

JUDICIAL DISPATCH



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PRESIDING MEMBER'S MESSAGE



Marsha L. Steinhart

By virtue of my position as Presiding Member of the Judicial Section, I was asked by the editor of the Judicial Dispatch, Honorable Deborah Karalunas, to prepare an article detailing the highlights of my term of office, having been installed at the Annual Meeting/Luncheon in January by the Honorable Jenny Rivera, and assuming my duties on June 1. I honestly can say it has been a fast paced and fun six months.

My immediate and more visceral response, however, to Deb's request was to reflect on a different submission by me, to a different judicial publication (*The Jurist*), in the winter of 2007 when I served as President of the Association of Justices of the Supreme Court. My article was filled with gloom. The financial picture for the judiciary was dismal and the future looked bleak. Efforts to obtain a salary increase repeatedly were rebuffed, and there was dissension and unpleasantness among colleagues and friends. It was a most difficult year for everyone. My term of office ended, a new year dawned but our salary was stagnant and was predicted to remain so. Several years later, the wisdom and vision of Chief Judges Kaye and Lippman came to fruition: a quadrennial Judicial Salary Commission was created: our members received a long overdue salary increase and an independent mechanism to assess future salary adjustments. Throughout those "lean years," no judge slacked off from his or her work and justice was dispensed unaffected by the financial frustration of the judges. The lawyers and the litigants observed the judiciary at its most courageous – serving with grace under pressure.

My current position gives me time to reflect on the State of the Judiciary and how we have grown and prospered. Shaped by our own experiences, we will, as always, do justice and know mercy.

The Judicial Section is flourishing. This year, we hope to begin a collaboration with the Young Lawyers Section of the New York State Bar to institute a mentoring program designed to direct young professionals along the right road. In doing so, undoubtedly, we also will benefit from the wisdom of youth. In addition, we intend to collaborate with the Women's Bar Association of the State of New York on a CLE at its Annual Convention in May. The proposed topic is implicit bias. I welcome any and all thoughts or suggestions you have on this important topic.

I want to thank NYSBA President Claire Gutekunst for her complete and unfailing support of the judiciary. In addition to her other important work, Claire has instituted a Membership Initiative, whereby each section of the Bar is requested to increase its membership numbers. I urge all of you who are not yet members of both the Association and Judicial Section to please join. You may call the State Bar at 800-582-2452 or join on line at www.nysba.org/join. Together, we can achieve so much more!

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"Justice is not to be taken by storm. She is to be wooed by slow advances. Substitute statute for decision, and you shift the center of authority, but add no quota of inspired wisdom." Benjamin N. Cardozo, 1923

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The Judicial Dispatch is your newsletter. To receive future complimentary paper editions, you must be a member of NYSBA's Judicial Section.

I welcome submissions on topics of interest to the members of our Section. If you have an article or announcement you would like considered for publication, please send it to me in electronic format. The views expressed in articles in this newsletter are not necessarily the views of NYSBA, the Judicial Section, or its Officers.

MESSAGE FROM THE CHIEF JUDGE

Greetings. A year ago in this space, I shared with you my thoughts about the needs and future direction of the New York State courts, and I described the objectives of the "Excellence Initiative," our top-to-bottom examination of court operations and processes focused on our core obligation of ensuring the just and efficient resolution of all matters that come before us.

One year later, I am pleased to report that the New York courts are making real progress and improving our performance in many key areas. I am gratified by the energy and enthusiasm with which our Administrative Judges, trial judges and nonjudicial staff have embraced the goals of the Excellence Initiative in their Courts and Districts around the State.

I have no intention or desire to downplay the enormous challenges that lie ahead, but it is apparent after a year of focused attention on operational issues that our criminal, civil and family courts are managing cases more efficiently, reducing backlogs and delays and providing better justice services. I will be reporting in depth on the Excellence Initiative and highlighting some of the progress we have made in my first "State of Our Judiciary Address," scheduled for February 22nd. I encourage you to join us at the Bronx Hall of Justice or view the live webcast at www.nycourts.gov.

As part of the Excellence Initiative, Administrative Judges and Supervising Judges have attended leadership training sessions at the New York State Judicial Institute, our judicial training and education center, with an additional session planned for top nonjudicial court managers later this year. The curriculum, developed by the New York State Judicial Institute in close consultation with the National Center for State Courts, was tailored to the specific operational issues we face in New York and included nationally recognized leadership experts.

