

The Zealous Advocate

Special Two-Volume Edition

Newsletter for the Defense
Winter 2006 - Volume I

The Defender's Message

Many thanks to all of you who attended the October 12 & 13, 2006

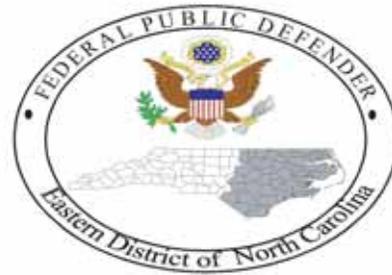
Panel Attorney Seminar at Wrightsville Beach. We received numerous responses to our survey regarding the quality of the seminar and most of our presentations were rated excellent. These seminars are extremely valuable for all of us to stay current and I was glad to see 125 attorneys in attendance.



Blockade Runner, Wrightsville Beach, NC

I just returned from the National Federal Public Defender Conference and part of the program was devoted to panel attorney training. This was beneficial to me, and I will be implementing some of the ideas being used in other Districts. I was glad to see that overall we have better panel attorney training programs than a large portion of the country.

On another note, I discovered on December 8, 2006 that our office is taking more time than it should to process panel attorney vouchers. I apologize for this and have implemented some changes. Hereafter, I will review all vouchers that exceed the statutory maximum, and I promise that they will be sent to the Judges no later than 15 days after we receive the correct paperwork from the panel attorneys. Donna Stiles continues to do a super job, but we need to do the reasonableness review more



quickly. The vouchers that do not exceed the statutory maximum have been processed in a timely fashion, but those that exceed the statutory maximum need to go to the Judges sooner. I understand that you panel attorneys work hard and need to be paid sooner. In doing my reasonableness review, I noticed that panel attorneys are writing more detailed letters justifying why they exceeded the statutory maximum. This is important, so keep doing this. In addition, please do not forget to write the Judges in advance if you expect your voucher to exceed the statutory cap.

Finally, as our focus is always on education and keeping you attorneys updated on the latest developments in criminal law, I encourage you to read both volumes of this special winter edition newsletter. In the first volume, you will find practical information that we hope will benefit your practice both within and outside the federal arena. The second volume contains highlights and summaries of recent changes in the law. I hope that you enjoy this special edition of the Zealous Advocate Defense Newsletter, and I look forward to a rewarding new year.

Thomas P. McNamara
Federal Public Defender

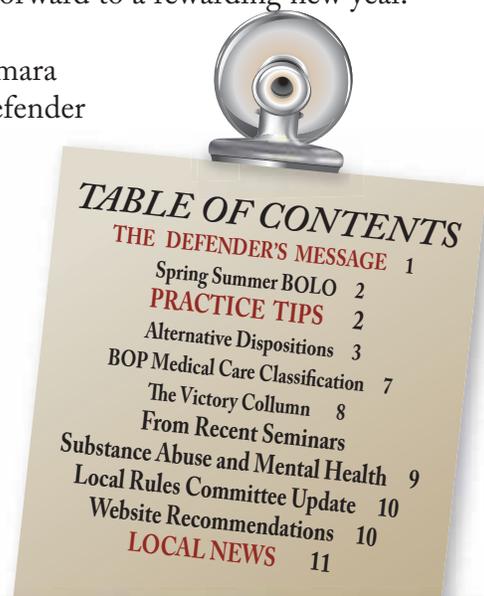


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Spring Seminar BOLO



Be on the lookout for information for our annual Spring Federal Criminal Practice Seminar. Donna Stiles will send out sign-up information shortly after the new year. Please direct any questions about our seminars to donna_stiles@fd.org.



Practice Tips:

Irving Younger's 10 Commandments of Cross-Examination

Irving Younger was an experienced litigator, judge and law professor. Known for his theatrical lecture style, Younger gave numerous presentations and seminars on trial advocacy. One of his more well-known lectures concerned what he termed in a publication, "The Art of Cross-Examination." Below are his famed "ten commandments" and a brief summary of each. Of course, Younger also taught students that, in addition to the ten points below, experience was the only way to master the art. If you do not get much time in court, he recommended reading trial transcripts and observing others at cross-examination to become an effective cross-examiner.

1. Be Brief

Be brief, short and succinct. Why? Reason 1: chances are you are screwing up. The shorter the time spent, the less you will screw up. Reason 2: A simple cross that restates the important part of the story in your terms is more easily absorbed and understood by the jury. You should never try to make more than 3 points on cross-examination. Two points are better than three and one point is better than two.

