Apple's Fourth Amendment Fight: The Right to Privacy in the Digital Age

Editor's Note: On March 28, 2016 the United States asked the District Court to vacate its order compelling Apple's cooperation in unlocking Mr. Farook's phone, saying that it had independently accessed the data. *The broader legal issues, of course, remain unresolved.*

Benjamin Franklin said that "[t]hose who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety."[1] For safety reasons, "[t]he Justice Department wants to force Apple to write software that would allow the government to try millions of random password combinations to get into the phone."[2] Indeed, "Magistrate Judge Sheri Pym in California ordered Apple…to create specialized software to help the FBI hack into a locked, county-issued iPhone used by a gunman in the mass shootings last December in San Bernardino, California."[3] The twenty-first century quandary, whether government interest will trump American liberty interests in technological privacy, will likely be played out in this highly publicized case.

Cory Morris

18th-Century Law, 21st-Century Technology

Technological progress is inevitable in American life. In 2014, the Supreme Court recognized that "[m]odern cell phones, as a category, implicate privacy concerns far beyond those implicated by the search of a cigarette pack, a wallet, or a purse."[4] Additionally, "[b]efore cell phones, a search of a person was limited by physical realities and tended as a general matter to constitute only a narrow intrusion on privacy."[5] The Supreme Court has gone as far as to say that "modern cell phones ... are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy."[6] If this is so, should not the Fourth Amendment and liberty interests of nearly every American, in a post September 11th world, outweigh the concerns of safety and security now implicated by a dead terrorist? Unable to access the phone itself, should the government be able to usurp Apple's technological ingenuity to break an encryption code?

"A Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable."[7] "[T]he ultimate touchstone of the Fourth Amendment is 'reasonableness.'"[8] "Where a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, . . . reasonableness generally requires the obtaining of a judicial warrant."[9] The Fourth Amendment inquiry may be changing as "[t]he laws governing online privacy are woefully out-of-date. To compel Apple to help execute a warrant, [a] judge cited the All Writs Act of 1789, enacted before there was electricity"[10] to accomplish the search of a cellular phone.

Even around the time the All Writs Act was enacted, as evidenced by Benjamin Franklin's suggestion, concerns over liberty were paramount. Indeed, "the Fourth Amendment was the founding generation's response to the reviled 'general warrants' and 'writs of assistance' of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity."[11] Some might argue that colonial era warrants and writs are not far removed from the government's position regarding Apple. Concerning negative speech rights, communication does not lose constitutional protection as "speech" simply because it is expressed in the language of computer code. There are limits on such speech, however[12], and one might wonder how Apple can be forced to act, in essence, where the government is rendered impotent without the assistance of a private entity.

The Case of the San Bernardino Shooter

The current Court Order utilizes the All Writs Act to force Apple to hack its own phone encryption. "Although that Act empowers federal courts to fashion extraordinary remedies when the need arises, it does not authorize them to issue ad hoc writs whenever compliance with statutory procedures appears inconvenient or less appropriate."[13] This has Apple concerned because "[o]nce created, the technique could be used over and over again, on any number of devices. In the physical world, it would be the equivalent of a master key, capable of opening hundreds of millions of locks — from restaurants and banks to stores and homes."[14] This would not comport with the twenty-first century reasonable expectation of privacy. There is no meaningful retort to Apple's suggestion - after all, the government alleges that the technical expertise to get into this phone lies with Apple and not with federal investigatory agencies.

What precedent will this set by the Federal Courts? The gunman is now dead[15] and the phone in the possession of the government. Furnishing the right to physical privacy to its millions of consumers, Apple has done nothing more than built a secure phone upon which its customers have come to expect and rely. "The U.S. has used the All Writs Act at least three times—most recently in 1980—to compel a phone company to provide a list of dialed numbers, but in those cases the technology and tools already existed, said Jennifer Granick, an attorney and director of civil liberties and the Stanford Center for Internet and Society."[16] Is this most recent invocation of the All Writs Act the remedy to Apple's ingenuity or will this force the Supreme Court to create a Fourth Amendment scheme fit for the digital age?

In *United States v. Jones*, the Supreme Court reviewed a case where the government obtained a search warrant permitting it to install a Global Positioning System (GPS) tracking device on a vehicle registered to the respondent's wife.[17] The warrant authorized the device to be installed within ten days and within the District of Columbia; however, the warrant was not complied with. The device was installed on the eleventh day in Maryland which began to track the vehicle's movements for twenty eight days. The use of the GPS device was challenged as unconstitutional, a violation of Jones' Fourth Amendment rights.

The opinion in *Jones*, written by the late Supreme Court Justice Antonin Scalia, also utilized doctrine from the 18th Century. Justice Scalia opined that the government's use of a GPS device under these circumstances, a physical intrusion, constituted a violation of the Defendant's constitutional rights, and the Framers would agree. Concurring in the opinion, Justice Sotomayor "would…consider the appropriateness of entrusting to the Executive, in the absence of any oversight from a coordinate branch, a tool so amenable to misuse, especially in light of the Fourth Amendment's goal to curb arbitrary exercises of police power to and prevent 'a too permeating police surveillance.'"[18] These words reverberate as the challenge Apple faces may again force the Supreme Court to examine the Fourth Amendment with the 18th century in mind.

Whether the use of the All Writs Act is appropriate will likely fall upon whether the Supreme Court finds the interests of the government to be so compelling and without any other remedy as to force Apple to act. "Read as a whole, [the All Writs Act of 1789] means that judges can tell people to follow the law, but they have to do so in a way that, in itself, respects the law."[19] However, Apple states that, "ultimately, we fear that this demand would undermine the very freedoms and liberty our government is meant to protect."[20] Indeed, "[t]he United States government may have a reasonable case when it comes to Mr. Farook, but a victory here would open a Pandora's box that can't be closed in the United States or anywhere in the world."[21]

Concurring in *Riley v. California*, Supreme Court Justice Samuel Alito indicated that:

> it would be very unfortunate if privacy protection in the 21st century were left primarily to the federal courts using the blunt instrument of the Fourth Amendment. Legislatures, elected by the people, are in a better position than we are to assess and respond to the changes that have already occurred and those that almost certainly will take place in the future.[22]

Even more alarming than this stern instruction is the Government's use of the All Writs Act which, in some sense, is remarkably similar to the colonial era writs found repugnant to the founders of this country. Many jurists are wary of

See PRIVACY, Page 22

Profiting from your Practice: Communicate to Avoid Problems with Clients

Initial Communication

An attorney must communicate early and often with clients to prevent dissatisfaction and to avoid problems which can lead to grievance or malpractice claims. Communication is necessary even before the first consultation, so the parameters of the consultation are clear along with its cost, if any. If the client fails to ask in advance about the cost or scope of the initial consultation, the attorney should make clear as to any limitations on the length of the free consultation or the exact fee, and if any credit will be applied toward a retainer.

Kenneth J. Landau

If the attorney is retained, the retainer agreement must specify the cost of the legal services, which attorney will be handling the matter and the (reduced) cost of any lower level attorneys, paralegals or support staff. The retainer should also make clear who will initially advance and ultimately be responsible for any other costs or expenses of a lawsuit (if applicable), including litigation expenses, such as filing fees, depositions, court costs and fees for experts. If certain legal matters are not going to be handled by the law firm, this should also be confirmed in writing along with potential deadlines for taking action such as the statute of limitations. If possible, a referral should be made to another attorney or an appropriate government agency or nonprofit who may be able to help in the matter.

Finally, the Retainer Agreement should inform the client of his or her right (subject to some exceptions) to submit a fee dispute to arbitration pursuant to Part 137 of the Rules of the Chief Administrative Judge. The client may even give consent to such a proceeding in the retainer, in which case, the attorney must notify the client in writing with certain information, as Part 137 provides, before commencing an action in any Court to recover legal fees.[1]

When you meet a client, especially at the initial consultation, it is important to make clear the timetable for resolution of a matter. Anyone who watches a legal program on television is conditioned to seeing a legal matter resolved within a week if not an hour. For this reason, it is important to give realistic expectations as to how long it will take for you to initiate and complete the matter. This should be done both verbally and in writing.

After the Retainer

Once you are handling a matter, it is important to periodically update the client as to its status. This must be done even if nothing has happened since your last update. Every month or so, the client should be sent a communication as to the status of the matter, recent activities since the last update if any, and what the next step will be. If nothing has happened, if there is a delay or if it will take additional time for the next step to occur, an explanation should be given, *i.e.*, there is a backlog on the Court calendar or it will take the other attorney or agency several weeks to process the matter, etc.

When legal work is generated, a copy should be sent to the client, even if not for review or correction; this way, they will have a copy for their files so that they can see what work is being performed on their behalf. If you are awaiting additional information or documents from a client, you must periodically follow up for same in writing. Similarly, if you are waiting for responses from other parties, it is also important that you follow up with them in writing.

As noted earlier, the type, range and projected total of expenses must be made clear to the client and if practicable and customary, they should be asked to advance these expenses or to reimburse you shortly after the expense has occurred, unless you have agreed to an alternate arrangement.

Why Clients Hate Lawyers

One of the most common examples of poor communication by attorneys is the failure to timely return telephone calls. Attorneys both young and experienced are repeatedly criticized for not returning telephone calls from their clients or others. This cannot only lead to dissatisfaction by clients but to potential grievance or malpractice claims. It is good practice that all telephone calls be returned within 24 hours. However, they do not have to be returned by the attorney, especially if he or she is not available or on trial. They can be returned by a colleague, a paralegal or an administrative assistant. The same suggestions apply to emails or correspondence which you must promptly acknowledge even if you are going to more fully respond later on.

An administrative assistant or paralegal can be introduced early in the course of fee representation as an important member of your team and as the "go to" person who can act as a liaison (or customer service representative) between you and the client. They can keep the client up to date and have the appropriate person get back to them if necessary in a timely manner.

Avoiding Fee Disputes

Another important area of communication by attorneys concerns fees. Although a retainer might establish fees, many bills fail to adequately explain the nature of the work performed or justify the time involved. In addition, many bills are not sent out frequently enough so the billable hours climb, causing "invoice shock" and adversely affecting both the willingness and ability of clients to pay. It is also a good practice, and may help to retain or earn some goodwill, to occasionally perform some work at no charge. An occasional short telephone call, letter, or in-person consultation can be provided at no charge to create and preserve goodwill with clients. This is important not only to keep them happy, but to nuture them as a source of referrals. To be sure, appropriate and timely communications not only avoids problems with clients but helps to develop goodwill with clients.

Communications are also important in conveying bad news. If there is an upcoming legal proceeding or option which has a significant possibility of being unsuccessful, it is important to let the client know about the possibility of an unfavorable result in advance. If they cannot afford to exercise every legal remedy, it is important to communicate what option you will pursue, subject to their approval. It there is an adverse result, perhaps a dismissal of a case or specific claim, it is important to advise the client in a timely manner so they do not discover this at the end of the matter or from another source.

It there are offers of disposition or resolution, whether in a commercial, tort or criminal matter, it is important that these offers be timely conveyed to the client with or without your recommendation. If there is a possibility of resolving the matter through ADR, whether through the Court, Bar Association or a private provider, it is important that this option be brought to their attention before the tremendous time, expense, and uncertainty of litigation has occurred.

Kenneth J. Landau is a partner in the Mineola law firm of Shayne, Dachs, Sauer & Dachs, LLP, and concentrates in the areas of negligence, medical malpractice, and insurance law on behalf of plaintiffs. He is a past Dean of the Nassau Academy of Law, and hosts the weekly radio show ALaw You Should Know,@ broadcast every Monday at 4:00 p.m. Tuesday at 1:00 p.m. or Sunday at 7:00 a.m. on WHPC 90.3 F.M. or Voicestream at www.ncc.edu/whpc

1. 22 NYCRR § 137, Attorney-Client Fee Dispute Resolution Program

MOOT COURT ...

Continued From Page 1

Kearon, Garden City, for whom the annual competition is named.

Christine T. Quigley again authored this year's problem, which argued two issues involving insider trading. The first was to determine whether email evidence obtained by a warrant should have been excluded where the data was stored on a server located outside of the United States. The second was to determine whether a person who trades on confidential information received indirectly from a company insider may be found guilty of insider trading under the securities laws *only if* the government shows that the defendant was aware that the insider who disclosed the confidential information and the direct recipient of it had a meaningfully close relationship representing a potential gain of a pecuniary or similarly valuable nature.

A total of five student teams competed this year, representing CUNY School of Law, Maurice A. Deane School of Law at Hofstra University, Touro College Jacob D. Fuchsberg Law Center, and St. John's.

THE VOLUNTEERS WHO PUT ORDER IN THE COURT

The Hon. Elaine Jackson Stack Moot Court Competition, coordinated by Nassau Academy of Law staff, Jennifer Groh, Director, Patti Anderson and Maureen Hymson, involves dozens of volunteer judges, brief scorers and timekeepers during the two-day event. We thank them for their participation.

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When May Courts Enjoin Business Disparagement?

The right to "freedom of speech" is enshrined in our federal constitution. But that right, although broad, has never been absolute.

Nearly a century ago, Justice Oliver Wendell Holmes explained that even the "most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic . . ." *Schenck v. United States.*[1] If words "are used in such circumstances and are such a nature as to create a clear and present danger," the First Amendment provides no protection to the speaker.

Michael A. Ciaffa

Since the decision in *Schenck*, courts have often struggled to balance an individual's right to free speech against the legitimate rights of others. One common misconception is that judges can never issue a "prior restraint" against a person's right to speak freely. Although "prior restraints" upon speech are rarely granted, courts have become increasingly sensitive to the rights of victims of "free speech," particularly when the risk of irreparable harm to a business or a person's professional reputation is apparent.

Dennis and *Ansonia Assoc.*: "Narrowly Tailored" Injunctions

In two recent cases, courts issued injunctions against disgruntled former employees who were "disparaging" their former employers on the internet, and in communications to the former employer's customers. Both were extreme cases. But the rulings made in the two cases fell squarely within the scope of existing judicial precedents discussed below.

In two recent cases, courts issued injunctions against disgruntled former employees who were "disparaging" their former employers on the internet, and in communications to the former employer's customers. Both were extreme cases. But the rulings made in the two cases fell squarely within the scope of existing judicial precedents.

