



November/December 2013

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NEW YORK STATE BAR ASSOCIATION

State Bar News

House of Delegates

Report calls for solutions to state's human trafficking problem

**By Mark Mahoney and
Patricia Sears Doherty**

Citing the growing scourge of human trafficking in New York—particularly its impact on children and teenagers—the State Bar has issued a report calling for legislative and legal measures to curb the problem.

The report of the Special Committee on Human Trafficking was approved by the House of Delegates during its meeting on November 2.

"It is unconscionable that nearly 150 years after our country outlawed slavery, thousands of children and adults continue to be victims of human trafficking," said State Bar President David M. Schraver of Rochester (Nixon Peabody). "As attorneys, we have a collective obligation to assist the victims and end this horrendous practice."

During the meeting, Committee Co-Chairs Bernice K. Leber of New York City (Arent Fox LLP) and Sandra Rivera of Albany (Manatt, Phelps & Phillips LLP), and committee members John H. Gross of Hauppauge (Ingerman Smith LLP), Hon. Barry Kamins of Brooklyn (Administrative Judge for Criminal Matters, 2nd Judicial District) and Hon. Carol Robles-Roman of New York (Office Of The Mayor) detailed the report and its recommendations.



Growing concern—Members of the Special Committee on Human Trafficking show their concern during a delegate's comment after presentation of their report and recommendations. L to R: Hon. Barry Kamins, Hon. Carol Robles-Roman, Co-Chairs Bernice K. Leber and Sandra Rivera, and John H. Gross. [Photo by Mark Mahoney]

Children and adults

"While statistics show that half of those trafficked are adults, there is a growing concern and recognition that more than half the victims are children

who continue to be exploited after they reach the age of majority," said Leber, a former State Bar president.

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Legal Education and the Future of the Profession

Breaking the logjam of law school debt becoming Job #1

By Mark Mahoney

The national statistics are startling.

\$40,634: Average yearly tuition/fees at a private law school, up 440 percent from 1985-2012. *

\$23,213: Average yearly tuition/fees at a public law school (resident), up, 1,057 percent from 1985-2012. *

\$36,202: Average yearly tuition/fees at a public law school (non-resident), up 666 percent from 1985-2013.*

\$122,158: Average law student debt upon graduation, 2011-12 (private) *

\$84,600: Average law student debt upon graduation, 2011-12 (public) *

\$61,245: 2012 graduates, median salary, full-time lasting at least 1 year. **

36 percent: 2012 graduates earning more than \$75,000 a year **

39.5 percent: 2012 graduates earning \$55,000 or less per year. **

58.3 percent: 2012 graduates in full-time job requiring bar passage lasting at least 1 year. **

(Sources: * American Bar Association.

** National Association for Law Placement.)

Law school was once seen as a guaranteed path to a financially rewarding and stable career. But in recent years, the rising cost of law school tuition has created a generation of students graduating with overwhelming debt and dwindling employment prospects.

Not only is a law degree no longer a guarantee of a comfortable living, many graduates today find themselves working second jobs, seeking other careers to pay off their law school



Study hall—Antony Eminowicz of England, an LL.M. student, studies at Albany Law School's Schaffer Law Library on October 8. [Photo by Mark Mahoney]

loans and putting off major purchases like homes and cars.

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Miranda nominated NYSBA's president-elect



Miranda

At the House of Delegates meeting November 2 at the Bar Center in Albany, the Nominating Committee announced the following nominations for offices with terms commencing on June 1, 2014. The nominees will be elected at the Jan. 31, 2014 House of Delegates meeting in New York City.

Executive Committee

President-Elect: David P. Miranda, *Albany*

Secretary: Ellen G. Makofsky, *Garden City*

Treasurer: Sharon Stern Gerstman, *Buffalo*

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First District: Jay G. Safer, *New York*

Second District: Domenick Napoletano, *Brooklyn*

Third District: Hermes Fernandez, *Albany*

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Fifth District: Stuart J. LaRose, *Syracuse*

Sixth District: Alyssa M. Barreiro, *Binghamton*

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Ninth District: Arlene Gordon-Oliver, *White Plains*

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Eleventh District: Richard M. Gutierrez, *Forest Hills*

Twelfth District: Richard S. Weisman, *Mount Vernon*

Thirteenth District: Michael J. Gaffney, *Staten Island*

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Bryan D. Hetherington, *Rochester*

Elena DeFio Kean, *Albany*

Edwina Frances Martin, *Staten Island*

Bruce J. Prager, *New York*

Elected Delegate to the House of Delegates

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Doris Ling-Cohan, *New York*

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Jeffrey S. Sunshine, *Brooklyn*

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Trinidad Martin, *Glens Falls*

Jeremiah Wood, *Gloversville*

Fifth District:

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Karen Stanislaus, *Utica*

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Denice A. Hamm, *Elmira*

Richard C. Lewis, *Binghamton*

Bruce J. McKeegan, *Delhi*

Seventh District:

Eileen E. Buholtz, *Rochester*

C. Bruce Lawrence, *Rochester*

Keith McCafferty, *Geneva*

Eighth District:

Joseph Scott Brown, *Buffalo*

David L. Edmunds, Jr., *Buffalo*

Norman P. Effman, *Warsaw*

Ninth District:

Jerrice Duckette Epps, *White Plains*

Joseph J. Ranni, *Florida*

Kelly M. Welch, *Scarsdale*

Tenth District:

Marc Gann, *Mineola*

John H. Gross, *Hauppauge*

Peter H. Levy, *Jericho*

Eleventh District:

Frank Bruno, Jr., *Glendale*

Chanwoo Lee, *Flushing*

Steven Wimpfheimer, *Whitestone*

Twelfth District:

Carlos Calderon, *Mount Vernon*

Alan B. Friedberg, *White Plains*

Richard Weinberger, *Spring Valley*

Thirteenth District:

Jonathan B. Behrins, *Staten Island*

John Z. Marangos, *Staten Island*

Robert A. Mulhall, *Staten Island*

Delegates to ABA House of Delegates

A. Vincent Buzard, *Pittsford*

Michael E. Getnick, *Utica*

Kathryn Grant Madigan, *Binghamton*

David M. Schraver, *Rochester*

Alena Shautsova, *Brooklyn*

Nominating Committee Members-at-Large

Seymour W. James, Jr., *New York*

Vincent E. Doyle III, *Buffalo*

Stephen P. Younger, *New York*

Nominating Committee Chair

Vincent E. Doyle III, *Buffalo* ♦

Addendum

Hon. Sarah L. Krauss of Brooklyn was reappointed as chair of the American Bar Association's Commission on Lawyer Assistance Programs by President James R. Silkenat. She also is a member of the State Bar's Lawyer Assistance Committee and co-chair of the State Bar's Committee on Judicial Wellness.

State Bar News



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Editor: Patricia Sears Doherty

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Article/letter authors are responsible for the correctness of all information, citations, and quotations.

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Special achievements in public service—The Committee on Attorneys in Public Service honored three attorneys with its 2013 Citation for Special Achievement in Public Service on Oct. 16 at the State Bar Center in Albany. L to R: President David M. Schraver of Rochester (Nixon Peabody LLP), Jessica Lazarin of Buffalo (Erie County Bar Association's Volunteer Lawyers Project), Tasha Moore of Buffalo (New York State Division of Human Rights), Tina Janssen-Spinosa of New York City (New York Legal Assistance Group), committee chair Catherine A. Christian (assistant district attorney, New York County) and keynote speaker Anne Erickson of Albany (president and CEO, Empire Justice Center). [Photo by Megan O'Toole]

State Bar hosts panel, webinar to promote Civil Gideon

By Mark Mahoney

As a pro bono program assistant at Albany Law School, third-year student Jeremy Ginsburg volunteers at community centers to help workers secure their rights.

Mark Houston, another third-year student, works with the attorney-for-the-day program twice a month, providing assistance on landlord/tenant issues in Albany City Court.

Third-year law student Jenna Dana, president of the school's Pro Bono Society, plans to do elder law and estate planning when she graduates. She said the legal system needs to be more accessible to those most in need.

Ginsburg, Houston and Dana represent a new generation of law students and legal professionals dedicated to providing civil legal counsel to disadvantaged individuals.

They were among the 35 law students, teachers and attorneys at Albany Law School who participated in the State Bar's October 3 live webcast and program on the right to counsel in civil matters.

The program, originating at the State Bar Center and simulcast to 18 law schools in three states, sought to educate and inspire the legal education community to push for a right to coun-



Live from the Bar Center—Bryan Hetherington, a panelist at the State Bar's webcast on Civil Gideon, appears on a live feed at Albany Law School. [Photo by Mark Mahoney]

sel in civil matters, in much the same way that impoverished citizens have a right to legal counsel in criminal cases.

The effort, known as "Civil Gideon,"

is named after the 1963 U.S. Supreme Court case, *Gideon v. Wainwright*, in which the court ruled that criminal defendant Clarence Earl Gideon was entitled to government-supported legal representation because he could not afford an attorney on his own.

Landmark celebration

As part of a 50th anniversary celebration of that landmark decision, the State Bar hosted the forum. It featured Chief Judge Jonathan Lippman, State Bar President David M. Schraver of Rochester (Nixon Peabody LLP), and a panel of experts moderated by Andrew Scherer, author of "Residential Landlord-Tenant Law in New York."

The panel included Professor Martha Davis of Boston (Northeastern University Law School); Hon. Fern Fisher, deputy chief administrative judge for the New York City Courts and director of the New York State Courts Access to Justice Program; Bryan Hetherington, general counsel of the Empire Justice Center; and John Pollock, coordinator of the National Coalition for a Civil Right to Counsel.

Schraver said improving access to justice has been a "major priority" of the State Bar for years, noting that in 2008 it adopted a position in favor of

civil legal counsel when basic human needs were at stake.

The State Bar also has strongly supported the American Bar Association's Civil Gideon resolution, urging governments to provide legal counsel at public expense to low-income people where basic human needs are at stake, Schraver said.

"Each year, millions of Americans are forced to navigate the justice system in cases that may involve housing, family matters, personal safety, consumer debt disputes, access to food stamps or subsistence income," he said.

He said providing legal assistance to those in need is more than just a moral imperative.

"Studies have shown that when parties have access to counsel, our courts function more efficiently and our state reaps economic benefits in the form of averted shelter costs, recovered federal funds and the multiplier effects of federal funds, just to name a few," Schraver said.

Lippman, participating via videotape, stressed the life-saving importance of providing civil legal services to those in need.

"Having a lawyer can mean the difference between an individual

Continued on page 12

Chief Judge's hearings aim to ensure access to justice

By Brandon J. Vogel

In Rensselaer City Court, Judge Carmelo LaQuidara estimates that 99 percent of litigants appearing before him in civil cases are unrepresented by attorneys.

"It is mind boggling," LaQuidara said during Chief Judge Jonathan Lippman's first public civil legal services hearing at the Court of Appeals September 17 in Albany.

LaQuidara said that it is "absolutely, critically important" that both parties are represented. "On the issue of civil cases, we have a person's shelter at stake. Whether they're going to have a roof over their head is at stake in a landlord-tenant case. And certainly that's as important as someone being represented in a criminal case," said LaQuidara.

Community leaders and legal services clients also testified to the importance of continued funding for civil legal services at hearings in each of New York's four judicial departments. Lippman and Chief Administrative Judge A. Gail Prudenti were joined in each department by the presiding justice and State Bar representatives. President David M. Schraver participated in the Albany hearing.

Toll on everyone

LaQuidara and Judge Margaret T. Walsh of Albany (Albany County Family Court) agreed that it would make "a world of difference" if both parties were represented in civil cases.

"Our role is to ensure that everyone is treated fairly. The difficulty for represented parties is to see the judge trying to help unrepresented parties," said Walsh. She explained that in cases in which a party is unrepresented, a judge must constantly adjourn so that the unrepresented party understands the proceedings.

"It is a difficult balancing act when one party is unrepresented," said LaQuidara. "Pro se clients often look to judges for assistance and often lack the basic understanding of the law. I think they feel that the system is somewhat skewed towards the party that's represented by an attorney."

Walsh said she deals with unrepresented litigants "quite a bit." She said that a family with three children and a \$45,000 annual income does not qualify for assigned counsel, and also often cannot afford a retainer fee or another monthly bill.

"It really takes a toll on everyone



Compelling stories—State Bar President David M. Schraver (left), listens to testimony during a September 17 hearing on civil legal services at the Court of Appeals. Schraver was joined on the panel by (L-R) Hon. Karen K. Peters, presiding justice, Third Department; Chief Judge Jonathan Lippman; and Chief Administrative Judge A. Gail Prudenti. Three other hearings were held in Manhattan, Long Island City and Buffalo. [Photo by Mark Mahoney]

when there isn't representation. And the children. That's the biggest deal. When custody matters are not resolved in a timely way, it's the children who suffer," said Walsh.

LaQuidara noted that law clerks are "constantly barraged with legal questions" and clients often try to refile the same case, leading to further delays.

Smart investment for NY

State Comptroller Thomas P. DiNapoli said that low interest rates have adversely affected the Interest on Law-

yer Account (IOLA) Fund, the traditional source of funding for legal services for the poor. He cited that current expenditures from the IOLA Fund are \$7 million, down from \$32 million in 2008. Judge Lippman targeted \$40 million in the 2013 Judiciary Budget for civil legal services and an additional \$15 million for IOLA.

DiNapoli said the Legal Services Corporation (LSC) grants amount to less than 27 percent of New York's legal services funding. In 2011, Con-

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Delegates approve special committee's recommendations on human trafficking problems

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"This report is seminal insofar as we looked to the continuum of those who are trafficked as youth and continue being trafficked into their adult years. It also addresses specific problems in the manner in which our justice system and government currently treat the victims, whether they are men, women or children. We must not only find ways to stop the trafficking of human beings, but also ensure the victims receive the care they need," Leber said.

Nationwide, human trafficking is a \$32 billion-a-year business. In New York, it is estimated that there were nearly 12,000 cases of human trafficking between 2000 and 2010. Since 2007, state officials have confirmed 224 cases of human trafficking, half in New York City. A Hofstra University study found that between 2000 and 2010, about 58 percent of nearly 11,300 sex trafficking victims in New York were under age 18.

"With many small communities and close proximity to Canada and interna-

tional ports, New York is particularly vulnerable to international human trafficking, but the problem is also domestic," Rivera said. "While New York and many other states have tough laws to curb trafficking in persons, the fact that the problem persists indicates the need to take more effective measures."

Delegate Diana Sen of New York (Office of Federal Contract Compliance Programs) commended the committee for its work. "This is an important report. It is essential that the New York State Bar Association serve as a leader and model" for tackling the problem.

"This is a sad, dangerous, demeaning issue," said delegate Karen Stanislaus of New Hartford (Oneida County Courthouse), adding that Oneida County already has begun training attorneys and social services workers on assisting victims of human trafficking.

Report recommendations

The report states that thousands of

people are taken from their families each year, threatened, abused, and forced into hard labor or prostitution.

The report contains recommendations for solutions to labor, child and sex trafficking.

It calls for establishing a civil private right of action that would allow victims to bring cases to civil court, which would help undercut the profit motive of the traffickers and provide compensation to victims. Twenty-nine states and the District of Columbia currently allow for a private right of action.

The report also calls on state lawmakers to enact an "enterprise disclosure law" requiring businesses with revenues exceeding \$100 million annually to file an oath with the state Labor Department that they do not engage in human trafficking.

To better protect young victims, the report recommends removing a state Penal Law requirement that prosecu-

tors must prove coercion when someone 19 or older intentionally advances or profits from the prostitution of a minor.

Other recommendations include reclassifying sex trafficking as a Class B violent felony; creating an affirmative defense for trafficking victims; requiring mandated reporters to report human trafficking; and extending protections to Family Court, social services and state agencies that deal with trafficking victims.

The Special Committee on Human Trafficking was established in January 2013 by then-President Seymour W. James, Jr. (The Legal Aid Society in New York City) and continued its work under President Schraver.

To read the report, visit: www.nysba.org/HumanTrafficking. ♦

Mahoney is NYSBA's associate director of Media Services. Sears Doherty is editor of the State Bar News.

Supreme Court's Souter: Speak loudly for civics lessons



High Court—Former Supreme Court Justice David Souter, left, President David M. Schraver and Secretary David P. Miranda meet before Souter's speech on civics education. [Photo by Patricia Sears Doherty]

By Patricia Sears Doherty

"We've got to open our mouths" and advocate strongly for more civics and humanities education in school curricula, said former U.S. Supreme Court Associate Justice David Souter at a rare speech in Albany in September.

"The humanities and social sciences in the U.S. have been getting the short end of the stick" in the nation's primary, secondary and post-secondary schools, Souter said.

"We are not asking for favors," he said. "We are arguing for the survival of the United States as we know it."

Souter traveled from his home in New Hampshire on September 12 to tout a new report by the American Academy of Arts & Sciences Commission on the Humanities and Social Sciences, of which he is a member. Titled, "The Heart of the Matter," the report names three goals and 13 recommendations for advancing the humanities and social sciences in America.

Those goals are: educate Americans in the knowledge, skills and

understanding they will need to thrive in a 21st century democracy; foster a society that is innovative, competitive and strong; and equip the nation for leadership in an interconnected world.

Souter's appearance was hosted by the New York Council for the Humanities, the New York State Library,

Archives and Museum and the American Academy. The State Bar was an event sponsor.

Wasting an opportunity

The race to improve America's intellectual standing within the global community in recent years has focused on mathematics and science, sometimes at the expense of the humanities and social sciences, especially history and civics education, Souter said.

That is a dangerous mistake, Souter told about 300 people in the audience. "The humanities and social sciences tell us who we have been, whom we have come from, who we are and who we may be." The humanities—the study of languages, literature, history, jurisprudence, philosophy, comparative religion and ethics—teach citizens how to think through and analyze the political and societal challenges facing

our democratic republic.

"It is a habit of mind, of intellectual character, that happens to be exactly the kind of characteristic necessary to preserve a democratic government of constitutional value," said Souter.

The normally publicity-shy Souter said he is speaking out now because of what he calls the dismantling of the humanities and social sciences in the nation's primary and secondary school districts and, especially, its de-emphasis as a major in colleges and universities.

He cited alarming statistics from the commission's report: that two-thirds of the nation's adults don't "have a clue" what the three branches of government are and that only 46 percent of eligible youth voters actually voted in the last presidential election.

"I don't think we can survive in that atmosphere of pervasive civic

Continued on page 11

The Road Not Taken

Two roads diverged in a yellow wood,
And sorry I could not travel both
And be one traveler, long I stood
And looked down one as far as I could
To where it bent in the undergrowth;

Then took the other, as just as fair,
And having perhaps the better claim,
Because it was grassy and wanted wear;
Though as for that, the passing there
Had worn them really about the same,

And both that morning equally lay
In leaves no step had trodden black.
Oh, I kept the first for another day!
Yet knowing how way leads on to way,
I doubted if I should ever come back.

