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# SCHENECTADY COUNTY BAR ASSOCIATION, INC.

## NEWSLETTER

June 2003

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Telephone Numbers:  
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Treasurer: 370-4743

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Website: [www.schenectadybar.com](http://www.schenectadybar.com)

### CALENDAR OF EVENTS

June 19, 2003 SCBA Annual Meeting, 12:00 p.m.  
June 14, 2004 US Supreme Court Admission Trip

ALL SCBA MEETINGS HELD AT  
THE GLEN SANDERS MANSION, SCOTIA, NY

### OFFICERS

President  
Vice President  
Treasurer  
Secretary

J. David Burke  
John R. Seebold  
Robert W. Hoffman  
Kathryn McCary



### NOTE INCLUSIONS IN THIS ISSUE

- ' Report of the Nominating Committee
- ' Proposed Amended By-Laws

### WE WELCOME NEW MEMBERS

We welcome to the Association

**Michele Mealy Fatone**  
**Christopher A Guetti**  
**Rosemary T. Hoag**  
**Samuel N. Iroegbu**  
**L. John VanNorden**

who were admitted to membership at the April,  
2003 meeting.

### **L** NEXT MEETING **7**

**JUNE 19, 12:00 P.M.**

**Will Include Memorial for Jane Finin**

*If you plan to attend the meeting, please contact Robert Hoffman at 370-4743 for reservations  
or e-mail us at [SchenectadyBar@aol.com](mailto:SchenectadyBar@aol.com)*

### FROM THE PRESIDENT

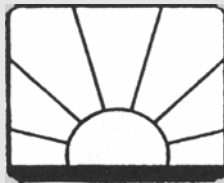
*J. David Burke*

Noticing that it is almost summer (maybe), the SCBA Constitution tells me it is time for the annual report on the work of the Association over the last year.

When you consider our co-sponsorship with the Court of Appeals of Judge Levine's retirement celebration; the critically acclaimed trial tactics CLE program where we offered 6 CLE credits for \$45.00; the "SCBA After 5" gathering at the Parker Inn; plus the four one-

hour CLE programs following the SCBA meetings; the Estate and Elder Law Seminar; the Real Estate Seminar; the mock trial competition won by the Scotia-Glenville High School; the joint Legal, Medical, Dental Dinner; the \$1,000 SCBA scholarship awarded to a Schenectady County Community College student; our advertisement in Proctor's Playbill; and the Law Day Program at which we hosted over 300 students, I think I can safely say that SCBA has had another productive year.

One of the major projects the Board of Directors undertook was the revision of our Constitution to make it compatible with our needs in the 21<sup>st</sup> century. Through the efforts of the Constitution Committee under the leadership of Mike Basile, this project has come to a successful fruition. Among the major features of the proposed by-laws that will serve as a replacement and revision of our present Constitution and By-Laws are the creation of three classes of membership, the streamlining of the membership application process, the increase of the members of the Board of Directors from 10 to 13 members, the establishment of the office of president-elect in place of a vice-president, and changing the October meeting to November. In accordance with our present Constitution, the proposed by-laws will be submitted to the membership for



### Don't Go It Alone

LAP—The Lawyer's Assistance Program of the Schenectady County Bar Association—is here to help members of the County Bench and Bar.

LAP is concerned about your welfare. We want to help. Whether you are facing illness, alcohol or drug addiction, a gambling problem, psychological problems or financial difficulties, LAP is here to provide you with free, completely confidential assistance.

All you have to do is ask.

Call us at  
388-4352

or write us at  
Schenectady County Bar Association  
Lawyers Assistance Program  
PO Box 602  
Schenectady, NY 12301

### In Memoriam

Jane Finin—May 2, 2003

SCBA Memorial will be given at the meeting June 19

adoption at the June 19, 2003, meeting. The text of the proposed new by-laws is included in this newsletter for those who didn't get a copy at the April meeting.

By the time this newsletter reaches you, the pictures taken by Frank Tedeschi at the April meeting for the Secure Pass applications should have been delivered to Sharon Sheffer at the Supreme and County Courts Clerk's Office. At your convenience you can pick up your picture from Sharon and complete the application. In case you didn't get a chance to have your picture taken at the April meeting, you will get another chance do to so if you arrive at the June 19<sup>th</sup> meeting between 11:30 a.m. and 12:15 p.m. You will also be able to pick up a Secure Pass application along with an application for an appointment as a fiduciary under 22 NYCRR Part 36. With respect to fiduciary training, we are continuing to work with the Albany County Bar Association to develop the appropriate programs. Veering to another subject, congratulations to Nick Tishler who was elected President of the Federation of Bar Associations, Fourth Judicial District, at the Association's meeting in Montreal in April.

I now come to the end of my last President's message. Before closing, I want to thank you for allowing me to be your President for the last two years. Although I assumed the office with a great deal of trepidation, I can honestly say that I had a great time as President and I will miss it. Needless to say, I am greatly indebted to all the chairs and members of our committees who worked very hard on behalf of SCBA; the members of the Board of Directors who, without complaint, acceded to early morning meetings so I could get to Fonda on time; to my boss, Hon. Joseph M. Sise, who gave me great latitude to attend to "Bar business", and particularly to John Seebold, Bob Hoffman and Kathryn McCary whose assistance was invaluable.

Now, its on to June and a new administration.

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### FROM THE COMMITTEES

The work of the Committees will resume next September. ALTERNATE DISPUTE RESOLUTION For information about the Committee call Chair Jean Carney, 872-9023



**CRIMINAL LAW** The Committee is in the initial stages of planning an afternoon seminar on driving while intoxicated. All members of the Association are encouraged to offer suggestions on topics or speakers. For information about the committee—or to offer suggestions concerning the seminar—call Chair Paul Callahan, 895-2334



**ESTATE & ELDER LAW** John Fantauzzi is retiring as a co-chair of this Committee—in 2003-2004 Gerard Parisi will join Pam McDevitt as co-chair. They will fax committee members a notice in August about the September meeting. For information, or to suggest topics or speakers for the monthly meetings, call Pam McDevitt, 370-4743 or Gerard Parisi, 377-9096.



