NYSBA Annual Meeting

January 14-18 | New York Hilton Midtown

The Perennial Challenge of Delivering Affordable And Accessible Justice

Janet DiFiore
Chief Judge
State of New York

For 142 years, the members of the New York State Bar Association have been coming together annually to address the evolving challenges facing our legal profession and our courts, including the perennial challenge of delivering timely, affordable and accessible justice services to the clients, litigants and members of the public we all serve.

The recurrent nature of this challenge was highlighted for me not long ago when a member of my staff salvaged some dusty old books being discarded as part of a court renovation project. One of them was a thick volume containing all 24 issues of the State Bar Bulletin for the years 1933-34. The March 1933 issue caught my eye—a speech given during State Bar Week by future Supreme Court Justice Robert H. Jackson, on a topic I find endlessly fascinating. The title of the speech? "Delayed Justice in New York State."

Mr. Jackson was the State Bar's representative to the Commission on the Administration of Justice in New York State, created by the Legislature in 1931 in response to public complaints about congested state courts that in some places were up to four years behind in their work. According to Mr. Jackson, the Commission's charge was to make justice "cheap, simple and quick." Nor did Mr. Jackson mince words in stating that the courthouse doors in New York had become "impassible," and "jammed with long suffering suitors," especially plaintiffs in automobile cases, a fast-growing caseload with which the Bench and Bar had yet to come to grips. (Address Before New York State Bar Association, NYSBA Bulletin, March 1933, pp. 117-127).

The Commission on which Jackson served was the genesis of two important institutions that improved the administration of justice in our State: the Law Revision Commission of New York State, now the oldest continuous agency in the common law world devoted to substantive law reform through legislation; and the Judicial Council of the State of New York, the first permanent body within our judicial branch dedicated to court management and the collection and publication of statistical data.

Another salvaged tome contained the written proceedings of the 84th Annual Meeting of the State Bar Association, held in January 1961. My eye was drawn again to the transcript of a panel discussion titled "Court Congestion in Metropolitan New York," featuring then-New York State Chief Judge Charles S. Desmond. Nearly 30 years after Jackson's Commission published its findings and recommendations, here was Chief Judge Desmond acknowledging "truly dreadful" delays of up to several years in some counties, attributable to explosive population growth and development in the outer boroughs and suburbs of New York City following World War II. (NYSBA, Proceedings of the 84th Annual Meeting, Jan. 25-28, 1961, pp. 32-47). In 1963, shortly after Chief Judge Desmond's panel discussion, New York adopted the CPLR, which helped alleviate congestion and long delays in Supreme Court through simplification of court procedure and jurisdiction.

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MARK KAUZLARICH/BLOOMBERG

Implementing 'Raise The Age' Legislation

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

This past October, New York saw the first phase of the new Raise the Age (RTA) legislation take effect, setting the age of criminal responsibility in this state at 17. The second phase takes effect this upcoming October, when the age of criminal responsibility will rise to 18. Implementation of the first phase of the new law was the product of a highly successful collaborative effort among numerous agencies and criminal justice stakeholders. Within the court system itself, judicial and nonjudicial administrators across the state were integral to the preparations for RTA implementation, with a focus on ensuring that core values—fairness, community safety, continuity of counsel and court of record, and speed of case movement—were preserved.

Previously, New York was one of only two remaining states (North Carolina being the other) to treat 16- and 17-year-olds as adults in the criminal justice system. Long overdue, this legislation (once fully implemented) removes cases involving most adolescents under the age of 18 charged with

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The Value of Dissent And Collegiality

Rolando T. Acosta
Presiding Justice
Appellate Division,
First Department

As an appellate judge, I have often pondered the interplay between collegiality, consensus, and dissent, especially since reading a recent Law Journal article on the subject. Andrew Denney, *Can the NY Court of Appeals, Comfortable With Debate and Dissent, Foster Consensus?*, NYLJ (Sept. 26, 2018). It was an interesting read, but I could not help but contemplate whether we should instead be asking if consensus-building should always be the goal of a Chief Judge (or a Presiding Justice). And is it problematic for a court to be "comfortable with debate and dissent"? There is, of course, no bright-line rule as to what percentage of an appellate court's decisions should be unanimous. Consensus and dissent may ebb and flow, but collegiality—cooperation and civility among colleagues—must lie at the heart of each.

Collegiality and independence form the bedrock of a judiciary in a democracy—a form of government in which many citizens (even, at times, just under 50 percent) may disagree with the prevailing view but choose to accept it without resorting to

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Involvement in the Bar Is More Important Now Than Ever

Alan Scheinkman
Presiding Justice
Appellate Division,
Second Department

I spent 8½ years as an administrative judge and have now completed my first year as Presiding Justice of the Appellate Division, Second Department. In these capacities, I have been involved in the administration of our state's courts. There are many stakeholders with whom court administrators interact. These include our judges and their associations, our partners in government in the executive and legislative branches of the state and its municipalities, our own employees and their union representatives, district attorneys, law enforcement agencies, institutional criminal defense providers, and advocates concerned with particular issues, such as domestic violence prevention and adjudication, just to name some. But critical to our success is meaningful interaction with the organized Bar. It is important for court leaders, judges and lawyers to work together to ensure that the courts

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Too Few Lawyers? Access to Justice in Rural Communities

Elizabeth A. Garry
Presiding Justice
Appellate Division,
Third Department

With growing populations downstate, declining populations upstate and aging populations statewide, our communities—whether rural, metropolitan or suburban—are facing evolving obstacles to ensuring access to justice for all New Yorkers. During my first year as Presiding Justice of the Third Department many attorneys have shared their concerns about the availability of legal services, and particularly in the rural regions, as many are located within my Department. The geographical and demographic circumstances in rural settings pose unique challenges, and these are issues that our court system, legal service providers, and other stakeholders are actively working to address.

Recognizing that many of my readers will be in urban areas, let me begin by stating that there are multiple opportunities for a successful

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Judiciary's Duty to Maintain Public Faith and Trust

Gerald J. Whalen
Presiding Justice
Appellate Division,
Fourth Department

Just before Thanksgiving, Chief Justice John Roberts commented that "We do not have Obama judges or Trump judges, Bush judges or Clinton judges." Mark Sherman, "*Roberts, Trump spar in extraordinary scrap over judges*," Associated Press (Nov. 21, 2018). Strong opinions followed regarding the practical reality of that statement, and yet there can be no dispute that the appearance of such partisanship is antithetical to our judicial system. This is because, no less than the attorneys, judges, court officers, and staff who endeavor daily to ensure a just resolution of disputes, the effectiveness of our system also requires the public's faith and trust. Indeed, this faith is integral to the rule of law itself, which "presupposes a functioning judiciary respected for its independence, its professional attainments, and the absolute probity of its judges." *New York State Board*

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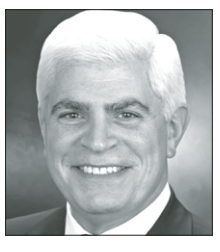
Inside

What We Do: Service to the Public and the Profession



Michael Miller

President
New York State Bar Association

The New York State Bar Association's (NYSBA) Annual Meeting brings together thousands of lawyers and is an opportunity to enjoy one of the great privileges of serving as NYSBA president—meeting so many of the men and women who embody our mission of service to the public and the profession.

I am so impressed by our members' generosity and strong sense of justice. You actively seek opportunities to serve, looking for ways to share your time, knowledge and skills with those less fortunate and with each other. The NYSBA is at the forefront of this work and our members are its life force. We are the protectors and the champions of the rule of law.

This summer, the NYSBA helped bring together lawyers from across the state to assist asylum-seeking refugees from the Southern U.S. border who were detained at the Albany County jail. Lawyer-volunteers were trained in intake processing, working with translators and preparing refugees for their credible fear interviews. When these lawyers' services no longer were required, they kept in touch, asking about the detainees they had worked with and how else they could help. As the refugee crisis continues, so does our work.

For years, the NYSBA has fought to reverse and to prevent wrongful convictions. In 2009, the members of NYSBA's Task Force on Wrongful Convictions released a groundbreaking report that detailed the leading causes of such tragedies. Throughout this period, we have been working to implement ideas from the report—and have achieved some notable legislative successes. The members of our reconvened task force are updating that report, as we redouble our efforts to prevent further injustices.

NYSBA's mission of service to the profession includes providing all the resources we need—beyond practice tools and MCLE credit. Lawyer well-being is a major concern. The stress of being a lawyer can be enormous, and we must acknowledge and act on it. Our November-December *Journal* focused on attorney substance abuse and mental health issues, shedding light on what often is hidden from public view to convey the message: We all are in this together, and help is available.

At the start of a new year, it is worthwhile to reflect on the enormous changes in the world during NYSBA's 140-plus years: from the telegraph to the cellphone; from manual typewriters to the Internet of Things; from shaking hands to Skype-ing.

Often lawyers—and the law—are criticized for not quickly adopting new technologies or responding to new developments. But recent history has illustrated that "move fast and break things" is a terrible mission statement. Jettisoning deliberation and consideration of possible consequences has caused significant harm to millions of people.

Today, new NYSBA committees are looking at cutting-edge issues such as medical and recreational cannabis, self-driving vehicles and the leaps in technology that cause us to question whether the laws we have and how we practice are adequate. Lawyers study the issues and review the facts before acting. Then we act with all due caution and deliberate speed, which is who we are as lawyers,

At the 142nd Annual Meeting, let us celebrate who we are and our mission: Service to the public and the profession.

Michael Miller is in private practice at the Law Office of Michael Miller.

Let the 'Voice of Lawyers' Be Heard

Henry M. Greenberg

President-elect
New York State Bar Association

We belong to one of the most impactful, influential and consequential professions in American life. Lawyers right wrongs, improve lives, make society better.

We are society's problem solvers. We are the foot soldiers of the Constitution. No other profession affords so many opportunities to help people in need.

Founded in 1876, the New York State Bar Association (NYSBA) has grown to become the largest voluntary state bar in the nation. So it comes as no surprise that our Annual Meetings are among the largest gatherings of lawyers in the world.

NYSBA's first Annual Meeting was held on Nov. 20, 1877 in Albany at the Assembly Chamber of the old State Capitol. We then had 356 members and dues were $5 per year.

