NEW YORK STATE BAR ASSOCIATION

State Bar News

March/April 2014
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ANNUAL MEETING 2014

Award ceremonies were seemingly everywhere during Annual Meeting. See photos and articles about many of them.

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WERE YOU SEEN AT ANNUAL MEETING?

Visit our Flickr gallery of photos from the 2014 Annual Meeting:

www.nysba.org/photos

State Bar continues efforts to battle mandatory pro bono reporting rule

By Mark Mahoney

The State Bar ramped up its challenge to the state's mandatory pro bono reporting rule during Annual Meeting, with the Executive Committee authorizing President David M. Schraver to retain private counsel and take other steps to fight the rule.

A day later, the House of Delegates tabled until June an Executive Committee resolution that would have amended the State Bar's "Comments" to the New York Rules of Professional Conduct to reflect controversial changes adopted by the Judiciary last year.

The amended new rule requires attorneys registering or reregistering in New York to report the number of hours they voluntarily spent providing legal services to the poor and underserved clients during the previous two years. It also requires attorneys to reveal how much money, within certain ranges, that they donated to charitable organizations that provide such legal services. It increases from 20 to 50 hours the amount of time attorneys should aspire to perform pro bono services.

The reporting rule took effect on May 1, 2013. A plan announced by Chief Judge Jonathan Lippman to make the reports available to the public, however, has been postponed until 2015.

"Family dispute"—Delegates again debated the controversial mandatory pro bono reporting rule for almost 90 minutes during the January House of Delegates meeting. Above, Executive Committee Member-At-Large Edwina Frances Martin has the microphone as Past President Kathryn Grant Madigan and Delegate Alan Rothstein wait their turns. *[Photo by Steve Hart/Happening Photos]*

At the House of Delegates meeting, Schraver announced that the Executive Committee, at its meeting the previous day, authorized him to take three steps regarding the reporting requirement.

NYSBA actions

First, the Executive Committee authorized Schraver to retain outside counsel to provide an opinion on

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Presidential Summit: Adjusting to changing climate

By Mark Mahoney

Flat demand for legal services, continued layoffs in a daunting job market, increased pressures, unhappy lawyers, globalization, a 24/7 demand for services, and the continued impact of the 2008 fiscal crisis have created for attorneys what former State Bar President Stephen P. Younger calls, "the new normal."

How to cope and thrive in the new normal was the focus of the second panel discussion of the Presidential Summit during Annual Meeting on January 29.

"As our profession evolves, we all need to adapt," said Younger of New York City (Patterson Belknap Webb & Tyler LLP). He moderated a panel of experts that included representatives of small and large law firms, an attorney representing a large company, and a consultant to the legal profession who provided the session's keynote address.

When Younger was State Bar president in 2010-2011, he created the Task Force on the Future of the Legal Profession. The task force's February 2011 report outlined the rapidly changing profession and

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A new normal—The Annual Meeting Presidential Summit on the future of the legal profession sparked lively discussion on where the profession has been where it is now and where it might be headed. The discussion leaders were, L to R, moderator and Past President Stephen P. Younger; Bruce MacEwen, keynote speaker; Anne Reynolds Copps; Frank Jimenez and Ben Wilson. *[Photo by Steve Hart/Happening Photos]*

Presidential Summit: Legal education needs to prepare attorneys to practice

By Cailin Brown

Growing pressure on the legal profession is driving calls for legal education that prepares practice-ready attorneys, rather than apprentices.

At the Presidential Summit, experts re-visited the issue during a panel on "Educating Tomorrow's Lawyers: Can Lawyers, Employers, Regulators and Educators Come Together to Address Our Challenges?"

Panelists at the Annual Meeting's premier event shaped the narrative around approaches to legal education that will include innovation and partnerships between apprenticeships and the practicing bar.

"Hardly a week goes by that we don't read something in the New York Times or the Wall Street Journal about the crisis in law, a crisis in legal education," said keynote speaker William Sullivan, the founding director of Educating Tomorrow's Lawyers, and the primary author of the 2007 Carnegie Foundation report on legal education. Part of the responsibility for legal education, he said, lies with the bar.

Voice of experience—Hon. Jenny Rivera, associate judge of the state Court of Appeals and a former law school professor, makes a point that captures the interest of fellow panelists William Sullivan and Phoebe Haddon during the Presidential Summit on legal education. *[Photo by Steve Hart/Happening Photos]*

Prepping for practice

The theme for the future of legal education, Sullivan said, is to align preparation with practice, a message he emphasized in his article, "Align Preparation and Assessment With Practice," in the September 2013 edition of the State Bar Journal.

To that end, Sullivan said, the program coordinated through the Webster Scholar Committee, the University of New Hampshire (UNH), the state Supreme Court and Board of Bar Examiners is fulfilling an alternative route to bar licensing.

Historically, the "good will" that shepherded students into becoming competent practitioners has diminished. The current economic squeeze

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Future of the profession depends on adjusting to business climate

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recommended ways for attorneys to adapt.

The business atmosphere, he said, has not changed much in the three years since the report was issued.

Bruce MacEwen, president of Adam Smith LLC, a Colorado-based consulting firm for the legal profession, used his keynote address to illustrate the quagmire in which the industry now finds itself.

The author of "Growth is Dead: Now What? Law firms on the brink," a collection of 12 blog posts outlining the economic issues facing the legal profession and offering potential solutions, began his speech, as he does the book, detailing the glut of attorneys that has given clients economic power over law firms. He also warned about the impact of "powerfully corrosive" discount pricing schemes that firms use to attract business in response to the increased competition.

"Once you get into a discussion with your clients about discounts, it can only go south from there," he said. "You never go from a 10 percent discount to a 5 percent discount. It only gets higher and higher."

Clients are taking advantage of lower-cost firms that provide a limited scope of services once provided by big, more expensive law firms, he said.

To respond to the changes that threaten their existence, MacEwen said, firms must discard the traditional, century-old law firm model and devise new ways to manage work, train lawyers and deliver knowledge. They also need to employ non-traditional ways of earning money by pricing services the way a client values them instead of using established law firm valuations.

Firms also need to be innovative in their approach to the new model.

"We are terrible at innovation," he said, noting that lawyers are highly skeptical of new approaches and not very resilient.

However, MacEwen said there will always be a need for quality legal services. He said globalization, complex new regulations and the migration of ideas will open up new opportunities for firms to thrive in the future.

Looking forward

With the problem sufficiently defined, Younger quizzed panelists about containing costs and about some of the techniques that firms are employing to survive in the new economy.

Frank Jimenez–general counsel, secretary and managing director of government affairs at Bunge Limited, a White Plains-based food processing company–said clients are seeking value, trust and certainty in what their companies pay for legal services. More certainty over legal fees could lead to more use of the firm's traditional counsel and less farming out of legal help to other outside firms, he said.

Anne Reynolds Copps of Albany (Law Office of Anne Reynolds Copps), owner of a small law firm, said small firms benefit from their size over larger firms, in that they do not have to pay big salaries to partners, save for buy-outs and do not support large staffs.

Rather, she said small firms can benefit by retaining a smaller number of employees and providing a supportive environment and generous compensation, thereby reducing the need to hire temps and incur related expenses.

Small firms also can compete with their larger competitors by narrowing their focus, making use of paralegals and assistants for routine work, and routinizing charges for certain work, she said.

MacEwen echoed that statement. He said firms need to make sure they get

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INSIDE

House of Delegates elects Miranda president-elect

By Mark Mahoney

The House of Delegates, given a rare opportunity to choose between two candidates for president-elect, on January 31 overwhelmingly chose Albany attorney David P. Miranda over Garden City attorney Thomas F. Liotti.

By a vote of 193-11, Miranda was elected president-elect-designee. He will succeed Glenn Lau-Kee, the current president-elect, who will become State Bar president on June 1. Miranda will assume the presidency on June 1, 2015.

The election, the first since current rules were adopted for electing officers in the 1970s, was precipitated by Liotti, who gathered enough petition signatures to force a runoff against Miranda. The Nominating Committee recommended Miranda as president-elect-nominee in November.

House balloting

Lau-Kee, presiding over the House meeting, gave each candidate three minutes to address the delegates.

Liotti (Law Offices of Thomas F. Liotti LLC) used his time to challenge fellow attorneys to rail against mandates that restrict their freedom.

"We have become a profession of deal makers, bureaucrats and compromisers. … As bar leaders, we must occasionally take a bullet for our association," he said. "We have had the freedom to pick and choose our clients for the causes we represent. But more and more, we are being told what we must do to conform our behavior to be less defiant or oppositional, to go along to get along."

As an example, he singled out the controversial rule requiring attorneys to report their pro bono activity to the Office of Court Administration as a condition of their biennial registration.

Miranda (Heslin Rothenberg, Farley & Mesiti PC) thanked his predecessors. He said he had learned what it took to lead the organization from those with whom he has served as the association's secretary for the past four years and as a longtime member. He said that as president, he would continue to promote the association's priorities.

"If I'm selected to represent this association, I will continue to act vigorously for the core principles of our profession: access to justice for all New Yorkers; an independent, properly funded judiciary; diversity in the judiciary, in our bar and in our association," he said. "And I will stand strong as an advocate for lawyers."

Delegates voted by paper ballot. Miranda was declared the winner shortly afterward and was greeted with a large round of applause.

Delegates also elected the remaining slate of officers: Ellen G. Makofsky of Garden City (Raskin & Makovsky) as secretary and Sharon Stern Gerstman of Buffalo (Magavern Magavern Grimm LLP), who was re-elected as treasurer. Both were recommended by the Nominating Committee and ran unopposed.

In addition to electing a new slate of officers for 2014-15, the House approved a resolution calling on state leaders to push for more civics education (see story, below).

Other business

In other business:

- The membership approved three changes to the bylaws. One creates a lifetime seat in the House of Delegates for NYSBA members who have served as president or past president of the American Bar Association (ABA). Current ABA President James R. Silkenat of New York City (Sullivan & Worcester LLP) will hold the first such seat. The membership also extended for 10 years the 12 seats in the House and two member-at-large seats on the Executive Committee created to promote racial and ethnic diversity in association governance.
- Delegates approved a report by the Committee on Diversity and Inclusion that concluded that progress was being made within state bar leadership toward greater diversity. However, the growing decline in the number of individuals willing to report their diversity status was of "increasing concern."
- Chief Judge Jonathan Lippman, addressing the delegates, reiterated the need for civil legal services, adequate funding for the courts, support for indigent representation, mandatory recording of interrogations to reduce wrongful convictions, reform of the pretrial system and excessive bail, raising New York's age of criminal responsibility, adding 20 new Family Court judges to handle the overwhelming caseload and ensuring that new lawyers understand the obligation to serve.
- President David M. Schraver presented the Ruth G. Shapiro Award to Kathleen Donelli of White Plains (McCarthy Fingar LLP) on behalf of the Committee on Women in the Law.
- Under "New Business," the House passed a resolution offered by former President Vincent E. Doyle III expressing "deep gratitude" to Patricia K. Bucklin for her nearly 13 years of service as executive director of the association. She will step down March 31. ◆

Mahoney is NYSBA's associate director of Media Services.

Strong advocacy—Secretary David P. Miranda promises to remain a strong advocate for the State Bar's priorities in his statement before the House of Delegates overwhelmingly voted in favor of him becoming president-elect, 193-11. *[Photo by Steve Hart/Happening Photos]*

Challenge mandates—Thomas F. Liotti, candidate for president-elect, urged the State Bar to challenge mandates restricting freedom in his statement before the House of Delegates before it voted. *[Photo by Steve Hart/Happening Photos]*

House of Delegates calls for more civics education

By Mark Mahoney

With New York state in danger of contributing to an already "shocking level of decline" in student understanding of civics, the House of Delegates on January 31 urged state leaders to make civics a top educational priority, on a par with reading and mathematics.

The resolution coincided with a new report from the Committee on Law, Youth and Citizenship (LYC) highlighting the benefits of civics education and pointing out where New York state has faltered in its teaching over the past decade.

A plea for action

Former Chief Judge Judith S. Kaye of New York City (Skadden, Arps, Slate, Meagher & Flom LLP) delivered an impassioned plea to the House for more civics education in New York's schools, calling on delegates to make a difference.

"With you, uniquely with you, lies an answer to what we can all see in the

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More civics—Former Chief Judge Judith S. Kaye makes an emotional plea to the House of Delegates in support of increasing civics education in New York's schools and asking the delegates to approve a report on the need from the Committee on Law, Youth and Citizenship. *[Photo by Steve Hart/Happening Photos]*

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Delegates, members, profession still divided over new mandatory pro bono rule

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whether the State Bar has a legal cause of action to invalidate the rule. He also was asked to seek an opinion on the prospect of legislative action designed to repeal or overturn the rule.

Second, the Executive Committee directed him to place a letter or click-through email on the association's website to provide members with a means to directly communicate their concerns about the rule with Lippman, the presiding justices and the administrative board. Go to www.nysba.org/probonoreporting.

Third, the Executive Committee directed Schraver to collaborate with local bar associations around the state on efforts to challenge the rule. He said he already had met with some associations, who have either taken positions or are considering taking positions on the rule.

"We have not been inactive with respect to this issue," said Schraver (Nixon Peabody LLP in Rochester). "I think we are representing the position of the House and of the association effectively, reasonably, responsibly, and we will continue to do so."

At the House meeting

Later in the House meeting, Scott M. Karson of Melville (Lamb & Barnosky LLP), a member of the Executive Subcommittee on Mandatory Pro Bono Reporting, which was established in November 2013, introduced a resolution that would align the association's Comment to Rule 6.1 of the Rules of Professional Conduct with the court administration regarding the pro bono reporting requirements.

The resolution also called for a reaffirmation of the State Bar's opposition to mandatory pro bono reporting and reiterated its support for providing voluntary pro bono services to the poor and adequate funding for indigent legal services.

"I want to begin by expressing my admiration for the unparalleled devotion to Civil Gideon and support for civil legal services expressed by Chief Judge Lippman time and time again," Karson said. "But having said that, I submit to you that on the issue of mandatory reporting, the chief judge simply got it wrong."

Speakers who followed largely echoed that opposition to the rule. Some expressed concern that the chief judge had enacted the rule without consulting State Bar members. Others called for more study into mandatory pro bono reporting.

Among the dozen or so speakers who addressed the House was former President Robert L. Ostertag of Poughkeepsie (Ostertag O'Leary Barrett & Faulkner), a leading voice opposing the reporting rule.

"I have yet to find anybody who supports the judge's rule," he said. "This rule has been dumped upon us. Nobody discussed it with us. … It's a matter of respect," he said.

Matthew J. "Jim" Kelly of Albany (Roemer Wallens Gold & Mineaux LLP), speaking as a member of the Torts Insurance and Compensation Law Section, called for a short, directly worded resolution, similar to that passed by the section in November.

"We think there needs to be a clear and direct message," he said, quoting from the section's resolution, "… that the rule constitutes an infringement against the privacy and free choice of attorneys and should be repealed."

The section also passed a resolution calling for an open comment period for all changes to the court rules that affect the legal profession, he said.

David M. Pellow of Verona (Madison-Oneida BOCES) called for gathering more information before the association takes a position.

"I think our best defense is good data. I think, here, we don't have good data," he said, and suggested that the State Bar work with local bar associations to get better information about how much pro bono work attorneys actually do.

Former State Bar President Justin Vigdor of Rochester (Boylan Code LLP) moved to postpone a decision on the resolution until the Cooperstown meeting in June to allow two working committees studying the issue a chance to issue reports.

Another former State Bar president, Katherine G. Madigan of Binghamton (Levene Gouldin & Thompson LLP), said she was "baffled" that the chief judge had pulled an "end run" around the State Bar in enacting the mandatory reporting rule.

"As a past president, I am very concerned this has seriously damaged a long relationship that was founded on mutual respect and trust," she said, adding that she supported postponing action on the resolution until June because of the ongoing studies.

Dennis R. Chase of Smithtown (The Chase Sensale Law Group), president of the Suffolk County Bar Association, said there is more than enough opposition to the rule statewide for the State Bar to take action now.

In June, he said, his association sent emails to the leaders of 62 bar associations across the state seeking their views on the reporting requirement. Although only 30 responded, the feeling toward the requirement was very evident.

"To have 50 percent of the bar associations countywide report to us and only having one being in favor of this rule speaks volumes," he said. "I speak for the Suffolk County Bar Association, and we are steadfastly opposed to this rule."

Supporting voices

Alan Rothstein of New York City, a delegate representing the New York City Bar, was one of the few speakers who supported the reporting requirement. He said his association has long supported reporting of pro bono hours because of the great need for pro bono services.

Despite the best efforts of attorneys and legal service providers, he said, at least 80 percent of the legal needs of the poor are not being met and more than 2 million people enter court each year without representation, largely because they cannot afford it.

"If this mandatory reporting can encourage more people to do pro bono and provide the necessary services, then we should support it," he said.

Peter J. Kiernan, another City Bar representative, said the State Bar should not consider suing or seeking legislation to get the reporting rule overturned.

"What we really have here is a family dispute. We have a big family and we have a big argument," he said. "But I don't think we want to bring in a third party, namely the Legislature, to mediate our family dispute."

He said the president of the State Bar should not be put in the position of advocating for attorneys before the Legislature when the needs of the poor were being underserved.

During the meeting, some speakers attempted to amend the wording of the resolution regarding placement of certain statements for emphasis and to table the change in the comment to the new reporting rules.

Ultimately, delegates voted 87-73 to table the resolution until the House of Delegates meeting on June 21 in Cooperstown.

Previous State Bar actions

In November, 2013, Schraver appointed the Executive Subcommittee on Mandatory Pro Bono Reporting in response to concerns expressed by members about the mandatory pro bono requirement.

Some members spoke out strongly against Lippman's new mandate during what Schraver called a "spirited" meeting of the Executive Committee last June in Cooperstown.

Following the June House meeting, Schraver sent a letter to the chief judge expressing the State Bar's decade-long opposition to mandatory reporting and reiterating its current concerns.

Schraver and a delegation of State Bar leaders that included President-elect Glenn Lau-Kee and Executive Director Patricia K. Bucklin also met with Lippman on July 23 in a closed-door discussion. The meeting was described as "a frank exchange of views and concerns."

The mandatory reporting rule coincided with an increase in the aspirational goal for pro bono services from 20 hours per year to 50.

That increase prompted another spirited discussion during the House of Delegates meeting on Nov. 2, 2013, in which members again expressed concern over the mandatory pro bono requirement.

Schraver said he spoke to Lippman by phone shortly after the November meeting to relay the concerns raised by members at the meeting. ◆

Mahoney is NYSBA's associate director of Media Services.

Summit panel focuses on ways to improve legal education for next generation of lawyers

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makes it more difficult for practitioners to offer informal apprenticeships. To fill the gap, the program at the UNH law school connects educators and the bar in a way that combines training for legal practice with an embedded bar assessment, Sullivan said.

The 24 students in the UNH program spend the second and third years of law school in a tightly integrated program that simulates the development of a practice, Sullivan said. Reporting on performances is extensive and students are measured against the goals of the 2003 MacCrate Report. Students have faculty mentors, write self-reports and develop portfolios.

The findings are very powerful, said Sullivan. The school has done a number of studies to prove to itsr own faculty as well as to the New Hampshire Supreme Court that it is doing what it promised.

When the bar's certification function is embedded in the education itself, such as with the Daniel Webster Scholar Honors program, the bench and the bar assist students toward a more intentional and accelerated development and toward a professional identity, Sullivan said.

