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NEW YORK STATE BAR ASSOCIATION

# State Bar News

SPRING 2019  
VOLUME 61, NO. 1  
WWW.NYSBA.ORG



## The Art of the Annual Meeting

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# First Person: WIL Chair Susan L. Harper at Historic Legislative hearing on Workplace Sexual Harassment

By Susan L. Harper

I was honored and excited to be asked by New York State Bar Association President Michael Miller to represent NYSBA at a recent joint hearing of the New York State Senate and Assembly on sexual harassment in the workplace.

The hearing, held in the State Capitol complex in Albany on Feb. 13, marked the first time in 27 years that state legislators had taken testimony on this issue. The historic nature of the hearing was underscored by the large number of legislators present on the dais – as many as two dozen Senators and Assembly members – and the huge turnout of news media.

The official notice for the hearing reminded presenters that they would be limited to 10 minutes of remarks. But there is no time limit on the questions that legislators can ask presenters. My name was fourth on a list of 15 speakers, and I was not called to present until nine hours into the hearing – at around 7 pm.

Ultimately, I sat through about 11 hours of testimony, including my own. I learned a lot about testifying, about how the New York State Legislature has dealt in the past with sexual harassment in its own ranks, and about gaps in current sexual harassment laws and policies.

## Two Tracks of Discussion

There were two different tracks of discussion throughout this hearing. One was on current sexual harassment laws at the state and federal level, including deficiencies and needed enhancements.

The other was a moving discussion concerning the past inappropriate behavior by elected and appointed officials in the Legislature – including sexual harassment, assault and rape – endured by former staffers. As it was relayed, these instances should have been handled

differently, and as a result, the victims suffered greatly.

Seven former New York State Legislature staffers, all of whom experienced, witnessed, or reported sexual harassment while working for the state, formed a group called the Sexual Harassment Working Group, and had called repeatedly for legislative hearings. This was their moment.

When members of the group spoke on Feb. 13, you could hear a pin drop. Women and men who were victims told harrowing stories that detailed the abhorrent behavior of their bosses; a complaint and investigation system that was difficult to navigate and was not independent or transparent; the personal psychological toll, including depression and suicidal thoughts; being hounded, attacked and mocked by the media; and the challenges of obtaining employment because of the negative media stories about them that remain easily available on line.

Most of the members of the Working Group had not been back to the Capitol since they had worked there. For them, this was a scary (and yet liberating) moment they bravely faced together to address the dark workplace moments that forever changed their lives. Following their joint testimony, I felt I could see that a huge weight had been lifted from them. They looked relieved and seemed empowered. There was strength in their faces and in their body language.

I was proud and deeply moved to witness this. I thought to myself, “what extraordinary courage they have.” These individuals are true leaders and outstanding public servants who are still fighting for what is right, even though they were truly wronged. It was extraordinary to watch former employees confront their former employer, and for all to recognize the humanity in the moment.

Many of the elected officials conducting the hearing – including

some who shared that they were also victims of abuse – apologized for the offenses of their former colleagues, which made me feel hopeful. A wrong is a wrong, and what I witnessed was people who cared and were trying to make it right.

I got the strong sense that the legislators present at the hearing were genuinely determined to change the culture in the State Capitol. I was very impressed by the attention and engagement of the officials that I observed, including their many substantive and pointed questions.

## Much Room for Improvement

During their testimony, members of the Working Group often referred to their paper, *Fixing Albany's #MeToo Problem: Policy Recommendations to Protect Employees of Elected and Appointed Officials from Gender-Based Discrimination and Harassment*. They discussed many topics that I expect will likely be addressed, including amending the New York State Constitution to include a prohibition on discrimination based on sex or gender, reforming statutes and standards, developing greater individual accountability, implementing uniform policies across state agencies, and increasing the statute of

limitations in sexual harassment cases, among others, to further protect victims.

In the course of many hours of testimony, I was taken aback to learn about some significant shortcomings in legislative policies, and how those shortcomings had created opportunities for sexual harassment to take place.

For example, legislative staff members were blocked from bringing certain actions that would not apply to most employees. In fact, the state Assembly had maintained that its staff members were not “employees” but “personal staff” of legislators, and therefore not covered by protections in state law against gender-based and other forms of protected-class discrimination.

Such limitations are wrong and nonsensical and have been a significant hurdle for employees pursuing their claims in both state and federal court.

*Susan L. Harper is the founding chair of NYSBA's Women in Law Section. Her complete testimony at the Feb. 13 joint Legislative hearing on sexual harassment can be read on line at [http://www.nysba.org/News/Sexual\\_Harassment\\_in\\_the\\_Workplace\\_Testimony/](http://www.nysba.org/News/Sexual_Harassment_in_the_Workplace_Testimony/).*



Susan Harper speaking at NYSBA's Presidential Summit on #MeToo.

# Lawyers Address ICE in the Courts

By Christian Nolan

Much to their ire, many lawyers in courthouses across the state are on alert.

They are on alert for plain-clothed Immigration and Customs Enforcement (ICE) agents conducting civil arrests of immigrants exiting courtrooms, walking in courthouse hallways, in stairwells, in alcoves, or at nearby bus stops arriving for their court appearance.

These courthouse arrests have increased 1,700 percent since 2016, according to the Immigrant Defense Project.

“It looks like a kidnapping,” said Terry Lawson, director of Bronx Legal Services’ Family and Immigration Unit. “A swarm of people who don’t identify themselves, don’t have a warrant . . . take the individual and put them in a vehicle. It’s terrifying for the people around them.”

Lawson’s remarks came as part of a panel discussion addressing the

presence of ICE in New York courts, which took place during the New York State Bar Association’s Annual Meeting at the New York Hilton Midtown. The event was co-sponsored by NYSBA’s Committee on Civil Rights and Committee on Immigration Representation.

Other panelists included Andrew Wachtenheim, a supervising attorney with the Immigrant Defense Project; Tina Luongo, attorney-in-charge of the criminal defense practice of The Legal Aid Society; and Joanne Macri, state-wide chief implementation attorney for the state Office of Indigent Legal Services. The event was moderated by Sarah Rogerson, director of Albany Law School’s Immigration Law Clinic and co-chair of NYSBA’s Committee on Immigration Representation.

The panelists explained how the courthouse arrests have caused fear among immigrant and mixed-status communities seeking access to justice and protection of funda-

mental constitutional rights. They said prosecutors have noted that it has had a chilling effect on witnesses coming forward in other cases. Even domestic violence victims have been reluctant to report violations of orders of protection for fear of retaliation such as being reported to ICE.

In late 2017, defense lawyers in the New York City area began protesting outside courthouses after ICE would make arrests inside the courthouse. “ICE-free NYC” and “Hell no, ICE must go,” they reportedly chanted outside the Brooklyn courthouse.

Luongo said that lawyers at courthouses began alerting one another to potential ICE apprehensions. They would text each other “watch out, ICE agent” and provide the location. Sometimes the lawyers have been able to delay a case and avoid apprehension. Other times it has allowed them to at least be able to tell their client not to say anything to the ICE

agents when the arrest is inevitable.

“For ICE, it’s a very safe place to pick up our clients,” said Luongo.

Luongo said it’s especially convenient for the ICE agents if a court officer assists ICE in providing them with the date, time and exact location of the court appearance of the defendant they are looking to apprehend.

Many of the panelists are hopeful that legislation is enacted to address the issue. As of press time, the Protect Our Courts Act was a pending piece of legislation this session, sponsored by Senator Brad Hoylman and Assembly Member Michaelle Solages. The bill would make it unlawful for ICE to arrest anyone going to or from court unless they have a warrant from a federal judge.

Panelists explained that currently ICE agents arrive at courthouses with an administrative warrant, which is signed by only an ICE supervisor instead of a judge and is not based on any probable cause.

# “Deportation Is a Life Sentence”: Immigration Consequences in Family Court Proceedings

By Joan Fucillo

“Deportation is a life sentence,” according to Professor Sarah Rogerson, director of the Immigration Law Clinic at Albany Law School. Rogerson was speaking at the Robert J. Schack Memorial Program, held by the Committee on Children and the Law during the New York State Bar Association’s Annual Meeting.

Her topic covered the minefield that a family court proceeding can present if one of the parties is undocumented or otherwise lacks permanency. Rogerson offered examples: An undocumented woman whose husband had molested their daughter was put in deportation proceedings because she pleaded no contest to a child neglect charge for not preventing the abuse. A woman got a temporary restraining order (TRO) against her boyfriend,

who was awaiting a hearing on his immigration status. She rescinded the order, but the Department of Homeland Security found the boyfriend’s fingerprints from the TRO matched prints in its database, which rendered him ‘inadmissible’ as an immigrant to the United States. While that did not make him deportable, it scuttled his chances for permanent residency.

When the consequences of entering a courtroom are that severe, Rogerson explained, people can face terrible choices. For example, an abused spouse will not request a TRO against an undocumented abuser if the family fears the abuser’s deportation more than the abuser’s presence.

Rogerson conceded that once a party’s status is revealed it can be very difficult to get a deportation order reversed. On rare occasions a

party is found to warrant ‘prosecutorial discretion,’ as in the case of the woman whose daughter was molested. But that does not confer permanency; it is more like a DACA (Deferred Action on Childhood Arrivals) protection, which itself lacks certainty.

According to Rogerson, best practice for lawyers and their clients with uncertain immigration status is to avoid the subject altogether, which often is a viable option

Status is neither needed nor relevant to a stop for a broken taillight or a request for an order of protection. Rogerson said that a lot of people tend to blurt out what is on their mind – “I’m undocumented!” – when confronted by a police officer shining a flashlight through the car window. She recommends counseling an immigrant with un-

certain status never to offer that information. “Keep admissions regarding immigration status off the record,” she said.

“Prepare your clients so they know the legal boundaries of their disclosures and the consequences” of breaching them, Rogerson said. She gave the example of a young immigrant in a juvenile delinquent proceeding who admitted to having once smoked a joint. This admission did not require his removal from the country, but it made him inadmissible.

Rogerson urged lawyers to have those conversations before clients enter the courtroom and to make sure clients know that, at a hearing, they can ask to consult with their attorney before answering a question.



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# Lawyering in the #MeToo Era

By Christian Nolan

The New York State Bar Association's Presidential Summit during Annual Meeting kicked off with a timely discussion on a topic that has dominated the headlines since the movement went viral in the fall of 2017 – #MeToo.

That's when actor Alyssa Milano encouraged victims of sexual assault and harassment to use the hashtag #MeToo on Twitter to draw attention to the magnitude of the problem. Soon other celebrities did, including Ashley Judd and Gwyneth Paltrow.

As evidenced by the sexual harassment complaints that came to light against now retired California appeals court judge Alex Kozinski or the highly contentious U.S. Supreme Court hearings involving Brett Kavanaugh, the legal field was certainly not exempt from the #MeToo movement.

