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NEW YORK STATE BAR ASSOCIATION

State Bar News

SUMMER 2018
VOLUME 60, NO. 3
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It's Miller Time

Michael Miller Sworn in as President of the New York State Bar Association

Hon. Sherry Klein Heitler swears in Michael Miller as NYSBA president at the Association's meeting in Cooperstown, June 16. Miller's wife, Cindy, looks on.

By Christian Nolan

In preparation for becoming the 121st president in the New York State Bar Association's rich history, Michael Miller mailed a handwritten note to all of the living past presidents asking them for suggestions on how to move the state bar association forward.

The response from Maryann Saccomando Freedman, who became the first female president of the state bar association in 1987, stood out to him.

"She suggested looking back in order to move forward," said Miller. "Build on the foundation where possible, rather than try to build a new foundation."

In 1997, there was a task force that produced a report and recommendations for the proper use of paralegals. They had reexamined an original report from 1976.

"She suggested that this might be something we should take a

look at in light of developments over the last 20 years," said Miller. "There have been a number of developments with regard to paralegals and ethics, confidentiality,

Miller was just starting to get warmed up.

Another task force on the agenda that requires revisiting the past is a follow-up to the 2009 ground-

force, and former Court of Appeals Judge Robert Smith, "will review new developments in technology, science, and judicial decisions to make affirmative recommendations to reduce the likelihood of more wrongful convictions," Miller said.

Miller hopes to
"engender a more meaningful experience for our membership"
and described serving as president of NYSBA as the
"greatest honor of my professional life."

supervision, and as a result, I decided to appoint a task force to revisit those guidelines and propose any changes, updates they think would be appropriate."

breaking report on wrongful convictions. A newly empaneled task force headed by retired N.Y. Supreme Court Judge Barry Kamins, who led the original task

Justice in the 21st Century

As Miller works to build on NYSBA's existing foundation, he has plenty of his own innovative ideas relevant to the effective administration of justice in the 21st century.

"We will focus on important criminal justice issues; explore the criteria and best practices for screening candidates for election to judicial office; discuss important law practice management matters; and address America's scourge of mass shootings, assault weapons and related legal issues."

To accomplish these goals, Miller formed numerous task forces and working groups including:

- *Rapid Response Advisory Group* to respond quickly and effectively when judges are unfairly attacked or other matters that require prompt response during the 24-hour news cycle.
- *Task Force on the Evaluation of Candidates for Election to Judicial Office* to propose best practice guidelines and make recommendations to assist local bar associations, good government groups and others in developing new effective non-partisan judicial evaluation efforts and improve existing ones.
- *Task Force on Incarceration Release Planning and Programs* to investigate and recommend state and national policy changes and best practices in order to help better prepare those released from incarceration to re-enter the community and reduce the rate of recidivism.
- *Task Force on Mass Shootings and Assault Weapons* to consider the connection between mental health and mass shootings, the relationship between domestic violence and mass shootings, whether assault weapons belong in civilian hands, and make appropriate recommendations.

Miller has also convened a working group to explore ways to help those in Puerto Rico still devastated by last year's Hurricane Maria and a working group to explore whether New York's Civil Rights Law, section 50-a, should be amended, revised or revoked. That law came under fire when it was used to prevent disclosure of police officers' disciplinary records in the Eric Garner case.

Also in the coming year, Miller plans to diligently work to improve NYSBA membership efforts in all areas, which includes a vigorous campaign focusing on out-of-state members.

"We have experienced solid and consistent growth in out-of-state membership over the past decade, both domestic and international, and 24 percent of our current membership is out-of-state members," said Miller. "We will be looking at how we can most effec-

tively meet the needs of these members and what kinds of events and programs we can offer to support them."

Miller said he's well aware of the ambitious agenda he has set for his presidency.

"I recognize most of these initiatives will have a life beyond my term," said Miller. "I consulted with [President-elect Henry M.] Hank Greenberg on all of these. I wanted to be certain that if a project hasn't reached its conclusion during my term, he would be fully supportive of that initiative because it really is a team effort."

Prepared to Serve

Miller has already been the president of a bar association, having served as president of the New York County Lawyers Association (NYCLA) in 2002-2004. Miller said there is "no question" that experience has him fully prepared to serve as NYSBA's president.

The year 2002 was a particularly challenging time for NYCLA as they were picking up the pieces from the September 11, 2001 terrorist attacks. Their headquarters, one-half block from the World Trade Center, was badly damaged and staff was temporarily relocated to various donated office spaces around the New York City area, including at the New York City Bar Association.

"The very first event that we had after the attacks was my swearing-in in May of 2002. So for all that time, from 9/11 to May 2002, we were out of the building," said Miller. "There was no place to hold CLEs. We didn't have membership records to send out billing. This was before the cloud. It was pretty rough."

"I think the usual experience one would have as a bar leader helped me enormously," continued Miller. "But having to do it with an existential crisis made me better equipped to serve as a bar leader with a much greater appreciation for the importance and value of your staff. There is no unimportant job."

'Deeply Honored'

Fittingly, Miller was initially sworn in as NYSBA president at a ceremony at NYCLA June 4 in New York City. New York State Chief Judge Janet DiFiore administered

Five Things About Michael Miller

1. Miller is a 1981 graduate of New York University, a 1984 graduate of New York Law School and has been a solo practitioner for more than 30 years in Manhattan, with a general civil practice focusing primarily on estate and trust work, including planning, administration and litigation.
2. In 1996, Miller spent a month in war-torn Bosnia serving as an election supervisor. Three years later he interviewed Kosovar refugees for evidence of war crimes and crimes against humanity for the U.S. Department of Justice in an ABA initiative to assist the War Crimes Tribunal in The Hague.
3. Following the 9/11 terrorist attacks, Miller worked seven days a week for six weeks leading lawyer volunteer efforts to help the families of victims. "I don't often talk about that work but I think it's important to remember that adversity brings out the best in our profession," Miller said.
4. Miller has received numerous awards over the years, most notably the ABA's Pro Bono Publico Award in 2002 – its highest award for pro bono service – for his efforts following 9/11.
5. Miller's wife Cindy is a former Radio City Music Hall Rockette. She was a leader of the effort in the early 1980s to have the Music Hall declared a landmark, thus preventing its demolition, and is a past president of the Rockette Alumnae Association.

the oath. Some 160 distinguished members of the judiciary and bar were in attendance, along with other colleagues, family and friends.

Some of Miller's close friends traveled great distances to attend, including from New Orleans and Korea. Ben Q. Limb, a close friend and New York Law School classmate with Miller, traveled from Seoul to be there. Limb said Miller has had a "profound impact on me as a lawyer and as a person."

"Thirty plus years ago, while at law school, Michael and I organized a conference for the late Kim Dae-jung who had taken his political asylum in the U.S.," said Limb. "In 1998, Michael was invited by Dr. Kim to attend his swearing-in as the newly elected president of South Korea. Michael flew all the way from New York to Seoul to attend the ceremony. My trip this time to

participate in Michael's swearing-in as president of NYSBA is a payback in kind to my lifetime friend."

While Miller said local and affinity bars serve an important role, he believes the State Bar Association provides a stronger, more persuasive voice for the profession, especially when advocating against unfair regulations, inappropriate laws, discriminatory practices or civil liberties violations.

Miller said he ultimately hopes to "engender a more meaningful experience for our membership" and described serving as president of NYSBA as the "greatest honor of my professional life."

"Words are inadequate to fully express how very deeply honored I am to serve as the president of the New York State Bar Association."

Nolan is NYSBA's senior writer.

HOD Approves New Section on Women in Law, Calls for Mandated Counsel Rate Increases

The New York State Bar Association (NYSBA) House of Delegates voted on June 16 to create a Women in Law Section, building on the work of NYSBA's long-time Committee on Women in the Law. The actions were taken at the Bar Association's quarterly meeting in Cooperstown, New York.

The House of Delegates also approved a report and resolution calling for an increase in the rates paid to private attorneys providing mandated representation for those who cannot afford to pay counsel, and approved a report recommending Congressional action to permanently exempt Puerto Rico from the Merchant Marine Act of 1920, known as the Jones Act.

"In its 32 years, the Committee on Women in the Law has attained a remarkable record of achievement in serving women in our profession and society," said NYSBA President Michael Miller. "We are excited about the opportunity through the section to involve so many more and do so much more to address the many issues impacting women today."

"We are also pleased that NYSBA's House of Delegates took action on two other important issues – the need to increase compensation rates for attorneys who represent those who cannot afford to pay for their own representation and the ongoing humanitarian crisis in Puerto Rico resulting from Hurricane Maria," Miller added. He recently established a NYSBA Working Group on Puerto Rico, to look at ways to assist the island's residents through enactment or modification of laws.

New Women in Law Section

As a result of House of Delegates approval, the transition of the Committee on Women in the Law (CWIL) to a section provides increased opportunities for all NYSBA members to participate in its work and the resources necessary to allow for expansion of its initiatives. NYSBA members can join sections in their fields of practice or interest, while committee membership is limited.

The mission of the Women in Law Section is to identify, study and make recommendations to address gender bias and law-related issues affecting women, with a focus on the general public and women in the legal profession. The section plans to expand on its programming, networking, mentoring, educational resources, best practices, legislative action and related advocacy.

In a presentation to the House, CWIL Chair Susan L. Harper said that numerous requests for involvement have been received from members and prospective members. She noted that recent national and state developments such as the increase in the number of women in the legal profession since CWIL was formed more than three decades ago; the #MeToo movement; significant legislative efforts in recent years to protect and support women's rights and achieve gender parity in the workplace; and the legal profession's focus on inclusion and diversity to attract, build and retain female attorney talent and leadership make now an ideal time to convert the committee to a section.

