

Commercial and Federal Litigation Section Newsletter

A publication of the Commercial and Federal Litigation Section of the New York State Bar Association

A Message from the Outgoing Chair

It was a privilege to serve as the Chair of our Section during a sensationally active year. As has been thoroughly documented in this year's *Newsletters*:

- Over 80 active members of our Executive Committee have led 35 committees to put out some 23 written reports this year—this may be a record!
- Monthly meetings featured federal judges Robert Katzman, Lewis Kaplan, Colleen McMahon and Stephen Robinson; members of New York's



Lesley F. Rosenthal

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A Message from the Incoming Chair

I want to take this opportunity to thank the Section for the opportunities it has provided to me throughout the years and to thank all of its members in advance for my incoming term as Section Chair. This Section has a rich history with esteemed leaders from the bench and bar serving as Section Chairs. Following in this great tradition is our outgoing Section Chair, Lesley Friedman Rosenthal. The Section owes Lesley a great deal of thanks for all her hard work and dedication this past year as Chair of our Section. The Section had a



Carrie H. Cohen

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mighty commercial division bench, the Honorable Elizabeth Emerson, Marguerite Grays, Orin Kitzes, and our beloved members Bernard Fried and Karla Moskowitz.

- We partnered with the Office of Court Administration in the editing and publication of the "Commercial Division Law Report," now posted to our new Section blog for members' immediate reference, understanding and discussion.
- Incoming Chair Carrie Cohen hosted a fascinating and fun Spring Meeting at the Cranwell Resort and Spa.
- Incoming Chair-Elect Peter Brown chaired a most memorable Annual Meeting, with record attendance at the luncheon and with an appearance by our new State Attorney General, and thought-provoking remarks on corporate crime by the Honorable Lewis A. Kaplan, the Fuld Award recipient.
- Hundreds of Section members hosted dozens of members of the federal judiciary in a first-ever celebration of five new chief judges of federal courts in New York last September.
- Under the leadership of Diversity Committee Chair, the Honorable Barry Cozier, the Section put on its first-ever program serving litigators of color in March. We also inaugurated the Honorable George Bundy Smith Pioneer Award. These events drew 260 registrants, most of whom were new to the Section.
- At the same time, the Section inaugurated a minority summer fellowship for a law student to spend the summer in the chambers of a Commercial Division justice in New York Supreme Court.
- The Section "hit the road," sponsoring events in New York County, on Long Island, in Queens, Buffalo, and Syracuse—in each case, in collaboration with the local county bar association.
- The Section is also privileged to be invited by OCA to participate in judicial education seminars, and to help OCA welcome delegations of foreign judges from Algeria, Egypt, Jordan and the Cayman Islands. These events present unique opportunities for members of the bar to interact with our broth-

ers and sisters on the bench, improving the quality of both representation and adjudication.

- As part of the overall Bar Association's extensive CLE offerings, our Section put on or co-sponsored four extremely well received and well attended freestanding CLE programs. At the time of this writing, other programs are in the works, including a provocative and juicy discussion over lunch scheduled on July 18 between outside and in-house litigation counsel. The Section's CLE programs just in this past year alone have literally served thousands of attorneys and fulfilled tens of thousands of required CLE credits.

We've established new committees on white-collar criminal litigation, in-house corporate litigation, and the *Commercial Division Law Report*; added new posts to our Executive Committee for reps from every county in which there is a commercial division; and appointed new committee co-chairs to refresh the mandate of existing committees and chairs. We have taken a strong stance in favor of judicial pay increases at both the federal and state levels.

Please visit our Section Web site regularly. We have several new features as well, including on-line registration, and our Section blog, which has become a locus of discussion on such hot topics as the best and worst practices of outside litigation counsel, and recently published decisions out of the Commercial Division.

The Section honors the energetic and effective leadership of outgoing Association President Mark H. Alcott, and welcomes with great enthusiasm the leadership of its new President, Kathryn G. Madigan. We also owe thanks to our Section Liaison Juli Turner, Meetings Representative Lori Nicoll, Web Editor Barbara Beauchamp, and Pat Wood of Membership Services. A special thank you goes to the *Newsletter* Editor, Mark Davies, for a very demanding job very well done.

The officers in this 2006-2007 Section year worked together marvelously as a team, and I'd like to extend my personal thanks to them: Carrie Cohen, Peter Brown, Vincent Syracuse, Susan Davies, and Kyana McCain. The Section is now in their extremely capable hands.

Lesley Friedman Rosenthal

A Message from the Incoming Chair

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terrific year with record increases in membership, the creation of several new dynamic committees, fabulous programming, and numerous written reports submitted to the Executive Committee; none of these achievements would have been possible without Lesley.

I am especially honored to be chairing the Section for the 2007-2008 NYSBA year as it nears our Section's 20th anniversary. This Section has a tremendous history; from its origin in helping to establish the Commercial Division, the Section has grown to more than 2,300 members and continues to work to improve the quality of representation of commercial clients in litigation matters. The Section also works to improve law and procedure in the areas of commercial and federal litigation and enhance the administration of justice. The Section has been instrumental in providing a forum to foster productive relationships between and among litigation colleagues, civil adversaries, and prospective and current clients, and has been on the forefront of many of the most important issues that have faced commercial and federal practitioners and the



The Section's 2006-2007 Chair Lesley F. Rosenthal passes the gavel—literally and figuratively—to incoming Section Chair Carrie H. Cohen at the meeting of the Section's Executive Committee on June 20, 2007. This is the first time that women have led the Section for two years in succession. *Photo by Steve Hart*

judiciary during the past 20 years. The success of our Section is surpassed only by the success of our leadership; past Section chairs serve as United States District Judges, have served and will serve as the President of the New York State Bar Association, serve as President of the Federal Bar Council, and serve as leading commercial litigators and in-house counsel. I look forward to leading our Section in carrying out all of our important work as well as planning for another successful 20 years.

As you all know as valued Section members, being part of a strong professional organization plays an important role in career development and professional satisfaction. If you are not yet involved in one of our many exciting committees, please contact one of my fellow officers or me. I look forward to a productive and exciting year ahead and welcome any of your comments or suggestions about

Section projects or activities.

Have a wonderful summer.

Carrie H. Cohen

You're a New York State Bar Association member.

You recognize the value and relevance of
NYSBA membership.

For that we say, **thank you.**

The NYSBA leadership and staff extend thanks to you and our more than 72,000 members — from every state in our nation and 109 countries — for your membership support in 2007.

Your commitment as members has made NYSBA the largest voluntary state bar association in the country. You keep us vibrant and help make us a strong, effective voice for the profession.

Kathryn Grant Madigan
President



Patricia K. Bucklin
Executive Director

Fordham Law Student Lina M. Martinez Receives Section's Inaugural Minority Summer Fellowship Award

By Susan M. Davies

Fordham Law School student Lina M. Martinez is the 2007 recipient of the inaugural Commercial and Federal Litigation Section Minority Law Student Summer Fellowship, which is funded by the Section and administered by The New York Bar Foundation. Kay Crawford Murray, a member of the Board of Directors of The New York Bar Foundation, presented the award to Ms. Martinez on March 15, 2007, at a reception held at Lincoln Center for the Performing Arts in New York City. The reception was held in conjunction with the Section's "Smooth Moves" CLE program and networking event for litigators of color.



From left to right: Hon. Charles E. Ramos, Tracee E. Davis, Lina M. Martinez, Kenneth G. Standard, and Kay Crawford Murray at the presentation of the Section's Inaugural Minority Law Student Summer Fellowship of the NY Bar Foundation to Ms. Martinez on March 15, 2007.

Ms. Martinez is a magna cum laude graduate of Drew University (Madison, New Jersey), where she was a Thomas Kean Fellow and earned a Bachelor of Arts degree in Political Science and Spanish. Her thesis, written entirely in Spanish, was entitled "The History of the Cuban Revolution through the Eyes of an Intellectual: Thomas Gutierrez Alea's Work Before and After the Revolution." The 2007 Fellowship selection committee—comprised of The Honorable Barry A. Cozier, Chair of the Section's Diversity Committee, Lesley F. Rosenthal, then Section Chair, and Tracee E. Davis, a member of the Section's Executive Committee and former Secretary of the Section, together with input from the Foundation—unanimously selected Ms. Martinez from among 18 highly qualified applicants.

As the Fellowship recipient, Ms. Martinez is spending her summer working as a law clerk in the chambers of the Honorable Charles E. Ramos of the Commercial Division of the New York State Supreme Court, New York County.

The Section has committed to funding the Fellowship for a minimum of four years, with the immediate goal of providing law students from diverse backgrounds with an opportunity to experience commercial litigation practice. The ultimate goal of the Fellowship is to create a network and forge relationships that will foster greater diversity among commercial litigators throughout the State of New York.

ships that will foster greater diversity among commercial litigators throughout the State of New York.

Application forms for the 2008 Fellowship will be available on the Section's Web site and from The New York Bar Foundation beginning on September 1, 2007. The Fellowship is open to all first-year (1L) minority students who are enrolled in a law school in the state of New York as of fall 2007 and are capable of fulfilling the requested work hours and responsibilities. The Fellowship will take place during the summer of 2008 for a period of 10 weeks, and the recipient will receive a stipend of \$5,000.

