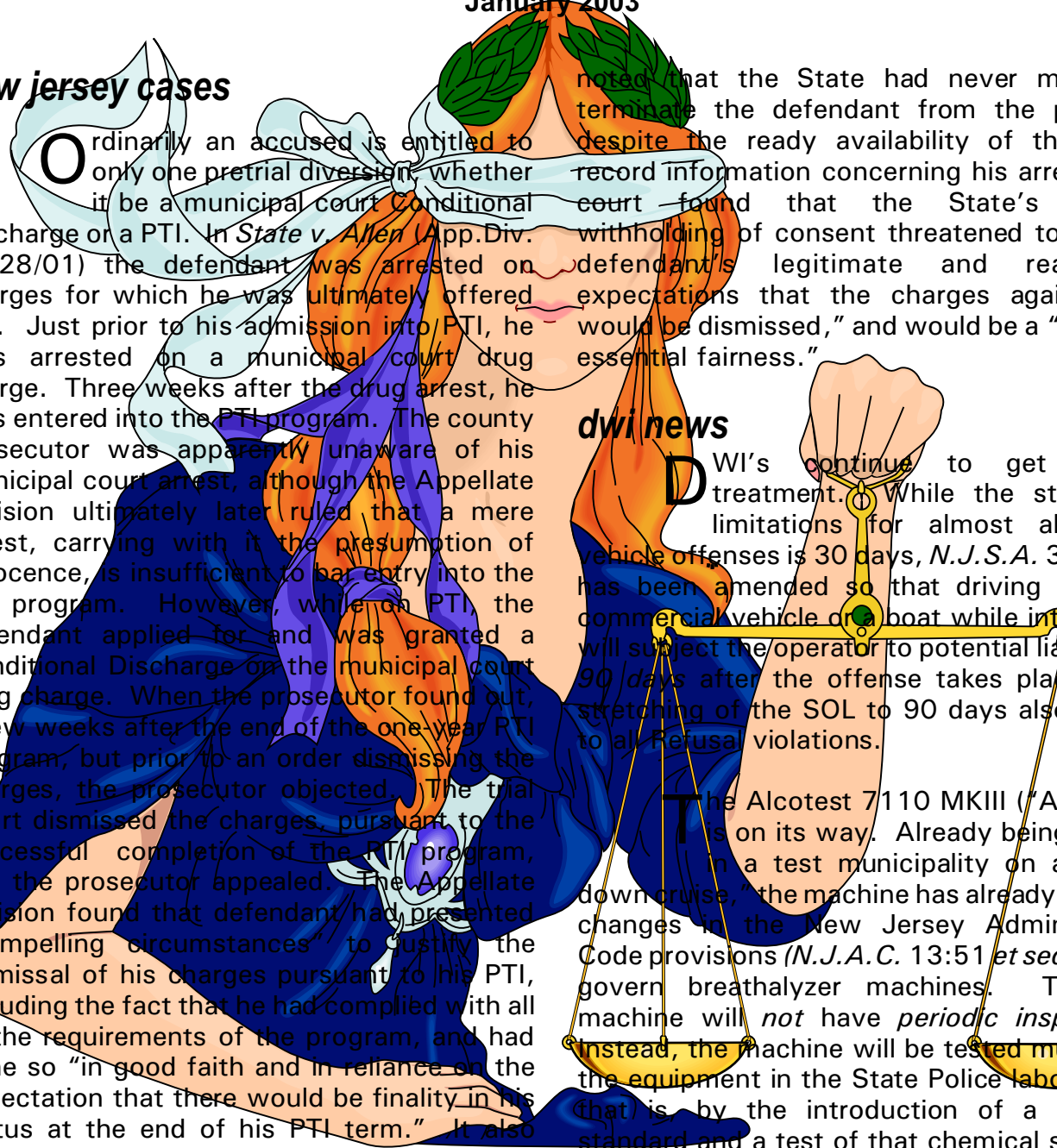

CRIMINAL LAW UPDATE

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January 2003

new jersey cases



Ordinarily an accused is entitled to only one pretrial diversion, whether it be a municipal court Conditional Discharge or a PTI. In *State v. Allen* (App.Div. 12/28/01) the defendant was arrested on charges for which he was ultimately offered PTI. Just prior to his admission into PTI, he was arrested on a municipal court drug charge. Three weeks after the drug arrest, he was entered into the PTI program. The county prosecutor was apparently unaware of his municipal court arrest, although the Appellate Division ultimately later ruled that a mere arrest, carrying with it the presumption of innocence, is insufficient to bar entry into the PTI program. However, while on PTI, the defendant applied for and was granted a Conditional Discharge on the municipal court drug charge. When the prosecutor found out, a few weeks after the end of the one-year PTI program, but prior to an order dismissing the charges, the prosecutor objected. The trial court dismissed the charges, pursuant to the successful completion of the PTI program, and the prosecutor appealed. The Appellate Division found that defendant had presented "compelling circumstances" to justify the dismissal of his charges pursuant to his PTI, including the fact that he had complied with all of the requirements of the program, and had done so "in good faith and in reliance on the expectation that there would be finality in his status at the end of his PTI term." It also

noted that the State had never moved to terminate the defendant from the program, despite the ready availability of the public record information concerning his arrest. The court found that the State's belated withholding of consent threatened to "defeat defendant's legitimate and reasonable expectations that the charges against him would be dismissed," and would be a "denial of essential fairness."