Need to Increase Rates Paid to Counsel for Mandated Representation

The report of the NYSBA Criminal Justice Section and Committee on Mandated Representation noted that the rates paid to assigned counsel under Article 18-B of County Law in New York State have not been changed since 2004. Since then, the state established the Office of Indigent Legal Services (ILS) and funding in the state budget has been designated to reimburse local governments for improvements in provision of services, but ILS is not authorized to modify assigned counsel rates. In federal court, the judicial conference is authorized to make such modifications and has adjusted rates regularly for the past 16 years.

The resolution approved by the House urges enactment of legislation to increase rates for all assignments defined by NYSBA's 2015 Revised Standards for Providing Mandated Representation in situations of financial hardship: (a) persons accused of an offense punishable by incarceration; (b) persons entitled to representation under Family Court Act § 249, § 262 or § 1120; Judiciary Law § 35 including child custody and habeas corpus cases; Article 6-C of the Correction Law; Surrogate's Court Procedure Act 407; Executive Law § 259-I; and County Law § 717; and (c) persons otherwise entitled to counsel by constitutional, statutory or other authority.

The House measure also calls for:

- The rates to be comparable to a percentage increase of judi-

cial and elected district attorney salaries;

- An annual review process and adjustment using a formula similar to that of the federal Criminal Justice Act; and
- The increased rates to be at state expense, not through unfunded mandates to the localities.

Support for Exemption of Puerto Rico From Jones Act

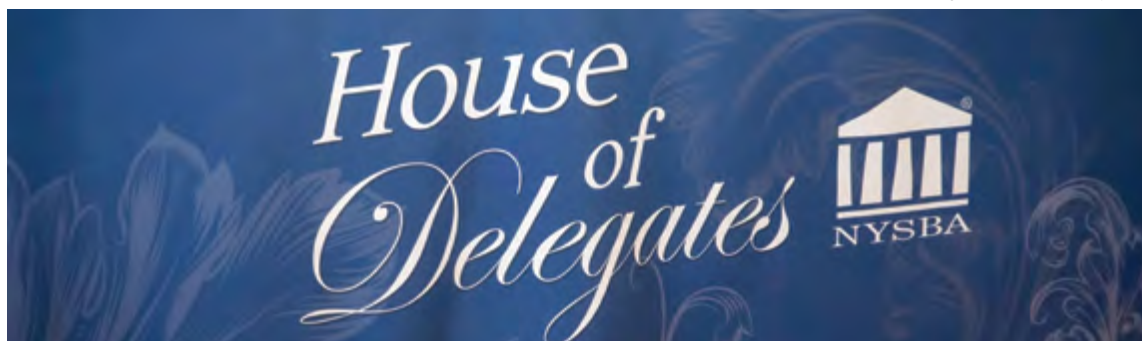
The House approved the report and recommendations of the New York City Bar, presented by NYCBA President Roger Juan Maldonado, to urge Congress to permanently exempt Puerto Rico from the Merchant Marine Act.

Known as the Jones Act, the law requires that cargo shipped between two ports within the United States must be transported on vessels that meet certain registration requirements. Exemptions already exist for other U.S. territories, including the Virgin Islands and American Samoa. The Jones Act does not apply to foreign shipments. The law was originally enacted to ensure that domestic ships would be available to support the U.S. military during war.

Imposing these restrictions causes Puerto Rico to experience increased shipping costs from the U.S. mainland for food, fuel and other basic goods. As a result, trade with the mainland U.S. is discouraged and Puerto Rico has extensive imports from foreign countries.

The report contends that:

- The justifications for imposing the Jones Act restrictions on Puerto Rico do not outweigh the substantial costs that this island economy incurs under these provisions;
- The 10-day Jones Act waiver for Puerto Rico made in the wake Hurricane Maria was insufficient; and
- A permanent waiver would be a way for Congress to provide much-needed help to Puerto Rico's economy.





A Conversation With Susan Harper, Chair of the NYSBA Women in Law Section

Committee on Women in the Law Chair Susan Harper speaks at the House meeting in Cooperstown about the need for a section on Women in Law.

On June 16, 2018, the New York State Bar Association House of Delegates authorized the conversion of the Committee on Women in the Law to a section. State Bar News sat down with Committee Chair and now Section Chair Susan L. Harper at the conclusion of the HOD meeting to discuss what this change will mean for serving women in society and the legal profession. Our discussion was regularly interrupted by HOD attendees offering congratulations, volunteering to help and expressing interest in joining the section.

What Is the Mission of the Women in Law Section?

The Women in Law Section serves as a voice to address issues, and a catalyst to support and advance opportunities, for women in the legal profession and all women under the law.

The section proposes legislation, the adoption and implementation of policy by the Executive Committee and House of Delegates, and other actions, including advocacy, education, networking and programming, to ensure the fair treatment of women under law and the full participation of women in the administration of justice and as equal members of the legal community.

How Will the Committee's Work Change Now That It Is a Section?

Committees are limited in the size of their membership and the resources available to perform their work. As a committee, our 53 members actively engaged in education, recognition and networking, and addressed legislation and policy through seven subcommittees. As a section, membership is open to all women and men who are NYSBA members. This change provides a tremendous increase in opportunities to participate in a vibrant section and, in turn, provides many more minds and hands to devise and implement projects to benefit women in general and in the legal profession. Think of the possibilities. It's very exciting.

Why Was the Request to Become a Section Made at This Time?

The committee has been involved in legislative and related measures to improve the law on gender-related matters including pay equity, paid leave, salary history disclosure questions for prospective employees, sexual harassment and, most recently, addressing female prisoners' rights and women's equal rights under the New York State Constitution. With the #MeToo movement and focus of the legal profession on diversity and inclusion, this is an ideal time to become a section, which will enable to expand our work on public policy and professional development. My work on our legislative affairs subcommittee began with pay equity and then paid leave, and I saw the real impact of our committee's work on people in the

workplace and in daily life. Today, New York is one of only a handful of states in our nation that offer paid family leave. We are proud of our achievements in this and many other areas. More, however, needs to be done, and we will continue this work.

Over the years, we received numerous requests to serve on the committee and, in some cases, very dedicated members stepped aside to make room for new voices. But as one committee member remarked recently, why should she have to step aside when she is passionate about these issues? Further, new NYSBA members have told us that they were inspired to join as a result of attending one of our programs or otherwise seeing the committee's work. This was expressed by an attendee at our CLE in May on "#MeToo: How to Navigate

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Scenes from Cooperstown



Past Presidents Seymour James (left) and Ken Standard (right) stand with Membership Committee Chair Tom Maroney.



President Michael Miller looks ahead.



EASL Section Chair Barry Skidelsky chats with President-elect Hank Greenberg.



Hon. Sherry Klein Heitler (left); Sophia Gianacoplos, executive director of the New York County Lawyers Association (center); and Judge Joan Madden (right) after the House meeting.



James O'Neal addresses the House after receiving the Root-Stimson Award.



Immediate Past President Sharon Stern Gerstman talks with Past President Seymour James.



Lesley Rosenthal, president of The New York Bar Foundation.



President Michael Miller (center) and NYSBA leadership welcome new House members.



Secretary Sherry Levin Wallach knits in honor of Immediate Past President Sharon Stern Gerstman.

Seen in Cooperstown



James O'Neal receives the Root-Stimson Award from President Michael Miller.



Hon. Sherry Klein Heitler reads to the House a note from Past President Maryann Saccomando Freedman.



Committee on Women in the Law Chair Susan Harper makes her case for a Women in Law Section.



Scott Karson gives the treasurer's report.



President-elect Hank Greenberg chairs the House meeting.



Fellow Buffalo residents Immediate Past President Sharon Stern Gerstman and State Bar delegate Oliver Young confer during a break in the House meeting.



Anne Noble, executive director of the Bar Association of Erie County, and State Bar delegate Marianne Mariano talk before the House meeting.



James Barnes, chair of the Committee on Continuing Legal Education, gives his committee's report.



State Bar delegate Gordon Eng speaks on the City Bar's Jones Act report.



President-elect Hank Greenberg hands the official Cooperstown baseball bat to President Michael Miller.

For Hank Greenberg, 'Law is the bedrock of a free society'



By Joan Fucillo

Hank Greenberg always knew he would be a lawyer. Aside from an unrealistic desire to be a pro basketball player, Greenberg never wavered in his commitment. More than 30 years in the practice has increased his passion for the law and lawyering, and his belief of the importance of law – and lawyers.

"The law has the power to transform the world," said

Greenberg. History has shown that an independent legal profession is an indispensable bulwark of a free and democratic society." Greenberg believes that being a lawyer also comes with the civic responsibility to address issues that others cannot or will not.

Greenberg discussed the still-common misconception that because the law is the province of thinkers and requires not only see-

ing both sides of an issue but also being able to argue either side, it is all head and no heart. But, he believes, what lies at the center of the law is a passion for justice. It is the engine that impels lawyers to right wrongs and seek societal progress.

Greenberg discussed the still-common misconception that because the law is the province of thinkers and requires not only see-

Compromise: The Lawyer's Art of the Possible

Unfairly, in recent years, the term "compromise" seems to be redefined to mean "capitulation." Yet, Greenberg opined that the art of creating consensus or finding common ground is central to the work of lawyers – solving problems. Thus, lawyers are deeply trained in the art of compromise, which includes rigorous review of the issue at hand and the work to understand both sides. This, he added, "is essential to bringing both sides together to solve a problem."

