
SCHENECTADY COUNTY BAR ASSOCIATION, INC.

NEWSLETTER

June 2005

Mailing Address:

PO Box 1728

Schenectady, NY 12301-1728

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Telephone Numbers:

President: 374-1800

Treasurer: 370-4743

Secretary/Newsletter/Membership: 377-6489

Administrative Assistant Arlene Williams: 377-6489 Thursdays 1:00-5:00 p.m.

Website: www.schenectadybar.com

CALENDAR OF EVENTS

June 16, 2005 SCBA Annual Meeting, 12:00 p.m.

NEXT YEAR'S MEETINGS:

September 8, November 17, January 19, April 20, June 17

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

OFFICERS

President
Vice President
Treasurer
Secretary

John R. Seebold
Hon. Karen Drago
Robert W. Hoffman
Kathryn McCary

BOARD MEMBERS

J. David Burke
Diane Enzinna
Brian Ferrucci
Joanne Haelen
Frank Parisi
Hon. Mark I. Powers
Margaret Tabak

WE WELCOME NEW MEMBERS

We Welcome to the Association

Barbara L. Guzman

Christina W. Meier

Demostene Romanucci

William J. Sanderson

Emily Titsworth

who were admitted to membership at the April 21
meeting



L NEXT MEETING **7**

JUNE 16, 12:00 P.M.

**WILL INCLUDE MEMORIAL FOR MARY LOUISE CORRIGAN FERRUCCI
AND ELECTION OF OFFICERS FOR 2005-2006 PROGRAM YEAR**

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

SCHENECTADY COUNTY BAR ASSOCIATION SLATE OF OFFICERS AND DIRECTORS

The Nominating Committee elected by the membership at the meeting held April 21, 2005 hereby nominates the following to serve as Officers and Directors of the Schenectady County Bar Association for the 2004-2005 program year:

OFFICERS

President:	Hon. Karen Drago
Vice President:	Robert W. Hoffman
Secretary:	Kathryn McCary
Treasurer:	Gerard F. Parisi

DIRECTORS

John R. Seebold
 John A. Fantauzzi
 Diane Herrmann

FEDERATION OF BAR ASSOCIATIONS, 4TH JUDICIAL DISTRICT

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

Nominating Committee:
 J. David Burke, Chair

Paul Briggs	Robert Carney
Dennis Englert	Larry Gordon

FROM THE PRESIDENT

John R. Seebold

Nine years ago I received a telephone call from Judge Reilly. He called to inquire if I had an interest in becoming the Treasurer of the Schenectady County Bar Association. I had heard that it was a thankless position and that the only reason I was being considered was because nobody else wanted the job. Despite my reservations, and probably because it was Judge Reilly doing the asking, I agreed to be recommended to the nominating committee. Now, after five years as Treasurer, two years as Vice-President and two years as President of the Association, I know it was a very good decision on my part.

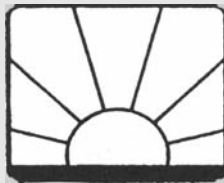
The experiences of the offices have been both personally and professionally rewarding. I have met and come to know well a lot of good attorneys. And attorneys are good people who help other people. We need to hear that, we need to believe that, and we need to spread the word. We also need to counteract the negative public sentiment towards attorneys which is being cast by others trying to gain economic advantages. Case in point is the current Builders Association radio advertisement which urges you to contact your legislator to reform Labor Law Section 240 because "trial attorneys are making millions" and as a result the cost of your new home is skyrocketing. That is the farthest thing from the truth. Note there is no mention of the true victim - the worker who is seriously injured due to the negligence of others who loses his or her home because they cannot return to work, and the indemnity they receive from Workers' Compensation is not enough to cover costs.

We also rarely hear about the countless number of attorney *pro bono* hours or, for that matter, the numerous billable hours that go unpaid because the client flat out refuses to pay.

We are fortunate to be engaged in a noble and honored profession. Keep your head up, and fight the good fight to preserve that right.

At the outset of my term, I promised you that I would not jump up on my soapbox at every opportunity. However, in this, my last chance, I felt compelled, but I will end here.

I would be remiss if I did not take the time to recognize some special people who have made my job a lot easier. Thank you to my partners, Vince and John, and my office staff, for allowing me to continue to serve as an officer. Thank you to Kathryn McCary, Bob Hoffman and Judge Drago for their dedicated service as officers of this organization. A special thanks is extended to Dave Burke. I did not realize how much Dave did for this organization until I succeeded Dave as President and fielded telephone calls and attended



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

meetings and conferences because that is what Dave Burke did. This organization would not be where it is today without his efforts.