In *Dennis v. Napoli*[2], for example, the Supreme Court granted a preliminary injunction in an opinion which thoroughly addressed the Court's authority to restrain conduct which incidentally involved "expressions and speech." The defendant in that case "launched a campaign to ruin plaintiff's personal and professional life" after discovery that the plaintiff had an affair with her husband. As part of that campaign, defendant "sent numerous letters, emails, texts and Facebook messages to plaintiff's family, friends, employers and future employers defaming plaintiff as well as posting vicious and insulting comments on plaintiff's Facebook pictures." Several letters were sent to the wives and family members of the partners at her current employer, calling plaintiff a "sexual predator" and "sex addict" and warning the recipients that they should not let their husbands near plaintiff.

In the face of these facts, the Court concluded that the plaintiff was entitled to a "narrowly tailored" injunction, prohibiting defendant from sending unsolicited communications concerning plaintiff to plaintiff's current employers or the employers' family members, prohibiting her from posting "derogatory or degrading statements" about plaintiff on Facebook or other social media sites, and prohibiting her from sending unsolicited messages concerning plaintiff to plaintiff's Facebook or LinkedIn contacts.

The Supreme Court's decision in *Dennis* found direct support for its ruling in a series of appellate court decisions upholding similar injunctions. In *Trojan Elec. Machine Co. v. Heusinger*,[3] for instance, the court affirmed an injunction restraining "picketing in the vicinity of plaintiffs' business or home." The defendants' actions "were calculated to injure plaintiffs' business and constituted an unjustified interference for which the preliminary injunction is justified." Defendant's "right of free expression" was outweighed by "the rights of plaintiffs to operate their lawful business without unjustified tortious interference and coercion unrelated to any legitimate resolution of defendants' disputes." "The restraint was narrowly tailored, serving to eliminate only the exact private wrong at issue and leaving defendants free to otherwise express themselves or seek resolution of their dispute with plaintiffs."

Likewise, in *Ansonia Assoc. v. Ansonia Tenants Coalition*,[4] the Appellate Division affirmed a Supreme Court order which enjoined defendants and "all persons acting on their behalf or in concert with them 'from interfering with plaintiff's business by approaching, accosting, initiating communications with, distributing written communications to, or otherwise disturbing visitors to the Ansonia for the purpose of discouraging sales or rentals of apartments at the Ansonia." "We agree with the IAS Court that defendants' conduct was not protected speech but merely an instrument of and incidental to wrongful conduct . . . calculated to injure plaintiff's business and interfere with the condominium owners' recognized interest in residential privacy."

Protecting Free Enterprise and Freedom of Speech

Based upon these authorities, judges clearly have the right to issue narrowly tailored injunctions against acts of commercial disparagement and other forms of wrongful and tortious speech. Just like in cases where a party's spoken or published words may present a "clear and present danger" to societal interests, a party's false, derogatory or disparaging words can present a "clear and present danger" to the rights of others "to operate their lawful business without unjustified tortious interference and coercion." When otherwise "protected speech" is "merely an instrument of and incidental to wrongful conduct" and involves publication of words that are plainly "calculated to injure" someone's business or professional reputation, our courts seem quite willing to grant injunctive relief if needed to prevent truly irreparable harm.

However, as with all applications for injunctive relief, the applicant's counsel must meet a heavy burden. First and foremost, the applicant must demonstrate a likelihood of success on the merits against the defendant. It is not enough for the plaintiff to merely plead the required elements of a claim for commercial disparagement, or interference with the plaintiff's existing or prospective business relationships. A strong factual showing is always necessary to convince the court that the plaintiff will likely succeed in its claims. This typically requires a detailed client affidavit, supported by documentary proof and other available evidence supporting the plaintiff's claims.

Furthermore, in cases where counsel is seeking a TRO and/or a preliminary injunction, CPLR § 6301 expressly limits the permissible grounds for granting interim injunctive relief. As provided in this section, "[a] preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual." Alternatively, a preliminary injunction may be granted "in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff."

The same section goes on to limit the circumstances where a temporary restraining order may be granted: "A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had."

The last element – danger of immediate and irreparable injury – is often the most important factor in convincing a court to grant a TRO or a preliminary injunction restricting a party's "free speech" rights. In *Dennis*, the court found that the plaintiff "established that she will suffer irreparable harm" through proof that the defendant's "offensive" words were "capable of injuring [plaintiff's] standing and reputation in all aspects of her personal and professional life …" Likewise, proof of likely lost sales and "jeopardized" business investments can provide a basis for finding a risk of "immediate and irreparable injury." *West Willow Realty Corp. v Taylor*.[5]

Provided these elements are satisfied, the victims of commercial disparagement and tortious interference with business interests may very well be able to obtain rapid injunctive relief when their business and professional interests are threatened by another party's use of words as an instrument of tortious conduct. At a minimum, when presented with facts such as those discussed above, counsel should explore the possibility of seeking a TRO and/or a preliminary injunction. "Free speech" is no defense if the party's conduct is wrongful, and injunctions can be granted if the risk of harm is immediate and truly irreparable.

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1. 249 U.S. 47, 52 (1919).
2. 2015 NY Slip Op 31540(U) (Sup. Ct., N.Y. Co. Aug. 12, 2015).
3. 162 A.D.2d 859 (3d Dept. 1990).
4. 253 A.D.2d 706 (1st Dept. 1998).
5. 23 Misc.2d 867, 870 (Sup. Ct., Rockland Co. 1960).

Correction Note:

March 2016 Focus Article
Tax Department's Regulatory Authority and the Fourth Amendment
By Gary Alpert
p.12, under heading **Case Law,** paragraph 3

In my article published in the Nassau Lawyer's March edition I made a serious error in my recitation of the *Rizzo* case:

> "…The trial court suppressed the evidence of the cigarettes as an unconstitutional search and seizure. The Appellate Division, Second Department upheld the trial court's decision…"

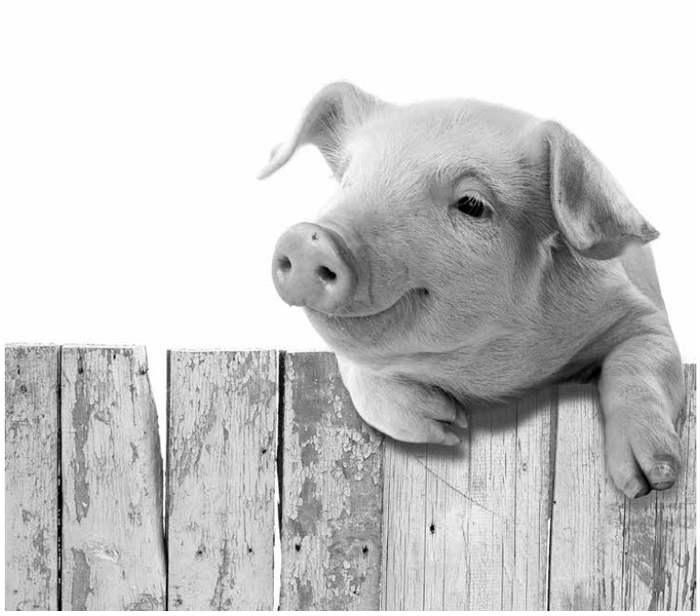
Article should be corrected with the following statement:

> …During the trial the seizure of cigarettes was admitted in evidence and the Defendant was convicted. On appeal the Appellate Division, Second Department reversed the judgment of conviction holding, "…motion to suppress the cigarettes which were seized should be granted on the ground that the seizure was a result of an unreasonable search…", [47A.D.2d at 469]

"My New Roommate is a Pig": Service and Assistance Animals at College

If you are the parent of a college student and have not yet received a call similar to this, be prepared. Requests for "Assistance animals", commonly referred to as emotional support, comfort,[1] or therapy animals have recently exploded on college campuses. These animals are often used as part of a medical treatment plan to provide students with companionship, help with depression, anxiety, loneliness and certain phobias. Yet, they are not considered "service dogs" under the Americans with Disabilities Act (ADA).

Patricia Kessler



Service Animals

The only two breeds of animals that can qualify under federal law as "service" animals are dogs and miniature horses. Service animals mean any dog (there is a separate provision regarding trained miniature horses)[2] that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.[3] Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability.

Under the law if the disability is not obvious, the only two questions which can be asked of a person with a service animal are (1) Is the animal required because of a disability and (2) what work or task has the animal been trained to perform.[4]

If an animal meets the test for "service animal" then the animal must be permitted to accompany the individual with a disability to all areas of a facility where a person is normally allowed to go with only limited exceptions.[5]

Assistance Animals

Assistance animals are treated differently under the law than service animals.

Under the ADA assistant animals are expressly precluded from qualifying as service animals.[6]

The Fair Housing Amendments Act of 1988 (FHA),[7] Section 504 of the Rehabilitation Act of 1973[8] and Title II of the American with Disabilities Act[9] protect the rights of people with disabilities to keep emotional support animals even when an owner/landlord policies and procedures prohibit pets.

An "assistance animal" under the FHA and Section 504 may be a certified service animal, an emotional support animal, or any other animal that "works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability."[10]

There are no specific species designated as emotional support animals. Consider these, a cat, pig, monkey, ferret, chameleon, hamster, duck. Schools have had requests for lizards, tarantulas, potbellied pigs, ferrets, rats, guinea pigs and sugar gliders — nocturnal, flying, six-ounce Australian marsupials.[11] College students can be clever.

Recent Cases

Two recent Department of Justice (DOJ) cases, brought on behalf of university students, provide insight to what the DOJ would like college and university policies and procedures regarding accommodation for assistance animals to look like.

In *United States v. University of Nebraska at Kearny* [12] the university was challenged over the decision to deny a student accommodations for an assistance animal. Brittany Hamilton had been diagnosed with depression and anxiety. She had a therapy dog prescribed to her that was trained to respond to her anxiety attacks. After Hamilton enrolled to attend UNK she signed a lease to live at one of UNK's student housing facilities. Hamilton's request to live with her dog was denied, based on UNK's no-pets policy for student housing. After a few weeks, Hamilton withdrew from her classes and moved out.

The United States' complaint alleged that UNK violated the Fair Housing Act, ("FHA"), by refusing to allow students to live with animals as reasonable accommodations when such accommodations were reasonable and necessary to afford students with disabilities to have an equal opportunity to use and enjoy student housing at the University of Nebraska at Kearney.[13] In addition, the complaint alleged UNK violated the law by making, printing or publishing statements and notices with respect to the rental of student housing that indicated a preference, limitation, or discrimination because of a disability.[14]

The FHA prohibits discrimination in housing on the basis of race, color, religion, sex, familial status, national origin or disability. Therefore, any discrimination based on a persons handicap is unlawful.[15]

UNK argued, in support of their rejection of Hamilton's request, that the university housing did not fall within the definition of "dwelling" under the FHA. The federal court rejected UNK's arguments and ruled UNK's housing did qualify as a "dwelling" under the FHA and Hamilton was entitled to have the therapy dog in the university owned housing.[16]

In addition, the court ordered UNK to pay $140,000 to two former students who sought and were denied reasonable accommodations to keep assistant animals. As a result, university changed it housing policy to allow students with psychological disabilities to keep animals in university housing.[17]

In September 2014 the DOJ filed a lawsuit in the U.S. District Court for the Northern District of Ohio. The DOJ charged that Kent State University and its employees violated the FHA by refusing to consider reasonable accommodation requests by students with psychological or emotional disabilities seeking to live with assistance animals in university housing and who were treated less favorably than similarly situated students with other types of disabilities such as mobility disabilities or vision impairments.[18]

In order to avoid litigation the parties agreed to resolve the matter through a consent decree. Kent State agreed to pay $140,000 to two former students who were denied reasonable accommodations, $30,000 to the advocacy group representing the students and $15,000 to the United States. In addition, the university also adopted a new housing policy consistent with the laws applicable to reasonable accommodations requests for assistance animals.[19]

Changes in Policy

With the increase of requests for emotional animals schools are confronted with a series of new issues and challenges. Challenges can include how these animals can co exist with students with allergies or fear of animals or whose religion does not allow such students to be in the presence of a particular animal. Less obvious issues include where to wash and groom the animals, where to wash their beds and accessories and access to pet stores and veterinarians.

Upon receipt of a request for an accommodation by a student the school must consider (1) Does the person seeking to use and live with an animal have a disability and (2) Does the person making the request have a disability-related need for an assistance animal? If the answer to each of these questions is yes, the accommodation is required.[20]

On the flip side, request for an assistance animal may be denied as unreasonable if (1)the accommodation would impose an undue financial or administrative burden;(2) fundamentally alter the nature of the housing providers services; (3) pose a direct threat to the health and safety of others and can not be reduced or eliminated by another reasonable request or (4) the animal would cause substantial physical damage to the property or others that can not be eliminated or reduced.[21]

These determinations must be made on an individual basis and can not be based on mere speculation or fear of harm or damage an animal may cause.[22] Schools may not limit students to particular residence halls[23] or limit the species of the animal itself, nor may a school charge an additional fee due to the accommodation.[24]

The new policies at Nebraska-Kearny and Kent State embrace provisions which now include language that the animal is limited to the dwelling unit except for natural elimination. Animals can not be left overnight alone, must be contained while in class or events and must be on a harness, leash or in a carrier when out of the dwelling. Other schools have policies that stipulate that the university is not responsible for the animals care including in the event of an emergency and decisions regarding animal removal are left to emergency personnel.[25]

Other school policies can include that the student is responsible for any damage that the animal may cause and for costs required above and beyond any standard pest management for residential halls. They may also require a signed consent form from anyone that would be affected by the animals presence such as room and dorm mates.

Some institutions are managing the issue with a matter-of-fact attitude. "We use our code of conduct for animals as well as people," said L. Scott Lissner, the ADA coordinator at Ohio State University. "We don't let our students

See PIG, Page 17

Obstacles Facing Patients Who Seek Medical Marijuana In New York

New York State law permits the purchase of medical marijuana by certified patients who have certain diseases or conditions, but there are many obstacles faced by these patients in attempting to obtain the medical marijuana.

