To Whom It May Concern:

My name is [redacted] and I am serving the rest of my life in prison after being convicted of murder and a federal gun charge. I have prepared this form letter for people who have been accused of serious crimes. It is my intent to share my experiences, express personal opinions, and offer suggestions on how you may better counter the accusations that have been made against your good character.

First, know that it is now you against the world. Even those deserving of your trust can be subpeonsed and forced to testify against you. Also, loyalties can change.

Prosecutors often use a shotgun method when charging a person. In this method, they allege every remotely conceivable offense possible, even though they may have a difficult or impossible time proving them at trial. This is a scare tactic and gives the prosecution a plea bargaining advantage over uninformed [redacted] persons. Overzealous prosecutors have bastardized the law to such a degree that a person may be accused of both assault and kidnapping if he bumps into another without saying excuse me. Therefore, it may be reasonable to demand a separate jury trial for each and every charge.

The prosecution may attempt to interrogate your friends and family and threaten them with criminal charges unless they "cooperate". This is usually, though not necessarily a bluff intended to panic people into making statements they would not make in absence of such coercion. Also, under the guise of criminal investigation, police often ask questions that are really none of their business and have no material connection to their investigation.

It is not the purpose of today's police force to gain a fair resolution of the matter. Instead, they weigh their success on how skillfully they can manipulate and browbeat a person into making a false confession. They will also strive to obtain statements that can be misinterpreted or taken out of context to appear incriminating.

You should know that a confession is involuntary if it is not the product of an essentially free and unrestrained choice of its maker or where the maker's will is overborne at the time of the confession. An "involuntary confession" is a term that refers to confessions that are extracted by any threats of violence, or obtained by any direct or implied promises, or exertion of improper influence. Such a confession is inadmissible at trial. Some type of coercive activity is a necessary predicate to the finding that a confession is involuntary. Compulsory self-incrimination is any form of coercion, physical or psychological, which renders a confession of crime or an admission involuntary.

As a pretrial detainee, a person loses those rights which are inconsistent with his pretrial detention status. For example, his right to privacy is limited. He should expect his visits and phone calls recorded and mail copied for "security reasons". Although it is questionable whether the prosecution can obtain these for criminal investigation without a warrant or criminal conduct appearing of its face, they do. Refer to Oregon Revised Statute (ORS) 133.721 et seq.① Even seemingly innocent remarks about your circumstances can devastate a defense. In theory, every action the jail guards take must be strictly centered around their singular goal of accommodating a person's needs while ensuring his presence in court. In practice, pretrial detainees are commonly subjected to overly harsh or oppressive conditions that have no meaningful connection to their jailer's legitimate goal.

Probable cause is an important term you should be familiar with. It may be defined as the U.S. Constitutional requirement that the prosecution present facts sufficient to convince a judge to issue a search or arrest warrant, and the requirement that no warrant should be issued unless it is more likely than not that a crime has been committed by the person to be arrested or that the objects sought will be found in the place to be searched. In limited situations where the officer cannot obtain a warrant, he may search or arrest if it is more likely than not that a crime is being or has been committed. Probable cause is dependent on the nature of the suspicion, the need for immediate action, and the intrusiveness of the search.

You will have an attorney appointed to represent you. He is not your friend. In fact, many defense attorneys are nothing more than covert extensions of the prosecution. Use him as your interpretor, your mouthpiece, and your advisor.

① U.S. v. Cohen, 796 F.2d 20 (1986)

But always view his motives in a suspicious light. Also, do not let him buffalo you into believing he is the one calling the shots. You are the one that makes final decisions.

You should expect to receive effective assistance of counsel. A prominent legal dictionary defines effective assistance of counsel as: "Concientious, meaningful representation wherein accused is advised of his rights and honest, learned and able counsel is given a reasonable opportunity to perform task assigned to him. Benchmark for judging any claim of ineffectiveness of counsel must be whether counsel's conduct so undermined proper functioning of adversarial process that trial cannot be relied on as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). As required by Sixth Amendment for criminal defendant, does not mean errorless counsel, and not counsel judged ineffective by hindsight, but counsel reasonably likely to render and rendering reasonable effective assistance; this necessarily involves inquiry into actual performance of counsel in conducting defense, based on totality of circumstances of entire record."

