



District Attorneys Association of the State of New York

Winter 2011

Volume 2, Number 3

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Message from the President

Hon. Derek P. Champagne, Franklin County District Attorney



I would like to thank all who participated in DAASNY's 2011 Winter Conference, held from January 26-28 at the Grand Hyatt Midtown in New York City. The conference highlighted the tremendous work that the Association has accomplished this past year and set forth a plan for advancing our commitment to prosecutorial excellence.

On the morning of January 28, the conference hosted a CLE on "Ethics: Leading By Example" expertly led by Linda Cantoni, Deputy Executive ADA for Queens County, Cyrus R. Vance, Jr., District Attorney of New York County, and Charles J. Hynes, District Attorney of Kings County. This CLE provided a comprehensive examination of how best to uphold our highest ethical standards.

I would also like to congratulate the award recipients who were recognized at the conference's closing luncheon. Through their integrity and dedication to prosecutorial best practices they serve as beacons of excellence for all public servants.

I look forward to working with the Association throughout the new year and to seeing the DAASNY members at the upcoming Summer Conference.

Spotlight On: Manhattan's Mental Health Court (MMHC)



On Friday, February 4, the Manhattan District Attorney's Office opened the Manhattan Mental Health Court (MMHC). The MMHC is a dedicated court part designed to provide comprehensive oversight and mental health treatment to eligible defendants. Through a system of intensive judicial monitoring of a defendant's progress, in conjunction with a support network, the Court works to ensure that offenders have the resources available to facilitate successful engagement in rehabilitation programs while maintaining

compliance with Court mandates.

Public safety concerns will be addressed by carefully selecting participants and holding them accountable for their actions. These defendants will then be connected with the appropriate mental health treatment programs. Participants will be evaluated by medical and psychiatric professionals and will have access to necessary medication and additional resources such as educational and vocational programs and substance abuse treatment.

In order to be eligible to participate in the MMHC, the offender must be diagnosed with a serious mental illness, i.e., a condition that meets the criteria for a DSM-IV Axis I psychiatric diagnosis. Presently, the MMHC will only consider defendants who are 18 years of age or older and who are charged with non-violent felony

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offenses. Their mental illness must have a significant impact on their everyday functioning and must also have contributed to the behavior that resulted in the arrest. Participation is voluntary and the offender must agree to treatment and enter into a plea agreement before starting the program. Because public safety is the foremost concern of the Court, crimes involving violence, sex offenses, and guns are not currently being considered.

If a defendant meets all criminal and mental health eligibility requirements and is willing to participate, the case will be adjourned for Federation of Employment and Guidance Services (FECS) to develop an appropriate Treatment Plan. FECS will provide the Treatment Plan to the Court, defense counsel, and the Special Litigations Bureau of the New York County District Attorney's Office. The Treatment Plan will set forth the level of care needed, frequency of treatment, court appearances, monitoring of medication compliance, and drug testing when appropriate.

If the defendant agrees to the terms of the proposed plea agreement and the Court consents to those terms, the case will be adjourned for the purpose of connecting the defendant to specific resources and programs consistent with the treatment plan. Upon a defendant's entrance into the plea, a MMHC Case Manager (who oversees a defendant's monitoring and compliance), and the Resource Coordinator will link the defendant to the appropriate services as provided for in the Treatment Plan. The defendant will also be connected with community resources, such as veterans' affairs, senior citizen services, adult protective services, day drug treatment, out-patient services, residential programs, educational and vocational training, job placement, substance abuse programs for participants with co-occurring disorders, and various forms of housing assistance.

If the defendant successfully completes the program and has been substantially compliant with the conditions of the treatment agreement, then, in accordance with the original agreement reached with the New York County District Attorney's Office, the defendant will earn a reduction of the plea and the agreed upon sentence will be imposed.

Winter Conference Award Honorees

At the DAASNY Winter Conference this past January, several outstanding prosecutors were recognized for their invaluable contributions to the safety and well-being of the residents of New York State.

