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Thank you.

Interview with David Zapp regarding Jorge 40's Expulsion From the Peace and Justice Commission

TTP: "What did you think of Jorge 40 being kicked out of the Peace and Justice Commission for not cooperating?"

David Zapp – "I think it was the best example of *chutzpah*."

TTP: "What's *chutzpah*?"

David Zapp – "It's the Hebrew word for "nerve" like when a man is accused of murdering his parents and then falls on the mercy of the court claiming he is an orphan! Colombia put Rodrigo Tovar Pupo in a situation (extradition) where he could not speak freely without prejudicing his U.S. case only to kick him out of the "*Justice and Peace*" process for not speaking freely. That's *chutzpah*."

TTP: "But Mancuso spoke freely."

David Zapp – "And look what hap-

pened to him. They not only punished him for narco-trafficking but enhanced his punishment for his paramilitary activities and said so in open court, publically distinguishing him from a co-defendant (El Tuso) claiming that his co-defendant was *only* a drug dealer. So we weren't going down that road in Jorge 40's case. In a U.S. court anything you say in court or out of court in connection with the case or not, can be used against a defendant. The judge in Jorge 40's case used to admonish him regularly every time he wanted to talk in open court that he should not do so without consulting his lawyer because of the risk he was taking.

"Let's be clear. Rodrigo Tovar Pupo is not shying away from helping the Peace and Justice Commission. He has always said he would cooperate as soon as he was through with his U.S. case. I even e-mailed prosecutors in Colombia trying to find a way to accommodate their interests and ours. I was ignored. And now Colombia has the "*chutzpah*" to kick him out of "*Justice and Peace*"! Fairness and logic dictates that he should be reinstated.

Paramilitary Leader "Jorge 40" Sentenced to 198 Months

In sentencing the high-ranking commander of the AUC, Judge Walton rejected the government's argument that Jorge 40 should be sentenced as a large-scale narcotics trafficker. The judge's reasoning was that the evidence showed that Jorge 40 was a soldier imposing a "war tax" on legal and illegal businesses in his territory to fund a war that he believed in. The Judge did not believe he was a narcotics trafficker with the intent on enriching himself.

The judge addressed the defendant respectfully, as a leader of an army fighting a legitimate enemy needing funds to continue the war against communists. And you know how much Americans hate communists! Jorge 40 in the end got what he most wanted: his reputation as a soldier intact, a legacy his family can be proud of.

The other paramilitary defendants' mistake, in my opinion, was to abandon their ideological principles and try to pass themselves off as repentant drug dealers eager to cooperate and to work off their cases. Instead of the political prisoners that they really were, they presented themselves as garden-variety criminals. Well, Jorge 40's judge actually heard the evidence at a hearing and concluded that these "tax collectors" were not drug dealers. But once you lose your ideological gloss, the government and the judge has the upper moral hand. Americans recognize war as a valid response to aggression. It is in our national DNA. The narcotics links would have been seen as a means to fund a legitimate war.

While it was literally the difference between a thirty-year sentence that the government wanted and the 16-year sentence that the defendant ultimately received, it still was a puzzling sentence. If he was a "warrior" and not a drug dealer, why such a lengthy sentence? The judge hung his hat on the "collateral damage" caused by allowing the drugs to be manufactured in Jorge 40's territory suggesting rather dubiously that Jorge 40 had some responsibility to the fetuses of pregnant addicts. That's a stretch. And speaking of "collateral damage," we Americans are hardly without sin. We commit it in our wars frequently and rarely does anyone get punished for it unless there is a public outcry.