"My strongly held belief is that American legal education is by far the best in the world, but it needs to continue to evolve to keep up with all that is taking place in the field," said moderator James R. Silkenant, president of the American Bar Association (ABA) and a partner in Sullivan & Worcester LLP. "If I was asked four or five years ago if legal education would be such a critically important topic for the legal profession, I would have come up with the wrong answer."

Some education innovations can be achieved through a number of initiatives rolled out in a January ABA task force report, he said. And, the ABA's Legal Access Job Corps will provide access to underemployed young lawyers looking for experience and training.

Kent D. Syverud, chancellor and president of Syracuse University, refuted claims about the state of preparation for prospective attorneys.

"We do not have a crisis in legal education," he said. "What the law profession has now," he said, is a "manageable challenge."

Syverud said his perspective stemmed from his roles as a legal educator, a regulator and a client.

Room for improvement

The drop in demand for legal services, said Syverud, has provided the impetus for many schools to seize opportunities to improve, and to change calcified practices. He said he has witnessed faculty and deans doing remarkable things, and reminded his audience that there is "no constitutional right for your entity to continue forever without changing or evolving."

Lawyers need to develop solid project management skills, he said, and the profession needs "lawyers who are good marketing and communications people."

"Law schools should focus on pedagogy that prepares students for the practice of law," said Hon. Jenny Rivera, associate judge of the New York State Court of Appeals.

"Law school must remain committed to providing access to a pool of diverse applicants and individuals from a broad range of experiences and economic communities. Law schools carry a heavy burden that the profession remains accessible to those whose past shows promise."

Legal educators—The first panel at the Annual Presidential Summit discussed the current state of legal education and offered suggestions on how to improve education in New York and the nation. L to R: Panelists are American Bar Association President James Silkenat; William Sullivan, keynote speaker; University of Maryland Dean Phoebe Haddon; Hon. Jenny Rivera, state Court of Appeals associate judge; and Syracuse University Chancellor Kent D. Syverud. *[Photo by Steve Hart/Happening Photos]*

The advent of mandatory pro bono hours for law students beginning in 2015 is one way schools can help close the justice gap while providing students with professional experience, she said. Students must put into practice what they are taught in the classroom, she said.

"The training of lawyers can both encourage a productive life and serve society's interest, not just for those who can afford it, but for those who need it," Rivera said.

One of the most important takeaways from various committee and task force reports, said Dean Phoebe Haddon of the University of Maryland Francis King Carey School of Law, is "the real importance of working together to solve problems that lie ahead. We have to work together, creatively and effectively with members of the profession and the law schools, and with other parts of the system that have a role to play in what we are talking about."

The question, she said, is how does the profession bring together unemployed young lawyers and a pool of millions of low- and moderate-income individuals who cannot afford lawyers.

"We are a community of scholars, and we need to conduct more quantitative analysis about this justice gap, about what is working and what isn't," she said. ◆

Brown is an associate professor of communications at The College of Saint Rose.

Future of the profession depends on lawyers adjusting to changes in business climate

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the most out of their staff by treating them well rather than attempting to conduct business as cheaply as possible.

Ben Wilson, a principal at Beveridge & Diamond PC, a larger Washington, D.C.-based law firm, said to meet his clients' desires, his firm employs both fixed fees and alternate fees. About 30 percent of his firm's revenue, he said, is generated from fixed fees, compared to less than 5 percent when he joined the firm.

"But I think we have to get beyond just the fee talk," he said. "I think we have to align our goals with the goals of our clients. We have to understand what the business plan is. What is (the client) feeling? What keeps him up at night?"

Panelists also agreed that technology is both a benefit and a curse, allowing firms to serve clients around their schedules and in far-away places, but also forcing companies to find ways to give their employees time for outside activities.

That led to a discussion about how lawyers cope with the 24/7 needs of clients.

"I think we have more control over this than we realize," he said, noting that a client is often only looking to be heard. "You can say, 'Interesting question. Can we talk tomorrow?' And that's really all the client is looking for."

Jimenez agreed, adding that in a non-emergency situation, clients just need a response. Wilson said that as a client, he will consider how quickly he needs a response from a law firm and will convey that degree of urgency to attorneys when he reaches out to them.

In helping to foster new attorneys, Wilson suggested giving them their own areas of responsibility and providing training so they can excel and become more productive.

Jimenez said firms also must look for ways to share the cost of training new lawyers.

Crystal ball

Intellectual property, non-public financing and cross-border transactions were among the hot trends in the profession, said the panelists. Other growth areas, panelists said, included anti-corruption, health care and securities compliance.

The panel concluded by discussing challenges for the profession in the next five or 10 years.

Copps said there will be a significant change in the way children come into families through third-parties, bringing about new demands for legislation and paperwork.

Technology also will continue to change, she added.

Wilson said the greatest competition for large firms will come from competent in-house counsel within companies. Large firms also will have to continue to increase market share and grow the practice. A third challenge, he said, will be identifying and keeping talent.

"We've seen a tremendous amount of change in the last 10 years. We're going to see continued stress. Everyone's trying to do it with less, do it faster, do it 24/7," Younger said. "But to be clear, this is a profession that remains one that we can all enjoy. It's one where everyone has an opportunity to compete."

Quoting the Greek philosopher, Heraclitus, he concluded, "Nothing endures but change." ◆

Mahoney is NYSBA's associate director of Media Services.

New pro bono reporting rule a command, not a request

Editor's note: The writer of this letter to Chief Judge Jonathan Lippman requested that it be reprinted in the State Bar News.

Dear Chief Judge Lippman;

I am writing to express my indignation and outrage over the new pro bono reporting requirements of Rule 6.1. of the Rules of Professional Conduct, "Voluntary Pro Bono Services," and its obvious insinuations.

While the rule may be laudable in its intent, it is clear that due to the mandatory reporting requirements of the rule, the "aspirational" suggestions of pro bono work and charitable contributions are not aspirations at all, but commands without known present or future consequences.

Those potential consequences have tangible and bewildering possibilities—whether it may be the present scrutiny of those in power or the future consideration of the Office of Court Administration, some potential grievance committee, or anyone and everyone. That those who could hold my license in their hands could use such unabashed pressure to compel my charitable work— and without regard to my own resources, desires, or most importantly, my philosophical convictions—is, to say the least, quite unsettling.

Charity by nature and definition is a voluntary act. Whether anyone chooses to donate their time, money or work to those deemed less fortunate is ultimately a decision—and right—of their own. Compelled charity is an inherent contradiction.

Involuntary "pro bono" work or monetary donation—whether directly compelled by dictate or, as here, indirectly coerced by thinly veiled attempts to shame or pressure—is an attempt to compel another's charity.

The work is no longer freely gifted, but is now unpaid labor involuntarily forced from one person's efforts for another's benefit, i.e., it is *de facto* slavery. I do not use that word lightly. Nor do I intend it as hyperbole.

No one has a right to demand one minute of my life or my work. My legal education and career were earned solely due to the hard sacrifices and struggles of my family and myself. If I now have the desire and ability to donate my time or resources charitably to others, then I should be able to do so on my own terms. No one has the right to demand my unpaid labor as a condition to my livelihood. Nor should my degree of charity be of anyone else's concern. That is the nature of a free and voluntary society.

Again, while the impetus behind this Rule may be well-intentioned, its present implementation and obvious future path are nothing short of tyrannical. It is clear that there will be attempts to introduce subsequent rules requiring pro bono work as a continuing condition to practicing law. Nothing will be "aspirational" any longer. This is quite apparent from the new pro bono requirements of incoming attorney applicants.

Aside from the most important issue of whether anyone can or should be compelled to involuntarily work without compensation, no matter what the supposed need of the beneficiary, other endless ethical considerations abound. If for some reason an attorney, by his alleged civic position, is compelled without choice into performing "pro bono" work, then where will it stop?

Who decides how much time should be demanded "pro bono?" Is 50 hours enough? Why not 100 or 200? And who decides what persons or causes qualify as the poor or underprivileged? What if those in power do not agree with causes of my own? What if a solo practitioner—or anyone for that matter—is struggling to pay his bills? Should he operate at a loss so that he can provide pro bono services?

Will other civic professions such as policemen, firemen, social workers, town clerks, and even sanitation workers be obligated to provide one week's worth of uncompensated labor per year for the underprivileged? Where does it end?

Who could decide? Who has the right to demand? Who has the right to judge?

This state has a record number of attorneys voluntarily giving record amounts of pro bono hours and charitable contributions. If you now insist on procuring free labor and resources by force, whether directly or indirectly through such methods and pressures as these, you will likely see pro bono hours drop to the minimum demanded—probably much less than now given. You will also see many more small firms and solo practitioners that will be unable to compete with the Big Law conglomerates. And you will surely see many lawyers leave this state.

Ultimately, charity—true, voluntary charity—is a private and personal matter subject to no one's fiat or supervision.

Please repeal this unconstitutional and outrageous rule immediately.

Richard A. Fiore
New Windsor

Problems with legal education not due to tuition costs, but to loans

Dear Editor:

Acknowledging that the crisis in our profession is important, but "Legal Education and the Future of the Profession" (State Bar News, November/December 2013) misstates the nature of that crisis.

Law school is expensive, absolutely, but the problem isn't cost—it is the fact that the majority of law school graduates will incur that cost through loans which are nondischargable, with no realistic prospect of securing employment.

Fewer and fewer law school graduates are finding law-related jobs, and more and more of the jobs that they are finding are low-paying and unsatisfying. We are producing new lawyers at a rate far faster than the market can absorb, and almost no one is saying this aloud. New York has 15 law schools and imports lawyers from all over the rest of the country. Reining in law school costs will not fix this, and if anything it will make the situation worse.

I still believe that law is a legitimate subject to study and a worthy career to pursue. But I wish that the institutions that should be the most responsible for forming our professional culture would behave more responsibly.

If I were king of legal education, I'd do a few things. I'd eliminate roughly a third of the law schools in the country, for starters. Law schools that are free-standing—unaffiliated with research universities—would be the first to go.

I would consider instituting a rule which would limit the number of law schools in a state on the basis of the population of the state. I would require that all law school applicants spend a minimum of one year outside of school. And I might extend the real-world requirement to three years, subject to some very narrow exceptions.

I would require that at least 20 percent of the credits required for graduation and bar exam eligibility be skills-based courses.

And I would start looking at optional ways to reduce the curriculum to two instead of three years. (For some, the third year is a good thing, I think.)

That would be a start.

William C. Altreuter
Altreuter Berlin
Buffalo

Rule 6.1: Writer knows when something is wrong for lawyers

Dear Editor:

I was sitting at my kitchen table looking out the window, when my 17-year-old daughter, Sara, asked me what I was thinking. I told Sara that I had to make a decision regarding my law license and that I was deeply troubled by it.

I explained the need for CLE as a requirement for my biennial registration and that the new registration required mandatory disclosure of personal information regarding how I spend my time and money.

I grew up relatively poor in Deer Park. Although my parents were able to keep a roof over our heads, furniture was repossessed and I recall walking with my mother to the food store where we would pay with food stamps. By my teenage years, I was self-sufficient, making money with paper routes and many odd jobs. I was also on the streets at night, smoking pot, trying other drugs and getting into trouble.

As a teenager, my lawyer was the Hon. Salvatore Alamia, a retired District Court judge who then was a criminal defense attorney. Over the years after I became an attorney, we would converse with one another. There was one time when I reminded Judge Alamia of a very valuable lesson he taught me when he was my lawyer.

I was facing a felony charge when he informed me that if I pleaded guilty to the felony, all the misdemeanors would be dismissed and I would receive no jail time. I said I could not accept the deal because I did not "do" the other items of damage and I would not admit to something I did not do. I recalled being advised that it was better to know the outcome then to go into court and take chances. I did not listen to the advice of counsel and I wound up with a plea bargain that included a misdemeanor and Y.O. status. Judge Alamia did not recall the scenario the way I did.

I continued to tell my daughter that being compelled to disclose the required information on pro bono was inherently wrong and went against everything I believed in. Showing me that she had heard enough, Sara rose from the table and said, "I would just check the stupid box and be done with it!" I thought about that option prior to our conversation, again that day, and again after I completed my CLE and

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Forum uses social media to answer questions about social media

By Mark Mahoney

Social media is everywhere these days.

Even in CLEs.

To demonstrate the pervasiveness of the medium and both its value and its dangers, the Commercial & Federal Litigation Section held a digitally interactive forum at Annual Meeting. Section leaders encouraged audience members to answer live poll questions and to post comments to Twitter during the meeting.

The result was a lively discussion, both in person and on Twitter, about the pitfalls facing attorneys when using social media in their practice.

Among the topics raised during the interactive forum were the appropriateness of advising clients to take down incriminating postings on social media, accepting or sending a "friend" request on Facebook or LinkedIn, investigating jurors' social media postings and divulging one's identity in connecting to potential clients on social media.

All media is permanent

As in other forums on electronic media, the main message of the day was that electronic messages are permanent.

Advising a client to take down an inappropriate post, said Professor Jonathan I. Ezor of Central Islip (Touro Law School), was akin to "closing the barn door after the horse has gotten out."

"These posts, once they are out in the world, are legally out of your client's control," he said.

Postings, he said, are retained on individual social media sites like Facebook and Twitter, as well as by the Library of Congress, and often by opposing parties, who can take a screen shot of a posting before a client has decided to delete it. Some Internet watchdogs have even created websites devoted to highlighting deleted posts, he said.

On the subject of advising clients to delete posts, panelists said an attorney can recommend that clients remove a post, but also should warn them about the potential impact of doing so—such as appearing deceptive. The best course of action is to advise a client beforehand about the risks of posting anything to social media, they said.

Panelist Ignatius A. Grande of New York City (Hughes Hubbard & Reed LLP) said attorneys used to only be concerned about email exchanges. But now, attorneys and their clients have to worry about Facebook messages, retweets and comments made to postings.

He cited a case in which a lawyer was fined for advising a client to delete a Facebook page that contained photos detrimental to the client.

Mobile media— smartphones and other mobile devices—also are a source of potential trouble for clients. Tweets can show where you were at the time you tweeted. Google will track an individual's movements. An individual can even be tracked if using wi-fi hotspots, even if GPS tracking on a mobile device has been turned off, Ezor said.

Social media on their minds—A standing-room-only crowd attended a digitally interactive forum hosted by the Commercial & Federal Litigation Section during Annual Meeting. Above, moderator Mark A. Berman presides over the discussion. L to R, panelists are Hon. Lisa Margaret Smith, Hon. Ronald J. Hedges, Professor Jonathan I. Ezor, Ignatius A. Grande, and Nicole Black. *[Photo by Richard Smith]*

Such location information can be used to disclose a meeting with a client, or to shoot down a client's alibi for a crime.

Nicole Black of Rochester (MyCase Inc., a social practice management company for the legal community), said attorneys increasingly have an ethical obligation to their clients to become educated about what's available in the electronic media.

Hon. Lisa Margaret Smith of White Plains (U. S. Magistrate Judge, Southern District of New York) said she has yet to see evidence in her courtroom that attorneys are knowledgeable enough to think to ask for geo-location information.

"I have not been seeing this level of sophistication, which goes back to having competence in the electronic age and what's available to you," she said.

Permission to tweet—Participants were encouraged to tweet about the digital forum as the discussion progressed and Michael Re of Garden City appears to be following instructions. *[Photo by Richard Smith]*

Panelists also waded into the sticky legal questions regarding contacting potential clients or witnesses on social media, particularly when it comes to

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Convocation caps year of legal education examination

By Mark Mahoney

The State Bar continues its examination of the legal education system with a scholarly convocation to be held May 22 at Pace University.

The convocation, co-sponsored by the State Bar and the New York State Judicial Institute on Professionalism in the Law, is part of an initiative begun in June by State Bar President David M. Schraver to explore the myriad issues associated with educating the next generation of lawyers.

"The legal profession has changed dramatically in the past 10 years, and it is vital that the profession help prepare new attorneys for the challenges ahead," said Schraver (Nixon Peabody LLP in Rochester). "As part of that preparation, we must take a close look at the traditional, as well as innovative, ways in which we educate students and help find ways to make legal education affordable so they can enjoy fulfilling and financially rewarding careers."

Schraver has made legal education the cornerstone initiative of his presidency. Among the actions he took to bring focus to the topic were dedicating the September 2013 Bar Journal exclusively to legal education and devoting the Presidential Summit at Annual Meeting to the topic.

The convocation will feature legal education experts in two panel discussions at the Judicial Institute's facility on the Pace University campus in White Plains. At the convocation's conclusion, the institute will prepare a scholarly journal on the proceedings.

Leading up to the convocation was a series of closed-door focus groups held in February and March in Albany, Buffalo, New York City and Long Island, said John H. Gross of Hauppauge (Ingerman Smith LLP), coordinator of the convocation, a member of the Institute and the State Bar's Committee on Legal Education and Admission to the Bar.

Members of the judiciary, academics, practicing attorneys and law students were invited to address the topics on the convocation agenda in the focus group sessions. Transcripts of the focus groups will be delivered to the panelists prior to the convocation for background, he said.

The agenda

The program will run from 10 a.m. to 4 p.m.

The morning panel will discuss the high cost of traditional legal education and the reasons behind it; early administration of the bar exam; what to do with the third year of law school; the issues surrounding the drive to graduate "profession ready" attorneys; the medical model, internships and mentoring; the future of evening and part-time programs; and other related issues.

On the agenda for the afternoon panel will be an examination of professional values programs; whether students should be required to take an oath similar to medical students; the impact of potential law school changes on professionalism; the pressures of student debt and its impact on professionalism and the practice of law; and the impact of proposals to revamp the third year of law school.

The convocation is free and open to interested individuals. For more information and to register, email professionalism@nycourts.gov. ◆

Mahoney is NYSBA's associate director of Media Services.

Hashtag: Social media and jury selection a courtroom concern

By Cailin Brown

The social media landscape and its requisite landmines require attorneys to anticipate and engage the wealth of online content that may impact case decisions. That means they should be using Facebook, LinkedIn and other websites to ensure jurors are ready to serve, said two panelists during Annual Meeting.

In the session, "#LegalProbs: Social Media and Its Impact on Jury Selection and Trial," attendees had a birds-eye view of how online traffic yields trial and case evidence.

Claudia Costa of Hackensack, N.J. (Gonzo Law Group) and Robert Gibson of White Plains (Heidell, Pittoni, Murphy & Bach LLP) spoke during a presentation sponsored by the Torts, Insurance and Compensation Law Section and the Trial Lawyers Section.

"As lawyers, we clearly have an obligation to keep up with case studies in the field as well as trends in society," Gibson said. "One of the most explosive trends is the way we communicate using technology."

Gibson said the growth on social media sites such as LinkedIn, Facebook and Twitter has reached hundreds of millions of daily users, statistics that have immediate ramifications in practicing law.

Gibson reviewed the New York Post's recent coverage of the *U.S. v. Steinberg* insider-trading case and the social media research methods employed in that case to vet jurors.

The Appellate Division in New Jersey held that it was appropriate for both counsel to use readily accessible wi-fi Internet access to conduct research.

Therefore, the defense team brought three laptops into the courtroom, allowing it to Google-search during jury selection and view social media profiles.

Gibson said that it is ethical for lawyers to research jurors as long as they do not communicate with the prospective jurors.

"You cannot get on a Facebook page and friend them and ask them questions," Gibson said. "Passive research is OK. If you Google a name and get the Facebook, that is OK. If you go on and try to discuss their views, that is completely impermissible."

Internet knowledge required

Recent court decisions have shown that Internet searches are practically obligatory now in order for a lawyer to adequately represent a client.

