Going Pro Se

(Representing yourself without a lawyer)

-Some of the things you need to know for going Pro Se in political cases in the U.S.-

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And

With the generous aid and able assistance of my first attorney advisor Mark Goldstone.
And the help of many clever reviewers including some from the MOCC.

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Preliminary tips

First - the system is not just - not even for you. Do not expect to find justice in the criminal [in]-justice system. Save your surprised outrage for the streets! Keep it out of the courts.

Second- however nice the judge or the prosecution can occasionally seem- they are NOT on your side! They make their money doing this and they don't get promoted or re-elected easily by being "easy" on crime! Prosecutors have quotas just like cops.

Third – **go to the courthouse** [far before your court date and more than once if possible] and sit in a criminal trial and really observe it. You can ask at the information desk for courtrooms where trials are scheduled. Procedures and rules and laws are somewhat different in each state and the District of Columbia so what I give here as to procedures is only an outline of the most of the possibilities. Take notes and ask [lawyers, law students/ law professors/ law librarians] and research what you didn't understand! Try to sit in on the judge you are going in front of. But sit through a criminal trial and hearings [or as much of one as you can] even if the judge that will be hearing your case is not holding a

trial when you are at the courthouse - law students and lawyers do this- you NEED to do this to get comfortable with the forum!!!!

Fourth – Whether or not you go pro se- YOU make, or at least you should make all the major decisions in your case- so don't go and blame others for the outcome. You make the decisions- not your lawyer! You need not always take all (or any) of your attorney or attorney-advisor's advice as you make decisions. Unless you are deceiving yourself as to the courts "justice", you know that every decision is risky- and by protesting in the streets against policies, institutions, or the government; you took the first risk. It's all a gamble; no one- not even a good defense attorney can guarantee an outcome favorable to you! If you lose, it could have been a defense attorney that lost. If you win, it could have been a defense attorney that won.

Fifth- If this is a planned political arrest or a political arrest made due to politically based behavior that you know "risks" your arrest, then you should know as many of the possible charges before your arrest as you can. You should familiarize yourself with the elements of those charges [see below in Elements] and when possible make your plans around your future defense and "deniability". You can find the elements of a crime by looking at statutes and jury instructions for them.

Also it is good to review the jury instructions for the charge – ask law librarian for help. Work with juggling those technicalities that can get you a not guilty in advance. This has been key to at least 3 of my Pro Se cases. But remember that the police are unpredictable and can and will charge you with additional outrageous charges even when you make your plans. And of course, many times you will be arrested with no idea that you are "risking" arrest.

Sixth- I am not a lawyer and this is NOT legal advice.

Nor is the idiosyncrasies of each set of state laws explored here. Things can be a little different in each state and that is why this is only a general document of what can be expected from the legal process and some winning strategies. It is also why it is important to explore what the exact process is in your state.

This is merely an account of what I've seen and learned during the 10 criminal protest cases where I've gone all the way through trial as a Pro Se defendant. [9 wins- 1 Hung Jury- no losses] My experiences prove that you can win going Pro Se!

Defendant Meetings

If this is a multiple co-defendant case or if as a protester you are trying for court solidarity with fellow protesters, you should try for regular defendant meetings and planning sessions to resolve the following questions and other issues.

Questions you MUST resolve either individually as a single defendant and/or as a group:

- ✓ What are your **GOALS** in your case:
  1. To win at all costs?
  2. To add to political awareness/raise political stakes ? How much and at what cost? { Much higher risk of a guilty verdict? A hung Jury?} Prospective penalties are found when you look up each law you have been charged with. See also below under political awareness.
  3. Some of both [this has less chance of accomplishing ether-but if accomplished it is best of all world- odds are against achieving a full "win" or as much publicity/political effect]
  4. To get best personal plea bargain deal[s] possible and not have to go through WHOLE process of having a trial. Under this option, your Pro Se work will be short and possibly you will be less effective in the negotiations than an attorney in getting a great deal. Unless, that is, there are large numbers of defendants involved. Then Pro Se negotiations can be much more favorable.. Dozens are need for true effectiveness in a small town. Hundreds for a big city. And yet sometimes the amount of arrests will work against you when the politicians get too embarrassed by large numbers- it can cause entrenchment against deals being made that are favorable to you..

- ✓ Do you really want to go pro se? See Pro Se Advantages before you consider.

- ✓ Do you want to do it with or without attorney assistance? [I have only gone Pro Se without attorney assistance a couple of times. Though the last time, my "assistant" read a book for most of the trial. I believe she had more confidence in me then I did.]

- ✓ Can you get court-appointed attorney assistance? Not all states or judges will let you have it, though you should try for an attorney assistant if you want one. Try even when people[such as your originally appointed attorney] tell you it's unlikely to get granted. You do need court permission to use an attorney advisor that you hire yourself. You may be able to find a lawyer willing to advise you at low or no cost.**

- ✓ Do you want [often more like-can you achieve with cooperating lawyer] the best of both worlds – a group trial with some defendants [or 1 defendant] having an attorney and the others going Pro Se? This would make that attorney your co-counsel- s/he must be willing to treat you with respect as if you are another attorney but be willing for you to join in all of his/her motions that you think are correct for YOUR case also. {Be SURE You DO this!] . You do not have to join in motions you do not think would be good for you.

- ✓ Do you want the trials together or split (the legal term is “severed”)? [Potential deal considerations here. Some people may be offered a deal they want to take- You can sever the cases and go on with a political trial or just a vigorous defense without adversely affecting them.]- ##If the group decides on having their cases together, do those NOT wishing to go Pro Se wish to have one lawyer for all or one for each?

** “Friendly” lawyers are great. But take their advice regarding what is “likely” to work with at least 2 grains of salt. They are taught and have large motivations to play it “safe.” First, what is not possible for them, because they are expected to “know better” is not the same as what is possible for you. That is one advantage of Pro Se defense. There is at least a little leeway and wiggle room and sometimes even a lot.. Especially as , unlike the lawyer, you don’t have to worry about how strange requests will look to your fellow “officers of the court” –the prosecutors and the judge or weather those unusual requests will adversely affect your career.

Secondly, as the better lawyers are often overworked, they can’t afford to” waste” their time on unlikely but possible motions and arguments. In fact they are trained not to waste their time that way. But you only have one client-you. So that gives you a world of motivation to decide that unusual motions and odd arguments are worth your time and effort. They have paid off for me more often then not.

Pro Se Advantages

Here are some strengths of going Pro Se:

*You are underestimated by the prosecution and they get careless.

* Lawyers have expectations as to how a trial will go. The Prosecution and the defense are often on the same page when they are both lawyers. You throw those expectations off by your unpredictability.

* Lawyers-even the good ones- have limited time and effort to spend on your case and "go the extra mile." As the better ones are often overworked, they can`t afford to" waste" their time on unlikely but possible motions and arguments. In fact they are trained not to waste their time that way. But you only have one client-you. So that gives you a world of motivation to decide that unusual motions are worth your time and effort. They have paid off for me more often then not.

* You get more wiggle room to get emotional/sympathy stuff into the case as it's harder to hold you to those court rules. Plus you get more politics in; not just to get a political message across for political purposes but also to get in the politics that explains to a jury what was really happening. Lawyers are often blocked from bringing your motivations in but you can't be blocked as easily. This can explain much to a jury that otherwise won't understand the situation.

Whether or not something is legal is often a matter of a borderline interpretation in a political case. But the explanation as to WHY you were sitting in a tree house for 6 1/2 weeks before you were asked to come down and WHY you refused to leave can be crucial to getting a jury to decide you were not "insane" and needing to be locked away from all the "good" citizens. If your lawyer isn't allowed to present that explanation you will be in trouble. This is likely by court rules; you probably will be told by the judge not to let that in also.

But how will they stop you, a non-lawyer, from "edging" around the issue? Right up front, in your opening, you have a right to introduce yourself to some degree... and you can with caution do shadier stuff where you "forgot" that the judge said something can't be explained...or "I didn't understand, I apologize Your Honor... I'll not do it again..."

See the first lines of threats that hold the lawyers in check just doesn't work as well on a Pro Se defendant. One threat that puts a leash on lawyers actions is that next case that lawyer has in front of that judge will be screwed. Another threat is that s/he is risking a warning on his license. Or non-cooperation from the prosecutors office on the defense attorney`s cases from now on. No more good deals for the rest of his/her clients. Going Pro Se you have none of those threats affecting you. So, unlike a defense attorney, as long as you don't stridently DEFY the judge and you are polite and apologetic with your "mistakes", you can wiggle around a lot!!!

*Your strengths lie in your flexibility; in your personal interest in winning and politicizing the case, your honesty, your political/moral stance and even the layman jury`s natural hostility toward lawyers.

Politicizing Your Case

There are all sorts of ways to make a trial a political event that can aid your cause and sometimes even your case.. Some cane be done while maintaining a fully vigorous defense. These are things like publicity stories in both activist and non-activist news sources, letters to the editor, protests held in front of your courthouse some public figures successfully called as witnesses in your trial and even jury nullification work that can be done by friends outside the court.

Jury nullification occurs when a jury returns a verdict of "Not Guilty" despite its belief that the defendant is guilty of the violation charged. The jury in effect *nullifies* a law that it believes is either immoral or wrongly applied to the defendant whose fate that are charged with deciding. Handouts to prospective jurors on their way into the courthouse on jury nullification by "disinterested" parties can be good. The handouts should not get tied directly to your case if it can be helped. [Judges hate Jury nullification as a rule and can become nasty to you if the have evidence that you instigated the effort. One way around this is to try to nullify ALL the juries during your court days.] Jury nullification can be looked up on the web. See links below.