I shall be telling this with a sigh
Somewhere ages and ages hence:
Two roads diverged in a wood, and I—
I took the one less traveled by,
And that has made all the difference.

—Robert Frost

Delegates debate mandatory pro bono reporting, lack of input into rules

By Mark Mahoney

A proposed resolution before November's House of Delegates meeting on increased aspirational hours for pro bono service in the Rules of Professional Conduct turned into a contentious 40-minute debate when some delegates expressed objections to a new rule requiring attorneys to report their pro bono hours and charitable contributions to legal services organizations.

After the meeting, State Bar President David M. Schraver of Rochester (Nixon Peabody) reiterated the association's opposition to mandatory reporting of pro bono hours and

charitable contributions.

"The reporting requirement dilutes the voluntary nature of pro bono work," Schraver said. "We very strongly believe that lawyers should provide pro bono service because they recognize the critical importance of access to justice and lawyers' unique ability to assist—not because they feel pressured into doing so."

Schraver spoke by telephone with Chief Judge Jonathan Lippman on November 4 to relay the sense of the meeting.

The pro bono rule, which took effect May 1, was imposed by the Administrative Board of the Courts with no input from the organized bar.

Contentious comments

The debate began when past President Robert L. Ostertag of Poughkeepsie (Ostertag O'Leary Barrett and Faulkner) objected to a resolution submitted by the Committee on Standards of Attorney Conduct (COSAC). The Administrative Board previously amended Rule 6.1 to increase aspirational hours of pro bono from 20 hours to 50 hours.

The resolution would have amended a State Bar comment to Rule 6.1 to conform the comment to the rule by stating that, "Every lawyer should aspire to provide at least 50 hours of pro bono legal services each year to poor persons," an increase from the previous level of 20 hours.



Mandatory debate—Past President Mark Alcott reminds delegates of the State Bar's Empire State Counsel program as Robert Ostertag, another past president, listens during the House debate. [Photo by Marty Kerins, Jr.]

Ostertag used the opportunity to express his objection to the mandatory

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LEGAL EDUCATION and the FUTURE OF THE PROFESSION

Financing law school putting extra stress on new lawyers' search for employment

Continued from page 1

Helping students with costs

The average law school student today graduates with tens of thousands of dollars in debt, many with debts in six figures, and can expect to pay about \$125 per month for every \$10,000 borrowed.

That is enough to make any potential student think twice about borrowing a lot of money, and to create plenty of work for law school financial aid officers.

Andrea Wedler, director of financial aid at Albany Law School, said the school's tuition, fees and living expenses top \$61,000 a year. She said her office helps students as much as possible with finding money to pay for it all.

Albany Law School, like many others, gives out merit scholarships based on Law School Admission Test (LSAT) scores and undergraduate grade-point average. Awarding financial assistance based on merit also helps colleges attract better students.

But the majority of the funding for students who can't pay the freight comes from loans, Wedler said. She encourages students to borrow as little as possible. If they do have to borrow, she said, she urges them to avoid borrowing the full amount of the cost and to avoid private lenders.

"We're trying to steer students away from the private loans," she said. Although their rates are competitive, they don't have the flexibility that these (federal) loans do. It's completely up to the lender whether or not they want to do anything to help if you get into trouble with your repayment. And a lot of them don't."

Columbia Law School in New York City—where annual tuition, fees, room/board and living expenses approach \$83,000 a year—offers a Surgeon General-type warning on its website to students thinking about taking out loans: "We urge you to be as prudent as you can be in the amount of debt you assume; how much you borrow now may affect your future choices in career and lifestyle."

Many law schools offer their own grants, loans, work study and financial aid packages, as well as advise students on where they can obtain low-interest or early-forgiveness loans and many provide exit-counseling upon graduation.

At New York University School of Law, for instance, the website advertises the school's Loan Repayment Assistance Program and notes that the school has integrated it with the federal government's Public Service Loan Forgiveness Program (PSLF) and the

Direct Loan Program's Income-Based Repayment option.

The Benjamin N. Cardozo School of Law in New York City—with annual full-time tuition, fees and room/board of about \$76,000—offers debt management assistance on its website. The site includes information on preparing a personal budget that lists all the expenses a student will face (including a "cost of attending" section with spe-

"We urge you to be as prudent as you can be in the amount of debt you assume; how much you borrow now may affect your future choices in career and lifestyle."

—Columbia University Law School website

cific information about tuition and fees); default prevention to help students manage their loans; a listing of repayment options; and links to other helpful sites, such as debt repayment calculators, scholarships and government loan programs.

On top of the debts they are generating in law school, students are compounding their problems by bringing in debt from their undergraduate educations.

According to statistics compiled by the American Federation of Teachers (AFT), overall college tuition across the country rose 42 percent from 2000 to 2012. During the 2010-11 academic year alone, in-state tuition and fees at public four-year colleges rose 8.3 percent; out-of-state tuition and fees rose 5.7 percent; and in-state tuition and fees at public two-year colleges rose 8.7 percent, according to the AFT.

Debt is outpacing even the steep tuition increases. From 2000 to 2013, outstanding student debt in the U.S. increased 500 percent—from \$200 billion to \$1.2 trillion. And the average change in student debt per household rose 34 percent between 2001 and 2010, from \$17,562 to \$26,682.

Wedler said students have begun taking matters into their own hands by shopping around for scholarship deals, sometimes pitting schools against one another for their business by negotiating financial aid packages.

Help from Uncle Sam

The U.S. Department of Education offers several low-interest loans and programs for law students, many of which were initiated in the past few years.

The Public Service Loan Forgiveness Program (PSLF) mentioned above, established in 2009, allows graduates who go into public service careers to

have a portion of their law school loans forgiven after a certain number of payments are made.

The Income-Based Repayment Plan, which also became available in 2009, allows income-eligible graduates to reduce their monthly loan payments based on changes to their income and family size. The Pay as You Earn Plan, initiated in December 2012, works in much the same way as the Income-

Based Repayment Plan, but offers more options for repayment.

Under the William D. Ford Federal Direct Loan Program, the largest federal loan program, students may obtain direct unsubsidized loans from the Education Department of up to \$20,500 per year. They also may obtain Direct PLUS loans, available to students who need more than the maximum unsubsidized loan amounts.

The Perkins Loan Program, another federal program, offers eligible students up to \$8,000 a year, depending on financial need, the amount of other aid a student receives and how much money each school has available to allocate.

And the Federal Work Study program allows students to work part-time to help offset their education expenses. It encourages students to do their work in public service or areas related to a particular course of study.

Recognizing the problem

It would be impossible to address student expense and debt without recognizing the root of the problem and the potential solutions. The legal community has recently focused attention on those root causes.

State Bar President David M. Schraver has made the arduous task of exploring possible solutions to the problems with legal education the cornerstone of his administration.

He charged the association's existing Committee on Legal Education and Admission to the Bar with studying the problem, made legal education a component of his Presidential Summit at the Annual Meeting in January and pledged to bring together key figures in the legal education community to help find solutions.

"First, we need to understand the factors that are driving the increase in cost,"

Schraver said in a recent interview.

"Secondly, which of those can we hope to affect to reduce or control? Some of it has to do with the economics of law schools; some has to do with politics."

Law school costs also have escalated, particularly in the past decade, because of higher salaries for law professors, a greater demand for law degrees, and the syphoning off of law school tuition to support other programs at schools, said legal experts, including former St. John's University law professor Brian Z. Tamanaha, author of 2012's "Failing Law Schools."

The State Bar's Task Force on the Future of the Legal Profession issued a report in February 2011 that addressed many of the factors, including the hiring practices of law firms that focus on "elite" over "practice-ready graduates;" the need for greater transparency in employment data provided by law schools; and the growing reliance on the U.S. News & World Report "Best Law School" rankings that place great emphasis on cost-driving factors such as student-faculty ratio, expenditures per student, LSAT scores and library resources.

Hopeful signs?

As noted above, in the last few years the federal government has established creative new loan programs to address the lower salaries, higher debt loads and dim job prospects faced by law school graduates.

In the last year, the State Bar and the American Bar Association (ABA) have committed significant attention and resources to the problem. And the legal community in general appears ready to tackle the issues and find solutions.

The ABA's Task Force on the Future of Legal Education in September issued a draft report outlining the problem and proposing changes to the law school model that in another era might have gone unheeded.

Tamanaha painted a pessimistic picture of the future of legal education and student debt in his book.

But in an October interview, Tamanaha said he was seeing signs for optimism – due largely to a recent sense of awareness of the problems from the legal community.

"There was a lot of denial out there. There's not denial anymore," he said from his office at Washington University School of Law in St. Louis. "Lawyer awareness is important. They simply weren't aware of the magnitude in the rise in tuition and the rise in debt. They just weren't aware how much it costs now."

Continued on page 27

LEGAL EDUCATION and the FUTURE OF THE PROFESSION

Presidential Scholars












President	Law School	Tuition During Third Year *	Then-3L Tuition in Today's Dollars**	Current Rate of Tuition***
 Kenneth G. Standard, 2004-2005	Harvard Law School '62	\$1,250	\$9,777	\$52,350
 A. Vincent Buzard, 2005-2006	University of Michigan Law School '67	\$1,200 (out-of-state)	\$8,662	\$52,540 (out-of-state)
 Mark H. Alcott, 2006-2007	Harvard Law School '64	\$1,250	\$9,554	\$52,350
 Kathryn Grant Madigan, 2007-2008	Albany Law School '78	\$2,500	\$9,648	\$43,248
 Bernice K. Leber, 2008-2009	Columbia Law School '78	\$4,490	\$17,329	\$55,916
 Michael E. Getnick, 2009-2010	Cornell Law School '69	\$1,500	\$10,081	\$57,270
 Stephen P. Younger, 2010-2011	Albany Law School '82	\$5,000	\$12,865	\$43,248
 Vincent E. Doyle, III, 2011-2012	University at Buffalo Law School '89	\$3,150 (in-state)	\$5,941	\$21,970 (in-state)
 Seymour W. James, Jr., 2012-2013	Boston University School of Law '74	\$2,750	\$14,486	\$44,720
 David M. Schraver, 2013-2014	University of Michigan Law School '70	\$1,740 (out-of-state)	\$11,088	\$52,540 (out-of-state)
 Glenn Lau-Kee, 2014-2015	Boston University School of Law '74	\$2,750	\$14,486	\$44,720

Chart compiled by Brandon Vogel

* Sources: Harvard Law School Annual Register, 1879-1970; University of Michigan Law School Admissions Office; Albany Law School Office of Communications & Marketing; Columbia Law School Office of Communications and Public Affairs; Cornell Law School Registrar's Office; University at Buffalo Law School Office of Communications and Public Relations; Boston University School of Law Registrar's Office

** CPI Inflation Calculator: http://www.bls.gov/data/inflation_calculator.htm *** Information found on each law school's website.

The cost of a legal education today eye-opening to NYSBA leaders

By Brandon Vogel

When President David M. Schraver was a third-year law student at the University of Michigan Law School in 1969, the out-of-state tuition was \$1,740 (\$11,088 in today's dollars).

Today, if Schraver were to enroll at the same law school, he would have to pay \$52,540 in tuition, nearly four times the rate of inflation.

"It is not surprising," said Schraver. "There has been dramatic change."

One of Schraver's presidential goals is to educate today's lawyers about the rising cost of law school tuition.

"First, we need to understand what factors are driving the increased costs. Second, we must look at costs we can either reduce or control," said Schraver. "Some has to do with economics of the law schools; others are political

issues. Investment in physical plants and libraries does not necessarily translate into quality education."

Both Schraver and Past President Kathryn Grant Madigan of Binghamton (Levene Gouldin & Thompson, LLP) said that for years universities treated law schools as "cash cows." He said that "is not viable in today's world."

In the case of his alma mater, Schraver said state support has decreased, forcing the university to raise tuition to recoup costs. The difference between in-state and out-of-state tuition is just \$3,000.

Schraver noted that the rise in tuition leads to concerns about diversity and discourages people from choosing a law career.

"Clearly, people are priced out of the market and may not take the risk," said

Schraver. "There are always going to be optimists who think they will get one of the top jobs. We are pricing people out of taking public interest and government law jobs. That ought to be a concern for our society."

Less is more?

In Broome County, Madigan said, law graduates often have to choose between a career in public interest law or finding a job with a firm, which will allow them to buy a home and get a mortgage. "It is really troubling," said Madigan.

Immediate Past President Seymour W. James, Jr. (The Legal Aid Society in New York City) said Legal Aid attorneys sometimes work second jobs to meet their debt loads.

"It is really astounding what the

cost of a legal education is today," said James. "It is unbelievable. So many students graduate with enormous debt, about \$200,000 between their college and law school loans."

Both James and President-elect Glenn Lau-Kee graduated from Boston University School of Law in 1974, when the tuition for a third-year law student was \$2,750 (\$14,486 in 2013 dollars). James' daughter is a third-year law student at Harvard Law School, where tuition is \$52,350.

Madigan noted the "tremendous growth in for-profit law schools," especially in the South and Southwest. "The profit motive drives the mission of the law school," said Madigan. "That is not healthy."

Post-recession, "the top 50 to 100 law

Continued on page 10

LEGAL EDUCATION and the FUTURE OF THE PROFESSION

Experienced lawyers to law students: 'Be brave; speak up'

By Patricia Sears Doherty

At an early morning forum, a group of students at Albany Law School were given a challenge: to use their youth and special skills as a selling point when applying for jobs upon graduation.

Two partners in the Albany-based Deily & Glastetter law firm told the students that what they could not offer potential employers in on the job or work experience, would be just as valuable—their youthful enthusiasm, their comfort with technology and their flexible availability.

The September 24 breakfast was the first in a series on professionalism established by the State Bar's Young Lawyers Section. Program Chair Sarah Gold of Albany (Gold Law Firm), an alumna of Albany Law School, planned the series as a conversation between established professionals and aspiring lawyers on different practical aspects. The September event focused on cultural competence in the private law firm. Events on November 19 and February 19 will explore working in finance and government.

Joann Sternheimer and Jonathan D. Deily, partners in Deily & Glastetter, LLP, agreed that the legal profession is much different today than when they began practicing law. Other lawyers in attendance agreed that today's clients are looking for quality and value for their dollars. "We have to get over the fact that we are not a 'vaulted profession' anymore," said Sternheimer. "Law is a 'business'."

The advantage that new lawyers bring to any law firm includes their

knowledge and comfort with "cutting edge technology and your cultural perspective," she said. "Don't be afraid to speak up."

Sternheimer, who recently became managing partner, said there is more diversity in the legal profession today. "But in my area of practice often it is still me and five white guys," she said. When women or people of color walk into a law firm that does not appear to be diverse, "that can be intimidating and that can be scary," she said. But young lawyers must overcome their nerves. "Screw up your courage," she said. "Be brave and put your best foot forward."

Changes in the makeup of the legal workforce are being dictated by clients' desire to hire firms with more women and minorities.

Deily said clients seem primarily interested in "the number of hours the lawyers in your firm worked for 'us' and 'Why are you working on the file?'" He said today's clients see the hiring of a lawyer more as a business transaction.

Law as business

Today, law firms need to promote their business by advertising their skills, said Sternheimer. "That is how we get the business," she said.

"If you don't meet the clients' diversity requirement, then you don't get the work," said Deily. "That has really become part of the public company culture." He said in order to win clients, he spends much of his time preparing Request for Proposals (RFPs) filled with diversity information, technology speci-



Legal advice—Joann Sternheimer, managing partner at Deily & Glastetter, center, gives practical advice to law students on navigating the law firm environment during the first in a series of breakfast discussions at Albany Law School in September. She and partner Jonathan Deily, right, answered students' questions and offered suggestions about entering the profession. Sarah Gold, chair of the State Bar's Young Lawyers Section, left, is program chair of the series. Events on November 19 and February 19 will explore working in finance and government. [Photo by Melissa Batalin/Albany Law School]

fications and other information that has nothing to do with the law.

Young lawyers

Members of the Young Lawyers Section at the breakfast confirmed the importance of the cultural shift from a law profession to a law business.

Stephen T. Buckley of Albany (Herzog Law Firm) said that new lawyers who "gain an understanding and appreciation for the business side of things" will be more marketable to today's law firms.

Penelope Andrews, president and dean of Albany Law School, noted that

Albany Law offers courses during semester intersessions and summer courses that teach basic business tasks, such as how to complete time sheets, how to dictate a memo or how to write a status report for a client.

Students at the breakfast asked whether their summer internships and participation in the school's law clinics could translate to better marketability.

"Anything that gives you the experience will help," said Sternheimer. ♦

Sears Doherty is State Bar News editor.

Presidents: Cost of an education today a shocking burden for profession's new attorneys

Continued from page 9

Schools are going to be fine. A lot of us are concerned about what may happen to the good, more regional schools, like Albany Law School and Seton Hall, that do not have the top rankings, as the market constricts," said Madigan.

She said her alma mater, Albany Law, had a historically high level of bar exam passage. But, as class size grew in the 1980s and 1990s, standards were sacrificed and bar passage rates plummeted. She noted that the new dean, Penny Andrews, is building on prior efforts to reduce class size and raise admission standards. Her plans for improving bar passage rates, as she did while associate dean at CUNY Law School, include identifying struggling students earlier and improving curricular support.

Schraver said some law schools are admitting fewer students and offering fewer courses, which affect faculty size.

Then and now

Madigan has been financially independent since she was 18 years old. In law school, she qualified for funding through the Comprehensive Employment and Training Act (CETA). The program provided low-income individuals with training and jobs in public service. She typically worked 30+ hours a week in the Albany County Public Defender's Office during her second and third year of law school, in addition to receiving a partial fellowship.

"The hours I worked were the exception, not the rule," said Madigan.

She noted that some parents paid the \$2,500 law school tuition, while others took out loans. She took out small loans in both college and law school, which were "manageable. Back then it was possible to work your way through school with minimal loans. That is no longer the case," said Madigan.

"More scholarships were available then," said James. "Today, most students are not going to be able to finance their legal education on their own without sizable loans." He funded his education through a partial scholarship, loans and by working during the summer and school year.

Madigan, whose son graduated from Cornell Law School in 2009, and James agreed that there are more clinics and practical skills programs available to law students today than in the 1970s.

Throughout her career, she said, law grads often have told her that they wished there had been better financial planning advice available for first-year law students. Some students get more loans than they need; others do not take enough.

Friends of Madigan frequently ask her if their children should become lawyers.

