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W H A T Y O U S H O U L D K N O W I F Y O U ' R E
A C C U S E D O F A C R I M E

by

Joyce B. David, Esq.

1988/89 Revised Edition

Foreword by the Hon. Milton Mollen
Presiding Justice Appellate Division
Second Judicial Department

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WHAT YOU SHOULD KNOW IF YOU'RE ACCUSED OF A CRIME

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F O R E W O R D

Anyone confronting the bewildering and, to many, the intimidating and nerve shattering complexities of the New York State criminal justice system for the first time in his or her life, will find Joyce David's handbook outlining the ABC's of the system an invaluable tool in dealing with them.

A highly-respected attorney with a wealth of first-hand experience in all aspects of criminal law, Ms. David's thorough, step-by-step description of what a criminal case is all about, written in language readily understood by the average layman, unschooled in legal procedures and terminology, will do much to ease the pain of that first encounter with the law.

Ms. David, expertly and concisely, spells out just what he or she may expect at every stage of the case, explaining just what will happen and why.

As she points out correctly in her own introduction, those exposed for the first time to the criminal justice system often feel as though they are in a foreign country, with strange new rules, procedures and language. WHAT YOU SHOULD KNOW IF YOU'RE ACCUSED OF A CRIME provides the anxious "tourist" with a thoroughly professional and knowledgeable guidebook.

Milton Mollen
Presiding Justice
Appellate Division
Second Judicial Department

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INTRODUCTION

People exposed to the Criminal Justice System for the first time often feel like they're in a foreign country with strange rules, procedures and language.

This handbook is geared to the state system in New York City, but many of the general principles apply to other jurisdictions as well. It's based on over 10 years of experience "in the trenches". It's a realistic, not a philosophical look, at the system.

This handbook has general information and shows how cases make their way through the system. Most of the legal terms used are explained in the text or are self-explanatory.

This handbook doesn't deal with specific cases or crimes. There's a lot of information that's just too technical or complicated for this book. If you have specific questions about a case, you'll have to consult a lawyer personally.

The Criminal Justice System, just like the rest of life, is not always fair. That doesn't mean we give up; it just means we try harder.

CHOOSING A CRIMINAL LAWYER

If you can afford a private lawyer, I suggest you hire a criminal lawyer. You wouldn't go to an eye doctor for a problem with your elbow.

If you don't know any criminal lawyers, call your local bar association, or check with friends or relatives who may have had criminal problems.

It's not a good idea to hire a lawyer who approaches you in the courthouse. Lawyers are not supposed to solicit clients that way.

Find out how much criminal experience a lawyer has before hiring him/her. The more serious the charges are against you, the more experienced a lawyer you need.

It helps if your lawyer practices where your case is pending. Your attorney will know the judges and D.A.s (District Attorneys) and will have a better idea of what you can expect in your case. The D.A. is the one who prosecutes the case against you.

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You also have an advantage if the judges and D.A.s know and respect your lawyer. They're more likely to listen if your lawyer has a good reputation.

LAWYER/CLIENT RELATIONSHIP

It's important to trust your lawyer. His/her job is to defend you and protect you from the system, whether you're innocent or guilty. If you committed the crime or participated in some way and don't feel comfortable telling your lawyer, you should get a different lawyer.

You're not helping yourself if you think your lawyer will do a better job if she or he thinks you're innocent. It's not a good relationship if you don't trust him/her enough to be truthful.

Your lawyer can't advise you effectively if you keep things from him/her. Everything you tell your lawyer is confidential, even if you eventually hire a different lawyer.

You should ask your lawyer to explain what's happening with your case. Don't think your questions are stupid just because you don't understand the system. It's a very complicated system. That's why you need a lawyer in the first place.

Just because your lawyer isn't in touch with you all the time, that doesn't mean that she or he isn't working on your case.

There will be times when your lawyer may have to give priority to someone else's case. This is most likely to happen when your attorney's doing a trial. Trial is the most important and difficult part of a case. It demands the most attention and concentration.

Don't feel slighted if your lawyer can't appear on your case when he or she's on trial with another defendant. It doesn't mean your case isn't important, just that at this time, another client's case has priority.

You'll appreciate this when your case goes to trial. You

wouldn't want your lawyer distracted by less pressing matters when you face your moment of truth.

LAWYERS' FEES

Lawyers' fees vary depending on the amount of experience they have and the nature of the case. It's better to have a clear understanding about the fee before any work is done, so your lawyer can concentrate on your case and not your bill.

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Your lawyer's fee will usually not include any other expenses. You'll probably have to pay additional money for a private investigator, expert witnesses (if necessary), transcripts, etc. Appeals and civil work are also usually extra.

Criminal lawyers usually require most or all of their fee up front. This should all be clearly spelled out in the retainer agreement you sign when you retain the lawyer.

Ironically, innocent people often have to pay higher fees. Because they're less likely to plead guilty, their cases usually require more work to prepare for and take through trial.

You shouldn't be looking for bargains when your freedom and reputation are at stake.

BEFORE YOU'RE ARRESTED

The sooner you get a lawyer involved in your case, the better. There are important decisions to be made and rights to be protected, early in a case. If you're accused of drunk driving, you should contact a lawyer before you submit to a breathalyzer test.

If you find out the police are looking for you, it's best to call a lawyer before responding to them. If you can't afford a private lawyer, call the Legal Aid Society.