Who May Legally Purchase Medical Marijuana

Sharon Kovacs Gruer

Patients who have the following and become certified are permitted to purchase legal medical marijuana: cancer, epilepsy, Huntington's disease, Parkinson's disease, ALS (Lou Gehrig's disease), multiple sclerosis, HIV/AIDS, intractable spasticity caused by damage to the nervous tissue of the spinal cord, neuropathy and/or inflammatory bowel disease, and also any of the following associated with or a complication of the above conditions: seizures; cachexia or wasting syndrome; severe nausea; severe or chronic pain; and/or severe or persistent muscle spasms (NYS Public Health Law Section 3360 [7][a]). Other diseases may be added to the list by the commissioner.

On March 15, 2016 proposed bills were submitted by New York State Assemblyperson Richard N. Gottfried and New York State Senator Diane Savino to include Alzheimer's disease, traumatic brain injury, dystonia, muscular dystrophy, wasting syndrome, post traumatic stress disorder, rheumatoid arthritis and lupus to the above list (A09562 and S06999).

Patient Certification and Registration Requirements

Patients seeking medical marijuana need to become certified to be able to purchase the medicine. Patients must receive a New York State Department of Health Medical Marijuana Certification from a registered physician, the difficulty of which is described below. Patients then should then access the Department of Health's online patient registration system to apply for a registry identification card.

In order to obtain the registry identification card, patients need to sign up for a personal "New York government ID" at *my.ny.gov*. After obtaining the New York government ID, patients should log on to *my.ny.gov* and click the "Health Applications" icon (*apps.health.ny.gov/pubauth/applist.html*) and the "Medical Marijuana Data Management System" link to register. Patients should have a valid Department of Health Medical Marijuana Program certification signed by a registered practitioner, photographic identification, documentation of New York State residency, and, if pertinent, designated caregiver information. There is a $50.00 application fee pursuant to Public Health Law Section 3363 (2)(f). Information may be found at *http://www.health.ny.gov/regulations/ medical marijuana/patients*.

After the application is approved, the registry ID card is sent to the certified patient. Patients may choose to designate one or two caregivers during the registration process, who can acquire, deliver, transfer, transport, possess or administer the marijuana. After the patient's application is approved, the designated caregiver(s) must then register with the department.

On March 15, 2016 proposed bills were submitted to amend Section 3369 to permit the use of a registry identification card, or its equivalent, issued under the laws of another state (as long as the visiting patient's condition is a serious condition), Bill S07000 sponsored by New York State Senator Diane Savino and Bill A09553 sponsored by New York Assemblyperson Richard N. Gottfried).

The first hurdle for patients seeking medical marijuana is locating a physician that is registered to prescribe it and willing to do so.

Locating a Medical Provider

The first hurdle for patients seeking medical marijuana is locating a physician that is registered to prescribe it and willing to do so. According to the New York State Department of Health website, as of February 24, 2016, only 421 doctors from across New York have registered to be able to prescribe medical marijuana.

However, patients do not have access to the database listing the registered physicians. Moreover, even where a physician is registered, the doctor may not be willing to actually certify patients and prescribe the medical marijuana. Some physicians that are registered are being asked by the hospitals which employ them to hold off certifying patients until the hospitals adopt guidelines. Patients are forced to blindly ask their various doctors if they know anyone who is registered and willing to prescribe medical marijuana, and cold call various medical practices, which is a hurdle for those in excruciating pain or who have debilitating diseases.

Locating Dispensaries for Medical Marijuana

Patients with valid registry identification cards and with their certification are able to purchase medical marijuana from one of the designated dispensing locations in New York State. Information on the registered organizations can be found on the Department of Health website: *http://www.health.ny.gov/regulations/medical_marijuana/application/ selected_applicants.htm*.

As of February 29, 2016, there were only three open dispensaries in Long Island/Queens: Bloomfield Industries, Inc., 2001 Marcus Avenue, Lake Success, New York, Columbia Care, LLC, 1333 East Main Street, Riverhead, New York, and Vireo Health of NY LLC, 89-55 Queens Boulevard, Elmhurst, New York.

Method of Payment: It's Cash Only

Another hurdle for patients purchasing medical marijuana is that payment must be made in cash. The author is also unaware of any health insurance covering medical marijuana in New York.

An additional hurdle for those who need the medical marijuana is that, pursuant to Public Health Law Section 3362, a patient may only possess a thirty-day supply, although during the last seven days the patient can possess up to such amount for the next thirty-day period.

Use of Medical Marijuana While Employed

An additional hurdle facing patients who are employed and being treated with medical marijuana are the employer's policies regarding the use of the marijuana. The Compassionate Care Act establishes certain protections for the use of medical marijuana, and Public Health Law Section 3369 provides that a certified patient is considered "disabled" under the New York State Human Rights Law. This means that employers may be required to provide reasonable accommodations to certified patients.

Although there are protections for certified patients who use medical marijuana, there are exceptions to the non-discrimination rules which would not bar enforcement of a policy prohibiting an employee from performing his or her employment duties while impaired by a controlled substance, under Public Health Law 3369[2]. This could lead to cases in which the employer, knowing of the use of medical marijuana, feels the employee is impaired, but the employee argues that he or she is not impaired and is being discriminated against. Moreover, the non-discrimination rules in Section 3369[2] do not require an employer to do anything that would put the employer in violation of federal law or cause the employer to lose federal contracts or funding.

Sharon Kovacs Gruer is the principal of Sharon Kovacs Gruer, PC, located in Great Neck, is a former Chair of the NYSBA Elder Law Section and the NCBA Taxation Committee, and has an L.L.M. in Taxation from NYU.

Nassau County Bar Association Annual Meeting

As noticed in last month's Nassau Lawyer, the Nassau County Bar Association's Annual Meeting is being held on May 10, 2016 at Domus. The meeting will begin at 7:00 p.m.

During the Annual Meeting, the election of Nassau County Bar Association officers, directors, Nominating Committee members and Nassau Academy of Law officers, and amendments to the Nassau County Bar Association By-Laws will be voted upon.

A complete set of the By-Laws, including the proposed amendments, can be found on the Nassau County Bar Association website at www.nassaubar.org. Copies are available at the reception desk at the home of the Association or by mail upon request.

Permissible Drug Use: The Administration of Medication in the School Setting

The phrase "drug use in school" typically conjures a sinister image. However, in order to remain in school, students increasingly require medication during the school day to stay safe as well as, manage or maintain their health.

Timothy M. Mahoney

Laura A. Ferrugiari

Boards of Education have responded by developing and adopting policies regulating the administration of all drugs, including both prescription and over-the-counter drugs. In addition, schools are developing approaches for the safe administration of medication in emergency situations, including allergy medication such as EpiPens, to address anaphylactic shock or glucagon to treat hypoglycemia, and most recently, emergency opioid related overdose drugs such as Narcan.

Ground Rules

Except in very rare circumstances, students may not carry or possess medication, prescribed or not, while on school property or while attending school functions.[1] Students, however, may have a health care professional administer medication while in the school setting, typically a registered professional nurse.[2] School districts must hire an RN, the appointment of whom may be shared or jointly employed by neighboring school districts.[3] RNs may perform health assessments; diagnose and treat a patient's unique responses to diagnosed health problems; teach and counsel patients about their health; execute medical regimens and implement health plans as prescribed or developed by medical professionals; and contribute as members of interdisciplinary health care teams and health related committees to plan and implement health care.[4]

The Education Law recognizes three categories of students when considering medication management: nurse dependent (or those who cannot self-administer); supervised (a student who has difficulty opening medication containers due to dexterity issues or who requires assistance in calculating dosage and therefore must direct a staff member to assist in the administration of the medication); and independent (those requiring no assistance whatsoever).[5] Only nurse dependent students require the assistance of an RN, although supervised students may require an RN's assistance should the student become unable to direct an unlicensed person in assisting the student in the administration of medication. Notwithstanding the student's status, medication must still be stored with the RN.

All medications must be delivered to the school nurse's health office in the original packaging with the student's name. Additionally, prescription medication must be properly labeled with the name and number of the pharmacy, the licensed provider's name, the date and number of refills, frequency of administration, dosage, and contain delivery directions: such as orally or by injection. All medications, including OTC, require explicit parental consent in order to be administered.

While on school property, a student may carry certain medications such as EpiPens or Glucagon. Under Education Law §921 and Commissioner's Regulation §136.6, school districts have the option of maintaining stock epinephrine auto-injectors on site. An epinephrine auto-injector is an automated delivery device that is approved by the U.S. Food and Drug Administration for injecting a measured dose of epinephrine in emergencies.

School districts may also allow trained staff members to administer an EpiPen in the event of an emergency to any student or staff member with anaphylactic symptoms, regardless of whether there is a previous history of severe allergic reaction. School nurses may administer anaphylactic treatment agents to either students or school staff under a "patient specific" or "non-patient specific" order from the school medical director. A non-patient specific order is a prescription that can be used for any unnamed individual experiencing an anaphylactic episode.

The State Education Department strongly encourages RN's to request that the school medical director issue such an order directing the administration of non-patient specific prescriptions to follow in the event someone demonstrates signs of an anaphylactic episode while in school.[6] Districts that choose to do so must first comply with Public Health Law §3000-c requirements.

For example, Section 3000-c requires the school district to have a "collaborative agreement" with an "emergency health care provider." A "collaborative agreement" is an agreement that incorporates written practice protocols, policies and procedures that comply with the Public Health Law.[7] An "emergency health care provider" can be either a physician with knowledge and experience in emergency care, or a licensed hospital that provides emergency care. Any member of the school staff who may administer an epinephrine auto-injector in an emergency must complete training that is approved by Department of Health. In accordance with State regulations, a school district must immediately report every use of an epinephrine auto-injector device to its emergency health care provider.

Student-Specific Health Plans

A student with medication management needs should have a health plan, reviewed at least annually. Students whose health issues or medication management needs which substantially interfere with a major life activity may also qualify for reasonable supports

See DRUG USE, Page 13

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DRUG USE ...

Continued From Page 11

under Section 504 of the Rehabilitation Act.[8]

Generally, where a student qualifies under Section 504, a team comprised of school professionals develops a health plan to be included in the student's 504 plan. A health plan is a medication management regimen developed by the student's physician which can address any type of health related issues, from a student's diet to the time by which to check a diabetic student's glucose levels, insulin requirements, and how to respond to emergency situations. A health plan is *not* a substitute for a 504 plan, but rather a component.[9]

Certainly, successful medication management may ameliorate any adverse educational effect within the school setting. The 504 team is tasked with assessing educational impact without considering such adverse effect, meaning how the student presents when not supported by medication. To do otherwise amounts to a failure to properly assess whether the student's impairment substantially limits a major life activity, the very standard for determining whether the student qualifies for Section 504 supports.[10]

For students with diabetes, periodic checking of blood glucose levels as well as the administration of Glucagon in cases of hypoglycemia is necessary. Section 504 plans for these students should indicate the frequency that a child needs to check his or her blood glucose levels throughout the school day. In these instances, convening a 504 team, with participation by the school nurse, will allow the school district to develop an appropriate plan to address the student's monitoring and testing needs. The 504 plan should be kept in the nurse's office and the classroom.

The team should also consider specifically addressing issues such as the frequency, time, and location in which blood glucose levels will be monitored throughout the day, the provision of snacks, water, and bathroom breaks, the training necessary for staff to recognize signs of hypoglycemia and the manner in which missed class time and missed school work will be made up. Staff can be trained by a school nurse to monitor a student's blood glucose levels, and must be so in order to administer Glucagon.[11]

Opioid Abuse and Student Medication

Of recent importance is the prevalence of opioid overdose on Long Island and in our school communities. Schools have the authority to choose to provide and maintain opioid antagonists, such as Narcan, on-site to ensure emergency access to students or staff exhibiting opioid overdose symptoms, whether known or suspected.[12] Narcan is the brand name for naloxone, an antagonist delivered intranasally or intramuscularly.

Schools may participate in one of three ways: school medical directors may register with the Department of Health to participate in the Opioid Overdose Prevention Program and receive a certificate of approval; the school medical director may issue non-patient specific orders for the administration of Narcan by the school nurse; or school districts may permit volunteers to be trained to administer opioid antagonists. In the latter instance, school staff may volunteer to be trained to administer an opioid antagonist on-site during the school day by completing a NYSDOH-approved training program.[13] Similar to EpiPens, a non-patient specific order may be written for Narcan by the school physician.[14]

Conclusion

Medication management on school grounds touches on many areas, from the school nurse to the special education team to district-wide determinations as to whether to participate in opioid overdose prevention programs. It is advisable for Boards of Education to periodically review their medication management policies to ensure school districts are responsibly addressing their students' health needs.

Laura A. Ferrugiari is a Partner at Frazer and Feldman, LLP, Garden City and Past President of the NCBA Education Law Committee. Timothy M. Mahoney is an Associate with the firm. Frazer and Feldman, LLP, has assisted school districts in adopting and implementing appropriate health and medication management policies.

1. Educ. Law § 6902.1. *See also* State Education Department, Guidelines for Administration of Medication in Schools (April 2002).
2. *Id.*
3. *Id. See also* 8 NYCRR § 136.2.
4. http://www.op.nysed.gov/prof/nurse/.
5. EDN § 902.
6. http://www.p12.nysed.gov/sss/documents/EpiGuidanceDoc.pdf.
7. Sample agreement: www.p12.nysed.gov/sss/schoolhealth/schoolhealthservices/ epinephrinecollaborativeagreementfinal.docm.
8. 29 U.S.C. § 701 *et seq.*
9. *Tyler (TX) Indep. Sch. Dist.*, 56 IDELR 23 (OCR 2010) (Reliance on a health plan in lieu of developing a 504 plan circumvents the procedural protections of Section 504 of the Rehabilitation Act).
10. *North Royalton (OH) City Sch. Dist.*, 109 LRP 32541 (OCR 2009).
11. 8 NYCRR § 136.7(f)(2).
12. EDN § 922.
13. Pub. Health Law § 3309.
14. *Id. See also* 10 NYCRR § 80.138.