"Somewhat tongue-in-cheek, I often ask: do you want me to talk them into it or talk them out of it," said Madigan. "I have long believed that we could always use more good lawyers who are committed to service. There are those students who look at law as a calling. There should always be a place for them." ♦

Vogel is NYSBA's staff writer.

Supreme Court's Souter advocates for more, better civics education in nation's schools

Continued from page 6

ignorance," he said, a declaration that set up the concluding statement in his speech: "We cannot preserve a nation of liberty without a citizenry that shares that habit of mind, which is why humane living and humane study should not get short shrift."

Poetic literacy

Souter said the need to increase Americans' belief in the power of the vote can be tied to the importance of reading. "That is why the teaching of poetry... is basic to the revival of civic literacy," he said.

As an example, he recounted attending a reading by the poet Robert Frost while in college. Souter said he asked Frost to read "The Road Not Taken."

As Frost recited the last stanza of the poem: "I shall be telling this with a sigh/Somewhere ages and ages hence:/Two roads diverged in a wood, and I—I took the one less traveled by,/And that has made all the difference," Souter imagined that Frost was commenting on "a

lifetime devoted to the virtue of independence and the refusal to follow the crowd."

Years later, after reading a biography of Frost, Souter realized that Frost "wrote the poem as a parody of a fellow poet who could never make his mind up. The point of the poem was not a celebration of noble independence, it was irony from start to finish." The Frost biography said the poet knew it and he agreed that the poem was "a very tricky one and not many people would understand it."

And, that, in a nutshell, is the strength of an education in the humanities, said Souter: The humanities teach us to question our conclusions, to avoid judging people with differing viewpoints. "Our best thinking may lead us to the wrong conclusion."

'One of the greatest'

Souter credited the legal profession for being a living example of a successful education in the humanities. He quoted from legendary U.S.

Court of Appeals Judge Learned Hand, whom he called "one of the greatest of them all."

Hand defined the spirit of liberty in a 1944 speech to newly naturalized citizens in Central Park. "He said that the spirit of liberty is the spirit that is not too sure that he is right," said Souter.

Souter agreed and said, "I want responsible voters who will avoid hysteria and avoid ideology and not be too sure that they are right. I want voters and I want legislators who will listen to the people who disagree with them, who will try to understand the minds of other men and women."

Asked for advice for those considering a law career, Souter said: "The problem of legal practice today is that there has been a shift from a genuine profession to a business. The last thing I want for the world is fewer lawyers with a background in the humanities."

"If you are going to be a lawyer, stick close to the humanities," he said.

Loud voices needed

Souter detailed the components of a call to action to "revive and invigorate" more humanities and social science education:

1. Preach to the choir—Support those who do not have to be convinced.
2. Use the media and write to those in a position to make educational decisions—"Make it clear" in letters to the editor and op-ed articles.
3. Speak out at school district meetings and in petitions to legislative representatives.
4. "Get the point out: beef up civics literacy in order to pump up our core values."

In short, "We've got to open our mouths!"

To see the video of David Souter's speech, go to www.humanitiescommission.org. To read "The Heart of the Matter" and see a short film, go to www.amacad.org. ♦

Sears Doherty is State Bar News editor.

Better access to justice goal of chief judge's civil legal services hearings around state

Continued from page 4

gress allocated \$378.6 million to the LSC for field grants. That number declined to \$316 million in 2013. DiNapoli said that the U.S. Senate has proposed increasing the amount to \$400 million for 2014, but the House of Representatives wants to decrease that amount to \$272 million.

"The reality is that a vast number of low-income New Yorkers cannot afford a lawyer," said DiNapoli. "Without a lawyer, they cannot adequately navigate legal programs involving some very fundamental needs we often take for granted." He said 49 percent of New Yorkers are unrepresented in mandatory settlement conferences in foreclosure cases, for example.

Although he did not recommend specific levels of funding, DiNapoli said "the numbers show that an investment in civil legal services is a smart investment." He added that, "the payback and benefit, in both qualitative and quantitative measures, is clear."

Mark N. Eagan, president of the Albany-Colonie Regional Chamber of Commerce, said his organization's goal is community prosperity. "Access to legal services at all socioeconomic levels is critical to community stability," said Eagan.

Schraver asked Eagan if businesses understand the importance of funding the court system and civil legal services. "I think that for businesses who have to use the court, they want it to be timely, they want it to be efficient.

They understand the adequate funding that can occur. But until they're there, they want their tax dollars to be as low as possible," said Eagan. "I think the folks most touched, and those that are most informed, do understand."

Need for pro bono attorneys

Albany Law School Dean Penelope Andrews emphasized how law schools and law students can "to some extent, close the gap," even with the lack of stable funding.

"I think that we all agree that law schools, as significant institutions in our society, have a responsibility to instill a sense of service and commitment to justice in our students," said Andrews. "If you believe in the rule of law and you believe that as a society, a democratic society, and the citizens in the democratic society should have access to the courts, then that is the business of law schools."

In response to Lippman's 2012 mandate that all law students complete 50 hours of pro bono service before being admitted to the bar, Albany Law hired a full-time pro bono fellow to facilitate the pro bono efforts of its students. Last year, 200 students completed nearly 2,500 hours of services in a variety of clinics. Andrews said Albany Law applauded Judge Lippman's rule.

Nearly one-third of Albany Law students assist individuals and families who need help just through its Clinic and Justice Center. Andrews' goal is 100

percent participation. "Albany Law students are learning to practice law with compassion and sensitivity to the needs of their clients," said Andrews.

She said law students come to law school with a passion for service.

"I think what we need to do is harness that passion, that energy. I don't think our law schools have done a good job. Some law schools have; others have done a mediocre job. But I

think collectively we can do more to harness the passion and the energy that students have right from the start," said Andrews.

Other witnesses included Denise Gonick, president and CEO of MVP Health Care, and Joseph Sluszk, executive director of the Albany Housing Coalition Inc. ♦

Vogel is NYSBA's Media Writer.

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Commentary

By President David M. Schraver

Is the nation's Constitution working? *Filibuster, sequestration and the federal Judiciary*

President David M. Schraver spoke on September 24, Constitution Day, at Roberts Wesleyan College in Rochester on the continuing importance of the U.S. Constitution in guiding our government's actions in today's complex world.

Here, we offer excerpts from that speech. The full text of Schraver's remarks are at www.nysba.org/ConstitutionDaySpeech.

~~~~~  
In 2005, our nation began to celebrate Constitution Day, an American holiday honoring the day in 1787 when 39 delegates to the Constitutional Convention signed the Constitution of the United States. Along with Independence Day and Presidents' Day, Constitution Day is an important part of the cultural heritage of the United States because it recognizes the value of the American experiment and the success of a nation of free people whose rights and liberties are protected by a written Constitution.

The deliberations of the Constitutional Convention of 1787 were held in strict secrecy. Anxious citizens gathered outside Independence Hall to learn what had been produced behind closed doors. Sound familiar? A

Mrs. Powel of Philadelphia is reported to have asked Benjamin Franklin, "Well, Doctor, what have we got, a republic or a monarchy?" We are told that without hesitation, Franklin responded, "A republic, if you can keep it."

I think it is right that we periodically, at least annually on Constitution Day, focus on our Constitution. It truly is the responsibility of each generation to understand our Constitution, to value the American experiment and to keep the republic so many have sacrificed to preserve and protect.

~~~~~  
There have been many interesting constitutional issues in the headlines as the result of recent Supreme Court decisions. ...

Instead, I ask you to think about a couple of fundamental, structural issues under the Constitution and whether, in our time, the Constitution is working as intended by the framers.

To filibuster or not?

...My Webster's New Collegiate Dictionary, which is actually not so new anymore, defines "filibuster" as

"the use of extreme dilatory tactics in an attempt to delay or prevent action esp. in a legislative assembly." Stated differently, it is a technique to delay or avoid a vote on a bill by prolonging debate.

The filibuster has been used in recent years by both parties in the United States Senate. With the Republicans currently in the minority in the Senate but holding 46 seats, and the Democrats holding 54 (including two independents), the threat of a filibuster by Republicans to block action by the Democrats is often in the news. Some, these days usually Democrats or their supporters, have called the filibuster unconstitutional, or at least, undemocratic.

...Article I of the Constitution deals with the legislative powers of the federal government. Article I, Section 5, clause 2 provides in pertinent part,



"Each House may determine the Rules of its Proceedings...." While Congress has discretion to regulate its internal procedures, courts have said it rests with the courts to evaluate Congress's rules in relation to the Constitution.

Research failed to uncover any reported court decision on the constitutionality of the filibuster. There is no provision for the filibuster in the Constitution, and there was not unlimited debate in the Senate until Aaron Burr presided over the Senate in the early 1800s. After a century of chaos, in 1917 the Senate adopted Rule 22 to

Continued on page 21

Innovative webinar, forums at law schools highlight need for a Civil Gideon law

Continued from page 4

accessing crucial disability benefits or food stamps, versus being denied the resources necessary for daily life," he said. "Having a lawyer can mean the difference between allowing a domestic violence victim to escape her abuser and to obtain child support versus being trapped in a life-threatening situation."

Panelists spotlighted the extent of the problem and discussed potential solutions.

Scherer said the gap in government spending on legal services for the wealthy and legal services for the poor is wide. He said the wealthiest 1 percent of Americans get a federal tax break of about \$23 billion a year, while the money spent by the federal government on legal services for the poor, 25 percent of population, is around \$340 million a year.

"That's \$11 for the poorest Americans and that's a tax break of an average of \$754 for the richest Americans," he said.

Fisher told a personal story. When she was in law school, her mother lost her home to foreclosure because she did not know how to get a lawyer.

"We're expecting people to play the

game without rules," she said, noting that 2.3 million people go before the courts without legal representation.

Davis said the lack of access to counsel compounds a racial bias in our society because poverty disproportionately affects women and minorities.

She said success of other countries in providing legal services through insurance and establishing means or merit tests shows that it can be done in the United States.

Hetherington called this a "very exciting time" because civil representation is expanding rapidly, albeit in increments. Pollock agreed, saying that it is not a theoretical movement. "There is a ton happening," he said.

Law School forums

After the program, the 18 law schools held their own forums to complement the discussion.

At Albany Law School, Ray Brescia, director of the college's Government Law Center, illustrated nine degrees of legal services, from the unreachable ideal of full legal service, through pro bono, low-bono, pro bono students, lawyers for a day, paralegals under supervision, lawyers training law

advocates, paralegals without supervision, and finally *pro se* representation, which he likened to "leading people to the wolves."

Anne Erickson, CEO and executive director of the Empire Justice Center, said the law is so complex that many individuals who represent themselves because they can't afford legal representation often are at a great disadvantage.

"There's a reason people have to learn to practice law," she said.

Still, she suggested that nonlawyers could help advocate on the front lines to enforce people's rights in much the same way the medical community uses professionals at different levels to provide a full range of health care.

Professor Connie Mayer said students could help bridge the gap, by drafting legal briefs and motions, assisting in court and preparing materials for community legal events.

She said that way, both the students and the people they help benefit.

"You develop a lot of legal skills when you're doing this kind of legal work," she said.

After the program, student Ginsburg said the panelists reinforced in

him the importance of providing legal services for the poor.

"What I got out of it is an affirmation that we really need to expand services beyond what we have currently," he said. "We need to come up with a creative solution to close the justice gap."

Dana said as a law student, she was familiar with the problem. But she was surprised to learn how much of a gap in legal services still remains.

"Knowing that gap makes us work harder to bridge it," she said.

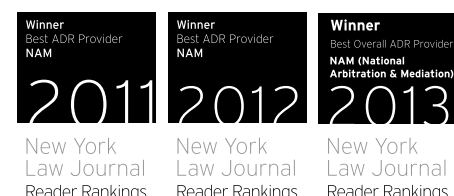
Other law schools holding forums were: Brooklyn Law School, Benjamin N. Cardozo, Columbia University, Cornell, City University of New York, Fordham University, Hofstra University, New York, New York University, Pace University, Rutgers, St. John's University, Seton Hall University, Syracuse University, Touro Law Center, University at Buffalo and Yale University.

To view the webinar, visit: www.totalwebcasting.com/view/?id=nysbar and click on "Civil Right to Counsel October 3, 2013." ♦

Mahoney is NYSBA's associate director of media services.

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Health Law Section Profile

By Kathleen Burke

Members stay current with changes thanks to section's programming, initiatives



Burke

The old adage: "The only constant in life is change" could be applied to health law. There always is something new and challenging in an area of the law that affects all of us.

Health reform redux

Perhaps the American health care delivery system can be described most generously as a "work in progress." The purpose of the federal Patient Protection and Affordable Care Act (ACA) is to address a perennial national challenge, i.e. how to design and maintain a reliable and efficient health care delivery system that provides the highest quality of patient care to the most people at the lowest cost.

Clinicians, health care leaders, governmental agencies, professional associations and foundations are among those most responsible for the initiatives to improve the quality, broaden the availability, and/or reduce the cost of medical care in New York.

The closures, service cutbacks and

financial tribulations of hospitals, whether in urban, suburban and rural areas, have been a particular cause of community distress in our state. New organizational realignments and models, such as accountable care organizations and medical homes, are being developed. The Health Law Section and its members are in the thick of it all.

Important, interesting issues

The ACA is but the latest example of a major health law development. The committees of the Health Law Section reflect the range of this fascinating area of the law: E-Health and Information Systems; Ethical Issues in the Provision of Healthcare; Health Professionals; Institutional Providers; Legislative Issues; Managed Care and Insurance; Medical Research and Biotechnology; Mental Hygiene and Developmental Disabilities; Professional Discipline; Public Health; and Reimbursement, Enforcement and Compliance.

The Health Law Section bylaws provide that the section's purposes shall be: "to bring together those members of the New York State Bar Association interested in health law and related issues... to examine the possibilities of,

and pursue improvement in, the law, regulations and procedures pertaining to health law... to disseminate information and exchange ideas relating to the development and practice in these fields, both substantive and procedural; to advance the interdisciplinary work of the bar with other disciplines involved in health care; to further the education of the bar; and to facilitate service to the public with respect to health law and related issues."

Among the ways in which the section achieves its purposes are:

- CLEs, such as "Health Care Decision Making: Implementation of the Family Health Care Decisions Act, Recent Developments and Ethical Considerations;" "An Apple A Day: What You Need to Know About Antitrust & Healthcare," sponsored with our colleagues in the Antitrust Section; and "The Affordable Care Act and Readiness for 2014 and Beyond—Public Benefit Exchange: Impact on Insurers, Providers, and Medicaid Program;"
- Public symposia, such as "Frankenfood or Scare Tactics? GMOs: Science, Law and Policy," a joint program with our colleagues in the Food, Drug, and Cosmetic Law

Section and the New York City Bar Committee on Health Law;

- Analyses and policy papers such as, comparison of New York laws with model laws related to public health emergencies; and legal issues, barriers, and solutions regarding health care costs;
- Memoranda commenting on proposed legislation, such as support of the Surrogate Decision Making Improvement Act in the 2011-2012 legislative session;
- And, thanks to Editor Robert N. Swidler, publication of the section's excellent Health Law Journal.

We welcome our colleagues in the State Bar—including those new to the bar, those who practice in related areas, and those simply curious about health law and intrigued by the issues—to join the Health Law Section or attend one of our programs. Bring your fresh perspectives, opinions and energy to the section's activities and learn with us for the benefit of the clients we serve. ♦

Burke is vice president of board relations, secretary and counsel at New York-Presbyterian Hospital in New York City and chair of the State Bar's Health Law Section.

Health Law Section Profile

Get on the Omnibus: New HIPAA rules for business associates

By Michelle Gabriel McGovern

On September 23, the long-awaited Omnibus Rule modifying the Health Insurance Portability and Accountability Act (HIPAA) went into effect, changing the privacy landscape for HIPAA-covered entities and business associates. The Omnibus Rule, which was issued in January, modifies a number of HIPAA requirements and included significant changes in the obligations placed on business associates.

The Omnibus Rule both broadens and strengthens the application of HIPAA to business associates or entities that create, receive, maintain, or transmit protected health information (PHI) on behalf of a covered entity.

The rule expands the definition of business associate, and by extension, HIPAA's reach, and provided for the direct application of the HIPAA regulations to those entities. The rule's new requirements for business associate agreements also sparked a flurry of activity as September approached, as

covered entities and business associates amended business associate agreements—and in some cases, internal policies and procedures—to ensure compliance.

Among the most significant changes presented by the rule are the direct application of the HIPAA Security Rule and certain provisions of the Privacy Rule to business associates. Before the Omnibus Rule went into effect, the civil (and arguably criminal) penalties under HIPAA did not apply to business associates, whose HIPAA liability was limited to breach-of-contract claims under business associate agreements. Now, business associates are subject to penalties under HIPAA for failure to establish the same security safeguards required of covered entities, or to comply with applicable provisions of the Privacy Rule.

In light of the Omnibus Rule, business associates are subject to certain provisions that previously applied to covered entities only. For instance, they are prohibited from using or disclosing

PHI unless authorized or required by the Privacy Rule, and they may disclose PHI for proper management and administration purposes and for data aggregation services.

However, business associates remain subject to the terms of the business associate agreements in place with covered entities (which may be more restrictive than the HIPAA regulations) and with the HIPAA requirement to disclose the minimum necessary information to meet a request for PHI. Like covered entities, business associates must disclose PHI in connection with government investigations and with an individual's request for an electronic copy of PHI.

If dealing with electronic PHI, business associates are required to implement the administrative, physical, and technical safeguards and policies to secure such PHI, and to comply with documentation requirements.

Define 'associate'

Before the Omnibus Rule went into

effect, "business associate" was defined as a person or entity performing certain functions or activities on behalf of, or services for, a HIPAA covered entity (or a health plan, health care clearinghouse and most health care providers) that involved the use or disclosure of PHI.

The Omnibus Rule expands that definition to capture all entities that create, receive, maintain, or transmit PHI on behalf of a covered entity. It specifically includes health information organizations and E-prescribing Gateways (and other similar entities), and persons offering personal health records to one or more individuals on behalf of a covered entity.

Subcontractors of business associates also are defined as business associates under the Omnibus Rule. This change is significant to both the subcontractors, who are now subject to HIPAA compliance regulations and applicable penalties, and to business

Continued on page 16

Whitney North Seymour, Jr:

'Seize the opportunity' to do good, best advice for today's lawyers

By Patricia Sears Doherty

Whitney North Seymour, Jr. has always taken advantage of public interest opportunities presented to him, no matter how unpopular they might be. As long as those opportunities allowed him to right a wrong, the assignment was worth taking.