The Section gratefully acknowledges the assistance of The New York Bar Foundation in implementing and administering the Fellowship. For more information about The New York Bar Foundation, contact Rosanne Van Heertum, Director of Development, The New York Bar Foundation, One Elk Street, Albany, NY 12207, rvanh@tnybf.org.



**Catch Us on the Web at
WWW.NYSBA.ORG/COMFED**

Section Confers Inaugural Hon. George Bundy Smith Pioneer Award

On March 15, 2007, former NYSBA President Kenneth G. Standard presented the Section's inaugural George Bundy Smith Pioneer Award to its namesake, the Honorable George Bundy Smith, retired Associate Judge of the New York State Court of Appeals and partner in the law firm of Chadbourne & Parke, LLP. The award, which recognizes legal excellence, community commitment and mentoring, was presented to Judge Smith in recognition of his work in the civil rights movement and his 30 years of public service as a judge.

Judge Smith received the award at a reception held at Lincoln Center for the Performing Arts, following a CLE program entitled "Smooth Moves: Career Alternatives for Litigators of Color," that was co-sponsored by the Commercial and Federal Litigation Section's Committee on Diversity (Chaired by the Honorable Barry A. Cozier of Epstein Becker & Green, P.C.) and the Committee on Corporate Litigation Counsel (Co-chaired by Carla Miller, Senior Director and Litigation Counsel of Universal Music Group, and Richard B. Friedman of Dreier LLP), and by the New York State Bar Association's Committee on Diversity and Leadership Development and Committee on Minorities in the Profession.

During the award ceremony, Association President Mark H. Alcott of Paul, Weiss, Rifkind, Wharton & Garrison, LLP paid tribute to Judge Smith as "a strong advocate for greater diversity and inclusiveness in the legal profession" and "a man who blazed trails and amassed a distinguished record of public and professional service." Section Chair Lesley F. Rosenthal stated: "It is an honor for the Section to inaugurate a Pioneer Award in the name of Judge George Bundy Smith, and to present the award to Judge Smith himself." Ms. Rosenthal described Judge Smith as "a



Presentation of the Section's George Bundy Smith Pioneer Award on March 15, 2007: (L-R) Hon. Barry A. Cozier of Epstein Becker & Green, P.C. (Chair of Section's Committee on Diversity); Carla M. Miller, Senior Director/Litigation Counsel of Universal Music Group (Co-chair of Section's Committee on Corporate Litigation Counsel); Hon. George Bundy Smith of Chadbourne & Park LLP (Honoree); Kenneth G. Standard of Epstein Becker & Green, P.C. (former NYSBA President); Mark H. Alcott (NYSBA President); and Lesley F. Rosenthal, Vice President/General Counsel/Secretary of Lincoln Center for the Performing Arts, Inc. (Section Chair)

Photo by Steve Hart

role model to all those in the legal profession, and especially to lawyers of color who are inspired by his achievements." Judge Smith's remarks upon receiving the George Bundy Smith Pioneer Award are reprinted in the spring 2007 issue of *NYLitigator*.

The Honorable George Bundy Smith served as an Associate Judge of the New York Court of Appeals for 14 years, from 1992 until his retirement from the bench in September 2006. From 1987 until 1992, he was an Associate Justice of the Supreme Court, Appellate Division, First Department, and, from 1980 to 1986, a Justice of the Supreme Court of the State of New York. Judge Smith's judicial service began in May 1975, when he was named to the New York City Civil Court.

Earlier in his career, Judge Smith worked as an attorney for the NAACP Legal Defense and Education Fund, Inc. He later became a judicial law secretary in the New York state courts, and from 1974 to 1975 was the administrator of New York City's Model Cities Program.

Judge Smith has served as an Adjunct Professor of Law at Fordham University Law School since 1981 and also at New York Law School in 2001.

Judge Smith obtained a bachelor of arts from Yale University in 1959 and a bachelor of laws from Yale Law School in 1962. He also earned an M.A. in Political Science (1967) and a Ph.D. in Government (1974) from New York University, an LL.M. (2001) from the University of Virginia School of Law, an honorary Doctor of Laws (2004) from Fordham University School of Law, and an honorary Ph.D. (2006) from Albany Law School of Union University.



CLE Panel "Smooth Moves: Career Alternatives for Litigators of Color": (L-R) Hon. Denny Chin (U.S. District Judge, Southern District of New York); Lawrence Otis Graham (New York Magazine columnist and author); Hon. Peter C. Harvey of Patterson Belknap Webb & Tyler LLP (former Attorney General for the State of New Jersey); Jose Maldonado (Vice President, Operations, AmeriChoice Corporation); Marcia Lynn Sells (Assistant Vice President, Planning & Program Development, Columbia University); Hon. Carol A. Robles-Román (Deputy Mayor for Legal Affairs and Counsel to the Mayor, City of New York)

Photo by Katherina Plumb

2007–2008 Section Officers and Delegates to Association’s House of Delegates

The Section’s 2007–2008 officers assumed their duties on June 1, 2007. In accordance with Article III of the Section’s bylaws, Carrie H. Cohen, Assistant United States Attorney, Criminal Division, Southern District of New York, succeeded Lesley F. Rosenthal, Vice President, General Counsel and Secretary of Lincoln Center for the Performing Arts, Inc., as Section Chair, and Peter Brown of Thelen Reid Brown Raysman & Steiner LLP succeeded Ms. Cohen as Section Chair-Elect. The following 2007–2008 officers were elected by voice vote at the Section’s Annual Meeting on January 24, 2007: Vincent J. Syracuse of Tannenbaum Helpert Syracuse & Hirschtritt LLP was elected Section Vice-Chair, Susan M. Davies was elected Section Treasurer, and Kyana R. McCain was elected Section Secretary. Mr. Syracuse served as Section Treasurer from June 1, 2004, until taking office as Vice-Chair. Ms. Davies served as Section Secretary during the 2006–2007 term. Ms. McCain, an associate at Thelen Reid Brown Raysman & Steiner LLP in New York City, graduated from Howard University School of Law and holds a master’s degree in engineering from Rensselaer Polytechnic Institute. Biographical information for Ms. Cohen, Mr. Brown, Mr. Syracuse, and Ms. Davies can be found on the Section’s Web pages at www.nysba.org/comfed.


The Section has elected Chair-Elect Peter Brown and former Section Chairs Lesley F. Rosenthal and Sharon M. Porcellio, of Lippes Mathias Wexler Friedman LLP, as the Section’s delegates to the Association’s House of Delegates for 2007–2008. David H. Tennant of Nixon Peabody LLP was elected alternate Section Delegate. Section Chair Carrie H. Cohen is a Delegate to the Association’s House of Delegates for 2007–2008 on behalf of the Association of the Bar of the City of New York.

The Section expresses its gratitude to outgoing 2006–2007 Chair Lesley F. Rosenthal and to outgoing 2005–2007 Section Delegate and former Chair Stephen P. Younger for their years of dedicated service to the Section. The Section also expresses its gratitude to the Section’s Nominating Committee, chaired by the Honorable Melanie L. Cynamowski of Greenberg Traurig, LLP, for nominating the 2007–2008 officers and delegates.

The Section’s bylaws can be found on the Section’s Web page at www.nysba.org/comfed.

Available on the Web

NYLitigator (www.nysba.org/NYLitigator)
and Commercial and Federal Litigation Section
Newsletter (www.nysba.org/ComFedNewsletter)



Back issues of the *NYLitigator* and the *Commercial and Federal Litigation Section Newsletter* (2000-present) are available on the New York State Bar Association Web site

Back issues are available at no charge to Section members. You must be logged in as a member to access back issues. Need password assistance? Visit our Web site at www.nysba.org/pwhelp. For questions or log-in help, call (518) 463-3200.

***NYLitigator* Index and *Commercial and Federal Litigation Section Newsletter* Index**

For your convenience there are also searchable indexes in pdf format. Click “Search” on the Adobe tool bar, and type in search word or phrase.

Inaugural Reception for the Onondaga County Supreme Court Commercial Division

By Vincent J. Syracuse

On May 9, 2007, the Commercial and Federal Litigation Section of the New York State Bar Association and the Onondaga County Bar Association hosted the official opening and inaugural reception in Syracuse, New York, for our newest Commercial Division venue. The reception in Syracuse was one of several Commercial Division events that the Section has hosted during the past several years in partnership with local bar associations throughout the state.

More than 140 representatives of the bench, bar and business community of central New York gathered in the ceremonial courtroom in the Onondaga County Courthouse for the official opening. The inaugural ceremony was called to order by Justice Donald A. Greenwald, Deputy Administrative Judge of the Fifth Judicial District. His opening remarks were followed by comments from OCA's Statewide Special Counsel for the Commercial Division Jeremy R. Feinberg, then Section Treasurer Vincent J. Syracuse, and Onondaga County Bar Association President David M. Pellow, who introduced Commercial Division Presiding Justice Deborah H. Karalunas. Justice Karalunas was first elected to the bench in 2002 and had a distinguished career as a commercial litigator in central New York for more than 20 years. After Justice Karalunas welcomed those present to the Commercial Division and outlined her plans for the court, the proceedings were adjourned to a reception in the courthouse.