In closing, it has been an honor and a pleasure to serve as an officer of your organization. Thank you for the opportunity and the confidence that you have placed in me. When I assumed the Presidency from Dave, it was basically inferred that I should just make sure that I do not screw up what had been built up over time. I hope I have not let you down.

Respectfully,

John Seebold

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FROM THE COMMITTEES.

ALTERNATE DISPUTE RESOLUTION For information about the committee, call Chair Jean Carney, 872-9023.

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CRIMINAL LAW For information about the committee, call Chair Paul Callahan, 895-2334.

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ESTATE & ELDER LAW For information about the Committee call Chair Kathleen Toombs, 465-7581.

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LAW DAY: For information about the committee, contact Chair Diane Herrmann, by calling 377-6731 or e-mailing to dianeherrmannesq@yahoo.com .

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

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REAL ESTATE For information about the Committee, contact Chair Larry Naviasky, at 374-7779 or pottnav_larry@global2000.net.

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

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**YOU BE THE JUDGE:
SHAKESPEARE EDITION
J. David Burke**

Shortly after being slammed with a money judgment, Romeo gave a promissory note and a mortgage of his property located in Verona to his father Montague. The note and mortgage were prepared by Attorney Dick Butcher. Next, Romeo formed a corporation, Capulet Inc. Attorney Butcher then prepared a quitclaim deed transferring Romeo's Verona property to Capulet Inc. Some time later, Capulet Inc. conveyed the Verona property to Mr. & Mrs. Portia for \$220,000. To finance the transaction, the Portias

obtained a mortgage from Shylock who hired Attorney Butcher to prepare the paperwork for the transaction. Horatio, the judgment creditor, then brought an action to set aside the transfers as being void and fraudulent. Shylock moved for summary judgment dismissing Horatio's claim, maintaining that he is entitled to the protection afforded by Debtor & Creditor Law § 278(1) because he did not have actual or constructive notice of Romeo's fraud.

Should the motion be granted?

[By popular demand, answers to Dave Burke's puzzler features will henceforth be included in the same issue as the question. The answer to the June *You Be the Judge* can be found later in this newsletter, but you're going to have to locate it for yourself. . .]

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**ANSWER TO APRIL
SHOULD I?**

1) Should I send a direct mail advertisement to potential clients that includes copies of newspaper articles about me?

Yes, but: A lawyer's targeted direct mail advertisement that includes copies of newspaper articles about the lawyer properly may be mailed to potential clients provided the advertisement comports with DR 2-101, and includes an appropriate disclaimer where the articles are likely to create unjustified expectations or contain claims that cannot be verified. NYSBA Opn.#624 12/16/91

2) Should I participate in a divorce mediation referral service that would use television and the Yellow Pages to advertise the availability of divorce mediators ?

No: Because divorce mediation by a lawyer necessarily entails "the use of the lawyer's services," a lawyer is forbidden by DR 2-103(C) from participating in a mediation referral service that is not operated, sponsored or approved by a bar association. NYSBA Opn 678 1/10/96

3) Should I tell the judge that the indigent defendant I was appointed to represent intentionally misrepresented his financial condition?

No: First, you must call upon the client to rectify the fraud, and if the client refuses to do so you should seek to withdraw from representation, but may not reveal the fraud unless ordered by the court to do so. Nassau County Bar Assn. Ethics Opn. 03-1.

4) Should I accept a loan from a client who was not represented by independent counsel?

Not a particularly good idea especially if there is no written agreement or the loan is not collateralized. If you do decide to do so, you must explain to the client the importance of obtaining independent

counsel and insist on the memorialization of the loan terms (see, Matter of Orseck, 262 AD2d 862 [1999]; Matter of Coxeter, 208 Ad2d 1178 [1994]).

5) Should I obtain a revocable power of attorney that authorizes me to settle a case and endorse my client's name on the settlement check?

Yes provided you make full disclosure to the client and only settle the case on terms agreed to in advance by the client. NYSBA Opn. 03-760

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RECENT DECISIONS

J. David Burke

Scantlebury v New York City Health & Hosp. Corp., ___NY3d___ [May 5, 2005]

General Municipal Law § 50-e(3)(c) does not excuse a plaintiff's failure to serve a timely notice of claim on the correct public entity as the purpose of that section is to cure improper methods of service, not service on the wrong public entity.

People v Schulz, ___NY3d___ [May 5, 2005]

For third-party culpability evidence to be admissible, there has to be sufficient evidence that clearly points out that someone besides the defendant committed the crime. Obviously the claim the butler did it is not enough.

Tikhonova v Ford Motor Co., ___NY3d___ [May 5, 2005]

Happily, if you are run over by a diplomat, his or her immunity does shield the vehicle's owner from liability.

