

Protect Your Freedom  
9 Common Mistakes People Make When They Are  
Charged With A Crime And How To Avoid Them

*The Ultimate Guide to Criminal Cases in Louisiana*

By  
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Criminal Defense Lawyer

## **WHO IS BEHIND THIS BOOK AND WHY SHOULD I LISTEN TO YOU**

I want to first thank you for requesting this book. I think that the information I give you here will help you in your quest to obtain information about your situation and our criminal justice system.

I've written this book so that people who have been arrested and/or facing prosecution in our criminal justice system can have good, solid information before hiring an attorney or dealing with the police.

My name is J. Kevin Stockstill and I have been representing people who have been accused of crimes since 1995. I limit my practice to state and federal criminal defense cases. You can find out more about me at my website [www.stockstilllaw.com](http://www.stockstilllaw.com). Thousands of articles are downloaded from the site each month.

- Graduate of Gerry Spence's' Trial Lawyer's College
- Member of the National Association of Criminal Defense Lawyers
- Member of the Louisiana Association of Criminal Defense Lawyers
- BV rating by Martindale-Hubbell
- Past President of the Lafayette Association of Criminal Defense Lawyers
- Frequent Speaker at continuing legal education seminars on criminal law topics

## **WHY DID I WRITE THIS BOOK?**

I am sick and tired of hearing horror stories of people who's cases have been botched by incompetent lawyers who don't know how to practice criminal defense law. I'm also sick and tired of hearing the same old story over and over of people's rights being trampled by prosecutors and law enforcement. You should be armed with the information provided in this book immediately. I wrote this book so that you can be informed today.

I am also sick and tired of outrageous lawyers advertising where lawyers, with the reputation for handling hundreds of cases at a time, make promises that can't be kept. I'm also tired of lawyers who advertise for criminal defense work and have very little to no experience in handling serious criminal cases. A lot of these lawyers advertise for criminal defense cases just so they can have a few extra cases to help pay the light bill. Criminal defense is not the focus of their practice and it certainly

shows, not only in their performance in court, but the final outcome of the case, which is generally a disaster.

Most attorneys require you to make an appointment in which you would get some of the information that I've provided here. I believe that you should be able to have this information, right now, and without any pressure. The hiring of an attorney to represent you is a very important step that should not be taken lightly. Frankly, this method of talking to you also saves me time. I've packed a ton of information into this book and it saves me the hours of time that it would take each day just to talk to all of the new potential clients who call. I cannot and will not accept every case, and, frankly, each year we turn down good cases that simply did not meet our case selection criteria. So, rather than cut you short on the phone, writing this book gives me a chance to tell you what you need to know so that you can make an informed decision about what steps to take with your case. Even if I do not accept your case, I would like you to be educated about the process so that you don't fall victim to prosecutors, law enforcement agents or to deceptive, misleading and unethical lawyer advertising.

#### I AM NOT ALLOWED TO GIVE LEGAL ADVICE IN THIS BOOK

I am not allowed to give legal advice in this book. I can offer suggestions and identify traps, but please do not construe anything in this book to be legal advice about your case until you have agreed to hire me "and" I have agreed, in writing, to accept your case.

FEWER CASES - MORE TIME FOR YOU

## **9 COMMON MISTAKES PEOPLE MAKE IN A CRIMINAL MATTER AND HOW TO AVOID THEM.**

- 1) **Allowing a search or seizure when the police come to your home or work-** Both the Louisiana and United States Constitutions prohibit unreasonable searches and seizures. The police are prohibited from searching your home without a warrant. Do not give the police permission to do this unless they present proper credentials and a search warrant. Read the complete search warrant to determine the scope and ask to watch the search proceedings. You are also entitled to a copy of the search warrant.
- 2) **Giving a voluntary statement** - Both the Louisiana and United States Constitutions give you the right to remain silent and not speak to police without a lawyer being present. You are not required to talk to police when they come to talk to you about a crime. You have the right to remain silent - which is what you should do until you speak to an attorney.
- 3) **Not being polite and courteous with police** - Don't give them a reason to escalate the situation and use violence and force on you.
- 4) **Resisting arrest** - Being uncooperative during an arrest will only hurt your case and can lead to injury.
- 5) **Voluntarily giving samples of body fluids, fingerprints, handwriting, clothing** -You don't have to give officers these items without a court order or your attorney's permission.
- 6) **Taking a polygraph or lie-detector test** - Polygraphs are inadmissible in court because they are unreliable. I only allow a client to take a polygraph test only after they have been tested by a polygrapher retained by the defense.
- 7) **Not telling your lawyer all the facts** - Your lawyer can't give you the

best representation if he doesn't know all the facts about the case. It's not good for your attorney to be surprised by information he learns at a hearing or trial. When you're honest with you lawyer he can do a better job at protecting your interests.

