



Judicial Relations Committee Bridges Gap Between Bench, Bar

By: Steven S. Orlow



It has been more than a decade now since three judges appeared in the role of appellants seeking reversals of a less than "Qualified" rating by our Bar Association's Judiciary Committee. The Board of Managers, in its capacity as an appellate body, was listening to strikingly similar stories from each of the judges.

As each jurist, in turn, appeared before the Board, each was told about certain traits, characteristics or, frankly, peculiarities of theirs that served to create a significantly unpleasant

working atmosphere for the attorneys who appeared before them. These were not simply minor idiosyncrasies but the behavior exhibited caused a certain level of tension and uncertainty that should not be present in a courtroom setting and only added unnecessary anxiety and pressure to the efforts attorneys must exert on behalf of their clients.

The astonishing similarity among these judges was that each one responded in almost the same manner: "Why didn't someone tell me about these issues well before my fourteen-year term expired?"

The implication to me and, subsequently, it would appear, to others on the Board, was clear. Both the embarrassment to the jurist of a less than "Qualified" rating, and the discomfort to a multitude of attorneys appearing before that jurist, might well have been avoided had the simple step been initiated of approaching the judge and making an attempt to bring the matter of their demeanor to their attention long before their term expired. And so, the current concept of the Judicial Relations Committee came into existence.

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LGBT Committee Holds 2nd Annual Mixer

The LGBT Committee of the Queens County Bar Association held its 2nd annual mixer on September 15 at the Beast Next Door Cafe in Long Island City. The mixer was attended by members of the committee and other local attorneys and law students as well as Guest of Honor, former State Senator

and NYC Council Member, Tom Duane. Senator Duane and the other attendees discussed his efforts and experiences during the passage of New York's same-sex marriage law in 2011 and the threat posed by the recent "religious freedom" laws proposed or passed in several states and localities.



(L to R) Bryce Jones, Matt Skinner, Martin Olesh, Michael Goldman, John Duane, Jennifer Catera, Will Tock, Peter Botti, Mary Northridge, Tom Duane and Tom Burrows

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The Docket

Being the official notice of the meetings and programs listed below, which, unless otherwise noted, will be held at the Bar Association Building, 90-35 148th Street, Jamaica, NY. Due to unforeseen events, please note that dates listed in this schedule are subject to change. More information and changes will be made available to members via written notice and brochures. Questions? Please call 718-291-4500.

CLE Seminar & Event Listing

January 2017

Monday, January 2	New Year's Day Observed - Office Closed
Monday, January 16	Martin Luther King, Jr. Day - Office Closed

February 2017

Monday, February 13	Lincoln's Birthday Observed - Office Closed
Wednesday, February 15	The Party II - Networking Event
Monday, February 20	President's Day - Office Closed

March 2017

Wednesday, March 8	Criminal Law Seminar
Monday, March 13	Islanders Game with Deitz Reporting at Barclays Center
Monday, March 27	Judiciary, Past Presidents and Golden Jubilarians Night

April 2017

Wednesday, April 5	Equitable Distribution Update
Friday, April 14	Good Friday, Office Closed

May 2017

Thursday, May 4	Annual Dinner & Installation of Officers
Monday, May 29	Memorial Day - Office Closed

Upcoming Seminars

Civil Court Seminar
Ethics Seminar
Elder Law Seminar
Surrogate's Court Seminar

New Members

Nicoleta Christodolou
Melissa A. Corbett
Andrew Esposito
David H. Faux
Jessica N. Fiscella
Matthew Fleming
Madjeen Garcon
Edmond J. Hakimian
Julia Johnson
Kyoung Jung
Erin B. Kowtna Kessler
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Editor's Note

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By: Charles A. Giudice
Queens Bar Bulletin Editor

This edition of the Bar Bulletin contains a notice from the Nominating Committee requesting applications to serve as officers and managers of the Queens County Bar Association.

The Nominating Committee conducts interviews of all interested candidates and then nominates those it believes are best suited to fill the positions and serve the Bar Association as a whole.

Members of the Nominating Committee are usually past presidents of the Association and other senior level practitioners.

Openings on the Board of Managers are guaranteed by the bylaws of the Association. The Board of Managers includes the current slate of officers. Membership on the Board is limited to two full terms of three years each. After serving out those two full terms, a member of the Board is ineligible to continue on the Board unless he or she is nominated to serve as an officer.

The officers of the Bar Association are the President, President-Elect (next year's president), Vice President, Secretary and Treasurer.

After completing a term as President, the new Immediate Past President is returned to the Board of Managers for one last three year term. Upon completing that last three year term, the past president ascends to become a member of the Nominating Committee. As there is a new president every year, one past president departs the board every year, guaranteeing at least one vacancy. Other vacancies arise as members depart early because of personal and career commitments, or serve out their eligible years without moving up to become officers.

I have had the privilege of serving on the Board of Managers for two years. I was initially nominated to finish the term of a member who left after two years, then re-nominated to a full three year term. At present, I am a member of the Class of 2019 – the board members whose terms are up in that year.

My time on the Board has been an education in the workings of the Association. I've been able to meet and form connections with some of our most distinguished members. Every person I have met through service on the board has been welcoming and quick to offer suggestions or help with bar events or even individual cases. Chances are, no matter what event I'm walking into, I will know at least one person from serving on the board.

That said, it's a serious responsibility. The Board is responsible for all of the affairs of the Association. That includes membership, finances,



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individual member requests, communications with the administration of the courts and more. Board deliberations are confidential, but I can say that we have taken some tough votes.

There is no better way, though, to take a hand in shaping the present and future of the Association – charting its course and confronting the difficult issues. As I have written before, being a prominent citizen in the Association has tangible as well as intangible rewards.

I encourage anybody interested in shaping our future to submit a letter of application to the Nominating Committee. If you are someone who has not previously been involved, and want to apply in future, joining a committee and serving as a committee chair is a good way to gain experience. Attending Bar Association functions, like stated meetings, Court Appreciation Night and Judiciary, Past Presidents and Golden Jubilarians Night is a good way to meet the people who make the decisions.

I am not a member of the Nominating Committee, and I do not purport to speak for that Committee or any of its members. I do believe that being involved in the Association is a way to do well by doing good.

I therefore close by encouraging new members to get involved and all interested members to apply to the Nominating Committee. I further encourage anyone who applies and is not accepted to reapply in future.

I wish you all the best of this holiday season.

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President's Message



I hope everyone's Thanksgiving was a healthy and happy one. I find it hard to believe that the New Year's holiday is around the corner and my term as President is half over!

The Association is alive with new initiatives. In November the Association, along the Brandeis Association and Yashar sponsored a trip to the 9/11 Memorial and Museum. It was very well attended and there was a strong consensus that more cooperative outings should be scheduled. I agree with that consensus and will be working with the affinity associations to schedule more events of that nature which would be of general interest to the members.

Two seminar presentations are nearly ready for presentation to the public. The hope is to use the various Queens County Libraries as the settings for these two seminars as well as others as they develop, thanks to the help of Judge Augustus Agate who is a member of the Queens County Library Board of Trustees.

The initiatives to attract new student members have proved to be very successful. The offer to second and third year students to have articles published in our Bulletin has yet to attract any writers, but it is early days yet.

The Association has a long and rich history, with written archives to match. I believe much of the material from the earlier days would be of interest to the membership and I am seeking help from a member or members who have an interest in culling articles or photos of interest to be published in the Bulletin. This task requires no long term commitment. If you are interested please contact us.

Finally, we say goodbye to two long time members of the Bench in Queens County. Justices Ritholtz and Nahman are retiring at the end of the year. On behalf of the Officers, the Board and the membership I wish them good luck and good health for the future and thank them for the service from the bench and to the Association over many years!

Happy New Year!

Gregory J. Brown
President



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QCBA Member Wins Nassau Post

By Mark Weliky*

A longtime Queens Bar member was victorious in his first run for political office.

On November 8, Arnold Drucker won his election to the Nassau County Legislature for the 16th Legislative District. He will fill the seat of the late Judy Jacobs who was a longtime Democratic leader of the Nassau County Legislature. In defeating Louis Imbroto, who ran on the Republican line, Arnold garnered 17,647 votes to 12,774 for his opponent. The county's 16th Legislative District includes parts of Roslyn Heights, Old Westbury and the Town of Oyster Bay.

For many years Arnold has run a successful general practice in Jackson Heights with a concentration in landlord/tenant litigation and commercial and residential real estate law. For the fifteen years that I have been directing the Queens Volunteer Lawyers Project (QVLP), the pro bono program here at the Queens County Bar Association, Arnold has been one of our most reliable pro bono volunteers.

Arnold has been volunteering since QVLP was formed in November 1991. He has provided pro bono assistance to dozens of low-income Queens residents throughout those years. Most of his service has consisted of defending tenants in eviction proceedings in Queens Civil Court. Feedback we get from these clients attests to the high quality legal assistance they received from him.

In 2002 Arnold received QCBA's Pro Bono Service Award in the area of Landlord-Tenant Law.

It has been a pleasure to work with Mr. Drucker and we wish him the best in his new endeavor.

*Mark Weliky is the Pro Bono Coordinator for the Queens County Bar Association

Queens District Attorney Richard A. Brown Honors NYPD Chief of Department Carlos M. Gomez With 11th Annual Hispanic Heritage Award



***"This year we pay
tribute to Chief Carlos
M. Gomez, the highest
ranking Hispanic officer
in the NYPD. Chief
Gomez has been with
the NYPD for over 30
years. He served in
a variety of precincts
citywide, including five
in Queens."***

*Queens DA
Richard A. Brown*

Queens District Attorney Richard A. Brown today announced that the New York City Police Department's Chief of Department Carlos M. Gomez has been named the recipient of the District Attorney's 2016 Hispanic Heritage Award for his unwavering dedication to public service, his efforts to reduce crime in Queens County and throughout New York City and his commitment to strengthening the relationships between the police and the communities that they serve.

