

NYSBA Annual Meeting

January 18-28 | A Two-Week Virtual Conference

Equal Justice Requires Simplification Of the New York State Courts



Janet DiFiore
Chief Judge
State of New York

Over the last 22 months, the Bench and Bar have traveled a long and arduous road together. We have transformed and reinvented the ways in which we deliver our services in order to safely manage our workloads and ensure access to justice for all New Yorkers. In the New York State Courts, we have established a productive “new normal” that relies on our hybrid model of in-person and virtual court operations to deliver justice services to lawyers and litigants during the ongoing public health crisis. Furthermore, our court system has led the State in implementing important COVID preventative policies, such as the mandatory vaccination program for all judges and court staff that took effect last September. As a result, our court system is well-positioned to meet the evolving challenges of the pandemic and resume the forward progress of the “Excellence Initiative.”

Notwithstanding the relentless day-to-day operational pressures of the pandemic, our judges, staff and court leaders have never stopped working to improve the administration of justice, including working to eliminate systemic racism and bias from the courts. In June 2020, following the killing of George Floyd, a watershed moment on issues of race in our nation, I asked Jeh Johnson, a prominent New York attorney and former U.S. Secretary of Homeland Security, to conduct an independent, no-holds barred review of our court system’s policies and

practices as they relate to issues of racism, bias and disparate treatment.

After conducting a rigorous four-month study, Secretary Johnson promptly issued a comprehensive report in October that commended our judges and staff for their commitment to equal justice but identified significant problems in need of attention and reform, including the “second-class” treatment of people of color in our high-volume courts, instances of racial intolerance within our court family and the need for greater diversity and inclusion.

We wasted no time in embracing and implementing Secretary Johnson’s report and recommendations. This past November, we issued a “Year in Review Report” documenting the extensive progress we have made to operationalize dozens of equal justice reforms—starting with the public commitment I have made, on behalf of our entire court system, to achieve a policy of “zero tolerance” for racial bias and discrimination, as well as mandated comprehensive racial bias training for all judges and nonjudicial staff, and many more. Equal Justice in the New York State Courts Year in Review: 2020-2021, November 2021.

Stated simply, we are working tirelessly to address every single one of the equal justice challenges that we have the power to remedy. However, as Secretary Johnson aptly recognized, some of these challenges are so extensive and systemic in nature that » Page 11



Continued Pursuit Of Excellence in a Time of Uncertainty



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

The past 22 months have brought great upheaval to our national and state economies, our personal and professional lives and, of course, the operations of the New York State Unified Court System—one of the largest, busiest and most complex court systems in the world, with over 3,000 state and local judges and 15,000 nonjudicial staff handling close to three million new case filings each year in 300-plus court locations across the state.

At the outset of the pandemic, our court system was com-

pelled to reinvent itself nearly overnight as we adopted and then mastered the use of virtual technology in order to safely manage our dockets and ensure access to justice in the broadest range of cases. Our judges and staff deserve great credit for this remarkable transformation, and for working to implement extensive and necessary health and safety measures in our courthouses. Our court system was among the first public institutions in the state to adopt mandatory » Page 13

The Tree of Democracy Requires the Sunlight Of Service



Rolando T. Acosta
Presiding Justice
Appellate Division,
First Department

There has been much discussion of late about whether our democracy is in decline. It is a valid and pressing question. Battered by discord, distrust, and disaffection, our collective faith and common bonds have been put to the test. Recent developments and disinformation have raised doubts about the fairness, integrity, and effectiveness of our democratic institutions. These concerns are heightened by those who fan the flames of polarization for political gain; who shamelessly sow unfounded doubts about the reliability of our electoral processes; and who, in the grip of a pandemic and an existential climate crisis, choose to weaponize science fiction over science—all to our great peril. These fraught and fractious times might tempt some to turn their backs on “the system” as corrupt or dysfunctional or broken beyond repair. Just the opposite reaction is required, however.

Thomas Jefferson famously observed in 1787 that “[t]he tree of liberty must be refreshed from time to time with the blood of patriots and tyrants” » Page 14

ability of our electoral processes; and who, in the grip of a pandemic and an existential climate crisis, choose to weaponize science fiction over science—all to our great peril. These fraught and fractious times might tempt some to turn their backs on “the system” as corrupt or dysfunctional or broken beyond repair. Just the opposite reaction is required, however.

Thomas Jefferson famously observed in 1787 that “[t]he tree of liberty must be refreshed from time to time with the blood of patriots and tyrants” » Page 14

Exploring the Many Benefits of E-Filing



Hector D. LaSalle
Presiding Justice
Appellate Division,
Second Department

Over the past two decades, electronic filing of court submissions has become increasingly utilized and made mandatory in courts throughout the state and nation. Electronic filing in the Appellate Division, Second Department, began in 2018 with cases originating in Westchester County. The program was gradually expanded over the course of three years until Kings County, the last and most populous county, was added effective April 1, 2021. Since that date, except for certain exempt

attorneys and litigants, electronic filing of briefs, records, and motions has been mandatory in all matters originating and electronically filed in the Supreme and Surrogate’s Courts in the 10 counties within the Second Department.

When a notice of appeal is filed in a matter that is subject to mandatory electronic filing, counsel for the appellant has 14 days to register with New York State Court Electronic Filing (NYSCEF) system or confirm a pre-existing registration and to » Page 12

Patience, Perseverance, And Progress



Elizabeth A. Garry
Presiding Justice
Appellate Division,
Third Department

Last year, in this special section of the Law Journal, many contributors—myself included—reflected upon our position at that time, having weathered unprecedented tumult and tragedy, while taking in the lessons of the pandemic with hope that we were standing at the threshold of positive change. We are not exactly where we had hoped or expected one year later; however, as a legal community we have continued to press onward, seizing every opportunity to learn and improve. Thanks to the commit-

ment and ingenuity of the people who make up our justice system, we have not only persevered, but also begun to lay the foundation for a more efficient, sustainable, and just future for the judiciary.

This April will mark 50 years since the Third Department moved into our courtroom in the Abrams Building for Law and Justice in Albany. There is a plaque outside of the courtroom bearing a quotation from Governor Nelson A. Rockefeller, who delivered remarks at the original dedication ceremony in 1972: » Page 15

A Link to the Past, a Bridge to the Future



Gerald J. Whalen
Presiding Justice
Appellate Division,
Fourth Department

We often greet the beginning of a new year by noting and celebrating certain landmarks from the year prior: the best movies, top television shows, or highest selling albums. It may feel tempting to expand this type of exercise to the legal field, naming the most newsworthy accomplishments or changes in the law, perhaps the largest awards of civil damages, the most infamous criminal cases, or the most important precedents upheld (or overturned) in 2021. I make this comparison not to make light of the law but to point out

how it differs from media or pop culture—it cannot be simply categorized by what is most popular or what is most commonly known and appreciated by the public.

The Fourth Department regularly issues decisions and opinions, many of which will be reported on by local and sometimes national media. The press often takes an interest in what they see as a novel or unusual decision, which is therefore deemed worthy of additional attention or scrutiny. Such cases may involve unusually large damages awards » Page 15

Inside

Law as a Tool for Social Change by T. Andrew Brown 10	We Must Unite To Restore Access to Justice by David Louis Cohen 11	Striving Toward a More Just Profession by Christopher R. Riano 12	New Lawyers Will Need To Be Proficient
Impacts of Mental Illness on the Attorney Client Relationship by Sherry Levin Wallach 10	Protecting the Most Vulnerable During the Pandemic by Deepankar Mukerji 11	Reimagining Access to Government by Michael Kenneally 12	Handling Emerging Technology by William S. Friedlander 13
The State of New York Business Law by Thomas M. Pitegoff 10	Oyez, Oyez, Can You Hear Me Now? by Sarah Gold 12	CLEs Will Address Safety, Leasing And More by Michelle H. Wildgrube 13	Lessons in Good Leadership by Sheryl B. Galler 14
Forging Global Relationships and Forging Ahead on Crucial Issues by Edward Lenci 10	Access to Justice: During, and After, The Pandemic by Hon. Denise Hartman 12	At the Forefront of Uniform Rules Updates And Other Pressing Issues by Michael O'Brien 13	Gleaning Something Positive Out of the Pandemic by Anne LaBarbera 14

Law as a Tool for Social Change



T. Andrew Brown

President
New York State Bar Association

At a time when the furor caused by the murder of George Floyd and the Black Lives Matter protests that followed appears to be waning, it is now up to lawyers to pick up that mantle and challenge

the laws that reinforce systemic racism in our society. After all, it is and has always been the lawyer's job to fight for "equal justice under law." In his dissent to *Richardson v. Ramirez*,

a 1974 case in which the Supreme Court held that convicted felons do not have the right to vote, celebrated Supreme Court Justice Thurgood Marshall championed our evolving system of laws. "The process of democracy is one of change," he wrote.

Marshall is, of course, best known for his success arguing against segregation. His victory did not exist in a theoretical sense; it was not something that only mattered to scholars. No, his victory changed the way Black Americans conducted their day-to-day lives. No more

separate but equal. No more sitting at the back of the bus. And while that change was not as final as it should have been and not as widely felt as many would have liked, it was undeniably critical.

The spirit of an ever-evolving system of laws was present in 2015 during *Obergefell v. Hodges*—a case that saw Mary Bonauto, Douglas Hallward-Driemeier and U.S. Solicitor General Donald B. Verrilli successfully argue before the Supreme Court that the Fourteenth Amendment requires states to provide marriage equality for all.

Or look back to 1967 at *Loving v. Virginia* when Bernard Cohen successfully argued that anti-miscegenation laws were uncon-

stitutional, leading the court to nullify those laws in more than a dozen states.

Unlike Marshall, some of these lawyers had not dedicated their careers to effecting change before being thrust into the role of change agent.

Cohen was a few years out of law school and volunteering at the American Civil Liberties Union when he was asked if he would take on the case of Richard and Mildred Loving. Mildred, who was Black and Native American, married Richard, who was white and lived in Washington D.C. When they returned to Virginia, they were arrested, jailed, and banned from the state for 25 years under the state's "racial integrity act."

It is unlikely Cohen initially thought he would make history. But Cohen was a member of our profession, a profession that allows those with skill, passion, and integrity to not only impact the lives of clients but alter the course of justice for millions. It is not a privilege any of us should forsake.

It may be tempting to embrace and work within the status quo, and yet as champions of the law, it is our duty to continually strive to make the world a more just place and that mandate includes working to change laws that do not serve justice.

T. ANDREW BROWN is a founder and managing partner of Brown Hutchinson.

Impacts of Mental Illness on the Attorney Client Relationship



Sherry Levin Wallach

President-elect
New York State Bar Association

Our society's mental illness crisis does not exist in a vacuum, but is inextricably interwoven with the issues of racism, social equity, and the law. It is a crisis that largely impacts representation of clients and the legal system as a whole. There are too many

instances where clients suffering from diagnosed or undiagnosed mental illness are left homeless, injured or incarcerated instead of hospitalized and treated. The idea that a person needs to be in crisis before becoming eligible to receive treatment is a paradox that lawyers representing the mentally ill so often face.

The difficulty of balancing the legal best interests with the mental health needs of a client

is compounded by the lack of resources or the availability of those resources. This can be legally and emotionally devastating for a mentally ill client. Representing clients who are struggling with mental illness can also create additional stress for lawyers. Proper medical and psychological care is necessary for clients to present their best selves and resolve their legal problems.

Access to justice is an important human right. The increase in efforts to expand problem solving courts including mental health courts within the criminal justice system addresses these concerns for those charged with crime. But why must we wait to assist those suffering from mental illness until they are involved with the criminal justice system? Clients who are dealing with civil

legal issues also need this kind of help. Too often, the lack of mental health care for clients impacts the lawyer's ability to provide legal representation that is in the client's best interest.

