

**Garden State CLE presents:**

# **Defending a Criminal Case in Federal District Court**



## **Lesson Plan**

**Presenter: Jerome Balloratto, Esquire**

# Introduction

## Relationship among federal criminal law enforcement agencies:

### Autonomy, Supervision, Control



**Department of Justice – Washington**



**United States Attorney for New Jersey**

**FBI**

**DEA**

**Marshal**

**DHS**

**IRS**

**Secret Service**

# 1. Initial Client Interview

**Find the right defense lawyer**

**Privileges and confidentiality**

**Legal fees and expenses**

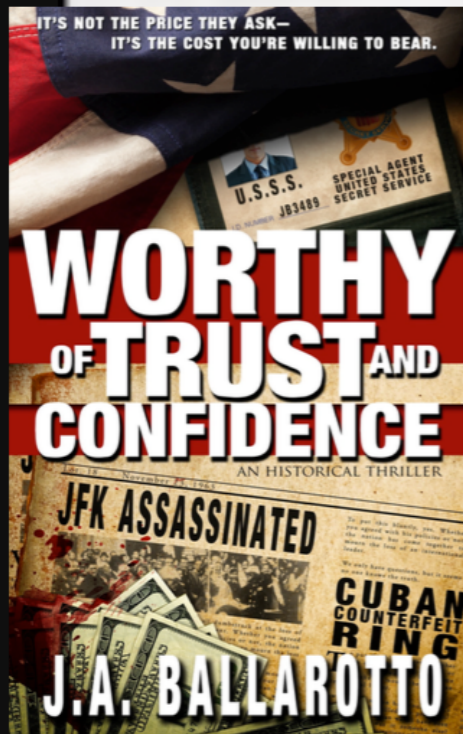
**Initial call to AUSA and/or FBI**



## 2. Tutorial for people under investigation



# THE FBI IS AT YOUR DOOR!



J.A. BALLAROTTO  
BALLAROTTOLAW.COM

# WE'RE HERE TO HELP



# **IF THEY ARE AT YOUR DOOR**

- **ONE OF THREE REASONS;**
- **TO ARREST YOU WITH OR WITHOUT AN ARREST WARRANT**
- **TO EXECUTE A SEARCH WARRANT**
- **INVESTIGATE YOU OR SOMEONE ELSE**



# **THE PREVARICATIONS**



- **“WE’RE JUST CONDUCTING AN INVESTIGATION.”**
- **“YOU’RE NOT A TARGET (YET).”**
- **“YOU’RE JUST A WITNESS.”**

**YOU THINK ITS OK TO TALK TO THEM**



**BIG MISTAKE**

# WHY YOU THINK IT'S OK!

**“I’M AN INNOCENT MAN”**



**“I’M NOT STUPID ENOUGH TO SAY  
SOMETHING INCRIMINATING.”**

**“I’M NOT GOING TO SIGN ANYTHING”**



- **ALWAYS AT LEAST TWO AGENTS**
- **THEY ALWAYS HAVE A PAPER AND PENCIL.**
- **THEY NEVER USE A RECORDER, YOU SEE.**
- **THEY DON'T SHOW YOU THEIR NOTES**