If lawyers validate juror statements, they might learn that a juror has a not-so-objective viewpoint on the case. For instance, in *Apple Inc. v. Samsung Electronics Co.*, the jury foreman previously had been involved in litigation loosely connected with one of the companies.

In the $1 billion patent infringement decision, the judge ruled that attorneys should have discovered the juror's litigation early in the case.

So, one way lawyers can encourage a fair jury, Gibson said, is to learn right away whether a juror has been involved in previous litigation.

"What if the information was out there and you didn't avail yourself of it? Your client might be a little upset," said Gibson. "During the trial you probably want to keep an eye on your jurors. They are not supposed to be posting, blogging. They get an admonition."

Gibson gave several examples from random social media accounts, which illustrated the biases shared so publicly through various outlets.

If a juror is caught reading a plaintiff or defense lawyer's Facebook page, the judge should be notified immediately, he added.

Robert Gibson

Claudia Costa

An opinion issued by the New York County Lawyers' Association Committee on Professional Ethics in 2011 states that the burden is on attorneys to track social media in order to advise their clients, said Costa.

"Social media cannot be ignored," she said. "You need to start right away from the beginning of the case. You know what you need to get to trial."

The obligation with social media is the same as it is with a piece of paper, Costa said. Clients cannot destroy evidence.

"You need to educate them and you need to preserve the social media. ...If you do not advise the client to preserve information, you could be subject to sanctions," she said.

Attorneys are obligated to know the policies of sites like LinkedIn and Facebook, and to warn clients to preserve the evidence. In *U.S. Equal Employment Opportunity Commission v. Original Honeybaked Ham, Inc.*, the EEOC was compelled to produce data and was sanctioned for "messing around with electronic discovery," Costa said.

In another instance, both a plaintiff and his lawyer were heavily sanctioned—$180,000 and $542,000—after the lawyer instructed his client to "clean up" his Facebook page.

Costa suggested lawyers discuss the implications of social media with their clients.

Lawyers who know they are going to be on trial, and receive a notice of claim, should get on Google right away, Costa said, and gather information before social media privacy settings are changed. Eventually, attorneys will need to demonstrate a chain of custody to show how any information was gathered, and authenticate that evidence.

Costa noted insurance claims cases where allegedly disabled parties were featured on social media in zumba classes, playing hockey or engaging in another sporting activity.

From now on, Costa said, lawyers may have a professional responsibility to review social media content or face professional liability.

If not now, she said, then in the near future. ◆

Brown is an associate professor of communications at The College of Saint Rose.

House of Delegates approves report, takes up call for more civics education

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committee's report has become a highly distressing, embarrassing situation, desperately, desperately in need of our concerted attention, creative thinking and diligent and perseverant action," she said.

"It's clear that we have to invigorate our fundamental values. We have to restore the promise of America for our future and our children's future," she said. "We just cannot maintain the rule of law. We cannot maintain our great democracy, without people educated in our nation's fundamental values."

The report chastises state education leaders for reducing the emphasis on civics education, and making social studies a "secondary curriculum" in schools, with history and civics being lumped together under literature.

Committee Chair Richard W. Bader of Albany (New Visions Law & Government Program) told delegates that "remarkably," the participatory experiences designed to show students how to become engaged citizens are neither required nor encouraged in the state Department of Education's new proposed framework for the Participation in Government component, the half-year course for high school seniors.

"Our legal system and justice system depend on the effectiveness of our schools to make sure Americans are able to appreciate the rule of law and to sustain their trust and confidence in the institutions of our constitutional democracy, such as trial by jury," Bader said.

Former State Bar President A. Thomas Levin of Garden City (Meyer, Suozzi, English & Klein P.C.), a member of the LYC Committee and longtime advocate of civics education, spoke on behalf of the resolution.

"I think everyone in the room is united on this particular point, because without the rule of law and without the flourishing of the rule of law, we're all out of business," he said. "It's high time that civics education be put back in the forefront of our educational system."

Several other delegates spoke on the resolution, which was approved by the House by voice vote, with one abstention.

The report notes that for the past three years, the state Board of Regents

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Electronic media poses risks to lawyers without buffers

By Mark Mahoney

"Breathe in. Breathe out."

The lesson learned in yoga class also applies to law firms dealing with electronic media.

Law firms get into problems with electronic and social media because they either forget about or fail to grasp the permanency of messages delivered electronically – from television commercials to emails to billing statements.

Think first—Pery D. Krinsky told attendees of an Annual Meeting forum on social media risks to think carefully before posting anything to social media. The forum was part of a daylong series of programs called "Risk Management 360." *[Photo by Richard Smith]*

So, before you send that email, or post that Tweet, or file that document, take a deep breath and think about it first, ethics attorney Pery D. Krinsky of New York City (Krinsky PLLC) advised during a January 30 presentation on social media risks.

The presentation was part of a larger Annual Meeting forum entitled, "Risk Management 360," co-sponsored by the Law Practice Management Committee and the committees on Attorney Professionalism, Lawyer Assistance, Continuing Legal Education, and Electronic Communications.

"We can't erase that digital footprint," Krinsky said in an entertaining presentation that included a PowerPoint presentation of TV and print ads about which questions had been raised as to their ethical propriety.

Powerful points

Commercials that make false or exaggerated claims have an infinite shelf life on the Internet, where they can be viewed by anyone at any time. Ads that violate ethical standards can and have been used against lawyers in grievance committees, he said.

With electronic filing of documents, clients can pore over billing statements until they find a questionable entry, allowing them to more easily bring a charge of fraud or to demonstrate that a firm does not have a proper system in place for detecting conflicts, Krinsky said.

"Never become comfortable with your clients, because at the end of the day, your clients are not your friends," he said.

Krinsky said attorneys must be constantly aware of the ways they can inadvertently share information, either through sloppiness or inattention to potential risks.

As an example, he showed a number of cases in which attorneys, and courts, carelessly created new documents by cutting-and-pasting old or incorrect information from an existing document into a new document.

Demonstrating how confidential information can be shared inadvertently, he said office copy machines resold without the hard drive having been purged can retain documents that can be retrieved by the new user.

"You have to be more careful than ever before," he said. "Breathe in, breathe out before hitting 'send.' " ◆

Mahoney is NYSBA's associate director of Media Services.

"Used" Presidents Society (self-proclaimed)—Past Presidents Kathryn Grant Madigan (Levene, Gouldin & Thompson LLP), Stephen P. Younger of New York City (Patterson Belknap Webb & Tyler LLP) and Michael E. Getnick of Utica (Getnick Livingston Atkinson & Priore, LLP) catch up during the Justice for All Luncheon. *[Photo by Jacques Cornell/Happening Photos]*

Show me the money: Committee explores gender equity pay gap

By Carol C. Villegas

Fifty years after the passing of the Fair Pay Act, a woman still makes an average of 77 cents for every dollar earned by a man. The pay gap exists in every profession, including the legal profession, and is worse overall for women of color.

This is not just a woman's issue; this issue affects men, women and their families. Dual income families are the necessary norm these days, and in many families, women are the primary or sole breadwinners. So, what can we as lawyers do about it?

On January 28, the Committee for Women in the Law hosted the Tenth Annual Edith I. Spivack Symposium during Annual Meeting with record attendance.

The program, entitled "Show Me the Money: Can We Close the Gender Equity Gap?," focused on the still-existing pay gap between women lawyers and their male counterparts; gender inequity in promotion and leadership ranks at law firms; gender inequity in and out of the courtroom; and the impact of unconscious bias against women attorneys.

Keynote: Two or more women needed

The symposium kicked off with an eye-opening keynote speech by Stephanie A. Scharf, former president of the National Association of Women Lawyers (NAWL) and currently a Commissioner on the ABA Gender Equity Task Force.

Scharf discussed the NAWL annual survey of retention, which looks at retention of women lawyers, rainmaking, compensation and leadership roles.

The survey results were unsettling. While 65 percent of staff at law firms are women, and 45 percent of associates are women, only 17 percent of partners at firms are women. The good news is that firm-wide management increasingly includes women. However, female attorneys still have a long way to go to equal male attorneys in pay, rainmaking and leadership roles.

In 2013, there were more women on governing committees, increasing from 15 percent in 2012 to 25 percent. Also, an increasing number of women are managing partners firm-wide, from 4 percent to 15 percent. But there clearly needs to be more participation of female attorneys at the top levels of management.

Significantly, the NAWL survey found that the most important firm practice that affects gender equity in compensation is the make-up of a compensation committee.

When a compensation committee consists of all males, women attorneys earn 85 percent to 91 percent of what their male counterparts earn.

Eliminate the gap—Stephanie A. Scharf of the ABA's Gender Equity Task Force, presents eye-opening results from a national study on retention, rainmaking, compensation and leadership among women lawyers at the Committee on Women in the Law's Edith I. Spivack Symposium during Annual Meeting. *[Photo by Steve Hart/Happening Photos]*

However, when a compensation committee has two or more women, female attorneys earn 100 percent of what their male counterparts earn.

For a symposium examining the ways in which women can achieve parity with men, Scharf provided a clear roadmap: We need more women making compensation decisions. Two or more women, to be exact.

Scharf also discussed how to use women's initiative programs at law firms to organize and lobby for change at the firm level.

She discussed the ABA Gender Equity Task Force, which provides a roadmap for firms to advance compensation goals, and encouraged the symposium participants to take these materials back to their respective firms. ◆

Villegas of New York City (Labaton Sucharow LLP) is a member of the Committee on Women in the Law.

Labor lawyers navigate Affordable Care Act's uncharted waters

By Amy Travison Jasiewicz

When the U.S. Supreme Court upheld the constitutionality of the Patient Protection and Affordable Care Act's (ACA) individual mandate in 2012, labor and employment attorneys finally could determine how to advise their clients on complying with the law.

ACA dramatically changed an employer's obligation to provide employees with health coverage as well as an individual's obligation to maintain health coverage.

"The ACA has been at the forefront of the minds of labor attorneys, as it represents a culture change for some of their clients and practices," said William D. Frumkin of White Plains (Frumkin & Hunter LLP). "It's a whole new world and we are guiding employers through uncharted waters."

Frumkin moderated a panel discussion on the ACA during the Labor and Employment Law Section's Annual Meeting program.

Large employers

Sharon G. Goldzweig of New York (Consolidated Edison, Inc.) said the ACA defines a "large employer" as having 50 or more fulltime employees, with full-time calculated as 30 hours or more per week.

Attorneys need to assess the wages of a large employer's work force and determine if any employees earn less than 400 percent of the federal poverty level (FPL). An individual employee whose "household income," is less than 400 percent of the FPL is eligible for a premium tax credit to put toward the cost of their health care premium. If an employee qualifies for the credit, the employer would face a penalty, she said.

To avoid either of the two tax penalties, a large employer must offer each fulltime employee health coverage that is affordable (no more than 9.5 percent of the employee's wage) and provides "minimum essential coverage" (coverage equivalent to the Bronze level plan in the government's health insurance marketplace).

"The federal government is not going to knock on your client's door on Jan. 1, 2015, and say 'Where is the health plan?'" Goldzweig said.

Instead, when employers issue W-2 forms at the end of the 2015 tax year, they must report the kind of health plan they provided and how much it cost the employee.

Other plans

Lisa M. Gomez of New York (Cohen Weiss and Simon LLP) noted that the ACA was written primarily with single employer plans that have insurance companies to provide the benefits in mind. For those with multi-employer, union-sponsored, or self-insured plans, the application of certain provisions of the ACA is not as clear.

"There are a lot of holes in the law where things just don't make sense for those with other types of plans," Gomez said.

New York state has its own online marketplace offering plans approved by the federal government. By applying online, individuals learn whether they are eligible for a tax credit to apply to the cost of their health care premiums.

A family of four can have an annual household income of close to $96,000 and still qualify for a tax credit, said Gomez. "There are a lot of people who would fall within that amount who would not consider themselves to be low-income, so it should benefit a considerable number of people," she said.

Explaining the Act—Sharon G. Goldzweig of Consolidated Edison, Inc. answers an attendee's question after participating in a panel on the Affordable Care Act sponsored by the Labor and Employment Law Section during Annual Meeting. *[Photo by Brad Hamilton]*

Potential litigation

In addition to constitutional challenges facing the ACA, potential opportunities for litigation abound given the complexities of the law, said Russell L. Hirschhorn of New York (Proskauer Rose LLP).

Employers considering restructuring their workforce to avoid the mandate by reducing the number of fulltime employees, or their hours could trigger litigation under ERISA (Employee Retirement Income Security Act) Section 510, which prohibits interference with an employee's ability to access plan benefits, Hirschhorn said.

Other potential litigation could involve the ACA's significant whistleblower protections, or even violations of the ADEA (Age Discrimination in Employment Act) and Title VII, if cutbacks in hours disproportionally impact a protected class of workers, he said.

Suzanne A. Metzger of New York (1199 SEIU National Benefit Fund) outlined compliance and concerns of employers with collectively bargained plans. ◆

Jasiewicz is a freelance writer and the former editor of the State Bar News.

Attorneys wade through maze of Affordable Care Act

By Mark Mahoney

Alyson Mathews and Richard K. Zuckerman offered a lot of information and advice, but not much comfort, to municipal attorneys responsible for implementing the provisions of the Affordable Care Act.

"It's a constantly moving target," Mathews explained during a panel discussion at Annual Meeting, "The Implications of the Affordable Care Act for Municipalities." She said a large part of the law are regulations that are still in proposal form, the details of which will be laid out in the future. "Everything is going to change on a daily basis," she said.

As if to help the speakers illustrate their point, less than two weeks after the Annual Meeting panel concluded, President Barack Obama announced changes to the act that will allow some employers to delay implementation and others to enroll fewer employees for an additional year.

Mathews and Zuckerman, both attorneys at Lamb & Barnosky LLP in Melville, spoke at a forum sponsored by the Municipal Law Section.

The Patient Protection and Affordable Care Act (ACA), commonly known as "Obamacare," was enacted in March 2010 to overhaul the nation's health care system.

What to cover

Among the key provisions, they said at the time of the January panel, is that employers will be penalized if

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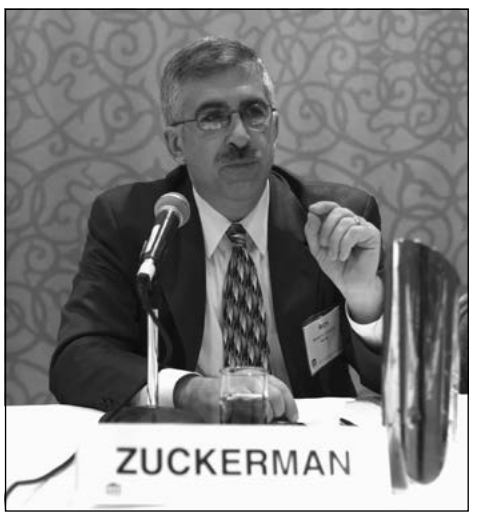
Moving targets—Alyson Mathews calls the Affordable Care Act a moving target for municipalities during an Annual Meeting program sponsored by the Municipal Law Section. *[Photo by Jacques Cornell/Happening Photos]*



Within the law—Richard K. Zuckerman explains how employers are meeting the letter of the Affordable Care Act during the Municipal Law Section's Annual Meeting program. *[Photo by Jacques Cornell/Happening Photos]*

Section program points out that social media tricky landscape for lawyer endorsements

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identifying one's self or purpose. The laws across the states are not uniform or clear-cut, they said.

"We should all assume that deception is unethical," Smith said, giving an example that attorneys are not allowed to provide fake names when contacting an unrepresented witness in order to see postings that otherwise would be private.

But not all situations are black and white, she said. In New York, for instance, attorneys must use their real names when setting up their public or personal Facebook pages. But it is not unethical, right now, to not say you are a lawyer on that page.

An audience member asked about a lawyer's ethical obligation to make sure a witness knows who you are during communications. "Would you be embarrassed if your action was disclosed on the front page of The New York Times?" said Smith, in response.

To endorse or not

The panel also discussed a reasonably new area of concern: endorsements on LinkedIn. Endorsements on a law firm or lawyer's LinkedIn page could be interpreted as a claim of specialty, which is prohibited under the Rules of Professional Conduct in New York.

"Until the State Bar issues an advisory opinion, I think it is wise to remove practice areas from endorsements," said Black, who also urged attorneys to be careful about using LinkedIn's categories in their profiles.

"Our firm's policy is to hide endorsements. I also stay away from recommendations," added Grande.

Other questions raised during the forum included the use of social media by jurors to either conduct research on a case they are hearing or to communicate with friends and family during a trial. Smith said jurors are regularly and clearly instructed not to do in-depth research or to tweet or instant-message during trials.

"And they still do whatever the heck they want," she said. ◆

Mahoney is NYSBA's associate director of Media Services.

How lawyers can help protect elderly from abuse

By Brandon Vogel

Identifying elder abuse is more complicated than seeing a bruise.

Panelists at the Elder Law Section's January 28 program "Elder Abuse: Looking Up From the Law" explored many forms of elder abuse and what lawyers can do about it.

"The mistreatment of the elderly is recognized as a major issue," said Joy Solomon of Riverdale (The Weinberg Center for Elder Abuse Prevention at the Hebrew Home at Riverdale). "Victims are devastated by abuse," adding that elder abuse is defined many ways.

She shared some eye-opening statistics:

- Only one in 24 cases is reported, while 14 percent of surveyed elders felt that they had been abused.
- Women are twice as likely to be abused and elder abuse often results in poverty.
- Older Americans deal with more bureaucracies than any other group.

Elderly victims also are three times as likely to die from abuse, according to the 1998 study, "The Mortality of Elder Mistreatment" by Dr. Mark Lachs.

"If you remain invisible, you will disappear. Victimization increases their vulnerability," said Solomon. "If a person is being victimized, it is likely to happen again."

Solomon discussed poly-victimization. "Abusers can be anywhere," said Solomon. "Sometimes, there are multiple abusers in one home."

"Lawyers are uniquely positioned to report abuse," said Solomon. She noted that lawyers often can identify who among their elderly clients is at risk. Lawyers should assure elderly clients that their conversations are confidential.

Increase in investigations

Three criteria must be met in an Adult Protective Services case: Is there a physical or mental impairment? Is there an imminent risk? Is there a person or agency who can responsibly address that risk?

Audrey Stone of White Plains (Special Prosecutions Division, Westchester County District Attorney's Office) noted that her office has seen "an incredible increase in the number of investigations of elder abuse." Her office usually sees the most extreme cases.

"Very few victims ever come forward themselves," said Stone.

She said that local banks are effective in recognizing suspicious behavior. "I am a huge fan of training and community outreach."

Protect your elders—Audrey Stone of the Westchester County District Attorney's Office makes a point during a discussion on elder abuse at the Elder Law Section program at the Annual Meeting. Art Mason of Lifespan, left, and Joy Solomon of the Weinberg Center for Elder Abuse Prevention, also were panelists. *[Photo by Richard Smith]*

She noted that there are "many different explanations for bruising" and that "sometimes, it's not elder abuse."

Art Mason of Rochester (Lifespan) said that 90 percent of abuse involves family members.

"Trust has to be counterbalanced. Many older adults are faith-based and may confide in their priest, rabbi or clergyman," said Mason. They are likely to confide in a doctor next, then a lawyer.

Mason advised lawyers to "pay attention to the words" of the elderly.

"Often they will say, I was mistreated or disrespected," said Mason. "You might be able to get a victim help." ◆

Vogel is NYSBA's media writer.

Affordable Care Act providing confusion for employers trying to comply with new rules

Continued from page 12

they do not offer health insurance to at least 95 percent of their fulltime employees, offer coverage that is unaffordable, or offer coverage that does not provide what the government defines as of "minimum value."

