

Nassau County DWI Seizure Program

**2002 Year-End Summary and
Final Progress Report**

To: Judith Jacobs
Presiding Chairperson
Nassau County Legislature
1 West Street
Mineola, NY 11501

To: Detective Lieutenant Michael J. Fleming
Commanding Officer
Asset Forfeit Bureau
Nassau County Police Department
1490 Franklin Avenue
Mineola, NY 11501

To: Lorna B. Goodman, Esq.
Nassau County Attorney
Office of The County Attorney
1 West Street
Mineola, NY 11501

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Submitted By:

Special Counsel to the County of Nassau

ANDREW J. CAMPANELLI P.C.
310 Old Country Road, Suite 103
Garden City, New York 11530
(516) 746-2678

Introduction

This year represented the first year within which my firm assumed the prosecution of all of the County's misdemeanor DWI civil forfeiture actions.

As of the date of this report, my firm has prosecuted and is currently prosecuting a *cumulative* total of 2,547 civil forfeiture actions as Special Counsel to the County.

I am happy to report that through hard work, exceptionally long hours and unrelenting determination, my firm has achieved significant progress towards: (a) alleviating the County's DWI case backlog, (b) creating procedures which have been implemented through my office and through which the County's cases are now being expedited, (c) reducing the expenses being incurred by the County under its DWI seizure program and simultaneously (d) maximizing the revenues being realized by the County under the program.

While we have achieved dramatic success towards achieving each of these goals, it would be impracticable to attempt to detail all that has been accomplished by my firm within the past year.

To best enlighten County representatives with regard to my firm's achievements in the successful prosecution of the County's cases, and the overall improvements we have implemented with regard to the County's program, I provide herein below a summary of several key indicia which are emblematic of our achievements.

I. Disposition of Civil Forfeiture Actions and Related Vehicles

As of the date my firm was retained to represent the County with regard to these civil forfeiture actions, the County was in possession of as many as 1,400 vehicles which had been seized from persons arrested for DWI. Each and every one of these vehicles was representative of a separate civil forfeiture lawsuit which the County was required to commence, and in which the County was required to prevail, if it was to dispose of each respective vehicle.

By virtue of my firm's commitment to aggressively prosecute these cases as rapidly as the law permitted, this year my firm secured the disposition of over one thousand (1,000) of the County's civil forfeiture cases and disposed of over one thousand related vehicles.

As illustrated by the graph on the following page, this represents a one thousand five hundred (1,500%) percent increase from the average number of cases which were being disposed of annually by the County, during the three year period within which the County was prosecuting these cases.

In disposing of over 1,000 of the County's forfeiture lawsuits, our success rate in obtaining judgments of forfeiture and/or other resolutions favorable to the County was over ninety-nine (99%) percent.

