

### *Panel – Expert Witnesses*

Steve Easton, Dean of the University of Wyoming Law School, and a NAFUSA member gave the leadoff presentation on cross-examining expert witnesses. His presentation was a short summary of his book “Dynamite Handling of Expert Witnesses”, published by ABA, 2008.

Easton said in order to effectively cross-examine an expert witness an attorney must “obtain information on your own”. The attorney must do research, interview other persons, and conduct an independent investigation to get information the opponents do not have.

Easton said the opposing counsel must discredit the expert’s analysis on one or all of the following grounds:

- Theory.
- Facts considered by the expert.
- Application of the theory to the facts.

The theory is usually the area where the controversy will occur.

Easton said attacking the expert’s credibility will not get the opposing counsel much ground. It may help to show where he might be wrong in one of the areas under consideration, but a credibility attack will not usually get you too far.

The cross-examination is not completely destroy the witness as in a Perry Mason television show. The object is to get the witness to admit to certain facts which undermine the expert’s theory, point out that his facts are incorrect, or demonstrate his theory is not correctly applied to the facts.

*Panel – Southwest Border Issues*

Southwest Border Issues was a panel presentation which examined law enforcement on the U.S./Mexican border.

The panel members were: Charlie Savage, New York Times correspondent to the Department of Justice, moderator; Gustavo Mohar, General Secretary of the Center for Investigation and National Security; David V. Aguillar, Deputy Commissioner of U.S. Customs and Border Protection; and L.D. (Larry), Villalobos, Section Chief of the Research and Analysis Section of the El Paso Intelligence Center.

Charles Savage, the moderator, emphasized that the panel would not discuss the failed undercover operation, “Operation Fast and Furious” conducted by the Alcohol, Tobacco and Firearms Agency which was under current scrutiny.

Gustavo Mohar said the drug addiction in the U.S. has caused an enormous business opportunity for drug dealers. The most profitable drug is cocaine.

Mohar said that Mexican drug cartels are so powerful they are able to take on the Mexican army. In the armed conflict that has occurred in Mexico since 2006, over 40,000 persons have been killed, including civilians, law enforcement officers, army personnel, and drug family members.

Mohar said the level of cooperation between the two countries has gotten much better in the last few years. He said one of the problems is that the countries know too little about each other.

The criminal organizations are driven by a combination of the following factors:

- The complexity of the drug organizations, the expanding international drug market, regional conditions in Mexico, and weakness in the security of the criminal justice of institutions of the Mexican government.
- When the United States was able to severely restrict the traffic of cocaine from Columbia to the United States, the flow then went to Mexico for further distribution to the United States. As a result, the Mexican cartels have become partners with the Columbian suppliers. The Mexican cartels control the flow of drugs to the United States. There is a large profit margin in moving cocaine northward. For example, the wholesale price of a kilo of cocaine in Columbia is \$1,500; in Mexico, \$12,500; in the U.S., \$32,000.
- The cartels are finding new ways to move the cocaine north. Cocaine is now moved from Columbia to Mexico via the Pacific Ocean on boats, and small submarines operated by two men.

Mohar said the Mexican government's response is aimed at retaking control of the territories now controlled by the cartels, and dismantling their organizations. He said the main effort is the use of the military, which is the only institution with sufficient fire power to take on the cartels. This amounts to Mexicans fighting Mexicans. The casualties in this battle are enormous. The number of homicides in the drug battle since 2006 to date is 49,285.

The sum of \$513,854,387 has been seized over the past four years. The United States has increased aid to Mexico, from \$40 million in the period 2000-2007 to \$444 million in 2008-2010.

Mohar said there are publicly held myths about the drug war, such as Mexico is in danger of becoming a failed state and the violent responses of the cartels are a sign of their strength. Mohar said Mexico is a strong country and is growing in military strength, and the violence of the cartels is a demonstration of their disorganization and lack of unified effort.

