Elaine Turley honored at Sweisgood Dinner which also marks valuable efforts of Lawyers Helping Lawyers Committee

By Laura Lane

Photos by Laura Lane

The Suffolk County Bar Association hosts the Peter Sweisgood Dinner each year. The Lawyers Helping Lawyers Committee held the annual award dinner this year on May 5, which featured a number of distinguished guest speakers, including Michael Marran and Touro Law School graduate George Pammer, who was also a frequent contributor to this publication while he was in law school. Elaine Turley, the past co-chair of Lawyers Helping Lawyers Committee was honored.

But who was the Rev. Peter Sweisgood? A member of the Benedictine Order, he was also a recovering alcoholic. Father Sweisgood was the president of the Long Island Council on Alcoholism when he died of heart failure on June 28, 1989.

During his lifetime he was instrumental in assisting many Long Island professionals afflicted with alcoholism, including members of the legal profession. A year before his death the SCBA's Lawyers Committee on Alcoholism and Drug Abuse (now known as the Lawyers Helping Lawyers Committee) had their first dinner meeting honoring Father Sweisgood. He shared his knowledge of recovery at that event and while serving on many panels and programs during his lifetime. For the past 30 years the SCBA has continued to honor his memory by hosting a dinner that includes guest speakers who often share their story of recovery.

George Pammar, one such speaker, said he had gone to too many wakes because of alcoholism. "I've seen what this does to families and individuals," he said. "It really is a disease."

John Lawlor said he knew Father Sweisgood. "He wasn't one to scream or preach at you," Mr. Lawlor said. "He was a patient man who knew how to reach an alcoholic. The kind of guy you didn't have to ask twice for anything."

Then he added, "Father Sweisgood wasn't about the accolades, pomp and circumstance."

Elaine Turley, described as someone dedicated to the lives of others, was the honoree of the evening. She has been in recovery for the past 31 years. "The Lawyers Helping Lawyers Committee is so important," she said. "We need to be here for the attorneys when they have a problem with addiction."

A staggering statistic was shared — 22 percent of attorneys have a drinking problem.

"This is serious stuff," Ms. Turley said. "Not everyone we reach out to makes it. It is a very special role that this committee serves for our legal committee."

Note: Laura Lane is the Editor-in-Chief of The Suffolk Lawyer. She is an award-winning journalist who has written for the New York Law Journal, Newsday, and is currently a senior editor for three Herald Community Newspapers.

CIVIL RIGHTS/TRAFFIC

Focus on FOIL: Traffic Parking Violations Agency Records

By Cory Morris

Cory Morris

The Second Department recently held that the Nassau County Traffic and Parking Violations Agency ("TPVA") is subject to the Public Officers Law insofar as such a request relates to its administrative/agency functions.[1] Rejecting the idea that the TPVA is a court and thus completely exempt from the Public Officers Law, New York's Freedom of Information Law ("FOIL"), the Second Department holding made two things abundantly clear: agency records, records concerning the nonadjudicatory responsibilities of the TPVA, are subject to disclosure under FOIL; and the TPVA is "an arm of the District Court," so that matters pending in the TPVA are considered to be pending in the District Court.

New York, like other states, enacted FOIL so that the governed have the ability to hold elected officials accountable for its actions. "[A] free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government."[2] The *raison d'etre* behind FOIL is simple and New York courts have consistently recognized that "the public is vested with an inherent right to know and that official secrecy is anathematic to our form of government," and that the Legislature enacted FOIL to "achieve[ ] a more informed electorate and a more responsible and responsive [government]."

Under FOIL, government records are "presumptively open" for public inspection and copying unless they fall within an enumerated statutory exemption of Public Officers Law § 87(2).[3] The exemptions are to be "narrowly construed" so as to ensure maximum public access and the burden rests on the agency to demonstrate that the requested material in fact qualifies for exemption. To meet that burden, the agency must "articulate particularized and specific justification" for the nondisclosure at issue.[4]

The legislative purpose in the Freedom of Information Law is mainly accomplished through the definitions of "Agency" and "Record." Pursuant to Public Officers Law § 86(3), an agency comprehensively includes "any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation . . . or other governmental entity performing a governmental or proprietary function for the state or [a local government]." "Record" is broadly defined to include "any information kept, held, filed, produced or reproduced by, with or for an agency . . . in any physical form whatsoever."[5] A definition of "Judiciary" is given in subdivision 1 of section 86 of the Public Officers Law: "'Judiciary' means the courts of the state, including any municipal or district court, whether or not of record."

