

Victims and Witnesses:
Understanding Your Rights and the Federal Court System

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I. INTRODUCTION

Victims of crime, and other people who have knowledge about the commission of a crime, are often required to testify at a trial or at other court proceedings. The federal criminal justice system cannot function without the participation of victims and witnesses. Complete cooperation and truthful testimony of all witnesses and victims are essential to the determination of the guilt or innocence of a person accused of committing a crime.

Crime victims and witnesses might experience feelings of confusion, frustration, fear, and anger. If you are a victim or a witness, the Victim-Witness Program of the United States Attorney's office can help you understand the rights given to you by law.

The United States Attorney's office is committed to ensuring that crime victims and witnesses are treated fairly by the criminal justice system. This pamphlet will provide answers to many of your questions and will help you understand your rights and responsibilities.

II. GENERAL INFORMATION FOR VICTIMS AND WITNESSES

A. Participants in the Criminal Justice System

- **Federal Judge**
The individual who presides over a court proceeding. Sometimes a *federal magistrate judge* presides over the proceeding. He/she has some, but not all, of the powers of a judge.
- **The United States Attorney (USA)**
The chief prosecutor for violations of federal laws of the United States. The USA is appointed by the President of the United States and confirmed by the United States Senate. The United States Attorneys' offices are part of the United States Department of Justice.
- **Assistant United States Attorneys (AUSAs)**
Government lawyers in the United States Attorneys' offices who prosecute cases on behalf of the United States.
- **Victim-Witness Coordinator/Advocate**
The person(s) in the United States Attorneys' offices who will assist you in your journey through the criminal justice system process.
- **Witness**
A person who has information or evidence concerning a crime and provides information regarding his/her knowledge to a law enforcement agency.
- **Victim**

An individual who has suffered direct physical, emotional, or economic harm as a result of a commission of a crime.

- **Defendant**

The person accused of committing a crime.

B. The Victim-Witness Program

Each United States Attorney's Office has a Victim-Witness program which is staffed by at least one Victim-Witness Coordinator or Victim Advocate. The goal of the Federal Victim-Witness Program is to ensure that victims and witnesses of federal crimes are treated fairly, that their privacy is respected, and that they are treated with dignity and respect. Victim-Witness Coordinators and Victim Advocates work to make sure victims are kept informed of the status of a case and help victims find services to assist them in recovering from the crime.

C. Victims' Rights

The Crime Victims' Rights Act gives victims of offenses charged in Federal court the following rights:

- The right to be reasonably protected from the accused.
- The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- The reasonable right to confer with the attorney for the Government in the case.
- The right to full and timely restitution as provided in law.
- The right to proceedings free from unreasonable delay.
- The right to be treated with fairness and with respect for the victim's dignity and privacy.

D. Victims' Services Required by Law

- **Victims are entitled to general information about the criminal justice process and notice of important case events:**

Notification about:

- the status of the investigation of the crime (as long as this will not interfere with the investigation of the crime), the arrest of a suspected offender, and the filing of charges against a suspected offender;
- the date, time, and location of each court proceeding that the witness and victim is either required to or permitted to attend;
- the release or detention status of an offender or suspected offender;
- the acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial;
- the sentence imposed on an offender, including the date on which the offender will be eligible for release;

Information regarding the corrections process, including information about work release, furlough, probation, and the defendant's eligibility for each;

- **Victims are entitled to information about available services:**

Information as to where he or she may receive emergency medical and social services and how and from whom to request these services;

Information about any restitution or other relief to which he or she may be entitled and how to obtain this relief;

Information about public and private programs that are available to provide counseling, treatment, and other support and how to obtain these services;

- **Victims are entitled to reasonable protection from a suspected offender:**

The Department of Justice shall arrange for a victim to receive reasonable protection from a suspected offender and persons acting for or with the suspected offender;

Victims who attend court proceedings shall be provided with a place to wait which is removed from and out of the sight and hearing of the defendant and defense witnesses;

- **Victims are entitled to the following additional services:**

Property belonging to victims and being held for evidentiary purposes shall be maintained in good condition and returned to the victim as soon as it is no longer needed;

In sexual assault cases, the cost of the victim's physical examination, and testing and

counseling for sexually transmitted diseases, shall be paid by the Department of Justice or the investigative agency. Sexual assault victims also have a right to request that the defendant be tested for sexually transmitted diseases.

