

**Subject:** LibertyWatch for September 2007

# LibertyWatch

## **A Publication of the Pennsylvania Association of Criminal Defense Lawyers September 2007**

Welcome to *LibertyWatch*. David R. Crowley covered the Pennsylvania Supreme Court, and the Pennsylvania Superior and Commonwealth Courts for the month of August, 2007. We are necessarily selective in our coverage and no newsletter can substitute for diligent research and innovative analysis. The cases can be found in full at: <http://www.aopc.org/>. If you prefer NOT to receive *LibertyWatch* via e-mail, kindly so inform us so that we may delete your e-mail from our records.

### **PENNSYLVANIA SUPREME COURT DECISIONS**

#### **Joint Trial of Separate Charges**

*Cmwlth. v. Cousar*, No. 395 Capital Appeal Docket. Opinion by Saylor, J., 8/21/07.

Over the well reasoned dissent of Madame Justice Baldwin, the court found no error in joining defendant's two marginally related capital cases and a separate burglary case for trial.

#### **PCRA â€™Timeliness â€™ Unknown Facts**

*Cmwlth. v. Bennett*, No. 6 EAP 2005. Opinion by Cappy, P.J., 8/23/07.

Averment that second PCRA was timely filed as within 60 days of the date appellant became aware that his first PCRA was dismissed due to appointed counselâ€™s failure to file a brief was sufficient to survive quashal. Case was remanded to PCRA Court for a determination as to whether it was timely filed.

### **PENNSYLVANIA SUPERIOR COURT DECISIONS**

#### **Sentencing â€™Discretionary Aspects â€™ Merger**

*Cmwlth. v. Robinson*, No. 3361 EDA 2004. Opinion by Lally-Green, J. dissenting opinion by Klein, J., dissenting opinion by Bender, J., 8/2/07.

Claim of judicial vindictiveness in re-sentencing is not a challenge to the legality of the sentence that may be raised as a matter of right. Corruption of Minors does not merge with Indecent Assault.

#### **Search & Seizure â€™Automobile Stop â€™ Investigative Detention**

*Cmwlth. v. Conte*, No. 1805 MDA 2006. Opinion by Stevens, J., 8/2/07.

Police encounter with defendant, whose vehicle was parked at night on shoulder of a highway exit ramp was a consensual encounter rather than an investigative detention even though the officer was in uniform, wore a gun, and activated his overhead lights.

#### **Probation Revocation â€” Parole Board â€” Jurisdiction**

*Cmwlth. v. Kelly* , No. 2036 MDA 2006. Opinion by Hudock, J., 8/6/07.

Fact that Parole Board had agreed to supervise appellant's period of probation and had statutory authority to arrest for violations did not divest the trial court of its power to detain appellant for violations of that probation.

#### **Sentencing â€” Mandatory**

*Cmwlth. v. Perez* , No. 3376 EDA 2005. Opinion by Gantman, J., 8/8/07.

As Commonwealth circumstantially established a conspiracy between defendant who was caught selling 0.3 grams of heroin and his supplier; the weight of heroin found in search of supplierâ€™s home could be attributed to defendant for purposes of establishing mandatory minimum sentence for possession with intent to deliver. The Commonwealth did not need to establish that defendant constructively possessed supplierâ€™s heroin.

#### **Appellate Practice â€” Anders**

*Cmwlth. v. Curry* , No. 1787 MDA 2006. Opinion by Kelly, J., 8/8/07.

Counsel's Anders brief was defective as it did not contain an argument and summary of argument, did not present the statement of the case in a neutral fashion, and concluded with an assessment that the appeal was frivolous.

#### **Search & Seizure â€” Automobile Stop â€” Investigative Detention**

*Cmwlth. v. Collins* , No. 1437 MDA 2006. Opinion by Johnson, J., dissenting opinion by Hudock, J., 8/8/07.

Police actions in blocking in a legally parked car constituted an investigative detention rather than a mere encounter. Well done PACDL member Parviz Ansari .

#### **Search & Seizure â€” Privacy**

*Cmwlth. v. Sodomsky* , No. 1953 MDA 2005. Opinion by Bowes, J., concurring opinion by Colville, J., 8/9/07.

Defendant who took his computer to retail outlet to install a DVD drive, abandoned his privacy interest in files contained in his hard drive.

#### **Guilty Plea â€” Withdrawal â€” Prejudice to Commonwealth**

*Cmwlth. v. Kirsch* , No. 1360 EDA 2006. Opinion by Bender, J., concurring statement by McEwen, P.J.E., 8/10/07.

Fact that prosecutrix had become a reluctant Commonwealth witness did not constitute prejudice so as to bar Defendant from seeking to withdraw guilty plea prior to sentencing.

#### **Right to Counsel â€” Withdrawal of Counsel**

*Cmwlth. v. Patterson* , No. 1812 MDA 2006. Opinion by Kelly, J., 8/13/07.

Court having permitted the withdrawal of defendantâ€™s counsel and elicited that defendant intended to secure new counsel erred in not colloquying defendant on the waiver of counsel when defendant appeared at sentencing without counsel as the court did not set a deadline for new counsel to enter his appearance.

