



**Frank T. Luciano, P.C.**

# NEWSLETTER

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## DRUNK DRIVING/DWI TIPS & TIDBITS (Part 2)

In our last Newsletter, I gave your fifteen suggestions that may help you to avoid a DWI/DUI encounter with a police officer and the conviction that may result. Here are another fifteen tips. Please remember that there are not iron-bound rules but merely suggestions. The best advise I can give you is DON'T DRINK AND DRIVE. You should also read my recently published book titled "New Jersey's DWI Survivor Guide" which you can download from my website at [www.ftlucianolaw.com](http://www.ftlucianolaw.com)

1. Refuse to participate in the horizontal-gaze nystagmus test, in which the police officer will use a flashlight to determine the point at which your eyes will oscillate or move. You can check my website for more information on the HGN test.
2. If you are pulled over, do not exit your vehicle unless you are instructed to do so. Keep both hands in sight on the steering wheel. Police officers do not want you to exit your vehicle. Moreover, if you do exit your vehicle, you may display some conduct that will show that you are intoxicated.
3. Maintain your composure at all times. You may be on camera at the stop site or at police headquarters.
4. If you do not think you are intoxicated, ask the police officer if he/she will videotape you. Alternatively, have your attorney, or the first person to retrieve you from headquarters bring a video camera along to tape your demeanor and repeat some of the field sobriety tests required of you earlier.
5. If a police officer has probable cause to stop your motor vehicle, and probable cause to determine that you are under the influence of alcohol or drugs, you must provide a breath test. No Exceptions! If you refuse, you will be convicted of an independent offense that will require at least a 7-month license loss, which will be in addition to the license loss you will receive for a DWI.
6. You can be convicted of refusing to participate in a breath test, if you make an attempt to delay the administration of the test.
7. You can be convicted of refusing to participate in a breath test, if you fail to provide a sufficient breath sample (i.e. short breath).
8. You can be convicted of refusing to participate in a breath test if you try to make or place a condition on your consent (i.e. yes, but first let me talk to my attorney).
9. You do not have the right to have an attorney present when you are required to participate in a breath test.
10. The government may not forcibly remove blood from your body if you refuse to give it voluntarily.

11. If you consent to a blood test, make sure the laboratory analyzed whole blood and not plasma. An analysis of plasma can produce a 20% higher BAC.

12. False teeth or bridgework may act as a reservoir for mouth alcohol and may cause a higher reading on a breath test. Burping or vomiting can cause the same false-positive result.

13. The results of some breath tests may be rendered inaccurate by reason of radio-frequency interference produced by radio devices in and about police headquarters, where certain breath tests devices are used. Keep your eyes open for sources of radio-frequency interferences.

14. Do not talk with any fellow inmates or friendly police officers about your arrest. The only person you should speak to is your attorney.

15. The government must advise you of your right to an independent test of your BAC and provide you with the opportunity to obtain one.

16. If you are arrested, immediately upon your release, create a timeline beginning 12 hours prior to your first drink and identify your food intake, drinks consumed, places visited and people you were with. Mark the document "CONFIDENTIAL"

THIS NEWSLETTER IS PUBLISHED BY  
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COMPLEX CIVIL LITIGATION  
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IN DRUG CASES  
DWI AND OTHER MUNICIPAL COURT CASES

# WHO ARE THE GREAT LAWYERS?

As many of you know, I first joined the National Association of Criminal Defense Attorneys over 20 years ago. In August 2008, that noble organization celebrated its 50th anniversary. Here is an article authored almost 20 years ago by one of its past presidents Larry Pozner.

**"I know who the great lawyers are."**

Show me what you are going to do in the dead of winter when it's Friday at 4:15 p.m., the courthouse is getting dark, nobody is around, you're exhausted, and you just want to go home. You know the deal isn't atrocious, but you know deep down there is another move you can make. It means you are going to come back yet another day, or you're going to spend a few more hours, or you're going to have to go cash in some personal chips with this prosecutor, or you are going to have to run a risk, or you are going to have to do any of a thousand things you've stored in your arsenal for the day you'd need them. Maybe you have a client who will take any deal because he is tired of being beaten up by the system. Maybe he wouldn't know the difference between so-so and great representation, but you do. So you stay a while longer and you work a bit harder, and the deal gets maybe 10 percent better, but it got better, and you know it. Maybe nobody else knows it. There's nobody to tell but yourself, or maybe your best friend who is also a criminal defense lawyer.