District Attorney Brown said, "This year we pay tribute to Chief Carlos M. Gomez, the highest ranking Hispanic officer in the NYPD. Chief Gomez has been with the NYPD for over 30 years. He served in a variety of precincts citywide, including five in Queens."

The Hispanic Heritage Award was presented to Chief Gomez, who became the first Latino Chief of Department in NYPD's history, during a reception this afternoon in District Attorney Brown's Kew Gardens office. The annual observance is a celebration of the rich culture and heritage of the Hispanic and Latino communities.

District Attorney Brown added, "Our Latino population here in Queens represents 28 percent of our 2.3 million residents. It is a population that enriches every aspect of life in our county and adds to its vibrancy and vitality."

Carlos M. Gomez was just a child when he and his father migrated to the United States from his native Cuba. He grew up in Queens. He attended college at the State University of New York Old Westbury, where he earned a bachelor's of arts degree in criminal justice. Gomez joined the New York City Police Department in July 1984. He started his illustrious career walking a beat as part of the Neighborhood Stabilization Unit in the Upper Manhattan and soon afterwards was transferred to the 103rd Precinct in Jamaica, Queens. In April 1989, Gomez was promoted to sergeant and that was just the beginning. He rose through the ranks and on September 16, 2016, became the 39th Chief of Department.

Throughout Chief Gomez' 32 years in law enforcement, he has served in a variety of precincts, including the 101, 102, 103, 106 and 115 - all in Queens. Before becoming the Chief of Department, Chief Gomez held the rank of Chief of Patrol in which he oversaw the implementation of several city-wide

initiatives aimed at reducing crime as well as strengthening the relationships between police and the community.

Chief Gomez has been married for 29 years to Lisa Gomez and they are the proud parents of two daughters, Jenna and Danielle.

National Hispanic Heritage Month started off as a week-long celebration in 1968. The observance was expanded to a month-long celebration in 1988 (from Sept. 15 - Oct. 15). During this month, America celebrates the traditions and culture of U.S. residents who trace their roots to Spain, Mexico and the Spanish-speaking nations of Central America, South America and the Caribbean. September 15 was chosen as the starting point for the celebration because it is the anniversary of independence of five Latin American countries: Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. In addition, Mexico and Chile celebrate their independence days on September 16 and September 18, respectively.

Last year's Hispanic Heritage Award was presented to the first Latina President of the Queens County Women's Bar Association and former Queens Assistant District Attorney Lourdes M. Ventura for her numerous accomplishments and tireless leadership. The previous year's recipients have been the Metropolitan Latin American Law Student Association (MetroLALSA), for its work bringing together the Latino student law communities from 13 different New York and New Jersey law schools, the Hon. Carmen Beauchamp Ciparick, a retired Senior Associate Judge of the New York State Court of Appeals, who was honored for her distinguished judicial and legal career that has spanned more than four decades. Prior award recipients include: Joseph A. Zayas, Judge of the New York State Court of Claims, in 2012; Richard M. Gutierrez, the President of the Queens County Bar Association, in 2011; Assistant District Attorney Mariela Palomino Herring, Chief of District Attorney Brown's Gang Violence and Hate Crimes Bureau, in 2010; Dr. Eduardo J. Marti, President of Queensborough Community College, in 2009; the Honorable Fernando Camacho, Administrative Judge of the State Supreme Court, Queens County, Criminal Term, in 2008; New York State Assemblyman Jose R. Peralta, of the 39th Assembly District, in 2007; and the Latino Lawyers Association of Queens County received the inaugural Hispanic Heritage award in 2006.

Judicial Relations Committee Bridges Gap Between Bench, Bar Continued from p.1...

To be clear, the Judicial Relations Committee does not deal with simple matters of procedure adopted by a particular judge, and certainly not with dissatisfaction with a judge's decisions. There are other avenues available in those instances: the former to the appropriate Bar Association Committee (Supreme Court, Criminal Court, Civil Court, etc.) and the latter, the appellate process. The efforts of the Judicial Relations Committee deal with matters that go to the demeanor and temperament of a judge. Admittedly difficult at times to describe, a matter appropriately subject to the attention of the Judicial Relations Committee might best be described in Justice Potter Stewart's memorable description regarding his definition of pornography: "I know it when I see it."

Any member of the Judicial Relations Committee can present a matter for consideration. Any Bar Association member can bring a "situation" to the attention of any member of our Committee. Without belaboring the point, it is only those situations involving perceived behavior by a judge that is sustained, egregious and/or disruptive of the ability of attorneys to perform their duties and responsibilities in a manner considered reasonable and acceptable that becomes the subject of further inquiry by the Committee.

There is one vital point that is made clear to each and every judge with which the Committee has determined it wishes to meet. Our deliberations and actions are not shared with any administrative personnel associated with possible judicial discipline. Our activity is intended to be, and has succeeded we believe, in being amicable in nature. Our efforts are, indeed, meant to avoid the involvement of the judicial hierarchy because we operate under the assumption, originally enunciated by those three judges over a decade ago, that virtually all judges are eager to carry on their duties in a manner supportive of the efficient and collegial administration of justice. As one prominent jurist recently commented, it would be hard to understand why any judge, if approached by the Committee, would not want to meet with the Committee. (Some additional level of comfort for judges approached by the Committee: no current or former judges, or law clerks, are designated as members of the Judicial Relations Committee).

One last point: the Judicial Relations Committee acts as a two way street. If there are complaints about attorneys appearing before a judge, we stand prepared to implement the resources of the Queens County Bar Association to meet that issue. One of the most effective and important Committees of our Association, the Lawyers Assistance Committee, was established as a direct result of Judges bringing to the attention of the Judicial Relations Committee the reality so often observed by them of a significant number of attorneys in an obviously substance abused state. The work of the Lawyers Assistance Committee has been, since its creation, outstanding.

The Queens County Bar Association has always striven to advance the efficient and equitable administration of justice in our County, and it pursues this effort by encouraging the good working relationship between practitioners at the bar and members of the bench. The Judicial Relations Committee is a creature of that continuing effort.

Editor's Note: Steven S. Orlow is a Past President, 2008-2009, of QCBA and Chairman of the Judicial Relations Committee.

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Dear Member:

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The recipients of the QCBA Scholarship are carefully chosen based on academic achievement, community service and/or service to the Bar and financial need and is awarded at the Annual Dinner in May.

I know that times are hard, but I would hope that you could donate to this worthwhile purpose and your tax deductible donation (of any amount) will help to support and recognize a deserving law student(s). The assistance we provide to the future lawyers, many of whom are struggling with enormous debt, also enhances the good name of our Association.

As President of the Queens County Bar Association, I thank you for your support of this valuable community-based program.

Sincerely,
Gregory J. Brown
President

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Thomas J. Principe, President, Columbian Lawyer's Assn; Spiros A. Tsimbinos, Program Moderator; Hon. Sheri S. Roman, Associate Justice, Appellate Division, 2nd Dept; Hon. Valerie Brathwaite Nelson, Associate Justice, Appellate Division, 2nd Dept; Karl E. Pflanz, Deputy Chief Court Atty, Appellate Division, 2nd Dept; Eun Chong (EJ) Thorsen, President, Queens County Women's Bar Assn; and Janet Keller, President, Brandeis Assn.



Spiros Tsimbinos, Hon. Sheri S. Roman, Hon. Valerie Brathwaite Nelson and Karl Pflanz



Spiros Tsimbinos, Joe Cristiano, Tom Principe, Claudia Lanzetta, Michele McSweeney and Jim Pagano



Spiros Tsimbinos, Hon. Sheri Roman and Joseph DeFelice



Spiros Tsimbinos giving a summary of the 2015 Annual Report and recent personnel changes in the Court of Appeals



Spiros Tsimbinos, Hon. Sheri S. Roman, Hon. Valerie Brathwaite Nelson and Karl Pflanz



Maria Gonzalez, Hon. Valerie Brathwaite Nelson, Donna Furey and Susan Pepitone



Paul Shechtman, criminal law practitioner, discussing criminal cases in the NYS Court of Appeals



Karl Pflanz, Deputy Chief Court Atty, discussing civil cases in the NYS Court of Appeals



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Hon. Phyllis Orlikoff Flug, Mark Keller, Hon. Martin Ritholtz, Janet Keller and Hilary Gingold

Book Review and Site

By: Stephen D. Fink

I have been requested to review the recent book written by our colleague Andrew Schatkin. Here are my comments. I have also provided an internet site that I hope you will find as helpful as I have.

SELECT LEGAL TOPICS, VOLUME 2 by: ANDREW SCHATKIN, ESQ.

If you are looking for a nice book to read on vacation or simply sunning yourself in your backyard, this is probably not what you want. Stephen King does not have to fear our colleague Andrew Schatkin surpassing him.

However, if you want (or better, need) to know more about the certain areas of criminal and civil rights law, this is the book for you. Frankly, it is an easy read chock full of useful cases. Mr. Schatkin has provided us with a very well organized treatise on

post-conviction remedies, Article 730 matters, civil rights issues and some civil law. He throws in some extra items about Federal and State practice which really helps by providing some basic rules. As usual, the book is a great resource of cases.

It is probably not a good idea to sit down and read this book from cover to cover (I did). It is most useful as a reference tool to be placed near your never-used Black's Law dictionary. Even if you never get near criminal law matters, it is helpful to most practitioners to have some basic knowledge of the issues. Here is a perfect opportunity to have such a text in your library. It is a paperback and does not take up a lot of room.

New York Slip Opinions Service

Okay, I admit it, I am a "Slip Opp" nerd. Every day the New York State Reporting Service publishes recent decisions of the Courts before they reach the "Official Reports." The site is divided into commercial

cases, lower Court cases, Appellate cases and the Court of Appeals.

I especially like to read the lower Court cases. I find them helpful in my practice areas whether they be from Queens or other Counties. It is nice to be able to tell a judge (even one you don't know well) that you read his/her recent case and found it interesting.

A brief search of Appellate cases (all Appellate Divisions and the Appellate Term First and Second) and you will find issues you deal with every day. These are the mostly recent Appellate cases and will certainly assist you in your pending matters. Of course this helps you follow for decisions if you are doing Appellate work.