The city of Syracuse has historically played a key role in New York State commerce. The creation of a Commercial Division venue in Syracuse helps maintain Syracuse's important role as a center of commerce in central New York and places it on an equal footing with other commercial centers in our state. Its creation is especially important to the legal and business communities of Syracuse. It will provide an easily accessible forum for the resolution of business disputes in central New York and will help contribute to the development of New York commercial law jurisprudence. Local Commercial Division venues help clients manage their litigation costs and allow lawyers to service their clients without interruption. Lawyers will be able to tell clients that they do not have to go elsewhere for the resolution of their matters and that they can now have their cases heard in a local court with expertise in commercial law and, if they wish, local juries.

The Commercial Divisions throughout the state have become an important forum for the resolution of major business disputes in a relatively short time. Our Section was closely involved in the creation of the Commercial Division more than 10 years ago and its growth from its first two venues in New York and Monroe Counties to its expansion to 10 venues throughout the state from Buffalo to Long Island.

NEW YORK STATE BAR ASSOCIATION

***We've Moved
the Dates!***

**2008 Annual Meeting
is one week later!**

Mark your calendar for
January 28 - February 2, 2008



Committee Spotlight: Committee on Corporate Litigation Counsel

The mission of the Section's recently established Committee on Corporate Litigation Counsel is to provide a forum in which in-house litigators and law firm litigators with in-house experience can share information and best practices, as well as address legislative, regulatory, and policy issues impacting the corporate community with judges, public sector lawyers, and law firm practitioners. The Committee is Co-Chaired by Richard B. Friedman of Dreier LLP and Carla M. Miller of Universal Music Group.



Panel for "The Ten Best and Worst Practices of Outside and Inside Litigation Counsel," presented at the Princeton Club in New York City on July 18, 2007.

Projects and Activities

Since it was established in July 2006 by then Section Chair Lesley F. Rosenthal, the Committee on Corporate Litigation Counsel has been one of the Section's most active and innovative committees:

- On July 18, 2007, the Committee presented an entertaining and informative CLE luncheon program at the Princeton Club in New York City entitled "The Ten Best and Worst Practices of Outside and Inside Litigation Counsel."
- On June 13, 2007, several Committee members participated in an informal, roundtable discussion between in-house counsel and justices of the Commercial Division of the Supreme Court of New York at the annual Judicial Institute Conference for Commercial Division Justices.
- On May 5, 2007, at the Section's Spring Meeting at The Cranwell Resort and Spa in Lenox, Massachusetts, the Committee presented a CLE program entitled "The Government as Prosecutor and Civil Plaintiff."
- On March 15, 2007, the Committee, in conjunction with the Section's Committee on Diversity, co-sponsored a CLE program and networking recep-

tion entitled "Smooth Moves: Career Alternatives for Litigators of Color," at which career mobility strategies and tips for navigating transitions between corporate, government, and law firm practice for attorneys of color were presented by a stellar group of high-profile panelists.

- The Committee's report entitled "Protecting Employees' Constitutional Rights in Governmental Investigations: The *U.S. v. Stein* Decisions (2006)" appeared in the Spring 2007 issue of *NYLitigator*.

In addition, the Committee's monthly meetings have provided a forum for its members to discuss the following issues, among others:

- Tips for effectively avoiding privilege pitfalls when communicating with former employees;
- The contours of a corporation's attorney-client privilege, i.e., when is an in-house lawyer speaking/acting "as a lawyer" rather than as a business advisor;
- The recent conflict waiver litigation in Georgia involving the Duane Morris firm; and
- The prevalence of the inclusion of prospective waivers of litigation conflicts in retainer letters, and the pros and cons from the clients' and law firms' perspectives.

Upcoming Projects

The Committee anticipates having periodic guest speakers at upcoming meetings on topics of interest to its members, such as developments concerning e-discovery under the December 2006 amendments to the Federal Rules of Civil Procedure and as contemplated by various constituencies for the CPLR. In addition, during the Judicial Institute Conference held for Commercial Division justices on June 13, 2007, several of the Commercial Division justices expressed an interest in having a working session with the Committee in the fall to discuss how the bench and bar can further collaborate to improve the efficacy of certain key Commercial Division rules.

Members of the Section who are current or former in-house litigators and are interested in joining the Committee on Corporate Litigation Counsel should contact Richard Friedman at rfriedman@dreierllp.com or Carla Miller at carla.miller@umusic.com.

Committee on Corporate Litigation Counsel Co-Chair Bios



Richard B. Friedman

Richard B. Friedman, a Co-Chair of the Committee on Corporate Litigation Counsel, is a partner in the Litigation Department at Dreier LLP, where he concentrates on commercial litigation and arbitration matters.

Rich has handled numerous litigations in federal and state trial and appellate courts throughout the country for many years. In one such recent case, he obtained a civil contempt order as well as an order of incarceration against a judgment debtor on behalf of a well-known multinational pharmaceuticals company seeking to enforce multi-million dollar judgments. Several District Court rulings were affirmed by the U.S. Court of Appeals for the Second Circuit before a settlement was reached.

Prior to joining Dreier LLP in February 2002, Mr. Friedman had a diverse career in private practice and as a senior litigator at a Fortune 500 company. While at Weil, Gotshal & Manges, Rich was a founding member of that firm's Business and Securities Litigation Department.

Rich has spoken on various topics concerning commercial litigation. In May 2007, he moderated a program entitled "The Government as Prosecutor and Civil Plaintiff" at the Section's Spring Meeting. In June 2007, he moderated a program entitled "Update on E-Discovery Six Months After the Amendment of the Federal Rules" at the Association of the Bar of the City of New York. In July 2007, he moderated a program sponsored by the Section and co-sponsored by the Corporate Counsel Section entitled "Ten Best and Worst Practices of Outside and Inside Litigation Counsel." Rich is admitted to practice before the U.S. District Courts for the Southern and Eastern Districts of New York, the Northern District of Texas, the Eastern District of Michigan, the Eastern District of Wisconsin, and the U.S. Courts of Appeal for the Second, Third, Fourth, and Eleventh Circuits.

Rich serves on the Second Circuit Courts Committee of the Federal Bar Council. He is the former Co-Chair of the Litigation Committee of the Greater New York Chapter of the American Corporate Counsel Association and a former member of the Corporate Law Departments, Professional Responsibility, and Litigation Committees of the Association of the Bar of the City of New York and is currently a member of the Federal Courts Committee of the Association. Rich is also a member of the New York Chapter of the American Inns of Court.

Rich received a B.A., magna cum laude, from Cornell University in 1979 and a J.D. from the University of Chicago Law School in 1982.



Carla M. Miller

Carla Miller, Co-Chair of the Section's Committee on Corporate Litigation Counsel, is a Senior Director, Litigation Counsel for Universal Music Group, the world's largest group of record and music publishing companies. In that capacity, Ms. Miller oversees all aspects of litigation for the company and its record company affiliates. Ms. Miller also provides pre-litigation advice and counseling on varied topics from artist contract and intellectual property disputes to real estate related issues. Prior to joining UMG, Ms. Miller was Counsel and Deputy Director of Litigation for Siemens Corporation, the domestic holding company for all U.S.-based affiliates of the leading German electronics and engineering company, Siemens AG.

Ms. Miller is an experienced trial lawyer, having conducted all phases of litigation in state and federal court. Prior to transitioning to the corporate world, Ms. Miller was associated with the law firms Proskauer Rose LLP and Morrison & Foerster LLP. Her law firm practice focused on commercial litigation and entertainment law, with an emphasis on music and film industry related issues and intellectual property litigation, including copyright and trademark infringement and other Lanham Act claims. Ms. Miller represented the major U.S. motion picture studios' interests in the landmark Southern District of New York bench trial and Second Circuit appeal involving DVD technology, which upheld the Digital Millennium Copyright Act of 1998 against a First Amendment challenge. Ms. Miller also was recognized in 2000 as one of the top 15 New York lawyers under 40 by *New York Lawyer Magazine*.

Ms. Miller is a member of the Copyright and Literary Property Committee of the Association of the Bar of the City of New York. She has served as a lecturer for the Practising Law Institute and CLE International on Year 2000 computer processing liability issues, the Digital Millennium Copyright Act, and the CAN-SPAM Act. She also serves on the Board of Trustees for the Brooklyn Youth Chorus Academy.

Ms. Miller graduated from Loma Linda University in 1985 with a Bachelor of Science degree in Computer Science. After a successful career as a Consulting Manager with Andersen Consulting (now known as Accenture), where she led consulting projects in Frankfurt, Germany, and Zurich, Switzerland, Ms. Miller received her Juris Doctorate degree from the University of California, Hastings College of the Law in 1995. Ms. Miller also served as a Senior Articles Editor for *The Hastings Law Journal*. Following law school, Ms. Miller clerked for Senior Judge Cecil F. Poole on the United States Court of Appeals for the Ninth Circuit.

Section Members Enjoy Spring in the Berkshires

By Carrie H. Cohen, Section Chair



The Commercial and Federal Litigation Section's Spring Meeting on May 4–6, 2007, was a resounding success. Set in the bucolic Berkshires at The Cranwell Resort and Spa, the Section was blessed with beautiful spring weather and lots of sunshine.



Hon. Albert M. Rosenblatt, retired Associate Judge of the New York State Court of Appeals, speaks after the welcoming dinner about some of the jurists whose biographies appear in his new book *The Judges of the New York Court of Appeals: A Biographical History*.