- 8) **Waiting until the last minute to hire a lawyer.** Some people have a hard time coming to the realization that they are going to be formally charged with a crime. They think if they will just stick their head in the sand everything is going to go away. There not. People charged with crimes need to be proactive by hiring a lawyer immediately. One of the most critical stages to defending a criminal case is the beginning. Witnesses need to be interviewed while their recollection is fresh and important constitutional rights attach and need to be protected from the moment a person is arrested. It is never too early to hire a criminal defense lawyer.
  
- 9) **Choosing a lawyer who is not experienced in criminal law or with handling criminal trials** - Criminal charges can have a serious impact on your life. Choosing an experienced and skilled criminal defense lawyer can have a tremendous affect on the outcome of your case. See page 16-19 for information about what to look for when hiring a criminal defense lawyer.

We are “different”.

We don't rely on a high volume of cases. We don't claim to handle every type of law under the sun. We don't want to. We don't need to.

Each year, we accept a limited number of criminal defense cases from hundreds of people who ask us to represent them. Fewer cases mean more time for you and, we believe better results overall. Since 1995, I have represented people accused of crimes throughout Louisiana. Most of the cases are referred to us by former satisfied clients, other attorneys, judges, court staff, and even prosecutors.

#### J. Kevin Stockstill's Standards:

- 1) A relentless pursuit of excellence
- 2) A dedicated work ethic
- 3) Thorough preparation for court battles
- 4) Absolute discretion
- 5) An unswerving focus on the client's best interest

Kevin is a trial lawyer-experienced and talented, with the skills and the fire not simply to "discover and settle," but to take the case to trial. And because adversaries recognize that he will not hesitate to try the case, he can achieve successful settlements when that is in the client's best interest. If your case passes our test and we accept it, you can be assured that you will receive personal attention. We will aggressively represent you, keep you up to date on what is happening in your case, and give you advice as to whether you should settle your case or go to trial.

We will fully explain all fees and costs to you before we start working on your case. Together, as a team, we will decide on the best tactics for your case.

## **HOW THE CRIMINAL JUSTICE SYSTEM WORKS IN LOUISIANA**

### **ARREST**

An arrest is defined in Louisiana as "the taking of one person into custody by another." A law enforcement officer can arrest someone in Louisiana either with a warrant or without a warrant.

#### **ARREST BY OFFICER WITHOUT A WARRANT**

Under Louisiana law a police officer may arrest a person without an arrest warrant when the following conditions are met.

- 1) The person to be arrest has committed an offense in his presence; and if the arrest is for a misdemeanor, it must be made immediately or in close pursuit;
- 2) The person to be arrested has committed a felony, although not in the presence of the officer;

- 3) The policeman has reasonable cause to believe that the person to be arrested has committed an offense although not in the presence of the officer; or the policeman has received positive and reliable information that another peace officer, either from this state or elsewhere holds an arrest warrant for a felony offense. A police officer is under no obligation to obtain an arrest warrant when he has probable cause to arrest the person in a public place. However, warrantless arrest of a person in a private dwelling is prohibited absent exigent circumstances.

### **A PERSON'S RIGHTS AFTER BEING ARREST**

An officer making an arrest is to inform the person of his intention to arrest him, his authority, and the cause of the arrest. This is not necessary if the person to be arrested has been engaged in criminal conduct, or is being pursued immediately after commission of an offense, or has fled or forcibly resisted arrest before he can be so informed, or if the disclosing of the information would impair the arrest. When a person is arrested or detained in connection with an investigation into an offense, he is to be fully advised of his right to remain silent, his right against self-incrimination, his right to the assistance of counsel, and, if indigent, his right to court appointed counsel. The United States Supreme Court has held that a valid arrest warrant is necessary to arrest a person in a private residence absent exigent circumstances. Once a person is brought to the police station for booking, the officer on duty must advise him of the charge against him, advise him of right to counsel and his right to a preliminary hearing if charged with a felony. The arrested person must also be brought before a judge for purposes of appointment of counsel within 72 hours of arrest.

### **ILLEGAL ARREST**

In Louisiana, a citizen has the right to resist an unlawful arrest. Even to the point of breaking an officer's jaw. An officer may use reasonable force to affect the lawful arrest but any force imposed in connection with an unlawful arrest constitutes a battery on the citizen for which the latter can recover damages if injured. The exclusionary rule generally prohibits the receipt of evidence at trial which was acquired as a result of an illegal arrest. All evidence which was derived or tainted by the illegal arrest is inadmissible in a trial. And invalid or illegal arrest, however, does not in and of itself avoid a subsequent conviction. In that situation the drugs that were recovered would not be admissible in a trial for drug possession. The officer's arrest

was illegal and therefore anything he found subsequent to that arrest in the form of evidence would be excluded from any trial.

