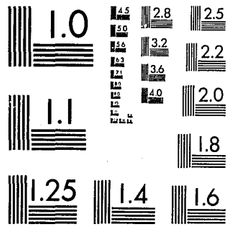

PRINCIPLES OF CRIMINAL PROCEEDINGS IN HAWAII'S JUDICIAL SYSTEM

BY THE
HAWAII CRIME COMMISSION
State Capitol
Honolulu, Hawaii 96813

JULY 1980

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Hawaii Crime Commission
July 1980

This report is respectfully submitted to the Legislature, State of Hawaii, pursuant to Act 219, Regular Session, Ninth Legislature, State of Hawaii, 1978 as amended.

THOMAS T. OSHIRO
Chairman
Hawaii Crime Commission

ACKNOWLEDGMENTS

This monograph attempts to present the broad outlines and principles of the Hawaii Criminal Justice System in nontechnical and everyday language readily understandable by nonlawyers. With the increasing interest and concern by the general public in the problems of crime and the criminal justice system, it is imperative that each citizen be informed of and understand what is being done in the courts of our State.

The Commission and its Staff owe a great debt of gratitude to innumerable persons for their contributions and suggestions regarding the monograph. Of these, we would like to mention especially: Rowena Adachi (graphics), Jon Van Dyke, Matthew S. Goodbody, Hikaru T. Kerns, The Honorable Marie Nakanishi Milks, The Honorable Donald K. Tsukiyama, and Francis I. Yamashita.

All of the suggestions and aid received in the research and writing of this monograph have been valuable, but we hasten to add that if they have been poorly acted upon, the responsibility is ours alone. Whatever its other merits, we most sincerely hope that this volume will be of service to the people of Hawaii in understanding their criminal justice system.

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I. INTRODUCTION

The purpose of this monograph is to provide an introduction to key concepts and procedures of Hawaii's judicial system. It is intended for use as a textbook in college courses such as political science, criminology, sociology, journalism, police science, and pre-law studies.

The monograph had originally evolved from certain chapters of a training manual, developed by the Commission, which was intended to train volunteers in the Commission's Court Observer Program. Based on comments received from court observer volunteers and others, it became apparent that a textbook of this nature could have wide application as an educational tool. Hence, in August of 1979, the Commission released a preliminary publication of the monograph.

Since its release, extensive revisions were undertaken to update the publication. The second publication includes the most recent legislation affecting Hawaii's criminal justice system and provides a more extensive elaboration of the procedures and key concepts discussed in the preliminary publication.

It is the aim of the Commission that a publication of this nature will encourage a greater public interest in more efficient and fair criminal justice system.

II. THE CRIMINAL JUSTICE SYSTEM OF HAWAII

A. THE COURTS

There are four levels to the judicial system of Hawaii. Two of the levels contain the trial court system. Appeals from the trial court system are handled by the other two levels.

1. Trial Court System: Circuit and District Court

The trial court system is divided into four judicial circuits.[1] The First Judicial Circuit covers the island of Oahu (the City and County of Honolulu) and also includes the district of Kalawao on the island of Molokai, commonly known as Kalaupapa.

The Second Judicial Circuit includes the island of Maui, Molokai (except for the district of Kalawao), Lanai, and Kahoolawe (the County of Maui).

The Third Judicial Circuit is the island of Hawaii (the County of Hawaii). Originally, the Big Island was divided into two circuits, the Third and the Fourth.

The Fourth Judicial Circuit was eliminated in 1943.

The Fifth Judicial Circuit includes the island of Kauai and Niihau (the County of Kauai).

Each of the four judicial circuits has a circuit court and a district court. Each district court is further divided into a number of geographic divisions. For example, the District Court

of the First Circuit includes the following divisions: Honolulu, Waianae, Ewa-Pearl City, Wahiawa, Waialua, Koolaupoko, Koolauloa, and Kalawao.

(a) District Court

Generally speaking, the district court has limited jurisdiction over civil and criminal matters. It conducts only non-jury trials. In civil cases, the district court, with some exceptions, has exclusive jurisdiction over matters that do not exceed $1,000, and concurrent jurisdiction with the circuit court in civil cases involving amounts between $1,000 and $5,000.[2] The district court also has jurisdiction in all small claims actions and in landlord-tenant cases.[3]

In criminal matters, the district court has limited jurisdiction, handling only those cases in which the possible maximum term of incarceration is one year or less, or where no jail sentence can be imposed.[4] (These cases are called misdemeanors, petty misdemeanors, and violations.) A defendant charged with a misdemeanor, or certain non-penal code petty misdemeanors with maximum sentences of six months or more, is entitled to a jury trial and the transfer of his case to the circuit court unless he waives a jury trial.[5] In felony cases, the district court is required to hold a preliminary hearing within 48 hours after the defendant's first appearance in court if the defendant is unable to post bail.[6] At this preliminary hearing, the district court judge must find probable cause from the

evidence adduced that the felony charged, or an included felony, has been committed and that the defendant committed it.[7] Otherwise, the defendant must be released.

In summary, district courts have jurisdiction in the following types of cases:

1) Civil cases that involve disputes of $1,000 or less;
2) Concurrent jurisdiction in civil cases involving amounts between $1,000 and $5,000;
3) Small-claims;
4) Landlord-tenant disputes;
5) Misdemeanors, petty misdemeanors, and violations; and
6) Preliminary hearings for felony cases.

Currently, there are 12 district court judges serving in the First Judicial Circuit, 2 in the Second, 3 in the Third, and 1 in the Fifth.[8]

(b) Circuit Court

Circuit courts are courts of general jurisdiction. The circuit court has exclusive jurisdiction in:[9]

1) All felony cases;
2) Civil cases involving more than $5,000 (with some exceptions);
3) Probate proceedings;
4) All jury trials, including cases from district court when a jury trial is authorized;
5) Petitions for writs of habeas corpus, extraditions, and other special proceedings.

Currently, there are 15 circuit court judges assigned to the First Judicial Circuit, 2 each to the Second and Third Circuits, and 1 to the Fifth.[10]

(c) Family Court

The Family Courts are a division of the Circuit Courts which specialize in cases involving children, family, and domestic problems.

On Oahu, 2 Circuit and 5 District Family Court judges hear cases; whereas on the neighbor islands, both circuit and district court judges are assigned to Family Court cases in addition to their regular duties.

The Family Court has exclusive jurisdiction over alleged juvenile law violators--these are persons below the age of eighteen who are alleged to have committed a crime and are referred to authorities.[11] On Oahu, the District Family Court judges generally preside over the disposition of such cases.

The Family Court may waive* its jurisdiction over a juvenile under appropriate circumstances. For example, two of the major requirements are, that the offense was committed by the juvenile on or after his or her sixteenth birthday, and the offense would be considered a felony if committed by an adult.[12] If waived, the juvenile would be tried as an adult by the court with appropriate

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*A waiver of jurisdiction by the Family Court means that it is irrevocably divesting itself of the statutory power to dispose of the merits of a particular juvenile case.

jurisdiction over the offense charged.[13] On Oahu, the Circuit Family Court judges generally preside over waiver hearings.

The Family Court also has jurisdiction over those adult offenses committed against a minor by a parent or legal guardian.[14] Charges against an adult for desertion, abandonment, or failure to provide support as required by law, or for non-felony offenses against a spouse, similarly come under this court's jurisdiction.[15]

In the First Circuit, the Family Court maintains a juvenile probation department, a system of intake services, probation counseling, and psychiatric and psychological services.

In the Family Courts of the Second, Third, and Fifth Circuits, such services are provided for both adults and juveniles by a single probation department within each circuit.

2. Appellate Court System

Hawaii's courts of appeal consist of the Supreme Court and the Intermediate Court of Appeals. These courts hear appeals from both the district and circuit courts. They may affirm or reverse decisions of the lower courts or, in certain exceptional circumstances, choose not to hear the appeal. In most cases, a defendant is entitled to one appellate review of a conviction as part of due process of law.

Generally speaking, appeals to the appellate courts claim that errors of law, or mixed law and fact, rather than errors in fact-

finding,* occurred during the prosecution of a case. The appellate courts are responsible for deciding the meaning and constitutional validity of Hawaii's laws and to ensure that no violations of either the Federal or State Bill of Rights, statutes, or rules of procedure occurred during the prosecution of the case, including a defendant's right to have a trial conducted fairly in accordance with the requirements of due process.

(a) Intermediate Courts of Appeals

The Intermediate Courts of Appeals is now composed of a chief judge and two associate judges who will hear all appeals assigned to them by the Hawaii Supreme Court.[16] This Court has concurrent** subject matter jurisdiction with the Supreme Court over these assigned cases.[17] Cases that the Chief Justice or his designee determine as lacking a significant enough question to warrant an assignment to the Supreme Court is assigned to the Intermediate Court of Appeals.[18]

A party is able to petition the Supreme Court for a writ of certiorari to review the decisions of the intermediate appellate court.[19] The acceptance or rejection of the writ shall be discretionary with the Supreme Court.[20]

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*Unless such findings of fact are clearly erroneous.

**With regard to the Intermediate Court of Appeals, concurrent subject matter jurisdiction means that it may handle the same types of cases as the Hawaii Supreme Court.

(b) Supreme Court

The Hawaii Supreme Court is composed of a chief justice and four associate justices and has general superintendence over all courts of inferior jurisdiction to prevent and correct errors and abuses where no other remedy is expressly provided for by law.[21]

Among other things, the Supreme Court is empowered to:

1) Hear and determine all questions of law or of mixed law and fact, which are brought to it on appeal from either the intermediate appellate court or other inferior courts or agencies; and

2) Issue writs of habeas corpus, mandamus, prohibition, and other necessary and proper writs.[22]

The Supreme Court also has a law-making function in the area of court procedure. For example, the Hawaii Rules of Penal Procedure governing criminal procedure are a creation of the Supreme Court.

B. COURT PERSONNEL

Besides the judge, three other court officials play important roles in trials:

1. Court Reporter

The court reporter records all testimony of witnesses, all proceedings, all objections of counsel, all rulings of the court, the judge's instructions to the jury, and all other matters that are included in the transcript. This record must be accurate, for if the case is reviewed by an appellate court, the court reporter's transcript becomes part of the official record of what happened when

the original case was tried.

2. Clerk

The clerk takes notes for the judge, marks exhibits for identification, and, when an exhibit is introduced, marks it as being in evidence. When a jury is being selected, the clerk draws the names of potential jurors from a drum. Also, the clerk is in charge of administering oaths to jurors, witnesses, and the bailiff. In contrast to the circuit court, the court reporter in the district court also performs the duties of a clerk.

3. Bailiff

The bailiff is required to keep order in the court and to assist the jurors and the judge. The bailiff performs such duties as calling out the witnesses' names from outside the courtroom and pounding the gavel to announce the judge's entrance into or exit from the courtroom. The bailiff also serves as messenger between the jury and the court when the jury retires to deliberate upon its verdict. In addition, it is the duty of the bailiff to prevent anyone from entering or leaving the jury room, or to prevent anyone from tampering with the jury. In the circuit court, many of the bailiffs are young lawyers who also serve as law clerks to the judges.

C. THE PROSECUTOR AND THE DEFENSE ATTORNEY

The State's chief legal officer is the Attorney General who is statutorily charged with the responsibility of prosecuting criminal offenses.[23] This responsibility, however, has been delegated to the Departments of the Prosecuting Attorney of the various city and county governments--subject to the authority of the State Attorney General to step in and try a particular case.[24] Therefore, although criminal cases are identified as State v. John Doe, it is not the State that normally prosecutes defendants; instead, the attorney for the prosecution will be a member of the Prosecuting Attorney's office. It should be noted that, currently, the State Department of the Attorney General prosecutes cases of alleged medicaid, unemployment compensation, and welfare fraud, as may be prohibited either by the theft provisions of the Hawaii Penal Code or by other non-penal code statutes.

The defense attorney may be a privately retained attorney, a court-appointed private attorney, or a member of the Office of the Public Defender. The Office of the Public Defender is the state agency responsible for defending indigent persons accused of crimes.[25] The right of a defendant to the services of a public defender or other appointed counsel is guaranteed by the Constitutions of both the United States and the State of Hawaii.[26]

The defense and prosecuting attorneys play different roles in criminal proceedings. The defense attorney, like an attorney in civil practice, is under an obligation to represent the defendant zealously and to act in the defendant's best legal interest. The defense attorney is thus duty-bound to do the utmost within the limits of law and ethics to safeguard and advocate the rights and interests of the accused, even though the facts may indicate that the accused acted wrongfully.[27] On the other hand, the prosecutor is under a different obligation. Although the prosecutor is supposed to be an advocate, the prosecutor must ensure that justice is served even when justice would result in an acquittal of the accused rather than a conviction.[28]

III. CERTAIN KEY CONCEPTS

A. CONSTITUTIONAL RIGHTS

In the American system of justice, a person accused of a crime continues to have the same constitutional rights as any other person and, in fact, is given special additional protections. This guarantee holds true no matter what the alleged offense may be, and no matter how lengthy a criminal record the person may have. Among these rights are:

1) That the defendant be entitled to a speedy and public trial;[29]

2) That the defendant be entitled to a trial by an impartial jury;[30]

3) That the defendant be informed of the nature and cause of the accusation;[31]

4) That the defendant be presumed innocent until proven guilty by proof beyond a reasonable doubt;[32]

5) That the defendant be represented by an attorney or provided with an attorney by the government free of charge if the defendant cannot afford one;[33]

6) That the defendant be allowed to remain silent, especially because anything an accused may say can be used against him or her as evidence;[34]

7) That the defendant be given an opportunity to have a trial even though the evidence may appear to be overwhelming and even though the defendant may believe he or she committed a crime;[35]

8) That the defendant be confronted with adverse witnesses;[36] and

9) That the defendant have compulsory process for obtaining witnesses to testify in the defendant's behalf.[37]

B. PROBABLE CAUSE

Probable cause is a standard that must be met in order to arrest or charge someone with an offense.[38] The amount of proof necessary to satisfy the "probable cause" standard is less than "proof beyond a reasonable doubt," the standard required for conviction at trial. For example, to make an arrest, the police officer need only show that sufficient facts and circumstances existed to lead a reasonable person to believe, upon reasonable grounds, that a crime was committed by the suspect.[39]

C. PRESUMPTION OF INNOCENCE

Unless a defendant has entered a guilty plea, he or she is presumed to be innocent of the crime at the outset of the trial. This presumption of innocence can be overcome only by evidence showing that the defendant is in fact guilty. The prosecutor has the responsibility to produce such evidence. It is only a "trier-of-fact" (either a jury or judge) who can determine whether or not the prosecution has proved that the defendant did commit an offense. The defendant, on the other hand, is not required to prove innocence. The defendant must be proven guilty

beyond a reasonable doubt as to every material element of the crime charged.[40]

D. REASONABLE DOUBT

In a criminal case, proof beyond a reasonable doubt to a moral certainty is required.* The elements of the offense, the requisite states of mind, the facts establishing jurisdiction, venue, the timeliness (statute of limitations) of the prosecution, and the identification of the defendant as the offender all must be proven beyond a reasonable doubt.[41] Perhaps the best way to define "reasonable doubt" is to use the definition given to juries by circuit court judges during the giving of jury instructions.

> "A jury must not convict a person upon suspicion nor upon evidence which only shows that the defendant is probably guilty or more likely than not to be guilty. What the law requires is proof of his guilt beyond a reasonable doubt.
>
> Reasonable doubt is defined as follows: Reasonable doubt is a doubt founded upon reason and common sense, and arising from the state of the evidence. It may arise not only from the evidence produced, but also from a lack of evidence. A reasonable doubt is not a mere possible doubt, because nearly everything relating to human affairs is open to some possible or imaginary doubt; and the law does not require that degree of proof which excludes all possibility of error and produces absolute certainty, for such degree of proof is rarely possible.
>
> The real question is whether, after hearing the evidence and from the evidence, you have or have not an abiding belief, amounting to a moral certainty, that a defendant is guilty because all of the material elements of the offense charged have been proved. If you have such a belief, the State has discharged its burden of proof and it is your duty to convict, and if you do not have such a belief, it is your duty to acquit."[42]

*By contrast, in deciding a civil case, the standard of proof is "preponderance of evidence." The party with the burden of proof must establish by a preponderance of evidence what that party needs to prove. This burden of proof is met when the jury is convinced that one person's story is truer than the other person's story. The person with the more believable story may be said to have a preponderance of evidence.

E. EVIDENCE

Evidence offered in a trial can be presented in the form of oral testimony by witnesses or it can consist of demonstrative evidence such as money, a weapon found at the scene of a crime, or a diagram. Oral testimony includes the opinions of duly qualified experts. Evidence may be direct, such as an observed fact, or it may be circumstantial, meaning that a conclusion may be drawn from an observable fact.

F. EVIDENTIARY RULES

Both the prosecutor and the defense attorney are governed by a body of law known as the law on evidence that controls what the jury may consider. Throughout a trial, one attorney or the other may frequently object to questions being asked by the opposing attorney on the ground that the questions violate the law of

evidence. It is then the responsibility of the judge to decide whether the objection is valid or not. If the judge finds the objection valid, the judge will "sustain" the objection and the question must be left unanswered or rephrased. Otherwise, the judge will "overrule" the objection and the questioning will be permitted to continue.

There are three major rules governing the admissibility of evidence:

1) The evidence must be competent; that is, the evidence must come from a legally permissible source;[43]

2) The evidence must be relevant; in other words, it must be pertinent or applicable to a determination of the issues at trial.[44] Evidence will be found irrelevant if it does not tend to prove or disprove a factual issue. Even evidence that may be relevant will be excluded if its value in proving a fact is outweighed by a) the danger that it may unduly arouse the jury's emotions of prejudice, hostility, or sympathy; b) the probability that it will unduly distract the jury from the main issues; c) the likelihood that it will consume an undue amount of time; and d) danger of unfair surprise to the opponent excusably unprepared to meet it;[45] and

3) The evidence must be material* to the issue; that is, the evidence cannot be too remote from the issue in the case.[46]

Many other rules supplement the requirements of competence, relevance, and materiality. Among the more commonly applied rules

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*The terms "relevant" and "material" are often used interchangeably. The rule of materiality is similar and in some instances identical in application to the rule of relevance.

are the following:

The Exclusionary Rule:[47]

The government is not allowed to use evidence that is illegally obtained. For example, this rule prohibits the government's use of evidence that was obtained as a result of an illegal search and seizure. The exclusionary rule was established to prevent the government from violating the constitutional rights of citizens and to preserve the integrity of the judicial process.

The Hearsay Rule:[48]

The hearsay evidence* rule limits a witness in court to testify only to matters that the witness has personal knowledge of. Hearsay evidence may be excluded to protect the defendant's constitutional right to cross-examine the witnesses against him. However, the hearsay rule has many exceptions; and hearsay evidence of some sort may be admissible in many trials.

Privileges:[49]

Certain types of confidential information may be withheld as evidence because they are considered to be privileged. What a client says to a lawyer, or what a husband says to his wife are examples of privileged communications. There are, however, circumstances when these privileges may not be invoked.

The Opinion Rule:[50]

Personal opinions are usually considered inadmissible. Witnesses are sometimes admonished to confine their testimony to observable facts of which they have firsthand knowledge.** An exception to this rule is

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*Hearsay evidence is defined by Webster's New Collegiate Dictionary (1973) as: "Evidence based not on a witness's personal knowledge but on matters told him by another."

**However, if the opinion concerns a subject matter upon which average individuals consistently form reasonably reliable opinions, the witness will be permitted to give an opinion. For instance, a witness may give an opinion on the speed of a car, the size or weight of the suspect, color, sound, smell, distance, time, and so forth.

the opinion offered by an expert. A qualified expert has the ability to draw inferences from facts which a jury would not be competent to draw.[51] The subject of the inference, however, must be so distinctively related to some science, profession, business or occupation, as to be beyond the ken of the average layperson.[52]

G. ELEMENTS OF A CRIME

Every crime is defined in terms of distinct ingredients, or "elements." The elements of an offense are: 1) the conduct, 2) the results of conduct, and 3) the circumstances attendant to conduct.[53] Moreover, with the exception of offenses that are non-penal violations, or that impose absolute penal liability, a person is not guilty of an offense unless he or she acted with the required state of mind with respect to each element of the offense as may be required.[54] For example, in the offenses of Assault in the First, Second, and Third Degrees, the elements that must be proven beyond a reasonable doubt are as follows:[55]

OFFENSE	STATE OF MIND	CONDUCT	RESULTS OF CONDUCT	CIRCUMSTANCES ATTENDANT TO CONDUCT	CLASS OR GRADE
Assault, 1st Degree	Intentionally or Knowingly	causes	Serious Bodily Injury		Class B Felony
Assault, 2nd Degree	(a) Intentionally or Knowingly	causes	(a) Bodily Injury	(a) By using a dangerous instrument	(a) Class C Felony
	(b) Recklessly	causes	(b) Serious Bodily Injury	(b) By using a dangerous weapon	(b) Class C Felony
	(c) Intentionally or Knowingly	causes	(c) Bodily Injury	(c) To correctional worker performing duty or within correctional institution	(c) Class C Felony
Assault, 3rd Degree	(a) Intentionally, Knowingly, or Recklessly	causes	(a) Bodily Injury		Misdemeanor or Petty Misdemeanor
	(b) Negligently	causes	(b) Bodily Injury	(b) By using a dangerous weapon	

The prosecutor must prove the presence of each and every element beyond a reasonable doubt. The defense attorney can either present evidence to rebut what the prosecutor has said, or through cross-examination he can "shoot holes" in the prosecutor's case. If all elements constituting a crime are not proven beyond a reasonable doubt, the defendant must be acquitted unless the elements which have been proven constitute a lesser offense included in the original crime.[56] For example, the defendant may be acquitted of Assault in the First Degree but found guilty of Assault in the Second Degree.

H. MENTAL CAPACITY AND RESPONSIBILITY

Even though the prosecution proves beyond a reasonable doubt that the defendant engaged in the conduct portion of a penal offense, the defendant may still be excluded from responsibility* and acquitted of the charge if at the time of the conduct, as a result of physical or mental disease, disorder, or defect, he or she lacked substantial capacity either to appreciate the wrongfulness of the conduct or to conform his or her conduct to the requirements of the law.[57]

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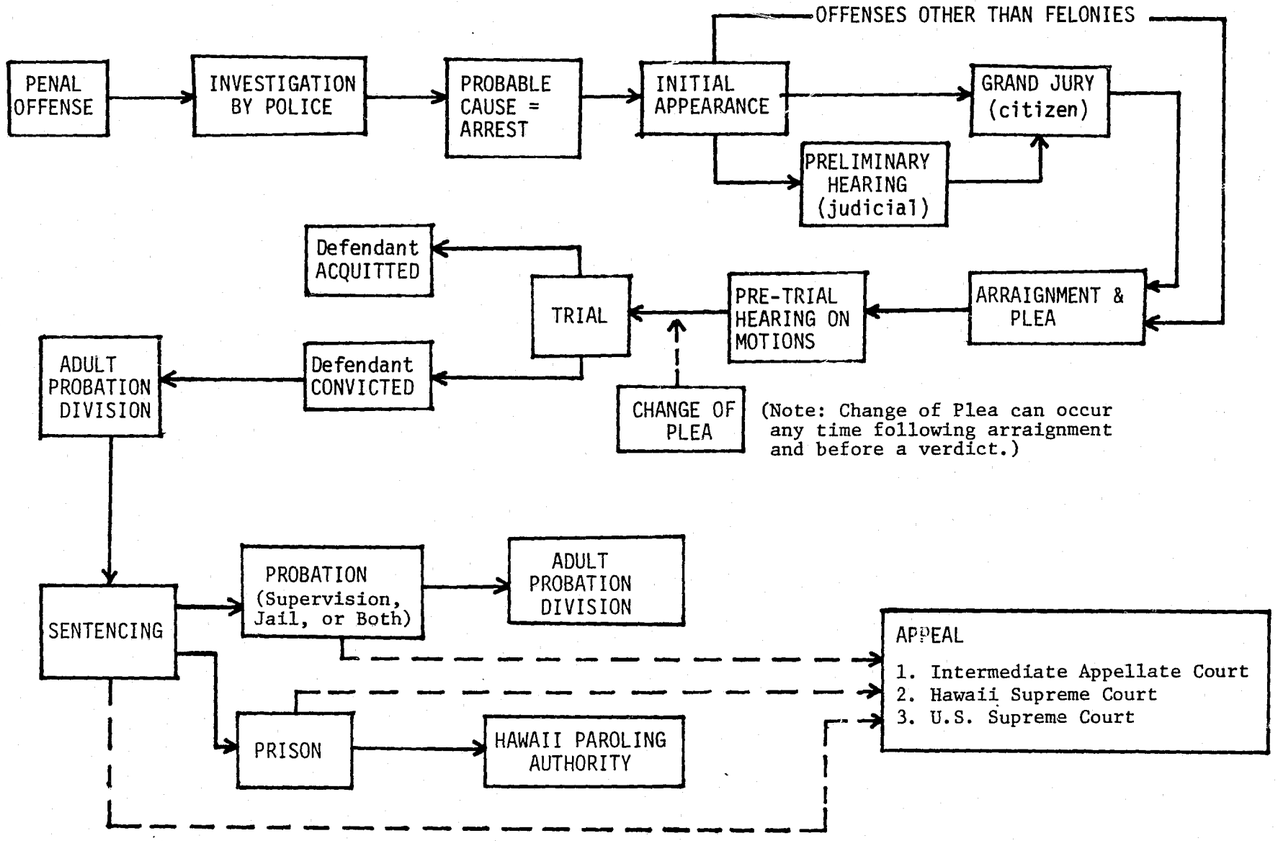
*As to why mentally irresponsible individuals are not held penally responsible for their actions, the commentaries to the Hawaii Penal Code explain that "/c/ondemnation and punishment of such an individual would be unjust because the individual could not, by hypothesis, have employed reason to restrain the act; he did not and he could not know the facts essential to bring reason into play." See Commentaries to Section 704-400 of the Hawaii Revised Statutes.

In these types of cases, defense counsel will usually file a motion for mental examination prior to trial accompanied by a notice of intent to rely upon such a defense. If satisfied of the need to assess the defendant's mental responsibility, the court may then order the temporary suspension of trial proceedings and appoint a three-member commission, usually comprised of two qualified psychiatrists and a qualified clinical psychologist, to examine and report on the defendant's mental condition and fitness to proceed for trial.[58]

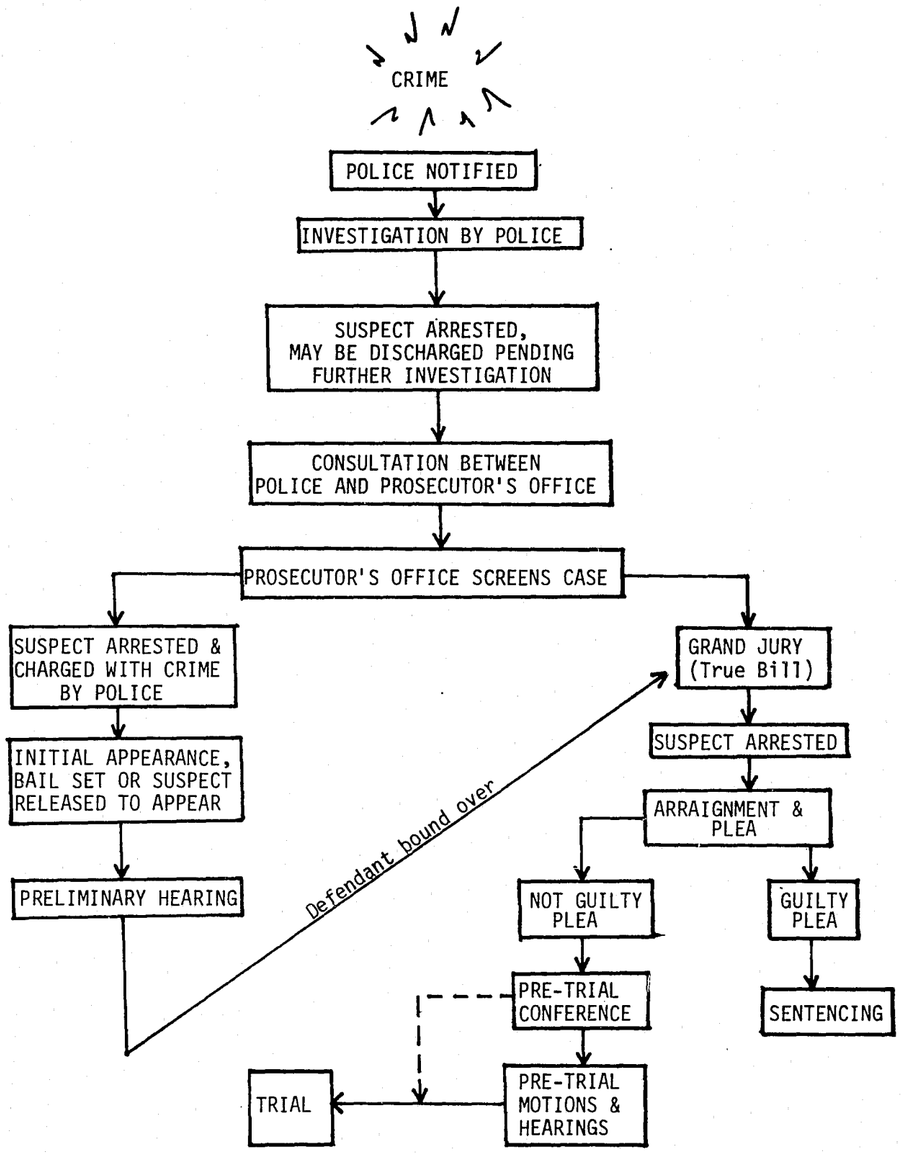
If the reports of the examiners state the defendant did suffer from a physical or mental disease, disorder, or defect at the time of the act and such impairment was sufficient to exclude responsibility, the court must then submit the issue of insanity to the jury or the trier-of-fact at the trial of the charge against the defendant.[59] In the defendant's trial, all factual issues, including that of penal responsibility, are submitted for the trier-of-fact's scrutiny.[60]

In the majority of cases and especially those involving a felony, an acquitted defendant is committed by the court to the custody of Director of Health, usually to the Hawaii State Hospital, for care and treatment until such time that it is determined that he or she can be safely discharged.[61] The same procedure is usually followed where a defendant is found to be unfit to proceed.[62]

CRIMINAL PROCEDURE FLOW CHART



PRE-TRIAL PROCEDURES: FELONY CASES



IV. MAJOR PRE-TRIAL PROCEDURES

A. FELONY CASES

1. Investigation by Police

In the investigative phase of an incident, the police conduct interviews with the complainant and possible eyewitnesses, secure and examine the crime scene, and perform other investigatory duties. A technician from the crime lab is sometimes called to conduct a technical investigation of the scene.

