NCDD Journal
National College for DUI Defense
Editor: Paul Burglin
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THE CONFRONTATION REVOLUTION SURVIVES With *Williams v. Illinois*

Prosecutors are precluded by the *Confrontation Clause* from introducing out-of-court "testimonial" statements without putting the declarants on the stand, *Crawford v. Washington* (2004), and this includes forensic reports certifying incriminating test results. *Melendez-Diaz v. Massachusetts* (2009). Furthermore, such reports may not be admitted into evidence via a testifying supervisor or other "surrogate" witness in lieu of having the actual author of the report testify. *Bullcoming v. New Mexico* (2001).

With these precedents, the high Court granted certiorari in *Williams v. Illinois* (June 18, 2012) (Docket 10-8505) to determine whether the *Confrontation Clause* also bars an expert witness from testifying about the results of testing performed by a non-testifying analyst where the actual report itself is never introduced. (If allowed, one can readily envision prosecutors in DUI cases having expert witnesses opine guilt of the accused with reference to an otherwise inadmissible alcohol or drug test report). The expert was a forensic analyst who opined that DNA from vaginal swabs of a rape victim matched the DNA obtained from the Defendant, based in part on a DNA profile performed by someone else at Cellmark.

The Court handed down a deeply fractured 4-1-4 decision, with the Justice in the middle (Justice Thomas) clearly agreeing with the four dissenters on the salient issue, but concurring with the plurality to affirm the defendant's conviction. Justice Breyer, for added measure, wrote his own concurring opinion. He expressed a desire for additional briefing and argument to try and determine "the outer limits of the 'testimonial statements' rule set forth in *Crawford*" in light of the "panoply of crime laboratory reports and underlying technical statements written by (or otherwise made by) laboratory technicians[.]" Not getting what he wanted, Justice Breyer stayed with the dissenting views expressed in *Melendez-Diaz* and *Bullcoming*. Clearly, Justice Breyer remains troubled by the practical problems he sees with strict enforcement of the *Confrontation Clause*, a logically expressed concern (see the Appendix to his opinion) that has led him to stray from his more usual liberal mooring on the Court.

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E.D.'S CORNER

We are looking forward to a fantastic Summer Session. Dean Stein and the Board are working hard to put together a wonderful program!

The next seminar will be the NACDL/NCDD Las Vegas seminar, "Getting the 'Not Guilty' Vote" held October 18-20, 2012, and it promises to be a power-packed seminar as well! From there we go to a great Winter Session venue in Scottsdale, AZ, January 17 - 18, 2013, at the Hyatt Regency Scottsdale Resort and Spa at Gainey Ranch. A brochure with registration form will be mailed to you very shortly. It is a truly amazing facility and will be a great respite for those who are in the middle of cold winter weather in January!

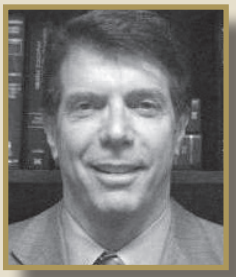
If you are interested in applying for the Board Certification Examination, the application deadline is August 31, 2012. The examination will take place January 16, 2013 at the Hyatt the day before the Winter Session begins.

Don't forget you can make your own changes to your bio on the NCDD website! You can also add your picture and change your contact information if you have moved. Please take some time to check out the tools our website has to offer to aid you in your law practice.

I look forward to seeing you soon!

--- Rhea Kirk

DEAN'S MESSAGE



Now that summer has arrived, I hope that everyone is enjoying their vacation season and spending quality time with their families. With the month of July upon us, I am diligently planning the final details of our upcoming seminar in Cambridge, MA. The NCDD Summer Session is truly the "epicenter" for training DUI defense lawyers. As your Dean, I look forward to another successful session and will strive to uphold the NCDD reputation for excellence.

I am pleased to say that the cause I have focused on this year is the education of Public Defenders. To that end, I have called upon our members to reach out to these noble warriors, to let them know about the NCDD scholarships that are available to them. It is my distinct pleasure to announce that my calls for help with spreading the word have been rewarded! My thanks go out to several members who have unselfishly volunteered to sponsor their local Public Defenders. They include, Mike Hawkins, Allen Trapp, Jay Ruane, Scott Joye, David Katz, and many more.

I am additionally pleased to announce that another one of my special projects for this year has been successful. The NCDD "Closer's Club" has reached out and assisted several members who sought help regarding the drafting, theme development, execution and strategy, concerning their closing argument in anticipation of trial. My special thanks to the Closer's Club mentors, John Webb, Jay Ruane, Joe St. Louis, Alan Bernstein, and Cole Casey.

