



NEW YORK STATE BAR ASSOCIATION

State Bar News



SCENES FROM ANNUAL MEETING 2023





NEW YORK STATE
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Publisher

Pamela McDevitt, Executive Director

NYSBA Chief Communications

Strategist

Susan DeSantis

Writers

David Alexander

Jennifer Andrus

Designer

Lori Herzing

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Address all communications to *State Bar News*, 1 Elk St., Albany, NY, 12207. media@nysba.org

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Advertising Representative

MCI-USA | Attn: Holly Klarman,

Sales Director

849 Fairmount Avenue, Suite 102

Towson, MD 21286

PH: 410.584.1960

Email: holly.klarman@wearemci.com

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The Criminalization of Mental Illness: Incarceration's Effect on Mental Health and Trauma

By Paula L. Green and Jennifer Andrus

The best way to curb the disheartening increase of people with mental illness living in state prisons and city jails is to act before these individuals are incarcerated, panelists told lawyers gathered for the Presidential Summit at the New York State Bar Association's Annual Meeting.

Jeff Beck, former director of the Prison Visiting Project at the Correctional Association of NY, in Brooklyn, said deciding who responds to an emergency call involving a person with a mental illness, and then determining where the person is placed, are key decisions that will help keep individuals from being incarcerated.

For example, is it the police, a combination of police and health care personnel or other responders who answer the first emergency call? And then, is the person placed in a jail or a hospital or a community-based program?

"We need to get people out of the system," Beck told lawyers, referring to correctional institutions.

Panel moderator Patricia J. Warth, an attorney and director of the New York State Office of Indigent Legal Services in Albany, told the audience that the choices a society makes are crucial.

The panel is part of the association's Presidential Summit "Mental Health and the Justice System – Impacts, Challenges, Potential Solutions." The Summit aims to focus attention on how untreated mental illnesses and a lack of funding and treatment have created a crisis in the criminal justice system.

Everyone from attorneys and their clients to judges, courthouse staff and prisoners have been af-



(L-R) NYSBA President Sherry Levin Wallach, Libby Coreno, chair of the association's Committee on Attorney Well-Being; and author Zack McDermott discuss why people living with mental illness end up in jails and prisons.

ected while the prolonged pandemic and deepening societal inequities exacerbate the ongoing crisis.

"We are choosing to incarcerate people," said Warth. "We can make choices that are more humane and rely less on incarceration for people with mental illnesses."

In her opening remarks, Warth laid out how the United States has struggled with creating appropriate and humane treatment systems for people with mental illnesses since the 1900s.

The federal legislation signed by President John F. Kennedy in 1963 discharged thousands of patients from state hospitals. Yet the proposed creation of a network of community-based mental health care centers never received adequate funding. The result was people with mental illnesses were left on the streets, arrested and began to overwhelm state prisons and city jails.

In August 2022, the association created The Task Force on Mental Health and Trauma Informed Representation to evaluate how the mental health crisis and the civil and criminal justice systems are intersecting in today's world. The Task Force aims to lay

out ways to help adults and children with mental health challenges and/or trauma histories.

Beck said it is essential to keep people living with mental illness away from correctional institutions, which operate with "a punishment paradigm."

Referring to the mental health units operating in prisons and jails, he said, "It is difficult to create a therapeutic environment."

Rules are everywhere in a rigid prison system and people suffering mental illnesses frequently respond more slowly, or don't understand, direct orders from security officers. They can end up facing penalties and punishment, even solitary confinement, which is extremely upsetting and dangerous for a person with a mental illness.

Beck said the city jail system, set up for short-term interventions, does not provide sufficient time to develop and carry out discharge plans. "It's a constant recycling of people who float in and out of the system and who are not a risk to the community," Beck said. "Yet they become a burden to the community because there is not a supportive system."

Zack McDermott, the former Brooklyn public defender who is living with mental illness, spoke during the Presidential Summit's first panel. He has recounted his experiences with the law and mental healthcare in his book, "Gorilla and the Bird: A Memoir of Madness and a Mother's Love." McDermott was joined on the stage by his mother Cindy McGilvrey, who shared her experiences caring for her son.

McDermott discussed how a mental breakdown led to his arrest and stay in a psychiatric hospital. "You can have people in jail with all types of issues from substance abuse to psychosis. Jail is not the place for them," he said.

He said his time spent under observation in a psychiatric hospital felt like a prison. "It was punitive, you are given limited visitors, and the food is bad. You are denied access to the people you love, the things that will make you feel good," he said. McDermott's legal experience helped him navigate his time in the hospital, but he says most patients don't know how to advocate for themselves. "They don't tell you how to get out once you are in," he said.

In Accepting Gold Medal, Civil Rights Attorney Sherrilyn Ifill Implores NYSBA Lawyers To Protect the Rule of Law

By Susan DeSantis

Civil rights attorney Sherrilyn Ifill told 300 people gathered to see her receive the Gold Medal, the New York State Bar Association's highest honor, that "it is our job to protect the boundaries of the rule of law in this country. And because you, we, are the New York State Bar, we have outsized influence in this country and over our profession."

"We've seen evidence of people at the highest levels of our profession, in the Department of Justice, engaged in conduct that you and I know is completely unacceptable for what we were taught is right in our profession," she said. "You have seen judges issue decisions that have no basis in fact. You have seen appellate courts pretend that the factual record doesn't exist. You have seen the very boundaries of our profession stretched and expanded by those who seek power."

Ifill received the award at the presidential gala dinner Friday night, Jan. 20, at the Rainbow Room in New York City, and the night was a celebration of the association's 146th Annual Meeting. Thousands of lawyers attended the in-person conference at the New York Hilton Midtown from Wednesday, Jan. 18, to Saturday, Jan. 21, and the virtual discussions on Monday, Jan. 23, and Tuesday, Jan. 24.

Sherry Levin Wallach, president of the New York State Bar Association, presented the award to Ifill, a senior fellow at the Ford Foundation and the former president of the NAACP Legal Defense Fund. When Levin Wallach called the award recipient a native of Queens and said "her story is a New York story," she received thunderous applause.

"Sherrilyn credits school integration, public funding for education and New York's public transportation infrastructure for helping her succeed," Levin Wallach said. "She recalls using a 35-cent subway token to travel from her home in Queens to a job in Harlem – and she is thankful that the integration of the unions gave her brother a path to success as an electrician. His success led to her success when he could sign a promissory note for her student loan to attend Vassar College."

For her part, Ifill encouraged the members of the New York State Bar Association to dedicate their success to uplifting the downtrodden and ensuring equal justice for all.

"We enjoy being lawyers," she said. "We get our livelihood from it, we get our status from it. It opens doors for us. We show up places and we're treated with respect because we are lawyers. Let's make ourselves worthy."

She gave the crowd a pretty good indication of what would make them worthy.



Civil rights attorney and longtime leader of the NAACP's Legal Defense Fund Sherrilyn Ifill receives the Gold Medal, the association's highest honor.

"We cannot just turn the page at the end of the newspaper when we realize that the justice system we serve is stealing the lives of people because they cannot afford counsel, because they are black, because

they are marginalized, because the system is unfair. We are implicated by that—you and I are not innocent—if we do not raise our voice within our own profession to make it right," she said.

New York State Bar Association Launches Enterprise Firm Membership Initiative With Inaugural Member Whiteman Osterman & Hanna

By Liz Benjamin

The New York State Bar Association announced the launch of a new enterprise firm membership initiative, which provides a suite of services specifically tailored to meet the needs of an entire firm, including streamlined access to association resources, enhanced benefits, discounted pricing and more.

In addition, the association is pleased to announce that Whiteman Osterman & Hanna, the Capital Region's largest law firm, will be the inaugural member of this firm-wide effort.

"The New York State Bar Association's top priority is providing support, resources, and advocacy that enable members to navigate the challenges that arise in our fast-changing legal profession and amplify their voice in the halls of power across the state and in Washington, D.C.," said NYSBA President Sherry Levin Wallach. "We are always looking for ways to improve our offerings to serve more attorneys, and firm membership provides a unique opportunity to meet that goal."

Benefits of enterprise firm membership include discounted pricing on an all-access pass to the association's robust catalogue of on-demand CLE programs that cover a wide array of pertinent topics in various interest areas. In addition, firm leaders will have the ability to join industry experts in presenting CLE courses to help raise the profile of their organizations.

"The NYSBA enterprise firm membership model not only

provides our attorneys with easy access to top-quality professional development, but it also allows our attorneys and the firm the ability to build our professional reputations as experts in the field

Osterman & Hanna. "Our firm has long had a strong connection to NYSBA and this new model is a welcomed new benefit."

