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KNOW YOUR RIGHTS

A citizen's guide to understanding your rights
and our criminal justice system.

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This booklet is a general overview of criminal law and the court process. It is by no means a complete discussion of those topics. This booklet is not legal advice. You should discuss your specific case with an attorney.

Chapter 1
PROTECTING YOUR RIGHTS BEFORE JAIL

How to do Your Best to Keep From Going to Jail

In five words: **DON'T TALK TO THE POLICE!** You have the right to remain silent – use it! This process has nothing to do with whether or not you are innocent. There are innocent people convicted everyday, don't let yourself become one.

The police have honed their skills for many years at getting around the law and twisting your words. Don't try to out smart them. Anything you say to the police is almost always deadly to your case. The best piece of advice that I could give you is to always ask to speak to an attorney before saying anything to the police.

Legally if you don't answer, or if you just say that you don't want to speak to the police, they can keep asking you questions. Once you ask for an attorney all questioning is supposed to stop until they provide an attorney. Of course, any attorney worth their weight in salt is going to tell you not to say anything and the police know it. Therefore, this should legally stop all questioning. Your choice to remain silent cannot be used in court.

YOUR RIGHTS AND THE POLICE

What you say to the police is always important. What you say will be used against you. It will give the police an excuse to arrest you.

You do not have to answer a police officer's questions, but you must show your driver's license and registration when stopped in a car.

Outside of your car, you cannot legally be arrested or detained for merely refusing to identify yourself to a police officer in California.

You do not have to give your consent to any search of yourself, your car, or your house; if you do consent you've made a big mistake which can affect your rights later in court.

If the police say they have a search warrant, ask to see it. Do not interfere with, or obstruct, the police – you can be arrested for it.

If you are stopped for questioning:

It is not a crime to refuse to answer questions, although refusing to answer questions can make the police suspicious about you. It is advised not to answer any questions until you've at least spoken to an attorney.

The first rule that you should remember when being questioned by the police is to tell them that you do not want to say anything until you've spoken to an attorney! By law they must stop asking questions until you have an attorney present.

The police may "pat-down" your outer clothing if they have a reasonable suspicion that you are carrying a concealed weapon. Do not physically resist or they will arrest you. However, the police cannot search further. Make it clear that you do not consent to any further search.

Ask if you are under arrest. If you are, you have a right to know why.

If you are stopped in your car:

Show your driver's license and registration upon request. Your car can in certain limited cases be searched without a warrant so long as the police have probable cause. To protect yourself later, make it clear that you do not consent to a search.

If you are given a ticket, you should sign it; otherwise you can be arrested. Fight the case later in court.

If you are suspected of driving under the influence of alcohol or drugs and refuse a blood, urine, or breath test, your driver's license can be suspended.

If you are arrested or taken to a police station:

Ask to see a lawyer immediately! Memorize this rule. The way it works is if you just tell the police you don't want to talk to them, they

legally can wait awhile and then come back and question you again and again. If you tell them you want to see a lawyer, then legally they have to stop questioning you until you have a lawyer present. In practice this will stop all questioning. They probably won't get you a lawyer and if they did any lawyer worth their weight in salt will tell you to remain silent and make sure you don't answer any questions.

You have the right to remain silent and to talk to a lawyer before you talk to the police. Tell the police nothing except your name and address. Do not give explanations, excuses, or stories. You make your defense in court based on what you and your lawyer decide is best.

Within 3 hours after you are arrested, or immediately after being booked, you have the right to make three complete phone calls to: 1) a lawyer; 2) a bail bondsman; 3) a relative or any other person. The police may not listen to the call to the lawyer.

You must be taken before a judge within 72 hours after your arrest. Sometimes you can be released without bail ("OR") or have your bail lowered.

JUVENILE LAW

If you are under 18 years of age, do not think that if you commit a crime you will only get a slap on the wrist and be sent home to your parents. Nowadays, in many cases children are treated as harshly as adults. With the exception of the death penalty, children in many circumstances may be given the same sentences as adults, including 50+ years to life.

When a child is arrested for the commission of a crime they are taken to juvenile hall. They can be detained in the hall for their safety or the safety of the community. Children in the juvenile court system do not have the right to bail. At the initial hearing or detention hearing, the court can be release the child on general release, house arrest or electronic monitoring. A probation officer will usually interview the child before the detention hearing and write a report for the court and attorneys. As with police officers, it is best not to talk about the specific crime you were

arrested for. Also, you should not discuss any other activities that you may have been involved in other than that particular crime, i.e., gangs, drug dealing, or other criminal activity. The best idea is to not speak to the probation officer without your attorney present. If you don't have one yet, the court will appoint one.

Children in Adult Court

There are a few different ways a child can be transferred to adult court:

1) They are 16 or older when the alleged offense occurred and the offense is one of those listed in Welfare and Institutions Code § 707(b).
2) They are 14 or older and
   a. The charges if committed by an adult could result in a death sentence or life imprisonment; or
   b. The are accused of personally using a firearm; or
   c. The offense is listed in W & I 707(b); and
      i. The have been previously found to have committed a §707(b) offense; or
      ii. The offense was gang related; or
      iii. The offense was a "hate crime"; or
      iv. The victim was 65 years old or older.
3) They are initially charged in juvenile court and the DA requests a fitness hearing. Depending on various factors, one of which is age, the child may be either presumed fit for juvenile court supervision or unfit for juvenile court supervision.

Another distinct difference between juvenile court adjudications and adult court proceedings is the lack of a preliminary hearing. There is really no screening process for truly bogus charges. Some might say that the most important differences between juvenile and adult court is that children are not afforded the right to a jury trial. All trials in juvenile court are before a juvenile court judge. They are the only ones to decide your fate.

The sentencing hearing in juvenile court is called the dispositional hearing. The court has several choices when deciding how treat a child after allegations of wrong-doing have been sustained against him or her.

The court can put the child on deferred entry of judgment, informal probation, or formal probation. Each of those can have conditions such as attending school, not using drugs, obeying your parents, to name a few. On formal probation, the judge can also order additional time in juvenile hall, the ranch, group home, foster home, or send you to the Department of Juvenile Justice or DJJ (formerly know as the California Youth Authority or CYA).

Information for Parents

You have the right to be present at all of your child's hearings if they are in juvenile court. You can be responsible for some costs, such as the cost of informal probation, the cost of detention, the cost of group homes, and your child's legal services. The court must find that you have the ability to pay. You should not encourage your child to forgo an attorney because you don't want to pay for it. If it is rarely a good idea for adults to represent themselves, how can it be a good idea for children to attempt to represent themselves? Even if you think it's a minor charge, the process sometimes has a way of snowballing. Also, your child's attorney represents your child, not you. They must do what they believe to be in the child's best interests. They may not be able to tell you everything about the case because that is not always in the best interests of their client, your child.

Just as you would require the police to have a search warrant to search your house if they suspected you of a crime, if your child is suspected of a crime and the police want to search his or her room, you should require that police have a search warrant. Also, parents technically have a right to be present when their children are being questioned. This is what we call a right without a remedy. If the police deny you access to your child, your child is unlikely to suppress any statements on that basis. You should never let your child speak to the police without an attorney present. Don't let them near your child. They will attempt to separate you and then pressure your child into making incriminating statements.

Collateral Consequences of Juvenile Convictions

Sustained juvenile allegations are not truly 'convictions' but charges that are sustained can have serious long term effects. Currently, certain charges when found true even in juvenile court can be considered strikes once the child reaches the age of 18.

