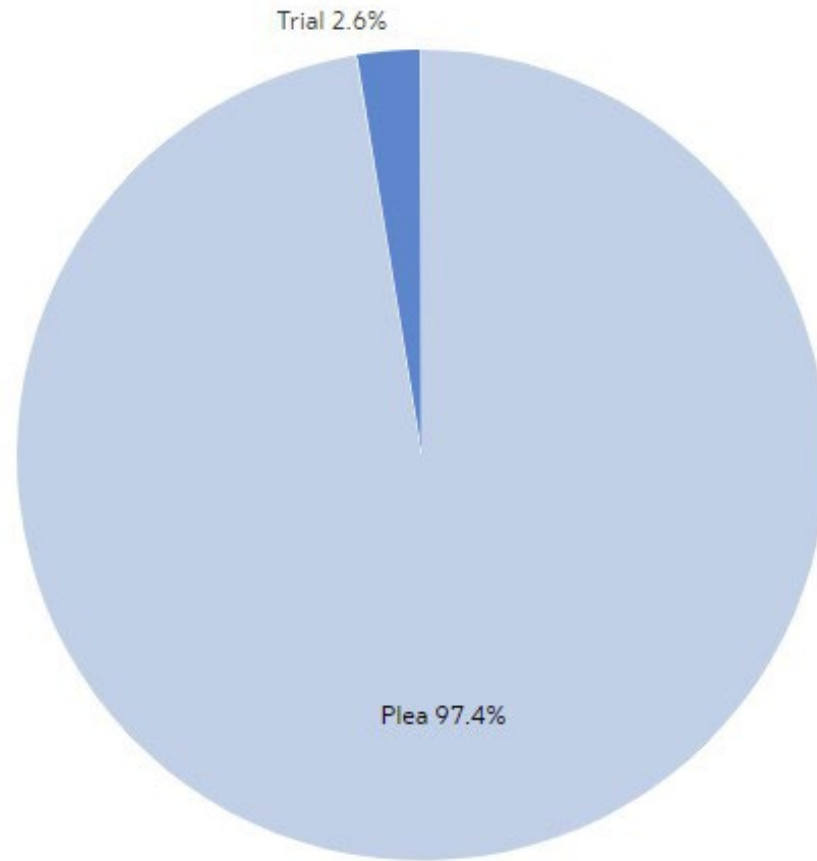


SETTING THE STAGE: STATISTICS TO KEEP IN MIND

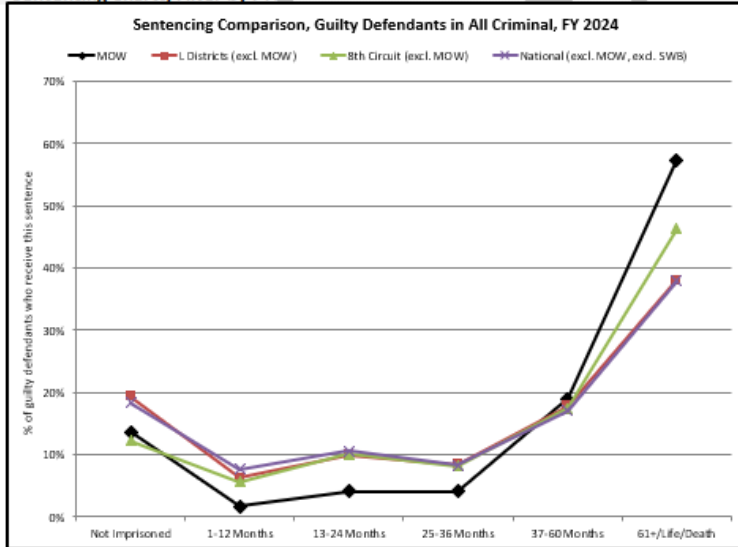
Guilty Plea and Trial
Fiscal Year 2023



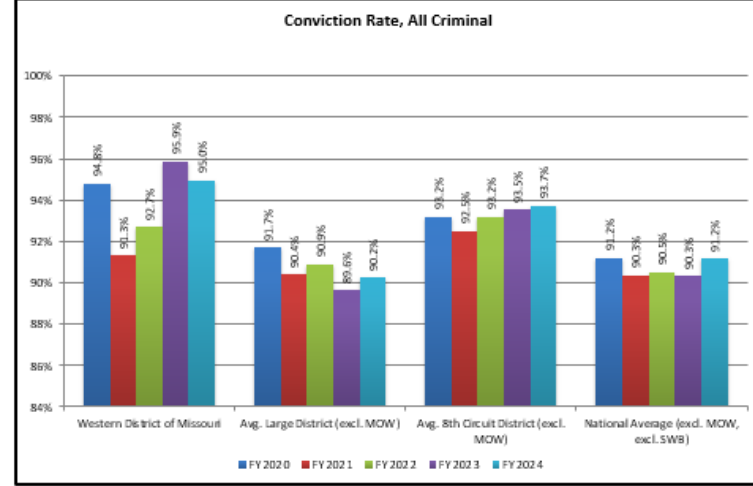
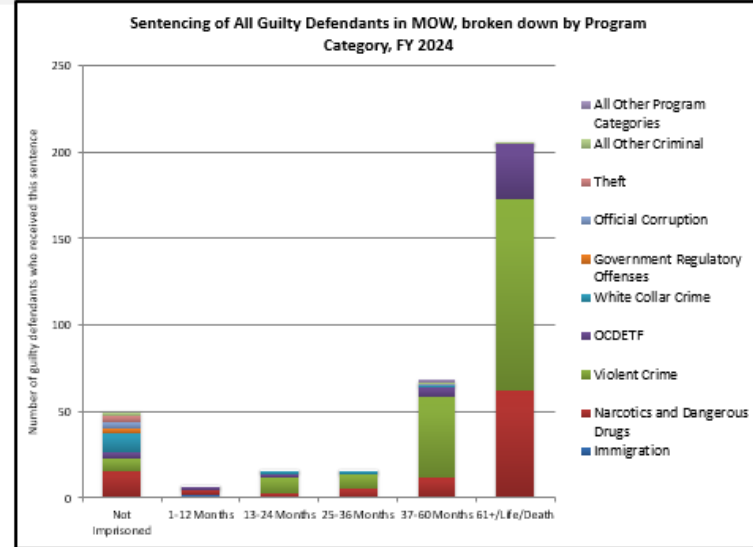
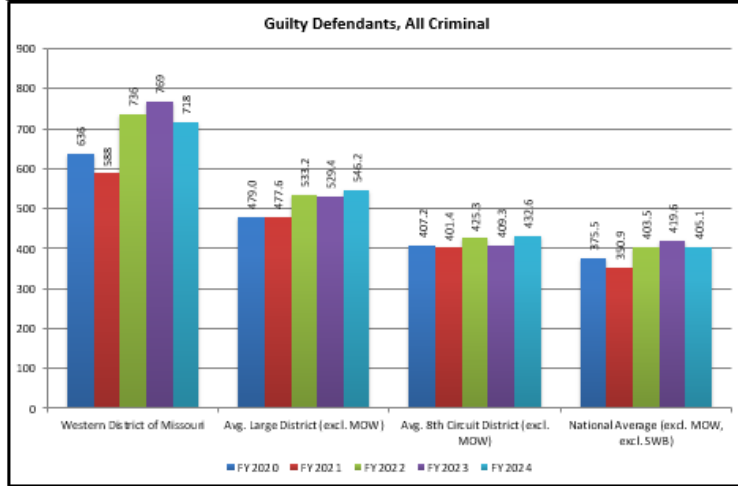
Guilty Plea and Trial
Fiscal Year 2023



Sentencing Charts, Filter by FY: 4



Conviction Rate for this Prog MOW: 95.0% Districts: 90.2th Circuit: 93.7National: 91.2%



RELATIONSHIPS CAN MAKE THE DIFFERENCE

THE ROLE OF RELATIONSHIPS IN CRIMINAL CASES



In general, how do professional relationships between defense attorneys and prosecutors impact the negotiation process in federal criminal cases? An emphasis on good faith and trust is important.

Examples where a strong professional relationship led to a positive outcome?

What are some best practices for fostering a collaborative environment between defense attorneys and prosecutors, especially in the early stages of a case?

Fed. Rule of Crim. Pro. 16.1 – Pretrial
Discovery





EDISCOVERY IN CRIMINAL CASES



Engage in early and ongoing discussions to agree on the scope, timeline, and procedures for eDiscovery.

Consider the use of an expert consultant and review platform to help with eDiscovery review and organization

Seek collaborative solutions that minimize cost and increase efficiency in the eDiscovery process