"The administrative management tools provided make man-

"The centralized billing eliminates time and hassles while the monthly CLE reports help us easily track attorney credits."

Other benefits of the firm membership program include:

Thought leadership opportunities in association publications

Input and involvement in the association's advocacy for important policies and legislative changes impacting attorneys

Discounted pricing on membership dues and professional development

Group billing to reduce administrative time

Firms interested in receiving more information about this initiative should contact: Associate Executive Director Kathy Suchocki at ksuchocki@nysba.org 518-487-5590.

"The NYSBA enterprise firm membership model not only provides our attorneys with easy access to top-quality professional development, but it also allows our attorneys and the firm the ability to build our professional reputations as experts in the field by joining prestigious speaker panels."

— Robert Schofield

by joining prestigious speaker panels," said Robert Schofield, managing partner at Whiteman

aging our NYSBA membership easier," said Whiteman Osterman & Hanna COO Jeff Hamilton.



The association's new enterprise firm membership will provide a host of services to meet the needs of an entire firm.

NYC Mayor Eric Adams' Chief Counsel Discusses Challenges Emerging From the Pandemic

By Paula L. Green

Reshaping the public perception of crime is a critical element of New York City Mayor Eric Adams' plan to move the city beyond the pandemic and into a more equitable city for everyone, Brendan McGuire, the mayor's chief counsel, told lawyers gathered for the opening day of the New York State Bar Association's Annual Meeting.

"There is no way to go forward without actual safety and without the perception of the city as safe," McGuire said during an interview with former association President Stephen P. Younger during a presentation to the association's Commercial & Federal Litigation Section.

While the media tend to focus on the uptick in crime since the pandemic began three years ago, crime is actually at historically low levels. Murders, for example, have increased to about 400 from the 300 annual murders recorded in 2019. Yet, the numbers are much lower than the 2,000 annual murders recorded during the early 1990s. "New York City remains one of the safest cities in the world," McGuire said.

Many young people are unaware of this fact and changing that perception will encourage more people to ride the subway and travel to their offices, which in turn will make people feel safer.

The increase in mental health disorders since the pandemic is another key issue for Adams, who backed a recent initiative to address people living with mental illness who are homeless,



NYSBA President Sherry Levin Wallach; Brendan McGuire, New York City Mayor Eric Adams' chief counsel; Loretta Preska, senior U.S. District Court judge for the Southern District of New York and NYSBA Past President Steve Younger.

McGuire said. In late November, Adams announced an initiative that would direct police and emergency medical workers to hospitalize people they deemed too mentally ill to care for themselves, even if they posed no threat to others.

"There is no easy solution," McGuire said.

Yet, dealing with the problem is essential to the safety of both the homeless people and the general public. Acknowledging the dilemma of removing people from the streets against their will, he said that ignoring a catatonic person sitting outside in 20-degree temperatures is "not a compassionate response." The administration has developed emergency response teams that are skilled in dealing with the mentally ill people living on the streets. Changing perceptions is also essential as the media frequently portray people with mental illness as perpetrators of

crimes. Yet mentally ill people without homes make up 80 percent of the victims of violent crimes in the city.

McGuire said Adams is intent on tapping into the city's legal, technical and financial expertise as it continues to rebuild from the pandemic.

"What will work look like in the city in 2050? How will Midtown be redefined?" McGuire said, adding that the administration is intent on developing new economic hubs in such areas as Brooklyn and Long Island City. "How do we ensure that large numbers of people are not left behind as the city is redefined?"

Another challenge is developing a blueprint for the city's educational system, which carried an annual price tag of \$40 billion before the pandemic and fed 1 million children each day.

"It's an enormous challenge," said McGuire, adding that no-

body likes to see such an expensive system in which students are performing so poorly. The chancellor of the New York City Department of Education is aiming to develop a system that fully engages with families and other city agencies to improve children's education.

As indicated by many of his appointments, the mayor recognizes how people with legal training can contribute to the city's successful management by bringing skills in strategizing and thinking through problems, McGuire said. The city is facing a shortage of talented legal minds and he encouraged lawyers to consider devoting a chapter of their careers to working in city government. "There is an incredible need for lawyers in the city system" he said, encouraging all young lawyers to consider working with New York City.

Panelists Discuss New Law Requiring Posting of a Salary Range in Job Advertisements

By Kathleen Lynn

Under a new law targeting pay disparities for women and people of color, employers in New York State will soon have to post a salary range when they advertise jobs, panelists told lawyers Monday at a Business Law Section session during the New York State Bar Association's Annual Meeting.

"The intent is to increase transparency about how much people are making, so that employees can call out potential disparities," said Nancy Gunzenhauser Popper of Epstein Becker Green in New York City, who called the law "a huge departure" for employers. The state law goes into effect in September of this year. A law on pay transparency has already gone into effect in New York City.

Popper was one of four panelists at Monday's Business Law Section presentation on new employment laws and regulations.

The new pay transparency law will likely be of interest not only to jobseekers, but also to an employer's current and former employees, who will compare their own salaries to what new workers are being offered, Popper said. The law follows an earlier law that barred employers from asking job applicants what they earn, to avoid perpetuating systemic income disparities.

Jason Lerner, a panelist and vice president for human resources at VDA Inc. in New York City, a company that consults on elevators and escalators, said that his company has found that posting a salary range often helps streamline the hiring process, because applicants have more information about the job upfront. "I get fewer people applying, but they're more competitive for the position," Lerner said.

The new law covers only the base salary, and does not require disclosure of commissions, bonuses, overtime pay, and so on, Popper said.

Panelists also discussed a recent change to the New York Labor Law prohibiting employers in New York State from retaliating against employees who take time off for lawfully protected absences. Randi May, a partner in the employment group with Tannenbaum Helpert Syracuse & Hirschtritt in New York City, suggested that employers review their attendance policies and train managers on the law's requirements to avoid exposure to liability, and do not impose "no fault" or similar penalties for lawful absences.

"If the communication about the policy and the law doesn't make its way down to line managers, that's really where the employers fall down and get themselves into trouble," she said.

The law says these employees can't be disciplined or penalized and sets potential fines of \$10,000 for the first violation and \$20,000 for subsequent violations. Additionally, there is a private right of action for aggrieved employees.

The panelists also discussed a new proposal from the Federal Trade Commission to ban non-compete clauses that block employees from jumping to a competing business. The FTC estimates that the new proposed rule could increase wages by nearly \$300 billion per year and expand career opportunities for about 30 million Americans. The proposal is now open to public comments, and May predicted that the final rule may allow for different provisions for highly compensated employees and lower-paid employees, in light of the FTC's invitation for public comment.

Michele Molfetta, associate counsel with Consolidated Edison Company of New York Inc., updated lawyers on New York State's COVID-19 sick leave law, which requires that employers offer five days' paid leave for employees with COVID-19. Under the law, employees can take such leaves on three separate occasions over the span of the pandemic.

Kathleen Lynn is a freelance writer.

NYC/NYS Pay Transparency

Overview

- Effective November 1, 2022 in New York City
- Effective September 17, 2023 across the state
- NYC law applies to:
 - Employers with 4 employees or more
 - Advertisements for a job, promotion or transfer opportunity performed at least in part in any of the 5 boroughs
 - Jobs performed from an office, in the field, or remotely from the employee's home

What does "advertisement" mean?

To apply importantly, this law was passed at the end of 2021 was actually went into effect when Mayor Adams came in in 2022, and was amended to push back the effective date 6 months, so that the city Council could work with advocates from employer

The Business Law Section held a panel discussion about New York City's new pay transparency law.

As Joint Dispensaries Begin To Bud in NY, Lawyers Focus on Regulations

By Christian Nolan

New York's first recreational marijuana dispensary opened in Manhattan in late December nearly two years after historic legislation was passed that legalized adult cannabis use and allowed for the implementation of a regulatory framework for the production, licensing, packaging, marketing and sale of cannabis.

As has been the case throughout the entire process, the New York State Bar Association's Cannabis Law Section has been at the forefront of keeping its members informed of new developments.

During NYSBA's Annual Meeting on Jan 19, the Cannabis Law Section took a deep dive into New York's proposed regulations over the course of four hours of in-person presentations and panel discussions. At one point during the panel discussion on regulations, Axel Bernabe, chief of staff for New York's Office of Cannabis Management (OCM), chimed in from the audience and asked if he may expand on a point pertaining to joint dispensaries and licensing.

The response was one you'd only expect to hear at a Cannabis Law Section event: "Dude, let's talk it out," said the moderator, Aleece Burgio, general counsel and strategic adviser at MJI Solutions in Buffalo, and a former section chair.