### **STOP AND FRISK**

In some instances a person's initial encounter with law enforcement is a "stop and frisk" encounter. By definition, it is an on-the-stop forced detention of a citizen by police officer when the officer does not have sufficient information to justify an arrest. Drawing the fine line between appropriate and inappropriate police interference in this regard has evoked a multitude of cases. If a stop or frisk is improper any evidence seized in connection with it is inadmissible in court. A classic example of a "stop and frisk" is a traffic stop. You are traveling down the road and a police officer suspects that you have exceeded the speed limit and he pulls your car over, you are stopped and temporarily detained. He asks for your identification, an explanation for your conduct, and your insurance and registration information. This is a "stop".

Louisiana has a "stop and frisk" statute. In Louisiana, a law enforcement officer may stop a person in a public place whom he reasonably suspects is committing, has committed or is about to commit a felony or misdemeanor. He may demand of the person his name, address and an explanation for his behavior. Notable, however, is that people detained in a "stop" are not obliged to answer any questions. If the officer reasonably believes he is in danger, he may frisk the outer clothing of the person for a weapon. If the officer reasonably believes that the person has a weapon, he may search him. If a weapon is found, he may keep it until he has finished questioning the person then either return it or arrest the person.

### **SEARCH AND SEIZURE**

In some instances a person's initial encounter with law enforcement is a "search and seizure." Sometimes law enforcement will show up at a person's home with a search warrant to conduct a search of that person's home. Sometimes after a person has been stopped, the police will attempt to search their person or in a case involving a traffic stop, they try and search a person's vehicle. The Fourth Amendment to our Constitution holds that people shall "be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." This provision has been construed to protect people "and their body cavities and fluids, such as blood"; in houses, vehicles, business offices, friends' apartment, a taxi cab, and a public

telephone booth. Early in the process, many criminal defendants make the mistake of consenting to a search they could have refused. Thus, they sometimes voluntarily provide evidence against themselves. Sometimes this error occurs because a person suspected of a crime does not realize that he has the right to refuse permission to search. At other times, the suspect may feel that he can bluff his way through the search by pretending that he has nothing to hide. In either case, law enforcement ends up with incriminating evidence, legally obtained, that might not have otherwise been available to them. On the other hand, the assumption that the police need a warrant for every search can lead to a false sense of security. There are times when a warrant is not required. Generally, a police officer can search when there is probable cause or a just belief that doing so will find evidence of a crime. Generally, in order for the police to search a home, they must have a search warrant. There are certain specific circumstances in which a search warrant is not required. For instance, property that is left in plain view, that is readily available to the public, or that has been abandoned or disposed of is generally not protected. Police may conduct a search without a warrant if certain exceptions apply:

**Consent:** A person voluntarily agrees to let a police officer conduct a search, even if there is a reasonable expectation of privacy, or a roommate or a spouse grants third party consent. You do not have to agree to a search without a warrant, however, police are not required to advise you that you may refuse consent for a search.

**Search incident to arrest:** The person was validly arrested and the search was reasonably conducted. In other words, you are being placed under arrest and the police do a pat down of your clothing for their protection and find illegal contraband in your pocket. This is a search incident to arrest.

**Exigent Circumstances:** The exigent circumstances is an exception to the rule. This requirement applies to a variety of situations under which quick action is required. For example, if officers have reason to believe that evidence is being destroyed, or that someone is injured or otherwise in need of assistance, a search warrant may not be required to go into a particular area and conduct a search.

Other exceptions are: Airport searches, property in open fields, searches of probationers and inmates, border searches, and vehicle searches.

## **KNOCK AND TALK**

Another way that an ordinary citizen may come into contact with law enforcement is through a “knock and talk”. The “knock and talk” is one of the newer methods that law enforcement is using to get around our constitutional right to be protected from unreasonable searches and seizures. A “knock and talk” occurs when a police officer or officers come to your door at home, knock on it, and when you open the door they want to begin discussing whether or not your home has been used for illegal purposes. Generally, a “knock and talk” is utilized in cases where law enforcement suspects that there has been drug activity at someone’s home. When a person answers the door, the police use intimidation and a person’s lack of knowledge to gain entry into the home which generally leads to either a search of the home or leads to the police, “freezing” the house and then leaving to go and obtain a warrant. The police “freeze” the house when officers stay there to insure that no one in the house leaves and no one in the house destroys evidence. Unfortunately, the courts in Louisiana have upheld this procedure. It is important for people to know that they are under no obligation to answer the door when the police are there, and if they do answer the door, they do not have to consent to a search or allow the police in their home.

## **BAIL**

Generally after an ordinary citizen’s initial contact with police the next step in the criminal justice system is bail. The Louisiana Constitution grants an absolute right to bail to anyone charged with a non-capital offense. A capital offense is one which carries the death penalty, (i.e. first degree murder and aggravated rape in some instances). The sole purpose of bail is to reasonably assure the defendant will appear in court whenever required. There’s basically six ways to make bail.

- 1) **Cash bond**; a cash bond is when you put up the full amount of the bond. As an example, if the bond is \$5,000, you could give \$5,000 to the sheriff’s office and that would cover the entire amount of the bond. The advantage to placing a cash bond is that when the case is resolved, the entire \$5,000 cash bond is refunded to whomever posted the bond.
  