Driver's licenses of children under the age of 18 and sometimes even adults under the age of 21 can be suspended for many different things. Below is a small sample of the types of crimes that can result in a suspended driver's license:

- Most drug crimes
- Most alcohol related crimes
- Vandalism
- Offenses involving a concealed weapon

Firearms prohibitions can result from many crimes of violence or domestic violence, or anything that is a felony.

- DNA testing for any felony offense.
- Loss of financial aid will result from many drug related convictions.

Sex Registration: If allegations of certain sex charges are sustained against you and you are sent to DJJ. You will be required to register as a sex offender for life. People are being required to register for life for acts they may have committed when they were 12 or 13.

Chapter 2
PROTECTING YOUR RIGHTS IN JAIL

You are in a holding tank in the Sacramento County Jail. You have been arrested for and charged with a felony offense. You are scared. Many thoughts race through your mind. What could the consequences be? Will I lose my job? Will I lose my family and children? Will I go to jail – and for how long? Will I go to state prison?

Being arrested for a felony is one of the most traumatic things that can happen to you. The consequences can, indeed, be life-threatening. Some felonies may mean that you will never walk free again.

Even if a person is given probation, there is an enormous loss of liberty. If you have a license to be a barber, landscape contractor, attorney, doctor, etc., it may be lost. This would be in addition to jail or prison time.

A felony conviction can be used as proof of guilt if someone wants to sue you for money. A person convicted of a felony loses many civil rights, such as the right to possess a firearm or the right to vote. Some felony convictions require that you register as a sex offender, a drug offender, or an arson offender. This means that the public has access to this record over the internet. Even if you are placed on probation, you will lose the right to privacy. You may be required to allow your person, home, and vehicles to be searched at any time by a peace or probation officer.

In California we live in an era of "three-strikes." If you have been previously convicted of a crime that is a strike (a serious or violent felony), any new serious or violent felony conviction would have three consequences:

- The court is required to send you to prison.
- The prison term would be twice the normal sentence for the crime.
- You can only receive 20% good time credit off your sentence while in prison.

If you have two prior felony convictions that are Strikes, each felony conviction after that carries twenty five years to life. The two prior felony convictions can be from the same case. They can be from other states or federal crimes and it doesn't matter how long ago they occurred. The minimum release date for a twenty-five-to-life sentence is twenty years and you would have to go before the parole board to be released. Politicians have appointed parole board members that don't grant parole to anyone convicted of a life sentence. The 10-20-life law means that if you are convicted of a felony while armed, ten years would be added to the sentence. If the gun was intentionally fired, twenty years is added. If someone was shot or killed, it adds life.

The purpose of telling you these things is to scare you. You are in a dangerous situation. Imagine that you're lost in the woods and your survival is threatened. You try not to fall apart. The best thing to do is not panic, control yourself, and take the necessary steps to protect yourself. Sit back in your cell, take three deep breaths, get yourself in a relaxed state and read on.

Protection Against Walls That Have Ears

The only confidential communication you can have in jail is with your lawyer in the jail's attorneys' booth. Your phone calls, visiting conversations, and letters are listened to and read. The reason that this is done is to convict you. Very often they have little or no evidence with which to convict you. Locking you up allows the police to monitor you 24/7, as well as allows them to record information that could hurt your case or damage a defense you had.

A quick example to drive home the point: In the case of a three co-defendant murder case, the defendants were all very young and incarcerated for several years pending a jury trial. The case had next to no evidence, only an unreliable informant that was not present at the scene of the murder. For two years the client did not talk on the phone, talk across the glass, or write a letter mentioning his case. The other two did not listen to their lawyers. One, who was a smart kid and would have probably became a doctor, talked about his case to his pregnant fianceé across the glass during a visit. The other talked on the phone to his parents. Both conversations were played in court to the jury. The client

has been on the street living a productive life for years. The other two kids will spend the rest of their earthly lives in prison without the chance of ever being paroled. **DON'T TALK ABOUT YOUR CASE TO ANYONE!**

A warning about fellow prisoners: Beware. There are many criminal cases that have been put together based on jailhouse informants. Don't talk to anyone about your case inside. Beware of others inside that ask to look at your paperwork or ask about the facts of your case. There are lawyers that don't give their clients paperwork for the fear that someone else may get hold of it and read it. Informants are liars that need information to sell to the police and the District Attorney to save their own skin. They have no loyalty, no friends, and no principles.

Be careful about whatever you say: An angry conversation with your wife that is completely unrelated to your case can be used to raise your bail, possibly even to "no bail." You cannot be too careful.

Chapter 3
GETTING OUT OF JAIL

Getting out of jail on O.R. or Bail

When you are arrested for a crime, the arresting officer decides the charges. The jail staff fixes the bail on your charges. They look at what is called the bail schedule for each of the offenses for which you are charged, add them up, then come up with the amount of bail that is set. The arresting officer may also ask the judge to set the bail beyond the schedule. The bail schedule is a product of the judges of the Sacramento County courts. The judges look at all the possible charges and set a fixed bail amount. Very serious charges are set at "No-bail."

Some charges permit release on "Own Recognizance" or "OR." This means that you could be let out of jail without having to post bail. You must sign an agreement that you will return to court on the designated dates. If the charge for which you have been arrested is one that is eligible for "OR," the personnel from the Pre-Trial Services office will interview you. After the interview, you will be given a score for "OR" eligibility. "OR" scores are based are based on ties to the community, employment or school attendance, and any previous criminal record.

The Pre-Trial Services Packet, which consists of the interview in jail, follow-up interviews with family and employers, your rap sheet and police report, will be submitted to the duty judge to review. If the duty judge thinks that you are an acceptable risk, "OR" will be approved and you will be released.

If you are not released on "OR," you will be brought to court within 48 hours of your arrest for arraignment. These 48 hours do not include weekends and court holidays. For example, if you are arrested on Friday night you have the right to be arraigned within 48 hours, excluding the weekends and holidays. You would probably go to court sometime on Tuesday.

In the period between your arrest and arraignment, an intake deputy in the District Attorney's Office reviews the police report and decides

what criminal charges, if any, should be brought against you. In some cases, the charges against you are dismissed and you are free to go. In other instances, the District Attorney will charge you with a misdemeanor rather than a felony.

When the police arrest someone, they will usually charge him with the most serious crimes the case would warrant. Charging someone with a felony when the facts don't really warrant it is also a police officer's way of administering "curbside justice." They know that if a person is charged with a felony, it will be more difficult for him to get out of jail. It is also possible that the District Attorney will charge you with a crime more serious than the one that the police arrested you for. This is generally the result of prior convictions being found on your rap sheet. The charges that are ultimately placed against you will have a strong determining effect on how much your bail will be.

If you go to court with an attorney at the arraignment, the attorney can ask for a release on your own recognizance or a reduction in the bail amount. If you have to wait until you go to court and ask for a court appointed attorney, this is not likely to happen. The fact that you have obtained an attorney shows that you want to fight your case and that you have invested to see the matter through. Why would you pay an attorney if you were going to skip town?

Posting Bail through a Bondsman

If you have to post bail, there are three ways of doing it. The first way is to use the services of a bail agency. Bail agencies usually charge ten percent of the bail amount to post bail for you. This ten percent is not carved in stone so it would be wise to negotiate with a bail agency for a lesser amount. Some bail agents are also more flexible with payment arrangements than others. Some will require half of the premium to be paid up front and allow you to make payments on the rest. Some will give even more liberal terms. It is a good idea to shop around and negotiate. If you have a lawyer ask for a recommendation.

Depositing bail with the Court

The second way to get out of jail is by depositing the total amount of bail with the court. The advantage of posting cash bail is that after the case is over, the entire amount of bail is returned to the person who deposited it. The disadvantage of using cash for bail is that most people do not readily have the large sums of money needed to do this.

