



NEW YORK STATE BAR ASSOCIATION

State Bar News



ANNUAL MEETING 2024 | VOLUME 66, NO. 1

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ANNUAL MEETING 2024

VOLUME 66, NO. 1

NYSBA.ORG

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The State Bar News is published two times annually by the New York State Bar Association, 1 Elk St., Albany, NY, 12207, to inform its members of Association activities and other matters of interest to the legal profession.

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The *State Bar News* welcomes articles from members of the legal profession on subjects of interest to New York state lawyers. Views expressed in published articles or letters are the authors' alone and are not to be attributed to the *State Bar News*, its editors, or the Association, unless expressly so stated. Article/letter authors are responsible for the correctness of all information, citations and quotations.

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How AI Is Going To Transform Your Five-Year Strategic Plan Into a Three-Month Sprint

By David Alexander

It took Netflix three and a half years to win over one million viewers while ChatGPT took just five days to reach that milestone. Truth is it has been moving at warp speed ever since and will likely have an enormous \$200 billion global impact on the economy next year.

ChatGPT has evolved so rapidly since its November 2022 launch that it can now write its own code. Imagine that!

It will change the kind of cases that attorneys handle because AI will be embedded in every single industry. While AI won't replace attorneys, much of the rote legal work of tomorrow will primarily be handled by AI. A 2023 study by Goldman Sachs estimated that 44% of legal tasks are susceptible to automation, the second highest exposure rate among all the industries that were studied.

Those were among the most fascinating points put forth by a pair of world-renowned panelists who spoke to hundreds of lawyers during the first half of the Presidential Summit, the marquee event of the New York State Bar Association's 147th Annual Meeting at the Hilton Midtown in New York City.

The summit, entitled "AI and the Legal Landscape: Navigating the Ethical, Regulatory and Practical Challenges," focused on harnessing the technology that is transforming the practice of law and bringing ethical and regulatory challenges to the forefront of its deployment.

The panel featured Bridget McCormack, president and CEO of the American Arbitration Association and the former chief justice of the Michigan Supreme Court, and Katherine Forrest, partner in the Litigation

Department and co-chair of the Digital Technology Group and a member of the Antitrust Practice Group at Paul, Weiss. They engaged in a back-and-forth discussion for nearly 90 minutes.

McCormack and Forrest agreed that AI will leave its mark on everything from long-term planning to billing and even the justice gap. While its propensity to produce errors is a problem for now, Forrest is confident that will soon be solved considering the investment of so much talent and money.

"The practice of law, the business of law and the democratization of legal information are all going to change dramatically and quickly. I think leaders of any organization should be focused now on planning for what this looks like. I always tell courts and other organizations that you have to throw your own long-term strategic plan out the door. You no longer have the ability to plan five years from now. You can for a year, but you're going to be revisiting it every three months and you're going to be changing it every three months," said McCormack.

"We are at the beginning of the beginning of the beginning. We are at a point where we really don't know in five years what our roles are going to look like; with one exception, it is not going to look like it does today, that I can absolutely assure you. The kind of conversations we are going to be having in five years are going to be incredibly different," said Forrest.

McCormack also noted that the billable hour will be a thing of the past because various AI tools will allow attorneys to complete tasks at such a quick rate that they will need to develop a new invoicing structure.

There are other challenges with the technology including

hallucinations, which are responses generated by an AI tool that contain false or misleading information presented as fact. These outputs are usually attributed to outdated or misclassified data, or biases in the data.

There are other inefficiencies in some A.I. models, which most notably arose in the Avianca case in the Southern District where two attorneys used ChatGPT to draft their legal brief that wound up containing citations that didn't exist.

"One of the dangers of the models is that they are incredibly persuasive and they really, really want you to believe them, which is its own kind of weird thing," said Forrest. "The model wanted them to believe these citations were real cases and so it's kind of a bizarre persuasion, so it's a hallucination. Now these hallucinations are a real issue that computer scientists are working on today, but there are problems for rolling out these tools for prime time in our profession and a lot of other places, so we have to solve them."

The Presidential Summit was sponsored by ALM and Anytime A.I.

In an earlier panel, a Business Law Section panel entitled "Artificial Intelligence – Practical Uses of A.I.," panelists discussed specific AI tools available to the legal profession and the best means to incorporate them into your business practices.

Luca CM Melchionna, chair of the NYSBA Venture and Technology Law Committee, moderated the panel that included Livia Maghiar, head of corporate and technology law and enterprise chief privacy officer, at TIAA, and Vedika Mehera, director of Orrick Lab in Boston.

Maghiar emphasized the importance of engaging various in-



(L-R) Former U.S. District Court Judge Katherine Forrest and former Chief Justice of the Michigan Supreme Court Bridget McCormack spoke about the enormous impact AI will have on the legal profession at the presidential summit.

house experts when producing policies to minimize risk while using A.I. technology.

"We have a compliance and risks committee with representatives from ethical, we have representatives from data management, we have representatives from data scientists, and we have representatives from legal compliance. It really takes a village to do that and to manage the risks because why we can recognize legal risks and we can recognize client risks, we don't always appreciate even as lawyers the technological risks that show up, the bogies. It takes different perspectives and different understandings of what you're building and how it's being built, including the data points that are being used," said Maghiar.

Mehera discussed how Orrick is encouraging its employees to use ChatGPT and general-purpose tools while adhering to in-house policies including the type of data employees are allowed to input.

"One of my colleagues uses the analogy that this technology is evolving so quickly, we don't ever want to be going from the flip phone to the iPhone 13."

Former Homeland Security Secretary Jeh Johnson Receives New York State Bar Association's Highest Honor

By Rebecca Melnitsky

Former Secretary of Homeland Security Jeh Johnson was feted at a black-tie Presidential Gala January 18th at the Museum of Modern Art in New York City where he received the New York State Bar Association's highest honor, the Gold Medal Award.

"I've tried to be a good member of the New York State Bar," Johnson told the hundreds of lawyers and guests attending the gala. "I tried to be a good public servant. I tried to be a good husband, a good father, a good son, a good friend and a good mentor. I think that's what it's all about for all of us, all of us very accomplished people in this room. Even though we win cases, we become judges, we hear distinguished cases, we occupy positions of importance, it's all about having a good life."

Johnson served as a co-chair of the association's Task Force on Advancing Diversity, which provided a path forward for diversity, equity and inclusion programs at universities, graduate schools, businesses, and courts only a few short months after the U.S. Supreme Court ruled that race-conscious admissions policies at Harvard and the University of North Carolina were unconstitutional.

In 2020, then-Chief Judge Janet DiFiore appointed Johnson as an independent monitor to assess equal justice in New York State's court system. Within four months, he issued a 100-page report recommending significant changes to promote equality. In the three years since, many of these recommendations have been adopted.

A graduate of Morehouse College (*cum laude*) and Columbia University Law School, Johnson served as secretary of Homeland Security from 2013 to 2017. Before that, he was general counsel of the Department of Defense (2009-2012), general counsel of the Department of the Air Force (1998-2001) and an assistant United States attorney for the Southern District of New York (1989-1991).

He has been affiliated with Paul, Weiss since 1984 and was elected as its first African American partner in 1993. He is the co-chair of the firm's Cybersecurity and Data Protection practice, and advises high-tech companies, private equity firms and government contractors on the legal aspects of cybersecurity, national security, data privacy, government relations, crisis management, high-stakes litigation and regulatory matters.

Johnson also serves as a trustee of Columbia University and is a member of the board of directors for Lockheed Martin, U.S. Steel and MetLife.

Johnson joins a distinguished group of legal icons who have been honored with the Gold Medal Award, including Justices Sandra Day O'Connor, Thurgood Marshall, Ruth Bader Ginsburg, Robert H. Jackson, William J. Brennan, Jr., Lewis F. Powell, Jr., Potter Stewart, Felix Frankfurter, Robert H. Jackson, Secretary of State John Foster Dulles and civil rights attorney Sherrilyn Ifill.