**IT'S NOT WHAT YOU SAY THAT YOU  
NEED TO WORRY ABOUT**

**IT'S WHAT THEY SAY YOU SAID**



**J. EDGAR HOOVER SAID:**

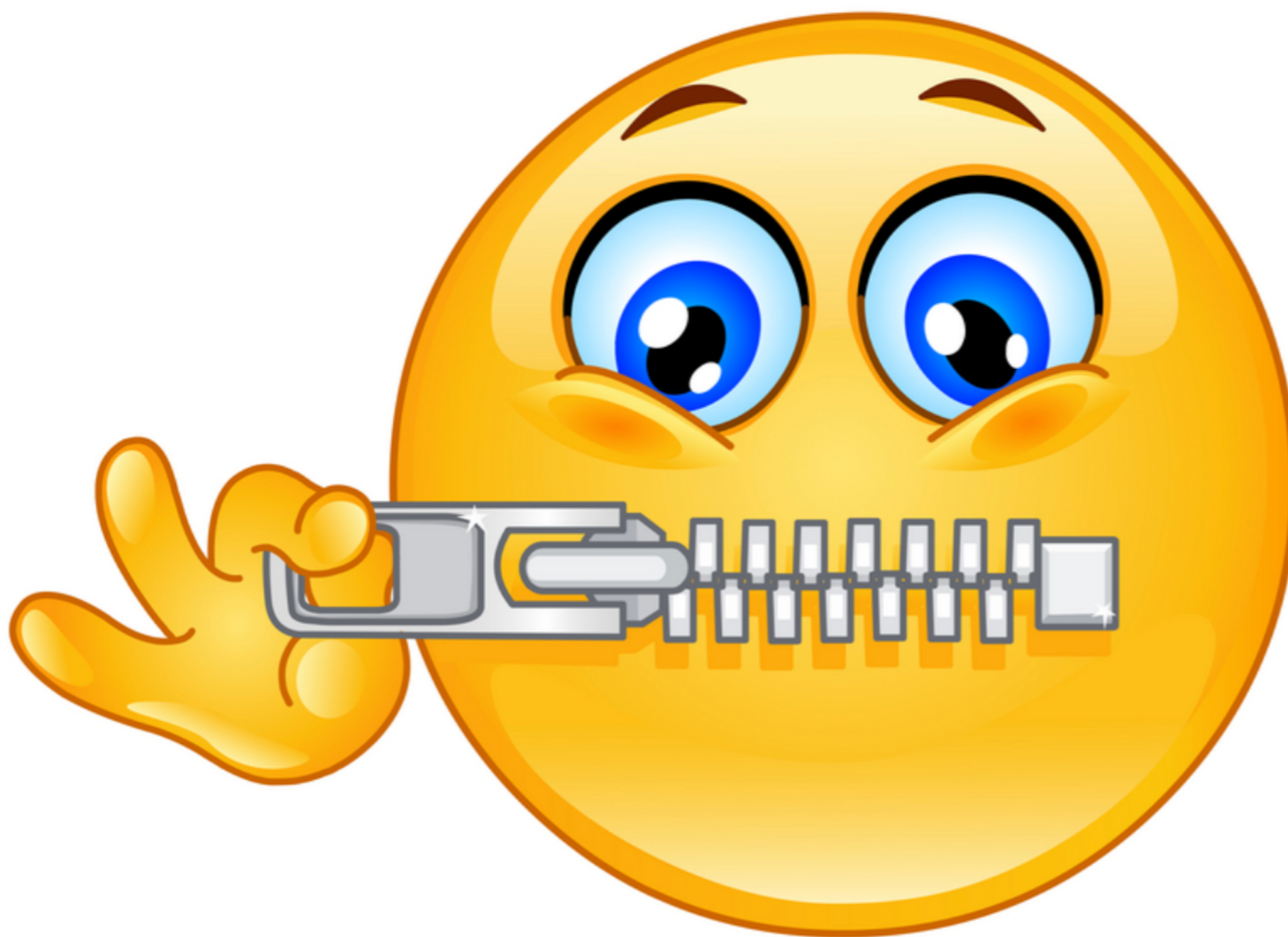
**FBI AGENTS DON'T NEED TO  
RECORD STATEMENTS**