The police are interested in making out a case against someone they suspect committed a crime. They're not your friends, unless you're the victim of a crime. The police may mislead you if they want you to talk to them and you may find yourself under arrest based on your own statements to them.

DON'T CONFESS

The police are very good at getting confessions. That's the easiest way for them to wrap up a case.

Even if they use deceptive methods to get a confession, like telling you things will go easier, or that a co-defendant has implicated you, this may be considered good police work, and a judge may allow the D.A. use your statement against you.

If you have a lawyer before you get arrested, she or he can find out if the police want to question you as a witness or a suspect.

If you're a suspect, your lawyer can tell the police that s/he doesn't want you questioned. If they question you after that, they won't be able to use your statements against you, unless they can prove that you blurted out a confession without being asked any questions.

If you're arrested and don't have a lawyer, don't answer any questions or make any statements about your case to the police or the D.A. Don't allow yourself to be videotaped. Whether they read you your rights or not, tell them you want to speak to a lawyer. Don't think you can outsmart the police.

Your silence can't be used against you, but it's very hard to defend you if you've made a confession (or admission). Even telling the police that you were at the scene of the crime but didn't do anything is an admission to an element of the crime.

If you're in jail, be careful what you say about your case to other inmates. You never know when one of them will try to work out his/her own problem by becoming a witness against you.

SOME OTHER DON'TS

Don't consent to a search of your person, home, or car.

Don't consent to be in a line-up or show-up.

This doesn't mean you should physically resist, just that you should object and tell the police you want a lawyer.

Don't resist arrest or become verbally abusive to the police or you might find yourself charged with additional crimes and possibly injured in the arrest process.

LINE-UPS

If the police intend to put you in a line-up, ask to have a lawyer there. Your lawyer can determine if they have the right to do so, and if they don't, s/he can protect you.

If they do have the right to put you in the line-up, your attorney can monitor the procedure to make sure it's done fairly.

If the persons placed in the line-up with you don't resemble you, then your attorney can ask the police to find better fillers. If they won't find better fillers, s/he can make notes of the differences in appearance between you and the fillers in order to help you later when the D.A. tries to use the line-up identification against you.

The police usually take a black & white Polaroid picture of the line-up that doesn't clearly show the differences between you and the fillers.

If you didn't have a lawyer at the line-up, this photo and the police testimony will often be the only evidence a judge will have, to determine if the line-up was fair.

Your lawyer can help you decide the best place to sit and number to hold to minimize the chance of being picked out.

Your attorney can make sure the police don't do anything improper, like suggesting in some way that the witness pick you out.

Having a lawyer at this early stage can be very helpful. If you're not picked out of the line-up in the first place, your case might be over before it begins and you'll save yourself a great deal of hassle and money.

Identification cases are the most difficult to defend. Even though identification testimony is the least accurate, it's the most believed by jurors.

SURRENDER

If you're a suspect in a crime, your lawyer can arrange for you to surrender.

The reason it's good to surrender (if the police intend to arrest you), is that it will show the court that you're a responsible person, worthy of being "released on your own recognizance" (R.O.R.'d), or of having low bail set when you first appear before a judge for arraignment. It may also be helpful at plea or trial to show your cooperation.

The purpose of setting bail is to make sure you return to court. By surrendering in the first place, you show that you're likely to return to court without having high bail set.

Your lawyer can tell the judge that you knew the police were looking for you, had the chance to run, but didn't. Surrendering won't guarantee low bail, but it gives you a better shot.

THINGS YOUR LAWYER MAY NEED TO KNOW

There are things your lawyer needs to know, to defend you. Below is a list of some information s/he may need from you:

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- 1) Whether you have any witnesses. These include alibi witnesses; character witnesses & eyewitnesses.
- 2) The names, addresses and phone numbers of your witnesses, so your lawyer can get their statements and advise them of the disadvantage to you if they speak the D.A.
- 3) Where and when you were arrested and the circumstances surrounding your arrest.

- 4) Whether you were shown to any witnesses by the police and the specifics of that identification procedure.
- 5) Whether the police found anything on you relating to the crime.
- 6) Whether the police had an arrest warrant or a search warrant.
- 7) Whether you made any statements to the police or the D.A. If so - Were you read your rights? Was any force used against you? Do you have any injuries?
- 8) Whether you know the witnesses against you and if they have any motive to lie.
- 9) Whether you're on probation or parole.
- 10) Whether you have any problems that may affect your case, like mental or physical problems, or problems with drugs or alcohol. Sometimes these problems may help your defense.
- 11) Your immigration status. If you're not a citizen, a criminal conviction may create problems for you with immigration.

THE ARREST

A police officer can arrest you, without a warrant, if that officer sees you committing a felony, misdemeanor or violation. The officer can arrest you for a felony or misdemeanor (even without a warrant), if he or she has "probable cause" to believe you committed a crime.

All it takes is one person making a criminal complaint against you, without any corroboration, to give the police "probable cause" to arrest you. They'll arrest you even if you tell them you're innocent. They hear that from almost every defendant, even the guilty ones, so they leave it for the courts to decide.

People find it hard to believe that they can be arrested based on one person's accusation, but that's the law.

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The police should have a warrant if they're arresting you at home, but there are exceptions to every rule.

BOOKING

When you're arrested, you'll be processed by the police (booked) before being brought to court for arraignment.

