Министерство образования и науки Российской Федерации
Федеральное государственное бюджетное образовательное учреждение высшего образования
«Тульский государственный университет»

Интернет-институт

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Реферат

ВЫПОЛНИЛ [redacted] Екатерина Аркадьевна
ПРОВЕРИЛА [redacted]

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Оглавление

Introduction

Before a criminal trial can be held, federal and state laws require a series of procedures and events. Some of these stages are mandated by the U.S. Constitution and state constitutions, some by court decisions, and others by legislative enactments. Custom and tradition often account for the rest. Although the exact nature of these procedural events varies from federal to state practice and from one state to another there are similarities throughout the country. These procedures, however, are not as automatic or routine as they might appear; rather, the judicial system's decision makers exercise discretion at all stages according to their values, attitudes, and views of the world.

1.Procedures before a criminal trial

1.1The Arrest

The arrest is the first substantial contact between the state and the accused. The U.S. legal system provides for two basic types of arrest those with a warrant and those without. A warrant is issued after a complaint, filed by one person against another, has been presented and reviewed by a magistrate who has found probable cause for the arrest. Arrests without a warrant occur when a crime is committed in the presence of a police officer or when an officer has probable cause to believe that someone has committed (or is about to commit) a crime. Such a belief must later be established in a sworn statement or testimony. In the United States up to 95 percent of all arrests are made without a warrant.

An officer's decision whether to make an arrest is far from simple or automatic. To be sure, the officer who witnesses a murder will make an arrest on the spot if possible. But most lawbreaking incidents are not that simple or clear- cut, and police officials possess and exercise wide discretion about whether to take someone into custody. Sufficient resources are simply not available to the police for them to proceed against all activities that Congress and the legislatures have forbidden. Consequently, discretion must be exercised in determining how to allocate the time and resources that do exist. Police discretion is at a maximum in several areas.

Trivial Offenses. Many police manuals advise their officers that when minor violations of the law are concerned, a warning is a more appropriate response than an arrest. Traffic violations, misconduct by juveniles, drunkenness, gambling, and vagrancy all constitute less serious crimes and entail judgment calls by police.

Victim Will Not Seek Prosecution. No enforcement of the law is also the rule in situations where the victim of a crime will not cooperate with the police in prosecuting a case. In the instance of minor property crimes, for example, the victim is often satisfied if restitution occurs and the victim cannot afford the time to testify in court. Unless the police have expended considerable resources in investigating a particular

property crime, they are generally obliged to abide by the victim's wishes.

When the victim of a crime is in a continuing relationship with the criminal, the police often decline to make an arrest. Such relationships include landlord and tenant, one neighbor and another, and, until recently, husband and wife. In this last case, however, heightened awareness of domestic violence has had a significant impact on police procedures.

Rape and child molestation constitute another major category of crimes for which there are often no arrests because the victims will not or cannot cooperate with the police. Oftentimes the victim is personally acquainted with, or related to, the criminal, and the fear of reprisals or of ugly publicity inhibits the victim from pressing a complaint.

Victim Also Involved in Misconduct. When police officers perceive that the victim of a crime is also involved in some type of improper or questionable conduct, the officers frequently opt not to make an arrest.[1]

1.2 Appearance Before a Magistrate

After a suspect is arrested for a crime, he or she is booked at the police station; that is, the facts surrounding the arrest are recorded and the accused may be fingerprinted and photographed. Next the accused appears before a lower-level judicial official whose title may be judge, magistrate, or commissioner. Such an appearance is supposed to occur "without unnecessary delay"; in 1991 the U.S. Supreme Court ruled that police may detain an individual arrested without a warrant for up to 48 hours without a court hearing on whether the arrest was justified.

This appearance in court is the occasion of several important events in the criminal justice process. First, the accused must have been informed of the precise charges and must be informed of all constitutional rights and guarantees. Among others, these rights include those of the now famous Miranda v. Arizona decision handed down in 1966 by the Supreme Court. The accused "must be warned prior to any questioning

[1] http://bukvi.ru/obshestvo/inostrannij/criminal-justice-process-in-the-usa.html

that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning." (Such warnings must also be given by the arresting officer if the officer questions the suspect about the crime.) In some states the accused must be informed about other rights that are provided for in the state's Bill of Rights, such as the right to a speedy trial and the right to confront hostile witnesses.