- 2) **Property bond**; a property bond is when you use real estate to post a bond. The real estate must be equal to or greater than the amount of the bond. As an example, if the bond is \$50,000 and you have real estate

valued at \$50,000 or more, that property can be used as a property bond. Basically the property is pledged to the sheriff's department. The sheriff's department gets a mortgage on the property and holds that property until the case is resolved. At the end of the case the mortgage is released by the sheriff and then the property is free and clear. In some parishes, the property must be completely unencumbered. However, in other parishes, the sheriff's office will accept the property as long as there is enough equity in the property to cover the bond. Also, some parishes require that the property be within the parish where the bond is going to be posted. However, some other parishes will accept property from other parishes. The benefit of using a property bond is that you don't come out-of-pocket with any money and at the end of the case the property is released. The disadvantage to using a property bond is that the property is actually encumbered throughout pendency of the case. Sometimes these cases can take some time to resolve and so the property can't be sold. Also, it takes time to post a property bond because you need paperwork from the clerk of court. You cannot post a property bond on a weekend.

- 3) **Commercial surety.** Commercial surety is a bail bondsman. Bail bondsmen are in the business of putting up bail bonds for their clients. The way it works is as follows. If your bond is \$10,000 the bondsman will actually put up the \$10,000 and charge a fee for this service. The bail bondsman's fee is 12% of the total amount of the bond. So in order for the bondsman to put up the \$10,000 on your behalf, you will pay him a fee of \$1200. The benefit to using a bondsman is the speed and lack of hassle when dealing with the sheriff's department. The bail bondsman is very experienced and deals with the various sheriff's departments on a daily basis. He can get the bond posted pretty much immediately. And once the booking process is complete the client is then released from jail. The disadvantage to using a bondsman is that once the bondsman fee is paid you're not going to get the money back. In the above example, the \$1200 that is paid to the bondsman will not be given back by the bondsman. That is his fee. And so the client is out-of-pocket \$1200.
- 4) **Personal surety.** A personal surety is a family member who agrees to pay the bond if the defendant fails to appear but does not actually put up any money to post the bond. The way that a personal surety bond works

is as follows. If your bond is \$10,000, a family member can be a personal surety as long as they can demonstrate that they earn at least \$10,000 a year. They demonstrate this by bringing a W-2, tax returns, and paycheck stubs. After the court determines that the personal surety makes the necessary amount of money to cover the bond, the court will then approve them as a personal surety. The personal surety then goes to the sheriff's department and signs the personal surety bond. No money is actually exchanged. However, if the person who has been arrested does not make their court appearance, then the sheriff's department and the State of Louisiana can then go after the personal surety for the amount of the bond. The advantages to using a personal surety is that no one comes out-of-pocket of any money to pay for the bond. The disadvantage is that the family member basically becomes a bondsman and runs the risk that if the defendant doesn't show up for court, they could be the subject of a potentially large money judgment for the amount of the bond.

- 5) **Release On Own Recognizance** . This is otherwise known as an ROR. These will be granted by the court generally for very minor offenses. The court releases the person without having to post a bond.
- 6) **Pretrial Release Programs**. Some parishes have created pretrial release programs. The way these programs work is that a person is released without having to post bond. However, the person that is released must report to a pretrial services officer either once a week or once every two weeks. In addition, the person may have to complete conditions of their release like attending substance abuse classes or domestic violence classes and even submitting to random drug screens. The pretrial release programs are generally only available for non-violent offenses and non-drug offenses. The benefits to this program is that no one has to pay any money or encumber property to get someone released under a program like this. The potential draw backs are that you are continually monitored by a pretrial service office with the sheriff's department and your freedom is more limited than it would be with the other forms of bond.
- 7) **Bond Reduction Hearings**. If you cannot afford the bail that is initially set by a judge, your attorney can file a Motion for Reduction of Bail on

your behalf. At this hearing, your defense lawyer can introduce evidence to show that you have strong ties to the community, that you are not a danger to the community, and that you will appear in court in an effort to get your bond reduced to a level that you can afford.

## **THE FILING OF FORMAL CHARGES**

After a person has been arrested, the State of Louisiana has 60 days if you've been charged with a felony or 90 days if you've been charged with a misdemeanor to file formal charges. There are two ways for the State to file its formal charges. One is a Bill of Information and the second is an Indictment. When the State files a Bill of Information, a prosecutor has generally reviewed the results of a law enforcement agency's investigation. They then decide that formal charges are necessary. After having reviewed the investigation and having made up in their mind that there is sufficient grounds to file formal charges, the prosecutor can then file what's called a Bill of Information. The Bill of Information is basically a pleading that is filed with the Clerk of Court's office that states that on a particular date a person has committed an offense. Once the Bill of Information is filed with the Clerk of Court's office, formal charges have been filed against the defendant.