If the case is going to go on for a long period of time, it may cost more in lost interest than it is worth. You also risk loss of the money by using it for bail. The police and the government get very greedy when someone accused of a crime uses a large amount of cash for bail. The police may investigate the source of the money in hopes to show it was gotten illegally so they can confiscate it. If the police don't get it, the Franchise Tax Board or IRS may come in. It is best to consider carefully with your attorney the use of cash for bail.

Using Property for Bail

A third way of getting out of jail is by posting a property bond. The owner of real estate transfers the deed temporarily to the court while the person is out on bail. The real property has to be in California, but can be in any county. It can be owned by anyone. It is not necessary that you own the property. The value of the equity in the property has to be worth twice the amount of the bail that is being posted. If, for example, the bail is $100,000.00, then the equity in the property has to be $200,000.00.

Equity means the value of the property that the owner would have after paying any loans and other obligations on the property. For example, the house was purchased for $70,000.00 and the owner still owes $35,000 and the property is now worth $135,000, then the owner has $100,000.00 in equity. This property could be used for $50,000 worth of the bail.

Using property for bail is a fairly complex procedure. The person who wants to use property for bail will have to complete an application from the County Clerk's Office. He will then have to present a deed to the property. If there is still money owed on the property, it is necessary to have a letter from the lender stating how much money is still owed on the

loan. It is also necessary to get an appraisal of the property by a licensed California real estate appraiser. A title report is also required, showing the names of the owners and all legal obligations, liens, etc. that might be outstanding. There is also a requirement that the fire insurance provider change the coverage so while the person is out on bail, the County of Sacramento is the beneficiary of the policy in the event that the home is damaged or destroyed by fire.

There is some cost involved in using the property for bail. The appraisal costs $300 to $500. A title company report will usually be $200. There is also a cost in time and effort. It is not easy to prepare the documents used for property bail. It involves trips to various companies, the recorder's office and numerous trips to the bond window in the courthouse. The estimated time for a successful property bail process is a week to ten days. There are no further costs, aside from the initial costs, when using real property for bail. If a piece of property with equity of $100,000 is used to make a $50,000 bail, the cost is around $500. This compares to the usual cost of $5,000 to a bail bond agency.

It is always a good thing to get out on bail if it is possible. You will feel better and look better. You can go to work and/or get into rehabilitation. It is easier for you to help your lawyer in your case.

STAYING OUT

Some Important Tips about Going to Court

Tip #1: Judges are human. They will be influenced by the impression you make on them. Dress nicely when you come to court. Be sure your clothes are clean and modest. Work clothes and uniforms are fine. They show the judge that you are a worker. Your dress shows that you take the court proceedings seriously.

Tip #2: Be on time. Judges will form an impression about your willingness to comply with probation by your punctuality. Your attorney will be grateful and will be able to put energy into your case rather than apologizing for your absence. If you are late, a bench warrant may be issued for your arrest. This may require your bail agent to reassume your bail.

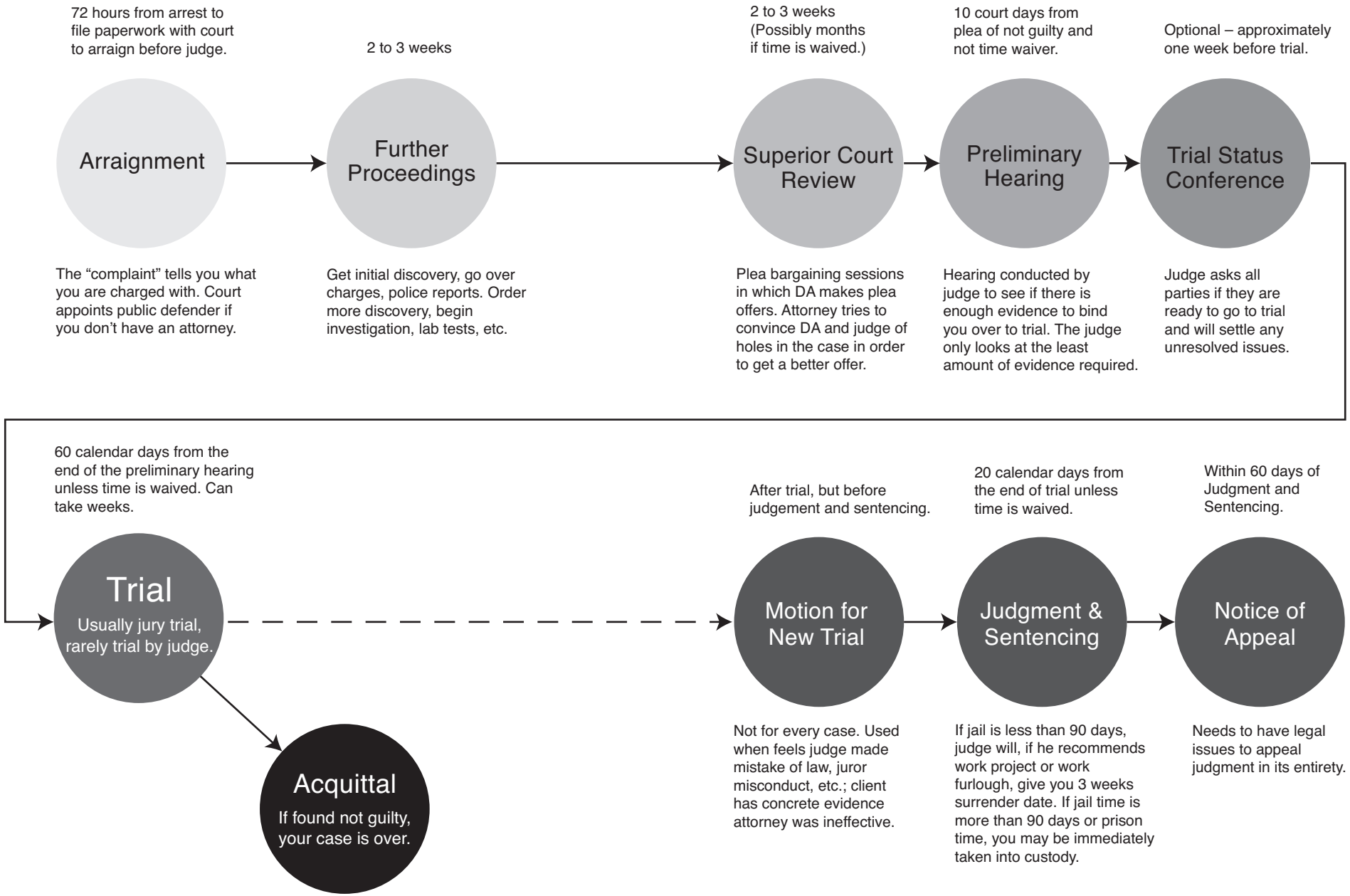
This will cost you $100. If you are unavoidably late, call the court and tell them when to expect you there. If you have a medical emergency, notify the court and your attorney. You will need to bring proof, so get a note from the doctor. If you fail to appear in court without a valid reason, you could be charged with a new charge.

Tip #3: Address the judge respectfully. Some clients get confused about how to address women judges. "Yes, your Honor" and "No, your Honor" works for both men and women. If you feel more comfortable with "Yes, ma'am" and "No, ma'am" that is fine too. Speak loudly enough to be heard. If you do not understand something, say so.

Tip #4: Keep track of what is happening. Get yourself a binder, notebook, or briefcase dedicated to your court case. Write down your next court appearance. Also keep the phone number of the court and phone numbers to reach your lawyer if a problem arises. Being on time and keeping appointments is extremely important. The judge will consider failures to appear or showing up late if there's a question of raising your bail or remanding you into custody after a jury trial.

