

# NYSBA Annual Meeting

January 19-29 | A Two-Week Virtual Conference

## Bench and Bar Face Shared Challenges and Opportunities In 2021



**Janet DiFiore**  
Chief Judge  
State of New York

2020 dawned with great promise for the New York state courts and the New York State Bar Association (NYSBA). For NYSBA, it started with the Annual Meeting and a spectacular Gala Dinner attended by more than 1,000 lawyers and judges honoring U.S. Supreme Court Justice Elena Kagan and the Judges of the New York Court of Appeals in the breathtaking Blue Whale room at the American Museum of Natural History.

The year also dawned brightly for our court system with the State of Our Judiciary Address at Court of Appeals Hall in Albany on February 26th when I highlighted the significant progress made under the Excellence Initiative to ensure the just and expeditious resolution of all matters filed in our courts, and laid out a broad range of initiatives to improve the delivery of justice, including implementing presumptive early Alternative Dispute Resolution for civil litigation and simplifying the constitutional structure of our trial courts.

**Virtual Courts**

Within a few short weeks, however, many of our plans and expectations had to be put aside as a deadly, fast-spreading virus compelled our court system to quickly stand up virtual courts in order to minimize courthouse traffic and safely deliver remote justice services to lawyers and litigants.

From the outset, we were determined to keep our courts open and functioning to provide access to justice and reassure the public

that our judicial system was still adjudicating disputes and upholding the rule of law. By early April, our judges and professional staff were working remotely to deliver a full range of justice services in all of our courts across the state. Over the last 10 months, we have worked nonstop to refine our virtual courts and expand their capacity. These efforts have allowed us to meet the increased demand for our services during the virus's second wave, and enabled our judges and staff to conference well over 20,000 matters a week, including resolving discovery disputes, narrowing disputed issues, referring matters to virtual ADR, deciding motions, settling cases and conducting virtual hearings and bench trials.

New York's lawyers have also shown great resilience and ingenuity in serving their clients during the pandemic, and the support and cooperation of NYSBA and the organized bar have made it possible for us to manage our dockets and move cases closer to final resolution during the crisis. A case in point is the Commission to Reimagine the Future of New York's Courts. Chaired by Immediate Past-President Hank Greenberg, and consisting of leading lawyers, judges, academics and technology experts, the Commission has done extraordinary work on a very fast track. In August, they issued detailed recommendations that contributed to our safe and successful resumption of in-person proceedings, including empaneling grand juries and conducting jury trials, throughout most of last summer and fall. And » [Page 13](#)



THE NEW YORK TIMES VIA SHUTTERSTOCK

## The Urgent Need For Adequate Court System Funding



**Lawrence K. Marks**  
Chief Administrative Judge  
New York State  
Unified Court System

As we know all too well, the COVID-19 pandemic has had an enormous impact on the justice system in New York, and across the nation. During last spring, and again with the resurgence of the virus last fall and into the winter, the vast majority of in-courthouse proceedings, including jury trials, have been postponed and suspended. Currently, virtual proceedings are the routine mode of conducting court business throughout the state.

The pandemic has also had an enormous impact on national and state economies, resulting in massive revenue shortfalls and gaping deficits in government

budgets. New York has not been spared: The state's current fiscal year budget deficit is more than \$15 billion, with further deficits predicted over the next several years.

As in prior years when New York has faced large budget deficits, the Judicial Branch has not avoided the pain. In 2011, when New York last experienced deficits of this magnitude, the court system's budget was slashed by \$170 million. The result for the Judiciary was several years of employee hiring freezes, drastic reductions in discretionary spending, and layoffs of up to 400 employees. » [Page 12](#)

## Efforts of Court Employees Provide Light and Hope



**Gerald J. Whalen**  
Presiding Justice  
Appellate Division,  
Fourth Department

Imagine being wrongly accused of a crime, arrested, jailed and waiting for your day in court nervously looking forward to your opportunity to demonstrate your innocence. Or, imagine being a parent or grandparent kept from your child or grandchild for weeks or months and waiting for the chance to explain to a judge why you should be reunited with your loved one. Or, imagine having escaped from an abusive relationship and looking for a court to provide an order of protection keeping the abuser at bay. These are just a few examples of people that come to our courts each day looking for protection, to be heard,

for a remedy, for justice as they envision it.

A civil society cannot operate without a functioning court system delivering justice to resolve these and the other conflicts that arise on a regular basis. The pandemic presented us, not just with a myriad of questions regarding how we continue to provide meaningful access to justice during this turbulent time, but with an opportunity for reflection. The court system is rightfully seen as a traditional, deliberative, even plodding branch of government. Often the way forward is determined by looking at the way things have always » [Page 14](#)

## Crisis as Opportunity



**Rolando T. Acosta**  
Presiding Justice  
Appellate Division,  
First Department

2020 was a year of tremendous tragedy and challenge, and this year began ominously, with a lawless mob storming the U.S. Capitol to disrupt the democratic process. A string of seemingly unending and unthinkable crises has tested our institutions and our resolve, laying bare harsh truths about our social compact and the many weaknesses, deficiencies, and injustices that persist in all areas of our government, including the judicial branch. We have been forced to confront the fragility of our society and to constantly remind ourselves that societal norms are threatened when people (with or without justification) feel disenfranchised,

ignored and powerless. It is difficult to talk of "bright spots" in the throes of a pandemic that has killed millions of our fellow human beings—including my father—or "silver linings" in the continuing string of deaths of people of color at the hands of those sworn to protect. Nonetheless, we can find some comfort in the strength of our courts in the face of injustice, a public health crisis, and the barrage of dangerous nonsense that flooded the court system and threatened our democracy. I see cause for optimism as we enter 2021. I do not delude myself that everything is and happens for the best, but I am hopeful, based on our » [Page 14](#)

## Rising to the Challenge



**William F. Mastro**  
Acting Presiding Justice  
Appellate Division,  
Second Department

The subprime mortgage crisis of 2008 had a severe effect on the national economy and the economy of this state, an effect from which the operations of the Appellate Division, Second Department were certainly not immune. Now, more than 12 years later, the mortgage foreclosure litigation spawned by that crisis continues to have an enormous impact on the work of our court. First and foremost among the enduring legacies of the crisis is the sheer volume of appeals that have been generated by the explosion in residential mortgage foreclosures occasioned by the crisis. This steady stream

of litigation has also required our court to grapple with legal concepts that previously seemed settled, but now must be applied to new methods of handling mortgages that have been adopted by lenders.

Foreclosure matters have come to consume a large share of our court's resources. The steady and dramatic increase in the number of foreclosure matters our court is called upon to adjudicate continues unabated. In 2008, our court decided roughly 40 appeals arising out of mortgage foreclosure actions. That number has now increased to the point where mortgage foreclosure matters rep- » [Page 13](#)

## At the Threshold



**Elizabeth A. Garry**  
Presiding Justice  
Appellate Division,  
Third Department

At this time each year, I am reminded of the ancient Roman god Janus, the inspiration and namesake of our month of January. As you may know, he was a god of two faces, one looking back and one forward, and so each year begins with this tribute to him on our calendars, this old god of doorways and thresholds. This reflection feels more significant—more charged, or more important—than in previous years. This year has been remarkably challenging, and we have all been changed by the exceptional circumstances we have experienced. Along with the tremendous pain and anxiety that we have experienced

this past year, we have also seen how we—as individuals, families, organizations, institutions and our society as a whole—are resilient, and adaptable in ways we would not have imagined. This is certainly true for our legal community and our justice system.

The judicial branch of our government—in some ways deliberately and by design—would not typically be regarded as particularly nimble, agile or experimental. Certainly, our court system has enacted meaningful and creative innovations, but such improvements have generally been implemented following careful and meticulous study and consideration. Yet, in » [Page 14](#)

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# Providing Leadership During These Historic Times



**Scott M. Karson**  
President  
New York State Bar Association

We are living through truly historic times. On Wednesday, America will inaugurate former Vice President Joseph R. Biden Jr., as the 46th President of the United States and Sen. Kamala Harris as the first woman and first woman of color to serve as Vice President. This follows an election that saw an all-time record high voter turnout, a testament to the

strength and resiliency of our democratic process as our country voted in the midst of an unprecedented pandemic. And while the long-awaited availability of vaccines bring hope that we are finally on the verge of eradicating coronavirus, there are still challenges that come with vaccine distribution and administration. Inevitably these historic soci-

etal and political issues of our time have become legal issues—and in both instances the New York State Bar Association—through the vast expertise of its membership—has been providing leadership on behalf of our profession. In September, I appointed the NYSBA Task Force on the Presidential Election, chaired by veteran election lawyer Jerry H. Goldfeder, to advise fellow attorneys, journalists and members of the public on issues related to the 2020 presidential race. The eight-member task force remains in place through the Jan. 20 inauguration, providing nonpartisan interpretation of the laws governing voting, the counting of ballots, the electoral college, and the role of Con-

gress in counting electoral college votes. While worst-case scenarios that could have prompted a constitutional crisis were avoided, the legitimacy of the election was still called into question by President Donald Trump’s unfounded allegations of fraud. NYSBA decried such tactics. For example, it was a source of great personal pride when I was joined by 23 past presidents of the association, both Republicans and Democrats, in issuing a statement regarding President Trump’s attempts to interfere with the lawful certification of the election results. We call for a return to civility in Washington, D.C., and to a time when lawmakers work together in a bipartisan manner for the good of the country.