We are also working with Judge Juanita Bing Newton, the Dean of the Judicial Institute, to ensure that the philosophy and objectives of the Excellence Initiative are integrated into our educational programming for all judges, court attorneys and court managers. To this end, I am pleased that we are re-introducing the Summer Judicial Seminars this year to provide judges with in-depth, skills-based training to help them handle their daily caseloads and operational challenges. Having attended the Summer seminars myself, I know that they strengthen collegiality as judges from different parts of the State share their successes and struggles with each. In a system as large and diverse as ours, it is important that we move forward together as a team of supportive partners fully committed to a shared vision and mission for our courts.

As judges, we know well that meaningful reform of the justice system is not possible without the cooperation and support of countless stakeholders, including the organized bar in all its different forms, prosecutors and law enforcement, public defenders, elected and appointed officials at all levels of government, social service agencies, civil legal service providers, community groups and nonprofits.

Judges need to work at building productive networks and relationships with our justice partners at every level. One thing I learned while serving in Family Court, County Court, Supreme Court and as the Supervising Judge of the Criminal Courts for the Ninth Judicial District is that when we demand excellence from the litigants who appear before us – meeting deadlines; providing meaningful updates and reports; being prepared in court – not only do they perform better but we, the judges responsible for these cases, are far better positioned to facilitate swift, effective and lasting justice outcomes.

As we move into 2017, we have good reason to be excited about the future of our State court system. Our institutional focus on strengthening case management and court operations is showing signs of success, and it is clear that we have the individual and collective talent – and the will – to make our courts better in every way. I am grateful to our trial judges and nonjudicial staff for their hard work on the front lines, and to Chief Administrative Judge Lawrence Marks and our Administrative and Supervising Judges for leading the way. I am confident that, together, we will deliver on our promise – our core obligation – of providing fair, timely and affordable justice to all New Yorkers.



Hon. Janet DiFiore

CONSIDERING A POTENTIAL STATE CONSTITUTIONAL CONVENTION

By: Henry M. Greenberg



Henry M. Greenberg

When it comes to Constitutions, the organized Bar bears a singular responsibility. Every lawyer takes an oath of office in which he or she pledge to "support the constitution of the United States, and the constitution of the State of New York." It's not a coincidence that 34 of the 55 delegates who produced the U.S. Constitution were lawyers, or that the primary authors of New York's first State Constitution were lawyers. Nor is it a coincidence that lawyers fill all nine seats on the U.S. Supreme Court and all seven seats of the New York Court of Appeals. By training, disposition and solemn oath, judges and the lawyers that appear before them are the primary guardians of our constitutional rights, privileges and immunities.

New York's Constitution mandates that every 20 years New Yorkers are asked the following question: "Shall there be a convention to revise the constitution and amend the same?" The next such mandatory referendum will be held on November 7, 2017. It presents a constitutional choice of profound importance; a once in a generation opportunity for the State to reinvent itself. We will not have this opportunity again for another twenty years.

To help lay the foundation for a serious and thoughtful public dialogue regarding the mandatory referendum, the State Bar Association established The Committee on the New York State Constitution. The Committee's membership is diverse, distinguished and experienced. It includes four former State Bar presidents; two former judges of the Court of Appeals; the presiding justice of the Appellate Division, Third Department; former state and local legislators; former high-level executive and legislative branch officials; and other distinguished members of the Bench and Bar from around the State.

Since its establishment in July 2015, the Committee's members have accomplished a great deal. They met with metronomic frequency, heard presentations from 23 distinguished authorities on different aspects of the State Constitution, and sponsored CLE programs that provided valuable information about a potential Convention and related issues. Additionally, the Committee issued lengthy reports on the Establishment of a Preparatory State Commission on a Constitutional Convention; Constitutional Home Rule; and the Environmental Conservation Article of the Constitution. Each report was unanimously approved by the State Bar's House of Delegates, and been praised for its scholarship and thoughtful treatment of important issues.

Most recently, on December 12, 2016, the Committee issued its fourth report on Article VI of the Constitution (known as the Judiciary Article), entitled "Opportunities to Restructure and Modernize the New York Courts." More than 16,000 words long, and representing approximately one-third of the Constitution, Article VI creates the structure and organization of the Unified Court System in New York. By contrast, Article III of the U.S. Constitution, which outlines the court system for the federal government, consists of a mere 375 words.