And talk it out they did with a panel on regulations that included Dasheeda Dawson, founding director of Cannabis NYC and Patricia Heer, deputy counsel of OCM.

"As lawyers, I don't have to tell you the importance of thoroughness, completeness..." said Heer in reference to the nearly

300 pages of adult cannabis use draft regulations that advanced to a minimum 60-day public comment period late last year.

The comment period is expected to close in mid-February at which point OCM is required to evaluate public comments and republish the regulations if the office makes substantial changes to the substance of them. OCM was established upon passage of the Marijuana Regulation and Taxation Act in March 2021.

Adult-Use Regulations

The regulations outline the rules licensees must follow when conducting cannabis operations in New York State. The regulations are designed to promote public health and safety and establish an equitable, consumer-driven adult-use cannabis market.

Additionally, according to the OCM officials, the regulations attempt to create a framework grounded in public health best practices, such as keeping cannabis products out of the hands of youth, establishing product quality and safety guidelines, outlining employee training standards and defining business security requirements to protect public safety. The regulations will also incentivize sustainable cannabis operations that protect against harmful energy intensive methods or wasteful practices.

Altogether, the regulation package sits at 282 pages and outlines:

- The application and license selection and renewal process
- The role municipalities play in regulating cannabis businesses
- Key social and economic equity program provisions in-



Aleece Burgio (L-R), former chair of the Cannabis Law Section; and Lynelle Bosworth, the current chair, took part in the section's Annual Meeting program.

cluding identification and prioritization

- Environmental and sustainability standards
- Ownership and true party of interest prohibitions
- General business operating requirements including security, record keeping, and transportation

The experts explained that these regulations also outline criteria for identifying social and economic equity and detail targeted opportunities for minority and women-owned businesses, disabled veterans and distressed farmers, as well as individuals from communities that were disproportionately impacted by the previous era of cannabis prohibition.

In addition, there are separate regulations governing packaging, labeling, marketing, advertising, laboratory permitting, oversight and testing of adult-use cannabis. They include requirements for child-resistant packaging and labeling that identifies products as containing cannabis with THC, limiting marketing to adult-only audiences and the rules for establishing testing procedures to ensure products are safe for consumption.

Legacy Market

Dawson explained that nearly 300 pages of regulations can be

daunting, especially for the "legacy cannabis market" i.e., those who have been selling marijuana long before it was legalized. She says she's placed an emphasis on "breaking down" those 300 pages of regulations in a way that can help encourage legacy operators to become licensed operators.

Another panel discussion during the Cannabis Law Section's four-hour event at Annual Meeting focused on developments in cannabis litigation featuring Richard Trotter, partner at Feuerstein Kulick in New York; James K. Landau, a partner at Prince Lobel Tye in New York; and Elinor C. Sutton, a partner at Quinn Emanuel Urquhart & Sullivan in New York and Dallas.

And another panel discussion focused on the perspectives of cannabis operators in New York – Kellie Rivera, senior counsel at Columbia Care in Boston; Mack Hueber, CFO of Beak & Skiff in Lafayette, N.Y.; and Kaelan Castetter, managing director of the Castetter Cannabis Group in Binghamton.

Bernabe, chief of staff for OCM, began the day with a presentation on true party of interest and how to create a genuinely fair and competitive brand-new marketplace.

Communication, Relationships, Trust Are Key to Successful Negotiations

By David Alexander

Communication, relationships, and trust are key components to successful negotiations, according to three panelists from the sports world and a former FBI hostage negotiator who spoke at the Entertainment, Arts & Sports Law Section panel “Approaches to Negotiations in Sports, Entertainment, and Other Universes,” which was held during the New York State Bar Association’s Annual Meeting in New York City.

Those characteristics apply across a broad spectrum that encompass a professional athlete’s contract, a media rights deal, a stadium sponsorship, and a hostage negotiation.

National Football League; Maggie Ntim, founder and international sports agent of Trinity 3 Agency; and Gary Noesner, retired chief of the FBI’s Crisis Negotiations Unit, spoke on the importance of being prepared and understanding the needs of both sides.

Pam Lester, co-chair of the section’s sports law committee, moderated the panel.

“The first things we try to establish is what the goals are? What is that we are trying to achieve on behalf of the players or the ownership group,” said McAfee.

Ntim expanded on that thought through her own experience representing athletes.

“Advocating for the athlete.

them out and consider a lot of different things such as health benefits. Some contracts I’ve seen didn’t even mention anything about that until only recently within the new collective bargaining agreement. You are now looking at opportunities in terms of maternity leave. These women have been playing for years and that was never an option.”

The same holds true for dealing with a hostage crisis, according to Noesner, who said there is a lot more preparation than people assume.

“For example, if we know we’re going to a siege with right wing militia folks, we know basically the ideology and some of the driving philosophy behind their behavior,” said Noesner.

He added it helps that the FBI has an expertise about human behavior and that it is important the negotiator has self-control.

“If you cannot control your own emotions, how can you begin to influence those of others? Can we avoid acrimonious interaction? Can we be patient and thoughtful and be good listeners to gather information?”

It is also important to ensure a client is fully briefed. Etna spoke about the importance of negotiating internally before doing so externally. He noted how someone may be looking to purchase a professional sports team but may not understand the process, especially when it comes to league approval.

“It merits careful consideration when you’re advising somebody as to whether they’re going to pass muster in terms of being approved by the league. It’s more than being of moral

fiber and background, it’s the finance wherewithal given the cost in the sports industry today.”

Noesner said that this is where trust and relationships come into play.

“We have a tendency to want to get down to business a little bit too quick. Quite often in my experience we don’t pay sufficient attention to relationship building, which is really the key to everything.”

He recounted a story he recently saw about a social science project that concluded that the greatest key to happiness is having good solid relationships in your life.

“Well, that’s certainly true in negotiations. This might be the first time we’re seeing somebody and it’s not exactly a pleasant experience, but if we can craft the relationship where this individual comes to believe we’re genuine and we’re sincere. We’re not going to make a bad day worse because we’re believable, we’re reliable and we’re dependable. I don’t know that you can place enough value on those things, and they come across, not just in words but in our demeanor and our approach.”

“I would say that on the management-labor side, given the general tension that exists between management and labor, the key to success is really about relationships, and as they say in labor relations, the keyword is relations because it’s an ongoing contract and communication with the other side,” said Etna.

Another component that comes into negotiations is the role of the press. Sports and prominent incidents such as hostage negotiations or kidnappings draw the public’s interest, which

“*If you cannot control your own emotions, how can you begin to influence those of others? Can we avoid acrimonious interaction? Can we be patient and thoughtful and be good listeners to gather information?*”

— Gary Noesner

Daniel Etna, partner and co-chair of the Sports Law Group at Herrick Feinstein; Arthur McAfee III, senior vice president, football operations,

There’s a lot of preparation that goes into it, especially when I’m dealing with women from the National Women’s Soccer League. I’m always trying to help



(L-R) Daniel Etna, co-chair of the Sports Law Group at Herrick Feinstein; Maggie Ntim, founder of the Trinity 3 Agency and Arthur McAfee III, senior vice president, football operations, National Football League, discuss successful negotiations.

makes trust a paramount characteristic when dealing with the press.

“I would say that in our space trust comes into play because anything you say is easily verifiable. If I put a number out there and attribute it to a player, the press can go look at that number up right away. Salaries are shared and the clubs know what they’re paying their players,” said McAfee. “They kind of know what the landscape is in terms of compensation. There has to be trustworthiness in order for the press to want to continue to deal with you.”

Ntim added one of the biggest challenges in dealing with the press is the continuous news cycle, the presence of social

media, and the need to respect the processes clubs have to adhere to by their respective leagues.

“As for the negotiating table, sometimes dealing with the press can be very interesting. I use social media a lot, so a lot of media folks will reach out and send me a DM and I can’t comment because anything I say, I’m going to be quoted on. So, I just try to wait until after everything is done and wait on the club to put out an announcement. There’s a process in place and so it’s better to just follow the protocol.”

An audience member asked how much intuition comes into play during negotiations.

“I think that the advantage for us in this space is that it is

very confined. You start with the proposition that the people you’re working with know the business, and in that space it becomes intuitive in terms of what to expect from the other side based upon your role play participation,” said McAfee. “And I’m just trying to understand that if you were to flip the roles, how would you react? And what would you negotiate? I think that’s how we work through and anticipate those kinds of kinds of things.”

Another question posed was whether you act differently in a one-off negotiation when you’re probably never again going to see the person on the other side of the table.