This pandemic has brought the mental health discussion to the forefront. Through lockdowns, quarantining and constant fear of COVID-19 transmission, the strain on our health care system has increased our country's awareness of the mental health crisis. Decreases in program staffing has made it even more difficult for our already underserved mental health community. Attorneys have seen not only clients, but their own family members and colleagues suffering. Witnessing this struggle so closely creates extreme stress for lawyers as well as their clients. Unfortunately, this is

SHERRY LEVIN WALLACH is the deputy executive director of the Legal Aid Society of Westchester County.

The State of New York Business Law



Thomas M. Pitegoff

Vice Chair
Business Law Section

New York City is a thriving worldwide financial and cultural center and a draw for all kinds of businesses, and this center of gravity redounds to the benefit of the state. But do the laws of New York state contribute to the state's attraction to businesses? We know that New York law is frequently the law of choice in business agreements, that New York City is often selected as the forum for litigation or arbitration, and that businesses sometimes make these choices even when the parties have no connection with the state. This is not just because New York contract law is well developed, but also because a statute enacted in 1984 facilitates these designations (NY General Obligations Law §§5-1401 and 5-1402).

On the other hand, some factors work against New York as a business center including the high cost of establishing and operating a business in or around New York City. New York's corporate law and limited liability company law have never stood out as a draw for businesses. Delaware does a far better job at this—even though few Delaware entities locate their actual offices in Delaware.

At the New York State Bar Association's 2022 Annual Meeting, the association's Business Law Section will assess where New York stands in the competition among states for business. Would better business entity laws draw more businesses to New York? Do board diversity requirements give states a competitive edge? The section's virtual CLE program is January 19th starting at 1 p.m. will address these questions. The panel will be moderated by David Curran, co-chair of the Environmental, Social, and Governance Committee (ESG) of the BLS and co-chair of ESG Advisory Practice at Paul, Weiss, Rifkind, Wharton & Garrison. The panel will also feature Katayun Jaffari, chair of Cozen O'Connor's Corporate Governance & Securities Group; Prof. Christopher M. Bruner, of the University of Georgia School of Law; and Prof. Jens Christian Dammann, of the School of Law at The University of Texas at Austin.

Another way to bring new business to New York state is to make the state a hub for an important industry. The second panel at

the Business Law Section's program addresses the question of whether New York can become a hub for the energy industry. What steps is the state taking to develop alternative energy sources? What steps should the state take? The panel will be moderated by Paul Ghosh-Roy, LIPA assistant general counsel and chair of the BLS Energy and Climate Law Committee. The panel will also feature Prof. Michael Gerrard, of Columbia Law School; Dale Bryk, director of State & Regional Policies at Harvard Environmental & Energy Law Program; and Stacey Sublett Halliday, a principal at Beveridge & Diamond.

The third panel will discuss developments in federal and New York state antitrust law. This will include an update on President Biden's Executive Order on Competition and its likely practical effects. It will also address proposed amendments to the New York Donnelly Act. The panel will be moderated by Jay Himes, special litigation counsel to the New York Attorney General's Office and that office's former antitrust bureau chief. The panel will also feature Franco Castelli, antitrust counsel at Wachtell Lipton Rosen & Katz; Kenneth S. Reinker, an antitrust partner at Cleary Gottlieb Steen & Hamilton; Sheila R. Adams, an antitrust partner at Davis Polk & Wardwell; and Matt Stoller, director of Research at the American Economic Liberties Project.

For more information and to register for the program, go to <https://nysba.org/am2022/business-law-section/>.

THOMAS M. PITEGOFF is a principal attorney at Offit Kurman.

NYSBA ANNUAL MEETING:

Angela Turturro, Sections Editor
Monika Kozak, Design

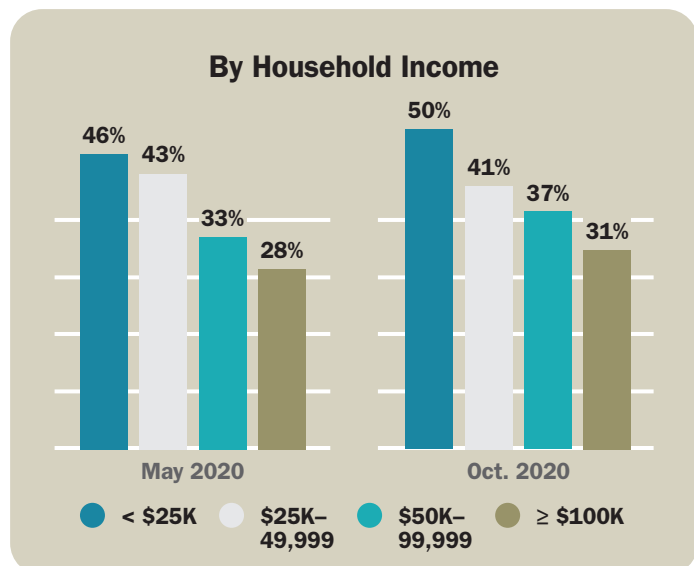
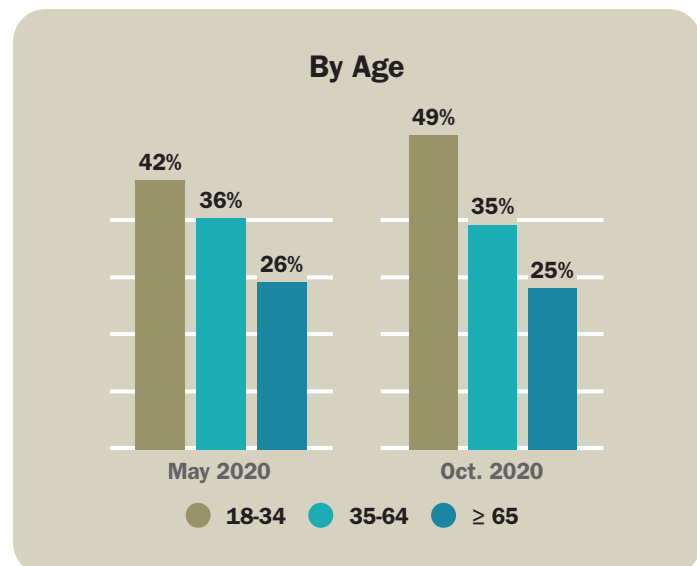
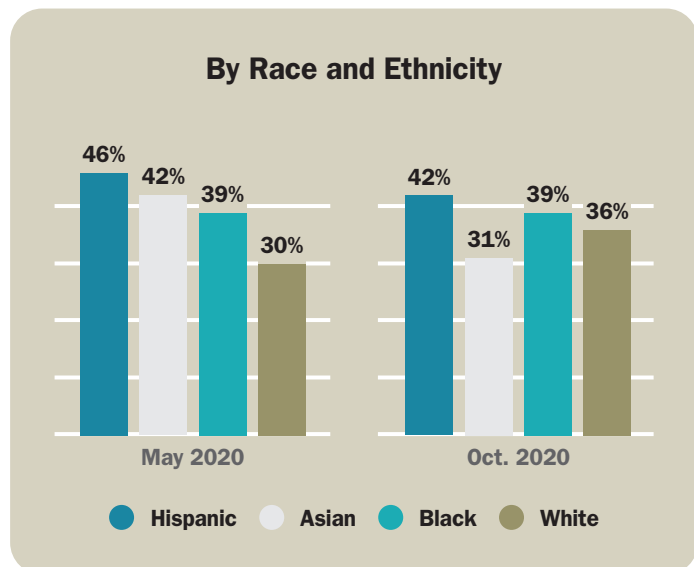
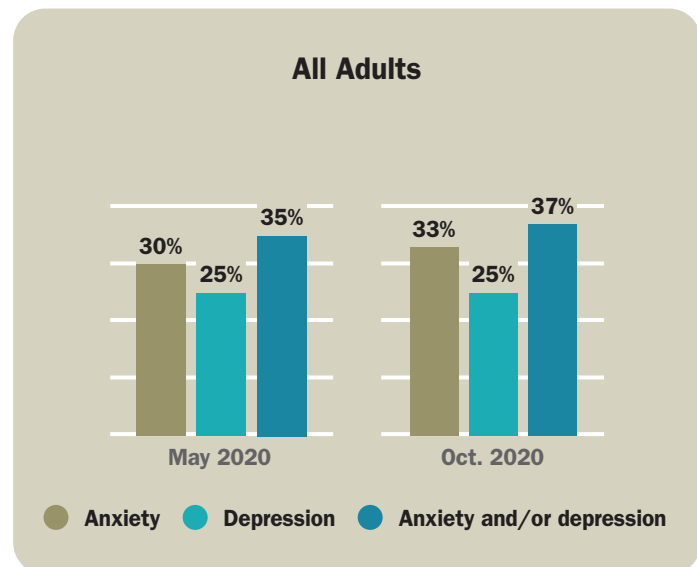


© 2022 ALM MEDIA PROPERTIES, LLC.
THE NEW YORK LAW JOURNAL® IS A REGISTERED TRADEMARK OF ALM MEDIA PROPERTIES, LLC.

Questions? Tips? Contact our news desk: editorialnylj@alm.com

Proportion of Adult New Yorkers Reporting Symptoms of Anxiety and/or Depression During COVID-19

The pandemic has taken a significant toll on the mental health of New Yorkers. In May 2020, more than one-third of adult New Yorkers reported symptoms of anxiety and/or depression. That rate is more than triple what was self-reported nationally during recent pre-pandemic periods.



SOURCE: NYSHealth analysis of U.S. Census Bureau Household Pulse Survey, in *Mental Health Impact of the Coronavirus Pandemic in New York State* (February 2021).

DESIGN: Monika Kozak/ALM

Forging Global Relationships and Forging Ahead on Crucial Issues



Edward Lenci

Chair
International Section

The International Section is NYSBA's face on the world stage. We are a large, international network of diverse lawyers, with over 70 chapters around the world, on every continent except Antarctica. Our members are thought leaders on a range of topics in private and public international law, including ESG compliance, cybersecurity and

data privacy, international litigation and arbitration, including investor-state arbitration, and international tax, trusts, and estates planning, to name just a few.

At NYSBA's Annual Meeting, the Section will feature panels on cutting-edge topics. One concerns the ESG factors that are becoming key drivers of global business

decisions as more such factors are incorporated into rules, regulations, and legislation. The moderator will be Prof. Azish Filabi, executive director of the Maguire Center for Ethics in Financial Services of the American College of Financial Services and chair-elect of the International Section. The second panel will discuss global data privacy developments and trends that emerged during 2021, including the new Personal Information Protection Law in China. The panel will also explore new laws in various jurisdictions, including Argentina and Canada, and what is ahead.

The section will also present its annual Award for Distinction in International Law and Affairs. This award recognizes a major

contribution during the year, or a career, to the global development of international law and the rule of law. The last recipient was the UN Office of Disarmament Affairs.

The section remained active in 2020, became more so in 2021, and will forge ahead in 2022. Its greatest achievement in 2021 was the entry into cooperation agreements with five foreign bar associations, namely, the Milan Bar Association, the Osaka Bar Association, the Philippine Bar Association, the Georgia Bar Association, and the Ukrainian Bar Association. Called a memorandum of understanding, or MOU, each agreement serves as a bridge between the bar associations by promoting understanding and cooperation between them

and offering benefits and opportunities for each other's members, including meetings, webinars, and publications.

The section has a long-standing commitment to diversity, equity, and inclusion. In 2021, the section amended its by-laws to expressly prioritize the advancement of diversity, equity, and inclusion. The by-laws now include the appointment of two diversity officers to the section's already diverse leadership. In June, the section's Japan Chapter and NYSBA's new LGBTQ+ Section teamed up to celebrate Japan's Pride Day. The section also champions human rights and the rule of law around the world. For example, in recent months the section formed a task force to aid

Afghan refugees; through the task force, attorneys receive training in handling refugee cases and case assignments.

