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BY RYAN TARINELLI

Judge sailed to a state Supreme Court seat last fall after Gov. Andrew Cuomo elevated one of her main opponents to a separate Judicial post, political insiders say.

Alexandra Murphy, 36, has quiet-ly started a 14-year term as a state

ly started a 14-year ferm as a state Supreme Court judge in the Ninth Judical District, which covers five counties in the mid-Hudson region. Murphy, who is the daughler of Chief Judge Jane DiFlore, is set to make a salary of \$210,900. The governor nominated one of Murphy's main competitors, court attorney Veronica Humme, as a judge for the state Court of Claims in July 2020, according to party insiders. That move cleared the path for Murphy to receive

the path for Murphy to receive the Democratic party nomination

the Democratic party nomination less than three weeks later, which earned her a spot on the ballot under the party line, they said. "I felt that was an embarrass-ment to the party," said one judi-cial delegate, weighing in on the maneuver that allowed Murphy

DiFiore's Daughter

Secured Judicial Post

In Wake of Cuomo Move

An ALM Publication

IN RRIFE

Pandemic Likely Fueling Firms' Work With ALSPs

The market for alternative legal service providers is growing by leaps and bounds—and most law firms are reaping the benefits, according to a new report.

ents, according to a new report. Released Thursday, the Thomson Reuters report on ALSPs estimated the size of the ALSP market at the end of 2019 at nearly \$1.3.9 billion. This rep-resents significant growth since 2017, when Thomson Reuters estimated its size at around \$10.7 billion.

One key consequence is that now 79% of U.S. law firms and 71% of corporations now report working with ALSPs, compared working with ALSPs, compared to 72% and 70%, respectively, when the previous literation of the research was released two years ago. ALSPs—legal niche entities that older high-demand services such as document review and litigation support—are becoming much more mainstream, the report shows. "There's been a switch from perceiving ALSPs as being tisst

perceiving ALSPs as being just competition for law firms to being more collaborative part-ners," said James W. Jones, a senior fellow at the Center on

sentor fellow at the Center on Ethics and the Legal Profession at Georgetown University Law Center, in an interview. "Apart from the steady growth, which has been pret-ty remarkable, I was struck by the way the so-called ALS's are becoming an established part of the legal market, Jones added. "One of the ALSPs that was interviewed was suggest-

added. "One of the Alar's that was interviewed was suggesting we shouldn't even call them
ALSPS anymore. I think that's
probably right."
While the Big Four and ALSPS
not tied to law firms make up
the majority of the ALSP marset law firms: Cantive ALSPS—
Burger King, Popeyes Operator the majority of the ALSP mar-ket, law firms' captive ALSPs— units within the law firm that use different personnel to pro-vide ancillary services—saw the most growth from 2017 to 2019. The report noted that cap-tives commanded a \$480 million share of the market #the and share of the market at the end share of the hands of 2019, which means they grew over 30% a year from their \$300 million in 2017. Still, the report contioned that the estimate may be an "underrepresentation" due to captives being hard to

noted made up most of the mar-ket with a value of \$12 billion, saw a growth rate of about 15%, while the Big Four's market expansion was pegged at 8%. According to the report, law firms' motivations for using

ALSPs has not significantly changed in two years. The primary driver is the ability to access specialized expertise, while the second-most common

increased comfort with ALSPs stems from their demonstrated

"When we first started this [ALSP market research] six or seven years ago, there were serious concerns about the identifying skepticism about confidentiality, efficiency and savings. "What's turned that around has been the extraor-dinary performance of ALSPs." The extended disruption posed by the COVID-19 pan-demic is also likely to fuel

demic is also likely to fuel nurther reliance on alternative providers, particularly as law firm partners have been forced to grow more comfortable with how technology is deployed toward legal services. "One of the highest uses of ALSPs by law firms now is in the technology sector," Jones said. "There was always some reluctance in using artificial intelligence, smart documents and predictive analytics," Jones added. 1 think you're seeing some of that reluctance disappears of the reluctance in section and the productive production of the productive productive production of the reluctance of the productive prod some of that reluctance disap-pear, particularly as a result of the pandemic."

Carrols Restaurant Group Inc., which operates Burger King and Popeyes res- > Page 4

Speaks, Does the First Amendment



The Dalton School, Former Headmaster Named as Defendants In Child Victims Act Suit

BYJANEWESTER

A FORMER student at the Dalton A FORMER student at the Dalton School on Wednesday sued the Upper East Side private school in Manhattan Supreme Court under the Child Victims Act, alleging that she was sexually assaulted by the school's former headmaster in the late 1980s.

The student, who was identi-fied in the complaint only by her initials, is represented by Mariann Wang of Cutl Hecker Wang, who wrote that her client was 14 years

ship to the ninth grade at Dalton. In addition to the scholarship

the student was told she could live in then-Dalton headmaster Gardner Dunnan's home as a "family help

er," according to the complaint.
"Instead, Dalton's headmaster repeatedly sexually abused [the student]. Wang wrote. "Dunnan used and applied the tremendous power, resources, and discretion that Dalton granted him as its long-time head of school, preying upon the 14-year-old given over to defendants' care." * Page 4



Scarpino, Noto Honored for Public Service in Transition to Private Practice at Dorf & Nelson

BYTOM MCPARLAND

A PANEL of state judges, elected officials and local leaders on Thurs-day honored former Westchester County District Attorney Anthony Scarpino's more-than 40-year career in public service, as he and his former deputy, Paul Noto, transition into private practice at the firm Dorf & Nelson. Among the speakers during the 40-minute virtual event was state

Supreme Court Justice Kathle Davidson, the district administra tive judge for the 9th Judicial Dis-trict, who credited Scarpino with charting a course for the court and the district attorney's office to navigate forced closures caused



by the pandemic in April. "We had to reconfigure the build-ing, we had to determine how we

were going to have grand juries; Davidson said in her remarks. "Those are the times wher either the relationships, profes sional relationships » Page 16

New York High Court Trims Claim vs. Bloomberg Over Supervisor's Alleged Misconduct

RY RYAN TARINELLI

NEW YORK'S highest court on Thursday affirmed the dismissal of claims that sought to hold Michael Bloomberg "vicariously liable" for conduct from a former supervisor at his company who was accused of raping another employee.

A former Bloomberg L.P.

A former bloomberg L-re-employee brought the illigation and accused Nicholas Ferris, a for-mer supervisor at the company, of harassment and rape. The lawsuit, flied in the Bronx, listed Bloomberg Lar and Fer-dalong with Bosomberg Lar and Fer-ris. Ferris has denied the allega-

tions, but could not be reached for

Court judgeships.

Murphy, who was rafed as "well
qualified" by two county bar assoclations, had a 10-year career as
an assistant district attorney in
Manhattan. She worked in a parttime role for more than half of her
time there, according to a spokesman for the officials. "He peace"

comment Thursday.

At issue in the case was whether
Bloomberg could be held "vicariously liable as an employer" under the human rights law for New York City due to his status with the com-pany, according to the Thursday pany, according to the Thansan, decision from the state's Court of

Appeals. In a 6-1 decision, the state's high materiacism, destace ingi-court found that Bloomberg was not an employer under the mean-ing of the city's human rights law. Judge Jenny Rivera dissented in

"The unique provisions of the City HRL provide for broad vicarious liability for » Page 10

DECISIONS OF INTEREST Big Law's Collections Push, Operational Efficiency

EMPLOYMENT LITIGATION: Officer's daim termination in bad faith insuf-ficient, potition to overturn order dented. Benjamin v. Brann. Supreme Court. New York. PERSONAL INJURY: City granted sum-

mary judgment dismissal, not liable under AC §7-210 for walker's injuries. Minoli v. 529 Broadway Holdings LLC. ne Court. New York PERSONAL INJURY: Defendants did

Kwan v. Confucius Plaza Tenants Ass'n. Supreme Court, New York.

Second Department

PERSONAL INJURY: Defendant's pro-posed amended answer not palpably Insufficient or patently devoid of merit. Diakournakos v. Gould Supreme

PERSONAL INJURY: Credibility Issues on accident's occurrence, conflicting testimony denies summary judg-ment. Williams v. Abaas. Supreme Court. Kings.

Court Kings.
MEDICAL MALPRACTICE: Medical

U.S. Courts

CONSTITUTIONAL LAW: State law combatting dgarette smuggling does not violate Supremacy, Commerce Clauses. Grand River Enterprises Six Nations Ltd. v. Boughton. 2d Cir.

INSURANCE LITIGATION: Plaintiff entitled to half of settlement; insurer had duty to indemnify action's defendants. Starr Indem. & Liab. Co. v. Excel-sior Ins. Co., SDNY.

CIVIL PROCEDURE: Lawsuit over wir less facilities' siting remanded; 'artful pleading' rule inapplicable. Gondolfo v. Town of Carmel SDNY.

INSURANCE LITIGATION: Court determines rightful claimant in interpleader action over policy's death benefit. New York Life Ins. Co. v. Brown. SDNY.

TRADE SECRETS: Only contract breach claim survives in action over alloged trade secrets' theft. Remede Consulting Grp. Inc. v. Harner, EDNY.

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Could Continue Into 2021

LAW FIRMS showcased their resiliency in 2020, with the legal industry seeing more than 14% net industry seeing more train 14% net income growth, according to a new analysis from Citi Private Bank's Law Firm Group. But firms that boosted their collection efforts— and remain focused on them— could be in particularly good shape this year, the analysis shows.

this year, the analysis shows. The analysis, published Wednes-day, notes that firm leaders in 2020 placed a premium on recording time and bill payment, allowing them more cash flow oversight while COVID-19 created uncertain-ty, especially in the second quarter

also lengthened as activity spiked during the fourth quarter. The increased focus on collec-tions helped drive revenue growth tions neiped drive revenue grown to 6.3% in 2020, partly driven by more work going to partners and a slight improvement in realization, the report said, even as demand declined about 0.1%. Looking at the bottom line, the industry saw average net income growth of 14.1% and ofits per equity partner growth

of 14%.

As firms doubled-down on collections and largely avoided worst-case bill-payment scenarios, some were able to meet revenue goals early on, and even delay collections into 2021, the report >> Page 10

Ruling: Collateral Estoppel Bars Syracuse Breach Claim

BY JASON GRANT

COLLATERAL estoppel bars a for-COLLATEIGN. estopped bars a nor-mer employee's claim against Syra-cuse University for breach of the implied duty of good faith, where he was fired after being directed first to take anti-harassment training, because the New York State Division of Human Rights. had already found during a fully

had already found during a fully litigated proceeding that Syracuse had a legitimate business reason for firing him, according to a state appeals court.

The ruling on the Issue by the Appellate Division, First Department was one of several legal cialins it addressed in handing down an opinion that affirmed a tri-

Online ★ The First Department decision is posted at nvil.com. al court's dismissal of ex-employee Adam DiCoby's lawsuft against the university, in which he'd lodged at least eight causes of action, includ-

ing one for defamation. ing one for defamation. In addressing DiCoby's defama-tion claim, in which he alleged that he was defamed via a disciplinary warning letter issued to him that was allegedly "published to the rest of the (university's) Administration," the appeals panel wrote, in part, that "qualified privilege attaches to statements made for a supervisory purpose in an employ-ment context," citing Murganti v. Weber.

vener. In addition, while rejecting defa-In addition, while rejecting defa-mation, the unantmore panel wrote that DiCoby falled "to plead [in his complaint] excessive publication of the letter, which is required in order to overcome the [qualified] privilege," citing Bulow v. Women in Need.

It was unclear from > Page 10



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Anytime, Anywhere:

New York Law Journal

New York Law Journal Inside

What Does the Trademark Moderotzañoa Act Have In Slore for Franchistog? by Chris P. Bussert and Mart A. Lieberstein

partners
by Dylan Jackson p3

at Court Calendars

Civil and Syrpeme Court calendars for New York and surrounding combles are now available weeks in advance at myl.com. Search cases by county, Index, Judge or party name. Important Part Information, including addresses, phon numbers and courtroons are updated daily. Only at myll.com.

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What is the Applicable Standard of Care for Child Victims Act Cases? by Gien Feinberg

Today's Tip

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When the Go Spealts, Doesthe First Amenoment Walter?

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How Wilmer Built a Winner With Help From the 'Entire Firm Community'

BY DYLAN JACKSON

PORFET Novick Belleves what makes his firm great is not any one practice group, or attorney, or client or matter. Novick, who or citent or matter. Novick, who leads Wilmer Culler Pickeing Hale and Dorr alongside Stacial Murley. Dreaks with current orthodoxy. Whereas the prevailing strategy in flig Law is to be the best alone or two things, Novick takes pride in what he sees as a well-indiced, complete firm—one that was recently a named The American Lawyers 2020 Law Firm of the Year

Year.
"It's the contribution from the entire firm community," Novick said when asked wny his firm deserved the recognition. "What I mean by that is our lawyers are strong. They get called for and take on really interesting high-profile work. Our stall is incredible, they

—of some big names lociuding.
Robert Mueller III, whose team returned to the firm after his high-profile stint as special cour nigh-pronie stint as special coon-sel investigating Russian interfer-ence into the 2016 election. Other notable additions included form er assistant U.S. attorney for Colo-rado Gina Rodriguez, former U.S. attorney for Colorado John Walsh, altomey for Colorado John Walsh, form er Durier Tangri Intellect ual property ittigator Sonal Mehta and top environmental attorney Peggy Otum. The firms case list since Janu-ary 2019 is statulasly star-studded. Wilmer was counsel to Harvard In

the landmark racial discrimination case, which the school beat back to what a Boston Globe columnist caded "a defiant delease of among."

tive action in higher education."
The firm was also counsel to
the city of Chicago in the Bligation
against the Trump administra-

tion over its "sanctuary only" sta-tus. in April 2020, the U.S. Circuit Court of Appeals for the Seventh Circuit ruled that President Donald Trump's threat to deny grant money over the city's sanctuary city policy violated the separation

of powers doctrine.
Last February, Wilmer was among the first law linns to set up a corooayirus task force. The group was led by Alejandro May-oricas, who was recently tapped by the Bideo administration to head

the Bideo administration to head up the U.S. Department of Home-land Security.

But, again, Nowick said his firm's success Des not just fit the attor-oeys it hires or its matters. He notes that Wilmer has made The American Lawyer's A-List—which historical productions are in the state of th American Lawyer's A-List—which takes into consideration not just revenues, but pro bono work and attorney salts action—for two con-secutive years. In the early months of the paidemic. Wilmer, like many times, opted to shift the burden of



Will mer Cutter Pickering Hale and Dorr has brought big names into the fold and represented clients on high-profile matters, but its success shows that the whole is even or extent that the whole is even or extent that the

the crisis ordo partners, not associates or staff. In lact, the firm's head count swelled more than 5% last year, while altorney head count across the industry change. across the industry shrunk by an average of 1.6%.

average of 1.6%.
"We're always very pleased when we're on the A-Ltst, because it speaks to econoroic diversity and pro bono work. It's another way to amptity what we're pround of as an institution. I think we do a lot

of things very well." Navick said. In the summer, as the streets filled with protesters outraged at George Floyd's killing at the hands of a Mizmescha police officer, Wittn-er went to work pro bono. The U.S. er went to work pro bono. The U.S. Conference of Mayors tapped the firm to help put together a list of reforms and recommendations aimed at building trust between police departuerds and their con-munities while rooting out racist

policing practices.

In the seven months between
the initial outland and the report's
publication, about 45 Wilmer attorneys and stall have worked on the

neys and stannave worked on tree effort and pullin nearly \$1.6 million worth of hours—ab pro bono. The film also got heav-ily havelved it predection voting rights tiligation. A number of firm attorneys contributed an "enor-mous" amount of time pro bono to create by sufficient provided. research and itigate issues related to mail-in balloting, including ballot drop box rules in Perusylvania Novick said the firm's work in this area led to a gint of paid work in post-election litigation. Accurding to the Federal Elections Commission, Witner tilled the Democ National Conmittee \$3.2 mi National Committee \$3.2 million between Nov. and Dec. \$1,000. This pipeline from relationship binking through pro bono work to eventual billing is something Novick is prood of.

We built new business and new relationships." Novick said.

1 think it is important to put out

there because it feeds into where west today."

Greenberg Traurig Sees Record Revenue as Nonequity Partner Tier Grows

BY DAN ROE

GREENBERG Traurig experienced healthy revenue and protit gains last year amid steady demand, while the firm's nonequity partner ranks continued to expand and the firm adjusted its

Creenberg, with an increase in Greenberg, with an Increase in billing rates, saw gross revenue rise 5.4% to \$1.73 billion, the firm's sevenin coisecutive year of record revenue. With a nearly 5% fichesse in all orney head county, revenue per lawyer stayed man'ty curvidad. \$1.97,000 Meanwhile, profits per equity partitiner (FEP) rose 6.1% to \$1.00 millions.

meanwhile, had a net gain of 48, expanding to 774.

In an interview, CEO Brian Dudy said the partnership shift isn't strategic. "It's simply the way the bisiness worked out this year it's not tonicative of any changein our strategy or billiow we're leveraging the firm." Duffy said. "It just hap-

ned." The expansion of the gooleguity tier continues a long-term pattern at the firm, a trend seen in many other firms as the industry careful tymanages its equity that Despite reporting record revenues over the past seven year, the firm has seen and gain of 14 equity partners in that time period, while having a net gain of 175 nonequity partners, according to ALM Legal Compass

data.
Overall, Drafty described a 2020
that was boistered by a number

of active practice areas. "We were busy: Private equity was busy, baokruptcy and restructuring were bisy, certain parts offitiga-tion, especially pharmac eutical and medical device, were busy, thealth

neid up."
Duffy sald he couldn't discuss
the firm's London office revenue
because the office's fiscal year
doesn't end until March 2021, but
he noted that "London is having a

The 2,171-afterney firm raised rates by approximately 4%, Duffy said, and saw no material change to its realization rates.

to its realization lates.
The firm saved money on travel for business development and inperson office expenses. "I can't tell you how much we saved on coffee, but a lot," Duffy said But Greenberg increased its cyberse-Greenberg Increased Its cyberse-cutty spending by 20% over prior years and added the afth care con-suring as the 40-once firm consid-ers returning its attorneys to the office. Greenberg In 2020 also closed two offices, in Boca Raton and in Nashville, Tennessee. The Boca Raton omce opened in 1997 and

Greenberg Traurig Orosa Revenus \$1,73 0,230,000 Per Longer (RPL) \$797,000 \$1 913 000 6.1% Total lawyers 2,070 Equity partners 311 ■ 2020 ■ 2019

closed in 2020 when Greenberg candidates in that market." Duty decided not to renew its lease, said. "We hirred one shareholder causing the attorneys there to to build an office, but when she move to the Hirm's Fort Law-derdale and West Palm Beach paodemic, we made the decision. derdale and West Palm Beach locations. The Nashvilte ofnce, opened in June 2019 with foropened in June 2019 With For-mer Tenhessee State Insurance Commissioner Julie McPeak at the helm, is fikely to return, Duffy said.
"We plan to reopen an office in Nashville and are already talking to

toclose temporarily."
Looking to 2021, Dutty said he

Expects more growth, especially in the firm's health care, life sciences, capital markets, real estate, and illigation practices. Duffy said the firm is encouraging employees to get vaccinated

as it considers an ultimate hybrid work model.

"Long terit, we look forward to having bwyes back in our offices whatever the new normal looks that may be "somety pe of hybrid, with more remote work happening post-yactination."

"But we will see people back in the office, whenced to be together to service clients and develop the next generation of talent. So much the hir half work of a young is savered.

of the training of a young lawyer takes place in person. Zoom lawtakes place in person. Zoom law-yer development can happen, bilt a part does require in person mentorsnip and sponsorsnip." Duity said. "durnext-generadom deserves that and our clients deserve that." Greenberg prepaid some of its expenses for 2021, although Duity declined to Xnethiy winds. "We were 30ke to start the year with very strongolatance sineetand a

a very strong balance sheetand a wesy sound Brandal position head-log into 2021," he said. For associates, year-end bomis-es were increased, but the nim

offered oo sa pplemental special fall borruses. In fleu of holding a normal summer associate program, the firm extended full-time offers to incoming 21 summer associates.

Law Firm Homepage Directory Contact: Mitchell Cohn af 973-854-2905 or mcohn@alm.com

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'Attempt To Intimidate': City's Countersuit vs. BLM Protesters Could Chill Free Speech Nationally, Observers Say

BY JASON GRANT

IN HER almost low decades of orunging civil rights lawsaffs largel-ing police abuse and misconduct, Detrott-based lawyer June Hur-Detroit-based lawyer Julie Hur-witz sald she had never seen the 'level of grafitificus widence and acts of aggression toward peame-hill professers' by police that she witnessed in Detroit Last summer. As residenis backing the Black Lives Matter movement, sparked

Lives Matter movement, sparked by the killings of George Floyd, protested duly against what they sait was a loug itstur you putter actuse in their city and authouvide, the police, according to Hurwitz, struck them with pepper spray, rubber bullets, beatings, sound capons flash grenades, random mass arrests and, in at least one instance, a violent chokehold take-

down of a protester.

By August, Hurwitz and a collection of accuracy see filed a first Amendment- and Fourth Amendment- based civil rights stat in tederal court against the police, quickly securing a temporary protestimize under not have but a protestimized. quicary securing a temporary restraining order and then what amounted to an injunction against the department's more aggressive taction. It was the type of sulfit that has long been used by protesters who betwee they're under attack by the potice, and it was similar to action is functive or many cities.



