



# SURVIVE JAIL

The Ultimate “How To” Guide for Surviving

A Jail or Prison Term

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STATEMENT OF LANGUAGE USED HEREIN: You will find that several words designated by many as profanity are used throughout this work. In that this is the same language used daily by inmates in county, state and federal penal institutions, the author chose to use those same words as a way of desensitizing you to their constant use inside jails and prisons. If you are in any way offended by the use of such strong language, the author apologizes, but also advises you to get used to it, because in the event you find yourself incarcerated, you will find that virtually every person inside your jail, from the lowest of inmates up to the warden himself, rarely completes a sentence without the use of such language.

STATEMENT OF GENDER REFERENCES: You will further find that the author chose to use the masculine form of nouns and pronouns within the body of this work when referring to inmates, lawyers, judges and guards. The author acknowledges there are females that hold each of these positions, and many of them do a very competent job. However, for consistency, and to avoid the clunky “he/she” types of designations, the author selected the masculine references since the vast majority of participants in the criminal justice system are males. No insult or denigration of the females who perform in these functions is intended.

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## Introduction

If you'd taken a poll 20 years ago, I probably would have been voted Least Likely to Go to Jail. In fact, over my 13 year career as a criminal defense attorney, I represented at least 10 people I'd attended a school with. When you figure into the equation that I attended 8 schools in 10-1/2 years, it would figure I'd run across someone I knew every now and then who was in serious legal trouble.

But no one ever thought it would be me.

I was your basic nerdish, almost straight-A non-jock student. Maybe even a teacher's pet once or twice. Not exactly the resume of your average felon.

But that didn't keep a judge in San Diego County from handing me 270 days in jail like he was giving away Halloween candy.

The hows and whys of my case don't really matter. Suffice to say I went from semi-respected attorney to inmate in just a few short steps. I found myself facing the ultimate survival challenge, one not likely to appear anytime soon on Reality TV. I had nothing to guide me but my wits and the bits of intelligence I'd picked up from my clientele over the years. Combining the two, I managed to do my time in remarkably easy fashion.

And I can honestly say there were times when I had a little fun on the inside.

If you're reading this book, then the odds are pretty good you think you might find yourself in a similar situation in the not-too-distant future. Or you just have bizarre reading tastes.

In either event, realize that even within the broad parameters of a "how to" book, every person's situation is going to be at least a little bit different from my own. That's just common sense. Just because I handled a situation in a certain way does not mean I handled it correctly. You're going to have to make a lot of split-second judgment calls, and I am not going to assume liability for how things turn out for you if you happen to follow in my footsteps.

However, there are certain situations that arise for just about every inmate, over and over again. If you know about these situations in advance, you can plan for them and be ready to deal with them in the best manner you can muster under the circumstances. Or at the very least be ready with a few options at your disposal.

But in typical sleazy lawyer (or, in my case, ex-lawyer) fashion, I am going to hide solidly behind the legal disclaimers in the front of this book. Mainly because I can't control how you are going to handle yourself on the inside. For all I know, you can't address a black man without dropping the "N bomb"...a guaranteed way to get out of jail early...and dead.

But all ass-covering aside, you're going to learn a lot of things you probably didn't know about being locked up in jail. You can accept it as fact, or choose to write it all off as bullshit. It doesn't matter much to me either way. I've been locked up, and I got through it in good shape. I'm hoping you'll be smart enough to do the same.

# I. AVOID JAIL ENTIRELY

## A Good Lawyer Can Make All the Difference In The World

“Q. What do you have when you have ten lawyers buried to their necks in sand?”

A. Not enough sand.”

*A joke my lawyer, Larry L. Fields, told my jury during his voir dire of the panel, in an attempt to demonstrate negative public feeling towards lawyers in general. Apparently my jury agreed with him. About the sand, that is.*

I cannot emphasize enough how important it is to have an attorney you trust.

You are about to turn over the decision making in the most important event in your life to a complete stranger. You’d better be able to trust that person with your life, because that’s exactly what you are about to do.

When you’re staring down the barrel of a criminal prosecution, you have two basic choices when it comes to legal representation: Hire your own attorney, or let the court appoint one to represent you. (Technically, there is a third option, representing yourself, but if you choose self representation, you’re too fucking stupid for words and totally beyond my help, so quit reading right now and start building up a piggy bank that some trusted friend or relative can dole out to you during your impending long prison stay).

If an “appointed attorney” sounds familiar, that’s because it’s a part of the “Miranda Warning” every TV cop since 1969 or so has been reading to whatever poor s.o.b. is being hauled away. “You have the right to speak with an attorney before questioning; if you cannot afford an attorney, one will be appointed to you by the court, yada yada yada.”

