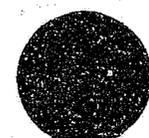


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MEDIA GUIDE

to the

United States Attorney's Office

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**U.S. Department of Justice
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March 1994

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875

TABLE OF CONTENTS

SEP 20 1994

ACQUISITIONS

THE UNITED STATES COURT SYSTEM

History	1
The Federal Court System	1
Federal District Courts	2
Circuit Courts of Appeals	3
United States Supreme Court	4

THE UNITED STATES DEPARTMENT OF JUSTICE

History	7
---------	---

THE OFFICE OF THE UNITED STATES ATTORNEY

History	9
United States Attorneys	10

THE UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF MINNESOTA

Criminal Division	12
Civil Division	12
Financial Litigation Unit	13
Forfeiture	14

HOW A CRIMINAL CASE PROCEEDS IN FEDERAL COURT

Investigation	15
Grand Jury	16
Charging of a Crime	17
Appearing in Court	18
Pretrial Motions	18
Plea Agreements	19
Jury Selection	20
Opening Statements	20
Witnesses and Evidence	20
Closing Arguments	21
Jury Instructions	21
Verdict	22
Sentencing	23
Appeals	24

HOW A CIVIL CASE PROCEEDS IN FEDERAL COURT

THE UNITED STATES ATTORNEY'S OFFICE AND THE MEDIA

Department of Justice Media Policy	27
Information Which Can Be Released	28
Information Which Can Not Be Released	29
Contacting the United States Attorney	30

JUDGES AND MAGISTRATE JUDGES OF THE UNITED STATES
DISTRICT COURT 31

UNITED STATES ATTORNEYS FOR THE DISTRICT OF MINNESOTA 33

UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF MINNESOTA 35

FEDERAL OFFICE TELEPHONE NUMBERS 37

Appendix A Title 28, Code of Federal Regulations, Section 50.2, Release of
Information by Personnel of the Department of Justice Relating to
Criminal and Civil Proceedings

Appendix B Local Rule 9 - Fair Trial-Free Press Directives

Glossary

THE UNITED STATES COURT SYSTEM

History

The third article of the Constitution provided that "The judicial [p]ower of the United States shall be vested in the [S]upreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish..." The Judiciary Act of 1789 developed this constitutional theme by establishing the federal judicial system and the Office of the Attorney General. The act provided for a Supreme Court to consist of a Chief Justice and five Associate Justices. It divided the United States into thirteen districts and three circuits. Additionally, it created the circuit and district courts and defined and prescribed their jurisdiction and procedures and provided for the appointment of a United States Attorney and U.S. Marshal for each federal district. The Judiciary Act also created the Office of the Attorney General and prescribed his duties.

The Federal Court System

The federal court system is a three tiered system with the United States Supreme Court at the top, the United States Court of Appeals and then the federal district courts in each of the ninety-four districts.

A person involved in a civil suit or criminal case in a United States court may proceed through three levels of decision. A case will be heard and decided by one of the courts or agencies on the lower level. If either party is dissatisfied with the decision rendered, they may usually have the case reviewed in a court of appeals. Then, if the party is still dissatisfied, but usually only if the case involves a matter of great national importance, the party may obtain review in the Supreme Court of the United States.

This pyramidal organization of the courts serves two purposes. First, the courts of appeals can correct errors in decisions made in the trial courts. Second, the Supreme Court can assure uniformity of decision by reviewing cases in which Constitutional issues have been decided or two or more lower courts have reached different decisions.

Federal courts, which are courts of limited jurisdiction, are only able to hear certain types of cases, those listed in the Constitution and in federal statutes. Nonetheless, they have the power to hear civil, as well as criminal, cases.

For the most part federal courts hear cases in which the United States is a party, cases involving violations of the Constitution or federal laws, cases involving foreign diplomats and some special types of cases such as bankruptcies and cases concerning incidents at sea or in the air. Federal courts also hear civil cases based on state laws that involve parties from different states.

Federal District Courts

The district courts are trial courts of civil cases and of criminal charges contained in federal indictments and informations. Criminal cases in the district courts must arrive under specific criminal statutes passed by Congress. Civil cases in the district courts normally involve a claim under federal law or a suit between citizens in different states.

There are ninety-four federal district courts, including eighty-nine in the fifty states and one in each of the District of Columbia, Puerto Rico, Guam, the Virgin Islands and the Northern Mariana Islands. Each state has at least one district, but many states have two or more federal judicial districts. The federal judicial district for Minnesota encompasses the entire state of Minnesota.

In districts having two or more judges, the chief judge is the judge with the longest service under 70 years of age who has not reached 65 years of age at the time of becoming chief judge. The chief judge serves a nonrenewable term of seven years. As in the courts of appeals, retired judges may be designated and assigned to continue to perform judicial duties. These judges are known as senior judges. Federal district court judges are appointed for life. The

district courts in the District of Columbia and Puerto Rico, like those in the fifty states, have judges that are appointed for life. Federal judges appointed in the territories of Guam, the Virgin Islands and the Northern Mariana Islands serve ten year terms.

Bankruptcy cases and certain related proceedings filed in the United States district courts may be referred to bankruptcy judges for hearing and decision. Bankruptcy judges, appointed by the judges of the courts of appeals, serve fourteen year terms.

Circuit Courts of Appeals

Above the district courts are the thirteen Circuit Courts of Appeal. Each circuit includes three or more states, except the District of Columbia Circuit and the Federal Circuit. The states of Alaska and Hawaii and the territories of Guam and the Northern Mariana Islands are included in the Ninth Circuit. Puerto Rico is included in the First Circuit and the Virgin Islands are included in the Third Circuit.

Cases from the District of Minnesota are appealed to the United States Court of Appeals for the Eighth Circuit. The Eighth Circuit Court of Appeals has jurisdiction over cases from Minnesota, North Dakota, South Dakota, Nebraska, Iowa, Missouri and Arkansas. The headquarters for the Eighth Circuit lay in St. Louis, Missouri, but the court also hears appeals in St. Paul, Minnesota. Cases in appeal are normally heard by a panel of the court consisting of three judges.

A disappointed suitor in a district court usually has the right to have the decision of his case reviewed by the court of appeals in their circuit. In addition to appeals from the district courts, the courts of appeals receive many cases to review actions of the Tax Court and various federal administrative agencies.

Each court of appeals consists of between six and twenty-eight circuit judges, depending upon the amount of work in the circuit. The chief judge is the judge with longest service but less than 70 years of age, who has not previously served as chief judge and has not reached 65 years of age at the time of becoming chief judge. Each circuit judge is appointed for life.

United States Supreme Court

At the top of the federal court system is the United States Supreme Court, the only court expressly established in the Constitution. Its chief work consists of appellate jurisdiction over the district courts, the federal courts of appeals and the highest courts of the states (the Minnesota Supreme Court). It consists of nine Justices appointed for life by the President of the United States with the advice and consent of the United States Senate. One Justice is designated by the President to act as Chief Justice.

The Supreme Court convenes on the first Monday of October each year and continues in session usually through June. Most cases are disposed of by the brief decision that the subject matter is either not proper or not of sufficient importance to warrant full Court review. But each year cases of great importance and interest are decided on its merits.

THE UNITED STATES DEPARTMENT OF JUSTICE

History

The United States Department of Justice has been described as the largest law office in the world. The Attorney General is the federal government's chief legal officer. The United States Government is the Attorney General's client. The Department of Justice is the Attorney General's staff. This staff, which is comprised of approximately 86,500 persons throughout the nation and its territories, performs many law enforcement functions in addition to providing legal services to the government.

Although the Office of the Attorney General was created by the Judiciary Act of 1789, the Department of Justice did not come into being until 1870, when it was established by Congress as one of the executive departments of government with the Attorney General as its head.

A primary responsibility of the Department of Justice is to represent the United States in court. Attorneys in general offices of other federal departments and agencies perform the day-to-day legal duties of the federal government, such as negotiation of contracts, settlement of complaints and providing legal advice to other government officials. However, when a department or agency is involved in or is contemplating litigation, the matter is generally turned over to the Department of Justice.

With certain exceptions, the bulk of the litigation function of the Department of Justice (approximately 85%) is performed by the ninety-three United States Attorneys and their staffs. This is particularly true in criminal cases. With regard to most violations of federal criminal law, United States Attorneys have broad discretion to initiate, pursue and decline criminal prosecutions.