Black Lives Matter protest at Foley Square in Manhantan last year. "The counterclain in this (Detroi) case is a strategy to silence racial justice advocates that your might expect from septicinests in the South in the 1950s," law professor Micha d Steinberg said.

of post-floyd protests crisscrissed America. But what came next, in a legal niting by the city of Detroit, shocked thir witz and has caused concern among civil rights advo-cates and lawyers nationally: the

ment right to march and speak out, and she, along with other attorneys and law professors, said they believe Detroit's countersuit is both novel and dangerous. They call it a classic Strategic Lawsuit cales and lawyers nationally; the city sumched a civil compensation probability and the city sumched a civil compensation probability and worry that if it's successful, or even survives a mode declaratory ludgment marking them as influentees and a declaratory ludgment marking them as influentees are limited to the survives a consist of the survives and a declaratory ludgment marking them as influentees are limited to the survives and the survives are lawyers and a declaratory ludgment marking the survives and t Against Public Participation, or SIAPP suit, and worry that if it's successful, or even survives an motion to dismiss, it's impact may be to intrinidate and scare off many thousands of would be profesters cross of the country who suddenly would need to consider their civil

of civil conspiracy, before taking to the streets.

"It is an attempt simply fointimidate and tentily people who are doing nothing more than exercising their field. Amenoment rights," said flurwitz in a recent phone interview.

Mochael Steinberg, a tiniversity Mochael Stationery, a University of Michigan Law School professor and a former lead of the American Chri Liberties Union of Michigan, added, "it will make thousands of people think wice before they go out and demonstrate in support of racial fustice if they can be held civilly liable for things that other protesters decide to ou independently" while part of, or on the minges of, a demonstration.

"If the [U.S. Constitution's] First

nt means anythi means that tile government can-not purush a person for marching not pursuit a person for marching or organizing or social justice sim-ply because other people decided to commit vancalism or otherwise decided to break the law while associated with the event, Stein-

berg said. Detroit's countersuit alleges in Detroit's counters int alleges in part that the counter-deemdants, who are the polaritis in the August-Ned suit, including the youth-led protest-organizing group Detroit Will Breathe, other protesters and some volunteer medics. "In combination, conspired to dishum to the protection of the protection of the pro-terior of the protection of the protection of the pro-terior of the protection of the protection of the pro-terior of the protection of the protection of the pro-terior of the protection of the protection of the pro-terior of the protection of the protection of the protection of the pro-terior of the protection of the protectio the peace, engage in disorderly cooduct, indie flots, > Auge 10

Expert Analysis

FRANCHISING

What Does the Trademark Modernization Act Have in Store for Franchising?

about COVID-19, the attack on the U.S. Cap-itol, the inauguration, and the NFL playoffs, have missed the passing of the Trademark Moderniza Act of 2020 into law (TMA 20 And although many portions of the TMA 2020 won't become effective until Dec. 27, 2021, it is the most significant trademark legislation since the landmark Trademark Law Revision Act of 1988. Several of its provisions will be of great interest to the franchise co nity, and one in particular will have a significant impact in trademark

Infringement matters.

Perhaps most significant for franchisors who seek to enforce their trademarks, is that the TMA 2020 restores or continus (depending on the jurisdiction) the pre-sumption of irreparable harm in trademark cases where injunctive relief is sought. The reinstatement of the presumption reverses what has been a refusal by many courts to apply the presumption in trademark cases after 2006 based on the U.S. Supreme Court's decision in trademark cases after 2006 based on the U.S. Supreme Court's decision of the U.S. Supreme Court's decision of the U.S. Supreme Court's decision of the U.S. Supreme Court's decision in trade-dimitar presumptions in illigation for the U.S. of 2008), which eliminated similar presumptions in illigation brought under palent and environ-2020 restores or confirms (depend brought under patent and environ-mental law.

mental law.
Franchisors and franchisees
requently litigate over trademarks
in cases artising from "holdover
scenarios" where a franchisee
continues to use the franchisor's trademarks after expiration or ter-mination of the franchise relationmination of the Franchise relationship in connection with a compet-ing venture, often from the same location as the former franchised business. The Lanham Act, which is the federal stabile governing trade-mark law in the United States, pro-vides franchisors with a significant vector of the corresponding act and weapon to secure preliminary and ultimately permanent injunctive relief to address these scenarios. It

CHRIS P. BUSSERT is senior counsel and MARC A. LIEBERSTEIN is partner at Kil-patrick Townsend & Stockton.







also revives the preliminary injunction as a weapon for franchisors t stop third parties from infringin

stop third parties from infringing the franchiseed trademarks and protect the investment of their franchisees in the brand. To obtain injunctive relief, franchisors typically must dem-onstrate: (1) a likelihood of suc-cess, (2) Irreparable injury, (3) the threatened injury to the mov-

Upon promulgation of all regulations envisioned by its drafters, the TMA 2020 should be beneficial to franchisor trademark owners and the consuming public in numerous

ant outweighs the harm the relief sought would inflict on the oppos-ing party; and (4) the injunction would not be adverse to the pub-lic interest. Prior to 2006, courts routinely held that a movant was entitled to injunctive relief merely by demonstrating a likelihood of by defilious raining a interaction of a trade-success on the merits of a trade-mark infringement claim. The rea-son for this was judicial recognition of a "presumption" of irreparable harm to the movant because of the

fringement. After *eBay* and *Winter*, there has been a substantial debate over whether those holdings should be limited to their respective subject matters or given broader applica-tion to other areas of the law such as trademark infringement and other Lanham Act matters. Over the past 14 years, court decisions have been decidedly mixed on the issue of whether a presumption of Irreparable harm continues apply in trademark intringement matters. The TMA 2020 has resolved the split of authority by clarifying that in trademark intringement matters the tranchisor trademark owner enjoys. a publit blue presumption the franchisor trademark owner enjoys a rebuttable presumption of irreparable harm upon establish-ing intringement at the proof stage, or showing of a likelihood of suc-cess in proving intringement in the context of motions for temporary restraining orders or preliminary intunctions.

Injunctions. For franchisor trademark ownror trancissor trademark own-ers, the availability of a presump-tion of irreparable harm should make it easier to obtain injunctive relief in trademark infringement lith-gation. And with this presumption back in play, franchisees may think wice about using the franchisor's trademarks without permission or in a manner that fulls to comply in a manner that falls to comply with the franchise agreement's terms. But franchisor trademark owners should be mindful about owners should be mindru about the importance of showing evi-dence of actual irreparable harm resulting from the alleged trade-mark intringement rather than relying solely on the presumption. Without such evidence of actual harm, the opposing party may be able to rebut the presumption. Although loss of revenues certainly qualifles as evidence of treparable Although loss of revenues certainly qualities as evidence of treparable harm, tranchise trademark owners can also make that showing by demonstrating harm to the brand and its reputation and value in the marketplace. Such evidence may be particularly helphul in jurisdictions that previously retused to apply the presumption immediately following elbay and Winch may, at least initially, balk at its reapplication.

The TIMA 2020 next addresses a new perceived threat to U.S. trade-

The TMA 2020 next addresses a new perceived threat to U.S. trade-mark owners, including franchi-sors, primarily from foreign-based businesses and, in particular, those from China who obtain or main-tain registrations based on false or tain registrations based on faise or inaccurate use claims and/or sub-mission of fake or digitally altered specimens not actually showing specimens not actually showing use of the mark in U.S. > Page 8

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Brothers in Law: Twins Reunite As Quinn Emanuel Partners

JUSTIN Griffin has been trying to get his twin brother, Asher Griffin, to work with him at Quinn Emanuel Urquhart & Suilivan for more than

a decade now. For most of their lives, the Griffins had done nearly everything together. Both grew up in the same working-class town in New Jersey; wonang-class rown in New Jersey, both graduated from Princeton Uni-versity, where they played base-ball; both then went on to Stanford Law School. But after law school, their lives

diverged. Justin took a job at Quinn Emanuel in California; Asher and

Emanuel in Cainomis, Asner and his wife moved to Texas. In January, their paths came back together when Asher Joined Quinn Emanuel as a founding mem-ber of its new Austin, Texas, office. It is rare for anybody, but espe-cially a Black aftorney, to reach the

clairy a Back attorney, to reach the ranks of Big Law partnership. Less than 2% of Am Law 200 partners are Black. For twin brothers to do so—and at the same firm, within the Am Law 50—is perhaps one-

For the Griffin brothers, it was For the Griffin brothers, it was a journey marked by episodes of self-doubt and cultural clash, as well as benevolent mentors and lots of hard work.

"At some point you're going to have to be comfortable being uncomfortable. You'll often be the

only person of color in the room. So getting comfortable being uncom-fortable allows you to be success-tul," Asher Griffin said.

'Two for the Price of One'

The Griffins grew up in Eaton-town, New Jersey, with their Scotch-Irish mother and Black Scotch-trish mother and Black tather, neither of whom gradu-ated college. But their father had worked his way into a successful career, becoming a coder for the old "punch-card" computers at Educational Testing Services, then partyingthal experience into a job at Bell Labs and then for several investment banks. They had a happy childhood and, as is the case for many twins, they were near-inseparable. As mixed-race kids, the Griffin

As mixed-race kids, the Griffin twins had a hard time fitting in, they said. "Being mixed, you're always



on the outside of either group," Jus-tin explained. And from an early age, they knew about how they, as Black men, would be perceived in America. Their father's experience

America. Their father's experience as a professional provided them with a unique perspective. "There weren't any black people in tech, especially in the 70s. He always set the framework for what it's possible. There's no entitlement in our family. We got the taik," Ash-cred. They were feld. "You have er said. They were told, "You have to work twice as hard, don't expect

anybody to give you anything."
Like their father, who played
middle linebacker briefly in college,
the Griffin twins took to sports. In
high school, Justin Griffin had an outstanding junior year baseball campaign, batting over .500 and catching the eye of local newspa-pers and scouts.

pers and scouts.

Eventually Justin was approached by Princeton's baseball coach and asked if he would be appropriated by the support of the

ball coach and asked I he would like to play for the university on scholarship. The Griffins presented themselves as a pair, "two of the price of one" as Asher put it, and accepted the offer.

The brothers admit that Prince towass their first choice—they hoped to go to a Division 1 school or sports—and they again felt themselves as outsiders fooking in, entering the bry League where they knew none of the unspoken rules required to succeed, from the workload to the dress code. "We didn't own Maks or have LL. Bean

ting prepared for that level was difficult. Asher said. Yet the Griffins found their way, to say the least. And when their time at Princeton came to a close, they found their paths diverging for the first time. Asher took a gap year to focus on trying to get drafted as a protestional baseball player, while also applying to law schooks. He took the LSAT and utilimately accepted an offer to go to Stanford Law School. Justlin, on the other hand, got an

otter to go to Stanford Law School.
Justin, on the other hand, got an
other from the Cleveland Indians
to play minor league bail. He gave
himsed two years to try to make it
into the big leagues. But after realtzing that it wouldn't happen, Justin
also went to Stanford.
The pair reunited briefly at Stanford, when Justin began his first
year and Asher was on his third.
And the two found ways to style
connected, even tangentially. Justin began working at Online
the Dean working at Online Time.

tin began working at Quinn Emanu-el in Los Angeles after he graduated in 2004, where Asher had done his 1L summer internship.
Asher got a post-graduation
offer from Quinn Emanuel. But he
instead moved to Texas with his wife who worked at Vinson & Flidins

wife who worked at Vinson & Bixins and joined Baker Botts in 2002. For the next decade, the twins would try to recruit each other, as their careers individually bios-somed and each of them moved up within their firms.

workload to the eless code. we didn't own khakis or hawe LL. Bean cafalog in our cubby, 'Justin said.'
"The first semester was very hard. Studying at a pace and get-ard. Studying at a pace and get-ard."

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Off the Front

DiFiore-Murphy

Continued from page 1
The Democratic Party nomination is key for state Supreme Court candidates running in the Ninth Judicial District, where Democrats hold a wide voter registration admontace over Republicane.

ivantage over Republicans Murphy had the least am of legal experience among candiof legal experience among candi-dates vying for the Democratic nomination, even though she was qualified for the spot, according to several Democrats with knowl-edge about the race who spoke to the Law Journal under the condi-tion of anonymity.

ion of anonymity.

As a lawyer, she had only
worked as an assistant district
attorney but was running for a
judicial position that dealt with

In the district, there's a process for getting the Democratic nomination for a state Supreme Court seat, several insiders said. In general, past Democratic candi-dates spent several years attend-ing political party events and interviewing with local political

interviewing with local political committees, they said. That timeline appeared to not apply for Murphy, who gained the party nomination less than a year after becoming legally eligible for the judicial post, they said. Under state law, a person must be admit-

state law, a person must be admit-ted to practice law in the state for at least 10 years before serving a state Supreme Court judge. Lucian Challen, a state court system spokesman, acknowledged that Murphy handles marimonial and civil matters in Westchester Counts ea a ludge.

and civil matters in Westchester County as a Judge.
"It is not unusual for a newly elected or appointed Judge to be assigned by court administrators to a new practice of law," he said in a statement to the Law Journal. Murphy's campaign gained the endorsement of many local

political committees and several party leaders, including Reginald

Lafayette, a former Westchester County Democratic party chair. Also endorsing Murphy was Kristen Zebrowski Stavisky, who is the chair of the Rockland who is the chair of the Rockland County Democratic party. She described Murphy as someone who was smart, dynamic and perfectly capable of serving as a state Supreme Court Judge. The Westchester County Bar

Association rated Murphy as "well qualified" for the position, as did the Dutchess County Bar

Association.

Murphy did not run under her
mother's last name and many
Democrats, even those who raised
eyebrows about her campaign,

eyebrows about her campaign, sald she never brought up her mother's position during their interactions with her. Some party members said the high-profile status of Murphy's mother was unavoidable, raising questions cour between my best over how her m oublic prominence impacted the

"The Chief Judge neither appoints nor anoints Judges, including her daughter," Challen

sald in a statement.

DiFlore, who herself was nomi-nated by Cuomo, is the head of New York's judicial branch and the state's top court. She also over-sees a multibillion-dollar budget

and a sprawling court system that includes judges and nonjudicial employees across the state.

Her reputation runs deeper in Her reputation runs deeper in Westchester County, where she previously served as a county court judge and spent many years as the county's district attorney, said one judicial delegate. DiFlore and Murphy did not make themselves available for an infection.

an interview.

Prosecutorial Career

A graduate of Fordham Univer-sity law school, Murphy spent more than 10 years as a prose-cutor for the Manhattan district

cutor for the Manhattan district attorney's office—an experience she highlighted during her run for state Supreme Court. Murphy, who started as an assistant district attorney in September 2009, worked in a trial bureau for years before working in a quality of life unit, according

in a quality of nile unit, according to office spokesman Danny Frost. Murphy worked in a part-time role for most of her employment at the office and had transitioned to that status in 2014, he said. When she left the office in early 2020, Murphy had less than five years as a full-time prosecutor,

years as a full-time prosecution, according to Frost. Challen said Murphy went to part-time status when she had her first child and she did work as a supervisor at one point during her

supervisor at one point during her part-time status.

Knowing how to balance work and life, he sald, allows her to have more empathy for litigants and to be part of a more inclusive judiciary. He implied Murphy 'should be commended' for wanting to emulate her methods.

phy "should be commended" for wanting to emulate her mother's decades-long career. In a campaign video, Murphy appeared to reference her pros-ecutorial experience and said she had dedicated her career to public service.

"The knowledge and experience I have gained over the last decade practicing in one of the busiest courthouses in the coun-try have prepared me to serve in this next capacity," she said. The former prosecutor ran on

the Democratic and Conservative party lines during last year's gen-eral election.

eral election.
Murphy was boosted by a welffunded campaign and received
a \$10,000 ioan from her father,
Dennis Glazer, in February 2020,
according to campaign fillings. Glazer is also DiFlore's husband. Chalfen said the \$10,000 loan

was used to kick off Murphy's campaign. DiFlore and Glazer "maintain separate checking accounts," he said in a statement. Stephen Gillers, a law professor

Stephen Gillers, a law professor at New York University who focus-es on legal ethics, said DiFlore as chief Judge has limitations on her political activity, but those do not apply to her husband. Glazer, he said, does not give up his rights as a citizen due to his relationship with DiBlore. with DiFlore.

with DiFlore.
Gillers also commended Murphy for not running under her
mother's last name.
Now that Murphy is on the
bench, DiFlore should not sit on
any case in which her daughter was a lower court judge, he said.

Political Jockeying

There were four open judicial spots in the Ninth Judicial District during last year's general elec-tion. But before the Democratic party nominations were settled,

political insiders say the mair competition came down to three candidates—Murphy, Humme and Robert Ondrovic—for two

and kobert Ondrovic—for two open state Supreme County. Another candidate, E. Loren Williams, was expected to fill an open position in Orange County and Judge Sam Walker in the Ninth Judicial District was an incum-bent, making birn likely to win bent, making him likely to win

bent, making him likely to win reelection, they sald. Before the general election, Democrats in the Ninth Judicial District hold a judicial convention where they nominate candidates for state Supreme Court.

for state Supreme Court.

Last year, the Democratic
judicial convention appeared to
be headed for a contested convention, with Murphy, Ondrovic
and Hummel competing for the
two open positions, two judicial
delegates said.

Hummel had been principal

court attorney in White Plains for a state Supreme Court Judge,

according to a press release.

She had also served as the principal court attorney for a Westchester County court judge and worked as the principal court attorney for a state Supreme Court Judge in New York City, the release

sald.
Ondrovic conducted more
than 300 jury trials and practiced
for more than three decades in
state Supreme Court, according to campaign material. Attempts to reach Ondrovic for this article

were unsuccessful.

Many people wanted to back
Murphy because they saw her as
a younger candidate who was per-sonable, sald one judicial delegate from the district. It's possible that Murphy could have come out with one of the two spots even with competition, the judicial delegate sald.

"So what happened took away y risk from anybody," they said erring to Hummel's nomination

to the state Court of Claims. Less than three weeks from the judicial convention, Hummel announced on Facebook that she was confirmed as a judge on the Court of Claims and expected to become an acting Supreme Court

become an acting supreme Court judge in the Bronx.

While my application was first filed last year, this opportunity suddenly presented itself, read the July 2020 post on her Face-book page.

Hummel expressed interest in a Court of Clarks Indipositio during

Court of Claims judgeship during the summer, according to the judi

the summer, according to the Judi-cial delegate, and it was known that a Court of Claims nomination could resolve the Issue of three candidates running for two open west-thester pudgeships. "In the neat of battle, it may seem like a consolation prize. But it's not," the Judicial delegate said. Net Tina Notz-Bongar, a district leader with the Peekskill Demoratic CHy Committee, said she couldn't help but feel disheart-ened over Hummel taking the

couldn't help but feel disheart-need over Hummel taking the Court of Claims position—even though the move did get her on the beach. To Volz-Bongar, it felt like the party didn't do its Job. Democratic voters trust the party to follow a process that puts forward the best candidate, she said. "And it didn't happen that way."

And it didn't happen that way," she said. "It's so disappointing to

Dalton School

ontinued from page 1 The assaults took place in the

The assaults fook place in the Manhattan apartment Dumban shared with his wife, a Dallon teacher, as well as in the couple's second home in New Jersey. Wang wrote. In January 1987, midway through the student's ninth grade year and Immediately after one of the assaults, Dumnan's wite fold the shudent sha had to leave the apartment, Wang wrote. The student's father picked her up, and her performance in her classes at Dallon' Took a preclutious dectine. Daiton "took a precipitous decline" amid the upheaval and much ion-

Dalton 'took a precipious uscum-amid the upheaval and much lon-ger commute, Wang wrote. The student's teachers noticed she was struggling but did not take "any steps to investigate or inquire about what was happening in her life or what was wrong," Wang wrote. She eventually trans-

ferred to another school. Wang noted in the complaint that another female student is believed to have lived with Dun-nan and his wife before the plain-

tiff moved in.
In spring 1997, The New York
Times reported that Dunnan had
resigned from Dalton after more
than 20 years as headmaster. The resignation was "prompted in part by his affair with a married female

by his attait with a married remaie teacher, who continues to work at the school," the Times reported. The Child Victims Act opened a one-year window, later expanded to two years, in which survivors of child sexual abuse could file claims that might have otherwise

been time-barred. The window expires in August. Defendants in Child Victims Act sults so far have included various schools, religious institutions and community groups such as the Boy Scouts of America, according to court records. In a statement, Wang said she looks forward to proving her cli-ent's claims in court. "Even the elite and most pow-erful must be held accountable," the paid. "Silvage below coult the

she said. "Silence helps only the perpetrators. It has taken our cli-ent decades to begin to learn not to blame herself. That is precisely why New York's Child Victims Act

Why year fork a claim is was passed."
Wang's client initially sued Daiton and Dunnan in the District of New Jersey, but the case was later transferred to the Southern District. of New York and then vo dismissed, according to court

records.

A spokesperson for the Dalton
School decilned to comment,
and Dunnan did not respond to
a request for comment.

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Outside Counsel

What Is the Applicable Standard of Care for Child Victims Act Cases?

y reviving time-barred claims and extending the statute of limitations for child sex abuse until the victims' 55th birthday, the legislature has given victims of sex abuse an opportunity to seek compensation for the harm done to them many years ago. According to the Office of Court Administration, more than 4,000 cases have been filed under the Child Victims Act (CVA). Most of the cases claim Act (CVA). Most of the cases claim that a childcare institution such a school, camp, daycare center, youth recreation facility or mental health care provider negligently failed to prevent the abuse.

The standard of care has evolved as society's awareness

of child sex abuse changed. Neg-ligence, of course, is a departure from the standard of care. Thus, the Issue that must be resolved in every CVA case is whether the childcare institution departed from the standard of care.

the standard of care.
Presently, the subject of child
sex abuse is widely known and
discussed. Every childcare institution has practices and procedures
intended to reduce the risk of child
sex abuse. For claims that arise in
today's world, the factual issues whether the procedures were quate and whether the delen-

dant properly followed them.

What about claims of child sex abuse that occurred decades ago?

