

THE NEW YORK CRIMINAL BAR ASSOCIATION

An Affiliate of the National Association of Criminal Defense Lawyers



NYCBA Members Newsletter

Vol. 2, No. 9

June, 2005

Welcome to the June 2005 issue of our Newsletter. This is our final issue until the Fall, so we wish all of you a great summer.

President's Message:

Thanks to all of the members of the New York Criminal Bar Association, many with guests, who came to the annual dinner on June 1, 2005 and helped to make this such an enjoyable and inspiring event, attended by about 300 people on a beautiful summery evening at Tavern on the Green. And, special thanks to:

- **Larry Hochheiser** for delivering a serious message about successfully defending the apparently guilty - a young man who was induced to confess falsely to a murder; Larry received the Robert Louis Cohen Award "for excellence in the practice of law, maintenance of the profession's highest standards and his untiring work in support of the criminal practitioner." The award is named in honor of Judge Cohen, who founded the New York Criminal Bar Association in 1970 and served as its President for eight years until going on the bench; he recently retired as a Supreme Court Justice and is now serving as a Judicial Hearing Officer;
- **Murray Richman**, for serving as our as guest speaker and doing a counterpoint to Larry Hochheiser's remarks;
- **Larry Goldman**, for his attention-getting introduction of Larry Hochheiser; and

- **Leonard Levenson**, Secretary, and **Michael Bachrach**, Treasurer, for their hard work, and to Dinner Committee Co-Chairs **Genay Leitman** and Vice President **Mat Mari**, and Committee members **Neil Checkman**, **Nancy Ennis** and **Dan Hochheiser** for their contributions.

Judicial Screening and Nominations:

Amy L. Berlin, Esq., whose business address is New York County Family Court, 60 Lafayette Street, New York, NY 10013 has submitted an application for consideration by the Mayor's Advisory Committee on the Judiciary for appointment to the Criminal Court or the Family Court;

Laura Held, Esq., whose business address is New York City Department of Finance, 66 John Street, New York, NY 10038 has submitted an application for consideration by the Mayor's Advisory Committee on the Judiciary for appointment to the Criminal Court; and

Kevin B. McGrath, Jr., Esq., whose business address is King's County District Attorney's Office, 350 Jay Street, Brooklyn, NY 11201 has submitted an application for consideration by the Mayor's Advisory Committee on the Judiciary for appointment to the Criminal Court.

If anyone has any information that would bear upon these candidacies, please advise the Committee at 36 West 44th Street, Suite 1408, New York, NY 10036, Att. Desiree Kim (212-944-6225). All comments will be kept in confidence.

Federal Magistrate Judge Vacancies:

Robert L. Begleiter, the Chair of the U.S. Magistrate Judge Merit Selection Panel, has requested that all members read the [Public Notice](#) from the U.S. District Court for the Eastern District of New York (EDNY), dated May 4, 2005, seeking two new, full-time Magistrate Judges in the EDNY. Anyone with any suggestions about possible applicants for these two positions, please contact Mr. Begleiter directly at (212) 350-2707 or at rbegleiter@constantinecannon.com.

U.S. v. Booker Update:

For those interested in following the most comprehensive coverage of the latest *Booker* developments we continue to recommend three sources:

a) the special *Booker* Resource Center on the Internet maintained by *Punch and Jurists* at <http://www.ussguide.com/members/BulletinBoard/Booker/index.cfm/>;

b) Professor Douglas Berman's [*Sentencing Law and Policy*](#) site on the Internet; and

c) the [*Second Circuit Blog*](#), where various attorneys with the Federal Defenders' Unit of The Legal Aid Society present daily summaries of all the latest Second Circuit decisions, including detailed analyses of the latest *Booker*-related developments.

Among some of the more notable recent developments regarding *Booker*, we list the following items:

- "[*N.Y. Judge Says Courts May Weigh Range of Facts for Resentencing*](#)," by Mark Hamblett, New York Law Journal, May 31, 2005.
- "[*Gonzales got it wrong: Sentencing statistics reflect healthy sentencing system*](#)," by Mary Price, General Counsel, FAMM Foundation, June 23, 2005.