In its report, the Committee reviewed a multitude of issues governed by Article VI, including its history, the design of our court system, and methods used for selecting judges of different courts. The Committee found that Article VI represents "an unnecessarily large and complex portion of the State Constitution," and raises critical aspects of New York's legal system that are ripe for discussion if a Constitutional Convention is called in 2017. Indeed, the report maintains that a Convention would provide an opportunity to institute reforms that would "reorganize, modernize and simplify the constitutional structure of the Unified Court System," and "improve the Judiciary in New York."

Over the course of 2017, leading-up to the Convention vote in November, the Committee shall continue this important work, guided by the conviction that our State Constitution "deserves to be better understood by those fortunate enough to live under it." David P. Currie, *The Constitution of the United States: A Primer for the People* (2000).

*Henry M. Greenberg is a shareholder with Greenberg Traurig, LLP. He is Chair of the New York State Bar Association's Committee on the New York State Constitution, and is Vice President for the 3rd Judicial District. The views expressed in this article are not necessarily the views of NYSBA, the Judicial Section, or the Judicial Council.

Join us

**Judicial Section
Annual Reception and Luncheon
Friday, January 27, 2017
Mercury Ballroom and Rotunda, 3rd Floor
New York Hilton Midtown**

GROWING UP IN THE BRONX

By: Hon. Harold J. Bauman

As a teenager growing up in the Bronx, my summers were spent doing my favorite things. Mornings saw me in the Bronx County Courthouse following civil and criminal trials. Afternoons were spent across the street in Yankee Stadium watching the likes of Joe DiMaggio, Mickey Mantle, Yogi Berra and Phil Rizutto.

My lasting impressions were that the Yankees were baseball's best and that helping people was what the Courts did best. I saw wise, compassionate judges and, sometimes, judges who practiced under a lesser standard. I chose to follow the best. Knowing that I could never be a baseball player, my dreams turned to the judiciary. I wanted to be a judge.

Life takes unanticipated twists and turns. During my career as a rocket scientist, I went to law school at night. After practicing law for decades in a rural upstate community, I ran for and was elected to the bench. My boyhood dream was realized. I cannot help but reflect on how lessons learned in Bronx Supreme shaped my career on the bench.

The hallmark of a judge is service to others. At our best we are imbued with a selfless devotion to the interests we serve – our litigants and the law. I am proud to be a judge who answers the call of justice even at 2:00 a.m. in January.

And I'm equally proud to embrace the idealism of participation in the New York State Magistrate's Association ("NYSMA"). Because of NYSMA, I have had the chance to make a difference by advocating for necessary reform. Alone, my efforts would accomplish little, but NYSMA, like other judicial associations and the New York State Bar Association, has a strong and accepted voice with influence in government. I view the great privilege I have been given to serve

NYSMA as an opportunity to pay it and the judiciary back for everything they have given me.

I see the most important role of judicial associations as preserving and protecting the essence of justice. We do this by giving members high quality judicial and ethical education courses, authoritative texts and periodicals, plus the opportunity to get to know some of the finest judges in the state. Active participation in judicial associations nurtures the soul of our great profession.

During my term as NYSMA's president, I devoted myself to this ideal. We will make NYSMA relevant to all our members. We will advocate for justice and for needed reforms in the justice system.

In my first five months as NYSMA'S President, I traveled throughout the State attending the swearing in of two judges, four retirement dinners, attending a status and legislative meeting with Judge Coccoma, our administrative judge, and a joint meeting of a County Bar and a County Magistrates Association. Judges Gary Graber, Tanja Sirago, Jonah Triebwasser and I toured the halls of our legislature in Albany to promote our legislative agenda. We spoke with counsel and representatives of senators and assemblypersons who were receptive to the laws we proposed and the rationales behind them. Our meeting with Kathleen O'Keefe, Esq., speaker Carl Heastie's attorney, was especially noteworthy. She gave us more than an hour and a half of her and the speaker's time, asked the right questions, and understood and appreciated our altruistic attitude of "Doing the Right Thing." A week or two later, Assemblyperson Gunther advised that she would sponsor one or more of our bills.