“I don’t think you can assume you’ll never interact with someone again. I think you must be true to yourself with demonstrated consistent ethical behavior,” said Noesner.

“You know the sports industry is such a small world and you just never know if you’re going to run into that person again. So, you should always remain professional and respectful because at the end of the day your image and your reputation are everything in the business, so you just always want to remain true to who you are,” said Ntim.

Skadden Attorneys Discuss Biden Administration's Emphasis on White Collar Crime

By Kathleen Lynn

The Biden administration is targeting white-collar crime, spending heavily to hire more Department of Justice lawyers and FBI agents, a panelist told lawyers Monday during the New York State Bar Association's Annual Meeting.

The panelist, Maria Cruz Melendez, a partner with Skadden Arps Slate Meagher & Flom, was one of four Skadden attorneys who spoke at a Business Law session on trends in securities and white-collar crime enforcement.

Cruz Melendez said that under U.S. Attorney General Merrick Garland, the Department of Justice is looking "holistically" at corporate misconduct, asking whether a corporation's leadership, compensation structure and culture opened the door for unethical behavior.

"The department wants to get companies to look at why misconduct happens," she said.

Moreover, she said, the department's top enforcement priority is to hold all individual wrongdoers who played a role in misconduct accountable, a change from the previous administration's policy on holding accountable those individuals "substantially" involved.

The Securities and Exchange Commission has also ramped up enforcement, collecting a record \$6.4 billion in penalties, disgorgement and interest relief in fiscal 2022, said Anita B. Bandy, a partner in Skadden's Washington office. That was up from \$3.9 billion in fiscal 2021.

As more investors seek to put their money where their beliefs are, the SEC plans new rules on ESG (environmental, social and governance) investing, Bandy said. Proposed new regulations would require funds and advisers that focus on ESG to disclose more information about their ESG strategies.

In the meantime, Bandy said, the agency has pursued several ESG-related enforcement actions. "The SEC isn't afraid to take on litigated ESG cases," she said.

In addition, Bandy said the SEC has increased its enforcement of cybersecurity cases. It has also continued to examine improper management of reported earnings per share, she said.

Digital assets are also drawing attention from the SEC, which has doubled the staff of the unit overseeing those assets, Bandy said. In 2022, the SEC accused the crypto lending platform BlockFi of failing to register the offers and sales of its retail crypto lending product. The case was the first of its kind against a crypto lending company, and BlockFi settled by agreeing to penalties totaling \$100 million.

Bandy predicted that in 2023, SEC enforcement priorities will include ESG disclosures; Regulation Best Interest, which imposes care, disclosure, conflicts and compliance obligations on broker-dealers; and the new marketing rule, which regulates how investment advisers advertise.

In another enforcement change, whistleblowers who report violations of U.S. anti-money laundering laws are eligible, as a result of the Anti-Money Laundering Act of 2020, for much larger incentives than in the past, according to Eytan Fisch of Skadden. Previously, awards were capped at \$150,000; now they can total 10 percent to 30 percent of the monetary penalties. With penalties at times in the hundreds of millions of dollars, "that is obviously quite significant," Fisch said.

In addition, the whistleblower provisions have recently been extended to include violations of U.S. economic sanctions. That would cover a wider range of corporations, not just financial institutions.

The panel was moderated by David Meister, Skadden's head of New York government enforcement and white-collar crime group. Meister briefly discussed the new makeup of the Commodities Futures Trading Commission, which he called "very aggressive," citing its 82 enforcement cases in fiscal 2022, resulting in \$2.5 billion in restitution, disgorgement and civil monetary penalties.

Kathleen Lynn is a freelance writer.



The Department of Justice is targeting white-collar crime with an emphasis on corporate misconduct.

Committee on Diversity, Equity and Inclusion Honors Three Outstanding Attorneys During Annual Meeting



(L-R) Samuel Buchbauer, co-chair of DEI Committee; Ross Moskowitz, a partner at Stroock, Stroock & Lavan; NYSBA President Sherry Levin Wallach, Ronelle Porter, and retired federal Judge Randolph Treece posed for a photo after the Constance Baker Motley Symposium. The Committee on Diversity, Equity and Inclusion honored Moskowitz, Porter and Treece.

By David Alexander and Jennifer Andrus

The New York State Bar Association's Committee on Diversity, Equity and Inclusion honored three outstanding attorneys during the association's Annual Meeting in New York City.

Retired federal Judge Randolph Treece and Ross Moskowitz, a partner at Stroock & Stroock & Lavan, received the John E. Higgins Diversity Trailblazer Award and Ronelle Porter was named the Ruth Bader Ginsburg Beacon Award recipient.

"These three distinguished individuals epitomize the enormous impact we can have," said Sherry Levin Wallach, president of the New York State Bar Association. "Each has given a lifetime of service mentoring lawyers of color and promoting fairness in the legal and justice system by sponsoring affinity groups, advocating for young attorneys, and devoting their careers to integrity and inclusiveness."

In accepting the award, Treece told the crowd he "stood on the shoulders of those before me." He practiced law alongside John Higgins, for whom the award is named, in New York's capital region at a time when there were just a few black lawyers in private practice. The two worked together in creating a black bar association and bringing more people of color into the legal profession.

Treece is of counsel at E. Stewart Jones Hacker Murphy. His 45-year law career includes a 14-year term as a United States magistrate judge for the Northern District of New York, where he was the first African American to be appointed to the federal judiciary in the Northern District.

Moskowitz serves as a strategic adviser to leading real estate development clients. His pro bono service included assisting the Museum of Arts & Design in its acquisition of 2 Columbus Circle in New York and defending the deal in four separate lawsuits.

In accepting his award, he said that "each of us has our own story. We don't have the same starting point but embracing our differences can broaden your thinking."

Porter, assistant deputy chair, Capital Markets and Corporate at Loeb & Loeb, focuses her work on mergers and acquisitions, corporate finance, joint ventures, cross border transactions, corporate gover-

nance and general corporate matters. She co-chairs the firm's New York Women's LEAD Network and is a member of Loeb & Loeb's Diversity Committee.

During her acceptance speech, she challenged those gathered to "move into spaces not open and welcoming," noting there are few women of color in the fields of corporate finance law and M&A. She encouraged those at the event to help others while pursuing their own goals, noting her motto is "lift while you climb."

The Higgins Award recognizes exceptional efforts of a member of the legal community to promote the full and equal participation of diverse people at all levels of the legal profession.

The Beacon Award was created following the 2020 death of U.S. Supreme Court Associate Justice Ruth Bader Ginsburg. It honors an individual who is honest, direct and courageous in the face of opposition and is an outspoken advocate for those less privileged.

The New York State Bar Association's Committee on Diversity, Equity, and Inclusion honors attorneys each year during NYSBA's Annual Meeting. The recipients were recognized at the Constance Baker Motley Symposium, a joint effort by the Committee on Diversity, Equity and Inclusion and the Task Force on the U.S. Territories, on Wednesday, Jan. 18. The symposium focused on the fight to overturn the century-old Insular Cases, which the U.S. Supreme Court and lower courts have relied on to deny constitutional protections to residents of the territories.

Co-Chair of the New York State Bar Association's Ukraine Chapter Honored for Her Fight to Protect Her Homeland



Anna Ogrenchuk, co-chair of the New York State Bar Association's Ukraine chapter, received the Distinction in International Law Award for helping marshal a coalition of law groups to pressure the United Nations to investigate Russia for alleged war crimes.

By Jennifer Andrus

The International Section of the New York State Bar Association bestowed its highest honor, the Distinction in International Law Award, to the co-chair of its chapter in Ukraine, Anna Ogrenchuk, during a virtual program as part of the association's Annual Meeting.

"At a time of personal struggle and her homeland under attack, Anna Ogrenchuk is leading the fight to hold the Russian government and its leaders accountable," said NYSBA president Sherry Levin Wallach. "She is a tireless leader for justice and the rule of law. I am proud to serve alongside her as bar presidents and leaders of our profession."

Ogrenchuk, president of the Ukrainian Bar Association, has helped marshal an international coalition of law groups to pressure the United Nations to investigate Russia for alleged war crimes.

"Anna Ogrenchuk's leadership in Ukraine inspires and energizes all of us to work harder in the practice of international law," said Azish Filabi, chair of the New York State Bar Association's International Section. "She embodies the qualities of professionalism, dedication, and integrity in her pursuit of justice."

"It's a true honor for me to receive this award," Ogrenchuk said. "Our work in strengthening Ukraine takes place in very unfortunate circumstances. For almost a year, Russian missiles have continued destroying our civil infrastructure and hitting residential buildings in Kiev and many other cities. Ukraine has become the center between the rule of law and lawlessness, between democracy and autocracy, and in general between good and evil."

