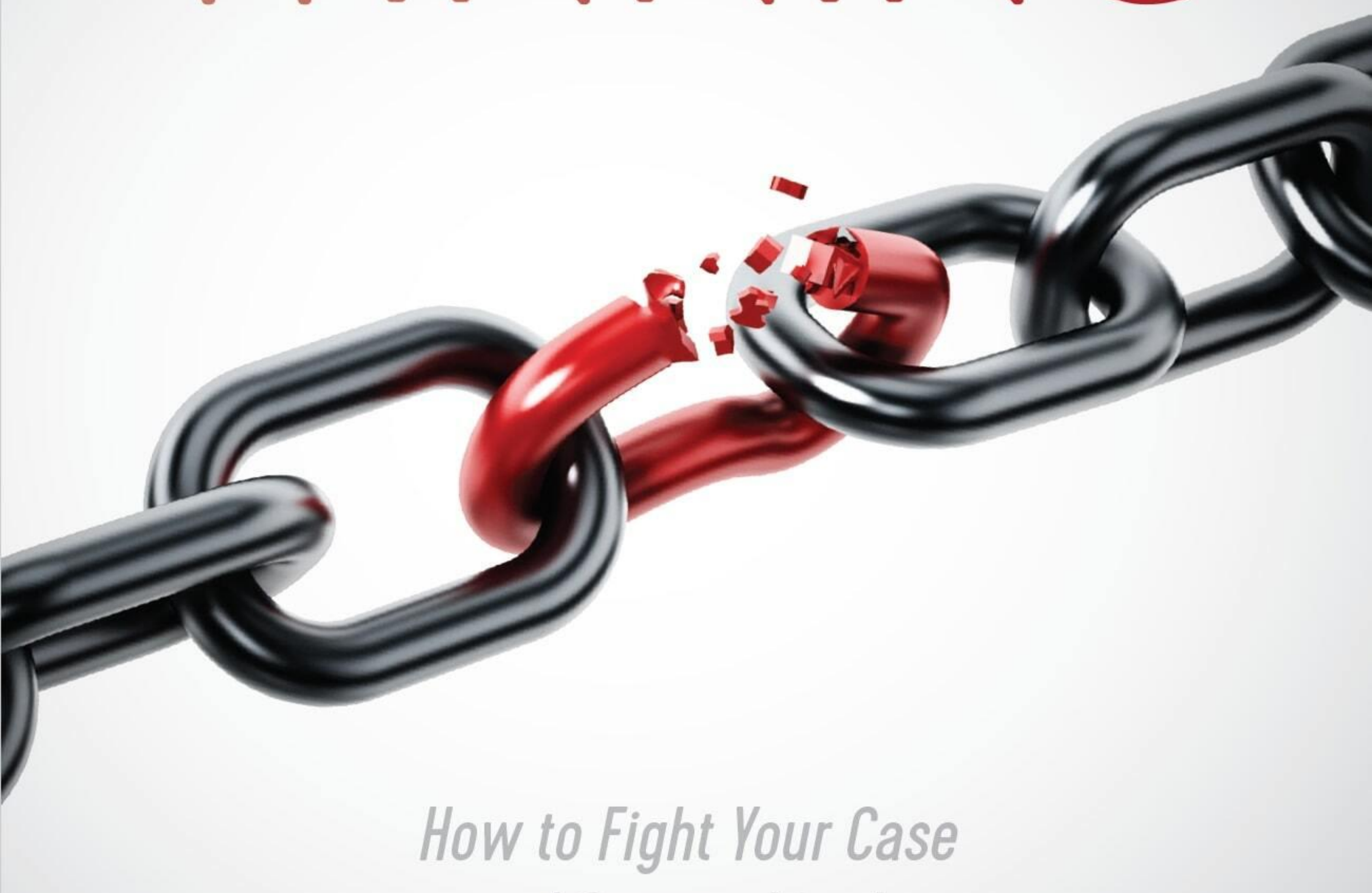
BEGINNING TO WINNING



How to Fight Your Case and Succeed in the Criminal Justice System

ROBERT F. GRULER II

Criminal Defense Attorney

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ROBERT F. GRULER II, ESQ.
Criminal Defense Lawyer

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To my mother for inspiring me to live a life of service and for showing me how.

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The entire team at R&R Law Group.

Without you, this book and our work would not be possible.

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Introduction

On Behalf of the Accused

My career path in criminal law caught me by surprise. As political science undergraduate, the idea of going to law school, becoming a prosecutor, and working my way up the political ladder sounded enticing. I would serve my community, make an impact, and lock up the bad guys. But a funny thing happened along the way.

In my first year of criminal law, I was a hard-nosed, prosecutorial, law-and-order type, all-around obstinate first year law school student. During class debates on criminal law, I was the first (and sometimes only) to side with the government, finding that their conduct in class hypotheticals did not jeopardize our Constitution and was entirely justified under the facts.

Anxious to start fighting crime, I began searching for internship opportunities with local prosecuting agencies around Arizona. To my dismay, I learned that the county attorney's office where I wanted to work would not accept first year law school students in the capacity I desired. First year students simply did not have enough experience or education to be of much use.

No problem. I figured I would use this time to instead work for a criminal defense law firm. There, I would see how those immoral defense attorneys operated, learn their secrets, and become a better

prosecutor when my time was right.

At my first criminal law internship, I was surprised to learn that my time would not be spent writing legal memorandums, researching case law, or interpreting statutes. I would be working and speaking with people, people facing criminal charges and seeking help.

When I started, I learned that these were really good people. Wholesome people with lives, families, careers, and future plans. These were not criminals. I thought I was going to be representing rapists, murderers, and drug traffickers. But these people were just like me.

They were facing criminal charges as a result of one single bad decision. One bad night, one bad argument, one too many drinks. I easily could have been in their exact situation facing their exact prospects.

I instantly wanted to help. It seemed ridiculous to me that so many of these good people were not able to eat, sleep, or function normally with these charges hanging over their heads.

Fortunately, I thought, many of these people were first offenders with no prior convictions. No one was hurt as a result of their crimes. They were doing very productive things with their lives that would be derailed with a criminal conviction. So, I thought, we have plenty to work with here. Surely we can work out an arrangement with the prosecutors to resolve these cases in no time.

I quickly learned, however, that this is not how

the criminal justice system works. I would spend hours with people facing criminal charges, learning the details about their lives in order to help the firm better negotiate a resolution. But when actually communicating with prosecutors and presenting our client's information, I learned how little prosecutors actually cared. Not all, but most. The prosecutors who did truly care were usually barred by office policies from exercising their discretion to reach a reasonable outcome. As a result, I saw a lot of good people suffer from overly harsh penalties.

This type of culture appeared to be systemic. To further immerse myself in the criminal process, I decided it would be a good idea to see the world from a police officer's perspective. I scheduled and completed a ride-along with a Phoenix Police Department officer, and the night on patrol with this officer helped to dramatically transform my understanding of the criminal justice system.

After meeting him at a police substation, we jumped into a police SUV and started doing laps around the surface streets of Phoenix, looking for action. While the sun was up, he wrote dozens of routine and relatively boring civil speeding tickets; I followed him to the driver's vehicle and observed the entire interaction. Most traffic stops brought the typical frustrations and tears from the drivers. It was obvious that this officer had a lot of experience writing tickets, and to a certain extent, enjoyed it.

After every traffic stop, the officer and I would

return to the car to finish the paperwork and move on to the next unsuspecting driver. Without fail, the officer would verbally add to the list of revenue he was generating for the city as a result of the ticket. He would say things like "speeding plus unsafe lane change plus no proof of registration is right around $1,500. She probably won't show up to court, so it will go into default judgement, which means that all doubles, so that will probably be $3,000 all said and done." After every traffic stop that number grew.

Around 8 p.m. at night, the sun had gone down and his tactics changed. Rather than writing speeding tickets, he began hunting for more serious offenses. In Arizona, and probably everywhere else, vehicles are supposed to be equipped with lights that shine on a car's license plates so that law enforcement can read them. When those lights burn out, which happens very frequently in the hot Arizona weather, officers have a valid reason to conduct a traffic stop.

The officer and I would do laps on surface streets in areas that had a number of bars and restaurants. Doing circles, we would drive ten minutes eastbound, make a U-turn, drive ten minutes westbound, and turn around again. Hunting.

The officer would pull his SUV behind vehicles, turn his headlights off briefly, and check whether the vehicle in front would have their license plate illuminated by their lights. Finding the next violation always took minutes. (Pay attention the next time you are driving at night. People forget to change their bulbs

and fall prey to this tactic frequently [it may also be a good time to check your bulbs]).

He wrote a number of tickets and stopped a lot of people, but one family left a mark. Around 9 p.m. we stopped an older white sedan for having nonworking license plate bulbs.

As we approached the vehicle, we found an unusual situation that we had not seen all night. Inside, there was an African-American family, a mother and her two daughters, both in pajamas. The younger daughter, probably around six years old, was in the front seat sitting next to mom. The older daughter, probably eight or nine, was in the back seat, laying down, covered in blankets but dripping in sweat. She had clammy skin and bloodshot eyes; she was clearly very sick.

The officer asked the mom if she knew why he was pulling her over. She said that she did not know. He explained that her license plate lights were out, which is illegal in Arizona. She said that she was terribly sorry, she did not know, and she would get them fixed. Clearly scared, she explained that she and her two daughters were coming home from urgent care. Her daughter was very sick and she was taking her to get help but that she would go right home and fix her lights.

The next question from the officer landed on her like a blow to the chest. The officer then asked if she had any unpaid speeding tickets. She did, and we both knew she did. The officer ran her license plate prior to approaching her vehicle. Failing to pay a speeding ticket suspended your driver's license in Arizona. Driving on a

suspended license is a serious criminal offense, the same classification as driving under the influence (DUI).

She immediately began explaining. She did know that she had not paid that ticket. She missed the court date and the court entered a default judgment. Her fines and fees all doubled. This court requires payment-in-full for default judgments. This means she owed over $600 and she just simply did not have the money. She was raising her two daughters on her own and was in-between work. She was very sincere and authentic; she was pleading for understanding.

The officer thanked her, appreciative that she just admitted to the offense, and provided the evidence that would seal her fate. He asked her to step out of the vehicle and immediately called for an impound tow truck to be sent to the scene. As we had done several times earlier in the day, the tow truck arrived in less than ten minutes and began loading her vehicle onto the platform.

The mother and her two daughters, one very sick, stood on the side of the road in a bad neighborhood around 10 p.m. at night while the police loaded up her car and drove off. This being 2009, the woman had no option to call an Uber, which did not exist. She did not even have a working cell phone, and she probably could not have afforded a ride if she did. In tears, she asked the officer how she could get home or what she should do. I'll never forget it: he pointed down the street half a mile and said there's a gas station, reminding her that they have pay phones.

Dumbfounded at how quickly and callously this happened right before my eyes, I asked the officer quietly if this was necessary and whether the young girl needed medical help or at least a ride home. He answered in cold and technical terms, explaining that it is necessary because it is illegal to drive on a suspended license. If he allowed her to continue to drive, it would create liability for the government if she hits and kills someone while driving without a valid license. If he allowed her to drive home on the promise that she would not drive again, he knows she will be driving the next day. So impounding her vehicle was the only way to ensure she does not drive again.

I understood clearly that his was the law and how it works legally. But what about with this family? What about the government's liability in leaving a sick family in a bad part of town at 10 p.m. at night? Was there any humanity in helping this family? An overwhelming sense of empathy I did not know I had bubbled up inside of me. This woman had been doing her best to care for her daughters, not harming anyone or asking anyone of anything. In an instant, she was stopped and robbed of what was likely her most valuable asset. I was raised by my poor single mother with two younger brothers. What if this was us?

Before I knew it, we were back on the road doing laps again, looking for the next victim. As I was processing, the officer added more numbers to his accounting: between the criminal driving on a suspended license, license plate light violation, no seatbelt ticket,

tow fees, and the impound fees, this would be another $2,500 brought into the government. But because she probably could not pay the impound fees, her car would likely be declared abandoned and sold at auction, bringing in another $3,000 for the value of the car. If she missed her court date a second time, she will have another default judgment and increased fees. This one stop, lasting fifteen minutes at most, would generate around $6,000 for the government over the coming years.

I ended the ride along shortly thereafter. I had seen enough and my stomach was in knots over what happened to that family. I knew that this criminal charge would bury them in serious additional hardship, yet there we were back on patrol mere minutes later, business as usual. We drove back to the substation where we met, and I left for the night. We were nearing six-figures in terms of revenue that this officer generated, and I have no idea what ended up happening to that family. This was not justice.

Doing It Better

Shaken from my naivete, my views on criminal justice changed quickly and dramatically. I vowed that I would never work as a prosecutor and would instead make it my mission to fight on behalf of the accused. I spent two and a half years working without pay for a local criminal defense law firm as pseudo-lawyer-in-

training, doing virtually everything except formally appearing on the record in court. It was there I met my business partner, Ryan Cummings, who was a year ahead of me in his legal career and already a licensed, practicing attorney. We became friends, sharing the same passion for obliterating government prosecutions.

I graduated from law school, passed the bar exam in Arizona and California, and began practicing law. I spent a year and a half at that law firm and learned a lot. The high-volume model kept me extremely busy, requiring that on some occasions I appear in five to six different courts in a single day. My caseload was high, but I learned a great deal. By my count, I appeared in well over one hundred different courts on thousands of different cases, ranging from simple traffic offenses to the most heinous of sex crimes. I met many different judges, court clerks, prosecutors, and police officers, and crammed years of courtroom experience into a very short time.

But perhaps the most important lessons from my time at that office were about how *not* to run a law firm. Management was disrespectful and employees were abused. Clients were promised outcomes by the sales team that were legally impossible. Attorneys and legal assistants did not have the resources necessary to do good legal work. Clients were sold on promises that could not be delivered.

I remember sitting with a client of the firm at court and explaining the situation to him. He was facing a second offense DUI and sixty days in jail. I inherited

the case the day of court from another attorney at the firm who left unexpectedly near the end of the case, which meant that I had done virtually no work on the case and was running out of time. We met at court, and after a brief review, I had to be the bearer of bad news. His best option would be to take a plea deal given the bad facts of his case, the timing, and the previous work done thus far on the case. When he learned that he would have to do sixty days in jail he looked physically sick and in utter disbelief.

He pulled papers from a folder with handwriting I recognized. On it were drawings and scribbles of the firm owner's plans for getting his case dismissed. It involved all sorts of irrelevant motions and strategies, whipped into a bizarre concoction of legal maneuvers. I had to explain to him that most of this was simply inapplicable to his case and the legal reasoning why. It was not the first time I had to undo overzealous promises given by the firm owners, but this was one of the most blatant. I was looking at the actual handwritten promise for an outcome that was not legally possible.

I will never forget the rest of our conversation sitting outside the courtroom, where we talked for over an hour. We paused over the court's lunch break and tried to see what we were missing. He explained the entire situation to me, which was the first time in his case he had felt like he had been heard. He was a middle-aged man, successful, married with children. His first DUI was alcohol-related, and he accepted responsibility and paid the consequences. It was around

six years prior to the new DUI we were addressing in court, but within the seven-year timeframe before they fall off as allegeable priors. But a lot had happened since then. He had two brain surgeries and serious medical complications that he managed with medication. On the morning of the second DUI, this man had been driving back and forth between his home and the hospital, where his wife was recovering from a medical procedure. He was splitting his time between spending time with her and his children at home.

He had been stopped for speeding early in the morning after falling asleep at the hospital and returning home to his kids. The officer noticed he seemed tired and lethargic, but he explained his medical situation and the medications he was taking. The officer, believing him to be impaired on his prescription drugs, arrested him for DUI. His blood was drawn and tested, coming back positive for several drugs like valium and muscle relaxers. These were prescribed to address body seizures he was experiencing because of his brain surgeries. It is possible, however, to be charged with DUI even while taking prescription drugs.

Amazingly, none of this information was in our firm's file nor the prosecutor's file. Almost no legal work was done. There are many defenses that are appropriate in these types of cases, but none of them had been investigated by the firm. The office did not know about his medical condition, request his medical files, review the details of his blood results, consider completing an independent test, submit a deviation request, or fight for

this man at all. His case was old, having been kicked around for months, and he was on the verge of trial.

We discussed his options. He could not serve sixty days in jail, as his wife's condition was ongoing, and he was now her full-time caregiver. He did not want to proceed forward with trial, and rightfully so, as his case had not been properly prepared. We could not ask for more time, as the judge refused any further continuances in the case.

His best option was to fire me and the firm. Only then, with a change in lawyers, would the judge consider the need for more time to be extraordinary. I walked him through the process, including exactly who to contact at the firm and how to communicate persuasively to get a full refund. I gave him referrals for reputable DUI lawyers I knew that would do the necessary work. I apologized on behalf of defense lawyers everywhere and told him my days at the firm were numbered. We shook hands and parted ways.

Shortly thereafter I left the firm. I joined Ryan, who had left previously, at a competing criminal defense law firm. The owner there promised a better way of practicing. But nothing was different. In addition to the bait-and-switch routine, poor management, and shoddy legal work, this lawyer was downright cruel directly to clients. I only lasted there four months. Years later, I am happy to report that neither law firm is still in business.

My time at these two law firms left me disappointed with what I saw being done by other lawyers in my practice area. Much like my experience

with the Phoenix police officer during my ride along, I was disturbed by the coldness and callousness with which people were being treated.

I did not want any part of that type of legal practice. In August 2014, Ryan and I decided to partner, and R&R Law Group was born in a spare bedroom in my home. We made a commitment to never allow our law firm to treat people the way other firms do. On this foundation and that promise, our firm grew quickly, being governed by our guiding philosophy and principles in all that we do.

Today, our team has successfully helped thousands of good people facing criminal charges. Our attorneys appear in over a hundred different courts every year, in cases ranging from criminal traffic offenses, DUI charges, misdemeanors, drug charges, and major felony offenses.

As the firm has grown, my duties have shifted from daily court appearances to managing the firm so that it develops and becomes the best and most effective criminal defense law firm in the country. In the process, my team and I have developed a framework for helping people facing criminal charges that works in every court, no matter the criminal charge. When implemented and done right, we have found success in cases even when there was no hope.

Version 3.0

My experience with criminal law as a naive law school student was version 1.0 of my career. My disillusionment with my prior law firms, which lead to the founding of our law firm, was version 2.0. Today, I am in version 3.0 of my career in criminal law.

But for context, let's begin with some of my backstory, starting when I was twelve years old in fifth grade—that was the first time I had alcohol.

Like many others, I was spending the night at a friend's house when I learned that my friend's older sister would be taking advantage of out-of-town parents and throwing a house party. Sounded like a great idea to me! I was excited to party with the older kids and join in on the fun. Of course, there was alcohol there, and it was good entertainment for the high schoolers to get the younger kids drunk. I drank way too much for my first time, of course, and became so sick I vowed I would never drink again.

But that did not happen. In fact, it started what I call my drinking career, which was long and hard. I break my drinking career into four parts or four phases. When you start drinking, it can be a lot of fun. Many people never leave this phase. Drinking or using drugs is fun and that is all. No other adverse impacts. But some people move into phase two, where drinking or using is still mostly fun, but with some problems. The problems are not catastrophic. A bad hangover can make you less productive at work but will not cost you your job or your

livelihood. I spent a lot of my high school and college years in this category. I was finding some problems associated with my drinking, but I was still having a lot of fun. The problems were not enough to outweigh my fun, and so I kept drinking.

As happens, I thoroughly progressed into the third stage, experiencing mostly problems having fun when it came to drinking. The balance was tipping and I was having less and less fun with more and more problems. The problems were becoming bigger too. I was missing important meetings, letting my health deteriorate, and failing in my relationships. Like many alcoholics, I had a difficult time admitting I could not control my drinking, and teetered back and forth between drinking and abstinence. The little bouts of fun were enough to keep me coming back to the bottle.

