

Select Issues In Immigration Crimes Defense

A Primer

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Table of Contents

- I. **The Sticky Subject of Alienage & Citizenship.** So, you say your client might be a US citizen? This section deals with the interesting considerations in the technical defense of a purported citizen in an illegal re-entry case.
- II. **Material Witnesses in Transporting Cases.** Have you ever noticed how witnesses are “material” if they help the government? The more they help the government the more material they get. Well, this section talks about ways to get material witnesses on your side.
- III. **The Requirement of Corroboration.** Turning a no-brainer into a brainer, if you will, is especially interesting in illegal entry cases. While the requirement of corroboration adheres to all crimes, it tends to fall flat in some instances of illegal entry prosecutions. Why?
- IV. **Immigration Crimes Sentencing Defense.** Are there special things inherent in these immigration crimes that have a special bearing on sentencing? Does an immigration defendant warrant any special attention from a sentencing judge? This section provides ideas to pursue in the sentencing phase of an immigration case.

I.

TITLE 8 U.S.C. §1326 CASES The sticky subject of alienage

Defending a person charged with violating Title 8 U.S.C. §1326 can be a challenging venture. At face value, you are defending a person who is sitting across a table from you and who is charged with being here. Ah. The multiple defenses should come easily to mind, right? And what complicates the matter is that many of these poor souls are facing astronomical jail terms. So the equation goes something like this: a pretty defenseless case with a hardcore sentence. And then you think to yourself, “Today is a good day to retire.” Although we face incredible odds, we are not without defenses to these charges.

I. THE CITIZENSHIP ISSUE AND HOW TO PROPERLY EXPLOIT IT.

The elements of a Title 8 U.S.C. §1326 prosecution are that:

- **The defendant was an alien at the time alleged in the indictment;**
- The defendant had previously been [denied admission][excluded][removed][deported] from the United States;
- That thereafter the defendant knowingly [entered][attempted to enter][was found in] the United States; and
- The defendant had not received the consent of the Attorney General of the United States or the Secretary of the Department of Homeland Security to apply for readmission to the United States since the time of the defendant’s previous deportation.

A. ALIENAGE

The government bears the burden of showing that your client was an alien at the time alleged in the indictment. If your §1326 client looks up at you during your first meeting with him and tells you he was born in Poughkeepsie, New York, get the birth certificate and you win. However, it is not always that easy. First, consider the work involved in establishing someone's citizenship. Then, REMEMBER that the burden remains with the government to show your client's alienage beyond a reasonable doubt.

First, what are the ways someone is a US citizen?

We all know that persons born in the United States are US citizens. But, various other people, not born in the United States, can claim citizenship in the United States under various conditions and circumstances¹. A determination that your client is a US citizen will act as a complete defense to certain cases (8 U.S.C. §1325, 8 U.S.C. §1326, for example), AND you have the pleasure of anointing someone a US citizen in the process.

A. CITIZENSHIP FOR PERSONS BORN ABROAD

There is a set of very important preliminary questions we should ask of our clients charged in immigration cases where his foreign/alien status is an element of the offense:

1. Where were you born?
2. What is the citizenship of your mother, father, and all four grandparents (regardless of whether they are living or dead)?
 - a. Sometimes it is better to ask where the parents and grandparents were born because a lot of folks will confuse 'citizenship' with residency.

There are rare cases in which an accused alien states that he was born in the United States. If that occurs, gather witnesses to attest to the birth: mom, midwife, doctor, if any, curandero², etc.

If, on the other hand, the client was **not born in the US**, but relates that a parent or grandparent was, there still exists a decent possibility that he could be a US citizen.

For example, Antonio was born in Mexico in the 1955. His mother was a Mexican citizen, but his father was a US citizen. Prior to moving to Mexico, Antonio's dad lived in the US for a total

¹Attached as Appendix #1 is a series of tables that are helpful resources for helping determine whether a person born abroad is a United States citizen. They come from *Kurzban's Immigration Law Sourcebook*.

²A curandero is a spiritual healer prevalent in Mexican/Mexican-American culture.

of 30 years, from the date of his birth to the time he left for Mexico. In 1975, Antonio became a legal permanent resident alien. In 2000, Antonio was convicted of a serious crime for which deportation was mandatory. Can the INS deport him?

Answer: No. Antonio is a United States citizen. By using various charts known as Naturalization Charts, one can help determine Antonio's status in the United States. The charts are relatively easy to use and are driven by the precise circumstance and the date of birth of the person whose status is in question. Please refer to the charts in Attachment #1. If you have a client who meets the various requirements, he can file an N-600 (see Attachment #2) to receive his certificate of citizenship.

Since a key to determining citizenship through parents is the citizenship status of the parents, one would benefit from knowing the citizenship of the grandparents. If a grandparent is a citizen, they can pass citizenship to their child, which, in turn, can then pass citizenship to your client. It's a little complicated but very rewarding.

Other very important questions to ask include:

1. How long did client reside in the United States (from what date to what date)?
2. How long did parents reside in the United States (from what date to what date)?
3. How long did grandparents reside in the United States (from what date to what date)?
4. What forms of proof do you have to show the length and veracity of each of the three questions above?
 - a. Baptismal records
 - b. School records
 - c. Bills
 - d. Library registration
 - e. Medical records
 - f. School Annuals (yearbooks, newspaper, etc)
 - g. Neighborhood anecdotes
 - h. Family anecdotes
 - i. Other witnesses (anybody who came in contact with person in question)

B. AUTOMATIC ACQUISITION OF CITIZENSHIP BECAUSE OF PARENTS' NATURALIZATION

While the rules for citizenship for persons born abroad focus on the status of the parents in passing citizenship to their offspring, an exercise which can render a person a citizen *from birth*,

a person born outside the U.S., to alien parents, can acquire citizenship from his parents if one or both parents naturalize and certain other conditions are met. In this case, the person would become a citizen of the United States upon satisfaction of final condition.

For example, Antonio is born in Mexico in 2000 to parents who are both resident aliens of the United States. When Antonio turns 5, his parents decide to naturalize and move back to the United States. So long as both parents naturalize, and before Antonio reaches the age of 18, and Antonio is or becomes a legal permanent resident and she does in fact naturalize.