E. Witnesses' Rights

- **General Witness Information**

If you are required to testify as a witness in a trial or other proceeding, you will receive a subpoena telling you when and where to go to court. A subpoena is a formal court order telling you to appear in court, and there are serious penalties for disobeying a subpoena. If you know in advance of anything that might keep you from attending a required court appearance, let the United States Attorney's office know immediately so that an attempt may be made to adjust the schedule. However, scheduling is at the discretion of the court and sometimes cannot be changed.

- **Will this be at my expense?**

Witnesses: If you are a witness, 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.

Witnesses who are federal government employees: If you are a federal government employee, the United States Attorney's office will assist you in advising your employer that you are required to be present in court. This 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.

Out-of-town witnesses: If you are an out-of-town witness, you may receive reimbursement for certain travel expenses, in addition to the daily witness fee. Out-of-town witnesses will be contacted by a representative from the United States Attorney's office who will make all witness travel and lodging arrangements.

Local witnesses: If you are a local witness, you are entitled to parking and mileage reimbursement, in addition to the witness fee for the days you are asked to be in court.

- **How do I receive my reimbursement?**

Witness voucher: At the conclusion of your testimony, you will be assisted in completing a witness voucher to make a claim for your fees and expenses. Generally, a check for all fees will be mailed to you by the US Marshal when the case is over.

F. Court Appearances

There are many different stages involved with a case, including numerous hearings that you may be asked to attend. Despite the best efforts of everyone concerned, court hearings do not always take place on schedule. When possible, the Assistant United States Attorney handling the case will discuss any proposed scheduling changes with you. The United States Attorney's office will also make every attempt to notify you in advance of any postponements or schedule changes.

G. How Cases are Resolved

Although many criminal cases go to trial, many other criminal cases end without a trial. For example, a defendant may plead guilty to the crime, or the Government may dismiss the case (not try the case) for a variety of reasons. Different scenarios are discussed below.

1. Declination

When the United States Attorney chooses not to prosecute a particular case, this is called declination.

An Assistant United States Attorney (AUSA) has the discretion to decline to prosecute a case based on several considerations, some of which the AUSA may not be able to discuss with you. The AUSA is ethically bound not to bring criminal charges unless the legally admissible evidence is likely to be enough to obtain a conviction. However, even when the evidence is sufficient, the AUSA may decide that there is not a sufficient federal interest served by prosecuting the particular defendant in a federal case. In many cases, the defendant may be subject to prosecution in another state, local, or tribal court (including a state court for the prosecution of juvenile delinquents) and prosecution in this other forum might be more appropriate than prosecution in federal court.

2. Dismissal

When the United States Attorney or the court chooses to dismiss the case after it has been filed with the court, this is called dismissal.

The Assistant United States Attorney (AUSA) may ask the court to dismiss a case that has been filed in court. The AUSA may do this because the court will not allow critical evidence to be a part of the case, or because witnesses have become unavailable. There are times when evidence that weakens the case may come to light after the case has started. In other instances, the court may dismiss a case over the objection of the Assistant United States Attorney if the court determines that the evidence is insufficient to find the defendant guilty.

3. Pretrial Diversion

When the United States Attorney decides not to try a defendant right away, or not to

bring charges immediately, a defendant may be placed in a Pretrial Diversion Program.

Under this program, the United States and the defendant enter into a contract in which the defendant agrees to comply with certain conditions, and agrees to be supervised by the United States Probation Office for a period of time. If the defendant successfully complies with all of the conditions, no charges will be brought. However, if the defendant fails to meet a condition, charges may be filed.

