WARREN COUNTY BAR ASSOCIATION, INC.
16 MAPLE STREET, SUITE 3
GLENS FALLS, NY 12801
OFFICE PHONE: (518) 792-9239 FAX: (518) 792-3183
www.warrencountybarassociation.org

TIPSTAFF

MAY - JUNE 2015

REMEMBERING DICK BARTLETT

Submitted by

Malcolm O'Hara, Esq.

On Memorial Day weekend 1979 the Albany Law Rugby team had a year-end party on Diamond Point where one of the teammates parents had a home. Someone decided we should invite the Dean, who would start his term the next fall. We had heard that Dick Bartlett had a place on the lake. He and Claire showed up in his Faye-Bowen and he held court at the beer keg until Claire decided it was time to leave. On that day I did not appreciate that I had made a friend for life and that I had met perhaps the most remarkable man I would ever know.

Dick Bartlett's many accomplishments are known to us all and have been well chronicled in the media in the days since his death. Glens Falls will likely never again have such a famous native son.

As Dean, he was remembered as a non-academic and real-life alternative professor, teaching evidence from a trial lawyer's perspective and State Constitution with the background of someone who had served in two of the three branches of State government and been a delegate to a Constitutional Convention himself. At a party in the courtyard of the law school in 1981 he collared me and asked me why I didn't have a job yet. He set me up with an interview at what was then Caffry, Pontiff, Stewart, Rhodes & Judge.

In 1986 when Dick retired as Dean he could have taken a position anywhere, it was our good fortune that he chose a basement office at 10 Harlem Street..

Whenever I traveled in the State on litigated matters, whether it be Binghamton, Syracuse, Kingston, Rochester or Malone as soon as I said I was from Glens Falls someone would inevitably say "do you know Dick Bartlett?".

Dick moved easily with the leaders of New York State including Nelson Rockefeller, Malcolm Wilson, Charles Breitel, Judith Kaye and Robert Morgenthau who were among his friends, but Dick was just as comfortable with the staff at our firm. He treated everyone with the same courtesy and respect whatever their station in life. No one enjoyed a good joke, or perhaps a drink too many, more than Dick Bartlett did. He loved the Adirondacks, he loved Lake George and he was terribly annoyed when he was not allowed to go to the island by himself anymore.

Throughout the recent months and his illness that would prove fatal, his intelligence and wit remained intact. With the steady stream of visitors that would come to 2 Potter Street in his final days he commented to me: "I feel as though I am living through my own wake".

Dick was a man of integrity, a champion of justice, a fair and generous partner, and a friend and mentor to countless men and women. His death creates a void that time will never fill.

A Toast in Dick's Memory

INSIDE THIS ISSUE:

The Immediate Past-President's Message

By Kristine K. Flower

The month of May marks the conclusion of my term as President of the Warren County Bar Association. It has been a privilege to serve our membership and work closely with our Board of Directors and Executive Director. Together we have continued the long standing traditions of the Warren County Bar Association of promoting collegiality, courtesy and fellowship. Our monthly meetings have continued to bring our members together for great programs and conversation. I am also proud to say that we have continued to host local CLE events each Fall and Spring. A big thank you to Dennis O'Connor and Dottie Benware for the planning and execution of these meetings.

One of our biggest accomplishments this year was the development and launching of our new website. A huge thank you to Maria Nowotny who singlehandedly oversaw this daunting project. I encourage everyone to check it out at: www.warrencountybarassociation.org.

At the recommendation of the Committee for Member Recognition, we also celebrated two of our outstanding members by awarding the Bernadette M. Hollis award to Rose Place and the Patrick J. Mannix award to Dennis Tarantino. We have also continued to support the Warren County Bar Foundation and we are grateful for that Board's ongoing support of us.

Lastly we have mourned the loss of several members, including most recently Hon. Richard J. Bartlett. Dick was the epitome of everything good about the Warren County Bar Association. My best memory of Dick was a phone conversation in the fall of November 2002:

"Good afternoon - law office of John Caffry." I said as I answered the phone that day long ago.

"Is this Attorney Flower?" the gentleman responded.

"Someday soon I hope." I laughed as I replied.

"It's Dick Bartlett and I'm proud to tell you it's Attorney Flower as of today."

That brief phone call confirmed that I had passed the New York State Bar exam and thereafter marked the end of that long road I had traveled the prior thirteen plus years from legal secretary to paralegal to law clerk and finally to attorney. I am thankful to have known Dick and to this day I am appreciative that this amazing man took the time to make that call.

I am also thankful for the opportunity to serve the members of the Warren County Bar Association and wish nothing but continued success to Dennis O Connor, the incoming President, the Board of Directors, and the membership at large in the years to come.

Notes from the Editors

We hope you enjoy this issue of the TIPSTAFF! We take pride in continuing to provide our readers with information on the law, the legal profession, area CLE programs and the activities of the WCBA and its committees.

We welcome your comments and suggestions for this newsletter. We also invite our readers to submit notes and articles of interest for publication. Articles can be submitted by mail or email to the WCBA office. The next Tipstaff will be published in September, 2015. Thank you.