THE OFFICE OF THE UNITED STATES ATTORNEY

History

In 1789, Congress passed the Judiciary Act directing the President to appoint in each federal judicial district "a meet person learned in the law to act as an attorney for the United States." The United States Attorney was "to prosecute in [each] district all delinquents for crimes and offenses cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned."

In 1861 Congress authorized the supervision of United States Attorneys by the Attorney General of the United States, a power granted by the Department of Justice Act in 1870. This statute created the Department of Justice with the Attorney General as its head. However, broad discretion was left to local United States Attorneys in certain matters such as prosecution of offenses under basic federal criminal code (now Title 18).

At first, United States Attorneys prosecuted only crimes mentioned specifically by the Constitution, namely, piracy, treason, crimes at sea, fraud against the then existing Bank of the United States and crimes involving federal offices or interference with federal justice.

In the first seventy-five years of the office, United States Attorneys functioned independently of the Attorney General of the United States, practiced law privately on the side and were expected to pay their staffs out of their own pockets. Early United States Attorneys were paid a set amount for each legal activity they performed such as civil suits filed, depositions taken or cases tried. The fee system was abolished by Congress in 1896 and a salary system was established with salaries ranging from \$2,000 to \$5,000 per year depending on the district involved.

United States Attorneys

Today, ninety-three United States Attorneys serve in ninety-four districts (the same United States Attorney serves both the District of Guam and the District of the Mariana Islands). Each of the ninety-four districts vary in geographical size and the number of judges.

United States Attorneys are appointed to four year terms by the President of the United States with the advice and consent of the United States Senate and serve basically at the will and pleasure of the President. The United States Attorney is the highest ranking federal law enforcement official in the judicial district.

The Attorney General of the United States may appoint an United States Attorney to fill the first 120 days of a vacancy in the office pending an appointment by the President. After such an appointee has served the 120 days and the office still remains vacant, the United States District Court then has the authority to appoint an acting United States Attorney.

United States Attorneys and Assistant United States Attorneys must reside in the district for which they are appointed. They are paid salaries directed by law and are prohibited from engaging in private law practice while serving in office.

THE UNITED STATES ATTORNEY'S OFFICE
DISTRICT OF MINNESOTA

The District of Minnesota was established by Act of Congress as a judicial district on March 17, 1849. Two days later, Henry L. Moss was appointed the first United States Attorney for the District.

The permanent staff of the United States Attorney's Office for the District of Minnesota consists of the United States Attorney, a First Assistant United States Attorney, a Criminal Chief, a Civil Chief, thirty-two Assistant United States Attorneys, ten paralegal specialists, an administrative officer and thirty-seven clerical employees and specialists.

The headquarters for the United States Attorney's Office is located in the Federal Courthouse in downtown Minneapolis. An unstaffed office is maintained in St. Paul for use when appearing before a judge seated in that city.

Functionally, the office of the United States Attorney for the District of Minnesota is divided into two divisions -- a Criminal Division and a Civil Division. The Criminal Division presently includes special sections devoted to the prosecution of narcotics, S&L/bank fraud crimes and armed career criminals. The Civil Division presently includes special sections devoted to collections, land condemnations, forfeitures and bankruptcies.

This office also has exclusive jurisdiction over two Indian Reservations in the State of Minnesota, Red Lake and Nett Lake. The United States Attorneys Office also has jurisdiction over the federal courthouses and parking lots, in addition to other federal land located in Minnesota. Thus, the United States Attorney's Office prosecutes all major crimes, including rape and murder, that occur on these lands.

Criminal Division

Within his or her district, each United States Attorney has the authority to prosecute all offenses committed against the laws of the United States. Both federal statutes and delegation from the Attorney General of the United States give the United States Attorney the broadest discretion in the exercise of such authority.

Under the federal criminal justice system, the United States prosecutor has wide latitude in determining when, whom, how and even whether to prosecute. The prosecutor's broad discretion in such areas as initiating or foregoing prosecutions, selecting or recommending specific charges and terminating prosecutions by accepting offers of defendants to plead guilty has been confirmed by the court.

Dramatic increases have been observed in the areas of white collar crime, narcotics cases, violent crimes from the Indian Reservations and bank robberies. Due to actions of Congress and priorities of the Department of Justice, the role of the federal government in the county's criminal problems, including violent crime, has also grown.

The Criminal Division is divided into three prosecution sections which allow a more effective response to federal crime. The three areas are the White-Collar Crime Section, which includes the Financial Crimes Section, the Violent and General Crimes Section and the Firearms and Narcotics Section, which includes the Gang Unit.

The Criminal Division currently has twenty-two Assistant United States Attorneys.

Civil Division

The Civil Division is currently composed of eight Assistant United States Attorneys and five paralegals who are responsible for a current caseload of affirmative, defensive and bankruptcy cases. The Civil Division also provides monitoring assistance to the Department of Justice and Social Security Administration for tax cases and social security disability benefit cases.

The clients of the United States Attorney in civil cases are the various departments and agencies of the federal government. Types of cases range from defense of damage actions under the federal Tort Claims Act to affirmative litigation such as pursuit of civil penalties for environmental violations. The Civil Division of the United States Attorney's Office also serves as a collection agent for judgements taken on debts owed the federal government, including delinquent student loans, Small Business Administration loans in default and unpaid criminal fines.

Principal client agencies include the United States Army Corps of Engineers, particularly in land condemnation cases, the Internal Revenue Service, principally in collection and bankruptcy matters, the Farmers Home Administration, the Veterans Administration, the Department of Agriculture, the Environmental Protection Agency, the Department of Interior, particularly in fish and wildlife matters, the Equal Employment Opportunity Commission, the Interstate Commerce Commission, the Federal Emergency Management Agency, the Department of Labor, the United States Postal Service, the Department of Housing and Urban Development and the Department of Education.

Financial Litigation Unit

The Financial Litigation Unit (FLU) is the collection branch of the United States Attorney's Office and is administratively located in the Civil Division.

Collections for the District of Minnesota have increased dramatically over the years. Over \$11 million in cash and property was collected during Fiscal Year 1993, a \$5.4 million increase over FY 92. It is interesting to note that the monies collected are more than double the budget of the United States Attorney's Office.

Money is collected through wage and bank garnishments, attachment of real and personal property (cars, boats, vacation homes etc.), intervening in bankruptcy proceedings and by garnishing federal tax returns.

Money collected on behalf of agencies such as the Small Business Administration or the Veterans Administration, go directly back to the agency.

Criminal fines, forfeited appearance bonds and special assessments collected from federal defendants go into a Crime Victims Fund established with the U.S. Treasury which gives money back to the community in the way of grants designed to aid victims of crime. In 1993, the State of Minnesota was awarded \$1,662,000 to help support state and local agencies that provide direct services to crime victims and their families. Victim compensation and victim assistance grants are used for medical expenses resulting from violent crimes, funeral expenses, counseling, shelter and other services to victims of crime.

Forfeiture

Yet another important function of the Civil Division is to handle legal aspects relating to the seizure and forfeiture of a criminal's assets. Money obtained through forfeitures may be placed in official federal law enforcement use, shared with state, county and local law enforcement agencies who participated in the investigation or used for such federal expenses as prison construction. Up to 80% of the forfeited assets goes back to state and local law enforcement. Last year an estimated \$1.77 million was distributed to over forty state and local law enforcement agencies. Agencies can use the money for law enforcement purposes such as purchasing equipment, training or to cover investigative costs.

HOW A CRIMINAL CASE PROCEEDS IN FEDERAL COURT

Investigation

Every criminal case begins with an investigation -- a search for facts and information that will lead to a suspect and evidence supporting the charge. The investigation may involve many different techniques, including witness interviews, search warrants, electronic or physical surveillance, examination of documents and testimony before a federal grand jury.

Before law enforcement officers can perform a search for evidence, they must obtain a warrant from a district judge or magistrate judge. The Fourth Amendment to the United States Constitution requires that a search warrant be supported by proof that probable cause exists to expect the search to produce evidence of a crime. One or more affidavits will be attached to the application for the search warrant to establish probable cause. The search warrant will clearly specify the place to be searched and the things to be seized. The officer's application for a search warrant usually takes place in private and is not open to the press.

After the warrant is served and the search is completed, an inventory of items seized is filed along with the warrant in the court clerk's office. Normally, both the warrant with affidavit and the inventory list of seized items is open to public inspection, unless they have been ordered sealed by a judge. The sealing of a returned warrant may be justified if, for example, the suspect has not been apprehended or if the search is part of a continuing criminal investigation.

