The American Criminal Justice System

How It Really Works

How to Beat It

The first thing you have to understand about the American Criminal Justice System is that it is a complete fraud. The methods for overcoming a fraud are entirely different from those used to play a game that isn't rigged. You have to know what to expect in real life, not what the books tell you that you should expect.

You can win in a game in which the other side cheats continuously. You just have to know how the other side is cheating and then devise a strategy to overcome it. Let's start with the players.

The Judge

The judge is supposed to be an impartial referee. At the federal level, there is even a statute that says so:

> **§ 453. Oaths of justices and judges**
>
> Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of this office: "I, _ _ _ _ _ _, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _ _ _ under the Constitution and laws of the United States. So help me God."

In real life, the judge will (almost) always "put his thumb on the scales" in favor of the government. This is most readily seen in rulings on pretrial motions. No matter how much merit a motion may have, especially if a motion should result in a dismissal of the case, the judge will deny it.

Why? The judge is attempting to demoralize you into taking a "plea bargain."

Your strategy is to file pretrial motions in order to build a record for appeal.

The Prosecutor

Prosecutors routinely stack bogus charges on indictments for two reasons.

The first reason is that if the prosecutor can make you think that you are facing conviction for a lot more charges than he had the right to bring against you, then it is that much easier for him to terrorize you into a "plea bargain."

The second reason is that the prosecutor has a much better chance of persuading a jury that you are guilty (of at least something) if a jury has an impressive array of charges to convict you of. How are a dozen average citizens supposed to know what a bogus charge is and what isn't?

What the prosecutor did (stack bogus charges) needs to be pointed out in your pretrial motions.

The Defense Attorney

Counsel for the defense is often the biggest problem. You can survive the denial of your pretrial motions by the judge and the stacking of bogus charges by the prosecutor. Surviving the machinations of you own lawyer is another matter entirely.

In the last decade or so "defense" lawyers have come up with a way to get their clients to plead guilty and save themselves the bother of doing your pretrial work and defending you in a trial (which consists merely of "going through the motions").

What defense attorneys do these days is simply ask for repeated continuances, often for months at a time. The judge always grants the continuances and the prosecutor never objects. They're in on the game.

The defendant, after months (more often years) of sitting in a cockroach-infested jail cell, finally "breaks" and takes a "plea bargain" in order to get to a regular prison, where he will hopefully be able to get some fresh air and decent food.

Your objective should be to get to trial as soon as you have filed all your pretrial motions. The feds and all the states have what are called "statutory speedy trial" statutes. I.e., the judge can give you "excludable time" (the clock isn't running) while he is considering your motions. Once he thinks he has you demoralized, you hit him with a demand for speedy trial. At the federal level, that is 70 days.

Your attorney will tell you "he's not prepared." He is never going to be prepared. Get it through your head you *will* get convicted. The results will be the same whether your attorney fights your case tooth and nail (don't hold your breath on this one) or you turn your back to the judge and just sit there for the entire trial.

A *Faretta* Hearing

If you don't like the way your attorney is doing things you may be forced into a *Faretta* hearing, named after the Supreme Court case of *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). That case holds that you have a Constitutional right *not* to have a lawyer.

In this hearing all you do is get it on the record that you do not want to be your own lawyer. You only want a lawyer who will adopt your pretrial motions.

Most defense lawyers will refuse to adopt your pretrial motions, telling you they have "no merit" (even though a lot of them have never won a case) and the judge will tell you that you can't have "hybrid representation" (submit your own motions and have a lawyer at the same time).

Once you are done with the charade known as a trial (never, ever take a "bench trial," where one judge takes the place of 12 people on a jury), you go to the next step (the advantage you

have with a jury trial is that the prosecutor has to convince twelve people. You only have to convince one).

The Appeal

An appeal is where you show the next higher court where the lower court made mistakes. This is where the pretrial motions you have filed come in. You may still "get robbed" of the acquittal that were rightfully yours but the odds here are no longer 100% against you.