Walls v Turner Constr. Co., ___NY3d___ [May 5, 2005]

A construction manager of a work site can be held liable as the statutory agent of the owner or general contractor under Labor Law § 240 (1) if it had supervisory control and authority over the work giving rise to the duty to conform with the requirements of 240 (1)

Matter of Nassau County Grand Jury Subpoena Duces Tecum Dated June 24, 2003, ___NY3d___ [May 3, 2003]

An individual partner of a law firm, whose firm was served with a *subpoena duces tecum* seeking production of firm records, cannot rely on the constitutional privilege against compelled self-incrimination to avoid producing the firm's records in his or her possession in a representative capacity, even if the records might incriminate him or her personally.

Pommells v Perez, ___NY3d___ [April 28, 2005]

Court holds that a plaintiff who terminates therapeutic measures following an automobile accident, while claiming "serious injury," must offer some reasonable explanation for having done so in order to survive a motion for summary judgment. A reasonable explanation accepted by the Court was plaintiff's physician's determination that further medical treatment would be only palliative in nature. Not content to stop, the Court went on to hold that when a defendant presents evidence that a pre-existing degenerative disc condition is the cause of the plaintiff's alleged injuries, the burden shifts to plaintiff to come forward with evidence addressing defendant's claimed lack of causation.

The Argo Corp. v Greater New York Mut. Ins. Co., ___NY3d___ [April 5, 2005]

Liability policy requires insured to give notice of an accident to the insurer as soon as practicable. Court holds that the failure to comply with this condition precedent vitiates the contract and the insurer does not have to show prejudice. However in,

Rekemeyer v State Farm Mut. Auto. Ins. Co. ___NY3d___ [April 5, 2005]

Plaintiff did not submit her notice of a SUM claim as soon as practicable. Court held that where an insured previously gives timely notice of the accident (apply for no-fault benefits), the insurer must establish prejudice before it may properly disclaim.

Toefer v Long Island RR ___NY3d___ [April 5, 2005]

Workers fell when working on, or getting down from the surface of a flatbed truck that was between four and five feet off the ground. They may not recover under Labor Law § 240 (1) because this is not the type of situation that calls for the use of a device like those listed in § 240(1) to prevent a worker from falling.

People v Aiken, ___NY3d___ [March 31, 2005]

After tracing the history of the duty to retreat from 1532, the Court reaffirmed the rule limiting the no duty to retreat rule in the face of deadly force to inside a dwelling. Here the defendant was standing in the doorway, not inside his apartment, when he killed the victim. The Court held he was not entitled to a jury instruction that he had no duty to retreat since the doorway was not a place from which nonresidents could be excluded.

JMD Holding Corp. v Congress Fin. Corp. ___NY3d___ [March 31, 2005]

Points out that the trend favors freedom of contract through the enforcement of liquidated damage provisions

as long as they do not clearly disregard the principle of compensation.

People v McClemore, ___NY3d___ [March 31, 2005]

CPL 530.13(4) provides that an order of protection expires 3 years from date of expiration of the defendant's maximum sentence. Defendant given 15 years to life. Court sets expiration date of order of protection 100 years from date of sentence. Court says OK.

People v Andrades, ___NY3d___ [March 29, 2005]

Discusses an attorney's obligation to the court and client when he or she believes the client intends to commit perjury upon taking the stand.

Slate v Schiavone Constr. Co., ___NY3d___ [March 29, 2005]

Another reminder that an extension "in the interest of justice" under CPLR 306-b to serve a defendant is not automatic. Here plaintiff's lack of diligence and long delay conspired to deny him relief.

People v Catu, ___NY3d___ [March 24, 2005]

The failure of a court at a plea allocution to advise a defendant who is pleading guilty to crime that carries with it a determinate sentence requires the reversal of the conviction without the defendant having to establish that he or she would not have pled guilty had he or she known of the post-release supervision.

Holy Temple First Church of God in Christ v City of Hudson, ___AD3d___ [April 28, 2005]

If your cellar floods you can collect from your local government if you can prove that municipality had notice of a dangerous condition, it neglected to make reasonable efforts to inspect and repair the defect and such neglect caused you injury. Query? How do you know before the flood that the underground sewer lines are defective?

Vanderwiele v Steiglehner, ___AD3d___ [April 28, 2005]

Is this a Labor Law § 240 (1) case? Employee spraying insecticide on the exterior of a building falls off ladder. No, because the work he was performing was not an activity, like painting or cleaning, protected under Labor Law § 240 (1).