The amount of time between arrest and arraignment varies from state to state and county/borough to county/borough.

After some preliminaries in the precinct, which usually in-

clude being searched, fingerprinted, photographed, and in certain cases an identification procedure (line-up or show-up), you'll be taken to Central Booking in the borough of arrest, to be processed further.

There are sometimes delays in the booking process. Your fingerprints have to be sent to the state capital to get your criminal record and check if you have any open warrants.

Sometimes the computers aren't working and this delays getting your criminal record. If it's your first arrest, the process often takes longer. If you refuse to be fingerprinted, you can be held until you agree.

C.J.A. INTERVIEW

After you're booked, you'll be interviewed by the N.Y.C. Criminal Justice Agency (C.J.A.), about your residence, employment, criminal record, etc. (not about the facts of your case).

It's important to answer their questions accurately. They will contact a friend or family member (depending on the name you give them as a contact person) to verify your information.

If you give them incorrect information, it may hurt your chance of getting low bail, because they'll note the fact that your information was inconsistent with the verifier's, and it will look like you're trying to hide something from the court.

They use the information to prepare a recommendation as to bail (often called an R.O.R. sheet), to help the judge in arraignments decide the question of bail or R.O.R.

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WHAT ELSE HAPPENS BEFORE ARRAIGNMENT

While you're being booked and interviewed by C.J.A., the D.A.'s office will be drawing up a formal complaint against you. This is usually done by their Early Case Assessment Bureau (E.C.A.B.). They interview the arresting officer and/or the witnesses/victims and decide what you'll be charged with.

All of the above has to be done before you can be brought to court for arraignment.

There are often delays in being brought to court. The system may be backed up if a lot of people have been arrested before you who are also waiting for arraignment. It's not uncommon for the delay to be more than 24 hours.

If it appears to Central Booking that you won't be arraigned the day you're booked, you'll be taken to a precinct to be lodged for the night. People often get very upset at this delay but there is really nothing you can do about it.

Your lawyer can find out where you are in the system and let your family know approximately when you'll be arraigned. In certain

areas, private lawyers are given preference once you're produced in court, and this can speed things up a little.

CRIMINAL COURT ARRAIGNMENT

At the arraignment, your lawyer will interview you, tell you what you're being charged with, advise you of your rights and make an application for low bail or R.O.R.

If you can't afford a private lawyer, there will be a Legal Aid lawyer assigned to your case at the arraignment.

Your lawyer will often "waive formal arraignment", so the charges against you won't be read aloud in open court.

Your attorney and the D.A. may have a conference at the bench with the judge. There will be a discussion about your case. Your lawyer can get some valuable information from the D.A. at this "bench conference". There may also be some discussion about a plea-bargain at this point.

Certain cases are disposed of at the arraignment. Your lawyer will discuss the offer with you and advise you if s/he thinks it would be a good idea to accept it. Sometimes felony charges are reduced to misdemeanors at the arraignment.

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If the charges are serious felonies, it's unlikely they'll be disposed of at the arraignment. The D.A. will probably give notice that their office intends to present your case to a Grand Jury. Your lawyer may give reciprocal notice that you wish to testify in the Grand Jury in your own behalf. The Grand Jury will be discussed more fully later in this guide.

The witnesses against you do not have to come to the arraignment or appear in court unless they're required to testify (in the Grand Jury, at a hearing or at trial).

BAIL

The judge at the arraignment is the one who decides about your bail. You may be R.O.R.'d (released on your own recognizance), have bail set, or be remanded without bail. Being remanded without bail is likely if you're charged with murder or if you're charged with a serious felony and have another felony case pending.

It helps to have as many friends and family members as possible at the arraignment. The bail may be lower if your lawyer can show the judge you have strong community ties, as evidenced by all the people who came to court for you.

Have your people bring money with them for bail. Your lawyer can often estimate the amount of bail the judge might set. This will depend on the nature of the case, your criminal record, your community ties and which judge is sitting in arraignments.

If your people have money with them at the arraignment and the

judge intends to set bail that's a little more than they have your lawyer can tell the judge the amount of money your people have with them, and the judge might set the bail at that amount, so you can be bailed out from court.

It saves a lot of hassle if you're bailed out from court. Once you're removed from the court building, bail has to be put up at the jail you're in or at certain other locations in the city. Your lawyer can advise you about that.

Bail can be posted by a bail bond or in cash. When bail is set, there's usually a bond amount set and a cash alternative.

To get a bail bond, your people have to see a bail bondsman. He will require some cash (at least 10% of the bond) and collateral for the rest (a house, bank book or the like).

The first bail that's set is often the most important. It's hard to get a bail reduction unless your lawyer can show there's been some change in circumstances since the first bail was set.

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ASSIGNED COUNSEL

Many people accused of crimes can't afford to hire a private lawyer, and are assigned a Legal Aid lawyer or a lawyer from the 18-B panel. In other states it is the Public Defender.

There are times I've asked someone who calls if they have a lawyer already, and he or she says: "No, I have a legal aid". It's unfortunate that defendants have that opinion of Legal Aid.

Lawyers who work for the Legal Aid Society are competent, well-trained, dedicated lawyers. The Legal Aid Society has excellent support staff, including investigators, social workers, funding for expert witnesses, etc.

An 18-B lawyer is a private lawyer who accepts assignments of criminal cases from the court and is paid by the state to represent indigent defendants (those defendants with no money). There are several reasons why you may be assigned an 18-B lawyer, instead of Legal Aid.

