



District Attorneys Association of the State of New York

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Contact Us

<http://www.daasny.org>

President Kathleen Hogan, Warren County District Attorney

hogank@co.warren.ny.us

Phone: (518) 761-6405

Fax: (518) 761-6245

Michael DeMartino, Special Assistant to the DAASNY President

michael.demartino@daasny.org

Phone: (518) 447-2496

Fax: (518) 447-2495

President-Elect Derek P. Champagne
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Message from the President

Hon. Kathleen B. Hogan, Warren County District Attorney



As President of DAASNY this past year, I have had the opportunity to witness first-hand the good work being done by District Attorneys and their staff all around the state. We have worked together to prosecute criminals, to pass several critical criminal justice bills, and, most importantly, to protect the people of New York. Successes such as the passage of Leandra's Law and the state-wide adoption of best practice guidelines for identification procedures have inspired us to fight harder in the effort to protect our communities from crime. In July I will be ending my tenure as President of DAASNY, and handing the reigns to the able hands of Franklin County District Attorney Derek Champagne. I leave this position with a deepened respect for my law enforcement colleagues and with the knowledge that in the end, the good guys will always persevere. Thank you for the wonderful opportunity; it has been my pleasure to work with all of you to keep our communities safe. I look forward to many future successes in my new role as Chairwoman of the DAASNY Board of Directors.

Statewide Identification Procedures Adopted by NYS Law Enforcement



Press Conference at the New York City Police Department, May 19, 2010

(from left to right: NYPD Police Commissioner **Raymond Kelly**; New York County District Attorney **Cyrus R. Vance, Jr.**; Chief **William Kilfoil**, Port Washington Police District and President of the NYS Association of Chiefs of Police; Warren County District Attorney **Kate Hogan** and President of the NYS DA's Association; **Tom Belfiore**, Chair of the Municipal Police Training Council; Acting Commissioner **Sean Byrne**; Orange County Sheriff **Carl DuBois**, President of the NYS Sheriff's Association)

On May 19, DAASNY, in partnership with law enforcement agencies at all levels of government across New York State, announced statewide guidelines for identification procedures that will enhance law enforcement's ability to solve crime and protect the rights of the accused. The adopted guidelines build on current lawful procedures and will result

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Niagara County

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Oneida County

in even more reliable and fair identifications, while minimizing the potential for misidentification. The safety of victims and witnesses was also a significant consideration in developing the protocols.

The procedures were spearheaded by the DAASNY Best Practices Committee, with extensive consultation and input from the New York City Police Department, the New York State Police, the New York State Association of Chiefs of Police, the New York State Sheriffs' Association, the state Division of Criminal Justice Services and the state Municipal Police Training Council. Indeed, this is the first time in the nation that law enforcement agencies have proactively worked statewide to establish best practices for photo array and lineup procedures.

These no-cost guidelines take into account the diversity of police departments around the state, and can be implemented easily by both small and large departments. The procedures will be continually reviewed and updated as practical experience is gained and as knowledge in this area develops.



Present at the Press Conference: **Allegany DA** Terrence M. Parker; **Bronx DA** Robert T. Johnson; **Broome DA** Gerald F. Mollen; **Clinton DA** Andrew J. Wylie; **Dutchess DA** William V. Grady; **Franklin DA** Derek P. Champagne; **Monroe DA** Michael C. Green; **New York DA** Cyrus R. Vance, Jr.; **Oneida DA** Scott D. McNamara; **Onondaga DA** William J. Fitzpatrick; **Putnam DA** Adam B. Levy; **Queens DA** Richard A. Brown; **Rensselaer DA** Rich J. McNally, Jr.; **Richmond DA** Daniel M. Donovan, Jr.; **Schenectady DA** Robert M. Carney; **Special Narcotics Prosecutor** Bridget G. Brennan; **Warren DA** Kathleen B. Hogan; as well as representatives from **Albany DA's Office**, **Binghamton PD**; **Broome County Sheriff**; **DCJS**; **Dryden PD**; **Hempstead PD**; **Kings DA's Office**; **Livingston DA's Office**; **Nassau DA's Office**; **Nassau PD**; **NYC Law Department**; **NYPD**; **New York State Police**; **Mechanicville PD**; **Orange County Sheriff**, **Port Washington PD**; **Putnam County Sheriff**; **Rockland County Sheriff**; **Rockland PD**; **Saratoga DA's Office**; **Schenectady PD**; **Suffolk DA's Office**; **Suffolk PD**; **Troy PD**; **Ulster DA's Office**; **Westchester DA's Office**; **White Plains PD**.

Highlights of the new guidelines include:

- How to create a fair photo array and live lineup.
- How to invite a witness to an identification procedure.
- How to instruct a witness before the identification procedure in a neutral and unbiased way.
- How to display a photo array or live lineup in a fair and neutral manner.
- How to conduct a "blinded" identification procedure, or, if possible, a "double blind" identification procedure.
- How to document the results of the identification procedure.
- What to do after the identification procedure is concluded.
- The creation of new forms that guide an officer through the new protocols.
- Training on how to conduct a fair, reliable and neutral identification procedure.