As soon as a person is arrested or taken into custody, they must be advised of their Constitutional rights. This process, known as giving the Miranda warning, includes informing the person of the right against self-incrimination and the right to have an attorney present during questioning. If the suspect cannot afford a lawyer, they can have an attorney appointed at public expense. Once a suspect expresses the desire to consult an attorney, questioning must cease until an attorney is present.

Grand Jury

The Constitution requires that federal felonies be charged by grand jury indictments unless the defendant consents to prosecution by way of information. The district courts are vested with power to summon, instruct and impanel grand juries. Grand juries, which consist of at least sixteen and not more than twenty-three persons, are larger than ordinary trial juries. A grand jury is impaneled for a term of one year or more and not just for a single case.

The function of the grand jury is to hear evidence of suspected violations of federal law and determine whether there is probable cause to believe a crime has been committed and that a particular person or corporation committed it. No federal grand jury can indict without the concurrence of the United States Attorney.

To obtain an indictment, the United States Attorney's Office presents evidence to a grand jury. During the grand jury investigation the United States Attorney or an Assistant United States Attorney presents the available evidence. No one other than the prosecutor, the witness, the court reporter, any necessary interpreter and the grand jurors are permitted in the grand jury room. No representatives of any suspect is permitted inside the grand jury room. Reporters are permitted to observe the coming and going of witnesses into the grand jury room. All grand jury deliberations are secret without the presence of the United States Attorney. If twelve members find probable cause to believe the accused committed the crime, they issue a bill of indictment.

The Supreme Court has consistently held that the proper functioning of the grand jury system depends upon maintaining the secrecy of grand jury proceedings. One of the primary reasons for doing so is to protect the privacy and reputation of the person being investigated. Accordingly, federal law imposes upon grand jurors, court reporters, the United States Attorney and his/her staff and everyone else who participates in the grand jury process, expect the witness, the obligation to maintain the secrecy of matters occurring before the grand jury.

Currently in the District of Minnesota there are two functioning grand juries. These grand juries meet separately and are in session from one to four days per month.

Charging of a Crime

Complaint: Sometimes, a suspect is arrested on the basis of an arrest warrant, also known as a complaint. The complaint is issued by a judge or magistrate judge and details why the government believes there is probable cause for the arrest. When a defendant is initially charged by complaint, the law provides that an indictment must be returned within 30 days. Otherwise, a defendant may be charged in an information, but only if he or she waives the right to be indicted.

Indictment: More commonly, charges are brought by an indictment. An indictment is a written accusation by a grand jury which charges the defendant with commission of a crime. Multiple charges in an indictment are referred to as counts. Indictments are returned in open court and filed in the court clerk's office and are a matter of public record. In some cases, indictments may be sealed if a judge determines that the defendant may flee before apprehension or for other reasons. Sealed indictments are not made available to the public until after the clerk of court is directed by the United States Attorney's Office or a judge to do so, generally after the reasons for the sealing have become moot.

Information: The only alternative to charging a defendant by the grand jury process is to charge him or her by the filing of an information. Informations, which are formal written accusations of a crime, may be filed in any federal misdemeanor case. An information may also be filed in a federal felony case, but only if a person waives the Constitutional right to indictment by a grand jury.

Appearing in Court

Initial Appearance: The proceeding in which a defendant makes his or her initial appearance in court is referred to as a first appearance. At the first appearance, which normally occurs before a magistrate judge, the defendant is advised of the criminal charges brought against him/her and the defendant is advised of the right to counsel. If needed, counsel will be appointed at public expense. A determination of bond also occurs at initial appearances. The Constitution guarantees a defendant the right to a reasonable bond, unless the court determines that the defendant poses a risk to flee or is a danger to the community.

Typical bonds include personal recognizance bonds, a non-monetary bond in which the defendant is released upon his or her promise to appear and answer to a criminal charge, cash surety bonds, in which the defendant is required to post some asset whose value is equivalent to the set monetary requirement by the court, and sometimes defendants are released on bonds that requires a percentage of the bond being placed with the clerk of court for example, a \$10,000 -10% bond would require the defendant to post \$1000 before they will be released from custody.

Arraignment: At an arraignment, the defendant is present with legal counsel and at this time will enter a plea to the charges brought. A defendant's first appearance and arraignment may be combined into a single proceeding. Only when a not guilty plea is filed will a case go to trial.

Pretrial Motions

It is common for defendant's counsel to file motions to suppress various evidence they believe was obtained in violation of the Fourth or Fifth Amendments. These amendments contain guarantees against unreasonable search and seizure and self-incrimination. Motions to suppress may be considered by the court at a suppression hearing, at which law enforcement officers are essentially put on trial to make sure that the evidence they gathered was obtained through legal means.

The exclusionary rule prevents the prosecution from using illegally obtained evidence to prove the defendant's involvement in the crime charged. The exclusionary rule is a remedy devised by the court to address an unconstitutional search. The theory behind the exclusionary rule is that if a court permits evidence to be used that was gained through violations of the law, the court then becomes a party to the official misconduct. Evidence that is ordered suppressed can be used in court for limited purposes such as proving a defendant is lying on the stand.

Often, however, a motion to suppress will be resolved on the basis of written briefs without a separate hearing.

Plea Agreements

At any point in the prosecution a defendant may seek a plea bargain. In cases where a plea bargain is agreed upon, a written plea agreement is filed with the court.

The majority of federal cases end in plea agreements. A plea bargain saves the prosecution the time and expense of a trial and may produce valuable cooperation from the defendant in the investigation of other criminal cases. Defendants similarly save time and money but also avoid the risk of a harsher punishment and the negative publicity that can accompany a trial. The courts benefit from the reduction in caseload.

The degree to which the prosecution is willing to engage in plea bargaining is determined primarily by the facts of each case, by the U.S. Sentencing Guidelines, the defendant's criminal record, the defendant's cooperation in on-going investigations, the wishes of the victim(s) and the interest of justice.

Jury Selection

When a jury trial is scheduled the district court summons a pool of prospective jurors. In the federal courts, the judge often plays an active role in the screening of prospective jurors, the first real phase of a criminal trial. This process is known as voir dire.

Attorneys may use peremptory challenges to strike or eliminate jurors lacking the profile they are seeking. Other jurors may be dismissed for cause, because something in their background or answers render them less than impartial.

Jurors are instructed not to discuss the case with anyone and to consider only the evidence introduced at trial. In particularly controversial or highly publicized cases, the jurors may be sequestered to prevent them from being subject to any outside influences.

Opening Statements

Once the jury is selected the trial begins with opening statements, when the attorneys tell the jury what the case is all about. The prosecution has the burden of proof and makes the first remarks to the jury. Opening statements cannot be argumentative, they simply give the jury an orientation about the evidence that will be produced in the trial.

Witnesses and Evidence

At any criminal trial it is up to the prosecution to prove the defendant is guilty beyond a reasonable doubt. The defendant is not obligated to put forth any evidence in rebuttal.

The prosecution offers witnesses and evidence to prove the points raised in the opening statement. The defense will be free to cross-examine these witnesses to highlight gaps in their knowledge of the events in question or contradictions with earlier statements.

Defense counsel may choose to forego the cross-examination of a witness if the testimony is not particularly damaging or if there is no evidence favorable to the defense or unfavorable to the prosecution that can be produced by cross-examination.

After the government presents its case, the defense may offer its own witnesses and physical evidence. However, the defendant is never required to take the stand or present evidence in his or her defense.

Attorneys may object to the opposition's questions on a number of grounds. Generally, leading questions (questions which suggest the answer sought) are prohibited on direct examination, but not on cross-examination. Counsel may also object to hearsay evidence, that is, the witness has no personal knowledge, but merely knows something second hand. Hearsay denies the defendant an opportunity at effective cross-examination and admits rumor as evidence. There are a number of exceptions to the hearsay rule, such as death bed statements.

Only evidence that has some logical relevance to the case is allowed and only original documents, unless proven to be unavailable, can become exhibits.

Closing Arguments

The case ends with closing arguments from both sides. Unlike the opening statements, which are previews, these statements are literally arguments that seek to influence the jury's interpretation of the facts. They often try to establish a theme that will allow the jurors to organize the evidence in their minds in a manner favorable to the side arguing. The prosecution presents its argument first and may make a rebuttal after the defense argues its side.