Serving as Dean to this fine organization has truly been a privilege and honor, and undoubtedly the high point of my career. Thus far, I attended and spent time with many of my friends at the Advanced Chromatography Clinic in Chicago, chaired a very successful Winter session in Orlando, spoke at the South Carolina annual DUI seminar, and spoke again at the highly attended NCDD Mastering Scientific Evidence conference in New Orleans.

My fulfilling year as your Dean will soon come to an end at the conclusion of the 2012 Summer Session at Harvard. I am pleased to announce that the NCDD tradition of excellence, will once again be continued in to next year, when I pass the torch to your new Dean, W. Troy McKinney.

--- George A. Stein

Four justices (Justices Alito, Roberts, Breyer, and Kennedy) opined that the DNA test result was permissibly referenced by the expert witness because (a) it was not offered for the truth of the matter asserted; and (b) the Cellmark report was not "testimonial" (essentially because it was not prepared for the purpose of litigation).

> **[E]ven if the report produced by Cellmark had been admitted into evidence, there would have been no Confrontation Clause violation… The report was produced before any suspect was identified. The report was sought not for the purpose of obtaining evidence to be used against petitioner, who was not even under suspicion at the time, but for the purpose of finding a rapist who was on the loose. And the profile that Cellmark provided was not inherently inculpatory."**
>
> --- Justice Alito

Justice Thomas concurred with the conclusion that the report was not testimonial, concluding that it lacked the formality and solemnity of the reports at issue in *Melendez-Diaz* and *Bullcoming* (this was his basis for voting to affirm the lower court's ruling and defendant's conviction). However, he simultaneously chastised the plurality opinion for attempting to "carve out a Confrontation Clause exception for expert testimony that is rooted only in legal fiction." He sided with the four dissenters (Justices Kagan, Ginsburg, Sotomayor, and Scalia) in their view that "testimonial" hearsay may not be admitted through the back door under the expert witness exception found in the many state evidence codes. The dissenters characterized the matter presented as an "open-and-shut" case under the Court's Confrontation Clause precedents (noting that the expert witness had no idea how the Cellmark test results were generated).

> **If the Confrontation Clause prevents the State from getting its evidence in through the front door, then the State could sneak it in through the back. What a neat trick—but really, what a way to run a criminal justice system. No wonder five Justices reject it.**
>
> --- Justice Kagan

A careful reading of Justice Thomas's concurring opinion in *Williams* should preclude trial courts from admitting incriminating forensic alcohol and drug test results into evidence in DUI/DWI cases unless the actual analyst testifies. Attempts to make the reports appear less formal so as to gain admissibility should fail, since "technically informal statements" are still "testimonial" when "made to evade the formalize process." *Williams* (concurring opinion by J. Thomas, fn 5). Writing for the dissenters, Justice Kagan makes a compelling argument as to why the Cellmark report was "testimonial" and should have been excluded.

WHY I DON'T STIPULATE TO FORENSIC TEST RESULTS

By Justin J. McShane

A frustrated judge recently asked me, "Justin, why don't you ever stipulate to a forensic science result?"

And it's true. I never stipulate to a test result, and you shouldn't either.

I have not found a single analytical test, or single forensic science result, that does not have some area of legitimate inquiry whether it be in the data (the test itself), the QC (teaching the machine right from wrong), the traceability of the standards, the QA (double check) performed, the background of the technicians, the credentials of the expert, or the very foundational validation of the technique employed.

Having said that, the question becomes, "*Does the issue matter to a jury?*" By purposeful design, these cases are tried to and determined by folks who generally have little or no idea of the subject matter, no prior experience in the science, and no knowledge to adjudge the validity of the measurements offered. If the science was going to be evaluated by other scientists, then our jobs would a lot easier and fewer miscarriages of justice would occur. Nevertheless, attorneys adequately trained in the field of forensic alcohol testing can use transferable concepts to bridge the gap between the world of science and the world of the jury.

Bear in mind, a paper audit can only show so much. Even the most detailed instructions allow for some discretion by the bench technician. There may very well be a disconnect between the existence of a truly validated method with robust instructions and actual execution that is not traceable by the paperwork. Knowledge of protocol and protocol adherence are two entirely different concepts. There is also the "x-factor" which is the fundamental question put to any witness: Can you, as a witness who is likely very nervous in front of a Jury, explain what you do, how you do it and how it results in a specific (or really a near specific) qualitative measurement with a quantitative measurement that is free of calibration and bias error so that the jury can understand it?