**LAW DAY:** For information about the Committee, contact Chair Diane Herrmann, by calling 346-1281 or e-mailing to [dianeherrmann@hotmail.com](mailto:dianeherrmann@hotmail.com)



**MATRIMONIAL LAW** . For information about the Committee, call Chair Eric Tepper, 399-5400



**REAL ESTATE** For information about the Committee, contact Chair Larry Naviasky, at 374-7779 or [pottnav\\_larry@global2000.net](mailto:pottnav_larry@global2000.net).



**TRIAL PRACTICES:** For information about the Committee, contact Chair John Massaroni, 374-1800.

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**SCHENECTADY COUNTY BAR ASSOCIATION  
SLATE OF OFFICERS AND DIRECTORS**

*The Nominating Committee* elected by the membership at the meeting held April 17, 2002 hereby nominate the following to serve as Officers and Directors of the Schenectady County Bar Association for the 2003-2004 program year:

**OFFICERS**

President: John R. Seebold  
 Vice President: Hon. Karen A. Drago  
 Treasurer: Robert W. Hoffman  
 Secretary: Kathryn McCary

**DIRECTORS**

Diane D. Enzinna

**FEDERATION OF BAR ASSOCIATIONS, 4<sup>TH</sup> JUDICIAL DISTRICT**

Delegate: Michelle H. Wildgrube  
 Alternate: Richard D. Wickerham

**Nominating Committee:**

Paul M. Callahan, Chair  
 Dana M. Boniewski  
 Dennis Englert  
 Diane Herrmann  
 Deborah A. Slezak

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**THANK YOU**

**PRO-BONO MATRIMONIAL PARTICIPANTS!**

The Pro-Bono Matrimonial Committee recognizes the following members of the Association who have honored our profession by accepting assignments to represent indigent residents of Schenectady County over the past year or by participating in the pro-se matrimonial clinics:

**hhhh**

Sven Paul	Eleanor DeCoursey
Hazel Rodriguez	Dennis Englert
Edward D. Vacca	Richard Weiskopf
Lawrence Gordon	Barbara King
Kenneth Litz	Ronald Shaw
Wayne Smith	Bruce Trachtenberg
Vincent Capasso Jr.	Michael Horan
Eric Tepper	Lawrence Dahlke
Michael Basile	Christine Galvin
Margaret Tabak	Richard Antokol
Joseph Litz	Joanne Haelen

**YOU BE THE JUDGE**

*J. David Burke*

Attorney Clever informs the police that he represents BC and that, except in his presence, they are not to question BC about an April 1994 burglary in which a gun was stolen. In November 1994, a murder occurs involving the gun stolen in the April burglary. In the course of the murder investigation, BC voluntarily goes to the police station where, in the absence of

**From the Editor**

Thank you to everyone who has contributed articles, features, or ideas to the newsletter this year. Special thanks to J. David Burke, who singlehandedly wrote roughly half the content of every issue! I always welcome comments and suggestions—let me know what changes you'd like to see.  
[kathryn.mccary@verizon.net](mailto:kathryn.mccary@verizon.net)/377-6489

counsel, the police initiate their interrogation of him with questions about the April burglary. As the questioning progresses, the police intermingle questions about the burglary with questions about the murder until BC confesses to the murder.

Assume the same facts with respect to defendant JD, except that in questioning him the police restrict their questions to the murder charge.

Assume RW is in custody as the result of the 1994 burglary and is represented by counsel when the police question him only about the murder.

*Which, if any, confessions should the Court suppress?*

*The member who submits the first correct answer by e-mail(SchenectadyBar@aol.com) will be SCBA's guest at the June meeting. The correct answer will be on our website (SchenectadyBar.com) after the June meeting, and in the September newsletter.*

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## RECENT DECISIONS

*McNulty v City of New York*, \_\_\_NY2d\_\_\_ [May 13, 2003]

Plaintiff accompanies friend who had a contagious form of meningitis to the hospital where doctors told her she did not need treatment. Later, plaintiff contracts meningitis and sues the doctors for malpractice. Court dismisses suit, holding that doctors did not owe a duty to plaintiff because there was no direct or indirect patient/physician relationship and no allegation that plaintiff's injury arose from the doctors' treatment of their patient.

*Peralta v Henriquez*, \_\_\_ NY2d\_\_\_ [May 13, 2003]

Defendants, the owners of two buildings, allowed the residents of the buildings and their guests to use an unpaved parking lot they owned. Just before midnight on a rainy night, plaintiff fell in the lot that was lit in some degree by a light from a nearby store. Plaintiff contended defendants had a general duty to illuminate the unpaved lot and thus created a dangerous condition by failing to do so. Court rejected the argument, concluding that a landowner's duty is not a generalized one-size-fits-all duty but is measured by the *Basso* standard of reasonableness.

*Eredics v Chase Manhattan Bank*, \_\_\_NY2d\_\_\_ [May 8, 2003]

During marriage husband opens Totten trust accounts "in trust" for wife. In separation agreement parties provide they each own, free of any claim of the

other, all property which he or she now owns. Husband dies; who gets the Totten trust, estate or wife? Court says wife because accounts were not revoked prior to husband's death in accordance with EPTL 7-5.2. The Court noted that a beneficiary may waive the benefits of a Totten trust so long as the waiver is explicit, voluntary and made in good faith. The broad language of separation agreement quoted above did not constitute such a waiver because it was not explicit.