The Next Appeal

At the federal level your next "appeal" is actually called a Petition for Writ of Certiorari (or discretionary review). Your odds at the U.S. Supreme Court considering your case? Less than 1 in 200. Sounds pretty hopeless, doesn't it?

We're just getting started. We have a number of cards left to play.

Retaliation

Federal judges have an "image" they like to portray. Hold them up to ridicule and you can make them behave. Scrape them off the bench and his replacement is more likely to "do the right thing."

All United States Attorneys want to be federal judges. Ruin their chance at a judgeship and you can quite often get them to behave themselves.

One of the biggest problems American citizens have with judges and prosecutors is that there appears no way to discipline them. The U.S. Supreme Court has enacted doctrines (also known as judicial legislation) such as absolute judicial immunity, absolute prosecutorial immunity, qualified immunity (for police and other government employees), and the like.

If you can't discipline someone, remove him (or her). Here's how it is done, with examples.

Federal Judge Raul Ramirez

Judge Ramirez presided over the criminal case of an alleged drug king pin, Michael Montalvo. Montalvo filed a plethora of pretrial motions.

Montalvo scraped him off the bench in late 1990 in Sacramento, California with a four and a half pound Writ of Mandamus. Every mistake Ramirez made in the Montalvo case (a multitude of goofy rulings) was attached to the Mandamus. Sacramento attorney Tony Furr was a witness to this.

Here is what happened to the Writ of Mandamus:

10/31/90	FILED PRO SE PETITION FOR WRIT OF MANDAMUS; NOTIFIED RESPONDENT AND REAL PARTY IN INTEREST OF FILING. (CRIMATT) [90-7575] (ogm) [90-70575]
11/16/90	Order filed: The petition for a writ of mandamus is ordered filed w/out the prepayment of fees and is hereby DENIED. (Terminated on the Merits after Submission Without Oral Hearing; Denied; Written, Unsigned Without Comment, Unpublished. TANG, author; FARRIS; KOZINSKI) [90-70575] (mg) [90-70575]

It looks like Montalvo lost it, doesn't it? Yes, but only on paper.

Usually in a mandamus petition the offending judge (federal or state) gets a phone call from the higher court (usually not a friendly one) and *then* the petition is denied. Quite often, the lower court judge has an attitude adjustment.

Apparently the call Ramirez got was more than just a little unfriendly. Ramirez resigned as a federal judge shortly thereafter.

Federal Judge Joseph Hatchett

Federal Eleventh Circuit Court of Appeals Chief Judge Joseph Hatchett resigned on May 14, 1999, after 5200 separate citizens filed 28 U.S.C. § 372(c)(1)[1] Complaints For Judicial Misconduct against him. He is now in private practice in Florida.

Federal Judge Jon P. McCalla

Federal District Court Judge Jon P. McCalla received five (5) different 28 U.S.C. § 372(c)(1) complaints against him by December 2000. If you read those complaints, you will see that the newspaper accounts of his misbehavior (Memphis Commercial Appeal) track *exactly* the wording of the § 372 complaints. McCalla was forced off the bench in August 2001 to get anger management counseling for six months.

Where McCalla became vulnerable was in a case where he castigated a black lady's lawyer for *four hours* in a federal court proceeding. The cost of running a federal court, at the time, was $1,750 an *hour*.

The per hour judge cost of operating a federal court at the time was $1,750 (estimated). *See Specialized Plating v. Federal Environmental Serv.*, 975 F.Supp. 397 (D. Mass. 1997) (attorney sanctioned for wasting 3 hours of court's time). The calculation at the time—18 years ago—was based on a judge working ten hours a day which, due to the assistance of staff attorneys and law clerks, is clearly overestimated.