Former Homeland Security Secretary Jeh Johnson accepts the Gold Medal at the Presidential Gala.

Chief Judge Rowan Wilson Praises NYSBA Members' Tireless Devotion to Shaping the Development of Law

By Susan DeSantis

Chief Judge Rowan Wilson praised the New York State Bar Association and asked for the association's advice and guidance in working with the court system to shape the law.

During an address to the House of Delegates at its Annual Meeting in New York City, Wilson said, "We need to rely on you and you on us in a couple of ways. As to legislative efforts, we want your input, advice and guidance as to the positions we may take and changes or revisions we might suggest."

Wilson also applauded the dedication of the association's membership to its mission, which, he said, has resulted in a profound impact on the profession and the state.

"Since its founding in 1876, the New York State Bar Association has been a force of good for New York. Part of the association's power comes from the impressive breadth and depth of its membership. But most of the association's impact comes from its leaders and its members' tireless devotion to its mission to shape the development of the law, to educate and inform the public, and respond to the demands of our diverse and ever-changing legal profession."

Wilson also noted that at the request of President Richard Lewis and Executive Director Pam McDevitt, the NYSBA president and the chief judge are having regular meetings. He also said that the Unified Court System is willing to assist the association in efforts to increase its membership.

"The judges, lawyers and non-legal staff of the Unified Court System can help the New York State Bar Association grow its membership. We stand ready to help in any most kind of membership drive you can conceive, whether that is by hosting events at the courts for young lawyers, coming to events you hold, engaging with you in civics education programs, conducting joint programs at law schools, you name it. I do not offer that purely out of a sense of altruism or responsibility. If we need your help to move forward, the stronger you are, the more helpful you will be."

He closed by again emphasizing the tenets of cooperation and collaboration.

"So that we're sure we don't confuse the means and the end, the means is collaboration, the end is justice. The New York State Bar Association and the Unified Court System share that same goal and I look forward to our collaboration for many years to come."



Chief Judge Rowan Wilson told the New York State Bar Association that its power comes from the impressive breadth and depth of its members.

New York State Bar Association Institutes All-Inclusive Membership Model

By Susan DeSantis

Distinguishing itself from many other bar associations, the New York State Bar Association will be enhancing its offerings to members by providing exclusive content, unlimited live CLE programming, 24/7 access to the association's on-demand CLE library of 1,700+ programs, complimentary membership for two of the association's legal sections, access to hundreds of digital publications and forms, and countless additional partner benefits, all wrapped up in one, affordable, membership fee.

The association's House of Delegates on Friday made a change to the association's by-laws to institute the new membership model beginning in the 2025 membership year.

Members can belong to two of the association's sections for free, with additional sections costing a modest \$30 per membership. The association's 28 sections range from those that focus on a legal practice such as Trusts and Estates, Tax, and Antitrust to sections that share common interests such as the association's Women in Law Section or LGBTQ Law Section. This is just the tip of the iceberg for this new membership package valued at over \$5,000.

The New York State Bar Association's Membership Committee, chaired by Clotelle Drakeford of the Legal Aid Society of Westchester County, and Michelle Wildgrube, a partner at Cioffi Slezak Wildgrube, proposed a subscription plan for association membership at the House of Delegates' summer meeting June 10th.

In a recent interview, Wildgrube and Drakeford answered questions about the subscription model proposed by the Membership Committee.

Q: How will this new model benefit members?

Michelle: Members will find it easy to get everything they need for one price. As many may know, the association has a complicated dues structure, and this will eliminate that. Members can pay for their annual membership upfront or via monthly credit card payments like they do now with Netflix or HBO. After that, the overwhelming majority of their activities will be free. It couldn't be simpler.

Clotelle: And one of the best parts is that the cost will be about the same as the average member is paying now. The Membership Committee studied what members are paying now on all their a la carte services — virtual CLEs, on-demand programming, membership fees and section memberships — before determining prices for the new model.

Think of it this way, if members added up what they typically spend on membership dues, CLE credits either with NYSBA or through another provider, and additional resources throughout the year, they could actually save money with their membership since they could complete ALL of their CLE requirements under this plan among other amazing benefits.

Q: What is the advantage of this new model for the association?

Michelle: The association will maintain an ongoing relationship with members and continually demonstrate the value of belonging. It will also give the association a more predictable source of revenue and that will lead to an increase in membership because it sets the course for continuing to evaluate and provide more resources as time goes by, leading to stronger member retention. In addition, the new model will simplify the process for joining and renewing.

Q: Will law students, newly admitted lawyers, retired attorneys and paralegals continue to pay less than lawyers in the prime of their careers? What will the impact be on sustaining members?

Clotelle: We are not planning to charge retired members or paralegal members much more than they are paying now. Law school students will continue to be free. Newly admitted attorneys will still qualify for free membership, but can opt to pay more to include more services and resources. Government, non-profit, and public interest



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attorneys are welcome to submit a dues waiver request.

Q: What isn't included in the new plan?

Michelle: Because of the expenses involved, in-person events such as section destination meetings, in-person CLEs, and Annual Meeting would be omitted from this model and require an additional fee should a member choose to register. But because there has been a trend toward virtual programming – spurred in part by COVID – many members will pay nothing more or their increased costs will be negligible. Surveys have shown that the majority of our members want virtual programming to be an option. Many prefer it. But that isn't to say that the association is moving away from in-person programming. We still believe that's vital for a membership organization.

Q: Would the model be available to firms for purchase?

Michelle: That's a great question. We absolutely see firms taking full advantage of this, particularly if they are already paying the membership fees for their attorneys or spending additional money on CLE for their team. Some firms would not only save thousands of dollars going this route based on existing CLE expenses and additional resource library expenses, but there are potential savings that may traditionally go unrecognized, such as possibly saving on liability insurance premiums if all firm members are part of the New York State Bar Association.

Q: What impact would the new model have on the association's many sections?

Clotelle: The sections have a lot to gain from this model. They can look forward to an increase in membership because of the two complimentary section memberships included in the model and the flat \$30 fee to join each additional section. Plus, sections are going to receive royalties from the association based on a formula that takes into account overall NYSBA membership and section membership.

Q: What impact would the model have on the association's CLEs?

Clotelle: With so many CLEs included in the cost of membership, we anticipate that CLEs will have a larger audience and

that will make our speakers even more influential than they already are.

Q: What else should members know about this new model?

Michelle: Annual membership to the association will also include 40-plus section newsletters, 400-plus live CLEs any given year, 150-plus informational programs, 4 Bar Journals, 2 editions of the State Bar News, 52 NYSBA Weekly eNewsletters, 12 New York State Law Digest Newsletters, and 80+ eBooks that include hundreds of online forms.

Clotelle: Many of our members don't know how much we offer but by moving to this exciting model, they will be able to take full advantage of everything we offer without worrying about the cost.



(L-R) Clotelle Drakeford and Michelle Wildgrube present the all-inclusive membership plan at the association's House of Delegates meeting.

Protecting Client Confidentiality Remains Paramount at the Outset of the AI Era

By David Alexander

Artificial Intelligence's pervasive impact on lawyers will initially be felt most profoundly in practical areas including document drafting and repetitive tasks that are data driven.

A panel of experts who spoke during the second part of the Presidential Summit, the marquee event of the New York State Bar Association's 147th Annual Meeting, discussed the practical benefits of AI while warning potential users that the technology does not eliminate the need for fact verification and client confidentiality.

The summit, entitled "AI and the Legal Landscape: Navigating the Ethical, Regulatory and Practical Challenges," focused on harnessing the technology that is transforming the practice of law and bringing ethical and regulatory challenges to the forefront of its deployment.

Vivian D. Wesson, executive vice president, corporate secretary, and general counsel for the Board of Pensions of the Presbyterian Church (U.S.A.) and chair of the NYSBA Task Force on AI, moderated the 90-minute conversation.