Perhaps there will be a day where crime laboratories that have truly validated methods for what they do such as what exists in the Good Laboratory Practices (GLP) world governed by the Food and Drug Administration or in the highly regulated world of the Environmental Protection Agency testing using perhaps the United States Pharmacopeia (USP) guidelines governing well-designed validation experiments that investigate and prove at a minimum accuracy (bias), precision (calibration), specificity, limit of detection, limit of quantitation, linearity and range, ruggedness, robustness and uncertainty in their qualitative and quantitative measurement that are all the

while verified on the particular instruments used by the particular operators using them (instrument qualification and suitability studies).

Perhaps there will be day where the laboratories will do the following:

1. Publish and make available true validation reports that feature:

- Objective and scope of the method (applicability, type).
- Summary of methodology.
- Type of compounds and matrix.
- All chemicals, reagents, reference standards, QC samples with purity, grade, their source or detailed instructions on their preparation.
- Procedures for quality checks of standards and chemicals used.
- Safety precautions.
- A plan and procedure for method implementation from the method development lab to routine analysis.
- Method parameters.
- Critical parameters taken from robustness testing.
- Listing of equipment and its functional and performance requirements, e.g., integration perimeters, baseline noise and column temperature range.
- Detailed conditions on how the experiments were conducted, including sample preparation. The report must be detailed enough to ensure that it can be reproduced by a competent technician with comparable equipment.
- Statistical procedures and representative calculations.
- Procedures for QC in routine analyses, e.g., system suitability tests.
- Representative plots, e.g., chromatograms, spectra and calibration curves.
- Method acceptance limit performance data.
- The expected uncertainty of measurement results.
- Criteria for revalidation.
- The person(s) who developed and validated the method.
- References.
- Summary and conclusions.
- Approval with names, titles, date and signature of those responsible for the review and approval of the analytical test procedure.

2. Retain people who are fully trained and fluent in the underlying theory of the technique they are employing for the process (sample preservation, sample preparation, instrument running, data collection, and data interpretation).

3. Control chart each of the instruments used so that the stability of the analytical instruments may be adequately examined.

4. Use blind proficiency tests for each analyst with a relevant sample containing a target analyte that is something that can be frequently misinterpreted for another like-analyte, and intermix them with routine samples run with very tight acceptance criteria with the quantitative result not dependent on the results of other laboratories, but rather on the targeted and designed value.

5. Use Quality Assurance (QA) officers who are more qualified in the theory than the bench technician, who have demonstrated greater proficiency in the assay than the bench technician, and who can actually employ the technique better than the person who runs the assay that they are called upon to evaluate. Now days, the QA officer is frequently not technically trained in the theory or the process of the assay they are called upon to double-check. Such a regime makes QA little more than a rubber stamp.

6. Keep verifiable information readily available that justifies their data and their opinions. The difficulty in getting the data is due to the typical crime laboratory being administratively lead by a sworn police officer who has no technical training in science whatsoever. A promoted traffic cop, if you will. This person (who is not steeped in the scientific culture of openness or transparency or has not even been meaningfully exposed to science likely has no idea of the process involved and what constitutes relevant information) has very much an "us-versus-them" mentality.

The only way we can continue make sure that the right result comes about is by forcing the crime laboratory into the limelight. It is only in this fashion that we can preform that all important final last act of being that all important External Quality Assurance Officer for justice's sake. This is why I never stipulate to a forensic test result.

CASE LAW ROUNDUP

Case Highlights from Illinois Attorney Donald Ramsell

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Interviewing Juror After Verdict

State v. Monserrate-Jacobs
2012 - Fifth Dist. Court of Appeals – Florida – No. 5D12-944

Following a guilty verdict, the defense sought court authorization to interview a juror-nurse concerning her examination of a blood kit (and its expiration date) that was admitted into evidence without objection or limitation, and possible comments to other jurors about it (including two jurors who declined to examine it). None of the witnesses testified about the expiration date on the kit.

Held: The request was untimely since the defense failed to object to the jury viewing the kit and the manner in which it was viewed. Furthermore, the motion was insufficient because it failed to include specific allegations as to why the verdict may be subject to legal challenge. Florida Rule of Criminal Procedure 3.575 requires the moving party to state the reasons why he/she believes that verdict may be subject to legal challenge, and allegations that are "merely speculative, conclusory, or concern matters that inhere in the verdict itself" are insufficient.