CVA cases have been filed for abuse that occurred as far back as the 1940s; many of the cases are for abuse from the 1950s and 60s. VIrr was dangerous or that th was a risk of sex abuse inherent in the situation. A review of the lit-erature demonstrates, however, that child sex abuse was virtually unknown until the mid-1970s and

GLEN FEINBERG, a partner at Fullerton Beck focuses much of his practice on representing individuals and insti-tutions in cases brought under the Child Victims Act. He can be reached at a feinberg@fullertonbeck.com and (2014) 203-86 at gfeinbergen. (914) 305-8676.



that institutions did not have the type of information that would rea-sonably lead them to suspect child sex abuse until many years later. Childcare institutions defending

lawsulfs for events that occurred decades ago must be judged by the knowledge and standards of the era in which the claim arose:

What would be negligence in retrospect is not negligence in prospect. It is only in prospect to fall to do what the reason-ably prudent person would have done or not done in the circumstances relative to time,

is a departure from the standard of care. Thus, the issue that must be resolved in every CVA case is whether the childcare institution denarted from the standard of care.

place, and community stan-dards, absent defined statu-

dards, absent defined statu-tory standards, that the law declares is negligent. Andre it Pumeroy, 35 N.Y.2d 361, 869-70 (1974). Examination of professional literature demonstrates that until recent times, society was simply unaware of the nature and extent of the problem of child sexual abuse. As a result, childcare organizations did not have practices and proce-dures for the prevention of child sex abuse. A defendant should not be held liable for falling to meet today's standards in the years today's standards in the years before those standards came into existence. It would be unfair, and contrary to longstanding prin-ciples established by the Court of Appeals in Andre t. Formeroy to hold an organization responsible

problem, and no consensus aroun how to reduce the risk of harm to

Many CVA complaints allege that the defendant should have known the abuser was dangerous because he paid special attention to the plaintiff. This special atten-tion, which is now referred to as tion, which is now referred to as grooming, was not known in prior decades to be associated with child sexual abuse. It would be unjust to find a defendant liable because it was not aware of information about child abusers that was not known.

or widely available at the time of the abuse.

The history of child sex abuse awareness. As late as 1975, Suzame Sgrol wrole, "Although the ploneering efforts of many distinguished professionals and dedicated by the people over the past decade have made child abuse a national issue, the problem of sexual moles tation of children remains a taboo topic in many areas." Suzanne M. Sgrol, Molestation of Children. The Last Frontier in Child Abuse, CHILD TODAY, May-June 1975 at 18, CHILD TODAY, May-June 1975 at 18, quoted in "A Short History of Child Protection in America" John E.B. Myers Family Law. Quarterly, Vol. 42, No. 3, Golden Anniversary Issue (Fall 2008), pp. 449-463 Published by: American Bar Association. John E. B. Myers noted in the Family Law. Quarterly that:

In the early 1970s, sexual abuse was still largely invis-ible, but that was about to

ible, but that was about to change. Two related factors launched sexual abuse onto the national stage. First, the child protection system-including reporting laws— expanded significantly in the 1970s. Second, new research shed light on the presearch shed light on the pre-and harmful effects of

ld. at 460. In a 1975 textbook on child abuse, Professor David R. Walters stated that, "Virtually no literature exists on the sexual abuse of chil dren." Physical and Sexual Abuse of Children, Causes and "Page 8

IN BRIEF

Continued from page 1 taurants and is one of the largest restaurant franchisees in the

start links and is to the large sets restaurant tranchiseses in the U.S., named, ared Landwa set the U.S., named, ared Landwa set the large set to the large se

contributing to the company's strategic priorities and contin-ued growth," Landaw said in a

strategic priorities and continued growth, "Landaw said in a statement. He was not Immediately available for an interview. Carrois operates more than 1,000 Burger King restaurants and 65 Popeyes restaurants. The company stated in its most recent earnings restaurant sense to the company stated in the most recent earnings reneal than 1,000 Burger King restaurant sense period for the previous year. Sales for the company's Burger King restaurants dropped 6.4%, while Popeyes Sales were up more than 17%. Carrois CEO Daniel Accordino attributed the company's financial situation at the time to the "agility and efficacy of our busness model in providing customers great value and convenience."

ers great value and convenience through drive-birn, at-the-counter take-out and delivery options along with our executional prowess in the face of a challenging operating environment.

Landaw took over as general counsel at Carrols on Feb. 8 and succeeded Markus Hartmann, who had been on the job for about a year. Hartmann is a former Marine helicopter pilot and executive for Mercedes-Berg. Research, & Development North. Research & Development North America, Inc. His next career

America, Inc. His next carees move was unclear. As Barrington Capital's top lawyer, Landaw also served as director, corporate secretary and acted as the general counsel for companies in Barrington's invest-

ment portfolio, according to his Linkedin profile. He Jofned the hedge fund in 2004.

We are excited to welcome Jared to Carrois and are confident that he will be a valuable contributor to the executive team, "Accordino stated in Landwa's hiring announcement. His expertise in providing legal oversight and guidance will be lindispensable to us as we build on the easting toundation of excellence

pensane to us as we ound on the easting foundation of excellence provided by our legal team and move our organization forward."

Landaw is a board member for Costar Technologies Inc., a Coppell, Texas-based company that makes security and video extratillation products. He has a surveillance products. He is a graduate of Columbia University School of Law.

Directors, GCs Need To Examine Board Dir

ESG Issues in 2021 Diversity and inclusion, environ-mental, social and governance (ESG) efforts, as well as getting employees back into the office safely, are among the topics that boards of directors and their general counsel should be con-cerned about in 2021, according to a report published Wednesday by Akin Gump Strauss Hauer & Feld.

Feld.

"This year, what we're doing is a proactive, hoilstic approach to governance as we talk to our clients, their boards and general counsel," Kerry Berchem, a partner at Akin Gump Strauss Hauer & Feld in New York, said of the

& Feld in New York, said of the report.

In the past year, boards of directors worked to find ways to continue business during the pandemic. They did not have to worry about the Trump admistration cracking down on diversity and ESG issues. Berchen said that is likely to change during the Riden administration.

Biden administration. Biden administration.
"COVID has impacted all of us. It just hasn't impacted all of us equally. It has exacerbated divides and highlighted recog-nitions of income inequality, diversity in the workplace and diversity in a lot of different lev-els," Berchem sald.

els," Berchem sald.
One of the Issues highlighted
in the report is diversity at the
board level. As of today, the state
legislatures of Maryland, illinots,
New York and California have
enacted board diversity-relat
ed measures. Berchem said it is likely other states will follow s by implementing some kind of board diversity mandate.

poard diversity mandate.
Outside of government entities, Nasdaq submitted a proposed rule to the Securities and
Exchange Commission in December 2020 that would require most
Nasdaq-listed companies to have
at least two diverse directors or
explain why they do not

explain why they do not.

"The Nasdaq proposal is
unique in that it came from an
exchange for the first time,"

Berchem explained.

Along those same lines, corporate ESG efforts have gained porate ESG entris have gained prominence among investors and activists in the past two years. However, there are no uniform reporting standards or metrics to guide public companies on what information to report.

"The answers are still some-what elustve. In the U.S. there has been a lack of uniformity in terms of disclosure and what metrics to utilize," Berchem said.

Right now, the SEC requir the disclosure of ESG issues there is a substantial likeliho that a reasonable investor would consider them important in deciding how to vote or make an investment decision," the

report states. Berchem s rchem said boards should Berchem sald boards should focus largely on the environ-mental and social parts of ESG. Millennials and activists are very interested in climate, she explained, and to ignore that would be a disservice to the

company.
"Activists and others are also interested in social justice. It is not a new issue but there has been an acceleration of aware-ness and a reminder for others,"

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Technology Today

INTERNET ISSUES/SOCIAL MEDIA

'Unauthorized Access' Can Be **Key in Computer Fraud Cases**





s businesses in New York and elsewhere begin to enter a second year of partiality or fully closed offices and of dealing with a workforce operating remotely, an issue that was topo-d-mind for much of 2020—computer security—should remain a key concern in 2021 and should not be overlooked or ignored.

In the past year, notorious data breaches by hackers and other

in the past year, notorious data breaches by hackers and other malevolent external forces have been regular festimes in the news. More commonly, however, business data breaches are caused by mileral action of the common of the or arguably "unauthorized access," particularly against business insid-ers such as employees who exceed ers such as employees who exceed their authority, is a question that has divided courts across the country and is currently before the U.S. Supreme Court. Van Buren v. United States, 940 F.3d 1192 (11th Ctr. 2019), cert. granted (April 20, 2020) (No. 19-783).

SHARI CLAIRE LEWIS, a partner in the Long Island office of Rivkin Radler, can be reached at shari Jewis⊕rivkin.com.

language evolved in the years since its passage. Nearly four decades ago, Congress passed the Counterfeit Access Device and Computer Fraud and Abuse Act of 1984, which includ-

"exceeds authorized access."
Almost a decade later, in 1994,
Congress broadened the CFAA. It
expanded the coverage of the provision covering unauthorized access
to include access used to break the
law. The 1994 amendment also cre-Access Device and Computer Fraud and Abuse Act of 1984, which included a new computer-crime prohibition 1030 made it a crime to obtain nation 1030 made it a crime to obtain nation assecurity information or financial records, or to use, modify, destroy, or disclose information on federal government computers, by "knowlingly accessingly a computer without authorization, or having accessed a computer with authorization, using the opportunity such access provides for purposes to which such authorization does not extend." Notably, the anonly prohibited access to computer with authorization and certain financial institutions. In 1986, Congress enacted the CFAA, which made several modifications to § 1030. Among other things, it replaced the phrase or having accessed a computer with authorization, uses the opportunity authorization, uses the opportunity authorization, uses the opportunity

time in 2008. Most significantly, the 1996 amendments extended the CFAA's scope to any "protected com-puter," which included not only federal or financial institution computers but also those used in interstate or inter-national commerce or communication. Currently, §1030(a)(2) is violated when a person intentionally accesses without authorization or "exceeds

without authorization or "exceeds authorized access" to a computer. The CFAA defines "exceeds authorized access to mean "to access a computarion and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or alter."

Plainly, by its terms, the CFAA applies to a stranger who, lacking any access rights at all, violates the law by access rights at all, violates the law by hacking into a computer. Such a bad actor may not be identifiable or may be outside the jurisdiction. However, the CFAA is also frequently used to redress the conduct of insiders, for example, when an individual with example, when an individual with authority to access an entity's comput-ers or systems as a result of the indi-vidual's employment does so for his or her own benefit or some improper pur-pose. In such cases, the Issue becomes

cases of arguably "unauthorized access," particularly against busi-ness insiders such as employees who exceed their authority, is a question that has divided courts across the country and is currently before the U.S. Supreme Court.

ated a new private right of action for enfittees that suttered damage or loss introduced to access a computer and when that access a computer and when that access a computer and when 1996, when Congress passed the Economic Explorage Act of 1996 and created the first leteriar criminal traderial criminal for the "exceeds". The meaning of the "exceeds" authorization. punishing the theft and misappropria-tion of trade secrets, and then another

The meaning of the "exceeds" equirement has been heavily debated and has divided the courts

Will Future Legal Departments Spend More on Tech, Less on Lawyers?

BY PHILLIP BANTZ

LEGAL departments are expected to begin shelling out serfous money on technology, while shedding generalist in-house lawyers as a way to cope with bigger workloads, hiring freezes, and more demands for efficiency and cost cutting, according to a forward-looking report from Garther Inc.

The legal and compilance practice arm of Garther Inc.

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The legal and compilance practice arm of Garther Inc.

The legal and compilance practice that 12% of Inchouse budgets will be devoted to legal tech by 2055, compared with 3.9% in 2020 and 2.6% in 2017.

by education and the second section in 2017.

"We're reaching a point where there's going to have to be a much more dramatic investment in legal technology," said Zack Hutto, director of advisory in Gartner's legal and compilance practice.

sory in Gartner's legal and compilance practice. "It's a very interesting dynamic," in house counsel are dealing with more work than ever before as a result of the coronavirus COVID-19 pandemic, new laws, regulations and risks. Meanwhile, Gartner staffing data suggests that legal department head counts will remain relatively fait in the near inture, according to Hulto.

usas segai department nead counts will remails relatively fait in the near future, according to thatto. The Association of Corporale Counsel released a separate study in January that showed a slight uptick in the number of chief legal officers who planned to Inter more lawyers this year. Still, more than 62% of the respondents said they weren't hiring.

nuring.
Automation, artificial intelligence, contract and
document management software and other types
of legal tech can help understaffed legal departments stay affoat or even edge ahead.

> Page 9



Apprehensions Cloud Legal's Inclusion Metric Collection and Accuracy

RY VICTORIA HUDGINS

THE DIVERSITY and inclusion questionnaires of yesteryear look nothing like the paperwork law firms are lacing now. "Filteen years ago II got a diversity survey II was very basic." says Seylarth Shaw chiel Inclusion. & diversity officer Kori Carew. "I would just provide the diversity percentage of the law firm. Then clients got wise and started to

ask, 'Who's working on my matters?"

Carew notes that these days, client questions range from detailing what type of work diverse attorneys are assigned to the firm's strategies for retention. 'It's not about the numbers

COMMENTARY

What's To Come For Cybersecurity In the Biden Era

BY ALEXANDER H. SOUTHWELL AND DANIEL RAUCH

LAST month, in response to the SolarWinds hack, then-President-elect Joe Biden oftered a simple message: "We will respond and probably respond in kind." For campaign observers, such tough talk might be unsurprising, Biden ran, after all, on a platform of "deterfring] cyber threats" and

on a platform of 'coenterjringj (cyber threats' and 'demand[ing] ... counterjring icyber and the six from conducting cyberesplonage. In In its first weeks, the administration has matched strong words with strong actions: elevating vel-eran cybersecurity leaders, calling for vast digital defense investments and laying the or renewed cooperation with allies groundwork for renewed cooperation with allies abroad and the private sector at home. Together, these devel-opments offer early answers to what the Biden administration's cybersecurity policy will look like (while, at the same time, raising important questions).

Strong Leaders and a Deep Bench

With its first hires, the Biden administration has made clear that cybersecurity will be front and center. For national cyber director, a new role established by the 2021 National * Page 8

ALEXANDER H. SOUTHWELL co-chairs Gibson, Dunn &

HOW COMPETITIVE IS YOUR **FOOTPRINT BY** PRACTICES?

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Stenography Dropouts **Find Opportunity** In Budding Digital Court Reporting Market

BY VICTORIA HUDGINS

SOME court reporters might be flighting against the digitization of their profession, but low court reporter graduation rates are also a major threat to their industry. According to a 2019 article from The Wall Street

Journal, the National Court Reporters Association estimated roughly 80-85% of students enrolled in a court reporter program drop out. But while that statistic is concerning, a legal transcription career is still feasible for non-stenographers. Indeed, evolving attitudes toward transcribing previously



COMMENTARY

Analytics Can Be Risky In the Wrong Hands

BY BARRY SCHWARTZ

RECENT years have seen dramatic advancements in ediscovery software, with some powerful analytics capabilities now often integrated as standard teatures instead of expensive add ons. Smutlaneadous, ediscovery platforms have become increasingly, ediscovery platforms have become increasingly, ediscovery platforms have become increasingly user-friendly, with visually appealing interfaces that make it easier for users to view, manage and produce their data— or so they think. In reality, the accessibility of analytics platforms can sometimes lead users to believe they understand the platforms better than they actually do. If a user is too emboldened, they may 2 Page 9

BARRY SCHWARTZ is SVP of advisory services at BIA-a lead ing national e-discovery and digital forensics company.

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Can We Prevent Another Trump Presidency Without a Conviction on Impeachment?

DESPITE the fact there has nev-er been a former resident of the White House more deserving than Donald J. Trump to be disqualified from holding any office requiring from holding any office requiring an oath to "preserve, protect and defend the Constitution of the United States," Senate Repub-licans may stifle the effort to disquality him through impeach-ment. But there are alternative nisms worth exploring.

Most constitutional scholars agree that Section 3 of the 14th agree that section 3 of the 14th Amendment presents the best alternative. It prohibits federal officials who took an oath to sup-port the Constitution, as Trump did when he was inaugurated, from holding future office if they engaged in "insurrection or rebeengaged in "insurrection or rebei-lion" or gave "aid or comfort to the enemies" of the United States. Critically, Section 5 of the 14th Amendment provides that Con-gress may enforce Section 3 by "appropriate legislation." Accord-ingly, disqualifying Trump under the 14th Amendment would only require a simple majority of the House and Senate, and not the

STEVEN SALKY is a District of Columbia criminal lawyer, who recently retired after 35 years from Zuckerman Spaeder to pursue nursing, and is now engaged in various criminal justice-related pro two-thirds of the Senate necessary for conviction in an impeachment

trial.
Of course, 14th Amend-ment legislation would require ment legislation would require establishing that Trump either "engaged in insurrection" or gave "engaged in insurrection" or gave "aid or comfort" to enemies of the United States. The current Article of Impeachment merely charges Trump with "internent of insurrection." If a majority of senators do not end up voting for conviction on the existing article of impeachment, there can be no assurance that a majority wo

of impeactment, there can be no sasurance that a majority would vote in favor of disqualification under the 14th Amendment. So what about legislation that does not proceed from the 14th Amendment? importantly, Trump engaged in the conduct leading to his impeachment as the los-ing candidate. Trump's actions to "Stop the Steal," up to and including those of Jan. 6, likely do not constitute official presider-lat conduct. Rather, they are the unofficial acts of a candidate who merely happened to be president. As such, Congress should have the same authority to disquality

As such, Congress should have the same authority to disquality him from holding future federal office as it would for anyone. Some may argue that congres-sional legislation disqualitying Trump, without either prior Sen-ate conviction of an impeachable offense or findings satisfying the 14th Amendment, would consti-tute a "bill of attainder." But a bill of attainder is a legislative act

clause does not forbid Congress from passing a law that singles out a private citizen for special treatment, so long as the treat ment does not constitute "punish

treatment, so long as the treatment does not constitute 'punishment' -A compelling angument can be made that disqualifying Trump from holding the presidency is a means of protecting the electoral processes designed by the Constitution, not a sanction for his past actions. Particularly if such legislation were supported by hearings focused on preserving he integrity of the Electoral College system, it should withstand constitutional serudiny. There is also the prospect of using criminal law to disquality Trump, at least temporarily. An othen overlooked federal law, 5 U.S.C. 7313, provides that people convicted of incling or encouraging riots or civil disorders shall, if the offense is a felony, "be including ble to accept or hold any position in the government of the United States... For five years following the dale upon which his conviction becomes final: "Thus, a leiony conviction for merely encouraging conviction for merely encouraging." the date upon which his convic-tion becomes final." Thus, a telony conviction for merely encouraging the January of rold at the Capitol could result in Trump's automatic disqualification from becoming president in 2025. District of Columbia law makes it a telony to willfully incite or urge other people to engage in a riot, it, in the course and as a result of a riot, a

Cutting Cookies: France's Fight Against Google and Amazon

BY GIANCLAUDIO MALGIERI

FRANCE'S data protection regula-FRANCE'S data protection regula-tor (CNIL) is proceeding firmly in its legal fight against cookle walls, by shooting two meaningful bul-lets at two glants of big tech— Google and Amazon. On 70 Ecember 2020, the CNIL Imposed £100 million sanctions

ainst Google (Google LLC and bogle Ireland Limited) and a Googie Ireiand Limited) and CSS million one against Ama-zon, for violating the e-Privacy Directive, over concerns about the transparency of cookies, the possibility to refuse cookies, and the informational architec-ture of cookie collection (which a secured to believe best on an is accused of being based on an opaque and defective opt-out mechanism).

PROF. DR. GIANCLAUDIO MALGIERI is associate professor at EDHEC Aug-mented Law Institute.

In the last few months, France has represented a central battle-field for the crucial question: are cookie-walls allowed under EU data protection law or not? Under the e-Privacy Directive, cookle the e-Privacy Directive, cookle-related data processing should be based on consent, except for technical cookles that are neces-sary for the provision of internet services. In addition, consent may result

an addition, consent may result from the appropriate parameters of the connection device and access to specific website content may still be made conditional on the well-informed acceptance of a cookie or similar device. If it is used for a legitimate purpose. This set of provisions seems compatible with cookie-walls, i.e. imposing cookies on the GDPR in 2016 has given under GDPR in 2016 has given under GDPR in 2016 has given do consent for dala processing if the provision of a service (including the content of the content of

ing accessing website content) is conditional on the data sub-ject's consent for unnecessary

ject's consent for unnecessary personal data, that consent is probably not free. In addition, withdrawing consent should never lead to adverse effects for the data subject (i.e., prohibiting the access to a website to subjects who constitute or the consent that each be described from their covered threat by he to a website to subjects who deny their consent should not be permitted). The European Data Protection Board has emphasised that this new concept of treedom of consent (in the GDPR) should inspire a substantial prohibition of cookle-walls. At the same time, the EU Court of Justice in the Planet49 Case 2019, autment that the dries subof Justice in the Planet49 Case (2019) affirmed that the data sub-ject's consent for cookies is not validly constituted if based on a pre-checked checkbox which the user must deselect to refuse his or her consent. Responding to these points, the CNIL adopted a case by-case approach on cookie— > Page 7

Letters to the Editor

Matrimonial Lawvers Comment on Loss Of Judges Due to Age

On behalf of the over 150 matrimonial law practitioners in a field where our clients and in a field where our clients and their children are in desperate need of wisdom, experience, and sensitivity from those judges who handle family law issues, we lament the loss of some of the best of those judges because of their having reached the age of 70. We have all become aware of the fact that 70 years of age should not be a demarcation point for judicial retirement as evidenced by the Supreme

Court of the United States, the entire federal bench, and the entire lederal bench, and the extraordinary services delivered by Judges who were previously certificated to serve beyond the age of 70.

We are cognizant that budgetary issues have created a

getary issues nave created a need to reduce expenses and that hard choices must be made to deal with that issue. We are hopeful that with a new national administration, federal ald will help ameliorate this problem. However, we urge the Governor, the Legislature, and Governor, the Legislature, and the Office of Court Administra-tion to do everything possible to preserve the talent and com-mitment of those who have served so well and have proven

themselves to be the very best models for judicial service.