The panelists included:

- Ignatius Grande, director at Berkeley Research Group, a member of the association's Task Force on AI, and immediate past chair of its Commercial and Federal Litigation Section.
- Marissa Moran, professor in the law and paralegal studies department at New York City College of Technology, CUNY.



(L-R) Vivian D. Wesson, Ignatius Grande, Ronald Hedges and Marissa Moran – all members of the association's Task Force on Artificial Intelligence – discussed the ethical and regulatory challenges AI poses for law firms at the presidential summit.

- Ronald Hedges, principal of Ronald J. Hedges and also a member of the NYSBA Task Force on AI.

"I think that everyone can envision a scenario where an associate who is behind schedule might want to use ChatGPT to create a draft of a brief. It is important that firms provide them guidance on how these tools can and cannot be used," said Grande. "As attorneys, one of the things that we have to worry about most is the confidentiality of our clients' data so having a policy that helps you regulate the use of generative AI is really important. I don't want to discourage or dissuade anyone from using this new technology, but it is important to understand how the tools work."

Unreasonable client expectations of the technology's capabilities and AI manufacturers' service agreements may also raise risk levels. Some companies' privacy policies may contain clauses that allow them to use their input data for training purposes, which expose their clients' information to third parties.

There was also some debate on AI's well-documented potential to narrow the justice gap.

"I understand that a lot of people say generative AI and AI are going to improve access to justice. I'm not sure, at least in the short run. Everything we are now talking about is going to require experts, experts to inform you, experts to advise you and experts perhaps to do a lot of things to aid in discovery," said Hedges. "I'm also not sug-

gesting it's good or bad to have platforms to suggest what pro se litigants should do, but it is something we are going to be confronting in the next few years."

Moran said that is imperative for attorneys to be mindful of their ethical duties surrounding AI and reinforced Grande's assertion of the need for them to understand the technology before attempting to use it.

"Like any technology that we use, we need to understand its benefits as well as its limitations in order to utilize it in an ethical manner to improve our decision making as well as to enhance our practice," said Moran.

The event was sponsored by ALM and Anytime A.I.

Artists Expect a ‘Long Journey’ To Establish AI Protections

By Paula L. Green

Attorneys are just beginning to navigate the head-spinning legal and business challenges emerging as generative AI technology disrupts the way books are written and illustrated, pictures are painted and films are created.

“We had two strikes this year and it will be a long journey. The dialogue is ongoing and we must be vigilant,” said Ann Burdick, general counsel of the Writers Guild of America, East, in New York City, told lawyers gathered at a Thursday panel held by the Entertainment, Arts and Sports Law Section at the New York State Bar Association’s Annual Meeting in New York City.

Burdick was referring to the months-long strikes by the Writers Guild of America, the Screen Actors Guild and the American Federation of Television and Radio Artists (SAG-AFTRA) last year. The labor unions were calling for better pay and working conditions, as well as fairer contracts

that include stipulations about the expanding use of artificial intelligence. The panel was titled “Impact of AI on Entertainment.”

Burdick said the guild’s 148-day strike helped lay out the extent of AI’s impact on the entertainment industry since ChatGPT was launched in November 2022. It showed the need to implement guardrails and provide protection for writers as the technology’s use accelerates and deepens. “It’s an existential threat to writers,” Burdick said, adding it is the latest in a centuries-long struggle between workers and technology.

Jonathan Handel, an entertainment and technology attorney and freelance journalist based in Los Angeles, agreed that workers’ fear of being displaced by technology has been around for 200 years. In this century, technology is impacting workers in the knowledge and creative industries, including illustrators, writers and actors. While the impact may vary, the economic repercussions are severe as people

and companies use AI to create books, paintings and even actors. Handel, who also moderated the panel, wondered how digitally replicated actors will influence labor rights, which hinge on the employee-employer relationship.

Umair Kazi, director of advocacy and policy at the Authors Guild in New York, said some claims about AI have been hyperbolic, yet it has had a devastating impact on the income of freelance writers and illustrators. “There has been a steep and quick decline,” said Kazi, pointing to the use of AI to make machine-generated books. Authors’ attorneys are focusing on intellectual property laws, particularly copyright laws, for some protection.

Vishwanath Mohan, counsel at Greenberg Glusker in Los Angeles, said that while some people want to use AI to create artistic content, the U.S. Copyright Office has rejected applications for AI-generated content with an artistic element.

“The human involvement in the creation of the content must be more than trivial (mere verbal prompts into an AI tool is not enough),” Mohan said. As a result, much of the content being created with generative AI cannot be copyrighted in the United States. Yet the guidelines vary around the world and AI-generated content has received copyright protection in India, China, and Canada.

Despite all the glamorous litigation -- such as *The New York Times v. Microsoft Corp.* and *The Authors Guild v. OpenAI Inc.* -- Mohan said the case to watch is a lawsuit filed by information services company Thomson Reuters against Ross Intelligence. Thomson Reuters accuses Ross Intelligence of unlawfully copying content from its legal-research platform Westlaw to train a competing artificial intelligence-based platform. A judge decided last September the case should go before a jury this year. “I’m betting the plaintiff will win on this.”



(L-R) Vishwanath Moran, Umair Kazi and Jonathan Handel discuss the impact of AI on the entertainment industry.



Judith Bass, panel co-chair of the association’s Entertainment, Arts & Sports Law Section joins the discussion.

Improving Taxpayer Engagement in Today's Politically Charged Environment: A Challenge for IRS Commissioner Werfel

By David Alexander

Moving the department into a more user-friendly technological atmosphere in a politically challenging environment is among the most pressing issues for the Internal Revenue Service, IRS Commissioner Daniel Werfel told hundreds of tax lawyers gathered for the New York State Bar Association's Annual Meeting.

Werfel, who assumed his position nearly a year ago, engaged in a question-and-answer session with Executive Committee members at the Tax Section luncheon. The program was part of opening day events at the New York State Bar Association's 147th Annual Meeting.

Werfel took questions for 45 minutes in a room filled with nearly 900 lawyers.

"We are at an incredibly important inflection point for this organization and the reason for that is for more than 10 years that predated the passage of the Inflation Reduction Act, the IRS budget was cut year over year over year, so much so that when you add it all up it equated to about a 20 or 25% cut," said Werfel.

Those cuts reduced the department's staff size to the same as it was during the 1970s.

In addition, the IRS has for years been at the center of some intense political battles with Republicans wanting to deplete the agency and Democrats relying on it to collect revenue to fund its legislative priorities.

Werfel noted that the IRS is also challenged to adjust to new



IRS Commissioner Daniel Werfel spoke to a packed room on the numerous changes the IRS is trying to implement since he assumed his position nearly a year ago.

rules — such as the regulations adopted as part of the Affordable Care Act — and a changing economy with the addition of online payment platforms such as PayPal and Venmo.

"If I was up here in 2010 mentioning those things, you would think I have lost my mind. Now they are a fundamental reality of our tax system and when it happens, and you have this ever-expanding set of requirements and challenges and new issues, as your resources decline, you start to strain at the seams," said Werfel.

To help address those challenges, the IRS released a strategic operating plan in August that outlines how it intends to use \$60 billion in additional funding it received as part of the

Inflation Reduction Act. The money is earmarked to improve the taxpayers' engagement experience with the department, to strengthen its tax compliance programs in a more equitable manner and to modernize its technology systems.

"We have lifted technology higher in the organization and closer to the commissioner's office because just about everything that I have ascribed to success-wise is going to require significant and accelerated modernization of our technology," said Werfel.

He added the department has the funds to build an IRS for the future, but that it is equally important that it produces results immediately and builds a technological infrastructure that ad-

dresses the roots of solutions.

