

**DESCRIPTION
OF THE
FEDERAL CRIMINAL
JUSTICE SYSTEM
FOR
DEFENDANTS**

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This pamphlet has been provided to help you better understand the federal criminal justice system. Use it only as an introduction. It is not a substitute for legal advice. Your attorney will advise you on your case. He or she is aware of the detailed statutes, rules, and court decisions that govern your particular case.

Although you have been charged with a crime, you are assumed to be innocent. The arrest and charges are ways to bring the case to court, not proof of guilt. You do not have to provide evidence. The government attorney has the responsibility of proving the case against you.

You have a right to an interpreter during court proceedings. Request one if you do not speak or understand English well. He or she will be with you in court to translate the statements of the judge, attorneys, and witnesses. You may also ask that certain court documents be translated for you.

Your case is being heard in federal court. That means that you are suspected of breaking a federal law, generally one created by the United States Congress that applies to all fifty states.

HOW THE CASE BEGINS

Upon your arrest, officers read a "Miranda Warning," advising you of your rights:

1. You have a right to remain silent. Anything you say can and will be used against you in court;
2. You have a right to an attorney;
3. You may request that the attorney be present during questioning;
4. If you cannot afford an attorney, the court can appoint one for you.

If you choose to give up these rights, anything you say may be admitted into court. You can ask for an attorney at any time or stop talking at any time. If you do either, questioning must cease.

The United States Marshals record your fingerprints and ask for information which identifies you. A fingerprint report is prepared showing your criminal record if you have one.

The arrest does not mean that you are guilty of a crime. A prosecutor, grand jury, judge, and jury must independently decide if enough evidence exists to support a charge.

INITIAL APPEARANCE

After the arrest, you are brought promptly before a magistrate judge. He or she determines whether you may be released from custody while awaiting formal charges or dismissal of the case.

You do not have to make any statement at the initial appearance and may ask to consult with an attorney.

ATTORNEYS

Although you may choose to defend yourself without an attorney, the court strongly recommends that you obtain counsel to protect your legal interests. A lawyer will explain pertinent law, advise you on decisions, and defend you in court. If you represent yourself, you may hurt your case without meaning to do so. Statements made by you in open court may be inconsistent with a claim or position that you may adopt at a later stage of the trial or proceedings. While you have a right to represent yourself, representing yourself may require that you exercise extreme caution in what you say.

If you cannot afford an attorney, the magistrate judge will appoint one at the government's expense. Your attorney will come from a panel of skilled and experienced attorneys selected by the court. You do not have a right to select the attorney of your choice from the panel of attorneys paid for by the government.

If you are not content with your attorney, you may request that your attorney be changed. A judge will deny your request, unless you provide a good reason for changing attorneys.

BAIL

In order to be released from custody, the court may require you to put up bail to guarantee your return. There are different types of bail that your attorney can describe for you. One type of bail is cash, which is deposited with the court at the time of your release. Cash bail is returned to you at the end of your case, whether you are found guilty (convicted) or not guilty (acquitted).

If you do not have the money to put up cash bail, you may ask friends and family to help, or you may obtain the help of a bail bondsman. A bondsman posts bail in return for a fee and other guarantees that you will appear in court. There are other types of bail that your attorney can describe to you.

Before a judge decides whether to release you on bail, you will be interviewed by a pretrial services officer. The officer's job is to gather information and recommend to the judge whether you should be released, and if so, what bail you should be required to deposit to insure that you will return to court when required to do so. You must answer truthfully.

The judge may decide to release you without bail based on your promise to appear when requested, to release you with the requirement that you produce bail, or to hold you in jail without bail. If the judge does set bail, you may bring it to the courthouse during business hours.

The judge may set conditions on your release, including travel restrictions, orders to stay away from a victim or witness, and requirements that you report in person or by telephone. The judge may also impose supervision by a pretrial services officer which may include periodic visits to your home to make sure you are obeying all the conditions set by the judge. If you

violate these conditions, you may be arrested and more charges may be brought against you. A crime committed while you are released on bail is charged as a separate serious offense.

If you are released on bail, you must appear in court every time your case is scheduled. If you fail to appear, the judge will issue a warrant for arrest. Once issued, the warrant remains on your record. If you or your family or friends have posted bail, you or they may lose it.

It is a good idea to note your next court date each time you appear in court. Your lawyer should inform you of any scheduling changes. You must let your attorney know where you can be reached at all times. It is your responsibility to know where and when to appear.