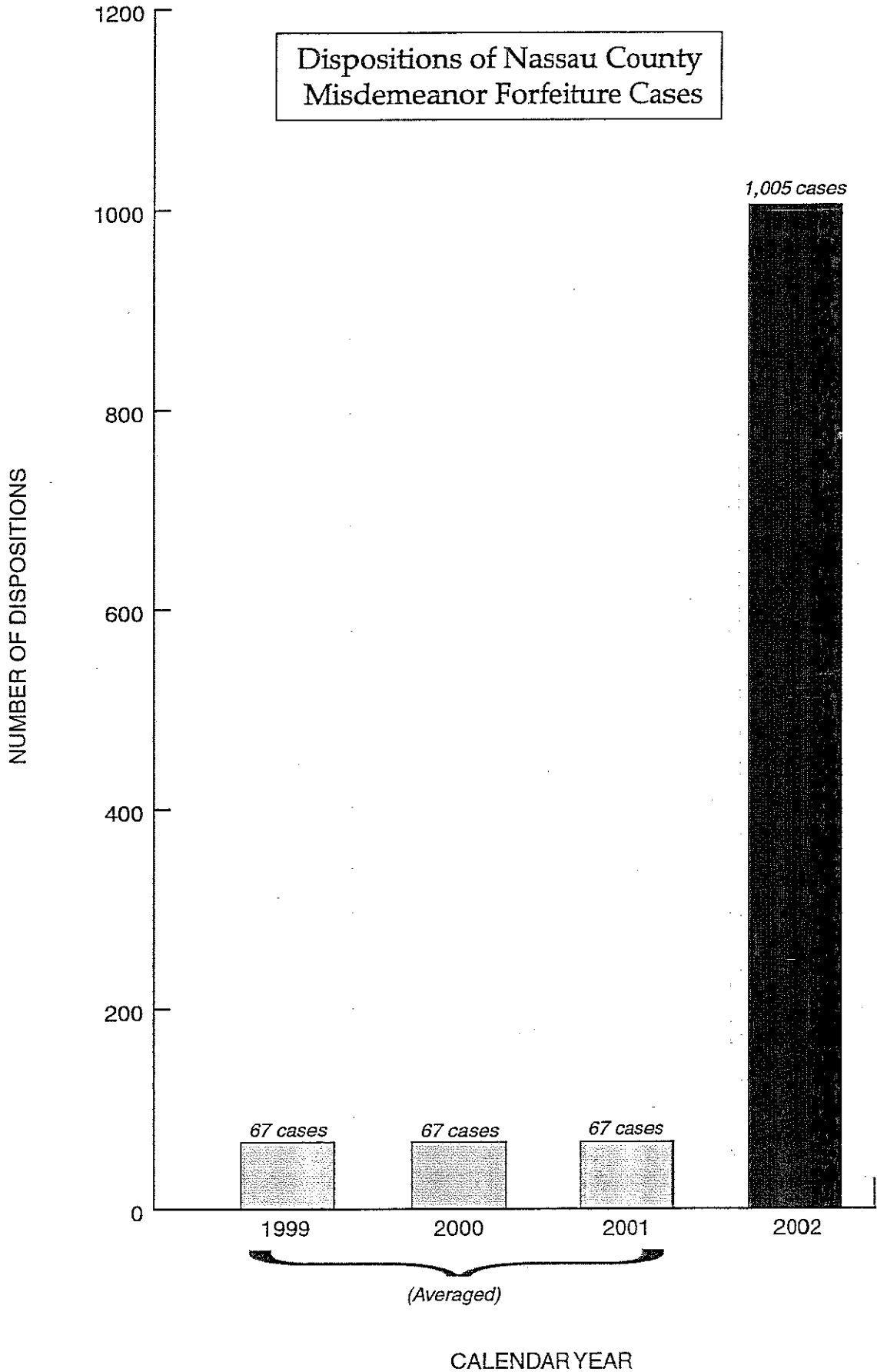
This 99% success rate included three hundred and fifty (350) cases in which the County was legally in default at the time my firm was retained. We ultimately prevailed and obtained judgments of forfeiture in 342 out of those 350 cases.

Moreover, within the context of these lawsuits, formidable legal assaults upon the County's DWI seizure program were launched by defendants which included, but were not limited to, GMAC (General Motors Acceptance Corporation), Ford, Nissan, Honda, and BMW. My firm was successful in defeating each and every one of these legal attacks.

In addition to the more than 1,000 cases and cars disposed of, my firm has drafted and filed hundreds of motions seeking summary judgment, default judgments, orders of attachment and stays, within the remaining cases which currently remain pending.

We have also obtained judgments of forfeiture and/or vehicle titles in an additional 100-150 cases and we are working in cooperation with the Nassau County Police Department to bring the respective vehicles to auction. The next auction has been scheduled for January 21, 2003.

Dispositions of Nassau County
Misdemeanor Forfeiture Cases



Cases being prosecuted by Nassau County



Cases being prosecuted by Andrew J. Campanelli, P.C.