In December 2021, the New York State Bar Association signed a memorandum of understanding with the Ukrainian Bar Association that forged a strong alliance. Less than two months later, lawyers in the United States, Ukraine and Poland joined together in a Ukraine Task Force under the auspices of the New York State Bar Association. The task force has played a role in helping refugees fleeing the violence, collecting evidence of war crimes and arguing for an international tribunal to investigate Russian aggression.

"In almost one year of the war together we have managed to build a strong network of lawyers who urged their governments to increase economics sanctions against the aggressed state. NYSBA was the first international legal agency that urged the U.S. General Assembly to establish a special tribunal for the crime of aggression against Ukraine. We do hope other organizations will join and support NYSBA's message showing the true role of the legal community," said Ogrenchuk.



2023 Annual Meeting Award Winners



Hon. Elizabeth A. Wolford
Ruth G. Schapiro Memorial Award
Women In Law Section



Abigail Dean
Sheldon Hurwitz Young Lawyer
Award
Torts, Insurance & Compensation
Law Section



The late Jack Hoffinger Martin B.
Adelman Memorial Award
Daughter Fran Hoffinger (left),
son-in-law Harvey Fishbein
(right) Criminal Justice Section



Anna Ogrenchuk
Distinction in International Law
Award
International Section



Anne Downey
Empire State Counsel Outstanding
Pro Bono Volunteer Awards



Amy E. Schwartz-Wallace
LGBTQ Vanguard Award
LGBTQ Law Section



Brian Barnas
Sheldon Hurwitz Young Lawyer
Award
Torts, Insurance & Compensation
Law Section



Carl Finger
Online Community Contributor
Award
Real Property Law Section



Daniel Perrone
Judge Robert T. Russell New York
State Veteran Advocate of the Year
Committee on Veterans



Hon. Denis Butler
Outstanding Jurist Award
Torts, Insurance & Compensation
Law Section



Hon. Erika M. Edwards
Advancement of Judicial
Diversity
Judicial Section



Errol Toulon
Corrections Award
Criminal Justice Section



Hon. George Silver
Outstanding Jurist Award
Torts, Insurance & Compensation
Law Section



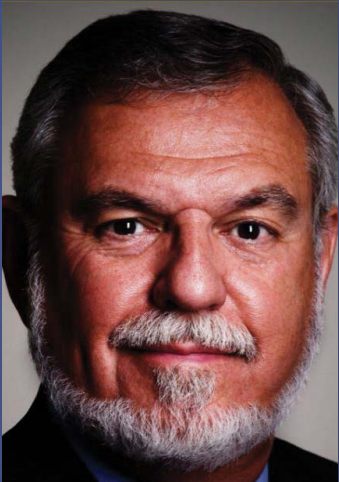
Jamie Levitt
Kay Crawford Murray Award
Women In Law Section



Presiding Justice Hector LaSalle
Distinguished Jurist Award
Judicial Section



Hon. Lillian Wan
Advancement of Judicial Diversity
Award
Judicial Section



Wayne Outten
Lifetime Achievement Award
Labor and Employment Section



Murray Richman
Charles F. Crimi Memorial Award
Criminal Justice Section



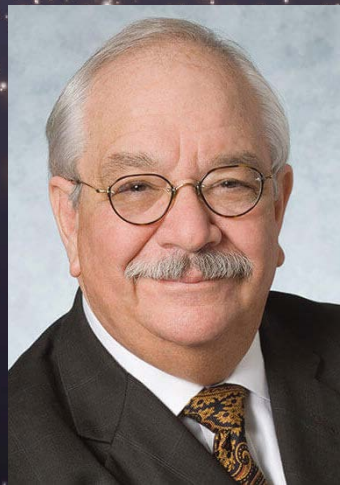
Patrick M. Connors
Professor David D. Siegel Award
Torts, Insurance & Compensation
Law Section



Richard P. Donoghue
Outstanding Prosecutor Award
Criminal Justice Section



Hon. Sallie Manzanet-Daniels
Advancement of Judicial Diversity
Award
Judicial Section



Saul Wilensky
John E. Leach Memorial Award
Torts, Insurance & Compensation
Law Section



Michael Perna
Jonathan Lippman Pro Bono
Award
50+ Section



Wesley R. Powell
Empire State Counsel Outstanding
Pro Bono Volunteer Awards



Katerina Kramarchyk
Outstanding Young Lawyer
Award
Young Lawyers Section



Tania Khatibifar
Outstanding Young Lawyer
Award
Young Lawyers Section



Nancy Connery
Professionalism Award
Real Property Law Section



Andre "Drew" Jaglom
Caplan Award for Meritorious
Service
Business Law Section



Hon. Laura M. Jordan
Betty Friedlander Award for Trial
Excellence
Trial Lawyers Section



Hon. Doris Gonzalez
Judge Irma Vidal Santaella Award
Trial Lawyers Section



Helene E. Blank
Peter C. Kopff Award
Trial Lawyers Section



Empire State Counsel
Outstanding Pro Bono Volunteer
Awards
Law Firm Honorees
Skadden, Arps, Slate, Meagher &
Flom LLP
Willkie Farr & Gallagher LLP
Paul, Weiss, Rifkind, Wharton &
Garrison LLP
Phillips Lytle LLP
Barclay Damon

This is not a complete list of winners.

NYSBA Honors Prosecutor, Top Criminal Defense Attorneys and the Suffolk County Sheriff

By Jennifer Andrus

Richard Donoghue, the former acting U.S. deputy attorney general who defied orders to press false claims of federal election fraud, accepted the Outstanding Prosecutor award given by the New York State Bar Association's Criminal Justice Section during the association's Annual Meeting. The Suffolk County sheriff and two New York City defense attorneys also received awards.

Donoghue played a critical role in refuting claims of a "stolen" election in 2020 by then-President Donald Trump and his allies. He testified before the House Select Committee investigating the Jan. 6, 2021, insurrection at the U.S. Capitol that he threatened to resign if the president ousted Acting Attorney General Jeffrey Rosen due to his refusal to overturn the election results.

In accepting the award, Donoghue spoke with a quiet humility. "We did what 99 percent of real lawyers would do - I know this to be true," he said. Donoghue also noted that the country has made it through wars, rebellions and economic turmoil and assured the audience that the republic will remain intact through these trying times.

"We need good lawyers both inside and outside government to work without fear or favor. Let us, as a profession, do all we can, to do just that."

"When it mattered most, Richard Donoghue stood up for the U.S. Constitution and the



(L-R) Former Acting U.S. Deputy Attorney General Richard Donoghue, Suffolk County Sheriff Errol Toulon, NYSBA President Sherry Levin Wallach, Bronx District Attorney Darcel Clark and criminal defense attorney Murray Richman caught up following the Criminal Justice Section Luncheon.

rule of law," said Sherry Levin Wallach, president of the New York State Bar Association. "We owe him a debt of gratitude for his courageous act at a time of intense consequence in our nation's history."

David Louis Cohen, chair of the Criminal Justice Section, echoed Levin Wallach's comments, saying Donoghue stood up for his convictions in the face of significant pressure.

"In recognition of his personal and professional character in the face of unprecedented challenges to democracy, the Criminal

Justice Section is pleased to honor Richard Donoghue's example of bravery in defense of justice," Cohen said.

Suffolk County Sheriff Errol Toulon Receives Corrections Award

Errol Toulon is a trailblazer in the field of corrections, helping young people, incarcerated women and trafficking victims improve their lives. Upon receiving the award, he chocked back tears, thanking his family for its constant support. He reminded all in attendance that released

inmates are not hiding, but living among us, working at the Target or the grocery store. "They don't have a scarlet letter; they are in our communities," he said.

In 2018, Toulon launched the Deconstructing the Prison Pipeline to study the root causes of juvenile delinquency and intergenerational crime. Last year, his innovative START program (Sheriff's Transition and Reentry Team) worked to ease reentry for inmates by providing employment, mental health care and addiction services.

These programs are showing results in Suffolk County, which has a low recidivism rate of 17 to 21%. During the event, Toulon gave credit to his team for its commitment to changing the lives of the inmates and their families.

“Sheriff Toulon is a tireless leader who believes in both the dignity of all people and the value of second chances,” Levin Wallach said. “The programs he has instituted to reduce crime and recidivism are truly remarkable.”

“Sheriff Toulon is among the most innovative and progressive national figures in the field of corrections,” Cohen said. “His dedication to reducing crime through rehabilitation is unparalleled. It is the awards committee’s privilege and pleasure to recognize his leading voice in the field of criminal justice.”