**Vaccine Recommendations** In the fall, NYSBA’s policy-making body, the House of Delegates, approved a resolution from our Health Law Section recommending that New York consider mandating a COVID-19 vaccine once a scientific consensus emerges that it is safe, effective and necessary. However, the House recommended that before taking this significant step, the state government should conduct a public awareness campaign to urge voluntary vaccination. It is our responsibility as legal experts to offer guidance to policy makers, which is one that we do not take lightly. NYSBA’s recommendations seek to strike a balance between government’s responsibility to protect the majority of New Yorkers while safe-

guarding personal freedoms clearly dictated in the Constitution. I am proud of the association’s work on these critically important issues and that we were at the forefront of the national discussion. After all, it is among NYSBA’s core missions to advise decision makers, elected officials, the media and the general public about the legal ramifications and impacts of these kinds of significant legal and societal issues. I hope you can all join us as we further this discussion at our two-week virtual Annual Meeting beginning Jan. 19 and highlighted by the Presidential Summit on Wednesday Jan. 27, which will focus on legal, constitutional and public health issues brought on by the COVID-19 pandemic. You can visit our website at [nysba.org](http://nysba.org) for more information.

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*Scott M. Karson is a partner at Lamb & Barnosky.*

## Lawyers Play A Role in Combating Racial Injustice



**T. Andrew Brown**  
President-elect  
New York State Bar Association

As the 2021 Annual Meeting of the New York State Bar Association is upon us, we find ourselves ready for better times in the new year and happy to see 2020 behind us. While we look ahead, we remain in the shadows of last year. The ravages of the coronavirus pandemic led to law practice and courthouse disruptions on a scale we’ve never seen before. Many of our colleagues continue to feel the effects. We are not alone. The past year has also illustrated striking inequities that persist within our society. Our association has been at the forefront of highlighting some of the inequities revealed by COVID-19 and illustrated during the aftermath of the George Floyd killing. The impact of COVID-19 has been strikingly more significant on the health of black and brown people than on white people. This is not because people of color have some genetic makeup rendering them more susceptible to the disease. Instead, many more blacks were and continue to be vulnerable to the disease because of a greater likelihood of living in more densely crowded home environments and having jobs that more likely place them in harm’s way. A lower percentage of blacks have jobs that can be done remotely, and many blacks have less access to the financial means to temporarily—or permanently—move away from trouble spots, as we’ve seen so many others do. A larger percentage of blacks have had to continue navigating the COVID-19 dangers as frontline workers while many others have had the luxury of working from home. The color of one’s skin

should have no relevance to the social inequities that we see, but clearly does. Racial injustice in policing was also a prominent focus in 2020 following the killing of George Floyd, who, while laying on the ground, had a knee pressed into his neck by a Minneapolis police officer for more than eight minutes. We all watched the video countless times and a summer of protest and outrage followed. This led to a national outcry for change. NYSBA formed a special task force at the direction of President Scott Karson to examine racial injustice and the need for police reform. The work of the task force committees will lead to recommendations for change to help eradicate the ugliness of racial injustice and misconduct in policing. Several public forums have already been held on the topic and a Continuing Legal Education program is scheduled for January 25 as part of the Annual Meeting to address the role of civilian review boards and community oversight in combating racial injustice and police misconduct. As lawyers, we have a role in examining and challenging the underlying racial injustices that lead to the inequities and disparities we regularly witness. During the Annual Meeting—and continuing into the coming year—there will be opportunities for the hard conversations around racial justice and the resulting inequities that are currently in the way of a truly just society.

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*T. Andrew Brown is founder and managing partner of Brown Hutchinson.*

## Criminal Justice Within the Shadow Of a Global Pandemic



**Robert J. Masters**  
Chair  
Criminal Justice Section

For those of us who are members of the State Bar Association, the Annual meeting remains among the most significant events on our calendar. The meeting has become familiar to all of us—an occasion to enjoy the company of those with whom we share professional interest—complemented by our renewal of warm personal

relationships. The events have become routine—some practically rituals—paying tribute to those who have served the Bar association in the past, while providing an example for those who will follow those who currently serve in leadership roles. Of course this year’s Annual Meeting—like so many other things in our professional and personal lives—will not be familiar. The routine will be replaced—by rituals designed to keep all of us safe. The sharing of professional and personal experiences

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*Robert J. Masters is Executive Assistant District Attorney for Legal Affairs with the Queens County District Attorney’s Office.*



### George Floyd Protests in New York City

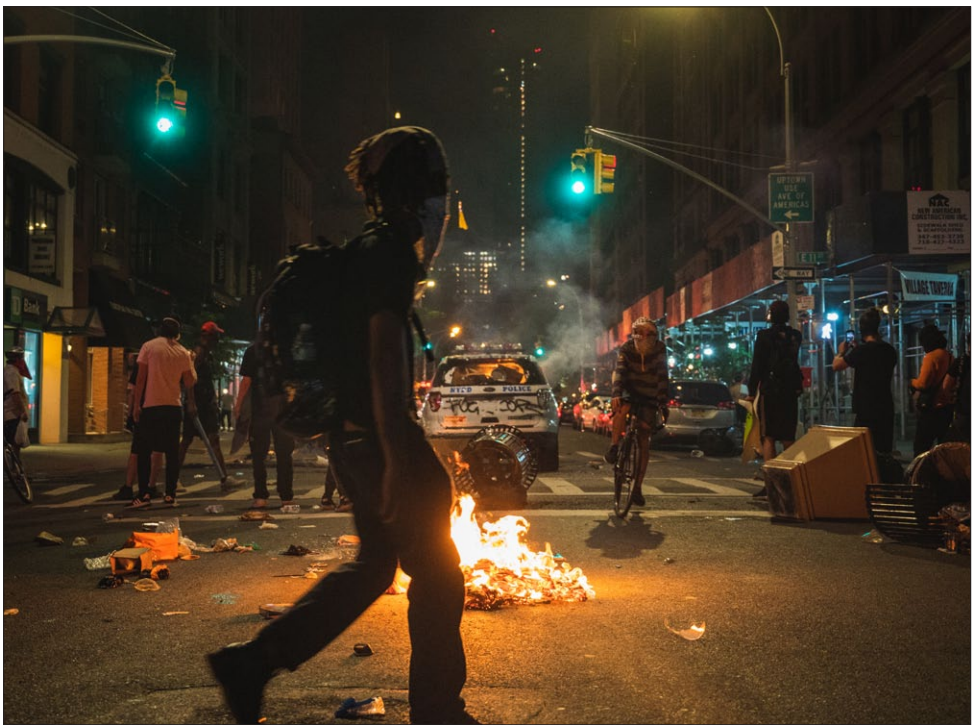
Photographs  
By Ryland West

The death of George Floyd on May 25 and the outpouring of anger across the country prompted a range of responses across the bar, at Big Law firms and boutiques alike. After Floyd’s death at the hands of the Minnesota police rekindled national outrage over police brutality and racial inequality, some lawyers called for larger actions among the profession to fight for change together. In October, Jeh Johnson who was named special adviser on equal justice in the courts, released his wide-ranging report where he detailed specific incidents of explicit racism and described a court system riddled with racism and racial bias. “The sad picture that emerges is, in effect, a second-class system of justice for people of color in New York State. This is not new,” wrote Johnson, a partner at Paul, Weiss, Rifkind, Wharton & Garrison and former U.S. Secretary of Homeland Security. New York is one of the largest blue states in the United States and a place where many public officials take deep pride in the state’s diverse population. New York state judges are more diverse compared to nearly three decades ago. But that progress has not kept pace with the changing demographics of the state, the report found. See charts on page 12.