"I would not be successful as the commissioner if I walked into this room, for example, and said the Inflation Reduction Act is a 10-year program, we have tens of billions of dollars to spend, and get excited because in year six things are really going to start taking off. Things almost have to happen on day one and that involves things we have done since day one like hiring, like bringing in new people and now the IRS is at 90,000 people, which is a big milestone because we are hiring mostly customer service reps and now we're getting to the hiring of the auditor phase," said Werfel.

Hackers Working for Lucrative Cyber Attack Industry See Law Firms as Rich Targets



Cybersecurity expert Mike Mooney warns that law firms need more protection from online hacking during a panel sponsored by the Torts, Insurance and Compensation Law Section.

By Paula L. Green

With their vast trove of intellectual property and business intelligence, law firms are rich targets for hackers working for the lucrative cyber-attack industry.

“Law firms are not seen as the most tech-savvy industry and there may not even be a technology staff at smaller firms,” Mike Mooney, partner and senior vice president at USI Affinity in Newtown Square, Penn., told lawyers gathered at a panel discussion on cyber risks held at the New York State Bar Association’s Annual Meeting in New York City. “Mix that all together and lawyers and law firms make prime targets.”

Mooney and Michelle Merola, an attorney with Hodgson Russ in Albany, warned lawyers about the evolving and increasingly sophisticated threats posed by the cyber-attack industry. “It is not a Nigerian prince sending out an email anymore,” said Mooney, noting it is a billion-dollar industry that frequently involves organized crime. Added Merola: “This is not a young person sitting in a basement. People are working on their techniques. This is business.”

The panel, “Real World Cyber Risks for Attorneys,” was sponsored by the association’s Torts, Insurance and Compensation Law Section and Trial Lawyers Section. Brian Rayhill, the section’s chair and head of his own law firm opened the panel discussion.

Attorneys whose clients entrust them with large amounts of sensitive and personal information face unique liability risks. “Confidentiality is a big problem for lawyers, even if they have backed up their data,” said Merola, noting that the stolen data can expose lawyers to malpractice claims. Malpractice insurance was not written to cover the losses and possible liabilities stemming from a cyber-attack that leaks sensitive data. In fact, malpractice policies can now state that liability claims stemming from cyber-attacks are limited to \$25,000. “That is affirming that they (insurance carrier) will only give you the \$25,000,” said Mooney.

“You would blow through \$25,000 in a week,” Mercola added. They advised lawyers to ask their insurance carriers if their coverage includes exposure to cyber risks.

Attorneys can use the cyber insurance application process as a valuable risk assessment tool to help correct security deficiencies. “You can discover your vulnerabilities,” said Mooney, adding the coverage does not have to be purchased. Insurance carriers will carry out a non-invasive scan of the firm’s technology system to assess its exposures, determining, for example, if the firm’s sensitive data can be found on the dark web.

“It is better to jump through more hoops now than paying claims down the road,” Mooney noted. If a law firm does secure coverage and sustains a cyber attack, the insurance carrier will resolve the problem that created the technology breach. “You can be scared to death and not practice law anymore. Or you can protect yourself,” said Mooney, adding that managers must consider the time, and billable hours, a security breach costs a firm and its clients. “It is not going to be a fun day at the office if you have a security breach.”

Insurance carriers normally offer \$1 million in a stand-alone policy, which would be sufficient for a small legal firm. Limits can reach up to \$50 million, or even \$100 million, Mooney said. A \$1 million limit would probably carry a \$1,800 annual premium, but prices vary depending on a firm’s size, risk and exposure.

Mooney said he finds law firms typically fall into one of three categories. “Those which have a risk and choose to correct it, those which discover a risk and choose not to correct it, and the people that scare me the most . . . those who don’t know what they don’t know,” he said.

Elections Around the World Ramp Up Uncertainty in Big Tech Mergers, Acquisitions

By Paula L. Green

Upcoming elections around the world will only ramp up uncertainty in the world of Big Tech mergers and acquisitions as anti-trust regulators and technology companies warily eye each other's strategies.

Different U.S. administrations, or even officials within an administration, can view the antitrust environment differently and corporate executives are on guard to adapt to shifting landscapes in 2024 and 2028, Lawrence Buterman, a partner at Latham & Watkins, told lawyers gathered at the opening day of the New York State Bar Association's Annual Meeting in New York City.

"It's a dynamic landscape," said Buterman, one of several panelists speaking at an Antitrust Law Section panel titled "A Survey of Big Tech Enforcement, From Consolidation to Monopolization." "Overall, there is a lot of uncertainty in the anti-trust enforcement area."

Rachel Brandenburger, global senior adviser for APCO Worldwide in New York, pointed out that Big Tech companies must be ready for a wide range of conclusions from regulators around the world. The Federal Trade Commission, for example, challenged Microsoft's recent acquisition of the video game publisher Activision Blizzard while the deal was approved by the European Commission. The acquisition also was approved by regulating authorities in Brazil, China, Japan and South Korea. Based in New York, APCO is an advisory, advocacy and reputation management services company. Brandenburger likened

the merger landscape to a "jigsaw puzzle" that must be fit together.

Shaoul Sussman, associate director for litigation in the Bureau of Competition at the Federal Trade Commission, opened the panel discussion by noting the long stretch of time surrounding the resolution of many antitrust cases. "Between the time the press release is issued, and a court issues a decision, there is a long period of time . . . five, six or seven years," Sussman said. "This is informing how we look at the merger arena."

The commission is well aware of the drain that litigation has on its resources, both financial and personnel, and the added costs needed to unwind any Big Tech acquisitions judged as anti-competitive. "This is informing our work," he said. "There is skepticism about what might happen if we let a merger go through."

Buterman noted the "enormous power" that agencies wield as executives try to map out their corporate strategies. Regulators can challenge a merger transaction based on a theory that a nascent company can pose a challenge to competition in an industry. "For companies, it is like having the Sword of Damocles hanging over their heads," he said, adding the uncertainty can harm companies. Noting the long time period between the filing of antitrust cases and outcomes, he said he thought it was incumbent on courts to slow down the process of litigation. Losses in the courts, he noted, could embolden some technology companies to move ahead with transactions.

Anne Catherine Raye, vice president of the Analysis Group, in Boston, Mass., noted that regulators can face setbacks, which will prompt reassessments

of the merger landscape. She noted that Big Tech is not one big group, and all companies face complex economic issues even as entry to the technology industry is relatively easy, compared to other industries.

Buterman said company executives "believe in the rule of law" and need clear guidance on how agencies are going to look at their actions. "For those of us advising companies, there is not much to go on to help us determine when a transaction will not be scrutinized," he added. Sussman said merging guidelines issued by regulating authority are meant to help companies understand regulators' analysis of potential mergers.

The panel was moderated by Beatriz Marques, assistant attorney general in the New York State Attorney General's Antitrust Office.

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Commercial Cannabis Sales Bring Big Bucks to a Long Island Town

By Rebecca Melnitsky

The Town of Babylon is reaping the benefits of opting in. While most Long Island municipalities refused to allow cannabis sales, this Long Island town became one of the few to allow recreational dispensaries and businesses.

At a panel hosted by the Local and State Government Law Section at the New York State Bar Association's Annual Meeting, Matthew McDonough, special counsel for the Town of Babylon, and Jacob Zoghlin, a land use and zoning attorney from Rochester, reviewed how marijuana sales have benefited the town that said yes.

The first store in Babylon, Strain Stars, opened in July. "They have been doing about \$1.5 million of revenue a week," said McDonough. "And the great thing about this, we get 3% of it."

That equals \$45,000. Another store, Happy Days

Dispensary, opened nearby earlier this month. A few more stores are expected to open in the Town of Babylon by the end of the year.

"There have been no major crime issues," said McDonough. "There are parking and traffic issues because they are that popular. . . as time as has gone on, those parking and traffic issues have reduced."

He noted that the town is the only place in the surrounding area for cannabis, and that most of the customers are older adults.

There is a lot of money in marijuana. Curaleaf, one of the biggest cannabis companies, brought in more than \$1 billion in revenue last year. "Municipalities are looking at their taxes and their mouths are watering," said Zoghlin.

