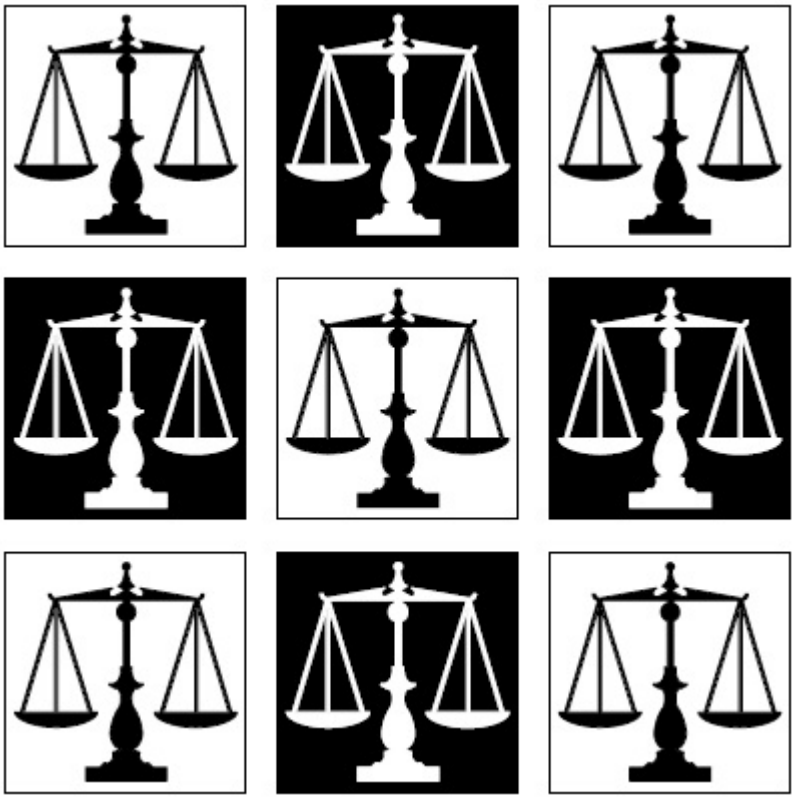
U.S. Department of Justice
Antitrust Division

Victim Witness Handbook



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INTRODUCTION

If you are a victim of or a witness to a crime, the Victim-Witness Assistance Program is designed to provide you with services while you are involved in the criminal justice system.

As a victim of a crime, you may be experiencing feelings of confusion, frustration, fear, and anger. Our staff can help you deal with these feelings. We also will explain your rights as a victim or witness, and help you better understand how the criminal justice system works.

One of the responsibilities of citizenship for those who have knowledge about the commission of a crime is to serve as witnesses at the criminal trial or one of the other hearings held in connection with the criminal prosecution. The federal criminal justice system cannot function without the participation of witnesses. The complete cooperation and truthful testimony of all witnesses are essential to the proper determination of guilt or innocence in a criminal case.

The Department of Justice is concerned that victims of and witnesses to crimes are treated fairly throughout their contact with the criminal justice system.

The Antitrust Division of the United States Department of Justice has taken several steps to make the participation by victims of and witnesses to crimes more effective and meaningful. One of these steps is the preparation of this handbook. We hope that it will provide answers to many of your questions and give you sufficient general information to understand your rights and responsibilities.

Thank you for your cooperation and for your service as a witness. We appreciate the sacrifice of time that it requires.

PART I: GENERAL INFORMATION FOR VICTIMS AND WITNESSES

The Antitrust Division of the Department of Justice is prosecuting the case in which you are involved. The Division is responsible for prosecuting all criminal and civil federal antitrust litigation on behalf of the Department of Justice, as well as other federal offenses that occur in conjunction with an antitrust offense. The Division consists of numerous litigating sections located in Washington, D.C. and three regional field offices in Chicago, New York, and San Francisco. The name, address, and office telephone number of the Antitrust Division attorney prosecuting this case, as well as the Victim-Witness Coordinator for the appropriate section or field office, is listed at the end of this handbook.

You are either a victim of a crime or are being asked to serve as a witness for the United States in a particular case. This handbook is designed to help you understand the federal criminal justice system.

