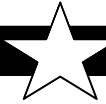

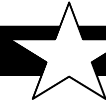

Federal Criminal Law News

PRE & POST CONVICTION LAW PUBLICATION

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Busted: Now What?

Getting arrested, whether it is by the Federal Government or the State is a traumatic experience. It usually is based upon an Indictment or action that occurs at the time the arrest is perfected. If you are indicted, a warrant for your arrest may be issued for the charges that were presented to the grand jury. Once you have been arrested, critical decisions that you make will determine the outcome of your case. This newsletter is designed to give you some ideas on what kind of decisions will be required if you have been **arrested** or **indicted**.

A. COOPERATION

One of the first, and potentially most critical decisions you will have to make is whether or not, upon your arrest, to cooperate with the government. Arrests occur by Indictment and arrest warrant; others occur by the actual commission of the crime at the time of the incident. A third means of arrest is through search warrants perfected on houses, cars and other personal property. Either way, oftentimes upon your arrest, the government will ask you, or tell you, if you cooperate immediately, that it could go "better for you." Agents of the Drug Enforcement Administration (DEA), FBI, ATF, Secret Service or other task force agencies of the State in which you are arrested will pressure you to cooperate immediately with a promise of leniency in the future. This is your first and most difficult choice. In our experience the agent will support lenient outcomes in the sentencing procedures if you cooperate upon arrest and the results are significant to the arrest and prosecution of other codefendants. There are occasions, however, that despite extensive efforts to cooperate, the arrest of others is not perfected. When this happens, though you believe you should receive some consideration, often you do not. Cooperation is usually an ongoing process. It is our recommendation that you obtain an attorney as soon after your arrest as feasible to represent your interests, either through cooperation or preparing for trial. Cooperation is the single most mitigating factor in the sentencing of defendants. Some agents will tell you that if you cooperate immediately at the time of your arrest, and without counsel, things will go better and/or that this moment is your only chance to cooperate.

After you are arrested, and if you do not choose to cooperate immediately, or cannot based upon the fact that you are a second generation defendant who has been fingered by a cooperating witness, you should immediately retain counsel. Several vehicles to attack your case can mitigate the outcome immediately after your arrest or Indictment.

B. CRITERIA FOR MAKING BOND

First there is a bond hearing. In bond hearings you need to know that the Bail Reform Act places the burden on the defendant to prove that they are not a risk of flight or a danger to the community. This is particularly true in drug cases, or cases where the minimum mandatory is 10 years to life by statute. Oftentimes defendants have unrealistic expectations of being released on bond.

The Bail Reform Act of 1984 allows courts to impose conditions of release geared toward ensuring community safety and even to deny release to those who pose a serious risk to the community.

Under the Bail Reform Act an authorized judicial officer may order the release or detention of a defendant pending trial. A detention hearing must be held upon a defendant's first appearance before a judicial officer unless the defendant or the government seeks a continuance. The officer may release a defendant on personal recognizance or bond, release a defendant subject to conditions, temporarily detain a defendant, or

detain a defendant pending trial. There is a presumption in favor of releasing a defendant on personal recognizance or bond pending trial. However, the release may be made subject to more stringent conditions if a judicial officer finds that such release will not reasonably ensure the defendant's appearance at trial or will endanger the safety of the community or any person. Conditions imposed cannot be so onerous as to be excessive within the meaning of the Eighth Amendment. A judicial officer may not impose financial conditions so burdensome to the defendant as to result in pretrial detention. If, following a detention hearing held before a judicial officer, the officer finds that no condition or combination of conditions will reasonably ensure the appearance of the defendant or the safety of the community or any individual, he shall order pretrial detention.

"Excessive bail shall not be required," U.S. Const. Amend. VIII; **United States v. Salerno**, 107 S.Ct. 2095, 2104-05 (1987) (pretrial detention solely on grounds of dangerousness to community not violative of Eight Amendment, which grants no absolute right to bail) (The Eight Amendment's prohibition against excessive bail is implicated only when it is proper to grant bail); bail becomes excessive when the amount of bail is set higher than that necessary to reasonably ensure defendant's appearance at trial, **Stack v. Boyle**, 341 U.S. 1, 5 (1951); **United States v. Zylstra**, 713 F.2d 1332, 1337 (7th Cir.) (purpose of bail to allow accused freedom while ensuring presence at trial), cert. denied, 464 U.S. 965 (1983). Also see **Bell v. Wolfish**, 441 U.S. 520, 535 n.16 (1979) ("[d]ue process requires that a pretrial detainee not be punished").

