

The Do's and Don'ts in Federal Criminal Practice
An Insider's Guide From the Bench

The United States District Court for the District of New Jersey
in Conjunction With
The Association of the Federal Bar of New Jersey
Brown Bag Lunch Program – Newark

October 23, 2014
12:30 to 2:00 pm
Jury Assembly Room
Martin Luther King Courthouse

Panelists: Hon. Stanley R. Chesler, U.S.D.J.
Hon. Esther Salas, U.S.D.J.
Hon. Susan D. Wigenton, U.S.D.J.
Hon. Michael A. Hammer, U.S.M.J.
Hon. Cathy Waldor, U.S.M.J.

Moderator: Gerald Krovatin, Esq., Past President of the AFBNJ

I. Initial Appearance

- A. What is it? What is the purpose of it? How does it differ from an arraignment?
- B. What makes an effective or successful bail package on behalf of the Defendant, from your perspective?
- C. On an application for detention, what do you want to hear from the Government before you are prepared to enter a detention order?

Handout: Bail Reform Act, 18 U.S. C. § 3142.

II. Discovery

- A. What are the most common discovery issues that you encounter in criminal cases?
Handout: Fed. R. Crim. P. 16 Discovery and Inspection.
- B. What is *Brady* material, and when does the Government have to produce it to the Defendant?
- C. What is *Giglio* material, and when does the Government have to produce it to the Defendant?
- D. What is *Jencks Act* material, and when does the Government have to produce it?
Handout: Jencks Act, 18 U.S.C. § 3500.
- E. What is “reciprocal discovery?”
- F. What is the difference between a trial subpoena and a grand jury subpoena, or a civil discovery subpoena?
Handout: Fed. R. Crim. P. 17 Subpoena.
- G. Can I make my trial subpoenas returnable before trial? Do I need a court order for that?
- H. Do you make the parties exchange pre-marked trial exhibits? When?
Does that violate a Defendant’s Fifth Amendment rights?

III. Motion Practice

- A. How do motions in a criminal case differ from motions in a civil case?
- B. When should the Defendant make pretrial motions?
- C. What kind of motions will require an evidentiary hearing?
- D. Is it ever too late to bring a suppression motion? (What is a suppression motion?)
- E. What is a motion *in limine*, and when should the parties bring them?

IV. Jury Selection

- A. How do you conduct it?
- B. Do you ever let the attorneys conduct voir dire? Under what circumstances?
- C. Do you allow the use of juror questionnaires? Under what circumstances?
- D. How tolerant are you of juror hardship excuses? Excusals for cause in general?
- E. What is “individualized voir dire?” Under what circumstances, if ever, do you use it?
- F. Do you follow the State court practice of requiring every prospective juror to be asked at least one open-ended question?
- G. How should lawyers exercise peremptory challenges in your courtroom?
- H. Do you permit the attorneys to “bank” their strikes?