### ***Ander*â€™s Briefs â€™ Counselâ€™s Review of the Record**

*Cmwlth. v. Wrecks* , No. 2293 EDA 2006. Opinion by Colville, J., 8/14/07.

The court declined to address counselâ€™s motion to withdraw as the untimely filed *pro se* post-sentence motion leading to counselâ€™s appointment was not contained in the record. Although counsel averred that she could not locate the motion, she did not aver that she asked her client for a copy. On remand, the court wants either a copy of the motion or an agreed statement of the lower court and parties as to the contents of the motion. At issue is whether the appellate court should consider this as a withdrawal from an untimely direct appeal (*Anders* standard) or an untimely PCRA (*Finley/Turner* standard).

### **Search & Seizure â€™ Warrantless Entry**

*Cmwlth. v. Arnold* , No. 601 MDA 2006. Opinion by Johnson, J., dissenting opinion by Lally-Green, J., 8/21/07.

Summary offense of noise violation, without any other evidence of illegal activity, did not provide basis officers to enter apartment without a warrant or probable cause and an exigent circumstance.

### **VUFA â€™ Statutory Construction**

*Cmwlth. v. Baxter* , No. 622 WDA 2006. Opinion by Ford Elliott, P.J., dissenting opinion by Orié Melvin, J., 8/22/07.

Felony VUFA charge for making a materially false statement in the purchase of a firearm could not be predicated upon false statements made on a federal ATF form without offending due process and separation of powers as the offending federal misinformation was not required under the state statute.

### **Sufficiency of Evidence â€™ Reckless Driving**

*Cmwlth. v. Fiedler* , No. 714 WDA 2006. Opinion by Todd, J., 8/22/07.

Appellant's admission to police officer that he was driving his vehicle at 70 miles-per-hour around a blind curve demonstrated willful or wanton disregard for the safety of persons or property so as to support his conviction of reckless driving.

### **Sentencing â€™ Discretionary Aspects**

*Cmwlth. v. WHM* , No. 2110 WDA 2006. Opinion by Todd, J., 8/22/07.

Claim that sentence for the incest conviction was excessive because it exceeded the recommendation of the Commonwealth or should have run concurrent with rape sentence fails to raise a substantial question. SVP finding was supported by sufficient evidence.

### **Firearms â€™ Juveniles**

*In Re: R.B.G.* , No. 1560 MDA 2006. Opinion by Todd, J., 8/22/07.

Juvenileâ€™s possession of a firearm did not support his adjudication on possession of prohibited offensive weapon. His argument that he could not be adjudicated delinquent on the offense of unlicensed possession of a firearm because his minority precluded him from licensure: while interesting was unavailing.

### **Witnesses â€™ Competence** *Cmwlth. v. Boich* No. 1856 MDA 2006

Opinion by: Popovich, J.; Dissenting Statement by Hudock, J. 8/22/07.

Considering purported rape victim's documented selective memory loss associated with her consumption of alcohol and prescription drugs, the trial court did not abuse its discretion in ordering a psychiatric examination to assist the court in assessing her competency to testify.

**Child Pornography – Statutory Construction** *Cmwlth. v. Diodoro* No. 1889 EDA 2005  
Opinion by: Stevens, J.; Dissenting Opinion by Klein, J. 8/23/07.

Eschewing the well reasoned dissent of Judge Klein, the *en banc* court held that merely viewing images on one's computer is sufficient control of the image to fall within the sexual abuse of children statute.

**PCRA – Previously Litigated Claims**

*Cmwlth. v. Jones* , No. 2244 EDA 2006. Opinion by Colville, J., 8/23/07.

The lower court erred in dismissing appellant's PCRA as involving a previously litigated and waived claim. Though raised in appellant's *pro se* direct appeal, the sentencing issue was not addressed on the merits as it was deemed waived for lack of inclusion in the 1925(b) statement. Further, as the claim challenge the legality of his sentence, it could not be considered waived for purposes of the PCRA.

**Hearsay**

*Cmwlth. v. Tielsch* , No. 2182 WDA 2002. Opinion by Panella, J., dissenting opinion by Bowes, J., 8/23/07.

Over the well reasoned dissent of Judge Bowes the court found that the lower court did not err in sustaining the Commonwealth's hearsay objection to inculpatory statements of a third party.

**Speedy Trial**

*Cmwlth. v. Trippett* , No. 979 EDA 2006. Opinion by Johnson, J., 8/24/07.

IDSi prosecution was timely commenced, the conviction was supported by sufficient evidence and the sentence was not excessive.

**Sentencing –**

**DUI**

*Cmwlth.v. Stafford* , No. 230 MDA 2007. Opinion by Tamilya, J., 8/24/07.

Two prior DUI convictions within the 10 year look back period makes the next DUI offense a third offense for sentencing purposes even where the first two offenses were each treated as a first offense for sentencing purposes.

**Compulsory Joinder**

*Cmwlth. v. Borzelleca* , No. 89 EDA 2005. Opinion by Bender, J., 8/27/07.

As the Commonwealth conceded that conspiracy constituted a single criminal episode, the trial court did not err in dismissing Delaware County prosecution following a Montgomery County conviction.