The meeting began on the perfect note with a sunset cocktail reception, followed by a dinner and after-dinner presentation by the Honorable Albert M. Rosenblatt, New York Court of Appeals (retired), on his soon-to-be-published book entitled *The Judges of the New York Court of Appeals: A Biographical History*. Judge Rosenblatt treated Section members to a history of the Court of Appeals and selected biographies of its chief and associate judges. Section members were then given another treat when outgoing Section Chair Lesley Friedman Rosenthal on the violin and her husband, Ted Rosenthal, on the piano played musical selections ranging from Van Morrison to Cole Porter to Duke Ellington.

The Saturday morning program featured two equally impressive panels. The first panel, entitled "The Government as Prosecutor and Civil Plaintiff," focused on the potential and actual ethical and legal issues that arise when a governmental agency has civil authority as well as criminal jurisdiction. The panel was organized and moderated by Richard B. Friedman, a partner at Dreier LLP and the Co-Chair of the Section's Committee on Corporate Litigation Counsel, and included an esteemed group of top legal talent. Participating on the panel were Matthew Biben, Executive Vice President and Assistant

General Counsel, The Bank of New York; Richard D. Owens, a partner at Latham and Watkins and the former Chief of the Securities and Commodities Fraud Task Force at the United States Attorney's Office for the Southern District of New York; Mark Pomerantz, a partner at Paul, Weiss, Rifkind, Wharton & Garrison, LLP and former Chief of the Criminal Division at the United States Attorney's Office for the Southern District of New York; and Mark Schonfeld, Director of the Northeast Regional Office of the United States Securities and Exchange Commission.

The second Saturday morning panel, entitled "Privacy, Technology, and the Law," focused on recent legal developments in the areas of morality and technology, such as those arising from the recent Hewlett-Packard "pretexting" scandal, the Department of Justice's initiatives against online purveyors of hardcore adult pornography, and the recent targeting of offshore Internet gambling operations. This panel was organized by Evan T. Barr, a partner at Steptoe & Johnson and Co-Chair of



Linda Jane Clark of Hiscock & Barclay, LLP, Albany (member-at-large of the Section's Executive Committee); Joseph P. Kubarek of Jaeckle Fleishmann & Mugel LLP, Buffalo; and Sharon M. Porcellio of Lippes Mathias Wexler Friedman LLP, Buffalo (Section Delegate to NYSBA House of Delegates and former Section Chair) at the Friday evening reception.

the Section's Committee on White Collar Criminal Prosecutions, and also included an esteemed group of top legal talent. Participating on the panel were Joseph DeMarco, Coordinator of the Computer Hacking and Intellectual Property Section and Assistant United States Attorney for the Southern District of New York; Bart M. Schwartz, who has his own legal practice and was the former Chief of the Criminal Division for the United States Attorney's Office for the Southern District of New York; and Michael Vatis, a partner at Steptoe & Johnson and former Associate Deputy Attorney General at the United States Department of Justice, where he advised the Attorney General on national security and technology matters. Both Saturday morning panels had active audience participation, and the Section extends our grateful thanks to all participants in these two extraordinary programs.



Founding Section Chair Robert L. Haig of Kelley Drye & Warren LLP, New York City and Hon. Howard A. Levine, Senior Counsel to Whiteman Osterman & Hanna LLP, Albany at the Saturday evening reception.

York. The Section extends its appreciation to Judge Peck and his fellow competition judges: James D. Yellen, Co-Chair of the Section's Committee on Securities Litigation and Arbitration, and Jonathan Lupkin of Fleming Zulack Williamson & Zauderer LLP and Co-Chair of the Section's Committee on Commercial Division Law Report. The Section also thanks Susan M. Davies, the outgoing Section Secretary and incoming Treasurer for all her hard work organizing this award last year.

After lunch, Section attendees participated in a variety of activities, including a trip to the Norman Rockwell Museum in nearby Stockbridge, a nature walk at the Pleasant Valley Wildlife Sanctuary, and a golf tournament

(at which the Section inaugurated its longest drive and closest to the pin contests). Post-afternoon activities, the Section got together to view the 133rd Run for the Roses on a large-screen television in the Resort's Music Room and to cheer Street Sense to his first Kentucky Derby victory.

Saturday night was the Section's gala dinner. The Section was honored to bestow its Robert L. Haig Award for distinguished public service on outgoing New York State Bar Association President and former Section Chair, Mark H. Alcott, who is a partner at Paul, Weiss, Rifkind, Wharton & Garrison, LLP. The award, named in honor of the Section's founder, Bob Haig, is bestowed each year at the Spring Meeting on an individual who has distinguished himself or herself in the area of public service. There are few recipients who embody the spirit of this award more



Leonard Benowich of Roosevelt & Benowich, LLP, White Plains, NY (center) is pictured after receiving the Section's 2007 Award for Excellence in Commercial Brief Writing at the luncheon on Saturday, May 5, 2007. With Mr. Benowich are (L-R) Susan M. Davies (Section Secretary); Hon. Andrew J. Peck, United States Magistrate Judge, U.S. District Court for the Southern District of New York; Carrie H. Cohen (Section Chair-Elect and Spring Meeting Program Chair); and Lesley F. Rosenthal (Section Chair).

At the Saturday lunch, the Section bestowed our second annual Award for Excellence in Commercial Brief Writing on Leonard Benowich, a partner at Roosevelt & Benowich, LLP, in White Plains, New York, for his brief for Defendant-Counterclaimant-Appellee in *Design Strategy, Inc. v. Davis* (2d Cir.). Gregg L. Weiner of Fried, Frank, Harris, Shriver & Jacobson LLP received an honorable mention for his memorandum of law in opposition to defendant's motion for summary judgment in *CDL Hotels USA, Inc. v. Willis of New York, Inc.* (S.D.N.Y.). The Award was presented to Len by the Honorable Andrew J. Peck, United States Magistrate Judge, Southern District of New



At the Friday evening reception (L-R): Mark C. Zauderer of Fleming Zulack Williamson Zauderer LLP (former Section Chair); Vince J. Syracuse of Tannenbaum Helpert Syracuse & Hirschtritt LLP (Section Treasurer); Jack C. Auspitz of Morrison & Foerster LLP (former Section Chair); Justice Barbara Kapnick of New York State Supreme Court, New York County; and NYSBA President and former Section Chair Mark H. Alcott of Paul, Weiss, Rifkind, Wharton & Garrison, LLP.

than Mark Alcott. The Section was further honored by having its 2007 Stanley H. Fuld Award recipient, the Honorable Lewis Kaplan, United States District Judge, Southern District of New York, present the Haig Award to Mark Alcott. Past recipients of the Haig Award are listed on our Section's Web site and include, most recently, the Honorable John M. Walker, Jr. and the Honorable Ralph K. Winter. After the gala dinner, guests were treated to an encore performance by Lesley and Ted with a special guest appearance by Susan Alcott, Mark's wife, who is the cantor at Temple Sholom of Floral Park, New York. Special thanks again to Lesley, Ted and Susan for sharing their musical gifts with the Section.



Hon. Lewis A. Kaplan, United States District Judge, Southern District of New York (left), presents the Section's 2007 Robert L. Haig Award to NYSBA President and former Section Chair Mark H. Alcott of Paul, Weiss, Rifkind, Wharton & Garrison, LLP on Saturday, May 5, 2007.

interactive discussion between panelists and the audience and was a tremendous success.

The Section also thanks and appreciates the attendance and participation of our past Chairs at the Spring Meeting, including the Honorable P. Kevin Castel, United States District Judge for the Southern District of New York; Mark H. Alcott, outgoing President of the New York State Bar Association and a member of Paul, Weiss, Rifkind, Wharton & Garrison, LLP; Robert L. Haig of Kelley Drye & Warren LLP; Jack C. Auspitz of Morrison & Foerster, LLP; Sharon M. Porcelio of Lippes Mathias Wexler Friedman LLP; Lauren J. Wachtler of Montclare & Wachtler; Stephen P. Younger of Patterson, Belknap, Webb & Tyler, LLP; and

Mark C. Zauderer, President of the Federal Bar Council and a member of Fleming Zulack Williamson Zauderer LLP. The Section further thanks JAMS, the dispute resolution experts, for its sponsorship of the Spring Meeting cocktail receptions. Last, but far from least, the Section acknowledges and gratefully thanks Lori Nicoll and her team at the NYSBA for their tireless efforts to ensure that everything ran smoothly at the Spring Meeting.

For those of you who missed it, some of the CLE materials from the Spring Meeting will be reprinted in the upcoming issue of *NYLitigator*. Also, there is always next year's Spring Meeting, which will be held at the beautiful Equinox Hotel in Vermont on May 2-4, 2008.



Section Chair-Elect and Spring Meeting Program Chair Carrie H. Cohen (center, standing) greets Neil V. Getnick and Margaret J. Finerty, both of Getnick & Getnick, at the Spring Meeting dinner on Saturday evening.