2. Use Plain Words

The jury can understand short questions and plain words. Drop the 50 dollar word in favor of the 2 dollar word. "Drive your car" instead of "operate your vehicle."

3. Use Only Leading Questions

The law forbids questions on direct examination that suggest the answer. The lawyer is not competent to testify. On cross-examination the law permits questions that suggest the answer and allows the attorney to put his words in the witnesses' mouth. Cross-examination, therefore, specifically permits you to take control of the witness, take him where you want to go, and tell your important point to the jury through the witness. Not asking controlled leading questions leaves too much wiggle room. What happened next? I would like to clear up a couple of points you made on direct? These questions are the antithesis of an effective cross-examination. Any questions which permit the witness to restate, explain or clarify the direct examination is a mistake. You should put the witness on autopilot so that all of the answers are series of yes, yes, yes!

4. Be Prepared

Never ask a question that you do not know the answer to. Cross is not a fishing expedition in which you uncover new facts or new surprises at the trial.

5. Listen

Listen to the answer. For some, cross-examination of an important witness causes stage fright; it confuses the mind and panic sets in. You have a hard time just getting the first question out, and you're generally thinking about the next question and not listening to the answer.

6. Do Not Quarrel

Do not quarrel with the witness on cross-examination. When the answer to your question is absurd, false, irrational contradictory or the like; Stop, sit down. Resist the temptation to respond with "how can you say that, or how dare you make such an outrageous claim?" The answer to the question often elicits a response, which explains away the absurdity and rehabilitates the witness.



I have always found that mercy bears richer fruits than strict justice. – Abraham Lincoln

7. Avoid Repetition

Never allow a witness to repeat on cross-examination what he said on direct examination. Why? The more times it is repeated, the more likely the jury is to believe it. Cross-examination should involve questions that have nothing to do with the direct examination. The examination should not follow the script of the direct examination.

8. Disallow Witness Explanation

Never permit the witness to explain anything on cross-examination. That is for your adversary to do.

9. Limit Questioning

Don't ask the one question too many. Stop when you have made your point. Leave the argument for the jury.

10. Save for Summation

Save the ultimate point for summation. A prepared, clear and simple leading cross-examination that does not argue the case can best be brought together in final summation.

"The Art of Cross-Examination" by Irving Younger, published in The Section of Litigation Monograph Series, No. 1, published by the American Bar Association Section of Litigation, ABA Annual Meeting, Montreal, Canada, 1975. © 1975 by the American Bar Association. Reprinted with permission.

To see one of Irving Younger's presentations on Cross-Examination, visit or contact the Legal Library at the Federal Building in Raleigh, N.C. 919-856-4478 or check with law school, bar association, or court libraries in your area.



Alternative Dispositions

Many of the cases we see which do not end in dismissal or acquittal, result in some form of imprisonment. However, there are other alternatives to incarceration. Below, we have detailed alternative dispositions that should be explored depending on the circumstances of your client's case.

A. Pre-Trial Diversion by Vidalia Patterson

Earlier this year, I worked on a juvenile case in which our client, a young girl, had numerous emotional and psychological problems that resulted in the behavior for which she was charged. We knew that placing her in juvenile detention would not address these problems, and, given her unstable condition, might cause her irreparable harm. What's more, we felt strongly that she should not spend the rest of her youth at a detention center. Since she did not have a significant juvenile record, we started exploring pretrial diversion and were able to offer the government an arrangement whereby our client would receive treatment, the victims of her offense would receive restitution, and the community would be sufficiently protected from future destructive conduct on her part.

Pretrial diversion is a procedure by which prosecution of a person is deferred for a set period of time. The U.S. Attorney's office offers a pretrial diversion (PTD) program for certain offenders. Persons excluded include: those with more than two prior felony convictions, those who are addicted to drugs, those who are public officials or former public officials accused of an offense arising out of an alleged public trust violation, those accused of an offense involving national security or foreign affairs, and those individuals accused of an offense which, according to Department of Justice guidelines, should be diverted to a State for prosecution. Thus, PTD is often considered an appropriate disposition for individuals who have relatively minor criminal histories, for juveniles or those for whom traditional prosecution may not adequately address the circumstances of the offense or needs of the offender.

Most individuals are diverted before being formally charged; however, as PTD is at the discretion of the prosecutor, individuals may be deferred any time prior to trial. Participation in the program is voluntary and involves the divertee's entering into a contract with the U.S. Attorney's Office to waive speedy trial rights and statute of limitations defenses, and submit to supervision by the U.S. Probation Office. After successful completion of the program, the prosecutor will formally decline prosecution, or where the person was already



charged, dismiss the charges. Of course, breach of the agreement will allow the U.S. Attorney to resume prosecution with notice to the offender.