Hawaii law permits the police to hold a suspect for up to 48 hours without a formal charge. During that time, the suspect is not able to obtain a release by posting bail because he or she has not yet been charged with an offense.

The police will generally consult with the Office of the Prosecuting Attorney before charging a suspect. The Prosecutor's Office has a screening unit that reviews evidence gathered before a decision is made on whether to charge a suspect. Both the police and the prosecutor have broad discretional powers on deciding whether or not to pursue a case for arrest or prosecution.*

*In cases involving sexual offenses, however, the statute provides that no prosecution can be instituted unless the alleged offense was brought to the notice of public authorities within three months of its occurrence. The three months requirement does not apply if the victim is a minor or an incompetent. See Haw. Rev. Stat. § 707-740 (Supp. 1979), as amended by Act 223, 1980 Haw. Sess. Laws.

The police, for example, have the discretion, based on their investigation, to decide whether or not a complaint is unfounded before turning the case over to the Prosecutor's Office. The prosecutor, on the other hand, in screening the case for further prosecution, may accept the charge by the police, or may reclassify, reduce, or reject the charge based on the examination of the facts and the evidence before the prosecutor. The accepted procedure is to base the decision to charge a suspect on the sufficiency of the evidence needed to obtain a conviction.

Once a suspect is arrested and charged, he or she must be taken promptly before a district court judge, usually the next court day following the suspect's arrest. Thus, an arrested suspect is often released "pending further investigation" because the prosecutor may wish to take the case to the grand jury (which gives the prosecutor more time to prepare a case) rather than present the evidence before a district court judge in a preliminary hearing (which must be held within 48 hours of the initial court appearance) if the suspect is unable to post bail.

2. Initial Appearance

At the initial court appearance for a felony case, the suspect--now a defendant--receives a copy of the complaint, if one had not been previously supplied. At this time, the defendant is not required to enter a plea of "not guilty" or "guilty" to the charges. The judge must then:

1) Be satisfied the defendant is informed of the charges;

2) Inform the defendant of the right to remain silent and that any statement made may be used against the defendant;

3) Advise the defendant of the right to counsel and allow the defendant reasonable time and opportunity to consult with an attorney;

4) Admit the defendant to bail as provided by law.[63]

3. Determination of Probable Cause: Preliminary Hearing and Grand Jury

Once a defendant is formally charged by the prosecutor, he or she must be promptly brought before a district court judge. Under the Hawaii state constitution, the defendant cannot be brought to trial after being charged by the prosecutor unless a group of citizens sitting collectively as a grand jury issues a formal written charge against the defendant.[64] The issuance, or "return," of this formal written charge--called a "true bill" or "indictment"--means that the grand jury has found that there is probable cause to believe that the defendant has committed a crime based upon evidence presented to it by the prosecutor.

The Oahu grand jury normally meets on a weekly basis to consider cases presented to it by the prosecutor. However, because of the backlog of cases to be heard by the grand jury, it is not unusual for a month and often two months to pass from the time the defendant is originally charged until the grand jury is able to consider the case for possible indictment. As a result, if the defendant is unable to post bail, the defendant could be forced

to sit in jail solely on the basis of a charge filed by the prosecutor. Hawaii law therefore provides that before a defendant may be held in custody on a felonious criminal charge for a substantial period of time, a district court judge must find sufficient evidence to show "probable cause" that, first, a crime was committed, and, second, that the defendant committed the crime.[65] Such a determination must be made by a district court judge in the preliminary hearing. Such a hearing must be held within 48 hours of the defendant's first court appearance if the defendant is in custody.[66] If the defendant is not in custody, the preliminary hearing must then be held within 30 days.[67] This latter period usually gives the prosecutor more time to obtain a grand jury indictment instead of going through a preliminary hearing. Most of the cases on the preliminary hearing calendar concern defendants who are still in jail.

(a) The Preliminary Hearing

The preliminary hearing held for felony cases is conducted before a district court judge and is usually of short duration. The only issue before the court is probable cause. The defendant does not enter any plea to the charge. Although several cases may be listed on the preliminary hearing calendar for a particular afternoon, all of them will usually be handled by one prosecutor. The cases may not necessarily be called in the order they appear on the calendar.

The preliminary hearing is considered a critical stage in the

prosecution of a criminal case, and the accused, therefore, has a constitutional right to be represented by legal counsel.[68] Most are represented by a public defender. A public defender may represent those who can afford their own private attorney but have not yet hired one because of the lack of time.

A preliminary hearing is like a mini-trial, but with some major differences. The prosecutor calls and questions witnesses. Then the defense attorney cross-examines them. The prosecutor's questioning is usually kept short, to avoid revealing too much about the evidence. The defense attorney, on the other hand, may wish to cross-examine extensively for the purpose of: (1) learning as much as possible about the prosecutor's case; and (2) pinning witnesses down to certain statements so they cannot change them later without losing credibility. Because of those same considerations, a defense attorney will seldom, if ever, allow the defendant to take the witness stand or offer witness testimony in defendant's behalf. Nor will a defense attorney, except in special situations, waive or forego the opportunity to have a preliminary hearing.*

Cross-examination during a preliminary hearing is quite different from the way it is conducted during a trial. The defense

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*One such instance might be where the defendant is a first offender who is unable to make bail and desires to plead guilty because he is unlikely to receive any prison sentence. By waiving a preliminary hearing and then an indictment, and pleading guilty to a complaint, the amount of time in jail would be minimized.

attorney attempts to probe witnesses with the hope of extracting from them information that can be useful to the defendant. Also, the defense attorney is not afraid of eliciting information that may be damaging to the defendant's case. For one thing, rarely are there cases where a defendant is discharged or released because of a lack of evidence presented by the prosecution. The defense attorney therefore, attempts to take advantage of preliminary hearings to conduct an extensive inquiry to discover the evidence against the defendant and to develop a strategy for trial. More importantly, it is better to learn any damaging testimony before the case goes before a jury.

The prosecutor, on the other hand, tries to limit both the number of witnesses called to the stand and the scope of their testimony. Since the rules permit the prosecutor to use hearsay evidence, the prosecutor may call police officers to the stand and ask them what certain unavailable eyewitnesses said.[69] By using hearsay evidence, the prosecutor can not only prevent a witness from being cross-examined too extensively, but is able to proceed with the hearing despite the unavailability of the eye-witness.

The rules also provide that the defense attorney cannot object to evidence on the basis that it was acquired by unlawful means, such as, from an illegal search and seizure.[70] Such objections are reserved for the trial court's determination.

Although a preliminary hearing is important to the accused as a means of discovering the prosecution's case, the defense counsel will seldom be allowed the opportunity to inquire fully into every aspect of the case. The courts are mindful of the primary purpose of the hearing and restrict the defense counsel to asking questions that are relevant to the determination of probable cause.

If the prosecutor is successful in presenting enough evidence to show probable cause, the district court judge will have the defendant "bound over" to the circuit court until the grand jury acts on the case. The defendant must remain in custody if unable to post bail. If the district court judge finds that there is not sufficient evidence to find probable cause, the defendant must be released. Dismissal of the case by the district court judge does not preclude further prosecution. Thus, if the defendant is discharged, the prosecution has the option either of preparing to present the case to the grand jury or gathering additional evidence for another preliminary hearing in district court.

(b) The Grand Jury Hearing

In Hawaii, all felonies must be presented to a grand jury for formal indictment.[71] For this reason, if a district court judge finds probable cause in a preliminary hearing, and thus "binds" the defendant over to a circuit court, a grand jury determination of probable cause must also be obtained. Two different determinations of probable cause may therefore be required in felony cases. However, the defendant may, with the court's approval, waive prosecu-

tion by grand jury indictment and consent to be charged by complaint because, for example, it may be advantageous to the defendant for plea bargaining purposes or for some other reason. The complaint would take the place of the indictment at the defendant's arraignment. Prior to a waiver, the defendant is advised by the judge of the nature of the charge and of his rights.

The function of the grand jury is to review the prosecutor's evidence and to determine whether a case should be brought to trial. Hawaii's grand juries are required by law to consist of at least sixteen persons, or four more than in a trial jury.[72] A grand jury is selected at the beginning of each calendar year and sits for a one-year term. At the present time, in Honolulu, there are two grand jury panels that meet on alternate weeks of the month on either a Tuesday or Wednesday. Grand jury sessions on the neighbor islands are less frequent with only one panel in each county.

The prosecutor decides what cases are to be brought before the grand jury and what evidence will be heard by it. In Honolulu, the prosecutor presents between 20 to 25 cases a week to the grand jury. The prosecution may take five to ten weeks after the defendant's arrest to present a case to the grand jury. Because a defendant who is bound over for trial after a preliminary hearing must be tried within six months from the date of arrest, the prosecution generally ranks cases in priority for presentation to the grand jury, giving precedence to those defendants who have had a preliminary hearing.[73]

The evidence presented is often sparse because all that is required of the grand jury is a finding of probable cause. A transcript of the proceedings may consist of only three or four double-spaced pages. The defendant, subject to payment, is entitled to the transcript of the grand jury proceedings dealing with his or her case. The prosecutor may ask the trial court to keep the transcript of the proceedings secret but must show good cause such as circumstances demonstrating that, if identified, the grand jury witness's personal safety will be jeopardized.[74]

As in a preliminary hearing, the prosecutor may present hearsay evidence.[75] After the prosecutor questions the witness, the grand jurors, unlike trial jurors, are free to question that witness. The prosecutor must be careful to avoid making personal comments to the grand jury concerning evidence--whether it may be regarding a witness's testimony or demonstrative evidence, because such remarks may influence the grand jury's decision in finding probable cause.

Grand jury proceedings are held in secret.[76] Only the members of the jury, the prosecutor, a court reporter,* and the grand jury

*Until 1970, a grand jury was not required to have a court reporter present to record its proceedings. Hence, before 1970, the defendant had no way of determining whether any improprieties were committed before the grand jury. For this requirement see Haw. R. Pen. P. 37 (c).

counsel* are allowed to be present. Witnesses are kept outside until called in to testify.

If a grand jury finds that probable cause exists to believe that a crime was committed, and that the defendant committed the crime, it returns a "true bill" (indictment). At least three-fourths of the jurors present (and at least 8 members) must agree to return the indictment.[77] Once an indictment is returned, it puts the defendant on notice that the government believes the defendant committed a crime. Unless the defendant has been bound over for trial after a preliminary hearing, the circuit court judge will, pursuant to the indictment, issue a bench warrant for that persons' arrest with a certain bail amount set. A defendant who has already been "bound over" will receive a notice or summons to appear at circuit court on a certain date and time for arraignment and plea.

Hawaii law requires that the indictment be a "plain, concise, and definite written statement of the essential facts constituting the offense charged."[78] Thus, the usual indictment will say that

*As a result of a 1978 Constitutional amendment, the grand jury now has the right to independent legal counsel. Haw. Const. Art. I, § 11. Enabling legislation requires the Chief Justice of the State Supreme Court to appoint one or more grand jury counsel for each of the four judicial circuits. The counsel's role is "to receive inquiries on matters of law sought by the grand jury, conduct legal research, and provide appropriate answers." Act 209, 1980 Haw. Sess. Laws.

on or about a certain date, the defendant did such and such, which is a violation of a certain section of Hawaii law.

4. Arraignment and Plea

A defendant indicted by a grand jury is then arrested and is scheduled for arraignment and plea in circuit court. Arraignment is simply the reading of the charge to the defendant, after which the defendant is called upon to make a plea.

In Honolulu, arraignment and plea (commonly referred to as A & P) is scheduled in circuit court usually on the morning of one day of the week. The defendant is given a copy of the indictment and when the defendant's name is called, he or she must appear before the judge with an attorney who usually waives a public reading of the charge. The attorney then usually announces that the client has read the indictment and understands it, and that the client pleads "not guilty" to the charge. Although in theory a defendant could plead "guilty" at the arraignment and plea, such a plea is rare. After the defendant makes a plea, the circuit court judge sets the trial date and the deadline for pre-trial motions.

5. Bail

Early in the pre-trial proceedings, a motion for reduction of bail or for release on own recognizance is usually made by the defense if the defendant was unable to post bail and thus is still held in custody.

Prior to the hearing on the motion, a report is prepared by a Pre-trial Release Unit counselor of the State Intake Service Center.* After interviewing the defendant, the counselor may recommend to the Circuit Court one of the several courses of action: 1) that the defendant be released on own recognizance (O.R.); 2) that the defendant be placed under supervised release; or 3) that the defendant's bail be confirmed, reduced, or raised. Among the factors taken into consideration are: the nature of the crime charged; the defendant's past record; the defendant's history of appearing when required, or whether there are any previous citations for contempt; the defendant's roots and ties in the community as reflected by length of residency in the state; the defendant's employment record, and family situation; and so forth. Although certain factors could disqualify the defendant from being eligible for release on O.R., the defendant may still be eligible for either supervised release or a reduction in bail. If the court decides to place the defendant on supervised release, the defendant must reside at a designated facility or residence and must report regularly to an intake service center counselor. If the court reduces bail, it may condition such bail on the defendant not visiting certain places or persons, remaining gainfully employed, continuing education, and so forth.[79]

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*There are now Intake Service Centers on the islands of Oahu, Kauai, Maui, and Hawaii. Such services at present are not extended to the district court level. The full responsibilities of the Intake Service Centers are set forth in Haw. Rev. Stat. § 353-1.3, as amended by Act 204, 1980 Haw. Sess. Laws.

Defendants may either post bail themselves or have a bondsman bond them out.[80] A bondsman requires some collateral from the defendant or a cosigner and a premium usually equal to ten per cent of the bail figure as a non-refundable fee. By law, the judge sets bail at an amount that is designed to ensure the defendant's appearance in court when required.

No bail is allowed however, where the charge is for a "serious crime where the proof is evident and the presumption great," and: (1) the crime is punishable by life imprisonment without possibility of parole; or (2) the defendant has been convicted of a "serious crime" within ten years preceding the charge against him; or (3) the defendant is already on bail on a felony charge.[81] A "serious crime" is defined as a Class A or B felony except for forgery in the first degree or failing to render aid in traffic accidents involving death or personal injury.[82]

Even when a "non-serious crime," such as a Class C felony, is involved there are many instances in which the court has discretion not to admit the defendant to bail.[83]

6. Plea Bargaining

Plea bargaining also takes place at the pre-trial stage. It involves having the defendant enter a plea of guilty in return for some concession on the part of the prosecutor. This concession could take the form of a dismissal of some of the charges, a reduction in the severity of the charge to which the accused pleads

guilty, or the prosecutor recommending leniency or remaining silent at the time of sentencing. A judge is not bound by the terms of the agreement. Therefore, even though a prosecutor may recommend that the defendant not be sentenced to prison, the ultimate decision is completely within the discretion of the trial judge.[84]

A great majority of cases end in guilty pleas, either as a result of plea bargaining or by individual choice of the defendant. Before accepting a "change of plea," a judge must determine whether the change of plea was made intelligently, voluntarily, and knowingly.[85] The defendant, aided by the attorney, fills out a two-page Guilty Plea document that helps the judge make this determination. The defendant and the attorney first review and discuss the form. Then the defendant dates and signs it, along with the attorney, who affirms that the defendant signed it voluntarily and with a full understanding of the charge and its possible consequences.

Then, in open court, the judge addresses the defendant personally and determines, with the aid of the guilty plea form, whether the defendant understands the following: the nature of the charge to which the plea is offered; the maximum penalty provided by law, and the maximum sentence of an extended term of imprisonment which may be imposed; the defendant's right to plead not guilty, or to persist in that plea if it has already been made; and the fact that a plea of guilty waives the defendant's right to a trial and sets the stage for the imposition of the sentence. The

judge also must determine that the plea is voluntary and not the result of threats, force, or promises apart from a plea bargain.[86] If the change of plea is a result of a plea bargain, the terms must also be set down on the guilty plea form. Although the judge must inform the defendant that the court is not bound by the terms of a plea agreement, the failure by the prosecutor to comply with the terms of the agreement permits the defendant to withdraw the plea.[87]

Instead of a plea of guilty, the defendant may enter a plea of no-contest or "nolo-contendere." Such a plea can be made only with the consent of the court.[88] Essentially, the defendant neither admits to nor denies the charges, but does not contest the facts of the case. This plea has the same legal effect as a plea of guilty, except that it is not an admission of civil liability. As with the guilty plea, the court must find that the plea of nolo contendere was made intelligently, voluntarily, and knowingly.[89]

If the judge is satisfied that the plea has been made properly and that it did not result from duress or coercion, the judge accepts the plea and sets a date for sentencing. However, if the defense attorney makes a motion to defer acceptance of guilty plea (DAGP), the judge does not accept the plea but instead sets a date for the consideration of the motion.

The DAGP is a procedure generally reserved for young, first-time offenders involved in accidental or situational crimes who are

considered good risks; that is, who are not expected to violate the law again.[90] Such a plea must be made prior to the commencement of a trial. If a judge grants a DAGP motion, the accused person is put on a quasi-probationary status. If he or she fulfills all the conditions imposed by the court, the case is dropped at the end of a certain period of time (usually 18 months), and the young offender is allowed to have the arrest record expunged.[91]

If plea negotiations are not concluded successfully, the case goes to trial. A pre-trial conference is then scheduled to give the participants a chance to discuss pre-trial motions, how long the trial will probably take, and any particular problem that may arise in the course of the hearings on the motions or the trial. These conferences are usually held in the chambers of the judge and are normally informal meetings although the judge or the parties may occasionally want to place something into the official transcript.

7. Pre-trial Motions

After the arraignment and plea, the prosecutor and defense attorney may, before the trial, make certain requests to the court (i.e., file motions) for certain court orders. Such pre-trial motions are very important because they can determine the nature and the quantity of evidence the prosecutor is allowed to use or the direction in which the trial will proceed.

Pre-trial motions include all of those defenses, objections, or requests that can be determined before trial of the actual charge against the defendant. Some motions must be made prior to trial. These include:

1) Defenses and objections based on defects in the institution of the prosecution;

2) Defenses and objections based on defects in the charge;

3) Motions to suppress evidence or for the return of property;

4) Requests for discovery;

5) Requests for consolidation or severance of charges of defendants;

6) Motions to dismiss for failure to join related offenses; and

7) Motions to transfer proceedings to another court.[92]

Motions to Dismiss can encompass 1), 2), and 6) above; the other motions are self-explanatory.

Some of the most common pre-trial motions are described below:

(a) Motion to Dismiss

These motions are brought when the defense believes that defects--either in the manner by which the charge was brought, or in the charge itself--require a dismissal. For example, if the prosecutor has made improper statements to, or withheld clearly exculpatory evidence from the grand jury to cause the grand jury to indict the defendant, such an indictment would properly be dismissed

by the judge, with or without prejudice* depending upon the nature of the improprieties. Motions to dismiss an indictment will more commonly be brought on the basis that insufficient evidence was presented to the grand jury.

A defendant may also move to dismiss a charge if trial is not commenced within six months from the date of arrest** or filing of the charge, whichever is sooner. If the delay is not the result of any of the circumstances enumerated by the rules, such as court congestion, a continuance requested by the defense, the absence or unavailability of the defendant, or other delays for good cause, then the charge must be dismissed by the judge either with or without prejudice.[93]

(b) Motion to Suppress

If evidence against a defendant, in the form of self-incriminating statements or objects, has been obtained illegally, the defense may file a motion to suppress the use of such evidence.

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*A dismissal of an indictment with prejudice precludes the prosecution from re-indicting the defendant for the same charge. Whereas, a dismissal of an indictment without prejudice does not bar the prosecution from obtaining a new indictment for the same charge. See Haw. R. Pen. P. 48(b).

**In felony cases, the date of arrest, for the purpose of computing the six-month period, has been interpreted by most courts to mean when the defendant is arrested, charged, and bound over after a preliminary hearing in district court, but not when the defendant is merely arrested and released by the police pending investigation. The Hawaii Supreme Court has yet to resolve this ambiguity.

This "exclusionary rule" exists to preserve the integrity of the courts by not requiring them to accept the fruits of illegal police acts.[94] It also serves to deter police officers from engaging in illegal activity and violating the constitutional rights of citizens.[95]

Thus, if police search all the residences in a certain neighborhood without search warrants, and find some narcotics in the last home searched, the court must exclude or suppress the narcotics from use at trial because they were obtained pursuant to an unreasonable search and seizure. Without such evidence, of course, the case against the defendant must fall.

This exclusionary rule also applies to statements and confessions made by a defendant when the Miranda rule is not followed or when the defendant involuntarily makes a statement. To illustrate, if a police officer, after arresting a suspect, does not advise the suspect, who is under custodial interrogation* at the time, that under the Miranda ruling he or she has a right to remain silent, that any statement made can be used against the suspect, and that the suspect has a right to an attorney either retained, or appointed at State expense, then any statement thereafter made by the suspect must be suppressed. Or, to illustrate further, if a confession is obtained either by physical or psychological duress, then the confession is an involuntary one and must also be suppressed.

*In Miranda v. Arizona, 384 U.S. 436, 444 (1966), the United States Supreme Court explained that "by custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."

(c) Motions for Discovery

Discovery is the procedure by which each side finds out about the other side's case. Although discovery is meant to be a two-way process, a defendant rarely has much information subject to discovery. The prosecution, on the other hand, has the benefit of a police investigation report, which is partially subject to discovery. Since each side is entitled to the statements of potential trial witnesses, disputes frequently concern what is a "statement" for the purpose of discovery.[96] Other materials and information that are discoverable and that may be the basis for dispute include books, papers, documents, photographs, or tangible objects that the party intends to introduce into evidence, any reports or statements of experts made in connection with the case, and defenses that the defendant intends to use.[97]

Information that is not usually subject to dispute which each side must disclose are the names and last known addresses of persons who will be called as witnesses at trial.[98] In addition, the prosecution must disclose any exculpatory information or that resulting from any electronic surveillance conducted of the defendant's conversations or on his or her premises.[99]

Unless otherwise ordered by the court, a defendant ordinarily need not disclose any defenses intended to be used

at trial.[100] If, however, the defendant intends to rely upon an alibi, that is, he or she was elsewhere at the time of the offense, then the defense counsel must disclose, in writing, the nature of the alibi and how it will be established, including the witnesses to be called upon.[101] Failure to disclose may result in the court excluding a defendant's witnesses from testifying as to the alibi.[102]

(d) Conclusion

The majority of pre-trial motions are filed by defense counsel. Seldom, if ever, will the prosecution file a motion prior to trial. On occasions, the prosecution may find it necessary in a specific case to file a motion to request that the defendant be committed without bail (see discussion on bail) or to obtain a protective order from disclosing to the defense the identity of a witness prior to trial for reasons pertaining to that witness's personal safety.

After a pre-trial motion is filed, the court will set a date for a hearing on the motion. At such a hearing, no jury is present and the judge decides all issues of law and fact. For example, at a Motion to Suppress Confession hearing, the judge will have an opportunity to hear both the defendant and the police officer give their versions of how the confession was obtained. The judge must decide what actually occurred, and whether the facts, as the judge finds them, are a violation of the defendant's

legal rights. Such a hearing is held out of the presence of a jury to prevent the jury from hearing and considering evidence that it should not hear.

B. MISDEMEANOR CASES

The pre-trial procedures for misdemeanor cases differ from the felony cases in that neither a preliminary hearing nor a grand jury indictment is necessary to require an individual to be tried for an alleged misdemeanor offense. After the individual is arrested for a misdemeanor offense (unless a citation has been issued in lieu of an arrest or a summons in lieu of a warrant), taken to the police station, and admitted to bail pursuant to a bail schedule, the initial court appearance would usually be for arraignment and plea.[103] If the defendant is unable to post bail and is held at the jail, the arraignment would generally occur when the court next convenes, which usually is within twenty-four hours after arrest.

At arraignment, the defendant is read a complaint or an oral statement of the charge and asked to plead to such complaint or charge. If the defendant is without legal counsel at the time, the court advises the defendant of his or her constitutional right to counsel; and if the defendant appears to be indigent, a referral is made to the Public Defender's Office to determine indigency which qualifies for legal representation. If the defendant wishes to obtain private legal counsel or is referred to

the public defender, the court generally continues arraignment for a week, unless the defendant is in custody, in order to allow the defendant time to consult and obtain a lawyer.

When conviction may result in imprisonment for six months or more, the court also informs the defendant of the right to a jury trial in circuit court.[104] The defendant may then waive a jury trial or elect to be tried without a jury in district court. If the defendant requests a jury trial, he or she is then committed to the circuit court for the setting of a trial date. If the defendant subsequently decides against a jury trial, the case may either be remanded back to the district court for a non-jury trial or tried by a circuit court judge.