The site can be found at www.courts.state.ny.us/reporter/decisions.htm.

Stephen D. Fink
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Tanya Hobson-Williams Named to New York Law Journals' Top Women in Law 2016



Queens County Bar Association member Tanya Hobson-Williams of Hobson-Williams, P.C. was recently named one of New York Law Journals' Top Women in Law 2016. The Top Women in Law recognizes the outstanding work being done by female attorneys across New York State who have had notable achievements over the past year.

As the principal of Hobson-Williams, P.C. Ms. Hobson-Williams concentrates her practice in the areas of elder law, business law, real estate closings and collections. Her active elder law practice assists senior citizens in obtaining Medicaid for home care and nursing home care.

Ms. Hobson-Williams routinely lectures at senior citizen centers, assisted living facilities and law schools; counsels families caring for the elderly on a number of related topics; and provides seminars on estate planning to New York State employees. She has written a number of articles on guardianship practice in New York and Medicaid planning for seniors and successfully represented clients at Medicaid Fair Hearings.

Ms. Hobson-Williams has served as a Guardian ad Litem in hundreds of Housing Court cases. Previously, she was elected judge of the Village of Hempstead, making her the first female

African-American jurist in the village.

She also served in several other capacities, including member of the Hempstead Village Zoning Board; arbitrator for the New York State Workers' Compensation Board; administrative law judge for the Parking Violations Bureau and the New York City Transit Authority; Small Claims Assessment Review hearing officer for Long Island residents who challenge their property taxes; small claims arbitrator in New York City; hearing officer for the New York City Department of Education; and arbitrator for the National Association of Securities Dealers.

She has received recognition for her work by the Office of the Nassau County Executive, the Hempstead branch of the NAACP for legal services and a service award from the Calvary Tabernacle in 2013. Her firm has been named one of the Top Women-Owned Law Firms by the New York Law Journal and, in 2014, she received the Long Island Business News Top 50 Most Influential Women award.

Ms. Hobson-Williams has a Bachelor of Arts in Government and Politics from St. John's University and a Juris Doctor from Benjamin N. Cardozo School of Law.

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The Nominating Committee is Accepting Applications to Serve on the Queens County Bar Association Board of Managers

Please take notice that those members who wish to be considered for nomination as Officers or Members of the Board of Managers of the Queens County Bar Association should submit written requests and resumes highlighting your activities in the Association prior to January 13, 2017.

Tentative meetings pursuant to the by-laws have been scheduled by the Nominating Committee on January 18, 2017 and finally on January 25, 2017. Said meetings are scheduled for 5:00 P.M. in the Board of Managers Room - in the Headquarters Building, 90-35 148th Street, Jamaica, N.Y.

At those meetings you may present the names of the persons whom you desire to have considered by the Nominating Committee for nomination to offices to be filled at the Annual Meeting. Hearings will be held at those times for that purpose pursuant to the by-laws.

Marie-Eleana First
Secretary

Please submit your requests in writing to the attention of the:

Nominating Committee
Queens County Bar Association
90-35 148 Street
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The Annual Election of Officers and Managers will be held on March 3, 2017. The newly elected Officers and Managers will assume their duties

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Donna received her law degree from St. John's University of Law. She is currently the Chairperson of the Board of Directors of the Catholic Lawyers Guild of Queens, Treasurer of East River Kiwanis Club, Chair of the Elder Law Section of the Queens County Bar Association and was past President of the Queens County Women's Bar Association, the Astoria Kiwanis Club, East River Kiwanis Club, and the Catholic Lawyers Guild of Queens.



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Size of Defect in Slip and Fall: A Not So Trivial Pursuit

By: By George M. Heymann



In the world of personal injury litigation, summary judgment motions for dismissal averring that a slip or fall on the ground or a step was caused by a "trivial defect" often result in a favorable decision for the defendant, as a matter of law, regardless of the severity of the alleged injury.

In *Loughran v. City of New York*¹ the Court of Appeals held that legal liability does not turn on whether a hole or depression that causes a pedestrian to fall is based on the number of inches of its depth or causes a trap. Reviewing each case on its merits, the question of a municipality's liability is dependent on whether it "neglected and failed to keep its public thoroughfares ... in a condition reasonably safe for pedestrians."

Although the hole in the park pathway where the plaintiff fell was only three inches deep, based on the record, the court held that there was sufficient evidence to warrant the matter to go before a jury and reversed the Appellate Term and the Appellate Division affirmances of the trial court's dismissal.

The reasoning in *Loughran* was reiterated by the Appellate Division, Second Department, in *Guerrieri v. Summa*² where the plaintiff tripped and fell over a slightly elevated metal strip that was used as a foul line for a dart game in a bar. While the Supreme Court denied a summary judgment motion to dismiss, the Second Department reversed.

Concluding that the strip of less than 3/4 of an inch in height did not have the characteristics of a trap or snare, the court opined that "[a]lthough the issue of whether a dangerous or defective condition exists 'depends on the peculiar facts and circumstances of each case' and is generally a question for the jury, it has been recognized that [t]he owner of a public passageway may not be cast in damages for negligent maintenance by reason of trivial defects on a walkway, not constituting a trap or nuisance, as a consequence of which a pedestrian might merely stumble, stub his toe or trip over a raised projection." (Citations omitted.)

Finding it unacceptable to reach "a mechanistic disposition of a case based exclusively on the dimension of [a] sidewalk defect, the Court of Appeals in *Trincere v. County of Suffolk*³ held that the 'time, place and circumstance' of an injury must be considered along with the width, depth, elevation, irregularity and appearance of the defect in question." Citing *Loughran*, the court clearly enunciated its position that "there is no 'minimal dimensional test' or per se rule that a defect must be of certain minimal height or depth in order to be actionable."

Here, the one-half-inch elevation of a cement slab over which the plaintiff stumbled and fell causing injury was held to be nonactionable as a matter of law upholding the Appellate Division's affirmation of the Supreme Court's granting the defense motion for summary

judgment dismissal.

The most recent opinion on this subject by the Court of Appeals is a consolidation of three Appellate Division decisions, one in the First Department and two in the Second Department. As to all three, the court noted that "[t]hese cases teach that it is usually more difficult to define what is trivial than what is significant."⁴

As a prelude to its holdings on each case, the court set forth the earlier principles that were established in *Loughran* and *Trincere*, as stated above. The court pointed out that *Trincere* and its progeny "establish the principle that a small difference in height or other physically insignificant defect is actionable if its intrinsic characteristics or the surrounding circumstances magnify the danger it poses, so that it 'unreasonably imperil[s] the safety of' a pedestrian" such as heavily traveled walkways "where pedestrians are naturally distracted from looking down at their feet."

Motions for summary judgment dismissal on the theory of trivial defect must demonstrate, prima facie, that "the defect is, under the circumstances, physically insignificant and that the characteristics of the defect or the surrounding circumstances do not increase the risk it poses."

Trilogy of Cases

In the first of the trilogy, *Hutchinson v. Sheridan Hill House Corp.*, the Court of Appeals held that the defect at issue was trivial as a matter of law because it was in a location that was well illuminated, in the middle of the sidewalk, and there were no crowds or other physical impediments that prevented the plaintiff from looking down as he walked. The object over which he tripped was a cylindrical-shaped piece of metal approximately 5/8 of an inch in diameter which projected between 1/8 and 1/4 of an inch above sidewalk.

The court found that the "irregular" piece of metal and "its rigidity and firm insertion into the sidewalk" are not dispositive since the same could be "true of many contours in a sidewalk. Moreover, the test established by the case law is not whether a defect is capable of catching a person's shoe. Instead the relevant questions are whether the defect was difficult for a pedestrian to see or identify as a hazard or difficult to pass over safely on foot in light of the surrounding circumstances." (Emphasis in original)

Zelichenko v. 301 Oriental Boulevard LLC involved a fall by the plaintiff while walking down a flight of stairs in a residential building. The defect in question was a "chip" in the nose of the second step from the bottom which measured 3.25 inches in width and 1/2 inch in depth. Plaintiff argued that the trivial defect defense should be limited to municipal defendants regarding accidents on sidewalks and not on interior staircases.

The Court of Appeals rejected this argument noting that the principle is applicable to municipalities and private landlords equally and has been applied to defects on stairways in privately owned buildings. It held that "[t]he trivial defect doctrine is granted on a fundamental principle that spans all types of liability: that if a 'defect

is so slight that no careful or prudent [person] would reasonably anticipate any danger from its existence' and yet an accident occurs that is traceable to the defect, there is no liability."

In this case, the court agreed with the Supreme Court's denial of defendant's summary judgment motion to dismiss and found in favor of the plaintiff. In reversing the Appellate Division, it held that there was a triable issue of fact as to the defect being trivial. To debate whether a person walking down the steps will place his foot in front or behind the chip in the step is not dispositive as a matter of law that the defect is not on the walking surface. The question is not whether a person could avoid such defect but whether they would invariably avoid it by descending naturally down the stairs.

Finally, in *Adler v. QPI-VIII LLC*, another case involving a fall and injury on an interior staircase the plaintiff alleged that her right foot got caught on a "big clump" that had been painted over in the middle of the stairs. As a resident in the building, she testified that she was "probably looking down" as she descended the stairs, which were not slippery, had no cracks were not covered with dirt or debris and were lit by a 60-watt bulb. Although plaintiff provided photographs of the "clump" no measurements were provided by either party.

Supreme Court denied defendant's motion to dismiss, and the Appellate Division reversed holding that the photographs established as a matter of law that the defect was trivial since it did not possess the characteristics of a trap or nuisance. The Court of Appeals reversed.

The court distinguished this case on the basis that the lack of measurements rendered the summary judgment record "inconclusive." While pointing out that photographs that fairly and accurately represent the location of an accident may be used to establish that a defect is trivial, such was not the case here. Without the dimensions of the "clump" placed into evidence it was not possible to determine if this was the kind of defect to which this doctrine applied.