Greenberg bemoaned the steep decline in the number of lawyers serving in the New York State Legislature. Having fewer mem-

bers trained in the art of problem-solving and consensus-building has made it more difficult to reach agreements and resolve complex public policy questions. A legislature shackled by an inability to find common ground does not fulfill its most basic functions and does not meet the needs of the citizens it serves.

Learning Law in Literature, History

Reading is Greenberg's main avocation. He is a history buff – a founding member of the Historical Society of the New York Courts – but his interests are wide ranging. His reading life includes fiction and nonfiction with a large dose of contemporary literature. Even reading a not-so-great book is a learning experience. If Greenberg has one piece of advice for young lawyers, it is: "Read. Read widely, read deeply. It will broaden your knowledge and make you a better lawyer."

Moving the Needle

Greenberg spent much of his career in public service. He is a former counsel to the New York State Attorney General, general counsel for the New York State Department of Health, and federal prosecutor. Among other govern-

“*History has shown that an independent legal profession is an indispensable bulwark of a free and democratic society.***”**

— Hank Greenberg

Greenberg. "Lawyers right wrongs, improve lives, make society better." Few other professions afford so many "opportunities to help people in need."

"Being a lawyer is a gift," Greenberg said. "You are part of an impactful, consequential and influential profession. Lawyers shaped the foundations of our state and

ing both sides of an issue but also being able to argue either side, it is all head and no heart. But, he believes, what lies at the center of the law is a passion for justice. It is the engine that impels lawyers to right wrongs and seek societal progress.

Greenberg cites Oliver Wendell Holmes, Jr., on that subject. In an 1886 lecture to college students on

ment posts, he also served as a law clerk to then-Associate Judge (later Chief Judge) Judith Kaye of the New York Court of Appeals.

Greenberg is now happily settled at Greenberg Traurig in Albany (he is no relation to the Greenberg for whom the firm is named). But he still takes on government assignments. These projects require Greenberg's full skill set – passion, perseverance and pragmatism – and offer no expectation of a “win” or even a solution. But he takes the opportunity to serve and move the needle in the right direction.

In 2013, Greenberg was appointed chair of a commission to study and make recommendations regarding the Albany County Charter. When Greenberg and his colleagues started their work, they were surprised to learn that the county did not have an administrative code. Over the years, changes and additions to administrative laws were simply added to the charter. The commission's final report proposed a number of technical changes and strongly recommended a complete charter overhaul, creation of a publicly accessible administrative code, and a streamlined Albany County Legislature, which has more members than the New York City council. The county approved many of the technical changes. Greenberg's service on the commission was pro bono, and he noted that “it's remarkable how much good you can do if you're willing to work for free.”

Greenberg also has a deep interest in New York's educational system. In 2014, on the recommendation of Governor Cuomo, the State Commissioner of Education appointed Greenberg to serve as Fiscal Monitor for the troubled East Ramapo School District in Rockland County. Two years earlier, the Commissioner appointed Greenberg special investigator to conduct a complete review of the Education Department's processes for receiving, reviewing and investigating reports of alleged improprieties involving student assessments. In both investigations, Greenberg delivered reports with recommendations to the State's Board of Regents that resulted in regulatory reforms.

Lawyers Need to Educate the Public

Greenberg is concerned that “many citizens lack sufficient knowledge about constitutional norms that are the foundation upon which our democracy and justice system is built.”

“The rule of law,” he added, “is a sine qua non for ordered liberty. Without it, we will lose the freedoms that are the hallmark of our country.”

“In the absence of civic education,” said Greenberg, “a citizen is prone to dismiss the Constitution, indeed the rule of law, as unimportant.” Greenberg warned that this lack of knowledge has led to a miscomprehension of the roles of each branch of government – legislative, executive and judicial – in making, implementing and interpreting the law. It has also made the judiciary subject to political attacks and diminished respect for the law and lawyers in general.

Greenberg believes lawyers should be engaged in their communities, to weigh in on the important issues of the day and help educate

the public. “As a profession, we have to reach out to our fellow citizens, to students in high schools, and even earlier. Our system and society are not perfect by any means, but we

must be heard. The goal of our legal training is not only to become an accomplished technician, but also a person of practical wisdom and judgment devoted to the pub-

“*The rule of law is a sine qua non of ordered liberty. Without it, we will lose the freedoms that are the hallmark of our country.*”

— Hank Greenberg

need to help people understand what has worked for over 200 years, how the law is the bedrock of a free society. Lawyers get this intrinsically; it's in our DNA.”

“We need lawyers and their voices now more than ever,” Greenberg emphasized. “It is quintessentially our moment. The law is such a vitally important profession and the voice of lawyers

lic good. These also are the qualities of true statesmen and stateswomen, which are sorely needed in these challenging times. We must seize every opportunity to spread the word.”

Fucillo is NYSBA's senior messaging and communications specialist.

A Son of the Borscht Belt

Henry “Hank” Greenberg (he says no one ever used his given name except his mother) grew up in South Fallsburg, New York, a hamlet in Sullivan County about 90 miles north of New York City. It was a tiny community – there were only 80 or so students in his high school graduating class – but it had an outsize influence in two seemingly disparate areas: the law and entertainment.

Sullivan County was the hometown of two chief judges of the New York Court of Appeals: Lawrence H. Cooke, who served from 1979-1984, and Judith S. Kaye, who served from 1993-2008. Greenberg knew Cook and Kaye well, serving as the latter's law clerk from 1988-1990.

South Fallsburg was in the heart of the “Borscht Belt,” an enormously popular vacation destination in the decades following World War II. Each June, communities in the southern Catskills exploded with seasonal residents, tourists, and some of the biggest names in entertainment. It's a way of life that has since disappeared, but for 50 years it was the place to be for a certain population of New Yorkers.

The summer residents were largely of Eastern European descent, part of the great wave of Jewish immigration earlier in the century. They formed tight-knit communities in the New York City area, and towns and villages like South Fallsburg became their summer haven. Once school was out for the summer, entire families moved to the Catskills, often staying in the same lodgings year after year.

In the early 1980s, when Greenberg worked summers as a bellhop at the old Concord Hotel, the Borscht Belt era was fading, but he still got to help entertainers and other celebrities with their luggage. He even had his picture taken with Bob Hope. It is said to be one of only a few photographs of Greenberg swinging a golf club.

O'Neal Receives 2018 Root-Stimson Award



James O'Neal, courtesy of Legal Outreach.

James O'Neal: 35 Years of Community Service

By Joan Fucillo

James O'Neal could have been anything and done anything. With degrees from Oxford College's intensive teaching and student leadership program at Emory University, Emory and Harvard Law, he could have had the world at his feet. Instead, he looked at the world around him and felt called to help others to their feet. His mission – to give underprivileged children a real opportunity to succeed. His vehicle – Legal Outreach, a law-based program headquartered in Long Island City, which is equal parts academic institution, skills training and extended family.

In recognition of his work, O'Neal received the 2018 Root-Stimson Award, which honors exemplary community service, at the House of Delegates meeting June 16 in Cooperstown.

For 35 years, O'Neal's brainchild has served many hundreds of poor and minority students

and their families. Students who are recommended for the program join Legal Outreach in eighth grade and continue through high school. They participate in mock trials, summer law institutes and summer law firm internships, and they prepare for higher education through Legal Outreach's College Bound Program, which has been called one of the premier college prep programs in the country. In 2017, Legal Outreach served 220 high school students. Of that year's graduates, 78 percent went to highly or very selective schools, such as Yale, MIT, Swarthmore, Cornell and Columbia. Overall, 93 percent of Legal Outreach alumni complete their four-year degrees within six years, and about 10 percent go on to law school.

For O'Neal, the stakes could not be higher. His address to the class of 1992 at Oxford College, nine years after founding Legal Outreach, urged the graduates to act:

"Soldiers are needed for the battle. Too many, however, are choosing not to enter the fray. . . . And even among those willing to fight, too many are enlisting in the reserves," saying that "not one of us can afford to stand idly by, watching, complaining, and lamenting."

O'Neal also expressed the joys of the path he'd chosen:

"[I]n taking up the challenge and promoting a cause, there is great internal reward and satisfaction . . . from knowing that through our efforts peoples' lives are being changed; and that due to our work, the world, for a few, is becoming a more palatable place in which to live. No greater joy exists than this – to make a solid, definite contribution to the lives of our fellow man."

Getting Students Excited About the Law

O'Neal was the recipient of Harvard Law's first Public

Interest Law Fellowship in 1982. He took that seed money, moved to New York City, and talked his way into teaching an elective course on constitutional law at an inner city high school. He believed that exposing students to the problem-solving and critical thinking skills the law demands would get them excited about the law, and motivate them to see that higher education – and the law – could have a place in their future.

Many of O'Neal's instincts were confirmed. The students were bright and could skillfully dissect an argument. And he was impressed by their after-class discussions, which focused on practical legal issues affecting them directly – domestic violence, landlord-tenant disputes, police use of force.

However, many of the students lacked basic skills in English and writing, and O'Neal concluded that he would more likely have an impact with younger students.

His program for eighth graders offered a summer law institute and used mock trials that addressed legal issues in students' communities.

But despite the students' promise, their motivation faded in high school. To get into college – much less law school – students needed to maintain the drive and self-discipline they had shown in the program. O'Neal's conclusion was that Legal Outreach had to do more than get students interested in the law, it needed to be more.

Starting with eight students, O'Neal launched an after-school study program. Over time, he added twice-monthly writing classes, summer law firm internships, mentoring and constitutional law debates. Legal Outreach students hone their reading, writing, public speaking and advocacy skills, prepare for the SATs and complete their college and financial aid applications. Each student has an attorney mentor.