Asking the right questions can raise red flags which might eventually produce a result so great and powerful to completely destroy the government's case. Investigating whether someone might be a US citizen by operation of law can be time-consuming, but the reward is great: not only have you provided a complete defense to a charge against a person previously thought to be an alien, but you have essentially uncovered a US citizen.

II. EXPLOITATION OF THE CITIZENSHIP ISSUE

Let's say that you engaged this entire process and you established, through your investigation, that your client technically fails to meet the guidelines for citizenship. Does that bind you and affect the way you advise your client about pursuing trial versus entering a plea of guilty? And, if you proceed to trial, how does your investigation hinder your defense? How far do you take your investigation? Does your thorough investigation hurt your defense?

A. PRACTICAL CONSIDERATIONS

1. Undertaking a citizenship investigation is extraordinarily tedious and onerous on the investigator. Consider that you often have to trace the family tree and find documents that will support the statements made by the "ancestors." If you have an anxious judge who does not give you much time to investigate this issue, consider scaling your investigation back.
2. There is nothing more devastating to your citizenship defense than mortality. Assume that your important witnesses are all dead, or have some sort or fashion of Alzheimer's. That's not too much of a stretch. You are dealing with many picayune details over a virtual sea-legged epoch. People either aren't around or they just flat-out don't remember

things.³

3. Your client will not be able to understand the technicalities of this area of the law. Oftentimes, people think that the only avenues for citizenship are birth in the US and naturalization. Many cannot grasp the idea of dual citizenship. So, the incredulity of your defense begins right at home with your client. That, in addition to the fact that your client *knows* he is guilty doesn't help your cause.

B. ETHICAL, YES ETHICAL, CONSIDERATIONS

1. Undertaking a citizenship investigation which leads to the inevitable conclusion that your client is *not* a US citizen places substantial shackles around what you can argue before the trier of fact. Let's say that your investigation revealed that one of prerequisites to derivative citizenship was not met and you now know for a fact that it is impossible for your client to be a US citizen. Then, can you argue before a jury or the judge, any of the following:
 - a. My client is a US citizen;
 - b. My client may be a US citizen;
 - c. Whether my client is a US citizen is beyond question;
 - d. My client's blood runs red, white, and blue.

As you can see, there is a substantial schism between your duty to your client and your duty of candor to the court. As Mike Tigar once told our law school class, "When the day is going bad, make sure that it's only your client *and not you* that is going to jail."

C. THE WAY TO SETTLE THE SCHISM, SERVE YOUR CLIENT, NOT GO TO JAIL, AND HAVE A FIGHTING CHANCE AT

³As evidence of fleeting memory, consider that Alberto Gonzalez, Attorney General of the United States, failed to remember, I mean "recall," many facts that apparently occurred a short 6 months prior to his testimony. And if a Harvard-educated-lawyer-former-Texas-Supreme-Court-Justice-personal-friend-of-the-President-never-met-torture-he-didn't-approve-of individual has such a difficult time, what about folks with a tenth of his education, intellectual prowess, wit, and cunning. What chances do the ordinary folks have to remember the details. In an unrelated matter, we'll discuss veracity later.

ACQUITTAL.

1. In the immigration context, before the INS/BCIS/BICE etc. a person attempting to establish their citizenship bears the burden of proving that they are a citizen. As we know, in the criminal context, the burden and standard of proof always rests with the government. In this context, the government must prove that your client was an alien at the time alleged in the indictment. Let's say you put on some evidence of a parent's US citizenship, or a grandparent's US citizenship, followed by expert testimony of the possibilities regarding US citizenship via these avenues, you might be able to have your cake and eat it too.⁴

2. THE MECHANICS OF THE DEFENSE.

- a. You need to put on some evidence that someone in the defendant's family (either mom, dad, or some grandparent) is a United States citizen.
 1. Remember, there might be a considerable amount of flexibility in the presentation of this evidence. For example, Federal Rule of Evidence 803(19) provides an exception to the establish hearsay rule is the evidence to be presented is reputation (either by a member of a family or associates or community) as to a family member's birth, death, adoption, marriage, etc. So, evidence regarding a person's birth, for example, can be made through this exception to hearsay. A prior birth certificate may not be necessary.
 2. Provide expert testimony regarding the ways that a person not born in the US can be a US citizen notwithstanding their birth abroad.
 3. The government is left quite flat-footed because now, instead of having to prove that the defendant is an alien, it has to disprove his US citizenship possibility. Proving a negative is damn near impossible.

⁴“To have your cake and eat it too” is a corruption of the English phrase “Wolde you bothe eate your cake and haue your cake?” which first originated in 1546. The phrase means describes a situation where one wants more than they deserve. With the consumption of one's cake, one also cannot have their cake after they've consumed it.

- A. **A quick and important note about expert testimony:** Be careful about allowing your expert to review your client's citizenship potential. This is especially true if your expert does not think your client is a citizen.

II.

GETTING MATERIAL WITNESSES ON YOUR SIDE

Everywhere around the world, they're coming to America.— Neil Diamond

Give me your tired, your poor...— Statue of Liberty

The business of America is business.—Calvin Coolidge

As economic conditions around the world deteriorate, and American politicians make overtures relating to the automatic naturalization of illegal immigrants already in the United States, the borders are teeming with people attempting to improve their individual economic situations. For every desperate soul seeking refuge in America, however unfortunate, there are those entrepreneurs invested in bridging the gap between the immigrant's reality and their dreams. Representing those accused of smuggling illegal aliens presents some very unusual and unique considerations. This paper will discuss some of the more salient issues in defending alien smuggling cases (Title 8 U.S.C. §1324).

I. Offenses found in Title 8 U.S.C. §1324.

- A. Bringing in aliens at a Place Other than a Port of Entry (Title 8 U.S.C. §1324 (a)(1)(A)(i)). Anyone who knowingly brings an alien into the United States at a place other than a designated port of entry is guilty. The penalties are as follows:
 - 1. 10 years maximum;
 - 2. 20 years maximum, if during and in relation to the offense the person causes serious bodily injury or puts in jeopardy the life of any person;
 - 3. Death, if any death resulted.
- B. Bringing in aliens in “any manner whatsoever” (Title 8 U.S.C. §1324 (a)(2)(A)). A person is guilty if he knows or acts in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the US and brings the alien to the US, regardless of later official action taken with respect to the alien. The penalties are as follows:

1. One year max.;
2. 10 yr max, if first or second violation where alien is not immediately brought to port of entry upon arrival and presented to an immigration officer;
3. 3 yrs minimum-10 year max, if bring-to was done for private financial gain or commercial advantage (first or second violation);
4. 3 yrs minimum-10yrs maximum, if the offense was committed with intent or reason to believe alien would commit an offense against US or any state that is punishable by more than one year (first or second violation);
5. 5 yr min.-15 yr max, for any other violation.