*States v Lourdes Hosp.*, \_\_\_ NY2d\_\_\_ [May 6, 2003]

In a *res ipsa loquitur* case Court holds that expert testimony can be used to help the jury "bridge the gap" between its own common knowledge, which does not encompass the specialized knowledge and experience necessary to reach a conclusion that an occurrence would not normally take place in the absence of negligence, and the common knowledge of a particular profession, which does

*Woodson v Mendon Leasing Corp.*, \_\_\_NY2d\_\_\_ [May 6, 2003]

Just a reminder that CPLR 5015(a) does not provide an exhaustive list as to when a default judgment may be vacated. As pointed out courts retain their inherent discretionary power to vacate their own judgments for sufficient reason and in the interests of justice.

*Desiderio v Ochs*, \_\_\_NY2d\_\_\_[April 8, 2003]

In this medical malpractice action, jury awarded infant plaintiff \$40,000,000 for nursing care for 55 years. Defendant proposed a structure under CPLR article 50-A that would pay plaintiff \$262,800 for the first year, compounding at a rate of 3.335% for 55 years, for a total of \$40 million. Plaintiff proposed a structure that would pay \$635,594 for the first year, compounding at a rate of 4% for 55 years, for a total well in excess of the \$40 million awarded by the jury. Applying the literal legislative language of article 50-A, the Court held that plaintiff's proposal should be accepted since it was in compliance with the statutory formula and its precedents. Anyone mention caps?

*Sprung v MTR Ravensburg*, \_\_\_NY2d\_\_\_ [April 3, 2003]

Plaintiff was injured when a retractable floor malfunctioned. Because the floor at issue was the only one it manufactured, the manufacturer contended it was a casual manufacturer and thus immune from claims of strict products liability and negligent design. The Court rejected this argument, holding that strict liability may apply because the retractable floor was built for market sale in the regular course of the manufacturer's business.

*Panek v County of Albany*, \_\_\_NY2d\_\_\_ [April 1, 2003]

Prior to the demolition of the old air traffic control tower, plaintiff was instructed to remove components of the tower's cooling system that weighed 200 pounds each. As he was removing one of the components, he fell from the ladder he was using. The Appellate Division, Third Dept. held that Labor Law §240(1) did not apply since the tower's scheduled demolition precluded a finding that plaintiff was engaged in an alteration activity. The Court of Appeals disagreed, finding that plaintiff's work constituted "alteration" since it involved a significant physical change in the building. The Court noted that the fact the building was scheduled for demolition does not change the nature of the work plaintiff was performing at the time of his accident, which is the critical inquiry in determining coverage under Labor Law §240(1)

*Matter of Pinnacle Environment Sys.*, \_\_\_AD2d\_\_\_ [May 22, 2003]

The doctrine of *res judicata* applies to arbitration awards, even if the awards have not been judicially confirmed. Also, it is for the court, not the arbitrator, to determine the *res judicata* effect of an award.

*Howard v Tylutki*, \_\_\_AD2d\_\_\_ [May 22, 2003]

Court states that the presence of trees and shrubbery in close proximity to the roadway is to be expected in rural areas and does not create an unreasonable danger for the careful driver. Court goes on to say that, even if a town is negligent in placing warning signs and markings, its negligence will not be considered the proximate cause of an accident if the drivers involved were sufficiently familiar with the physical conditions surrounding the roadways.

*Stone v Altarac*, \_\_\_AD2d\_\_\_ [May 15, 2003]

Reiterates the rule that the one or two family homeowner exemption contained in Labor Law §240(1) and §241(6) is not automatically negated where the property is used for both residential and commercial uses. The exemption will apply if the main purpose of the construction project is directly related to the owner's residential use of the property, the exemption applies, even though the commercial section of the property may incidentally benefit.

*Matter of Joseph O*, \_\_\_AD2d\_\_\_ [May 8, 2003]

Reiterates rule that in a juvenile delinquency proceeding the appropriate remedy for a violation of the respondent's right to a speedy resolution of the petition is a dismissal of the petition.

*Matter of Skiff-Murray v Murray*, \_\_\_AD2d\_\_\_ [May 8, 2003]

Court adopts the fugitive disentitlement doctrine that permits a court to dismiss an appeal if the party seeking relief is a fugitive while the matter is pending. Here the defendant skipped town to avoid paying child support while pursuing an appeal of the child support order.

*Arendt v General Electric Co.*, \_\_\_AD2d\_\_\_ [May 8, 2003]

Not only can you get sued for age discrimination, but also for failure to rehire the person you laid off. Imagine GE doing something callous. Unthinkable.

*Wisniewski v Cairo*, \_\_\_AD2d\_\_\_ [May 8, 2003]

Dad agrees to pay \$3,000 per month child support which was nearly three times greater than he would have paid under the Child Support Standards Act and represented approximately 65% of his net income. Court sets aside child support, finding agreement to be unconscionable.

*City of Troy v Capital Dist. Sports*, \_\_\_AD2d\_\_\_ [May 1, 2003]

Points out that, while a statutory charging lien under Judiciary Law § 475 comes into existence upon commencement of an action, the lien attaches only when proceeds in an identifiable fund are created by the attorney's efforts. Here, although the attorney's efforts resulted in a \$1.5 million reduction in his client's debt to a creditor, no lien attached because the reduction did not produce proceeds in an identifiable fund.

*Matter of Blanchard v Blanchard*, \_\_\_AD2d\_\_\_ [April 24, 2003]

A voluntary agreement of joint custody will not be set aside unless there is a sufficient change of circumstances and unless the modification is in the best interest of the children.

*Higgins v Douglas*, \_\_\_AD2d\_\_\_ [April 24, 2003]

An easement granting a right of way to the easterly shore of Lake Placid allows for the construction of a dock at the end of the easement since it is a reasonable use within the contemplation of the grant that was intended to convey a means of accessing the lake.