Municipalities that have opted out can opt back in for cannabis sales through a voter referendum or legislation.

Rules Restrict Cannabis Store Locations and Advertising

Municipalities can place limits on a cannabis store's operating hours, appearance, and location – similar to the laws governing other businesses. "Things that municipalities do all the time, they can still do," said Zoghlin. "It's things you can already do as long as you're not treating cannabis businesses differently."

Likewise, a municipality cannot impose extra fees and taxes on a cannabis business unless they apply to similar businesses, like liquor stores.

In addition, the stores are subject to state zoning regulations, which restrict where they can be located. Under state law, dispensaries must be at least 500 feet from schools and at least 200 feet from places of worship. However, one attendee noted that there was confusion if daycares and preschools inside of

churches were placed under the "school" or "place of worship" designation.

The Town of Babylon recently reduced the permitted distance between cannabis stores and residential areas from 1,000 feet to 750 feet, but changed how it calculates the distance between properties. Instead of measuring from a central point in the property, the town now measures from property line to property line.

Furthermore, stores cannot use cartoons, bubble-type font, neon colors in their advertising – or other marketing that targets people under the age of 21. Stores also cannot use colloquial terms in advertising, like "weed," "stoner," or "pot" – unless those terms are already in the store's name.

"It hasn't been this terrible rollout," said McDonough. "It's effectively the only place on Long Island that's been open to stores . . . There's been no major issues."



Matthew McDonough, special counsel for the Town of Babylon, and Jacob Zoghlin, a land use and zoning attorney, discussed the ongoing rollout of recreational cannabis sales.

2024 Annual Meeting Award Winners



Anne C. Reddy
Justice for All Pro Bono Award



Arthur Allen Katz
Justice for All Pro Bono Award



(L-R) Scott Karson, Justice Rolando Acosta, Justice Leonard Austin, Justice Sheri Roman, Justice Reinaldo Rivera and Michael Miller at the Committee on Courts of Appellate Jurisdiction Reception.



NYSBA President Richard Lewis presents the Ruth G. Schapiro Award to Judge Edwina Richardson.



Jonaki Singh
Outstanding Young Lawyer Award



Josie Sheppard Wilson
Kay Crawford Murray Award



Noah Hanft
Chuck Newman Award



Judge James Murphy, Distinguished Jurist Award winner, joined by Justice Gregory Gilbert.



Justice Deborah Karalunas (right), Advancement of Judicial Diversity Award, joined by Justice Barbara Kapnick.



Lawlor Quinlan
Justice for All Pro Bono Award



Michael Cardello presents the Stanley Fuld Award to Chief Judge Rowan Wilson.



Russell Franklin, John E. Higgins Diversity Trailblazer Award winner, joined by Nihla Sikkander.



(L-R) Sheryl Galler pictured with Seth Goldstein, Astrid Aune, winners of the Samuel M. Kaynard Memorial Student Service Award, joined by Evan Spelfogel.



Ronald Weiss
Jonathan Lippman Pro Bono
Award



Tina Foster, Justice Ruth Bader
Ginsburg Beacon Award, joined
by Committee on Diversity,
Equity and Inclusion co-chairs
Dena DeFazio (left) and Nihla
Sikkander (right).



Wesley Powell
LGBTQ+ Vanguard Award



Judge Matthew D'Emic (left),
Vincent E. Doyle, Jr. Award for
Outstanding Judicial
Contribution in the Criminal
Justice System, joined by Judge
Barry Kamins.



Daniel Looney, Outstanding
Contribution to the Bar and the
Community, joined by Rick
Collins.



Rodney Personius
Charles Crimi Memorial Award



Leanne Lapp, Michele S. Maxian
Award for Outstanding Public
Defense Practitioner, joined by
Norman Effman.



Peter Lavigne
David S. Caplan Award for
Meritorious Service



Michael Berger (left), Martin B. Adelman Memorial Award, joined by Rick Collins.



Judge Michael Simons, David Siegel Award. Justice Barbara Kapnick, Outstanding Jurist Award.



Weeden Wetmore (left), Outstanding Prosecutor Award, with Robert J. Masters.



Justice Erin Gall
Betty Friedlander Award



Justice Suzanne Adams
Peter C Kopff Trial Advocacy Award



Christopher Flint, Betty Friedlander Award, joined by Brett French.

This is not a complete list of winners.

SCENES FROM ANNUAL MEETING 2024



SCENES FROM ANNUAL MEETING 2024



New York State Bar Association Calls for More Offenses To Be Added to Hate Crime Statute in Face of Rising Antisemitic, Anti-Asian Hate

By Rebecca Melnitsky

In the face of an alarming rise of hate crimes across the state and nation, the New York State Bar Association is calling for a much-needed update of New York State law through the Hate Crimes Modernization Act. The act would expand the list of hate-crime-eligible offenses to include charges such as graffiti, criminal obstruction of breathing, and rape in the third degree.

This is one of the recommendations of the association's Task Force on Combating Antisemitism and Anti-Asian Hate. Others focus on improving the reporting and prosecution of hate crimes, as well as preventing the spread of hate speech on the internet. The association's governing body, the House of Delegates, approved the report on Friday, Jan. 19.

Since Hamas' Oct. 7 attack on Israel, the Anti-Defamation League has documented 832 antisemitic incidents of assault, vandalism, and harassment across the United States in the month after, for an average of nearly 28 incidents a day. Even before Oct. 7, the ADL documented that antisemitic hate crimes steadily rose throughout the past decade.

Anti-Asian hate crimes in New York City, meanwhile, increased by 800% in the first year of the COVID-19 pandemic. And while the pandemic has slowed, anti-Asian hate has not -- including the death of Jasmer Singh in a road rage attack in Queens on Oct. 19, 2023.

"Hate does not belong in our communities, and the victims of

hate crimes -- no matter what their race or religion is -- need the law to take their pain seriously," said Richard Lewis, president of the New York State Bar Association. "As antisemitism and anti-Asian hate have increased, this has become more important. I thank the task force for their thorough examination of existing law and laying the groundwork for improvement. We urge the Legislature to pass the Hate Crimes Modernization Act, along with all other necessary changes that this task force has identified."

The New York State Bar Association also recommends:

- That the law provides more examples of what constitutes a hate crime, including the actions of a defendant before and after an attack.
- The passage of the Stop Hiding Hate Act, which would require social media companies to disclose the measures taken to moderate hate speech and is modeled on a law California enacted in 2022.
- Adopting new measures -- such as requiring police agencies to document all alleged hate crimes, regardless of whether they result in an arrest -- to improve hate crime tracking and reporting.
- Enforcing compliance of the Dignity for All Students Act, including creating a review board within the New York State Education Department.
- Removing the word "substantial" from New York's



(L-R) Brian Cohen and Vincent Chang, the co-chairs of the Task Force on Combating Antisemitism and Anti-Asian Hate, presented their recommendations to the House of Delegates.

Hate Crime Act so it includes people who were attacked "in whole or in part" because of their characteristics, eliminating confusion in hate crime prosecution. "Many crimes can be hate crimes, as long as the motive and intent are there," said Brian Cohen, a partner at Lachman Cohen & Belowich, who served as co-chair of the task force. "Catching the law up to this reality will go a long way in making our communities safer. I'm proud to say that we have the New York State Bar Association's full support in this effort, and I

hope we see our proposed changes soon passed into law."

"The first step to fighting hate is identifying it," added co-chair Vincent Chang, counsel at Davis Polk. "Aiding local authorities in sharing accurate information about the number of hate crimes is part of that step. We hope that the proposed legislation gives police, lawyers, and others the tools they need to prosecute hate crimes. I thank the task force members for their dedication and hard work in putting together this thoughtful and thorough report."

