**Memorandum**

**To: Due Process Issue Bank**

**Fr: CAFL Administration**

**Re: Right to Counsel – IAC – Failure to Introduce or Object to Evidence**

**Date: December 21, 2016**

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Several cases hold that counsel is ineffective (technically, that counsel’s performance falls measurably below that of a reasonable fallible attorney, the first prong of Strickland/Saferian) if she fails to introduce relevant evidence or object to clearly inadmissible evidence. Those cases include:

Commonwealth v. Salyer, 84 Mass. App. Ct. 346, 354-55 (2013) (defense counsel ineffective because she failed to object to admission of prejudicial statements clearly covered by spousal disqualification – although she had made many other appropriate objections – and she had no sound strategic basis for the failure to object).

Commonwealth v. Sepheus, 468 Mass. 160, 170 (2014) (defense counsel ineffective because he asked detective to express views on defendant’s guilt and failed to move to strike detective’s non-responsive answer, which would have been allowed; this “invited” testimony provided link to element of offense, and defense counsel had no reasonable strategic reason for his actions.)

Commonwealth v. Sugrue, 34 Mass. App. Ct. 172, 173-74 (1993) (failure to object to highly prejudicial and inadmissible fresh complaint testimony constitutes ineffective assistance)

Commonwealth v. Frisino, 21 Mass. App. Ct. 551 (1986) (failure to object to clearly inadmissible testimony and documents is ineffective assistance)

Commonwealth v. Peters, 429 Mass. 22 (1999) (defense counsel’s failure to object to clearly inadmissible fresh complaint testimony, together with her “inept” cross-examination that elicited and opened the door to other inadmissible testimony constituted ineffective assistance)

Commonwealth v. Whyte, 43 Mass. App. Ct. 920, 920 (1997) (defense counsel’s failure to object to inadmissible hearsay was ineffective; “Defense counsel later stated on the record that it was part of her trial strategy not to object to much of the hearsay testimony previously elicited. We think that if that was her intention, then defense counsel’s judgment was so manifestly unreasonable as to be unprotected by the labels of trial strategy’ or ‘trial tactics.’)