

Bringing Hope to the Hopeless Case:

Using All the Tools in Your Toolbox to Get Your Client a Fighting Chance at Trial, or a Better Plea

Discovery

- *Brady v. Maryland*, 373 U.S. 83 (1963) (government has duty to disclose exculpatory evidence)
- *Giglio v. United States*, 405 U.S. 150, 154 (1972) (duty to disclose includes evidence affecting credibility of government witnesses)
- *Kyles v. Whitley*, 115 S. Ct. 1555 (1994) (the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police)
- Federal Rule of Criminal Procedure 16

Jencks Material

- Jencks Act: 18 U.S.C. § 3500
- Federal Rule of Criminal Procedure 26.2
- *United States v. McKenzie*, 768 F.2d 602 (5th Cir. 1985) ("This court has recognized such early Jencks disclosure as a salutary practice that should be encouraged to avoid the interruptions and delay at trial that are inevitable if the defense does not receive the material until the conclusion of the direct testimony.")
- *United States v. Campagnuolo*, 592 F.2d 852 (5th Cir. 1979) (although government is not required to disclose Jencks materials before trial, doing so is encouraged to obviate trial interruptions)

Motions to Suppress

- *United States v. Jones*, 565 U.S. 400 (2012) (installing a GPS tracking device on a person's private vehicle to track their movements constitutes a search)
- *Carpenter v. United States*, 138 S. Ct. 2206 (2018) (police need to seek a warrant to obtain historical cell-site records from a suspect's cell phone provider)

Beware of the Good Faith Exception

- *United States v. Leon*, 468 U.S. 897 (1984) (exclusionary rule does not apply to evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be invalid)
- *Davis v. United States*, 564 U.S. 229 (2011) (good faith exception applies "when the police conduct a search in objectively reasonable reliance on binding judicial precedent") → not limited to warrants

Stipulated Trial

- See USSG § 3E1.1 Application Notes 1 and 2 for how to argue that your client should get acceptance points after proceeding by way of a stipulated trial