That was until 2016, when I found myself squarely in the fourth category: problems. No more fun, no more enjoyment, just problems. Drinking was destroying my life.

A little more backstory. I am the oldest of three boys: my middle brother Joey has Down syndrome and is a year younger than me, and my youngest brother Eric is three years younger, so we all grew up together very close. Eric also had a career with substances. As a boy, he broke his wrist several times doing things that all boys do: playing football and jumping bikes off ramps. He had several surgeries that were unable to return his hand to normal. In constant pain, he was prescribed pain killers while they continued to schedule surgeries,

complete rehab, and get him beyond the injury.

As the years went by, he was prescribed more and more pain killers by various doctors. He became severely addicted, obtaining numerous prescriptions from multiple doctors, who all wrote him orders for hundreds of pain pills every month. It became all consuming. He found himself squarely in the fourth phase: facing major problems.

When his supply of pain medication started to lose its effectiveness, he turned to a harder drug: heroin. By cruel coincidence, I later learned the first person to shoot his arm full of heroin was the same, old friend of mine whose older sister got us drunk for the first time when I was in fifth grade.

Eric continued to use heroin for years, much of it under the nose of our entire family. He spent time at treatment facilities in Phoenix and around Arizona, constantly fighting the addiction, making strides, and relapsing. After a period in treatment, Eric needed a place to live and I let him move into my house. I was building my law firm from the ground up and was never at home. He needed a safe space, and I could put my drinking on hold while I helped him recover.

Shortly after he moved in, I started to notice strange behavior. Money was missing from my wallet, he was not doing the things he was supposed to be doing, like looking for a job, and he seemed to be out of sorts mentally and physically. I decided to come home one day unexpectedly and I noticed an unfamiliar car parked in front of the house. I entered to find him with who I

suspected was his drug dealer. I could not confirm it but asked the stranger to leave and had a serious talk with my younger brother. I explained I was a criminal defense lawyer, already not somebody in good graces with law enforcement, and that any drug use or transactions could absolutely not take place in my home. He said he understood, and he agreed to step up to show me he wanted to stay sober and continue living with me.

About a month later, I decided to make another surprise visit home in the middle of the day. I found Eric passed out, high on heroin in his bed. I woke him from his stupor, packed up his few belongings, and drove him to a random friend's house about an hour outside of town. I explained this was necessary because I could not have that type of behavior happening at home. He was crying, screaming, and pleading for me to not kick him out and to give him one more chance. It still breaks my heart thinking about that conversation.

I did not hear from him for months. He was upset and had no desire to speak with me. I learned he was making great progress though and was excited when I heard he was completing a long, in-patient program at a highly regarded treatment center. He came out of the program looking better and sounding healthy. Cautious but optimistic, I was looking forward to having my brother back again.

After several months, Eric was making great progress. With help from my parents, he got his own apartment and, as a family, we were helping him rebuild his life. After years, we were finally turning the corner

and he was doing much better.

On February 27, 2016, I got a call from my mother early in the morning. Slightly irritated at such an early phone call, I remember answering the phone and hearing sounds of horror that I will never forget. My mom could not breath or speak. I could hear her gasping for air over and over again in between screams. It was the definition of bloodcurdling. I knew immediately what happened, but could not confirm it until she was able to gather enough air to shout, "He's dead!"

I jumped in my car and got to his apartment just as the police were arriving. I spent what felt like the entire day there, as police and medical reviewed the scene and wheeled his body down the stairs and into the medical van. He hung himself in his apartment, alone, with heroin needles littered throughout.

My family and I were devastated. Being the oldest, I did my best to stay strong as we went through the formalities. We had the viewing, the funeral, the cremation, and laid him to rest. I went back to work immediately, believing that burying myself in work would be the solution to my grief. It wasn't.

If there was any question about which phase I was in regarding my drinking career, Eric's death answered it. I sprung fast and hard into the fourth category; it became crystal clear my drinking was causing major problems in my life. Fortunately, I was surrounded by my loving family and friends who helped me help myself. I sought treatment at two local centers in Arizona and joined the fellowship of Alcoholics

Anonymous to help me better understand how to deal with this problem. Although it took a few tries for me to understand how it works, it is now a part of my life. Every week, I meet with a group of men who support one another in our mission to live alcohol free lifestyles, and I am a better person for it.

I shortly realized that my life has an unusual intersection. I am an alcoholic, I lost my younger brother to drugs and suicide, and I am also a criminal defense lawyer. Life provided me with a trifecta of experiences and skillsets, and I knew I had to find better ways to help.

In 2019 I decided to start the Clean Slate Sobriety Workshop (www.cleanslatesobriety.org), which is a two-hour workshop I present at drug and alcohol treatment centers. The workshop is focused on two aspects. First, on helping people understand the legal consequences of drug and alcohol crimes. Second—and more importantly—we work through helping people prepare the motions necessary to clear their criminal records. The goal is to empower individuals in recovery to start the expungement process, so that when they get out of treatment, they can apply for jobs and housing, and re-start life with a clean slate. This book is not about sobriety, AA, or the 12-steps, but it is about service. My goal is to distill impactful information from my experiences as a criminal defense lawyer that will best serve you in your journey.

So What?

In law school I had a professor who used to ask a question, wait for the response, and then ask the follow-up question: "So what?" He was probing to see whether the students had a deep understanding of the concept or if they were just regurgitating something they read from the short summary. We are reaching the end of the introduction to this book and the question is, So what?

The 9-step framework I detail in this book is only effective if you, the reader, can understand the process and put it in context. I have attempted to distill the best concepts, principles, and strategies in criminal defense law into a workable model that nonlawyers can understand and immediately apply in their cases and their lives. The long and detailed introduction helps, I hope, to shed light on my reasoning for systematizing this defense framework.

I initially wanted to be a prosecutor until I realized just how cold and callous the legal system is today. My experiences in law school, on a police ride along, and working with prosecutors helped me realize just how many people need help in criminal law. My time at other criminal defense law firms helped me realize just how incompetent and uncaring many criminal defense lawyers can be, despite their claims to treat you like family. When people look to someone to trust, they place their hopes in defense lawyers. To see those same defense lawyers take advantage of unsuspecting defendants for pure monetary gain is just as bad as the

officers making the unnecessary arrests.

We built our law firm from the ground up to focus on you, the person in need of effective representation. In the evolution of the firm, we also built a system that we know produces results time and time again. Our firm has successfully helped thousands of people with their criminal cases. We are one of the fastest growing law firms in our state (and the country) by many metrics. This is directly attributable to our results, which is a consequence of our system. We have received numerous awards and accolades for our work, including me being named one of Arizona's 35 Top Entrepreneurs Under the Age of 35 by The Arizona Republic for our new approach to criminal defense.

We have hundreds and hundreds of five-star reviews, have been featured in both local and national stories, and are looked to as thought leaders even by other defense lawyers. We have hundreds of substantive legal informational videos on our YouTube channel (www.rrlaw.tv), host a local podcast (www.grulernation.com), and host free workshops for those in treatment and recovery (www.cleanslatesobriety.org).

We do a lot to help. But in all those activities, I realized that there was no comprehensive system or framework for solving criminal legal problems. There is only so much I can convey on YouTube or during a two-hour workshop. People need much more.

The mother who had her car impounded did not know how to address her unpaid speeding ticket, and

certainly did not have the resources to hire an attorney to help with her new criminal charges. The man who hired my former law firm did not know how to hold the law firm accountable, blind as to what they were supposed to be doing in his case. The people at the treatment centers where I speak do not know how to help themselves, many of them finding themselves at rock bottom with no idea what to do in court or what to expect from their lawyers. My hope is that this book helps those people and, of course, you.

Finally, a word about trust. As we will see, a key component of the framework I detail in this book is to find a trusted resource for information. Stephen Covey, author of *The 7 Habits of Highly Effective People*, describes trust as being an intersection between competence and character. I spend the rest of the book detailing my competence in solving criminal legal problems. Before we started our journey, however, I believed it to be important to share with you a slice of my life, even the uncomfortable stuff, so you can also better understand my character.

Let's go.

Definitions

It is important to define three terms prior to getting started.

IP/Innocent Party

***IP* is the abbreviation for *Innocent Party* in this book. Under our legal system, every person is considered innocent until proven guilty. That means throughout the entirety of the book, unless we are talking about a person pleading guilty or being found guilty at trial, that person is legally an innocent party. Many people come to our office believing that they are not innocent. They will wonder, How can I plead not guilty when I did in fact do that thing? The answer is because legally, under our system of law, they are innocent. Accordingly, I will refer to them and you as IP where appropriate in this book.**

Defendant

***Defendant* is the formal legal term for the person who has been accused of a crime. There are three main parties in a criminal defense case: the prosecutor, who is responsible for bringing the charges forward and representing the government; the defendant or the defense, which is the party being charged with the crime; and the judge, who mediates between the parties.**

Attorney

Attorney **means the same thing as *lawyer*, both in the real world and this book.**

Three Values

The vast majority of those reading this book desperately want their criminal charges to disappear. If there were a magic formula I could share that would make that happen, I would.

Unfortunately, in my experience working on thousands of criminal cases, there is no magic bullet. Real life is not like the movies, and the idea that there is one secret case, or statute, or missed piece of evidence that will result in a dismissal of your charges is not an accurate depiction of how it all works.

The good news, though, is that people facing criminal charges really do not want their cases dismissed. They want what comes as a result of not having criminal charges:

- **The calm from not facing criminal charges**
- **The certainty from having one less roadblock in your future**
- **The security from not having to report to court**
- **The assurance from knowing you are not going into custody**
- **The confidence in your knowledge about the process**
- **The optimism for your future**
- **The burden off your shoulders**

After representing thousands of people facing criminal charges, we have synthesized all of these feelings down to what we call the *Three Values*: Safety, Clarity, and Hope.

These are three attributes that we know we can influence. We can apply certain processes to our investigation and defense of your case in a way that will bring about those three desirable conditions.

Safety

After an arrest or when facing criminal charges, the most immediate pain people experience is a lack of

safety and certainty. How can a person feel safe when they are in handcuffs in the back of a police car? They can't.

Moreover, most people facing criminal charges have never been through the process before and have no idea what to expect. How long will I be in custody? Can I trust the police? Are they allowed to lie to me? What are the penalties for this? Will I get taken advantage of? Who will be at the station with me? And so on.

Suddenly, people in this position assume the worst knowing nothing else. Their minds scour back through all the movies and television shows they watched over the years in hopes of identifying anything useful they can lean on. In most cases, the adrenaline release triggers the fight or flight sensation we all know, except in this case both options are impossible. The police have limited both options. If you try to run or fight, you will lose both attempts and be charged with additional crimes.

Should that person be released, then what? Now, after escaping a dangerous and scary ordeal with the police, Who can they trust? What can they do? What is going to happen at their next court date? The mind again spirals out of control trying to piece together answers.

There is a lot we can do to reestablish a sense of safety and build a strong foundation from which we can work throughout the remainder of the case.

Clarity

The criminal justice system is complex, understandably so. Nowhere are the stakes higher. Law students study criminal procedure, criminal law, constitutional law, and the rules of evidence, and they still enter the workplace knowing virtually nothing. There are local statutes, case law, and procedures that are not taught and must be learned on the fly. Even if you know the rules, all it takes is one judge who interprets the law differently and everything changes. Attorneys practice for decades and still regularly run into novel issues that require new answers.

So what is the everyday, average non-attorney citizen supposed to do when facing criminal charges?

The most obvious answer many people have is to simply hire a lawyer. But this is not so simple and introduces a whole slew of new questions and problems. Who to hire? Can they be trusted? Are they any good? How can I gauge their performance? Is this supposed to work this way? Should it be taking so long? How much should it cost? It is all very confusing.

The alternative, then, is to work with a public defender or to forgo hiring an attorney altogether. In some states, like Arizona, you are not entitled to a public defender unless the government is seeking jail time. If they are not asking for jail, they will not provide you with a lawyer. Which means that you may be alone throughout the entire process!

Under these circumstances, people often turn to

Google for a crash course on the law. Unfortunately, most of the information is terrible. Much of what you find falls into one of a few categories:

1. **It is written by marketing copywriters who do not know anything about criminal law.**
2. **It is anecdotal and written by people who do not know anything about criminal law (e.g., "my friend got a DUI dismissed by winking at the judge.")**
3. **It is outdated.**
4. **It is not appropriate for your jurisdiction or your state.**

Often this leads to information overwhelm. Twisted into a pretzel by competing information, people often make bad decisions, hire unscrupulous lawyers who tell them what they want to hear, or simply bury their heads in the sand.

A key purpose of this book is to provide you with a framework you can use in your case to cut through the noise and eliminate the uncertainty inherent in the process. This creates Clarity, which is essential to success in navigating the criminal justice system.

Hope

It is difficult to succeed in a criminal case if you,

or your lawyer, have no hope for a good outcome. Feeling hopeless saps energy and makes it difficult to take action. Strong and persistent action is required to win.

Many good people come to us knowing that they are in trouble and had some part in the conduct that lead to the charges. In their minds, they are both factually and legally responsible for the criminal charges against them. They wonder how we can help when they are, in fact, guilty. Their heads hang low and they are all but resigned to defeat.

This is in large part a product of the system. The entire experience is humiliating and robs a person of their humanity. Meanwhile society does its very best to demonize and shun people who are so-called criminals.

Overwhelmed with despair and fearful of their future, many people choose to forgo their constitutional rights and simply accept their guilt without any action at all. They have no optimism and no hope.

This perfectly aligns with the interests of the government. The faster they can process and close cases, the better. The faster they can process and close your case, they will.

Remember not to let this process grind you to a pulp and let the system rob you of hope. It is a fundamental principle of our justice system that you are innocent until proven guilty.

That means that even if you did something wrong, were arrested and spent the night in jail, said things you should not have, performed badly on all tests,

and did everything else incorrectly, you are still legally innocent.

Unless you have been convicted after trial or agreed that you are guilty, you are innocent.

It is the government's burden to prove otherwise, and it is a high burden to meet.

Three Components

How exactly do we reach the point where we have the Safety, Clarity and Hope we so desire? We need to identify three components that we want present as we progress through your case.

Confident Decisions

The first is the ability to make confident decisions.

Confident decisions are critical to success in

defending a criminal case. There will be many decisions that need to be made over the coming months:

- **Should I hire a lawyer?**
- **If so, which lawyers?**
- **Should I trust my public defender?**
- **Should I even defend myself?**
- **If so, which strategy should I use?**
- **Should we file that motion?**
- **Should I take a plea deal?**

The question is, Can you sleep well at night knowing you made the right decisions at the end of the day? How can you be confident?

You can be confident when you have a system you can trust and rely on. That system is this book and this framework.

Taking Action

The next critical component we want present as we progress through your case is the ability to take action.

The vast majority of people who are facing criminal charges never see the results that they desire because they never create an environment that enables them to take action.

In fact, many people never even address their criminal charges at all! Failing to attend your court

proceeding and choosing inaction is the Ostrich Defense—burying your head in the sand and not dealing with it. This results in warrants being issued, licenses being suspended, and increased fees.

It is important that the uncomfortableness and fear surrounding your criminal charges are dealt with swiftly and without mercy. Fear and discomfort are normal and will be around throughout the process. But fear and discomfort that leads to inaction or causes you to be paralyzed by fear must be smashed and cannot be allowed to accompany you in the process.

They will not serve you and must be eliminated. Following the framework of this book will provide you with the tools needed to operate without feeling paralyzed by overwhelming fear and discomfort.

The goal is to keep your optimism and energy levels high in order to help you take positive action to move your case forward. You must be awake and vigilant throughout this process, and the guidelines set forth in book will help you achieve the required level of action to help you achieve the best outcome in your case.

Maximum Performance

The final critical component in a criminal case is performance. When I speak of performance, I am talking about the performance in the various aspects of your case:

- **Of your lawyer or legal team**
- **Of the prosecutor in reviewing any deviations in your case**
- **Of the judge in assessing the evidence and making appropriate rulings**
- **Of you in holding everyone accountable to ensure they have the materials they need to do their job**
- **Of your family**
- **Of all these factors and their impact on your career and future**

It starts with performance by you. You need yourself to perform at your maximum capacity over the course of your criminal case. The reality is that no one on this entire planet is going to care more about or be more invested in your criminal case than you.

This is the reason the critical components one and two are so important: you cannot perform at maximum levels if you cannot make confident decisions or take action.

Throughout the course of this book, you will find the tools you need to achieve maximum performance from your lawyer, your support circle, and yourself.

The Nine Steps

Step 1: Trust

As many things do, our framework also starts with trust. The criminal process can be both long and exhausting. Throughout the course of the case, there will be times when it is necessary to make decisions based on information you receive from two sources: your prior memory and other people. In this section, we will discuss making a clear record for yourself to refer to, if necessary, in the future. We will also discuss the Lawyer Impact Scale, to review the differing categories of criminal defense lawyers.

Creating a Record

After an arrest or receiving a ticket, police usually make field notes in a notepad. At some point after the case has processed, the police officer involved sits down and writes a formal report. This is because in general, criminal cases can take months, if not years, to resolve. Officers make a record while their memories are fresh so that they have materials they can refer to at a later date.

It is wise to make a personal report as soon as you can; it is critical to document what happened. This should be written like a story with a beginning and an end. This should be handwritten or typed and stored in a secure location. Do not share this document with anyone other than your lawyer.

Events Before Police Contact

Start with the beginning of time leading up to the incident. Here are some simple questions to answer:

- **What were you doing that day or night?**
- **Who was around you?**
- **Where were you located?**
- **What time of day or night was it during this part of the story?**

Police Interaction

Next, detail the encounter and the interactions with law enforcement. Here are some questions that may be applicable:

- **How was the contact with the police initiated (traffic stop, 911 call)?**
- **Who was around when the police arrived? Write down their names and what they saw.**
- **What did you say to the police?**
- **What did the police say to you?**
- **Were there drugs or alcohol involved?**
- **How much do you remember about this incident on a scale of 1 to 10? (1—no memory at all, and 10—remembering everything clearly)**
- **Where did the police make contact with you?**
- **Did someone call 911? Who?**
- **Did the police make you do any tests, like field-sobriety tests? If so, which test(s), and how do**

you think you performed?

- **Did the police search you, your car, or your home? Did you give them permission?**
- **Did the police read you your rights?**
- **Did the police have to get a warrant?**
- **Were there any injuries? Who was hurt, and how?**
- **Was there an accident? How did it happen?**
- **Did the police seize any property? What did they take?**
- **Did you provide a blood, breath, urine, or saliva sample?**
- **Were there any photographs, audio recordings, or video recordings taken by you or others?**

Events After Interaction

After an arrest, if you or your loved one are released from custody, it is important to save and to store any paperwork in a safe location. It is also important to make note of any release conditions, such as those preventing you from leaving the state or country, possession of firearms, consuming alcohol or drugs, or having contact with someone who is prohibited.

Make note of all of these release conditions, as well as any contact with any people who were involved in the events leading to the arrest. This includes any communications from people who may be labeled the victims of the crime, or other witnesses who contact you

to discuss what happened.

In many situations, there may be security camera recordings, social media posts, or other digital recordings that may be helpful but will be subject to deletion quickly. Be sure to capture as much of this information as you can while it still exists. Take screen shots of text messages, save voicemails, print out social media postings, save receipts, and document anything else that is relevant to the incident. It is the practice of many establishments, such as bars or restaurants, to delete security camera footage after a certain period of time. In these cases, it is critical to make a request for these records immediately in writing so this evidence is preserved.

Personal Inventory

Now that you have created a thorough recording of the events leading up to the incident, the arrest and interaction with the police, and the aftermath, we must set that aside and focus elsewhere.

It is time to create what we call a personal inventory, a snapshot of your life as it stands now, aside and apart from the interaction with law enforcement. This will focus on several areas of your life, including health, career, education, family, extracurricular activities, special considerations, and miscellaneous items.

Personal Health

Take a moment to catalog issues with your

personal health; a snapshot of your lifestyle may be critically important in your case, particularly in situations involving DUI or domestic violence matters.