Kathleen B. Hogan
District Attorney

PROPOSED REFORMS TO THE CRIMINAL JUSTICE SYSTEM

Submitted by Kate Hogan, DA

Two major reforms to the criminal justice system are being hotly debated in Albany: grand jury reform and raising the age of criminal responsibility. In his executive budget proposal, Governor Cuomo proposed comprehensive legislation on both these topics. Many legislators, on both sides of the aisle, believed the proposals were far too complex and the subject matter too important to be pushed through the budget process that now appears to have a firm April 1st deadline. While it remains to be seen what will come out of this legislative session, the reform proposals are substantively significant and warrant thoughtful consideration from members of the bar. Here is a nutshell version of the proposals as they are currently configured.

Grand Jury Reform

In the wake of Ferguson and all the implications of that tragic incident, New York had its own police related death with racial overtones in the case of Eric Gardner in Staten Island. Mr. Gardner was selling cigarettes illegally when he was surrounded by several members of the New York Police Department and placed under arrest. While being handcuffed, Mr. Gardner could be heard to say, "I can't breathe. I can't breathe." He died, and an investigation ensued. Unlike Ferguson, this entire incident was captured on video. The Staten Island DA's Office presented the case to the grand jury and no indictment was returned. Because of the grand jury requirements of secrecy, District Attorney Dan Donovan was not permitted to discuss what evidence was presented and considered by the grand jury. Many in the public were dismayed that there was no charge forthcoming. In his State of the State, Governor Cuomo promised that there would be reform to permit more transparency in the grand jury process and have more oversight of the prosecution in police related deaths, claiming that there is too cozy a relationship between police and prosecutors. In the Governor's proposal, CPL 190.85 would be amended to permit a grand jury to issue a report in cases of police related deaths. A special monitor would be appointed in these cases and in the event of a no true bill, the special monitor would be authorized to review all the evidence of the investigation. If the special monitor finds substantial errors in the presentation of such magnitude that there exists a reasonable probability that an indictment would have resulted but for these errors or there is newly discovered evidence, the special monitor may recommend to the Governor that the Attorney General or a special prosecutor be appointed.

Chief Judge Lipmann proposed changes to the grand jury proceedings during his State of the Judiciary. He recommended that the judge take a very active role in presiding over grand jury presentations with the judge controlling which witnesses would testify and the charges that should be submitted. Under the Lipmann proposal, in the event of a no true bill, the court would be authorized to disclose the testimony of all public servants, the charges considered and the legal instructions with discretion on not disclosing civilian witnesses if it would compromise an ongoing investigation or put the witness at risk.

Attorney General Eric Schneiderman has his own version of reform which appears to be only temporary. His proposal would have his office appointed as a special prosecutor in all cases where a civilian dies in a police encounter until a more permanent statutory scheme may be enacted.

Both houses have strong opinions on whether grand jury reform is the proper vehicle in which to address the public's concern and if so, what reform achieves the objective without compromising the long standing and legitimate reasons for grand jury secrecy. It remains to be seen if there is enough consensus on any of the current proposals or if there can be a critical mass for a yet to be discussed alternative version.

Raising the Age of Criminal Responsibility

There has been a strong and orchestrated push to raise the age of criminal responsibility that seemed to have some real momentum at the beginning of the budget process. However, what seemed to be likely to get passed ended up yanked from the budget when substantive and legitimate concerns were voiced by nearly all factions and no clear path to resolving those concerns presented itself within the April 1st deadline. Governor Cuomo's proposal would have all cases committed by 16 and 17 year olds automatically adjudicated in Family Court, except Murder in the Second Degree, Rape in the First Degree, Criminal Sexual Act in the First Degree and any armed felony offense which would require DA consent before being transferred. The Governor also proposes extending YO eligibility to 20 years old, reducing the maximum sentences and eliminating the requirement of secure detention for serving sentences. As with all significant reform the devil is in the detail and when it comes to the details, there was very little consensus. It appears that across the board, there is agreement that 16 and 17 year old state prison inmates should not be housed with older offenders, but any consensus ends there.

The legislators recognize that 95 percent of 16- and 17-year-old defendants have their cases sealed either by outright dismissal, an adjournment in contemplation of dismissal, a plea to a non-criminal violation or a youthful offender adjudication. They also know that prison is usually a last resort for teenage criminals. Some believe it should never be utilized. Others believe that it should be reserved for the worst of the worst. Many have concerns about migrating that volume of cases to an already overburdened Family Court system, and others question whether OCFS can properly manage the population of defendants who would be sentenced under this new statutory scheme. Regardless of how this debate ends, the Juvenile Justice Act changes the law to such an extent and degree that serious questions were raised regarding fundamental criminal justice issues, including offender accountability and public safety.

It is impossible to predict what will happen in Albany but if either of these reforms are enacted, it is certain to dramatically change the way in which we practice our profession.

Tim Higgins
Timothy J. Higgins, Esq.
LEMIRE, JOHNSON & HIGGINS, LLC
Attorneys at Law
2534 Rte. 9, PO Box 2485
Malta, NY 12020
(p) 518.899.5700
tjh@lemirejohnsonlaw.com

Torts and Civil Practice: Selected Cases from the Appellate Division, 3rd Department

Employer's third-party liability for "grave injury"

Barclay . Techno-Design, Inc. (Devine, J., 2/19/15)

Plaintiff sustained serious arm and hand injuries when, allegedly at the direction of his employer, he reached into a food processing machine to adjust nozzles. He filed a product liability suit against the manufacturer of the machine; and that defendant sued plaintiff's employer for contribution and indemnification. Under Workers' Compensation Law § 11, such a third-party claim against plaintiff's employer requires the defendant to show plaintiff suffered a "grave injury", about which Supreme Court (Giardino, J., Fulton Co.) found a question of fact, and denied the employer's motion to dismiss. The Third Department reversed and dismissed the third-party suit, finding that plaintiff's injury (which included a 90% loss of use of the hand and 60% loss of use of the fingers due to dysfunction of the middle, ring and pinky fingers) did not meet the "grave" standard at issue: "permanent and total loss of use or amputation of an arm, leg, hand or foot".

