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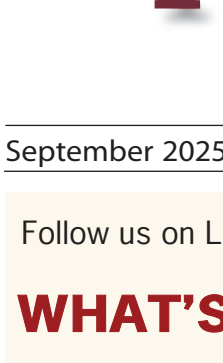

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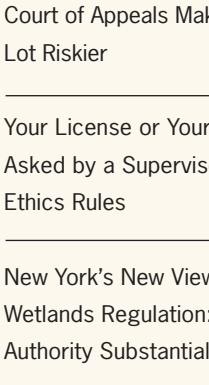

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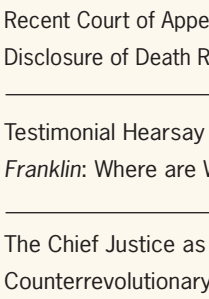

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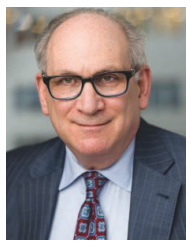

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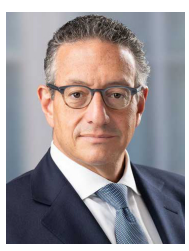

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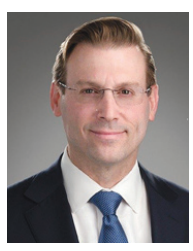

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nassaulawyer@nassaubar.org

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2025 Nassau County Bar Association

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From the President

James P. Joseph

September is a month of endings and beginnings: summer yields to fall, students return to school, court calendars fill, and clients return with renewed urgency. For many, September feels like an extended Monday morning—a shift back into structure and responsibility, often accompanied by stress and unease. While a fortunate few embrace Mondays with excitement, most of us face them with at least some measure of anxiety. It is perhaps fitting, then, that September is also recognized as National Suicide Prevention Month, reminding us of the importance of mental health, both for ourselves and for those we serve.

Tragically, lawyers are at heightened risk. Our profession faces disproportionately high rates of depression, substance abuse, and addiction, particularly alcohol. Suicide, in fact, has been reported as the third leading cause of death among attorneys, following only cancer and heart disease. These statistics are sobering, but they also underscore the urgent need for awareness, openness, and support within our community.

Fortunately, our Lawyer Assistance Program (LAP), led by Elizabeth Eckhardt, LCSW, PhD, is renowned throughout New York State and beyond. Under Dr. Eckhardt's leadership, free and confidential assistance is available to lawyers, judges, and law students who may be struggling with addiction or mental health challenges. If you or someone you know is in need of help, our confidential 24-hour helpline is available at (516) 512-2618 or (888) 408-6222. You may also reach Dr. Eckhardt directly at eeckhardt@nassaubar.org.

In addition to these vital services, LAP—together with the Nassau Academy of Law—is hosting a series of important Dean's Hours this fall. On September 30, we begin with "Survival Techniques for a Healthy Law Practice." On October 28, in partnership with the NYSBA LAP, we will present "Aging in the Legal Profession: Be Aware and Be Prepared." And on November 13, the Dean's Hour will address "Substance Misuse and Mental Health Issues Among Legal Professionals." Each of these programs offers practical tools and insights that can help us strengthen both our practices and our well-being.

Connection and belonging are among the most effective antidotes to stress, anxiety, and even burnout. For many of us, the Nassau County Bar Association provides that sense of community—a place where professional relationships grow into friendships and support networks that enrich our lives. One of the best opportunities to experience this community firsthand is our annual BBQ at the Bar, to be held on the evening of September 4. This free, informal, and always enjoyable event is the perfect way to kick off the season, meet new colleagues, reconnect with old friends, and discover all that the NCBA has to offer.

Community also means supporting one another in times of need. Thanks to the leadership of Past President Rosalia Baiamonte—who secured significant grants and founded our annual LAP Walkathon—funding for our Lawyer Assistance Program has grown substantially. Yet the need for LAP services remains great. At the BBQ, you'll find our LAP Committee hosting a table where you can learn more, get involved, and even support their efforts by purchasing raffle tickets for a chance to win one of several baskets.

The BBQ at the Bar is more than just a fun evening—it's often the starting point for meaningful engagement with our Association. A casual conversation over a plate of food can lead to a committee membership, a CLE collaboration, or even a lasting mentorship. Whether you are a new lawyer looking to connect, a seasoned practitioner eager to give back, or somewhere in between, this event is an easy entry point into the many opportunities the NCBA provides to learn, grow, and contribute.

For example, later this month—on September 15—we will hold the annual WE CARE Golf and Tennis Classic, WE CARE's largest fundraiser of the year. Proceeds from this event enable WE CARE to provide grants to numerous small Long Island charities, making a meaningful difference in our broader community. Whether you join us for golf, tennis, or pickleball, come for dinner, sponsor the event, or volunteer your time, this is yet another way to connect through the NCBA.

We also have a robust schedule of CLEs this month, thanks to the leadership of Dean Chris DelliCarpini and the Nassau Academy of Law. Highlights include a Dean's Hour on recent developments in the law of hearsay, presented by Judge Arthur A. Diamond; a matrimonial law update by former NCBA President Stephen Gassman; and a Dean's Hour on "Demystifying the Court of Claims," featuring Judge Linda Mejias Glover.

Our committees, too, will be active this fall. Many will hold meetings throughout September, and on Saturday, September 27 we will host our first-ever Pet Rescue Event at Domus, presented by the Animal Law Committee under the leadership of President-Elect, the Honorable Maxine Broderick.

There is much to look forward to when you are part of the community that is the Nassau County Bar Association. I hope to see you at one or more of these events in the weeks ahead.

FOCUS: PERSONAL INJURY

Court of Appeals Makes Assumption of Risk a Lot Riskier

Christopher J. DelliCarpini

In two decisions this spring, the Court of Appeals sought to clarify the doctrine of assumption of risk, which bars recovery for injuries inherent to certain sports and recreational activities. But these decisions come only two years after the Court's last comprehensive restatement of the doctrine, and the dissents then and now show that assumption of risk remains contentious.

In *Katleski v. Cazenovia Golf Club*, the Court, deciding a pair of cases, held that assumption of risk barred recovery for a golfer in a tournament who was struck by a ball, but that the doctrine did not apply to another golfer whose golf cart collided with a vehicle in the parking lot.[1] The same day, however, the Court handed down *Maharaj v. City of New York*, holding that assumption of risk denied relief to a cricket player playing on a tennis court who stepped into a seven-foot long crack in the asphalt.[2]

In the short term, the recent decisions offer some clarification of the doctrine's application. In the long term, however, they may weaken the foundations of assumption of risk.

Grady Restates the Doctrine—And Its Criticisms

New York common law has long recognized the doctrine of assumption of risk as a species of contributory negligence:

> One who takes part in such a sport accepts the dangers that inhere in it so far as they are obvious and necessary, just as a fencer accepts the risk of a thrust by his antagonist or a spectator at a ball game the chance of contact with the ball.[3]

The doctrine appeared on its way out in 1975, however, with the adoption of CPLR 1411:

> In any action to recover damages for personal injury, injury to property, or wrongful death, the culpable conduct attributable to the claimant or to the decedent, including contributory negligence or assumption of risk, shall not bar recovery....

It seemed that henceforth, plaintiffs' negligence would limit damages but not preclude liability. Over the decades, however, the Court recognized situations where assumption of risk would deny recovery despite CPLR 1411.[4]

Grady involved a high-school baseball player injured during a fielding drill that had two baseballs being batted about and an L-screen between the first-baseman and the player at "short first base."[5] In the companion case, *Secky v. New Paltz Central School District*, the plaintiff was a high-school basketball player injured during a rebound drill conducted without boundary lines.[6] The Court affirmed dismissal in *Grady* but reversed in *Secky*, based on its own view of which risks were inherent in baseball and basketball.[7]

"Though we have acknowledged that the assumption of risk doctrine may not 'sit comfortably' within the landscape of comparative fault," the majority wrote, "it remains in full force in the limited context of athletic and recreative activities."[8] Balancing the "enormous social value" of sports and athletic activities and the "principles of comparative causation" in CPLR 1411 against the "potentially crushing liability" for venues, the Court reconceived assumption of risk:

> Accordingly, assumption of risk in this context "is no longer treated as a defense to the abandoned contributory negligence equation" (*Morgan*, 90 N.Y.2d at 485, 662 N.Y.S.2d 421, 685 N.E.2d 202). Rather, the doctrine defines "the standard of care under which a defendant's duty is defined and circumscribed 'because assumption of risk in this form is really a principle of no duty, or no negligence and so denies the existence of any underlying cause of action' " (*id.*, quoting Prosser and Keeton, Torts § 68 at 496-497 [5th ed 1984]....

Judge Rivera concurred in *Grady* and dissented in Secky, and in a lengthy opinion argued: "It's time we correct the errors of the past and abandon the implied assumption of risk doctrine that the Court has retained despite the Legislature's unequivocal abolition of contributory negligence and assumption of risk as complete defenses. New York is a comparative fault jurisdiction."[9]

Judge Singas dissented in *Grady* and concurred in *Secky*, finding that this two-ball fielding drill did not unreasonably enhance the risk of baseball: "Defendants' evidence demonstrated that plaintiff "accepted personal responsibility" for his injury because it stemmed from an inherent risk of playing baseball—being hit by a mis-thrown ball."[10]

Katleski and *Maharaj* Expand the Doctrine but Blur the Edges

In *Katleski*, the Court unanimously decided two cases—and Judges Rivera and Singas, representing both ends of the spectrum in *Grady*, were both on the panel.

Mr. Katleski was injured while competing in a tournament at the golf club where he had been a member for eighteen years. As he rode in a cart around the seventh hole looking for a ball, another competitor teed off from the adjacent third hole, slicing so badly that the ball struck Mr. Katleski in the eye.[11] The risk of such injury was indisputably inherent to golf, but Mr. Katleski argued that the placement of the competition tee box at the third hole unreasonably enhanced the risk.[12]

The Court conceded that "The risks of a sport can also be unreasonably enhanced through the negligent design or operation of a sports venue," but it held that the tee box here did not unreasonably enhance that risk.[13] It found Mr. Katleski's expert's opinion "wholly conclusory," and it noted that the tee box's placement was not "done without competitive purpose," making any added risk not unreasonable.[14]

In *Maharaj*, however, Judge Rivera issued another fulsome dissent, building upon the criticisms she raised in *Grady*.

Mr. Maharaj was injured during a cricket match when he tripped and fell over "a seven-foot-long fissure, three to four inches deep, that ran across the playing surface."[15] In a 174-word opinion, the majority affirmed dismissal: "There is no evidence in the record that the irregularity in the playing field—the cracked and uneven surface of the tennis court—unreasonably enhanced the ordinary risk of playing cricket on an irregular surface."[16]

Judge Rivera began her dissent with the history of cricket before recounting Mr. Maharaj's injury and the procedural history, including the First Department's affirmation of dismissal and its grant of leave to appeal.[17] She particularly noted the plaintiff's expert's opinion that "The unpaved holes in the fissure were deeper and wider than the 'generally accepted industry standards for safe walking surfaces,'" and that this condition had developed over years of neglect.[18] Judge Rivera then crystallized

the arguments against applying assumption of risk here:

> Plaintiff argues that granting summary judgment was improper because the primary assumption of risk doctrine does not apply to defects resulting from a landowner's negligent maintenance of their property and creating risks that are not inherent in recreational activity. He further argues that the Appellate Division's holding propagates unsound public policy by shielding landowners who allow their property to fall into a state of disrepair.
>
> She then restated the defendants' ultimately prevailing position: Defendants respond that the Court's precedent requires application of the primary assumption of the risk doctrine because the risks created by "suboptimal" conditions on an outdoor field are inherent to outdoor recreational activity. Defendants also argue that applying the doctrine serves valuable public policy ends by protecting owners of recreational facilities from cost-prohibitive liability.

Judge Rivera then traced the legislative history of CPLR 1411 as she had in *Grady*, then turned to Court case law that "has long distinguished between risks inherent to the athletic activity that are known and obvious, and conditions of the venue that are 'not sufficiently interwoven into the assumed inherent risk' of the activity and thus constitute negligence in the 'ordinary course of any property's maintenance.'"[19] But "[r]ather than affirm this distinction and correct the confusion in the courts below," she observed, "the majority ignores our jurisprudence without explanation and perpetuates the problem."

She concluded: "Tripping over a fissure resulting from years of neglect is not an inherent part of playing outdoor sports. To the contrary, it is an inherent danger to any use of the courts."[20]

Play At Your Own Risk

The most obvious lesson of these decisions is the interplay, after *Maharaj*, between assumption of risk and a landowner's liability for premises defects. Specifically, if a plaintiff in a covered sport or recreational activity is injured by a hazardous condition on the playing field, the doctrine will bar recovery where: (1) the risk of injury from that condition is inherent in the activity; and (2) the particular hazard did not unreasonably enhance that inherent risk.

