



# 2021 Annual Conference

Niagara Falls, New York

**Crazy Arraignment Capers**

September 28, 2021

Presented by:

Joshua Shapiro, Esq.

Stephen D. Ferri, Esq.

1.0 MCLE Professional Practice

This program has been approved for credit in New York State for all attorneys including those who are Newly Admitted (less than 24 months) and administered by the Onondaga County Bar Association.



## **Presenters**

**Joshua S. Shapiro Esq.** is the Special Counsel for the Town and Village Courts to the Administrative Judge of the Sixth Judicial District. In that role he primarily works with the District Supervising Judges, providing support and assistance to the 174 Town and Village Courts located within the Sixth District. Prior to that position Joshua spent 11 years as an Assistant District Attorney, beginning his career with the Suffolk County District Attorney and ending with the Broome County District Attorney, where he prosecuted violent felony offenses and homicides. During his career he has tried numerous criminal cases in Village, Town, District, County, and Supreme Courts in both Suffolk and Broome counties, running the gamut from simple misdemeanors up to and including murder cases. Joshua graduated from Binghamton University in 2003 and earned his JD from the University of Richmond School of Law in 2006.

**Stephen D. Ferri Esq.** is a Court Attorney Referee for the Sixth Judicial District. Steve provides support and assistance to Superior Court judges throughout the district, managing uncontested matrimonial and foreclosure cases. He also serves as a mediator, arbitrator and SCAR hearing officer. Before that position, he was a prosecutor in the Broome County District Attorney's Office for about 17 years, prosecuting both felony and misdemeanors and for the last four years serving as the primary appellate attorney for the office. For five years, he also served as the principal court attorney for the Honorable Martin E. Smith, Broome County Court Judge and Acting Supreme Court Judge. Steve graduated from the University at Buffalo and obtained his JD from Albany Law School.



# Crazy Arraignment Capers

Presented by

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2021 Edition

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Back to Basics: What is  
required for an  
arraignment?

**Examination of Accusatory  
Instrument for Facial  
Sufficiency C.P.L. §140.45  
(When arrested without a  
warrant)**

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Back to Basics: What is  
required for an  
arraignment?

**Governed By CPL §170.10**

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**CPL §170.10**

The Court must inform the defendant:

1. Of his/her right to counsel (C.P.L §170.10(3))

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**The Right to Counsel at Arraignment**

1. Gideon v. Wainwright, 372 U.S. 335 (1963)
2. Strickland v. Washington, 466 U.S. 668 (1984)
3. Hurrell-Harring v. State, 15 N.Y.3d 8 (2010)
  1. Arraignment as a "critical stage" of the proceeding.

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**CPL §170.10**

The Court must inform the defendant:

1. Of the charges (C.P.L §170.10(2))

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**CPL §170.10**

The Court must issue a securing order.  
(CPL § 170.10(7)).

1. CPL 530.20

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**Scenario #1 – The Guilty Plea**

Considerations when a principal wants to enter a plea of “guilty” at arraignment:

1. A principal may not plead guilty to a felony complaint;

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**Scenario #1 – The Guilty Plea**

Considerations when a principal wants to enter a plea of “guilty” at arraignment:

1. A principal may not plead guilty to Driving While Intoxicated or Driving While Ability Impaired in violation of V.T.L. § § 1192.2, 1192.2a, 1192.3, 1192.4, or 1192.4a if the court is aware that the offense was charged in connection to an accident involving serious physical injury or death. C.P.L. §170.10(8).

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## Scenario #1 – The Guilty Plea

Considerations when a principal wants to enter a plea of “guilty” at arraignment:

1. If a principal pleads guilty in the CAP or VAP, the case must be kept through final disposition by the judge who conducted the arraignment. C.P.L. §170.15(1).
  1. EXCEPTION: Those CAP & VAP plans where judges are cross-designated as a judge of a different court to sit.