Use of taint teams for discovery review and protecting privilege



NEW GOVERNMENT PRESERVATION GUIDANCE

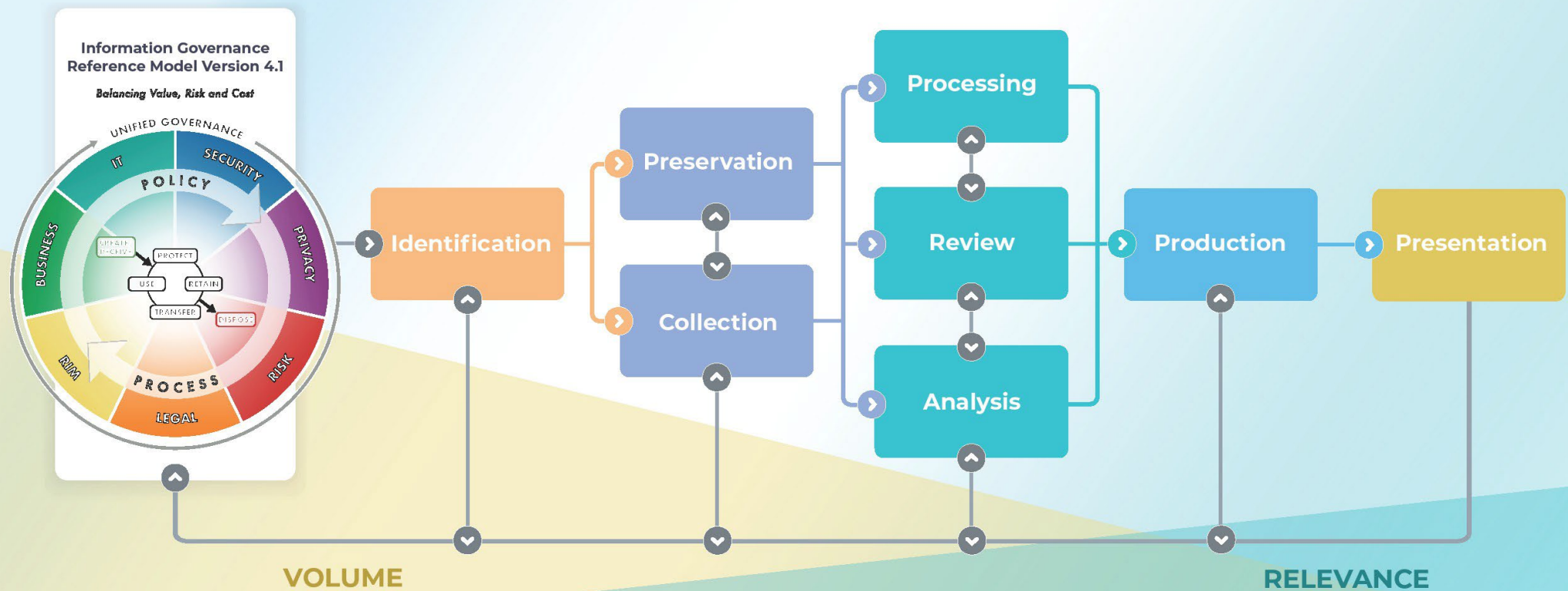
- **FTC and DOJ Update Guidance That Reinforces Parties' Preservation Obligations for Collaboration Tools and Ephemeral Messaging**

- January 26, 2024

- The updated model letter adds a new requirement that companies submit an "Information Systems Diagram," showing where and how "the Company stores all physical and electronic information in its possession, custody or control," including: 1) information systems (e.g., email or voicemail); 2) Collaborative Work Environments (platforms used to create, edit, store, and access documents and information by authorized users, such as Microsoft SharePoint and iManage); and 3) backup storage systems.



Electronic Discovery Reference Model





SUCCESSFULLY NAVIGATING THE PRE-INDICTMENT PHASE

- As the facts of a case begin to unfold from both the defense and government perspective, what strategies are useful to establish a line of communication that is clear, useful, and protects the rights of a defendant?
- How are pre-indictment arguments handled? How are pre-indictment facts and conclusions communicated between the parties?
- What does an exchange of documents look like at this phase? Are there any benefits to a reverse proffer? What role does a grand jury subpoena play in communication strategies (target v. witness)?



