

SUMMARY OF CRIMINAL CASE PROCEEDINGS

Criminal Complaint – Is a formal legal document that sets out the facts and legal reasons to support the prosecutors' claims. Most of the times, the criminal complaint is used to give cause for an arrest warrant to be issued.

Arrest Warrant – Is issued when a criminal complaint and supporting affidavit establishes probable cause to believe that an offense was committed and that the Defendant named in the warrant is the one who committed it.

Arrest – Is the apprehension of a person by taking into custody to answer a criminal charge.

Initial Appearance – The Initial appearance is the Defendant's first appearance in Court. At the initial appearance, the Defendant is advised of the charges filed against him/her. At the Initial appearance, the Defendant is advised of certain rights.

Pretrial Release / Detention Hearing – Pursuant to the Bail Reform Act of 1984, Defendants are to be released prior to trial without any special conditions, unless the Court concludes the Defendant is likely to flee or is a danger to others or the community. During a Detention hearing, the Court can determine that there are certain pretrial conditions that could reduce the likelihood that a Defendant will flee or endanger others or the community. In the event the Defendant waives his/her right to a detention hearing or the Court determines there are no conditions or combination of conditions to ensure Defendant would not flee or endanger others or the community, the Court will order the Defendant Detained.

Preliminary Examination – A Defendant is entitled to a preliminary examination in a felony case within 10 days of the initial appearance, if detained, or 20 days if released. The purpose of a Preliminary Examination is to present evidence to a Judge to determine if there is probable cause to justify further Court proceedings. If the Government is unable to establish probable cause, the complaint is dismissed and the Defendant is released. If the Grand Jury finds probable cause and returns an Indictment prior to a Preliminary Examination hearing, the hearing will be stricken and the case will proceed.

Charging Document – A Criminal case begins when the Defendant is formally charged in an Indictment or Information.

Indictment – An indictment is a formal document issued by a Grand Jury, charging the Defendant of committing a crime(s). The U.S. Attorney or an Assistant U.S. Attorney appears before a Grand Jury and presents evidence to show a person has committed a crime and that they should be formally charged for it.

SUMMARY OF CRIMINAL CASE PROCEEDINGS

Grand Jury – Is a group of citizens, empanel by the Court, consisting of 16 to 23 persons to hear evidence and determine whether there is probable cause to return an indictment against a Defendant.

Information – An Information is a formal document charging a Defendant of committing a crime by the U.S. Attorney alone, without any participation by the Grand Jury in charging a Defendant.

Arraignment and Plea – In a Felony case, an arraignment is held after the Indictment is returned by the Grand Jury. At the Arraignment, the Defendant can have the charges read to him/her or waive the formal reading of the Indictment/Information. The Defendant is advised what the charges are and what the maximum penalties maybe. The Defendant then enters his/her plea to the charges, guilty or not guilty.

Guilty Plea – If the Defendant enters a plea of guilty, the Defendant will be advised of his/her rights and the Court will enter a finding of guilt and set the matter for sentencing.

Not Guilty Plea – If the Defendant enters a plea of not guilty, the Court will set discovery and pretrial motion deadlines.

Speedy Trial Act – The Speedy Trial Act imposes deadlines on the prosecution in order to minimize delays in bringing a case to trial. The Act requires Federal Defendants to be indicted within 30 days of their arrest and to be brought to trial within 70 of the filing of the Indictment or Information or 70 days of their first appearance in the District in which they were charged, whichever is later. The Speedy Trial Act does recognize that there are justifiable reasons that will make it impossible to begin a trial within the time periods. These reasons are referred to as Excludables. Any delay resulting from an excludable event stops the running of the Speedy Trial Act “Clock.” Some examples of an Excludables would be time for Defendant to investigate the charges, or time to conduct a psychiatric examination, to determine if the Defendant is competent to stand trial.

Discovery - The Government discloses certain evidence in the Government's possession. Not all evidence is discoverable before trial. The Defense is entitled to discover and inspect all of the statements made by the Defendant to law enforcement officials, all results of any scientific tests conducted by the Government and any tangible or physical evidence in the Government's possession. After responding to the Defendant's discovery request, the Government is entitled to Reciprocal Discovery from the Defendant. Pursuant to a case heard before the U.S. Supreme Court, *Brady v. Maryland*, the Government is required to disclose to the Defendant, any evidence it has in its possession that maybe favorable to the Defendant on the issue of guilt of punishment. This is known as Brady Materials.