NASSAU ACADEMY OF LAW

APRIL 19

Another Evening with the Surrogates

Jointly presented with the Suffolk Academy of Law and the NCBA Surrogate's Court Estates and Trusts Committee

Cocktail hour 5:30-6:30PM; Program 6:30-8:30PM

2 credits professional practice

APRIL 20

Recent Decisions Concerning Liability Imposed by Sections 200, 240 and 241(6) of the Labor Law

With the NCBA Plaintiff's Roundtable Committee

5:30-7:30PM

2 credits professional practice or skills

Brian J. Shoot, Esq., Sullivan Papain Block McGrath & Cannavo PC, Garden City; **Terrence Tarver, Esq.,** *Chair, NCBA Plaintiff's Roundtable Committee*

MAY 4

***Dean's Hour:* "Deflategate": A New Danger to Arbitration?**

Sign-in 12:30: *Program* 1:00-2:00PM

1 credit professional practice or skills

Anthony Michael Sabino, Esq., Sabino & Sabino, P.C.; Arbitrator and Mediator, FINRA; Professor of Law, St. John's University Peter J. Tobin College of Business

MAY 4

Decoding the Alphabet Soup of Visa Options for Entertainers, Athletes and Artists...and Other Immigration Issues

With the NCBA Sports, Entertainment & Media Law ***and*** *the NCBA Immigration Law Committees*

5:30-8:30PM

2 credits professional practice or skills; 1 credit ethics

Eric Shaub, Esq., New York; **Marie-Elena First, Esq.,** New York; **Howard R. Brill, Esq.,** Hempstead; **Patrick Casey,** Founder and Owner, We Are Casey, New York; Moderators: **Matthew A. Kaplan, Esq.,** *Chair, NCBA Sports, Entertainment & Media Law Committee*; **Rajat Shankar, Esq.,** *Chair, NCBA Immigration Law Committee*; **Richard P. Liebowitz, Esq.,** *Vice-Chair, NCBA Sports, Entertainment & Media Law Committee*

MAY 5

***Dean's Hour:* Collection of Legal Fees: You've Earned It- Now, Go and Get It!**

Sign-in 12:30: *Program* 1:00-2:00PM

1 credit professional practice or skills

Todd E. Houslanger, Esq., Houslanger & Associates, PLLC, Huntington

MAY 9

Intersection of Bankruptcy, Article 81 Guardianship, Elder Law & Estate Proceedings

With the NCBA Bankruptcy Law, Elder Law ***and*** *Surrogate's Court Estates and Trusts Committees*

5:30-8:30PM

3 credits professional practice

Hon. Alan S. Trust, United States Bankruptcy Court, EDNY; **Bill P. Parkas, Esq.,** McCoyd, Parkas & Ronan, LLP, Garden City; **Moriah Adamo, Esq.,** Abrams, Fensterman, et al. LLP, Lake Success; **Adam D'Antonio, Esq.,** D'Antonio Law Firm, Garden City

MAY 12

***Dean's Hour:* Taking Care of Business: Entity v. Individual Representation**

With the NCBA Ethics Committee

Sign-in 12:30: *Program* 1:00-2:00PM

1 credit ethics

Chris G. McDonough, Esq., McDonough & McDonough, Garden City; **Omid Zareh, Esq.,** *Chair, NCBA Ethics Committee*

MAY 12

After I Do: A Primer on Handling Matrimonial Cases

In Collaboration with The Safe Center LI, and Nassau Suffolk Law Services

Sign-in 2:30 p.m.; *Program* 3– 8PM

Light Supper included

5 credits professional practice

Carolyn D. Kersch, Esq., Alisa J. Geffner, Esq., Samuelson Hause Samuelson Geffner & Kersch LLP, Garden City; **Elena Karabatos, Esq.,** Schlissel Ostrow Karabatos, PLLC, Garden City; **Robert C. Mangi, Esq.,** Mangi & Graham LLP, Westbury; **Kieth I. Rieger, Esq.,** Rieger & Fried LLP, Garden City; Moderator: **Mary Ann Aiello, Esq.,** *Dean, Nassau Academy of Law*; Mary Ann Aiello PC, Garden City

This program is designed to take attorneys through the key steps of handling a matrimonial case from retainer to trial. Nassau Academy of Law is waiving tuition for those that commit to taking a pro-bono case through The Safe Center LI or Nassau Suffolk Law Services before Nov 30, 2016. Attendees will be billed the applicable registration fee if there is no commitment to taking a case before deadline. If you prefer not to commit, registration fees for program will be $150 Member/ $200 Non-Member.

"ANOTHER EVENING WITH THE SURROGATES"

Jointly presented with the Suffolk Academy of Law and the NCBA Surrogate's Court Estates & Trusts Committee

Tuesday, April 19, 2016
Cocktail Hour 5:30-6:30 p.m.
Program 6:30-8:30 p.m.

Back by popular demand! Please join us for "Another Evening with the Surrogates." Surrogates from across the state will participate in an hour-long meet and greet, followed by a roundtable discussion of common questions into both the procedural and substantive issues involved in Surrogate's Court practice. With both social and educational components, this evening will be one you will enjoy and remember.

MODERATORS

Lori A. Sullivan, Esq.
John P. Graffeo, Esq.
Chairs, NCBA Surrogate's Court Estates & Trusts Committee

Brette M. Haefeli, Esq.
Robert M. Harper, Esq.
Chairs, SCBA Surrogate's Court Estates & Trusts Committee

2 credits in professional practice

SURROGATES

Hon. Nora S. Anderson
New York County

Hon. John M. Czygier, Jr.
Suffolk County

Hon. Robert J. Gigante
Richmond County

Hon. Peter J. Kelly
Queens County

Hon. Nelida Malave-Gonzalez
Bronx County

Hon. Rita Mella
New York County

Hon. Margaret C. Reilly
Nassau County

Hon. Brandon Sall
Westchester County

ADVANCED MEDIAT

With the NCBA Alternative Dispute Resolutio

DATE: **Friday, May 13, 201**
TIME: *Sign-in* **8:30 a.m.;** *Pr*

This is an advanced mediation training program designed specifically for mediators who have completed both basic and advanced mediation training. A specialized and unique interactive all-day program, it satisfies the requirements for "Continuing Education for Neutrals" set forth in §146.3 and 146.5 of the Rules of the Chief Administrator that require that Court-approved mediators undertake six (6) hours of continuing education every two (2) years as determined by the District Administrative Judge. This course has been approved as satisfying such requirements by the New York State Supreme Court Administrative Judges of Nassau, Suffolk, Queens, New York, Kings and Westchester counties. This course will not determine which lawyers appear on the State Court' rosters, which is left entirely to the Courts' discretion. Several ADR Coordinators from local Federal and State courts are expected to participate in the Navigating Court ADR Programs segment.

Y 13
anced Mediation: Moving Towards Mastery
h the NCBA Alternative Dispute Resolution
mittee and the NCBA Mediation and
tration Advisory Council
) a.m. - 4:30PM
edits professional practice; 1 credit ethics
iel Weitz, Esq., Deputy Director of the
ision of Professional and Court Services /
e ADR Coordinator, New York State
fied Court System; Program Coordinators:
sau Academy of Law, Mary Ann Aiello, Esq.,
; Erica B. Garay, Esq., Co-Chair, NCBA ADR
mittee; Meyer, Suozzi, English & Klein, P.C.,
den City ; Loretta M. Gastwirth, Esq., Co-Chair,
BA ADR Committee; Meltzer, Lippe, Goldstein &
tstone, LLP, Mineola. Marilyn K. Genoa, Esq.,
ir, NCBA Mediation and Arbitration Advisory
ncil; Genoa & Associates, P.C., Old Brookville

AY 16
e 'n' Shine (Out to Lunch)*
e Valuation Process
Things Considered When Valuing a Business
ch 12:30-1:00; *Discussion* 1-2PM
tional CLE credit available for purchase of
. Program is free to attend. Must pre-
ister.
rold L. Deiters III, CPA/ABV/CFF/
FF, Partner, Baker Tilly LLP, Melville;
derator: TBA

Y 16
ergfell: The Supreme Court Pronounces the
nt for All to Marry
0-7:30PM
edits professional practice
olyn D. Kersch, Esq., Alisa J. Geffner, Esq.,
uelson Hause Samuelson Geffner & Kersch
, Garden City; Cory H. Morris, Esq.,
ntington

MAY 17
Dean's Hour: Stop in the Name of the Law! Lawful Approach or Stop of Vehicles
With the NCBA Criminal Court Law & Procedure Committee
Sign-in 12:30: *Program* 1:00-2:00PM
1 credit professional practice or skills
Hon. Andrew M. Engel, Nassau County District Court

MAY 17
Openings and Summations
With the NCBA Plaintiff's Roundtable Committee
5:30-7:30PM
2 credits professional practice or skills
David J. Dean, Esq., Sullivan Papain Block McGrath & Cannavo, P.C., Garden City; **Ben B. Rubinowitz, Esq.,** Gair Gair et al., New York; Moderator: **Terrence Tarver, Esq.,** *Chair, NCBA Plaintiff's Roundtable Committee*

MAY 18
Nassau Academy of Law and the American Heart Association
Annual Trusts & Estate Conference
Continental Breakfast 8:00-8:30a.m.; Program 9:00-11:00 a.m.
Panelists: Nassau County Surrogate **Hon. Margaret C. Reilly; Paul S. Lee, JD, LLM,** Northern Trust Company, New York
Optional 2 credit CLE/CPE credit available for purchase. Program is free to attend. Must pre-register. For registration or more information, contact alison.sewell@heart.org, 212.878.5923.

ON: MOVING TOWARDS MASTERY

mmittee & the NCBA Mediation and Arbitration Advisory Council

m 9:30 a.m.-4:30 p.m.

6 CLE credits
5.0 professional practice; 1.0 ethics

Presenter: **Daniel Weitz, Esq.,** Deputy Director of the Division of essional and Court Services / State ADR Coordinator NYS Unified Court System

gram will allow mediators who have completed 40 hours of training (basic and advanced) and y serve on Court mediator rosters to satisfy the requirements for "Continuing Education for " set forth in §146.3 and 146.5 of the Rules of the Chief Administrator. Our program has received l from the Administrative Judges of the Supreme Courts of Nassau, Suffolk, New York, Queens, nd Westchester Counties. <u>However, it is open to all attorneys who have previously taken formal on training to be a mediator.</u>

AGENDA

:30 am	Continental Breakfast and Registration
:35 am	Overview and Introductions
0:00 am	Brief Review of the Mediation Process
11:00 am	Mastering Essential Mediation Skills
11:10 am	Break
11:45 am	How to "Seal the Deal" and Build Durable Agreements
12:45 pm	Navigating Court ADR Programs
1:30 pm	Lunch
2:30 pm	Bridging Impasse, Working with Attorneys & Wise Use of Caucus
2:40 pm	Break
3:40 pm	Practicing Mediation Skills – Role Play
4:30 pm	Mediator Ethics

SEMINAR/CD & DVD ORDER FORM

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•**By Check:** Make checks payable to NAL and mail with form to NAL, 15th and West Streets, Mineola, NY 11501

•**By Credit Card:** FAX completed form with credit card information to 516-747-4147

•**Seminar Reservations Online:** www.nassaubar.org >MCLE>Calendar, Reservations

Seminar Reservation Form

Date	Seminar Name	P	E	TOTAL Credits	Member	Non-Member	Domus Scholar Circle	18B
Apr 19	Another Evening with the Surrogates	2.0		2	$110	$145	$30	~
Apr 20	Recent Decisions Concerning...Labor Law	2.0		2	$80	$115	$0	~
May 4	DH: Deflategate	1.0		1	$30	$40	$0	~
May 4	Decoding the Alphabet Soup of Visa Options	2.0	1.0	3	$115	$155	$0	~
May 5	DH: Collection of Legal Fees	1.0		1	$30	$40	$0	~
May 9	Intersection of Bankruptcy	3.0		3	$115	$155	$0	~
May 12	DH: Taking Care of Business		1.0	1	$30	$40	$0	~
May 12	After I Do: A Primer on Handling Matrimonial	5.0		5	$150	$200	N/A	~
May 13	Advanced Mediation	5.0	1.0	6	$200	$250	$200	~
May 16	Obergefell	2.0		2	$80	$115	$0	~
May 17	DH: Stop in the Name of the Law	1.0		1	$30	$40	$0	$40
May 17	Openings and Summations	2.0		2	$80	$115	$0	~
	SEMINAR RESERVATION TOTAL:							

CD and DVD Order Form

Area of Law	Seminar Name	P	E	TOTAL Credits	CD/DVD Member	CD/DVD Non-Member	Seminar Code
Criminal	Modern Day Slavery: Human Trafficking	3.0		3	115/130	150/175	6TRADE0302
	Padilla Compliance: Best Practices	2.0		2	75/95	110/130	6PADLLA0301
	Criminal Law Update 2015	2.5	0.5	3	115/130	150/175	5CRIMUP1106
Ethics	Client Retention Guidelines		1.0	1	40/55	75/80	DH012716
	Demystifying the Attorney Grievance Process		1.0	1	40/55	75/80	DH020116
	Mind Your Manners		1.0	1	40/55	75/80	DH030916
Health	The Times They Are A-Changing : Marijuana	3.0		3	115/130	150/175	6TIMES0229
Estate	Another Evening with the Surrogates	2.0		2	75/95	110/130	6EVENING0419
	Exciting World of Estate Tax	1.0		1	40/55	75/80	DH032916
Elder	Article 17-A Guardianships	3.0		3	115/130	150/175	6ARTICLE0223
IP	Can You Still Patent Software?	1.0		1	40/55	75/80	DH030216
Construc-tion	Mechanics Liens & Public Liens	1.0		1	40/55	75/80	DH030116
Litigation	Basics of Asbestos Litigation	2.0		2	75/95	110/130	5ASBES1216
Law Firm Manage-ment	Business Succession : Pt 1 : Ethical/ Insurance	1.0	1.0	2	75/95	110/130	6SUCCESS0114
	Business Succession : Pt 2 : Financial/Tax		2.0	2	75/95	110/130	6SUCCESS0119
	Target Your Marketing to Attract Clients	1.0		1	40/55	75/80	DH011416
	E-Filing in Nassau County	1.5		1.5	40/55	75/80	DH022916
	Get Planning: Business Plans for Attorneys	1.0		1	40/55	75/80	DH030316
R. Property	Anatomy of a Mortgage Foreclosure Action	2.0		2	75/95	110/130	6CLOSURE0127
	Avoiding Closings Nightmares	2.5	0.5	3	115/130	150/175	5AVOID1102
Family & Mat Law	Anti-Social Media in Family Court	2.0		2	75/95	110/130	6MEDIA0405
	Imputation of Income in Matrimonial	2.0		2	75/95	110/130	6IMPUT0126
Plaintiff	Navigating ERISA	2.0		2	75/95	110/130	6LIENS0204
Insurance	Insurance Law Update 2015	1.5	0.5	2	75/95	110/130	5INS1026

(Subtotal) **CD/DVD Order Total**

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Billing zip for credit card:

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MARKETING ...