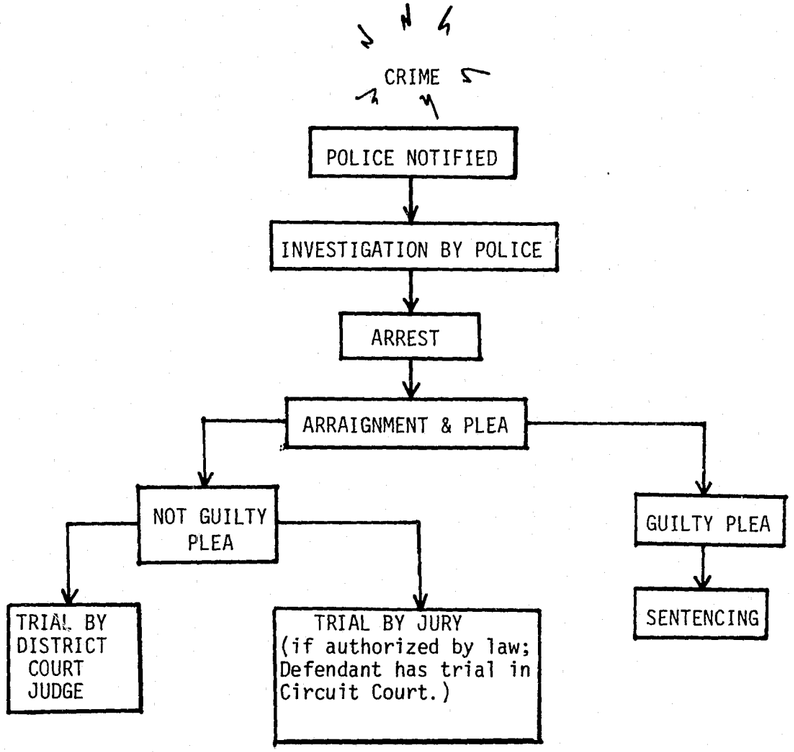
A defendant who pleads not guilty and also waives the right to trial by jury is tried in district court. Additionally, for less serious crimes such as petty misdemeanors, where the maximum jail term possible is less than six months, a defendant is not entitled to a jury trial.[105]

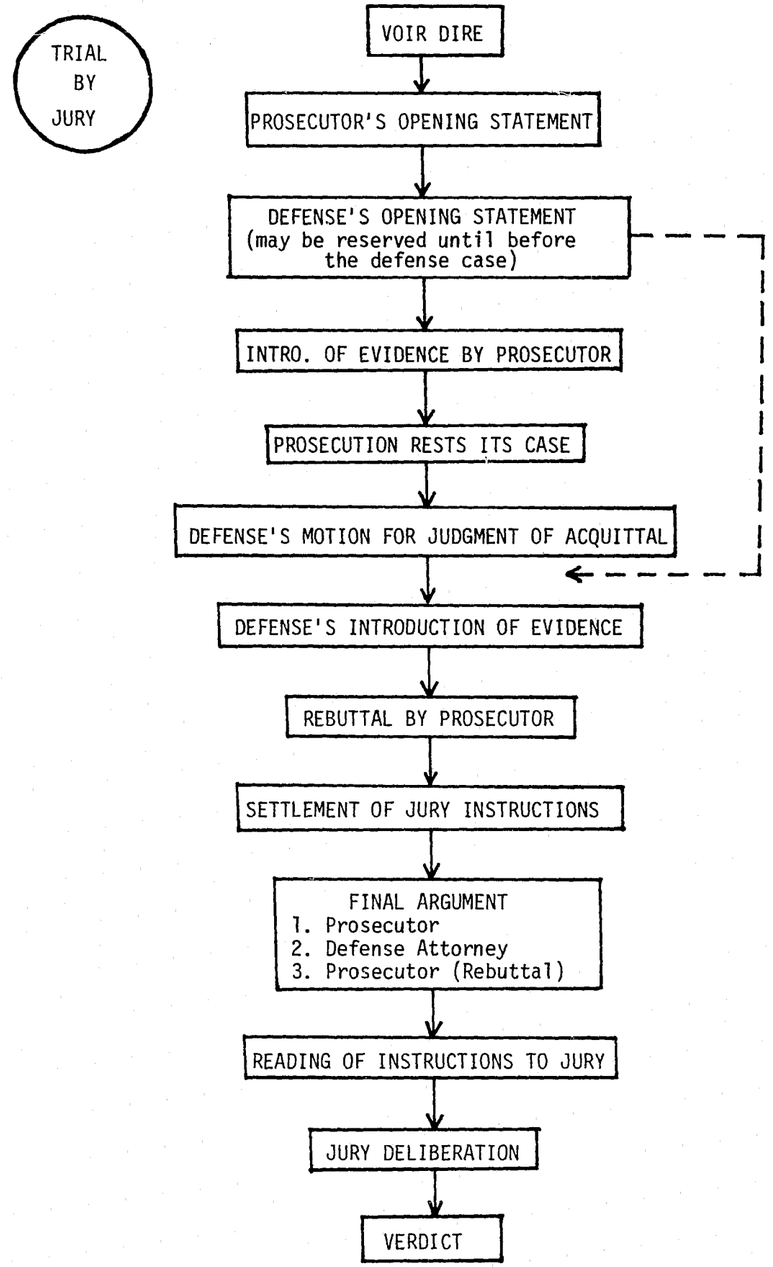
After the entry of a plea at arraignment the defendant may request and obtain a reduction of bail or a release to appear on own recognizance (RTA). If able to post bail or if released to appear, the defendant may then remain free provided all court requirements to appear are met during the course of the proceedings.

If the defendant is unable to post bail and thus is in custody, the court must schedule the trial for hearing within 48 hours after the initial appearance.[106] If the trial is not set or held within such time limits, the defendant, upon filing a motion, must be released to appear for trial unless the court finds from the complaint or affidavits filed with the complaint that there is probable cause to believe that an offense has been committed and that the defendant has committed it.[107] Because few cases in district court are brought on the basis of written complaints and affidavits, few people are committed on this basis. Thus, if a defendant is in custody and indicates an inability to post bail, and is not released to appear, trial is set for a date within 48 hours and the defendant is referred to the public defender for representation. Because the courts are often faced with a backlog of cases, the judge may often release defendants to appear and a date will be set in the normal course for arraignment and plea, or for trial if a plea has been entered.

Except for the above-mentioned differences, pre-trial procedures for misdemeanor cases are similar to those in felony cases.

PRE-TRIAL PROCEDURES: MISDEMEANOR CASES





V. TRIAL BY JURY

It may be helpful to look at the flow chart on the previous page before reading this section. The text follows the sequence of the flow chart and outlines the basic procedures for criminal trials by jury. The procedures for non-jury trials are similar to those of a jury trial except with respect to those procedures relating to juries and jurors: voir dire examination of prospective jurors, jury instructions, jury deliberation, and verdict. In the case of circuit court non-jury trials, the circuit court judge has, like the district court judge, the additional role of being a trier-of-fact, in addition to being the trier-of-law.

A. VOIR DIRE

The questioning of prospective jurors is called the voir dire examination. It is the attorneys' opportunity to communicate with individual jurors and to determine if they can be fair and impartial and follow the law. The purpose of voir dire is to help the attorneys "weed out" prejudiced or potentially unfair jurors.

The clerk of the court selects jurors by chance. The names of prospective jurors are placed in a wheel from which the clerk picks out the twelve individuals who are to take their seats in the jury box. The judge then asks the jurors some preliminary questions--for example, whether any of them knows any of the

parties, witnesses, or attorneys involved. The judge may then read the indictment to determine whether any of the potential jurors are familiar with the incident.

After finishing this preliminary questioning, the judge turns over the questioning to the attorneys. The judge, however, has the power to limit the questions an attorney may ask, depending on the subject matter of the case. Attorneys' questions are often based on juror qualification cards that are filled out by all jurors prior to their selection.

The prosecutor goes first. The prosecutor's major concern is whether the juror will hold the prosecutor to a higher standard than that of reasonable doubt. The prosecutor is also concerned with whether a juror has any moral or religious beliefs that would make it difficult for the juror to return a guilty verdict.

The defense attorney then questions the jurors. He or she must analyze the ability of each juror to understand and follow the laws regarding the presumption of innocence and reasonable doubt. The defense attorney's questioning will try to determine whether a juror believes the defendant might be guilty merely because the defendant has been charged with a crime, or whether a prospective juror's views about police, law and order, drugs, race, and so forth would tend to prejudice the juror against the defendant.

Pre-trial publicity is of concern to defense attorneys. For example, press reports may include information of a defendant's

past criminal activities, evidence which a prosecutor is not allowed to introduce into evidence. If a member of the jury learns of the defendant's prior criminal record through press accounts of the crime, the defendant may be convicted solely on the basis of his or her prior criminal record instead of the facts established by the prosecutor during the course of the trial.

An attorney may challenge a juror "for cause" if the attorney believes that the juror will not be able to serve fairly and impartially. It is then up to the judge to decide whether the juror should be excused for cause. If jurors state that they can be fair and impartial, and can set aside previously formed opinions about the case, the judge will probably not excuse them for cause.

However, attorneys are also allowed another kind of challenge for which no justification has to be given. After a jury has been passed for cause, it must face "peremptory challenges."[108] When a peremptory challenge is exercised, the judge has no discretionary power to decide whether or not a juror should be excused. The number of peremptory challenges allowed the defense and prosecution is limited by law. If the offense charged is punishable by life imprisonment, each side is entitled to twelve peremptory challenges.[109] In all other criminal trials by jury involving a single defendant, each side is entitled to three peremptory challenges.[110] Co-defendants tried together each have fewer peremptory challenges than if tried separately; although the number given to the prosecutor will not exceed the total given to all co-defendants.

Once twelve jurors have been selected, the judge may direct that alternate jurors be selected. The jurors are then sworn in and the judge will direct them not to discuss the case with anyone, not even among themselves. The judge will caution them not to form an opinion until all the evidence has been introduced.

In order to avoid influencing members of the jury, the attorneys are barred from communicating with the jurors outside of the trial proceedings.

B. OPENING STATEMENT

The opening statement gives the attorneys the chance to present their theories of the case. Rather than providing all the details, an attorney will give the jury a preview of the case. Since evidence is presented piecemeal, witness after witness, the opening statement can serve as a useful road map to inform the jury what route each side will take on the way to a conviction or an acquittal. Because evidence is not yet presented, it would be impermissible for either side to argue the particular merits of the case.

Opening statements tend to be fairly short. Often the opening statement of the defense attorney is much shorter than that of the prosecutor. The defense attorney may not, in fact, present an opening statement until just before the beginning of the defense case. The prosecutor will never waive an opening statement because it is a crucial opportunity to familiarize the jury with

evidence that the prosecutor intends to present to satisfy the burden of proof. (Also, a waiver could possibly lead to a motion by the defense attorney for a judgment of acquittal.)

C. INTRODUCTION OF EVIDENCE BY PROSECUTOR

After the opening statements, the prosecutor calls the first witness* to the stand and commences direct examination. When the prosecutor concludes questioning, the defense attorney begins to cross-examine the witnesses. If the prosecutor believes that the prosecution witness has been impeached, the prosecutor may try to rehabilitate the witness by a "redirect" examination. More often, the prosecution merely examines further into points raised by the cross-examination. A redirect examination may be followed by a recross examination by the defense attorney. Both procedures are repeated until the questioning of the witness is exhausted. Additional prosecution witnesses are called and the process repeated until all prosecution witnesses have been called.

During the trial, the prosecutor's evidence must show, first, that a crime was committed (i.e., the corpus delecti), and, second, that the defendant committed the crime.** Oral testimony may be

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*The court normally excludes other witnesses from the courtroom at the request of either party. This "exclusion of witness rule" is imposed to prevent the witness from being influenced by the testimony of other witnesses. Haw. R. Evid. 615, Act 33, 1980 Haw. Sess. Laws.

**In order to prove that a defendant committed a crime, the prosecutor must prove that the defendant committed the physical act constituting the crime--the actus rea--and that he did so with the requisite mental intent--the mens rea.

from a witness recounting what he or she knows of an alleged crime or from experts who have specialized knowledge in particular fields. Experts may be called to give an opinion the subject of which is so distinctively related to some science, profession, business, or occupation, as to be beyond the ken of the average layperson.

Tangible objects such as diagrams, models, or photographs are considered "demonstrative" evidence.[111] The weapon or bullets found at the crime scene are a type of demonstrative evidence called "real" or "original" evidence.[112] Such evidence must first be marked by the clerk, and then identified and authenticated by a witness before being admitted in evidence as a State's Exhibit. The defense attorney may object to the introduction of demonstrative evidence for a number of reasons including its alleged irrelevance, the danger of arousing the jury's prejudice against the defendant, the failure of the prosecutor to have the witness identify and authenticate the exhibit, or a failure to establish the chain of custody. An exhibit not in evidence should not be shown to the jury.

Evidence may also take the form of "stipulations," or agreements between the parties, as to certain facts in issue. If such an agreement is approved by the court, the facts stipulated to are regarded as being conclusively proven.

The following example illustrates these various types of evidence. John Witness testifies that he found a smoking revolver near the victim's body. In addition, Ethel Expert gives her

opinion that the smoking revolver was the weapon that caused the victim's death based upon the characteristics of the slug found in the victim's body. Both parties agree that Ethel Expert may give her opinion as an expert on ballistics. John Witness's oral testimony is direct evidence of what he personally observed. The revolver and slug are demonstrative evidence. The testimony of Ethel Expert is opinion testimony about ballistics, a science which is beyond the ken of the average layperson. The agreement between the parties is a stipulation as to the fact that Ethel Expert is an expert and may therefore give an expert opinion.

D. DEFENSE'S MOTION FOR JUDGMENT OF ACQUITTAL

Throughout the entire trial, the defendant is protected by a "presumption of innocence" and the prosecution must overcome this presumption by proving its case beyond a reasonable doubt. Thus after the prosecution "rests," that is, completes presenting evidence in its case, the defense will make a Motion for Judgment of Acquittal (MJOA).

In deciding an MJOA, the judge must assume the truth of the prosecution's evidence and give the prosecution the benefit of all legitimate conclusions to be drawn from its evidence.[113] If after doing this, the judge finds the evidence so minimal that no reasonable juror could return a verdict of guilty beyond a reasonable doubt, he must grant the MJOA.[114] Since the prosecution need only introduce enough evidence that, if believed, would

sustain a conviction, this motion is rarely granted.

By denying the motion, the judge is merely giving a legal opinion that enough evidence was presented so that a reasonable jury could be convinced beyond a reasonable doubt that the defendant is guilty. Since the jury might be influenced by the judge's denial of the motion, this motion is always made out of the hearing of the jury, either at the bench or with the jury out of the courtroom.

If the judge grants the MJOA, the defendant is discharged from any further prosecution for the crime just as if the jury had heard all of the evidence and returned a verdict of acquittal.

E. INTRODUCTION OF EVIDENCE BY THE DEFENSE

If the judge denies the MJOA, the defense may then introduce evidence. If the defense attorney has not already given an opening statement, the attorney may now do so. Otherwise, he or she will call the first witness.

The procedure is the same as during the prosecutor's case. The defense attorney conducts direct examination of the witness, followed by cross-examination by the prosecutor, and redirect by the defense. This exchange continues until questioning is exhausted.

Just as in the prosecution's case, defense evidence may be by oral testimony, by demonstrative evidence, or by stipulation. However, because the prosecution bears the burden of proof, the

defendant need not present any evidence at all if he or she believes that the prosecution did not meet its burden of proving guilt beyond a reasonable doubt. The defendant also has an absolute right not to testify.[115] Hence, the defendant also has the right to expect that the prosecutor will not comment upon the decision not to testify and that the jury will not draw any unfavorable conclusions about the defendant because of the decision not to testify. Such rights are necessary because the defendant may have good reasons for deciding not to testify which are unrelated to guilt or innocence.

The defendant relying upon an "affirmative defense," however, bears the burden of proving the defense by a preponderance of the evidence.[116] An "affirmative defense" is one in which the defendant usually does not contest the criminal conduct charged, but alleges facts, which if proven, act as a complete legal defense to negate penal liability. For example, duress is raised as an affirmative defense when the defendant admits to the illegal conduct, but claims that it was done only because of unlawful coercion.[117] The defendant must then "affirmatively" establish the claim of coercion by a preponderance of the evidence; that is, by evidence that coercion more likely than not occurred. If the trier-of-fact is satisfied that the defendant has done so, the defendant must be acquitted, even though the prosecution meets the burden of proving the elements of the crime charged beyond a reasonable doubt.[118]

F. REBUTTAL BY PROSECUTOR

After the defense has rested its case, the prosecutor may wish to put on rebuttal witnesses. Rebuttal evidence is confined to matters brought out by the defense. The prosecutor may not introduce new evidence unless it is to rebut the defense case.

G. SETTLEMENT OF JURY INSTRUCTIONS

When the introduction of evidence has been completed, the judge and attorneys confer to settle the instructions to the jury. The judge has a standard set of instructions that is given in every case. It covers such topics as the presumption of innocence and reasonable doubt.

The instructions proposed by the attorneys, however, are meant to strengthen the theory of each side's case. The prosecution, for example, may propose instructions dealing with what it must prove to gain a conviction. In offenses having different degrees, an instruction concerning a lesser degree of the offense may be given at either party's request, although it is usually the defense attorney who makes the request.

When the instructions are settled, a court reporter is called in and the instructions are formally settled for the record. At this time, the attorneys will state, for the record, their objections to the granting or refusal of certain instructions.

H. FINAL ARGUMENT

After the instructions have been settled, the attorneys are given an opportunity to present their views of the case to the jury. Final argument gives each attorney a chance to review and analyze the evidence and organize it into a convincing argument. They will also highlight various aspects of the case, fully realizing that the jury is not permitted to take notes during the trial. Evidence harmful to their case will be considered and minimized.

The prosecutor begins first and is followed by the defense attorney. The defense attorney usually takes a longer time to present his final argument because the defense is given only one opportunity to speak. After the defense finishes, the prosecutor is allowed to rebut the arguments of the defense because he or she bears the burden of proof. For this reason, it is important for the defense attorney to anticipate the points that the prosecutor will raise in rebuttal and to counter them effectively.

Each attorney has his or her own style of presenting a final argument. Some are very logical, while others are highly emotional. Some try to combine both approaches. All, however, try to "sell" their case as effectively as possible.

I. READING OF INSTRUCTIONS

After both sides complete their closing arguments, the judge proceeds to instruct the jury. The judge organizes the various instructions as deemed appropriate, unless one of the attorneys

objects, which is rare. The judge also reminds the jury that what the attorneys have said in their final arguments is not evidence.

Next, the judge has prepared verdict forms that are also subject to objection by the attorneys. Each verdict form will have only one verdict on it: guilty as charged, or not guilty, or guilty of a lesser included offense.

J. JURY DELIBERATION AND VERDICT

After they hear the judge's instructions, the members of the jury retire from the courtroom to deliberate on the case. If the court does not have a jury room, the courtroom will sometimes be used as the deliberation room.

In deciding the case, the jury must rely on its collective memory, for no notes may be taken during the trial. Demonstrative evidence introduced during the trial is brought into the jury room and may be inspected by the members of the jury.

From the moment the jury receives the case for deliberation, all of its members are kept together as a group--in certain cases, they may be sequestered. While the jury deliberates upon a verdict, no one is supposed to talk to any of its members about the case. The bailiff has the responsibility of protecting the jury from outside influences. During deliberation, the judge and other court personnel, the attorneys, and the defendant must await the outcome.

After the jury enters the deliberation room, they elect one of their members to be the foreman. It is difficult to generalize

about what happens next because each jury operates differently and jury deliberations are supposed to be kept secret. After the trial is over, however, individual jurors may discuss the deliberations if they want to, unless the judge orders them to the contrary because they will be returned to the jury pool. Attorneys sometimes talk to jurors afterward to gain insights into how and why the jury reached its verdict.

During their deliberations, the jury may request that certain portions of the testimony be read to them. They may also ask that certain instructions be repeated.

The jury generally has two choices: (1) declaring the defendant guilty as charged, or (2) declaring not guilty. A third choice is sometimes available to the jury: declaring the defendant guilty but to a lesser charge.

A verdict of "not guilty" means that the prosecution failed to meet its burden of proof and not that the defendant was found innocent. "Innocent" means that the defendant is blameless or is not involved with the crime.

The only issue before the jury is whether the prosecution has met its burden of proof. If it has, then the jury should convict the defendant; and if it has not, then the jury should acquit the defendant. The jury should render an acquittal if the prosecution fails to meet its burden of proof even though the jury may doubt the innocence of the defendant. The defendant's innocence is never really at issue; at issue is whether the defendant is proven guilty.

When the jury has decided upon a verdict, the jury foreman selects the proper verdict form, signs, and dates it before returning to the court. After being notified that the jury has reached a verdict, all parties then return to the courtroom. The verdict either for acquittal or for conviction must be unanimous. If the jury is hopelessly deadlocked, or "hung," the judge may declare a mistrial. The case would then be set again for another trial before another jury.

After the jury has reached its verdict and is back again in the courtroom, the foreman of the jury passes the verdict to the judge who reads it silently. The judge then passes it to the court clerk who reads it out loud. If the verdict goes against the defendant, the defense attorney usually asks that the jury be polled. The judge will then ask each juror individually if the verdict announced was the decision of the juror. The prosecution may similarly request a poll when the jury reaches a verdict for acquittal.

If the defendant has been convicted, the judge then releases the jury from further duty in the case and sets a sentencing date. The defendant is referred to the Adult Probation Division for a pre-sentence report. After a conviction, the defendant's bail may be raised especially if a prison sentence is likely, thereby increasing the possibility that the defendant might risk flight.

K. SENTENCING

Two commonly used systems of sentencing are known as determinate sentencing and indeterminate sentencing. The former is generally used in dealing with misdemeanor convictions and the latter generally with felony convictions.

Determinate sentencing requires the judge to set a specified length of sentence, which the defendant is expected to serve. Misdemeanors are punishable by a term of imprisonment not to exceed one year and a fine not to exceed $1,000.00.[119] A petty misdemeanor carries a maximum term of 30 days in jail and a $500.00 fine.[120] A violation carries no jail sentence but may be penalized by a fine not exceeding $500.00,[121] or by performance of community service.[122]

Indeterminate sentencing, used in dealing with felony convictions, requires the judge to sentence the defendant to the maximum term of imprisonment as provided by law, if incarceration is the appropriate punishment.[123] A minimum term of imprisonment can then be set by the Hawaii Paroling Authority.[124] The minimum term is the minimum time a prisoner must serve before becoming eligible for parole; it is, in other words, a tentative parole date.[125]

Felonies are crimes that carry a penalty of more than one-year imprisonment.[126] In Hawaii, felonies are divided into three categories. Class A felonies carry a maximum sentence of 20 years and a $10,000.00 fine.[127] A Class B felony carries a maximum sentence of ten years in prison and a $10,000.00 fine.[128] A Class C felony is punishable by a maximum prison term of five years and a $5,000.00 fine.[129]

Murder is a Class A felony that carries either a maximum term of imprisonment of 20 years or life imprisonment with opportunity for parole.* However, the defendant must be sentenced to mandatory life imprisonment without the possibility of parole if convicted of murdering: (1) a police officer, prosecuting attorney, or judge who was engaged in performing his or her duty at the time; or (2) a person known by the defendant to be a witness in a murder prosecution; or (3) a person as a hired killer or as one responsible for hiring the killer; or (4) a person while the defendant was imprisoned.[130]

Defendants convicted of murder, or any Class A felony, are not eligible for probation.[131] Someone convicted again for certain serious crimes within the time of the maximum sentence of the prior conviction is also ineligible for probation, must be sentenced to the maximum indeterminate sentence, and must actually serve a mandatory minimum term of imprisonment before being eligible for

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*Parole is the release of an inmate from prison by the Hawaii Paroling Authority prior to expiration of the sentence on the condition of future good behavior and remaining under the supervision of the Paroling Authority. Probation is a procedure whereby a defendant found guilty of a crime is released by the court from imprisonment and placed under the supervision of a probation officer.

parole.[132] These serious crimes are murder, assault in the first degree, kidnapping, criminal coercion involving dangerous weapons, rape or sodomy in the first degree, extortion involving dangerous weapons, robbery in the first degree, burglary in the first degree, promoting a dangerous drug in the first or second degree, and promoting a harmful drug in the first degree.[133] In addition, a number of less serious felonies are also subject to mandatory treatment with lesser mandatory minimum terms of imprisonment for subsequent convictions of any one of the enumerated offenses.[134] The effect of these provisions is that it removes from the discretion of the judge the authority to place certain repeat offenders on probation, and limits the power of the paroling authority to allow release on parole prior to service of the mandatory minimum sentence.* However, if the judge finds out that "strong mitigating circumstances warrant such action," the judge may impose a lesser mandatory minimum sentence if the court provides a "written opinion or its reasons for imposing the lesser sentence."[135]

*To illustrate, if the defendant, after conviction for burglary in the first degree, commits and is convicted for robbery in the first degree, the court must impose the maximum indeterminate sentence for the robbery with a mandatory minimum term of five years imprisonment before parole. If the defendant then commits and is convicted of a third serious crime, the mandatory minimum term would be for ten years. If the crimes involved were of the less serious variety, the mandatory minimum for the second conviction would be three years, and for the third, five years.

There are also provisions that deal with certain classes of offenders; that is, the persistent offender, the professional criminal, the dangerous person, the multiple offender, and certain offenders against the elderly or handicapped. These provisions extend the maximum terms of imprisonment to: life, for a Class A felony; 20 years, for a Class B felony; and 10 years, for a Class C felony.[136]

MAXIMUM TERMS OF IMPRISONMENT

		If sentence extended for certain types of offenders:
CLASS A FELONY	20 years	Life
CLASS B FELONY	10 years	20 years
CLASS C FELONY	5 years	10 years
MISDEMEANOR	1 year	
PETTY MISDEMEANOR*	30 days	

Generally, when a defendant is convicted and sentenced for two or more crimes without an extended term, he serves the sentences at the same time or "concurrently."[137] There are two exceptions to this general rule. The first is when a prisoner commits and is convicted of a crime while imprisoned or during

*Petty misdemeanors not in the penal code include all crimes for which a person may be sentenced to imprisonment for a term that has a maximum of less than one year.

an escape from imprisonment. The court may then add the maximum term for such a crime to the portion of the term which remained unserved at the time of the commission of the crime.[138] The second exception pertains to the mandatory minimum sentence. The court may also add the maximum term for the offense bearing the mandatory minimum sentence to any other sentence then or previously imposed on the defendant.[139] Because the terms must be served one after the other, these are two examples of "consecutive" sentencing.

The judge has a number of options in sentencing a defendant.[140] Two of them most frequently used are: (1) placing the defendant on probation, or (2) sentencing the defendant to prison. If the judge chooses probation, the judge may also sentence the defendant to a jail term for a specified period of time not exceeding one year.[141] While on probation, usually a five-year period for a felony, the probationer is supervised by the Adult Probation Division and may be required to be gainfully employed throughout the period of probation, or be enrolled in an educational facility until the completion of studies, or to commit no criminal violations, or to report regularly to the assigned probation officer.[142]

In deciding to sentence the defendant, the judge has the benefit of a pre-sentence report prepared by the Adult Probation Division.[143] The report includes, but is not limited to, "an analysis of the circumstances attending the commission of the crime, the defendant's history of delinquency or criminality, physical and

mental condition, family situation and background, economic status and capacity to make restitution or to make reparation to the victim or victims of his crime for loss or damage caused thereby, education, occupation, and personal habits, and any other matters that the reporting person or agency deems relevant or the court directs to be included."[144] The defense attorney will also receive a copy of the report,[145] but will not be given a copy of the confidential recommendation of the probation officer.

If the court decides to incarcerate the defendant, the Hawaii Paroling Authority will decide the minimum term of imprisonment. Prior to 1976, the Paroling Authority (or the Board of Parole and Pardons, as it was then known) was a five-member, part-time board. It is now a three-member board, headed by a full-time chairman.[146] The new Authority has sought to regularize the setting of minimum sentences, taking into account the record of the offender and any aggravating or mitigating circumstances.

Although the minimum term serves as the tentative parole date, it is entirely within the discretion of the Authority to decide whether the prisoner will be released on that date or not. If released, he or she will continue to be under the supervision of the Paroling Authority until fully discharged.[147]

Neither the courts nor the Paroling Authority have control, however, over the Correctional Divison's authority to release prisoners into a Conditional Release Center (CRC) in which the

defendant resides in a state facility but is allowed to work in the community pursuant to certain rules and regulations. The purpose of such facilities is "to provide housing, meals, supervision, guidance, furloughs, and other correctional programs" for prisoners and "in selected cases, a chance to begin adjustment to life in a free society and to serve as a test of an individual's fitness for release on parole."[148] Thus, even though a minimum term of imprisonment* is set by the Paroling Authority, the prisoner, while serving the minimum, may be able to go out into the community while in a CRC facility.

Finally, a few words on the youthful defendant program. Eligible for this program are young adult offenders who, at the time of sentencing, are between the ages of 16 and 22, and have "not been previously convicted of a felony as an adult or adjudicated as a juvenile for an offense committed at age sixteen or older which would have been a felony" had they been adults.[149] Under the program such offenders may be sentenced to a special indeterminate term of imprisonment instead of the sentence that normally applies to their offense. For a Class A felony, the special term is eight years; for a Class B felony, five years; and for a Class C felony, four years.

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*The question of whether a prisoner while serving the mandatory portion of the minimum term can be released to a CRC facility is currently being litigated. For discussion of mandatory minimum term, see page 65.

The minimum term, as in the case of adults, is set by the Paroling Authority. The young adult defender, however, is to be imprisoned apart from career criminals whenever possible.[150] Most defendants tried in court are adults, aged 18 or older, but in certain cases those over 16 may be tried as adults if the Family Court waives its jurisdiction over the young offender.[151]

VI. NON-JURY TRIALS

A. NON-JURY TRIALS

The procedures for non-jury trials are similar to those of a jury trial except with respect to those procedures relating to juries and jurors. The procedures for voir dire examination of prospective jurors, jury instructions, jury deliberation, and determining a verdict are not required in non-jury trials. Opening statements are generally disregarded as well.

Trials in district court are conducted without juries.[152] Additionally, a defendant indicted for a felony may elect to be tried without a jury in the circuit court.[153] In non-jury trials, the circuit court judge, like the district court judge, becomes both the trier-of-fact as well as the trier-of-law.[154]

B. SENTENCING

In district court, a defendant who is convicted of a misdemeanor either based on a plea of guilty* or a finding of guilt after

*In contrast to the circuit court's requirement of a guilty plea in both written and oral form, a defendant's guilty plea in district court may be entered only in an oral form. However, the district court judge must determine that the plea was made intelligently, voluntarily, and knowingly.

trial, will be sentenced immediately unless a pre-sentence diagnosis and report is ordered by the court. In cases where the defendant is under twenty-two years of age, the court must order a pre-sentence diagnosis and report unless it is waived by agreement between the defendant and the prosecuting attorney, and the court consents. It is discretionary for other cases.[155]

When a pre-sentence diagnosis and report is ordered by the court, the defendant is referred to the District Court Counseling Service for pre-sentence investigation, evaluation, and report.*

The District Court Counseling Services perform similar functions as its Circuit Court counterpart, the Adult Probation Division. A report prepared by a district court counselor is usually not more than two pages and is thus not as detailed as a report prepared by the Adult Probation Divison.

The report at a minimum includes a summary of the circumstances of the crime, the defendant's role, his or her statement and social history, the counselor's personal evaluation of the defendant, and other comments. The defendant, prosecutor, and court all receive a copy of the report prior to the sentencing date.