**Witnesses – Confidential Informants**

*Cmwlth. v. Withrow* , No. 901 EDA 2006. Opinion by Johnson, J., 8/27/07.

Trial court erred in dismissing drug prosecution due to Commonwealth's failure to identify confidential informant where defendant failed to demonstrate any need for disclosure of the

informant's identity and Commonwealth established that the informant would be needlessly endangered by such disclosure.

#### **Aggravated Harassment â€” Statutory Construction**

*Cmwlth. v. Leonberger* , No. 1314 EDA 2006. Opinion by Johnson, J., concurring and dissenting statement by McEwen, P.J.E., 8/27/07.

As 18 Pa.C.S. Â§ 2703.1 expressly limits aggravated harassment by a prisoner to situations where the prisoner spits on an officer while â€œconfined or committedâ€ in a statutorily prescribed â€œfacility or institutionâ€ or when being transported to or from that â€œfacility or institutionâ€ , it does not cover a situation where the prisoner has been transported to a hospital for treatment between arrest and incarceration.

#### **VUFA â€” Sentencing**

*Cmwlth. v. Coto* , No. 201 WDA 2006. Opinion by McCaffery, J., 8/27/07.

The offense of firearms not to be carried without a license is downgraded to a misdemeanor if the defendant is otherwise eligible to possess a valid license and has not committed any other criminal violation. In a case of first impression the court held that license eligibility is a matter of sentencing mitigation subject to proof by the defendant by a preponderance of the evidence.

#### **Search & Seizure â€” Automobile Stop â€” PWID â€” Sufficient Evidence**

*Cmwlth. v. Duncan* , No. 130 MDA 2007. Opinion by Johnson, J., 8/27/07.

Defendant's inability to leave the scene of a prior stop due to factors other than police action does not invalidate his consent to search where the investigating officer has expressly told him that he need not consent to the search. Possession of 3.3 grams of crack in several baggies with no indicia of distribution other than the contemporaneous possession of 100 empty baggies and some rubber bands was sufficient to support PWID conviction.

#### **Search & Seizure â€” Detention**

*Cmwlth. v. Dutrieville* , No. 39 WDA 2006. Opinion by Hudock, J., 8/28/07.

Distinguishing

*Bennett* the court found that 30 cops encircling and then entering a â€œnuisanceâ€ bar to check patronâ€™s i.d.s against county warrant list did not constitute an illegal detention.

#### **IP Violation â€” Sentencing â€” Credit**

*Cmwlth. v. Maxwell* , No. 386 WDA 2006. Opinion by Hudock, J., 8/28/07.

Defendant, following the revocation of his intermediate punishment sentence, was not entitled to credit against his new sentence for time spent on electronic monitoring while serving his IP sentence.

#### **Witnesses â€” Confidential Informants**

*Cmwlth. v. King* , No. 3056 EDA 2005. Opinion by Gantman, J., 8/29/07.

The court erred when it dismissed drug charges against Appellee on the ground that the Commonwealth had failed to produce an informant as a â€œmaterial witnessâ€ at trial.

#### **Speedy Trial â€” Due Diligence**

*Cmwlth. v. Surovcik* , No. 3502 EDA 2006. Opinion by Popovich, J., 8/29/07.

The lower court erred in denying motion to dismiss under rule 600. Even though the Commonwealth clearly did not withdraw and refile charges to avoid the 365 day time limit to try this case, it did not exercise due diligence in bringing the case to trial as all the evidence as the

new evidence that was used to justify its serial filing was merely cumulative of evidence it had in its possession at the time of the first filing.

## **PENNSYLVANIA COMMONWEALTH COURT DECISIONS**

### **Forfeiture â€” Sufficiency of Evidence**

*Commonwealth of Pa. v. Johnson* , 823 C.D. 2007. Opinion by Simpson, J., 8/1/07.

The Pa. Supreme Courtâ€™s pronouncement in *Fontanez* that where the property at issue is currency, â€” the petitioner need only allege that the money belongs to himâ€” reduces but does not completely eliminate petitionerâ€™s initial burden of establishing a lawful right to the cash.â€”

At minimum petitioner must allege under oath that he has a lawful right to the currency.

### **License Suspension â€” DUI â€” CDL**

*Wagner v. Bureau of Driver Licensing* , 1648 C.D. 2006. Opinion by Leadbetter, P. J., 8/9/07.

One year disqualification from operating a commercial vehicle following DUI conviction is mandatory even when the DUI occurred while driver was operating his personal vehicle.

### **Criminal History Information Records Act â€” Expungement â€” Statutory Construction â€” Mandamus**

*Sammons v. Pa. State Police* , 548 M.D. 2006. Opinion by Leadbetter, P.J., 8/9/07.

State Police were without discretion to ignore order expunging criminal record of septuagenarian who met the statutory requirements for expungement.

### **License Suspension â€” Drug Conviction â€” Single Criminal Episode**

*Giambrone v. Bureau of Driver Licensing* , 484 C.D. 2006. Opinion by Leadbetter, P.J., dissenting opinion by Pellegrini, J., 8/14/07.

Over the well reasoned dissent of Judge Pellegrini, the *en banc* court found that Defendantâ€™s 11 counts of acquiring a controlled substance by fraud consolidated for trial did not constitute a single criminal episode and supported 11 consecutive 6 month suspensions of driving privileges.

