

Public Defender Seminar

November 29-30, 2007.

Asheville, NC.



State/Federal Interplay

Or...

“We’re from the government and we’re here to max you out.”

The Feds are Reaching Out

- The STARS Program.
- Combined State/Federal Taskforces.
- The “Civil Commitment of Sexually Dangerous Persons” Act.
- Forum Shopping and Other Neat Tricks.

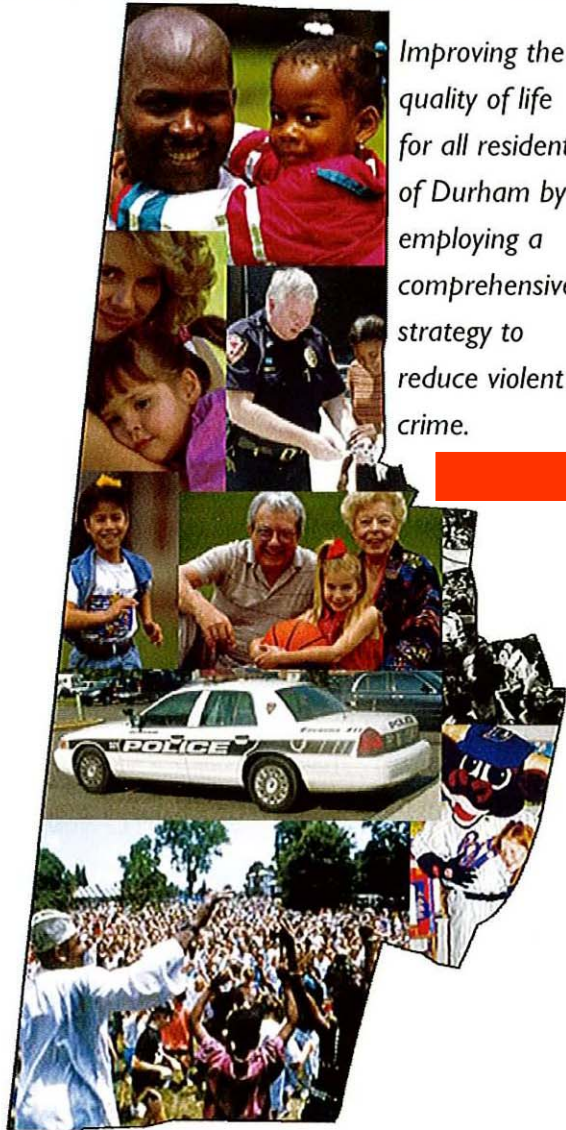
The STARS Program

An initiative begun during the Clinton Administration by AG Janet Reno as a part of Safe Streets/Safe Neighborhoods Project.

SAFE

NEIGHBORHOODS

America's Network Against Gun Violence



Improving the quality of life for all residents of Durham by employing a comprehensive strategy to reduce violent crime.



Project Safe Neighborhoods is a comprehensive, strategic approach to combating gun and gang crime by linking together local, state and federal law enforcement officials, prosecutors, and community leaders to implement a multi-faceted strategy to deter and punish gun crime from all sides. It is a commitment to reduce gun crime by networking local programs that target gun crime with state and federal efforts, and providing those programs with the tools and resources they need to succeed. Project Safe Neighborhoods is achieving unprecedented cooperation among law enforcement officials and the community, with an emphasis on intervention and prevention, aggressive prosecutions, and enhanced accountability.



Targeting Repeat Offenders



The STARS program identifies repeat offenders with a history of violence and gun possession. These felons are called in quarterly for notification sessions, where they hear from both the community and law enforcement. The message is simple: Put down illegal guns, stop the violence, and stop involving juveniles in crime. The community offers assistance to those willing to make a change. Notified offenders who continue to engage in violent behavior are targeted for Federal prosecution.

Promoting Gun Safety

Protecting children from firearms accidents in the home is just as important as protecting them from violence on the streets. Free gun locks, made available through Project ChildSafe, are distributed to anyone who needs them. Gun locks are available at all police substations, the sheriff's office, and from the Durham Co Gun Safety Team.



Changing the Lives of Youth

In cooperation with the YMCA's Turning Point Initiative, Durham Parks and Recreation, and NCCU, Project Safe Neighborhoods seeks to turn youth away from gangs by providing healthy, productive alternatives to gang involvement, and assisting youth who wish to leave the gang by providing resources and assistance to do so.