If two or more people are accused of committing a crime together, the Legal Aid Society is only allowed to represent one of them. The Legal Aid Society is like one big law firm, and it's considered a conflict of interests to have the same law firm represent co-defendants.

Legal Aid might not be able to represent you because they represent a witness against you who has a pending case. This would also be considered a conflict of interest.

If you're accused of murder, and are indigent, you'll be assigned a lawyer from the 18-B "homicide panel". The Legal Aid Society usually does not handle murder cases.

There are different panels of 18-B lawyers for different types of cases. These lawyers have been screened to make sure they're qualified to handle the kinds of criminal cases they'll be assigned to.

The "misdemeanor panel" has lawyers qualified to handle misdemeanor cases.

The "felony panel" has more experienced criminal lawyers than those on the "misdemeanor panel".

The "homicide panel" has the most experienced criminal lawyers.

The "Family Court panel" is for criminal cases involving juveniles that will be handled in the Family Court.

There's also an "appeals panel" to handle your appeal, if you're indigent.

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FELONIES

There are different categories of crimes. The more serious crimes are called felonies. The most serious felonies are "A" felonies, the least serious are "E" felonies. The designations vary from state to state.

Certain felonies carry mandatory jail sentences, if you plead guilty or are found guilty after trial (conviction). This means you can't get probation. These are usually cases involving the sale of drugs or the use of a gun or violence, such as "armed felony offenses" and "violent felony offenses" (A.F.O.'s and V.F.O.'s).

If you're convicted of a felony, you may also lose some of your civil rights. In some cases your lawyer can get you a Certificate of Relief from Civil Disabilities that may mitigate the effect of a felony conviction.

If you're accused of a felony and have one or more prior felony convictions, jail sentences are mandatory and longer.

Generally, one prior felony conviction makes you a "predicate felon", more than one prior felony conviction makes you a "persistent felony offender".

If you're on probation or parole, a conviction after trial or plea of guilty to a new crime (felony or misdemeanor) can violate your probation or parole (V.O.P.) and you'll probably get extra jail time.

MISDEMEANORS & VIOLATIONS

The less serious crimes are classified as misdemeanors. Violation offenses are less serious than misdemeanors and aren't considered crimes.

If you're arrested for a misdemeanor, violation, or certain low grade felonies, the police can, under certain circumstances, give you a "desk appearance ticket" (D.A.T.), which is like a summons. Instead of going through the booking process and being held in jail until you're brought before a judge for arraignment, you're released from custody and given a date to appear in court to be arraigned.

Penalties for misdemeanors and violations are less serious than those for felonies. You may even be able to get an A.C.D. (adjournment in contemplation of dismissal). This means your case is adjourned for six months (you don't have to return to court), and, if you don't get into trouble within the six months, it's dismissed and sealed, as if you were never arrested. You're more likely to get an A.C.D. if it's your first arrest.

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YOUTHFUL OFFENDER

If you were under 19 when the crime you were arrested for was committed, and you're convicted (plead guilty or are found guilty after trial), the judge might treat you as a "youthful offender" (Y.O.) - the conviction is vacated and the case sealed.

You're entitled to "youthful offender" treatment on your first misdemeanor conviction. It's discretionary for certain first time felony convictions.

"Youthful offender" doesn't mean you won't be punished for the crime (with jail time or probation), but the punishment is often less severe and you won't have a criminal record. This is meant to give a young person a chance to straighten out without the stigma of a criminal record.

If you received Y.O. on a prior felony case, then it's as if you weren't convicted of that felony and you won't be considered a "predicate felon" if you're charged with another felony.

If you got Y.O. on a prior case, it won't save you from extra jail time for violation of the probation or parole from that case, if you're convicted of something else after that.

JUVENILE OFFENDERS

There are certain crimes where juveniles are treated as adults in the Supreme Court and others that are dealt with in the Family Court. Certain procedures are different for juveniles. This guide won't discuss the distinctions.

CIVIL FORFEITURES

Generally speaking, the D.A.'s office can seek forfeiture of the instrumentality or proceeds of certain crimes.

The D.A.'s office can even attach this property before you're convicted, if they can show there's a likelihood you'll be convicted. This is a relatively new law. Your lawyer will explain it

to you, if it applies to your case.

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WHAT CAN HAPPEN TO YOUR CASE

Almost all criminal cases (felonies, misdemeanors and violations) start in the Criminal Court. In some states this is termed the Municipal Court.

Cases that start as felonies and are reduced to misdemeanors by the D.A., and cases that start as misdemeanors or violations, stay in the Criminal Court until they're finished.

Cases that are going to remain felonies must be transferred to the Supreme Court. In other states this is called Superior Court and in those states with a Superior Court system, the Supreme Court is above the Superior Court. To get your case transferred from the Criminal Court to the Supreme Court, the D.A. must present his/her evidence to a Grand Jury and get an indictment. This will be explained more fully later.

There are only three things that can happen to a criminal case: it can be dismissed or A.C.D.'d by the D.A. or a judge (very rare); you can plead guilty; or the case can go to trial (where you're either acquitted or convicted).

If you get a dismissal, an A.C.D., an acquittal after trial, or plead guilty to a violation, your case can be sealed and your fingerprints and arrest photos may be returned to your lawyer.