Federal courts must provide reasons for bail decisions. Fed.R.App.P. 9(b).

C. **SEARCH WARRANTS**

Attacking a search warrant on wire tap or other seized evidence are methods of mitigating the outcome of your case by suppressing evidence such as firearms, drugs, money or other elements of the offense that may aggravate the profile of the case for jury trial purposes.

Lesser available sanctions include the suppression of secondary evidence or preclusion of testimony, and in fashioning a remedy, courts will bow to the degree of government misconduct against the prejudice to the defense. *See* **United States v. Loud Hawk**, 628 F.2d 1139, 1152 (9th Cir. 1979), cert. denied, 455 U.S. 917 (1980). This case specifically speaks to the balancing test necessary for the determination of the misconduct and the prejudice and whether or not there is an alternative such as eliminating certain testimony. *See also* **United States v. Johnson**, 457 U.S. 537, 102 S.Ct. 2579, 73 L.Ed.2d 202 (1982) (fourth amendment violations are not reviewable in a 2255 motion when the movant has had an opportunity for full and fair litigation of the claim); **Stone v. Powell**, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976); and **United States v. Cook**, 997 F.2d 1312 (10th Cir. 1993) (fourth amendment violations are not reviewable in a 2255 motion when the movant has had a full and fair opportunity to litigate the claim at trial and on direct appeal).

D. **ATTACKING THE INDICTMENT**

Attacking an Indictment is not as simple as it use to be though defective indictments can be evidenced by such things as multiplicity and duplicity.

In **United States v. DuBo**, 186 F.3d 1177 (9th Cir. 1999), and **Neder v. United States**, 527 U.S. 1, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999), the Supreme Court, and the Ninth Circuit, determined that the Indictment must plead to specific statutory language in each of the charges filed against the defendant. As such, there is specific language in each statute that must be identified to put a defendant on proper notice of what constitutes the charge of the grand jury.

The Fifth Circuit has held in **United States v. Cabrera-Terran**, 168 F.3d 141, 143 (5th Cir. 1999), that the failure of the indictment to charge each and every essential element of an offense is a serious constitutional violation. See also **United States v. Morales-Rosales**, 838 F.2d 1359, 1361-62 (5th Cir. 1988), that criminal Information ...does not charge...the second element of the offense...the failure of an Information to charge an offense is a jurisdictional defect that is not waived by a guilty plea. *See also* **United States v. Eldrington**, 726 F.2d 1029, 1031 (5th Cir. 1984). The failure to charge an essential element of a crime is by no means a mere technicality. *See* **United States v. King**, 587 F.2d 956, 963 (9th Cir. 1978). *See* **United States v. Kurka**, 818 F.2d 1427, 1431 (9th Cir. 1987). It is not amenable to harmless error review. *See* **United States v. Spruill**, 118 F.3d 221, 227 (4th Cir. 1997). *See also* **United States v. Brown**, 995 F.2d 1493 (10th Cir. 1993) ("failure of the indictment to allege all the essential elements of an offense ... is a jurisdictional defect requiring dismissal ... The absence of prejudice to the defendant does not cure what is necessarily a substantive, jurisdictional defect in the indictment"); **United States v. Gayle**, 967 F.2d 483 (11th Cir. 1992) ("A criminal conviction will not be upheld if the indictment upon which it is based does not set forth the essential elements of the offense"); *citing*

United States v. Italiano, 837 F.2d 1480 (11th Cir. 1988); **United States v. Deisch**, 20 F.3d 139 (5th Cir. 1994) ("To be sufficient, an indictment must allege each material element of the offense; if it does not, it fails to charge that offense").

The Grand Jury Clause of the United States Constitution provides that "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury." U.S. Const. Amend. V. The court said that: "to comport with the Fifth and Sixth Amendments, a criminal indictment must (1) contain all of the elements of the offense so as to fairly inform the defendant of the charges against him, and (2) enable the defendant to plead double jeopardy in defense of future prosecutions for the same offense." **United States v. Santeramo**, 45 F.3d 622, 624 (2nd Cir. 1995) (*per curiam*).