*Hart v Marriott International*, \_\_\_AD2d\_\_\_ [April 24, 2003]

This is a scary story. Despite plaintiff's attorney's best efforts, she sues the wrong defendant. Defendant's insurance company doesn't tell plaintiff she has sued the wrong company until after the Statute of

Limitations has run. In a 3-2 decision, the Court held that the proper defendant should be estopped from asserting the Statute of Limitations defense because of the conduct of the insurance company and its failure to properly file a certificate of doing business with the Department of State. Do you wonder why lawyers have heart attacks?

*Redgrave v Redgrave*, \_\_\_AD2d\_\_\_ [April 24, 2003]

Reiterates the rule that in a divorce action the court is authorized to direct a party to pay counsel fees and expenses at any time after the start of the action up through the entry of final judgment.

*Fahey v Canino*, \_\_\_AD2d\_\_\_ [April 24, 2003]

Although only 18 weeks pregnant with twins, plaintiff spontaneously delivered both twins who did not survive. The Court dismissed her malpractice action because she did not suffer an independent physical injury and the emotional distress for which she sought recovery derived from her concern over what happened to the twins and not for a breach of any duty the defendant owed her. The dissent maintains the action should go forward because plaintiff is alleging a breach of a duty owed by defendant to her to provide her with competent medical care regarding her pregnancy. A point to ponder, would this be the law if men had babies?

*People v Sharp*, \_\_\_AD2d\_\_\_ [April 17, 2003]

Because robbery in the third degree is not one of the crimes listed in Executive Law § 995 (7) Court cannot direct the defendant to provide a DNA sample for inclusion in the state DNA identification index.

*Stafford v 6 Crannel Street*, \_\_\_AD2d\_\_\_ [April 17, 2003]

Near capacity crowd, hardcore rock, patrons moshing on the dance floor, assault (sounds like SCBA After 5). Anyway, Court holds that the fact the patrons were moshing on the dance floor does not establish that the defendant should have reasonably anticipated or prevented the sudden altercation in which plaintiff was injured.

*Jockimo v Abess*, \_\_\_AD2d\_\_\_ [April 17, 2003]

The submission of a workers' compensation decision awarding plaintiff a 20% scheduled loss of use of her right arm, standing alone, is not sufficient to raise a question of fact on the issue of whether plaintiff sustained a "serious injury" under Insurance Law § 5102 (d).

*Davis v Evan*, \_\_\_AD2d\_\_\_ [April 17, 2003]

Doctor last treats plaintiff on June 5, 2000, submits affidavit, dated October 22, 2001, that does not provide an explanation for significant period between his last treatment of plaintiff on June 5, 2000 and his October 22, 2001 affidavit. Court finds affidavit insufficient to raise a triable issue of fact regarding any claimed serious injury.

*Matter of Estate of Clark*, \_\_\_AD2d\_\_\_ [April 17, 2003]

When the language of a will is unambiguous and supports a reasonable meaning, the court is bound by the language and the canons of construction do not come into play.

*Ehlinger v Ruberti, Girvin & Ferlazzo, P.C.*, \_\_\_AD2d\_\_\_ [April 10, 2003]

In this divorce action, wife held title to house in which husband claimed an equitable interest based upon wife's promise to name him as co-owner after he paid off the mortgage. Husband's attorney does not file a notice of pendency, wife remortgages the house, court imposes constructive trust upon the house in husband's favor, mortgage is foreclosed, husband gets nothing. Now, the rest of the story; a legal malpractice action against his attorneys who move for summary judgment dismissing the complaint. Denied. Take heed.

*Staudinger v Village of Granville*, \_\_\_AD2d\_\_\_ [April 10, 2003]

You wouldn't think so, but a municipal parking lot is considered a "highway" for the purposes of General Municipal Law § 50-e (4) - prior written notice of defect.

*DeSanctis v Montgomery Elevator Co.*, \_\_\_AD2d\_\_\_ [April 10, 2003]

The doctrine of *res ipsa loquitur* did not apply in this elevator case because plaintiff did not establish exclusivity of control due to the fact the mechanism which he claimed caused the accident was designed to come into contact with the public and, thus, subject to potentially damaging misuse or vandalism.

*Blackstone v Hayward*, \_\_\_AD2d\_\_\_ [April 10, 2003]

Proof that a dog chased bicyclists and cars, barked at strangers and fought with another dog was insufficient proof to elevate these typical territorial behaviors into a vicious propensity. My dog smiles.

*Mrozinski v St. John*, \_\_\_AD2d\_\_\_ [April 10, 2003]

Good example of the establishment of a "serious injury" under Insurance Law §5102 (d) by means of an expert's qualitative assessment of the plaintiff's

condition.

*Dia CC. v Ithaca City School Dist.*, \_\_\_AD2d\_\_\_ [April 10, 2003]

Where liability is sought to be imposed on a school for negligent supervision relating to an intentional tort (i.e. sexual abuse), plaintiff generally must demonstrate the school's prior knowledge or notice of the individual's propensity or likelihood to engage in such conduct.

*Mohawk Valley Ski Club v Town of Duanesburg*, \_\_\_AD2d\_\_\_ [April 3, 2003]

Since plaintiff did not show that there was suitable public access or termini, its evidence of motorized boats on Mariaville Lake was insufficient to deem it a navigable waterway.

*Cardarelli v Scodek Constr. Corp.*, \_\_\_AD2d\_\_\_ [April 3, 2003]

Reiterates the rule that a guarantee is assignable absent express language in the document to the contrary.

*Matter of Wen v Wen*, \_\_\_AD2d\_\_\_ [April 3, 2003]

Separation Agreement provides that husband "shall pay 80% of the tuition for the Albany Boys Academy should he consent to sending the parties' son to said school." Husband decides not to consent. After considering the best interests of the child and the circumstances of the case and parties, Court says pay 75%. It points out that, although the separation agreement sets the percentage Husband must pay if he consents, it does not foreclose any financial obligation in the event he does not.