### **State Parole**

#### **â€” Timely Revocation**

*Taylor v. Pa. Brd. of Probation and Parole* , 2052 C.D. 2006. Opinion by Leavitt, J., dissenting opinion by Friedman, J., 8/15/07.

The due process protection to a timely revocation of parole is not offended by a regulation which permits the Parole Board to ignore constructive notice of a new conviction while waiting months for the sentencing court to provide it with proof of the conviction.

### **Forfeiture**

*Commonwealth of Pa. v. Howard*, 856 C.D. 2007. Opinion by Leadbetter, P.J., 8/21/07.

Property owner, having met his initial burden of establishing a lawful claim to the property, was entitled to an evidentiary hearing. The lower court could not find that criminal trial testimony supporting the fact that the property was derivative contraband obviated the need for a hearing on the motion for return of property.

### **Prisoner Rights â€” Legal Mail**

*Brown v. Pa. Dept. of Corrections*, 3 M.D. 2007. Opinion by Leadbetter, P.J., dissenting opinion by Friedman, J., 8/24/07.

Department of Corrections policy of opening legal mail outside the presence of the addressee inmate unless it bears a control number does not impinge upon inmate's first amendment rights.

## PACDL News and Announcements

### Mark Your Calendar

#### ***Sex Offenses*** (6 credit hours)

(General Membership and Board of Directors Meeting at 12:15 p.m.)  
Friday, September 21, 2007  
Radisson Hotel Valley Forge  
1160 First Avenue  
King of Prussia, PA 19406

#### ***Libations, Citations and Demonstrations:***

#### ***The Ultimate Motor Vehicle Seminar*** (6 credit hours)

(General Membership and Board of Directors Meeting at 12:15 p.m.)  
Friday, October 19, 2007  
Ramada Conference Center  
1540 S. Atherton Street  
State College, PA 16801

#### ***For the Experienced*** (9 credit hours)

(General Membership and Board of Directors Meeting on Saturday at 12:15 p.m.)  
Friday and Saturday, November 9 & 10, 2007  
Pennsylvania Convention Center  
Philadelphia, PA

#### ***Capital Cases*** (6 credit hours)

Friday December 7, 2007

#### ***Search & Seizure*** (6 credit hours)

Saturday, December 8, 2007

(General Membership and Board of Directors Meeting on Friday, 12/7/07 at 12:15 p.m.)  
Doubletree Hotel  
One Bigelow Square  
Pittsburgh, PA

## ***D.C. Circuit Permits Grand Jury Witness Limited Review of Prior Testimony***

**Peter F. Vaira**

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A federal grand jury witness, recalled to testify before the grand jury should have a right to examine the transcript of his or her prior testimony.

Up to now courts have rarely granted such requests.

The Department of Justice has consistently opposed any such disclosures. The D.C. Circuit in a recent ground breaking case has opened the door to permit witnesses to examine their prior testimony, with certain limitations.

Some background is necessary. Federal Grand jury transcripts are secret and are protected from discovery by Rule 6(e), Federal Rule of Criminal Procedure. For an authorized disclosure of grand jury material, a threshold requirement is that the disclosure must be "preliminary to or in connection with a judicial proceeding." Rule 6(e)(3)(E)(i), Federal Rule of Criminal Procedure. A disclosure to a witness of his or her prior grand jury testimony to prepare for a subsequent grand jury appearance would be in connection with a judicial proceeding. [It] is well settled that a grand jury hearing is a judicial proceeding within the scope of Rule 6(e) and Rule 6(e) may support disclosure "in connection with" the grand jury's own proceedings.

*In re 1979 Grand Jury Proceedings*, 479 F.Supp. 93 (E.D.N.Y 1979). In order to gain access to grand jury transcripts an applicant must show particularized need, and must demonstrate that the need for disclosure outweighs the need for continued secrecy. *Douglas Oil Co. v. Petrol Stops N.W.*, 411 U.S. 211 (1979).

Witness requests to obtain transcripts of their own prior testimony have generally been denied by the courts. See, *Bast v United States*, 542 F.2d 893, (4th Cir 1976); *In re Bianchil*, 542 F.2d 98, (1<sup>st</sup> Cir. 1976). In a divided panel decision the Seventh Circuit held that grand jury witnesses may not obtain copies of the transcripts of their own testimony.

*United States v Clavely*, 565 F.2d 111 (7<sup>th</sup> Cir. 1977), affirmed by an equally divided en banc panel, 578 F.2d 1219 (7<sup>th</sup> Cir. 1978). The Ninth Circuit permitted a witness to examine his prior testimony in *United States v. Bursey*, 466 F.2d 1059 (9<sup>th</sup> Cir. 1972), finding it unfair that grand jury and prosecutor could review witness's prior testimony but the witness could not.

The court

*In re Sealed Motion*, 880 F.2d 1367, 1368 (D.C. Spec Div. 1989) permitted witnesses to obtain transcripts of their own testimony which was alluded to in the report of a special prosecutor.

The unique factual situation of the case is not precedent for the issue discussed in this article.