Conclusion

As a closing commentary to *Hutchinson et al.*, the Court of Appeals cautioned that "there are no shortcuts to summary judgment in a slip and fall case."

Hutchinson does, however, provide some guidance to the trial and appellate courts in determining such motions: 1) the courts are obligated to consider all the circumstances, not solely the dimensions of the alleged defect; 2) where dimensions of the alleged defect are unknown and photographs and/or testimony are inconclusive, the motion must be denied; and 3) there must be an avoidance of interjecting questions as to how a plaintiff might have avoided the accident.

*George M. Heymann, a retired New York City Housing Court judge, is of counsel at Finz & Finz and director of the Housing Legal Clinic, Woodside on the Move, in Queens.

¹ *Loughran v. City of New York*, 298 NY 320 (1948).

² *Guerrieri v. Summa*, 193 AD2d 647 (2d Dept. 1993).

³ *Trincere v. County of Suffolk*, 90 NY2d 976 (1997).

⁴ *Hutchinson v. Sheridan Hill House Corp.*; *Zelichenko v. 301 Oriental Boulevard, LLC*; *Adler v. QPI-V/11 LLC*, 26 NY3d 66 (Oct. 20, 2015).

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Achieving Juvenile Justice in New York: Part 1

A Look at the Solutions to Help Youth Struggling in the Juvenile Justice System

By: Priyanka Verma

I. Introduction

On Saturday, May 15, 2010, ten days before his seventeenth birthday, Kalief Browder and a friend were walking home from a party in the Bronx when they saw a police car driving toward them.¹ More squad cars arrived, and Kalief and his friend were squinting at a glare of the police spotlight.² A police officer told them that a man had just reported that they had robbed them.³ The officers searched him and his friend and found nothing.⁴ Kalief and his friend were taken to the forty-eighth precinct where they were fingerprinted and locked in a holding cell and then taken to Central Booking at the Bronx County Criminal Court.⁵ Kalief was charged with robbery, grand larceny, and assault, and the judge ordered him to be held (because he was still on probation from a previous incident) and set bail at three thousand dollars.⁶ Unfortunately, his family was unable to set bail, and Kalief was transported to Rikers Island.⁷ Once Kalief got to Rikers, he was assigned to a dorm where about five teenage boys slept in an open room, each having a plastic bucket to store in their possessions.⁸ The night after he arrived at Rikers, a group of guards lined him and other inmates up against a wall to figure out who had been responsible for an earlier fight.⁹ Kalief said that he had nothing to do with the fight, but still the officers beat him and the other inmates went through a worse experience.¹⁰ Afterward, the officers gave the teens a choice: go to the medical clinic or go back to bed, and if anyone went to the medical clinic and told the medical staff what had happened, they would write up charges against them, and get them sent back to solitary confinement.¹¹

On the morning of July 28, 2010, a grand jury voted to indict Kalief.¹² The criminal complaint alleged that he and his friend had robbed a Mexican immigrant named Roberto Bautista by pursuing him, pushing him against a fence, and taking his backpack.¹³

By the time Kalief's case was dismissed in June 2013, prison records showed that he had attempted suicide at least six times and had spent 1,110 days in prison, with more than 800 days in solitary confinement.¹⁴ After the charges had been dismissed, Kalief had a lot of trouble getting rid of the fears that had consumed him in jail.¹⁵ He said that he was afraid of being attacked on the subway and before going to sleep at night, he checked to make sure every window in the house was locked.¹⁶ His mental health deteriorated as he became paranoid and he was hospitalized in a psychiatric ward at Harlem Hospital Center.¹⁷ In June 2015, Kalief pushed an air-conditioning unit out of a second-floor window at his parents' home, wrapped a cord around his neck and pushed himself out of the opening feet first.¹⁸ His mother heard a noise and went outside to the backyard and saw that her youngest child had hanged himself.¹⁹

Kalief's story illustrates how important it is for the New York State Legislature to raise the age of criminal responsibility. If the age of criminal responsibility in New York were raised to 18, Kalief Browder would never have been placed in Rikers Island. In May 2015, Democratic Senator Velmanette Montgomery introduced a bill (S5642A) to raise the age of criminal responsibility, which would change the age at which minors may be tried as adults for various felonies, as well as the way courts handle juvenile delinquent cases.²⁰ According to the bill, the legislation (S5642A) would raise the age of criminal responsibility from 16 to 18 so that youths who are charged with a crime may be treated in a "more age appropriate" manner.²¹ This bill preserves the jurisdiction of the adult courts to try persons 13-17 years old for "juvenile offender" crimes.²² However, for less serious crimes and for "juvenile offender" crimes that can be best handled in Family Court or in the newly created youth part, this bill brings a necessary reform.²³ The raise the age bill currently has been amended and recommitted

to the judiciary committee.²⁴ Until then, may reforms can be made to make the juvenile justice system more effective.

Part II of this Note will talk about the New York State Department of Corrections and Community Supervision ("DOCCS")²⁵ and the New York City Department of Correction, which are the administrative agencies that house and supervise people committed to the agency under the auspices of the state criminal justice system. DOCCS and the New York City Department of Corrections should not be managing adolescents in adult prison facilities—rather the Office of Children and Family Services ("OCFS")²⁶; which is dedicated to improving the integration of services for the children, youth, families, and vulnerable populations of New York, should take charge of overseeing young people in prison facilities as the youth would have more opportunities for rehabilitation with OCFS. On December 22, 2015, Governor Andrew Cuomo of New York issued an executive order which directed DOCCS, in collaboration with OCFS, to implement a plan to move 16 and 17-year-olds from adult prisons to a facility separate from adult prisoners who are age 18 or older.²⁷ The Governor acknowledged in his Executive Order that this would be an interim measure pending the passage of the Raise the Age Bill, which the legislature was unable to come to an agreement.²⁸ While this is a laudable step by Governor Cuomo to ensure that the legislature raises the age of criminal responsibility to 18, more can be done to make sure that the initiatives and programs to assist the youth in New York are better able to reform the juvenile justice system in New York. This Note will look at some those initiatives and programs that are part of the bigger picture and serve one purpose: to persuade the legislature to pass the Raise the Age legislation.

Part III of this Note will focus on the Raise the Age Bill, which is part of a public awareness

1. See Jennifer Gonnerman, Before the Law, THE NEW YORKER (Oct. 6, 2014), <http://www.newyorker.com/magazine/2014/10/06/before-the-law> [hereinafter Gonnerman].

2. Id.

3. Id.

4. The complaining witness then changed his story by saying that they had robbed him not that night but two weeks earlier. Gonnerman, *supra* note 1.

5. Id.

6. Kalief already had a few run-ins with the police, including an incident where an officer reported seeing him take a delivery truck for a joyride and crash into a parked car. He was charged with grand larceny, and the judge gave him probation and "youthful offender" status. Gonnerman, *supra* note 1. A "youthful offender" is defined as an individual who commits a crime and is at least sixteen years old and less than nineteen years old. N.Y. Crim. Proc. Law §720.10 (McKinney 2011).

7. Gonnerman, *supra* note 1.

8. *Supra* note 5, at 2.

9. Id.

10. Id.

11. Id.

12. Id.

13. Id.

14. Bryon Pitts, Katie Yu and Lauren Effron, Who Kalief Browder Might Have Been if He Hadn't Spent Over 1,000 days in Jail without a Conviction, ABC NEWS (June 17, 2015, 6:54 P.M.), <http://abcnews.go.com/US/kalief-browder-spent-1000-days-jail-charges/story?id=31832313>.

15. Michael Schwartz and Michael Winerip, Kalief Browder, Held at Rikers Island for 3 years without Trial, Commits Suicide, NY TIMES (June 8, 2015), <http://www.nytimes.com/2015/06/09/nyregion/kalief-browder-held-at-rikers-island-for-3-years-without-trial-commits-suicide.html>.

16. Id.

17. Id.

18. Id.

19. Id.

20. Josefa Velaquez, Cuomo's Criminal-Age Proposal Faces Resistance in Senate, (May 26, 2015, 6:07 A.M.) <http://www.capitalnewyork.com/article/albany/2015/05/8568660/cuomos-criminal-age-proposal-faces-resistance-senate>.

21. Senate Bill S1409, The New York State Senate, 2013-2014 Legislative Session, (last visited April 1, 2016) <https://www.nysenate.gov/legislation/bills/2013/s1409/amendment/original>.

22. Senate Bill S5642A, The New York State Senate, 2015-2016 Legislative Session, (last visited April 1, 2016) <https://www.nysenate.gov/legislation/bills/2015/S5642>.

23. Id.

24. Deanna Gondek, "Raise the Age" bill left out of budget, but advocates remain determined, LEGISLATIVE GAZETTE, (April 8, 2016) <http://legislativegazette.com/archives/3098>.

25. See Department of Corrections and Community Supervision, <http://www.doccs.ny.gov/>. The NYS Department of Corrections and Community Supervision ("DOCCS") is responsible for the confinement and habilitation of approximately 53,000 individuals under custody held at the 54 state facilities and the 36,000 parolees supervised throughout the seven regional offices [hereinafter Department of Corrections and Community Supervision].

26. See Office of Children and Family Services, <http://ocfs.ny.gov/main/about/default.asp>. The New York State Office of Children and Family Services (OCFS) is responsible for programs and services involving foster care, adoption and adoption assistance, child protective services including operating the Statewide Central Register for Child Abuse and Maltreatment, preventive services for children and families, services for pregnant adolescents, and protective programs for vulnerable adults [hereinafter Office of Children and Family Services].

27. Executive Order No. 150, Establishing one or more Correctional Facilities within the Department of Corrections and Community Supervision Exclusively for Youth, (Dec. 22, 2015), <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO150.pdf> [hereinafter Executive Order No. 150].

