

April 8, 2010

Dear Panelist:

This letter covers the following topics:

- Recent Supreme Court Decision
- Upcoming CLE Programs
- Designated Parking Spaces at Jail
- Expert Witness Transcript Database
- Experts Who Won't Testify
- Visitation Problems at Jail
- Affirmations of Extraordinary Circumstances
- Basic Trial Skills Program
- District Attorney Strongarm Tactics
- Annual Criminal Law and Procedure Update
- Additions to Experts Panel

RECENT SUPREME COURT DECISION

On March 31, 2010 the United States Supreme Court, in *Padilla v. Kentucky*, ruled that a criminal defense attorney must advise his or her client of the risk of deportation attendant upon conviction of certain crimes. Failure to do so is a violation of the defendant's Sixth Amendment right to the effective assistance of counsel.

In response to this decision, the Nassau County Criminal Law & Procedure Committee of the Nassau County Bar Association, in conjunction with the Immigration Law Committee, is meeting at the Nassau County Bar Association on Tuesday, April 20th at 12:30 P.M. Please make note of the date and time if you are interested in attending.

Note: The Nassau Academy of Law will provide one (1) CLE credit for those in attendance. This is optional, at a cost of \$30.

Additionally, I am in receipt of a 16 page advisory from the Immigrant Defense Project, on the duty of a criminal defense attorney following the Padilla decision. If you would like us to fax you a copy, call and let us know.

UPCOMING CLE PROGRAMS

On Tuesday, April 20, 2010, from 5:30 to 8:30 PM, the Family Court Law & Procedure Committee will present a program entitled “Stump the Judges”. Judges Hope Zimmerman, Julianne Eisman, Ellen Greenberg and Robin Kent will field questions from practicing family court attorneys concerning Family Court Act Articles 3, 6, 8 and 10, as well as questions involving evidentiary, ethical and procedural issues

On Thursday, May 27, 2010, from 5:30 to 8:30 PM, the Assigned Counsel Defender Plan will present a program entitled “Depraved Indifference In A Post Feingold World”. This program will address the current state of the law in the area of culpable mental states following the Court of Appeals 2006 decision in *People v. Feingold*. Presenters will include Dick Barbuto, author of Amicus briefs in *People v. Valencia* and *People v. Heidgen*; Jill Harrington, appellate attorney in *People v. Heidgen*; and Marianne Karas, appellate attorney in *People v. Feingold* and *People v. Valencia*.

Both of these programs are free for all 18B Panelists. Brochures for these programs are enclosed.

DESIGNATED PARKING SPACES AT JAIL

I recently had a series of conversations with Sheriff Mike Sposato about difficulties in parking at the Nassau County Jail. Based thereon, he agreed to designate a total of eight parking spaces (four for each building) for “attorney only” parking. Although this won’t solve all of your problems, it is something that we didn’t have before and I thank Sheriff Sposato for his help.

EXPERT WITNESS TRANSCRIPT DATABASE

Panelist Tony Collelouri suggested that I begin to collect transcripts of testimony from prosecution expert witnesses and to include them on our website. I think this is a great idea. If you have transcripts of testimony of any such witnesses, please mail, fax or email them to me at your earliest convenience. My thanks to Tony for the suggestion..

EXPERTS WHO WON'T TESTIFY

Some of our Panelists have dealt with expert witnesses who are willing to work on background matters but are unwilling to testify at trial. This is usually due to the fact that the expert has had a prior relationship with Nassau law enforcement personnel. Regardless of the reason, **this practice is unacceptable.**

In the future, if you feel that there is any chance that an expert may have to testify, mention that fact to the witness before you engage their services. If they indicate that they will not testify, I suggest that you use someone else and advise me as to who they are. In that regard, if any of you have had this problem in the past, please call me and let me know. There is no point in our having these people on our expert list if they are prepared to abandon ship at the critical point in the case.

AFFIRMATION OF EXTRAORDINARY SERVICES

Please note that when you submit affirmations of extraordinary circumstances, it is not enough for you to assert that all of the time you spent "was necessary for the proper representation" of your client. That goes without saying. What is required in such an affirmation is for you to recite the reasons why you were forced to spend an inordinate number of hours on the case, by listing the reason or reasons why the case was not ordinary but extraordinary. Please keep this in mind for the future.

BASIC TRIAL SKILLS PROGRAM

The New York State Defender's Association is presenting its 2010 Basic Trial Skills Program in Albany, New York from June 13 through June 18, 2010. Application deadline is April 16, 2010. If you are interested in more information, please call us at 747.8448.

DISTRICT ATTORNEY STRONGARM TACTICS

Panelist Lee Kleinhardt Jr. advises of a case where his client, a student at Hofstra on a full academic scholarship, was charged with an E felony involving a DWI, an accident and an injury to a passenger. The District Attorney's office demanded that the defendant plead guilty to the E and do upstate time and that if he did not do so within 30 days, an additional charge, a D felony, would be added against him.

Defendant declined, the charges were upgraded, the case went to trial and after 17 days defendant was acquitted of both felonies. Lee has indicated that he is available at 516.223.7714 to assist any panel member by sharing his experience on this case and advising how he was able to overcome the District Attorney's strongarm tactics.

ANNUAL CRIMINAL LAW & PROCEDURE UPDATE

The Annual Criminal Law and Procedure Update will be held this year on Friday, October 29, 2010, from 1:30 – 4:30 PM in the Central Jury Room at Supreme Court. Please mark the date.

ADDITIONS TO EXPERTS PANEL

The following have been added to our Experts Panel:

Crime Scene Reconstruction

Hal Sherman
P.O. Box 951
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516.932.5278
Cell: 917.620.9695
hal@fearforensics.com

Fingerprint and Palmprint Identification

John Brunetti
West Haven, Ct. 06516
Cell 203.500.2744

Firearm Identification

William F. Wheatley
Factsgroup LLC
P.O. Box 167
Rosemont, N.J. 08556
908.797.6553
factsgroup@comcast.net

Forensic Art

Robert Mladinich
New York, N.Y. 10009
212.477.4915
Cell: 917.204.5916
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remprivateinvestigators.com/trial_exhibits.html

Interpreters

Spanish

Gladys Henao
Westbury, N.Y. 11590
516.297.7613
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Investigators

Arthur C. Barragan
Brace Private Eye, Inc.
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Medicine

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Child Abuse

Psychology

Gisele Kehl, Ph.D.
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516.625.0680
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Toolmark Identification

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Thank you for your continued good work on the Panel.

Very truly yours,

Patrick L. McCloskey