Unfortunately these will just be souvenirs because the police usually keep a copy of your photo for their mug files and your fingerprints are kept in the criminal justice computers. Potential employers and the like won't have access to your fingerprint record or any information about your case, but if you're rearrested, it will show up.

WHAT HAPPENS AFTER CRIMINAL COURT ARRAIGNMENT

If bail is set that you can't make, your case will usually be adjourned to six days from the date of your arrest.

Basically, the law says that if you're in jail, the D.A. has six days (on a felony charge) from the date of arrest to have witnesses give sworn testimony supporting the charges against you or you're entitled to be released from jail.

This can be done by bringing the witnesses to court for a preliminary hearing or having them testify before a Grand Jury.

It's very rare to have a preliminary hearing in New York City, because at a preliminary hearing the defense lawyer gets a chance to cross-examine the witnesses. District Attorneys would rather not expose their witnesses to cross-examination at this early stage, and they avoid doing this by going to the Grand Jury instead. The Grand Jury proceedings are secret and defense lawyers are only entitled to be present when and if their own client testifies.

On the adjourn date, if the D.A. has not complied with the law, you should be R.O.R.'d. But if the D.A. can show a good reason for not getting an indictment or providing a preliminary hearing within the six days, then the D.A. can get an extension.

GRAND JURY

A Grand Jury is comprised of 16-23 people. They listen to evidence presented by the D.A. and decide if there's enough evidence against a defendant for him/her to face felony charges. It takes 12 grand jurors to vote an "indictment".

A Grand Jury also has the power to return a case to the Criminal Court as a misdemeanor if it thinks there isn't enough evidence for felony charges, but there is enough for misdemeanor charges. This would be called a "prosecutor's information".

The Grand Jury is an "arm" of the D.A.'s office, and the proceedings are secret in order to protect the witnesses.

It's not hard for a D.A. to get an indictment because the Grand Jury usually only hears the D.A.'s evidence. There's no defense lawyer to cross-examine the witnesses and they usually don't hear from the defendant.

If you've been arrested, your lawyer will be notified if the D.A. intends to present your case to a Grand Jury.

In certain cases your lawyer might advise you to testify before the Grand Jury and/or present witnesses. To do that, your defense lawyer must notify the D.A. before the Grand Jury presentation is completed.

If you testify in the Grand Jury, your lawyer can be there with you, but can't ask questions or make objections.

If things go well, the Grand Jury may fail to vote an indictment (No True Bill), and your case will be over, saving you a lot of hassle and money. This is another reason to get a lawyer working on your case early on.

Most cases that are presented to a Grand Jury are presented within six days of arrest, to prevent the defendant's R.O.R.

INDICTMENT

An indictment is merely a formal accusation listing the felony charges against you in the Supreme Court. It's not evidence of guilt.

If you're indicted, your case will be transferred to the Supreme Court. If you're out of jail, you and your lawyer will be notified by mail when to come to the Supreme Court to be arraigned

on the indictment.

SILENT INDICTMENT

Occasionally cases are presented to a Grand Jury before anyone is arrested. If the Grand Jury indicts, this is called a "silent indictment".

The same "silent indictment" procedure may be followed if you were arrested for a felony and had your case dismissed by a judge in the Criminal Court.

The D.A. still has the right to present felony charges to a Grand Jury within six months of your arrest. There's no time limitation if you're accused of homicide.

In "silent indictment" cases, you won't be notified that your case is being presented to a Grand Jury and may not have the chance to testify or present defense witnesses.

You'll still be able to present your defense at trial.

If you're indicted this way, an arrest warrant issues and you'll be arrested and brought to Supreme Court for arraignment.

SUPREME COURT ARRAIGNMENT

The Supreme Court arraignment is similar to the Criminal Court arraignment on the initial complaint. You're advised of the charges against you and there's a decision on bail.

If you're out of jail and have been coming to court when you were supposed to, and if you appear for arraignment when notified, the chances are that your bail status will remain the same.

If you're in jail, you'll be brought to Supreme Court for arraignment and your lawyer will be notified when to appear.

Your lawyer gets a copy of the indictment from the D.A. in court. Your attorney will waive the public reading of the charges against you and enter a plea of not guilty for you. Your lawyer may also get a "voluntary disclosure form" (V.D.F.), and police reports at this time, from the D.A. The V.D.F. has information your lawyer needs to prepare your case.

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COURT APPEARANCES

If you're out of jail while your case is pending, you must appear in court on every adjourn date, unless your lawyer has arranged for you to be excused.

Unless you're told otherwise, be there at 9:30 A.M. Keep track of the courtroom you're supposed to appear in and the adjourn date. This is your responsibility.

The only time you should wait for a letter from the court,

before appearing, is if your felony case has been transferred to the Supreme Court and you've been told to wait for notification of the Supreme Court arraignment date. A case is transferred to the Supreme Court after a Grand Jury has voted an indictment.

If you get to court on time and don't see your lawyer, check to see if your name's on the court calendar to make sure you're in the right room on the right date.

If it's the right courtroom and date and your lawyer isn't there, it probably means he or she had to cover another case first. Most lawyers have to give priority to their clients who are in jail and cover those cases first.

If you leave the courtroom to call your lawyer, tell one of the court officers so they won't call your case while you're not there and issue a bench warrant because you're absent.

BENCH WARRANTS & BAIL FORFEITURES

If you're late, or don't show up, the judge may issue a bench warrant. You can be arrested on that warrant. If you're out on bail, your bail money can be forfeited.