In general, the idea is to wreck the career of the misbehaving judge or prosecutor. The facts and the law are irrelevant. Only massive career-busting retaliation works. The downside is that you have to have a different strategy for each case. As Miyamoto Musashi ("A Book of Five Rings") and Otto Skorzeny ("Commando Extraordinary") both pointed out, a new strategy will

[1] Currently the complaint procedure is found at 28 U.S.C. 351.

only work once or twice. The third time your enemy is waiting for you.

With one exception. You file a RICO complaint against the prosecutor.

United States Attorney Alan M. Bersin

Alan M. Bersin was the U.S. Attorney for San Diego. He prosecuted a man named Kenneth Bauer. Bersin apparently "bent the rules" in the Bauer case.

Bauer retaliated with a RICO lawsuit ("bending the rules" is also known as "obstruction of justice," 18 U.S.C. § 1503, a predicate act under RICO). Bersin resigned as U.S. Attorney and became a public school superintendent. As of this writing, he is now the No. 2 person at Homeland Security.

A few years later a fellow named Jason Ripley was informed by the I.R.S. that he was about to be indicted for money laundering, for his part in a Ponzi scheme. The lawyers he went to told him that they could get him a 10-year guilty plea, which would cost him $100,000.

Instead, Ripley mounted a "pre-emptive strike" by suing the U.S. Attorney for the District of Minnesota, Rachel K. Paulose, making the allegation that she wasn't "playing by the rules."

Ripley was never indicted. He never did a day.

Other defendants pending indictment followed suit, filing one RICO action after another against her. She eventually resigned in November 2007 after several members of her staff themselves resigned in protest over her leadership. *See* Phillip Shenon, *U.S. Attorney in Minnesota Is Reassigned* (New York Times 11/20/2007).

How This Works

Every United States Attorney wants to be a federal judge. In order to become a federal judge, the following procedure is used.

1. A United States Senator who belongs to the political party that currently holds the White House puts three names in nomination for the position. E.g., if a Democratic Senator from California has an opening for a federal judgeship, he (or she) submits three names to the Obama White House.

2. The FBI does a background check and furnishes what they find to the White House. "Pick one."

3. If there are three names put in nomination and one of them has a string of RICO's wrapped around his or her neck, guess who does not get the nomination?

4. Confirmation of the nominee is usually a U.S. Senate rubber-stamp proceeding, too late in the game for our RICO retaliation to be effective.

The Media

Hold a judge up to public ridicule and the odds are you can make him behave. Remember the federal judge in New York who ruled in favor of some folks in a bad neighborhood on a search and seizure issue? He was castigated all the way up to Bill Clinton (the President). He reversed himself. The prosecutors didn't even have to put in a motion.

Politics

You can write a letter to your Congressman. Some office dweeb normally gets it, answers it, and tells you there is nothing the Congressman can do because of "separation of powers" (those words are found *nowhere* in the Constitution) or some similar nonsense.

There is a world of difference between a simple letter and hundreds (or thousands) of them. Let him know that there are a *lot* of pissed-off people ready to throw him out in the next election and he *will* "get involved."

What can a Congressman do? Here's what the lawyers won't tell you.

"Congress may amend a statute simply to clarify existing law, to correct a misinterpretation, or to overrule wrongly decided cases." *Wesson v. United States*, 48 F.3d 894, 901 (5th Cir. 1995) (citation and footnote omitted).

" … Congress may cure any error made by the courts." *Fast v. School District of City of Ladue*, 728 F.2d 1030, 1034 (8th Cir. 1984) (en banc) (statutory construction).

Congress has the "power to limit or contradict judicial doctrine by statute . . ." *Belgard v. State of Hawai'i*, 883 F.Supp. 510, 515 (D. Hawai'i 1995).

To sum up, you *can* win a criminal case. You just have to understand what you are up against and how to deal with it.

Even better, you can adopt the attitude of the era of sailing ships and muzzle-loading cannon:

"No quarter asked or given."[2]

[2] For those unacquainted with this phrase, to *give no quarter* has two related meanings, first, "don't show any friendliness to the enemy" and second, "take no prisoners."—Reference: WorldWideWords.org