As I look to the future of NYSMA, I invite your feedback, ideas and suggestions about how we can best meet your needs and ex-



Harold J. Bauman

pectations, and how can we help you to be competent professionals and successful in our rapidly changing profession. This is an opportunity to see what we are doing well, what we can do better, and how we can help meet "the challenges of increasing court demands and expectations." I encourage all of you to be actively involved in your associations and communities and to take advantage of the many benefits of membership in your respective professional associations. Because of NYSMA, I had the chance to make a difference by advocating for necessary reform. In the words of Yogi Berra, "The future ain't what it used to be." Let's work together to make it even better.

honoring

Hon. Lawrence K. Marks
Hon. William C. Thompson
Hon. Milton Mollen

OMITTING THE CONSTRUCTIVE POSSESSION INSTRUCTION: IS THE DEFENDANT PREJUDICED?

By: Hon. David S. Zuckerman

Law enforcement authorities obtain a warrant to search a specific residence for drugs and drug packaging materials. When they execute the warrant, they find drugs as well as papers, such as utility bills, connecting the residence to an individual named Olive Oyl. Oyl is not present at the time the warrant is executed. In fact, she had been incarcerated on an unrelated charge for weeks. The prosecutor presents the case to the Grand Jury which votes a true bill charging Oyl with possession of the drugs. After arraignment on the indictment, Oyl's attorney makes a motion to "inspect and dismiss." CPL §§210.20.210.35. The court reviews the transcript of the grand jury proceedings and finds the evidence sufficient to support the charges but is surprised to find that the prosecutor, when giving final instructions on the law, omitted what is commonly known as the constructive possession instruction. The issue before the court is whether the prosecutor was required to instruct the grand jury regarding constructive possession.

Most experienced criminal defense attorneys with whom I have spoken reflexively answered the question in the affirmative. Two years ago, in *People v. White*, 49 Misc3d 1105 (Kings Cty. 2015). Judge Williams agreed and dismissed a gun possession indictment solely because the prosecutor did not charge the grand jury with the law regarding constructive possession. But, is the charge truly required?

Analysis begins with reviewing the requirements for instructing a grand jury. Pursuant to CPL §190.30(7),

"Whenever it is provided in article sixty that a court presiding at a jury trial must instruct the jury with respect to the significance, legal effect or evaluation of evidence, the district attorney, in an equivalent situation in a grand jury proceeding, may so instruct the grand jury."

Thus, the People may not abdicate their role as Legal Advisor by failing to provide appropriate instructions or by giving improper instructions to the Grand Jury. The Court of Appeals, however, has diluted the statutory mandate. In *People v. Dillon*, 87 NY2d 885, 887 (1995), the Court held that there is a "lesser standard for measuring the sufficiency of Grand Jury instructions." A more specific standard was set forth in *People v. Calbud, Inc.*, 49 NY2d 389, 394-395 (1980)

where the Court noted that a prosecutor's instructions to the grand jury are "sufficient if the [prosecutor] provides the Grand Jury with enough information to enable it intelligently to decide whether a crime has been committed and to determine whether there exists legally sufficient evidence to establish the material elements of the crime." See also *People v. Goff*, 71 NY2d 101 (1987).

Turning to the applicable law, pursuant to Penal Law §10.00(8), "possess" is defined as "to have physical possession or otherwise to exercise dominion or control over tangible property." More commonly, there are two categories of possession: actual or constructive. Typical examples of physical or actual possession are when a person has an object in his or her hand or clothing. Constructive possession occurs when a "person exercises a level of control over the area in which the property is found, sufficient to give him or her the ability to use or dispose of the property." CJI 2d Penal Law Article 220. A common example of constructive possession is when an object is found in a person's home even though the person is not then present. Thus, the statutory definition of possession "expands the scope" of a number of possessory offenses. *People v. Tirado*, 47 AD2d 193 (1st Dep't 1975) *aff'd* 38 NY2d 955 (1976).

There are a legion of published decisions addressing the sufficiency of trial evidence in cases in which the prosecution relied upon a theory of constructive possession. A seminal case in New York is *People v. Manini*, 79 NY2d 561 (1992). In *Manini*, a drug possession case, the Court further expanded the applicability of constructive possession to situations where the defendant has dominion and control of drugs "as a result of his authority over the person who actually possesses them, rather than through his access to or control over the place where the drugs are kept." *Id.*, at 574.

