

I Object!

– James Eckert, Esq.

Reverse-Rosario

If a dog bites someone, and the owner is sued, money is at stake, and therefore both sides will examine the witnesses, under oath, before trial, and a full record will be created. If the dogbite produces criminal charges, nothing as important as money is at stake, so as little as possible is revealed about what a witness will say on the stand. There are exceptions, see *People v Rosario*, 9 NY2d 286 (1961). Where rules apply to the prosecution, you can bet they'll eventually apply to the defense. So we have reverse-*Rosario*, sometimes called Oirasor or Osarioray.

Criminal Procedure Law §240.45(2)(a) requires the defense, after the People have rested, to give the prosecution, "any written or recorded statement made by a person other than the defendant who the defendant intends to call as a witness at trial, and which relates to the subject matter of the witness's testimony."

After the People have rested - it's a trial obligation, not a general one.

"Other than the defendant" - this never applies to the client's statement. However, if we have a written copy of a statement made by a witness which contains statements of the defendant to the witness, this is a statement of that witness, not the client. "I did it" doesn't have to be turned over, "Defendant said 'I did it, and I'm glad'", does.

Defendant intends to call as a witness - this only applies to our witnesses. Written or recorded statements of the prosecution witnesses do not have to be turned over to them under Reverse-Rosario. This does, however, require us to turn over statements all at once. If you were to decide not to call the second witness, the disclosure would have already been made.

Relates to the subject matter of the witness's testimony - this is pretty broad, but not all-encompassing. Impeachment material is not covered, and matters pertaining to, say, similar incidents or history of the witness may not be covered. Note, however, that 240.25(2)(b)&(c) cover the witness's convictions and pending criminal actions.

Written or recorded - this is pretty all-encompassing, it seems to me. There is no requirement that the witness agree that a written statement is correct, or that notes of a statement be contemporaneously recorded.

Reverse-Rosario never applies to the defendant, does not apply to the People's witnesses, and only kicks in once the People have rested.