Continued From Page 3

ways to communicate it is through content marketing. Content marketing focuses on giving people valuable information to educate them and stay top of mind with them.

Describing the firm's practice on a website or in a brochure only goes so far. It is self-serving and generic. The firm needs to prove its knowledge by writing and speaking on topics that are helpful to its market. Giving away information for free is a great way to showcase expertise, enhance credibility and build a trusted relationship. When people read an article or hear a presentation that has good information, they tend to have a more positive view of the author/speaker. The more often they get helpful information, the more they tend to trust and be willing to hire or refer someone.

An additional benefit to content is that it can take on myriad forms. Writing and speaking is not just about articles for third party publications or live presentations in front of a group. It includes blogs, checklists, newsletters, white papers, eBooks, video, radio, podcasts, webinars, charts, pictures, and infographics. It also includes sharing other people's content in a way that adds value.

Every piece of content can and should be repurposed to get the most out of the investment in creating it. For example, create short and long versions of every piece. An article can be turned into several blog posts or combine related blog posts or articles into white papers and eBooks. Produce audio/video versions of written content or seminars and edit them to different lengths. Develop a webinar or live event from written content and vice versa. Change the tone and style of a piece to appeal to different audiences: clients versus peers.

The key to content marketing success is to make sure the information is targeted to the audience. It has to be relevant and useful to THEM. Self-promotional material will not cut it.

Use Multiple Marketing Channels

Once the content has been created, it must be promoted via multiple channels, including web, email, print, social media, press releases, public relations, sponsored content and advertising. Different people will find the content in different ways. Some prospects may read an email; others may pay more attention to social media. By using several marketing methods, firms can reach the most people. Of course, the message needs to be tailored to each channel and firms should choose the marketing outlets that work best for their audience.

For example, some social media channels are better than others for certain markets. A firm trying to reach business people as prospects or referrals should make the most of LinkedIn. Facebook tends to work better for those focusing on a consumer market. Firms should not only choose the right outlet for their market, but also make sure the message is right. LinkedIn and Facebook posts should look and sound different because the audience is different. Consumers are probably not going to want to read something overly technical so it does not make sense to post something on Facebook that reads that way. Format is also important. Graphics and video are particularly important when reaching out to consumers (although they can also be very effective with business audiences). The point is to think of who is the reader at all times.

When it comes to email, an important tactic is segmenting the email database. In other words, do not send the same email to everyone. Group contacts based on who they are and their interests.

The same is true of email marketing. When it comes to email, an important tactic is segmenting the email database. In other words, do not send the same email to everyone. Group contacts based on who they are and their interests. A prospect may not be interested in the same kind of information as a referral source. By creating audience segments, an email-marketing message can be targeted and maximized to get the best results.

Make The Most Of Search Results

In addition to all the ways that firms can promote their content, they can also attract clients via Internet searches. Content is crucial for effective search marketing. It boosts both paid and free search results. In determining how to rank a website, search engines look for sites with high-quality relevant information. They also look for websites that are updated frequently.

For this reason, blogging is one of the most important marketing tactics for firms. It improves a firm's search results when people are looking online and it establishes credibility for those who are evaluating the firm's services. In fact, a well-known digital marketing company called HubSpot surveyed 13,500 companies and found that the more blogging a business does, the more leads it gets.[2] Blogging is also one of the easiest forms of content to produce regularly because it's such a flexible format. Just about anything goes. Firms can also repackage blogs to fuel additional content marketing to attract more clients.

There are ways to improve search engine rankings by using the right keywords or paying for higher placement

See MARKETING, Page 17

PIG ...

Continued From Page 9

walk across campus and lick people unless it's welcome, so we don't let the dogs do it. We don't let students howl all night." And, he added, "they can't go to the bathroom wherever they want."[26]

Schools must be clear in their policies regarding the neglect and abuse of animals. Animals can be neglected if the student treats the animal less as a permanent companion but rather like a passing fad. In addition, unlike service animals that are rigorously trained and selected based on temperament, assistance animals have no such requirements. As a result, their behavior and ability to withstand difficult circumstances may be more complex.

Despite these challenges it is well known that students today are facing increased stress, anxiety, substance abuse and mental health related issues. Certainly, they will need to learn the tools necessary to overcome these issues when they graduate and become part of the work force. Can assistance animals increase a students isolation and loneliness or lead to criticism of coddling? Yes, but caring for an animal can foster accelerated maturity and true responsibility. Having the comfort of an assistance animal may provide needed companionship and stability in a turbulent period of a student's life and may also help to increase a lonely student's social interaction. Many students enjoy the presence of animals. If properly trained and cared for these animals may provide a therapeutic effect on other members of the school community that do not need to have them as assistance animals.

Patricia Kessler focuses in higher education issues. She provides advocacy services for college students involved disciplinary actions and accommodations requests. She is an arbitrator in Nassau County District Court. She is a member the Education Law, Alternate Dispute Resolutions and Ethics Committees. She is a volunteer Puppy Raiser for the Guide Dog Foundation & America's VetDogs Foundation. She can be reached at collegestudentadvocates@gmail.com

1. HUD FHEO-2013-01 n. 4 at 2.
2. 28 CFR § 35.136(i); 28 CFR 36.302 (c)(9).
3. 28 CFR § 35.104.
4. 28 CFR § 36.302(c)(6).
5. HUD FHEO-2013-01 at 3, 28 CFR.302 (c)(6).
6. 28 CFR 35.104, HUD FHEO-2013-01 at 1.
7. 42 USC § 3601 *et seq.* (2013); 42 U.S.C § 3604 (f)(3)(B).
8. 29 USC § 794 (2013).
9. 42 USC § 12101; Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990).
10. HUD DEHO-2013-01 at 2.
11. http://www.nytimes.com/2015/10/05/us/four-legged-roommates-help-with-the-stresses-of-campus-life.html
12. *U.S. v. Univ. of Nebraska at Kearney*, 940 F. Supp. 2d 974 (D. Neb. 2013).
13. *Id.* at 16.
14. *Id.* at 16.
15. 42 USC §§ 3601-3631, 42 U.S.C. § 3604.
16. 940 F.Supp.2d 974, 4:11-cv-03209-JMG-CRZ Doc # 80 Filed: 04/19/13 Page 1 of 12 - Page ID # 802.
17. http://www.justice.gov/opa/pr/justice-deaprtment-and university-nebraska-a-kearny-settle-lawsuuit-over-students-rights.
18. www.justice.gov/opa/pr/justice-department-files-fair-housing-law-suit-against-kent-state-university-discrimination. Case: 5:14-cv-01992 Doc #: 1 Filed: 09/08/14.
19. *Id.*
20. HUD FHEO-2103-01 at 3.
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. 940 F.Supp.2d 974, Exhibit A2.
26. http://www.nytimes.com/2015/10/05/us/four-legged-roommates-help-with-the-stresses-of-campus-life.html.

MARKETING ...

Continued From Page 16

at the top of the search results page. However, having targeted high-quality content is still the key to success.

Plan, Prioritize, And Delegate

The most important thing for firms to do in order to succeed at marketing is to develop a marketing plan. It is the best way to ensure that limited resources are spent in a well-thought out way. As part of this process, firms need to set priorities and goals. It is fine to start with a small initiative. The point is to do something on a regular basis and then build from there.

In addition, firms need to develop a budget and allocate specific resources to marketing. If time and money is not set aside for marketing, it will not get done. In terms of implementation, it is crucial to develop schedules and deadlines and assign responsibility for specific tasks. As an attorney, do not take on responsibilities that could be done by others. Delegate and give the right job to the right people. It will be more cost effective and productive in the long run. Remember time is money and everyone should be doing tasks that are the highest and best use of their time.

Marketing is a marathon, not a sprint. Firms have to be promoting themselves consistently for a long time to see results and the best way to do that is to have a plan for targeting their marketing.

Edie Reinhardt, Esq. is Principal of RDT Content Marketing LLC, a marketing consulting company specializing in helping law firms use content to distinguish their brand and build their business. She previously practiced law and worked in publishing and media for over 15 years. Contact her at ereinhardt@rdtcontentmarketing.com.

1. Frederiksen, Lee W. and Taylor, Aaron E., *Spiraling Up: How to Create a High Growth, High Value Professional Services Firm*, (Hinge Research Institute), p. 85.
2. Kolowich, Lindsay, *How Often Should Companies Blog? [New Benchmark Data]*, HubSpot 4/9/2015, http://blog.hubspot.com/marketing/blogging-frequency-benchmarks.

Dressed to a Tea
WELCOME TO THE 70'S
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The Lawyer Assistance Program

by Mark E. Goidell

The most comprehensive study ever conducted of alcoholism, substance abuse and mental health issues among lawyers in the United States was published in the February 2016 edition of the *Journal of Addiction Medicine*.[1] The conclusions are alarming: "Attorneys experience problematic drinking that is hazardous, harmful, or otherwise consistent with alcohol use disorders at a rate much higher than other populations…. Depression, anxiety, and stress are also significant problems for this population…" The rate of alcoholism in attorneys exceeds 20 percent. The incidence of attorneys suffering from depression, anxiety and stress was reported at 28 percent, 19 percent and 23 percent, respectively. Although the data was insufficient to arrive at any conclusions regarding the frequency of substance abuse other than alcohol, previous studies have reported that the rate of addiction among attorneys is substantially higher than that of the general population.[2]

The volunteer lawyers and professional staff of the Lawyer Assistance Program of the Nassau County Bar Association ("LAP") are well acquainted with the pervasiveness of alcoholism, substance abuse and mental illness in our profession.

Equally important, we know the paralyzing consequences and symptoms of these diseases and their effects on clients, colleagues and the reputation of the profession. Telephone calls go unanswered, emails are not returned, and deadlines are missed. Excuses, procrastination and neglect pile up while the attorney is incapacitated by the disease and unable to escape its ever-tightening grip. Many are unable or unwilling to come to terms with their ailment and refuse to ask for help until there are dire professional and personal penalties. Tragically, a far too frequent result of delay is death. Alcoholism, drug addiction and some mental illnesses are progressive and inevitably fatal if unchecked.

Alcoholism, substance disorders and mental illness cut across economic, gender, age, social, racial, and all other boundaries, although attorneys in their first 10 years of practice were found to be most vulnerable to alcoholism. They have no respect for partners in large firms, sole practitioners and those in between. These diseases do not discriminate between litigators and transactional attorneys, trial attorneys and appellate counsel.

The LAP helps attorneys to find solutions to the seemingly insurmountable problems of addiction and mental illness. We provide free and confidential assistance to lawyers, judges, law students and their family members who suffer from these diseases. We also offer free and confidential assistance to law firms who seek direction and guidance in the event an attorney becomes or may be impaired.

The confidentiality of our services and all communications with the LAP are strictly protected by statute – Judiciary Law § 499 – which provides a privilege coextensive with attorney-client communications:

> The confidential relations and communications between a member or authorized agent of a lawyer assistance committee sponsored by a state or local bar association and any person, firm or corporation communicating with such committee, its members or authorized agents shall be deemed to be privileged on the same basis as those provided by law between attorney and client. Such privilege may be waived only by the person, firm or corporation which has furnished information to the committee.

Members of the LAP are exempted from the mandatory reporting requirements of the Rules of Professional Conduct for certain ethical violations. Specifically, Rule 8.3(c)(2) creates an exception for "information gained by a lawyer or judge while participating in a bona fide lawyer assistance program."

The LAP sponsored by the Nassau County Bar Association is one of three professionally staffed lawyers assistance programs in the State of New York. We have been fortunate to receive generous financial and other widespread support from the Nassau County Bar Association, the WE CARE Fund, and the NYS Office of Court Administration. As a result of these contributions, Nassau LAP has a professional Director, Elizabeth Eckhardt, LCSW, PhD (cell: 516-512-2618; email: eeckhardt@nassaubar.org), who is singularly devoted to the recovery of impaired attorneys.

LAP maintains a toll-free hot line (888-408-6222) which receives calls every day, 24 hours per day, from attorneys seeking help and from others who request assistance and guidance for attorneys. Those communications are, of course, strictly confidential.

Nassau LAP provides formal and informal monitoring services for attorneys and law students seeking recovery and a solution to their alcoholism or addiction. The sources of formal monitoring are courts, the Grievance Committee for the Tenth Judicial District and the Committee on Character and Fitness. Informal monitoring is frequently requested by law firms and others, including criminal defense, family law and grievance attorneys in an effort to assist their client-attorneys through legal ordeals arising from alcoholism, substance abuse or mental illness.

No attorney should suffer from the isolation, loneliness, despair and hopelessness felt so deeply by the alcoholic, addict and depressed.

The initial contact with LAP is frequently from the impaired attorney, but also comes from requests placed by his or her family, partners or colleagues. When necessary, we coordinate, facilitate and conduct interventions. The support we provide to the impaired attorney only begins with the initial contact. Our Director conducts an assessment and refers clients to appropriate healthcare providers for rehabilitative and other services. Our volunteer attorneys provide individual peer support for recently referred attorneys. There are monthly, well-attended support meetings for attorneys, judges, law students and family members in recovery. We also offer training to empower attorneys to help others who are still in need.

In 2010, the Bar Association adopted a Model Policy for use by law firms and institutional entities in their employment relationships with attorneys who are struggling with alcoholism, addiction or mental health concerns. Among other things, the Model Policy is designed to provide impaired attorneys with a meaningful opportunity for recovery while maintaining their employment.