On Sunday morning, Mark A. Robertson, a partner at Fulbright & Jaworski LLP, and a member of the Section's Committee on Arbitration and Alternative Dispute Resolution, put together a fantastic panel entitled "Litigation, Arbitration, Mediation, or a Combination?" This panel used a hypothetical commercial dispute to analyze the various issues that arise in choosing a forum for dispute resolution. The panel was moderated by Mark Robertson with esteemed panelists the Honorable Barrington D. Parker, United States Court of Appeals for the Second Circuit; the Honorable Kathleen A. Roberts of JAMS and former United States Magistrate Judge for the Southern District of New York; Carroll E. Neesemann of Morrison & Foerster, LLP and Co-Chair of the Section's Committee on Arbitration and Alternative Dispute Resolution; mediator and arbitrator David Plant; former Section Chair Stephen P. Younger of Patterson, Belknap, Webb & Tyler, LLP; and William J. Kuhne, a partner at Morrison & Foerster, LLP. The Sunday morning panel provoked an



2006-2007 Section Officers (L-R): Carrie H. Cohen (Chair-Elect); Vincent J. Syracuse (Treasurer); Lesley F. Rosenthal (Chair); Kyana B. McCain (Secretary-Elect); Peter Brown (Vice-Chair); and Susan M. Davies (Secretary) pictured on Saturday evening after presentation of a plaque to Ms. Rosenthal in appreciation of her service as Chair.

“Privacy, Technology, and the Law”

By Evan T. Barr

At the Section’s Spring Meeting in the Berkshires on May 5, 2007, the Committee on White Collar Criminal Litigation presented a panel discussion, moderated by Committee Co-Chair Evan T. Barr, Steptoe & Johnson, entitled “Privacy, Technology, and the Law.” The panel focused on three areas: the recent pretexting scandal at Hewlett-Packard, the government’s initiative against purveyors of adult pornography, and the regulation of offshore Internet gambling. In each instance, the panel explored the ways in which the law is attempting to strike a balance between privacy rights and the expansion of technology.

Bart Schwartz, former Chief of the Criminal Division of the U.S. Attorney’s Office for the Southern District of New York, who was retained in 2006 by Hewlett-Packard to conduct a worldwide review of the company’s investigative practices, provided an overview of the case. The Hewlett-Packard scandal involved an investigation of leaks by a board member to the news media and the use by investigators of “pretexting methods” (posing as a customer) to obtain phone records to identify the source of the leak. The ensuing scandal led to the indictment of several high-ranking Hewlett-Packard executives by the California Attorney General and the U.S. Attorney for the Northern District of California. Patricia Dunn, the chairperson of the company, was forced to resign. Mr. Schwartz noted that his investigation found that while much of the conduct at issue might have been technically legal, the individuals involved in the scandal should have paid more attention to the ethical implications of their conduct.

Joseph DeMarco, an Assistant United States Attorney for the Southern District of New York and the Chief of the Office’s Computer Crimes Unit, and Michael Vatis, a partner at Steptoe and Johnson specializing in privacy and Internet security issues, joined Mr. Schwartz in discussing the federal legislation (the Telephone Records and Privacy Protection Act of 2006), which was enacted in the wake of the Hewlett-Packard scandal. The panelists noted that while many of the new law’s prohibitions were already in force under other statutes, the bill served to fill in certain gaps in existing law that might otherwise allow intrusive objectionable conduct. The panelists also speculated that the new legislation most likely would have collateral and unintended consequences on various legitimate areas of telemarketing.

The panel next addressed the Justice Department’s Obscenity Prosecution Task Force. Mr. DeMarco described some of the cases recently brought by federal prosecutors against hardcore porn distributors, including one recent case in which misleading internet domain names were used to lure unsuspecting minors into viewing sites containing highly offensive material. The panel debated the question of whether the government should attempt



Evan T. Barr of Steptoe & Johnson (Co-Chair of the Section’s Committee on White Collar Criminal Prosecutions) (at far right) is pictured at the CLE panel on “Privacy, Technology, and the Law,” with fellow panelists (L-R) Michael Vatis of Steptoe & Johnson; Bart M. Schwartz; and Assistant U.S. Attorney for the Southern District of New York Joseph DeMarco.

to regulate the distribution of materials intended solely for the private use of consenting adults. Mr. Vatis spoke about the difficulties encountered by the courts in defining obscenity according to widely disparate community standards around the country and in defining where the community was located when viewing occurred online. There was also a discussion about what role in-house compliance lawyers should play in regulating the viewing of pornography by employees on work computers.

The panel concluded with a discussion of issues raised by offshore Internet gambling. Mr. DeMarco provided an overview of the types of laws potentially applicable to games of chance and sports betting wagering games on the Internet, and some examples of recent prosecutions by the Department of Justice. Mr. DeMarco explained that these prosecutions were important in curbing the addictions of some online gamblers and in regulating the movement of large sums of money offshore. Mr. Vatis described the provisions of a new statute passed by Congress in October 2006 that prohibits credit card companies and money exchange services from assisting in transactions involving overseas sports betting. The panel also discussed the government’s focus on financial institutions that facilitate Internet gambling and its use of federal money laundering laws to address this issue.

Throughout the program, the panelists entertained questions and comments from Section members. The Section and the Committee on White Collar Criminal Litigation again thank Mr. Schwartz, Mr. DeMarco, and Mr. Vatis for a terrific and enlightening discussion.

Evan T. Barr is Co-Chair of the Section’s Committee on White Collar Criminal Litigation.

“The Government as Prosecutor and Civil Plaintiff”

By Richard B. Friedman



Richard B. Friedman of Dreier LLP (Co-Chair of the Section's Committee on Corporate Litigation Counsel) moderates a CLE panel on “The Government as Prosecutor and Civil Plaintiff.” His fellow panelists were Mark Schonfeld, Director of the Northeast Regional Office of the SEC; Richard D. Owens of Latham & Watkins; Mark Pomerantz of Paul, Weiss, Rifkind, Wharton & Garrison, LLP; and Matthew Biben, Executive Vice President and Associate General Counsel, The Bank of New York.

Attendees at the Spring Meeting of the Commercial and Federal Litigation Section were rewarded with an exciting discussion on Saturday, May 5, 2007 during the morning program, entitled “The Government as Prosecutor and Civil Plaintiff.” The program was moderated by Richard Friedman, a litigation partner with Dreier LLP. The esteemed panel consisted of Matthew Biben, Executive Vice President and Associate General Counsel of The Bank of New York; Richard Owens, a litigation partner at Latham & Watkins LLP; Mark Pomerantz, a litigation partner at Paul, Weiss, Rifkind, Wharton &

Garrison LLP; and Mark Schonfeld, the Director of the Northeast Regional Office of the United States Securities and Exchange Commission. Messrs. Biben, Owens, and Pomerantz are all former Assistant United States Attorneys for the Southern District of New York, the latter two having served as chiefs of the Securities and Commodities Fraud Task Force and of the Criminal Division, respectively.

The panelists discussed the numerous issues that arise when federal and state law enforcement agencies and certain other federal and state agencies having dual civil and criminal authority pursue parallel civil and criminal investigations against the same individual and/or corporate targets. Specifically, the panel discussed the potential and actual ethical issues that may arise from such parallel investigations, including, for example, whether the same attorney can and/or should handle both investigations; the government lawyers' access to grand jury proceedings and/or materials obtained after a search warrant for use in civil forfeiture matters; the relationship between an SEC administrative proceeding and a federal criminal investigation; and the application of DR 7-105, which generally prohibits leveraging the threat of criminal charges to obtain an advantage in a civil matter. The 75-minute program was noteworthy for the extensive questioning by panelists of one another and the numerous questions from the audience.

Richard B. Friedman is a litigation partner at Dreier LLP and is the Co-Chair of the Section's Committee on Corporate Litigation Counsel.

“Litigation, Arbitration, Mediation or a Combination?”

By Mark A. Robertson



Mark A. Robertson of Fulbright & Jaworski (standing, at rear) moderates the CLE program “Litigation, Arbitration, Mediation, or a Combination?” Pictured with Mr. Robertson are panelists (L-R) Hon. Barrington D. Parker, United States Circuit Judge of the Court of Appeals for the Second Circuit, and William J. Kuhne of Morrison & Foerster LLP.

chair Mark A. Robertson (Fulbright & Jaworski LLP).

The program analyzed a dispute over a fictional movie entitled *Dreamsicle*, starring Edward R. Murphy and Beyonce-Seminoles, that included humorous facts and photos. The players include the Ronald Trump Self Promotion Company, commonly known as “The Ronald,” President Jeff Clinton, The Apprentice, and Miss

At the conclusion of the Spring meeting on Sunday May 6, the Section presented an engaging and interactive program called “Litigation, Arbitration, Mediation, or a Combination?” The panelists included the Honorable Barrington D. Parker, Jr. (United States Court of Appeals for the Second Circuit); William J. Kuhne (Morrison & Foerster, LLP); Carroll E. Neesemann (Morrison & Foerster, LLP); David Plant (New London, New Hampshire); the Honorable Kathleen Roberts (JAMS); and Stephen P. Younger (Patterson, Belknap, Webb & Tyler LLP); and it was moderated by panel

America. The parties were in a dispute over what was required and permitted by a license agreement.

The discussion, including great participation from the audience, focused on whether the parties should or would have to engage in arbitration under a poorly drafted arbitration clause; whether mediation could help the parties resolve the problems; whether a court would or should assist the parties with an injunction, discovery and other relief; and what would happen if the arbitrators did a poor job of arbitrating the case.

The Section thanks the panelists for sharing their extensive knowledge with the audience.



Participants in the CLE panel “Litigation, Arbitration, Mediation, or a Combination?” (L-R) Stephen P. Younger of Patterson Belknap Webb & Tyler LLP (former Section Chair); Hon. Kathleen A. Roberts of JAMS; David Plant; and Carroll E. Neesemann of Morrison & Foerster LLP (Co-Chair of the Section’s Committee on Arbitration and Alternative Dispute Resolution).