Second, the magistrate will determine whether the accused is to be released on bail and, if so, what the amount of bail is to be. Constitutionally, the only requirement for the amount is that it shall not be "excessive." Bail is considered to be a privilege not a right and it may be denied altogether in capital punishment cases for which the evidence of guilt is strong or if the magistrate believes that the accused will flee from prosecution no matter what the amount of bail. An alternative to bail is to release the defendant on recognizance, basically on a pledge by the defendant to return to court on the appointed date for trial.

In minor cases the accused may be asked to plead guilty or not guilty. If the plea is guilty, a sentence may be pronounced on the spot. If the defendant pleads not guilty, a trial date is scheduled. However, in the typical serious (felony) case, the next primary duty of the magistrate is to determine whether the defendant requires a preliminary hearing. If such a hearing is appropriate, the matter is adjourned by the prosecution and a subsequent stage of the criminal justice process begins.

At the federal level all persons accused of a crime are guaranteed by the Fifth Amendment to have their cases considered by a grand jury. However, the Supreme Court has refused to make this right binding on the states. Today only about half of the states use grand juries; in some of these, they are used for only special types of cases. Those states that do not use grand juries employ a preliminary hearing or an examining trial. (A few states use both procedures.) Regardless of which method is used, the primary purpose of this stage in the criminal justice process is to determine whether there is probable cause for the accused to be subjected to a formal trial.

The Grand Jury. Grand juries consist of 16 to 23 citizens, usually selected at

random from the voter registration lists, who render decisions by a majority vote. Their terms may last anywhere from one month to one year, and some may hear more than a thousand cases during their term. The prosecutor alone presents evidence to the grand jury. Not only are the accused and his or her attorney absent from the proceedings, but usually they also have no idea which grand jury is hearing the case or when. If a majority believes probable cause exists, then an indictment, or true bill, is brought. Otherwise the result is a no bill.

Historically two arguments have been made in favor of grand juries. One is that grand juries serve as a check on a prosecutor who might be using the office to harass an innocent person for political or personal reasons. Ideally an unbiased group of citizens would interpose themselves between an unethical prosecutor and the defendant. A second justification for grand juries is to make sure that the district attorney has secured enough evidence to warrant the trouble and expense for both the state and the accused of a full-fledged trial.

The Preliminary Hearing. In the majority of states that have abolished the grand jury system, a preliminary hearing is used to determine whether there is probable cause for the accused to be bound over for trial. At this hearing the prosecution presents its case, and the accused has the right to cross-examine witnesses and to produce favorable evidence. Usually the defense elects not to fight at this stage of the criminal process; in fact, a preliminary hearing is waived by the defense in the vast majority of cases.

If the examining judge determines that there is probable cause for a trial or if the preliminary hearing is waived, the prosecutor must file a bill of information with the court where the trial will be held. This serves to outline precisely the charges that will be adjudicated in the new legal setting.[2]

1.3 The Arraignment

Arraignment is the process in which the defendant is brought before the judge in the court where he or she is to be tried to respond to the grand jury indictment or the

[2] florida.theorangegrove.org›og/file…5b28442773ae/1

prosecutor's bill of information. The prosecutor or a clerk usually reads in open court the charges that have been brought against the accused. The defendant is informed that he or she has a constitutional right to be represented by an attorney and that a lawyer will be appointed without charge if necessary.