How you proceed is up to you. Most people with at least a minimal amount of good sense and a few extra dollars will spend those dollars to hire the best attorney they can afford. The rest just wait for the court to appoint an attorney, and pray they get a decent one.

What never ceased to amaze me was the number of people who should have hired counsel, and obviously had the money to do so, but chose to let the court appoint their counsel for them.

When I was in practice, I spent my first five years working off “The List.” The List was how we referred to the process of obtaining court appointed cases. If you were not too busy, you’d go “Fishing in F” for new cases. Department F of the then-Municipal Court was where all the new felony cases were first routed for arraignment, which is the process where the accused was first informed of the charges filed against him and entered his not guilty plea. This was also where the majority of appointed attorneys got their cases.

It's been said that new doctors get to practice their craft on dead people (cadavers) before they ever see a live patient. New attorneys don't get to practice on the dead before they get their first living client. New attorneys get to practice their craft representing the poor (or the wealthy that are too cheap or too stupid to hire their own attorney).

Over the years, I lost track of the number of clients I represented, free of charge to them, who actually made more money in a year than I did. I specifically remember this one clown who walked out of court with me after his arraignment. We stood in the parking lot and spoke briefly about his case. I then I got in my 10 year old Chevy Malibu and watched in amazement as he drove away in a 2 year old Mercedes.

I guess you can't afford to buy a car like that unless you are willing to scrimp in other areas, such as paying for your own attorney.

I always prided myself on the fact that I tried to give my "free" clients the same level and quality of service I gave to my paying clients. I was fired fewer than 5 times in 13 years, so I guess most of my clients were happy with the service they received. Happy clients who are not paying for your services have no incentive to spend their money to hire someone else.

However, there were plenty of attorneys of my acquaintance who were less than attentive to their appointed clients. I know because I ended up being hired by many of these unhappy potential felons over the years. Alcoholics, drug addicts (including one guy who was arrested three times by undercover cops, twice by the same cop), wife beaters, cop biters, and others.

And these were all the attorneys.

The truth is that there are some very good attorneys who work on an appointed basis for the poor (or those with poor judgment), both as public defenders and as private attorneys appointed by the court to their case.

There are also a bunch of boneheads that view their clients as nothing more than a source of easy money. Money they use to pay their bills, buy their rock cocaine, or whatever.

The problem with accepting an appointed attorney is you have no control over who you get...Sam Superattorney or Charlie Crackhead.

If you have money, any money at all, you should strongly consider giving all of it to an experienced criminal defense attorney. One who can guide you through the jungle that is a criminal prosecution and, hopefully, bring you out on the other side in reasonably good shape.

The big question is, then...

## **HOW DO I FIND A GOOD CRIMINAL DEFENSE ATTORNEY?**

The absolute best way I can recommend to you is to get a referral from someone you know and trust who has used that same attorney in the past and gives him a solid recommendation. Instead of closing your eyes and blindly stabbing at names in the phone book, go with an attorney who has performed well for someone you know. At least you will have a little information to work with when negotiating a fee, not to mention a little peace of mind, knowing you're represented by someone who has gotten good results in the past for a trusted friend or family member.

If you can't get a direct referral from someone you know, a second and almost as effective method is the old "friend of a friend" method. Maybe your friends and family aren't a bunch of arch-criminals in constant need of legal representation. But the odds are pretty good that you have a friend, or neighbor, or coworker, or someone who knows someone who used a good criminal defense attorney in the recent past. Find out who they used and don't be afraid to drop their name as the source of the referral. Nothing warms the heart of an attorney more than to know that he has a good reputation in the community, and that community is recommending him to the other unfortunates who need legal help.

I'm not kidding.

We all love to hear that our old client so-and-so said we were really good at what we did, and that you should hire us on the spot. Sometimes that warm feeling actually translated into a slight fee reduction when the prospective client was a little short on funds. You know, since he was a friend of so-and-so and all, I cut the fee or took it in payments.

Sometimes.

Regardless of the fee issue, you want to find someone you feel comfortable with and trust to guide you through the jungle of criminal prosecution. If a certain attorney comes highly recommended, but you don't feel comfortable dealing with him, then keep looking! Never hire someone you don't trust to represent you in a criminal defense matter, even if they come highly recommended.

It's your life and your money. That means, in at least this limited instance, you actually have total control. It doesn't exist anywhere else in the criminal justice system, so use this control wisely, and hire someone you trust.

But what if no one in your circle of influence can give you a referral? How do you find a good attorney in this instance?

