

34 Franklin St.
Lyons, NY 14489
January 14, 2008

Mr. Richard Healey
Wayne County District Attorney
Hall of Justice, Suite 202
Lyons, NY 14489

Dear Mr. Healey (and Mr. Shaw):

I write regarding pending traffic charges (including an AUO) with an appearance before Judge Forgione next Wednesday (Jan 21). I've been told that Mr. Shaw will be prosecuting. I wish to bring to your attention some additional information in the hopes that prosecution can be avoided.

Being arrested in front of my home on Nov 17th as part of some 'sting' operation between the State Troopers and the Lyons Police was an indignity. It seemed clear the timing was meant to 'roll me' before the scheduled court date on Wednesday (arrest the guy, ticket him, tow his car, and see if we can jail him). Having parked on my property I was very surprised the car was towed out of my driveway (I have filed a complaint with the State Police) – trooper Sousa was on a mission. A Lyon's police car was parked with his lights off only a few houses away and left after the arrest. I assume the direction came from a 'public servant' in the DA's office?

You may not be aware that State Trooper Sousa pulled me over at a road check point in Clyde about a month earlier. He told me: *I'm not going to write you a big ticket for AUO, just unlicensed operation... You can leave your car parked here and walk to your party [a family get together in Clyde], by the time you get back we'll be gone and you can drive home... I'm not going to be looking for you...*

Also, I had written to the Lyons Chief of Police and some other officials on September 17th <http://www.AKidsRight.org/support/forgione1.pdf>

I had passed many Lyons police in town since that date and nothing happened. I made a 'reasonable' inference that this is my local community, they understand some of the details of my situation, and as long as I don't get pulled over for another reason – I don't have to worry.

I am not the 'usual' criminal and you know I was always honest about my actions and treated people with respect and courtesy. I would have expected 'authorities', especially in my hometown to respond in a similar manner. A simple phone call to say, “John, we are not going to let it go anymore. If we see you, you will be arrested.” I never would have expected people to go out of their way to setup an arrest as part of their jobs.

Entrapment: We have attorneys who are members of our Family Law reform group and I did some on-line research to better understand entrapment. That one of the key issues is did law enforcement 'entice' someone to commit a crime who normally would have had no propensity to do so. I also saw that New York uses the 'objective' standard of proof.

<http://www.law.fsu.edu/Journals/lawreview/frames/253/lordfram.html>

The gravamen of the objective view of entrapment is whether the police conduct "**falls below standards, to which common feelings respond, for the proper use of governmental power.** ... [W]hen the agents' involvement in criminal activities goes beyond the mere offering of such an opportunity and when their conduct is of a kind that could induce or instigate the commission of a crime by one not ready and willing to commit it, then—**regardless of the character or propensities of the particular person induced**—I think entrapment has occurred.

I don't think it's a sure thing, but I think a jury of 'common' persons, when looking at the specifics of my conduct might agree. I plan on having the State Trooper and Lyons Police officer testify about who ordered their actions. At present I feel it may be someone in your office and I would plan to ask them to testify regarding the plans that were made and the motivation behind them.

I ask you to give me the name of anyone in your office who was involved in setting up that arrest and also the Lyon's police officer involved. I would plan on issuing a subpoena via the Court for their testimony.

Summary:

I'm sure you are aware that I spent 20 days in jail. I have also paid two fines in Macedon and Clyde for a total of \$470.00 – in addition I have turned the plates in for my car and stopped the insurance. I have not driven since the arrest on Nov. 17. I'm presently working with an attorney from Newark in an attempt to get this taken care of in Family Court (although that will take time).

I certainly hope, that in 'interest of justice', a lot of time & effort can be saved for all parties and consideration be given to dismissal or an ACD.

Best regards!

CC: Mr. David Shaw

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