At 90 years old, Seymour—an accomplished litigator and prosecutor and a former president of the State Bar—still practices law with one of his daughters, Gabriel North Seymour, writing briefs for trials and appeals in public interest cases.

That penchant for taking on difficult cases to help people has been a hallmark of Seymour's professional and personal lives.

His private law practice—first as an associate and then a partner at Simpson Thacher & Bartlett, then as a partner at Brown & Seymour, a partner at Landy & Seymour and now working with his daughter—has been marked by his willingness to advocate for the underdog.

"My greatest conviction," said Seymour, "has been fighting against bullies. As long as we lawyers do that, our profession is in good shape."

Each phase of his career was a response to an opportunity—to serve, to advocate, to stir the pot—an opportunity presented to him by where he stood in life and who challenged him to

step up. Accordingly, Seymour's best advice for young lawyers: "Attorneys have a unique opportunity to make their community and country better places," and they should not procrastinate in grabbing that opportunity.

"Above all, be active in the State Bar," said Seymour. "The collegiality between attorneys, the opportunity to share experiences and work on committees on important legal issues enriches your practice."

Get it right

His own public service is legendary. assistant U.S. attorney for the Southern District of New York, 1953-1956; chief counsel for the Special Unit of the state Commission of Investigation examining waste and corruption in New York City government, 1960-61; state senator, 1966-68; U.S. attorney for the Southern District of New York, 1970-73.

As U.S. attorney, Seymour was lead counsel for the government in *New York Times Co. v. United States*, the watershed case of the Pentagon Papers and the New York Times in 1971. He defended the government's case in the State Bar's February 1994 Journal in "Press Paranoia—Delusions of Persecution in the Pentagon Papers Case."

In a recent interview, Seymour said the government was not opposed to releasing historical information to the press, just that some of information con-



A 'must-see' for lawyers—Whitney North Seymour, Jr. on a family trip outside the historic home of U.S. Supreme Court Chief Justice John Marshall in Richmond, Virginia. Seymour recommends that every lawyer and jurist visit the site. Marshall was the author of the *Marbury v. Madison* decision that established federal judicial review to guarantee compliance with the U.S. Constitution.

tained in the papers would have had an impact on current military operations and foreign affairs in Vietnam.

"I believe in the freedom of the press. But I also believe in the responsibility of the press," he said, emphasizing that the press needs to realize that sometimes a decision to print a story is not the smart one. "Journalists need to

think of the ramifications" of printing sensitive information.

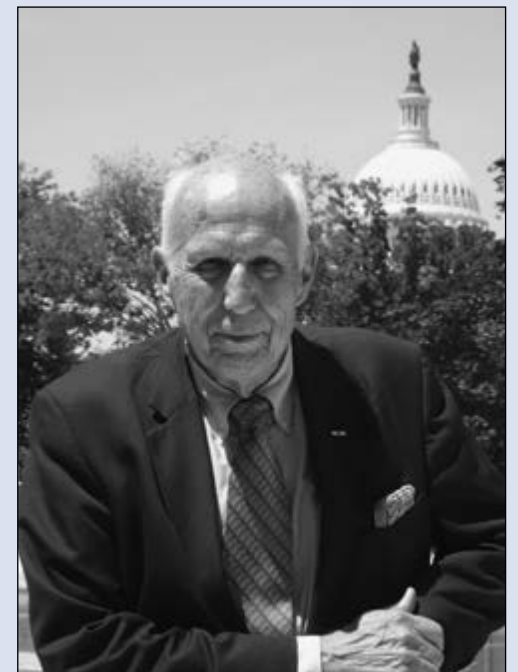
While at Brown & Seymour, which he calls a "small country firm" in his biography, he was the government's independent counsel prosecuting former Reagan White House insider

Continued on page 30

SEYMOUR'S TWELVE RULES FOR A LAWYER'S LONG AND HAPPY LIFE

1. Be thoughtful and kind to everyone—especially young people, strangers and office staff.
2. Go out of your way to help people. In the words of the Delaney Sisters, "Your job is to help somebody."
3. Be scrupulously honest. Always be candid and tell the truth. Don't cheat on your taxes.
4. Stand up to bullies. Never flinch. Imitate Mother Jones: "Pray for the dead, but fight like hell for the living."
5. Do it now. Every legal task is easier if you do it as soon as possible. Beware of deadlines that seem far off—they can creep up quickly when you are least able to handle them.
6. Keep clients informed. Telephone immediately whenever you receive an adverse outcome. Your client will understand and forgive you—but not if you delay.
7. Praise good work by others. Send "fan letters" to lawyers who do things that make a difference. Build up your own support network, people who care about you and will cheer you on when the going gets tough.
8. If you want to get things accomplished, don't worry about who gets the credit.¹
9. Develop public speaking skills. Collect good anecdotes and use them. Never give a dull speech.
10. Live modestly. Save income for early retirement, so you can enjoy years of public service, non-profit work and *pro bono publico* cases. Contribute time to politics and public service. Democracy depends on people with experience, good judgment and legal training.
11. Study history for travel and recreation. When you visit other countries, visit gardens and historic houses to get a feeling for heritage.
12. Take care of yourself. Do not smoke. Drink lots of water. Try to get eight hours sleep. Go easy on the booze. At professional social functions, drink soda or juice to stay alert and remember people's names.

1. "It's surprising how much you can get done if you don't care who gets the credit." Harold Warp, founder, Pioneer Village, Minden, NE.



Proud father—Whitney North Seymour, Jr. in front of the U.S. Capitol on the day his daughter, Gabriel, was admitted to practice at the U.S. Supreme Court.

Preventing burnout and dealing with stress no laughing matter

By Brandon Vogel

When comedian Mark Lundholm's son accidentally broke the side mirror on his car, he was naturally, and visibly, upset.

His six-year-old reassured him. "It's OK, Dad. It's only a mirror," he said.

Lundholm realized then that while a mirror could be replaced, his little boy was telling him something more. "The peers you have, your family, the answers that are out there. They are your mirror."

Lundholm, a former convict who has been clean and sober for 24 years, brought his stand-up act to the State Bar Center on September 10 for the Lawyer Assistance and Law Practice Management committees' MCLE program, "Don't Get Burned By Burnout."

He detailed his experience with addiction and the lessons he learned. "We choose to burn out, to be less empathetic and to let business get the best of us," said Lundholm. "Attorneys have the gifts of passion and purpose, which lead them to a path." He said that burnout leads to disquiet, which is where the self-destructive fuse is lit and people lose their path.

Not all stress is created equal

Patricia Spataro, director of the Lawyer Assistance Program (LAP), said that lawyers face an adversarial system, fierce competition, demanding clients and prolonged periods of stress. As such, the rates for depression, suicide and divorce are higher for lawyers than the general population.

"Stress affects all systems and changes us," said Spataro. She distinguished several types of stress, including post-traumatic stress disorder and burnout. She advised the audience that the first episode of major depression is usually preceded by a period of intense stress.

"You don't need to know the specifics," said Spataro. "You just need to recognize that change is present."

She discussed the services offered by the LAP, created in 1990. The services are described in electronic format at www.nysba.org/lap.

"Confidentiality is the hallmark of the LAP's success. We are there as a first choice or a last resort," said Spataro.

Warning signs from fellow attorneys might include late deadlines, long lunches and excuses that "do not make sense" to co-workers but make sense to the afflicted "because they are sick."

"The gloves need to come off, because the consequences are serious," said Spataro.

Only human

Richard Rifkin, the State Bar's special counsel, said the relationship between lawyer and client is at the core of ethical principles. "The touchstone of a lawyer's job is to maintain the clients' confidentiality and act with loyalty. This represents your ethical obligation," said Rifkin.

"When dealing with a client, we should be at the top of our game, and in top mental and physical shape," said Rifkin. "But we cannot. It is unrealistic. We are human beings. We have

good days and bad days."

When asked how to square personal difficulties with relationships to clients, Rifkin said, "I submit it is not easy. There are times when all of us could use help."

He also noted that ethical responsibilities extend to other attorneys. He cited the New York City Bar's ethics opinion, 1995-5, as the best guide on the duty to report lawyers who are impaired.

Rifkin also noted the Lawyer Assistance Program's success. "It is geared to help you deal with clients, court matters and disciplinary proceedings. It serves a special and unique need," said Rifkin.

"It is extremely important that the public is protected from an incapacitated attorney," said Rifkin. "If your impairment is serious enough, you won't be able to practice law. We want to help lawyers who are at risk for losing their practices."

True stories

At the program's conclusion, committee members Timothy D. Foley of Old Forge (The Foley Law Firm, LLC); Hon. Sallie Krauss of Brooklyn (retired, Family Court of the State of New York); Hon. Vincent J. Reilly, Jr. of Schenectady



Laugh to recover—Comedian Mark Lundholm, a former convict and a recovering substance abuser, travels the country as a lecturer, using his comedy to dramatic effect for those in recovery and professionals who work with those in need of help. [Photo by Mark Mahoney]

(state Supreme Court, Schenectady County); and Lawrence Zimmerman of Albany (Hiscock & Barclay) each told stories of lawyers being fired, losing their families and, ultimately, getting back up again. Only Zimmerman's story was autobiographical. ♦

Vogel is NYSBA's media writer.

New HIPAA rules for attorneys, explained

Continued from page 14

associates, who become liable for failure to enter into business associate agreements with subcontractors.

To ensure that business associate agreements reflect Omnibus Rule requirements, the rule includes modifications to the business associate agreement regulatory requirements. Because these changes became effective for certain entities on September 23, both covered entities and business associates have been charged with updating business associate agreements that did not already incorporate the requirements in the Omnibus Rule – and, in some cases, with entering into agreements with subcontractors who are now business associates subject to HIPAA.

However, for entities that had a HIPAA-compliant business associate agreement in place before Jan. 25, 2013, and if the contract was not renewed between March 26, 2013, and Sept. 23,

2013, then the entities are permitted to rely on that contract until Sept. 22, 2014.

Finally, business associates are learning the impact of the new HIPAA requirements, particularly the penalties that may be levied upon entities that fail to comply with the rules. As HIPAA-related settlements with federal regulators have increased in recent years, it remains to be seen the financial impact that the Omnibus Rule's requirements—and the failure to comply with those requirements—will have on business associates. ♦

McGovern is an attorney with Manatt, Phelps & Phillips, LLP in New York. She focuses her practice on a variety of regulatory and transactional matters for the health care industry, and provides advice on complex regulatory and compliance issues.

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Recommended Reading

Magic, doing more with less and the future of the profession make topics for some good books

Glenn Lau-Kee

Scarcity: Why Having Too Little Means So Much

by Sendhil Mullainathan and Eldar Shafir



Lau-Kee

If you were asked, "What do you most lack in your life right now?" what would you say? Time? Money? Relationships? We all know scarcity in one form or another. What we don't know is

how powerfully the sense of scarcity can affect our actions and decisions.

In *Scarcity: Why Having Too Little Means So Much*, Sendhil Mullainathan, professor of economics at Harvard University, and Eldar Shafir, professor of psychology and public affairs at Princeton University, explore how scarcity takes up mental bandwidth and causes "tunneling," in which our perspectives are distorted.

The sense of scarcity provides a different explanation for "...why the poor stay poor, why the busy stay busy, why the lonely stay lonely, and why diets often fail." It is thought-provoking to be shown how scarcity can take over our actions both individually and in

organizations, as well as its implications for public policy. And it is startling to recognize its workings within oneself. We are not as rational as we fancy ourselves to be.

Watch the authors' video at www.aspenideas.org/session/scarcity-why-having-too-little-means-so-much. Or do you have too little time?

Lau-Kee of New York City (Kee & Lau-Kee, PLLC) is NYSBA's president-elect.

Earamichia Brown

The Thinking Woman's Guide to Real Magic

by Emily Croy Barker



Brown

My quilt buddy, Meg Cox, who is a former journalist for the Wall Street Journal, author and current president of the Quilt Alliance (an organization dedicated to preserving stories, quilts,

etc.) recommended this book as a great summer read. I picked it up.

It is an imaginative story about a woman who is not thrilled with her life and gets caught in an alternate world.

She has to learn the skills of magic to survive.

I recommend it because it turned out to be more thought-provoking and engaging than I expected. It left me hoping for a sequel. I knew that it had to be somewhat literary, since Meg recommended it and considering her journalistic and authorship roots. The author did a great job developing the characters and plot.

Brown of New York City (NYS Office of the State Inspector General) is co-chair of NYSBA's Task Force on Gun Violence.

Bethany J. Hills

Tomorrow's Lawyers: An Introduction to Your Future

by Richard Susskind



Hills

It makes sense that Richard Susskind has aimed this book at "young" lawyers. No, not because information technology (IT) plays such a prominent role in the predictions he makes about the

changing dynamics in the legal profession.

I think he chose the focus of this book, the most recent of his writings focused on analyzing the transformation occurring in the legal profession, for a simple reason. The fear that you can't teach an old dog new tricks.

Susskind's root cause analysis of the changes is dead on—clients demand more for less, the boundaries of the legal profession are officially blurred and the role of IT in performing legal services continues to expand. The book provides a necessary road map for young lawyers to critically evaluate the platforms where they will practice law.

Intense job competition may dissuade interviewees from asking the probing questions he suggests. But, knowing if an employer has a long term strategy, can embrace the changing profession, and will embrace new technology and service delivery models is essential. It is time to evaluate what role lawyers play and invent new ways of practicing that prevent the end of lawyers. ♦

Hills of New York City (Epstein Becker & Green, P.C.) is chair of the Food, Drug and Cosmetic Law Section.

At The Bar Center



National recognition—Doug Guevara, senior director of Continuing Legal Education at the State Bar, congratulates Katherine Suchocki, director of Law Practice Management, accepting the Award of Professional Excellence in Public Interest from the Association of Continuing Legal Education for the State Bar CLE program "Providing Legal Assistance for Persons Affected by Superstorm Sandy." [Photo by Kimberly Francis]

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HOUSE OF DELEGATES IN ACTION



Talking it over—Delegates Samuel O. Tilton and June Castellano discuss a point being made during the debate on mandatory pro bono reporting during the meeting.



'Sad, dangerous issue'—Delegate Karen Stanislaus talks of the need for training attorneys on how to assist victims of human trafficking during the House meeting.



Presidential legacy—Presidents present and future stand together after the November House of Delegates meeting. L-R: President-elect Glenn Lau-Kee, President David M. Schraver and President-elect Designee David P. Miranda.



Tweeting—Secretary David P. Miranda composes a twitter entry during the House of Delegates meeting. He has been tweeting from the floor of the House meetings for two years, adding color commentary to complement the live webcasts.



Standing count—Members of the House of Delegates vote by standing during a debate on the State Bar's comment to the new Rule 6.1 in the state's Code of Professional Conduct, which referred to increasing the number of aspirational pro bono hours required for mandatory biennial reporting, was not approved.



At the microphone—Delegate Richard Cahill was one of many members with pertinent questions and thoughts during the November 2 House of Delegates meeting at the State Bar Center.

ANNUAL MEETING 2014 PREVIEW

NYSBA Annual Meeting 2014

Jan. 27–31, 2014 New York Hilton Midtown, New York City

NYSBA's 137th Annual Meeting: Preliminary Calendar

Tuesday

JANUARY 28, 2014

SECTION MEETINGS

►Elder Law Section

Annual Update on Elder Law; Update on Managed Long-Term Care: Enrollment of Dual Eligibles and Other New Developments; Elder Abuse; Retirement Planning with Trusts; Problems Facing the Nursing Home Industry: Fiscal Constraints Caused by Health Insurance Reimbursement Formulas; Unauthorized Practice of Law in the Filing of Medicaid Applications; the Role of Private Payment in Assuring Fiscal Solvency; New Models for Enhancing Quality of Care.
Meeting 1:30 p.m. – 6:15 p.m.
Reception following

►Entertainment, Arts and Sports Law Section

The program will highlight the following topics:
1) *Copyright Fair Use Across the Media—Fine art, publishing, motion pictures and television are all governed by the same legal precepts, but how copyright fair use is applied in practice in each of them can be very different. The norms and concerns are shaped, in part, by different financing and insurance requirements as well as different levels of risk tolerance. We will cover the basic concepts, and then compare and contrast the application across the media. We expect vigorous audience participation in this vibrant discussion.*
2) *The Battle for Over-the-Air TV Retransmissions: How Aereo and FilmOnX Disruptive Technologies are Pushing Copyright to its Limits, Dividing the Courts and Affecting an Industry—An in-depth moderated panel discussion by leading practitioners in the copyright and broadcast fields focusing on the impact to the broadcast TV industry and the divisiveness created among the federal courts resulting from the mini-antenna technology and related systems employed by Aereo and FilmOnX (f/k/a AereoKiller) to retransmit over-the-air broadcast programming to multiple individual subscribers.*
Meeting 1:00 p.m. – 5:30 p.m.
Reception 5:45 p.m.
Offsite: Warwick New York Hotel

►General Practice Section and the Committee on Professional Discipline

In this program a panel of experts will engage in a moderated discussion of the benefits and detriments of attorney advertising on the internet. They will explore the implications of such advertising in social media, websites and also traditional advertising, and compare and contrast the ethical considerations in each area. This program will address the questions you have had, or should have, when using the internet for promotion of

your practice.
Meeting 9:00 a.m. – 1:00 p.m.

►Intellectual Property Law Section

Something Bold, Something New: How Global Changes Can Affect All of You! Topics will include: International Changes in IP—Is it Chaos or the New Normal?; 3-D Printers—Do We Need New IP Laws?; Trademarks, Metadata, and Key Word Searching—Are Things Changing?; Claims Construction—When Should it be Considered? And How Much Deference Should the CAFC Give the District Court?; Top Ten IP Cases of 2013; The Intersection of IP and Financial Transactions: Assets, Monetization and Collateralization Issues; Inter Partes Review: Is This the New Normal?; Ethics: Subject Matter Conflicts.
Meeting 8:45 a.m. – 12:35 p.m.
Luncheon 12:35 p.m. – 2:00 p.m.
Meeting resumes 2:00 p.m. – 5:30 p.m.
Reception following

►Senior Lawyers Section

Strategies for Optimizing and Protecting You and Your Clients' Assets in Retirement—This half-day program is designed to give practitioners guidance on some of the most common issues confronted when retirement is contemplated. Experts in their respective fields will address the timing of social security benefits and IRA minimum distributions, as well as Roth conversions; the function of a will as opposed to a trust will be examined, along with the criteria for determining when each should be used; types of house transfers and their consequences will be explored, as will the use of charitable trusts and special needs trusts for the benefit of disabled children or grandchildren. The program also will address the planning options available to protect assets for long-term care planning purposes and possible Medicaid eligibility.
Meeting 9:00 a.m. – 1:00 p.m.

