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A T T O R N E Y S A T L A W

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EXPANDING OUR SERVICES

Fredric F. Azrak, Esq.

Fredric F. Azrak, Esq. announces the continued expansion of our services. We are pleased to announce the association of John A. Snowdon, Jr. to head the Criminal Defense Department. Although Azrak & Associates has practiced criminal defense for over 29 years, the firm has greatly expanded the Criminal Defense Department. Fredric F. Azrak has asked John A. Snowdon, Jr. to head the Criminal Defense Department and expand its services to include the defense of those accused of White Collar Crime. Many individuals and businesses are reluctant to contact the Police Department when issues arise relating to these areas. We here at Azrak & Associates, L.L.C. continue representation of those charged with any criminal offense, but now we also guide those individuals and corporations that may be victims of those offenses.

When family members, friends or acquaintances find themselves charged with any crime, the firm of Azrak & Associates will be there to defend you. Our services range from Municipal Court matters such as DWI to the most serious capital offenses.

John A. Snowdon, Jr., Esq. has practiced law for 31 years in both criminal and civil areas. As a trial attorney for the Office of the Public Defender and the Passaic County Prosecutor's Office, he has tried to completion over 500 Superior Court cases and has appeared in the Appellate Division and Supreme Court of New Jersey. Most recently he was chief of the financial crimes unit, overseeing a 20-person unit charged with the investigation and prosecution of financial crimes, insurance fraud, and governmental corruption. He has extensive experience in areas of corporate security, banking, insurance, and real estate fraud, identity theft and theft of protected property, and has successfully recovered in excess of two million dollars in restitution each year over the last five years. He also has extensive contacts with governmental agencies at all levels, which enables him to interface with them in such a manner as to secure cooperation and data usually unavailable to private attorneys. He is fully acquainted with all areas of litigation and has extensive experience dealing with the judiciary and individual clients with difficult cases. During his tenure in the trial unit, he prosecuted most of the major high impact crimes in Passaic County, including such cases as the "Hail Mary" murder cases, and has appeared on both national and local media.

As head of the trial unit, he was responsible for the investigation and prosecuting of over 2,500 cases per year, including politically sensitive and complex financial crime cases.

He has taught and lectured over the years for the New Jersey Bar Association, William Paterson University, Passaic County Police Academy, and various local community groups.

We encourage referrals of all Criminal Defense matters. If you have any questions regarding these areas you should contact Azrak & Associates, L.L.C.

A DWI PRIMER PART I

John A. Snowdon, Jr., Esq.

Recent changes in the law in New Jersey concerning driving while intoxicated ("DWI") have significantly increased the penalties which can be imposed upon conviction for DWI on a driver. Perhaps this is a good time to review, in a multi-part article, some important aspects of the law.

People frequently assume that driving under the influence ("DUI") refers only to people driving a vehicle with a particular blood-alcohol concentration (BOC). In reality, driving under the influence is operating a motor vehicle while under the influence of either alcohol, a narcotic drug, a hallucinogenic drug, or a habit-producing drug. Not only that, but it is not necessary that a breathalyzer result be used to convict someone of driving while intoxicated.

Driving while intoxicated, in fact, is frequently proved by opinion testimony, usually from police officers, concerning a driver's appearance and reaction to a series of psychological and physical tests commonly known as field sobriety tests. In fact, this is frequently the case when people become

intoxicated as a result of a synergistic reaction between what would ordinarily be a small amount of alcohol and other drugs or medication a person may have been using at the time. That is, even though a person's blood-alcohol level as determined by the use of a breathalyzer might be under the current standard (.08), a driver still could be found guilty of DWI based on a police officer's observations and field test results.

The most common type of substance which results in DWI arrests, however, is alcohol; the proper name for which is actually ethyl alcohol, a colorless, odorless liquid. When alcohol is bottled for human consumption certain other ingredients, particularly flavor enhancers, are added to the alcohol which create the distinctive alcohol smell on the breath of a person who has been drinking. Ethyl alcohol is quickly assimilated into the body and into the bloodstream not only through the normal digestive process, but also directly through the stomach wall. This is why the affects of ethyl alcohol usually can be felt within minutes of its ingestion. Once in the bloodstream, the alcohol spreads throughout the body and begins to exert a depressant effect on the central nervous system. Blood flows to the lungs and hence the smell when exhaling.

The first part of that system to be affected is usually the frontal parts of the brain which are responsible for thinking, reasoning, logic and many voluntary nervous system functions. This is why even a small amount of alcohol can affect fine motor skills and thinking long before it reaches a level which the State would call legally intoxicated. In New Jersey, case law has held that intoxication, that is being under the influence of alcohol or some other substance, is a "substantial deterioration or diminution of the mental faculties of physical capabilities" of the driver.