Interestingly, the Criminal Resource Manual for U.S. Attorneys at 712 notes that the supervision contemplated by the PTD program should be tailored to the participant's needs and lists a number of areas including employment, counseling and community service. It also states that "[i]nnovative approaches are strongly encouraged." This language provides defense counsel an opportunity to advocate for PTD and propose an arrangement in which the client's needs are met while requiring restitution or some other service that may better serve the community or victim than the client's incarceration. Moreover, with successful completion of the program, the charges are dropped, thus insulating the client's criminal record from a conviction.

Information on the Pre-Trial Diversion program offered by the U.S. Attorney's office can be found at § 9-22.000 of the U.S. Attorney's Manual. To view this section online, please visit:

<http://www.usdoj.gov/title9/title9.htm>. A go-by for a PTD Agreement can be found in the Criminal Resource Manual for U.S. Attorneys at 715, viewed online at: <http://www.usdoj.gov/title9/crm00715.htm>.

B. Substance Abuse Treatment Facilities and After-Care Facilities by Laura Sutton

Recently, I was asked to assist a fellow attorney with a client who had a rather nasty addiction to prescription pain killers. Soon, I found myself on a wild-goose chase to find the client a drug program that was a "perfect fit." We were hopeful that the judge would accept the treatment program for purposes of sentencing. During my search, I stumbled on a plethora of substance abuse programs and after-care programs. Despite a number of pitfalls, after exploring all of our client's options, program availability, and needs, my colleague and I settled on a program. Perhaps the information that I was able to uncover in my "chase" will be a jumping-off point for someone else out there to find that "perfect fit" for a client. From the ritzy-chauffeur-driven-Whitehouse-living to the work-for-

your-bed-and-board-or-bust, there are a variety of programs that are sure to fit a client's needs or budget—best of luck!

First Step Farm—Female Facility 828-667-0303; **Male Facility** 828-665-5604—First Step Farm is a therapeutic community for individuals who have completed a substance abuse program. The female facility is located in Candler, NC, and the male facility is located several miles away. The facility is a 90-120 day residential program that accepts individuals who are eligible for the program and who want to attend the program. The program is essentially an employment-based program, requiring individuals to work at the facility, a greenhouse, during their stay. The requirements include: ability to lift 60 pounds, NC residency, substance abuse treatment within 12 months (more than detoxification), reference by a mental health professional, and no prescription antipsychotics (there is no medical staff at the facility). An individual must fill out an informational packet, submit to a telephone interview, and will be placed on a waiting list. Once accepted into the program, a patient may bring items such as clothing, work boots, socks, hobbies or crafts, and bedding, however nothing is required. The patient will have contact restrictions with family and friends, but on the third weekend with the facility, a weekend pass will be distributed. The facility offers therapeutic learning through work and recreation, 12-step meetings, relapse prevention classes, and life skills training.

Grace Home—803-854-9809; www.hebroncolony.com — Grace Home is a non-denominational, Christian work program. The facility is located in Santi, SC and is female only. The program lasts 10 weeks, and is an in-patient facility that takes voluntary patients only—all legal issues must be resolved before an individual can enter the facility (although probation is permissible). The facility allows residents to work inside and outside the facility, therefore there is no cost for the treatment; the facility also accepts faith-based donations. Located on 41 acres of land with a pond stocked with fish, a dock with canoes and row boats, the facility also has volleyball and a workout room. On Wednesdays, there is an activity day, on Thursdays, there are crafts, and on Fridays, the residents are taken into town for shopping. For placement an individual must call the facility (it cannot be a jail call) and a mini-interview



will be conducted. Additionally, a blood work-up is required to screen for communicable diseases, with a \$300 refundable medical deposit before entering the facility. An individual taking mind-altering anti-depressants cannot enter the facility; only standard medications are permitted. Once accepted into the program a resident may bring 2 sets of twin size sheets, 1-2 dresses, jeans or pants, and work clothes; cell phones, tape and CD players are prohibited. The staff at the facility has participated in the program, and is able to empathize with the patients. The facility does have television, but only permits the residents to watch 3 shows; food is provided but snacks must be purchased separately. The resident will have contact restrictions with family and friends—for the first 5 weeks, the resident may have no telephone privileges or visitors, but mail is encouraged. A pastor may visit anytime. After 5 weeks, immediate family may visit from 12-9 Saturday-Sunday and one 15 minute telephone call is allowed on Saturday and Sunday. The program provides nouthetic counseling, and other counseling as the need arises. The program puts Christ first, although it is non-denominational.