The strength and staying power of the #MeToo movement has shown that laws aimed to prevent sexual harassment are largely ineffective. As such, an esteemed panel moderated by the Hon. Colleen McMahon, chief judge, U.S. District Court for the Southern District of New York, examined the laws regarding sexual harassment and considered how attorneys can work to prevent it. The panel also highlighted ways that attorneys can nurture and support gender equity in the legal profession and in our society.

Other panelists included Kathryn Barcroft, of Solomon Law Firm; Gregory S. Chiarello, of Outten & Golden; Carrie Goldberg, of C.A. Goldberg; and Susan Harper, of the Bates Group and chair of NYSBA's Women in Law Section.

Chiarello said it is mistaken to think that laws alone are the solution to the problem. He said it is a good starting point but it's more about "changing the culture." He said victims need to feel more comfortable about coming forward, which he said is still a problem but has improved some since the #MeToo movement began.



Chief Judge for the Southern District of NY Colleen McMahon speaking at NYSBA's Presidential Summit.

To that point, Barcroft said some victims may be more willing to come forward in the workplace if it wasn't for the fear of retaliation or losing their job for speaking out. She said oftentimes employers say they will do an investigation, but the end result seems that they are protecting the harasser instead of the client. Instead, the client ends up the topic of discussion throughout the office and the employer later comes back and says, "trust us, we took care of it."

"I think in a work environment there should be some level of accountability," said Barcroft. "I think the reason (the problem) persists, is not because there isn't enough training but because people continue to think they can get away with it."

While many celebrities have spoken out about their #MeToo experiences, there are many other people, especially those in low-paying service jobs, for whom the potential consequences of speaking out are simply too risky.

For example, Harper pointed out that sexual harassment and assault is most prevalent in food service/restaurant, retail, health care, and administrative support positions. Three-quarters of all women working in positions where they rely on tips for wages report toler-

ating inappropriate behavior. Eighty percent of those working in restaurants have experienced harassment from co-workers, including managers, or customers.

The panel also addressed the backlash that has come from some men over the #MeToo movement. McMahon explained that after she gave a speech last December about #MeToo, which went viral, she was confronted in an elevator on her way out of the event by a man saying she was naïve thinking that men wouldn't be victims of women falsely accusing them. Other panelists noted that some men have said they no longer want to have closed door meetings with a woman alone for fear of what they could be accused of.

Goldberg said some male lawyers have also taken their personal attitudes on the topic with them when handling these cases and "passions seem to flair." Goldberg, who represents victims, said defense lawyers have even made remarks, such as "slutty" about her clients. She advises that lawyers negotiate these cases "dispassionately."

Overall, McMahon believes that men need to follow the "*New York Times* rule," i.e., would you want your mother to read about your behavior on the front page of

*The New York Times*? McMahon said you can meet a woman for breakfast, meetings or drinks but...

"What you can't do is what you wouldn't want your mother to read about on the front page of *The New York Times*," said McMahon. "I personally don't see what's so hard about it."

## Litigating #MeToo

The State Bar's Commercial and Federal Litigation Section also held a panel discussion during Annual Meeting entitled "Litigating Sexual Harassment Cases in the #MeToo Era."

The panel tackled such topics as how #MeToo is affecting nondisclosure agreements and their impact on the cost of settlements.

Panelists included New York Supreme Court Justice Saliann Scarpulla, New York County, Commercial Division; Carrie H. Cohen, of Morrison & Foerster; Kathleen Peratis, of Outten & Golden; and Louis DiLorenzo, of Bond, Schoeneck & King. Gerald T. Hathaway, of Drinker Biddle, moderated the discussion.

Peratis said some plaintiffs are fine with defendants wanting the settlement to be confidential, while others are not. She also said that even if there isn't a formal confidentiality agreement in the settlement, it does not mean the parties have to talk about it. The victim may not be comfortable discussing the case with the media and the defendant likely would not want to.

New York enacted legislation last year to combat sexual harassment in the workplace. That legislation included a provision that nondisclosure agreements can only be used when the condition of confidentiality is the explicit preference of the victim.

The panel broached the notion that in the #MeToo era, a confidentiality agreement could cost a defendant more in the overall settlement amount. This sentiment was confirmed by Goldberg during the Presidential Summit when she

*Continued on page 26*

# Implicit Bias: A Law Enforcement Perspective

By Joan Fucillo

Police officers risk their lives just by coming to work. Their duties expose them to the worst aspects of humanity and demand that they take nothing at face value. They are required to make split-second decisions in dangerous situations and trust that their training and instinct lets them see what's real. The public does not have a good understanding of the full extent of what police officers do and are not well positioned to know what training officers need or would benefit from. This is why it is so hard to develop effective implicit bias training for police officers.

A talk entitled "Implicit Bias: A Law Enforcement Perspective" was presented on Jan. 16 at the Criminal Justice Section meeting during the New York State Bar Association's Annual Meeting. The speakers, Janine Gilbert and Sergeant Heather Perkins, addressed what implicit bias training should consist of for law enforcement and the challenges in designing it, based on their experience.

After opening with a disclaimer that their presentation did not represent official New York City Police Department (NYPD) training or policy, and that they were not discussing the NYPD's current training in this arena, Gilbert, assistant deputy commissioner of equity and inclusion, and chief EEO officer and ADA coordinator at the NYPD, explained that implicit bias training for NYPD officers, while not or-

dered, has its roots in the findings of then-U.S. District Court Judge Shira Scheindlin in *Floyd v. City of New York*. Judge Scheindlin found that in practice the NYPD's stop-and-frisk policy was in violation of the 4th and 14th Amendments to the U.S. Constitution because it disproportionately impacted black and Latino citizens.

Gilbert noted that "over the last few years, reports of bias incidents have been on the rise," which has demonstrated the need around understanding bias and implicit bias training for everyone.

A former prosecutor, Gilbert said that there is often resistance from officers to training that doesn't originate with law enforcement. "The solution? Have cops train cops. Training must be law enforcement driven, with buy-in from the top."

She then introduced Sgt. Perkins, a 19-year NYPD veteran, who has served as a senior instructor and curriculum developer at the Police Academy and who recently joined the NYPD's Office of Equity and Inclusion.

Perkins and Gilbert agreed that "implicit bias does exist generally, and it affects behavior. Though research shows that explicit prejudice has declined over time, there has not been a complementary decline in discriminatory results. Implicit bias may explain this difference."

Understanding police culture is important. Gilbert and Perkins both said that people who join "have good intentions – they join

'to serve and protect.'" But police views are born of experience, exposure, and the need to trust their fellow officers with their lives.

Police are skeptical of implicit bias training, they added, "because it feels like they are being accused of racism or being called racists." Additionally, officers feel that their police training and patrol experience keeps them safe and enables them to do their jobs effectively, and anything that would have them question their reactions or second-guess themselves might put them at risk.

Perkins addressed these concerns and explained how effective implicit bias training could be developed. She emphasized that "everyone has implicit biases" – it is a universal human condition. Training should be "participatory and start with the safety risks of *not* dealing with implicit biases." The goal, she added, is "keeping everyone safe," and keeping police officers safe, "both on the streets and legally."

"The training is about learning, getting skills you can use," she said.

Gilbert then listed some important factors for training:

- Clear goals.
- Small class size.
- Police officers lead training – they understand and can handle push-back and anger.
- Emphasize that training is not about condemning their character (i.e., calling them racist).
- Show how training will help keep officers safer. Clearly address the risks they face – and their fear

about 'what happens if I hesitate?'

- Community involvement: Strengthen the "we are them" mentality.

Perkins pointed out that with only 37,000 police officers in a city of 8.5 million people, "officers need to have legitimacy as officers and authority figures in communities they serve." Better community relationships help keep officers safe. Implicit bias training can help officers "avoid pitfalls or traps that they may not see otherwise because they are unaware," and also help them avoid missing a legitimate threat or seeing a nonexistent one.

One of the biggest challenges, said Gilbert, "is that this is all part of a larger culture change which takes time. It takes time, faith, repetition and buy-in – especially from the leadership – to be adopted and passed down to subsequent generations. The larger the population and the deeper entrenched opposing ideas are, the longer and more difficult the change process becomes."

Bronx County District Attorney Darcel Clark, who attended the program, reiterated the importance of having "police know the community, and for the community to know the police." She noted that this approach is sometimes called 'soft on crime' because fewer people end up in jail. "But that is not the goal," she added. "The goal is safe communities and safety for the officers who protect and serve them."

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NYSBA President Michael Miller said that the alliance with Kaplan Bar Review “substantively expands our member benefits and fits well with NYSBA’s values: championing the legal profession, ensuring that New York lawyers are among the best and most competent practitioners in the world, and reaching out to its future – law students and new graduates who aspire to be New York lawyers.”

The partnership originated during the NYSBA Corporate Counsel Section’s 2017 Kenneth G. Standard Internship Reception, held at Pryor Cashman in New York City. Kaplan Bar Review, which began

sponsoring the reception in 2015, sent Leona Krasner, then a senior regional director with Kaplan, to represent the company and to present the interns with scholarships to Kaplan’s bar review course.

Miller was impressed with the Kaplan presentation, and he and Krasner spoke about offering discounts to NYSBA members. He said, “Our conversation resulted in a meeting that December with some of Kaplan’s corporate leaders, me, and NYSBA executive staff, ultimately resulting in this exciting new partnership and a substantial benefit to law student members.”

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# In Conversation: Preet Bharara and Dean Matthew Diller

*Billed as a 'fireside chat,' Bharara and Diller's talk took place at the Judicial Section Awards and Luncheon, January 18, 2019, during the New York State Bar Association Annual Meeting in New York City. The Honorable Cheryl Chambers, presiding member of the Judicial Section and justice of the Appellate Division, Second Department, introduced the program.*

*Preet Bharara, a former U.S. Attorney for the Southern District of New York, is currently the distinguished scholar in residence at New York University School of Law, co-chair of the Brennan Center's National Task Force on the Rule of Law and Democracy and author of an upcoming book titled Doing Justice, which will be published this month. He is the executive vice president of Some Spider Studios and hosts the podcast Stay Tuned with Preet Bharara.*

*Fordham University School of Law Dean and Paul Fuller Professor of Law Matthew Diller is a prominent scholar who has worked for greater access to justice throughout his career as a lawyer and legal educator.*

*The following are excerpts from that conversation. They have been edited for clarity and readability.*

**Dean Diller:** So, one of the assignments, which I commend to you all, is Preet co-chairs a task force, a bipartisan task force, on the rule of law and democracy that produced last fall a report, titled *Proposals for Reform*, that bears reading. . . .

**Bharara:** One of the things I'm proudest of since leaving office is this task force that I work on, that's really supported by the Brennan Center. My co-chair is Governor Christie Todd Whitman, former governor of New Jersey and former EPA administrator under George Bush. And we have a bipartisan group of folks including former senators, former heads of agencies, cabinet officials.