I'd like to know your name. I want to serve on your team. Because whenever you are dedicated in that way, and prepared to do battle for your client, whatever your court, whatever your cause, you *are* the dream team.

## THE MUNICIPAL COURT'S BIG PIGGY BANK

In 2004, New Jersey enacted the so-called "unsafe driver's" statute. The purpose of the statute is to provide some leniency to drivers charged with moving violations without sustaining the "points" usually associated with infractions of this type. The statute provides a plea-bargain offer for people who seek to protect their insurance rates. The trade-off is a hefty fine which well exceeds the financial penalties authorized by other motor vehicle offenses. This offense requires the driver to pay a \$150 fine plus a \$250 surcharge and usual court costs of \$30. More than 160,000 drivers take this no-points deal each year. In 2007, 15% of the 1.1 million motor vehicle violations docketed with the Motor Vehicle Commission were for the "unsafe driver's" offense. Since 2004, the "unsafe driver's" statute has generated over \$170 million dollars in fines.

## NEW JERSEY'S CONSUMER FRAUD ACT AND THE NEED TO REQUEST A REFUND OR CURE

A few years ago, a consumer purchased a new car and in the process paid to the car dealership a registration fee of \$117, where the actual fee was less than \$97. When the consumer learned of the overcharge, a Consumer Fraud Act (CFA) lawsuit was filed. The car dealership's defense, among others was that the consumer's CFA claim was defective because a refund had not been requested.

Recently, the Supreme Court rejected that defense. Consistent with the legislature's commitment to make the New Jersey CFA one of the broadest consumer fraud statutes in the country, the court concluded that a demand for a refund could not be required under the CFA because a condition of that nature would defeat the statute's purpose and that is consumer protection.

## LEGAL BUMPS AND BLOOPERS

In a murder trial, the defense attorney was cross-examining a pathologist. Here's what happened:

**Attorney:** Before you signed the death certificate, had you taken the pulse?

**Coroner:** No.

**Attorney:** Did you listen to the heart?

**Coroner:** No.

**Attorney:** Did you check for breathing?

**Coroner:** No.

**Attorney:** So, when you signed the death certificate, you weren't sure the man was dead, were you?

**Coroner:** Well, let me put it this way. The man's brain was sitting in a jar on my desk. But I guess it's possible he could be out there practicing law somewhere.

## USEFUL WEBSITES

- [www.aaaai.org/patients.stm](http://www.aaaai.org/patients.stm)  
At this website you can obtain a local pollen count, allergy treatment and a guide to allergy drugs.
- <http://symptoms.webmd.com>  
At this website you may determine the nature of your health problem and what action should be taken by answering a series of questions.
- [www.abanet.org/rtpt/public](http://www.abanet.org/rtpt/public)  
You may obtain information about trusts, power of attorneys, living wills, and other estate issues from this website.
- <http://education-portal.com>  
You can obtain free online courses at this website including courses in biology and chemistry, history and anthropology.
- [www.stormfacts.com/foilage](http://www.stormfacts.com/foilage)  
This is another leaf peepers guide website. See our last newsletter for other similar web sites.

## DIETING AND THE WONDERFUL WORLD OF HERBS

As we finally pass through the doldrums of this long, harsh winter, our thoughts tend to drift toward the summer and some carefree days at the beach. Of course that means bathing suits and the need to shed some of our winter bulk.

There is no great magic to this seasonal process. All you have to do is restrict food intake and exercise. Easier said than done. Here are some helpful hints from Mother Nature.