The Pretrial Diversion Program is designed for those defendants who do not appear likely to engage in further criminal conduct, and who appear to be susceptible to rehabilitation. The objective of the program is to prevent future criminal activity by certain defendants who would benefit more from community supervision and services than from traditional punishment.

4. Plea Agreements

When the United States Attorney reaches an agreement with a defendant, a plea agreement is established. A guilty plea can take place at any time, and can even take place after trial has begun.

To the public and to many victims, plea bargaining has a negative image. In reality, it is a very good tool to resolving a case and making sure a conviction is certain. Criminal cases always involve risks and uncertainties. A jury verdict of guilty is never a sure thing. With a plea agreement, a conviction is guaranteed, and a sentence is imposed. By pleading guilty, the defendant waives his or her right to trial.

5. Trial

Many cases do go to trial. Trials are discussed fully later in Section III, What Happens in Felony and Misdemeanor Cases.

H. Answers to Commonly Asked Questions

The criminal justice process can be complex and lengthy. Federal and tribal law enforcement agencies, and staff from the United States Attorneys' offices will provide you with a variety of notification and assistance services to keep you informed on the status of your case.

The Victim-Witness Coordinator at the United States Attorney's office will be your main contact throughout the prosecution phase of the case. Please contact the Coordinator if you have any questions.

Listed below are answers to some questions that are frequently asked by victims and witnesses.

1. What kind of support services or assistance can the Victim-Witness Coordinator offer?

- Referrals
Victim-Witness Coordinators can provide victims with referrals to existing agencies for shelter, counseling, financial compensation, and other types of assistance services.
- Accompaniment to court
In certain cases, the Victim-Witness Coordinator or Victim-Witness Advocate may be available to accompany you to court to provide support.
- Assistance with employers or creditors
If your participation in the prosecution causes you to be absent from work, the Victim-Witness Coordinator can, at your request, contact your employer and explain your role in the case. Likewise, if the crime, or your participation in the prosecution makes you unable to pay your bills on time, the Victim-Witness Coordinator can, at your request, contact creditors for you, or assist you in doing so yourself. While creditors are not obligated to take your participation in the case into consideration, they may choose to do so, particularly if there is a possibility that you may receive restitution from the defendant.

2. How will I find out information about the case?

The United States Attorney's office will provide you with information throughout the progress of the case including notification of the filing of charges against a suspected offender or the dismissal of any or all charges; notification of a plea agreement; notification of the date set for sentencing if the offender is found guilty as well as the sentence imposed.

The Victim-Witness Coordinator will routinely provide information or assistance concerning transportation, parking, lodging, translators, and related services. In addition, every effort will be made to inform you about changes in the court's schedules.

If you have questions about the case in which you are involved, you are welcome to call the Victim-Witness Coordinator or the Assistant United States Attorney who is handling the case. The Assistant United States Attorney may also be contacting you for information at various stages of the proceedings.

3. How can I tell the court how this crime has affected me?

During a trial, it may seem as if most of the attention is paid to the defendant and not to the affects the crime has had on the victim. However, if the defendant is found guilty or pleads guilty, the victim has several opportunities to let the court know how the crime affected his/her life. A victim may submit a *victim impact statement*, a written statement of the affects of the crime and his/her feelings about the crime, to the probation officer. This statement will be included in the pre-sentence report prepared by the probation

officer for the judge prior to sentencing.

Victims may attend the sentencing hearing, and will also have the opportunity to address the court at this time. This is called *victim allocution*, and is discussed further in Section III,(A)(9) "The Sentencing Hearing." The Assistant United States Attorney or the Victim-Witness Coordinator will tell you if such an opportunity exists for you, and will talk to you about the aspects of a presentation.