FORMAL CHARGES

First the arresting officers meet with the government prosecutor in the case against you. If the prosecutor (the Assistant United States Attorney) believes that a reasonable basis exists for the charges, he or she drafts a complaint and presents it to the court. In some cases, the complaint may have already been presented to the court before your arrest.

Before the prosecutor can bring formal charges against you, a court must independently determine whether a reasonable basis—that is probable cause—exists for the charge by considering the evidence presented by the prosecutor. These hearings occur in front of a magistrate judge, judge, or grand jury depending on the seriousness of the offense:

- A minor offense is tried in front of a magistrate judge; proceedings to bring formal charges are not required. Misdemeanors can be tried before a magistrate judge, but only when the defendant gives up (waives) his right to a trial before a judge.
- A more serious offense punishable by a prison sentence of a year or less is first heard in front of a magistrate judge in a preliminary examination. He or she determines whether to allow the charges in a criminal complaint. It is the magistrate judge's duty to examine the complaint to determine its adequacy and whether the crime charged is a felony or misdemeanor. A preliminary hearing before the magistrate judge is also available to all defendants who have not been indicted.
- A felony, a crime punishable by more than a year in prison, is formally prosecuted through an indictment or information as described below.

INDICTMENT OR INFORMATION

In the next step, the prosecutor presents evidence against you to a grand jury in order to obtain an indictment. This usually happens within a month of your arrest. An indictment is a formal charge made by a group of citizens sitting as a grand jury. It requires that at least twelve grand jurors agree that there is probable cause to believe that you committed the crimes with which you are charged.

Grand jury proceedings are secret. You may choose to testify in front of the grand jury. If you do so, the prosecutor will ask you questions. Your lawyer will not be permitted to be with you while you testify, although he or she can wait outside of the grand jury room. You may

leave the grand jury room to speak to him or her. Any statement you make in front of the grand jury can be used against you at trial. You may ask that witnesses be heard on your behalf, but you may not be present when they testify.

On your attorney's advice, you may choose to give up your right to an indictment by a grand jury. Instead, you will be charged by the government prosecutor through a document called an information.

PRETRIAL DIVERSION

On rare occasions, the prosecutor chooses not proceed by indictment and may offer you the opportunity to participate in a Pretrial Diversion Program instead. In this event, you will be referred to a pretrial services officer who will conduct an investigation and evaluate your eligibility to participate. If you successfully complete the diversion program, the prosecutor will move to dismiss the charges.

AN ARRAIGNMENT

The arraignment is your opportunity to plead not guilty, guilty, or no contest to the charges (*nolo contendere*). The indictment or information is read in open court. The court gives you a copy of the indictment before asking you how you wish to plead.

NEGOTIATING WITH THE PROSECUTOR: PLEA BARGAINING

In some cases, you may decide to waive your right to a trial and plea bargain instead. A plea bargain is an agreement between you and the prosecutor to settle your case.

The prosecutor may offer to recommend a particular sentence agreeable to you or may move to dismiss other charges against you in return for your guilty plea. Your plea is not final until it is accepted by the judge. The court may reject the terms of the plea agreement.

If the prosecutor makes a plea recommendation which is not binding on the court, the court can accept the plea without accepting the recommendation. In this case, you may not be able to withdraw your plea, and you will be bound by the judge's sentence whether or not it deviates from the plea's terms. You will also have lost your opportunity to go to trial. Listen carefully to what the judge says when he or she takes the plea. What other persons tell you the judge will do is not binding on the judge.

Before deciding to plead guilty, consider the advantages and disadvantages carefully. Consult with your attorney.

If you plead guilty, the judge must address you directly in open court in order to explain the nature of the charges. There may be mandatory minimum penalties imposed by law. There will be applicable sentencing guidelines.

The judge will determine your sentence by accepting the plea agreement or by applying the statutes and sentencing guidelines. The guidelines are rules which help the judge determine sentence length and fines for specific crimes. The judge decides how to apply the guidelines,

after considering a pre-sentence report, your statement, statements from your friends and relatives, your lawyer's statement, the government's recommendation and, sometimes, evidence.

A defendant who pleads guilty has a criminal record, even if he or she does not serve any time in jail or prison. If you plead either guilty or no contest, you give up certain rights including a right to a jury trial. If you plead not guilty, your case goes to trial.

SUPPRESSION HEARINGS BEFORE TRIAL

If law enforcement agents took property from you as evidence, or you made a statement to them, or they had a witness identify you, and it is believed by your attorney that they acted improperly, your attorney may file a motion to suppress. This motion seeks to prevent such evidence from being presented at your trial.