The New York State Bar Association Supports Passage of New York’s Medical Aid in Dying Bill

By Jennifer Andrus

The New York State Bar Association’s House of Delegates, its governing body, voted today to support passage of a bill that would allow terminally ill people in New York to take medication that would end their lives.

The Medical Aid in Dying bill (A995a/S2445) includes safeguards such as mandatory evaluations of a person’s decision-making capacity, palliative and end of life care counseling and protections against coercion.

The bill has 85 co-sponsors. The bar association’s Task Force on Medical Aid in Dying made the recommendation in a report to the governing body.

“The Task Force on Medical Aid in Dying has worked tirelessly on this issue and produced recommendations that safeguard our most vulnerable populations,” said New York State Bar Association President Richard Lewis. “Support for medical aid in dying offers both dignity and compassion for those grappling with what can be a very difficult time in their lives.”

The task force reviewed the legal, ethical, public health and policy considerations surrounding the issue. It evaluated the impact on families, health care providers, nursing homes and correctional facilities.

“Our committee took a thoughtful approach to this issue and heard from many groups and voices who both support and oppose aid in dying as part of our work,” said Mary Beth Quaranta Morrissey, chair of the task force and chair-elect of the New York State Bar Association’s Health Law Section. “We held hours of hearings ensuring that everyone who is passionate on this issue would be heard.”

The New York bill is modeled after legislation in Oregon, nine other states and the District of Columbia.



Task Force on Medical Aid in Dying Chair Mary Beth Quaranta Morrissey presents findings of its report before the House of Delegates.

New York State Bar Association Objects to Governor’s Transfer of Funds That Belong by Law to Low-Income New Yorkers

By Susan DeSantis

Richard Lewis, president of the New York State Bar Association, issued the following statement about Gov. Kathy Hochul’s executive budget, which moves \$100 million from a fund that pays for low-income New Yorkers to get civil legal services, to the general fund:

“The New York State Bar Association strenuously objects to Gov. Kathy Hochul’s misguided maneuver to take possession of \$100 million that rightly belongs to New Yorkers who are about to lose their homes, who are seeking lifesaving medical treatment, who need help recovering from crushing debt or are facing other life-changing civil legal challenges.

“This money is under the purview of the IOLA Fund, which supports 81 non-profit legal services organizations that help New Yorkers in their time of greatest need. The law simply does not allow the governor to divert this money -- which comes from escrow on attorney accounts and not from the taxpayers -- to the

state’s general fund. The New York State Bar Association supports the IOLA Board of Trustees in its unanimous opposition to this misuse of money that was set aside by law to aid low-income New Yorkers.”

Chief Judge Rowan Wilson: By Taking on More Cases, New York’s Court of Appeals Will Regain Its Former Glory

By Jennifer Andrus

Recalling a time when New York’s Court of Appeals heard hundreds of cases and was viewed as one of the most prestigious in the country, Chief Judge Rowan Wilson vowed to return the court to its former glory.

“I would like to get back to that,” he said.

Wilson was the keynote speaker at a dinner of the New York State Bar Association’s

Committee on Courts of Appellate Jurisdiction at the association’s Annual Meeting in New York City on January 16.

Wilson noted that the Court of Appeals in 2021 heard only 81 cases, and that last year the court received only 600 motions for appeal instead of the more than 1,000 that was once typical. Reacting to the decline in caseloads at the Court of Appeals, the New York State Bar

Association held a panel discussion on the situation in May 2023.

The chief judge said the court must dramatically increase its caseload to regain its stature. To do that, he is encouraging attorneys and presiding justices of the appellate courts to send the court more motions for appeal.

Under the new chief judge, court days have already gotten longer, with arguments sometimes going past 7 p.m. Wilson says he will continue to allow arguments to go later when necessary. “More time may be needed for a case in answering our questions because it is better for the case,” he said.

He is also considering allowing two judges of the Court of Appeals to review each criminal appeal, which would presumably lead to the decision to review more criminal cases.

Wilson also encouraged attorneys to send the court amicus briefs on issues and cases, saying it will help the judges identify and better understand the issues at the center of each case.

“We want to do this for public cases [from the New York Attorney General] and in some private party cases. We want open collaboration with all of you and are prepared to listen to the people who are on the ground about what they need,” he said.

We Are All One Court

Wilson also addressed changes in the management of the Court of Appeals under his leadership including the practice of elevating an appellate justice to sit on the Court of Appeals in the event a Court of Appeals judge is recused.

“We are all judges and we are part of the same system. You are all good enough, and often appellate judges have more trial experience than current members of our court,” he said. “It builds camaraderie between judges, creating connections and making us a better court.”



Chief Judge Rowan Wilson speaking before the Committee on Courts of Appellate Jurisdiction.

Strategies To Be a Culturally Effective Lawyer

By Jennifer Andrus

“Ten Strategies To Be a Culturally Effective Lawyer” was the theme of this year’s Constance Baker Motley Symposium at the New York State Bar Association’s Annual Meeting in New York City.

The Committee on Diversity, Equity and Inclusion assembled an all-star panel of experts who offered real life examples of the steps and missteps we take while working with others who are different. The first element of understanding how to be culturally effective is awareness of biases.

Awareness

“We all have biases and need to address them head on,” said Mirna Santiago, a DEI expert and founder of Girls Rule the Law. “Recognizing the bias and change it before it’s a problem.”

The topic of privilege can be difficult to understand. Associate Justice Cheryl Chambers of the

Second Department, Appellate Division, offered the panel a definition of privilege as an unearned advantage that can encompass more than race and wealth. “Those who have it don’t seem to know that they have it,” she said.

Truro Law professor Meredith Miller agreed, adding that self-awareness is key. “We need to recognize our unearned advantage.”

Interpersonal Communication

Following awareness, the next strategy involves interpersonal communication and engagement. Not everyone in the workplace is outgoing and it may be uncomfortable to engage with those coworkers. This strategy involves communicating with others, especially when it is difficult and not abandoning a relationship when it may be rocky. Working through disagreements or working past misunderstandings takes patience and humility.

“Consider the possibility that you are not always right and be humble,” said NYSBA Committee on DEI Co-chair Nihla Sikkander.

Justice Tanya Kennedy took it a step further with a list of suggestions on how to be a better coworker. “Be empathetic, an active listener, be respectful, non-judgmental and non-condescending. Be curious and open to learning from someone, even if you disagree,” she said.

Long Island attorney Kimberly Dobson challenged the attorneys to look at another person’s misstep as an opportunity to rise above it.

“Extend grace to people when they make a mistake; likewise when you make a mistake, own it by saying ‘I see that something happened here.’” When people acknowledge mistakes, Dobson said, everyone can grow from the experience.

Professional Development

When working with people from different backgrounds, coworkers should acknowledge that they don’t know everything about that culture and be open to seeing a client or coworker as the expert.

Professional development is enhanced when we understand that change is inevitable.

“You need to be adaptable and be willing to admit when you don’t know something. Engage in constant self-reflection and self-awareness,” said Justice Tanya Kennedy.



(L-R) Jackie Drohan, Justice Tanya Kennedy and Justice Cheryl Chambers offer thoughts on how to fight implicit bias at the Constance Baker Motley Symposium.



(L-R) Bess Chiu, Kimberly Dobson and Mirna Santiago share mentor experiences during the symposium.

Supporters of New York ERA Ballot Referendum Prepare for Strong Opposition

By Jennifer Andrus

Supporters of the New York Equal Rights Amendment to the state constitution outlined their hopes and fears in the runup to the statewide ballot referendum in November.

The panel discussion, “Each One Reach One,” focused on the grassroots organizing needed to win ratification of the amendment. The amendment would enshrine rights for women, transgender individuals and people who have disabilities in the New York State Constitution.

A panel of legislators, activists and lawyers participated in the Women in Law Section’s Edith Spivack Program at the New York State Bar Association’s Annual Meeting in New York City. According to the panelists, 75% of New Yorkers support an Equal Rights Amendment. However, many of those polled did not know that rights for women and other groups were not already protected under New York State law.