SUMMARY OF CRIMINAL CASE PROCEEDINGS

Pretrial Motions - A pretrial motion is a request prior to trial by either the Government or Defendant for a ruling by the Court on a matter in dispute. Examples of Pretrial Motions are: Motions relating to discovery requests, Motions to suppress evidence, motion to dismiss the Indictment or Information. If there is a dismissal of the charges, Indictment, or Information, the dismissal may be "with prejudice" or "without prejudice." If the matter is "with prejudice," the Government will be barred from prosecuting the Defendant again on the same charge or charges. If it is "without prejudice" the Government is allowed to prosecute the Defendant again on the same charge or charges should it elect to do so in the future. If there is a Pretrial Motion where the Court needs to resolve a matter of fact in order to rule on the Pretrial Motion, the Court will hold an Evidentiary Hearing where evidence and/or testimony is given in order for the Court to determine the facts.

Guilty Pleas - A Defendant may enter into a guilty plea, where he/she admits the commission of one or more of the alleged criminal offense(s). If the Court accepts the Defendant's guilty plea, there will be no trial and the defendant will be given a date to return for the Court to impose a sentence. The Defendant must be competent to enter into a plea of guilty and the guilty plea must be made voluntarily. The Defendant must understand the nature of the charges and what the maximum penalties may be. Before accepting Defendant's guilty plea, the Court must be certain that the Defendant understands he/she will be waiving certain Constitutional rights and that the Defendant knowingly and voluntarily waives those rights. For example, the right to vote or the right to bear arms. The Federal Rules of Criminal Procedure also require that there be a factual basis for a guilty plea. If the Court determines the Defendant did not violate the law, or the Defendant has a valid defense, the Court cannot accept the guilty plea. The Defendant could enter into a Guilty Plea based upon a Plea Agreement, or a Blind Plea.

Plea Agreement - The Federal Rules of Criminal Procedure allow the Government and Defendant to negotiate a plea agreement. In exchange for the Defendant's plea of guilty to one or more of the criminal offense(s), the Government may move the Court to dismiss or reduce other charges pending against the Defendant, or may recommend to the Court that the Court sentence the Defendant to a recommended sentence, or that they do not oppose a sentence the Defendant may recommend to the Court. The Judge handling the case does not get involved in the plea negotiations. The Judge can either accept or reject the parties' plea agreement. If the Court rejects the parties' plea agreement, the Defendant is allowed to withdraw his/her guilty plea and go to trial. If however the Court accepts the plea agreement but does not accept the recommended sentence, the Defendant does not have an absolute right to withdraw his/her plea of guilty.

Blind Plea - Is where the Defendant pleads guilty to the commission of one or more of the alleged criminal offense(s) without any agreement with the Government. Some Defendants file with the Court, a Plea Declaration, which is a written document where the Defendant presents his/her factual basis for the plea of guilty.

SUMMARY OF CRIMINAL CASE PROCEEDINGS

Trial by Jury - The Sixth Amendment to the Constitution guarantees the Defendant's right to a trial by a jury for all criminal offenses, except petty offenses. The Federal Rules of Criminal Procedure allow the Defendant to waive his/her right to a jury trial and proceed with a Bench Trial. In a Jury Trial, the role of the Jury/Juror is to act as the Triers of Fact. The Judge will decide what law(s) the Jurors will apply to the case. Jurors hear arguments and evidence presented by the Government and Defendant. The Government presents its case first. The Defendant is given an opportunity to present its case second. The Defendant however, is not required to present any evidence. It is the Government's burden to prove, beyond a reasonable doubt, that the Defendant committed the alleged offense(s). The Defendant is presumed to be innocent until proven guilty.