*Lamarre v Rensselaer County Plaza Assocs.*, \_\_\_AD2d\_\_\_ [March 27, 2003]

In *Trincere v County of Suffolk* (90 NY2d 976) the Court of Appeals noted that not every injury caused by an elevated brick or slab need be submitted to the jury. This case adds to that by noting that a landowner cannot 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 toes or trip over a raised projection. Has anyone seen a case where a trivial defect is a trap? Let me know if you have.

*Shaw v Burgess*, \_\_\_AD2d\_\_\_ [March 13, 2003]

While the Second Department recognizes a plaintiff's right to recover for common law negligence where a dog's conduct, although not vicious, results in

a reasonably foreseeable injury (*Colarusso v Dunne*, 286 AD2d 37), the Third Department adheres to the rule that a plaintiff may not recover for injuries sustained in a dog attack absent a showing of vicious propensities.

*Trager v Town of Clifton Park*, \_\_\_AD2d\_\_\_ [March 13, 2003]

A reminder that the Statute of Limitations for a declaratory judgment action is not always six years. In fact it can be as short as four months if the underlying dispute could have been resolved in a CPLR article 78 proceeding (*Solnick v Whalen*, 49 NY2d 224).

*Danka Office Imaging Co. v General Business Supply*, \_\_\_AD2d\_\_\_ [March 13, 2003]

In deciding whether parties have entered into an oral contract, court looks to the parties' objective intent as manifested by their express words and conduct at the time of the agreement, rather than their after-the-fact professed subjective intent.

*People v Rodriguez*, \_\_\_AD2d\_\_\_ [March 6, 2003]

Confidential informant makes a controlled drug buy at a residence on November 15, 2002. One month later, police apply for search warrant, which is granted. Court holds warrant issued without probable cause since the single sale was not supported by additional information or observations of continued drug activity occurring between the sale and the application for the warrant.

*Wheeler v Lebanon Valley Auto Racing Corp.*, \_\_\_AD2d\_\_\_ [March 6, 2003]

Reiterates the rule that a public nuisance is actionable by private persons only if it is shown that the person suffered special injury beyond that suffered by the community at large.

*Padula v County of Tompkins*, \_\_\_AD2d\_\_\_ [March 6, 2003]

Voluntary outpatient of the Tompkins County Mental Health Clinic kills policeman who responded to call regarding a disturbance patient was creating. Administrator sues County in negligence, claiming it failed to adequately monitor and treat the patient. Court rejects County's claim it owed no duty to decedent because the providing of psychiatric care is a proprietary function which means the County is held to the same duty as a private person.

#### LEGISLATIVE ACTION 2003 SESSION

Chapter 11: Amends CPLR 8011 to increase the Sheriff's fee for service of a summons, subpoena or civil process from \$10 to \$15. Eff. Immediately.

Chapter 13: Expands restrictions on smoking in bars, restaurants & places of employment. Eff. July 24, 2003. Watch this, it may go up in smoke.

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### **REPORT: THE SEARCH FOR MISSING WILLS**

Anthony Fazzone's office is looking for a will drafted by Eugene Turchi. Anyone know who has his wills?

**Keep those cards & letters coming in, folks!**

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### **SCBA RECORDS AND ARCHIVES**

The Association has been blessed with many years of dedicated volunteer leadership, with the archives and records handed on from one leader to the next—a system with immense potential for screwups. Now that we have an office—and staff!—we would like to consolidate all existing records, with the intent of establishing a more reliable system for maintaining and preserving them.

If your office has Association files—however old—please let Secretary Kathryn McCary know, and she will make arrangements to take them off your hands.

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### **LEGAL LORE**

*Contributed by J. David Burke*

The honorable commander and commissaries of Albany, etc., having heard the complaint of the honorable officer about the disobedience or failure to comply of the inhabitants of Schaenhechtady, who have been warned and advised several times by means of ordinance not to depart with their wagons and sleighs from this place to Shaenhechtady without the knowledge of the officer here, or to go from Shaenhechtady to this place without the knowledge of the officer there, and whereas all such orders have from time to time been neglected;

Therefore, their honors aforesaid hereby expressly order all inhabitants of Shaenhechtady hereafter promptly to regulate themselves accordingly, especially at this juncture of time, under penalty of a fine of 25 guilders to be forfeited by the transgressor, *toties quoties*. Furthermore, the respective officers are ordered to pay close attention to this.

This done at Albany, at the sessions of their honors, this 9<sup>th</sup> day of December 1675.

A.J.F. Van Laer, ed., *Minutes of the Court of Albany, Rensselaerwyck & Schenectady, 1675-1680*, Vol. II (Albany, 1928).

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### **NOTICES/ITEMS OF INTEREST**

*SCBA Past President Vincent Capasso, Jr.* was recently selected, through a rigorous peer review process, for inclusion in the upcoming edition of *The Best Lawyers in*

*America*. He was also appointed, effective in April, to a three-year term as a member of the **Committee on Professional Standards** of the Third Judicial Department. Way to go, Vince!

**ÈÈÈ**

*Robert “Jake” LoCicero and Marc D. Greenwald* have recently joined the offices of the **DeLorenzo Law Firm, LLP** as associates. Jake, a graduate of SUNY Binghamton and the SUNY Buffalo School of Law, will practice in the areas of Matrimonial and Family Law, Criminal Law, Medical and Dental Malpractice and Employment Discrimination. Marc, a graduate of SUNY Plattsburg, and Albany Law School, also holds an MBA from the University at Albany, and is an adjunct faculty member at the School of Business at Siena College. He will practice in the areas of Medical and Dental Malpractice, Corporate Law, Real Property, Estates and Employment Discrimination. The DeLorenzo Law Firm, LLP is happy to welcome Jake and Marc to its ranks.

