CRIMINAL LAW UPDATE

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cases

The Constitution is often called a "living document" in that it adapts its mandates to apply to evolving social and technological changes. That elasticity is no more evident than in Georgia v. Randolph (U.S. Supreme Court, 3/22/06) where the court was faced with the sticky issue of co-tenants of a dwelling, one of whom consented to a police search of the premises, and the other who vociferously objected. The constant element in assessing Fourth Amendment reasonableness in such cases, the Court held, is the great significance given to widely shared social expectations. In other words, the current state of society's values as to privacy dictate what is reasonable, and what is not. Here the conflicting values of the right of one tenant to admit whomever he or she chooses and the right of the other to object come into conflict. The rationale for deciding that the objecting tenant here must win? The Court opined that where cotentants disagree about the entry of a guest into their premises, no reasonable guest would seek to enter. In this consent search situation, the police were nothing more than invited guests, who, in the face of the objections of one party, are societally expected to decline the offer to enter. An almost poetic way to decide such consitutional issues, is it not, taking the temperature of the times to determine the reasonableness of governmental conduct? That the framers of the Constitution prohibited only unreasonable searches is a testament to their genius in letting each generation of citizens determine the parameters of its own social contract.

dwi update

The Supreme Court has halted the deployment of the Alcotest in the State until the St. v. Chun litigation regarding the reliability of the machine has been judically determined. The Breathalyzer, whose epitaph had already been written, lives to fight another day. The hearing will resume September 18th, and is expected to last one month. The Chun attorneys have also petitioned the Court to stay all sentences based in whole or in part on Alcotest readings. Currently, under exceptional circumstances, certain first time offenders can be convicted and forced to serve their full sentence and license suspension before being allowed to challenge the reliability of the Alcotest evidence against them.

Oh, this ain't good. In State v. Luthe (App.Civ., 3/6/06) the Court ruled that sentences for 3rd time DWI offenders must be served either fully in jail, or partly in an inpatient facility (up to 90 of the 180 days). No work release, no outpatient rehabilitation, no "alternative programs." Wardens or sheriffs however have always exercised discretion as to where inmates serve their sentence, and view electronic home detention as true imprisonment, just at a different location. It is not a sentence per se, just an administrative decision as to the site of the sentence. The Bergen County Sherriff, however, will now not admit

DWI'ers to such programs.

This ain't good either...no, wait, it's okay. In State v. Howard, (3/8/06), the Appellate Division ruled that the state has no affirmative dury to prove that a defendant was informed of his right to his own medical test of his blood alcohol content. This despite the language of NJSA 39:4-50.2, the Implied Consent Law, which reads in part: "the person tested shall be permitted to have such samples taken and chemical tests of his breath, urine or blood made by a person or physician of his own selection...[t]he police officer shall inform the person tested of his rights under [this statute]." The standard statement read to DWI defendants contains such language, but in cases where for some reason it is not read, the correct way to address the failure is by a motion to suppress, so sayeth the Court.

Judicial Retirement Reception
Judge Bruce A. Gaeta

Tuesday, April 25th, 6:00 p.m.
The Venetian
546 River Drive, Garfield

Join in feting this
jurist on his stellar career

Reservations: send $68.00 to
Joseph A. Maurice, Esq., payable to
Judge Gaeta Retirement.

Client have a minor legal problem, like, oh, drug possession or distribution? Even for just a Disorderly Persons offense of Possessing Marijuana? Looking at a 6-24 month loss of license? Says he would rather do extra time rather than lose the DL? (Or, more often, "Can I pay a higher fine instead?" "No, schmuck, you can't.") A recent amendment to NJSA 39: 35-16 may change your response to "If you stop annoying me, maybe you can keep your license." Suspension remains mandatory "unless the court finds compelling circumstances warranting an exception," consisting of extreme hardship and no alternative transportation. The burden is on the defendant to make this case.

The Complete Guide to Prosecuting, Defending and Understanding DV Law and Procedure.

Tuesday, April 18th, 5:00 p.m.
Newark Airport Marriott Hotel
$85 advance ($95 door)
(Full dinner served!)

Honorable Harry G. Carroll, JSC
(former DV judge)
Rem L. Spencer, Esq.
(noted DV lecturer)

- What exactly is the DV process and procedure?
- When does a relationship qualify as "domestic"?
- What grounds qualify as harassment and what *do not*?
- Are you entitled to discovery?

Don't miss this nuts 'n bolts seminar!
For the novice and experienced
Call the BCBA to register today!
201-488-0044

Municipal Prosectors Seminar. Saturdays April 8th and 22nd, 9:00-1:00pm, BCBA HQ.; $30/session ($50 for both). Register with Francine, Mercer County Bar Association, 609-585-6200. MV, criminal, plea bargaining DV, ethics, sentencing, evidence and more!

Never give in-nevah, nevah, nevah-in nothing great or small, large or petty, never give in except to convictions of honor and good sense. Never yield to force, never yield to the apparently overwhelming might of the enemy. ***Sir Winston Churchill, British statesman.*** *(Courtesy Lawrence M. Simon, Esq.)(fake British accent added)*