Today, by comparison, we have over 70,000 members, 60 standing and special committees and task forces, and 26 specialized sections with a total section membership of over 37,000.

Our founders would barely recognize the world in which we now live. Yet, lessons can be learned from our very first president, John K. Porter, who addressed the membership 141 years ago.

Porter identified two "common purposes and objectives" for NYSBA: to "serve the profession and to serve the public." He challenged the fledgling association to "exercise a collective and permanent influence."

He also charted the path for our future when he said: "The influence of our profession in the next generation depends on a large degree on the manner in which we fulfill our duty … the obligations of that trust reach far beyond the present generation."

Succeeding generations of lawyers have proudly followed Porter's clarion call. Over the years and across the nation we have championed the rule of law and led the fight for justice and social change.

But now more than ever, the voice of lawyers must be heard. Our clients and communities need our wisdom. They need our gift of seeing both sides of an issue. They need us to explain why the rule of law has kept us free for over two centuries.

As members of this great and noble profession, it is our duty to protect and fight for an independent judiciary; the apolitical administration of justice; and equal justice under the law. The job falls to us to teach our fellow citizens why we must have a government of laws and not men and women.

John K. Porter would be amazed by the breadth and depth of our current initiatives; gratified that we have pursued this work as an organization; and overwhelmed at the tremendous talents and energies of our members and their willingness to share and volunteer.

Come join us at the Annual Meeting and experience the rich tradition firsthand!

Henry M. Greenberg is a shareholder at Greenberg Traurig in Albany.

Business Lawyers and the Business Law Section

Peter W. LaVigne

Chair
Business Law Section

Law is a profession and the New York State Bar Association is an essential part of it. The law, like other professions, has standards for education and training, admissions and professional conduct. And like other professions, it relies on professional organizations to maintain and protect those standards, ensure the training of members, and advance the goals of the profession, including service to the public. Within the NYSBA, the Business Law Section performs those functions for business lawyers and the business community in New York state and beyond.

I joined the Section's Securities Regulation Committee almost 30 years ago, because of an interest I had in New York's securities law, the Martin Act. As a member of the Committee, including three years as Chair, I learned more about the far corners of state and federal securities law than I ever knew existed and met lawyers who became mentors, colleagues and friends.

There are 11 subject matter committees in the Section, and one subcommittee (which may in time become a committee), covering such disparate topics as banking, bankruptcy, business organizations, derivatives, franchises, insurance, not-for-profit corporations, mergers and acquisitions, public utilities, and technology and venture law. Committees meet during the Spring, Fall and Annual meetings, and some meet more often. The Securities Regulation Committee meets for dinner, discussion and CLE every month except August. Section members include lawyers from large and small firms, in-house counsel, and government lawyers. We have experienced lawyers, lawyers just starting out or looking to change or expand their practice areas, and law students. Committee meetings provide an opportunity for lawyers from all levels of experience to meet as equals and to discuss new developments and established principles in a setting where discussions are driven not by specific client needs but by a broader interest in the law and policy.

As members of the Section and committees we have the opportunity to comment on regulatory and legislative proposals not primarily as client advocates but as experts interested in shaping good rulemaking and legislation. The Legislative Affairs Committee follows developments in the the New York legislature for bills affecting the New York business community. We have submitted memos for and against legislation. We have also proposed legislative changes, and will have a presentation at this year's annual meeting on draft proposals to amend the Limited Liability Company Law.

We are committed to fostering greater diversity in our membership, and will be expanding our program to mentor minority lawyers and law students in the coming year.

The Bar Association often tells prospective members what membership can offer, and there is a lot, but I have a different pitch. In order for the Bar Association, and the Section, to continue to maintain the goals and standards of the profession, we need what you offer: your time, your talents, your dedication to the profession. I hope to see you soon.

Peter W. LaVigne is a partner in the New York office of Goodwin Procter.

Working Toward Reform to Improve Justice for All

Tucker C. Stanclift

Chair
Criminal Justice Section

'Reform" means the improvement or amendment of what is wrong, corrupt, unsatisfactory, etc. It does not require a revolution in which a radical change is necessary to overhaul the entire system. The Criminal Justice Section works to reform certain areas of the criminal law that needs some fine tuning, or at most redressing serious wrongs without altering the fundamentals of our system. It is with this tempered approach that our section seeks to improve justice for all citizens of this state.

Serving as defense counsel for the indigent, I came face to face with hundreds (if not thousands) of New York's poor citizens facing the regrettable choice of pleading guilty to crimes they did not commit for the lack of $500 bail because another night behind bars would mean losing jobs, homes, and custody of their children. In my view, the bail system needs to be improved to educate lawyers, judges, and court personnel about alternative forms of bail and to only impose cash bail in the most serious of cases. Would the loss of $500 cash bail seriously be incentive enough for an accused to be in court if they were inclined to flee the jurisdiction? Surely, our system can be improved to address this incongruity. Since January 2018, the Criminal Justice Section has made Bail Reform a priority because the poor, un-convicted of any crimes, are needlessly filling our jails. New York is in a unique position this legislative term to make serious and meaningful progress in making changes to a system that unwittingly discriminates against the poor.

Diversity of views is a key aspect of the Criminal Justice Section's makeup and a critical component of our success on controversial issues. As defense counsel, prosecutors, police officers, and judges we do not always see eye to eye on the necessary changes that will improve the administration of justice. A prime example is Discovery Reform. The mission of this section is "to anticipate, recognize, and address such [criminal] issues … as properly come before or should come before the New York State Bar Association." See Section's Mission Statement. Discovery reform is coming to New York state. We need to recognize the importance of our role in the discussion and address the issue at a legislative level. How we accomplish this task and to what extent is often debated amongst the leadership. The New York State Bar Association is made up of an ever more diverse group of practitioners. Civil lawyers and citizens alike are baffled by the secretive methods of criminal prosecutions. No depositions of key witnesses? Limited access to evidence? Investigative notes and prior statements withheld until the 11th hour? The stakes are not merely financial as they are in civil cases. In my view, the blindfold should be lifted and the Criminal Justice Section, together with Bar leadership, must move this new legislature to take appropriate corrective action without unduly jeopardizing the safety of those a part of the process.

The Bar Association has also established a Wrongful Convictions Taskforce to examine previous reforms such as video recording of confessions. In 2001, I presented the Appellate Division, Third Department, with the issue of suppressing a youth's confession for failure to electronically record the interrogation process that led to a written statement obtained by law enforcement. The court stated that "there is no authority in this State which supports defendant's argument that failure to electronically record his statement requires that it be suppressed." *People v. Ferguson*, 285 A.D.2d 901 (2001). Although I believed then (as I do now) that Due Process required suppression of the unrecorded confession in serious felony cases, the courts are reluctant to change without statutory authority. It took over 15 years for the legislature to catch up with the times for electronic recording of custodial interrogations. The same is true for Discovery Reform. Although Due Process seems to mandate open discovery for those facing incarceration, it will not come to pass without legislative authority. Critics justly point out the dangers to witnesses for the truly unscrupulous defendants. In my view, sufficient safeguards can be enacted to cure the objection. The Criminal Justice Section will be active; we will be thoughtful; and we will be rel-

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Tucker C. Stanclift of Stanclift Law PLLC in Queensbury, N.Y. focuses his practice area in criminal law, DWIs, civil litigation, personal injury, and vehicle and traffic law.

Mediation Preparation Tips for In-House Counsel

Elizabeth J. Shampnoi

Chair
Corporate Counsel Section

Mediation is increasingly being utilized by companies for early, efficient and faster resolution of disputes. Mediation may occur pre-litigation, during litigation and after appeal. Recognizing the benefits of mediation, many courts now require mandatory mediation. The traditional benefits of mediation such as time and cost savings are widely known. Often more important to companies, however, is the ability to customize a process that best meets their needs and avoid the uncertainties of litigation. Additionally, mediation allows the parties to consider creative solutions not available in litigation.

Preparation is key to the success of any mediation. Whether handling the matter internally or working with outside counsel, spending time to prepare increases productivity in the mediation. All involved must understand how the process works and strategize how to approach the mediation. Identifying goals and outlining a path to achieve those goals while maintaining flexibility will help increase success.

Key considerations include: an analysis of your best-case, worst-case and likely alternative to a negotiated resolution; what negotiation style and strategy will be implemented; who is going to take the lead role; what information will you share—and when—to persuade the other party of the strengths in your argument. It is imperative that you outline the critical issues as well as the strengths and weaknesses of your case and do the same from the other party's perspective to anticipate their arguments. This will make for rational decision-making. Prepared parties also have greater credibility all around.

Best practice dictates that counsel be prepared to provide key facts and evidentiary support for the claim and those that undermine the opposing party's claim. Counsel should have available sufficient information so that the mediator and opposing party may objectively understand your position. Effective mediation advocacy requires focusing on information that truly matters but with objectivity. Counsel must be able to acknowledge the strengths in the opposing party's claim. Anticipating the opposing arguments and facts, being prepared to explain why those facts are not supported or of little consequence, will lead to a greater chance of resolution.

A few other preparation tips include: understanding and sharing with the mediator the relationship between counsel; prior and potential future dealings between the parties; and the personalities of all involved because mediation is not strictly about numbers—it involves emotion too. It is important to share as much information as possible with the mediator in advance. Speaking to the mediator privately in advance is encouraged to save time the day of the mediation. Counsel should build rapport with the mediator and be upfront. This allows the mediator to be more effective. It is almost important to determine whether it will add value to begin in joint session, with mediator opening remarks followed by opening remarks from counsel and/or the parties. Opening remarks are often an opportunity to persuade and speak directly to the other party without having those remarks filtered by counsel. Remarks should be prepared ahead of time, demonstrate a willingness to listen, and be conciliatory consistent with the spirit of mediation. Opening remarks if not carefully crafted can also inflame the situation so careful consideration and preparation is required.

Investing adequate time to prepare for mediation will enhance the likelihood of success. In the event the mediation is not successful, in-house counsel's preparation time is still well spent because the foundation will be laid from which to build for future negotiations or litigation preparation.

Elizabeth J. Shampnoi is president of Shampnoi Dispute Resolution and Management Services and serves as a mediator, arbitrator, consulting expert and trainer. She works with in-house counsel, law firms, and executives providing strategic advice to develop and implement ADR programs.

