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# CRIMINAL LAW UPDATE

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## cases, notes and observations



Criminal defense lawyers are frequently lambasted for getting their clients off on "technicalities." To the public, of course, vindicating your client's constitutional rights against illegal and unreasonable searches and seizures seems like a "technicality." Imagine the hue and cry (hue, by the way, means "a loud outcry or clamor from those pursuing a felon and all which who heard it were obligated to take up the pursuit") from those who learn that the failure of an officer to sign a motor vehicle ticket is fatal to the bringing of the charge. In *State v. Fisher* (363 N.J. Super. 108, 9/18/03), the Appellate Division ruled that the failure of the officer to sign the summons was fatal in that there was no attestation that the officer had probable cause to believe that the offense was committed. The dismissal of the summons was upheld, even though the defendant had a court appearance within the 30 day statute of limitations, and was fully apprised of the charges against him. A technicality? Maybe. But when we start to *infer* probable cause, rather than requiring someone to stand up, be identified, and attest to that probable cause, we slide just over the precipice of our constitutional rights and down a slippery slope. Bravo to this appellate panel which was willing to suffer the dismissal of a DWI ticket to reaffirm the protection of our individual rights. 'Tis better one hundred guilty men go free, lest one innocent be convicted.

Whose names does the state publish on the Internet when they are convicted of a sexual offense? Everyone? Only those found to be (the more serious) Tier II or Tier III offenders? Oh, if it were only so simple. The place where you can find the answer is *N.J.S.A. 2C:7-13*. If an offender has been classified as posing a moderate risk for re-offense, and the court has ordered notification pursuant to *N.J.S.A. 2C:7-8* the name *will* be available on the Internet (*unless* the sole sex offense committed by the offender is one of a small class of exceptions, including certain adjudications of delinquency and acquittals by reason of insanity). Even in those exceptions, the State can petition to have the record made available on the Internet. Offenders whose risk of re-offense is low will *not* have their names published. Sometimes no publicity is very nice...

Video cameras in patrol cars are a wonderful way of documenting the events leading to and surrounding the arrest of DWI suspects. The problem is, the technology is so new that some police officers are simply not conscious of it when they have the suspect perform the field sobriety tests. The patrol car is almost always positioned behind the suspect's vehicle, but the field sobriety tests are often conducted on the sidewalk, off to the side of the patrol car. The officers forget to turn the video camera so that the area of the tests can be viewed. What we

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*The comments contained in this publication are not necessarily those of the Bergen County Bar Association; if you disagree with them, they are not even necessarily those of the author.*

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are often left with is the view of the rear of the suspect's car, illuminated by alternating red and blue lights, and a sound track that indicates the FST's being administered, and speculating as to how well our client is doing.

**D**rug offenses. Boy, we just don't have enough of those. In "the old days" we could frequently work out a deal where the client would get probation upon condition of attendance at an in-patient program of drug rehabilitation. Minnesota, Florida, it didn't matter where. Well, so long as your client lived in New Jersey when the crime was committed, he/she *cannot* attend that in-patient program if it is out-of-state. Yup, even if it is just over the border in Rockland County, or just a few miles past the Delaware in Pennsylvania. He/she is on probation, and must remain in New Jersey unless the other state accepts supervision, which other states are not wont to do. They are trying to work this out among the states through the Interstate Probation Compact but, as of the current time, you should ticket your clients on probation to *Straight and Narrow* and not the *Betty Ford Clinic*.

**F**rom our *You Can't Make This Stuff Up* department: A twenty-one year old man recently stood before one of Bergen County's three female judges (who shall remain nameless, but is the only one who does not share a common first name with the others) and pled guilty to DWI. Before imposing sentence, the judge asked the young man to tell her a little bit about himself. He paused, and began "Well, I like to take long walks on the beach...." The judge burst out laughing hysterically, and then, valiantly struggling to regain her composure, pointed out to the young man in the now roaring-with-laughter courtroom that this was neither a date nor a personal ad, and that he may wish to discuss whether he was employed, attending school, or the like. The young man did earn some credits with his response: the judge told him from the nature of his answer, it was clear to her that he had never before been in a municipal courtroom.

### **Criminal Motion Seminar Pretrial, Trial, Post-Trial And More!**

- Court Rules Governing Motions
- Motions to Make before, during and after Trials
- Differing Burdens of Proof
- Important Evidence Rules and Trial Applications
- PTI, *Clawans* Charges, Joinder and Severance
- *And the Vienna Convention on Consular Relations!* (If you do not know *why* you should know this, you need this seminar!)

**Wednesday, January 28<sup>th</sup>, 4:30 pm  
Room 403, BC Justice Center**

**Lecturer Judge John A. Conte**  
*Receive his 400-page  
seminar material handbook!*

\$40 BCBA members, \$50 non-members,  
\$10 extra at door  
See flyer, or call 201-488-0032

Why must there be endless litigation, indeed constant warfare, between the forces of good and evil (choose for yourself which is the state, and which is the defense), in order to settle the recurring issue of who is guilty, and who is not, and what protections are our constitutional heritage and which are an abuse of our social contract? Twenty-three centuries ago, in speaking of war in general, Aristotle gave us the answer: *We make war that we may live in peace*. Only in the crucible of trial is the truth forged.

***Happy New Year!***