**Charles F. Crimi
Memorial Award:
Murray Richman**

Murray Richman is one of the best-known criminal defense attorneys in New York City and also a past president of the New York State Association of Criminal Defense Lawyers.

“I have known Murray since I was a college student. He is one of the attorneys that inspired me to be a criminal defense attorney. I have had the privilege to serve alongside him for many years and the honor to have had him refer me cases,” Levin Wallach said. “He is a skilled attorney

defense attorney. He successfully defended a wide range of clients in a number of high-profile cases. Later, he and his two daughters founded a litigation boutique, the Hoffinger Firm, where he practiced until recent years. He also taught at several law schools and helped establish the Hoffinger Colloquium at NYU School of Law, a monthly lecture and conversation about current issues in criminal law.

Harvey Fishbein, Jack Hoffinger’s son-in-law presented the award, which was accepted by Hoffinger’s daughter Fran. Fishbein recounted how Jack came from meager beginnings in the Bronx and after service in the Army, used the GI Bill to attend college and law school.

“Jack had a brilliant mind with an understanding of people and the street,” he said. “He understood that good law is practiced with relationships between the prosecution and the defense.”

Fran agreed, saying her father was a thinker with a passion for the study of law. “He understood the balance between both sides and he knew it was important to spend the time needed in seeing justice.”

“Jack is one of the greats of the criminal justice community. He was a brilliant criminal attorney and scholar. He was a true gentleman who treated everyone with dignity,” said Levin Wallach. “On a personal note, Jack served alongside me in the New York State Bar Association and supported my rise through the NYSBA leadership. I will always be grateful for his mentorship, encouragement and friendship.”

In her closing remarks to the section she once chaired, Levin Wallach encouraged all of those present to keep up the good fight. “It’s an uphill battle, don’t give up! We are fighting hard, don’t give up!”

“It’s my 39th year of practice and it’s the greatest thing in the world, being a lawyer, it’s been a great life.”

— Murray Richman

In accepting the award, he said “It’s my 39th year of practice and it’s the greatest thing in the world, being a lawyer, it’s been a great life.”

who has tried thousands of criminal cases over the past half century. He could not be more deserving of this recognition.” As Murray always says when he puts his appearance on the record, “Murray Richman for the defendant and the constitution of the United States of America.”

Richman is also a lecturer in criminal law at Fordham Law School, New York Law School, and Cardoza Law School, giving back to the next generation of attorneys. He hosts a weekly radio program on WVOX called “Don’t Worry Murray.”

“Don’t Worry Murray’ has protected the freedom of more Bronxites than likely anyone can fully and accurately calibrate,” Cohen said. “Now in the sunset of his practice, he personifies the short-sleeved lawyer who brings meaning to the 4th, 5th & 6th Amendments.”

**Martin B. Adelman
Memorial Award: Jack
Hoffinger**

During six decades as a member of the bar, the late Jack Hoffinger was an exemplary de-



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New York State Bar Association Commercial & Federal Litigation Section Honors Two Judges

By Jennifer Andrus

The New York State Bar Association's Commercial & Federal Litigation Section honored Senior U.S. District Judge of the Southern District of New York P. Kevin Castel with its Stanley H. Fuld award during the association's Annual Meeting.

Judge Castel received the honor along with retired Justice Leonard B. Austin, the 2022 recipient of the award who elected to wait until this year's in-person Annual Meeting to receive his award.

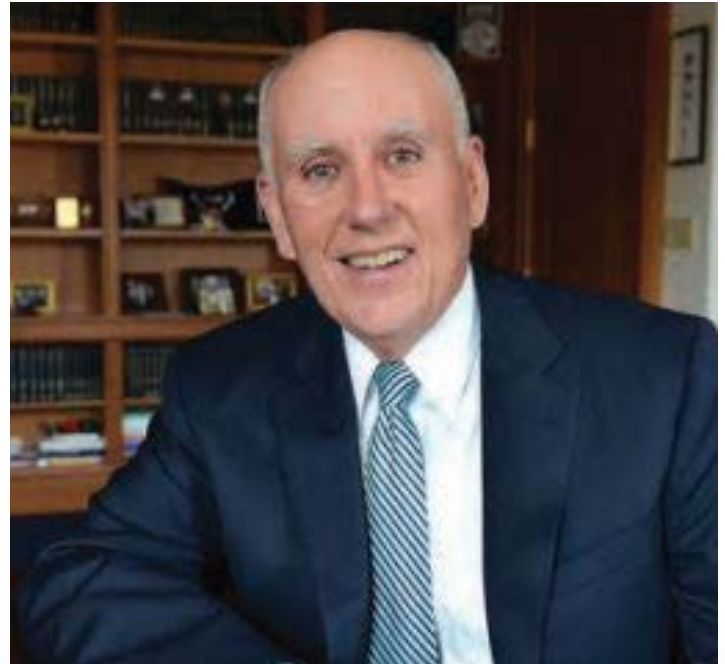
"We are delighted this year to present the Stanley H. Fuld Award to Hon. Leonard B. Austin and Hon. P. Kevin Castel. Both of our recipients are well deserving of this honor, and we truly appreciate their contributions to commercial law and jurisprudence over the course of their careers," said Commercial & Federal Litigation Section Chair Ignatius Grande.

Justice Austin was appointed to the Appellate Division, Second Department, in 2009. He retired in 2022. Prior to his elevation to the appellate court, he was a judge in the Commercial Division in Nassau County where he had a significant impact on banking and forfeiture law.

Prior to his nomination to the federal bench, Judge Castel practiced for many years in commercial litigation and was the chair of the Commercial & Federal Litigation Section of the New York State Bar Association.

Since 1995, the section has presented the award for outstanding contributions to commercial law and jurisprudence. The award is named after one of the most distinguished judges ever to sit on the New York State Court of Appeals, Stanley H. Fuld, who was the first recipient of the award.

Other recipients of the Stanley H. Fuld award include U.S. Supreme Court Justice Antonin Scalia, former New York State Chief Judges Jonathan Lippman and Judith S. Kaye and former state Chief Administrative Judge Ann T. Pfau.



Senior U.S. District Judge of the Southern District of New York P. Kevin Castel received the Stanley H. Fuld Award from the Commercial & Federal Litigation Section.



New York State Bar Association Presents Distinguished Jurist Award to Presiding Justice Hector LaSalle



Justice Joanne Quinones, chair of the Judicial Section, with Presiding Justice Hector LaSalle, Appellate Division, Second Department, who received the Outstanding Jurist Award.

By Jennifer Andrus

The Judicial Section of the New York State Bar Association honored four judges including the Presiding Justice of the Appellate Division, Second Department, Hector LaSalle, during Annual Meeting.

“The judiciary is the cornerstone of our justice system,” said Sherry Levin Wallach, president of the New York State Bar Association. “The hard work and dedication of our judges to make sure justice is served is paramount. Our award winners exemplify one of the most important values of the New York State Bar Association – to do the public good.”

Justice LaSalle, who oversees one of the nation’s busiest courts, is receiving the Judicial Section’s highest honor, the Distinguished Jurist Award. He is credited with streamlining court processes to reduce a court backlog during the pandemic.

“Justice LaSalle is an exemplary judge whose hard work and innovation has improved court operations under tough circumstances,” said Justice Joanne D. Quinones who chairs the Judicial Section. “His work to modernize the court is an inspiration.”

Advancement of Judicial Diversity Awards

The three other award winners – Justices Erika M. Edwards, Sallie Manzanet-Daniels and Lillian Wan -- are being recognized for advancing diversity on the bench.

Justice Edwards

Justice Edwards serves in the New York County Civil Term where she focuses on medical malpractice cases. She has previously served in city, county and the Supreme Court in New York

County. Her work on the bench follows a long career as a litigator specializing in criminal defense, personal injury and civil rights cases.

She is president of the Judicial Friends, which educates the community on the justice system and provided a place of support during the pandemic amid rising tensions following the death of George Floyd in police custody.

“Justice Edwards has devoted her career to advancing social and racial justice,” said Justice Quinones. “Her work as both an attorney and a judge create a lasting impact for access to justice for underrepresented communities.”

Justice Manzanet-Daniels

Justice Manzanet-Daniels is an associate justice in the Appellate Division, First Department. Her legal roots are in criminal defense in the Bronx. In 1999, voters elected her to the Civil Court in Bronx County and later to state Supreme Court, making her the youngest judge of Hispanic heritage elected to that court. She broke more barriers with her appointment to the Appellate Division by Gov. David Paterson, becoming the first Latina to serve on that court.

