

August 27, 2009

Dear Panelist,

This letter addresses the following topics:

- Annual Criminal Law & Procedure Update
- Jail Visit Study
- Gunshot Residue Testing
- Arraignment B Matters
- Grand Jury Matters
- Felony Exam Matters
- Updating of Expert's List
- Unreliability of Forensic Evidence
- The Eyewitness Conundrum
- Spanish ACOD Sheets
- Jail Visit Order
- Letter From Inmate
- Additions To Expert's Panel

### **Annual Criminal Law & Procedure Update**

This year's annual Criminal Law and Procedure Update will be held on Friday, October 23, 2009, from 1:30 to 4:30 in the Central Jury Room at Supreme Court. Please mark that date on your calendar if you plan to attend.

### **Jail Visit Study**

In response to periodic phone calls I receive from social workers at the jail who advise me that certain defendants have not seen their 18B attorneys in months, I conducted a study of jail visits by our panelists during the past two years. I am pleased to advise you that the vast majority of you visited the jail on a regular basis and the small number who didn't had virtually no incarcerated clients during the time period studied. The bottom line is that you are all to be commended.

## **Gunshot Residue Testing**

This may be old news to some, but the Nassau County Police Department has lost its license to test for gunshot residue and must now send samples out of state for testing. Gunshot residue testing is expensive and therefore the Assistant District Attorney on the case must first get approval from at least one Supervisor, stating that the case is important enough to justify the cost of the testing. Keep this in mind if you are plea bargaining a case that involves this type of evidence.

## **Arraignment B Matters**

Panelist Steve Bandel advises me that the ADA in Arraignment B last week told him that he would consent to RORs on certain cases but only if Steve would waive CPL 710.30 notice. I don't know if this concept is the brainchild of this individual ADA or if it is a new policy of the DA's office. I do believe, however, that an ROR has nothing to do with 710.30 notice and feel that we should refuse to consent to such nonsense.

## **Grand Jury Matters**

Panelist Michelle Armstrong advises me that she recently had her client testify before the Grand Jury on an attempted murder case. The defendant told the grand jurors that he had an alibi witness outside and another on call. He requested that the grand jurors hear the two witnesses and also subpoena telephone records that would support his alibi. **The Grand Jury voted not to hear any of the alibi evidence.**

The indictment was dismissed after inspection of the minutes by the Court. Information surfaced that the grand jurors were concerned about how long it would take for the ADA to assemble all of the evidence. They were apparently advised that, if it could not be done before their term ended, their term would be extended. At this point one of the grand jurors said "I'm losing money. I know what I have to do."

I'm not sure what the moral of this story is, but it certainly seems appalling that private citizens would vote to indict a potentially innocent person for a serious crime, because of temporal and monetary issues. Keep this in mind as you continue to practice here in Nassau.

## **Felony Exam (180.80) Matters**

Panelist Stuart Austin advises that on two recent occasions in Part 9, where he requested a felony exam on incarcerated clients, the court attempted to give him an adjourned date of five days rather than the two he requested. The reason for the longer adjournment, according to Stu, is a misconception on the part of some of the Judges that 180.80 time does not begin to run until a demand for a felony exam is made.

Despite any age-old agreement between the Legal Aid Society and the Nassau County District Attorney's office, the law clearly states that 180.80 time begins to run upon the incarceration of the defendant. There is no waiver of this simply because the defense requests an adjournment or conference.

Stu has assembled the following case law in support of this proposition, for which we thank him.

People v. Allen 21 Misc 3d 1109, 873 NYS 2d 236 (2008)  
People v. Lorenzo 167 AD 2d 630, 562 NYS 2d 861 (1990)  
People v. Scoralick 140 AD 2d 658, 529 NYS 2d 11 (1988)  
People v. Edwards 121 Misc 2d 505, 467 NYS 2d 975 (1983)

### **Updating of Experts List**

We recently undertook a complete renovation of our Experts' list, purging those persons who have died, retired and/or moved away, and adding a number of new experts. The new list has been posted on our website ([nassau18b.org](http://nassau18b.org)) and can be accessed there.

In order to keep this list as current and helpful as possible, I am asking each of you to advise me whenever you learn that one of our experts is no longer available. I would also ask you to complete the attached "Request for Information" sheet and fax it back to me at your earliest convenience.

### **Unreliability of Forensic Evidence**

In the May 12, 2009 issue of the New York Law Journal, there appeared an article concerning a report by the National Academy of Sciences. This report concluded that, with the exception of DNA, **a number of forensic techniques are unreliable and insufficiently scientific to produce consistent and reliable results.** A copy of the article is enclosed.