Jury Instructions

Following the closing arguments the judge instructs the jurors on the law applicable in the case. Attorneys on both sides may have previously requested that the jurors receive specific instructions. The judge decides what instructions are appropriate in advising the jurors of their responsibilities as judges of the facts in the case and how the facts they determine will affect the verdict, based on the laws in question. Jury instructions are open to the public. However, the courtroom is considered closed to traffic during this time. If you are in the courtroom at the time jury instructions begin, you must remain in the room until they have been completed.

The jury retires behind closed doors to deliberate on a verdict. Whether the deliberation takes a few minutes or several weeks, jurors are prohibited from discussing the case with non-jurors or examining items related to the case that were not placed into evidence. Once the jurors are discharged from their duties, reporters are generally free to interview them about the verdict.

Verdict

The verdict is announced in open court. In federal cases, the jury decision must be unanimous. A jury that is unable to reach a decision is known as a hung jury. In this case, a mistrial may be declared and the accused may be prosecuted again on the same charged.

An acquittal is final because of the constitutional protection against double jeopardy (being tried twice for the same crime). If a guilty verdict is not sustainable by any reasonable interpretation of the facts, the judge could grant a motion for acquittal before the case goes to the jury or an acquittal motion for judgment notwithstanding the jury's guilty verdict. It is rare, but possible at this stage, that a motion for a new trial will be granted because of legal errors in the trial procedures. Losing defense counsel often make the motion as part of routine procedure.

If a defendant is convicted he or she may be returned to custody or allowed to remain free on bond pending sentencing. At the time of conviction, the trial judge will order a presentence investigation. The results of this investigation, compiled in a written report by the probation office, will include details about the defendant's background and information that could affect the severity of sentence. Presentence reports are not public record.

In virtually all federal criminal cases, no date for sentencing is scheduled until the presentence report is completed and made available to the judge and attorneys for both sides. Specific challenges and objections to the report may be raised by either side.

Sentencing

In the federal courts, a person convicted of violations that occurred on or after November 1, 1987 are punished under the provisions of the federal sentencing guidelines. These guidelines are a complex series of criteria, regulations and limits used by the court to determine an appropriate range of punishment. Various types of information gathered in the presentence investigation are used to produce a numerical score that helps determine this range. Each criminal offense carries a basic score, known as a base offense level, which may be subject to enhancement or reduction by the determination of other factors. For example, playing a major role in a conspiracy could warrant an increase, while acceptance of responsibility of the criminal actions could warrant a decrease. A defendant's criminal history also figures into the formula.

Under the sentencing guidelines, a defendant is not eligible for parole. For example, a ten year prison sentence under the guidelines means the defendant will spend ten years in prison. Aside from an appeal or presidential pardon, the only opportunity for a reduction in prison time comes if an inmate displays positive, cooperative behavior while incarcerated. In such cases, up to 54 days of so called "good time" may be subtracted from a sentence as a reward for each year of positive behavior.

Normally, a defendant may be sentenced above or below the determined guideline range only if the government files an appropriate motion for upward or downward departure with the court or if the judges finds reasons why the prescribed sentencing range is either too lenient or too harsh. If the judge decides to sentence outside the guidelines range, they must state the reasons for doing so on the record.

Convictions for offenses that occurred prior to November 1, 1987 are not subject to the sentencing guidelines. Judges have greater discretion in sentencing, with limits imposed only by statute and defendants may face eligibility for parole.

Appeals

Cases from United States District Courts may be appealed by either the prosecution or the defense. An appeal may challenge a verdict because it is not supported by the evidence, because procedural errors by the court prejudiced the case or because the trial judge misapplied the law. Appeals may also challenge a particular sentence.

An appellate court may choose to affirm (uphold) or reverse (overturn) any or all parts of a district court's decision. Some appeals may result in the granting of a new trial.

An appellate court also may choose to affirm a judgment of conviction while vacating (rejecting) a sentence in a given case. In that event, the case is remanded (returned) to the lower court for resentencing.

Cases on appeal from the United States District Court for the District of Minnesota are heard by the United States Court of Appeals for the Eighth Circuit.

HOW A CIVIL CASE PROCEEDS IN FEDERAL COURT

A federal civil case begins when someone files papers with the clerk of court that states a claim against the person believed to have committed a wrongful act. This is referred to as a plaintiff filing a complaint against the defendant. The defendant may then file an answer to the complaint. These written statements of the positions of the parties are known as pleadings. The federal government doesn't have to be a party to a civil case in federal court. If jurisdiction is appropriate for a given case, any person or group may sue any other person or group in a federal civil case.

If the parties in a case can't agree on how to settle the case on their own or through independent arbitration, the court can decide the dispute through a trial. In a civil trial, the purpose is to determine whether a defendant failed to fulfill a legal duty to the plaintiff.

There is a right to a trial or a hearing in civil cases if the court finds it has jurisdiction and there is no legal impediment to letting the case proceed. Some federal statutes, such as Title VII discrimination laws, do not provide for a jury trial. Also, if the court grants summary judgement to either party or decides to dismiss the case, no trial is held.

Assuming a jury trial is available, any party may request one. If the party chooses to have a jury trial, determining the facts is the task of the jury. If the parties decide not to have a jury and leave the fact finding task to a judge, the trial is called a bench trial. In either kind of trial, the judge decides what legal standards to apply. With certain exceptions, civil trials proceed the same as criminal trials, in that they use an adversary process to allow each side to present evidence, including exhibits and testimony.

Standards of proof are different, however. In criminal trials, the government must prove guilt "beyond a reasonable doubt". But in civil trials, in order to decide for the plaintiff, the jury or bench trial judge must determine by a preponderance of the evidence that the defendant failed to perform a legal duty and violated the plaintiff's rights. A "preponderance of the evidence" means that more of the evidence favors the plaintiff's position than favors the defendant.

In civil cases, if the jury or bench trial judge decides in favor of the plaintiff, the judge usually orders the defendant to pay the plaintiff money, referred to as damages, to take some specific action that will restore the plaintiff's rights or to do a combination of both. If a defendant wins a case, there is nothing more the trial court needs to do except decide whether the plaintiff must pay certain costs and fees incurred by the defendant in deciding the case.

About 90% of all civil cases never go to trial.

THE UNITED STATES ATTORNEY'S OFFICE AND THE MEDIA

Department of Justice Media Policy

The Constitution that sets the foundation for First Amendment freedoms for the press also guarantees certain rights to accused person under its Fifth and Sixth Amendments. It becomes the duty of the United States Department of Justice, in its dealings with journalists, to carefully balance the demands of an informed public against the rights of the accused, including the right to a fair and impartial trial in a public court of law.

It is the policy of the United States Attorney's Office for the District of Minnesota to give journalists any appropriate information necessary to fulfill their obligation to keep the public informed, without jeopardizing an accused's right to a fair trial, the government's need to conduct thorough and fair investigations and the need for secrecy of grand jury proceedings.

A series of rules and regulations closely governs our ability to release and discuss information about the hundreds of civil and criminal proceedings that we handle each year. Copies of these rules and regulations are included in this handbook.

Federal law prohibits disclosure of "matters occurring before the grand jury." In other instances, fairness to defendants and litigates and the need to preserve the safety of witnesses, informants and law enforcement personnel prevent the United States Attorney from making disclosures to the press. In still other cases, early disclosures can compromise an on-going investigation.

The United States Attorney's Office has found members of the media generally to be aware of these considerations and to be understanding and cooperative in those instances when we must decline to comment on matters of public interest.

Department of Justice guidelines cover the types of information which can be disclosed in both criminal and civil matters. The United States Attorney's Office for the District of Minnesota is committed to compliance with these guidelines. An awareness and understanding of these guidelines by the media will make our jobs easier.

In addition, Department of Justice policy is designed to promote fairness, accuracy and sensitivity to the rights of defendants consistent with the public right to know. Department policy dictates:

1. That unless there are unusual circumstances, news conferences should be not held to announce investigations, indictments or arrests.
2. Information about investigations, indictments and arrests should be provided equally to all members of the media. Answers to legitimate questions about indictments or arrests should not go beyond the explanation of what is in public documents.
3. Generally, prior to indictment or arrest, even the existence of a particular criminal investigation should not be acknowledged or commented upon.

Information Which Can Be Released

The Department of Justice guidelines on news releases stipulates the following as information which may be made public, subject to specific limitations imposed by law or court rule or order:

1. The defendant's name, age, residence, employment, marital status and similar background information.
2. The substance or text of the charge, limited to that contained in the complaint, information, indictment or other public documents.
3. The identity of the investigating and/or arresting agencies and the length and scope of an investigation.
4. The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons and a description of physical items seized at the time of arrest.