Jury Selection - In Federal Criminal cases, there are usually twelve jurors and one to six alternates. To be a juror, one must be over the age of 18; be a U.S. Citizen; have lived in the judicial district for a year; be able to speak, read, and write English well enough to complete a questionnaire; be free of mental and physical infirmities that would render him or her incapable of serving; and have no felony convictions or pending felony charges. Prospective jurors may be questioned by the lawyers and/or Judge. This process is called Voir Dire. The lawyers use this process to determine if they believe a prospective juror may not be able to be impartial. If a lawyer feels a prospective juror may not be impartial, he/she may ask the Judge to dismiss the juror for cause. This is also known as a Challenge for Cause. Lawyers may also ask the Judge to excuse a certain number of jurors without having to give any justification. This is known as a Peremptory Challenge.

Opening Statements - Opening Statements are statements made by the attorneys to explain to the Jury what they expect the evidence to reveal during the trial. The Government goes first. The Defendant can give an opening statement immediately after the Government, or it can wait to and do one after the Government has presented its case. The Defendant may even elect not to do an opening statement.

Presentation of Evidence - The Defendant is presumed innocent until proven guilty. It is the Government's burden to overcome the presumption of innocence. The Government must convince the Jury that the Defendant is guilty by proof beyond a reasonable doubt. That is why the Government presents its evidence first. There are two types of evidence that may be presented to the Jury/Judge. There is physical evidence. This could be documents, photographs, videos, and other objects (also known as Exhibits). The second type of evidence is known as testimony of witnesses who are called to the witness stand to testify. A witness is placed under oath, and the side that calls the witness begins its questioning. This is known as Direct Examination. The opposing side has the opportunity to also question the witness on the stand. This is known as Cross-Examination. Questions on Cross-Examination are used to attempt to show that the testimony the witness gave on Direct was not credible. If after Cross-Examination is done and the person who did the Direct Examination wants to further question the witness, they may call upon the witness for a Redirect Examination and the opposing party will be afforded an opportunity for a Recross-Examination of the witness.

SUMMARY OF CRIMINAL CASE PROCEEDINGS

Closing Arguments - After all the evidence is present, and after each side has rested, each party makes its closing argument. The Closing Argument is where each side summarizes the evidence presented and they attempt to persuade the jury to return a verdict in their favor. The Government goes first, followed by the Defendant. Since the Government has the burden of proof, the Government is given the opportunity to give a rebuttal argument.

Jury Instructions - Following the closing arguments, the Court will give the Jurors instructions as to the relevant law, how the law applies to the case being tried, and what questions they must decide.

Deliberations - After receiving the Jury Instructions from the Judge, the Jurors retire to the Jury Room where they are able to review the jury instructions, discuss the evidence presented to them and try to reach a Verdict. The Verdict must be unanimous, meaning all Jurors must be in agreement to either find the Defendant Guilty or Not Guilty. If the Jurors are unable to reach a unanimous decision, the Judge can declare a mistrial, and the prosecutor may decide to ask the Court to dismiss the action or ask that the case be presented to another jury.

Verdict - The Verdict is the unanimous decision by the Jurors. The Verdict form is signed by all the members of the Jury. If the Verdict is returned Not Guilty, the charges are dismissed. If the Verdict is returned Guilty, the Court will enter a Judgment of Guilt based upon the Jury's Verdict. The Court will set dates for the filing of Post Trial motions and set the matter for sentencing.

Post Trial Motions - Common Post Trial Motions are motions for a New Trial or for Judgment of Acquittal.

Bench Trial - A bench trial is a trial by the Judge and not a Jury. For a criminal Defendant to have a Bench Trial, the Defendant would need to waive his/her right to trial by a jury, and the Prosecutor and Judge must all agree to it as well.

Sentencing - A criminal sentence is a judgment imposing a punishment upon a Defendant who has been found guilty of a crime. Prior to the Sentencing hearing date, the Court will receive a presentence investigation report from the probation department. The report contains information about the Defendant, characteristics of the offense, and the probation officer's recommendations on how the Sentencing Commission guidelines may apply to the case. The sentencing guidelines are advisory to the Judge and the Judge must consider them.

Appeal - After sentence is imposed, the Defendant may have the right to appeal to a higher court. Reasons to appeal are to see whether the trial was conducted properly, whether the District Court Judge made an error in procedure or in determination of the law, or in the Sentence imposed. If the Defendant chooses to appeal the trial or sentence, the appeal must be filed within fourteen days of entry of the Criminal Judgment on the Court's docket.