I do not recommend retaining counsel. Appointed counsel will do practically as much for you as retained counsel. However, you may want to hire expert witnesses beyond what the state will provide you as an indigent. An expert exists on every subject and must be allowed to testify unless the court deems the testimony to be of no benefit to your defense and confusing to the jury. A third party can volunteer to pay the expenses.

Your attorney will hire an investigator. Investig tive tasks may include locating and interviewing witnesses and alleged victims, photographing and diagramming crime and arrest scenes, conducting background and criminal history record checks, collecting relevant scientific data, obtaining recorded 9-1-1 calls and agency dispatch communications, speculative analysis, reviewing media coverage, verification of facts, and more. Your attorney may have the duty to independently verify your investigators findings.

Your attorney or his investigator may attempt to take your biography. I suggest you not tell them anything you do not also want the prosecution to know.

Request your attorney give legal opinions and properly advise you of your rights in writing so that you will have a record to reflect upon. 99% of verbal communication is eventually forgotten. Additionally, he will not be able to later deny he told you something if you have a signed letter to the contrary. Ideally, your communications to him should be verbal and his to you in writing. Examples of topics suitable for detailed written communications are trial preparations and appeal possibilities.

Attorneys often fail to explain to their clients the most basic of their rights. For example, it is common knowledge that criminal defendants have a right to a fair and impartial trial. But what does this mean? A prominent legal dictionary defines a fair and impartial trial as, "A hearing by an impartial and disinterested tribunal; a proceeding which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial consideration of evidence and facts as whole... A fair and impartial trial by a jury of one's peers contemplates counsel to look after one's defense, compulsory attendance of witnesses, if need be, and a reasonable time in light of prevailing circumstances to investigate, properly prepare, and present the defense. One wherein defendant is permitted to be represented by counsel and neither witnesses nor counsel are intimidated. One wherein no undue advantage is taken by the district attorney or anyone else. One wherein witnesses of litigants are permitted to testify under rules of court within proper bounds of judicial discretion, and under law governing testimony of witnesses with right in parties to testify, if qualified, and of counsel to be heard. It requires that the jury chosen to sit in judgment shall have no fixed opinion concerning the guilt or innocence of one on trial. There must not only be a fair and impartial jury, and learned and upright judge, but there should be an atmosphere of calm in which witnesses can deliver their testimony without fear and intimidation, in which attorneys can assert accused's rights freely and fully, and in which the truth can be received and given credence without fear of violence." You will be hard-pressed to receive a fair and impartial trial in contemporary courts.

Beware of signing authorizations for release of information. Some rocks are better left unturned. Also, your attorney may have reciprocal discovery obligations to provide even privileged medical records to the prosecution.

Beware of waiving any of your rights or "stipulating" to anything. There may be indirect or unforeseen consequences.

You may be offered a plea bargain. If so, ask yourself, "If I accept this plea bargain, can I live ___ years of my life wondering if I could have beat this case, or am I better off serving a possible sentence of ___ years knowing I fought for my freedom?"

If you are seriously considering a plea bargain, there are a few things your attorney may tell you: a) The judge is not bound by a plea bargain unless you make him so. Refer to ORS 135.432. b) Just because you plead guilty does not mean that the government will not surprise you with additional "unrelated" or federal charges at a later date. c) When you plead guilty, you forfeit many or your procedural rights including nearly all of your appeal options. Refer to ORS 138.050. d) If eligible, and for reasons that will become apparent later, it is unrealistic to count on good time credit to be reducted from your sentence. e) The judge cannot give you a longer sentence for exercising your right to trial.