Hit the library or the internet, and search back issues of your local newspaper for news stories about local trials. Look for the names of attorneys that:

1. Appear over and over again, and
2. Either win their cases outright, or seem to get good deals for their clients.

It should be pretty easy to spot stories where an attorney won a case outright...normally the reporter mentions this fact in both the headline and in the first couple of paragraphs.

The more difficult job is deciding if an attorney got a good deal for their client.

One clue to look for is a quote from the “victim” in the case. If the victim seems really pissed off, then the accused probably got a pretty good deal. Another clue to look for is comment from the prosecutor that sounds like sour grapes. If they blame anyone for being forced to offer a deal for less than what the accused deserved, then the accused again probably got a pretty good deal in the case.

The reason you want to look for certain attorney names that appear regularly in the paper is because they are the attorneys that specialize in criminal defense law. They are probably in court every day, often on several cases at the same time. They tend to know the press, and can sometimes get sympathetic press coverage if your case is newsworthy. They are, at the very least, very good at getting their own names in the paper.

Publicity Pays! A well known criminal defense attorney has more influence, tends to get better deals for his clients, and actually KNOWS how to try a case before a jury. If your attorney has been around for a few years and nobody at the corner bar has ever heard of him, chances are you have a slacker that doesn't know his ass from a hole in the ground. Find somebody else. Somebody good at what they do, which is defending the criminally accused.

Also, the guys who are in court every day tend to have decent relationships with prosecutors and judges. This can be crucial when it comes time for plea bargaining and sentencing. Most of the parties will deny it up and down, but I've seen the “old boy network” in action too many times to put even a tiny amount of faith in their denials. When you have two cases that are essentially equal, Prosecutors and Judges will regularly offer better deals to defense attorneys they know and respect than they will to someone they do not know, or for whom they have little or no respect.

This good working relationship can mean the difference between jail time and a non-custodial sentence. A good attorney with a good working relationship with the powers that be can sometimes keep you out of jail, even if you deserve to be there.

But assuming there is no one on Planet Earth you know or trust enough for a referral, and the newspapers are no help, how can you find a qualified attorney?

The last two effective methods are to use a Referral Service or the Yellow Pages.

Most Referral Services are run by County Bar Associations, which are nothing more than a group of lawyers located in the same region (usually city or county). Most of these Services are populated by attorneys who pay the Bar Association for each referral they receive. Since the Bar Association is governed by their own local peers, you would think most attorneys would work extra hard to do a good job so their colleagues would not hear about what a “dump truck” they are (“dump truck” being a favorite client phrase used to describe a criminal defense attorney who does the absolute minimum necessary, and seem more interested in making money than finding justice for their clients).

Like anything else, the truth is that some of the attorneys on those lists are very good, some are average, and some should be forced to repeat law school, since it’s obvious they didn’t learn very much the first time around. There is a Latin phrase, *Caveat Emptor*, which means “Let the Buyer Beware!” If you decide to use a referral service, then *Caveat Emptor*, baby, *Caveat Emptor*! If the service gives you three names, call all three and *make and keep* all three appointments. Don’t hire the first person you speak with, just because he says all the things you want to hear. Keep the other two appointments! You can always come back and hire Attorney #1 later.

Last, and quite honestly least, pick up your phone book and turn to the Yellow Pages. In an average sized city, you’ll find anywhere from 15-250 pages of attorney ads. It’s absolutely overwhelming the first time you do a Yellow Pages search. Page after page of double-truck (2 page) display ads, hundreds of smaller display ads, column after column of names, it makes you want to start looking for countries that have no extradition treaty with the United States.

Start by making things simple. Skip the big display ads. These are really nothing more than big love letters attorneys write to themselves anyway, and very few will ever give you enough information to make an informed decision. A few may tout past good results for old clients, but the disclaimers always read “past results are no guarantee of future performance.”

If you are forced to use the Yellow Pages, at the very least focus on the attorneys who advertise themselves as Criminal Defense Attorneys. It may seem obvious (at least it does to me) but on more than one occasion I saw an attorney I knew to be a Tax or Probate specialist in court representing someone on a DUI or a petty theft case. There is no law against an attorney trying to branch out into different areas of legal practice, but you don’t want to be the guinea pig he practices upon. Spend your money wisely and hire someone who has been practicing criminal defense law for at least a year or two.

Remember...it’s your money AND your ass, not just your money like it is in all other types of cases.

In most Yellow Pages, there are columns of names and phone numbers, each column broken into different specialties. Look for the column entitled “Criminal Defense” and start calling people for appointments. Most attorneys will give you a half hour or hour of their time for free, to discuss your case and see if they can help you out in any way.