Mary Frances Center—1212 Recovery Road, P.O. Drawer D, Tarboro, NC 27886; 252-641-1111—The Mary Frances Center is a substance abuse treatment center located in Tarboro, NC. It is an in-patient facility that takes court-ordered female patients only, as it has a contract with the Department of Corrections to provide rehabilitative services to female inmates with substance abuse problems. The length of the program depends on the length of the individual's incarceration period. For placement, the inmate must be evaluated by the Department of Corrections for alcohol or drug problems and be medically cleared for treatment. The inmate must be classified as a minimum custody, non-violent offender, with only 6-20 months remaining on a sentence after the orientation process and approval to enter the program. The program provides family programs, community volunteer programs, student education programs, and specialized components, including relapse prevention, after-care focus group, and 12-step work group.

Lake Christian Miracle Lake—423-506-2803 or 423-263-2583—Miracle Lake is a Christian training program located in Etowah, TN. Miracle Lake is an all-male, in-patient facility that takes court ordered and voluntary patients that qualify for the program. The program is tuition-based, and costs a total \$1055 for the 8 week program. Prospective patients must buy a \$5 application packet, fill it out, and make contact with a pastor at the church the individual plans to attend after completing the program before an individual may be placed at the facility. Once accepted into the program, the patient may bring a variety of clothing to work in and clothing to attend church in to the facility. The facility does enforce contact restrictions with family and friends—Saturday afternoon is “family day,” which is restricted to immediate family only (girlfriends and fiances may attend services in the chapel only). The program does not provide specific drug or alcohol counseling—they believe that Christ is the answer.

Prodigal Community—336-785-0770; www.prodigals.org – Prodigal Community is a drug and alcohol treatment facility located in Winston-Salem, NC. It is a 13-15 month program for both male and female individuals. The in-patient facility accepts both court ordered and voluntary patients. Residents are not required to pay for treatment; rather, they work 40 hours per week at the facility. Before placement, individuals fill out a survey form, and upon placement, a job is assigned to a resident. For placement, individuals must fill out an application, submit it to the facility, and call to check on the application status. Criteria for potential patient include a relapse history, at least 18 years of age, short term treatment within the past 5 years, commitment to treatment, 4 days clean from drugs and alcohol, and medically and emotionally stable. Upon entry to the facility, the patient may bring clothing, but certain items are prohibited such as narcotics and cough medication. Patients must earn certain items of “status” as they work through the program (i.e. jewelry, electric items, and makeup). The program includes: a 2 month orientation, speaking ban between males and females; family groups, educational groups on Wednesdays, Hospitals and Institutions on Sundays.

Moral excellence comes about as a result of habit. We become just by doing just acts, temperate by doing temperate acts, brave by doing brave acts.— Aristotle



Trosas—1820 James Street, Durham, NC 27707; 919-419-1059 telephone; 919-403-8799 fax; www.trosainc.org—Trosas is an in-patient facility that provides a 2 year substance abuse program. The program is co-ed, and will take patients that are accepted into its program. Patients must work at the facility in lieu of payment. For purposes of placement, potential patients must walk into the facility Monday through Saturday between 9 and 3. If a potential patient is out-of-state or in a facility, the patient must write a 2-3 page autobiography and fax or mail it to the facility. After the autobiography is received, Trosas will coordinate with the facility to perform an interview. The facility provides everything a patient will need. Upon entry, there are stringent contact restrictions between the patient and family and friends: 30 days before a patient may write or receive written letters; 90 days before patient may make a 15 minute call; 1 year before patient can have family visits. The program provides group meetings and 1-on-1 meetings if needed, but is mainly a self-help program

Walter B. Jones—2755 West Fifth Street, Greenville, NC 27834; telephone 252-830-3426 ext. 317 for admissions; fax 252-752-6137—Walter B. Jones (WBJ) is an in-patient drug and alcohol treatment facility. WBJ accepts voluntary, male and female individuals for its 21-28 day program. The program accepts various insurance providers, but if the individual has no insurance, a payment plan is worked out based on the individual's last year's income. For admission, an individual must have an admissions form filled out by a mental health facility, and then fax it to WBJ, where it will be processed within 3-4 business days. A bed date will be provided within that time. Once accepted into the program, a patient may bring certain items with them, such as rubber sole shoes, clothing, writing equipment, prescription medication in containers, personal hygiene items; however certain items are prohibited (weapons, alcohol, drugs, cell phones, etc.). The facility does have contact restrictions with the patient's family, but provides visitation on Sundays from 1:30 to 4:30. WBJ provides group counseling, 1-on-1 counseling, and various other classes.