Tip #5: Parking. The best place to park is in the county parking lot, which is bordered by 9th and 8th and G and H Streets. You will enter the parking lot from G Street. If you park there you will not have to worry about change or running out to feed the meter. This will help you both avoid a ticket and assure your presence in the court at the time your case is called.

THE CRIMINAL PROCESS



Chapter 4
BEFORE TRIAL

ARRAIGNMENT

Arraignment is the first time that you go to court on your case. At the arraignment the Judge will tell you what charges have been filed against you by the District Attorney (DA) and ask if you want a lawyer appointed. He will ask if you can afford a lawyer. If you say you want a lawyer but can't afford one, the judge will appoint either the Public Defender (PD) or what is called a "panel" lawyer.

APPOINTED ATTORNEYS

The Public Defender is a county employee appointed by the Sacramento Board of Supervisors. The Public Defender's Office has its central administrative office in the basement of the County Administrative Building at 700 H Street, Suite 0270, Sacramento, CA 95814.

A "panel" lawyer is also paid by the county and works under another county department called the Criminal Conflict Defenders (CCD). CCD has its central administrative office at 901 H Street, Suite 409, Sacramento, CA 95814.

The Public Defender's Office sometimes gets too many clients to represent. When this happens the Public Defender's Office declares an "overload" and asks the court to appoint an attorney from CCD.

Sometimes the Public Defender's Office will also declare a conflict of interest and ask the court to appoint an attorney from the CCD. A conflict of interest can occur when there is more than one defendant in the case. The Public Defender's Office can only represent one of those persons. Other examples of conflicts might be when the public Defender represents the victim or a material adverse witness.

If the CCD is appointed to your case, one of their attorneys will

be present in court to accept the appointment for the CCD, but another lawyer will likely be assigned to actually work on your case. After waiting a few days you can call CCD at (916) 874-7670 to find out what lawyer was assigned to your case if you were assigned the CCD to represent you.

If you were appointed either a public defender or a panel lawyer to represent you, your case will usually be continued for about two weeks from the date of your arraignment for what is called "further proceedings." In the meantime, an attorney from one of those agencies will see you and review the police report with you. Ordinarily, the courts will not consider a motion for bail until the attorney who is going to handle your case represents you.

PRIVATE ATTORNEYS

If you have a private attorney who is hired before your arraignment, you are in somewhat more of an advantageous position. Your attorney can interview you before you go to court and find out whether it is advisable for you to make a bail motion.

Sometimes the bail is set very high in relation to the facts and circumstances of you particular case. In this case, it may benefit you to ask for a reduction in bail before posting bail. If the bail is about as low as it will get, I advise my clients not to make a bail motion because the bail could also be raised. If there are aggravating facts, the District Attorney can succeed in getting the bail raised considerably. The judge who hears the bail motion is required by law to assume that the statements in the police report are true.

A private attorney can get the proceedings moving along much more rapidly. As soon as I am retained, I make a request for "discovery" on the case. If a bail motion is going to be set, I can sometimes do this informally even before you go to court. I may also contact the District Attorney on the case and arrange an informal conference with the judge in chambers to try to get the bail lowered. It may also be possible for you to get "OR" (release on your own recognizance) at the time of the first appearance if represented by a private retained attorney.

In some cases, the alleged victim or a witness can be brought to court to talk to the judge and the District Attorney. This can be an important factor in getting you an "OR" or reduced bail. A private attorney on the job immediately can begin to interview witnesses and start to work on your case while events and memories are fresh.

Another thing that a private attorney can do for you at arraignment is to do what is best to avoid publicity for your case. In many cases it is better to have you out of sight and out of mind. In other cases, you may need someone who can speak for you and begin advocating your case immediately before you have been judged and hung in the media.

Please remember that, while an attorney may be confident of a particular result, no attorney can guarantee that result. In fact, it is unethical for an attorney to do so. If an attorney guarantees you a certain result you should view that advice as suspect.

FURTHER PROCEEDINGS

After the arraignment the case is normally set for what is called "Further Proceedings." This is simply a way of saying that the case is being delayed while your attorney gathers police reports and has an opportunity to talk with you to find out what needs to be done next on the case.

Police reports are not usually available to the defense lawyer until the lawyer has appeared in court and told the court that they are going to be the attorney for the client. At that time, they can request them from the District Attorney's Office.

SUPERIOR COURT REVIEW

In Sacramento County, the case is set within a fairly short period of time after arraignment for what is called a "Superior Court Review." This is the Monty Hall let's make a deal time. Realize that the entire system would crumble without most cases being resolved at early stages through "plea bargains" also called "deals." 98% of all cases resolve

before trial. If all cases went to trial there would never be enough resources to handle all of them. Trials are expensive and time consuming for everyone including the county. I've heard estimates that it costs the county as much as $10,000 a day for each trial. For this reason the system has evolved to pressure all parties to resolve the case before the expense of a trial.

The District Attorney's Office in Sacramento County has a practice of not immediately charging priors and other enhancements (facts that could add more time to your case).

This allows the District Attorney to offer you a lower term if you accept a deal at the beginning stages of the case. It also gives them the ability to threaten you with the possibility of more time if you do not take the deal they offer.

A Superior Court Review takes place in the Judge's chambers. The District Attorney will argue the facts as he or she sees them about the particular offense. The defense attorney then provides the defendant's version with any mitigating factors and talks about other facts in you favor. This is where a good defense attorney that is prepared can make a big difference with your case. This usually results in an offer being made by the District Attorney. The court will generally agree to go along with that offer if the defendant accepts it. Sometimes, however, the judge will intervene and pressure the District Attorney to make a lower offer.

In many instances, the offers made at this early stage of a case produce "sticker shock" for the client. Sometimes, if the person doesn't want the offer, but the case against him is quite strong, the case may be continued one, two, or three times, to allow the attorney and the client to review all of the evidence and consider all the possibilities. This allows the client to have a complete picture of what may or may not happen if he proceeds with the case rather than take the deal.

The possible punishment you are looking at the first time you go to court may be deceptive. There are many "enhancements" in the Penal Code and these may be added to make the charges considerably more serious. For example, a person who has been charged with possessing drugs for sale could also possibly be accused of committing this offense

for the benefit of a gang. This person could also have prior prison terms that could carry enhancements. There may be one or more "strikes" that could be alleged. There are many other possible enhancements to criminal charges that have to be looked at very seriously at this early stage of the proceedings in order to give you the best benefit of the advice of your counsel.

Sometimes the District Attorney will agree to dismiss the case. Sometimes a misdemeanor rather than a felony is offered. Sometimes a diversion of criminal charges is possible so you don't end up with a conviction on your record. Sometimes cases don't get settled and proceed to trial.

Remember that you, the defendant, are the one to say "yes" or "no" to any deal that is offered. If the case doesn't settle at the Superior Court Review stage, a plea of "not guilty" is entered and the case is set for a Preliminary Hearing.

PLEA NEGOTIATIONS

Most lawyers will settle far more cases by plea bargain than by going to trial. The qualities of attorneys differ widely. Just because an attorney is retained, don't think for a minute that this means they are necessarily any good. There are retained private attorneys that never go to trial. Many such attorneys make very good money. The phrase that is used to describe how they operate is "bleed them and plead them," meaning that they will take all your money and then dump you.

On the other hand, there is a time and place for plea bargains. This is where a good attorney can properly evaluate the "worth" of your case and advise you accordingly. Many of the best deals are offered at the early stages in the case. Numerous laws have been passed in the past few decades that increase criminal penalties enormously.