WHEN YOU GO TO COURT, TAKE SOME FRIENDS WITH YOU. Friends can: give moral support to you, the defendant especially if something goes wrong; give a friendly audience for you; attract media coverage; and, most importantly, they can effectively unnerve and distract the prosecutor just by their mere presence. They can talk about or handout jury nullification flyers outside the courthouse.

Also, in a political trial, the political education of your jury is a goal. This starts in your case with the Voir Dire questions, that clue off the prospective jury to the fact that this is not a typical case- that it is political and generally what it is about and goes to the Closing Arguments and on. {see below for Voir Dire.} This is only sometimes a positive for your case but rarely a negative. In either way, you're here because of politics, educating the jury is the one positive outcome that you can count on, no matter what, from your trial.

On the other hand there are other ways to politicize your case that can hurt your case but can give you even better political leverage. If you are willing to potentially hurt your case or even lose it in a highly moral way, it can be a major victory for your cause.

A defense of conscience almost never "works" as a purely winning strategy. Of course as I've said, winning may not be the number one priority. But winning is always a major part of my priority and I have never ever used that defense.

Another possible case-hurting but good political move is adding witnesses you do not need or that might have something unfavorable to your case. You might do that just because they have critical political information to present under oath in front of the jury and trial audience and media. The case where I got a hung jury was one that my co-defendant and I politicized the most.

This was one where we believed, rightly I think, that the political gains we had achieved by our action, - a new homeless shelter in the city [Franklin School Shelter of Washington DC]- was threatened and that political moves that risked the case could and would aid us in keeping the shelter going. We wanted important information regarding lack of shelter to be admitted by officials while they were under oath. We ultimately succeeded in keeping the shelter open, at least in part aided by our trial publicity and shaming of city officials. But by emphasizing the political nature as much as we did, we risked our case. This led to the hung jury. We had even fought long and hard for more then 2 days with the judge to be allowed to question those witnesses that were unfavorable to us in front of the jury. We did so because they could be and were forced to testify under oath in front of reporters as to shelter conditions in the city.

Case Progression

The progression of a case usually goes much like this [grand jury indictment comes in the early pre-hearing part if it applies to the case at all] :

Arraignment

Pre-trial conference[s]/hearing[s]-various types and purposes

Trial-

- Jury selection - Voir Dire questioning and prospective juror elimination [If trial by Jury]
- Jury swearing and initial instructions [If trial by Jury]
- Opening Statement[s] -sometimes only by prosecution -depends on defense wishes
- Opening of Prosecution's Case
- Prosecution Witnesses[and admission of evidence]-
  - Examination [by prosecution]
  - Cross-examination [by defense]
  - Re-direct [by prosecution]
- Resting of Prosecution Case
- Opening of Defense Case [defense may have their opening here if they wish- and only if the defense decides to put on a case]
- Defense Witnesses [and evidence]
  - Examination [by defense]
  - Cross-examination [by prosecution]
  - Re-direct [by defense]
- Rebuttal Testimony
- Closing Arguments
  - Prosecution Closing
  - Defense Closing
  - Prosecution Closing Rebuttal [most but not all jurisdictions in US]
- Final Jury Instructions [If trial by Jury]
- Verdict

Sentencing Hearing

Arraignment

Typically, a criminal defendant's first court hearing is an "arraignment" before a judge or magistrate. This often happens soon after arrest and while you are still in custody. An "arraignment" is an appearance in court where charges are formally read to a defendant. If bail or "bond" has not been set, it is often set at the same time as the arraignment. In general, it`s a good idea to plead not guilty even if you did it, or even if the cops say they have video or witnesses who saw you do it. This gives you time to sort out what you are going to do and if you are going to go Pro Se.

In some jurisdictions, there is a subsequent "formal" arraignment, where the formal charges ("indictment" or "information") are presented to the defendant. These charges are drafted by the prosecutor, and may vary from any original charges that were drafted by the police.

Grand Jury

If the case is to be remanded to federal court, there is not a preliminary hearing/arraignment. Instead, you, the defendant, goes before a grand jury. The grand jury is made up of 23 citizens. Grand jury hearings are private. The public may not attend, nor may reporters be present. If you have a lawyer/lawyer assistant at this phase, the lawyer may not even be present. However if you have one, you may leave the courtroom to confer with his attorney when he feels the need. Unlike actual trials, guilt may be inferred by you exercising your right not to testify. See www.infoshop.org for it's Infoshop.org Guide to Grand Jury Investigations for more information on Grand Juries.

Initial Hearings

Initial hearings (sometimes called First Appearance or Status Hearings or sometimes Preliminary hearings) are to set dates and get various motions out of the way- after you dismiss your attorney, YOU are the one who will have to file motions. Often this is the first time you will be asked "How do you plead?"[Sometimes this is a reason to wait to fire your attorney until latter in the proceedings.] In fact, you are the one who has to decide what if any motions you need to file and when you file them.

All of this is easier with an attorney advisor – you can make a motion for one- this is an attorney appointed by the Court to assist, but not represent a Pro Se defendant. In some places, it is likely that you will get one- in other places it unlikely, especially for low level offenses.] Bring them in written form. You will have to arrange dates and argue your motions. Even if you plan to retain the same attorney as an assistant to you, it can be better to wait to officially dismiss him/her until later. This is because s/he will be unable to make arguments or speak officially at any time [except PERHAPS at your testimony on the stand- see Your Testimony as a Witness.] during the proceedings after becoming your assistant. If you do not wait to dismiss your attorney, the burden of argument is fully on you at these preliminary matters. Be prepared.

As a Pro Se defendant, throughout the hearings and trial proceedings you are sometimes excused for not knowing proper procedures, proper format or proper court formality as you make mistakes. [You will make these mistakes- but so does the other side sometimes. It is not a terrible thing.]- A certain relaxation from normal court formality can occur because of your lack of experience and training- do not count on it unless you have to; but when it happens, it can be a great advantage.

Examples of just a few of the motions that you, the defendant, can file at a pre-trial conference.

1. **Suppress evidence** – A request to a judge to keep out evidence at a trial or hearing, often made when a party believes the evidence was unlawfully obtained or may be extremely prejudicial.
2. **Dismiss information and complaint** – Asks the judge to get rid of one [or more or all] of the charges.
3. **Requests for Discovery** – requests evidence and statements from the prosecutor (ex: documents associated with your case such as arrest report, photos, etc) so that you can know the evidence that is planned to be presented against you.
4. **Compel discovery** – Requests the judge order the prosecution to provide specific or withheld evidence and statements
5. **Sever counts** – Asks the judge to separate charges- have them tried separately.
6. **Speedy trial** – Asks for a quick trial date.
7. **Modify or reduce bail** – Motion to reduce the amount of bail that has been set.
8. **Bill of particulars** - Motion to make the Bill of Particulars [specific facts] more definite.
9. **Reduce charges** – Asks for the judge to reduce the charges to lesser charges.
10. **Change of venue** – Requests the judge to move the trial to a new place [usually because of unfavorable publicity or social climate] sometimes even a new judge, etc.
11. **Preserve evidence** – Requests the judge issue an order to any party, thought or known to have evidence {includes news outlets and police], to not destroy evidence. [You may send your own letter – but if you feel they may destroy the evidence anyway- the judges order may be of more help to you.]
12. **Examine police file** – Asking for the judge to allow you to examine to police files pertinent to your case.

14. **Joining or Severing cases** – Asks for other defendant's cases to either be tried with yours or separately from yours.

Pleas

Plea bargaining consists of two types: Sentence bargaining and Charge bargaining. In Sentence bargaining, you are pleading guilty or no contest in return for the prosecutor recommending a reduced sentence. The prosecutor can only recommend the reduced sentence as the judge can decide not to sentence you as recommended.

In Charge bargaining, you are pleading guilty or no contest on a lesser charge in exchange for the dropping of a more serious charge. [Ex: Murder charge reduced to a manslaughter charge.] In bulk defendant negotiations with DC prosecutors aided by jail solidarity tactics, hundreds of charges of impeding, crossing a police line, and other misdemeanor charges, some with potential sentences of up to 180 days, were reduced to a five dollar traffic ticket.

Not Guilty Plea
A plea by the defendant claiming innocence of guilt. You will continue on your path through the legal system.

Guilty Plea
A plea by the defendant claiming/admitting guilt. If the guilty plea is part of a plea bargain, the bargain is usually but not always adhered to by the judge. Otherwise it is the Judge's call regarding sentencing within both the legal limits of punishment set out for each crime.

There is a time for the defendant to make a plea or explanation or statement after pleading guilty and it is usually immediately before sentencing. This is called your right of Allocution. This can be used for a moral and/or political statement that can be incredibly powerful. If done if front of media , it can help your cause. This is a good place for the crime /defense of conscience statement. You can make this statement of Allocution, whether or not you decide to go Pro Se.

Nolo Contendre
By issuing a plea of nolo contendere, or "no contest", the defendant accepts the punishment without formally admitting that he was guilty. By doing this, he avoids the consequences of a guilty plea with regard to potential liability to other people for money damages or more importantly without admitting moral "guilt".

Alford Plea
An Alford plea is when a defendant pleads guilty for practical reasons even though s/he maintains his/her innocence. With this you do not admit the act but you admit that the prosecution could likely prove the charge Most often this plea is allowed in cases where to not accept a plea has severe consequences [Ex.

The death penalty] – but you can try for it and it has been used in much less serious cases on occasion.

Many judges resist letting defendants plead nolo contendere or make an Alford plea. This can be a subject for argument and negotiation.

