

# Understanding the Federal Court System

To the extent possible, a separate waiting area will be provided for you away from the defendant and defense witnesses during court proceedings. Emotional support and assistance will also be provided to you during these proceedings.

Upon your request, assistance will be provided in talking with your employer if your cooperation in the investigation or prosecution of the crime causes you to be absent from work. Likewise, if the crime prohibits your ability to make timely payments to creditors, assistance notifying the creditor will be provided.

You will be provided with information or assistance concerning transportation, parking, lodging, translator and related services which may be needed during court proceedings.

When needed, you will be provided referrals to existing agencies for shelter, counseling, compensation, and other types of assistance services.

If you are a victim of sexual assault, you may be eligible for anonymous and confidential testing for sexually transmitted diseases. Please contact the Victim-Witness Specialist if this is one of your concerns.

If you have questions about the case in which you are involved, you should feel free to call either the Victim-Witness Coordinator or the Assistant U.S. Attorney handling the case and ask questions. Also, the Victim-Witness Coordinator or Assistant U.S. Attorney may be contacting you throughout the case. The court may release the defendant pending trial under conditions that satisfy the court. Nevertheless, if you have any concerns about the conditions of the defendant's release, please discuss them with the Victim-Witness Coordinator or the Assistant U.S. Attorney handling the case.

If anyone threatens you, or you feel that you're being harassed because of your involvement with the case, you should immediately notify the U.S. Attorney's Office, the Federal Bureau of Investigation (FBI), or the law enforcement agency conducting the investigation. All of these telephone numbers are listed in your telephone directory under United States Government. If it is an emergency, you should call 911.

## CAN THE DEFENSE CONTACT VICTIMS AND WITNESSES?

The U.S. Attorney's Office often receives calls from witnesses asking about their rights if a defense attorney or a defense investigator contacts them. Witnesses do not belong to either side of a criminal case. Even though you may be subpoenaed first by the prosecution or by the defense, it is proper for the other side to contact you. While it is the prosecution that is asking for your cooperation in this case, you may be contacted by the defendant's attorney 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. If you do agree to an interview with a representative of the government or the defense, here are some suggestions on how to deal with it:

- First and foremost, you should always tell the truth.
- If you speak to an attorney or an investigator for the government or the defense, they may write down what you say and ask you to sign what they have written.
- You do not have to sign the statement. However, any statement made 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 even applies to oral statements that are not reduced to writing at all.
- If you decide to sign a written statement, make sure you read it over very carefully beforehand and correct any mistakes.
- We encourage you not to discuss the case with members of the press. Since you are a potential witness in a criminal case, the rights of the government and the defendant to a fair trial could be jeopardized by pre-trial publicity.

The assigned Assistant U.S. Attorney may discuss various aspects of the case with you to prepare you for testifying in court. The Assistant U.S. Attorney will want to hear your concerns and answer all your questions about the case and about courtroom procedures. However, there may be some questions that the Assistant U.S. Attorney cannot answer because federal law prohibits disclosure of certain events occurring before a grand jury that are not public.

## WHAT HAPPENS IN A CRIMINAL CASE?

Witnesses are not needed at every step in the process. Not every step is taken in every case. In fact, some cases end before they reach trial. Even so, we wish you to know all the steps of a criminal prosecution.

### Types of Crimes

Any offense punishable by death or imprisonment exceeding one year is called a felony. Any criminal offense punishable by imprisonment for less than one year is a misdemeanor. Any misdemeanor that carries a penalty of imprisonment for not more than six months, a fine of not more than five hundred dollars (\$500), or both, is a petty offense.

Felonies are the most serious crimes. Misdemeanors include such offenses as minor assaults, simple possession of controlled substances, some tax law violations, and other offenses. Petty offenses include offenses against traffic laws as well as many regulations enacted by agencies of the United States.

## Initiating Charges

Some cases begin when an Assistant U.S. Attorney, working with a law enforcement officer, files a criminal complaint before a U.S. Magistrate Judge. This complaint is a statement of facts, made under oath. The statement sets out all the facts which show that the defendant violated the laws of the United States. If the Magistrate Judge accepts the complaint, a summons or arrest warrant will be issued for the defendant. In some cases, the defendant may have been arrested without a warrant. In these cases, the defendant is presented to the Magistrate Judge at the time the complaint is filed.