—Christine Simmons,  
Ryan Tarinelli



Black Lives Matter protestors joined at Foley Square in Manhattan on May 29, to march over the Brooklyn Bridge in protest of George Floyd’s murder and racial injustice in the judicial system, photos above. Below, protestors set a trash fire in the middle of the street in Manhattan after a peaceful protest turns violent in New York on May 30.



can no longer be accomplished in a pleasant, warm setting, but instead in the artificial, socially distant, digital platforms upon which we have all been reduced to relying. I am impressed that the Annual Meeting has unwittingly become a metaphor for what has become of the practice of law—particularly, criminal law—in 2021. For just as we have little choice but to replace the familiar and routine—the rituals of our Annual Meeting—with the “virtual,” and in some respects, barely adequate

alternatives, our courts will continue to face even more unappealing compromises to provide relief to those who crave some fashion of that elusive commodity called justice, during these unprecedented times. Just as future Annual Meetings will return to their familiar, time-honored rituals, so too will the practice of law. However, when the public is sufficiently protected from the scourge of COVID-19—through the continued distribution of vaccines, our courts will gradually reopen, and all of us will be faced

with backlogs that would have been previously unimaginable. All matters will profile as a priority—demanding the justice system’s immediate attention. Each matter will be faced with the hard reality that choices will be forced on the courts, the litigants, as well as the parties—choices that will disappoint everyone on a serial basis. Within the criminal justice system, those choices will need to be made in servitude of the precious constitutional rights, to which every accused is entitled,

as well as in the shadow of the crushing fiscal constraints that will face prosecutors—and more problematically—the judiciary. Compromises will be needed and therefore, sought. New policies, previously beyond our ability to conceive, will be visited upon all of us. Solutions will neither be obvious, nor painless. Rather, programs may be implemented and soon abandoned, as conditions on the ground will dictate. At the most optimistic, all we can responsibly anticipate will be incremental improve-



# Virtual Program Includes CLEs, Awards And a Talent Show



**Jay L. Himes**  
Chair  
International Section

Our mission at the International Section of the New York State Bar Association (NYSBA) is to bring together international lawyers through global meetings, topical programs, mentorship opportunities, publications, writing competition, and much more. We have over 60 chapters across the globe, and dozens of committees.

The COVID-19 pandemic is presenting challenges, but our mission remains the same. And the Section having embraced the challenges, our global community is stronger than ever. Along with the other groups comprising NYSBA, we are planning our first-ever virtual annual meeting, for Jan. 27, 2021, from 8 a.m. - 12 p.m., EST. The program will include two international CLE topics:

- “Cross Border Litigation. When we need the most from our allies around the world: Best practices and recommendations.”
- “A Breath of Fresh Air: 2020’s Impact on Diversity, Equity and Inclusion.”

We also will confer the International Section’s award for outstanding contributions in the area of international law and affairs, recognizing the work of the United Nations Office for Disarmament Affairs (UNODA). Hon. Izumi Nakamitsu, Under-Secretary-General and High Representative for Disarmament Affairs, will accept the award on behalf of UNODA. We also will announce the winner of the Albert S. Pergam International Law Writing Competition for law students, which this year received a record number of over two dozen submissions.

Additional annual meeting events will include virtual sessions with our global chapter chairs, and another session with the Section’s Latin American Council, which will update on developments in this region.

Our social gathering—“The International Section’s Got Talent”—invites participants to create a short video or slide show showcasing their talent, or that their family, pets, co-workers, or anything else. A collage of the videos will be presented, after which those attending will vote for their favorite “act,” with prizes going to the top three vote-getters.

Although our virtual meetings have strengthened our global reach, we are looking forward to resuming our in-person global events. Our next in-person event, our 2021 fall global conference, is planned for London, Oct. 13-15, 2021, where our keynote speaker will be the Lord Chief Justice of England and Wales, Lord Burnett, and where our gala dinner will take place at one of London’s famed Inns of Court. After that, we have a regional meeting set to be held in Madrid on April 28-29, 2022.

Meanwhile, we offer a steady fare of webinars, which in recent weeks have ranged from comparative sports law, to investment opportunities in the US and EGS investing, to nuclear weapons and international law in the contemporary era.

We’re happy to have you join us. For more information, go to: <https://nysba.org/committees/international-section/>

Jay L. Himes is a senior counsel at Labaton Sucharow.



NEW YORK UNIFIED COURT SYSTEM / AP

## Virtual Courts Proceedings

As of July 6th, all visitors to state courthouses and other facilities have been required to go through a temperature screening and questioning before entering the buildings, and are required to wear a mask.

In April, federal and state trial courts generally suspended all jury trials. Judges by and large were given discretion to use technology to limit in-person courtroom appearances.

Judges are finding common ground in technology as the key to keeping their courts on pace, and their staffs, lawyers and clients safe during the nation’s public health crisis. And they predict the use of that new technology will not fade with the pandemic, but will likely permanently change the operation of judicial systems.

—Marcia Coyle



RYLAND WEST / ALM

A virtual arraignment is conducted at Criminal Court in Manhattan, top photo. New York City’s criminal court started conducting all arraignments by video conferencing in March to limit traffic in courthouses during the coronavirus outbreak. Above, clearly marked seating arrangements placed for the jury to ensure social distancing in a trial court room at the Brooklyn Supreme Court in Brooklyn.

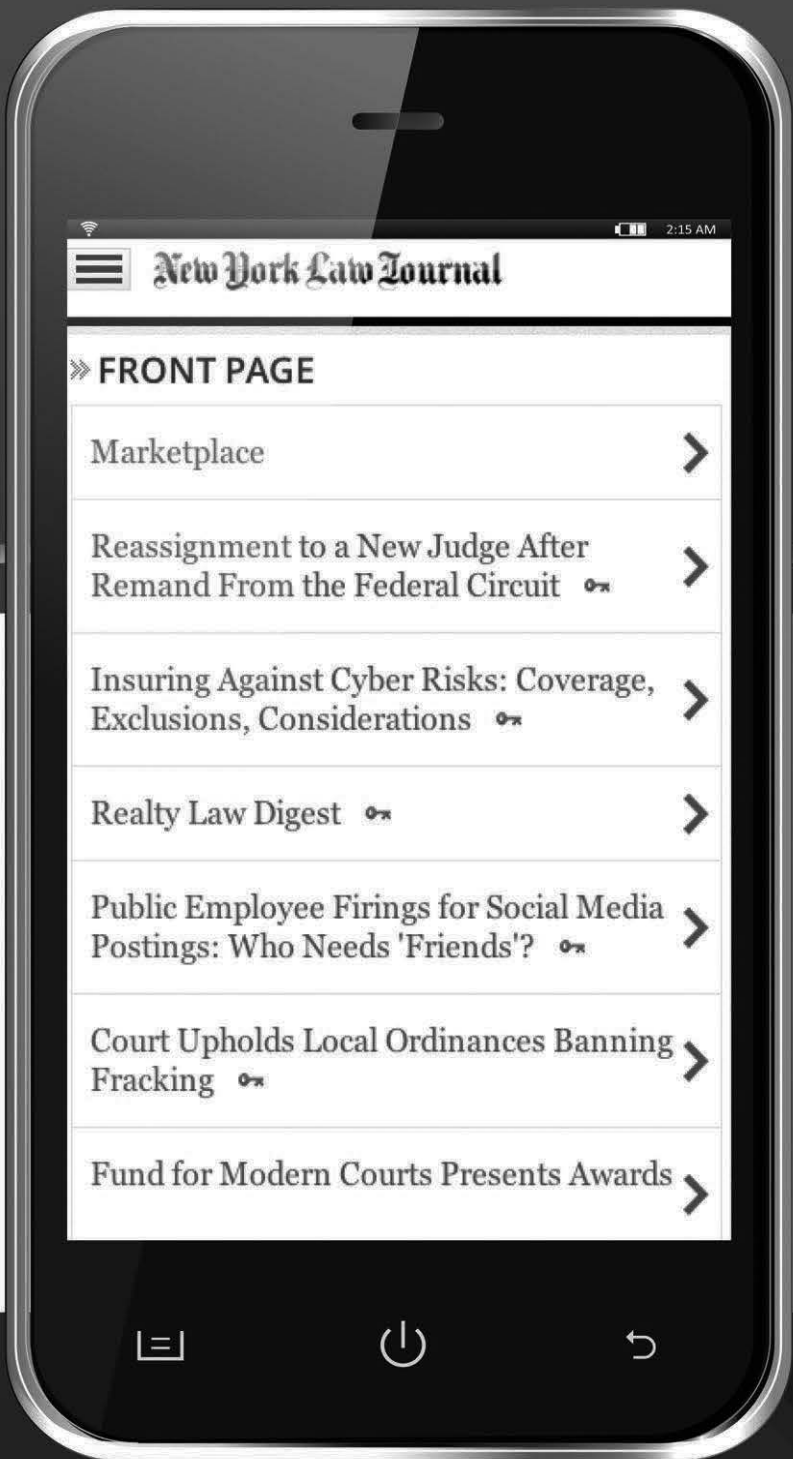
NYSBA ANNUAL MEETING: Angela Turturro, Sections Editor | Monika Kozak, Design

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# Real Property Law Continues To Be Impacted by the Pandemic