The Board of Managers, Officers, and Past Presidents of the American Academy of Matrimonial Lawyers, New York Chapter

Letters Welcome

The Law Journal welcomes letters from its read-ers for publication. They must contain the names and addresses of corresponders. Letters should be of reasonable length and submitted with the understanding that all consepondence is subject to the editorial judgment of the newspaper in considering dispitization, length, relevancy, taste and other criteria. Letters may be e-mailed to manactionogenia.

Continued Emphasis on D&I on the Horizon, but Not Without Its Challenges

BY CHRISTINA TELLADO AND DEISY CASTRO

ON JAN. 20, within the first few hours of his administration, President Joe Biden signed the "Execu-tive Order on Advancing Racial tive Order on Advancing Naca-Equity and Support for Under-served Communities Through the Federal Government, 'which states that the government has as a responsibility to alfirmatively advance "equity, civil rights, racial justice, and equal opportunity.' This executive order requires federal agencies to assess "sys-temic barriers to opportunities and benefits for people of color and underserved groups" in order to develop policies and programs to address such inequities. It also revoked executive orders issued

revoked executive orders issued pytomer President Donadi Trump that prohibited certain types of diversity and hockson training and promoted "patriotic education." The prompt action taken in issuing this executive order is an unmistakable sign that the Biden administration will seek to implement and entorce progressive policies in the realm of diversity, equivalent promises to ensure diversity from the top down. Specifically, according to a Brookings institution study, Biden's Cabinet is accurated to a Brookings institution study, Biden's Cabinet is supplied to the control of the contr equivalent with Presidents Barack Obama and Bill Clinton in terms of Organia and suit clinton in terms of non-white Cabinet appointments, but includes more women than his six predecessors, in addition to several historic appointments, such as U.S. Rep. Deb Haaland, who, if confirmed, will be the first Native American Cabinet

secretary.

Biden's expressed commitment
to diversity, not to mention the
recent global attention gamered by
the Black Lives Matter movement
and various other social justice issues, has resulted in diversity, equity and inclusion taking center stage with legitimized importance in all sectors of society. Accordincrease, although they may face challenges along the way, particu-

larly due to the polarized national political divide. Recent state legislative action has been directed at promoting diversity, particularly in California. Specifically, California Assembly Bill (Ab) 579, signed into law Sept Divide Companies to have at least one director from an underrepresented community on the board by the end of 2021, and, depending on the board's size, may require additional directors from underrepresented community is the end of 2022. A "director from an underrepresented community" is defined as "an individual who self-identities as Biack, African American, Hispanic, Latino, Asian, Pacific Stander, Native American, Native Hawailian, or Alaska Native, or who self-identifies as gay, testian,

Hawaiian, or Alaska Native, or who self-dentifies as gay, lesbian, bisexual, or transgender:

AB 979 was modeled after Calfornia Senate Bil (SB) 826, which was enacted in 2018 and requires similar diversity minimum to book and the self-dentified bil (SB) 826 were the first of their kind in the United States and may serve as an indicator of and may serve as an indicator of

and may serve as an Indicator of now similar lows, from either state or federal government, may be received and the challenges that lay shead.

Not surprisingly, both of these laws continue to face legal chalenges. Specifically, in Méchand to Fudilia, SB 826 was challenged on the basis that I voldate the Equal Protection Clause under the 14th Amendment of the U.S. Coustitution. Although dismissed for lack of standing, an appeal is currently pending before the U.S. Court of Appeals for the Ninth Circuit Appeals for the Ninth Circuit (Appeals for the Ninth Circuit (Appeals for the Ninth Circuit (Appeals for the Minth Circuit (Appeals for the Minthh Circuit (Appeals for the Min over, in Crest & Pratuna (1 and 1) fled in August 2019 and September 2020, an activist group, on behalf of taxpayers, sought to enjoin the California secretary of state from implementing and enforcing SB 826 and AB 979, respectively. Both cases are pending in Califor-tal Superior Country of Campber 18 Superior Country (1)

Both cases are pending in Callior-inal Superior Court for the County of Los Angeles. Notwithstanding the challenges to Callionials board diversity laws, legislation seeking to promote diversity will likely continue. For Instance, since SB 826 was first enacted, approximately a dozer

posed legislation almed at increas-ing board diversity, although unlike the strict requirements and penal-ties under California's laws, most of the current legislation encour-

ties under California's laws, most of the current legislation encourages diversity through disclosure requirements.

Accordingly, privale companies and employees will likely continue taking steps to increase and promoted elversity. As the U.S. Supreme Court noted in 2007s Grutter is follower, and an accordingly many of American Disclosures have made clear that the stills nowed in today's increase. skills needed in today's increas-ingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints. Yet, even when a law demands increased diversity, these laws do not explain how to increase diversity without

how to increase diversity without violating the law.
As such, employers and companies who enact Initiatives to support or promote diversity may face legal challenges. Specifically, Title VII of the Civil Rights Act of 1964, which prohibits based on race, color, national origin, religion and sex, is not limited to discrimination against traditionally disadvanton against traditionally disadvanton tion against traditionally disadvan-taged groups. This means that a well-meaning diversity, equity and inclusion policy or program may result in claims of 'reverse discrimwithout taking any actual steps to put it into practice, may also result in liability. For instance, in Santiago v. Information Resources, plaintiffs aliege that the defendant announced diversity initiatives, but did not institute any substantive measures and sought to slience advocates for change. Filed in Sep tember 2020, this case is pending

tember 2020, this case is pending in the U.S. District Court for the Southern District of New York.

Although companies and employers may see an increased necessity to address and promote issues of diversity, equity and inclusion, it is important that such inflations are produced to the production of the production o tiatives and policies be carefully crafted and implemented with the advice of counsel.

CHRISTINA TELLADO is a partner and co head of Holland & Knight's national wage and hour group. DEISY CASTRO is a labo and employment associate at the firm

Judicial Ethics

Optnions From the Advisory Committee on Judicial Ethics

The Advisory Committee on Judicial Ethics responds to written inquiries from New York state's approximately 3,600 judges and justices, as well as 3,600 judges and justices, as well as hundreds of judicial neuring officers, support magistrates, court attorney-referees, and judicial candidates (both judges and non-judges seeking election to judicial office). The com-mittee interprets the Rules Govern-ing Judicial Conduct (22 NYCRR Part 100) and, to the extent applicable, the Code of Judicial Conduct. The committee consists of 27 current and committee consists of 27 current and retired judges, and is co-chaired by the Honorable Margarei Waish, a justice of the supreme court, and the Honorable Lillian Wan, a court of claims judge and acting supreme court justice.

Digest: Whether or not a judge may hold two part-time judicial positions in the same municipal court is a legal question beyond his Committee's jurisdiction. If it is determined that the dust service described is legally permissible, such serving would not otherwise violate any ethics rules or principles under Part 100. If there is a least timestiment to serve service.

the Judge may not so serve. Rules: NYS Const, art VI §§ 17, 20; Public Officers Law § 2; Second Class Cit-les Law § 19; Village Law § 3-303(3); 22 NYCRR 100.2; 100.2(A); 100.6(B) (4); 101.1; Opinions 18-57/17-166; 09-140; 06-161; 91-133.

Opinion: A part-time judge asks if he/she may hold two part-time judicial positions in the same city judical positions in the same city court, namely an elective quarter-time position and an appointive quarter-time position. The judge says the hours of the two positions will not conflict. A judge must avoid impropriety and the appearance of impropriety in all the judge's activities (see 22 NYCRR 100.2), must respect and comply with the jux and must act at

WYCHE 100.5, must when been dewith 100.5, must when the size of the comply with the law, and must at at all times in a manner that promotes public confidence in the plintain of the public confidence in the plintain of the size of th

sons (see Opinion 91-133). Our jurisdiction is limited to issuing "advisory opinions to judg es and justices of the Unified Court es and justices of the Unified Court System concerning issues related to ethical conduct, proper execution of judicial duties, and possible con-flicts between private interests and official duties" (22 NYCRR 101.1). We conclude the present inqui-

We conclude the present Inqui-y is a legal question, governed by applicable statutes and/or case law rather than the Rules Governing Judicial Conduct (see e.g. Opinion 09-140 [nothing than Village Law § 3-30(3)] prohibits a part-time village justice from serving in both an elective and an appointive village office]; Second Class Cities Law § 19 [7] No person appointive village office; Second Class Cittles Law § 19 [*No person shall, at the same time, hold more than one city office. Upon the acceptance by the city officer of a second office the first office held by him shall thereupon become vacant. Tj. Legal questions could potentially include the current class status of the city in which the ludge serves as well as the the judge serves as well as the applicability (if any) of various provisions of the Second Class Cities Law, the NYS Constitution, the Public Officers Law, and/or the charter of the city in which the judge serves.1 > Page 7

When the Government Speaks, Does the First Amendment Matter?

uch, maybe too much, has been written about whether Donald Trump's insurrectionary speech on January 6 is protected by the First Amendment. Commentators have cited Justice Oilver Wendell Holmes's Tamous apparism in Holmes's famous aphorism in Schenck v. United States that "the most stringent protection of free speech would not protect a man Screen most stringent protection most stringent protection speech would not protect a main in lakely shouting the in a theater and causing a panic. Also prominently clied is the Supreme Courts modern lest for unprotected notice and the strong protection of the strong produce of the strong produce and the strong produce the strong protection of the strong produce the strong

likely to incite or produce such action."
But the discussion is the assumes that the First Amendment gives Donadi Trump constitutional protection for his speech, regardless of the conferior or droumstances of his speech. Does it? is the First Amendment applicable to speech by the government, and most especially to a president's speech?

The Framers of our Constitution enacted the First Amendment not protect the government, they enacted the First Amendment for protect the government, they enacted the First Amendment protect the government, they enacted the First Amendment to protect the government, they enacted the First Amendment opported the government, they enacted the First Amendment to protect the government from a bridging the reaction of speech, or of the press; or the right of the people peace-aby to assemble, and to petition the Government for a redress of giverances. In enacting the Bill of giverances. In enacting the Bill of grievances." In enacting the Bill of Rights, the Framers sought to protect the citizens of America from abuses by the government, wheth-er those abuses involved repres-sion of religious liberty, arbitrary invasions of privacy, denial of fair criminal proceedings, infliction of cruel punishments, and, of course, the untrammeled freedom to communicate. The Framers enacted these rights to protect the people,

not the government.

The concept of "government speech" as a special category of speech rights is a logical corollary to the idea that constitutional rights are enjoyed by the people, not government officials. Thus, communications by government

officials, while acting in their offi-cial capacity, are not insulated from discipline, and these officials cannot look to the Constitution for not look to the Constitution for protection. On the other hand, communications by government officials that are made in their pri-vate capacity, as private citizens, could receive constitutional pro-tection.

A case decided by the Supreme A case decided by the Supreme Court nicely Hilbstrates this distinc-tion between government speech and private speech. In Garcetti t: Ceballos (2006), a deputly pros-ecutor in the Los Angeles District Attorney's Oftice defected serious inaccuracies in a police search war-

Is the First Amendment applicable to speech by the government, and most especially to a president's speech?

> rant and brought it to the attenrant and brought it to the atten-tion of his supervisor. At a meet-ing, which included several of the police officials responsible for the warrant, the deputy was criticized for his handling of the case, and he ultimately suffered retallation for his criticism. He sued, claiming he was retaliated against becau of his criticism, and he sought the protection of the First Amendment. protection of the First Amendment. The lower courts agreed with him, finding that when he after his grevance over the search warrant, he spoke "as a citizen on a matter of public concern." This is the search warrant of determine when speech by a government employee may enjoy constitutional protection.
>
> The Supreme Court reversed. When the deputy complained to his boss about the warrant, he wasn't speaking as a privale citizen, regardless of whether the Issue was on a matter of public interest. He

regardies of whether the Issue was on a malter of public Interest. He spoke as a prosecutor, fulfilling his responsibility to advise his super-visor about how best to proceed with a pending case. The Supreme Court therefore held that when public officers or public employees make statements pursuant to their official duties, "they are not speak ing as offizers for Flast Amendment purposes, and the Constitution

cations from employer discipline."

By way of contrast, if the deputy
had written a "Letter to the Edi-

had written a "Letter to the Edi-tor" of a local newspaper, or gave a speech on criminal justice reform at a public forum, in which he described how police lashly search warrants, the deputy would now enjoy constitutional protection. Here he is communicating not in his official capacity or pursuant to official duties but as a private citi official duties but as a private citi-can speaking to the public about a matter of public concern. He could be disciplined for his letter, or his forum remarks, only if his boss found an adequate justification for treating him differently than any other member of the general public, and that failing to impose disci-pline on him may have an adverse import on the oper-

adverse impact on the oper-ations of the D.A.'s office. As far as statements by Donald Trump in his capacity as president, it is difficult to think of

any statement that he has made that was not made in his official capacity, including his Twitter statements, and of course, his incendiary remarks on January 6. And if his statements are made in his official capacity, then under *Garcetti* he cannot seek refuge in the First Amendment.

the First Amendment.
Conceivably, Trump while president, during private encounters with intends, might have made statements that were not made in his official capacity as president. And if those statements are somehow legally punishable, then presumably.

Trump is used to could beak to

legally purishable, then presumably if Trump is sued he could look to the First Amendment for protection. But his impeachable statements on January 6 surely were not of that kind. Defending Trump against the use of those statements, his lawyers can make all sorts of arguments. But one argument they cannot make is that Trump's statements are shielded by the First Amendment.

BENNETT L. GERSHMAN is a Professor of Law at the Elisabeth Haub School of or Law at the Elisabeth Haub School of Law. Pace University. He is the author of "Prosecution Stories" (Twelve Tables Press 2018).

Impeachment

Continued from page 6
 bodily harm. Given the injuries and deaths that occurred Jan. 6, Trump could be prosecuted for inciting a riot and, it convicted, be barred from holding tederal office for at least five years.

An open question exists whether items blines the specific process.

disqualification, either by a previ-ously enacted statute or by new legislation, can withstand consti-tutional scrutiny when applied to the Office of the President. The Supreme Court has held that nei-ther the states nor Congress can impose additional qualifications on House or Senate seats beyond those provided for in the Quali-fications Clause for members of Congress in Article I. The ratio-nale of these decisions suggest that the Presidential Qualifica-tion Clause, set forth in Article II tion Clause, set forth in Arrice ii of the Constitution, similarly sets exclusive eligibility qualifications for the Office of the President. If so, Congress may be constitu-tionally capable of disqualifying Trump from holding a lower lederal office, but not from the constitu tionally established Office of the

tionary established Office of the President. However, 5 U.S.C. 7313 does not address the eligibility requirements for president and only imposes a temporary disability on certain people from "accepting" such office. Such a time-limited disquali-fication arguably does not interfere with the octavists eligibility crit aris. with the exclusive eligibility criteria for the Office of the President set

forth in the Qualifications Clause of Article II. For this reason, tem porarily barring Trump from the presidency upon felony conviction of the District of Columbia statute prohibiting the incitement of a riot might well withstand a constitu-tional challenge.

onal challenge. Of course, in our democracy, we eed not and should not rely on the U.S. Congress or a criminal con-U.S. Congress or a criminal con-viction to prevent a future Trump presidency. Voters ultimately determine who holds that office, despite Trump's efforts to inter-fere with this most basic constitu-tional right. To best assure Trump remains a one-term president, we must once again make our voices heard at the ballot box in the event he ever again seeks our highest

Google

«Continued from page 6 related data processing. However, while this case-by-case approach is not a strict prohibition of cook-le-walls, there is another side: considering the circumstances of the case, in some specific con-texts even "de facto" cookle-walls (i.e. Informational architectures that make the refusal of cookles very difficult) might be abustive and unlawful. That is the case of the deliberations of 7 December

deliberations are just an addi-tional episode in the long "saga" of the CNIL's activity against big tech industries about cookle walls and data subjects' freedom of consent. In January 2019, the CNIL had penalties on Google for the lack of validity of consent for ad personalisation under the GDPE consent for ad personalisation was invalid under the GDPR because people were not adequately informed and it was specific and ambigu-ous (it was based on a pre-ticked box that could be deselected only after different steps and the differ-ent data processing purposes were not clarified.)

ent data processing purposes were not clarified.)
However, these two new CNIL decisions against Google and Ama-zon are important not only for the entity of the sanctions, but because they are the first important CNIL deliberations after the CJEU case deliberations after the CEU case Planet49, and because they are after the difficult sequence of CNIL Guidelines (of 2019 and 2020) against coolide walls. The main finding that we could learn from these decisions is that not only are cookie walls (on

a case-by-case basis), likely to be unlawful, but also "de facto" cookle walls are generally unlaw-ful. In other words, forcing the data making clicks, scroits and pressing ambiguous buttons before being able to refuse cookies has the same effect of a cookie wall and should be prohibited. Looking at the broader picture, this last episode of the long and vibrant saga about cookie rules in Europe clarifies the urgency of a reform of the e-Privacy Directive.

subject to take the difficult steps of

making clicks, scrolls and pre

The prohibition of cookie walls is not explicit in EU law (the e-Privacy Directive seems to tolerate them in conflict with the GDPR's notion of consent as interpreted by the EDPB). In addition, it is not clear why In addition, it is not clear why the procedural rules of the GDPR (e.g., the cooperation mechanism) cannot be applied to the e-privacy rules too, which are instead trag-mented in many different national rules (that are often incompatible each other). However, EU reform of e-privacy rules still seem to be far from approved.

Opinion: 20-164

«Continued from pages 4
However, If a recognized body charged with providing legal guidance determines that holding these two part-time judicial positions concurrently is legally permissible, so serving would not otherwise violate any ether the product of the provider of the product of the ics rules or principles under Part 100 (see Opinion 06-161; cf. Opinion 18-57/17-166 [*a

judge does not violate the Rules Governing Judicial Conduct by fulfilling his/her statutory powers, functions, and duties ers, functions, and duties as a licensing officer in good-nath reliance on statutory author-ity and administrative guidance on how to exercise that author-ity T). Conversely, if there is a legal impediment to hoding these two part-lime positions, the judge is ethically prohibited from so serving (see generally 22 NYCRR 100.2[A]). 1. See e.g. Second Class Cities Law § 19, NYS Const and W § 17 (Town, village) and city country, jurisdediciny judge calgibility for them office or service, mattheway the complexity of the control of the construction of the construction of the construction of the state, every officer of a politic who will be constructed or the state, every officer of a politic of the state, every officer inhibit in the execution of his official hunclions to a portion only of the construction of his official hunclions to a portion only of the state. The office of a politic officer is a state officer in the condition of his officer. The condition of his officer is a facility officer.

Calendar

TUESDAY, FEB. 16

NY State Bar (CLE) Virtual Arbitrations Are Here Stay: What You Need To Kr

12 p.m.—1:00 p.m. MCLE Credits Register at: https://nysba.org/ events/virtual-arbitrations-are-here-to-stay-what-you-need-

WEDNESDAY FER. 17

NY State Bar (CLE) Accessible Banking For All: How Advances In Technology Can Help The Masses Gain More Control Over Their Financial Well-Being 11:30 a.m. – 12:30 p.m.

11:30 a.m. – 12:30 p.m. 1.0 MCLE Credits Register at: https://nysba.org/ events/accessible-bankingfor-all-how-advances-in-tech-nology-can-help-the-masses-

gain-more-control-over-their financial-well-being/ migration Law Update: Revei ing Immigration-Related Administrative Actions

1.5 MCLE Creatts
Register at: https://nysba.
org/events/immigration-lawupdate-reversing-immigratio
related-administrative-action

Practising Law Institute Social Media and Mobile Devices 2021

2021
9 a.m. – 5 p.m.
https://www.pli.edu/programs/
social-media-addressing-corpo
rate-risks

Nassau Community College Divorce during Covid

3 P.M. WHPC. 90.3 FM Radio Voice stream or Podcast www.NCCradio.org

THURSDAY, FEB. 18

NY State Bar (CLE)

ompensated Gestational Surrogacy Has Arrived: The Child Parent Security Act Becomes Effective Feb. 2020 Part II (Webinar)

9 a.m. – 12 p.m. 3.5 MCLE Credits Register at: https://nysba.org/ events/compensated-gesta-tional-surrogacy-has-arrived-the-child-parent-security-act-becomes-effective-feb.-2020-part-ii-web

Practising Law Institute Ethics for Commercial Litigate 2021

2021
9 a.m. – 11:10 AM
https://www.pli.edu/programs/
ethics-for-commercial-litigators
exesting, Trading and Doing
Deals 2021

9 a.m. - 4:45 p.m. https://www.pli.edu/program. investing-trading-and-doing-deals

FRIDAY, FEB. 19

NY State Bar (CLE)

IY State Bar (CLE)
Businesses And Workplaces
12 p.m.—1:00 p.m.
1 MCLE Credits
Register at: https://nysba.org/
events/diversity-inclusion-for2021-businesses-and-work-

July - Dusinesses-and-work-places/ ractical Advice On How To Han-dle Traffic Court Cases-Do's And Don'ts (Webinar) 12 p.m. - 1 p.m. 1.0 MCLE Credits Register at: https://nysba.org/ www.tr/crestical-advice-onregister at: https://hysba.org events/practical-advice-on-how-to-handle-traffic-court-cases-dos-and-donts-webina

MONDAY, FEB. 22

NY State Bar (CLE)

tealing Your Image and The Grateful Dead: Amendmer To New York's Right Of Publicity Law Of Publicity LSW 12:30 p.m. – 2 p.m. 1.5 MCLE Credits Register at: Stealing Your Image Register at: Stealing Your Image And The Grateful Dead: Amends ments To New York's Right Of Publicity Law - New York State Bar Association (nysba.org)

New York City Bar (CLE) Fundamentals of Enforcing

ey Judgments and Frau Transfer Litigation 4 p.m. - 6:15 p.m. https://services.nycbar.org/ EventDetail?EventKey=_ WEB022221&mcode=NYLJ Contact: Rosan Dacres, 212-382-6630 or rdacres@nycbar.

