

Client Control

December 1996

I. The Challenge

- A. Are YOU part of the system in his eyes?
- B. “Why aren’t you working just my case.”
- C. “I want to do something.”
- D. Even honest efforts to collect information may look bad.
- E. Client doesn’t listen to you and you don’t learn facts from him.

II. The proper degree of client control:

- A. Avoids possible misconduct that:
 - (1) *Can form the basis for a new charge.*
 - (2) *Shows consciousness of guilt.*
 - (3) *Is aggravation.*
 - (4) *Diminishes your bargaining power.*
 - (5) *Dries up your E&M.*
- B. Lessens chance your client may engage in obstruction of justice or acts that resemble it.
- C. Makes your time more productive.
- D. Client may help himself in preparing his defense.

E. Client can make intelligent choices.

III. Too Much Client Control May Lead to:

A. Lack of communication. You lose greatest weapon - his side of the story.

B. Accused not making intelligent choices.

C. Complaints that end your representation.

D. Mistrust.

IV. Golden Rules of Client Control for YOU

A. Listen to what the client has to say at least once, all the way through.

B. Do not tell the client YOU think he is guilty unless HE says he is guilty.
(The EVIDENCE may suggest he is guilty.)

C. Keep the client informed.

D. Be candid.

E. You are not his friend. You are his lawyer.

F. Don't be friendly with or speak highly of the TC.

G. Don't defend or give a reason why the government did what they did.

H. Avoid huddles with counsel and excessive 802s client can see.

V. Golden Rules for the CLIENT

A. Don't talk to ANYONE without first speaking with you. Not parents, spouses, chain of command, co-accused, "friends," or Members of Congress.

B. Don't contact witnesses for any reason. Looks bad, false accusation of tampering, will be known to the prosecution.

C. Be honest with you.

D. Behave.

VI. First Contact with Client

A. Inform client: who you are; your job; secrecy of communications; "I am your only true ally."

B. Listen. Listen. Listen.

C. Don't judge.

D. No shakedowns or accusations. "Your commander charged you with XYZ. What is your side."

E. Consider having accused write out his story (Discovery?)

VII. At Every Meeting (including the first):

A. Make an appointment when the client will see you again. (Great time saver.)

B. Tell him what decisions he will have to make and the deadlines.

C. For some clients, give taskers.

(1) Benefit of Taskers:

(a). *Makes him feel part of the team.*

(b). *Can lead to valuable information.*

(c). *Keeps him busy.*

(2) Downside of Taskers:

(a). *Goes too far. (Locating versus interviewing witnesses)*

(b). *Accused think he is specially empowered: cop syndrome.*

(c). *Might talk too much.*

(d). *Might reveal strategy to government.*

(3) Possible Taskers:

(a). *Locate a witness/address/phone number.*

(b). *Take a picture/draw a diagram.*

(c). *Locate a document/regulation.*

(d). *Reminder: Never have an accused the source of any fact when you can have a more independent source.*

**VIII. Good Client Control is also Good Grostefon Avoidance.
Grostefon best avoided by:**

A. Doing your best.

B. Keeping client informed.

C. Telling client the truth.

D. Letting him make his decisions. Client has the right to make bad choices and the choices may not be bad.

E. Keeping notes on what you did and why. Having accused acknowledge in writing is questionable idea - signals mistrust.

IX. Working with Client on the Three Major Decisions.

A. Key: Explain good side. Explain bad side. Explain law. Let client decide.

B. Forum.

(1) Why not members? Harder on you but so what?

(2) Different types react differently.

(3) Judges fairly predictable on sentencing. Members not.

C. Plea. His life, not yours.

(1). TRIAL Defense Service; Not GUILTY PLEA Service.

(2). Best way to get out E&M may be contested trial. Can get evidence on things government won't stipulate to.

D. Testifying.

(1). Will be cross examined.

(2). Scope not limited to what accused wants to talk about.

(3). Not a contest with prosecutor.

(4). May involve uncharged misconduct, prior convictions, and inconsistent statements.

(5). His explanation may "anger" members.

(6). *What will you say if convicted? (Mendacity)*

IX. Client Control During the Trial

- A. Uniform.
- B. Demeanor.
- C. “Don’t distract me; write it down.”
- D. Keep client informed. Distinguish from explaining everything to him.
- E. Having friends and family attend?

- (1). *Not universally a good idea.*
- (2). *Appropriate dress.*
- (3). *Can you control them and their demeanor?*
- (4). *Will it look like playing for false sympathy?*

F. Rehearse providence inquiry: focus on specific intent and knowledge elements.

G. Discuss possibility of conviction in NG plea cases.

H. “Anything else you want to say?”

XI. Post Trial Client Control

- A. Don’t tell him what to say/not say about YOU.
- B. Prepare client for confinement. (Do what they say. Keep mouth shut.)
- C. Prospective deferment requests.
- D. Don’t anger Chain of Command.