The defendant has several options about how to plead to the charges. The most common pleas are guilty and not guilty. But the accused may also plead not guilty by reason of insanity, former jeopardy (having been tried on the same charge at another time), or "nolo contendere" (from the Latin, no contest). Nolo contendere means that the accused does not deny the facts of the case but claims that he or she has not committed any crime, or it may mean that the defendant does not understand the charges. The nolo contendere plea can be entered only with the consent of the judge (and sometimes the prosecutor as well). Such a plea has two advantages. It may help the accused save face the public because he or she can later claim that technically no guilty verdict was reached even though a sentence or a fine may have been imposed. Also, the plea may spare the defendant from certain civil penalties that might follow a guilty plea (for example, a civil suit that might follow from conviction for fraud or embezzlement). If the accused pleads not guilty, the judge will schedule a date for a trial. If the plea is guilty, the defendant may be sentenced on the spot or at a later date set by the judge. Before the court will accept a guilty plea, the judge must certify that the plea was made voluntarily and that the defendant was aware of the implications of the plea. A guilty plea is to all intents and purposes the equivalent to a formal verdict of guilty.[3]

1.4 The Possibility of a Plea Bargain

At both the state and federal levels at least 90 percent of all criminal cases never go to trial. That is because before the trial date a bargain has been struck between the prosecutor and the defendant's attorney concerning the official charges to be brought and the nature of the sentence that the state will recommend to the court. In effect, some

[3] http://www.esia.net/Definitions.htm

form of leniency is promised in exchange for a guilty plea.

Because plea bargaining virtually seals the fate of the defendant before trial, the role of the judge is simply to ensure that the proper legal and constitutional procedures have been followed. There are three (not mutually exclusive) types of plea bargains.

Reduction of Charges. The most common form of agreement between a prosecutor and a defendant is a reduction of the charge to one less serious than that supported by the evidence. This exposes the criminal to a substantially reduced range of sentence possibilities. A second reason for a defendant to plead guilty to a reduced charge is to avoid a record of conviction for an offense that carries a social stigma. Another possibility is that the defendant may wish to avoid a felony record altogether and would be willing to plead guilty to almost any misdemeanor offered by the prosecutor rather than face a felony charge.

Deletion of Tangent Charges. A second form of plea bargain is the agreement of the district attorney to drop other charges pending against an individual. There are two variations on this theme. One is an agreement not to prosecute "vertically" that is, not to prosecute more serious charges filed against the individual. The second type of agreement is to dismiss "horizontal" charges; that is to dismiss additional indictments for the same crime pending against the accused.

Another variation of this type of plea bargaining is the agreement in which a repeater clause is dropped from an indictment. At the federal level and in many states, a person is considered a habitual criminal upon the third conviction for a violent felony anywhere in the United States. The mandatory sentence for the habitual criminal is life imprisonment. In state courts the habitual criminal charge often is dropped in exchange for a plea of guilty.

Another plea bargain of this type is the agreement in which indictments in different courts are consolidated into one court in order that the sentences may run concurrently. As indictments or preliminary hearing rulings are handed down in many jurisdictions, they are placed on a trial docket on a rotation system. This means that a defendant charged with four counts of forgery and one charge of possession of a forged instrument might be placed on the docket of five different courts. Generally it is

common practice in such multicourt districts to transfer all of a person's indictments to the first court listed. This gives the presiding judge the discretion of allowing all of the defendant's sentences to run concurrently.[4]

Sentence Bargaining. A third form of plea bargaining concerns a plea of guilty from the defendant in exchange for a prosecutor's agreement to ask the judge for a lighter sentence. The strength of the sentence negotiation is based upon the realities of the limited resources of the judicial system. At the state level, at least, prosecutors are able to promise the defendant a fairly specific sentence with confidence that the judge will accept the recommendation. If the judge were not to do so, the prosecutor's credibility would quickly begin to wane, and many of the defendants who had been pleading guilty would begin to plead not guilty and take their chances in court. The result would be a gigantic increase in court dockets that would overwhelm the judicial system and bring it to a standstill. Prosecutors and judges understand this reality, and so do the defense attorneys.

Constitutional and Statutory Restrictions on Plea Bargaining. At both the state and federal levels, the requirements of due process of law mean that plea bargains must be made voluntarily and with comprehension. This means that the defendant must be admonished by the court of the consequences of a guilty plea (for example, the defendant waives all opportunities to change his or her mind at a later date), that the accused must be sane, and that, as one state puts it, "It must plainly appear that the defendant is uninfluenced by any consideration of fear or by any persuasion, or delusive hope of pardon prompting him to confess his guilt."