If you carry guns illegally, commit violent crimes, or associate with a group that engages in violence, you will be targeted for prosecution to the fullest extent

The STARS Program

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If you carry guns illegally, commit violent crimes, or associate with a group that engages in violence, you will be targeted for prosecution to the fullest extent of State and Federal Law.

The STARS Program

A stick and carrot approach combining the “scared straight” philosophy with the offering of available community resources.

What’s the process?

The STARS Program

- The most “at risk” state probationers and parolees are called into the local police department.
- They are searched and are required to read and sign a form stating that the meeting is in no way a grant of immunity.
- Out comes the stick.

The STARS Program

DEA, ATF, FBI, local police and sheriff personnel, state DA, US Attorney, DOC officers, and anyone else nearby with a gun and a badge, confront the supervisees.

The STARS Program

- Out comes the carrot.

The STARS Program

Community Leaders, church pastors, TROSA graduates, employment security personnel, health department members, GED/community college teachers, and others address the supervisees.

The STARS Program

Now being done in Greensboro,
Winston-Salem, High Point, Durham,
Salisbury, and just last month, Burlington.

It will be coming to a town near you.

Combined State/Federal Taskforces

- A likely [un]intended consequence of the STARS Program.
- ATF, DEA, and FBI each deputize a local cop as a Task Force Officer (TFO).
- The TFO then contacts his/her assigned federal agent when the local department arrests a “hot prospect.”

Combined State/Federal Taskforces

- The result: a greater sharing of information than ever before by law enforcement.
- There is no reason why we cannot do the same.

The "Civil Commitment of Sexually Dangerous Persons" Act.

Who is eligible?

Applicable to any person in federal Bureau of Prisons custody, or sent to the BOP for a psych evaluation. 18 USC § 4248(a).

The “Civil Commitment of Sexually Dangerous Persons” Act.

Who decides?

The Attorney General or any individual authorized by the Attorney General or the Director of the BOP (e.g. the prison bus mechanic) may certify that the person is a sexually dangerous person. 18 USC § 4248(a).

The “Civil Commitment of Sexually Dangerous Persons” Act.

What is a “sexually dangerous person?”

A person who has engaged or has attempted to engage in sexually violent conduct or child molestation, and...

The "Civil Commitment of Sexually Dangerous Persons" Act.

The "person suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation[.]" Seriously. 18 USC § 4248(a).

The “Civil Commitment of Sexually Dangerous Persons” Act.

What is the effect?

A certificate filed under this section shall stay the release of the person pending the completion of the [Star Chamber-like] procedures contained in this section. 18 USC § 4248(a).

The "Civil Commitment of Sexually Dangerous Persons" Act.

How does one get back through the Looking Glass?

Court must determine, by a preponderance, that the person will not be sexually dangerous to others. 18 USC § 4248(e)(1).

The “Civil Commitment of Sexually Dangerous Persons” Act.

Is there any good news?

Temporarily. United States v. Comstock, No. 5:06HC2195-BR (E.D.N.C. Sept. 7, 2007).

Forum Shopping and Other Neat Tricks.

- ❑ Punishment, or “Who Has the Bigger Hammer?”
 - ❑ Substantive Law.
 - ❑ Splitting the Baby Between Forums.
 - ❑ Burying the Defendant Twice.
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Forum Shopping and Other Neat Tricks.

Who has the bigger hammer?

For drugs and guns, as a general matter, the feds have the bigger hammer. Take for example...

Forum Shopping and Other Neat Tricks.

The Armed Career Criminal Act.

Defendant currently charged with felon in possession of a firearm or ammo.

Defendant has 3 priors of either a violent felony or serious drug offense or both.

Defendant's 3 prior offenses were committed on different occasions.

Forum Shopping and Other Neat Tricks.

The Armed Career Criminal Act.

Penalty: Mandatory minimum of 15 years and up to life.

Forum Shopping and Other Neat Tricks.

The Career Offender Guideline.

Defendant currently charged with a felony crime of violence or drug trafficking offense.

Defendant has 2 priors of either a crime of violence or drug trafficking offense or both.

Defendant's prior convictions were separated by an intervening arrest.