Discovery oversight leads to rejection of witness affidavit

Epps v. Bibicoff (Peters, P.J., 1/22/15)

Plaintiff alleged a shoulder injury when he was struck by a slate tile that fell off the roof of the rental property next to his residence. The defendant property owner moved for summary judgment claiming, among other things, lack of notice that the roof was in a dangerous condition. Supreme Court (Buchanan, J., Schenectady Co.) granted the motion; refusing to consider the affidavit of plaintiff's wife, who claimed to have "made multiple complaints to defendants regarding the state of the roof". Affirming, the Third Department found no fault with the trial court's exclusion of the wife's affidavit because she had not been identified as a 'notice' witness during discovery and plaintiff provided no reasonable excuse for such failure.

Out-of-possession landlord liability

Miller v. Genoa AG Center, Inc. (Devine, J., 1/22/15)

The general rule in New York is that an out-of-possession landlord will not be held responsible for dangerous conditions on leased premises once the tenant is using the property. One exception to the general rule; when the hazard giving rise to the injury was affirmatively created by the landlord; came into play here as Supreme Court (Rumsey, J., Tompkins Co.) denied the defendant's motion for summary judgment. Plaintiff's decedent was employed by the tenant; which operated a propane tank refinishing business in the defendant's building. A propane leak led to an explosion which severely burned Mr. Miller and ultimately caused his death. The Third Department affirmed denial of the motion for summary judgment, noting plaintiff's proof that the fatal explosion was most likely caused by an electrical spark from an exhaust fan motor or a lighting source; both of which were installed by the defendant prior to the tenant's occupation of the building.

Feuerherm v. Grodinsky (Egan, Jr., J., 1/29/15)

Defendant's rental property was a 3-story duplex that contained 7 bedrooms, one of which faced the rear of the premises and provided access (by climbing out a window) to a portion of the roof. Plaintiff left a bar across the street from the rental property at about 3:00 a.m., and was found about 5 hours later on the ground in the backyard; apparently injured in a fall from the roof. Supreme Court (Rumsey, J., Cortland Co.) granted the out-of-possession landlord's motion for summary judgment upon a showing that defendant did not create and had no knowledge of the allegedly hazardous condition; the foreseeable use of the unprotected section of roof by some tenants "to hang out or smoke". The Third Department affirmed, concluding no violation by the defendant of the state's Property Maintenance Code's requirement for railings or guards because the roof was not being used for "living, sleeping, eating or cooking".

Continued on page 5

Continued from page 2

Motor vehicle liability

Wallace v. Barody (Garry, J., 1/29/15)

Defendant was driving through an intersection when her vehicle struck and killed a pedestrian who was crossing against the light but in a crosswalk. After concluding that decedent "darted" suddenly into the path of the defendant's vehicle; making the collision unavoidable; Supreme Court (Ferradino, J., Saratoga Co.) granted summary judgment dismissing the action, and was affirmed by the Third Department. Defendant testified that she was travelling at about 30 mph (below the posted speed limit), and defendant's failure to sound her car's horn before impact did not violate the statutory duty to do so "when necessary" in light of the uncontradicted evidence that defendant's view of the pedestrian was blocked by a cargo van in the adjacent lane and that there was no time to give warning before the moment of impact.

Smith v. Allen (Peters, P.J., 1/22/15)

Plaintiff was a passenger in the defendant Boutelle's truck, and was seriously hurt when she was struck by a deer that; having first been hit by the defendant Allen's vehicle, was propelled into the air, and then crashed through Boutelle's windshield. Supreme Court (Nolan, J., Saratoga Co.) granted both defendants motions for summary judgment, based in part on evidence that neither driver was speeding or distracted and that neither operator saw the deer until it came into contact with their respective vehicles. Affirming, the Third Department rejected the affidavit of plaintiff's accident reconstruction expert as "of questionable probative value" due to the absence of calculations supporting his conclusion that the defendants had sufficient time to react and avoid hitting the deer.

Rouse-Harris v. City of Schenectady (Clark, J., 1/22/15)

Plaintiff was hurt when her car was struck by a police cruiser. Defendant moved for summary judgment relying on the qualified immunity afforded under Vehicle & Traffic Law § 1104 where the police officer is in pursuit of a suspect and does not act recklessly. Supreme Court (Kramer, J., Schenectady Co.) dismissed the claim and the Third Department affirmed, characterizing the officer's failure to activate the cruiser's emergency lights or siren as "nothing more than a momentary lapse of judgment" not reaching the standard of 'reckless disregard' for the safety of the other drivers.

New trial ordered after jury's inadequate damages award

Killon v. Parrotta (Lynch, J., 2/26/15)

Supreme Court (Muller, J., Warren Co.) granted plaintiff's motion to set aside a jury's award for past ($0) and future ($25K) pain and suffering after it concluded that the defendant negligently struck plaintiff in the face with a metal baseball bat, causing injuries including a shattered jaw and multiple broken bones in his mouth. The Third Department affirmed the trial court's order of a new trial on pain and suffering damages unless defendant stipulates to an award of $200K for past and $150K for future.