The Section Presents the Eighth Edition of Its Ethics and Civility Program

By Vincent J. Syracuse

The civility guidelines for New York lawyers had its genesis in a report that was issued by the Section in June 1994. The Section's report commented on the growing lack of professional civility and apparent disrespect for the litigation process among attorneys in our state and proposed specific guidelines on the subject of civility and professional courtesy in litigation. The Section's recommendations were subsequently enacted as Standards of Civility in Appendix A to the Disciplinary Rules of the Code of Professional Responsibility (pt. 1200 of tit. 22 of N.Y.C.R.R.).

The idea of a special continuing legal education program devoted to both ethics and civility issues evolved from various discussions at meetings of the Section's Executive Committee, as part of its continuing commitment to the improvement of litigation practice in New York. Larry Weiss, who was then the Chair of the Section's Committee on CLE, and I felt that there was a need for a special CLE program that addressed both subjects. The idea was that experienced litigators were uniquely suited to the task of educating senior and junior lawyers in a way that would affect their attitudes and behavior and underscore the important place that civility has as a part of professional responsibility. The concept was to present a two-part program where speakers first made substantive presentations that outlined recent developments in legal ethics and emphasized the importance of civility, followed by an unrehearsed colloquium based on "real world" practical fact patterns that would help guide litigators through the maze of ethical and civility dilemmas faced in everyday practice.

The Section's ethics and civility program, which was first presented in the fall of 1998, has remained true to its original concept and has proven to be one of the NYSBA's most successful CLE programs. It was presented this spring for the eighth time, this year in New York City, Rochester, Albany, Buffalo and Melville, and attracted 600 attorneys from across the state. Plans are already being made for the ninth edition in 2008.

Vincent J. Syracuse is the new Vice-Chair of the Commercial and Federal Litigation Section and the Chair of its Committee on the Commercial Division. He is a partner in Tannenbaum Helpert Syracuse & Hirschtitt LLP, where he is the Chair of its Litigation Department. He has been the overall Planning Chair of the Section's ethics and civility program since its inception.

"Working Out and Litigating the Problem Loan"

By Robert Schrager

On May 10, 2007 in New York City, and on May 18, 2007 in Syracuse, the Section's Committee on Creditor's Rights and Banking Litigation presented a CLE program entitled "Working Out and Litigating the Problem Loan." The program was planned by Committee Co-Chairs Michael Luskin, of Luskin Stern & Eisler, L.L.P. and Robert Schrager, of Hodgson Russ LLP. Included on the panels, in New York, was the Honorable Charles J. Ramos, Commercial Division, Supreme Court, New York County; and, in Syracuse, were the Honorable Stephen D. Gerling, Chief Judge, Bankruptcy Court for the Northern District of New York, and the Honorable Deborah H. Karalunas, the newly appointed Commercial Division justice in the Supreme Court, Onondaga County.

The program provided an overview of the strategy and tactics involved in negotiation and litigation arising from a problem loan. Among the topics discussed were initial file reviews and negotiations from the perspectives of the lending institution and the borrower, managing the litigation, budgeting, the tactical steps in the litigation, bankruptcy considerations and resolution techniques.

With more than 100 enthusiastic attendees, the CLE program was well received; and the Committee is grateful to the wonderful panelists for a tremendously successful event.

Robert Schrager is Co-Chair of the Section's Committee on Creditor's Rights and Banking Litigation.

Gregory K. Arenson Receives 2007 Award for Distinguished Service to the Section

At the Spring Meeting on May 5, 2007, Section Chair Lesley F. Rosenthal announced that Gregory K. Arenson of Kaplan Fox & Kilsheimer LLP was the recipient of the 2007 Award for Distinguished Service to the Section.

The Award for Distinguished Service to the Section was inaugurated at the 2006 Spring Meeting by then Chair Stephen P. Younger. The Award recognizes Section members who have gone above and beyond the call of duty in their service to the Section and who exemplify the highest standards of professionalism. In 2006 Mr. Younger conferred the Award on Carroll E. Neesemann of Morrison & Foerster LLP for his work as Chair of the Section's Committee on Alternative Dispute Resolution.

In presenting the 2007 Award to Mr. Arenson at the Section's Executive Committee meeting on June 20, 2007, Ms. Rosenthal described him as "the very model of what a lawyer should be: extremely capable at his work and always willing to serve the profession."



Greg Arenson of Kaplan Fox & Kilsheimer LLP receives the 2007 Award for Distinguished Service to the Section from former Section Chair Lesley F. Rosenthal on June 20, 2007.

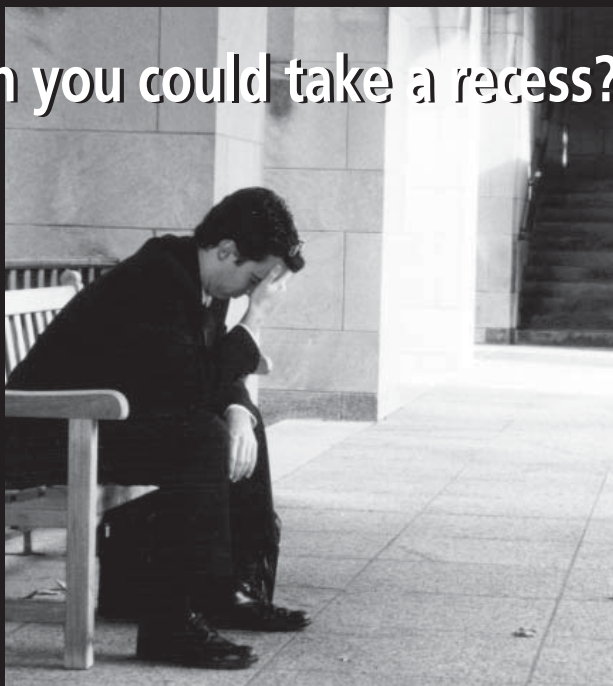
Photo by Steve Hart

Gregory K. Arenson is a founding member of the Commercial and Federal Litigation Section, having joined what was then the Federal Courts Committee of the New York State Bar Association in 1987. Mr. Arenson subsequently served as Chair of the Section's Committee on Discovery, before assuming his current position as Chair of the Section's Committee on Federal Procedure in 1997. He is the principal author of numerous reports that have been adopted by the Section concerning the Federal Rules of Evidence and the Federal Rules of Civil Procedure, and on several occasions has testified on behalf of the Section before the Committee on Rules of Practice and Procedure of the Judicial Conference of the United

States. Mr. Arenson's service to the profession is not limited to the active role he has played in this Section: Among other things, he serves as a mediator in the U.S. District Court for the Southern District of New York.

The Section congratulates Gregory K. Arenson on his receipt of the 2007 Award for Distinguished Service and thanks him for his 20 years of service on behalf of the Section.

Wish you could take a recess?



If you are doubting your decision to join the legal profession, the New York State Bar Association's Lawyer Assistance Program can help. We understand the competition, constant stress, and high expectations you face as a lawyer. Dealing with these demands and other issues can be overwhelming, which can lead to substance abuse and depression. NYSBA's Lawyer Assistance Program offers free and confidential support because sometimes the most difficult trials happen outside the court.

All LAP services are confidential and protected under Section 499 of the Judiciary Law.



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Handling Immigration Appeals Pro Bono in the Second Circuit

By Michael D. Sant'Ambrogio

During the April 2007 Executive Committee Meeting of the Commercial and Federal Litigation Section, the Honorable Robert A. Katzmann of the U.S. Court of Appeals for the Second Circuit urged the members of the Section to provide pro bono representation on behalf of immigrants appealing decisions of the Board of Immigration Appeals ("BIA") to the Second Circuit. The number of appeals from the BIA handled by the Second Circuit has increased dramatically in the wake of the attacks on September 11, 2001, and a subsequent effort is being made to clear a backlog of cases at the BIA, currently comprising 31 percent of the Second Circuit's docket.

I spoke with Nicolas Commandeur, an associate at Patterson Belknap Webb & Tyler LLP, who is representing a young man who immigrated to this country as a lawful permanent resident with his parents when he was only nine months old. In January of this year, an Immigration Judge ordered the young man, whom we shall call Sam, removed from the United States as a "criminal alien" based on his guilty plea to attempted burglary in the second degree.

How did you come to represent Sam?

N.C.: Sam wrote a letter about his family history to the director of a legal services organization in New York City, which provides legal services to poor and low-income New Yorkers. His story was very compelling. He has spent virtually his entire life in the United States, nearly all of his family lives here and are United States citizens, and he barely speaks the language of his country of birth. His brother is currently serving in the Reserves of the United States Army and has completed a one-year tour of duty in Iraq.

Sam grew up as a victim of domestic abuse. His father routinely beat Sam, his mother, and his siblings, causing physical injuries. His mother eventually fled to another state to escape Sam's father, taking her family with her. She became a naturalized citizen prior to Sam's eighteenth birthday.

Sam had no prior criminal convictions before pleading guilty to attempted burglary in the second degree, and he has presented no behavioral problems while serving his two-year sentence. Sam readily acknowledges his mistake and accepts responsibility for his actions. It seemed to me that it would be wrong to deport him.

What was the posture of the case when you agreed to represent Sam?

N.C.: Sam was serving his prison sentence, and the government had initiated removal proceedings in the

Immigration Court in anticipation of his release. I met with Sam in prison, interviewed his family members, and researched the applicable law. We determined that Sam had a claim of derivative citizenship based on the fact that his mother was naturalized while he was still a minor in her custody.

