

DONNA ALDEA, ESQ.

Barket Epstein Kearon Aldea & LoTurco, LLP

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SUMMARY OF LEGAL EXPERIENCE

Donna Aldea is a partner at Barket Epstein Kearon Aldea & LoTurco, LLP, which she joined in March of 2013, and heads the firm's Post-Conviction and Appellate Practice Group.

Prior to joining BEKAL, Ms. Aldea was an Assistant District Attorney in Queens County from 1999-2013, serving as Senior Appellate Attorney from 2002 to 2004, Supervisor in the Appeals Bureau and Head of the Article 78 and People's Appeals Units from 2004 to 2007, and most recently, as the District Attorney's Counsel for Special Litigation, handling the office's most difficult cases and novel legal issues at both the trial and appellate levels.

Over the course of her career, Ms. Aldea has briefed, argued, or edited hundreds of criminal appeals, federal *habeas corpus* cases, and substantive pre-trial and post-conviction motions in the United States Supreme Court, the United States Court of Appeals, the New York Court of Appeals, the United States District Courts, the Appellate Division, and the New York State Supreme Court, many involving issues of first impression. She has also served as co-counsel at numerous homicide trials, handling the complex evidentiary issues arising throughout the course of the trial proceedings.

Some of her notable cases include:

- *People v. Mayer Herskovic*, in which she obtained a reversal of defendant's gang assault conviction and dismissal of the indictment on weight-of-the-evidence grounds, based on a challenge to the DNA evidence used by the People at trial.
- *People v. Calvin Harris*, where she successfully obtained a pre-*voir dire* change of venue for the defendant in this high-profile murder case, successfully litigated complex evidentiary issues relating to the admissibility of a defense third-party culpability case, and limitations on the prosecution's use of hearsay, DNA evidence, and blood-spatter testimony, and ultimately helped to obtain an acquittal for Mr. Harris at trial;
- *People v. Jalal Abodalo*, where she obtained the first post-conviction vacatur of a conviction on actual innocence grounds in New York State since this was recognized by the courts as a free-standing claim under CPL §440.10;
- *People v. Aaron Powell*, where she obtained a reversal of defendant's two first-degree murder convictions on the grounds of juror bias;
- *People v. Christopher Loeb*, where she obtained a vacatur of defendant's criminal convictions and dismissal of his indictment following police brutality and police perjury;
- *Callahan v. Suffolk County, et. al*, where she convinced the United States Court of Appeals for the Second Circuit to reverse a jury verdict in favor of the County and order a retrial for the family of an unarmed man who had been shot and killed by police;
- *Matter of Singas v. Engel*, where she obtained the first appellate decision in New York State recognizing that records pertaining to testing of simulator solution used in every breathalyzer calibration in the state is subject to disclosure to the defense under New York's discovery statute;
- *People v. Sasha Masri*, where she obtained a reversal of defendant's attempted assault conviction and dismissal of the indictment following the improper submission of a lesser included charge;
- *People v. Constandino Argyris and John DiSalvo*, where she convinced the New York Court of Appeals to reevaluate the legal standard used to evaluate reasonable suspicion in anonymous tip cases;

- *People v. John Taylor*, where she acted as lead counsel in the briefing and argument of the constitutionality of New York's death penalty statute in the New York Court of Appeals;
- *People v. Mazultov Borukhova and Mikhail Mallayev*, a joint trial of a circumstantial first-degree murder-for-hire case, which she tried and then successfully litigated on appeal;
- *Brown v. Blumenfeld*, where she successfully challenged the authority of a Supreme Court Judge to issue an order precluding evidence;
- *People v. Terril Grice*, a landmark Court of Appeals decision defining the contours of New York's right to counsel;
- *People v. Peter Wells*, successfully defending constitutionality of New York's persistent violent felony offender statute and persistent felony offender statute against *Apprendi* challenge, and convincing New York Court of Appeals to hold, as a matter of first impression and statutory interpretation, that CPL §270.15 permits the discharge of a sworn juror prior to empanelment based on the trial court's concern that the juror might be incapable of remaining attentive during trial because of his work schedule;
- *In re David B. (Anonymous)*, landmark Court of Appeals decision upholding the criteria for mental illness as defined by N.Y. Crim. Proc. Law § 330.20(1)(d) against constitutional challenge, and deeming it the applicable standard in initial commitment and subsequent retention hearings;
- *People v. Matthew Colletta*, a second-degree murder case involving a 7-hour drive-by shooting spree of a dozen individual victims by a drunk and drugged defendant, which she tried and successfully litigated on appeal;
- *People v. Barbara Sheehan*, a complex murder trial involving a justification defense premised on Battered Women's Syndrome, which she successfully litigated on appeal;
 - *People v. Farid Popal*, bodyless murder case involving complex evidentiary and jurisdictional issues, which she successfully litigated through trial and on appeal;
- *Jimenez v. Walker*, where she successfully convinced the United States Court of Appeals for the Second Circuit to hold, as a matter of first impression, that the judicially-created *Harris/Coleman* presumption should be extended to the court's inquiry under 28 U.S.C.S. § 2254(d) and the Anti-Terrorism and Effective Death Penalty Act as to whether the state court's decision was on the merits;
- *Hernandez v. Greiner*, where she successfully convinced the United States Court of Appeals for the Second Circuit to hold, as a matter of first impression, that ineffective-assistance-of-counsel claim premised on appellate counsel's failure to perfect brief to highest state court after a discretionary leave grant could not be recognized on habeas;
- *Bethea v. Girdich*, where she successfully convinced the United States Court of Appeals for the Second Circuit to hold, as a matter of first impression, that the filing of a motion to extend the time to appeal or to file a late notice of appeal does not restart the one-year limitation period under the Anti-Terrorism and Effective Death Penalty Act;
- *Smaldone v. Senkowski*, where she successfully convinced the United States Court of Appeals for the Second Circuit to hold, as a matter of first impression, that the Anti-Terrorism and Effective Death Penalty Act's one-year limitation period was not tolled for the ninety-day period in which petitioner could have, but did not, seek certiorari from the United States Supreme Court;
- *Sellan v. Kuhlman*, where she successfully convinced the United States Court of Appeals for the Second Circuit to hold that the state court's denial of the petitioner's Sixth Amendment claim, despite the absence of any discussion of the federal claim in the state court decision, constituted an adjudication on the merits for purposes of habeas review.