You have a right to be present at the suppression hearing. Your attorney and the prosecutor may question witnesses. Based on the witnesses' testimony, the judge may decide that the evidence was obtained improperly and that the prosecutor cannot present the evidence against you at trial.

BRINGING THE CASE TO TRIAL

The prosecutor must bring your case to trial promptly. Certain unavoidable delays are allowed. You may give up your right to a speedy trial if, for example, your attorney needs more time for motions, investigation, or negotiations with the prosecutor. If the prosecutor is not ready to try your case within the time required, the court may dismiss the case.

The court will decide if other defendants will be tried with you. It will also decide whether all the crimes with which you are charged will be tried at the same time.

THE COURTROOM

A number of court officials will be present in court in addition to your attorney. They enforce the rules governing courtroom behavior and proceedings:

The Judge or Magistrate Judge presides and decides questions of law, explains the legal points to the jury, and determines the sentence.

The Court Clerk processes court papers, manages the calendar, and swears in witnesses.

The Court Interpreter translates everything that is said in court, as required by defendants or witnesses.

The Court Reporter records all the court proceedings. The reporter may ask people to repeat certain words to maintain accuracy. The reporter can create a written transcript of the proceeding.

The Deputy United States Marshals maintain order in the courtroom, provide security, and escort defendants in and out of the courtroom.

The Jury listens to both sides of a case and decides guilt or innocence. A trial jury consists of twelve persons. A number of alternates are chosen who serve if a regular juror must be excused before jury deliberations begin.

The Prosecutor, the Assistant United States Attorney, presents the evidence on behalf of the government.

Your Attorney is present at all times that the case is before the court.

BEGINNING TRIAL

As a person accused of a crime, you have the right to a trial by jury. You and the prosecutor may agree to give up this right with the approval of the court. A judge alone will then decide the case. Defendants rarely give up the right to a jury trial.

A jury trial begins with jury selection. This is an important stage in which the judge or magistrate judge, attorneys, and you select the group of twelve people who decide the case. A jury is chosen from a group of citizens randomly selected by computer from the Eastern District of New York. That district includes the counties of Brooklyn, Nassau, Queens, Staten Island, and Suffolk. Defense counsel or the prosecutor may ask the judge to dismiss a prospective juror if it appears that he or she cannot serve fairly. In addition, the prosecutor and your attorney may exercise a number of "peremptory" challenges. Peremptory challenges give the defense counsel and prosecutor the right to request that a juror be excused. These challenges may not be exercised on the basis of race, ethnicity or sex.

Once approved, the jurors and alternates are sworn in and seated in the jury box. The judge explains the trial procedure, principles of law, and each juror's duties.

You have an absolute right to attend the trial. If you are in jail, an officer escorts you to the courtroom. You will be given civilian clothes so that the jurors do not know that you are in custody.

If you are free on bail, you must appear for the trial's commencement. Once trial begins, if you do not continue to appear, the trial may proceed without you.

OPENING

The prosecutor begins the trial with an opening statement explaining how he or she will prove that you committed the crime charged. Your attorney may make an opening statement but is not required to do so. The burden of proving beyond a reasonable doubt that you are guilty is on the prosecutor.

PROSECUTOR'S CASE

To prove the government's case, the prosecutor introduces evidence against you. Evidence consists of statements from witnesses who appear in court or by deposition and are sworn to tell the truth, the physical objects (exhibits) such as a document, a weapon, a map of the crime location, or a photograph. Recordings of conversations to be played before the jury and transcripts of the recording may also be used.

The prosecutor questions each of the government's witnesses under direct examination. Your lawyer may then question the same witnesses under cross-examinations. Either side may object to the other side's questions, answers, or exhibits. When an attorney makes an objection, the judge decides whether to allow the question, statement or exhibit. "Sustained" means the objection is valid. "Overruled" means it is invalid. In some instances, the judge will consult with attorneys outside the hearing of the jury at the side bar of the court.

DEFENSE

You and your attorney then decide whether to offer evidence in your "defense." You have a right to consult with your attorney and help make decisions as to how he or she will conduct the trial. You do not have to produce any evidence, testify, or present any defense at all, because you are presumed to be innocent.

You have an absolute right to decide whether or not to testify on your own behalf. The jury will be told that your decision not to testify cannot be held against you. Your decision whether or not to testify is often a critical one.

If you and your attorney decide to present evidence in defense, the judge may allow the prosecutor to present additional evidence in rebuttal.

If something occurs which is prejudicial to your case, your attorney may move for a mistrial. If the judge grants the motion, the jury will be discharged. The prosecutor may then begin a new trial.