Many defense attorneys are masters at manipulating a person into a guilty plea. Through years of experience, they know just the right things to say and how to say them to make you feel hopeless and afraid. They are motivated by the easy money of appearing at a brief change-of-plea and sentencing hearing rather than a costly trial.

During visits with your attorney, he may want to discuss how you are being treated in jail, politics, the weather, etc. Instead of playing into his sideshow, ask him what he has accomplished since his last visit and what he expects to accomplish before his next. If you repeat this chain of questioning at every visit, you may actually see progress.

Request your attorney provide you with copies of all documents filed with the court, discovery, investigative reports, reproductions of photographs, etc., immediately when they become available. Request 9 x 12 or larger envelopes to store those documents undamaged [redacted] from exposure to the elements. You may also request from him copies of certain case laws and statutes.

At some point you may be offered a conclusional statement advising you of your rights and asking if you understand. This may be a devious attempt to swindle your rights from you. Everyday words and phrases may have much more inclusive or modified meanings within the arena of the law. Always seek clarification.

Discovery in criminal proceedings emphasizes your right to obtain access from the government to all exculpatory evidence and information necessary to prepare your defense. Refer to ORS 135.805 et seq.; Brady v. U.S., 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)(Brady Material). You are entitled to evidence in the possession or control of the government if such evidence tends to indicate your innocence or tends to mitigate your alleged criminality if you demand it and if the failure to disclose it would result in a denial of a fair trial. Mitigating circumstances do not constitute justification or excuse for an offense, but may be considered as extenuating or reducing the degree of moral culpability. The Jencks Act or Rule entitles a criminal defendant in federal court to access to government documents for assistance in cross-examination of witnesses in order to impeach by prior inconsistent statements. Refer to Jencks v. U.S., 353 U.S. 657, 77 S.Ct. 1007, 1 L.Ed.2d 1103 (1957); 18 U.S.C. 3500; FRCiP 26.2. Prior inconsistent statements are statements made by a witness which contradict statements made on the witness stand that may be introduced to impeach his credibility after a foundation has been laid and an opportunity given him to affirm or deny whether such statements were made. Such impeachment may be made through the witness himself or through another witness who heard the statements. To impeach a witness you call in question his veracity, by means of evidence adduced for such purpose, or the adducing of proof that a witness is unworthy of belief. A witness may be impeached with respect to prior inconsistent statements, contradiction of facts, bias, or character. Federal Evidentiary Rule 608 governs impeachment by evidence of character and conduct of a witness (Many state rules are patterned after federal rules). Under the Work Product Rule, any notes,

workingp apers, memoranda or similar materials prepared by an attorney in anticipation of litigation are protected from discovery. A Motion to Compel Discovery may be filed by your attorney when the prosecution is uncooperative with your discovery demands.

At some point you may need to replace your attorney. Oregon courts have stated that a person has a non-absolute right not to be forced to proceed with an attorney with whom he does not want, yet he does not have a right to counsel of his choice. In deciding your request for a replacement attorney the judge may consider its timing and, though unnecessary, the presence of a conflict of interest. Too near your trial is poor timing.

There may come a time when you will want to file an ethics complaint against your own or the prosecuting attorney, especially if the latter has fabricated evidence or knowingly used false testimony against you. A complaint form and informative pamphlet can be obtained by writing to: Disciplinary Counsel's Office, Oregon State Bar, 5200 S.W. Meadows Road, P.O. Box 1689, Lake Oswego, OR 97035-0889.

Your path to freedom begins in your jail's law library. Many jail policies give you the right to use their law library to prepare a pro se (meaning without the assistance of an attorney) state petition for a writ of habeas corpus, which is what you will be doing. If guards give you hassles about getting into the law library you might complain to your case judge that the Sixth Amendment entitles you to assistance of counsel, and that in order for you to both facilitate this assistance and guarantee its effectiveness, you must be allowed regular use of a law library.

Your attorney may motion for a reduction of bail or release on recognizance. Refer to ORS 135.230 et seq. In deciding this motion, the judge might consider such factors as presumption of innocence, the weight and character of evidence against you, indigency, community ties, employment and living arrangements, availability of electronic surveylance devices, whether you have ever been a fugitive, and whether you have ever been convicted of escape or failure to appear.