E. **MULTIPLICITY AND DUPLICITY**

Indictments charging a single offense in different counts are **multiplicious**. See **United States v. Seda**, 978 F.2d 779, 780-82 (2nd Cir. 1992) where the indictment charging bank fraud and false statements to obtain the loan in separate counts were considered multiplicious. See also **United States v. Langford**, 946 F.2d 798, 802 (11th Cir. 1991) wherein the indictment charging multiple counts of conspiracy based on multiple mailings in furtherance of a single conspiracy to commit securities fraud was also considered multiplicious. When several factual allegations are each elements of the same offense, the defendant may be charged with only one count of that offense. See **United States v. Pal**, 894 F.2d 895, 897-98 (7th Cir. 1991). A particularly interesting case is **United States v. Anderson**, 872 F.2d 1508, 1519-20 (11th Cir.) wherein the indictment charging violations of the same general conspiracy statute in three (3) separate counts was multiplicious when the multiple criminal actions involved only one conspiracy. For example, where there are conspiracies and substantive crimes committed in the completion of the conspiracies, these are distinct offenses and may be charged separately; an indictment charging conspiracy in an attempt to import controlled substances in one count, and attempt to import specific plane loads of controlled substances in separate counts, is not considered multiplicious because the separate statutes were violated. See **United States v. Love**, 767 F.2d 1052, 1062-63 (4th Cir. 1985), *cert. denied*, 474 U.S. 1081 (1986).

Indictments charging two or more distinctive offenses in a single count are **duplicitous**. Duplicitous indictments obscure the specific charges and may violate a defendant's constitutional right to notice of charge against him/her. This may also hinder ability to plead double jeopardy in a subsequent prosecution. Duplicitous indictments may also prevent the jury from separately deciding guilt or innocence with respect to each particular offense, thus creating uncertainty as to whether the defendant's conviction was based on a unanimous jury's decision.

F. **PLEADING GUILTY OR GOING TO TRIAL**

The second most difficult decision you will make, barring cooperation, after arrest and/or during the course of your pretrial proceedings is whether to plead guilty or go to trial. Pleading guilty can result in mitigation of your case based upon relevant conduct factors, role adjustment, acceptance of responsibility and other sentencing guideline issues.

The Federal Rules of Criminal Procedure, under Rule 11, requires full disclosure of the terms of the plea bargain and you are permitted to enter a guilty plea only if knowingly and voluntarily with the advice of competent counsel. See **Tollett v. Henderson**, 411 U.S. 258, 263 (1973). Once a person enters a plea of guilty, they waive a number of constitutional rights, so the importance of identifying a voluntary and knowing plea is not only formatted through court action, but through written disposition and the Federal Sentencing Guidelines.

Pursuant to 6B1.1(c), *"the court shall* (emphasis supplied) *defer its decision to accept or reject any non-binding recommendation pursuant to Rule 11(e)(1)(B), and the court's decision to accept or reject any plea agreement pursuant to Rules 11(e)(1)(A) and 11(e)(1)(C) until there has been an opportunity to consider the presentence report, unless the report is not required under 6A1.1."* Pursuant to 6B1.4, *"**(Policy Statement)***

(a) A plea agreement may be accompanied by a written stipulation of facts relevant to sentencing. Except to the extent that a party may be privileged not to disclose certain information, stipulations shall:

(1) set forth the relevant facts and circumstances of the actual offense conduct and offender characteristics;

(2) not contain misleading facts; and

(3) set forth with meaningful specificity the reasons why the sentencing range resulting from the proposed agreement is appropriate.

(b) To the extent that the parties disagree about any facts relevant to sentencing, the stipulation shall identify the facts that are in dispute.

(c) A district court may, by local rule, identify categories of cases for which the parties are authorized to make the required stipulation orally, on the record, at the time the plea agreement is offered.

(d) The court is not bound by the stipulation, but may with the aid of the presentence report, determine the facts relevant to sentencing."

Rule 11(e)(2) of the Federal Rules of Criminal Procedure require *"disclosure of the plea agreement"* to the district court at the time the guilty plea is taken. This rule is properly read to mean that all "material terms" or "material details" or "elements" of the agreement must be disclosed. The purpose of this requirement (disclosure with specificity) is to enable the district court to probe a Defendant's understanding of the consequences of his plea bargain and the voluntariness of entering it. See **United States v. Daniels**, 821 F.2d 76, 80 (1st Cir. 1987), and **United States v. Blackner**, 721 F.2d 703, 708 (10th Cir. 1983). There cannot be an entry of a plea with specificity without a complete understanding of the impact of the PSI and its content.

