

# UMAN LAW FIRM

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## Information for Federal Defendants

### After Arrest

Now that you have been arrested by the federal agent, it is once again time to remember the very first Miranda warning is the right to silence. You should exercise this right, when approached by a law enforcement officer. When using the telephone be careful what you say about your case. If you are approached by any law enforcement officer, you should be polite and advise them that based on the advice of your attorney you do not wish to speak

to them, and most importantly you want your attorney present during any conversation that you may have, and say nothing further. When approached by other inmates in jail or talking to friends on the telephone, do not discuss any details of your case. Simply tell them that you have an attorney appointed to you and you have no particular details to share with them. It is common for someone to share the details of their case with a fellow inmate; and the fellow inmate calls law enforcement or a prosecutor and elaborates on your details in hopes of becoming a Government witness against you to shorten any prison sentence they may have or are about to receive. You should keep in mind that all of your letters (except legal mail) going out and coming in will be read by a jail employee. *All of your*

*telephone calls will probably be monitored and possibly recorded.*

Do not talk to anyone about your case without first discussing the matter with your attorney. You may discuss anything concerning your case with your attorney because these matters are recognized to be confidential. Remember though that this confidential privilege extends only to discussions between you and your attorney and your attorney's staff. Anything you tell your family, friends or others such as cell mates is not confidential, and the prosecutor can compel those people to testify about what you have said whether they want to or not.

### CONTENTS

After Arrest..... 1  
First Appearance..... 2  
Release or Detention..... 3  
After First Appearance..... 4  
Trial Preparation-Trial ..... 4  
Plea Preparation/Plea ..... 5  
Plea and Cooperation Preparation..... 6  
Sentencing Guidelines ..... 7  
Jury Verdict/Sentencing/Appeal ... 8  
Designation..... 9

This attorney-client privilege exists between you, your attorney and your attorney's staff only. For this reason your attorney cannot discuss your case with your family or friends without your permission. This is an important decision and you should discuss it with Many things happen at the first appearance before a federal Magistrate. The first of which is filling out a financial affidavit to show the court how much you make and how much you spend. This is used to determine whether or not you qualify for the services of a Federal Public Defender or a private attorney employed as a Federal Public Defender. The private attorneys are selected from a list of approximately twenty-five (25) Federal Bar approved lawyers on a rotating basis. The selection is made by the Federal Public Defender's Office. Also, at first appearance you will be made aware of the charges against you. This is usually done through a brief explanation by your attorney as to what the particular charges are. At a later time, you and your

your attorney.

You may have been interviewed by a probation officer prior to your first appearance in court for the purpose of preparing a pretrial service report. This report is prepared to assist the Magistrate in his decision of whether or not attorney will go over the indictment (charges) in greater detail, but at first appearance it is only necessary that you generally be made aware of the charges against you.

Also, at first appearance the Magistrate is obligated to inform you of the maximum potential sentence. This is the cap and under no circumstance may the sentence be higher than the maximum allowed by the law. In almost every situation the sentence received will be far less than the maximum as stated by the Magistrate. After you are made aware of the charges against you and have had an attorney appointed to represent you the judge will then proceed to arraignment, which is simply to enter a plea of not guilty. The Magistrate Judge is not permitted to accept a plea

to release you on bond. A copy is given to the United States Attorney (prosecutor) and a copy to your attorney. You have an opportunity to review it for any mistakes.

### First Appearance

of guilty. Therefore, even if you wanted to enter a plea of guilty at your first appearance it is not possible to do so. Another event that occurs at first appearance is a bond hearing. In Federal Court it is called a detention hearing. If there has been some agreement reached with the prosecutor as to a reasonable bond that you can make, then it will be a recommendation to the Judge that you are released on a particular bond with particular conditions. If this does not occur, that is if the Government wants you held without a bond, then a bond hearing will take place. It can take place that same day or if the Government asks for a continuance the defendant can have up to five (5) days to prepare for the bond hearing. By law, you must stay in jail until the

bond hearing is held. Sometimes a defendant may have some pending State charges and is already in custody on a State bond that he/she cannot make. In that situation it is best to waive (temporarily give up) a bond hearing until the State case can be straightened out. Another way of saying it is that even if the Federal Judge was to grant you a bond that you could make, you would not get out of jail because of the existing State bond that you cannot make. If and when the State bond is made or removed, then a motion can be put into the Federal Court to have a bond hearing. At a bond hearing in Federal Court, it is by law that you should be presumed better off locked up than on the street. If you are facing a firearm or drug charge, which has a statutory maximum of ten (10) years or more potential sentences then the Government starts off with a benefit that, by law, you are presumed to be either a risk of flight or a danger to the community.