**Ira S. Goldenberg**  
Chair  
Real Property Law Section

The COVID-19 pandemic continues to dramatically impact the practice of real property law. The continuing legal education programs presented by the Real Property Law Section during the 2021 Annual Meeting of the New York State Bar Association will focus on the effects of the pan-

dem, as well as other topics of interest to real estate attorneys. Landlord-tenant cases have been hard hit by the pandemic as courts have slowed or sometimes stopped handling cases. Consequently, some residential landlords have taken matters into their own hands by “locking

out” tenants who have not paid rent. Unfortunately, such actions are fraught with potential liability. “Illegal Lockouts and Post Eviction Proceedings,” will be explored by Carlos C. Perez-Hall, a member of the Executive Committee of the Section and a well-known landlord-tenant attorney, during the Section’s program on Thursday afternoon, January 21. Carlos will explore the topic from the perspective of courts, landlords and tenants, and will provide useful tips for practitioners. Common Interest Communities have also been dramatically affected by the pandemic. The Condominiums and Cooperatives Committee, chaired by Erica Buckley

and Ingrid Manevitz, will present a program thoroughly exploring the impact from the points of view of the Real Estate Finance Bureau of the New York State Attorney General’s Office, sponsors, unit owner boards, practitioners, and real estate brokers. In addition, legislation in 2021 and a case law update will be discussed. The program is scheduled for Thursday afternoon, January 28. There are of course other topics of interest to real estate attorneys, other than those relating to the pandemic. One area is the fascinating interaction between historic preservation and diversity and inclusion. Preservation is an important tool to maintain

historic monuments, but has had the unfortunate impact of displacing and excluding certain members of the community. Shelby Green, a professor at Pace University Law School and a member of the Section’s Executive Committee, will discuss the topic during the Section’s CLE program on Thursday, January 21. Another field of interest to real estate lawyers are surety bonds, which are an important source of relief and protection for mechanic’s liens, appeals, preliminary injunctions, “Yellowstone Injunctions,” and construction projects. Ariel Weinstock, an officer of and member of the Executive Committee of the Section, and Neil Ped-

erson, a principal of a bonding agency, will discuss the area on Thursday, January 21, during the Section’s CLE program. The Not-For-Profit Corporation Committee of the Section will conduct its annual CLE program on Friday, January 29. Finally, please join us for the Section’s annual award presentations, including those for Professionalism, Outstanding On-Line Community Contributor, law student scholarships, and recognition of our St. John’s law student editors of our Real Property Law Journal.

Ira S. Goldenberg is a partner at Goldenberg & Selker.

# Light on the Horizon: The Year of Women Leaders



**Terri Mazur**  
Chair  
Women in Law Section

Year 2020 brought its share of darkness—the COVID-19 pandemic, racism, deep political division, loss of jobs, and tragic loss of countless lives. But there is light on the horizon: 2021 promises to be a year where women will lead our government in greater numbers than ever before. Kamala Harris has broken one of the country’s highest glass and concrete ceilings as the first woman, and first Black and South Asian person, to be elected vice president. Her election is a pivotal moment and will inspire women and girls to aspire to leadership positions. President-elect Biden has assembled a diverse cabinet and an all women communications team. We will have the most women, and women of color, in Congress ever: at least 141 women. A Black woman scientist is co-leader of the team that developed a COVID-19 vaccine. We need to seize upon this momentum to achieve gender equity in the legal profession, to ensure that women lawyers have more leadership roles and opportunities. While women have made great strides—approximately 50% of graduating law school classes and 47% of incoming law firm associates are women, law firms are still losing significant numbers of women by the time partnership promotion decisions are made. Women remain starkly underrepresented in leadership roles such as equity and managing partners, general counsels, U.S Attorneys, and other government leadership positions. COVID-19 has also disproportionately impacted women. Women are more likely to have been laid off or furloughed than men during the pandemic. A recent McKinsey & Company/LeanIn study reveals COVID-19 has caused more than one in four women to consider leaving the workforce or downsizing their careers because of increased demands of in-home schooling, child and elder care. In the legal profession, these pressures while

juggling the enormous demands of practicing law (especially billable hour requirements) are driving women lawyers out of the profession. Research has consistently identified two critical barriers to advancing women lawyers: (1) primary responsibility for domestic matters such as child and elder care, and (2) unconscious and conscious bias. The disruption of 2020 offers opportunities for the legal profession to undergo transformative change. The events of 2020 have taught all lawyers that flexible hours and remote work are viable. Implementing and de-stigmatizing flexible work will benefit working parents and others handling family responsibilities. These events have also increased awareness of the need to counter bias through genuine, systemic change in policies and practices promoting diversity. The Women in Law Section (WILS) has worked tirelessly to enable more women lawyers to become leaders: Our 2020 Annual Meeting addressed elimination of unconscious bias. We held programs on networking, communications and presentation skills; strategies to increase women in first chair roles; confronting bias in politics and the legal profession; leadership skills; celebrating women’s suffrage and combatting voter suppression; and researching issues impacting female attorneys of color and with disabilities. This work does not stop. Our 2021 Annual Meeting will address how to lead, retain and advance diverse attorneys during this crisis and beyond. We invite all attorneys to join us in these ongoing efforts.

Terri Mazur is an experienced trial lawyer who focuses her practice on federal securities litigation and regulatory investigations, primarily in the financial services industry, antitrust, defense of financial institutions in the consumer financial services industry, and complex commercial disputes.

## Marks

In some ways, the Judiciary’s fiscal challenges this year are similar to those of 2011; in other ways, the present challenges are different and worse. Because the court system budget is made up overwhelmingly—90% or more—of personnel costs (judge and employee salaries and fringe benefits), sizeable reductions in our budget inevitably require cuts in personnel spending. In 2011, in addition to the hiring freezes, the decision was made, as noted, to terminate hundreds of employees. That difficult and regrettable decision was followed by several years of flat, zero increase annual budgets, which combined to cripple court operations in the years that followed. Those years were further followed by modest 2% average annual budget increases, barely enough to cover employee collectively-bargained salary increases.

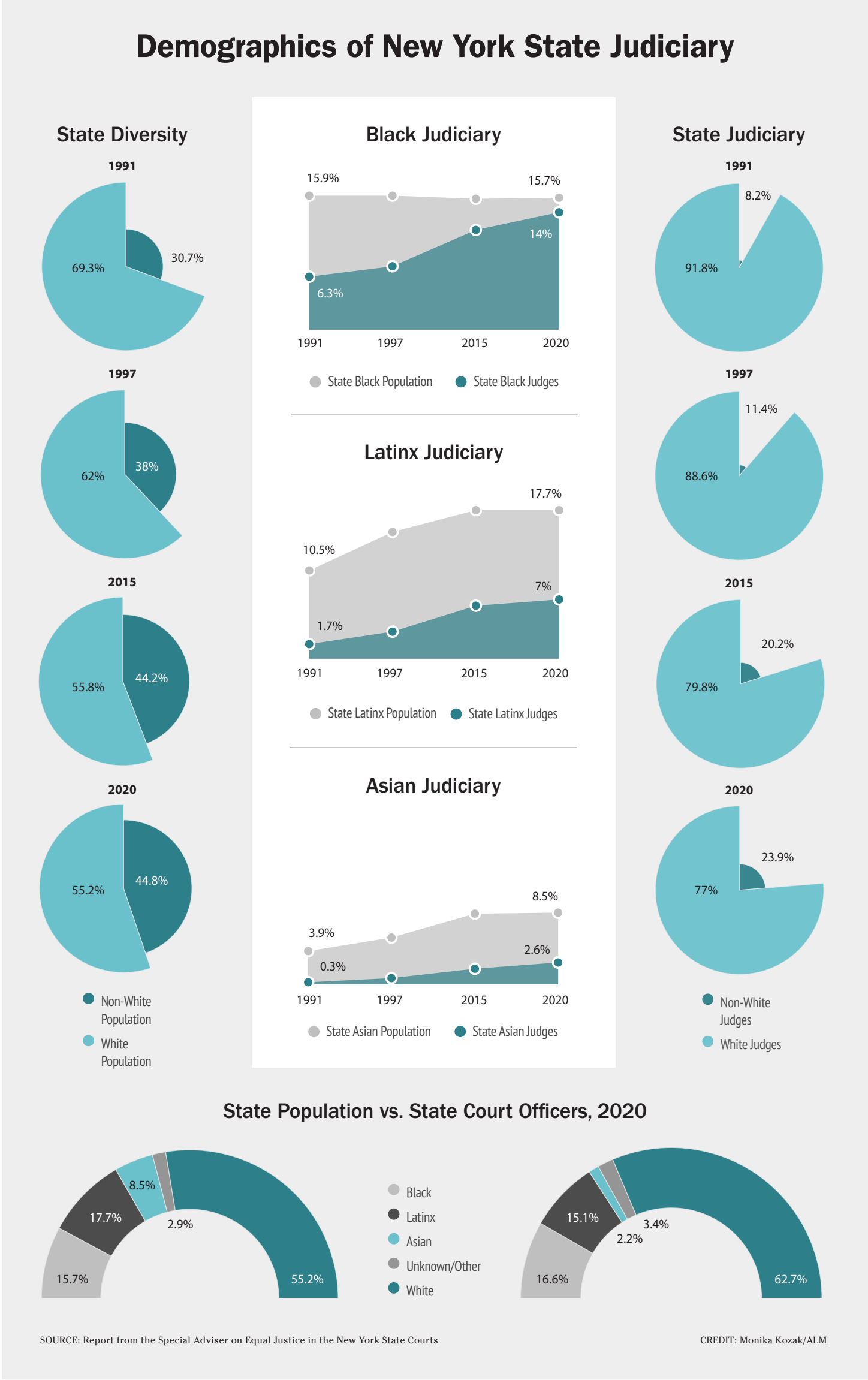
The combination of the slashed court system budget of 2011, the flat court system budgets in the two or three ensuing years, and the very modest budget increases in the years thereafter resulted in a decline of more than 1,500 employees in the court system’s statewide workforce. This meant, beginning in 2011 and essentially continuing into 2019, fewer court clerks, court officers, court reporters, court interpreters, back-office staff, etc., in courthouses throughout the state. As anyone who works or litigates in the state court system knows, the reduced workforce made it that much more difficult to conduct the day-to-day business of the courts in an efficient and timely manner. Although Chief Judge DiFiore’s Excellence Initiative resulted in substantial, and in some cases dramatic, reductions in case backlogs and delays, the gains of the Excellence Initiative were made much more difficult, and at times frustrated, by the reality of a greatly reduced state court system work force.