I am also aware of a situation in a recent case in the District of Columbia where the court permitted a witness who was recalled to the grand jury numerous times to examine the transcript of his prior testimony. That matter remains under seal and cannot be further disclosed.

The Third Circuit has not directly ruled upon the exact issue, except in a non precedential factual situation in

*United States v Rose*, 215 F.2d 617 (3d Cir. 1954). In summary, until now the right of a witness to obtain the transcript of his or her prior grand jury testimony has been very doubtful. The

United States Attorney's Office in the Eastern District of Pennsylvania adheres to Department of Justice policy, and generally will not give a witness a transcript of his or her prior grand jury testimony, and will oppose a petition to the court by a witness to obtain a transcript.

A recent ground breaking case is *In Re Grand Jury*, 490 F.3d 978 (D.C. Cir. 2007). That case involved grand jury subpoenas for two corporate employees who were recalled to testify before a grand jury, one for a second time, the other for a fourth time.

Both made requests to the district court to review a transcript of their prior testimony.

Both applications were denied and both appealed. As a procedural matter the circuit court held that the lower court's denials of the applications for disclosure was a "final decision" under 28 USC 1291, and were appealable,

without first having to suffer contempt for failure to testify before the grand jury.

The court, with concurrence of the parties, decided to weigh the competing interests, for and against disclosure, as the court would do in assessing third party requests for the transcripts, but interestingly did not require the moving parties to meet a particularized need standard, as required by *Douglas Oil Co.*

Aside from the obvious advantage of being able to prepare for his or her second grand jury appearance, the court noted that a grand jury witness needed to use the prior transcripts to avoid being charged with making false declarations in violation of 18 USC 1623(a) for making two materially inconsistent statements in his or her testimony.

Under that statute the government need not prove which statement is false, 18 USC 1623(c).

The court also noted that a witness is permitted to recant prior grand jury testimony without legal penalty pursuant to 18 USC 1623(d), but would have difficulty doing so without the aid of the prior transcript.

The court expressed considerable interest in the government's argument about witness intimidation. The court recognized that witness intimidation is a serious problem in the criminal justice system, and credited the government's argument that if a witness could routinely obtain the transcript of his or her prior testimony, an interested third party with influence over the witness, could pressure the witness to permit that party to gain access to the transcript, citing Justice Brennan's dissent in *United States v. John Doe, Inc.*, 481 U.S. 102, 125 (1987). In this regard, the court cited without quoting,

*In re Alvarez*, 351 F. Supp. 1089, 1090-91 (S.D. Cal. 1972). In *Alvarez* the court said, "It is also true that [a witness] may claim [to interested third parties] without fear of contradiction that he gave no useful testimony.

In absence of a transcript, this denial cannot be refuted." The court also credited the government's argument that a witness's fear of being forced to disclose the transcript to an intimidating third party could deter the witness from testifying freely in the first place.

As a former career federal prosecutor I am sympathetic to the application of the foregoing arguments in certain investigations.

Prosecutors believe that witnesses in an organized crime case are often supplied lawyers who are more loyal to the crime family than the client, and will report back to the family if the witness gives testimony implicating the higher ups in the family.

Joel Friedman, former Attorney in Charge of the Philadelphia Strike Force on Organized Crime, and now in practice in Philadelphia said, "If the witness is entitled to a transcript of his or her testimony organized crime bosses will expect disclosure to them, and any refusal to do so will be regarded as a betrayal." Prosecutors feel the same scenario occurs in a union corruption case where union members called to testify are represented by attorneys hired by the union leaders. The lower court in the *John Doe* case felt that the problem of intimidation extended to corporate employees called to testify in an investigation of corporate corruption who would fear retaliation by corporate higher ups. Prosecutors feel the grand jury secrecy regarding non

disclosure of the witnesses statements permits witness candor that would not be possible if the witness could readily obtain a copy of his or her testimony.

After weighing the interests of the witness and the government, the Court held that the witness was entitled to review the transcripts of his or her prior testimony in the privacy of the United States Attorney's Office or some other secure private location. The court reasoned that even if an interested third party confronted the witness with questions about the substance of his or her testimony, the witness's response would not change if the witness had simply reviewed his or her testimony in private. The court specifically did not rule on whether the witness was entitled to a copy of the transcript, but read in the context of the opinion, it is unlikely that a copy would be supplied to a witness. The court left to the discretion of the district court whether to allow the witnesses' attorneys to accompany them, or whether the witness or the attorneys could take notes.

Creed C. Black, Jr., a Philadelphia defense attorney was critical of these restrictions. "Once you accept that the witness has a right to read his own transcript, it's hard to justify putting blinders on counsel. The task of advising federal grand jury witnesses is tough enough. The federal grand jury system won't crumble over permitting the lawyer to read the transcript with his or her client. There should be a presumption of access by counsel. If the government fears some compromise of its investigation, the courts can make exceptions in extraordinary cases."

In a similar situation, in a formal non-public investigative proceeding, the SEC may deny a witness a transcript of his or her testimony, but will always permit a witness to examine a transcript of the testimony.  
See 17 CFR 203.6.

