

# THE NEW YORK CRIMINAL BAR ASSOCIATION

An Affiliate of the National Association of Criminal Defense Lawyers



## *NYCBA Members Newsletter*

Vol. 1, No. 2

November 2003

**Greetings.** This is the second issue of our new monthly newsletter - and we hope you will continue to send us your comments and suggestions about what you would like to see included each month.

### **President's Message:**

A great victory for criminal justice was won this past week with the settlement of the lawsuit brought by the New York County Lawyers' Association to raise the rates paid to court appointed counsel pursuant to county law 18-B.

[For a full report on that settlement, see "[Lawyers' Fees To Defend Poor Will Increase](#)," by Susan Saulny, The New York Times, November 13, 2003 - a copy of which has been posted on our Web site.]

Although the settlement matches the recent increase authorized by the state Legislature, the impact of the lawsuit as an impetus for the Legislature to act cannot be overstated. Additionally, with the settlement the lawsuit sets a critical precedent for other jurisdictions.

Our congratulations to NYCLA and to the law firm of Davis Polk & Wardwell who graciously and magnificently took on the representation of NYCLA on a pro-bono basis. Special recognition goes to Norman Reimer, a member of our Board of Directors and the President-Elect of NYCLA, whose vision and determination were critical to the success of this suit.

## Dues

Dues for the 2004 calendar year remain at \$95 and should be paid by December 31, 2003. For those of you who have not paid your 2003 dues, please do so immediately so that you can continue to receive the many benefits of membership (including this monthly newsletter) without interruption! If you are uncertain as to whether you are current in your dues, please contact our Treasurer, Leonard Levenson at (212) 721-0522. Dues may be paid by cash, check, American Express, VISA, or Mastercard.

## Upcoming Events:

### December 9, 2003: Annual Winter Holiday Party

There is still time to make reservations for our annual holiday party honoring Judge Bernard J. Fried. Our party, with its fabulous buffet, live music, and boisterous bar, will be held on **Tuesday, December 9, 2003 at 6 PM** at **SPQR Restaurant, 133 Mulberry Street**, New York, New York in "Little Italy." The cost of the party is \$80 for members, \$90 for non-members. Payment may be made by cash, check, American Express, VISA, or Mastercard. Please call our Treasurer, Leonard Levenson at (212) 721-0522 and make your reservation today. We look forward to celebrating the holidays with our members, our friends, and particularly Judge Fried and other judges who will be attending.

### Additional Events/CLEs of Note:

On Wednesday, **November 19, 2003**, 6:00 - 9:00 p.m., the **Association of the Bar of the City of New York** will be hosting a CLE Seminar entitled "***The New International Criminal Court: How to Represent Defendants, Victims & Witnesses***." This seminar, which will award 3 transitional CLE credits for those who attend, costs \$165 for ABCNY Members and \$255 for Non-members. For more information go to <http://www.abcny.org>

On Tuesday, **November 25, 2003**, at 6:30 p.m., **Fordham Law School** will be sponsoring a CLE seminar entitled "***Should Criminal Defense Lawyers Be Constrained by the Truth?: The Limits of Zealous Advocacy***." Panelists will include USDJ Michael B. Mukasey and Gerald L. Shargel, Esq. For information go to <http://law.fordham.edu/cle.htm>

On Friday, **December 5, 2003**, the **New York State Association of Criminal**

**Defense Lawyers (NYSACDL)** is sponsoring a CLE Seminar, entitled "***New York State Grand Jury Practice***," at St. Francis College, 182 Remson Street, Brooklyn, NY. For information, please contact Patricia Marcus at (212) 532-4434.

On Monday, **December 8, 2003**, 6:00 - 9:00 p.m., the **New York County Lawyers' Association** will be hosting a free forum entitled, "***Women in Criminal Law: Program For and About Professionals: Does gender matter and should it?***" For more information or to register call (212) 267-6646 or go to <http://www.nycla.org>

## **Forthcoming NYCBA CLE Seminar**

We are currently making plans to hold a CLE seminar in the near future which will examine the latest developments in legal resources that are on the Internet for the New York Criminal Defense Attorney.

Using our own Web site as the model, we will give participants a comprehensive overview of the many new and indispensable features that are available on the Internet. The seminar will be held in the Courtroom of the Future at the United States Supreme Court Courthouse, at 60 Centre Street, where you will have access to your own computer screen to follow our panel of experts as they guide you through practical examples of how to use some of the Internet's features to assist you in your practice. More details will follow shortly - but we note that our seminars are **free** to our Members.

**Articles and Briefs** - a monthly feature of some of the most noteworthy new postings on our Web site. Among the most recent postings are:

"[\*Third Party Guilt: The crucial role of defense theory instructions\*](#)," by Thomas Lundy, **The Champion Magazine**, September/October 2003 (published by our affiliate, the [\*National Association of Criminal Defense Lawyers \(NACDL\)\*](#))- which includes an interesting discussion of *People v. Primo*, 753 N.E.2d 164 (N.Y. 2001), where the New York State Court of Appeals rejected the necessity of showing a "clear link" between a third party and the crime in question prior to admitting evidence of third party guilt.

"[\*Reversible Errors - 2002\*](#)," a summary of the grounds on which criminal defendants received relief from the Federal courts in recent years through 2002, written by Alexander Bunin, Esq., Federal Public Defender, Northern District of New York.

