

May 31, 2005

Dear 18B Panelist:

**This letter addresses the following topics:**

- Nassau County Jail – Visiting Procedures
- Client Centered Representation
- “Sealed” Violations
- Renewal of Secure Passes
- Assignment of Investigators to Cases
- Fingerprint Experts
- Expert Orders
- CLE Credits for IDV Training
- Website Improvements
- Part 9 Survey

**Nassau County Jail – Visiting Procedures**

Together with other concerned members of the defense bar, I met with Sheriff Reilly and his deputies on two occasions recently, concerning visiting hours and parking problems. We received some short term progress and long term solutions in both areas.

**SHORT TERM PROGRESS** - The Sheriff would not change the general visiting hours from 1:00 P.M. but did, at our request, implement a new “critical need” procedure that is set forth in the flyer annexed to this letter. Under this new procedure, if you have a critical need to see your client, i.e. an exceptional circumstance where it is imperative to visit a client in order to avoid prejudicial delay in the case <sup>1</sup>, you should call the Sheriff’s office at 572.4600, identify yourself and your client, and state that you are calling in a critical need situation. You will then be told which building your client is in, you will be granted early access to the visiting area, and **your client will be in the visiting area at 12:40 P.M.**

On the question of your being made to wait for lengthy periods of time before your clients are produced during normal visiting hours, we were told by the Sheriff’s personnel that delays in producing defendants are in many cases due to the defendants themselves, because the defendants choose where they want to be at any given time (e.g. law library, yard, shower). They suggested that if you alert your client to the fact that you will be visiting him at a given time and date and tell him to be locatable and presentable at such time, your waiting period should be reduced. It’s at least worth a try.

Regarding parking, the Sheriff at our request set aside a designated parking area for members of his staff that is separate from the visitors parking area. This has freed up a number of parking spaces in the visitors’ area.

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<sup>1</sup> If, for example, you arrange at a morning court conference that a client will be released the next day upon his guilty plea, or receive a sentence of time served, it would be appropriate to invoke this procedure.

LONG TERM SOLUTIONS - In the near future, a representative from the County Executive's Office, representatives from the Sheriff's office, representatives from the Legal Aid Society, a representative from the Criminal Courts Bar Association and I will visit Riker's Island and the Brooklyn Courthouse to inspect their videoconferencing equipment. Videoconferencing enables attorneys to have conferences with their clients without visiting in person. The conferences are secure so that the attorney – client privilege is honored. We hope to institute this in Nassau County not as a replacement for in person visits but as a supplement to them. I will keep you advised.

Regarding parking, the Sheriff's office has Federal grant funds to expand the parking facilities in East Meadow. They predict that by this year's end, the number of parking spaces at the jail should be doubled.

### **Client Centered Representation**

Those who attended our recent C.L.E. Program on Client Centered Representation were witness to one of the most controversial programs in recent memory. Comments ranged from "The best CLE program I have ever attended" to "I can't believe they give CLE credits for this crap." The program concerned itself with ways to approach defendants, who are often hostile to the system and who often feel that assigned counsel are part of the problem and not the solution. The goal is to develop a better relationship with the client in order to reduce the number of replacement attorneys sought by such defendants and in order to enable you to work with rather than against your client for a better chance at a plea or successful trial. For those of you who are interested, I have reduced to writing various suggestions that were made both from the lecturers and from our audience members, and have included them on a separate page enclosed with this letter. I hope one or more of these points may be of help to you.

### **"Sealed" Violations**

When a client pleads guilty to a violation, the case will be sealed pursuant to CPL §160.55. The fingerprints will be destroyed and the original charges and documents associated with the case cannot thereafter be obtained without a court order. It is important to note, however, that **the record of conviction for the violation is not sealed but remains a public record.**

Steve Barnwell now points out that there has been a change in the public's ability to access such records of conviction. In the past, an investigator would have to go to the County where the sealed violation was taken in order to obtain the record. Now, anyone can submit an application to the Office of Court Administration, pay a fee of \$52 and have a search done of all 62 counties in the state. The Office of Court Administration's records for Nassau County date back to 1982.

Steve points out that in the case of a defendant who receives Youthful Offender treatment, the records will not be placed in the OCA system, thus presenting the question of whether a plea to a B misdemeanor with Y.O. might be preferable to a plea to a

“sealed” violation. One should be aware, though, that if the client chooses the Youthful Offender misdemeanor, the arrest will still show on a NYSID report and will be noted as a Y.O. disposition with no conviction.

### **Renewal of Attorney Secure Passes**

Renewal of the attorney secure passes, which must be done by written application, **takes eight to ten weeks for processing.** Oscar Holt submitted his application a month in advance, thinking that, since it was a renewal, that would be sufficient time. It was not. Oscar told me that an attorney may be admitted to a court building with the old secure pass and a yellow carbon copy of the renewal application, but he suggests the better practice is to re-apply at least 10 weeks prior to your expiration date.

### **Assignment of Investigators to Cases**

I have been advised that some of our Panelists have been denied investigators in certain cases. In my opinion, the refusal of a judge to grant an investigator significantly impairs one’s ability to try a case and, indeed, to plea bargain it properly. I am therefore greatly in favor of investigative assignments.