The second way that the State of Louisiana can bring formal charges with someone is with an indictment. An indictment is returned by a grand jury. Prosecutors will present evidence to a grand jury and after the grand jury hears all of the evidence presented by the prosecutor, they decide whether or not there is "probable cause" that a crime has been committed. If the grand jury determines that there is probable cause that a crime has been committed, they can return what's called a true bill. Once a true bill is returned, it is filed with the Clerk of Court's office and the person that is accused has now been indicted and is formally charged. In some instances a grand jury can hear the evidence and determine that there's not probable cause or not sufficient evidence to reach a level of probable cause. In that instance, they can return what's called a no-true bill or can pretermite an indictment and request more evidence. In cases where the penalty is death or life imprisonment, the State of Louisiana must proceed with a grand jury investigation and an indictment to file formal charges. Also, most parishes will submit their sex cases to grand juries as opposed to filing Bills of Information. When the State is going to present a case to the grand jury, they sometimes will issue what's called a "target letter". A target letter is sent to the person that is the target of the grand jury investigation. The target letter generally tells the target that they are the subject of a grand jury investigation and

invites them to testify at the grand jury. If you receive a target letter, it is very important that you discuss your case and your rights with a criminal defense lawyer before going to a grand jury. Rarely do I let my clients testify in front of a grand jury.

## **ARRAIGNMENT**

The next step in the criminal justice process is for the person accused to receive a subpoena for their arraignment. After formal charges have been filed, whether or not it was by way of Bill of Information or Indictment, the Clerk of Court's office will issue a subpoena for the person formally charged to be arraigned. At the arraignment, the Indictment or Bill of Information is read in open court and the defendant enters his/her plea. Generally, the defendant's attorney will waive the reading of the charges. The purpose is to clearly notify the accused of the charge against him/her. The defendant has four options at arraignment. He/she can plead guilty, not guilty, not guilty by reason of insanity, or Nolo Contendere. It is imperative that you plead not guilty at the arraignment. The reason why you always plead not guilty at the arraignment is that the State of Louisiana has the burden of proving its case beyond a reasonable doubt. It does not make any sense to plead guilty without first seeing all of the evidence that the State has and having your attorney conclude, after reviewing all of the evidence, that the State can meet its high burden of proof. Only after you and your attorney have had an opportunity to see all of the evidence that the State has against you should you make a decision to plead guilty. At arraignment, the defendant will be served with additional court dates. These court dates are a Motions Hearing Date, Pretrial Conference Date, and Trial Date.

## **MOTIONS HEARING DATE**

After a person is arraigned, their attorney should file pretrial motions on their behalf. Pretrial motions are pleadings that are filed with the Clerk of Court that requests that the court set a hearing to force the prosecution to turn over the evidence that it has against the defendant. In addition, there are other issues that can be heard by a court at a motion's hearing, things like Motions to Suppress Evidence, because evidence was obtained in violation of the Constitution, and Motions to Suppress Confessions or Incriminating Statements because they were taken in violation of the Constitution.

## PRETRIAL CONFERENCE

The purpose of the pretrial conference is to determine whether or not there is any issues left unresolved in the case that would prevent the case from proceeding to a trial. In addition, the pretrial conference is generally used by the attorneys to try and negotiate a resolution of the case by way of a “plea bargain”. A “plea bargain” is a compromise between your attorney and the prosecutor which resolves the case without a trial. A plea bargain can be a dismissal, guilty plea to a reduced charge or guilty plea with an agreed upon sentence. If the case cannot be resolved at the pretrial conference by way of plea bargain and there are no issues that are preventing the case from being ready for trial, then the case will proceed to trial.

## TRIAL

In Louisiana people who are charged with misdemeanors are entitled to a “bench trial” which is a trial before a judge. People charged with felonies are entitled to jury trials with either a six or twelve person jury. The order of trial is as follows.

- 1) **Voir dire:** Voir dire is jury selection. In jury selection, attorneys for the State and attorneys for the defendant question the jurors to determine whether or not they are qualified to serve as jurors in a particular case.
- 2) **Opening Statements:** Opening statements are presented by both the prosecution and the defense. The purpose of an opening statement is to give the jurors a roadmap of the evidence that will be presented by both sides. It is an opportunity for a defense lawyer to tell his client’s story and what they think the evidence will show at trial.
- 3) **The State’s Case in Chief:** The state calls its witnesses under direct examination. The defense then cross-exams the state’s witness.
- 4) **The Defense’s Case in Chief:** The defense calls its witnesses in direct examination and the state or the prosecution then cross-examines the defense’s witnesses.
- 5) **State’s Rebuttal:** The state then has an opportunity to call additional

witnesses to rebut or refute the evidence that was submitted by the defense. The witnesses that are called by the prosecution in its rebuttal case are then to subject to the defense's cross-examination.