Rector v Calamus Group, ___AD3d___ [April 28, 2005]

Home inspection contract limits inspector's liability to the amount of the inspection fee (\$205). Court says contract is enforceable since a clear contractual provision limiting damages is OK absent a special

relationship between the parties, statutory prohibition, or an overriding public policy.

Matter of Clark v Oswego County Self Ins. Plan, ___AD3d___ [April 21, 2005]

In the field of workers' compensation, to establish a viable claim for mental injury premised on work-related stress, the stress must be greater than that which usually occurs in the normal work environment.

Torrington Indus. v Southworth-Milton, ___AD3d___ [April 21, 2005]

Contractual language that a seller has made no representations regarding a piece of equipment's condition and that a purchaser, after inspecting the equipment, has agreed to purchase it "as is" is sufficiently specific to bar a claim that the buyer was fraudulently induced into entering into the purchase contract.

Matter of County of Clinton, ___AD3d___ [April 21, 2005]

A motion to reopen a default judgment of tax foreclosure must be made no later than one month after entry of the judgment.

Adirondack Combustion Tech. v Unicontrol, ___AD3d___ [April 14, 2005]

A claim based upon a breach of an implied warranty requires a showing of privity between the manufacturer and the plaintiff when there is no claim for personal injuries.

Lower v Village of Watkins Glen, ___AD3d___ [April 14, 2005]

A party seeking to invoke equity to reform a written agreement based upon a purported mistake bears the burden of showing a mutual mistake by clear and convincing evidence.

Martin v Columbia-Greene Humane Socy., ___AD3d___ [April 14, 2005]

If you are a volunteer at a not-for-profit organization, you are not entitled to the protection afforded by N-PCL 720-a (protects directors, officers and trustees who serve without compensation from liability).

Milark v Meigher, ___ADd3d___ [April 14, 2005]

Party submits evidence in support of application to enforce separation agreement. Other party fails to submit evidentiary material raising a question of fact regarding his or her compliance; no hearing is required prior to the issuance of an order enforcing the agreement.

Matter of Kelly, ___AD3d___ [April 14, 2005]

The proper venue for proceedings involving a lifetime trust is the county where the trust assets are located, the grantor was domiciled when the proceedings were commenced or a trustee resides.

Matter of Palma, ___AD3d___ [April 14, 2005]

Apparently, you can initiate a proceeding seeking advice and direction from a Surrogate. Court implies that a jury trial is not available in such situation.

Nissen v Nissen, ___AD3d___ [April 14, 2005]

Generally, a custodial parent should be allowed to remain in the marital residence until the youngest kid becomes 18. This is good news as it means I can stay until I'm 68 and then move to the Eddy.

Gage v Monescalchi, ___AD3d___ [April 7, 2005]

Remember when you win a case, and what SCBA member doesn't, you are not entitled to recover counsel fees from the defendant unless authorized by statute, court rule or written contract.

People v Burns, ___AD3d___ [April 7, 2005]

Defendant passenger's mere presence in a vehicle where drugs are found is not sufficient evidence of constructive possession.

Matter of James P., ___AD3d___ [April 7, 2005]

To establish entitlement to a new hearing in a Family Court matter based upon a claim of ineffective assistance of counsel, the movant must demonstrate that he or she was deprived of meaningful representation and that he or she suffered actual prejudice as a result.

Usack v Usack, ___AD3d___ [April 7, 2005]

Where it is found that one parent has alienated the children from the other parent, suspension of child support is an appropriate remedy as long as children would not become public charges as a result.

State of New York v Dennin, ___AD3d___ [April 7, 2005]

If you represent someone in an action brought by the State under Navigation Law §181 (1) to recover clean up and removal costs of a petroleum spill, you cannot contest the reasonableness of the costs in the action; instead you must do so in a CPLR article 78 proceeding. Are we elevating form over substance?

People v Gudz, ___AD3d___ [April 7, 2005]

To invoke the mistake in fact defense, a defendant does not have to show that his or her mistake was reasonable under the circumstances

People v Dort, ___AD3d___ [March 31, 2005]

Holds that *Crawford v Washington* (541 US 36) is not applicable to a Sex Offender Registration Act risk assessment hearing because such hearing is not part of a criminal proceeding.

Matter of Wittenberg Sportmens' Club v Town of Woodstock Planning Bd., ___AD3d___ [March 31, 2005]

A reminder that a court cannot adjudicate a dispute raised in a CPLR article 78 proceeding unless the governmental agency that made the determination is a party thereto.

Matter of Fellows, ___AD3d___ [March 31, 2005]

Court declines to abandon rule that the right of election against a will is a personal right, which dies with the surviving spouse, which means that an estate of a surviving spouse cannot exercise the right of election.