For decades before the pandemic, the section had held two conferences a year outside the United States. Our last conference was in Tokyo, in November 2019. We hope to continue that tradition in 2022, starting with a European regional conference in Madrid in late April 2022, a global conference in London the following November, and another global conference in Mexico the following year. We hope to see you in person at these conferences!

EDWARD LENCI is a partner in the New York office of Hinshaw & Culbertson.

We Must Unite To Restore Access To Justice



David Louis Cohen
Chair
Criminal Justice Section

For all of us who practice in the criminal legal system, this year has been one of immense challenges as we sought, in a virtual world, to provide access to justice for both the accused and the victims of crime.

The backlog in the criminal courts has grown to levels that were unacceptable pre-pandemic. This was caused by the inability to conduct more than a handful of jury trials coupled with long overdue changes in criminal discovery. Thousands of accused individuals remain in custody awaiting trial for very long times. Who has not heard of the crisis on Rikers Island and the deplorable conditions faced by those incarcerated? The court system must erase this backlog by prioritizing trials for those in custody rather than the crimes alleged.

An in-custody trial must always have priority over a case with a defendant who has been released. This is the least that we can do to eliminate the lengthy pre-trial backlog that exists. However, without the ability to conduct trials, most serious cases will languish until the courts can resume full-scale operations.

The court system did an amazing job of creating a virtual system that allowed for certain calendars to be called, conferences conducted, and, in some cases, dispositions reached. The institution of electronic filing of motions and other pleadings in the criminal courts, as has been done in civil matters for many years, was a major improvement spurred by the closing of courthouses. In-person arraignments are back,

and a limited number of in-person appearances for pre-trial hearings have been scheduled. However, as we all know too well, without the jury panel outside the courtroom door, cases do not get resolved and the backlog continues to grow.

Assigned counsel and lawyers who maintain a private criminal defense practice have suffered significant economic hardship due to the inability to go to court to provide representation for their clients. Most criminal defense lawyers, other than those employed by institutional providers, work as solo practitioners or in small firms. This is especially true in the rural areas of our state.

Many of our section members rely on court assignments and previously they weren't paid until the case was completed. With pandemic delays, cases were not ending, and these lawyers were not getting paid for their work. When this issue was brought to the attention of those in charge of the courts, they responded and developed a system for regularly approving interim vouchers, thus enabling counsel to be paid as the work was performed.

As in our section, all participants in the criminal legal system must work together to find solutions to the systemic problems caused by the pandemic. Once the pandemic is behind us, it will take a unified effort from all sides to restore the system's ability to render justice to all.

DAVID LOUIS COHEN is the principal attorney of the Law Office of David Louis Cohen.

Protecting the Most Vulnerable During the Pandemic



Deepankar Mukerji
Chair
Elder Law and
Special Needs Section

As we face yet another frightening wave of contagion and illness, it becomes more a part of our ongoing reality. The attorneys in Elder Law and Special Needs Section are acutely aware of the effects of this pandemic, as we are often on the front lines in working with the frailest, the most susceptible to the virus, and the most likely to be hospitalized. We have gone from struggling to reach out to our clients, to working with them in a virtual world, and now are running out of resources to keep them safe.

Perhaps at the forefront of our response to the pandemic has been the creation of a Committee

on Long Term Care Facility Reform. This group was formed when we became aware the devastating effects of the pandemic on residents of nursing homes and other congregate care settings. With a large number of active members, this energized Committee has worked to advocate for much-needed legislation, such as the essential visitation bill, which has become law, and the safe staffing law, which sets minimum staffing levels for nursing homes. However, the work of the Committee goes well beyond legislative advocacy, and includes outreach, and development of resource materials. This year, they are looking to focus on enforcement of the laws and rules to ensure that facilities are implementing the new procedures and also are continuing to

» Page 14

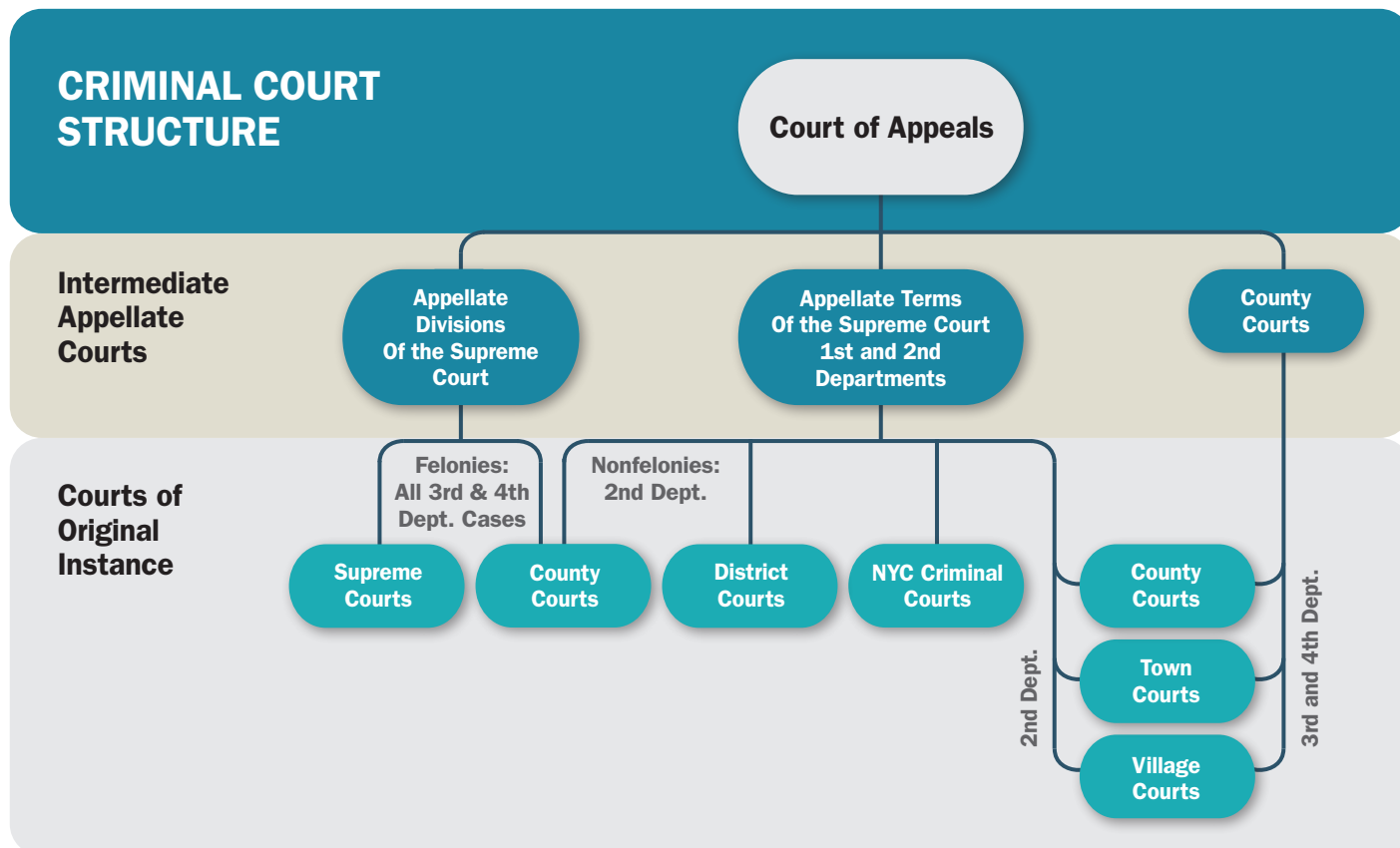
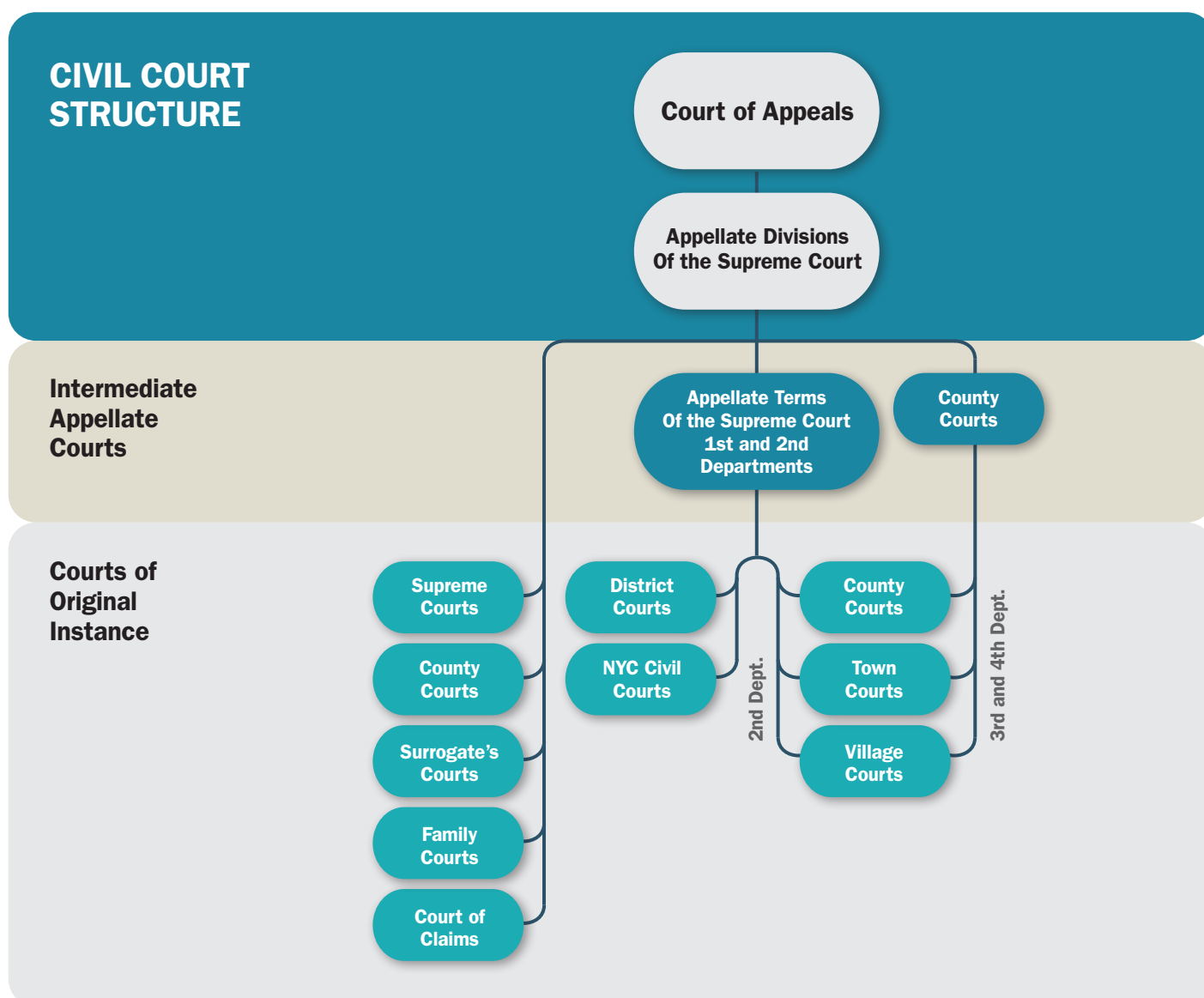
DEEPANKAR MUKERJI is an attorney at Deepankar Mukerji, PLLC.



Deaths among Medicare patients in nursing homes soared during the COVID-19 pandemic. In response, NYSBA created a Committee on Long-Term Care Facility Reform to advocate for the essential visitation bill, and the safe staffing law.