In order to reduce food consumption, try a teaspoon of Psyllium seed with 8 ounces of water one hour before lunch or dinner. This seed, which is extremely low in calories is from the Indian plantain. It is surrounded with a fiber that swells to four times its original size and, as a result, can provide you with a comfortable level of fullness without a whole lot of food intake. The seed has the added ability of reducing cholesterol levels.

Flax seed can be used as a similar bulking agent for the same reason (*viz.* an expandable fiber coating). If you choose Flax



### Bo's Seasonal Special NEW POTATO & LEEK SOUP

This is a simple recipe that produces elegant results

- 3 tablespoons of unsalted butter;
- 8 large leeks, white part only, cleaned thoroughly and chopped;
- 8 medium sized new potatoes, peeled and thinly sliced;
- 6 cups of chicken stock;
- one large bay leaf;
- 1/4 cup of heavy cream; and
- white pepper and salt.

Melt butter in a soup pot and add leeks. Cook until tender, but not brown. Add potatoes, chicken stock, bay leaf and season to taste with white pepper and salt. Bring to a boil, lower heat and simmer until potatoes are soft. Let cool and puree until smooth. Return to pot, add heavy cream and test seasonings. You can thin the soup with additional chicken stock or make it thicker with additional heavy cream.

seed, use the whole seed because ground flax seed is rich in calories and can be absorbed. Like the Psyllium seed, you should mix a teaspoon of Flax seed in 8 ounces of cold water and consume it one hour before lunch or dinner.

Now, with respect to the exercise component to lose weight, try Cordyceps. This ancient Chinese potion, which is made from a mushroom, has been used by athletes and body builders to increase endurance. Take one 250 mg capsule one-half hour before your workout. Another good stamina builder is Siberian Ginseng. Russian cosmonauts used it in space flight to overcome the fatigue and sleeplessness attending travel in space. One half-hour before your training routine begins, take (a) one teaspoon of tincture (1.5) or one 100 mg tablet that contains 1% or more of Eleutherode E.

In closing, I must remind you that I am a lawyer and not a doctor. Consult with your medical expert before you try any of these suggestions. In that regard, my sister-in-law and friend Lisa who is now a registered nurse and works in the gut-wrenching environment of the emergency room in a local hospital is studying to become a certified herbalist. Hopefully, she will soon be able to give us other insight into the wonderful world of herbs.



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WE SURVIVE  
ON REFERRALS FROM OUR CLIENTS.  
LAST QUARTER MANY OF YOU  
GAVE US GREAT ASSISTANCE.  
**THANK YOU!**

## THE LEGENDS OF THE EASTER BUNNY AND THE EASTER EGG

Like many other well received religious holidays, Easter Sunday is associated with folklore and myths. The most noteworthy of which are the Easter Bunny and the Easter Egg.

Legend has it that during Anglo-Saxon times, the goddess of spring, who was known as Eostre came upon a bird whose wings were frozen due to a severe cold snap that occurred in early spring. In order to save it, Eostre decided to turn the bird into a rabbit, but not just some ordinary rabbit. To this rabbit, Eostre entrusted the magical powers of egg laying.

With this fable, the storyteller was able to capture the main ingredient of the spring festivals celebrated by most ancient cultures, the fertility rite. The rabbit, which is a notoriously productive breed, is even more so in the spring and, so is egg production. Thus, rabbits, eggs and spring are all symbols of new life, which is the core of early culture's commitment to fertility.

The first recorded existence of the Easter Bunny appeared in Europe, sometime in the 16th Century. It was introduced in this country by German immigrants who settled in Pennsylvania in the 18th Century. Their children believed that if they were good, the Easter Bunny would leave them a collection of brightly colored eggs.

Here are some other interesting facts associated with the Easter Egg:

- The most famous decorated Easter Eggs came from Ukraine. They are called Pysanky.
- In some cultures, a person will tap the end of his egg against another's. The person holding the egg that cracks the other egg will have good luck.
- The annual egg-rolling contest at the White House is done with wooden eggs that have an unusual shape. These eggs can be purchased without great expense at the White House.
- The earliest colored eggs were dyed red to signify the blood of Jesus Christ.