United States Sentencing Guideline 6B1.4 stipulates that with respect to relevant policy, that plea agreements accompanied by written stipulations of fact, relevant to sentencing, set forth the relevant facts and circumstances of the actual offense conduct, not contain misleading facts, and sets forth with meaningful specificity why the sentencing range from the proposed agreement is appropriate. The purpose of this Sentencing Commission Policy Statement is to provide a Defendant with reliable information upon which to make an informed plea and understand the sentencing consequences. Additionally, the Commission has adopted a policy to further promote the Sentencing Reform Act goal for *"truth in sentencing"* by articulating the factors relevant to the development of a Defendant's particular sentencing guideline range by stating, *"the Commission encourages the prosecuting attorney, prior to the entry of a plea of guilty or nolo contendere under Rule 11 of the Federal Rules of Criminal Procedure, to disclose to the defendant the facts and circumstances of the offense and offender characteristics 'then known to the prosecuting attorney, that are relevant to the application of the sentencing guidelines."* See U.S.S.G. 6B1.2, Commentary, Rule 11(e)(2) of the Federal Rules of Criminal Procedure requires *"disclosure of the plea agreement"* to the district court at the time the guilty plea is taken. The specificity of disclosure is significant to enable the district court to probe the defendant's understanding of the consequences of his bargain, and the voluntariness of his entering it. See **United States v. Daniels**, 821 F.2d 76, 80 (1st Cir. 1987) and **United States v. Blackner**, 721 F.2d 703, 708 (10th Cir. 1983). Also see **Santobello v. New York**, 404 U.S. 257 (1971); **United States v. Fisch**, 863 F.2d 690 (9th Cir. 1988).

Plea bargaining resolves the majority of federal cases. Some specific stipulations in the plea bargain can reduce the expected outcome of the sentencing process. However, be wary of the United States Probation Office and the preparation of the PSR which may result in a different interpretation to your expectations from any plea agreement. An experienced attorney can help you navigate these rough waters.

G. GOING TO TRIAL

At trial, the government is required to prove that beyond a reasonable doubt you are guilty of all of the charges brought against you. They will present all of the evidence they have to the jury in making a determination of guilt or innocence. One of the key features of guilt or innocence is the use of informants who are part of the criminal case. These informants, even though many lack credibility, are often believed by jurors because their information is corroborated by federal agents or police officers. However, discrediting those witnesses is critical to successful litigation at trial. Discrediting witnesses comes in the form of showing the jury that those individuals received a benefit for their testimony, and to show, if possible, that their backgrounds are filled with prior criminal conduct and deception.

Taking your case to trial is complicated. One of the key features of successful trial litigation is to be sure you have defense witnesses, if available, to offset the facts the government is going to present against you. Oftentimes attorneys will choose not to bring in defense witnesses because the government may not have proven some of the case. Some examples of defenses are:

1. Alibi

2. Entrapment vs. Acceptance of Responsibility

3. Actual Innocence

4. Multiple Conspiracies

H. PRETRIAL MOTIONS CAN HELP THE TRIAL PROCESS BE MORE SUCCESSFUL

There are a number of motions that can be filed in a pretrial capacity that can help you make a decision of whether to plead guilty or go to trial. These are traditionally called **DISCOVERY MOTIONS**. Discovery motions are generic in form but are designed to require the government to release to you all of the information that they have against you. They do not have to release all of the information well in advance of the trial, and in some jurisdictions, only a few days before trial is required.

In **Brady v. Maryland**, 373 U.S. 83 (1963), the Supreme Court held that the prosecution must turn over to the defense, upon request, any information within its possession that is material to either the Defendant's innocence or his punishment. The duty to disclose extends to any information within the possession of any attorney or agent in the prosecutor's office (*See* **Giglio v. United States**, 405 U.S. 150 (1972)), and any known information within the possession and/or control of cooperating law enforcement personnel. *See* **United States v. Brooks**, 966 F.2d 1500 (D.C. Cir. 1992). The prosecution has a duty, under Rule 16, to search the investigative files of other government agencies for evidence material to the defense even if the prosecution does not intend to use such evidence at trial. The government's obligation extends to information in the possession or control of staff or other persons who participated in the investigation and evaluation of the case. *See* **United States v. Bailleaux**, 685 F.2d 1105, 1113-14 (9th Cir. 1982), and **United States v. Jensen**, 608 F.2d 1349 (10th Cir. 1979).