Construction site liability under Labor Law

Larkin v. Sano-Rubin Constr. Co., Inc. (Garry, J., 1/29/15)

Plaintiff was employed by a subcontractor on a school renovation project, and was hurt when a window panel slid down its frame above him and pinned his shoulder. His claim for damages against the defendant construction manager under Labor Law § 240 was dismissed by Supreme Court (Devine, J., Albany Co.) and affirmed by the Third Department. Construction managers can be held liable under § 240 if they have "the authority to direct, supervise or control the work which brought about the injury", regardless of whether such control is actually exercised. The contract documents for this project actually read to the contrary for Sano-Rubin, and plaintiff's proof in opposition (mostly a private investigator's report) failed to raise a question of fact.

Boots v. Bette & Cring, LLC (Devine, J., 1/22/15)

Another plaintiff hurt during a school renovation project when his utility knife malfunctioned sued the general contractor ("GC") under Labor Law § 241(6), and relied on an Industrial Code Rule 23 provision that prohibited the use of hand tools with "split or loose...handles". Supreme Court (Ellis, J., Franklin Co.) granted summary judgment to the GC, noting plaintiff's deposition testimony that he cut his wrist because the locking mechanism on the utility knife was loose and the blade broke in half. Affirming dismissal, the Third Department ruled that while the Rule 23 regulation relied upon by the plaintiff did define a "specific" (not "general") safety standard as required to support a claim under § 241 (6), the regulation was not applicable to the facts of the accident because "it makes no mention whatsoever of the locking mechanism found within a hand tool".

Matthew F. Fuller, Esq.

MEYER & FULLER PLLC

Does Friends of Thayer Lake LLC v. Phil Brown Create Problems For State Acquisition Of Property In The Adirondacks?

Submitted by
Matthew F. Fuller, Esq.

Paddlers and those seeking expanded recreational opportunities in the Adirondacks and elsewhere seemed to have rejoiced at the 3rd Department's January 15, 2015 decision in Friends of Thayer Lake LLC v. Phil Brown, 126 A.D.3d 22 where the 3rd Department sided with Mr. Brown and paddlers alike in upholding the "right" of the public to paddle waters that are "navigable in fact" over what is otherwise private property. I won't "wade" into those choppy waters, but instead point a light at a paragraph, footnote, and the dissent, which perhaps might toss a monkey wrench into future NYS purchases of private property in our beloved park.

At the outset, please note that I don't get into the "can the brook be paddled" portion of the navigability-in-fact discussion. That indeed is its own article and one, I believe, is more in the "beauty is in the eye of the beholder" category. What may be a pleasure paddle to one person, may be sufferable to another, and yet certain death to another. Instead, I focus on what I believe to be a bit more perplexing issue with the majority's decision.

At issue in the case was Phil Brown's paddling of the Shingle Shanty Brook as it crosses the Brandreth family property in Hamilton County. I won't draw the map, but it is an area many of us would romantically call "remote" in the truest Adirondack sense- hopefully places not yet served by mobile phone coverage, but I digress.

Page 10 of the decision struck a chord with me from the title perspective. Therein, the majority notes "…the standard for navigability-in-fact is more concerned with a waterway's capacity and characteristics than its location. A significant element in determining whether a waterway on private property is navigable-in-fact is whether there are multiple "termini" by which the public can gain access and which provide means by which the waterway can be used *for travel to and from other destinations. A body of water on private land that has no inlet, outlet or public access- such that it cannot be reached without crossing private land or cannot be used as a travel route to other destinations- is not navigable-in-fact*." I've added some emphasis there that will be discussed a bit further, but the majority then notes "*The Waterway meets this test, as it adjoins public property at both its termini*."

So let's start there: *The Waterway meets this test, as it adjoins public property at both its termini*. Understanding the implications of this takes a little discussion of the background: The property to the north of the Brandreth family property is now known as the William C. Whitney Wilderness Area, which previously had been owned by the Whitney family. As the case notes, and so far as I am aware from reviewing maps, there was no public access beyond the Whitney property via this Shingle Shanty Brook or intervening ponds.

Put in the context of this case, this begs the question: Had the William C. Whitney Wilderness Area ***not*** been owned by the State at the time of the deciding of this case, would the outcome have been decided differently? If you retreat back to the paragraph of the majority's decision noted above, the answer has to be yes. This case would have been decided differently, and Mr. Brown would have been a trespasser, had the Whitney family still owned the property to the North. This would be because Mr. Brown would not have been traveling "to" or "from" a public destination, i.e., there would have been no outlet. If one "gets to the end" and simply has to turn around and head back to where one started, the brook, river, stream, or mud hole, is not "navigable-in-fact".

That leads to footnote 5 of the decision, and then the dissent, which should pique the interest of any real property practitioner in the region, and also the Attorney General's office which generally "signs off" on NY State property acquisitions, be they conservation easements or straight fee purchases. The majority in footnote 5 seems to recognize this opening of Pandora's box, when it notes "***The law is clear that no taking without just compensation results from a determination of navigability-in-fact****: however it appears most unlikely that anyone contemplated that this remote property was burdened by a public easement of any nature when the property was conveyed into private hands in 1851, or indeed, at any time prior to the State's purchase of adjoining lands.* ***While it is well established that property ownership rights are not altered by adjudications of navigability-in-fact****, we share the dissent's concern that the application of the rule in cases such as this may destabilize long-established expectations as to the nature of private ownership*."