Editor's Note: The motion was not untimely since it was apparently filed within 10 days of the verdict as required by the rule. What the Court was really saying is that anything the juror-nurse looked at, or commented upon, was fair game since no objection or instruction had been made or requested. If the defense was truly concerned about the juror-nurse seeing or saying something improper, an objection or motion should have been made during the trial. The other lesson to be gleaned here is that although the procedural rule only requires the moving party to state the "reasons" it believes the verdict may be subject to legal challenge, the Court interpreted it to require more than just speculative allegations.

Blood Test Suppression

***State v. Falconer* (2012)**
2012 WL 1867159 (Ohio App. 5 Dist.) 2012-Ohio-2293

Ohio law requires defendants to file a pretrial motion to suppress if they wish to challenge the validity and admissibility of an alcohol test. Defendant filed such a motion based on a lack of information being provided about who drew the blood, whether it was done by an authorized person, and the manner of collection, handling, and storage.

Defendant's motion included its citation of regulations concerning (a) the use of a non-volatile antiseptic on the puncture area; (b) the use of a sterile dry needle into a vacuum container that contains a solid anticoagulant; (c) the blood sample must be sealed in a manner such that tampering can be detected; (d) the container have a label with the suspect's name, date and time of collection, name or initials of person collecting the sample; and name or initials of person sealing the sample; (e) the sample must be refrigerated when not in transit or under analysis; (f) and chain of custody; and (g) requirements for testing.

Held: Defendant's motion was very specific and placed a burden on the State to show that the test was administered in substantial compliance with the state regulations. The trial court should not have limited the scope of the hearing.

Suppression of SFST's

State v. Stricklin
2012 WL 1493830 (Ohio App. 6 Dist.), 2012-Ohio-1877 (April 27, 2012)

Defendant was stopped for an inoperable headlight. The officer testified that he had a "slight odor" of alcohol, bloodshot glassy eyes, and appeared "anxious" (though the latter claim was not in her police report). Defendant denied drinking, and he walked up to the headlight and gave it a bang that got it working. The officer then walked back to her patrol vehicle and determined that he had a prior DUI conviction four years earlier.

Given the *de minimus* reason for the traffic stop, coupled with the lack of any indicators of actual intoxication, there was not reasonable suspicion to warrant the administration of field sobriety tests.

NOTE: The dissent makes a compelling argument for affirming the trial court's ruling (and one likely shared by the vast majority of trial and appellate judges). Field sobriety tests are supposedly intended, after all, to be a screening tool for determining possible impairment.

Search & Seizure

***U.S. v. Hickman* (2012)**
U.S. District Court (Idaho) – Docket 4:11-CR-00223-BLW
2012 WL 1883479

After making an enforcement stop for tinted windows, the officer conducted a DUI investigation and determined that Defendant was not under the influence and told him he was free to go. However, before the defendant had time to leave the officer began interrogating him about whether he had drugs or cash in his car based on a faint odor of marijuana he claimed to have smelled on his driver's license. The questioning involved suggestions that a narc dog could be summoned and ultimately two more deputies arrived on scene. The officer claimed that consent to search was ultimately given, whereupon an illegal shotgun was discovered in the vehicle.

Held: Although a strong odor of marijuana emanating from a vehicle may be grounds for a warrantless search, a faint odor on a license is not. Cf. *United States v. Guzman-Padilla* (9th Cir. 2009) 573 F.3d 865, 886 n. 5. Moreover, consent to search is invalid where it is obtained during the course of an illegally prolonged detention. See *Florida v. Royer* (1983) 460 U.S. 500 (an investigative detention must "last no longer than is necessary to effectuate the purpose of the stop").

DUI Checkpoint Avoidance

***Jones v. State* (May 7, 2012)**
___ Ga ___, ___ S.E.2d ___ (Docket No. S11G1054)

Jorgensen v. State (1993) 207 Ga.App. 545, 428 S.E.2d 440 (a favorable decision for NCDD member Robert Chestney almost 20 years ago), held that normal driving, even if it incidentally evades a DUI checkpoint, does not justify a warrantless detention. Subsequent to *Jorgensen*, several published decisions from Georgia held that abnormal or unusual actions (albiet legal) which are taken by a motorist to seemingly avoid a DUI checkpoint may support a warrantless enforcement stop. See *Terry v. State* (2007) 283 Ga.App. 158, 159, 640 S.E.2d 724 and cites therein.