**IF AN FBI AGENT SWEARS TO  
IT**

**THAT'S ENOUGH!**



# THE BEST ADVICE



# WHY YOU DON'T TALK TO THEM



# **F. RULES OF EVIDENCE**

## **RULE 803(5)**

**PAST RECOLLECTION RECORDED**

**AGENTS REPORT CAN BE READ TO JURY**

**EVEN IF HE CAN'T REMEMBER.**

**IF HE WROTE IT--MUST BE TRUE**

# F. RULES OF EVIDENCE

## **RULE 801-HEARSAY**

**YOUR STATEMENTS ARE NOT HEARSAY**

**AGENCY ADMISSION-EVEN YOUR LAWYER**

**COCONSPIRATOR STATEMENT**

**ADOPTED ADMISSION**

**CAN ONLY BE USED AGAINST YOU**

**CANNOT FURTHER YOUR DEFENSE**

# YOU CAN RELY ON THE CONSTITUTION



**MAYBE**

# DON'T LIE TO THEM



**IT'S A SEPARATE AND SERIOUS CRIME**

# **ASSERTING YOUR RIGHTS**

**5<sup>TH</sup> AND 6<sup>TH</sup> AMENDMENT—ANYTIME  
BEST AT START OF INTERROGATION**

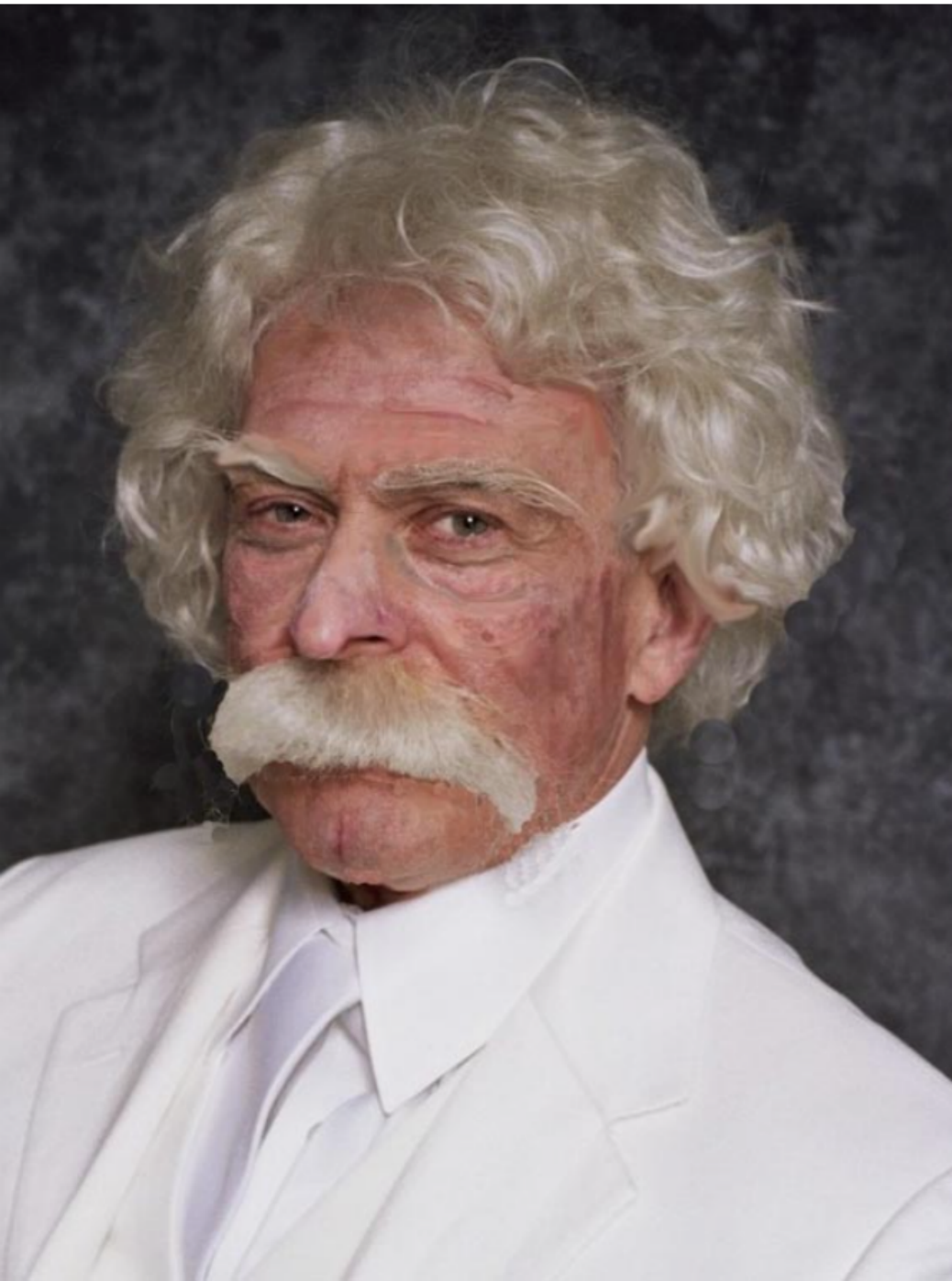
**MUST BE ARTFULLY ASSERTED**

- **YOUR SILENCE CAN BE USED AGAINST YOU**

**BEST RESPONSE**

- **“I HAVE NOTHING TO SAY-I WANT MY LAWYER”**

**MARK TWAIN SAID:**



**IT'S BETTER TO APPEAR  
STUPID**



**THAN  
TO OPEN YOUR MOUTH  
AND  
PROVE IT**

The image features five black silhouettes of men in suits standing in a row against a white background. The central figure is more clearly defined, showing a white shirt and a dark tie. The other four figures are solid black shapes. Two lines of bold red text are superimposed over the silhouettes.