Let's stop there again: To be clear, based on the discussion above of a waterway needing a "to" and a "from" for it to be navigable, if the Whitney property had been privately owned, the navigability-in-fact test would have failed as there would be no "to". With that, is no large leap to conclude that the State's purchase of the Whitney property turned what was otherwise a non-navigable-in-fact mud stream, into a fully navigable-in-fact public waterway. This then begs the question, did the State's purchase of the Whitney property take the Brandreth family's ability to exclude what would other-

Continued on Page 7

Continued from Page 6

wise be trespassers from crossing their property? Again, based on this decision, that answer seems to be yes. By purchasing the Whitney property, the State, perhaps unintentionally, created a navigable-in-fact stream, and took the Brandreth family's right to exclude the public from their land.

In page 12 of the decision, the dissent starts down this stream, but doesn't paddle the full distance. The dissent notes "Defendants do not dispute that it is only as a result of the State's recent acquisitions that the Waterway may be accessed from publicly-owned land and that, but for the short portage around the rapids, those members of the public engaged in the sport of wilderness canoeing are now able to reach the Waterway and navigate its meandering path, *whereas they previously had no way of accessing it*."

Perhaps this might be a point of argument before the Court of Appeals, but it strikes me that the essence of "navigable-in-fact" is that once navigable, always navigable, and this would seem to be in the "can it be paddled" part of the test, as well as the "to and from" part of the test. In that light, does the "to and from" analysis extend back even prior to the ownership of Whitney and Brandreth? If so, how far? Will the argument extend back to the Crown? Back to the original grant of the patents? If the argument is that the "to and from" portion of the navigable-in-fact test marches back to when the "sovereign" owned the property, then are there any streams that aren't navigable-in-fact from the "to and from" standpoint? That is, if the sovereign once owned the various properties, and therefore arguably creating "tos" and "froms", and thereafter conveyed the properties to private landowners who have owned the properties through the intervening centuries, then perhaps under a belief that "navigable-in-fact" never disappears even when the property is conveyed to private ownership (i.e., the patents/land grants), this "to" and "from" part of the test would seem to be completely unnecessary. That would devolve the test into "can it be paddled".

All of the above paddles us back to beginning of the trip, which is the impact on State land deals in the Adirondacks. If I am a private property owner in the Adirondacks, particularly a large scale private property owner, with streams and ponds that cross or dot my land that perhaps are currently "non-navigable", and I see the State eyeing parcels on the various sides of my property, do I not intervene to be paid when the State "takes" my ability to exclude the public from my lands because the State's purchase will then open my streams and ponds to navigability? The majority decision, and indeed an expanded reading of footnote 5 of the Friends of Thayer Lake decision would seem to say yes, I must now be paid for that taking, or at least that is how a private property owner in such situation should argue. As the Court notes, I doubt anyone "looked around" to see what impact these purchases would have. The conspiracy theorist might argue "they knew exactly what they were doing" with such purchase, but I don't know if credit should extend so far.

The facts and the decision of this case pose some pretty significant exercises in logic that will be interesting to see before the Court of Appeals. Hopefully this exercise might be briefed by our fellow local colleagues Mssrs. John Caffry, Esq. and Dennis Phillips, Esq., who head up the opposing arguments before the Court of Appeals.

ADIRONDACK PARALEGAL ASSOCIATION

The Adirondack Paralegal Association is wrapping up another eventful meeting year. We would like to thank the attorneys, surveyor and other area professionals who volunteered to speak at our meetings throughout the past year.

Our Membership Drive and monthly meetings will resume in September. If you have office staff who are not currently members of our Association please encourage them to join us! Being a Member of our Association is a great way to gain valuable information, expand legal knowledge and network with local professionals employed in the legal field. Our annual membership dues are $15 and our monthly dinner meetings are held at a local restaurant on the second Thursday of each month. For more information, please contact Tammi Blake, President, at 745-5030 or tammi@wjudgelaw.com.

Maria G. Nowotny, Esq.

NOTES FROM THE NYSBA HOUSE OF DELEGATES

Submitted by

Maria G. Nowotny, Esq.

The NYSBA House of Delegates (HoD) met on March 28, 2015 at the Bar Center in Albany.

President Glenn Lau-Kee included updates on mandatory reporting of pro bono efforts and the Uniform Bar Examination in the President's Report to the House of Delegates. The administrative order defining pro bono service is expected on May 1, 2015 and he will be reviewing it carefully. (Post-meeting note: The New York Law Journal recently carried an article covering Judge Lipmann's release of mandatory pro bono reporting requirements. In general terms, the reporting will be anonymous and the definition of pro bono has been expanded.) Implementation of the Uniform Bar Examination, which is governed by the Court of Appeals, has been postponed. Statewide hearings were held to obtain comment (WCBA participated in a video conference with Chief Administrative Judge Gail Prudente in February) and the Court of Appeals will announce its plan in the future. The primary concern of the State Bar is that law students are adequately trained to practice New York law. The concern is heightened by the recent trends of large law firms cutting back on training and the increasing number of graduating law students immediately commencing careers as sole practitioners. (Post-meeting note: The *New York Law Journal* and the *New York Times* reported on May 5, 2015 that the uniform bar exam will be administered in New York State commencing the summer of 2016.)