4. How do I know when the offender in my case may be released from prison?

- Federal Bureau of Prisons Notification
If the defendant is sentenced to a period of time in a federal prison, victims who choose to participate in the Victim Notification System (VNS) and have kept their contact information updated in VNS, will receive notice through VNS of the death, escape, or furlough of the inmate, if the inmate is transferred to a halfway house, and the inmate's eventual release date.
- Victim contact information in VNS is kept confidential and the inmate does **not** have access to this information.

5. What do I do if I am being threatened by the defendant or others acting on behalf of the defendant?

If anyone threatens you at any time while you are involved with the case, or you feel that you are being harassed because of your connection to the case, you should **immediately** notify the federal law enforcement agency conducting the investigation or the United States Attorney's Office. These telephone numbers are listed in your telephone directory under United States Government. In emergency situations, always contact your local law enforcement (911) first.

6. What is a bond and what factors are considered when releasing a defendant?

There are two main factors the court considers when deciding whether or not to release a defendant pending trial:

1. Risk of flight, and
2. Risk of danger to the community.

If the court is satisfied that the defendant will appear in court and that the defendant does not pose a threat to the community, the court may release the defendant while he or she is awaiting trial.

Sometimes the court may require the defendant, or someone acting on his/her behalf, to post cash or property, which is known as a *bond*; or it may simply require the defendant to promise to appear. Since most federal criminal defendants are released on bond pending trial, you should not be surprised if you happen to see the defendant prior to trial.

If you have any concerns about the conditions of the defendant's release, please discuss them with the Assistant United States Attorney handling the case.

7. Can I observe the trial?

- Witnesses: As a general rule, witnesses are not permitted to watch court proceedings. This rule helps to ensure that a witness's testimony is based solely on his or her own knowledge, and not on things he or she heard another witness testify about or on things he or she heard the judge or the lawyers say during court proceedings.
- Victims that are testifying at the trial: A victim who will be testifying as a witness during the trial, may be excluded from watching all or part of the trial if a judge decides that the victim's testimony would be materially altered by hearing other testimony at trial.
- Victims that are not testifying at the trial: Not all victims are required to be witnesses at the trial. According to the Victims' Rights Clarification Act of 1997, the judge is not allowed to order a victim to be excluded from the trial simply because that victim may testify or allocute at the sentencing hearing.

8. Am I entitled to a witness fee for every day that I am required to appear in court in connection with the case?

Victims: Victims will only receive a witness fee for the days they testify. If they are not testifying and are there only to observe the proceeding or to allocute, they will not receive a witness fee.

Witnesses: See Section II, E, Witnesses' Rights.

9. Can I discuss the case with others?

- Defense attorneys and investigators working for defendants often contact victims and witnesses. It is not unusual or inappropriate for the defense lawyer or an investigator for the defense to contact you for an interview. While you may discuss the case with them **if you wish to do so**, you **do not have to** talk to them. The choice is entirely yours. Below are some general suggestions and tips when discussing the case.

- ▶ Please let the United States Attorney's office know if you have agreed to be interviewed by the defense attorney or investigator. You may want to bring an additional person, chosen by you, to witness the interview.
- ▶ Always tell "the truth, the whole truth, and nothing but the truth."
- ▶ The Assistant United States Attorney may discuss some parts of the case with you to inform you and prepare you for testifying. However, there may be some instances when the Assistant United States Attorney may not be able to answer some of your questions because it may endanger the case or other witnesses.
- ▶ After you testify in court, you are not allowed to tell other witnesses what was said during the testimony until after the case is over. Please do not ask other witnesses about their testimony, and do not volunteer information about your own testimony.
- ▶ Know to whom you are talking when you discuss the case. We encourage you not to discuss the case with members of the press before or during the trial as the defendant's right to a fair trial could be jeopardized by any publicity.

10. My property is being held as evidence. How, and when, can I get it back?

- Sometimes, law enforcement officers hold property belonging to victims and witnesses as evidence for trial. If your property is being held as evidence and you would like to try to get your property back before the case is over, notify the law enforcement officer or the Assistant United States Attorney who is handling the case.
- In some, *but not all cases*, arrangements can be made for early release of property. In any event, at the conclusion of the case, your property should be returned to you promptly. In those instances where this is not possible, the Assistant United States Attorney will explain the reasons for not returning the property.

