

not give up this hearing. It is important in the legal process.

Why is a preliminary hearing important? At this hearing, the judge decides whether the prosecution has enough evidence for a case against you. It is also a chance for your lawyer to find out how strong the district attorney's case is against you. If it is a weak case, the charges may be dropped.

First, there must be enough evidence for a grand jury to indict, or charge, you. There does not have to be enough evidence to convict you, but it has to be clear evidence. The state must make a *prima facie* case. *Prima facie* is Latin for "on the face of it." On the face of it, or just looking at it, the case must appear to be strong.

Second, the judge may lower your bail at this hearing. Third, she will set a trial date. However, at the preliminary hearing, you do not have to give any evidence.

When is there another hearing before the trial? If a lawyer believes some evidence was seized illegally, he will say that the evidence should not be used in court. There will then need to be a hearing so that the judge can decide whether the evidence can be used or not.

There also may be another hearing if the charges are lowered or raised. An arraignment may be called where the charge against you could be raised. For example, you may be accused of a burglary in which someone was shot. If the person dies, the charge will change from a burglary to murder.

The charges may also be lowered. You may change your plea. This is what happens in most criminal cases. This happens because of something called plea bargaining.

Plea Bargaining

Plea bargaining is working with the prosecutor to come to an agreement that is fair and helpful to all. You agree to plead guilty, and the district agrees to a lower charge. This means that you may not get as harsh a sentence. But it also helps the district attorney to bring you to justice quickly and efficiently. Here, the court is not involved—only the defendant and the prosecutor. Yet, the court decides the sentence.

For example, suppose that you are arrested for selling drugs. The amount of drugs you sold might be very small. But if you are found guilty, the sentence could be harsh, even though it may even be your first offense. Once you cross the line between right and wrong, you are due a punishment.

The witness in this case is the person to whom you sold the drugs. The evidence is the drugs found on you when you were searched. The district attorney might offer to drop the charge of selling drugs and just charge you with possession of drugs. This is because it is your first offense, because you are willing to plead guilty, and because you tell the court you want to get into a drug program in order to change your behavior and build a new life. Just as intent to commit a crime is important to the courts, so is intent to improve one's behavior.



CRITICAL THINKING

The Constitution says that people have a right to a jury for most crimes. Yet, because of plea bargaining, cases often do not go to trial. Do you think that a person who has not committed a crime would plead guilty and accept a plea bargain? Do you think that most guilty people would accept a plea bargain?

DID YOU KNOW? Many people are critical of plea bargaining. However, it allows the courts to save time by eliminating the long delays of trials. In this way, the criminal justice system is able to handle the huge volume of cases.

EYE OPENER According to the Statistical Abstract from 1992 of the U.S. District Court, in 1990, less than 6 percent of people arrested for homicide have been acquitted.



CRITICAL THINKING
How can talking back increase tensions and increase the possibility of an arrest taking place?



Workbook

Self-Check p.20

Reality-Check p.21



TO LEARN MORE

*The Peoples Guide to Government:
Judicial Branch, pp. 32-33, 48*

The judge does not have to accept the plea bargain. You do not have to either. People who support plea bargaining say that it is good. People plead guilty, help the system work and move along, and do not have to wait a long time for a trial. People who are against it say that too many criminals receive lighter sentences that do not really punish them. What is your opinion?

Arrest in School

What if you are arrested in school? As always, anyplace, anytime, if you think you are about to be arrested, **do not say anything until you talk with a lawyer**. If the police want to question you at school, ask them to call your parents. You can give them your name and address. It is possible that answering a few questions would not hurt you. You are the only one who knows whether you have done anything illegal. But, whether innocent or guilty, it is best to stay silent.

The police must give you the *Miranda* warning. However, the school officials are not required to. For example, if a high school principal asked a student if he had bought marijuana in school and the student said yes, this would be a confession. This confession would help convict the student. The evidence could be used in court because the school official was a private citizen. Private citizens are not required to give the *Miranda* warning.

Understanding Chapter 9

1. How do you know when you are under arrest?
2. Explain how bail works.
3. What is plea bargaining?

Chapter 9: pages 47 and 48

1. Where does a judge decide if there is enough evidence for a case? _____
2. If it is a weak case what might happen? _____
3. What does "prima facie" mean? _____
4. What does "on the face of it" mean? _____

5. What do you not have to give at a preliminary hearing? _____
6. When will a judge decide if evidence can be used or not? _____

7. When would a charge change from burglary to murder? _____

8. When may charges be lowered? _____
9. Who would you work with to get an agreement fair to all? _____
10. Plea bargaining helps the District attorney to bring you to what? _____
11. In plea bargaining who/what decides the sentence? _____
12. What are you due when you cross the line between right and wrong? _____
13. When would a district attorney/prosecutor offer to drop some charges? _____

14. What is important to courts other than intent to commit a crime? _____

15. A judge does not have to accept what? _____
16. Do you have to accept a plea bargain? _____
17. People that accept a plea bargain do not have to wait for what? _____
18. People against plea bargain say what? _____

19. What do you think? _____

20. If you are arrested at school what should you do? _____

21. Private citizens (school officials) are not required to do what? _____

Critical Thinking

(pages: 47 &48)

1. Do you think that a person who has not committed a crime should consider a plea bargain? Why?
2. Would most guilty people accept a plea bargain? Why?
3. How are plea bargains good for the criminal justice system?
4. How can talking back to a police officer increase the possibility of an arrest taking place?

5. Why is a preliminary hearing important?

6. Describe a situation when a person accused of burglary would have their charges raised.

7. What should a student do if arrested at school?