Victims and witnesses of federal offenses may be interviewed by a law enforcement officer prior to the filing of a complaint. In those situations, the law enforcement officer will tell the Assistant U.S. Attorney assigned to the case about these statements. Sometimes the Assistant U.S. Attorney may wish to interview the witnesses in person.

Other cases begin when a grand jury indicts the defendant. A grand jury is a group of twenty-three (23) citizens from across the state who meets to examine the evidence against people who may be charged with a crime. The work is done in complete secrecy. Secrecy protects the grand jurors, the persons involved in the investigation and ensure no one tampers with the investigation or flees prosecution. Only an Assistant U.S. Attorney, a stenographer, and witnesses who give evidence before a grand jury are present.

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. If you are asked to testify before the grand jury, it is important to review carefully what you remember about the crime before testifying. You must tell the truth. You will probably meet with the case agent or the Assistant U.S. Attorney before you meet with the grand jury. This will help you get ready for your grand jury appearance.

After hearing the evidence presented by the Assistant U.S. Attorney, the grand jury will decide whether there is probable cause to believe the defendant committed the crime and should be prosecuted. Grand jury charges against a defendant are called "indictments." If the grand jury finds that the case should not be prosecuted, they will return a "no true bill."

Not every witness in a serious crime is called to testify before the grand jury. Sometimes the grand jury will issue indictments on the basis of an officer's testimony alone.

## The Initial Appearance

This is the defendant's first hearing after arrest. It takes place before a U.S. Magistrate Judge, usually the same day the defendant is arrested. Witnesses are not needed at these hearings. The initial appearance has three purposes. First, the defendant is told his or her rights and the charges are explained. Second, the defendant is assisted in

making arrangements for legal representation, and may be appointed an attorney by the court. Third, the court determines whether or not the defendant can be released on bail.

Many defendants charged with a felony are released at the end of the hearing. Either they have posted bail or they have been released on conditions which include their promise to return for future hearings or the trial. Those conditions may include the requirement that they not personally contact witnesses in the case. In rare cases, the defendant will be detained without bail.

### Preliminary Hearing

A preliminary hearing is held only when criminal charges are instituted by complaint. The purpose of this hearing is to determine whether there is cause to believe that the defendant has committed the offense charged. The burden is on the Assistant U.S. Attorney to produce sufficient evidence to support this finding. The Assistant U.S. Attorney does not have to prove at this hearing that the defendant is guilty, but must present evidence to show that there is good reason to proceed with the charges against the defendant. The date for this hearing is set at the initial appearance.

Usually the law enforcement officer alone can give sufficient evidence that there is probable cause that the defendant has committed the offense. Occasionally, witnesses may be subpoenaed to testify; if you receive such a subpoena, you should get in touch with the Assistant U.S. Attorney handling the case as soon as possible.

No preliminary hearing is required when a grand jury has returned an indictment. As noted above, the grand jury has already determined probable cause.

### 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 or to resolve other legal questions. In most cases, witnesses are not needed at a motions hearing. If a witness is needed at this hearing, (s) he will receive a notice from the U.S. Attorney's Office.

### The Witness Pretrial Conference

Sometime before the trial date, the assigned Assistant U.S. Attorney may contact you, by letter or phone, and ask you to appear at a witness conference to prepare you for trial. The purpose of this witness conference is to review the evidence you will be testifying about in court. The Assistant U.S. Attorney and often the law enforcement officer handling the case will be present at this meeting.

## Trial

When a trial commences, a jury is selected. Then, the Assistant U.S. Attorney and the defense attorney make an “opening statement.” An opening statement summarizes for the jury the evidence that each side will bring out in court during the course of the trial. After the opening statements, the Assistant U.S. Attorney presents the case for the government. Each witness called by 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 Assistant U.S. Attorney may then cross-examine the defendant’s witnesses. When both sides have rested, the prosecution and the defense make closing arguments. After closing arguments, the jury is instructed by the court and they begin to deliberate. Unless the jury is “hung” meaning it cannot reach a unanimous verdict, it will return a verdict of “guilty” or “not guilty” of the offense charged. In a criminal trial all jurors must agree on a verdict.