NYCBA Web Site Features:

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

- We have posted under the "Legal Research" button copies of the following articles of interest:
 - "[*Sentencing Tips for New York Lawyers: Obtain a Copy of the Presentence Report*](#)," by Alan Rosenthal. Esq.
 - "[*Anticipating BOP Issues at Sentencing and Representing Imprisoned Clients*](#)," by Stephen R. Sady, Chief Deputy Defender, Federal Public Defender's Office, Portland, OR, June 2005.
 - "[*White Collar Crime*](#)," by Robert G. Morvillo and Robert J. Anello, New York Law Journal, June 7, 2005.
 - "[*The Sound of Silence Post Arrest and pre-Miranda*](#)," by Benjamin E.

Rosenberg, New York Law Journal, June 19, 2005.

- We also remind our readers that we continuously post, under the "Legal Memoranda" section of the "Briefs and Motions" button on our Web site, various documents of use to practicing attorneys in New York. For example, that section contains a copy of the "[Risk Assessment Guidelines and Commentary](#)" used by state officials under the Sex Offender Registration Act ("SORA").

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 Finally, we note that we have posted the following recent cases of interest under the "Decisions" button:

- [Brown v. Greiner, No. 03-2242\(L\) \(2d Cir. June 3, 2005\) \(Judge Leval\)](#) - For two excellent, but dramatically different, summaries of the scope of this decision, see "[A Very Narrow Decision on New York's Persistent Felony Offender Law](#)," by Yuanchang Lee, Second Circuit Blog, June 8, 2005; and "[Circuit Upholds State's Persistent Felon Law](#)," by Mark Hamblett, New York Law Journal, June 6, 2005.
- [People v. Rivera](#), No. 86, Court of Appeals of New York, June 9, 2005 (Judge Rosenblatt) - For two excellent, but again dramatically different, summaries of the scope of this ruling, see "[New York Court of Appeals Upholds Persistent Felony Offender Law Despite Ring, Blakely, and Booker](#)," by Yuanchang Lee, Second Circuit Blog, June 9, 2005; and "[Panel Upholds State's Felony Offender Law](#)," by John Caher, New York Law Journal, June 10, 2005.
- [Courtroom Television Network, LLC v. The State of New York](#), No. 88, Court of Appeals of New York, June 16, 2005 (Judge G.B. Smith) - See "[Ruling Upholds Ban on Cameras in Court](#)," by Al Baker, The New York Times, June 17, 2005.
- [U.S. v. Martinez, No. 04-2075-cr \(2nd Cir. June 24, 2005\) \(Judge Sotomayor\)](#) - Here the Second Circuit held that "the Sixth Amendment rights of confrontation as elaborated in *Crawford v. Washington*, 541 U.S. 35 36 (2004), and of jury factfinding discussed in *United States v. Booker*, 125 S. Ct. 738 (2005), do not bar judicial consideration of hearsay testimony at sentencing proceedings." In support of its conclusion, the Second Circuit relied primarily on the half-century-old Supreme Court decisions of *Williams v. Oklahoma*, 358 U.S. 576(1959), and *Williams v. New York*, 337 U.S. 241 (1949). See,

"[Circuit Clarifies Use of Hearsay at Sentencing](#)," by Mark Hamblitt, New York Law Journal, Jun2 28, 2005.

News From the Web

- **Crime Time:** We note that the 2005 version of CrimeTime is now available for download. It incorporates the new Drug Law Reform Act sentencing so it is very worthwhile taking a look at in any drug case. You can reach it through this link: <http://owasco.co.tompkins.ny.us/distatto/crimetime.html>
- **Wiretap Resources:** For an excellent site devoted to wiretap resources, we recommend the site maintained by [EPIC.org](http://epic.org) (Electronic Privacy Information Center). Among the many interesting and helpful resources listed is a [Chart](#) which shows that out of 30,975 wiretap applications filed in both federal and state courts from 1968 through 2004, only 30 (less than one-tenth of one percent) were denied.

Comments and Newsletter Contributions Welcome

Comments on this and future issues of this Newsletter are most welcome, as are your own stories about cases, issues, arguments, events. etc. - whether just a sentence or a paragraph to alert us to a recent development, or a longer piece. Please send your material to Scott Tulman, Chair of the Internet and Newsletter Committee at Tel.: (212) 867-3600 or email: stulman@aol.com - or send your comments by email directly to our committee at: nycrimbar@nyc.rr.com.

Yours for a better defense,

Henry J. Steinglass
President
(212) 406-7700

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