The mandate only applies to those employers with at least 50 full-time and/or full-time-equivalent employees. Definitions as to what constitutes that distinction are contained in the law.

However, on February 10, the president moved some of the targets, postponing the mandate one year for companies with 50 to 99 workers and requiring that larger businesses cover only 70 percent of their workers, instead of 95 percent, until 2016.

In addition to those constantly moving targets, both speakers said there will be confusion over which employees are considered full-time, as there are detailed rules regarding the counting of hours of service. The "look-back" measurement method for determining that number also is "really confusing," Mathews said.

Employers that violate the law are subject to financial penalties, some quite substantial. Mathews said those penalties can quickly pile up.

For example, under Section 4980H, the monthly penalty for violating the law is calculated at $2,000, multiplied by the number of full-time employees, divided by 12. The first 30 full-time employees are excluded from the calculation.

> *"When you determine the winners and losers with the Affordable Care Act, the winners are going to be the ones who have a paper trail."*
>
> *—Alyson Mathews*

So, she said, an employer with 330 full-time employees that offered less than 95 percent of its employees coverage and had one employee take a tax credit for purchasing coverage on the health exchange would face a penalty of $50,000 per month under that formula.

Other violations, such as not offering minimum coverage, would follow different penalty formulas, they said.

Zuckerman said employers will be trying to offer the least amount of coverage so as to receive the lowest penalties, desiring to fall just within the requirements of the law. The big picture questions for employers, Zuckerman said, are "Do we have to do this?" and "What happens if we don't?"

Mathews offered participants a chart to further illustrate the complexity of the law and the procedures employers must follow. It resembled a subway map and explained the complexities of determining coverage to an ongoing employee based on different deadlines and time frames established under the law.

Both speakers said it is critical that employers keep track of the kinds of benefits they offer during contract negotiations with employees and that they maintain detailed records, as Mathews said there is a "tremendous amount" of paperwork involved.

"When you determine the winners and losers with the Affordable Care Act, the winners are going to be the ones who have a paper trail," she said. "Memorialize the method you communicated with employees."

Another factor employers will have to consider is that the ACA rules regarding such matters as which employees are eligible for coverage and when they become eligible supersede existing agreements employers might have with their employees, Zuckerman said. Therefore, employers must be cognizant of the law regarding how much time they have to offer employees coverage.

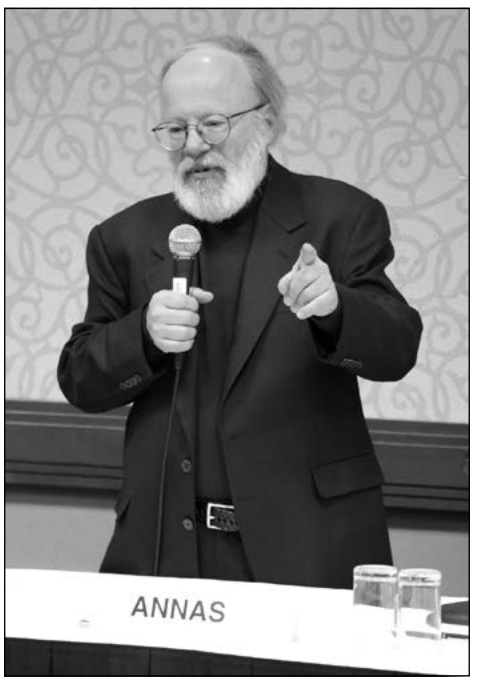
"We're actually all in the same boat," Zuckerman said. ◆

Mahoney is NYSBA's associate director of Media Services.

Genetic screening: Too much information or not enough?

By Brandon Vogel

After Angelina Jolie announced she carried the BRCA1 gene mutation and underwent a double mastectomy in 2013, nearly 5 percent of women surveyed said they would seek medical advice on preventive mastectomies or ovary removal.



Ethically speaking—Professor George J. Annas speaks about the emerging field of genetic screening and the ethical conflicts in clinical medicine and research during the Food, Drug and Cosmetic Section's Annual Meeting program. *[Photo by Jacques Cornell/Happening Photos]*

Although a seemingly small figure, Harris Poll Chairman Humphrey Taylor said that translated to nearly 6 million women worldwide.

"The Angelina Effect" has brought considerable attention to DNA screening and its potential effects for future health.

Professor George J. Annas of Boston (Health Law, Bioethics & Human Rights Department, Boston University School of Public Health) examined the controversial issue in a speech during Annual Meeting entitled, "Ethical Conflicts in Clinical Medicine and Research: Consent to DNA Screening, Research on Extremely Premature Infants and International Drug Trials." The Food, Drug and Cosmetic Law Section presented the January 30 program.

Reporting results

"Genetic information is uniquely personal and private," said Annas. "It is about you, your parents, your children, and your siblings. Your genome is your probabilistic, future diary. It tells you what could happen to you medically."

Reporting results from screenings has divided clinicians and bioethicists.

The American College of Medical Genetics and Genomics (ACMG) issued its recommendations for the reporting of incidental or secondary findings in clinical exome and genome sequencing on March 21, 2013. Incidental findings are defined as results from an additional 56 specific genes that arise outside the original purpose of the testing.

The ACMG recommended that laboratories should return the 56 findings to the doctor ordering the tests. Such findings also should be reported even if the patient is a child, the ACMG recommended. In a clarification issued on March 23, it said that failing to report the results, at least the ones with "life-saving" potential, would be unethical.

In the May 31, 2013 issue of Science, Annas and colleagues Professor Susan Wolf of the University of Minnesota and Dr. Sherman Elias of the Feinberg School of Medicine at Northwestern University argued that patients have the right not to know.

"Patients have an established right to refuse unwanted medical tests and the information they might disclose, even if that information would offer potential medical benefit," they wrote. "The law and ethics and human rights all support the rights and dignity of the individual, to both informed consent to testing and informed refusal of learning the results of testing," said Annas.

More information better?

In the summer of 2013, 23andMe, a Google-backed company, released a commercial aimed at gaining 1 million customers for its testing kit, Saliva Collection and Personal Genome Service (PGS). The company claims the kit can screen for 254 conditions. The company dropped the price from $999 to $99 in December 2012.

The Food and Drug Administration (FDA) issued a letter to 23andMe on Nov. 22, 2013 stating that it did not clear or approve 23andMe to market the PGS for health purposes. Of concern were the potential health consequences that could result from false positive or false negative assessments, and that clinical validation was lacking.

23andMe stopped marketing the kit on Dec. 5, 2013.

Annas emphasized that the FDA has since "made it clear that it is not against genomic testing, but it does want more data."

"This is an opportunity for industry and the FDA to come together and set standards for genetic testing," said Annas. ◆

Vogel is NYSBA's media writer.

Power of genetic information as controversial as it is personal

By Brandon Vogel

Genetic information is as powerful as it is personal.

That is precisely what makes it controversial.

Panelists discussed the rapid growth of genetic data and its ethical implications at the Health Law Section's January 29 program, "Genetics, Ethics and the Law."

"Unlike other indicators of current health status, like blood pressure or cholesterol levels, genetic data has the special property of allowing us to look into the future at possible unmanifested diseases," said Samuel J. Servello of New York City (Moses & Singer LLP), co-chair of its Committee on Medical Research and Biotechnology.

"Also, it reaches way beyond the individual to give us information on siblings, children, parents and anyone else who shares the individual's genetics."

Genetic data "is a powerful tool with potential uses for good and bad," he said. "It can also be used and is being used in personalized medicine research."

However, there are legal and ethical concerns. "As there is economic incentive to collect and utilize genetic information, we need to balance the goals of research and development of new drugs and therapies with an individual's right to privacy of his or her genetic information. As attorneys, we need to understand genetics, advancement in technology and how they are, and should be, reflected in our legal framework," Servello said.

In his speech, "Genomics from a Medical Geneticists' Perspective," Dr. Harry Ostrer of the Bronx (director of genetic and genomic testing, Montefiore Medical Center) said there are three major areas for lawyers to consider: discovery, privacy and intellectual property.

Despite it being a $20 billion market, "we are still in the learning phase with genetic information," Ostrer said. In each genome, there are 3.5 million single nucleotide variants, 600,000 insertions/deletions and 17,000 coding variants.

He said New York City's diverse population makes it a good place to study the issue.

To market, to market

Ann M. Willey of Albany (Albany Law School) acknowledged genetic information as "both powerful and exciting," but said that there is concern about its misuse.

She explained the differences between two hot topics: direct to consumer marketing and direct access testing.

Direct-to-consumer marketing provides information on the availability of genetic tests and their possible value for individuals. Access to the tests requires a referral to a health care practitioner or officer of the court. Genetic counselors cannot write prescriptions.

Direct access testing is "the most controversial of all tests," said Willey. It is self-performed or self-ordered testing.

The most well-known example is 23AndMe, a company that makes saliva-based testing kits. The Food and Drug Administration (FDA) ordered the company to halt sales of its product in November 2013. The FDA claimed that 23AndMe failed to show that its technology was supported by science. It also said consumers could unnecessarily seek medical care.

Personal and powerful—Samuel J. Servello, left, Karen L. Illuzzi Gallinari and Dr. Harry Ostrer listen carefully to what co-panelist Ann M. Willey has to say during a discussion on "Genetics, Ethics and the Law" sponsored by the Health Law Section. *[Photo by Brad Hamilton]*

In New York, testing is limited to those procedures approved by the FDA as available for over the counter sale. No genetic tests have been approved for over the counter sale.

Karen L. Illuzzi Gallinari of the Bronx (director of regulatory affairs for medical research, Montefiore Medical Center) discussed biobanking, the collection and storing of blood and tissue specimens and health information for future medical research. ◆

Vogel is NYSBA's media writer.

Young Lawyers: Tips for successful work/life integration

By Brandon Vogel

When Maureen Maney was a new associate and sent to cover her first deposition, her seasoned adversary imparted a few "words of wisdom."

His advice? He told her that trial lawyers survived on four things: greasy fried food, nicotine, caffeine and alcohol.

Maney had more constructive and healthier advice for the standing-room-only crowd at the Young Lawyers Section's January 31 program, "Maintaining a Healthy Work/Life Balance While Avoiding Ethical Dilemmas as a New Attorney."

She suggested that work/life integration was perhaps a more apt concept than work/life balance.

"It can be very challenging at times to maintain a good quality of life while practicing as an attorney," said Maney of Syracuse (Hancock Estabrook LLP). "But there is life outside of the law and it is absolutely essential to have one."

She learned this lesson the hard way one morning when she read an article on the front page of a newspaper to discover that a high school classmate had been killed in a motor vehicle accident on his way to work. He was 31. "I decided that I needed to make some changes and be more efficient and cognizant with how I was managing my time," said Maney.

"The starting place for working towards work/life integration is to determine what your values and priorities are," said Maney, detailing the first of several practical tips.

She also recommended that young attorneys build in non-negotiable blocks of time for themselves at least twice a week. These blocks should be treated like calendar appointments. "You need to re-charge your batteries or you will run on empty," said Maney.

She emphasized the importance of finding mentors who can help navigate the legal profession, identifying the five people every lawyer needs in his or her life. They include an older attorney outside your office with whom you can seek counsel; a young, enthusiastic attorney to remind you why you became a lawyer; a non-lawyer friend to give perspective outside of the profession; someone who makes you laugh; and someone who gives a push when needed.

"Work is a rubber ball. It will bounce back. Your reputation, health, family and friends are glass," Maney concluded.

Serious consequences

Patricia Spataro, director of the State Bar's Lawyer Assistance Program (LAP), detailed how the stresses of the legal profession take their toll on lawyers.

Lawyers are four times as likely as the general population to get depressed and twice as likely to develop a drinking problem. "These issues can start in law school," said Spataro. She noted that the majority of law students are facing heavy school loan debt and fewer job opportunities when they enter the profession. For newly admitted lawyers, these issues add to the stress already inherent in the field.

"Law is a stressful profession and not managing this stress can lead to serious consequences," said Spataro. "Lawyers must pay attention to the way stress impacts them."

Because of the stigma of having a mental health problem, lawyers sometimes are reluctant to seek help. The problems caused by untreated issues can place their law license in jeopardy.

"It is important to watch for the early warning signs of depression, problem drinking and other mental health impairments," said Spataro. "Concerns are easier to address and treat in the beginning stages and these potentially serious issues don't go away on their own."

"You have a responsibility to report conduct violations and unethical behavior of other lawyers under Rule 8.3," said Spataro. "Along with the responsibility to hold each other accountable, there should be an obligation to watch out for each other. A lawyer would know best the signs that a colleague is struggling. Don't worry about diagnosing the problem, just reach out and ask if everything is OK when you notice a lawyer who does not seem themselves."

She also noted that under the Centers for Disease Control and Prevention guidelines, two drinks a day for a man is normal, while one drink for a woman is normal. A lawyer must be extra vigilant about these guidelines, because there is much more at stake for lawyers who drink more than the suggested limits. Even within the suggested limits there can be risks for lawyers, she said.

Balancing act—Maureen Maney, above, and Patricia Spataro spoke during the Young Lawyers Section Annual Meeting program on ways to maintain a balance between lawyers' work lives and personal lives. *[Photo by Brad Hamilton]*

She suggested audience members ask themselves, "Is there anyone in your life who has expressed concern about your drinking, your depression or your behavior?" This can be a reliable indicator that there might be a problem and you should seek assistance.

Attorneys should call the LAP if they have any questions or concerns about themselves or a colleague: 800-255-0569. ◆

Vogel is NYSBA's media writer.

The clock keeps ticking for Gangi's work on social justice

By Brandon Vogel

As surprised as he was to learn he had been nominated for the Haywood Burns Award, Robert Gangi was even more surprised when he won.

Social justice champion—Robert Gangi, center, winner of the Haywood Burns Award is congratulated by President-elect Glenn Lau-Kee and Diana Sen, chair of the Committee on Civil Rights, which sponsors the award. *[Photo by Richard Smith]*

Although he is not an attorney, Gangi has devoted his career to criminal justice and law enforcement. The Committee on Civil Rights presented him with the award on January 30 in recognition of his longtime commitment to social justice.

A graduate of Columbia University, Gangi is the director and founder of the Police Reform Organizing Project (PROP) at the Urban Justice Center in New York City. During his tenure, PROP has published a voter education guide, hosted numerous forums on unjust police practices and issued several reports on police abuses.

"Robert Gangi has dedicated his life to progressive social change. He has effected impactful reform and shined a light on the issues affecting prisoners," said Diana Sen of Manhattan, chair of the Committee on Civil Rights. "He is a true champion for justice."

The work he has done over the last four decades has had a big impact on him.

"I work with people who have been dealt a bad hand and sought to give them a better chance at a fair hand," said Gangi. "The work I have done has been a privilege. I have been connected to issues that I care deeply about. To do that kind of work has led me to live a rich and productive life."

"I am driven by my strong belief in dignity of all human beings," said Gangi. "We take action. In our work, the clock never runs out. It is our job and responsibility to ensure that we always have time."

Dignity for prisoners

He served as the executive director of the Correctional Association of New York from 1982 to 2011. He also worked to prevent prison overcrowding, advocated to repeal mandatory minimum sentencing laws for people convicted of drug crimes, and promoted alternatives to incarceration.

"Other teams may be bigger and stronger, but we don't play the game to win trophies. We play the game to win a better, more just world," said Gangi.

Prior to his work at the Correctional Association, he was a program officer for the John Hay Whitney Foundation and a community organizer in New York City. His op-eds have appeared in the New York Times, Newsday and Albany Times Union.

Gangi said he has no intention of slowing down. "We must keep on keeping on. The clock never runs out in our game," said Gangi. "This will help sustain me for years to come." ◆

Vogel is NYSBA's media writer.

AWARD CEREMONIES AT ANNUAL MEETING 2014

Criminal Justice Awards—The Criminal Justice Section honored eight attorneys and jurists for their contributions to the criminal justice community at its annual awards luncheon on January 30.

Vincent E. Doyle, Jr. Award for Outstanding Judicial Contribution in the Criminal Justice System: Hon. Barry Kamins, Brooklyn. L to R: Section Chair Hon. Mark Dwyer of Brooklyn (New York State Court of Claims); Judge Kamins (chief of policy and planning New York State Unified Courts System); and Chief Judge Jonathan Lippman.

Outstanding Contribution in the Field of Criminal Justice Legislation: Sen. Lee Zeldin, Brookhaven. L to R: Judge Dwyer, Senator Zeldin, Rick Collins of Mineola (Collins, McDonald & Gann, P.C.), co-chair of the Sealing Committee.

Outstanding Contribution in the Field of Criminal Law Education: Anthony J. Colleluori, Syosset. L to R: Judge Dwyer, Colleluori, Rick Collins.

Outstanding Police Contribution in the Criminal Justice System: Philip Banks, III, New York City. L to R: Judge Dwyer, Banks, John M. Ryan of Kew Gardens (chief assistant district attorney, Queens County District Attorney's Office), member-at-large of the section's Executive Committee.

Outstanding Prosecutor: Frank A. Sedita III, Buffalo. L to R: Judge Dwyer; Michael J. Flaherty, Jr, accepting for Sedita; Section Secretary Robert J. Masters of Kew Gardens (executive assistant district attorney, legal affairs, Queens County District Attorney's Office), co-chair of the Sentencing and Sentencing Alternatives Committee.

Michele S. Maxian Award for Outstanding Public Defense Practitioner: Jessica W. Goldthwaite, Brooklyn.L to R: Judge Dwyer, Goldthwaite; and Susan M. BetzJitomir of Bath (BetzJitomir & Baxter, LLP), co-chair of the Sentencing and Sentencing Alternatives Committee.

Outstanding Contribution in the Field of Correctional Services: Jason D. Effman, Albany. L to R: Judge Dwyer, Jason Effman, Norman P. Effman of Warsaw (Wyoming County Public Defender), co-chair of the Correctional System Committee.

Charles F. Crimi Memorial Award: Paul Shechtman, New York City
L to R: Judge Dwyer, Shechtman, and Lawrence S. Goldman of New York City (Goldman and Johnson), chair of the Ethics and Professional Responsibility Committee.

New York State Conference of Bar Leaders Innovation Awards

Small Bar Association: (Network of Bar Leaders—L to R: Karla Wilsey, chair, New York State Conference of Bar Leaders; Phil Schatz, past president, Federal Bar Association, S.D.N.Y. Chapter; Taa Grays, past president, Network of Bar Leaders; Raymond Dowd, president, Network of Bar Leaders.

Medium Bar Association: Asian American Bar Association—L to R: Mike Huang, AABANY president; Clara Ohr, president-elect; Yang Chen AABANY executive director; Rocky Chin, a founder of AABANY.

Large Bar: Brooklyn Bar Association—L to R: Andrew Fallek, BBA president; Diana Szochet, past president; Fern Finkel, trustee; Avery Okin, BBA executive director.