11. How can I get my money back?

Many people lose money as a result of being victimized. There are two possible ways for you to recover your losses; there is, however, **no guarantee** that your losses will be recovered.

a. Compensation

Crime victims' *compensation programs* are administered by each state, territory, and the District of Columbia and provide financial assistance to victims and survivors of victims of criminal violence who are not otherwise covered by insurance. These funds are

intended to cover:

- Medical expenses, including expenses for mental health counseling and care
- Loss of wages resulting from a physical injury
- Funeral expenses for a death resulting from a compensable crime
- Eyeglasses or other corrective lenses
- Dental services and devices
- Prosthetic devices

☞ Each compensation program has its own rules regarding the types of losses for which victims may recover and the amount of money victims may recover. Also, each compensation program has its own instructions for applying for crime victims' compensation. Consult with your Victim-Witness Coordinator to determine how to apply for compensation.

b. Restitution

After a defendant is convicted of certain types of crimes, the judge may order the defendant to pay *restitution* as part of the sentence. Restitution occurs when an offender gives back the thing(s) he or she stole (or damaged) or when the offender pays the victim for his or her loss. Restitution can be either discretionary or in some cases the judge is required by law to award the victim restitution for the full amount of the victim's losses. Examples of these cases include child support recovery, sexual abuse, domestic violence, telemarketing fraud, sexual exploitation and other abuses of children, consumer product tampering, most violent crimes, and most crimes against property, including fraud.

Receiving Restitution Payments

You will normally receive your restitution payments from the Clerk of the District Court. The defendant should not make payments directly to you. The court clerk of courts maintains a record of payments and disbursements on all court ordered restitution for accountability purposes. You may receive one large lump sum payment, but more than likely you will receive smaller payments from time to time. This will depend on the defendant's ability to repay the restitution and on the number of other victims involved.

☞ It is your responsibility to keep the U.S. District Clerk of Court informed of your **current address**. If you move, you should contact the Clerk of Court immediately so that any restitution payments can be forwarded to you at your new address.

III. WHAT HAPPENS IN FELONY AND MISDEMEANOR CASES

This section explains the way felony and misdemeanor cases move through the court system.

Witnesses and victims are not needed at every step in the process and not every case follows all of the available steps. In fact, many cases end before they reach trial. Even so, it may be useful for you to be familiar with all the steps that the case in which you are involved might go through.

A. Felony Cases

Any offense punishable by death or imprisonment exceeding one year is a felony. The prosecutors and the courts handle felony cases differently from misdemeanor cases. Misdemeanor cases differ from felonies in that misdemeanor cases have shorter possible sentences.

1. The Filing of a Criminal Complaint

Some felony cases begin when the United States Attorney's office, working with a law enforcement officer, files a criminal complaint before a United States Magistrate Judge.

- **What is a criminal complaint?**

The complaint is a sworn statement of facts stating that there is probable cause to believe that the accused person has committed a crime and 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, if he or she has not already been arrested.

- **Is there anything that I should do to help in preparing the complaint?**

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 officer will report the victims' or witnesses' statements to the Assistant United States Attorney assigned to the case. The Assistant United States Attorney may or may not decide to interview the witness in person.

2. The Initial Appearance

- **What is an initial appearance?**

The initial appearance is the defendant's first hearing after arrest. It takes place before a United States Magistrate Judge, usually the same day the defendant is arrested. There are three purposes for this hearing. At the initial appearance, the defendant is advised of his or her rights, and the charges are explained. Next, the defendant is assisted in making arrangements for legal representation. The court may appoint an attorney for the defendant if necessary. Finally, at the hearing, the court determines whether the defendant is a danger to the community or a risk of flight, and whether he or she can be safely released.

