

THE NEW YORK CRIMINAL BAR ASSOCIATION

An Affiliate of the National Association of Criminal Defense Lawyers



NYCBA Members Newsletter

Vol. 1, No. 9

June, 2004

Greetings and welcome to the June 2004 issue of our Newsletter - our final issue until the fall.

President's Message:

As detailed below in the report from our Dinner Chairperson, Genay Ann Leitman, our annual dinner was a great success; and I especially want to thank all who worked so hard to make that dinner one of the outstanding social events of the year.

I also urge all Members to pay particular attention to the notice below (and to watch our Website for updates) about the havoc that AOL and other Internet Service Providers (ISPs) have been creating for many organizations across the country who rely on emails as the preferred form of communication with their members.

Annual Dinner:

Set forth below is the Report we received from Dinner Chairperson Genay Ann Leitman regarding the Annual Dinner that was held on June 2 , 2004:

Dear Members:

Once again, and thanks to the nearly 300 strong that attended, our Association's

Annual Dinner on June 2nd was a huge success. This dinner is always the highlight of the season for all of us to mingle, and this year was no exception. Fortunately, the forecast of thunderstorms proved wrong - and we were able to enjoy our cocktail hour in Tavern on the Green's gorgeous garden. The bar was stocked, the food was plentiful, and the congeniality was unsurpassed.

This year we honored Marty Adelman - and Judge John Martin was our guest speaker. Dinner was served in the Crystal Room and the music of John Halsey and his orchestra filled the evening. We even spotted some of our members and their guests dancing in the aisles.

We look forward to seeing you again next June.

Genay Ann Leitman
Dinner Chairperson and Board Member

Upcoming Events:

July 28-31, 2004

NACDL Annual Meeting and Seminar

"[The Power of Persuasion - Winning Over Judge and Juries](#)"

The Argent Hotel

San Francisco, California

For more information and registration details, click [here](#)

September 10, 2004

"[Appellate and Post-Conviction Practice](#)"

NYSACDL CLE

St. Francis College

Brooklyn, New York

For information and registration details, call Patricia Marcus at (212) 532-4434.

The Republican National Convention:

No, we are not converting our Newsletter into a political forum - but we do wish to bring to your attention an urgent request for help from the National Lawyers Guild (NLG).

As you know, the Republic National Convention (RNC) will be held in New York

City this summer from August 29 to September 2, 2004. The New York City Police Department has already predicted that there will be thousands of arrests during the RNC.

As more fully explained in the [attached letter](#) from the NLG, and on its [Web site](#), the NLG is organizing a Mass Defense Committee; and it is seeking volunteer lawyers to handle arraignment shifts during the Convention, to represent arrestees (pro bono or at reduced rates), or to do other legal work that may be required. If you are interested in helping out, fill out the [attached questionnaire](#) and return it as soon as possible to the National Lawyers Guild Office (RNC Volunteers) at 143 Madison Ave., 4th Floor, New York, NY 10016.

If you have any questions about this task, please call Bruce Bentley at (212) 679-6018.

AOL E-mail Problem:

As we noted in our May Newsletter, AOL (now joined by several other ISPs) recently instituted a series of new procedures designed to help cut down on spam mail, but which also unintentionally affects organizations such as ours who rely on emails as the principal means of communication with their Members. The problem is that if we send out bulk emails to our Members, some ISPs automatically assume that we are sending spam - and the new procedures they have implemented automatically intercept and reject all of our emails that go to their customers.

In addition, in its arbitrary and self-serving method of imposing its will on its customers, by default AOL automatically disables all links and all images that are contained in emails that we (or you) send - unless the sender's name has been added into the recipient's address book.

We have posted detailed procedures on the Newsletter page of our Web site that explains what **YOU** must do to solve this problem. (AOL and the other ISPs will only accept complaints from their own customers; so we can't help from this end.) Effectively, you have to make certain changes in the email program that you use to make sure that we are listed as a "safe" sender. But we also urge all of our Members to complain loudly and often to AOL - since these new email restrictions can and will affect your ability to use emails in your practice of the law.

Imagine not being able to send co-counsel a link to an important case - or not being able to file a PDF document with a court- or not being able to send a picture

of your child to a family member - all because the recipient has not yet added your email address to his or her list of approved senders!!!!

Our advice - switch to another ISP!

News You Can Use:

- The New York City Department of Corrections has announced that attorneys who possess a Unified Court System Attorney Secure Pass will no longer need to obtain a separate DOC attorney pass to gain admission to Department facilities. The green DOC card which was previously required is no longer needed. For details, click [here](#).
- For those interested in following the daily proceedings in the Lynne Stewart trial, [Cryptome.org](#) posts on a daily basis the transcripts of each day's proceedings, including the jury selection and the pre-trial hearing transcripts.