[All photos by Steve Hart and Jacques Cornell/Happening Photos]

SCENES FROM ANNUAL MEETING 2014

Stanley H. Fuld Award—Hon. Shira A. Scheindlin received the 2014 Stanley H. Fuld Award at the Commercial and Federal Litigation Section Luncheon. Scheindlin chaired the section from 1991-1992. L to R: Hon. Nicholas G. Garaufis (Eastern District of New York); Hon. Jack B. Weinstein (Eastern District of New York); Judge Scheindlin (Southern District of New York), Hon. Sidney H. Stein (Southern District of New York); and Hon. Deborah A. Batts (Southern District of New York). *[Photo by Steve Hart/Happening Photos]*

Kay Crawford Murray Award—Committee on Women in the Law co-chairs Anna Park of New York (Zeichner Ellman & Krause LLP), left, and Ellen G. Makofsky of Garden City (Raskin & Makofsky LLP), right, present the 2014 Kay Crawford Murray Award to Connie O. Walker of Rochester. Walker is a law clerk to U.S. District Court Judge Frank P. Geraci, Jr. She is the immediate past president of the Monroe County Bar Association. *[Photo by Steve Hart/Happening Photos]*

Strategizing for the Summit—President David M. Schraver of Rochester (Nixon Peabody LLP) and President-elect Glenn Lau-Kee (Kee & Lau-Kee, PLLC) discuss the finer points of the Presidential Summit during the morning walk-through. *[Photo by Steve Hart/Happening Photos]*

Career development—Sheila A. Gaddis of Rochester (executive director, Volunteer Legal Services Project of Monroe County) asks a question during the Annual Career Development Conference. *[Photo by Steve Hart/Happening Photos]*

Charity Corps—Panelists Susan Chase of New York City (The Legal Aid Society) and Catherine M. Hedgeman of Albany (Law Office of Catherine M. Hedgeman) chat with an attendee before the Charity Corps program, "Getting Ready for the Nonprofit Revitalization Act." *[Photo by Jacques Cornell/Happening Photos]*

Future stars—The Entertainment, Arts and Sports Law Section honored David Fogel (Benjamin N. Cardozo School of Law) and Amanda Agnieszka Rottermund (St. John's University School of Law) with the 2013 Phil Cowan/BMI Memorial Scholarship. *[Photo by Richard Smith]*

Letter to the Editor: Writer knows when something is wrong for lawyers

Continued from page 8

returned to my office to complete the form.

Today, I do "okay" financially. Between my law practice and other business interests I employ over 25 people and as such contribute hundreds of thousands of dollars in state and federal taxes. These tax dollars are used to support local governments and the social programs they put forth – including those which benefitted my parents and filtered down to me as a child.

Compare some of the personal information I shared herein with the answer I provided to Section D of my Attorney Registration Form, which was "NONE OF YOUR BUSINESS." Why that response and not just check the box? Well, Sara, to paraphrase the poet Robert Frost, "I chose to divulge the personal information, and that has made all the difference!"

I do not believe that I have any obligation to divulge personal information to anyone yet I willingly have done so here. Tell me that a few judges have mandated that I disclose how I spend my time and money— both of which I have earned through sweat equity— and I go silent. (Keep in mind that I have not touched on the thought of mandating *how* I spend my time and money because that issue is not ripe for discussion.) I have chosen not to disclose, and if it turns out that I have chosen poorly regarding Rule 6.1, I wonder, will you stand with me, my brethren?

Post Script: I was in the landlord/tenant part of the Fifth District Court in Ronkonkoma on Dec. 12, 2013, when a judge confirmed to an unrepresented tenant—a young woman in her 20s—of her agreement to pay $56 to avoid eviction. Shell-shocked at the agreement, I handed the woman $100 and told her lawyer he should be ashamed of himself for threatening eviction for $56. He responded that it wasn't him, but his client.

I wonder. Did the $100 qualify under Rule 6.1? I'll never know because you didn't ask nicely!

To read the full text of this letter, go to http://www.sbertolinolaw.com/uploads/rule6-1.pdf

Steven P. Bertolino
East Islip

Kathleen Donelli receives Ruth G. Schapiro Award

By Brandon Vogel

Dolores Gebhardt met Kathleen Donelli when she interviewed for a job at Donelli's firm 13 years ago.

Gebhardt, then a broke, single mother of two, had been admitted to the bar for 16 years, but had little matrimonial law experience and no courtroom experience.

Donelli, herself once a young, divorced mother and domestic violence survivor, fought to hire Gebhardt as an associate at McCarthy Fingar LLP, mentored her and showed her how to get business. Today, Gebhardt is an equity partner in McCarthy Fingar and an active bar leader, just like her mentor.

Gebhardt is one of many people who have benefited from Donelli's advocacy and it is one reason Donelli, of White Plains, received the 2013 Ruth G. Schapiro Award from the Committee on Women in the Law during the January House of Delegates meeting in New York City. It recognizes a State Bar member for outstanding contributions to addressing the concerns of women.

Committee chair Anna S. Park of Manhattan (Zeichner Ellman & Krause) said Donelli "has been a champion for women's rights and families, notably her advocacy for no-fault divorce legislation."

Career full of firsts

Donelli concentrates her practice in matrimonial law and was the firm's first female equity partner. Today, nearly half of the firm's equity partners are women and the firm has flex-time arrangements because of Donelli.

She won a landmark Court of Appeals custody decision, *Tropea v. Tropea*, in 1996. The case established that courts should determine if a custodial parent should be permitted to relocate with a child based on the "best interest" of the child.

"Kathleen Donelli's talent, commitment and effective leadership have led her to the top of the legal profession," said Ellen G. Makofsky of Garden City (Raskin & Makofsky LLP), co-chair of the Committee on Women in the Law. "We are pleased to welcome Kathleen Donelli into our distinguished group of award recipients."

Donelli pointedly thanked certain people who have guided her throughout the years, notably Rev. Des O'Connor of Our Lady of the Lake Parish in Mt. Arlington, N.J., who became a father figure for Donelli after her father's death; her aunt, Bernice Forkan, and mentor, Hon. Sondra Miller, the 1995 recipient of the Schapiro Award and a colleague at McCarthy Fingar. "They are the reasons I am here today," she said.

Donelli is a past president of the Westchester Women's Bar Association and the White Plains Bar Association, and director of the Women's Bar Association of the State of New York. She also is a member of the Grievance Committee for the Ninth Judicial District.

She is a graduate of the City University of New York and Pace University School of Law.

"I have always had a fundamental conviction that hard work and a good education offered me the hope of a better life," said Donelli. "My life has never been stagnant. It was and still is full of possibilities."

She concluded her remarks by telling the audience how loans helped her go back to school while she had a young son. She said that in today's climate she might not have the same opportunities afforded to her.

"My heart goes out to these young lawyers. We who have been so blessed, have the opportunity and an obligation to help our young lawyers find their place in this noble profession," said Donelli. ◆

Women's advocate—President David Schraver congratulates Kathleen Donelli for winning the Ruth G. Schapiro Award from the Committee on Women in the Law during the January House of Delegates meeting at Annual Meeting. *[Photo by Jacques Cornell/Happening Photos]*

Vogel is NYSBA's media writer

Excellence in Public Service Award Recipient—Judge Victoria A. Graffeo

By Brandon Vogel

You have got to be a jack of all trades in government.

Hon. Victoria A. Graffeo, senior associate judge of the New York State Court of Appeals, shared that firsthand experience while accepting the 2014 Excellence in Public Service Award. She has worked in all three branches of state government in her career.

Given by the Committee on Attorneys in Public Service, the award recognizes public sector attorneys who demonstrate a "higher calling" by an extraordinary commitment to service, honor and integrity. Graffeo received her award on January 28.

"I can think of no more deserving recipient than Judge Graffeo," said President David M. Schraver of Rochester (Nixon Peabody LLP).

"She has exemplified excellence at every turn and has improved the lives of New Yorkers through her work and decisions," said Committee Chair Catherine A. Christian of New York City (Office of the Special Narcotics Prosecutor).

In accepting the award, Graffeo said, "My years as a judge have exceeded my expectations." She also said that "no one in public service works alone. Public service is simply a people's business."

Many colleagues from state government attended the ceremony in support, including former Chief Judge Judith S. Kaye, former Court of Appeals Associate Judge Carmen Beauchamp Ciparick, and current judges Jenny Rivera and Sheila Abdus-Salaam. Graffeo praised Kaye and Chief Judge Jonathan Lippman for their leadership, support and friendship.

"She pursued a law degree as a meaningful way to help people and she has done exactly that," wrote Lippman in his nomination letter of support. "In each of these positions, Judge Graffeo demonstrated the qualities that continue to define her: a brilliant analytical mind and quickness to learn, a willingness to rise to every challenge, an outstanding work ethic, and a precision and care in everything she does."

Specializing in public service

Graffeo, who has spent most of her career in public service, has served on the Court of Appeals since 2000. She previously was an associate justice of the Appellate Division of the state Supreme Court, Third Department and a justice of the state Supreme Court, Third Judicial District.

She began her career in private practice and later became assistant counsel to the New York State Division of Alcoholism and Alcohol Abuse and chief counsel to the Assembly Minority Leader. In 1995, she was appointed New York State Solicitor General.

She chairs the Advisory Committee on Pro Bono Service by In-House Counsel. She also is co-chair of the Advisory Committee on the New York State Pro Bono Bar Admission Requirements and chair of the New York State-Federal Judicial Council.

Graffeo earned her undergraduate degree from the State University of New York at Oneonta and her law degree from Albany Law School. She resides in Guilderland. ◆

Excellent public servant—Catherine A. Christian, left, chair of the Committee on Atorneys in Public Service, and President David Schraver present Hon. Victoria A. Graffeo, senior associate judge of the New York State Court of Appeals, with the 2014 Excellence in Public Service Award. *[Photo by Jacques Cornell/Happening Photos]*

Vogel is NYSBA's media writer.

A true professional: John Marwell, a pillar of the bar

By Brandon Vogel

Learning how to disagree without being disagreeable was the best advice John Marwell received in his career.

In his four decades of law practice, Marwell has embodied that philosophy, has been a pillar of the profession and an effective bar leader.

Colleagues, adversaries and clients wrote letters nominating him for the Attorney Professionalism Award, given by the Committee on Attorney Professionalism. Marwell received the award for 2014 at the House of Delegates dinner during Annual Meeting.

To be of help

The Columbia Law graduate "wanted to go into a profession where he could help people." He began his career as an in-house legal counsel at IBM. After four years, he hung out his shingle. IBM told Marwell he would be welcomed back if he chose to return.

At a bar association event in 1978, he met Stuart Shamberg, a well-known zoning attorney. Shamberg had recently secured a "landmark victory" in the case of *Berenson v. the Town of New Castle*, which established the duty of municipalities to meet their fair share of local affordable housing needs.

The two men decided to merge their practices and established the firm, Shamberg Marwell Hollis Andreycak & Laidlaw, P.C., a general practice firm. Marwell said the firm is best known for its zoning, land use and environmental practices and has handled a number of landmark cases.

"I value the fact that people call us when they need help," said Marwell, who has argued two cases before the state Court of Appeals. "I value the profession and the ability to deal with other attorneys and try to work with them to solve the client's problem."

His partner, P. Daniel Hollis III, praised him for his sound advice "that will be based upon the soundness of his character, his fidelity to his ideals and standards, his honesty in presenting his opinion in a way that is never accusatory and always supporting."

Marwell recently wrote a law school letter of recommendation for his firm's receptionist. "She is going into law for the right reasons: to help people and make a positive contribution to society," said Marwell.

A particular highlight of his career was writing an *amicus* brief with his son, Jeremy, in the case of *Serrone v. City of New York*. The younger Marwell is an associate at Vinson & Elkins LLP in Washington, D.C.

Within the State Bar, Marwell is chair of the Finance Committee and a past vice-chair of the Senior Lawyers Section. He served as vice-president of the Ninth Judicial District from 2007 to 2011. He was president of the Westchester County Bar Association from 2005 to 2006.

Past State Bar President Vincent E. Doyle III of Buffalo (Connors & Vilardo, LLP) and Marwell worked closely together on the Working Group on Judicial Compensation. Doyle wrote in his nomination letter, "In all of my interactions with John, he is unfailingly professional. He always conducts himself with courtesy and civility, even while debating contested issues. He brings great honor to our profession." ◆

Truly professional—President David Schraver,left, laughs with John Marwell, as he presents him with the 2014 Attorney Professionalism Award at the House of Delegates dinner during Annual Meeting. *[Photo by Steve Hart/ Happening Photos]*

Vogel is NYSBA's media writer.

Top young lawyer feted for work on death penalty, human rights

By Mark Mahoney

From his beginnings as a child of war in Pakistan to his transformation into a passionate and respected resource on capital punishment and human rights issues, Muhammad Usman Faridi has come a long way in a short time.

His tireless efforts in these areas, as well as his pro bono work as an associate at the New York City law firm of Patterson Belknap Webb & Tyler, have earned him the State Bar's Outstanding Young Lawyer Award for 2014. It was presented by the Young Lawyers Section during a reception January 29 at Annual Meeting.

Faridi is a member of his firm's litigation practice. During the past five years, he has spent hundreds of hours helping pro bono clients through the firm's outreach efforts. He also regularly donates his time to sharing his expertise in human rights issues, particularly capital punishment matters, with local high school students.

"I'm interested in human rights issues because I view myself as a human rights activist," Faridi said in an interview. "In college, I did a lot of work on international human rights issues and interned at the United Nations and a couple of other nonprofits where they did human rights work."

Lisa R. Schoenfeld of Garden City (Schlissel Ostrow Karabatos), chair of the Young Lawyers Section, said for Faridi to have achieved so much at such a young age is a testament to his dedication, drive and passion.

"Muhammad is an outstanding lawyer with an unwavering commitment to human rights and the rule of law," she said. "This award is well deserved."

Hard-working immigrant

Faridi grew up in Bharth, a small village in northeastern Pakistan, and immigrated to Brighton Beach in Brooklyn when he was in seventh grade and began learning English. In high school, he worked 30 hours a week.

While an undergraduate at John Jay College of Criminal Justice and working as a cab driver in 2001, Faridi met former Irish President Mary Robinson, a passenger in his cab. He and Robinson, then the United Nations High Commissioner for Human Rights, began discussing Faridi's passion for human rights, and Robinson encouraged him to go to law school. He earned his juris doctor at New York School of Law.

In acknowledging the award, Faridi credited his father, who drives a taxi cab six or seven days a week; his mother, a homemaker who raised three children in Pakistan while his father was in the U.S.; and his law firm, which he said allowed and encouraged him to participate in New York City Bar's Capital Punishment Committee and do other human rights work.

"For me, it's basically a culmination of the work I've done on my own, my own hard work," he said. "But most of it, I think, is basically the trust that a lot of other people around me had in me and also the support that they provided me."

Faridi encouraged other young lawyers to stick with what motivates them.

"Regardless of where you end up in regard to your profession and employment, you can still do things to advance the ideals that compelled you to be a lawyer in the first place," he said. "Don't forgo and put on the back burner the ideals and whatever philosophies that you have that you believe in." ◆

Proud moment—Muhammad Usman Faridi, center, receives the 2014 Outstanding Young Lawyer Award from Lisa R. Schoenfeld, chair of the Young Lawyers Section, which sponsors the award, and State Bar President David Schraver during Annual Meeting. *[Photo by Brad Hamilton]*

Mahoney is NYSBA's associate director of Media Services.

Psychologist advises divorce attorneys on how to cope with stress

By Mark Mahoney

Arnold Shienvold has seen more than his share of volatile family issues—from testifying at the trial of a teenager who murdered his cousin, to providing a competency report in a custody case involving a stepfather accused of sexually abusing his wife's 4-year-old son, and many other heart-breaking incidents.

It is a given that the family members involved in these disputes are affected by stress. But often overlooked is the impact that dealing with people under such stresses has on the attorneys involved.

Shienvold, a clinical psychologist with the office of Riegler, Shienvold & Associates in Harrisburg, Pa., was the keynote speaker at a luncheon hosted by the Family Law Section on January 30 during Annual Meeting.

Reasons not to stress

He first told the gathering that it is not difficult to figure out the reason behind their clients' anxieties—losing custody of children or seeing them less frequently, financial destitution due to divorce, feelings of abandonment, loneliness and loss of friends, and difficulties in facing their new situations.

"All clients are quirky and all clients have anxieties," he said.

He told attorneys that difficult clients generally fall under one of four different continuums.

There are the "histrionic" individuals, those who are overly emotional, play the victim, need constant reassurance and provide few details about their situations. There is the "borderline" individual, who is moody, very needy, clingy, manipulative and seductive. Another is the "narcissistic" individual, who is grandiose, self-important, doesn't take responsibility, aggressive and who has to win. The fourth is the "anti-social" individual, who is self-gratifying, a risk-taker, deceitful, charming, manipulative, doesn't have much of a conscience.

Compounding these characteristics, Shienvold observed, is the fact that "we are seeing clients at their worst moments." He noted that when stressed, these people often will repeatedly revert to the old patterns of behavior that helped create their problems in the first place.

The question for attorneys becomes how best to deal with those clients.

Shienvold advised attorneys first to learn the art of "active listening," which he said means paying close attention to what their clients are saying and avoid distractions while meeting with clients.

He said they should be consistent with clients in terms of listening skills, keeping appointments and giving advice.

"These are people who really notice inconsistencies and they hook on them," he said. "If there's not a natural crisis, they will create a crisis."

He further advised attorneys not to always believe the sets of facts presented by their clients, but always to validate the feelings they are experiencing.

He also said lawyers should manage any anger they might feel toward clients.

"If you spin out of control emotionally, they'll spin higher," he said.

In helping clients deal with their situations, he urged attorneys to evaluate themselves, identifying their own strengths, weaknesses and tendencies.

For example, he posed, are you a "white knight" who wants to rescue everyone, a mediator who wants to make peace, a pacifist who hates conflict, a stern parent, or a gladiator who wants to control a situation?

"We all have biases. The important thing is to recognize your biases," he said.

The attorneys who recognize their own tendencies and modify their roles to fit their clients' needs have a better chance at managing difficult clients. "If you want to overcome your stress, increase your options in problem-solving," he said.

He concluded by saying that anxiety, depression and fatigue among attorneys are probably related to distorted perceptions and a loss of control. Make sure your expectations are realistic for yourself, he advised. ◆

Mahoney is NYSBA's associate director of Media Services.

A little advice—Psychologist Arnold Shienvold used his speech at the Family Law Section's Annual Meeting luncheon to offer advice to family attorneys on how to cope with the stress of resolving their clients' family disputes. *[Photo by Brad Hamilton]*

House of Delegates to hold April meeting in Rochester

By Mark Mahoney

President David M. Schraver will get a chance to show off his community to his State Bar colleagues in April, as the Association's House of Delegates holds its April meeting in Rochester.

The House of Delegates meeting will be held on April 5 at the Hyatt Regency hotel in Rochester. The Executive Committee will meet the preceding day, April 4, at the offices of Schraver's law firm, Nixon Peabody LLP.

"I'm really looking forward to having the delegates join me in Rochester," said Schraver. "There are many great places to visit and things to do here. So I hope that in addition to conducting the business of the State Bar, members will take advantage of all that Rochester has to offer."

In addition to the House of Delegates and Executive Committee meetings, there will be other events for Executive Committee members. On April 3, the Executive Committee will tour the Telesca Center for Justice, then attend a reception hosted by the Monroe County Bar Association. That will be followed by a reception and dinner at the George Eastman House, a historic house and museum once owned by the founder of Eastman Kodak Co.

Following the Executive Committee meeting on Friday will be the House of Delegates reception and dinner at the Genesee Valley Club.

Saturday morning's agenda begins with the Caucus of Section Delegates breakfast meeting and the House of Delegates districts' meeting. The full House of Delegates will meet from 9 a.m. to 1 p.m. That will be followed by a buffet luncheon for members.

Other activities

- On April 2, Schraver will host a reception at his law firm for Rochester-area members and non-members interested in joining State Bar sections.
- On April 3, new members of the Executive Committee will participate in an orientation session at the Hyatt.
- On April 5, following the House of Delegates meeting, the Leadership Committee will host a luncheon meeting. The New York Bar Foundation also will meet. ◆

Mahoney is NYSBA's associate director of Media Services.