The Sacramento court system is designed to get rid of cases in a hurry. The District Attorney in your case may have as many as 200 cases. The offer made in a case is based on reading the police report. The offer may be too high or too low depending on many factors. Such

factors could include the judge hearing your case, current politics in the county, and the District Attorney involved. This is also specifically where an attorney that practices regularly in a specific legal area, such as criminal law, in a specific county, such as Sacramento, will be better equipped than an outsider to evaluate what your case is currently "worth."

Many times the client may be shocked and angered when an attorney comes with an offer and recommends that the client take it. Sometimes the client angrily rejects the offer and loses trust in the attorney. It may not be in your best interest to reject the offer and the attorney so quickly. The court will usually grant a reasonable continuance for a client to consider an offer. The client should insist on seeing the attorney with enough time to fully discuss the case. If some investigation needs to be done, enough time will usually be granted to do this also. The attorney and the client should also discuss other possible pitfalls (such as strike priors surfacing) if the client rejects the deal.

Another alternative is for the client to seek a second opinion. No lawyer should ever get offended when a client says he wants to seek a second opinion. A second opinion should be that, rather than a sales pitch based on a cursory review of your version of the case. If you have already paid one lawyer a lot of money it does no good to hire another for a lot of money without some assurance that the second lawyer can get better results for you. The best option would be to make sure that the second lawyer reviews the file and knows the case. This may involve reading police reports, viewing videotapes, seeing the crime scene and legal research. Once you have paid a lawyer money it is hard to get it back, so avoid hasty moves.

SEVEN MYTHS ABOUT PLEA BARGAINING

Myth #1: The District Attorney can't prosecute the case if the victim doesn't want to press charges.

Many unwilling victims are forced to come to court and testify against their will. The District Attorney, not the victim, decides whether or not to "press charges." The victim is seen as just another witness and in many cases, such as a domestic violence case, it is assumed by the

District Attorney that they have a “hostile victim.”

Myth #2: Jailhouse lawyers tell people: “Don’t take the first offer. It will get better!”

The offer will get better if the case falls apart on the District Attorney. On the other hand if the case gets stronger, the District Attorney files enhancements, the District Attorney finds other victims, the District Attorney finds strikes or other priors, the offer will get much worse. Every case must be evaluated individually.

Myth #3: The District Attorney is going to drop the case because the victim or witness is not going to testify.

You must assume the victim or witness is going to show up to testify because this always seems to be the case. If the victim or witness is totally uncooperative or disappears that may help a great deal to resolve your case. However, cops and the District Attorney can use all sorts of threats to get people to testify. Victims are told that CPS will take their children away if they don’t testify. They are also threatened with prosecution. If people don’t show up in court the judge will issue a warrant for their arrest. If someone refuses to testify they risk being held in contempt by the judge and put in jail until they testify. If someone is the victim of a sex crime they can refuse to testify and the judge can only fine them $1,000 for each act of contempt. It is better for that person to refuse to testify and the judge can only fine them one thousand dollars for each act of contempt. It is better for that person to refuse to take the oath and say nothing else.

Almost all the so-called victim’s rights laws passed in the last few decades are designed to make it easier to get convictions not protect victims. The most fundamental civil right we possess is the right to be left alone. That right may be given little notice if the District Attorney thinks someone is a victim and wants his or her testimony. Such a person would be well advised to seek legal counsel.

Myth #4: If the District Attorney makes a low offer he knows how weak the case is and will dismiss it if I don’t take the deal.

The answer is that this may be so. Things may also get a lot worse. Refer to the answer above.

Myth #5: The District Attorney will not spend the money to take the case to trial.

The District Attorney loves spending money. The more they spend the more they can ask for from the County. Sometimes the District Attorney may balk at flying a witness across the country for a misdemeanor, but most of the time money is not a consideration.

Myth #6: It is my word against his or hers. The jury won’t convict me on such flimsy evidence.

The law says that the testimony of a single witness, if believed by the jury is sufficient to convict. Jurors in Sacramento County are very trusting of the government. People do get convicted on the testimony of a single witness.

Myth #7: The police didn’t read me my rights; therefore the case has to be dropped.

First, the so-called Miranda Rights which we are familiar with from T.V. and movies are only required if you made a statement to the police while detained or in custody. Second, what happened and what the police report says happened are often two different things. Third, they are only required if the District Attorney is going to use those statements in court. It does not by itself make the arrest illegal or mean your case must be thrown out. There may be other evidence of a crime besides your statement.

The lesson here to be learned is that before you reject an offer review your case thoroughly. What is the evidence against you? Make a list. What are your defenses? Make a list. What is the risk of going to trial? How much time am I looking at if I lose at trial? You should demand answers to these questions from your lawyer.

Taking a deal or going to trial are decisions made by the client. The lawyer has a duty to give you his or her best advice. Don't get mad at your lawyer for that advice.

The sad statistic is that most jury trials end in conviction. As mentioned earlier, your innocence has nothing to do with the process. The type of jury you end up with ultimately determines the verdict. Sacramento has one of the highest conviction rates in the state. Why? It's the jury pool. This certainly doesn't mean that you shouldn't take your case to trial. Every case is different. It does mean that you need to review your case carefully with your lawyer and make the best decision for yourself.

PREPARATIONS FOR TRIAL

Preparations for trial begin the very first time that the defendant and defense counsel meet. From the initial interview possible defenses to the case should be considered. Work done on the case after that first meeting should be aimed at putting the defense together. Legal research is frequently required to know what kinds of defenses are possible. This should be done at the very early stages of the proceedings.

Defenses usually fall into several categories. One line of defense will say that you did not do the act that constitutes the crime. Another line of defense will say that you did do the act that you are accused of having done, but that it wasn't a crime because the crime was legally justified, i.e., self-defense or a consensual sexual act between adults. Still another type of defense would be that you did do the act but it did not constitute the crime you are accused of, i.e., manslaughter instead of murder, or simple possession of drugs instead of possession for sale.

Trial preparation consists of two aspects. One aspect is to know everything possible about the prosecution's case. The other is to gather every possible witness and piece of evidence that will support the defense. This should be the goal from the very first day. The process of getting information from the District Attorney is called "Discovery." This process begins immediately.

The discovery may consist of initial police reports and any supplemental reports written by any other police officers or detectives and any dispatch tapes. These are recordings of the conversations between the dispatcher and individual police officers, as well as officers who communicate among themselves. They are available on audiotapes and computer printouts. These should be asked for immediately since they are destroyed every six months.

You may also ask for any videotape that may be available. Sometimes, the police interrogate people and make audio and videotapes of their conversations. You may also ask for photographs. If a death is involved, you may ask for the autopsy report. If there are medical records available, you may ask for those also. One very importantand often overlooked avenue of discovery is to view all of the physical evidence seized by the police.

The prior convictions of all witnesses need to be discovered. You can also ask for any and all records the District Attorney has on prior offenses of the defendant. Also, try to get as much information about priors from the courts, and other defense lawyers who might still have a file on a previous case. Ask that fingerprint testing of physical evidence be obtained. If this has not been done, and there are no plans by the District Attorney to do it, you can hire your own fingerprint expert to do it. You should also ask very early in the case for blood test results and other chemical test results.

If a confidential informant has been involved in a case, you can file a motion to try to discover the identity of that informant.

If the issues in the case are going to involve questions of honesty or tendencies toward violence on the part of police officers, ask for records of any prior complaints made against them. If the prosecution intends to use expert witnesses, try to get as much background information about those expert witnesses as you can. Then hire your own to counter them.

Learning about a criminal case is a proactive process. All prosecution witnesses need to be interviewed by the defense investigator. The police officer may have written notes on what the prosecution witnesses say, but the officer may have written his notes simply to support his version of why the person was arrested and what he was arrested for.