Citing *Jorgensen*, the Georgia Supreme Court reversed Appellant's DUI conviction, declaring that "[w]ithout evidence of a specific driving violation *or maneuver to support the officer's belief that [the motorist] was trying to avoid the roadblock*, … the trooper lacked reasonable suspicion to stop [the motorist]." (emphasis added)

Editor's Note: It's troubling how the GA courts cite *Jorgensen* for purportedly establishing a rule that says abnormal driving (e.g., sudden turn, reduction in speed, or braking) justifies a warrantless detention even in the absence of a vehicle code violation, so long as it appears to have given the officer a reasonable basis to believe the motorist was trying to avoid a DUI checkpoint. This runs counter to the U.S. Supreme Court's reasoning in *Whren v. United States* (1996) 517 U.S. 806 (any traffic violation is grounds for a stop, even if it's pretextual). The *Whren* Court concluded that it's impractical to apply a "reasonable officer" test to vehicle stops, but in the absence of a vehicle code violation, GA trial courts must try to figure out whether a cop's "belief" about a driving maneuver was to avoid a checkpoint. In other words, the judge will have to determine if the cop reasonably interpreted a legal driving maneuver as evidencing the defendant driver's intent to

avoid a checkpoint. Wow---that's an awful lot of speculation and hunch. Of course, they have apparently just assumed that purposeful avoidance of a checkpoint is grounds for a warrantless stop, which is perhaps even more disturbing!

Blakely v. State
___Ga.App.___, ___S.E.2d ___ WL 2148158 (June 14, 2012)

This decision comes on the heels of the GA Supreme Court's holding in *Jones* (see above), and vividly demonstrates the extent to which an officer can be permitted to "mind read" the intent behind a motorist's driving maneuver as the basis for stopping him.

"[Officer] Bennett noticed the headlights of [Defendant's] vehicle approaching the roadblock, at which point [Defendant] 'immediately' made a 'kind of sudden turn' into a driveway, backed out, and drove away from the checkpoint. Bennett testified that [Defendant] was 'probably less than a quarter of a mile' from the checkpoint when he turned around, and Bennett 'could barely see to where [Defendant] pulled in the drive.' Bennett explained that the road curved, 'with a hill,' between the driveway where [Defendant] turned around and the roadblock."

In essence, the Defendant's legal, three-point turn almost a quarter of a mile before a checkpoint was sufficient to find reasonable suspicion for the warrantless enforcement stop. This was the ruling even though "Bennett [additionally] testified that department policy *required* him to stop anyone who "turned around while we have [a] road check." (emphasis added).

Editor's Note: The department policy "requiring" the stop of anyone merely turning around, regardless of apparent reason, should have been grounds to find the checkpoint was unconstitutionally operated. It does not appear from the record that this argument was advanced.

<u>License Revocation Actions</u>

Exclusionary Rule Inapplicable

Miller v. Toler
___ S.E. ___, 2012 WL 2076514 (W.Va.) (June 6, 2012)

Citing sister-state decisions from Connecticut, Maine, and Utah, as well as federal court rulings, the West Virginia Supreme Court held the exclusionary rule does not apply in civil administrative hearings concerning the suspension or revocation of a driver's license. The rationale is that (1) the purpose of the rule is to deter unlawful police conduct, and application of the rule to criminal proceedings provides a sufficient deterrence; and (2) The judicially created exclusionary rule is not a constitutional right of the accused.

Editor's Note: If your State requires establishment of a lawful arrest as one of the issues in a license suspension/ revocation hearing, you might persuasively claim that an unlawful detention tainted the subsequent arrest and made it illegal.

Lawfulness of Arrest Is Contingent Upon Lawfulness of Initial Detention

***Wisconsin v. Anagnos* (June 26, 2012)**
___ N.W.2d ___, 2012 WL 2378548 (Wis.)

In a license revocation hearing that requires proof of a lawful arrest, the inquiry may include whether the traffic stop preceding the arrest was justified by probable cause or reasonable suspicion.

Citing *Welsh v. Wisconsin* (1984) 466 U.S. 740, the Wisconsin Supreme Court held that a motorist is not "lawfully placed under arrest" if he is seized during the course of an unconstitutional traffic stop. (*Welsh* determined that the defendant therein was not "lawfully placed under arrest" because the officers violated the Fourth Amendment by seizing the defendant in his home without a warrant and without exigent circumstances.).