Fast forward to the onset of the pandemic last year. Faced with the perfect storm of dramatically declining revenues and dramatically increased expenditures (particularly public health care costs and unemployment benefits expenditures), the Governor required 10% reductions in Executive Branch spending at designated points throughout the fiscal year. By late April, the Governor was likewise urging the Judiciary to take steps to reduce its budget by 10% (roughly \$300 million), an amount that was later deducted from the state’s Financial Plan, which delineates the amount of cash that is available for the state government to spend. As a responsible partner in state government and in accordance with the Governor’s urging and the reduction in the state’s cash plan, the Judiciary proceeded to develop and implement a budget reduction plan. Budget cuts of this magnitude—75% more than the at the time unprecedented budget cuts of 2011—constitute an enormously

bitter pill for the Judicial branch to swallow. The plan included, among other measures, a strict employee hiring freeze, elimination of all non-essential discretionary spending (e.g., supplies, travel, education and training, legal reference materials, etc.), deferral of certain expenditures to future fiscal years (e.g., collectively bargained salary increases and employer share of social security costs), elimination of the Judicial Hearing Officer program, and denial of all but a small handful of applications of Supreme Court Justices age 70 or older who applied this year for certification or recertification to remain on the bench for two more years. That latter decision, made by the Administrative Board of the Courts pursuant to the state Constitution and the Judiciary Law, was particularly painful but it was absolutely necessary. The choice was a stark one: Deny certification to most of these judges, for a cost savings of \$55 million over the next two calendar years—or lay off at least 325 court employ-

ees. But the decision was the right one. Under the civil service rules governing employee layoffs, most, if not all, employees who would have been terminated would not have been eligible for pension benefits and would have found it difficult or impossible to find other employment in this economic climate. Furthermore, the lessons of the court employee layoffs of 2011 and the declining employee workforce that followed over the ensuing years could not be clearer. Layoffs and a reduced court workforce lead to crippling effects on court operations, particularly in courts that primarily service economically disadvantaged litigants, such as Family Court and Housing Court. So the overarching goal in implementing this fiscal year’s budget reductions has been to avoid employee layoffs—for operational as well as humane reasons. Going into the next fiscal year, beginning April 1, 2021, that will continue to be our highest budget priority. We have prepared and submitted our

proposed budget, which is now in the hands of the Governor and the Legislature. Given the continuing economic realities, we are proposing a budget that absorbs the 10% spending reduction in this year’s court system budget but, critically important, includes no additional reductions in our funding. If approved, this will mean a continuance of the hiring freeze for at least a portion of the upcoming fiscal year, but it will avoid the necessity of employee layoffs. We are hopeful that this proposed budget will be well received in Albany. The viability of our court system as we approach the end of the pandemic depends on it. And we will absolutely need the strong backing of the bar in support of this budget. The organized bar must make its voice heard by emphasizing that further cuts in court system resources will devastate the delivery of justice in this state, particularly for economically disadvantaged people who turn to the courts to preserve essential rights and legal protections.





# Addressing COVID-19 And Diversity Challenges in the Entertainment, Arts And Sports Industries



### Barry Werbin

**Chair  
Entertainment, Arts  
And Sports Law Section**

This past year has been nightmarish for the people and markets served by our EASL Section, as the COVID-19 pandemic ripped through the arts, entertainment and sports sectors with a vengeance. Broadway was shuttered, along with stage and film theaters across the country; actors, dancers, singers, musicians and production crews experienced extended furloughs and unemployment; college and professional sports all but shut down until mid-year, when events intermittently started and re-started only to empty stands; museums and art galleries remain in crisis mode; and protracted TV and film production shutdowns delayed new programming for many months. Addressing these critical issues has been an ongoing focus of EASL's programming.

At our 2021 annual meeting, the EASL Sports Law Committee sponsored Part II of an ongoing forum on The Impact of COVID-19 on Sports: A Legal Perspective. The forum has been examining the uncertain paths forward emerging from, and potential long-term impacts of, the pandemic on world sports.

The COVID-19 crisis has led many lawyers to re-think the benefits of alternative dispute resolution in light of the high cost and increasingly protracted nature of litigation. Our ADR and Fine Arts Committees sponsored a two-panel

*Barry Werbin is counsel at Herrick, Feinstein and a member of its intellectual property group.*

program at the annual meeting that offered a deep dive into arbitration and mediation, and how they are well-suited for the EASL fields.

Despite the challenges of the pandemic, our annual Music Business Law Conference went ahead all virtual in late 2020, with multiple virtual CLE sessions focusing on music litigation and finance, the impact of the pandemic on the music industry, and the legal and practical implications of the new Music Modernization Act.

The State Bar's 2020 call for an increased focus on diversity, and the impact of the Black Lives Matter movement, spurred on our own Section to develop more diversity-focused programs impacting our covered industries. For our 2021 annual meeting, EASL's Diversity Committee sponsored the first of a CLE series of forums exploring past and continuing racial inequality and injustices that continue in each EASL industry sector, starting with a focus on the publishing industry. Additional diversity forums will continue throughout 2021. Another diversity program is in the works focusing on BAME (Black Asian Minority Ethnic) fashion designers and claims of cultural appropriation.

In these challenging times, pro bono assistance has become a lifeline for many people in the arts and entertainment fields. We have partnered with Volunteer Lawyers for the Arts to present pro bono clinics addressing artists' rights, and with VLA and Artists Rights Society to arrange a program on trust and estate matters.

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# Lawyers Who Save Lives



### Karen Gallinari

**Chair  
Health Law Section**

It is not news that some lawyers dedicate their careers to saving lives. Attorneys practicing criminal law may first come to mind. What may be less well known is that those of us who practice health law are also working hard to save lives, albeit at much less daily risk than our selfless colleagues on the front lines of medicine.

This year our Health Law Section members seized the opportunity to address the legal and ethical public health issues that COVID-19 brought front and center, by bringing attention to state action that would ease the challenges of public health emergencies. This was accomplished by presenting recom-

mendations to New York state leadership to pass laws that will maximize the ability of local officials and front-line workers to act quickly and fairly to protect lives, especially the lives of our most vulnerable.

The Health Law Section Task Force, which prepared recommendations, approved by the Association's House of Delegates, included attorneys knowledgeable about the applicable law and the interests of the diverse stakeholders impacted. In addition, the final recommendations reflected valuable input from our colleagues from other Sections and Committees, including but not limited to Elder Law and Special Needs, Disability Rights,

Diversity and Inclusion, Food and Drug and Business Law. The productive dialogues this effort facilitated continue through the work of our Health Law Section Committees and two Bar-wide Task Forces, which were created to address long-term care issues and ongoing issues relating to immunity and liability. These continued discussions are important to permit extended attention to many challenging issues.

The recommendations advocate for the enactment of emergency preparedness procedures, crisis standards of care and wise vaccination administration. They are available at <https://nysba.org/healthlawsectioncovid19/>. Such laws will provide guidance on how to manage the difficult decisions that would need to be made if there are not enough hospital beds, health care workers or medical equipment and treatments for everyone. Most importantly, they provide tools to enhance protection of health care workers and vulnerable populations, such as the elderly,

disabled, minorities and communities of color.

New York state legislators have also been hard at work drafting proposals that address a number of the public health challenges COVID-19 has made obvious. They included conflicting bills regarding whether and to what extent a COVID-19 vaccination should ever be mandated. (See Assembly Bills 11129 (Gottfried), 11172 (Salka) and 11179 (Rosenthal)). Hopefully, vaccination safety, public health messaging and sufficient public acceptance will make any mandate unnecessary. In the meantime, the Health Care Section will continue to dedicate itself to improving the understanding and effectiveness of public health and other health care laws. Some of our latest discussions include attention to the impact of climate change on our health. If you also wish to save lives by protecting our environment and our health care providers, and by maximizing fair access to health care in good times and in bad, please join us.

