

New York Law Journal



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CRIMINAL PRACTICE: Double jeopardy not violated by re-trial for depraved indifference murder after acquittal on intentional murder. *People v. Santos Suarez*, App. Div. (p. 18, col. 1).

CRIMINAL PRACTICE: Depraved indifference murder conviction stands despite jury's acquittal on intentional murder. *People v. Khalil Danielson*, App. Div. (p. 18, col. 1).

LEGAL PROFESSION: Informal retainer is void; plaintiff compensated for services rendered under quantum meruit. *Goldston v. Bandwidth Technology Corp.*, Supreme Court, New York (p. 19, col. 3).

ADMINISTRATIVE LAW: Bronx borough president candidate, committee violate campaign finance act, penalized \$2,500. *Matter of Espada 2001 v. New York City Campaign Finance Board*, Supreme Court, New York (p. 20, col. 3).

LEGAL PROFESSION: Court finds law firm may have violated rules in failing to disclose settlement conflicts. *Appel-Hole v. Wyeth-Ayerst Laboratories*, Supreme Court, New York (p. 21, col. 3).

SECOND DEPARTMENT

ADMINISTRATIVE LAW: Homeowner's failure to exhaust administrative remedies bars Article 78 relief; petition time-barred. *Mishina v. City of*

TORTS: Owner did not breach duty of care to shopper injured from unforeseen acts of third party. *Sorscher v. M&S Deli Grocery*, Supreme Court, Kings (p. 23, col. 1).

JUVENILE LAW: Juvenile lacked standing to request 'Mapp' hearing, suppression of vicodin bottle found in her purse. *Mater of M.A.R.*, Family Court, Nassau (p. 23, col. 1).

UNITED STATES COURTS

TAXATION: Proceeds of sale of interest in lottery winnings ordinary income, not long-term capital gain. *Prebola v. Commissioner of Internal Revenue*, 2d Cir. (p. 23, col. 3).

SOCIAL SERVICES LAW: Agency's demand to return legal fees paid to lawyer whose client's debts were discharged is rejected. *Blinder & Blinder PC v. Barnhart*, 2d Cir. (p. 23, col. 3).

BUSINESS LAW: SEC motion for disgorgement, interest, penalties in connection with fraudulent offering granted. *Securities and Exchange Commission v. Opuhenica LLC, SDNY* (p. 25, col. 1).

TORTS: Wheelchair bound detainee's medical indifference claim survives; safe transportation possibly denied. *Soyers v. City of New York*, EDNY (p. 26, col. 1).

million in the so-called "Mega Claims" litigation to help Enron pay debts as it liquidates.

The suit by JPMorgan investors was filed in 2002.

"In essence, plaintiffs allege that they invested in JPMorgan Chase

Continued on page 8

Governor Eliot Spitzer discusses the state budget with reporters at the Capitol

Prisoner's Claim of Deficient Police Training Goes Forward

BY TOM PERROTTA

INADEQUATE training policies for correction officers leave New York City vulnerable to a lawsuit by a man who was injured after he fell out of his wheelchair on a trip from Criminal Court to Rikers Island, a federal judge in Brooklyn has ruled.

Eastern District Judge Charles P. Sifton declined to award the city summary judgment in the suit, which alleges the city violated the Americans with Disabilities Act by failing to properly transport prisoners with disabilities.

"Whether plaintiff's injury was a foreseeable consequence of the City's negligent training of police officers in safe transportation is an issue to be resolved by a jury," Judge Sifton wrote in *Soyers v. City of New York*, 04-CV-3907.

Brett H. Klein of Leventhal & Klein, who represents plaintiff Devin Soyers, estimated correction officers in the city make 100 or more trips a year between prisons and courts with wheelchair-bound defendants who are improperly secured.

"It's inexcusable that the city has failed to comply with the ADA by not training its employees on the safe transport of wheelchair-bound people," Mr. Klein said.

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Judge Sifton

The decision appears on page 26.

Now at ny.law.com

The judge said the industry standard in wheelchair safety requires all wheels to be strapped down to prevent injury.

Localities Told to Of Nude Dancing

BY MARK HAMBLETT

MUNICIPALITIES that want to exclude strip clubs must first consider evidence of potential negative impacts such as rising crime or falling property values, a federal appeals court has ruled.

The U.S. Court of Appeals for the Second Circuit said that, although the U.S. Supreme Court has not "expressly decided the issue," its case law suggests that town officials must provide evidence of "negative secondary effects" before passing an ordinance to ban nude dancing.

The decision in *White River Amusement Pub Inc. v. Town of Hartford*, 06-0233-cv, was made by Judges Guido Calabresi, Rosemary Pooler and Barrington D. Parker. Judge Pooler wrote for the panel.

The White River Amusement Pub opened its nude and semi-nude dancing club in downtown White River Junction, Vt., in September 2001.