As a former federal prosecutor, I agree with the court's limited ruling, and especially permitting the district court to decide whether the attorneys should accompany their clients. I am of the opinion the witness alone should review his or her prior testimony.  
This will be sufficient to refresh recollection yet still protect the secrecy of the grand jury.  
I predict the decision of the D.C. Circuit in *John Doe* will be adopted by other courts with similar restrictions on the disclosure of transcripts.



*The author served as United States Attorney for the Eastern District of Pennsylvania from 1978-1983, and as Career Attorney in the Department of Justice Organized Crime Section, for ten years, most of which as Chief of the Chicago Strike Force.*

***Still Time To Register!***

***Sex Offenses*** (6 credit hours)

(General Membership and Board of Directors Meeting at  
12:15 p.m.)

Friday, September 21, 2007

Radisson  
Hotel  
Valley Forge

1160 First Avenue

King of Prussia ,  
PA 19406

**Registration and Continental Breakfast**

8:00 a.m. –  
9:00 a.m.

**Conceptual Overview of a Sex Offense Case** (including investigation and preparation for the preliminary hearing),

9:00 a.m. –  
11:00 a.m. **Evidentiary Issues (Rape Shield; 404(b), impeachment of the complaining witness, false accusation evidence)** by *Jules Epstein, Esquire and Marissa Bluestine, Esquire, Philadelphia*

**Break**

11:00 a.m. –  
11:15 a.m.

**Sample Cross Examination of Complaining Witness** by *Jack Furlong, Esquire, Trenton, New Jersey*

11:15 a.m. –  
12:15 p.m.

**Lunch (on your own) — PACDL General Membership and Board of Directors Meeting**

12:15 p.m. –  
1:30 p.m.

**Ethical Issues in Sex Offense Cases** by Andrew F. Schneider, Esquire and Richard S. Wasserbly, Esquire, Doylestown

1:30 a€  
2:30 p.m.

**The Nuts and Bolts of Meganâ€™s Law Hearings** by Christa Dunleavy, Esquire, Deputy Bucks County Public Defender

2:30 a€  
3:30 p.m.

**Break**

3:30 a€  
3:45 p.m.

**The Defense of Internet Crimes and Child Pornography** by Marc Neff, Esquire, Philadelphia .

3:45 a€  
4:45 p.m.

#### Directions

Radisson Valley Forge Hotel

1160 First Avenue

King of Prussia , PA  
19406

Phone: 610-337-2000

From Philadelphia :

Take Schuylkill Expressway (Route 76) West to Exit # 327. Bear right at first light onto Mall Blvd. Turn right at next light onto N. Gulph Road and proceed approximately 1.5 miles to First Avenue . Hotel is at this corner of N. Gulph and First.

From PA Turnpike:

(Route 276) Take Turnpike to Exit # 326 (old Exit 24) Valley Forge. Immediately take first right and merge onto N. Gulph Road . Proceed approximately 1.3 miles to First Avenue .  
Hotel is at this corner of N. Gulph and First Ave.

**REGISTRATION FORM B Sex Offenses (9/21/07) \***

Mail the completed Registration Form with payment no later than September 17, 2007.

Only prepaid attendees are guaranteed seating. Door registrations are permitted only as space and material are available.

The address is: PACDL,  
115 State Street ,

Harrisburg , PA 17101 .

Telephone 717-234-7403.

Fax 717-234-7462.

**CANCELLATION POLICY** - PACDL must guarantee payment for meals and materials in advance.

There will be no refunds after

9/17/07.

If you cannot attend, a colleague may take your place or your materials will be mailed to you.

Cancellations made prior to that date will be subject to a \$50 cancellation fee.

**SCHOLARSHIPS** - There are a limited number of partial scholarships available to assist with the seminar fee for PACDL members whose dues are current.

Hotel charges are not included.

To apply, mail the completed seminar registration form along with a letter requesting financial assistance to PACDL no later than September 12, 2007. Scholarship applications received after that date will not be considered.

**LOCATION** - The Radisson Hotel Valley Forge is located at 1160 First Ave. , King of Prussia , PA 19406 .

For overnight reservations call 610-337-2000 or 888-267-1500. PACDL has a block of rooms available for \$109 single or double/night, plus tax. Please call immediately and reserve your room. You must state you are with the Pa. Assoc. of Criminal Defense Lawyers to receive this rate.

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G PACDL Members

G PACDL Public Defender Members  
\$225

G PACDL Members in Practice Less than 5 Years  
\$225

G Public Defenders

G All Other Criminal Defense Attorneys

10% Discount for groups of three or more from the same office

Please fill out the following portion as well:

\_\_\_\_\_ Desired Number of Credit Hours Reported to the CLE Board at \$1.50 per hour  
\$ \_\_\_\_\_

(no discount on CLE reporting fees)

TOTAL REGISTRATION and CLE REPORTING FEES  
\$ \_\_\_\_\_

Name \_\_\_\_\_ Attorney ID \_\_\_\_\_

Mailing Address

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\_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

\_\_\_\_\_

Phone Number \_\_\_\_\_ FAX \_\_\_\_\_

Please note any dietary needs or needs related to disabilities

This seminar has been approved for 5 credit hours of substantive law and 1 ethics hour by the Continuing Legal Education Board of the Supreme Court of Pennsylvania.

