

# The Defender

Newsletter for CJA Panel Attorneys

## Resource Issue

### Getting Help

When you need an answer to a legal research question, half the battle is finding a reliable source. This issue attempts to point you toward some good starting points for attacking legal research issues.

We are always available to answer questions. However, when you cannot find someone to bounce your ideas off, it is good to know where else to look.

### Guideline Hotline

The United States Sentencing Guidelines, can be arcane and confusing. In order to assist attorneys with their application, the Defender Services Committee of the Judicial Conference of the United States created The Sentencing Guidelines Group. The Guidelines Group is specifically designed to assist criminal defense lawyers, and it has Assistant Federal Defenders on its staff. It is not part of the Sentencing Commission. The Group is located at 601

Pennsylvania Avenue, N.W., South Building, Suite 100, Washington, D.C. 20004. The toll-free number is (800) 788-9908. The fax is (202) 393-3385.

### E-mail and Bulletin Board

When we do not have the answer to your question right off the top of our heads, there are other Defender Offices we can contact. For a significant research problem, we can address a query to all 62 Federal Defender Offices throughout the country. There is also an electronic bulletin board upon which we can call in and leave, or retrieve, information.

### Our Research Files

We collect and maintain files on issues we have researched for trials and appeals. The following is some of the research available:

- \*Whether being a "felon in possession of a firearm" is a crime of violence under the Bail Reform Act.
- \*A sample Anders Brief (informing appellate court that there are no meritorious grounds for appeal), and accompanying motions.
- \*Use of prior convictions under the Armed Career Criminal Act.
- \*Research on proof of venue.
- \*Unconstitutionality of

"Gun-Free School Zone Act" and affect on challenging federal jurisdiction under other criminal statutes.

- \*Effect of "diminished capacity" under the Sentencing Guidelines.
- \*Effect of a search by a private citizen.
- \*The defense of "temporary possession."
- \*Whether the defense can require stipulations.
- \*Review of a detention order.
- \*Determining when a person is under arrest or detained, and when a Terry patdown is appropriate.
- \*Determining when consent to search is voluntary.
- \*"Plain view" and "plain feel."
- \*Effect of pretextual automobile stop.
- \*Whether suppressed or inadmissible evidence can later be considered at revocation hearing.
- \*Revocation based upon failure to pay when a defendant is indigent.
- \*"Standing" to contest a search by motel room guest.
- \*Requirements for admission of coconspirators statements.
- \*Research on bank fraud and credit card fraud.
- \*Computation of time limits under Speedy Trial Act.
- \*Liability at sentencing for the actions of coconspirators.
- \*Research on admissibility of polygraph results.
- \*Challenges to drug dog

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searches.

\*The "good faith" exception to defects in a search warrant.

\*Federal jurisdiction and procedure for juvenile prosecutions.

\*Research concerning release pending appeal.

\*"Work Product" privilege for third parties employed within attorney-client relationship.

\*Impeachment by prior convictions.

\*Research on the enforceability of plea agreements.

\*Retroactivity of 1995 reduced sentencing guidelines for marijuana plants.

\*Effect of delivery of simulated drugs.

\*Collection of conspiracy cases reversed for insufficient evidence.

\*Sample §2255 petition, case law and Order, regarding insufficient evidence of "use of a firearm" after U.S. v. Bailey. Also, 11th Circuit cases following Bailey.

\*Cases recognizing that minute quantities of drugs may be found on U.S. currency.

\*Use of prior acts under FRE 404(b) to prove intent.

\*What kinds of presentence detention will be credited by the Federal Bureau of Prisons as "time served" in federal custody.

## Recommended Books

Lawyers can spend a lot of money on books. It is very difficult to pry lawbook salespeople from your waiting room, without pacifying them with a small sale. However - without directly libeling any particular author or publisher - a lot of this stuff is expensive junk.

Once, when I was a law clerk to a very unappreciative lawyer in Houston, I took my revenge by

convincing him that his library was not complete without a certain Latin-titled, multi volume legal encyclopedia . . . minutes before the salesman arrived.

However, with no animosity, I recommend the following purchases:

Guideline Sentencing, An Outline of Appellate Case Law on Selected Issues, Federal Judicial Center. We get this soft-cover book free twice a year. It is available to the general public via the Internet. For information, call the Federal Judicial Center Information Services at (202) 273-4153. It is an excellent, portable annotation of the Sentencing Guidelines.

Defending a Federal Criminal Case, Federal Defenders of San Diego, Inc. 1995 Ed. This is absolutely free and we still have some to hand out. (I will get more if demand increases). This hardbound volume is almost one thousand pages of up-to-date case law on every aspect of a federal criminal case.

Guideline Grapevine, Federal Defenders of Eastern Washington & Idaho. This is a regularly published compilation of Sentencing Guideline annotations, collected by subject. I have some softbound volumes of collected material from July 1992 to September 1994. We have all the individual issues from that date on, which we can copy upon request.

Cross-Examination: Science and Techniques, Pozner & Dodd, The Michie Company (\$105). This is the best trial technique book on the market. It actually gives step-by-step instructions on how to prepare and execute effective cross-examinations. Most trial technique books give vague advice and provide examples that do not have broad application. This book is specific and gives examples of situations that regularly occur (e.g.,

crossing an informant).

Criminal Law Outline, The National Judicial College, Judicial College Building, University of Nevada, Reno, NV 89557 (\$18). This is a listing of all Supreme Court cases involving criminal procedure and substantive law. It is indexed by issue, and it is light enough to carry to court.

BNA Criminal Practice Manual, Pike & Fisher, Inc., 4600 East-West Highway, Ste. 200, Bethesda, MD 20814-1438 (\$630 a year, \$570 renewal). This is expensive, so I only recommend it to persons specializing in criminal law. It might be a good purchase for a person that is not *also* going to buy reporters and digests. It is a biweekly report on all aspects of criminal practice (case law, forensic analysis, trial excerpts, sample pleadings, etc.). There are three volumes - (case law, current reports & index).

I hope this was a little help.

Editor and Chief Defender / Executive Director: Alexander Bunin  
Southern District of Alabama Federal Defenders Organization  
2 South Water Street, 2nd Floor  
Mobile, AL 36602  
(334) 433-0910  
(334) 433-0686