- 6) **Closing Arguments:** Counsel for the prosecution and the defense then argue their case to the jury. The closing argument is when the attorneys mesh the law and the evidence that was presented at trial and argue as to why the defendant should be either guilty or not guilty.
- 7) **Instructions by the court:** At this stage the court reads to the jury its jury instructions which include the jury's duty to deliberate on the evidence and to reach a verdict. In addition, the court will instruct the jury as to what laws it is to apply to reach its verdict. Namely, that is the laws that criminalize the conduct that the defendant is accused of committing.
- 8) **Jury Deliberation:** At this point, the jury leaves the courtroom and goes to a jury deliberating room to consider the evidence and law and reach its verdict.
- 9) **The Reading of the Verdict:** At this point, the jury comes back into the courtroom and hands the bailiff its verdict and the verdict is read in open court.

## SENTENCING

In the event that the defendant loses at trial or in some cases agrees to a plea bargain, the judge will generally set the case for a sentencing. At the sentencing hearing, the defendant is afforded an opportunity to present favorable evidence on his behalf and request leniency from the court. Generally, before a sentencing hearing, the court will order a presentence investigation report which is an investigation performed by the Department of Public Safety and Corrections. This report includes a background check and a life history of the defendant so that the court can have the necessary information it needs to fashion an appropriate sentence.

## **READ This Section Before Hiring an Attorney**

While no lawyer can guarantee an outcome, it does make a difference to your case and your future, as to who your lawyer is. You may or may not know this, but - just because someone has a law degree and a fancy yellow page ad - doesn't mean he or she is the best attorney for you. After all, when you're talking about being charged with a criminal offense, that kind of situation is no small matter. What happens to you in the criminal justice system can affect you for the rest of your life! Do you really want to trust your defense to just any lawyer.

You can't shop for attorneys like you shop for other things. Attorneys are not all created equal! I'm sure you've realized that after what happened in the O.J. Simpson trial. So, deciding on an attorney based on price alone does not make much sense – that is, if you want to have the best chance of being found not guilty. If you shop for a bargain basement attorney, you'll get a bargain basement defense. Can you really afford to settle for that? What's your future worth?

In a criminal matter you can't undo the bad outcome of a bad defense “without an appeal and lots of extra expense”. You can't take it back and start over again. If you end up in prison – seeing your family only on visiting days – because your attorney was inexperienced or inept, what kind of a bargain is that?

No, - what you need is someone who knows their way around a courtroom, someone who knows that they're doing in a criminal case. You don't need your next door neighbor's divorce attorney or the attorney who drafted your brother-in-law's will. And even though you may ask all your friends to refer you to someone, chances are they will not have the expert “in-the-know” advice on the best attorney to handle your case.

## HOW DO YOU CHOOSE?

How do you find out who in your local community is the best for your case? I believe that there are certain questions to ask that will lead you to the best person for your case no matter what type of case you have. It may involve some time on your part, but that's okay because the decision as to who your attorney will be is maybe one of the most important decisions you will make in your life.

## SO, HOW DO YOU FIND OUT WHO IS GOOD IN YOUR AREA?

HERE ARE SOME TIPS.

- 1) Get a referral from an attorney that you know. He or she will probably know someone who does specialize or focus in criminal defense law. If you don't know anyone at all, go to [www.lawyers.com](http://www.lawyers.com) or call your local bar association because they may have a referral list.
- 2) The yellow pages can actually be a good source of names. Understanding three things, however: First, not everyone advertises in the yellow pages. Most of *our* cases come from referrals from other attorneys, court staff, prosecutors, judges, and satisfied clients. Second, be careful about the ads that tell too many different specialties. No one can do everything well. Third, be careful about the full page ads. This advertising typically attracts a lot of cases that can overwhelm an attorney. Make sure that the attorney you hire is selective enough with his or her cases that your important case does not become just one more file in the pile. We know several law firms that went out of business buried under the "weight" of full page yellow page ads.
- 3) Your local bar association probably has a lawyer referral service. Understand that lawyers have signed up to be listed in certain specialties. Their names come up on a rotating basis. This is another good source for an initial appointment. Just take the questions we talk about here to that interview.

- 4) Interview several attorneys. Ask each attorney who else handles these cases in your area. If they won't give you any names, **LEAVE**. Ask this question of each attorney. The names you see showing up on various lists of recommendations are probably good bets for attorneys doing these cases on a regular basis in your area. This is probably the best way to find the attorney who is right for you.
- 5) Ask each attorney if they have information just like this book and/or a website so that you can find out more about qualifications, experience, and their method of handling a case before you walk in the door.
- 6) Be careful about an attorney who rushes you to sign a fee agreement. If an attorney is doing a high pressure sales maneuver on you, it's probably because he doesn't have a sufficient amount of cases coming through the door and is desperate to get you signed up. If he doesn't have enough cases coming through the door and is desperate to get you signed up, it's because he's probably not a good attorney and is desperate for cases.
- 7) Beware of an attorney who contacts you in writing just after you have been arrested for the sole purpose of soliciting your case. If you are contacted "cold" **it should be** for the sole purpose of providing you free information that you can study in your own home own your own time.
- 8) Here are factors and good points to look for and question your attorney about. Note that not every attorney will meet all of these criteria, but the significant absence of the following should be a big question mark.
  - Experience - obviously, the longer you have been practicing a particular area of law, the more you will know. Experience is a big factor in most cases. In addition, look for someone who is a specialist or limits their practice to a particular area of the law. Generalist, people who try and handle every type of case, whether it be a personal injury case, criminal case, divorce case and bankruptcy cases is not focusing his practice in a particular area. Lawyers who focus their practice in particular areas, like