It seems axiomatic that the concept of constructive possession is beyond the knowledge of a typical grand juror. Nonetheless, there are very few published decisions that address whether a finder of fact must be instructed regarding the law of constructive possession. It has been suggested that the dearth of published writings on the subject signifies that the law is clear and unambiguous. *People v. White*, *supra*, is one of the rare decisions where the court specifically addressed the issue. In support of her decision to dismiss the indictment, Judge Williams cited *Manini* and



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People v. James, 196 AD2d 747 (1st Dep't 1993) *lv denied* 85 NY2d 863 (1995) for the proposition that a "constructive possession charge is not necessary only where the People rely upon actual possession." Neither of the cited cases, however, actually stands for that proposition.

In *Manini*, the Court addressed two distinct factual scenarios to determine whether the prosecution had presented sufficient evidence to the grand jury to establish, *prima facie*, that the defendants possessed drugs that were recovered from others. The analysis involved application of the doctrines of accessory liability and constructive possession. However, the Court did not reach the issue of whether a constructive possession instruction was, in fact, required. In *James*, a robbery case, the prosecutor did not instruct the grand jury regarding constructive possession in connection with a weapon that was recovered by the police. In analyzing the omission, the First Department held that "the evidence before the Grand Jury supported defendant's actual, not constructive, possession, of the gun in question." *James*, 199 AD2d at 748. Thus, neither case stands for the proposition that the prosecutor is required to charge the grand jury with constructive possession. In fact, surprisingly, this author has not located any published appellate decision that categorically holds that a prosecutor is required

to give such instruction to the grand jury.

The First Department has suggested that a prosecutor is never required to give the grand jury a constructive possession instruction. In *People v Hewitt*, 233 AD2d 171 (1st Dep't 1996), a case factually similar to the Olive Oyl scenario, police officers executed a search warrant for an apartment and recovered contraband along with telephone and utility bills bearing the defendant's name. The defendant was arrested outside the premises with the keys to the apartment on his person. The trial court dismissed the indictment based on the prosecutor's failure to instruct the grand jury regarding constructive possession of the contraband. The First Department reversed.

The First Department began its analysis by examining the statutory difference between a court's obligation to instruct a petit jury versus the Legal Advisor's obligation to instruct a grand jury. Pursuant to CPL §300.10(2), a court must charge a petit jury with "the material legal principles applicable to the particular legal case." The First Department contrasted that requirement with CPL §190.25(6), which requires that the grand jury be instructed "[w]here necessary or appropriate."

While the *Hewitt* court acknowledged that it was addressing the particular facts of the case, it added, as a rationale, "only the People could be prejudiced if the Grand Jury misunderstood possession to be limited to physical possession by the defendant." If only the People could be prejudiced by the omission, the prosecutor does so at his/her own peril. The clear implication from the First Department's decision is that a prosecutor is never required to instruct a grand jury regarding constructive possession.

Two years later, the First Department applied the same rationale to a very different case. *People v Newspaper and Mail Deliverers' Union of NY and Vicinity*, 250 AD2d 207 (1st Dep't 1998) *lv den* 93 NY2d 877 (1999) involved a labor union charged with enterprise corruption. Upon Defendant's motion to inspect and dismiss, the lower court found the instructions given to the grand jury insufficient. The First Department reversed, finding that the prosecutor's legal instructions imposed a heightened standard of criminal liability than was required by applicable statutes. As in *Hewitt*, the court held that "defendant can hardly claim to have been prejudiced by the advantageous instruction..." *Id.*, at 215.

In these two cases, the First Department seems to have carved out a new doctrine for analyzing deficiencies in grand jury proceedings: whether the given or omitted instructions benefited the defendant by setting a higher evidential burden on the prosecution. Applying that test to constructive possession, we first turn to the instruction. CJI 2d Penal Law Article 220, provides:

"POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property. Thus a person may possess property in either of two ways:

First, the person may have physical possession of property by holding it in his or her hand, or by carrying it in or on his or her body or person.

Second, the person may exercise dominion or control over property not in his or her physical possession. A person who exercises dominion or control over property not in his or her physical possession is said to have that property in his or her constructive possession."

Clearly, the instruction provides two separate theories for the finder of fact to apply in a case of possessory crimes. In *Hewitt*, the First Department implied that, without the second prong of the instruction, the People would be limited to proving actual or physical possession. By adding the second definition, there are significantly more scenarios where possessory crimes can be charged. Put another way, as the First Department held, omitting the second part of the instruction could only prejudice the prosecution.