The ADR Challenge: Its Growth in New York State

Deborah Masucci
Chair
Dispute Resolution Section

Are we optimally using mediation and arbitration in New York state? In April 2018, Chief Judge Janet DiFiore and Chief Administrative Judge Lawrence Marks thought not. That is when they established an Advisory Task Force to provide recommendations on how to increase the use of alternative dispute resolution (ADR) in the courts with the goal of reducing case delays and enhancing access to justice.

The ADR boom seen in the late 20th Century never sparked in New York state despite its many champions in New York City, the home of the American Arbitration Association (AAA), the International Institute for Conflict Prevention and Resolution (CPR) and the Financial Industry Regulatory Authority's (FINRA) ADR Department. During that time JAMS—the biggest mediation advocate in California, established a New York presence waiting for the wave to come. New York state law school's established ADR clinics to offer students hands on experience using the processes that would become part of their case management toolkit as they developed their legal career. Through all of these development, the NYSBA Dispute Resolution Section supports the members of the Bar in their efforts to be skilled ADR practitioners by offering many opportunities to be part of the ADR evolution.

In 2018, the NYSBA's Dispute Resolution Section celebrated its 10th anniversary. Its members are focused on three pillars: a forum for improving ADR processes, enhance the proficiency of practitioners and neutrals through education, and increasing knowledge and availability of party selected solutions. These pillars were evidenced throughout 2018 and will continue to strengthen as the Section's members continue to advocate for high professional standards for delivering these processes.

Collaboration is central to all the activities that the Section undertakes. In 2018, major programs were offered in collaboration with other NYSBA Sections including the: Commercial and Federal Litigation, Corporate Counsel, Elder Law and Special Needs, International, and Young Lawyers and Law Students Sections. The ADR Section also partnered with the New York International Arbitration Center, the Chartered Institute of Arbitrators and even the United Nations, providing opportunities for members to expand their skills into cross-border arbitration and mediation.

How were the pillars and collaborative efforts demonstrated in 2018? How will the Section carry these initiatives forward in 2019? First, as a forum for improving ADR processes, the Section delivered a program titled "The Litigative DNA: The Underutilization of Mediation in NY." That program examined the reasons ADR has stalled in New York and received commentary by court programs in states where mediation in particular is part of the fabric of their dispute management and resolution processes. Further, ADR in the Courts and Mediation Committees have been working closely with court ADR administrators and judges to improve the quality and performance of court ADR programs. These Committees and additional programming will play an important role in 2019 by providing recommendations to the Advisory Task Force, an integral part of improving ADR processes in expanding the diversity of the rosters of mediators and arbitrators and, more importantly, ensuring that diverse neutrals are selected to cases. The Section offers a mentorship program that includes scholarships for women and minorities to attend Section programs during the year. In 2019, the Section plans to publish a practice development guide for new neutrals and will issue a report on efforts to diversify the field.

Second, the Section is committed to educating lawyers advocating in an ADR setting and neutrals. Each year, the Section delivers mediation and arbitration training. These sessions are focused on service as a neutral. However, in 2018, the Section added Mediation Advocacy skills training and offered an ADR clinic. The clinic prepares new lawyers to offer their ADR advocacy services to unrepresented parties building experience that can be used to showcase their skills to possible employers. New York state law schools have three opportunities to compete and boast about their skills training classes. For the third year, the Section sponsored its Arbitration Competition and in 2019 the Section will offer a Mediation clinic testing competitors' skills as a mediator and mediation advocate. Finally, the NYSBA/American College of Civil Trial Mediators sponsor an annual writing competition recognizing scholarship in the ADR field. Two prizes are awarded—one solely for New York state students.

Third, the world of ADR and the processes used to resolve disputes continues to evolve. Our world is shrinking and everyone is involved in some form of international trade. In 2018, the Section celebrated the 60th anniversary of the New York Convention and the adoption of the Singapore Convention developed to enforce cross-border mediation settlements. Both instruments support ADR internationally. It is important for New York lawyers to be aware of these important tools supporting arbitration and mediation because New York state is an international center for trade. The Section continues to support ADR in a myriad of fields with its programming and committees. In 2019, the Legislative Committee will work with members of the New York legislature on possible changes to New York's CPLR.

As the Section celebrates its 10th anniversary, we look back at what has been accomplished in the field and what needs to be done in the future. Section members will be a powerful force in the evolution of the ADR field. The Section offers lawyers a unique opportunity to be part of the evolution by taking advantage of the programs offered and by actively working on initiatives to expand the field. Take the step and join us.

Deborah Masucci is an arbitrator, mediator and consultant of Masucci Dispute Management and Resolution Services.

Striving to Meet Increased Challenges

Judith D. Grimaldi
Chair
Elder Law and Special Needs Section

Elder and special needs law has become more challenging as the basic societal supports on which our aged and disabled clients thrive can no longer be taken as a given. Foundational programs such as Social Security, Medicare, Medicaid and disability services are being re-examined, re-designed and often reduced. Social Security has been re-characterized from a contributory social insurance program to an entitlement that can be altered and changed. Thus, the rules are changing in the middle of the game and our clients are caught in the mix.

The elder law and special needs attorney's role as advocate and advisor is becoming even more crucial. We are asked by our clients to maximize their planning options, create defensive strategies, and help them understand the impact of these changes on them, their finances and their family. The elder law and special needs attorney has become the lawyer for the later years, which requires we have the knowledge to cover life from pre-retirement to death. The elder's expansive life cycle requires we know long-term care and estate planning, but also about health, housing, financial security, community resources, treatment of Alzheimer's and other chronic diseases, government benefits beyond Medicare and Medicaid, real estate, retirement savings and tax implications. The list continues to grow as the elders and the families we serve are becoming more diverse. This is what makes the practice interesting and exciting, and each day presents a new issue and a new challenge.

Elder Law and Special Needs Section (ELSN) members strive to meet these challenges with wisdom and energy. Our Section and the Medicaid Committee will continue to work with the non-profit and legal services community to advocate for improvements in the delivery of home- and community-based services throughout the state, and our section will continue to advocate for a revised Power of Attorney law and collaborate with the other NYSBA sections on producing workable legislation.

In October 2018, the ELSN's Section spearheaded a housing symposium featuring one of the founders of the famed "Dementia Village" in the Netherlands, who provided an interactive presentation on this unique residence for individuals with dementia. This concept allows residents to feel comfortable in their surroundings and live with people of like interests.

Other highlights include the work of the of the following Section Committees: The Special Needs Committee produced a public series in Nassau County. The Client and Consumer Issues Committee updated the consumer brochures on senior benefits and prepared outreach efforts on health care decision-making. The Mental Health Committee is working on a health care proxy form to be used for individuals with the mental health issues. Finally, the Task Force on the Challenge of Medicaid Planning has started a research project and plan to address the proliferation of non-attorney Medicaid planning services and advocate for consumer education and protection in this area.

Judith D. Grimaldi is a partner in Grimaldi & Yeung in Brooklyn.

Greetings From Lawyersville

Barry Skidelsky
Chair
Entertainment, Arts & Sports Law Section

Yes, that's a real place in New York state—as already known at least by my colleagues in NYSBA's Entertainment, Arts and Sports Law Section (EASL), and by readers of the recent EASL Journal special edition celebrating the Section's 30th anniversary.

EASL's 2019 annual meeting program at the Hilton (Tuesday, January 15) will include CLE panels addressing legal ethics for entertainment and other lawyers, plus various transactional, litigation and regulatory matters concerning underlying rights and adaptations in multiple media.

If you cannot attend our program and/or joint networking reception with the Intellectual Property Section (EASL loves to cross-pollinate with other NYSBA sections, bar associations, and law firms), here is a brief introduction to what copyright law calls "derivative works" (plus mention of a related lawsuit doubling as a warning for podcasters and others).

The Copyright Act defines derivative works as those based on or adapted from one or more pre-existing works. Traditional and obvious examples include sound recordings based on a musical composition (i.e., the music and lyrics of a song), and motion pictures or theatrical plays based on a previously published book. More modern and less obvious examples are podcasts, apps and websites. All involve multiple works and underlying rights that must be "cleared." Failure to do so upfront increases risks and costs.

The right to create derivative works (and to prohibit others from creating them) is part of a bundle of exclusive rights a copyright holder has which arise when a work of original authorship is fixed in tangible form (including as MP3 and other digital media files). Copyright registration is not required, but is generally recommended to obtain added value, statutory damages and counsel fees.

Related lawsuits (often at federal and state courts in New York and California, where many entertainment, media and technology matters are litigated) have followed the emergence and adoption of each new media technology.

A chronological list of some relevant traditional media technology well developed *over the last century* includes printed sheet music, mechanical piano player rolls, film, sound recordings, radio, television, and home video recorders. Newer online and mobile digital media technologies that emerged *over the last couple of decades* continue to develop and supplant at an accelerated pace, creating global opportunities and challenges.

Legislators and judges struggle to adapt copyright and other law to emerging digital media. Consider the recently enacted Music Modernization Act (music licensing reform primarily promoted by large streaming services), and *UMG v. iBus Media* (case no. 2:18-cv-9709, U.S. District Court, Central District of California, filed Nov. 16, 2018).

UMG is one of the first nationally prominent cases concerning podcasts. Various record labels and music publishers sued the owner of pokernews.com for willful copyright infringement relating to unauthorized use of music in the defendant's poker related podcasts. Given statutory damages of $150,000 per infringed work, the total tab could easily exceed $6 million. Space constraints here aside, more information is available at nysba.org/easl.

Barry Skidelsky has experience as a musician, broadcaster, bankruptcy trustee, FCC trustee, arbitrator, and general counsel. Based in New York City, he currently owns a national consulting and legal practice with particular interests and expertise in media, entertainment, communications and technology.

Overview of Tax Act's Impact On Matrimonial Law

Eric A. Tepper
Chair
Family Law Section

2018 was a quiet legislative year on the matrimonial front in New York state. Ironically, it was federal legislation that is about to have a major impact on the matrimonial field. Specifically, the Trump tax reform legislation (officially called the Tax Cuts and Job Act) which was enacted at the end of 2017 will have its major impact on the matrimonial field effective Jan. 1, 2019.