Four reports and recommendations were presented to the House membership all of which were approved. Succinctly, the reports and recommendations were presented by the

- Task Force on Gun Violence which emphasized the need for education, as a high level of regulation already exists.
- Committee to Ensure Quality of Mandated Representation which recommended amendments to Standards for Providing Mandated Representation addressing
    - preservation of record,
    - case file maintenance,
    - facilitation of appointment of appellate counsel during the pre-trial and trial proceedings; and
    - addressing counsel's responsibilities to client if the case is remanded for other proceedings during or after appeal, as well as, if counsel becomes aware of a credible claim of actual innocence and counsel's availability if asked by trial court.
- Committee on Standards of Attorney Conduct (COSAC) recommendations to address ethical issues arising from the effect of technology on the practice of law.
- Committee to Study the Court Advocates Proposal reviewed proposed legislation to authorize, in very limited circumstances, a limited form of representation of indigent clients by non-lawyer court advocates, under the supervision of an attorney in Housing Court and in respect to consumer debt matters. A negative impact on the practicing bar was not identified as the subject litigants are presently unrepresented and at or below 200% of the poverty level.

The next meeting of the HoD will be held on June 20, 2015 at The Otesaga in Cooperstown.

James T. Towne, Jr., Esq.

Attorney James T. Towne, Jr. Speaks at Forum Celebrating 30th Anniversary of United Support of Artists for Africa (USA for Africa)

On Wednesday, April 8, 2015, Partner James T. Towne, Jr. of Towne, Ryan & Partners, P.C. spoke as a panelist on protecting African Intellectual Property at *A Forum Discussion: Arts as Tools for Change* to celebrate the 30th Anniversary of USA for Africa in Nairobi, Kenya.

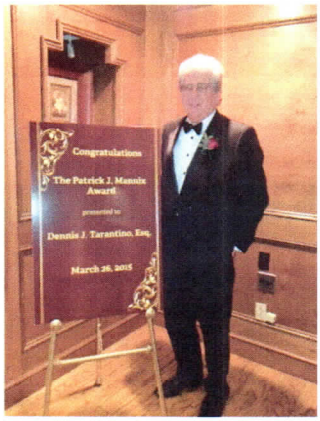
Mr. Towne has devoted a significant amount of personal time to charitable efforts in Africa. In his role as a Trustee to the Loisaba Community Conservation Foundation, Inc. ("LCCF") – a qualified U.S. 501 (c)(3) not-for-profit organization - he has contributed to the development of educational and health services for the extremely impoverished Ewaso and Koija communities located 100 miles north of Nairobi. Mr. Towne was invited to speak on the panel by Salim Amin, son of the late world-renowned photographer, cameraman and publisher Mohamed "Mo" Amin.

The late Mr. Amin experienced a defining career moment when he brought international attention to the 1981-84 Ethiopian famine through his compelling photojournalism. Mr. Amin's powerful images inspired a groundswell movement leading to the founding of the USA for Africa in 1985.

In its first year, the USA for Africa made history as 45 of America's top recording artists including Harry Belafonte, Ray Charles, Michael Jackson, Smokey Robinson, Tina Turner and Stevie Wonder among other music royalty came together to record "We are the World." The song has not only inspired people to action across all continents and shed light on the critical needs of Africa, but has also sold more than 7 million records worldwide generating more than $60 million to combat these severe issues in Africa (www.usaforafrica.org). It was also the springboard for USA for Africa's progeny: LiveAid, FarmAid and many other grassroots efforts.

"To be asked to participate in USA for Africa's 30th Anniversary event and to be surrounded by enormously talented people who have spent their careers serving the disadvantaged in Africa was such a privilege. I learned much about helping to fulfill the social, educational, health and creative needs of the people we support in Ewaso by brainstorming new ideas, perspectives and strategies with these individuals who have spent 30 years on the ground, talking the talk and walking the walk. It was tremendously motivating," Towne said.

The 30th Anniversary event, which was organized by USA for Africa and Co-hosted by A24Media and AllAfrica.com ran from 9:00 a.m. to 5:30 p.m. In addition to the panel on protecting African Intellectual Property, additional discussions included Legacies of Arts & Artists for Change, Africa's Voice in Sustainable Development Agenda, African Arts in Action – Issues & Ideas and Culture Event.



CONGRATULATIONS!
THE PATRICK J. MANNIX AWARD
PRESENTED TO
DENNIS J. TARANTINO, ESQ.

Submitted by
Hon. Richard Tarantino

At the March dinner meeting, immediately following the 13th Annual March Mixer to benefit the Bar Foundation, our Association honored Dennis J. Tarantino Esq. with the presentation of the Patrick J. Mannix Award. The criteria for the award states in substantial part that the recipient should have exhibited cordiality, civility, congeniality, and a keen sense of humor in developing professional and personal relationships, and have acted as a mentor to young lawyers. Dennis, a 40 year member of our Association, was only the 4th recipient of this Award in the last 15 years.

Den's brother Dick noted in his remarks that Den was one of approximately 7 members of the Albany Law School Class of 1974 to come to Glens Falls immediately, or almost immediately, after graduation. Less than 18 months after graduation, Den had to deal with the untimely death of his boss, the much beloved then part-time City Court Judge, William J. Kenneally. Faced with the challenge of continuing a general private practice, Den was soon to be on the receiving end, from many members of the Warren County Bar, of the professional attributes and kindness the Mannix Award honors.