Immediately after the arrest or citation, please document the following information as soon as possible (All of this information may or may not be relevant, but it is important to have a contemporary recording of this information should it be deemed necessary in the future):

- **Height**
- **Weight**
- **Activity Level**
- **Daily Exercise**
- **Weekly Exercise**
- **Exercise a few times a month**
- **No exercise**
- **Prescription medications**
- **If yes, what are they? why are they prescribed? what dosage? how many times per day?**
- **Are you taking antidepressants?**
- **Over the counter medications**
- **If yes, what are they? why do you take them? what dosage? how often?**
- **Alcohol usage (daily/weekly/monthly rarely/never)?**
- **When drinking, how many servings per setting? (a serving is considered one unit of alcohol, or 1 beer, 1 glass of wine, 1 shot of alcohol in a drink or by itself)**

- **Do you smoke? If so, how many cigarettes or packs a day? How long have you been smoking?**
- **Do you have any physical injuries (knees/back/neck)?**
- **Do you wear glasses or contacts?**
- **Why (nearsightedness/farsightedness/stigmatism/ other)?**
- **Have you ever been diagnosed with nystagmus in one or either eye?**
- **Have you had LASIC?**
- **Have you ever been diagnosed with a balance or inner ear problem?**
- **Have you had any surgeries in the past? If so, what were they and how long ago?**
- **Have you ever been diagnosed with acid reflux, GERD, or any other esophageal issues?**

Trusted Resources

After an arrest, most people feel like they have nowhere to turn. This is perfectly normal, as very few in society have access to a lawyer on call to help them through these types of situations. As a result, many people turn to their family, friends, co-workers, or simply the internet for answers. These are all good places to start, with some important caveats.

The first important point to remember is that most of the information on the internet is bad, plain and simple. The information is most often written by nonlawyer, marketing people who have very little

knowledge about the law and who are only writing with the goal of pushing you to contact their client's law firm. This results in terrible, often incorrect or outdated, information being published all over the internet. In many cases, the information is copied, slightly modified, and regurgitated across multiple markets. This information is not reliable.

In other situations, there is very little information connected to your case, as attorneys write content for their website that try to hide the ball. In other words, the information is off limits to you unless you retain their services. This is a very common business model amongst lawyers. The only way to access the solution is to, of course, hire them.

Another strategy is the scare-you-to-death angle, where attorneys market over and over the maximum penalties the law prescribes, knowing full well that you will not ever get those penalties imposed in your case. Yes, technically the maximum penalty allowable under the law may be ridiculously high. But attorneys in that market who are familiar with general sentencing guidelines know full well that no judge would sentence an individual to the maximum, absent extreme aggravating factors. Nevertheless, they push these numbers as scare tactics while providing their solution. Who wants to go to prison for ten thousand years when you can hire them for a small fee to solve all your problems?

Each of these techniques are extremely prevalent across the internet and are usually not helpful at all.

Our biggest advice to people in these situations is to stay off the internet and find a trusted resource who has the appropriate legal knowledge within the specific jurisdiction. The internet will only create anxiety; provide bad, conflicting information; and create a false, bizarre mixture of horror and hope.

Choosing a Lawyer

It is important to remember that private criminal defense lawyers, like public defenders, all want to be paid for their services. Law firms run like a business, and their business will fail if they are inefficient, or give away their time without compensation. This creates a wide range of attorneys with different philosophies about handling their case load.

Some attorneys, for example, follow the "see them and plea them" mindset, where the business model is to get as many people as possible through the door and processed as quickly as possible. These firms operate on volume, and the work product is generally terrible (I know firsthand, because I used to work at a firm like this). There are simply not enough resources to do adequate legal work. Not enough support staff, not enough management support, and not enough time in the day to work cases up and challenge legal issues. These firms generally fail, as did the firm I had experience with at the onset of my career.

On the other hand, there are attorneys who are so extremely rooted in the morality and philosophy of a defense that it becomes problematic. Early in my career,

I knew a very good attorney who would go to court three or four times for an abnormally small fee. While I certainly applauded his tenacity, I knew immediately that this type of model was also not sustainable. He was so undervaluing his time and expertise that he could not afford to run his business profitably. When considering all the time he spent on this one case relative to the fee he charged, he was probably making minimum wage.

Again, I value his passion and am not discounting that at all. But the model is not sustainable. I have no doubt that the rest of his caseload was suffering as a result of his hyper focus on issues that perturbed him. His firm was not profitable and he could not stay in business. His firm is no longer in existence today.

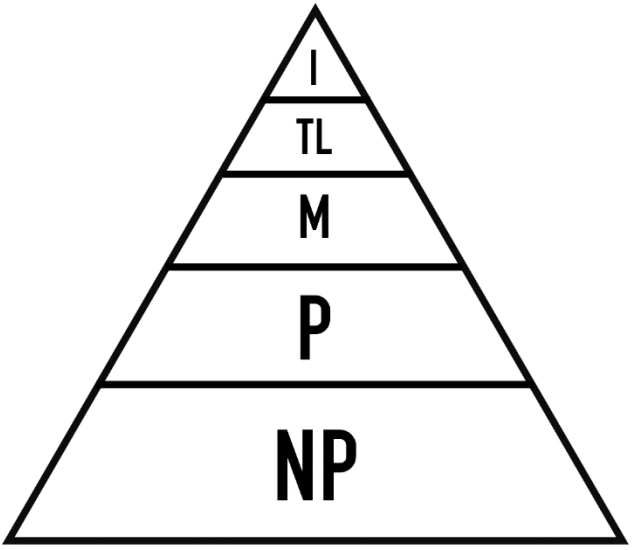
Knowing these two ends of the spectrum, the right solution is to find a firm that operates with a fair balance between the two. But how do you find the right lawyer or law firm to work with? There are so many law firms spending big money on marketing that people do not know where to turn. What often happens is people then call the loudest law firm. These are the firms that have the most ads on the most busses, have the most billboards, or run the most commercials. But while some of these firms may do good work, they are often not the best fit for many people.

So how is a person to choose the right lawyer? Should they even hire a lawyer? Is where the lawyer went to law school important? Should they be former prosecutors or pure blood criminal defense attorneys? Should they be younger, older, or in the middle? Should

it be a solo lawyer who works alone, a small firm, a medium firm, or a large firm? What about the location of the firm? Is it better if they are closer to the court or does that matter? Do they have any bar complaints or have they ever been in trouble with their license? What about the firm that says they are aggressive? How do they compare with the firm that says they are even *more aggressive*?

So many questions! Every year, lawyers spend many millions of dollars to develop a brand or a marketing message that sets them apart by highlighting their unique take on their approach. In my opinion, most of these attempts at advertising amount to little more than unhelpful noise.

Over the years, I have seen many different types of lawyers come and go from the practice of criminal law. In my coaching program for other lawyers, I divide them into five different categories in what I call the Lawyer Impact Scale. It looks like this:



If we review the entire universe of lawyers practicing in criminal law, we can separate them into different levels of impact or effectiveness in their ability to help people get results. Rather than talking about who is the most aggressive, has the most experience, or who has the cleverest commercials, we are focusing on which lawyer or law firm is going to have the most impact in your case.

Shockingly, significant portion of attorneys I see representing people charged with crimes are what I call *Non-practitioners*. These are people who are licensed lawyers, but they do not limit their practice to only criminal law. They are lawyers but they are not criminal law practitioners. They regularly take other cases in different practice niches, like family, personal injury, or bankruptcy law. We often joke that these are "door

lawyers"—meaning, they will take any case that comes through their door. We have taken over many cases from Non-practitioners who thought they could handle a criminal defense matter only to realize they were in well over their heads. This is not because they are bad lawyers but because of their lack of focus on criminal law. They just simply do not have the necessary experience to get results. Non-practitioners are at the bottom of the scale, because they are the least effective and have the least impact on a person's case.

By contrast, there is the *Practitioner*. This type of lawyer or law firm regularly accepts criminal law cases and declines other types of cases. This type of lawyer is more effective and impactful because of their familiarity with the courts, prosecutors, and criminal rules and procedures. If you are considering hiring a lawyer, this is the bare minimum. These lawyers often have less sophisticated practices, case review systems, and reputations, but are far better than Non-practitioners. By my estimates, Non-practitioners and Practitioners make up around 80% of the criminal defense lawyers appearing in criminal court on a regular basis.

Moving up the scale, we next find *Mentors*. After years of practice, continuing education, and success in court, Practitioners can evolve into more effective lawyers and become Mentors. Mentors have developed substantial experience in criminal law as a result of their time and success as a Practitioner. Given their expertise, Mentors often become guides for Practitioners, sharing useful information and contributing to the criminal law

knowledge base.

But most lawyers and law firms stop here. They rest on their laurels and often use their age or time in practice as an indicator of their "experience." They have often built a nice reputation for themselves, are able to charge a premium for their services, and live comfortably doing the work they deem necessary on their cases. They have significant impact because of their good history and strong reputation for being effective lawyers. They have good careers, do good work, and help many people. But they rarely change anything substantive within the realm of criminal law.

This is where *Thought Leaders* operate. Thought Leaders are the select few lawyers elevated beyond Mentors by their ability to create change within the criminal legal system. They are winning arguments on novel legal issues, creating new successful defense strategies, or building momentum for political changes and criminal justice reform. They are rare, highly respected, and sought-after criminal defense lawyers, and thus very effective. Judges, prosecutors, police officers, expert witnesses, and even courtroom bailiffs know who they are and respect their ability to cause change and consequences for all parties involved. Their impact and effectiveness ends at criminal law however. Their time and dedication to their practice has left them limited in their ability to operate with influence outside of the criminal legal sphere.

This distinguishes the final and most impactful type of defense lawyer, the *Influencer*. Unlike the

Thought Leader, the Influencer's effectiveness extends well beyond the criminal legal sphere. The Thought Leader is creating new conversations within the criminal justice system. The Influencer creates the conversation, but rallies support, momentum, and influence from outside the limited criminal community. Issues extend beyond the usual parties in criminal law and into the public sphere, where bigger, more meaningful and impactful conversations can be had.

With an understanding of these different categories, you should be better equipped to cut through most of the marketing noise you hear from lawyers and better able to find the attorney or the law firm that matches your desired level of effectiveness.

Step 2: Goals

Setting goals is important in any aspect of life, but particularly deserving of thought in a criminal case. Of course, every single person facing criminal charges has one unifying goal: to have their charges dismissed so that they can move on with their lives. This is also our goal, and the target we set in every single criminal case we represent.

It is important, however, to distinguish between ultimate goals and realistic goals. Of course, we all always want to reach the ultimate goal of achieving dismissals and acquittals on all of our cases. But the reality is that this is not possible in every case. Instead, we need to take a moment to identify what is most important to you in the resolution of your case. Many people have areas of their lives that they want to protect, and some areas take priority over others.

For some, the priority is staying out of custody. For others, it involves protecting custody and parental rights of their children. Or ensuring that their professional license is not jeopardized. Or that they are not financially ruined. It all depends on the specifics of your life. But an attorney cannot help if they do not have a clear understanding of your priorities and utmost concerns.

Getting clear on what is most important to you will be helpful throughout the entirety of your case. It will help you see what success looks like when nearing the end of your case. If you take a moment now to

envision and document what success looks like, you can refer back to your original goals and judge whether or not they have been reached at the conclusion of your case.

Moreover, there is something powerful about writing down your goals and your vision for your future. More often than not, what you envision and focus on becomes a reality. This principle has been discussed everywhere from the self-actualization classic *Think and Grow Rich* by Napoleon Hill to modern day renditions, like *The Secret* by Rhonda Byrne, largely because it works.

Consider documenting your goals at the outset of your case. Take a sheet of paper and draw three columns. At the top of each column add a title for nonnegotiable, negotiable, and not important.

Nonnegotiable concerns and goals are exactly that, nonnegotiable. If near the conclusion of your case, the government is offering a plea deal that requires something from you that appears on your nonnegotiable list, you will reject the government's offer and take your case to trial.

Negotiable items are important but not critical to your case or your life. If you can achieve these goals, that is a welcomed win, but if not, you may still consider the proposed resolution.

Not important (or not applicable) items can be sorted into the third and final column. These are concerns that either do not apply to you or are simply not important.

Read through the following sections and organize your concerns and goals into each column.

Non-Negotiable	Negotiable	Not Important (N/A)

Incarceration/Custody

- **Avoid jail (for shorter sentences)**
- **Avoid prison (for longer sentencing)**
- **Substitute home detention for jail**
- **Allow work release or work furlough while in custody**
- **Avoid community service or substituting community service for incarceration**
- **Avoid supervised probation or intensive probation**

Driver's License

- **Avoid a license suspension**
- **Avoid insurance rate increase**
- **Avoid interlock/breath testing device being installed in car**
- **Avoid high-risk insurance policy requirements**
- **Avoid points added to or deducted from motor**

vehicle record
- Avoid impact on commercial driver's license or impact on CSA scores

Professional/Reputation

- Avoid a criminal record or conviction
- Avoid felony conviction
- Avoid background check problems/seal record/ expungement
- Avoid being listed in sex registry
- Protect teacher/professor certification
- Protect security clearance
- Protect medical license
- Protect pilot's license
- Protect real estate license
- Protect law license

Immigration

- Prevent deportation
- Avoid impacts on visa or permanent residency
- Avoid impacts when applying for citizenship

Other

- Avoid impacts on divorce or child custody proceedings/decisions
- Protect financial or credit concerns
- Avoid impact on military service (existing or future planned)

- ☐ **Avoid loss of student loans or preclusion from applying to loans**
- ☐ **Address travel concerns/admittance into other countries (e.g., Canada, Mexico)**
- ☐ **Address unique security concerns**
- ☐ **Address special health conditions**
- ☐ **Other future plans**

Step 3: Mitigation

Purpose & Overview

The criminal justice system can feel very cold and isolating. People who have been charged with crimes enter the process identifiable only as a name, list of charges, and case number. Almost nothing else is known.

A person's history as a law-abiding citizen, a wonderful parent, and a dutiful employee will never be brought to light unless we tell them. The purpose of this section on mitigation is to help provide structure to tell the human side of your story, beyond anything that happened in the criminal case.

Think of it this way: if you are one of ten people who have been charged with a crime, How can we make you stand out from the other nine? How can we demonstrate to the prosecutor that you are a law-abiding citizen? That you are a great parent? That you provide support to the community? That you have great credibility?

We have to extract the information from the story of your life, craft it into a compelling story, and present it to the government. If we do not do it, nobody else will. That will mean the only thing the government knows about you is what they see from your paperwork. That is not what we want them to remember about you. There is much more to your story than what they read in the police report.

Which means we need to jump into action. At the

early stages of your case, the progress may feel slow. You may not even have a court date and charges may not have even been filed. If your case is underway, it often takes time for police reports, body camera footage, witness statements, blood results, and other evidence to become available and to be disclosed. There are flurries of activity that happen around court dates, and there are slow but strategic investigations that take place. From your perspective, it may feel like nothing is being done and that you can be doing more to help.

This is where starting the mitigation process becomes important. *Mitigation* is referring to you and your life, aside from facts surrounding the current case. This process seeks to put your life and the allegations in your case in context. During this phase, you can begin gathering documents that provide insight into who you are as a person.

Think of this process like preparing for a job interview. If we sit down and review the story of your life, including all of your achievements, relationships, experiences, ambitions, and future plans, what would we find? The goal is to gather enough positive material about you to make you an obvious candidate for the job, or in this case, a good case outcome.

The following are examples of documents commonly used in the mitigation phase of a case.

School Transcripts

Provided that they show good grades and good

attendance and that they are both recent and relevant to the case.

Diplomas and GEDs

Showing the ability to complete school and earn a degree.

Awards/Recognition

Provided the accolades show some achievement for which you are proud.

Employee of The Month Awards

Indicates you can keep a stable job and achieve success in that profession.

Certificates of Achievement or Participation

May be from extracurricular activities, hobbies, sports, clubs, etc.

Volunteer Activities

Helps to build a picture of service. Any documentation is helpful, such as letters from other volunteers or sign-in documents.

Any Military Service

Time of service in any branch or discharge papers.

Rehabilitation Programs

Successful completion of rehabilitation programs.

Document your stay with any inpatient or outpatient programs. May also discuss involvement in 12-step programs or other abstinence programs.

Letters of Appreciation

From people on whom you've made a positive impact.

Specific Past Events

Any specific acts or instances of which you are proud.

Some jurisdictions have legal guidelines as to what constitutes good mitigating factors. They are generally similar from jurisdiction to jurisdiction and are mostly obvious. If you work through the list provided above, you will have an excellent start.

As always, be sure to have your attorney review the materials you have gathered prior to disclosing the records to the government. It is important not to disclose materials that will have an adverse impact on your case. Materials, for example, that incriminate you in the current case or other potential cases should not be provided to the prosecutor.

Ultimately, use your best judgment but also follow the advice of your lawyer. Effective lawyers with experience in your jurisdiction will likely have an idea of what type of mitigation is most effective in the legal and political landscape.

The process of gathering these materials may take time, which is why it is important to start early at the beginning of your case. The information you gather

during this phase, along with the character letters we discuss next, will be very helpful in building the remainder of your defense.

Character Letters

It may be necessary to have friends, family members, coworkers, colleagues, mentors, professors, counselors, and other people close to you write a short character reference letter on your behalf. It can be uncomfortable to make such a request from people close to you in your life, especially in such a private process. However, in our experience, these letters can be impactful both with prosecutors and judges during settlement negotiations.

This is because having a stack of character letters available to present to the prosecutor or the judge says a lot about you and your case. It shows that there are other people in the world who care enough about you to write a letter on your behalf. It also shows that you personally care enough about your case to have the uncomfortable conversations required to gather the letters.

One of the most difficult parts of asking for character letters is helping people understand what to write on your behalf. Generally, the simpler the better. When we work with people, we help them understand what is needed by breaking the letter into four parts.

The following suggested framework may be helpful. Your letter should not follow these suggestions verbatim, but instead should follow the general

structure. Be sure to have the writer include the writer's name, the specifics of the request, and the rationale behind the request in the following format.

The letter should be no more than one page and start with a very simple introduction:

> ***Dear Judge/Your Honor/Prosecutor:***
> ***I hope this letter finds you well. I am writing on behalf of _____ and his/her request for _____ (choose one):***
> - ***A lenient sentence.***
> - ***A deviation request.***
> - ***A reduced plea deal.***

Keep your audience in mind. If you are writing to the prosecutor's office asking for a better plea deal, be sure to address the prosecutor and not the judge. Similarly, if a plea deal has been accepted and you are writing to the judge to get a more lenient sentence, address your letter appropriately.

Next, tell the judge what you want the court to know about the person for whom the letter is being written. Examples can include qualities that the writer admires or respect about you:

- ***Mary is a kind and caring person. She has always been there for me.***
- ***Sam is working hard to make sure this never happens again.***
- ***John has explained to me how much this process***

means to him.

- *Harry is a wonderful father and family man. This situation is completely out of character.*

In the next paragraph, the writer needs to add more information about the extent of the relationship that exists between the two people. Tell the judge how you know the person you are writing on behalf of and how long your relationship has existed. The court will find your letter more impactful if you can establish a stronger relationship between the two.

I know this about Sara because we spent time together in college for four years and have been friends ever since. During our time together, she has explained her strong ambitions to attend nursing school and fears that having a criminal conviction will be detrimental to her future career prospects. She and I have had long conversations about this process, and I have made a commitment to help her through this.

Finally, close the letter saying thank you and reiterating support for the request made in the introduction. Be sure to also provide contact information.

Thank you, Your Honor, for taking the time to read my letter and take into consideration our request that you _____. If there is anything further that is needed or anything additional I can contribute,

please feel free to contact me by phone at _____.
Thank you,
Your Signature

Letters can be typed or handwritten, but should be signed with an ink signature and delivered back to your attorney for your file. There is no limit to the number of character letters a person can submit, but as a general target aim for between five and ten on misdemeanor cases and more on serious offenses.