Five things to think about when considering a plea bargain:

1. A judge-approved guilty or no contest plea bargain may result in a criminal conviction. The conviction will show up as a criminal record.
2. The defendant may lose rights and privileges as if the defendant were convicted after trial.
3. A no contest plea says "I don't choose to contest the charges". – Not an admission of guilt.
4. A guilty plea serves as an admission of guilt.
5. A plea bargain may result in a lighter sentence and completes the matter quickly.

Plea bargaining enables the judges to move cases through the legal process, and prosecutors to rack up convictions. Many judges are amiable to plea bargains as it moves cases speedily through their court and makes them look efficient. You need to know that in most if not all jurisdictions, judges don't have to agree to the plea bargain even after you and the prosecutor agree to it. They can hand down any sentence they like despite the deal though they do not often take matters into their own hands.
And as always in different jurisdictions, different often subtle rules apply, even to judges powers. For example: in dc, a plea bargain is not binding on the judge as to sentence, but is binding as to charge / indictment, unless it is a "lock in" plea bargain, which most dc judges are reluctant to accept.

Motions

A Motion is how you ask for something from the Court. Such as the Motion for Discovery – this allows you to see what evidence the prosecution has against you. As it is usually filed routinely your lawyer [if one was initially appointed for you so you could have the arraignment hearing] may have already filed it. Ask your lawyer what motions have been filed and what responses have occurred or are expected. The lawyer should turn over everything that has already occurred in the case to you. {All this part is easier with an attorney advisor as they can help you research and write them.}

Many motions, like Discovery, need to be made very, very quickly in a case so this is something that can't wait. There are usually strict rules that certain motions need to be submitted in writing by a certain time. The amount of time varies in each state,

often 15, 30 or 60 days from the time of arraignment. The judge usually grants some exception to this but do not count on it!

While the motions that immediately concern you and your trial are a priority, you should know that there are motions that you will want to make after the trial if you are found guilty. If the defendant receives a guilty verdict from the jury, you can immediately begin a series of post-trial motions in the hope the judge will grant a new trial or make a judgment notwithstanding the verdict and acquit the defendant. You may later engage an attorney for appeal if you do not desire to continue Pro Se.

Pretrial Conference [s] and Order [s]

Prior to the actual trial, a pretrial conference, sometimes called a pre-trial hearing is held. Sometimes more than one. In more serious cases, always more than one. These hearings are held between the trial judge and counsel to determine if all discovery has been completed, what exhibits and witnesses each side might use during the trial. [In some states this discovery is not required at this time and rarely required from the defense.] – Never GIVE them anything [esp. in advance], not even a hint of what your defense is unless you are forced to by judges order or court rules or procedures as shown to you. If you are forced to do so; try to see if you can only explain your positions to the Judge, and not to the Prosecutor. This hearing may also decide the approximate length of time that will be necessary for the trial, and what ground rules the judge will require before, during, and after the trial.

Sometimes the final determinations regarding motion and procedural matters will take place only a few minutes before the trial starts. [And I have known those final determination arguments made at the last minute to last as long as 3 or 4 days] Sometimes [even many times] it has become an additional unexpected formal hearing with “testimony” in it’s own right– Testimony can be an “expert” or other witness that would help an argument being put forth regarding any motionary matter. Other times, last minute spoken arguments are not allowed. [It depends on both local rules AND judge’s style.]

The Trial -- The Role of the Judge and Jury

A trial is defined as "a judicial examination of issues between parties to an action." There are Jury trials, where the judge presides and makes decisions as to rule of law but the jury decides fact and declares guilt. And there are Bench Trials, where the judge decides both rules of law and the facts of the case, deciding guilt. In both cases the judge decides on sentencing , except for death penalty cases.

In a trial, the parties each get the opportunity to present their side of the case, and the judge and jury (if the trial is a jury trial) are responsible for entering a verdict and judgment based on the evidence and arguments presented. It is the judge's duty to see that only proper evidence and arguments are presented. This is often the judge’s PRIME function at least in a jury trial. In a jury trial, he also instructs the juries, which will be called on to make decisions regarding those matters at issue and then a judgment is

entered based on the verdict reached by the jury. You may have some input into the instructions the jury is given.

If the parties have not requested a trial by jury, or if that doesn't apply to the offense you are charged with [typically misdemeanors do not warrant a jury trial in certain states], the judge becomes the trier of law (the judge) and the trier of fact (which would be the jury prerogative in the event of a jury trial). The judge then enters a Findings of Fact and Conclusions of Law, sometimes prepared by the prevailing winning (prevailing) party, based on the evidence and arguments presented and then a judgment is entered based on those findings of fact and conclusions of law. In civil cases, both sides submit proposed findings of fact& conclusions of law.

It is not impossible to win as a pro se defendant in front of a judge only case; though it is harder.

I have won twice in front of a judge though I have yet to CHOOSE to forgo a jury trial when I've had the right to one. I do not recommend forgoing a jury trial- particularly if you want the case to be political and publicized. Of course, judge trials are much faster…sometimes too fast for the Pro Se defendant. If the judge goes at a extremely fast pace, consider asking for the judge to slow down. Only if absolutely necessary, try to object. Get the judges unfair pacing on the record in case you will need an appeal.

In a judge only trial, the facts and what is allowable becomes more important then previously. There is less chance of "swaying" with sentiment. Exceptions to that are liberalist appeals to 'known' liberal judges [ask friendly attorneys for the lowdown on the judge's politics/attitudes] or constitutional type swaying of judges with the application of laws to the facts in your case. Example: "While private property rights are involved, because the area of the protest was a hotel, it had certain public obligations. As such, the constitutional guarantee of freedom of speech had precedence. Thus…" Or example: " The fourth amendment having been so severely abused by the officer's outrageous conduct that day led me to…."] and more reliance on technicalities. More reliance on "Elements of the Case" and "Theory of the Case" and less on closing arguments. In a judge only case, stress police improprieties and legal violations and your facts. Keep less to sentimental plays on sympathy and more on laws.

Co-counsel

If you have co-counsel [one or more lawyers that are defending your fellow defendants or another pro se defendant], you must remember to *consider* joining in each motion or argument that they make. IF their motion works for your case as well as it does for their case, then join it by stating "Your Honor, I with to join in this motion." If you do not formally do this the judge only grants or refuses it in their case. If you forget that, the judge may ask you if you wish to join but do not COUNT on it. It is your responsibility to ask to join each and every motion.

Selection of the Jury

A jury trial begins with the judge choosing prospective jurors to be called for Voir Dire (examination). When people respond to a jury summons, they gather at the court house to form a pool of potential jurors from which they are called in groups for specific criminal or civil trials. There they are questioned by attorneys for each side and/or the trial judge about their background, life experiences, and opinions to determine whether they can weigh the evidence fairly and objectively. This process is called voir dire. "The jury box shall be filled with prospective jurors before examination on voir dire and the Court will examine the prospective jurors as to their qualifications."

At some point BEFORE the start of the jury selection process, the parties[you and the prosecution] are to submit written requests for voir dire questions. In some places this must be submitted many day's in advance of the trial. The questions for voir dire are often determined by the judge at that last pre trial conference. However many jurors need to be seated, many more prospective jurors will be called.

Voir Dire is incredibly important to you as it is where you can start to build your outcome in the prospective jury's mind. I often feel , that I win the case on the Voir Dire. But not for the reasons that most lawyers think it's important. Lawyers believe that you can pick your "ideal" jury through the questions and strikes. For the most part, I don't.

First, you have your Strike For Cause or as it's often called Challenge for Cause *: "He is Prejudiced against a person of my race." is a strike for cause. You listen to the answers to the questions that get asked. Sometimes you ask yours –sometimes the judge does. If the answer makes that person likely to be unfair to you, then you argue to get rid of that person. The prosecution make argue to keep. Or conversely the prosecution may argue to get rid; and you argue to keep. The judge decides.

Getting rid of a prospective juror based on no good legal reason like is a Strike Without Cause or a "Preemptive Challenge".** You have usually 3 of those strikes [sometimes more] and one strike for the alternates. They are made after your argued [out of the prospective jurors hearing] for cause strikes. The lawyers call it stacking the deck. They will look at a persons dress and livelihood and prejudge their disposition towards their client. " Black men in suits with bowties who are government workers don't like …" Sort of mind-reading game stuff.

Well, sometimes you are right on that stuff. You could tell that a hostile glare from the white woman who worked for a congressman followed you every move. But I can tell you from first hand experience, that the little old prim churchgoing lady with the tightlipped look who you are sure has never considered challenging anything the authorities do, whom you could not keep off your jury 'cause you had used up your strikes will be the one to surprise you by giving you her utmost support. Or maybe it will be the skinhead biker guy you swore hated you and all protestors. Or the man in the business suit and tie. They'll be the one to sway the jury in your favor in the back room. If you had stuck them because of your prejudices, you would have regretted it.

You prejudge- it's a crapshoot unless you are in a murder trial and get dozens of strikes from the judge and even that's a maybe. But one way I often shake up a prosecutor is to tell the judge that I'm willing to pass on taking any of my Preemptive Strikes if the

prosecutor will. This “shake up” of mine has often put the prosecutor on the defensive from the very beginning and made the judge more interested in the case. Many judges are as skeptical of Preemptive strikes so doing this can greatly endear you to your judge and it will shake and confuse your prosecuting attorney. They just can’t get their mind around it. It’s a pretty safe bet that they will refuse to give up their preemptive strikes so you look good at little risk. Because your own prejudices can work against you in this as much as for you.

