

*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?