For the first two types of plea bargains reduction of charges and deletion of tangent charges some stricter standards govern the federal courts. One is that the judge may not actually participate in the process of plea bargaining; at the state level judges may play an active role in this process. Likewise, if a plea bargain has been made between the U.S. attorney and the defendant, the government may not renege on the agreement. If the federal government does so, the federal district judge must withdraw

[4] http://www.uscourts.gov/about-federal-courts/types-cases/criminal-cases

the guilty plea. Finally, the Federal Rules of Criminal Procedure require that before a guilty plea may be accepted, the prosecution must present a summary of the evidence against the accused, and the judge must agree that there is strong evidence of the defendant's guilt.

Arguments For and Against Plea Bargaining. For the defendant the obvious advantage of the bargain is that he or she is treated less harshly than would be the case if the accused were convicted and sentenced under maximum conditions. Also, the absence of a trial often lessens publicity on the case, and because of personal interests or social pressures, the accused may wish to avoid the length and publicity of a formal trial. Finally, some penologists (professionals in the field of punishment and rehabilitation) argue that the first step toward rehabilitation is for a criminal to admit guilt and to recognize his or her problem.

Plea bargaining also offers some distinct advantages for the state and for society as a whole. The most obvious is the certainty of conviction, because no matter how strong the evidence may appear, an acquittal is always a possibility as long as a trial is pending. Also, the district attorney's office and judges are saved an enormous amount of time and effort by their not having to prepare and preside over cases in which there is no real contention of innocence or that are not suited to the trial process. Finally, when police officers are not required to be in court testifying in criminal trials, they have more time to devote to preventing and solving crimes.

Plea bargains do have a negative side as well. The most frequent objection to plea bargaining is that the defendant's sentence may be based upon nonpenological grounds. With the large volume of cases making plea bargaining the rule, the sentence often bears no relation to the specific facts of the case, to the correctional needs of the criminal, or to society's legitimate interest in vigorous prosecution of the case. A second defect is that if plea bargaining becomes the norm of a particular system, then undue pressure may be placed upon even innocent persons to plead guilty. Studies have shown that, in some jurisdictions, the less the chance for conviction, the harder the bargaining may be because the prosecutor wants to get at least some form of minimal confession out of the accused.

A third disadvantage of plea bargaining is the possibility of the abuse called overcharging the process whereby the prosecutor brings charges against the accused more severe than the evidence warrants, with the hope that this will strengthen his or her hand in subsequent negotiations with the defense attorney.

Another flaw with the plea bargaining system is its very low level of visibility. Bargains between prosecutor and defense attorney are not made in open court presided over by a neutral jurist and for all to observe. Instead, they are more likely made over a cup of coffee in a basement courthouse cafeteria where the conscience of the two lawyers is the primary guide.

Finally, the system has the potential to circumvent key procedural and constitutional rules of evidence. Because the prosecutor need not present any evidence or witnesses in court, a bluff may result in a conviction even though the case might not be able to pass the muster of the due process clause. The defense may be at a disadvantage because the rules of discovery (the laws that allow the defense to know in detail the evidence the prosecution will present) in some states limit the defense counsel's case preparation to the period after the plea bargain has occurred. Thus the plea bargain may deprive the accused of basic constitutional rights.

The Adversarial Process

The adversarial model is based on the assumption that every case or controversy has two sides to it: In criminal cases the government claims a defendant is guilty while the defendant contends innocence; in civil cases the plaintiff asserts that the person he or she is suing has caused some injury while the respondent denies responsibility. In the courtroom each party provides his or her side of the story as he or she sees it. The theory (or hope) underlying this model is that the truth will emerge if each party is given unbridled opportunity to present the full panoply of evidence, facts, and arguments before a neutral and attentive judge (and jury).

The lawyers representing each side are the major players in this courtroom drama. The judge acts more as a passive, disinterested referee whose primary role is to keep both sides within the accepted rules of legal procedure and courtroom decorum. The judge eventually determines which side has won in accordance with the rules of evidence, but only after both sides have had a full opportunity to present their case.