We have been very fortunate to witness, time and again, attorneys who found recovery and thereby restored their practices, reputations and professional relationships. No attorney should suffer from the isolation, loneliness, despair and hopelessness felt so deeply by the alcoholic, addict and depressed. We empathize with the obsession that afflicted attorneys mistakenly believe cannot be successfully overcome without a drug or a drink, and with the compulsion to indulge despite both the desire to stop and the recognition of horrific consequences.

See ASSISTANCE, Page 21

Pro Bono Attorney of the Month

Veronica Renta Irwin, Esq.

BY SUSAN BILLER

Nassau Suffolk Law Services Volunteer Lawyers Project (VLP) and the Nassau County Bar Association are privileged to honor Veronica Renta Irwin, Esq. as our Pro Bono Attorney of the Month for April, 2016. Ms. Irwin, a partner at the Manhasset firm of Irwin & Streiner, LLC, has been an enthusiastic and dedicated pro bono attorney since she first volunteered with the VLP in 2013.

Ms. Irwin's zealous advocacy assisting indigent clients who have come to the VLP has been nothing short of remarkable. Over the past two and a half years, she has represented three matrimonial clients, volunteering over 300 hours of legal assistance in 2015 alone. In addition to representing needy matrimonial clients, she feels it is important to dedicate a substantial portion of her time training associates in her firm to do the same.

Ms. Irwin received her Juris Doctor Degree from Hofstra University School of Law in 1999, and her Bachelor's degree in Political Science from SUNY University at Albany in 1996. She was admitted to practice in Connecticut in 1999, New York in 2000, and Pennsylvania in 2013. She is also admitted to practice in the Eastern and Southern Districts of the United States Federal Court, and is a member of the Nassau County Bar Association.

From 2001-2007, Ms. Irwin worked at New York's largest plaintiff's no-fault firm. Also during that period, she was a member of the Town of Islip Planning Board. Prior to that, Ms. Irwin worked for a firm as an associate specializing in the areas of medical malpractice, products liability and personal injury litigation.

This varied litigation background has enabled Ms. Irwin to hone the necessary legal skills to be a successful and formidable advocate for needy individuals. Irwin is also fluent in Spanish, which is extremely helpful due to the increasing number of Spanish speaking clients needing pro bono assistance.

After ten successful years in her own practice, she is grateful for her firm's success. She feels that since the law has given her so much, she is determined to give back by representing pro bono clients.

She states, "I litigate my Pro Bono matters with the same enthusiasm utilizing the same creative problem solving skills as I do with my paying clients. Everyone should have access to representation, especially the client in the weaker financial position. I am not afraid to get my hands dirty on their behalf."

Ms. Irwin recalls a particularly meaningful matrimonial case she recently handled for the VLP. The client was a defendant who had suffered traumatic brain damage as a result of a prior accident. The client needed more time to digest and understand the proceedings than most attorneys were able to give her. Ms. Irwin was thankful that the matter was pro bono, since she did not feel comfortable billing the client for all of the extra hours needed. She was inspired by the client's resiliency and perseverance despite her disability, and considers herself lucky to have been able to represent her.

"Pro Bono work gives me the opportunity to help in a way that can be even more meaningful than with a paying client," states Ms. Irwin. "It can be liberating to have an additional conversation with a client without the thought of whether the client must be billed for it. This enables me to be a better lawyer and a better person. "

As the Pro Bono Coordinator for the VLP, it is clear that Ms. Irwin is one of those rare volunteers who can be counted on the take the most difficult and contentiously contested matters. She brings her enthusiasm and passion for the practice of law to every case she handles. We are incredibly fortunate to Ms. Irwin for assisting our most needy clients.

In addition to the practice of law, Ms. Irwin enjoys spending time with her husband and two children.

The Volunteer Lawyers Project is truly fortunate to have Veronica Renta Irwin on board and honor her as our Attorney of the Month.

The Volunteer Lawyers Project *is a joint effort of* ***Nassau Suffolk Law Services*** *and the* ***Nassau County Bar Association****, who, for many years, have joined resources toward the goal of providing free legal assistance to Nassau County residents who are dealing with economic hardship.* ***Nassau Suffolk Law Services*** *is a non profit civil legal services agency, receiving federal, state and local funding to provide free legal assistance to Long Islanders, primarily in the areas of benefits advocacy, homelessness prevention (foreclosure and eviction defense), access to health care, and services to special populations such as domestic violence victims, disabled, and adult home residents. The provision of free services is prioritized based on financial need and funding is often inadequate in these areas. Furthermore, there is no funding for the general provision of* ***matrimonial or bankruptcy representation****, therefore the demand for pro bono assistance is the greatest in these areas. If you would like to volunteer, please contact Susan Biller, Esq. 516-292-8100, ext. 3136.*

CORRECTION: The author of the March 2016 Pro Bono Attorney of the Month column was incorrectly credited. Gail Broder Katz, the *Pro Bono* Project Coordinator for The Safe Center LI (*formerly Nassau County Coalition Against Domestic Violence*) was the articles author. She can be contacted at GBroderKatz@tscli.org or 516-465-4700 for information about the Project and how you can help.

IN BRIEF

Farrell Fritz is pleased to announce that commercial litigation associates **Sarah M. Baird** and **Stavros Karageorgiou, CCM** will be recognized at the Nassau County Bar Association's second annual *Access to Justice* Pro Bono Recognition event which is co-hosted by Nassau/Suffolk Law Services and The Safe Center LI. The event recognizes firms and individuals who have performed outstanding pro bono service during the past year.

Marian C. Rice

Jeff Wurst, a partner and the chair of Ruskin Moscou Faltishek's Financial Services, Banking and Bankruptcy Department, announced the firm has added additional services for its Cyber-Lending Practice including a cost-effective package of services directed at the Cyber-Lender and intended to supplement (and not replace) the services already being provided by the Cyber-Lender's regular counsel, whether in-house or an outside firm. Charging a modest fixed monthly retainer that may be adjusted quarterly based on usage, RMF's attorneys provide counseling to Cyber-Lenders on deal structuring and securitization, including general lending methodologies, as well as with workout and recovery strategies as well as access to and advice from RMF's Cybersecurity Practice Group in order to keep its financial services clients apprised of the latest threats targeting the financial services industry, effective steps to mitigate the myriad of cyber risks and cybersecurity regulatory expectations.

Ralph Branciforte, an associate at Sahn Ward Coschignano, PLLC, was selected as a Touro Law Center's 2016 Public Interest Attorneys of the Year which recognizes attorneys for their commitment and dedication to performing pro bono work for the good of the public.

Lois Carter Schlissel, Managing Attorney at Meyer, Suozzi, English & Klein, P.C. announced the promotion of **Jayson Choi,** previously Of Counsel in the firm's Wills, Trusts & Estates Department, to Shareholder, effective April 1, 2016. Hon. **Ira B. Warshawsky**, Of Counsel to the firm's Alternative Dispute Resolution and Litigation practices, NAM Neutral and a New York Supreme Court Justice in Nassau County's Commercial Division from 2002 until his retirement in 2011, has been recognized as an "Alternative Dispute Resolution Champion" in *The National Law Journal* and *Legal Times*. **Andrew J. Turro,** Chair of the firm's Equine & Racing Law practice and a member of the Employment and Litigation practices, has been named the 2016 Top Legal Eagle for Labor & Employment in the March 2016 issue of *Long Island Pulse Magazine*.

Patricia E. Salkin, dean of Touro's Jacob D. Fuchsberg Law Center and a nationally renowned scholar, educator and expert in land use law and government ethics, was named Provost for the Graduate and Professional Division at Touro College. She will step down as Dean of the Touro Law Center on July 31, 2016 and a search for a new law school dean will commence immediately.

Shawn P. Kelly of the law firm Kelly, Rode & Kelly, LLP announced the firm was celebrating their 60th anniversary on April 1, 2016 with friends, colleagues and clients. The firm was founded by the late John D. Kelly who moved the practice from Brooklyn to Mineola where it has been located since 1968.

In recognition of his distinguished achievement, dedication to the legal profession, and commitment to the organized bar and service to the public, **Terrence L. Tarver** of Sullivan Papain Block McGrath & Cannavo, P.C. has been elected a Fellow of the New York Bar Foundation.

Evan H. Krinick, Managing Partner of Rivkin Radler LLP, has announced that **Edward A. Ambrosino**, a leading authority for companies on economic development, IDA and conduit issuer development transactions, real estate development and municipal law, has joined the firm as Of Counsel in the Real Estate, Zoning & Land Use Practice Group.

The Russo Law Group, P.C. is pleased to announce **Kim N. Christian** and **Deanna M. Eble**, both associates at the firm practicing in the areas of Elder Law, Estate Planning, Medicaid Planning, Special Needs Planning, Estate and Trust Administration, Real Estate & Social Security Disability, have been promoted to partner.

Karen Tenenbaum has been selected as a recipient of first Annual Judge Gail Prudenti Top Women in Law Award, presented by Hofstra University School of Law, Center for Children, Families, and the Law. Tenenbaum Law, P.C. of Melville, NY, concentrates in IRS & NYS tax controversies.

Stagg, Terenzi, Confusione & Wabnik, LLP is proud to congratulate managing partner **Thomas Stagg** on being recognized as one of *Long Island Pulse Magazine*'s 2016 "Top Ten Legal Eagles" for Litigation.

Elder Law attorney **Ronald Fatoullah** of Ronald Fatoullah & Associates, has been named a King of Long Island, for his outstanding leadership and contributions to the Nassau County Community. Elizabeth Forspan, managing attorney at the firm, has been named as one of the "Long Island Power Women of Business" for 2016.

Gary Wirth, an attorney with 30 years of construction and surety experience, has recently opened his own law firm, The Law Offices of Gary Wirth, P.C., located at 120 Front Street, Mineola, New York 11501, Tel. No. (516) 506-7220 / Fax No. (516) 506-7219 / Email: gwirth@wirthlawfirm.com

The Law Firm of Elias C. Schwartz, PLLC, with offices in Great Neck and Boca Raton, Florida, is pleased to announce that **Susan J. Deith** and **Victoria Gionesi** have joined their Great Neck office as associates. Ms. Deith, who is Vice-Chair of the Nassau County Bar Association Lawyer Assistance Committee, concentrates her practice in the areas of employment law and commercial litigation. Ms. Gionesi concentrates her practice in the areas of foreclosures and commercial litigation.

Leslie H. Tayne, who practices in the area of consumer and business financial debt-related services at the Tayne Law Group, has been selected as Long Island Pulse 2016 Top Legal Eagle. Ms. Tayne has also been selected as a recipient of first Annual Judge Gail Prudenti Top Women in Law Award, presented by Hofstra University School of Law, Center for Children, Families, and the Law.

The *Nassau Lawyer* welcomes submissions to the IN BRIEF column announcing news, events and recent accomplishments of its members. All submissions must be made as Word documents. Due to space limitations, submissions may be edited for length and content.

PLEASE E-MAIL YOUR SUBMISSIONS TO: nassaulawyer@nassaubar.org with subject line: IN BRIEF

The In Brief column is compiled by Marian C. Rice, a partner at the Garden City law firm L'Abbate Balkan Colavita & Contini, LLP where she chairs the Attorney Professional Liability Practice Group. In addition to representing attorneys for nearly 35 years, Ms. Rice is a Past President of NCBA.

LAWYERS' AA MEETING

Nassau County Bar Association
1st Wednesday of the month

For more information call
516-512-2618

ASSISTANCE ...

Continued From Page 19

We also understand, however, that a solution is well within the reach of any attorney who has a willingness to recover.

The great news is that confidential and effective help is a telephone call, email or website click away.

Thankfully, the recent scientific study published in the *Journal of Addiction Medicine* offers much hope for the future of the profession. The authors express the expectation that their work will "serve to inform investments in lawyer assistance programs and an increase in the availability of attorney-specific treatment. Greater education aimed at prevention is also indicated, along with public awareness campaigns within the profession designed to overcome the pervasive stigma surrounding substance use disorders and mental health concerns. The confidential nature of lawyer-assistance programs should be more widely publicized in an effort to overcome the privacy concerns that may create barriers between struggling attorneys and the help they need."

Consistent with these conclusions, our outreach efforts target the bar in general and law schools in the metropolitan area. Through the Nassau Academy of Law, LAP makes brief presentations at the beginning of each CLE seminar. Law schools have become keenly aware of the growing problems among law students, and now welcome our presentations to their students to discuss stress management, signs and symptoms of addiction and depression, and the path to recovery.

These efforts are still grossly insufficient to reach the many attorneys in our community who need help. We will be meeting with law firms and others who employ attorneys on Long Island to spread the word about the availability of our services, minimize the stigma still associated with these diseases, and help attorneys to overcome the fear that silences so many of the sick and suffering. Soon, our website portal will be significantly enhanced in order to provide greater educational services, treatment resources and another confidential means of reaching out for help. In the near future, we will be sponsoring and conducting a CLE at the Bar Association that will educate and carry our message of hope and recovery. We hope that the program will empower the bar to identify potential problems and assist our professional colleagues.

The LAP has only scratched the surface of its potential to assist attorneys in need of our services. The primary obstacles were, are, and will always be misplaced fear and the stigma still perceived to accompany these diseases. Despite increased public awareness and a commitment to confront alcoholism, substance abuse and mental health concerns, these problems persist at disheartening rates. We firmly believe that we are dealing with treatable illnesses rather than moral shortcomings. Please do not permit silence or fear to separate you or anyone else about whom you care from a healthy, happy and fulfilling life and career. Let us know if we can be of assistance.

Mark E. Goidell is an attorney in Garden City, New York and is the Chair of the Lawyer Assistance Committee of the Nassau County Bar Association.

1. Patrick R Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 Journal of Addiction Medicine 46 (February 2016).
2. Donna L. Spilis, *ABA Commission on Impaired Attorneys, An Overview of Legal Assistance Programs in the United States* 1 (1991); G. Andrew Benjamin et al., *The Prevalence of Depression, Alcohol Abuse and Cocaine Abuse Among United States Lawyers*, 13 International Journal of Law & Psychology 233, 233-46 (1990).