A legal term you should be familiar with is due process of law. The Due Process Clause of the U.S. Constitution requires that no person shall be deprived of life, liberty (freedom), or property without due process of law. The requirements of due process are regularly changed by the Supreme Court. They vary in detail from situation to situation, but the central core of the idea is that a person should always have notice and a real chance to present his side in a legal dispute and that no law or government procedure should be arbitrary or unfair. Embodied in the due process concept are the basic right of a defendant in criminal proceedings and the requisites for a fair trial. These include but are not limited to timely notice of a hearing or trial which informs the accused of the charges against him; the opportunity to confront accusers and to present evidence on one's own behalf before an impartial jury or judge; the presumption of innocence under which guilt must be proven beyond reasonable doubt by legally obtained evidence and the verdict must be supported by the evidence presented; the right of the accused to be warned of constitutional rights at the earliest stage of the criminal process; protection against self-incrimination; assistance of counsel at every critical stage of the criminal process; and the guarantee that an individual will not be tried more than once for the same offense.

If you are assigned a judge that is reputedly pro-prosecution, you may consider having him disqualified from hearing your case. Refer to ORS 14.210 et seq.

Many people mistakenly believe that they are doomed merely because the prosecution has alleged eyewitnesses. However, eyewitness testimony has inherent potentials for error. Refer to State v. Classen, 590 P.2d 1198, 285 Or 221 (1979).

The prosecution has likely initiated formal charges against you with a grand jury indictment. A grand jury is a group of people who determine whether probable cause exists that you committed a crime and whether an indictment should be returned against you. An indictment is not evidence. It is merely the vehicle the prosecution uses to bring you to trial. Obtaining access to grand jury records can be difficult.

Omnibus hearings may be conducted to rule on pretrial motions and requests regarding suppression of illegally obtained evidence, challenges to suspect identification procedures, challenges to voluntariness of admissions or confession, and challenges to accusatory instrument or indictment (also known as a demurrer).

A Motion to Suppress is a device used to eliminate from the trial evidence which has been secured illegally, generally in violation of certain state statutes or constitutional provisions, or the Fourth, Fifth, or Sixth Amendments of the U.S. Constitution. Possibly relevant to a motion to suppress is the Fruit of the Poisonous Tree Doctrine. Refer to ORS 133.683. This doctrine provides that evidence which is spawned by or directly derived from an illegal search or an illegal interrogation is generally inadmissible against a person because of its original taint, though knowledge of facts gained independently are admissible. The Exclusionary Rule commands that where evidence has been obtained in violation of the Fourth Amendment search and seizure protections, the illegally obtained evidence cannot be used at a person's trial. However, the Good Faith Exception to the Exclusionary Rule provides that evidence is not to be suppressed when that evidence is discovered by officers acting in good faith and in reasonable, though mistaken, belief that they were authorized to take those actions. In common usage, good faith is a term that is ordinarily used to describe a state of mind denoting honesty of purpose and being faithful to one's duty or obligation.

A Motion In Limine is a pretrial motion requesting the court to prohibit opposing counsel from referring to or offering evidence on matters so highly prejudicial to the moving party that curative jury instructions cannot prevent a dispositional effect on the jury.

Defenses and/or Affirmative Defenses to criminal liability include but are not limited to alibi, coercion, consent, automatism, de minimus infraction, duress, entrapment, ignorance or mistake, mental disease or defect (insanity), intoxication, necessity, protection of property, public duty, legal impossibility, self-defense and protection of others. Each of these have technical definitions and qualifications. Further, a person has the moral right to make the prosecution prove each element of the alleged offense beyond a reasonable doubt, if they can. Ask your attorney about inventive defenses.