When a driver is stopped by a police officer who finds, after speaking to the driver, that he has reason to believe the

driver has been operating a motor vehicle under the influence of alcohol or a drug, there are several ways that the officer can attempt to determine whether or not that driver's use of the alcohol or drugs is at such a level as to be deemed intoxicated.

Frequently, if the officer makes certain observations of the driver (red eyes, weaving, stammering speech, etc.), at some point in time the driver will be asked to take what is known as the breathalyzer test. The breathalyzer is a machine which is designed to measure the blood-alcohol concentration in a sample of exhaled air. Here is how it works.

When alcohol is absorbed into the body, it flows through all of the vessels and organs, including the lungs. During breathing, molecules of carbon dioxide which have accumulated in the bloodstream are forced through the walls of small cells in the lungs known as alveoli, and are expelled during exhalation. If the person has been drinking ethyl alcohol, molecules of the alcohol will attach themselves to the molecules of carbon dioxide that are being exhaled by the suspected person. The breathalyzer is able to measure the amount of those alcohol molecules contained in a sample from a suspected intoxicated driver compared to a sample of air which does not contain alcohol molecules. The driver's test air is exposed to an ampoule containing a chemical solution of potassium dichromate, silver nitrate and sulfuric acid. If the exhaled air contains ethyl alcohol molecules, those molecules will begin a process of oxidation in the ampoule which creates acetic acid. In the process, the remaining potassium dichromate is destroyed. After a known period of time, the test ampoule is placed in the breathalyzer machine along with a reference ampoule and the color difference between the two is measured by photocells in the machine. The difference in color between the two ampoules is measured and calculated, and is used to calculate the blood-alcohol

concentration through the use of a known constant.

Even though the breathalyzer is the most common test for intoxication, there are circumstances under which the police are able to compel a driver to supply a blood or urine sample for analysis. This frequently happens when a driver's appearance and conduct exhibit a high level of intoxication, but the BOC from the breathalyzer indicates a low level of alcohol in the person's system. When this situation occurs, police suspect that the driver may be under the influence of other intoxicants as well as alcohol. When confronted with this, the police will ordinarily transport the driver to a facility where a blood and/or urine sample will be taken. From this sample, a laboratory is able to detect not only the BOC, but the presence of any other narcotics.

CELL PHONES MUST BE HANDS FREE

Fredric F. Azrak, Esq.

Charles E. Murray, III, Esq.

Drivers in New Jersey will have until July 1, 2004 to go "hands free."

New Jersey is the second state in the nation to adopt a band on hand-held wireless phones while operating a car. We are all aware of the hazards of holding a phone and the steering wheel at the same time. The Legislative is attempting to limit those distractions. Fines will be between \$100.00 and \$250.00 for any infraction, but no motor vehicle points or automobile insurance eligibility points will be assessed.

Any hands free wireless telephone that has an internal feature or is equipped with an attachment by which a user engages in a conversation without the use of either hand is permitted. You will also be able to dial, activate, deactivate or initiate a function in the telephone without violation.

Although an officer cannot solely pull

you over for the use of the phone there may be occasions that you are stopped. The law states that it is a secondary offense if you are pulled over for another reason. You are also still permitted to use any kind of phone to report traffic accidents, road hazards, reckless driving, etc. or if you are in an emergency situation.

We are advising our clients to contact our firm when charged with any traffic offense. There can be situations where charges are brought presumably based on this law, that implicate you with other offenses. There are defenses available to you when wrongly charged.

IDENTITY THEFT AND THE COMMON COLD

Fredric F. Azrak, Esq.

John A. Snowdon, Jr., Esq.

How is identity theft like a common cold: it can strike anybody, anytime. What are the differences? With a cold you know you have a problem, with identity theft you may not even be aware that you have been victimized until massive damage has been done. You have only to watch television news to see stories of victims' lives disrupted by identity thieves. Lately there have been a series of commercials depicting victims in an amusing format in which the thief is speaking through the mouth of the victim and laughing about his theft. The truth is that there is nothing amusing about identity theft for the victim. Even if some of the victim's financial losses are covered by insurance or credit card or bank liability limits, the long-term effects on a victim can last for decades. In one extreme case I handled, a Baltimore police officer's credit was so damaged and his life made so miserable by dunning bill collectors that he decided to take a "life time out," as he put it, by joining the Navy! Even then he spent years defending himself against scores of motor vehicle summonses all across the country issued to someone using his identity.