►Tax Section

The program will discuss Hot Topics in Corporate Tax; Partnership Tax; and International Law; in addition to the following topics: Application of NY False Claims Act to Taxes; a Two-Part FATCA Extravaganza—FATCA Basics For Transactional Lawyers and Advanced FATCA For Those Who Can't Get Enough.
Meeting 9:00 a.m. – 12:00 p.m.
Reception/Luncheon 12:00 p.m. – 2:00 p.m.
Meeting resumes 2:15 p.m. – 4:00 p.m.

COMMITTEE MEETINGS

►Committee on Attorneys in Public Service

*Meeting 1:00 p.m. – 5:15 p.m..
Awards for Excellence in Public Service
Reception 5:30 p.m. – 7:00 p.m.*

►Committee on Women in the Law

Show Me the Money: Can We Close the Gender Equity Gap? In compensation, promotion and business development, women lawyers remain notched behind male lawyers despite their growing rep-

resentation in law firms, the government and corporate counsel offices. What can we do to regain momentum and eliminate the long-standing pay and promotion disparity between male and female lawyers? We are pleased to offer a dynamic program reviewing federal and state Fair Pay Acts, enforcement of such legislation by government agencies and private litigants—including strategies to improve the compensation and promotion process—and showcasing strategies for women lawyers to narrow the gender equity gap by honing professional practice skills and by successfully navigating ethical and employment pitfalls resulting from gender bias.
Meeting 9:00 a.m. – 12:15 p.m.
Luncheon 12:15 p.m. – 1:30 p.m.
Meeting resumes 1:45 p.m. – 4:15 p.m.
Networking Reception 4:15 p.m. – 5:30 p.m.

SPECIAL EVENT

►Charity Corps

What Does the New Nonprofit Revitalization Act Mean for Nonprofit Organizations and the Lawyers Who Work With Them? In 2012 the New York State Legislature passed the Nonprofit Revitalization Act with overwhelming bipartisan support. What does the new law mean to existing and fledgling nonprofits? What does it spell for attorneys and law students aspiring to work with nonprofit organizations? New York's not-for-profit sector will need to be more mindful of oversight and apply good governance measures to continue offering their services. The speakers will discuss the anticipated impact and necessary changes in best practices to day-to-day operations of not-for-profit organizations.
Meeting 9:00 a.m. – 10:30 a.m.

MEMBER BENEFIT

►*The New York State Bar Association and Fastcase are offering complimentary seminars during the 2014 Annual Meeting to help NYSBA members boost their online legal research skills on Fastcase, a recently added NYSBA member benefit. Attendees will receive one MCLE credit (Law Practice Management). Seating is limited – register early.*
Meeting 3:00 p.m. – 4:00 p.m.

Wednesday

JANUARY 29, 2014

PRESIDENTIAL SUMMIT

2:00 p.m. – 5:00 p.m.

I. Educating Tomorrow's Lawyers: Can Lawyers, Employers, Regulators and Educators Come Together to Address Our Challenges?

II. Supporting Today's Lawyers: The Rapidly Changing Legal Profession

President's Reception

*Complimentary reception for all members
5:00 p.m. – 7:00 p.m.*

SECTION MEETINGS

►Business Law and Corporate Counsel Sections

New York Business Lawyers: Competing

Ethically in a Global Marketplace—Panels will cover NYSBA reports and achievements in assuring New York's future in the business law world and the newest challenges every New York attorney faces; and transactional ethical issues, including conflict of interest situations, personal interest conflicts, client-to-client conflicts and prospective client conflicts.

*Meeting 9:00 a.m. – 12:15 p.m.
Reception/Luncheon
12:15 p.m. – 2:00 p.m.*

►Commercial and Federal Litigation Section

The program will highlight the following topics:

1) *The Interplay of Delaware and New York Law in Resolving Corporate and Commercial Disputes—New York's importance as a center of commerce and finance, and Delaware's dominance in the jurisdictional competition for business associations, have given the courts in those states an out-sized role in shaping the decisional law that governs the nation's corporate and commercial life. The Commercial and Federal Litigation Section is pleased to present a panel discussion of experts about the influential role of Delaware law in the adjudication of business disputes in New York courts, with special guests Vice Chancellor Travis Laster of the Delaware Court of Chancery and Associate Justice David Friedman of the Appellate Division, First Department. Topics to be examined include fiduciary duty in closely held entities and the ability to contract around them; advancement and indemnification of corporate officers and directors; the covenant of good faith and fair dealing; direct and derivative claims; freeze-out mergers; inspection of books and records; oral operating and partnership agreements; and the reliance factor in commercial fraud cases.*
2) *Are Your Social Media Communications Legally Ethical? Join the Section in an interactive cutting-edge presentation featuring some of the country's top speakers on social media ethics. Can you advise a client to "take down" incriminating social media postings? Do you need to inform an unrepresented witness when "friending" to gain access to her "private" postings that you are an attorney and/or the purpose of such communication? Are there any limitations that an attorney must be aware of when accessing "public" social media posts by the other party? Are there limitations when researching a juror on social media? Can you identify your firm's areas of practice under "specialties" on LinkedIn? Can a judge use social media? The panel will seek to provide the answers to some of these ethical questions.*
Meeting 9:00 a.m. – 12:00 p.m.
Reception/Luncheon
12:00 p.m. – 2:00 p.m.

►Health Law Section

Hot Topics for NY Healthcare Lawyers—This program will cover current and timely issues of concern to healthcare lawyers in New York, including the NY health insurance exchange, regulation of, and liabilities surrounding, mobile medical apps, genetic testing and applicability to healthcare lawyers, recent OPMC and CPH initiatives, NY regulatory updates, reimbursement challenges and more.
Meeting 9:00 a.m. – 1:00 p.m.
Luncheon 1:00 p.m. – 2:00 p.m.
Meeting resumes 2:00 p.m. – 5:00 p.m.

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ANNUAL MEETING 2014 PREVIEW

►International Section

Topics will include: *That's Your Opinion: Opinion Practice in International Transactions*; *Dispute Resolution Clauses in International Transactions: The Devil You Thought You Knew*; *Non-Lawyer Ownership of Law Firms: The View From Here and There*.
Meeting 8:45 a.m. – 12:50 p.m.
Reception/Luncheon 12:50 p.m. – 2:00 p.m.

►Torts, Insurance & Compensation Law and Trial Lawyers Sections

Reception/Dinner 6:00 p.m.
Offsite: The Harvard Club

►Trusts and Estates Law Section

Til Death Do Us Part: Updates on Marriage and Estate Law—Topics will include abandonment, estate tax considerations, portability and disqualification in the context of estate planning and estate litigation.
Meeting 9:00 a.m. – 12:00 p.m.
Reception/Luncheon 12:00 p.m. – 2:30 p.m.
Speaker: Roberta A. Kaplan, Esq. will give a personal account of the recent Windsor case before the Supreme Court.

►Young Lawyers Section

The program will focus on consumer and corporate bankruptcy issues. It will begin with a session on *Bankruptcy 101* that will provide an introduction to bankruptcy and key concepts for young practitioners. The panels also will include a discussion of consumer debtor intake, the meeting of the creditors, and an overview of bankruptcy litigation arising in the consumer and corporate contexts.
Meeting 8:45 a.m. – 12:00 p.m.

COMMITTEE MEETINGS

►Committee on Animals and the Law

Human Animal Conflict: Balancing Property Rights, Nuisances and Public Safety with Animal Welfare, Conservation and Humanity—This program is not to be missed by lawyers practicing animal, municipal, zoning and environmental law. The knowledgeable panel will provide a detailed discussion of the most common, and not so common, situations in which both private and public nuisance actions are brought, and the state and federal laws that apply. Topics to be covered will include hot topic nuisance issues, such as geese roundup and eradication, feral cats, animal hospice facilities, hoarding, factory farm practices and the ownership, rehabilitation, exhibition of exotic animals and wildlife and landlord/tenant issues.
Meeting 1:00 p.m. – 5:00 p.m.

►Committee to Ensure Quality of Mandated Representation, Co-Sponsored with the Committee on Courts of Appellate Jurisdiction and the Criminal Justice Section

Please join us for a viewing of the documentary "Scenes of a Crime" which explores the real-live case of People v. Adrian Thomas in which the lengthy interrogation of the defendant was videotaped. Defendant Thomas was convicted, and his appeal—including claims that his interrogation was unduly coercive, and that expert testimony should have been allowed—will be argued in the Court of Appeals on Jan. 14, 2014. The film will be followed by a panel discussion on wrongful confessions/videotaping of interrogations.
Meeting 10:00 a.m. – 12:30 p.m.

►Committee on Law, Youth & Citizenship

Education and the Law
Meeting 9:00 a.m. – 12:00 p.m.

MEMBER BENEFIT

►The New York State Bar Association and Fastcase are offering complimentary seminars during the 2014 Annual Meeting to help NYSBA members boost their online legal research skills on Fastcase, a recently added NYSBA member benefit. Attendees will receive one MCLE credit (Law Practice Management). Seating is limited – register early.
Meeting 9:00 a.m. – 10:00 a.m.

Thursday

JANUARY 30, 2014

SECTION MEETINGS

►Antitrust Law Section

Antitrust Developments Roundup; *Navigating Federal and State Regulators During Your Merger*; *Antitrust Class Certification: Getting Tougher?*; *Antitrust Trials: Why You Win or Lose*; *Social Media and Competition Policy*; *Antitrust Law Evolves: Do Dissents and Concurrences Matter?*
Meeting 8:30 a.m. – 5:00 p.m.
Reception/Dinner
Offsite: University Club

►Criminal Justice Section

Topics will include: *Search and Seizure*; *New York's Right to Counsel*; *Confrontation After Crawford*.
Meeting 9:00 a.m. – 12:00 p.m.
Reception/Luncheon 12:00 p.m. – 2:00 p.m.

►Dispute Resolution Section

Diving Deep—Taking a Fresh Look at Our Underlying Assumptions and Approaches to Mediation and Arbitration Theory, Practice and Skills; *Navigating ADR Forums*; *Crossing Cultural Divides in Mediation and Negotiation*.
Meeting 9:15 a.m. – 12:00 p.m.
Networking Luncheon
Offsite: Dorsey & Whitney LLP
12:00 p.m. – 1:30 p.m.
Meeting resumes 1:30 p.m. – 4:00 p.m.
Reception immediately following
Offsite: New York International Arbitration Center

►Family Law Section

Reception/Luncheon
12:00 p.m. – 2:00 p.m.
Keynote Luncheon Speaker: Arnold Shienvold, PhD, Riegler Shienvold & Associates of Harrisburg, PA
Divorce Lawyers Under Siege: Strategies for Differentiating Your Client's Anxieties From Your Own. Dr. Shienvold is a clinical psychologist who specializes in dealing with high conflict families. He is a nationally-recognized expert in forensic custody evaluations and family mediation. In addition to his clinical practice, Dr. Shienvold consults to public and private agencies, teaches and lectures at a multitude of professional conferences and schools, and regularly writes on these topics.
Meeting 2:00 p.m. – 4:30 p.m.
2014 Family Law Update: The Year in Review—We will walk through this year's interesting cases, current issues, changes in rules and statutes and must-know issues on the horizon.

►Food, Drug & Cosmetic Law Section

This session will address important evolving FDA legal issues, including regulation of compounding pharmacies, implementation of new food safety rules, an update from FDA Office of Counsel and an ethics presentation from a preeminent bioethicist.
Meeting 8:45 a.m. – 12:45 p.m.

►Municipal Law Section

Land Use and SEQRA Update; "Ethics Jeopardy"; *Freedom of Information Law and Confidential Information*; *Hot Topics Regarding IDAs and LDCs*; the *Ins and Outs of Article 78 Proceedings*; the *Application of the Affordable Care Act to Municipalities*.
Meeting 9:00 a.m. – 12:05 p.m.
Lunch — on your own
12:05 p.m. – 1:35 p.m.
Meeting resumes 1:45 p.m. – 4:30 p.m.

►Real Property Law Section

Panel discussions will include the following: *Not-for-Profit Corporation Law—How the Osborn Decision Impacts Real Property Tax Exemptions For Not-For-Profit Corporations*; *Lease Negotiations Beyond the Lease*; *2013 Real Property Case Law Update—Six Court of Appeals Cases, Plus Cases on PCDS and Other Matters*; *Mechanics Liens—Filing, Bonding, Priority and Recent Case Law*; *The Constitution Pipeline—120 Miles of Condemnation Litigation*.
Meeting 8:15 a.m. – 12:15 p.m.
Reception/Luncheon
Offsite: The 21 Club
12:45 p.m. – 2:15 p.m.

►Torts, Insurance and Compensation Law and Trial Lawyers Sections

All Roads Lead to Resolution Part I: State of the Union—Trial and the Summary Jury Trial; *All Roads Lead to Resolution Part II: State of the Union—Arbitration and Mediation*; *Ethics Update*; *#legalprobs—Trial in the Aftermath of Social Media Discovery Rulings*; *Back to the Future of the Legal Profession—The Modern Day Legal Apprentice?*
Meeting 8:30 a.m. – 12:00 p.m.
Meeting resumes 1:00 p.m. – 5:00 p.m.

►Young Lawyers Section

Bridge the Gap 2014: Intellectual Property; *Personal Injury*; *Appeals*; *ABC Law*; *Estate Planning*; *Environmental, Land Use/Zoning*; *Criminal Law*; *Family Law*; *Matrimonial Law*; *Work/Life Balance*; *Ethics*; *Landlord/ Tenant Residential Real Estate*; *Social Media*.
Meeting 9:00 a.m. – 5:00 p.m.

COMMITTEE MEETINGS

►Committees on Civil Rights and Diversity and Inclusion

Contemporary Civil Rights Issues in Relation to the 50th Anniversary of the Civil Rights Act.
Meeting 2:30 p.m. – 5:30 p.m.

►Committee on Condominiums and Cooperatives of the Real Property Law Section

Advanced Topics in Condominium and Cooperative Law.
Meeting 2:00 p.m. – 5:00 p.m.

►Committee on Immigration

The Future of Immigration Reform—What Will It Look Like and How Will It Define Our Legal Obligations?
Meeting 9:00 a.m. – 12:00 p.m.

►Committee on Issues Affecting People with Disabilities

When Special Education is Not Enough: Students Falling Between the Cracks—This program will examine the challenges facing schools, communities and families to meet the needs of an ever growing number of school age children with disabilities that transcend what public schools can offer. In addition to defining the obligations of the public schools to serve this population, the panel will highlight the unique problems facing children involved in the court system, children facing serious family crises, serious mental illness, social maladjustment and drug/alcohol addiction. With a panel of experts from OPWDD, DSS, OMH and the court system, this program will identify the barriers to the development of highly coordinated cooperative community-based model of services and supports for children and families and will share strategies for replacing the outdated and fragmented ones.
Meeting 9:15 a.m. – 12:15 p.m.

►Committee on Law Practice Management, Co-Sponsored by the Committees on Attorney Professionalism, CLE, Electronic Communications and Lawyer Assistance

Risk Management 360—The integrated practitioner navigates law practice risks, the stresses of lawyering and ever-changing technology, all while maintaining professional standards. This full-day program will feature speakers and panelists from multiple disciplines discussing these topics while sharing their expertise about the law of law practice as well as the many resources available to make your practice efficient, effective and rewarding.
Meeting 9:00 a.m. – 5:00 p.m.

Friday

JANUARY 31, 2014

SECTION MEETINGS

►Environmental Law Section

A session filled with discussions on a number of hot topics facing environmental attorneys today, including hydrofracking issues to be decided by the Court of Appeals, the recently announced New York State Department of Environmental Conservation Audit Policy and its related ethical implications, as well as a potpourri of topics that will inform and enlighten the *Environmental Law Section*.
Meeting 8:50 a.m. – 12:10 p.m.
Reception/Luncheon 12:30 p.m. – 2:00 p.m.

►Judicial Section/Council of Judicial Associations

Reception/Luncheon 12:00 p.m. – 2:00 p.m.

►Labor and Employment Law Section

Plenary sessions and workshops will include: *The Hard Questions Under the Affordable Care Act*; *New Developments in the Whistleblower Law*; *DOMA is Dead—The Impact of its Obituary on Other Laws*; *Impasse Resolution Under the Taylor Law with Emphasis on the New Standard for Interest Arbitration*; *Recent Developments and Issues in Labor Relations Law*.
Meeting 8:30 a.m. – 12:30 p.m.
Dutch Treat Reception and Luncheon 12:30 p.m. – 2:30 p.m.

Commentary: Schraver asks whether filibusters were intent of Constitution's framers

Continued from page 12

stop unlimited filibusters by authorizing the Senate to end a filibuster upon a two-thirds vote. Ending debate is sometimes called cloture.

Under the old Rule 22, if senators wanted to delay or prevent a vote, they had to bring in cots and speak or read until one side or the other was exhausted. In 1975, Rule 22 was amended to require 60 senators, not 67, to stop floor debate, which seems like an improvement.

However, a practice has developed to permit a senator to place a hold on a certain measure or matter, implicitly threatening a filibuster if the majority leader does not honor the hold. In this way, the threat of a filibuster often is sufficient to prevent a measure or matter from coming to the floor of the Senate.

Furthermore, because the current rule and practice do not impose any inconvenience on senators, the hold and threat of a filibuster are used much more often than in the past (reportedly over 100 times a term).

... The cloture rule requires a supermajority (60 percent) to end floor debate and bring a matter to a vote in the Senate. But the Constitution itself requires supermajority votes only in six specific situations: Article I, Section 3, clause 6; Article I, Section 5, clause 2; Article I, Section 7, clause 2; Article I, Section 7, clause 3; Article II, Section 2, clause 2; and Article V.

... The framers of the Constitution enumerated these six, and only these six, circumstances in which a supermajority vote is provided for in the Constitution.

There is a maxim that would have been well known to the lawyers

included among the framers: "expressio unius exclusio alterius"—translated into English: the express mention of one thing excludes all others.

Under this maxim, wouldn't the express mention of six supermajority requirements preclude the creation by congressional rule of other supermajority requirements to take legislative action?

.... Considering these provisions of the Constitution, the filibuster seems to be contrary to the intent of the framers and to the democratic principle, and arguably constitutional mandate, of majority rule.

In frustration, the Senate majority has occasionally talked about changing the filibuster or cloture rule. This is regarded as such a drastic action that it is sometimes referred to as "the nuclear option," and when proposed recently to permit the Senate to act on certain presidential nominations, resulted in a compromise, at least for the time being.

There seems to be no appetite or political will to revoke the filibuster rule or challenge it in court as unconstitutional, likely because today's majority recognizes that the time will come when it is in the minority and will want to use it.

So I pose the questions: Is the filibuster unconstitutional? Does it prevent the Constitution from working as the framers intended?