But how do we prove that a hazard did or did not unreasonably enhance the risk? The Second Department's decision in *Maharaj* also emphasized that that this defect "was clearly visible" and "open and obvious,"[21] but the Court of Appeals did not mention this issue. Other decisions, however, consider any concealed risk to unreasonably enhance the risks.[22]

Another lesson is the review of the expert opinions offered in *Katleski*. As the Third Department noted, the defense expert referred to USGA rules and had personally inspected the third and seventh holes before opining that the course had been reasonably operated.[23] But the Court of Appeals found that the plaintiff's expert's opinion was "wholly conclusory" and failed to apply the correct standard: "It is not enough for Katleski to show that the layout of the course was less safe than it ideally could have been; he must show that the design enhanced the inherent risk of being struck by a ball beyond what is *customary in the sport*."[24]

Long-term, plaintiffs' counsel can press for a reconsideration of the doctrine as they prosecute their cases under the currently controlling case law. In *Maharaj*, Judge Rivera laid out five factors when, based on case law, assumption of risk should not apply even to open and obvious premises defects. The dissents in *Maharaj* and *Katleski* at the Appellate Division level show that there is an audience for the argument that assumption of risk has grown far beyond any principled exception to the law of comparative negligence. While arguing for the law's change likely should not be your lead argument, it may be worthwhile to include it in hopes of a sympathetic hearing at some level.

1. 2025 N.Y. Slip Op. 02178 (Apr. 15, 2025).
2. 2025 N.Y. Slip Op. 02143 (Apr. 15, 2025).
3. *Murphy v. Steeplechase Amusement Co.*, 250 N.Y. 479, 482 (1929).
4. *E.g., Arbegast v. Bd. of Educ. of South New Berlin Cent. School*, 65 N.Y.2d 161 (1985); *Maddox v. New York*, 66 N.Y.2d 270, 276 (1985); *Turcotte v. Fell*, 68 N.Y.2d 432, 436 (1986); *Benitez v. New York City Bd. of Educ.*, 73 N.Y.2d 650, 658 (1989); *Morgan v. State*, 90 N.Y.2d 471, 484 (1997); *Bukowski v. Clarkson Univ.*, 19 N.Y.3d 353, 355 (2012).
5. *Grady*, 40 N.Y.3d at 98.
6. *Id.* at 97.
7. *Id.* at 97–99.
8. *Id.* at 94.
9. *Id.* at 100 (Rivera, J., concurring and dissenting).
10. *Id.* at 119 (Singas, J., dissenting and concurring)(quoting *Morgan*, 90 N.Y.2d at 484).
11. *Katleski*, 2025 N.Y. Slip Op. 02176 at *1.
12. *Id.* at *3.
13. *Id.* at *3–4.
14. Id. at *4.
15. *Maharaj*, 2025 N.Y. Slip Op. 02143 (Rivera, J., dissenting).
16. *Id.* at *1.
17. *Id.* at *1–3 (Rivera, J., dissenting).
18. *Id.* at *2–3 (Rivera, J., dissenting).
19. *Id.* at *5 (Rivera, J., dissenting)(quoting *Morgan*, 90 N.Y.2d at 488).
20. *Id.* at *8 (Rivera, J., dissenting).
21. *Maharaj v. City of New York*, 200 A.D.3d 769, 770 (2d Dep't 2021).
22. *See, e.g., Custodi v. Town of Amherst*, 20 N.Y.3d 83, 88 (2012), *quoted in Maharaj*, 200 A.D.3d at 770.
23. *Katleski v. Cazenovia Golf Club, Inc.*, 225 A.D.3d 1030, 1034–35 (3d Dep't 2024).
24. *Katleski*, 2025 N.Y. Slip Op. 02178 at *4.

Christopher J. DelliCarpini i is an attorney with Sullivan Papain Block McManus Coffinas & Cannavo PC in Garden City, representing personal injury plaintiffs on appeal. He is also Dean of the Nassau Academy of Law. He can be reached at cdellicarpini@triallaw1.com.

FOCUS: ETHICS

Your License or Your Job? What to Do When Asked by a Supervisor to Bend or Break Ethics Rules

Cynthia A. Augello and Emi Hare-Yim

Integrity has always been an important ethical value in the field of law. Often, the responsibility to uphold that value falls onto lawyers in positions of authority, compelling them to ensure that the lawyers under their supervision maintain honesty in every transaction and case. But what happens when a supervisor compels their subordinates to break this moral code?

Recently, a Department of Justice whistleblower, Erez Reuveni, came forward and spoke with *The Daily (New York Times)* about his own encounter with this situation. Reuveni had been with the DOJ since 2010 and had recently been promoted to Acting Deputy Director of the Office of Immigration Litigation. Soon after the Trump Administration took over, Reuveni was informed that the Alien Enemies Act would be invoked, and that the higher-ups wanted deportation planes to take off "no matter what." Reuveni's supervisors, namely Emil Bove, told Reuveni to consider telling the courts "f**k you"—essentially to deny prospective court orders and continue deporting migrants.

This ethical dilemma reached its climax when Reuveni was allegedly asked by his supervisors to lie in a court briefing about deported Mr. Abrego Garcia and call him an MS-13 leader, even when there was allegedly no evidence to back the claim up. Reuveni stated that he refused to sign the briefing, as he could be liable to perjury, and claimed he was put on administrative leave a matter of days later. Soon after, he was terminated. "It's pretty clear they fired me as a warning shot to the DOJ," he told reporters at *The Daily*.[1]

Since Reuveni filed his report, another whistleblower has come forward alleging the same thing about their DOJ supervisors, saying Bove and other DOJ officials were "actively and deliberately undermining the rule of law."[2]

There have been cases like Reuveni's before. When the DOJ pressured their prosecutors to drop the criminal corruption charges on Eric Adams earlier this year, many attorneys who refused to do so were put on administrative leave, including Celia V. Cohen, Andrew Rohrbach and Derek Wikstrom. All the prosecutors who were involved with the Adams case in the New York Office, including former Acting U.S. Attorney Danielle Sassoon, have since resigned in protest, along with at least six attorneys in Washington.[3]

Cases like these beg the question: what exactly do you do when your supervisor asks you to bend or break ethical rules? Do you speak up and lose your job—or do you stay quiet?

As we know, there are established rules on the honesty and integrity of lawyers. New York Rule of Professional Conduct 3.3 (a)(1) states "A lawyer shall not knowingly… make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact." A lawyer cannot lie to the courts; this is well established. This holds up even if the lawyer in question is subordinate to a higher authority, as established in New York Rule of Professional Conduct 5.2 (a). In other words, if an attorney's supervisor directs them to lie, they cannot. If they choose to comply, they could be prosecuted under 18 U.S. Code § 1621.

Furthermore, an attorney who is in this situation is compelled to report their supervisor's misconduct to a higher authority—in New York, that would be the Attorney Grievance Committee. New York Rule of Professional Conduct 8.3 (a) states "If Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation."

Of course, this defiance and reporting of a supervisor comes with many risks. Both Reuveni and the lawyers on Adam's case ended up losing or leaving their jobs, stranding them without income and pulled from a profession that they loved.

In principle, retaliation laws should protect those who refuse unethical orders and report their supervisors. 5 U.S.C. § 2302(b)(9)(D) is a prime example of this, stating that "any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority… take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of… refusing to obey an order that would require the individual to violate a law, rule, or regulation." Furthermore, 5 U.S.C. § 2302(b)(8)(A)(i) protects those who partake in "any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences… any violation of any law, rule, or regulation." New York State also has extensive whistleblower and retaliation protections.

Theoretically, an attorney's job should be protected by these rules—but as we've seen, the situation isn't always so black and white. Reuveni, for instance, was able to be terminated after refusing to sign the brief, even though his conduct is legally protected under 5 U.S.C. § 2302(b)(9)(D).

This is a frightening reality for many subordinate lawyers; however, Reuveni is taking the appropriate next steps. He has since filed an appeal with the Merit Systems Protection Board to prove his termination unlawful. If you are a federal employee, this is your right under 5 U.S. Code § 1221. To establish a prima facie case, it must be true that "the employee, former employee, or applicant for employment has demonstrated that a disclosure or protected activity described under section 2302(b)(8) or section 2302(b)(9)(A)(i), (B), (C), or (D) was a contributing factor in the personnel action which was taken or is to be taken against such employee, former employee, or applicant."

For lawyers in the private and public sector, you must file a claim in NYS Supreme Court under NYLL § 740 and Civil Service Law § 75-b for retaliation, respectively.

In summary, any lawyer facing this situation has a decision to make, either with consequences. A young lawyer may feel that disobeying their supervisor will lead to the end of their career but in reality, obeying has far worse consequences. It will always be better to protect your integrity—and your license—and choose the ethical route. Do as the law compels you and report the wrongdoing to proper authorities, and exercise your right to appeal if you are wrongfully terminated or victim to another personnel action.

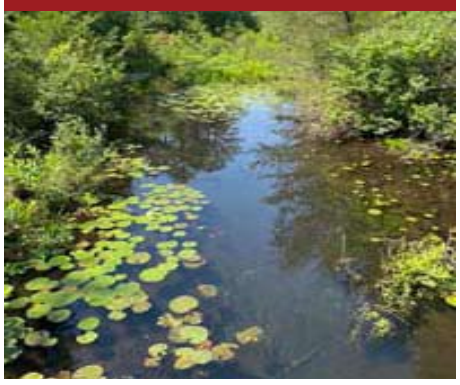
1. Rachel Abrams, A D.O.J. *Whistleblower Speaks Out, The Daily*, The New York Times (July 23, 2025), https://www.nytimes.com.
2. Rebecca Beitsch, *Second whistleblower backs allegations Bove was 'undermining rule of law'*, The Hill (July 28, 2025), https://thehill.com.
3. Sarah N. Lynch, *Three prosecutors in corruption case against NYC Mayor Eric Adams resign*, Reuters (April 23, 2025), https://www.reuters.com.

Cynthia A. Augello is the founding member of the Augello Law Group, PC, where she practices education law. She is also the Editor-in-Chief of the *Nassau Lawyer* and Chair of the NCBA Publication's Committee. Cynthia can be contacted at caugello@augellolaw.com.

This article was co-authored by **Emi Hare-Yim** a Senior at Bronx School of Science and an Intern with Augello Law Group, P.C.

FOCUS: ENVIRONMENTAL

New York's New View of Freshwater Wetlands Regulation: Legal and Regulatory Authority Substantially Increased



John L. Parker

For 2025, the freshwater wetlands regulatory update represents a sea change in the regulatory and legal environment. Wetlands areas play an important ecological role in our communities. They are usually submerged lands, and buffer areas near them, that are commonly referred to as "marshes" or "swamps." Wetlands absorb flood water, act as a buffer against extreme weather events, filter and clean water, and provide habitat for wildlife and aquatic plants. For Long Island and the New York City area, the state's regulatory jurisdiction covers both freshwater and tidal wetlands.

The New York State Department of Environmental Conservation ("DEC") recently adopted new regulations implementing the state legislature's expansion of the state's authority over freshwater wetlands.[1] There are an estimated two and a half million acres of freshwater wetlands in New York, with the new regulatory changes now covering an additional one million acres.[2] There are also approximately 25,000 acres of tidal wetlands along the hundreds of miles of coastline of Long Island and New York City.[3]

New York State has long held that these DEC regulatory programs are a priority.[4] The protections are achieved by restricting use of these wetlands and requiring permits for different activities in and around them. Compliance efforts range from fines to agency demands to remove structures built in wetlands areas that fail to meet regulatory requirements.[5]

New Legal Developments Substantially Increase Freshwater Wetlands Regulation

The new DEC regulations introduce a number of changes that impact the scope, scale, and timing of agency actions. For example, maps are a key regulatory tool and are currently required for contiguous wetland areas of 12.4 acres or larger. Beginning in 2028, the minimum contiguous area needed to trigger the mapping requirement will decrease to 7.4 acres. Notwithstanding these changes, the agency may still assert jurisdiction even in the absence of these size-based mapping requirements if the DEC, upon review, concludes that the wetland in question meets one of eleven specified "unusual importance" criteria, discussed below.[6] Once this decision is reached, a 100-foot adjacent buffer area will also be subject to regulation. Additionally, the timeframes for agency decision-making and review are intended to create some certainty in these new processes, such as 90-day jurisdictional determinations and appeals processes.[7]

The criteria that the DEC uses to determine whether a wetlands area is of "unusual importance" include: watershed with significant flooding, urban areas, rare plants, rare animals, unusual local importance, vernal pools, Class 1 wetlands, previously mapped wetlands, regional significance, floodways, and water quality. As a result, requests to the DEC for regulatory jurisdictional determinations will likely increase greatly from the previously limited number of reviews. Therefore, additional staff time will be needed for these determinations, as they effectively replaces the previous mapping approach in many scenarios. These jurisdictional determinations will also rely in part upon remote sensing information. Thus, current DEC staff resources may not be sufficient to meet the new demands. In partial response to the increased need for staff review, the DEC will include General Permits to address some scenarios.