- **Am I supposed to attend the initial appearance?**

Witness testimony is typically not needed at the initial appearance. However, you may attend if you so desire.

- **Could the defendant be released after his or her initial appearance?**

Although some defendants are detained (held without bond), many defendants charged with a felony are released at the end of this hearing. They, or someone acting on their behalf, have either posted money to guarantee their return for trial and other hearings, or they have been released on conditions which include their promise to return for future hearings or the trial. The conditions of bond may include a requirement that they not personally contact victims or witnesses in the case.

☞ **Victims of Domestic Violence**

If you are the victim of a federal domestic violence offense, you have the right to address the court at the initial appearance. You will be allowed to tell the judge whether or not you believe the defendant poses any threat to you if he or she is released.

In all types of cases, if you have **any** concerns about the conditions of the defendant's release, please discuss them with the Assistant United States Attorney handling the case.

3. Grand Jury Proceedings

Some cases begin with grand jury proceedings rather than with the filing of a criminal complaint.

- **What is a Grand Jury?**

A grand jury is a group of citizens who meet to examine the evidence against individuals who may be charged with a crime. The grand jury's work is done in complete secrecy. Only an Assistant United States Attorney, a stenographer, and the witnesses subpoenaed to deliver grand jury testimony are allowed in the grand jury room.

After hearing the evidence presented by the Assistant United States Attorney, the grand jury will decide whether there is probable cause to believe that a crime has been committed. If the grand jury decides that there is probable cause to believe that the defendant has violated a criminal law of the United States, they will return an indictment. If the grand jury finds that this is not true, they will return a "no bill."

- **What is my role in the Grand Jury proceeding?**

Although a grand jury proceeding is not a trial, it is a serious proceeding. Witnesses are placed under oath, their testimony is recorded, and their

testimony may be used later during the trial. It is important to carefully review what you remember about the crime before testifying before the grand jury. You must tell the truth. Before testifying before the grand jury, you will probably meet with the case agent or the Assistant United States Attorney.

The grand jury does not necessarily call every witness to testify. Sometimes the grand jury will return indictments on the basis of an agent's testimony alone. If you are called to testify, the Assistant United States Attorney should be able to give you an approximate time when your testimony will be heard. Unfortunately, it is not always possible to schedule testimony to the minute. Your appearance may involve waiting to be called before the grand jury, so you should bring some reading material or other work along with you. You should be aware that if you are testifying at trial, your statements made to the grand jury must be disclosed to the defendant.

4. The Preliminary Hearing

- **What is a preliminary hearing?**

A preliminary hearing will be held in cases where an indictment does not follow a criminal complaint right away. The United States Attorney does not have to prove the defendant's guilt at this hearing, but must present evidence to show that there is good reason (known as "probable cause") to proceed with the charges against the defendant.

- **What is my role in the preliminary hearing?**

Usually, the law enforcement officer alone can provide sufficient evidence showing that it is probable that the defendant committed the offense. Occasionally, witnesses may be subpoenaed to testify. If you receive such a subpoena, you should contact the Assistant United States Attorney who is handling the case as soon as possible.

5. The Arraignment

- **What is the Arraignment?**

At the arraignment hearing, the charges in the indictment are read to the defendant, and his or her bail conditions are reviewed by the court. The defendant is given an opportunity to plead guilty or not guilty to charges at this time.

- **What is my role in the arraignment?**

Witnesses are usually not needed at this hearing.

6. Hearings on Motions

- **What are motions?**

Before the trial, the court may hear requests, known as “motions,” by the defendant or the United States. Examples of these may include motions to suppress evidence, to compel discovery, or to resolve other legal questions.

- **Do I have to participate in hearings on motions?**

If you are needed at a motion hearing, you will be notified by the United States Attorney’s office.

7. The Pre-Trial Conference

Sometime before the trial date, the Assistant United States Attorney in charge of the case may contact you by letter or phone asking you to come to a pre-trial conference.

