

The Year in Review

It was the best of times. It was the worst of times, . . .
we had everything before us, we had nothing before us.

Charles Dickens, *A Tale of Two Cities*

Well, it's that time. This column draws to a close my year as the 111th President of the New York State Bar Association. I have been privileged and honored to serve this great Association.

Being State Bar President is the greatest job in the world. For one thing, people take my telephone calls. For another, our members and our indefatigable staff continue to impress me with a desire to make a difference in our profession and in clients' lives and with their overall infectious enthusiasm that working together – despite the challenges and enormous economic hurdles we have faced this year – we can do better; we can continue to improve our laws and do more for society and our profession. In countless meetings with you and in my journeys around the state to the local and specialty bar associations, your dedication and sense of commitment to the profession are extraordinary – but even more so in these difficult times.

Key Initiatives Completed

With "Helping Lawyers, Helping Clients" as the theme for my term, last June I asked Barry Kamins to chair (along with my Arent Fox Partner, Scott Peeler as Secretary) the Task Force on Wrongful Convictions. This distinguished group of prosecutors, defense counsel, judges, civil litigators, law school professors and good government groups are the first in this state to study all the causes of wrongful convictions. Since the report issued, district attorneys have commented how impressed they are with

the report, with the balanced, even-handed approach and with the testimony elicited in two hearings.¹ These comments underscore how fortunate we are to receive this extraordinary, definitive body of work. As I write this in March, Barry and I have also received over 200 requests from prisoners, their attorneys and their families seeking to expand the study beyond the 53 cases that the task force tackled. Some ranking members of the New York Legislature also have hailed the report, expressing interest in implementing legal reform. We have begun to meet with them in order to discuss ways to put the report into practice. The initiative will surely be a lasting tribute to Barry and his team.

In June 2008, I also invited Michael Gerrard, now director of Columbia Law School's new Center for Climate Change Law, to study and propose a list of priorities for legislative, executive, agency and municipal action in order to reduce the effects of global warming. In a cogent legal study, co-sponsored by the Environmental Law Section, Michael and leading lawyers who concentrate in environmental law (along with a cadre of law students from Columbia Law School) took a fresh look at the key legal steps that must be undertaken in order to reduce greenhouse gas (GHG) emissions 80% by 2050.² The legal issues include, for example, amendments to the State Energy Code to cover more building renovations than at present and SEQRA regulations to consider greenhouse gas effects on the environment. They made it possible for the State Bar to take legal



positions before our national, state, and local government and their respective agencies in order to ensure a healthier, cleaner environment. The New York State Department of Environmental Conservation has already embraced a recommendation in the report, which requires that whenever energy use or GHGs are significant in a development project, a developer would be required to report on it and mitigate its effects. Mike Getnick, your President-elect, has kindly agreed to continue implementing these projects during his term.

Privacy laws continue to affect lawyers, their clients and government. Whether dealing with identity theft, producing documents with sensitive information covered by privacy laws or advising others on the disclosure of health information, we must be aware not only of our clients' privacy concerns and our own but also our profession's. Here, Alison Arden Besunder and Kelly Slavitt co-chaired a massive interdisciplinary undertaking on Privacy, Lawyers and Clients, and held a Summit on Privacy to share ideas with our Sections and other stakeholders in the report.³ In this timely report, which for the first time addresses how

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PRESIDENT'S MESSAGE

interwoven these laws are, a task force of health lawyers, labor lawyers, intellectual property lawyers, and civil and criminal litigators reviewed statutes and privacy laws from various perspectives and made comparisons. Their work caused our House of Delegates to debate the meaning and implications of privacy and the attorney-client privilege, document retention, identity theft and the like. The members and public will benefit from this study.