Women at the Well Ministries—423-745-0010; thewomenatthewell.com—Women at the Well is a drug and alcohol treatment program located in Athens, TN. The in-house program is a 15 month discipleship that takes court ordered and voluntary female individuals to the program. The cost for the program is \$275 per month, and the program does not accept insurance. However, the facility will work with patients on an individual basis for payment. To apply, an individual must fill out an application and fax or mail it to the facility; the application includes a medical test with blood work. Acceptance of an application may take between 1-2 weeks. Once accepted into the program, a resident is permitted two monitored visits per month for two hours (visits may be made by only 8 approved family members from a visitation list) and 2 ten minute telephone calls on a weekend. The program offers both group and 1-on-1 counseling

Watershed—800-861-1768; thewatershed.com — Watershed is a drug and alcohol treatment facility located in Boca Raton, FL. Watershed offers a 3-4 week in-patient program and accepts either voluntary or in-patient referrals of both men and women. Watershed has three facilities—two in Florida with 120 beds and 28 beds and one in Texas with 58 beds. The facility accepts various insurance providers for payment or cash payment, and costs \$600 per day. For placement, an individual must provide insurance information, and then options are explored by the admissions staff over the telephone. Upon acceptance into the program, the resident is flown to the city of the facility and is picked up by limousine at the airport and chauffeured to the facility. Residents are asked to pack a week's worth of clothing—workout clothing and swim suits are permissible. There are washers and dryers on the premises and the residents are given laundry detergent for washing clothing. Contact restrictions are made by therapists on an as-needed basis, and visitation is on weekends. The program has group counseling and 1-on-1 counseling with therapists and psychiatrists, as well as activities.



Wilmington Treatment Center –2520 Troy Drive, Wilmington, NC 28401; 877-762-3750; www.wilmtreatment.com –The Wilmington Treatment Center is a drug and alcohol abuse program for women and men. The facility takes both voluntary and court-ordered commitments for a 28 day program. The cost is \$12,000 for the residential 28 day program, payable half in advance and half at discharge. The facility accepts most private health insurance or private payment, and will provide a discount to \$10,000 if the resident has no health insurance. For placement, the individual must call the facility, provide information over the telephone or provide it by fax. The facility will review the information, then contact the resident (or his or her representative) and follow up with an interview, and in a few days the resident will be notified whether he or she has been accepted into the program with a bed date. Once accepted into the program, the resident may bring limited belongings such as clothing and personal hygiene items; certain items are prohibited such as laptops. The facility permits visitation on Sundays from 1-5. Wilmington provides counseling based on the 12-step social program, as well as individual and group counseling; the program focuses on teaching residents how to stay sober.



Bureau of Prisons - Medical Care Level Classification System

The Federal Bureau of Prisons (BOP) was established in 1930 with several goals: to provide advanced medical care for inmates, to provide professional prison services, and to make the administration more consistent and centralized.

Recently, the BOP began to pursue several ways to streamline its operations. One of the new programs is the implementation of a new medical CARE Level Classification System. The new four level classification system pairs inmates with the appropriate institution that can address an inmate's medical needs. The BOP staff at the Designation and Sentence Computation Center (DSCC) located in Grand Prairie, Texas and the

Office of Medical Designations and Transportation located in Washington, DC is responsible for the designation to the appropriate institutions, with the latter having responsibility for the more serious cases. The BOP staff will continue to rely on information contained in presentence reports, the judgment, the statement of reasons, and judicial recommendations in the designation process. However, an inappropriate recommendation for designation by a judge will be notified by the BOP to the judge.