C. Transport/Move Aliens (Title 8 U.S.C. §1324(a)(1)(A)(ii)). A person knowing or in reckless disregard that an alien has come to, entered, or remained in the US in violation of law and thereafter transports or moves or attempts to move that alien within the US, *in any way*, in furtherance of that alien's violation of law is guilty. The penalties are as follows:

1. 5 yrs max;
2. 10 years max, if done for private financial gain or commercial advantage;
3. 20 years maximum, if during and in relation to the offense the person causes serious bodily injury or puts in jeopardy the life of any person;
4. Death, if any death resulted.

D. Conceal/Harbor/Shield from Detection Aliens (Title 8 U.S.C. §1324(a)(1)(A)(iii)). A person is guilty if they act in knowing or reckless disregard of the fact that an alien has come to, entered, or remained in the US in violation of law, and thereafter conceals, harbors, shields from detection or attempts to do any of the foregoing. The penalties are the following:

1. 5 yrs max;
2. 10 yrs max, if done for private financial gain or commercial advantage;
3. 20 years maximum, if during and in relation to the offense the person causes serious bodily injury or puts in jeopardy the life of any person;
4. Death, if any death resulted.

E. Encouraging/Inducing an alien to come to, enter, or reside in the US, knowing that such coming to, entry, or residence is in violation of law. Title 8 U.S.C. §1324(a)(1)(A)(iv).

1. 5 yrs max;
2. 10 yrs max, if done for private financial gain or commercial advantage;
3. 20 years maximum, if during and in relation to the offense the person causes serious bodily injury or puts in jeopardy the life of any person;
4. Death, if any death resulted.

LIMITED RELIGIOUS AFFIRMATIVE DEFENSE: Title 8 U.S.C. §1324(a)(1)(C) provides a limited defense against certain provisions of §1324. If you have a situation where a client is charged with transporting, concealing, or inducing an alien to reside in the US (once they have already arrived in the US)(i.e., Title 8 U.S.C. §1324(a)(1)(A)(ii), (iii), and (iv)⁵), there is a limited defense to prosecution where you can show:

- a. that your client was a religious denomination have a bonafide nonprofit, religious organization in the US, or the agents or officers thereof;
- b. who encourage/invite an alien already present in the US;
- c. to minister as a non-compensated volunteer, notwithstanding the provision of room, board, travel, medical, and other basic living expenses
- d. PROVIDED that the minister/missionary has been a member of the denomination for at least one year.

F. Conspiracy to do any of the above acts. Title 8 U.S.C. §1324(a)(1)(A)(v)(I). Punishable as follows:

1. 10 yr max.

G. Aid/Abet any of the above acts. Title 8 U.S.C. §1324(a)(1)(A)(v)(II). Punishment:

1. 5 yr max.

II. Common Defenses.

A. **THE KNOWLEDGE REQUIREMENT.** Various of the sections in §1324 require a person to act in knowing or reckless disregard of certain facts. If your client presents a bonafide misunderstanding of the fact of the alien's illegal presence, that can act as a defense. Also, consider whether a person may have been hoodwinked into thinking that his "cargo" is legal.

1. Non-exhaustive list of things to look for to discount knowledge of alienage requirement:
 - A. Extent of furtiveness;
 - B. Extent of concealment;
 - C. Statements made of intention;
 - D. Extent to which client spoke aliens' language;

⁵The defense is limited with respect to subsection (iv) and applies only to a person who encourages or induces an alien to reside in the United States. If your client encouraged or induced an alien to come to or enter the US illegally, the defense doesn't fit.

- E. Extent of previous encounters with alien(s);
- F. Relationship with alien(s)

B. **INTENT TO FURTHER ILLEGAL PRESENCE.** Some sections of §1324 require that a crime have as an element the intent to further the illegal presence of the alien. Consider these defenses:

1. Key to this type of defense is the mental state and intent of the mover. Was he acting out of some other purpose (ie, humanitarianism, health, duress, etc.)
2. Mere transportation, without more, is insufficient as a matter of law to convict. *United States v. Chavez-Palacios*, 30 F.3d 1290 (10th Cir. 1994);
3. Defendant must act with specific intent to further the illegal presence. *United States v. Rivera*, 879 F.2d 1247 (5th Cir. 1989), *cert. denied*, 493 U.S. 998, 110 S.Ct. 554, 107 L.Ed.2d 550 (1989);
4. An attempt to secure legal status for an alien is not acting with requisite mental state. *United States v. Merkt*, 764 F.2d 266 (5th Cir. 1985). *But see United States v. Alvarado-Machado*, 867 F.2d 209 (5th Cir. 1989) (where Fifth Circuit said a paroled alien is equivalent to an alien who is seeking admission at the border and a person who transports such an alien is in violation of the statute (1324) because aliens' departure and re-entry into the US voids any such parole).

C. **ALIENAGE.** Each section of §1324 requires that the person transported, moved, brought to the US, concealed, etc. be an alien.

1. The Fifth Circuit Pattern Jury Instruction defines alien as any person who is not a natural-born or naturalized citizen, or a national of the United States. The term "national of the United States" includes a citizen and a person who, though not a citizen of the United States, owes permanent allegiance to the United States. Fifth Circuit Pattern Jury Charge, Criminal §2.03.
2. The introduction of previously issued immigration documents which attest to alienage is not sufficient proof beyond a reasonable doubt of alienage. *United States v. Alvarado-Machado*, 867 F.2d 209 (5th Cir. 1989).
3. Generally, either live testimony or testimony through depositions, as envisioned by Title 8 U.S.C. §1324(d) will suffice to show alienage. Whether in live testimony or in depositions, the key is getting good stuff out of the aliens that are kept as witnesses. These folks are called material witnesses.