Whether it was a speed camera program, a safety study or red-light camera video footage, upon receiving a FOIL request the TPVA took the position that, as an arm of the judiciary, the agency was not subject to FOIL. The TPVA reasoning was that the Freedom of Information Law (Public Officers Law § 84 et seq.) expressly excludes the judiciary from its definition of an agency subject to the disclosure rules.[6] The view of the TPVA was erroneous, however, because should it wish to consider itself a court, and as an arm of the District Court, it must then comply with the New York Judiciary Law § 255. As many attorneys know, the access to court records is *greater* than that access provided under FOIL. This, in part, is why the legislature exempted the judiciary from FOIL. Rather than shield access to records (for whatever reason the agency would wish to do such a thing), the TPVA's position that the traffic *agency* is a court may now provide broader disclosure in light of the 2018 TPVA decision; agency records being discoverable pursuant to FOIL and judicial records subject to disclosure via the Judiciary Law.

The keeping of records of the court and certifying and furnishing true copies thereof are among the fundamental duties of a clerk of court and his or her assistants.[7] Public Officers Law § 66, Judiciary Law §§ 255 and 255-b, and General Municipal Law § 51 express a strong

(Continued on page 23)

Shoehorning Modern Family Dynamics into Antiquated Laws (Continued from page 15)

> to a same-gender married couple is presumed to be their child and, further, that the presumption of parentage is not defeated solely with proof of the biological fact that, at present, a child cannot be the product of same-gender parents. If we were to conclude otherwise, children born to same-gender couples would be denied the benefit of this presumption without a compelling justification. The difficulty is in fashioning the presumption so as to afford the same, and no greater, protection.[5]

To again quote Justice Mulvey, "[t]he Legislature *has not addressed this dilemma*."

Courts, of course, do not have the luxury of waiting for the Legislature to get around to addressing dilemmas, especially those that were not foreseeable until a legal dispute brought the issue to the fore. With the seismic shift in the perception of "family" over the past generation, judges are more and more called upon to force the square peg of modern culture into the round hole of the law, and sometimes even our most esteemed high courts, down the road, hit the reset button.

That is what happened with the Court of Appeals' landmark 2016 opinion in *Brooke S.B. v. Elizabeth A.C.C.*[6] In that case, the court backtracked from a 25-year-old precedent in *Alison D. v. Virginia M.*[7] and found, lo and behold, that Domestic Relations Law §70 permits "a non-biological, non-adoptive parent to achieve standing to petition for custody and visitation"[8] after all. *Alison D.* said just the opposite, concluding that a child's lesbian co-parent was a "legal stranger" with no right to seek visitation rights after separating from the biological mother. Only then-Associate Judge Judith S. Kaye saw the writing on the wall back in 1991.

In her dissent, Judge Kaye observed that DRL §70 specifies that the person seeking custody or visitation must be the "parent," a term the Legislature found no need to define, undoubtedly because at the time the meaning was self-evident and unambiguous. The majority was leery of expanding the definition beyond its traditional intended meaning, understandably concerned that doing so could open the floodgates and permit every dedicated caregiver to sue for visitation, while upsetting myriad legal principles. Judge Kaye, however, believed there was a happy medium, and said her colleagues "overlook and misportray the court's role in defining otherwise undefined statutory terms to effect particular statutory purposes, and to do so narrowly, for those purposes only." [9]

It is not my intention to spell out a definition but only to point out that it is surely within our competence to do so. It is indeed regrettable that we decline to exercise that authority in this visitation matter, given the explicit statutory objectives, the courts' power, and the fact that all consideration of the child's interest is, for the future, otherwise absolutely foreclosed.[10]

In *Brooke S.B.*, the court found "limited circumstances" where DRL §70 "permits a non-biological, non-adoptive parent to achieve standing to petition for custody and visitation." Judge Sheila Abdus-Salaam, writing for the court, held:

> The definition of 'parent' established by this Court 25 years ago in Alison D. has become unworkable when applied to increasingly varied familial relationships . . . Under the current legal framework, which emphasizes biology, it is impossible — without marriage or adoption — for both former partners of a same-sex couple to have standing, as only one can be biologically related to the child (*see Alison D.*, 77 NY2d at 656). By contrast, where both partners in a heterosexual couple are biologically related to the child, both former partners will have standing regardless of marriage or adoption. It is this context that informs the court's determination of a proper test for standing that ensures equality for same-sex parents and provides the opportunity for their children to have the love and support of two committed parents."[11]

Without question, the definition of "family" is constantly changing and has shifted continuously since the very founding of the republic.[12] The new family paradigm is there is no paradigm. The nuclear family "ideal" glorified in such television programs as *Ozzie and Harriet* and *Leave it to Beaver* — breadwinner father, homemaker mother, "natural" (translation: biological) parents — gave way to family units with a single parent, same sex parents who may or may not share DNA with children they may or may not have adopted and, other myriad relationships that could have little (or everything) to do with genetics. Our statutes have not kept pace with this shift, and to this day the U.S. Census Bureau defines "family" as "a group of two people or more (one of whom is the householder) related by birth, marriage, or adoption and residing together."[13] And the problems that arise therefrom must be resolved by the courts, whether there is clear legislative guidance or precedent or not.

Judge Kaye in *Alison D.* recognized the court's legitimate role in defining terms undefined by the Legislature — such as "parent"— to effect the overarching intent of the statute. That is a role the courts must embrace, with all due caution and restraint. Culture, science and law are intersecting in unprecedented ways, and much of the time the resultant societal and legal questions arise in the courts that need to be brought to the attention of lawmakers.

Note: Judge Gail Prudenti is Dean of the Maurice A. Deane School of Law at Hofstra University and Executive Director of the Center for Children, Families and the Law. She was previously Chief Administrative Judge of the State of New York and Presiding Justice of the Appellate Division, Second Department.

[1] *Deborah Perry-Rogers, et al., v. Richard Fasano, et al.*, 276 A.D.2d 67 (1stDept. 2000).
[2] *Id.*
[3] *Matter of Christopher YY. v Jessica ZZ.*, 2018 NY Slip Op 00495 (3rd Dept.Jan. 25, 2018). A
[4] *Matter of Beth R. v. Ronald S.*, 149 A.D.3d 1216 (3rd Dept. 2017).
[5] *Matter of Christopher YY. v Jessica ZZ.*, 2018 NY Slip Op 00495 (3rd Dept. Jan. 25, 2018).
[6] *Brooke S.B. v. Elizabeth A.C.C.*, 28 N.Y.3d 1 (2016).
[7] *Alison D. v. Virginia M.*, 572 N.E. 2d 27 (1991).
[8] *Brooke S.B. v. Elizabeth A.C.C.*, 28 N.Y.3d 1 (2016).
[9] *Alison D. v. Virginia M.*, 572 N.E. 2d 27 (1991).
[10] *Id.*
[11] *Brooke S.B. v. Elizabeth A.C.C.*, 28 N.Y.3d 1 (2016).
[12] See Tricia Hussung, *The Evolution of American Family Structure*, at https://online.csp.edu/blog/family-science/the-evolution-of-american-family-structure. Posted June 23, 2015.
[13] See https://www.census.gov/programs-surveys/cps/technical-documentation/subject-definitions.html#family

Focus on FOIL: Traffic Parking Violations Agency Records (Continued from page 17)

and forthright legislative policy to make available to public inspection and access all records or other papers where there is no compelling reason for secrecy or where secrecy is not compelled by statute or rule.[8] It is longstanding law and common knowledge that courts are presumptively open to the public and do not operate under a shroud of secrecy. What about an "arm" of the district court?