The classification system breaks down into the following levels of care:

CARE Level 1 Inmates

- Generally healthy
- Limited medical needs easily managed by clinical evaluations on a 6 month basis
- Less than 70 years of age
- Examples—mild asthma, diet-controlled diabetes, stable HIV patient not requiring medication

CARE Level 2 Inmates

- Stable outpatient requiring quarterly clinical evaluation
- Managed in chronic care clinic, including mental health issues
- Enhanced medical resources may be required, but not regularly necessary
- Examples—medication controlled diabetes, epilepsy, emphysema

CARE Level 3 Inmates

- Fragile outpatient requiring frequent clinical contact to prevent hospitalization for catastrophic event
- May require assistance with activities of daily living but not daily nursing care
- Inmate companions may be used for assistance
- Stabilization of medical or mental health conditions may require periodic hospitalization
- Examples—cancer in remission less than one year, advanced HIV, severe mental illness in remission on medication, severe congestive heart failure, end-stage liver disease

CARE Level 4 Inmates

- Require services available only at a Medical Referral Center/CARE Level 4 Center (limited in-patient care, enhanced medical services)

The challenge of social justice is to evoke a sense of community that we need to make our nation a better place, just as we make it a safer place. – Marian Wright Edelman



- May need daily nursing care
- Functioning may be severely impaired and requires 24-hour skilled nursing care or assistance
- Examples—cancer on active treatment, dialysis, quadriplegia, stroke or head injury patients, major surgical patients, acute psychiatric illness requiring inpatient treatment, high-risk pregnancy

In conjunction with this recent CARE level assignment, the BOP has assigned CARE levels to many of its facilities. Although the CARE Level assignments are subject to change as the BOP continues to evaluate its system, the current assignments are as follows:

CARE Level 1 facilities: USP Atwater, FCI Herlong, USP Lee, FCI Manchester, USP Pollock, FCI Ray-Brook, FCI Safford, FCI Sandstone, FCI, Three Rivers, FCI Williamsburg, FPC Yankton, FCC Yazoo City (current and activating)

CARE Level 2 facilities: all other facilities not designated as CARE level 1, 3, or Medical Referral Centers (CARE Level 4)

CARE Level 3 facilities: FCC Butner (other than FMC) (Minimum, Medium I, Medium II, and Low), FMC Fort Worth (Low), FCI Terminal Island (Low), USP Terre Haute (current and activating) (Minimum, Medium, and High), USP Tucson (High)

CARE Level 4 (also known as Medical Referral Centers) facilities: FMC Butner, FMC Carswell, FMC Devens, FMC Lexington, FMC Rochester, USMCFP Springfield

For more information on the Bureau of Prisons, see its website at www.bop.gov. Information contained in this article was obtained from two memoranda issued by the Administrative Office of the United States Courts on August 21, 2006 ("Information on the Bureau of Prisons Medical Care Level Classification System (Important Information)") and October 6, 2006 ("Additional Information on the Bureau of Prisons Medical Care Level Classification System (Information)"), by James C. Duff and from the Bureau of Prisons' website located at www.bop.gov.



The Victory Column: Suppressing Evidence

After a successful suppression motion resulted in the dismissal of a felon in possession case, the Zealous Advocate asked the trial team to share the tips that resulted in this favorable outcome.

The client was a homeless man living at a Raleigh shelter. He had previously resided in another state where he knew that warrants had been issued for one of his aliases, and he had an extensive criminal history spanning more than 25 years. Raleigh police officers were investigating a series of residential burglaries based on a 10 day old tip describing a black male, 6'0" who was seen riding a blue bicycle. The client, a black male measuring 5'9" tall, was riding a blue bicycle several miles from where the burglaries took place when he was stopped by the officers. The officers claimed that the client was very cooperative and agreed to allow them to search his personal belongings and take him to the police station. However, client consistently maintained that, based on his experience with law enforcement officers and his knowledge of the outstanding warrants, he did not consent to the search or agree to go to the station.

After a motion to suppress and the government's opposition were filed, the court held a suppression hearing during which these two conflicting stories were recounted: the government argued that the client was "an armed career criminal" and must have given consent, and the client testified that he never gave consent. During the hearing, the court pointed out that no justification other than the defendant's consent existed in the case, and allowed both parties to brief the issue before issuing an order. After these memoranda were filed with the court, the judge found the client's rendition of the events more credible, granted the motion, and the case was dismissed.

Joseph Ross, the assigned AFPD, met with the client and, after hearing his story, determined that he was very credible and seemed capable of testifying. Joseph will encourage a client to testify when it seems that this is the best way to tell the client's story. As Joseph has lectured previously, people respond to stories. And, as defense attorneys, it is our responsibility to tell the client's story