III. HOW TO HANDLE MATERIAL WITNESSES: A DEPOSITION STRATEGY⁶

<p>BLESSED ARE THE MEEK: FOR THEY SHALL INHERIT THE EARTH</p> <p><i>MATTHEW 5:5</i></p>	<p>IT TAKES TWO TO LIE. ONE TO LIE AND ONE TO LISTEN.</p> <p>---HOMER J. SIMPSON</p>
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The government's use of material witnesses poses some interesting challenges to the criminal defense practitioner. On the one hand they might be putting the hurt on your client. On the other hand, their story (coming to America to work and make a better life) makes them an instant hero. How you treat these witnesses depends, of course, on what they are going to say. Therefore, prior to securing their status as a material witness, prior to deposing them, and definitely prior to putting them on the stand or conducting your cross-examination, know what they are going to say about your client.

A. MATERIAL WITNESS INVESTIGATION.

1. REMEMBER THAT THEY ARE REPRESENTED. Always secure counsel's permission before discussing case with witness.
2. Plan ahead for multiple interviews. It never fails that the more times a person tells a story the more grandiose the facts get. Remember the story of the big fish. Grandiosity with regard to certain facts could cripple the witness's credibility.
3. Photo array (any line-up problems?)
 - A. Photo line-up tricks: Get a multiple photo spread.
 1. When presenting the spread (which includes a photo of your client), pay particular attention to hesitation in the identification process. "I think this is him" or "Maybe it's..." or "I am not sure" or "I don't know," together with pauses, silence, and constant looking.

⁶Saturday Night Live word coined by Will Farrell in a satirical,

2. Or you can do a spread without your client's photo. See if the person gives a false positive regarding some other person in the lineup.
4. Lying History. Adults are liars. But, how do you get adults to admit that they are liars? Anybody ever heard of Santa Claus, the Easter Bunny, the Tooth Fairy, the stork, etc. Start with the little, harmless, *white* lies and then make it explode. Try to see under what circumstance they'd stray from the little white lie to the big nasty one.
5. Criminal history inquiry. Get into everything (arrests, convictions, etc.) whether in their country or in the US.
6. Dastardly deeds. Have you ever done anything that you are not proud of?
7. Familiarity with the system (Tit for tat). Are they aware of what they are getting for agreeing to testify for the government? Or is the government foregoing something because they are getting the person's testimony?
8. Border Patrol treatment/promises/coercion. Are they preoccupied by anything the BP told them or did to them or anything else they may have witnessed?
9. Gathering negative information about a material witness can be difficult sometimes. The witness may or may not be onto what you are trying to achieve. But, how do you elicit all of this horrible information from someone not really willing to talk to you in the first place? You must build the trust between you and the witness. How do you do that?
 - A. Appear interested in their story. They just want someone to "feel their pain." Mirror their emotion.
 - B. Close in on them physically, lessening the space between you and them.
 - C. Note-taking. Does it distract from the connection that you are trying to make with the witness?
 - D. Tape- or other type of recording. Does this create a barrier to the trust-building that you are trying to accomplish?

- E. Dress. Do the clothes you wear have an impact on the interview and whether it'll make the witness more or less forthcoming?
 - F. Use of language, tone, pace, and accent.
10. Motion to Suppress Help. Oftentimes, whether the mats hurt or help you in the long run, they can help you in the context of a motion to suppress. These are the ultimate bystanders with nothing to gain. Take the agent's report relating to reasonable suspicion or probable cause for the stop and ask the alien material witness if that fact existed. For example, if a BP agent testifies that they saw heads bobbing up and down, the mats can refute that. If the BP says that he saw the vehicle riding low, a material witness can help refute that. This is powerful stuff. On the one hand, if they help the government in its case-in-chief, but on suppression, the government is forced into the position of not refuting the testimony (which lends instant credibility to the suppression testimony) or challenging the credibility of the witness (which might call into question their testimony at later hearings, trial, etc.). To that end, get the judge to make a finding as to the credibility of the material witness. Either way, it will help you. If for nothing else, this might help get you some plea bargain leverage.

B. MATERIAL WITNESS DEPOSITIONS

Depositions of Material Witnesses

- 1. The Material Witnesses ("Mats")
 - a. The best two witnesses for the government (?). The government is able to sift through all of the witnesses in search of their favorite two. Why do they choose to keep certain aliens and not others? What are they hiding? Is it possible that they have allowed all of your favorable witnesses to go about their business in Mexico and kept only those that could really put the hurt on your client? The government wouldn't do that, would they? What do you do if the government sends home a favorable material witness?
- 1. ***Valenzuela-Bernal* Motion to Dismiss the Indictment.** Supreme Court decision holding that the government had duty to make a good faith determination that any illegal alien witnesses possess no favorable evidence to the defense *prior* to its their deportation. *United States v. Valenzuela-Bernal*, 458 U.S. 858 (1982). If the defendant can make a plausible showing that the testimony of the deported alien would have been material and favorable to the defense, the indictment should be dismissed. *Id.* at 873. The Court should dismiss the indictment if the testimony could have affected

the judgment of the trier of fact. *Id.* at 873. Some circuits have adopted an additional requirement of a showing of bad faith on the part of the government. *United States v. Chapparro-Alcantara*, 226 F.3d 616, 624 (7th Cir. 2000); *United States v. Pena-Gutierrez*, 223 F.3d 1080, 1085 (9th Cir. 2000); *United States v. Iribe-Perez*, 129 F.3d 1167, 1173 (10th Cir. 1997); But See *United States v. Gonzalez*, 463 F.3d 560 (5th Cir. 2006)(where 5th Circuit applies, but does not express adopt the requirement). Examples of bad faith include government departures from normal deportation procedures, or deporting a witness to gain an unfair tactical advantage.

2. What Evidence to Gather and How:

- A. Proceed by oath or affirmation of defendant or counsel attesting to facts favorable to the defendant.
1. Cross-examine material witnesses about the lack of proper interrogation of all witnesses;
 2. Use material witnesses to develop those facts that are favorable to the defendant that *would have been* testified to or potentially addressed by missing alien witness. Did the missing witness have the best opportunity to observe critical facts? Did the missing witness have knowledge of the encounter not known by all? Was there some insight that could only be provided by that witness?
 3. Surprisingly, sometimes BP reports contain synopses of statements given by everybody. They are oft times contained in I-213's or in other reports such as the G-166 (Report of Investigation) or the I-831 (Continuation Page for Form G-166F).
 4. Contact the deported material witness to see what story they gave to BP. I know you're sitting there thinking, "Yeah, if I had a cape and red suit I might could do that." But, remember, your point is that the government acted improperly by trying to limit the universe of information eventually available to the trier of fact. In the case of certain aliens, their deportation may be pending, but not yet executed (ie, El Salvadorans, Hondurans, Guatemalans, etc.) so it would be easier for you to track them down and speak to them.