Most would agree that the specific legal definition regarding constructive possession describes a concept that is likely beyond the ken of typical grand juror. Thus, a prosecutor relying on a constructive possession theory would normally be required to define it for a grand jury. *Valles*, 62 NY2d at 38. Pursuant to *Hewitt*, however, the prosecutor can freely omit the instruction.

Lastly, notwithstanding the difference in charging requirements between petit and grand juries, if the above analysis is correct, it would apply equally to a court's final instructions at trial. Thus, following the First Department's analysis, a court is never required to grant a defendant's request for a jury instruction regarding constructive possession. Of course, if the above analysis is correct, defense counsel should not even be requesting the instruction.

Membership in the Judicial Section

I invite you to join NYSBA and OUR Judicial Section. United as one body, we strive to promote, insure and deliver justice. We have worked hard to make membership in the Section valuable and rewarding. So please join the more than 300 judges at all levels of the state judiciary who already enjoy the many privileges afforded by their affiliation with NYSBA and the Judicial Section.

NYSBA provides a wide array of programs and services to help keep attorneys and judges well informed and connected. The Judicial Section addresses issues unique to the duties, responsibilities and welfare of the judiciary. Our Section also provides a forum for representatives of the Council of Judicial Associations to address issues relating to legislation and court procedure. Among the other benefits of membership in our Section are:

- three free online CLE educational programs
- free access to CasePrepPlus's entire library of advance sheets and research services, as well as unlimited access to all archives (an annual value of \$160)
- a discount to attend the Judicial Section Annual Meeting luncheon
- a complimentary copy of the "Judicial Dispatch," the only newsletter in New York State written by judges for judges
- unparalleled camaraderie among our State's guardians of the law

If you have any questions, please contact our Member Resource Center at 800-582-2452.

Membership in the Judicial Section is only \$25.00. Section membership dues can be paid online at nysba.org, or by mail to NYSBA, Attention State Bar Service Center, One Elk Street, Albany, NY 12207. **Join now!**

HUMAN TRAFFICKING: AN UPSTATE PERSPECTIVE

By: Hon. Rachel Kretser

In 10 years as an Albany City Criminal Court judge, I've seen more prostitution cases than I care to remember—and a grand total of one “john” case. Not once have I presided over a human trafficking case, even though in 2007 New York State enacted a very robust anti-trafficking statute. How could that be?

My own experience, plus statistics provided by the Division of Criminal Justice Service (41 of the 62 counties in New York State have not reported a single sex trafficking arrest since 2007 despite that fact that there have been nearly 19,000 prostitution arrests), inspired a June 16 CLE program, Human Trafficking: An Upstate Perspective. The CLE was held at Albany Law School, sponsored by the Gender Fairness Committee for the Third Judicial District (which I chair) and co-sponsored by several organizations, including the New York State Bar Association. It was an eye-opening and deeply troubling afternoon.

A large crowd heard from Attorney General Eric Schneiderman (who as a state senator co-sponsored the Human Trafficking statute), judges who have presided over human trafficking cases and federal and local law enforcement officials. Additionally, the victim perspective was presented (the judicial and law enforcement panel discussions have been converted to audio podcasts which can be heard at <http://www.nycourts.gov/admin/amici/index.shtml>).

The picture was one of young girls, often run-aways or throw-aways, who end up on the street where they encounter someone who they initially think is their guardian angel but, in reality, is quite the opposite: a pimp who exploits young women and children, often gets them hooked on drugs and drags them into a lifestyle from which it is nearly impossible to escape.

The women/girls are arrested occasionally, but even if sentenced to jail are likely back on the streets or marketed on the internet

within a matter of weeks. The trafficker, on the other hand, is almost never held accountable. Victims develop a perverse loyalty to the pimp, akin to Stockholm Syndrome, and without their cooperation it is difficult (but I refuse to believe impossible) to make a trafficking case.

There are steps that can be taken to address this modern-day slavery, and one of them is attacking the demand side of the equation. Our program inspired Albany County District Attorney David Soares to promise a new initiative aimed at arresting and publicly humiliating “johns” in the hope of making the risk of patronizing greater than the reward, while diminishing the demand, and hopefully supply. Additionally, Attorney General Schneiderman announced a new partnership with local law enforcement.

