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When the prosecution indicts, and then indicts again.

Â Bill of Rights.Â (From the public domain.)Â Â What should a criminal defense lawyer do when his or her client is caught with a bunch of drugs, unlawful weapons, and other contraband, but the prosecutor only files criminal charges on the drugs? On the one hand, resolving the drug case might make the other potential charges go away by keeping attention away from the other possible charges. On the other hand, the defendant might become the victim of successive indictments. A crystal ball would come in handy here. Â ÂÂ prosecutor is not automatically required by the Fifth Amendment's double jeopardy clause to indict all at once for crimes discovered on the same date against the same defendant arising from the same operative facts. Maryland's highest court made this clear today in reversing a trial judge's dismissal of a felony prosecution where the defendant had already been convicted on a drug charge relating to the same search that turned up the weapons that were later prosecuted in court and which became the subject of the trial court's reversal. Colonel Preston Long v. Maryland, __ Md. __ (Aug. 25, 2008). Â This situation underlines the importance for criminal defense lawyers to decide whether to include or exclude uncharged criminal conduct in plea negotiations. On the one hand the uncharged conduct may go out of sight and out of mind if not mentioned. On the other hand, because the uncharged criminal conduct may not go away, the client needs to be involved in the decision whether to stay silent on the uncharged conduct in any guilty plea negotiations. Why, though, would a prosecutorÂ remain silentÂ about uncharged criminal conduct during guilty plea negotiations, as opposed to dangling them in front of the defense lawyer in an effort to try to persuade the defendant to enter a guilty plea? Â Jon KatzÂ Â ADDENDUM: Guilty plea negotiations are part of the harsh reality of criminal defense. One side of me dislikes guilty pleas very much. However, a criminal defense lawyer is obligated to do as much good and as little harm for a client as possible, always coming from a position of strength. For instance, if I can get a misdemeanor disorderly conductÂ guilty plea agreement from a client caught redhanded setting a building on fire, that might just be a big defense victory.

Posted by Jon Katz in Criminal Defense at 00:00