Moreover, this duty to disclose extends to any information that may tend to impeach a witness or discredit the witness' testimony. The prosecutor's duty to disclose information is especially great when specific information is requested by the defense. *See* **Agurs v. United States**, 427 U.S. 97 (1976).

This information is especially important as it is necessary to effectively cross-examine key prosecution witnesses. *See* **Davis v. Alaska**, 415 U.S. 308 (1974).

In **Jencks v. United States**, 353 U.S. 657 (1957), the Supreme Court held that the federal government in a criminal prosecution must turn over to the defense, for impeachment purposes, certain statements made to federal agents by government witnesses.

Voluntary disclosure is encouraged. Notes of Advisory Committee, Fed.R.Crim.P. 26.2.

The government's failure to provide discovery of all relevant Jencks Act material is error. In **United States v. Bibbero**, 749 F.2d 581, 585 (9th Cir. 1984), *cert. denied,* 471 U.S. 1103 (1985), a cooperating accomplice testified for the government regarding the defendant's activities.

In **United States v. Shoher**, 555 F.Supp. 346, 352 (SDNY 1983), the court stated that the prosecution must disclose the information sufficiently far in advance to permit "effective evaluation, preparation and presentation."

In order for production to be meaningful, counsel should be granted sufficient time to evaluate the material. **State v. Sette**, 242 S.E.2d 464 (WVa. 1978).

I. SELECTING A JURY

In selecting a jury, your attorney should try to obtain permission from the court to ask extensive background questions of the jurors. This is commonly known as *voir dire*. *Voir dire* includes such things as background questions, bias, relationship with parties involved in the case, geographic and cultural background considerations.

A jury questionnaire is often allowed as long as it is not overly extensive. Some courts do not allow jury questionnaires to be given to the jurors directly but will allow additional questioning of the jury with submissions from defense counsel to the judge. The judge will do the questioning of the jurors and select those that the judge feels are applicable. Of specific interest are those where cultural differences might affect the jury's attitude toward a particular defendant. This is particularly true in African-American, Latin and Korean jury selection processes. Some questions should be given to the court to ask the jurors concerning any biases they may have from pre-conceived stereo types such as all drug dealers are African-American or Latin males.

J. FEDERAL RULES OF EVIDENCE

The Federal Rules of Evidence are complicated and detailed and have to be followed. Objections to matters of error by the government or the court are made during trial or sentencing in order to protect the record for appeal. The best way to get a successful appeal is to protect the record of any error, both evidentiary and factual, as well as any error by the court, such as jury instructions and the admission of evidence that is

inadmissible. If you plead guilty or convicted, there are three (3) phases remaining for you to contemplate.

1. Sentencing (objections to the PSR must be made with specificity)
2. Appeal
3. Habeas Corpus

K. **SENTENCING**

Sentencing is a complicated proceeding unless all of the Federal Sentencing Guidelines issues have been resolved through plea bargaining. Many times going to trial can help resolve relevant conduct questions that can reduce the outcome of the sentence, even after conviction.

One of the most complicated areas of sentencing guidelines is relevant conduct and how much drugs or money, or other features of relevant conduct, should be held against you for purposes of setting the base offense level. Enhancements such as role, obstruction of justice and Criminal History Score are also critical factors in determining the outcome of the sentence. The PSR is not evidence. Since the PSI is not evidence, specific findings of fact as to disputed issues of fact or guideline matters must be carefully reviewed. *See* **United States v. Garrido**, 995 F.2d 808 (8th Cir. 1993) at 812 (n.6); **United States v. Leichtnam**, 948 F.2d 370 (7th Cir. 1991); and **United States v. Bluske**, 969 F.2d 609 (8th Cir. 1992) at 616 (n.5). *Also see* **United States v. Wise**, 976 F.2d 393 (8th Cir. 1992) and **United States v. Streeter**, 907 F.2d 781, 791-92 (8th Cir. 1990), that a *"presentence report is not evidence and is not a legally sufficient basis for making findings on contested issues of material fact."* The court is required to follow Rule 32 Federal Rules of Criminal Procedure in responding to objections to the PSR. Some of the many sentencing issues that may arise are:

1. Relevant conduct exposure (offense level);
2. Aggravating or mitigating role;
3. Obstruction of justice;
4. Acceptance of responsibility;
5. Criminal history;
6. Upward or downward departure;
7. Cooperation;
8. Firearms enhancements, non-statutory.