Den, as well as other new members of the Bar, would also experience firsthand from attorneys such as Pat Mannix (Dan's dad), Jack Mannix (John Jr.'s dad), and Vince Canale (Greg's dad) things such as Young Lawyer Dinners (free), office Christmas parties (free), and on-going and generously given legal advice and sharing of work product (free).

Needless to say, over the past 25 years Den has been very actively engaged in payback for the courtesies and kindness shown him and others. As past Master of Ceremony, or co-MC, of earlier Christmas Bar Dinners which were very humorous roasts of judges and fellow attorneys, as past co-host of personally funded Holiday Parties for all Bar members and their staffs, and as present and past MC for the Warren County Bar Foundation Mixer, Den continues the traditions which foster collegiality among the Bar. Den has always been an open door for, and supporter of, newly admitted attorneys. He has also been an early and continuing member of the Adirondack Women's Bar Association.

2015 Mixer

Mary-Ellen Stockwell, Esq.

MEYER FULLER PLLC

A Re-Cap of the 2015 Law Day Ceremony & Events

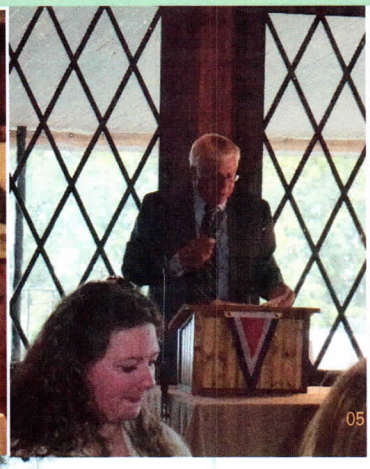
Submitted by
Mary-Ellen Stockwell

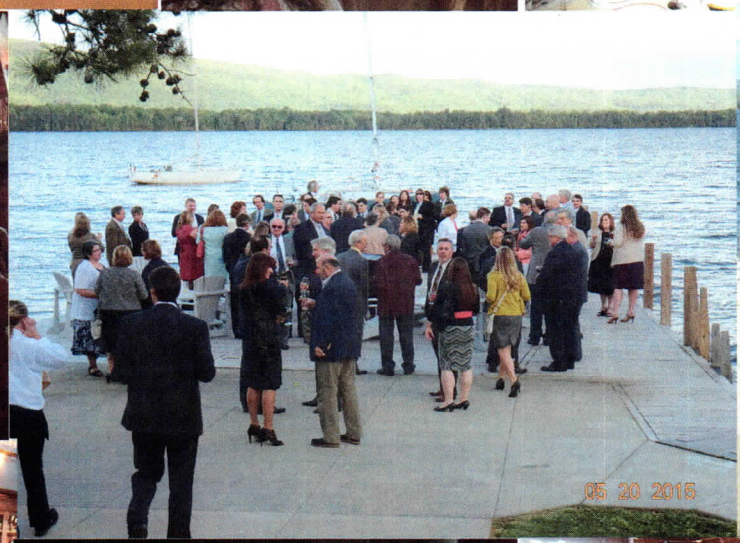
As this year's committee chairperson of the Warren County Bar Association's Law Day Committee, I am pleased to report that this year's Law Day celebration honoring the 80th year anniversary of the Magna Carta: Symbol of Freedom Under the Law turned out to be a great success! On Thursday, April 30th, 2015, we held the 19th Annual Law Day Walk/Run at Coles Woods at the Glens Falls YMCA where we were able to raise $1,610.00 for the Glens Falls Open Door Soup Kitchen. We had over thirty participants walk or run in this year's race and out of these participants many joined together for the team competition, with several children completing the course as well. This year, each participant received a t-shirt, a free pass for a class at Hot Yoga Saratoga, a loaf of Villa's bread, and dinner from Subway. Next year will mark the 20th Anniversary of the Law Day Walk/Run on the evening before the annual Law Day Breakfast. We encourage you all to participate in next year's race! I would like to take the time to thank our sponsors for the 2015 Law Day Walk/Run: The Adirondack Trust Company, Impressive Imprints, Hughes Insurance Agency, Inc., Adirondack Samaritan Counseling, Inc. and Hot Yoga Saratoga, as well as the YMCA, Adirondack Runners, the Warren County Bar Association and our committee members who helped run the race, Eileen M. Haynes, Daniel J. Hogan, Bruce O. Lipinski, Elisabeth B. Mahoney, and Timothy S. Shuler.