In June 2008, the Task Force on the State of our Courthouses, chaired by Sharon Porcellio, Hon. Melanie Cyganowski and Gregg Aronson (three of my colleagues in the Commercial & Federal Litigation Section), began studying our courthouses across the state. Undaunted and driven, they have managed to complete a statewide survey and analyze how to make courthouses more user-friendly for lawyers and clients, judges and court personnel. Their report will be presented at the upcoming House of Delegates meeting in Cooperstown in June.

Fifty-six percent of our members practice law in a small-firm environment, which presents them with unique and formidable challenges. For this reason, this year we focused on another core mission of the State Bar: helping to improve the legal profession. Robert Ostertag, long an advocate for the small- and solo-firm lawyer, spiritedly undertook a renewed study – aided by his capable team of similarly situated, geographically diverse lawyers. They tackled some of the big issues we face practicing in the 21st century and prepared a report and recommendations for consideration by our House of Delegates at our upcoming June meeting.

This year for perhaps the first time, each of the five Task Forces mentioned in my column will have completed its studies in a single year. This is a remarkable achievement for them and for our Association, and furthers the goal of remaining relevant, current and timely to our members. For your energy and dedication, thank you!

Our Association's Response to the Economy

I don't need to remind you as you read and watch the news media that the economy has absorbed us intensely this year – lawyers and clients alike. In September 2008, the Legislature enacted a moratorium, banning the filing of mortgage foreclosures for the fourth quarter and providing for mandatory settlement conferences for so-called "toxic," or subprime, "high-end" mortgages. Last fall, I therefore asked Peter Coffey, Anne Reynolds Capps and our CLE Director, Terry Brooks, to organize free CLE programs for our members on how to handle a mortgage foreclosure proceeding so that lawyers would be in a position to help those who could not afford a lawyer. Thanks to their efforts and the Queens County and Brooklyn Bar Associations, we held a CLE program in Queens County, one of the hardest hit areas. Some 250 lawyers attended, promising to give pro bono help to homeowners threatened with the loss of their most prized possession. Peter, Anne and Terry also produced a wonderful "People's Law School" video for the public. This video, "Saving Your Home from Foreclosure," describes in plain English the rights that homeowners have during foreclosure proceedings.⁴ I asked that the video also be made available in bankruptcy and state courthouses across the state. As I write this column in March, over 350 visitors have heard the program at the Web site alone. Many people are unable to pay their mortgages – some 50,000 face foreclosure in 2009 – so your pro bono service is profoundly important for these most vulnerable citizens.

One of a number of challenges this year, unlike perhaps any other year since 1997, has been the state of our economy. With the severe downturn in the financial services market, lawyers and clients have not been spared – directly or indirectly. To remain as responsive to our members as possible, I asked Lauren J. Wachtler, who chairs our Committee on Lawyers in Transition, to create specific programs for our members who

suffered the loss of their jobs. Lauren is creating a new job bank at the State Bar Web site where lawyers can post their resumes directly. This is in addition to working with lawjobs.com, a Web site company with which the State Bar has built a relationship, which posts broad job prospects and offers support. Lauren also started a special blog for attorneys,⁵ found coaches for lawyers on resume building and interviewing, conducted roundtable discussions to address concerns, and single-handedly set up a statewide network of members to assist lawyers. Lauren was aided by our dedicated Membership Chair Claire Gutekunst and Gary Munneke, Chair of the Law Practice Management Committee. On a related note, the tireless Sally Kraus, Chair of the Lawyers Assistance Program, and Pat Spataro, our State Bar LAP director, have continued to work coordinating programs on depression and drug addiction, reinforcing the State Bar as a holistic place where lawyers and their families may call and find professional help.

With over 500 lawyers present for the Presidential Summit during our Annual Meeting in January, we focused on the economic crisis and climate change for our members – with renowned speakers from the financial services industry, government and academia explaining where things stood and should go.⁶ Steve Younger, your President-elect, secured the memorable closing address by Dick Parsons who, just the week before, was named chair of Citigroup.