Current Structure of the New York State Courts

New York has the most outdated, convoluted and inefficient trial court structure in the nation—a confusing conglomeration of 11 separate trial courts, each with its own jurisdiction and procedure, that has not been meaningfully updated since 1962.



SOURCE: New York State Unified Court System

DESIGN: Monika Kozak/ALM

DiFiore

« Continued from page 9

the judicial branch alone does not have the power to make the necessary changes. Rather, it will take the coordinated efforts and support of all three branches of government to fix the “dehumanizing” conditions in our “under-resourced” and “over-burdened” family, civil and criminal courts—conditions that create the perception of a “second-class system of justice” for the low-income, unrepresented litigants of color who predominantly appear in those courts. Report from the Special Adviser on Equal Justice in the New York State Courts, Oct. 1, 2020, at pp. 54-55.

Many factors undoubtedly contribute to the appearance (if not the reality) that there are two justice systems at work in our state, but there is one factor that stands out above all the others. New York has the most outdated, convoluted and inefficient trial court structure in the nation—a confusing conglomeration of 11 separate trial courts, each with its own jurisdiction and procedure, that has not been meaningfully updated since 1962.

The rigid, antiquated barriers separating the trial courts in our so-called “Unified Court System” severely restrict our ability to flexibly and rationally manage and assign people and resources among the different trial courts in order to meet the demonstrated needs of our litigants. The result is that one or more courts in our system may be struggling with backlogs and delays while other courts down the street may be underutilized by comparison. This system creates obvious disparities in the provision and quality of justice services, and these disparities continue to be most apparent in the over-burdened high-volume courts that serve low-income litigants, including unrepresented litigants of color.

Some of the most egregious consequences of our fragmented court structure fall on the most vulnerable families who are forced to pursue related legal issues (divorce, child custody and support, domestic violence) before different judges in multiple courts (Supreme Court, Family Court, Criminal Court), leading to more court appearances, more lost workdays, more childcare and transportation expenses, more stress and frustration—and less trust and confidence in the courts and the justice system.

A recent op-ed by three respected, experienced justice system leaders described how the disparities inherent in this “wasteful and balkanized” system were greatly exacerbated during the pandemic, resulting in “radically different experiences for litigants depending on their racial, economic and geographic backgrounds.” Edwina Mendelson, Ronald Richter and Juanita Bing Newton, “Finally Bring Order to N.Y. Courts,” Daily News, Nov. 16, 2021.

These systemic disparities are deeply troubling and unacceptable. It is up to us in the Bench and Bar to lead the way in making certain that our partners in state government, and the public we serve, understand the urgent need for court reform and simplification.

During the 2022 Legislative Session the Judiciary will submit to the Legislature a proposal to amend Article VI of the New York State Constitution which, in the broadest strokes, will create a simple, modern, equitably-structured court system consisting of: (1) a single statewide Supreme Court into which the Court of Claims, County Court, Family Court and Surrogate's Court will be merged; (2) a single statewide Municipal Court replacing the New York City Civil and Criminal Courts, Nassau and Suffolk District Courts and 61 upstate City Courts; and (3) the

Town and Village Justice Courts, which will not be affected by our proposal. The proposal will also lift the long-outdated constitutional cap on the number of Supreme Court Justices and authorize the Legislature to increase the number of judges available to hear and resolve the three million-plus cases filed in our state courts each year.

We believe that we have developed a sound proposal for meaningful reform, but we welcome the input and constructive suggestions of our judicial, bar and stakeholder partners on how to remake our state courts into a model of efficiency and equity. We are grateful to Senate Majority Leader Andrea Stewart-Cousins and Assembly Speaker Carl Heastie for their consideration of our court simplification proposal. We are optimistic about gaining their support, and that of Governor Kathy Hochul, for a measure that creates a simple, easy to navigate, equitably-structured and resourced court system that is equipped to provide every litigant, in every court, with first-class justice services.

Court simplification is not a new idea. Over the last 50 years, virtually every Governor and Chief Judge has championed the need to modernize our state's super-complicated court system. However, the pandemic has brought a heightened sense of urgency to this issue, casting a harsh and revealing spotlight on how the shortcomings of our current system are felt most deeply by low-income litigants of color seeking justice services in our over-burdened and under-resourced family, housing, criminal and civil courts.

The public health crisis temporarily interrupted our progress toward achieving court simplification in the Legislature over the last two years, but it has also created a growing sense of urgency, one shared by the unprecedented coalition of more than 100 judi-

cial, bar, legal service, business and good government groups that have voiced enthusiastic support for court reform.

We look forward to working with President T. Andrew Brown, President-Elect Sherry Levin Wallach, the Board of Delegates, and every member of the State Bar on this issue that is so vital to our collective ability to meet the modern-day justice needs of all New Yorkers. For decades the State Bar Association has steadfastly supported constitutional simplification of the courts as a “matter of supreme importance to the legal profession.” Report and Recommendations Concerning Whether New Yorkers Should Approve the 2017 Ballot Question Calling for a Constitutional Convention, Committee on the New York State Constitution, April 20, 2017, at 22.

The time for action is now. In New York, the State Constitution may be amended by legislative action when two separately elected Legislatures vote to place an amendment on the ballot and the voters approve the proposed amendment at a general election. First passage in 2022, followed by second passage in 2023, coupled with a voter referendum in November 2023, would assure our ability to begin transforming and simplifying our court system as early as Jan. 1, 2025.

The people of this state cannot afford to wait any longer. For decades, the same communities have shouldered the systemic inefficiencies and disparities of a trial court structure that is frozen in the 1950s. New Yorkers need and deserve better from their leaders. New Yorkers need a simple-to-navigate, equitably-structured court system that delivers first-class justice services to every litigant in every court—regardless of who they are or where they come from in life. Let's work together to get this done. Nothing could be more important.

Oyez, Oyez, Can You Hear Me Now?



Sarah Gold

Chair
General Practice Section

As we come up on the second anniversary of the pandemic, it is time to look back at what the profession looks like now. For many, working from home is no longer a novelty, and will not be for some time to come. But the bigger issue, not only for attorneys but also for our clients is connecting to the courts and access to justice. While many people take for granted having 5G cell service and broadband connections everywhere, for many in rural and even subur-

ban communities, it is not a given that you can connect easily and quickly. Dropped calls, spotty coverage, and a lack of providers in these areas leave those with few options to connect to the larger world.

In NYSBA's Task Force on Rural Justice, the 2020 report (drafted prior to COVID-19) stated a number of shortfalls in the telecommunications infrastructure within New York state. These shortcomings spoke to a large gap in the ability for

practitioners and clients to communicate with each other and the court system, an issue that became horribly magnified in the light of court shutdowns and virtual appearances. There have been efforts made during the pandemic by the federal government to connect those left behind due to low income, and the Build Back Better bill currently mired in Congress includes \$1 billion in broadband efforts, much of which is earmarked to help with distance learning and subsidizing communications affordability programs.

New York state too has had programs to provide broadband and telecom coverage throughout the state, but all one must do is look at a mobile coverage map to see where that effort falls short. And even those who do have connections are not with-

out issues. It can be witheringly expensive for those connections, not to mention the equipment you need to use to take full advantage. A basic cell phone will only get you so far and leaves one at a grave disservice in the legal system. Add to that the inability for many town and village courts to connect with their litigants, and worse yet, the inability for those attorneys to communicate effectively with those courts in a virtual manner, this pandemic, and any other emergency like it will continue to hamstring the ability for people to seek justice of any type. There are already financial issues that people face in seeking their day in court; a lack of technology should not be a barrier as well.

SARAH GOLD is a solo practitioner of Gold Law Firm.

Access to Justice: During, and After, The Pandemic



Hon. Denise Hartman

Presiding Member
Judicial Section

The COVID-19 pandemic has presented my judicial colleagues with many challenges to our mutual mission to ensure that our courts provide meaningful access to justice for all litigants throughout the state. For much of the past two years, we've strived mightily to adapt to remote technology to continue the business of the courts. But true access to justice often requires face-to-face, in-person proceedings—where litigants and their counsel feel that they have been heard and treated as real, not virtual, people, encountering real, not virtual, problems. And it heartens me that we have been able to move slowly but surely to more in-person activities in the courthouse, as well as at bar association functions and social occasions with colleagues. To be sure, we need to take care to be as safe as we can while we increase in-person proceedings and activities, but it is imperative that we do so if we are to really hear and understand each other as we work toward resolution of issues of disagreement.

During the past two years, my judicial colleagues have employed innovative technologies that have, inarguably, furthered our mutual mission of ensuring access to justice for all. With the assistance of court administrators, dedicated clerks, technical personnel, and other court staff, we have held countless virtual case management conferences, motion arguments, evidentiary hearings, and even full bench trials to help bring legal disputes to resolution. To help litigants participate remotely in proceedings so important to them, we have established kiosks in the courthouses, and worked with community partners to establish many others at libraries and churches. Our appellate courts have similarly adapted to hear oral arguments remotely. And in both trial and appellate courts, we have begun streaming proceedings in real time to ensure the public's constitutional right of access to observe our courts at work.

No doubt some of these innovative methods will continue beyond the pandemic. We've learned, for example, that remote conferencing can sometimes quickly and efficiently resolve non-evidentiary issues in high volume courts for

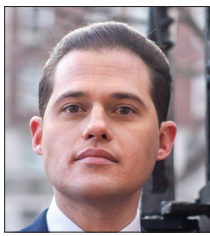
both represented and self-represented litigants. In more complex litigation, remote conferences and arguments reduce the number of hours that attorneys need to charge clients for the time and expense of travel to and from the courthouse—a savings that may be more pronounced in the more spread-out regions of our state. Given the diminishing ability of even middle-class litigants to afford legal representation, use of virtual technologies in certain kinds of proceedings provides efficiencies that can substantially enhance access to justice for many people.

But we all know that virtual court proceedings cannot in the long-term provide meaningful access to justice for all litigants in all cases. We have, during these past few months, successfully worked through obstacles to hold more in-person jury trials, using social distancing protocols recommended by scientific experts to make them as safe as possible. More in-person appearances are needed. In our criminal courts, we need to hold in-person proceedings and trials to respect the defendants' due process and speedy trial rights. In the civil courts, we need to schedule more trials either to put longstanding disputes before a jury, or to bring home the reality of a pending trial to encourage parties to come to settlement. In proceedings in our family courts, housing courts, and specialized courts, such as our drug courts, mental health courts, and veterans' courts, the humanity of in-person proceedings is critical to making those involved be and feel heard and understood.

A final thought: Access to justice means more than giving litigants their physical day in court. It means that we as judges must truly listen to those who come before us, without allowing our experiential or ideological biases to block us from hearing. As the presiding member of the Judicial Section, I know that so many of my colleagues actively aspire to this ideal. I encourage us all to aspire to the same ideal in life.

HON. DENISE A. HARTMAN is Acting Justice of the Supreme Court in Albany County.

Striving Toward a More Just Profession



Christopher R. Riano

Chair
LGBTQ Law Section

It has been a genuine privilege and honor to have the chance to establish the newest Section of the New York State Bar Association, and in particular to do so while navigating the dynamic challenges that the COVID-19 pandemic has presented. Ensuring that there is a state-wide home for members of the LGBTQ legal community and our allies allows for all members of the Section to do

everything that we can to further the noblest traditions of our profession. We have done this through community building, advocacy, virtual programming, and our first in-person event just a few weeks ago. I am truly looking forward to continuing this work as we advance the mission of our Section to be a leading voice for the LGBTQ+ legal community in New York and beyond.

One of the things I am proudest of is that the LGBTQ Law Section strongly welcomes not just LGBTQ+ identified lawyers, but also our allies. According to the latest available data, over 35% of our section membership identifies as allies of the LGBTQ community. This data point speaks volumes about the importance of elevating all voices in the legal community when it comes to championing a broad and inclusive definition of diversity, equity, and inclusion.