She spoke out about the court system’s lack of diversity during a joint legislative hearing on the judiciary dealing with court consolidation. In 2020, she published a report analyzing the disparity of representation on the judiciary, which helped secure additional appointments to the bench in 2021.

“Justice Manzanet-Daniels continues to break through bar-

riers and use her influence to improve the judiciary across New York State,” said Justice Quinones. “Her mentorship of the next generation of Latino lawyers and judges will continue that movement to a more diversified court.”

In addition to her work on the bench, Justice Manzanet-Daniels mentors young people and describes community service as her greatest passion. She also founded the Dare to Dream scholarship, which benefits the Puerto Rican Bar Foundation, the Hispanic Federation and the Latino Judges Association Foundation.

Justice Wan

Justice Wan serves as an associate justice of the Appellate Division, Second Department. Her nomination by Gov. Kathy Hochul in May of 2022 made her the first Asian American woman appointed to the Appellate Division. Her election to state Supreme Court in Brooklyn was also a first for a woman of Asian descent.

She has presided in Family Court in Bronx and Kings counties and the Court of Claims, focusing on guardianship and eviction proceedings. She also advocates for judicial diversity as a board member and immediate past president of the Asian American Judges Association of New York. Under her leadership, the association is growing and expanding to include communities outside of New York City.

“Justice Wan is dedicated to advancing judicial diversity in our courts,” said Quinones. “She has generously shared her wealth of experience with countless students, lawyers and fellow judges.”

Pioneering Practitioner Receives Ruth G. Schapiro Memorial Award From NYSBA's Women In Law Section

By David Alexander

The Chief United States District Judge, Western District of New York, Elizabeth Wolford received the Ruth G. Schapiro Memorial Award during the New York State Bar Association's House of Delegates at the association's Annual Meeting in New York City.

"Judge Wolford epitomizes the very essence of this award," said Sherry Levin Wallach, president of the New York State Bar Association. "She is an exceptional lawyer who has long been at the forefront of expanding diversity and elevating the role of women in our profession. She is a transformative leader who has spent her career selflessly dedicating her time towards helping others."

Judge Wolford was appointed by President Obama as the first woman to hold the position of federal District Court judge in the Western District of New York. In 2021, she became the first woman to become the chief judge of the Western District.

"I did not know Ruth Schapiro but based on everything that I have read since receiving notice about this award, I am truly humbled to be receiving this award named in her memory," said Wolford.

In response to a 2017 report entitled "If Not Now, When? Achieving Equity for Women Attorneys in the Courtroom and in ADR", which encouraged judges to adopt policies that would result in more women having the opportunity to appear in court, Judge Wolford was



Chief United States District Court Judge Elizabeth A. Wolford of the Western District of New York (center) received the Ruth G. Schapiro Memorial Award. (L-R) Susan Harper, past chair of the association's Women in Law Section; Deborah G. Rosenthal, president of the Women's Bar Association of the State of New York; Judge Wolford, NYSBA President Sherry Levin Wallach, Kim Wolf Price, chair-elect of WILS and Sheryl Galler, chair of WILS.

among the first to implement a rule in her chambers that "strongly encourages litigants to permit more junior attorneys to examine witnesses at trial."

Although the rule applies to all attorneys, its impact has been a positive one for women.

"We all know that women have made tremendous strides in the profession from the time Ruth Schapiro graduated law school about 70 years ago and the time I graduated law school about 30 years ago," said Wolford. "I can only imagine the different experiences that she had as opposed to my experiences. The New York State Bar Association and the Women In Law Section deserve a great deal of credit for promoting women

and being instrumental in advocating for the advances that women have made in the profession, but there is no question that our work is still to be done."

Judge Wolford is a past president of the Greater Rochester Association for Women Attorneys and the Monroe Country Bar Foundation and served as a member of the Board of Directors for Just Cause. In addition, she is a past recipient of the association's Root/Stimson and the Outstanding Young Lawyer awards.

The Ruth G. Schapiro Memorial Award, presented by the Women in Law Section, recognizes exemplary achievement by a male or female member of the association in addressing the

concerns of women. It was established in honor of the Committee on Women in the Law's first Chair, Ruth G. Schapiro.

The Women In Law Section sponsored the 19th Annual Edith I. Spivack Symposium during the Annual Meeting. The symposium's central theme was "The Perpetual Gender Pay Gap: How Unequal Pay Negatively Impacts Women, Society, and the Profession."

NYSBA Executive Committee Approves Resolution To Form Committee on the Selection of Judges for the Court of Appeals

By Susan DeSantis

The New York State Bar Association Executive Committee approved the appointment of a Special Committee on the Selection of Judges for the Court of Appeals in response to concerns raised over the appointment of a chief judge. The committee will examine the selection process, including its history, and make recommendations to the association.

The Executive Committee reaffirms that the rule of law and the independence of the judiciary are crucial to the administration of justice. It is of the utmost importance to public confidence that there is a fair process that allows the judiciary to operate independently and effectively.

NYSBA Calls ERA a Crucial Amendment to the State Constitution

Sherry Levin Wallach, president of the New York State Bar Association, issued the following statement about the state Legislature's passage of the ERA:

"The New York State Bar Association commends the state Legislature for deciding today to put the ERA, a crucial amendment to the state Constitution, before voters. The Equal Rights Amendment extends protections to classes of New Yorkers we didn't recognize when the Equal Protection Clause of the state Constitution was written. It prohibits discrimination based on ethnicity, natural origin, age, disability, sexual orientation, gender identity, gender expression, pregnancy, reproductive healthcare and autonomy. If voters approve, the ERA will permanently enshrine these rights in our state Constitution, protecting the state's residents from the vagaries of politics, changes in the composition of the Legislature or a shift in the makeup of the judiciary."

New York State Bar Association Urges NY To Amend Constitution To Set Rules for Gubernatorial Succession

By Jennifer Andrus

The New York State Bar Association is proposing that New York State amend the Constitution to establish a procedure to ensure that a governor is fit to serve and establish a mechanism for succession.

The House of Delegates, the association's governing body, approved a report urging the government to amend the Constitution to ensure an orderly transition of power if a governor is incompetent or unable to serve. The process would include enshrining a procedure in the state Constitution similar to the 25th Amendment to the U.S. Constitution.

"The peaceful transfer of power is at the foundation of democracy. Recent events remind us we cannot take this for granted," said New York State Bar Association President Sherry Levin Wallach. "These proposed changes to our state Constitution are designed to provide clarity and direction for filling a vacancy in the chief executive position. Without it, we are vulnerable to political power plays and chaos."

When a Governor Is Unable to Serve

The association's Committee on the State Constitution studied the issue and presented a report to the House of Delegates. The recommendations include amending the Constitution to establish a Committee on Gubernatorial Disability that would determine if a governor was unfit to serve. The committee would include the lieutenant

governor, attorney general, comptroller, and six Cabinet members.

The committee would be able to determine that a governor is unfit to serve by a simple majority and forward the matter to the state Legislature. The declaration of removal must then pass the Assembly and state Senate by a two-thirds vote.

"New York should no longer ignore the potential crisis that would develop should a governor lack the physical or mental competence to continue to serve as governor," said Christopher Bopst, the chair of the association's committee that studied the issue. "A procedure must be adopted to provide for an orderly determination of inability and transfer of power."

The State Legislature Would Confirm Lieutenant Governor Nominees

If there is a lieutenant governor vacancy, the governor would select a nominee who would need to be confirmed by a majority of each house of the Legislature. A timeline would be established to ensure the process is followed. Currently, the governor can appoint a lieutenant governor without legislative oversight.

When Kathy Hochul became governor, she appointed two lieutenant governors in eight months, neither of whom were vetted by the Legislature.

"Having two lieutenant governors chosen exclusively by the governor within such a brief pe-



Lieutenant Governor Subcommittee Chair Alan Rothstein (L) and Committee on the New York Constitution Chair Christopher Bopst present the findings of their report on Gubernatorial Succession before the House of Delegates.

riod of time has reignited concerns over the process," said Alan Rothstein, the chair of the committee's Lieutenant Governor Subcommittee. "Is this the best way to select a person who is a heartbeat from the governorship?"

An amendment to the state Constitution is a long process involving passage of the same amendment by both houses of the state Legislature in two consecutive legislative sessions. Following passage, the amendment must be approved by the voters in a statewide referendum.

The House of Delegates also recommended that:

- If the Senate president pro tempore or the Assembly speaker became governor, the legislator must resign from the Legislature.

- If the succession to governor by a legislator is temporary due to impeachment or short-term inability to serve, the legislator need not relinquish the office, but cannot exercise powers or duties of the legislative office.