SUMMATION

At the end of trial, your attorney and the prosecutor make closing statements called summations. The prosecutor sums up first and last.

The judge then explains the law to the jury as it applies to your case. The jury is taken to a closed room to discuss the case in private and to reach a decision. The decision is called a verdict. While deliberating, the jury may send notes to the judge asking for testimony to be read back or for other help. It cannot hear new evidence.

DECIDING GUILT OR INNOCENCE

The jury must weigh the evidence and determine whether you are guilty beyond a reasonable doubt. If the jurors have a reasonable doubt about whether you are guilty as charged, they must find you not guilty. If satisfied beyond a reasonable doubt of your guilt, the jury must find you guilty. If you are being tried from more than one crime, the jury will reach a separate verdict for each crime.

The decision of the jury must be unanimous. Occasionally, after much deliberation, a jury cannot agree on a verdict. In such a case, the judge may declare a mistrial. The prosecutor may then try you again.

If you are acquitted, you will be released immediately if no other charges are pending or there is not a detainer by another agency such as the Immigration and Naturalization Service. You cannot be tried for the same crime again unless there has been a mistrial.

If you are found guilty, your case is adjourned so that the judge can determine the sentence. Generally you will be placed in jail to await sentencing.

AFTER TRIAL

Before sentencing, your attorney may make a motion to set aside the decision of the jury. The judge may then dismiss or reduce the charges or provide for a new trial. Judges rarely grant these requests.

SENTENCING

The Probation Department interviews you and prepares a report to help the judge in determining the sentence. It is generally best to cooperate in this process since you may be able to provide favorable information. The judge relies heavily on this report in sentencing. You and your attorney may seek to correct any errors in the report.

You, your supporters, your attorney, the prosecutor, and the victim of your crime, if any, have a chance to speak at the sentencing. Your attorney may prepare a memorandum suggesting how the judge should rule. People can write letters to the judge and can appear to testify at the sentence.

The judge weighs the seriousness of the crime, your background, any prior criminal record, the sentencing guidelines, and your family and community ties in deciding the sentence.

If the jury found you guilty of more than one charge, the judge may impose concurrent sentences; these are sentences that run at the same time. The judge may also, on some rare occasions, impose consecutive sentences; these are sentences that run one after the other so that you will stay in prison longer.

You are required to pay a fee of fifty dollars for each conviction of a crime. You may be fined and compelled to make restitution, that is, to pay people you have injured. In some cases, you may be placed in a community treatment center or required to serve a sentence in your home or to provide services to the community.

If you are sentenced to probation or supervised release, the Probation Department will supervise your release and impose specific conditions. If you violate any of these conditions or fail to follow the probation officer's orders, you will be arrested, and the judge may imprison you or otherwise extend your punishment.

VOLUNTARY SURRENDER

If you are out on bail and are sentenced to a period of imprisonment, the judge may permit you to surrender voluntarily to an institution selected by the Bureau of Prisons in advance of your surrender date. Voluntary surrender is not a matter of right, but if the judge permits it,

you will have the opportunity to travel to an institution on your own rather than in the custody of the United States Marshal. You must pay your own travel expenses.

APPEALS

An appeal is a request to a higher court to review possible errors made at the trial or on motions. After sentencing, you have a right to appeal your sentence or conviction or both. Even if you pled guilty or accepted a plea bargain, you may appeal certain questions including the judge's application of the sentencing guidelines.

Your appeal will be decided by a panel of three judges appointed to decide appeals. You have a right to a court-appointed appellate lawyer if you cannot afford to hire one yourself. The lawyer will argue the appeal without your being present, but he or she will consult with you on the brief and you may be able to supplement his or her arguments in writing.

AFFIRMANCE

If the appellate court finds no error in the trial court's decision, your sentence or conviction is affirmed, and you have lost your appeal. Most cases are affirmed. You have a limited right to petition for further review to the United States Supreme Court. Most such petitions are denied.

REVERSAL

If the appellate court finds that the lower court made a substantial error, the decision of the trial court is reversed. All or some of the charges may be dismissed. You may receive a new trial. Your conviction may be modified so that, for example, you receive a different sentence.

INCARCERATION DURING AN APPEAL

You may ask the district court judge to be released from prison while you await the results of an appeal. The request is rarely granted.

COLLATERAL ATTACK

In some very limited circumstances there may be grounds for attacking your conviction even after your final sentence and appeal. You can consult your attorney or the pro se clerk of the court.

April 10, 1995

Federal Courthouse, Brooklyn

Courtroom 10

Judge Jack B. Weinstein