In truth, 99.9% will always be able to help you out, in one way or another. Even if all they do is go to court and hold your hand, it's better than going in there alone. So don't let the attorney's statement "I think I can help you" be the one factor that persuades you to hire him.

Instead, try and get a feel for the attorney as a person. Is this someone you think you can relate to, work with, and actually feel comfortable hiring to represent your best interests in court? If so, then put their name on your short list of possible hires and move on to your next appointment. Never, ever hire the first attorney you speak with, the first time you meet them. Always check out two or three others before you decide. You can't really test-drive an attorney the way you would a used car, but you can at least spend a little time checking out the field before you decide to hire one.

## **WARNING!!!!**

If you use the Yellow Pages to find an attorney, you need to be aware of certain services, run by law firms, which are nothing more than modified referral services in disguise. You call a phone number listed for a Law Firm and someone will usually travel to your home to meet with you and discuss your case. Many times this person is not an attorney, but will be dressed in a suit and tie and will give the *appearance* of being an attorney. In fact, this person is a salesman (sometimes called a Case Manager), hired by the attorneys to sell you on the idea of hiring their referral service. Once you sign a contract and pay the fee, the case manager then assigns your case to a specific attorney, who pays the service for the referral.

Many people are not sophisticated enough to realize the case manager is not going to be the person who represents them in court (he cannot, since usually he is not even a lawyer). They've just hired an attorney they've never even met. Sometimes it works out okay, and sometimes it turns into a complete disaster.

If you hire someone out of the phone book, ask them point blank if they are going to be the person who represents you in court. If not, ask to meet the real lawyer before you sign any contracts and pay any fees. If they give you any grief, or tell you that they just don't do business that way, then get up and leave (or throw them out of your house). It's your life and your money that is on the line here. Don't put either one at risk just because some salesman makes a good presentation.

Along those same lines, be aware that just about any attorney you do hire (or even the ones appointed by the court) will have conflicts with their time on occasion, and need a colleague to appear in court with you on their behalf. Normally this will be at a meaningless hearing (and there can be one hell of a lot of those!) so don't sweat it if an attorney other than the one you hired shows up at your arraignment, or at a motion setting hearing.

A good attorney will let you know in advance that someone else will appear in court with you on their behalf, whenever advance notice is possible. But sometimes last second

emergencies pop up, so don't get your panties in a twist if it happens once or twice. If it begins to happen regularly however, then you need to have a talk with your attorney and find out what exactly is going on. Never be afraid to ask questions! Remember, it's your life that is at stake here. You are entitled to as much information as you can gather, and no decent attorney will get pissed off if you want to ask questions about the process. Just don't ask the same questions, over and over again. That WILL piss them off, every time!

So you're going to do the intelligent thing and hire your own attorney. The #1 question every single client ever had, even before they wanted to know how I thought their case would turn out, was

## **HOW MUCH IS THIS GOING TO COST ME?**

One of my favorite scenes in the movie "National Lampoon's Vacation" was when Clark Griswold cracked up the family station wagon on a dirt road in the desert, and had to be towed into a repair station in the middle of nowhere. In reply to his question "How much is this going to cost me?" the mechanic replied "How much you got?"

In all honesty, I rarely knew how much other attorneys charged for a particular case, and I never cared, either. I charged what I thought the case was worth, and you, as the prospective client, either paid me or moved on to someone else. Most attorneys have the same attitude.

The real question you should be asking is "How much am I willing to spend to try and get myself out of this jam?"

Anyone with brains will spend every available penny, and go into debt for the rest, to hire the best attorney they can find. This is not the time to wait for the famous K-Mart Blue Light Special.

I know of several attorneys who run phone book ads that have a coupon good for \$500 off any of their services. What a Crock! They are going to charge you exactly what they think the case is worth, and your \$500 coupon has already been figured into the fee they quote. If you are shopping for a criminal defense attorney and using coupons, all I can say is Enjoy Prison.

So if you are still asking "How much should I pay?" then my answer would have to be "Whatever it takes to get you the attorney you want to hire." Save the coupons for the grocery store.

That's about all there is to say about hiring an attorney. Just use your common sense, and realize that this is going to be one of the more important decisions you ever make, so take as much time as you have available to you, and shop around for the best fit between you and your counsel (and price be damned!).

## II. PLEA BARGAINING TO AVOID JAIL

Slightly more than 97% of all criminal cases are resolved without going to trial. A small percentage are dismissed due to any number of reasons, and a larger percentage are held in abeyance (meaning an alternate disposition is worked out, usually involving the accused entering a drug treatment program or other type of counseling without entering a plea of guilty). The rest are resolved by Plea Bargaining.