We do not recommend having a presentence report interview without an attorney present.

L. **APPEALS**

After a conviction is handed down and the sentencing hearing is concluded, there may be a sense of finality and hopelessness as to the results of the preliminary proceedings. However, there is an opportunity to change this situation around. Enter the appellate and post-conviction attorney. Through experience with the system and expertise in thoroughly examining trial motions and transcripts, the appellate and post-conviction attorney may provide valuable assistance in matters which arise either after trial or after sentencing or both.

After trial and sentencing, the defendant can be represented by an attorney who can take a fresh look at their case. In some instances, for this to occur, trial counsel should not handle appeals, or at least not do so alone.

The appellate and post-conviction attorney examines the whole case, from indictment to trial to sentencing, searching for pertinent issues that could substantiate a different outcome. This includes, but is not limited to, rulings on pretrial motions, the pertinent criminal code sections, search and seizure issues, defective indictments, illegal sentences, and a wide array of constitutional issues. For example, in **Duhart v. United States**, 476 F.2d 597 (6th Cir. 1973), the court found that a motion to vacate sentence could be properly raised based on the claim that Petitioner was illegally arrested, and therefore the evidence found in his car was also illegal. Also, in **United States v. Donaldson**, 978 F.2d 381 (7th Cir. 1992), the court held that convictions tainted by constitutional errors must be reversed unless the errors are harmless. And finally, searches conducted outside proper judicial process, without prior approval of judge or magistrate, are generally per se unreasonable. **United States v. Morris**, 977 F.2d 677 (1st Cir. 1992). Therefore, having an appellate and post-conviction attorney on your side may prove beneficial to your case.

M. **HABEAS CORPUS (2255)**

Federal prisoners seeking post-conviction relief on issues relating to trial or sentencing controversies must apply for a Writ of Habeas Corpus to the sentencing court under Title 28 U.S.C. 2255 within one year from the latest of:

1. the date in which judgment of conviction becomes final;

2. the date on which the impediment to making a motion created by governmental action in violation

of U.S. laws or the Constitution is removed, if movant was prevented from making a motion by such governmental action;

3. the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review;

4. the date on which the facts supporting the claim[s] presented could have been discovered through the exercise of due diligence.

In plain language, this means that while in the past, §2255 motions could be made "at any time," there are now significant time restrictions. For example, it is the latest of these four dates that counts. Thus, if a new, retroactive Supreme Court case affects your conviction, you have one year from the date of that decision, even if you have been incarcerated for several years, to file a 2255. For most other claims, though, you will likely only have one year from when "the judgment of conviction becomes final" (which could differ depending on whether your case was appealed or a Writ of Certiorari was filed). Although the last exception allows for newly discovered evidence to be an excuse, the section contains a "due diligence" requirement which is often read quite strictly. A habeas under this statute is for the purpose of vacating, setting aside, or correcting a sentence or conviction that the court imposed. The most successful reasons for filing a 2255 is:

- Inaccurate information in the PSI
- Error in guideline calculations
- Illegal Sentence
- Ineffective assistance of counsel
- Counsel's failure to investigate or call witnesses
- Trial errors based on counsel's failure to present evidence
- Evidence from trial not properly presented at sentencing.

Section 2255 provides for relief where the sentence was imposed (1) in violation of constitutional laws of the United States; (2) where the court was without jurisdiction to impose the Petitioner's sentence; (3) where the sentence was in excess of the maximum authorized by law; and (4) where the sentence is otherwise subject to collateral attack. *See* **Hill v. United States**, 368 U.S. 424 (1962). A petitioner seeking to challenge the legality of the imposition of a sentence by a court may therefore make a claim pursuant to Section 2255. *See* **Dioguardi v. United States**, 587 F.2d 572 (2nd Cir. 1978) (a motion under Section 2255 must...be directed to the sentence as it was imposed, not to the manner in which it is being executed).