## What Is at Risk?

So, part of what we're doing in



Preet Bharara speaking with Fordham Law Dean Matthew Diller at the Judicial Section Awards and Luncheon.

the task force is try to talk about things that we think are at risk, because largely, as we've discovered I think more in the last two years than the prior number of years, is that a lot of democracy works on the honor system. And there are norms that people follow and lots of folks who decided what rules should apply or not and what rules specifically should apply to a White House or not. If you have someone who's willing to push the boundaries, these are in peril.

**Diller:** So, a lot of the recommendations in the report take the form of taking things that have been traditions and established norms around democracy and the rule of law and enshrining them in legislation so that they become part of our formal laws as opposed to just culture and tradition.

What about the culture and tradition part? Is there hope for it? And what can the bar do, what can the judiciary do to support that culture?

## Is Legislation Needed?

**Bharara:** Look, you're not going to solve – and maybe this is the

“*As we've discovered . . . a lot of democracy works on the honor system.*”

— Preet Bharara

wrong thing to say to a bunch of folks who interpret statutes and rules – you don't solve every problem by enacting rules and statutes. I think there are some things you can do. I think depending on how the President uses his pardon power, that you might see movement towards amending the Constitution with respect to the pardon power.

Depending on other things that happen, and you're already seeing this movement afoot, the fact that this President changed from the norm of disclosing tax returns, you have a number of bills in the Congress that are making their way through, which may not pass, about a requirement that presidents, or people who run for president in a

serious way, have to disclose some years of tax returns. And we have a proposal in our report requiring candidates to disclose three years of tax returns.

So, on some things you can have a stark statute or rule. It's very easy to say, “tax returns? You have to disclose them to the public if you're going to run.”

Other things, like the independence of the judiciary or speaking respectfully to other folks or making sure you respect the boundaries between politics and law enforcement, you can enact some rules, enact some policies, but at the end of the day none of the – can I plug my book for a moment?

**Diller:** Please.

**Bharara:** Among the points I make in the book, . . . , is that, no matter how many laws you pass, no matter what regulations you enact, unless the people, including judges, including litigants, including the people who are subject to lawsuit, unless all those people respect the system, you're not going to get very far. So, the culture is very important.

## The Rule of Law

**Bharara:** With respect to the question you ask, and I make this point in the book a little bit, too, and I guess I'll share it with you folks: There's never been a time, that I'm aware of, where people in this country are so interested in what lawyers have to say. Or so interested in having lawyers explain to them, how does it work? What's a grand jury? What happens at trial? What does it mean to be put under oath? What are the standards that you have to follow or meet before you put someone under investigation? How does a wiretap work? How do you decide what's true and what's not true?

. . . And I think that's a good thing. Because a lot of people who are citizens of this country have sort of assumed things go in a particular way, and they're all thoughtful, educated people and, I think, committed citizens who don't understand how things work. And so, it's a long-winded way of saying, the one way I think you can make a difference is, not just in your courtrooms and not just in your law firms but whenever you talk to people who are outside of this profession, emphasize to them the best traditions of the law.

It is very easy to malign lawyers and we deserve a lot of the lawyer jokes that we get. But, you know, as I've been thinking about it for the last couple of years, I think you've heard me make some of these points when I've spoken at your school, and I say again in the book, you know, the way that trial unfolds, and the way that rules are enforced in a courtroom, are good. And are a model, I think, for public discourse.

Obviously public discourse is different. The public square is different from a courtroom. But imagine how great it would be if a little

bit more we followed the norm that you have in court of only using arguments based on evidence; where you can't make arguments based on character assassination; where you have to be respectful to everyone; where, in our jury system, the jury is reminded every day, in the criminal or other trial, at the end of every day, even though evidence is coming in, some of it salacious, some of it seemingly probative, [to] keep an open mind. And you don't make your decision until you've heard *all* the evidence. . . .

And now compare how truth is found and how debate is conducted, and how difficulties and controversies and fights are resolved in a courtroom versus how it happens on cable television, or how it happens in politics.

And when, I think, you put out messages like that and you explain to people that reason and logic and evidence and respectful disagreement work and have worked for hundreds and hundreds of years in our system, maybe you can make some impact on the way other people outside of a courtroom think about how they resolve disputes, good-faith disputes, political ones, policy ones with their fellow citizens.

**Diller:** So, I see what you are describing every day because there's a tremendous surge in interest in law school, that I think is tied back to the fact that legal issues are so salient in our society at this time, and people really want to make a difference and understand that you can make a difference through law.

And, so, from a legal educator point of view, it's a moment where suddenly everyone is listening to what we have to say and they really . . .

**Bharara:** We should seize that moment! I mean people – I'm sure this is true of a lot of folks, you go to a social event and people want to talk about what the latest development in the Russia investigation is. Or they want to talk about the latest development in some other case. Now I think law has always been fascinating to people. You have entire series that are built on what happens in courtrooms. But I think it's different because people are finally understanding that it's

not just interesting because it's entertainment, it's interesting and important because these are things that are under threat in the country.

**Diller:** So, what I find is that subjects that used to be viewed as really archaic are now front and center. So when you get to that point in constitutional law where you mention (or don't mention) the emoluments clause, suddenly it goes from being dusty, sleepy provision to front and center – or the 25th Amendment. So I do think that is a great sign of hope for our future . . .

**Bharara:** Or standing! Everyone wants to know what standing is now. When people think there is going to be a transgression of some norm or law, people think ok, well someone will sue. But now you have discussions on television and other places among intelligent people but who did not go to law school – Well, who gets to sue? These are really important questions that more people are asking than ever asked before.

## The Law as Model

**Diller:** So, this is the upside to what's going on in our country now is that – and there really is an upside in the sense that there is a renewed interest in law and our legal institutions. And I think a sense that they are, they need defending and protecting. And that it's all of our responsibility to do so. But having said that it all remains incredibly contested. And what do you think are ways to reach across that contestation, to spread the word about it, so that it's not just a segment of our society focused on this and the rest is not interested at all?

**Bharara:** I think that's a hard question. And I think at the same time that there is more and more interest from a broader group of people about how our institutions work, how democracy works, how the branches of government are supposed to interrelate and how court cases work, there are also people who are increasingly siloed into their own positions. What's this term that everyone keeps talking about – tribalism. It's a real

thing. And further to what I said before, the more people can spread the word that you *can* have disagreements with other folks.

Here's the other part of why the legal profession is interesting, and should be revered in some ways, even though it's not. The status quo in America now is if you have a certain point of view you watch one cable news network; if you have a different point of view you watch another. If you're on social media and Twitter, you only follow the people who agree with you. People who annoy you, you mute or you block – whatever the function is on the particular platform you're on – and you only hear in the echo chamber.

And yet it's interesting to me, a lot of the people who survive in their own echo chamber, it's not like they're indifferent to what is going on. They actually really care a lot about the wall. Or they care a lot about foreign policy. Or they care a lot about taxes. So they're engaged citizens in that sense, but they don't want to hear what the other side has to say. They don't want to be persuaded by them, they don't want to understand how to meet those arguments.

Imagine, if you're a lawyer, particularly a litigator, and in particular a prosecutor or defense lawyer, you couldn't do your job, you would be fired, you couldn't survive, if you didn't sit there and listen to the arguments of the other side and then force yourself to meet the arguments.

So, further to what I said before, there's a model for how we talk about things in the law. And you know what – sometimes people do punch each other in the face, I guess, in a courtroom. But generally speaking, because there are lots of folks who keep order, people make their arguments, other people make their arguments. Everyone is respectful, everyone has an opportunity to speak. And so I think bridging the divide in that sense is a little bit trying to get some of this culture in a profession that people make a lot of fun of over time, that I in some ways am in awe of, and having other people understand this is a good way of doing it.

# A Gala Dinner for the 2020 Annual Meeting

By Christian Nolan

Legal luminaries like Benjamin N. Cardozo, and even former U.S. presidents like Dwight D. Eisenhower, all share a common bond special to the New York State Bar Association – they delivered addresses at Annual Meeting dinners.

From 1877 to 1995, the Annual Dinner was the flagship event for NYSBA, sometimes drawing more than 1,000 people.

In 2020, NYSBA will honor its rich history by going back to the future and restoring the proud tradition of a gala dinner as the featured event of Annual Meeting.

NYSBA is excited to announce that the gala dinner will be held Thursday, January 30, 2020 at the American Museum of Natural History in New York City. The dinner will be open to all NYSBA members for a reasonable cost.

The gala dinner will replace the previous Annual Meeting week format, which has included the House of Delegates dinner on Thursday and the President's Dinner on Saturday, following the conclusion of Annual Meeting. Attendance at both the House of Delegates Dinner and the President's Dinner was by invitation only.

The event will still include the traditional presentation of the Gold Medal Award, the highest honor bestowed by the State Bar Association, and will feature a special guest speaker. At the dinner, NYSBA plans to honor the judges of the New York State Court of Appeals, along with other state court appellate jurists.

"We are planning an extraordinary event that is more inclusive and open to the entire membership," said President-elect Hank Greenberg. "We anticipate a large crowd of New York lawyers to attend this dinner, including distinguished jurists and other leaders of the New York bar."

Past invitation-only dinners have been costly for NYSBA. The gala dinner has the potential to generate revenue that could be used to support association programs.

## National News

Oftentimes the guest speakers made national news for their remarks at the Annual Meeting dinner. For instance, during World War I in 1918, Sir Frederick Edwin Smith, British Attorney General in the Lloyd George Cabinet, was diplomatically critical of President Woodrow Wilson during his speech before NYSBA. His comments were reported in the *New York Times* on Sunday, Feb. 3, 1918.

In addition to Justice Cardozo (who was chief judge of the New York Court of Appeals at the time), other future members of the Supreme Court who spoke at past Annual Meetings include Chief Justice Harlan F. Stone, and Associate Justices Oliver Wendell Holmes, Jr., Louis D. Brandeis and George Sutherland. Future presidents Grover Cleveland and William Howard Taft also spoke at Annual Meeting.

The Gold Medal has also been awarded at Annual Dinners to several Supreme Court justices, including William J. Brennan, Lewis F. Powell, Jr., Potter Stewart, Thurgood Marshall, John Marshall Harlan, Felix Frankfurter and Robert H. Jackson.

Governors, federal cabinet heads and other high-ranking officials have attended in years past. After World War II and prior to becoming the 34th U.S. president, Dwight D. Eisenhower spoke at the Annual Dinner in 1949.

*\*NYSBA will make additional announcements about the gala dinner in the coming months as more details become available.*



NYSBA President Archibald R. Murray served from 1993–1994 and presided over the 1994 dinner.



U.S. Solicitor General and future Supreme Court justice Stanley Reed was the guest speaker at the Jan. 22, 1938 Annual Meeting. He is pictured with Gov. Herbert Lehman (center) and incoming NYSBA President Joseph Rosch (right).