POST – INDICTMENT: THE CHANGING STRATEGIES FOR RESOLUTION/TRIAL



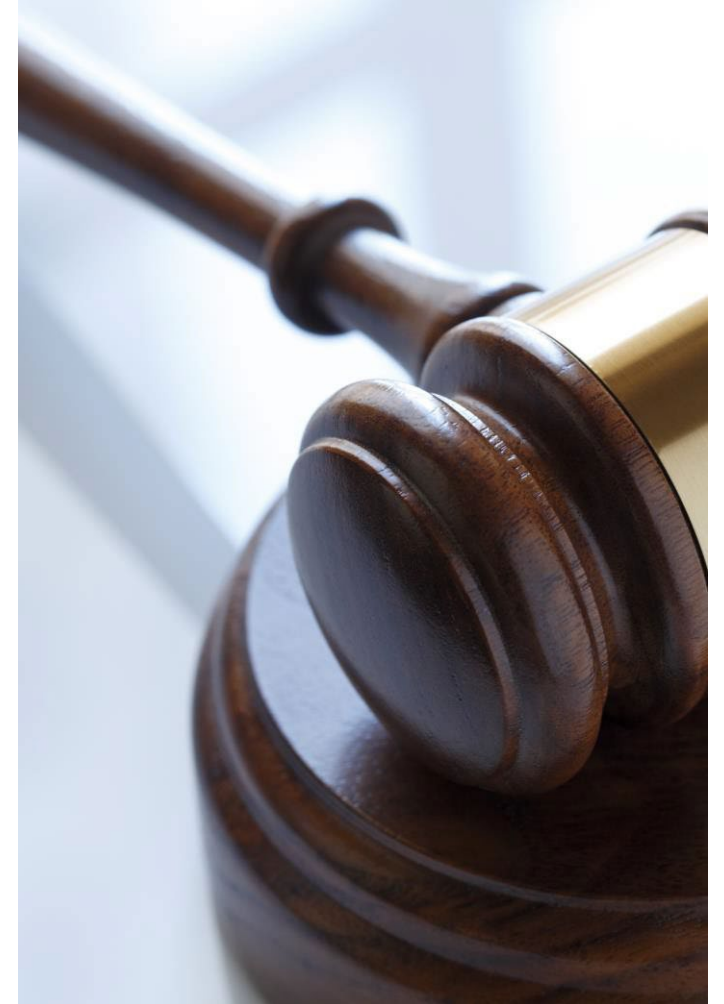
TRIAL

THREE OPTIONS FOR RESOLUTION

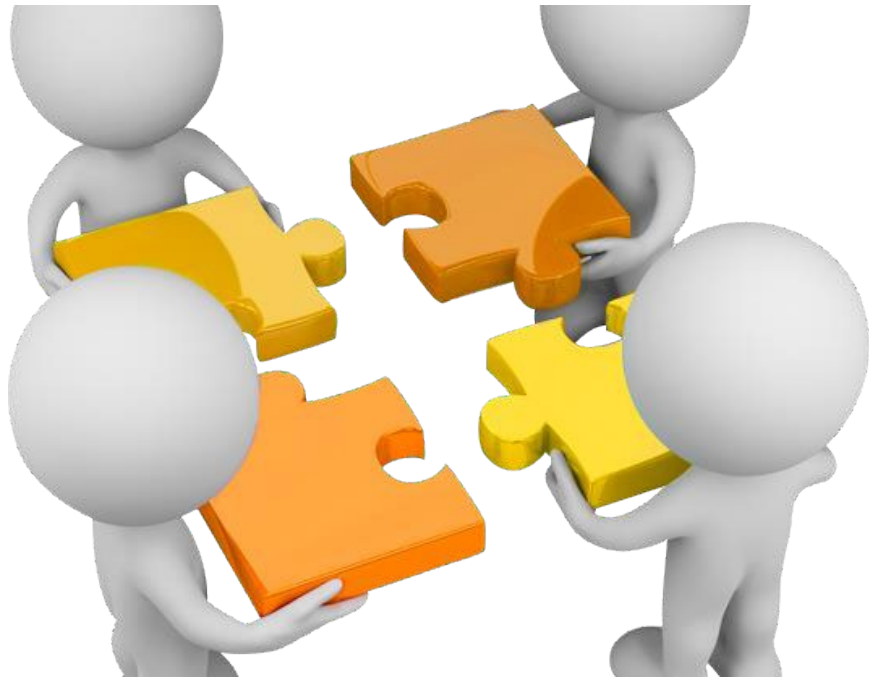
Guilty Plea

Trial

Diversion/Dismissal



IS POST- INDICTMENT COOPERATION POSSIBLE?



POST-INDICTMENT – NOW WHAT?

Face to face communication still plays an important role in helping to lay the groundwork for the working relationship between defense and the government. Emails, phone, and video conference are good subsequent forms of communication for follow ups.

In the first meeting, discuss discovery logistics, including collected volume of materials, eDiscovery formats, and production timelines AND the point of contact for questions on same.

What are some best practices for fostering a collaborative environment between defense attorneys and prosecutors, especially in the early stages of a case?



SENTENCING IN CRIMINAL CASES

- In Federal cases, the US Sentencing Guidelines are the primary source of reference for both parties
- What role do the 3553(a) factors play in presenting a case after a defendant has entered a plea of guilty?
- What is the role of a Sentencing Memorandum and is it necessary?
- What are the strategic considerations that both sides consider as they approach the sentencing process?
- What role does supervisory/client input play a role in determining what must/should be emphasized at sentencing?
- What communication occurs between the parties before sentencing?
- The role of plea agreements in cases (binding v. non-binding)





THANK YOU

LUCINDA, J.R., KATE, & SHAZZIE