**ÈÈÈ**

*The Legal Aid Society of Northeastern New York, Inc.* will be celebrating its **80<sup>th</sup> anniversary** with an event at the Albany Institute of History and Art between 5:15 and 7:15 on June 19. Schenectady County Bar Association members will be receiving invitations—but save the date!

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### **INTERESTED IN GETTING INVOLVED?**

To join an SCBA committee, contact:

Alternate Dispute Resolution—Jean Carney

Criminal Law—Paul Callahan

Estate & Elder Law—Pam McDevitt/Gerard Parisi

Law Day—Diane Herrmann

Matrimonial Law—Eric Tepper

Real Estate—Larry Naviasky

Trial Practice—John Massaroni

*Pro Bono* Matrimonial—J. David Burke

[addresses & numbers are in the SCBA directory—if you've mislaid your copy, call Kathryn McCary for a replacement]

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### **CLASSIFIED ADVERTISING**

*SPACE AVAILABLE*

**Reasonable office space for rent in prime location.** Included are library services, conference room, copier, fax, reception, secretarial space and other amenities available. First or second floor available. Contact Richard M. Antokol, Esq., Antokol, Resiman & Coffin, 514 State Street, Schenectady, NY 12305 (518) 370-2500

**Office Space available for two attorneys and two staff.** 650 Franklin Street, Schenectady. Space includes parking and use of conference rooms, kitchen and reception areas, also may include telephone answering, Internet access and facsimile service. If interested, please contact Lewis Kaehler Bates & Angle LLP, 374-3344.

**Office Space available for sole practitioner.** 38 North Ferry Street, Schenectady. Space includes use of conference room and reception area. If interested please contact Phil Rodriguez, 346-7275

*HELP WANTED*

**The Hoffman Law Firm** has an opening for a secretary on either a full-time or part-time basis. Salary and benefits commensurate with experience. We will train. Send resume and inquiries to Bob Hoffman, 1802 Eastern Parkway, Schenectady, NY 12309

or Email: [rwhooplaw@juno.com](mailto:rwhooplaw@juno.com)

*POSITION AVAILABLE*

**The City of Schenectady** is considering adding an additional outside closing attorney for tax foreclosure properties. The rate available is \$250.00 per closing. Interested persons please should respond to the Law Department, Room 201, City Hall, Schenectady 12305 or contact Michael Brockbank at [cityatty@nycap.rr.com](mailto:cityatty@nycap.rr.com)

**ADVERTISING IN SCBA PUBLICATIONS:**

Advertising will be accepted for inclusion in the Schenectady County Bar Association Newsletter, Membership Directory, and other publications. Please contact Kathryn McCary at 377-6489 for information.

**KEEP YOUR PROFESSIONAL  
COLLEAGUES POSTED**

**If**

- % you have relocated
- % you or someone you know has received special recognition
- % your firm is involved in community based activities

and you would like your announcement placed in the **SCBA** newsletter, please drop us a line:

SCBA  
c/o McCary & Huff, LLP  
107 North Ballston Avenue  
Scotia, NY 12302

so we can share the good news.

**MINUTES—SCHENECTADY COUNTY BAR ASSOCIATION—MEMBERSHIP**

ANNUAL MEETING—June 19, 2003—12:00 p.m.—The Glen Sanders Mansion, Scotia, NY

The meeting was called to order by President J. David Burke at 12:20 p.m., 84 members of the Association being then present and constituting a quorum. The President welcomed the judges present, and the family of Jane Finin Vadney. He announced that the winning Scotia-Glenville Central School District mock trial team could not attend because of Regents exams, but thanked the Association for its support of the Mock Trial program.

MINUTES OF PRIOR MEETING

The minutes of the April 17, 2003 meeting were approved by general consent.

TREASURER'S REPORT

Treasurer Hoffman distributed a written report, copy attached, which was accepted by general consent.

PRESIDENT'S REPORT

President Burke noted that the Association will be donating a new, large-screen television set to be used to show orientation and training videos to the incoming jury panel, and to show videotaped testimony; a plaque identifying the Association as the donor will be affixed to the set. The Commissioner of Jurors has expressed thanks to the Association for this gift.

An OCA pamphlet detailing the new fees, including fees for filing motions and stipulations of discontinuance, can be obtained from the courts.

The New York City Criminal Court is accepting resumes for the position of Chief Court Attorney, which pays approximately \$85,000; resumes are due by July 9. There is also a United States Magistrate Judge position open in the Syracuse Northern District office.

Judge Kaye has formed a Committee on the Jury, which will be holding public hearings and soliciting comments in writing on how to improve the jury system.

Forms to apply for consideration for appointments under Part 36 are available; note that the position of referee in foreclosures needs no special training, but the other possible appointive positions do require training.

Pictures will be taken after the meeting for attorneys wishing to apply for the new court Secure Pass; note that it requires two forms of picture ID.

SCBA member Maggie Tabak has received the Capital District Women's Bar Association Distinguished Service Award, and Kathryn McCary has received the Law, Order & Justice Center's Mediator of the Year Award.

COMMITTEE REPORTS

MEMBERSHIP COMMITTEE REPORT

The names of the following applicants were read for the first time; no objection being raised, their names were set over for a second reading at the September meeting:

Marnie M. Dzialo, sponsored by Paul V. Sciocchetti; Gilah R. Mayer, sponsored by Paul V. Sciocchetti; Warren Redlich, sponsored by J. David Burke; Matthew Schwartz, sponsored by Susan Ciani Casey; Jill S. Polk, sponsored by Michelle H. Wildgrube.

The name of the following applicant was read for the second time:

Timothy F. Wilkens, sponsored by Vincent Capasso, Jr.

Mr. Wilkens was welcomed to membership in the Association.