II. Increase of Revenues Generated by the DWI Seizure Program

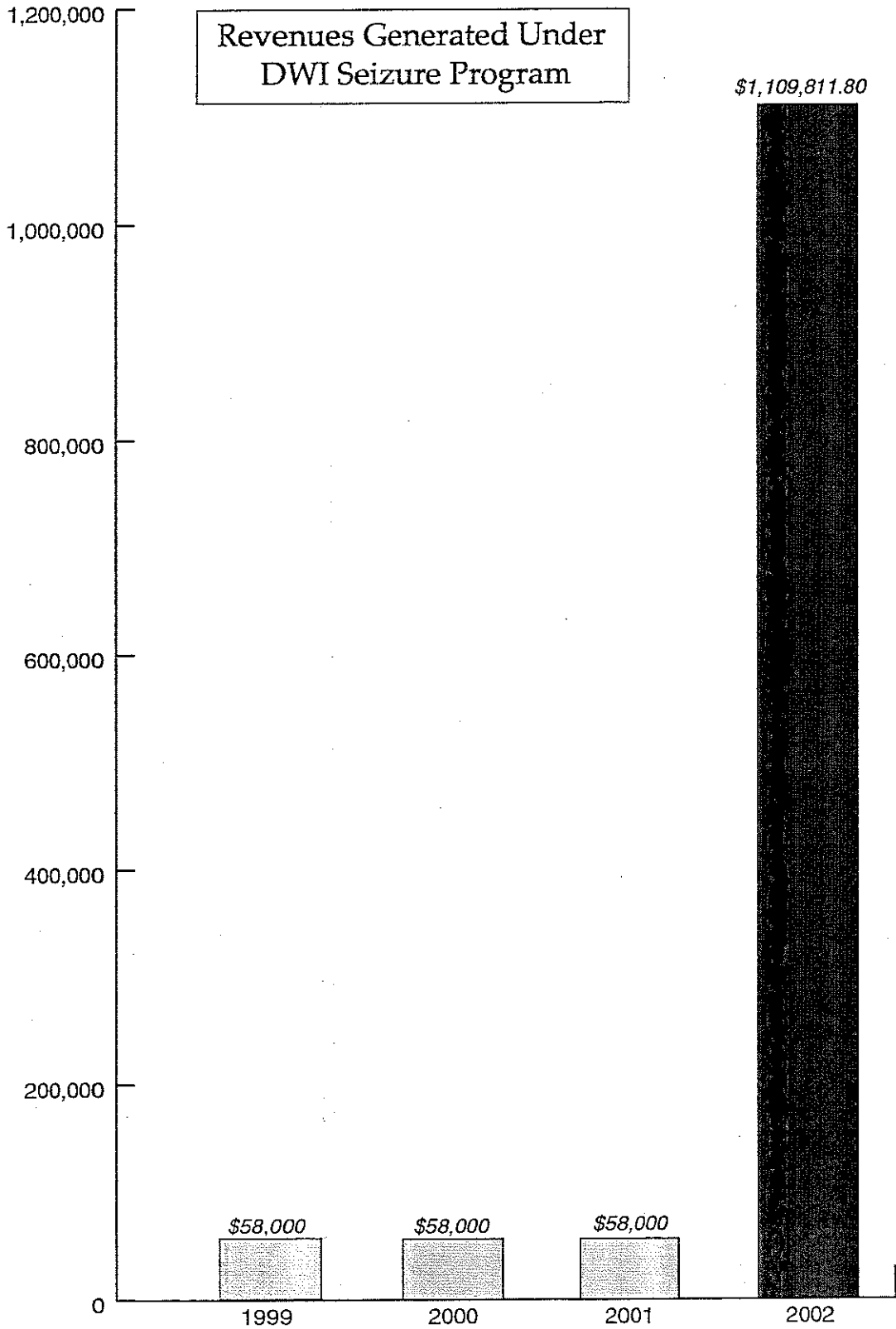
Although the primary goal of the DWI seizure program is to reduce the number of DWI offenses being committed within the County and thereby increase public safety,¹ I have employed my best efforts to not only prosecute Nassau County's civil forfeiture cases expeditiously, but also in a manner which would maximize any concomitant financial benefits which the County might realize under the program.