In particular, the tax reform legislation eliminated the "alimony" deduction. Since approximately 1942, spousal maintenance has been deductible to the payor and includable in the recipient spouse's income for tax purposes. The federal tax legislation eliminates the "alimony" deduction going forward. Maintenance provisions found in a Separation or Marital Settlement Agreement or Judgement of Divorce which were entered into by Dec. 31, 2018 should still be exempt from the new law and remain deductible to the payor and includable in the recipient's income for tax purposes. However, if there was neither a valid Separation or Marital Settlement Agreement in place or a Judgement of Divorce as of Dec. 31, 2018, spousal maintenance will no longer be subtracted from the payor's income and added to the recipient's income on the federal tax return. This is true, even if there is a pending divorce action.

At first glance, spouses receiving maintenance might view the elimination of the alimony deduction as a windfall as the maintenance received will no longer be taxable income on the federal return. However, the net effect of the law is that there will be less money available to a divorcing couple with which to pay maintenance as the payor spouse (typically in a higher tax bracket) will have a larger tax bill given the elimination of the alimony deduction. Unless there is a legislative fix, it will be up to judges to determine whether equity will require more "deviations" from the maintenance guidelines to make up for the elimination of the alimony deduction. That being said, attorneys representing the payor spouse may want to consider presenting proof showing what the net effect to the payor would have been had the maintenance been deductible to the payor as opposed to non-deductible. Some computer programs which calculate the maintenance guidelines amount are able to provide this information. Alternatively, an accountant may be needed to provide these figures.

While the federal alimony deduction is eliminated for future divorces or agreements executed after Jan. 1, 2019, the deduction remains intact for purposes of New York state and New York City income taxes. There was a provision in the 2018 budget bill whereby New York opted out of the federal tax scheme and continued the alimony deduction at the state level. Therefore, if parties enter into a Separation or Marital Settlement Agreement or get divorced after Jan. 1, 2019, maintenance paid pursuant to the terms of the settlement agreement or divorce judgment will still be deductible on the state tax return, even though the deduction is eliminated on the federal tax return.

Section Update

The Family Law Section continues to be a vibrant section, providing our nearly 2,500 members with a plethora of benefits. Our three-day summer meeting this past July at the Equinox Resort in Vermont was a great success. We even had to cut off registration because the meeting sold out in a matter of days. Our section's hard-working CLE committee continues to put on CLE programs which are second to none. Our section's website provides our members with monthly case law and legislative updates prepared by past chair, Bruce Wagner. Our legislation committee continues to monitor and comment on legislation and proposed rule changes affecting matrimonial and family law. Our quarterly publication, the *Family Law Review*, provides invaluable information and timely articles to our members.

Our section's daily listserve remains extremely active, whereby members pose practice questions which are answered by other section members. This past November, the Section was honored to receive the Pipeline Diversity Award from the Scales of Justice Academy in recognition of the section's continued support of the work of the academy in exposing underserved high school women to various areas of the law. I wish to thank my fellow officers, Rosalia Baiamonte, Peter Stambleck and Joan Adams, as well as the co-chairs from our various committees and the past section chairs, for all of their hard work in continuing to keep our section active and vital.

Eric A. Tepper is a partner at Gordon, Tepper & DeCoursey.

The Time Has Come to End Mass Incarceration

Paul T. Shoemaker
Chair
General Practice Section

As we prepare to observe Martin Luther King Jr. Day, let us honor him by dedicating ourselves to eliminating the serious injustice of mass incarceration in America.

The statistics are grim. The United States has a prison population of 2.2 million, more than any other country. Our rate of incarceration is the highest in the world and falls with severe disproportionality on African Americans.

The rate of incarceration for black males in the 30- to 34-year-old age group is 6,412 per 100,000 individuals—a shocking rate of imprisonment of 1 out of every 16 men. Far too many are incarcerated for crimes that are not violent and far too many are incarcerated for possession of illegal drugs who are users. In addition, people convicted of non-violent crimes such as drug possession have been given sentences that are excessively long because the judge had no ability to make the punishment fit the crime and the defendant's circumstances as a result of mandatory statutory sentences.

The rate of imprisonment per 100,000 people is 148 in England, 62 in Japan and 30 in India, far below the overall incarceration rate of 737 in the United States. As our past President Sharon Stern Gerstman pointed out last year, the United States has 5 percent of the world's population, but 20 percent of the world's prison population, including a disproportionate number of people of color. President Gerstman established the Task Force on School to Prison Pipeline to study this issue.

Mass incarceration destroys the lives of prisoners and severely impacts families and communities, particularly minority communities.

The sheer cost of our prison system is staggering. Opposition to mass incarceration is coming both from those who wish to see people treated more fairly and from those who wish to see the government spend less. There is no reason for us to resort to draconian measures out of all proportion to those exercised in the rest of the world.

How did this happen? Scholars note that our prison sentences are far longer and that we have a harsh public attitude compared with other nations. We are virtually alone among industrialized nations in maintaining the death penalty and life sentences are much more common in the United States.

Moreover, just as the gun lobby is propped up by those who profit from the manufacture and sale of guns, the prison lobby is propped up by those who profit from the construction and use of prisons. In addition, prison expansion has been seen as a development strategy for depressed areas.

When, however, the huge costs of mass incarceration are considered, it is clear that something must be done. One solution is to release prisoners. Even conservatives have started to call for shorter and fewer prison sentences. People convicted of drug offenses (many involving a drug which now is being made legal) and other non-violent offenders should be treated with more leniency.

There also is hope to be found in the concept of restorative justice. Restorative justice is a program for dealing with people—especially young people—suspected of committing crimes that seeks to either divert them away from the criminal justice system or to prescribe a sentence of therapies and interventions instead of incarceration: a program supervised by the court designed to change a defendant's behavior for the better.

Restorative justice originated in New Zealand and has been used there with great success with the troubled indigenous Maori population. The New Zealand model typically involves family group conferencing. The meeting is attended by the alleged offender, his family, the victim, the police, a trained youth advocate, and other people the family wish to invite.

The youth advocate mediates between the family and the police. The offense is described and the young person admits or denies involvement. The victim describes the impact of the offense.

The participants then discuss how the matter might be resolved. The family deliberates privately and the meeting reconvenes with the professionals and the victim to see if they can agree on the plan advanced by the family. A typical plan may include a confession and apology by the offender, restitution, and participation in therapy, education and/or training.

Restorative justice and similar programs have started to gain traction here in the United States. For example, the U.S. District Court for the Southern District of New York has implemented the Young Adult Opportunity Program to help young defendants avoid incarceration. The program provides access to employment, counseling and treatment resources.

The Justice Court for the Village of Bronxville, N.Y. provides young offenders with the opportunity to avoid incarceration by participating in the Community Restorative Justice Program. This program is implemented through a Conditional Discharge, which allows the court to tailor a program of requirements for the defendant for a period of one year, which if performed to the court's satisfaction, will allow the defendant to be discharged without incarceration or probation. The program requires the individual to comply with specified therapies and interventions recommended by expert personnel who advise the court. The individual meets frequently with members of the community restorative justice staff of the Bronxville Justice Court. These and other steps are intended to assure that the offender complies with the law and achieves a degree of rehabilitation, usually aided by a year of psychological therapy, and understanding of the seriousness and long term consequences of his misconduct.

The value of a sentence of therapies and interventions or diversion from the criminal justice system can be substantial. Young people who are imprisoned are brutalized and exposed to career criminals. After leaving prison, they often perceive no opportunities for themselves other than lives of crime. These are the costs of mass incarceration on the individual level.

Mass incarceration takes too large a toll on the individual, community and national levels. It is time to roll back mass incarceration and to bring America closer to fulfilling Dr. King's dream.

Paul T. Shoemaker is a partner in Greenfield Stein & Senior.

Resolve to Make the Office Fun Again, Even in a # Era

Richard K. Zuckerman
Chair
Local and State Government Law Section

Sharon N. Berlin
First Vice-Chair
Local and State Government Law Section

The holiday season may be over but, as you get back to your regular work schedule, we encourage you to add one more goal to your New Year's Resolution list: to make your office fun again! In light of #MeToo, it is no surprise that many employers are decreasing social and other fun activities, believing that doing so may avoid situations that could lead to liability. With the constant reminders that just about *anything* can go "viral," it is not surprising that employers are defaulting to a "sterile" work environment. Doing so may come at a cost—the decrease of employee morale, overall efficiency and work performance. The good news is that you can do something about it!

Let's face it. Employees spend much of their waking hours at work. Circumventing liability in a # era does not require the cancellation of all morale boosting activities. Avoiding liability involves, among other things, having clear policies written in simple, easy-to-understand language, and that prohibit illegal harassment and discrimination. Training your workforce on those policies every year is also a must. New York Labor Law §201-g requires every New York employer to have disseminated to their employees, on or before Oct. 9, 2018, a policy against sexual harassment and to provide all employees with anti-sexual harassment training by no later than Oct. 9, 2019 and at least annually thereafter. Employer policies should prohibit illegal harassment and discrimination, including at any workplace party or other event. Employees should be reminded regularly of that prohibition, including in advance of any event.

Here are three suggestions that employers can implement to help make their office(s) fun again: with that in mind,

Surprise your employees. Planning a surprise employer-provided lunch or outing shows employees that they are appreciated and can help break up a work week.

Start New Traditions. Productive workforces have routines, protocols or committees for everything they do. Why not have one for planning something fun? This could be as simple as celebrating staff birthdays and other life events; "bring your son/daughter to work" day; having an employer-provided breakfast to welcome new employees; encouraging employees to suggest quarterly learning seminars presented by and to other employees; hosting a book club; or starting a "lunch club" where a different kind of cuisine is brought into the office once a month. Public employers cannot use public money to fund these activities, but their employees can voluntarily contribute to cover the cost.

Get involved in community service. Have a service day to let your employees give back. Volunteering and getting involved with local organizations brings people together for a good cause and can be beneficial to one's health. It also boosts the employer's visibility and sets the employer apart from competitors.

This year, consider making a positive change by making your office (more) fun.

Richard K. Zuckerman and Sharon N. Berlin are partners at Lamb & Barnosky.