TUESDAY, FEB. 23

NY State Bar (CLE) Click, Return, Disaster! Practical

Social Media Use And Ethics For Attorneys 10 a.m.—11:15 a.m.

1.5 MCLE Credits Register at: https://nysba.org/ events/dick-return-disaster practical-social-media-useand-ethics-for-attorneys/ rder Searches And Digital

To Know
1 p.m. - 2 p.m.
1 MCLE Credit
Register at: Border Searches And
Digital Forensics: What Lawyers
Need To Know - New York State
Bar Association (nysba.org)

New York City Bar (CLE)

The Foreign Sovereign Immuni-ties Act in Art and Antiquities Matters 12 p.m. – 1:30 p.m. 1.5 CLE credits

1.5 CLE credits
Webinar Registration Link:
https://services.nycbar.org/
EventDetail?EventKey=_
WEB022321&mcode=NYLJ

Contact: Rosan Dacres, 212-382-6630 or rdacres@nycban

... stace Bar (CLE)
troduction To Military Cultural
Competency. A Guide For
Lawyers
1 p.m. - 2 p.m.
1.0 MCLE Credits
Register at: https://nysba.
org/events/introduction-tomilitary-cultural-connetence-

org/events/introduction-to-military-cultural-competency a-guide-for-lawyers/ uman Trafficking Awareness: Tools For Attorneys To Assist

Register at: Human Trafficking Awareness: Tools For Attorneys

To Assist Survivors - New York State Bar Association (nysba.

Survivors 11 a.m. – 12 p.m. 1 MCLE Credit

orge rsing Home Reform: The Federal Landsca

tion (nysba.org) New York City Bar (CLE)

ofessional Responsibili in the Wake of a Pande

Ethics Still Matter (2021 Professional Developmen

Workshop Series)
6 p.m. – 9 p.m.
3 CLE credits
Webinar Registration Link:
https://services.nycbar.org/
EventDetail*EventKey=.
WEB027421/Bemcode=WTLJ
The Basics — Part III (Drafting
Commercial Contracts: Six-Part
Lunchtime Series)
1 n.m. – 2 nm

Webinar Registration Link: https://services.nycbar.org/

WEB22421&mcode=NYLJ Contact: Rosan Dacres, 212-382-6630 or rdacres⊕nycbar.

EventDetail?EventKey=

Practising Law Institute Fundamentals of Patent

https://www.pli.edu/progra fundamentals-of-patent-litigation

Nassau Community College Pivoting Your Practice During Covid

3 P.M. WHPC. 90.3 FM Radio Voice stream or Podcast www.NCCradio.org

NY State Bar (CLE)
How To Read A Property
Insurance Policy (and Act
Understand It)
12 p.m.—1 p.m.
1 MCLE Credits
Register at: https://nysba.

Legal Issues 8:30 a.m. - 12:30 p.m.

THURSDAY, FEB. 25-FRIDAY, FEB. 26

FRIDAY, FEB. 26

Practising Law Institute Negotiating Commercial Lea legotiating Commercial Leases 2021 9 a.m. – 5:15 p.m.(Day 1) 9 a.m. – 4:30 p.m.(Day 2) https://www.pli.edu/programs/ negotiating-commercial-leases

NY State Bar (CLE) Let's Talk About Race: The Ori Of Systemic Racism In The

United States And Tips For Dismantling Those Systems By Being Actively Anti-Raci

org/events/how-to-read-a-property-insurance-policy-and-

3.0 MCLE Credits Register at: https://nysba.org/

events/all-is-not-quiet-in-wny-the-latest-environmental-legal

THURSDAY, FEB. 25

Litigation 2021 9 a.m. - 5:15 p.m.

1 p.m. – 2 p.m. 1 CLE credits

The Federal Landscape 1 p.m. – 2:30 p.m. 1.5 MCLE Credits Register at: Nursing Home

Reform: The Federal Landscape - New York State Bar Associa-

WEDNESDAY, FEB. 24

NY State Bar (CLE)

Forensic To Know

12 p.m. – 1 p.m. 1 MCLE Credit 1 MCLE Credit
Register at: Let's Talk About
Race: The Origins Of Systemic
Racism In The United States
And Tips For Dismantling Those
Systems By Being Actively AntiRacist - New York State Bar
Association (nysba.org)

New York City Bar (CLE)
9th Annual Securities Litiga

& Enforcement Institute 11:30 a.m. – 5:10 p.m. 12.5 CLE Credits
Webinar Registration Link:
https://services.nycbar.org/
EventDetail/EventKey=_
WEB022621&mcode=NYLJ
Contact: Rosan Dacres 212382-6630 or rdacres@nycbar.org 12.5 CLE Credits

TUESDAY, MARCH 2

NY State Bar (CLE)

ewing And Discussion Of Veteran Culture: Of Veteran Culture: Homemade, The Film 12 p.m. – 1 p.m. 1 MCLE Credit Register at: Viewing And Discus-sion Of Veteran Culture: Home-made. The Film - New York State Bar Association (nysba.org)

WEDNESDAY, MARCH 3

Nassau Community Colle Tips for Parents During and A

3 P.M. WHPC 90.3 FM Radio Voice stream or Podcast www.NCCradio.org

THURSDAY, MARCH 4— FRIDAY, MARCH 5

NY State Bar (CLE)

nr State Bar (CLE) Bridging The Gap – March 2021 8:45 am. – 5 p.m. 16:0 MCLE Credits Register at: https://nysba.org/ events/bridging-the-gap-march-2021/

FRIDAY, MARCH 5

NY State Bar (CLE)
The Child-Parent Security Act
And Women: Navigating Th
Changing Landscape For
Assisted Family Building

2 p.m. – 3 p.m. 1 MCLE Credit i MCLE Credit Register at: The Child-Parent Security Act And Women: Navigating The Changing Landscape For Assisted Family Building - New York State Bar Association (nysba.org)

TUESDAY, MARCH 9— THURSDAY, MARCH 11

NY State Bar (CLE)

3-Day Commercial Media Training Spring 2021 8:30 a.m. – 5 p.m. 24.0 MCLE Credits Register at: https://nysba. org/events/3-day-commer cial-mediation-training-spring-2021/

WEDNESDAY, MARCH 10

NY State Bar (CLE)
Finding The Balance: Data
Security, Privilege, Disclosure
& Malpractice Liability In The
Age of The Clouds
12.p.m. – 1:30.p.m. 12 p.m. – 1:30 p.s 1.5 MCLE Credits r.3 mr.LE Credits Register at https://nysba.org/ events/finding-the-balance-data-security-privilege-disclo-sure-malpractice-liability-in-the-age-of-the-clouds/

FRIDAY, MARCH 12

NY State Bar (CLE)

egal Malpractice 202.
9 a.m. – 1 p.m.
4.0 MCLE Credits
Register at: https://nysba.org/
events/legal-malpractice-2021/

DATE CHANGE: SUNDAY MARCH 14-THURSDAY, 18 (PREVIOUSLY MARCH 13-17)

NY State Bar (CLE) 2021 NYSBA Trial Acad

Register at: https://nysba. org/events/2021-nysba-trial-

SATURDAY, MARCH 13— WEDNESDAY, MARCH 17

NY State Bar (CLE) 2021 NYSBA Trial Aca

9 a.m. – 5 p.m. 37.5 MCLE Credits Register at: https://nysba. org/events/2021-nysba-trial-

Expert Analysis / Outside Counsel

Franchising

two new mechanisms for franchi sor trademark owners to challenge trademark registrations where sub stantial questions exist whether the subject mark was ever used

The first is a procedure for ex partie reexamination that permits challenges to use-based registra-tions issued under §1(a) of the Lanham Act on the ground that the subject mark was not used in the subject mark was not used in commerce at the time the applica-tion was filed (if use was averred there) or, alternatively, as part of the amendment to aliege use or statement of use submitted dur-ing prosecution of an application originally filed under §1(b). The second is a procedure for ex parte nt, which permits chai explagement, which permissions lenges to registrations covering marks that have never been used in commerce. The primary purpose of the expungement option is to tstrations obtained by for

§44(e) or §66(a) of the Lanham Act. Nevertheless, the two proceedings are not mutually exclusive, and, at least in theory, a challenger could bring both against the same reg-istration.

imerous regulations will be led to enable the reexaminaneeded to enable the reexamina-tion and expungement mecha-nisms, but the TMA 2020 does provide for the following: (1) unlike inter partes opposition and can-cellation proceedings in the U.S. Trademark Office, there is no standing requirement to initiate the new mechanisms, meaning any nemark sequencem to mutate the new mechanisms, meaning any person can petition the Director of the LC Valent and Trademark of the LC Valent and Trademark of the LC Valent and Trademark seexamination or expungement proceeding. Alternatively, the Director can institute either proceeding sus aponte: (2) to initiate a proceeding sus aponte: (2) to initiate a proceeding one could potentially institute either mechanism by filing a Petition with the Director that identifies the registration(s) at issue and the challenged goods and/or services. The Petition must include a verified statement of the "reasonable investigation" of the "reasonable investigation" of the merits of the challenge conducted

by the Petitioner, any supporting evidence, and any fee prescribed by the Director. The Director will review the Petitioner's submission and determine if it establishes a prima facic case of nonuse. If so, the Director will institute the proceeding and notify the Registrat, who will have the opportunity to submit documentary evidence of submit documentary evidence of use. In the case of expungement,

expunge may be brought at any time after their third anniversa-ries. One may file a Petition for reexamination at any time within the first five years of the subject registration's issuance. One can appeal the Director's decision to invalidate all or a portion of a challenged registration to the Trademark Trita and Anneal Board in mark Trial and Appeal Board. contrast, however, a determin

Although many portions of the TMA 2020 won't become effective until Dec. 27, 2021, it is the most significant trademark legislation since the landmark Trademark Law Revision Act of 1988.

the Registrant alternatively may provide evidence that any nonuse is due to special circumstances excusing such nonuse. The Director will render a final decision on the Petition; and (3) as for timing, one may file a Petition for expunge-ment only between the third and tenth anniversaries of the subject registration, although for a limited time of three years after the TMA 2020's effective date, Petitions to

tion by the Director whether or not the Petitioner has estab-lished a prima facie case of nonuse

is not appealable.

Another significant part of the TMA 2020 codifies the existing Tet that 2000 counter a fee assaing fee-ter of protest* procedures, which would allow franchisor trademark owners (or any third party) to raise certain challenges to pending applications during examination. This could be an attractive less

expensive alternative for franchiexpensive arternative for franchis-sor trademark owners to prevent third party applicants of contus-ingly similar marks from obtaining registrations without having to file opposition proceedings. The TMA 2020 provides a more formal approach to submission

formal approach to submission and consideration of "letters of protest" and evidence relevant to a ground for the refusal of particular applications. Within two months after the date on which a third party files a submission, the Director will determine whether to include that evidence in the record include that evidence in the record of the application. Any determina-tion by the Director of whether to lorward that evidence to the exam-iner assigned to an application is final and non-reviewable, but it will not prejudice any party's right to raise any issue and rely on that or any other evidence in any other

Last, under the TMA 2020, the Last, under the TMA 2020, the Director will provide by regulation flexibility to examining attorneys in establishing deadlines to Office Actions. Currently, applicants receive a rigid six-month period to respond to Office Actions, regard-

less of the Issue presented. The TMA 2020 authorizes the Direc-tor to establish shorter deadlines of not less than 60 days, which the Director may extend at the request of the applicant for an aggregate of up to six months from the issuance of the original from the Issuance of the original from the Issuance of the original of Office Action, upon payment of a fee prescribed by the Director. The practical effect of these new more flexible liming regulations is that trademark registrations for franchisors could issue more quickly, assuming the franchisor trademark reademark owner responds substantively to the Trademark Office or before the new permitted shorter deadlines.

deadlines. Upon promulgation of all regula-tions envisioned by its drafters, the TMA 2020 should be beneficial to inchisor trademark owners and tranchisor trademark owners and the consuming public in numerous respects. Indeed, taken together, the TMA 2020's redomin may result in greater and more cost-effective protection for trademark own-ers seeking injunctive relief and a registration system that more accurately reflects the reality of the marketplace.

Standard

*Continued from page 4
Treatment, David R. Walters, (Indiana University Press 1975), (munana University Press 1973), p. 111. Carol Plummer, MSW, in the Journal of Child Sexual Abuse stated, "Although the welfare of children has been of concern in the United States for many years, the prevalence of child sexual the prevalence of child sexual abuse was not public knowledge until the late 1970s. "Journal of Child Sexual Abuse, Vol. 74 (1999 Haworth Press). Plummer noted that the "emerging research" on child sexual abuse by David Finkelhor and others from 1978 to 1981 propensed the designment of pre-

hor and others from 1978 to 1981 'prompted the development of pre-vention efforts. Plummer places the earliest child sex abuse efforts in the mid to late 1970s. On his website, education con-sultant, Dr. Edward Dragen dis-cusses the evolution of the stan-dard of care related to child sexual abuse. Dr. Dragen states that for the period of 1982-1989:

me period of 1982-1989:
My review of the professional
standard of care at that time
revealed that there was no
standard, statute or regulation, or board of education policy that required the school to develop a policy regarding by employees or to provide training to employees regard ing sexual harassment.

The American Camp Asso-ciation (ACA) is the pre-eminent ciation (ACA) is the pre-eminent organization for the establish-ment of guidelines and standards for summer camps. ACA did not address child sex abuse until the McMartin pre-school abuse claims in 1983. "How the American Camp Association Has Evolved Through Certain Crités." Comment Mexicine.

Association Has Evolved Through Certain Crisis, Camping Magazine, September 2010. As recently as 2004, Charol Shakeshalt observed that, "Edu-cator sexual misconduct has not been systematically addressed in schools." Educator Sexual Mis-conduct: A Sumbasis of Fielding. conduct: A Synthesis of Existing Literature 2004, U.S. Departmen Of Education Doc #2004-09 Office of the Under Secretary By Charol Shakeshaft Hofstra University and Interactive, Inc. Huntington, N.Y. According to Shakeshaft, as of 2004, "Because so little has been done to "Because so little has been done to prevent educator sexual miscon-duct, it is not surprising that there are no studies of the effectiveness of prevention programs or legis-lation." Id. Shakeshaft noted that, "aithough not empirically documented, there are practices that many believe are likely to reduce educator sexual misconduct." Id.

Until recently, little has been done to prevent sexual abuse of students by adults who work in schools. The advent of awards to abused students, as a result of Title IX legisla-tion, and newspaper and other media coverage has prodded school district officials to

viders who did not enact polices that are now widely agreed to be appropriate and necessary to pro-tect children. Lawsuits, however, are not decided based on hind-sight. They are decided based on the knowledge and practices that

As the courts in New York adjudicate cases brought under the CVA, they should judge a defendant's actions based on the standards of knowledge and the practices and procedures that were generally accepted at the time of the alleged abuse.

acknowledge educator sexual abuse. However, it is not high on the priority list in most

schools. Charol Shakeshaft (2003). Edu-cator Sexual Abuse. Hotstra Hori-zons, Spring, 10-13.

Thus, as of 2004, there was no Thus, as of 2004, there was no consensus regarding practices to reduce sexual misconduct by edu-cators. In a statement that describes the standard of care as of 2004, Shakeshaft found that "[w]ith rare exceptions, sexual abuse prevention ng for educators and school staff—whether preprofessional or while on the job—does not include

existed at the time of the events alleged in the lawsuit.
Grooming of victims and the standard of care. Many CVA complaints allege that the defendant should have suspected child abuse because the abuser groomed the because the abuser groomed the plaintiff and other children for abuse by paying special attention to them. One difficulty in determining the standard of care for detection of grooming is the "lack of consensus regarding exactly what this [grooming] process entails and how it is clearly distinguished from normal adult-child interactions." Bennett N, O'Donohue W. The construct of grooming in

Conversely, decisions from the First, Fifth, Seventh, and Eleventh Circuits find the reason for the Individual's access to the computer to be dispositive of whether the conduct "exceeds authorized access." These courts have read §1030's

child sexual abuse: conceptual Sex Abus. 2014;23(8):957-76. doi: 10.1080/10538712.2014.960632. PMID: 25258355.

PMID: 25258355.
The difficulty of Identifying grooming behavior was even more pronounced in decades past. In the inaugural edition of the Journal of Child Sexual Abuse in 1992, the journal's founder/editor, Robert Geffner, Ph.D., stated hat TUINIE is known concention. that "[1]Ittle is known concerning who is likely to be dangerous in the future or how to determine who is an offender." Robert Geffner Ph.D (1192) EDITOR'S COM-MENTS, Journal of Child Sexu Abuse, 1:1, 1-13, p. 7. More rece Abuse, 1:1, 1-13, p. 7. More recent literature highlights the lack of reliable information that can be used to identity an abuser based on grooming behavior. Presently, "there are no methods of known psychometrics to validly assess grooming." Bennet, N. (2014). As a result:

result. The courts are currently unable to take much legal action against grooming as it is not well-understood and clearly demarcated. Furthermore, psychologists are currently using cilinical judgment to determine whether or not an allegad perspirator's behavalleged perpetrator's behavlors are considered groom

ing. The reliability and valid-ity of these judgments are largely unknown leaving con-cerns of unacceptable rates of false positives and false

of false positives and false negatives. Id. If mental health profession-als "have not been able to find any measures that validly assess grooming behaviors (by any defini-tion of grooming)" (id.) it would be tion of grooming? (d.) It would be unreasonable to expect childcare providers to be able to reliably identity such behavior. The lack of consensus concerning what grooming is and how to identity it should effectively preciude find-ing that there is a standard of care concerning grooming.

As the courts in New York adjudicate cases brought under the CVA, they should judge a defendant's actions based on the standards of knowledge and the standards of knowledge and the practices and procedures that were generally accepted at the time of the alleged abuse. Modern, robust risk reduction standards for child sex abuse are a recent develop-ment. It would be fundamentally unfair to hold organizations liable for the business and consistent and for the process of the consistent for the process of the process of the consistent for the process of the process of the consistent for the process of for not living up to information and standards that did not exist

Fraud

the individual dispositive. Under these cases, once granted access to the employer's computer sys-tem for employment purposes, the employees use of that access does not become 'unauthorized' regardies of the employee's pur-pose. Only termination or resigna-tion of the employee rescrinds that authorization.

thorization. The leading decision in the Second Circuit is United States is: Valle, 807 F.3d 508 (2d Cir. 2015). In Valle, a police officer searched a police database for an individual's per-sonal information without any law enforcement purpose. The circuit court concluded that the officer had not exceeded his authorized access to the police department's database, holding that the statu-tory requirement was met 'only when [the defendant] obtains or alters information that he does not have authorization to access for any purpose which is located on a computer that he is otherwise authorized to access." Valle was a criminal case, but courts in the Second Circuit have applied the

Second Circuit have applied the Valle standard in civil cases. For example, in Poller v. Bio-Scrip, 974 F. Supp. 2d 204 (S.D.N.Y. 2013), the U.S. District Court for the Southern District of New York explained that the CFAAS language did not provide support for the argument that authorization to a computer was negated by an use a computer was negated by an employee's resolve to use the computer contrary to the employer's interest, so long as that individual still technically possessed the right of computer access as part of its or her employment. In other words, exploitative or disloyal access to an employer's computer did not render otherwise permissible access unauthorized within the CEAA's meaning.

meaning.

To the same effect is the Southern District's decision in Apple Mortgage v. Barenblatt, 162 F. Supp. 3d 270 (S.D.N.Y. 2016). Here, after 3d 270 (S.D.N.Y. 2016). Here, after resigning, former employees continued to receive emails on their cell phones because the employer had not changed the codes on its computer system in the days following their resignations. The district court denied the former employees' motion for summary judgment on the ex-employer's CFAA claim, indingfus there was considered to the complex of the complex o

resigned[,] they accessed emails from the [employer's] system on their phones and read, forwarded, or deleted emails, meaning that there was "a triable issue of fact as to whether they acted with-out authorization" when they accessed, deleted, or forwarded

If the court upholds the officer's conviction, it may expand the ability of businesses to rely on the CFAA in the Second Circuit by extending liability to those who have some authority to access a computer system, but who exploit their access for an improper purpose.

The Fourth, Sixth, and Ninth Circuits, following the same stan-dard adopted by the Second Cir-cuit, also have held that a person who was authorized to access who was authorized to access a computer did not exceed the authorized access by violating an employer's restrictions on the use of information once it was validly accessed. See, e.g., Royal Truck & Trailer Sales and Service v. Kraft, 974 F.3d 756 (6th Ctr. 2020); WEC Carolina Energy Sols. v. Miller, 687 F3d 199 (4th Cir. 2012); LVRC Hold-ings v. Brekka, 581 F.3d 1127 (9th Cir. 2009).

authorization to access company information but used that informa-tion in violation of company policy. See, e.g., United States is Rodriguez,

The Supreme Court

In Van Buren, the U.S. Supreme Court may resolve the debate as

See, e.g., Chilled States E. Rodriguez, 628 F.3d 1258 (11th Ctr. 2010); United States E. John, 597 F.3d 263 (5th Ctr. 2010); International Atr-port Centers E. Clirin, 440 F.3d 418 (7th Ctr. 2006); EF Cultural Travel BV E. Explorica, 274 F.3d 577 (1st Ctr. 2001)

to the meaning of "exceeds author rized access" as used in the CFAA. The question before the court: Does a person who is autho-rized to access information on a computer for certain purposes violate §1030 by accessing the same information for an improper

The case arose after a police officer in Georgia was charged officer in Georgia was charged with violating the CFAA by searching a woman's license piate in a police database in exchange for a payment from a third party. Prosecutors asserted that the police officer was authorized to search the database as part of his official duties, but not in exchange for the payment.

payment.

