

# THE NEW YORK CRIMINAL BAR ASSOCIATION

An Affiliate of the National Association of Criminal Defense Lawyers



## *NYCBA Members Newsletter*

Vol. 1, No. 4

January, 2004

**Greetings** and, on behalf of your Officers and your Board of Directors, I send my best wishes to all of our Members for a Happy and Prosperous New Year.

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

As we celebrate the significant raise of the 18(b) rates on January 1 st , we note at the same time a decrease in case loads and arraignment opportunities for the same attorneys. I can report that steps have been taken to insure a fair distribution of re-assignment cases and arraignment shift opportunities. However, any member who feels he or she has not received a fair opportunity, or who is aware of some inequity in the assignment of 18(b) cases, please contact me.

Finally, with the new year, I remind you to pay your annual dues so that you can continue to receive this newsletter and continue to have access to our web site.

### **Upcoming Events:**

**March 1, 2004, 6:00 - 9:00 p.m.**

**BEWARE OF FALSE CONFESSIONS: Should All Custodial Interrogations of Crime Suspects Be Video-taped?**

A public forum co-sponsored by the New York Criminal Bar Association, the Justice Center, the New York County Lawyers' Association's Civil Rights Committee and

Criminal Justice Section, and the New York Women's Bar Association.

Featuring:

- Hon. Richard A. Brown, Queens County District Attorney
- Hon. Amy Klobuchar, County Attorney, Hennepin County, Minnesota
- Christopher Dunn, Associate Legal Director, New York Civil Liberties Union
- Russell Neufeld, Attorney in Charge Criminal Defense Division, Legal Aid Society
- The New York City Police Department Legal Matters Department
- Eugene Nathanson, Chief Draftsperson of NYCLA's Resolution calling for the Videotaping of all Custodial Interrogations

(Additional Speakers to be Announced)

## Electronic Postmarks:

One of the most exciting new developments on the horizon is the advent of **Electronic Postmarks®** - a method of signing and sealing documents sent by e-mail. Because electronic postmarking can provide significant benefits to attorneys in particular, we have set forth below some general information about such program that is currently available - although there will undoubtedly be some new and simpler programs, tailored for lawyers, that will soon be offered.

While easy to use, cheap and efficient, e-mails are still considered unreliable, particularly for legal matters because (a) it is easy to fake the identities of the parties involved, (b) there are no acceptable receipts to prove that a party has received a transmission (and it is too easy to alter the time-stamp records and fool with the records using the regular e-mail process), and (c) until now, there has been no method of assuring confidentiality of the e-mail message or the attached documents.

Thus, most lawyers still prefer to use FedEx and UPS or similar services as the only safe means of shipping documents to other lawyers and to the courts - principally because the delivery can be tracked and the sender gets a receipt that can prove the time and date of delivery.

Recently, four companies have joined together to provide a means of giving e-mails the same security features through a new program known as **Electronic Postmarks® - or USPS EPM®** (herein the "**USPS System**"). Using this new program, you will be able to prove that a secure document was sent to and received by your recipient because you will receive a unique electronic receipt for each e-mail sent. Since the new program will operate under the auspices of the United States Postal Service, senders will also gain the protections of all the Federal mail-fraud laws - and electronic postmarking may even become a valuable tool in the war on spam.

We think that one of the most significant markets for electronic postmarks will be within the legal community because the system will help to eliminate some of the inherent and critical deficiencies of e-mails: it will provide a new method of transmitting documents to other lawyers and to the courts that will be faster, more secure and significantly cheaper than the comparable services currently used by most lawyers, such as FedEx, UPS, private messengers, etc.

Under the **USPS System**, once a lawyer has established a secure Electronic Postmark account, documents can be sent at a cost of less than 80 cents each - depending on the volume of purchase. For example, if you purchase a block of 100 units at a cost of \$60, the price of the Electronic Postmark for each e-mail message will be \$.60 - a cost that is significantly cheaper than FedEx's current standard overnight rate of approximately \$30.00.

Without getting too complicated, the **USPS System** has been developed jointly by the **United States Postal Service (USPS®)**, a company known as **AuthentiDate®**, another company known as **GeoTrust, Inc.®**, which is in the business of supplying Secure Digital Certificates for Internet transactions, and **Microsoft®**.

The quickest and easiest way to learn about and see how the new system works is to go to <http://www.authentidate.com/flash/epmdemo.html> and click on the "View Demo" button. The New York Times recently published an article on the **USPS System**, and for those interested a copy of that article is attached.

You should also go to the USPS EPM site at <http://www.usps.com/electronicpostmark/welcome.htm> for further information about setting up a USPS EPM account.

We warn you, in advance, that getting started with the **USPS System** is both complicated - and a bit premature; but we also believe that you should start learning about this new concept because it is destined to change a lot about how

lawyers will use e-mails.