The people of the United States are depending on you and every other citizen who knows something about a crime. Only with your help can we have a fair and effective system to bring criminals to justice.

* * * * *

1. IF YOU ARE THE VICTIM OF AN ANTITRUST VIOLATION, YOU ARE ENTITLED TO CERTAIN RIGHTS

Under the law, victims of federal offenses such as antitrust violations are entitled to certain rights. Stated briefly, these are

(a) The right to be reasonably protected from the accused
(b) The right to reasonable, accurate, and timely notice of any public court proceeding.
(c) The right not to be excluded from any such public court proceeding.
(d) The right to be reasonably heard at any public proceeding in the district court involving release, pleas and sentencing.
(e) The reasonable right to confer with the attorney for the Antitrust Division handling the case.
(f) The right to restitution as provided in law.
(g) The right to proceedings free from unreasonable delay.
(h) The right to be treated with fairness and respect.
(i) The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.
(j) The right to be informed of the rights under this section and the services described in section 503(c) of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607(c)) and provided contact information for the Office of the Victims' Rights Ombudsman of the Department of Justice.

How these rights are provided in any particular case will depend on the facts of the case, the need of the Government effectively to investigate and prosecute the offense, and the legal rights of the defendants. While the Antitrust Division attorney prosecuting this case will do his or her best to see that you receive the rights to which you are entitled, Division attorneys represent the United States and not the victims of antitrust violations. As a crime victim you can seek the advice of your own attorney concerning any of the rights described above.

The Department of Justice has also established an administrative complaint process for victims who believe that they have been denied any of the rights described above by a Department employee. A complaint form can be obtained from an Antitrust Division Victim-Witness Coordinator or attorney who is prosecuting the case, or can be downloaded at http://www.justice.gov/atr/securing-victims-rights-administrative-complaint-procedure, and the completed and signed form should be sent to the Antitrust Division point of contact identified on the form. Complaints will be acknowledged and investigated and, if appropriate, corrective action will be taken against the employee. The decision of the Department of Justice with respect to the action taken in response to an administrative complaint is final and may not be appealed to the courts. However, this process is not intended to help you obtain the rights to which you may be entitled in the case at hand. If you believe that you are not receiving the rights described above or elsewhere in this handbook, please let the Victim-Witness Coordinator or attorney prosecuting the case know as soon as possible. Every effort will be made to provide you with your rights as a victim or to explain why certain rights cannot be provided.

More information concerning victims' rights, including information about upcoming public court proceedings in matters being prosecuted by the Antitrust Division, can be found at: http://www.justice.gov/atr/victims-rights.

2. AS A VICTIM OR WITNESS, YOU ARE ENTITLED TO UNDERSTAND WHAT IS HAPPENING IN THE CASE IN WHICH YOU ARE INVOLVED

If you have questions about the case in which you are involved, you should feel free to call the Antitrust Division Victim-Witness Coordinator or attorney who is prosecuting the case and ask questions. Although much of the information gathered during the course of a criminal investigation is confidential and may not be discussed except in court, we will do our best to answer your questions. You may also request that the prosecutor contact you during the case regarding various stages of the proceeding.

3. WITNESSES ARE ENTITLED TO A WITNESS FEE FOR EVERY DAY THAT THEY APPEAR IN COURT IN CONNECTION WITH THE CASE

If you are not a federal government employee, you will receive a witness fee for each day that you are required to attend court in connection with the case, including time spent

waiting to testify. Out-of-town witnesses receive reimbursement for certain travel expenses in addition to their daily witness fee. You will receive information regarding fees and expenses prior to the time you are requested to appear.

At the conclusion of your testimony, you will complete a witness voucher to make a claim for your fees. Generally, a check for all fees will be provided to you approximately four to six weeks after your testimony.

If you are a federal government employee, the Antitrust Division will work with the Department's Special Authorization Unit to handle travel and to secure a "Certificate of Attendance" that will enable you to receive your regular salary, notwithstanding your absence from your job. You will not collect a witness fee in addition to that salary.