*Unlike the District Court of the First Circuit, the District Courts of the Second, Third, and Fifth Judicial Circuits do not as yet have such counseling services. However, services of the circuit court probation departments are available to them upon request.

The sentencing alternatives that may be imposed by the circuit or district court judges for misdemeanor convictions are: 1) imprisonment; 2) fine; 3) suspended sentence; 4) probation; 5) community service work; or 6) a combination of the foregoing.[156]

A defendant who receives probation or a suspended sentence is usually supervised for a specified period by a district court counselor. If incarceration is a condition for probation, the defendant can be sentenced up to six months for a full misdemeanor.[157]

VII. THE COURTS OF APPEAL

The remedy of appeal to a higher court is available to both the defendant and the prosecution.[158] The defendant is not limited to what may be appealed but only as to when. The prosecution, on the other hand, is statutorily limited as to what may be appealed,[159] or may often decide that the costs of appeal are not worth the probable results. Thus, most appeals are by the defendant. The following outlines the process of appeal when taken by either the defendant or the prosecution.

A. APPEAL BY DEFENDANT

The defendant must usually wait until after judgment is entered, that is, the formal imposition of sentence, to appeal.[160] An appeal begins with the timely filing of a written notice of appeal with the trial court within 10 days after the judgment is entered.[161] Customarily, the defendant's attorney will first give an oral notice of an intent to appeal immediately following sentencing and subsequently will file the written notice.

In the past, a notice of appeal automatically operated to stay or suspend the execution of the sentence imposed upon the defendant.[162] At the present time, the trial court decides whether the defendant must serve his or her sentence immediately or await

the disposition of appeal.[163] To make this decision, the trial court must weigh a number of factors, including the possibility that the defendant might flee the jurisdiction or commit another crime, against the possibility that the defendant might unnecessarily serve a sentence (particularly if imprisonment has been ordered) should the conviction be later overturned.*

Should the trial court allow the defendant to remain free pending the outcome of the appeal, the trial court may raise the amount of bail** as well as impose other conditions it deems proper.

If the defendant is indigent, various provisions are available for him to obtain representation for an appeal at the state's expense. The attorney is either a court-appointed private attorney, or one from the Public Defender's Office.[164]

The defendant does not have to obtain the trial court's permission to appeal after sentencing. This is not the case, however, with regard to "interlocutory appeals"; that is, those taken prior to sentencing.[165] For instance, if the defendant wishes an immediate

*In most cases when a conviction is reversed by the appellate court, the defendant may be retried because the constitutional protection against double jeopardy is deemed to have been waived by the defendant in all but a few exceptional cases.

**Of course, if the defendant is indigent, any substantial amount of bail would be sufficient to keep the defendant incarcerated.

appellate review of an order denying a pre-trial motion to dismiss indictment, permission by the trial court must first be obtained, which, if granted, would result in a temporary suspension of trial proceedings.

The defendant is permitted to file an "interlocutory appeal" only if the trial court determines that a "more speedy termination" of the case would be brought about.[166] Because an appeal after sentencing is available to the defendant, "interlocutory appeals" are rarely granted and are disfavored by both the trial and the appellate courts even though the latter may ultimately decide the issue in the defendant's favor. Not surprisingly, therefore, the refusal of a trial court to allow an "interlocutory appeal" is itself not appealable.[167] Moreover, no procedure for such an appeal is provided for from the district court.[168]

B. APPEAL BY PROSECUTION

In contrast with the defendant's almost unlimited right to appeal from conviction and sentence, the prosecutor's right of appeal after trial is highly restricted because the defendant has a constitutional right under both the federal and state constitutions, as well as state statute, against being twice placed in jeopardy for the same conduct.[169] This right against double jeopardy means simply that the State will not be allowed to prosecute a defendant over and over again until it obtains a conviction. Thus

any verdict entered in favor of the defendant (whether it be an acquittal or conviction for a lesser charge) can not be appealed by the prosecution under any circumstances even if it believes the court or defense made legal errors or engaged in impermissible conduct.[170]

Jeopardy "attaches" when the jurors are sworn in a jury trial or when the first witness is sworn in a non-jury trial.[171] This requirement prevents the prosecution from discontinuing a case it believes it is losing before a verdict is reached for the purpose of re-trying the case with better preparation or better trial conditions.

Because of the protection against double jeopardy, the prosecutor is statutorily accorded rights to appeal before the trial begins, unlike the defendant whose right to an interlocutory appeal is strictly limited. For instance, pre-trial orders by the trial court that suppress the use of evidence from use at trial against the defendant, that call for the return of seized property to the defendant, that deny a request by the prosecution for a protective order to keep the identity of a witness secret, that dismiss an indictment or complaint against the defendant, or that otherwise operate to bar further proceedings in the case, are examples of what the prosecutor may appeal prior to trial.[172]

Only in four limited instances is the prosecution permitted by statute to appeal after a verdict or sentence has been entered. The prosecution may appeal orders that: 1) vacate a verdict or

finding of guilt; 2) impose illegal sentences; 3) grant new trials; or 4) rule on questions of law adversely to the prosecution where the convicted defendant has appealed.[173] In the latter instance, such an appeal is termed a "cross-appeal." Few appeals are taken by the prosecution on the basis of the first three reasons.

If the prosecution appeals, a notice of appeal must be filed within 30 days after the entry of the judgment or order appealed from.[174]

C. RECORD ON APPEAL AND BRIEFS

Whichever side files an appeal, a record for appeal--consisting of the transcripts of the proceedings, and all documents, papers, and exhibits that were filed with the court--must be assembled and forwarded to the Supreme Court.[175]

Once the Clerk of the Supreme Court receives the notice of appeal in any case and assigns a number to it, he then "dockets" the record of each case and gives notice of docketing to the parties.[176] The supervision and control of appeal proceedings, with some exceptions, lies with the Supreme Court from the time the notice of appeal is filed with its Clerk.[177]

The trial court retains control only for the issuance of orders that aid the Supreme Court in its determination of the case, such as the correction of certain matters within a record.[178] The trial court may revoke or amend the conditions of any stay of execution of a sentence for a violation of the conditions of the stay.[179]

After the record on appeal is "docketed," the appellant, the party pursuing the appeal, must file an opening brief with the Supreme Court. An answering brief to the opening brief is then prepared and filed by the appellee, the party against whom the appeal is being taken. The appellant may then file a reply brief responding to points raised in the appellee's answering brief.[180] The docketing of the record, and the filing of briefs by appellant and appellee are governed by rules that set out specific formats, time limits, and other requirements that must be complied with. Some exceptions can be made, but only with the permission of the Supreme Court.[181]

The opening brief by the appellant generally includes: 1) a statement of the Supreme Court's jurisdiction; 2) a concise outline of the question(s) presented for decision; 3) a brief statement of the facts of the case and the conclusion of law made by the trial court; 4) an argument citing the points of fact and law on which the appellant believes the trial court erred; and 5) a citation of legal authorities relied upon.[182]

The appellee's brief will contain counter statements of the issues presented, and arguments and legal authorities that dispute the appellant's claims.[183] A reply brief submitted in response to the appellee's answering brief is confined to matters or questions raised in the answering brief.[184] Although it is rarely done in an appeal, the prosecution, as the appellee, may "confess error" and agree that the trial court erred and the conviction must be reversed.[185]

In a similar manner, the defense counsel for an indigent person may, on rare occasions, file an "Anders brief"* stating, in effect, that there are no valid grounds for appeal and thus requesting that the Supreme Court allow appellate counsel to withdraw from the case. Few, if any, Anders briefs are filed by defendants who are able to afford their own counsel, probably because such counsel would refuse to take the appeal case if they believed that there were no valid grounds for appeal. Such a brief usually requires almost as much, and often more, effort to prepare than a regular appeal because the defense counsel must convince the Supreme Court that no valid grounds for appeal exist. Thus, like the state's "confession of error," such an Anders brief is seldom presented.

D. ASSIGNMENT TO INTERMEDIATE COURT OF APPEALS

After completion of the briefs, the Chief Justice or another judge designated by the Chief Justice reviews each appeal and decides

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*An "Anders brief" refers to the case of Anders v. California, 386 U.S. 738 (1967) in which the United States Supreme Court held that the constitutional right to counsel requires that on an indigent's first appeal from his conviction, the court-appointed counsel must support the appeal to the best of his ability. The court-appointed counsel may request permission to withdraw only if he finds the case to be wholly frivolous, in which event, a brief must be filed referring to anything in the record that might arguably support the appeal.

whether the case is to be assigned to either the Intermediate Court of Appeals* or the Supreme Court depending on the importance of the issues presented for review.[186]

Because a restraint of the defendant's liberty may be at stake, in the case where the defendant appeals a conviction and sentence, or because prosecution has been suspended, where the State pursues an appeal before trial, it appears to be the unwritten policy of the Supreme Court to decide criminal appeals earlier than civil appeals.

If the appeal is assigned to the Intermediate Court of Appeals, the parties are promptly notified and permitted the opportunity to petition for reassignment to the Supreme Court. A rejection of a petition for immediate reassignment is not subject to further judicial review.[187]

However, an appeal may still be reassigned to the Supreme Court if a request is made by either the Intermediate Court of Appeals or by the Supreme Court itself. The ultimate decision of where an appeal will be heard lies with the Supreme Court.[188]

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*The Intermediate Court of Appeals was created primarily to assist the Supreme Court in clearing the backlog of appellate cases generated by the large number of appeals filed within the past few years. However, any appeal filed prior to May 25, 1979, involving questions of state or federal constitutional interpretation or involving criminal sentences of life imprisonment without possibility of parole are to be decided by the Supreme Court.

If the appeal is before the Intermediate Court of Appeals, the parties will be given the opportunity to present the merits of their cases by oral argument.[189]

After a decision by the Intermediate Court of Appeals is made, the non-prevailing party may then file a written motion asking the Intermediate Court of Appeals to reconsider its decision or apply for a writ of certiorari from the Supreme Court, requesting that the Supreme Court review the decision by the Intermediate Court of Appeals.[190] If either request is denied, the decision of the Intermediate Court of Appeals becomes final.[191]

E. REVIEW BY THE SUPREME COURT

If the application for a writ of certiorari is accepted, the case is then heard by the Supreme Court, which also decides cases not initially assigned to the Intermediate Court of Appeals. The Supreme Court may either dispense with oral arguments or schedule a hearing for the parties.[192]

F. THE APPELLATE PROCESS

As provided by statute, "/n/o order, judgment, or sentence shall be reversed or modified" by either the Intermediate Court of Appeals or the Supreme Court "unless the court is of the opinion that error was committed which injuriously affected the substantial rights of the appellant."[193]

The Supreme Court or the Intermediate Court of Appeals must first decide whether any error occurred. Next, it considers whether the error "injuriously affected" the "substantial rights" of the appellant. What constitutes "substantial rights" is a question that is often subject to disagreement by judges of the appellate courts as well as by attorneys who practice before them. Therefore, the term "substantial rights" may not be easily definable in any individual case.

If the appellate court is of the opinion that there were no errors, the contested order or judgment of the lower court is "affirmed"--that is, left undisturbed. Even if it believes that errors were committed, the appellate court may still affirm the contested order or judgment because it is of the opinion that the errors did not affect substantial rights and thus can be disregarded. Such errors are referred to as "harmless errors."[194] On the other hand, if the court believes substantial rights of the appellant were affected by the error, it will reverse or modify the contested judgment or order. Such an error is referred to as "reversible error."[195]

An error will usually be brought to the appellate court's attention by the appellant. However, should the appellant fail to point out or raise the error, the appellate court, on its own volition, may notice the error if the defect affects substantial rights, and thus requires a reversal or modification of a trial court's order or judgment. Such an error is referred to as a "plain error."[196]

The outcome of the appeal is usually determined by the majority of appellate judges.* The written opinion of the majority, referred to as the majority opinion,** is published in the Hawaii Reports, and will generally include the following items: 1) the title; 2) docket number; 3) date of decision; 4) disposition of the case or matter; 5) an examination of the facts and the contentions by the parties; 6) a discussion of the legal authority as deemed dispositive of the case; and 7) the author of the opinion.[197] Because it includes these items, such an opinion is also referred to as a "full opinion."***

A justice or judge who disagrees with the outcome of the appeal, as decided by the majority, may issue a dissenting opinion which would present the counter arguments and legal authorities that the dissenting justice or judge deems dispositive.

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*All of the appellate court judges or justices may be in complete agreement and issue a "unanimous opinion" reflecting this agreement.

**An opinion that is not identified as authored by an individual justice is referred to as a "per curiam" opinion; that is, one "by the court."

***By contrast, opinions which merely state, in usually not more than two paragraphs, the disposition of the case, are referred to as memorandum decisions. The Intermediate Court of Appeals may not issue a "full opinion" except in limited situations, and will otherwise dispose of cases by "memorandum decision."

CONTINUED

1 OF 3

A "concurring opinion" is usually filed by a justice or judge who agrees with the conclusion or result of another judge's "majority" or "dissenting" opinion, but wishes to state separately other views or reasons for concurring.

The majority opinion or the opinion of the court, constitutes a "legal precedent" for the lower courts to follow should the same or similar situations, questions, or issues arise later. It is binding upon the appellate court itself unless it decides to overrule its prior decision.

As noted above, a decision of the Intermediate Court of Appeals may be reviewed only at the discretion of the Supreme Court. Unless it is overturned, a decision by the Intermediate Court of Appeals, like the decision of the Supreme Court itself, is final. The non-prevailing party may request the Supreme Court to reconsider its decision but such a request is rarely granted.

The non-prevailing party may then petition for writ of certiorari to the United States Supreme Court when a federal constitutional issue is implicated or a federal right is alleged to have been violated by the decision of the Hawaii Supreme Court. As of this writing, no criminal appellant since statehood has ever successfully petitioned for a hearing before the United States Supreme Court to contest a Hawaii Supreme Court decision.*

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*Vindication of a federally guaranteed constitutional right that a defendant believes to have been denied by the state courts may also be pursued by an action in the United States District Court for the District of Hawaii. Grounds for such an action are very limited, and are beyond the scope of this monograph on the Hawaii criminal justice system.

APPENDICES

A.

FOOTNOTES

1. Haw. Rev. Stat. § 603-1 (Supp. 1979).

2. Haw. Rev. Stat. § 604-5 (Supp. 1979). If the amount in controversy exceeds $1,000, the action may be transferred to or commenced in circuit court.

3. Haw. Rev. Stat. § 633-27 (Supp. 1979), as amended by Act 171, 1980 Haw. Sess. Laws.

4. Haw. Rev. Stat. § 604-8 (1976).

5. Haw. Rev. Stat. § 806-60 (Supp. 1979).

6. Haw. R. Pen. P. 5(c)(2) (1977). If defendant is not in custody, the preliminary hearing must be conducted within 30 days of the first appearance.

7. Haw. R. Pen. P. 5(c)(5).

8. Haw. Rev. Stat. § 604-1 (Supp. 1979).

9. Haw. Rev. Stat. § 603-21.5 (1976).

10. Haw. Rev. Stat. § 603-3 (Supp. 1979).

11. Haw. Rev. Stat. § 571-11(1) (1976), as amended by Act 303, 1980 Haw. Sess. Laws.

12. Haw. Rev. Stat. § 571-22(a) (1976), as amended by Act 207, 1980 Haw. Sess. Laws.

13. Id.

14. Haw. Rev. Stat. § 571-14 (1976).

15. Id.

16. Haw. Rev. Stat. § 602-51 (Supp. 1979).

17. Haw. Rev. Stat. § 602-57 (Supp. 1979).

18. Haw. Rev. Stat. § 602-6 (Supp. 1979).

19. Haw. Rev. Stat. § 602-59 (Supp. 1979).

20. Id.

21. Haw. Rev. Stat. § 602-4 (Supp. 1979).

22. Haw. Rev. Stat. § 602-5 (Supp. 1979).

23. Haw. Rev. Stat. §§ 28-1 and -2 (1976).

24. E.g., see Charter of the City and County of Honolulu, Act VIII - Sec. 8-105 (1978).

25. Haw. Rev. Stat. §§ 802-1 to 802-12 (Supp. 1979).

26. U.S. Const. amend. VI; Haw. Const. art. I, § 14.

27. ABA Cannons of Professional Ethics No. 11.

28. Id.

29. U.S. Const. amend VI.

30. Id.

31. Id.

32. Lilienthal's Tobacco v. United States, 97 U.S. 237, 266 (1877); Terr. v. Adiarte, 37 Haw. 463, 466-470 (1947).

33. Supra, note 29.

34. U.S. Const. amend. V.

35. Supra, note 29.

36. Id.

37. Id.

38. Draper v. United States, 358 U.S. 307 (1959).

39. Id.; Haw. Rev. Stat. § 803-5 (1976), as amended by Act 105, 1980 Haw. Sess. Laws.

40. Haw. Rev. Stat. § 701-114 (1976).

41. Id.

42. Hawaii Standard Jury Instruction No. 2.4 (1969).

43. Haw. R. Evid. 601 to 603.1, Act 164, 1980 Haw. Sess. Laws.

44. Haw. R. Evid. 403, Act 164, 1980 Haw. Sess. Laws.

45. Haw. R. Evid. 404, Act 164, 1980 Haw. Sess. Laws.

46. McCORMICK'S HANDBOOK OF THE LAW OF EVIDENCE 434-435 (2d ed. E. Cleary, 1972).

47. Mapp v. Ohio, 367 U.S. 643 (1961); Wong Sun v. United States, 371 U.S. 471 (1963).

48. Haw. R. Evid. 801 to 805, Act 164, 1980 Haw. Sess. Laws.

49. Haw. R. Evid. 501 to 513, Act 164, 1980 Haw. Sess. Laws.

50. Haw. R. Evid. 701 to 706, Act 164, 1980 Haw. Sess. Laws.

51. McCORMICK'S HANDBOOK OF THE LAW OF EVIDENCE 29-31 (2d ed. E. Cleary, 1972).

52. Id.

53. Haw. Rev. Stat. § 702-205 (1976).

54. Haw. Rev. Stat. § 702-204 (1976).

55. Haw. Rev. Stat. §§ 701-710 and -712 (1976), Haw. Rev. Stat. § 707-711 (Supp. 1979).

56. Haw. Rev. Stat. § 701-109(4) (1976).

57. Haw. Rev. Stat. §§ 704-400 and -402 (1976), as amended by Act 222, 1980 Haw. Sess. Laws.

58. Haw. Rev. Stat. § 704-404 (Supp. 1979).

59. Haw. Rev. Stat. § 704-408 (1976), as amended by Act 222, 1980 Haw. Sess. Laws.

60. Id., H.R. Conf. Comm. Rep. No. 72-80, 10th Leg., Reg. Sess. (1980).

61. Haw. Rev. Stat. § 704-411 (1976 and Supp. 1979).

62. Haw. Rev. Stat. § 704-406 (1976).

63. Haw. R. Pen. P. 10.1.

64. Haw. Const. art. I, § 10.

65. Haw. R. Pen. P. 5(c)(5).

66. Haw. R. Pen. P. 5(c)(2).

67. Id.

68. Coleman v. Alabama, 399 U.S. 1, 9-10 (1969); Reponte v. State, 57 Haw. 354, 361, 556 P.2d 577 (1976).

69. Haw. R. Pen. P. 5(c)(5).

70. Haw. R. Pen. P. 5(c)(3).

71. Haw. R. Pen. P. 7(a).

72. Haw. R. Pen. P. 6(a).

73. Haw. R. Pen. P. 48(b).

74. Haw. R. Pen. P. 16(e)(4).

75. State v. Murphy, 59 Haw. 1, 4-7, 575 P.2d 448, 452-454 (1978).

76. Haw. R. Pen. P. 6(e).

77. Haw. R. Pen. P. 6(f).

78. Haw. R. Pen. P. 7(c); Terr. v. Bellivieu, 24 Haw. 768, 771 (1919).

79. Haw. Rev. Stat. § 804-7.1 (Supp. 1979), as amended by Act 242, 1980 Haw. Sess. Laws.

80. Haw. Rev. Stat. § 804-1 (1976), as amended by Act 50, 1980 Haw. Sess. Laws. According to this newly revised provision, the defendant may pay the entire bail amount by cash or "by a credit card approved by the court."

81. Haw. Rev. Stat. §§ 804-3 and -4, as amended by Act 242, 1980 Haw. Sess. Laws.

82. Haw. Rev. Stat. § 804-3, as amended by Act 242, 1980 Haw. Sess. Laws.

83. E.g., if charged with a Class C felony alleged to have been committed while on probation for another, the defendant may be committed without bail by the court that had originally sentenced the defendant to probation. Haw. Rev. Stat. § 706-626(3) (1976).

84. Haw. R. Pen. P. 11(d) and (e).

85. Haw. R. Pen. P. 11.

86. Haw. R. Pen. P. 11(d).

87. Haw. R. Pen. P. 11(e)(2).

88. Haw. R. Pen. P. 11(b).

89. Haw. R. Pen. P. 11.

90. Certain types of individuals are statutorily ineligible to receive a DAGP. For example, one previously convicted of a felony or one who uses a firearm or distributes certain illict drugs to a minor in committing the offense charged, would be disqualified. There are numerous other exceptions to the statute. Haw. Rev. Stat. §§ 853-1 to 853-4 (Supp. 1979), as amended by Act 292, 1980 Haw. Sess. Laws.

91. Haw. Rev. Stat. § 853-1(e) (Supp. 1976) and § 831-3.2 (1976).

92. Haw. R. Pen. P. 12.

93. Haw. R. Pen. P. 48.

94. Haw. R. Pen. P. 41; Weeks v. United States, 232 U.S. 383 (1914); Mapp v. Ohio, 367 U.S. 643 (1961); Wong Sun v. United States, 371 U.S. 471 (1963); State v. Evans, 45 Haw. 622, 372 P.2d 365 (1962); Haw. Rev. Stat., Chapt. 803 (1976 and Supp. 1979).

95. Id.

96. Haw. R. Pen. P. 16(b)(1)(ii) and (iii), (c)(2)(i) and (ii).

97. Haw. R. Pen. P. 16(b)(1)(iii) and (iv), (c)(2)(ii) and (iii).

98. Haw. R. Pen. P. 16(b)(1)(i) and (c)(2)(i).

99. Haw. R. Pen. P. 16(b)(3).

100. Haw. R. Pen. P. 16(c)(3).

101. Haw. R. Pen. P. 12.1(a) and (b).

102. Haw. R. Pen. P. 12.1(e).

103. Haw. R. Pen. P. 5(a) and (b), Id. 1.

104. Haw. R. Pen. P. 5(b), Haw. Rev. Stat. §§ 635-12, 635-13, and 806-61 (1976).

105. Haw. Rev. Stat. § 806-60 (Supp. 1979); Haw. R. Pen. P. 23.

106. Haw. R. Pen. P. 5(b)(2).

107. Id.

108. Haw. R. Pen. P. 24(a); Haw. Rev. Stat. § 635-27 (1976).

109. Haw. Rev. Stat. §§ 635-29 and -30 (1976); Haw. R. Pen. P. 24(b).

110. Id.

111. Haw. R. Pen. P. 24(c).

112. McCORMICK'S HANDBOOK OF THE LAW OF EVIDENCE 524 (2d ed. E. Cleary 1972).

113. Id. at 527 and n. 24.

114. Haw. R. Pen. P. 29; See, e.g., Curley v. United States, 160 F.2d 229, 232-233, cert. denied, 331 U.S. 837 (1947).

115. U.S. Const. Amend. V; Hawaii Const. art. I, § 10.

116. Haw. Rev. Stat. § 701-115(b) (1976); Haw. Rev. Stat. § 702-231 (1976 and Supp. 1979).

117. Haw. R. Pen. P. 30(a) and (b).

118. Haw. Rev. Stat. § 806-62 (1976).

119. Haw. Rev. Stat. § 635-17 (1976); Haw. R. Pen. P. 30.

120. Haw. Rev. Stat. §§ 701-107(3) and 706-640(3) (1976).

121. Haw. Rev. Stat. §§ 701-107(4) and 706-640(4) 1976.

122. Haw. Rev. Stat. §§ 701-107(5) and 706-640(4) (1976).

123. Haw. Rev. Stat. § 706-605(2) (1976), as amended by Act 93, 1980 Haw. Sess. Laws.

124. Haw. Rev. Stat. § 706-660 (1976).

125. Id.; Haw. Rev. Stat. § 706-669 (1976).

126. Haw. Rev. Stat. § 706-670 (1976).

127. Haw. Rev. Stat. § 706-107(2) (1976).

128. Haw. Rev. Stat. §§ 706-660(1) and 706-640(1) (1976).

129. Haw. Rev. Stat. §§ 706-660(2) and 706-640(1) (1976).

130. Haw. Rev. Stat. §§ 706-660(3) and 706-640(2) (1976).

131. Haw. Rev. Stat. § 706-606 (1976).

132. "/A/ person who has been convicted of a class A felony shall be sentenced to an indeterminate term of imprisonment of twenty years without possibility of suspension of sentence or probation. The minimum length of imprisonment shall be determined by the Hawaii paroling authority. . . ." Act 294, 1980 Haw. Sess. Laws.

133. Haw. Rev. Stat. § 706-606.5 (Supp. 1979), as amended by Act 284, 1980 Haw. Sess. Laws.

134. Id.

135. Some of the less serious felonies include: burglary in the second degree, assault in the second degree, reckless endangering in the second degree. Haw. Rev. Stat. § 706-606.5(b), as enacted by Act 284, 1980 Haw. Sess. Laws.

136. Haw. Rev. Stat. § 706-606.5(c), as enacted by Act 284, 1980 Haw. Sess. Laws.

137. Haw. Rev. Stat. § 706-662 (1976 and Supp. 1979).

138. Haw. Rev. Stat. § 706-668 (1976).

139. Id.

140. Haw. Rev. Stat. § 706-606.5(c), as enacted by Act 284, 1980 Haw. Sess. Laws. Because this statute, and its antecedent have yet to be construed by the Hawaii appellate courts, there is great uncertainty as to how it will be applied.

141. Haw. Rev. Stat. § 706-605 (1976, Supp. 1979, and as amended by Act 93, 1980 Haw. Sess. Laws).

142. Haw. Rev. Stat. § 706-623 (1976).

143. Id.; Haw. Rev. Stat. § 706-624 (1976 and Supp. 1979).

144. Haw. Rev. Stat. § 706-601 (1976). In addition, the court may order a pre-sentence psychiatric, psychological, and medical examination of a defendant. Haw. Rev. Stat. § 706-603 (Supp. 1979).