Sequestration

The sequester is a package of automatic spending cuts by the federal government that was agreed to by the Congress and the President.

By way of background, in 2011, the

federal government was approaching the debt limit, as we are today. The debt limit needed to be raised through a congressional vote or else the United States would default on its obligations in early August.

Democrats wanted a "clean" vote to raise the debt limit without strings attached. Republicans wanted substantial spending cuts as a condition of raising the debt limit. In view of this disagreement, congressional action to avoid default could have been blocked by a filibuster or otherwise....

.... As we now know, the supercommittee failed to reach a deal, the sequester was triggered, efforts to avoid the so-called "fiscal cliff" failed, and the sequester was implemented as of March 1, 2013.

.... Access to justice is one of the core values of the legal profession and of the organized bar, including the New York State Bar Association. Significantly, the second purpose stated in the Preamble to the Constitution of the United States is to "establish justice."

...Schraver analyzes Article III and quotes from an August 13 letter written to Vice President Biden by 87 chief judges of federal district courts across the U.S., including all four of New York's district courts, expressing "grave concern" over the impact of flat funding and sequestration on "the Judiciary's ability to carry out its constitutional and statutory responsibilities."

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... The filibuster or threat of filibuster seems at least partly responsible for the sequester and the inadequate funding of the judiciary. And the impact on the third branch of government raises serious concerns about whether the

Constitution is working as intended by the framers.

In conclusion, let me say that the partisan political atmosphere that seems to block true bipartisan efforts to address the challenging problems of our time is unfortunate.

In addition to adequately funding the federal judiciary, important issues facing our country include healthcare reform, national security and terrorism, energy and climate change, financial industry reform, immigration reform, economic recovery and deficit reduction.

Whether or not the filibuster is constitutional, the use of such rules by both parties creates at least the appearance of undemocratic or dysfunctional government, undermines public confidence in government, and significantly impedes the ability of the government to deal effectively *[with]* serious issues.

Constitution Day affords us an opportunity to consider our written Constitution, a document that has provided the framework for a republic, a representative democracy, that is the envy of the free world.

It is incumbent on thoughtful people to study our Constitution, to participate in the system of self-government it establishes, to hold our elected officials accountable for making our Constitution work, and to help keep the republic created by the framers in order "to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity. . . ."

To read the full address, go to [www.nysba.org/ConstitutionDaySpeech](http://www.nysba.org/ConstitutionDaySpeech). ♦

## House of Delegates makes new mandatory pro bono reporting rule a matter of debate

*Continued from page 7*

reporting rule and the way in which it was imposed on the profession, "like an iron fist," without input from the State Bar.

"I am outraged at what the OCA (Office of Court Administration) and the chief judge have imposed upon us as a profession, and the way they went about doing it," he said, likening it to blackmail and coercion. "There's nothing voluntary about it. It's mandatory, under pain of sin."

He said the impact is felt particularly hard by solo practitioners and small firms, and that the association should stand up against the reporting mandate.

"This is now the issue and now the time," he said.

He proposed two motions, one to reject the proposal to amend the com-

ment to Rule 6.1 and another to table it to give the association time to consider its comment and, Ostertag suggested, to consider a potential class action suit against the OCA.

COSAC chair Joseph E. Neuhaus of New York City (Sullivan and Cromwell LLP) said tabling the comment was not the vehicle to advance other issues. "This is not the way. This just makes us look bad."

But others supported Ostertag's position.

Richard T. Cahill, Jr. of Kingston (Ryan Roach & Ryan LLP) said attorneys who can do pro bono do it when they can, but to mandate it is "just wrong."

"This needs to be defeated and it needs to be defeated now," he said.

Christopher Denton of Elmira (Denton Law Office) bluntly said,

"Let's call this what it is. It's coercive."

He estimated that with an aspirational level of 20 pro bono hours per year, State Bar members already donate about \$385 million in legal services annually. That would jump to nearly \$1 billion at 50 hours.

But Susan B. Lindenauer of New York City stressed that the rule change is still only aspirational in nature, not mandatory, and that it is the duty of attorneys to perform pro bono service.

"It is not charity. It is a professional obligation," she said. "I personally think 50 hours is not too much to ask of people."

Lillian M. Moy of Albany (Legal Aid Society of Northeastern NY) and Barbara C. Moses of New York City (Morvillo, Abramowitz, Grand, Iason & Anello PC) were among those who

said the anger being expressed should be directed at the process for imposing the rules, rather than the obligation to report pro bono service.

Past President Mark H. Alcott of New York City (Paul, Weiss, Rifkind, Wharton & Garrison LLP) suggested the State Bar leadership devise a way to address the real issue, the coercive effect of mandatory reporting of hours and charitable contributions and the fact that the State Bar is not being consulted by the courts on such matters. "These are things that rankle us deeply," said Alcott. "We really need to sort this out."

The debate ended when Ostertag's motion to table the resolution was approved by a voice vote of 114-60-2. ♦

Mahoney is NYSBA's associate director of media services.



## Governmental Relations

By Ronald F. Kennedy, Director

### NYSBA establishes its legislative priorities for 2014



Kennedy

The State Bar's 2014 state and federal legislative priorities were approved by Executive Committee on November 1.

The process began four months earlier with a letter from President David M. Schraver to NYSBA section and committee officers, requesting their recommendations for the upcoming legislative session.

The initial review of issues in the State Bar's priority-selection process began with the Committee on Legislative Policy and the Committee on Federal Legislative Priorities, which met on September 19 and September 17, respectively. The committees discussed the association's 2013 legislative priorities, reviewed the recommendations, and determined which issues to recommend to the Steering Committee on Legislative Priorities. Chaired by Schraver, that committee met on October 7 to consider all of the recommendations and to develop its report to the Executive Committee.

Below are the issues approved by the Executive Committee. (The descriptions of some issues are abbreviated here.) For enhanced summaries, please go to [www.nysba.org/2014LPDescriptions](http://www.nysba.org/2014LPDescriptions).

#### State Legislative Priorities for 2014

##### Integrity of New York's justice system.

An independent, well-functioning judicial system, accessible to all, is a bedrock principle of our democracy. The courts, more than any other arm of government, are the bulwark of liberty. As practitioners we have seen, whether through shortened court hours or delays in proceedings, the impact budget cuts have had on the operation of the court system. The governor and Legislature must ensure that adequate resources are provided so that the courts can fulfill their essential role. Issues also under this category:

- For the courts to properly fulfill their role, all members of society must have access to the courts. Government funding is necessary to ensure access to the justice system for the poor and vulnerable. Programs to provide **legal services** for the poor should be

funded to address the unmet need throughout New York state.

- **New Family Court judgeships should be created** to ensure justice for New York's children and families.
- Broader establishment of **Veterans Treatment Courts** should be undertaken as an effective means to balance the needs of our communities and military veterans who find themselves having to navigate the court system.
- Enactment of legislation is required to address **wrongful convictions**, which cast serious doubt on the ability of our criminal justice system to protect the innocent and ensure that the guilty are not free to commit more crimes.
- Public policy should be developed to **reduce the correctional system's use of solitary confinement**.

##### Sealing records of conviction of certain crimes.

The State Bar supports legislation that would allow a person who has been convicted of certain offenses to apply to the court to have their record sealed at a later date.

##### Franchise Act.

The State Bar supports amending the Business Franchise law to conform to the Federal Trade Commission's franchise rules and to change state laws that discourage franchisors from locating their headquarter operations in New York, thus driving jobs and economic benefit to other states.

##### Support for our democratic ideals.

- **Civics Education:** Democracy depends upon an educated citizenry. A core mission of the State Bar is to foster an understanding and respect for democracy and the rule of law. The State Bar supports requiring civics education in all grades, and the appropriate funding to implement this policy, ensuring an understanding of our system of government.
- **Increased Voter Participation:** New York's voter participation rates have continued to decline. This trend must be reversed. The State Bar supports changes to state laws making it easier to register and to vote.

##### Support for the legal profession.

A core mission of the State Bar is to represent the interests of the legal profession. In that regard, the association will work to protect the independence

of the judiciary, enhance access to the courts, promote affirmative legislative proposals that benefit the profession, and oppose those proposals that would burden it. The State Bar will work to ensure that attorneys are able to protect their clients' interests and effectively engage in the practice of law.

#### Federal Legislative Priorities for 2014

##### Integrity of the justice system.

Sequestration, which was imposed by the Budget Control Act of 2011, has impaired the function of the federal court system. If those across-the-board budget cuts remain in place, the operation of the federal courts and the Legal Services Corporation will be crippled, limiting access to the justice system for individual New Yorkers and business entities. Adequate funding to address this problem should be appropriated by Congress.

##### Repeal of the Defense of Marriage Act (DOMA).

In *Windsor*, the U.S. Supreme Court struck down Section 3 of DOMA, which excluded married same-sex couples from federal protections, responsibilities, and programs. Section 2 of DOMA, which purports to excuse the states from honoring the marriage of same-sex couples performed by a sister state, still stands and also should be repealed by Congress.

##### Support increased voter participation.

In the United States, voting is one of our most fundamental rights, ensuring our ability to participate in the electoral process. However, the rate of voter participation is of concern throughout the nation. Measures to remove barriers

to registration and voting and to encourage participation, while maintaining the integrity of the process, could go a long way to improving civic engagement and enhancing our democracy.

##### Support legislative reform to address the state of crisis in immigration representation.

The State Bar supports enactment of a statutory right to appointed counsel to ensure justice for that community of immigrants who are confronted with sanctions under U.S. laws on immigration.

##### Administration of justice.

- **Maintain Rule 11 of the Federal Rules of Civil Procedure (FRCP)** and oppose Congressional legislation that would amend FRCP Rule 11 to reinstate a mandatory sanctions provision. The old rule imposing mandatory sanctions—deleted from the FRCP in 1993—was thoroughly discredited because it significantly multiplied satellite litigation, greatly increased litigation costs, and did not allow ameliorative action by the courts.
- **Support for states' authority to regulate the tort system.** The federal government should leave it to the states to determine how best to provide access to the courts for injured parties to exercise their right to seek compensation and to make reasonable adjustments to the system.

##### Support for the legal profession.

A core mission of the State Bar, as described above under state legislative priorities. ♦

### Summaries of selected chapters of 2013 laws

At press time, Governor Andrew Cuomo had authorized hundreds of new chapters of laws with his signature. A user-friendly and broad list summarizing selected Chapters of New York Laws enacted to date in 2013 may be viewed on the State Bar website at [www.nysba.org/2013ChapterLaws](http://www.nysba.org/2013ChapterLaws).

The summaries do not describe all of the statutes enacted in New York

during the 2013 legislative session. Also, multiple effective dates may apply to some chapters. More information on the chapters, legislation and sponsor's memoranda in support may be viewed at <http://public.leginfo.state.ny.us/menuf.cgi>. Please refer to an official source to obtain the provisions and effective dates of all new statutes. ♦

—Ronald Kennedy



## Pro Bono: Recognizing judges for pro bono, access to justice initiatives

By Gloria Herron Arthur, Director



Herron Arthur

In celebration of the fourth anniversary of National Pro Bono Week, the State Bar, in collaboration with its pro bono partners, hosted a luncheon awards ceremony on October 18 at the State Bar Center in Albany.

Pro bono partners include: the Albany County Bar Association, Albany Law School, Legal Aid Society of Northeastern NY, Prisoners' Legal Services of New York, The Legal Project, and the staff of the Third Judicial District Administrative Office.

President-elect Glenn Lau-Kee was joined by Chief Judge Jonathan Lippman in welcoming more than 100 guests. Lau-Kee, Hon. Victoria Graffeo, senior associate judge of the state Court of Appeals, Jenna Dana, president of Albany Law School's Pro Bono Society, and members of the student group presented awards to the distinguished jurists for their pro bono contributions and access to justice initiatives.

The distinguished honorees were:

### Hon. George B. Ceresia, Jr. Supreme Court, Rensselaer County



Ceresia

As the administrative judge for the Third Judicial District, Ceresia personified the spirit and purpose of National Pro Bono Week. He not only formed the district's pro bono committee, but also actively participated in its work.

The pro bono committee consists of representatives from Capital District legal services provider organizations, state and local bar associations, members of the Albany Law School faculty and staff from the office of the administrative judge. Under Ceresia's leadership, the pro bono committee has raised professional awareness about local pro bono opportunities and the need for more volunteers in the Capital Region.

Ceresia has recruited and encouraged lawyers and judges to participate in pro bono. For example, he helped organize the first successful Pro Bono Expo, held in 2007, and hosted law firm managing partner breakfast meet-

ings in 2008 and 2009 to raise awareness about the need for greater law firm participation in pro bono.

In 2011, Ceresia launched the first Community Law Day, providing the public with information on legal topics ranging from governmental benefits, family law, child custody, mortgage foreclosure, and consumer debt/credit issues. Thanks to Ceresia's guidance and vision, Community Law Day has evolved into a biannual event. In 2012, Community Law Day was expanded from a one-day event to two days. Since its inception, Ceresia has attended each Community Law Day to show his support and appreciation to the lawyers who staff the event.

Ceresia is open to creative suggestions on increasing pro bono involvement and access to justice in the Third Judicial District. Among other access to justice initiatives, Ceresia supported The Legal Project's Reduced Fee Matrimonial Program as an innovative way to assist those who "fell between the cracks" in obtaining legal assistance in domestic violence divorce cases.

Similarly, he supported Prisoners' Legal Services (PLS) establishment of the Pro Bono Partnership Project, a collaboration between PLS, Albany Law School and the Albany County Supreme Court to recruit and train law students to review prisoners' *pro se* Article 78 petitions for possible referral to pro bono counsel. Over the years, Ceresia also has supported pro bono recruitment at the Legal Aid Society of Northeastern NY through district-wide mailings.

### Hon. Christine M. Clark Supreme Court, Schenectady County



Clark

Hon. Christine Clark has a long history of recognizing the importance of pro bono and of facilitating access to justice, particularly for women who are survivors of domestic violence.

Clark regularly refers domestic violence victims to The Legal Project for pro bono assistance. In her referrals to specially trained pro bono attorneys, she freely hands out The Legal Project's brochures from the bench, thus acknowledging the importance of having specialized knowledge of domestic violence.

Clark also has a keen awareness of the importance of domestic violence advocates in assisting victims with

safety planning and supporting them through the sometimes unwieldy court process. Clark has spoken at many educational panels for students and pro bono attorneys, such as at a recent panel on women in the judiciary for the Center for Women in Government and Civil Society and The Legal Project's Matrimonial Law Breakfast Club meeting on the topic of "Best Practices from the Judiciary."

### Hon. Robert E. Littlefield, Jr. Chief Judge, U.S. Bankruptcy Court



Littlefield

Insolvency is a common plight for many low-income people. For many, bankruptcy protection is the best option to start anew. However, filing *pro se* can be a daunting and difficult process.

Chief Judge Robert Littlefield knows the importance of having representation and has been invaluable in promoting pro bono in bankruptcy cases. He is extremely sensitive to the stress and sense of crisis that those facing bankruptcy experience, and supports the vital need of clients to have equal access to representation and assistance through the process.

Littlefield has publicly spoken on the need for pro bono and for lawyers to get involved. In addition, he has been a panelist in various CLE programs to recruit new pro bono volunteers.

Littlefield also recognizes the importance of acknowledging pro bono volunteers' efforts. He recently attended the Albany Law School Pro Bono Society's bankruptcy training to thank the students for their involvement and initiative in starting the program. Littlefield also posts the names of attorneys who do pro bono on the federal Northern District of New York's court website.

### Hon. George H. Lowe

Retired, U.S. Magistrate Judge  
Co-Chair, President's Committee on Access to Justice



Lowe

George H. Lowe served as a U. S. Magistrate Judge for the Northern District of New York from 2004-2012. Before being appointed to the bench, he was a partner for 21 years at the Syracuse firm of Bond, Schoeneck & King, concentrating in white collar criminal defense and federal court civil litigation.

Throughout his career, Lowe has been an exemplary leader, having served as president of the Onondaga County Bar Association; chair of the Fifth Judicial District's Committee on Character and Fitness; an officer and director of Legal Services of Central New York; a director of the Onondaga County Bar Foundation; former chair of the Onondaga County Bar Association's Pro Bono Practice Committee; an officer and trustee of the Federal Court Bar Association for the Northern District; a founding member of the State Bar's Senior Lawyers Section; and a member of the Chief Judge's Task Force to Expand Access to Civil Legal Services.

Since 2007, Lowe has served as co-chair of the State Bar's President's Committee on Access to Justice. In that capacity, he was instrumental in reaching out to members of the federal judiciary in an effort to raise their awareness about the unique, administrative oversight role the New York Bar Foundation could play in identifying related non-profit legal services organizations to which unclaimed funds remaining in class action settlements and awards could be made.

Lowe played a key role in shepherding the State Bar's development of a

*Continued on page 24*

## Annual Meeting 2014 Preview

*Continued from page 20*

### ►Young Lawyers Section

*Bridge the Gap 2014: See Information from Thursday's Meeting.*  
Meeting 9:00 a.m. – 5:00 p.m.

### COMMITTEE MEETINGS

#### ►Committee on Children and the Law

*Advanced Child Protective Litigation—This program will explore recent developments in child protective law and such difficult situations as when the attorney for the child must take the initiative, managing the*

*interconnection with family offense and custody proceedings, complying and coping with Nicolson guidelines on removal of children, involving non-respondent parents and other family resources and pursuing alternatives to foster care placement.*  
Meeting 9:00 a.m. – 12:15 p.m.

#### ►Committee on Not-For-Profit of the Real Property Law Section and the Municipal Law Section

*Primer on Real Property Tax Exemptions.*  
Meeting 9:00 a.m. – 12:10 p.m. ♦

## Law Practice Management

By Katherine Suchocki, Director

### Protecting Your Practice – Risk Management 360 programs worth attending



Suchocki

The Law Practice Management Department (LPM) presents continuing legal education programs statewide to help you protect your practice.

This fall, in conjunction with the Committee on Insurance Programs and the Committee on Continuing Legal Education, LPM presented “Protecting Your Practice – Risk Management 101 for Lawyers.”

Chaired by LPM committee member Marian C. Rice of Garden City (L’Abbate Balkan Colavita & Contini, LLP), the program included an overview of insurance considerations, conflicts of interest, New York Rules of Professional Conduct and cases of interest. Designed for all practicing attorneys regardless of their level of expertise, panelists offered practical tips for improving a practice and lessening the possibility of a malpractice claim or grievance. Participants earned 4.0 MCLE ethics credits.