Our Association's Response to Disaster

Besides the economy, sadly this year we were faced with not one but two plane crashes, the second of which, Continental Airlines Flight 3407, claimed the lives of 53 people. A special, special tribute goes to Robert Saltzman, chair of our Mass Disaster Team of lawyers and the members of his team. The telephone calls I received

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late at night from Bob about the tragedy in Buffalo and the near-tragedy in New York City underscore Bob's superb leadership and the committee's immediate response to both horrific events, gave me profound comfort. I cannot thank the members of the team enough for their grace, responsiveness and sensitivity. On a somewhat related note, I also want to send a special word of thanks to Bob, Steve Krane and my colleague here at Arent Fox, Jennifer Bougher, on helping prepare me for my argument on lawyer advertising in January before the Second Circuit, where the State Bar, as *amicus curiae*, advocated for the affirmance of the order by Northern District of New York Judge Scullin upholding the constitutionality of the moratorium on contacting accident victims or their loved ones within 30 days of an accident.

Federal and State Legislative/Judicial Outreach

There have been so many other high points this year that it is hard to include them all: In October, Mike Getnick, Pat Bucklin and I met with Governor Paterson's counsel to propose that Rockefeller Drug Reform and adequate civil legal services funding become part of the Governor's then-emerging legislative agenda. The Governor subsequently took up both issues, and we are hopeful that he will address them before the end of this legislative term.

Ron Kennedy, Richard Rifkin, Steve Younger (Chair of our new Federal Legislative Priorities Committee) and I visited with leading members of Congress from New York, covering a wide range of issues, including: the destruction of documents in the Executive Branch, loosening the restrictions on funding for the Legal Services Corporation (LSC) and protecting the attorney-client privilege. In February, following President Obama's Executive Order proposing to close Guantanamo Bay prison within a year and study the remaining 300-some prisoner cases, the State Bar successfully advocated

for adoption of a resolution before the ABA House of Delegates with respect to ensuring habeas corpus rights, the rule of law, Article III or military courts and jurisdictional concerns affecting Guantanamo Bay detainees. Thanks go to Fernando Bohorquez, who chairs the State Bar Civil Rights Committee, and Sharon Stern Gerstman for negotiating that resolution with the ABA. The resolution went to the President and his administration for consideration.

This year, the Committee on Legislative Policy, led by Chair Hermes Fernandez and the State Bar's Ron Kennedy, of the Office of Governmental Relations, developed a list of key legislation for which we would advocate. Thereafter on a regular basis, Mike Getnick and I had many productive meetings not only with state legislators but also for the first time with the Governor's Office, his Chief of Staff, his counsel and the Division of the Budget, as well as with the majority leaders of the State Senate and Assembly and their counsel, Chief Judge Jonathan Lippman, Chief Administrative Judge Ann Pfau and other officials with the Office of Court Administration. We testified at Senate and Assembly hearings and took the proverbial show on the road by speaking at the Monroe County Bar Association Forum on funding for civil legal services. For the first time, we included in the priorities consideration of how proposed legislation would affect lawyers and the legal profession.

This year Chief Judge Kaye became Chief Emerita of our state's highest court, and we witnessed the investiture of our new Chief Judge, Jonathan Lippman. In that connection, I was asked to testify before the Senate Judiciary Committee in support of the nomination of Judge Jonathan Lippman, and we celebrated at the State Bar Center following his investiture. Chief Administrative Judge Ann Pfau and I spoke weekly, and Mike, Pat Bucklin and I also met with Judge Pfau quarterly to discuss the most important issues affecting lawyers and judges and the practice of law. These productive talks enabled us

to communicate with you – timely and effectively – about the latest issues. Thanks go to former Bar President Bob Witmer who, following Governor Paterson's statements to the press in December 2008 concerning diversity on the Court of Appeals, agreed to chair a special subcommittee to study the Commission on Judicial Nomination, and make recommendations on how to increase diversity in the number of applications and in the composition of the commission itself. Bob also agreed next to study the manner in which appointments are made for the Appellate Division bench in order to ensure greater diversity there, too. I am certain that he will find cogent and concrete ways to achieve this important objective. My sincere thanks also go to former Bar President Vince Buzard and his Committee to Review Judicial Nominations, which not only reviewed the nominations of candidates for our Court of Appeals but graciously agreed to undertake for the first time a review of candidates for our federal courts.