The "urban areas" criterion alone will qualify most of downstate New York for designation as regulated freshwater wetlands. Overall, the "unusual importance" criteria will apply to smaller areas that did not previously fall into agency jurisdiction, such as vernal pools—a key location for many species, including salamanders and frogs.

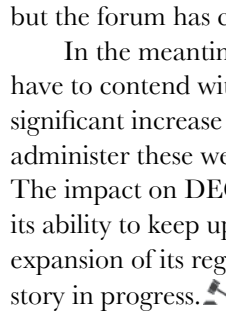
The Future Role of New York State in Wetlands Regulation

Prevailing views of the balance of power between states and the federal government in our federal system are changing. There is a renewed preference for shifting responsibility to the states, including some environmental protections. For wetlands, there are many notable Supreme Court Clean Water Act decisions which have shaped—and limited—the scope of federal wetlands authority.[8] Now, with this growing focus on the role of the states, New York's freshwater wetland protections are already the subject of judicial review. One result of these new views of federalism is the shifting of the costs and burdens of regulations to state agencies, which may not have adequate resources to deal with the increased workload.

In New York, there are two lawsuits challenging the DEC's adoption of these regulations. These pending cases seek judicial review, due in part to impacts on competing state goals for increased housing and economic development.[9] The courts will ultimately have their say regarding the scope of and approach to the regulation of freshwater wetlands. As a result, the arguments will continue, but the forum has changed.

In the meantime, the DEC will have to contend with a potentially significant increase in its workload to administer these wetlands programs. The impact on DEC resources, and its ability to keep up with such an expansion of its regulatory authority, is a story in progress.

1. See Freshwater Wetlands Act, Environmental Conservation Law ("ECL"), Article 24 (2022).
2. See 6 NYCRR Part 664.
3. See *Remarks of NYSDEC Acting Commissioner John P. Cahill Summary of the Regulatory and Legislative Update Session*, https://www.wetlandsforum.org/archive/cahill.htm (last visited June 5, 2025); see *also U.S. Fish & Wildlife Service Status and Trends of Wetlands in the Long Island Sound Area: 130 Year Assessment*, https://dec.ny.gov/sites/default/files/2023-12/tidalwet130a.pdf (last visited June 10, 2025).
4. The freshwater wetlands law seeks to "to preserve, protect and conserve freshwater wetlands .and …, to prevent" their despoliation. See ECL § 24-103. Similarly, tidal wetlands are protected, in part, because they are vital for "marine food production, wildlife habitat, flood and storm and hurricane control, recreation, cleansing ecosystems, sedimentation control, education and research, and open space and aesthetic appreciation." See ECL § 25-0102; see *also* Chapter 790, Section 1, of the Laws of 1973; ECL § 25-0105(1); 6 NYCRR § 661.2(a).
5. Our clients, both homeowners and businesses, commonly seek counsel to address these issues, which often requires collaboration with environmental and project management experts.
6. There are some limited "grandfathering" provisions for projects under review, including site plan approval and for limited State Environmental Quality Review Act situations. 6 NYCRR § 664.1.
7. See 6 NYCRR 664.8(a) – (e); see *also* 6 NYCRR 664.9.
8. See, e.g. *Sackett v. Environmental Protection Agency*, 598 U.S. 651 (2023).
9. See *Business Counsel of New York State, Inc., et al v. New York State Department of Environmental Conservation*, Index No. 904423-25 (Albany County); see *also, Village of Kiryas Joel, et al v. New York State Department of Environmental Conservation*, Index No. 904424-25 (Albany County).



John Parker is a Partner with Sahn Ward Braff Coschignano PLLC, where he leads the Environmental Energy and Resources Practice Group. He serves as the Chair of the Legislation Committee of the NYSBA Environmental and Energy Law Section and Chair of the NCBA Environment Law Committee. He can be reached at jparker@sahnward.com.

FOCUS: FREEDOM OF INFORMATION LAW

Recent Court of Appeals Case Concerning the Disclosure of Death Records

Bryan Barnes

This article examines the recent Court of Appeals case Reclaim the *Records v. New York State Department of Health*, decided on May 22, 2025.[1] In a 4-3 decision, the Court modified the determination of the Appellate Division regarding permissible disclosure of death record information pursuant to the Freedom of Information Law ("FOIL").[2] Reclaim the Records involves both the "personal privacy" exemption under FOIL,[3] as well as the disclosure provisions under New York's Public Health Law.[4]

Factual and Procedural Background

The petitioner in this case is the not-for-profit organization Reclaim the Records ("RTC"), "an organization of genealogists, historians researchers and open government advocates."[5] The FOIL at issue was made by RTC in 2021 to the New York State Department of Health ("DOH"), which publishes an online database that contains the limited categories of a decedent's first and last name, middle initial, date of death, age at death, gender, state file number, and residence code for deaths from 1957 to 1970.[6] RTC sought "*all* information" the DOH retained in its "death index files" for all available years through December 31, 2017, and "not merely the fields shown online."[7]

The DOH Records Access Officer responded to the FOIL request by providing a link to the DOH's online database, as well as providing a supplement for the year 1971, with the same categories of information that would be published online.[8] The balance of the request in reference to information from 1972 through 2017 was denied pursuant to PHL § 4174(1)(a) and 10 NYCRR § 35.5(c)(3).[9]

On administrative appeal, the DOH Appeals Officer agreed with the assessment that all the information from 1972 through 2017 is exempt because PHL § 4174(1)(a) prohibits disclosure of records on file for less than 50 years.[10] The DOH Appeals Officer further concluded that the privacy exemption of POL § 87(2)(b) and POL § 89(2)(b) applied because the records requested contained "personal information" and that "release could facilitate identity theft."[11]

RTC subsequently filed an Article 78 Petition with the Supreme Court, Albany County. The Albany court granted the petition and ordered the DOH to disclose the requested records with social security numbers redacted.[12]

The DOH appealed. The Appellate Division reversed in a 3-2 decision, in which the majority stated that PHL § 4174(1)(a) exempted disclosure because the statute "was intended to protect the confidentiality of information contained in certified records, and that disclosure would constitute an unwarranted invasion of personal privacy."[13] The two dissenting justices would have ordered disclosure of "decedent's names, dates of birth, dates of death, and places of birth and death."[14] RTC appealed to the New York Court of Appeals.

COA Majority Opinion

The Court of Appeals majority held as follows: 1) the DOH fulfilled its obligation regarding the pre-1957 data; 2) the current DOH database should be expanded to include information for all the years from 1957 to 2017, limited to the same categories of information that the DOH currently publishes online; and 3) disclosure of decedents' medical history, cause of death, location of interment, and whether they were buried, cremated, or gave an anatomical gift constitutes an unwarranted invasion of personal privacy and is not subject to FOIL disclosure.[15]

On the issue of unwarranted invasion of personal privacy, the Court noted its previous recognition that "[t]he desire to preserve the dignity of human existence when life has passed is the sort of interest to which legal protection is given under the name of privacy," and "surviving relatives have an interest protected by FOIL in keeping private affairs of the dead."[16] The Court further took cognizance of the legislative history of PHL § 4174 (1)(a) that certified death records were exempt from disclosure to "minimize the possibility of an unwarranted invasion of person[al] privacy."[17]

In reaching its conclusion, the Court clarified that consideration was given to the statutory provisions of PHL § 4174(1)(a), but not the administrative regulations associated with that statute.[18] The Court reasoned that the FOIL disclosure exemption under POL § 87(2)(a) prohibits release of any record protected under "state or federal statute," but not does not prohibit disclosure of records protected pursuant to an administrative regulation.[19] The Court reasoned, "A regulation is not a statute and, therefore, does not fall within the ambit of this narrowly construed exemption."[20]

The Court relied heavily on its own precedent in *New York Times v. City of New York Fire Department*[21] in applying the balancing test for determining what constitutes an "unwarranted invasion of personal privacy" under to POL § 87(2)(b) and § 89(2)(b). The application of the "balancing test" of public versus private interests, as used in the *New York Times* case, became a major distinction between the majority and dissenting opinions: specifically, whether a broad or narrow view of what constitutes the public interest was applied. In short, the majority disagreed with the dissent's position that the public interest was limited to the matters that shed light on government operations.[22] To use this narrow view of the public interest would, according to the majority, "fail to narrowly construe the FOIL exemption, in contravention of the Court's established precedent.[23]

Dissenting Opinion

The objection of Chief Judge Wilson and the two other dissenting judges centered around the premise that FOIL is designed to fulfill the public interest of transparency of the inner workings of the government.[24] According to the dissent, to determine availability under FOIL, the primary question is whether disclosure would be "helpul to the public in making 'intelligent, informed choices with respect to both the direction and scope of government activities.'"[25]

In reasoning that no public interest was served by disclosing the death record information at issue, the dissent relied on the balancing test of public versus private interests established in *New York Times v. City of New York Fire Department*. But, unlike the majority, the dissent reached a different conclusion. The dissent determined that the information sought by RTC was not in furtherance of the objective of FOIL and thus served little to no public purpose.[26]

Conclusion

The main difference between the majority and the dissent is the primary goal of the FOIL statutes. The dissent's view is that FOIL's purpose is to meet the transparency objective of showing the day-to-day workings of government. The majority considered this an improperly narrow view of the purpose of FOIL. Therefore, on the subject of death records, the dissent held a more absolutist view that disclosure was not in the public interest because it wasn't in pursuit of FOIL's primary objective. By comparison, the majority embraced a broader view of FOIL and held that most, but not all, of the records were disclosable.

The majority also qualified its determination the certain categories by records should be withheld under the "invasion of privacy" exemption by remitting the case to the Supreme Court for in-camera review to assess whether certain records should be withheld in their entirety, or whether redaction of certain information would suffice to protect privacy interests.

1. *Reclaim the Records v. New York State Dept. of Health*, 2025 Slip Op. 03102 (Ct. App. May 22, 2025), 2025 N.Y. LEXIS 726 (2025).
2. *Reclaim the Records v. New York State Dept. of Health*, 227 AD3d 1303 (3rd Dept. 2024).
3. POL §§ 87(2)(b), 89(2)(b).
4. PHL §§ 4100, 4174. These Public Health Law statutes are also incorporated in POL § 87(2)(a), which exempts FOIL disclosure of records that are "specifically exempted from disclosure by state or federal statute."
5. *Reclaim the Records*, 2025 N.Y. LEXIS at *5.
6. *Id.* at *1.
7. *Id.* at *5.
8. *Id.* at *5. The 1971 supplement provided by the DOH was eventually added to its database.
9. *Id.* at *6.
10. *Id.* at *6.
11. *Id.* at *6.
12. *Id.* at *10.
13. *Reclaim the Records*, 227 AD3d at 1305-307.
14. *Reclaim the Records*,, 227 AD3d at 1311-312. The dissent also held that PHL § 4174(1)(a) was inapplicable because that the statute only protects original death certificates or certified copies, which had not been requested by RTC.
15. *Id.* at *12.
16. *Id.* at *14-15, *quoting New York Times Co. v. City of New York Fire Dept.*, 4 NY3d 477, 485 (2005); see *also National Archives and Records Admin. v. Favish*, 541 US 157 (2004).
17. Department of Health Mem. at 13, Bill Jacket, L. 1988, ch. 644.
18. *Id.* at *22.
19. *Id.* at *22.
20. *Vertucci v. New York State Dept. of Transit*, 195 AD3d 1209 (3rd Dept. 2021).
21. *New York Times Co. v. City of New York Fire Dept.*, 4 NY 477 (2005).
22. *Id.* at *16.
23. *Id.* at *16.
24. *See Id.* at *34 (Wilson, C.J., dissenting)
25. *Id.* at *36 (Wilson, C.J., dissenting) *quoting Fink v. Lefkowitz*, 47 NY2d 567, 571 (1979).
26. *Id.* at *41 (Wilson, C.J., dissenting).

Bryan Barnes is a Deputy County Attorney assigned to the Legal Counsel Bureau in the Nassau County Attorney's Office. He can be reached at bbarnes@nassaucountyny.gov.

FOCUS: CRIMINAL

Testimonial Hearsay from *Crawford* to *Franklin*: Where are We Now?

Hon. Arthur M. Diamond, JSC (ret)

It is no exaggeration that Justice Anton Scalia's epic 2004 *Crawford v. Washington*[1] decision revolutionized Confrontation Clause jurisprudence in our courts. In the over twenty years since *Crawford*, both state and federal courts have grappled with the application of the disallowed hearsay, referred to in Scalia's words as "testimonial hearsay," and how to correctly apply said prohibition.