- The power of the governor should no longer be transferred to the lieutenant governor if the governor is out of state.

"Our committee has created a roadmap for the state Legislature to consider and it creates an order of succession complete with checks and balances," Bopst said. "We urge the Legislature to pass these amendments during the current legislative session."

NYSBA Adopts Report Making Recommendations To Bring About Change to Long-Standing Racial Inequities



Former NYSBA President T. Andrew Brown created the Task Force on Racism, Social Equity and Law. The New York State Bar Association is urging the state to establish a commission to study possible remedies for the harm done by slavery.

By David Alexander

The New York State Bar Association is urging the state to establish a commission to study the harm done by slavery and consider possible remedies.

The House of Delegates approved this recommendation and 12 others at the association's Annual Meeting in New York City. The recommendations were contained in a 105-page report written by the association's Task Force on Racism, Social Equity and the Law, which studied the issue for more than 18 months.

"The wealth gap is the result of structural racism that has perpetuated the inequities experienced by people of color," said NYSBA President Sherry Levin Wallach. "Inadequate access to healthcare, disproportionate educational opportunities, and redlined communities are just some of the more prevalent causes of racism."

The House of Delegates is also recommending:

- Jury procedures to guarantee the constitutional principle that defendants will be judged by a jury of their peers
- Establishment of an independent commission to address equitable educational funding
- Government accountability on environmental justice issues
- Changes to property appraisal processes to promote equity
- Education for licensed professionals and provider facilities to minimize bias

To determine how to address the wealth gap, the association is suggesting the commission should try to find remedies that would have long-term benefits, reducing the wealth gap beyond the current generation.

Access to capital for minority-owned businesses, lead free drinking water, and support measures to reduce or eliminate racial disproportionality in school discipline are some of the other recommendations approved by the House of Delegates.

History of Racism

New York's history of racism and social inequity dates to its inception as a Dutch Republic colony, according to the report. A key port city, New York City was at the center of prevailing negative perceptions about non-whites, especially Africans who arrived as slaves.

In addition, historical discriminatory practices have impeded the efforts of African Americans to obtain employment that would enable them to become embedded in the middle class. Nearly 73% of poor children in America are children of color. Meanwhile, white families account for nearly 71% of family income although they only represent 60% of families in New York State, according to the report.

Recommendations

Recommended actions for a commission to address include identifying a framework for examining the myriad issues and remedies that can be taken at both the state and federal levels.

Mental Health Courts Operate With Compassion

By Paula L. Green

The state's mental health and other problem-solving courts are offering people living with mental illness and trauma a way to rebuild their lives and stay out of jail, panelists told lawyers gathered Friday at the New York State Bar Association's Annual Meeting in New York City.

"Flexibility is essential. We come to know our people and ask them what they need," Justice Marica P. Hirsch, a judge in the Court of Claims, Supreme Court, Criminal Term, Queens Treatment Court, told the audience assembled at the association's Health Law Section panel, "Mental Health and the Criminal Justice System."

She described how the court worked with one woman living with a mental illness who could not leave her apartment for scheduled court appearances when certain "minions," or voices, told her not to leave home. Court officials would wait until she felt comfortable to appear in court and she went on to successfully complete her program.

Justice Matthew J. D'Emic, presiding justice at the Brooklyn Mental Health Court, talked about how giving court participants a certificate upon completion of the program was almost an afterthought when the state's mental health court system started in 2002. Yet doing so has evolved into an effective tool for recovery.

"You have to remember these people were not on the honor roll. They were not on sports teams. They did not receive trophies," said Justice Hirsch, adding that some individuals even asked court officials to print out new certificates after their paper documents were destroyed during Hurricane Sandy in 2012. "The certificate is very important to them."

Some of the problem-solving courts that are part of the New York State Unified Court System include Mental Health Courts, Veterans Treatment Courts, Drug Treatment Courts and Opioid Courts.

Everyone working in a mental health or alternative courtroom helps contribute to the individual's success, panelists agreed. Justice Hirsch described how court clerks can quickly determine if a defendant is not taking their medications or upset. For example, a court officer noticed an individual began shaking when other defendants in orange jumpsuits and handcuffs came into the room. Her case was moved to the front of the docket, so she could meet with the judge and leave quickly.

Panel moderator Carol Fisler, a New York City-based consultant on justice and mental health collaborations, said poverty usually drives the criminal behavior

of a defendant ending up in mental health courts, rather than their mental illness. There are now 42 mental health courts in the state and 500 across the country. "Collaboration is the name of the game," she said, adding the courts meet the needs of public safety while reducing the incarceration of people living with mental illnesses.

"When the courts are experienced as places of safety and defendants are treated with respect, it can be a major driver of change in their behavior," she said. "It is the secret sauce of treatment."

Justice D'Emic sees the mental health courts as a balancing act between public safety and the defendant's needs. "If the weight tips on the side of public safety, there is no choice but to impose a sentence," he added.



(L-R) Carol Fisler, consultant on Criminal Justice and Mental Health Collaborations, moderates a panel on how the mental health courts in New York operate. She is joined by Marcia P. Hirsch, presiding justice of the Queens Felony Mental Health Court and Matthew D'Emic, presiding justice, Brooklyn Mental Health Court.

Law on Electronic Notary Services Goes Into Effect

By Susan DeSantis

A new law, NY Executive Law Section 135-c, authorizes notaries to perform electronic notarial acts by registering with the Department of State and complying with new rules. Notaries wishing to provide electronic notary services will be able to register with the Department of State starting on Feb. 1.

After Jan. 31, New York State will no longer allow remote ink notarization. With remote ink notarization, a paper record was created when the notary and the signer were in different locations but using communications software that allowed them to interact. Notaries were allowed to perform their duties through remote ink notarization during the pandemic.

The new rules include a provision requiring all notaries, including those notaries that only provide traditional in-person services, to keep a journal of all notarial acts performed including the type of identification provided, for 10 years. That provision went into effect Wednesday Jan. 25. Electronic notaries must maintain a journal of all notarial acts as well as an audio & video record of all electronic notarial acts performed.

Under the new rules, electronic notarial services may be done remotely online. The notary must be in New York State at the time that the documents are signed but the signer may be out of state.

The notary must know the signer personally or use communications technology to identify the signer through credential analysis in which a third-party service validates a government-issued identification presented by an individual through a review of public and proprietary data sources.

The notary could also use identity proofing in which a third party confirms the identity of a signer by reviewing personal information from public and proprietary data sources. Or the identification could be based on the oath of a witness who knows the signer. The notary must be able to see and interact with the signer in real time. The communications technology must have security protocols in place to prevent unauthorized access.

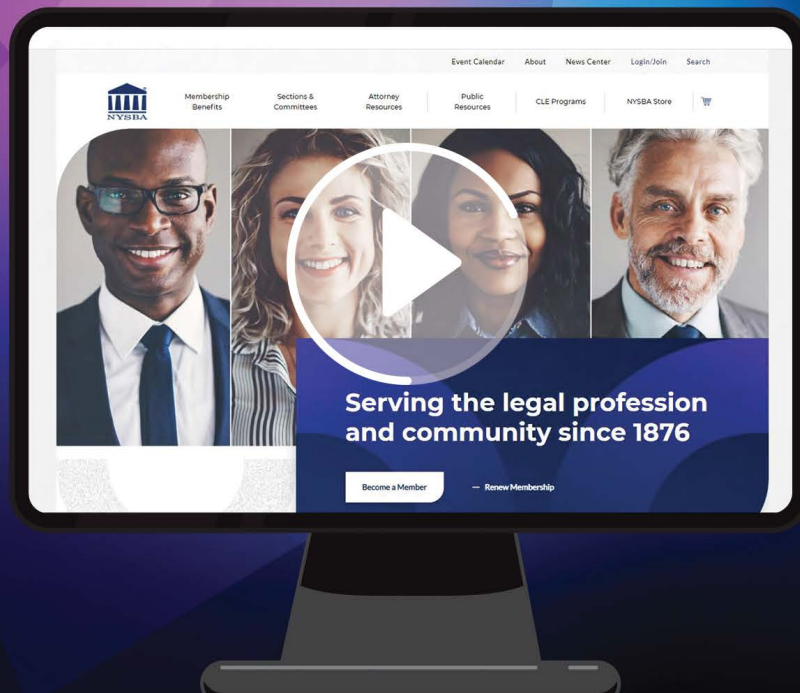
An electronic notary may charge up to \$25 per electronic notarial act. The notary may charge \$2 for a certificate of authenticity for any document that has been created through an electronic notarial act.

For more information on how to become an electronic notary and for more details on the rules, visit the Department of State's website.



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