Be sure to also encourage those writing on your behalf to not bad mouth the court, the law, the prosecutors, or the justice system. Also, do not ask the court to do impossible things, like dismiss the case, when there is no legal basis to do so. Finally, stay away from excusing the conduct—for example, by saying that the person is sorry for committing the crime but only did so because he was an alcoholic. That type of mitigation should be left to your attorney. Instead, use the opportunity to vouch for your friend and follow the framework detailed previously.

Defense attorneys sometimes differ about the effectiveness of character letters and mitigation in general, but in my experience, we have seen amazing results when courts and prosecutors are shown strong evidence of support for the accused from the community. Cases that otherwise would not have resolved by settlement did so when we were able to place the criminal charges in a bigger context.

Worst case scenario, a prosecutor or judge looks at your files and now knows a little bit more about you.

Best case scenario, something in your mitigation pulls on the heartstrings of a key prosecutor or judge, and your case resolves itself. Ignore the mitigation process at your peril.

Examples:

Bad Mitigation	Good Mitigation
I am a nice person	Ten character references from friends and family
I do not have a criminal background	FBI background check documentation showing no other violations
I am worried about my future	Specific documentation about job applications, immigration status, or other concrete paperwork
I might lose my job	Copies of company handbook showing required termination, or letter from boss that termination will occur, if a conviction happens.

Step 4: Discovery

In the legal context, *discovery* is a phrase you may have heard in movies or TV shows. It usually involves one lawyer screaming at another lawyer for not giving them all of the discovery. In reality, this is not far from the truth. The discovery process in a criminal case is critically important, involving significant strategy and many pitfalls. Discovery rules are complex and vary significantly from jurisdiction to jurisdiction. In this chapter, we will be focusing on broader themes in using discovery to create leverage in a criminal case. Using these themes as the goalposts we want to reach, you must navigate the field according to your local rules of criminal procedure.

Overview

Legally, discovery is the idea that the parties involved in a legal matter need to see what the other side has in their files. This is so both parties have all the information and evidence about a case to help ensure they can be properly prepared for trial. This stops the surprise witness scenario we often see in the movies, and it helps cases resolve short of trial. Both sides get to review the evidence against them and then act accordingly.

But it is not as simple as sitting down together and rummaging through each other's files. There are many rules surrounding discovery that address a number of questions: What has to be disclosed? What can be

withheld? At what time does material have to be disclosed? What happens if one side fails to disclose? And many, many more. Many of these rules provide opportunities for maneuvering into a tactical advantage.

In a criminal case, the government holds nearly all of the evidence, and thus bears most of the burden in disclosures. When they fail to meet their burden, there may be an opportunity.

The prosecutor's office typically fails in one of four ways:

1. Timing
2. Failure to Disclose
3. Failure to Preserve
4. Failure to Review

We will address each in turn.

Timing

Many remember the phrase "right to a speedy trial" from their childhood study of the Constitution and the Sixth Amendment. Fortunately, that right was and still remains strongly protected in our justice system. When used appropriately in a criminal case, it can cause the government to be unprepared in a case. If the rules say that the government has to give the IP (innocent party) the evidence they need by a certain time, and if they fail to do so, the penalty for that failure may be that they cannot use the evidence any further. In certain situations, this can be a critical blow to the government's

case.

Let's illustrate this concept in a highly simplified hypothetical DUI situation. IP is stopped and charged with DUI/OWI. In this jurisdiction they draw blood samples to test a person's blood alcohol content. They also have a speedy trial provision in their rules that say, if exercised, a trial needs to take place within six months of the date of the charges.

The state crime laboratory that analyzes blood is backlogged in processing samples, and it is currently taking seven months to receive results. If IP sets his case to trial quickly, prior to the government returning with results, he may be able to use discovery rules to prevent the blood results from coming into the case to be used as evidence against him. The government failed to play by the rules related to timing. They disclosed the evidence too late, and therefore the penalty for violating that rule is that they cannot use the evidence.

As mentioned, there are many rules related to timing in the discovery process. Attorneys who have been practicing for decades often forget or overlook the nuances in the rules. It is not expected that you master them. The question that should be considered when thinking about discovery is, Who is supposed to do what by when? If it feels like it is taking too long for the government to produce evidence or disclose materials, it probably is, and you have a right to know what evidence the government has in their possession.

A word of caution: although the rules of

discovery can be used to the advantage of the defense, it is very easy to inadvertently tip the government to their mistake, providing them with time to make corrections.

For example, if the government discloses their list of witnesses they intend to call at trial and a key witness is not on that list, it would be a bad strategic idea to call that prosecutor weeks before trial and ask them about the omission. They would have the time to correct their mistake, disclose the key witness, and move forward with their case against you.

Attorney Accountability
If your lawyer tells you that they are waiting on basic discovery for months on end, you may want to inquire further. Basic discovery, like a police report, in a criminal case is typically available within thirty days of the arrest. Blood results, lab analyses, witness statements, and other evidence may take longer to produce. However, be mindful of attorneys blaming government ineptitude on not having answers for you in your case. You have the right to hold your attorney accountable.

Failure to Disclose

Disclosure timing violations **can be exploited when we know what is supposed to be disclosed and can identify that it was late or done in violation of the rules. But what if you do not know what is supposed to be disclosed and what is not? It is difficult to identify a**

discovery rule violation for failure to disclose if you do not know that you were supposed to have that evidence or material in the first place.

When we talk about *failure to disclose violations*, we specifically mean the government not disclosing discoverable material to the defense. In other words, the government has something the defense is entitled to see, but the government does not tell the defense they have it, and the defense is not aware it exists.

How can the defense know about something they do not know exists? It is difficult, taking considerable time and resources.

The investigatory process starts with broad, general requests about materials of interest to the defense. These requests take the form of written motions filed with the court and copies delivered to the prosecutor.

Often called a *motion for discovery*, this is a formal request that the government compile the materials that have been requested and that they begin the process of delivering them to the defense. When delivered, these items should be thoroughly reviewed and analyzed. Attorneys have varying methodologies for reviewing and organizing their discovery, but the goal is to identify areas that require further investigation.

After an initial review, there will almost certainly be issues that justify requests for supplemental discovery for additional investigation. These can take place in the form of interviews with witnesses, physical examination of evidence, on-site location visits, etc. In

certain cases and when resources permit, a full-time investigator is retained to assist in the discovery and investigation process. Investigators are typically ex-law enforcement with significant experience as detectives or investigators.

General Requests

It is critical, therefore, to ensure that the initial requests for discovery cover a wide range of topics. Consider the following list in making requests for the discovery from the government:

Police Reports

The most obvious starting point is to request all police reports, including notes officers used in preparation of their reports. Often times there are many officers involved in response to a crime, but not all officers write reports. It is important to know the entire universe of law enforcement involved in a case and identify areas where there are gaps. Police may write supplemental police reports days, weeks, or months after the initial report, so it may be necessary to make additional requests.

Body and Dash Camera Footage

Thankfully, more and more law enforcement agencies are equipping their officers with body and dash cameras. This footage can be critical to a strong defense. Many prosecutors never watch this footage, believing it to be superfluous and unnecessary when they can gather

what is needed from the police report.

Unfortunately, many police officers are trained to write reports that support criminal convictions rather than offer an unbiased and objective report of the facts. Reviewing camera footage that shows significant differences between a police report and reality can create major problems for the government's case.

Technical Data

In addition to body and dash cameras, police vehicles are also capable of recording and capturing other valuable data. Departments across the country use different technologies and protocols, but consider the following: GPS data to track the police vehicle's location, automatic vehicle location (AVL) data (similar to GPS data and used for the same purposes), computer-aided dispatch (CAD) data to piece together a timeline of events and the communication between the officer and the dispatcher. Consider requesting the data early to ensure it is preserved and disclosed timely.

Blood/Breath Results

If the case involves a blood or breath sample, it is important to request much more than the results. The government normally delivers a one-sheet summary of your results, expecting you to trust their analysis without further inquiry. The machines that analyze the samples keep detailed logs and can be scoured to identify problems. Machines can error, drop data,

experience surges, malfunction mechanically, and otherwise operate improperly.

But if you are not reviewing the entire data set, you will not see these errors. In breath test cases, the most common machine in use is the Intoxilyzer 8000, which records COBRA data. In blood analysis cases, the samples are tested in a process called gas chromatography mass spectrometry. The machine will generate charts called chromatograms that can be reviewed to identify problems with the sample run. Be forewarned, however, that it takes a highly skilled eye to review the results.

Duty to Disclose

Keep in mind that although the government holds most of the evidence and will be doing most of the disclosing in a criminal case, the duty goes both ways. The IP also has a duty to disclose information to the government about the defense evidence and materials.

This does not mean the defense has to disclose specific trial tactics or strategies, only evidence that may or may not be disclosed in the event of the trial. Just as the defense has the ability to interview and inspect law enforcement evidence, the prosecutor's office has the same right with defense evidence.

Defense attorneys often disclose materials to the defense in order to comply with the rules. These materials may include the following:

Affirmative Defenses

Some defenses must be specifically noted and disclosed to the court and the prosecutor. *Affirmative defenses* are defenses that acknowledge that the conduct happened, but that explain the rationale behind the conduct such that the law deems the action to be lawful and an acceptable defense.

For example, in a situation where an IP is charged with assault for striking another in the head, the affirmative defense of self-defense may be appropriate to invoke. This is telling the court and the prosecutor's office that the defense is not contesting the fact that there was technically a legal assault that occurred.

The IP did in fact make physical contact with the victim. There is no dispute that there was a punch thrown and landed or that IP was the person responsible. Instead, the IP is asserting that the alleged victim was in fact the aggressor, and that the punch was thrown as a matter of self-defense.

Other common affirmative defenses include the following:

- **Duress. Admitting that the conduct occurred, but that it is was under duress of another.**
- **Identity. The conduct happened, but the IP is not the person who did it, and law enforcement identified the wrong person.**
- **Necessity. That the conduct happened, but it was necessary to do it under the circumstances.**

- **Defense of Others. The conduct happened, but it was done to protect the lives or well-being of others in the area.**
- **Entrapment. The conduct happened, but it would not have occurred but for law enforcement encouraging and coercing the IP to do the illegal activity.**

Certain jurisdictions require that these defenses are invoked early in the case. Failure to properly notify the jurisdiction of the defenses may prevent their use in the case.

Witnesses

In some criminal cases, the defense has helpful witnesses that we can call into trial. Broadly speaking, defense witnesses can be either laypersons, nonexpert witnesses, or expert witnesses.

***Nonexpert witnesses* are people who have relevant information about the conduct that led to the charges. For example, a common situation occurs in crowded nightlife scenes where an individual is arrested for being disorderly in the venue. In these conditions, it is very easy for the bouncers or the police to properly identify the true party responsible for the commotion.**

Police will then make multiple arrests, believing it necessary to cast a wide net to quell the unrest. From their perspective, their job is to gather the evidence, make arrests, and let the court system sort out the remaining questions. In these conditions, police are often

not able to identify and interview all of the witnesses.

If the defense completes a thorough investigation and identifies witnesses who are willing to testify that the IP is wrongly accused, the names of the witnesses must be disclosed.

***Expert witnesses*, by contrast, typically have no firsthand knowledge of the conduct that led to the charges, but are brought in to review the evidence and offer their opinion on the conclusions that can be drawn from the evidence.**

Expert witnesses are most commonly used in driving under the influence cases when discussing blood or breath testing and its results. The government would have you believe that their tests are foolproof and always accurate. They have their version of an expert witness in the form of the crime laboratory analyst who will take the jury stand and explain that their testing process is flawless.

When appropriate, the defense can present a very strong defense to the case by enlisting the help of a more qualified, more persuasive, and more scientifically accurate expert witness to combat the government's claims.

Expert witnesses can be brought in for nearly any purposes, provided their testimony is considered to be relevant to the case, which can include the following:

- **Forensic accountants**
- **Handwriting experts**
- **Sexual therapists or counselors**

- **Addictionologists**
- **Document preparers**
- **Drug analysts**
- **Breath testing experts**
- **Blood testing experts**
- **Medical experts**
- **Parental experts**
- **Vocational experts**

The list is virtually endless, but the critical point to remember is that the names and contact information will likely be required to be disclosed to the court and the prosecutor's office so that they are on notice that these experts may be called in a trial.

Documents/Data

Other documents and data will probably also need to be disclosed depending upon the local rules. This includes materials like video recordings, emails, text messages, screenshots, voicemails, etc. An issue regularly occurs with individuals trying to represent themselves without a lawyer, where they try to introduce evidence in a trial but are barred by the court for not following the rules.

In some instances, the material was not properly disclosed prior to the trial and the prosecutor objects to the material's admission into evidence. Judges often show considerable leniency to IP's who are not represented by an attorney, and may permit the evidence to be entered on the record despite the

technical rule violation. This helps the IP feel as though they are being heard and the evidence is being considered before the judge finds them guilty.

In other situations, the judge will not accept the evidence because the IP has not come prepared with the proper form of evidence to be turned over to the court. Many times the defendant will try to show the judge a video or a picture on their cell phone. The judge will tell them they are happy to review the evidence if the cell phone is taken into evidence by the court.

The IP will of course not want to turn the phone over to the court, and without having the materials ready on a CD/DVD/thumb drive or printed file, the IP will be unable to have that evidence considered. Judges will also rarely grant a continuance of the trial to allow the IP to change the media format for admission.

Step 5: Pleadings

All criminal cases will involve *pleadings*, which are documents that are filed with the court. These take the form of criminal charges, motions, notices, amendments, subpoenas, and so on. Drafting proper pleadings requires years of school, training, and practice and is far beyond the scope of this book.

For readers representing themselves, please be cautious when filing motions on your own behalf. Everything that is written and submitted to the court may become public record and often times innocent letters, motions, or requests are well-intentioned but poorly drafted and cause serious consequences.

As an example, there was a judge in one of the states where I practice law that accepts apologetic emails as guilty pleas. Driving their car, a person will be stopped, charged with a criminal traffic violation, and told to appear in court in thirty days. Many of these drivers reside out-of-state, and will try to resolve their case by sending a well-intentioned letter or email to the court asking for leniency.

IPs will tell the judge that they are sorry for the violation and then ask for leniency in dismissing the case. The judge might interpret the language to mean that person was sorry or apologetic, and consider the email an admission of guilt; the judge might then enter a plea of guilty on their behalf, impose a serious fine, and slap them with a criminal conviction. This type of behavior by the judge is completely unlawful and stopped when our

office gets involved. But we do not know how many hundreds, or thousands, of people have criminal convictions as a result of this court's practice.

Consequently, the best general rule for IPs without a lawyer is to only file motions or paperwork written on forms provided by the court. This significantly reduces the likelihood for catastrophic error, as the court forms will be unlikely to provide the space or the opportunity to do much damage.

The remainder of this section will provide a brief overview on the most common types of motions that defense lawyers utilize in criminal cases. Different jurisdictions have different naming conventions for the specific motions, but the underlying issues remain generally the same.

Notice of Appearance

When an attorney begins representing a new person, they need to notify the court and the prosecutor about the representation. This is done by filing paperwork called a *notice of appearance*. A standard notice of appearance has two main objectives.

First, it notifies the court that there is an active, licensed attorney who is representing the defendant. The motion names the attorney and/or their law firm, and notes the court file that all further communication should take place with that attorney or law firm. The IP is now shielded from communications from the court or the prosecutor. This may seem minor, but it can be very important protection, especially from overzealous

prosecutors.

Do not put it past prosecutors to communicate with you even though you have a lawyer. In some situations, defense lawyers step out of the courtroom to take a phone call or communicate with another witness. Unethical prosecutors may seize this opportunity to have a brief conversation with a represented defendant, in violation of ethical rules and proper courtroom decorum.

Sometimes the misconduct is not as blatant as a direct communication: watch for prosecutors who speak loudly in the courtroom with the intention of catching the ear of other defendants in the courtroom. Prosecutors may make actual or implied threats related to the outcome of the case. A common threat is that the prosecutor will request a harsher penalty if the plea agreement is rejected and the case goes to trial. In my opinion, this is prosecutorial misconduct, but the actual standard of prosecutorial misconduct may vary in your jurisdiction.

The next key point in a notice of appearance is to enter a formal plea (we talk more about this concept in the chapter "Step 8: Advocacy"); we tell the court we are entering a plea of not guilty. We are informing the court that we are denying the allegations and will be moving forward in defending the case. Entering this plea triggers certain procedural rules, and the court can begin issuing orders and scheduling the next court dates.

Motion for Discovery

After notifying the court that the case is now being represented by an attorney, many lawyers will submit a formal request for discovery. A *motion for discovery* cites the applicable rules that say the government must provide the required disclosure, and it usually lists the items that are being requested by the defense. The following items may be requested by your lawyer:

- **Names, addresses, and phone numbers of all people the government/prosecutor may call as witnesses.**
- **All statements the government gathered from the defendant or any person who is being tried with the defendant.**
- **Names, addresses, and phone numbers of any expert witnesses the government is using in their case.**
- **Copies of all police reports, officer notes, written statements, photographs, and video recordings obtained by the police in their investigation.**
- **Any recorded statements made by the defendant during an interrogation or interview.**
- **Lists of items or objects seized from the defendant or impounded as evidence.**
- **Results of all scientific tests completed in the cases.**
- **List of any prior convictions the government intends to use at trial.**

- **A list of any other acts committed outside of the allegations in this case that the government intends to use to prove motive, intent, character, or knowledge.**
- **Any materials which are exculpatory in nature or tend to mitigate or negate the defendant's guilt.**
- **A list of prior convictions for any witnesses the government intends to call at trial.**
- **Copies of recordings and surveillance records.**
- **Documents leading to the preparation and execution of a search warrant.**
- **If the case used an informant, the identity of the informant if permitted to be known under the rules.**
- **All other written or recorded statements by the alleged victim of the case, their case workers, or volunteers.**
- **All medical records or reports gathered by law enforcement.**
- **All information on prior disciplinary proceedings against the officers involved in the investigation (Brady material).**

The formal request should ask the government to send copies of the requested information to the defense, or at the very least, make it available for review and for copying. Do not be surprised if the government charges fees to obtain these materials. In some instances, the prosecutor's office may decline to provide certain material, citing privacy rules or because the investigation

is not yet completed.

We see this routinely with police officers. Often times, police officers are under investigation for misconduct, but prosecutors fail to disclose the fact that the investigation exists because it is "pending." This is problematic for the defense, which of course has no mechanism of learning about internal investigations.

For this reason, our office routinely monitors the news and other government agencies to identify officers who are under investigation but not disclosed to the defense (in fact, we have an entire segment on our YouTube channel that documents this type of misconduct available at www.watchingthewatchers.tv).

Unfortunately, it is often difficult to trust the prosecutor's office to disclose incidents of misconduct involving their law enforcement officials. Instead, a little extra research into personnel files through Freedom of Information Act Requests may be worth the effort.

Notice of Defenses

It may also be prudent to tell the court about certain materials and defenses intended to be used in your case and to disclose these to the government. Many jurisdictions require that specific defenses be at least noted in the pleadings. This does not mean that the entire defense need be disclosed to the government, just that notice be provided about which certain defenses may be explored. Failure to properly notify the court may result in the inability to use that defense.

This may include listing affirmative defenses we

discussed previously, such as acting in self-defense, being entrapped, having consent, acting under duress or necessity, being justified in the conduct, etc.

Similarly, the defense has a duty to notify the government about certain materials which may be used at trial. This can include items like photographs, videos, charts, graphics, PowerPoint presentations, diagrams, audio or video recordings, 3D renderings, etc. It may be important that these items be disclosed so that they can be used in the trial. Proper disclosure gives the prosecutor's office notice that the defense may use the materials and provides them with the opportunity to object.

If the prosecutor's office believes the materials to be problematic, they have the ability to respond to the disclosure notice and state their objection. The judge can then hear arguments from both parties prior to making a decision about whether or not the materials can be used.