28. Id.

Achieving Juvenile Justice continues from p. 18...

campaign that focuses on raising the age of criminal responsibility in New York as it is in the best interests of New York's children and youth, communities and community safety, as well as the state's economy. The lack of appropriate interventions for the 16 and 17-year-olds in the adult system and the increased exposure to violence and abuse, makes it difficult and near impossible for adolescents to reform and become successful, productive, and contributing members of their communities.²⁹ Part IV will look at the research about the development of adolescent brains and part V will focus on the collateral consequences that youth can face if he or she has a criminal record.

Part VI will talk about the Adolescent Diversion Program ("ADP"), a program for 16 and 17-year-old defendants in New York State's adult criminal justice system, which seeks to provide older adolescents with age-appropriate alternative and services, such as. The ADP should not only focus on non-violent offenders but should also give those accused of violent offenses an opportunity for rehabilitation. Part VII will talk about New York City's Fair Chance Act, which was enacted in October 2015, and which made it an unlawful discriminatory practice for most employers, labor organizations, and employment agencies to inquire about or consider the criminal history of job applicants until after extending conditional offers of employment.³⁰ This legislation reflects the view that job seekers have to be judged on their merits before their mistakes, and therefore this Act should be enacted in the State of New York so that those 16 and 17-year-olds who have past criminal history will have the opportunity to obtain employment.

Part VIII will talk about Governor Cuomo's other initiative to achieve juvenile justice reform—using his executive power to pardon people who were convicted of nonviolent felonies as teenagers. This might be a good step toward getting the legislature to raise the age of criminal responsibility, but it has many drawbacks. Ultimately, it is up to the legislature to raise the age of criminal responsibility to 18—but until the legislature passes it, New York will have to look at other opportunities for juvenile justice reform. There are a number of potential solutions that the State of New York can make when it comes to reforming the juvenile justice system and this Note will focus

on those solutions and look for ways to make those solutions more efficient.

II. DOCCS and New York City Department of Correction's Supervision of Youth in Prison Facilities

In December 2015, Governor Cuomo issued an executive order directing DOCCS³¹ in collaboration with OCFS³² to implement a plan to remove minors from adult prisons in the state.³³ The plan will transfer all female youths and all medium and minimum security classified male youths, who are 16 and 17-year olds and have been sentenced to state prison from adult facilities where they are currently housed in juvenile facilities.³⁴ One of the positive aspects of this executive order is that the juvenile facility that they will move to will have specialized programs of treatment that is geared for younger offenders.³⁵ It was also announced that OCFS would assist DOCCS in implementing the specialized youth facility.³⁶ However, keeping juveniles under the supervision of DOCCS and the New York City Department of Correction might not be the right choice.

a. A Look at the Correctional Association of New York's Survey of the Greene Correctional Facility

On November 8 and 9, 2012, the Correctional Association of New York³⁷ ("CA") Prison Visiting Project ("PVP")³⁸ visited the Greene Correctional Facility. The Greene Correctional facility has one the highest concentrations of young people in any New York State prison. It also has some of the highest reported allegations of staff violence, harassment, and intimidation against incarcerated persons.³⁹ The CA received surveys from 174 people incarcerated at Greene about general prison conditions and 108 surveys specifically regarding the treatment of 16 and 17 year olds at Greene.⁴⁰ The median age of the people incarcerated at Greene is 22, compared to a system-wide median of 37.⁴¹ According to the respondents for CA's survey, Greene ranks as one of the worst CA visited prisons on almost all indicators of safety and alleged physical abuse of incarcerated persons by security staff.⁴² People reported physical brutality including slaps, kicks, punches, being thrown against the wall, aggressive pat frisks, and other

forms of physical violence.⁴³ Overall, 97% of people who responded to a survey about the treatment of 16- and 17- year-olds reported that young people face more abuse than adults at the prison.⁴⁴ Of the surveyed young people at Greene who had entered DOCCS at age 16 or 17, 86% had personally experienced a physical confrontation with the staff, compared to only 26% of the people of any age in all CA- visited prisons.⁴⁵ Also, medical care at Greene was marked by low utilization, average or better-than average access to care, below average assessments of overall quality of care, average ratings of the quality of clinic provider care, and very poor ratings of the quality of sick call.⁴⁶

All of these findings demonstrate some important points when it comes to reforming juvenile justice in New York. First, the mental health and medical needs of the youth need to be addressed properly.⁴⁷ It is important to meet the young people's developmental needs.⁴⁸ Also, there should be many program opportunities for the young people in these youth justice facilities—such as academic vocational, degree granting college, Alcohol and Substance Abuse Treatment ("ASAT") and anti-violence programs such as Aggression Replacement Training ("ART") and Alternatives to Violence Project ("AVP").⁴⁹ In addition, there should be new programs for youth with a therapeutic approach, smaller group settings, trained staff, de-escalation techniques and greater connections to the family and community.⁵⁰ Youths should be in an environment with age and developmentally appropriate support to help these individuals grow and attain their potential.⁵¹

b. Taking a Look at the US Attorney's Findings about Violence toward Teenagers at Rikers Island

In 2014, the U.S. Department of Justice released a report highlighting the culture of violence against youthful inmates at Rikers Island,⁵² perpetrated by guards who operated with little fear of punishment.⁵³ The report concluded that there is a pattern and practice of conduct at Rikers that violates the constitutional rights of adolescent inmates.⁵⁴ Most adolescents are placed at the Robert N. Davoren Center ("RND")⁵⁵. The report found that adolescent inmates at Rikers are not adequately protected from harm, including serious physical harm from the rampant use of unnecessary and excessive force by the New York

29. Raise the Age NY, Coalition of National and Local Advocates, Youth, Parents, Law enforcement and Legal Representatives, Faith Leaders, Service Providers and Unions Write to Elected Leaders re: Raise the Age, (May 2, 2016), available at <http://raisetheage.ny.gov/newitem/coalition-national-local-advocates-youth-parents-law-enforcement-legal-representatives-faith-leaders-service-providers-unions-write-elected-leaders-re-raise-age>.

30. NYC Commission on Human Rights, Legal Enforcement Guidance on the Fair Chance Act, Local Law No. 63 (2015), available at <http://www.nyc.gov/html/cchr/downloads/pdf/FCA-InterpretiveGuide.pdf>.

31. Department of Corrections and Community Supervision, *supra* note 25.

32. Office of Children and Family Services, *supra* note 26.

33. Press Release, New York State, Governor Andrew M. Cuomo, Governor Cuomo Signs Executive Order to Separate Teens from Adult Prisons (Dec. 22, 2015) (on file with author) [hereinafter *Separate Teens from Adult Prisons*].

34. *Id.*

35. *Id.*

36. *Id.*

37. The Correctional Association of New York (CA) is an independent non-profit organization that was formed to ameliorate the conditions of criminal defendants and people in prison, improve the discipline and administration of local jails and state prisons, and furnish assistance and encouragement to people returning to their communities after incarceration. See History of the Organization, Correctional Association of New York, available at <http://www.correctionalassociation.org/about-us/history-organization>.

38. Each year, PVP visits seven to ten of New York State's correctional facilities that house men, and issues facility-specific reports on prison conditions to both policymakers and the public, shedding light on problems and promoting effective and human practices that they observe. PVP also conducts in-depth research on key corrections issues and publishes comprehensive reports of finding and recommendations. See About the Prison Visiting Project, Correctional Association of New York, <http://www.correctionalassociation.org/pp/about-pvp> (last visited May 1, 2016).

39. Correctional Association of New York, Greene Correctional Facility: 2012-2014 (Summary Report), Prison Visiting Project, (Oct. 2014), [http://www.correctionalassociation.org/wp-content/uploads/2014/10/Greene-Summary-](http://www.correctionalassociation.org/wp-content/uploads/2014/10/Greene-Summary-Report-2014.pdf)

[Report-2014.pdf](http://www.correctionalassociation.org/wp-content/uploads/2014/10/Greene-Summary-Report-2014.pdf) [hereinafter *Summary Report*].

40. *Id.*

41. *Id.*

42. *Id.* at 2.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* at 5.

47. *Id.* at 6.

48. *Id.*

49. *Id.*; Correctional Association of New York, Greene Correctional Facility: 2012-2014 (Final Report), Prison Visiting Project, (Oct. 2014), <http://www.correctionalassociation.org/wp-content/uploads/2014/10/Greene-C.F.-Report-Final.pdf>.

50. Summary Report, *supra* note 40 at 6.

51. *Id.*

52. Managed by the New York City Department of Correction and includes nine of the twelve inmate facilities. See About the Department of Correction, New York City, <http://www1.nyc.gov/site/doc/about/about-doc.page> (last visited May 1, 2016).

53. Benjamin Weiser and Michael Schwartz, U.S. Inquiry Finds a Culture of Violence Against Teenage Inmates at Rikers Island, (Aug. 4, 2014) <http://www.nytimes.com/2014/08/05/nyregion/us-attorneys-office-reveals-civil-rights-investigation-at-rikers-island.html>.

54. *Id.*

55. *Id.*

56. *Id.*

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City Department of Correction staff.⁵⁶ The report also found that there is a deep-seated culture of violence that is pervasive throughout the adolescent facilities at Rikers, and DOCCS staff routinely utilize force not as a last resort, but instead as a means to control the adolescent population and punish disorderly or disrespectful behavior.⁵⁷ One of the statistics the report points out is that in the year 2013, approximately 51% of adolescent inmates at Rikers were diagnosed with some form of mental illness.⁵⁸

i. Rikers and the Greene Correctional Facility: What needs to be changed

Governor Cuomo's Executive Order removes sixteen and seventeen-year-old youth from adult prisons, only to place them in a separate facility under the total supervision of DOCCS.⁵⁹ Youths need to have direct access to developmentally appropriate and necessary services and programs operated by OCFS.⁶⁰ In Rikers and in the Greene Correctional Facility, youths have been suffering abuse not only by the staff but also through insufficient programs available to them. It would be dangerous to have DOCCS and the New York City Department of Correction supervise youths in jail. Rather OCFS would be better for this because OCFS is responsible for all of the state's juvenile justice programs, transformation of the juvenile justice system, administering and managing residential facilities and one reception program for juvenile delinquents and juvenile offenders placed in the custody of the OCFS Commissioner.⁶¹ OCFS is more geared towards improving services for New York's children, youth, families and vulnerable populations,⁶² whereas DOCCS and the New York City Department of Corrections is responsible for the confinement and rehabilitation of individuals held in state facilities.⁶³ An office that is better equipped to work with youth should be the one who provide a system of juvenile justice through programs that are evidence- and outcome-based.⁶⁴ Within the Office of Children and Family Services is the Division of Juvenile Justice and Opportunities for Youth ("DJJOY"), which is responsible for supervision and treatment of court-placed youth, from intake to facility programming and community service provision.⁶⁵ DJJOY also supports and monitors facility based operations and programs, as well as detention, community services and a range of community-based programs.⁶⁶ This is exactly what the youth need—the overall focus should be on ways to rehabilitate the youth, not incarceration.