This year, as we launch our first annual meeting program as a Section and give out our inaugural Vanguard Award to a lawyer who has consistently gone above and beyond to support the LGBTQ+ community in New York state and around the nation, I am reminded that all of us

stand on the shoulders of giants. Early pioneers who made so much progress on LGBTQ parental rights, a fundamental right to marriage equality, and now taking a leadership stance on ensuring the rights and liberties of members of the transgender and non-binary community. These are just a few of the areas in which we are leading toward a more equitable future.

As we look towards 2022, I invite everyone to join in our work, since as we know, there is so much more to we can achieve together.

CHRISTOPHER R. RIANO is executive director of the Center for Civic Education and a lecturer in constitutional law and government at Columbia University.

New York State's Online Court System During the Pandemic

In 2020, Chief Judge Janet DiFiore created the Commission to Reimagine the Future of New York's Courts to examine the enhanced use of technology and online platforms, and make recommendations to improve the delivery and quality of justice services, facilitate access to justice, and better equip the New York State Unified Court System to keep pace with society's rapidly evolving changes and challenges.

Looking Into the Future

- The Commission recommended analyzing **virtual court proceedings** to determine their role in the future of New York courts.
- Launching the small claims **online dispute resolution** pilot in New York County and developing additional pilots.
- Redesigning the UCS website to become a **centralized court portal**, consolidating various "eCourts" systems, and standardizing the websites of individual courts.
- Enacting legislation to allow the Chief Administrative Judge to institute **e-filing** on a mandatory basis, in any or all of the state's trial courts.

Remote Judging Survey

50%

Of respondents use a personal non-UCS-issued desktop computer at home to conduct court business remotely.

70%

Of respondents who used non-UCS cloud accounts to store information indicated that their accounts did not require multi-factor authentication.

51%

Of respondents conduct personal business on the same devices they use for court business.

46%

Of the respondents required e-filing. In addition, 57% of respondents still require a hard copy working set of motion papers to be submitted.

SOURCE: Initial Report on the Goals and Recommendations for New York State's Online Court System (Nov. 9, 2020). Remote Judging Survey: Access and Use of Technology First Report (January 2021).

LaSalle

«Continued from page 9»

enter information, including a copy of the notice of appeal with proof of filing and the order or judgment appealed from, in the NYSCEF system. Members of our Clerk's Office are notified of the filing and provide the filer with an Appellate Division docket number. The filer then has seven days to serve the respondents with a form containing that information, and to file proof of service electronically. Thereafter, the respondents have 20 days to register with NYSCEF or confirm registration and to enter certain information into the system. Once this is done, records, appendices, briefs, motions, and applications relating to that appeal are filed electronically, and service upon all parties other than those who are exempt shall be by electronic filing. Members of our Clerk's Office and Motion Support staffs review the electronic filings in the same fashion that they previously reviewed hard copy filings that came over the counter. Once the electronic filings have been accepted for

filing by the court, the filer is notified. Litigants are encouraged to consult our court's website for more detailed information and guidance regarding electronic filing.

Although the court's electronic filing rules require, in addition to electronic filings, the filing of six physical hard copies of briefs and records, the requirement to file hard copies has been suspended by administrative order since the beginning of the COVID-19 pandemic. In addition, since July 1, 2020, except for exempt attorneys and litigants, we have required all papers filed in relation to every motion and every proceeding initiated in the court to be submitted in digital format only, with no hard copy submission to be made unless requested by the court.

While adjusting to a new system naturally presents certain challenges to those used to the old system, electronic filing has provided our court with many benefits. Our justices and staff are not located all in one building, but rather have physical offices spread throughout the 10 counties that comprise the Second Department. It used to be very cumbersome and time-consuming to physically transport briefs, records, and motion papers to those who needed to see them, including justices, chambers staff, and staff in

the court's Clerk's Office, Law Department, Motion Department, and Decision Department. And in the past, a justice and his or her law clerk would share one copy of the record and briefs for each case, making it difficult for them to work on the same case at the same time. Even worse, this court only possessed one copy of original papers in many criminal and family proceedings, meaning that only one member of a panel of justices at a time could be in possession of a trial transcript.

Now, with electronic filing, every court filing can be viewed by any member of the court's staff from his or her desk within a matter of seconds. The digital copies of the records and briefs can also be searched electronically for key words using the "Ctrl-F" function, and information from the documents can be cut and pasted into other documents. This has greatly increased our efficiency and productivity. In addition, much less space is required in our courthouse to store physical records, and our Clerk's Office can process filings and answer questions much more quickly. If a litigant has a question requiring a member of the Clerk's Office to look at a record, the record no longer needs to be tracked down and physically transported to the Clerk's Office. In addition, Justices and court

staff are no longer required to lug around voluminous records when they move between offices or work from home. Indeed, it would not have been possible for court staff to work remotely at the outset of the COVID-19 pandemic without the existence of electronic copies of court documents.

Undoubtedly, electronic filing also saves attorneys and litigants a great deal of money and time. Having immediate access to digital copies of papers filed by opposing parties is surely as useful to attorneys and litigants as it is to court staff. Attorneys are immediately notified when a filing is made, and can start working on a response right away. And attorneys can work on a submission right up until the deadline for filing, without needing to save time for transportation to the courthouse.

Last but not least, electronic filing has many environmental benefits. The unnecessary production of multiple copies of often voluminous paper records contributes to air pollution, water pollution, deforestation, the filling of landfills, and the emission of greenhouse gases that cause climate change. As our planet faces this great challenge of the 21st century, we are trying to do our small part to address it with the use of 21st century technology.

Reimagining Access To Government



Michael Kenneally

Chair
Local and State Government Law Section

A benefit of its scale, local government provides greater accessibility to the public than do its state or federal counterparts. The general public can attend municipal and school board meetings, often with the ability to address the governing boards directly. They may interact with their elected officials as part their daily life. More so than any other level of government, the engagement and participation by the public in helping shape local policies is limited more by the public itself than by the government.

Access to government is commonly discussed in terms of open and transparent meetings and decision making pursuant to the Open Meetings Law, and the disclosure of records and information under the Freedom of Information Law. Mobile devices, wireless and cellular technology

and social media make all of this information (and its evil twin, misinformation) available almost instantaneously. Often, someone does not even have to be searching for the information; it can be instantly pushed to their device of choice, be it a mobile phone, laptop or smartwatch. Participation in government action is no longer confined to in-person meetings and traditional media. A wide array of social media and online forums or communities create new avenues of access to local government for the public.

Yet, in today's ultra-connected society, access to government is not as simple as allowing the public to observe and speak at meetings or disclosing minutes or records of proceedings. Several issues facing local government today require a much deeper inclusion of the public to help reimagine policies and procedures that previously have been taken for granted. In April 2021, all municipalities were required to submit police reform plans to the Governor's office. These reforms plans, by Executive Order, were required to include stakeholders in the process—local police

CLEs Will Address Safety, Leasing And More



Michelle H. Wildgrube
Chair
Real Property Law Section

In the past year, as the real estate market has boomed in many parts of the state, the Real Property Law Section has been committed to the safety of our clients and staff. Real estate closings have always been gatherings of sellers, buyers, attorneys, title company representatives, and brokers, often held in a conference room with people sitting shoulder to shoulder around the closing table.

With COVID-19, we have learned to handle closings differently, to keep people safe. Closings have been bifurcated, with sellers pre-signing documents and parties often sitting in separate rooms. While we miss the camaraderie of the closing table, the new practices have helped to keep participants safe. In response to questions from our members about best practices, our section published guidelines for closings to aid purchasers, sellers, brokers, title agents, and attorneys as we transact closings differently, but just as effectively, in this time of COVID-19.

The Section will host a virtual Continuing Legal Education program on Monday, January 24 from 2 p.m. to 5:15 p.m. This program is open to members and non-members of the section. Panelists will discuss real property concerns following the Surfside condo collapse, issues in commercial real estate leasing, environmental improvements and financing for commercial properties, and ethics. The program will offer 3.5 CLE credits.

In the aftermath of the Surfside condo collapse, members of our section discussed ways to avoid such a catastrophe for clients in New York and reviewed the roles of the contractors, architects, municipal authorities, and the condominium board. David Fitzhenry of Ganfer Shore Leeds & Zauderer, and Howard L. Zimmerman, the founder and principal at Howard L. Zimmerman Architects & Engineers, will review the issues of negligence, board member liability, the business judgment rule, engineering inspections, individual rights of unit owners, and insurance in addition to the role of counsel in handling matters involving condominiums and cooperatives.

The commercial leasing environment has changed as people work from home and offices remain empty or at less than full capacity. With these changes, the New York City commercial

leasing market continues to be affected by the pandemic. A panel of landlord-tenant attorneys, Adam M. Endick of Vinson & Elkins, and Hope K. Plasha and Jason T. Polevoy of Patterson Belknap Webb & Tyler, along with Barbara Winter, managing director of Jones Lang LaSalle Brokerage, will explore the new leasing landscape and other hot topics in New York City commercial leasing in the second hour of our Continuing Legal Education program.

Updating of commercial buildings for environmental efficiency can be expensive, but low cost financing is available for these updates through Commercial Property Assessed Clean Energy Financing known as C-PACE. These improvements can reduce carbon emissions and the financing can rescue defaulting properties. C-PACE financing will be discussed by a panel headed by Joel I. Binstok, of the York Group, with Joshua S. Winefsky, of Kramer Levin Naftalis & Frankel, Laura Y. Rapport of North Bridge Opportunities, and Jessica Bailey, president and CEO of Greenworks Lending from Nuveen.

We are also pleased to welcome back Nancy Connery, of Schoeman Updike Kaufman & Gerber, who will present "A Brief Primer on Everyday Ethics." Her topics will include escrow agreements, representing clients in out-of-state transactions, and payment and credit issues.

Prior to the CLE, at 1 p.m. on January 24, the section will conduct its annual business meeting to elect officers and district representatives. In addition, we will award the section's Professionalism and Communities Page Awards, our Melvin Mitzner and Lorraine Power Sharp scholarships, and recognize the Real Property Law Journal's student editors and editorial staff from St. John's Law School. Our section welcomes attendance at the business meeting and CLE by zoom on the day of the program; video replay of the program will also be available.

The Section will also host our popular CLE on Condominiums and Cooperatives on Thursday, January 27 at 1 p.m., coordinated by our Condo and Coop Committee Chairs Erica F. Buckley of Nixon Peabody and Ingrid C. Manevitz of Seyfarth Shaw. Our Committee on Not for Profit Entities and Concerns will also have their CLE on Friday, January 28 at 9 a.m., planned by Committee Co-Chairs Susan E. Golden of Venable and Emanuela D'Ambrogio of Barclay Damon.

MICHELLE H. WILDGRUBE is a principal of Cioffi Slezak Wildgrube.



The COVID-19 pandemic caused many landlord-tenant issues, such as rent forgiveness and eviction moratoriums, that NYSBA's Real Property Law section tries to address.



In the aftermath of the Surfside condo collapse in Florida last year, members of the Real Property Law Section analyze ways to avoid such a catastrophe for clients in New York.

At the Forefront of Uniform Rules Updates And Other Pressing Issues



Michael O'Brien
Chair
Torts, Insurance & Compensation Law Section

I have been honored to serve as Chair of the Torts, Insurance, and Compensation Law Section this past year. Our section is comprised of many attorneys who practice in the courts of the state of New York, as well as at Workers' Compensation Boards and various other tribunals. We have certainly learned that "court" is much more than just a physical building. Court is really the belief in our system that resolves disputes in a civil manner. Pre-pandemic caseloads would bring many of us to physical buildings for conferences, motions, depositions, hearings, jury selection, and trials. Now, with the exception of jury trials and other

mandatory in-person appearances, our entire practice takes place over various online platforms like Zoom and Microsoft Teams. There was a steep learning curve for many of us at the beginning; but we learned, and we grew. The legendary Sun Tzu is believed to have said, "In the midst of chaos, there is also opportunity." These pandemic times have certainly presented us with chaos and opportunity. I sincerely hope you have taken advantage of this time for growth and reflection, to hone a skill or to focus on a new practice area. Personally, I was also able to take advantage of attending CLEs and meet-and-greets that I would not

have previously considered pre-pandemic, mostly due to time or travel constraints.