- **What is a pre-trial conference and what is my role in it?**

The purpose of this conference is to prepare you for trial, and to review the evidence. You are entitled to receive a witness fee for attending this conference if you are otherwise eligible for witness fees.

8. The Trial

In many felony cases, the only contact witnesses have with the prosecutors comes at the pre-trial conference and at the trial.

- **How will I know when I am supposed to testify at trial?**

Normally, when the trial date has been set, you will receive a subpoena. You may face serious penalties for failing to appear as directed on that subpoena. Check your subpoena for the exact time and place at which you should appear. If for any reason you are unable to appear as the subpoena directs, you should immediately notify the Assistant United States Attorney who is working on the case.

- **Why are trials sometimes delayed?**

Felony trials usually proceed as scheduled; however, sometimes a trial may be delayed. There are a number of reasons why a trial is delayed or postponed. The defendant may plead guilty at the last minute; if this happens, the trial will be canceled. At other times, the defendant or the Assistant United States Attorney asks for, and is granted, a continuance to a future date. Sometimes the trial has to be postponed a day or more because other cases being heard by the court have taken longer than

expected. The United States Attorney's office will do everything it can to notify you of any postponement in advance of your appearance at court.

- **Will I have to wait before I testify?**

Although all of the witnesses for trial are usually asked to appear early in the day, it is not uncommon to have to wait for some period of time before being called to the courtroom to give testimony. For this reason, it is a good idea to bring some reading material or other work to occupy your waiting time.

- **Who will question me?**

Usually, you will first be questioned by the Assistant United States Attorney. Then the defendant's attorney has the right to question you. The Assistant United States Attorney may then ask follow-up questions. The defendant will be present in court. The judge may also ask you questions.

- **Can I talk about my testimony?**

After you have testified in court, you should **not** tell other witnesses what was said during the testimony 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.

9. The Sentencing Hearing

- **What is a sentencing hearing?**

If the defendant is convicted, the judge will set a date for sentencing. The sentencing hearing offers victims several important opportunities to tell the court how the crime has affected them. These opportunities are called *victim impact statements* and *allocution*.

- **How can I tell the court how this crime has affected me?**

Victim Impact Statement

When the defendant is convicted, by plea or by trial, the victim may submit a "victim impact" statement. This statement is a written description of the victim's physical, psychological, emotional, and financial injuries that occurred as a direct result of the crime. Generally, the victim impact statement form will be provided to the victim by the Victim-Witness Coordinator, the AUSA, or by the probation officer. The defendant and his/her attorney typically see the Victim Impact Statement.

Pre-Sentence Report

The probation officer will incorporate information from the Victim Impact Statement into a *pre-sentence report* that he/she must submit to the court

before the defendant is sentenced. A pre-sentence report is a document completed by the Probation Office which details the defendant's criminal history, the defendant's background, and the impact of the crime. This pre-sentence report will become a formal part of the court record and as such will be seen by the defendant and his or her attorney.

Victim Allocution

If you are a victim of the convicted offense; or the close family member of a child victim, deceased victim, or incapacitated victim of the convicted offense; you will have an opportunity to inform the court about the crime's impact on you. The defendant will be present when this occurs.

- **How does a judge choose an appropriate sentence for the defendant?**

Only the judge has the power to impose a sentence. Judges follow federal sentencing guidelines and other sentencing factors when issuing a sentence. These assure that sentences are relatively uniform and fair. Sentencing alternatives permitted under the guidelines include placing the defendant on probation, which allows the defendant to be released into the community under supervision of the court for a period of years. Alternatively, the judge may sentence the defendant to a period of incarceration and/or may impose a fine on the defendant. The judge may also formulate a sentence involving a combination of these sentencing alternatives.