The **2010 Morgenthau Awards** were presented to:



- **Anthony J. Girese** – Counsel to the Bronx District Attorney, Region One. Girese has spent over 40 years as an assistant district attorney practicing both appellate and trial work. His prosecutorial excellence is manifest in the transcripts of the hundreds of appeals that he argued before State and Federal courts as well as his prosecution of numerous high-profile murder trials. Girese is recognized throughout the Bronx DA's office for his deft legal advice and his unfaltering willingness to serve as a mentor for his colleagues. He has also shared his expertise as an invaluable member of DAASNY's Legislative Committee.
- **Anne J. Swern** - First Assistant District Attorney, Kings County, Region Two. In her over 30-year career as a prosecutor, Swern is recognized for her formidable trial skills and her visionary committed to problem-solving justice. She was instrumental to the formation of the state's first Mental Health Court and Treatment Alternatives; she helped institute fundamental changes to the Drug Treatment Alternative to Prison (DTAP) Program; she served on the New York State Commission on Drugs and the Courts; and she organized the innovative Veterans Affairs Advisory Council which helps divert veterans from prison

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Washington County

Richard M. Healy
Wayne County

Donald O'Geen
Wyoming County

Jason L. Cook
Yates County

and assists them in acquiring the help they need to recover from PTSD.

- **Joanne Perry** – Chief Assistant District Attorney, Broome County, Region Three. Perry has worked extensively as both a trial and appellate attorney for the past 28 years. She has served as an educator to fellow attorneys through editing the Broome County newsletter and leading numerous NYPTI trainings. She is also active in the Broome community through her volunteer work with the SOS shelter for Battered Women and the YMCA and YWCA. Perry is recognized throughout New York for her resolute integrity.
- **Sandra Dewarling** – First Assistant District Attorney, Monroe County, Region Four. Doorley has personally prosecuted more than 60 felony trials, including 20 homicides. She has also held numerous leadership roles in the office, including Chief of the DWI Bureau and Deputy Chief of the Major Felony Bureau. Currently, she supervises all homicide prosecutions and has assumed a leadership role in the prosecution of cold cases using DNA evidence. Doorley was the first woman to serve as First Assistant District Attorney in Monroe County.



The **2010 Hogan Award** was Awarded to the **Hon. Charles J. Hynes**, District Attorney of Kings County. DA Hynes has been a leader in the field of criminal justice for more than 20 years. As a steadfast advocate for enhancing the safety of all families, Hynes initiated the Brooklyn Family Justice Center – a one stop shop providing services for the victims of domestic violence and their

surviving children. In the fall of 2008, Mr. Hynes created a first-of-its-kind, alternative-to-prison program, Drew House, for female defendants convicted of a felony and their children. At Drew House, children are permitted to reside with their mothers while the women serve out their court mandates in a secure, community-based residential setting. DA Hynes also created a faith-based mentoring program called Youth and Congregation in Partnership (YCP) to provide support to court-involved youth from members of Brooklyn's churches, mosques, and synagogues. Additionally, he initiated one of the first Drug Treatment Alternative-to-Prison (DTAP) programs for chronic drug offenders in the country. DTAP has rehabilitated hundreds of non-violent drug addicts and has become a model for the nation. In 1999, DA Hynes started the ComALERT (Community And Law Enforcement Resources Together) public safety program which supports individuals on probation or parole as they re-enter their Brooklyn communities. And in 2005, he created the Girls Re-entry Assistance Support Program (GRASP). GRASP is specifically designed to meet the needs of young women between the ages of 13 and 25 who are returning to the community after placement in a juvenile or adult correctional facility. Thanks to his dedication and vision, DA Hynes has helped to forge a modern landscape for juvenile justice.

The **2010 Forfeiture Law Advisory Group Award** was presented to **Robert Nigro, Chief of the Civil Forfeiture Bureau in Nassau County**. Under his skillful leadership, the bureau collected over \$ 44 million in forfeited criminal proceeds and over 1,740 forfeited vehicles, primarily from DWI offenders. Nigro has also served as the long-time treasure of DAASNY.

The **2010 Fight Crime Invest in Kids Advocacy Award** was presented to the **Hon. Richard McNally**, Rensselaer County District Attorney Richard McNally received the Fight Crime: Invest in Kids Champion for Children" Award. Fight Crime: Invest in Kids, is a national anti-crime group of more than 5,000 police chiefs, sheriffs, district attorneys and violence survivors. DA McNally has been an active member with the group for three years, participating in news conferences and volunteering for other activities to raise awareness about effective children's programs.