3. **Moving to Depose Favorable Witnesses Prior to their Deportation.** Sometimes you will run into a witness who is saying favorable things about your client and who unwittingly aides the hell out of your defense. What do you do? Under Federal Rule of Criminal Procedure 15 and 18 U.S.C. §3144, you can move for the arrest and detention of a material witness, together with a motion to depose the witness. Attach an affidavit describing the need for the testimony (they possess material information and are in the course of deportation). Also, if you'd rather have the witness available for live testimony, you can slap him/her with a subpoena and ask for the setting of reasonable bail in your motion, pursuant to Title 18 U.S.C. §3142 (Bail Reform Act).

A. If you don't slap the witness with a subpoena and attempt to secure his presence at your trial, and he doesn't want to come to court to testify, your chances of postponement are nil. Best course of action is to serve the subpoena on him to appear at every hearing so that, at very least, you can serve him with his next subpoena or to give further instructions.

- b. Know what they are going to say ahead of time through investigation requests
1. Photo array (any line-up problems?)
 2. Motion to suppress information
 3. Reckless endangerment issues
 4. Criminal history inquiry
 5. Lying history (anything and everything)
 6. Dastardly deeds
 7. Familiarity with the system (How can I help myself?)
 8. Border Patrol treatment/promises/coercion

2. The Deposition

Often heard through criminal defense circles is the comment, "Man, I wish we had the rules that they have in civil cases, because if I did..." Depositions, although being conducted for and used in criminal cases, are largely governed by the Federal Rules of Civil Procedure. The "technicalities" that we often look for often hold the key to our client's freedom. Consider these "technicalities":

- a. Before the deposition even starts (and you don't want depositions) object to the following *in writing*:

1. There has been no factual foundation of exceptional circumstances to take the depositions of these witnesses, in lieu of their live testimony before the trier of fact;
 2. If you received no notice as to the time, place, manner of the deposition...object.
 3. If you are being forced to conduct depositions prior to the passing of a discovery deadline, object that you cannot meaningfully cross-examine because the government has not disclosed any information for you to be able to properly cross-examine. As such, your objection is that your client is denied effective assistance of counsel, right to counsel, due process, and a fair trial.
 4. If you are forced to depositions within 30 days of your client's first appearance through counsel⁷, object that you have not given consent to proceed to trial within that 30 day time frame. Only you can consent to that proceeding to trial that early and since these depositions are *for use at trial*, they are tantamount to trial testimony for which your consent must be first secured. See Title 18 U.S.C. §3161.
 5. Make 6th Amendment confrontation objection, stating that depositions are not the equivalent of testimony before the trier of fact since the trier of fact cannot gauge the witness's demeanor in a court setting.
 6. Object to the absence of a judicial officer or qualified person to administer the oath to the witness. Fed. R. Civ. Proc. 30
- b. Once the depositions start you are to object in the same fashion as if the case was actual in trial mode.
1. Objections under Federal Rules of Evidence not made are waived. Federal Rule of Criminal Procedure 15(g)
 2. Object to proceeding through the deposition with your client in jail garb.
 3. Object to the identification of your client during the deposition as improper, especially if the prosecutor or other person has

⁷Generally this first appearance references the arraignment of the defendant following indictment. Therefore, the passing of this thirty-day time limit for which the court requires a defendant's consent prior to proceeding to trial often, if not always, occurs long after the date set for material witness depositions.

previously identified the defendant prior to the material witness identification.

4. Object and advise that the material witness be made aware (again) of his 5th Amendment privilege to remain silent.⁸
 5. Make sure that the Rule of Sequestration of Witnesses is invoked and adhered to.
 6. Object to any time that the videographer moves the camera from recording the witness to recording other things. Re-urge objection to not having witness testify live; then object that the very limited opportunity for the jury to see the witness's demeanor is being wasted when the videographer scans away from the witness.
 7. Similarly, any time a videographer pans the camera to get a gut-reaction from the parties (positive or negative) to the testimony given, although it might make "good tv" it has the effect of bolstering the testimony of the witness.
- c. Once the videotaped session has concluded there are a couple of interesting objections/requests you can make that might get you some leverage.
1. At the conclusion of each deposition, an individual request should be made for the deponent to review the transcript or recording.
 2. Once the playback is commenced, sit back and wait for the end of the playback. Once the playback is done, interrogate the videographer about the lack of interpretation given to the deponent as they reviewed the transcript/tape. The purpose of the playback is to provide the deponent with the opportunity to make changes to their testimony. If they are not provided with the interpretation of the english that is purportedly what their answer is, how can they make corrections?
 3. In a similar vein, if the deponent is not made aware of the purpose of the playback, how can they make any changes?
 4. Object to the absence, if any, of certification of the record.

⁸This one is tricky. I once made this objection during a deposition and counsel for the material witness got testy. After advising me that he had already advised his client about the privilege, he told me that he knew what he was doing. I had no doubt he knew what he was doing. I just wanted a videotaped reaction from the lawyer and/or client about the privilege. Since that altercation, that lawyer chose to no longer represent material witnesses.

- d. TECHNICAL PITFALLS FOR BOTH PROSECUTOR AND DEFENDER. The deposition can be an interesting experience for both defense counsel and the prosecutor. The deposition can trip up both parties. The idea here is to try to be tripped up the least.
1. Prosecutor pitfalls
 - A. Nine times out of ten, deposition testimony not as harmful as in-court testimony because:
 1. The prosecutor has absolutely no rapport with the material witness. In fact, only the arresting agent has any rapport with the witness...and that rapport isn't so good.
 2. No victimization potential. A deposition doesn't give the prosecutor the same soapbox to pontificate over victimization issues. The thunder is somehow lost.
 3. Not as talkative (video). Whether because of the amazement of the electronics or the augustness of the setting, generally, material witnesses are less talkative during depositions than during trial.
 2. Defense pitfalls
 - A. Cross-Examination.
 1. One of the things that defense counsel often forgets is that cross-examination is substantially different when you are dealing with an interpreter and a non-english-speaking witness. Cross-examination is a skill based in large part on timing. That timing is hurt when the examiner's searing cross is elongated into undecipherable mush by the translator.