*Karen Gallinari is an adjunct professor at Pace University's Elizabeth Haub's School of Law.*

# Striving for Justice During Difficult Times



### Barbara R. Kapnick

**Presiding Member  
Judicial Section**

I am very honored to serve as Presiding Member of the Judicial Section this year, although I am disappointed that all our activities have to be virtual, rather than in person. As judges, we thrive on the collegiality amongst us, as well as the constant interaction we enjoy with the lawyers and litigants, all of which we are missing this year. The COVID-19 pandemic has created an unprecedented and unimagined world in which we are all learning many new skills and trying to adapt, and to simultaneously promote the cause of justice which we all serve.

Our Section represents judges from upstate to downstate, federal and state courts, from

Supreme and Family Courts to Criminal, Housing and Surrogates Court and Town and Village Justices. As Chief Judge DiFiore has mentioned numerous times in her weekly presentations, the judges, assisted by extraordinarily dedicated chambers and other non-judicial staff, have conducted thousands of virtual conferences, hearings and trials, drafted thousands of decisions, and worked to resolve an enormous number of cases throughout these difficult times.

And then in the midst of the pandemic, our world was shaken again this past summer by the tragic and senseless killing of George Floyd in Minneapolis,

setting off a wave of national and international demonstrations, rekindling long-standing anger and outrage over the systematic discrimination and racial inequality in our legal system and beyond. In response to these events, the Chief Judge appointed Jeh C. Johnson, who served in the Obama administration as U.S. Secretary of Homeland Security and General Counsel for the Department of Defense, and is currently a partner at the law firm of Paul, Weiss, Rifkind, Wharton & Garrison, to conduct a review of racial bias in the state court system. Secretary Johnson and his team issued a comprehensive report on October 1, containing numerous equal justice recommendations which are already being implemented in our court system.

The Judicial Section is very honored to have Secretary Johnson as the Keynote Speaker at our Virtual Program on Friday, January 29 (12:30 p.m. - 2:30 p.m.) and invite you all to register and attend. We will also be presenting our Distinguished Jurist Award to

Hon. Rolando T. Acosta, Presiding Justice of the Appellate Division, First Department, and our Advancement of Judicial Diversity Award to the Franklin H. Williams Judicial Commission, which promotes racial and ethnic fairness in the Courts, on the occasion of its 30th Anniversary.

Finally, I would be remiss if I did not mention the 46 Supreme Court justices who were not certificated or re-certificated to continue presiding in our courts for another two years. While we are cognizant of current budgetary constraints, we are saddened to see these fine jurists and their staff leave the court system, to which they have wholeheartedly dedicated themselves for so many years. We wish you all a safe and prosperous future. Thank you for all you have done to promote justice in our courts—we will miss you all!

*Barbara R. Kapnick is an associate justice of the Appellate Division, First Department.*

## DiFiore

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The Commission continues to study how our court system's new reliance on online platforms and other tech innovations can be continued beyond the pandemic in order to modernize court operations and improve the quality of our services well into the future.

### Access to Justice

New York's dedicated and diverse bar community also deserves great credit for stepping up to meet the pandemic-related legal needs of New Yorkers who have been harmed by the public health crisis and its economic consequences. In early April, NYSBA and the court system worked together to create the COVID-19 Pro Bono Recovery Task Force. Chaired by former Chief Judge Jonathan Lippman, the Task Force has done a remarkable job of recruiting and training volunteer lawyers to provide pro bono assistance to struggling New Yorkers in unemployment, housing and probate matters.

One of the projects launched by the Pro Bono Recovery Task Force resulted in an outpouring of 600 lawyers who volunteered to provide free legal assistance in probate matters to individuals and families who lost loved ones to COVID-19. State Bar Past-President Michael Miller deserves credit for successfully overseeing this worthy program and forming an excellent committee of Surrogates, senior court staff, experienced trusts and estates practitioners and NYSBA staff who worked together to train the volunteers and match them with clients.

Bench and Bar must continue to work together to prioritize access to justice. While reliance on remote technology has helped us meet the justice needs of litigants and clients during the pandemic, we know that there is a significant "digital divide" facing many New Yorkers who cannot access our virtual courts because they lack any or all of the following: digital broadband and Wi-Fi capacity, adequate data plans and smartphone minutes, and basic computer equipment.

Another impetus for collaboration and creative solutions is the economic fallout from the pan-

dem, which has created a large shortfall in the state budget and compelled the judiciary to make some very difficult choices in order to achieve nearly \$300 million in cost-savings in our current-year budget, including reducing judiciary funding for civil legal service providers by approximately 10%. This reduction comes at a time when the need for civil legal services has never been greater, but our Permanent Commission on Access to Justice, and our Deputy Chief Administrative Judge for Justices Initiatives, Edwina Mendelson, have been working on creative solutions to ensure access during the pandemic, including creating remote court access centers in safe, convenient locations, such as houses of worship and community centers, where unrepresented litigants can use technology to receive remote legal services, prepare and e-file court papers, and fully participate in virtual court proceedings.

### Racial Justice

2020 will also be remembered for a national reckoning on race and racial injustice that followed

the brutal killing of George Floyd in Minnesota last May. When only a few days later a court employee posted disturbing and racist images on Facebook, I asked Jeh Johnson, a nationally respected lawyer at Paul, Weiss, Rifkind, Wharton & Garrison who served as U.S. Secretary of Homeland Security in the Obama Administration, to conduct an independent "Equal Justice Review" of our court system's policies and practices as they relate to issues of racial justice.

In October, Secretary Johnson and his team issued a comprehensive set of practical recommendations to help us achieve fairness, diversity and meaningful inclusion in our court system. In response, I made a commitment on behalf of our entire court system to embrace a policy of zero tolerance for racial discrimination, and I charged Deputy Chief Administrative Judge Edwina Mendelson with leading our efforts to follow through on that commitment and implementing Secretary Johnson's recommendations. And, further, to evaluate and report on our progress, we have engaged an Independent Monitor, Alphonso David, a nationally rec-

ognized civil rights advocate and President of the Human Rights Campaign.

I want to thank State Bar President Scott Karson for unequivocally supporting our Equal Justice efforts, and I want to commend him for creating the Task Force on Racial Injustice and Police Reform. Co-chaired by President-elect T. Andrew Brown and distinguished attorney Taa Grays, the Task Force's mission is to promote public understanding of the issues that contribute to police misconduct and recommend reforms to end harmful law enforcement and criminal justice practices that disproportionately affect persons of color. Together with the Equal Justice Review, the Task Force's broad focus on issues of policing and law enforcement sends an important message that the judiciary and the legal profession stand together in our commitment to eliminating racism and bias from our justice system.

### Conclusion

This year's Annual Meeting may lack the stimulating personal interactions and warm collegiality that we look forward to each year,

but it does come at a unique and historic moment for the Bench and Bar. Over the coming year, we will have many opportunities to strengthen our justice system and our profession during these extraordinary times: from safely re-starting in-person court proceedings to preparing for an expected surge of pandemic-related litigation to ensuring access to justice for struggling New Yorkers to following through on our shared commitment to ending racism and fostering equal justice under law.

I believe we have every reason to look forward to meeting these challenges with confidence and optimism based on the unwavering dedication and commitment demonstrated by our judges and professional staff over the last ten months, the steadfast support and commitment of New York's lawyers during the pandemic, and the historically strong and supportive bonds we share with NYSBA and the organized bar.

Questions? Tips? Contact our news desk: [editorialnylj@alm.com](mailto:editorialnylj@alm.com)

## Mastro

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resented roughly one-third of our docket. Our court was already the busiest appellate court in the nation, handling roughly 65% of the statewide Appellate Division caseload, instead of the 25% it was originally designed to handle. The exponential acceleration in the number of foreclosure appeals has contributed substantially to our already daunting caseload.

In addition to the staggering volume of foreclosure appeals pouring into our court, certain practices adopted by mortgage lenders in the years preceding the 2008 financial crisis have required us to repeatedly adjudicate new issues that had not previously arisen in foreclosure matters. Until the early 1990s, in the typical mortgage foreclosure action, the identities of the borrower and the lender, and the mortgagor and the mortgagee,

were obvious. However, lenders began pooling mortgage loans into funds that were bought and sold in the secondary market. Mortgage Electronic Registration Systems, Inc. was an entity created to serve as the lender's nominee or mortgagee for millions of mortgages nationwide, and to thereby avoid the need for recording in county clerks' offices the constant assignments and reassignments of those mortgages. With individual notes and mortgages now mixed into pools, and in the absence of a public record of assignments, it often became difficult to ascertain the identity of the actual owner of a particular note. Thus, foreclosure defendants began to argue with increasing frequency that the plaintiff seeking to foreclose the mortgage had not established that it was the actual owner of the note, and therefore lacked standing to sue.