- **Can I be compensated by the defendant for the damages he/she caused to me?**

Restitution is the payment of money by the defendant to the victim or to the court for damages caused by his/her actions. The court will issue an order of restitution in cases where restitution is mandatory and will consider issuing a restitution order in cases where restitution is discretionary. (See, Section II(H), Answers to Commonly Asked Questions, "How can I get my money back?") If you are a victim, you should cooperate fully with the Assistant United States Attorney and/or the United States Probation Office in preparing a Victim Impact Statement regarding the impact of the crime and the need for restitution.

B. Misdemeanor Cases

Any criminal offense punishable by imprisonment for a term not exceeding one year is a misdemeanor. Misdemeanors include such offenses as assaults, possession of controlled substances and some tax law violations. Petty offenses are a type of misdemeanor and include offenses against traffic laws and wildlife violations on federal land, as well as

many regulations enacted by the agencies of the United States.

1. Initiating Misdemeanor Cases

Misdemeanor cases are not presented to a grand jury and can be initiated in a variety of ways. The United States Attorney may file a criminal information or a complaint with the court charging a misdemeanor.

- **What is a criminal information?**

This is usually done after an Assistant United States Attorney and a law enforcement officer review the evidence. It is the United States Attorney's task to decide whether a case will be brought, and how that case will be charged.

- **What is my role?**

The Assistant United States Attorney may speak to victims and witnesses, or the law enforcement officer will report the victims' and witnesses' statements to the Assistant United States Attorney.

2. The Arraignment

- **When is the arraignment?**

Once the complaint or information is filed, a date is set for the defendant to appear before the United States Magistrate Judge for arraignment. In cases where an arrest has been made prior to the filing of a complaint or information, the arraignment occurs immediately.

- **What happens at an arraignment?**

The arraignment before the United States Magistrate Judge is a hearing during which the defendant is informed of his or her rights, advised of the right against self-incrimination, informed about assistance of counsel, notified of his or her right to have the case heard before a United States District Court Judge or before a United States Magistrate Judge, and notified of the dates for further proceedings in the case.

The Magistrate Judge will review facts presented by the Assistant United States Attorney and the defendant, and will set conditions of bail release. Those conditions may include the defendant promising to appear on the date set for trial, the promise of a money bond to be forfeited if the defendant fails to appear, or other conditions of release that seem fair and just to the Magistrate Judge. The purpose of bond is to ensure that the defendant will be present when the case is heard for final disposition. It is not necessary for victims or witnesses to appear at the arraignment unless they have been specifically instructed to do so by the case agent or the Assistant United States Attorney. In any event, you will be advised if the

defendant is released pretrial.

3. The Trial

A trial of a misdemeanor case follows the same pattern described in detail in Section III(A)(8), The Trial.

4. The Sentencing Hearing

In petty offense cases, the court may proceed immediately to sentencing after the verdict has been delivered. The defendant and the United States each have an opportunity to speak to the issue of sentencing. In misdemeanor cases, the court may request a pre-sentence investigation and report from the United States Probation office. If such a report is ordered, sentencing will be postponed for a period of time to allow for the preparation of the report. If the case before the court involves financial or physical injury to a crime victim, the court will consider restitution. Restitution is discussed more fully in Section II(H), Answers to Commonly Asked Questions, "How can I get my money back?"

A Victim Impact Statement, prepared by the victim, can be used to show the court the harm suffered and how this crime affected the life of the victim. The victim should cooperate fully with the Assistant United States Attorney and the United States Probation officer to determine the impact of the crime. Victim Impact Statements are discussed fully in Section II(H), Answers to Commonly Asked Questions, "How can I tell the court about the impact that the crime had on me?"

IV. CONCLUSION

We hope that this booklet answers many of your questions as to how the federal criminal justice system operates and your rights as a victim or your role as a witness. Victims and witnesses have important responsibilities in the criminal justice system, and full cooperation is essential for the criminal justice system to operate effectively. Your contribution of time and energy is appreciated by everyone in the United States Attorney's office.

If you have any other questions or problems related to the case, please contact the Victim-Witness Coordinator or the Assistant United States Attorney assigned to the case.