The **2010 Lifetime Service Awards** were presented to:

- **Hon. Terrance M. Parker.** Prior to his current appointment as Allegany County Court Judge, DA Parker served as a prosecutor for his entire legal career, having joined the Allegany District Attorney's office as an ADA. During his tenure, Parker was instrumental in implementing and expanding the services offered by his office and the County. One such initiative was the formation of the Allegany County Drug Court, in which he remains an active participant. Moreover, under his leadership, the Allegany DA's office acquired a victim's advocate and sponsored an office for the CCAC in Allegany County which, among other things, provides a place to properly interview and record children who are victims of crimes. He has stated on many occasions that one of the things he will miss most is the attending the DAASNY conferences.
- **Hon. Gerald L. Stout.** DA Stout was recognized for his 19 years of dedicated and honorable service to the District Attorneys Association of the State of New York, to our State and to the citizens of Wyoming County. As District Attorney, he instituted progressive DWI and Domestic Violence programming, and he developed innovative revenue-saving practices for the county and the state. His steadfast commitment to the pursuit of justice has inspired attorneys throughout the state to strive for highest standards of prosecutorial ethics.

We thank all award recipients for their tireless work towards improving New York's criminal justice system through diligent prosecutions, creative initiatives, and a dedication to service.

Amicus Brief Update

Morrie Kleinbart, Appeals Bureau Chief, Richmond County District Attorney's Office

Amicus briefs were filed in both the Court of Appeals and the Appellate Division, Second Department. In the Court of Appeals, Westchester County Assistant District Attorney Steven Bender filed a brief on behalf of the association in *People v. Harnett*, a Schenectady County case in which defendant sought a ruling that his plea was unknowing and involuntary because he had not been advised of the possibility that he could be subject to civil commitment after he completed his sentence pursuant to the Sex Offender Management and Treatment Act (SOMTA). The Court recently rejected that notion. New York County Assistant District Attorneys Sara Zausmer and Patrick Hynes filed an amicus brief in *People v. Alonso*. In *Alonso*, the trial judge dismissed an indictment as a sanction for a discovery violation. When the People (the Attorney General) took an appeal, the Second Department dismissed it on the ground that the dismissal was pursuant to CPL Section 240.70(1), and the CPL does not authorize dismissal from such orders. The case is to be argued in March.

In the Second Department, Onondaga County Assistant District Attorney James Maxwell filed a brief supporting District Attorney Brown's position in *Matter of Brown v. Blumenfeld*, an Article 78 petition challenging Justice Blumenfeld's authority to consider, at a suppression hearing, whether a program in which assistant district attorneys interview arrestees at Central Booking before the commencement of criminal proceedings violated the Rules of Professional Conduct. Argument on this special proceeding is scheduled for March 11. Bronx County Assistant District Attorneys Tony Girese, Colleen Phillips, and Joe McCormack filed an amicus brief in *People v. Heidgen*, addressing a defense theory that intoxication is a defense to depraved indifference

murder and a claim that the evidence of the mens rea of depraved indifference was legally insufficient. This case has been argued and awaits decision.

We thank those who worked on these briefs and District Attorneys DiFiore, Vance, Fitzpatrick, and Johnson for allowing their assistants to work on these matters of statewide import.

If you have an amicus brief that the association filed, but which has not yet been posted on the website, please send it electronically or by mail to Morrie Kleinbart in Richmond County: morrie.kleinbart@rcda.nyc.gov or Morrie Kleinbart, Richmond County District Attorney's Office, 130 Stuyvesant Place, Staten Island, New York 10301.

District Attorneys who would like to request an amicus brief should contact DAASNY President Derek Champagne at dchampag@co.franklin.ny.us. Assistant District Attorneys should send amicus inquiries and requests to Lois Raff, Counsel to the Queens County District Attorney at LMRaff@queensda.org. Requests should be made as early as possible so that there is sufficient opportunity to evaluate the request and draft the amicus.