On Friday, May 1, 2015, we celebrated, with over one hundred people in attendance, our annual Law Day Breakfast at the Hiland Park Country Club. After eating breakfast while being serenaded by the music of Johnathan Newell, Executive Director of the Hudson River Music Hall, we had the pleasure of having the breakfast invocation given by Pastor Leah Grace Goodwin of the Harrisena Community Church and the Law Day Proclamation presented by Frederick H. Monroe, Supervisor of the Town of Chester on behalf of Warren County Board of Supervisors. Hon. David B. Krogmann led us in this year's Pledge of Allegiance and our speaker, Christine C. Kopec, Visiting Assistant Professor at Skidmore College, gave an intriguing and exciting speech on the history of the Magna Carta. We were honored to have Daniel G. Stec, Assemblyman of the 114th District present a New York State Legislative Resolution honoring this year's 2015 Liberty Bell Award Winner, Sharon King. We were also joined by the 2015 Law Day Essay/Media Contest winner Lauren A. Piccoli, a sophomore at Lake George High School. Also in attendance were the talented young adults from Salem Central School who were the winners of this year's Warren County Mock Trial Competition. A special thanks goes out to this year's committee members Dottie C. Benware, Brian C. Borie, Claudia K. Braymer, Dustin Bruhns, Nathan Hall, and Jessica Hugabone Vinson. Our Legal Information Seminar at the Crandall Library unfortunately did not provide the turnout we were looking for as far as public members interested in hearing information, but we certainly had a wonderful turnout of attorneys who were ready and willing to present on several topics. We hope to re-vamp the time of the program next year to encourage more public involvement by possibly doing an evening program. Thank you to Carl T. Baker, Claudia K. Braymer, James R. Burkett, Gordon Eddy, Matthew R. Ludemann, Tucker C. Stanclift, Jessica Hugabone Vinson, as well as our friends at the Legal Aid Society of Northeastern New York who helped us to coordinate this year's event. Thank you to all who participated in the 2015 Lawyers in the Classroom Schools Program. Once again, it was a success and the students thoroughly enjoyed it.

Most importantly, we thank the Warren County Bar Foundation for their continued support in underwriting this program and helping to make it a continued success each and every year.

ANNUAL DINNER
THE LAKE GEORGE CLUB
MAY 21, 2015





OUR MEMBERS' CORNER
IN RECOGNITION OF SPECIAL EVENTS!

CONGRATULATIONS

Congratulations to our own Karla Williams Buettner who was presented with the New York State Bar Association Law, Youth & Citizenship Program's Distinguished Service Award for her work with the Mock Trial Program.

Happy Birthday to our Members who are celebrating birthdays in the coming months

May

2 Alan Rhodes
3 Erin Komon
6 Joy Smith
8 Robert Gregor
11 Katherine Henley
11 Larry Corbett
12 Dustin Bruhns
13 John Goodman
14 Monique Genchi
15 Sarah Merry
17 Michael Hill
19 Malcolm O'Hara
22 Dennis Tarantino
24 Robert Kelly
31 Hon. John Austin

June

2 Joanna Davis
3 Mary Elizabeth Kissane
3 Daniel Mannix
3 Stacy Frederick
6 Paul Pontiff
8 James Burkett
10 Martin Carbone
11 Anya Endsley
13 Lillian Moy
18 Michael Stern
20 James Davies
30 Russell Tharp

If you know of any events or accomplishments that should be recognized in our Tipstaff, please send them to the Bar Association Office.

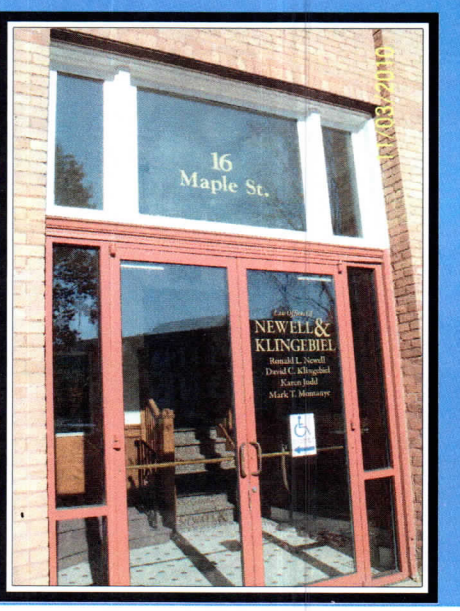
We're Moving!

As of **June 15, 2015**, the WCBA Office will be located at:

16 Maple Street
Suite 3
Glens Falls, New York 12801

Phone number, email and fax will remain the same.

Have you visited our new website?
www.warrencountybarassociation.org



CHAPMAN HISTORICAL MUSEUM

A Life to Remember, A Legacy to Hold

Hon. Richard J. Bartlett

From June 19th through June 29th, the Chapman Historical Museum will host an exhibit honoring Hon. Richard J. Bartlett. The exhibit will feature a number of his awards and memorabilia from his auspicious legal career and his connections to Glens Falls. Admission is free. We encourage all members to take a few moments out of your hectic schedules to view the exhibit. The Chapman Historical Museum's hours of operation are Tuesday through Saturday from 10 a.m. to 4 p.m. and Sunday from noon to 4:00 p.m.

CLASSIFIED ADS

Advertise in the next Tipstaff

Classified Listings:
(For sale or free, i.e. books, office furniture, etc.)

Maximum of 25 words
Members: $50
Non-members: $75

(Member notices for change of address, establishment of office, hiring or attorneys, etc. shall be at no charge to members of WCBA.)

Display Ads (Members):
Full Page $250
Half Page $150
1/4 Page $50
Business Card $25

Display Ads (Non-Members):
Full Page $325
Half Page $200
1/4 Page $95
Business Card $40

All ads must be "camera ready" and must be prepaid. The Bar Association reserves the right to edit all ads.

SAVE THE DATE EVENTS!

If you would like to publish an upcoming community event or one for your organization, please email the information for the event to wcba-ny@verizon.net.

TIPSTAFF is a publication of the Warren County Bar Association.

Send articles of interest, classifieds, and announcements to:
TIPSTAFF- c/o Warren County Bar Association
EDITORIAL STAFF:
Karla W. Buettner

HAVE A GREAT SUMMER!