III. Raise the Age Campaign

New York is one of only two states in the country that sets the age of criminal responsibility at 16. In 2012, then Chief Judge Jonathan Lippmann of New York's Court of Appeals, issued a proposal to raise the age of criminal responsibility to 18 for youth who are charged with committing non-violent offenses.⁶⁷ This proposal was criticized for having a narrow scope and was not taken up by the legislature.⁶⁸ In 2013, Assembly member Joseph Lentol and Senator Michael Nozzolio introduced legislation to raise the age of criminal responsibility to 18 for all youth (except for those accused of the most serious offenses – these would be handled by Family Court), but this bill did not pass.⁶⁹ Following this failed effort, in April 2014, Governor Cuomo appointed a Commission on Youth, Public Safety and Justice, to make recommendations on how New York could raise the age of juvenile jurisdiction and make other reforms to improve youth outcomes while increasing community safety.⁷⁰

Governor Cuomo addressed raising the age of juvenile jurisdiction again in his New York State executive budget for 2016-2017, which includes funds for the application of a bill which would, among other things, raise the age of criminal responsibility from age 16 to age 17 on January 1, 2018, and to age 18 on January 1, 2019; raise the age of juvenile jurisdiction from age 7 to age 12 on January 1, 2018 for all offenses except homicide; and remove cases to Family Court to include youth ages 16 and 17 charged with non-violence felonies, misdemeanors, or harassment or disorderly conduct violations.⁷¹ As a result of New York's low age of criminal responsibility, the youth who could benefit from Family Court's "social-service orientation" are deprived of an opportunity to receive productive intervention that is only available through the Family Court Act.⁷² This intervention includes alternative to incarceration programs that provide developmentally sensitive interventions.⁷³

The notion of criminalizing or institutionalizing youth who are as young as 14 and 15 is a flaw in New York's effort to increase public safety because the focus should be on addressing these youths' anti-social behavior.⁷⁴ It is true that there are young people whose offenses are so atrocious and their backgrounds so damaged that there is no other option but to confine them.⁷⁵ It is also true that marking someone with a criminal record or incarcerating them may be keeping the public safe. However, the low age of criminal responsibility and the Juvenile Offender

Law often result in many youth who were involved in crimes based on accomplice liability being prosecuted as adults, regardless of their "individuality, regardless of their potential, and regardless of the extent of their involvement in the underlying crime."⁷⁶

IV. Research

Research has shown that our brains do not fully develop until the age of 24 and that adults between the ages of 18 and 24 have less impulse control and are less likely to consider the consequences of their actions.⁷⁷

Since 2000, brain researchers and psychologists have published scientific studies which show that the brain continues to develop during the adolescent years and is not fully formed until the early 20s, and some studies place the age of complete development at 25.⁷⁸ According to these studies, children lack the decision making and "risk assessment capabilities of adults" and they are more inclined to peer pressure.⁷⁹ As the pre-frontal cortex area of the brain develops, young adults become more "reflective and deliberate" decision makers.⁸⁰ As the cognitive skills of adolescents develop, their behavior is often impulsive and they lack the ability to focus on the consequences of their behavior.⁸¹

Juvenile brains are more active than adult brains in regions controlling aggression and fear and less active than adult brains in regions connected with risk assessment and impulse control.⁸² Immature judgment is considered as a possible mitigating circumstance, which would solidify the defendant less blameworthy for the transgressions committed.⁸³ Developmental psychologists who have examined the issue of youth and delinquency propose that adolescents may be characterized as less mature than adults, not because of cognitive immaturity, but because of deficiencies in their maturity of judgment. These 'psychosocial factors' include the ability to control one's impulses, to manage one's behavior in the face of pressure from others to violate the law, or to remove oneself from a potentially dangerous situation.⁸⁴ Research suggests that juveniles are not only less culpable than adults, but more receptive to rehabilitative intervention.⁸⁵ The majority of juvenile offenders, even those who commit serious offenses, are not predetermined to become career criminals.⁸⁶ Rather, only a small fraction of juvenile offenders continue to offend at a high level.⁸⁷ Also, violent actions by children do not necessarily reflect violent

57. Id.

58. Id.

59. Press Release, Correctional Association of New York, CA Disappointed, Dismayed that Governor's Removal of 16 and 17 year olds from Adult Prisons will Keep Youth Under DOCCS Authority (Dec. 23, 2015) (on file with author) [hereinafter Press Release, Correctional Association].

60. Office of Children and Family Services, *supra* note 26.

61. "The Universal Declaration of Human Rights," article 1 (December 10, 1948) found at <http://www.un.org/en/documents/udhr/>

62. Id.

63. Id.

64. Id.

65. Juvenile Justice and Opportunities for Youth, New York State Office of Children and Family Services, <http://ocfs.ny.gov/main/rehab/> (last visited May 1, 2016).

66. Id.

67. LEGISLATIVE MEMO: REGARDING LEGISLATION TO RAISE THE AGE, New York Civil Liberties Union, <http://www.nyclu.org/content/regarding-legislation-raise-age> (last visited Feb. 20, 2016) [hereinafter Legislative Memo].

68. S.B. 7397, 235th Leg., Reg. Sess. (N.Y. 2012).

69. LEGISLATIVE MEMO: SUPPORTING RAISING THE AGE OF CRIMINAL RESPONSIBILITY, New York Civil Liberties Union, <http://www.nyclu.org/content/regarding-legislation-raise-age> (last visited Feb. 20, 2016) [hereinafter Legislative Memo: Supporting].

70. S.B. 4489, 236th Leg., Reg. Sess. (N.Y. 2013); A.B. 7553, 236th Leg., Reg. Sess. (N.Y. 2013).

71. Final Report of the Governor's Commission on Youth, Public Safety, and Justice: Recommendations for Juvenile Justice Reform in New York State 3 (2015) [hereinafter Gov.'s Comm'n Recommendations for Juvenile Justice Reform], available at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/ReportofCommissiononYouthPublicSafetyandJustice_0.pdf.

72. 2016-17 New York State Executive Budget: Education, Labor and Family Assistance Article VII Legislation, available at https://www.budget.ny.gov/pubs/executive/eBudget1617/fy1617artvllbills/ELFA_ArticleVII.pdf.

73. Jeffery Storey, Q&A: Michael A. Corriero, NY LAW JOURNAL (Mar. 2, 2012), <http://www.newyorklawjournal.com/id=1202544131059/QA-Michael-A-Corriero?slreturn=20160311225414> [hereinafter Q&A: Michael A. Corriero].

74. Id.

75. Id.

76. Id.

77. Id.

78. The Council of State Governments Justice Center, Reducing Recidivism and Improving Other Outcomes for Young Adults in the Juvenile and Adult Criminal Justice Systems, The Council of State Governments Justice Center (Nov. 2015), <https://csgjusticecenter.org/wp-content/uploads/2015/11/Transitional-Age-Brief.pdf>.

79. Supporting New York State Chief Judge Jonathan Lippman's call on the New York State Legislature to pass and the Governor to sign legislation raising the age of criminal responsibility for nonviolent offenses to 18 and permit the cases of 16 and 17 year-olds charged with such offenses to be adjudicated in the Family Court rather than the adult criminal justice system, Hearing before the Council of the City of New York, Res. No. 1067 (2011) [hereinafter Supporting New York State Chief Judge].

80. Brief for Am. Psychological Ass'n & Missouri Psychological Ass'n as Amie Curiae Supporting Respondent at

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tendencies, but are more likely due to immaturity, lack of impulse control, or reduced capacity to handle stressors.⁹⁰

There have been studies assessing the deterrent effect of prosecuting juveniles as adults, which conclude that the threat of adult sanctions has no deterrent effect on crime.⁹¹ One study had concluded that the adult prosecution of juveniles in New York and Idaho produced no deterrent effect on juvenile crimes rates and two studies concluded that New York and Florida juveniles prosecuted as adults are more likely to reoffend.⁹² The United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention published a report which analyzed data about serious adolescent offenders and their lives in late adolescence and early adulthood.⁹³ The most significant finding of the study is that “[m]ost youth who commit felonies greatly reduce their offending over time, regardless of the intervention. Approximately 91.5 percent of youth in the study [aged 14-18] reported decreased or limited illegal activity during the first three years following their court involvement.”⁹⁴ Additionally, the study found that “longer stays in juvenile facilities did not reduce reoffending; institutional placement even raised offending levels in those with the lowest level of offending.”⁹⁵ Even though juveniles are physically, psychologically, and constitutionally different from adults, New York’s criminal justice system fails to account for these differences and as a result, New York’s youth suffer.⁹⁶

a. The United States Supreme Court

The United States Supreme Court has recognized that adolescents are less blameworthy for the offenses they commit because they are less capable of evaluating the possible outcomes of different courses of actions and they are more vulnerable to external pressures.⁹⁷ For instance, the Court has found that:

*“[a]dolescents, particularly in the early and middle teen years, are more vulnerable, more impulsive, and less self-disciplined than adults. Crimes committed by youths may be just as harmful to victims as those committed by older persons, but they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long range terms than adults.”*⁹⁸

The United States Supreme Court, in the last ten years, has reflected the understanding that “adolescents are unfinished products, developmentally and morally” and “that these factors hold constitutional significance.”⁹⁹ In *Roper v. Simmons*, the United States Supreme Court recognized that “a lack of maturity and an underdeveloped sense of responsibility are found in youth more than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.”¹⁰⁰ The court also stated that youth have less control over their environment.¹⁰¹ Based on such research, the Supreme Court, in *Roper v. Simmons*, ruled that it is unconstitutional—cruel and unusual punishment—to impose the death penalty on an offender whose crime was committed before he or she turned 18.¹⁰² Almost five years after the *Roper v. Simmons* case, the Supreme Court, in *Graham v. Florida*, held that children cannot be sentenced to life without parole in non-homicide cases.¹⁰³ In 2011, the Supreme Court, in *J.D.B. v. State of North Carolina*, held that a child’s age is a relevant factor to consider in determining whether a child is “in custody” for the purposes of Miranda warnings.¹⁰⁴ The Supreme Court has opened a broad discussion of how adolescents differ from adults, and caused states to take a new look at what those differences mean for the legal process and for the sanctions imposed on young offenders.¹⁰⁵

2. *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633).