Consider this exchange in which the defense attorney is trying to get the witness to admit that he has been in the US before (based on a true story)

Defense: You've been here before?

Witness: (No Answer)

Defense: Answer please.

Witness: Answer what?

Defense: The question.

Witness: Which question?

Defense: That you've been here before.

Witness: This is my first time here.

Defense: This is your first time here in the US?

Witness: No, this is my third time in the US. It is my first time in this building.

Now, add the time it takes for translation and your one question *coup de grace* cross has just been shredded by a guy that didn't even finish grade school. It feels an awful lot like the confusion that is created by the "Who's on First?" comedy routine performed by Abbott and Costello.⁹ Now, no one is trying to mess up your cross. There is no malice on the part of the witness. It's just that typical cross, that Larry Posner-Terrence McCarthy stuff, doesn't work too well with anyone who needs translation. So here are some tips for conducting good cross on material witnesses who require translation:

- e. Conducting good cross-examination of a material witness who requires translation. This list is by no means exhaustive, but they present good starting tips.
 1. Know the answers to your questions ahead of time. This is one of the old rules, but sometimes the old rules are the best rules.¹⁰
 2. Keep your questions ultra-short. Don't overload the translator with compound questions or a question that drags on. If he gets tripped up by your question, you will likely not get the answer you are looking for from the witness and/or the witness will ask you to repeat the question.
 3. Slow down. This is #2's big sister. Same rationale.
 4. If the answer you want is a "yes," nod while you ask the question.
 5. Make eye contact with the translator and the witness. By making eye contact with the translator and the material witness, you can gauge the proper pace of your examination.

⁹*Who's on First?*, Bud Abbott and Lou Costello, Copyright 1956.

¹⁰I borrowed this line from Alfredo Villarreal, AFPD, Western District of Texas.

6. If needed, break a question into 2 digestible parts for the translator, and the material witness. This allows you and the translator to further synchronize the cross.
7. If you are referring to things, objects, or people, have them there at the deposition to point to as you cross. If, for example, you are talking about a location, photograph it, give a copy to the government and mark and introduce it in evidence. If you want to implicate an agent in wrongdoing, subpoena the agent and have him there to be identified by the witness.

f. **OTHER GOOD STUFF TO BRING OUT.**

1. If the material witness did not feel threatened or endangered by your client, bring it out. But, if he felt threatened or endangered by the agents, bring it out. That might provide an excellent opportunity to suggest, ever so coyly, that the government's hovering coerciveness colored the testimony of the witness.
2. Beef up your motion to suppress with facts the government would rather not have aired out (ie, facts that contradict the agents...i.e., the truth).

g. **THE REQUIREMENT OF UNAVAILABILITY.** The requirement of unavailability (Compare 8 U.S.C. §1324(d) and Federal Rule of Evidence 804(a) and (b)(1)[Hearsay Exception, Former Testimony]).

1. If the deposed promises to return if subpoenaed, there is a hurdle for a showing of unavailability. So, in your questioning, bolster the witness's agreement to be present at the trial to testify.¹¹
2. If the government fails to subpoena prior to his return to Mexico, there is a hurdle for a showing of unavailability.
3. If the government does nothing to secure his presence for court to testify, there is a hurdle for a showing of unavailability (i.e., lack of due diligence)

¹¹Now, obviously you'd rather the witness not be present to put the hurt on your client. And, you'd also like the videotaped depositions to be lost somehow. So, this line of questioning is quite tongue-in-cheek. In cases where material witnesses have been released on bond, sometimes they don't show up for hearings. I'd rather take my chances on a material witness who has "a little rabbit in him" than with a judge granting my ever-so-thoughtful objections. The reference "a little rabbit in him" comes from the movie *Cool Hand Luke*, Copyright 1967.

4. If the witness somehow gets to stay in the United States, no unavailability.
5. Question the witness about whether, if released on bond, he would return to testify in trial. If he answers no, make offers that the government might not. For example, the material witness answers “No.” Then say, “Now, if the government offers to allow you to stay in the country and work, would you stay?” Y’all know what the answer is. This extra question is helpful on two fronts: First, it destroys unavailability. Second, it sets up the reward-for-testimony angle. It essentially puts the government in a nasty Catch-22¹². If it releases the witness to cure the unavailability issue, it opens up the paid testimony angle. If it does nothing, it creates a problem with unavailability.
6. Never, never, never agree to deport the material witnesses. Instead, object to the release of the material witness, and cite some favorable testimony that they would provide. The exception to this doctrine, of course, is when you have no other alternative than to enter of a plea of guilty.

I N THE EVENT THAT YOUR NIT-PICKING GETS UNDER THEIR SKIN, CONSIDER THESE REASONABLE, OR NOT SO REASONABLE, PLEA BARGAIN OFFERS

- A. In any case where you might want to suggest a plea bargain, in lieu of whipping up on the prosecutor in a motion to suppress or other pretrial motion, consider making an offer immediately after filing your dispositive motion. The following are suggestions for plea offers.
 1. Aiding and abetting the illegal entry of an alien. Title 8 U.S.C. §1325 & Title 18 U.S.C. §2. Max penalty: 6 months per alien charged in criminal complaint;
 2. Accessory after the fact to the illegal entry of an alien. Title 8 U.S.C. §1325 & Title 18 U.S.C. §3. Max penalty: 3 months per alien charged in criminal complaint;
 3. Superseding the indictment to read a misprision of the underlying offense pursuant to Title 18 U.S.C. §4. This provides for a nine-level reduction in the sentencing scheme and caps the prison time to 3 years;
 4. Superseding the indictment to allege an accessory after the fact to the underlying offense pursuant to Title 18 U.S.C. §3. This will provide for a

¹²*Catch-22*, Joseph Heller, Copyright 1970.

six-level reduction in the sentencing scheme and cuts in half all of the maximums provided by statute for the offense.

A SAMPLE MOTION

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

DEL RIO DIVISION

UNITED STATES OF AMERICA

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VS.