Many times, “exculpatory information,” that would take the blame off the defendant, is not put into the police report. Prosecution witnesses have to be interviewed. Very early in the case, defense witnesses need to be interviewed and their testimony preserved.

Visiting the scene where the crime or an act occurred is very helpful. Look at the place from different angles and at nighttime if the incident occurred at night. Look for businesses to see if there might be someone who saw something. Sometimes there are neighbors, such as little old ladies who sit at a window all day long and never miss anything. Sometimes, the absence or presence of lighting, trees or other such physical scenery, is very important.

One of the greatest tools for defense attorneys is the subpoena duces tecum. This is a fancy word for a document that when given to a person that has relevant information, it forces them to give it up or show up in court and explain to a judge why they can’t. Each of us in our lifetime generates an enormous amount of information that is available through public agencies such as the Department of Motor Vehicles, credit reports, real estate transactions, contact with the police, medical providers, school and education records, job reports, etc. These are frequently sources of information and can be used to help a person in their defense and attack the credibility of the District Attorney’s witnesses.

What Must Be Done

- You need to review with your attorney every piece of physical evidence that the District Attorney has. This can be done in person or by viewing photographs or a videotape.
- You need to review all statements you have made. This may be in videotapes or police reports or in investigative reports.
- All of your witnesses need to review any statements they have made. These may be in videotapes or police reports or in investigative reports.

Technology and Legal Defense

Society has changed and the good defense attorney must go along with those changes. Smartphones, laptops, and email are required to

remain relevant in today’s world. Criminal defense is no different. For example we live in what has been referred to the video generation. The attention span of a juror is 20 minutes, which is the time between commercials on the television. If you are not holding the juries attention then you are not getting your points through to them.

Projectors, video, digital photos, and auto cad reproduction of crime scene events are now required working tools of a competent defense in the courtroom. Before you get to the courtroom access to research on the Internet and legal databases are requirements.

There are many attorneys that are still defending client’s the same way attorneys did 100 years ago. Unfortunately, they are hard to tell until you see them in action in the courtroom, and usually by that point it is too late. When you see your attorney pulling out an old dog-eared pad of paper from which to read his closing, and not instead reaching for a laptop to present slick computerized presentation for the jury, there could be a reason to be concerned.

MOTION PRACTICE

So what’s a motion? A motion means that you are asking the court to do something. There are a variety of commonly used motions, however, motions are only limited by the imagination of the attorney.

There needs to be “authority” or a legal basis for the motion. In fact, many motions take their names from either a legal code section or a legal case that gives support for the motion. For example a “995 motion” is named for California Penal Code section 995 and a “Marsden motion” takes its name from People v. Marsden.

The judge is supposed to remain neutral and not act on his own until an issue is put before him usually by way of a motion. Motions can determine the fate of a case long before reaching a trial. Depending on the type of motion, motions can be brought before, during, and after a trial.

Filing a motion means preparing a legal document, filing it with the court and setting it for a hearing. Some of the more common motions include motions aimed at asking the judge to dismiss the case on various grounds. One such ground may be that the police obtained the evidence illegally.

Discovery motions are aimed at asking the judge to order the District Attorney to provide certain information. There are also motions that are made to get the county to pay for necessary services needed to fight a case such as for experts and testing of evidence. There are also motions made to limit what the District Attorney can present as evidence at trial. In the inverse there are motions to request that the defendant be allowed to present certain types of evidence at trial.

A motion for a line-up may be a good idea when there is an issue of identification of the defendant. Sometimes the police may arrest "the usual suspects" or someone who vaguely fits the suspect description. Many times a person may be arrested when he is suspected of a particular crime and the victim will be brought immediately to the scene. This is what is called a "cold show-up." That means that the victim has been asked to identify someone in a highly suggestive situation and one in which the victim is not asked to pick the person out of a group of people. In these, and many other instances, a motion for a lineup may be appropriate.

If a victim of a crime sees the defendant in court, on a television broadcast or on the street, the value of a lineup motion may be lost. Even if a person has previously identified the defendant, it is still good to ask for a lineup motion. It is possible that the victim would not pick out the defendant at a lineup. They may pick out the wrong person.

Another common motion is a motion to suppress evidence also called a "1538.5" motion after the Penal Code section that governs them. This is a request to the court that certain physical evidence and statements gathered by the police may not be used against the defendant in trial. The theory of a motion to suppress evidence is that the police invaded the defendant's right to privacy when they seized evidence, and the court should not allow this to happen.

There is also another reason. It is hoped that by preventing the police from using evidence that they have seized illegally, they will be deterred from this kind of behavior in the future.

In recent years our right to be protected from unreasonable search and seizure has been greatly reduced. In the past 20 years, it has been public policy to make it easier to convict people of crimes. This has been done at the expense of our individual protection. The net result is that it is now much harder to win motions to suppress evidence.

However, you can be successful in getting serious felony cases thrown out all together based on suppression motions. Also, there is another reason that such motions should be filed even though politically they may stand little chance of success: It can be an excellent tool for discovery. Opportunities to call witnesses before trial are being more and more limited, and every chance to do so should be sought out and used in order to get information before trial.

One extremely important motion to file these days is a motion to strike prior convictions. This is a request to the court that a prior conviction not be used. This means that the lawyer must question his client very carefully about the circumstances surrounding his guilty plea in a prior conviction. It also requires a diligent effort to get files and police reports from previous defense attorneys, as well as from the courts.

The usual approach to a motion to strike a "prior" is to show that the client was not properly advised at the time of his pleas and that the information that they should have been given would have resulted in them not taking the plea bargain. Another approach is to attempt to show that the attorney representing him on that case did not give the client adequate representation.

LAW: ARREST THROUGH TRIAL

Ever had some ask you how sure you are? You might be asked something like "On a scale from one to ten, one being the least confident and ten being most confident, rate yourself as to how confident you are." The law doesn't use a scale from one to ten, but instead uses the scale

to the left, one being a reasonable suspicion and ten being beyond a reasonable doubt.

The problem is that many people, including jurors, think that just because you were arrested you're guilty. Usually the first thing a juror thinks when he or she walks through the courtroom door for the first time and sees the defendant is "I wonder what he did."

Jurors in particular need to be made to understand the law. Just because you were arrested you are not guilty. To arrest a person the police officer only needs a reasonable suspicion to believe that a crime was committed and that the person being arrested committed it. This is a very low standard.

On the other hand it is the juror, not the police, who has the duty to decide whether you are guilty of a crime. The standard that a juror must use is beyond a reasonable doubt. This is the highest legal standard in the law.

What people and especially jurors also need to understand is that a police officer holds no special position in a courtroom. A cop is to be held to the same legal principals as any other witness. Just like you could place someone under a "citizen's arrest" for committing a crime, you and the police are supposed to be viewed the same legally when it comes to credibility.

Of course you and I know that in the real world this is not the case. Police officers lie all the time, they are trained how to lie and get around the law, but the general public is taught from their earliest experience to not question police officers. Police officers are professional witnesses that are trained how to testify effectively. They show up in polished uniforms with a script, their police report. Probably the most difficult job for a trial attorney is re-educating a potential juror as to how the law and the world really works when it comes to police officers.

Chapter 5
AFTER TRIAL

REFERRAL TO PROBATION

If you have been acquitted of all charges at trial, you walk out of court as a free person. Bye!

If you are found guilty of some or all of the charges, your case will be referred to the probation department for the preparation of a pre-sentence report.