Honoring Our History, Mission, and Values

Cheryl E. Chambers
Presiding Member
Judicial Section

Over the past year, the Judiciary has confronted many challenges that reinforce the importance of an independent judiciary and the value of working together as members of the Judicial Section to advance fairness, efficiency and justice for all. As members of the judiciary and the bar prepare to gather at the Judicial Section Awards Luncheon during the 2019 New York State Bar Association Annual Meeting, this is an occasion to reflect on the history of the Judicial Section and how the fundamental principles underpinning its formation are still relevant today.

At its Annual Meeting held on Jan. 20, 1923, the New York State Bar Association convened a meeting of judges in the state to obtain their views on the formation of a judicial section. On this question, Justice A.F.H. Seeger remarked: "It is regrettable that so many of the Justices in the State are not acquainted with each other and I think the creation of this Section would tend to bring the Justices nearer together, where they may exchange ideas, experiences and so promote the work and the cooperation of the Bench and the Bar." The following year, Calvin Coolidge, just five months into his presidency, signaled support for legislation by which the procedure in the federal trial courts would be simplified to expedite the hearing and disposal of cases. Against this backdrop, Association members voted unanimously at the Jan. 19, 1924 Annual Meeting to form the Judicial Section as its first section. The Association had a keen appreciation of the role of the judiciary in advancing affirmative reforms.

The Judicial Section immediately commenced its tradition of providing a forum for constructive dialogue, featuring speakers who explore issues of substantive law, procedure and court administration. The goal of these new convenings was to provide a vehicle for the judiciary to consider and voice its perspectives as well as an opportunity for the Association to gain insights from the judiciary when developing and implementing policy positions. At that time almost a century ago, free speech, worker safety, immigration, gender and race were among the prevalent issues in court cases, the world of politics and the news.

To further the exchange of information and collaboration with the bar, as well as members of the bench, the section created a Council on Judicial Associations in 1971. Composed of the Chair of the Judicial Section and a delegate of each statewide and New York City judges' organizations and representatives from the U.S. District Courts, the Council serves as liaison with these organizations and members of the judiciary, as well as a clearinghouse for bar initiatives and a forum for the exchange of ideas on critical issues affecting the judiciary and the administration of courts.

In keeping with its historical roots and mission, the Judicial Section and the Council of Judicial Associations continues to bring together the most influential judicial and bar leaders to advance our perspectives within and through the New York State Bar Association. Further, we assemble, in New York City at the Judicial Section Luncheon during the Annual Meeting, to recognize distinguished members of the judiciary who have made outstanding contributions to the administration of justice.

During this year's luncheon on January 18, we will honor Hon. Raymond J. Lohier of the U.S. Court of Appeals for the Second Circuit; Hon. Alan D. Scheinkman, Presiding Justice, Appellate Division, Second Department; and Hon. Elizabeth A. Garry, Presiding Justice, Appellate Division, Third Department.

The luncheon program will feature Preet Bharara, former U.S. Attorney for the Southern District of New York, in conversation with Fordham University School of Law Dean Matthew Diller about new threats to the rule of law and how we can work together speak up for and protect the democratic values that we all hold dear.

The Judicial Section is an ideal place to take on these difficult questions and facilitate practical solutions because we bring together all parties for the sole purpose of advancing the rule of law and improving the judicial system. We believe that together we can make a difference.

Join us for the 2019 Judicial Section Awards Luncheon.

Cheryl E. Chambers is an Associate Justice of the Appellate Division, Second Department and has served as the Presiding Member of the Judicial Section and the Council of Judicial Associations since June 2018.

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evant to the discussion as we approach the next legislation session.

In 2012, our executive committee worked tirelessly with our Sealing Committee to enact Sealing Legislation for former offenders. This too is now law in New York. Fast forward to 2018 and the New York Times reports that the federal government is seeking to overhaul the criminal justice system and the nation's sentencing rules. Reform at the federal level should also include sealing of convictions in New York's Federal Court system. The Criminal Justice Section continues to make this a legislative priority for our citizens previously convicted in Federal Court.

All in all, I believe the Criminal Justice Section continues to rise to the occasion of reform. It need not be revolutionary. Simple improvements will suffice. I look forward to continuing as your Chair until June 2019. Thank you.

Whalen

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of Elections v. Lopez Torres, 552 U.S. 196, 212 (2008) (Kennedy, J., concurring).

Maintaining this faith is no small task, and it is a duty of which every judge from the town hall to the Supreme Court must be particularly conscious from the moment he or she first puts on the robe. This is a moment that changes us, certainly, but more importantly, we must remember that this moment changes the public's perception of us. Prior to this point, a judicial candidate's identity was inextricably attached to his or her political affiliation. Once the bench is attained, however, that identity must be shed and a new mantle of impartiality donned to ensure, both inside and outside of the courtroom, that this political past is not seen as prologue. This has never been an easy task, but particular attention must be paid in an age where the immediacy of mainstream and social media reaction has the potential to paint our words and actions with unintended political spin. This is far from a matter of mere decorum where "the appearance of bias demeans the reputation and integrity not just of one jurist, but of the larger institution of which he or she is a part." *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1909 (2016). The appearance of impartiality and the separation of the court's work from partisan gamesmanship are therefore as much requirements for public faith in the courts and the judges that preside therein as the absence of actual bias.

When considering how to traverse this tightrope of ensuring impartiality in what feels to be an increasingly partisan world, it is always useful to consider those who have successfully arrived at the other side. His retirement from the bench this past December brings inescapably to mind the Honorable Eugene F. Pigott Jr. Named Erie County Attorney in 1982 and appointed initially to the trial bench and almost immediately to the Appellate Division following his subsequent election, Judge Pigott is hardly a stranger to politics. Media coverage at the time of his elevation to the Court of Appeals in 2006 painted his appointment with a partisan brush. Whether mere speculation or an accurate reflection of the governor's intent, it was posited by commentators that then-Governor Pataki appointed Judge Pigott as part of an effort to skew the court to the right, to create a tough-on-crime court more aligned with perceived conservative ideals. John Caher, "Appointments to Top Court Bring More Conservative Approach," Law.com (Jan. 2, 2007); Elizabeth Benjamin, "Pataki's Court of Appeals Pick," Times Union (Aug. 18, 2006); Michael Cooper, "Pataki Appoints Fifth Republican to Highest Court," New York Times (Aug. 19, 2006). Yet, to my mind, Judge Pigott exemplified during his tenure the ideal that, although the path to the bench may pass through the electoral ballot, there are no "Pataki judges" and no 'Cuomo judges.' His legacy is unshaded by the expectations of his appointment, but instead he is appropriately lauded for his pragmatism, noted for his recognition of the importance of criminal defendants' rights, and reflected upon as ideologically unpredictable. See, e.g., Timothy Murphy, "Judge Pigott Returns to Trial Bench After Illustrious Appellate Career," NYSBA Leaveworthy Newsletter Vol. VI No. 1 (Spring 2017); Vincent Bonventre, "NY Court of Appeals: The Paterson v. Skelos Decision—The Judges, Politics, Votes, and Opinions," New York Court Watcher (Sept. 22, 2009); Joel Stashenko, "On Brink of Departure, Pigott Discusses His Approach to Law," New York Law Journal (Dec. 27, 2016).

Judge Pigott, a frequent dissenter, also reminds us that the absence of partisanship is not the absence of opinion. Murphy, supra; Stashenko, supra. Dissent is a healthy and necessary part of our judicial process, a process aided by the different analytical approaches of its judges. Further, my concern regarding the appearance of partisanship in the judiciary is not meant to suggest that either the media or other court watchers should report on our work with anything less than a critical eye—indeed, such a mirror is a necessary measure of public perception. What we seek to avoid is the presentation of oneself as a pro-prosecution, pro-plaintiff, pro- or con-*anything* judge and thereby create an expectation that the system is skewed from the start. It is incumbent on each of us to guard against the creation of a legitimate perception that a court, any court, is a "political prize" to be won by the current majority. Adam Liptak, "Roberts, Leader of Supreme Court's Conservative Majority, Fights Perception That It Is Partisan," New York Times (Dec. 23, 2018). Public faith and judicial independence demands that we work against such perceptions in order to ensure that our own legacy, like that of Judge Pigott, is one of leaving the courthouse stronger than we found it.

NYSBA ANNUAL MEETING:

Susan DeSantis, Deputy Editor-In-Chief
Angela Turturro, Sections Editor
Monika Kozak, Design

Gathering Together to Discuss Lawyers In Transition

C. Bruce Lawrence
Chair
Senior Lawyers Section

The Senior Lawyer Section has focused this year on its members being lawyers in transition. Stephen Gallagher wrote in our magazine, The Senior Lawyer, on "Lawyer Well Being," addressing the appropriateness of the Section looking at the issue of senior lawyers in transition. After discussions with NYSBA's Young Lawyers Section and General Practice Section, and support from their leadership, we contracted with Steve to develop programing for regional *Gatherings* around the state. We held the first gathering with the Monroe County Bar because of support from their Young Lawyers Section and Senior Lawyers Committee. Held in early October, it got great reviews from attendees. The seniors in attendance loved the format of short presentations followed by breakout groups to discuss and comment on each program section. It was for many in attendance their first opportunity to talk with contemporaries about transitioning, how they might go about selling their practice, and what life might be like if they weren't practicing any more. Most commented that they had never talked about these issues with others. We have heard from other regional bars about an interest in holding joint *Gatherings* with our Section. But first, we are going to discuss this type of programing at the Annual Meeting.

We are holding an Annual Meeting *Gathering* on Thursday January 17th at 10AM at the Hilton with invited speakers, including bar leaders, bar executives, and those involved in Lawyers Concerned for Lawyers. The program will include a roundtable discussion of the "Gatherings" being held by this Section, joint with all co-sponsoring entities including local bar associations, Young Lawyers Section and the General Practice Section. We will be inviting several local bar leaders who have expressed an interest in working with us, and key section and committee leaders who may share this same interest. We will reach out to the courts, the law school community, and health care providers who share our concerns about the aging legal workforce and the future of the profession. We want the meeting to exploring how we might be able to come together in new ways to help senior lawyers, as well as younger lawyers who are entering the profession. We invite our Senior Lawyer Section members attending the Annual Meeting to join us.