The important part of the voir dire for you is the sneaking of positive and political info into your trial ahead of the game. Try to get the judge to approve phrasing that is positive for you. “Have you had any encounters with protestors that would prejudice you against them?” is better phrasing for you then the following – but you might have to settle for something like this: “Do you believe you can give a protestor a fair and impartial hearing?” as the prosecutor will be trying to limit the questions and what type you can have. If your case is about a death penalty protest, for example, the you might want something like this: “ Do your feelings about the Death penalty prejudice you against those who protest against it?” I normally try for anywhere between 8 to 10 “unique” questions though I’ve sometimes tried for as many as 15..

Many qualifying jury questions are fairly routine and wont be missed but you should make sure they get asked. “Are you able to consider a police officer’s testimony and to give it no more or less weight than anyone else’s?” or some variation on it for example. “Are you or is anyone in you immediate family or friends a police officer?” That sort of thing. Improper {“bad”} or missed questions or initial jury instructions are Appeal Issues as are improperly Struck for Cause or improperly not Struck for Cause jurors, if you should lose your case.

After voir dire of all prospective jurors, a jury is selected from the qualified prospective jurors and instructed by the judge regarding the issues that they will be deciding. Those instructions can usually be expanded to your advantage by your arguments for additional instructions [the prosecution will try for the same PLUS s/he will argue against your additions- you must do the same for his additions – again made at that pre-trial hearing/conference. [The different instruction types can be found through research BEFORE hand- this can also be where having an attorney advisor or co-counsel attorney is to your advantage as they can direct you to pertinent instructions or you can join in their argument if co-counsel.]

DO NOT make arguments in front of the jury. There are lots of little Sidebar Conferences [when you are called up to the bench and the microphones turned off so the jury can’t hear] and [mini-hearing like] times when the jury is not present when arguments for various things will be made. [Sometime the judge will send the jury out to hear arguments] DON”T say argumentative things in front of the jury except for objections that don’t need lots of argument or explanation- ASK for Sidebar conferences in these cases [“May I approach the bench, your honor”?] You do not want to have a juror who ends up being picked to hear you arguing against having her on the jury.

*Challenge for Cause: Either the Government or the defendant may challenge a prospective juror for cause when the prospective juror lacks a qualification required by

law, is not impartial, is related to either of the parties, or will not accept the law as given to him by the court or other reasons approved by the court.

**Peremptory challenges: Each party will be given number of peremptory challenges established by law which enable the parties to reject prospective jurors without cause. This decision is based on subjective considerations of the parties when they feel a prospective juror would be detrimental to their side of the case.

Opening Statements

After the jury is empanelled [sworn in and initial instructions given them], each side may present an opening statement. In many places the defendant can RESERVE his or hers until the opening of the defense case, thus not giving their statement until the prosecution rests their side of the case. - This can be though is not ALWAYS advantageous. In a group case it is many times best of both worlds, if some do and some don't.

The Government has the burden of proving defendant guilty beyond a reasonable doubt and therefore, must give their opening statement first. This may be followed by an opening statement by the defendant. You don't have to put on a statement at this time- you don't have to put on a case after all. The burden of proof is on them. I wouldn't advise forgoing your defense –see below. You may want to wait though until the beginning of your side of the case and after the resting of their side of the case.

These arguments are FACT based only – conclusions are reserved for Closing Arguments. [But as a Pro Se defendant, this is where you can start to garner sympathy.] Consider openings a "roadmap for the jury to what the case will be about."

Consider telling the jury your story of why you did what you did. Why you felt the need to protest the particular injustice, and why you chose your particular method of protest. You can only do this if this will also be presented in testimony or evidence.

The opening is also your important first chance to introduce yourself- to garner sympathy and to explain why you are going Pro Se. The government will say, " I am _______, the Prosecuting Attorney for this case." You can say " I am _____, I work for so and so, and I have absolutely no experience or training with the law however I believe …

I use my volunteer work at a soup kitchen in my openings--" Hi, ladies and gentlemen of the jury. My name is Jamie Loughner. I am the defendant. Thank you all for choosing to spend the time necessary for *justice* to prevail in this case. Now I am NOT an attorney nor do I have any legal training. In fact I spend a lot of my time cooking in a soup kitchen working with the homeless. I'm also an activist. - I'm a little nervous about all this… and I hope you'll forgive me if I'm not as poised or experienced as the Prosecutor is. Not as practiced." — shading of tone works well for me here on the word practiced, then on the rest----"But you will see that moral belief plays a role in this case. And I think that for you to be able to do your duty as jurors, you need get to know me a little more then you would if I wasn't defending myself. In this case, you will see …. And you will hear testimony that I was protesting…"

As you present your Opening Statement [if you do and whenever you do], you say what you think they will see in the case. "You will see that the facts of the case are not so cut and dried. You will see that the arresting officer…" If the judge has cut off all political reference, one way to get it in is " You will see pictures of signs that read "Get rid of the death penalty…and banners reading…. And you will hear see and hearing people chanting "The death penalty has got to go."

In your demeanor, you need to be respectful towards the jury. You should stand each time they enter or leave the courtroom. You should make eye contact with each one of them, rather then constantly looking at your notes. And you should smile- it's ok and sometime endearing to make it a nervous earnest smile, but you still need to smile occasionally. Give them a reason to believe you and/or want to help you. {jury nullification}

Testimony of Witnesses

After opening statements are given, testimony of witnesses and documents or other physical evidence such as videotapes are presented by each side, the prosecution's side to begin. This is often called the Prosecutor's Case-in-Chief. When/ If you present a defense case that will be the Defense Case.

The side that did not call the witness conducts cross-examination of a witness after the initial examination [questioning] for the side calling the witness. This is called Direct Examination. If they wish, after a party has cross-examined a witness, [and if the Judge allows it] the other side [side originally calling a witness] has the opportunity to redirect examination in order to rehabilitate the witness on the points covered by the cross-examination.

Cross-examination is VERY hard [and initial examination for that matter] especially for Pro Se defendants- practice! Start with a couple friends or co-defendants. Make one of them the prosecutor and the other one a witness.

And remember you can't ask a "leading" question of your own witness on Direct Examination but you must lead -at least a bit- when cross examining! The definition of a "leading question" is a question that suggests the answer. "You were parked in the alley in your squad car, isn't that correct, Officer Jones? That is only capable of being answered yes, or no, it is either correct or incorrect. Whereas a non-leading question is more appropriate on Direct Examination, and goes like this. "Were you in a squad car? Where were you parked?"

IMPORTANT: You can't cross-examine [or redirect] a witness on a subject that was not originally raised during their Direct Examination! – Lots of objections and arguments in front of the judge occur because of this on both sides. This is where a lot of objections come in. And yes -it goes for your witnesses too! {If the prosecution doesn't ask their witness about a subject- you can't open the "new " subject- if it's a vital piece of information, that you really need, then you might need to call THEIR witness as one of your own. [Albeit a hostile if not technically "hostile" witness- don't call the witness

hostile in open court unless they behave that way—ask one of your "helpers" for more information on this point if it comes up or you think it will.]}

If a witness testifies to one fact and a statement or document in the files shows that testimony to be false or inaccurate, the document can then be used to question the witness on the accuracy of the witness's recollection. This is called impeachment of the witness. Only if there is **obvious** and **blatant** and **provable** falsification will the question of perjury possibly arise. [**Always,** outside of the jury's hearing.]

Your Testimony as a Witness

During your witness presentation ---if you intend to take the stand yourself---there will probably be confusion and debate, **outside of the jury's hearing**, regarding how it will be conducted. Will you ask yourself questions? Will you present your witness statement as if it is a story narrative? No questions –just what you describe as happening. If you have an attorney assistant, this is where the judge may rule that an exception can be made and your assistant can ask you questions. You usually have to ask for this option.

Evidence

You must formally "enter" all evidence you intend to have considered by a jury before the resting of your case [before closing arguments]. Ask the judge to enter it into the record. Make sure that you know the difference between Marking your exhibits for Identification Purposes, and for Entering them into Evidence. You should do both! It is helpful to have your exhibits pre-marked. With copies made and shown to the other side before you enter them. It is also a smart idea to prepare an Exhibit Chart for you case and put it prominently on you table to record what exhibits have been marked for identification [a number and which sides evidence – ex: Defense Exhibit 1 being put one a sticker on the back of a photograph and then referenced as "Defense Exhibit one"], and which were admitted into evidence.

After presenting evidence, you must also ask for it to be admitted. I once was pitted against a new prosecutor that I had rattled by not following the usual script. He forgot to enter halve of his evidence, which meant the jury could not see it even though one of his witnesses testimony was based on it. Another prosecutor took ½ an hour and lost most of the juries patience with him because he couldn't figure out how to word the request to enter the evidence into the court record. The judge, who had helped me in wording things as I was Pro Se and not a Professional, stood by and let him make a fool of himself.

Ask the judge "May I present this evidence" and "May I approach the jury?" before presenting [handing] anything [evidence] to the jury. Again, if there is evidence produced shows that a witness's testimony is false, the witness is considered "impeached" upon cross-examination, and you are free to argue in your conclusion that the witness is not truthful or does not remember and therefore should not be believed.

Do you put a defense case on?

After the prosecution's witnesses you should make a motion to dismiss for lack of prosecution. [See motions below.] If it is granted then your case is over and you won. If not granted then the case continues. Defendants then have to make a decision **before** starting their case and after making their argument if they want to move for a dismissal for lack of prosecution as to weather they will put on a defense case. Cases where your goal is partly or wholly political should always have a defense- **the defense is your political statement**.

There is NO obligation to present a defense if the prosecution failed to make a case by proving each and every element of the criminal charge against you beyond a reasonable doubt. Presumption of innocence is supposedly the law of the land. [That is supposed to mean that you are presumed innocent of the charge unless and until the prosecution proves you guilty of each and every element of the criminal charge against you beyond a reasonable doubt. ---Though I've never banked on that.