Before 2008, the issue of standing to commence an action was rarely raised in appeals arising

from mortgage foreclosure matters. In fact, standing was not a frequently litigated issue in any kind of action, since actions are not normally commenced by parties with no stake in the outcome of the litigation. While standing was an issue that would sometimes arise when a private party sought to challenge some action by a governmental entity that arguably did not have a sufficiently direct impact on that plaintiff, the issue arose very infrequently outside that context. Today, the issue of standing is ubiquitous in mortgage foreclosure cases. Indeed, the Legislature recently enacted RPAPL 1302-a, which provides that the defense of standing cannot be waived by a defendant in a mortgage foreclosure action involving a home loan. As a result of this legislation, standing will be a potential issue in every residential foreclosure action, even though the question of whether a defendant has waived the defense of lack of standing—which itself has generated

extensive litigation—has been eliminated.

The fluid nature of the ownership of the note in each case has also fueled a vast amount of litigation concerning the evidentiary standards required for demonstrating such ownership. The seemingly simple task of proving that the plaintiff is the owner or holder of the note forming the basis of the action, as well as of establishing the default on the loan by the borrower, can become complicated when a representative of a loan servicer relies upon records maintained by another entity to establish essential facts, thus testing the limits of familiar concepts such as the business records exception to the hearsay rule.

In addition to requiring a renewed focus on established legal principles, the mortgage foreclosure crisis has introduced new legal issues that our court is called upon to resolve. In an effort to combat predatory lending practices and protect home-

owners from the harsh effects of foreclosure, the Legislature has enacted a variety of statutes requiring, for example, that lenders provide certain notices to borrowers. In a large percentage of the mortgage foreclosure appeals brought before our court, the proper interpretation or application of one or more of these statutes is at issue.

Although modern methods of packaging and processing mortgage loans has made those loans much less individualized, at least from the lender's perspective, each lender is entitled to enforce its legal rights, and each borrower is entitled to due process and the full protection of the law in seeking to avoid foreclosure. Our court's obligation in mortgage foreclosure matters, as it is in every type of case, is to devote its full attention to the issues, and to achieve a just result in each and every case that comes before us. Despite the challenges presented by our staggering caseload, which have certainly been exacerbated

by the mortgage foreclosure crisis, our dedicated Justices and non-judicial staff continue to rise to the occasion and remain consistently and conscientiously focused on resolving every matter that comes before us in a timely and thoughtful manner.

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# Acosta

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willingness and ability to improve, that we can make a hard-edged, realistic assessment of our flaws and take concrete steps to address them. For in a crisis, we can forge opportunities.

What gives me such hope? Our resourcefulness, for one. We have all marveled at the way in which the scientific community rallied to the cause and developed vaccines in record time. In my corner of the world, where I preside over the Appellate Division, First Department, we cannot lay claim to anything that momentous. But I was impressed by how well our judges, our staff, and the lawyers who appear in our court adapted to the new reality that was thrust upon us last March. When the COVID-19 crisis began and in-person appearances at the First Department were no longer safe, we expeditiously switched to a virtual court model, conducting oral arguments, pre-argument settlement conferences, and admission ceremonies remotely. Although I miss the personal contact with my colleagues and counsel, virtual arguments have proven quite successful. And while many challenges remain, particularly given the attrition in our judicial ranks that has required us to reduce the number of oral argument sessions to two or three per week, I would not be surprised if there is significant interest in continuing

with virtual arguments after the pandemic is over.

Regarding innovation in the courts more generally, last June, Chief Judge Janet DiFiore appointed a Commission to Reimagine the Future of New York's Courts and asked me to chair its Appellate Practice Working Group. We released our initial report last month. New York State Unified Court System, Commission to Reimagine the Future of New York's Courts, Initial Report of the Working Group on Appellate Practice (December 2020). Towards the goal of our top priority, which is the establishment of a robust and uniform technological infrastructure for the appellate courts, the Working Group's key proposals include creation and rollout of a single appellate case-management system for the Court of Appeals and the four Departments of the Appellate Division; enhanced technology training for appellate justices and staff; development and implementation of best practices on the use of technology; and the combination and coordination of virtual and in-person operations to allow easy transition to in-person operations and vice versa as needed amid the pandemic and beyond. Moving forward, the Working Group plans to assess what substantive changes to appellate practice might benefit attorneys and litigants, and how to ensure that pro se litigants are not left behind as we increase the use of technology in our public-facing operations. While the courts have long been focused on improving

their technological capabilities, things have not always moved as quickly as they should; yet the pandemic crisis pushed that goal to the forefront, and we are making great strides.

This year also brought a renewed focus to the persistent issues of racism, which pervade all segments of our society. The killing of George Floyd sent shockwaves throughout the world. It was, tragically, one of many police killings of people of color. However, it triggered a new awareness and a greater sense of urgency to reexamine the existence of explicit and implicit racism in our country, both symbolic and substantive. Sports teams changed offensive names, and states removed confederate flags and monuments, all symbolic actions that told the world that we may finally realize in this country that it is way past time to stop being complicit by ignoring the obvious.

Substantively, the movement that grew out of the killing of Mr. Floyd led Chief Judge DiFiore to commission an independent evaluation of New York State Courts' policies, practices, and programs as they relate to issues of racial and other forms of bias. The evaluation, led by former U.S. Secretary of Homeland Security Jeh Johnson in his role as Special Adviser on Equal Justice in the Courts, provided a sober assessment of the problems that persist. He reported that "this is a moment that demands a strong and pronounced rededication to equal justice under law by the New

York State court system." New York State Unified Court System, Report from the Special Adviser on Equal Justice in the New York State Courts (Oct. 1, 2020) [hereinafter Special Adviser Report]. Secretary Johnson emphasized that there must be "a commitment from the top" to embrace a policy of zero tolerance for racial discrimination and, to that end, Chief Judge DiFiore has ordered implementation of his recommendations, including "[m]andating comprehensive bias training for all judges and court staff on issues of implicit bias and cultural sensitivity, ... strengthening policies and procedures for investigating complaints of racial bias and discrimination, ... eliminating barriers to diversity in the areas of recruitment and outreach, ... [and] [e]nhancing trust between our Court Officers and our litigants and communities of color." New York State Unified Court System, Letter from Chief Judge Janet DiFiore to court system staff (Oct. 29, 2020).

At the First Department, eager to get a head start on addressing many of these issues, I asked Justice Dianne T. Renwick to chair a new Committee on Bias in the Courts, which is composed of judges and non-judicial staff from the Court and our auxiliary agencies. I am proud to say that the work of the Committee is already underway. For example, the Committee is planning trainings on implicit bias and similar issues for judicial and non-judicial staff alike, developing an annual staff survey on diversity and inclusion matters,

reviewing our hiring processes and internal policies on reporting and addressing workplace discrimination, and evaluating whether the court's historical artwork and architecture ought to be contextualized to further inclusivity and the cause of justice.

It is troubling that some of the problems that Secretary Johnson identified in 2020 had previously been reported in 1991 by the New York State Judicial Commission on Minorities, appointed by then-Chief Judge Sol Wachtler. Special Adviser Report, *supra* at 3, 27. Some may ask, so why will this time be any different? My answer is simple. This time will be different because it has to be, and because our judiciary is far more diverse today than it was in 1991. See Rolando T. Acosta, Court Consolidation: An Opportunity to Increase Judicial Diversity, NYLJ, Jan. 24, 2020. As I have previously written, a judiciary that reflects the makeup of the citizenry lends credibility to a system that has far too often failed to achieve justice for marginalized groups. The integrity of the judiciary is as important today as it has ever been and, fortunately, there are now more stakeholders involved who are motivated to achieve equal justice for all.

Courts are where rights are delineated, where justice is administered, where evidence and truth prevail over empty rhetoric. Recently, we witnessed an alarming capacity for millions of Americans to be convinced of a supposed fraud even though the repeated claims of fraud were not

based in reality or truth but were instead cynically made for political gain. Disturbingly, many in our country are attempting to blur the line between fact and opinion. But the truth is, there are no "alternative facts." If there were, for example, the same Yankees' game could be shown on two television networks and two sets of viewers could reach different conclusions as to who won and who lost. It has never been clearer that preservation of our government requires trust, truth, vigilance and courage. Thankfully, courts across this country stood as a bulwark against an onslaught of baseless attacks on the electoral process, deciding each case not on the rhetoric but on the facts, and, in so doing, upheld the rule of law.

Nevertheless, confidence in our courts and our democracy is eroded by pervasive falsehoods, systemic racism, and unequal treatment. We must be committed to seeing the opportunity that lies within every crisis and making the changes that are sorely needed. Commission recommendations are like a vaccine; they only help if you inject them into the system. Still, I fervently believe there are enough earnest people of good will and intention to solve our biggest problems and restore our fellow citizens' faith in our institutions. "Change will not come if we wait for some other person or if we wait for some other time. We are the ones we've been waiting for. We are the change that we seek." Transcript, Barack Obama's Feb. 5 Speech, NY Times, Feb. 5, 2008.