– David Zapp

Guidelines Do NOT Determine Sentence

The Federal Sentencing Guidelines do not determine the sentence. A law, 18 United States Code 3553(a), lists the factors that determine the sentence. One of

those factors is the sentencing guideline applicable to the offense that the judge is free to ignore, reject entirely, or, modify.” Often the parties agree on the guideline and they include it in plea agreements. Even though they are not binding on the judge, the guidelines the judge know what the parties believe. It does not mean that the defendant is agreeing that the stipulated guideline is what he should be sentenced to. In fact most defendants disagree with the guideline but agree that it IS the guideline applicable to the crime. In fact in most cases in the Southern and Eastern Districts of New York the agreements allow for the defendant to argue for a sentence under the guidelines. As many inmates know, many defendants have guidelines that are super, super high, yet never get a sentence even remotely within their guideline range. Many get “time served” sentences. Don’t get too worked up about the guidelines. They determine nothing.

– David Zapp and Johanna Zapp

Speak Up: The Life You Save May Be Your Own

The Obligations of a Defense Lawyer to Give You “Effective Assistance”

This article came up as a response to a reader’s suggestion that an office should be established to oversee the performance of lawyers. That’s not necessary because defendants who speak up can tell a judge all he needs to know. But you must speak up! This is what you should know about your lawyer’s responsibilities to you.

1. After your arrest, your attorney should visit you within a few days and speak to you about the complaint or indictment and tell you what is going to happen as each stage of the process continues.

2. After receipt of your DISCOVERY (the evidence against you) he should meet with you promptly and discuss it and tell you how he thinks you should move forward.

3. This generally involves three options: 1) trial, 2) plea without coopera-

tion, 3) plea with cooperation. If you need further information about your case to help you come to a decision, ask your lawyer for it. At the end of your meeting your lawyer may recommend a course of action and you should discuss it with him for as long as it takes.

4. If the option is to plead, the plea agreement should be brought to you at the prison and not at the courthouse just before you go out to meet the judge. It should be discussed calmly in a private room along with a beverage of your choice and perhaps a candy bar to make things more relaxing. You can even ask your lawyer in advance to have the agreement translated for you so you can digest the agreement in the privacy of your cell and not have to be self conscious doing it in front of him. Ask him to send you the plea agreement so you can be prepared for questions before your next meeting with the attorney. By the time you take your plea you should know exactly what you and the government have agreed to so you can avoid the old story of “my lawyer promised me,” or my lawyer did not explain it me.” On the one hand I am tired of these stories and on the other hand it breaks my heart.

5. Whenever you are going to court or to the prosecutor’s office, or anywhere your attorney should advise you in person or via mail or e-mail in advance. Nothing should take you by surprise. If any of those steps above mentioned are missing: SPEAK UP! YOU MUST SPEAK UP! The judge is going to ask you if “you are satisfied with your attorney?” and “have you had a sufficient opportunity to review your plea agreement. TAKE ADVANTAGE OF that opportunity. SPEAK UP! The Judge will deal with it if only because he wants the plea to go forward and does not want to be accused of not addressing your complaint. So if a judge heard for example that the plea agreement had just been given to you in court and no one had read it to you, or your lawyer had never visited you, or that he did but promised you something, he would want to know about that and address it.

6. Don’t complain to your Bunkie or family. It’s not going to help. Tell the judge. There is an old saying, “If it is not

on the record, it didn’t happen.” The record is the recording or the taking down by a court reporter of everything said that is said in court SPEAK UP! You will be heard. You have to be heard!

7. After a plea, the judge will order a presentence interview. The lawyer should insist that he be present. The probation office will contact the lawyer to set up a time and date. Prior to the interview, the lawyer should explain to you what questions will be asked of you.

8. A report will be submitted to the judge. It is called a pre-sentence report (PSR). That report will be given to your attorney, and he should visit you and discuss it with you to determine whether it is accurate and complete and if it isn’t he should promptly correct it. That PSR goes with you wherever you go, and is chiefly relied upon by prison authorities.

9. Your lawyer should submit his own **pre-sentencing report** on your behalf.

10. Then you will be sentenced.

11. The life you save will be your own. **Speak up.** Take control of your destiny. It’s too late after sentence.

– David Zapp and Johanna Zapp

David Zapp and Johanna Zapp articles are available on the web at <http://davidzapp.com>

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