Bail jumping is also a separate crime you can be charged with if you're out on a bench warrant more than 30 days. It's very hard to defend that charge and sometimes gives the D.A. extra bargaining power in dealing with your current case.

A bench warrant will also stay on your record and come back to haunt you later, even if you clear it up. It will give a judge an excuse to set higher bail on you in the future.

If you can't come to court because you're sick, or because you've been rearrested, call your lawyer and let him/her know, or have a family member call.

If you're represented by an assigned lawyer (Legal Aid or 18-B), that's no excuse for not calling to let him/her know why you can't make your court appearance.

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You should have your lawyer's card with his/her name and phone number. It's your responsibility to let your defense attorney know if there's a good reason you can't come to court.

Don't assume that if you're rearrested, somehow the courtroom where your case is pending will know about it.

If you have a good excuse why you can't come to court, and your lawyer knows about it before going to court, the attorney can tell the judge and ask the judge not to issue a bench warrant.

Otherwise, the judge will issue a bench warrant and a bail forfeiture. This is a hassle for you and for the person who put up your bail.

GETTING BACK BAIL MONEY

If you make all your court appearances, the bail money should be returned to the depositor several weeks after your case is over, whether you win or lose.

If the person who put up the bail (depositor) has moved since putting up the bail money, the depositor has to go to the Department of Finance, at 1 Centre Street in Manhattan, with proof of identification and his/her bail receipt, to get the bail check.

But if your bail was forfeited because you missed a court date it is difficult for the depositor to get it back. Even if you're represented by an assigned lawyer, the person who put up your bail (depositor or bail bondsman) may have to pay a private lawyer to do a "bail remission motion" to try to get back his/her money.

The procedure varies from borough to borough, as does the amount of the cash bail, if any, that will be returned. If you have a bail bond, contact the bondsman if there's a forfeiture.

A "bail remission motion" must be done within one year of the forfeiture of bail - that's the statute of limitations on these motions. The defendant must have returned to court before this motion can be brought.

The bail depositor should not wait until your case is over before arranging for a "bail remission motion". If the depositor waits beyond a year from the date of forfeiture, it may be too late to get any money back because of the statute of limitations.

If you "bench warrant", have your lawyer check your bail status when you return. If you return within 45 days of the forfeiture, there's an easier procedure for reinstating the bail.

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WHAT TAKES SO LONG

Criminal cases can take a long time to finish. This depends on the seriousness of the charges and whether you're going to take a plea or go to trial.

There are "speedy trial rules" governing the amount of time the D.A. has to be ready for trial, but more serious cases can take six to 12 months, or longer, to go to trial. Trial preference is usually given to defendants who are in jail.

Technically, the D.A. has to be ready for trial within six months of your arrest, (90 days for misdemeanors), but there are certain time periods that are excluded from the six months (or 90 days) and these rules do not apply to homicide cases.

Some of the reasons for the delay include: crowded court calendars, busy D.A.s and defense lawyers, and delays in getting documents from the D.A. or police that your lawyer needs to prepare for trial.

Each case is different and requires different preparation. There are certain procedures that have to be followed. Your lawyer can explain this more fully as it relates to your case.

The wait is frustrating but there's little that can be done to speed things up. In certain cases, delay is helpful to the defendant. Witnesses, like all of us, having memories that fade over time.

It's upsetting having criminal charges hanging over your head. Lawyers sensitive to their clients' feelings often act as psychologists and social workers as well as lawyers. Maybe that's why we're also called counselors.

TRIAL PREPARATION

After arraignment, your case will be adjourned. If it's a felony, trial preparation usually begins after you've been arraigned on the indictment. If it's a misdemeanor, trial preparation begins after the Criminal Court arraignment.

The next time the case is on, there will be a conference, where the D.A., the judge and your lawyer will discuss your case to see if it can be disposed of without a trial. There will probably be a plea offer. If the plea is refused, the case is adjourned for your lawyer to make "motions".

Plea-bargaining will be discussed later in this guide.

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One of the biggest delays in the system is due to trial preparation. It's better to have the delay than go to trial without adequate preparation, even if you're in jail.

One of the things your lawyer has to do is make certain "motions". Your attorney will prepare an Omnibus motion which is a formal written request for certain information the D.A. has about your case (discovery), and requests that certain evidence be suppressed on the grounds it was obtained in violation of your rights. There are also certain "dismissal" motions that are included, where appropriate.

There will usually be hearings on the suppression motions if the judge thinks you're entitled to them. These pre-trial hearings will be discussed later.

Another thing your lawyer has to do to prepare your case for trial is to investigate. Sometimes an investigation can't be done until the D.A. responds to your lawyer's "discovery" motions and turns over police reports to your attorney.

The D.A. often keeps information from the defense until the eve of trial. Police reports are often turned over with the names and addresses of witnesses deleted to protect them. Judges usually don't make the D.A. disclose that information until trial. We sometimes call this "trial by ambush".

Your case will be adjourned, usually about three weeks at a time, until it's ready for trial or you take a plea.

Because of all the delays, some defendants take pleas just to avoid having to come back to court so many times. This is more likely to happen in Criminal Court in misdemeanors cases.

TO PLEAD OR NOT TO PLEAD

Many people think plea-bargaining is a dirty word. Plea-bargaining is actually like negotiating the disposition of a case. Sometimes a plea-bargain is appropriate.