Plea Bargaining is nothing more than the Prosecuting Attorney and your Attorney working out a deal whereby you plead guilty to a lesser charge than the one you are now facing. Normally this also means you will face less jail or prison time than you would if you went to trial on the current charges and lost the case. Many times it can mean you will not go to jail at all...you simply are placed on probation and ordered to sin no more.

Plea Bargaining normally becomes a hot issue every time the office of District or Prosecuting Attorney comes up for election. Everyone who runs for the office makes all kinds of ridiculous statements about how they will stamp out plea bargaining and demand that all those convicted of crimes in their district serve the maximum allowable time.

What a bunch of bullshit.

In truth, most courts are strained to the maximum by the number of cases that actually go to trial (less than 3% of the number of cases filed annually). If plea bargaining were eliminated, it would take less than 4 weeks for the entire criminal justice system to collapse, and virtually everyone awaiting trial would go free, assuming no radical changes to the U.S. Constitution.

By way of example, I heard a story a few years ago from a guy I knew who prosecuted cases in Alameda County (Oakland), California. He said they had so many murder cases filed and pending trial in Oakland, and so few courtrooms, that anyone charged with a less serious crime than murder (and that is pretty much all of them!) could snag a Get Out Of Jail Free card simply by agreeing to continue their trial dates for a year or more. Agreeing to this continuance meant they got out of jail on their own recognizance, without having to post any bail.

All it would have taken was a handful of these guys to say “No, I want my speedy trial as guaranteed by the United States Constitution” and Alameda County would have been in deep shit.

So Plea Bargaining is going to be with us for the foreseeable future, and there is an almost 100% chance you are going to be offered a bargain before you get too far along with your case.

Each court operates differently, but normally after you attend your initial arraignment, the court will schedule some sort of Preliminary Hearing. This is a hearing where the court

will listen to the evidence presented by the Prosecutor, and decide based upon that evidence, if there is enough to justify “Binding you over” for a jury trial.

If the law allows, at that hearing the Prosecutor can call only a single police officer to testify to the statements and evidence gathered during the investigation in your case. Otherwise, one or more witnesses in your case will appear and testify. If there is even a slight connection between you and the crime, you can count on getting “bound over” for trial.

Prior to the start of this hearing, however, most jurisdictions will allow the prosecutor to make you an offer...plead guilty (or “no contest” if allowed) to one or more charges for a limited sentence, and avoid having that hearing. This is where a good attorney can make all the difference in the world.

Most courts have a policy that the best deal is offered prior to the start of the preliminary hearing. The idea is, if you confess your sins early, and save the taxpayers the time and trouble of putting on a full blown hearing, you’ll be rewarded with a better deal. Turn them down, and the deals just get worse as time goes on.

In truth, sometimes it works out that way, and sometimes the offers keep getting better and better. It depends on the charges, the quality and quantity of witnesses for and against you, and a variety of other factors your attorney can explain to you that are present in your case and in no others. This is why in the very beginning I warned you that no two cases are alike...each has something about it that makes it very much different from all the others. The guy next to you may be facing identical charges, but his case is radically different from your own.

A good attorney will lay out the pros and cons of taking a deal at this stage. Many times, additional investigation conducted by your attorney as the case progresses turns up evidence not available at the time of the Preliminary Hearing, and your case can become significantly stronger. Stronger cases usually translate into better deals offered before trial.

After the question about fees, the next most asked question I ever fielded from clients was:

## **IS THIS A GOOD DEAL?**

There never was a hard and fast rule to use to decide if a deal being offered was a good one or a bad one. In one case, a deal with no custody time offered could actually be considered a bad deal, whereas I had one case where the client was offered twenty years in prison, and all things considered, it was a pretty good deal. (Okay, I admit it...it was a shitty deal, but when the DA has a Hollywood quality security camera tape of you committing the armed robbery with more than a dozen victims alleged as separate counts, and various enhancements and prior convictions adding up to approx. 110 years worth of prison time, 20 years doesn’t sound too bad!).

Probably the best way to decide if a deal is good or not is to first be absolutely honest with yourself. Did you do what you've been accused of doing? If so, there is a better than even chance you're going to be convicted at trial, and after a jury says "guilty" you can pretty much forget about any plea bargaining. You're going to get whatever the judge feels is an appropriate sentence, and I can tell you from painful personal experience the judge isn't going to care too much about the deals you were offered in the past.