The interrogation: Lying to suspects a tricky tactic

By Cailin Brown

Editor's note: On February 20, the state Court of Appeals overturned the 2009 murder conviction of Adrian Thomas, the suspect whose interrogation was the subject of the documentary examined during this panel.

Excerpts from the documentary, "Scenes of A Crime," depict the slow, steady pressure two Troy police officers exerted on murder suspect Adrian Thomas.

The interrogation footage was central to an Annual Meeting program, "Analyzing Factors That Give Rise to False Confessions and Whether Due Process Requires Expert Testimony on These Factors," sponsored by the Committee to Ensure Quality of Mandated Representation.

The footage was from a documentary made by New Box Productions, which was honored at the American Bar Association Silver Gavel Awards for Media & the Arts.

During Annual Meeting, an audience of prosecutors and defense attorneys watched as the father of six expressly denied hurting his baby son, and then, eventually, repeated in his confession what the police officers had said.

The Thomas case, said Committee Chair Norman Effman of Warsaw (Wyoming County Public Defender), raises the question of how far interrogators can go with a suspect, and asks at which point a confession becomes involuntary.

Thomas was convicted in 2009 of killing his infant son and was sentenced to 25 years to life in prison. In January, his appeal was presented to the state Court of Appeals, which voted 7-0 to overturn the conviction on February 20. The decision also blocked Thomas' statements from any retrial.

Cost to defend

One of the underlying issues around complicated cases such as the Thomas case concerns the mounting costs of providing a deep defense, which often is too expensive for counties, which finance public defense, said Effman.

Jerome K. Frost of Troy (Frost & Kavanaugh, PC), Thomas' defense attorney, was a panelist at the program.

In defending Thomas, Frost relied on expert witnesses to address the science and medicine surrounding the infant's death, the psychology involved in the extraction of a confession and the ramifications of how jurors interpret recorded confessions.

Frost rattled off the flat rate costs involved in hiring experts to participate in the defense, noting that he used personal frequent flier miles to underwrite some witness travel costs. Some of those costs were reimbursed by the county legislature.

Panelist Ingrid A. Effman of Troy (Law Offices Of Theresa J. Puleo), part-time public defender in the Thomas case, watched the 10 hours of police interrogation and saw how the police broke Thomas down as time went on.

"Everything he agreed to is what was suggested to him," she said. At one point, Thomas was sent to a pyschiatric hospital, where he stayed for 16 hours before returning for more interrogation.

"You look at this case and you can't not question what happened," she said.

The documentary scenes switched from the Troy Police Department interrogation room to interviews with experts who questioned the investigators' methods and offered a different diagnosis of how the baby died. While the police contended Thomas had fractured his child's skull, an expert pediatric neurosurgeon determined that the child had died of a systemic infection.

"This case had many holes in it," Ingrid Effman said. "First of all, there is no skull fracture, not one broken bone on this child's body."

"As a matter of law in this case, the police just went too far," said panelist Rick Greenberg of New York City (Office of the Appellate Defender).The case represents a growing focus on recorded interrogations.

"Right now, we know in this case exactly what was said to Thomas," said Barry Scheck, co-founder and co-director of the Innocence Project at the Cardozo School of Law.

"One can see exactly what was the substance of his confession; what came from Mr. Thomas himself," said Scheck.

When the courts consider the reliability of a confession, they may consider whether the confession was coerced, said Professor Alison Redlich of Albany (School of Criminal Justice at the University at Albany).

She said that "one of the things that does happen when you tell experts there was a confession, that cognitively skews their evaluation of other evidence. So, too, with jurors."

While recordings are necessary, Redlich said, expert witnesses can provide jurors with an explanation about false confessions and why people give false confessions.

The proper training of the police in interrogation techniques is critical, Scheck said. "Everybody agrees you should not be feeding facts," Scheck said.

"As lawyers, we have to look at the science more closely than we have been. It's not enough to be told the science is there," said Kristine Hamann of New York City (Bureau of Justice Assistance, Department of Justice).

"We don't have a robust field of study of these issues." The science, she said, is in its infancy when it comes to human interaction and how people react to interrogations. ◆

Brown is an associate professor of communications at The College of Saint Rose.

Suspect interrogation—Rick Greenberg, a panelist at an Annual Meeting program that analyzed the factors and due process concerning false confessions, makes a point as Barry Scheck and Professor Alison Redlich listen. *[Photo by Brad Hamilton]*

Mediators who address culture clash bring value to negotiations

Leading U.S. experts on China discuss its changing legal system and view of mediation

By Amy Travison Jasiewicz

When parties from different cultures come to the mediation table, negotiations can be particularly challenging. Cultural misunderstandings can result in both sides being baffled or angered by the response of the other. So what can a mediator do to avoid hitting a brick wall when cultures cross?

"Mediators who are sensitive to the potential issues between parties from different countries bring great value to the process when these misconceptions are addressed," said Carolyn E. Hansen, an international attorney, mediator and arbitrator in Stone Ridge and New York City.

When in Rome—The Dispute Resolution Section sponsored an Annual Meeting program about the issues that can arise due to cultural misunderstandings. Above, panelist Peter Lai portrays a Chinese businessman and panelist Jhilam Sanyal plays a western businesswoman in a role-playing exercise illustrating such a misunderstanding, as panelist James M. Rhodes, right, listens. *[Photo by Brad Hamilton]*

What did that mean?

Hansen led role-playing exercises during the Dispute Resolution Section's Annual Meeting program. One involved a Chinese businessman, played by Peter Lai of Goshen, founder of TQM Associates, and a western businesswoman, played by Massachusetts and New York attorney Jhilam Sanyal.

The exercise:

When a shipment of goods arrived damaged from Lai, Sanyal paid half of the original price, even though only 30 percent of the items were damaged. Through his Chinese culture lens, Lai saw this as "getting more than you paid for."

Westerner Sanyal pushed for agreement given the amount of business she lost. Lai said "yeah," at the end of the session, avoiding eye contact, head down. He was stunned when a contract was drawn up based on his response.

Audience interpretation of the exchange was varied, illustrating how complex it can be to interpret human response, especially across cultures. However, everyone agreed that Lai's body language revealed that he was not ready to settle.

"Sometimes the critical key is the difference between the word and the body (language), or the word and the tone. And sometimes it can be that the tone and the body look very friendly, but the words are very negative. This is the time to ask, 'What's really happening here?'" said Hansen.

She urged mediators to ask questions to clarify understanding or perception. Also, be aware that when people hear something that is unfamiliar or difficult for them to understand, they tend to default to a negative interpretation.

"Stay open to another meaning. This meaning may be ascertained by questioning the party who you are observing, or by questioning another person from that culture, asking, 'What did that person I observed really mean?'" said Hansen.

Legal system in Mainland China

Executive Director Ira Belkin and Co-Director Jerome Cohen, both of the US-Asia Law Institute at New York University School of Law, provided insight on how the legal system and mediation in China are evolving, and whether they can be effective in a communist, one-party state.

"There is a struggle going on in China as we speak, over what kind of legal system China is going to have. How formal will it be? How Western will it be?" said Cohen.

While China's new leadership may recognize the need for an effective, formal legal system, it is reluctant to relinquish power. Also, the corruption that has long undermined China's criminal justice, litigation, arbitration and mediation systems is still present, Cohen said.

In business disputes between China and companies owned or run by ethnic Chinese outside the mainland, he said businessmen are sometimes detained for great lengths of time, with the police serving as "mediators" and settlements being signed under coercion.

Given this context and language differences, the term "mediation" may not mean the same thing to the Chinese government that it means to an American practitioner, Belkin explained.

"In China, the government's purpose in promoting mediation is to eliminate social conflict and not necessarily to assist the parties to reach a voluntary solution to a private dispute. Moreover, the formal legal system in China is still developing. Therefore, the idea of American-style mediation as an alternative to a relatively predictable litigation process may not apply in the Chinese context," he said.

With localities resisting the central party and the rapid growth of the legal system in recent years, it is an exciting time of change for China, Cohen said. He noted that China has more than 200,000 judges, 230,000 attorneys, more than 700 law schools and hundreds of thousands of people taking the bar exam each year. ◆

Jasiewicz is a freelance writer and the former editor of the State Bar News.

House of Delegates takes up call for more civics education

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has been considering plans to reduce the number of social studies credits needed to graduate from high school. It also has been considering a plan to allow students to forego the Regents exams in United States History & Government and Global History & Geography.

The report also cites the recent elimination of state social studies tests in fifth and eighth grades as further evidence of a decline in the state's leadership in civics education.

"Can the elimination of government classes be far behind?" the report asks.

Letter to Cuomo

In addition to the House action, State Bar President David M. Schraver of Rochester (Nixon Peabody LLP) on January 22 wrote a letter to Governor Andrew Cuomo soliciting his support for more civics education.

"Our governmental institutions, including our legal institutions and justice system, depend upon the effectiveness of today's educational institutions to develop Americans who are educated and committed to the maintenance of the rule of law," Schraver wrote. "We need future citizens who understand the institutions of constitutional democracy, including our system of law and justice."

His letter is available at www.nysba.org/civicseducationletter.

Read the report at: www.nysba.org/LYCcivicsReport2014/. ◆

Mahoney is NYSBA's associate director of Media Services.

U.S. Deputy A.G. promotes petitions for clemency

Offering clemency—U.S. Deputy Attorney General James M. Cole uses his speech to the Criminal Justice Section during its Annual Meeting awards luncheon to ask for the help of state bar associations in identifying prisoners who would qualify for a form of executive clemency. His speech was widely reported in national publications. *[Photo by Steve Hart/Happening Photos]*

By Amy Travison Jasiewicz

Throughout the federal prison system, there are many low-level, nonviolent drug offenders serving life or near-life sentences, because they were convicted of their crimes when harsh minimum sentences were mandatory for drug convictions.

U.S. Deputy Attorney General James M. Cole, speaking at the Criminal Justice Section's Annual Meeting luncheon, said that there is a need to identify inmates who might successfully petition President Barack Obama for a commutation of their sentences, resulting in their release.

Cole stressed that while many inmates are dangerous and have appropriate sentences, there are others who would have received substantially lower sentences if convicted today for precisely the same drug offense.

"This is not fair, and harms our criminal justice system," he said.

Prison crisis

The high rate of recidivism among these offenders, along with the minimum sentencing laws they once faced, have contributed to what Cole described as a "crushing" prison population that exceeds 216,000 inmates.

The Department of Justice spent $6.5 billion on the prison system last year, which operates at 33 percent over capacity system-wide, Cole said. This takes funding away from "supporting our prosecutors and law enforcement agents in their fight against violent crime, drug cartels, public corruption, financial fraud, human trafficking, and child exploitation, just to mention a few. In other words, if we don't find a solution to the federal prison population problem, public safety is going to suffer," he said.

Clemency part of solution

Gains have been made through legislative reform; new sentencing and charging policies; and efforts by many federal agencies to prevent crime, assist offenders with re-entry and reduce recidivism. Commutation of sentence is another way to uphold the integrity of the justice system and make smarter use of prison space and funding, Cole said.

Commutation of sentence, a form of executive clemency by the president that Cole described as "an extraordinary remedy that is rarely used," is available in certain circumstances. In December, President Obama granted commutations for eight men and women who had served at least 15 years in prison for crack-cocaine offenses. Most were serving life sentences.

Cole clarified that a commutation is not a pardon, an exoneration, or forgiveness. Rather, it is the reduction of a sentence in the interest of fairness and justice.

Skilled attorneys needed

When the Bureau of Prisons advises prisoners of the potential to apply for a commuted sentence, Cole said it also can provide information about possible sources of assistance.

"It is our hope that organizations like yours will help by recruiting interested and skillful lawyers and training them to assist qualified inmates with petitions," said Cole, who noted that guidance on the petition process and standards of consideration is available to bar associations from the Office of the Pardon Attorney.

Ideal candidates for this type of clemency are low-level, nonviolent offenders who have clean prison records; have no significant ties to large scale drug organizations, cartels or gangs; are first time offenders or have no extensive criminal history; are not considered a threat to public safety; were sentenced under out-of-date laws that have since changed; and are facing a life or near-life sentence.

"You each can play a critical role in this process by providing a qualified petitioner…with the opportunity to get a fresh start," he said. ◆

Jasiewicz is a freelance writer and former editor of the State Bar News.

Changes to whistleblower law mean lawyers must adapt

By Amy Jasiewicz

Until recent legislative reforms, employees who went public with claims of fraudulent activity by their employer had only a remote chance of winning their case and very limited protection from retaliation.

"For those of us who represent employees, this was a very sad state of affairs," said Jonathan Ben-Asher of New York (Ritz Clark & Ben-Asher, LLP).

When the financial crisis of 2008 hit and threatened to collapse some of the world's largest financial institutions, Congress got serious about whistleblower protection, passing new and expanded legislation that transformed the system to be significantly more employee-friendly.

Ben-Asher moderated a panel discussion about these significant reforms during the Labor and Employment Law Section's Annual Meeting program. He described amendments to the Sarbanes-Oxley Act, and the Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted in 2010, as "very powerful weapons for employees. They contain protections and remedies that employers need to be aware of."

New statute of limitations

One change that benefits the employee, but also is advantageous to the employer, is the Dodd-Frank extension of the statute of limitations from 90 to 180 days to file a complaint with the U.S. Department of Labor (DOL) Occupational Safety and Health Administration (OSHA), said Jill Rosenberg of New York (Orrick Herrington & Sutcliffe LLP).

"The 180 days is helpful, as it gives everybody more time to have the matter investigated, to see if it can be resolved before going to the Department of Labor," she said.

Some disappointing aspects of the rules for employers are the loss of mandatory arbitration and the need to preliminarily reinstate the employee if OSHA finds merit to the complaint.

"That is a very difficult thing for the employers…to take back an employee on some sort of temporary basis while the employee is litigating through the Department of Labor," said Rosenberg.

OSHA investigates

Teri M. Wigger, assistant regional administrator for OSHA whistleblower programs in New York, noted that after

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Laboring for whistleblowers—The Labor and Employment Law Section sponsored two plenary sessions during Annual Meeting, one on the Affordable Care Act and one on changes in the Whistleblower Law. Above, speakers on the Whistleblower Law panel listen as Frances Nicastro makes a point. L to R: Jonathan Ben-Asher, Teri M. Wigger, Jill L. Rosenberg, and Nicastro. *[Photo by Brad Hamilton]*

Cyber thieves threaten security of confidential files, work

By Mark Mahoney

After a presentation by two FBI Internet security agents, one could not fault the lawyers in the room if they all suddenly felt compelled to toss their PCs into the nearest river and run over their smartphones with a bulldozer.

During an Annual Meeting forum on January 30, the two agents gave a frank—and often frightening—talk about the threat posed by individuals seeking to steal vital financial and legal information. These days, even confidential information is passed along routinely by millions of people daily through Internet hookups, wi-fi, smartphones and other electronic devices.

The forum was part of an all-day program entitled, "Risk Management 360," co-sponsored by the Law Practice Management Committee and the Committees on Attorney Professionalism, Lawyer Assistance, Continuing Legal Education and Electronic Communications.

For attorneys, the threat of cyber theft means confidential files stored or transferred electronically are vulnerable to being stolen; phone calls with clients are at risk of being monitored; and the content of text messages and emails is in danger of being intercepted.

"It's all in the air," one agent said. "It's a thousand times worse than some creep sitting in the bushes with binoculars."

Secrets revealed

The two agents, who would not give their names or allow their photographs to be taken because of security concerns, work in the FBI's New York Cyber Branch. While their identities remained a secret, they unveiled plenty of secrets employed by cyber thieves, including many methods that most people might not even consider.

There are software applications that allow thieves to intercept and record phone calls, track computer usage and decode passwords. Email spoofing, in which the thief sends emails using a forged sender address, is the fastest-growing cyber crime, the agents said.

Law firms, especially those dealing with matrimonial law, are particularly vulnerable because the offended spouse often will employ electronic surveillance techniques to gain information about the other spouse's financial records, movements and relationships by monitoring household computers, eavesdropping on cell phone conversations and intercepting messages sent over smartphones.

Another panelist, John R. McCarron, Jr. of Carmel (Montes & McCarron PLLC), co-chair of the Law Practice Management Committee, said the more tech-savvy spouses have an advantage.

Cyber criminals also are getting smarter about who they target, as they begin to recognize shortcomings in the information storage system. "They're getting creative in knowing who maintains data," one agent said.

For instance, criminals are no longer exclusively trying to tap into the systems kept by large corporations. Rather, some have begun targeting other organizations that maintain the same data, but that might not have the same high levels of security. One agent compared it to trying to break into the New York Stock Exchange versus trying to break into a shopping mall. Similarly, small law firms are more vulnerable to breaches than large firms that likely have more elaborate security systems.

"Smaller law firms are going to be the low-hanging fruit" for cyber criminals, McCarron said.

For all the security threats out there, panelists said, we may have no one to blame but ourselves for the explosion in cyber crime. People have become so accustomed to using electronic devices that they do not regularly use the tools available to protect against threats.

"We've been conditioned. There's no stopping it," one agent said. "Human involvement is always the weak link where it's failed."

Worse yet, as young people grow up with the technology, criminal activity will become second nature to those so inclined, they said.

It can be stopped

But there are ways to thwart, if not completely stop, cyber theft, panelists said.

For instance, make sure your email address is correct when opening or sending messages. Turn off on-air communication when possible. Install apps that show who is connected. Check and review IP addresses. Contact financial institutions when your password keeps being denied or changed. Get rid of compromised email addresses and update your virus protection regularly. Use sentence passwords, rather than familiar phrases or words that are easy for thieves to decode.

Lawyers should set up separate email addresses for clients, or should avoid altogether sending anything other than routine information to clients electronically.

Panelists also advised people never to have one email be the only method of sending wire transfers. Speak to a real person to verify the exchange. Use protection for wi-fi accounts, and take advantage of products or services available to encrypt information.

Moreover, move data to the cloud and encrypt it, as cloud cyphers often will be safer than keeping data in one's own network, McCarron said. And use good security software or hire a security expert.

Panelist John C. L. Szekeres of Hartsdale said it is no longer sufficient to leave your data protection to your human resources department.

As if further evidence was needed to demonstrate how Internet thieves are constantly on the prowl, one of the FBI agents said that a new, unprotected computer hooked up to the Internet will get a virus within 7 minutes.

That's enough to make anyone think about tossing their computer in the river. ◆

Mahoney is NYSBA's associate director of Media Services.

To catch a thief—John R. McCarron, Jr., left, John C.L. Szekeres and Hal Stewart were members of a panel on cybersecurity hosted by the Committee on Law Practice Management and others as part of a daylong forum on risk management. *[Photo by Richard Smith]*

Association seeks executive director

A special committee has been appointed to assist in the search for a new executive director to replace Patricia K. Bucklin, who is leaving the State Bar at the end of March.

The search committee will provide input to State Bar leadership and to Young Mayden, the legal recruiting firm hired to conduct a nationwide search.

The search committee was appointed by State Bar President David M. Schraver of Rochester (Nixon Peabody LLP) and President-elect Glenn Lau-Kee of New York City (Kee & Lau-Kee PLLC).