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## Scenario #2 – Family Court Warrants

### Local Criminal Court Jurisdiction

1. Family Court Warrants: Family Court Act §153;
2. Article 8 (Family Offenses) Family Court Act §827;
3. CAP & VAP Judges may arraign Family Court Warrants for Article 8 Offenses, C.P.L. 530.11(4) When Family Court is Not In Session;
4. Article 4 (Support). Family Court Act §431;
5. CAP & VAP Judges may arraign when Family Court is Not In Session. Family Court Act §155;

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## Scenario #3 – County Court Warrants

### C.P.L. § 530.70(2)

1. Defendant must be brought before County Court Or detained at the local correctional facility of the county in which the court sits;
2. CAUTION – Problem-Solving Courts & Acting County Court Judges;

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**Scenario #4 – Parole Warrants**

**Local Criminal Courts have no jurisdiction to “arraign” a defendant upon a parole warrant.**

1. Such arrests are generally direct-deposits at the local correctional facility.

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**Scenario #5 – Fugitives from Justice**

**C.P.L. §570.34 – Arrest of accused without a warrant within NY State**

1. May be taken to any local criminal court judge (including CAP & VAP Judges);
2. Must be charged via Fugitive Complaint;
3. Judge is acting as his/her own court (generally), and Fugitive Complaint should stay with him/her until it transfers to County Court;

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**Scenario #5 – Fugitives from Justice**

- You cannot arraign on a Governor’s Warrant;
- You cannot accept a waiver of extradition;
- You cannot hold a hearing on the merits of the extradition application;

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**Scenario #6 – Intoxicated or Impaired Principal**

**So Intoxicated or Impaired that a principal is incapable of understanding the proceedings or assisting in his/her own defense.**

1. Discuss with counsel;
2. Adjourn arraignment if necessary;
3. Mere intoxication is not enough, principal must be so impaired so as to be unable to understand the proceedings;

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**Scenario #7 – Mentally Incapacitated Principal**

**C.P.L. §730.30 – Order of Examination**

1. Any time after [arraignment] the court [must] issue an order of examination when it is of the opinion that the defendant may be an incapacitated person.

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**Scenario #8 – The Motion to Dismiss**

**C.P.L. § § 170.45 & 210.45. A motion to dismiss must be:**

1. In writing; and
2. Upon reasonable notice to the people; Unless
3. The People waive that requirement.

**People v. Jennings, 69 N.Y.2d 103 (1986);**

**People v. Lawrence, 64 N.Y.2d 200 (1984);**

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**Scenario #9 – The Missing  
Accusatory Instrument**

**You must have an accusatory instrument  
to arraign on a:**

1. Summary Arrest (without a warrant);
2. Arrest Warrant;
3. Fugitive from Justice;
4. Violation of Probation Warrant (C.P.L. §§ 410.40 & 120.90(5))

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**Scenario #9 – The Missing  
Accusatory Instrument**

**You do not need to have an accusatory  
instrument to arraign on a:**

1. Bench Warrant;
2. Family Court Warrant;

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**Scenario #10 – The Principal  
Who Does Not Speak English**

**You must provide interpreter services for  
a principal who does not understand English**

1. This includes those who speak some English but who indicate that they would prefer to have an interpreter;
2. Live Interpreter Services (adjournment if necessary);
3. LanguageLine Solutions (contact your local District Office for Assistance);

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**Scenario 11: Setting Bail**

You may only set bail if the offense is a **qualifying** offense as defined by C.P.L. § 510.10(4)

- 1. Crimes listed in statute specifically;
- 2. Any crime that is alleged to have caused the death of another person. C.P.L. §510.10(4)(j);
- 3. Any felony committed while serving a sentence of probation or post-release supervision. C.P.L. §510.10(4)(r);
- 4. Any felony where the defendant qualifies for sentencing as a persistent felony offender under P.L. §70.10. C.P.L. §510.10(4)(s)

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**Scenario 11: Setting Bail**

You may only set bail if the offense is a **qualifying** offense as defined by C.P.L. § 510.10(4)

- 5. Any felony or class 'A' misdemeanor involving alleged harm to an identifiable person or property alleged to have been committed while the principal was released on another class 'A' misdemeanor or felony involving alleged harm to an identifiable person or property. Prosecutor must establish reasonable cause to believe that the principal committed both crimes. C.P.L. §510.10(4)(t)

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**Scenario 11: Setting Bail**

You may only set bail if the offense is a **qualifying** offense as defined by C.P.L. § 510.10(4)

- 6. Failure to Register as a Sex Offender in violation of Correction Law §168-t.