CONCLUSION

Hiring a criminal defense lawyer is paramount to taking the appropriate steps in getting the best results. Learn more about the defense attorney representing you and what their federal experience is. Merely being a former prosecutor does not necessarily make the best defense attorneys though some are exceptional. A good federal defense lawyer should have experience in federal criminal law, pre- and post-conviction. Sometimes it is better to hire two (2) lawyers, one for the pre-trial process, and one to help from the beginning of the pre-trial process to the end of the case to ensure the record is perfected for sentencing and post-conviction relief. Defense teamwork is a practical way to cover all of the aforementioned bases. Hiring a litigation lawyer and a mitigation lawyer are critical to success. If an attorney you are interviewing is not amenable to working with other lawyers, that could be a problem and you should consider that in making your choices on who to retain. Federal Criminal Defense Lawyers can work in any state in the country, either by admission or by pro hac vice and local counsel relationships. Do not be intimidated by hiring an attorney that may not come from the town in which you are charged. Do not be afraid of hiring more than one lawyer, and if you have only enough funds to hire one lawyer, hire one that is experienced in criminal law.

Pre-Plea, Sentencing, Appeals and Habeas Corpus

WHEN IT'S TIME FOR A CHANGE
All Federal Circuits

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LOOKING FOR ASSISTANCE WITH YOUR LEGAL MATTERS?

When you are looking for answers to your legal problems, the Federal Criminal Law Center is the place to look. The Center provides full representation services as well as national legal research assistance on a *pro se* level Our attorneys are available to represent individuals on matters dealing with the trial process, plea and sentencing mitigation, objections to the presentence report, appeals, and *habeas corpus* petitions. Lead Counsel, Marcia G. Shein, has been practicing law throughout the country in the Federal Court system since 1992 and has been consulting with criminal defense lawyers throughout the country on issues of sentencing and post-conviction mitigation since 1981. Marcia G. Shein works diligently to mitigate the outcome of every case she is associate with, whether representing an individual, working with an attorney, or assisting an individual in preparing pleadings for *pro se* filing.

Marcia G. Shein is a member of the following courts:

- *United States Supreme Court*
- *Northern, Middle, and Southern Districts of Georgia*
- *Northern, Eastern, Western, and Southern Districts of Texas*
- *Eastern District of Michigan*
- *District of Columbia*
- *Northern District of Oklahoma*
- *District of Nebraska*
- *District of Arizona*
- *Northern District of Florida*
- *Eastern District of Tennessee*
- *District of Colorado*
- *Northern and Southern Districts of Indiana*
- *First Circuit Court of Appeals*
- *Second Circuit Court of Appeals*
- *Third Circuit Court of Appeals*
- *Fourth Circuit Court of Appeals*
- *Fifth Circuit Court of Appeals*
- *Sixth Circuit Court of Appeals*
- *Seventh Circuit Court of Appeals*
- *Eighth Circuit Court of Appeals*
- *Ninth Circuit Court of Appeals*
- *Tenth Circuit Court of Appeals*
- *Eleventh Circuit Court of Appeals*
- *D.C. Circuit Court of Appeals*

- *Georgia Court of Appeals*
- *Georgia Supreme Court*

The Federal Criminal Law Center is currently seeking questions with potential general impact from criminal defendants. We will try to choose one question to answer that will help as many of you as possible on the issue raised in our future newsletters. We cannot answer every question, so please submit questions regarding important issues that may effect a large portion of the federal criminal justice population.

We also have available for purchase, *The Federal Criminal Law Inmate Handbook*, which gives offenders and their families vital information on the process of our Federal legal system from pre-trial to post-conviction.

Marcia G. Shein has appeared *pro hac vice* in the following courts:

- *Middle District of Alabama*
- *Northern District of Alabama*
- *Southern District of Alabama*
- *Western District of Arkansas*
- *Central District of California*
- *District of Connecticut*
- *Middle District of Florida*
- *Southern District of Florida*
- *Northern District of Illinois*
- *Southern District of Illinois*
- *Northern District of Iowa*
- *Southern District of Iowa*
- *Western District of Kentucky*
- *Western District of Louisiana*
- *District of Maryland*
- *District of Minnesota*
- *Southern District of Mississippi*
- *Eastern District of Missouri*
- *District of New Jersey*
- *Eastern District of New York*
- *Northern District of New York*
- *Southern District of New York*
- *Eastern District of North Carolina*
- *Middle District of North Carolina*
- *Western District of North Carolina*
- *Middle District of Pennsylvania*
- *Eastern District of Pennsylvania*
- *District of Puerto Rico*
- *District of South Carolina*
- *Middle District of Tennessee*
- *Western District of Tennessee*
- *Eastern District of Virginia*
- *Western District of Virginia*
- *Western District of Washington*
- *Northern District of West Virginia*