# Garry

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response to this pandemic, we have seen our court leaders and workforce quickly embrace and refine new ways of doing business to ensure that we are able to carry on with our work. The widespread use of virtual court formats is one of the best examples, as well as changes related to remote work, and of course enacting new protocols designed to protect the health and safety of our workforce and the people we serve. As we continue to hunker down and brace for what we hope to be the final months of this pandemic, this crisis provides an opportunity to reflect on our incredible capacity for change and some of the issues that have come into such sharp focus during this time, to consider the ways in which our ability to adapt and improve might be applied in other areas of our work, and to prepare and plan to build back better.

Although it is disturbing, it is sadly not surprising that during challenging times, historically marginalized communities suffer at disproportionately elevated rates. It is well documented that the direct effects of COVID-19 have hit communities of color particularly hard. The Centers for Disease Con-

trol have identified inequities that put people of color at higher risk, including institutional discrimination in healthcare, housing, education, criminal justice and finance, as well as healthcare access, occupational circumstances and income gaps (Centers for Disease Control and Prevention, Health Equity Considerations & Racial & Ethnic Minority Groups [July 24, 2020]). In addition, studies have shown the incidence of COVID-19 cases in tribal communities at rates as high as 3.5 times that of non-Hispanic whites (Centers for Disease Control and Prevention, Press Release, CDC Data Show Disproportionate COVID-19 Impact in American Indian/Alaska Native Populations [Aug. 19, 2020]). The indirect effects of the pandemic and associated economic impacts are also borne disproportionately by Black and Hispanic households, which are more likely to have lost income and housing as a result of COVID-19 (Sharon Cornelissen & Alexander Hermann, A Triple Pandemic? The Economic Impacts of COVID-19 Disproportionately Affect Black and Hispanic Households [July 7, 2020]). In addition, studies demonstrate that women have been disproportionately affected by the economic downturn and more severely affected by the unique circumstances of

this crisis than in previous recessions (Titan Alon, et al., National Bureau of Economic Research Working Paper Series, The Impact of COVID-19 on Gender Equality). And even for those who have not lost income, people of color, women, and LGBTQ+ individuals in the workforce have reported challenges such as mental health struggles, difficulty keeping up with their workload, feelings of isolation and fear of lost opportunities at disproportionate rates (Kweilin Ellingrud, et al., Diverse Employees Are Struggling the Most During COVID-19—Here's How Companies Can Respond [Nov. 17, 2020]). These are just a few illustrations of the disparate impact of this crisis upon underrepresented communities and populations.

As the COVID crisis has so acutely displayed the unjust impact of historical inequities, we have also seen a new wave of demonstrations seeking racial equality in law enforcement and the justice system. Last summer, Chief Judge Janet DiFiore appointed former U.S. Secretary of Homeland Security Jeh Johnson to review court system policies and practices and make recommendations to improve equal justice in our courts. Secretary Johnson issued his report in October. The report took a necessarily hard look at the

status quo, and did not blanch at presenting some difficult findings. Secretary Johnson also made a number of important recommendations, including a renewed commitment from the top to a policy of zero tolerance for discrimination and bias, as well as the promotion of existing resources, such as the Franklin H. Williams Commission on Racial and Ethnic Fairness in the Courts and the court system's Office of Diversity and Inclusion, as well as additional bias training, improved diversity and inclusion practices in human resources, clearer policies and more robust investigative and enforcement mechanisms, among many other reforms. The Chief Judge has demonstrated her commitment to following through in this area by charging the Equal Justice in Courts Initiative—led by Deputy Chief Administrative Judge Edwina G. Mendelson, who also leads the Court System's Office for Justice Initiatives—to implement the recommendations of the report. Chief Judge DiFiore has also appointed Alphonso David, former counsel to the Governor and current President of the Human Rights Campaign, as an independent monitor to report on the court system's progress.

Confronting racism and inequality in our society, our workplaces

and in our courts is, of course, a substantial and multi-faceted undertaking. But there is no doubt that we must tackle these difficult issues, and there is likewise no doubt that we are capable of doing what we must to bring about a more just court system and society. The implementation of Secretary Johnson's recommendations will require commitment and cooperation by court system leadership and judicial and nonjudicial public servants at every level. It is more important now than ever that we reiterate our commitment to this work. Although the current crisis and the looming economic impact of the pandemic may threaten to distract us, COVID-19 has sharply magnified the very reasons why we must remain steadfast in our commitment to doing all we can to improve equal justice. It has also shown us that our institutions can be creative, flexible and capable of operating in new and innovative ways. The pandemic, and this crisis, will end. This time is an opportunity to move beyond the old normal—a "normal" which has been unfair and dysfunctional for so many in our communities—to a more just future. As a court leader and member of our Administrative Board, I reiterate my own commitment to this important work. The hard

look taken by Secretary Johnson and the meaningful accountability built into the process justify my confidence that we will accelerate our progress toward racial justice, and I look forward to continuing to take part in and support these efforts in the months and years to come as we step across the threshold into 2021.

# Werbin

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Despite the many accomplishments of our Section, we were deeply saddened by the loss of our long-time Executive Committee member and former Chair, Judith Bresler, one of the leading art law experts in the country. In her honor and to preserve her memory, we've re-named our annual law school writing scholarship competition the Phil Cowan-Judith Bresler Memorial Scholarship, a project that was dear to Judith's heart and to which she devoted herself tirelessly each year. We look forward to recognizing two winning scholarship students at our annual meeting and continuing to serve the legal needs of the myriad communities that make up our Section's diverse base.

# Whalen

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been done. Now, although I do not believe COVID-19 has impacted the deliberative process, there is no dispute that it has dramatically altered the procedure by which matters are heard. On this issue, there is no useful precedent for our current factual circumstances.

The resolution of our procedural problems is found in the heart of the courts themselves. When we discuss our judicial system, we often focus on its most visible facet—the judges presiding over trials and the attorneys presenting arguments on behalf of their clients. But black robes and tailored suits are only the tip of the iceberg. For those individuals described above, the front line of judicial protection is and has always been the court employees who engage directly with the pub-

lic. It is the clerks, court officers, victim advocates, probation officers, judicial assistants, translators, and others who ensure that access to the judicial system is indeed meaningful. In the Fourth Department in particular, it is the shipping department that allows our court, spread throughout 22 counties across Western New York, to operate as a single unit.

There is no denying the essential nature of the work being done by our court employees or that they are in fact the heart of our system. Prior to the pandemic our court employees would engage directly with the people we serve, see them up close, look in their eyes and see their pain. Daily our staff would be reminded in a very personal way of the valuable service our courts provide to the citizens of our great state. Now, they have adjusted and are continuing to adjust and find new ways of ensuring that this level of personal service persists

and judicial protection continues unabated. Some employees shifted to working from home in order to lessen the density in our buildings, continuing to produce quality work despite the inconveniences and distractions that can come with a home office. Not all of the court's operations can be handled remotely, however, and many of our employees still perform their duties in the courthouse all or part of the time. Our court officers continue to protect our courthouses and ensure that the public and court staff are working in a safe environment. They fulfill this duty while adhering to all the safety protocols, including wearing masks, standing behind shields, constantly washing their hands, and sanitizing all points of contact. Similarly, our court secretaries, law clerks, and other staff routinely engage the members of the legal communities, their clients, and the public generally. While many of these

interactions now happen virtually or by phone, I am proud of the personal touch and compassion that our court employees continue to demonstrate.

All of our court employees stepped up to find the needed solutions and make the necessary changes happen. Further, they did not just merely keep the lights on, but moved court operations forward. The transition from primarily paper pleadings and documents to digital filings was just one of the innovations that had been long discussed but never fully implemented until the pandemic forced the issue. In order to protect parties, witnesses, and our staff from exposure to COVID-19, we moved some proceedings from in person court appearances to virtual. The shift to hearing cases on a virtual platform is a dramatic change in the way our judges and staff perform their duties and one which required our technology staff to

create a digital environment in which we could safely work. How do you run a hearing with witnesses, lawyers, court staff and judges all on computer screens? Hundreds if not thousands of hurdles had to be crossed before we had a fully functioning platform. Our technology staff tackled these issues and delivered in record time, not just meeting but exceeding expectations. Our court staff retrained to adjust to this new environment, as did our judges. All of our dedicated court employees answered the call and did so with enthusiasm.

There needs to be light and hope that a remedy is available when an injustice has been experienced. Without the possibility of a remedy those in need experience hopelessness and despair. The challenges posed by the pandemic have been substantial, but our court staff have stepped up to provide that light and hope. And for that, I thank them.

# Masters

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ments and a gradual return to the criminal justice system to which we have all devoted so much of our careers, and thereby made it the envy of the world. Criticizing the decisions and the pace of our return to normal will remain a daily temptation—one to which we should not surrender—lest we damage the confidence in the very functioning of our government by our dependent public.

And that can only be accomplished by a shared resolve for all practitioners—whether private or public defenders, state or local prosecutors, judges, court staff, as well as all of law enforcement—to make the commitments and sacrifices—as yet unidentified—necessary for us to provide justice for all.

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