Unfortunately, *Crawford* never actually defined what "testimonial hearsay" is, and as Hamlet so aptly put it, "therein lies the rub." In a recent NYLJ Opinion column,[2] Professor Paul Schectman put it simply: "Twenty-one years later the term remains ill-defined." This column will hopefully synopsize the leading cases involving the interpretation of "testimonial hearsay" since *Crawford*, beginning with *Davis v. Washington*,[3] decided a mere two years after *Crawford*, and ending with this year's *People v. Franklin*[4] and *Franklin v. New York*.[5]

Interestingly, critics note that while Scalia failed to offer a single definition of what "testimonial hearsay" is, his decision states that "various formulations" of the core class of "testimonial' statements" exist.[6] Summarizing, they are 1) *ex-parte* in court testimony or its functional equivalent that declarants could reasonably expect would be used prosecutorially in court; 2) statements contained in formal testimonial materials such as affidavits, depositions or confessions; 3) statements made under circumstances which would lead an objective witness to reasonably believe that the statement would be available for use at a later trial; and 4) statements made to police officers during the course of an interrogation.

History

Davis v. Washington was the first post-*Crawford* decision of note. In *Davis*, the testimony at issue was a 911 taped phone call made by the victim's wife at the time of an ongoing assault by the defendant against her husband. She did not testify at trial and the recording was played for the jury. The Washington Court of Appeals held that those portions of the 911 call in which the caller/victim identified Davis were not testimonial.

The case went to the Supreme Court. Writing again for the majority, Justice Scalia stated that the issue presented is whether the conversation that took place in the 911 call produced testimonial statements of the type that were referred to and prohibited in *Crawford*. Holding that the introduction of this type of interrogation was not of the nature anticipated in *Crawford*, Scalia wrote, "[t]he difference between the interrogation in *Davis* and the one is *Crawford*" is that here the victim/caller "was speaking about events *as they were actually happening* rather than describing past events."[7]

Michigan v. Bryant[8] involved the Michigan police being sent to a gas station parking lot where they found a victim, Anthony Covington, mortally wounded by gunshot. Covington stated that he had been shot by defendant Bryant outside Bryant's house and then drove himself to the gas station. At trial, decided prior to both *Crawford* and *Davis*, the officers testified about what Covington had told them. The Michigan Supreme Court reversed the conviction, holding that the testimony of the officers violated the Confrontation Clause as per the decisions of the U.S. Supreme Court in *Crawford* and *Davis*.

Writing for the court, Justice Sotomayor found that the victim's identification of the defendant and the location of the shooting were not testimonial and the U.S. Supreme Court reversed. In her analysis she focused on the "primary purpose" of the interrogation by the police and identified three factors that should be considered in courts making that determination. First, the court should rely on the objective facts surrounding the encounter/interrogation; second, the court should establish whether or not there was an "ongoing emergency" at the time of the encounter; and finally, courts should analyze the statements and actions from both the declarant and the police point of view. Applying the foregoing, she held that the "primary purpose" of the encounter and the statements made by Covington was to allow the police to meet an ongoing emergency.

The decision was met with a somewhat harsh dissent by Justice Scalia who declared it an "absurdly easy case," because from Covington's perspective the only purpose of his statements was to allow the police to arrest and prosecute the defendant. The author does not have the space to detail Justice Scalia's objections to the majority, but suffice it to say it is worth reading.

Smith v. Arizona[9] was the fourth case in which the court was called to rule on *Crawford's* applicability to the admissibility of forensic lab results wherein the original author of the report was not available at trial. *Melendez-Diaz v. Massachusetts*,[10] *Bullcoming v. New Mexico*,[11] and *Williams v. Illinois*[12] preceded the *Smith* case, and while the *Melendez* and *Bullcoming* decisions were relatively straightforward, the *Williams* case produced a fractured decision where it was held that one lab analyst's testimony which related the absent analyst's testimony which she used in coming to her own opinion did not violate the Confrontation Clause because the absent analyst's statements were not introduced for their truth but to explain the basis for the testifying expert's opinion. This decision caused substantial confusion about *Crawford's* applicability to expert testimony and the *Smith* case appears to have been heard to attempt to clear up that confusion.

In *Smith*, Arizona law enforcement officers arrested Jason Smith for possession for large amounts of drugs and related paraphernalia. The alleged drugs seized were sent to a state lab for "full scientific analysis." Analyst #1 prepared a typed report with the results of her tests which found the presence of methamphetamines and marijuana. Three weeks prior to trial, the State replaced Analyst #1 with Analyst #2 to deliver the opinion on the drugs. Analyst #2 had not in any way participated in the testing or the creation of the report and stated so on trial. What he did do was review each of the tests previously done by Analyst #1 and state that it comported with "general principles of chemistry" and the lab's "policies and practices."

Smith was convicted and appealed on the basis that the use of a "substitute expert" his constitutional rights under the Confrontation Clause to cross examine the person who had actually done the testing, namely Analyst #1. The state argued that the witness had testified as to his own opinions even though he used #1's records. The Arizona Court of Appeals affirmed the conviction because under Arizona law an expert may testify to "the substance of a non-testifying expert's analysis if such evidence forms the basis of the testifier' s expert opinion because Arizona case law has held that the "underlying facts" are then "used only to show the basis of the…opinion and not to prove their truth."[13]

The U.S. Supreme Court specifically granted *cert* to rule on the rationale of that evidentiary rule. In rejecting the State's position, Justice Kagan held that when it comes to basis testimony of an expert's opinion "truth is everything when it comes to the kind of basis testimony presented here." That is why the prosecution uses it! And so the Court decided that the statements were indeed offered for their truth. The Confrontation issue then arises: were these statements by #2 testimonial? The trial court never addressed that issue.

Kagan noted that in determining the statement's primary purpose—why #1 created certain notes or report—the Arizona court must first determine which statements of his are at issue and then conduct an analysis consistent with *Crawford, et al.* and so remanded the case. There were three opinions concurring in part filed in the case. Justice Alito's was, in the author's opinion, the most interesting. His focus was on the impact of the "testimonial" part of the decision and its implication for future testimony under FRE 703, in particular Roman numeral II of his decision. It is worth reading.

People v. Franklin

Most recently the New York Court of Appeals had the opportunity to weigh in on *Crawford* in the case of *People v. Franklin*, decided on April 25, 2024.[14] The facsts are straightforward. The defendant was arrested following a road rage incident that involved a firearm. The police searched the basement of a home that the defendant, Cid Franklin, shared with his son and stepmother. During the search, police found a gun in a basement closet containing blankets, pillows, and other items belonging to both Franklin and his mother.

After his arrest, while in Queens Central Booking prior to his arraignment, Franklin was interviewed by an employee of the Criminal Justice Agency (CJA), which was standard procedure for anyone being arraigned in New York City. CJA is a non-profit organization that is responsible for producing a pre-trial release recommendation to the court, essentially to determine the defendant's suitability for pretrial release. The interview involves the defendant's community ties, warrant history, present address and how long the defendant has lived there, employment status, and if the defendant expects anyone to attend the arraignment. The employee conducting the interview endeavors to verify any information obtained with third persons if possible. The report is then given to the arraigning judge, defense attorney and prosecutor.

The report produced identified Franklin as giving his address as "117-48 168th St. BSMT" and this information was verified by his mother. At trial, literally the only direct evidence tying the gun to Franklin was the information on the report that he provided. The People introduced the form through the current Queens borough CJA supervisor. The interviewer was no longer employed there.

Defense counsel objected to the introduction as a violation of the defendant's Sixth Amendment right of confrontation and as hearsay. The trial judge overruled both objections and admitted the form as either a "public record" or "business record" exception and stated that there was no *Crawford* violation because the form was not specifically made for a prosecution purpose but rather "as an aid to the judge to determine if any bail should be set at arraignments." The defendant was convicted of one count of possession of a weapon. The Appellate Division reversed, citing *Crawford*, applying the "essential element" test to the contents of the form—that is—they found that the admission of the form violated the Clause because it was "admitted in order to establish an essential element" of the charged crime with no opportunity to cross-examine the maker.

Judge Halligan noted that the U.S. Supreme Court had since *Crawford* issued several decisions that "refined itss Confrontation Clause analysis on numerous occasions since it decided *Crawford*" and that these new decisions put prior New York cases at odds with the more recent U.S. Supreme Court cases. Judge Halligan then stated that it is apparent that the "essential element" approach has been replaced by these cases and announced that "we now clarify that in ascertaining whether out-of-court statements are testimonial, courts should inquire, as the U.S. Supreme court has instructed, "whether in light of all the circumstances, viewed objectively, the 'primary purpose' of the conversation was to 'create an out-of-court substitute for trial testimony,'" citing *Clark v. Ohio* (*quoting Michigan v. Bryant, supra*).[15]

The Court of Appeals admittedly does not address the hearsay objection (without stating why) but rather goes right to the Confrontation Clause objection. Here, the Court of Appeals holds that the creation of the report was not testimonial and that its primary purpose is administrative and the fact that the report became relevant during the trial does not change that opinion.

The defendant appealed to the U.S. Supreme Court which denied *cert* in statements written by Justice Alito and a second by Justice Gorsuch and the content of both statements is extremely significant or troubling depending upon your point of view.[16]

Alito's statement may indeed signal the coming of a revision of our *Crawford* inspired jurisprudence altogether. While he agrees that *cert* should be denied in this case, he then states "… but in an appropriate case we should reconsider the interpretation of the Confrontation Clause that the court adopted in *Crawford v. Washington*." He challenges the historical underpinnings of Scalia's research along with the claim that he may have misinterpreted the meaning of "witness" found in the Seventh Amendment. His conclusion: "if we reconsider *Crawford* the result may be a reaffirmation of it **or the adoption of a completely different Confrontation Clause rule**, but whatever the outcome, reconsideration is needed." (emphasis added)

Conclusion

For advanced criminal practitioners there are a few takeaways from all of the above. First, it is clear that there is NO one way to define what is testimonial hearsay. Do not discard Scalia's original language because it has been criticized—no U.S. Supreme Court case stands for the proposition that *Crawford's* "essential language" has been discarded. Don't give up on it.

Next, until *Clark v. Michigan* is overturned, the "primary purpose" language still lives; don't give up on it either. Furthermore, in dealing with expert reports/opinions as in the often-vilified *Williams v. Illinois*, remember that decision was not overturned, it was remanded for the trial court's further consideration of the objective circumstances surrounding the testifying witness's trial testimony. And of course, in New York, the Court of Appeals decision in *People v. Franklin* is still the law.

One final reminder: attorneys and judges are dealing with TWO separate issues when confronted with testimonial hearsay issues; the first is the hearsay issue itself: is it admissible at all under an exception to the hearsay rule; if yes, THEN the confrontation clause issue must be addressed.

1. *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).
2. Paul Schectman, *'Franklin v. New York' and the Meaning of Testimonial*, New York Law Journal (May 28, 2025, 10:00 AM), https://www.law.com/newyorklawjournal/2025/05/28/franklin-v-new-york-and-the-meaning-of-testimonial/.
3. *Davis v. Washington*, 547 U.S. 813, 126 S. Ct. 2266, 165 L. Ed. 2d 224 (2006).
4. *People v. Franklin*, 2024 NY Slip Op 02227, 42 N.Y.3d 157, 242 N.E.3d 652 (2024), *cert. denied sub nom.*
5. *Franklin v. New York*, 145 S. Ct. 831, 221 L. Ed. 2d 546 (2025).
6. *Davis*, 547 U.S. 822, 126 S. Ct. 2273.
7. *Id.*, 827, 2276.
8. *Michigan v. Bryant*, 562 U.S. 344, 131 S. Ct. 1143, 1149, 179 L. Ed. 2d 93 (2011).
9. *Smith v. Arizona*, 602 U.S. 779, 779, 144 S. Ct. 1785, 1788, 219 L. Ed. 2d 420 (2024).
10. *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 129 S. Ct. 2527, 174 L. Ed. 2d 314 (2009).
11. *Bullcoming v. New Mexico*, 564 U.S. 647, 131 S. Ct. 2705, 180 L. Ed. 2d 610 (2011).
12. *Williams v. Illinois*, 144 S. Ct. 852, 218 L. Ed. 2d 48 (2024).
13. *Id.* 792, 1796 (*citing overruled State ex rel. Montgomery v. Karp*, 236 Ariz. 120, 124, 336 P.3d 753, 757 (App. 2014)).
14. *People v. Franklin*, 2024 NY Slip Op 02227, 42 N.Y.3d 157, 242 N.E.3d 652 (2024), cert. denied sub nom.
15. *Id.*, 162.
16. *Franklin v. New York*, 145 S. Ct. 831, 221 L. Ed. 2d 546 (2025).

Hon. Arthur M. Diamond (JSC. Ret) served as a Justice of the New York State Supreme Court from 2004 through 2021. From January 2015 until his retirement, he served as Supervising Judge of Guardianship matters for Nassau County. In October of 2021, Justice Diamond was the initial recipient of the NCBA Gold Gavel Award honoring the justice who best serves as mentor and teacher of other judges. He can be reached at artie.diamond@yahoo.com.