Feeney Amendment II?

We have received a really depressing email from David Beneman, who is the CJA Resource Counsel from Maine and a Member of the NACDL. David alerts us to a new stealth attack that Congressman James F. Sensenbrenner, Jr. (R.Wisc.) is mounting on what remains of judicial discretion under the Federal Sentencing Guidelines.

Sensenbrenner has proposed a new law, H.R. 4547, which he euphemistically has entitled "Defending America's Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2004." You can read the full text of that bill by going to the Thomas legislative Website at <http://thomas.loc.gov/> and then typing in "H.R. 4547" in the Bill Number search box.

Masquerading as a law that champions drug treatment while protecting children, H. R. 4547 is just another attempt to shift power from judges and the federal sentencing commission to federal prosecutors while implementing even harsher mandatory minimum sentences for drug crimes: this time, for the distribution of drugs (including marijuana) to minors.

Among other things, David Beneman has noted that the new bill, if passed:

"creates new mandatory life sentences without possibility of release for a variety of drug crimes, including virtually any federal drug conviction following two prior felony drug convictions (including prior state felonies). It directly repeals most of the few guidelines provisions that the Commission has managed to pass over the last few years ameliorating the severity of federal drug laws for first-time and low-level offenders (including, for those who follow such things, the minor role cap). It further restricts judicial sentencing discretion . . . and it grants the Justice Department even more leeway to control departures from the guidelines when the Department deems it desirable to do so."

We have posted the full text of David's email on the Bulletin Board Section of this Web site. Click on the "[Bulletin Board](#)" button on the MAIN MENU BAR, and then, under "Read Messages," select the item called "New Proposed Changes to the Federal Drug Laws."

As Chairman of the House Committee on the Judiciary, Congressman Sensenbrenner is an extremely powerful force in Congress; and he will certainly attempt to tack H.R. 4547 on to some essential bill with the hope that Congress will be forced to accept it without any debate - as happened when the Feeney Amendment was passed. So, send an email to your Congressman or Senator - today - to warn about the dangers of this new bill!

House Resolution 568

As we are all aware, the past four years have seen a dramatic shift in the United States from international cooperation to international isolation. A recent example of this is [House Resolution 568](#) - "Prohibiting Consultation of Foreign Laws and Courts" - sponsored by Rep. Tom Feeney, among others. This resolution was sent to the House Committee on the Judiciary on March 17, 2004. It expresses the sense of Congress that "judicial determinations regarding the meaning of the laws of the United States should not be based on judgments, laws, or pronouncements of foreign institutions, unless such foreign judgments, laws, or pronouncements inform an understanding of the original meaning of the laws of the United States," and proclaims that "Americans should not have to look for guidance on how to live their lives from the often contradictory decisions of any of hundreds of other foreign organizations." Essentially, the Resolution attempts to codify an unfortunate and arrogant belief that the United States holds a moral authority over the rest of the world, and prohibits United States courts from basing its decisions on the laws or decisions of other nations.

Although this Resolution may appear on its face to have more substantial effect on trade agreements, contracts, and the like, the effect on the criminal bar could be equally disastrous. The National Association of Criminal Defense Lawyers (NACDL) has issued a [response](#), stating, in part: "Our Constitution protects us from being bound by foreign laws but its original intent was never to blind us to foreign law."

The New York County Lawyers' Association (NYCLA) is currently compiling a full report, arguing against the passage of this law. Anyone interested in participating in NYCLA's report should contact NYCBA member Michael Bachrach at <mbach2000@yahoo.com>.

Judicial Screening and Nominations:

The Mayor's Advisory Committee on the Judiciary is required to make recommendations to the Mayor concerning the qualifications of incumbent judges for appointment or reappointment to the Criminal Court, the Family Court, and the Interim Civil Court; and that Committee has solicited our assistance in evaluating the following three individuals, all of whom are currently serving as Criminal Court Judges, and all of whose terms expire at the end of 2004:

- Judge Gerald Harris
- Judge Pauline A. Mullings
- Judge Megan Tallmer

The Committee requests that you inform them of any personal experience you have had regarding the above judges as to judicial temperament, treatment of attorneys, litigants and court personnel, fairness, ethics, legal ability, industriousness, case management skills, knowledge of current substantive and procedural law, etc. If the information is adverse, then the Committee requests that it be specific and, in some manner, verifiable. The Committee can be contacted at 36 West 44th Street, New York, NY 10036, or by telephone at (212) 944-6225.