The defense has this power as well. If the prosecutor attempts to introduce materials that are overly harmful to the case or not relevant to the facts, the court may decide to disallow their use. The legal standard judges consider is whether the material seeking to be admitted is more probative than prejudicial—meaning, if the evidence tends to provide more value than harm, the court will let it be used in trial.

One tool that defense attorneys commonly use is a diagram called the *burden of proof chart*, which looks like this:

Legal Standard	Result
Beyond a Reasonable Doubt	Guilty
Clear & Convincing	Not Guilty
Preponderance of Evidence	Not Guilty
Probable Cause Evidence	Not Guilty
Reasonable Suspicion	Not Guilty
Scintilla of Evidence	Not Guilty
No Evidence	Not Guilty

The chart illustrates the different levels of proof that exist throughout the legal system and shows that the government's burden of proof in criminal law is the very highest standard that must be met. This can be persuasive to jurors, helping them understand that if there is any doubt that is based on reason regarding guilt in a case, they have to find that person not guilty.

While effective, the court may not allow this image to be shown in a trial without prior permission or approval; therefore, it is important to notify the court that you will be using it in your arguments. This also gives the prosecutor the opportunity to object to any materials you wish to use. In our experience, however, most prosecutors do not read the notices of defenses except in rare cases where they have a high interest. Regardless, it is important to disclose materials you wish to use, because you risk the court prohibiting their use during a trial.

Motion to Suppress Evidence

Most filings and motions are routine, necessary,

and boring. They lay the proper foundation for a strong defense and ensure all parties are playing by the rules, but they do not turn the tide in a case. Unlike notices of appearance, motions for discovery, or notices of defenses, *motions to suppress evidence* are juicy.

Motions to suppress evidence are highly substantive, containing pages of facts about the case, laws applicable to the charges, and arguments about the proper outcome. They usually elicit a response from the prosecutor, and many times proceed to minitrials called *evidentiary hearings*, where witnesses are called into court and arguments are presented to the judge.

The purpose of the motion to suppress is to do exactly what the name suggests: suppress evidence.

The easiest way to understand how it works is by way of example. Let's consider the timeline in a DUI case:

1. **Officer Allen sees a car make a wide right turn.**
2. **Officer Allen follows the car, claiming to see the car weaving within a lane.**
3. **Officer Allen conducts a traffic stop.**
4. **Officer Allen asks IP to provide identification, proof of insurance, and registration.**
5. **Officer Allen asks IP to complete field sobriety tests, and IP agrees.**
6. **Officer Allen asks IP to complete a portable breath test in a handheld device, and IP agrees.**
7. **Officer Allen reviews the results and conducts an arrest.**

8. **Officer Allen transports the IP to a DUI processing scene for a blood draw.**
9. **Officer Allen is also a phlebotomist and draws two vials of blood.**
10. **Officer passes the blood vials and the blood kit to another officer, Officer Barry.**
11. **Officer Barry is ordered to transport the blood back to the police station and impound the blood into evidence.**
12. **Officer Barry completes the transport exactly as ordered.**
13. **The police all complete their reports and paperwork, and the police portion of the case is closed. The case then goes to the prosecutor's office for prosecution.**

Now, let's fast forward six months. The IP has hired an attorney, who has completed a thorough investigation of the case and who has learned that Officer Barry is no longer with the department. He resigned with no explanation and left the state.

Is this a problem? The government will claim that there is no problem whatsoever. Officer Barry followed instructions, followed protocol, and delivered the blood sample into evidence. The fact that Officer Barry is no longer working with the department and unlikely to show up for a trial is inconsequential, they will say.

The defense, however, recognizes this as a chain of custody problem. Evidence that is transferred from one party to another needs to follow a documented path

called a *chain of custody*. Our chain in this case is going from Officer Allen to Officer Barry and then into evidence.

Diagrammed, it looks like this:

A → B → E

With Officer Barry gone and unavailable, our diagram looks as follows:

A → [ ] → E

This is a broken chain and a problem. Without having Officer Barry available at a trial, the defense loses the opportunity to question him about his conduct. Did he transport the sample immediately to impound? Did he store it at the proper temperature? Did he sit with it in his passenger seat or was it in the trunk? Did he open and examine the vials? Did he manipulate any of the labels? The legal fact is that we cannot know for certain what happened during the transport without Officer Barry's testimony. All presumptions of propriety are pure speculation.

Faced with this fact pattern, a motion to suppress the blood results may be appropriate. We cannot know whether the evidence was handled properly or impounded according to procedures, as the chain is clearly broken. The argument, then, is that the evidence is tainted and not reliable and cannot be used in court. Unless the officer finds and drags Officer Barry back to

court to testify, there is no evidence in the record that the vials were handled properly.

When I filed a similar motion in one of my first DUI cases, the judge agreed and suppressed the blood results from coming into court. This was a huge victory for my client, as the blood results were the most problematic part of the case.

However, just because the blood results were suppressed and not allowed to come into the case, it does not mean that the entire case is automatically dismissed as a result. If the government believes they can move forward without the evidence that was disallowed, they can choose to do so.

Referring back to our hypothetical DUI case, this means that if the government believes they have enough evidence from the traffic stop, field sobriety tests, and a portable breath test to move forward without the blood results, they can. The suppression is only connected to the one key piece of evidence or line of investigation that is the subject of the suppression request.

There are times, however, when the suppression of the evidence is so catastrophic to the government's case that they have no choice but to dismiss the case.

When thinking about evidence that may be suppressible in a criminal case, it may be helpful to create a similar timeline and work your way through the chain of events with a magnifying glass to identify areas where the government may have acted in violation of your rights. If you can break the chain, you may be able to get the evidence suppressed.

The earlier you can identify the problem in the timeline, the better, because the sooner in the sequence of events you break the chain, the more evidence will be suppressed.

Referring back to our hypothetical, let's change the facts slightly and say that the problem with the government's case happened between points 2 and 3, when Officer Allen claims to have observed weaving within the lane and conducted the traffic stop. If after a review of the dash camera and body camera footage, we learn that Officer Allen was not truthful or accurate in his description of the traffic violations that justified the traffic stop, our suppressible issue appears much earlier in the timeline.

In this case, Officer Allen's traffic stop was not warranted or justified and was therefore illegal. All of the evidence gathered as a result of the illegal traffic stop, then, is illegal. That encompasses all of the remaining points, including the field sobriety tests, portable breath test, and other admissions. If this motion is filed and the judge grants the suppression, the government has no other evidence with which to move forward.

Contrast this with the suppression of only the blood results. There, the government still had evidence on which they could rely at trial. But, if the chain is broken earlier in the process, the suppression may be so catastrophic to the government's case as to warrant a complete dismissal of the charges.

Step 6: Interviews

In many jurisdictions, the defense has the opportunity to conduct recorded, live interviews of the law enforcement officials involved in the case. This can include responding officers, phlebotomists, supervising officers, custodians of records, crime lab technicians, blood or breath analysts, detectives, case managers, and any other individuals responsible for gathering, processing, or analyzing evidence in a case.

This is an important part of the process in building a defense that unfortunately many defense attorneys overlook. Interviews take a considerable amount of time and preparation, but can be critical in identifying key problems with the government's case.

Remember, police are recruited, hired, and trained to gather evidence to support criminal convictions. Their reports routinely include only facts and explanations that justify the criminal charges, while conveniently leaving out alternative explanations or identifying holes in the investigation.

The ability to interview the officer in a recorded setting provides the defense with the opportunity to probe the officer's memory and recollection in much greater detail. It also allows the defense the opportunity to undermine the officer's claims and assess the officer's credibility. In our experience, interviews have been critical in identifying major problems with the government's case that would have otherwise been overlooked had the interviews not been completed.

Attorney Accountability
If your lawyer tells you that they do not do interviews, you may want to inquire one step further. Criminal defense attorneys often explain that they prefer not to do interviews because it will alert the other side to their strategies and they would rather keep their line of questioning hidden until the trial. In some cases, this is a perfectly valid strategy, provided there is in fact a rationale behind the decision. Too often, attorneys refuse to do interviews because they are lazy, not because of a well-thought-out strategy.

Attorneys have different styles in conducting interviews. Some tend to be highly combative and aggressive, while others prefer the friendly "just have a couple of questions" approach. While there is no exact science behind conducting an interview, the following framework and suggested line of questioning will be helpful in providing structure:

Introduction

At the start of the interview, it is important to establish the pertinent facts and make the appropriate introductions. Prior to starting the interview, it is important to ensure that the interview is being recorded. Make sure the technology is ready with full batteries and plenty of recording space, and be sure to press record.

Consider the following introduction in the telephonic

interview of an arresting officer in a criminal case:

IP: Good morning officer, my name is Robert Gruler, the time is 1 p.m. on Tuesday, January 1, 2020, and I am here on a recorded call with Officer Smith. Hello officer.
O: Hello.

IP: Will you please confirm your full name and badge number for the record?

O: Officer John Smith, S-M-I-T-H, badge number 1-2-3-4.

IP: We are scheduled for an interview regarding a case in which you cited me with a criminal charge on May 1, 2019, at 9:36 p.m. at night. The charge is for three counts of DUI and you cited me in the Springville Municipal Court. Is that correct?

O: That's correct.

IP: Before we begin, I need to ask, Is there anyone else in the room with you like a supervisor or prosecutor? (If so, be sure to ask them to identify themselves, spelling their first and last name and providing their badge number, if applicable.)

Initial Questions

After the formal introduction, many people are inclined to dive right into the heart of the case with the

officer, but it is important to pause and inquire about the officer's preparations for the interviews.

Start broadly by asking what the officer did to prepare for the interview. Typically, they will say that they reviewed the police report, their notes, possibly the body camera footage, or the 911 call. Interviews can take place months after the incident, and it is reasonable for an officer to review these records.

Next, ask if the officer has had any communication with other police department employees or law enforcement officials since the date of the violation.

Finally, ask if they have had any communication with any employees from the prosecutor's office about the case.

These questions are important because these conversations and communications are protected, privileged, or confidential conversations. This means that if the officer had other conversations about the case, the defense may have the right to know about the conversation and the substance of the communication.

What were the parties communicating about? Was the prosecutor's office attempting to coach or modify the officer's statements? Were there problems with the report that had to be corrected? Are there doubts to the original claims? Is there collusion occurring between the parties?

Admissions by police officers that they are communicating with prosecutors or other employees can open the door for further investigation that can reveal

potential misconduct by the government.

Officer Background

Prior to asking case specific questions, it is important to review the officer's background. This helps the defense understand the officer's qualifications and credibility. Answers to these questions can also reveal information that had not been disclosed by the prosecutor's office in violation of discovery rules.

Here is a potential line of questioning:

- **Where are you currently employed?**
- **How long have you been employed by the [x] Police Department?**
- **Prior to your employment at [x], were you previously employed by any other law enforcement agency? If so, when, where, and for how long?**
- **Did you resign from your previous position in lieu of termination?**
- **Have you ever been disciplined as a law enforcement officer? If so, what were the dates and the reason for the discipline? Were you suspended?**
- **What is your current assignment?**
- **How long has this been your assignment?**
- **Have you ever held a rank higher than what you currently hold now? If so, when was the date of the demotion?**
- **What were your assigned duties on the date of**

the incident?

- **What training have you received related to the investigation of this type of case?**
- **What is your experience in investigating this type of case?**

Do not be surprised if the officer offers short, almost rude responses. They do not like to be asked about discipline, policies, or procedures. Use your judgment and press harder where appropriate to ask the officer to clarify certain points and details. Officers may try to be evasive in their responses but, with enough tenacity, they can be compelled to answer.

These questions are general and broad, inviting the officer to provide details that require further investigation. If the officer's response justifies further inquiry, spend more time in this section prior to moving on.

Case Specific Questions

Prior to conducting an interview, all of the pertinent evidence from the case should be thoroughly reviewed. This includes all police reports, body cameras, dash cameras, surveillance footage, 911 calls, and everything else that exists that helps re-create the conditions of the incident.

It may be helpful to create a timeline of the incident to stay organized and to make notes about all of the evidence in one centralized location. The goal is to know all the evidence better than the officer and the

prosecutor.

Questions in this section should be designed to inquire about areas of the government's case that are unclear or vague. Officers can often jump to conclusions in their reports without properly connecting the dots.

Consider the following themes in questions about the specifics of the case.

Officer's Ability to Observe

Where was the officer when they first observed the alleged crime? Often times their line of sight is not as accurate as their report claims. What were they doing when they first noticed the violation? Were they typing on their computer, responding to another call, talking on their cell phone? What was an officer preoccupied with prior to responding to the violation?

Timing

In some situations, cases can be won based on problems with the timing of the government's investigation. For example, some statutes have DUI laws that say that a person's blood level must be higher than the legal limit and the blood sample must be drawn within a certain period of time since the person was driving.

If the state law says this time limit is two hours, a person who is stopped for DUI at midnight will have to have their blood sample drawn by 2 a.m., otherwise the draw is outside of the statutory window.

We have seen many cases where the police

miraculously draw a sample of blood a mere two minutes before the timing requirements expire. In our hypothetical, that would be a blood draw at 1:58 a.m.

When these close call situations are identified, they are ripe for questioning and may warrant further investigation into how exactly the officer measured the time and whether the officer made some timing adjustments at the margins.

Failure to Follow Procedures/Protocols

Effective defense attorneys also familiarize themselves with police department protocols and policies to help identify when law enforcement officials fail to follow procedures.

If officers are required to follow proper procedures and failed to do so in one part of the case that we can identify, it is reasonable to conclude that they may have also not followed proper procedures in other parts of the case. If department procedures are in place to ensure the integrity of law enforcement investigations, failing to abide by policy may jeopardize the government's case and provide a tactical advantage.

As with other lines of questioning, significant investment in reviewing the discovery is required for these questions to be effective. With a strong understanding of the evidence and the department procedures, questions about the officer's failure to comply with policies can often result in the officer struggling to avoid admitting violations. Do not be surprised if officers terminate the interview and request

a follow-up interview with a prosecutor present.

- **How and why was an officer trained to handle a certain situation?**
- **Why did they handle it differently than they were trained?**
- **Why did they choose to take certain actions?**
- **How many witnesses did they interview to come to their conclusions?**
- **If they jumped to conclusions without interviewing other people, why?**
- **Did they try to identify any other objective witnesses who could independently relay what they observed? Why not?**

Other Tips

Interviews can be short and simple or long and contentious. Following the below best practices may help ensure the interview is productive:

Be respectful

Even though you are communicating with an adversarial party, disrespect is not appreciated by the officer, the prosecutor, nor the judge. Using profanities, questioning a witness's truthfulness, or calling names is not appropriate.

Stay out of the weeds

Keep the interview focused on the important and

relevant facts. Do not argue about inconsequential facts. For example, if the officer writes in his or her report that the car was tan, when in reality it is officially listed as beige, this is probably not going to be a material fact in the case. The point can be made that there is a discrepancy as to the color, and the interview can move forward.

Be on time

Failure to appear for a scheduled interview is not professional and may result in officers or prosecutors to not appear in the future or file complaints with the court.

Provide a Copy

Prosecutors may want a copy of the interview you completed with an officer, and you can provide them with one.

Be Prepared

Have your questions well thought out in advance and be prepared to take notes and ask follow up questions.

At the conclusion of the interview, many attorneys have their audio recordings transcribed for further review. There are many free online tools like www.rev.com or www.temi.com that can transcribe files quickly. They will not be certified for use in court, but they may be helpful to add to your file for quick reference. It is important that interviews are recorded

and saved. If an officer's story changes after the interview, you have a recording to which you can refer to show the officer's initial responses. This is also useful at trial. If an officer changes their story while on the stand, their prior recorded statements may be admissible to show that the officer's story changed.

Step 7: Negotiations

Criminal cases involve negotiating from beginning to end. Whether negotiating about release conditions, court dates, or plea deals, there is always a back and forth between the government and the defense.

In this section, we are only talking about negotiations regarding the final outcome of the case, known as a *plea agreement*, or *plea deal*.

We cover this in great detail in the next section, but a criminal case starts with an IP making a plea declaring that he or she is innocent of the charges brought forth by the government.

At some point throughout the case, the IP may decide to change their plea from "not guilty" to "guilty," provided it serves some specific benefit.

One benefit might be a significantly reduced jail sentence under the law. If a person is arrested and charged with a crime that has a potential for thirty days in jail, that person may take a plea deal if the arrangement reduces jail from thirty days to one day. That is a major benefit to that person, and they may decide that pleading guilty under those conditions makes sense.

This decision is called *accepting a plea deal*. There will be a separate court proceeding called a *change of plea hearing* where the IP tells the court that their plea will be changed from not guilty to guilty. We would no longer call that person an IP, or innocent party.

By pleading guilty, they legally have now become a GP (guilty party).

The reality is that somewhere between 97 and 99 percent of all criminal cases are resolved without a trial—meaning, the accused negotiated an acceptable plea deal or similar alternative. The likelihood of a case actually going to trial is very small statistically speaking, though it should be higher with criminal litigators.

With such a high percentage of cases being resolved by negotiation, it is critically important to have a robust negotiating framework in the context of criminal law.

Before we review the framework for negotiations, we need to understand several important concepts.

First, practicing criminal law by relying solely on charm, wit, and charisma is usually not effective. Unlike the movies, in practice the courts and prosecutor's offices do not operate with holiday gifts, tins of cash, or sexual relationships as currency.

Second, negotiating is most effective when all of the other work detailed in this book is completed rigorously. The work must be done to convey to the opposing side that the defense case is strong, the team is prepared, and we are fully expecting a not guilty verdict. Proper preparation is critical to enter the negotiation from a position of power. Judges and prosecutors can tell immediately when the defense is unprepared in much the same way effective defense lawyers can sense a weak government case.

Third, we must also briefly understand how plea deals originate and function.

Many criminal charges carry mandatory penalties that are defined by the law. These penalties are often called *mandatory minimums*, and this means that if a person is convicted of the offense, they absolutely have to receive the mandatory minimum penalties. Neither the judge nor the prosecutor has the authority to negotiate the penalties lower because the minimum penalty for that crime is set in stone by law.

Other crimes do not have any mandatory minimum penalties, and instead penalties are imposed by either the court or the prosecutor's office when discussing resolving the case by plea deal. Prosecutors offer plea deals primarily because of their interest in closing cases quickly. If every person who was charged with a crime set their case to trial, the justice system would be completely overwhelmed and prosecutors would have to start either dismissing cases or hiring swarms of new prosecutors.

To incentivize IPs to take plea deals, prosecutors will offer reduced penalties in exchange for a plea of guilty. As we saw in the hypothetical plea deal reducing thirty days of jail to one day, it may make sense to accept that deal.

But what if we revisit that hypothetical and the prosecutor's initial plea offer was thirty days, exactly what the statute offers? Should the person take that plea deal? Probably not. After all, if they rejected that plea, went to trial and lost their case, the judge would

give them thirty days anyways. At least that person tried to win by going to a trial. There is nothing to lose in that situation.

Prosecutors offer plea "deals" like this (that are not really deals) all the time. They know that most people will take a plea deal even if it offers them no benefit because they are fearful of going to trial or do not have the willpower or resources to do so. There are also political pressures from the local government or the city council to be tough on crime and impose harsh penalties. Politicians, elected county attorneys, and prosecutors may want to protect their positions by instituting agency wide policies for certain criminal offenses. These policies trickle down to all of the subordinate prosecutors who then dutifully follow orders when making plea deals.

When facing a hard policy line from a prosecutor in a criminal case, there are a number of different approaches that one can take to make a persuasive case that there should be a departure from the official policy. For our purposes, we are going to call this process *preparing a deviation request* and discuss the ideal format suitable for most applications.