NASSAU ACADEMY OF LAW

September 9 (Hybrid)

Dean's Hour: Reverse Discrimination—How the Recent Supreme Court Decision in *Ames* Impacts the Future of Employment Litigation

With NCBA Labor & Employment Law Committee

12:30PM

1.0 CLE Credit in Professional Practice

NCBA Member FREE; Non-Member Attorney $35

In this program we will explore the Supreme Court decision in *Ames v. Ohio* concerning the standard to apply in discrimination claims filed under Title VII by non-minority litigants. This CLE will explore the impact on practitioners both litigating these matters and counseling businesses and employees about best practices and policies.

Guest Speakers:

Rick Ostrove, Leeds Brown Law, P.C.
Lisa M. Casa, Forchelli Deegan Terrana LLP

September 18 (In Person Only)

Dean's Hour: Recent Developments in Testimonial Hearsay—Where Are We Now?

12:30PM

1.0 CLE Credit in Professional Practice

NCBA Member FREE; Non-Member Attorney $35

Several recent U.S. Supreme Court decisions have cast doubt on the durability of the landmark hearsay decision of *Crawford v Washington* culminating in this year's New York Court of Appeals decision in *Benjamin v New York*. This program will review those cases and hopefully cast light on the current state of the law of testimonial hearsay.

Guest Speaker:

Hon. Arthur M. Diamond (ret.)

September 18 (In Person Only)

Matrimonial Law Update—Cases, Cases, Cases by Stephen Gassman, Esq.

With NCBA Matrimonial Law Committee and sponsored by

KLG Business Valuators & Forensic Accountants
OurFamilyWizard
SOBERLINK Proving Sobriety, Improving Lives

5:30PM: Dinner; 6:00PM CLE Program

2.0 CLE Credits in Professional Practice

NCBA Member $30; Non-Member Attorney $75

Stephen Gassman of Gassman Baiamonte Gruner, P.C. will provide an extensive review and update on many of the important cases decided in matrimonial law since our last update. He will discuss a number of new cases during this program that will be a valuable tool for your matrimonial law practice.

September 25 (Hybrid)

Dean's Hour: Taking Hate to Court—Voices Against Anti-Asian Hate

With NCBA Asian American Attorney Section

12:30PM

1.0 CLE Credit in Diversity, Inclusion and Elimination of Bias*

NCBA Member FREE; Non-Member Attorney $35

Join us for a screening of the new short documentary film, "Voices Against Anti-Asian Hate," followed by a discussion about the making of the film and the Task Force's work.

Guest Speaker:

Professor Elaine Chiu, St. John's University School of Law and Past Chair of the AABANY Anti-Asian Violence Task Force

September 25 (Hybrid)

Demystifying the Court of Claims

With NCBA Diversity & Inclusion Committee

6:00PM

Refreshments will be served

1.5 CLE Credits in Professional Practice

NCBA Member FREE; Non-Member Attorney $50

This presentation offers a practical overview of the NYS Court of Claims, including its history, judicial composition, and limited jurisdiction over claims against the State. It covers common case types, procedural requirements under the Court of Claims Act, and strategic considerations for practitioners. The program also introduces the court's new Attorney Referral Pilot Program, aimed at expanding legal representation for unrepresented claimants through pro bono and reduced-fee referrals.

Guest Speakers:

Hon. Linda K. Mejias-Glover, Judge, NYS Court of Claims; **Oscar Michelen,** Michelen Law; and **Kimberly Kinirons,** NYS Attorney General's Office

September 29 (Hybrid)

Dean's Hour: Crimmigration and Enforcement Updates

With the Nassau County Assigned Defender Plan

12:30PM

1.0 CLE Credit in Professional Practice

NCBA Member FREE; Non-Member Attorney $35

Crimmigration—the intersection between criminal law and immigration law—is at the forefront of many actions taken by the current federal administration. This program will address the administration's immigration enforcement activities, executive orders, priorities, and legislation. The speakers will

PROGRAMS CALENDAR

also discuss the support available to attorneys from the Regional Immigration Assistance Center (RIAC).

Guest Speakers:
Jackeline Saavedra-Arizaga, Legal Aid Society of Suffolk County, Immigration Unit and Long Island RIAC, and **Michelle Caldera-Kopf,** Legal Aid Society of Nassau County, Immigration Unit and Long Island RIAC

September 30 (Hybrid)

Dean's Hour: Survival Strategies for a Healthy Law Practice
With NCBA Lawyer Assistance Program and New Lawyers Committee
12:30PM
0.5 CLE Credit in Ethics & Professionalism and 0.5 CLE Credit in Law Practice Management
NCBA Member FREE; Non-Member Attorney $35

Lawyers struggle with substance misuse, mental health issues, suicidality, and deaths by suicide in greater numbers than the general public and other professions. The panel will educate attendees about why lawyers are at risk, what to look for, and how to help. Science-based stress reduction, mindfulness, focused breathing, and traits of resilient attorneys will also be discussed as these are all associated with increased productivity and professional efficacy.

Guest Speakers:
Elizabeth Eckhardt, LCSW, PhD, NCBA Lawyer Assistance Program; **Jackie Cara,** Cara Law; and **James Joseph**, Joseph Law Group, P.C.

September 30 (Hybrid)

CPL § 440.10: Litigating Wrongful Convictions
With the NCBA Appellate Practice Committee, Nassau County Assigned Counsel Defender Plan, and NYS Office of Indigent Legal Services, Appellate Defender Council
3:00PM – 5:00PM
1.5 CLE Credits in Skills and 0.5 CLE Credit in Ethics & Professionalism
NCBA Member FREE; Non-Member Attorney $25

Wrongful convictions are prevalent and involve both factually innocent people and those whose rights have been violated. Post-conviction litigation, via CPL § 440.10 motion, is a powerful tool to seek justice for clients when their cases involve beneficial information that is outside of the appellate record. We will discuss how § 440.10 practice applies to trial and appellate attorneys as well as provide advice for investigating claims, working with prosecutors, and filing and arguing motions.

Guest Speakers:
Anastasia Heeger, Innocence Project
Mandy Jaramillo, Statewide Appellate Support Center, NYS Office of Indigent Legal Services

October 3 (In Person Only)

Third Annual Veterans Forum: Advocating for Military and Veteran Clients—Practical Legal Information and Tips Every Lawyer and Service Provider Needs to Know
9:00AM Continental Breakfast and Registration
9:30AM–12:30PM Program
1.0 CLE Credit in Professional Practice
FREE CLE Program and Continental Breakfast

9:30AM Welcome and Introduction
10:00AM What is a Veteran?
11:00AM Special Considerations in Immigration and Estate Planning for Veteran Clients
12:00PM Information About Local Organizations That Serve Veterans and Service Members

October 6 (Hybrid)

Dean's Hour: Discovery Reformed—Understanding the Changes to CPL § 245
With the NCBA Appellate Practice Committee and Nassau County Assigned Counsel Defender Plan
12:30PM
1.0 CLE Credit in Professional Practice
NCBA Member FREE; Non-Member Attorney $35

This is Part 1 of a two-part series on updates to New York's discovery laws. On August 7, 2025, new amendments to CPL § 245 and CPL § 30.30 went into effect, including several changes that impact when and how to challenge the District Attorney's Office's Certificates of Compliance (COC) and Certificates of Readiness. This program will explore the new procedures governing COC challenges, standards used to determine if a COC is valid, how to assess due diligence and the *Bay* factors used in making that determination, and the new scope of automatic discovery.

Guest Speaker:
Karen E. Johnston, Esq.

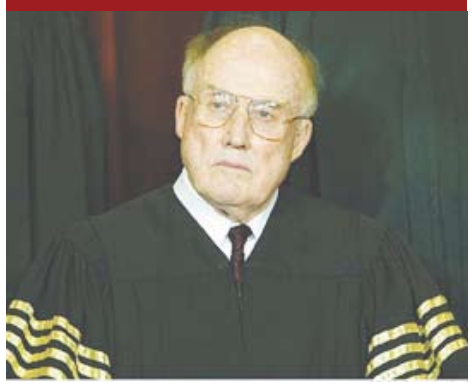
These programs are appropriate for newly admitted and experienced attorneys. Newly admitted attorneys should confirm that the format is permissible for the category of credit.

*CLE Credit in this category is available only for experienced attorneys.

The Nassau Academy of Law provides CLE financial aid and scholarships for New York attorneys in need of assistance. For more information, email academy@nassaubar.org.

FOCUS: LAW AND AMERICAN CULTURE

The Chief Justice as Counterrevolutionary



Rudy Carmenaty

This September marks the twentieth anniversary of the passing of William Rehnquist, the sixteenth Chief Justice. Prior to his elevation to the center chair, he had served as an Associate Justice. Rehnquist spent more than 33 years on the Court from 1972 until his death in 2005, the last nineteen were as Chief.

His tangible legacy can be found in the numerous opinions he authored during his storied tenure. Yet his most enduring accomplishment could well be how he altered the direction of constitutional adjudication. Rehnquist strategically moored the Court rightward by fostering a counter-veiling conservative impulse.

In 1969, President Nixon nominated Warren Burger to succeed Earl Warren. Burger, however, was not up to the task of providing the stewardship to offset Warren's liberal legacy. While less expansive in his rulings, Burger was also quite limited in his capabilities.

Burger was ham-fisted, ostentatious, and had the annoying habit of switching his vote in conference so that he could dictate opinion assignments. This tactic caused considerable consternation. As Chief, Burger was regarded as pompous and not quite up to snuff.

In retrospect, the Burger Court can best be described as a court in transition. During the 1970s, Warren-era rulings were narrowed at the margins but remained largely intact. In some instances, most notably in *Roe v Wade*, the Burger Court went further than the Warren Court ever dared.

Much of the credit has to go to William J. Brennan. A superb tactician, Brennan was able, time and time again, to secure the five votes he needed to garner a majority. Brennan achieved his various triumphs by peeling-off Republican nominated justices such as Harry Blackman, Lewis Powell and John Paul Stevens.

Nixon never got a proper handle on the propensities of his nominees. Most came to disappoint conservative court-watchers. Rehnquist, with his legal bona fides and muscular opinions, proved the exception. The President appointed Rehnquist "to save the court from the Ivy League."[1]

Rehnquist soldiered on irrespective of the prevailing winds or the prevalent punditry. So much so, he was the sole dissenter in 78 specific instances.[2] Early-on, he acquired the moniker of the "Lone Ranger." His clerks affectionately presented him with a Lone Ranger doll which he kept in his chambers.[3]

This is not to say he was isolated. As early as 1974, *The New York Times* speculated the affable Rehnquist could one day be Chief Justice.[4] And he enjoyed cordial relations with the court's liberals. Brennan, William O. Douglas, Thurgood Marshall, and later Ruth Bader Ginsburg all respected and admired Rehnquist.

Brennan once observed that "Bill Rehnquist is my best friend up here."[5] Rehnquist and the ornery Douglas formed a mutual admiration society of sorts, despite their diametrically opposing views and defined by their mutual iconoclasm. Marshall, who seldom agreed with Rehnquist on the law, went on to label him "a great chief justice."[6]

Born in Milwaukee, Rehnquist was literally a conservative from the cradle. After military service in World War II, he attended Stanford, both college and law school, on the G.I. Bill. At Stanford Law, he was ranked first in his class, made law review, and subsequently clerked for Robert H. Jackson.

Ranked third in that same Class of 1952 was a young woman named Sandra Day. They were moot court partners, dated, and he proposed to her.[7] As we all know, they didn't marry each other. Still, think how different history would have been if Sandra Day had accepted Bill Rehnquist's marriage proposal.[8]

After his clerkship, he practiced law in Phoenix and served as a legal adviser to Barry Goldwater's quixotic 1964 presidential campaign. Nixon appointed him Assistant Attorney General in the Office of Legal Counsel in 1969. In late 1971, he was nominated to the seat being vacated by the ailing John Marshall Harlan II.

During his confirmation hearings in 1971, and again in 1986, Rehnquist's 1952 memo to Justice Jackson concerning *Brown v Board of Education* and unsubstantiated charges Rehnquist interfered with minorities voting in Arizona engendered strident opposition. Nonetheless, he was confirmed by the Senate on each occasion.[9]

Ronald Reagan promoted Rehnquist to Chief Justice when

Burger stepped down. The justices, who had long chafed under Burger, came to value Rehnquist for being fair and even-handed in the performance of his new duties. He soon emerged as the leader Burger might have been and most certainly was not.

The years 1994 to 2005 witnessed a period of consistency unmatched since the Judiciary Act of 1869 established a nine-member court. Rehnquist would preside over what was a 5/4 razor-thin majority. The conservatives were the Chief, Antonin Scalia, who occupied Rehnquist's former seat, and Clarence Thomas.