## Web Site Features:

While we make changes on the NYCBA Web site on an almost daily basis, we plan to use this space each month to highlight some of the most significant new features that should be of interest to our Members. This month we feature the following items:

### Blawgs:

This past year has seen a dramatic growth of a new Internet phenomenon - namely web logs - or "blogs." Blogs are a type of personal online commentary on a specific topic, formatted to resemble an online journal - and, when they cover a legal topic, they have come to be known, appropriately, as "blawgs."

Because blogs and blawgs are easy to set up and maintain, they seem to grow exponentially: more than 100,000 new blogs came into existence this past year. Buried deep in that mountain of resources are some exceptionally good blawgs that can be very useful to the criminal defense attorney.

The [fedcrimlaw web site](#) (to which all Members of the NYCBA have free and unlimited access), maintains a special section devoted to blawgs for the criminal defense attorney, which can be accessed by going to [Key Websites - Blawgs](#) link on the Members page of that site.

Blawgs can be as simple as random musings about some matter of concern or interest to the author (known as a blogger); or they can be highly detailed studies of a particular subject in the vein of a law review article. Of course, as more and more lawyers seek to establish a blawg identity on the Internet in some real or esoteric field of expertise, the range, scope and quality of blawgs varies enormously.

Among the best and most useful of the blawgs noted on the fedcrimlaw site are:

[SCOTUSblog](#) - an excellent, informative running commentary on the latest developments at the Supreme Court which is maintained by the law firm of Goldstein & Howe in Washington, D.C.

[DaubertontheWeb](#) - an ongoing analysis of the latest developments affecting the admission of scientific evidence in both state and federal courts, under the standards established by the Supreme Court in *Daubert v. Merrell Dow*

*Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)

[FourthAmendment](#) - an online supplement to "Search and Seizure," (3rd Ed. 2000), by John Wesley Hall, Jr., Esq. of Little Rock, AR, containing the latest developments in Fourth Amendment law

[VisaLaw.com](#) - an "Immigration Law Portal" maintained by Messrs. Suskind and Susser, a large nation-wide immigration law firm, this site provides ready access to many timely immigration law issues and resources

## Media Links:

Under [Investigative Tools - Media Links](#) on the NYCBA web site we have provided you with access to the home pages of most of the major newspapers, radio stations and T.V. stations in the Metropolitan New York City area. The availability of these sites makes it easy to download copies of articles about any cases you have that achieve notoriety. Please let us know if you have additional links that you would like added to this site.

## Punch and Jurists Newsletter:

We remind you that one of the most invaluable benefits of membership in the NYCBA is the availability of a free subscription to the **Punch and Jurists** weekly criminal law newsletter (**P&J**) - a resource devoted exclusively to tracking useful decisions and noteworthy events affecting federal criminal practitioners. If you wish to have these newsletters e-mailed to you each week as they are issued - without charge - simply send an email by clicking [here](#) and simply type the word "subscribe" in the subject line.

As a sample of some of the cases covered in recent issues, we note that in last week's issue, P&J featured a decision entitled [U.S. v. Perella, 273 F.Supp.2d 161 \(D.Mass. 2003\)](#) in which Judge Gertner presented a thoughtful analysis of sentencing departures based on "extraordinary rehabilitation" - a topic that is particularly significant in light of the recent efforts by Congress to cut back on downward departures. In her decision, Judge Gertner explained her reasons for granting a downward departure to a sentence of probation for a defendant whose drug addiction led to a spree of three bank robberies; but who then responded positively to various court-ordered drug treatment programs and turned his life around.

In Issue No. 38, P&J featured a decision entitled *U.S. v. Campanelli, 270 F. Supp.2d 467 (S.D.N.Y. 2003)* in which Judge Haight rejected the Government's efforts to increase a defendant's sentence by five levels, pursuant to U.S.S.G. § 2B3.1(b)(7), based on its allegations that the co-conspirators "intended" to steal more than \$1.5 million in payroll money from The New York Times Company. Finding that the Government had proved "no more than hopes and informed beliefs" about what the co-conspirators intended, the Court ruled that Government had totally failed to carry its burden of proof up to a reasonable certainty as required.

## Judicial Screening and Nominations:

The Mayor's Advisory Committee on the Judiciary has solicited our assistance in evaluating individuals submitting their application for consideration by the Committee for a judicial position.

If any member has information bearing upon the candidacy of the following individuals, please contact us at [stulman@aol.com](mailto:stulman@aol.com).

- **Alex J. Zigman, Esq.**, Bronx County District Attorney's Office
- **David E. Liebman, Esq.**, 277 Broadway, New York, New York
- **Robert Mauer, Esq.**, 1205 Franklin Avenue, Garden City, New York (resident of Queens County)
- **Cheree A. Buggs, Esq.**, New York City Council, Human Services Division
- **Donald Leo, Esq.**, New York County District Attorney's Office
- **Frank M. Glasser, Esq.**, New York County District Attorney's Office
- **Matthew A. Sciarrino, Jr., Esq.**, Supreme Court, Staten Island

Lastly, don't forget: this is your Newsletter. We can only improve its content and its quality if you let us know what you like and what you don't like - or if you find any broken links. So, please stay in touch and send us all of your comments and suggestions.

Yours for a better defense,

Harvey Fishbein  
President

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### Internet and Newsletter Committee:

Harvey Fishbein  
Scott Tulman  
Peter G. Schmidt  
Michael K. Bachrach