Information Which Can Not Be Released

Certain information could tend to create prejudice without serving a law enforcement function, the Department of Justice policy outlines the following as such information:

1. Observations about a defendant's character.
2. Statements, admissions, confessions or alibis attributable to a defendant or the refusal or failure of the accused to make a statement.
3. Reference to investigative procedures such as fingerprints, polygraph examinations, ballistic tests or laboratory tests, including DNA testing, or the refusal by the defendant to submit to such tests or examinations.
4. Statements concerning the identity, testimony or credibility of prospective witnesses.
5. Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used in trial.
6. Any opinion as to the accused's guilt, the possibility of a plea of guilty to the offense charged or the possibility of a plea to a lesser offense.
7. Information concerning a defendant's prior criminal record unless prior convictions are an element of the current charge i.e. a felon in possession of a firearm.
8. Photographs of a defendant will not be available unless it serves a law enforcement function. This policy does not restrict the release concerning a defendant who is a fugitive.
9. Addresses or names of victims and/or witnesses.

These policies and the provisions of Title 28, Code of Federal Regulations, Section 50.2 do not prevent participation in media programs which concern Department of Justice policies, issues and priorities.

Contacting the United States Attorney

Members of the media desiring information are encouraged to contact the Media Coordinator or the United States Attorney personally. Questions on matters of Department of Justice or office policy or procedure should be addressed to the United States Attorney. Factual inquiries about pending criminal matters may be address to the Media Coordinator or the Assistant United States Attorney handling the matter. During the trial of a matter or following the resolution of a matter, inquiries may be directed to the Media Coordinator, the United States Attorney or the Assistant United States Attorney handling the matter.

JUDGES AND MAGISTRATE JUDGES
OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

United States Judges

Donald D. Alsop (St. Paul)
David S. Doty (Minneapolis)
Richard H. Kyle (St. Paul)
Harry H. MacLaughlin (Minneapolis)
Paul A. Magnuson (St. Paul)
Diana E. Murphy (Minneapolis)
Robert G. Renner (St. Paul)
James M. Rosenbaum (Minneapolis)

United States Magistrate Judges

Floyd E. Boline (Minneapolis)
Randall R. Burg (Bemidji)
J. Earl Cudd (Minneapolis)
Raymond L. Erickson (Duluth)
Jonathan Lebedoff (St. Paul)
Patrick J. McNulty (Duluth)
Franklin L. Noel (St. Paul)

UNITED STATES ATTORNEYS FOR THE DISTRICT OF MINNESOTA

(All Presidentially appointed, unless otherwise noted)

Henry L. Moss	1849-1853
Daniel H. Duston	1853-1854
John E. Warren	1854-1855
Norman Eddy	1855-1857
Eugene M. Wilson	1857-1861
George A. Nourse	1861-1863
Henry L. Moss	1863-1868
Cushman K. Davis	1868-1873
William W. Billson	1873-1882
D.B. Searie	1882-1885
George N. Baxter	1885-1890
Eugene G. Hay	1890-1894
E.C. Stringer	1894-1889
Robert G. Evans	1889-1901
Milton D. Purdy	1901-1902
Charles C. Houpt	1902-1914
Alfred Jacques	1914-1922
Lafayette French, Jr.	1922-1928
Lewis L. Drill	1928-1933
George F. Sullivan	1933-1937
Victor E. Anderson	1937-1948
John W. Graff	1948-1949
Clarence U. Landrum	1949-1952
Philip Neville	1952-1953
George E. MacKinnon	1953-1958
J. Clifford Janes	1958
Fallon Kelly	1958-1961
J. Clifford Janes	1961
Miles W. Lord	1961-1966
Hartley Nordin (acting)	1966
Patrick J. Foley	1966-1969
J. Earl Cudd (acting)	1969
Robert G. Renner	1969-1977
Thorwald H. Anderson, Jr. (acting)	1977
Andrew W. Danielson	1977-1979
Thorwald H. Anderson, Jr. (acting)	1979-1980
Thomas K. Berg	1980-1981
John M. Lee (acting)	1981
James M. Rosenbaum	1981-1985
Francis X. Hermann (acting)	1985-1986
Jerome G. Arnold	1986-1991
Thomas B. Heffelfinger	1991-1993
David L. Lillehaug	1994-present

UNITED STATES ATTORNEY'S OFFICE DISTRICT OF MINNESOTA

Minneapolis Office

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110 South Fourth Street
Minneapolis, Minnesota 55401
(612) 348-1500
FAX: (612) 348-1610

St. Paul Office (unstaffed)

266 Federal Building
316 North Robert Street
St. Paul, Minnesota 55101
(612) 290-4401
FAX: (612) 290-3133

Staff

David L. Lillehaug
United States Attorney

Douglas R. Peterson
First Assistant United States Attorney

Thorwald H. Anderson, Jr.
Chief, Criminal Division

Robert M. Small
Chief, Civil Division

Karen A. Jambor
Media Coordinator

Assistant United States Attorneys:

Christopher J. Bebel
Lonnie F. Bryan
Margaret T. Burns
Patricia R. Cangemi
Roylene A. Champeaux
Elizabeth L. de la Vega
Andrew S. Dunne
Jeanne J. Graham
Francis X. Hermann
Jon M. Hopeman

James E. Lackner
John M. Lee
Andrew M. Luger
Mary Jo Madigan
Francis J. Magill
Lizabeth A. McKibben
Richard G. Morgan
Paul A. Murphy
Carol A. Needles
Janet A. Newberg

Jeffrey S. Paulsen
Nathan P. Petterson
Mark R. Pitsenbarger
Denise D. Reilly
Kenneth W. Saffold
Henry J. Shea
Friedrich A.P. Siekert
Joseph T. Walbran
Michael W. Ward
D. Gerald Wilhelm
Lynn A. Zentner

FEDERAL OFFICE TELEPHONE NUMBERS

Department of Agriculture	(612) 290-3352
Bureau of Alcohol, Tobacco and Firearms (ATF)	(612) 290-3092
Clerk of Court (Minneapolis)	(612) 348-1821
Clerk of Court (St. Paul)	(612) 290-3112
Clerk of Court (Duluth)	(218) 720-5250
Defense Investigative Service	(612) 222-0212
Drug Enforcement Administration (DEA)	(612) 348-1700
Eighth Circuit Court of Appeals (Clerk's Office)	(314) 539-3600
Federal Bureau of Investigation (Minneapolis)	(612) 376-3200
Federal Bureau of Investigation (Duluth)	(218) 722-3341
Federal Protective Service (FPS)	(612) 725-3642
Fish and Wildlife	(612) 290-3889
Health and Human Services (HHS)	(612) 290-3124
Housing and Urban Development (HUD)	(612) 370-3011
Information (Federal Agencies in General)	1-800-366-2998
Immigration and Naturalization Service (INS)	(612) 854-7754
Internal Revenue Service-Criminal (IRS)	(612) 290-3321
Minnesota Bureau of Criminal Apprehension	(612) 642-0612
Postal Inspectors	(612) 293-3200
United States Army Criminal Investigation	(612) 290-4155
United States Customs Service	(612) 348-1300
United States Department of Labor	(612) 370-3111
United States Marshal's Service	(612) 348-1935
United States Secret Service	(612) 348-1800

GLOSSARY

A

A/K/A - Also known as. Reference on court documents to a person's known alias or aliases. For example: John A. Doe, a/k/a John Q. Smith.

ACCOMPLICE - A person who knowingly and voluntarily aids, abets, advises or encourages the principal offender in a criminal act.

ACQUITTAL - A verdict after a criminal trial that a defendant has not been proven guilty beyond a reasonable doubt.

ACTION - A case, cause, suit or controversy disputed or contested before a court.

ADMISSIBLE - Evidence which can be legally and properly introduced.

AFFIDAVIT - A written statement of fact given voluntarily and under oath.

AFFIRMED - In the practice of appellate courts the word means that the decree or order at issue is declared valid and will stand as rendered in the lower court.

AFFIRMATIVE DEFENSE - Without denying the charge, a defendant raises extenuating or mitigating circumstances such as self-defense, insanity or entrapment to avoid criminal responsibility. In civil cases, a defendant raises a legal fact, such as a statute of limitations or a claim that the debt was paid, which would avoid a judgment against him or her based on the facts in the complaint.

ALFORD PLEA - A plea whereby a defendant does not specifically admit guilty but concedes that the prosecution's evidence would be sufficient to win a conviction if the case were to go to trial.