4. YOU HAVE THE RIGHT TO BE FREE FROM ANY THREATS

If anyone threatens you or you feel that you are being harassed because of your contribution to the case being tried, you should immediately notify the Antitrust Division or the Federal Bureau of Investigation (FBI). The telephone number for the local office of the FBI is listed in your telephone directory under United States Government. IT IS A FEDERAL OFFENSE TO THREATEN, INTIMIDATE, HARASS, OR MISLEAD A WITNESS IN A CRIMINAL OR CIVIL PROCEEDING. Victims and witnesses have the right to be free of harassment or intimidation by the defendant or others.

Since antitrust defendants are routinely released on bond or on their own recognizance pending trial, you should not be surprised if you happen to see the defendant on release prior to trial. Nevertheless, if you have any concerns about a defendant's release, please discuss them with the Division attorney prosecuting the case.

Of course, if you are threatened or harassed while you are attending court proceedings, you should report that fact immediately to the prosecutor.

5. DISCUSSING THE CASE WITH OTHERS

Often we are asked by witnesses about their rights if a defense attorney or a defense investigator contacts them. Witnesses do not belong to either side of a criminal case. Thus, even though you may first be approached by the prosecution or by the defense, it is proper for the other side to try to talk to you. While it is the Antitrust Division that is asking for your cooperation in this case, you may be contacted by the defense lawyer or an investigator for the defendant for an interview. While you may discuss the case with them if you wish to do so, you also have the right not to talk to them. The choice is entirely yours. You may simply say "I'm sorry, but the answer is no." (This also applies to our requests for an interview.) If you do agree to an interview, here are some suggestions on how to deal with it.

First and foremost, you should always tell "the truth, the whole truth, and nothing but the truth."

If you give a statement, you do not have to sign it, but any statement that you make during an interview, even if not signed, may be used to try to challenge or discredit your testimony in court if your testimony differs from that statement. This applies even to oral statements that no one has written down.

If you decide to sign a statement, make sure you read it over very carefully before you sign it and correct any mistakes.

Ask to have a copy of any statement that you make. Whether you sign the statement or not, you may tell the lawyer or investigator that you will refuse to give a statement unless you receive a copy of it.

When you have an interview with the defendant's lawyer or investigator, please let the Division attorney handling the case know about the interview. If you elect to have an interview with the defendant's lawyer or investigator, you may want to have present an additional person chosen by you to witness the interview.

You may discuss the case with anyone you wish. The choice is yours, but it is not always a good idea. Be sure you know to whom you are talking when you discuss the case. If a defendant approaches you and you find this upsetting, please tell the Antitrust Division attorney immediately. While you may discuss the case with the media if you wish, we encourage you not to do so since you are a potential witness in a criminal case and the rights of the government and the defendant to a fair trial could be jeopardized by pre-trial publicity.

In the interest of ensuring a fair trial, after you have testified in court, you should not discuss with other witnesses what was said during your testimony until after the case is over. Thus, please do not ask other witnesses about their testimony or volunteer information about your own.

The prosecutor may discuss various aspects of the case with you to prepare you for testifying if that is necessary, but (s)he may be prevented from answering some of your questions about the case because the law prevents the prosecutor from disclosing what has occurred before the grand jury.

6. SCHEDULING YOUR APPEARANCE IN COURT

It is difficult to schedule trials and other court hearings at a time convenient for everyone involved. Any court hearing requires the presence of witnesses, the defendant

and the defendant's lawyer, an Antitrust Division prosecutor, and the judge. Crime victims also have the right to be present at public court proceedings.

Therefore, WHEN THE COURT SETS A TIME AND PLACE FOR A HEARING IN A CASE THAT YOU ARE INVOLVED IN AS A WITNESS, YOU MUST BE THERE PROMPTLY, unless an emergency prevents it. If you have been sent a subpoena -- a formal order to appear -- you should know that there are serious penalties for those who do not obey that order.

If you know in advance anything that might keep you from making a court appearance, let the Division prosecutor know immediately so that an attempt may be made to adjust the schedule. (However, scheduling is ultimately at the discretion of the judge.) This applies to travel and vacation plans in the future, as well as immediate emergencies before trial or a court hearing. In any case, you should immediately call either number listed at the end of this handbook.

Despite the best efforts of everyone concerned, court hearings do not always take place on schedule -- the hearing or trial is sometimes postponed or continued to a new date. When possible, the Division prosecutor will discuss with you any proposed scheduling change. We also will notify you of any postponements in advance of your appearance at court.