State Bar members have access to our insurance program, administered by USI Affinity, with exclusive insurance and benefit solutions to help protect their practices. Recognizing that proper client intake, conflict checks and docket control procedures are key to effective practice management, USI Affinity co-sponsors our annual “Risk Management” CLE program. Participants in the “Protecting Your Practice” CLE receive a 7.5 percent credit toward their CNA Lawyers’ Professional Liability premium.

Representatives from USI Affinity attended each program and answered questions about insurance and purchasing the appropriate coverage. If you missed this program in Buffalo, New York City, Long Island, Albany or Westchester, the program was recorded and is available at [www.nysba.org/ProtectYourPractice](http://www.nysba.org/ProtectYourPractice).

We’ve posted resources to help you protect your practice, including a checklist for purchasers of professional liability insurance and a tip sheet on applying for professional liability insurance on our newly redesigned LPM website ([www.nysba.org/LPM](http://www.nysba.org/LPM)) under “Protecting Your Practice.”

#### Risk Management 360

The Protecting Your Practice theme will continue in 2014. The Law Practice Management Committee is teaming with the Committee on Attorney Professionalism, the Lawyer Assistance Committee and the Electronic Communications Committee to present “LPM Day” at the State Bar’s Annual Meeting in New York City on Jan. 30, 2014.

We are taking basic risk management and protecting your practice one step further to explore technology, the stresses of lawyering and maintaining professional standards in a full-day program, “Risk Management 360.”

Focusing on the “integrated” law practice, speakers and panelists from multiple disciplines will share their expertise and many resources to make your practice efficient, effective, rewarding and protected. Panelists will discuss how their firms have implemented new ways of practicing law, as well as how these new methods impact attorney ethics, professionalism and best practices.

New Age advertising; social media and ethics; the 24-7 lawyer; technology, stress and your practice; practice man-

agement tips; and maintaining professionalism will be explored during this special program. The program also will include a networking luncheon, providing ample time for networking with colleagues.

For more information, visit [www.nysba.org/LPM](http://www.nysba.org/LPM).

The Law Practice Management Committee also will present the 2014 Career Development Conference on Jan. 27, 2014 at the Hilton Midtown in conjunction with the Committee on Lawyers in Transition and the Committee on Diversity and Inclusion. For more information, visit [www.nysba.org/2014CareerConference](http://www.nysba.org/2014CareerConference).

If you would like to get involved with Law Practice Management initiatives, contact me at [ksuchocki@nysba.org](mailto:ksuchocki@nysba.org) or 518-487-5590.

We also want your feedback. Tell us what you think about our new website, which was completely redesigned and revamped this fall. Visit [www.nysba.org/LPM](http://www.nysba.org/LPM) for information on practice management trends, marketing, client development, legal technology and finance. You also can follow us on Twitter at #NYSBALPM. ♦

### State Bar recognizes judges for their dedication to pro bono work

*Continued from page 23*

white paper on the need to create a civil right to counsel in basic human needs areas, such as housing, sustenance, benefits, and domestic violence.

As a result of his leadership, in October 2008, the white paper was approved by the Executive Committee for publication. The paper appears in the Special 25<sup>th</sup> Anniversary edition of the *Touro Law Review*, an issue dedicated exclusively to “An Obvious Truth: Creating an Action Blueprint for a Civil Right to Counsel in New York State.”

In November, 2008, the House of Delegates approved a two-prong resolution: (1) supporting the creation of a right to counsel for vulnerable low-income people who face eviction or foreclosure; and (2) extending the existing right to counsel for unemployment insurance claimants to administrative hearings.

#### Hon. Gary Stiglmeier Albany City Court



Stiglmeier

Judge Stiglmeier’s commitment to pro bono extends to supporting emerging attorneys and law students who engage in pro bono work. During the time that Albany Law School ran a housing clinic, Stiglmeier gave students the opportunity to observe a housing calendar. Albany Law School Professor C. Benjie Louis reports that her students appreciated the judge’s professionalism and words of wisdom, calling it an invaluable teaching tool.

Stiglmeier was instrumental in implementing the “Attorney for the Day” program in housing court in October, 2010. The program affords low-income tenants representation at their first appearance on a housing matter. Providing counsel at the first appearance usually results in the amicable resolution of the matter.

Each year since the program launched, Stiglmeier has appeared at the annual training to recruit volunteers, speaking about the benefits of tenants having representation in housing cases. Without Stiglmeier’s dedication and support of this program, many poor people would have been rendered homeless. ♦

## MOVING? let us know.

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#### New York State Bar Association

MIS Department  
One Elk Street  
Albany, NY 12207

TEL 518.463.3200  
FAX 518.487.5579  
Email [mis@nysba.org](mailto:mis@nysba.org)





## TECHLEX

By Barbara Beauchamp

## Find what you need: CLE search tool offers intuitive interface for users



Beauchamp

This fall, the State Bar launched a fully redesigned website with many new, exciting features. One of the main features of the site, however, is not new at all.

On the previous version of the website, users had access to a special searchable/sortable interface to find the CLE programs. They still do.

Searches are available by topic, date, location, format, credit type, number of credits available and so on. The interface is clean, simple and intuitive. The State Bar's CLE participants love the interface and have come to rely on it.

For several years, State Bar staff worked with up to six vendors at a time to bring about the new website. The new site has a lot of bells and whistles, such as interactive calendars, the ability to add a CLE program to your own email calendar, easy-to-use rolldown menus for navigation, a self-

service menu of tools on the MyNYSBA page and more.

But the most used area of the new website is the searchable/sortable CLE interface. In an era when outsourcing, consultants and vendors seem to be the order of the day, the State Bar is proud that our special CLE search/sort tool is the creation of a staff member—Database Administrator Lucien Uveges.

**Easy to use**

CLE is very popular on the website.

In fact, in the new website's first month of operation, the State Bar booked record sales through the new online store. The online store is fully integrated with the website and offers some handy tools.

On the lower right side, users can sort products and programs. For example, a user looking for a DVD on Elder Law is just a few clicks away from getting a full list, then easily putting those items in the shopping cart and using the secure checkout to place an order.

For users purchasing electronic products (such as online CLE or downloadable forms), collecting your pur-

chases is easier than ever. Once you've made your purchase, you will receive a confirmation that contains a link to your electronic product. If you aren't planning to use your electronic purchase immediately, we store your purchase in our system and you can access it at your convenience through the MyNYSBA page.

The MyNYSBA page is available from the home page (directly beneath your name while logged in) or from the Members Only menu.

Among the many tools on the MyNYSBA page is a self-service menu. Change your username or password. Update your profile. Access your elec-

tronic or downloadable products.

While you are on the MyNYSBA page, check out the CLE Credit Tracker. This tool allows you to track your CLE credits earned, enter credits not earned through NYSBA and maintain a running total of credits still needed in your reporting cycle.

The overarching goal of the State Bar's website re-design is to make it easy for members to interact with us, find CLE programs and products they need and take advantage of members-only benefits.

If you'd like to share your feedback, please email [webmaster@nysba.org](mailto:webmaster@nysba.org) with the subject line "Web feedback." ♦



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# Proposed Bylaws Amendments for approval at Annual Meeting 2014

Earlier this year, as reported to the House of Delegates at the June 22, 2013 meeting, the Executive Committee considered and approved a proposal to provide a seat in the House of Delegates for an Association member who is serving or has served as President of the American Bar Association. The House of Delegates approved a proposal from the Committee on Diversity and Inclusion to extend for an additional ten years the seats in the House of Delegates and on the Executive Committee to further racial and ethnic diversity. These actions by the Executive Committee and House of Delegates now require several Bylaws amendments in order to take effect.

The amendments below will be presented for discussion and adoption at the 2014 Annual Meeting.

## HOUSE OF DELEGATES SEAT FOR ABA PRESIDENT

Given the prominence of the ABA President, it would benefit the Association to have any NYSBA member who is serving or who has served as ABA President serve as a member of the NYSBA House. As is the case with NYSBA Presidents, this person would be entitled to a term for life. This requires an amendment to Article V, section 3 of the NYSBA Bylaws, which governs the composition of the House, as well as Article V, section 4, which governs terms in the House.

To incorporate this change in the Bylaws, we propose the Bylaws amendments set forth below:

### V. HOUSE OF DELEGATES

\*\*\*

**Section 3. Composition.** The House of Delegates shall be composed of:

**A.** The officers of the Association;

**B.** The members-at-large of the Executive Committee;

**C.** Three members of the Association from each judicial district to be elected by the Association after nomination in the manner provided for herein, to be known as elected delegates;

**D.** The past presidents of the Association;

**E. Any member of the Association who is serving or has served as President of the American Bar Association.**

**F.** Representatives from each of the sections of the Association to be known as section delegates.

[Remaining sections to be relettered accordingly]

\*\*\*

### Section 4. Terms.

**A.** Past presidents and current or past presidents of the American Bar Association shall serve as delegates for life. The President, President-Elect, Secretary and Treasurer shall serve as delegates during their terms of office.

## EXTENSION OF DIVERSITY SEATS IN HOUSE OF DELEGATES AND ON EXECUTIVE COMMITTEE

In 2004, based on a recommendation from the Special Committee on Association Governance, the Association Bylaws were amended to provide for two at-large seats on the Executive Committee and twelve members of the House of Delegates appointed by the President to further racial and ethnic diversity in each body. These Bylaws provisions contain a ten-year "sunset" clause by which, if no further action is taken, the provisions will be automatically removed from the Bylaws on November 6, 2014. The "sunset" provision was included on the premise that over the course of ten years, racial and ethnic diversity might increase to the point at which designated seats in the House and on the Executive Committee would no longer be necessary.

The committee recommended that the Bylaws provisions be continued for an additional ten years. In addition, the committee recommended that progress made toward furthering diversity goals be more closely monitored, with annual reports prepared for the Executive Committee and the House. This requires an amendment to Article V, section 3(G) and Article VII, section 1(F)(1).

To incorporate this extension in the Bylaws, we propose the Bylaws amendments set forth below:

### V. HOUSE OF DELEGATES

\*\*\*

**Section 3. Composition.** The House of Delegates shall be composed of:

\*\*\*

**G.** Twelve delegates to be appointed by the President then in office from a range of racial and ethnic minority groups identified by the National Association for Law Placement. At least two and no more than four of such delegates shall be appointed from each Judicial Department, and all appointments shall be subject to confirmation

by the Executive Committee. ~~Delegates appointed in 2004 may serve for the balance of the Association year concluding May 31, 2005, and for the ensuing Association year concluding May 31, 2006, with such service to constitute a single year for purposes of calculating consecutive terms of service under Section 4(C) of this article. This subsection shall take effect immediately upon adoption by the Association and shall expire ten years from the date of adoption amendment (November 6, 2004 January 31, 2014) and shall be removed from these Bylaws without further action of the Association. Notwithstanding such expiration, the final term authorized under this provision shall be for a full year, concluding May 31, 2015-2025.~~

[Note: if the bylaws amendments relating to the ABA President set forth above are approved, this provision will be relettered as "H."]

## VII. EXECUTIVE COMMITTEE

**Section 1. Composition.** The Executive Committee of the Association shall consist of:

\*\*\*

**F. 1.** Eight members-at-large who shall be members of the House of Delegates or section chairpersons at the time of selection, or who have served as members of the House of

Delegates or section chairpersons within three years preceding the time of selection. Not less than two of the members-at-large shall be selected from the First Judicial District. Two of the members-at-large shall be selected to further ethnic and racial diversity and may not be drawn from the same Judicial District. ~~The Nominating Committee is authorized to make nominations for these two positions at any time up to December 31, 2004, for election at the January 2005 House of Delegates meeting. The initial term of service for the individuals selected to fill the latter two member-at-large seats shall commence on February 1, 2005, and conclude May 31, 2006, with such service to constitute a single year for purposes of calculating consecutive terms of service under Section 2 of this article. This subsection shall take effect upon adoption by the Association. Ten years from the date of adoption amendment (November 6, 2004 January 31, 2014), the provision for the two members-at-large selected to further ethnic and racial diversity shall expire and be removed from these Bylaws without further action of the Association, and the number of these members-at-large on the Executive Committee shall revert to six. Notwithstanding such expiration, the final term authorized under this provision shall be for a full two-year term, concluding May 31, 2015-2025.~~ ♦



**Honoring Youth Courts**—Jacey Kannaird of the Elmira Youth Court accepts the Youth Court Volunteer Award at the "Celebrate New York State Youth Courts" event on September 23 at the James T. Foley U.S. Courthouse in Albany. L to R: Hon. Richard S. Hartunian, U.S. Attorney for the Northern District of New York; Hon. Bernard J. Malone, Jr., former judge of the New York State Supreme Court, Appellate Division; Kannaird; and Hon. Judith S. Kaye, former chief judge of the New York State Court of Appeals. Kaye and Malone co-chair the State Bar's Special Committee on Youth Courts.

Members of the Bethlehem and Colonie Youth Courts presented a youth court simulation hearing. Team members acted as the judge, prosecutor, defendant, witness and bailiff. Albany Mayor Jerry Jennings also was honored at the event. [Photo by Brandon Vogel]

## State Bar exploring possible solutions by shining a light on legal ed debt problems

*Continued from page 8*

Tamanaha said the demand for reform is being driven by law school applicants. And that, he said, could soon help drive down law school costs, tuition and debt.

"If you're coming out of law school with \$150,000 in debt, you're in a tough spot," he said.

Until recently, it appeared the confluence of high law school costs would be a never-ending cycle. But there may be real signs of hope on the horizon for a turnaround.

Public law school tuition for non-res-

ident students in 2011 and 2012 dropped 5 percent and 8 percent, respectively. And tuition increases at private schools have slowed their steep annual increases.

In addition, job prospects appear to be turning around in a few select areas, with 1.3 percent more graduates finding long-term, full-time employment from 2011 to 2012 and slightly more job openings for 2012 graduates in government and at private law firms. ♦

*Mahoney is NYSBA's associate director of media services.*



**Winning volunteer**—Past President Stephen P. Younger, center, recently was presented with the Dedication to Justice Award from the Brooklyn Volunteer Lawyers Project at its anniversary gala. At left is Andrea Bonina, past president of the Brooklyn Bar Association and mistress of ceremonies. At right is Michael Cardozo, New York City corporation counsel, who presented the award. [Photo by John Nissenbaum]

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## Lawyer Assistance Program

By Patricia Spataro, Director

### It did not have to end this way



Spataro

*I stood next to my mom, who was sitting on a metal chair in a stark hospital hallway when the doctor told us that my dad had just died. Though 40 years have passed since that moment, I can still*

*hear the exact words my mother said, seemingly to the doctor but probably more to herself: "It didn't have to end this way."*

*My dad was an alcoholic. Many attempts were made to get him help, but all were unsuccessful. In the four years prior to his death, he had a period of sustained sobriety for about three consecutive months, and we were hopeful. One single drink led him back to his addiction and, eventually, to his death.*

I received several telephone calls this year from someone on the other end informing me that the person we tried to save was now dead. In those moments, and without conscious thought, I'd hear a voice in my head say, "It didn't have to end this way." I'd make a deliberate effort to leave the obvious unsaid, but, regardless, the words would hang painfully between me and the caller. Strangely, a few for whom the bell tolled this year were in their 30s and the voice in my head would scream those words.

The disease of alcoholism is fatal and we cannot mince words about this. Death can take years with a slow deterioration of health or can happen quickly with an alcohol-fueled incident.

In the category of alcohol-fueled events, there are untimely or sudden deaths. It is estimated that the misuse of alcohol is linked to almost 50 percent of car accidents, suicides, trauma, visits to the emergency room and accidental drowning.

Over time, regular excessive drinking can lead to liver disease, digestive problems, heart problems, increased risk for cancer and neurological problems, and to death. Problem drinking can lead to emotional, legal, financial, work, and relationship troubles and to the death of marriages, careers, financial security and a good reputation.

Excessive drinking can cause serious problems for lawyers trying to meet the high demands of practicing law. It can present a terrible challenge for law firms. And the phrase, "It didn't have to end this way" resonates loudly when a managing partner calls to say the attempts to save an associate

or a senior partner failed and they needed to let the person go or end a partnership. Also sad is when I get word that an attorney is disbarred because of wrongdoing caused by excessive drinking.

People are more capable of changing at this stage. Though it is not easy to change, it is simple to determine if there is a need. Look at the limits and assess what level of risk you're at. If you don't drink at all or you always

approach those for whom you are concerned. Missed deadlines, visible excessive drinking, legal problems, relationship problems, health problems—all can be early warning signs.

Here's the challenge: I don't want you to wait until the behaviors are so bad or the consequences so serious that you clearly know the person is an alcoholic and feel it time to confront the issues. I want you to take a risk here and reach out when you see a pattern of behavior that elicits concern.

I encourage you to trust your gut sense about this. I understand you risk changing the relationship when someone says, "Mind your own business" or, "You don't need to worry about me. I'm fine." It is a risk worth taking.

Though I can't ever guarantee a "happily-ever-after" result, the risk is worth it. You are instrumental in saving a job, a career, a marriage, a life and sparing yourself or someone else the lament that "It didn't have to end this way."

Go to [www.nysba.org/LAP](http://www.nysba.org/LAP) to get help or to find out how to help a colleague. ♦

*The disease of alcoholism is fatal and we cannot mince words about this.*

### Defining the disease

What exactly is excessive drinking? It is when a person cannot control how much he or she drinks and faces serious risk as a result.

The Centers for Disease Control and Prevention recommends limits for men of no more than two drinks per day, 14 drinks per week or five drinks per occasion. For women those limits are one drink per day, seven drinks per week or four drinks per occasion.

A majority of the population doesn't drink at all or always stays within the recommended limits and fall within the no-risk and low-risk levels. Those at moderate risk for serious problems will regularly violate one or two of the limits and those at high risk regularly violate all three recommended limits.

Those at high risk make up about 5 percent of the population. Hope springs eternal, and with the right treatment and support many high risk drinkers find their way back from the brink. They regain their health for the most part, though, as a result of their drinking days, many have chronic health problems with which they must learn to live. Many have to live with the scars of divorce, being estranged from children, lost jobs and damaged reputations. Regardless, most are just grateful to be alive and sober, and at this point cannot have one without the other.

And then there are the ones who help eludes.

### Focus needed

About 20 percent of the population falls into the moderate-risk category and I believe we need to aggressively target this group. It is here that we can save a person BEFORE jobs (yes, plural) are lost, health deteriorates, families break up, law licenses perish, and the death grip of alcoholism happens.

stay within the recommended limits... congratulations, but don't stop reading. If you regularly drink beyond two of the limits, it is time to consider pulling on the reins while you still can. Call us at the Lawyer Assistance Program. We can help.

