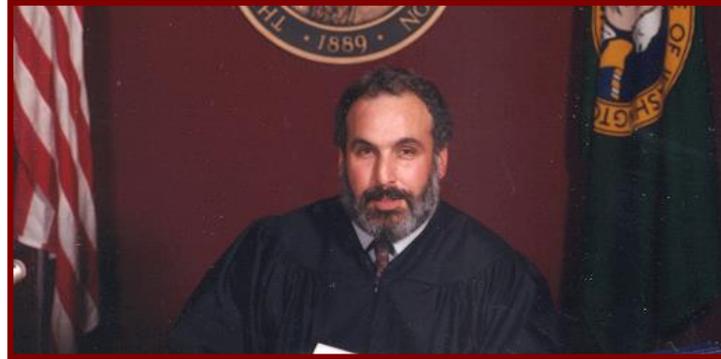


# THE DISTRICT COURT CRIMINAL PROCESS

Judge Philip J. Van de Veer



The following scenario explains how the criminal justice system works in Pend Oreille County District Court.

On New Year's Eve, Storm Haney attends a party at a friend's house in Newport. They play games, have a few drinks, and celebrate the arrival of the New Year.

Storm leaves the party shortly after midnight. Deputy Stan Fleming of the Pend Oreille County Sheriff's Department stops Storm's vehicle just outside Newport because Storm's left rear taillight is out. Deputy Fleming smells alcohol on Storm's breath, and Storm's speech is slurred. He asks Storm to do several field sobriety tests including a portable breath test which results in a .16 blood-alcohol reading. Storm is arrested for Driving Under the Influence.

Mr. Haney will now learn first-hand how the criminal justice system works. He will encounter several steps in the process.

1. Arrest
2. Arraignment
3. Pretrial Hearing
4. Trial
5. Sentencing and Probation

You remember from school that government is separated into three branches: legislative, executive and judicial. The legislative branch “makes” the law. The executive branch “enforces” the law. The judicial branch “interprets and applies” the law.

In our case, the Washington State Legislature passed a statute making it a crime to drive while impaired by alcohol. A blood-alcohol level over .08 is presumed impaired.

The Pend Oreille County Sheriff represents the Executive branch. Deputy Fleming was “enforcing” the law when he arrested Storm. The Prosecutor is the lawyer for the county who “enforces” the law when he brings the government’s case against Storm to court.

Judge Philip J. Van de Veer represents the judicial branch of government. He presides over the case of State v. Haney, making sure the law is applied correctly, and the rights of the parties are protected.

## **1. ARREST**

Not everyone arrested for a misdemeanor offense is booked into jail. Sometimes, the accused is free to go after he or she signs a criminal citation. By signing the citation, the accused promises to appear in court at a later date for arraignment.

Storm is not so lucky. Driving while intoxicated involves the potential for further danger to others. Storm is not allowed to drive away. He is handcuffed, transported, and booked into jail. His car is impounded.

## **2. ARRAIGNMENT**

Because Storm is in custody, he will make a “first appearance” in court the next day. This is so he will not sit in jail for a long time before a judge can determine if the charges are properly brought.

Generally, a defendant's first appearance is called an "arraignment." Several things will happen at Storm's arraignment.

1. Advice of Rights The judge will first advise Storm of his rights including the right to remain silent and the right to be represented by an attorney. If Storm cannot afford an attorney, the Judge will appoint a public defender. The prosecutor representing the state is an attorney, so it is important Storm also have an attorney.

2. Informed of Charges Storm will then be informed of the charges against him. Driving Under the Influence is a gross misdemeanor that carries a maximum penalty of 365 days in jail and a five thousand-dollar fine.

3. Probable Cause Determination The prosecutor presents the facts of the case from the police report. Based on this presentation, the judge will decide whether "probable cause" exists to believe the accused committed the offense charged. This is not a determination of guilt or innocence. It is an initial decision by the judge whether the facts as alleged, if true, are sufficient to constitute a crime.

If the judge does not find probable cause for the charge, the charge is dismissed. This review is a protection for everyone accused of a crime by the State. In essence, the judicial branch of government (judge) is reviewing the actions of the executive branch (sheriff and prosecutor) to monitor compliance with the Constitution and laws established by the legislature.

The Judge finds probable cause for the charges against Mr. Haney to continue.