A jury convicted the officer
and he appealed to the Eleventh
Circuit, which affirmed the officer's conviction on the computer fraud charge, holding that a person with authority to access a com-puter could be guilty of computer fraud if that person subsequently

insused it.

The circuit court reasoned that the evidence showed that the officer had accepted \$6,000 to investigate a woman; that he searched what was supposed to be the woman's license plate in the Georgia Crime Information

defense is one that addresses threats as close as possible to

Center database: that the data-Center database; that the data-base was supposed to be used for law enforcement purposes only, and that officers were trained on the proper and improper uses of the system. The circuit court concluded, therefore, that a jury could have found beyond a rea-cessible doubt this hay files. sonable doubt that the officer had committed computer fraud for financial gain in violation

On Nov. 30, 2020, the Supreme Court heard argument in Van Buren and a decision is expected later this term. If the court uphoids the officer's conviction, it may expand the ability of businesses to rely on the CFAA in the Second Circuit by extending liability to access a computer system, but who exploit their access for an improper purpose. It, however, the court reverses the Eleventh Circuit, the CFAA Jurisprudence in the Second Circuit will likely remain as it is, and companies being a unwanted jurissions. On Nov. 30, 2020, the Supre remain as it is, and companies facing unwanted intrusions into their computer systems by insiders will continue to rely on other laws and causes of action

Cybersecurity

president has tapped Jen East-erly, a former National Security Agency official who helped create U.S. Cyber Command. The National Security Council will include at security council will include at least five sperienced cybersecu-rity officials, including Anne Neu-berger, who will serve as deputy national security adviser for cyber and emerging technology (a newly created role meant to elevate the subject internally and coordinate cybersecurity efforts occurs the cybersecurity efforts across the

government).

And they aren't alone. Vice President Kamala Harris and Health and Human Services Secretary nominee Xavier Becerra each served as Cali-fornia Attorney General, and each iorina attorney cenera, and each made cybersecurity and data pri-vacy priorities in that role. Avril Haines, now director of national intelligence, has extensive cyber-security experience. And Biden's pick to lead the Department of

Homeland Security, Alejandro Mayorkas, was previously deputy DHS secretary, with a portfolio including addressing diverse cyber threats and negotiating a key cybersecurity agreement with China.

The president's spending pri-orities have also reflected his pledge to make cybersecurity a "top priority." In his American Res-cue Plan stimulus proposal, Biden cue Plan stimulus proposal, Biden asks Congress for \$10 billion for "the most ambitious effort ever to modernize and secure federal IT and networks." The centerplece of this effort is a \$9-billion request for IT and cybersecurity shared services at the General Services Administration and Cybersecurity and Infrastructure Security Agen-cy. The plan also calls for \$690 billion for "cybersecurity across federal civilian networks"; \$300 million for GSA Technology Trans-formation Services programs; and \$200 million to "surge cybersecu-

rity technology and engineering rity technology and engineering expert hiring." This commitment is impressive in both absolute and relative terms. For instance, the plan requests \$10 billion for pandemic supply manufactur-ing and \$20 billion for a national vaccine distribution program— comparable sums. This sends a powerful signal: even in a pan-

Building Bridges

Along with surging personnel and money, this administration seems likely to look to cooperation, both with other nations and the private sector, as a key part of its cybersecurity approach. Early signs include a thaw with European Union officials, who view the Biden administration as more records and ministration as more records as administration as more receptive to cybersecurity cooperation, the appointment of officials with cyber-dipiomacy experience (like Mayorkas), and a renewed focus on working with the private sector.

What's Next?

Even as the administration's opening moves have answered some questions, they raise others:

• Will cooperation prevail? One of Biden's core messages, in the campaign and after, has in the campaign and after, has been a piea for bipartisan unity. Cybersecurity policy could be a big part of this vision, as cross-party cooperation has historically been possible on a variety of cybersecurity issues. Alternatively, it is also possible that cybersecurity, like many other issues, may cause continued fractures, especially if the focus shifts from areas of consensus and toward contro-versial issues like Section 230 immunity.

• How far "forward" will How far "forward" will cyber delenses lean? In recent years, as crystallized in a 2018 Department of Defense Cyber Strategy document, America's approach to cybersecurity has leaned toward "defend forward" (i.e., the best cyber their source), and "persistent engagement" (i.e., favor proac-tive, offensive actions to take the initiative). It is possible Biden may double down on this offense-minded approach. Yet this posture is not without ret this posture is not without controversy, and in time, we may see a less hawkish strat-egy, with emphasis shifting toward cooperation, diplo-macy and "passive" defenses. • What role will the private sector play? As former DHS cyber-security official Mark Weatherford recently observed, "20 years ago, dealing with foreign nation attacks were the sole responsibility of the federal government," but today, prigovernment," but touay, p., vate companies are prime targets of well-resourced, state-sponsored attacks. In this context, a key question is whether, and to what extent, the Biden administration's early promises of private-sector cooperation will be realized. If they are, the private sector may have opportunities for If they are, the private sector may have opportunities for unprecedented government funding, expertise and opera-tional support. At the same time, we expect increased regulatory scrutiny of companies' cybersecurity posture, as well as privacy practices, particularly those companies contracting with the govern-ment and in the information technology supply chain. Such a rise of intense regulatory scrutiny might prove to be at odds with governmental cooperation, and companies will have to navigate that ten-sion, even as they devote more resources and attention to cybersecurity defenses.

And of course, given the flu-id, ever-changing nature of the threat, it may well be an "unknown unknown—dangers we did not know we did not know—that comes to define the next four years. The early answers are now clear. The questions are just getting started.

Technology Today

Spending

« Continued from page 5 But more than a few in-house lead-ers have realized that introducing new tech into a legal department can be time consuming and costsy. In fact, Gartner data from late

2019 showed that it took about two and a half years for legal depart-ments to break even on their initial investment in legal tech, according to Hutto.

to Hutto.

He added: "It's far longer than vendors are promoting. There's Just so much hype out there."

While the payback for invest-ing in legal tech won't be immediate, the alternative of hiring more lawyers and legal department staff, "bringing in more Dutch boys, if you will, to plug the little holes

In the dam, that strategy will not work—It certainly won't work for long," Hutto said.
The Gartner report also predicts that nonlawyer staffers will replace 20% of generalist in-house lawyers by 2024 as legal departments realize that much of the other work you might throw a generalist lawyer senting could be discargered. yer against could be disaggregated and handled by nonlawyers," Hutto

and handle by innanny...,
said.

Tim not saying we're expecting
the death of the generalist, 'he added. 'There is a role for in-house
generalist lawyers. but there may
be a glut of generalist lawyers that
h-house legal teams have hired as
part of that Tutch boy stralegy for
solving work demand problems.

More specialists will also find
easts in legad departments as
generalists move toward the exit,

according to Gartner. The report suggests that companies will rely more on specialists, who aren't easily suppianted with technology, to 'replace law firm expertise and control costs. "Specialist legal work is typically lower in volume but higher in complexity, it is therefore not the best starting notifie for shandaritization.

starting point for standardization and automation." Hutto states in the report.

the report.
"The higher-volume, lower-complexity work that is typically carried out by generalist lawyers is where nonlawyer staff will drive is where from any et scan will drive efficiency gains for the department, by digitizing key workflows and expanding the use of automation," he added.

Phillip Bantz can be reached at

Inclusion

overall. It's about, is there a revolving door?"
With evolving diversity and inclusion expectations. In firms and corporate legal departments say the control of the contro

able hours and billing partners, for instance, can be modfied by couple, edst of raggle internal properties of the couple, and the couple internal properties of the couple, and the couple internal properties of the couple internal properties of the couple of the coupl

delicate conversations and build-ing trust with attorneys. It's not, however, a problem all legal organizations face—indeed, it's not common for all law firms or corporate legal departments to have qualitative metrics in the first place, consultants note. But as more corporate level departments first place, consultants note. ISBE as more corporate legal departments begin to examine the factors fueling the attrition of diverse attorneys, It's likely that a growing number of outside counsel will also be pres-sured to track qualitative metrics sured to track qualitative m

The Need For Qualitative Data

Most law firms and corporate legal departments evaluate the diversity of their ranks by ana-lyzing HR data. "With every new hire, our staff in the HR departnire, our staff in the HR depart-ment is able to collect how they self-identity, track promotions and how long the individual is at the firm, "explains Buchanan Ingersoli & Rooney chief diversity & inclu-sion officer Loyd Freeman. But Freeman and other inclu-sion officers note that hitters and

But Freeman and other inclusion officers note that hirring and promotion data only lells part of the story. I think it's important to separate diversity and inclusion when you're measuring them. For me, diversity is a quantitative measure too simply look at the source you should be not seen to see the source of the

evaluate diversity and inclusion in legal organizations can be far-reaching. Diversity Lab founder

reaching, Diversity Lab founder and chief experimentation officer Caren Ulrich Stacy explains that it can include assessing if diverse attorneys have access to in-depth career and project feedback, influ-ential sponsors, promotions and business generation credit. Lociee Lord senior partner and chief diversity & inclusion officer Paulette Brown adds that review-ing an attorney's work to ensure they are placed on career-building tasks is also critical for the reten-tion of diverse lawyers. In additasks is also critical for the reten-tion of diverse lawyers. The addi-tion to looking at hours billed every month for diverse lawyers, [we] are also looking at the quality of work they're getting. Brown says. She adds, "If a person Isn't receiving quality work and is not able to move along with their associate

move along with their associate class, they may decide to leave or they may be asked to leave." Qualitative data also looks at whether lawyers feel at home in their organization. Seyfarth Shaw, for Instance, leverages ongoing surveys and scheduled one-on-theresticates to areas humor? one discussions to gauge lawyers' sense of belonging within the firm and how attorneys are progressing,

Carew says.
Of course, It's not just law firms performing these qualita-tive assessments. Legal departtive assessments. Legal depart-ments are also surveyed by the parent organization to measure how diversity and inclusion efforts are unfolding companywide, notes Sonya Olds Som, a partner at Heidrick & Struggles, which is hired by companies to conduct D&I sur-

veys and focus groups. When legal veys and focus groups. When legal departments are polled, diversity and inclusion is reviewed "not just in terms of the number, but how they feel in terms of representation, support and environment," she notes.

To be sure, the frequency of these surveys and infortness way.

To be sure, the frequency of these surveys and interviews vary per organization. But Bechtel Corp, risk management assistant general counsel Cliff Rankin notes such evaluations should be conducted consistently and shared compa-

wide "These efforts have been going "These efforts have been going on in the industry as long as I've been working—so 30 years," Rankin says. However, he notes the launch of new programs such as The Diversity Lab's Mansfield Rule, which asks legal departments to consider at least 50% of underrepresented candidates wit en hir

represented candidates when hiring internal roles and outside counsel, signals that a more deliberate
approach is needed.

We see you have to be intertional, 'he sys. 'Il you're not tracking your performance it's difficult
to see where you are at any point.

"You have to track your progress
and wou have to be transparent! and you have to be transparent about that progress."

Is the Data Accurate?

As legal organizations track diversity and inclusion metrics, their analysis may be hampered by inaccuracies and limited data.

by insecuracies and inimited data.
Tracking billable hours, for example, can seem fairly straightforward with the time and billing software found in nearly every law firm. However, gauging the work quality of those billable hours can quality of those billable hours can be stifled by broad descriptions that provide little insight, Diver-sity Lab's Stacy says. "If people are using UTBMS [Uniform Task-Based Management System] codes, you can't measure the type of work they're doing when they are bill-land hours." She says, evaluating ing hours," she says, explaining that there are "big-picture UTBMS codes" that don't provide detailed explanations of the work accom-

To address these shortcoming Stacy says some law firms suppl ment UTBMS codes by comparir ment UTBMS codes by comparing associates work to practice group-specific benchmarks. A firm, for instance, can set core benchmarks or competencies all litigation asso-ciates should reach during their litrst, second, third and fourth-year. But such benchmarks aren't feather. It has them as the netter. found in all law firms, she notes. Everyone has billable hours but

not many have career or practice benchmarks.

But the problems don't end there. Fish & Richardson princi-pal and diversity intitative chair Ahmed Davis notes not all firms reveal how or if they compensate or promote an otherway for loading Ahmed Davis notes not all firms reveal how or if they compensate or promote an attorney for leading a client matter. There are a number of large corporations that have realy put their money where their mouth is in requiring firms to show that a certain amount of diverse attorneys are actually working as the relationship or billing partner—the firm representative that has the relationship or billing partner—the firm representative that has the relationship or billing partner—the firm representative that has the relationship of the client, Davis says. "And so that may be true in name but the question is how do you track what is happening within a firm? You may have a woman or diverse altorney that is by name the relationship or billing partner at a firm for a client but within the firm? You may have a woman or diverse shorney that is being calculated and applied? And is if the being calculated and applied? And is if the being measured, and Jan they keeping metarics of that? The accuracy of qualitative data can also run into problems as well. Davis and other inclusion officers also note that when altorneys keep backback responses provided during D&I surveys or one-on-one discussions regarding inclusion can become tainted

one-on-one discussions regard-ing inclusion can become tainted by suspiction or fear of reprisal. The biggest barrier I think from the standpoint of diverse attorneys [is a] reluctance to being truthrul and honest because they're con-cerned about consequences."

cerned about consequences, Davis says. And for non-disease attorneys there's fear of being truthful and honest because they fear the consequences. It's the same discussion on both sides. While diverse attorneys don't want to be perceived as complainers, nondiverse lawyers fear their statements will be labeled as detached at best or bigoted at worst. Tam ond a straight white worst. "I am not a straight white male," Davis, who is African Ameri-can, notes. "[But] I know that there are some and perhaps more than

a few straight while men that in the abstract understand diversity is important, but they have mis-givings or concerns about what is going on with all the diversity and inclusion. But they're not going to stand up and say that because they may be perceived as not concerned in the best light or perceived as racisf in the worst light." racist in the worst light.

Putting Quality in Qualitative Data

While not all employees are in a rush to discuss workplace experiences and diversity, law firms and

ences and diversity, law firms and legal departments say there are ways to resolve that hesitancy. Anonymized surveys, for instance, can allow attorneys to be more open about their experiences within a legal organization, Seyfarth Shaw's Carew notes. Additionally, Shaw's Carew notes. Additionally, an inclusion officer who sits on the firm's management committee can add weight to D&I evaluation requests and decrease the chances they're ignored by busy lawyers, Buchanan Ingersoil's Freeman adds. But ultimately, it's up to the organization to create a culture where everyone feels empowered

to share their experience.
In order to avoid attorneys self-censoring themselves during diversity discussions, the inclusion officer has to build trust. Davis says. "The real challenge at the end of the day for me is trying the end of the day for me is trying to figure out how to have an hon-est conversation with non-diverse people that have questions, issues, concerns or doubts. And have an open dialogue that advances the process without people feeling like they're being ostracized or labeled.

they're being ostracized or ianeies. That's a very challenging delicate dance to do and that's why this whole thing is a challenge." To be sure, any trust and openness built up by those D&I conversations will crumble if lawyers cont see their concerns addressed. don't see their concerns add "If they feel once they make their "If they feel once they make their feelings heard and management will do something about it, they will remain candid around their responses. Once responses fall onto deaf ears, that's when you'll get no response at all," Freeman

ys. Still, while these surveys and Still, while these surveys and discussions regarding sense of belonging are uncomfortable for some, these conversations aren't occuring in all law firms or legal departments. Indeed, some consultants say the qualitative data needed to measure inclusion isn't yet found in all legal organizations.

yet found in all legal organizations. "It's a wide variety. There are some companies that are very metric-driven and very focused on specific targets and reaching those targets and they have a whole program in place," Som says. "And there's companies that are generally aware they need to do better but it's not a metric-driven or specific. It's like anything else: Organizations are at different places in their priority and journey." But it's never too late to start. Beethel risk management assis-

Bechtel risk management assis tant general counsel Rankin says tant general counsel kankin says his organization is currently figur-ing out what metrics it needs to understand its in-house attorney retention trends. "It's a question of how you develop and retain [in-house attorneys] and that's more than just a diversity issue, it's more on the inclusion side and involves

everyone."

While some are beginning to use qualitative data to evaluate their diversity and inclusion efforts, there are signs this practice may there are signs this practice may become more widespread in the future. Orrick Herrington & Sutcliffe chief talent officer Siobhan Handley notes that more corporate clients may stress the need for an inclusive in-house and outside coursel cul-ture. I think the industry is looking at the near controlls. (Gonnealect at it more carefully. [Companies] at it more carefully, [Companies] are asking that of their law firms to allow for an environment that provides consistency and ongoing success [to] diverse attorneys, and our attorneys are looking internally and putting pressure on themselves."

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DECISIONS WANTED!

The editors of the New York Law Journal are eager to publish court rulings of interest to the bench and bar. Submissions must include a sentence or two on why the decision would be of significance to our readers. Also include contact information for each party's attorneys. E-mail decisions to decisions are now.

Stenography

 Continued from page 5
 recorded proceedings are creating more legal transcription opportu-nities in court reporter agencies, legal tech companies and the court

system.
The emergence of digital court reporting has created a viable path for those who decided no to become a stenographer, noted Cuyahoga Community College's

Cuyahoga Community College's captioning and court reporting program director Kelly Moranz.

"Court reporter companies will have the digital court reporter capture the record and get that record," Moranz explained. ("But] they don't have the business model where the same person lel where the same person that captured the record [pro-duces] the transcription." Tran-scription opportunities for non-stenographers are also available in the U.S. court system, Moranz

In the courts where they're using digital equipment, they would send that [recording] to a transcriptionist as well. A lot of times those transcriptionists are former stenographers that retired or are those that have the skills

from school and went into another direction," she said. While Moranz noted that many stenographer hopefuls go in 'anoth-er direction' before graduating, she said that even limited stenography training can lead to other career opportunities. For instance, some opportunities. For instance, some stenography programs teach court procedures, transcription produc-tion and other skills transferable to

tion and other skills transferable to captioning and transcription and voice writing training, Mornaz said. But stenography school drop-outs aren't limited to taking their training to the judiciary or court reporter agencies. In recent year, the emergence of machine learning-powered remote transcription softpowered remote transcription: ware companies has also increa demand for transcribers.

demand for transcribers.

Transcription software platform
Verbit, for example, hires legal transcriptionists to verify its Al-generated transcripts. "Our network of transcriptionists are diverse," said Verbit senior customer success manager Tony Sirna. "Some come sain electronic transcriptions." as an electronic transcriber certifled from the AAERT [American Association of Electronic Reporters and Transcribers]," while oth-ers are retired stenographers, or legal transcriptionists that seek freelance work, Sirna explained.

While remote transcription software providers may tout their technology's ability to quickly produce Al-powered transcriptions, accuracy demands and software limitations of the produce and the software in the produce of the produce

accuracy demands and software ilmitations still require a human to review those transcriptions. Transcribers play a key role in confirming speakers' names and the matter's nuances, Sirma said. "It's an open industry for people that want to get into the industry," he added. he added.
To be sure, some stenographers

To be sure, some stenographers have labeled capturing the record from previously recorded proceed-ings as a "risky" practice that could place the accuracy of the legal record in danger and threaten stenographers' livelihoods. But Cuyahoga's Moranz noted digital apportus is the aloet between. reporting is the latest technology and career opportunity to meet growing court and deposition demands. "Steno is not for everyone," she

said. "Not everyone wants to talk all day [voice writing] or make annotations. It's a technologydriven profession more and more, and this gives them an opportunity to fill the need."

Wictoria Hudgins can be reached at

Analytics

Continued from page 5 and up making a mistake that negatively impacts their case, such as not producing responsive documents or accidentally producing

ments or accidentally producing privileged information. Having the most expensive or advanced tool in the toolbox doesn't matter if you don't know how to use it, and if you're not using those tools properly, there are risks everywhere. Here are a few examples of areas where mex-perienced users tend to go wrong in their use of analytics and search tools:

1. Incorrect tagging of docu-ments. Analytics tools are only as good as the data that's ted into them, and a big mistake made by inexperienced users is to not tag documents cor-rectly. A common example would be a responsive docuwould be a responsive docu-ment that's attached to a ment that's attached to a nonresponsive email. It might seem correct to tag the email itself because of its attach-ment, as often was the nor-mal practice before the use of analytics. However, because there's nothing responsive in the body of the email, tagging the body of the email, tagging it will only make the analytics model less effective at best, or result in incorrect decisions by those tools at worst.

2. Over-reliance on basic search functions. Search tools are powerful, but they're not feedingent.

tools are powerful, but they're not foolproof. When running searches, inexperienced users sometimes overlook flaws in the underlying data that can affect the quality of their search results. Variations or misspellings of a name, or text that is continued in a cerearthat is contained in a screen-shot or other image, can be

easily missed.
3. Incorrect handling of review, Sometimes privilege review. Sometimes attorneys clearly mark docu-ments in a data set as priviments in a data set as privi-leged, but when they don't, a close read of a document may be necessary to ascertain that it's privileged — for instance, a brief mention in an email chain about the topic under discus-sion. Users shouldn't assume that an analytics model is that. Some parties still do rely on clawback agreements that allow them to assert privilege over documents after they've

been produced to the other

party But, as the old saying

goes, you can't un-ring a bell. In some cases, if you try to claw back a document, the other party might claim that you've waived privilege by pro-ducing it, at which point you'd have a fight on your hands — a fight that is becoming harder

to win. Recently, we worked with a cil-ent that was trying to produce documents on a tight deadline. They wanted to produce and send over everything that came up from a search in order to get the job done as quickly and as cheaply as possible. We advised the client that We advised the client that they were risking a waiver of privilege and successfully con-vinced the counsel to change vinced the counse to change course, thereby protecting the client's privileged documents. In general, if you have some-thing you don't want the oth-er side to see, don't rely on technology or clawback agree-ments alone to save you after

ments alone to save you after you've already sent data out the door.