To overcome this presumption, the defendant must present live testimony and/or documents to show the court that there are conditions of release that could be imposed which would ensure the safety of the community, as well as assure your appearance at future court proceedings.

### Release or Detention

If you are released on bond there will be travel conditions set, as well as other conditions. If your travel is restricted to the Northern District of Florida, then you cannot go outside of the following counties: Alachua, Levy, Gilchrist, Dixie, Lafayette, Taylor, Madison, Leon, Gadsden, Liberty, Franklin, Wakulla, Jefferson, Jackson, Holmes, Washington, Bay, Calhoun, Gulf, Escambia, Santa Rosa, Okaloosa, and Walton counties. If you are granted travel outside of the Northern District of Florida to either the Middle District or the Southern District, be sure and check with your

attorney or the Probation Office to find out which counties this includes. Additional conditions of release are usually that you obtain no passport, maintain or seek permanent employment or status as a full-time student, have no association with witnesses or co-defendants in your case, submit to random drug testing by the Probation Office and report to them as they direct. Probation will visit your residence within ten (10) days of your release to verify that you in fact have an approved permanent residence. Also, you can expect to submit to one or more random urine tests and you will have little or no advance notice of when they will request samples. Any violation of your pre-trial release can be very damaging to your trial and/or potential sentencing. If you are denied a bond or cannot make the bond you will be "detained." That is simply another way of saying locked up and held prior to trial.

## After First Appearance

*I cannot emphasize too strongly that you must not talk about your case over the telephone or with other inmates. This is especially true of trial strategy which Trial preparation will require you to give to your attorney and/or investigator all of the information that you have concerning your participation, lack of participation, co-defendant's participation, and witnesses which may have been present. In Federal Court there are no depositions for your attorney to take to learn the potential testimony of Government witnesses. Also, your attorney will not get the Government witness list until the morning of jury selection. You and your attorney will go over all of the discovery that is received from the Government. In Federal Court this is usually limited to your prior record, any statements that you may have made to either cooperating co-defendants or law enforcement, the results of any tests*

you may discuss with your attorney and witnesses or evidence that you plan on presenting at trial.

You have the right to make the decision as to three options: Go to trial, enter a plea of guilty, or

conducted by the Government, and the summary of any testimony of any expert witnesses. Do not be surprised if there is not a lot of discovery for you to see prior to trial. The trial itself will begin no sooner than thirty (30) days from your first appearance nor later than seventy (70) days of your first appearance. Normally, in Federal Court there are no continuances. Therefore, be prepared to either enter a plea of guilty or go to trial on the date of trial which is given by the Magistrate at your first appearance. The first stage of trial will be the jury selection. There will be a number of citizens summoned for jury duty that will be seated at random in the court room. You and your attorney will have the name and occupation of most of the jurors and the number of

plea and agree to cooperate with the Government.

## Trial Preparation -Trial

the seat that they are assigned to. The judge asks ninety-nine percent (99%) of all of the questions during jury selection. After the judge has completed his questioning, which is usually very lengthy and in depth, your attorney will have the option of asking some follow up questions. Your attorney cannot begin questioning all over again or try to ask questions just to get personal with the jurors. The attorney is only allowed to ask for clarification or to follow-up on some of the questions that were already asked by the judge. After all of the questioning has been completed you and your attorney will have five to ten minutes to go over the jury list and decide who are the best candidates to try to keep and who are the jurors you would like

to strike. Your attorney has ten (10) challenges and the Government has six (6) challenges which can be used to remove a juror without giving any explanation. Also, it is possible to remove jurors for "cause." That is, the juror has something in their background or have said something that shows that they have some prejudice against the defendant. After you and your attorney have gone over the potential jurors, your attorney and the Prosecutor will go up to the judge with the court reporter and the court clerk present. The judge goes down the list of jurors according to their seat numbers and starts out with the prosecutor asking if he/she wants to accept or If you decide that you prefer to plead guilty to the charge or charges then this will be done either the day that jury selection was set to begin or prior to that date. Sometimes, the Government is willing to dismiss some of the counts in exchange for a plea of guilty. There is very little bargaining in Federal Court as compared to State Court. Also, the Government will never

reject juror number one. If, for example, the Government accepts juror number one then it goes to your attorney to accept or reject. If your attorney accepts juror number one, that will become the first of twelve (12) jurors for your trial. The judge then goes to your attorney and asks about juror number two. If your attorney rejects juror number two that counts as one of the ten strikes that can be used to dismiss jurors. Then the judge goes back to the prosecutor and asks about juror number three, this is done until twelve (12) jurors have been selected. Then one or two alternate jurors will be selected in the event that one or two of the main jurors cannot attend the agree to recommend a sentence to the judge. No one can speak for a Federal Judge and no one can promise you what sentence you will receive. The judge has the final say in the sentence that he imposes. Sometimes there will be a written plea agreement which you and your attorney will go over in advance as well as your attorney informing you where he/she thinks that

entire trial. The alternate jurors will sit in and they will hear the entire case and they will not know they are alternate jurors until the case is concluded. After the case is concluded, but before the jurors go to their room to reach a decision, the judge informs them that there has been one or two persons that have been alternates and they cannot go into the jury room but they must remain available in case something happens to one of the jurors before they come back with their verdict.