Forum Shopping and Other Neat Tricks.

The Career Offender Guideline.

Penalty: A sentence at or near the statutory maximum.

Forum Shopping and Other Neat Tricks.

Recidivist Drug Enhancements.

Defendant currently charged with trafficking 50g of crack. "Normal" penalty is mandatory minimum 10 years and up to life.

Forum Shopping and Other Neat Tricks.

Recidivist Drug Enhancements.

If Defendant has a prior felony drug conviction of any kind and gov files an information of prior drug conviction, penalty becomes mandatory minimum 20 years and up to life.

Forum Shopping and Other Neat Tricks.

Recidivist Drug Enhancements.

If Defendant has 2 prior felony drug convictions of any kind and gov files 2 informations of prior drug conviction, penalty becomes mandatory life.

Forum Shopping and Other Neat Tricks.

Mandatory Gun Enhancements.

Defendant currently charged with trafficking 50g of crack and carrying a gun. Normal penalty for the drugs is mandatory minimum 10 years and up to life. Gun carries 5 years consecutive.

Forum Shopping and Other Neat Tricks.

Mandatory Gun Enhancements.

Defendant currently charged with trafficking 50g of crack and “brandishing” a gun. Normal penalty for the drugs is mandatory minimum 10 years and up to life. Gun carries 7 years consecutive.

Forum Shopping and Other Neat Tricks.

Mandatory Gun Enhancements.

Defendant currently charged with trafficking 50g of crack and “discharging” a gun. Normal penalty for the drugs is mandatory minimum 10 years and up to life. Gun carries 10 years consecutive.

Forum Shopping and Other Neat Tricks.

Mandatory Gun Enhancements.

Defendant currently charged with conspiracy to traffic 50g of crack and carried a gun twice during the conspiracy. Normal penalty for the conspiracy is mandatory minimum 10 years and up to life. 1st gun carries 5 years consecutive, 2nd gun 25 years.

Forum Shopping and Other Neat Tricks.

Substantive Law

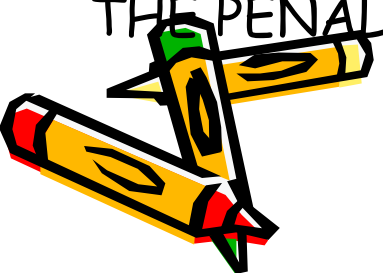
Got a bad search warrant? Bring it to federal court where Leon's "good faith" exception lives and breaths.



1. ON THE ABOVE DATE THIS APPLICANT RECEIVED INFORMATION THAT NARCOTICS IS [sic] BEING STORED AND SOLD AT THE ABOVE RESIDENCE FROM SUSPECT LISTED ABOVE. THIS INFORMATION WAS RECEIVED FROM DETECTIVE _____ OF THE ROXBORO POLICE.

2. DETECTIVE _____ RECEIVED THIS INFORMATION ON THIS DATE FROM A CONFIDENTIAL RELIABLE INFORMANT. THIS INFORMANT TOLD DETECTIVE _____ THAT SCHEDULE II NARCOTICS WERE SEEN IN THE ABOVE RESIDENCE ON THIS DATE. THIS INFORMANT IS FAMILIAR WITH THE PACKAGING, SALE AND DISTRIBUTION OF NARCOTICS.

3. THE CRI IS DEEMED RELIABLE THROUGH THE ARRESTS AND CONVICTIONS OF SUSPECTS THROUGH THE PENAL SYSTEM.



Forum Shopping and Other Neat Tricks.

Splitting the Baby.

Defendant, a felon, is stopped at a roadblock and has 50g cocaine powder under the seat and a box of shotgun shells in the trunk.

State will prosecute the cocaine and feds will prosecute the shells to achieve consecutive sentences.

Forum Shopping and Other Neat Tricks.

Burying the Defendant Twice.

Defendant pleads to state charge of felon in possession of a firearm gets 10-12, suspended.

Defendant has 3 prior, consolidated B&Es when he was 17 although these prior offenses were committed on different days.

Forum Shopping and Other Neat Tricks.

Burying the Defendant Twice.

Feds file a successive felon in possession case because the state sentence "did not adequately address federal concerns."

Penalty: Mandatory minimum of 15 years and up to life.