# NYSBA GALA DINNER

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## Cannabis Law Committee Program Focuses on Preparing for Legal Recreational Marijuana in New York

By Jeff Storey

New York Governor Andrew Cuomo announced on Jan. 15 that he would include in his 2019-2020 budget proposal a program to legalize the adult recreational use of marijuana.

On the same day at NYSBA's Annual Meeting, members of the Committee on Cannabis Law were discussing the various policy issues involved in giving New York a bigger share of what has become a \$10 billion industry.

New York is one of 32 states, Washington, D.C., Guam and Puerto Rico that permit the use of medical marijuana. Marijuana is also legal for recreational use by adults in 10 states, New York not yet among them, and D.C.

Marijuana use is illegal in every state under federal law, but until recently attorneys could rely on the fact that enforcement of the law

was not a priority, at least where medical marijuana was concerned.

Sara Payne of Barclay Damon in Syracuse told attendees at the Cannabis Committee program that a 2014 NYSBA ethics opinion gave attorneys "very, very robust" assurances if asked to "advise and assist" medical marijuana clients. But if New York authorizes recreational use, more clarity will be needed so that attorneys "know what their boundaries are" between legal counseling and drug trafficking.

Members of the Cannabis Committee have already started drafting a new ethics opinion. Without the new opinion, "we're going to start seeing issues all over the place," Payne said. These would involve "plant-touching" companies as well as real estate, banking and other third-party functions.

Cannabis companies and their lawyers must navigate numerous

regulations for the packaging of marijuana that vary from state to state. Some were on display at the meeting. They include illustrative elements, warnings that the product is not meant for children, and information about potency and nutrition. The information may be on a different spot on the package, depending on where it's coming from.

"We are trying to run a multi-million-dollar business with no single frame of reference," said Gary Kaminsky, director of compliance for Acreage Holdings.

The committee also addressed the increasing popularity of CBD or cannabidiol – a form of cannabis derived from industrial hemp that cannot get you high but may make you healthier. The farm bill signed in December by President Donald Trump legalized the cultivation of hemp – although whether it legalized CBD is a more

complicated question.

The Food and Drug Administration insists that it retains its authority under the Federal Food, Drug and Cosmetic Act to regulate products containing cannabis or cannabis-derived products. The agency added in a statement issued on the day the farm bill was signed that "we continue to be concerned about the number of drug claims being made about products not approved by the FDA that claim to contain CBD or other cannabis-derived compounds."

Panelist Marc Ullman of Rivkin Radler said in an interview that the agency should either set enforcement parameters or go after companies it believes are violating the law.

"Sticking to the status quo makes the agency look silly," he said.



The Dakota Hub at Convene seats 80.

## NYSBA CLE Introduces New NYC Location

### By Christian Nolan

The New York State Bar Association is proud to introduce its new home for Continuing Legal Education (CLE) programs in the New York City area.

Known for state-of-the-art facilities and technology, programs will now take place at Convene's 810 Seventh Ave. location between 52nd and 53rd Streets in the heart of Midtown West.

This Convene location includes 23,000 square feet of total space, encompassing a dozen various-sized meeting rooms on the 22nd and 23rd floors.

"NYSBA has offered top-quality CLE programs in New York City for years, and now we have a home base for those programs that is centrally located and offers state-of-the-art technology and other amenities for our CLE attendees," said Katherine Suchocki, senior

director of CLE and Law Practice Management.

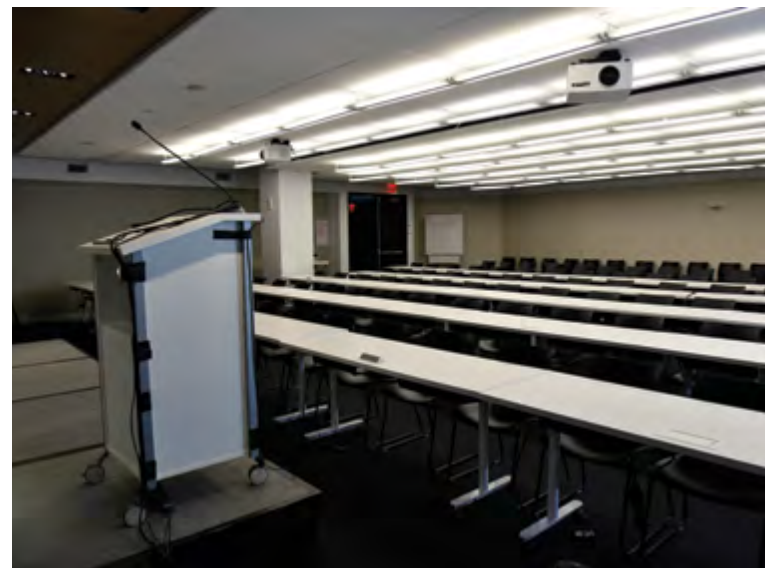
The early feedback from attendees has been great, as many have provided program evaluations mentioning how much they enjoyed the new CLE location.

Coffee and beverage service will be available throughout the day for program attendees, as well as a wide array of snacks.

Partnering with prominent commercial landlords, Convene

operates a network of hospitality-driven locations in Class A office buildings across major U.S. cities. All their locations, including this Midtown West facility, offer contemporary meeting spaces, state-of-the-art technology, fresh cuisine options, and production and planning support.

For a full listing of all NYSBA CLE offerings, please visit [www.nysba.org/CLE](http://www.nysba.org/CLE).



The Empire Forum at Convene seats 100.

# Establishing LGBT Parentage Under the Court of Appeals Ruling in *Brooke S.B.*

By Joan Fucillo

*Brooke S.B.* is the story of what constitutes a family and of passionate advocacy in the face of seemingly impossible odds. It deeply moved attendees at the Jan. 17 Family Law Section meeting during the New York State Bar Association's Annual Meeting in New York City.

Brett Figlewski, legal director of the LGBT Bar Association of New York (LeGaL), said that he went to law school to “change the world, to effectuate real change.” As one of the attorneys on the legal team that argued the landmark custody case *Brooke S.B. v. Elizabeth C.C.* before the New York Court of Appeals, he has certainly made strides.

Brooke Barone and her ex-partner, Elizabeth Chapman-Cleland, had been together for two years when they decided to have a child. Chapman-Cleland became pregnant through alternative insemination, and, in 2008, their son was born. Both women were listed as parents on the birth certificate and used “Barone” for the boy’s last name.

When they broke up in 2010, they continued living in the same vicinity and had a co-parenting arrangement. Barone provided financial support to Chapman-Cleland, enjoyed several overnight visits a week with her son, and took him to medical appointments and daycare. In 2013, Chapman-Cleland cut off contact. Brooke Barone sued in Chautauqua County Family Court in Jamestown for custody and visitation rights. The family court appointed R. Thomas Rankin as attorney for the child (AFC). It was Rankin who sought leave to appeal with New York’s highest court so that, on appeal, it was technically the child who was the appellant and Barone and Chapman-Cleland were the respondents.

Barone talked about the pain of not being able to see her son and gave examples such as running into her son and her ex at the local grocery, only to watch powerlessly as Chapman-Cleland hustled the boy out of the store. She recounted her frustration at the obstacle to her parental rights: *Alison D. v. Virginia*



Left to right: Family Law program Co-Chair Rosalia Baiamonte with speakers Brooke Barone and Brett Figlewski.

*M.*, the 1991 Court of Appeals decision establishing a bright-line rule that only biological or adoptive parents had standing to seek custody and visitation. All others were “legal strangers” to the child.

In 2010, in *Debra H. v. Janice R.*, the Court of Appeals seemed disinclined to revisit *Alison D.* when it stated in dicta that any change in the meaning of ‘parent’ under the law needed to come from the New York State Legislature, not the judiciary.

AFC Rankin argued in family court and on appeal to the Fourth Department that non-biological/non-adoptive parents like Barone should have standing because of recent and sweeping changes in the law to recognize the rights of LGBT individuals, including marriage equality both in New York and nationwide. That did not affect the outcome; according to the Fourth Department, *Alison D.* applied. But Rankin and Barone persisted. The Court of Appeals granted leave to appeal.

Barone contacted LeGaL, and soon a legal team was assembled including Susan Sommer of Lambda Legal, Margaret Canby and Caroline Krauss-Browne of Black Rome LLP, and LeGaL’s Brett Figlewski. AFC Thomas

Rankin, of Goodell & Rankin, worked with Eric I. Wrubel, Linda Genero Sklaren, and Alex R. Goldberg of Warshaw Burstein, LLP. NYSBA filed an amicus brief in the case written pro bono by Roberta Kaplan, who received NYSBA’s Gold Medal in 2018 for her ‘extraordinary’ work in civil rights litigation. In August 2016, the Court of Appeals ruled in Barone’s favor.

Figlewski explained the law behind the victory, saying that New York’s 2011 Marriage Equality Act and the U.S. Supreme Court’s rulings in *U.S. v. Windsor* in 2013 and *Obergefell v. Hodges* in 2015 had set the stage, but neither the act nor those rulings alone could overturn the New York law in *Alison D.*, which directly affected children and parental status.

What *Brooke S.B.* did was change the standard, Figlewski said. Now, “where a putative parent can prove there was an agreement to have a child and raise it together, that parent will have standing,” noting that “intent and consent” are key.

The ruling, he said, also allows for robust use of the concept of “equitable estoppel,” meaning, in essence, that a party cannot take a



Figlewski looks on as Barone addresses attendees.



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# Annual Meeting Photo Album



Left to right: Secretary Sherry Levin Wallach; Hon. Cheryl Chambers and New York City Bar Association President Roger Juan Maldonado.



President-elect Hank Greenberg delivers remarks at the House of Delegates meeting.



President Michael Miller talks with Hon. Barry Kamins during the House of Delegates Dinner.



Deborah Owens, executive director of diversity & inclusion at the New York City Bar Association, and John Owens, Jr., Chair of the General Practice Section, chat with Roy Simon, professor emeritus of law at Hofstra University School of Law.



House of Delegates member Eileen Millett and Past President Kathryn Grant Madigan take a moment to catch up before the start of the House of Delegates meeting.



The Law360 Pro Say podcast hosts talking with President Michael Miller, during their live-audience recording of the podcast.



Barry Scheck, co-founder of the Innocence Project, talks with fellow panelist Hon. Karen Peters during the Presidential Summit on Wrongful Convictions and the Role of Prosecutors.



Jessica MacFarlane looks on as Xavier Donaldson, program chair for the Criminal Justice Section meeting, takes questions from the room.



Former Attorney General Barbara Underwood delivers the keynote address at the Justice For All Luncheon.



Left to right: Membership Committee Chair Thomas Maroney, Immediate Past President Sharon Stern Gerstman and Hon. Helena Heath at the Torts, Insurance & Compensation Law Section Dinner.