Summer Reading:

The summer months are always a good time to catch up on reading that pile of cases sitting on your desk. To help you accomplish that task, we have listed below a number of the more significant Supreme Court decisions from the current term, and we recommend that you click on the links below, print out the decisions, and

start going through this list:

[Blakely v. Washington, 124 S.Ct. ____ \(No. 02-1632, June 24, 2004\)](#)

[Crawford v. Washington, 124 S.Ct. 1354 \(No. 02-9410, March 8, 2004\)](#)

[Hiibel v. Sixth Judicial Dist. Court of Nevada, 124 S.Ct. ____ \(No. 03-5554, June 21, 2004\)](#)

[Thornton v. United States, 124 S.Ct. 2127 \(No. 03-5165, May 25, 2004\)](#)

[Yarborough v. Alvarado, 124 S.Ct. 2140 \(No. 02-1684, June 1, 2004\)](#)

Web Site Features:

Each month, we try to point out some of the latest resources that we have posted on our Web site at www.nycrimbar.org/. In keeping with that tradition, we note the following items:

Briefs:

Under the "Briefs and Motions" button on the MAIN MENU BAR, we have recently added the following items:

- On February 26, 2004, the [Center for Constitutional Rights](#) (CCR) and several other parties filed a lawsuit against the New York State Department of Correctional Services (DOCS) and MCI WorldCom Communications, Inc. (MCI), on behalf of family members and lawyers of individuals incarcerated in New York State Prisons. The suit challenges the high rates and expensive commissions or "kickbacks" that DOCS demands from recipients of collect calls from New York prisoners.

Under the DOCS' contract with MCI, MCI remits 57.5% of its prison revenue to the State, which puts this money in its general operating fund. Prisoners have no choice but to use the MCI collect call system, and those who accept their calls are forced to pay outrageous rates to speak to their families and friends. In the lawsuit, CCR argues that this commission is illegal and unconstitutional, as it subjects prisoners' loved ones and counsel to an unlegislated tax, and impedes on their freedom of speech and association.

CCR is demanding a refund of the money, and a change in the policy for the future.

DOCS and MCI moved to dismiss the Complaint on various grounds, alleging jurisdictional defects and a failure to state a claim for relief. We have now posted on our Web site a copy of the [Brief filed by the CCR in Opposition to Defendants' Motion to Dismiss](#).

- We have also posted a copy of the [Memorandum of Law in Support of Martha Stewart's Motion for a New Trial Based Upon Government Misconduct](#), dated June 10, 2004.

Recent Notable Decisions:

- We have posted a copy of Judge Gleeson's opinion in [U.S. v. Hiruko, No. 03 CR 1124 \(JG\) \(E.D.N.Y. June 9, 2004\)](#), in which he granted the defendants' motions to suppress evidence of counterfeit money found in a car after finding that the Government had relied on false testimony.
- We have also posted a copy of the recent 175-page decision by Judge William G. Young in [U.S. v. Richard Green, No. 02-10054-WGY \(D.Mass. June 18, 2004\)](#), in which he blasted the Federal sentencing system as being unfair and he concluded that the Federal Sentencing Guidelines are unconstitutional.
- Finally, we have posted a copy of the New York State Court of Appeals decision in [People v. Stephen LaValle, No. 71, June 24, 2004](#), where, by a 4-to-3 vote, the Court held that New York's capital punishment statute violates the State constitution because of the manner in which the statute is worded: the law's fatal flaw was telling jurors a deadlock on punishment meant parole eligibility. Accordingly, the Court directed the State legislature to rewrite the statute if it wants to keep trying capital cases. [See, "[New York's High Court Voids State's Death Penalty](#)," by John Caher, New York Law Journal, June 23, 2004.]

Professional Notices:

On a trial basis, and in order to test the market for selling advertising space in this Newsletter, we are inaugurating with this issue a **Space for Rent Notice** from Member Joel Rudin, as follows:

Location: 200 West 57th St. (7th Ave.) - a charming, beautifully restored pre-War building opposite Carnegie Hall, near numerous subways, Central Park, and Columbus Circle redevelopment. I have 5 offices available in a 10-office, criminal defense suite. Brand-new construction and beautiful, classy, customized furnishings, French doors, crown and base moldings, 24/7 A/C controlled in the suite, windows open, all services provided including telephone reception. Available July 1, offices range from \$1900 to \$2800. Call Joel Rudin at 212 752-7600, ask for Theresa.

We wish all of you a wonderful summer.

Yours for a better defense,

Harvey Fishbein
President

Internet and Newsletter Committee:

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