4. Incomplete production of documents. Two standard ana-lytics tools, email threading and deduplication, are often used to reduce redundancy in a data sat before review. For used to reduce redundancy in a data set before review. For instance, in an email thread that contains 20 messages, only the final email in the conversation would need to be included for review, since it fully includes all previous communications. However, depending on your production protocol agreement with the oncossin party vow middle. the opposing party, you might need to produce all 20 messag-es in the conversation as sep-arate documents, to make it es in the conversation as sep-arate focusies and as sep-arate focusies and the flow or old conversation. Not doing so could violate your production profice of order and you would run the risk of sanctions from the court and/or increased costs from having to run the production over again to cor-rect the deficiency. Producing only the most inclusive emails is not a bad strategy, but you must make sure that all parties have agreed to do so, and that they understand how to iden-tify, handle and produce emails tify, handle and produce emails that branch out into separate

The Math Rehind the Tools

As straightforward as analyt-ics platforms might appear on the surface, using them effectively comes down to understanding the

math behind the tools. Risk and probability factor greatly into the work done by e-discovery professionals. Many leading analytics tools are

Many leading analytics tools are built on a similar algorithm that actively learns from a representa-tive sample of documents marked by the user either as responsive or non-responsive. The model built by those decisions is then applied to the remaining documents in the set, giving each one a score, typi-cally from 0.1 to 0.9. (For Instance, everything 0.5 and shove might be cally from 0.1 to 0.9; (for instance, everything 0.5 and above might be considered responsive, and every-thing 0.49 and below would be non-responsive.) It's important to look below the non-responsive line and take a sample to see what percent-age of those documents turn out to be responsive, and if necessory. age of those documents turn out to be responsive, and if necessary, further train the model. The goal is to achieve an acceptably low math-ematical probability that there are responsive documents below the threshold.

This technical know-how works This technical know-how works best when combined with an attorney review team that has a deep understanding of the case, the issues, and even institutional knowledge. Since analytical algo-rithms essentially magnity the deci-sions on a small subset of docusions on a small subset of docu-ments across the entire population, it's ever more critical that those base decisions are as accurate as possible. The more deeply the review team understands a case and the parties involved, the better their decisions on the base set will be, and the lower the probability of consolitive transitive tensions. of something important slipping through.

Every Case Is Different

There's no one-size-fits-all in and requires a customized and requires a customized approach. I've had decades of expe-rience and so have my colleagues, yet, each of us have encountered situations that the others haven't. If one of us is presented with a legal matter that falls outside of our individual experiences, we'll talk individual experiences, we'll talk it through as a team and debate the merits of different approaches as necessary to achieve the best overall result. Using analytics tools without the proper know-how is like an amateur picking up a guitar and trying to client. You metal he abote street

picking up a guitar and trying to play! I. You might be able to strum a chord or two without a lesson, but getting the most out of your instrument requires knowledge and countless hours of practice. To get the best results out of your data, there's really no substitute for experience. for experience.

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Off the Front / Off Page 2

Syracuse

«Continued from page 1 the panel's decision what job DICoby had occupied at Syracuse, and the decision did not say why he was terminated. It also did not explain why he was ordered to get anti-harassment training. Attempts to obtain underlying court records in the case were not successful. Earlier in the varied opinion, the

First Department panel examined several arguments made by DiCo-by in his breach-of-contact claim,

vhile rejecting each one. DiCoby's complaint "alleges nei-her a written employment agree-nent nor any employment for a fixed term," the panel, comprised of Justices Saille Manzanet-Daniels,

of Justices Saulie maintained (James), Anil Singh, Tanya Kennedy and Manuel Mendez, wrote. "Instead, the complaint alleges only that delendant [Syracuse] breached the implied duty of good faith in issuing the letter of warning and directing plaintiff to

take anti-harassment training," the panel further wrote. It then said that "absent exceptions not applicable here, however, there is no implied duty of good faith in an at-will employment," citing Horn to Now, Work Tanger.

New York Times.

DiCoby "also asserts that defendant's written employment policies Dicoby "also asserts that defen-dant's written employment policies proscribe retailation, discrimina-tion, and harassment of employees," the justices wrote, before stating that "although written employment policies can form part of an implied

policies can form part of an implied contract, there, however, with one exception, these policies appear nowhere in the record. In addition, the justices that "even assuming that a breach of contract claim has been stated, it falls because is it barred by col-lateral estoppel." They explained that "the issues of whether [Syra-ruse] had a leattimate business. cuse] had a legitimate business reason to terminate [DiCoby] and take the employment actions of which [DiCoby] complains were fully resolved by the New York State Division of Human Rights (DHR), with both parties having

a full and fair opportunity to litt-gate the issue in that administra-tive proceeding." In addition, the justices stated in the Feb. 4 opinion that DICOby "has failed to plead any claim for prom-issory estoppel, because he has failed to allege any "imamblemons issory estoppel, because he has falled to allege any 'unambiguous promise' or reasonable and fore-seeable reliance and detriment," quoting New York City Health & Hosps. v. St. Barnabas Hosp. Michael Confusione of Hegge & Confusione in Manhattan rep-resented NiColev in the appeal

& Confusione in Manhattan rep-resented DiCoby in the appeal, according the opinion. He could not be reached for comment. Mark Whitford, a Rochester-based Barclay Damon partner focusing on appellate and com-mercial litigation, represented

Syracuse in the appeal.
"We're pleased with the deci-"we re pleased with the deci-sion. Otherwise, we have no com-ment with respect to what the court ruled," Whitford said by phone.

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54 in the Second Hundred and 68

It's unlikely firms can save as

It's unlikely firms can save as much on expenses as life steadily approaches normal this year, Rusanow noted. But they can con-tinue to become more efficient in certain ways—one of which is by continuing those timely billing and collection practices. Another is by lowering staff to lawyer ratios— a long-term trend that may have been accelerated by the pandemic

Countersuit

destroy public property, resist or obstruct officers in charge of duty, or otherwise commit acts of violence against counter-plaintiffs and DPD [Detroit Police Department]

officers."
The action further claims that as a result of the conspiracy and counter-defendants' illegal, wrong-ful, or tortious acts" some police officers suffered "physical injuries" and "pain, suffering, and emotional distress," and that the city itself

suffered "property damage" and a "loss of business opportunities." "Counter-defendants have been captured on video hurling dangerous projectiles at police officers, blocking busy streets and school buses, encouraging violent behavior, screaming loudly in the faces of DPD officers," the 20-page countersuit alleges. It fur-ther states that counter-delendants ve used social media to publish false statements about Detroit's police and city officials, as well poince and city onicials, as we as for posting "videos and other content encouraging violence or endorsing violence against police officers, promoting the destruction and defacing of property, and disrupting the lives of Detroit residents."

residents."

Many of the allegations do not name the specific counter-delendants involved in the alleged wrongful acts, though elsewhere in the countersuit individuals are

Hurwitz and the five other law-Hurwitz and the five other law-yers representing the Detroit Will Breathe group and 14 individual plainlifts/counter-defendants have a filed a motion to dismiss the city's countersuit that's pending before U.S. District Judge Laurie Michelson of the Eastern District

of Michigan. The veteran civil rights lawyer,

The veteran civil rights towyer, whose law firm is joined by three others, all of them organized by the progressive haldonal Lawyers Guild, views the counter action as both lactually and legally weak. "When you file a complaint such soft has challed to the complaint such as this against someone, you are required to assert facts that will support the elements of your claim," she said. But the city of Detroit "says cops were injured [during the profests] without saying who injured them" among the demonstrators, she said, and it claims "acts of violence" were it claims "acts of violence" were committed against the police "with-out naming" which protesters com-mitted them.
"It's weak legally," she said, "because it is limited to one count

"because it is limited to one count of civil conspiracy." Also, "you can't plead a civil conspiracy as a standatione claim, it has to be connected to some underlying tort," she noted.

"They're [the city and co-defendants/counter-plaintiffs, which includes Mayor Michael Duggan and Police Civil James Crabel I riving to connect the civil

Duggan and Police Chief James Craigl trying to connect the civil conspiracy to criminal unlawful conduct, she said. But in recent months, she said, about half of the 400 or so protesters rounded up last summer, while typically being charged with disorderly conduct

misdemeanors, have seen their cases dismissed. Criminal defense lawyers defending the remaining protesters are in talks with the city now, Hurwitz said, to have nes all of the remaining defendar

charges dismissed, too. Moreover, she pointed out, Moreover, sine pointeu out, the piaintiffs/counter-defendants in the Detroit Will Breathe case were never charged with criminal conspiracy, despite civil allega-tions made in the counter-suit that would appear to support criminal

would appear to support criminal charges. Steinberg, who runs the Civil Rights Litigation initiative clinic at the University of Michigan Law School, where he has two students, he noted, whom he's overseen School, where ne has two Studens, he noted, whom he's overseen while they've worked on behalf of the Detroit Will Breathe plaintitis/counter-defendants, sald of the City's countersuit, 'I think it's baseliess and it's an ithen by a decision of the man lawsuit. 'Istrongly believe it is going to be rejected,' he said. Still, he added, 'While it's baseliess, it has a chilling effect from joining marches against white supremacy and police abuse."

The counterclaim in this case is a strategy to silence racial justice advocates that you might be spect from segregationists in the South in the 1950s, 'Steinberg also said.' Their did tilsturbing that also said. Their did tilsturbing that

also said. I find it disturbing that also said. I find it disturbing that it is being used by Detroit in the midst of some of the largest and most widely supported demon-strations for racial justice in the

nation's history."
Reginald Turner Jr., a member Reginald Turner Jr., a member of the 579-lawyer, International law firm of Clark Hill, which is repre-senting Detroit and its half-dozen individual defendants/counter-plaintiffs, did not return multiple messages seeking comment. His client, Lawrence Garcia,

messages seasing comment. His client, Lawrence Garcia, Detroit's Corporation Counsel and the city's lead lawyer, declined to immediately comment when reached but said he may comment at a later time. In the main lawsuit lodged against Detroit, Duggan, Craig and its co-defendants have yet to file a motion to dismiss the action, though one is expected, Hurwitz Said.

In ther view, it simply "became imperative to launch the 75-page suit" because we had to put a stop to this," reterring to the allegedity aggressive and vitolent facilities being used by police against probein guest of the proper season of the proper season of the propers of the property of the propert aggressive and violent tactics being used by police against pro-testers. Among the many injuries allegedly resulting from incidents described in detail, and sometimes graphically, in the complaint are protesters and volunteer medics suffering hearing loss, a fractured

suffering hearing loss, a fractured pelvis, concussions, a collapsed right lung and injured ribs.
"The core of the sult," said Hurwitz, "is that the police department engages in systemic violence and racism, resulting in not only the violation of the Pirst Amendment right to expect but Feurith Amend. right to protest, but Fourth Amend-ment and 14th Amendment sub-

stantive process rights."
"And there are claims," she said, "of the department's use of excessive force, false arrest and unconstitutional conditions of

On Sept. 4, Michelson granted the Detroit Will Breathe and related plaintiffs' motion for a temporary restraining barring the police from actions such as using strik-ing weapons, chemical agents and chokeholds against profesters. In chokeholds against profesters. In her order, she wrote in part that video footage from Aug. 22, 2020, "appears to show a line of Detroit police officers, dressed in riot gear and armed with batons ... appear to throw tear gas canisters into the crowd of profesters. The police offi-cers then advance on the ground crowd of protesters. The police offi-cers then advance on the crowd and grab, shove, and use batons to beat people standing at the front of the group. There is also footage of officers pursuing ind-viduals who are running or walking away from the chaos, apparently not posing any threat, and violently shoving them into the ground or

building.
"These videos, buttressed by
the testimonial evidence," she
said, "establishes that at least
some plaintiffs have a likelihood of success on their claims that the DPD used excessive force against them. True, plaintiffs' chances of prevailing could be lessened by a delense of qualified immunity, but that issue has not been briefed and it is premature to address it now." On Sept. 18, Michelson set down

agreement among the parties for the restraining orders to be made the restraining orders to be made more permanent, in the vein of an injunction, as she issued a "Joint Order to Preserve the Stahus Quo." The same order, which came after motions and arguments by the Detroit co-defendants saying the temporary restraining order may leave pedies of others from properly temporary restraining order may keep police officers from properly delend themselves during protests, also decreed that "nothing in this order (1) suspends any laws that prohibit violent or destructive actions by protesters or (2) pre-vents Detroit police from (a) reasonably and lawfully protecting themselves and the public against violence perpetrated by protest-ers that could harm officers or the public (including protesters throwing objects at police, such as frozen water bottles, bricks, bottle rockets, or cherry bombs) or (b) taking reasonable and lawful action against protesters who violate any laws or resist arrest (e.g. ordering protesters to cease unlawful activity, or using reasonable force to arrest a protester if there is probable cause to believe that the protester violated

beneve that the protester violated the law)."

When Michelson will rule on the Detroit Will Breathe plaintiffs' dismissal motion against Detroit's countersuit is unclear. Each side has submitted briefing in the countersult. In addition, the ACLU and a group called Protect the Protest Task Force, which focuses on stop-ping SLAPP lawsuits nationwide, have filed amicus briefs support-ing a countersuit dismissal. Mean-while, a Blue Lives Matter-oriented group calling itself the Nationa Police Association has lodged at amicus brief backing the Detroit police's civil conspiracy action against the protesters and other counter-defendants.

Collections

Continued from page 1 noted. That could give them a betnoted. That could give them a bet-ter shot at revenue growth relative to the first quarter of 2020, espe-cially if they have a high volume of fees and unbilled time they still need to collect from last year. "We have heard that some firms, having reached their revenue tar-rets, may not have newhold for

having reached their revenue tar-gets, may not have pushed for collections, preferring to leave inventory to collect in the new year. Indeed, at year-end, inventory had grown 8.5%—placing the industry in a solid position for early 2021 collections," the report stated.

Meanwhile, many firms prepaid spenses in the fourth quarter of expenses in the fourth quarter of last year, Citi said, possibly allow-ing them to manage expense pre-sure this year as life returns to some version of normal. Because the industry performed well prior to the pandemic last

will be difficult for firms to achieve revenue growth early this year. But, the report stated, "high inventory levels certainly will help, assuming that firms remain focused on collection efforts."

they expect to see continued dispersion in the industry, likely leading to further consolidation. Indeed, the legal industry in 2020, Just as in previous years, had a wide range of performances. Am Law 50 firms, in particular, were the only segment to see demand growth (at 0.9%) and they outper-formed in revenue growth (up 8%). This segment reported 16.2% net income growth and 14.8% growth in

income growth and 14.8% growth in profits per equity partner, Citi said. For the rest of the industry, we saw declining demand and modest revenue growth, 'the Citi analysis said, with expense management being the key factor in strong profit growth.

growth.

Every market segment reduced operating expenses, Citi sald, and this was most pronounced for firms outside of the Am Law 50. Some expense cuts were deliberale, such as delaying intrastructure projects and managing head count or salmounced. and managing head count or sa-ary costs, while some happened naturally with remote work and less travel. Still, compensation expense pressure increased, with special fail associate bonuses being a bear factor. key factor. Gretta Rusanow, head of advi-

Gretta Rusanow, head of advisory services for Citl Private Bank's Law Pirm Group and the author of the report, noted in an interview Wednesday that every segment of the industry had solid levels of inventory coming into this year. "It wasn't just the Am Law 50. You did see a healthy year of inven-tory growth setting up collections across the industry for the start of

the year," she said.

The analysis, co-authored with senior client adviser Michael McKenney, was based on a sample of 202 firms—80 Am Law 100 firms,

been accelerated by the pandemic, she said.
"I think it's important to note

"I think it's important to note I'm hearing firms talk about, yes, they might reduce their secretarial staff ratios. On the other hand, they may simply be shifting those staffing numbers to other areas, whether it's technology, or more billings and collections and pricing staff, or business staff.," she said. "They may not see net savings, but net efficiencies in shifting to other areas."

The report concludes this focus on "operational efficiency" is likely to continue in 2021, though expense growth is also likely "as vaccines are rolled out, and life returns to some version of normal." "With all this said, the law firm

industry demonstrated in 2020 how resilient and adaptable it is. While we are living in uncertain times, we are cautiously optimistic about 2021," the report said.

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Scarpino

with colleagues can either breach or we can come together. And that really for me made a difference in understanding the character of Judge Scarpino. We just stuck it

t," she said. The accolades, which also cluded messages from West-ester County Executive George Lattimer and state Sen. Pete Harckham, D-Westchester, came as Scar-pino and Noto begin their tenure with Dorf & Nelson, a boutique firm with an entrepreneurial streak and

ith an entrepreneurial streak and lans for expansion. The firm announced in January that it had landed Scarpino afte the incumbent district attorney lost his re-election bid to former Manhattan federal prosecutor Mimi Rocah last July. Scarpino, now a partner focused on strategic plan-ning and civil litigation, plans to focus his work in part on business development and counseling cli-ents, while Noto will serve as a partner in Dorf & Nelson's litiga-tion and commercial real estate

County DA, Scarpino was known for enacting a slate of criminal justice reforms, including an end to cash ball in cases that did not seek jall time and declining to prosecute time and declining to prosecute offenses for possession of small amounts of marijuana. He also implemented a new case manage-ment system, which allowed pros-ecutors to proactively share infor-mation from police departments with criminal defense attorneys

before the state's new discovery laws took effect last year. Speakers on Thursday praised Scarpino's vision and as a public servant, as well as Noto's drive and dedication to the work of the vari-ous offices he served.

"The remarkable thing about everywhere that you've been in your

everywhere that you've been in your public service career is marked by bwo things," Hardsham, who found time during a badget hearing to join the event, said of Scarpino. "It's marked by leadership, You have always been a leader in whatever organization you are in, where your peers looked up to you. And just impeccable integrity, which is so essential to keeping trust in government," Harckham said.

In his own remarks, Latimer recalled personal experiences working with both men, whom he regarded as "senior and extremely capable lawyers in the community

"Even though life brings us together, takes us apart, puts us on opposite sides, puts us together, we realize as we age we have much more in common," he said. "These are two outstanding gentiemen. They're good men and even on a given day where we disagree, the

given day where we disagree, the respect in their direction in tremen-dous. We all respect them."

The call, which was organized by Dorf & Nelson founders Jon Dorf and Jon Nelson, was attended by more than 70 guests.

Addressing the audience, Scar-

pino said that public life had taught him that there is a "price to pay"

him that there is a price of pay for service.
"There's no holidays. There are no weekends," he sald.
But, he added: "I've loved all my jobs and because of that, I've never felt I've worked a day in my life."

@ Tom McParland can be reached at

Brothers

© Continued from page 3 Scott Douglas & McConnico, where he worked under several mentors including firm name partner Stephen McConnico. He made partner in 2008. Justin thrived at Quinn Emanuel,

Justin thrived at Quinn Emanues, a place he found refreshing after Stanford and Princeton. When

Stanford and Princeton. When he Joined the firm in 2004, it had roughly 90 lawyers and was known for its informal culture. "You couldn't tell who anybody was—could be John Quinn in shorts or the messenger," Justin sald. In that environment, "Tim not going to stand out because I'm not wearing the right suit or shoes. I'll stand out for the work.

In 2014, the year after Justin made partner at Quinn Emanuel, the firm opened an office in Hous-ton. Justin remembers telling Asher at the time, "We opened Asher at the time, "We opened our Houston office. We might have a chance." But it wasn't until six years later that Quinn would mull over opening an office in Austin, where Asher is based. Last year, two Quinn Emanuel partners moved to Austin in the middle of the pendemic. The suc-

midst of the pandemic. The suc-cess of remote work meant that, in the firm's mind, a brick-and-mortar office may not be necessary to launch a new location. So Justin reached out to Asher in another attempt to recruit his brother. This

en he sald yes, I emailed

took it from there," Justin said. In January, Quinn Emanuel announced that it was opening an Austin office. Among the found-ing members of the outpost was Asher. After more than decade apart, the twins were once again

apart, the twins waste and Asher reunited.
A month in, Justin and Asher have yet to work directly together. Perhaps unsurprisingly, the Griffins have similar practices as litigation Justin said its only a matter of

time before their work paths cross as, perhaps, the only Big Law twin tandem. "We can't wait to be in a hearing together"

@ Dylan Jackson can be reached at

Bloomberg

employers but that liability does not extend to individual owners, officers, employees, or agents of a business entity," read the ruling from the majority.

arom the majority.

An attorney for the plaintiff,
Niali MacGlollabhui, had argued in
court documents that Bloomberg
is subject to liability because he
is accused of fostering a culture

of sexual harassment and discrimi-

nation.

But the court's majority found the plaintiff 'falled to allege that Bloomberg is her employer for purposes of liability under the City HRL.

"Plaintiff's allegations that

*Plaintiff's allegations that Bloomberg fostered a culture of discrimination and sexual harass-ment at Bloomberg L.P., based primarily on news articles and reports of a deposition in an unre-lated case, do not transform him

into an employer for purposes of vicarious liability for Ferris's dis-criminatory conduct," read the rulling from the majority. 'Any claims that Bloomberg engaged in offending conduct against plaintiff by discriminating, aid-ing and abetting discrimination, or retailating are not advanced in this anopaet. in this appeal."

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immediately of of the elevators, and double glass doors lead
from the waiting sees to the large conference noon which is
openerously decorated with original arthoric.
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as required.

as required. The space has a 2nd large conterence room that leads to an amazing outdoor terrace that is huge - overlooking the Brooklyn Bridge and the East River. There is good signage svalistic in the elevator lobby and on the foot floor so the subdement can have good identification. Great views and light.

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NOTICE OF QUALIFICA-TION OF LIME, LLC Appl. for Auth. filed with Secv. of State of NY (SSNY) on 01/12/21. Office location: NY County. LLC formed in California (CA) on 07/29/02. NYS fictitious name: LIME STUDIOS LLC. SSNY des-ignated as agent of LLC STUDIOS LLC: SSNY des-ipatated as agent of LLC-tipated as agent of LLC-tif may be served. SSNY shall mail process to the LLC. 122 90th St. Santa Monlea, CA 90045. CA addr. Stars. 4400. Los Angeles. CA 90067. Cert of Form. Glow with Secy. of State. 100 11th St. Sacramento. CA 90067. Cert of Form. CA 90067. Cert of Form. CA 90067. Cert of Form. CA 90067. Cert of State. CA 90067. Cert of Form. CA 90061. Cert of State. CA 90061. Cert of State.