So if you're offered something that carries 25% or less of the overall time you are facing if you are convicted as charged at trial, I always felt that was a pretty good deal in most cases. In California, most felonies carry a sentencing range that runs from probation and no jail time, up to one year in jail (while on probation), to a sentence of no probation and 16 months (low term), 2 years (mid-term) or 3 years (upper term) in state prison. If a client had never been in trouble before, there was a 95% certainty that probation would be offered as a plea bargain (and even after losing at trial, I cannot remember a single client I ever had who went to prison on their very first felony conviction other than those involved in sex cases or causing great bodily injury or death to someone else).

However, even if probation was offered, the court had the discretion to sentence the client to as much as one year in the county jail, and under the guidelines in place at the time, the client would do anywhere from  $\frac{1}{2}$  to  $\frac{2}{3}$  of that time in custody.

The best plea bargains were the ones where the court and the prosecutor agreed that the client would not serve any time in custody at all. Assuming the client was guilty of something, these deals were the easiest to sell. They were also the hardest to obtain, as courts don't like to be limited in their sentencing options, and rarely agreed to go along with a "no custody time" deal in felony cases. Again, this is based on my personal experience in handling criminal cases over a period of about thirteen years, in courts up and down the state of California...always listen to and rely upon the advice of the lawyer you've hired as he can give you the scoop on how things are done in your jurisdiction.

On the flip side, there are times when bad deals are the only ones on the table. The rule of thumb I always used to decide if a deal was bad, was to try and estimate what the client would get if he went to trial and lost. If the offer wasn't much better than what I thought he would get if he lost at trial, I'd tell the client I thought the deal sucked and if he went to trial, it probably wouldn't get much worse.

For example, petty theft with a prior conviction for theft is a felony in California, and carries the sixteen months, two years or three years in state prison if convicted and probation is not granted. I lost track over the years of how many times a client was offered the middle term of two years as a plea bargain. If he lost the trial, the most he would get (at least in this example where there are no other enhancements to add to his time) was three years. Since California prison inmates served  $\frac{1}{2}$  of their sentence before release he would only be risking an actual six extra months in prison if he lost at trial and the court gave him the maximum three years.

That is a bad plea bargain offer.

In fact, I would classify this one as being far shittier than the twenty years offered where 110 years was the maximum prison sentence available. At least a twenty year offer was less than 20% of the time the client faced. In the petty theft case the client had almost no incentive to take a deal, since six months either way isn't that long for most people. That means everyone has to withstand the stress of going through a jury trial on a case that would probably have settled if the offer had been more reasonable, all because of a lousy six months difference in time.

If you're at the stage where a plea bargain is offered, I cannot stress enough that you need to rely upon the expert advice and counsel of your attorney. This is one of the situations I spoke of earlier, where you are literally putting your life and your future into the hands of a complete stranger, so I hope you have chosen wisely and hired someone you can trust implicitly.

But remember....

While your attorney can make a lot of procedural decisions for you, in order to make the case move along as smoothly as possible...

### **THIS IS NOT ONE OF THOSE DECISIONS!**

The decision to accept a plea bargain is *yours and yours alone*. Maybe your spouse or parents will have a say in the matter, but the ultimate decision to plead out or reject the deal and go to trial is all yours!

Your attorney can and should give you all the information available so you can make an informed decision, and one you can live with. At the risk of sounding like a broken record, I hope you've done the smart thing and hired someone you can trust, because this is ***THE JOB*** you've hired them for! If your attorney is telling you that based on his experience and the facts of your case the deal being offered is a good one, and you don't trust your attorney, you are, in a word, fucked! So avoid all the trauma and hire well from the beginning.

After all, when the case is finally over, your attorney will go back to his office and start working on the next client's case. You are the one who has to do the time, pay the fine, pick up the trash on the side of the highway, or whatever. So you need to make the best decision, based on all of the quality information you can acquire from counsel you can trust.

So what are the risks of going to trial versus taking a plea bargain?

First and foremost, there is the chance that new information (bad information) will surface before or during trial that will put you in an even worse light than you were in prior to trial. Witnesses decide to shade their testimony, or recall new information that was not included in a police report (if the witness is a cop the term we always used was

“testilying”: testimony designed to insure your conviction even though it is completely false and only arises during a trial, never in a previously provided police report...this is the number one reason why most people caught up in the system hate cops). Also, during the plea bargaining phase your average prosecutor will be working on 20 to 40 different files, so the odds are good he hasn't taken a real close look at yours. Yet.

Once trial is set and all plea bargains are rejected, you become the focal point in his life, and he's going to have your file memorized prior to trial. He may (and most likely will) run across facts (or statements, or evidence, call it what you will) that he did not notice during the plea bargaining phase. He will use this new information to justify asking for a significantly harsher sentence should you lose at trial.