O'Connor and Anthony Kennedy, both appointed by Reagan, help forged the so-called "Rehnquist Five."[10] These two justices however were often the swing votes on hot-button social issues. Stevens, David Souter, Ginsburg, and Stephen Breyer formed the liberal bloc. All of which frustrated conservatives to no end.

This situation was largely brought about by Republican appointees Stevens (named by Ford) and Souter (named by G.H.W. Bush) voting consistently with justices nominated by Bill Clinton. As such, Rehnquist "lost more battles than he'd won" on issues such as "abortion, gay rights, and affirmative action."[11]

With the alignment of justices tilting slightly to the right, advocates in their briefs or during oral argument pitched their appeals to O'Connor, whose vote was pivotal. The Rehnquist Court seemed more like the "O'Connor Court," as she became "a majority of one."[12]

Roe v Wade would not be reversed under Rehnquist.[13] While the Court did permit additional restrictions, the right to an abortion was sustained but under a different rubric. In 1992, *Roe* was upheld 5-4 in *Planned Parenthood v Casey* and an "undue burden" test was formulated by O'Connor, Kennedy and Souter.[14]

One of two dissenters in *Roe* in 1973 (the other was Byron White), Rehnquist argued "Roe was wrongly decided, and that it can and should be overruled."[15] The Roberts Court overturned *Roe* and *Casey* in *Dobbs v Jackson Women's Health Organization* in 2022.[16]

A similar pattern can be detected regarding affirmative action and race-based preferences. *Grutter v Bollinger* sustained an admissions process favoring underrepresented minorities.[17] This case stemmed from objections raised against practices at the University of Michigan Law School.

The law school readily admitted it favored certain minorities, arguing on behalf of a compelling state interest in ensuring a "critical mass" of diverse students.[18] Almost forgotten was *Gratz v Bollinger*, a separate case decided that same day dealing with undergraduate admissions at Michigan.[19]

In *Gratz*, Rehnquist, for a 6–3 majority, struck down as unconstitutional a points-based system where the University mechanically granted twenty additional points to the scores of favored minority candidates. This proved to be too much for O'Connor and Kennedy, as well as for Breyer who concurred in the judgment.

That being said, Grutter added texture to the ruling in *Regents of the University of California v Bakke*.[20] *Bakke* first permitted race to be considered to promote a diverse student body while forbidding strict racial quotas. Rehnquist had dissented in *Bakke* and in *Grutter*. Eventually his position was vindicated.

For O'Connor in *Grutter* wrote "race-conscious admissions policies must be limited in time"[21] *Grutter* alluded to a sun-setting term of 25 years. In 2023, the Roberts Court ruled 6-3 in *Students for Fair Admissions v Harvard* that such preferences in college admissions violated equal protection.[22]

In contrast to the paradigm in place since the New Deal, Rehnquist championed a conception of federalism wherein the balance of power vis-à-vis the states and the national government shifted back ever

so slightly to the states. This is perhaps his most substantive contribution which was realized in his lifetime.

Methodically, Rehnquist was inclined to accord more deference to the states as he sought to curb the ambit of federal power. His efforts first bore fruit when as an associate justice in *National League of Cities v Usery*, the Fair Labor Standards Act was held inapplicable against state and municipal governments.[23]

Although eventually overturned, the ruling in *Usery* marked the first time Rehnquist was able to convince his fellow justices to accept his view of federalism.[24] By the time he became Chief, he had five solid votes to strike down federal laws which encroached too stringently on state authority.

In *United States v Lopez*, the Chief in a 5-4 decision struck down the Gun-Free School Zones Act of 1990.[25] Rehnquist reasoned possession of a handgun is not economic activity and has little impact on interstate commerce. For the first time in decades, the Court overruled a Congressional statute under the Commerce Clause.

The most controversial decision rendered by the Rehnquist Court has to be *Bush v Gore*. This case determined the 2000 presidential election in George W. Bush's favor.[26] The presidency hinged on the electoral college tally from Florida, as a series of recounts in the tabulation of votes cast generated wide-spread litigation.

On election day, November 8, 2000, it appeared Bush won Florida by the narrowest of margins. State law mandated automatic machine recounts in light of the meager percentages that gave Bush his victory. On November 10, with machine recounts finished in all but one county, Bush's cushion was reduced significantly.

Vice President Al Gore, Bush's opponent, selectively requested manual recounts in four Democratic-leaning counties. A series of court actions by the rival campaigns ensued. The state supreme court ultimately ordered a statewide manual recount. On December 8, the Bush campaign moved to have the Rehnquist Court intercede.

Bush wanted to stay the Florida Supreme Court's ruling. It should be noted, Art. II, § 1, cl. 2 states "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors" to which it is entitled. The Constitution posits authority with state legislatures, not with state courts for these purposes.

On December 9, precipitated by an emergency request from the Bush campaign, the U.S. Supreme Court stayed the recount. The issue was whether the recounts ordered by the Florida Supreme Court were constitutional and what would be the appropriate remedy if they were not. Oral argument was set for December 11.

The Court issued its ruling the following day. In a 5-4 per curium decision, the majority found there was an equal protection violation and ordered the recounts stopped. The decision hinged on the use of disparate counting requirements in the counties resulting in an "unequal evaluation of ballots in various respects."[27]

The contested electoral votes went to Bush, and with it the presidency despite his losing the popular vote nationwide. Rehnquist, O'Connor, Scalia, Kennedy, and Thomas voted in the majority. Stevens, Souter, Ginsburg and Breyer dissented, although Souter and Breyer did agree there was an equal protection violation.

By any measure, the ruling in *Bush v Gore* makes the Rehnquist Court the most consequential in American history. This case continues to generate controversy. The justices were accused of putting their retirement schedules, hoping to have a member of their own party appoint their successor, before the Constitution.

All nine justices remained on the bench until after the election in 2004. That October the Court announced the Chief Justice had contracted thyroid cancer. A visibly weakened Rehnquist was able to administer the oath to Bush at his second inaugural, but his diagnosis limited his participation during the 2024-2025 term.

William Rehnquist died on September 3, 2005. His innate leadership qualities and his pragmatic conservatism enabled him to cobble together a brittle 5/4 coalition which fostered a more balanced understanding of federalism. In those areas where he was unsuccessful, inroads were made setting the stage for the present-day Court.

This not surprisingly opened Rehnquist to much the same criticism conservatives aimed at Earl Warren. In the assessment of liberal commentators, charges of judicial activism not judicial restraint were in order. Rehnquist maintained he was committed to preserving liberty by curtailing the federal government.

It should also be noted he was not doctrinaire. Rehnquist did vote in favor of apparently liberal positions. His opinion upholding Miranda warnings for criminal suspects in *Dickerson v United States* on institutional grounds, after having decried *Miranda* as an associate justice, provides a case in point.[28]

Moreover, his temperament and his competence as Chief, engendered such prestige that it imbued confidence in his Court, save for *Bush v Gore* which was inevitably bound to displease half the country. Frankly, the role of Chief Justice suited Rehnquist perfectly.

His service left an indelible imprint on the legal landscape. Beyond his command of cases and controversies, he altered the then prevailing jurisprudential dynamic and redirected the course of Constitutional law. If ever a Mount Rushmore of Chief Justices were to be erected, Rehnquist's profile would be prominently featured.

In 1995, Rehnquist had sewn on his robes four yellow stripes. This was a departure from standard judicial attire. Rehnquist enjoyed the whimsy of Gilbert & Sullivan operettas. Attending a performance of *Iolanthe* by a small theater company, he admired the regalia worn by the 'Lord Chancellor' and adopted it as his own.[29]

After his death, his successor John Roberts decided to return to a plain black robe. At the time Roberts, who had once clerked for his predecessor, observed that he had yet to earn his stripes.[30] He is in good company, as few jurists will ever match the achievement of William Rehnquist and so earn their stripes.

1. Leela De Krester, *Chief Judge Lost More Fights Than He Won*, New York Post (September 5. 2005), https://nypost.com.
2. *Lone Dissent An Exercise in Supreme Obstinacy*, https://lonedissent.org (last visited Aug. 26, 2025).
3. Richard W. Garnett, *The Lone Ranger's Long Game*, City Journal (June 18, 2022), https://www.city-journal.org.
4. Warren Weaver, Jr. *Relative youth and long sideburns notwithstanding, he has become the point man of the Supreme Court's right wing*, New York Times (October 13, 1974), https://www.nytimes.com.
5. David J. Garrow, *The Rehnquist Reins*, New York Times (October 6, 1996), https://www.nytimes.com.
6. Jeffrey Rosen, *Rehnquist the Great?*, The Atlantic (April 2005), https://theatlantic.com.
7. Cat Hofacker, *Sandra Day O'Connor rejected 1950s marriage proposal from William Rehnquist*, USA Today (October 31, 2018), https://wwwusatoday.com.
8. In 1981, Rehnquist lobbied President Reagan to nominate O'Connor to the Court.
9. In 1971, Rehnquist was confirmed by a vote of 68-26. In 1986, he was confirmed by a vote of 65-33.
10. De Krester, *supra*.
11. *Id.*
12. Jeffrey Rosen, *The O'Connor Court: America's Most Powerful Jurist*, New York Times (June 5, 2001), https://www.nytimes.com.
13. 410 U.S. 113 (1973).
14. 505 U.S. 833 (1992).
15. *Id.*
16. 597 U.S. 215 (2022).
17. 539 U.S. 306 (2003).
18. *Id.*
19. 539 U.S. 244 (2003).
20. 438 U.S. 265 (1978).
21. 539 U.S. 306 (2003).
22. 600 U.S. 181 (2023).
23. 26 U.S. 833 (1976).
24. *Garcia v. San Antonio Metropolitan Transit Authority* 69 U.S. 528 (1985).
25. 514 U.S. 549 (1995).
26. 531 U.S. 98 (2000).
27. *Id.*
28. 530 US 428 (2000).
29. David G. Savage, *For Rehnquist, the Robe Has a Meaning of Sorts*, Los Angeles Times (January 8, 1999), https://www.latimes.com.
30. *Chief Justice Roberts: Underneath His Robes, Underneath Their Robes*, Blogs.com (August 4, 2006), https://underneaththeirrobes.blogs.com.

Rudy Carmenaty is Deputy Commissioner of the Nassau County Department of Social Services. He can be reached at Rudolph.Carmenaty@hhsnassaucountyny.us.

FOCUS: MENTAL HEALTH

Interview with Elizabeth Eckhardt, LCSW, PhD, Director of the NCBA Lawyer Assistance Program

The interview below was conducted with Elizabeth Eckhardt, LCSW, PhD, Director of the Nassau County Bar Association Lawyer Assistance Program (LAP), by the Juris Education Interview Team on August 13, 2025.

Why do you believe mental health support is especially important in the legal profession?

Lawyers struggle with substance misuse, mental health issues, suicidality, and deaths by suicide in greater numbers than the general public and most other professions. Lawyers are consistently at or near the top of the list of all professionals in suicide rates. Suicide has been reported as the third leading cause of death among attorneys after cancer and heart disease.

When attorneys are in crisis, their clients can suffer—and it's often the most vulnerable who suffer the most. Attorney misconduct results in delays and expenditures of additional funds that may be required to address the consequences of attorney misconduct through further proceedings with different counsel. By helping legal professionals get the support they need in a timely fashion, we help ensure justice is delivered fairly, ethically, and compassionately. In certain circumstances, victimized groups lack the means available to address attorney misconduct, thereby being victimized a second time.

The New York State Lawyers Fund for Client Protection approves more than $9 million in total reimbursement annually to eligible law clients for losses caused by the dishonest conduct of former NYS lawyers. The 2021 Annual Lawyers Fund Report states that, "Apparent causes of misconduct are often traced to alcohol or drug abuse and gambling. Other causes are economic pressures, mental illness, and marital, professional, and medical problems." These are the very issues the Lawyer Assistance Program (LAP) is tasked to address.

Lawyers are also often reluctant to seek help due to the stigma associated with mental health and substance misuse. Furthermore, lawyers are often the ones others go to for help; there is often real discomfort with asking for help for themselves. Lawyers also struggle with (and often don't know it) maladaptive perfectionism, vicarious and secondary trauma, burnout, and compassion fatigue.

What are the most common mental health challenges you see among law students and early-career lawyers?

While these groups are similar, some of the challenges are different and noteworthy. Students entering law school often struggle with adapting to a new learning style, rigorous academic course loads, competitiveness, work/life balance, reluctance to seek help, and financial burdens. These struggles have a cumulative impact on law students.