Deviation Request

A *deviation request* is a formal letter addressed to the prosecutor or supervising prosecutor, or both, in a criminal case asking their office to deviate from the standard office policy and offer a more lenient and appropriate sentence. The letter contains several

different parts that support the final request:

1. **Identification of factual disputes**
2. **Discussion of evidentiary problems**
3. **Analysis of legal defenses**
4. **Presentation of mitigation materials**
5. **Request for a specific resolution**

The letter should start with a formal introduction and explanation of the reason for the letter: to request a deviation in the specific case. The letter can reference the five sections that will be covered and thank the reader for considering the request. It is also good practice to note that this letter is being written for the purposes of plea negotiations and should not be used against you.

Attorney Accountability
A word of warning: think carefully before revealing the trial strategy in the deviation request! It may be tempting to detail all of your points to the prosecutor in your request for a reduction. But if a prosecutor denies your request, you want to ensure that you have not provided their office with your entire trial strategy.

Identification of Factual Disputes

Deviations usually start with a basic recitation of the facts surrounding the case. Prosecutors often have caseloads in the triple digits, and will not remember this

specific case without a refresher. In the summary of the facts, it is appropriate to detail the facts all parties can agree on as well as identify points of contention.

Although Officer Smith writes in his report that _____, in reality evidence will show that _____ actually occurred, as will be detailed by witness [x].

This is a good opportunity to respond to the allegations in the police report and detail your version of the event. Prosecutors can only review evidence that they have in front of them, which is typically only the police report. Having a deviation request with the facts detailed from your perspective will likely be the first time a prosecutor will even consider your version of the events.

As always, be respectful in dissecting the officer's reports, and do not use this opportunity to call the officer names or question the officer's integrity (unless there is good cause to do so). Prosecutors usually feel like they are on the same team as the police, and they develop close working relationships with police. Attacking the officer may cause the prosecutor to instinctively recoil from the request.

Instead, try to craft a methodical outline of the events from an alternative perspective that shows the officer's observations may have been reasonable under the circumstances despite being clearly wrong.

Discussion of Evidentiary Problems

The next section of the letter is more direct and focuses on detailing the specific problems the government has with the evidence against you. These can range in seriousness, but remember to be cautious about tipping your hand.

It is usually best practice to only identify glaring problems that the prosecutor would be apt to address on their own. This can include obvious problems, like those with officer integrity violations or discipline, flagrant violations of policy, use of excessive force, the lack of witness availability, the inadmissibility of government tests, and so on.

The goal in this section is to remind the government that they have the burden of proving guilt, and that it will be difficult for them to do so with these glaring legal problems in their case. On occasion, cases have very few actual legal problems. But a thorough investigation always reveals small inaccuracies or errors.

These problems will have to be highlighted by the defense and incorporated into a theme for trial. While prosecutors may recognize that legally the defense argument is a stretch, they also have to consider how a jury will respond to a potent theme. These themes may strike a judge or a juror in a way that causes them to lean in favor of the defense.

Analysis of Legal Defenses

After detailing the obvious problems in the government's case, it is important to explain how those

issues will translate into a legal victory for the defense. Again, this should be done without sacrificing strategies that would be useful in a trial. The goal is to connect the dots from the factual disputes through the evidentiary problem and to conclude how that will translate to a legal defense.

For example, in the situation where a key witness is unavailable, it may make sense to remind the government that their case cannot be made alone with the remaining witnesses. In a situation where there was excessive force and damaging body camera footage, the government may want to consider the political climate in the court's jurisdiction. Jurors from that location may not respond in favor of the government should the defense succeed in getting the video admitted.

This section should not be an inside look at your trial strategy playbook. Instead, it is meant to show the prosecutor that you are thinking far enough down the road to consider taking your case to trial. It shows that you at least have a strategy. Most criminal defendants unfortunately put very little effort into their cases, so when a prosecutor sees proactive and strategic thinking, it will catch their attention and cause them to pay more attention to your request.

Presentation of Mitigation Materials

In "Step 3: Mitigation," we talked about mitigation materials, what they are, and how to use them in your case. This section of the deviation request provides the opportunity to highlight key portions of the

materials you are presenting. All the materials will be attached to the end of the letter for the prosecutor to review, but this section in the heart of the letter allows you to call attention to the points you want to ensure are not overlooked:

Setting aside the issues outlined above, I want to take a moment to discuss other important details about my life that I believe help to mitigate the allegations brought forth by the government.

Use this opportunity to explain the positive aspects of your life. Discuss the potential consequences that you may face if the prosecutor does not grant your request. Explain how the effects of the conviction will ripple throughout your life. Identify the people you support and how they will be hurt if a reasonable resolution is not reached. At this point, consider that the prosecutor has only heard negative things about you stemming from the police report and the evidence in the case.

This is the time to detail all of the other positive contributions you are making to the world and to highlight your greatest accomplishments. Do not be shy in gloating about your accomplishments. If you do not use this opportunity to make your case, no one else is going to do it for you.

Request for a Specific Resolution

With all of the arguments, evidence, points of

contention, and mitigation laid out, it is time to request a specific resolution. What is a resolution that the government can offer that the defense would accept in exchange for pleading guilty?

At the outset of this book, we discussed the importance of setting goals. This is a good time to ask for a resolution that meets your top goals while still being reasonable. It is unlikely that a prosecutor is going to dismiss your case and write you an apology. But a prosecutor might offer a reduced sentence that meets some of your goals.

In some situations, that means asking for community service instead of jail. Or asking for the opportunity to complete a class in exchange for dismissal of the charges. Or for a misdemeanor instead of a felony. Or to drop the allegation of prior offenses. There are infinite possible requests and endless opportunities for creative resolutions.

In this part of the deviation request, it may be helpful to provide the prosecutor with a few different options to give them ideas on resolving the case short of trial. This is an invitation to continue negotiating, and the prosecutor's office may need to review the case further, speak with the alleged victims, or get permission from a supervisor. Do not be surprised if the prosecutor counters your request, agreeing to some of the proposed conditions while rejecting the others.

Given what I have outlined in this letter, I believe that a reasonable resolution in this case is to allow me to plead guilty to _____ with a penalty _____.This resolution

serves my interests in protecting _____and serves the interests of the government by resolving this case without the added expense of trial. This is a just result and best supports the interests of justice. Thank you for considering my deviation request.

After the letter is completed, all support letters and documentation should be attached and prepared for transmission to the prosecutor's office. In some jurisdictions, deviation requests can be sent directly to one specific, assigned prosecutor. In others, deviation requests are sent to a specific email address or point of contact to be reviewed by a separate committee.

Time varies as to when a response can be expected. Some prosecutors review requests immediately while others only review their files the day of the next court setting. It is always good practice to keep a hard copy of the entire request available to hand deliver to the prosecutor at the next court appearance. This ensures that they have a copy when they claim to have not received it, and they may appreciate having a physical copy.

A deviation request is a valuable tool in our defense tool kit, one that if used correctly can create significant positive movement in a criminal case.

Step 8: Advocacy

In the preceding steps, we talked about concepts and frameworks that ensure we are best prepared to succeed when it comes time to litigate. We discussed thinking through our options, preparing motions, interviewing law enforcement, preparing our mitigation, negotiating with prosecutors, identifying defenses, and so on. Advocacy is where it all comes together in the courtroom.

***Advocacy* is the word I use to refer to attending court and implementing the plan.**

Criminal law, unlike many other practice areas, in most cases requires physically attending court. For many, days with court proceedings scheduled are filled with anxiety.

In this section, my hope is to provide you with an understanding of the different phases and types of court proceedings we see in a criminal case. Where appropriate, I will share tips on being prepared for the worst case scenario. If you can be prepared for the worst case scenario, which in my experience rarely actually happens, then much of your concern will vanish.

It is important to note here that there are hundreds of criminal jurisdictions across the country. We have federal criminal law, state law, and county and city criminal codes under which a person can be charged. Jurisdictions often implement their own procedures, naming conventions and rules. For example, one court might call the very first court proceeding an *arraignment*

while another calls it an *initial appearance*. Some state courts want driving under the influence cases closed in less than six months, while other states may allow them to drag on for years.

Rather than identify all the various names and rules across all the jurisdictions, I will instead use the names that I think are most descriptive of what is happening at each proceeding. The names may not exactly match the proceedings in your jurisdiction, but the substance of the hearings will.

This is because although the law allows the different jurisdictions to establish their own local rules, they must still comport with the United States Constitution and federal law when it comes to ensuring that a defendant's rights are not being violated. There is a minimum standard that must be met by the states when managing their criminal legal system, and these different phases are required under that standard.

Practicalities

One of the first questions many people have is whether or not they actually have to attend court. The process causes anxiety and can seriously interfere with a person's other obligations, like work or school. No one likes going to court.

The first general rule: if you do not have a lawyer representing you, you must go to court unless you are otherwise excused by the judge. Failure to appear in court on a criminal charge can result in serious consequences, like a warrant for your arrest, forfeiture

of your bond, suspension of your license, and even new criminal charges. You cannot send an unlicensed family member or friend to court for you, it must be a licensed attorney. It is also not wise to mail a letter or a motion to the court two days before your hearing and expect to get a ruling. If you do not have a confirmation from the court that your hearing has been moved or your presence has been waived, you must be present.

If you do have a lawyer representing you or are working with a public defender, you should defer to their judgment as to your presence in court. If they tell you to be there, follow their guidance and be sure to attend. There are many situations, however, where your presence will not be required and not be helpful.

Whether you need to attend court is often based on the type of charge you are facing. Generally, there are two categories of criminal offenses: *felonies* and *misdemeanors*. Felonies are serious offenses and every court proceeding must be attended in person, even if you have a lawyer. Misdemeanors, while still serious, have lesser penalties than felonies and therefore have less strict rules on appearance in court.

In some misdemeanor cases in certain jurisdictions, your lawyer may be able to waive your presence at some of the less substantive court appearances like arraignments or pre-trial conferences. You should still plan on being in court unless your lawyer explains otherwise.

When appearing in court, it is important to dress, act, and speak appropriately. In many jurisdictions, a suit

and tie is not required, but the minimum standard should be pants and a collared shirt. Shorts, sandals, T-shirts (with or without words) are not appropriate. Judges and prosecutors will not take you or your case seriously if you are not dressing appropriately.

In the event that your case goes to a trial in front of a jury, your outfit and demeanor become critically important. There are strategies and consultants we use that are outside the scope of this book, but you would be well served to defer to your trial lawyer.

Similarly, the language you use should meet court standards. Do your best to eliminate slang from your vocabulary the moment you enter the courtroom. Some judges are very formal while others are cordial.

Regardless, you should remember that you are being recorded by an audio/video recorder, or a record might be kept by the court reporter. This means you need to be mindful of your speech. If you are represented by a lawyer, he or she will do the talking for you.

But if you are representing yourself, you need to be prepared and know what you will be saying. Trying to wing it or being conversational with the judge will not serve you well. Say "yes" instead of "yea" and address the judge as "Your Honor."

Also be mindful of your facial expressions and breathing patterns. Judges, prosecutors, and jurors can all see your head shake, eyes roll, and hear your snort under your breath when the police officer lies on the stand. Although you may be boiling in anger, you cannot

let it show in this setting. Instead, write down the point of contention on a piece of paper and slide it to your attorney or prepare to address it on your own when it is your time to speak.

In short, use common sense. Turn your cell phone off, leave your hat in the car, and treat the courtroom with respect. As they say, there is nothing more important than a first impression.

Arraignment/Initial Appearance

After an arrest occurs, one of two procedures takes place.

For lower level, more routine misdemeanor offenses like domestic violence or DUI, the person is *booked and released*. This means the person is photographed, fingerprinted, and otherwise identified. Items on their person are inventoried and contraband is confiscated.

Evidence, like a blood sample or DNA swab, is taken and impounded. The police then release the person, issuing them a citation with a court date scheduled in approximately thirty days.

This person is released on their *own recognizance*, which means they are not reporting to any person or agency while they are on release. In this type of case, the person's promise to appear on the upcoming court date is sufficient to secure the release. In other words, the legal system is taking the person's word for it that they will appear for their next court date.

For more serious offenses and felony charges,

the person will not be released until they see a judge. This typically happens quickly. The legal system recognizes that a person being taken into custody is a significant infringement upon their rights.

To justify the seizure of those rights, the person arrested is required to see a judge who can then make a determination as to whether release is appropriate and, if so, under what conditions. In many states this must be within twenty-four to forty-eight hours after an arrest. The arrestee must remain in custody until that time.

In either situation, the first time the arrestee sees the judge, the judge will complete what is called an arraignment. Jurisdictions use varying terminology, like *initial appearance*, *first setting* , *first appearance*, or *probable cause hearing*. The names are not important.

At this proceeding, the judge arraigns the accused. The judge first identifies the IP, usually by name and date of birth. The judge then reads the charges and the law which are alleged to be violated. Do not be surprised if your attorney waives the formal reading of the charges.

This is done in the interests of time and to spare the airing of all the details of the charges in the courtroom. The attorney will confirm that they do not wish that the judge read every detail, and the judge will carry on. The judge is required to explain that the charges carry maximum penalties and to ensure the that IP understands the accusations.

For nonfelony criminal charges, an attorney may

be able to waive the entire formal arraignment proceeding via written motion. In misdemeanor cases, many courts will accept a written motion called a notice of appearance by a lawyer in place of completing the court proceeding. The lawyer can request that the arraignment is vacated, enter a plea of not guilty on the IP's behalf, and ask for a new court date for the next proceeding.

Initial Plea

Legally, the most important part of this proceeding comes when asked to enter a *plea*. A plea is a formal declaration made by or on behalf of the IP regarding whether they are innocent/not guilty or guilty.

Practically, the plea entered in almost every criminal case at this point is not guilty. This enables the case to continue moving forward into the next stage. If you have any doubts about what to do at an arraignment, plead not guilty.

People often wonder how it is possible to plead not guilty in a case where they believe the evidence clearly shows they are, in fact, guilty. It is true, if the IP decides at the arraignment that they would prefer to plead guilty and move on, they have that option. It is not advisable, however, in almost every possible situation. Immediately pleading guilty prevents the accused from reviewing any of the evidence against them, completing a worthwhile investigation, or negotiating with the government/prosecutor about a reduced or dismissed resolution.

Instead, it ensures a guilty conviction and leaves the sentence up to the discretion of the judge. Although courts and prosecutors set up schemes to induce IPs to forgo many of their rights in an effort to close cases quickly, do not ever feel bullied into taking a deal that is not providing a benefit.

There may come a time when it is appropriate to change the initial plea of not guilty to guilty. This happens in a change of plea proceeding (more on that in the below section "Plea Agreements/Resolutions"). But it comes after the case has been properly defended. At this stage, it is necessary to enter a plea of not guilty in order to move to the next stage. Otherwise, if you plead guilty at this stage the rest of this book is mostly irrelevant.

Release Conditions

After the judge accepts the plea of not guilty, the next issue will be about setting proper release conditions. The court must consider and decide what is appropriate. Should the IP be held in custody? Should they be released? If released, should they have to check in with an agency? If there is a victim of a crime, should the IP be allowed to communicate with the victim or return to a shared residence? What if the IP has to travel out-of-state? Should the IP be required to do random drug testing?

These are just a few of the issues that can arise.

If the IP was booked, released, and returned for court,

the judge may not make any changes to the person's status and allow them to continue to be released on their own recognizance.

This means they are allowed to be out of custody so long as they remain law abiding. They do not need to check in with a government agency or comply with any mandatory testing.

In other situations, the court may impose *release conditions*. This means an IP will be released from custody so long as they follow certain rules. For example, in a domestic violence situation, the IP may be released so long as they do not communicate with the alleged victim or return to the residence. If those conditions are violated, that person can be taken into custody and charged with new crimes.

Other conditions can include drug and alcohol testing, checking in with a government agency responsible for keeping tabs on IPs, not leaving the state, or not returning to a certain location. Judges have significant discretion in crafting release conditions, and some judges are stricter than others.

The judge can also impose significant financial restrictions on an IP in the form of a bond. In situations where the alleged crime is serious and the IP is considered a repeat offender, or if there is doubt as to whether the IP will return to court if released, the court can order a financial sum of money be posted to secure the IP's appearance.

For example, if an IP is a resident of California,

travels to Arizona, and is arrested for DUI, the judge may be concerned that the IP will go home and not return to Arizona for court. To ensure that the IP returns, the judge may require that a $5,000 bond is posted and held in trust by the court. If the IP returns and participates in the case, the money will be returned at the end. If the IP does not return, that bond will be forfeited to the court and a warrant will be issued for the IP's arrest. The money acts as collateral to secure the IP's appearance.

For some criminal charges and in some situations, the court may decide that release is not appropriate under any circumstances. The court may call this *no bond* or *no release*, but it means that the IP will not be released during the pending case. This can mean the innocent party is in jail for months, or even years.

This is not a common release decision and is usually only reserved for the most serious charges and circumstances, such as the following examples:

- **Sexual allegations**
- **Dangerous crimes against children**
- **Use of deadly weapons in the offense**
- **Persons deemed to be a hazard to the community or themselves**
- **Crimes involving murder or death**

In the event that an IP is deemed to be nonbondable or is not allowed out of custody, many jurisdictions offer the opportunity for reconsideration by requesting a subsequent hearing (as an example, see an Arizona case

called *Simpson v. Owens*).

It is better, however, to be prepared to address release conditions during the arraignment to argue for the best possible release conditions. Overly harsh release conditions can be a major problem that last the duration of the case, effectively punishing the IP prior to any finding of guilt. Excessive screenings, check-ins, ankle monitoring, a cost-prohibitive bond, or other preconditions can be highly burdensome and can even set up innocent parties to fail.

The argument, then, is to ask the court to impose the least restrictive or onerous conditions that meet the court's objectives and to provide evidence to support the requested condition. The following chart illustrates the arguments and supporting evidence:

Argument	Evidence
IP is not a flight risk.	• No history of failing to appear at other court proceedings • No outstanding obligations to other courts (traffic tickets, child support, etc.) • No international connections or citizenship • Client hired an attorney showing willingness to address
IP is not a repeat offender.	• No criminal history • No other pending charges • IP is not a danger to the community

	• No history of violence • No history of mental illness • Allegations do not involve the use of a weapon • Allegations do not involve injury to a person or property
IP has support.	• Parents/Children/Spouse in courtroom or have been in touch • Have an addiction treatment center ready to help
IP has strong connections to the community.	• Primary residence is in this state • Family lives in this state • Job in this state
IP's release is critical.	• Will lose job/spouse/children • Mental/health condition requires release • Other dependents rely on aid/support

The judge is looking for evidence to support the decision on release conditions. Being prepared with bullet points that address these major themes with concrete supporting evidence will provide the judge with materials to support your case.

After the judge accepts the IP's plea and sets release conditions, the substantive part of the

arraignment is over. The judge may order the government to make certain files available and address other requirements under the rules of criminal procedure, and the judge will set the next court date(s).

The arraignment hearing can be fast-paced and overwhelming. Ordinarily, the courtroom is jam-packed with people, and the judge is processing dozens of cases that day. It is important to be prepared to enter a plea of not guilty, asked to be released on your own recognizance, and request a new court date. It is not appropriate to get into the facts of your case at this stage. In most cases, the judges at this stage do not have the legal authority or basis for dismissing or reducing your charges. Attempts to argue with the judge over information that is not relevant at this proceeding will only lead to trouble. Instead, address the specific points that need to be made at this setting.

Pre-Trial Proceedings

The entirety of criminal cases can be broken into two main phases: the *pre-trial phase* and the *trial phase*. The vast majority of cases are resolved in the pre-trial phase, where various pre-trial proceedings take place. These proceedings take many different names: *pre-trial conferences* (PTCs), *pre-disposition conference* (PDCs), *case management conferences* (CMCs), *trial readiness conferences* (TRCs), *initial pre-trial conferences* (IPTCs), *status conferences* (SC), *preliminary hearings* (PHs), and so on.