Cordani v Thompson & Johnson Equip. Co., ___AD3d___ [March 31, 2005]

Discusses the three factors that are applicable to cases where the plaintiff claims a product without an optional safety feature is defectively designed because

the equipment was not standard. This is a well-written opinion by J. Carpinello with the usual outcome

Olsson v MacDonald, ___AD3d___ [March 31, 2005]

Practice Point: A party in a civil action may be collaterally estopped from challenging liability when that party has pleaded guilty to criminal charges addressed to the same incident.

Engelman v Girl Scouts-Indian Hills Council, ___AD3d___ [March 24, 2005]

Plaintiff commences action claiming disability discrimination under the Human Rights Law, then applies for and receives Social Security Disability Insurance. Court points out the receipt of SSDI benefits does not automatically preclude plaintiff's action but he is required to explain any inconsistency between an SSDI application and his claim that he was able to perform the essential functions of his position, at least with reasonable accommodations.

Matter of Cruz v New Millennium Constr. & Restoration Corp., ___AD3d___ [March 24, 2005]

Worker's Compensation Law §54 (5) precludes a worker's compensation insurer from invoking Insurance Law § 3105 (b) to retroactively cancel a policy that has been obtained by fraud.

O'Banner v County of Sullivan, ___AD3d___ [March 24, 2005]

A police officer in a patrol car responding to a police call or dispatch is engaged in an emergency operation within the meaning of V&T Law § 114-b and therefore can only be held liable if his or her conduct demonstrated a reckless disregard for the safety of others. The nature of the call however is relevant in determining whether the cop's conduct was in reckless disregard for the safety of others.

Matter of Valentine v American Airlines, ___AD3d___ [March 17, 2005]

The term "surviving spouse" in Workers' Compensation Law § 16 (1-a) does not include a nonmarried domestic partner. Note that Workers' Compensation Law § 4, which applies only to 9/11, deems domestic partners to be surviving spouses for death benefit purposes.

Hinlicky v Dreyfuss, ___AD3d___ [March 17, 2005]

Evidence Point: So long as a medical reference material is reliable, it will be admissible if used to explain a physician's decision making process and not offered as per se evidence of a standard of care. Here the item was a flow diagram, or algorithm, that is used

by physicians to evaluate a patient's preoperative need for a cardiac evaluation.

People v Cancer, ___AD3d___ [March 17, 2005]

Another evidence point (more of this & you guys won't need Richardson): Once a prima facie case of conspiracy is established, the statements of each coconspirator are admissible against every other coconspirator which is an exception to the general rule that an admission by one defendant is not binding upon and may not be used against another defendant.

Matter of Stuckelman, ___AD3d___ [March 17, 2005]

Is a legal secretary an independent contractor? No says the Court because she was paid on an hourly basis, was required to account for the hours she worked; needed the office manager's permission to change her work schedule; performed her duties at the law office, used its equipment and supplies and answered the telephone. The fact she claimed to be an independent contractor and deducted expenses on her federal tax return as if she were self-employed made no difference.

Bard v Jahnke, ___AD3d___ [March 17, 2005]

Gored by a bull? Owner will not be strictly liable for your injuries unless he or she knew or should have known of its vicious or violent propensities, because a bull is a domestic animal. Court also reaffirms its position that it will not adopt the enhanced duty rule espoused under certain limited circumstances by the First and Second Departments. I suppose I could say that this no bull, but I won't. See also, *Mindel v Jones*, ___AD3d___ [March 17, 2005], a case involving a dog with the same holding.

Brooking v Polito, ___AD3d___ [March 17, 2005]

In a medical malpractice action, punitive damages are only recoverable where the conduct in question shows a wrongful motive on the defendant's part, willful or intentional misdoing, or a reckless indifference equivalent to willful or intentional misdoing. Not an easy burden I'd say.

Matter of Aretakis, ___AD3d___ [March 17, 2005]

Because the matters referred to in the complaints against petitioner concerned public statements that were already part of the public domain, petitioner attorney could make the contents of the complaints public, an exception to the confidentiality rule set forth in Judiciary Law § 90 (10).

Redder v Redder, ___AD3d___ [March 10, 2005]

Court has no authority to compel the parties in a contested custody proceeding to pay the legal fees and

expenses of a Law Guardian appointed pursuant to the Law Guardian Program

People v Coutant, ___AD3d___ [March 10, 2005]

Not only don't you make the best-dressed list, but you get arrested when the police observe you sleeping in your car that is parked on the highway and you are only wearing a hockey jersey, thigh-high stockings, and a condom.

