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When money talks in criminal court.

Unfortunately, we are far away from a society that provides equal access to justice and the courthouses. The criminal defendant with the most money has more lawyers to choose from and to pay. The defendant with money has a wider and more flexible and immediate choice of expert witnesses. The defendant with money is able to pay restitution for theft and other cases more immediately, so as sometimes to have a stronger negotiating advantage. In Virginia, money sometimes can make a whole host of misdemeanors go away through the satisfaction and discharge process that gives a judge full discretion -- without any power in the prosecutor to do worse for the defendant -- to decide whether to dismiss a criminal prosecution upon written confirmation by the alleged victim that s/he has received satisfaction for the injury (so long as the alleged victim is not a law enforcement officer or, generally, a family or household member; and so long as the alleged offense is not alleged to have been committed riotously or with the intent to commit a felony). What do I do about this lopsided state of power affairs for people with money and people with less or no money? The solution is not for the people with money to be unable to pay for justice, but to overhaul the criminal justice system (including decriminalizing much of it, and increasing resources for indigent defendants and those who barely fail to meet the requirements to obtain indigent defense) so that the people with less money can catch up with this money gap. Jon Katz

Posted by Jon Katz in Criminal Defense at 01:00