**THE AGENTS WILL LINGER**

**THE PLAIN VIEW EXCEPTION**

**FOREWARNED IS  
FOREARMED**

**THEY'RE OUT THERE**

**AND**

**GEORGEIOUS**

**BUT**

**RUTHLESSLY DRIVEN**

**AND**

**WILL USE THEIR CHARMS**



# LIMITED OPTIONS



**DON'T RESIST**

# ARMED WITH A SEARCH WARRANT

- LET THEM SEARCH- THEY DON'T NEED THE WARRANT
- YOU HAVE NO RIGHT TO SEE IT
- IF YOU INTERFERE YOU WILL BE ARRESTED
- TAKE YOUR CELL PHONE, BRIEF CASE, LAPTOP AND LEAVE.



# DON'T PROVIDE ANY INFORMATION



- **SAFE COMBINATIONS**
- **COMPUTER OR PHONE PASSWORDS**
- **LOCATION OF FILES**

JUST CALL YOUR  
LAWYER



# IF THEY COME TO ARREST YOU

- **YOU HAVE NO RIGHT TO RESIST-EVEN AN ILLEGAL ARREST.**
- **WITH OR WITHOUT A WARRANT**
- **LET THEM CUFF YOU**
- **ANSWER NO QUESTIONS-ASK FOR YOUR LAWYER**
- **TELL SOMEONE TO CALL YOUR LAWYER**



# RESPONDING TO A GRAND JURY



- ***DUCES TECUM***-PRODUCTION OF RECORDS  
(NO 5<sup>TH</sup> AMENDMENT PRIVILEGE)
- ***AD TESTIFICANDUM***-TESTIMONY UNDER  
OATH (CAN ASSERT THE 5<sup>TH</sup> AMENDMENT)

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**REQUIRES A CAREFUL RESPONSE**

- **JUST TAKE IT**
- **FORCE OF LAW**
- **CALL YOUR LAWYER**
- **ISSUED BY THE U.S. ATTORNEY**
- **POWER TO INDICT**
- **CAN HOLD YOU IN CONTEMPT**



# PROMISES BY THE AGENTS



**WORTHLESS**

# TOTALLY UNENFORCEABLE

- “WE DON’T WANT YOU-TELL US WHAT YOU DID AND WE WILL LET YOU GO”
- “THIS INTERVIEW IS OFF THE RECORD”
- “IF YOU COOPERATE WITH US YOU WILL GET PROBATION”

**THEY ARE TRAINED TO LIE TO YOU**

# HERE'S WHY



**AGENTS DO NOT MAKE PROSECUTORIAL  
DECISIONS**

# UNITED STATES ATTORNEY

- **APPOINTED BY THE PRESIDENT**
- **SOLE POWER TO PROSECUTE**
- **PICK OF THE BEST LAWYERS**
- **MANY JUDGES ARE FORMER AUSA'S**

**IF THERE'S SOMETHING  
STRANGE  
IN YOUR NEIGHBORHOOD**



**WHO YOU GONNA CALL?**

# YOUR LAWYER



# YOUR MOST TRUSTED CONFIDANT

# WHAT DO YOU TELL HIM

- **GO TO HIS OFFICE-DO NOT USE THE TELEPHONE**
- **TELL HIM WHO WAS AT YOUR DOOR**
- **CRIME FRAUD EXCEPTION**
- **CRIMINAL ATTORNEY REFERRAL**



# WHAT TO DO

- **GET A REFERRAL**
- **RESEARCH THE LAWYER'S EXPERIENCE**
- **DO WHAT HE TELLS YOU**
- **RESPECT THE ATTORNEY-CLIENT PRIVILEGE**



# WHY WAIT FOR THE FBI

- **BE PROACTIVE**
- **CLEAN YOUR OWN HOUSE**
- **CONDUCT YOUR OWN INVESTIGATION**
- **TAKE AFFIRMATIVE ACTION**
- **WHAT TO DO WITH THOSE EMAILS?**