we do, gain far more experience than generalist.

- Experience actually trying cases –ask the attorney how many cases he has actually tried. Has he or she achieved any significant verdicts or settlements? Don't accept the "all my cases are confidential" line! The greater your number of cases actually tried and substantial verdicts and plea bargains achieved, the more likely the prosecution will respect you. Past results are not a guarantee of the future but past results do demonstrate some level of experience and success.
  - Respect in the legal community – Does the attorney teach other lawyers in seminars and does he have a good reputation with other attorneys in town?
  - Membership in trial lawyer associations. In our area, you can certainly find who is a member of the Louisiana Association of Criminal Defense Lawyers and/or the National Association of Criminal Defense Lawyers. Attorneys who are serious about practicing in the area of criminal law are generally members of these organizations. These organizations provide extensive education and networking for trial lawyers.
- 9) How will your attorney keep you informed about the progress of the case? In my practice, we generally send a copy of every piece of correspondence and pleadings in the case to the client. We also take time to explain the "pace" of the case and in what time frame the client can expect activity to take place.
- 10) Find out who will actually be working on your case. Make sure that you and your attorney have a firm understanding as to who will be handling your case. There are a lot of things that go on with a case that do not require the senior attorney's attention. On the other hand, if you are hiring an attorney because of his or her trial skills, make sure that that person is going to be trying your case for you.

## **OTHER ATTORNEYS**

**If You Don't Hire Us, Or If We Decline Your Case, Please Consider Calling An Attorney From This List of Experience Criminal Defense Attorneys.**

Thomas E. Guilbeau (Lafayette) - 337-232-7240

Alfred Boustany (Lafayette) - 337-261-0225

Daniel Stanford (Lafayette) - 337- 232-2272

Mike Small (Alexandria) - 318- 487-8963

Thomas Lorenzi (Lake Charles) - 337-436-8401

Lewis Unglesby (Baton Rouge) - 225-387-0120

Barry Salinger (Lafayette) - 337-235-5791

Jason Robideaux (Lafayette) - 337-291-9444

Cecelia Bonin (New Iberia) - 337-606-0108

Richard Spears (New Iberia) - 337-367-1960

## **What Do We Do For You In A Criminal Defense Case?**

Here is a more or less complete list of the task we may be called to do in your case. Remember that each case is different, and that not all of these tasks will be required in every case. They are:

- Initial interview with the client
- Educate client about criminal defense cases
- Gather documentary evidence, including police reports, medical records, lab reports, and forensic analysis reports
- Interview known witnesses
- Collect other evidence, such as photographs of the crime scene
- Analyze the legal issues such as affirmative defenses, criminal procedure issues, and evidentiary issues.
- Decided with the client whether an attempt will be made to negotiate a plea bargain with the prosecution
- Prepare for trial and/or plea bargaining before trial
- Prepare the client and witnesses for trial
- Organize the preparation of exhibits for trial
- File briefs and motions with the court to limit the prosecution's case and eliminate surprises at trial
- Take the case to trial with a jury or judge
- Analyze the jury's verdict to determine whether we have good grounds to appeal the case

- Make recommendations to the client as to whether or not to appeal the case

## **WHY YOU SHOULD HIRE US**

As I said at the beginning of this book, “we are different.” Rather than run around trying to manage hundreds of cases at a time, we carefully select the cases that we will accept at any one time.

There are many attorneys who advertise for criminal defense cases. Unfortunately, some of the attorneys have so many small cases in their offices that no case gets their personal attention. Others have no real intention of trying your case themselves and if the case cannot be plea bargained they will refer the case out for trial. There are good experienced attorneys in this field, but it is very difficult for a consumer to separate the good from the bad. You need to take responsibly for your hiring decision by asking the right questions. Our clients get personal attention because we are very selective in the cases that we take. We decline hundreds of cases a year in order to devote personal, careful attention to those that we accept.