145. Haw. Rev. Stat. § 706-602 (1976).

146. Haw. Rev. Stat. § 706-604(2) (1976).

147. Haw. Rev. Stat. § 353-61 (1976).

148. Haw. Rev. Stat. § 706-670 (1976).

149. Haw. Rev. Stat. § 353-22 (1976).

150. Haw. Rev. Stat. § 706-667(1) (1976), as amended by Act 295, 1980 Haw. Sess. Laws.

151. Haw. Rev. Stat. § 706-667(3) (1976), as amended by Act 295, 1980 Haw. Sess. Laws.

152. Haw. Rev. Stat. § 521-22 (1976).

153. Haw. Rev. Stat. §§ 604-8 and 604-9 (1976); Haw. R. Pen. P. 5(b)(4).

154. Haw. Rev. Stat. § 806-61 (1976); Haw. R. Pen. P. 23(a).

155. Supra note 2; Haw. R. Pen. P. 23(c).

156. Haw. Rev. Stat. § 706-601 (1976).

157. Haw. Rev. Stat. § 706-605 (1976 and Supp. 1979).

158. Haw. Rev. Stat. § 706-624(3) (Supp. 1979).

159. Haw. Rev. Stat. §§ 641-11 to 641-13 (1976 and Supp. 1979). Haw. R. Pen. P. 37.

160. Haw. Rev. Stat. § 641-13 (1976 and Supp. 1979).

161. Haw. Rev. Stat. § 641-11 (Supp. 1979).

162. Haw. R. Pen. P. 37(c).

163. Haw. Rev. Stat. § 641-14(a) (1976); Haw. R. Pen. P. 38(a).

164. Haw. Rev. Stat. § 641-14(a) (Supp. 1979).

165. Haw. Rev. Stat. § 802-1 (1976).

166. Haw. Rev. Stat. § 641-17 (Supp. 1979).

167. Id.

168. Id.

169. State v. Valiani, 57 Haw. 133, 137, 552 P.2d 75, 76, (1976); Haw. Rev. Stat. § 641-12 (Supp. 1979).

170. U.S. Const. amend. V; Haw. Const. art. I, § 10; Haw, Rev. Stat. §§ 701-110 to -112, and 806-51 (1976).

171. Haw. Rev. Stat. § 641-13 (Supp. 1979).

172. E.g., M. v. Superior Court of Shasta Co., 4 Cal.3d 370, 482 P.2d 664, 668 (1971).

173. Haw. Rev. Stat. § 641-13 (1976 and Supp. 1979).

174. Id.

175. Haw. R. Pen. P. 37(c).

176. Haw. R. Pen. P. 39(b); Haw. R. Cir. P. 75 and 76.

177. Haw. Sup. Ct. R. 1(d).

178. Haw. R. Pen. P. 39(a).

179. Haw. Rev. Stat. § 641-14(a) (Supp. 1979).

180. Haw. Sup. Ct. R. 3.

181. Haw. Sup. Ct. R. 3, 7, and 8.

182. Haw. Sup. Ct. R. 3(b).

183. Haw. Sup. Ct. R. 3(c).

184. Haw. Sup. Ct. R. 3(d).

185. Terr. v. Kogami, 37 Haw. 174, 175 (1945).

186. Haw. Rev. Stat. § 602-5(8) (Supp. 1979); Haw. Sup. Ct. R. 1(e), (f), and 27.

187. Haw. Rev. Stat. § 602-58 (Supp. 1979); Haw. Int. Ct. App. R. 15.

188. Haw. Rev. Stat. § 602-5(9), (Supp. 1979); Haw. Sup. Ct. R. 29.

189. Haw. Int. Ct. App. R. 4.

190. Haw. Rev. Stat. § 602-59 (Supp. 1979); Haw. Int. App. Ct. R. 5.

191. Haw. Int. Ct. App. R. 10.

192. Haw. Sup. Ct. R. 4.

193. Haw. Rev. Stat. § 641-16 (Supp. 1979).

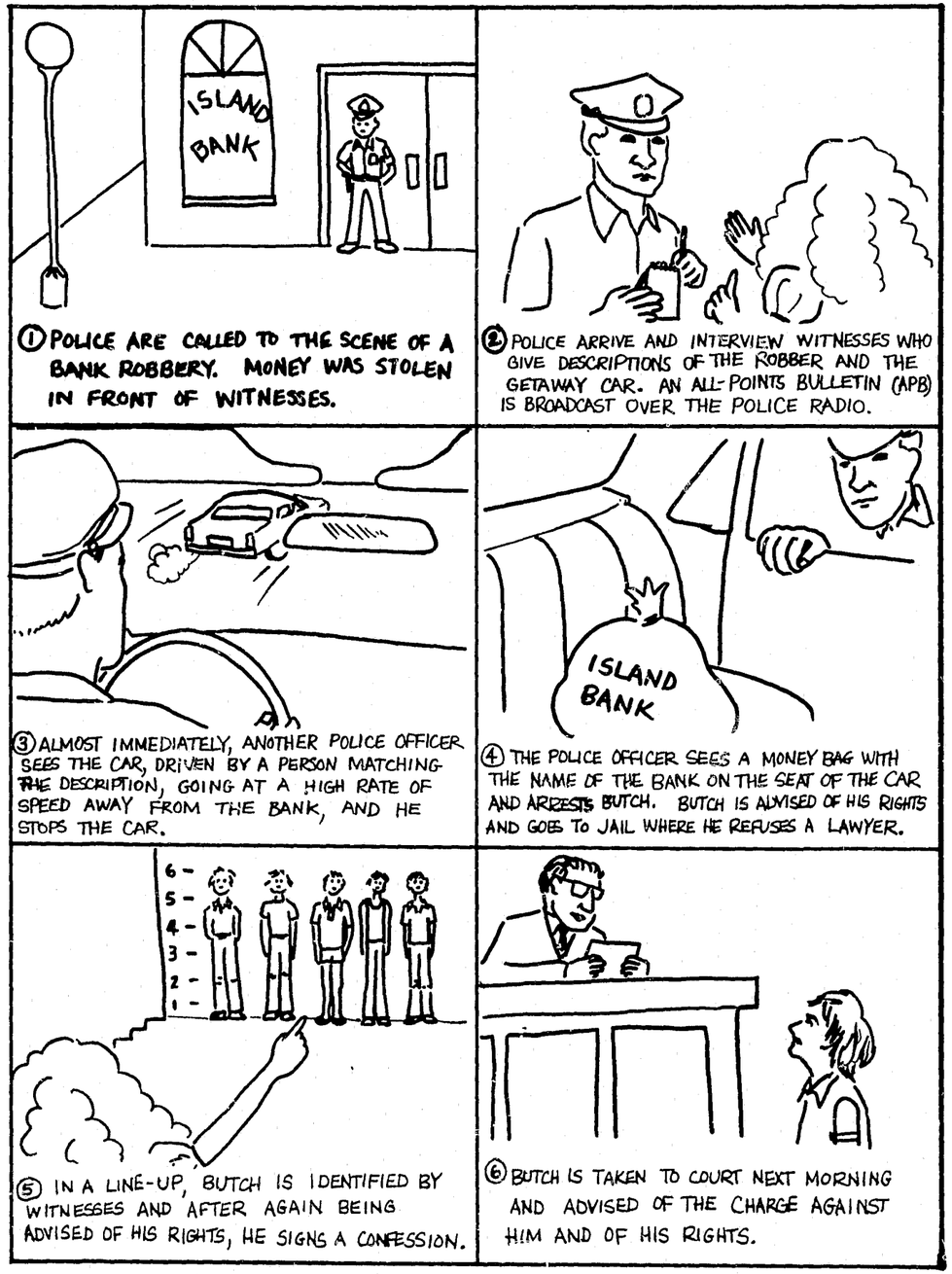
194. Id.; Haw. R. Pen. P. 52(a).

195. Haw. Rev. Stat. § 641-16 (Supp. 1979).

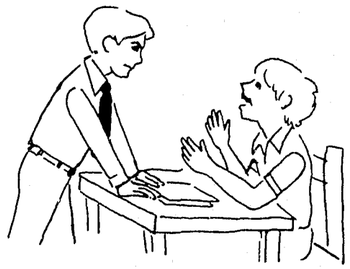
196. Id.; Haw. R. Pen. P. 52(b).

197. Haw. Int. Ct. App. R. 19.

A CASE HISTORY: STATE v. BUTCH

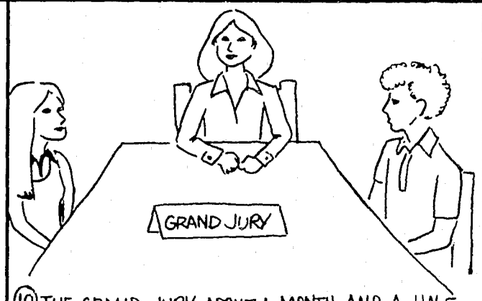


⑦ BAIL IS ALSO SET AT $5,000. IF PUT UP, BUTCH IS FREE UNTIL TRIAL. HE CAN HAVE A BAIL BONDSMAN PUT IT UP FOR HIM FOR A FEE. BUTCH CANNOT RAISE THE BAIL. THE JUDGE SCHEDULES A PRELIMINARY HEARING TO DETERMINE WHETHER THERE IS PROBABLE CAUSE TO HOLD BUTCH UNTIL THE GRAND JURY CAN CONSIDER HIS CASE.

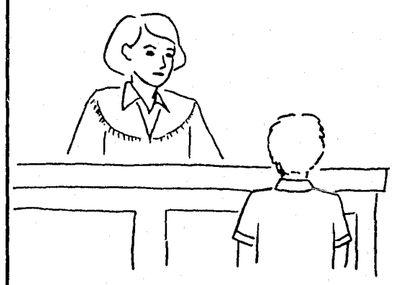


⑧ BUTCH HAS NO MONEY TO HIRE AN ATTORNEY SO HE IS ASSIGNED AN ATTORNEY FROM THE PUBLIC DEFENDER'S OFFICE.

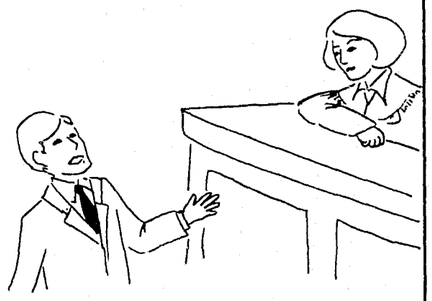
⑨ AT A PRELIMINARY HEARING, THE PROSECUTION CALLS THE TELLER WHO WAS ROBBED AND THE DETECTIVE TO WHOM BUTCH CONFESSED TO TESTIFY. THE JUDGE FINDS THAT THERE IS SUFFICIENT EVIDENCE TO FIND "PROBABLE CAUSE" AND TO HOLD BUTCH IN CUSTODY FOR ACTION BY THE GRAND JURY.



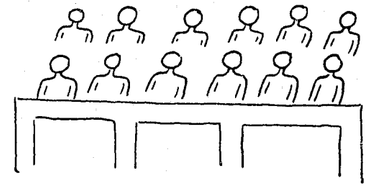
⑩ THE GRAND JURY, ABOUT A MONTH AND A HALF LATER, HEARS THE TESTIMONY OF THE TELLER AND THE DETECTIVE AND DECIDES THERE IS PROBABLE CAUSE TO RETURN A "TRUE BILL" OR INDICTMENT CHARGING BUTCH WITH BANK ROBBERY.



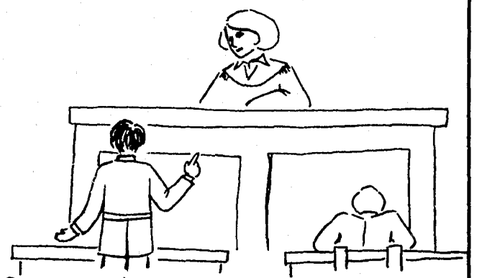
⑪ SOON AFTER, BUTCH IS ARRAIGNED IN CIRCUIT COURT AND PLEADS "NOT GUILTY". A TRIAL DATE IS SET AT THIS TIME.



⑫ A PRETRIAL HEARING IS HELD IN WHICH BUTCH'S ATTORNEY ARGUES UNSUCCESSFULLY THAT BUTCH'S CONFESSION WAS OBTAINED UNDER ILLEGAL, LENGTHY INTERROGATION.

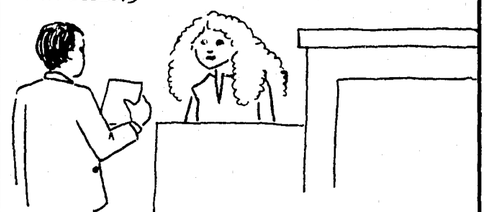


⑬ AT TRIAL, THE JURY HAS 12 MEMBERS, ONE OF WHOM IS LATER SELECTED AS FOREMAN. JURORS ARE SELECTED BY RANDOM FROM A POOL OF QUALIFIED JURORS. (A DEFENDANT MAY WAIVE HIS OR HER RIGHT TO A TRIAL BY JURY.)



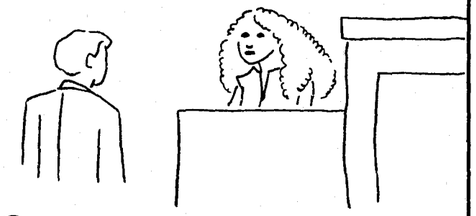
⑭ THE LAWYERS PRESENT THEIR OPENING STATEMENTS ABOUT WHAT THEY THINK THE EVIDENCE WILL SHOW. THE PROSECUTION GOES FIRST.

(PROSECUTION'S DIRECT EXAMINATION OF ITS WITNESSES.)



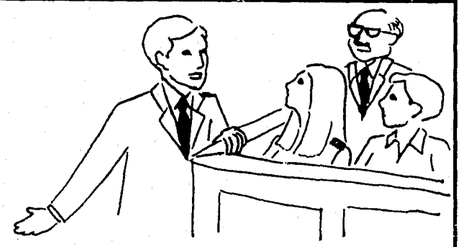
⑮ THE PROSECUTION MUST ESTABLISH BUTCH IS GUILTY BEYOND A REASONABLE DOUBT AND PUTS ITS WITNESSES ON THE STAND FIRST. WITNESSES ARE SUBPOENAED TO APPEAR IN COURT FOR THE TRIAL.

(DEFENSE'S CROSS-EXAMINATION OF PROSECUTION'S WITNESS.)

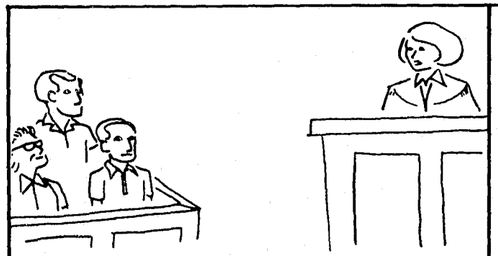


⑯ LAWYERS CROSS-EXAMINE WITNESSES TO TRY TO DESTROY THE FORCE OF WITNESSES'S TESTIMONY. OBJECTIONS ARE RAISED TO PROPRIETY OR LEGALITY OF TESTIMONY. JUDGE SUSTAINS OR OVERRULES OBJECTIONS.

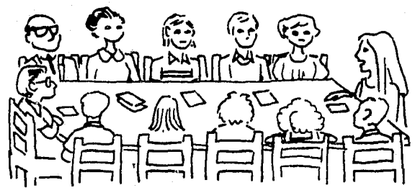
⑰ ALL OVERRULED OBJECTIONS ARE RECORDED IN CASE BUTCH'S LAWYER INTENDS TO APPEAL THE COURT'S RULINGS OR THE JURY'S FINDINGS.



⑱ LAWYERS SUM UP THEIR CASES TO THE JURY AFTER ALL THE EVIDENCE IS PRESENTED. THE PROSECUTION GOES FIRST, THEN THE DEFENSE, AND FINALLY THE PROSECUTION AGAIN FOR REBUTTAL BECAUSE HE OR SHE MUST PROVE THE GUILT OF BUTCH.



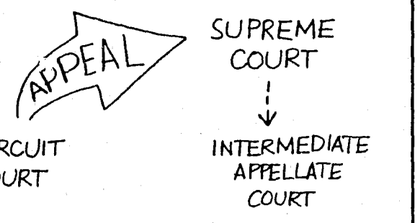
(19) JUDGE ADDRESSES THE JURY TO EXPLAIN THE LAW APPLICABLE TO THE CASE, WHAT A GUILTY VERDICT MEANS, AND HOW THE JURY MAY FIND THE DEFENDANT GUILTY OR NOT GUILTY.



(20) THE JURY DELIBERATES IN SECRET SESSION AND ONLY IF THEY REACH A UNANIMOUS DECISION CAN THEY RETURN A VERDICT.

(21) THE FOREMAN RETURNS THE VERDICT; IN THIS CASE, "GUILTY". THE JUDGE LATER SENTENCES BUTCH TO 20 YEARS, THE MAXIMUM ALLOWED BY LAW.

(22) THE HAWAII PAROLING AUTHORITY SETS THE MINIMUM TERM OF IMPRISONMENT THAT BUTCH MUST SERVE BEFORE HE IS ELIGIBLE FOR PAROLE.



(23) BUTCH'S ATTORNEY APPEALS THE CASE TO THE SUPREME COURT ON THE BASIS THAT THE JUDGE'S INSTRUCTIONS WERE IMPROPER AND THE CONFESSION ILLEGAL. HE IS TURNED DOWN

(24) HE THEN SEEKS A WRIT OF HABEAS CORPUS AND ASKS FOR A NEW TRIAL. THIS IS ALSO UNSUCCESSFUL. HE CAN NOW ONLY APPEAL TO THE U.S. SUPREME COURT ON A POINT OF CONSTITUTIONAL RIGHTS.

C.

EXAMPLES OF FORMS AND DOCUMENTS USED IN CRIMINAL PROCEEDINGS

The following are examples of similar forms and documents used in the past by various agencies or courts such as the Honolulu Police Department, the Hawaii Paroling Authority, the Department of the Prosecuting Attorney for the City and County of Honolulu, the Office of the Public Defender, the District Court of the First Circuit, Honolulu Division, the Circuit Court of the First Circuit, and the Hawaii Supreme Court. The names, dates, places, events referred to or described therein, however, are purely fictitious. The forms and documents are not designed to be used for any other purpose except to serve as an illustration. The following list are examples of what could have been used or filed in a criminal proceeding concerning the fictitious case of State v. Butch:

Report No._____

WARNING PERSON TO BE VIEWED IN LINEUP
OF RIGHT TO HAVE AN ATTORNEY PRESENT

BUTCH (name), do you know that you are in custody of

DETECTIVE DANNY OFFICER (name of officer) at the Police Station? Yes B. No_____.

You are suspected of having committed ROBBERY 1° (offense)

which occurred on JUNE 1, 1980 (date) at ISLAND BANK (place of offense).

I am going to ask you to appear in a lineup with other persons to be viewed by witnesses for purposes of identification to find out if you were responsible for COMMITTING ROBBERY 1° (offense).

Although you do not have the right to refuse to appear, you have the right to have an attorney present during the lineup.

If you cannot afford an attorney, the court will appoint one for you.

Do you want to have an attorney present during the lineup? Yes_____

No B.

SIGNED: BUTCH (name)

27 ISLAND ROAD (address)

JUNE 2, 1980 (date) 3:00 (time) A PM

WITNESSED BY:

1. DETECTIVE DANNY OFFICER (name)

H.P.D. (address)

JUNE 2, 1980 (date) 3:00 (time) A PM

2._____ (name)

_____ (address)

_____ (date) _____ (time) A PM

HPD-284

Report No.

ROBBERY 1°
Classification

PHYSICAL LINE-UP

Person Viewing Line-up:
TERESA TELLER

Location of Line-up:
POLICE DEPARTMENT

I viewed a "live" physical line-up at JUNE 2, 1980/6:00 P.M. conducted
Time & Date
by DETECTIVE DANNY OFFICER. The line-up consisted of 5
Investigator
participants who were numbered in numerical order from 1 to 5.

From the line-up, I

( ) am unable to select any one person as being a suspect in this case.

(✓) have selected the person bearing number 3.

( ) have identified the voice of the person bearing the number _____.

Comments:

I have been permitted to read this statement consisting of 1 pages prepared by DETECTIVE DANNY OFFICER and attest that this statement
Investigator
is true and correct to the best of my knowledge. I further attest that my selection in this line-up has been made by me freely and voluntarily without influence or coercion from anyone.

Signed TERESA TELLER

DETECTIVE DANNY OFFICER
Investigator

JUNE 2, 1980 6:00 P.M.
Time & Date

HPD-284B

REPORT NO._____

DISTRICT NO._____

WARNING PERSONS BEING INTERROGATED
OF THEIR CONSTITUTIONAL RIGHTS

BUTCH, do you know that you are in the (presence / custody) of
(Name)
DETECTIVE DANNY OFFICER at the HONOLULU Police Station? Yes B No____
(Name of officer)
I am going to ask you questions about THE ROBBERY 1°
(offense)
which occurred on JUNE 1, 1980 at ISLAND BANK
(date) *(location)*

but first I want to inform you of certain rights you have under the Constitution.
Before I ask you any questions, you must understand your rights.
You have a right to remain silent.
You don't have to say anything to me or answer any of my questions.
Anything you say may be used against you at your trial.
You have a right to counsel of your choice or to talk to anyone else you may want to.
You also have a right to have an attorney present while I talk to you.
If you cannot afford an attorney, the court will appoint one for you.
Do you want an attorney now? Yes____ No B.
If you decide to answer my questions without a lawyer being present, you still have the right to stop answering at anytime.
Do you understand what I have told you? Yes B. No____
Would you like to tell me what happened? Yes B. No____

Signed: BUTCH
Name
27 ISLAND ROAD
Address
JUNE 2, 1980 9:00 AM (PM)
Date *Time*

Witnessed By:

DETECTIVE DANNY OFFICER
Name
HONOLULU POLICE DEPARTMENT
Address
JUNE 2, 1980 9:00 AM (PM)
Date *Time*

Remarks: *(Unable to read, refused to sign, etc.)*

HPD-81 (R-8/78)

HONOLULU POLICE DEPARTMENT
STATEMENT FORM

COMPLAINANT/VICTIM'S NAME	DATE OF OCCURRENCE	REPORT NO
TERESA TELLER	JUNE 1, 1980	
ADDRESS	**CLASSIFICATION**	**DISTRICT NO**
ISLAND BANK	ROBBERY 1°	

CHECK APPROPRIATE BLOCK
- ☐ COMPLAINANT
- ☐ VICTIM
- ☐ WITNESS
- ☐ OTHER

NAME, ADDRESS AND OTHER PERTINENT INFORMATION

LOCATION OF INTERVIEW: HONOLULU POLICE DEPARTMENT

I BUTCH, do freely and voluntarily provide the following statement:

On June 1, 1980, I went into Island Bank holding a loaded handgun and two brown paper packages. I went up to the teller counter, laid the brown packages in front of her, and demanded that she fill the bags up with money, pointing my loaded handgun at her. After she filled the one bag with money, I grabbed it from her, left the bank, and walked toward my car that was parked out in front of the bank on Aloha Avenue.

After driving for 15 minutes, I was stopped by a police officer, arrested, and advised of my rights.

I have read this statement prepared by DETECTIVE DANNY OFFICER, which consists of 1 (typewritten) (handwritten) pages, and have been given the opportunity to make corrections thereon. I attest that this statement is true and correct, to the best of my knowledge, and that I gave this statement freely and voluntarily without coercion or promise of reward.

Witnessed By: _____

Date: _____ Time: _____

Signed: BUTCH
Date: JUNE 2, 1980 Time: 9:15 P.M.

Investigator: DETECTIVE DANNY OFFICER
Date: JUNE 2, 1980 Time: 9:15 P.M.

HPD-252

Page 1 of 1 pages

BAIL

$ 5,000

JOSEPH HONOR
District Judge

District Court of the First Circuit

STATE OF HAWAII

COMPLAINT

DETECTIVE DANNY OFFICER, *first being duly sworn says:*

On or about the 1st day of June 1980, in the City and County of Honolulu, State of Hawaii, BUTCH, while armed with a dangerous instrument, to wit, a handgun, did threaten the imminent use of force against TERESA TELLER with intent to compel acquiescence to the taking of or escaping with the property that was the subject of the theft, to wit, money, thereby committing the offense of Robbery in the First Degree in violation of Section 708-840(1)(b)(ii) of the Hawaii Revised Statutes.

Subscribed and sworn to before me this 2d *day of* JUNE, *A.D. 19* 80

PAUL PROSECUTOR
Deputy Prosecuting Attorney
City and County of Honolulu

DETECTIVE DANNY OFFICER

Address H.P.D.

WARRANT OF ARREST

The State of Hawaii:

To the Sheriff of the State of Hawaii, or his Deputy; or the Chief of the Honolulu Police Department, or his Deputy; or any Police Officer in the First Circuit, State of Hawaii:

YOU ARE HEREBY COMMANDED on the information of DETECTIVE DANNY OFFICER

verified by oath, forthwith to arrest and take the body of BUTCH

accused of violating SECTION 708-840(1)(b)(ii), H.R.S.

as in the above complaint more fully set forth, if he can be found, and forthwith have body before said District Judge of the First Circuit, at his Court Room in said First Circuit, or at 8:30 a.m. of the next secular day following the date of service.

And you are also commanded, having arrested the said _____

to summon as witness of accusation _____

Witness the hand of the said Judge this 2d *day of* JUNE, *19* 80

JOSEPH HONOR
Judge of the Above Entitled Court
State of Hawaii

Executed the within warrant on the person of.....

.....

.....

named therein, this ..... *day of* ....., *A.D. 19*.....

Police Officer

District Court of the First Circuit

State of Hawaii

THE STATE OF HAWAII

vs.

.....

.....

.....

WARRANT OF ARREST

RECEIVED AND FILED

....., *A.D. 19*.....

at.....*M.*

.....

Clerk, District Court of the First Circuit

IN THE DISTRICT COURT OF THE FIRST CIRCUIT

HONOLULU DIVISION

STATE OF HAWAII

AFFIDAVIT IN SUPPORT OF WARRANT OF ARREST

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

Detective DANNY OFFICER, hereinafter referred to as the "affiant," being first duly sworn, on oath, deposes and says:

That he has reason to believe that the offense of Robbery in the First Degree has been committed and that the perpetrator of the said offense is one BUTCH;

That Robbery in the First Degree is prohibited by Section 708-840(1)(b)(ii) of the Hawaii Revised Statutes;

That facts tending to establish the grounds for the issuance of a warrant of arrest for the said BUTCH are as follows:

That your affiant is a resident of the City and County of Honolulu, State of Hawaii; that he is a police officer employed by the Honolulu Police Department and has been so employed for the past ten (10) years; that he is presently assigned as a Detective to the Criminal Investigation Division and has been so assigned for the past five (5) years; that your affiant, in the course of performing his assigned duties has investigated numerous crimes involving Robbery and other related offenses and has so testified in the courts of the State of Hawaii;

That on June 1, 1980, your affiant was assigned to investigate the report of a robbery at the ISLAND BANK, located at 30 ALOHA AVENUE, City and County of Honolulu, State of Hawaii; that the victim of this robbery was one TERESA TELLER;

That on June 1, 1980, your affiant interviewed TERESA TELLER, and that she is a Bank Teller employed by ISLAND BANK, located at 30 ALOHA AVENUE;

That during the said interview with the said TERESA TELLER she told your affiant that on June 1, 1980, at about 3:00 p.m., she was within the said ISLAND BANK when she observed an unknown male standing in front of her teller window; that she observed that the said unknown male was holding a semi-automatic handgun in his right hand and that said handgun was pointed in her direction; that she also observed at this time two (2) brown paper packages which were laying on the teller counter in front of her, that the said unknown male ordered her by saying, "FILL UP THE BAGS, MOVE IT;" that she immediately picked up one (1) paper package nearest to her and began to fill it with currency from TERESA TELLER's cash drawer;

That by this time, TERESA TELLER had placed all the currency from her drawer in the one (1) paper package and held it in her left hand; that the said unknown male reached over the counter with his left hand and grabbed the paper package from her hand; that the said unknown male then turned and walked towards the front entrance to the said ISLAND BANK, and that during this time, TERESA TELLER pressed the holdup alarm button which also activated the surveillance camera; that the said unknown male exited the front entrance and walked in the Ewa direction on Aloha Avenue;

That the said unknown male left the said ISLAND BANK with only one (1) brown paper package and that said TERESA TELLER observed the second (2nd) brown paper package still laying on the teller counter; that the said brown paper package remained on the teller counter undisturbed until the arrival of the Honolulu Police;

That on June 1, 1980, at about 3:55 p.m., your affiant arrived at the said ISLAND BANK and that said brown paper package was recovered as evidence and was later processed for latent fingerprints; that latent fingerprints were developed on the said brown paper package and that said latent fingerprints

were compared with the inked fingerprints of BUTCH, which were on file at the Honolulu Police Department; that said latent fingerprints developed on the said brown paper package were positively identified as those of BUTCH by Sergeant ETHEL EXPERT, a fingerprint identification officer, employed by the Identification Section of the Honolulu Police Department;

WHEREFORE, your affiant respectfully prays that based upon the facts and circumstances contained in this affidavit, a warrant of arrest be issued for the arrest of BUTCH for the charge of Robbery in the First Degree in violation of Section 708-840(1)(b)(ii) of the Hawaii Revised Statutes; that the said BUTCH be brought forthwith before this judge or detained subject to the order of this court or any court in which the offense to which the said BUTCH is triable for the violation of Section 708-840(1)(b)(ii) of the Hawaii Revised Statutes.

FURTHER AFFIANT SAYETH NOT.

DETECTIVE DANNY OFFICER

Subscribed and sworn to before me
this 2nd day of June, 1980 at
2:00 P.M.

JOSEPH HONOR
JUDGE
DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISON

IN THE DISTRICT COURT OF THE FIRST CIRCUIT

_____ DIVISION

STATE OF HAWAII

SEARCH WARRANT

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

TO THE HIGH SHERIFF OF THE STATE OF HAWAII, OR HIS DEPUTY; OR THE CHIEF OF POLICE, OR HIS DEPUTY; OR ANY POLICE OFFICER IN THE FIRST CIRCUIT, CITY AND COUNTY OF _____, STATE OF HAWAII:

Affidavit(s) having been made before me by _____ that he has probable cause to believe that the property described herein may be found at the locations set forth herein and that it falls within those grounds indicated below by "x"(s) in that it is property:

_____ stolen or embezzled

_____ obtained in violation of Section(s) _____, Hawaii Revised Statutes

_____ obtained in violation of Section(s) _____ Ordinance No. _____ Revised Ordinance of the City and County, State of Hawaii

_____ designed or intended for use as a means of committing the criminal offense of _____

_____ which is or has been used as a means of committing the offense of _____

_____ possessed or controlled in violation of Section(s) _____, Hawaii Revised Statutes

_____ designed or intended for use in violation of Section(s) _____, Hawaii Revised Statutes

_____ which is or has been used in violation of Section(s) _____, Hawaii Revised Statutes

_____ which is evidence of the crime of _____

And as I am satisfied that there is probable cause to believe that the property described herein is being concealed (on) (within) the (person)(premises) or (vehicle) described below and that the foregoing grounds for application for issuance of the search warrant exist.

YOU ARE COMMANDED TO SEARCH

for the following property:

pursuant to Section 803-32 of the Hawaii Revised Statutes, as amended and Rule 41 of the Hawaii Rules of Penal Procedure, and if you find same, or any part thereof, to bring forthiwth before me, in the District Court of Honolulu, City and County of Honolulu, State of Hawaii, or any other court in which the offense in respect to which the property or thing taken is triable, or retain usch property in your custody subject to the order of this court pursuant to Rule 41 of the Hawaii Rules of Penal Procedure.

