

THE NEW YORK CRIMINAL BAR ASSOCIATION

An Affiliate of the National Association of Criminal Defense Lawyers



NYCBA Members Newsletter

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May, 2004

Greetings and welcome to the May 2004 issue of our Newsletter. Don't forget our annual dinner on June 2, 2004.

President's Message:

As detailed below, our annual dinner is next week at Tavern on the Green. I am very pleased to announce that our Board of Directors has voted to designate the award given to our honoree each year as "The Robert Louis Cohen Award for Professional Excellence" in honor of our founding President.

As I recently wrote to Judge Cohen, now retired, I cannot think of a more appropriate name for the award. His excellence, both as a practitioner and as a Judge, epitomizes the purpose and intent of the award. Congratulations.

Upcoming Events:

June 2 , 2004 - The NYCBA Annual Dinner

This is your **last chance** to join us for our annual dinner at the beautiful Tavern on the Green in Central Park. This year's event will be held next **Wednesday evening, June 2, 2004**, starting with cocktails at 6:00 pm, followed by dinner at 7:30. As most of you know, this event is one of the highlights of the year.

So, if you have not already done so, make your reservations today: either send a

check to our Treasurer, Leonard J. Levenson, Esq. at 225 Broadway, Suite 1804, New York, NY 10007 - or call his office at (212) 732-0522 to charge your seats to your credit card (American Express, Visa or Mastercard only.) The cost of the dinner is \$150.00 for Members and \$170.00 for Guests.

Our honoree this year will be one of our former Presidents - Martin B. Adelman; and our Guest Speaker will be former U.S. District Court Judge John A. Martin, who resigned from the Bench last June, stating that he "[no longer wanted to be part of our unjust criminal system](#)."

Big AOL E-mail Problem:

If you use AOL to receive your e-mails, we may no longer be able to send you this monthly Newsletter by e-mail. AOL has recently instituted a new anti-spam program which is so indiscriminate that it blocks e-mails from anyone who sends more than three simultaneous e-mails to AOL customers - which, of course, is exactly what we must do to send out our monthly Newsletter and other announcements that are important to our Members.

The problem is further complicated because AOL will only accept complaints from its own customers. So, if you are an AOL subscriber, we urge you to complain to AOL - loudly and as often as it may take - before this stupidity becomes so entrenched that it blocks important e-mails from many of your own valid and valuable sources.

After days of trying to sort through this mess, we finally learned that AOL customers must call the AOL Postmaster - at (888) 212-5537 - to request that incoming mail from the NYCBA be unblocked. If you would like a more technical explanation of this latest AOL fiasco, go to <http://www.sfidboard.com/showthread.php?t=41644>

Web Site Features:

While we make changes on the NYCBA Web site on an almost daily basis, we try - each month - to point out some of the most significant new features that should be of interest to our Members.

At the top of each page of our Web site there is a MAIN MENU BAR listing various

"buttons," most of which contain sub-menus. This month we feature the following items:

Computer Tips:

For those who use (or want to learn how to use) PDAs (such as Palm Pilots) to help you organize your life as a lawyer, we highly commend for your review a recently published article entitled "[*A Day in the Life of a PDA Enabled Lawyer*](#)," written by Nashville attorney Barry Neil Shrum. Mr. Shrum's illustrated "show-me-how" lessons take some of the mystique out of setting up and using PDAs.

For example, he explains how to set up features such as the built-in calendars and contact management programs; and he reviews some of the amazing software and hardware options that are now available for PDAs. Check out, for example, his discussion of how easy it is to use a portable "electronic highlighter" that enables you to scan up to 500 pages of text while sitting on a bus or subway and then copy it to your computer. One basic model costs \$99.99 - and it fits in your jacket pocket.

Another outstanding feature of Mr. Shrum's article is his detailed listing of packaged software that is now available for the Palm Pilot. Here, for example, is his listing of software packages of legal resources for the New York attorney that are now available for your Palm Pilot:

- New York City Building Code (34th Edition) (\$49.95)
- New York City Police Department Patrol Guide (2004 Edition) (\$49.95)
- New York Civil Practice Law and Rules Handbook (35th Annual Edition) (\$49.95)
- New York Confessions Judge John J. Brunetti (\$49.95)
- New York Consolidated Laws (NYCU™) (15th Annual Edition) (\$49.95)
- New York Corporation Law Handbook (2003 Edition) (\$49.95)
- New York Court Forms (2004 Edition) Eugene W. Salisbury (\$49.95)
- New York Criminal Procedure Law (34th Annual Edition) (\$49.95)
- New York Estates, Powers and Trusts Law and Surrogate's Court Procedure Act
- New York Estates, Powers, and Trusts Law (E.P.T.L.) (39th Annual Edition)
- New York Family Law Handbook (2004 Edition) (\$49.95)
- New York Law Digest (2004 Edition) (\$49.95)
- New York Law Enforcement Handbook (2004 Edition) (\$49.95)
- New York Legal Forms and Procedures Handbook (\$49.95)
- New York Manual for Police (\$49.95)
- New York Penal Law (38th Annual Edition) (\$49.95)
- New York Penal Law and Criminal Procedure Law (2004 Edition)
- New York Penal Law, C.P.L., V.T.L., NCIC Codes, & Related Statutes (\$49.95)

New York Real Property Law Handbook (2004 Edition) (\$49.95)
New York Search and Seizure (14th Edition) Barry Kamins (\$49.95)
New York Surrogate's Court Procedure Act (S.C.P.A.) (2004 Edition) (\$49.95)
New York Vehicle and Traffic Law (2004 Edition) (\$49.95)

In short, this is an article that you should print out, save and read when you have some free time.

Recent Notable Decisions:

We have posted the New York Court of Appeals decision in [People v. Stultz](#) - where the Court adopted the *Baldi* standard for appellate review of claims of ineffective assistance of counsel. See "[Standard is Set for Ineffective Appellate Counsel](#)," by John Caher, New York Law Journal, May, 5, 2004.

We have also posted Judge Cedarbaum's recent decision in [U.S. v. Stewart, No. 03 Cr. 717 \(MGC\) \(S.D.N.Y. May 5, 2004\)](#), in which she denied Martha Stewart a new trial based on allegations that one of the jurors had deliberately concealed material information from the defense.

Briefs:

We have posted the [Brief](#) and [Reply Brief](#) submitted by **Diarmuid White, Esq.** to the Second Circuit in [Francolino v. Kuhlman, No. 02-2617 \(2nd Cir. April 20, 2004\)](#). In that ruling, the Circuit finally rejected petitioner Joseph Kuhlman's long running battle to obtain habeas relief based on the state practice of "judge-shopping." The Court ruled that, while prosecutorial judge shopping "raises serious concerns about the appearance of partiality," the practice does not automatically entitle a defendant to habeas relief in the absence of a showing of actual prejudice.

Legal Memoranda:

Through the courtesy of Richard Ware Levitt, Esq. and the NYSACDL, we have posted a copy of Mr. Levitt's recent article in which he presented a discerning analysis of the Supreme Court's recent decision in [Crawford v. Washington, 124 S.](#)

[Ct. 1354 \(2004\)](#). As we are all beginning to understand, *Crawford* has dramatically changed the legal landscape of the admissibility of "testimonial hearsay" under the Confrontation Clause; and it overruled long-standing Second Circuit precedent on that issue. Mr. Levitt's article helps the criminal defense practitioner understand the scope and the direction of the many changes that can be expected to flow from the *Crawford* decision.

I look forward to seeing all of you at our annual dinner on June 2.

Yours for a better defense,

Harvey Fishbein
President

Internet and Newsletter Committee:

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