Training Around the State:

The Division of Criminal Justice Services will conduct eight one-day trainings on the new identification procedures for the summer and early fall. These courses will be taught by police officers and district attorneys. The training, including forms and guidelines, will also be available through the DCJS eJustice system. The Municipal Police Training Council, the Sheriffs' Association, and the NYS Law Enforcement Training Association are also training their members on the identification procedures.

Spotlight On: Queens "Say Yes to Tennis - No to Violence" Day

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Ontario County

Francis D. Phillips, II
Orange County

Joseph V. Cardone
Orleans County

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Oswego County

John M. Muehl
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Special Narcotics
Prosecutor

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Steuben County

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Suffolk County

James Farrell
Sullivan County

Gerald A. Keene
Tioga County

Gwen Wilkinson
Tompkins County

Holley Carnright
Ulster County

Kevin Kortright
Washington County

Richard M. Healy
Wayne County

Gerald L. Stout
Wyoming County

Jason L. Cook
Yates County



On May 27, 2010, Queens District Attorney Richard A. Brown, joined by former New York City Mayor David N. Dinkins, the United States Tennis Association (USTA) and the New York Junior Tennis League, hosted more than 650 Far Rockaway Public School Students at the 12th annual "Say Yes to Tennis – No to Violence" Day at the USTA Billie Jean King National Tennis Center in Flushing Meadows-Corona Park in Queens.

The day-long tennis event was the culmination for students from nine public schools in Far Rockaway who participate in the District Attorney's long-running STAR (Straight Talk About Risks) Track anti-violence program, which started in 1993. As part of the STAR Track program, 30 members of the District Attorney's Office and nine members of the New York City Corporation Counsel's Office visited these nine schools throughout the school year to talk about the risks of guns, drugs, gangs, and how to make the right choices. The program's curriculum is designed to drive down the crime rate and build up self-esteem, confidence, and the quality of life for the students.

The day featured on-court activities with National Tennis Center pros, an introductory tennis instruction, and a tennis demonstration by District Attorney Brown and former Mayor Dinkins. Many groups came together to make the event possible, including the USTA, NYPD, and Modell's Sporting Goods, among others.

District Attorney Brown noted that the event "...is meant to encourage our young people to make affirmative choices such as sports being an alternative to the deadly culture of gun violence which has permeated their lives on an almost daily basis. Our challenge and goal is to teach them that tennis, aside from being a fun activity, is an enriching, self-improving activity that can be applied to all aspects of life and can give them the confidence to succeed."

More information can be found at: <http://www.queensda.org/>



Amicus Brief Update

Morrie Kleinbart, Appeals Bureau Chief, Richmond County District Attorney's Office

Since September of last year, the Association filed amicus briefs in connection with five appeals; three to the New York State Court of Appeals, one to the Supreme Court of the United States, and one to the United States Court of Appeals for the Second Circuit. In the Court of Appeals, we filed an amicus brief, authored by Westchester Assistant District Attorneys Tony Servino and Steve Bender, in **People v. Tara Gravino** which presented the question of whether a plea court must advise a defendant of the obligation, upon his conviction, to register as a sex offender under SORA. We also filed an amicus brief, authored by Richmond County Assistant District Attorney Morrie I. Kleinbart in **Hurrell-Harring v. State of New York**. Our brief addressed the impact which a declaration that indigent criminal defendants receive constitutionally ineffective assistance of counsel would have on the criminal practice in the course of a demand for injunctive relief requiring the state to provide a system of public defense that cures this inadequacy. Finally, in that same Court, Westchester County Assistant District Attorneys Tony Servino and John Carmody filed an amicus brief in **Cayuga Indian Nation v. Cayuga County Sheriff**. Our brief addressed the propriety of the institution of a collateral civil action for declaratory relief by potential criminal defendants once a criminal proceeding had commenced in connection with the defendants' criminal activities.

More recently, New York County Assistant District Attorneys Alan Gadlin and Christopher

Marinelli filed an amicus brief prior to the en banc review of the Second Circuit's ruling in **Besser v. Walsh**, which held that New York's Persistent Felony Offender Sentencing Framework (Penal Law Section 70.10) was unconstitutional. Westchester County Assistant District Attorneys Tony Servino and Steve Bender also filed an amicus brief in the Supreme Court of the United States in **Connick v. Thompson**. At issue in Connick is whether imposing failure-to-train liability on a District Attorney's office for a single Brady violation contravenes the rigorous culpability and causation standards announced in the relevant cases where there is no history of similar Brady violations.

We appreciate the assistance provided by the various assistants who authored the amicus briefs, often under very tight deadlines. We are particularly grateful to the District Attorneys who have allowed their assistants to spend time on these matters of such importance to the Association.

Finally, and most importantly, if you have an issue pending in an appellate court for which an amicus brief would be helpful or if you believe the issue is one of such significance that the Association ought to be heard, please do not hesitate to reach out to the Amicus Subcommittee of the Legislative Committee.

Check out the new and improved DAASNY web site at:

www.daasny.org