from the client's perspective. Although the prosecutor may elicit some bad facts on cross-examination, this should not discourage you from having your client testify, when appropriate. In some cases, it may be more prudent to put the client on the stand and risk the exposure of his criminal record than to allow the government and its witnesses to be in control of what evidence is put on the record and how it is portrayed. Another ingredient essential to this win was the trial team's seizing the opportunity to reply to the government's second memorandum. If given the opportunity to file a reply, do so as it allows the client to have the last word. Before drafting its reply, the team obtained a copy of the suppression hearing transcript. Along with case law, testimony from the hearing was included in the reply to craft an argument urging the court to see the client's testimony as credible. The use of the transcript in this manner underscores the importance of conducting a thorough cross-examination of the government's witnesses at a suppression hearing. Because suppression issues are so fact-specific, it is important to elicit testimony that provides as complete a picture as possible of the circumstances surrounding the violation. Be sure to ask about such specifics as lighting conditions, how law enforcement officers were dressed or what weapons they carried, distances between persons and objects, timing of events, the presence of other individuals, etcetera. Regardless of whether the court grants leave to file supplemental memoranda after a hearing, preserving the record in this manner may be helpful later at trial, for impeachment purposes, or on appeal.

Many thanks to trial team members Joseph Ross, Paddi Rollins, Vidalia Patterson, and Lauren Brennan for contributing these helpful tips. If you have a success story to share or know of someone who does, please email your submissions to vidalia_patterson@fd.org or laura_sutton@fd.org. Your submission should include a brief description of the victory and identify any tips or lessons learned.



From Recent Seminars: Substance Abuse and Mental Health

The holidays are fast approaching, and for most people, stress levels are increasing faster than holiday credit card debt. With those increased stress levels, anxiety and depression may begin to set in along with the need to pacify seasonal lows by getting high on alcohol or chemical stimulants. For others, the holidays present a difficult time of year for coping with life. As we learned at the Fall Criminal Practice Seminar, there are two programs—BarCARES and the Lawyer Assistance Program (LAP)—that are available to assist North Carolina attorneys who are affected by substance abuse, drug abuse and mental health issues.

BarCARES

BarCARES (Confidential Attorney Resource & Enrichment Services) is a subsidiary of the North Carolina Bar Association, and is a short-term, confidential counseling program provided for attorneys and their immediate family members. Lawyers and members of their immediate family may take advantage of the program's counseling services if they are a member of the local bar group that has "opted into" a BarCARES program. You may contact BarCARES in order to find out if your local bar has "opted into" a BarCARES program.

The BarCARES program assists professionals with numerous issues that may be a source of stress, including personal, family, and/or work issues. To use the program, call the BarCARES program at its toll-free number: 1-800-640-0735. You will be asked for the name of your local bar group and for information about the source of your concerns, to determine whether your local bar group has "opted into" the program. The program provides an attorney or immediate family member up to three free visits each year; those that choose to continue visiting a counselor will be assisted in finding a counselor who is an approved provider for insurance purposes.

You can protect your liberties in this world only by protecting the other man's freedom. You can be free only if I am free. — Clarence Darrow



Office of the Federal Public Defender, Eastern District of North Carolina
150 Fayetteville Street Mall, Ste 450, Raleigh, NC 27615 (919) 856-4236

The BarCARES program and local bar groups contract with Human Resource Consultants (HRC) of Raleigh and Chapel Hill to administer the counseling program and to contract provider groups for areas not serviced by HRC. HRC is a provider of psychiatric, psychological, social work, and career counseling services throughout North Carolina. For more information on HRC, please visit its website at www.hrc-pa.com or call 919-929-1227.

BarCARES is a confidential program committed to maintaining the privacy of its clientele. Only the client, counselor and anyone the client discloses his or her affiliation with BarCARES will know of the client's association with the program.

For more information on the BarCARES program, or for help, call its toll-free number 1-800-640-0735, or see the link for the BarCARES program on the North Carolina Bar Association's website at www.ncbar.org/about/barCARES/index.aspx. Information from this article was obtained from the North Carolina Bar Association's link for the BarCARES program at www.ncbar.org.



Local Rules Committee Update

Joe Craven, who was unable to deliver his update during the fall's Criminal Practice Seminar, has graciously provided the following information on the proposals being drafted and considered by the Local Rules Committee for the Eastern District of North Carolina.

The committee is still working on rules 32.1 & 32.2, which are the presentence report (PSR) disclosure rules, and intends to submit a draft to the judges sometime at the beginning of 2007. The new rules would allow attorneys on both sides to disclose the PSR to experts and investigators without any leave of court. Before, counsel of record had to approach the court as an applicant and request leave to disclose the PSR.

Of course, this would not be full disclosure, but rather would be limited to expert witnesses and investigative agents. Moreover, counsel would be responsible for retrieving the original documents distributed to these parties. The distributing attorney must have the documents returned at or prior to sentencing. Keep in mind that this proposal has not been finalized and is not yet in effect. For now, the rule remains that you must obtain leave of court before disclosing a PSR.