dwi news

DWI's continue to get special treatment. While the statute of limitations for almost all motor vehicle offenses is 30 days, N.J.S.A. 39:5-3(b) has been amended so that driving a car, a commercial vehicle or a boat while intoxicated will subject the operator to potential liability for 90 days after the offense takes place. The stretching of the SOL to 90 days also applies to all Refusal violations.

The Alcotest 7110 MKIII ("Alcotest") is on its way. Already being utilized in a test municipality on a "shake down cruise," the machine has already wrought changes in the New Jersey Administrative Code provisions (N.J.A.C. 13:51 *et seq.*) which govern breathalyzer machines. The new machine will *not* have *periodic inspections*. Instead, the machine will be tested much as is the equipment in the State Police laboratories, that is, by the introduction of a chemical standard and a test of that chemical standard,

A Publication of the Bergen County Bar Association

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not every few months (as is done now with the Breathalyzer 900) but *immediately before and immediately after* the breath alcohol test of the defendant. It is required that the Alcotest have an attached printer, along with the new self-calibrating unit, so all results of both the chemical standard and the defendant's breath, will be the subject of documentation. The addition of the printer module will eliminate the standard question asked by DWI clients, "How do we know that the police officer accurately wrote down my reading, and that he is not just making it up?"

bcpo investigative squads

ARSON/ENVIRONMENTAL FUGITIVE SQUAD

A.P. Michael Maher, Chief 752-4213
Back-up A.P. David Yucht 646-2043

CONFIDENTIAL INVESTIGATION UNIT

A.P. Jeffrey Ziegelheim, Chief 752-4482
A.P. Lucia Van Wetering Chief (Family leave)

DOMESTIC VIOLENCE

A.P. Sharyn Peiffer, Chief 646-3189
A.P. Carol Novey Catuogno 646-3602
A.P. Murshell Bland 645-2732
A.P. Danielle Grootenboer 752-4223
A.P. Brian Sinclair 752-4224

FUGITIVE DIVISION

A.P. Michael Maher, Advisor 752-4213

FATAL ACCIDENT

A.P. John Higgins, Chief 646-2936
Back-up A.P. Thomas Kearney 646-3082

HOMICIDE

A.P. James V. Santulli, Chief . . 646-2413/3724
Back-up A.P. Ralph Lilore . . . 556-2500 x-5503

SEX CRIMES/CHILD ABUSE

A.P. Patricia Baglivi, Chief 646-3761
A.P. Demetra Maurice 752-4197
A.P. Maria Rockfol (Megan's Law) . 752-4198
A.P. Mark Dispoto 646-3531

S.I.S.

A.P. David Yucht, Chief 646-2043

MAJOR CRIMES

A.P. Ike Gavzy, Chief 646-2370

NARCOTIC TASK FORCE

A.P. James Donohue, Chief . 556-2500 x-5501
A.P. Catherine Fantuzzi 556-2500 x-5502

MONEY LAUNDERING SQUAD/INSURANCE FRAUD

A.P. David Nathanson, Chief 556-2500 x-5504
A.P. MaryAnn Salemi (Forfeiture) . . 646-2415

CRIMINAL INVESTIGATION DIVISION/ TERRORISM

A.P. Ralph Lilore, Chief 556-2500 x-5503

news

At the December joint meeting of the Criminal Practice Municipal Court Committees, Municipal Court Judge, Presiding Judge and Vicar Roy F. McGeady, discussed the likely impact on municipal court of the coming "best practices" revisions. The short version is that the revisions will impact attorneys very little. The three most important changes: *all* municipal court cases, not just DWI cases, must be disposed of within 60 days; there will be a standardized adjournment policy, requiring a request at least four days prior to the trial date; and a standardized bail schedule will likely be developed. Uniformity in having the State produce the first brief in warrantless searches was discussed, as were seminar topics. Members are urged to contact committee chairs with seminar suggestions.

Judge Sebastian Gaeta Jr. has been appointed to the Criminal Division starting January, but will not sit criminal until a criminal courtroom is available.

reality bites

Ajealous husband from Tonbridge, England, who suspected his wife of cheating and placed a tape recorder in her bedroom to catch her *in flagrante delicto*, was convicted of her murder and sentenced earlier this year to life in prison. Being a stupid criminal – redundant? – Richard Cooper, forgot, however, to *turn off the tape recorder while he killed his wife*, and was recorded as shouting as he strangled her "You are the weakest link – goodbye." *And you thought host Anne Robinson was mean...*