This warrant may be served and the search made at the time indicated below by an "x"(s) :

_____ in the daytime limited to the hours between 7:00 a.m. and 10:00 p.m. and for a period not to exceed ten (10) days from its issuance.

_____ at any time in the night between the hours of 10:00 p.m. and 7:00 a.m. and for a period of time not to exceed ten (10) days from its issuance.

GIVEN UNDER MY HAND, and dated this _____day of _____, 19___, at _____, City and County of Honolulu, State of Hawaii.

JUDGE OF THE ABOVE ENTITLED COURT
STATE OF HAWAII

IN THE DISTRICT COURT OF THE FIRST CIRCUIT

HONOLULU DIVISION

STATE OF HAWAII

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On the basis of your affiant's personal knowledge, as set forth in the attachments hereto, and on the basis of the information contained in those attachments,

police officer, employed by the City and County of Honolulu, State of Hawaii, being duly sworn, deposes and says, that

that the property described hereinafter can be found at the location described hereinafter and that it falls within those grounds indicated below by "x"(s), in that it is property:

_____ stolen or embezzled

_____ obtained in violation of Section(s)_____

_____, Hawaii Revised Statutes

_____ obtained in violation of Section(s)_____

_____Ordinance No_____Revised Ordinance of the City and County, State of Hawaii

_____ designed or intended for use as a means of committing the criminal offense of_____

_____ which is or has been used as a means of committing the offense of_____

_____ possessed or controlled in violation of Section(s)

_____,
Hawaii Revised Statutes

_____ designed or intended for use in violation of Section(s)

_____
Hawaii Revised Statutes

_____ which is or has been used in violation of Section(s)

_____,
Hawaii Revised Statutes

_____ which is evidence of the crime of_____

_____

Attachment No_____

OBSERVATION OF AFFIANT

Your affiant, a police officer employed by the City and County of Honolulu, State of Hawaii, states that he has been a police officer for _____years, and that his present assignment is

That on _____at_____.m., your affiant observed the following:

and requests the issuance of a search warrant to SEARCH:

for the following property:

The following attachments are incorporated by reference as though set forth herein haec verba: Attachment(s) No(s). _____;

Attachment No _____

OPINION OF AFFIANT

Your affiant, a police officer employed by the City and County of Honolulu, State of Hawaii, has received special training and experience in the field of investigation as follows:

Attachment No. ____

OFFICIAL CHANNELS

Your affiant, a police officer employed by the City and County of Honolulu, State of Hawaii, has obtained information from the following official source which he believes to be reliable:

The source supplied the following information:

Attachment No._____

CITIZEN INFORMANT

Your affiant, a police officer employed by the City and County of Honolulu, State of Hawaii, received information from a citizen whose name is
and who is a citizen who observed a crime or has information regarding a crime, and appears to have no personal interest in the matter except to assist law enforcement.

Your affiant was informed on_____
by said informant who spoke from personal knowledge that on
_____at_____.m.:

Attachment No. _____

UNTESTED INFORMANT

Your affiant, a police officer employed by the City and County of Honolulu, State of Hawaii, received information from an informant whose reliability has not been tested.

The name of the informant is

Your affiant wishes to keep the identity of the informant confidential for the following reason(s):

Your affiant was informed on _____
by said informant that on _____ at
_____.m. :

Attachment No._____

OFFICER-INFORMANT

Your affiant, a police officer employed by the City and County of Honolulu, State of Hawaii, states that he has been a police officer for _____years and that his present assignment is

That on _____at_____.m., your affiant received information (a telephone call) from _____ _____, a police officer known by your affiant to have been employed by the City and County of the Honolulu, State of Hawaii for _____ years and that his present assignment is

Officer_____told your affiant that on_____at_____.m, he personally observed:

Attachment No_____

OFFICER-INFORMANT

RELIABLE-INFORMANT

Your affiant, a police officer employed by the City and County of Honolulu, State of Hawaii, states that he has been a police officer for _____years and that his present assignment is

That on _____at_____m., your affiant received information (a telephone call) from a police officer, known by your affiant to have been employed by the City and County of Honolulu, State of Hawaii for _____years and that his present assignment is

Officer_____told your affiant that on _____at_____.m., he received information from as informant who has previously given truthful information to him

The name of the informant is

Your affiant wishes to keep the identity of the informant confidential for the following reason(s):

Attachment No._____

Your affiant was informed by officer_____

_____that the said informant said that he observed the following facts:

That your affiant commenced the actual physical mechanics of preparing this affidavit and attached search warrant at_____ on_____; that the elapsed time reflected herein has been diligently utilized by your affiant in the mechanics of physically preparing these documents, consulting with the Department of Prosecuting Attorney, locating the appropriate judge and transporting these documents to the judge for his official action in connection therewith;

That based on these facts set out herein, there is probable cause for the issuance of a warrant directing a search of said (premises, person or vehicle) for said property.

WHEREFORE, it is prayed that a search warrant be issued and that such warrant contain a direction that it be served during the_____;

FURTHER AFFIANT SAYETH NOT.

_____

Subscribed and sworn to before me
this_____day of_____,19___
at_____.M.

_____
JUDGE OF THE ABOVE ENTITLED COURT
STATE OF HAWAII

14-01-13
(6/72)

IN THE DISTRICT COURT OF THE FIRST CIRCUIT

HONOLULU **DIVISION**

State of Hawaii

STATE OF HAWAII
vs.
BUTCH,
Defendant.

D C Complaint No _____
D C Mittimus No _____
H P D Report No _____

For and in violation of Section 708-840(1)(b)(ii), H.R.S.

ROBBERY, FIRST DEGREE

COMMITMENT TO CIRCUIT COURT

On the 3rd day of JUNE 19 80, the defendant ____ above-named having been arraigned to answer to the charge of, to-wit:

On or about the 1st day of June, 1980, in the City and County of Honolulu, State of Hawaii, BUTCH, while in the course of committing theft and armed with a dangerous instrument, to wit, a handgun, did threaten the imminent use of force against TERESA TELLER, with intent to compel acquiescence to the taking of or escaping with the property that was the subject of the theft, to wit, money, thereby committing the offense of Robbery in the First Degree in violation of Section 708-840(1)(b)(ii) of the Hawaii Revised Statutes.

and that said defendant____ having demanded preliminary examination in the above-entitled court, and finding from the evidence adduced there is probable cause to believe that the offense charged was committed and the defendant committed the offense, I therefore this day commit said defendant____ to the Circuit Court of the First Circuit of the State of Hawaii for further proceedings.

Bail set at $ 5,000
____Bond filed by _____
____Cash Posted
____In custody at _____
____O.R. _____

GIVEN UNDER MY HAND THIS 5th day of JUNE, 1980.

JOSEPH HONOR
Judge of the above-entitled Court.

JOHN DEFENDER Esq.____

Attorney___ for Defendant____

RETURN OF SERVICE

On _____, 19____, at _____o'clock _____M.

I served the within subpoena by delivering a copy to the within-named _____

_____

_____

at _____.
(address/location of service)

Dated: Honolulu, Hawaii, _____.

_____

DEPARTMENT OF THE PROSECUTING ATTORNEY
City and County of Honolulu
30 Ewa Street
Honolulu, Hawaii 96813

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII v. BUTCH, Defendant.	CR. NO. XXXXX ROBBERY IN THE FIRST DEGREE (§ 708-840(1)(b)(ii), H.R.S.) INDICTMENT

INDICTMENT

The Grand Jury charges:

On or about the 1st day of June, 1980, in the City and County of Honolulu, State of Hawaii, BUTCH, while in the course of committing theft and armed with a dangerous instrument, to wit, a handgun, did threaten the imminent use of force against TERESA TELLER, with intent to compel acquiescence to the taking of or escaping with the property that was the subject of the theft, to wit, money, thereby committing the offense of Robbery in the First Degree in violation of Section 708-840(1)(b)(ii) of the Hawaii Revised Statutes.

A TRUE BILL

PAUL PROSECUTOR
Deputy Prosecuting Attorney
City and County of Honolulu

FRANCES FOREPERSON
Foreman

In the Circuit Court of the First Circuit

State of Hawaii

STATE OF HAWAII vs. BUTCH, Defendant.	CR. NO. XXXXX BENCH WARRANT ROBBERY IN THE FIRST DEGREE (§ 708-840(1)(b)(ii), H.R.S.)

BENCH WARRANT

STATE OF HAWAII:

TO THE CHIEF OF POLICE OF THE CITY & COUNTY OF HONOLULU, OR HIS DEPUTY, OR TO ANY OFFICER AUTHORIZED BY LAW TO EXECUTE WARRANTS OF ARREST IN THE STATE OF HAWAII, GREETINGS:

The GRAND JURY in and for the Circuit Court of the First Circuit of the State of Hawaii for the year 1980, having duly PRESENTED AND FILED AN INDICTMENT in the said Circuit Court against the above-named defendant charging said defendant with having committed the offense of ROBBERY IN THE FIRST DEGREE IN VIOLATION OF SECTION 708-840(1)(b)(ii) OF THE HAWAII REVISED STATUTES.

WE COMMAND THAT YOU arrest and bring said defendant before this Court, to the courtroom of JUDGE JANE JUDGE in the Judiciary Building, Honolulu, State of Hawaii, FORTHWITH.

This warrant shall not be executed after six (6) months from the date of issuance or between the hours of 10:00 p.m. to 7:00 a.m. on premises not open to the public, unless authorized in writing by a Judge of the above Court.

DATED: Honolulu, Hawaii, JULY 7, 1980

JANE JUDGE

Judge of the above-entitled Court

✓ BAIL SET AT $ 5,000

___ DEFENDANT TO BE RELEASED TO APPEAR AFTER BEING ARRESTED AND BOOKED WITHOUT POSTING BAIL

OFFICER'S RETURN

EXECUTED the within warrant on the person of_____

_____

at_____
(time and place)

DATED: Honolulu, Hawaii,_____

_____
Police Officer

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ORDER AS TO BAIL SCHEDULE

Effective APRIL 15, 1980, the following amounts shall be fixed as bail in the listed felonies:

$50,000 - Murder of peace officer or witness; hired killing; Murder while imprisoned (Sec. 606a, Hawaii Penal Code)

$20,000 - Any other Murder

$ 5,000 - All CLASS A felonies (except Murder)

$ 2,000 - All CLASS B felonies

$ 1,000 - All other felonies

NOTE: In those instances wherein special circumstances exist which may require consideration for an upward or downward revision of the amount of bail specified, the undersigned or any other judge having authority to set bail may be contacted for approval of such revision.

DATED: Honolulu, Hawaii, April 15, 1980.

_____
JUDGE OF THE ABOVE-ENTITLED COURT

00-01-18
(2/72)

In the Circuit Court of the First Circuit
State of Hawaii

STATE OF HAWAII

vs.

BUTCH,

Defendant.

CR No XXXXX

ORDER AS TO BAIL.

Charge: ROBBERY IN THE FIRST DEGREE
(§ 708-840(1)(b)(ii), H.R.S.)

ORDER AS TO BAIL

Good cause appearing therefor,

IT IS HEREBY ORDERED that bail in the above-entitled matter be and same is hereby set in the sum of FIVE THOUSAND Dollars ($ 5,000).

Dated: Honolulu, Hawaii, July 16, 1980.

JANE JUDGE
Judge of the above-entitled Court

01-01-06
(6-79)

Court
Prosecutor
Defense Attorney:

In the Circuit Court of the First Circuit
State of Hawaii

STATE OF HAWAII

vs.

BUTCH,

Defendant.

Cr No XXXXX

NOTICE OF SETTING OF ARRAIGNMENT AND PLEA

ROBBERY, 1°

NOTICE OF SETTING OF ARRAIGNMENT AND PLEA

To: **PROSECUTING ATTORNEY**, City and County of Honolulu, State of Hawaii;
JOHN DEFENDER
HALAWA JAIL

You are hereby notified that the above-entitled matter has been set for arraignment and plea on MONDAY, JULY 21, 1980 8:00 o'clock, A.M., before the Honorable JANE JUDGE

Judge of the above-entitled Court, in his courtroom in the Judiciary Building, 417 So. King St. (behind the King Kamehameha Statute), Honolulu, State of Hawaii.

Dated: Honolulu, Hawaii: JULY 17, 1980

CLARENCE CLERK
Clerk

OFFICE OF THE PUBLIC DEFENDER
HEAD MAN
PUBLIC DEFENDER
BY: JOHN DEFENDER
DEPUTY PUBLIC DEFENDER
20 OAHU PLACE
HONOLULU, HAWAII 96813
TEL. NO.: 548-0000

ATTORNEYS FOR THE DEFENDANT

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII vs. BUTCH, Defendant.	CR. NO. XXXXX ROBBERY IN THE FIRST DEGREE (§ 708-840(1)(b)(ii), H.R.S.) MOTION FOR RELEASE ON OWN RECOGNIZANCE AND/OR ON SUPERVISED RELEASE, OR IN THE ALTERNATIVE FOR REDUCTION OF BAIL; AFFIDAVIT OF COUNSEL; and NOTICE OF MOTION

MOTION FOR RELEASE ON OWN RECOGNIZANCE AND/OR ON SUPERVISED RELEASE, OR IN THE ALTERNATIVE FOR REDUCTION OF BAIL

Defendant, BUTCH, by and through her/his undersigned counsel, JOHN DEFENDER moves this court for the release of defendant on own recognizance and/or on supervised release, or in the alternative for reduction of bail in the above-captioned charge(s) which has been set at the sum of FIVE THOUSAND DOLLARS ($5,000) in the aggregate.

This motion is based upon Rules 46 and 47 of the Hawaii Rules of Penal Procedure, Chapter 804 of the Hawaii Revised Statutes, the records and files of this case, the affidavit of counsel attached hereto, and upon such further matters as may be presented at the hearing on this motion.

DATED: Honolulu, Hawaii, July 28, 1980.

JOHN DEFENDER
JOHN DEFENDER
ATTORNEY FOR DEFENDANT

OFFICE OF THE PUBLIC DEFENDER
HEAD MAN
PUBLIC DEFENDER
BY: JOHN DEFENDER
DEPUTY PUBLIC DEFENDER
20 OAHU PLACE
HONOLULU, HAWAII 96813
TEL. NO.: 548-0000

ATTORNEYS FOR THE DEFENDANT

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII vs. BUTCH, Defendant.	CR. NO. XXXXX ROBBERY IN THE FIRST DEGREE (§ 708-840(1)(b)(ii), H.R.S.) AFFIDAVIT OF COUNSEL

AFFIDAVIT OF COUNSEL

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

JOHN DEFENDER, being first duly sworn on oath, deposes and says:

1. That he represents the above-named defendant;

2. That your affiant believes that defendant's motion should be granted for the following reasons on information and belief:

a. That defendant is 20 years old and has no prior criminal record;

b. That defendant has been in custody since June 1, 1980, and has been unable to make bail;

c. That defendant is presently unemployed and indigent;

d. That defendant has resided continuously on Oahu for the past 15 years;

3. That based on the foregoing it is affiant's belief that defendant is a qualified candidate for either bail reduction, supervised release, or release on his own recognizance.

FURTHER, Affiant sayeth naught.

DATED: Honolulu, Hawaii, July 28, 1980.

JOHN DEFENDER
JOHN DEFENDER
ATTORNEY FOR DEFENDANT

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII vs. BUTCH, Defendant.	CR. NO. XXXXX ROBBERY IN THE FIRST DEGREE (§ 708-840(1)(b)(ii), H.R.S.) NOTICE OF MOTION

NOTICE OF MOTION

TO: OFFICE OF THE PROSECUTING ATTORNEY

City and County of Honolulu
State of Hawaii
30 Ewa Street
Honolulu, Hawaii 96813

PLEASE TAKE NOTICE that the foregoing Motion will be presented before the Honorable JANE JUDGE Judge of the above-entitled Court, in the Courtroom of said Judge in the Judiciary Building, Honolulu, Hawaii, on Monday, the 4th day of August, 1980, at the hour of 8 o'clock a.m. of said day, or as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawaii, July 28, 1980.

OFFICE OF THE PUBLIC DEFENDER
HEAD MAN
PUBLIC DEFENDER

BY JOHN DEFENDER
JOHN DEFENDER
DEPUTY PUBLIC DEFENDER

ATTORNEYS FOR DEFENDANT

HEAD MAN
Prosecuting Attorney
PAUL PROSECUTOR
Deputy Prosecuting Attorney
City and County of Honolulu
30 Ewa Street
Honolulu, Hawaii 96813
TEL. NO.: 523-0000

ATTORNEYS FOR THE STATE OF HAWAII

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII vs. BUTCH, Defendant.	CR. NO. XXXXX ROBBERY IN THE FIRST DEGREE (§ 708-840(1)(b)(ii), H.R.S.) ORDER DENYING MOTION FOR RELEASE ON OWN RECOGNIZANCE AND/OR ON SUPERVISED RELEASE, OR FOR BAIL REDUCTION

ORDER DENYING MOTION FOR RELEASE ON
OWN RECOGNIZANCE AND/OR ON SUPERVISED RELEASE,
OR FOR REDUCTION OF BAIL

Defendant's Motion for Release on Own Recognizance and/or on Supervised Release, or for Reduction of Bail, having come on for hearing in the above-entitled causes on August 4, 1980 before the Honorable Jane Judge and the court being fully advised in the premises and having orally denied said motion,

IT IS HEREBY ORDERED that the aforesaid motion be and the same is hereby denied.

Dated at Honolulu, Hawaii: AUGUST 4, 1980.

APPROVED AS TO FORM:

JOHN DEFENDER
John Defender
Attorney for Defendant

JANE JUDGE
Judge of the above-entitled court

Court
Prosecutors
Jail
APD
Def. Attorney
Crim. Clerk

00-01-31
(8/76)

In the Circuit Court of the First Circuit

State of Hawaii

STATE OF HAWAII	)	Cr No XXXXX
vs.	)	ORDER SETTING ASIDE BAIL
BUTCH,	)	ROBBERY, FIRST DEGREE SEC. 708-840, H.R.S.
Defendant.	)	

ORDER SETTING ASIDE BAIL
(O. R.)

Good cause appearing therefor,

IT IS HEREBY ORDERED that bail in the above-entitled matter be and same is hereby set aside and the defendant is released to appear on his own recognizance.

Dated: Honolulu, Hawaii, AUGUST 4, 1980

JANE JUDGE
Judge of the above-entitled Court

COURT
PROSECUTORS
PRS
DEFENDANT/ATTY

Pretrial Release Services Unit
Intake Service Centers
State of Hawaii
Honolulu, Hawaii

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII	)	CR. NO. XXXXX
vs.	)	CHARGE: ROBBERY, FIRST DEGREE SEC. 708-840, H.R.S.
BUTCH,	)	
Defendant.	)	TERMS AND CONDITIONS OF RELEASE ON OWN RECOGNIZANCE

TERMS AND CONDITIONS OF RELEASE
ON OWN RECOGNIZANCE

It is the Order of the Court that you will, during your release on your own recognizance, comply in all respects with the following terms and conditions:

1. Appear in Court whenever directed by the Court;
2. Keep in contact with your attorney at all times so that you are aware of the dates and times of your Court appearances;
3. Keep your attorney and the Pretrial Release Services Unit (telephone_____) informed of your current address and of any intended change of address and the reasons therefor;
4. Not leave the Island of Oahu without first obtaining approval of the Court.

You are advised that failure to comply with any of the foregoing terms and conditions shall mean that the Court may revoke your release and issue a bench warrant for your arrest.

Dated: Honolulu, Hawaii AUGUST 4, 1980

JANE JUDGE
Judge of the above-entitled Court

Rev. 1/78

ACKNOWLEDGEMENT BY DEFENDANT

I fully understand and agree to the foregoing Terms and Conditions of Release On Own Recognizance and I understand that in the event I violate any of the conditions of release, the Court may issue a bench warrant for my arrest. I am also aware that intentional failure to appear at such times as directed by the Court is punishable as a separate crime.

Date: August 5, 1980 BUTCH

Witnessed: _____

Court
Jail
Prosecutors
APD
Def/Att.
Crim. Clk.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII vs BUTCH, Defendant.	CR. NO. XXXXX CHARGE: ROBBERY, FIRST DEGREE SEC. 708-840, H.R.S. ORDER SETTING ASIDE BAIL Supervised Release

ORDER SETTING ASIDE BAIL
Supervised Release

Good cause appearing thereof,

IT IS HEREBY ORDERED that bail in the above-entitled matter be and same is hereby set aside and the defendant is released to appear on his own recognizance; upon condition, however, that the defendant comply with all the Terms and Conditions of Supervised Release set forth in the "Terms and Conditions of Supervised Release."

Dated: Honolulu, Hawaii August 4, 1980

JANE JUDGE
Judge of the above-entitled Court

C
FR:
DEFENDANT/ATTY

Pretrial Release Services Unit
Intake Service Centers
State of Hawaii
Honolulu, Hawaii

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII	)	CR. NO. XXXXX
vs.	)	CHARGE: ROBBERY, FIRST DEGREE SEC. 708-840, H.R.S.
BUTCH,	)	
Defendant.	)	TERMS AND CONDITIONS OF SUPERVISED RELEASE

TERMS AND CONDITIONS OF SUPERVISED RELEASE

It is the Order of the Court that you will, during your release on your own recognizance while under Supervised Release, comply in all respects with the following terms and conditions:

1. Appear in Court whenever directed by the Court;

2. Keep in contact with your attorney at all times so that you are aware of the dates and times of your Court appearances;

3. Upon release you are to reside at 27 ISLAND ROAD;

4. Keep your attorney and the Pretrial Release Services Unit (telephone_____) informed of your current address and of any intended change of address and the reasons therefor;

5. Not leave the Island of Oahu without first obtaining the approval of the Court;

6. Report to the Pretrial Release Services Unit whenever directed to do so.

You are advised that failure to comply with any of the foregoing terms and conditions shall mean that the Court may revoke your release and issue a bench warrant for your arrest.

Dated: Honolulu, Hawaii August 4, 1980

JANE JUDGE
Judge of the above-entitled Court

Rev. 1/78

ACKNOWLEDGEMENT BY DEFENDANT

I fully understand and agree to the foregoing Terms and Conditions of Release On Own Recognizance while under Supervised Release and I understand that in the event I violate any of the conditions of Supervised Release, the Court may issue a bench warrant for my arrest. I am also aware that intentional failure to appear at such times as directed by the Court is punishable as a separate crime.

Date: August 5, 1980 BUTCH

Witnessed: _____

OFFICE OF THE PUBLIC DEFENDER
HEAD MAN
PUBLIC DEFENDER
BY: JOHN DEFENDER
DEPUTY PUBLIC DEFENDER
20 OAHU PLACE
HONOLULU, HAWAII 96813
TEL. NO.: 548-0000

ATTORNEYS FOR DEFENDANT

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII vs. BUTCH, Defendant.	CR. NO. XXXXX ROBBERY IN THE FIRST DEGREE (§ 708-804(1)(b)(ii), H.R.S.) MOTION TO SUPPRESS CONFESSION; AFFIDAVIT OF COUNSEL and NOTICE OF MOTION

MOTION TO SUPPRESS CONFESSION

COMES NOW, defendant, BUTCH, by and through his court-appointed attorney, JOHN DEFENDER, and moves this Honorable Court to grant an order suppressing all statements obtained from defendant coincident with his illegal interrogation in violation of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 8 of the Hawaii Constitution.

This motion is made pursuant to Rules 12, 41, and 47 of the Hawaii Rules of Penal Procedure and is based upon the affidavit of counsel, the files and records of the instant case, a memorandum of law as may be provided at a later date and such further evidence as may be provided at this hearing.

DATED: Honolulu, Hawaii, August 8, 1980.

OFFICE OF THE PUBLIC DEFENDER
HEAD MAN
PUBLIC DEFENDER

BY: JOHN DEFENDER
JOHN DEFENDER
DEPUTY PUBLIC DEFENDER
ATTORNEYS FOR DEFENDANT

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII	CR. NO. XXXXX
vs.	ROBBERY IN THE FIRST DEGREE (§ 708-840(1)(b)(ii), H.R.S.)
BUTCH,	AFFIDAVIT OF COUNSEL
Defendant.	

AFFIDAVIT OF COUNSEL

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

JOHN DEFENDER, being first duly sworn on oath, deposes and says:

1. That he represents the above-named defendant, BUTCH;

2. That he has interviewed the defendant and is informed and believes that:

a. On June 1, 1980 at approximately 3:15 p.m., defendant was arrested for the charge of Robbery in the First Degree;

b. On June 2, 1980, the next day, Detective DANNY OFFICER of the Honolulu Police Department interrogated defendant with respect to the alleged offense;

c. Defendant has completed his formal education only up to the eighth grade;

d. Defendant is a near illiterate;

e. Said defendant confessed to the alleged robbery after signing a constitutional waiver form;

f. That the alleged waiver of his constitutional rights was neither voluntary or intelligent for the reason that defendant did not fully understand either the consequences or the fact that he was waiving his constitutional right to remain silent and to have an attorney present during his interrogation.

FURTHER, Affiant sayeth naught.

JOHN DEFENDER
JOHN DEFENDER
ATTORNEY FOR DEFENDANT

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII vs. BUTCH, Defendant.	CR. NO. XXXXX ROBBERY IN THE FIRST DEGREE (§ 708-840(1)(b)(ii), H.R.S.) NOTICE OF MOTION

NOTICE OF MOTION

TO: OFFICE OF THE PROSECUTING ATTORNEY

City and County of Honolulu
State of Hawaii
30 Ewa Street
Honolulu, Hawaii 96813

PLEASE TAKE NOTICE that the foregoing Motion will be presented before the Honorable JANE JUDGE Judge of the above-entitled Court, in the Courtroom of said Judge in the Judiciary Building, Honolulu, Hawaii, on Friday, the 15th day of August, 19 80, at the hour of 8 o'clock a.m. of said day, or as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawaii, August 8, 1980.

OFFICE OF THE PUBLIC DEFENDER
HEAD MAN
PUBLIC DEFENDER

BY JOHN DEFENDER
JOHN DEFENDER
DEPUTY PUBLIC DEFENDER

ATTORNEYS FOR DEFENDANT

HEAD MAN
Prosecuting Attorney
PAUL PROSECUTOR
Deputy Prosecuting Attorney
City and County of Honolulu
30 Ewa Street
Honolulu, Hawaii 96813
Ph.: 523-0000

ATTORNEYS FOR STATE OF HAWAII

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII	CR. NO. XXXXX
v.	ROBBERY IN THE FIRST DEGREE (§ 708-840(1)(b)(ii), H.R.S.)
BUTCH,	ORDER DENYING MOTION TO SUPPRESS CONFESSION
Defendant.	

ORDER DENYING MOTION TO SUPPRESS CONFESSION

Defendant's Motion To Suppress Confession having come on for hearing on August 15, 1980 before the Honorable Jane Judge, and the court being fully advised in the premises and having orally denied said motion,

IT IS HEREBY ORDERED that the aforesaid motion be and the same is hereby denied.

Dated at Honolulu, Hawaii: August 18, 1980.

APPROVED AS TO FORM:

JOHN DEFENDER
JOHN DEFENDER
Attorney for Defendant
BUTCH

JANE JUDGE
JANE JUDGE
Judge of the above-entitled court

00-01-10.2
(R-6/76)

OFFICE OF THE PUBLIC DEFENDER
HEAD MAN
PUBLIC DEFENDER
BY: JOHN DEFENDER
DEPUTY PUBLIC DEFENDER
20 OAHU PLACE
HONOLULU, HAWAII 96813
TEL. NO.: 548-0000

ATTORNEYS FOR DEFENDANT

In the Circuit Court of the First Circuit

State of Hawaii

STATE OF HAWAII	CR No XXXXX
v.	GUILTY PLEA
BUTCH,	ROBBERY IN THE FIRST DEGREE (§ 708-840(1)(b)(ii), H.R.S.)
Defendant.	

GUILTY PLEA

1. I plead **GUILTY** to the charge of ROBBERY IN THE FIRST DEGREE

2. My mind is clear. I have not taken any pills or drugs or medicines or alcoholic drinks within the last 48 hours. I am not sick. I am 20 years old. I understand the English language. I finished 8 years of school. I have never been under treatment for any mental illness.

3. I have received a written copy of the original charge in this case. I have read it over with my lawyer, and he has explained it to me. I understand the original charge against me. I told my lawyer all the facts I know about the case. He discussed with me the government's evidence against me, and advised me of the facts which the government must prove in order to convict me and of the possible defenses which I might have.

4. My lawyer has also explained to me the reduced charge which the government has agreed to charge me with, instead of the original charge. (Applicable only if original charge has been reduced).