7. PLANNING YOUR TRIP TO COURT

As a victim or witness, you may have questions about transportation, the location of the courthouse, food service, or simply may need information concerning where to go and what time to appear. That information will be provided by the Victim-Witness Coordinator prior to your appearance. Of course, you may also call the attorney or Victim-Witness Coordinator with questions at any time.

8. HOW CASES TURN OUT

People who learn about criminal prosecutions from watching television shows about lawyers tend to have a misconception about criminal prosecutions and how the criminal justice system works. The most misleading thing about the TV shows is that they most often show the defendant pleading not guilty and the case being tried by a jury. In reality, many criminal cases are concluded without a trial. The defendant may plead guilty. Guilty pleas and plea agreements are discussed below.

a. Guilty Plea

The defendant may choose to plead guilty. By pleading guilty the defendant waives the right to a trial. The guilty plea results in a conviction.

b. Plea Agreement

The Antitrust Division may enter into an agreement that the defendant will plead guilty and the Government will take a certain position with respect to the sentence imposed or some other action. This process of obtaining a defendant's agreement to plead guilty is recognized by the courts as a proper way of disposing of criminal cases. In fact, the United States Supreme Court has encouraged such plea agreements.

The government usually benefits in several ways by entering into an agreement for a guilty plea to certain charges rather than going to trial. One benefit is the guarantee of a conviction. Criminal cases always involve risks and uncertainties. Even a case that appears to be very strong may not result in a conviction if there is a trial. In many cases there is a possibility that certain evidence may not be admitted. The Antitrust Division will consider this in deciding to agree to a plea to certain charges. Another benefit of plea agreements is the prompt and certain imposition of sentence, which is a major goal of the criminal justice system. A third benefit is that they help to obtain pleas and convictions of other defendants. The Antitrust Division will often require, as a condition of a plea, cooperation of the defendant in further investigations or prosecutions of others. Since there is no trial and no witnesses are called to testify, the witnesses also avoid any possible inconvenience and emotional stress that they might experience when they have to testify. When it is reasonable to do so, the Antitrust Division prosecutor will notify victims of, and consider victims' views about, prospective plea agreements.

9. RECOVERING FINANCIAL LOSSES

Often, crime causes financial loss for the victim. If you have ever been the victim of a violent crime, you may have had cash or valuable property stolen (and not recovered), or you may have experienced damaged property, medical expenses, or a loss of income because you could not work. As the victim of an antitrust violation, you may have been defrauded of money belonging to you or suffered business losses as the result of anticompetitive conduct.

There are three possible ways that crime victims can try to recover their losses. Unfortunately these three ways, discussed below, are not always effective. We do not wish to discourage anyone, but we do not wish to give a false impression either.

a. Compensation

Although rarely available for victims of antitrust violations, state agencies administer crime victims' compensation programs that provide financial assistance to victims and survivors of victims of criminal violence. Payments are made for medical expenses, loss of wages attributable to a physical injury, and certain other expenses. Each state establishes its own instructions for applying for crime victims' compensation,

procedures to be used in processing applications, approval authority, and dollar limits for awards to victims.

b. Restitution

Restitution means that an offender repays the losses that he or she has caused the victim. In an antitrust case, this usually involves a direct monetary payment from the defendant to the victim for the damages resulting from the violation.

From the point of view of effective law enforcement, the time to seek restitution is when the defendant is found guilty or pleads guilty. If that is the final result of the case the law requires the trial judge to consider restitution as part of the offender's sentence. The decision, however, is the judge's. The judge might determine that the defendant does not have enough money to repay the debt to the victim. In antitrust cases, judges often conclude that it would be too complicated to determine the amount of damage caused by the violation during a sentencing hearing.