2. Procedures during a criminal trial

Assuming that no plea bargain has been struck and the accused maintains his or her innocence, a formal trial will take place. This is a right guaranteed by the Sixth Amendment to all Americans charged with federal crimes and a right guaranteed by the various state constitutions and by the Fourteenth Amendment to all persons charged with state offenses. The accused is provided many constitutional and statutory rights during the trial. The following are the primary rights that are binding on both the federal and state courts.

2.1 Basic Rights Guaranteed During the Trial Process

The Sixth Amendment says, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." The Founders emphasized the word speedy so that an accused would not languish in prison for a long time prior to the trial or have the determination of his or her fate put off for an undue length period of time. But how soon is speedy? Although this word has been defined in various ways by the Supreme Court, Congress gave new meaning to the term when it passed the Speedy Trial Act of 1974. The act mandated time limits, ultimately reaching 100 days, within which criminal charges must either be brought to trial or dismissed. Most states have similar measures on the statute books, although the precise time period varies from one jurisdiction to another. By "public trial" the Founders meant to discourage the notion of secret proceedings whereby an accused could be tried without public knowledge and whisked off to some unknown detention camp.

The Sixth Amendment also guarantees Americans the right to an impartial jury. At the least this has meant that the prospective jurors must not be prejudiced one way or the other before the trial begins. For example, a potential juror may not be a friend or relative of the prosecutor or the crime victim; nor may someone serve who believes that anyone of the defendant's race or ethnic ancestry is "probably the criminal type." What the concept of an impartial jury of one's peers has come to mean in practice is that jurors are to be selected randomly from the voter registration lists supplemented in an increasing number of jurisdictions by lists based on automobile registrations, driver's

licenses, telephone books, welfare rolls, and so on. Although this system does not provide a perfect cross-section of the community, because not all persons are registered to vote, the Supreme Court has said that this method is good enough. The High Court has also ruled that no class of persons (such as African Americans or women) may be systematically excluded from jury service.

Besides being guaranteed the right to be tried in the same locale where the crime was committed and to be informed of the charges, defendants have the right to be confronted with the witnesses against them. They have the right to know who their accusers are and what they are charging so that a proper defense may be formulated. The accused is also guaranteed the opportunity "to have the Assistance of Counsel for his defense." Prior to the 1960s this meant that one had this right (at the state level) only for serious crimes and only if one could pay for an attorney. However, because of a series of Supreme Court decisions, the law of the land guarantees one an attorney if tried for any crime that may result in a prison term, and the government must pay for the legal defense for an indigent defendant. This is the rule at both the national and state levels.

The Fifth Amendment to the U.S. Constitution declares that no person shall "be subject for the same offence to be twice put in jeopardy of life and limb." This is the double jeopardy clause and means that no one may be tried twice for the same crime by any state government or by the federal government. It does not mean, however, that a person may not be tried twice for the same action if that action has violated both national and state laws. For example, someone who robs a federally chartered bank in New Jersey runs afoul of both federal and state law. That person could be legally tried and acquitted for that offense in a New Jersey court and subsequently be tried for that same action in federal court.

Another important right guaranteed to the accused at both the state and federal levels is not to "be compelled in any criminal case to be a witness against himself." This has been interpreted to mean that the fact that someone elects not to testify on his or her own behalf in court may not be used against the person by judge and jury. This guarantee serves to reinforce the principle that under the U.S. judicial system the burden

of proof is on the state; the accused is presumed innocent until the government proves otherwise beyond a reasonable doubt.

Finally, the Supreme Court has interpreted the guarantee of due process of law to mean that evidence procured in an illegal search and seizure may not be used against the accused at trial. The source of this so-called exclusionary rule is the Fourth Amendment to the U.S. Constitution; the Supreme Court has made its strictures binding on the states as well. The Court's purpose was to eliminate any incentive the police might have to illegally obtain evidence against the accused.[5]

2.2 Selection of Jurors

If the accused elects not to have a bench trial that is, not to be tried and sentenced by a judge alone his or her fate will be determined by a jury. At the federal level 12 persons must render a unanimous verdict. At the state level such criteria apply only to the most serious offenses. In many states a jury may consist of fewer than 12 persons and render verdicts by other than unanimous decisions.