### **The Eyewitness Conundrum**

An article entitled "The Eyewitness Conundrum" appeared in the January issue of the New York State Bar Association Journal, in which procedures were discussed, pursuant to which courts, police and attorneys could reduce mistakes by eyewitnesses. If you would like a copy of this article, please call and let us know. (747.8448)

## **Spanish ACOD Sheets**

ACOD information sheets, first introduced in Arraignment B in October of last year, are now available in Spanish. Copies of these forms will be faxed to you the day before you are scheduled to serve in Arraignment B. You are reminded that the decision as to whether to accept or reject an ACOD is not yours, but the defendant's.

If the Judge in Arraignment does not give you enough time to go over the information in these sheets with your clients, please let me know.

## **Emergency Jail Visit Order**

Panelist Joe LoPiccolo provided me with a sample emergency jail visit order. It is enclosed.

## **Letter From Inmate**

I was pleased to receive the following letter from an inmate in the Nassau County Jail. The 18B attorney involved deserves praise but asked that he not be named. My thanks to him all and to all of you who act similarly in the defense of your clients.

My name is \_\_\_\_\_. I am an inmate currently serving a sentence here at the Nassau County Correctional Center. I am writing this letter to compliment my 18B Attorney. His name is \_\_\_\_\_,

As of May 7, 2009 he was assigned to my criminal court matter. He immediately took interest in all aspects of defending me. I felt his desire to represent me was important in my trusting him with the facts of the case at hand. ... I would like to praise Mr. \_\_\_\_\_ as a member of the Nassau Bar Association, have him acknowledged in his professionalism and file this letter in his record as an attorney in the criminal justice system in Nassau County.

He is an asset to the bar in the way he performed his duties in defending his client.

Respectfully

## **Additions to Experts' Panel**

The following have been added to our Experts' Panel:

### **Chemistry And Drug Testing**

Dr. Thomas A. Kubic  
Thomas A. Kubic & Associates  
P.O. Box 208  
Greenlawn, N.Y. 11740  
631.261.2117  
Drugs & Drug Residues

### **Interpreter**

Spanish

Patricia Garcia  
64-33 184<sup>th</sup> Street  
Fresh Meadows, NY 11365  
917.270.8936

Ukrainian

Andrij V.R. Szul  
P.O. Box 1008  
Bellmore, NY 11710  
516.679.9663  
Cell: 212.677.4422

### **Investigators**

Peter Knoth  
PO Box 1175  
Bethpage, NY 11714  
516.439.4114  
Cell: 516.458.3054  
[Dukes12@aol.com](mailto:Dukes12@aol.com)

## **Photographic & Video Analysis**

Tom Bouklas  
201 Arnold St.  
Holbrook, NY 11714  
631.737.1315  
Cell 631.672.1056  
[tbouklas@optonline.net](mailto:tbouklas@optonline.net)

## **Psychiatry**

Dr. James Lynch  
142 Joralemon St.  
Suite 10F  
Brooklyn, NY 11201  
718.858.3200

## **Psychology / Social Work**

Nadine Mass, LCSW  
Director, Forensic Services  
Clinical Forensic Initiatives  
75 Maiden Lane, Suite 201  
New York, NY 10038  
656.537.1749 X 106  
Fax: 646.706.7151

A. Raquel Sanchez, LCSW  
Long Beach, N.Y.  
Cell: 718.781.2112  
[Racheli9@yahoo.com](mailto:Racheli9@yahoo.com)

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Thank you all for your continued good work.

Very truly yours,

Patrick L. McCloskey

FAX TO 516.873.8032

EXPERTS LIST  
REQUEST FOR INFORMATION

I think we need additional experts in the following area(s)

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I know one or more persons who would be a good addition to the Experts List:

Name	Phone	Area of Expertise
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NAME (OPTIONAL)

At a Term of the Nassau County Court,  
held in and for the County of Nassau, at the  
County Court Courthouse, 262 Old Country  
Road, Mineola, New York on the \_\_\_\_ day  
of \_\_\_\_\_, 2009

PRESENT:

HON.  
JUDGE OF THE COUNTY COURT

-----X

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

Defendant.

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ORDER

IND. NO.:

IT IS HEREBY ORDERED, that the attorney for the above-named defendant,  
\_\_\_\_\_, and any associate or co-counsel of his firm, is authorized to enter and  
conduct a legal visit with the defendant at the Nassau Correctional Center on Sunday,  
\_\_\_\_\_ between the hours of 9:00 A.M. through 12:00 P.M for the purposes of  
preparing his client to testify at his trial.

ENTER

\_\_\_\_\_  
J.C.C.