College = Culture Shock

It's one thing to get into college, it's another to get through college. A significant barrier to a successful college career for students from impoverished backgrounds often isn't academic or financial, it's cultural. Summer law firm internships give students experience with corporate culture, and lawyers and firm executives also come to them to serve as teachers and mentors.

Having experience and interaction with the corporate world helps, but Legal Outreach also includes transition to college workshops to more fully prepare students. In a series of 10 workshops, students use real-life case studies to discuss everything from interacting with professors to responding to racial issues to handling conflicts with roommates. Once students get to college, they remain in the Legal Outreach family. If law school is their goal, they join the College to Law School Pipeline Diversity program.

Why Does Legal Outreach Work So Well?

The program is selective, and once there, students quickly learn

“*No greater joy exists than this – to make a solid, definite contribution to the lives of our fellow man.*”

— James O'Neal

the program mottoes: “No excuses” and “nothing less than excellence.” O'Neal demands their best efforts and full commitment, and he expects them to empower each other, because they are part of a whole.

O'Neal is an inspiring educator and role model because he embodies “nothing less than excellence,” and his intellectual curiosity and flexibility make him unafraid to fail. He will not double down on a bad idea but embraces the challenge and figures it out. In fact, O'Neal's third motto can be summed up in a single word – “evolve.” It is what he does and what his students learn to do.

Legal Outreach receives tremendous support from law school partnerships, law firms, governmental and public interest agencies, more than 200 attorneys and more than a dozen judges.

Academic Institution, Skills Training, Extended Family

Legal Outreach students are ambitious and hard working but the schools in underserved areas are starved for resources. Poor families encourage their children, but may not have the tools to help them fulfill their promise. With the understanding that family support is vital to a student's success, when Legal Outreach takes on a student, it takes in the whole family.

Some of the most powerful letters in support of James O'Neal's nomination for the Root-Stimson Award came from students, alumni and their parents.

Parents expressed gratitude at being given the assistance and the tools so their children could grow. Some hadn't finished high school. One letter was from a parent whose

four children are Legal Outreach alumni – two who graduated college and two in college.

Students and alumni described a rigorous atmosphere and admitted to sometimes feeling frustrated about whether they could maintain the high standards. But O'Neal always helped them work through it. They expressed a kind of awe at the challenges they'd overcome, and how they'd evolved in their five years in the program. All of them called Legal Outreach family.

O'Neal has resisted calls to overextend Legal Outreach or to make it a nationwide brand. In 2006, he helped found the New Jersey Law and Education Empowerment Project (NJLEEP) with Seton Hall Law School, and he encourages others to use Legal Outreach as a model. In a 1998 interview with the Emory University alumni magazine, O'Neal noted, “There has to be what I call third-party intervention if young, motivated, but underprivileged kids are to have a real opportunity . . . to succeed.”

Fucillo is NYSBA's senior messaging and communications specialist.

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State Bar Association Honors Judge and Children's Lawyer for Excellence in Juvenile Justice and Child Welfare

Honorees Judge Kathie E. Davidson (left) and Betsy Ruslander (right) pose with Judge Howard A. Levine after receiving the Levine Award at the Bar Center on June 6.

By Christian Nolan

Judge Kathie E. Davidson and Betsy Ruslander have been honored with the 2018 Howard A. Levine Award for Excellence in Juvenile Justice and Child Welfare, given by the New York State Bar Association's Committee on Children and the Law.

The awards, presented on June 6 at the State Bar Center in Albany, recognize those who have done outstanding work to improve New York's child welfare and juvenile justice systems.

"Judge Davidson, a trailblazing and caring judge, is an innovator when it comes to helping children and families and Betsy Ruslander has devoted her career to improving the representation that children receive in the Family Court," said David J. Lansner of Lansner & Kubitschek (New York City), who serves as chair of the Committee on Children and the Law. "It is with great pleasure that we honor these two hardworking leaders who have accomplished so much."

Davidson is administrative judge of the Ninth Judicial District, which includes Westchester and Rockland counties among others. Prior to that, she was the supervi-

sion, she is the chairperson for the Attorneys for Children Advisory Committee in the Ninth Judicial District, a member of the state Permanent Judicial Commission

dinating training for the panel attorneys in the 28 counties of the Third Judicial Department.

She is a long-time member and former chair of the State Bar Association's Committee on Children and the Law. She is also a member of the Statewide Advisory Committee on Attorneys for Children and the state Children's Justice Task Force.

The award ceremony was attended by New York State Chief Judge Janet DiFiore, State Bar President Michael Miller and President-elect Henry M. "Hank" Greenberg.

The Howard A. Levine Award is named for retired Court of Appeals Judge Howard A. Levine, who was the first chair of NYSBA's Special Committee on Juvenile Justice, now known as the Committee on Children and the Law. He is an advocate and leader in the effort to improve New York's child welfare and juvenile justice systems.

Nolan is NYSBA's senior writer.

■
*It is with great pleasure
that we honor these two
hardworking leaders who have
accomplished so much.* **■**

— David J. Lansner

ing judge for the Family Courts in the same district. She was the first African-American woman elected to a countywide judgeship in Westchester County when elected in 2003 as a Family Court judge.

She is the lead judge of the state Child Welfare Court Improvement Project and National Council of Juvenile and Family Court Judges' Victim Act Model Court. In addi-

on Justice for Children and created the Westchester County Child Welfare and Juvenile Justice Committee.

Ruslander is the director of the Office of Attorneys for Children for the Appellate Division, Third Judicial Department in Albany. Prior to serving as director, she was the assistant director from 1994 to 2010, primarily in charge of coor-

Knowledge Is the Key to Disrupting Implicit Bias

By Joan Fucillo

What is implicit bias? It is the brain's automatic, instant association of particular stereotypes with certain groups, which manifests in certain attitudes toward these groups.

Because our implicit biases are reflexive, we are not aware of them. We act on them but without making a conscious choice to do so. Implicit bias exists in all groups and in all people. Implicit biases are normal, everyone has them, and everyone is susceptible to acting on them.

NYSBA staff attended a hour-long presentation on implicit bias by Gregory Owens, director of strategic partnerships and collaborations at the New York State Office of Children and Family Services.

Owens, a licensed master social worker, gave a fast-paced presentation fueled with anecdotes and insights. He covered implicit bias, why it's bad – and good – why it's universal and why fact-based knowledge is key to interrupting it. "Once you know, you can't unknow," he said. Ignorance no longer applies.

Owens explained that we need implicit bias. We process 11 million bits of information a minute but our capacity to effectively handle information maxes out at 40 bits. Our brain automatically sorts and categorizes the other 10,999,960 bits, which allows us to navigate the world without being overwhelmed by data.

However, when our brain's protection program results in a leap to a conclusion, and we unquestioningly react without evidence to inform our reaction, our reliance on our instincts can have real consequences for those affected by our bias.

Implicit bias factors into interactions that run the gamut from headline-grabbing police shootings to tipping the wait staff to how much you pay for a car. It affects school discipline from pre-school through high school. Being perceived as black or white can deter-

mine whether and where you are shown a home or apartment or whether you get a job interview.

How can we interrupt implicit bias, halt the "go-to" before it starts? The first step in interrupting implicit bias is understanding that it exists and knowing the facts.

- In a 2009 study, African-American and white candidates were interviewed for low-wage jobs. Candidates had identical resumes and identical interview training. Yet, whites with criminal records were offered jobs at the same rate as African-Americans with no criminal records.
- A 2003 study mailed thousands of identical resumes to employers with job openings. The resumes were randomly assigned a "white" sounding name (i.e., Brendan) or an African-American sounding name (i.e., Jamal). Brendan got a callback at a rate 50 percent higher than Jamal.
- Photographs taken after Hurricane Katrina showed people struggling through high water dragging garbage bags full of what they could salvage. Two stood out because of their captions: One AP photo of a black man was captioned: "A young man walks through chest-deep flood water after looting a local grocery store in New Orleans." The other AP photo showed a white couple, with the caption: "Two residents waded through chest deep water after finding bread and soda from a local grocery store after Hurricane Katrina came through the area."
- Participants in a 2017 study regularly judged a black man to be larger, stronger and more muscular than an identically sized white man. In a 2003 study of similar black and white faces participants showed a greater tendency to perceive anger and a threatening affect in the black faces.



- According to a study by the Yale Child Study Center, even at the pre-school level, teachers watch black boys more closely, because there is an expectation that these boys will misbehave.
- As part of a study on children and race commissioned by CNN, first graders were shown ambiguous pictures of black and white children together. Seventy percent of the white children felt that something negative was happening in the pictures, but only 38 percent of the black children did. Sadly, that same study showed that white children have an overwhelming bias toward whites and that black children do too.

As Greg Owens noted, implicit bias is rooted in normal cognitive processes. Community, workplace and family members working to disrupt implicit bias must remain aware that these biases are embedded in our brains, and that our greatest tool is knowledge.

He then closed with a quote from author James Baldwin that underscores both the enormity of the task and the value of each small step: "The world changes according to the way people see it, and if you can alter, even by a millimeter, the way people look at reality, then you can change the world."

Fucillo is NYSBA's senior messaging and communications specialist.

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On June 1, These NYSBA Committees and Sections Welcomed New Leadership. NYSBA's Executive Committee Welcomed Nine New Members.

Congratulations to the new Chairs, Co-Chairs and Executive Committee members. Thank you for your willingness to serve.