Left to right: Sustaining members David Singer, Domenick Napoletano and President-elect designee Scott Karson.



Nearly 1,000 gathered for the Tax Section Lunch, by far the largest single event held during Annual Meeting.



Jennifer Ismat, editor-in-chief of the *NY International Law Review*, speaking at the International Section luncheon.

# 'It's Time for Equal Rights in the Constitution'

By Joan Fucillo

"It's time to put women in the Constitution!"

Carol Robles-Román, president and CEO of the ERA Coalition, opened the Women in Law Section's 15th Annual Edith Spivack Symposium with a call for passage of the Equal Rights Amendment (ERA) to the U.S. Constitution. The event took place during the New York State Bar Association's Annual Meeting in January.

"Most people aren't aware that equal rights for women are not part of the Constitution," she said, adding that 80 percent of women who knew about the ERA thought it "had already passed and were shocked to learn it hadn't."

Another common misconception is that the 19th Amendment to the U.S. Constitution already includes equal rights for women. It does not. It concerns only women's

right to vote; it does not ensure equality. Passage of the ERA would remedy that.

The ERA, first introduced in 1921, gained steam in 1972, when it passed both houses of Congress and was sent to the states for ratification. The deadline for ratification was extended, but that period ended in 1982, with the ERA falling three states short of the two-thirds of states required for approval. In 2014, the ERA Coalition was established to revive the amendment and work toward its passage. So far, two more of the 38 state legislatures needed have passed the amendment.

The text of the ERA reads: "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."

Robles-Román said that while women have made strides, a re-trenchment is taking place under

the current President, noting that only 18 percent of new federal court appointees have been women. Lifetime appointments of a mostly white, male federal judiciary will have long-term effects, she said, making action on the ERA more urgent.

"Why do we need a constitutional amendment?" Robles-Román asked rhetorically. "Despite gains, sex discrimination, gender violence and pay disparities are still pervasive, and women often have no legal recourse. Women don't have constitutional equality. Period."

She believes that the media attention and scrutiny garnered by the #MeToo and Time's Up movements "has put constitutional equality front and center."

The new House Judiciary Committee chair, Rep. Jerry Nadler, has promised to hold hearings and to remove and extend the deadline for ratification of the ERA. Robles-Román said, "We are on the arc of the equality pendulum."

## Getting on Equal Footing

A lively discussion about how women can move forward in law firms followed Robles-Román's remarks.

Panelists expressed ideas about how to bring more women into the upper ranks, including mentoring, accountability, awareness of the impediments and active intervention. Speakers included Hon. Lucy Billings, a judge on the state Supreme Court, New York County; Zachery Carter, New York City Corporation Counsel; Laurie Robinson Haden, senior vice president and assistant general counsel of CBS Corporation; and Brad Karp, chair of Paul, Weiss, Rifkind, Wharton & Garrison.

Before turning the mic over to Brad Karp, Mazur noted that Paul Weiss has a strong history of support for women and diverse attorneys – it was the first major New York City law firm to hire an African-American associate, to hire an African-American female associate, and to make a woman a partner. It has all-equity partnership, and 55 percent of its incoming associates are women.

## Commitment to Diversity and Inclusion

Karp said that in looking at firm makeup, law firms tend to "compare themselves to peer law firms" when they should "compare themselves to the society at large." At Paul Weiss, each partner is required to write an annual memo to



Carol Robles-Román gives keynote at the Women in Law program.

“Despite gains... women don't have constitutional equality. Period.”

— Carol Robles-Román

Despite their progress, Terri Mazur, a securities and litigation practitioner, and program moderator, pointed out that women still are underrepresented in the upper levels of law firms. They make up about half of all associates but only 19 percent of equity partners.

the entire law firm describing what he or she has done over the past year to support diversity and inclusion, Karp added.

Mentoring works best when it is "informal and organic," Karp said. Partners should offer to show someone how to navigate firm pol-

itics, describe the mores of firm culture and talk about how to deal with missteps.

Karp addressed the issue of Paul Weiss's 2019 partner class – 12 white lawyers, only one a woman. That “piece of the pipeline was overwhelmingly white male,” he said, saying that it is “embarrassing.” Karp believes that class was an outlier – but “there are no excuses.” Partner classes of 2020 and beyond will be different, he said, noting that the firm is looking at attrition more closely, which can be at 10 to 15 percent for female associates.

Part of Laurie Robinson Haden's job at CBS is to oversee and manage outside counsel. It is easy for an organization to state “we are committed to diversity and inclusion,” said Haden, but “your audio needs to match the video.” The people who come to pitch an outside firm's services may be diverse, she said, “but are their names on the billing?” Or “are they doing low level work?” Ensuring diversity in the team being hired requires follow up. Accountability is in the data.

“You have to be willing to take action,” said Haden, if you are not getting what you are paying for. She noted that major corporations like Verizon and Walmart are starting to demand diversity in outside counsel. Microsoft, she added, provides an incentive of up to two percent of billings if the firm reaches specific diversity goals.

Zachary Carter observed that “women often fare better in the public sector in hiring and leadership roles.” In the Corporation Counsel's office, “Fifty percent of the employees are women, and 10 out of 16 divisions are led by women.” Carter said that being surrounded by women leaders in the city Law Department wasn't odd, “it felt normal. We all grow up under and with women – it is our lived experience.”

Hon. Lucy Billings found it ironic that the “representation of women on the bench is greater than the number of women who appear as lead attorney in court.” She urged judges to advise an all-white, male legal team, “Don't you think there will be women and



Getting on Equal Footing panelists (left to right): Hon. Lucy Billings, Zachary Carter, Laurie Robinson Haden and Brad Karp.

people of color on the jury?” And, if they do not rethink their trial team and lose their case, a judge can offer some advice: Next time, “consider the composition of the jury.”

### **Create Opportunities for Leadership**

Real law firm power resides in client relationships, said Karp, so it is incumbent on partners to “teach, train and support” associates and to “hand over clients to young partners and senior associates.”

If people are not given the opportunity to lead, said Billings, “no one will perceive their qualifications.” People can't be perceived as equal if “they have no track record,” she added. To help attorneys gain experience in oral argument, a judge can remind lead counsel that the woman sitting next to him “prepped and drafted the motion,” so she should argue. When the lead attorney does step aside, caution that individual against trying to control the young attorney from counsel's table. “Let that person make the argument,” Billings said.

### **Implicit Bias Plays a Role**

“At the pre-partner level,” said Carter, “the skill sets among attorneys are usually similar.” Yet the

inclination is to see a white male as more capable of client development. He noted that unconscious bias is not bigotry – it's instinct. So, “to evaluate capability, re-evaluate your criteria,” he said.

Haden recommended Dr. Arin Reeves's work on confirmation bias. For her study titled *Written in Black & White*, Reeves sent 60 law firm partners identical research memos from two young male associates with identical resumes, both named “Thomas Meyer.” Half received a memo from ‘African-American’ Thomas Meyer and half from ‘Caucasian’ Thomas Meyer. Many more errors were found in the ‘African-American’ associate's memo than in the ‘Caucasian’ associate's memo. Partner comments stated that the ‘Caucasian’ associate had “potential” and “good analytical skills,” while the ‘African-American’ associate's memo needed “lots of work” and was “average at best.”

### **Staying on Track**

Paul Weiss sponsors women's initiatives and programs inside and outside of the firm, said Karp, emphasizing the importance of being active in local, state and national bar associations and other groups. Volunteering provides opportunities, and opportunity is accretive.

Haden started her own support network in 2004. Corporate Counsel Women of Color began with a few dozen women and today boasts 4,000 members. She said that over the years the group's annual conference has become a hub of opportunities and business development.

### **Culture Is a Factor**

Billings finds the “around the clock mentality” of some areas of the law – such as trial counsel – dissuades women from entering those practices. She believes it is an unnecessary part of the culture, saying, “I work around the clock – when I'm awake.”

Carter said that “women thrive in the public sector because, at the end of the day, it's not about how many hours you've worked, it's about the quality of your work.”

*The annual symposium, which takes place during the NYSBA's Annual Meeting in New York City, is named for Edith Spivack, a 1932 Columbia Law School graduate. She worked for the New York City Law Department without pay for the first year of her 70-year career there, to prove herself ‘worthy’ of the job. When she died in 2005, the headline of her New York Times obituary said that she was “Called the Brains of the City's Law Office.”*

# GDPR: “Earth-shattering” for Corporate Compliance



GDPR panelists (left to right): Alejandro María Massot, Jonathan Armstrong, moderator Gerald Ferguson, Flávia Rebello and Sarah Zhao.

## By Joan Fucillo

Gerald Ferguson believes that the General Data Protection Regulation (GDPR), implemented by the European Union (EU) on May 25, 2018, “is earth-shattering in terms of corporate compliance.” Ferguson, a partner at Baker Hostetler and founder of the firm’s data privacy practice, was speaking as the moderator of *The GDPR: Emerging Trends, Issues and Global Development*, a panel held on Jan. 14 as part of the International Section’s program during the New York State Bar Association’s Annual Meeting. “U.S. companies are rethinking their data handling and working on compliance issues” but are “still feeling their way,” Ferguson added.

## The EU

Jonathan Armstrong, a partner at Cordery Legal Compliance in London, sketched out the main elements of the GDPR: limitations on holding data; restrictions on uses of data unless there is specific opt-in; the ability to have data ‘scrubbed’; and penalties for noncompliance. A data breach could result in a fine of up to 4 percent of a company’s worldwide revenues but, he pointed out, “there is no overall data ‘court’” in the EU. Complaints are filed in individual countries, where “each has its own data protection regulator.”

England, he said, has “60 fulltime regulators,” who can “knock and ask to review records.” They can impose fines or order “a business to stop data processing.”

## Brazil

Brazil’s new privacy law, effective August 2020, “incorporates much of the GDPR” regarding data transfer and handling, and individual rights of claim, said Flávia Rebello, a partner at the intellectual property law firm Trench Rossi e Watanabe in São

Paulo. “It is the first omnibus data protection law in Brazil, a country not generally concerned with privacy, she said, “so it is a big change.” Rebello noted that Brazil will establish a data protection authority for enforcement, sanctions and penalties and to review individual rights of claim.

## Chile and Argentina

Alejandro María Massot, who practices mergers and acquisitions at Estudio Randle in Buenos Aires, said that Chile’s former data protection laws had no real enforcement component. This changed when “Banco de Chile lost \$10 million in thefts from a malware intrusion,” Massot said. The new law adopts GDPR concepts, sanctions and compliance, and provides for a national regulator with full enforcement powers.

Argentina’s new data protection law also enhanced compliance rules and increased punishments, including “warnings, fines (of about \$3,000), or closure of the data base.” The law “will apply to companies without a physical presence in country,” he said. Consent to data collection is required in most cases, unless it is publicly available or needed for “the exercise of state powers.”