Whether you take a plea or go to trial is an important decision you have to make. It's not the kind of decision your lawyer should make for you, but his/her opinion should be very important to you when you decide to take a plea or go to trial.

Once your lawyer has a clear enough picture of the evidence against you, s/he can evaluate the chances of winning your trial.

Your attorney will usually balance your odds of winning against the amount of time you could be sentenced to if you lose trial and the sentence being offered in the plea-bargain.

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Defendants who are in jail awaiting trial are more likely to take pleas than defendants who are out of jail.

The decision is a very difficult one, especially if you're innocent and the evidence against you looks strong. There are provisions in the law for a person to plead guilty without admitting guilt. This is called a SERRANO plea or an ALFORD plea (named after the cases that allow this kind of plea). Some judges don't like to take SERRANO/ALFORD pleas.

It's very hard to admit guilt if you're innocent, but there are defendants who do it because their chances of winning are so slim, they'd rather take the sure thing (usually probation or low jail time) than risk a severe jail sentence after losing trial.

If you go to trial and lose, you usually get more time than that offered in the plea-bargain. It's like getting extra punishment for putting the state through the trouble and expense of the trial.

No matter how experienced or skillful your lawyer is, there's no guarantee of winning a trial. One reason people take pleas is to avoid the uncertainty of trial.

Trial is an uphill battle for the defense attorney. The D.A. has most of the tools. Your lawyer has police and detective investigators (D.I.s) to help investigate and get witnesses to cooperate. as well as getting private detectives.

Even if the defense has been able to get the names and locations of witnesses, there's no real way to get them to cooperate if

they don't want to and most people don't want to get involved.

The District Attorney's office also has public opinion on their side. Even though the law says that you're presumed to be innocent, and that the burden of proving your guilt is on the D.A., jurors do not always understand or follow the law.

Unfortunately, nowadays, especially in New York City, jurors are exposed to crime on the streets, either personally or through the media, and tend to presume you're guilty and expect the defense to prove your innocence. This is especially true if you're a member of a minority or poor.

Sorry to paint such a grim picture, but that's where things are and this guide discusses realities, not ideals.

PRE-TRIAL HEARINGS

There are several types of hearings, called pre-trial hearings, or suppression hearings, that may occur before a trial jury is selected.

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Not every case has pre-trial hearings. It depends on the evidence against you. These hearings are usually named after certain landmark cases.

After the hearings, the judge decides whether or not to let the D.A. use certain evidence against you at trial. If the evidence in question at the hearing is the only evidence against you, and you win the hearing, that might be the end of your case.

A HUNTLEY hearing is to suppress statements allegedly made by you to a law enforcement officer (including the police, the D.A., or their agent), on the grounds that you weren't advised of your constitutional right to remain silent or were forced to make the statement, either by threats or brutality.

I often have clients tell me, when I interview them for the first time, that the police did not "read them their rights". They seem to think that's a way to get a case dismissed. Unfortunately, that's rarely the result. The only consequence of not reading you your rights is that if you made a confession there are now grounds to get it suppressed.

It's unlikely that the police will admit they failed to read you your rights or that they threatened or beat you. At the HUNTLEY hearing they'll probably testify that they read you your (MIRANDA) rights and deny that they used any force.

The judge usually believes the police. This happens in most instances where the police version differs from the defendant's.

A DUNAWAY hearing is also a hearing to suppress statements, on the grounds that the police didn't have probable cause (any legal reason) to arrest you in the first place.

A WADE hearing is a hearing to suppress the identification on the grounds that the pre-trial identification procedure was suggestive and that the witness would not have otherwise been able to identify you.

A MAPP hearing is a hearing to suppress physical evidence seized from you (usually a weapon, drugs, or the proceeds of a crime) on the grounds that the police had no legal right to stop you or search you in the first place.

A SANDOVAL hearing is a hearing to prohibit the D.A. from using your criminal record to impeach you during cross-examination, if you testify at trial.

Ordinarily, when a witness testifies at trial, the opposing counsel can use the witness' criminal record on cross-examination to show that the witness isn't worthy of belief.

When the witness is the defendant, the court has to balance your constitutional right to testify on your own behalf against the D.A.'s right to this cross-examination technique.

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The problem is that juries tend to believe that if you've committed crimes in the past, you probably committed this one too, and that's not one of the factors a jury is supposed to consider as evidence. The defense attorney tries to limit this through the SANDOVAL hearing.

If you don't testify at trial, the D.A. can't introduce your criminal record, except under specific conditions that are too technical to discuss here.

TRIAL

After the pretrial hearings are finished, the trial begins. The trial is the part of the case where a decision is made by a judge or a jury, after listening to the evidence, as to your guilt or innocence.

You're entitled to a jury trial in all felony cases and misdemeanor cases that carry penalties over six months in jail.

Even if you're entitled to a jury trial, there are certain cases that are better tried without a jury. This kind of decision is between you and your lawyer and usually depends on the specifics of your case and which judge is in the trial courtroom.

It's important to dress appropriately when you're on trial. Dress like you would for a church function, not like you would on a date. You want to look neat but not flashy.

If you're out of jail and don't appear for trial, in addition to getting a bench warrant and forfeiting your bail, your case may be tried without you.

Most judges warn defendants of that possibility. If you've

been warned, and don't appear, you can be tried, convicted and sentenced in your absence. The likelihood of conviction increases if you're not present at your trial.

