

August 15, 2007

Dear Panelist:

This letter covers the following topics:

- Lewis Edelstein Honored
- Motion Practice in District and County Courts
- Dismissal of Simplified Traffic Informations
- Supplemental Appropriation to 18B Budget
- Additions to Experts Panel
- Assigned Counsel
The Burglary That Started It All

LEWIS EDELSTEIN HONORED

The New York State Bar Association recently gave its President's Pro Bono Award for the 10th Judicial District to Family Court Panelist Lewis Edelstein. Mr. Edelstein has donated approximately 73 pro bono hours per year for the past seventeen (17) years. Our thanks and congratulations to Lewis Edelstein for a job well done.

MOTION PRACTICE IN DISTRICT AND COUNTY COURTS

District and County Court Panelist Paul Delle, dismayed in his current dealings with the Nassau County District Attorney's office, sent me a copy of a Demand he is currently including on all of his cases, including felony screening cases. I have included a copy with this letter. I am given to believe that many of you share Paul's frustration. This enclosure is offered only for your information and consideration. Whether you use it, or a variation of it, is totally your decision.

DISMISSAL OF SIMPLIFIED TRAFFIC INFORMATIONS

C.P.L. 100.25 (2) states that when a defendant is issued a simplified traffic information, he is entitled upon a timely request to receive a supporting deposition from the issuing police officer, setting forth the factual basis for the issuance of the ticket. The statute states that the issuing police officer must file such supporting deposition with the court “together with proof of service thereof.”

Panelist Mitch Dranow recently won an appeal in the Appellate Term on what he called a “quirky, but effective, procedural ground that my fellow 18B practitioners may want to know about”. In **People v. Hollinger** (decision enclosed) the Court held that the affidavit of service filed in the case, which included a statement about mailing but did not include the defendant’s address to which the supporting deposition was mailed, was fatal and rendered the simplified traffic informations insufficient.

Mitch stated that this decision “may not seem like much at first glance, but I have the feeling that this may be a fairly common occurrence that gets overlooked”. Our thanks to Mitch for bringing this to our attention.

SUPPLEMENTAL APPROPRIATION TO 18B BUDGET

Two weeks ago, I appeared before the Government Services Committee of the Nassau County Legislature and asked that my 2007 budget for 18B attorneys and experts (\$4,350,000) be supplemented by an additional \$1,650,000 based upon the fact that I have been averaging payments of approximately \$500,000 per month for vouchers for the first 6 months of 2007. (Last year’s rate was approximately \$350,000 per month.).

I was asked the cause(s) of the increased spending this year and I suggested to the Committee that it was twofold:

1. The dissolution of the Defense Counsel Screening Bureau in 2002. (Our yearly vouchers numbered between 3600 and 3900 before dissolution. Since then, they have numbered between 4800 and 5200. This year, we project over 6000.)
2. The policies of the Nassau County District Attorney’s office. I told the Committee that, although the new District Attorney began service in 2006, I didn’t start to see a full fledged response from the criminal defense bar at that time. In 2007, however, many defense attorneys, being pushed by little or no plea bargaining, are taking their cases to trial. Trials are more expensive than pleas. Further, where pleas are being taken, they are often being taken only after numerous conferences, adjournments, and more conferences.

I have been asked to gather data to support either or both of these factors. I am now asking for your help. **Regarding the first factor, if you have evidence of defendants being declared eligible for Legal Aid or 18B counsel where little or no indigency screening was done (whether in District, County or Family Court) please let me know.**

Regarding the second factor, if you know of any instances where cases have been delayed or prolonged because of changed District Attorney policies or procedures, please let me know. Please include in your advisements whether any such delays were due to assistant district attorneys being unprepared for conferences, delaying pleas where indigent defendants could not first make full restitution, withholding evidence (including Brady material), refusing to speak to mitigating witnesses, filing statements of readiness that proved to be illusory, or any other conduct that delayed the proper conclusion of a case.

I have included a sheet for you to complete and ask that you fax it back to me at your earliest convenience. I thank you for your cooperation.

ADDITIONS TO THE EXPERT'S PANEL

The following experts have been added to our Expert's Panel:

Forensic Psychology / Forensic Social Work
Psychology / Social Work
Substance Abuse

Brian J. Belfi Psy.D.
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Investigations

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**ASSIGNED COUNSEL
THE BURGLARY THAT STARTED IT ALL**

In a recent issue of the Nassau Lawyer, I wrote an article about the origin of the Assigned Counsel program, i.e., about the burglary trials of Clarence Earl Gideon. The first trial, without a defense attorney, ended in a quick conviction. The second, after the Supreme Court's landmark decision in **Gideon v. Wainwright**, was decidedly different. Gideon's story is very interesting. If you missed it and would like to see how and why you are part of legal history, fax me the attached request sheet and I'll send you the article.

As always, I thank you for your continued dedicated service to the 18B Program in Nassau County.

Very truly yours,

Patrick L. McCloskey