The Court Probation Department is located at 711 E Street, near the Courthouse. If you are out of custody, you will be told to go there to arrange an interview. If you are in jail, a probation officer will come to see you. It is very important to discuss this interview carefully with your attorney before you go see the probation officer. It may be desirable to write out your version of the events and present them to the probation officer. You may want to tell him that you do not want to discuss the matter of the crime any further because your case will be appealed.

You do want to be as cooperative as possible and to have the probation officer like you. You want to carry documents such as graduation diplomas, honorable military discharges, receipts for child support payments, etc. with you. If you don't bring these things, the probation officer will probably say in the report that you claim to be graduated from high school or that you claim to have an honorable military discharge, etc., rather than say that you did these things.

The probation officer begins his report by getting the District Attorney's file. The crime will be recounted from a review of the police reports even thought the Judge has heard the trial. The report will then have your statements, your personal history and the conclusion and recommendations of the Probation Department. Letters from your family and friends will be included in the report as well as statements from the victim or victim's family.

The report has a section in which you are asked about your con-

sumption of alcohol and various drugs. Probation officers always seem to write things that make the client look like a totally burned-out "drugee." Your denial of saying these things later when you are standing before the judge will usually fall on deaf ears.

If you are sent to see the Probation Officer, ask your lawyer to see a Pre-Sentence Report of another client. The contents of that report are secret and can be revealed to no one, but the lawyer can take a report and show you its various parts and the format. This can prepare you for what questions you will be asked.

It would be good to write the information yourself and give it to the Probation Officer. It will be gratefully accepted. By saving the Probation Officer some work in this way, you're likely to gain some favorable treatment.

You are entitled to have a copy of the report three days before the date of the sentencing hearing unless your attorney asks the judge to order it done nine days before.

Since probation officers are considered to be part of the court, they cannot be subpoenaed to court to explain the recommendations they make. Going to the probation department is fraught with risk and requires careful thought and preparation.

Motion for a New Trial

Let's assume your case has gone to trial and you have been found guilty. What happens next? The two most important things for you and your lawyer to do at this point are to prepare a motion for a new trial and prepare for sentencing. Possible grounds for a new trial are found in Penal Code section 1181.

Most of the grounds relate to juror misconduct. Another reason could be the finding of new evidence. If the judge has erred in his instructions to the jury, or has erred in the ruling of the law, or if the prosecution has been guilty of prejudicial misconduct, these could be possible grounds for a new trial.

It is common for lawyers to file a motion for a new trial citing one or

more errors the judge has made. This usually doesn't result in a new trial. The judge is likely to rule that he or she considered the questions and made the right decision at the time. These motions serve most usefully to help the appellate attorney see issues that the trial attorney thought important and sometimes give an opportunity to make a better record in light of all the evidence that came in during trial.

Motions for new trials may succeed when they involve juror misconduct or new evidence.

COLLATERAL CONSEQUENCES OF ADULT CONVICTIONS

Immigration Consequences

This is one of the most common areas of collateral consequences of criminal convictions. If you were not born in the United States and your parents were not citizens of the United States when you were born, you very well may face this issue. Immigration consequences of criminal convictions are an incredibly complicated area of the law. Some basic guidelines are:

- Drug convictions are generally treated harshly. If it's your first and only offense you might get lucky.
- Domestic Violence (including child abuse) is also treated very harshly.
- Sex crimes are treated harshly too.

Before you plead to any charges, if you are not a citizen of the United States, you need to make sure you understand exactly what might happen should you plead or get convicted of your charges.

Sex Crimes

First, it is a crime to have sex with anyone under the age of 18, even if you are under the age of 18. If you are over 18, it is worse. And the older you are the worse it is. There are too many sex charges to go over in this limited space. Suffice it to say that, you could be charged with a felony. It could be a strike. And you could be required to register

as a sex offender for the rest of your life. If you are sent to prison when you get out, you could be required to where a GPS tracking device at all times and you may not be permitted to live near schools, parks or other places where children live. This could mean you can never live in your family residence again.

CONCLUSION

Information is power. These pages are written to empower you and to help you not only to survive, but also to win. If you were diagnosed with cancer, you would want to get your hands on everything you could to learn about the disease that threatens you. You would use the information to get the best help you could from professionals and experts, but you would want to be in control of the decisions that were yours to make.

It is my sincere hope that I have given you some knowledge that will help you to fight your case. The goal is to help you to work with your lawyer and to win. Winning takes various forms. Sometimes it is getting the District Attorney to dismiss a case before it ever gets started. Sometimes it is winning by a Motion to Suppress Evidence. Sometimes it is raising the stakes so high that the prosecution offers you a deal that you believe is in your best interest to take. Sometimes, it's winning a "Not Guilty" verdict in the courtroom.

Our system of law is adversarial. The District Attorney does his best to convict you. Your lawyer does his best to set you free. The quality of defense lawyers varies across a great range from great, to good, to terrible. Nobody but you will be looking over your lawyer's shoulders to see that you get good representation.

There is an upside and downside to everything. All aspects of your case should be considered and decisions should be made based on what appears best for you. Your input should be sought on these decisions. Your attorney, however, has the final say regarding most decisions in your case, with the exception of whether you will plead guilty or you will testify. Those are absolute rights guaranteed by the Constitution.

APPENDIX

STRIKE PRIORS

A conviction for a prior "Strike" offense can greatly change the way you approach your case. You must let your attorney know immediately if you have been a ward of the Juvenile Court or convicted as an adult for any of the crimes listed here. If you are not sure, err on the side of caution. The last minute discovery of "strike" priors when you are about to go to trial can be devastating. "Strike" priors can be from any state or federal crimes. There is no limit to how old they may be. Review this list carefully and if you think that you may have been convicted of any one of these crimes, tell your lawyer immediately!

- Arson
- Assault with intent to rape or rob.
- Assault on a Police Officer
- Assault by Inmate
- Assault with a deadly weapon
- Assault by life prisoner on a non-inmate
- Any Felony Punishable by Life or Death
- Carjacking
- Continuous Sexual abuse of a Child
- Criminal Threats (Previously known as Terrorist Threats)
- Drug Conspiracy with a Minor
- Drugs sold to a Minor
- Exploding Destructive Device to Injure, Murder, or with Mayhem
- Forcible Sodomy
- Forcible Oral Copulation
- Forcible Penetration by Foreign Object
- Grand Theft Firearm
- Hold Hostage by Prisoner
- Inflict great bodily injury
- Kidnapping
- Lewd Act on Child
- Mayhem
- Murder

- Personal Use of a Deadly Weapon
- Personal Use of a Firearm
- Personal Infliction of Great Bodily Injury
- Residential Burglary
- Rape
- Robbery
- Theft of a Firearm
- Voluntary Manslaughter
- Felony with use personal use of a firearm or deadly weapon
- Assault with intent to commit a felony
- Intimidation of witnesses or victims
- Attempt of Any Crimes Listed Above Except Assault

Juvenile Priors

All the crimes listed previously above and:

- Assault with Intent to Murder
- Assault with Firearm or Destructive Device
- Assault by Any Means with Force Likely to Produce Great Bodily Injury
- Any Crime Using a Firearm
- Any Gang Related Violent Crime
- Carjacking while Armed
- Discharge of Firearm into an Inhabited Building
- Escape by Force or with Great Bodily Injury
- Intimidating a Witness
- Influencing the Testimony of a Witness
- Manufacturing or selling more than 1⁄2 Ounce of Controlled Substance
- Mayhem
- Torture

HOW TO FIGHT POLICE ABUSE

First, realize that there are two broad areas of law: Criminal and Civil. So far we've only been talking about criminal law. How to tell the difference? Criminal law involves "the State" (which is just another word for the government, i.e., the District Attorney, the courts, the police) vs. a person and what is being taken is some form of freedom.

Civil law involves a person vs. a person and what is being taken is some form of money.