5. I plead guilty because, after discussing all the evidence and receiving advice on the law from my lawyer, I believe that I am guilty. I know that even though I believe myself guilty, I still have the right to plead not guilty and have a trial by jury in which the government will be required to prove me guilty beyond a reasonable doubt. I know that in a trial, I can see, hear and question the witnesses who may testify against me, I can call my own witnesses to testify for me, and I do not have to take the stand and testify if I do not wish to do so. I know that I have a right to a speedy and public trial. I know that by pleading guilty, I am giving up my right to a trial and will be found guilty and sentenced without a trial of any kind. I plead guilty because (give brief factual statement of what defendant did):

On June 1, 1980, I went into Island Bank with the intent to commit a theft. Armed with a semi-automatic handgun, I threatened to use it against TERESA TELLER unless she placed money from her cash drawer into my bag. After she placed the money into one of the bags, I grabbed it from her and left the bank.

6. My lawyer has told me about the possible maximum sentence for my offense, which is 20 years in prison and a fine of $ 20,000. He also explained to me the possibility of my maximum term of imprisonment being extended to life imprison., and explained that if I am a repeat offender or if the present offense involved a firearm I will be subject to the automatic sentences of imprisonment which are required under Act 181 and Act 204, Session Laws of Hawaii 1976.

7. I plead guilty of my own free will. No one is putting any kind of pressure on me or threatening me or anyone close to me to force me to plead guilty. I am not taking the rap for someone else.

8. I have not been promised any kind of deal or favor or leniency by anyone for pleading guilty, except that I have been told that the government has agreed as follows:

NONE

(State all understandings, if none, write "none")

I know that the Court is not a party to, so that it does not have to recognize, any deal or agreement between the prosecutor and my lawyer or me. I know that the Court has not promised me leniency for pleading guilty.

9. I further state that (any further statements, if none, write "none"):

NONE

10. I am signing this paper after I have gone over all of it together with my lawyer, and I am signing it in the presence of my lawyer. I have no complaints about my lawyer and I am satisfied with what he has done for me.

Dated at Honolulu, Hawaii, August 25, 1980

BUTCH
Defendant

CERTIFICATE OF COUNSEL

As counsel for defendant and as an officer of the Court, I certify that I have read and explained fully the foregoing "Guilty Plea", that I believe that the defendant understands the document in its entirety, that the statements contained therein are in conformity with my understanding of the defendant's position, that I believe that the defendant's plea is made voluntarily and with intelligent understanding of the nature of the charge and possible consequences, and that the defendant signed the foregoing in my presence.

Dated at Honolulu, Hawaii, August 25, 1980

JOHN DEFENDER
Attorney for Defendant

I acknowledge that Judge JANE JUDGE questioned me personally in open court to make sure that I knew what I was doing in pleading guilty and understood this Guilty Plea form before I signed it.

BUTCH
(To be signed in open court after plea)

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII vs. BUTCH, Defendant.	CR. NO. XXXXX ROBBERY, FIRST DEGREE SEC. 708-840, H.R.S. NOTICE OF SETTING OF TRIAL

NOTICE OF SETTING OF TRIAL

TO: PROSECUTING ATTORNEY, City and County of Honolulu, State of Hawaii

JOHN DEFENDER
HALAWA JAIL

You are hereby notified that the above-entitled matter has been set for trial for the week of September 22, 1980 at 8:30 o'clock A.M., before the HONORABLE JANE JUDGE of the above-entitled Court in her courtroom, Honolulu, State of Hawaii.

DATED: Honolulu, Hawaii, August 20, 1980.

CLARICE CLERK
CLERK

00-01-16
(6/71)

HEAD MAN
Prosecuting Attorney
PAUL PROSECUTOR
Deputy Prosecuting Attorney
City and County of Honolulu
30 Ewa Street
Honolulu, Hawaii 96813
Tel. No.: 523-0000

ATTORNEYS FOR THE STATE OF HAWAII

In the Circuit Court of the First Circuit

State of Hawaii

STATE OF HAWAII	)	Cr No. XXXXX
	)	
vs	)	SUBPOENA
BUTCH,	)	
	)	
	)	
Defendant.	)	
	)	
	)	
	)	

SUBPOENA

THE STATE OF HAWAII

To Teresa Teller, c/o Island Bank, 30 Aloha Avenue, Honolulu, Hawaii 96813

YOU ARE HEREBY COMMANDED to appear in the courtroom of the above-entitled Court, before the Honorable Jane Judge

on Monday, September 22, 1980

at 8:30 o'clock A.M., to testify on behalf of the STATE OF HAWAII in the above-entitled action.

Dated: Honolulu, Hawaii. September 8, 1980

JACK CLERK
Clerk

RETURN ON SERVICE

Received this subpoena at _____

and on _____, at _____

_____

I served it on the within named _____

by delivering a copy to h_____ and tendering to h_____ the fee for one day's attendance and the mileage allowed by law.

Dated: Honolulu, Hawaii, _____

_____

CONTINUOUS INTERFOLDING®

IF YOUR NAME, ADDRESS AND OR SOCIAL SECURITY NO SHOWN AT LEFT IS INCORRECT PLEASE INDICATE CORRECT DATA BELOW

NAME _____ (LAST) (FIRST)

ADDRESS _____ (NO.) (STREET)

(CITY) (STATE) (ZIP CODE)

SOCIAL SECURITY NO.:

FOR JURY SERVICE DURING THE YEAR

SOCIAL SECURITY NO _____

PLEASE PRINT ALL ENTRIES — DO NOT BEND, SPINDLE, FOLD OR STAPLE. FORM NO 2000

JUROR'S QUALIFICATION FORM

Jury Commission Phone No.:

CIRCUIT COURT
State of Hawaii

STATUS	EXEMPTION
JUROR COMMISSIONER'S USE	

74002

Please answer each question and return the form within ten days.

1 DATE OF BIRTH _____ 2 YEARS OF RESIDENCE IN STATE _____ ON THIS ISLAND _____

3 YOUR OCCUPATION AND EMPLOYER (IF RETIRED OR UNEMPLOYED LIST LAST OCCUPATION AND EMPLOYER): _____

_____ EMPLOYER'S PHONE NO _____ YOUR HOME PHONE NO _____

4 EDUCATION (CIRCLE LAST YEAR COMPLETED) ELEMENTARY SCHOOL 1 2 3 4 5 6 7 8 HIGH SCHOOL 1 2 3 4 OTHER _____ 1 2 3 4 5 6

5 MARITAL STATUS _____ 6 NO OF CHILDREN _____

7 SPOUSE'S NAME _____

8 SPOUSE'S OCCUPATION AND EMPLOYER _____

9

MOORE BUSINESS FORMS, INC. HI

CONTINUOUS INTERFOLDING®

IF YOUR NAME, ADDRESS AND/OR SOCIAL SECURITY NO. SHOWN AT LEFT IS INCORRECT PLEASE INDICATE CORRECT DATA BELOW.

NAME _____ (LAST) (FIRST)

ADDRESS _____ (NO.) (STREET)

(CITY) (STATE) (ZIP CODE)

SOCIAL SECURITY NO.:

FOR JURY SERVICE DURING THE YEAR

SOCIAL SECURITY NO _____

PLEASE PRINT ALL ENTRIES — DO NOT BEND, SPINDLE, FOLD OR STAPLE. FORM NO 2000

JUROR'S QUALIFICATION FORM

Jury Commission Phone No.:

CIRCUIT COURT
State of Hawaii

STATUS	EXEMPTION
JUROR COMMISSIONER'S USE	

74003

Please answer each question and return the form within ten days

1 DATE OF BIRTH _____ 2 YEARS OF RESIDENCE IN STATE _____ ON THIS ISLAND _____

3 YOUR OCCUPATION AND EMPLOYER (IF RETIRED OR UNEMPLOYED LIST LAST OCCUPATION AND EMPLOYER): _____

_____ EMPLOYER'S PHONE NO _____ YOUR HOME PHONE NO _____

4 EDUCATION (CIRCLE LAST YEAR COMPLETED) ELEMENTARY SCHOOL 1 2 3 4 5 6 7 8 HIGH SCHOOL 1 2 3 4 OTHER _____ 1 2 3 4 5 6

5 MARITAL STATUS _____ 6 NO. OF CHILDREN _____

7 SPOUSE'S NAME _____

8 SPOUSE'S OCCUPATION AND EMPLOYER _____

9

MOORE BUSINESS FORMS, INC. HI

CONTINUOUS INTERFOLDING®

IF YOUR NAME, ADDRESS AND/OR SOCIAL SECURITY NO. SHOWN AT LEFT IS INCORRECT PLEASE INDICATE CORRECT DATA BELOW.

NAME _____ (LAST) (FIRST)

ADDRESS _____ (NO.) (STREET)

(CITY) (STATE) (ZIP CODE)

SOCIAL SECURITY NO.:

FOR JURY SERVICE DURING THE YEAR

SOCIAL SECURITY NO _____

PLEASE PRINT ALL ENTRIES — DO NOT BEND, SPINDLE, FOLD OR STAPLE. FORM NO 2000

JUROR'S QUALIFICATION FORM

Jury Commission Phone No.:

CIRCUIT COURT
State of Hawaii

STATUS	EXEMPTION
JUROR COMMISSIONER'S USE	

74004

Please answer each question and return the form within ten days.

1 DATE OF BIRTH _____ 2 YEARS OF RESIDENCE IN STATE _____ ON THIS ISLAND _____

3 YOUR OCCUPATION AND EMPLOYER (IF RETIRED OR UNEMPLOYED LIST LAST OCCUPATION AND EMPLOYER) _____

_____ EMPLOYER'S PHONE NO _____ YOUR HOME PHONE NO _____

4 EDUCATION (CIRCLE LAST YEAR COMPLETED) ELEMENTARY SCHOOL 1 2 3 4 5 6 7 8 HIGH SCHOOL 1 2 3 4 OTHER _____ 1 2 3 4 5 6

5 MARITAL STATUS _____ 6 NO. OF CHILDREN _____

7 SPOUSE'S NAME _____

8 SPOUSE'S OCCUPATION AND EMPLOYER _____

9

MOORE BUSINESS FORMS, INC. HI

INTERFOLDING®

IF YOUR NAME, ADDRESS AND/OR SOCIAL SECURITY NO SHOWN AT LEFT IS INCORRECT PLEASE INDICATE CORRECT DATA BELOW

NAME _____ (LAST) (FIRST)

16. ARE THERE OTHER REASONS WHY YOU SHOULD NOT SERVE AS A JUROR? PLEASE SPECIFY _____

17. THE PROSPECTIVE JUROR IS UNABLE TO FILL OUT THIS FORM BECAUSE _____

I HAVE THEREFORE DONE SO IN HIS (HER) BEHALF.

SIGNATURE _____ DATE _____

I DECLARE THAT THE RESPONSES ON THIS QUALIFICATION FORM ARE TRUE AND ACKNOWLEDGE WILLFUL MISREPRESENTATION OF A FACT IS SUBJECT TO PUNISHMENT UNDER THE LAW

YES NO

10. HAVE YOU SERVED AS A JUROR? IF YES, WHEN _____ WHICH COURT _____
11. HAVE YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY BEEN A PARTY TO A LAWSUIT?
12. HAS A CLAIM FOR PERSONAL INJURY EVER BEEN MADE AGAINST YOU OR HAVE YOU EVER MADE A CLAIM FOR PERSONAL INJURY?
13. HAVE YOU EVER BEEN CONVICTED OF A CRIME PUNISHABLE BY IMPRISONMENT FOR MORE THAN ONE YEAR? IF YOUR ANSWER IS YES, HAVE YOUR CIVIL RIGHTS BEEN RESTORED BY PARDON? YES_____NO _____
14. ARE YOU RELATED TO OR CLOSE FRIENDS WITH ANY LAW ENFORCEMENT OFFICER?
15. DO YOU CLAIM TO BE DISQUALIFIED OR EXEMPT FROM JURY SERVICE? IF YES, FROM THE ENCLOSED INSERT, SPECIFY WHICH DISQUALIFICATION OR EXEMPTION YOU ARE CLAIMING. (NOTE: SEC. 612-4 (3) REQUIRES A PHYSICIAN S CERTIFICATE AS TO THE DISABILITY.)

16. ARE THERE OTHER REASONS WHY YOU SHOULD NOT SERVE AS A JUROR? PLEASE SPECIFY _____

17. THE PROSPECTIVE JUROR IS UNABLE TO FILL OUT THIS FORM BECAUSE _____

I HAVE THEREFORE DONE SO IN HIS (HER) BEHALF.

SIGNATURE _____ DATE _____

I DECLARE THAT THE RESPONSES ON THIS QUALIFICATION FORM ARE TRUE AND ACKNOWLEDGE WILLFUL MISREPRESENTATION OF A FACT IS SUBJECT TO PUNISHMENT UNDER THE LAW

YES NO

10. HAVE YOU SERVED AS A JUROR? IF YES, WHEN _____ WHICH COURT _____
11. HAVE YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY BEEN A PARTY TO A LAWSUIT?
12. HAS A CLAIM FOR PERSONAL INJURY EVER BEEN MADE AGAINST YOU OR HAVE YOU EVER MADE A CLAIM FOR PERSONAL INJURY?
13. HAVE YOU EVER BEEN CONVICTED OF A CRIME PUNISHABLE BY IMPRISONMENT FOR MORE THAN ONE YEAR? IF YOUR ANSWER IS YES, HAVE YOUR CIVIL RIGHTS BEEN RESTORED BY PARDON? YES_____NO _____
14. ARE YOU RELATED TO OR CLOSE FRIENDS WITH ANY LAW ENFORCEMENT OFFICER?
15. DO YOU CLAIM TO BE DISQUALIFIED OR EXEMPT FROM JURY SERVICE? IF YES, FROM THE ENCLOSED INSERT, SPECIFY WHICH DISQUALIFICATION OR EXEMPTION YOU ARE CLAIMING. (NOTE: SEC. 612-4 (3) REQUIRES A PHYSICIAN S CERTIFICATE AS TO THE DISABILITY.)

16. ARE THERE OTHER REASONS WHY YOU SHOULD NOT SERVE AS A JUROR? PLEASE SPECIFY _____

17. THE PROSPECTIVE JUROR IS UNABLE TO FILL OUT THIS FORM BECAUSE _____

I HAVE THEREFORE DONE SO IN HIS (HER) BEHALF.

SIGNATURE _____ DATE _____

I DECLARE THAT THE RESPONSES ON THIS QUALIFICATION FORM ARE TRUE AND ACKNOWLEDGE WILLFUL MISREPRESENTATION OF A FACT IS SUBJECT TO PUNISHMENT UNDER THE LAW.

YES NO

10. HAVE YOU SERVED AS A JUROR? IF YES, WHEN _____ WHICH COURT _____
11. HAVE YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY BEEN A PARTY TO A LAWSUIT?
12. HAS A CLAIM FOR PERSONAL INJURY EVER BEEN MADE AGAINST YOU OR HAVE YOU EVER MADE A CLAIM FOR PERSONAL INJURY?
13. HAVE YOU EVER BEEN CONVICTED OF A CRIME PUNISHABLE BY IMPRISONMENT FOR MORE THAN ONE YEAR? IF YOUR ANSWER IS YES, HAVE YOUR CIVIL RIGHTS BEEN RESTORED BY PARDON? YES_____NO _____
14. ARE YOU RELATED TO OR CLOSE FRIENDS WITH ANY LAW ENFORCEMENT OFFICER?
15. DO YOU CLAIM TO BE DISQUALIFIED OR EXEMPT FROM JURY SERVICE? IF YES, FROM THE ENCLOSED INSERT, SPECIFY WHICH DISQUALIFICATION OR EXEMPTION YOU ARE CLAIMING. (NOTE: SEC. 612-4 (3) REQUIRES A PHYSICIAN S CERTIFICATE AS TO THE DISABILITY.)

16. ARE THERE OTHER REASONS WHY YOU SHOULD NOT SERVE AS A JUROR? PLEASE SPECIFY _____

17. THE PROSPECTIVE JUROR IS UNABLE TO FILL OUT THIS FORM BECAUSE

In the Circuit Court of the First Circuit

State of Hawaii

HONORABLE JANE JUDGE **JUDGE PRESIDING**

) Cr. No. XXXXX
)
)
)
)
)
) VERDICT
) CHARGE: ROBBERY, FIRST DEGREE
) SEC. 708-840, H.R.S.
)
)
)
)

WE, the JURY in the above-entitled cause, find the defendant guilty as charged.

FRANK FOREMAN
Foreperson

Honolulu, Hawaii.

September 24, 1980

00-01-04
(6/71)

In the Circuit Court of the First Circuit

State of Hawaii

STATE OF HAWAII

vs.

BUTCH,

Defendant.

Cr No. XXXXX

JUDGMENT, NOTICE OF ENTRY

JUDGMENT

The above-named defendant having entered a plea of not guilty and after a jury trial having been found guilty of Robbery in the First Degree.

IT IS ADJUDGED that said above-named defendant has been convicted of and is guilty of the offense of Robbery in the First Degree

committed in the manner and form set forth in the charge.

IT IS THE JUDGMENT AND SENTENCE of the Court that Defendant be committed to the custody of the Department of Social Services and Housing and be confined at Hawaii State Prison for a term of TWENTY (20) YEARS until released in accordance with law.

MITTIMUS TO ISSUE FORTHWITH

Dated: Honolulu, Hawaii, October 8, 1980

JANE JUDGE
Judge of the above-entitled Court

NOTICE OF ENTRY

The foregoing judgment has been entered and copies thereof delivered or mailed to all parties.

DATED: Honolulu, HI, Oct. 8, 1980

JACK CLERK
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

THE STATE OF HAWAII	)	CR. NO. XXXXX
vs.	)	MITTIMUS
BUTCH,	)	
Defendant.	)	

MITTIMUS

THE STATE OF HAWAII:

To the Sheriff of the State of Hawaii, or his Deputy; or any police officer authorized by law:

The above-named defendant having been duly adjudged guilty in said Circuit Court of the offense of ROBBERY IN THE FIRST DEGREE

and in due course said Circuit Court duly imposed the sentence upon said defendant which is stated on the judgment attached hereto,

YOU ARE HEREBY ORDERED to take said defendant into your custody and to cause said sentence to be executed.

THIS MITTIMUS TO ISSUE FORTHWITH.

WITNESS the Honorable JANE JUDGE, FOURTH Judge of the above-entitled Court.

Dated: Honolulu, Hawaii, October 8, 1980.

JACK CLERK
Clerk

OFFICE OF THE PUBLIC DEFENDER
HEAD MAN
PUBLIC DEFENDER
BY: JOHN DEFENDER
DEPUTY PUBLIC DEFENDER
20 OAHU PLACE
HONOLULU, HAWAII 96813
TEL. NO.: 548-0000

ATTORNEYS FOR DEFENDANT-APPELLANT

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII,	CR. NO. XXXXX
Plaintiff-Appellee,	ROBBERY IN THE FIRST DEGREE (§ 708-840(1)(b)(ii), H.R.S.)
vs.	
BUTCH,	
Defendant-Appellant.	NOTICE OF APPEAL

NOTICE OF APPEAL

Defendant-Appellant above-named, by his/her court-appointed attorney, hereby appeals to the Supreme Court of the State of Hawaii from the Judgment entered herein on October 8, 1980.

DATED: Honolulu, Hawaii, October 17, 1980.

OFFICE OF THE PUBLIC DEFENDER
HEAD MAN
PUBLIC DEFENDER

BY JOHN DEFENDER
JOHN DEFENDER
DEPUTY PUBLIC DEFENDER

ATTORNEYS FOR DEFENDANT-APPELLANT

PREPAYMENT OF COSTS WAIVED.

JANE JUDGE
JUDGE OF THE ABOVE-ENTITLED COURT

01-29-03
(1/73)

OFFICE OF THE PUBLIC DEFENDER
HEAD MAN
PUBLIC DEFENDER
BY: JOHN DEFENDER
DEPUTY PUBLIC DEFENDER
20 OAHU PLACE
HONOLULU, HAWAII 96813
TEL. NO.: 548-0000

ATTORNEYS FOR DEFENDANT-APPELLANT

In the Circuit Court of the First Circuit

State of Hawaii

STATE OF HAWAII,	Cr. No. XXXXX
Plaintiff-Appellee,	REQUEST FOR TRANSCRIPT OF PROCEEDINGS FOR RECORD ON APPEAL
vs.	
BUTCH,	
Defendant-Appellant.	

REQUEST FOR TRANSCRIPT OF PROCEEDINGS FOR RECORD ON APPEAL

In conjuction with the Notice of Appeal filed herein on October 17, 19 80, it is requested that RITA REPORTER, _____, _____, official court reporter(s), First Circuit Court, State of Hawaii, prepare and furnish in the regular order of cases tried a transcript of the proceedings held on SEPTEMBER 22-24, 19 80, in the above-entitled matter.

(Those excepted by HRS, Sec. 606-13 may disregard the following paragraph.)

In accordance with HRS, Sec. 606-13 and Hawaii Rules of Civil Procedure, Rule 75(b), a deposit will be made with the Chief Clerk of the First Circuit Court satisfactory to said official court reporter(s) within five days to insure payment upon completion of such transcript, and upon completion and certification of the transcript by the official court reporter(s), the clerk shall pay the official court reporter(s) the fees earned by him to the extent that they have been deposited as aforesaid and shall return to the depositor any amount deposited in excess thereof.

DATED; Honolulu, Hawaii October 18, 1980.

JOHN DEFENDER
JOHN DEFENDER
DEPUTY PUBLIC DEFENDER

RECEIPT OF REQUEST ACKNOWLEDGED:

RITA REPORTER (Date) October 18, 1980

_____ (Date) _____

_____ (Date) _____

OFFICE OF THE CLERK
SUPREME COURT, STATE OF HAWAII
HONOLULU

NOTICE OF ENTERING CASE ON CALENDAR

Take notice that I have this day placed on the calendar of the Supreme Court the case of STATE OF HAWAII, Plaintiff-Appellee v. BUTCH, Defendant-Appellant.
(Criminal No. XXXXX - First Circuit Court)
(Opening Brief due on or before January 26, 1981)

Honolulu, Hawaii, November 26 *19* 80

CLARENCE CLERK
Clerk of Supreme Court.

No. 0000

Supreme Court of Hawaii

CAVEAT

The attention of counsel and parties is directed to Supreme Court Rules 3(a), (b), (c), (d), and 8(e), (f), and (g), regarding the preparation and format of briefs. You are informed that full observance of these rules will be expected and required. See *Alamida* v. *Wilson*, 53 Haw. 398, 404-05 (1972); *Ala Moana Boat Owners' Assn.* v. *State*, 50 Haw. 156 (1967); *State* v. *Gager*, 45 Haw. 478, 482 (1962); *State* v. *Pokini*, 45 Haw. 295, 297 (1961). Failure to prepare briefs in conformity with the rules will make the parties and counsel subject to appropriate sanctions, which may include striking of the opening brief or dismissal of the appeal. See for example this court's order filed on September 15, 1976, in *State* v. *Kea*, No. 6155, striking the opening brief and requiring the appellant to file a new brief.

With respect to criminal appeals, counsel is further reminded that in the event counsel chooses not to file an opening brief, counsel shall timely file a motion for withdrawal of the appeal, either signed by both defendant and counsel, or supported by a statement and affidavit of counsel showing counsel's reasons for not prosecuting the appeal; provided that this shall not be construed to limit the obligations imposed upon appointed counsel under *Anders* v. *California*, 386 U.S. 738 (1967). (See the minute order dated March 3, 1978, on file in the office of the clerk of the supreme court.)

CONTINUED

2 OF 3

NO. 0000

IN THE SUPREME COURT OF THE STATE OF HAWAII

OCTOBER TERM 1980

STATE OF HAWAII, Plaintiff-Appellee, vs. BUTCH, Defendant-Appellant.	CRIMINAL NO. XXXXX APPEAL FROM THE VERDICT FILED SEPTEMBER 24, 1980 AND FROM THE JUDGMENT, FILED OCTOBER 8, 1980 FIRST CIRCUIT COURT HONORABLE JANE JUDGE Judge

RECORD ON APPEAL

HEAD MAN Prosecuting Attorney PAUL PROSECUTOR Deputy Prosecuting Attorney City and County of Honolulu 30 Ewa Street Honolulu, Hawaii 96813	OFFICE OF THE PUBLIC DEFENDER HEAD MAN Public Defender BY: JOHN DEFENDER Deputy Public Defender 20 Oahu Place Honolulu, Hawaii 96813
Attorneys for Plaintiff-Appellee	Attorneys for Defendant-Appellant

INDEX

(To Record on Appeal

STATE OF HAWAII
Plaintiff-Appellee,

Versus

BUTCH,
Defendant-Appellant.)

TO RECORD ON APPEAL

CRIMINAL NO. XXXXX

The original record in Criminal No. XXXXX Circuit Court, First Circuit, State of Hawaii, as herein entitled, contains all of the original documents entered of record in said matter.

DESIGNATION OF CONTENTS OF RECORD ON APPEAL — PAGE NO.

MINUTES:

Yellow pages attached to the rear portion of the Record of Appeal are the original minutes entered by the Clerks of Court, First Circuit Court,

TRANSCRIPT:

Transcript No. XXXX

EXHIBITS:

Prosecution's - IN EVIDENCE

"1" Diagram drawn by Detective Danny Officer of floor plan of Island Bank.

"2" Black and white photograph of male taken by bank surveillance camera.

"3" Envelope containing marked money from Island Bank.

"4" Envelope containing 2 brown paper bags.

"5" Envelope containing a semi-automatic handgun, pistol clip, cartridges, and six bullets.

"6(a)" Statement (1 page) of Butch, dated June 2, 1980.

"6(b)" Form warning persons being interrogated of their constitutional rights signed by Butch, Detective Danny Officer, on June 2, 1980.

"7" Latent fingerprint card in an envelope.

CRIMINAL NO. XXXXX

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII,
Plaintiff,
vs.
BUTCH,
Defendant.

CIRCUIT COURT CLERK'S CERTIFICATE

I, JACK CLERK, Clerk of the Circuit Court of the First Circuit, State of Hawaii, do hereby certify that all documents and items, as listed in the foregoing index to the Record on Appeal, are originals thereof as filed and entered of record on the above-captioned proceeding; and that they are attached hereto and made a part hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of this Court this 24th day of November, 1980.

JACK CLERK
JACK CLERK, Clerk
Circuit Court, First Circuit
State of Hawaii

SAMPLE

STATE OF HAWAII
HAWAII PAROLING AUTHORITY

NOTICE OF HEARING AND RIGHTS AND REQUEST FOR LEGAL COUNSEL

To: BUTCH, 000-00-0000

You are hereby notified that the Hawaii Paroling Authority will, on February 5, 19 81, at Hawaii State Prison at 9:00 a .m. hold a hearing based on:

Crime(s):	Cr.#:
Robbery, First Degree	XXXXX

☒ For fixing of minimum term of imprisonment

☐ For refixing of minimum sentence and setting of parole heretofore tentatively set effective _____, 19____. The reason(s) for reconsideration are as follows:

☐ For parole consideration. You shall prepare a parole plan, setting forth the manner of life you intend to lead if released on parole, including specific information as to where and with whom you will reside and what occupation or employment you will follow. The parole staff shall render reasonable aid to you in preparation of your plan and in securing information for submission to the Hawaii Paroling Authority.

You are hereby advised of your rights to:
1. Consult with any person(s) you reasonably desire;
2. Be assisted and represented by counsel prior to and during your hearing;
3. Have counsel appointed for you if you so request and cannot afford to retain counsel on your own;
4. Appear in person and be heard;
5. Waive any of the above rights.

Having received the above Notice of Hearing and Rights and Request for Legal Counsel and having read or had it read and explained to me, I fully understand it.

The following are my decisions on my rights to the above-mentioned hearing:

1. I will obtain legal counsel of my own choosing. ☐ Yes ☒ No
2. I wish to have assistance in acquiring legal services as I am not able to afford a lawyer on my own. ☒ Yes ☐ No
3. I consent to have the Hawaii Paroling Authority release all pertinent information to my legal counsel. ☒ Yes ☐ No
4. With knowledge that this is my right, I wish to personally appear at the hearing. ☒ Yes ☐ No
5. I will have my Legal Counsel appear in my behalf. ☒ Yes ☐ No

BUTCH (Inmate's Signature) — January 9, 1981 (date)

WAYNE WITNESS (Witness' Signature) — January 9, 1981 (date)

DSSH 3001 (Rev. 9/79)

SAMPLE

STATE OF HAWAII
HAWAII PAROLING AUTHORITY

NOTICE AND ORDER FIXING MINIMUM TERM(S) OF IMPRISONMENT

In the Matter of BUTCH, 000-00-0000
A Prisoner

HAVING been duly convicted and sentenced as follows:

Circuit	Conviction Date	Offense & Criminal Number	Sentence Date	Maximum Sentence
First	10/08/80	Robbery, First Degree, Cr. No. XXXXX	10/08/80	20

You are hereby notified that following a Hearing on February 5, 1981, it is the order of the Hawaii Paroling Authority that minimum term(s) of imprisonment is fixed as follows:

Offense & Criminal Number	Minimum Term
Robbery, First Degree, Cr. No. XXXXX	10 years

DATED: Honolulu, Hawaii, State of Hawaii, March 2, 1981

HAWAII PAROLING AUTHORITY

PETER PAROLE
Chairman

I do hereby certify that the foregoing is a full, true and correct copy of the original on file.