NCBA Committee Meeting Calendar • April 18 - May 12, 2016

Questions? Contact Stephanie Pagano (516) 747-4070 spagano@nassaubar.org

Please Note: Committee Meetings are for NCBA Members. Dates and times are subject to change.

Check website for updated information: www.nassaubar.org

Intellectual Property
Monday, April 18 2016
12:30 p.m.
Ariel Ronneburger

Criminal Court Law & Procedure
Monday, April 18, 2016
12:30 p.m.
Andrew Monteleone

Tax Law
Tuesday April 19, 2016
8:30 a.m.
Noelle Geiger

General/Solo/Small Firm Practice
Tuesday April 19, 2016
12:30 p.m.
Gary Port

Elder Law Social Services Health Advocacy
Tuesday, April 19, 2016
12:30 p.m.
Saundra Gumerove/Maureen Rothschild DiTata

Real Property
Tuesday, April 19,, 2016
12:30 p.m.
Mary Mongioi/Kevin McDonough

Attorneys/Accountants
Tuesday, April 19, 2016
12:30 p.m.
Leslie Tayne

Commercial Litigation
Wednesday, April 20, 2016
12:30 p.m.
Thomas McNamara

Women In The Law
Wednesday, April 20, 2016
12:30 p.m.
Martha Haesloop

New Lawyers
Wednesday, April 20, 2016
6:30 p.m.
Jennifer Koo/Michael DiFalco

Alternative Dispute Resolution
Thursday, April 21, 2016
12:30 p.m.
Loretta Gastwirth/Erica Garay

Veterans & Military Law
Friday, April 22, 2016
12:30 p.m.
Steven Raiser

Civil Rights
Monday, April 25, 2016
12:30 p.m.
Jason Starr

Domus Open
Tuesday, April 26, 2016
12:30 p.m.
Dan Russo

Corporation Banking and Securities Law
Thursday, April 28, 2016
12:30 p.m.
Kate Heptig

Appellate Practice
Monday, May 2, 2016
12:30 p.m.
Richard Langone

Hospital & Health Law
Thursday, May 5, 2016
8:30 a.m.
J. Kemp Hannon

Community Relations & Public Education
Thursday, May 5, 2016
12:45 p.m.
Ira Slavit

Ethics
Monday, May 9, 2016
5:30 p.m.
Omid Zareh

Senior Attorneys
Tuesday, May 10, 2016
12:30 p.m.
Bruce Hafner

District Court
Tuesday, May 10, 2016
12:30 p.m.
Mitchell Hirsch

Labor & Employment Law
Tuesday, May 10, 2016
12:30 p.m.
Jeffrey Schlossberg

Education Law
Wednesday, May 11, 2016
12:30 p.m.
Candace Gomez

Association Membership
Wednesday, May 11, 2016
12:45 p.m.
Marc Gann/Geoffrey Prime

Matrimonial Law
Wednesday, May 11, 2016
5:30 p.m.
Rosalia Baiamonte

Publications
Thursday, May 12, 2016
12:45 p.m.
Christopher DelliCarpini

New Lawyers
Thursday, May 12, 2016
6:30 p.m.
Michael DiFalco/Jennifer Koo

PRIVACY ...

Continued From Page 6

the dangerous precedent the government is trying to set and its implications for free speech, freedom from government compulsion and negative liberty interests.[23]

Conclusion

What the law considers a reasonable expectation of privacy must be revamped to fit the new technology paradigm. "If the government wants the power to compel companies to undermine their own security systems, it should go to Congress and ask for it."[24] At least one Supreme Court Justice thinks that the legislature and not the Federal Courts should be the ultimate arbiters of privacy rights. Technology companies will continue to exist and grow and the law needs to address these changes. This decision may very well set the standard for what is to come in the twenty-first century should the government be successful in forcing Apple's hand.

Cory Morris, M.A., Social Justice Attorney, Adjunct Professor at Adelphi University and Principal Attorney at the Law Offices of Cory H. Morris (http://www.coryhmorris.com).

1. Benjamin Franklin, Pennsylvania Assembly: Reply to the Governor, *Votes and Proceedings of the House of Representatives,* 1755-1756 (Philadelphia, 1756), pp. 19-21, *available at* http://tinyurl.com/gsugoyq.
2. Eric Lichtblau and Matt Apuzzo, *Justice Department Calls Apple's Refusal to Unlock iPhone a 'Marketing Strategy'*, New York Times (Feb. 19, 2016), *available at* http://tinyurl.com/jv3ygat.
3. Tami Abdollah, *Apple to tell judge in California case: Congress must decide*, Associated Press (Feb. 23, 2016), *available at* http://tinyurl.com/zxqp2v7.
4. *Riley v California*, 134 S. Ct. 2473, 2488-2489 (2014).
5. *Id.* (citing Kerr, Foreword: *Accounting for Technological Change*, 36 Harv. J. L. & Pub. Pol'y 403, 404-405 (2013)).
6. *Id.* at 2484.
7. *Kyllo v. United States*, 533 U.S. 27, 31-33 (2001); see *Smith v. Maryland*, 442 U.S. 735, 740-741 (1979); see also *Katz v. United States*, 389 U.S. 347, 361 (1967).
8. *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006).
9. *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 653 (1995).
10. Robert Levine, *In the Government vs. Apple, Who Wears the Black Hat?*, New York Times (Feb. 20, 2016), *available at* http://tinyurl.com/j73f97h.
11. *Riley*, 134 S.Ct. 2473, 2494 (2014).
12. *See, e.g., United States v. Raymond*, 228 F.3d 804 (7th Cir. 2000) (instructions for violating the tax laws not protected); *United States v. Dahlstrom*, 713 F.2d 1423 (9th Cir. 1983) (same); *Herceg v. Hustler Magazine, Inc.*, 814 F.2d 1017 (5th Cir. 1987) (instructions for engaging in a dangerous sex act protected); *U.S. v. Featherston*, 461 F.2d 1119 (5th Cir. 1972) (instructions for building an explosive device protected); *see also Bernstein v. United States Department of State*, 922 F. Supp. 1426, 1435 (N.D. Cal. 1996) ("Instructions, do-it-yourself manuals, [and] recipes…are also speech.")
13. *Pennsylvania Bureau of Corr. v. United States Marshals Serv.*, 474 U.S. 34, 43 (1985).
14. Tim Cook, *February 16, 2016 A Message to Our Customers*, Apple (Feb. 16, 2016), *available at* www.apple.com /customer-letter/.
15. Although deceased, the individual may still have a right to privacy. *See, e.g., Harbatkin v NYC Dept. of Records & Info. Svcs.*, 19 NY3d 373, 380 (2012), citing *New York Times Co. v. City of New York Fire Dep't,* 4 NY3d 477, 484-485 (2005) .
16. Abdollah, *supra* n.3.
17. *U.S. v. Jones*, 132 S.Ct. 945, 956 (2012).
18. *Id.* at 925-926 (J. Sotomayor, concurring) (quoting *United States v. Di Re*, 332 U.S. 581, 595(1948)).
19. Amy Davidson, *The Dangerous All Writs Act Precedent in the Apple Encryption Case*, The New Yorker (Feb. 19, 2016), *available at* http://tinyurl.com/hmgxdoh.
20. Cook, *supra* n.14.
21. Levine, *supra* n.10.
22. *Riley*, 134 S.Ct. at 2497-98 (2014)(Alito, J., concurring).
23. See *Obergefell v Hodges*, ___US___ , ___, 135 S Ct 2584, 2635 (2015) (discussing concepts of liberty and negative liberty in the 18th century).
24. Levine, *supra* n.10.

NCBA New Members

We welcome the following new members

Attorneys

Richard Herzbach
Certilman Balin Adler & Hyman, LLP-LI

Timothy P. Higgins
Timothy P. Higgins Esq.

Wendy Hodor

Ethan D. Irwin
Raiser & Kenniff, PC

Alison C. Keil
Keil & Siegel LLP

Neil E. Mangot

Gary Novins

Kelly Rau
Glass & Glass

Peter Shipman

Susan I. Stein

Students

Cathleen E. Benites
John P. Capitani
Cynthia M. Capobianco
Cameron M. Catrambone
Stephen M. Clacherty
Robert F. Costante
Andrew J. DeMasters
Nilani Ekanayake
Manuel Esteban Sr.
Daniel Galan
David Allan Henig
Alexa N. Joyce
Rebecca Medina
Marissa R. Meredyth
Ryan Robert Nelson
Christopher Santoro
Kelsey Walker
Maria C. Zieher

MIRANDA ...

Continued From Page 1

tlement conferences in the past two years than nearly everyone else, will receive the Thomas Maligno Pro Bono Attorney of the Year Award. Finally, the Peter T. Affatato Court Employee of the Year Award will be awarded to Lisa Porteus, Chief Court Reporter for Supreme Court in Mineola.

Liberty Bell Honoree Robert Bernstein

Robert Bernstein

The Liberty Bell Award recognizes a non-lawyer who has strengthened the American system of freedom under the law by heightening public awareness, understanding and respect for the law.

Robert Bernstein was a teacher at The Wheatley School, Old Westbury, for 30 years. A strong advocate for education about the law, he started the law program at Wheatley and served as the student team's mock trial coach since 1997, the first year of the New York State High School Mock Trial Competition in Nassau County. In addition, as a board member of the ACLU, he helped develop a law program on students' rights and responsibilities.For the past 15 years, Bernstein has volunteered as a court advocate for The Safe Center LI. He goes to Family Court every week and assists the victims in filing the petition, offering them support during the often-grueling process of applying for an Order of Protection. He also accompanies the petitioners into the courtroom, which can be of inestimable value to a fearful victim of abuse.

Bernstein retired from teaching but never retired from Mock Trial coaching. He returned to Wheatley for the express purpose of coaching the mock trial teams, which he continues to do to this day.

Pro Bono Attorney of the Year

Jonathan Press, Esq.

The Thomas Maligno Pro Bono Attorney of the Year Award recognizes an NCBA member for selfless commitment to the furtherance of the most noble traditions of the organized bar. The award is named for Thomas Maligno, former Executive Director of the Nassau/Suffolk Law Services and the founding manager of its pro bono effort, Volunteer Lawyers Project, an NCBA-supported program that helps maximize the quantity and quality of pro bono assistance provided for Nassaus low-income community.

This year's Pro Bono Attorney is Jonathan Press. He has dedicated himself to the NCBA Mortgage Foreclosure Pro Bono Project for the past two years and has accumulated more volunteer hours than almost anyone else in the program, attending nearly every Mortgage Foreclosure/Sandy Recovery clinic twice a month and making himself available for daily court-mandated settlement conferences, as well as attending creditors' meetings in Bankruptcy Court. He has helped train other attorneys to learn the process, and has additionally brought new attorneys into the program.

Press is willing to help out on late notice, even in bad weather. He is the first one called at the last minute if another volunteer is unable to attend due to an emergency. His dedication has made him one of the most reliable volunteers in the project. He earned his law degree from Benjamin N. Cardozo School of Law.

Court Employee of the Year

Lisa Porteus

The Peter T. Affatato Court Employee of the Year Award, named after the NCBA Past President, recognizes a non-judicial employee of any court in Nassau County who exhibits professional dedication to the court system and to its efficient operation, and is exceptionally helpful and courteous to other court personnel, members of the bar, and the people served by the court system.

This year's honoree is Chief Court Reporter for Nassau County Courts, Lisa Porteus, who has been in the court system for 31 years. Not only does she have direct supervision over the 29 senior court reporters in Supreme Court, but she is also responsible for the court reporters in all of the courts in Nassau County.

While the Court faces financial challenges resulting in diminished resources available to the Court system, Porteus and the court reporters under her leadership have gone above and beyond to ensure that judges, lawyers and the public are protected with detailed, accurate records of all court proceedings.

The annual Law Day Dinner is on Tuesday, May 3rd, 5:30 - 8 p.m. at the Nassau County Bar Association. Law Day is open to NCBA members, non-members and the public. The price per person is $55. Please contact Caryle Katz, (516)747-4070, ckatz@nassaubar.org to make your reservation.

"Moving Toward Mastery" – NAL Offers CLE For Trained Mediators

By Erica B. Garay

The main program speaker and mediator trainer will be Daniel M. Weitz, Esq., Deputy Director of the Division of Professional and Court Services/ State ADR Coordinator of the New York State Unified Court System.

The Nassau Academy of Law ("NAL") of the Bar Association of Nassau County, Inc. ("NCBA") is pleased to offer a course to mediators, "Advanced Mediation: Moving Toward Mastery," who have completed 40 hours of training (basic and advanced) and currently serve on Court mediation rosters so that they may satisfy the requirements for "Continuing Education for Neutrals" set forth in §§ 146.3 and 146.5 of the Rules of the Chief Administrator. This NAL program, organized by the NCBA Alternative Dispute Resolution (ADR) Committee, is scheduled to take place at the NCBA on Friday, May 13, 2016 from 9:30- 4:30pm (registration and breakfast starting at 8:30 a.m.). The fee for members is $200.00 for the six credits.

The main program speaker and mediator trainer will be Daniel M. Weitz, Esq., Deputy Director of the Division of Professional and Court Services/ State ADR Coordinator of the New York State Unified Court System. This continuing education program will allow participants to explore through interactive exercises and group discussion, a variety of issues in an effort toward achieving mastery of their mediation skills and practice, including breaking an impasse. While there are many programs currently available for initial training of mediators to enable attorneys to serve on Court rosters, there are no formal programs listed on the Court website to enable mediators to fulfill their continuing education requirements. The NAL is pleased to be offering this resource to trained mediators. This program has received approval from the Administrative Judges of the Supreme Courts of Nassau, Suffolk, New York, Queens, Kings and Westchester Counties. Also invited (and expected to participate) are the Administrative Judges and/or their ADR coordinators of these counties, as well as the ADR coordinators of the United States District Courts for the Eastern and Southern Districts of New York, Rebecca Price and Robyn Weinstein.

All trained mediators should consider attending this valuable program.

Erica B. Garay is chair of ADR Practice at Meyer, Suozzi, English & Klein, P.C., co-chair of the ADR Committee, an arbitrator and mediator.