ALLEGATION - A claim or statement of what a party intends to prove. The facts as one party claims they are.

ALLEGE - To claim or declare that something is so.

ALLOCUTION - When a judge grants the right of allocution the defendant is asked if he or she has any statement to make to the court prior to sentencing. The defendant and/or his or her attorney may respond, but no response is required.

AMENDMENT - The correction of an error in any process, pleading or proceeding at law.

ANSWER - In a civil case, the formal written statement by a defendant responding to a complaint and setting forth the grounds for his or her defense.

APPEAL - A request by the losing party that the judgment be reviewed by a higher court.

APPEARANCE - The formal act by which a defendant submits to the jurisdiction of a court.

APPELLANT - The party who initiates an appeal.

APPELLATE COURT - A court having jurisdiction to hear appeals and review a trial court's procedure.

APPELLEE - The party against whom an appeal is taken.

ARRAIGNMENT - The proceeding in which an accused person is brought before a judge to hear the charges filed against him or her and to enter a plea a guilty, not guilty or no contest (nolo contendere).

ARREST - To take into custody by legal authority.

ATF - Bureau of Alcohol, Tobacco and Firearms. Part of the Department of the Treasury. The ATF is active in cases involving violations of the federal gun laws, illegal use of explosives, arson and armed career criminals.

AUSA - Assistant United States Attorney. A federal trial attorney, appointed by the Attorney General of the United States upon recommendation of the United States Attorney in his or her district.

B

BAIL - Money or other security (such as a bail bond) given to secure a person's release from custody, which is at risk should he or she fail to appear before the court.

BAIL BOND - The obligation signed by the accused to secure his or her presence at trial, which he or she may lose by not properly appearing for trial or any other court proceeding. Often referred to simply as bond.

BAILIFF - A court attendant, sometimes called a courtroom deputy, who keeps order in the courtroom and has custody of the jury.

BENCH WARRANT - An order issued by a judge for the arrest of a person.

BEST EVIDENCE - Primary evidence; the best evidence available (i.e. production of an original letter is the "best evidence" that a letter exists)

BILL OF PARTICULARS - A detailed statement of the charges made against a defendant.

BIND OVER - To hold a person for trial on bond (bail) or in jail.

BOND FOR COSTS - A bond given by a party to secure the eventual payment of the costs of a suit.

BRIEF - A written statement prepared by one side in an appellate case to explain to the court its view of the facts of a case and the applicable law. At district court level, the statement is known as a memorandum.

C

CAPIAS - A writ requiring the marshal to take a defendant into custody.

CAPTION - The heading on a legal document listing the parties, the court, the case number and related information.

CHALLENGE - An objection to the seating of a prospective juror on the jury panel for a trial.

CHALLENGE FOR CAUSE - Objection to the seating of a particular juror for a stated reason (usually bias or prejudice for or against one of the parties in a lawsuit).

CHARGE TO THE JURY - The judge's instruction to the jury concerning the law that applies to the facts of the case.

CIRCUMSTANTIAL EVIDENCE - Evidence that merely suggests something by implication.

CITE - To command the presence of a person; to notify a person of legal proceedings against him or her and to require his appearance in the court, especially to face contempt proceedings. Also, to read or refer to legal authorities in an argument or submission to a court. For example, to cite a case to refer to a particular case in an attempt to persuade the court to be guided by the decision reached in that court.

CIVIL ACTION - Every lawsuit other than a criminal action; an adversary proceeding for the enforcement or protection of a legal right or the redress or prevention of a wrong.

CLERK OF COURT - An officer appointed by a court of justice who has charge of the clerical work; keeps the records and seal, issues process, enters judgments and orders and gives certified copies of documents from the record.

COMPLAINT - A preliminary charge issued by a judge and details why the government believes there is probable cause for the arrest. If a person is initially arrested and charged via complaint, an indictment must be returned within 30 days.

COMPLAINANT - The party who complains or sues; one who applies to the court for legal redress, also called the plaintiff.

CONCURRENT SENTENCE - Sentences for more than one violation to be served at the same time rather than one after the other.

CONSECUTIVE SENTENCE - Successive sentences, one beginning at the expiration of another imposed against a person convicted of two or more violations.

CONTEMPT OF COURT - Willful disobedience of a judge's command or of a court order, or actions calculated to embarrass or hinder the court in the administration of justice. Contempt may be cited in both civil and criminal cases.

CONTINUANCE - Postponement of a legal proceeding to a later date.

CONVICTION - A judgment of guilt against a criminal defendant.

CORROBORATING EVIDENCE - Supplementary evidence that tends to strengthen or confirm initial evidence.

COSTS - An amount of money to the successful party (and recoverable from the losing party) solely as reimbursement for certain expenses incurred in prosecuting or defending the suit. Does not include attorney fees.

COUNTERCLAIM - A claim which a defendant makes against a plaintiff.

COURT OF APPEALS - An intermediate federal court, inferior to the United States Supreme Court but higher than the United States District Court. Its function is to review the final decisions of the district courts, if challenged. There is a court of appeals for each judicial circuit. Cases appealed from the District of Minnesota are heard by the United States Court of Appeals for the Eighth Circuit.

CROSS-CLAIM - A claim by one party against a co-party (a defendant claiming against another defendant or a plaintiff against another plaintiff) arising out of the original complaint.

CROSS EXAMINATION - The questioning of a witness produced by the other side.

CUMULATIVE SENTENCE - Sentences for two or more crimes to run successively rather than concurrently.

D

DEA - Drug Enforcement Administration. Part of the Department of Justice, the DEA is the lead federal agency in enforcing narcotics and controlled substances laws and regulations.

DAMAGES - A monetary compensation which may be recovered in the courts by a person who has suffered a loss or injury through the unlawful act or negligence of another.

DE NOVO - ANEW - A "trial de novo" is a new trial of a case.

DEFENDANT - In criminal cases, the person charged with a crime. In civil cases, the person or entity from whom relief is sought by the plaintiff.

DEPOSITION - The testimony of a witness taken under oath in preparation for a trial.

DETENTION HEARING - A proceeding held to determine whether or not a person should be held in custody prior to trial or, if detention has been enforced, whether or not it should be terminated.

DIRECT EVIDENCE - Proof of facts by witnesses who saw acts done or heard words spoken, as distinguished from circumstantial or indirect evidence.

DIRECT EXAMINATION - The first questioning of witnesses by the party on whose behalf they are called.

DISCOVERY - The pretrial process by which one party discovers the evidence that will be relied upon at trial by the opposing party.

DISMISSAL - The termination of a case.

DISTRICT COURTS - Courts of the United States each having territorial jurisdiction over a judicial district which may include a whole state or only part of it. The district courts are the trial courts of the federal judiciary.

DIVERSITY OF CITIZENSHIP - A phrase used with reference to federal jurisdiction, denoting a civil case in which the district courts have jurisdiction because all the persons on one side of the case are citizens of states different from all the persons on the other side. The matter in controversy must also exceed a value of \$50,000.

DOCKET - A list of cases to be heard by a court.

DOCUMENT - Generally refers to writings, pictures, maps etc. Denotes official papers such as deeds, agreements, title papers, receipts and other written instruments used to prove a fact.

DOUBLE JEOPARDY - Putting a person on trial more than once for the same crime. Forbidden by the Fifth Amendment to the Constitution.

DUE PROCESS OF LAW - The right of all persons to receive the guarantees and safeguards of the law and the judicial process. Includes such constitutional requirements as adequate notice, assistance of counsel and the rights to remain silent, to a speedy and public trial, to an impartial jury and to confront and secure witnesses.

E

ELEMENTS OF A CRIME - Specific factors that define a crime, every element of which the prosecution must prove beyond a reasonable doubt in order to obtain a conviction.

ENTRY OF JUDGMENT - Recording the judgment. The action of the court clerk, putting into the docket book a statement of the final judgment and entering copies thereof in the record of the case and the judgment book.

EQUITABLE SHARING - A manner of distributing proceeds seized and/or forfeited in federal criminal investigations and prosecutions. Through equitable sharing, law enforcement agencies which participate in a case may receive a share of the assets seized in that case, such as drug money, for use in financing their ongoing law enforcement efforts.

EVIDENCE - Any kind of matter, presented at trial through witnesses, records or documents for the purpose of persuading the court or jury of the correctness of the contentions of the parties.

EX PARTE - On behalf of only one party, without notice to any other party. An ex parte motion is filed by one party without notice to the other party.