I have written to Judges Donnino, Falanga and Foskey about this matter and have asked them to convey my feelings to the Judges in the County, District and Family Courts. Notwithstanding the foregoing, the law states that investigators are not available simply upon request. County Law § 722 c states that such experts shall be granted only when the Court makes an ex parte finding that such an expert is “necessary”. There is no definition of what is necessary but it is clear that **some** showing must be made in your supporting papers. I suggest therefore that you avoid using boilerplate language, or at least supplement such language with a particular need that is unique to the case at hand. That said, if you have a problem in this area, please feel free to let me know and I will intercede to try to get you what you need.

### **Fingerprint Experts**

We have none. The two previously on our Experts Panel are no longer working. If you know someone who is qualified and possibly interested in becoming a member of our Expert’s Panel, please let me know.

### **Expert Orders**

When you submit an Order for an expert, please be sure to include language that the expert fee “shall not exceed One Thousand (\$1000) Dollars without further Order of this Court”.

## CLE Credits for IDV Training

If you attended one or more of the IDV training programs in January or February, but did not receive your CLE credit, please let me know.

## Website Improvements

I have received two suggestions for improving our Website (nassau18b.org): first, that we set up an internet bulletin board so that panelists can pose questions or problems and receive suggestions from other panelists; and, second, that we make the online vouchers interactive, so that you can fill them out on your computer. Both of these suggestions have merit and I am presently trying to accomplish each. I will keep you advised.

## Part 9 Survey

It has been suggested that an SCI calendar call at 2:00 P.M. every day in Part 9 would improve things. The mornings would then be reserved for straight conferencing. I am asking all members of the Felony and Major Felony Panels to complete the enclosed survey on this question and fax it back to me, so that we can determine whether this is a good idea or not.

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Thank you for your continuing service on the 18B Panel.

Very truly yours,

Patrick L. McCloskey

## PART 9 SURVEY

Are you in favor of a procedure in Part 9 where the morning is confined to conferencing and all SCI Pleas are taken starting at 2:00 P.M.?

**YES** \_\_\_\_\_

NO \_\_\_\_\_

COMMENTS (if any):

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NAME (Optional)\_\_\_\_\_

Please fax back to 873.8032

### **Client Centered Representation**

The following are suggestions that are designed to improve the relationship between assigned counsel and their clients.

- When you meet your client, before you discuss the facts of the case, discuss the client's background and look for common ground in order to begin to establish trust.
- If you think that your client feels that you're not a "real" lawyer, tell him in essence "I'm a private attorney. I take a handful of cases like this, but I'll treat you the same as a private client" or "Today's your lucky day. I only take cases like this about four times a year. I would normally charge \$10,000 for a case like this."
- Don't be afraid to recite your credentials, including years of practice, number of cases you've tried and significant victories you've attained.
- Give them your card and tell them "I'm your lawyer".

- If your client expresses frustration about the criminal justice system, tell him that you can't control everything and you too are frustrated by some things in the criminal justice system. In other words, share your frustration and make it a common bond.
- Get an inexpensive looseleaf book, put the client's name on it and make sure he sees his name on it so he knows you have respect enough to treat him as an individual.
- When entering a courtroom in which your client and the A.D.A. are present, talk to your client for at least a minute **before** you approach the A.D.A. If it's the first time you're meeting your client, explain which one is the A.D.A. and say, in substance, "Your file is over there and I want to find out what's in it. Do you agree?" Then, approach the A.D.A. to discuss the file.
- Try to avoid banter and laughter when talking to the A.D.A. in your client's presence. He cannot hear what you and the A.D.A. are saying but he can see how you're acting and it is counterproductive for you and the A.D.A. to appear to be enjoying yourselves at what he may deem to be his expense.
- Remember something personal about your client (his mother's asthma, his wife's broken down car) and ask about it during subsequent visits.
- Don't be the first one to mention a plea bargain. If you do, the client may think that you just want to get rid of the case. Instead, say "I want to try this case." Let him be the one to say "What about a plea bargain?"
- If a plea offer is made that you think is advisable, write a detailed letter to your client explaining the benefits of accepting such a plea, including the sentence, and the ramifications of rejecting such a plea, including your inability to plea bargain if the case is indicted. This letter is your insurance against an indicted client later telling a Judge that he wants his pre indictment plea offer back and wants a different attorney because you never properly explained what would happen to him if he rejected the plea.
- Before court, enlist your client as a member of your team by giving him something to do such as making up a witness list or drawing a map of the scene.
- In court, in front of the jury, enlist your client as a member of your team by giving him something to do, such as handing you papers or exhibits, or having him turn the pages of a flip chart. Let the jury see that you have a good relationship with your client. Don't be dismissive or intolerant of him.
- Give your client the "Perp Hug". When you leave him, shake his hand or put your hand on his shoulder, rather than just say "I'll see you in a month".
- Communicate with your client's family. Let them know who you are and that you're involved in the case.

- Let everyone in your client's neighborhood know who you are. Give out your card and tell them all that you're the defendant's attorney.

- Do followup correspondence with your client.

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