The **USPS System** is complicated because signing up for this service is a four-step process, as follows:

- you first have to download some free software from USPS to enable you to electronically "sign and seal" your documents. Currently, the software you need for this purpose can be downloaded at: [http://www.uspsepm.com/epm/epm\\_office\\_ext/index.htm](http://www.uspsepm.com/epm/epm_office_ext/index.htm)
- next, you will have to download a new Microsoft extension to use on your documents (which so far is available only on a limited number of Microsoft products). Currently, the required extensions can be downloaded at: <https://www.uspsepm.com/crm/downloadEPMOffice.adate>
- next, you will have to purchase a block Electronic Postmark units which are used each time you send a USPS EPM. The units come in block sizes of 25, 100, 1,000 and up. To see the current prices, go to: <https://www.uspsepm.com/crm/epmPricing.adate>
- finally, you will need to purchase a personal Digital Certificate or ID from GeoTrust for a cost of \$19.95 for a full year. To sign up for your Digital Certificate (and learn how they are used), go to: <http://www.geotrust.com/uspsepm/>

The **USPS System** is also a bit premature - at least in the sense of implementing the system for personal use. In other words, while the concept itself is very timely, the use of **USPS System** is still quite limited because:

- so far, the new system works only for Microsoft Word XP and Microsoft Word 2003. However, Microsoft has announced that extensions for other versions of Microsoft Word, and for other Microsoft Office products, including Outlook and Excel, are forthcoming and are expected to be released over the coming months. In addition, companies like Adobe and Corel have announced plans to include Adobe PDF documents and WordPerfect documents within the **USPS EPM** program.

- so far, we are unaware of any court sites that permit electronic filing of documents which have signed up for the new **USPS EPM** package - but we have been told that more than 100 courts, nationwide, are considering using this system as a means of giving receipts for documents filed over the Internet.

We will keep monitoring the **USPS System** and any comparable programs that are developed; and we will keep our members apprised of any new developments - particularly when the courts start signing up and what new products have been included in the program. Ultimately, we will also put together a brochure for our Members which will give them detailed instructions to help them sign up when the time becomes ripe. In the meantime, if you come across any good articles about electronic postmarking, in general, please send them to us.

## 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).

- Deborah Hickey, Esq., Office of the New York County District Attorney, One Hogan Place, New York, New York 10013
- Robert J. Masters, Esq., Office of the Queens County District Attorney, 125-01 Queens Blvd., Kew Gardens, New York 11415

## 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:

## Notable Decisions:

In an effort to keep our Members apprised of the latest and most noteworthy

decisions, we are in the process of adding a new feature to our Web site which will be devoted to providing to significant new decisions (both Federal and State) which are often difficult to locate.

In fact, we have already been providing links to such cases on the ***What's New - Recent Articles*** page of our Web site. For example, we recently posted a copy of an article from the January 23, 2004 issue of the New York Law Journal, entitled "[Prison Bureau's Halfway House Rule Rejected](#)." That article referred to an order issued by Judge Richard J. Holwell of the S.D.D.Y. in *Zucker v. Menifee, No. 03 Civ. 10077 (RJH) (S.D.N.Y. Jan. 21, 2004)*. At the time we posted the article, we also posted a link to Judge Holwell's order.

The new ***Notable Decisions*** page on our Web site could become a resource of great value to our Members - but only if you alert us to new decisions of interest and, hopefully, write a brief summary of the significance of the decision. Then, just send your summary, together with a copy of the decision, to us at [decisions@nycrimbar.org](mailto:decisions@nycrimbar.org). The attachments must be in one of the following formats: either a link to a site on the Internet where the decision can be obtained, or in Microsoft Word, WordPerfect or PDF format.

## Legal Research:

We are constantly adding new features to our Web site to assist and guide our Members in their online legal research efforts. Thus, as an example, under ***Briefs and Motions - Legal Memoranda***, we recently added a copy of 2004 version of the compilation of cases known as "[Errores Juris](#)" (formerly known as "Reversible Errors"), which is prepared annually by the Office of the Federal Public Defender for the Districts of Northern New York and Vermont. This current and comprehensive compilation presents an up-to-date listing and summary of cases in which criminal defendants received relief on their appeals from a United States Court of Appeals or the U.S. Supreme Court.

To maximize the distribution and use of this important legal research tool, we have also attached a copy of [Errores Juris 2004](#) to this Newsletter in PDF format.

## Telephone Directories:

The NYCBA Web site maintains an expansive list of telephone numbers, all of which can be quite useful on a daily basis. For example, under "Telephone Directories" there are listings for Federal, State and City courts, agencies, police precincts and prosecutors. A regularly updated list of the direct telephone

numbers of every Assistant in the Eastern and Southern District U.S. Attorney's Offices can be found, which may be particularly useful when attempting to reach an Assistant after hours.

We also maintain a NYCBA membership directory, listed under "Member Info." Unfortunately, our records are only as accurate as the information you, our members, provide. So we highly encourage all members to double check the information we have listed for you. If there are any errors please alert us immediately.

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  
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