EX POST FACTO - After the fact.

EXAMINATION - An interrogation or search. The examination of a witness consists of a series of questions asked by a party to the action or his attorney, in order to bring before the court or jury the knowledge which the witness has of the facts or matters in dispute or probing and sifting the evidence as previously given.

EXECUTION OF JUDGMENT - A writ (order) to the marshal or sheriff requiring him or her to carry out the judgement of the court.

EXCEPTIONS - Declarations by either side reserving the right to appeal a judge's ruling on a motion.

EXCLUSIONARY RULE - Court ruling preventing illegally obtained evidence from being used in the case in chief against a criminal defendant. Derived from Fourth and Fifth Amendments to the Constitution.

EXHIBIT - A document or other article introduced as evidence during a trial or hearing.

F

FBI - Federal Bureau of Investigation. The principal investigative arm of the Department of Justice.

FNU - First name unknown. Reference on court documents indicating that an individual's true first name is unknown to authorities.

FEDERAL QUESTION - Refers to the jurisdiction given to the federal courts in cases involving the interpretation and application of Acts of Congress, the United States Constitution and treaties.

FILE - To put into files or records of the court; to file a paper is to place it in the official custody of the clerk. The clerk is to endorse upon the paper the date it is received and retain it in the record of the case subject to public inspection.

FORFEITURE - Real or personal property to which the right is lost due to the commission of a crime or by way of an assessed penalty. A forfeiture may be either administrative or judicial.

G

GRAND JURY - A group of citizens, from sixteen to twenty-three people, who are assembled in secret to hear or investigate allegations of criminal behavior. A grand jury may remain empaneled up to 18 months. It has authority to conduct criminal investigations and to charge a crime by indictment.

H

HABEAS CORPUS - A writ which commands that a person be brought before a judge. Most commonly, a writ of habeas corpus is a legal document that forces law enforcement authorities to produce a prisoner they are holding so that the court can determine whether legal justification exists for the detention. More specifically, there are writs "ad testificandum" (to produce an incarcerated person in court to testify at a trial) and "ad prosequendum" (to produce an incarcerated person in court as a party in a lawsuit).

HARMLESS ERROR - An error committed during a trial that was either corrected or not serious enough to affect the outcome of a trial and therefore was not sufficiently harmful (prejudicial) to be reversed on appeal.

HEARING - A relatively formal proceeding similar to a trial, with one or more legal issues to be agreed upon or determined.

HEARSAY - Evidence that is not within the personal knowledge of the witness but was relayed to the witness by a third party.

HOSTILE WITNESS - A witness whose testimony is not favorable to the party who calls him or her as a witness.

HUNG JURY - A jury that cannot reach a verdict.

I

INS - Immigration and Naturalization Service.

IRS - Internal Revenue Service. Part of the Department of Treasury. Certain tax-related criminal cases filed by the United States Attorney are often the result of field work by the Criminal Investigations Division of the IRS. The IRS also may be involved in certain civil cases filed by the United States Attorney.

IMMUNITY - In criminal cases, a grant by the court against prosecution in return for providing criminal evidence against another. In civil cases, immunity is a complete legal defense against being found liable for the relief sought by the plaintiff or against being sued at all.

IMPEACHMENT OF A WITNESS - An attack on the credibility of a witness, through evidence introduced for that purpose.

IN CAMERA - In chambers, or in private. Matters of the court that are addressed in camera are not open to the public.

IN FORMA PAUPERIS - "In the manner of a pauper." The permission given to a person to sue without payment of court fees.

INADMISSIBLE - That which under the rules of evidence cannot be admitted or received as evidence.

INDICTMENT - An accusation by a grand jury charging a person with a crime.

INFORMATION - An accusatory document, filed by the prosecutor detailing the charges against the defendant.

INJUNCTION - A temporary or permanent order of the court prohibiting the performance of some specific act in order to prevent irreparable harm to the one seeking the injunction.

INSTRUCTIONS - A judge's directions to the jury regarding the law in the case and its authority to determine the facts and to draw inferences from the facts in order to reach a verdict.

INTERROGATORIES - Written questions asked by one party and served on an opposing party who must answer them in writing under oath as a discovery device.

INTERVENTION - A proceeding by which a third party is permitted to enter a lawsuit pending between other parties. He may join the plaintiff in seeking what is asked in the complaint; or with the defendant in resisting the claims of the plaintiff; or may demand some relief adverse to both of them.

ISSUE - (1) A disputed point or question to which the parties to a case have narrowed their disagreement; a single material point which is affirmed by one side and denied by the other. When the plaintiff and the defendant have arrived at some point which one affirms and the other denies, the point is said to be they are "at issue." When the defendant has filed an answer denying all or part of the allegations of the complaint, the "issues have been joined" and the case is ready to be set for trial. (2) To send out officially or to issue an order.

J

JUDGEMENT - The final disposition of a lawsuit.

JUDGMENT N.O.V. - Judgement notwithstanding the verdict; a judge's decision contrary to the verdict of the jury.

JURISDICTION - The power or legal authority of the court to hear and decide a case. (1) Federal courts are courts of limited jurisdiction. They cannot consider a case unless there is a specific grant of jurisdiction over the case found in federal law. (2) The parties all have sufficient contacts with the judicial district to permit the court to have jurisdiction over them.

JURY - Persons selected according to law and sworn to inquire into matters of fact and declare the truth about matters laid before them during a trial.

L

LECC - Law Enforcement Coordinating Committee. An active working team of local, state and federal law enforcement agencies within a district. Established nationwide in 1981 by the United States Attorney General's Task Force on Violent Crime, the LECC concept was designed to enhance cooperation and coordination of resources among law enforcement groups at all levels of government.

LNU - Last name unknown. Reference on court documents indicating that a person's true last name is not known to authorities.

LEADING QUESTION - A question that suggests the answer desired of the witness. A party generally may not ask one's own witness leading questions; leading questions may be asked only of hostile witnesses and on cross-examination.

LIMINE - A motion requesting that the court exclude certain evidence that might prejudice the jury.

M

MNU - Middle name unknown. Reference on court documents indicating that an individual's true middle name is not known to authorities.

MAGISTRATE JUDGE - A court appointed judge who may conduct preliminary and pre-trial proceedings in minor criminal offenses and some district court proceedings, including civil trials with the consent of the parties.

MINUTES - The official record of what takes place in court.

MIRANDA WARNING - Requirement that police tell a suspect in their custody of his or her constitutional rights before they begin questioning.

MISTRIAL - A trial terminated before a verdict is reached because of fundamental error prejudicial to the defendant. A mistrial also may be declared in the event of a hung jury, resulting in the order for a new trial.

MOOT - A proceeding which seeks judgment or ruling on a dispute which does not actually exist. For example, when one party brings a motion to compel the other to answer, interrogatories and the other has already answered, the motion is moot.

MOTION - An application for a rule or order, made to a court or judge.

N

NMN - No middle name. Reference found in court documents to a person who has no middle name. Example: John NMN Doe.

NO BILL - Grand jury finding that the evidence was insufficient to indict.

NOLO CONTENDERE - A plea of no contest, but without an admission of guilty.

NOTICE - Information or a warning usually given in writing, informing a person of some fact which it is his or her legal right to know.

NOTICE OF APPEAL - Notice to the court and to the other parties to the suit that a party intends to exercise his or her right to appeal. Filing the notice of appeal in the district court is the first step in making the appeal.

O

OCDETF - Organized Crime Drug Enforcement Task Force. Established in 1982, OCDETF is a multi-agency approach to combat organized crime and drug trafficking. Through OCDETF, various state and local law enforcement agencies may cooperate on investigations with any or all of nine federal agencies; the Drug Enforcement Administration, Federal Bureau of Investigation, Immigration and Naturalization Service, United States Attorneys, United States Marshals Service, United States Coast Guard, Internal Revenue Service, United States Customs Service and the Bureau of Alcohol, Tobacco and Firearms.

OBJECTION - The process by which one party takes exception to some statement or procedure.

OPINION - A formal judicial statement of the legal reasoning upon which the judgment is based.

ORDER - A written or oral command from a court directing or forbidding an action or deciding a legal issue.

OVERRULE - Judge's decision not to allow an objection; also, decision by higher court finding that a lower court decision was in error.

P

PSI - Presentence investigation (report). See sentencing report.

PARTY - A person, business or government agency actively involved in the prosecution or defense of a legal proceeding.