BRAD BOARD
Executive Secretary

I certify that a true and correct copy of this document was served to the prisoner on _____, 19____, by ☐ Mail ☐ Personal service.

_____
Signature and Title

_____
Agency

DSSH 5002 (9/78)

D.

DEFINITIONS

ACCUSED: person charged with a crime; also known as the defendant.

ACQUITTAL: a release or discharge from a criminal charge by a court of final jurisdiction, usually upon a finding of "not guilty" by a jury or judge.

ADJUDICATION: a process by which a court determines whether a defendant is guilty of a crime.

ADMISSIBLE EVIDENCE: evidence that is pertinent and proper for consideration in reaching a decision.

AFFIANT: a person making an affidavit.

AFFIDAVIT: a written statement sworn to before a notary or officer of the court.

ALLEGATION: a statement made by a party who claims it can be proved as a fact.

APPEAL: the legal procedure by which a lower court decision is brought to a higher court for review.

APPELLANT: the party who appeals a decision of the trial court.

APPELLATE COURT: a tribunal empowered to hear arguments pro and con, concerning the decisions on questions of law made by a lower court. The appellate court has the power to affirm, reverse, or remand the original decision for retrial.

APPELLEE: the party against whom the appeal is taken, i.e., the party that prevailed in the lower court.

ARRAIGNMENT: a formal proceeding in which the defendant in a criminal case is called before the court and informed of the offense he or she is charged with. The defendant is then asked to plead "guilty" or "not guilty."

ARREST: the legal apprehension and restraint of a person for the purpose of charging the person with a crime. A person can also be arrested for investigation in some circumstances.

ARREST WARRANT: a legal document issued by the court authorizing the police to arrest someone.

ATTORNEY: a graduate of a law school, admitted to practice before the courts of a jurisdiction. The attorney's job is to advise, represent, and act for the client.

BAIL: an amount of money set by the court which must be posted or pledged prior to the release of a person accused of a crime. Bail is intended to assure the defendant's presence in court. Bail can be of two types, cash or surety. A surety bond indicates that a 10% premium was paid to a bondsman who guarantees the amount of the bond to the court. This 10% is not refundable to the defendant. A cash bail indicates the full amount of the bond was posted by the defendant in cash with the clerk of the circuit court. This money is totally refundable after disposition of the case, regardless of the outcome.

BAIL REDUCTION: an act by a judge to reduce the bail required to be posted to secure release from jail.

BAILIFF: a person appointed by the court to keep order in the courtroom and to have custody of the jury.

BEING DULY SWORN: having taken an oath; bound by an oath.

BENCH WARRANT: order issued by a judge for the arrest of a person--the accused, a witness, or other participant in a judicial proceeding--who failed to appear in court as required. It may also be for the arrest of the accused as a result of a charge or indictment filed.

BEYOND A REASONABLE DOUBT: the degree of certainty required of a juror to determine the guilt of a criminal defendant.

BILL OF PARTICULARS: a document intended to inform the defense of the specific occurrrences intended to be investigated in the trial and to limit the course of the evidence to the particular scope of the inquiry.

BOND: Bail Bond. See BAIL above.

BONDSMAN: the individual who arranges for the defendant in a criminal case to be released from jail by posting a bail bond.

BOUND OVER: an expression used to indicate the changing of jurisdiction, such as when a felony case is transferred to the circuit court by a district court judge.

BRIEF: a statement of the facts and legal arguments governing a case, written from the perspective of the litigant presenting this document.

BURDEN OF PROOF: the requirement of affirmatively proving a fact or facts in dispute in a case. For instance, the prosecutor is responsible for producing the evidence and proving "beyond a reasonable doubt" the guilt of the defendant.

CALENDAR: a daily register of cases to appear before the court, generally indicating the name of the defendant, the charge, whether or not the individual is incarcerated, and the names of the prosecuting and defense attorneys. It is prepared by the clerk of the court, and is sometimes called a docket.

CAPITAL CRIME: a crime in which the possible sentence is death. It has also been interpreted to mean a life imprisonment case where capital punishment is prohibited.

CHAIN OF CUSTODY: a foundational requirement satisfied by tracing the whereabouts of an object, offered as evidence, to establish the improbability that the item had either been exchanged with another or had been contaminated or tampered with. Such objects include items stolen in a theft, the pistol used in a murder, narcotics sold in a drug case, and so forth.

CHANGE OF VENUE: the removal of a case begun in one place to another location for trial. It is used when the defendant cannot obtain a fair trial in the county where the crime was committed.

CHARACTER EVIDENCE (of Defendant): evidence of the accused's character or a trait of character is not admissible to show that he acted in conformity with such character or a trait of character. It is, however, admissible where it will help to prove facts that are of consequence to the action such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, modus operandi, or absence of mistake or accident.

CHARGE: the accusation outlining the nature of the crime(s) the suspect allegedly committed. Generally, the charge is contained in an indictment or complaint or stated orally.

CHARGE TO THE JURY: instructions given by the judge to the jury on the principles of law the jury should apply to the facts of the case to return a verdict. Also known as instructions.

CIRCUMSTANTIAL EVIDENCE: evidence of an indirect nature.

COMMON LAW: the system of jurisprudence that originated in England and was later developed in the United States, which is based on judicial precedent rather than legislative enactments. Originally based on the unwritten laws of England, the common law is "generally derived from principles rather than rules; it does not consist of absolute, fixed, and inflexible rules, but rather of broad and comprehensive principles based on justice, reason, and common sense." Also called "case law."

COMPLAINANT: the victim of a crime who brings the facts to the attention of the authorities.

CONCURRENT SENTENCES: where the defendant, after being convicted for more than one crime, is permitted to serve all of the sentences at the same time even though more than one sentence has been imposed.

CONFESSION: an oral or written admission of guilt made by the accused; not admissible against the defendant at trial unless the state demonstrates that it was voluntarily made and, if applicable, was made after the defendant was given the Miranda warnings. Other incriminating statements must also be shown to be voluntary and in accordance with the requirements of Miranda.

CONSECUTIVE SENTENCE: when the defendant is required, after being convicted and sentenced for more than one crime, to serve the second sentence after completion of the first.

CONSOLIDATION: the act of joining together two or more charges or defendants for a single trial.

CONTEMPT OF COURT: any act calculated to embarrass, hinder, or obstruct a court in the administration of justice or calculated to lessen its authority or dignity.

CONVICTION: a judgment of court, based on the verdict of the trier-of-fact (usually a jury), or upon a plea of guilty, that the defendant is guilty of a criminal offense.

CORAM NOBIS: a common law writ usually issued by a court pursuant to a request by a defendant claiming that the judgment against him was based upon an error of fact not appearing in the record. Through the writ, the court which entered the judgment is allowed to reconsider and correct its judgment. To illustrate, the writ may be used by a defendant who is convicted, who exhausts all his appeals, and who serves a sentence. Later, upon discovery of new evidence, he is able to establish that the judgment of conviction should be

corrected, and through the writ, the court is able to make such a correction.

CORPUS DELICTI: the body of a crime. The substantial fact that a crime has been committed. A person who confesses to a crime cannot be convicted without proof that the crime actually occurred.

CORRECTIONAL INSTITUTION: a term given to a prison, jail, or other facility based upon the premise that those incarcerated can be "corrected" or rehabilitated.

CORROBORATING EVIDENCE: evidence supplementary to that already given and tending to strengthen or confirm it.

COURT: a chamber or other room where trials and other judicial hearings take place. A court is presided over by a judge, who is sometimes referred to as "the court."

COURT CLERK: an individual who keeps a running record of the court's activities each day and records future dates for the judge's calendar. This person is in charge of all case files for each day.

COURT OF APPEALS: see APPELLATE COURT.

COURT OF RECORD: a court whose proceedings are permanently recorded; this court generally has the power to fine or imprison for contempt.

COURT REPORTER: a court official in charge of making a permanent record of all activities occurring in the court.

CRIME: any act that the legislature has determined to be punishable by imprisonment and, hence, prosecutable in a criminal proceeding.

CROSS-EXAMINATION: the questioning by a party or his attorney of the opponent's witness; follows the direct examination. (See SCOPE OF CROSS-EXAMINATION.).

DEFENDANT: the person charged in a criminal action; also the accused.

DEFERRED ACCEPTANCE OF GUILTY PLEA (DAGP): a procedure where a defendant's plea of guilty to a charge is not accepted by the judge. An investigation, similar to a pre-sentence investigation, is usually first completed. The judge can then accept the plea or place the defendant on DAGP status, which is like probation. If the defendant complies with the terms and conditions of the DAGP status, all charges will be dismissed. This type of plea is usually reserved

for young, first offenders, and must be made prior to commencement of a trial.

DETERMINATE SENTENCING: imposition of a sentence where the exact term of defendant's incarceration is fixed by the court or as required by law.

DIRECT EVIDENCE: proof of facts by witnesses who saw the acts done or heard the words spoken, as distinguished from circumstantial evidence, which is called indirect evidence.

DISCOVERY: modern pre-trial procedures by which one party gains information concerning the evidence held by the adverse party.

DISMISSED WITH PREJUDICE: an action taken by the court in certain circumstances in which the charges against the accused are dismissed and the state is prevented from refiling charges.

DISMISSED WITHOUT PREJUDICE: an action by the court dismissing one or more charges against the defendant, but allowing the state to refile the charges later.

DISPOSITION: the outcome of a case.

DOCKET: see CALENDAR.

DOUBLE JEOPARDY: a common law and constitutional protection preventing the government from prosecuting a person twice for the same charges.

DUE PROCESS OF LAW: law in its regular course of administration through the courts of justice. The guarantee of due process requires that every person has the protection of a fair trial. Many judicial decisions help define the procedural and substantive protections embodied in the notion of "due process of law."

EVIDENCE: the information offered to the court or jury to prove something.

EXCLUSION OF WITNESS RULE: an order of the court requiring all witnesses who may testify for either party to be excluded from the courtroom until they are called to testify. These witnesses are admonished by the judge not to discuss the case of their testimony with other witnesses or persons, except attorneys.

EXHIBITS: documents or other tangible evidence.

EX PARTE: refers to a judicial proceeding that is held or a judicial order granted at the instance and for the benefit of one party only, without notice to, or a contestation by, any person adversely interested.

EXPERT EVIDENCE: testimony given in relation to some scientific, technical, or professional matter by experts, i.e., persons qualified to speak authoritatively by reason of their special training, skill, or familiarity with the subject. Experts can testify only on matters that are beyond the comprehension or experience of ordinary citizens.

EXTRADITION: the process of returning a fugitive from one state or country to another, usually so that the fugitive can be put on trial.

FELONY: any criminal offense that carries a sentence of more than one year in jail.

GRAND JURY: a body of citizens that hears evidence against a person suspected of a crime and decides if probable cause exists to charge the suspect formally.

GUILTY: a plea accepting guilt or a verdict indicating that the prosecution has met its burden of proof.

HABEAS CORPUS: a writ requiring that a person be brought before a court to determine whether that individual is being held legally; usually used to challenge a ruling made by the trial court on a question of law.

HEARSAY: evidence not based upon a witness's personal knowledge but rather on information the witness obtained from someone else.

HUNG JURY: a jury unable to agree unanimously on whether to convict or acquit a defendant.

IMMATERIAL EVIDENCE: evidence that has no bearing upon the issues.

IMMUNITY: a protection from a duty or penalty, e.g., immunity from prosecution granted a witness to encourage answers to questions the witness might otherwise refuse to answer on Fifth Amendment grounds.

IMPANELLING: the process by which potential jurors are selected and sworn as jurors.

IMPEACHMENT OF WITNESS: an attack on the credibility of a witness.

INADMISSIBLE EVIDENCE: evidence that cannot be admitted or received at a hearing or trial because it is immaterial, irrelevant, incompetent, or for some other reason.

INCARCERATED: jailed; imprisoned.

INCOMPETENT: refers to persons whose testimony is not admissible because of either mental incapacity, immaturity, lack of proper qualifications, and so forth. This term is sometimes used to describe a defendant, who, because of a physical or mental disease, disorder, or defect, lacks the capacity to assist his lawyer in preparing a defense or to understand the nature of proceedings against him.

INDETERMINATE SENTENCING: imposition of the maximum sentence allowed by law with the exact term determined by the Hawaii Paroling Authority based upon the individual case.

INDICTMENT: a document prepared by a grand jury formally charging a person with a crime. Also called a true bill.

INDIGENT: a person unable to afford an attorney.

INFORMATION: a sworn affidavit charging a person with a crime based on facts supplied to the state attorney. It is signed by the prosecutor and has the effect of an indictment. In Hawaii, it is called a complaint.

INJUNCTION: a court order that prohibits a person from doing or from not doing certain acts.

INSANITY: a term loosely used to refer to the degree of mental disorder, defect, or disease that relieves a person of criminal responsibility of his or her actions.

INSTRUCTION: direction given by the judge to the jury prior to their deliberation, informing them of the law applicable to the facts of the case before them.

IRRELEVANT EVIDENCE: evidence that does not tend to prove or disprove any of the facts in issue in a hearing or trial.

JAIL: a facility where those convicted of a crime, usually a misdemeanor, or those awaiting trial, are incarcerated.

JUDGE: a public official appointed to hear and decide cases in a court of law.

JUDGMENT: the official and authentic decision of a court.

JUDGMENT OF ACQUITTAL: a decision by the court that the prosecution has failed to introduce sufficient evidence that, if believed, would entitle a trier-of-fact to find beyond a reasonable doubt that the

defendant committed the crime charged. This decision, usually requested by the defendant, can be made either at the end of the state case, or the end of the presentation of all the evidence.

JUDICIAL NOTICE (OF ADJUDICATIVE FACTS): the act by which the court, at a hearing or trial, finds as proved, without requiring the production of evidence, facts that are not subject to reasonable dispute in that they are either (1) generally known within the territorial jurisdiction of the trial court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Examples include geographic facts, scientific data, historical events, and so forth.

JURISDICTION: the legal authority of a court over the defendant or the subject matter of the dispute.

JURY: a panel of persons (usually twelve) selected according to law and sworn to evaluate the evidence presented to them and determine the truth of the matter in dispute.

JUVENILE: one who has not yet reached legal age as prescribed by law; in Hawaii, under the age of eighteen.

LAY THE FOUNDATION: a party seeking to have evidence admitted must often first "lay a foundation" to the court's satisfaction by establishing certain preliminary facts relating to the evidence. Such preliminary facts might include the actual and personal knowledge, competency, or expertise that allows a person to testify as a witness, the voluntariness of a confession, or the authenticity of a document or exhibit. To illustrate, before a person may testify about observing what happened during an alleged crime, a foundation must be laid that the person was actually an eyewitness and thus had personal knowledge about the crime. In the same way, before a person may testify as an expert, the foundation must be laid and the court must be satisfied that the person is qualified by knowledge, skill, training, education, or experience, as an expert in the area about which he seeks to testify. Unless the preliminary facts are established, that is, the foundation is laid, that the person was an eyewitness in the former case, or is an expert, in the latter, the person's testimony will not be admitted into evidence.

LEADING QUESTION: a question that instructs or suggests to a witness how and what to answer by putting words into the witness's mouth to be echoed back; this type of question is prohibited on direct examination.

MANDAMUS: a writ that issues from a court of superior jurisdiction, directed to a public official, commanding the performance of a particular act.

MIRANDA RULE (warnings): the requirement that a person receive warnings relating to the right against self-incrimination (right to remain silent) and the right to the presence and advice of an attorney before any custodial interrogation by law enforcement officials takes place. Custodial interrogation involves questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of freedom of action in any significant way. Statements and evidence obtained in violation of this rule are not admissible in the defendant's criminal trial and are grounds for a federal constitutional challenge to any conviction obtained thereby. The Supreme Court rule was enunciated in Miranda v. Arizona.

MISDEMEANOR: an offense that authorizes a maximum sentence of up to one year in jail.

MISTRIAL: a trial that has been terminated and declared void prior to the jury's returning a verdict (or the judge's declaring a verdict in a non-jury trial) because of some extraordinary circumstance (such as death or illness of a necessary juror or failure of the jury to agree on a verdict), or because of some fundamental error prejudicial to the defendant that cannot be cured by appropriate instructions to the jury. A mistrial usually creates the necessity of a new trial before a different jury unless the circumstance or error was so prejudicial that the charge must be dismissed with prejudice.

MITIGATING CIRCUMSTANCES: facts that do not constitute a justification or an excuse for an offense, but which may be considered as reducing the degree of culpability.

MITIGATION: a reduction or lessening of a penalty or a punishment that may be imposed by the court.

MITTIMUS: an order issued by the court and directed to the sheriff or other police officer commanding him to convey the defendant to jail or prison until trial, or if convicted, to serve his sentence.

MOTION: an application to the court requesting something. Motions may be made orally, or, more formally, in writing.

NOLLE PROSEQUI: a formal entry upon the record by the prosecution, with the court's consent, by which it declares that it "will not further prosecute" the case either as to one of the counts or all of the counts.

NOLO CONTENDERE: a plea in a criminal offense, indicating that the defendant neither admits nor denies the charges, but does not contest the facts of the case. The judge treats the defendant as guilty for all other purposes. The real effect is that it is not an admission for the purpose of determining civil liability.

NOT GUILTY: a plea by accused denying guilt or a verdict indicating that the prosecutor failed to meet its burden of proof.

OBJECTION: an expression of disapproval to the form or content of a question asked by opposing counsel. The judge will rule on the validity of the objection. An objection can also be made against tangible evidence or conduct of opposing counsel.

OFFENSE: the violation of any criminal statute.

OFFER OF PROOF: when a judge makes a ruling excluding evidence, the party seeking to have the evidence admitted into evidence makes an "offer of proof" to the court. This statement apprises the court of the nature of the alleged error in its excluding the evidence and of the corrective action sought. For example, in the case of testimonial evidence, the party states on the record what the witness would say if permitted to answer the question, and what is expected to be shown by the answer. There are two reasons for such an "offer of proof." First, it permits the trial court an opportunity to consider further the claim for admissibility. Second, the appellate court, if it later reviews the case, may then be able to decide whether the exclusion of evidence affected the substantial rights of the party offering the evidence.

OPINION EVIDENCE: evidence of what the witness thinks, believes, or infers in regard to a fact in dispute, as distinguished from personal knowledge of the facts; generally not admissible except in the case of experts.

OPINION OF THE COURT: statement of a judge explaining the reasons for a decision.

OVERRULE: term used when the court denies a point raised to the court, such as in "objection overruled."

PARDON: power of the Governor to relieve a convicted person from the legal consequences of the conviction.

PAROLE: the release of an inmate from prison by the Hawaii Paroling Authority prior to expiration of a sentence of incarceration on condition of future good behavior. The parolee remains under the supervision of the Paroling Authority until the term of the parole expires. It is a rehabilitative program that is designed to reduce the expenses of incarceration provided that there is good reason to believe the parolee can make a successful reentry into society.

PEREMPTORY CHALLENGE: in the selection of a jury, each side has a right to a fixed number of peremptory challenges that can be used to

prevent the seating of unwanted potential jurors. No reason need be given for the exercise of such a challenge.

PERJURY: the offense of giving false testimony under oath.

PETTY MISDEMEANOR: in the penal code, an offense that authorizes a maximum sentence of 30 days in jail and a $500 fine. Otherwise, any offense that authorizes a maximum jail sentence of less than one year.

PLEA: the defendant's response to the prosecution's charges. A defendant may plead "guilty," "not guilty," or "nolo contendere."

PLEA BARGAINING: negotiations between the defense and the prosecution to resolve the dispute without a full trial. Examples of plea bargaining include:

a. In a multi-count case, the prosecution may abandon certain counts in exchange for the defendant's plea of guilty to the remaining counts.

b. A negotiation whereby the defendant would plead guilty to a charge in exchange for the prosecution's agreement to recommend a definite sentence to the court.

c. A negotiation between the prosecutor and defense counsel whereby the defendant would plead guilty to a lesser charge.

POLLING THE JURY: a practice whereby the jurors are asked individually whether they assented and still assent to the verdict.

PRELIMINARY HEARING: a hearing held before a district court judge to determine whether probable cause exists to believe that a crime was committed and that the defendant committed the crime.

PREPONDERANCE OF EVIDENCE: proof which would lead the trier-of-fact to find that the existence of the contested fact is more probable than its nonexistence. This standard is used in civil trials and even in criminal trials when, for example, the defendant asserts an affirmative defense. It is a lower burden of proof than that of proof beyond a reasonable doubt.

PRE-SENTENCE INVESTIGATION: a thorough background investigation (taking into account socio-economic and environmental factors) ordered by the court prior to adjudication and sentencing for the purpose of determining the appropriate disposition. It is conducted by a probation officer.

PRE-TRIAL DETAINEE: a term referring to defendants in custody awaiting trial, or on occasion, awaiting the filing of charges.

PRE-TRIAL RELEASE: a program that accepts responsibility to see that a defendant appears in court usually without posting bond. The defendant must keep in contact with the pre-trial release counselor assigned (if one is assigned).

PRIMA FACIE CASE: evidence presented by the prosecution that, if believed, is sufficient to prove beyond a reasonable doubt each element of the crime. If the prosecution has not established a prima facie case, the court will grant the defendant's motion for judgment of acquittal (MJOA).

PRISON: a facility where those convicted of felonies are incarcerated.

PROBABLE CAUSE: the existence of facts and circumstances within one's knowledge which would cause a person of reasonable caution to believe that a crime has been committed (in the context of an arrest) or that property subject to seizure is at a designated location (in the context of a search and seizure). Probable cause is required at the time of the arrest or search and may not be created by the fruits of a successful search and seizure. Probable cause is also a determination by a district court judge or grand jury that there are facts and circumstances which would cause a reasonable person to believe that a crime has been committed and that the defendant committed the crime.

PROBATION: a procedure whereby a defendant, found guilty of a crime upon the verdict or plea of guilty, is released by the court without imprisonment, subject to conditions imposed by the court and under the supervision of a probation officer. A violation of probation can lead to revocation of probation and the imposition of a prison sentence or a modification of the probation conditions. The defendant may be sentenced to jail as a condition of probation.

PROBATION MODIFICATION: formal court proceeding initiated by the defendant through his attorney or by the probation officer to add or delete certain conditions of a defendant's probation.

PRO SE: a Latin expression referring to a defendant that acts as his or her own attorney.

PROSECUTOR: a government attorney whose duty is to prosecute persons accused of crimes.

PUBLIC DEFENDER: a member of the Office of the Public Defender who is appointed by the court to represent indigent defendants.

QUASH: vacate or void the indictment or subpoena because the document or procedure used to obtain it was defective. Now an obsolete term in Hawaii.

QUESTION OF FACT: disputed factual contention traditionally left for the jury to decide. In a battery case, a question of fact would be whether A touched B. The legal significance of the touching of B by A is a question of law that is generally left for the judge to decide.

QUESTION OF LAW: disputed legal issues generally left for the judge to decide.

REBUTTAL: evidence that explains away, refutes, or contradicts the evidence of the other side. Generally refers to evidence presented by the prosecutor after the defense has completed its case.

RECIDIVISM: habitual criminal activity; a recidivist is a repeater of any type of crime.

REDIRECT EXAMINATION: follows cross-examination and is exercised by the party who first examined the witness.

REHABILITATION OF WITNESS: the act of attempting to re-establish the credibility of a witness whose testimony has been impeached or whose character has been attacked or discredited during cross-examination.

RELEASE ON RECOGNIZANCE: a program in which a defendant is released upon the defendant's promise to appear and answer a criminal charge, without the posting of bail. Sometimes special conditions are imposed (e.g., remaining in the custody of another). In determining whether to permit a defendant to be released on recognizance, the court must take into account the nature and circumstances of the offense charged; the weight of the evidence against the accused; the accused's family ties, employment, financial resources, character, and mental condition; the length of residence in the community; the defendant's record of conviction; and the defendant's record of appearance at court proceedings.

REST: a party is said to "rest" or "rest the case" when the party has presented all the evidence the party intends to offer.

RESTITUTION: to make restitution means to pay back, to make whole again. Restitution is sometimes a special condition of probation requiring the defendant to reimburse the victim of the crime for any financial losses incurred as a result of the crime.

REVOCATION HEARING: a formal courtroom proceeding initiated by a probation officer to determine whether the terms of probation have been violated. Juries are not impanelled for these hearings. The accused probationer does, however, have the right to an attorney.

RIGHT OF CONFRONTATION: the Sixth Amendment to the federal constitution provides that "in all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." Article I, Section 14, of the Hawaii Constitution is in accord. The right to confront adverse witnesses includes the accused's right to be present at every stage of the trial as well as the right to cross-examine adverse witnesses.

SCOPE OF CROSS-EXAMINATION: limiting the scope of cross-examination to the subject matters raised on direct examination, and those dealing with credibility of the witness, is the traditional rule in evidence. The court, moreover, has traditionally had discretion to permit cross-examination into matters should the interests of justice so require. To illustrate, a prosecution witness testifies that she saw the defendant at the scene of the crime shortly after it occurred. During cross-examination, the defense attempts to ask questions that would show that (1) bad feelings existed between the witness and the defendant, and that (2) the witness has had a child out of wedlock. The judge rules that question (1) is valid because it concerns the credibility of the witness--that is, her testimony might be colored by a personal grudge against the defendant; and that question (2) is objectionable because it goes beyond the scope of subject matters raised on direct examination and is otherwise not admissible.

SEARCH AND SEIZURE: the police practice of searching for and then seizing evidence useful in the investigation and prosecution of a crime. Searches and seizures are constitutionally limited by the Fourth and Fourteenth Amendments to the United States Constitution and by provisions in the state constitution, statutes, and rules of court. A search and seizure must be reasonable. The police usually must have probable cause to believe that the item searched for was involved in criminal activity and will be located at the place to be searched. Except in certain carefully defined "exigent circumstances," police must present this evidence to a judge to obtain a search warrant prior to the search and seizure.

SEARCH WARRANT: an order issued by a judge permitting police officers to search specified premises for specified things or persons and to bring them before the court.

SELF-DEFENSE: the protection of one's person or property against some injury attempted by another; the law of self-defense justifies an act in the reasonable belief of immediate danger. A person may not be punished criminally to the extent that he or she acted justifiably in self-defense.

SENTENCE: penalty imposed on a defendant after conviction for a crime.

SEQUESTERED JURY: jurors who are kept together throughout the trial and deliberations (or just during deliberation) and guarded from improper contact until they are discharged. Juries have been frequently sequestered in sensational and major trials.

SEVERANCE: this term usually refers to the separation of the trials of two or more defendants, named in the same indictment or information, or to separation of charges for the same defendant, normally tried together. It is a useful device especially where some prejudice might arise to one or more of the defendants if they or the charges were tried during the same trial.

SPEEDY TRIAL: a right of the accused, secured under the Sixth Amendment to the federal constitution and Article I, Section 14, of the Hawaii Constitution, that his or her trial will be conducted according to fixed rules, regulations, and proceedings of law, free from unreasonable delay.

STATE'S EVIDENCE: testimony given by an accomplice or participant in a crime tending to convict others; as in, to "turn state's evidence."

STATUTE: any law passed by a legislative body.

STATUTE OF LIMITATIONS: any law that fixes the time within which the state must prosecute a defendant or else be thereafter barred from prosecuting the person for that particular crime.

STIPULATION: an agreement by attorneys on opposite sides of a case as to any matter pertaining to the proceedings in a trial. It is not binding unless assented to by both parties and approved by the judge.

SUBPOENA: a court order requiring a witness to appear and give testimony before the judge.

SUMMONS: a written order issued by a judge ordering a person to appear at a certain time and place to answer charges or questions.

SUSTAIN: to support, e.g., the judge "sustained" the objection because he found the question to be invalid.

TESTIMONY: evidence presented by a witness under oath.

TRANSCRIPT: the official and verbatim recordation of proceedings in a trial or hearing.

TRIAL: the formal judicial proceeding through which criminal and civil disputes are adjudicated.

VENIREMEN: members of a panel of jurors.

VENUE: synonymous with "place of trial."

VERDICT: the formal and unanimous decision of a jury, reported to the court and accepted by it.

VIOLATION: an offense that carries no jail time but may be penalized by a fine not exceeding $500. A violation is not considered a crime.

VOIR DIRE: a French phrase, usually translated as to speak the truth. A voir dire examination refers to the examination by the judge or by the attorneys of prospective jurors to determine their qualification for jury service, to determine if cause exists to challenge (or excuse) particular jurors, and to provide information about the jurors so that the parties can exercise their peremptory challenges.

WAIVER: an intentional and voluntary abandonment of some known right. In general, a waiver may either result from an express agreement or be inferred from circumstances, but courts must indulge every reasonable presumption against the loss through waiver of constitutional rights. Examples: Waive jury; Waive speedy trial; Waive preliminary hearing.

WARRANT: a written document issued by the judge authorizing a police officer to make an arrest, make a search, or carry out a judgment.

WORK FURLOUGH: a program allowing inmates of jail or prison to leave their place of incarceration during the day and seek employment.

WRIT OF PROHIBITION: an order by a court to prevent an action by a lower court or governmental official.