The town selectboard instructed Town Attorney Robert Manby in the spring of 2002 to draft a public indecency ordinance. He came up

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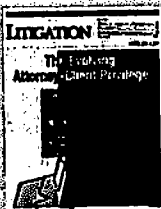
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SPECIAL TALKOUT SECTION



Pending Requirements in Securities Fraud Cases

Developments Continue

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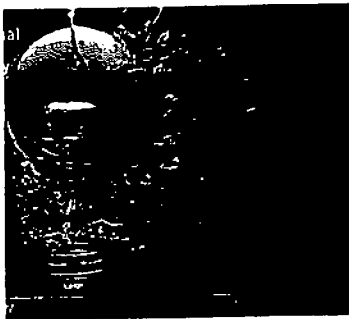
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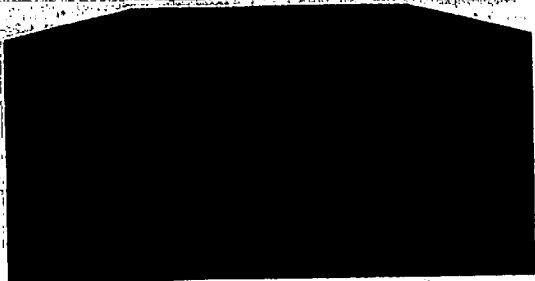
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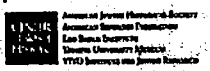
PANELISTS

- Ian Buruma** - R. Luce Professor of Democracy, Human Rights, and Journalism at Bard College and author of *Murder in Amsterdam: The Death of Theo van Gogh and the Limits of Tolerance*.
- Pierre Hazan** - Political Advisor to Patricia Mugny, Minister of Culture of the City of Geneva.
- Nadine Strossen** - Professor of Law, New York Law School, and President of the American Civil Liberties Union.
- J.M.H. Weller** - University Professor and Joseph Straus Chair, NYU School of Law; Director, The Hauser Global Law School Program.

MODERATOR

Rud Tittel - Ernst C. Stiefel Professor of Comparative Law at New York Law School and Chair of the NYLS Comparative Law & Politics Discussion Group.

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Injury Suit

Continued from page 1

The Corporation Counsel's Office, which is defending the lawsuit, declined to comment.

Stephen Morello, a spokesman for the Department of Correction, said the department on average has between 40 and 50 wheelchair-bound individuals in custody.

Mr. Klein's client, Mr. Sayers, has been a paraplegic since 2000. In May 2004, he was arrested for assault; after his arraignment he was transported from a Staten Island courthouse to Rikers Island.

Mr. Sayers was handcuffed when two corrections officers pushed his wheelchair into a van that was accessible via a ramp. The officers strapped the back wheels of his chair to anchors on the floor of the van; Mr. Sayers asked them to strap the front wheels, too, but they declined and said they were following procedure.

As the vehicle approached the Verano-Narrows Bridge, Mr. Sayers tipped backwards in his chair, hit his head on the window of the van and landed on his back. The officers stopped the van in Brooklyn, near the Brooklyn House of Detention. The officers were soon told to bring Mr. Sayers to Manhattan House at 125 White Street. They were unable to return Mr. Sayers to an upright position so he was left on his back for the trip from Brooklyn to Manhattan.

Mr. Sayers was later diagnosed with a fracture of his inferior pubic ramus. He claims his injuries caused him pain for a year and worsened arthritis related to his paraplegia.

In his suit, Mr. Sayers alleged several claims, including violations of the ADA and §504 of the Rehabilitation Act. Judge Sifton dismissed claims against the individual officers on grounds of qualified immunity.

However, the judge said Mr. Sayers' claims survived inspection under the *Monell Doctrine*, which holds that a municipality cannot be held liable as a person unless one of its policies or customs caused the deprivation of constitutional rights.

Citing expert testimony, Judge Sifton said the industry standard in wheelchair safety requires all wheels to be strapped down to prevent injury.

Judge Sifton noted that several months after the incident, the Department of Correction established a policy of securing only the two rear wheels for disabled defendants—a practice experts consider unsafe. When Mr. Sayers' fall occurred, it had no official policy.

"Plaintiff has clearly shown that improper securing of plaintiff's wheelchair in the van caused his injury," Judge Sifton wrote. "The van was moving at a moderate speed when plaintiff fell, and there were no sudden stops or movements that might have otherwise caused plaintiff to fall backwards." Assistant Corporation Counsels Sheryl A. Bruzzese and Jordan M. Smith represented the city.

— Tom Perrotta can be reached at perrotta@aol.com.

governing the sale of goods across borders. And for much of that time, the Vis Moot has been training new generations of lawyers to cross borders, transcend cultural differences and level the playing field for merchants from around the world.

In previous eras, the great powers used gumboots to argue for their interpretations of trade arrangements. More recently, American and European conglomerates deploy legions of lawyers trained by U.S. law schools and armed by Lexis-Nexis and Westlaw. Today, however, businesses in Azerbaijan, Thailand and even tiny Montenegro can engage their own local lawyers who are fully prepared to take on the talent raised in New York and London.

Over the course of this week, leading arbitrators have been mooting the next class of these young lawyers. After each session they provide feedback on making more effective arguments. Lounging in the University of Vienna's Juridicum between sessions, they provide the coaching necessary for establishing a career. The mentoring continues each evening in the city's smoke-filled bars.

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Notwithstanding some jokes, the law remains a learned profession. And only a small portion of the learning can be transmitted by books or classroom lectures. Since 1993, the Vis Moot has been rewarding students and encouraging practical training in developing regions from Bali to Bangkok, just as from Cambridge, (England) to Cambridge, (Mass.).

For the economy to become both global and sustainable, we need able advocates for everyone. For the profession of law to remain honorable, it must find ways to transmit knowledge between generations and among peoples. After all, for want of a conforming primary distribution fuse board, a factory's production line shuts down.

Mark R. Shulman
The author is assistant dean for Graduate Programs and International Affiliations at Pace University School of Law.

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