You should discuss restitution with the prosecutor. In many cases, the U.S. probation officer (an officer of the court) is required to prepare a presentence investigation report that includes a section assessing the financial, social, psychological and medical impact of the crime on any individual against whom the offense was committed. This section is called the "Victim Impact Statement," and it includes a provision on restitution. If you were a victim, you should cooperate fully with the Antitrust Division and the United States Probation Office by providing information regarding the impact that the crime had on you. Without this information, the judge cannot make an informed decision on your need for restitution.

c. Civil Damages

A victim may try to recover his or her losses by a civil lawsuit against the defendant. Such a private lawsuit is completely separate from the criminal case. In fact, the jury in a civil case may find that the defendant owes the victim money even though a different jury in the criminal case found the defendant not guilty, because the burden of proof is higher in a criminal case.

If you wish to sue a defendant for civil damages you must consult your own attorney; the Antitrust Division cannot provide legal advice concerning the desirability of a civil case. However, the antitrust laws do provide that a plaintiff who brings a successful civil damage action is entitled to three times the antitrust damages actually suffered, plus court costs and a reimbursement of attorneys' fees.

PART II: WHAT HAPPENS IN AN ANTITRUST CASE

Any offense punishable by death or imprisonment exceeding one year is called a felony. Felonies are the most serious federal crimes. Antitrust violations are felonies, as are most other violations that may be charged by the Antitrust Division such as mail and wire fraud.

This part of the handbook is intended to explain the way a felony antitrust case moves through the court system. Each step is explained in the sections below. WITNESSES ARE NOT NEEDED AT EVERY STEP IN THE PROCESS. After the grand jury hearings are completed, most witnesses are asked to come to court only for trial. Victims who are not also witnesses are not required to attend any of the proceedings discussed below, but they have the right to be present at any of the public proceedings. The Division prosecutor will make reasonable efforts to notify victims of upcoming public court proceedings.

Not every step is taken in every case. In fact, many cases end before they reach trial. Even so, you may wish to know all the steps that the case in which you are involved might go through.

1. GRAND JURY HEARINGS

A grand jury is a group of twenty-three citizens from the same judicial district who meet to examine the evidence against people who may be charged with a crime. The work is done in complete secrecy. Only a prosecutor and a stenographer meet with them -- plus those witnesses that are subpoenaed to give evidence before a grand jury.

Although a grand jury is not a trial, it is a serious matter. Witnesses are put under oath. Their testimony is recorded and may later be used during the trial. It is important to review carefully what you remember about the crime before you testify before the grand jury. You must tell the truth as you recall it. Before testifying before the grand jury, you will probably meet with an Antitrust Division attorney. This will help you get ready for your grand jury appearance.

After hearing the evidence presented by the Antitrust Division attorneys, the grand jury decides whether the case should be prosecuted. Grand jury charges against a defendant are called "indictments."

If you are called to testify before the grand jury, a Division attorney should be able to give you an approximate time when your testimony will be heard. Unfortunately, it is usually impossible to schedule testimony to the minute. Your appearance may involve some waiting to be called before the grand jury itself, so we recommend that you bring some reading material along with you.

All witnesses who testify before the grand jury, except federal employees, are entitled to the same witness fee and expenses that are available for testifying in court at trial.

2. ARRAIGNMENT ON THE INDICTMENT

If a grand jury issues an indictment, the defendant will be ordered to appear in court to answer the charge. This is called an arraignment. In an antitrust case, the arraignment is usually the first time that the defendant appears in court. The defendant's rights are explained and the charges in the indictment are read to the defendant. The defendant is asked to plead guilty or not guilty. Usually the defendant is released after the arraignment on the promise to return to court for trial or other hearings. Often at this hearing the date is set for the case to be tried. Witnesses are not needed at this hearing.

3. HEARINGS ON MOTIONS

Before the trial, the court may hear "motions" made by the defendant or the United States. These may include motions to suppress evidence, to compel discovery, or to resolve other legal questions. In most cases, witnesses are not needed at the motions hearing. If a witness is needed at this hearing (s)he will receive a notice from the Antitrust Division.

4. THE WITNESS CONFERENCE

At some time before the trial date, an Antitrust Division attorney will usually contact each witness to schedule one or more witness conferences. The purpose of a witness conference is to review the evidence the witness will be testifying about. Witnesses are entitled to a witness fee for attending this conference.

5. TRIAL

In antitrust cases, a witness normally will be notified of the trial date by a letter and a subpoena -- a formal written order from the court to appear.