PEREMPTORY CHALLENGE - A challenge which may be used to reject a certain number of prospective jurors without giving a reason.

PERJURY - The criminal offense of making a false statement under oath.

PETIT JURY - An ordinary trial jury. Persons impaneled and sworn in a district court, who determine any question or issue of fact in any civil or criminal action according to law and the evidence introduced at the trial. Petit juries are composed of twelve members whose verdict must be unanimous.

PLAINTIFF - The one who brings the suit, asking for the enforcement of a right or the recovery or relief from a wrong. The government of the United States, represented by the United States Attorney, is the plaintiff in every federal criminal case.

PLEA - The defendant's declaration in open court that he or she is guilty or not guilty or wishes to plead no contest to the charges made in the indictment or information.

PLEA BARGAINING - The process through which an accused person and a prosecutor negotiate a mutually satisfactory disposition of a case. Usually it is a legal transaction in which a defendant pleads guilty in exchange for some form of leniency. It often involves a guilty plea to lesser charges or a guilty plea to some of the charges if other charges are dropped. In federal courts, the plea agreement is accepted and approved only after the district judge determines that it satisfies the interests of justice.

PLEADING - The formal written statement presented by the parties in a civil case, forming the basis for the lawsuit and defining the issues.

POLLING THE JURY - The act, after a verdict has been announced, of asking jurors individually whether they agree with the verdict.

PRAYER - In a civil case, the relief requested in the complaint, cross-claim or counterclaim.

PRELIMINARY HEARING - The hearing at which a judge determines whether there is sufficient evidence against a person charged with a crime to warrant holding him or her for trial.

PRETRIAL CONFERENCE - An informal conference between the attorneys for both sides to clarify the issues and to attempt to work out a settlement, with a judge or magistrate as moderator.

PROBABLE CAUSE - Sufficient legal reason to allow a search and seizure or the arrest of a person.

PROBATION - An alternative to imprisonment allowing a person found guilty of an offense to stay in the community, usually under conditions and the supervision of a probation officer.

PROCEDURE - The rules for the conduct of a lawsuit.

PROCEEDING - The judicial business before the court or judicial officer; any step or act taken in a lawsuit from the beginning to the executing of the judgement.

PROCESS - The summons or any other writ which may be used during the progress of the case.

PROSECUTOR - A lawyer for the government, usually an Assistant United States Attorney.

PUBLIC DEFENDER - A court appointed government lawyer who provides legal defense services at no cost to a poor person accused of a crime.

Q

QUASH - To vacate or void a summons, indictment or subpoena.

R

RICO - Racketeer Influenced and Corrupt Organizations Act. RICO provides for criminal and civil penalties for persons who engage in a pattern of racketeering activity or collection of an unlawful debt that has a special relationship to an enterprise affecting interstate commerce.

REASONABLE DOUBT - Such uncertainty as might exist in the judgment and conscience of a prudent person applying reason to the evidence introduced.

REBUTTAL - Evidence disproving other evidence previously given or reestablished the credibility of challenged evidence.

RECORD - A written memorial of all the acts and proceedings in an action or suit.

REDIRECT EXAMINATION - Questioning of witness by party that originally called that witness after opponent's cross-examination.

REMAND - To send back. The act of the appellate court in sending a case back to the district court for further action.

RESPONDENT - The party against whom an appeal is taken.

REVERSE - Action of a higher court in setting aside or revoking a lower court decision.

REVERSIBLE ERROR - An error sufficiently prejudicial (harmful) to justify an appellate court in reversing the judgment of a lower court.

S

SA - Special Agent. Professional title of most federal investigative officers.

SAC - Special Agent in Charge. The managing agent for a field office of the FBI, ATF or the Criminal Investigations Division of the IRS.

SAUSA - Special Assistant United States Attorney. A federal trial attorney appointed by the United States Attorney General upon the recommendation of the United States Attorney of his or her district. Usually hired for the purpose of assisting in the preparation and presentation of a special case or special type of case.

SEARCH WARRANT - A written order issued by a judge that permits a law enforcement officer to search a specific area for specific evidence.

SELF-INCRIMINATION, PRIVILEGE AGAINST - The constitutional right of people to refuse to testify against themselves or make statements that could subject them to criminal prosecution.

SENTENCE - A court's determination of the punishment to be inflicted on a person convicted of a crime.

SENTENCING GUIDELINES - A complex series of criteria, regulations and limits used by the court to determine a range of appropriate punishment for a defendant. Mandated by the Sentencing Reform Act of 1984, the guidelines were developed by the United States Sentencing Commission, an independent agency of the judicial branch. After a review by Congress, the guidelines became effective on November 1, 1987 and apply to all federal offenses committed on or after that date. Defendants sentenced under the guidelines are not eligible for parole. A judge may sentence a defendant above or below the recommended guideline range but only under specific circumstances.

SENTENCING REPORT - Document containing background of a convicted person, prepared by the U.S. Probation Office to guide the judge in the imposition of a sentence. Sometimes called a presentence report, presentence investigation report or PSI.

SERVICE - The delivery of a writ, notice or injunction by an authorized person to officially notify another party of a proceeding in which he is concerned.

SERVICE OF PROCESS - The service of writs, summons or rules to the party to whom they ought to be delivered.

SEQUESTRATION OF WITNESSES - Keeping all witnesses (except the plaintiff and defendant) out of the courtroom except for their time on the stand and admonishing them not to discuss their testimony with other witnesses. Designed to prevent a witness from being influenced by testimony of a prior witness.

SMURFING - The practice of dividing financial transactions into amounts less than \$10,000 to avoid triggering the reporting requirement of the Currency and Transactions Requirements Act. Persons employed by the offender to carry out the transactions may be referred to as "smurfs".

SPECIAL GRAND JURY - Differs from a regular grand jury in that it is normally empaneled for special investigative purposes such as the investigation of organized crime. Unlike a regular grand jury, which may remain empaneled up to 18 months, a special grand jury may be extended for up to 36 months.

STATE'S EVIDENCE - Testimony given by a participant in a crime, tending to convict others.

STATUTE - Written law enacted by a legislature.

SUBPOENA - A court order compelling a witness to appear and testify.

SUMMONS - A writ directing the marshal to notify the person named that an action has been commenced against him in the court and that he is required to appear and answer the complaint.

SUPPRESS - Forbidding the use of evidence at a trial because it is improper or was improperly obtained.

SUSTAIN - Court order allowing an objection or motion to prevail.

T

TEMPORARY RESTRAINING ORDER - Also referred to as a TRO. An action by a court to prohibit a person from an action which is likely to cause irreparable harm to the one seeking the order. This differs from an injunction in that it may be granted immediately, without notice to the opposing party and without a hearing. It is intended to last only until a hearing can be held, 10 days or less.

TESTIMONY - Evidence given by a witness under oath. This does not include evidence from documents and other physical exhibits.

TRANSCRIPT - The official record of all testimony and events during a trial or hearing.

TRIAL DE NOVO - A new trial.

TRUE BILL - An indictment by a grand jury.

U

USA - United States Attorney. The chief federal trial attorney in a given judicial district. United States Attorneys are appointed by the President to four year terms with the advice and consent of the United States Senate.

USCS - United States Customs Service. Part of the Treasury Department.

USMS - United States Marshal's Service. Part of the Department of Justice. The nation's oldest federal law enforcement agency.

USPIS - United States Postal Inspection Service. The law enforcement arm of the United States Postal Service.

USSS - United States Secret Service. Part of the Department of the Treasury.

V

VACATE - To set aside.

VERDICT - Conclusion, as to fact or law, that forms the basis for the court's judgment.

VENIRE - A writ summoning persons to court to act as jurors; used to refer to the people summoned for jury duty.

VENUE - The county, city or district in which a court with jurisdiction over the parties and the subject matter may hear the case.

VOIR DIRE - Literally, "to speak the truth." Process of questioning potential jurors so that each side may decide whether to accept or oppose an individual for jury service.

W

WAIVER - Intentionally giving up a right.

WAIVER OF IMMUNITY - A means authorized by statute by which a witness, before testifying or producing evidence, may relinquish the right against self-incrimination, thereby making it possible for that testimony to be used against him or her in future proceedings.

WARRANT - A court order authorizing law enforcement officers to make an arrest or conduct a search.

WILLFUL - Done intentionally without justifiable cause, as distinguished from carelessly or inadvertently.

WITNESS - One who testifies as to what he or she has seen, heard or otherwise experienced.

WRIT - A judicial order directing a person to perform a specific act.