We moved to terminate the removal proceedings based on Sam's claim of derivative citizenship, and the Immigration Judge ("IJ") asked for an evidentiary hearing on the issue.

Tell me about the evidentiary hearing.

N.C.: The evidentiary hearing took place in the prison where Sam was being held. We presented testimony from Sam, his mother and brother, and an expert on domestic violence. One of the issues in our case is when Sam's parents legally separated. The expert gave some helpful testimony on that point, and in particular about how Sam's father's abuse influenced Sam's mother's decision to leave.

The hearing went well, although I quickly learned that the court would be different from any court I had appeared in previously. Everything that we brought in had to be screened by prison officials. For example, I had prepared several large two-by-three-foot posterboard demonstratives, but the guards wouldn't let them into the prison. So we had to improvise, and basically re-create our demonstratives at the hearing itself.

Although the IJ was sympathetic to our case, he ruled against us on our motion to terminate; the removal proceedings continued until he ultimately ordered Sam to be removed. We appealed the order to the BIA, but the BIA affirmed the IJ's decision on the eve of Sam's release from prison.

What happened to Sam after he completed his prison sentence?

N.C.: He was transferred to a detention center, where state prisoners who the government believes are criminal aliens are processed for removal after they complete their prison sentences.

How do you prevent a client's removal while you pursue his or her appeal?

N.C.: When you file an appeal from the IJ's decision with the BIA, the IJ's order of removal is automatically stayed. But you must specifically ask the Second Circuit for a stay of removal when you petition the Second Circuit for review of the BIA's decision. This may present a

quandary for some clients subject to removal as criminal aliens. For clients who are not asylum applicants, they are not necessarily subject to discrimination in their countries of birth. In order to pursue their appeal in the Second Circuit and fight for their citizenship, they have to accept continued detention in often deplorable conditions rather than liberty in another country. It can be a "Hobson's choice."

Where does the case stand now?

N.C.: We have submitted our petition for review to the Second Circuit and moved for a stay of removal and are moving for release on bail pending resolution of Sam's petition. We expect to have oral arguments once the petition is fully briefed. In the meantime, I talk with Sam regularly by telephone from the prison where he is being detained. He is incredibly appreciative of the work we are doing for him.

Had you ever handled an immigration case before?

N.C.: No.

Where did you look for guidance?

N.C.: We reached out to private practitioners, public service organizations and law school professors who specialize in immigration law. They were very excited about the case both because of Sam's history and because of the legal issues it raised concerning derivative citizenship. All of the organizations doing work in this area are eager to help attorneys providing pro bono representation to immigrants in asylum or removal proceedings. We've been very lucky to find so many individuals and organizations willing to help.

How can other lawyers get involved in pro bono immigration representation?

N.C.: There are many worthy organizations that do this work and provide legal services free of charge. They include Human Rights First, the International Rescue Committee, and the Association of the Bar of the City of New York's Immigrant Women and Children Project and Refugee Assistance Project. There are many immigrants in need of assistance, and the representation provides lawyers with excellent experience in the courtroom, counseling clients, and arguing in the Second Circuit. So you can improve your lawyering skills while making a difference at the same time.

Michael D. Sant'Ambrogio is Co-Chair of the Section's Committee on Pro Bono and Public Service.

Judicial Institute



On June 13, 2007, several Section members participated in two panel presentations before Commercial Division justices at the NYS Judicial Institute at Pace Law School in White Plains. Left to right, bottom row: Lesley Rosenthal, Past Section Chair; Hon. Bernard Fried, Commercial Division, NYS Supreme Court, New York County; Jamie Stern, The Bank of New York. Second Row: Steve Younger, Past Section Chair; Suellen Galish, New York Mercantile Exchange; Carrie H. Cohen, Section Chair; Hon. John M. Curran, Commercial Division, NYS Supreme Court, Erie County. Third Row: Paul Sarkozi, Co-Chair, Commercial Division Committee; Jeremy Feinberg, Office of Court Administration.

Celebration of Changing of the Guard in Erie County



On March 9, 2007, the Section joined with the Bar Association of Erie County to thank Hon. Eugene M. Fahey for his service as a Justice of the Commercial Division of the Supreme Court of New York, Erie County, and to welcome Hon. John M. Curran, who succeeded Justice Fahey in January 2007. From left to right (first row) Anne Rutland, Cindy Perry, Melissa Nickerson, Justice Fahey, Cheryl Smith Fisher, Sharon Porcellio, Lesley F. Rosenthal; (second row) John MacCallum, Hon. John M. Curran, Beth Ann Bivona, Peter Brown, John Horn.

Photo by David Archer

Section's Executive Committee Honors Section's Empire State Counsel

At its June 20, 2007 meeting, the Section's Executive Committee paid tribute to the following Section members who qualified as NYSBA Empire State Counsel during 2006 by providing at least 50 hours of free legal services to the poor:

- Marilyn B. Ampolsk, Morgan, Lewis & Bockius LLP
- Stephen Bergstein, Bergstein & Ullrich LLP
- Thomas C. Bivona, Milbank, Tweed, Hadley & McCloy LLP
- Fernando A. Bohorquez, Jr., Baker & Hostetler
- John A. Borek, Fried, Frank, Harris, Shriver & Jacobson LLP
- Marc W. Brown, Phillips Lytle LLP
- Catherine R. Castaldo, White & Case LLP
- Adrian Castro, White & Case LLP
- Dale Cendali, O'Melveny & Myers LLP
- Darren Cohen, Kramer Levin Naftalis & Frankel LLP
- Stephanie Lynn Cohen, White & Case LLP
- Clare Cusack, Morgan, Lewis & Bockius LLP
- James d'Auguste, Akin Gump Strauss Hauer & Feld LLP
- Irma Dominguez, Justice Project at Circulo de la Hispanidad
- Stacey O'Haire Fahey, Proskauer Rose LLP
- Kate M. Fitzpatrick, Chadbourne & Parke LLP
- Andrew Frackman, O'Melveny & Myers LLP
- Jonathan N. Halpern, Bracewell & Giuliani LLP
- Zoe E. Jasper, Satterlee Stephens Burke & Burke LLP
- Cheryl J. Lee, Ropes & Gray LLP
- Susan B. Lindenauer, Legal Aid Society
- Lenor C. Marquis, Heller Ehrman LLP
- Bernard W. McCarthy, Chadbourne & Parke LLP
- Christopher J. Meade, Wilmer Cutler Pickering Hale and Dorr LLP
- Marc Aaron Melzer, Kramer Levin Naftalis & Frankel LLP
- Desma Polydorou, Morgan, Lewis & Bockius, LLP
- Lesley F. Rosenthal, Lincoln Center for the Performing Arts, Inc.
- Paul D. Sarkozi, Hogan & Hartson LLP
- Brendan M. Schulman, Kramer Levin Naftalis & Frankel LLP
- Mason Simpson, Fried, Frank, Harris, Shriver & Jacobson LLP
- Amy Slusser, O'Melveny & Myers LLP

- Donald S. Snider, Law Office of Donald S. Snider
- Emily Stern, Proskauer Rose LLP
- Joel M. Taylor, Kramer Levin Naftalis & Frankel LLP
- Lori J. Van Auken, Winston & Strawn
- Michael R. Wright, Levene Gouldin & Thompson, LLP
- Kent A. Yalowitz, Arnold & Porter LLP

The Association's Empire State Counsel program was inaugurated on June 1, 2006, by then President of the Association, Mark H. Alcott. The program's goal is to encourage lawyers to provide pro bono services for the needy by honoring those who donate their time, talent, and expertise to serve the civil legal needs of New York State's poorest citizens. Association members who report providing at least 50 hours of legal services in a calendar year, at no fee and without expectation of fee, to persons of limited financial means or to not-for-profit, governmental or public services organizations, where the legal services are designed primarily to address the legal and other basic needs of persons of limited financial means, are eligible for the title "Empire State Counsel" and also receive a certificate suitable for framing, a ribbon, and a lapel pin.

In honoring the Section's 2006 Empire State Counsel, Chair Carrie H. Cohen stated: "I am not at all surprised that so many of our Section members are Empire State Counsel. Rendering pro bono legal service is a vital part of our responsibility as lawyers, and I urge all Section members to participate in this important NYSBA program."

During 2006, the Section's Empire State Counsel volunteered their services throughout the state to such worthwhile causes as assisting homeless families to obtain public housing and assistance, protecting urban green spaces in low-income neighborhoods, representing victims of discrimination based on sexual orientation, and counseling *pro se* civil litigants in the New York County Supreme Court Office for the Self Represented.

For more information about the Association's Empire State Counsel program or to find out how to volunteer your legal services for a worthwhile cause, contact the Co-Chairs of the Section's Committee on Pro Bono and Public Interest, Michael D. Sant'Ambrogio at mdsantambrogio@gmail.com or Robert L. Becker at beckerr@raffbecker.com, or visit <http://www.nysba.org/probono>. Section members who qualify are encouraged to register as 2007 Empire State Counsel by completing the electronic verification form at www.nysba.org/probono.