## China

Sarah Zhao, a partner at Baker Hostetler, said that China’s privacy laws focus on “the need to protect national security,” but that concepts of personal privacy and consumer protections have “tagged along” with other privacy measures. When Baidu, China’s Google-like search engine, was found to have been “doctored” for marketing purposes, customer complaints went viral,” Zhao said.

Data acquired in China must be kept in China, and the transfer of data outside of the country must

meet a “business necessity” standard. Most important, she said, “data held must be available for national security and critical infrastructure operations” and provided to the authorities, as required. “The law is constantly shifting, and enforcement actions change,” Zhao added, saying that it is critical to be aware of any changes in the law because compliance is mandatory.

## Inroads into the U.S.: California’s New Data Privacy Laws

Effective January 2020, California’s new data privacy law, based on “GDPR’s data subject rights,” will apply to companies valued at \$25 million or more,” and all those whose “business model is about data collection,” said Ferguson. Companies must reveal the data they have on a subject. Subjects have the right to have their data deleted, to take it elsewhere, and to opt-out of the data being sold.

The penalty for violations, Ferguson noted, can run \$750 per incident, “which can have real repercussions in a class action suit,” once they get past standing issues.

## Data Breach Notification

The GDPR has an infrastructure “for reporting a data breach,” said Armstrong. If data is not secure, “you must tell the regulators. Companies are responsible for their employees that handle data or misuse data.”

Brazil does not have a timeline for reporting, only that it happen within a “reasonable period,” said Rebello, adding “the thought is that 72 hours is reasonable.”

Massot said that, in general, Argentina has no duty to report. “Only financial institutions under the central bank law” have a duty to report.

In China, “it depends on what is

breached and who is doing the breaching,” such as the government, said Zhao.

## GDPR: Unintended Consequences

“A bribery case in the UK was withdrawn over privacy issues,” said Armstrong. “Individuals in litigation or criminal cases can exercise their rights – the right to be forgotten, the right not to hand over personal information,” he said. This can slow or defeat misconduct investigations and make the role of outside counsel more difficult.

Armstrong recounted being blocked from reading a digital version of a Long Island newspaper because he was tagged as an EU national. In trying to avoid triggering GDPR obligations, he said, “this kind of monitoring actually digs it in deeper” under the regulations.

## Is the Honeymoon Over?

A week after the program was presented, on January 21, the French data protection authorities announced it had fined Google the US equivalent of \$57 million. According to Fortune.com, France “issued the fine because Google did not meet the country’s standards for providing information to consumers about how their data is being used, nor did it provide enough information about its data consent policies.” It was the first major fine levied since implementation of the GDPR.

The CEOs of Microsoft, Cisco, IBM and Apple have called for some form of U.S.-wide privacy law, although they are not specifically urging adoption of the GDPR. This could indicate a trend.

As Ferguson sagely opined a week before the Google fine was announced, “most organizations will be affected by the GDPR.”

# Implicit Bias Is Real

By Joan Fucillo

Want proof that implicit bias is real? Take the Stroop Test.

The test is simple: A series of color names are posted on-screen, and the task is to name the color of the word, not read the word. At first, the words and colors align. Then the word ‘black’ appears in red, ‘green’ is written in orange, and so on.

Jessica MacFarlane, senior research associate at the Perception Institute at Rutgers University, administered the group test to the attendees of a series of programs on implicit bias at the Criminal Justice Section meeting on Jan. 16, during the New York State Bar Association’s Annual Meeting in New York City. The accuracy of the audience responses went downhill very quickly.

The point, says MacFarlane, is that the test creates a “conflict in our brains. Reading the word is our default reaction.”

“The only way to perform this test correctly,” she said, “is to focus, think and slow down – an intentional override to unconscious behavior.”

Noting the numerous studies showing how implicit biases have real-life repercussions – including the likelihood that an African-American defendant in a capital case is more likely to receive a sentence of death than a similarly situated white defendant – MacFarlane revealed the urgency

of having an override.

“Implicit bias,” she said, “is increased by stress, multi-tasking and unfamiliarity. It is not reduced by good intentions or suppression.” She added that the key is being aware of and critical of your own assumptions.

Bronx Family Court Judge Gayle Roberts recounted wrestling with the issue of implicit bias after a court appearance by a man seeking visitation rights.

“He had a neck tattoo,” she said. She ruled against him. At the end of the day, however, she realized her stereotyping of the man because of that tattoo had informed her ruling.

“I am not as fair as I think I am,” said Roberts.

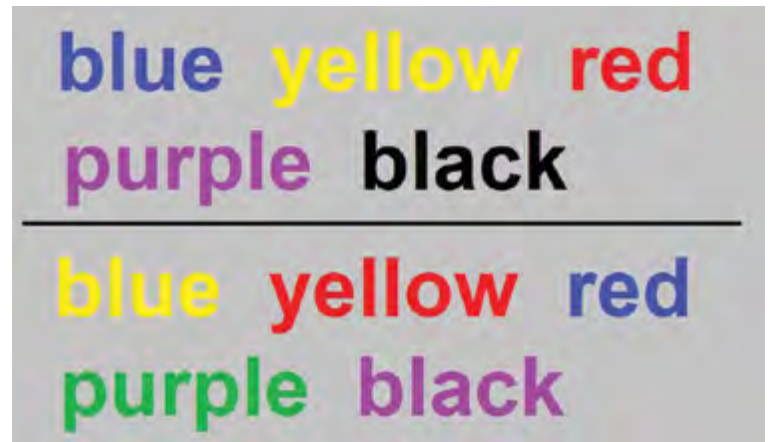
Since then, Roberts has kept a benchcard as a checklist for making court work for everyone.

First, she said, “create a friendly atmosphere” and see parties as individuals.

She schedules difficult cases for the morning, because the parties “are fresher and sharper” than in the late afternoon.

And, Roberts noted, “I always ask myself, would I have ruled differently if the party” were someone different?

MacFarlane noted the value of making a courtroom or district attorney’s office look more inclusive both to make it more welcoming and to ease racial anxiety. She cited the district attorney’s office in Charlotte, NC, which



removed the photos of police that lined the walls so witnesses being prepped would be more comfortable.

Xavier Donaldson, program chair, then took the microphone. Donaldson is a trial attorney and founding partner of Donaldson & Chilliest, LLP, who has argued frequently in the Southern District of New York. He said that the Southern District of New York courthouse lobby was recently filled with artists’ drawings of major trials and, “I did not see one black attorney among those depicted.”

Then he told the following anecdote:

“Three times the same federal judge confused me with my client. The first time the judge called my client ‘Mr. Donaldson,’ I pointed out the error and the judge apologized. I appeared again before the same judge, who again called my

client ‘Mr. Donaldson.’ I pointed out the error and again the judge apologized. The third time, the judge turned to my client, a black woman, and greeted ‘Mrs. Donaldson.’

“That, I believe, is rooted in a form of implicit bias. For a while I honestly felt a certain anxiety whenever I entered that courtroom.”

Donaldson said to transfer his experience to another situation. “One could imagine,” he said, “a rural New York county, with a majority white population, that has two state prisons. In those counties, there are many diverse clients being tried with all-white juries.”

“We need to address these specifics and possible implicit bias before trial,” he added, “to avoid results that may have been based, in part, upon impermissible factors or considerations.”

## Establishing LGBT Parentage Under the Court of Appeals Ruling in *Brooke S.B.*

*Continued from page 15*

legal position in conflict with the party’s “prior statements and conduct.” To determine whether equitable estoppel applies, the court needs to look at what happened – not just between the adults but also in each adult’s respective relationship with the child. The facts, said Figlewski, are “in how the family conducted its life.”

Four factors often looked at are consent, including whether the biological or adoptive parent held

out the other as a parent; whether the parties and the child lived together as a family; whether the individual assumed the duties of parenting; and whether a parent-child bond was established.

An increasingly important consideration during litigation is whether it would harm the child if the relationship is disrupted and visitation is cut. After the Court of Appeals ruling and subsequent family court appearances to determine the best interests of the child,

Barone’s ex-partner agreed to a custodial and visitation arrangement, and Barone finally saw her son that fall. After three years apart, it took some time to adjust, but Barone and her son have restored their loving family bond.

Figlewski described how the law is seeing new challenges in the form of multi-parenting arrangements and, in some cases, assertion of rights by donors in alternative insemination. Such cases build on the principles of *Brooke S.B.* and

hinge on both the intentions of the parties and how they conducted themselves with each other and with the child – where there is a divergence, the facts on the ground will often be persuasive and prevail.

Although a hierarchy of parentage exists in the law, Figlewski said, there is no doubt that intent and functional parentage are now included, and legal advocates play a tremendous role in ensuring that parental rights are recognized and protected.

# *Annual Meeting Awards*



NY Court of Appeals Chief Judge Janet DiFiore receives NYSBA's Gold Medal award from President Michael Miller at the President's Dinner.



US Court of Appeals Judge Richard Sullivan (center) receives 2019 Stanley H. Fuld Award from the Commercial and Federal Litigation Section Chair Robert Holtzman (right) and Carrie Cohen, Morrison & Foerster LPP (left).



Presentation of the Ruth Schapiro Award by the Women in Law Section. Left to right: NYSBA Past President Claire Gutekunst; President Michael Miller; Schapiro honoree Deborah Scalise; Secretary Sherry Levin Wallach; Women in Law Section Chair Susan Harper; Jacqueline Hattar and Frettra Miller De Silva, co-chairs of the Women in Law Awards Committee.





Ruby Asturias takes a moment to acknowledge fellow honoree Lauren D. Rachlin (posthumous) at the International Section Awards Lunch.



Shirani Ponnambalam is presented with the Jonathan Lippman Pro Bono Award by former NY Court of Appeals Chief Judge Jonathan Lippman (left) and Chair of the Senior Lawyers Section, C. Bruce Lawrence (right).



Albany County District Attorney David Soares speaks to the Criminal Justice Section upon being honored with the Outstanding Prosecutor Award.



Justice Sylvia Hinds-Radix reflects upon her career creating opportunities for diversity and inclusion after receiving the Diversity Trailblazer Award.



Ronald Mayer (center), Jonathan Lippman Pro Bono Award honoree, poses with former NY Court of Appeals Chief Judge Jonathan Lippman (left) and Chair of the Senior Lawyers Section C. Bruce Lawrence (right).



Preetha Chakrabarti (center) receives the Outstanding Young Lawyers Award: Pictured with her mother, Indrani Chakrabarti, and Young Lawyers Section Chair Terrance Tarver

# New York State Bar Association Elects New Officers, Section Chairs

By Christian Nolan

Scott M. Karson, of Stony Brook, has been elected president-elect designee of the New York State Bar Association.