People v Russell, ___Ad3d___ [March 10, 2005]

Juror indicates that defendant's failure to testify might influence his determination. Defense counsel challenged the juror for cause, the DA objected and the Court denied the challenge. Court holds that where a challenge for cause on this ground is denied and a defendant subsequently exhausts his or her peremptory challenges prior to a jury being sworn, an ensuing verdict must be set aside.

Church v NYS Thruway Auth., ___AD3d___ [March 10, 2005]

Practice Point: When no order or final judgment has been entered on a verdict or decision, collateral estoppel is inapplicable.

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MESSAGES FROM THE COURTS AND OTHER OFFICIALS/ORGANIZATIONS

A very useful web address is

http://portal.courts.state.ny.us/pls/portal30/internetdb_dev.menu_internetdb.show

This is the NYS Unified Court System Attorney Registry look-up page address. You can use it to locate another lawyer—if s/he is currently registered in New York State, s/he'll be in there. In fact, if s/he's *been* registered in living memory s/he'll probably be in there; there is information for attorneys who died before the Internet was even thought of!

The site will give you the most recent address and telephone number known to OCA, as well as telling you the Attorney's current registration status.

**WWW.SCHENECTADYBAR.COM—
WEBSITE MANAGER BADLY NEEDED**

We need someone to assume responsibility for the management of the Association's website. (Visit the site at the address above to see just how long it has been since anyone was performing this function!)

Information is posted to the website, and other maintenance duties are performed, by Terry Burton of Schoharie. However, someone needs to provide Terry with the information to post.

The Website Manager would be expected to visit the website on a regular basis to make sure the content is up-to-date. At the same time, s/he would be expected to think about new and interesting things to do with the website, continuing to use Terry for the actual implementation. Ultimately, such a person would be responsible for thinking about the website as a way to present information about lawyers (especially, of course, *Schenectady* lawyers) to the public in a positive way. . . S/he might, for example:

💡 come up with topical stuff to replace the 9/11 tribute to the right of the homepage, and think of ideas to keep it current.

💡 think about replacing the generic pictures in the collage at the top of the home page with SCBA pictures: perhaps a picture from the Supreme Court admission trip, pictures of recent winners of SCBA awards, a picture of the winning mock trial team?

💡 consider new features to make the site interesting and useful for members and the public alike.

The Manager would then be responsible for locating necessary material (such as pictures) and working with Terry to get them onto the site.

The Website Manager would also be responsible for checking periodically to make sure the Legal Links are still valid, and scouting out new and useful ones, as well as giving Terry information needed to keep the Calendar of Events current.

No special qualifications, although some familiarity with the capabilities and possibilities of personal computers is probably important.

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REPORT:

THE SEARCH FOR MISSING WILLS

There's nothing new to report, folks, but **KEEP THOSE CARDS & LETTERS COMING IN!**

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SCBA RECORDS AND ARCHIVES

I wish I had had an opportunity to tell Gerry Hennessey how excited Arlene and I were at getting his old Bar Association files. We've found some treasures in his well kept folders—I think we would both have liked the chance to say "Thanks, Gerry! This is great!"

If you've got Association files, please don't make us wait until your death—which we hope (for each and every one of you) will be a *long* way in the future. Give us a call (Kathryn McCary, 377-6489) and we'll come pick them up. You will be simultaneously relieved of a responsibility and rewarded with praise—what could be better?

While we're on the subject of files:
The SCBA office needs another filing cabinet. If your office has an excess filing cabinet that you'd be willing to get rid of, please let us know:
377-6489

ANSWER

JUNE YOU BE THE JUDGE

No, because the knowledge gained by Butcher while representing Romeo is imputed to Shylock who is bound by such knowledge although Romeo may never have actually told him about the previous transactions. Thus, there is a question of fact as to whether Shylock had constructive knowledge of Romeo's alleged fraudulent transfers. *Skiff-Murray v Murray*, ___Ad3d___ [April 14, 2005]

INTERESTED IN GETTING INVOLVED?

To join an SCBA committee, contact:

Alternate Dispute Resolution—Jean Carney
Criminal Law—Paul Callahan
Estate & Elder Law—Kate Toombs
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]

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GOT NEWSLETTER CONTRIBUTIONS?

If you have something you want included in a future newsletter, the following are the deadlines for 2005-2006:

September (Mailing Date 30)—August 12

November (Mailing Date November 8)—October 21

January (Mailing Date January 10)—December 19

April (Mailing Date April 11)—March 24

June (Mailing Date June 6)—May 26

CLASSIFIED ADVERTISING

SPACE AVAILABLE

Office Space Available: 514 State Street, Schenectady, 1st or 2nd Floor, single offices or entire floor (2,400 sq. ft.) Short walk to Courthouse. Some furnishings available. Contact: Richard M. Antokol, 370-2500

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MINUTES--SCHENECTADY COUNTY BAR ASSOCIATION--MEMBERSHIP

REGULAR MEETING--April 21, 2005--12:00 p.m.--The Glen Sanders Mansion, Scotia, NY

The meeting was called to order by President Seebold at 12:20 p.m., 30 members of the Association being then present and constituting a quorum.