Request your attorney to subject the prosecution's case to adversarial testing through a full compliment of pretrial motions and supporting memorandums before the prosecution has had a chance to competently build their case against you. Your attorney may resist your request for pretrial motions, in an effort to minimize his workload, by saying they are pointless. But there are advantages to these motions regardless of their initial chance of success. First, you force the prosecution to commit to a particular version of the facts early in the case before they have had an opportunity to competently put together their fairy-tale. Second, the greater the level of activity in a case, the greater the window of opportunity for a mistake to be made in the prosecution. For example, the failure of the judge to use sound, reasonable judgment when deciding issues may amount to an abuse of his discretion, which can result in a successful appeal. Refer to State v. Sullivan, 952 P.2d 100, 152 Or App 75 (1998). Therefore, wreak havoc to set the stage for appeal.

Trials may be postponed for a number of reasons. Postponements are statistically in a defendant's favor (memories fade, witnesses naturally pass away, etc.). A genuine reason for postponement may be to conduct necessary investigative work (the judge may want to know what you expect to accomplish and why this has not already been done). Another legitimate reason for postponement might be to allow replacement counsel needed time to familiarize himself with the case. Another valid reason for postponement might be that you are presently not competent to stand trial. Unavoidable attorney-client communication break-downs may also slow things down.

Whether to have a jury or bench trial is an important decision. May the judge hear particular evidence in your case that would be excluded from jury consideration? Will the case turn on a legal defense or some technicality that may not be fully appreciated or understood by a jury?

Whether to personally testify at trial is also an important decision. Reputable defense attorneys generally prefer their clients not take the stand.

Most trials today take place in kangaroo courts. Rest assured your attorney has met with the prosecution to discuss how they can best railroad you. During trial, the prosecution will weave a tale of fabrications, omissions, exaggerations, and minimizations

while your attorney sits idly by and objects at pre-planned or inconsequential times. And if the prosecution misses a point, you can bet your attorney will be there to pick up his slack. Your attorney's presentations may be described as shams and farces intended to sabotage whatever defense you may have. Be creative to foil their plans.

Request your attorney spend substantial time with you right before trial. This is a critical period where your attorney's time should be accounted for. Every minute he is in dialogue with you is a minute he is not in conference with the prosecution plotting against you.

Typical trial progression may be as follows: 1) Jury selection / Voir dire (pronounced vwah deer). 2) Precautionary instructions: a part of the judge's instructions to a jury that cautions it against being influenced by anything outside the trial. 3) Prosecution's opening statement: outline of summary of nature of case and of anticipated proof presented by attorney before any evidence is submitted. Its purpose is to advise the jury of facts relied upon and of issues involved and to give a general picture of the facts and the situations so that the jury will be able to understand the evidence. It is an outline of facts which the attorney in good faith expects to prove or show evidence to support. 4) Defense's opening statement, or the defense may reserve its opening statement until after the prosecution presents its case. 5) Prosecution presents its case. Expect your attorney to riddle the prosecution's case with objections and thorough cross-examination. 6) Defense's Motion for Directed Verdict of Acquittal: a verdict in which the judge takes the decision out of the jury's hands. The judge may do this when the prosecution has alleged facts which, even assuming them to be true, cannot add up to a successful case. Refer to ORS 136.445. 7) Defense presents its case. 8) Closing arguments: the final statements by attorneys summarizing the evidence that they think they have established and the evidence that they think the other side has failed to establish. 9) Jury instructions, deliberation, and verdict: Jury instructions are directions given by a judge to a jury concerning the law of the case: A statement made by the judge to the jury informing them of the law applicable to the case in general or some aspect; an exposition or the rules or principals of law applicable to the case of some branch or phase of it, which the jury are bound to accept and apply. Attorneys for both sides normally furnish the judge with suggested jury instructions containing their preferred verbiage. Refer to F.R.Crim.P. 30. You may request a jury instruction on your particular theory of the case. Refer to State v. Harper, 888P.2d 19 (Or App 1994). 10) Defense's Motion for Judgement Notwithstanding Verdict: a motion that judgment be entered in accordance with the movant's earlier motion for a directed verdict and notwithstanding the contrary verdict actually returned by the jury. Refer to ORCP 63.