When the police pick you up on the bench warrant, you'll be sent to jail to serve your sentence. You may also, practically speaking, waive your right to appeal.

Assuming you're having a jury trial, the first part is to select the jury. This is called voir dire.

A panel of prospective jurors is brought to the courtroom from the Central Jury Panel. The judge explains some general principles of law to them.

From that panel, 12 or more at a time, six if it's a misdemeanor trial, are called into the jury box to be questioned by the judge, the D.A., and the defense attorney.

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The purpose of the voir dire is to give the D.A. and the defense attorney a chance to find out whether the prospective juror can be fair.

After each round, the attorneys usually leave the courtroom with the judge and court reporter (who records the proceedings), and challenge the jurors they don't want.

It's more a process of elimination than one of selection. There are a specific number of peremptory challenges for each side, depending on the nature of the charges.

Peremptory challenges are those that do not require the attorney to give a reason for the challenge.

If either side can show the judge that a potential juror can't be fair, then that juror can be challenged for cause. Challenges for cause are unlimited.

A felony trial jury consists of 12 jurors and usually two alternates. If one of the jurors can't continue to serve (because of illness or the like), an alternate is substituted.

After the jury is selected, the judge usually tells them more of the general principles of law. Your attorney explains their duties and explains the order of the trial. Your lawyer also warns them not to discuss the case with anyone until it's over.

The D.A. then makes an opening statement. This tells the jury what the prosecution intends to prove to them during the trial. Your attorney usually describes this as a table of contents.

The defense attorney may also make an opening statement. This will be a matter of trial strategy that your lawyer will decide, depending on the nature of your defense.

The defense attorney is not required to make an opening state-

ment, because the defense is not obligated to prove anything during the trial.

After opening statements, the D.A. presents evidence. Evidence is testimony from witnesses and exhibits (weapons, contraband, documents, etc.).

When a witness testifies for the prosecution, the D.A. questions that witness before the defense. This is direct examination. When the defense attorney questions that witness, it's cross-examination.

When the D.A. has finished putting on the prosecution's case, your lawyer has the right to present a defense case.

However, the defense doesn't have to present a case because the defense doesn't have to prove anything. The jury is supposed to decide, based on what the District Attorney presents, if they're convinced of your guilt "beyond a reasonable doubt".

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A major trial decision is whether or not you'll testify in your own behalf at trial. Even though the jury is told not to hold it against you if you don't testify, they often do hold it against you. The decision is harder if the D.A. has been given permission to cross-examine you about your criminal record.

After the defense rests, the D.A. may present evidence to rebut something the defense has raised in its case. If this happens, the defense may present evidence to rebut that.

When both sides finish presenting their evidence, they rest. Then they do summations. The defense attorney sums up first, and, because the defense has the burden of proof and the D.A. sums up last.

Summations are the lawyers' comments about the evidence to show why they think the jury should reach a certain verdict.

When both sides finish their summations, the judge explains the relevant law to the jury and sends them out to deliberate until they reach a verdict. Jury members are not allowed to discuss the case with anyone who isn't on the jury.

A verdict must be unanimous. Sometimes the jury can't reach a verdict by the end of the day, and they're sequestered for the night (sent to a hotel together).

If the jury can't reach a unanimous verdict, and it seems they won't be able to no matter how long they deliberate, they may let the judge know they're deadlocked and the judge may declare a "hung" jury. If that happens, you may be tried again.

If you're acquitted (found not guilty), you can't be charged or tried again for the same case.

SENTENCING

If you're convicted after trial, or take a plea, the case will be adjourned for the probation department to prepare a report to aid the judge in sentencing. If you've been in jail awaiting trial you'll get credit for that time toward your sentence.

It's very important to make a good impression on the person interviewing you, because the probation department recommendation carries a lot of weight. Even if your sentence was negotiated by plea-bargain, if the probation report is bad, the judge may decide not to keep his/her promise to you and give you the option of taking more jail time or withdrawing your plea.

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Also, your probation report is attached to your file and is taken into consideration when you become eligible for parole.

If you're eligible for "youthful offender" treatment, the probation report is sometimes the deciding factor.

If you've taken a plea and are out of jail awaiting sentence and fail to keep your appointment for your interview with the Department of Probation, or get convicted of another crime, or fail to appear in court on the date of sentence, the judge can give you a harsher sentence without giving you the option of withdrawing your plea.

When the Department of Probation prepares its report, they usually contact the D.A. for input, but not the defense attorney. If you're convicted after trial, your lawyer may want to prepare his/her own "pre-sentence report" to balance things out.

APPEALS

If you're convicted after trial, your lawyer must file a "notice of appeal" for you within 30 days of the sentence date to insure your right to appeal.

If you're indigent, a lawyer will be assigned to do your appeal. It will either be a Legal Aid lawyer or an 18-B lawyer.

Appeals take a long time to be heard. Part of the delay, especially if you're indigent, is the length of time it takes the appeals lawyer to get the minutes of the trial.

Assigned lawyers have a lot of cases to do, so it usually takes longer for them to get to your case. It sometimes takes years for an appeal to be heard.

If you can afford to pay privately for the appeal, and the minutes of the trial, you can speed up the process quite a bit.

Sometimes you can get bail pending appeal but the majority of defendants wait in jail until their appeal is heard.

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