You cannot charge someone with a crime. Only the State, i.e. the District Attorney, which in Sacramento County is Jan Scully, can charge a person with a crime.

You can report a crime committed by a police officer to another police officer or some form of citizen's review board set up by the police or the government, but don't hold your breath waiting for satisfaction. What you'll find is a case of the fox guarding the henhouse.

Legally, a police officer is just another person. You can sue a police officer like you would any other person for harming you. For example, when police beat you up or destroy your property without a legal reason you can sue them. When the police illegally harm you "under color of authority" or as a police officer and as part of some sort of practice or policy, then they have also violated your civil rights. For example, you have a right not to be stopped by a police officer just because you are a black kid walking down the street.

Anyone with any real life experience in this area knows that civil rights violations occur all the time. The problem is that there are very few attorneys that will sue the police. The cases can be complicated and can take more time than they are worth when compared to other areas of law.

All such "civil rights" attorneys know the dirty little secret that very few legitimate cases will ever find an attorney to take it. This leaves most without an attorney to take their cases. There is no easy answer for those seeking justice in this area. Here are some options:

File a complaint with internal affairs

By law, every police agency is supposed to have forms available for you to file a complaint. Every law enforcement agency is supposed to have a section called Internal Affairs that investigates such complaints. Again, don't hold your breath waiting for justice.

Also realize that the police got section 148.6 of the Penal Code passed. It requires you to sign a form stating that you know that filing a false police report is a crime before the agency can accept the form. Feel intimidated yet?

Of course you need to always be truthful. However, even if you are truthful the police may use the law to go after you. What this does for you is that it starts a record. If the police do turn around and try to file false criminal charges against you, then you have a record to support your argument that this is retaliation. Also, the complaint is required to stay in the police officer's personnel file for a period of time so that should someone else have the misfortune of suffering the same abuse they may be able to legally through what is called a "Pitchess Motion" get access to the complaint and contact you so that you can testify on his or her behalf against the officer that abused you.

File a claim with the City, County, or State

In order to sue the police in their official capacity and the police department for its policies you must first file a claim. The "municipal claim" as it is called is not a lawsuit. However, you must file this claim within six months from the incident in order to preserve your right to later sue.

Once the claim is rejected, you have six months from the date of rejection to file the actual lawsuit in either a state court or a federal court.

Where to get a claim form

You can get a claim form to file a claim against the State of California by going to 730 K Street. This is a brick building with an entrance from the K street mall. Tell the person at the front desk that you need a claim form.

You can get a form to file a claim against the City of Sacramento by going to City Hall at 915 I Street. Go to the second floor to the clerk's office.

You can get a form to file a claim against the County of Sacramento by going to the Sacramento County Administration Building at 700 H Street. Go up to the second floor to Room 2450. Ask the secretary for a County of Sacramento Claim Form.

Get Politically Active

The best organization in Sacramento fighting police abuse is the Sacramento Chapter of the NAACP. Because of the many complaints of police abuse they have started a cop-watch program with a web page at www.saccopwatch.org. There is also a legal redress committee meeting which meets once a month every 3rd Saturday from noon — 2 p.m. at the NAACP Branch Office at 816 H Street, 2nd Floor in which volunteer lawyers give advice. Call (916) 447-8629 or visit www.sacnaacp.org.

Another organization protecting civil rights in Sacramento is the Sacramento Chapter of the ACLU. They have been recently fighting for the rights of minorities and due process of law. For more information call (916) 691-0582 or visit www.sacaclu.org.

What if you are left to go it alone?

If you have not given up, but cannot find anyone to pursue a legitimate civil rights lawsuit, you can file yourself. But honestly, it's not going to be easy.

Here are some options: There is always The People's Court or Small Claims Court. This is one of the most useful but least used tools to fight against police abuse. The procedures in Small Claims Court are kept simple. The limit for what you can sue for is a maximum of $7,500. In small claims court you represent yourself. No one is allowed to have attorneys. There is a Small Claims Advisory Office on the 3rd Floor of the Carol Miller Justice Center located at 301 Bicentennial Circle, in

Sacramento.

If you have filed a claim with a government agency that is not satisfactorily resolved, you will want to go immediately to the Small Claims Court at the Carol Miller Justice Center and file a complaint to start your lawsuit immediately. You should ask the Sheriff Civil Division to do the delivery of the complaint on the law enforcement officer. This will make matters much easier on you.

GLOSSARY

No Contest Plea — Means the same as guilty, but you are not contesting the charges.

District Attorney — Also called the D.A., the prosecutor, the state, and "the people." Jan Scully is the D.A. in Sacramento and all other D.A.'s, or Deputy District Attorneys, work for her.

Panel Attorney — In certain situations a Public Defender cannot take your case and a 'panel attorney" is called to take it. A panel attorney is still an "appointed attorney" paid for and regulated by the county.

Indigent Defense Panel (IDP)/Conflict Criminal Defenders — Just different words for the conflicts "panel" that administers the panel attorneys.

Public Defender — Also called a P.D. Paulino Duran is the P.D. in Sacramento and all other P.D.'s, or Deputy Public Defenders work for him.

Private Attorney — An independent attorney that works only for money.

Dump Truck – An attorney that doesn't care about your case and wants to just get rid of it.

Marsden Motion — Motion that a defendant can ask for to get another appointed attorney.

"Pro-per" or "In Pro Per" — Someone who has chosen to represent themselves instead of letting an attorney represent them.

Probation — When you are convicted or found guilty, instead of going to prison or jail for the full time, the judge can order for you to be on probation for a period of years. During that time, you must obey all conditions of probation or you risk going to jail.

Infraction — a crime that you can only get fined money for. For example, a traffic ticket.

Misdemeanor — a crime that you can only get less than a year for. For example a first time petty theft you can only get a maximum of six months in county jail.

Felony — A crime that you can get only more than a year in prison for. These include the most serious crimes including those for which you can get the death penalty.

“Waiving” or “to waive” — if you waive your right, you are giving up that right.

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Keith J. Staten, Attorney at Law

Mr. Staten specializes in complex criminal litigation, DUI litigation and administrative licensing issues. He earned his Bachelor's of Arts in Management Information Systems from San Francisco State University in 1987, and he earned his Juris Doctorate from the University of the Pacific, McGeorge School of Law in 1992. After beginning his career at the Sacramento County Public Defender's Office, Mr. Staten left to start his own criminal defense practice in 1994.

Between 2001 and 2007, Mr. Staten was Senior Staff Counsel for the California Department of Motor Vehicles. There he reviewed DUI legislation and managed all writ litigation throughout the State of California. He also was the in-house legal advisor to the Driver Safety Program.

Mr. Staten is an expert in DUI matters, both from the criminal justice side and the DMV administrative side. He also is known for his successful verdicts in drug and sex cases.

Mr. Staten helped create new case law in the "Facebook" case. In that case, a juror had "friended" other jurors on the social networking site and regularly posted commentary on the trial during that trial. Mr. Staten successfully argued at both the trial and appellate level that his client's right to a fair trial trumped that juror's privacy rights, and won a motion for a new trial.

Further, in the case of a fatal shooting at a Sacramento IHOP, Mr. Staten won an acquittal for his client when his frame-by-frame analysis of surveillance video clearly revealed his client acted as a peacemaker, and had left the restaurant before the fight escalated to the shooting.

Mr. Staten has been an active member of his community by serving on the Boards of the Sacramento County Bar Association, the Sacramento Indigent Defense Panel, the Wiley Manuel Bar Association, Natomas Pathways 3 Charter High School and the OK Kids Program of Sacramento. He has given lectures to community organizations, youth groups, and professionals.