Committees

Committee on Annual Awards

John H. Gross, Chair
Ingerman Smith, LLP
Hauppauge, NY

Committee on Civil Practice Law and Rules

Souren Avetick Israelyan, Co-Chair
Law Office of Souren A. Israelyan
New York City

Domenick Napoletano, Co-Chair
Law Offices of Domenick
Napoletano
Brooklyn, NY

Committee on Immigration Representation

Camille Mackler, Co-Chair
New York Immigration Coalition
New York City

Prof. Sarah F. Rogerson, Co-Chair
Albany Law School
Albany, NY

Committee on Legal Aid

Sergio Jimenez, Chair
Brooklyn Defender Services
Brooklyn, NY

Committee on the New York State Constitution

Hon. Karen K. Peters, Chair
Permanent Commission on Justice
for Children
Woodstock, NY

Committee on Veterans

Robert A. Mulhall, Co-Chair
Staten Island, NY

Jessica D. Parker, Co-Chair
Tarrytown, NY

Sections

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Peter W. LaVigne, Chair
Goodwin Procter LLP
New York City

Commercial and Federal Litigation Section

Robert N. Holtzman, Chair
Kramer Levin Naftalis & Frankel
LLP
New York City

Dispute Resolution Section

Deborah Masucci, Chair
Masucci Dispute Management
and Resolution Services
Brooklyn, NY

Elder Law and Special Needs Section

Judith D. Grimaldi, Chair
Grimaldi & Yeung LLP
Brooklyn, NY

Environmental and Energy Law Section

Marla E. Wieder, Chair
U.S. Environmental Protection
Agency Region II
New York City

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Golenbock Eiseman Assor Bell &
Peskoe LLP
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Hon. Cheryl E. Chambers, Chair
Appellate Division, Second
Judicial Department
Brooklyn, NY

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New York City

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Thomas J. Hall, Chair
The Law Firm of Hall & Hall,
LLP
Staten Island, NY

Young Lawyers Section

Terrence Lee Tarver, Chair
Tarver Law Firm, P.C.
Garden City, NY

Section leader profiles may be
found at the Section home page.

Executive Committee

Aimee L. Richter
VP 2nd District

Robert T. Schofield
VP 3rd District

Jean Marie Westlake
VP 5th District

Richard C. Lewis
VP 6th District

Mark Arthur Berman
Member at Large

Evan M. Goldberg
Member at Large

Erica M. Hines
Member at Large

Rona G. Shamoon
Member at Large

Tucker C. Stanclift
Member at Large

Executive Committee member
profiles can be found at: <http://www.nysba.org/CustomTemplates/SecondaryStandard.aspx?id=27051>.

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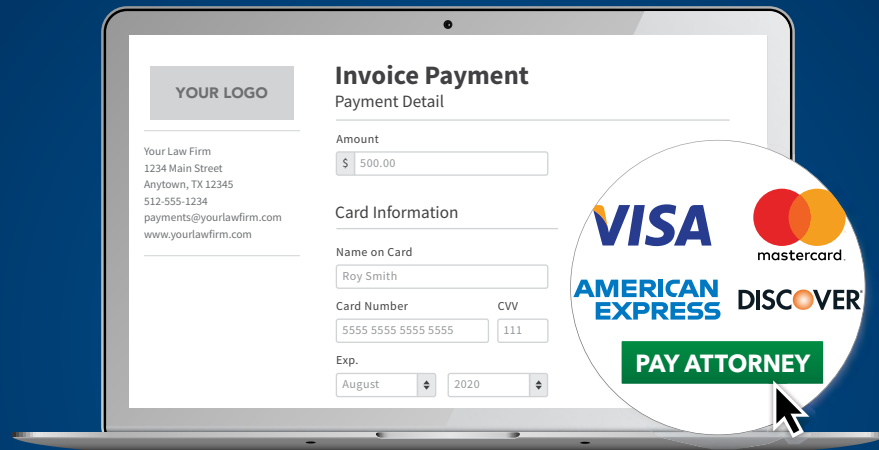
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Nominating Committee Seeks Candidates for NYSBA Offices

The Nominating Committee invites members of the Association to submit recommendations of themselves or others for consideration in developing its slate of nominees for Association offices beginning in 2019.

Members wishing to become an officer or member of the NYSBA Executive Committee should review Article VIII of the Association's Bylaws describing the Nominating Committee and nominations for office (www.nysba.org/bylaws).

As part of the selection process, candidates for the offices of president-elect, secretary, and treasurer may be required to appear in person before the Nominating Committee at its meeting on September 17 in New York City and at its meeting on November 2 in Albany.

Candidates for the office of member-at-large of the Executive Committee may be required to appear in person before the Nominating Committee at one of the two meetings. No appearance before the Nominating Committee is required for the positions of vice president, elected delegate (three for each judicial district), the one member-at-large recommended by the Section Delegates to the House of Delegates, and the member-at-large recommended by the Young Lawyers Section.

Offices for Nomination

The Nominating Committee is accepting and will be interviewing candidates for president-elect, secretary, treasurer, members-at-large of the Executive Committee – three (please indicate if you are seeking a regular seat or diversity seat). At least one of these members-at-large is selected to further ethnic and racial diversity in the Association and must come from a judicial district other than the First Judicial District, since there currently is a member-at-large selected to further diversity from that district.

Other Offices

The Nominating Committee does not decide on the names of the vice-presidents and the elected delegates that are presented to the House of Delegates for election at the Annual Meeting. (See NYSBA Bylaws, Article VIII § 1(A)(3).)

Similarly, the Nominating Committee does not decide on the names of the one member chosen by the Section Delegates to the House of Delegates and the one member chosen by the Young Lawyers Section to fill the position of members-at-large to the Executive Committee.

Therefore, candidates for these positions are not required to appear before the Nominating Committee. (See NYSBA Bylaws, Article VIII §§ 1(A)(4) & 1(A)(5).)

However, the Nominating Committee does encourage anyone interested in these positions to contact the vice-presidents of their respective judicial districts and/or the chairs of the Section Delegates to the House of Delegates and Young Lawyers Section to determine deadlines and such criteria as may be established for consideration to fill the positions of a vice-president, elected delegate, or Executive Committee member-at-large from the Section Delegates to the House of Delegates or Young Lawyers Section. For relevant contact information, please email your request to NominatingChair@nysba.org.

Special Eligibility Criteria for Candidates

A candidate for president-elect must have served as a member of the House of Delegates within five years preceding the time of nomination but need not be a member of the House at the time of nomination for office.

Candidates for the three member-at-large positions of the Executive Committee referenced

above must be current members of the House or section or committee chairs, or have served in such capacity within three years of the time of selection.

Nature of Service

The nature of service for Association offices is described in the Association's Bylaws (www.nysba.org/bylaws).

The president-elect, secretary, treasurer, 14 vice-presidents, and 11 members-at-large serve on the Executive Committee and in the House of Delegates, which manage the business and activities of the Association and generally meet quarterly. They also serve as liaisons to Association committees and sections.

The president-elect chairs the House, assists the president, and becomes president on June 1 of the following year. Persons serving as president and president-elect will receive a stipend of \$75,000 and \$37,500, respectively.

The secretary keeps a record of House of Delegates and Executive Committee meetings. The secretary also chairs the Resolutions Committee and serves as a liaison to the Section Delegates to the House of Delegates.

The treasurer serves as an *ex officio* member (as does the president-elect) of the Finance Committee, which oversees the financial affairs of the Association and meets approximately four times per year. The treasurer presents the Association's financial report at each House meeting.

Timetable for Submitting Recommendations

Members who are seeking office may place their names before the Nominating Committee by self-declaration or nomination.

Candidates for president-elect must submit their declarations of candidacy to the Secretary by **no later than September 1, 2018**.

Candidates seeking all other offices are strongly encouraged to file a declaration of candidacy and submit all background materials by September 1, 2018 to ensure adequate time for review by the Nominating Committee.

In making nominations, members are encouraged to keep in mind the Association's diversity policy, which was adopted by the House of Delegates in November 2003.

The policy emphasizes the commitment to achieving diversity in the "membership, officers, staff, House of Delegates, Executive Committee, sections and committees and their respective leaders. Diversity is an inclusive concept, encompassing gender, race, color, ethnic origin, national origin, religion, sexual orientation, age and disability."

Submissions must include a current curriculum vitae or resume; a maximum of five letters of support; a written statement of no more than 500 words setting forth the reason for seeking office; and a disclosure of any public professional discipline, sanction, and/or contempt finding by a court. Please direct this information to David P. Miranda, Chair, Nominating Committee, New York State Bar Association, One Elk Street, Albany, NY 12207 or by email to NominatingChair@nysba.org or by fax to 518-463-8527.

Timetable for President-Elect Candidates' Statements for Publication

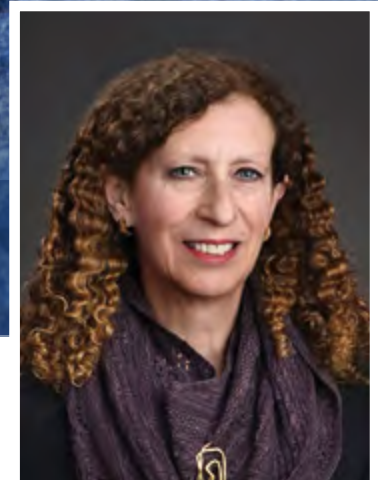
Each candidate for president-elect is invited to submit a 400-word statement for publication in *State Bar News* by **September 1, 2018**. For more information, please contact Dan Weiller at 518.487.5500 or dweiller@nysba.org.