In this, my first year of handling the County's forfeiture program, I have increased the revenues generated under the program by one thousand eight hundred (1,800%) percent and I have collected and turned over to the County monies totaling in excess of one million one hundred thousand (\$1,100,000.00) dollars.

The graph provided on the following page is emblematic of the dramatic improvement achieved within my first year managing the program as compared to the three years during which the program was managed by the County.

¹ A goal which has been achieved by the program which has been credited with reducing the number of DWI offenses within the County by 36% and the number of DWI accidents within the County by 26%.

REVENUES COLLECTED AND TURNED OVER TO NASSAU COUNTY



(Averaged)

CALENDAR YEAR

Revenues generated while cases were being prosecuted by Nassau County

Revenues generated while cases were being prosecuted by Andrew J. Campanelli, P.C.

III. Increased Sales Prices Realized For Cars Sold Under The Program

As of the date my firm was substituted as Counsel for the County within these cases, the County was realizing an average sales price of approximately \$583.00 per vehicle for those vehicles which had been sold under the seizure program. Under the circumstances, one of my goals was to undertake whatever efforts might be necessary to increase the average sales price obtained in the sale of these vehicles.

In addition to retaining the services of a professional auctioneer (at my expense), I implemented aggressive marketing efforts to increase awareness of the auctions, increase auction attendance and thereby realize greater sales prices at auction.

To supplement the standard auction legal notice which we are required to publish by law, we immediately began publishing advertisements regarding the auctions in publications traditionally oriented exclusively to sales of used automobiles and other properties (*e.g. The Buylines et al.*).

In addition, my auctioneer and I set-up and currently maintain two internet web sites through which interested persons can obtain auction information including the date, time and location of each auction, driving directions and terms of payment/sale. We also upload an inventory of the particular vehicles which are to be offered at the auction and provide the year, make, model, VIN number, mileage and current photographs of each vehicle to be sold, generally within 5 to 7 days before the date of each respective auction.²

Each person who has registered at any previous County auction is automatically notified of the next auction by e-mail, or by as many as 3,000 post cards which are mailed out for each auction. Finally, I file and/or post notices of the auction upon the community events calendars in local town newspapers such as those published by *Anton Newspapers* and *The Herald*, and on as many as ten Long Island based web sites which provide public information and calendars of events occurring within the Long Island Community.

As a result of these cumulative efforts, at my last auction on December 10, 2002, there were over 600 potential bidders in attendance and the average per-car sales price was increased by approximately two hundred fifty (250%) percent.³

² At my December 10, 2002 auction, my staff offered free "2003 daily planners" which bore the address of the web site upon which I personally post the above-referenced auction information. Over 400 attendees of this auction requested and were provided with one of these daily planners. The cost of the daily planners, (approximately \$1,000.00) was borne at my expense rather than at the expense of the County.

³ Excluding salvage or "totaled" vehicles.

IV Reduction of Costs Being Incurred by the County under the Program

As of the date my firm was substituted as Counsel for the County within these cases, the County was incurring storage expenses well in excess of \$1,000.00 per day, for the storage of DWI seized vehicles.

By virtue of my firm's rapid disposition of the County's cases, and herculean efforts by the Nassau County Police Department Asset Forfeiture Bureau and Property Clerk, which moved as many as 700 vehicles to the County's auction site for sale, and additionally relocated as many as 600 additional DWI seized vehicles from private lots to property which the County currently occupies cost-free, these storage costs have been reduced by ninety (90%) percent, to approximately \$100.00 per day.