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## Forms of Bail

Committed to the custody of \_\_\_\_\_ until bail is posted as follows (select at least 3 types):

[*Juvenile Offender*] to be lodged in a place certified by the Office of Children and Family Services as a juvenile detention facility for the reception of children, being a Juvenile Offender at the time the crime was allegedly committed

[*Adolescent Offender*] to be lodged in a place certified by the Office of Children and Family Services and the State Commission on Corrections as a specialized secure juvenile detention facility for older youth, being an Adolescent Offender at the time the crime was allegedly committed

(check if applicable) Although the Court would not or could not otherwise require bail or remand, the Court has set nominal bail pursuant to CPL §510.10(5) upon the defendant's voluntary request.

- \$ \_\_\_\_\_ Cash, or
- \$ \_\_\_\_\_ Credit Card or similar device, or
- \$ \_\_\_\_\_ Insurance Company Bail Bond, or
- \$ \_\_\_\_\_ Secured Appearance Bond (Form CRC 3292), or
- \$ \_\_\_\_\_ Partially Secured Appearance Bond with a \_\_\_\_\_% deposit (Form CRC 3293), or
- \$ \_\_\_\_\_ Unsecured Appearance Bond (Form CRC 3294), or
- \$ \_\_\_\_\_ Secured Surety Bond (Form CRC 3292), or
- \$ \_\_\_\_\_ Partially Secured Surety Bond with a \_\_\_\_\_% deposit (Form CRC 3293), or
- \$ \_\_\_\_\_ Unsecured Surety Bond (Form CRC 3294).

NOTE: A partially secured and/or unsecured surety bond must be selected.

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## Scenario 12: The Contemptuous Principal

### Judiciary Law §751 & UJCA §210

1. Explore Alternatives: Removing principal from courtroom;
2. A summary criminal contempt is an extraordinary remedy to be used sparingly and only after strict adherence to procedure;

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## Requirements:

1. Act must occur during court proceeding and in immediate view and presence of the judge;
2. Must be intended or amount to an actual obstruction of justice or interruption of court business;

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Procedure:

1. Court must warn the person that continuation of the behavior may result in summary contempt;
2. Court must allow the principal a reasonable opportunity to state the reasons or excuse for the behavior;

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Procedure:

3. Court must allow the principal a reasonable opportunity to apologize for and correct the behavior;
4. Court must allow the principal a reasonable opportunity to state the reasons or excuse for the behavior;

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Final Order of Contempt, the Court Must Enter a Written Order:

1. Stating the facts of the offense that constitute summary contempt;
2. Specifying the punishment imposed;
3. Stating that the contempt is criminal;
4. State how the conduct disrupted the proceeding;

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Punishment:

1. Fine not to exceed \$1,000;
2. Incarceration not to exceed 30 days;

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Purge

1. After finding of contempt the principal should be given one last opportunity to purge the contempt to have the sentence forgiven.

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32

Recommendations:

1. I do not recommend the use of contempt, and I especially do not ever recommend using contempt during a virtual proceeding;
2. Explore other options. For Example: removing the defendant from the courtroom and continuing without him/her, muting the defendant, turning off his/her camera, etc.

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**Scenario 13: The Virtual  
Arrest**

**C.P.L. §182, Executive Order 202.1 et seq.**

- 1. Expanded by Executive Orders in Attached Chart;**
- 2. Permissible Uses;**
- 3. Limitations;**
- 4. Consent?**

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**Scenario 14: The Adolescent  
Offender**

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**Contact Information**

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