4. Conditions of Release A defendant is presumed innocent and generally has a right to be released while awaiting trial. However, the Court does have authority to impose "terms and conditions" of release on a defendant while awaiting trial. These are

rules Mr. Haney must obey if he wishes to remain free while awaiting trial. A defendant's release can be revoked, and he can be jailed until trial if he violates the conditions of release. In Storm's case, the prosecutor asks for bail in the amount of \$1000.00.

The Court considers several factors in setting terms of release. Those factors include whether the defendant is a potential threat to the community, whether the defendant is likely to appear at subsequent hearings, and the likelihood of subsequent criminal violations while waiting for trial. The judge reviews Mr. Haney's criminal history. He has had one prior drunk driving conviction. Storm also failed to appear once for a court hearing.

The Court sets Storm's bail at \$1000.00 to insure future appearance. Also, Mr. Haney may not consume alcohol, may not drive without a valid license, will be subject to random testing to monitor compliance with the no alcohol requirement.

5. Entry of Plea Finally, Storm is asked to enter a plea to the charge of D.U.I. Mr. Haney pleads not guilty. When the defendant enters a plea of not guilty, the court sets a "pretrial hearing" in four to six weeks.

6. Discovery The time between arraignment and pretrial hearing is used by the prosecutor and by defendant's attorney to conduct "discovery." This is where the prosecutor and defense attorney review the evidence, interview witnesses and exchange information. The prosecutor provides copies of the police report to the defendant and designates other evidence and witnesses the state will present at trial.

### **3. PRETRIAL HEARING**

At the pretrial hearing the state and defendant decide whether the case will proceed to trial. The judge calls the name of the case,

State v. Haney, and asks the parties how they wish to proceed.

The parties have several options. These options include (1) dismissal, (2) “continuing” the case for dismissal, (3) entering a guilty plea, (4) deferred prosecution, or (5) jury or bench trial.

1. Dismissal Sometimes the evidence is weak or witnesses are not available. Sometimes, the defendant has a strong defense to the charge such as “self defense” to a charge of assault. In those cases, the prosecutor may decide to dismiss the case entirely.

On other occasions, the defendant will ask the Court to dismiss the case or exclude evidence which the prosecution has collected. This may happen if the law did not authorize the arresting officer’s conduct or that conduct violated the rights of the accused. If those rights are violated, then the evidence discovered after the violation cannot be used. Without the evidence, the prosecutor can’t prove the case, and the case is dismissed.

For example, courts have ruled a police officer can’t stop motorists for no reason at all. The officer has to have some reasonable basis, such as speeding, to stop a vehicle. Storm’s attorney might argue that a busted tail light was not a sufficient reason for the police officer to stop Storm’s car. Therefore, the state cannot introduce the evidence of Storm’s intoxication which the deputy noticed after stopping Storm.

This argument will not succeed in Storm’s case. This is because Courts have ruled that police have the right to stop vehicles for mechanical problems such as a busted tail light. Therefore, evidence of Storm’s alleged intoxication will be admissible because the initial stop was permissible.

2. Continue For Dismissal Sometimes, the prosecutor and defendant agree to “continue” (put on hold) a case. If the defendant is not charged with another crime for an agreed period of time, usually one year, the case is dismissed. The purpose of a

continuance for dismissal is to induce the defendant not to have any further violations. If the defendant is charged with further offenses, the case becomes active, and the defendant has admitted the evidence against him.

Because of the seriousness of the charge against Storm, the prosecutor will probably not agree for Storm's case to be "continued" for dismissal.

3. Entry of Guilty Plea Sometimes evidence against the defendant is strong, and the defendant agrees to plead guilty in exchange for a set punishment. When the facts warrant, the charge may be amended to a different or lesser charge. For example, a DUI may be amended to Reckless Endangerment. The judge is not bound to follow the plea bargain.

In Storm's case, the legislature has imposed a minimum mandatory sentence for driving while intoxicated. If Storm pleads guilty, he will be sentenced to a minimum of 45 days in jail, followed by 90 days of electric home monitoring, \$1,545 in fines, and suspension of his driver's license for 900 days. Storm will have to have an ignition interlock installed in his car. He will be on probation for up to five years. This mandatory sentence is based on Storm's prior DUI and a blood alcohol level over .015 at arrest.