V Increased Legal Challenges

Notwithstanding all of the success we achieved this year with regard to alleviating the County's DWI case backlog, and improving the process by which these cases are prosecuted, the prosecution of the County's forfeiture cases has presented an ever increasing challenge.

Legal attacks upon the County's DWI seizure program have increased in both intensity and complexity, thereby presenting a theater of unrelenting legal battles launched against the program. Addressing these challenges requires the devotion of constant resources and ever increasing efforts to defend the program and its continued implementation.

As of the date of this report, numerous constitutional attacks have been asserted and simultaneously remain pending before the New York State Supreme Court, Nassau County, The Supreme Court, Appellate Division, Second Department, and the United States District Court, E.D.N.Y. (Central Islip). If any of these defendants⁴ were to prevail within their respective challenge, the County's entire forfeiture program could be "voided" by a single judicial determination.

To minimize the likelihood of such an event, we have, in agreement with the Police Department and the Office of the County Attorney, implemented new procedural safeguards to afford DWI defendants a level of "due process" intended to insulate the County's seizure program against successful constitutional challenges.

⁴ Or plaintiffs who have commenced actions *against* the County as a result of the seizure of their respective motor vehicle.

As a result of these implementations, however, the burdens presented in the prosecution of Nassau County's DWI civil forfeiture cases have been increased significantly.

As a result of recent forfeiture cases which include Krimstock v. Kelly,⁵ County of Nassau v. Bigler,⁶ and Lashuk v. County of Nassau,⁷ we have been constrained to implement a procedure by which defendants whose cars have been seized incident to a DWI arrest may raise an immediate challenge to the County's continued retention of their vehicle.

This mechanism enables a defendant to challenge the County's continued retention of their motor vehicle by merely mailing a demand for the return of their vehicle to the Nassau County Police Department.

In the event that they do so, the County is legally required to make an application to the Supreme Court, Nassau County, for provisional relief in the form of an order of attachment which authorizes the County to retain possession of the respective vehicle while the civil forfeiture action remains pending.

Since this mechanism has been implemented, the number of demands received, and responsive motions being drafted and filed by my firm, has begun to increase exponentially.

While my firm possesses the resources to keep pace with the demands, the burden of deciding these motions for provisional relief falls upon the Judge to whom all of these cases have been assigned, as well as his staff, who are already burdened beyond the Court's reasonable capacity.

⁵ Krimstock v. Kelly, 2002 U.S. App. Lexis 19182.

⁶ County of Nassau v. Bigler, Supreme Court, Nassau County 99-025915 (November 13, 2001 Hon. Robert Roberto Jr.).

⁷ Lashuk v. County of Nassau, Supreme Court, Nassau County 02-013272 (December 17, 2002 Hon. Robert Roberto Jr.).

Conclusion

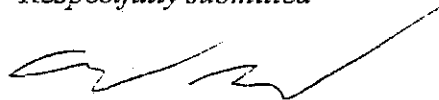
As reflected within this year-end report, my firm has achieved remarkable success in addressing the County's forfeiture case backlog, prosecuting the County's cases efficiently and successfully, and defending the entire DWI seizure program from continuous legal attacks.

Notwithstanding the positive achievements reflected within this report, however, significantly more work remains to be done. As of the date of this report, there remains a total of 1,542⁸ open forfeiture actions which my firm continues to prosecute as Special Counsel to the County.

I fully expect that the continued prosecution of these, and any future cases, will be subjected to the increased legal challenges described herein.

It is my intent to ensure that the progress and success I have achieved in prosecuting the County's forfeiture cases during the 2002 year is not hindered by these developments, and that continued improvements are realized in the 2003 year and beyond.

Respectfully submitted



Andrew J. Campanelli, President
ANDREW J. CAMPANELLI, P.C.
310 Old Country Road, Suite 103
Garden City, New York 11530
(516) 746-2678

⁸ Nearly two hundred (200) of these new cases were referred to my office in November and December alone.