## Plea Preparation\Plea

you will fall within the sentencing guidelines. (Sentencing guidelines will be discussed later). In Federal Court, the judge will normally not accept a plea of no contest. You will have to say the guilty word about three times. The judge will ask you about five times, five different ways if you know what you are doing and if you are doing it freely and voluntarily and if you are

pleading guilty because you are guilty. This is done to protect you and the record. The judge wants to make sure that no one is forcing you, promising you something, intimidating you or threatening you to get you to enter your plea of guilty. He also will make sure that you know the rights that you are giving up by entering a plea of guilty. Also, the judge does not have to accept your plea of guilty. If the judge thinks that you are not telling the truth or you are trying to down play what you actually did he can easily walk off the bench and tell you that “you might as well tell that to a jury.” In that case unless your attorney can repair the damage, your only choice is to go to trial.

Also, during your plea of guilty the Judge will have to hear some facts to show him that you did something that is actually against the law. Therefore, he will ask the Government (prosecutor) to give their version of the facts and ask you to listen. If you decide that you want to plead guilty and cooperate with the Government in the

carefully to what the Government is about to say. During the statements of facts the Government will tell the judge that should this case have gone to trial the Government would be prepared to prove beyond a reasonable doubt...at that point the Government will tell the judge a thumb nail sketch of what was going on and what your involvement was. After the Government is done, the judge will ask if you heard what the Government said and those true facts. If there is a written plea agreement the judge will ask if you heard what the Government said and are those true facts. If there is a written plea agreement the judge will briefly go over it with you to make sure that you understand its terms and conditions. The judge will also want to make sure; that you have worked with your attorney; that you have told your attorney everything that you knew about the case; that you had ample time to discuss investigation of other persons, a written plea and cooperation agreement will be prepared. You and

your case with your attorney and that to make sure that your attorney has answered any questions you have or discussed any defenses that you may have had to the case, as well as, where you may fit in the sentencing guidelines. Also, during this plea the judge will ask if you are aware that by pleading guilty you would be facing the statutory maximum. Again, the statutory maximum will most likely be far higher than what your actual guideline sentence will be. But the judge is obligated by law to tell you what the maximum potential sentence and fine you may receive. Normally anyone who has a Federal Public Defender does not have the financial means to pay a fine so that should be of little or no concern.

### **Plea and Cooperation Preparation**

your attorney will go over it in detail and the judge will also go over it during your plea of guilty. In

cooperating with the Federal authorities, you must tell them everything that you know about everyone. You cannot pick and choose. It is all or nothing. If the Government thinks that you are holding back information, trying to protect someone or basically not being truthful with them, they can revoke the agreement. If the agreement is revoked, they can file additional charges against you, they can put back in any charges that they had already asked be dismissed against you and they can use anything that you said against you. If everything goes well during the plea Federal court uses a sentencing guideline manual to arrive at a recommended sentencing range of imprisonment. You and your attorney will go over your case and your prior criminal record and establish the guideline range which you fall into in case you go to trial, or plead guilty. The sentences can be different because in Federal court if you plead guilty and "accept responsibility" that is to say you did it and you are sorry, you will get

agreement then it will not get revoked and you will have immunity for the information that you provide to them. In other words, no one will get on the witness stand and say that you said so and so, they cannot use your words against you. Your cooperation will usually require you to give information to law enforcement, possibly appear in front of a Grand Jury and give testimony, and also testify for the Government at trial. If in the Government's sole discretion they believe you have provided "substantial assistance," they will send a 5K.1 certificate (letter) to the judge. This will three levels off of your sentencing range (if your sentencing range is level 16 or higher). This can result in a one to three year reduction of the sentencing you would be looking at. Without a 5K.1 letter or Rule 35 motion (both filed only by the Government) you will be sentenced somewhere in the guideline range. The guideline range that you and your attorney come up with may differ a little bit from the one that is calculated by the

untie the judges' hands and allow him to sentence you anywhere he wants to. The judge will no longer have to give a minimum mandatory or a guideline sentence. If your cooperation is not completed until after sentencing you may receive a Rule 35 motion. This motion does the same thing as a 5K.1 letter. Any reward (lower sentence) will be awarded after sentencing instead of at sentencing.