Identity theft crimes are various types of related criminal acts resulting from an unauthorized person gaining access to someone's private personal information. Identity thieves frequently obtain credit cards in the victims name, take out home equity loans and even mortgages on the victim's property, obtain gambling credit, obtain employment they would otherwise not be qualified to get or would be barred from getting, obtain duplicate driving credentials, conceal criminal records, and access practically anything else that requires proof of identity. It has been reported that people have even used false identities to adopt children and terminate life support for sick or injured hospital patients.

How do thieves steal your identity?

There are as many ways as the human imagination can invent. In a world where more and more people are disseminating their personal information via credit applications, new car loans, Internet purchases and the like, crucial pieces of personal information become available to thieves. For example, just because you trust your internet company not to use your credit information improperly doesn't mean that some employee in the company cannot access that information and use, or worse yet, sell it to organized rings that can cause monumental damage in only a few days, usually without the victim discovering the fraud until it is too late. Some industries do try to fight back. For instance, some credit card companies will alert their customers to what they perceive as an unusual amount of activity on a card. However, this is usually too little too late. Massive damage can have been done before anyone notices.

You can take some steps to reduce your chances of becoming a victim of identity theft. You have heard some advice before: shred important documents (thieves go through garbage looking for important papers), don't give out personal information, etc. Here are a few additional thoughts: first, limit the number of credit cards you own.

Actually, having too many cards can hurt your credit rating since each card represents a source potential debt. This excess credit ironically does not enhance your credit score, but, to the contrary, can be counted as a negative. One or two bankcards should be more than sufficient for the average person.

Second, if there is one cardinal rule, it is never, never, never give out your social security number. This is the single most significant personal identifier in use today. With that number and very little else your identity can be stolen and your good credit rating compromised. With the number alone thieves can obtain other personal identifiers such as motor vehicle licenses and birth certificates, all of which will enable thieves to access all the private areas of your life. It is true that in some business transactions you may be required to supply your social security number, usually in situations where your credit is being checked, such as when applying for a mortgage, home equity line of credit or an auto loan. In those situations there is not much you can do to protect yourself except to be sure that you are dealing with a reputable firm. But lately many businesses and organizations have been asking for your number when they really have no legitimate need for it. In these situations you should ask why the party needs your social security number. If there is not a valid reason or you feel uneasy with the transaction, you should always resist giving out this information, particularly if it is coupled with other common identifiers such as name, address and date of birth. If a person seemingly has no legitimate need for your social security number but will not do business with you without it, go elsewhere.

Lastly, you should periodically order a credit report on yourself. More and more unsolicited credit cards are being opened without the customer's consent and end up being open sources of credit in an unknowing cardholder's name. Someone could access the card number and wreak havoc with your credit

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without you even knowing that the account existed. If any unsolicited or unwanted credit sources show up on your credit report, close them immediately, in writing.

At Azrak and Associates we have responded to the proliferation of identity theft by establishing a financial crimes unit. This unit not only represents persons unjustly accused of financial crimes (sometimes because their identity has been stolen), but also represents victims of identity theft. We can interface with law enforcement authorities to recover lost property, free victims from financial responsibility for unauthorized use of their identity, and restore a damaged credit rating. If you feel you may have been a victim of identity theft, or any financial crime, either in your personal life or in your business, you should act immediately to mitigate the damage. Besides the direct economic losses you may suffer, you should also know that there are other more salient problems caused by identity theft. For instance, every time someone denies you credit because of credit rating problems caused by identity thieves, this refusal is noted in your credit file, thus weakening your

actual credit. It is not only persons accused of financial crimes that need a white-collar crime specialist, but also victims.

Finally, if you discover that you have been the victim of identity theft or have been unjustly accused of a financial crime, you need the services of an expert in the field to stop the damage, recover lost property, deal with legal actions filed against you, and repair your credit. This is the only way you will be able to restore your life under your own name without law suits, wage garnishments, property seizures and even foreclosures on your home, as well as other unwelcome side effects of the theft. Trying to straighten out the problems is a frustrating and long-term fight few people can accomplish themselves - just ask my Baltimore police officer client. Just as you need to address that nasty cold before it develops into something worse, you need to act expeditiously if you are victimized or accused before the damage becomes severe and your good name ruined.

If you would like to receive newsletter issues, informative flyers, and other data prepared by Azrak & Associates, L.L.C., please call us at 973-839-9062 or e-mail us at lawyers@azraklaw.com with your business or personal e-mail address. Feel free to include areas or particular interest to you.