Prior, at 9 a.m., we will be holding the presentation of the Section's Jonathan Lippman Senior Pro Bono Awards; guests are most welcome. At 9:45 a.m., the Section will hold its Annual Meeting with election of officers and appointment of Executive Committee members. At 1 p.m., the Executive Committee will hold a working lunch.

C. Bruce Lawrence is chair of the creditor's rights practice group at Boylan Code in Rochester.

10 Actions You Can Take Now to Advance And Champion Women in Law

Susan L. Harper
Founding Chair
Women in Law Section

I have the honor of being the first Chair of the new Women in Law Section of the New York State Bar Association. Our Section's mission is to be an active voice and catalyst for change to advance women in the legal profession and for all women under the law.

As members of t he bar, we are in a unique position to lead, advocate and use our power individually and collectively to develop and implement innovative ideas, reforms and workplace solutions that will advance women.

Where should you begin? Here are 10 actions you can take today to advance women in the New Year.

(1) Cultivate a Culture You Wish to See—Develop a deliberate tone from the top and workplace culture that makes advancement a strategic priority for all staff, practices, divisions, and teams. Hold your teams accountable to meet goals and report on progress. Review and share metrics to ensure everyone is on track.

(2) Be a Mentor—The best professionals are well mentored professionally and politically. Advise your employees and associates on development of skills for success. When they grow and prosper, it will benefit clients, your organization, and the bottom line.

(3) Assignments—To create equal opportunities for all, ensure women have meaningful assignments, including taking and defending depositions, arguing motions, participating in negotiations, examining witnesses, leading cases and deals, and interacting with clients.

(4) Adopt the Mansfield Rule—Like the NFL's "Rooney Rule," over 65 law firms have "pledged that women or minorities will make up at least 30 percent of candidates for any leadership or governance positions, including lateral hires and equity partner promotions." For more on building your bench, visit diversitylab.com.

(5) Client Relationships—The power is with the clients who are demanding diverse legal teams. Take women to pitches and give them active responsibilities at client meetings. Ensure women have substantive roles on matters. Develop training. Track metrics, review and adjust.

(6) Compensation and Advancement—Work with management and compensation teams to ensure equal pay, credit for client origination and development. Be transparent about compensation criteria.

(7) Be a Sponsor—Advocate and actively support promoting women's appointment to lead, serve as executive management, practice leaders, committee chairs, task forces and speakers at events.

(8) Amend the Rules—Consider revising your rules to encourage giving junior attorneys (oftentimes women) greater speaking roles in court. Also, encourage inclusion of women on trial teams with active roles.

(9) Build Visibility—Encourage participating in professional associations, writing articles, speaking engagements, and committees. Increase promotion of women's accomplishments.

(10) Commit today to be part of the solution to advance change—Join 623 women, men, and over a dozen committees who make up the Women in Law Section. Attend our Jan. 15, 2019 Annual Meeting program, luncheon and networking reception: "Secure Your Seat at the Table: Becoming a Leader and an Indispensable Lawyer Who Champions Women."

Be the change that you wish to see. The moment is now.

Susan L. Harper is the managing director NY/NJ of Bates Group.

Leadership in the Face of an Estate Tax Mismatch

Katie Lynagh
Member
Trusts & Estates Law Section

Trusts and estates practitioners are well accustomed to responding to new developments in the law, and 2018 was no exception. The federal Tax Cuts and Jobs Act, signed into law on Dec. 22, 2017, introduced major changes to the federal lifetime estate, gift, and generation-skipping transfer (GST) taxes, as well as the income taxation of individuals, partnerships, and corporations. For trusts and estates practitioners, perhaps the most significant change is that the legislation doubled the federal lifetime estate, gift, and GST tax exemptions, which are inflation-adjusted, from $5.49 million in 2017 to $11.18 million in 2018. The federal lifetime exemption for 2019 is $11.4 million per person. On Jan. 1, 2026, the exemption will revert to the prior level of $5 million per person, adjusted for inflation since 2010.

New York's estate tax exemption amount is not affected by the federal tax legislation. The New York exemption amount for dates of death in 2019 is $5.74 million per person. As a result of the federal tax legislation, many New York estates are subject to state estate tax but not federal estate tax. Estate planning documents often include formula dispositions that are based on the federal exemption amount and the higher federal exemption amount may affect how these documents operate, potentially triggering unanticipated New York estate tax or causing beneficiaries to receive amounts that differ from the testator's intentions. The problem is especially acute given that the benefit of the New York exemption amount phases out and is lost entirely if the taxable estate exceeds 105 percent of the New York exemption amount. The Trusts and Estates Law Section has responded to the significant mismatch between the exemption amounts by developing legislative proposals that would adjust the New York exemption amount and modify the way that formula bequests are interpreted.

While the tax law changes garnered a great deal of attention in 2018, trusts and estates practitioners continue to remain focused on advising clients on traditional issues such as the division of assets, charitable giving, planning for business succession, and preparing for disability and/or incapacity. In 2018, the Section supported members' professional development by conducting CLE programs on a wide variety of topics, including best practices for powers of attorney, family vacation home ownership strategies, protecting assets from creditors and long-term care expenses, planning for art collections, and the modification of existing trusts.

Our Section's committees develop legislation to solve issues confronted by practitioners and our clients and provide practitioners with a forum for professional collaboration. Three of the Section's legislative proposals were signed into law in 2018. We are continuing our work on a number of important legislative initiatives, including a long-term project that ensures that New York statutes remain on the forefront of modern advances in our area of practice.

Looking forward to 2019, the Trusts and Estates Law Section remains dedicated to responding to changes in the law, advancing legislation in our practice area, collaborating with other Sections on shared priorities, and strengthening our members' practices through knowledge sharing.

Katie Lynagh is an associate in the trusts and estates department of Milbank, Tweed, Hadley & McCloy. She is the incoming chair of the Section's Estate and Trust Administration Committee.

Garry

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legal career outside of urban settings; and there is great joy to be found in a quiet small town or rural setting. Our upstate communities are not particularly diverse, but neither are they hostile to diversity. The people residing in our towns, villages, and farm communities are much more likely to be broad-minded and big hearted than the opposite; I share this observation based upon decades of personal experience. So, to any readers wondering whether their quality of life may be enhanced by a closer connection to nature, let me clearly say that mine has been, and more than that, that I have never lacked opportunities for personal and career growth and service while living in rural upstate communities. These are communities filled to overflowing with history and beauty—and populated by good neighbors.

However, attorneys in rural areas are scarce. Although New York state has one of the highest rates of attorneys per capita in the nation, most areas outside of New York City have far fewer lawyers. Many rural counties have only one or two attorneys per 1,000 residents. The dearth of legal help can make it difficult for people to obtain the routine legal advice necessary to successfully plan for the future, manage their businesses and organize their lives. It also complicates the critical work of securing basic life necessities for those living in poverty. Rural residents are often left to handle their legal problems without the assistance of an attorney.

In response to these challenges, leaders in our court system and the legal profession are working to get more New Yorkers the legal help they need to keep our communities thriving. For example, the Rural Law Center of New York is providing legal services for low-income, rural New Yorkers throughout the state. The Rural Law Center has also partnered with the New York State Bar Association's Committee on Courts of Appellate Jurisdiction to support the Pro Bono Appeals Program, which operates in the Third and Fourth Departments of the Appellate Division. Another project, The Rural Law Initiative, is a pilot program created by Albany Law School's Government Law Center, with partial funding provided by a grant from the U.S. Department of Agriculture. The Initiative is intended to provide non-representative legal advice to farms, small businesses and entrepreneurs in rural areas, on matters including business formation, land use, financial literacy, regulatory matters and more. This program also connects participants to attorneys who can provide more comprehensive representation, and refers non-eligible individuals to other sources of free or low-cost legal assistance. The Legal Aid Society of Northeastern New York and Pro Bono Net have also collaborated on an innovative program called "Closing the Gap." This initiative uses technology to connect low-income rural litigants with remote volunteer attorneys in the Capital District who provide limited scope representation. These programs are some examples of creative problem solving aimed at tackling the unique barriers to providing sufficient legal representation in rural communities. (For a more thorough and extensive treatment of this topic, see the recent issue of the NYSBA Government, Law and Policy Journal devoted to Rural Justice in New York State.)

Under the leadership of Chief Judge Janet DiFiore, Chief Administrative Judge Larry Marks, my colleagues on the Administrative Board, and leaders in our judiciary statewide, the Court System has also taken steps to address the legal needs of our rural populations. As mentioned above, one initiative that has gained support is the use of limited scope representation, or unbundling. In 2016, the Court System issued a policy statement encouraging this practice. The process of evaluating public comment upon proposed guidelines designed to clarify the ethical rules governing limited scope representation, and forms to facilitate the practice, is currently underway . In addition, the New York State Access to Justice Program has partnered with the New York State Bar Association to hold trainings relative to the use of limited scope representation. This form of representation has been used in various settings, particularly including rural areas, and through pro bono initiatives such as the "Closing the Gap" program discussed above. Although it would be ideal for our state's citizens to have access to full representation for all of their legal matters, the provision of limited scope legal services can be a useful tool in assisting individuals who might otherwise appear pro se in potentially life-changing legal proceedings.

In October, the New York State Permanent Commission on Access to Justice, chaired by Helaine M. Barnett, hosted a Statewide Stakeholders Meeting in Albany. More than 140 individuals—including judges, legal services providers, practitioners, community leaders and public officials—came together to discuss strategies that have been successful and to formulate action plans for local initiatives. Information was shared as to the efforts underway in various communities, and participants then broke out into groups to focus on applying that knowledge to both rural and metropolitan settings. Stakeholders from judicial districts throughout upstate New York have since formed working groups in specific focus areas, such as modest means representation and using technology to address the justice gap, and local action plans are being formulated.

As court administrators, we are also working to address specific problems as we identify them. For example, in the Third Department, we have encountered a shrinking pool of lawyers who are willing and able to serve as attorneys for the child (AFCs) in some areas. For the purpose of supplementing our existing AFC panels, and to thus ensure that appropriate representation is available for young people in those communities, we have recently created additional AFC contract offices. We are currently establishing new AFC contract offices in Broome and Chenango counties, in addition to those which already exist in Clinton, Essex, Franklin, Fulton, Otsego and Schuyler counties.