[In a political case, where the judge has gagged you to the point that you have virtually no case or politics left, here is where you can consider a visual objection. Example: the defendant[s] rising and gagging themselves. **Extreme Caution** : This could blow your case, may cause further legal problems, a contempt of court charge, or even a mistrial.- I have seen it done in a hearing successfully- no contempt charge and the judge ultimately revoked his own gag order after the press played with it. This is something I've never done or felt I had to do.]

PS here- Make sure that Presumption of Innocence and Proof Beyond a Reasonable Doubt are jury instructions that the Judge is going to use- Presumption of Innocence – and remember as with all jury instructions, there is usually alternate wordings, so argue for the best one for YOU! Some of the alternate endings are found as options in parenthesis in the books after the basic jury instructions. Some wordings are invented on the spot by merging optional endings together by arguing for them in front of the judge. [See Legal Research below]

Motions during the Course of the Trial

Before the closing arguments and up until the time the case is sent to the jury for deliberation, certain motions may be made during the course of the trial. Here are a few important ones. They are not the only ones. A clever attorney advisor/ or joining with your Co-Counsel's motions, IF you agree with them, can help you here. Or get advice from your research helpers.

1. Motion in Limine: -a motion to exclude certain evidence/topics from the trial.

This motion is usually made just prior to the jury selection and it requests that the judge not allow certain facts to be admitted into evidence--such as political beliefs, religious motivation, and other matters which are either not relevant to the particular case involved or which might influence the jury unfairly. Any half-way decent prosecutor will try this against you – sometimes at different times of the trial and hearings. Be prepared to show [factually not morally] why the politics **is** part of the trial. [If the case hinges on intent, that mat be an angle for you to argue the exclusion of the politics as those politics will

give the jury an insight into your intent that day. This can work AGAINST your case but FOR your political statement. There are many other angles- look up the precedents!]

2. Motion for Lack of Prosecution [sometimes called Motion for Lack of Evidence] or sometimes called Judgment of or Motion for Acquittal:

This motion is made by the defendant at the close of evidence presented by the prosecution and is based on the premise that the prosecution has failed to prove his case. MAKE IT – DON'T FORGET THIS! If it is granted, the court takes the case away from the jury and renders a verdict for the defendant and against the prosecution, and the trial is concluded in the defendant's favor. You win!!!

If the court denies the motion, the trial continues with presentation of the defendant's side. [Remember that the defendant is never obligated to prove anything or to put on any evidence. As a practical matter in a political case, it makes little sense not to put on your defense case.] This denial is usually done on the theory that the Government's burden at that point in the trial is to prove guilt beyond a reasonable doubt, and they will only acquit you if no reasonable juror could find that the Government proved its case. - If the defendant so desires.

Sometimes this is called something else [differs locally- you have to ask a local legal person]- find the name for it!

3. Motion for Mistrial:

Either party can move for a mistrial if, for example, during the course of the trial certain matters which are not admissible such as those mentioned in a motion in Limine are presented by any witness either purposely or unintentionally in the presence of the jury. If the judge grants the motion for mistrial, the trial is immediately ended and the jury is dismissed. Depending on local rules, the Government may be able to re-try the case at a later date.

CAUSING A MISTRIAL INTENTIONALLY THROUGH YOUR MISCONDUCT CAN HAVE VERY SERIOUS CONSEQUENSES!.

This can result in --- B-I-G ---trouble if proved. Think revocation of bail. Think additional charges. Think jail time. Of course unlike a lawyer you don't have to worry about your license being suspended or revoked but still….

It's also best to avoid contempt charges like the plague- unless you feel you need to do it for a strong political reason, then take them on INTENTIONALLY not through uncontrolled emotion, outbursts, or rudeness! [Jail is likely for contempt.]

4. Objections:

During the examination of a witness, one side may "object" to the questioning or the testimony of a witness or the presentation of evidence, or the question itself if the attorney feels the testimony or evidence about to be given should be excluded.

If the objection is Sustained (Granted) by the judge, that particular testimony or evidence is excluded. If the objection is overruled (Denied) by the judge, the testimony or evidence may be given. A ruling on an objection may be the basis for appeal. However, in order to preserve the right to appeal, a party must make sure that the specific question, and the specific objection be recorded properly so that a reviewing or appellate court knows what the question and the objection was. Specific types of objections need to be made and sometimes argued [in a "Sidebar" Conference, if a jury trial]. You should be able to understand different types of objections, such as "Leading", "Asked and answered" , "Irrelevant", etc. Some of the websites listed below contain the different objections. There are a few more then 20 but only a handful are regularly used.

I tend to blank out which objection name goes with which objection in stressful moments of the trial. This is where an assistant attorney is often most helpful to me. I always instruct my assistant to write down the objection name as I start my objection. So for example, I say "Objection, Your Honor!" when the prosecutor asks a witness a similar or exactly the same question more then once. As I blanked out on the name of the objection, I then look down to the legal pad my assistant wrote –*asked and answered*-on. And when the Judge asks "On what grounds?" I answer, "Asked and Answered., your Honor."

Rebuttal Testimony

Sometimes, after each side has presented its evidence, the prosecution MAY be allowed to present some rebuttal testimony, which rebuts (challenges) evidence just presented by the other side. [Differs in different places]

Closing Arguments

Closing arguments to the jury set out the facts that each side has presented and the reasons why the jury should find in favor of that side. Time limits are sometimes set by the court for closing arguments, and each side must adhere to the specified time. The prosecution often gets to present closing argument first and may present rebuttal to defendant's closing argument. [Differs by state]

You should begin preparing for your closing argument the minute you get arrested, as often that theory of the case helps shape your investigation, preparation and defense of the case. I sometimes imagine a potential closing argument while in the jail awaiting the arraignment [bail] hearing. It's a start on my research for what I will need and something to engage my mind also.

Charge to the Jury

After each side presents testimony and evidence, the judge delivers his charge to the jury, usually in the form of oral [sometimes written] instructions. Each side may present proposed [usually] written instructions to the Judge for consideration. The different instruction types can be found through research BEFORE hand. - This can also be where having an attorney advisor is to your advantage.

****
An example instruction can be:

CIRCUMSTANTIAL EVIDENCE:

INSTRUCTION NO. _______

The Court instructs the jury that if there be any fact or circumstance in this case susceptible of two interpretations, one favorable and the other unfavorable to the defendant, and when the jury has considered such fact or circumstance with all the other evidence, if there is a reasonable doubt as to the correct interpretation, then you must resolve such doubt in favor of the defendant and place upon such fact or circumstance the interpretation favorable to the defendant.

****

But don't [EVER] be afraid to get try to get something added verbally if you forgot it or something occurs to you LATE or because of a new development in the trial- this goes for EACH stage actually. {But it seems to occur to me most at this stage.}

After the judge has considered all proposed instructions, the jury is given an instruction, which sets forth the jury's responsibility to decide the facts in light of the applicable rules of law. The jury then returns a verdict of either Guilty or not Guilty.

Elements [Part of charges to the Jury]

Very important to your case.

During the charge to the jury, the Elements of the offense will be presented [read] to the jury. They may have alternate wording favorable to you that you might have to argue to have included.

Elements are important. The are all the parts of what make up a criminal offense. For the defense, a major objective of the instruction or charging phase of a trial is to provide the jury with correct statements of the law and favorable to the defendant. These can become a technical way of giving the jury [or judge] a "hook". A "hook" is a reason, however logically stretching, for a sympathetic jury to find you "not guilty".

Example: Trespass [often a charge in political situations- the section of Trespass called Unlawful Entry is commonly charged in DC] It has 2 subsections – A and B. It's elements are different for each subsection.

DC Code [law] is written thus:

CHAPTER 33. TRESPASS; INJURIES TO PROPERTY.

§ 22-3302. Unlawful entry on property.

Any person who, without lawful authority, shall enter, or attempt to enter, any public or private dwelling, building, or other property, or part of such dwelling, building, or

other property, against the will of the lawful occupant or of the person lawfully in charge thereof, or being therein or thereon, without lawful authority to remain therein or thereon shall refuse to quit the same on the demand of the lawful occupant, or of the person lawfully in charge thereof, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $100 or imprisonment in the Jail for not more than 6 months, or both, in the discretion of the court.

The **elements** of this law in DC for subsection A look like this:

Instruction 4.36

{Instructioon4.44 in 1978 edition}

Unlawful Entry

D.C. Code22-3102

(Penalty: 6 month, $100 fine, or both)

A. Entry Without Authority

The essential elements of this offense, each of which the government must prove beyond a reasonable doubt, are:

1. *That the defendant entered, or attempted to enter, a public or private dwelling, building, or other property, or part of such dwelling, building, or other property;*
2. *That s/he did so without lawful authority;*
3. *That the attempt to enter was against the will of the lawful occupant or the person lawfully in charge of the premises: and*
4. *That the defendant entered, or attempted to enter the property consciously, voluntarily and on purpose, not mistakenly, accidentally or inadvertently.*

The government must prove beyond a reasonable doubt not only that the defendant entered against the will of the lawful occupant of the premises, but also that s/he knew, or should have known, that s/he was entering against the will of the occupant. Therefore, unless you find beyond a reasonable doubt that the defendant had been warned to keep off, or that s/he knew or should have known that the area which s/he entered was restricted, you must return a verdict of not guilty.

Then there is an "optional" charge [instruction on elements] that I occasionally want in my case and have argued for it to be included. It sits under the basic instruction and is in parenthesis. It only works as an instruction when the belief is based on a legal based belief. [Not moral rectitude- "I was doing it for the right reason."- The law rarely

recognizes morals.] For example, if I had a lease or had reason to think I did or if there was a law about a property being made accessible to certain people or a treaty.