## OUR CASES AND VERDICTS

Here is a sampling of cases that we have handled. Remember that each case is different. We've won cases we probably should have lost and we've lost cases that we expected to win. Once a case is in the hands of the jury, it is out of our control. We do believe, however, that significant trial experience in criminal cases is one factor that many people use to choose one attorney over another. Many of our clients have told us that this is true. With these disclaimers in mind, here are some of our results:

### *State of Louisiana vs. Robert Kelly.*

Robert Kelly, otherwise known as R. Kelly, a R&B Artists from Chicago was arrested and formally charged with a second degree felony battery. Mr. Kelly was in town performing a concert. He went to a local health club and got involved in a fight with some members of the health club during a basketball game. R. Kelly and some of his body guards were charged. The members of the health club were seriously injured. We were members of the defense team that defended Mr. Kelly. After thorough investigation and trial preparation, the prosecution ended up reducing the charge from felony second battery to misdemeanor simple battery. A felony conviction would have seriously impacted Mr. Kelly's career and recording contract.

### *State of Louisiana vs. Luther Campbell.*

Luther Campbell, otherwise known as "Luke Skywalker" was the lead singer in the rap band "2 Live Crew". Mr. Campbell was in the Lafayette area performing a concert. The State of Louisiana brought formal charges accusing Mr. Campbell of a felony second degree battery. The prosecution contended that during the concert, a young woman climbed up on stage and Mr. Campbell grabbed her and threw her off of the stage whereupon she fell face first onto the concrete floor sustaining serious injuries. After an investigation, the defense learned that someone at the concert had secretly brought in a tape recorder and had taped the entire concert. After obtaining the video tape and viewing it, it became obvious that someone other than Mr. Campbell had thrown the young woman from the stage. After confronting the prosecution with this evidence, the prosecution dismissed the case against Mr. Campbell.

*United States of America vs. Lamont Robinson.*

Mr. Robinson was charged with 23 counts of physical abuse, 30 counts of sexual abuse, and 1 count of aggravated sexual abuse which carried up to a life sentence for the alleged molestation of his step-daughter. The case was tried by jury. After the prosecution rested its case, the defense moved for a dismissal. The judge, after hearing arguments, decided that a dismissal was appropriate and dismissed the 23 physical abuse cases. The defense then presented its case and made arguments to the jury on the remaining counts. The jury returned a verdict of not guilty on the remaining 30 counts of sexual assault and the aggravated sexual assault charge.

*State of Louisiana vs. Brian DeBlanc.*

Mr. DeBlanc was accused of molesting a friend's daughter. The case was tried to a jury. During the cross-examination of the victim, the defense was able to expose numerous inconsistencies. The trial judge commented that it was the best cross-examination of a child that he had ever witnessed. The jury returned a verdict of not guilty.

*United States of America vs. Scott McDaniel.*

The Federal Government brought an indictment against Mr. McDaniel for possessing equipment that was capable of intercepting satellite signals and for witness tampering. The FBI raided Mr. McDaniel's office and located equipment used to intercept satellite signals in his office. At the time, Mr. McDaniel was on probation for the exact same offense from a previous case. The case went to trial by jury. At the trial, the defense argued that the satellite signal theft equipment was planted there by his business partner in an effort for her to obtain control over the business. The jury returned a verdict of not guilty on all charges.

*State of Louisiana vs. Terry LaPointe.*

Mr. LaPointe was formally charged with eight counts of aggravated rape. Each count carried a life sentence. The prosecution alleged that Mr. LaPointe had raped his step-daughter. The case went to trial by jury. The jury found Mr. LaPointe not guilty on all charges.

*State of Louisiana vs. Kevin Coleman.*

Mr. Coleman was charged with two counts of second degree murder. Five eye-witnesses testified that Kevin Coleman was one of two people that fired shots into a crowd of people that resulted in two deaths. During cross-examination, the defense was able to show that the eye-witnesses didn't actually see Mr. Coleman but that Mr. Coleman's name was suggested to them by the investigating officer. One of the dangers of eye-witness identification testimony is suggestion by law enforcement. The defense argued that Kevin was a victim of suggestion by the police and erroneous eye-witness identification. The jury found Mr. Coleman not guilty on both counts.

*State of Louisiana vs. Marlo Foreman.*

Marlo Foreman, a City of Rayne police officer, was formally charged with manslaughter. Mr. Foreman shot someone while performing his duties as a police officer. The prosecution and the state police alleged that the shooting was not proper and that Mr. Foreman used excessive force when he shot his service revolver 18 times at the alleged victim who, according to the state police, was already in custody. After a jury trial, the jury found Mr. Foreman not guilty.

*State of Louisiana vs. Jerry Boudreaux.*

Mr. Boudreaux was accused of attempted first degree murder of a police officer. The police and the prosecution were alleging that Mr. Boudreaux attempted to run down a cop as Mr. Boudreaux was fleeing from a drug deal. The defense did an investigation and located a witness that would testify that the police were lying. On the eve of trial, the prosecution dismissed the case.

**Visit [www.stockstilllaw.com](http://www.stockstilllaw.com) to review other verdicts. Louisiana residents can also subscribe to our newsletter that is delivered to your door eight times a year.**