The search committee is comprised of: Paula Doyle, senior director, Human Resources and Service Center Operations; Michael L. Fox of Walden (Jacobowitz & Gubits LLP), a State Bar delegate to the American Bar Association; Sharon Stern Gerstman of Buffalo (Magavern Magavern Grimm LLP), treasurer of the association; Seymour W. James, Jr. (The Legal Aid Society in New York City) and Kenneth G. Standard of New York City (Epstein Becker & Green PC), former State Bar presidents; Kevin Kerwin, associate director of governmental relations; Ellen Makofsky of Garden City (Raskin & Makofsky), incoming Association secretary; and Sandra Rivera of Albany (Law Office of Sandra Rivera).

Young Mayden has received input from staff and has placed ads in select media. It also has met with potential candidates and referral sources and has finalized a job description that is posted on the Association website: www.nysba.org/executivedirectorsearch.

In a memo to staff announcing the search committee, Schraver said he was "encouraged by the activity to date," but said no timetable for a selection had been determined.

Bucklin announced in an email to staff on January 7 that she was leaving the Association after 12-1/2 years to pursue other employment opportunities. Her last day will be March 31.

The executive director is the chief administrative official of the Association, responsible for overseeing a staff of 125 in the Albany area.

Potential candidates for the position should contact Barbara Mayden at Young Mayden at 615-823-7338 or bmayden@youngmayden.com. ◆

—Mark Mahoney

Challenges and risks of search engine optimization

By Brandon Vogel

A product can live or die based on its Google ranking.

The higher the ranking, the more likely it is that a consumer will click on that link to check out a product or service.

Search engine optimization (SEO) has rewritten the rules of online advertising and presented new business and legal challenges for brand owners.

"Basically, we are playing a new game," said Jason Nardiello of Syracuse (Hiscock &Barclay LLP). "The new mode is all about SEO and getting Google to rank your page higher than others."

Nardiello and Rebecca Griffith of New York City (National Advertising Division, Council of Better Business Bureaus, Inc.) discussed recent developments in online advertising within social media and user generated content at the Intellectual Property Section's January 28 program, "The Constantly Changing Online World: Advertising, Trademarks, Metadata and Key Word Searching."

As the Internet has become a major form of commerce, the opportunities for trademark infringement have increased. Nardiello noted that when Google introduced its Page Rank algorithm in 2000, the term SEO was not common. At that time, webmasters used spiders to rank their pages higher than others. Spiders are software programs that search websites and bring that information to search engines.

Nardiello explained how federal case law is addressing the legal issues that arise when one company or competitor uses trademarks of third parties' "key words" in Google's online advertising programs. Most of the lawsuits are brought as trademark infringement and unfair competition claims.

Citing a federal district court case, *Rosetta Stone Ltd. v. Google, Inc.*, Nardiello said that Google did not allow use of trademarks in keywords prior to 2004. The same case mentioned that 7 percent of Google's revenue comes from trademarked keywords. In 2009, Google permitted limited use of trademarks in ads and permitted bidding by non-owners, which led to "unhappy trademark owners."

Black and white

There are two methods of SEO that are of concern for online trademark infringement: White Hat and Black Hat.

White Hat SEO involves strategically placing keywords in titles and headers that could positively affect the ranking of a particular page and focus more on content to attract users to web pages.

Black Hat SEO is where issues arise, as SEO specialists can use a number of methods to artificially increase a web page's PageRank, which increases its visibility.

Some Black Hat SEO methods include inundating a web page with keywords; webmasters who may buy links from other websites to boost a page's rank; and making a page that is part of a "link farm," a collection of multiple web pages that interlink to boost page rankings. If search engines detect that a website is part of a farm, the farm can be banned from searching. Risks include confusing consumers and capitalizing on well-known brands for market gain.

Courts have not fully examined Black Hat SEO methods in the context of trademark infringement or unfair competition, Nardiello said.

"We know that traditional advertising formats are declining in popularity. Now, digital, mobile and social media have become incredibly powerful tools for advertisers," said Griffith. "The challenge that companies face—along with the lawyers that advise them—is ensuring the advertising is not misleading and clearly identifies itself as advertising."

Much of the Federal Trade Commission's (FTC) guidance has focused on whether there is adequate disclosure of information that is relevant to how the consumer views or understands the content; and whether the advertiser's claims are truthful, non-misleading and adequately substantiated.

The "FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising" require disclosure of any connection between the speaker and the advertiser and recognize that endorsements must reflect the actual opinion or experience of the speaker. Advertisers cannot use endorsements to make claims that they could not support themselves.

The FTC updated its ".Com Disclosures" guidelines in 2013. They re-emphasized that existing consumer protection laws apply equally to all electronic media, regardless of size or other constraints.

Griffith acknowledged that the same rules in social media apply as in traditional media. Advertising must be truthful, accurate and not misleading. Any disclosures must be clear and conspicuous. Endorsements must disclose the connection between the endorser and the advertiser.

Native advertising blurs the line between traditional editorial content and traditional advertising when native ads take on the look and feel of the host publisher. This format is controversial because of its resemblance to, and risk of confusion with, editorial content.

"Commercial speech is entitled to less protection than editorial speech," said Griffith. Ads are subject to regulatory oversight and commercial speech needs to be vetted and cleared differently. There are concerns with right of publicity and IP rights, proper disclosures and substantiation of all advertising claims" she said. ◆

A new game—Jason Nardiello gives a primer in the new ways of optimizing online search engines during a panel sponsored by the Intellectual Property Section at Annual Meeting. *[Photo by Steve Hart/Happening Photos]*

Powerful tools—Rebecca Griffith discusses recent developments in online advertising during a panel sponsored by the Intellectual Property Section at Annual Meeting. *[Photo by Steve Hart/Happening Photos]*

Vogel is NYSBA's media writer.

Whistleblower law changes; lawyers adapt

Continued from page 24

a preliminary investigation, her agency will not recommend employee reinstatement, "until we come to you (the respondent) with all of the evidence and show why we think it (the complaint) has merit."

Wigger provided some important tips for attorneys filing a complaint on behalf of a client, and urged attorneys to provide as many specifics as possible in the initial complaint to help the investigation progress more quickly. Those details should include exactly what occurred, why the employee thinks they are being retaliated against, and what form the retaliation took, she said.

The same goes for attorneys representing respondent companies: the more specifics provided in their defense, the better. "If you respond that the claimant was terminated for legitimate reasons, don't just say that. Show it," she said.

She reminded attorneys that any information shared with OSHA is shared with the other party, so take care not to include names of witnesses (send those names under separate cover to the investigator), and redact information, such as social security numbers or other personal information, from payroll documents.

Minimize litigation

Employers can minimize the likelihood that an employee will think that he or she is being punished for raising concerns, "by creating a culture where employees know that raising concerns isn't problematic, and is actually a good thing," said Frances Nicastro of New York, director of Employment Incentives and Pensions Legal (Americas) for Barclays.

Nicastro encouraged employers to create detailed whistleblower policies that are written in layperson's terms, and to issue regular reminders that they exist. Employees also need specifics about who to contact with a complaint, and how. Anonymous mechanisms also should be available, such as hotlines or web-based forms.

Whistleblower anxiety

Several panelists acknowledged the natural tendency for whistleblowers, as soon as a complaint is made, to experience anxiety. Once they have "reasonable belief" that they have been the target of retaliation, any action by the employer is sometimes interpreted by employees as related to their claim. This does not diminish the merit of the complaint, but practitioners should be aware of and sensitive to this issue.

Complaints should be handled in a streamlined way so that employees can be assured that information about the complaint is only shared with those on a need-to-know basis and will not be widespread knowledge, said Nicastro. This should help to reduce any anxiety that an employee may begin to feel, she said. ◆

Jasiewicz is a freelance writer and former editor of the State Bar News.

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Internet poses new problems for lawyers who advertise

By Mark Mahoney

The Internet has created a new landscape for legal advertising that challenges traditional lawyer promotional practices and is outpacing changes in established rules of ethical conduct.

Panelists at an Annual Meeting forum, "Internet Advertising—The Traps and Pitfalls," sponsored by the General Practice Section and the Committee on Professional Discipline, said some lawyers follow the standard practice when promoting themselves or their firms.

But other attorneys – often, young lawyers not fully trained in proper etiquette or feeling unbound by tradition– are pushing the envelope as they struggle to compete in a shrinking business market. They are seeking more creative ways to generate business without spending a lot of money, said ethics lawyer Pery D. Krinsky of Krinsky PLLC in New York City.

Eileen J. Shields of New York City (Departmental Disciplinary Committee, Supreme Court Appellate Division, First Department) said some attorneys are following traditional rules while other, more aggressive lawyers, are bending and breaking them. New guidelines would protect attorneys who lose ground by not being as aggressive in pushing the boundaries, she said.

But Krinsky said rules will not solve the problem of irresponsible application of the rules. "It's not just the rules. It's how we teach lawyers to apply the rules," he said.

To demonstrate how an advertising campaign can be interpreted in different ways, Professor Emeritus Roy D. Simon of New York City (Hofstra Law School) cited a case reported in the New York Law Journal that morning.

The case, *Board of Managers of 60 E. 88th St. v. Adam Leitman Bailey, PC,* involved a dispute over legal fees in resolving a dog-barking complaint. The client claimed the fees were exorbitant given the scope of the case, while the attorney claimed the client authorized him to do whatever it took to resolve the matter.

In an attempt to settle on a fair number, the judge in the case took note of the law firm's advertising itself as the firm that "gets results."

"If you hire the firm that 'Gets Results,' you expect hard-nosed attorneys with a practical approach, not gold-plated preparation for a trial that should not have been that complicated, never was imminent, and never occurred," according to the article quoting the judge.

He then found both parties to be responsible for the high fees, the client slightly more so.

Deborah A. Scalise of Scarsdale (Scalise & Hamilton LLP) said the standard is clear: "If it's truthful and accurate … then what's the problem?"

But Simon disagreed. "I don't think consumers can sort out the crap," he said. "There's a great danger that what people see will reflect their own senses and sensibilities."

Krinsky said the sophistication level of clients in interpreting ads must be considered and asked whether they should be protected.

"We can't assume that clients necessarily get it," he said, adding that rules are needed for situations where there might be misunderstandings.

Be cautious

Panelists cited examples of proper and improper ads, discussed the rules about applying disclaimers to advertising, examined what constitutes acceptable puffery vs. unacceptable superlatives, and the value of rules prohibiting attorneys from soliciting clients immediately after mass disasters.

The program concluded with a discussion on blogs, which Shields said are often used as thinly disguised advertising vehicles for attorneys.

"Just because you classify it as a blog, it's obviously something that you are doing for non-altruistic purposes," she said. "Much of the time, a blog is written with the purpose of getting you to retain me as an attorney."

Advertise carefully—That was the advice from panelists speaking at an Annual Meeting program sponsored by the General Practice Section and the Committee on Professional Discipline. Above, Professor Roy D. Simon looks over the shoulder of panelist Deborah A. Scalise as she quotes from the Rules of Professional Conduct. *[Photo by Richard Smith]*

There is a thin line between informational and promotional material on a blog, but that once you cross it, it triggers the requirements for filing an advertisement, Simon said.

When it comes to Facebook and Twitter and the Internet, the technology and the rules are evolving. Attorneys should use common sense and be extra vigilant in following the rules regarding advertising. ◆

Mahoney is NYSBA's associate director of Media Services.

Market for exotic animals spotlights regulatory needs

By Brandon Vogel

Tigers and medicine—Anna Frostic, left, of the Humane Society, and attorney Katherine A. Meyer listen to a question from the audience during the Committee on Animals and the Law's Annual Meeting program. Both were members of a panel on human animal conflict. *[Photo by Richard Smith]*

There are more captive tigers in the United States than in the wilds of Asia.

Because of the demand for tigers' skin and bones as well as for use in traditional Chinese medicine, tigers are worth more dead than alive.

Those were just a few shocking statistics revealed at the Committee on Animals and the Law's Annual Meeting program, "Human Animal Conflict: Balancing Public Safety with Animal Welfare, Conservation and Humanity."

Topics discussed included government cooperation in managing America's wildlife, the U.S. Department of Agriculture's role in ensuring humane care treatment, and representing animal interests in litigation cases.

Laws of wild animals

Anna Frostic of Washington, D.C. (The Humane Society of the United States) detailed recent developments in state and federal laws that pertain to owning dangerous exotic animals.

"Legislation, regulation and litigation are needed to address these issues," said Frostic.

The illegal wildlife trade market is worth up to $19 billion annually, according to the U.S. Fish and Wildlife Service. The World Wildlife Fund calls it the fifth most profitable illicit trade in the world. Only 6 percent of tigers in the U.S. reside in facilities accredited by the Association of Zoos and Aquariums. Most are in substandard roadside zoos regulated by the U.S. Department of Agriculture.

Frostic acknowledged that, while the exact numbers are unknown, it is estimated that more than 15,000 primates are treated like pets and more than 1 million giant constrictor snakes have been imported since 1977.

Frostic said six states have no dangerous wild animal laws on record: Alabama, Nevada, North Carolina, South Carolina, West Virginia and Wisconsin.

After Terry Thompson unleashed 18 tigers, 17 lions and 8 bears from his Zanesville, Ohio, backyard in October 2011, Ohio enacted the Dangerous Wild Animals and Restricted Snakes Act in 2012.

The law, which took effect January 1, bans unpermitted ownership of exotic animals. All wild animals and certain restricted snakes must be embedded with micro-chips at the time of registration.

Small birds can equal big costs

Michael Begier, national coordinator of the Airport Wildlife Hazards Program for the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, discussed, "Wildlife and Aviation Safety at Airports-Legal Foundations."

He said wildlife strikes cost up to $950 million in the U.S. alone and up to $1.3 billion each year worldwide, just in civil aviation. In the United States, there are approximately 26 strikes per day. Worldwide, 250 people died and 229 aircraft were destroyed since 1988 because of bird strikes. Expanding populations of wildlife species have increased the problem.

"Approximately 90 percent of strikes are not damaging," said Begier. "Over the last decade, airports have done a very good job of managing this problem."

Other panelists were M. Carol Bambery of Washington, D.C. (Association of Fish & Wildlife Agencies); Laquetta D. Jones Bigelow (Animal and Plant Health Inspection Service, U.S. Department of Agriculture); and Katherine A. Meyer (Meyer Glitzenstein & Crystal). ◆

Vogel is NYSBA's Media Writer.

Conflict persists in defining what is confidential information

By Mark Mahoney

An inherent conflict exists between a public employee's obligation to protect an individual's personal privacy and the public's right to know what its government is doing.

The terms of the conflict are not easily defined and the dispute is not easily resolved.

Steven G. Leventhal of Roslyn (Leventhal, Cursio, Mullaney & Sliney LLP) and Carol L. Van Scoyoc, chief deputy corporation counsel for the city of White Plains, provided their thoughts on how governments should proceed in such matters during an Annual Meeting panel discussion sponsored by the Municipal Law Section, called "FOIL & Confidentiality – Balancing Competing Considerations."

Confidential conflicts—Carol L. Van Scoyoc, chief deputy corporation counsel for White Plains, and Steven G. Leventhal provide insight on conflicting Freedom of Information Law interpretations for municipalities during an Annual Meeting discussion sponsored by the Municipal Law Section. *[Photo by Jacques Cornell/Happening Photos]*

Define 'confidential'

One problem with knowing what information can be disclosed and what can't, they said, is that the law does not specifically define the term, "confidential information."

For example, the state Attorney General's office is in conflict with the Committee on Open Government, a subdivision of the Department of State, over whether public employees are prohibited from disclosing what is discussed in closed-door executive sessions.

In 2000, the attorney general determined that municipalities did have the statutory authority to prohibit members of a legislative body from disclosing the contents of executive sessions.

But Robert J. Freeman, executive director of the Committee on Open Government, has said that there must be a federal or state law specifically banning disclosure of information in order for that information to be kept secret.

Two examples of that are the Family Educational Rights and Privacy Act (FERPA), which restricts the disclosure of information about school children, and the Health Insurance Portability and Accountability Act (HIPAA), which regulates the disclosure of patient medical information.

Leventhal said he disagrees with Freeman's interpretation. He said there ought to be a different interpretation of the law to include not only information specifically prohibited from disclosure, but also information deemed prohibited from disclosure by municipalities that have used proper discretion in making that determination.

Van Scoyoc said the conflict came to a head in a 2011 case involving the city of White Plains' Board of Ethics and a Freedom of Information Law (FOIL) request made by the Journal News newspaper.

The city refused to disclose material from an ethics hearing regarding the city's mayor. The city had initiated an investigation and served the mayor with formal charges. But since the mayor resigned before a hearing could be conducted, the city argued it did not have to disclose the board's record of the proceedings.

The courts ruled partially in favor of the city and partially in favor of the newspaper, Van Scoyoc said.

Materials not released by the court included information that would have constituted an unwarranted invasion of privacy; intra-agency and inter-agency materials that were not statistical or tabulations of data; instructions to staff that did not affect the public; and material not deemed to be final agency policy or determinations, she said.

Essentially, she said, the court found that the Freedom of Information Law overrules municipal rules regarding confidentiality. The panelists also noted that the state Legislature can create certain exemptions from disclosure.

The panelists also discussed new changes to the state's transparency laws, specifically relating to the identities of gun owners under the state's new gun control law, the Secure Ammunition and Firearms Enforcement (SAFE) Act of 2013.

The SAFE Act contains an opt-out clause that allows pistol permit holders the opportunity to exempt their personal information from FOIL requests. Unless they opt out, the registration information remains open to the public. ◆

Mahoney is NYSBA's associate director of Media Services.

Private online professional communities: Technology bringing members together

By David Adkins

Last fall, the State Bar rolled out a new online community platform powered by Higher Logic. These communities support resource sharing, collaboration, networking and the ability to leverage the experience and knowledge of our members.

Several sections and committees have established communities and the technology staff is assisting others with community development.

Like the listserve technology we have used in the past, members can participate in these communities through email. They also can interact with the communities by using a web browser or a mobile app. In addition to email, members can share files, organize discussions, post news and events, network, and extend the connection among members.

Solo practitioners and newly admitted attorneys sometimes can suffer from "professional isolation" from their peers. Our online communities can help members connect and network online, regardless of where they practice.

We are working with the sections to support their collaboration using the online communities. In January, we established the Technology Community, where all members can ask questions, trade tips, and compile a library of technology resources.

We have links to training and tutorials for Fastcase legal research (a free member benefit) and Clio Practice Management software. Members also will see frequent updates of technology topics of interest to the legal profession.

How to join

To join one or more of the communities, visit http://communities.nysba.org or click the Communities link at the top of the NYSBA website home page, www.nysba.org.

When logged into the website, members automatically will be logged into the communities. If not logged in, click on the "Login to see members only content" in the upper right corner of the screen. Your username and password are the same as your NYSBA web account. The systems are connected to allow a single set of login credentials.

Once logged into the communities, your profile will appear in the upper right corner. We filled in some information from your membership record. Click on "Complete Your Profile" to edit or add information.If you have a LinkedIn account, you can transfer your photo and information by clicking on "Update your information from LinkedIn."

Be sure to click on the "Privacy Settings" tab on the profile page to control what others can and cannot see about your information. You have complete control over your information and what other State Bar members can see.

We have mobile applications available on the Apple and Droid platforms, so members also can interact from their smartphones or tablets. Search for "NYSBA" in the Apple App store or Google Play store to find the NYSBA Communities app.

Visit http://www.nysba.org/HowDoI/ for videos and a tutorial on joining the online communities and other topics.

I look forward to seeing you online! ◆

Adkins is NYSBA's chief technology officer.

Voting Rights Act still important, but for different populations

By Patricia Sears Doherty

After the Voting Rights Act became effective in 1965, it was viewed as important to insuring that people of all races do not face discrimination when casting their votes on Election Day.