“The ERA provides broad safeguards in our state. This is a critical moment where we need to legally recognize equality for all residents,” said Assemblywoman Rebecca Seawright who represents part of Manhattan.

The campaign, run by a coalition of groups, will employ traditional media, social media and old-fashioned grassroots, neighborhood organizing.

“Many people don’t vote and many voters don’t know enough to flip the ballot over for the referendum questions,” said New York Civil Liberties Union’s Katharine Bodde. “We will need four million people to turn over

their ballots to vote yes.”

Events will ramp up in the fall to keep it top of mind for voters as the election nears. Fundraising is also key with organizers estimating the need for \$20 million to \$25 million raised for a successful statewide media campaign. The civil liberties union’s Sasha Ahuja says the campaign will “create urgency through ads and social media influencers. The stakes here in New York are high. This amendment enshrines rights protecting New Yorkers regardless of whatever way the political winds blow.”

Background: How We Got Here

The ERA regained momentum in the summer of 2022 following the U.S. Supreme Court’s *Dobbs* decision overturning *Roe v. Wade* and returning the regulation of abortion to the states. Days after the decision, Gov. Kathy Hochul called the Legislature into session to pass the ERA. As required in the state constitution, the bill passed in a second consecutive legislative session in January 2023. The amendment will be on the statewide ballot in New York on election day, Nov. 5, 2024. Legislators and their staff acknowledge that it’s important for the statewide referendum to land in a presidential year to benefit from the larger voter turnout.

Seawright said the initial bill faced fierce opposition from the Assembly Republicans, who are in the minority. She says it was a precursor to the opposition she expects from the state GOP this fall. “Success in effort requires a coordinated effort. We know



Former New York Congresswoman Carolyn Maloney explains the campaign to pass the federal ERA and the New York ERA ballot referendum.

that the issue of transgender rights and abortion rights will mobilize some conservative and religious groups in our state. We need to be ready for this opposition when it comes.”

Not Your Mother’s Movement: Federal ERA Is Back

A highlight of the Spivack event was an address by former New York Rep. Carolyn Maloney, who is organizing the fight for passage of the Equal Rights Amendment to the U.S. Constitution. Now out of office, Maloney devoted her energy fulltime as the board chair of the ERA Coalition.

She encouraged the attorneys in attendance to work within their circles of friends and neighbors to pressure members of Congress to pass the ERA or face being voted out of office.

“Why is it so hard to have these 23 words enshrined as the 28th amendment? We need to

hold members of Congress accountable,” she said. “If we don’t stop them from chipping away at our rights, they will keep coming after us. If we get equality in the constitution they can’t come after us.”

Maloney said ERA passage on the federal level also gives women the standing to press for enforcement of the laws of equality in state courts. Maloney cited statements by U.S. Supreme Court Justice Antonin Scalia saying, “If it’s not there [in the U.S. Constitution], then discrimination is allowed since it’s not outlined there.”

Finally, Maloney asked for help from Republican women to pass the ERA. She recounted several successes in Congress when support from women across the aisle was crucial in getting bills passed.

“I say enough! Let’s make it happen this year and if we don’t, we need to create a women’s party to get equal rights in the Constitution,” she said.

What Lawyers Should Know About Pay Transparency Laws in New York

By Paula L. Green

Lawyers learned to steer their clients clear of violating the new pay transparency law at a panel discussion held Friday at the New York State Bar Association's Annual Meeting in New York City.

The "So What's New in New York" panel also laid out details of a new city decree meant to prevent workers from facing weight and height discrimination, new contract requirements for employers hiring freelancers who rack up as little as \$800 in fees, and other relevant laws for the association's Labor and Employment Law Section. Sara Kula, of Kula Law in Mount Kisco, moderated.

The state Pay Transparency Law, which requires salary transparency in job advertisements and builds on New York City's 2016 pay transparency law, became effective last

September. Proposed regulations are being finalized.

Bridget Holohan Scally, deputy general counsel and association commissioner in the New York State Department of Labor, said the department's intent for transparent job descriptions that include a salary range are meant to benefit both employers and employees. "We're not out to get anyone. We want to make sure both the applicant and the employer know what the job entails," said Scally, adding that employers' good faith efforts are taken into account.

For example, a job advertisement for a real estate agent that publishes a salary range of \$50,000 to \$250,000 raises concerns because the salary range is so large. "We would be suspicious of anything more than \$100,000," she added. "It raises concerns that the employer is not being straightforward."

Employers must also ensure the job description lists all of the duties to be performed by the employee being hired. For example, a simple ad for a dishwasher at \$18 an hour complies with the law's salary mandate. "But if you ask that employee to mop floors and watch your children, you're not in compliance with the law," she said.

Miriam F. Clark, a partner in the New York City law firm of Ritz Clark & Ben-Asher, said there are differences in the state and city laws, but both apply to companies with four or more people. The city law, administered by its Commission for Human Rights, includes domestic workers and aims to ensure pay equity. It helps avoid situations where "the frat brother of the employer, who is a white male, gets hired at \$175,000" when other applicants, such as women and people of color, were offered lower salaries.

She urged employers to state a minimum and a maximum salary number in the job description. "Don't be vague, be specific," Clark said, adding this also helps hiring managers budget for a post.

Tracey Salmon-Smith, a partner at Faegre Drinker, was also on the panel, sharing insights on how the new law affects her clients mainly in the field of finance.

Steven A. Zuckerman, associate at Cooley law firm in New York, said employers are eager to know what evidence state and city officials are using to determine if an employer is acting in good faith when advertising a job. Scally said the state regulations contain guidance on what good faith entails.

Another concern for employers is the outcome when internal employees read the job description and feel they are not being paid enough. "That could impact the internal situation," Zuckerman said.

SCENES FROM AM 2024 GALA



How a Service Dog and Two Lawyers Welcome Clients With Disabilities

By Rebecca Melnitsky

Could a person with limited vision access your firm’s website? Could a wheelchair user get inside your law office?

For people with disabilities, navigating legal services can be a challenge. But it does not have to be that way. At a panel hosted by the Elder Law and Special Needs Section at the New York State Bar Association’s Annual Meeting, attorneys Michael Amoruso and Vincent Russo shared how they work to make their practices accessible.

Amoruso, who is hearing-impaired and legally blind, was accompanied by his service dog. “Back when I was growing up, if you were deaf, you were also considered dumb,” he said. “So I had to advocate for myself.”

When Amoruso was in college, he wished to be a golf player. But after finding that his eyesight was deteriorating, he changed his path to becoming a lawyer.

A Bad Day Getting to Court

When Amoruso was traveling to New York City for a hearing, a man at Grand Central Station ran over his cane, snapping it in half. Amoruso got down on his hands and knees, found a wall, and followed that until he reached an area with which he was familiar. He took a taxi to the courthouse, where a security guard helped him get to the hearing, waited for him until it was over, and guided him all the way back to Grand Central Station and to his train.

“I tell you that story not for empathy or sympathy,” Amoruso said. “But if you’re going to be



Michael Amoruso, pictured with his service dog, and Vincent Russo described how their offices and law practices accommodate people with disabilities.

hiring associates, these are the things you need to start considering if you’ve got a disabled attorney or a staff member. Don’t feel sorry for them, you help them succeed.”

Accessible Law Practices

Amoruso and Russo shared some of the many ways they made their offices and practices more accessible for people with disabilities:

- Smartboards in conference rooms so clients can zoom in on text.
- Different kinds of pens – including claw pens – so clients can comfortably sign documents.
- Handrails on the walls to help unstable people walk.

- Chairs with arms so people can lift themselves out of chairs.
- A ramp at the office entrance.
- Only two rooms – a reception and a conference room – so clients go through fewer doors.
- Light, stable furniture that can be easily moved.
- No door thresholds to get in the way of walkers or wheelchairs.
- Sound insulation in rooms to make it easier to hear.
- Valet parking.
- Sloped edges on tables so people leaning on their arms do not get nerve damage.
- Easy-to-clean floors in case of an accident.
- Policies and procedures to accommodate varying disabilities.