You, the Members!

As promised, we continued the Membership Challenge this year, which Mike Getnick has agreed to promote again next year. With tremendous efforts from our Committee on Membership, chaired by Claire Gutekunst, and our State Bar staff Pat Wood and Megan O'Toole, we started the year with a new membership kick-off in what I hope will become an annual event – the July boat ride for some 600 newly admitted lawyers. Over 250 joined as a result – and Mike, together with Sherry Levin Wallach, has agreed to host this annual, wonderful event again this year with the help of our Sections and sponsors. In this past year, despite our economy, our membership jumped from 74,000 members in 2008 to more than 78,000 in 2009. This increase is largely due to a strong, continuous commitment by leadership to raise the level of visibility of the State Bar in New York and across the nation, and our close collaboration

with members to remain relevant to member needs and deliver membership services of real value.

Achieving greater diversity is vital not only within the judiciary but also among our members, our profession and our State Bar leadership, and we have expanded our outreach efforts this past year. In December, Lillian Moy, who chairs our Committee on Minorities in the Profession, Glenn Lau-Kee and I held a lunch for minority bar presidents at Arent Fox. More than 40 bar leaders came to share their ideas on how best to promote their associations, help their communities and promote future leaders in the State Bar. Lillian then followed up in January during Annual Meeting week with a conference especially for minority bar association leaders and the State Bar leadership in order to address their concerns and offer the State Bar's assistance in joint programs. I know that with Lillian at the helm, we will make a lasting impact on increasing the diversity in our profession and in the State Bar. In this regard, special thanks to Claire Gutekunst and former Bar Presidents Kate Madigan, Tom Levin

and Ken Standard (the latter three of whom lead the Committee on Diversity & Leadership Development) for making our Annual Meeting Celebration of Diversity so effective and successful (we gained 50 new members of color at that one event alone); and for the wisdom of the House of Delegates in approving the addition of two out-of-state members (whom I have appointed) and, in 2004, the addition of 12 minority lawyers.

From my perspective, a year is a very short period of time. I was blessed to have a warm, supportive and friendly staff that has a resilient "can do" attitude. I will always cherish my friendship with Pat Bucklin, our esteemed Executive Director, for all the sound advice she renders; the unflagging energies of Sebrina Barrett, who has a Midas touch with words; Keith Soressi and Kathy Baxter for assiduously preparing countless legal memoranda, Executive Committee and House agendas; Pat Wood who is always far ahead on membership ideas and ways to maintain our relevancy to members; Kathy Heider for her perfectionism in meeting plans;

Rich Martin for his warm and helpful assistance on our numerous surveys and projects; and Kris O'Brien for her patience in all matters financial. To all the staff liaisons who have made events roll seamlessly and who have had the patience to respond to my many questions, I thank you. Finally, to my very good friends Mike Getnick and Steve Younger, thank you for being there for me and especially for your unwavering support. Despite the state of the economy and the challenges we have faced, we have everything before us. ■

1. The report of the Wrongful Convictions Task Force can be found at <http://www.nysba.org/wrongfulconvictions>.
2. The report of the Task Force on Global Warming can be found at <http://www.nysba.org/globalwarmingTFReport>.
3. The report of the Task Force on Privacy can be found at <http://www.nysba.org/privacyreport>.
4. You can view "Saving Your Home from Foreclosure" at <http://www.nysba.org/thepeopleslawschool>.
5. Visit the Committee on Lawyers in Transition blog at <http://nysbar.com/blogs/lawyersintransition>.
6. The 2009 Presidential Summit Webcast can be viewed at <http://www.nysba.org/summitwebcast>.

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