### Sentencing Guidelines

Probation Office. Probation will have better knowledge of all of your prior criminal activities through their research. There are three particular provisions that you should be aware of. These are called Federal Habitual Offender Provisions. The first one is the career offender, to be considered a career offender you must fit into the following requirements: (1) You must be at least eighteen (18) years old; (2) The current offense must be a

felony for a “crime of violence” or a “controlled substance” offense; (3) You must have two prior convictions for “crimes of violence,” “controlled substance,” or any combination thereof. If you fall under this category your guidelines range jumps automatically to a Criminal History Category six and your offense level will be a minimum of thirty-two (32). The next provision is called Armed Career Criminal. To be considered an Armed Career Criminal you must have met the following requirements: (1) You must be charged with being a felon in possession of a firearm; (2) have If the jury returns a verdict of guilty or if you enter a plea of guilty, your sentencing will be set for approximately seventy (70) days later. Within that time the Probation office will prepare a Presentence Report. This report will be a very in-depth background report on you. It will contain information about your personal and family background, where you have worked, if you have ever been in the military,

three prior convictions for “violent felonies” or “serious drug offense.” If you fall under this requirement, you are facing a mandatory minimum of fifteen (15) years in prison and your guideline automatically goes to an offense level of thirty-three (33) or thirty-four (34) with a Criminal History Category of Six (22-27 years). The final habitual offender provision is three strikes and you’re out. Requirements to meet this provision is that (1) The current offense must be a “serious violent felony;” and (2) prior convictions for “serious violent felonies” or one serious violent felony and one how many brothers and sisters you have, where they work, how old they are, where you went to school, if you have had any health problems or psychological problems, as well as your prior criminal record. Also, within the Presentence Report will be the Probation officer’s calculation of the sentencing guidelines. Before the judge receives a copy of the Presentence Report, your attorney and the prosecutor get a copy.

prior “serious drug felony.” The “serious violent felony” is murder, sex crimes, kidnaping, arson, use of firearms, or any attempt of conspiracy of those. This also includes any crime punishable for more than ten years under Federal law. If you think you fall under any of these habitual offender provisions, be sure to discuss them in depth with your attorney because you will be well outside of the normal sentencing guideline range.

### Jury Verdict/ Sentencing/ Appeal

You and your attorney will go over the Presentence Report page by page and if there are any inaccurate statements your attorney can file objections to the report. The judge will then go over the objections at sentencing and either agree or disagree to them. At sentencing the judge will first ask if there is any legal reason why sentencing should not occur. Ninety-nine percent (99%) of the time

there is no reason and sentencing will go forward. Your attorney will argue on your behalf and try to bring out all of the good things about you.

The judge will then ask if you wish to make a statement. That is something you and your attorney must discuss and decide what/if you should say anything to the judge. After the sentence is imposed, the judge will then inform you that you have ten (10) days to file a notice of appeal. In most situations your attorney will automatically file that on your behalf and either prepare the appeal themselves or ask that another attorney do the appeal. If the request is made for another attorney to do the appeal there is an appellant attorney in the Tallahassee Office of the Federal Public Defender and there are private attorneys who agree to get paid for handling your appeal. You will be notified in writing as to whom your appeal attorney is and you should receive copies of the briefs that are filed by both your

attorney and the Government. During your appeal there is no court hearing that would require you to be present. It will all be handled on paper.

### **Designation**

After sentencing the Probation Officer will prepare a judgment and commitment paper, which basically outlines the sentence imposed by the judge. The judge will then sign it and it along with your Presentence Report will be forwarded to the Bureau of Prisons Designation Office in Montgomery, Alabama. Your current offense, sentence, and prior record will be used to calculate what type of facility you should be designated to. They look at custody levels from one to six. The Federal camp is extreme minimum custody and does not have bars, fences or gates. A level one is a very low level of custody, but it will have a fence and bars. Level five and six is a U. S. Penitentiary. The judge makes no

recommendation as to what security level you should receive or as to where you should be located. By standard policy the Bureau of Prisons try to locate you as close to home as possible. Normally, after six months to a year at your first institution an observation period has been completed and you may ask for a transfer to a less secure facility or closer to home and that will be reviewed by your progress review team. Normally, you will not be allowed to take anything with you as you travel to your designated facility. Once you have arrived, you will receive a list of items that you may receive by mail and you will get package permits that will allow persons to forward to you personal items. If you need to communicate with either your trial or appellate attorneys, please do so in writing. After sentencing collect calls will normally not be accepted unless it is an emergency.