# **Libations, Citations and Demonstrations:**

## **The Ultimate Motor Vehicle Seminar**

(6 credit hours)

Friday, October 19, 2007

Ramada Conference  
Center

1540 S. Atherton Street , State College ,  
PA  
16801

- 8:00 a.m.      **Registration and Continental Breakfast**
- 9:00 a.m.      **DUI Update and a Look at the Privileged Life  
(Licensing Issues in Penn Dot Administrative  
Hearings and Appeals)**      *Edward F. Spreha, Jr., Esquire,  
Harrisburg and Beverly J. Points,  
Esquire, Office of Chief Counsel,  
PennDOT, Bureau of Driver  
Licensing*
- 10:00 a.m.      **Are Your Eyes Playing Tricks on You?: Human  
Factors Issues in DUI and Homicide by Vehicle Cases**      *Dr. William Vigilante, Jr., Human  
Factors Expert, Robson Forensics*
- 11:00 a.m.      **Break**

11:15 a.m.	<b>The Boys and Their Toys: A Demonstration of Speed Timing Devices (radar, Vascar, Acutrack, Enradd, Tracker) and Defenses and Consequences</b>	<i>Sgt. Cliff Karlsen, Harrisburg Traffic Safety Unit John B. Mancke, Esquire, Harrisburg</i>
12:15 p.m.	<b>Lunch (on your own) PACDL General Membership and Board of Directors Meeting</b>	
1:30 p.m.	<b>OOPS!: Mistakes Lawyers Make at Preliminary Hearings and Trials in Motor Vehicle Cases</b>	<i>Panel: Honorable Bradley P. Lunsford, Centre County Court of Common Pleas; Honorable Rick Williams, Mifflin County Court of Common Pleas; Dawson R. Muth, Esquire (former District Judge); and David R. Crowley, Esquire, Centre County Chief Public Defender, Moderator</i>
2:30 p.m.	<b>Get the Buzz on the New DUI Drug Recognition Expert (DRE) Program: An Explanation and Demonstration of Its Protocol and Legality</b>	<i>George Geisler, Jr., Eastern Pennsylvania Law Enforcement Director of Team DUI</i>
3:30 p.m.	<b>Break</b>	
3:45 p.m.	<b>Was the District Attorney Caught Speeding on the Way to the Courthouse? Ethical Lessons from the Duke Lacrosse Case</b>	<i>Professor Christopher Robinette, Widener University School of Law</i>

# REGISTRATION FORM B Libations, Citations and Demonstrations (10/19/07) \*

Mail the completed Registration Form with payment no later than October 15, 2007.

Only prepaid attendees are guaranteed seating. Door registrations are permitted only as space and material are available.

The address is: PACDL,

115 State Street ,

Harrisburg , PA 17101 .

Telephone 717-234-7403.

Fax 717-234-7462.

**CANCELLATION POLICY** - PACDL must guarantee payment for meals and materials in advance.

There will be no refunds after

10/15/07.

If you cannot attend, a colleague may take your place or your materials will be mailed to you.

Cancellations made prior to that date will be subject to a \$50 cancellation fee.

**SCHOLARSHIPS** - There are a limited number of partial scholarships available to assist with the seminar fee for PACDL members whose dues are current.

Hotel charges are not included.

To apply, mail the completed seminar registration form along with a letter requesting financial assistance to PACDL no later than October 10, 2007. Scholarship applications received after that date will not be considered.

**LOCATION** - The Ramada Inn & Conference

Center is located at

1450 S. Atherton Street ,

State College , PA 16801 .

For overnight reservations call 814-238-3001. PACDL has a block of rooms available for \$79 King room, plus tax.

Please call immediately and reserve your room. You must state you are with the Pa. Assoc. of Criminal Defense Lawyers to receive this rate.

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G PACDL Members

G PACDL Public Defender Members  
\$225

G PACDL Members in Practice Less than 5 Years  
\$225

G Public Defenders

G All Other Criminal Defense Attorneys

10% Discount for groups of three or more from the same office

Please fill out the following portion as well:

\_\_\_\_\_ Desired Number of Credit Hours Reported to the CLE Board at \$1.50 per hour  
\$ \_\_\_\_\_

(no discount on CLE reporting fees)

TOTAL REGISTRATION and CLE REPORTING FEES  
\$ \_\_\_\_\_

Name \_\_\_\_\_ Attorney ID \_\_\_\_\_

Mailing Address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone Number \_\_\_\_\_ FAX \_\_\_\_\_

Please note any dietary needs or needs related to disabilities

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**Ramada Conference  
Center**

**State College**

1450 S Atherton Street, State College,  
PA  
16801

Phone: 814-238-3001 Fax: 814-237-1345

[www.ramadasc.com](http://www.ramadasc.com)

# ***FOR THE EXPERIENCED***

## ***The Ultimate Criminal Law CLE***

Friday & Saturday, November 9 & 10, 2007

Pennsylvania Convention Center

1101 Arch Street

Philadelphia, PA 19107

## Tentative Schedule

**Friday, November 9, 2007** ( 6 Rule 801 Capital Case Training Hours)

### Registration and Continental Breakfast

8:00 – 8:30 a.m.