Voting rights update—Diana Sen, chair of the Committee on Civil Rights, introduces two experts who would update Annual Meeting attendees on the Voting Rights Act and how sections affect language access and stop-and-frisk police methods. L to R: Sen, Kristen M. Clark, chief of the New York Attorney General's Civil Rights Bureau; and Jerry George Vattamal of the Asian American Legal Defense & Education Fund. Vincent Warren of the Center for Constitutional Rights is not pictured. *[Photo by Jacques Cornell/Happening Photos]*

Today, the act remains in effect, although the Supreme Court struck down key parts last June requiring certain jurisdictions to obtain pre-clearance to make changes to their voting laws and regulations.

Still, the act's guarantees of equality are just as necessary, but not in the way originally intended, said a panel of experts during an Annual Meeting program.

The program, "Contemporary Civil Rights Issues in Relation to the 50th Anniversary of the Civil Rights Act," included a documentary and discussion of the political life and times of civil rights pioneer Constance Baker Motley, the first black woman to be named a federal judge.

Speakers also highlighted problems being tackled today over language access rights in voting and stop and frisk police tactics.

Language a hindrance

The need for the act was never more apparent than during an election in Boston's Chinatown area in 2004, said Jerry George Vattamala of New York (Asian American Legal Defense & Education Fund). All of the Asian voters were directed to one line at the sign-in desks, and all other voters stood in another, more fast-moving, line.

"That's because the Asians were taking too long for the poll workers to find their names," he said, an illustration of a violation of Section 203 of the act.

Section 203 of the Voting Rights Act states that any voter requiring assistance can be helped inside a voting place.

However, "many poll workers do not know that if they can't read or understand English, they can still vote," he said.

The violations are more likely to happen in urban settings, where immigrants from around the world tend to live in ethnically homogenous groups.

In jurisdictions with a large population that speaks another language, the act requires that "every piece of material has to be translated into that second language, including the ballot," Vattamala said. Oral language interpreters also must be made available.

Problems also arise in such jurisdictions when the second language in which ballot materials are printed, as decided by the U.S. Census Bureau, does not coincide with an actual language.

For instance, in an election in Queens County in 2011, the official translated language was termed "Asian-Indian."

"There is no such language," said Vattamala.

The Voting Rights Act becomes "critical in such areas. The voters who utilize Section 203, really need it," he said.

Advocacy groups helpful

Advocacy groups such as Vattamala's organization act as watchdogs for such minority populations. They monitor poll sites for compliance and to ensure that a compliance plan is in place for that jurisdiction. He said compliance plans must be pre-cleared by the Department of Justice.

"On Election Day, teams of volunteers go to poll sites to monitor and assist with translations," he said.

However, alternative materials and translations are sometimes slow to materialize. For instance, in the Queens County poll site that was designated for an Asian-Indian translation, Bengali was chosen as the common language.

"Four elections came and went and still there were no ballots available in the Bengali language" said Vattamala. His group filed a complaint with the courts.

Continued on page 34

Chief Judge launches pilot program to help civil litigants "navigate" courts

Chief Judge Jonathan Lippman, during his State of the Judiciary address on February 11, unveiled a Court Navigator Program to assist unrepresented litigants in certain designated cases brought in the New York City Civil Court. He said the pilot program later could be expanded to other courts.

The program's purpose, as described in the order of Chief Administrative Judge A. Gail Prudenti, is to provide "essential non-legal services, without cost, to unrepresented litigants by qualified non-lawyers," who will be designated as Navigators.

The pilot program is to begin in the Housing Part in Kings County and for consumer credit matters in Bronx County.

In an eblast to members, State Bar President David M. Schraver said the Association will closely monitor the Court Navigator Program as it proceeds. He and President-elect Glenn Lau-Kee met February 25 with the Chief Judge's committee overseeing the program and agreed to share information.

State Bar members can email comments to dschraver@statebar.nysba.org.

According to the chief administrative judge's order, a list of qualified navigators will be maintained by the court system. To qualify, a navigator will have to meet minimum educational training requirements. Navigators will be supervised by not-for-profit service providers. Three initially have been authorized—the New York State Access to Justice Program, University Settlement and Housing Court Answers.

Navigators will be authorized to assist unrepresented parties, such as tenants in New York City Housing Court, where currently 90 percent are unrepresented. They will help those not represented complete "do-it yourself" form documents, gather and organize other documents, schedule court proceedings and provide non-legal services as the court may direct.

A navigator may "accompany the unrepresented party to court appearances and, if directed by the court, answer factual questions posed by the court."

Under Prudenti's order, navigators may not provide legal advice, legal counseling or, unless approved by the chief administrative judge, legal information. In addition, they may not "draft, execute, serve, or file with the court any documents," nor may they hold themselves out as "representing, speaking for or advocating on behalf of a litigant;" conduct negotiations with an adversary unless at the court's direction; address the court "unless to provide factual information at the court's direction;" or "perform any service that constitutes the practice of law."

Navigators may not be compensated by any unrepresented party to whom they provide services. ◆

CLE Seminar Schedule

To register or for more information, call toll-free 1/800/582-2452. For Albany and surrounding areas call 518/463-3724 or fax your request to 518/487-5618. Check www.nysba.org/cle for New York MCLE credit hours for courses. *(This schedule is subject to change)*

PRACTICAL SKILLS SERIES

P/S FAMILY COURT PRACTICE SUPPORT

(W) April 2	Buffalo	Holiday Inn Amherst
	Long Island	Melville Marriott
(Th) April 3	Syracuse	Sheraton Syracuse University Hotel
	Westchester	Holiday Inn Mt. Kisco
(W)April 9	New York City	Concierge Conference Center
	Rochester	Holiday Inn Rochester Airport
(Th)April 10	Albany	New York State Nurses Association

P/S PURCHASES AND SALES OF HOMES

(T) April 29	Long Island	Melville Marriott
(Th) May 1	Albany	New York State Nurses Association
	New York City	Affinia Manhattan
	Rochester	Holiday Inn Rochester Airport
	Syracuse	Sheraton Syracuse University Hotel
	Westchester	Elmwood Country Club
(T)May 6	Buffalo	Holiday Inn Amherst

P/S EASEMENT LAW IN NEW YORK (9:00 a.m. – 12:15 p.m.)

(W) May 14	Long Island	Melville Marriott
(W) May 21	New York City	Concierge Conference Center
(W) May 28	Albany	New York State Nurses Association

P/S DEBT COLLECTION & ENFORCEMENT OF JUDGMENTS

(T) June 24	Westchester	Holiday Inn Mt. Kisco
(W) June 25	Long Island	Melville Marriott
(Th)June 26	New York City	Concierge Conference Center
	Syracuse	Sheraton Syracuse University Hotel
(M) June 30	Albany	New York State Nurses Association

P/S THE NUTS & BOLTS OF CONTRACT DRAFTING: FROM BASIC TO ADVANCED TOPICS – Live & Webcast

(M) July 21	New York City	New York's Hotel Pennsylvania

MEDICAL MALPRACTICE

(F) March 14
Albany — Holiday Inn Albany – Wolf Rd

(F) March 21
SyracuseGenesee Grande Hotel

(F) March 28
Buffalo — Holiday Inn Amherst
New York City — Affinia Manhattan

SECURITIES ARBITRATION

Live & Webcast
(F) March 11
New York City — The New Yorker Hotel

BRIDGING THE GAP

(T-W) March 11 & 12
Albany(VC) — New York State Nurses Association

(T-W) March 11 & 12
Buffalo(VC) — The Conference Center Niagara Falls

(T-W) March 11 & 12
New York City — New York's Hotel Pennsylvania

10th ANNUAL INTERNATIONAL ESTATE PLANNING INSTITUTE

(Th-F) March 13-14
New York City — Crowne Plaza Times Square Manhattan

LITIGATING CONSTRUCTION SITE ACCIDENTS

(Th) March 13
Albany — New York State Nurses Association

(F) March 14
Long Island — Melville Marriott

(F) March 21
New York City — Affinia Manhattan

CPLR UPDATE 2014

(Sat) March 15 *(9:00-12:40)*
Buffalo — Holiday Inn Amherst

(F) March 21 *(1:00-4:40)*
Albany — New York State Nurses Association

(Sat) March 22 *(9:00-12:40)*
Syracuse — Sheraton Syracuse University Hotel

(Th) April 10 *(5:30-9:10)*
Long Island — Melville Marriott

(Th) May 8 *(5:30-9:10)*
New York City — Concierge Conference Center

ATTORNEY ESCROW ACCOUNTS: RULES, REGULATIONS & RELATED TOPICS

(9:00 a.m. – 12:45 p.m.) Live & Webcast
(F) March 21
New York City — Concierge Conference Center

INTRODUCTORY LESSONS ON ETHICS & CIVILITY

(F) April 4
Long Island — Melville Marriott
Syracuse — Sheraton Syracuse University Hotel

(F) April 11
Albany — New York State Nurses Association
Buffalo — Holiday Inn Amherst

(F) April 25
New York City — Affinia Manhattan

ELECTION LAW AND REPRESENTING A POLITICAL CANDIDATE

(9:00 a.m. – 1:00 p.m.)
(F) April 25
Albany — New York State Nurses Association

(W) April 30
New York City — The New Yorker Hotel

(Th) May 15
Westchester — Elmwood Country Club

18TH ANNUAL NEW YORK STATE AND CITY TAX INSTITUTE

(T) April 29
New York City — Concierge Conference Center

ADVANCED INSURANCE PRACTICE

(F) May 2
New York City — Concierge Conference Center
Syracuse — Sheraton Syracuse University Hotel

(F) May 9
Albany — New York State Nurses Association
Buffalo — Holiday Inn Amherst

(F) May 16
Long Island — Long Island Marriott

UNITED STATES IMMIGRATION LAW IN 2014: BASICS AND BEYOND

(T-W) May 6-7
New York City — New York's Hotel Pennsylvania

DWI: THE BIG APPLE XIV

Live & Webcast
(Th) May 8
New York City — Affinia Manhattan

THE NEW UNIFORM GUARDIANSHIP IN NEW YORK AND ARTICLE 81 DEVELOPMENTS

(9:00 a.m. – 1:00 p.m.)
(F) May 9
Albany — New York State Bar Association

(T) May 13
New York City — New York's Hotel Pennsylvania

TRIAL OF A CUSTODY CASE

(F) May 9
Westchester — Elmwood Country Club

(F) May 16
Rochester — Holiday Inn Rochester Airport

(F) June 6
Albany — New York State Nurses Association
Long Island — Melville Marriott

(F) June 13
New York City — New York's Hotel Pennsylvania

SOCIAL MEDIA ISSUES IN THE WORKPLACE: WHAT EMPLOYMENT LAW ATTORNEYS NEED TO KNOW

(9:00 a.m. – 1:00 p.m.)
(W) May 14
Albany — New York State Nurses Association

(T) May 20
New York City — New York's Hotel Pennsylvania

TELEHEALTH & TELEMEDICINE

(12:00 p.m. – 2:00 p.m.) – Live & Webcast
(Th) May 15
New York City — Moses & Singer

STARTING A PRACTICE IN NEW YORK

(F) May 16
New York City — Affinia Manhattan

DISCOVERY PROCEEDINGS FOR TRUSTS & ESTATES PRACTITIONERS

(9:00 a.m. – 1:00 p.m.)
(Th) May 29
Albany — New York State Nurses Association
Syracuse — Sheraton Syracuse University Hotel

(F) May 30
Buffalo — Holiday Inn Amherst
Long Island — Melville Marriott

(Th) June 5
Rochester — Holiday Inn Rochester Airport
Westchester — Holiday Inn Mt. Kisco

(W) June 11
New York City — New York's Hotel Pennsylvania

COMMERCIAL LITIGATION ACADEMY

Live & Webcast
(Th-F) June 5-6
New York City — Radisson Martinique on Broadway

PUBLIC SECTOR LABOR RELATIONS

June 3
New York City — Concierge Conference Center

June 12
Syracuse — Sheraton Syracuse University Hotel

ETHICS 2014

(9:00 a.m. – 12:45 p.m.)
June 6
Buffalo — Holiday Inn Amherst

June 9
Rochester — Holiday Inn Rochester Airport

June 10
Long Island — Melville Marriott

June 10
New York City — New York's Hotel Pennsylvania

June 13
Syracuse — Genesee Grande Hotel

June 27
Albany — New York State Nurses Association

TBD
Ithaca — Hilton Garden Inn – Ithaca

TBD
Westchester — Elmwood Country Club

BRIDGING THE GAP

(M-T) July 14-15
Albany(VC) — New York State Nurses Association

(M-T) July 14-15
Buffalo(VC) — The Conference Center Niagara Falls

(M-T) July 14-15
New York City — New York's Hotel Pennsylvania

We're looking for a few good lawyers.
Join a NYSBA committee.

Promote the bar.
Interact with colleagues.
Help create policy.

Contribute your ideas.
Initiate change.
Do something worthwhile.

Why?
Attorneys seeking the opportunity to make a difference in the work of the organized bar in New York are invited to apply for service as members of the committees listed below. Through NYSBA committee work, many women and men have worked diligently throughout the history of the New York State Bar Association to build effective programs not only for the benefit of the profession, but the public as well.

What's it all about?
There are two kinds of committees: standing and special. Standing committees consider and study matters relating to the general purposes and business of the Bar that are of a continuous and recurring nature. Special committees study issues of an immediate and non-recurring nature.

Generally, committees analyze legislation, propose improvements to the justice system and incorporate the creative thinking of the best legal minds to produce programs and resources for the benefit of the profession and public. The primary responsibility of committees is to act as a catalyst for change in the legal profession. Historically, NYSBA committees have helped the Association play an important role in shaping the state's laws and policies.

Lawyers like you.
Lawyers from all practice settings, including public, private, solo, public interest, government, judiciary, academia, and corporate, participate on committees, which offer them a rewarding opportunity to meaningfully contribute to the work of the organized bar. Committee service has historically led to leadership opportunities in the Association—and that is the pinnacle of a lifetime of professional achievement.

We should note that the Association has formally adopted a Diversity Policy and is committed to achieving diversity in all of its forms.

What's in it for me?
Committee work does require a commitment of time, but the rewards are significant. It provides you with the opportunity to have meaningful input into matters that affect the practicing bar and the public whom we serve. Committee service allows you to enjoy the company of lawyers from areas throughout the state in a collegial atmosphere and to have the unique experience of working with leading practitioners. Committee members not only contribute, they learn and benefit from a shared networking experience. But you have to be committed. You must be willing to give your time and to share your expertise, experience and perspective.

How much time will it take?
On average, most committees meet quarterly or bi-monthly and in most cases a few hours of preparation are necessary for each meeting. Under the Bylaws, members are appointed annually by the president, but usually serve three years.

Who makes the appointments?
Appointments are made by the president who assumes office on June 1. In anticipation of taking office, the president-elect reviews and evaluates the work of each committee during the spring and makes appointments taking into account the completed Committee Assignment Request Form. Committee assignments are effective June 1, 2014. The deadline for responding is April 1, 2014. You will receive notification of your appointment in May 2014.

What do I need to do?
You can complete the form on this page or visit the NYSBA Web site and fill out your information online at www.nysba.org/joincommittees. You also may write directly to President-elect Glenn Lau-Kee, c/o New York State Bar Association, 1 Elk St., Albany NY 12207, to advise him of your interest in being appointed to serve on a committee noting any special qualifications you may possess. Please provide a brief statement supporting your application (300-word maximum). Please include practice area, your relevant prior experience, bar service, all known prior presidential appointments, and, if applicable, prior service on the committee for which you are applying.

NYSBA Committee Assignment Request Form:

Deadline is April 1, 2014.

Please Note
If you are presently serving on an Association committee(s), you do not need to submit this form for your current committee. Due to the specialized nature of committee work, eligibility must be restricted to attorney members only. Law student members are encouraged to apply for committee positions upon their formal admission to practice.

We appreciate your interest and will do our best to accommodate all requests but due to the large volume of requests received this may not be possible. In that event, we encourage you to continue to apply in the future.

Application requirements:
- A brief statement supporting your application (300 word maximum).
- A list of your practice area, relevant prior experience, bar service and all known prior presidential appointments.
- A copy of your CV.

Please note: Submissions not accompanied with a statement and CV will be returned with a request for additional information. Please ensure that your application package is complete prior to submission to avoid delays in the selection process.

Please list your first, second and third preferences.

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__ Veterans
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__ *Youth Courts

*Indicates Special Committee

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Membership Number _____

Address _____

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Please complete and return this form along with your letter of interest, prior bar experience and CV by April 1, 2014 to: Kimberly McHargue, Executive Offices, NYSBA, One Elk Street, Albany, NY 12207. Fax: 518.487.5624.
To apply online* go to: www.nysba.org/joincommittees

*You will need your NYSBA username and password to access this area. If you need this information, please call 518.463.3200.

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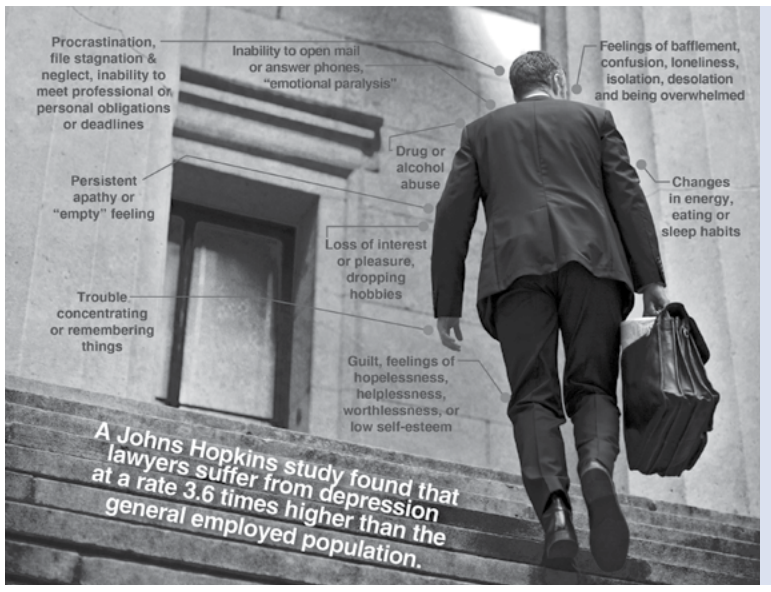

Voting Rights Act of 1965 still relevant, but for different populations of citizens

Continued from page 30

A major step forward in the case challenging unconstitutional stop-and-frisk tactics by the New York City Police Department occurred, coincidentally, the morning of the program.

That morning, the city and the Center for Constitutional Rights announced a negotiated agreement in which the De Blasio administration agreed to withdraw the appeal, previously filed by Mayor Bloomberg, of the decision in *Floyd v. City of New York.* The court had ruled that many New Yorkers, including Blacks and Latinos, who were stopped in this manner suffered violations of their constituitional rights guaranteed by the fourth and fourteenth amendments.

Panelist Vincent Warren of New York City (Center for Constitutional Rights) called the announcement "incredible timing."

He said that more than 50 percent of the stops made by police were for "furtive movements."

"Race was a primary factor for determining who got stopped," said Warren.

In an unusual move, Hon. Shira Scheindlin of New York City (U.S. District Court, Southern District) was taken off the case last fall by the Second Circuit Court of Appeals.

"That was quite unusual," said Warren. "During years of litigation, neither side ever asked for her to be removed."

The agreement meant that the city would abide by Scheindlin's rulings and that a federal monitor would be appointed for at least three years.

"This has been a very good day for us and for the case," said Warren. ◆

Sears Doherty is State Bar News editor.

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