<u>Confrontation Cases</u>

See article on page 1 regarding SCOTUS decision in ***Williams v. Illinois*** (expert witness used as conduit for getting in DNA report).

State v. Sorensen
___N.W.2d ___, 283 Neb. 932, 2012 WL 1889206 (Neb.) (May 25, 2012)

A nurse's certificate that blood was drawn in a medically accepted manner, signed at the request of law enforcement in connection with Defendant's DUI arrest, was "testimonial" within the meaning of the Confrontation Clause. It was in essence an "affidavit" and improperly admitted into evidence because the nurse was not subject to cross-examination.

<u>Voir Dire</u>

***Anderson v. State of Texas* (May 16, 2012)**
Court of Criminal Appeals of Texas – No. PD-1067-11

Appellant filed a petition for discretionary review, contending the Court of Appeals erred in holding the trial court did not abuse its discretion in refusing to allow defense counsel to question the jury panel about its understanding of

the differences between proof "beyond a reasonable doubt" and the lesser burdens of proof applicable in civil cases.

Held: Although trial courts have broad discretion over the process of selecting a jury and the propriety of particular questions, it is an abuse of discretion for it to prohibit proper questions about proper inquiries such as the standard of proof applicable in a criminal trial. The matter was remanded to the Court of Appeals to determine whether the harmless error doctrine precluded reversal of the conviction.

Editor's Note: Since this appears to have been "constitutional error" (it having arguably violated the defendant's right to trial under the Texas Constitution), the Court of Appeals must reverse the conviction unless it determines beyond a reasonable doubt that the error did not contribute to the conviction or determination of punishment. Texas Rule of Appellate Procedure 44.2.

TRIAL TIP TREASURE

by Lynn Gorelick

The most important part of a trial is establishing some kind of relationship with the jury. There will never be a case where every juror pays close attention to your *voir dire*, but having even one juror's attention is a good start.

Having a theme that you can convey to the jury in *voir dire* is essential. I believe that thinking outside the box, no pun intended, in addressing this issue is one of the most creative parts of the process. I look for several events or issues in the case that each person in the jury will have some kind of life experience with. This can be something as simple as a television show that they watch regularly.

We have all heard *voir dire* questions about "…unfair treatment by police officers…," but there are many other situations that can elicit helpful information. I have used questions regarding what one might do, what does it mean, if they are read their *Miranda* rights. This has often resulted in overwhelming responses akin to "…stop talking…keep quiet ask for an attorney..." I find that asking a question that each of the jurors will feel comfortable answering makes it easier to hold onto the jurors that can be helpful.

Keep your eye on juror reactions. Look for one or two who seem to be paying more attention to you than the District Attorney. Be creative, know your case, and think about what makes it unique. Formulate your questions to incorporate this creativity. It will serve you well.

Editor's Note: This edition's trial tip treasure comes from Lynn Gorelick, who has been practicing criminal defense in Alameda County (Northern California) for the past 29 years. Lynn is a graduate of U.C. Berkeley and U.C. Hastings College of Law.

A TRUE CLOSER--- CLARENCE DARROW

One of George Stein's special projects during his term as Dean of NCDD was his establishment of the "Closer's Club." The following is a short excerpt from William O. Douglas's foreword to "Attorney For The Damned," a compilation of closing arguments by Clarence Darrow and a must read for trial lawyers seeking to improve their closing arguments.

"Darrow was widely read and well versed in the humanities. His addresses sparkle with analogies, with historic examples, with figures of speech taken from the masters.

"But his intellectual achievements were not the secret of his success. Darrow knew people. He ran the gamut of emotions in his jury speeches. His arguments are a full orchestration, carrying great power even in cold print. They must have been overwhelming as they came from his tongue. Yet he was not the flamboyant type. His words were the simple discourse of ordinary conversation. They had the power of deep conviction, the strength of any plea for fair play, the pull of every protest against grinding down the faces of the poor, the appeal of humanity against forces of greed and exploitation."

--- *Attorney For The Damned*, by Arthur Weinberg (Simon & Schuster, Inc. 1957)

Editor's Message: Contributions to the NCDD Journal are welcome. Articles should be about 1200-1500 words and relate to DUI/DWI defense. Trial Tips should be 200-300 words. Please prepare in Word and submit as an attachment to burglin@msn.com. The NCDD reserves the right to edit or decline publication.

Thank you