President Seebold welcomed the judges present.

MINUTES OF PRIOR MEETING

The minutes of the January 20, 2005 meeting were approved by general consent.

TREASURER'S REPORT

Treasurer Robert Hoffman was unable to be present at the meeting. A written Treasurer's report was distributed, copy attached to the official copy of these minutes. The Treasurer's Report was accepted by general consent.

PRESIDENT'S REPORT

President Seebold noted a sad event and a happy event. George Pulver, Greene County Court Judge, has notified the Association that there will be a memorial service on May 25, 2005 for Greene County Supreme Court Justice George L. Cobb. There will be an open house in celebration of the 90th birthday of J. Raymond Amyot, retired Administrative Judge of the 4th Judicial District on May 19, 2005, preceding the Saratoga County Bar Association's May meeting.

Barbara King has been reappointed as a delegate to the New York State Bar Association. Dave Burke has been appointed to replace Peter Coffey, whose term has expired.

The President noted that the Association has received brochures for the Court System's legal fellows program, which are available to anyone interested. He also noted that the Association has donated Five Hundred Dollars (\$500) to the Red Cross for Tsunami Relief.

ELECTION OF THE NOMINATING COMMITTEE

President Seebold appointed Paul Briggs and Diane Herrmann as tellers to distribute, collect and count ballots for the election of a nominating committee.

COMMITTEE REPORTS

MEMBERSHIP

It was announced that Barbara L. Guzman, Christina W. Meier, Demostene Romanucci, William J. Sanderson, and Emily Titsworth have applied for membership, and will be admitted effective immediately.

MOCK TRIAL

The winning Mock Trial Team was Notre Dame-Bishop Gibbons. They will be going on to the Statewide competition in Canton.

REAL ESTATE

The seminar will be held May 19, and promises to be very informative.

LAW DAY

Chair Diane Herrmann reported that the event this year will start in City Hall, where the INS ceremony will be held in the Council Chamber. Following the ceremony Judge Clark, together with representatives from the Public Defender and the District Attorney's Offices, will do a presentation to the Middle School participants on the criminal justice system. They will then visit the police station, where they will observe the proceedings in Judge Versaci's court, and tour the jail. Lunch will be at the Sons of Italy Hall on Liberty Street at 12:30.

Association members were urged to sign up for outreach tables.

MEMORIAL AND SUNSHINE

Committee Chair Neil Moynihan offered the following resolution in memory of Gerald Hennessy

WHEREAS, Gerald T. Hennessy died at St. Clare's Hospital on the 12th day of February, 2005 at the age of 91 years; *and*

WHEREAS, he was a native Bostonian, having graduated from the Bentley School of Accounting and Finance, he became a Schenectadian nearly 70 years ago upon his employment with the local G.E. Company in its accounting and auditing field; *and*

WHEREAS, like so many others of his great generation, Jerry's career was placed on hold by World War II, of which he was a veteran, having served his country honorably with five years of active duty in the armed services, inclusive of three years in the Pacific theatre, and upon his return, he continued to serve his county and community, as a member of the active army reserves for more than two decades, attaining the rank of lieutenant colonel; *and*

WHEREAS, subsequent to his military service, Gerald entered Albany Law School of Union University, from which he graduated in 1950, embarking upon a long and distinguished engagement in the general practice of law in our community from 1951 to the time of his death; a period in excess of fifty years; *and*

WHEREAS, throughout his legal career, Attorney Hennessy was possessed not only of a keen knowledge of the law itself, but moreover, he diligently practiced his learned profession with competence and honor, always putting his clients' best interests first; *and*

WHEREAS, he was an active member and past president of this Schenectady County Bar Association, which recently paid honor to him by recognizing him as an outstanding lawyer. Jerry was constantly amongst the first

in volunteering to aid this organization and the people it serves. He acted as our parliamentarian and undertook the redrafting of the extensive bylaws of our local bar association; *and*

WHEREAS, in addition, he was a member of the American and New York State Bar Associations, as well as the American Trial Lawyers Association. Both his colleagues and the bench have readily attested to his abilities and recognized his thorough preparation for trial and other legal proceedings. For more than twenty years, Jerry was a member of the committee on character and fitness for admission for the New York State Bar; *and*