I have successfully used my take/belief on a federal law called the MacKinney Act for this defense of a trespass charge. It orders abandoned government buildings to be used under certain circumstances for sheltering homeless.

Here is the optional charge:

> *[Evidence has been introduced that the defendant believed s/he had a right to enter or be present in the area in question. One who enters a restricted area with a good faith belief that s/he is entering with lawful authority is not guilty of unlawful entry unless you are convinced beyond a reasonable doubt that s/he did not have a good faith belief of his lawful authority to enter the area.]*

The elements of this law for B charge of Unlawful Entry are different. Subsection B doesn't talk about ENTERING against the will of the lawful occupant – it is about being directed to leave by someone in lawful authority and REMAINING- a very different set of facts that the prosecution would have to prove.

Many times when looking at the elements of a crime I can easily see that I was charged for the "wrong" one. The one harder for the prosecutor to prove, as it was the one that I DEFINITELY did not do! This has helped shape my case.

By "checking off" the elements, you can see what elements you might admit to or ignore in your building of your case and what ones you need to contradict or deny by the presentation of your witnesses and evidence. This is how you build your case.

I once concluded a case with the closing argument ticking off the elements precisely. [Actually I have done this more than just this one time.] I had built the case very carefully around the elements once I learned the charges elements.

The closing argument went approximately like this:

"As you can see ladies and gentleman of the Jury, by testimony and evidence put before you in both my case and the prosecution's case --I was there. - I admitted I was there when I testified. [Required element*], "I obstructed traffic.-You saw it in the video."* [Required element*], "I did it with intention of obstructing traffic. I admitted that on the stand, also"* [Required element*] " But I did NOT do it with the intention to disrupt congress."* [Required element*]*-

"As you saw in the pictures, I was in front of the Supreme Court when arrested. As you saw in the video put into evidence, I was in an anti-death penalty rally. As you heard from testimony of both the prosecution's police witnesses and my own, I was yelling and chanting anti-death penalty slogans. You heard from my witness ____, that the Supreme Court was making a death penalty decision that day. That Congress had nothing on it's slate about the death penalty. You may conclude from the evidence presented that I clearly had no intention of disrupting congress that day- As you heard from my testimony, I wasn't even aware that congress was in session. You may conclude from the

evidence presented that there clearly was no attempt on my part to disrupt congress. From the evidence presented you may conclude that I was there to have my message heard by the Supreme Court not Congress.

When you go back into the jury room, I'm ***sure*** *that you will find that the elements needed to be proven in the case against me were not. That you will find me NOT GUILTY! I am confident that you will. "*

I returned to my seat and rested my case- I was found not guilty within a short time.

The Defense Theory of the Case

Also during the Jury Charges, you are entitled to an instruction to the Jury consistent and encompassing the Defense Theory of the Case. [And if you choose to submit it in writing to the judge and are granted it, you might get a verbatim version of your Defense Theory of the Case] I recommend you discuss with your attorney advisor how you file a Defense Theory of the Case. In the case I just referred to, my Defense Theory of the Case was submitted in writing, approved by the judge, and looked a lot like my closing arguments that I just quoted. If the judge does not grant this instruction, it is an appeal issue.

Mistrial

If a jury is unable to reach a verdict, in which case the judge declares a mistrial, the case may be tried again, if the Prosecutor desires. If so, it must be before a new jury. A jury which cannot reach a verdict is usually referred to as a hung jury. Many times, though not always, prosecutors are reluctant to re-file charges in misdemeanor cases especially, - unless they think it was hung by 1 person, and the vote was 11-1 in favor of conviction, in which case they will probably re-file charges.

Also a mistrial can be declared if something improper happens during the course of the trial, as I explained above.

Verdict

Following the entry of the jury's [or Judges] verdict, either side may give notice of its intention to appeal. In North Carolina [Pennsylvania and other cases also], there is in misdemeanor cases, a judge only for the 1st trial BUT from the lower court you can bump it up to a higher court and get a jury trial if dissatisfied with the judges verdict. There are reasons you might NOT want to do so until a couple of days later- Though doing so immediately means it's filed verbally and thus easier. If the Judge has taken a disliking to you, he can require large bail amounts [right then and there] until the new trial so you might want it to get out of his hands before you file!

In the District of Columbia there is only one trial court, so if you lose your trial, you don't get a second jury trial, but you do have a right to appeal to the Court of Appeals, which is DC's highest court. In the Court of Appeals, only legal arguments

about what went wrong in your trial are allowed, and no new evidence, witnesses, or testimony is taken, it is merely a legal review as to whether the Judge, the Prosecutor screwed up and the screw up affected your rights, thus warranting a new trial, or in rare circumstances, a reversal of the conviction.

Relevant info: North Carolina and other states has a “Second trial right“ if found guilty in front of a judge [as far as I can tell for Misdemeanors, as felonies seem to go straight to a Jury] as do other states. - See below.

Appeals

Appeals in political cases are important. If you win, you will create favorable case law precedents for activists to use in their turn. Precedents are only set where an appeal is won not when a case is won. The precedent you can set by winning an appeal in your case can be essential to later activists and others.

What is an Appeal? An appeal is a request to a supervisory court, usually composed of a panel of judges, to **review** a lower court's decision.

When one or both parties to a lawsuit disagree with the result in the trial court, it is usually possible to get a higher court (called an appellate court) to review the decision. Usually, an appellate [appeals] court reviews only whether the trial court followed the correct law and the proper procedures, and no factual evidence is presented. The facts of the case are not retried. Some states have two levels of appeals courts; an appeal is usually first considered by an intermediate court (often called a court of appeals). If a party is still unhappy with the result, it is sometimes possible to get the state's highest court (usually called the supreme court) to review the case.

To appeal the trial court's decision, you must file a notice with the trial court within a short period of time (usually but not always about 30 days) after the entry of judgment [guilty] by the court clerk.

The appellate court will require that both sides submit briefs and may also require the parties to orally argue before the court. After weighing the evidence submitted, the court makes its ruling, called a holding.

In the Court of Appeals, only legal arguments about what went wrong in your trial are allowed. No new evidence, witnesses, or testimony is taken. It is merely a legal review as to whether the Judge and or the Prosecutor screwed up and affected your rights, thus warranting a new trial, or in rare circumstances, a reversal of the conviction. You can hire an attorney for the appeal if you like or continue Pro Se. Appeals deal mostly with violations of constitutional rights. Try to stick to constitutional issues on an appeal. A good constitutional issue such as violation of Due Process will get you a new trial granted by the appellate court. If you win a new trial, then you can politicize it.

Constitutional issues can include: The right under the Fourth Amendment to the U.S. Constitution to be free from any unreasonable search and seizure; the right under the

Fifth Amendment to the U.S. Constitution to remain silent; The right to a trial either before a judge or a jury; the right to summon witnesses and compel their attendance to testify on behalf of the defendant; the right to confront and cross-examine any witness the State may call, the right to a speedy trial; the right to be presumed innocent unless and until the State has proven each and every element of the crime beyond a reasonable doubt; the right to be represented by an attorney.

Each state has a different appeal process. You must be speedy in your research as there are many different deadlines for each type of appeal.

Examples of the process for appeal for one state:

Appeals in W.V. require a notice of appeal in criminal cases filed within 30 days of judgment. The petition has six parts; each needing to be addressed:

* Table of Authorities
* Findings& Rulings in the Trial court
* Statements of Facts
* Assignment of Error
* Discussion of Law
* Requested Relief

You need to be aware of which standard of **review** is being used by the court you are appealing to as you research your appeal options. There is a De Novo Standard of Review and an Abuse of Discretion Standard of Review. [There may be others but this is all I know of at this time.]

De Novo is Latin for “from the beginning” and refers to an appeals court performing its own analysis of whether the **correct legal standards** were applied by the original court in reaching its decision from the beginning and usually only is applied for more significant trial errors. When a judgment upon an issue in part is reversed such error, for some mistake made by the court, in the course of the trial, a venire de novo is awarded in order that the case may again be submitted to the jury.

The Abuse of Discretion standard of review governs the less significant trial errors. In it. a judgment will be termed an abuse of discretion if the adjudicator has failed to exercise sound, reasonable, and legal decision-making skills. Examples of "abuse of discretion" or judges' mistakes include not allowing an important witness to testify, making improper comments that might influence a jury, showing bias, or making rulings on evidence that deny a person a chance to tell his or her side of the matter. This does not mean a trial or the judge has to be perfect, but it does mean that the judge's actions were so far out of bounds that someone truly did not get a fair trial. Sometimes the appeals courts admit the judge was wrong, but not wrong enough to have influenced the outcome of the trial, often to the annoyance of the losing party. In criminal cases abuse of discretion can include sentences that are grossly too harsh.

For examples:

In Maryland, the Court of Special Appeals will review issues of law and mixed questions of law and fact De Novo. The court will apply a De Novo standard of review to the issue of whether the confrontation clause was violated.

In WV, when the issue on appeal is a question of law or involving an interpretation of a statute, the W. V. Supreme Court of appeals applies a De Novo Standard of review.

The Habeas Corpus is the most common type of appeal. Prisoners often seek release by filing a petition for a writ of habeas corpus. A writ of habeas corpus is a judicial mandate to a prison official ordering that an inmate be brought to the court so it can be determined whether or not that person is imprisoned lawfully and whether or not he should be released from custody. A habeas corpus petition is a petition filed with a court by a person who objects to his own or another's detention or imprisonment. The petition must show that the court ordering the detention or imprisonment made a legal or factual error. Habeas corpus petitions are usually filed by persons serving prison sentences. In family law, a parent who has been denied custody of his child by a trial court may file a habeas corpus petition. Also, a party may file a habeas corpus petition if a judge declares her in contempt of court and jails or threatens to jail her.