Mediation Advocacy Training Planned for Women and Minority Lawyers

Following the success of the Section's March program "Smooth Moves: Career Alternatives for Litigators of Color," the Section is offering a four-session program on "Mediation Advocacy for Women and Minority Lawyers." The program will commence on September 27, introducing a framework for the mediation process as an advocacy tool and the role of the mediator. The second session will be held on October 11, with a focus on preparing to use mediation and mediators strategically in the negotiation process. The third session will be held on October 31, where the focus will be impasse-breaking techniques and enhancing relationships developed through the mediation process to move the matter to resolution after the mediation event. Finally, the fourth session of the program will explain how to qualify to serve and gain experience as a mediator. Throughout the sessions there will be a discussion of cultural and gender issues that might impact the negotiation process within the context of mediation.

Speakers and participants will include prominent mediators and ADR professionals, as well as members of the federal and state judiciary. Several bar groups will co-sponsor the program, including the Asian Bar Association, the Association of Black Women Attorneys, the Metropolitan Black Bar Association and the Puerto Rican Bar Association.

Program Co-Chairs Barry A. Cozier (Chair of the Section's Committee on Diversity) and Deborah Masucci (Co-Chair of the Section's Committee on Arbitration and Alternative Dispute Resolution) describe the program as important in the continued objective to broaden the depth and experience of women and minority attorneys who may utilize mediation effectively to meet the needs of their clients.

Further information on the program can be found on the Section's Web site at <http://www.nysba.org/comfed> under Upcoming Events.

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CPLR Amendments: 2007 Legislative Session

(Chapters 1-384)

CPLR §	Chapter (§)	Change	Eff. Date
105(e)	125(1)	Defines “clerk,” in supreme and county court, to mean clerk of the county	1/1/08 ¹
304	125(2)	Reorganizes section; provides that the summons or petition must be filed in accordance with CPLR 2102; prohibits acceptance of filing unless required fee is paid, except in case of e-filing where fee is paid as authorized by chief administrator	1/1/08 ¹
306-a	125(3)	Clarifies that summons or petition is filed with county clerk	1/1/08 ¹
1101(d), (f)	56, Part C, § 18	Extends sunset from 9/1/07 to 9/1/09	4/9/07
2102	125(4)	Provides that papers in supreme and county court must be filed with county clerk; provides that a paper filed in accordance with the chief administrator’s rules or local court rule or practice shall be deemed filed; requires transmittal of papers to clerk of court; prohibits clerk from refusing papers except where directed to do so by statute, rule, or order	1/1/08 ¹
2214(b)	185(1)	Provides that in order to require service of answering papers at least 7 days before return date, motion papers must be served at least 16 days before return date (instead of 12 days); sets same requirement for cross-motions	7/3/07 ²
2215	185(2)	Requires service of cross-motion at least 7 days before return date if demand is made pursuant to CPLR 2214(b) (10 days if cross-motion is mailed, 8 days if delivered overnight)	7/3/07 ²
2302(b)	136	Provides for production of prisoners in NYC Civil Court	7/307
2303-a	192	Provides for service of trial subpoenas	1/1/08
2308(a)	205	Increases penalty for non-compliance from \$50 to \$150	1/1/08
7009(a)(2)	40	Provides that the attorney general, not the corporation counsel/ county attorney, shall represent the court	5/29/07
8011(h)	36	Eliminates fee for serving order of protection	8/19/07

Notes: (1) Gen. Oblig. Law § 15-108 has been amended to add a new subdivision (d) limiting the circumstances under which a release or covenant not to sue shall be deemed a release or covenant under section 15-108. 2007 N.Y. Laws ch. 70, eff. July 4, 2007, and applicable to releases and covenants not to sue effective on or after that date. (2) The pilot program for commencement of civil actions and proceedings by fax or email has been expanded to include certain cases in Supreme Court, Livingston County, NYC Civil Court, and Surrogate’s Court in Chautauqua, Monroe, Queens, and Suffolk counties. 2007 N.Y. Laws ch. 369.

Endnotes

1. Applies to actions and proceedings commenced on or after 1/1/08.
2. Applies to notices of motion served on or after 7/3/07.

2007 Amendments to the Uniform Rules for Supreme and County Courts, Rules Governing Appeals, and Certain Other Rules of Interest to Civil Litigators

(N.Y. Orders 1-13 of 2007)

22 N.Y.C.R.R. §	Court	Subject (Change)
202.7(f)	Sup./County	Clarifies that notification requirement applies to any application for temporary injunctive relief, including, but not limited to, motion for stay or TRO; excludes from notification requirement motions for orders of protection
202.48(c)(2)	Sup./County	Requires that proposed counter-orders and counter-judgments be submitted with a copy marked to delineate proposed changes to the order or judgment to which objection is made
202.70(a)	Sup./County	Increases Kings County monetary threshold to \$75,000; decreases Westchester County monetary threshold to \$75,000; adds \$25,000 monetary threshold for Onondaga County
Part 1010	A.D., 4th Dep't	Abolishes Civil Appeals Settlement Program established in 2006

Note: The court rules published on the Office of Court Administration's Web site include up-to-date amendments to those rules: <http://www.nycourts.gov/rules/trialcourts/index.shtml>.

New Rule on Counter-Orders

The rules for Supreme and County Courts have long required that proposed counter-orders and counter-judgments be made returnable on the same date and at the same place as settlement of the proposed order or judgment. In addition, the proposed counter-order or counter-judgment must be served on all parties not fewer than two days before the date of settlement if it is served personally or not fewer than seven days before the date of settlement if it is served by mail. 22 N.Y.C.R.R. § 202.48(c)(2). That rule has been amended, effective September 1, 2007, to require that any proposed counter-order or counter-judgment be submitted with a copy clearly marked to delineate each proposed change to the order or judgment to which objection is made. In other words, one must submit both a tracked and untracked version of the proposed counter-order or counter-judgment.

Notes of the Section's Executive Committee Meetings

February 13, 2007

The Executive Committee greeted four Commercial Division law clerks who will be graduating from the program in 2007. The Executive Committee adopted a report on "Proposed Federal Rule of Evidence 502," prepared by the Section's Committee on Electronic Discovery and Committee on Federal Procedure. The Executive Committee also approved the submission of the Section's Committee on Bankruptcy Litigation's report on "Proposed Revised E.D.N.Y. Bankruptcy Rules to the Chief E.D.N.Y. Bankruptcy Judge."



comments addressed the report's proposal to create a private right of action for certain violations of the proposed statute. The Executive Committee also adopted a report of the Section's Committee on Ethics and Professionalism, in which the Committee expressed concerns with the code of conduct proposed in the report of the Association's Special Committee on Sarbanes-Oxley Issues on a "Proposed Code of Conduct for Association Leaders."

March 14, 2007

Guest speaker the Hon. Elizabeth Hazlitt Emerson, New York State Supreme Court, Commercial Division, Suffolk County, described the operations and caseload of the Suffolk County Commercial Division, which began operations in 2002.

The Executive Committee adopted a report by the Section's Committee on Employment and Labor Relations generally endorsing and commenting on the "Report and Recommendations on Mandatory Retirement Practices in the Profession," prepared by the Association's Special Committee on Age Discrimination. The Executive Committee also adopted the comments of the Section's Committees on CPLR and the State Judiciary on the "Report of the Association's Task Force on Electronic Filing of Court Documents"; the comments generally supported the Task Force's recommendations but opposed the proposal for privatization of e-filing facilities and expressed concern about the possible danger the all-or-nothing mandatory approach to e-filing posed to the current pilot programs in New York County.

The Executive Committee adopted the comments of the Section's Committee on Class Action on a report by the Association's Elder Law Section proposing legislation to regulate the sale of variable and fixed annuities; the

April 18, 2007

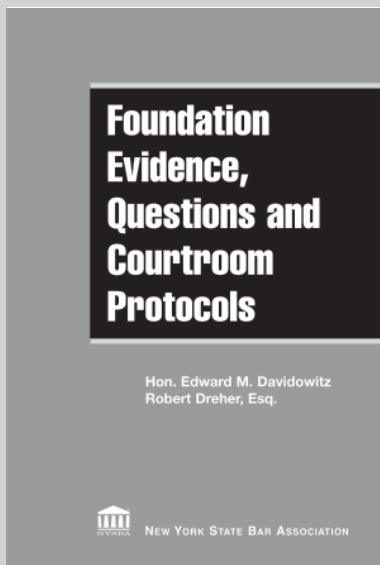
Guest speaker the Honorable Robert A. Katzmann, United States Circuit Judge for the United States Court of Appeals for the Second Circuit, discussed judicial salaries and spoke about the greatly increased number of immigration appeals being handled by the Second Circuit and the inadequate representation for those appellants. Judge Katzmann invited Committee members to contact him with proposals for improving legal representation in immigration cases before the Second Circuit.

The Executive Committee resolved that, on behalf of the Section, the Chair would send (1) a letter to federal legislators in support of the Chief Justice's call for a substantial increase in salaries for the federal judiciary; and (2) a letter to the Honorable Spitzer, Bruno, and Silver in support of an immediate, substantial, and retroactive pay increase for New York's judiciary. The Section's Committee on Appellate Practice presented the results of that Committee's study of the practice within the Second Circuit of certification of state law questions to state high courts.

The Executive Committee adopted the report of the Section's Committee on CPLR supporting a proposal to amend CPLR 2106 to provide that an unsworn affirmation given by any person may be used in a civil action. Former Section Chair Lauren Wachtler expressed thanks to Lesley Rosenthal for her work as Section Chair during 2006-2007.

From the NYSBA Bookstore

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