Jurisdictions use many different names and have different objectives, but they offer all parties involved in the case to accomplish a few things:

1. **Meet together to discuss the case.**
2. **Resolve issues that are outstanding from the last setting.**
3. **Address current issues with resolving the case.**
4. **Set new deadlines and court proceedings.**

First, criminal law is unlike a lot of other fields of law. Many lawyers never step foot in a courtroom or leave their office. Drafting wills or forming corporations can all be done from a desk and a computer. Criminal law, though, routinely requires all of the parties, including the defendant, to gather in court.

This provides valuable time for all parties to communicate, usually once every thirty to sixty days. This also ensures the case is moving forward according to the rules. (Remember, there are speedy trial rules we discussed in the chapter "Step 4: Discovery.") If the rules are violated, it can result in cases being dismissed. These periodic pre-trial proceedings afford all the parties to ensure that there is forward progress on the case.

A number of issues can be discussed at pre-trial proceedings, but it depends on the type of proceeding and the evolution of the case. Early in a criminal case, most issues revolve around discovery and the disclosure of information. Defense lawyers will ask prosecutors to

send information about specific issues. When they refuse, this becomes a discovery issue that can be addressed in court privately by the attorneys or in court on the record in front of the judge.

Pre-trial proceedings are also good opportunities to discuss the court's orders. If the judge ordered the government to do something by the next court date, and they failed to comply, the judge can use the meeting as an opportunity to address their noncompliance.

These settings are also useful in informing the court about the progress being made in resolving the case; for example, defense lawyers often have issues securing expert witnesses due to scheduling conflicts. It may be necessary to inform the judge so that the court can order hearings to accommodate schedules.

Courts may also want to be apprised of any substantive motions that will be filed or whether evidentiary hearings will need to be scheduled. These are hearings surrounding major case issues that might involve significant court time or additional resources. Communicating with the court helps the court to allocate their time and manage their calendar.

Defense attorneys may also use the pre-trial proceedings as an opportunity to inquire about requests for deviations or submit new or supplemental information to the prosecutor. In some instances, the prosecutor's office may have granted a deviation request and come prepared with a new plea agreement.

Both the defense and prosecutors should also be

prepared to discuss the facts of the case. Prosecutors typically rely on the police report and have no knowledge about the defendant's position as to the events. A prepared defense attorney can often provide an alternative explanation or can help address inconsistencies in the police report.

Pre-trial proceedings usually follow roughly the same format. If you are represented by a lawyer, your lawyer will handle almost all of the proceeding for you. If your court requires that you call your case on the record, your attorney should do all of the speaking, leaving you only to identify yourself with the basics, like name and date of birth.

Defense attorneys and prosecutors usually meet off the record to discuss the case. This means that they are not communicating directly to the judge in a formal court proceeding while being recorded. Instead, the defense and the prosecutor may choose to step out of the courtroom to a smaller conference room to discuss the case in private.

In motion situations, the IP does not join the attorneys during this discussion. This is for the defendant's benefit. Many prosecutors often draw a harder line in the presence of a defendant, and communication is not as a candid. (We will discuss an opportunity for the IP to communicate with the prosecutor in the next section on settlement conferences.)

After this conversation, the opposing attorneys

will decide the next best course of action. In many cases, there will be a *continuance* to a new court date, which means the parties are agreeing that more time is necessary to complete what needs to get done. This can mean completing more interviews, requesting more discovery, preparing substantive motions, continuing negotiations, etc. Your attorney may leave with additional tasks to complete, new materials to review, new deadlines, or new court dates.

Attorney Accountability
Pre-trial proceedings are always good opportunities to check in on your case with your lawyer, especially if your attorney is not requiring you to join them in court. Asking your attorney to discuss what occurred at your hearing is not unreasonable.

Communicating with Prosecutors

If you are at a pre-trial proceeding without a lawyer, because either you cannot afford one or the government will not appoint you a public defender, you will have to complete the proceeding on your own.

It is important to remember that although many prosecutors are pleasant people, they are working in a capacity that is directly adverse to your position and interests. They are prosecutors and are responsible for prosecuting you and other IPs.

When you meet with them, they usually will tell you the following:

1. **I am a prosecutor. I represent the government and I do not work for you.**
2. **I am not your lawyer and I cannot answer legal questions.**
3. **This is a plea agreement for your case. Today you have the following options:**
    a. **Accept this deal and plead guilty, accepting the penalties outlined here.**
    b. **Reject this plea deal, set your case for trial, and represent yourself.**
    c. **Ask for more time to consider your options.**

Most people who represent themselves in court, called *pro pers*, choose the last option and ask for more time. Courts may allow this a handful of times, but will eventually deny further continuances and set the case for trial.

To resolve the case, many pro pers try to have a conversation with the prosecutor, hoping that if they explain their side of the story, they may be able to reach an agreement. Unfortunately, they mistakenly believe that prosecutors will either (1) listen to or (2) care about their side of the story relating to the charges. Prosecutors at pre-trial conferences are listening to multiple people, who are not represented by a lawyer, with multiple charges, one after another, for hours at a

time, day after day.

In addition, they also know that legally, pre-trial proceedings are not the appropriate time to have these conversations. Especially given that they are prosecutors with interests directly opposed to the unrepresented person.

Any attempt to speak with a prosecutor via human communication in a way that interrupts the prosecutor's scripted bullet points usually does not end well. Prosecutors will often note in their internal file that the pro per was difficult or confrontational, and they will tell you that you are rejecting the plea deal and that the case will be set to trial. Some prosecuting agencies go so far as to revoke all further plea deals when the case is set to trial and to ask for harsher penalties.

Discussing the details of your case with the prosecutor may also reveal insights into the case that should not be disclosed to the agency that is seeking to convict you. Many people fail to utilize their right to remain silent at the time of the investigation and arrest and then fail again to use it when in front of the prosecutor. Although the prosecutor should not be using the information that you are sharing during settlement negotiations, that information cannot be unheard. In the event that the case does not resolve via settlement, the prosecutor has been privy to details that may impact how they prosecute the trial against you.

In the event that you are representing yourself at a pre-trial conference, be sure to follow these general guidelines:

- **Be polite and courteous with the prosecutors. If you are not, they will remember and handle your case accordingly.**
- **Do not share more than is necessary. Now is not the time to explain your side of the story. That time is at the trial. Do not reveal any defenses to the prosecutor.**
- **Come prepared. If you have evidence that you can present, bring it. Come prepared with your research completed, your questions ready.**
- **If you have prepared your mitigation and/or deviation request, bring a hard copy with you to deliver to the prosecutor.**

Settlement Conferences

In some criminal cases, especially those with serious potential consequences, it may be appropriate to conduct one or more settlement conferences. *Settlement conferences* are proceedings that can be used to resolve the case prior to going to trial in a way that is amicable to both the defense and the prosecutor's office.

Settlement conferences, unlike the short negotiations that take place during the pre-trial proceedings, are much higher in intensity. These proceedings can be relatively short or last hours, depending on what issues need to be addressed.

In criminal cases, it is not unusual for the defense and the prosecution to come to loggerheads, refusing to

negotiate any further or budge on a plea deal. When parties recognize the need, they can request that the court schedule a settlement conference with all of the parties. This is usually not conducted with the regularly assigned trial judge, but is scheduled with a judge who will only be available for the purposes of the settlement.

At the time of the hearing, all parties, including the IP and his or her family, should appear and be in attendance. The defense lawyer and the prosecutor are often invited to the judge's chambers, where they can discuss the issues in the case in private. The prosecutor will present the government's case and explain the rationale for the plea agreement that is being offered. The defense attorney will then explain their position on their case, flaws with the government's, evidence, mitigation factors, and other information relevant to the case.

The format is largely informal, with the judge leading the discussion and trying to find common ground amongst the parties. If the defense can persuade the judge to the defense's case, the judge may be willing to lean on the government to be open to further negotiations.

In the event that there is movement from the parties, it is then appropriate to bring the IP and their family into the conversation. The judge, the defense lawyer, and the prosecutor all return to the courtroom and open the conversation to all involved. This is a good opportunity for the IP and the family to ask questions related to the case.

The judge may also take the time to explain how the law works, so that the IP is hearing it from the court rather than the defense attorney or the prosecutor. It is also not uncommon for the IP or the family to ask questions directly of the prosecutor. Be mindful that these proceedings are usually recorded.

Although they are considered settlement proceedings and are not supposed to be used against you, what is said in the room can have lasting effects.

Plea Agreement/Resolution

If the defense and the prosecutor, and of course you, come to an agreement as to the terms of resolution, it is appropriate to set the case for what is called a *change of plea proceeding*.

As we discussed previously, one of the first legal actions that occurs in a criminal case is the entering of a plea of not guilty. This tells the court that the IP is contesting the charges, and invokes other rules for the further proceedings in the case. If, after these proceedings take place, it is decided that the best course of action for the IP is to accept a guilty plea, this hearing is necessary to formally change the plea from not guilty to guilty.

The plea agreement is usually reached by the prosecutor and defense lawyer well in advance, but there are times when minor adjustments are made at the time of the hearing. When finalized, the defendant and their lawyer should thoroughly review the agreement and address any points of concern.

These proceedings can be long but are relatively straightforward. The defendant (pleading guilty now and no longer the IP) is usually not required to speak, other than answering yes or no questions. The judge will thoroughly review the plea agreement form that was signed by the parties and ask the defendant to answer basic questions.

The court wants to confirm that the defendant

- **enters the plea voluntarily, without promise of anything or threat from anyone;**
- **is not under the influence of drugs, alcohol, or impairing substances;**
- **pleads guilty;**
- **knows he/she is giving up certain rights, like the right to trial, to call witnesses, etc.;**
- **understands the consequences; and**
- **agrees that a crime was committed based on the facts before the court.**

When the judge is satisfied that the defendant has been properly apprised of all their constitutional rights and understands what they are doing, the judge will ask how they plead, to which the defendant must respond, "Guilty."

Trial

In the event that a case is not resolved by a dismissal or a plea agreement, the case needs to move

forward to a trial to have the issue of innocence or guilt decided by a judge or a jury. As mentioned previously, a very low percentage of criminal cases ever go to trial. The very idea of trial causes many people, even lawyers, to flare up with fear and worry. People picture the anxiety inducing scenes from movies and TV shows and vow that they will not allow their case to go that far. There are times, though, when trial is absolutely necessary.

Perhaps the most appropriate time to consider going to trial is when there is no benefit to the IP taking a plea deal. This happens surprisingly frequently. People charged with crimes regularly plead guilty when doing so provides them no benefit. Either they get the same penalties under the plea agreement as the judge would have given them had they lost at trial, or the penalties are even harsher under the plea than they would be at trial.

Why? Many people simply do not understand how the system works or that a better outcome is possible. Combined with the fear and anxiety created by the criminal legal system, it is no surprise people want to close their cases as quickly as possible, even though the penalties are worse than they need to be.

Many lawyers also aim to avoid trials, recognizing that trial creates a lot of additional and unnecessary expense and anxiety. Effective lawyers may be able to convince the government as to the weakness of their case, resulting in a negotiated resolution. Good preparation may make the trial unnecessary.

But when trial is necessary, it usually happens in the following order of events.

Jury Selection

If the case is jury eligible, a panel of jurors are brought into the courtroom and questioned in a process called *voir dire*. The judge will ask the jurors if they know anyone in the room or if anything can impact their ability to be fair jurors. Both the prosecutor and the defense can also ask the jury questions and can strike, or remove, jurors based upon the rules. Both sides get to strike jurors until the court has a full jury with which to hear the case.

Government Opening Argument

The government starts the case by presenting their *opening arguments*, which generally involves telling the court what the prosecutor will be presenting to them over the course of the trial. They will usually tell a brief story about the different elements of the offense and then tell the jury what evidence they will hear that conforms to the evidence.

Surprisingly, opening arguments are not supposed to be argumentative and draw conclusions. The government is supposed to tell what the evidence will show, not make arguments that draw conclusions, which can be a difficult nuance to distinguish. If the prosecutor is being too argumentative during opening arguments, it may warrant an objection.

Defense Opening Argument

After the prosecutor presents their opening arguments, the defense may present an opening argument. Many defense attorneys establish their theme for the trial and outline their defenses during the opening arguments.

Opening arguments may be useful to employ a tactic called "drawing the string," where the defense attorney tells the jury about the bad facts that the prosecutor will cite in their case. Doing so may build trust and comfort with the jury and allow the defense to help craft the narrative surrounding the bad facts.

Government Case

After opening arguments, the government will present their *case-in-chief*, which is where they will present their evidence. The government will call the witnesses, usually police officers, crime lab analysts, witnesses, and victims, to testify about the allegations. These witnesses and the questions by the prosecutors are used to lay the foundation for admitting evidence into the court records. These can be items like records, documents, photographs, bodily samples, and any other materials relevant to the case. Many criminal cases only involve the officer and their testimony and require no further evidence be admitted.

Defense Cross-Examination

After each government witness presents their

testimony, the defense is afforded the opportunity to ask questions of each person. This is called *cross-examination*, and the purpose is to probe the memory, credibility, bias, and other relevant factors of the witnesses. Cross-examination can be long and aggressive or short and simple, depending on the witness and the issues before the court.

Defense Case

After the government has presented their evidence, the government rests, at which point it becomes time for the defense to present their case-in-chief, following the same format as in the government's case. During the defense case, the defense has the same right to call the appropriate witnesses and experts to support their defense. This can include opposing expert witnesses to combat the government's claims presented by their witnesses.

This is routine in DUI cases, where the defense may call a blood analyst to argue that the government's process of testing blood samples in their crime labs is not a process without error. As a general rule, it is not good practice to have the defendant testify in trial. There are times when the defendant should testify, but that is a difficult decision that should be made after careful consultation with a lawyer.

Government Cross-Examination

The government, like the defense, has the opportunity to question all of the defense witnesses,

including the defendant if the defendant testifies. If the defendant decides to testify, it should be after careful consideration as to the value of the testimony and with serious preparation for the cross examination.

Government Closing Argument

After the defense rests, most criminal cases will then start *closing arguments*. The government makes their final arguments. Unlike opening arguments, closing arguments are much more argumentative. At this stage of the case, the government is trying to convince the court, either the judge or the jury, of the defendant's guilt. The prosecutor will attempt to draw connections between all the evidence, explain how they each apply to the elements of the offense, and then argue that the evidence collectively shows that the defendant is guilty.

Defense Closing Argument

After the government presents their closing argument, the defense has the opportunity to present their closing arguments. These usually reiterate the theme presented during the defense opening argument and highlight the government's failure to show that the evidence meets the burden of proof standard. Many defense attorneys also make some version of an argument centered around reasonable doubt.

The burden of proof the government has to meet is the highest in our legal system, meaning that the government has to provide evidence that shows beyond a reasonable doubt that the person committed the crime.

Government Second Closing Argument

Because of this very high burden, the government is provided the opportunity to do a second closing argument. This time is usually reserved for rebutting the arguments made by the defense during the defense closing.

At the conclusion of the closing arguments, the case will be turned over to the judge or the jury to render a verdict.

The following are questions you should consider before going to trial:

- **Is my plea agreement worse than my penalty would be at trial?**
- **Is my plea agreement the same as it would be if I lose at trial?**
- **If I go to trial and lose, will my penalty be worse under the judge's sentence?**
- **If I go to trial and lose, is there anything that can be done at sentencing? (See next section.)**
- **If I go to trial, what is the likelihood of success?**
- **Has my attorney exhausted all other options?**

If, unfortunately, the verdict after a trial is guilty or the defendant takes a plea deal, there will be a time for sentencing. *Sentencing* is the proceeding where the court imposes the penalty, defining the terms of the

penalty, and how the sentence will be carried forward.

In some cases, the sentence is imposed immediately after the trial. The judge, having heard the facts of the case, will then impose the penalties. Usually, this happens in lower level offenses where the judge is imposing fines, probation, or low amounts of jail. There are opportunities, however, for you or your defense lawyer to request additional time to prepare for sentencing. When granted, the judge may schedule a new hearing in thirty to forty-five days to allow both parties time to prepare the sentencing arguments.

In certain jurisdictions, the defendant is also required to meet with a governmental or contract agency to prepare what is called a *pre-sentence report.* The defendant meets with the agency to discuss the issues in the case; the pre-sentence report writer is supposed to offer an independent analysis and opinion as to the sentence. Usually the report documents certain facts about the defendant, like age, employment, community support, educational level, etc. Defense lawyers and prosecutors alike can also prepare their sentencing recommendations and submit them in writing to the court.

At the time of sentencing, all parties return to court with their arguments prepared. The judge will review all of the written memorandums submitted by the prosecutor, defense lawyer, and pre-sentence division and then consider all oral arguments.

After arguments conclude, the judge will consider what was presented and then issue a sentence. This is

the final penalty, and can include length of time in custody, on probation, fines, fees, orders for drug or alcohol testing, restitution to victims, counseling/therapy and other requirements. The judge usually reviews these on the record in open court and the court clerk provides the defendant with copies, and further instructions after the proceedings close.

In some scenarios, aggressive preparation for sentencing is essential. In others, the judge is bound by the confines of the law and the sentence has few variables. We will discuss case results and sentencing further in the chapter on results.

Step 9: Result

Finally, after a lot of hard work laying the proper foundation, we must talk about possible results and outcomes at the conclusion of your case. Many people have been conditioned to think about criminal case outcomes in black and white terms, hearing only two options in the movies: guilty or not guilty. These may be the two options we see at the end of a jury trial, but as we discussed previously, somewhere between 97% and 99% of all cases are resolved with some other resolution. In this section, I will lay out some potential outcomes and suggest several creative solutions that you may wish to consider if appropriate in your jurisdiction.

Guilty After Trial

The first, most obvious, and absolute worst case result is to be found guilty after a trial. This usually means that plea negotiations failed and that the person will now be sentenced by the judge. Often, judges impose harsher penalties after a trial is completed in what defense attorneys call a "trial tax." Judges and prosecutors do not like going to trial and will at times punish the defendant for refusing to take the deal and instead choose to have a trial.

Although this is unethical—in my opinion—it routinely happens and needs to be considered prior to deciding to take a case to trial. There is a real likelihood that the prosecutor's office will ask for a harsher sentence after a trial if a plea deal is rejected. In fact, this

is the standard policy in many prosecutor offices.

Pleading Guilty As Charged

In some situations, the defendant decides to forgo the option of going to trial and instead decides to plead guilty. There are many reasons to make this decision, one of which includes being cognizant of the trial tax that may be imposed at the conclusion of a trial.

If the odds of winning at trial appear to be poor, it may make more sense to accept the plea, which has a known, specified penalty and sentence. For example, let's look at a situation where we have a defendant who is pleading guilty to criminal charges with a normal prison sentence of five years and a maximum prison sentence of eight years. If the defendant has a bad case with a lot of problematic, aggravating facts, it may make sense to take a plea deal for the normal prison sentence of five years. Defendant may realize that if he goes to trial and loses, the judge may impose the aggravated penalty, and his sentence may go up by eight years.

If the prosecutor presents a plea deal for five, six, or seven years, the defendant may want to take it. Otherwise, if the defendant goes to trial and loses, the sentence may be left up to the judge, and the ultimate penalty imposed may be harsher than what is being offered by the prosecutor's office under the plea. If the judge has the authority to sentence the person all the way up to the potential maximum, a plea agreement that guarantees less than the maximum may be worth

considering if the likelihood of a win at trial is low.

Open Range

Some plea agreements can be negotiated that have what is called an *open range*, or *no agreements*, *plea*. Again, various jurisdictions use various names, but the concept is the same. Many crimes carry a range of penalties. For example, a certain class of felony criminal offenses may have the following potential penalties, ranging from least severe to most severe:

Mitigated	Minimum	Presumptive	Maximum	Aggravated
1 year	2 years	5 years	8 years	10 years

This chart is discussing a fictional crime, but resembles what are known as *sentencing charts*, present in many jurisdictions. Crimes are categorized into different classes or categories and their associated penalties are organized into charts. Prosecutors, defense lawyers, and judges all then refer to the charts to discuss the penalties.