On a rare occasion, the criminal case is tried only by the judge. The steps, however, are the same as with a jury trial.

## Sentencing

If the defendant is convicted, the judge will set a date for sentencing. The time between conviction and sentencing is used to prepare a pre-sentence investigation report. This report is prepared by the U.S. Probation Office. (In misdemeanor cases, the pre-sentence investigation report may be waived.)

At the time of sentencing, the judge will consider both favorable and unfavorable facts about the defendant before determining the appropriate sentence to impose. Only the Judge may impose the sentence unless the death penalty is requested. The judge has a wide range of alternatives to consider, including placing the defendant in jail for a specific period of time; placing the defendant on probation (in which the defendant is released in the community under supervision of the court for a period of years); imposing a fine, or formulating a sentence involving a combination of these sanctions.

The court will also consider requiring the defendant to make restitution to victims who have suffered physical or financial damage as a result of the crime. If you are a victim, you have the opportunity to complete a Victim Impact Statement regarding the impact of the crime on you. A Victim Impact statement is a written description of your physical, mental, 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 may attend the sentencing proceedings and also may have the opportunity to address the court at this time. The Victim-Witness Coordinator or the Assistant U.S. Attorney handling the case will tell you if such an opportunity exists for you and will talk to you about such a presentation.

If the defendant is sentenced to serve a term of months in prison, you may request to be notified about the status of that defendant. Any victim of, or witness to, a serious crime who wishes to be notified about a defendant's release or release proceedings may participate in the Federal Bureau of Prison's Victim and Witness Notification Program. Participants are notified of parole hearings, defendant transfers to other facilities, the death, furlough or escape of an inmate (notification of the latter is done telephonically), and parole or mandatory release of a defendant. The names and addresses of participants in this program are not released to the defendant.

## YOUR DAY IN COURT

In many felony cases, the only contact witnesses have with the prosecutors is during the witness conference and at the trial. Normally, when the trial date has been set, you will be notified by a subpoena.

A subpoena is an order of the court. You may face serious penalties for failing to appear as directed on the subpoena. Check your subpoena for the exact time and place of your appearance. If for any reason you are unable to appear as the subpoena directs, you must immediately notify the Assistant U.S. Attorney who is working on the case. The Assistant U.S. Attorney's name and number is located on the front page of the subpoena at the bottom right-hand corner.

Usually hearings and trials take place as scheduled; however, that is not always the case. Sometimes the defendant may plead guilty at the last minute, and the trial is canceled. At other times, the defendant asks for and is granted a continuance. Sometimes the hearing or trial has to be postponed a day or more because earlier cases being heard by the court have taken longer than expected.

Although all of the witnesses for court appear early in the day, witnesses 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 handiwork to occupy your waiting time.

## Scheduling Your Appearance

A case may involve several kinds of court hearings. You may be asked to testify at all of them or you may not be needed for any. The different types of hearings include a preliminary hearing, a motion hearing, and an appearance in court for trial or sentencing. You may also be asked to testify before the grand jury. It is difficult to schedule court hearings at a time convenient for everyone involved. Any court hearing requires the presence of witnesses, law enforcement officers, the defendant's attorney, the Assistant U.S. Attorney, the Judge and the defendant. Therefore, when the court sets a time and place for a hearing in the case you are involved in, you must be there promptly.

Despite the best efforts of everyone concerned, court hearings do not always take place on schedule. When possible, the Victim-Witness Coordinator or the Assistant U.S.

Attorney handling the case in which you are involved will discuss with you any proposed scheduling changes.

### Planning Your Trip

As a victim or witness, you may have questions about transportation, the location of the courthouse, food service, or where to go and what time to appear. The U.S. Attorney's Office has assembled information on these subjects. You should feel free to ask either the Victim-Witness person, Assistant U.S. Attorney or the investigative agent about them.

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.

At the conclusion of your testimony, you will be assisted in completing a witness voucher to make a claim for your fees.

Generally, a check for all fees will be provided to you via U.S. Mail 7-10 days after the trial is completed.

If you are a federal government employee, the U.S. Attorney's Office will submit 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.