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REPORT TO MEMBERSHIP 2017–2018

Immediate Past President's Message

The Year in Review



New York State Constitution

On November 7, 2017, a referendum on whether to hold a Constitutional Convention was placed before the citizens of the State of New York. This referendum appears on the ballot every 20 years. In preparation for the 2017 vote, NYSBA's special Committee on the New York State Constitution was hard at work, issuing a total of five reports, all of which were approved by our House of Delegates by overwhelming majorities. The last of the reports (approved by our House in June, 2017) proposed that the New York State Bar Association take a position in favor of the Convention. As a result, the Association advocated for the Convention, albeit with very limited resources, while opposition groups were well-funded and focused on various special interests. While the electorate (and some of our members) did not agree with us, we formed a bond with other good government groups and gained a considerable amount of

respect from the press. Many editorials in favor of the vote cited our Report as the basis for the editorial. This Report is available at <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=74494>.

Funding for Indigent Legal Services

One of our chief federal legislative priorities is increased funding for the Legal Services Corporation, but 2018 was a challenge because President Trump had recommended that LSC be totally defunded. Our leadership and staff lobbied our New York members of Congress several times during the year, and gained not only their support but also their leadership in helping to convince other members to support LSC. For the first time in many years, funding for LSC increased in 2018, with the amount allocated rising from \$385M to \$410M. As Congress considered the 2019 budget, we continued to lobby the New York delegation, and provided much-needed data and testimonials from

citizens within their districts who benefited from LSC-funded legal services. We are disappointed that the 2019 budget did not have another needed increase, but pleased that Congress has again allocated \$410M for 2019.

During the budget process in the New York State Legislature, we supported the judiciary budget in full, and the \$100M allocated within it to IOLA and to direct grants to Legal Services providers. We were pleased that the judiciary budget was adopted without criticism or comment.

We also fought against any increase in biennial registration fees for lawyers as a funding source for indigent criminal legal services, and we were pleased that the budget did not include any such fee.

Confidentiality for Lawyer Referral Services

One of our state legislative priorities was to achieve legislation that would ensure the confidentiality of all communications between

a client and a lawyer referral service. This would protect clients who contact either the NYSBA LRIS or any of the LRSs that are sponsored by our county bar associations. We are happy that our efforts with the Legislature were successful. The bill passed both houses unanimously and is awaiting transmittal to the Governor for signature. Our leadership has alerted the Governor's legal staff about the importance of this legislation to the Association.

Criminal Justice Reform

We were pleased that the subjects of criminal discovery reform and bail reform were presented by the Governor as part of the budget package, but we were disappointed that neither subject was included in the budget. Our leadership has met many times with Senate leadership to see if there could be any support for our bill on Criminal Discovery Reform, and we have written on several occasions to legislative leaders and the Governor to no avail. We have continued to

meet with key Assembly members and Senators in the hope that this may be achieved next legislative session.

Power of Attorney Reform

Our leadership, staff, consultants, and the Elder Law and Special Needs Section spent a lot of time and effort trying to secure the passage of our bill to simplify the POA form and to enforce the acceptance of statutory forms by all financial institutions. The bill passed the Assembly unanimously in June 2017, and had strong support in the Assembly again this year. However, we have not been able to move it to the floor of the Senate either in 2017 or 2018. We will continue to work with key Assembly members and Senators to achieve its passage next year.

Protecting Against Federalization of Tort Laws

Another one of our federal legislative priorities has been avoiding the usurpation of any tort laws, currently governed by the states, by the federal government. In particular, there is a bill pending before Congress that would use federal law to change New York's Labor Law § 240. We have vigorously opposed this bill and have consistently reminded the New York members of Congress that this bill is a serious encroachment on state law. The bill has not passed, and we will continue to oppose it.

Advocacy by Sections

Our Sections have worked with our Legislative Affairs staff to promote or oppose a variety of state and federal legislative or administrative actions. We are proud of the work of our Sections and the high regard that their reports are given. One such report, from the Environmental and Energy Law Section, was transmitted to President Trump, our first Association letter to the White House. The report sought reconsideration of the United States' withdrawal from the Paris Accords, and it was reported to us that the

report was given consideration by administrative staff.

Speaking Out for Justice and an Independent Judiciary

During the course of the year, there have been various criticisms of the judiciary, which were unwarranted and in derogation of the constitutional provisions of separation of powers. These took the form of attacks by the White House on individual judges, and a proposal by the Governor to require judges to certify their time in the courtroom. Whenever the judiciary was attacked, the Association responded with statements, press releases or letters. We never feared speaking truth to power on behalf of the judiciary.

We also tried to educate the public on the necessity of an independent judiciary and by championing all constitutional rights. This has included a number of articles and speeches embracing the Constitution's provisions for the separation of powers and all rights that the Constitution grants.

NYSBA on the National and International Stage

The American Bar Association held its Annual Meeting in 2017 in New York City and NYSBA was included in the planning and presentation of so many events. In February, 2018, the ABA House of Delegates adopted the NYSBA Report "If Not Now, When?" [<http://www.nysba.org/women-staskforcereport/>] on the role of women in litigation, and the need for new rules and paradigms to increase the role of women and minorities in litigation teams.

Our International Section helped to generate a relationship with the Seoul Bar Association, culminating in a Memorandum of Understanding between NYSBA and the Seoul Bar, and also one between the Seoul Bankruptcy Court and the Bankruptcy Court of Southern District of New York. The Section also created a voluntary code of professional conduct, approved by the Executive Committee. The Section will be compiling a list of lawyers and law

firms from around the world who pledge to follow it, in order to assist law firms in engaging ethical counsel from other countries.

Member Benefits

NYSBA is committed to improving the delivery of member benefits to all members, regardless of geography, demographics or practice setting. Our CLE department has made many improvements. In addition to adding new programs, there are new delivery methods. Members can receive a large discount on CLE when purchasing in bulk. Members can customize their CLE by purchasing only the segments of programs they want. This assures the delivery of high-quality targeted programming to all members, whether they attend in person, while seated at their computers, or listen while traveling.

NYSBA also continues to offer steep discounts on a number of products that enable better law office management: Professional Liability Insurance, Cybersecurity Insurance, Case Management Software, Fee Management Software and many other products. Many members report that these discounts more than exceed the cost of their dues. Make sure to check them all out. <http://www.nysba.org/CustomTemplates/Content.aspx?id=74189>.

NYSBA is committed to making payment of dues and purchasing products as easy as possible, and there have been a number of changes to achieve this. There are also a number of pilot programs and dues exceptions that can help ensure that all lawyers can be members regardless of financial constraints.

Challenges

As baby boomers retire and leave the profession, we lose many of our members. New lawyers, from smaller law school classes, have not replaced them in equal number. As a result, the Association faces some membership challenges and a concurrent reduction in dues revenue. We are not alone in this challenge. Almost every voluntary bar feels the same pinch. It means we need to do a better job commu-

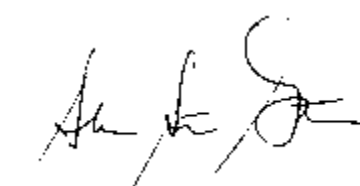
nicating the value of membership to all lawyers. You, our members, know all of the benefits of membership, both tangible and intangible. Please encourage your colleagues, your mentees, your lawyer children to become members. With a larger membership, we can do so much more.

May We Live in Interesting Times

An ancient Chinese blessing is "May you live in interesting times." In that respect, we are blessed. The past year has brought so many interesting issues, which I have tried to highlight in my President's Messages in the *Journal*. There is no shortage of issues we can work on through the Association. We need your expertise and your time and your commitment. Most of us went to law school to make a difference. Let us all take a little time away from our practices and fix something which needs fixing. Join a committee, volunteer within your Section to work on a committee or a project, or just contact NYSBA leadership or staff – we will put you to work!

Thank You

Words cannot express the joy and honor I have had being your President 2017-2018. Thank you for the opportunity to serve you, the profession and the public. Thank you to our amazing staff for all of their support. Thank you to all of the members who contacted me over the year to make suggestions or tell me when I was doing something wrong (or something right). Thank you to all of the volunteers on our committees, our Sections, our House of Delegates and our Executive Committee. The generous donation of the time and expertise of so many of our members makes this Association the best anywhere. Thank you.



Legislative Advocacy

Federal

In February, and again on ABA Day in April, State Bar Leaders, President Sharon Stern Gerstman and President-elect Michael Miller went to Washington, D.C. and met with key policymakers in the State's congressional delegation.

Legal Services Corporation: The NYSBA delegation was part of a successful lobbying effort to maintain – and to increase – funding for the Legal Services Corporation.

The delegation also expressed opposition to the proposed Infrastructure Expansion Act of 2017, which would effectively overrule parts of N.Y. Labor Law dealing with liability, and repeated its support for states' authority to regulate the tort system.

State

State Bar Leaders, President Sharon Stern Gerstman and President-elect Michael Miller led the Association's lobbying efforts on its 2018 legislative priorities.

The Legislature passed NYSBA's bill to ensure that communications between a legal referral service programs and consumers of legal services are deemed privileged on the same basis as communications between an attorney and client.

Our other legislative priorities include reforming the statutory power of attorney to simplify the form, ensure that a valid form cannot be refused, protect third parties who follow the process, and conform it with the statutory language

so a form cannot be invalidated due to harmless error.

NYSBA has long championed reforms to the right to discovery in criminal justice matters. The Association has submitted a legislative proposal, A.7292 (Lentol)/S.6848 (Avela), which allows effective provisions to protect witnesses while affording defendants the information to which they are rightly entitled.

The State Bar Association's leaders will continue to advocate for reform on these important issues.