As a result of programs such as this, the justice system is finally taking a holistic approach to prostitution/human trafficking cases, providing services in lieu of incarceration for those arrested on prostitution charges, and holding pimps and johns accountable.



Hon. Rachel Kretser



Congratulations also to the following justices who were certificated effective January 1, 2017:

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Angela Mazzarelli
Carol Edmead
Kathryn Freed
Robert Kalish
Joan Madden
Alan Marin
Steven Barrett
L. Priscilla Hall
Lawrence Ecker

Antonio Brandveen
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THE WORK OF THE JUDICIAL COUNCIL AND THE JUDICIAL SECTION'S ANNUAL LUNCHEON HONORING LARRY MARKS, WILLIAM THOMPSON AND MILTON MOLLEN

By: Hon. Marsha Steinhardt

The Judicial Section of the New York State Bar Association and its affiliate The Council of Judicial Associations is unique. The Section's members hail from every jurisdiction in the state and preside in every court – Federal, Supreme, Surrogates, Court of Claims, County, Family, District, City, NYC Civil and Criminal, Housing and Town and Village. The Council is comprised of leaders from each of these courts' associations and representatives from many minority Bar Associations. The Council meets four times each year to conduct business important to the Judiciary, and our Annual Meeting takes place on the Friday afternoon of State Bar Week in conjunction with the Section's sumptuous Annual Awards' Luncheon.

The mission of the New York State Bar Association's Judicial Section is to promote dialogue, interaction, collaboration and collegiality among the judges and justices in New York State and to improve and promote the efficiency, effectiveness, diversity and standing of the judiciary. Our primary concern is the administration of justice. Although the

members of the council do not always see eye-to-eye on every issue we are united in our desire to ensure that the citizens of our state are served to the best of our individual and collective abilities. We are equally united in our desire to achieve statewide diversity both on the bench and in the legal profession.

This year, at our Luncheon, we will recognize three people who represent the best of what the judiciary is "all about." The Honorable Larry Marks will receive the Distinguished Jurist Award which honors a jurist who embodies the highest ideals of the Judicial Section and recognizes judicial excellence and extraordinary commitment to the rule of law. We are delighted that our Chief Judge Janet DiFiore will present this award to Judge Marks. Judge William Thompson will receive the Section's third prestigious Advancement of Judicial Diversity Award, following the steps of the Hon. Karen Peters and Hon. Edwina Richards-Mendelson. Justice Thompson is truly deserving of this award which recognizes his toil to bring people together. After the Crown Heights riots in the early 1990s, he

formed "Blacks and Jews in Conversation," an organization that welcomed all, fostered dialogue, and organized cooperative activities and events. Judge Thompson also led numerous groups of his colleagues – people of every faith and creed -- on trips to Israel. Justice Ellen Spodek, a member of several of the overseas tours, and a longtime friend of the recipient, will tell of her own adventures as she presents the award to Judge Thompson. Equally meaningful will be presentation of a plaque to Judge Milton Mollen commemorating his lifetime of achievements. Judge Mollen epitomizes what it means to be a devoted jurist.

The Judicial Section of NYSBA looks forward to growth in our membership. We share ideas and collaborate to achieve our common goals and fulfill our mission. Together we can do more. This year, among other things, we expect to join with the Young Lawyers Section in a mentoring program, and to organize a CLE addressing implicit bias and discrimination. Collegiality, conviviality and a chance to catch up with colleagues. What could be better than that?

INFORMATION FROM YOUR ASSOCIATIONS

Association of Justices of the Supreme Court of the State of New York
Congratulations to the following newly elected justices!

1st Judicial District (Manhattan)

Robert R. Reed, Kelly O'Neill Levy, Erika M. Edwards, James E. d'Auguste, Andrea Masley

2nd Judicial District (Brooklyn)

Katherine A. Levine, Reginald Boddie, Peter P. Sweeney, Shawndya L. Simpson

3rd Judicial District (Albany, Columbia, Greene, Rensselaer, Schoharie, Sullivan, Ulster)

Andrew G. Ceresia, Michael Mackey

4th Judicial District (Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, St. Lawrence, Saratoga, Schenectady, Warren, Washington)

Mark L. Powers

5th Judicial District (Herkimer, Jefferson, Lewis, Oneida, Onondaga, Oswego)

Gregory R. Gilbert

7th Judicial District (Cayuga, Livingston, Monroe, Ontario, Seneca, Steuben, Wayne, Yates)

Charles A. Schiano, Jr.