Current President-elect Henry M. “Hank” Greenberg, of Albany, assumes the presidency on June 1, 2019, succeeding President Michael Miller, of New York City. Sherry Levin Wallach, of White Plains, was elected to a third one-year term as secretary. Domenick Napoletano, of Brooklyn, was elected treasurer.

The House of Delegates, the association’s governing body, elected Karson and the other officers during the 142nd Annual Meeting in New York City on January 18. Karson begins a one-year term as president-elect on June 1, 2019 and will become president on June 1, 2020.

## Scott M. Karson

Karson is a partner at Lamb & Barnosky in Melville. He is the chair of the firm’s Professional Ethics Committee and Litigation Committee. He concentrates his practice on trial and appellate litigation, including municipal, commercial, real property title, land use and zoning and personal injury litigation. He has argued more than 100 appeals in the state and federal appellate courts.

Karson is currently treasurer of the association, his third one-year term in that role. Karson previously served a three-year term as vice

president of the State Bar for the Tenth Judicial District (Nassau and Suffolk counties) and is a member and former chair of the NYSBA’s Audit Committee.

He is also a member and former chair of the Committee on Courts of Appellate Jurisdiction, and serves as a member of the Finance Committee, the President’s Committee on Access to Justice and the Committee to Review Judicial Nominations.

In addition, Karson is a past president of the Suffolk County Bar Association and is the delegate of the Suffolk County Bar Association to the American Bar Association House of Delegates. He is also a member of the American Bar Association Council of Appellate Lawyers. He is vice chair of the Board of Directors of Nassau Suffolk Law Services, the principal provider of civil legal services to Long Island’s indigent population. He is a recipient of the Suffolk County Bar Association President’s Award (1996 and 2011) and Lifetime Achievement Award (2018).

Karson graduated from the State University of New York at Stony Brook and earned his law degree *cum laude* from Syracuse University College of Law.

## Section Chairs

Six new State Bar Association section chairs also assumed office during Annual Meeting. They include:

## Antitrust Law Section

Nicholas Gaglio, of New York City (Axinn, Veltrop & Harkrider) – Prior to joining its leadership team, Gaglio served the Antitrust Section as Diversity chair for several years, helping to spearhead the section’s Diversity Fellowship program. He also served as Membership chair for over five years.

Gaglio holds degrees from Duke University and The George Washington University Law School.

## Corporate Counsel Section

Mitchell F. Borger, of New Jersey (Macy’s Inc.) – He is a 20-year member of the Corporate Counsel Section Executive Committee and previously served as chair in 2005.

He holds degrees from SUNY Oneonta and Albany Law School of Union University.

## Tax Section

Deborah Paul, of New York City (Wachtell, Lipton, Rosen & Katz) – An active member for 26 years, Paul has been a frequent panelist at NYSBA conferences on tax aspects of mergers and acquisitions and related topics.

She holds degrees from Harvard University, Harvard Law School, and New York University School of Law.

## Torts, Insurance and Compensation Law Section (TICL)

James P. O’Connor, of New York City (Maroney O’Connor) – An active NYSBA member for 24 years, he served on the TICL Section Executive Committee.

He holds degrees from Boston College and Hofstra University School of Law.

## Trial Lawyers Section

Kevin J. Sullivan, of Buffalo (Nichols and Sullivan, P.C.) – Mr. Sullivan has been an active NYSBA member since 2000. He was a member of the House of Delegates from 2015 through 2017 and has been the Chair of the Trial Lawyers Section Legislative Committee since 2016.

He holds degrees from St. Bonaventure University and St. Mary’s University School of Law.

## Trusts and Estates Law Section

Robert M. Harper, of Uniondale (Farrell Fritz) – An active NYSBA member for the past 11 years, he is the former treasurer and secretary of the Trusts and Estates Law Section, past Governmental Relations and Legislation co-chair and past delegate to the House of Delegates.

He holds degrees from Boston College and Hofstra University School of Law.

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## Lawyering in the #MeToo Era

*Continued from page 7*

said defendants don’t want their case to go public and plaintiff’s lawyers are seeking to settle for as much as possible. The result?

“There is a price to pay for someone not being able to tell their story,” said Goldberg.

Goldberg also noted that a non-

disclosure agreement could potentially result in recidivists never getting exposed publicly for their actions.

Justice Scarpulla, during the CommFed panel, said that it is not as easy in the #MeToo era for recidivists to sweep their conduct under the rug, especially as plaintiff’s law-

yers look to enter previous misconduct into evidence.

“For many years, certain employers’ past harassing behavior was shoved under the table, companies pretended it didn’t happen, and hoped it would go away,” said Scarpulla. “As judges, we cannot ignore that history at this point in

time. I think we all are aware that there may be probative value to that [past harassment] information.”

Further, Scarpulla thinks that “confidential settlements are more of a thing of the past and defendants will be paying a much steeper price for confidentiality.”

# Examining Privacy Concerns with IoT

By Christian Nolan

All the devices in our daily lives know more about us than we realize – where we are, what we eat, even our shopping habits.

In fact, everyone is connected to the internet in so many ways that now only five percent of connected devices are personal computers.

Known as the ‘internet of things,’ these devices, whether it’s Alexa, Cortana, smart televisions or smart watches, have gone from 2 billion in usage in 2006 to a projected 200 billion in 2020.

But with this rise in smart devices in our homes and in our possession throughout the day comes growing concerns about data privacy. The information collected by these devices is even becoming a hotly contested issue in courtrooms around the country.

For instance, a New Hampshire judge last year ordered Amazon to release recordings from a murder victim’s Echo device and any cell-phones paired to it over a certain period of time.

In Connecticut, the prosecution is using evidence in a high-profile murder case taken from a Fitbit device that contradicts the story of

the defendant, who is accused of murdering his wife but claims it was a masked intruder. It is the first time anywhere Fitbit device information has been used as evidence in a murder case.

There have also been complaints from parents that hackers have turned their Wi-Fi baby monitors into spy cams or that hackers can take control of your car, which led to a recall of some Fiat Chrysler automobiles.

These issues were all part of the discussion at the New York State Bar Association Intellectual Property Law Section’s *Privacy and the Internet of Things* panel as part of their daylong Annual Meeting event at the New York Hilton Midtown Jan. 15.

Leonie Huang, of Holland & Knight, moderated the discussion, which also featured panelists Jessica Lee, of Loeb & Loeb; Mark Melodia, of Holland & Knight; Anthony Ford, senior data privacy counsel at Medidata Solutions; and Manas Mohapatra, chief privacy officer at Viacom.

Lee started the discussion with a presentation that included the statistics and court cases noted above, and the group spent a large portion



Medidata Solutions’ Anthony Ford (left) and Viacom’s Manas Mohapatra (right) at the ‘internet of things’ program.

of the event providing background on the internet of things.

Further, the group explained that personal data is more than a name, an email address or phone numbers. Privacy concerns can include your IP address, cookies, mobile identifiers, and employee data, which can reveal your gender, age/date of birth, social media log-ins and handles, as well as location data.

Mohapatra, who also worked in high-ranking positions dealing with privacy at the Federal Trade Commission and Twitter, said unlike the General Data Protection Regulation recently implemented by the European Union, the U.S.

has no comprehensive privacy federal legislation. Depending on what type of data it is, who is using it and for what purposes, Mohapatra said the same data about the same group of people may get protections in one context under U.S. laws but not in another.

The panelists expressed concern that various states across the country could begin enacting their own privacy regulations, perhaps stemming from lawsuits. This, they said, could result in divergent enforcement across the 50 states, like “state level mini-GDPRs.” From there, Lee said, could come “the real push for federal regulation.”

## What Happens to Your Pets During a Natural Disaster?

By Jeff Storey

Shortly after Hurricane Katrina in 2005, news reports speculated that up to 250,000 abandoned animals may have died from drowning, starvation, dehydration, disease and other causes related to the disaster.

“This was a human problem in addition to an animal problem,” said Barbara Ahern of Albany, during a presentation at the State Bar’s Annual Meeting by the Committee on Animals and the Law on “When Disaster Strikes, What Happens to the Animals?”

Ahern said that a line can be drawn between pre- and post-Katrina when it comes to protection of animals. Horrific fires in California and a spate of hurricanes have kept the subject of di-

asters and disaster response in the public eye.

Recognizing that many are reluctant to leave behind animals they regarded as members of the family, after Katrina Congress passed the Pets Evacuation and Transportation Standards (PETS) Act mandating that federal, state and local response plans take this bond into account.

According to Wanda Merling of the Humane Society of the United States, who discussed disaster planning at the state Bar conference, the bill covers cats, dogs, rabbits, turtles and pocket pets but not farm animals, aquatics, zoos, exotics and reptiles.

PETS does not provide that any specific action be taken to provide for the evacuation, transportation and sheltering of household pets

and service animals in harm’s way. That is up to state or local agencies.

In New York, a public-private partnership called the Empire State Animal Response Team (ESART) coordinates County Animal Response Teams (CARTS). Actual assistance is provided by volunteers that include veterinarians, animal control personnel and animal welfare groups.

Recently passed legislation shields veterinarians from legal liability for participating in emergency efforts outside their offices and treats volunteers as if they were state employees.

Ahern said that as of November 2018, 28 upstate New York counties have operational CARTS. “Many have excellent plans,” she said.

A sticking point in such plans is that animals that are evacuated may be given shelter in an emergency but separated from their owners. The New York Office of Homeland Security and Emergency Services advises that in the event of an evacuation, “make plans now on what to do with your pet in the event you have to leave your home.”

During Superstorm Sandy, many evacuees balked at boarding trains or buses without bringing their pets along. But legislation has been passed to create a kind of public transit Noah’s Ark.

Any resident of the state evacuating New York City, Long Island or other downstate counties via the MTA or Port Authority can now bring their pets along with them. However, human passengers get priority in seating.



# Spring 2019

## Upcoming CLE Programs

Bringing you the best and most relevant continuing education to help you be a better lawyer.