Over the past year, the TICL Section has been at the forefront of many issues confronting the members of our section, not the least of which were the updates to the Uniform Rules that govern much of our practice in the civil court system. The TICL Uniform Rules Task Force worked tirelessly to study the impact that the "new" rules would have on litigants, clients, practitioners, and the court system. Our Section was at the forefront of recommending various amendments to Uniform Rules, as well as hosting online forums and leading numerous CLE programs on the topic. TICL will continue this leadership role into 2022 and beyond.

In 2022, the TICL Section will co-sponsor (in conjunction with the Trial Lawyers Section) the New York State Bar Association Trial Academy. This is an exciting opportunity for the TICL Section on many levels, including our professional obligation to

teach our craft to newer attorneys, our overall dedication to the practice of law, and our commitment to the civil resolution of disputes.

Also in 2022, the TICL Section plans to hold its Annual Meeting in the fabulous, family-friendly destination of Hammock Beach Golf Resort & Spa in Palm Coast, Florida. We at TICL are the section whose members take their profession very seriously, but who also like to relax and unwind. We hope you will join us!

Finally, please allow me to thank you for the opportunity to be your Chair for 2021. I have learned so much from our members, past Chairs, and incredible executive board. I could not have succeeded without your learned counsel and support. I look forward to serving the TICL Section and NYSBA in different capacities for many years to come.

MICHAEL P. O'BRIEN is a trial attorney at O'Brien Law Firm.

New Lawyers Will Need To Be Proficient Handling Emerging Technology



William S. Friedlander
Chair
Trial Lawyers Section

The virtual communications practices adopted of necessity during the COVID-19 pandemic are driving permanent changes in trial practice. Court-promoted pandemic expedients such as virtual motion practice, preliminary and compliance conferences, and depositions have proven to be effective and efficient and will likely be adopted as standard practices. The New York State Bar Association's Trial Lawyers Section has also found that the use of virtual technology for strategy meetings, settlement conferences and mediations is becoming the

default. The primary benefit of working virtually is the obvious savings of time and expenses but there are other benefits as well. It is helping us prepare for a post-pandemic world in which AI and related technologies will render skills in document generation as obsolete as typewriting or early word processing are today.

In a post-pandemic world, we will rely more heavily on technology, and the next generation of legal professionals will need to understand its potential better than lawyers today do. Future trial lawyers will need to

demonstrate their technological proficiency from their first job on so that they are braced to handle emerging technology as their law firms evolve. They will also need to find new ways to attract clients and build fruitful relationships without using traditional networking events/ sponsorship/hospitality tools, as technological solutions and social distancing become more conventional. This will present early opportunities for junior lawyers to distinguish themselves through finding creative (and effective) solutions to technology-driven challenges.

In conjunction with other sections and committees, the Trial Lawyers Section's CLE and Brown Bag programs have this year focused on practice in the post-pandemic world including remote depositions, mediations, and trials. We have also discussed tech upgrades and the optimization of popular software packages. Our upcoming virtual

annual CLE, on January 27 to 28 at NYSBA's Annual Meeting will look at ethics rules relating to cybersecurity and privacy when using the Internet in the hybrid office environment. We also plan a trial demonstration examining openings, closings, and juror bias in the post-COVID world.

Some point to a risk that the technologizing of practice will privilege large firms at the expense of small practices. The counter-proposition is that technology is ubiquitous, that sophisticated video and document sharing technology is even now available to small firms in new working environments, and that the pandemic has dislodged old forms of practice and given an edge to smart and tech-savvy litigation entrepreneurs. The Trial Lawyers Section is looking toward the future.

WILLIAM S. FRIEDLANDER is an attorney at Friedlander & Mosher in Ithaca.

Marks

«Continued from page 9»
COVID testing and vaccination programs in order to prevent the spread of the virus and assure the public that our courthouses were safe places to appear and conduct business.

As we move into the new year, we are acutely aware of the pandemic's enduring grip on our justice system and the ongoing challenges it poses for the efficient adjudication of legal disputes. In the face of many difficult pandemic-related operational and safety challenges, the New York state courts have been able to achieve a productive "new normal," supported by an effective hybrid model of in-person and virtual court operations that has enabled us to move and resolve cases efficiently. As a result of our increased reliance on technology and innovation, and the progress we have made to move cases during the pandemic, we have every expectation that the court system will be able to return to full operational capacity in the upcoming fiscal year.

Our goal in the coming weeks and months is to bring to bear all of our resources to tackle the case backlogs that have arisen as a direct result of the public health measures, such as the CDC's six-foot social distancing protocol, that have inevitably limited our trial capacity in both civil and criminal cases. We look forward to the day when we can mitigate that protocol in order to expand our trial capacity and diminish the pandemic-related backlogs and delays that have arisen in some of our courts. In the meantime, however, we are fortunate to be able to lean on the lessons we learned from Chief Judge Janet DiFiore's Excellence Initiative, when we were able to achieve dramatic success in reducing backlogs and delays—in all categories of cases—in courts across the state. The many achievements

of that program, with its critical evaluation of court operations at every level, and with its goal of operational and decisional preeminence in everything we do, will continue to serve us well as we move forward during the public health crisis and beyond.

A critical component of our plan to return to full court operations involves the approval and enactment of the Judiciary's budget request for the state's new fiscal year that begins on April 1, 2022. The Judiciary's budget proposal, as submitted to the Governor and the Legislature, seeks an increase of 2.5% over the current fiscal year. This reasonable request will allow us to strategically address staffing vacancies and implement and expand a range of important and necessary programs. After a year-long hiring freeze that stretched from 2020 into 2021, and unprecedented attrition in court staffing, the court system needs to fill a large number of vacant staff positions in order to support essential hearings, trials and courtroom proceedings, and ensure important back-office assistance to litigants seeking resolution of their cases. Our relatively modest request for additional funding will allow us to continue to replenish our staffing levels to support our return to full court operations, particularly in courtroom titles such as court clerk, court officer and court reporter.

Another critical piece of our full operations plan is the continued expansion of presumptive alternative dispute resolution, a program that refers litigants to court-sponsored mediation and other ADR options at the earliest possible stages of all civil and family court cases deemed suitable for ADR treatment under established protocols. Our commitment to presumptive ADR will enhance the quality of justice, reduce litigation costs and delays, and free up courts to focus on matters requiring more intensive judi-

cial supervision. Although the public health crisis has slowed the full implementation of this program, court-sponsored virtual ADR has been a success story during the pandemic, contributing to the disposition of large numbers of cases. Hundreds of judges and court staff have received relevant training, and many more mediators and neutrals have joined ADR rosters in courts across the state. Presumptive ADR is an indispensable component of the state courts' return to full operations going forward.

Always an important part of court operations, technology has played an invaluable role during the pandemic, enabling court proceedings to be conducted virtually. Post-pandemic, our new virtual model will continue to serve as an important complement to our in-person operations. In addition, e-filing and electronic document delivery brought important efficiencies to court processes and operations while helping to reduce foot traffic in our buildings. Millions of cases have been commenced by e-filing since its inception, by more than 100,000 attorneys and over 50,000 self-represented litigants, and we were able to make important expansions to the program throughout the course of the pandemic. E-filing is currently used in Supreme Court, Surrogate's Court, Court of Claims, NYC Civil Court and Housing Court and the four Departments of the Appellate Division. The Judiciary's proposed budget will not only support the continued expansion of e-filing, but it will also support other important technology initiatives designed to improve the efficiency and the quality of our justice services, including system-wide upgrades, new case reporting tools and dashboards, and a top-to-bottom review and revamping of the court system's website.

Also vitally important in any post-pandemic planning is our charge to promote meaningful

access to justice for all New Yorkers. This remains a matter of paramount importance as we strive to cultivate greater access through a variety of budgetary and programmatic efforts. Notably, our budget request seeks an increase of \$12.6 million in funding for over 80 civil legal services providers who receive grants from the Unified Court System to provide critically-needed representation for individuals who cannot afford an attorney. This increase would support retroactive cost-of-living adjustments for the past several years and help legal service providers meet an expected surge in pandemic-related civil legal needs, particularly in housing and family matters. Additionally, the budget contemplates an increase in the number of Help Center locations (where litigants can obtain necessary information about court procedures), and expansion of the CourtHelp website (which provides similar information online).

The state court system is doing everything in its power to prepare for a return to full court operations. Our proposed budget has been designed to support that vital objective by requesting the resources we reasonably need to fill vacant staff positions, expand the use of technology to strengthen court operations, institutionalize court-sponsored ADR, and ensure access to justice for economically disadvantaged litigants who cannot afford an attorney. We are grateful to the New York State Bar Association, and the entire practicing bar, for their steadfast support of our court system during the last 22 months. We look forward to your continued support in Albany as we seek approval of the Judiciary's Budget Request for the next fiscal year, a request that will enable us to restore full court operations and provide fair, timely and efficient justice services to the lawyers and litigants we serve.

Lessons in Good Leadership



Sheryl B. Galler

Chair
Women in Law Section

The year 2021 gave us some spectacular examples of how leaders can rise and fall. We learned, or were reminded, that leadership—that is, good leadership—is not about satisfying one’s ego or achieving individual success. Good leadership is about fostering the success of others. Good leaders develop the skills and talents of their teams. They trust and empower their coworkers. They create a culture of inclusion and equity. They lower the ladder to let others climb. They open doors to help others survive and thrive.

NYSBA’s Women in Law Section (WILS) will explore how to be a good leader, and more, at its Annual Meeting program sched-

into or out of corporate legal departments, and between the private and public sectors. WILS also will present two awards that memorialize past leaders and honor current ones: the Ruth G. Schapiro Memorial Award, established in 1992 in memory of the first chair of the NYSBA Committee on Women in the Law (CWIL, now the Women in Law Section), and the Kay Crawford Murray Memorial Award, created in 2008 to honor Ms. Murray, a former chair of CWIL. These Awards recognize attorneys who, in the spirits of Ms. Schapiro and Ms. Murray, advocate for inclusive workplaces and equal opportunity for women, open doors and ensure opportunities for women attorneys, focus on issues that disproportionately impact women, and substantially contribute to increasing the value of diversity in the legal profession. Like the outstanding award-ees, many members of WILS contribute to our profession in many impressive ways. They have founded firms, manage legal

departments, were appointed to the bench, lead diversity initiatives, and are sponsors and mentors. They volunteer their time to bar associations, and participate in task forces seeking solutions to the challenges facing our profession and society. WILS offers year-round programs featuring these good leaders and others. Join us to learn about issues impacting all women, such as harassment, gender pay gaps, caregiver discrimination, substance abuse and vicarious trauma, and actionable measures to respond. Join us to learn how to advance our legal careers and skills. Join us to celebrate women who fight for equality, leverage their networks to help others, and support each other’s goals, and to show appreciation to persons of all genders who have been allies and champions in these important efforts. We invite you, as lawyers and leaders, to join us.

SHERYL B. GALLER is counsel to Moskowitz & Book and a solo practitioner.