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NOTICE OF QUALIFICA-TION of BOP NW RES-TAURANT LLC Appl. for Auth. filed with Secy. of State of NY (SSNY) oh 01/ 12/21. Office location: NY County. LLC formed in Delaware (DE) on 12/22/20. Princ office of LLC 200 1221. Office location. NY
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NOTICE OF QUALIFICA-TION OF PRIVATE INTION OF WHITH THE PROPERTY OF THE PROPERTY O of LLC clo Corporation Service Co., 251 Little Falls Dr., Wilmington, DE 19808. Cert. of Form. filled with Secy. of State, 401 Federal St. Ste. 4, Dover, DE 19901. Purpose: Investments.

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Lewes, DE 19988. Arts of Org. filed with the Secy. of State, 401 Federal St. Ste 4, Dover, DE 19901. Purpose any lawful activities. 0000s10798 22-Tu m9 f2-Tu m9

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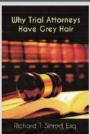
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NOTICE OF FORMA-TION of CLOUD NINE HOLDINGS, LLC Arts. of Org. filed with Seev. of State of NY (SSNY) on 01/ 12/21. Office location: NY 1221. Office location: NY County, Prince office of LLC: 383 Tenth Ave., NY, NY 16918. SSNY designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to the LLC at the addr. of its princ. office. Turpose: Any lawful activity.

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Uniondale. NY 11983.
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14 TUESDAY, FEBRUARY 16, 2021 New Bork Cate Zournal | NYLJ.COM

The 2021 National Audubon Society Annual Meet-ing of Members will be held virtually this year, on Monday, Feldruary 22, 2021, at 4pm EST. To participate in the Annual Meeting and in the Annual Meeting and origination of the audubon-origination of the audubon-origination of the audubon-origination of the audubon-origination of the audubon-tion of the audubon-origination of the audubon-

ORDER TO SHOW CAUSE

At a Special Term, Part
Ass of the Supreme Court
of the State of New York
held in and for the County
of New York at 60 Centre
Street, New York, New
York, on the 1sth day of
December, 2020.
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December, 2020.
PRESENT: DEBRAA.
JAMES, JSC
SUPREME COURT OF
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Court Calendars

Court of Appeals

CALENDAR FOR THE MARCH TERM

TUESDAY, MARCH 23

Arguments begin at 2 p.m. teen the Affrontacks! Prosec the Affrontacks! Inc. v. NYS Department of Environmental Conservation People v. Howard Powell People v. Kathon Anderson

NESDAY, MARCH 24

Jean-Paul v. 67-30 Daremouth St. Owners Corp.

THURSDAY, MARCH 25 Arguments begin at 12 p.m. People v. Kennesh State People v. Klesh Brooks a/k/a People v. Klesh Brooks People v. Charo N. Allen

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20544 United Suest Life Ites v. Horowitz 204000 Thomas v. Triboro Malmensone 202012 McMildo v. NVCDOE 2020550 McMildo v. NVCDOE 2020550 Mar Humbing v. Bartingeo Insurance 205650 Sur Faustia v. Deloine Touche 2014 CO. Breadaway Courier v. Bertshire Harbarwy THURSDAY, FEB. 25

THURSDAY, FEB. 25

2 P.M.
16796F People v Mario Solano
1949612758-2760 LtC. v.
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194469C. Verenica
293651 Urba Place v. Shewez
19288 Fedham v. Pon Ambority
202795 in rc. Rennes, inc.
292255 Trado v. City of NY
202718 Fize American v. Verlak
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20/2718 First American v Verlsk Analytics 20/2718 First American v Verlsk Analytics 20/2900 New York Lawyers v, NYFD 20/2902 Diaz v NYU Langone 16/1455 People v, Barnal Johnson 19/5446 Cedeno v, Pacelli 19/2021 People v, Benjamin Dray 20/27176 Carcia v, Rosarfo 20/2719 Frimus Pacific v, Goldman Sachs

20/2/03 to Sachs
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20/14/3 Simmons v. Bergh
20/14/3 Simmons v. Bergh
20/18/3 Henry v. N. Transit
20/13/8/N. Newson v. LVMH More
19/52/05/N. Belair & Evans v. Rizzo

Acosta, P.J. Friedman, Renwick, Manzanet-Daniels, Glache JJ.

WEDNESDAY, FEB. 17 2 P.M. 5047420 Edwin Ramos And Richard A. Milan v. Meetspoilsan Transporsaelon Authority, et al

10 P.M.
25841/14 Melvin Sernano, As Administrator of The Estate of Ana Sernano v. St. Barnahas Nursing Home, Inc. THURSDAY, FEB. 18

12 P.M. 22087/19 J.Z., An Infane By His Moeher And Natural Guardian, Priscilla M. Felcan v. Vicenzo Salerno And Angela M. Salerno

MONDAY, FEB. 22

10 A.M. 557505/20 Susan Lucak v. Passive Capital Management LLC 2 P.M.

2 P.M. 654636/18 Gaseway International, et al v. Richmond Capital Group, LLC, et al 2:30 P.M. 156181/2040 X Owner LLC v. Jani Masi

Masi 3 P.M. 652487/20 Annaly CKE LLC v. Ben Ashlumazy 3:30 P.M. 652513/20 Rochel Leah Bernsueln-Delicher v. Yehuda Gurwiz

TUESDAY, FEB. 23

9:30 A.M.

15802018 Edward Lesau v. 1199 SEJU Nasional Benefit Fund 10 A.M.

651903/20 Playboy Emergrises International, Inc. v. Meredish Corp., et al

2 P.M.

2 P.M. 158271/19 American Express National Bank v.Michael Medina

WEDNESDAY, FEB. 24

9:30 A.M.

THURSDAY, FEB. 25

11:30 A.M. 11:30 A.M. 18189/18 Ashley Campbell And Johanne Brooks v. 181 Armore Services, Inc. And Joshua Lawrence

Lawrence
2 P.M.
15689620 BOP 350 Bloocker Seroes
Leasehold LLC'x Quik Park
Bloocker Seroes Garage LLC
15736320 One NY Plaza Co. LLC'x
Quik Park Southern LLC, et al
3 P.M.

650110/17 Elisabeth Morse v. LoveLive TV US, Inc., et al

FRIDAY, FEB. 26

651581/16 Jerry Ohlinger's Movie Material Store, Inc. v. Legend Movie Posters Corporation et al.

TUESDAY, MARCH 2

lome, Inc. 12 P.M.

First Department

APPELLATE DIVISION

CALENDAR FOR THE FEBRUARY TERM

TUESDAY, FEB. 16 2 P.M. 2 P.M. 17/1806 People John Mercalf 20/2548 Glray v. Undaya 20/2546 GSCP VI EdgeMarc v. ETC Norsheast Pipeline 13/4381 Allied World v. Merchanes

Memoal 194659 Shaniliwa v. Berkowitz 194659 Shaniliwa v. Berkowitz 1946599 People v. Baudillo Monales 195057 Harries Tubenan v. H.T. Development 195676 Sloyes-Mendez v. Chy of NY 194689(1) Babix Founh v. Siem 202234(1) v. CSS NS LLC 2022355 Twenty 6 Boalty v. Kill & Doa's Equines 1947516 People v. Eichard Mahdemand

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Housing AV1182N Harris v. Chy of NY

WEDNESDAY, FEB. 17

2 P.M. 2 P.M. 19/3848 People v. Brandon Garcia 20/1893 Cornez v. Bray 20/2586 Nationsur Mongage v.

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28/3704 Unopia Hearn v. Gramerry Cureface 136-608 Score v. Logan Bus Company 13/2006 Propie v. Rinchanesi 13/2006 Propie v. Rinchanesi 28/2006 Deschalane v. Tricon Crusternesion 28/2006 Task Bealay Owner v. America Inc. 13/2005 Unob v. City of NY 13/2022 Universal Construction v. NYCHA 13/4015 Universal Construction v. NYCHA

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NYCHA 20/2369 Sagaille v. Carrega 20/2406 U.S. Bank v. Boksor 20/2406 U.S. Bank v. Bolsor 15/2740 People v. Maethow Williams 20/393 IN 10 Two Troes v. Mathonsy 20/3623N Cuenca v. Beach 65 20/4025N Goesz Fizzparick v. OTR Media Group

2 P.M.

2 P.M. 18/1081 People v. Raphael Jackson 19/4085 JPHorgan Chase v. Peners 19/1691(1) Rosen v. Kronik Barush 19/4315(1) Hindlin v. Advanced Alemaive 29/2020 Goldin v. Levy 18/5415 People v. Shaheem Dweka

20/0209 Goldin v. Levy 129/416 People v. Shalheem Bweka 20/1713/2157 ACP v. Famous Induseries 13/4509 Mona v. Mona 13/5409 Mona v. Mona 13/5409 Mona v. Mona 13/5402 Pann Second Are v. First American Thie 17/2665 People v. Tyrell Williams 20/3023 Taamos v. NYCLOS

19/4033 Gamez v. Kew Gardens 19/4312 D'Arnagnan, LLC v. Sprinkir

7 Salomon v. US Tennis Assoc. 20/3772N T&M Trustoeship v. BDO USA

TUESDAY, FEB. 23 2 P.M.

2 P.M.
19791 People v. Sharif King
20/1203 Pikiman v. Schreeder
196791 DRB Capital v. Hitari 20/2204 Beard of Mays & Silvest Endv. Grusselin
1972115(1) Maleine v. Cley of NY
18706063 Schwanzhard v. Ogan
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197064 People v. Typel Myers
20/0606 Devenaux & Associaes v.
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20/1666 Devertaint & Associates Turb 18/4059 Lewis v. Thomas 20/1477(2) Lewis v. Hallon Consuración 15/1469 People v. Jeorge Smith 20/2639 Panasleo v. O'Rell 20/2614 14th Sereet Medical v. Epsedn 20/168 BOC Paraners v. Artson Nomes

20/16/8 BOC Paraners v. Artson Young 20/50/60(2) Nimble Veneures v. Craws 20/06/00 Caro Home v. 181 Westchesser Avenue 20/4/5/20 Sokoloff Aris v. Nur Ashki

WEDNESDAY, FEB. 24

20/1560 rem. Phis 19/3591 A., Angelica 20/3112 Martinez v. St-Dill 20/3516 Neighbors United v. Politics of NY Deblasio 15666 Biggan v. City of NY 17558 Rodriguez v. City of NY 175259 People v. Saul Olavarria 17572 Mironov v. Memorial 20/2672 Mironov v. Memorial Hospital 20/1271 Cheung v. 48 Tenanes 20/2514 Conrad v. Cley of NY 20/25129 Ono v. Ono

Construction, LLC's, V. R.D. Construction, LLC's, V. R.D. Constructing Inc., et al 11 A.M.

COURT NOTES

U.S. DISTRICT COURT

Southern District

Public Notice: Appointment of New Magistrate Judge

The United States District Court for the Southern District of New York is accepting applications for the position of one full-time Magistrate Judge at New York, NY. The duties of the position are demanding and wide ranging and will include: (1) conduct of

and wide ranging and will include: (1) conduct of preliminary proceedings in criminal cases; (2) trial preliminary proceedings in criminal cases; (2) trial various pretrial matters and evidentiary proceedings on delegation from the judges of the district court; (4) trial and disposition of civil cases upon consent of the litigants; and (5) satispment of additional duties not inconsistent with the Constitution and laws of the United States.

the United States.

The basic jurisdiction of the United States Magistrate Judge is specified in 28 U.S.C., Section 638. To be qualified for appointment, an applicant must:
(a) be a member in good standing of the bar of the highest court of a State, the District of Columbia, the Commonwealth of Puers for Roo, or the U.S. Virgin her Commonwealth of Puers for Roo, or the U.S. Virgin in the active practice of law for a period of at least in the active practice of law for a period of at least five years (with some substitutions authorized); (c) be competent to perform all the duttes of the office, of good moral character, emotionally stable and mature, committed to equal justice under the law, in good health, patient and courteous, and capable of deliberation and decisiveness; (d) be less than 10 years old; and (e) not be related to a judge of the district court.

A Merit Selection Panel composed of attorneys and other members of the community will review all applications and recommend in confidence to the judges of the district court the five persons whom appointment following an FB and IRS investigation of the appointee. The Court is interested in a diverse applicant pool and encourages all qualified candidates to submit their applications, including women and members of minority groups. The current salary of the position is \$201,112 per annum (**effective 11/1/2021).

Candidates should submit applications to: Edward A. Friedland Destrict Court Executive United States Courthouse 500 Pearl Street, Room 820 New York, NY 10007-1312

An original plus fifteen (15) coptes of a cover let-ter, resume and application must be received by March 19, 2021. Application forms are available on the Court's web site: www.nysd.uscourts.gov. (One vacancy may be filled from this posting.)

APPLICATION

NEW YORK COUNTY

Housing Court

Applications for Housing Court Judges

Hon. Joan B. Lobts (Ret.), Chairperson of the Advi-sory Council for the Housing Part of the Civil Court of the City of New York, today announced that the of the City of New York, today announced that the Advisory Council has begun the process of solici-ling applications for Housing Court Judge positions. In order to encourage interest in applying and to provide sufficient time for a full review of candidates, applications will be accepted through April 22, 2021

provide sufficient time for a full review of candidates, applications will be accepted through Agril 22, 2021 at 5 p.m. Housing Court Judges are appointed to five-year terms. They are required to have been admitted to the New York State Bar for at least five years, two of which must have been in an active and relevant from the properties of the properties of the properties of the properties and publical temperament and knowledge of federal, state and local housing laws and programs. The present slarly for Housing Court Judge is \$189,900 per year. Persons interested in applying to become Housing Court Judges may obtain a questionnaire by emailing Court Judges of the Court of the Court Judge Departing the person at the Office of the Deputy Chief Administrative Judge George J. Silver, 111 Centre Street, Room 1240, New York, NY, 10013. In as much as April 22, 2021 has been established as the deadline date for submission of such applications, Judge Lobts encourages all applicants to obtain, complete and submit the original questionnaire, along with one (1) additional copy, as soon as possible.

QUEENS COUNTY

Ctvtl Court

Calendar Calls for Parts 15C, 30C and 32C

Please be advised that commencing Monday, Peb-ruary 8, 2021, the Part 15C calendar will be heard at 139am and the Part 32C calendar will be heard at 139am and the Part 32C calendar will be heard at 129am. The parties may continue to use the same recurring Teams link as they previously had, but should enter the conference at the appropriate time in accordance the conference at the appropriate time in accordance tions, please email the Court at submission/CPB recourts, gov.

QUEENS COUNTY

Supreme Court, Ctvtl Term

Justice Mojgan Lancman and Justice Tracy Catapano-Fox are now presiding over the Queens Supreme Court Compilance Conference Part, Justice Lancman will hold Compilance Conferences on Mon-days through Trusrdays, and Justice Catapano-Fox will hold Compilance Conferences on Tuesdays and Wednesdays.

All parties shall submit a fully completed and executed Compliance Conference Order by email to escpfinycourts gov. There will be no in person appearances required at this time. The fully completed and executed Compliance Conference Order must be submitted to the Court at least two business days prior to the Compliance Conference submission date. Those Orders that are properly completed will be signed by the Court and field with the Queens Courty Clerk. A follow-up Compliance Conference date may be scheduled to ensure completion of discovery.

The parties may request a virtual conference with the Court in the Compliance Conference Order to discuss any discovery issues that the parties can-not agree to.

Failure to submit a fully completed and executed Order may result in the Court either modifying the Order or scheduling the parties to appear for a virtual Compliance Conference by Microsoft Teams.

Counsel should refer to Justice Lancmand Justice Catapano-Fox's Part rules for furiguidance.

APPELLATE TERM FIRST DEPARTMENT

Civil Appeals

Pursuant to 22 NYCRR 640.6 (a) (2), a "Clerk's Return' from the New York Civil Court has been filed with the Clerk of the Appellate Term, Pirst Department for each Civil action listed below since the last calendar was published on January 5, 2021.

The Clerk's Returns are from the New York Civil Court - New York and Broax Comation.

For York of the Court of the Appellation of 22NYCRR 640.6 (a) (2) (iii) in the event of non-compliance.

21/026 3505 Bway Owner Lic v. Meneely, Amy-Beth 21/027 Newman, David v. American Airlines 21/028 Newman, David v. American Airlines 21/029 Valentine Towers Lic v. Torres, Michelle 21/030 Transus; Dragonsurfside v. Beach View Apt.

APPELLATE 10 A.M.
650409/16 Harry Spring Consulting,
LLC v. Jack Esserson, et al
MONDAY, MARCH 22 60 Centre Street Room 401

MONDAY, MARCH 1

Higgitt, J.P., Brigantti and Hagier, J.J.

2 P.M. 8920/19 Lourdes Neder v. Sheldon Andrews And Trisuae Plumbing Services Corp. TUESDAY, MARCH 23

9:30 A.M. 55025379 BitPusher LLC v.
Cachene Capital Management
LLC And Desires Cachese
Bennark Markovitch

21/017 Similis Mgmr Lic v. Dzganiya, Nino MONDAY, MARCH 8

MONDAY, MARCH 8
Higgitt, J.P., Brigantii and
Hagler J.J.
16565 People v. Duncan, 2:
12646 People v. Utdov, George
13411 People v. Outdolef, Maxime
20127 People v. Brott, Lenny
20158 The Park Countil 1 v.
Figuenca, Migusi

The following cases are on for submission. No appearance is necessary.

Higgitt, J.P., Brigantti, Hagler, J.J. 17063 People v. Davis, Charleseon MONDAY, MARCH 8

Higgitt, J.P., Brigantti, Hagler, J.J. 17/112People v. All, Ricky 18/375 People v. Arebinez, Alexander

New York County

SUPREME COURT

Ex-Parte Motion Part And Special Term Part

Ex-Parte Motions Room 315, 9:30 A.M. Room 315, 9:30 A.M.
Special Term Proceedings
Unsafe Buildings
Bellevue Psychiatric Center
Kirby Psychiatric Center
Metropolitan Hospital
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I. Describe representative federal cases for at least the last five years with which you have been involved in terms of:

A. chul or criminal, title and Judge assigned;
B. subject matter (e.g., securities, antirust, personal injury);
C. particular matter hitigated (e.g., trial, appeal, discovery issues, motions to dismiss or for summary tudement eff.

discovery issues, motions to dismiss or for summary judgment, etc.). D. your role (e.g., if case was tried, were you lead counse?! If not, did you examine or cross-examine any witnesses? How long was the trial? Was case tried to verdict? Did you argue motions or evidentiary points, etc.? If case was not tried, did you argue motions? If so, describe. If case was appealed, did you argue the appeal?) II. If the federal cases in which you have partici-pated do not provide a representative sample of your work, supply the same information with respect to state court cases or administrative matters.

III. List your opposing counsel in the cases described above with addresses and phone numbers.*** If the answer to any of the following questions is yes, please give particulars.***

IV. Have you ever been convicted of a crime?

VI. Have you ever failed to file federal or state income tax returns?

VII. Are you now or have you ever been delinquent in the payment of taxes? VIII. Have you ever been the subject of a contempt proceeding?

IX.Have you ever been the subject of Rule 11 sanctions?

X. Have you ever been the subject of a Bar disci-plinary proceeding?

XI. Have you ever been investigated by any court-appointed person or committee with respect to any question of ethics?

Return To: Edward A. Friedland Edward A. Prieniand District Court Executive U.S. Courthouse, Room 820 500 Pearl Street New York, NY 10007-1312

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SUPREME COURT

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Submissions Part TUESDAY, FEB. 16 TUESDAY, FEB. 16
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11005521 Thompson v. NYC
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THURSDAY, FEB. 18
10088670 Bradshaw v. NYC Office
10112679 Proms v. Admin. For
Children's
100014271 Lee v. Hon. Judge Ferfer
100014271 Lee v. Hon. Judge Ferfer
100012271 Mensala v. Morgan
Sandrey Bradsrage
Paperiess Judge Part
TUESDAY, FEB. 16

TUESDAY, FEB. 16
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65464620151 William Roys v. East
Royer 72nd Gange LLC v.
15566620218 West Rins S. v. NTS
15564602250 Act Princappie LLC
v. NYS Div. of
15641520281 St. Nicholas
Panners LLC v. Washingson

156415/0283 St. Nicholas Panners LLC v. Washington 159487/00555 Tenth Ave. LLC v. Pannani 160478/20555 Tenth Ave. LLC v. Shalad 65755/20616 First Ave. LLC v. Employers Ins. Co. 1610/5/2079 Madison v.

1610026079 Madison v.
Ebvahlmuzakh
25235-184.M. v. NYC
151262719 Aughane v. Saml
156533/19 Abbone v. Trendz N Sydes
Trading
656193/20 Acres Loan Originasion
v. Kaseshin Gallery LLC
15478/717 Adirondack Ins. Exch. v.

Chung 161952/14 Admiral Indomnity Co. v. NYC 1615074 Adminal Industry Co. 1.
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90 Branster. Room 540
91 Ramser. Room 561
92 Rook. Room 515
95 Thomas. Room 529
99 Strankert. Room 528

16 Schlesinger: Room 106 81R Hewitz Room 321 84R Feinberg: Room 114 87R Burke: Room 238 89R Hoaling: Room 236

SPECIAL REFEREE 71 Thomas Street 85R Shamahs Room 300

60 Centre Street Egan: Room 230 SUPREME COURT

Room 130, 9:30 A.M. 60 Centre Stre SUPREME COURT Motion Dispositions from Room 130 60 Centre Street

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