Continuing Legal Education and Publications

Continuing Legal Education

NYSBA CLE continues to provide the best and most relevant continuing legal education programming for New York attorneys. We rely on our CLE volunteers – the judges and lawyers who for decades have been developing and presenting seminars, preparing rich collections of written materials and raising the bar for legal practice in New York. Last year more than 2,000 lawyers and judges volunteered.

- NYSBA is increasing the number of live and online programs we offer. In 2017, NYSBA presented 87 program topics in a variety of formats at 183 locations statewide. As of June 2018, NYSBA presented over 88 programs in 161 locations. Programs range from practice- and skills-based CLEs that introduce lawyers to new areas of practice to sophisticated Institutes that offer in-depth analysis for experienced attorneys. Almost all programs are recorded and made available in our Digital Media Library.
- NYSBA's popular "Bridging the Gap," a two-day program for newly admitted attorneys, is offered in Albany, Buffalo and New York City, with live presenters in each location.

- The Law Practice Management Committee focuses on the needs of solo and small firm practitioners. LPM produces CLE programs and publications and maintains a resource database on our website, providing up-to-date information and practical tips on how to manage and apply technology in day-to-day practice. Find programs on LPM-related topics at www.nysba.org/LPM.
- NYSBA's Digital Media Library offers over 4,000 programs on demand, with closed captioning available. Self-attestation now allows registrants to download MCLE certificates at the conclusion of a program. As technology advances, stand-alone CD products will be discontinued and replaced with a combined DVD/CD product, which includes the MP3 and MP4 downloads.
- NYSBA is developing a members-only all-access, CLE pass for online programming. Visit www.nysba.org/cle for additional information.

Publications

This past year, NYSBA published more than 26 books, supplements and form products, in addition

to downloadable forms and document assembly products created by experienced attorneys exclusively for attorneys practicing in New York.

Titles published include the 2017–2018 edition of our Practical Skills Series, a 19-volume set covering 26 areas of practice; new editions of *Commercial Leasing*, *Legal Manual for New York Physicians* and *Siegel on Entertainment Law*; and updates to *Probate and Administration of New York Estates*, *Estate Planning and Will Drafting in New York*, and *Construction Site Personal Injury Litigation*. All offer practical, real-world information and advice to help New York attorneys succeed.

The Association for Continuing Legal Education, the international association for CLE professionals,

recognized our three-volume *Disability Law and Practice* series with its "Award of Professional Excellence in Publications."

We continue to provide access to the complete NYSBA Online Publications Library through Fastcase. NYSBA members get electronic access to virtually all our reference titles at an exclusive discount, which more than covers the cost of membership.

We continue to publish the *New York State Law Digest* and the *NYSBA Journal*, which are also available on the NYSBA Periodicals app, and CasePrepPlus, a weekly e-newsletter summarizing recent and significant New York appellate cases. These are free to all NYSBA members. Our 26 Section publications (72 issues a year) are also available as e-books.

NEW YORK STATE BAR ASSOCIATION

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An exclusive member benefit, the CasePrepPlus service summarizes recent and significant New York appellate cases and is available for free to all NYSBA members. It includes weekly emails linked to featured cases, as well as digital archives of each week's summaries.

To access CasePrepPlus, visit www.nysba.org/caseprepplus.



Legal and Community Services

Pro Bono

The Association's Pro Bono Services Department partners with legal service providers, the courts, governmental organizations and law schools to provide pro bono service training, recruitment and guidance. The Association advocates for increased civil legal service funding and encourages and supports the generous pro bono work of members who carry out one of the proudest traditions of our profession.

The Association holds annual awards ceremonies that highlight our members' pro bono contributions. This includes recognition of Empire State Counsel® at the Association's Annual Meeting in January; the President's Pro Bono Service awards on Law Day in May; and the Denison Ray Civil Award and Phil Daley Award at our bi-annual Partnership Conference.

Closing the Access to Justice Gap

- NYSBA's Pro Bono Services Department administers ny.freelegalanswers.org as part of the American Bar Association's Free Legal Answers™ project. This project provides a web-based opportunity for lawyers

to do pro bono and for low-income New Yorkers to receive basic legal assistance.

- With a grant from The New York Bar Foundation, we developed the online immigration pro bono portal www.nysbaprobono.org to connect pro bono volunteers, mentors and service providers with each other, and with other valuable resources.

NYSBA's bi-annual Partnership Conference is scheduled for October 2–4, 2018, at the Capital Center in Albany. The Conference provides affordable and high-quality continuing legal education and networking opportunities for civil legal service and pro bono professionals from across the state.

Law, Youth and Citizenship (LYC) Committee

For the 25th year, LYC administered the New York State High School Mock Trial Tournament, with the final round on May 15, 2018, at the James T. Foley Federal Courthouse in downtown Albany. Preparations for the Tournament began last fall when the Mock Trial County Coordinators distributed case packets to high schools

throughout the state. This year's case centered on an allegedly disruptive high school student, school discipline and the school-to-prison pipeline. In all, 4,000 students and their teacher coaches from 400 high schools took part in New York's tournament, one of the largest in the nation. They were aided by 1,500 volunteer lawyers and hundreds of judges. Goshen Central High School took home the honors.

In July 2017, LYC administered its last Mock Trial Summer Institute, which drew 36 high school student-attendees. Work is now under way to create Mock Trial instructional videos for students, teachers, judges and attorney-mentors. The LYC-administered James Madison Legacy Project drew 28 teachers to a week-long training focusing on constitutional history and theory, and follow-up professional development. LYC's fall 2017 conference, "Participation in Government," brought 150 people to Lake George. In early 2018, the LYC-supported statewide "We the People" finals were held in Albany. LYC's fall 2018 conference will tackle "The Contours of Student and Faculty Free Speech Rights in a Politically Charged World."

Lawyer Assistance Program (LAP)

The Association's Lawyer Assistance Program provides confidential assistance to attorneys, judges, and law students who are struggling with substance abuse, mental health issues or other personal concerns that can potentially impact their abilities to successfully function in the legal profession. LAP also provides CLEs to professionals and educational programs to law school students on recognizing, preventing, and dealing with addiction, suicide, and other mental health issues. LAP helpline: 800.255.0569 / lap@nysba.org.

Lawyer Referral and Information Service (LRIS)

In 2017, the State Bar's Lawyer Referral Information Service launched an online referral platform for people seeking an attorney (www.FindaLawyerNYS.org). Putting LRIS in the online marketplace lets potential clients request a referral at their convenience and makes it easier to find LRIS panel attorneys. Additionally, the platform automates many of the back-end administrative tasks of LRIS and provides participating attorneys with consistent reporting, up-to-date data and an easy way to pay LRIS fees.

- LRIS received nearly 10,000 calls for assistance in 2017.
- LRIS engagement rate is 13.3%. (ABA average is 3%–8%.)

Diversity and Inclusion

Through educational programming and outreach in coordination with the Association's Committees and Sections, NYSBA's Diversity and Inclusion Specialist facilitates Association efforts to increase diversity and inclusion in Association leadership and in the legal profession.

NEW YORK STATE BAR ASSOCIATION

MIRANDA
Warnings

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NYSBA

Sections and Committees

NYSBA's Committees research and make recommendations on issues all lawyers care about. NYSBA's 25 Sections offer online communities, resources, innovative and substantive CLE programs and outreach to students, young lawyers and diverse attorneys.

Committee Highlights

The Association added three new Committees and a Task Force to study and to educate the Bar on cutting-edge issues:

- The Committee on Technology and the Legal Profession has produced a series of Best Practices videos and webinars on topics such as artificial intelligence, data protection, ethics, conflicts of interest and social media, and the EU's new data protection rules. Committee Chair Mark Berman guest-edited a NYSBA *Journal* devoted to technology and the profession.
- The Committee on Cannabis Law serves as NYSBA's focal point for the evolving legal status of cannabis at both the state and federal levels, helps educate lawyers about the issues and seeks to set the highest possible legal and business standards for legalized products. To expand its outreach, the Committee has invited Sections to appoint liaisons to the Committee.
- The Committee on Transportation Law studies the legal issues arising from cell phone app ride-sharing services and the advent of driverless cars and trucks.
- The Task Force on the School to Prison Pipeline has brought together stakeholders from youth courts, legal aid and legal services, DA's offices and school districts to examine current practice and law as related to school discipline. The Task Force is working on a report of its findings.
- The Committee on Diversity and Inclusion, in coordination with the CLE Committee,

co-sponsored a series of free diversity CLE programs that fulfill the new Diversity, Inclusion and Elimination of Bias MCLE credit. The Committee will continue to work with the CLE Committee on strategic programming and ensuring diversity in CLE program panelists.

With the support of The New York Bar Foundation, the Committee on Diversity and Inclusion held five Youth Law Day programs in partnership with various law schools throughout the State. Youth Law Day provides high school students from underserved communities with a taste of the law school experience and introduces the possibility that law school could be in their future.

At the reception for its annual Celebrating Diversity in the Bar program, the Committee honored two Diversity Trailblazers, the late Judge Sheila Abdus-Salaam (posthumously) and Barbara Finkelstein, Esq., CEO of Legal Services of the Hudson Valley, for their exceptional efforts to increase diversity and inclusion in the legal community.

In addition, the Committee presented its bi-annual (2017) Diversity Report Card to the House of Delegates and the Executive Committee.

- The Committee on LGBT People and the Law and the Failla Commission of the New York State Courts co-sponsored a CLE on "Mindful Communication: Exploring Implicit Bias" that fulfilled the D&I credit. The Association endorsed the Committee's recommendation to amend the Unified Court System's rules prohibiting discrimination to include "gender identity" and "gender expression."