On your side of the courtroom, your witnesses may turn out to be shit, and either not show up for the trial (a crime in and of itself), or worse, show up and do such a horrible job that you would vote to convict yourself if they'd let you in the jury room.

You could even let yourself down by making a horrible impression on the jury should you take the stand and testify. For the past 50 years, your jurors have spent hundreds of thousands of hours watching court room dramas, from Perry Mason and The Defenders in the fifties and sixties, to L.A. Law and The Practice in the nineties and two thousand's. They expect every witness (including you) to come across as believable and professional as those actors on T.V.

It ain't gonna happen, Sport!

The closest they'll find are the cops, who are pretty much nothing more than professional liars. Add to that the fact that most jurors have had nothing but positive contacts with the police during their lifetimes, and you have all the ingredients for a Greek tragedy, starring You!

Then there is the stress aspect...you're only on trial for your life. You can cancel any plans you might have for a good night's sleep or to fully digest a meal during this timeframe. Your body is going to betray you in new and unusual ways just about every hour that your case remains unresolved. Upset stomachs, headaches and diarrhea are the most common ailments. Skin rashes, hair loss, excessive body odor are also regular issues for defendants. You'll be short with the people you love (or at least the ones who love you). If you have existing addictions to drugs or alcohol, you'll probably amp up your use of your substance(s) of choice, which makes you worthless to your attorney, and puts you at high risk of being jailed once you arrive in court, for being under the influence of whatever.

There are other negatives I could mention here, but hopefully you get the picture. Being the accused in a criminal jury trial is probably *the* most stressful event you'll ever endure. Hopefully you have a sense of humor which will carry you through these times. Or at the very least, a strong stomach.

So with all of these negatives surrounding a jury trial, why would anyone want to go through that process?

I can only think of three reasons.

**Reason Number One:** You got a shitty plea bargain offer. Like I mentioned earlier, when the only difference between the time offered in your plea bargain and the maximum time you could do if you went down in flames on all counts in a jury trial is six months, you might as well roll the dice. You never know when lightning will strike, the gods will smile, and a jury will unanimously decide to send you home a free man. When the only cost to find out if this is one of those times in six months, I say put twelve in the box and let's get started.

**Reason Number Two:** The case is falling down around the ears of the prosecutor. Even with all the negatives I just mentioned about your going to trial, sometimes it hits the prosecutor even worse. Witnesses take off and cannot be found, evidence is lost by the crime lab and will not be available at the time of trial, a continuance is needed by the D.A. but denied by the court (this one is extremely rare, but happened twice during my career), all are good reasons to take a shot at trial. If the jury is empanelled and a witness called, the D.A. is locked into the case. If he dismisses after this point, due to lack of witnesses or evidence, the case is over for good, my friend, and cannot be re-filed at any time. It's called double jeopardy. The only way he can retry your case is if the jury cannot reach a unanimous decision, and a hung jury is declared. Catching a hung jury is better than losing, and can often times force the D.A. to make a better plea bargain offer the second time around. But your attorney will usually only be truly happy with a not guilty verdict. I can only assume you would share in his joy.

**Reason Number Three:** You are genuinely and truly not guilty. The odds are overwhelming that this does not apply to you. As much as it pains me to admit it, the police normally catch the right guy. I know, I read the papers and hear about the occasional innocent man released after serving 30 years in prison, thanks to a bunch of lying cops and lack of DNA evidence at the time of the trial. But let's face facts. Even if you read about ten of these guys, every single day for a year, that would only make a total of 3,650 men. In an average year, well over 5 million people are prosecuted for offenses ranging from traffic violations to murder. 3,600 guys make up a very small percentage of that total.

So I am going with the odds on this one, and assuming you are guilty of at least something you are being accused of. If this is true, and only you know in your heart of hearts if it is, then you probably should drop the wounded innocent bullshit façade and take a deal! Don't expect to bluff your way past a jury, because it normally just doesn't happen. For all their deficiencies, juries have a pretty good sense of whether you are telling the truth or not, and only rarely do any jurors ever come back and say they now have doubts about the way they voted. Most just convict you, and get on with their lives, never giving you another thought.

And God help you if your trial judge thinks you lied during your trial! If you weren't looking at a maximum sentence before trial, you will be now! I've had too many clients snatch defeat from the jaws of victory, because the judge thought they were trying to lie their way out of trouble. Whatever good I was able to do on their behalf prior to their taking the stand to testify disappeared like a fart in a windstorm.

So if you're guilty, and you know that you are... Take a deal, dummy, and avoid all the trauma associated with trial.

But what if you are truly not guilty of anything at all?