Insofar as the TPVA is judicial or an arm of the District Court, the 2018 TPVA decision should be construed to allow access to records otherwise unavailable under the Public Officers Law to be available through the Judiciary Law and the Uniform Justice Court Act. "All justices of courts governed by [the Uniform Justice Court Act] shall keep or cause to be kept legible and suitable records and dockets of all criminal actions and proceedings. The rules may govern the manner, form, care, custody and disposition of such records." NY UJCA § 2019. The Uniform Justice Court Act provides that:

> *The records and dockets of the court except as otherwise provided by law shall be at reasonable times open for inspection to the public and shall be and remain the property of the village or town of the residence of such justice…*

provided, however, that if such records and dockets are transferred pursuant to section twenty hundred twenty-one of the uniform district court act, the responsibility for such records and dockets by the city, village or town shall cease and they shall be the property of the district court to which they are transferred.

Being an "arm" of the district court, the 2018 TPVA decision specifically holding that matters pending in the TPVA are considered to be pending in the District Court, the TPVA must account for judicial records which, as noted above, are presumptively open to the public.

Whether an agency, a court, an arm of a court, a topic of discussion, approval or disagreement, Traffic and Parking Violations Agency records, whether judicial or administrative, must be made available to the public upon request.

Note: Cory Morris is a civil rights attorney, holding a master's Degree in General Psychology and currently the Principal Attorney at the Law Offices of Cory H. Morris. He can be reached at http://www.coryhmorris.com

[1] *Matter of Law Offs. of Cory H. Morris v. County of Nassau*, 2018 N.Y. Slip Op 835 (2nd Dep't. App. Div. 2018) (referred to herein as "2018 TVPA decision").
[2] Public Officers Law, Section 6.
[3] *Capital Newspapers v. Whalen*, 69 N.Y.2d 246, 252 (1987), quoting *Fink v. Lefkowitz*, 47 N.Y.2d 567, 571 (1979).
[4] *Westchester Rockland Newspapers, Inc. v. Kimball*, 50 N.Y.2d 575, 579 (1980).
[5] *Matter of Gould v New York City Police Dept.*, 89 NY2d 267, 274, 675 N.E.2d 808, 653 N.Y.S.2d 54 (1996); see *Matter of New York Civ. Liberties Union v City of Schenectady*, 2 NY3d 657, 661, 814 N.E.2d 437, 781 N.Y.S.2d 267 (2004).
[6] *Matter of Fink v Lefkowitz*, 47 NY2d 567, 571, 393 N.E.2d 463, 419 N.Y.S.2d 467 (1979,) see *Matter of West Harlem Bus. Group v Empire State Dev. Corp.*, 13 NY3d 882, 885, 921 N.E.2d 592, 893 N.Y.S.2d 825 (2009); *Matter of New York Civ. Liberties Union v City of Schenectady*, 2 NY3d at 661; *Matter of Gould v New York City Police Dept.*, 89 NY2d at 275.
[7] Public Officer Law § 86(4); *Newsday, Inc. v. Empire State Dev. Corp.*, 98 NY2d 359, 362 (2002).
[8] See *Matter of Pasik v. State Bd.*, 102 A.D.2d 395, 399, 478 N.Y.S.2d 270 (1st Dep't. 1984), appeal withdrawn 64 N.Y.2d 886).
[9] *People ex rel. Harris v. Lindsay*, 21 A.D.2d 102, 248 N.Y.S.2d 691, 1964 N.Y. App. Div. LEXIS 3960 (N.Y. App. Div. 1st Dep't. 1964), aff'd, 15 N.Y.2d 751, 257 N.Y.S.2d 176, 205 N.E.2d 312, 1965 N.Y. LEXIS 1665 (N.Y. 1965).
[10] *Cline v. Board of Trustees*, 76 Misc. 2d 536, 351 N.Y.S.2d 81, 1973 N.Y. Misc. LEXIS 1528 (N.Y. Sup. Ct. 1973), aff'd, 45 A.D.2d 823, 357 N.Y.S.2d 1022, 1974 N.Y. App. Div. LEXIS 7188 (N.Y. App. Div. 3d Dep't. 1974).

FREEZE FRAME

Welcome to the world Hudson

Past SCBA President Ilene Cooper and her husband, Mitch Cooper are enjoying their new grandson, Hudson Graham Cooper, who was born on April 6, 2018. He weighed in at 8 lbs., 14 oz. and was 21 inches tall. Congratulations to all!