Section Highlights

Activities

At its 2018 Regional Meeting in Seoul, Republic of Korea, the International Section signed a Memorandum of Understanding with the Seoul Bar Association. The Real Property Law Section offered a CLE on zombie houses. The Business Law Section has subscribed to a service that tracks New York State bills in areas of specific interest to its members.

Diversity

The Corporate Counsel Section offered "What Organizations Can Do to Prevent the Discriminatory Effects of Implicit Bias." The Dispute Resolution and the Labor and Employment Law Sections each offer seven diversity fellowships. The Dispute Resolution Section instituted a Diversity Mentoring Program, pairing five attorneys with experienced lawyers. The Health Law Section offers eight-week summer diversity fellowships. At its second annual Government Law Spring Forum, the Local and State Government Law Section covered "Minority and Women-Owned Business Enterprise Purchasing in New York."

Mentoring

The Intellectual Property Law Section offers two-year fellowships designed to provide Section leadership opportunities to young law-

yers. The Trial Lawyers Section is organizing Law Student and Young Lawyers Committees to increase involvement in Section leadership.

Joint Efforts

At the 2018 Annual Meeting, the Corporate Counsel and Business Law Sections held collaborative programming, as did The Trial Lawyers and the Torts, Insurance and Compensation Law Sections. The General Practice Section teamed with the Committee on Professional Discipline for a sold-out Annual Meeting program on "Loose Lips and Emailing Lawyers," which also included a CPLR update. The Entertainment, Arts and Sports Law Section and the Intellectual Property Law Section teamed up in February for their annual pro bono clinic for struggling artists and not-for-profit arts organizations. This Spring, the Dispute Resolution and Commercial and Federal Litigation Sections held a joint program on the "Underutilization of Mediation in New York and What Can Be Done About It."

Sold Out

Young Lawyers Section 9th Annual Trial Academy

Antitrust Section's inaugural William Howard Taft Lecture

Family Law Section 2017 Summer Meeting

NEW YORK STATE BAR ASSOCIATION

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For your **dedication**,
For your **commitment**, and
For recognizing the **value** and
relevance of your membership.

As a New York State Bar Association member, your support helps make us the largest voluntary state bar association in the country and gives us credibility to speak as a unified voice on important issues that impact the profession.

Michael Miller
President

Pamela McDevitt
Executive Director

House of Delegates

Reports Approved by the House

November 2017

The Trusts and Estates Law Section outlined a proposal for a New York Trust Code, which would enable codification of changed practices and case law.

The New York County Lawyers Association produced a report that reviewed issues related to providers of online legal services and made recommendations for regulations and best practices.

The Committee on the New York State Constitution produced a final report recommending that a convention be held with the goals of fixing New York's court structure, lifting barriers to voter participation, balancing the power between local and state governments, and streamlining the Constitution itself.

The Commercial and Federal Litigation Section produced a report on the number of women lawyers who serve as litigators, arbitrators and mediators, with recommendations as to steps firms, ADR providers and clients can take to increase the number of women in litigation and ADR settings. NYSBA presented a resolution to the ABA House of Delegates in February 2018, which was approved.

January 2018

The Committee on Immigration Representation presented a report urging that the U.S. Immigration and Customs Enforcement (ICE) include courthouses as a "sensitive location" in its Sensitive Locations Policy and that Congress pass the Protecting Sensitive Locations Act and amend the Immigration and

Nationality Act to codify ICE's Sensitive Locations Policy.

The NYSBA/WBASNY Domestic Violence Initiative produced a report reviewing the Initiative's work during the past year and recommending that its work in the areas of training and education, expanding pro bono opportunities and resources, and legislation to protect domestic violence victims be continued. In response, the Family Law Section has added a new Domestic Violence Task Force.

The Criminal Justice Section put forth a measure that supports elimination of cash bail for those facing misdemeanor or nonviolent felony charges in New York State and calls for the training of judges, court personnel and lawyers to better understand the alternatives to cash bail.

April 2018

The Criminal Justice Section presented a report and recommendations to improve New York State's more than 1,200 town and village courts.

NYSBA's Committee on Families and the Law put forth a memorandum in support of state funding for and oversight of the mandated parental representation provided to indigent parents. The report's recommendations include full state funding for mandated parental representation, higher quality representation and a mechanism for statewide oversight of such representation.

Reports are available at www.nysba.org/substantivereports/.

The New York Bar Foundation

Because of your generosity, The Foundation presented its largest number of grants in several years. Nearly \$700,000 in grants helped fund more than 100 programs across New York State that address some of the most fundamental issues in our society: homelessness, domestic violence, immigration, and services for the elderly and children.

Additionally:

Nearly \$200,000 was distributed to law students through fellowships and scholarships including funds from the Catalyst Public

Service Fellowship program, which The Foundation began administering in 2017. Law students from across New York State are able to apply to The Foundation for fellowships and scholarships that provide invaluable educational opportunities and much-needed financial assistance, and have a remarkable impact as these students embark on their path to the profession.

In their second annual 24-hour giving challenge, the Young Lawyer Friends of The Foundation and the Young Lawyers Section raised more than \$9,000 to help fund non-profit organizations throughout the

state that assist veterans in need of legal services.

Lawyers and friends across New York State donated funds to assist those in need of legal services after the hurricanes and flooding that devastated Texas, Florida, Puerto Rico and the U.S. Virgin Islands. A call for assistance generated more than \$30,000, which was sent to organizations in these badly impacted areas.

Generous gifts from the Business Law and Family Law Sections were used to establish two new funds to provide grants to organizations in Business Law- and

Family Law-related legal services programs. John H. Gross, President of The Foundation noted, "These gifts are examples of how the NYSBA and Foundation can work together to make a difference via the grant program to those in need of legal services."

When you give to The New York Bar Foundation, you make a difference. By working together for the greater good, you help assist people throughout the state and beyond with life-changing legal matters. Thank you.



Foundation Memorials

A fitting and lasting tribute to a deceased lawyer or loved one can be made through a memorial contribution to The New York Bar Foundation.

To make your contribution call **The Foundation** at **(518) 487-5650** or visit our website at www.tnybf.org



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Finances

NYSBA Finances

The New York State Bar Association is committed to being accountable to its members and the public for its finances.

The Association works hard to ensure that member dollars are used to create professional, public service, and educational activities and benefits in the diverse and changing legal profession. Copies of the complete audited financial statements for the years 2017 and 2016 are available to members and may be obtained by contacting Kristin M. O'Brien, Senior Director of Finance, kobrien@nysba.org.



Revenue and Support:

Dues	\$10,054,000
Annual Meeting	\$897,000
Investment Income	\$1,035,000
Other	\$168,000
Books and Publications	\$1,204,000
Administration Fees and Royalties	\$2,476,000
Sections	\$3,771,000
Continuing Legal Education	\$3,154,000

Assets:

Cash	\$1,057,000
Investments	\$43,959,000
Property and Equipment	\$2,313,000
Other Assets	\$2,171,000

A Conversation With Susan Harper, Chair of the NYSBA Women in Law Section

Continued from page 7

Sexual Harassment in the Workplace.”

A look at the numbers in the profession shows the need and opportunities for a Women in Law Section. For the past 20 years, approximately 50 percent of law students have been women. NYSBA estimates that currently 40 percent of attorneys in New York State are women. Women, however, make up only 19 percent of law firm equity partnership – up 3 percent in a decade – and 30 percent of non-equity partners. American Bar Association data finds 24 percent of Fortune 500 companies have female general counsels.

The gender gap also is present in the role of trial attorneys, as described in NYSBA's Commercial and Federal Litigation Section 2017 report “If Not Now, When?” It found that female attorneys comprise just 25.2 percent of attorneys appearing in commercial and criminal cases in state and federal courts in New York State and 19.5 percent in complex commercial matters. In alternative dispute resolution, only 11 percent

of arbitrators and 18 percent of neutrals are women. On average, 35 percent of federal judges and 31 percent of state judges are women.

We certainly have made progress, and, with our new section, we have an incredible opportunity to achieve more.

Will the Section Be Collaborating With Other NYSBA Groups and Other Organizations?

As a committee, we have worked with other sections and committees within NYSBA addressing gender issues. In addition to promoting the Commercial and Federal Litigation Section's report on women in the courts and ADR in the May 2017 NYSBA *Journal* devoted to women's issues, we incorporated the report's findings in both of our capstone programs: Women on the Move and our 2018 Spivack Symposium at Annual Meeting. We also collaborated with the Labor and

Employment Law and Corporate Counsel Sections on our May #MeToo CLE program. Many other sections, such as Antitrust, have generously supported our programming over the years. Such coordination leverages the impact we have in addressing gender issues.

What Initiatives Do You Foresee for the Section?

We will be expanding our current projects including addressing women's issues through legislation, public policy initiatives and engagement. In recent years, there has been a significant amount of legislation introduced in New York State impacting women.

As a section, we also will ultimately be able to provide more professional development resources and support to women in the profession at all stages of their careers through such means as mentoring, enhancing skill sets, executive leadership development, and networking events. We will work

with law firms, corporate counsel, and government and public service offices to reach out to women in the profession for their insight and feedback on what will help them most. We have also discussed developing support for the reengagement of women in the legal profession when they “off-ramp” to take off time to have and raise children, care for the elderly, or fulfill military obligations or for other reasons.

Geography is critical to us. Through our membership and outreach, we want to ensure that we are involving and reaching people throughout New York State, as well as our out-of-state members. In essence, becoming a section enables us to expand our footprint to serve women in society and the profession.

For more information about the work of the section and to join the Women in Law Section, visit <http://www.nysba.org/womeninlaw/>.

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