A mistrial is an erroneous, invalid, or nugatory trial. The judge may declare a mistrial because of some extraordinary event, for prejudicial error that cannot be corrected at trial, or because of a deadlocked/hung jury.

A Motion for a New Trial is a request that the judge set aside the judgment or verdict and order a new trial on the basis that the trial was improper or unfair due to specific prejudicial errors that occurred, because of newly discovered evidence, etc. Newly Discovered Evidence is evidence of a new and material fact, or new evidence in relation to a fact in issue, discovered after the rendition of a verdict or judgment, or testimony discovered after trial that was not discoverable before trial by exercise of due diligence. Newly discovered evidence in this manner refers to evidence of facts existing at the time of trial of which the aggrieved party was excusably ignorant. Refer to F.R.Crim.P. 33; ORCP 64.

Request your attorney file a pretrial memorandum citing and arguing the applicability of those laws and constitutional provisions favorable to you on matters he anticipates will be pertinent at trial. Your attorney may resist this by stating that it is strategically unwise to provide the prosecution with an early warning of your defense particulars. However, the benefits of thoroughly presenting your case may ~~override~~ outweigh the effects of revealing these particulars to the prosecution.

A witness can invoke the Fifth Amendment privilege against self-incrimination to avoid answering incriminating questions. The witness must assert the privilege in response to each incriminating question. The prosecution may nevertheless attempt to compel a witness to testify by granting use immunity. Use immunity prevents the prosecution from using any testimony against a witness in a subsequent prosecution, but does not necessarily bar the use of the immunized testimony against a criminal defendant at sentencing if that person is convicted, unless otherwise specified. Because the government usually has no incentive to grant use immunity to defense witnesses, a defendant must rely on the judge to order the government to grant immunity. This may occur when a defendant's case would be prejudiced without the witnesses' testimony. Refer to U.S. v. Bahader, 954 F.2d 821, 826 (2d Cir. 1992); U.S. v. Abbas, 74 F.3d 506, 512 (4th Cir. 1996); Virgin Islands v. Smith, 615 F.2d 964, 966 (3d Cir. 1980).

A person has a well-established right to self-representation. Refer to U.S. v. McDowell, 814 F.2d 245 (6th Cir. 1987). Obviously, putting yourself against the system is risky. Further, your appeal would be crippled because you could not claim ineffective assistance of counsel. A related option would be to have yourself approved as co-counsel where you assume some of your attorney's functions. This hybrid representation has potential strategic advantages.

If you are found guilty, the judge may order a pre-sentence investigation (PSI). Although PSI reports are suppose to be prepared by an impartial fact-finder, this is hardly the case. They are written in language and tone friendly to the prosecution. Neither you nor your attorney are required to cooperate with a PSI. A separate sentencing memorandum can be filed by your attorney.

The people of Victims' Assistance work for the prosecution and are typically victims of crime themselves. They are a vindictive and bitter people. Their obsession is to comfort victims and make your life miserable. Expect them to have conspired with your alleged victims and crafted some quite imaginative stories to be theatrically and dramatically recited at your sentencing. This is a hot ticket you can do little about.

At sentencing the judge will ask you if you have anything to say for yourself, commonly called the right of allocution. If you have pled guilty, express remorse and willingness to make amends. Your objective will be to tactfully instill in the judge a sense of your value as a person without appearing arrogant. Be careful not to say things that may jeopardize your appeal. A judge may order a lesser sentence in consideration of your past good behavior, family situation, and kindred factors.