“If you serve this community, you need to put a little bit of thought into the client experience,” Amoruso said.

This mindset extends to how the attorneys designed their websites. Amoruso’s website has fewer words, a lot of white space, and a contrasting button to request a consultation – all to make navigation easier. Russo’s website can be customized. One can make the text dyslexia friendly, alter the contrast for people with visual impairments, change the language to Spanish, as well as other adjustments.

“It distinguishes you from the general practitioner who says they’re an Elder Law attorney,” said Russo. “Because you take the steps to make sure that you are accessible to all clients.”

Telehealth Regulations Change in a Post-Pandemic World

By Rebecca Melnitsky

As the COVID-19 pandemic made digital and telehealth services necessary, governments eased regulations for access. Now that the crisis is over, regulations are returning, and states are reexamining their procedures.

Randi Seigel, health care partner at Manatt, Phelps & Phillips, briskly examined the past, present and future of telehealth regulations at a meeting of the Health Law Section during the New York State Bar Association's Annual Meeting.

"There was a dramatic uptick in telehealth at the start of the pandemic and through the 12 months that followed purely out of necessity," said Seigel. "The federal and state government took rapid action to ease the myriad of regulatory burdens on providers that prevented telehealth from being readily accessible."

Many patients, especially those in rural areas, prefer telehealth services and have continued to use them as the pandemic has receded. But the rules have changed since then. During the pandemic, it was permissible for doctors to communicate with their patients on technologies without privacy protections, such as FaceTime, but that is no longer the case.

Online Questionnaires

In the coming year, Seigel said to look for how states are regulating the use of online questionnaires in telehealth. "We're seeing some states actually embrace the use of online questionnaires and say they count as telehealth if there was a prior, preexisting relationship

with the patient," said Seigel. "But other states have made it clear the use of online questionnaires or automatic chatbots are not considered telehealth."

Seigel said that states have differentiated online questionnaires from traditional "store and forward" communications, in which a person sends additional medical information, like a photo of a rash or a medical record, for a medical provider to look at and make decisions.

"I think in some ways, it's really helping patients get access to medications at lower costs and there's some low risk," said Seigel. "But we've also seen there's a proliferation of prescribing opioids, controlled substances, potentially weight-loss drugs – that are raising concerns around the use of this online questionnaire. I think there's going to be a lot of activity here – either at the state regulatory level or by the boards of medicine, who may take action if the state doesn't pass something."

License To Practice Remotely

Many states have a regulation that the medical professional providing telehealth services must be licensed in the state where their patient is located – a requirement that was waived during the pandemic. "However, almost all of the states have now lifted these temporary flexibilities and are exploring new policies that seek to expand or streamline the state licensure process for physicians," said Seigel.

Furthermore, state law is often unclear about how nurse practitioners and assistant physicians can practice telehealth.



Randi Seigel, health care partner at Manatt, Phelps & Phillips, examined the past, present and future of telehealth regulations.

"We're sort of left to guess and interpret the rules because most of those rules haven't been updated with the growth of telehealth."

There are pathways for physicians and nurses to gain licenses in other states through agreements like the Interstate Medical Licensure Compact and the Nurse Licensure Compact. Bills for New York to join these agreements have been introduced in the state legislature.

Telehealth providers may also face additional requirements when prescribing certain medications, such as controlled substances and abortion pills.

"With any growth of a certain type of service, you can expect government oversight," said Seigel. "Here, we're seeing federal activity around telehealth, and looking at telehealth utilization and studying its impact on the quality of care."

Confused by the Drastically Changing College Sports Landscape? Just Follow the Money

By David Alexander

Envision being fired from a job where you walk away with a \$78 million severance package that allows you to still get paid even if you find another job. Perhaps that is possible to comprehend for the CEO of an international conglomerate, but a college football coach?

Look no further than Jimbo Fisher, the former Texas A&M coach who was let go last November and is the beneficiary of the university's generosity.

Meanwhile, Florida State University is suing the Atlantic Coast Conference, its current league, challenging an agreement that binds the school to the conference for the next 12 years with more than half a billion dollars in exit fees at stake. It's only getting messier as the conference filed an amended complaint to the one it filed in December to prevent the school from participating in league affairs.

These are a few examples of the volatile landscape that is consuming intercollegiate athletics, according to a panel on the influence of money in college sports that was hosted by the Entertainment, Arts & Sports Law Section at Dorsey & Whitney as part of the New York State Bar Association's 147th Annual Meeting.

Section Co-Chair Jill Pilgrim moderated the All-Star panel that included:

- Hal Biagas, chief operating officer and general counsel at Seven 1 Sports & Entertainment Group.
- Donna Lopiano, president and founder of Sports Management Resources, adjunct professor of sports management at Southern Connecticut State University,

and president of The Drake Group.

- Peter Roby, former director of athletics and recreation at Northeastern University and member of the Knight Commission on Intercollegiate Athletics.

"Since the College Football Bowl playoff started in 2015, the severance package for fired coaches within public institutions of the Football Bowl Subdivision has tripled. It went from \$32 million to \$98 million of what we considered 'dead money.' That means schools are paying out coaches who were fired before their contracts were up," said Roby. "Why do you think that is? Why do you think people started getting fired with years still left on their contract? It's because now they are playing for a national championship where the money is that much bigger, and schools are less patient with coaches if they are not getting into the tournament."

NCAA football generates approximately \$400 million annually while the NCAA Division I men's basketball championship, March Madness, generated \$1.1 billion in 2022.

The NCAA uses men's basketball tournament money to cover its operating expenses and to conduct 90 championships in 24 sports. However, 90% of it flows back to member institutions and conferences, which provides a big incentive to have successful teams. Revenue from the College Football Playoff is distributed directly to conferences and schools by a pre-determined formula.

The college sports model where free labor is standard has also contributed to the precipitous increase of revenue generation. Student-athletes were traditionally

only eligible for scholarships that contained the monetary value equivalent to the cost of attending their institution. Personal expenses such as books and computers were not included.

They were finally allowed to earn money through endorsements, autographs and promotional appearances without risking their playing eligibility in 2021 with the advent of Name, Image, Likeness after the Supreme Court unanimously ruled in *NCAA v. Alston* that the NCAA could not limit education-related payments to student-athletes.

That ruling, however, has not impacted the bottom line for the NCAA or its members.

"NIL money comes from third parties where some business contracts with a student-athlete to use their name, image, likeness and it cost the school nothing. The schools are not paying anything out of pocket following this change to the NIL regulations," said Biagas.

What remained, though, is that student-athletes are not allowed to receive compensation tied to performance and recruits are not supposed to sign a marketing deal dependent on where they decide to school.

The reality is very different. What has followed is chaos over the rise of "pay for play" schemes that

are run through collectives, which typically are companies affiliated with school alumni. These collectives run as third parties and acquire financial resources that are directed to student-athletes for the right to use their NIL. Coincidentally, this form of compensation costs the institutions nothing.

However, this has created more questions than answers as 95% of NIL collectives are directed towards football and men's basketball.

"This is all about men's sports. It's all about football, it's about men's basketball, and it's about choices that were made by the foxes that were guarding the hen house. Title IX required institutions to give women equal publicity, equal promotion to develop women athletics in the same way that men athletics were developed. That has not been done," said Lopiano. "Women coaches are making half the salaries of male coaches. If you don't make an investment in women sports, if only 50% of all the coaches of women sports are women, and 95% of coaches in men's sports are men, you can see who is making the money and the investment has only been made in football and men's basketball with no sign of anything being done differently."



Hal Biagas and Jill Pilgrim were part of a panel that examined how the expanding revenue streams and ever-changing student-athlete compensatory regulations have impacted the highest levels of college athletics.

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