Looking at a few pieces of data, like the person's criminal charges, criminal background, and presence of aggravating or mitigating factors, a defendant can look at the chart and have an idea about the potential penalties. This is often how prosecutors review their plea deals. They look at just a few pieces of data, pick up a chart, locate the person on the chart based on the available data, and offer a plea deal. Reading the charts can be confusing at first glance. Let's discuss the main

pieces.

The *presumptive term* is the standard term. If all things are equal and there is no reason to increase or decrease the penalty, the sentence will be the presumptive term. This is the starting point. The penalty can then go up or down depending on other evidence that is introduced.

The penalty can increase one level to the *maximum* when the court or the prosecutor finds that there are factors that warrant a harsher sentence. Often times this can be subjective and left to the determination of the judge or the prosecutor. Factors that might cause a prosecutor to request a harsher sentence to a maximum term might include the following:

- **Defendant has prior offenses that are not allowed to be alleged or serious enough to be aggravating,**
- **Defendant has shown no remorse or been difficult throughout the criminal proceedings,**
- **Defendant's conduct during the offense was harsh or aggressive, or**
- **Victims to the case are asking for the maximum term.**

These factors may not be detailed specifically in the law but instead are based on observations made by the parties involved. Contrast this with *aggravated penalties*, where the prosecutor may point to specific aggravating factors detailed in the law. These can

include various considerations:

- **A deadly weapon was used in the offense.**
- **Victims were underage or young children.**
- **Defendant is a repeat offender.**

Prosecutors may submit written motions notifying the court that they are intending to allege aggravating factors, and the motions point to the specific provisions of the law that justify the aggravated penalty. The motions provide the defense with notice that the prosecution is seeking the aggravated sentence and provides the defense with time to prepare arguments in the alternative.

From the defense perspective, arguing for the minimum and mitigated sentence operates the same way. The defense may point to characteristics of the case that warrant the minimum sentence under the law. This may include factors like the following:

- **Defendant is remorseful, accepts responsibility and has already started making positive changes.**
- **Defendant is a first time offender and has no criminal history.**
- **Defendant is the sole provider for a number of dependents, and harsh penalties would have adverse consequences on their dependents.**

Again, these factors may not be detailed in the law, but are observations made throughout the course of

trial and presented at sentencing. Asking for a mitigated sentence, however, usually requires pointing to specific factors that are detailed under the law. These may include the following examples:

- **Defendant was youthful or under age at the time of the offense.**
- **Defendant is a documented victim of abuse.**
- **Defendant was under extreme duress at the time.**
- **Defendant lacks the mental capability to understand the exact nature of the offense.**

Understanding this range, we can now turn to open range or no agreements plea deals. In some scenarios, defense attorneys and prosecutors cannot come to a negotiated agreement as to the final penalty. Instead, they will agree to a range and let the judge do the sentencing.

Let's take an example where the defense attorney does a persuasive job on a case and asks the prosecutor's office for a plea to the lowest, mitigated sentence. The prosecutor may not have the authority to create a plea deal for the lowest sentence, but may agree to an open range plea deal. Under this agreement, the prosecutor can write into a deal that there is no agreement as to the final sentence, but that the maximum penalty will be capped at the presumptive terms.

This means it cannot be the maximum or the aggravated penalty. The prosecutor is helping to limit

the risk for anything worse than a standard presumptive sentence. It is then up to the defense to argue for the minimum or mitigated sentence. Ultimately, the judge will decide if a reduced sentence is appropriate at the time of sentencing. Prepared properly, these plea deals provide the opportunity to earn a more lenient sentence.

Pleading Guilty to Reduced Charge

Many plea deals often involve changing the original charge into a lower level criminal offense. The lower level offense is usually less severe than the original charge and is offered in exchange for the defendant pleading guilty. A common example is in the case of DUI charges. A person charged with DUI may not want the DUI conviction because of professional consequences. Instead of pleading guilty to the DUI charge, a plea may be negotiated where the defendant pleads guilty to a lesser charge for reckless driving or careless driving. The defendant gets a reduced charge and lower penalty, and the government saves the time and expense of having to conduct a trial and gets a conviction for their numbers.

Conforming Reduction

A plea deal with a *conforming reduction* is very similar to the previous plea of pleading to a reduced charge. In some circumstances, the prosecutor's office will not want to allow a plea agreement to a reduced charge because the penalties for the reduced charge are significantly less than the original charge. The

government may want harsher penalties, in which case, the defense may present the option of what is called a conforming reduction.

Referring back to our DUI example from the previous paragraph, a conforming reduction would still allow our hypothetical defendant to plead guilty to a reduced charge from a DUI to reckless driving. Except in a conforming situation, the penalties would be the same as the regular DUI. So this defendant will still have to pay the same fines and serve the same amount of jail as under the original charge, except that the criminal conviction on his record will be for reckless driving and not DUI. This may sound like a minor benefit when the person still has to suffer the same consequences; however, in some situations like professional licensing, the final name of the criminal conviction can be of critical importance.

Reduction to Open or Undesignated Felony

In some situations, it may be possible to enter a plea deal for a felony criminal charge that starts as a felony but becomes a lower, lesser misdemeanor offense. Under the plea agreements, the defendant pleads guilty to an *open* or *undesignated felony offense*. If the person successfully complies with the requirements imposed by the court, they can return after a certain period of time and ask the court to change the criminal conviction from a felony and into a misdemeanor.

If they fail, by failing on probation or by not

abiding by the court's requirements, the court may enter the conviction as a felony. But if they succeed, the conviction on their record will be permanently labeled a misdemeanor. These arrangements can create strong incentives for defendants to remain law-abiding and in compliance with court requirements so that they can "earn" a misdemeanor at the appropriate time.

In dealing with the prosecutor, this argument can be persuasive and appeal to the idea of rehabilitative justice, especially in cases involving first time felony offenders. It is more in-line with the interests of society to reform individuals convicted of crimes. This arrangement provides them with the opportunity to show they are rehabilitated and to earn a misdemeanor rather than being permanently tarnished with a felony conviction, which will cause additional long-term problems.

Reduction to Non-Felony Offense

Felony convictions carry serious consequences, and an opportunity to accept a plea deal that reduces a felony charge to a misdemeanor is well worth considering. Usually, these types of reductions are seen for crimes that border two criminal categories. For example, a crime that is a low level felony but not low enough to be considered a misdemeanor, may be reduced and designated a misdemeanor in a plea agreement.

Reduction to Non-Criminal Offense

Similarly, any plea deal that reduces a misdemeanor criminal charge into a non-criminal offense is a welcomed opportunity to avoid a criminal conviction. These may take the form of plea agreements to accept responsibility for civil offenses, a reduction to a petty offense, or reduction to a civil traffic violation.

Diversion

Many jurisdictions have programs that defendants can enter to earn a significant reduction or even a dismissal of their criminal charges. These are often called *diversion programs*, and involve the defendant completing a class or series of classes over a certain period of time. These obligations can be as short as a weekend or lasting months or longer. They usually involve substance abuse counseling and treatment or involvement in community service projects. At the end of the program, the program provider typically notifies the court of completion, and the court in turn dismisses the charges.

Deferred Prosecution

Other jurisdictions may offer an alternative to resolving a criminal case called *deferred prosecution.* Under these agreements, prosecutors suspend prosecution of the case for a certain period of time in order to allow the defendant time to show further compliance with the law. For example, if a person is

charged with a criminal traffic violation, the prosecutor may suspend prosecution for six months.

At the end of six months, the person will be required to return to the prosecutor's office with a copy of the driving record. If their driving record is clean and they have incurred no further infractions, the prosecutor can voluntarily dismiss the case. If the prosecutor learns that the defendant has new violations, they can reinstate prosecution on the original charges. Like diversion, this provides defendants with the opportunity to earn a dismissal through continuous lawful conduct.

Misdemeanor Compromise

In certain jurisdictions and for certain crimes, it may be possible to negotiate a dismissal of the charges based on monetary compensation of the victim. In situations that involve property damage, such as criminal accident or criminal damage cases, it may be possible to come to an arrangement with the prosecutor's office whereby the property owner is paid restitution in exchange for dismissing the charges.

It is important to consider your local rules regarding contacting victims prior to attempting to reach out to the property owners/victims yourself. Typically, these arrangements are negotiated through the prosecutor's office, who then communicates through the victim's advocate and then to the victim. If an agreement can be reached, the court may consider dismissing the criminal charges given that there has been a compromise.

Dismissal

Dismissals **of criminal charges come in different shapes and sizes but are always cause of relief. Criminal cases are dismissed for infinite reasons, ranging from prosecutorial discretion and decisions to drop cases to criminal defense lawyers winning motions to suppress evidence.**

But some dismissals are better than others. Dismissals of criminal charges can come in two forms: (1) with prejudice and (2) without prejudice. When a case is dismissed with prejudice, it means that the case has been dismissed and can never be brought again in court. This often happens after a trial has already started and the defense moves to dismiss. In other hearings, a judge may rule on a defense motion to dismiss and order the dismissal with prejudice.

By contrast, a case that is dismissed without prejudice can be refiled and brought again against the defendant. This is often the case when the government has not processed a sample fast enough in a DUI case. The government will file criminal DUI charges, dismiss them prior to trial because they do not have results, and then refile the charges when the results come back. This can be extremely stressful for defendants, essentially forcing them to live the process over a second time.

There are often situations, however, when charges that are dismissed without prejudice are never refiled. It is best to defer to local attorneys who know the policies of prosecutor offices in your case to learn about their internal refiling decisions.

Ultimately, dismissals with prejudice are case victories, ensuring that the criminal charges cannot be refiled and that there will be no criminal conviction.

Acquittal at Trial

By far the most rewarding, but most physically and mentally taxing outcome, is to win a complete acquittal at trial. This means the government refused to dismiss the case prior to a trial, the defense rejected all plea offers, and the case proceeded to a trial. After all the evidence was presented, the judge or the jury returned a verdict of not guilty—meaning, all of the evidence was considered and the defendant was acquitted of all charges. The defendant cannot be charged again and their criminal record will show that they were formally and completely acquitted of all charges.

Next Steps

Having covered the 9 steps to a successful criminal defense case, it is time to bring it all together. The following is a strategy sheet we use in our practice to help people understand how we will be proceeding with their case. If you would like to download a copy, the full file is available at www.beginningtowinning.com/strategy.

Using this form, you can write notes about the key components of your case. As you see, this chart is structured more linearly than the previous example. Start with Step One and use the framework detailed in this book until you reach Step Nine.

As you complete this work, never forget to take care of yourself. The stress and anxiety throughout the process can be punishing. It is important to keep your energy levels up and your optimism high. This can be the difference between a good outcome and bad outcome, or a broken person and a strong person. Eat well, exercise, and when you go out for ice cream, treat yourself to two scoops.

I truly wish you and your family the very best.

Strategy Sheet

PREVAILING	NEGOTIATIONS	ADVOCACY	RESULT
	STEP 7	STEP 8	STEP 9
PREPARING	PLEADINGS	INTERVIEWS	DISCOVERY
	STEP 4	STEP 5	STEP 6
PLANNING	TRUST	GOALS	MITIGATION
	STEP 1	STEP 2	STEP 3

PREVAILING	NEGOTIATIONS	ADVOCACY	RESULT
	• Factual Dispute? • Evidentiary Problems? • Preservation Problems? • Constitutional Problems? • Legal Defenses / Affirmative Defenses? • Mitigation Materials? • Statutory Authorities for Reductions? • Specific Requests in Deviation?	• Arraignment / Initial Appearance • Pre-Trial Conference • Case Management Conference • Trial Readiness Conference • Settlement Conference • Change of Plea Proceeding • Evidentiary Hearings • Trial / Sentencing / Acquittal	• Acquittal / Not Guilty • Case Dismissed Pre-Trial • Diversion / Dismissal • Plea to Lesser Charge / Non-Criminal • Non-Mandatory Resolution • Conforming Reduction • Home-Detention / Work-Release • Non-Felony Resolution
PREPARING	PLEADINGS	INTERVIEWS	DISCOVERY
	• AZ. R. Cr. Pro. Motions? • Trebus / Pre-charging? • Evidentiary Preservation? • Disclosure of Witnesses? • Notice of Defenses? • Motion for Discovery? • Motion to Compel? • Motions in Limine? • Disqualification / Notice Judge?	• Officer background / training / etc? • Ability to observe / prior actions? • Compliance with policies / procedures? • Adequacy of training / re-training? • Distractions / inconsistencies? • Prior crimes / disciplines / history? • Non-disclosed developments / errors? • Profiling / discrimination / racism? • Pervasive Problem with Agency / Firings?	• Police report / Dispatch / Asst. Reports? • Officer notes / hand-written / logs? • Calibration / maintenance records? • Witness statements? 911 Call? • Dashcam / body cam / audio recordings? • Blood / breath / urine / chemical results? • Cobra / GPS / AVL / CAD data? • Officer discipline records? • Independent Testing / Results?
PLANNING	TRUST	GOALS	MITIGATION
	• Is an attorney necessary? • Private vs. public defender? • Lawyer / firm disciplinary record? • Extremely low fees / volume based? • Exclusive practice area or "Door Law"? • Proud displayed results? Good reviews? • Go to trial frequently or "See & Plea"? • Involvement outside Law in Community? • Team Approach or Solo Practitioner?	• Custody / jail / incarceration? • Criminal conviction / record? • Driver's license issues / points / insurance? • Reputation / professional licenses? • Immigration / military / security clearances? • Costs / fees / travel? • Medical / health / anxiety / mental / physical / substance / treatment concerns? • Other Specific Issues?	• Professional background? • Educational background? • Community involvement? • Social achievements / awards? • Family / children / parental support? • Volunteer organizations / help? • Future plans / goals / aspirations? • Health / mental issues? • Societal pressures / prejudices?

About the Author

Robert F. Gruler II was born and raised in Arizona, attending Arizona State University and Summit Law School. He is licensed to practice law in the State of Arizona, State of California, U.S. Federal District Court for the State of Arizona, and the United States Supreme Court.

Robert has been featured in numerous news stories, including being named one of Arizona's 35 Top Entrepreneurs Under the Age of 35 by The Arizona Republic in 2006. Robert is on the board of the nonprofit organization EricsHouse (www.EricsHouse.org), which is led by his mother Marianne Gouveia. EricsHouse helps people suffering from a traumatic loss as a result of overdose, substance abuse, suicide, or other tragic death.

Robert regularly speaks at drug and alcohol treatment centers across Arizona, presenting the Clean Slate Sobriety Workshop to help those in recovery clear their criminal records. Robert is the host of the Gruler Nation Podcast, a Scottsdale podcast that focuses on in-depth conversations with high performers throughout the community. Robert is also the host of a live show called Watching the Watchers, where he monitors and reports on police, prosecutorial, judicial and political misconduct in our criminal justice system. For the latest episodes or to join the Facebook group, please visit www.watchingthewatchers.tv.

Robert also helps entrepreneurial-minded

lawyers grow their practice by building marketing assets, systems, and procedures necessary to run a multi-million dollar law firm (www.grulermethod.com).

In his free time, Robert enjoys lifting weights and exercising, spending time with his family, traveling, attending self-development seminars, and hiking. Learn more about Robert's projects by visiting www.robgruler.com and connect with Robert on Twitter @RobertGrulerEsq.

Robert's law firm R&R Law Group is located in Scottsdale, Arizona. Visit www.rrlawaz.com or call (480) 400-1355 for more information. We love referrals.

Visit our website dedicated to the Beginning to Winning Project at www.beginningtowinning.com.

Appendix

Our Moral Imperative

We have a fundamental belief that we have a moral imperative and duty to keep people out of prison, out of jail, and off the criminal record books.

We believe that people are naturally born with an innate goodness inside of them.

We believe that a torn social fabric has led to an unjustly harsh, overly enforced, and perverted mechanism of justice.

We believe that only a vigorous, competent, and dedicated defense can restore the proper balance to an otherwise abusive and heartless system.

A better, modern, and moral system of justice should emphasize rehabilitation and not punishment.

To that end, we have dedicated our mission to the study of statutory authority, case law, rules of procedure, the modern science of technical defense, and most importantly the Constitution.

We believe we have the integrity, the knowledge, the

passion, and the dedication to change the way the justice system treats those whom we represent.

Our commitment is to implement these beliefs.

Our Mission

To fight for those preyed upon by the current legal system. To uphold the Constitution and the rights afforded to those under its protection. To protect those in need from being exploited by a cold legal system. To help good people in difficult situations maintain their humanity, recover their dignity, and return to living wholesome lives.

Our Vision

To help create a more equitable justice system. One that does not tolerate legal overreach. One that preserves the principle of innocence unless proven otherwise. One that considers the full human being and their needs in accordance with society's interests above profits or politics.

Our Principles

These are the 7 principles of representation at the R&R Law Group by which we operate and which we commit to you.

Compassion.

We understand that being charged with a crime can be one of the most trying and difficult times in your life. You face worry over your future, your reputation, and you are unsure of the potential outcomes. Our team understands this better than most. Each of us has been through our own trials and tribulations. Now, each of us are using our experience and our position on this team to treat you the way we would want to be treated ourselves.

Clear Integrity.

We believe in free and open information to help you make the best decision for your future. Whether that means hiring our firm, another firm, or choosing to forgo hiring a lawyer altogether, we do not hide the ball. We regularly refer potential clients to other criminal defense lawyers who we believe to be a better fit. We believe that helping people find the attorney that best serves their circumstances helps them, us, and all with their defense needs.

Core Competency.

We have built a team dedicated to this specific area of law. Our entire defense team focuses exclusively on defending criminal and traffic cases. Every hour, every day. Our attorneys collaborate with one another, sharing strategies that work and those that do not. This means that you receive the benefit of multiple minds with experience in virtually every court in Arizona.

Constant Communication.

Open and continuous communication is critical in establishing the trust necessary to succeed in a legal relationship. Knowing that you place your case, and in many ways your future, in our hands is our honor. We strive to make our team readily available to you throughout the course of your case and beyond. The horror stories of never being able to contact your attorney have no place here at the R&R Law Group. We welcome and encourage constant communication.

Compelling Defense.

A strong defense requires more than a scorched earth approach. In some circumstances, this is necessary. But in the majority of cases, a proper balance of focused legal investigation combined with a thorough telling of the human side of your situation provide the best results. Practicing in all four corners of Arizona, we know what balance to strike in each jurisdiction, in front of every judge, and with every prosecutor to get you the

best possible results.

Creative Execution.

We strive to find a solution that works no matter what your background or the circumstances of your case. This means not conforming to the standard traditions of thinking. The courts and prosecutors design their systems to move and close cases quickly. This is not usually in your best interest. We slow down the process, provide a compelling defense, and propose creative solutions that will work for you.

Continuous Care.

Our representation does not stop at the courthouse steps. We know that there is much more to you than your legal case, and we hope to help you move past this temporary hardship and beyond with success. Your legal case may close, but that does not mean our relationship has to do the same. We hope to build a lasting bond with you, having worked hand in hand with focus, precision, and integrity to successfully move past your current problem and into the future together.

CRIMINAL DEFENSE STRATEGIES
TO HELP YOU BEGIN, AND WIN, YOUR CASE.

Are you or a loved one facing criminal charges and scared about what to do?

Have you been disappointed and confused by the information you are finding (or not finding)?

Do you feel overwhelmed and lost about how to start defending your court case?

Every year, criminal defense lawyer Robert F. Gruler and his team use the strategies presented in this book to help thousands of good people facing criminal charges reach favorable outcomes in their case.

In this book, Robert explains:

- **9 main parts of a criminal case and how they apply to you.**
- **3 most important characteristics you must use to build your defense.**
- **10 examples of mitigation useful in negotiating a favorable outcome.**
- **Checklists, principles, and charts used in criminal defense cases.**
- **Tips for holding your lawyer accountable in your case.**
- **Much more, including links to information about additional online resources specific to your case.**

Throughout this book, Robert shares his firm's most successful strategies in order to help more good people charged with crimes secure favorable outcomes in their cases and find safety, clarity and hope in their lives.