# 3. Arrest & Pre-trial Custody

**Surrender**

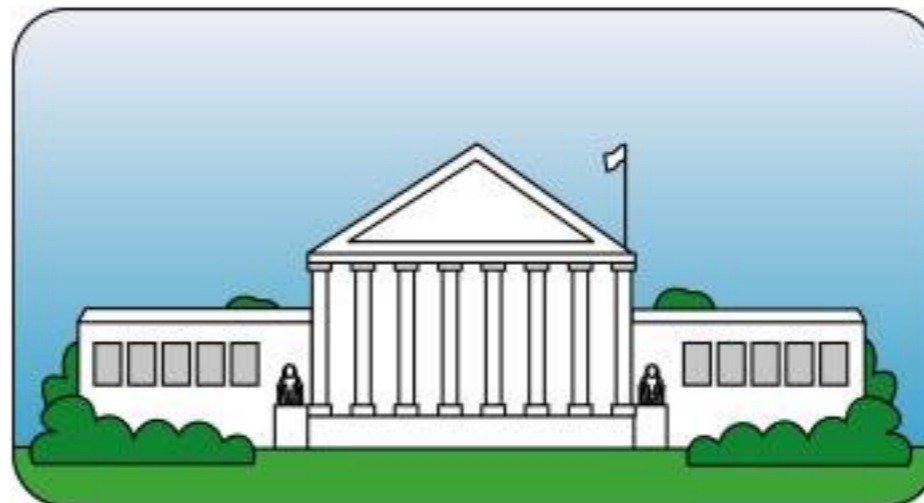
**Pre-trial services**

**Release on bail with conditions**

**Alternatives to pre-trial detention**

**Location & Access during pre-trial detention**

**The importance of pre-trial release pending trial**



## 4. Plea Bargaining Process

**Access to the governments evidence (tapes, video, confessions discovery)**

**Discussions with AUSA on plea disposition**

**Cooperation agreements**

**Adjustments:**

**Victim-related**

**Role in offense**

**Obstruction**

**Multiple Counts**

**Acceptance of Responsibility**

**Criminal History**

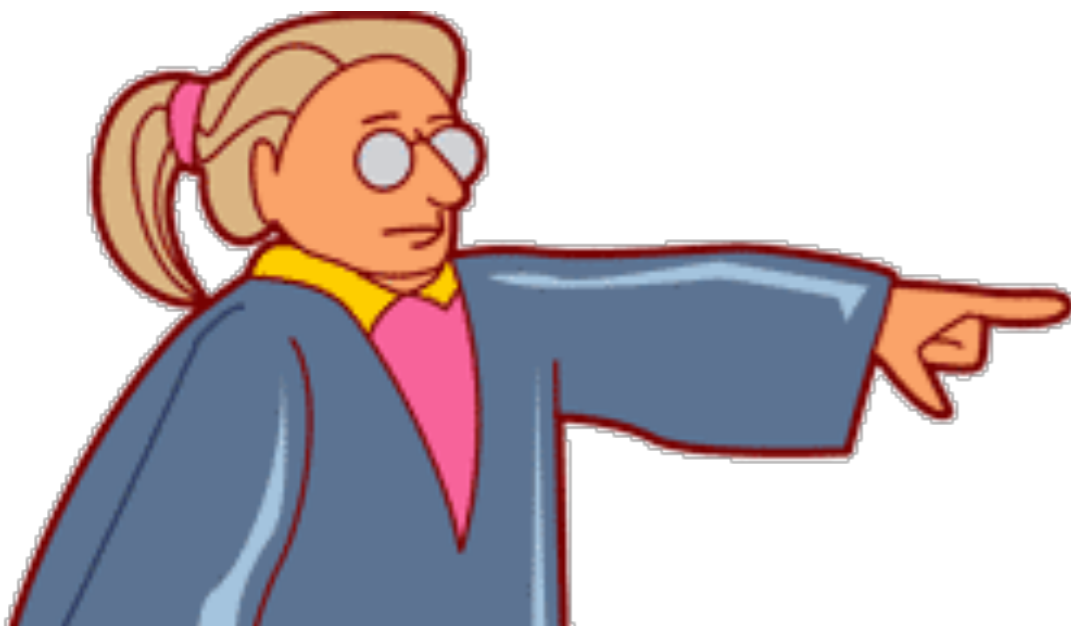


# Federal Sentencing Table - Range

**Departures:**

**Substantial Assistance to Authorities  
Other Grounds for Departure**

**Plea Agreements**



# 5. Plea and Sentencing

**Entry of Plea and Factual Basis**

**Pre-sentence Investigation**

**Federal Probation**

**Self-Surrender**

**Venue for Sentence**

**Half-way Houses**

**Good Time and other Credits**



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