Gleaning Something Positive Out of the Pandemic



Anne LaBarbera

Chair
Young Lawyers Section

A lot has been lost during the pandemic. The world has had to reorganize itself, and so has the profession. It came on so quickly that, as lawyers, we struggled at first to change. Already in the process of revolutionary technology renovations, the New York State Bar Association was well placed to move activities online even when that change unexpectedly came at a crushing pace. For younger lawyers, particularly those who were admitted during the pandemic, the most difficult kind of event to move online was networking. I was excited when NYSBA’s Women in Law Section quickly solved that by using breakout rooms during its successful “Law School Is Over” online events, prompting me to think of ways in which the Young Lawyers Section could use this success as a model to the benefit of our members. In June, when I started my year as chair and the pandemic looked like it was nearing an end, I started to think more about my long-standing goal to connect New York lawyers with the legal system and its practitioners in Scotland. I received the bulk of my legal education in Scotland because I was living there when I decided to study law. I ended up practicing in New York years later, but I always try to think of ways to connect the Scottish legal profession with lawyers in New York. Leveraging remote technology as the Women in Law Section did with its programming during COVID-19 presented a cost-effective way to do so. In October, the Young Lawyers Section and the Scottish Young Lawyers Association piloted a

comparative admission to practice program in which the executive director of the Board of Legal Examiners in New York and a representative of the Law Society of Scotland joined the same program from Albany and Edinburgh. They discussed how attorneys in New York might become qualified as solicitors in Scotland and how Scottish solicitors might get admitted to practice law in New York. We looped in an English barrister admitted in New York but educated in Scotland who joined us from London. Given our differences in geography, those of us who adhere to the British tradition of small talk about the weather had plenty to chat about before the start of the program. The program was a resounding success, and we have decided to create more of these comparative programs with lawyers in other countries. Before the pandemic, I was planning ways to bring my Scottish and New York worlds together. I assumed that doing so would be expensive and complicated and involve travel. Were it not for the pandemic, I don’t think the infrastructure necessary to put together our program nor the willingness to attend remotely would have existed to the extent necessary to create this event. We all wish the pandemic didn’t happen, but now that it has, we all need to look for the ways in which we can accentuate the positive.

ANNE LABARBERA is the principal attorney at Anne LaBarbera Professional Corporation. She concentrates her practice in entertainment law, media law and commercial law.

Bringing the Country Together

A survey of adults nationwide shows that Americans overwhelmingly feel that it is important for the Biden administration to prioritize initiatives that will bring the country together and they think that national service programs are an excellent way to do so.

By the Numbers

- 77%** Of respondents want Congress to pass legislation expanding national service opportunities.
- 64%** Of Americans think their local government generally tries to do what is right.
- 54%** Think their state government generally tries to do what is right.
- 34%** Say the same about the federal government.

Main Areas That Would Benefit From Young People’s Work

- Homelessness and housing** 27%
- Environment** 26%
- Education and youth** 23%
- Aging and elder care** 21%
- Economic security/poverty alleviation** 18%

SOURCE: Memo to Interested Parties, from Ben Greenfield of Change Research, regarding ‘Americans To Expand National Service Programs To Help Unify Country’ (2022).

Acosta

«Continued from page 9

The Tree of Liberty... (Quotation), Monticello.org. Perhaps, over 200 years later, Jefferson’s statement needs updating: The tree of democracy—which safeguards our liberty—must be nurtured by the shared sacrifice and commitment of fellow citizens; bloodshed is not required. It is clear that today, more than ever, the tree of democracy which sustains us requires our citizens to become more involved in our public institutions and government, to feel genuinely engaged in the political process and concerned about the wellbeing of others. The roots of our tree are strengthened through selflessness, service to those less fortunate, and shared experiences. To that end, I join with many others who advocate for a large-scale expansion of civilian national service opportunities for young Americans.

There is a long history in this country of our citizens rising to the responsibility of national service during times of crisis. Many young patriotic Americans answer the call through voluntary military service, with far too many having given the last full measure of their devotion. There is also a significant appetite in this country for opportunities to participate in civilian public service. Yet, this desire to serve far exceeds what current programs can accommodate.

A poll conducted last January by Change Research showed that 62% of Americans would recommend civilian service to young people in their lives and 44% of all young Americans are potentially interested in serving, including 60% of young people of color. Currently, there are only about 65,000 positions available. 77% of respondents to the poll, including majorities of both Democrats and Republicans, said they strongly or somewhat support Congress passing legislation that would expand national service opportunities, such as AmeriCorps and the Peace Corps. New Poll: As President Biden Calls for National Unity, Majority of Americans Support National Service To Bridge Divides, ServeAmericaTogether.org.

These poll numbers tell me that, to paraphrase President John F. Kennedy’s immortal speech, there are millions of young Americans who are asking not what their country can

do for them, but what they can do for their country. They just need the means to do it.

In my view, national service need not be mandated as it is in other democracies such as Denmark and France. Constitutional Act of Denmark, §81; Casey Quackenbush, French President Emmanuel Macron Is Reinstating National Service for All 16-Year-Olds, TIME (June 28, 2018). Indeed, a 2017 Gallup poll showed that only half of Americans currently support mandatory national service, and 57% of those age 18-29 oppose the idea. Jim Norman, Half of Americans Favor Mandatory National Service, Gallup (Nov. 10, 2017). But it can be incentivized through loan forgiveness, scholarships, and other means; and given the significant interest in voluntary service, it would be sensible to make serving easier and more appealing.

This is the approach taken by the Cultivating Opportunity and Recovery from the Pandemic through Service (CORPS) Act, which was introduced in the U.S. Senate in June 2020 on a broadly bipartisan basis and in the House earlier this year. S. 3964, 116th Cong. (2020); H.R. 4100, 117th Cong. (2021). Its purpose is to, among other things, expand national service programs administered through the Corporation for National and Community Service to help the country respond to and recover from the public health, economic, and social crises that emerged due to the COVID-19 pandemic.

The benefits of providing a large proportion of young Americans with the opportunity for civilian public service would be many. It would instill a sense of shared purpose and individual commitment to our society. It would enlighten those who serve through exposure to people with different backgrounds and perspectives. And it would teach them about the inner workings of our government and reinforce that, for all the bad news we hear every day, there is an awful lot of valuable, even noble, service being performed in support of the common good.

Democracy is not self-executing. It requires constant care and commitment and cannot be taken for granted. Through public service programs—in addition to robust civic education initiatives like the ones I wrote about earlier in the year (Rolando T. Acosta, A Crisis of Faith (in the Rule of

Law), NYLJ (April 30, 2021))—we can provide the youth of America, the future leaders of our country, with an understanding and appreciation of our democratic systems, and in so doing, reduce the ignorance and apathy that can form a breeding ground for distrust, unfounded conspiracy theories, and authoritarianism. Expansion of national service programs should not be limited to responding to the COVID-19 crisis but should become a permanent and important part of this country’s fabric, like the “social contract” envisioned by Jean-Jacques Rousseau, where our collectively held will aims at the common interest.

Importantly, public interest work is promoted by both law firms and law schools in New York through stipends and scholarships, which encourage young law students and lawyers to work in government or public interest jobs that they could not otherwise afford to take. For example, during the 2020-21 academic year, my alma mater, Columbia Law School, provided funding for 308 students to work at domestic public interest, government, or judicial internships—including for one student through the Judge Sheila Abdus-Salaam Public Service Internship Fund, named for one of my most cherished former colleagues—and for 22 students to engage in international human rights advocacy.

The New York State Unified Court system (UCS) also takes a keen interest in promoting pro bono participation for law students. The Pro Bono Scholars Program, introduced in 2014 by then-Chief Judge Jonathan Lippman, is an innovative program that is the first of its kind in the country—it enables law students to spend their final semester of law school performing pro bono service for the poor while receiving academic credit, and permits students to take the New York bar examination in February of their final year of study, before they graduate, accelerating the pace at which they can enter the job market as licensed attorneys Pro Bono Scholars Program—A Legal Education Initiative, nycourts.gov.

And, of course, New York’s legal community can be rightly proud of its record when it comes to providing free legal services. Since 2015, New York has required prospective lawyers who have taken the bar exam to complete 50 hours of qualifying pro bono service before admis-

sion to practice law. Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law §520.16. Additionally, pursuant to the Rules of Professional Conduct, “[l]awyers are strongly encouraged to provide pro bono legal services to benefit poor persons” by providing at least 50 hours of free legal services annually and by contributing financially to organizations that provide such services. 22 NYCRR §1200, Rule 6.1. At the First Department, we often have attorneys from law firms representing defendants pro bono in criminal appeals, and we greatly appreciate their efforts.

Moreover, UCS is one of the few court systems in the country that provides funding from its own budget to organizations that offer free civil legal services to low-income clients, since Judge Lippman launched the Task Force To Expand Civil Legal Services in 2010 (the Task Force was made the Permanent Commission on Access to Justice in 2015). Last September, Chief Judge Janet DiFiore announced that, in 2022 alone, the judiciary would provide a total of \$100 million to civil legal services providers throughout the state. Press Release, Chief Judge Announces New Five-Year Grants for Judiciary’s Civil Legal Services Program (Sept. 8, 2021).

Serving others is immensely rewarding, enlightening, and inspiring. My parents taught me that a life well lived necessarily includes service to others, and that is something that I have experienced first-hand since my time as a young lawyer at the Legal Aid Society. The personal pride and enrichment I gained in helping others and the professional training I received were priceless. I want every young American to have the same opportunity and to be inspired to take advantage of it, whether it be interning in a court, teaching through AmeriCorps, or volunteering internationally through a program like the Peace Corps.

Service is good for the soul. It is good for the country. It is good for democracy. And without a shared commitment to service and understanding of our system of government, the tree of democracy may be felled not by the large axe of some outside authoritarian army, but by the slow rot of neglect, or by many blows from smaller axes wielded by our own fellow citizens who have been convinced that the tree never stood in the first place.

Mukerji

«Continued from page 11

provide safe access to residents by their loved ones.

As we move forward in the next year, we will look to forward our legislative agenda, which includes the repeal of the 2019 law creating penalties for Medicaid home care applicants who have transferred funds, an amendment to the Power of Attorney law to “grandfather” older forms, granting them the same protections that the newer forms receive, and creating workable permanent laws which allow for remote execution of documents.

Recent New York state regulations implementing more stringent requirements for Medicaid patients to receive home care are also a concern of the Section. These regulations provide for new evaluations by an “independent assessor” which will determine how much care our clients receive, and panels which will be reviewing

all cases receiving over 12 hours per day of care. Unfortunately, we will be seeing the effects of these regulations for a long time and will be working to mitigate their impact. Since the public health emergency has delayed implementation of many of these measures, this will be a long-term project for the Section and its committees.

One of the most critical of issues which has arisen as a result of the pandemic is an acute shortage of health care workers. Our laws, rules and regulations mean nothing if our clients are not able to secure the care that they need to live. The current labor shortage is dangerous for the elderly and frail populations. As the state begins to address this issue and search for responses to the crisis, we will be monitoring the actions and proposals closely.

We invite all NYSBA members to work with us in our efforts to protect the most at-risk population in the state and thank you for your support.