A group of potential jurors is summoned to appear in court. They are questioned in open court about their general qualifications for jury service in a process known as "voir dire" (from Old French, meaning "to say the truth"). The prosecutor and the defense attorney ask general and specific questions of the potential jurors. Are they citizens of the state? Can they comprehend the English language? Have they or anyone in their family ever been tried for a criminal offense? Have they read about or formed any opinions about the case at hand?

In conducting the voir dire, the state and the defense have two goals. The first is to eliminate all members of the panel who have an obvious reason why they might not render an impartial decision in the case. Common examples might be someone who is excluded by law from serving on a jury, a juror who is a friend or relative of a participant in the trial, and someone who openly admits a strong bias in the case at hand. Objections to jurors in this category are known as challenges for cause, and the number of such

[5] http://wn.com/Rights_of_the_accused

challenges is unlimited. It is the judge who determines whether these challenges are valid.

The second goal that the opposing attorneys have in questioning prospective jurors is to eliminate those who they believe would be unfavorable to their side even though no overt reason is apparent for the potential bias. Each side is allowed a number of peremptory challenges requests to the court to exclude a prospective juror with no reason given. Most states customarily give the defense more peremptory challenges than the prosecution. At the federal level one to three challenges perjury are usually permitted each side, depending on the nature of the offense; as many as 20 are allowed in capital cases. The use of peremptory challenges is more of an art than a science and is usually based on the hunch of the attorneys.

In the past attorneys were able to exclude potential jurors via the peremptory challenge for virtually any reason whatsoever. However, in recent years the Supreme Court has interpreted the Fourteenth Amendment's equal protection clause to restrict this discretion by prohibiting prosecutors from using their challenges to exclude African Americans or women from serving on a criminal jury.

The process of questioning and challenging prospective jurors continues until all those duly challenged for cause are eliminated, the peremptory challenges are either used up or waived, and a jury of 12 (six in some states) has been created.

In some states alternate jurors are also chosen. They attend the trial but participate in deliberations only if one of the original jurors is unable to continue in the proceedings. Once the panel has been selected, they are sworn in by the judge or the clerk of the court.[6]

2.3 Procedures after a criminal trial

At the close of the criminal trial, generally two stages remain for the defendant if he or she has been found guilty: sentencing and an appeal.

Sentencing is the court's formal pronouncement of judgment upon the

[6] http://www.carlcederlaw.com/judge-or-jury-trial

defendant at which time the punishment or penalty is set forth.

At the federal level and in most states, sentences are imposed by the judge only. However, in several states the defendant may elect to be sentenced by either" a judge or a jury, and in capital cases states generally require that no death sentence shall be imposed unless it is the determination of 12 unanimous jurors. In some states after a jury finds someone guilty, the jury deliberates a second time to determine the sentence. In several states a new jury is empanelled expressly for sentencing. At this time the rules of evidence are more relaxed, and the jury may be permitted to hear evidence that was excluded during the actual trial (for example, the previous criminal record of the accused).

After the judge pronounces the sentence, several weeks customarily elapse between the time the defendant is found guilty and the time when the penalty is imposed. This interval permits the judge to hear and consider any post trial motions that the defense attorney might make (such as a motion for a new trial) and to allow a probation officer to conduct a presentence investigation. The probation officer is a professional with a background in criminology, psychology, or social work, who makes a recommendation to the judge about the length of the sentence to be imposed. The probation officer customarily examines factors such as the background of the criminal, the seriousness of the crime committed, and the likelihood that the criminal will continue to engage in illegal activity. Judges are not required to follow the probation officer's recommendation, but it is still a major factor in the judge's calculus as to what the sentence shall be. Judges are presented with a variety of alternatives and a range of sentences when it comes to punishment for the criminal. Many of these alternatives involve the concept of rehabilitation and call for the assistance of professionals in the fields of criminology and social science.