In post conviction Habeas Corpus proceedings, you will be limited to allegations that your constitutional rights are violated. There is a one year statute of limitation for filing a federal Habeas Corpus Petition for post-conviction relief under 28 USC 2254 [for state prisoners] or 28 USC 2255 [for federal prisoners].

Sentencing

This usually happens at a later sentencing hearing not immediately after your verdict. [But not always- you **can** ask for immediate sentencing right after conviction to get things over with if you don't want a further appeal.] This sentencing hearing is where you can make a statement about why you did something and make emotional, political or logical appeals for leniency to the judge. Conversely, if appealing and sentencing is being set very soon you can TRY for it to be put off by asking for it to be after appeal. [See above for reasons you might not want to mention your appeal immediately.]

LEGAL RESEARCH – You will need to "cite" **laws**, **rules** or **previous cases** to persuade the court.

Don't Panic! This is not as hard as it looks at first. Once you try looking up a few cases you can get the hang of it pretty quickly.

There are public law libraries you can go to. The one's at your courthouse are sometimes reserved for lawyers but you can ask the judge to give you access since you are going pro se. In many states this is not a problem – any one can use it. Also Public Defenders

offices or friendly attorneys will often let you use their library if you explain your situation. Law schools also have information access.

The internet is sometimes very useful for legal research. But do not rely on it exclusively! Lexis Nexis access and other legal database access is what you need. Again it can be found at universities.

Most important**: your law librarian is your best friend** !!!! ASK for help! Fall on your knees if you have to. THESE are the people who can show you how to find the case precedents that will help you WIN. That will help you get evidence into the trial. They will help you frame your arguments in if you ask them. They will help you ask for certain Jury Instructions if you ask them. Get their sympathy and thus their help!

--Again, going Pro Se you are sometimes excused ignorance of written formats or court formality. Sometime even technical arguments. But DON'T COUNT on it unless you have to.

Also , as a [potentially] repeat Pro Se political defendant you may encounter the same few charges over and over again in the same legal system. Always save your case law research- making note of what argument worked well. After a bit you will have case law arguments for those specific charges that rival most local lawyers.

*I have often had lawyer ask me for my case note files saying that they were more comprehensive then theirs**. Don't feel that this is where lawyers can beat you**- you have much better motivation and more time to devote to the case research. **You can end up with much better case law then the prosecution if you put a little effort into it**.*

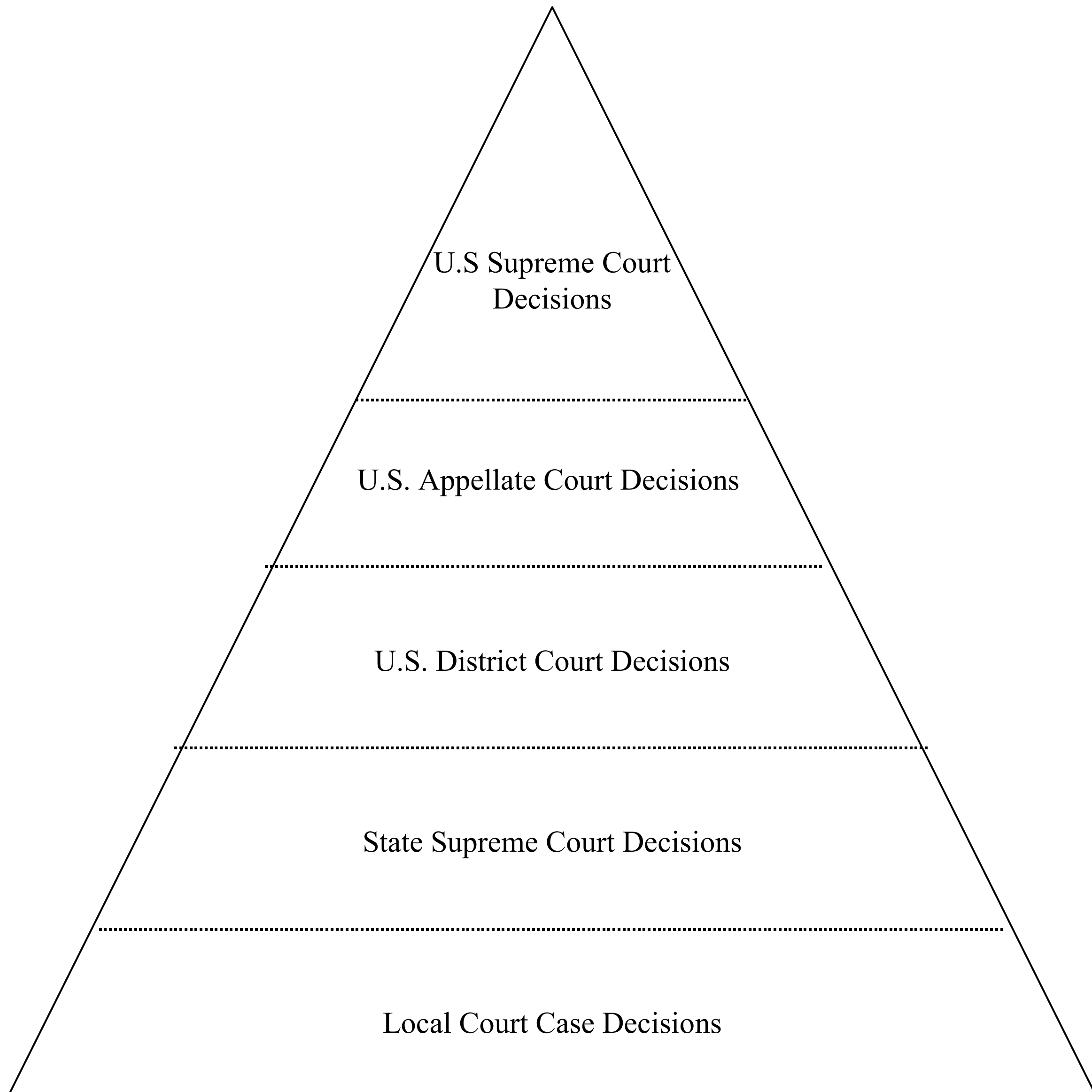
"**Authority"** is the information used to convince a court how to apply the law to the facts of a case. **Authority is the law (case or statute) and is cited to – this is sometimes referred to as a "cite".** You need to know this because many times you will want to argue a point because it seems fair or just or right, but you are not allowed to and the Judge will want to know, "What is the authority for that?" "Or, do you have any authority for that?"

You should be able to give an answer something like this: " If you look at Moore v. United States 139A.2d 868, 869(D.C.1957), Your Honor, I believe it will support my motion." If you have at least 3 copies of the case handy, it will help as you can hand one to the Judge [hand evidence or papers to the Judge's clerk-usually next to the bailiff-never to the Judge directly], one to the Prosecution and keep one for yourself to refer to as you make your argument.

You can have as many cites as you want. More is better if and only if the cases were all on your side of the argument regarding your interpretation of the law. Check each case and reason carefully weather it is similar to yours and supports your argument.

Legal authority is divided into two classes -- primary and secondary. These are also referred to as controlling and persuasive. There are two sources of primary [Controlling] authority: (A.) constitutions, codes, statutes, and ordinances; and (B.) court decisions, preferably from the same jurisdiction where the case is filed or the Supreme Court.

Secondary [Persuasive] authority, which is not cited except in certain circumstances, is found in legal encyclopedias, legal texts, treatises, law review articles, and court cases in other jurisdictions. Primary authority is binding on the Court (that is, the Judge must apply the law) while secondary sources are not binding but they can persuade the Judge in the direction you want.



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Example: If you are indicted for violating a WV state law in West Virginia, the controlling authorities for that case are decisions of the US Supreme Court interpreting the U.S. constitution, and the WV Supreme Court interpreting the state constitution and state law.

Decisions of the federal Appellate Court or U.S. District Court may be controlling IF they rely on constitutional interpretation and not just the supervisory power of the Appellate or District Court.

Decisions of other Circuit or other State Supreme Courts are only persuasive authority and judges in W.V. are not compelled to follow those decisions.

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- Primary [Controlling] authority is the most accepted form of authority cited, and therefore should be used before any other authority.

1. Constitutions, codes, statutes, and ordinances are the written laws of either the United States, the individual states, counties, and municipalities. These laws are enacted by the United States Congress, state legislatures, commissioners, and city councils. The U.S. constitution and it's amendments affects/supports the rights all citizens, where as each state's constitution affect/support the right within that state.

2. When a particular case is decided in a jurisdiction, it becomes "precedent" which means that it becomes authority for a subsequent case or a similar question of law. The law is often criticized as "conservative" or back-ward looking because it relies on old cases long ago decided to decide existing cases. So, often you get a Judge saying, " I am bound by the precedent established in the following case. And then they cite some extremely old case." That is very frustrating. It is the common law tradition in all states except Louisiana.

Court decisions are the basis for the system of **stare decisis**"- Latin for "the thing has been decided." These decisions are published in what is called the National Reporter System which covers cases decided by the United States Supreme Court down to the individual district courts in each state. These reporters each have their own "digest" system which serves as an index by subject on points of law. There are many reporters in this system and they can be found in most law libraries, and they are confusing at best, so make sure you check in with your local law librarian before you dive in and start doing legal research. States each have their own Reporters as well. Before you begin researching, you must know if you are in a Federal or Local court. Courts that begin with District Court for the District of [State]… are Federal Courts.

- Secondary [Persuasive] authority is used to obtain a broad view of the area of law and also as a finding tool for primary authority. Secondary authority is not cited to the court unless there is no other authority available.