If you are among those I congratulated above, your help is required because you are significant in this battle. You have to muster the courage to



**Civics education important**—Members of the Law, Youth and Citizenship Committee met during the 37th Annual LYC Civics and Law-Related Education Conference October 17 in Geneva. Pictured L-R, Hon. Jonah Triebwasser, Barbara Piazza, Lisa Lewis, Jay Worona, Chair Richard Bader, Oliver Young, Lynn Su and T. Andrew Brown. The committee will meet again on Jan. 29, 2014 at the State Bar's Annual Meeting in New York. [Photo by E. Triebwasser]

## The Bar Around The Corner: Bar Association of Erie County



**Association Address / Phone:** 438 Main Street, Sixth Floor, Buffalo, NY 14202; 716-852-8687

**Website:** [www.eriebar.org](http://www.eriebar.org)

**Founded:** 1887

**Number of Members:** 3,700

**Brief Association Vision:** To support members in meeting their professional and ethical obligations; to ensure access to justice; and to maintain the infrastructure and capability to fulfill our mission.

**Brief History:** A not-for-profit professional association, the Bar Association of Erie County was founded to "cultivate the science of jurisprudence; promote reform in the law; facilitate the administration of justice; elevate the standard of integrity, honor and courtesy in the legal profession; and cherish the spirit of camaraderie among the members thereof."

**What is your association's favorite meeting location?** Meeting locations are largely determined by event size. Larger events, such as the Judicial Candidates Luncheon, which typically draws an audience of about 400, tend to be held at large downtown hotels with full banquet facilities. Smaller meetings and CLE seminars are held in the conference/meeting space at Bar Headquarters.

Popular social events like our annual black-tie President's Ball—held each spring to honor our current/former presidents—are held at a location of the president's choosing, usually favorite local clubs or restaurants.

**What is your association's most popular outing/social event?** The Annual Judicial Candidates Luncheon. Until the 1970s, the event was much more formal—some would say stodgy—and served primarily to introduce judicial candidates to members of the practicing bar.

The event was transformed into something much more light-hearted and high-spirited, and the tradition of "roasting" the candidates was born. Others around the country often express surprise at the no-holds-barred nature of the roast.

President Michael J. Ryan, who has served as roastmaster at the annual event, attributes it to "the camaraderie between the bench and bar" in Erie County and the fact that "judges are lawyers first. Once they ascend to the purple and don the robe, they don't leave the past behind. They're still very much a part of the bar." In fact, Ryan received a call over the summer from a judge who wanted to know when the roast would be held. The jurist was making fall travel plans and didn't want to "look like a bad sport" by missing the opportunity to be roasted.

**What is your association's most important current project / initiative?** Our Disaster Preparedness Manual, to be launched in November. Immediate

Past President Kathleen M. Sweet appointed a disaster recovery task force in November 2012. Chaired by William F. Savino, the group developed a model disaster preparedness plan that will help local attorneys anticipate and plan for events that could disrupt their practices.

The task force recently completed its work and has released a manual, available at [www.eriebar.org](http://www.eriebar.org).

"The seed of the idea for disaster planning came out of the ABA meeting in New Orleans," said Sweet, who noted that the meeting "was held on the anniversary of the week it was supposed to be held when Katrina hit there."

"How that event affected lawyers professionally and personally and how it affected their clients, the court system and the legal community was, frankly, way more involved than I had ever considered."

The meeting inspired Sweet to make disaster planning and business continuity one of her presidential initiatives.

"Although we will likely and hopefully never sustain a natural catastrophe of that scale here, the programs made me realize that my own firm could benefit from having some structured approach to readiness and planning so that the pain and aggravation of responding to an unwelcome event could be mitigated," Sweet said.

The manual covers numerous aspects of the disaster recovery process and allows attorneys to save critical information about clients, employees, finances, insurance, utilities, computer files, passwords and much more.



**Friendly roast**—Hon. Frank Caruso, left, of Niagara Falls (Niagara County Supreme Court) serves as "roastmaster" at the Bar Association of Erie County's annual Judicial Candidates Luncheon. President Michael J. Ryan is pictured at right. *[Photo by Terry Vine]*

**How has your membership over the years helped to improve your association?** Our members continue to be active and engaged in our programs and activities. Their willingness to share their time and talent—by serving in leadership roles, chairing or participating on one of our 40 committees, educating students and others about their legal rights through our public service programs—enables us to fulfill our mission and continually improve our offerings to our members and our community.

High-spirited events like our Judicial Candidates Luncheon provide stress-reducing comic relief for our members. These events encourage networking and collegiality, and enable us to remain relevant to both long-time members and newly admitted attorneys. ♦

*The Bar Around The Corner is a project of the New York State Conference of Bar Leaders, [www.nyscbl.org](http://www.nyscbl.org).*



**Vietnam's Justice Minister**—Hon. Ha Hung Cuong spoke to the members of the International Section during its fall meeting in Vietnam in late October. *[Photo by Megan O'Toole]*



**Vietnam talks**—State Bar President David M. Schraver, second from left, International Section Chair Glenn Fox, far right, and American Bar Association President James R. Silkenat, left, take an opportunity to meet U.S. Ambassador to Vietnam David Shear during the section's fall meeting. *[Photo by Megan O'Toole]*



## The New York Bar Foundation

By The New York Bar Foundation President Cristine Cioffi

### Grants make a difference for less fortunate on a daily basis: Your gift matters



Cioffi

As this column goes to press, the New York Bar Foundation is reviewing more than 80 grant applications received from organizations around the state.

To be considered for funding, a project must demonstrate that it: 1) facilitates the delivery of legal services to those in need; or 2) improves the justice system and the law; or 3) enhances professional competence and ethics; or 4) increases public understanding of the law.

Within this framework, the Foundation makes a difference in the lives of less fortunate people in our communities on a daily basis.

#### Together, we make a difference

Consider "Rosa" (not her real name), a 35-year-old single mother

from the Dominican Republic with five daughters. She has been a lawful permanent resident of the U.S. for 15 years. Her eldest daughter is 13. Rosa

*As attorneys, we are more aware than most of the gaps in legal services for economically disadvantaged individuals.*

has survived domestic abuse by an ex-boyfriend and a house fire, which tragically, three years ago, destroyed their home and important papers.

While Rosa and her children survived unharmed, her green card and New York state identification card were destroyed. Rosa believed she had no way of replacing her green card because she could not afford to pay the \$450 filing fee. She got by, but struggled against substantial obstacles without proof of her lawful immigration status.

Rosa sought assistance from the

Upstate New York Immigration Law Project (UNYILP) of the Legal Aid Society of Northeastern New York (LASNNY), an organization that

received a 2013 grant from the New York Bar Foundation for its immigrant services. It was able to obtain a waiver of her filing fee, and then advised her she was immediately eligible to apply for citizenship. With a second waiver of the \$680 citizenship application fee, she was able to prepare for and pass the history and civics tests.

She took the Pledge of Allegiance at a naturalization ceremony in October. Now she and her children are American citizens, with a brighter future facing them.

#### Why give?

As attorneys, we are more aware than most of the gaps in legal services for economically disadvantaged individuals. For many types of legal services, if the consumer cannot pay, he or she is dependent on legal services corporations or attorneys who offer pro bono services.

Many of the functionally poor in our communities are not impoverished enough to qualify for legal aid. And there are always more cases than legal services corporations can handle.

It is these unserved and underserved legal needs that the New York Bar Foundation can help fill. Grants to organizations that run divorce clinics or client housing workshops or help train pro bono attorneys can reach hundreds of individuals who otherwise might never have the benefit of legal advice.

By giving to the New York Bar Foundation, you play a key role in raising up women like Rosa. Please consider including the Foundation in your annual giving. ♦

## Whitney North Seymour, Jr. combined love of the law and his community to 'do good'

Continued from page 15

Michael Deaver for unethical lobbying, another difficult, unpopular assignment.

#### Political career

Even his unsuccessful bid for the Republican nomination for the U.S. Senate, in an effort to unseat Democratic Sen. Daniel Patrick Moynihan, was notable for its David and Goliath struggle. Seymour's willingness to campaign—and even get arrested at the Altamont Fair Grounds for political campaigning provided a challenging freedom of speech test case.

His foray into politics was "great, great fun," he said, "because we made it fun." He first became politically active after serving as an assistant U.S. Attorney from 1953-56 for Hon. J. Edward Lumbard, who was named chief judge of the U.S. Court of Appeals, Second Circuit in 1959.

During a morale-boosting speech to staff, Seymour recalled Lumbard's admonition: "When you leave here, pay it back by getting into politics." The next week Seymour and his wife, Catryna, "went to my local political clubhouse" and volunteered for election district duty. He said they did anything asked of them: knocking on doors getting petitions signed, even giving speeches on street corners with

their small daughters nearby in their strollers.

He especially enjoyed serving as a state senator in 1965-68. "I met so many people wanting to do good," recalled Seymour. "I enjoyed immensely going to chicken farms near Elmira and riding in a glider—I never would have been able to do that" except as a politician.

Seymour credits his tenure in the state Senate with providing the opportunity for him to serve as U.S. attorney—which he called "the best job" of his career.

His unsuccessful run for U.S. Senate in 1982 taught him how money is used in politics, especially how special interest groups donate only to incumbents in order to achieve their goals. His reaction was to co-found Citizens Against PACS, which initiated Congressional finance reform in 1984. He later became a director of the Center for Responsive Politics, which gathers campaign finance data in a non-partisan format. As a director of Public Campaign, he has advocated for Congressional campaign finance and lobby reforms.

"I am very grateful for the opportunity to be educated on how politics does and does not work," said Sey-

mour. He still believes that "we have an extraordinary country of representative government."

Even becoming a tuberculosis patient in 1954 taught Seymour valuable lessons in advocacy. He was an assistant U.S. attorney working long hours "and not taking care of myself." Married for only three years, his wife rented a cottage near the sanatorium in Saranac Lake to be near him. Part of his treatment required him to walk for two hours every day. They explored Mt. Marcy together, becoming fervent conservationists in the process. "It was a gift. It made us understand the importance of maintaining unspoiled nature," he recalled. When they returned home, they became active in preserving Storm King Mountain, working to preserve historic courthouses across the state, and co-founding Natural Resources Defense Council.

#### The world around him

He wrote two books while U.S. attorney, "The Young Die Quietly—The Narcotics Problem in America," and "Why Justice Fails." Then, while he was State Bar president, he wrote a memoir of his U.S. attorney experiences, which was published in 1975.

His other books illuminate his love of community and his artistic interests: "Small Urban Spaces" about vest pocket parks (1969); "For the People, Fighting for Public Libraries" which urges public support for public libraries (1979); and "Making a Difference," about individuals who have contributed ideas and efforts to help others (1984).

For several years, he and his family operated Lime Rock Press, which specialized in miniature books with unique, if tiny, bindings.

Perhaps Seymour's energy and interest in everything around him—was inherited from the example set by his father, Whitney North Seymour, whose distinguished legal career included a stint as president of the American Bar Association, the American College of Trial Lawyers, the Institute of Judicial Administration and The Legal Aid Society.

Seymour, Jr.'s earliest memories are of playing on the floor of his father's law office with the tools of his trade: paper, pencils, paper clips, while his father worked. It was only natural that the son says today that being a lawyer was "all I ever thought of as a career." ♦

Sears Doherty is State Bar News editor.

# RECENT DECISIONS & CASE LAW DEVELOPMENTS

The State Bar is pleased to provide you with case summaries and legislation alerts prepared by **CasePrepPlus™**, the Association's affinity partner. **CasePrepPlus™** is an online service highlighting and summarizing the most recent and significant New York appellate cases (with links to the full opinions), and Second Circuit and U.S. Supreme Court cases having significance for New York practitioners—plus alerts and reminders about recent legislation and uniform rules changes.

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## First Department

**PERSONAL INJURY. RESTAURANT. INGRESS/EGRESS. OPEN FAÇADE. DOOR. NYC ADMINISTRATIVE CODE. STEP TO SIDEWALK IN EXCESS OF 7½ INCHES.** In this trip and fall accident that occurred when the plaintiff exited the defendant's restaurant through a door with a stepdown to the sidewalk in excess of 7½ inches, the defendant moved for summary judgment on the ground that the door in question, which led to an open façade area, did not constitute a "door" within the meaning of NYC Admin. Code §27-371(h). Order denying defendant's motion for summary judgment is affirmed. The 7½ inch step from the inside of the defendant's restaurant to the façade area on the sidewalk violated NYC Admin. Code §27-371(h) and constitutes some evidence of negligence. Further, and contrary to the defendant's contention, the code provision is not limited in application to "required" exits, or exits regularly used as such, but to "all" exits. *Stone v. Cabana E. Assoc.*

**EMPLOYMENT LAW. AGE-RELATED DISCRIMINATION. PLEADINGS.** Plaintiff, the principal of a school that she founded, brought an action for age-related discrimination against the City of New York and its DOE under State and City law. Order granting the defendants' motion to dismiss for failure to state a cause of action is affirmed. Although the plaintiff alleged that, at 54 years of age, she was in a protected class, that she was qualified for the position and that she was subject to an adverse employment action, she did not adequately allege facts from which it could be inferred that she was subjected to discrimination. Rather, plaintiff simply alleged the legal conclusion that she was 54 years old and that the defendants were motivated by discrimination in terminating her. *Askin v. DOE.*

## Second Department

**CIVIL PROCEDURE. MOTIONS. RESTORING ACTION TO**

**CALENDAR AFTER DEFAULT AT CALENDAR CALL.** In this personal injury products liability action against the manufacturer of a chair, plaintiff moved to restore her action to the trial calendar after it was dismissed when she defaulted at a trial calendar call [22 NYCRR202.27(b)]. In support, plaintiff explained why the calendar call was missed and submitted an expert's affidavit to establish that the chair that broke was defective. In opposition, the defendant conceded that the plaintiff offered a reasonable excuse for her default, but argued that she failed to establish a meritorious cause of action. Order granting plaintiff's motion is reversed, and motion denied. The affidavit of plaintiff's expert was conclusory and failed to set forth the factual basis for her claim. Further, the Supreme Court improperly determined that plaintiff established a meritorious cause of action based upon the denial of the defendant's previous motion for summary judgment. To the contrary, the denial of summary judgment was solely based upon the issue of whether the chair was manufactured by the defendant, rather than whether the chair was defective. *Aydiner v. Grosfillex, Inc.*

**MATRIMONIAL LAW. SAME-SEX COUPLE MARRIED IN CONNECTICUT. COMITY. CUSTODY. STANDING.** In this action for divorce and ancillary relief, plaintiff sought custody or visitation with the parties' child, who was carried by the defendant after being artificially inseminated. Undisputed is that the same-sex couple married in Connecticut, returned to their home in New York, and that the plaintiff did not adopt the child. Order denying plaintiff's motion for custody or visitation on the ground that she lacked standing as a parent, and granting the defendant's motion for sole custody, without a hearing, is reversed, with the matter remitted for a hearing. Although at the time of the child's birth New York had not enacted the Marriage Equality Act, which affords comity to out-of-state same-sex marriages, the Supreme Court should have recognized the plaintiff as the

child's parent under New York law [DRL §73]. *Counihan v. Bishop*

## Third Department

**COMMERCIAL LAW. LAW FIRM PARTNERSHIP. WITHDRAWING PARTNER. BREACH OF WRITTEN PARTNERSHIP AGREEMENT. ACCOUNTING.** Plaintiff brought an action for an accounting to recover her share of contingency fees against her former firm and its partners, individually. In moving for summary judgment, plaintiff contended that the firm was not dissolved when she withdrew because the written partnership agreement she signed as an original partner remained in effect after she withdrew. Order granting plaintiff's motion for summary judgment is affirmed. Although as a general rule a partnership dissolves with the withdrawal of a partner, the rule is not followed where the partners agree otherwise. Here, the partnership agreement which the plaintiff executed expressly provided that the withdrawal of a partner would not cause dissolution of the partnership. Further, records of the Department of State revealed that the defendant firm continued as the same legal entity in which the plaintiff was a partner, except for a different name. *Masson v. Wiggins.*

**CRIMINAL LAW. PLEAS. VALIDITY. IMMIGRATION CONSEQUENCES. INEFFECTIVE ASSISTANCE OF COUNSEL.** Defendant, who pleaded guilty to a misdemeanor petit larceny count and was subsequently detained by immigration officials for deportation, moved to vacate his plea on the ground that he was misled as to the immigration consequences of his plea. In support, the defendant offered: (1) his own testimony that his lawyer advised him that "he did not know of anybody that ever got deported of a misdemeanor"; and (2) the testimony of his aunt, who stated that defense counsel said that the plea would "most likely" not result in deportation, although she acknowledged that the phrase "most likely" necessarily meant that deportation remained a possibility. Order denying defendant's motion to withdraw his plea is

affirmed. "The fact that [defense counsel] may have expressed his experience-based assessment of the likelihood that removal proceedings might or might not be initiated ... was not misleading." Thus, the advice was not deficient and the defendant was not deprived of the effective assistance of counsel. *People v. Obeya.*

**COMMERCIAL LAW. CONTRACTS. SALES. UCC. COVER. MITIGATION OF DAMAGES.** Plaintiff brought an action for breach of an oral contract to recover the balance owed on the delivery and installation of office furniture to the defendant's offices. As a counterclaim, the defendant contended that it was entitled to an offset for three months of rent because it could not take possession of its new offices until furniture with the correct fabric on its panels was delivered and installed. In moving for summary judgment on liability, plaintiff contended that it offered to install the furniture with the wrong fabric and then install the correct fabric as soon as possible, which the defendant refused, and that the defendant made no efforts to minimize its damages. Order granting plaintiff's motion for summary judgment is affirmed. Pursuant to UCC 2-715(2)(a), the defendant could only recover causally-related consequential damages "which could not reasonably be prevented by cover or otherwise." Here, although claiming that its new offices were unusable without the correct fabric on the furniture, the defendant failed to assert that it made any effort to cover or minimize its damages, and did not counter plaintiff's contention that it was willing to install the furniture and replace the fabric after business hours as a means by which to avoid any damages. *Accent Commercial Furniture, Inc. v. P. Schneider & Assocs., PLLC.* ♦



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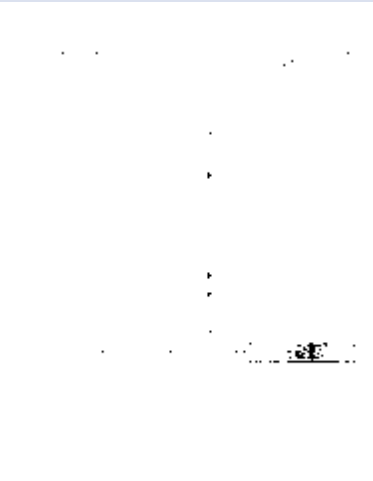
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