

August 11, 2008

Dear Panelist,

This letter covers the following topics:

- Chris Adamowicz
- Annual Criminal Law and Procedure Update
- Free Eyewitness Identification Website
- Collect Calls From Jail – Solution
- Oh Canada
- Do Not Record List
- Adverse Consequences of ACODs
- De-Briefing – Interpreters and Survey
- Motions to Inspect and Dismiss
- Post Release Supervision
- Money Laundering Statute
- Additions to Experts' Panel

**Christine Adamowicz**

I regret to inform you that Chris Adamowicz, a former member of the District Attorneys office and an 18B Panelist since 1991, passed away on June 20<sup>th</sup> after a long struggle with cancer.

## **Annual Criminal Law and Procedure Update**

This year's annual Criminal Law and Procedure Update will be held in the Central Jury Room of Supreme Court on Friday afternoon October 17<sup>th</sup>. This valuable program is free to all 18B Panelists in good standing. Please mark and hold the date if you are interested

## **Free Eyewitness Identification Website**

I have been made aware of a free resource from the Eyewitness Identification Reform Litigation Network. It is at [eyeid.org](http://eyeid.org). Once you register, you will have access to material that may assist you in the defense of eyewitness cases.

## **Collect Calls From Jail – Solution**

In my April 11, 2008 letter to you, I pointed out that Optimum Voice does not accept collect phone calls. This would preclude any Panelist with such service from receiving collect calls from their clients. I asked for possible solutions. Panelist Adrienne Flipse Hausch provided one: have the defendant call a relative collect, and have the relative place a 3<sup>rd</sup> party conference call to your office. Problem solved. Note, however, that if the relative is part of the conversation, the attorney – client privilege would not apply. Act accordingly.

## **Oh Canada**

Panelist Kim Lerner advises that members of “inadmissible classes” are barred from entering Canada. The surprising part is that members of inadmissible classes include those convicted of minor offenses such as shoplifting, assault, unauthorized possession of a firearm, driving while impaired (yes: driving while impaired) and, of course, those convicted of more serious offenses. You may want to keep this in mind as you advise clients down the road of yet one more collateral consequence of criminal convictions. For more information, google “Canada inadmissible persons.”

## **Do Not Record List**

Panelist Andrew Monteleone notes that, as with Nassau, the New York City Department of Corrections is recording all phone calls to and from New York City jails. There is a Do Not Record list for any attorney who has a client in a City facility. You

can get your name on it by going to:  
[nyc.gov/html/doc/html/how/prevent\\_recording.shtml](http://nyc.gov/html/doc/html/how/prevent_recording.shtml)

### **Adverse Consequences of ACODs**

I am attempting to compile a comprehensive list of all of the problems with an ACOD. Thus far, my list includes the following: The defendant will be unable to join the military during the 6 or 12 month period; a prospective employer will have access to court records of the ACOD while such period is pending and often, as a practical matter, after the case has been dismissed; the defendant may have difficulty joining a police department or other law enforcement agency; the defendant may have difficulty in obtaining a gun permit; the defendant will forfeit the right to sue for false arrest and/or malicious prosecution.

If you know or have heard of other adverse consequences of ACODs, please list them on the “Survey Sheet” enclosed with this letter and fax it back to me at your earliest convenience. Thank you.

### **De-Briefing – Interpreters and Survey**

Panelist Karen Johnston notes that if you bring a non English-speaking defendant to the District Attorney’s office to be debriefed, there will be no outside interpreter present. A detective will interpret. You should therefore consider bringing an interpreter to the jail in advance of the debriefing session if you want to be sure your client understands the nuances of the waivers and the agreement.

Panelist Roberta Fox has a broader concern: she wonders whether any Panelists are getting any benefit from debriefing sessions with this District Attorney’s office. If you have experience with this matter, please complete the applicable portion of the “Survey Sheet” enclosed herewith and fax it back to me at your earliest convenience.

### **Motions to Inspect and Dismiss**

Panelist Joe LoPiccolo notes that when the District Attorney’s office responds to Motions to Inspect and Dismiss, they only forward the Judge the witness testimony. They do not include a list of the witnesses who testified, the opening instructions or the charge at the conclusion of testimony. You should therefore specifically demand in your motion papers that all such material be produced.

### **Post Release Supervision**

Panelist Joe LoPiccolo also points out a recent Court of Appeals decision **People v. Sparber** 10NY3d457, that deals with the question of whether defendants can be relieved of their obligation to serve Post Release Supervision because sentencing courts failed to comply with CPL §§380.20 & 380.40. If you have trouble accessing this case and want a copy, call the 18B office and we will fax it to you.

### **Money Laundering Statute**

Panelist Joe Gentile points out a problem with Penal Law § 470, the state money laundering statute. For many years, Joe notes, the federal authorities and the states, which have passed statutes almost identical to the federal model, have assumed that proceeds (which is not defined in the statute) constitute the gross receipts of a business. Indeed, the New York statute has monetary thresholds consistent with this view. Joe notes, however, that on June 2, 2008, the United States Supreme Court in **United States v. Santos**, decided that the term proceeds means the **profits** and **not the receipts** of a business. That case involved the operation of an illegal gambling business. Essentially, proceeds were meant to represent the net profits (revenue minus expenses) of a business and not the mere receipts of a business. The only exception would be contraband in a drug case or an organized criminal enterprise. All other proceeds must be predicated on profits and not gross receipts.

Joe recently wrote to State Senator Skelos, asking him to take a close look at the existing statute, indicating that it did not anticipate this type of distinction and thus would require significant amendment. Stay tuned.

### **Additions to Experts' Panel**

The following experts have been added to our Experts' Panel:

#### **Eyewitness Identification**

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Interpreters

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Psychiatry

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My thanks to Panelists Adrienne Flipse Hausch, Kim Lerner, Andrew Monteleone, Karen Johnston, Roberta Fox, Joe LoPiccolo and Joe Gentile for their contributions to this letter. My continued thanks to all of you for your valuable contribution to the criminal justice system in Nassau County.

Very truly yours,

Patrick L. McCloskey