1. Legal encyclopedias contain topics which are arranged alphabetically and are substantiated by supporting authorities. I find these fairly easy to use.

2. Treatises are texts written about a certain topic of law by an expert in the field.

3. Law review articles are published by most accredited law schools and are sometimes a broad survey of a particular area of law. This may be a useful starting point to get a

handle on what the legal issues in your case are likely to be. The authority cited in the article may also be a good place to start your legal research.

4. The Index to Legal Periodicals provides the only book reviews in the law and also provides case comments, which cases are listed in the "Table of Cases."

5. American Law Reports Annotated (A.L.R.) is a collection of cases on single narrow issues. You must be aware that A.L.R. must be constantly updated.

6. Restatements are publications compiled from statutes and decisions which tell what the law is in a particular field.

7. **Shepard's Citations** is a large set of law books which provide a means by which any reported case (cited decision) may be checked to see when and how a higher or another court has treated the first decision. All cases must be checked to make sure another court has not reversed or overruled the decision you want to use. Shepardizing your citations can save a lot of embarrassment [And your case!] later on, as you need to make sure that the case you are relying upon is still "good law" and has not been overruled.

Some basic rules of legal research are:

1. Give priority to cases from your own jurisdiction.

2. Search for the most recent ruling on a subject matter.

3. Check the pocket part in the back of almost all law books. The pocket part is the most frequently used device for updating law books.

4. Pay attention to dates on books, i.e., copyright date and date of pocket parts.

5. Be aware of "2d" and "3d" citations. They distinguish one series from another, and usually the higher number is the later (more recent) citation.

6. All legal citations are written with the volume number first, an abbreviation of the title, and the page number, e.g., 152 P.2d 967 or 144 A.L.R. 422.

If you want to go Pro Se you <u>must</u> internalize the following:

You must be able to deal with rejection of your arguement
- You can't define it as failure- it's a battle, not the war.

You must continue after being shot down
- Always think to yourself – "What can I do now"-don't dwell on whatever you lost. Learn to move on to the next subject, yet keep in mind if there is another way later in the trial (or on appeal, or in the press) to get what you were initially denied. Many times, it is appropriate, if you think you have been screwed by the

Judge, to politely ask the Judge to Reconsider, and then give a brief argument why your view should prevail.

You must view things from many different angles. Or at least keep the appearance of doing so.

You need the ability to think more in terms like, "That is A view" versus "There is my view and the wrong view."

"That is A defense" versus "They don't have a defense." Being impatient or intolerant with another's view, defense or assertion appears immature in the courtroom - showing it too obviously is even worse. The opposing side is supposed to have a view, defense or assertion, and they are acting as zealous advocates for their side. They may even believe in the truth of their own arguments, or in the righteousness of their position. Many times you will deal with outrageous arguments using deceit and/or lies that would never be used as arguments outside the courtroom.

You must learn be precise in written and spoken word. [Lie by omission]

"I did not have sexual relations with Monica Lewinsky." Ms. Lewinsky's allegations involved oral sex. The definition of sexual relations -as Bill Clinton well knew - does NOT include oral sex. So, President Clinton, on national television never denied Ms. Lowinsky's specific sexual allegation.... But millions thought he did! "There is no improper relationship." There isn't now, but WAS there? Many of us are raised speaking and writing without that precision. Some of us understand it for the falsehood that it is! – But this is the IN-justice system- if you want to accomplish your goals you must use their tools or at least understand those tools. When we hear such statements, we fill in the gaps with what we believe is the intended meaning. Precision in the spoken and written word will take time to learn.

You must remain dignified regardless of the circumstances.

Your face and demeanor should not too obviously reflect your outrage. You will deal with all sorts of absurdities, injustices and indignities. You will be told nonsense and lies with people looking you straight in the eye or sounding like they are on a truth serum. You must learn to stare absurdities, injustices and indignities square in the face without losing your cool while still defending yourself. Being outraged or emotional does NOT carry the weight it may carry outside the courtroom. Think of it as being respectful of yourself – not respect for the system and its components. Be polite where you cannot have respect.

This does **not** mean you must be unemotional or emulate lawyerly robotics. Going pro se does allow you a little wiggle room here that can be to YOUR great advantage- but it must be a calculated and measured emotionalism and passion about your side of the case for the jury not the judge. If the judge and jury see you as an irrational, out of control person they may think you are someone who has

likely broken the law, or, they may decide they don't like you which can sway them away from you in making their decision.

You must be persistent and through.

Come back with a second legal argument if the first one is shot down. A common tactic is not a, but if you find a, then b.. Ex: I didn't hit him, but even if I did it didn't hurt.

You must remain in control of your emotions.

When you are litigating Pro se, it is particularly difficult to separate your emotions during litigation. Be forewarned, emotionalism during litigation [esp. – when speaking to the judge] can and most likely will be used as an excuse to cut you off.

When you do exhibit your feelings, it must come as part of a conscious decision on your part that it is in your own best interests. An example is if you take the witness stand and are trying to convey your beliefs such as " I believed I had to act in some significant way in order to prevent people from dying in an unnecessary war" – then you can show strong emotions but be ready to reign it in for the next part of the trial. During the most political and well publicized trial that I was in, real tears as I spoke of the homeless freezing to death was helpful. Yet I was able to continue acting in a controlled, thinking manor as soon as I was off the stand. If you lose control of your emotions for any reason then be prepared to ask the judge for a short recess.

You must cultivate the ability to know and accept you are wrong after being 100% convinced you are right about the definition of a law or court rule.

This can be a learning experience. Sometimes, despite our convictions or our research [or because of them], there will be times we will miss or misinterpret the point and be wrong. Thinking law and litigation is a mixture of morality, common sense and fairness is a common source of this experience. Morality, common sense and fairness may be have been claimed to be elements in the drafting of laws, But we know that for a lie. Now is the time to REALLY internalize this truth.

The implementation of law will not favor morality, common sense or fairness. You can be morally right, have acted in an entirely moral, political manner and still have all the legal rules against you! Again- the system is not just- not even for you.

Sometimes you will have to hold your position when right [in your interpretation of a law or rule] when everyone is saying you are wrong.

Remember case law is made by litigants questioning Judge's decisions. There may be times lower court procedure and trials become a formality in order to get the higher courts to rule on your issues.

Don't get too bogged down in technicalities.

Especially with a jury. A lawyer can do that better and certainly faster. You'll only get a jury hostile to you cause they will see you as obstructing their ability to get this over with and go home. Lead to your strengths. Lawyer's have expectations as to how a trial will go. Usually the Prosecution and the defense are on the same page when they are both lawyers – the lawyers are trained that way.. You really can shake those expectations by your unpredictability and thus cause major errors in the prosecutions case.. Your strengths lie in your flexibility. your personal interest in winning and politicizing the case, your honesty, your political/moral stance and even the layman's natural hostility toward lawyers.

Second trial rights -appeals

North Carolina, Pennsylvania and some other states have a second trial right –ask if this applies in your state and for what type of cases. [As far as I can tell this applies only for misdemeanors in every state I've learned about this, as felonies seem to go strait to a Jury]

North Carolina's law: *You have the right to appeal the judge's decision. If, after you have been found guilty, you wish to have a jury trial, you must tell the judge within ten days that you wish to appeal his/her decision. A jury trial is when 12 people hear the evidence of your case and decide whether you are guilty. District Court does not have jury trials. If you are charged with a misdemeanor or an infraction, the judge will decide your case. If, after your case has been heard in District Court, you appeal to Superior Court, you will have a jury trial.*

Here is the North Carolina Website this was taken from- it contains other trial info: http://www.nccourts.org/Support/FAQs/FAQs.asp?Type=13&language=1

Other websites for legal research:

A brief general overview website:
http://www.criminalatty.com/pages/arrest.asp#processofcrimcase
Excellent as can give you court rule, laws, opinions, etc.:
http://www.findlaw.org

A quick and perhaps easier to understand overview of the Criminal court process in the US in general:
http://co.essortment.com/criminaltrialp_rmga.htm

Also good site for rule and laws: http://www.nolo.com/

Excellent script of how a trial works:
http://www.springsgov.com/units/municourt/prose.htm

http://www.caught.net/lawfind/lawfindf.htm

Voir Dire Questions info:
http://www.crfc.org/americanjury/voir_dire.html

http://www.legalhelp.org/library.htm [Use their inf.-don't get sucked in]
Another good site for resources:
http://www.legalfreedom.com/prc/index.html

http://www.id.uscourts.gov/glossary.htm#top- a GOOD legal glossary – print it and study it!

Here is an excellent PDF that explains trials:
http://www.sanantonio.gov/court/pdf/pro-se.pdf
And pleas: http://www.sanantonio.gov/court/pleas.asp

Here is American Bar Association lawyer recommendations for civil lawyers facing Pro Se defendants- it will give you an insight into the strengths and weaknesses of going Pro Se- the lawyers fear it sometimes- luckily few lawyers think to read this- or they forget what it says. http://www.abanet.org/genpractice/compleat/su97pro.html

Here is a very helpful PDF that will give you other helpful sites:
www.ncsconline.org/WC/Education/KIS_ProSeGuide.pdf

Jury nullification information-

- **web site of the American Jury Institute/Fully Informed Jury Association (AJI/FIJA).**: http://www.fija.org/juror%27s_guide.htm
- http://www.law.umkc.edu/faculty/projects/ftrials/zenger/nullification.html
- http://jctmac.tripod.com/jurynull.html
- http://www.levellers.org/jrp/
- http://famguardian.org/Subjects/Activism/Jury%20Nullification/QuotesOnDutiesOfJurors.htm
- http://www.patrickcrusade.org/nullify.htm