LAWYER LIT

POLICE STATE: How America's Cops Get Away With Murder by Gerry Spence

Book Review by Edwin F. Lambert

Gerry Spence claims, in his latest book, that in his sixty years in the courtroom he has never represented a person charged with a crime in which the police themselves had not violated the law. Provocative to say the least!

Spence, now an octogenarian and not as active as in past years, still has in his most recent book presented arguments, methods of practice and trial presentation which can be of benefit to all trial counsel, who first and foremost are advocates. There is a great deal to be gleamed from reading Gerry Spence, and especially within this topical work. Spence has previously published sixteen national works which began with his *Gunning for Justice*[1] in 1982.

By way of quick background, Spence has appeared in numerous jurisdictions in high profile cases, e.g., the Karen Silkwood Case and the defense of Imedla Marcos. He rails often against what he calls the "New Slave Master," a combine of mammoth corporations, intrusive government and insurance companies. Spence has been inducted into the American Trial Lawyers Hall Of Fame, whose members include Clarence Darrow and John Adams.[2]

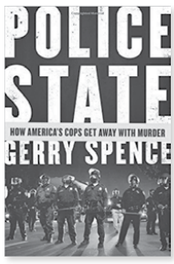
POLICE STATE[3] begins with topical references to the Freddie Gray case in Baltimore, wherein a prisoner was found to have sustained catastrophic injury to the neck caused by the trauma and sustained while being transported in custody, and in cuffs, in a police van. Freddie Gray did not survive. In the Walter Scott case in South Carolina, Scott was stopped by a patrol car for a broken taillight and, when he began to flee, was shot multiple times in the back and killed. Both cases received large Internet-age national publicity. Spence also makes quick reference to the local cases of Eric Garner on Staten Island and the Ferguson, Missouri, incident, which ignited when a black youth was shot six times and killed. Both of these cases have impacted the national consciousness.

Spence attributes causation, for these and like events, to the "Spoon Feeding of *Law & Order*" and other media cop shows, which he believes creates a perception that the police put their lives in danger to keep us safe. He also cites the Supreme Court doctrine of "qualified immunity" from the 2014 case of *Plumhoff v. Rickard*.[4] He also details how Congress in 1994—after the 1993 incident involving the Branch Dividians where mass murders occurred—passed the Violent Crime Control and Law Enforcement Act, which ostensibly requires the U.S Attorney General to collect data on cases of excessive force by the police, and to publish its findings in an annual report. Spence tellingly points out that, to this date, no data has been published, and that experts have called this a "National Scandal."

But Spence's book is not all a diatribe against the police state, which he argues we have become; Spence acknowledges that he has a duty to offer his solutions to this issue, and he does so in the book's final chapter. He offers twelve proposals, which he proposes can bring about "a new police culture for the safety and wellbeing of us, the people."

The book then explores eight (8) case studies of past Spence cases. Spence admits that he presents these case studies from his advocate's perspective, and he writes:

> I'm intimately familiar with the facts of these cases, but I also use literary license to breathe life into these accounts, to re-create the experience as I have felt them deep to the bone. Except where explicitly noted, dialogue and quotations reflect the essence of the moment rather than being drawn verbatim from trial or interview transcripts or other sources.



POLICE STATE: How America's Cops Get Away With Murder
Author: Gerry Spence
2015
St. Martin's Press
Hardcover
List price: $19.74

Cleary, this is a literary device style which is myopic, in one sense, but gives us, as fellow trial lawyers, a look into the mind of a master trial lawyer, who tells us how to construct the themes of a case for juror's consumption. In essence, his book presents his methods of trial advocacy, his actual presentations, and allows us to hear his opening statements and closing arguments. It is these perspectives that make this book well-worth reading.

The first case study is the "Ruby Ridge" case of the Weavers, a family of religious extremists who believed in the "coming tribulation." In that case, a jury deliberated for twenty-three (23) days, and eventually acquitted Randy Weaver of all charges, except for a failure to appear on the charge of sawing off his own shotgun. As a result of the criminal acquittal verdict, Spence, on the Weavers' behalf, sued the U.S Government for the aggravated deaths of Sammy and Vicki Weaver in1993. This resulted in a government settlement offer of $3 million to the surviving three children and $100,000 to Randy Weaver. Spence champions that no one was ever convicted for the murders at Ruby Ridge, and argues that the entire matter was a government and police reaction gone completely out of control.

We learn from the Ruby Ridge why he did not put his client on the stand and how to reverse a prosecution's case and put prosecution on trial. These are advocacy tactics we as trial lawyers can benefit from.

Another case study is that of the chilling prosecution of Brandon Mayfield, a lawyer in Portland, Oregon, whose problems arose when he married Mona his wife, whose greatest sin was that she was born in Egypt and her husband converted to the Muslin faith.

This case study begins with the 1994 coordinated series of attacks on the Spanish rail system, which resulted in the killing 191 and wounding 1800. As a result of the subsequent global alert and the FBI's review of its terrorists fingerprint data base, the FBI determined that it was lawyer Brandon Mayfield's fingerprint that was Spanish latent fingerprint #17. However, the Spanish police also did their own analysis and found no such match. Nevertheless, the FBI, using our U.S Foreign Intelligence Surveillances Court, was authorized to plant electronic listening devices into the Mayfield home and to permit "sneak peeks" into the home, ultimately resulting in the FBI retrieval of the son's high school Spanish homework. This evidence was the Mayfield's only connection to Spain found by the FBI.

In May 2004, the Spanish police announced to the world that they had matched the print at the site to an Algerian national, and that latent print #17 was of no value to its investigation for identification purposes. Spence takes the case, and will seek money damages and even further will attempt to have the Patriot Act declared unconstitutional.

The ultimate disposition being that the Mayfield's settled for $2 million and preserved their right to challenge the constitutionality of the Patriot Act. That aspect of the case proceeded to the U.S Supreme Court, which denied certiorari. In effect, the police in Spain saved an American family and an American lawyer when he had never even been to Spain.

Another case study deals with the police use of Tasers. Spence cites an American Civil Liberties Union report, finding that between 1999 and 2005 at least 448 people in the U.S. and Canada have died from being shocked by police utilizing Tasers. Spence argues that the defense of "excited delirium—which attempts to portray that those suffering from this delirium are very strong, irrational, and impervious to pain—was nothing more than junk science. Hence, the police fear of "excited delirium" did not justify the use of Tasers, resulting in another $2 million settlement in favor of Spence's client.

The case study of the Imelda Marcos defense does not exactly fit the prior studies but Spence makes his argument that the United States, for strictly political reasons, kidnapped the Marcos in a subterfuge exodus from the Philippines. U.S Attorney Rudy Giuliani prosecuted Imelda for RICO Crimes—contending that there was a defrauding of three banks for $165 million for purposes of real estate investment. Spence's defense in that case was essentially that Imelda was not in concert with the husband's alleged absconding from the Philippines with funds. Spence's opening was that the case:

> is actually like his hand, it has two sides. The U.S Attorney calls the palm side kickbacks and bribes, but the defense claims there are two sides to every hand. It is my responsibility to show you the often side of the hand, that the "web of fraud" is actually a fabrications of the government who seeks to have the wife of President Marcos convicted for reasons not at issue in the case.

Spence continues:

> This is a woman who lived with her beloved husband for thirty-five years, saw him in sickness and in health and was there when he took his last breath. Her position is simple: "I am going to defend my husband. His lips have been sealed by death. He can't defend himself. You can do what you wish with me, but you cannot do this to a man who has spent his entire life as a servant of the Philippine people and who laid his entire fortune and life down on their behalf."

Most adult Americans who were of age when this trail was ongoing only remember the enormous number of shoes Mrs. Marcos owned. The government introduced that into the case to show the enormous ostentatious wealth of the Marcos. It was Spence who in his opening tells the jurors:

> I told them the Philippines had hundreds of mom-and pop shoe manufacturers who'd send Imelda shoes hoping the first lady would be seen wearing them. Most didn't fit, but when the Marcos's appeared in this country the first thing we saw were newsmen zooming in on the shoes she was wearing.

Later in the case, Spence motioned for a mistrial on the court's comments throughout the trail. Spence argued to the court that by the court's own conduct it had denied Imelda her rights to a fair trial. The motion was denied, but Spence outlines his closing as follows:

> The great danger in this case is the "big S." It's called suspicion. Suspicion isn't Proof. Spence closed with a vignette, because the judges' had attempted to undermine Spence by telling the jury, by judicial comment; that Spence's final closing to them; was a shopworn story with no sincerity attached. Spence turned to the jury. "Ladies and gentlemen, this is the story of a wise old man and a smart-aleck boy. The smart-aleck boy wanted to show up the old man as a fool. The boy had captured a small bird in the forest. His plan was to go to the old man with the little bird cupped inside his hands so that only the small tail of the bird protruded." Then he'd say with a sneer, "old man, what I have in my hand?" And the wise old man would say, "you have a bird, my son." Then the boy would say with confronting distain, "old man, is the bird alive or is it dead?" And if the old man said the bird was dead, the boy would open up his hand and the bird would fly away free into the forest. But if the old man said the bird was alive, then the boy would begin to crush the bird in his cupped hands and to crush it and crush it until the little bird was dead then had open his hand and say, "see, old man, the bird is dead!" So the smart aleck boy as planned, came

See REVIEW, Page 25

US Supreme Court Swearing-In

Rebecca Sassouni and Jacqueline Harounian

Jacqueline Harounian

Yashar's members are Jewish women lawyers and judges, and the Hadassah National Attorneys Council coordinates a trip to the United States Supreme Court every year. The Council also submits amicus briefs to the Supreme Court on a variety of issues including women's rights, gun control and domestic violence. Having been sworn into The US Supreme Court previously in 2013, I was thrilled to visit the Court again, this time as a guest, accompanying my cousin, attorney Rebecca Sassouni, who practices Special Education law.

Jacqueline Harounian is a matrimonial attorney and a partner at Wisselman, Harounian & Associates PC. She accompanied the group as the current President of the Yashar Chapter of Hadassah, a boutique bar in the Nassau County Bar Association.

Rebecca Sassouni

My takeaways from the weekend included the wonderful alignment between my personal, civic, professional, feminist, and moral priorities. Everything about our experience together at the Supreme Court reinforced my decision to return to the practice of law, after years in retirement to raise my family while building a reputation for civic engagement in the community.

(seated 2nd from left)Rebecca Sassouni with Justice Ruth Bader Ginsburg

My time at the Supreme Court confirmed the ideals that informed my decision to become an attorney years ago and why I am passionate about representing students now. It was a special thrill to be there with Hadassah since I am a Life Member, and a Charter Member of Yashar. Being there with my dear cousin Jackie was the ultimate play date. I am also an active member of the Nassau County Bar Association's Education Law Committee, where I contribute to CLE programs, including a presentation in April of 2016.

Rebecca Sassouni is principal of her own firm, Rebecca Sassouni, Esq. PLLC. She limits her practice to representation of students of all ages, preschool through graduate, in all school settings, in varieties of contexts, including special education and discipline.

Gail B. Saul

Several years ago, my husband and law partner, Richard Saul, began talking about how we should apply for admission to the United States Supreme Court. My immediate reaction was: "Why? What's the point?" I practice divorce and family law, and my husband and partner practices personal injury law. It seemed highly unlikely we would ever argue an appeal in the United States Supreme Court. Finally, I said, "Why not? It will be an experience we can take part in together. Let's do it."

The night before we were sworn in we heard an exceptional presentation/lecture from a former Solicitor General of the United States who has argued 75 times at the Supreme Court! Monday morning, bright and early, we headed for the United States Supreme Court. We went into the beautiful building and were led into our own private room where we were given instructions as to what we were to do, and how the admission ceremony would work. We were then led into the Courtroom where we were graciously greeted by the personnel and Justices of the Supreme Court. We rose for the Oath of Admission and were then congratulated, as newly admitted attorneys. After the admission ceremony, while sitting very close to the Justices, we witnessed two legal arguments before the Court and saw the Justices in action, questioning the attorneys. I imagined myself before the Court, arguing a case.

Gail B. Saul and Richard D. Saul

Later, we were honored to meet Justice Ruth Bader Ginsburg in our private room. She stood right next to me, telling interesting stories about the cases she decided and her experiences as a Supreme Court Justice. We then toured the prestigious Supreme Court library, and learned about its inner workings. The entire experience was fascinating, interesting and exhilarating at the same time. I loved sharing this with my husband and legal partner. I would highly recommend this experience to all attorneys interested in livening up their legal career.

Gail B. Saul and Richard D. Saul are partners of The Saul Law Firm, LLP in Garden City, New York. Gail concentrates in matrimonial and family law, and Richard concentrates in personal injury law. Gail is a member of the Executive Board of Yashar of Hadassah.

REVIEW ...

Continued From Page 24

to the old man with the bird hidden in is cupped hands and he said, old man, what do I have in my hands? The old man said, "You have a bird, my son." Then the boy said, "is the bird alive or is it dead?" And the wise old man softly said, "the bird is in your hands, my son." And ladies and gentlemen of the jury, Imelda Marcos is in yours.

The result was a not guilty verdict. In summarizing this verdict, Spence comments: "Power through its voice, the corporate media, had captured the minds of an entire nation. The hatred of the Marcos's by those who'd never met them, never knew them, and many who'd never heard of them descended on the nation like the plague." It took a trial man like Spence to tell the clients' real story. The other case studies are replete with these tried and truly masterful tactics of Spence.

In his concluding chapter, Spence outlines numerous recommendations to prevent consequences of a police state.

On balance, Spence's POLICE STATE is a time well spent, and can be great use to all trial lawyers, bearing in mind what Spence had said about himself: " My intent is to tell the truth as I know it, realizing that what is true for me may be blasphemy for others."

Edwin F. Lambert is a graduate of Fordham College and Fordham Law and has been a personal injury trial lawyer specializing is insurance defense and select general practice matters in Nassau County, the Metropolitan Area, and Upstate venues.

1. Gerry Spence, Gunning for Justice: My Life and Trials (Doubleday 1983).
2. All bibliographical data recited herein is extracted from the website http://www.gerryspence.com/.
3. Gerry Spence, Police State: How America's Cops Get Away with Murder (St. Martin's Press 2015). All quotations in this review are from his book.
4. 134 S.Ct. 2012 (2014).