Larry Villalobos said that although the cartels are violent in Mexico, there is no danger in the United States. For example, Juarez, Mexico is a dangerous city; just across the border El Paso is perfectly safe. Mexico is not going to collapse; the cartels on the other hand have no internal infrastructure, have no trust among themselves, and are often confused as to who to align with.

David Aguillar said the peak years of apprehending illegals have passed. In 2000, 1.6 million illegals were apprehended. At the end of fiscal 2011, 338,000 illegals were apprehended. Aguillar said the borders are far safer than before.

U.S. Attorney Gonzales reported that cartels are creative in bringing drugs in using aircraft flying under radar and dropping drugs to person on the ground. Money then goes out of the United States. There needs to be a better method of south bound inspections in stopping the flow of firearms and money.

#### Question

If we seriously affect the flow of cash back to Mexico to pay for the drugs that will certainly affect the incentive to send drugs; what then are we doing to impede that flow of cash? The answer was not informative, and pointed out a serious problem in the enforcement area.

*Panel – Wikileaks*

The panelists were: Richard Rossman, (NAFUSA Past President, moderator); Charlie Savage (New York Times); Valerie Plame Wilson (former CIA officer); Kenneth Wainstein, (former Assistant Attorney General - National Security Division, former U.S. Attorney, former Homeland Security Advisor - White House, NAFUSA member); Jack Goldsmith (Professor - Harvard Law School, former Head of Legal Counsel - Justice Department); and Eric Snyder (former federal and state prosecutor).

This panel was to explore the effect of the disclosures by the Wikileaks organization of confidential and secret files obtained from an Army corporal, and whether the Wikileaks or the news organizations which published them should be prosecuted.

Charles Savage said that the New York Times exercised considerable discretion and did not publish any top secret documents. The Times met with government officials before publishing the material.

Kenneth Wainstein said that in determining whether to prosecute leakers, the government must weigh national security versus the public's ability to review the action of the government. He said the Department of Justice must carefully weigh the damage to the First Amendment. He said he was not in favor of prosecuting the regular working press. Wainstein said the Department of Justice must distinguish between the new media and the traditional media. The internet has changed the entire picture. In this particular instance, the Wikileaks person should be prosecuted.

Jack Goldsmith said the government was at fault for such lax security; an Army corporal could get access to those sensitive documents. Goldsmith said the government should extradite

Assange, the Wikileaks head, and distinguish him from the traditional media. The Espionage Act is not a good vehicle for prosecution of the media, it is too non-specific. The consequences of an unsuccessful prosecution of the media would be terrible, and encourage more leaks. The trial would be a political football. Goldsmith questioned whether it could be shown that the government was harmed.

Valerie Plame Wilson was herself the victim of government leaks. She said the burden is on the government to protect secrets. Over one half a million contractors have top secret security clearance – yet they are not government employees. How does the government control them? She felt there is no difference between the New York Times and Wikileaks. She felt the major prosecutions should be directed to the government employees who took an oath of secrecy and broke it. She felt a prosecution of a newspaper would likely be lost. She felt it was hypercritical to bring such a prosecution of a newspaper when the high officials of the government leak every day.

Ms. Wilson felt that the diplomatic relationships will not be harmed by the leaks. She felt foreign officials will continue to speak with our officials and provide information.

Eric Snyder said that the Wikileaks is an embarrassment. It damaged National Security and betrayed officials and confidential informants. Assange should be extradited and prosecuted. He is not a responsible journalist. The New York Times demonstrated responsibility. The Times did not encourage the Army corporal to release the information.

*Supreme Court Term 2010-2011*

Stewart Young, Assistant Professor of Law and Director of the Prosecution Assistance Program at the University of Wyoming College of Law, presented an extensive review of the 2010-2011 Supreme Court session. He gave highlights of criminal cases involving exigent circumstances justifying a search, confrontation clause cases, prosecutorial misconduct cases, sentencing cases, and securities cases. Professor Young has agreed to email to any NAFUSA member his extensive notes for the presentation. Please direct your request to Professor Stewart Young (email address, [syoung19@uwyo.edu](mailto:syoung19@uwyo.edu)).