CAUSE NO. Xxxx

xxxx

DEFENDANT’S SECOND MOTION TO SUPPRESS DEPOSITION

TO THE HONORABLE WILLIAM WAYNE JUSTICE, SENIOR UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS:

COMES NOW the Defendant xxxx or “Defendant”), in the above-styled and numbered cause and by and through his attorney of record Assistant Federal Public Defender Frank Morales, pursuant to Federal Rule of Criminal Procedure 15, Title 18 U.S.C. §3503, and Federal Rules of Civil Procedure 30, 32 and hereby files this SECOND MOTION TO SUPPRESS DEPOSITION and in support thereof would show the following:

I.

THERE EXISTS NO STIPULATION BY AND BETWEEN THE PARTIES TO WAIVE REVIEW OF THE DEPOSITIONS BY THE DEONENTS.

On December 2, 1999, defense counsel received copies of depositions of the material witnesses in the above-numbered and styled cause. Defense counsel objects to the use of both depositions until such time as the material witnesses can examine the deposition and affix his signature. Page three, lines thirteen through sixteen of the deposition of Miguel Mendez Soto and page three, lines fourteen through seventeen of the deposition of Jose Hernandez-Miranda contain a certification that the deposition transcript was not submitted to the witness for examination and signature, “examination and signature having been waived by the witness and all parties present.” Additionally, the cover letter which accompanies both depositions states that all parties have waived the reading, examination, and signing by the deponents.

This waiver plainly did not occur. Defense counsel remembers that no one ever asked

him, counsel for the Government, or the witness if they desired to have the examination and signature waived. Defense counsel comes to this conclusion because he was present at the deposition and recalls that, during the time he was present, neither the parties nor the witness consented to a waiver of the examination of the deposition and signature of the deposition. In a conversation with the Assistant United States Attorney who conducted the deposition, he also recalls no such stipulation.

II.

TITLE 18 U.S.C. §3503 AND FEDERAL RULE OF CIVIL PROCEDURE 30 REQUIRE THAT THE DEPOSITION BE GIVEN TO THE DEPONENT FOR EXAMINATION, CHANGES, AND SIGNATURE.

Depositions in criminal cases shall be taken and filed in the manner provided in civil actions. Title 18 U.S.C. §3503(d). When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read by the witness. Federal Rule of Civil Procedure 30(e). To the best knowledge of the defense, neither the deposition of Jose Hernandez-Miranda nor Miguel Mendez-Soto have been delivered to each respective deponent for an examination, changes, and signing. Until that has been accomplished, the defense would move to suppress both depositions as noncompliant with Title 18 U.S.C. §3503 and Federal Rule of Civil Procedure 30(e).

III.

SUPPRESSION IS ENVISIONED AS A PROPER REMEDY FOR FAILURE TO COMPLY WITH EXAMINATION, CHANGES, AND SIGNATURE OF THE DEPOSITION.

Errors in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained. Federal Rule of Civil Procedure 32(d)(4). The error relating to the deponent's examination, changes, and signature of the deposition was discovered on December 2, 1999, when the deposition was received by defense counsel.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the depositions of Jose Hernandez-Miranda and Miguel Mendez-Soto held on November 2, 1999 be suppressed until such time as the Officer has complied with the requirements of Federal Rule of Civil Procedure 30.

III.

Bienvenidos a los Estados Unidos? **Title 8 U.S.C. 1325 (Illegal Entry Prosecutions)¹³**

Any alien who

- (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or
- (2) eludes examination or inspection by immigration officers, or
- (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact...

1. Defending the alleged illegal entrant

- a. Determine whether the client is a United States Citizen. (See citizenship conditions precedent found in INA §§301-309 aka Title 8 U.S.C. §§1401-1409).
 1. Key questions to ask
 - A. Where were you born?
 - B. Do you now have any status? (Legal Permanent Resident is subject to removal under 8 U.S.C. § 1227 (INA §237))
 - C. Do you have a USC mother, father, or grandparent on either side?
- b. Get the discovery. Usually only information available on the crossing is the defendant's own statements. So...
 1. Check for any potential motions to suppress.
 - A. Motion to suppress the encounter and all the fruits of the encounter.
 1. What reason did the agent have to confront your

¹³Dan Newsome, AFPD in the Del Rio Division assisted me with this part of the outline. My thanks to him.

client? Was he swimming the river? riding a train? walking through the brush? Or, was he just mingling in the crowd along a sidewalk being himself? Watch for profiling information.

- B. Motion to suppress statements
 - 1. *Miranda* problems
 - 2. Waiver problems
 - 3. Language problems
- c. Determine whether the facts contain any other chargeable conduct.
 - 1. Assaultive conduct (e.g., Title 18 U.S.C. §111)
 - 2. False Statements (e.g., Title 18 U.S.C. §§911, 1001)
 - 3. **1326 or 1325 felony potential?!?!?!?!?**
- d. Explore plea agreement possibilities.
 - 1. 8 U.S.C. §1304(e)—Alien not in possession. Carries penalty of not more than 30 days jail and up to a \$100 fine, in addition to special assessment of \$10)
- e. If you find that trying the case will not risk additional charging possibilities, remember the corroboration requirement of *Smith, infra.* and *Opper v. United States*, 348 U.S. 84 (1954).

Some important case law:

- 1. *United States v. Flores-Peraza*, 58 F.3d 164 (5th Cir. 1995), cert. denied 116 S.Ct. 7826 (1996)—under Double Jeopardy law, illegal entry conviction under 8 U.S.C. §1325 does not preclude subsequent prosecution and conviction for violation of 8 U.S.C. §1326 for the same illegal entry into the U.S.
- 2. *United States v. Arriaga-Segura*, 743 F.2d 1434 (9th Cir. 1984)—must prove prior **1325 conviction** in order to convict of felony violation of 8 U.S.C. §1325.
- 3. *United States v. Rincon-Jimenez*, 595 F.2d 1192 (9th Cir. 1979)—Crime of improper entry by an alien was complete upon entry, and not a continuing crime. In this case, crime was barred by 5 year statute of limitations.
- 4. *Smith v. United States*, 348 U.S. 147 (1954)—a conviction may not rest solely upon an uncorroborated confession.

5. *United States v. Oscar*, 496 F.2d 492 (9th Cir. 1974)—if defendant is never free of “official restraint”, defendant has not improperly entered the U.S.