8th Judicial District (Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming)

Mary L. Slisz, Daniel J. Furlong

9th Judicial District (Dutchess, Orange, Putnam, Rockland, Westchester)

Janet C. Malone, Thomas E. Walsh II

10th Judicial District (Nassau, Suffolk)

Joseph H. Lorintz, Edmund M. Dane

11th Judicial District (Queens)

Joseph Esposito, Cheree A. Buggs, William A. Viscovich, Margaret A. McGowan, Joseph A. Zayas, Ernest F. Hart

12th JD (Bronx)

Doris M. Gonzalez, Donald Miles

GREETINGS FROM NYSBA PRESIDENT



Claire Gutekunst

Recently, I had the pleasure of speaking at the Council of Judicial Associations fall meeting. These quarterly meetings promote dialogue, interaction, collaboration and collegiality among the judges around the State, which improves the administration of justice for all New Yorkers.

The judiciary works hard day in and day out, work that is demanding and sometimes very difficult, so we are happy to help you in any way we can. Our Association has a long history of supporting New York's judges. We have been at the forefront in lobbying for more equitable judicial pay and a fairer workload, helping get both a pay raise and an increased number of judgeships, particularly in the hard-pressed family courts. We have worked for full funding and appropriate oversight throughout the state for indigent criminal defense, believing that better-prepared, less over-worked defense counsel will help ease the burdens on the court and help ensure more equitable outcomes. And we have lobbied for adequate court budgets. Justice is not served if the courts are underfunded and understaffed.

Improving the administration of justice includes increasing and maintaining diversity in the judiciary. That's not only right, it's smart. The Judicial Section did a great report a couple years ago about the continued need to increase diversity in the judiciary in New York, especially outside of New York City, and, more recently, co-sponsored a program on that topic. Diversity speaks to a basic issue of trust in our judicial system – if those who find themselves in the court system are surrounded by judges and staff who do not look like them, it is more difficult for them to have faith that the outcome will be fair and unbiased.

We are proud to work with you on these and other issues to help ensure New York has the most qualified men and women on the bench, that the courts are appropriately funded and supported, and that New Yorkers have access to justice in civil and criminal cases throughout the state. As enshrined on a banner hanging in the Association's headquarters, the "due administration of justice is the firmest pillar of good government." Without an independent, well-functioning judiciary that is accessible to all, our democracy would rest on an unstable foundation.

Our Association values our partnership with the bench, and the actions we have taken together are helping our courts get the resources needed to function properly. To maximize our impact, we need all your voices and all your perspectives. Please join us and get involved. Together, we have accomplished a lot. Let's do more.

Claire Gutekunst

President

MEMBER HIGHLIGHTS

On April 7, 2016 Honorable Harold J. Bauman, Liberty Town Justice and President of the New York State Magistrates Association had the honor to place a wreath at the Tomb of the Unknown Soldier, one of the nation's most sacred shrines honoring veterans who sacrificed their lives for our freedom.

The Tomb of the Unknown Soldier includes the remains of unknown service members from World War I, World War II, and the Korean War. Soldiers from the 3d U.S. Infantry Regiment keep a 24-hour-per-day, 365 day-a-year vigil at the Tomb. The wreath ceremony is memorial in purpose and patriotic in nature, dedicated to the memory of all those interred in the cemetery and to all those dying in the military service of the United States.

Hon. Gary Graber, Hon. Tanja Sirago, Hon. Harold Bauman and Hon. Dennis Quinn placed the wreath on behalf of the New York State Magistrates Association.



From left: Hon. Dennis Quinn, Champion Town Justice and NYSMA Past President; Hon. Tanja Sirago, Cairo Town Justice and NYSMA Executive Director; Hon. Harold Bauman, Liberty Town Justice and NYSMA President; and Hon. Gary Graber, Darien Town Justice and NYSMA Past President.



Justices Randall T. Eng, Sheri S. Roman, and Judith N. McMahon at the annual meeting of the Supreme Court Justices Association (SCJA) of the City of New York on June 14, 2016. Justice Roman concluded a year as President of the SCJA in which she testified before the New York State Commission on Legislative, Judicial, and Executive Compensation. She was succeeded as President at the annual meeting by Justice McMahon; Justice Eng officiated the ceremony.



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JUDICIAL SECTION

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