81. Supporting New York State Chief Judge, *supra* note 79.

82. MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. Issue Brief #3: Less Guilty of Reason of Adolescence. Retrieved from: http://www.adjj.org/downloads/6093issue_brief_3.pdf.

83. Brief of the American Medical Association et/ al/ as Amici Curiae in Support of Respondent, *Roper v. Simmons*, 125 S. Ct. 1183 (2005) (No. 03-633), 2004 WL 1633549, at 12 [hereinafter AMA Brief].

84. E. Cauffman, J. Woolard and N.D. Reppucci, Justice for Juveniles: New Perspectives on Adolescents’ Competence and Culpability, 18 QLR 403 (1999).

85. *Id.*

86. L. Steinberg and E. Cauffman, The Elephant in the Courtroom: A Developmental Perspective on the Adjudication of Youthful Offenders, 6 Va. J. Soc. Pol’y & L. 389 (1999); Legislative Memo, *supra* note 24.

87. Get the Facts, Raise the Age NY, <http://raisetheage.ny.com/get-the-facts> (last visited Feb. 20, 2015).

88. Edward P. Mulvey, Highlights from Pathways to Desistance: A longitudinal Study of Serious Adolescent Offenders, U.S. Dep’t of Justice 1-2 (2011), available at <https://www.ncjrs.gov/pdffiles1/ojdp/230971.pdf>.

89. *Id.*

90. See Neelum Ayra, Campaign for Youth Justice, State Trends: Legislative Victories from 2005 to 2010, Removing Youth from the Adult Criminal Justice System, Washington, DC: Campaign for Youth Justice, at 9 (2011).

91. Robert Anthonen, Note, Furthering the Goal of Juvenile Rehabilitation, 13 J. Gender Race & Just. 729, 741-42 (2010).

92. *Id.*

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93. Supporting New York State Chief Judge, *supra* note 79.

94. Edward P. Mulvey, Highlights from Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, March 2011.

95. *Id.*

96. Julianne T. Scarpino, Note and Comment: A Progressive State of Mind: New York’s Opportunity to Reclaim Justice for its Juveniles, 23 J.L. & Pol’y 845, 850 (2015).

97. *Id.*

98. *Id.*

99. *Eddings v. Oklahoma*, 455 US 104, 115 n.11 (1982) (citing to 1978 report of the twenty century task force on Sentencing Policy Toward Young Offenders).

100. Kim Taylor-Thompson, Minority Rule: Redefining the Age of Criminality, 38 N.Y.U. Rev. L. & Soc. Change 143, 146 (2014) (discussing the Supreme Court’s decision in *Miller v. Alabama*, 132 S. Ct. 2455, 2468 (2012)).

101. *Roper v. Simmons*, 543 US 551, at 569 (2005) (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)).

102. *Id.* at 569.

103. *Id.*

104. 130 S. Ct. 2011, 2026 (2010).

105. 131 S. Ct. 2394.

The Fourth Wave, Juvenile Justice Reforms for the Twenty-First Century, (http://www.theneodifference.org/wp-content/uploads/2014/09/JJWhitepaper-Design-Long_Final.pdf)

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Paul Pavlides, recipient of the Academy Award with Academy of Law Dean Hon. Martin Ritholtz and his daughters Paula and Anne.

Academy of Law Award Winner Paul Pavlides

Paul Pavlides was honored at the Judiciary, Past President's and Golden Jubilarians Night on April 11, 2016, by the Academy of Law with an award for his outstanding contribution and dedication to our Continuing Legal Education programs.

Paul Pavlides was born on March 10, 1933, in Brooklyn, New York. He grew up in Jamaica, New York from 1941 to 1967. He lived less than a block from the Queens County Supreme courthouse. His family then moved to Jamaica Hills. He attended Jamaica High School and graduated in 1950. While in high school, Paul was an honor "Arista" student, head of the G.O. and Boys Varsity.

Paul attended the City College of New York from 1950 to 1954. While there, he was captain of the Freshman Football Team. He was also captain of the Track Team. During his senior year he entered the NCAA Weight Lifting competition, where he finished third in the nation in his weight class.

He then enlisted in the US Army from 1954 to 1956, spending one year in Iceland. Paul was the first man in the US Army to score 500 (perfect score in the physical fitness test). After leaving the US Army, Paul attended Brooklyn Law School at night from 1957 through 1961 and was admitted in 1961 to the New York State Bar and the Federal Courts in the Eastern and Southern Districts.

After being admitted, Paul became partners with George Campos, in the firm known as Campos & Pavlides. They have been in partnership since 1961. Campos & Pavlides is the oldest partnership in Queens County. They are a general office practice; however, they do a great deal of negligence work.

During the Vietnam War, Paul volunteered as a Government Appeals Agent. He has also been a Court Conference Officer in the Family Court for several years. Paul was a member of the Board of Managers for eight years and has been on the Grievance Committee of the Queens County Bar Association since 1984, leading to his being appointed as Vice-Chair in 1996 and afterwards, Chair in 2004.

After spending 10 years on the parish counsel of St. Demetrios Greek Orthodox Church, Paul was appointed counsel for the church. He and his firm have been serving as counsel to the church, on a pro bono basis for over 25 years. For his service, Paul was awarded with the highest laity honor the church can bestow, Archon in the Order of St. Andrew.

Paul's parents were Greek immigrants from Cyprus Island. His father was a waiter in a nightclub and his mother worked in the garment business. Paul has two brothers; Christopher Pavlides, who was an Orthopedic Surgeon in Brooklyn and Queens; and Gregory Pavlides, who is an Accountant

and businessman (printing business).

Paul married Janet Apthorpe of London, England in 1967 and they have two daughters, Paula and Anne that followed their father's footsteps and became attorneys. Both daughters were former Assistant Attorney Generals in New York State. Paul's eldest daughter, Paula, is now with the defense firm Congdon, Flaherty, O'Callaghan, Reid, Donlon, Travis & Fishlinger in Mineola, NY. Anne is in-house counsel at Calvin Klein. Both Paula and Anne are St. John's Law School graduates, having graduated from Loyola College and Boston College respectively. They are both married and have given their parents four beautiful grandchildren.

Paul's nephew, Gregory Pavlides, is an Assistant District Attorney in Queens County. He is the Deputy Bureau Chief of Narcotics. His niece, Denise Pavlides (Gregory's wife), is an Assistant District Attorney in Nassau County on the Appeals Bureau. Paul's other niece, Kasandra, is a student at St. John's Law School.

During Paul's downtime he plays golf. He still jogs and works out with weights and gymnastic equipment.

Paul has said that even though there are three lawyers in his family, his wife reminds them that she is the judge, so you know where they all stand.



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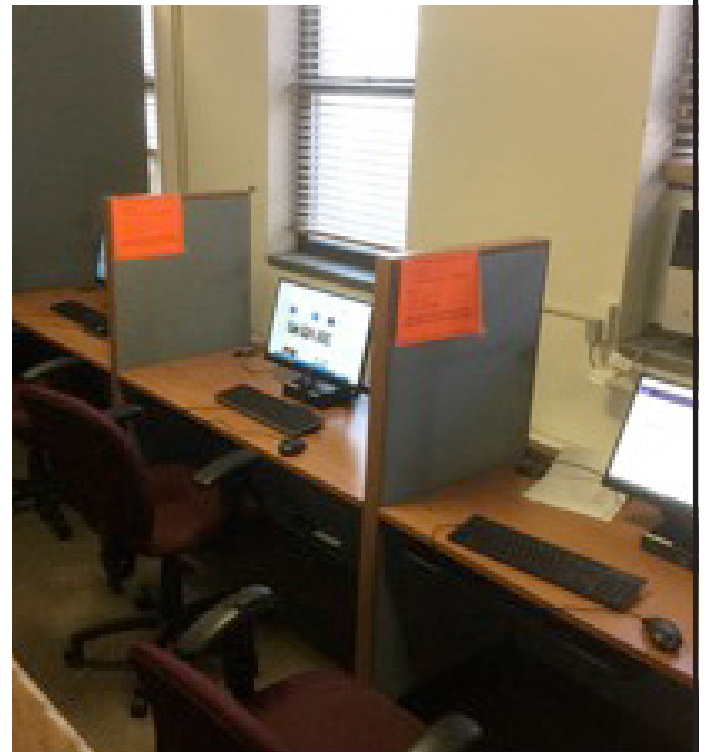
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Oxford-Berkeley program.

I had the time of my life. I found the original deed to all of New York from the King to his brother the Duke of York. This is the deed from which all title searches flow. I found the original Laws of New York set forth by the Duke of York in 1683, many of which are still in force. I found the biographies of Samuel Johnson and Myles Cooper, Oxford graduates who founded Kings College (now Columbia University) and modeled it on Oxford.