REPORT OF THE MEMORIAL AND SUNSHINE COMMITTEE

Committee Chair Neil Moynihan was unable to attend the meeting; in his place, President Burke offered the following resolution in memory of Jane Finin Vadney:

WHEREAS Jane Finin Vadney, a member of this Association, died on the 2<sup>nd</sup> day of May 2003; and  
WHEREAS Jane Finin Vadney was a lifelong resident of the Capital District, who graduated from SUNY-New Paltz and the California Western School of Law; and  
WHEREAS Jane Finin Vadney practiced with the Schenectady law firm of Grasso & Grasso from her admission to the Bar in 1981 until her death, first as an associate and then, starting in 1985 as a partner, and was at the time of her death Managing Partner of that firm as well as a Deputy County Attorney for Schenectady County; and  
WHEREAS Jane Finin Vadney for many concentrated her practice in the area of public sector labor relations and was well-known and respected for her representation of numerous local police and firefighter units; and  
WHEREAS throughout her career, Jane Finin Vadney was active in the Schenectady County Conservative Party, serving as committee person, counsel and delegate and convenor to the Supreme Court Judicial Convention, 4<sup>th</sup> District; and  
WHEREAS Jane Finin Vadney is survived by her husband, Michael Vadney, as well as her Father, Charles T. Finin, her five sisters and one brother and seven nieces and nephews now, therefore, be it  
RESOLVED, that the Schenectady County Bar Association records with deepest sorrow the passing of its former member, Jane Finin, and conveys its sympathy to her Husband and other family members, and be it further  
RESOLVED, that this Resolution be incorporated in the minutes of this meeting and recorded in the journal of proceedings, and a copy thereof be transmitted to Jane Finin's family.

Member Susan Beaudoin shared her memories of being co-counsel with Jane on a case, and observed that Jane was just a neat person. Member Bruce Trachtenberg noted that noone was a stronger advocate than Jane, and that whatever she said, she meant. Judge Kramer observed that Jane appeared before him often, and was a passionate advocate whom he came to admire

greatly; President Burke agreed that she was certainly a passionate advocate, who argued, argued, argued for her position. Member Paul Tocker, who served with Jane in the City Attorney’s office stated that she was a terrific lawyer and a great colleague, and is sorely missed.

Thereupon, on MOTION of Susan Beaudoin, the Secretary was directed to cast one ballot in favor of the Resolution.

RECOGNITION OF BOARD MEMBERS.

President Burke noted that Board Members Vincent Versaci and Amy Herter Robinson have completed their terms; on behalf of the Association he presented each of them with a gift certificate to the Glen Sanders Mansion, in appreciation of their service.

CONSTITUTION & BY-LAWS

Constitution and By-Laws Chair Mike Basile moved adoption of the proposed new by-laws, as set forth in the June newsletter, with one amendment; comments were received from Gerry Hennesey and Earl Bucci concerning honorary members and the office of President elect. In light of the concerns expressed about the President-Elect, the Committee recommends that the proposed new Article II be amended by the addition of the language “except for the office of President Elect in a year that the current President Elect is nominated for the Office of President.”

The Chair having moved the adoption of the proposed new by-laws as amended, discussion was held. Member Earl Bucci noted that the title “President Elect” mans that you automatically become President at the end of the current term. There should therefore be only 3 nominations: President Elect, Secretary and Treasurer—why change the wording if you aren’t going to change the meaning?

Member Gerry Hennesey noted that different by-laws handle this issue differently. Most lawyer organizations with a President-Elect use the automatic process, but some don’t. The purpose of the President-Elect is to give the individual the year to prepare himself to be President, and to allow him or her to select and organize committees for the succeeding year. The Schenectady County Bar Association is a small organization, and its President is not expected to devote all his time to that office. With respect to Honorary Members, Member Hennesey noted that the by-laws currently provide that all members must be members of the Bar, and it should stay that way. When the by-laws were last reviewed, the Committee looked at by-laws from many other Association, and normally they require that even honorary members be members of the bar.

Member Peter Coffey rose to explain the purpose of President-Elect and the interplay of the nominating/2-term process, and read the language of the proposed by-laws.

On MOTION of Member John Massaroni the matter was referred back to the committee.

REPORT OF THE NOMINATING COMMITTEE

Paul Callahan offered the report of the Nominating Committee, which proposed the following to serve as Officers and Directors of the Schenectady County Bar Association for the 2003-2004 program year:

OFFICERS		DIRECTORS	
President:	John R. Seebold	Diane D. Enzinna	
Vice President:	Hon. Karen A. Drago	FEDERATION OF BAR ASSOCIATIONS, 4 <sup>TH</sup> JUDICIAL DISTRICT	
Treasurer:	Robert W. Hoffman	Delegate:	Michelle H. Wildgrube
Secretary:	Kathryn McCary	Alternate:	Richard D. Wickerham

No independent nominations having been received, on MOTION of Paul Callahan the Secretary was directed to cast one ballot in favor of the slate of nominees.

Outgoing President Burke passed on to incoming President Seebold a copy of Robert’s Rules of Order and a gavel. He thanked the Membership, noting that he appreciated the honor of having been asked to serve as President, but was glad his term was over.

President Seebold thanked the Membership for electing him, and urged that members call him with ideas and concerns. He noted that he had very big shoes to fill, but at least Dave Burke has promised to continue writing the Recent Decisions and You be the Judge features for the Newsletter. He then presented a plaque to President Burke in recognition of his service.

President Seebold reappointed the Constitution and Bylaws Committee, to allow them to deliberate on the matter of the President Elect as referred back to them.

There being no additional business to come before the Membership, the meeting was adjourned at 1:10 p.m.

Respectfully submitted,  
Kathryn McCary, Secretary

## PRO BONO RESOURCES

Looking for a chance to uphold one of the profession's finest traditions—the provision of free legal advice and services to those who can't afford them? Whatever may have been true in the past, today's busy practitioner doesn't readily find, in daily life and practice, significant *pro bono publico* opportunities. That doesn't mean the opportunities aren't out there: the need is great, and it is a need only we are qualified to meet.