The lightest punishment that a judge can hand down is that of probation. This is often the penalty if the crime is regarded as minor or if the judge believes that the guilty person is not likely to engage in additional criminal activity. If a probated sentence is handed down, the criminal may not spend any time in prison as long as the

conditions of the probation are maintained. Such conditions might include staying away from convicted criminals, not committing other crimes, or with increasing frequency, performing some type of community service. If a criminal serves out his or her probation without incident, the criminal record is usually wiped clean and in the eyes of the law it is as if no crime had ever been committed.

If the judge is not disposed toward probation and feels that jail time is in order, he or she must impose a prison sentence that is within a range prescribed by law. The reason for a range of years instead of an automatically assigned number is that the law recognizes that not all crimes and criminals are alike and that in principle the punishment should fit the crime.

In an effort to eliminate gross disparities in sentencing, the federal government and many states have attempted to develop sets of precise guidelines to create greater consistency among judges. At the national level this effort was manifested by the enactment of the Sentencing Reform Act of 1987, which established guidelines to structure the sentencing process.

Congress provided that judges may depart from the guidelines only if they find an aggravating or mitigating circumstance that the commission did not adequately consider. Although the congressional guidelines do not specify the kinds of factors that could constitute grounds for departure from the sentencing guidelines, Congress did state that such grounds could not include race, gender, national origin, creed, religion, socioeconomic status, drug dependence, or alcohol abuse.

The states, too, have a variety of programs for avoiding vast disparities in judges' sentences. By 1995, 22 states had created commissions to establish sentencing guidelines for their judges, and as of late 1997 such guidelines were in effect in 17 states. Likewise, almost all of the states have now enacted mandatory sentencing laws that require an automatic, specific sentence upon conviction of certain crimes particularly violent crimes, crimes in which a gun was used, or crimes perpetrated by

habitual offenders.

Despite the enormous impact that judges have on the sentence, they do not necessarily have the final say on the matter. Whenever a prison term is set by the judge, it is still subject to the parole laws of the federal government and of the states. Thus parole boards (and sometimes the president and governors who may grant pardons or commute sentences) have the final say about how long an inmate actually stays in prison.[7]

[7] http://www.usa-auswandererforum.com/immigration-faqs/311-criminal-court-process.html

Conclusion

At both the state and federal levels everyone has the right to at least one appeal upon conviction of a felony, but in reality few criminals avail themselves of this privilege. An appeal is based on the contention that an error of law was made during the trial process. Such an error must be reversible as opposed to harmless. An error is considered harmless if its occurrence had no effect on the outcome of the trial. A reversible error, however, is a serious one that might have affected the verdict of the judge or jury. For example, a successful appeal might be based on the argument that evidence was improperly admitted at trial, that the judge's instructions to the jury were flawed, or that a guilty plea was not voluntarily made. However, appeals must be based on questions of procedure and legal interpretations, not on factual determinations of the defendant's guilt or innocence as such. Furthermore, under most circumstances one cannot appeal the length of one's sentence in the United States (as long as it was in the range prescribed by law).

Criminal defendants do have some degree of success on appeal about 20 percent of the time, but this does not mean that the defendant goes free. The usual practice is for the appellate court to remand the case (send it back down) to the lower court for a new trial. At that point the prosecution must determine whether the procedural errors in the original trial can be overcome in a second trial and whether it is worth the time and effort to do so. A second trial is not considered double jeopardy, since the defendant has chosen to appeal the original conviction.

The media and others concerned with the law often call attention to appellate courts that turn loose seemingly guilty criminals and to convictions that are reversed on technicalities. Surely this does happen, and one might argue that this is inevitable in a democratic country whose legal system is based on fair play and the presumption of the innocence of the accused. However, about 90 percent of all defendants plead guilty, and this plea virtually excludes the possibility of an appeal. Of the remaining group, two-thirds are found guilty at trial, and only a small percentage of these appeal. Of those who do appeal, only about 20 percent have any measurable

degree of success. Of those whose convictions are reversed, many are found guilty at a subsequent trial. Thus the number of persons convicted of crimes who are subsequently freed because of reversible court errors is a small fraction of 1 percent.

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