In the old library of Christ Church College, I found hundreds of old Talmuds, untouched and unread for more than 300 years. Oxford University and Christ Church College are on St. Aldate's Street. In digging in the Bodleian Library old maps collection, I found that St. Aldate's Street was originally called Great Jewry Street, and was the site of the Oxford Synagogue before the English Jewish Community was expelled by the King in 1290. Thereafter, Oxford, the intellectual core of Great Britain, was built on top of the ruins of the synagogue that was at the center of the city.

What is the meaning of this digging underneath Oxford's effort to bury its past? What is the true origin of the Common Law? Read *The University on Great Jewry Street*. \$25.

6. Common Origins of Flushing, Ohio and Flushing, New York (2007). Why the same unusual name in both places? The Westward Movement is a theme in American History. It turns out that an important part of it started on Northern Boulevard near Main Street, when Members of the Historic 1657 Quaker Meeting House left by horse and wagon over the unsettled New Jersey and Pennsylvania back country to found a new town in the wilderness of Ohio in 1813.

I followed their tracks in a 2005 Red Ford Mustang in 2007. I found their cemetery in Flushing, Ohio. I talked to the local historian, townspeople and local librarians. This is their story, of the Queens County Quakers who helped to settle the Great American West of 1813 – the Ohio River valley. \$20

7. Inside the Mind of Magistrate Justin Sheffield (2009) – I served one year as the Acting Village Justice in my suburban home town, Ardsley. I thought I might pursue a judicial career. But the experience was overwhelming. Putting people in jail kept me up late into the night. What if I was wrong? Jails and prisons are very dangerous places. Bail is set with the most limited of information. This novella explores what goes on inside the judge's mind during this process. \$15.

8. Nacher v. Dresdner Bank – How Every Holocaust Survivor in the world was compensated 65 years late OR How one small New York City law firm and its Berlin co-counsel reshaped history (2010). This is the story of Ferdinand Nacher, a 90 year old Forest Hills resident who came into our office in 1994 with an incredible story and evidence to back it up.

When we met him, Mr. Nacher was living on Social Security in a rent stabilized apartment. But he had once been one of the wealthiest men in Europe. In 1934, his family business, Englehardt Breweries, Inc. owned breweries, malt factories, hotels and restaurants all over Germany. These were seized by the Dresdner Bank on behalf of the Nazi Party in 1934. Mr. Nacher still had the documents of seizure 60 years later in 1994, when we first met him. They were photostats, not photocopies – white ink on thick black paper in the German language – notarized copies of one of the largest thefts in history.

This is the story of how we pled Mr. Nacher's case in every forum we could think of – the Queens County Supreme Court, the German Consulate in New York, the U.S. District Court in New Jersey, the U.S. Court of Appeals in Philadelphia, the U.S. Supreme Court, international arbitrators in Switzerland and administrative tribunals in the former East Germany.

In 1995, Justice Joseph Lane directed that the case go forward to depositions over the loud protestations of the Dresdner Bank's New York branch Park Avenue lawyers. Justice Joseph Golia denied the Bank's motion to dismiss in 1999. Thereafter, the U.S. Treasury Dept. took over the case and 56 other cases inspired by our Queens County Supreme Court Summons and Complaint, and settled the combined cases for \$5 billion. Every Holocaust survivor in the world received \$7000, a small fortune in Belarus, Latvia, Poland and Romania.

My law partners Marc Leavitt and Joseph Yamaner, our co-counsel Larry Miller, and our German co-counsel Sebastian Schuetz did something beyond the extraordinary – we actually ultimately got the Nacher Estates a substantial recovery 65 years after the original theft. Mr. Nacher died during the 14 years we worked on this case of all cases – from 1994 to 2008. But we put the case in his will. Mr. Nacher's Executor, his nephew Ronnie Mandowsky became our client, and the Queens County Surrogate's Court approved our efforts.

We have given CLEs about Nacher v. Dresdner Bank at

the QCBA, Syracuse University, Cardozo Law School, the University of Michigan Law School, and Case Western Reserve University Law School. This book is the story of this incredible journey and what we learned from it. \$25.

9. The Common Law Revisited (2014). The late U.S. Supreme Court Justice Oliver Wendell Holmes wrote a book called *The Common Law* in 1881. It was based on his experiences as a lawyer in Boston before he became a judge. This volume is a fictionalized account of events I kept in my law office in Kew Gardens and Forest Hills in 1988 and 1989. I updated it in 1994 and again in 2014. It is also based on lectures I gave as an Adjunct Instructor of pre-law students at SUNY New Paltz and CUNY Queens College. It is wildly different than Holmes' account, but it is perhaps a much more accurate description of the Common Law as it is today. \$25.

I hope you will buy some or all of my above listed books. To save on paper, printing and postage, my office will send you electronic copies by e-mail attachment. Please e-mail our office staff to order: Tasneema Sobhany (ts.leavittkerson@gmail.com), Mazel Yakubov (my.leavittkerson@gmail.com), Maria Mayorga (mm.leavittkerson@gmail.com), or Peter Mrakovcic (pm.leavittkerson@gmail.com).

Alternatively, call any of them at (718) 793-8822 or write them at Leavitt & Kerson, 118-35 Queens Blvd., 12th floor, Forest Hills, NY 11375.

All nine volumes would cost \$190, but if you order all nine the price is \$150. Make your checks payable to **Paul Kerson Publishing Co.** Alternatively, give your Master Card, Visa or Amex card number to Taz, Mazel, Maria or Peter on the telephone. We will absorb the sales tax and promptly e-mail you the volume or volumes ordered.

Your support and readership over the decades is very meaningful to me.

"Some day, I am going to write a book about this..."

By Paul E. Kerson

We've all said it. "You can't make these things up." We've all said that too.

Well, I've been writing it down all along – nine books worth – novels, novellas, history, biography, and memoir – all based on our common experiences practicing law together these past 40 years. Now that I am 65 years old, and I am no longer your President or Editor, it is time. "Some day" has come.

I am a very curious man. I have an inner need to know why everything happened the way it did. "Proximate cause" is not enough for me. The case cannot be solved and justice cannot be done unless we know the root causes of the misconduct that causes the clients to rely on us to make things right.

The same thing is true of the Queens County, New York City, New York State and Federal justice systems themselves. Unless we understand their roots, we cannot make them function at their best for our clients.

It is with this idea in mind that I have approached each day in our profession. One of the results of this thought is the nine books you see summarized below.

Many of these books started as Queens Bar Bulletin articles, so they will be familiar to you, my long-term readers of many decades. Others are fictionalized accounts of experiences I have had with all of you all these years.

But the point of all this writing is the same: An effort to come to some understanding of why things are the way they are; why people get themselves into such difficulty, and how we can best understand and improve the County, City, State and Federal Justice Systems to make them work as best they can for everyone.

In my final years, I hope to improve and refine our understanding even further. I saved all my case files, more than 2000 of them in expensive storage lockers. Digitizing is not for me. I want to feel the texture of the tissue paper thin computerized rap sheet, the thick wad of hospital records, my own handwritten notes about each juror, and most of all, my file jacket, with my notes of each court conference.

A digital photo of a 25 year old file is just not the same thing, nor does it tell you as much information. The tactile feel of different kinds of paper in one's hands jars the memory, and brings back the emotions.

In the time I have left, I hope to re-read and re-feel the



emotions of each file and each client with a critical eye. Now that I am older, and hopefully wiser, what would I have done differently? Could there have been a better outcome? What steps should I have taken that I did not take? What steps did I take that should not have been done?

I hope you will buy all my books so far, and the many books I have imagined but have not yet written.

This additional income will give me some extra time to gain a deeper understanding of the roots of what we do, and to write it down for those who practice law and try to make justice happen long after we are gone.

I hope to share part of the profits from the sale of these books with the QCBA itself, which contributes so much to our individual and collective well-being.

1. The Freedom Thieves (1980) – This is a fictionalized account of my time as an Assistant Special Prosecutor in the State Attorney General's Office. It is an effort to come to some resolution about the intersection of profit, prosecutors, politics and the press – in short, what does a free country really mean. \$25.

2. Union of Queens with New York City – What was Gained and what was Lost (1988) – We are a very large urban county with two major airports, people from all over the world, and no county treasury or taxing authority whatsoever. How did we come to live in this anomalous situation? How does having no treasury affect the county justice system? Or in the immortal words of Justice Weinstein to "City" officials: "Are you waiting for someone to die in our broken courthouse elevators?" This history explores what transpired in 1898 when the five boroughs were consolidated, and why and how it was done. \$15.

3. Reading the Qu'ran as Talmud for Christmas – A Matter of Life and Death OR How it fell to one lone lawyer to protect the United States from foreign attack (1995) – This is a fictionalized account of RAW TERROR every day for two months. It all started when a terrorism suspect called the QCBA Legal Referral Service and said he needed a lawyer because the FBI was looking for him. I had served on the Federal public defender (Criminal Justice Act) panel for six years, so Arthur sent me the case. \$15.

4. The American Testament – How and Why Governor L. Bradford Prince Rebuilt Flushing, New York in Santa Fe, New Mexico (1997). Quite by accident, on a family trip out west, I visited the State Museum of New Mexico in Santa Fe. The entrance is graced with a large oil painting of "Governor L. Bradford Prince of Flushing, L.I." Therein lies a personal adventure. I had never heard of him before. I tracked down all his papers and descendants.

He had been the co-founder of the QCBA in 1876, served as a New York State Assembly Member and State Senator from Flushing, and was awarded a patronage appointment as Chief Justice and later Governor of New Mexico Territory, then a wild, lawless place. This is the story of his life, and how he brought law itself as experienced in Queens County to the Wild West. \$25

5. The University on Great Jewry Street – Forgotten Origins of Oxford, Great Britain, the Empire, the Common Law, New York, Kings College and the United States (2007). We know our judicial system came from England, but we do not know the details. What, exactly, was it that came from England? I always wanted to know. Our late Queens Bar Bulletin Editor, my friend Barry Tivin, encouraged me to go and find out, and so I did. In the summers of 2004 and 2005, I took a three week class each summer for American adults sponsored by the University of California at Berkeley, known as the