TEACHING, PUBLICATION, AND CLE PRESENTATIONS

Ms. Aldea is an adjunct professor at her *alma mater*, St. John's University School of Law, where she has taught New York Criminal Practice and Appellate Advocacy, and has also directed the Criminal Externship Seminar and acted as a faculty advisor for third-year law students' directed research projects. Her article, *Smile – This is Oral Argument*, was published in the New York Law Journal's special

edition on appellate advocacy, and her cases and commentary have been frequently featured in legal and mainstream press, including the New York Law Journal, New York Times, Daily News, New York Post, Newsday, New Yorker, Legislative Gazette, ABC, CBS, NBC, and CNN.

She is also a frequent CLE lecturer, and has presented a wide range of topics on ethics, substantive and procedural criminal law, trial and appellate strategy, and legal writing to a broad audience, including judges, court legal staff, prosecutors, defense attorneys, and appellate practitioners. She has lectured for the New York State Judicial Institute, the Association of Law Secretaries to Justices of the Supreme Court and Surrogates Court, the Office of Court Administration, the Nassau County Bar Association, the Suffolk County Bar Association, the Queens County Bar Association, the Bronx Bar Association, the New York State Association of Criminal Defense Lawyers, the New York Prosecutors' Training Institute, individual District Attorney's Offices, and at seminars held at individual law schools.

She served as Chair of the Appellate Practice Committee for the Nassau County Bar Association from 2017-2019.

CLE Lectures Include:

- *Unraveling the Helix: Understanding, Limiting, and Effectively Challenging DNA Evidence*
- *Ready or Not ... "Speedy Trial" Under CPL §30.30*
- *Search and Seizure Update*
- *On the Road Again: Challenging the Lifetime Driver's License Revocation*
- *Navigating Article 440 of the New York Criminal Procedure Law*
- *Inventory Searches*
- *Criminal Appeals and Post-Conviction Proceedings*
- *Strategic Considerations in Choosing Among Post-Conviction Remedies*
- *Everything You Need to Know About Central Booking Interviews (but were afraid to ask)*
- *The Write Stuff: Enhancing Your Persuasiveness*
- *Post-Conviction Ethical Pitfalls & Pointers*
- *Criminal Appellate Practice*
- *Batson - Post Hecker*
- *Legal Writing for the Trial Attorney*
- *Predictably Unpredictable: Issues with the Deliberating Jury*
- *Evidentiary Issues*
- *Prosecutorial Misconduct on Summation*
- *How to Draft a Perfect Affirmation and Memorandum of Law*
- *Guide to CPL §330.30*
- *Guide to People's Appeals*
- *Guide to Article 78*
- *Ethics in Witness Preparation*
- *Federal Habeas Corpus for Beginners*

PROFESSIONAL HONORS AND AWARDS

Ms. Aldea has received numerous honors and awards for both her advocacy and teaching, including the *Thomas E. Dewey Medal*, presented by the New York City Bar Association; the *Board of Director's Award for Outstanding Advocacy*, presented by the Association of Government Attorneys in Capital Litigation; the *Eugene J. Kelly, Jr. Award for Best Prosecutor*, presented by the Queens County District Attorney's Office; the *Dean's Adjunct Faculty Teaching Award*, presented by St. John's University School of Law; and the *Alumni Association Service Award*, presented by St. John's University School of Law. Additionally, Ms. Aldea has been repeatedly recognized by *Super Lawyers* in the areas of Appellate Practice and Litigation, and as one of the *Top Attorneys in Metro New York*.