WHEREAS, he provided wise counsel to the Schenectady Municipal Housing Authority for several years during the nineteen sixties; *and*

WHEREAS, always a gentlemen and normally low-keyed, in the heat of battle, he had been known to occasionally invoke his feisty flair, mellowed with a bit of his Irish wit; *and*

WHEREAS, Gerald T. Hennessey, served his community in additional ways, through membership in Kiwanis for more than fifty years, serving as President of the Niskayuna Kiwanis Club, Lt. Governor of Mohawk Division and in other offices of New York State Kiwanis International; *and*

WHEREAS, being a man true to his faith, he was a familiar figure in his ongoing participation in the activities and support of his church, as a devout communicant of St. Helen's Parish; *and*

WHEREAS, he was predeceased by his wife, the former Blanche L. Male in 1991, survivors include his sisters, Frances T. Hennessey, Loretta E. Walsh and Mary G. Berthiaume and several nieces and nephew. He will be sorely missed by many, as friend, advisor and colleague, for a personal and professional life well done; *now therefore, be it*

RESOLVED, that the Schenectady County Bar Association records with sorrow the death of Gerald T. Hennessey, Esq. and takes this occasion to note publicly the loss of an attorney who, in his professional, community and personal life, exemplified integrity of the highest character, *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 Gerald T. Hennessey's family.

Thereupon, on Motion of Chair Neil Moynihan, the Resolution was unanimously adopted.

President Seebold noted that Gerry loved this organization, and displayed his lifetime achievement award prominently in his office. He will be missed.

OTHER BUSINESS

Michelle Wildgrube reported on the meeting of the Federated Bar for the Fourth Judicial District, held last week in Montreal. It was an excellent meeting with good CLE opportunities, and well attended by members of this Association. She noted that Nick Tishler, who has just completed his term as President of the Federated Bar, has done a great deal to facilitate the interaction between our bar associations and the Quebec bench and bar which is an important feature of the Montreal meetings.

Peter Coffey reported on the recent action of the New York State Bar Association House of Delegates, which voted in support of providing gays and lesbians with legal protections equivalent to those of married heterosexuals, and which voted to expand the definition of *pro bono* work while reducing the aspirational goal for hours of *pro bono* work each week.

RECOGNITION OF THE 50-YEAR PRACTITIONERS

President Seebold recognized two members who have reached 50 years in the practice: Neil Moynihan and Romolo Versaci, and presented each of them with resolutions from the State Assembly and Senate, a Commendation from Assemblyman Tonko, and a plaque from the Association.

Neil Moynihan noted that he has loved his fifty years of practice, which he didn't know would happen back when Ro used to take him back and forth to school and "made me be a lawyer," and that he still loves it and will practice "as long as the good Lord lets me.:"

Romolo Versaci stated that he was overwhelmed, and wanted to thank his family for putting up with him all these years because "I'm not always easy to get along with—I'm a hard fighter but I think I'm fair." He too loves being a lawyer, and hopes he can practice until the day of his death.

REPORT OF THE TELLERS

The Tellers reported that the following have been elected to serve as the Nominating Committee:

J. David Burke, Chair
Paul Briggs Dennis Englert
Robert Carney Larry Gordon

There being no additional business to come before the Membership, the meeting was adjourned at 1:00 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.

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.

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.

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.

CAPITAL DISTRICT WOMEN'S BAR ASSOCIATION

THE LEGAL PROJECT

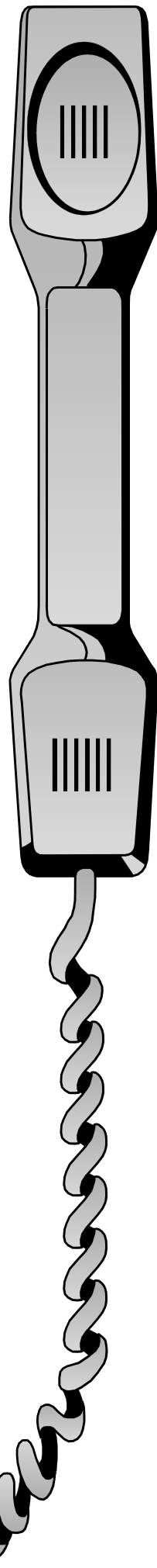
435-1770

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

Not-for-Profit local providers of CLE programs tend to take a break over the summer—but look for us again next fall!

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

Come on in—You will find:

- Dave Burke as Bard
- John Seebold's Farewell
- A couple of Answers

See you at lunch, June 16!

“The rule of joy and the law of duty seem to me all one.”

Oliver Wendell Holmes, Jr., *Speech at Boston Bar Association Dinner, 1900*