Results from the 2021 Survey of Law Student Well-Being (2021 SLSWB) demonstrate that law students struggle with mental health challenges and substance misuse in greater numbers than other graduate school students. Interestingly, this survey is a follow-up to the same survey that was completed in 2014. The 2021 survey added a question about trauma, concerns regarding the Bar Exam, and law school efforts to combat these challenges. Nearly 70% of the law students thought they needed help in the last year for emotional or mental health problems compared to 42% in 2014. Over 80% of respondents answered yes to having experienced trauma in at least one category, with roughly 70% of respondents and 11% of the law students having thought seriously about suicide in the past year, compared to 6% in 2014. Nearly 33% of the students reported they had thought about attempting suicide in their lifetime, up from 21% in 2014. 15.7% of the law students said they had intentionally hurt themselves without intending to kill themselves in the past year, up from 9% in 2014.

Research has also shown that new lawyers, those practicing less than 10 years, also struggle more than attorneys who have been in the profession for longer. These attorneys often have accrued large student loan debt and are not earning enough in the early years of practicing to cover expenses and also pursue other life goals. New attorneys also face large learning curves, high expectations, and a lack of mentoring.

The stigma associated with substance misuse and mental health challenges is still very relevant and is often a deterrent for attorneys and law students to seek help.

What services or resources does your program provide that might benefit aspiring or current law students?

LAP provides free, confidential assistance to lawyers, judges, law students, and their family members who are experiencing difficulties with alcohol or substance abuse, gambling, depression, stress, or other mental health issues.

These services include peer and professional counseling; treatment assessment and referral; diversion and monitoring; and crisis intervention, outreach, and education. Members of the Lawyer Assistance Committee volunteer their time to help other lawyers in need. The committee truly is the backbone of the Lawyer Assistance Program.

The NCBA has a Law Student Committee and a New Lawyers Committee to provide additional support and assistance.

How can law schools better support students' mental health, and what role should institutions play in creating healthier environments?

Law Schools appear to be taking the issue of law student well-being seriously. There have been several efforts initiated by law schools that are promising to help mitigate the mental health and substance misuse associated with being a law student. Law Schools can better support their students by:

- Sending explicit messages about the importance and benefit of seeking help
- Providing in-house counseling services
- Professionally facilitated student workshops on subjects related to well-being
- Faculty and staff training on student well-being that includes the role of faculty in students' well-being, boundaries, what to look for, what resources are available, clearly defining expectations, deadlines
- Peer Support Programs such as the Students Helping Students program at Touro Law Center

Are there any misconceptions about mental health in the legal community that you believe need to be addressed?

Resiliency, stoicism, and self-efficacy at all costs is still very much the culture in some areas of the legal profession. Therefore, stigma—which refers to the shame, blame, and fear associated with mental health and substance use and misuse—often prevents attorneys from reaching out for much-needed help and education regarding mental health and substance misuse and abuse. It's unfortunate for obvious reasons but also because there are several issues that can be addressed with minimal intervention if caught early. These same issues become more complicated to treat and much more intrusive to daily life if one does not reach out early.

Attorneys that I meet with are often surprised at how much better they feel even after a brief conversation where they share with someone else what they have been struggling with. Sometimes all that is needed is an understanding ear. I think there is a potential misconception that if we open up to someone, we will have to commit to some kind of treatment. That is often not the case.

I think there is a perception that burnout, chronic stress, and lack of work-life balance are unavoidable if one is to be a successful attorney. It is these beliefs that lead to untreated burnout, compassion fatigue, and vicarious and secondary trauma. There seems to be an acceptance that work/life balance is something you put off till you wind down your practice.

I think it is important to stress here that LAP services are strictly confidential. Confidential communications between a legal professional and a Lawyer Assistance Program are deemed privileged. Section 499 of the Judiciary Law (as amended by Chapter 327 of the Laws of 1993 and as amended thereafter).

This confidentiality is designed to encourage lawyers, judges, and law students in New York to seek

help for issues like substance abuse, mental health challenges, or stress, without fear of disciplinary action or negative career consequences.

There have, however, been real efforts to educate members of the legal profession on strategies and skills to promote well-being. I do believe this is gaining some traction as we get more invitations to present in law firms, law schools, and legal departments.

How can law students and future lawyers build sustainable practices to manage stress, burnout, and work-life balance long term?

I cannot stress enough the importance of creating self-care practices while in law school.

There have been widespread efforts within law schools to create a culture that normalizes mental health struggles and encourages help-seeking behaviors, the importance of work-life balance, and readily available resources.

Law students who have struggled with mental health or substance misuse and have successfully reached out for help can be powerful examples for other law students. Speaking openly normalizes the stress and difficulty that law students inevitably will encounter and provides hope that with proper self-care and reduced stress, school and work-life balance are possible. These personal stories chip away at the stigma and fear associated with getting help.

Education is key to recognizing the signs of stress, burnout, substance misuse, and other mental health challenges in oneself and one's colleagues. Law students and legal professionals often spend more time with their fellow law students and colleagues than they do with friends and family. Recognizing the signs of mental health and substance misuse and understanding the best ways to approach someone you are concerned about can be life changing.

Working on resiliency has proven to be a worthwhile effort for law students and new lawyers. Being able to bounce back from setbacks, embrace change, and manage stress with things like mindful breathing and other mindfulness-based stress reduction strategies can help dramatically when navigating the challenges inherent in the legal profession. Understanding and managing emotions, setting boundaries, and focusing on what is controllable at any given moment are also trademark traits of resilient attorneys.

Juris Education, a law school admissions consulting firm, is proud to feature insights from leaders like Elizabeth Eckhardt, LCSW, PhD, to help pre-law students better understand how to care for their mental health throughout the demanding journey to law school.

September is Suicide Prevention Month!

Lawyers die by suicide in greater numbers than the general public and other professions. In fact, suicide has been reported as the third leading cause of death among attorneys after cancer and heart disease.

SIGNS TO LOOK FOR IN SELF AND OTHERS

- Disturbed sleep
- Agitation, anxiety
- Self-hating thoughts
- Hopelessness and apathy
- Feeling like a burden to others
- Loss of interest in pleasurable activities
- Thoughts of wanting to escape life
- Unbearable emotional pain
- History of suicide attempts (prior attempts increase risk)

DO'S AND DON'TS OF SUICIDE PREVENTION

- **Do** learn warning signs
- **Do** be gentle but direct. Ask if person is thinking about suicide and if they have a plan
- **Do** show concern and compassion
- **Do** offer resources like the **800-273-8255 Suicide Prevention Hotline**, **988 Suicide and Crisis Lifeline**, and **741741 Crisis Text Line**
- If you suspect that someone is in danger of harming themselves, **Do** stay with them until they are safe
- **Don't** be judgmental
- **Don't** debate why suicide is not good
- **Don't** expect that a person at risk will seek help on their own
- **Don't** act shocked or ask why
- **Don't** lecture on the value of life
- **Don't** be sworn to secrecy

The NCBA Lawyer Assistance Program is directed by Beth Eckhardt, PhD and the Lawyer Assistance Committee is chaired by Dan Strecker, Esq. LAP is supported by funding from the NYS Office of Court Administration, the WE CARE Fund, and Nassau County Boost. *Strict confidentiality protected by Section 499 of the Judiciary Law.

Lawyer Wellness Corner

FREE CONFIDENTIAL HELP AVAILABLE*

(516) 294-6022 or
(516) 512-2618
LAP@NASSAUBAR.ORG

Nassau County Bar Association Lawyer Assistance Program

ncba_lawyersassistance

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The NCBA is grateful for these individuals who strongly value the NCBA's mission and its contributions to the legal profession.

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Walter L. Szczech
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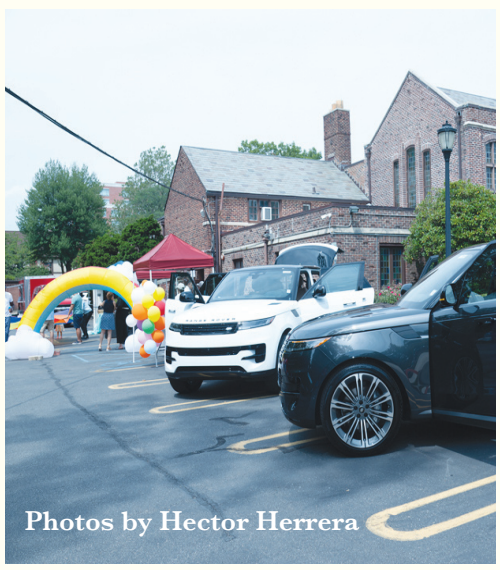
Alexandra Wertis
Tatiana Marie Wypych

Family Fun Festival

On Sunday, August 17, the NCBA Diversity & Inclusion Committee hosted its first Family Fun Festival at Domus! The Committee extends a special thank you to Land Rover Freeport for generously sponsoring the event and helping to create an entertaining day for NCBA Members and their families.




In Brief

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

Schroder & Strom, LLP is proud to announce that **Michael P. Spellman** has been honored by *Long Island Business News* as an Emerging Leader Under 30 for 2025. **Diana C. Capalbo** has been admitted to the NYS Bar, thereby beginning her position as an Associate Attorney at the firm.

Bond, Schoeneck & King PLLC is pleased to announce its ranking of 27th in *New York Law Journal's* The New Titans of New York list released on July 24. Bond has more than 300 lawyers serving companies, nonprofits, public sector entities and individuals in a broad range of practice areas, with ten offices in New York State. Labor and Employment Law attorney **Jacqueline A. Giordano** has been recognized as a 2026 Best Lawyers in America: Ones to Watch. Nine Long Island office attorneys have been named 2026 Best Lawyers in America, including NCBA Members: **Andrea Hyde** (Litigation–Trusts and Estates, Trusts and Estates); **Craig L. Olivo** (Employment Law–Management, Litigation–Labor and Employment); **Terry O'Neil** (Employment Law–Management, Labor Law–Management, Litigation–Labor and Employment); and **Steven P. Block** (Trusts and Estates). *Long Island Business News* has selected **Alan E. Weiner CPA, JD, LL.M**. as a 2025 Icon Honors recipient. Icon Honors recognizes Long Island business leaders, over the age of 60, for their notable success and demonstration of strong leadership within and outside their fields.

Forchelli Deegan Terrana LLP is proud to announce that **Linda Tierney**, the firm's Director of Office Management, was appointed Vice President of the Association of Legal Administrators (ALA) Long Island Chapter for a one-year term. The following partners were recognized in the 2026 Edition of The Best Lawyers in America®: **Stephanie M. Alberts** (Trusts and Estates); **Joseph P. Asselta** recognized (Construction Law); **Daniel P. Deegan** (Real Estate Law); **Kathleen Deegan Dickson** (Cannabis Law); **Keith J. Frank** (Employment Law–Management); and **Gregory S. Lisi** (Employment Law–Management, Litigation–Labor and Employment). The following attorneys were included in the 2026 Edition of Best Lawyers: Ones to Watch® in America: **Gabriella E. Botticelli** (Commercial Litigation); **Caroline G. Frisoni** (Corporate Law); **Taylor L. Gonzalez** (Land Use and Zoning Law); **Sebastian Jablonski** (Tax Law); **Cheryl L. Katz** (Litigation-Trusts and Estates); **Julia J. Lee** (Tax Law); **Lindsay Mesh Lotito** (Banking and Finance Law); and **Jeremy M. Musella** (Corporate Law).

Robert S. Barnett, Founding Partner of Capell Barnett Matalon & Schoenfeld LLP, is presenting a webinar on "Tax Treatment of LLC Liquidating Distributions: Income and Deduction Rules, Basis, Tax Distributions, Reporting" for Strafford on September 17, 2025. Partner **Yvonne R. Cort** was quoted in a Bloomberg news article entitled, "NYS Billionaires Are Richer Than Ever as Mamdani Pushes for Higher Taxes" regarding New Yorkers changing their domicile to other states.

Rivkin Radler LLP is proud to announce that the following attorneys were recognized in the 2026 Edition of The Best Lawyers in America®: **Stuart I. Gordon** (Bankruptcy and Creditor Debtor Rights, Insolvency and Reorganization Law, Litigation–Bankruptcy); **Walter J. Gumersell** (Business Organizations); **Jean Hegler** (Trusts and Estates); **Jennifer F. Hillman** (Litigation–Trusts and Estates, Trusts and Estates); **Geoffrey R. Kaiser** (Health Care Law, Litigation–Health Care); **Benjamin P. Malerba** (Health Care Law); **Patricia C. Marcin** (Trusts and Estates); **Jeffrey P. Rust** (Health Care Law); **William M. Savino** (Insurance Law, Litigation–Insurance); and **Wendy H. Sheinberg** (Elder Law, Trusts and Estates). The following attorneys were included in the 2026 Edition of Best Lawyers: Ones to Watch® in America: **Nicholas Moneta** (Elder Law, Trusts & Estates); **Philip Nash** (Insurance Law); **Catherine Savio** (Commercial Litigation, Litigation-Securities); **Sean N. Simensky** (Banking and Finance Law, Corporate Law); and **Elizabeth Sy** (Commercial Litigation, Intellectual Property Law).