4. Deferred Prosecution Sometimes if the defendant has an alcohol addiction, a DUI prosecution is "deferred" (delayed) to allow treatment rather than punishment. The theory of deferred prosecution is that treatment, rather than punishment, is more likely to reduce future offenses. If the defendant can eliminate the addiction, he or she will not drive drunk in the future.

To qualify, the defendant is evaluated at a treatment facility. If he or she qualifies, and completes a rigorous treatment, usually lasting two years, the charges are dropped at the end of five years. If the defendant fails to complete treatment or has another offense, the

case proceeds to trial with defendant essentially admitting the charge.

Storm's Petition for Deferred Prosecution was denied because Storm did not believe he had an alcohol problem when interviewed by the alcohol counselor.

5. Trial Every criminal defendant has the Constitutional right to a jury trial. The defendant can also request a bench trial where the judge decides guilt or innocence. Storm requests a jury trial. The court sets a trial date within 90 days (60 days if defendant is in jail) unless the "speedy trial" period is waived by defendant.

#### **4. JURY TRIAL**

1. Jury Selection On the morning of trial, twenty Pend Oreille County citizens, selected at random, report to court for jury duty. Six of these men and women will be chosen to serve.

Both Storm and the State have the right to a fair and impartial jury. The attorneys will question potential jurors to discover any bias or other reason why someone might not be the right person to hear Storm's case. For example, someone who knows Storm personally and who has either a favorable or unfavorable opinion about Storm may not be able to neutrally consider the evidence. Once six jurors are selected, their duties will be explained to them by the judge.

2. Opening Statement The trial begins with the attorney for each side making an opening statement. This is where each attorney previews the evidence that will be presented and provides a framework for the jury to consider the evidence. Each attorney attempts to introduce his or her case to the jury in a favorable light.

3. Plaintiff's Case The State presents its witnesses and evidence first. In Storm's case, Deputy Fleming will be the primary witness. He will testify about what he saw and did the night of the

arrest, specifically Storm's conduct that demonstrated he was impaired by the consumption of alcohol. A breathalyzer expert may also be called to testify. He would testify that the breathalyzer functioned properly when Storm took the test which showed he was over the legal blood-alcohol limit. The test result will be offered as evidence.

Defendant's attorney will cross-examine the state's witnesses to bring out information favorable to the defendant.

4. Defendant's Case After the prosecution has finished, the defense presents its own witnesses and evidence. Witnesses from the New Year's gathering might testify that Storm wasn't drinking or didn't consume enough alcohol to be impaired. The defense may also put a breathalyzer "expert" on the stand if there is an issue of reliability, improper adjustment or improper operation of the breathalyzer on the evening Storm was charged. The state's attorney will cross examine defense witnesses. The defendant may testify, or he may exercise his constitutional right not to testify.

Each side can present "rebuttal" evidence to contradict or explain testimony presented by the other side. Once both sides have finished presenting evidence, the case will be submitted to the jury.

5. Instructions to the Jury The jury decides whether Storm was impaired by alcohol and guilty of driving under the influence. The judge decides on the law which the jurors must use to reach their decision of guilt or innocence. The judge reads the law to the jurors in a series of jury instructions. The proof against Storm must be "beyond a reasonable doubt" in order to convict.

6. Closing Arguments After the jurors are read the instructions, the attorneys for each side present closing arguments. The attorney for each side reviews the evidence and tries to convince the jurors that the testimony presented either does or doesn't meet the

burden of proof to convict.

7. Deliberations After closing arguments, the jurors retire to deliberate (review the evidence, discuss, and vote) until a final decision is reached. To convict, the verdict must be unanimous.

In Storm's case, after several hours of deliberation, the jurors return to the courtroom where foreman reads the verdict: Guilty.

Storm has the right to appeal his conviction.

## **5. SENTENCE AND PROBATION**

Typically, the prosecutor recommends a length of sentence, and conditions of probation. The recommendation may be based upon the defendant's prior criminal conduct, the nature of the crime, or other factors. The defendant has the opportunity to present mitigating facts that warrant a reduced sentence.

The Court sentences Mr. Haney to 365 days in jail and "suspends" 225 days. This means Storm must serve 50 days in jail then 90 days on electronic home monitoring. Storm is also placed on supervised probation for five years. Storm may not violate any criminal laws and must seek alcohol treatment. If Storm violates probation, he could be summoned back to court for a "Show Cause" hearing, and may serve the remaining 225 days in jail.

Storm's conviction is now part of his permanent criminal record.