The committee also anticipates proposing a new rule that would allow attorneys to secure periods of leave in a calendar year. There is a similar system in place at the state level, and the rationale is that lawyers work long hours and need to have time off to be effective at their jobs.

Please look for Local Rules Committee updates to these proposed rules in future issues of the Zealous Advocate. Many thanks to Joe Craven for his contribution to this column. Joe has kindly offered to speak with anyone who has questions or a particular issue relating to these rules. He can be reached at (919) 856-4236 or email him at joseph_craven@fd.org.



Website Recommendations

To check the schedule for upcoming Panel Attorney and Federal Defender training programs, go to: http://www.fd.org/odstb_TRAINING.htm

Learn more about "The Dangers of Detention" for juvenile offenders. This report, issued by the Justice Policy Institute, explores the impact of juvenile detention and provides some interesting statistics.

http://www.justicepolicy.org/reports_jl/11_28_06_dangers/press_dangers_11_28_06.html

(Or, go to <http://www.justicepolicy.org/> and click on "Reports." This one was issued 11/28/06.)

For a quick survey of what the blogosphere* has to say about criminal law happenings, check out BlawgRepublic. This website has links to various legal news blogs* with



previews of their latest posts. For the criminal law list, go to: [http://www.blawgpublic.com/cat/Criminal Law/](http://www.blawgpublic.com/cat/CriminalLaw/)

One of the blogs listed at BlawgRepublic is <http://publicdefender.typepad.com/>. There, you will find some interesting public defense-perspective musings by an anonymous public defender who enigmatically identifies himself only as “Gideon.”

*What’s a “blog,” you might ask? According to <http://www.Wikipedia.com>, “a blog is a website where entries are made in journal style and displayed in reverse chronological order.” Blog derives from the term, “web log.” A “blogosphere” encompasses multiple blogs “as a community or social network.” Some blogs are updated fairly regularly and are a great resource for keeping up with newsworthy events. Have an interesting criminal law blog or website to share? Send your submission to vidalia_patterson@fd.org.

Disclaimer: The Office of the Federal Public Defender for the Eastern District of North Carolina does not guarantee the accuracy of or endorse the views or opinions found in the websites listed above. Links to these sites are intended for general reference and to contribute to your web-surfing enjoyment.



Local News

Eastern District News

The FPD congratulates current Chief U.S. Probation Officer Bob Singleton who after 22 years of service, will be retiring at the end of December. We also send our congratulations to Supervisory U.S. Probation Officer Walter Jessup on his retirement after 22 years of service with the U.S. Probation Office. We, in turn, welcome and congratulate Jim Johnson on his newly appointed position as Chief U.S. Probation Officer at the beginning of the new year.

The FPD also congratulates George E.B. Holding on his appointment as United States Attorney.

Senior District Judge Malcolm Howard announced this fall that he would no longer take new criminal cases. However, should you have the occasion to visit his courtroom in Greenville, please take the opportunity to view his new portrait, which was unveiled at a ceremony on October 27, 2006.



Please remember to continue checking the preferences pages for the district judges found at <http://www.nced.uscourts.gov> for updates and changes.

FPD Office News

The FPD is pleased to welcome several additions to our office. In the Raleigh office, Eric Brignac joins us as a Research and Writing Attorney, and Lauren Brennan will intern with us for one year before she graduates from N.C. Central Law School. We also welcome Sylvia Lawrence, our new administrative assistant in the Fayetteville office.

This summer, we bid a fond farewell to Windy Venable, but also send our congratulations to her and Marc Pilcher on their September 23 wedding.



After more than two and a half years of negotiations with the Administrative Office of the U.S. Court and General Services Administrator, we have finally opened our unstaffed office in downtown New Bern. We look forward to serving Chief Judge Flanagan when the New Bern Courthouse reopens. Our new office is located at 409 Broad Street.



Panel News

We are pleased to welcome the following attorneys who are training to become panel attorneys: in Raleigh, David E. Duke, Nardine Mary “Nan” Guirguis, Rudy E. Renfer, and Geoffrey Ryan Willis; in Elizabethtown, William Leslie Johnson, II; in Wilmington, Gregory Steven McIntyre; in Goldsboro, Marsha Mitchell-Hamilton; and in Durham, Christopher Shella. Mary Jude Darrow of Raleigh, is the latest addition to the panel.



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