Burner Prudenti Law, P.C. is proud to announce that **Erin Cullen** and **Alma Muharemovic** have joined the firm as Associate Attorneys in its Trusts and Estates and Estate Planning departments.

We Acknowledge, with Thanks, Contributions to the WE CARE Fund

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TUNNEL TO TOWERS 5K RUN AND WALK

Sunday, September 28, 2025
9:30 AM - 2:00 PM

Be Part of the WE CARE Team!
Whether you're walking, running, or cheering from the sidelines, your presence matters.
Help us honor our heroes and show that We Care.
Family and Friends Welcome!

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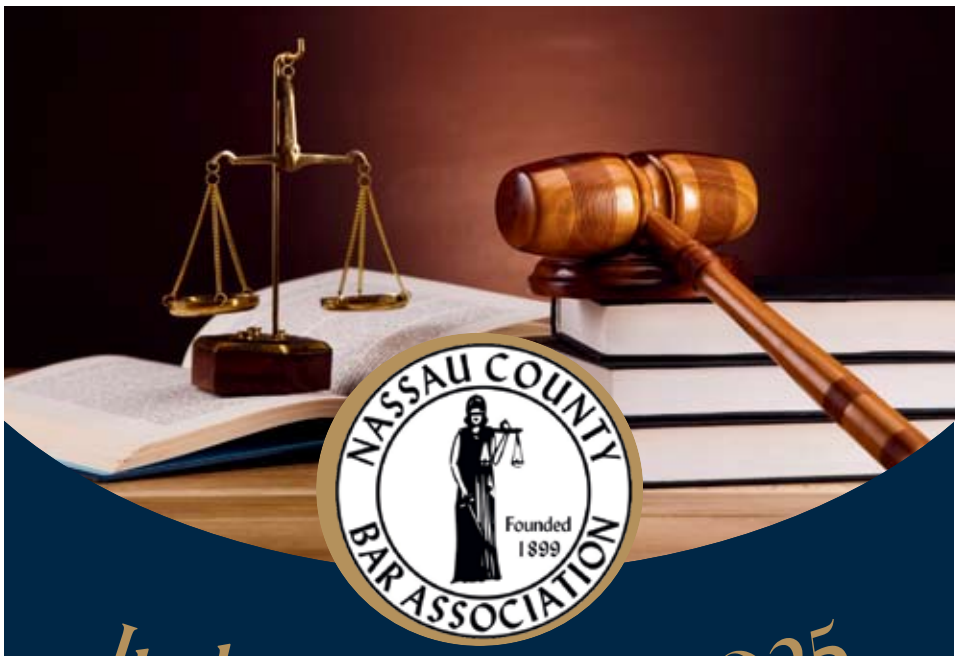

Judiciary Night 2025

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Thursday, October 23, 2025
5:30PM at Domus

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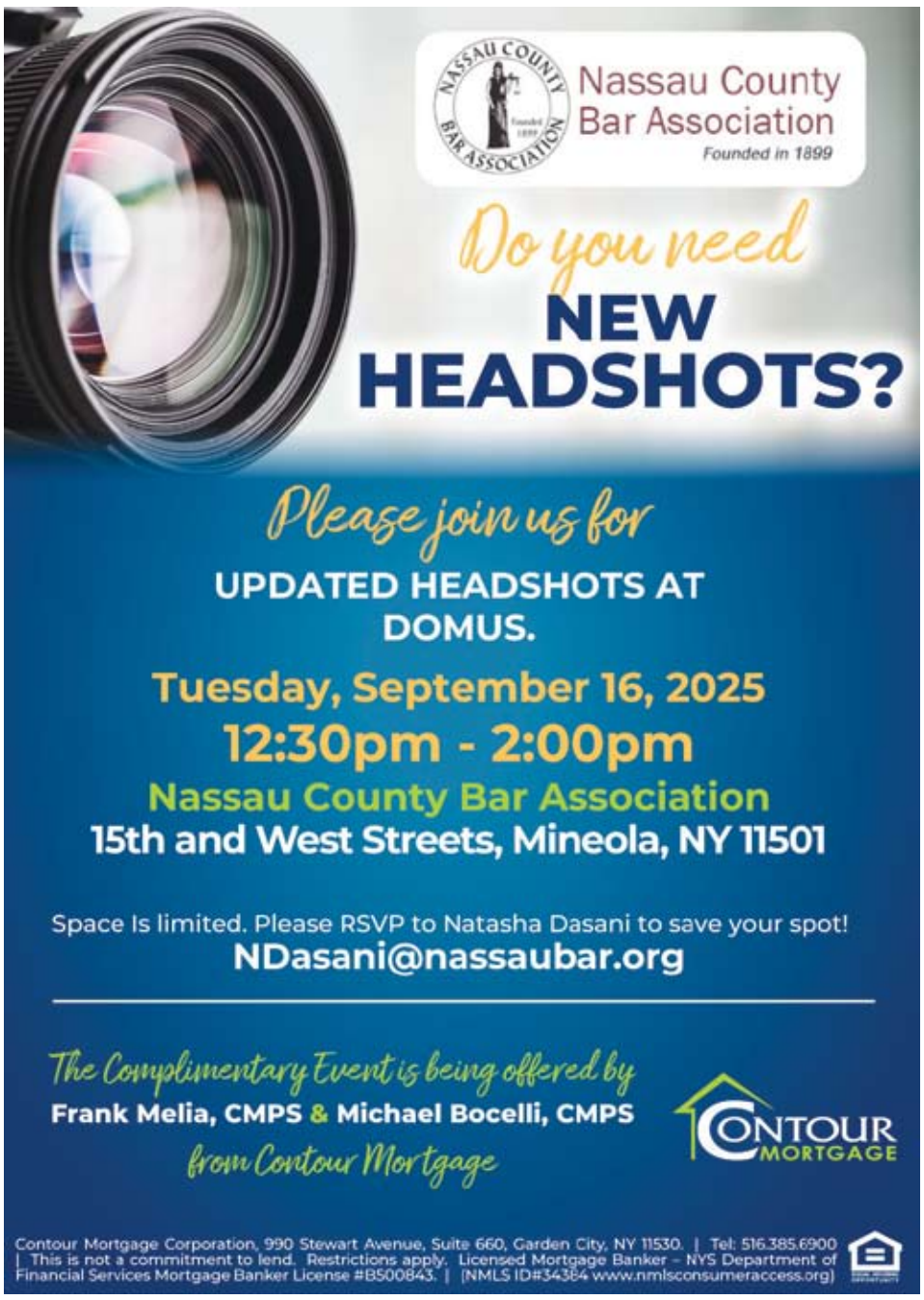

CALL FOR ATTORNEY ADVISORS AND MOCK TRIAL JUDGES FOR 2026 TOURNAMENT!

The Nassau County Bar Association hosts the 2026 New York State High School Mock Trial Tournament at the Nassau County Supreme Court from February to April 2026.

Attorney Advisors are needed to guide about 50 high school teams and mold the next generation of lawyers by helping the students hone their trial strategy and tactics! Be a resource about law school and the legal profession!

Attend the Attorney Advisor Training Session on Thursday, September 11 at 12:30 PM at Domus!

Mock Trial Judges and Attorney Advisors are eligible to receive CLE credit for their participation.

If you are interested in volunteering or have questions, please contact Natasha Dasani at ndasani@nassaubar.org or (516) 747-4077.

CALENDAR | COMMITTEE MEETINGS

COMMITTEE CHAIRS

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Commercial Litigation	Danielle J. Marlow and Michael H. Masri
Committee Board Liaison	Hon. Maxine S. Broderick
Community Relations & Public Education	Ingrid J. Villagran and Melissa A. Danowski
Conciliation	Karl C. Seman
Condemnation Law & Tax Certiorari	Robert L. Renda
Construction Law	Adam L. Browser and Robert J. Fryman
Criminal Court Law & Procedure	Brian J. Griffin
Cyber Law	Nicole E. Osborne
Defendant's Personal Injury	Brian Gibbons
District Court	Matthew K. Tannenbaum
Diversity & Inclusion	Hon. Maxine S. Broderick and Hon. Linda K. Mejias-Glover
Education Law	Liza K. Blaszcyk and Douglas E. Libby
Elder Law, Social Services & Health Advocacy	Christina Lamm and Dana Walsh Sivak
Environmental Law	John L. Parker
Ethics	Thomas J. Foley
Family Court Law, Procedure and Adoption	Tanya Mir
Federal Courts	Michael Amato
General, Solo & Small Law Practice Management	Jerome A. Scharoff
Grievance	Robert S. Grossman and Omid Zareh
Government Relations	Michael H. Sahn and Brent G. Weitzberg
Hospital & Health Law	Kevin P. Mulry
House (Domus)	Christopher J. Clarke
Immigration Law	Sylvia Livits-Ayass
In-House Counsel	
Insurance Law	Michael D. Brown
Intellectual Property	Elizabeth S. Sy
Judicial Section	Hon. Linda K. Mejias-Glover and Hon. Ellen B. Tobin
Judiciary	Marc C. Gann
Labor & Employment Law	Lisa M. Casa
Law Student	Bridget Ryan and Emma Henry
Lawyer Referral	Peter H. Levy
Lawyer Assistance Program	Daniel Strecker
Legal Administrators	
LGBTQ	Jess A. Bunshaft
Matrimonial Law	Joseph A. DeMarco
Medical Legal	Nicole M. LaGrega
Mental Health Law	Jamie A. Rosen
Municipal Law and Land Use	Elisabetta T. Coschignano and Anthony C. Curcio
New Lawyers	Andrew B. Bandini
Nominating	Sanford Strenger
Paralegal	
Plaintiff's Personal Injury	Steve Z. Gokberk
Publications	Cynthia A. Augello
Real Property Law	Suzanne Player
Senior Attorneys	Peter J. Mancuso
Sports, Entertainment & Media Law	Lauren Bernstein
Supreme Court	Clifford S. Robert
Surrogate's Court Estates & Trusts	Maria L. Johnson and Cheryl L. Katz
Veterans & Military	Gary Port
Women In the Law	Rebecca Sassouni and Melissa Holtzer-Jonas
Workers' Compensation	Craig J. Tortora

WEDNESDAY, SEPTEMBER 3
Real Property Law
12:30 p.m.

THURSDAY, SEPTEMBER 4
Community Relations & Public Education
12:30 p.m.

Publications
12:30 p.m.

TUESDAY, SEPTEMBER 9
Asian American Attorney Section
12:30 p.m.

Assistant District Attorney Kirk Sendlein, head of the Hate Crimes Unit of the Nassau County District Attorney's Office, will discuss what the Unit does and hate crimes information and statistics against Asian Americans in Nassau County.

WEDNESDAY, SEPTEMBER 10
Plaintiff's Personal Injury
12:30 p.m.

Honorable R. Bruce Cozzens will give a "State of the Union" of the Nassau Supreme Trial part.

Elder Law, Social Services & Health Advocacy
12:30 p.m.

Matrimonial Law
5:30 p.m.

At "An Evening with the Matrimonial Judges of Nassau County," you'll learn some "dos and don'ts" and practical tips when appearing before our judges.

Diversity & Inclusion
6:00 p.m.

THURSDAY, SEPTEMBER 11
Alternative Dispute Resolution
12:30 p.m.

FRIDAY, SEPTEMBER 12
Appellate Practice
12:30 p.m.

TUESDAY, SEPTEMBER 16
Women In the Law
12:30 p.m.

WEDNESDAY, SEPTEMBER 17
Sports, Entertainment & Media Law
12:00 noon

Association Membership
12:30 p.m.

Business Law, Tax & Accounting
12:30 p.m.

Surrogate's Court Estates & Trusts
5:30 p.m.

Family Court Law, Procedure and Adoption
Cocktail Party
5:30 p.m.

THURSDAY, SEPTEMBER 25
Senior Attorneys
12:30 p.m.

TUESDAY, SEPTEMBER 30
Diversity & Inclusion
6:00 p.m.

Moderator Oscar Michelen, Esq. will have a two-hour conversation with Dr. Baz Dreisinger on "Incarceration Nations and the Future of Justice." Dr. Dreisinger is an author, activist, professor of English at John Jay College of Criminal Justice, the founder of the Prison-to-College Pipeline and the executive director of Incarceration Nations Network.

WEDNESDAY, OCTOBER 1
Real Property Law
12:30 p.m.

THURSDAY, OCTOBER 2
Community Relations & Public Education
12:30 p.m.

MONDAY, OCTOBER 6
Publications
12:30 p.m.

TUESDAY, OCTOBER 7
Intellectual Property
12:30 p.m.

WEDNESDAY, OCTOBER 8
Plaintiff's Personal Injury
12:30 p.m.

Matrimonial Law Committee
5:30 p.m.

THURSDAY, OCTOBER 9
Education Law
12:30 p.m.

Defendant's Personal Injury
12:30 p.m.

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