In a state as large and diverse as ours, there are few one-size-fits-all solutions to the challenges we face. Although impressive progress has been made, there is a great deal of work ahead. We are fortunate, however, to benefit from a wealth of expertise, innovation and commitment among members of our judiciary and legal profession. By collaborating with and supporting the efforts of practitioners, legal service providers and other stakeholders, engaging in long-term strategic planning, and remaining flexible and creative in responding to issues that arise, we will continue to improve access to justice and legal representation for all New Yorkers.

Daily columns in the Law Journal report developments in laws affecting medical malpractice, immigration, equal employment opportunity, pensions, personal-injury claims, communications and many other areas.

DiFiore

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Coincidentally, around the same time I was perusing those musty volumes, a colleague forwarded to me, this time in electronic form, an article from the New York Review of Books titled, "Why You Won't Get Your Day in Court." According to the author, Senior U.S. District Court Judge Jed Rakoff: "Over the past few decades, ordinary U.S. citizens have increasingly been denied effective access to their courts." While he identified at least eight distinct factors undermining access to justice for people of moderate means, for the sake of brevity I will comment only on the first two, which should be obvious to all of us: the ever growing cost of hiring a lawyer; and the increased expense, aside from legal fees, for a litigant to pursue a lawsuit to conclusion. (Jed S. Rakoff, New York Review of Books, Nov. 24, 2016). The six other factors identified are: fewer lawyers willing to take contingent-fee cases involving modest awards; decline in unions and institutions providing members with free legal representation; imposition of mandatory arbitration; judicial hostility to class action suits; diversion of legal disputes to regulatory agencies; and, in criminal cases, vastly increased risks of heavy penalties in going to trial.

As a court system, our first order of business must be to reduce court congestion and delay, which in themselves can constitute a denial of justice for litigants seeking redress for personal injuries; parties in matrimonial actions attempting to move forward with their lives; families and children needing protection and stability; and businesses, large and small, for whom litigation is a major cost of doing business. On the criminal side, court delay harms defendants, presumed innocent under the law, who often languish in jail while their families and communities suffer; prosecutors who watch cases grow stale as witnesses move away and memories fade; and crime victims whose suffering is amplified while waiting for justice to be done.

Beyond the individual harm is the broader loss of public confidence and respect for our courts, which weakens us institutionally and makes us easy targets for those who would undermine judicial independence and the rule of law for their own political or personal gain.

These were among the primary concerns that led me to announce the "Excellence Initiative" upon my investiture as Chief Judge in February 2016. While the objectives of the Excellence Initiative are to achieve and maintain operational and decisional excellence in our trial and appellate courts, the initial focus has been on eliminating case delays and backlogs and keeping our courts affordable and accessible for all New Yorkers.

Next month, I will deliver the third annual State of Our Judiciary Address and report publicly on the encouraging—in some places dramatic—progress we have made to speed the justice process and make our courts more efficient. As important, we will announce additional measures to build on this progress and upgrade the quality of our justice services across our entire court system, from our commitment to early mediation as a means of narrowing issues and promoting less costly dispositions in civil and family matters, to our work with the City of New York to implement legislation providing lawyers to tenants facing eviction in our Housing Courts.

The experiences and observations of Justice Jackson, Chief Judge Desmond and Judge Rakoff serve to confirm that our profession can never stand still when it comes to the administration of justice. History has shown how the approaches, practices and attitudes that served us well in the past are quickly outdated by the evolving needs of our clients and litigants. Each generation of judges and lawyers is challenged to examine our justice system with fresh eyes and devise updated solutions that respond to the modern needs and expectations of the people who depend on the Bar for justice, and who support our courts with their hard-earned tax dollars.

One of the most serious challenges facing the Bar and Bench today, so well elucidated by Judge Rakoff, is the same one that confronted Justice Jackson in 1933 and Chief Judge Desmond in 1961, and which has bedeviled humanity since biblical times: How can we make sure that every person gets their day in court?

While that challenge remains as daunting today as it ever was, I see reason for optimism in the steadfast support and generous pro bono contributions of the organized Bar, and NYSBA in particular; the hard work and commitment of our judges and court staff; and the good will and cooperation of our partners in government and our many justice stakeholders. All of us, working together, have it in our power to keep our courthouse doors open and accessible for every person seeking his or her day in court.

Scheinkman

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of our state promote and protect the rule of law and deliver equal and timely justice to all. Participation in the organized Bar affords some of the best opportunities for judges and lawyers to collaborate in addressing common issues and problems.

The day-to-day work of lawyers who litigate cases and the judges who decide those cases proceeds on separate tracks, with communication between lawyers and judges limited, in the main, to formal arguments, conferences and the submission of written papers, all focused on the resolution of the particular case at hand. When it comes to assessing from a broader perspective the state of our courts and the practice of law in New York, judicial administrators need the honest, candid and insightful perspectives of the attorneys in the trenches. No two lawyers ever think exactly alike and we all have different ways of looking at the same problems, borne out of our differing experiences. Rather than relying only upon ad hoc, and perhaps unrepresentative, input from those attorneys whom we happen to encounter, the views of the Bar are best gauged through the prism of our many bar associations, organizations which carefully synthesize the opinions and concerns of their members and develop thoughtful reports and recommendations in their representation of their members.

It is not enough for judges to simply be passive recipients of formal bar association communications. We need to work side-by-side with our fellow lawyers in order to gain a true understanding of the issues confronting the practicing Bar and to work in tandem to guide the legal profession and shape the development of New York law and the New York courts. This is not a one-way street. Judges and court administrators should be actively engaged with the Bar in order to assure that the Bar is aware of the concerns of the Judiciary and has a true understanding of pending changes and the reasons for them, and, importantly, to provide the Bar the opportunity to weigh in and help shape reforms. By active engagement, I mean regular attendance at meetings, legal education programs, receptions and dinners. Our judges should fully participate so that our Bench-Bar dialogue is as meaningful as possible.

In recent months, I have heard that there has been a decline in interest among lawyers in participating in organized Bar activities. This is most distressing. We lawyers owe it to ourselves and the future of our common profession to re-energize our colleagues to take an active role in our professional organizations. Court leaders need the active support and engagement of vibrant bar organizations in order to best carry out their administrative responsibilities.

Since my admission to the Bar over four decades ago, I have always been involved in bar association activities. These have been some of the most professionally and personally worthwhile experiences in my life. I have learned much and have met colleagues from around the state who have become lasting friends. Within the State Bar, I have served in the House of Delegates, on the Committee on the New York State Constitution, on the Committee on Courts of Appellate Jurisdiction (now in my third stint as a member), and on the Task Force on Administrative Adjudication, and I have been active in the Commercial and Federal Litigation Section, the Family Law Section, and the General Practice Section (once upon a time I was co-editor of the Section newsletter). In these roles, I have been able to, in conjunction with judges and lawyers from various geographic and practice areas, study and debate issues of concern to the profession and to develop proposals and recommendations for action.

As a court administrator, I have tried to reach out to the representatives of the organized Bar and meet with them regularly. In the past year, I have held two separate meetings in the Appellate Division courtroom with State Bar leaders and leaders of the many bar associations within the Second Department. We had a lively and valuable discussion on important issues and I look forward to continuing these forums. In addition, members of our court have been designated to continue the dialogue through smaller group meetings with Bar representatives from their home communities.

Lawyers who are active in bar association work are able to play meaningful roles in influencing the debate on matters affecting the legal profession, such as attorney admission, attorney discipline, and efforts to promote civility in the practice of law, as well in relation to substantive legal issues. They also have an opportunity to provide feedback regarding programs and practices adopted by the courts, such as the efforts made in recent years to improve the operations of our state's courts. The input of the organized Bar has been invaluable in the ongoing reassessment of court procedures pursuant to Chief Judge Janet DiFiore's Excellence Initiative, the continuing expansion of e-filing, and the use of the latest technology that is bringing about significant changes in how we do things. I have consulted, and will continue to consult, with the Bar on measures to address the crushing caseload, and the resulting delays in civil appeals, experienced in in the Appellate Division, Second Department.

The view from inside the courthouse can often be very different from the view of the lawyers who are coming into the courthouse to seek justice for their clients. Although many of today's judges were once themselves practitioners who were looking in from the outside, the challenges faced by lawyers change over time. The practice we once knew is different from the practice of today. Lawyers who work alongside judges as members of the organized Bar can help keep us attuned to the needs and viewpoints of the lawyers and litigants who appear before the courts. By doing so, lawyers provide court leaders with an invaluable perspective which will enhance the formulation of fair and user-friendly court rules and practices.

Bar association participation provides lawyers with opportunities to fulfill their obligations and to keep up with the latest developments in the law and to give back to their profession and their community. Bar associations offer a wide variety of interesting continuing legal education programs, through which we can share our knowledge with each other. Bar associations' ethics committees offer important advice and counseling; bar associations operate volunteer programs that enable lawyers to help those who are unable to afford critical civil legal services.

Another significant function fulfilled by the organized Bar is educating the public about the roles of judges and lawyers, and about how the legal system works. Bar associations sponsor programs and make public statements that serve to enhance the reputation of the judiciary and the legal profession in general. Today, anyone with a smartphone and social media account can disseminate uninformed comments about judicial decisions and the judicial process to a vast audience, including comments that unfairly impugn the integrity of judges. Ethical constraints restrict what judges may properly do in response. Bar associations must, and do, step in to correct misconceptions about how the law works and how cases are decided. This intervention is critical to the preservation of judicial independence.

For all of these reasons, I would suggest that any lawyer who is not already an active member of the organized Bar should get involved. A fully engaged and participatory Bar is essential to the continued vitality and integrity of our profession. Participation in one or more of the bar associations throughout our state offers is an open opportunity to contribute to the betterment of our profession. Join up and join in today.

Acosta

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Hobbes' "state of nature," because their voices are heard and there is a chance that, in time, their view will become that of the majority. Indeed, we can be collegial without reaching consensus, and while valuing dissent.

I was named Presiding Justice of our Court concurrent with the appointments of four new Associate Justices. From the start, my veteran colleagues and I endeavored to integrate the "rookies" into the Court, by meeting with them to explain our procedures and common practices, sharing lessons learned from years of experience, and inviting them to our regular group lunches. Breaking bread is an indispensable way in which to cultivate a collegial atmosphere, and I encourage my fellow judges to have lunch together often.