We hope the following opportunities may spark your curiosity, engage your compassion, or at least fit your convenience.

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### THE PRO BONO MATRIMONIAL PROGRAM OF THE SCHENECTADY COUNTY BAR ASSOCIATION

Contact Person: J. David Burke—853-8102

Provides assistance in completing the papers and procedures to obtain a divorce, through two programs:

- % Volunteer attorneys agree to accept one case per year to represent an indigent litigant.
- % Biennial pro-se clinics, at which pro-se plaintiffs are guided through the divorce process.

This is our very own program; more volunteers are urgently needed. Call Dave to sign on.

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### LEGAL AID SOCIETY OF NORTHEASTERN NEW YORK

PRIVATE ATTORNEY INVOLVEMENT PROGRAM

Coordinator: Elena Rich—462-6765

Matches lawyers with clients in the following areas:

- |  |  |
|--|--|
| Bankruptcy   | Health, including Health Care Proxies, Medicaid and Medicare |
| Consumer law   | Wills and Estates  |
| Employment   | Real property issues including evictions and foreclosures    |
| Education, including unemployment                                      | SSI Benefits   |
| Family, including Custody, Support, Visitation, Separation and Divorce |  |

The program is also interested in hearing from you if you have legal expertise in another area you are willing to share with those in need.

Services qualify for CLE credit (1 credit for 6 hours of service/you can accumulate up to 6 hours of credit through *pro bono* in each 2-year CLE cycle). Malpractice insurance coverage is provided, and out-of-pocket expenses are covered by the program. The program also offers training programs that qualify for CLE credit. You can call Elena for information or a registration form; forms are also available through the SCBA office, call 377-6489 or e-mail [kathryn.mccary@verizon.net](mailto:kathryn.mccary@verizon.net).

Legal Aid has also offers the **Children's Legal Project**, providing free civil legal representation for low-income children in Albany, Rensselaer, and Schenectady Counties; at this time these services are being provide in-house, but those interested in volunteering should let Elena know, in case there are cases the in-house attorney can't handle.

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### CAPITAL DISTRICT WOMEN'S BAR ASSOCIATION

THE LEGAL PROJECT

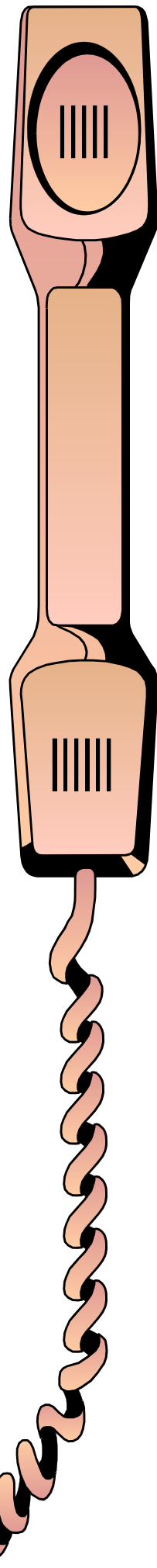
435-1770

Addresses the need for non-criminal legal assistance by providing innovative, cost effective services that are collaborative in nature and that focus on well-defined but unmet community needs. A unique aspect of The Legal Project is its provision of assistance to the working poor—those who don't qualify as indigent, but still can't afford to pay standard legal fees.

The Legal Project provides legal advice and information through a bi-weekly column in the *Times Union*, Project Helpline on the Channel 10 morning news, custom-designed workshops for community groups and organizations, and Legal Clinics at local community agencies.

The Legal Project provides legal representation through the following programs:

- The Domestic Violence Legal Connection
- Affordable Housing Attorney Assistance
- Bankruptcy and Credit Program
- Battered Immigrant Legal Assistance
- Civil Legal Services to Sexual Assault Survivors



## CONTINUING LEGAL EDUCATION OPPORTUNITIES

### **THE LEGAL AID SOCIETY OF NORTHEASTERN NEW YORK, THE CAPITAL REGION BANKRUPTCY BAR ASSOCIATION, AND THE ALBANY COUNTY BAR ASSOCIATION**

Topic: BASIC BANKRUPTCY PRACTICE  
Date/Time: June 25, 2003 4:00-8:00 p.m.  
Place: Albany County Courthouse, Juror's Lounge  
Presenters: Hon. Robert E. Littlefield, Jr,  
Cynthia A. Platt, Andrea E. Celli,  
Paula M. Barbaruolo, Marc S. Ehrlich  
Richard DiMaggio  
Cost: Free to attorneys agreeing to accept two pro bono referrals from the Legal Aid Society of Northeastern New York or the Albany County Bar Association; \$75 for all others  
CLE Credits: 3.5 Skills

### **ALBANY COUNTY BAR ASSOCIATION**

Contact: Barbara Davis 445-7691 or [acba@global2000.net](mailto:acba@global2000.net)

Topic: HOW TO KEEP YOUR CLIENT HAPPY  
Date/Time: June 11, 2003 12:5  
Place: Albany Law School  
Presenters: TBA  
Cost: \$60 Member/\$75 Non-Member/\$25 Student  
CLE Credits: 1.5 Skills/1.5 Ethics

Schenectady County Bar Association  
c/o McCary & Huff, LLP  
107 North Ballston Avenue  
Scotia, NY 12302

Come on in—You will find:

- Recognition of Our Pro Bono Participants
- Some Amusing Legal Lore
- Recent Decisions and You Be the Judge

See you at lunch, June 19!

*“Incompetent, irrelevant and immaterial,” he murmured, and all  
the other lawyer talk that lawyers talk in triplicate.”*

James Thurber *The Wonderful O*