Every lawyer can tell their own collection of stories about representing someone they truly believed was innocent of any and all charges. I had a half dozen or so clients who fit that description, at least in my own mind.

I hated representing each and every one of them... at least at the time.

Nothing is more nerve wracking to a lawyer than the prospect of having an innocent client convicted and serving time behind bars.

I thank God that in the three cases where I went to trial with someone I thought was truly innocent, their juries agreed and found them not guilty.

So much for your lawyer's state of mind. What about yours?

If you were truly not guilty, and you were my client, in most cases I would tell you to fight the case out. Turn down any and all plea bargains, and take the case to the box.

However, and this is a HUGE however, there are going to be times when you're not guilty of anything but you need to seriously consider taking a deal to avoid super serious consequences should you lose the case at trial.

I can vividly recall one case where my client was accused of molesting two boys (his own sons) and was facing a mandatory minimum nine years in prison if he lost the case. This was in Kern County, California, which is a county nationally known for throwing damn near everybody into prison in the 1980's for molesting kids. Of course, twenty years later, we're finding out that almost every single case was pure-D horseshit from the very beginning, and Appellate courts are letting the defendants out of prison. Finally. But only after serving ten to twenty years of actual time inside.

My client did not do the things he was accused of. Even the acts themselves were described in such fantastical fashion by the boys it was obvious that someone was coaching them to say these things, and doing a piss-poor job of it at that. Learning that the clients ex-wife had moved in with a guy fresh out of prison, who was going around town telling everyone he knew that he was going to adopt the boys as his own once their daddy was put away forever cemented in my mind my client's innocence.

The deputy D.A. on the case, who was a bonehead as a D.A., and now is a bigger bonehead as a judge, didn't see things quite the same way I did, but offered my client a deal to plead to one count of molesting as a misdemeanor, with no requirement that he register as a sex offender, and he would get out of jail that same day.

So the client has to decide: press his claims of innocence and risk anywhere from nine to 24 years in state prison (as a child molester no less... more on that later) or plead no contest to something he did not do and go home in about six hours.

He spent less time thinking about it than I thought he would, given he was going to plead to a sex offense (a misdemeanor, but a sex offense nonetheless) and decided to take the deal and go home that same day.

Obviously, I don't know the facts of your case, but you might find yourself in a similar position: falsely admitting guilt in order to minimize your exposure to jail or prison. The case I just told you about was an extreme one, but similar situations exist for less serious cases, every single day in courts across America.

If you happen to be one of these unfortunates, then you have to weigh out the risks of going to trial and the possible punishments that await you should you lose, the financial burden of paying for a jury trial (and I know for a fact those are not cheap), and the stress factors that will affect you and your family. It might be better for you in the long run to abandon whatever principles that drive you to want a trial and just plead out to get the case over with. If it comes down to a question of balancing many years in prison versus going home today, the decision might be an easy one for you.

If you are faced with this kind of decision, you're going to have to rely heavily upon the advice of your attorney, so I again warn you, beg you, cajole you, and even outright order you to hire the best attorney you can afford to help you make this most critical decision. You need a solid, accurate estimate on your chances of winning your case at trial before you decide to admit guilt for something you didn't do. It's a decision you're going to have to live with for the rest of your life, so you need the best advice possible to help you make the decision that's right for you.

So you've been found guilty. What happens now?

This may be the most important, critical stage of the criminal proceedings...it's your last chance to avoid going to jail. The things you say and do at this point will pretty much affect the rest of your life, so think long and hard before you say or do anything that might have an impact on the judge who will impose the sentence upon you.

If you've followed the one piece of advice I've hammered into you over and over (hiring a good criminal defense attorney), your attorney will be able to guide you through this process and advise you on the options available to you. Unless you've been found guilty of an offense that carries a mandatory prison sentence, you have a number of options that might be available to you to avoid spending even one night behind bars.

THIS CONCLUDES THE FREE SAMPLE CHAPTERS OF “SURVIVE JAIL.” I HOPE YOU FOUND THIS INFORMATION TO BE HELPFUL IN YOUR JOURNEY THROUGH THE CRIMINAL JUSTICE SYSTEM.

THERE IS A LOT MORE INFORMATION YOU NEED TO KNOW TO GIVE YOURSELF THE BEST CHANCE TO SURVIVE A CRIMINAL PROSECUTION AND CUSTODIAL COMMITMENT, AND YOU CAN HAVE THAT INFORMATION IN YOUR HANDS IN A MATTER OF MINUTES BY VISITING [www.survivejail.com](http://www.survivejail.com) AND PURCHASING A COPY OF MY BOOK.