Collegiality, however, is not synonymous with consensus, nor does the presence of the former necessarily result in the latter. No matter how hard we might work to foster collegiality or seek consensus, we must recognize that judges are individuals, with their own prisms through which they interpret the law. The process of adjudication by panels of appellate judges relies on debate, and judicial independence requires that judges decide every case that comes before them based on their own analyses. This will inevitably result in any number of concurring and dissenting opinions, which sometimes require publication when, after circulation to the panel, the outlier(s) cannot convince the majority to compromise on its ruling (e.g., the breadth of it, the cases cited, or the language used).

Importantly, dissent is not antithetical to collegiality. In fact, dissension should have a negligible effect (if any) on collegiality in the world of appellate judging. Of course, "the act of writing a dissent can have unintended consequences, particularly if [it] consists of unnecessarily harsh language." Hon. Leroy Rountree Hassell Sr., *Appellate Dissent: A Worthwhile Endeavor or an Exercise in Futility?*, 47 How. L.J. 383, 387 (2004). The same is true of a majority opinion that strikes at a dissenting colleague in flagrantly harsh terms. Still, "[r]ather than thinking of collegiality and dissent as binary, mutually exclusive opposites, it is possible to regard collegiality as a quality that may be present or absent—even in a dissent." Hon. Bernice B. Donald, *The Intrajudicial Factor in Judicial Independence: Reflections on Collegiality and Dissent in Multi-Member Courts*, 47 U. Mem. L. Rev. 1123, 1144 (2017).

Fortunately, judges are not shrinking violets (or, at least, we shouldn't be). We can withstand criticism in the press without responding with a public comment. We can endure the harsh words of litigants who are disappointed, or even outraged, by our decisions. And our relationships can sustain—even be strengthened by—candid disagreement with colleagues over the just outcome in a given case.

Appellate judging is a contact sport, and we should not shy away from airing our disagreements publicly (and civilly). Collegiality incorporates teamwork as an element of decision making, and each teammate has a right, indeed an obligation, to improve the team by sharpening the issues and our writings—without sharpening the knives.

Personally, those times when I have had the strongest disagreements with my colleagues (former Justices James M. McGuire and James M. Catterson, for example), my writing has been at its best. Our Court's split decision in *Fields v. Fields*, 65 A.D.3d 297 (1st Dep't 2009), aff'd 15 N.Y.3d 158 (2010)) is, I think, a good example of this. It is frequently through the process of exchanging opposing writings, the back-and-forth of challenging one another and exposing weak arguments, that our best work—and perhaps a more soundly reasoned result—shines through. It is also where our biases can be revealed and dissipated—all cases, particularly matrimonial ones like *Fields,* have the potential to invoke our biased viewpoints, which may be tempered through discourse and the exchange of writings with colleagues who hold the opposing view. As another former colleague of mine wrote, "it's nice to have consensus, especially if that can be brought about in a collegial fashion. But, an intermediate appellate court should be a place where the legal issues in a case can be thrashed out in clear opposing writings." David B. Saxe, *Riding the Learning Curve as a New Appellate Division Judge*, 88 N.Y. St. B.J. 45 (February 2016), at 46.

In other words, iron sharpens iron.

Opposing writings are also essential to the rigorous development of legal precedent and policy. I agree with Chief Judge DiFiore that "unanimity is always valued, but it's never exalted over the correct or right product." Denney, supra (internal quotation marks omitted). Dissenting opinions regularly lead not only to better writing, but also sharper and clearer jurisprudence.

Of course, an appellate judge must be prudent in choosing whether to dissent, given the potential costs involved—namely that opposing writings take longer to draft and publish, may reduce collegiality in future cases if the debate turns ugly, and may, some argue, undermine public confidence in the court and the judiciary. See, e.g., Donald, supra at 1129; Epstein et al., *Why (and When) Judges Dissent: A Theoretical and Empirical Analysis*, 3 J. L. Analysis 101, 104 (2011). In my view, however, dissents are often beneficial, in part because they provide the public with a window through which to view the checks and balances that serve as the foundation of our democracy, and they give a voice to those who hold minority views.

Appellate judges surely have no obligation to concur with a majority opinion with which they materially disagree. To the contrary, we are duty-bound to dissent when we seriously oppose the majority's ruling in a case. While some may argue that dissents leave the bar and the public feeling uncertain on the state of the law, I would posit that split decisions are critical to protecting public confidence in the judiciary—and, on occasion, to leaving the door open for an injustice to be corrected in a later case. See, e.g., *Plessy v. Ferguson*, 163 U.S. 537, 552 (1896) (Harlan, J., dissenting), rev'd *Brown v. Bd. of Ed. of Topeka, Shawnee Cnty., Kan.*, 347 U.S. 483 (1954). If Chief Judges and Presiding Justices were to seek to silence dissenting opinions, what would that say about the value of speaking out in a democracy?

Therefore, appellate jurists should feel free to dissent when they genuinely disagree with a majority decision—when no compromise can be reached with their colleagues over the issues at bar—and we must all remain collegial and civil in the process.

Marks

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criminal conduct from the adult criminal court system and places them rightly with other youths in the Family Court system. Those adolescents accused of felonies who remain in the superior criminal court also may no longer be incarcerated in adult facilities and are instead placed in specialized juvenile detention facilities certified by the State Office of Children and Family Services, in conjunction with the State Commission of Correction. Significantly, adolescents and their families will benefit from rehabilitative and support resources not otherwise available in adult criminal court.

Once the legislation is fully implemented, 16- and 17-year-olds who commit misdemeanors will be treated as juvenile delinquents, with their cases handled in Family Court. RTA creates a new classification called Adolescent Offenders for 16- and 17-year-olds charged with felonies. These cases are commenced in newly established superior court Youth Parts and are presided over by specially trained judges. The cases may be removed from the Youth Part to Family Court depending on the severity of the felony charges, as well as other circumstances. The Youth Part also has jurisdiction over all cases involving Juvenile Offenders, 13-, 14-, and 15-year-olds charged with designated felonies in the adult criminal justice system. The vast majority of youth will be handled in the Family Court system, and for many of those, probation departments may "adjust," or divert, the cases, with a Family Court petition never being filed.

Great preparation went into satisfying requirements of the new legislation, in a short timeframe. New York hit the ground running and, through a concerted collaborative effort, met the goal of instituting phase one of the RTA legislation in less than 18 months after the law was enacted. All aspects of the legislation were examined during planning and implementation. The court system established its own internal committee to formulate a statewide plan for smooth implementation, co-chaired by Deputy Chief Administrative Judges Edwina Mendelson and Michael Coccoma. The Committee held collaborative meetings with a wide range of government agencies that were engaged in their own implementation efforts, including, among others, the State Division of Criminal Justice Services, the State Office of Children and Family Services, the State Commission on Correction, the State Department of Corrections and Community Supervision, the New York City Mayor's Office of Criminal Justice, and the New York City Administration for Children's Services.

Concurrently, Judge Mendelson co-chaired a parallel effort with the New York City Mayor's Office of Criminal Justice for Raise the Age implementation, first city-wide and subsequently in each county. A successor coordination team run by the Mayor's Office continues that work, with bi-weekly meetings to discuss RTA-related issues that arise. Likewise, all District Administrative Judges outside of NYC worked with stakeholders (defense, prosecution, probation, law enforcement, service providers, etc.) to plan cohesive implementation within their districts. Governor Cuomo also convened an RTA Implementation Task Force prior to implementation, consisting of judicial, law enforcement and social service experts, among others, which continues to meet, review, and evaluate the effectiveness of RTA implementation. The Task Force is assessing implementation both statewide and at the local level and will be formally reporting on the two phases of the implementation.

Structural and operational changes were adopted to ready the courts for managing a systemic change of this magnitude. The Committee developed a recommended practice guide and detailed region-specific operational templates to assist the state's Administrative Judges in implementing the new law in their respective jurisdictions. Judicial and non-judicial assignments were modified and courtrooms were physically relocated, all to accommodate the newly created Youth Parts, as well as the changes to Family Courts and the anticipated after-hours arraignments throughout the state. The legislation impacted the court system's court data collection and record-keeping. A wholly new statewide case tracking system was developed for the Youth Parts, allowing for RTA data to be accessed and monitored in one place to improve disposition reporting and data analysis—a system that will ultimately be universally implemented in all superior courts for all categories of cases.

Education and training has been a major component of the preparations for RTA implementation. The RTA Committee, in conjunction with the court system's Judicial Institute, provided comprehensive training for Youth Part judges and Accessible Magistrates (who handle after-hours arraignments under the statute, as well as "pre-petition" hearings for juvenile delinquents) to ensure compliance with the statutory requirements of the law. At the Summer Judicial Seminars, mandatory programs with a dedicated track of courses focused on RTA legislation were provided. The seminars were highly effective and the presentations were excellent—with a full week of material video-recorded and available for future access. There is an RTA SharePoint platform available to court personnel containing links to the RTA statute, FAQs, and the court system's implementation plan, as well as links to the Judicial Institute's training materials, checklists, PowerPoint presentations, and podcasts on raising the age of criminal responsibility in New York. Training on the new law was also provided throughout the state for key nonjudicial personnel.

Additionally, to further ensure judges and non-judicial personnel are fully informed on the changes brought on by the new legislation, an RTA handbook and benchcard have been prepared for judges and staff.

While RTA implementation has been largely successful, some concerns have emerged. Operational issues have been identified and are being addressed, such as detention and placement issues and necessary changes in legal forms. The court system even created a 24-hour 800 number providing immediate guidance for judges and court staff with RTA-related questions.

Fortunately, so far there have been relatively few cases subject to the new law commenced since the statute's effective date. That volume, however, will certainly increase next October when the age of criminal responsibility is raised to 18. Although increased volume may bring greater stress on operations, the extensive ongoing preparation will ensure that the second phase of implementation proceeds smoothly as well.

Implementation of the RTA legislation has had an auspicious start. Given the effective collaborative efforts of all relevant government agencies, and within the court system itself, raising the age of criminal responsibility has been highly successful with few hurdles in its path. Due to meticulous preparation, concerns have been swiftly identified and addressed, ensuring that adolescents, without compromising community safety, receive the highest caliber of justice removed from the harsh setting of the adult criminal system.