IV.

IMMIGRATION-RELATED SENTENCING ISSUES

MOTIONS FOR DOWNWARD DEPARTURE

I. Overstated criminal history

“There may be cases where the court concludes that a defendant’s criminal history category significantly over-represents the seriousness of a defendant’s criminal history or the likelihood that the defendant will commit further crimes.”

—United States Sentencing Guideline §4A1.3, Policy Statement

Considerations:

- I. Few offenses (usually misdemeanors);
- II. Remoteness (10 years prior to instant offense); and
- III. No criminal activity during intervening period.

Other Considerations:

1. Likelihood of committing other crimes (pre- and post-arrest rehabilitation, restitution, education, volunteerism, church-going activities, etc.);
2. Reasons for commission of instant offense;
3. Intervening good acts; and
4. Intervening life event.

Opening the door to the Devil¹⁴:

- I. Facts underlying “minor offenses”;
- II. Same type of offense; and
- III. Recency

II. Cultural assimilation

¹⁴‘Opening the door to the Devil’ is an awkward phraseology that I use to describe situations where your argument, albeit intended to be helpful to your client, gets your client into hotter water. For example, in a case involving an assault that was actually a rape, mentioning that the assault puts your client into category III and that, therefore, his criminal history category is overstated might draw the special ire of the judge, especially if the judge was previously unaware of those facts. Everybody knows you want to help your client, but, on the way to Nirvana, don’t step in doggy doo.

Cultural assimilation is a permissible basis for a downward departure at sentencing. *U.S. v. Rodriguez-Montelongo*, 263 F.3d 429 (5th Cir. 2001); *U.S. v. Lipman*, 133 F.3d 726 (9th Cir. 1998).

In essence, this motion asserts that your defendant is a “*de facto* American.” The relevance is two-fold. First, a *de facto* American facing deportation is essentially being banished to a foreign land. *Lipman*, 133 F.3d at 729. This represents a greater hardship on a culturally assimilated deportee because of the ties to the only homeland he has known. Second, as in *Lipman*, a deportee’s return to the United States mitigates his culpability because of the strong “cultural, emotional, and psychological ties to this country.” *Id.*

Evidence to present includes, but is not limited to:

- A. Arrival on US soil;
- B. When became LPR;
- C. Educational attainment;
- D. English language acquisition;
- E. Spanish language depletion;
- F. Number of trips to country of citizenship (i.e., uninterrupted residence in US?);
- G. Family resides in US (including mother, father, siblings, spouse, and defendant’s own children);
- H. American cultural acquisition (i.e., Scouts, history, politics, economics, psychology, etc.);
- I. Civics lessons taught, if any; and
- J. Employment history (i.e., payment into Social Security, Medicaid, with no possible return on investment).

III. Voluntary Disclosure—U.S.S.G. §5K2.16

Defendant voluntarily discloses to authorities the existence of, and accepts responsibility for, the offense prior to the discovery of such offense, and if such offense was unlikely to have been discovered otherwise, a departure below the applicable guideline range for that offense may be warranted.

If discovery of defendant’s involvement in other crimes was likely, departure not available. *U.S. v. Adams*, 996 F.2d 75 (5th Cir. 1993).

Considerations:

- A. Timing of disclosure;
- B. Place of disclosure;
- C. Motivation for disclosure;
- D. Person’s lack of sophistication; and
- E. Person’s lack of experience and familiarity with the criminal justice system.

IV. Coercion and Duress—U.S.S.G. §5K2.12

So many of our clients will commit offenses in the immigration context because they feel the duress of the situation and that they otherwise would not commit the offenses.

Consider a re-entry client who comes to avoid death squads.

Consider a transporter who was part of the group who was gently coerced to drive. “Ordinarily coercion will be sufficiently serious to warrant departure only when it involves a threat of physical injury, substantial damage to property or similar injury resulting from unlawful action of a third party or from natural emergency. Notwithstanding this policy statement, personal financial difficulties and economic pressures upon a trade or business do not warrant a downward departure.”

1. Consider an El Salvadoran, Nicaraguan, Guatemalan, or Honduran client who has tattoos. These clients are in tremendous trouble once they get to their home countries because of the relevance of their tattoos: Police think they are gang-bangers; gang-bangers believe they are part of rival gangs;
2. Consider those who flee for natural emergencies;
3. Consider those who flee loan sharks;

This section might be helpful to help you argue for a reduced sentence in any immigration-related case.

V. What Exactly Is the Purpose of Sentencing this Particular Defendant?

The interplay of §3553(a) AND immigration defendants.

After *Booker*, sentencing courts are essentially allowed to impose whatever sentence they want, relying on the Guidelines as only advisory. The Court must still properly consider Title 18 U.S.C. §3553(a) which states,

The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider---

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed---

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant; ...

The “crime” oftentimes is the mere act of crossing a political boundary without permission. No

one is injured, there are no victims, the national security of the United States is not threatened, etc. Think about the conduct the courts are actually punishing. Oftentimes it is coming back to the United States to work, or to be near or with family, etc. The yearning to return is often driven by a strict adherence to family values.¹⁵

VI. An Ethical Consideration

SOMETHING TO CHEW ON:

So few of our clients get manna¹⁶ when their pre-sentence reports come back with errors that favor them. We, as their lawyers, jump for joy, click our heels, and thank a higher being for the luck and the mercy shown our client. If you are aware of that error, what ethical obligation do you have to the Court to correct the error? Does this ethical obligation interfere with your duty of loyalty to your client? If it does interfere, then what? How on earth do you expect your client to ever trust you again if you go and do something which increases his time? Is there a way to save your bar card and your reputation.

¹⁵You might remember Vice President Dan Quayle took a shot at fictional character Murphy Brown for having a child out of wedlock, and harangued the fictional character for glamorizing her “lifestyle choice.” That lifestyle choice involved the raising of a child without having the benefit of both parents’ rearing. Be careful quoting Dan Quayle, but it seems obvious to me that the harm that was trying to be prevented is greater than the need to punish, to deter, to provide just punishment for the offense, etc.

¹⁶*Manna* is a biblical term which referred to the mysterious substance provided miraculously by God to the Hebrews to sustain them during their forty years of travel through the desert. *Exodus* 16:4; *Numbers* 11:7.