### **Legal Malpractice 2019**

**4.0 Credits**

Monday, March 25 | NYC  
Thursday, March 28 | Rochester

### **Being Heard at Hearings | Local Criminal Court Practice**

**3.5 Credits**

Thursday, March 28 | Albany & Webcast  
Friday, March 29 | Long Island  
Friday, March 29 | Westchester

### **New York Appellate Practice**

**7.0 Credits**

Friday, March 29 | NYC

### **Arbitration 2019 – What Parties & Their Counsel Have a Right to Expect & Arbitrators Should Be Delivering: Arbitration at Its Best**

**7.0 Credits**

Monday, March 25 | NYC

### **Representing Veterans before the Veterans Administration**

**4.0 Credits**

Thursday, March 28 | Westchester

### **Easement Law in New York**

**4.0 Credits**

Friday, March 29 | Albany & Webcast

### **The Purchase & Sale of a Business**

**3.0 Credits**

Monday, April 1 | NYC

### **Accounting for Lawyers**

**3.0 Credits**

Monday, April 1 | NYC  
Tuesday, April 16 | Albany

### **Amendments to the Commercial Division Rules**

**1.0 Credits**

Tuesday, April 2 | Webinar

### **Family Court Practical Skills: Support, Custody, Family Offense Hearings & Diversity**

**7.0 Credits**

Tuesday, April 2 | Albany & Webcast  
Wednesday, April 3 | Westchester  
Thursday, April 4 | Long Island  
Thursday, April 4 | Syracuse  
Monday, April 8 | Buffalo

### **New York Appellate Practice**

**7.0 Credits**

Thursday, April 4 | Albany  
Friday, April 5 | Long Island  
Monday, April 15 | Westchester

### **Commercial Litigation | Bridging the Gap**

**16.0 Credits**

Thursday, April 4 – Friday, April 5 | NYC

### **Commercial Mortgage Foreclosures & Workouts**

**7.5 Credits**

Thursday, April 4 | Rochester  
Friday, April 5 | NYC

### **We All Speak Justice Here!**

### **Ensuring Language Access in the New York Courts**

**2.0 Credits**

Friday, April 5 | NYC

### **Introductory Lessons on Ethics & Civility 2019**

**4.0 Credits**

Tuesday, April 9 | Buffalo  
Wednesday, April 10 | Albany & Webcast  
Friday, April 12 | Long Island  
Friday, April 12 | NYC & Webcast  
Friday, April 12 | Rochester

### **Being Heard at Hearings | Local Criminal Court Practice**

**3.5 Credits**

Monday, April 8 | Syracuse  
Thursday, April 11 | Glens Falls  
Thursday, April 11 | Rochester

### **Advanced Commercial Mediation Training**

**16.0 Credits**

Friday, April 12 & Monday, April 15 | Long Island

### **Handling Tough Issues in a Plaintiff's Personal Injury Action**

**7.0 Credits**

Monday, April 15 | NYC  
Wednesday, April 17 | Albany & Webcast  
Thursday, April 18 | Rochester

### **Legal Malpractice 2019**

**4.0 Credits**

Tuesday, April 16 | Westchester

### **Business Law Basics**

**7.5 Credits**

Monday, April 29 | NYC

## **The Courtroom of the Future**

**2.0 Credits**

Tuesday, April 30 | NYC

## **DWI on Trial – The Big Apple XIX**

**7.5 Credits**

Thursday, May 2 | NYC & Webcast

## **Public Utility Law 2018**

*This program was originally scheduled for November 2018 and was rescheduled.*

**7.0 Credits**

Thursday, May 2 | Albany

## **Handling Tough Issues in a Plaintiff's Personal Injury Action**

**7.0 Credits**

Thursday, May 2 | Long Island

Friday, May 3 | Buffalo

## **Medical Malpractice Litigation 2019**

**7.0 Credits**

Monday, May 6 | Buffalo

## **Anatomy of a Trust**

**7.5 Credits**

Tuesday, May 7 | Albany

Tuesday, May 7 | Buffalo

Tuesday, May 21 | Long Island

Friday, May 31 | NYC

## **Insurance Coverage Update 2019**

**6.5 Credits**

Friday, May 10 | Buffalo

Friday, May 10 | NYC

Friday, May 17 | Albany & Webcast

Friday, May 17 | Long Island

## **Starting a Solo Practice in New York**

**7.5 Credits**

Monday, May 13 | NYC

## **U.S. Immigration Law**

**8.0 Credits**

Friday, May 17 | NYC

## **Disabilities in the Legal Profession**

**7.0 Credits**

Monday, May 20 | NYC

## **The GDPR at One Year**

**2.0 Credits**

Thursday, May 23 | Webinar

## **Keeping Current with Automobile**

### **Litigation in New York**

Thursday, May 30 | Albany & Webcast

Friday, May 31 | Buffalo

Friday, May 31 | Long Island

Monday, June 3 | NYC

### **Ethics 2019: Legal Ethics in the Real World**

Thursday, June 6 | Rochester

Thursday, June 6 | Westchester

Monday, June 10 | Albany

Monday, June 10 | NYC

Thursday, June 13 | Long Island

Friday, June 21 | Buffalo

TBD | Ithaca | TBD

TBD | Syracuse | TBD

### **Bridging the Gap Skills**

**6.0 Credits**

Friday, June 7 | NYC

### **Mandated Representation**

Friday, June 7 | Albany

### **Unraveling the New Tax Law's Impact on Domestic Relations Law**

**6.0 Credits**

Friday, June 7 | Long Island

Friday, June 7 | Rochester

Tuesday, June 11 | Westchester

Wednesday, June 12 | Albany

Friday, June 14 | NYC

### **Antitrust Law Basics**

**3.5 Credits**

Monday, June 10 | NYC

### **Purchases and Sales of Homes**

**7.0 Credits**

Friday, June 14 | Rochester

Wednesday, June 19 | Westchester

Thursday, June 20 | Long Island

Friday, June 21 | NYC

### **Social Media Guidelines**

Monday, June 17 | NYC

### **International Bridging the Gap 2019**

**16.0 Credits**

Monday–Tuesday, June 17–18 | NYC

### **Bridging the Gap – Summer 2019**

Tuesday–Wednesday, August 13–14 | NYC

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I have practiced thoracic and vascular surgery since 1991. I maintain an active practice and am Medical Director of Champlain Valley Physicians Hospital Wound Center. I am certified by the American Board of Thoracic Surgery and am a Registered Physician in Vascular Interpretation.

I review for the New York State Office of Professional Medical Conduct and have had over ten years of experience in record review, determinations of standard of care, deposition and testimony in medical malpractice cases.

Craig A. Nachbauer, M.D.  
North Country Thoracic and Vascular, PC  
12 Healey Avenue  
Plattsburgh, NY 12901  
Phone: (518) 314-1520  
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410.584.1960

## Lawyer to Lawyer:

### Florida Real Estate

James A. Marx, Esq.  
Marx Rosenthal PLLC  
1 SE 3rd Avenue, Suite 2900  
Miami, Florida 33131  
(305) 577-0276 [James@MarxRosenthal.Com](mailto:James@MarxRosenthal.Com)  
[www.MarxRosenthal.Com](http://www.MarxRosenthal.Com)

Florida Board Certified Real Estate Attorney with over 30 years of experience at large national law firms and boutique firms focusing on real estate transactions and financings. Selected by the Florida Board of Governors and served as Committee Member and Past Chairman of the Florida Realtor Attorney Committee which prepares the FR/Bar Contract Documents that are customarily used in real estate transactions throughout Florida. Executive Committee Member for both the Real Property and Business Law Sections of the Florida Bar for the past several years and recognized as a top attorney for over 10 years in several publications. Frequent author and lecturer with extensive depth and experience with complicated transactions, contract interpretation, deposit disputes and matters related to limited liability companies. Title agent with largest title underwriters: First American, Fidelity and Old Republic. Board Certified Mediator. Available for co-counsel, to provide title insurance for Florida real estate transactions or financings, or to serve as mediator or expert witness for disputed matters.

# COVER PHOTO CAPTIONS

#### Top Left

GDPR Panel Chair Gerald J. Ferguson (BakerHostetler LLP) and Flavia Rebello (Trench Rossi e Watanabe) at the International Section program.

#### Top Right

Program Chair Xavier Donaldson (Donaldson & Chilliest, LLP) speaks during a Criminal Justice Section panel on implicit bias.

#### Middle Left

Panel moderator Leonie Huang, (Holland & Knight) sits with panelist Jessica Lee (Loeb & Loeb) during an Intellectual Property Law panel on Privacy and the Internet of Things.

#### Middle Center

Assembly Member Richard Gottfried (D-Manhattan) addresses the Health Law Section meeting.

#### Middle Right

Joanne Macri of the NYS Office of Indigent Legal Services listens as Tina Luongo from The Legal Aid Society speaks during a joint Committee Civil Rights and Immigration Representation panel.

#### Bottom Left

Brett Figlewski, legal director of the LGBT Bar Association and Brooke Barone, petitioner in the landmark Court of Appeals ruling *Brooke S.B.*, taking audience questions during the Family Law Section meeting.

#### Bottom Right

From left to right: Presidential Summit – Listening to #MeToo Panel: President Michael Miller, Hon. Colleen McMahan, Gregory Chiarello, Kathryn Barcroft, Susan Harper and Carrie Goldberg.

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## APRIL CLE PROGRAMS AT CONVENE

The Purchase & Sale of a Business | **Monday, April 1**

Accounting for Lawyers | **Monday, April 1**

Commercial Mortgage Foreclosures & Workouts | **Friday, April 5**

Non-Compete Agreements in New York | **Monday, April 8**

Introductory Lessons on Ethics & Civility | **Friday, April 12**

What Makes Lawyers Happy | **Friday, April 12**

Handling Tough Issues in a  
Plaintiff's Personal Injury Action | **Monday, April 15**


Business Law Basics | **Monday, April 29**


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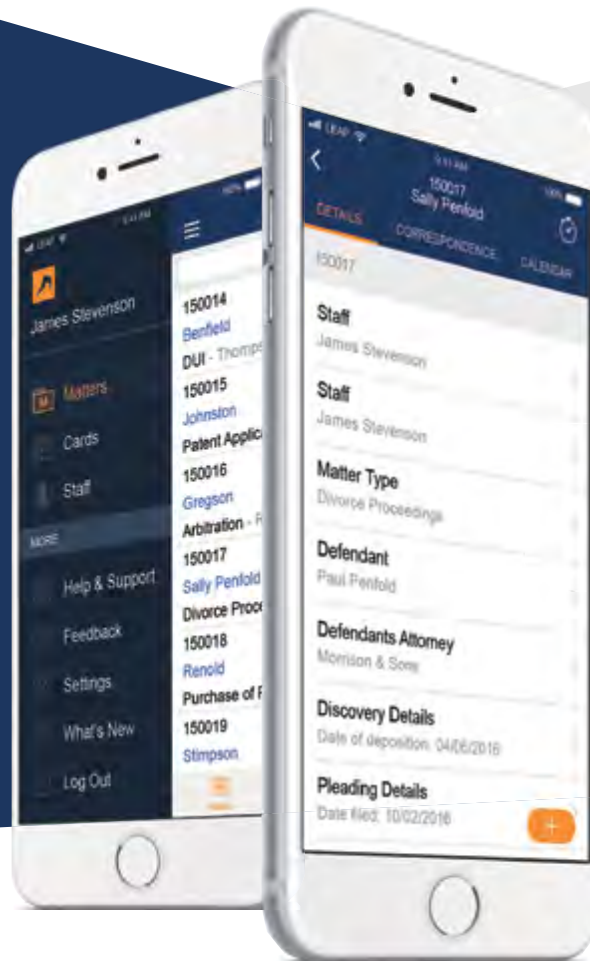
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