On direct appeal: Appellate attorney have a tendency to challenge harmless errors or issues with little or no merit. A prominent legal dictionary defines the Harmless Error Doctrine as: "The doctrine that minor or harmless errors during a trial do not require reversal of the judgment by an appellate court. An error which is trivial or formal or merely academic and was not prejudicial to the substantial rights of the party assigning it, and in no way affected the final outcome of the case. An error is harmless if reviewing court, after viewing entire record, determines that no substantial rights were affected and that error did not influence or had very slight influence on verdict. Doctrine which permits an appellate court to affirm a conviction in spite of such type of error appearing on the record. Any error, defect, irregularity or variance which does not affect substantial rights will be disregarded by courts." Refer to F.R.Cr.P. 7(c), 52. Identify reversible or prejudicial errors for him which are substantially harmful to your rights and affects or presumptively affects the final results of the trial. Refer to Cunningham v. Montgomery, 921 P.2d 1355, 143 Or App 171 (1996). If he refuses to raise these, request his assistance preparing a Balfour-brief. Refer to ORAP 5.90; Anders v. Cal., 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). This will allow you to present your own claim. However, if he forces you to submit a Balfour-brief to raise potentially meritorious issues, he may be unconstitutionally depriving you of professional advocacy. Direct appeals are primarily used to challenge issues that have been raised in the trial court and decided against you. You have a right to an attorney on direct appeal to the state court of appeals. Thereafter,

until your case is remanded, this right is lost. Nevertheless, courts continue to appoint counsel as a matter of judicial efficiency. Appeals are fought on paper with the exception of a ten minute oral argument hearing where you will not be present. It is possible to be released while your appeal is pending. Refer to ORS 138.135. If y lose in the court of appeals, you can request the state and then federal supreme court to hear certain issues you lost on. Rarely do high courts grant such requests.

On Post-Conviction Appeal: You will have two years from the conclusion of your direct appeal in which to file your state petition for post conviction relief in the county circuit court. This is used to challenge such things as ineffective assistance of counsel and prosecutorial misconduct. Prosecutorial misconduct usually takes the form of discovery violations or improper comments during trial, but may stem from fabrication of evidence. There will be an evidentiary hearing where you will be present and perhaps testify. An adverse judgment from the circuit court can be appealed in much the same manner as was your direct appeal from your conviction and sentence.

On state writ: A state Petition for a Writ of Habeas Corpus is filed in the county circuit court and with some exceptions may raise issues you missed in your previous appeals. Refer to ORS 34.310 et seq. (Incidentally, this same type of writ may be used to challenge conditions of confinement that require immediate judicial scrutiny or intervention such as a denial of medical care resulting in pain and anguish.) A state writ is procedurally handled by courts in much the same manner as a post conviction appeal. There is no statute of limitations for filing a state writ. Most prisoners initially bypass the state writ and go directly to a federal writ after conclusion of their direct and post conviction appeals. An adverse judgment from the circuit court can be appealed in much the same manner as was your direct appeal from your conviction and sentence.

On federal writ: A federal Petition for a Writ of Habeas Corpus is filed in the U.S. District Court for the District of Oregon. Refer to 28 U.S.C. 2254. Only those claims involving federal laws or the U.S. Constitution, called federal questions, that have been preserved or fully litigated in state courts can be presented on a federal writ. The court may hold an evidentiary hearing if there are disputed questions of fa and you did not receive a full and fair state court hearing. An adverse judgment from the District Court can be appealed to the Ninth Circuit Court of Appeals in California. You can request the U.S. Supreme Court review an adverse decision from the federal appellate court. Rarely are such requests granted.

On application for executive clemency: At any time you can request the Governor grant you clemency in the form of a full or partial pardon, reprieve, or commutation of sentence. The Governor may look for evidence of actual innocence. An application will be accepted by the Governor's office no more frequently than every six months.

If you succeed in having evidence suppressed because it was unlawfully obtained, you may bring a lawsuit for monetary damages for violation of your Fourth Amendment right to be free of unlawful searches and seizures. Refer to Williams v. Codd, 459 F.Supp. 804, 812-813 (S.D.N.Y. 1978).

I welcome a reply to this letter. I am not an attorney and will not give legal advice. This letter is not legal advice.

I urge you to discuss this letter with your attorney. Question him. Study his reactions. Watch his eyes closely for signs of deceit. Form your own conclusions.

Good luck,