Wallach

«Continued from page 10

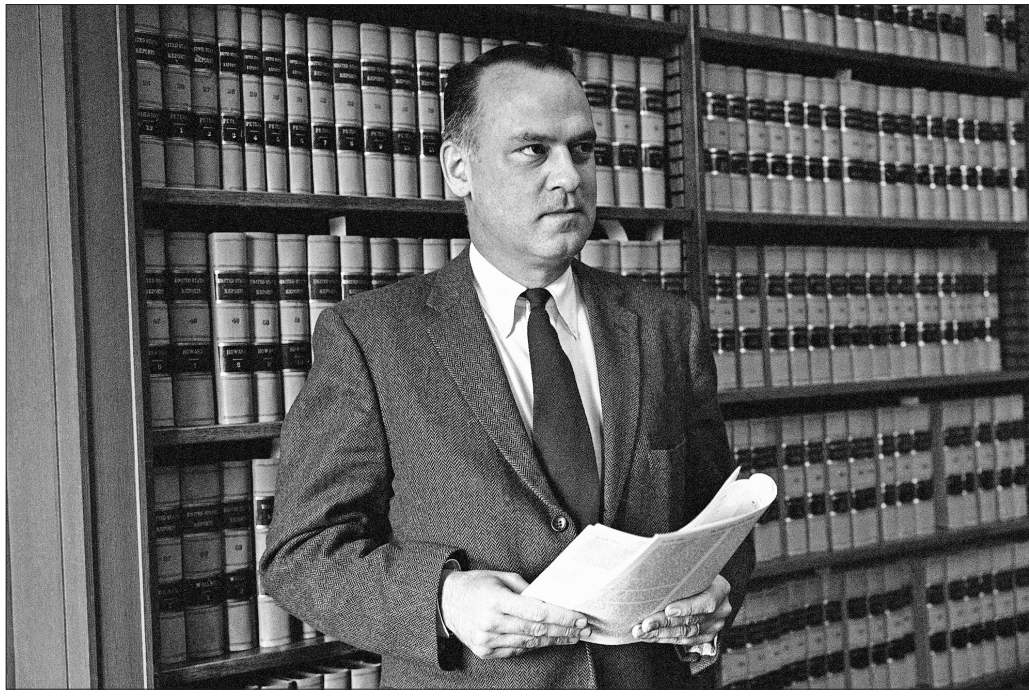
not a new struggle but one that has been made more difficult because of the global pandemic.

In my almost 30 years of practice, I have seen clients’ mental health concerns and conditions intersect with the civil and criminal legal system. I have seen clients denied treatment because they were not in “crisis” and the outcome of a client’s case negatively impacted by their suffering. I have also felt the added stress that trying to assist a client with mental illness creates and wrestled with its impact on the attorney client relationship. As I look toward the beginning of my presidency of the New York State Bar Association, I hope to study and evaluate these issues and to find ways to improve our ability to represent clients suffering from and living with mental illness.

In addition to stigmatization, discrimination and often the inability to recognize problems, poverty and insurance limitations play a significant role in a person’s ability to access treatment. As result of the COVID-19 pandemic, a number of programs have been created to address the incredible need for mental health services. It is imperative that these initiatives continue and that there is continued support for the estab-

lishment of more accessible, better staffed mental health services for all throughout New York state. Access to medical and psychological resources is yet another place where the inequality between the haves and the have nots is so painfully apparent. It is people living in poverty and our Black and brown fellow citizens who are once again hit the hardest. It is the mentally ill from these communities who so often end up incarcerated instead of in a hospital. One of the most difficult tasks for attorneys representing clients with diagnosed or undiagnosed mental illness is helping provide them with access to the appropriate resources.

The challenges faced by people battling mental illness are enormous and can be as difficult and life changing as suffering paralysis. This fight is often incomprehensible and confusing to the untrained professional, which prevents people from being given the opportunity to overcome their illness. The lack of understanding of the true pain that is felt by a person suffering from mental illness may also result in a lack of empathy and inability to provide the much-needed support. Those of us in the legal community who represent or have represented people engaged in this battle know that we must fight to obtain an outcome for the client that is in their best interest both legally and psychologically.



"I worked hard on every opinion. I think they were all satisfactory. I think it's very important for a judge—any judge, anywhere—to remember that every case is the most important case in the world for the people involved in that case, and not to think of a case as a second-class case or a third-class case or an unimportant case. It behooves the judge or justice to apply himself fully to every case and to give it conscientious consideration."

—Potter Stewart, as quoted by John Paul Stevens in *Some Thoughts on Judicial Restraint*, 66 *Judicature* 177 (1982).

Whalen

«Continued from page 9»

or particularly notorious crimes, and these reports are the way that the majority of the public will view the Court's work, through the prism of a handful of "newsworthy" cases that they read about in the paper.

However, the greatest impact of the courts on society rarely comes from the splashiest or most well-publicized cases. While it is indeed important to highlight serious disputes and salute the courageous lawyers from each side, it is much more important to recognize that every litigation of every matter, from civil, criminal, family, surrogate, and every court, deserves respect and admiration. The inner workings of the judiciary may sometimes seem mysterious, but the issues we deal with most frequently are ones that would be familiar to all people, such as disputes over property, family troubles, or minor crimes. Resolving these disagreements, and upholding and enforcing the rule of law, this is the greatest impact that the courts have on the public.

As a state court, we are called upon to interpret criminal and civil statutes as well as the state and federal constitutions, but our greatest contribution is in the interpretation and perpetuation of the common law. The common law is not derived from

a text drafted by a legislator, like constitutions and statutes, but instead is drawn from the pool of human wisdom and has been collected case by case over the centuries to form a body of rules aimed at determining controversies large and small. Because of the nature of the common law, it is a unique reflection of the society that it governs, and it is primarily the jurisdiction of the state courts. Although statutes are not static, and even constitutions can be amended, the common law has a singular ability to make incremental changes that reflect gradually changing social mores and values. It is through these minor changes that we both accommodate societal shifts over time and also demonstrate our continued commitment to justice and the traditions of the past. The common law frequently, though not always, governs those disputes that would be deemed small, not newsworthy, unlikely to be discussed by academics or the tabloids. But the principles espoused in each case that is governed by the common law—a dog bite, a contract dispute, a slip and fall in a parking lot—provide not only a link to the past but also a bridge to the future, through which the courts hold up a mirror to, and shine a light on, all aspects of society.

I am periodically asked what is the biggest or most important case over which I have presided. The question brings to mind a

quote from former U.S. Supreme Court Justice Potter Stewart, who was asked at the end of his career whether he had written or contributed to any one opinion of which he was particularly proud. He responded:

"I worked hard on every opinion. I think they were all satisfactory. I think it's very important for a judge—any judge, anywhere—to remember that every case is the most important case in the world for the people involved in that case, and not to think of a case as a second-class case or a third-class case or an unimportant case. It behooves the judge or justice to apply himself fully to every case and to give it conscientious consideration." John Paul Stevens, *Some Thoughts on Judicial Restraint*, 66 *Judicature* 177 (1982).

It is critical that we remember this timeless advice and strive to follow it. Whether a case will be written up in the news, remembered by the public, or quoted in future opinions, it is always the most important case to the parties involved, and is therefore deserving of equal vigor, attention, and deliberation from the courts. It may not always be seen as noteworthy or headline-making, but through careful and considered deliberation, and through the durable but flexible principles of the law, we uphold and advance the values of a peaceful, principled, and free society.

Garry

«Continued from page 9»

"We are gathered here today in a place that distinguishes a free, open society from a closed sterile tyranny. We are meeting in a place that distinguishes a nation ruled by laws from a country ruled by force, we are in a court of law."

When we think of the changes that have occurred within the past two years, and certainly the last 50, or the 126 years since the Appellate Division was created, those fundamental principles have consistently motivated our work. Reflecting upon how we have carried on successfully despite the many challenges we have faced, it may be due to the importance of those shared values. Our sense of duty and common purpose is driven by the idea that the courts distinguish our system of government from a tyrannical one, that they represent our persistence as a nation of laws and the stability our justice system provides during harrowing times. Our system is not perfect, but those underlying concepts inspire the hope and determination necessary to maintain and improve it. Although new challenges always lie ahead, I am more confident than ever that we as a workforce and professional community are equipped to meet them.

Maintaining court operations during a pandemic presented significant challenges, but thanks to our dedicated court personnel and a cooperative bar, we found creative and effective ways to adapt. Court employees quickly transitioned to performing their duties through a combination of remote and carefully scheduled in-person work, beginning in the very early weeks of the "pause," and our court staff, bench, and bar developed and learned entirely new procedures for remote arguments and proceedings, at the height of the pandemic. As with so many industries, however, certain efficiencies were sacrificed, and some areas of

our work were diminished by the inability to be fully present in our workplaces. We also profoundly felt the loss of opportunities to gather and learn from one another in the usual way—opportunities that are impossible to precisely quantify or assess, but are so meaningful.

Within our courts, the return to 100% in-person operations last spring was much more complicated than resuming business as usual, due to the protracted nature of this crisis. Although the vaccines made it possible for most of us to return to our offices, chambers and courthouses in greater numbers, court administrators, judges, employees, attorneys and litigants all had to implement and adapt to evolving requirements to protect the health and safety of those who enter our facilities. For instance, when we resumed in-person oral arguments, all participants wore face coverings. We were briefly able to forgo that practice with proof of vaccination, but then returned to full masking in courtrooms in response to the proliferation of the Delta variant last summer. Our workforce adopted yet more new ways to perform their duties safely in person, and court users were cooperative and courteous in the face of changing expectations and requirements.

Technology has played an undeniable role in our ability to not only function, but improve, during this difficult time. But even state-of-the-art technology is only as valuable as the skills and vision of those who plan and then make use of it. Our Technical Services teams have kept up with evolving technological needs to ensure that, during the pandemic, we never fell short of our very high standards of service; they have also worked with managers and staff to help them optimize their performance, above and beyond the needs of responding to COVID. As we maintained our core and auxiliary operations, we have built in improvements that will benefit us and, more importantly, the public we serve, long

after this crisis has ended. Some of our offices have moved to electronic, paperless work processes that are more sustainable, user-friendly, and efficient than previous models. We are also continuing to expand our use of e-filing; in the Third Department as of the beginning of this year, nearly all of our appeals are subject to mandatory e-filing, with appropriate exemptions.

In further pursuit of forward-thinking solutions, my colleague, Presiding Justice Rolando Acosta, has done an outstanding job leading a working group on appellate practice for the Commission To Reimagine the Future of New York's Courts. That group has recommended a variety of innovations that will leverage technology to streamline the appellate process, ranging from improving e-filing and reducing the use of paper to expediting the delivery of transcripts to speed up the perfection of criminal and Family Court matters. My fellow Presiding Justices and I have joined him in working together to address these issues, and I look forward to continuing the implementation process.

I share all of this to thank and recognize the court employees, judges, attorneys, bar associations, court administrators, and others who have worked together to serve the public and pursue the administration of justice during this time. At a time when public discourse can feel so divisive, I am deeply thankful to have seen such patience and civility within our traditionally "adversarial" profession. In a time when workers in a wide variety of fields have chosen to reevaluate their career paths, I am inspired by the many court employees who have shown exceptional resilience and redoubled their commitment to our shared work.

What an interesting time—and such a wonderful community of people to share it with. Thank you for the opportunity to work with and for you, and to share these thoughts.

Kenneally

«Continued from page 12»

forces, public officials as well as members of the community, non-profit and faith-based community groups. Local laws opting out of cannabis dispensaries and lounges are subject to permissive referendum. In addition, the pandemic has given rise to a number of issues that create sharp divides within communities. Mask mandates, vaccinations and absentee voting have faced varying degrees of opposition. These issues and oth-

ers that local governments face today have the potential to provoke deeply emotional responses by the public, making enhanced access to government more challenging.

Ensuring full participation in government by the public will necessarily involve managing community opposition to these issues. Some issues, such as fair housing and environmental justice, have encountered NIMBY-based opposition for decades. More recent issues such as mask mandates, vaccines, and police reform have sparked protests and counter-protests in communities throughout

the nation. Balancing the public's enhanced access to government while managing opposition and first amendment rights is an exponentially challenging task for local governments, yet essential to promoting dialogue on potentially divisive issues and creating informed local policies.

An engaged and informed public presents local governments with an opportunity to reimagine public participation in government. Doing so will leverage the greatest advantage that a local government has to offer: its accessibility to the public, and the public's access to it.



Anytime, Anywhere: New York Law Journal On Mobile

Legal professionals are always on the go, and so is their most trusted news source. *New York Law Journal's* mobile website and newsletter are digitally optimized—are you tapped in?

Get instant access to award-winning legal news, 24/7.

newyorklawjournal.com