You should be aware that because a subpoena is an order of the court, you may face serious penalties for failing to appear as directed on that subpoena. Check your subpoena for the exact time at which you should appear. If for any reason you are unable to appear as the subpoena directs, you should immediately notify the Antitrust Division attorney who is working on the case.

Usually antitrust trials go on as scheduled; however, this is not always the case. Sometimes the defendant may plead guilty at the last minute and the trial is therefore

cancelled. At other times, the defendant asks for and is granted a continuance. Sometimes the trial has to be postponed a day or more because earlier cases being heard by the judge have taken longer than expected. When possible, the prosecutor handling the case or the Victim-Witness Coordinator will discuss with you any proposed scheduling change. The Antitrust Division will do everything it can to notify you of any postponement in advance of your appearance at court.

Although all of the witnesses for trial usually come to the courthouse early in the day, most must wait for some period of time to be called to the courtroom to give their testimony. For this reason, it is a good idea to bring some reading material or handwork to occupy your waiting time. If you are waiting in a courtroom, you should be aware that it may be against the rules to read in court.

An antitrust trial follows the same pattern as the trial of any other criminal case. The prosecution and the defense have an opportunity to make an opening statement, then the prosecutor will present the case for the United States. Each witness that is called for the United States may be cross-examined by the defendant or the defendant's counsel. When the prosecution has rested its case, the defense then has an opportunity to present its side of the case. The United States may then cross-examine the defendant's witnesses. When both sides have finished presenting evidence, the prosecution and the defense have an opportunity to argue the merits of the case to the court or, in a case which is being heard by a jury, to the jury, in what is called a "closing argument." The court or the jury will then make its findings and deliver a verdict of guilty or not guilty of the offense charged.

After you have testified in court, you should not tell other witnesses what you said until after the case is over. Thus, you should not ask other witnesses about their testimony and you should not volunteer information about your own.

6. SENTENCING

In a criminal case, if the defendant is convicted the judge will set a date for sentencing. The time between conviction and sentencing is most often used in the preparation of a pre-sentence investigation report. This report is prepared by the United States Probation Office. At the time of sentencing, the judge will consider both favorable and unfavorable facts about the defendant before determining the appropriate sentence to impose.

The function of imposing sentence is exclusively that of the judge. In some antitrust cases, (s)he has a wide range of alternatives to consider and may place the defendant on probation (in which the defendant is released in the community under supervision of the court for a period of years), or place the defendant in jail or other

confinement for a specific period of time, or impose a fine, or formulate a sentence involving a combination of these sanctions.

The court will also consider requiring the defendant to make restitution to victims who have suffered financial damage as a result of the crime. If you are a victim, you should cooperate fully with the Antitrust Division and the United States Probation Office on preparing a Victim Impact Statement regarding the impact of the crime and the need for restitution. A Victim Impact Statement is a written description of your physical, psychological, emotional, and financial injuries that occurred as a direct result of the crime. A Victim Impact Statement is read by the judge who will be sentencing the defendant.

Victims and witnesses can attend the sentencing proceedings. Victims have the right to be reasonably heard at sentencing. The judge may provide victims the opportunity to address the court or may request a written statement. The Antitrust Division prosecutor will tell you if such opportunities exist for you and will talk to you about such a presentation.

PART III: CONCLUSION

We hope that this handbook has answered many of your questions about how the federal criminal justice system operates, your rights if you are a crime victim, and what is expected of you in your role as a potential witness. As explained in this handbook, victims of federal offenses have the right to be kept informed about the progress of prosecutions and to participate at certain stages of the proceedings, consistent with the need successfully to prosecute offenders and defendants' legal rights. Witnesses have important responsibilities in the prosecutorial process, and their full cooperation is essential if the system is to operate effectively. Your contribution, in time and energy, is very much appreciated by everyone in the Antitrust Division.

If you have any other questions or problems related to the case, please contact the Victim-Witness Coordinator or the Antitrust Division attorney assigned to the case. Their names, addresses and telephone numbers are listed below.

_____

ANTITRUST DIVISION ATTORNEY

_____

_____

_____

Address

_____

Telephone Number

_____

VICTIM-WITNESS COORDINATOR

_____

_____

_____

Address

_____

Telephone Number