8:30 – 12:00 p.m. **Innocence (homicide/arson case): Demonstration of Direct and Cross of an Expert; Ineffective Counsel; Recanting Witness** by Professor Jules Epstein, Moderator, Widener University School of Law ; Gaetan J. Alfano, Miller Alfano & Raspanti P.C. ; Thomas A. Bergstrom, Malvern ; Stuart Lev, Defender Association of Philadelphia ; Brian J. McMonagle, McMonagle, Perri McHugh & Mischak ; and Sara M. Webster, Mellon, Webster & Shelly

### Luncheon with Guest Speaker Joshua L. Dratel, Counsel for Guantanamo Detainees, Co-author of *The Torture Papers: The Road to Abu Ghraib* (included in your registration)

12:00 – 1:15 p.m.

1:15 – 2:15 p.m. **Ethics and Guantanamo Bay** by Joshua L. Dratel, Moderator, New York; NY ; Rebecca Snyder and Lt. Commander William Kuebler, Office of Military Commissions, Office of Chief Defense Counsel, Washington, DC.

### New Developments in the Use of Expert Witnesses

2:30 – 3:30 p.m.

by Felicia Sarner, Defender Association of Philadelphia and Mark B. Sheppard, Sprague & Sprague

### Fact Busting For Post Conviction Litigation and Appeals

3:45 – 5:15 p.m.

by James Klein, Chief, Appellate Division of the Public Defender Service for the District of Columbia

### Join your comrades at Vintage Wine Bar & Bistro (13<sup>th</sup> & Sansom Sts.)

5:30 – 7:30 p.m.

**Saturday, November 10, 2007** (3 Substantive Law Hours)

	<b>Federal Track</b>	<b>State Track</b>
<b>8:30 – 9:30 a.m.</b>	<b>Criminal Tax Cases</b> by Robert E. Madden, Philadelphia and Peter Goldberger, Ardmore	<b>Will the Case Go Federal and Then What?</b> by Michael J. Engle, Trigiani & Engle, LLP and Richard R. Harris, Obermayer Rebmann Maxwell & Hippel LLP
<b>9:45 – 11:15 a.m.</b>	<b>Anatomy of a Healthcare Fraud Trial</b> by Ellen C. Brotman, Moderator, Montgomery, McCracken, Walker & Rhoads, LLP ; Hon. Michael M. Baylson, U.S. District Court for the E.D. of Pa .; Paul L. Knight, Oâ€™Connor & Hannan, L.L.P .; Marc S. Raspanti, Miller Alfano & Raspanti P.C. ; Manisha M. Sheth, AUSA; and J. Alvin Stout, III, AUSA	<b>PCRA Traps</b> by Professor Jules Epstein, Widener University School of Law and Helen Marino, Capital Habeas Corpus Unit, Defender Association of Philadelphia
<b>11:30 a.m. – 12:30 p.m.</b>	<b>Bank Secrecy and Money Laundering</b> by Meredith S. Auten, Morgan Lewis ; Ian M. Comisky, Blank Rome LLP; and Mathew D. Lee, Blank Rome LLP	<b>Death by Car in Pennsylvania</b> by F. Michael Medway, Philadelphia
<b>12:40 p.m.</b>	<b>PACDL General Membership and Board of Directors Meeting – all PACDL Members are welcome to attend</b>	

*This seminar has been approved for 8 credit hours of substantive law and 1 ethics hour , including 6 hours of Rule 801 Capital Case Training Hours by the Continuing Legal Education Board of the Supreme Court of Pennsylvania.*

*Thank You to our Course Planners: Ellen C. Brotman and Alexandra Gaugler of Montgomery, McCracken, Walker & Rhoads, LLP and Michael J. Engle of Trigiani & Engle, LLP and to our Sponsors: Blank Rome LLP; Dilworth Paxson LLP; The Law Office of Arthur*

*T. Donato, Jr.; Miller, Alfano & Raspanti, PC; Montgomery, McCracken, Walker & Rhoads, LLP; Sprague & Sprague; and Trigiani & Engle, LLP*

**REGISTRATION FORM B  
FOR THE EXPERIENCED**

Mail the completed Registration Form with payment no later than 10/31/07.

Only prepaid attendees are guaranteed seating. Door registrations are permitted only as space and material are available.

The address is: PACDL, 115 State Street, Harrisburg, PA 17101. Telephone 717-234-7403. Fax 717-234-7462.

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\$450

PACDL  
Members,

\$350

PACDL Public Defender Members

\$350

PACDL Members in Practice Less than 5 Years

\$450

Public  
Defender, Non-  
member

\$499

All Other  
Criminal  
Defense

Attorneys

\$299  
Friday Only

\$199  
Saturday Only

10% Discount for groups of three or more from the same office

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\_\_\_\_ Desired Number of Credit Hours Reported to the CLE Board at \$1.50 per hour  
\$ \_\_\_\_\_

(no discount on CLE reporting fees)

TOTAL REGISTRATION and CLE

REPORTING FEES  
\$ \_\_\_\_\_

Name \_\_\_\_\_

Attorney ID \_\_\_\_\_

Mailing Address

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City \_\_\_\_\_ St \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ FAX \_\_\_\_\_

e-mail \_\_\_\_\_

Please note any needs related to disabilities.

