

JOSEPH M. FINNERTY

GENERAL SUMMARY

Litigation practitioner for over forty years: chief counsel to one of the nation's largest daily newspapers, chief counsel to one of the country's earliest and most recognized independent investigative reporting agencies, and to newspapers, press associations, television news stations and radio news networks in all aspects of libel and First Amendment law, pre-publication, publication and media relations issues; prepublication review for international book publishing group; local counsel to press association, television and radio news affiliates; First Amendment and media-related litigation; and representing corporate clients in complex, high-profile matters, including contracts, environmental (*The American Lawyer* April 2013 list of Top Rated Lawyers in Energy, Environmental and Natural Resources Law), major construction litigation, patent and trademark disputes, customs and antitrust.

"Joseph Finnerty's legal eye has provided me with necessary confidence to share my explorations [in this book]."

Jonathan Safran Foer, Acknowledgments,
Eating Animals, New York: Little, Brown
and Company (2009), at p. 269.

BACKGROUND

PROFESSIONAL

Finnerty Osterreicher & Abdulla

70 Niagara Sq.

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Buffalo, NY 14202-3407

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Martindale: AV-Rated; 5.0/5.0 Peer Review (<http://www.martindale.com/Joseph-M-Finnerty/17045765-lawyer.htm>)

Founding Partner, September 1, 2019 to present.

Barclay Damon LLP

200 Delaware Ave.

Buffalo, New York 14202-2150

Equity Partner. October 29, 2007 – August 31, 2019.
Member (2007-2009) and Chair (2010-2019) of the firm's Media & First Amendment Law practice area; Member of the Intellectual Property Litigation, Commercial Litigation and Environmental practice areas.

Stenger & Finnerty

70 Niagara Street–The Third Floor
Buffalo, New York 14202-3407

Founding partner. July 1, 1993 –October 29, 2007.

A litigation firm concentrating in First Amendment, corporate and environmental matters. Clients: one of the country's largest daily newspapers, television and radio news stations, a press association, reporters, a large petrochemical corporation, a major public utility, a manufacturer of heavy construction equipment, and a marine industry trade association.

Jaeckle, Fleischmann & Mugel

Buffalo, New York 14202
716-856-0600

Equity partner: January 1, 1987 - June 30, 1993. Member of the firm's Litigation Department (Corporate and Commercial Litigation Group). Chairman of the firm's Recruiting Committee. Member of the U.S./Canada Free Trade Practice Group. Associate, Litigation Department: August 3, 1981 - December 31, 1986.

Bar Admissions

New York, 1982

U. S. District Court, Western, Northern, Eastern and Southern Districts of New York; U.S. Court of Appeals, Second Circuit
U. S. Bankruptcy Court

Professional Memberships

The National Press Club
Washington, D. C.
(Member: Freedom of the Press Committee)

Media Law Resource Center
(Member: Pre-Publication, Membership, Pre-Trial and Litigation Committees)

Bar Association of Erie County
(Former Member: Committees on Appellate Practice; Practice and Procedure in State

Courts; Practice and Procedure in Federal Courts)

New York State Bar Association

(Member, Committee on Media Law; Member, Task Force in Free Expression in the Digital Age)

American Bar Association

(Member 1982 – 2023: Forum on Communications Law; Appellate Advocacy Committee)

EDUCATION

Undergraduate:

Washington & Lee University

Lexington, Virginia

Bachelor of Arts, *cum laude*, 1976 (English Literature)

Phi Eta Sigma Honor Society; John H. Hamilton Scholarship in Greek

Honor Roll, Dean's List

Psi Upsilon Fraternity (President, Treasurer, Secretary)

Graduate:

Wake Forest University

Winston-Salem, North Carolina

(Masters Program, English Literature, 1976-77)

The Wake Forest University Fellowship

University of Scranton

Scranton, Pennsylvania

(Masters Program, English Literature, 1977-78)

Law:

Mercer University

The Walter F. George School of Law

Macon, Georgia

Juris Doctor, *cum laude*, 1981

Editor-in-Chief, *Mercer Law Review*, 1980-81

Author, "Lost on the High Seas," 31 *Mercer L. Rev.* 1081 (1980)

Charles Elihu Nadler Award for Dedication to Excellence in Legal Writing

Finalist: Author's Court Award of the State Bar of Georgia

HIGHLIGHTS--PROFESSIONAL

FIRST AMENDMENT/PRESS

- Chief legal counsel to one of the country's largest daily newspapers. Has defended and managed an ongoing caseload of dozens of libel claims (electronic and print) for the newspaper, newspaper groups, television news stations and radio news networks. Chief legal counsel to an independent investigative news agency. Pre-publication review and vetting of articles and editorials on a daily deadline basis. Regular pre-publication review of book manuscripts for major international publishing group. Counseling of press clients on compliance with jurisprudential, statutory and professional journalistic principles, press relations. Has represented the newspapers, as well as a national press association, in litigation over courtroom and public records access issues. Has represented newspaper, television and radio news clients in resisting government prior restraint and government and private litigant-issued subpoenae. Has represented college and university newspapers, including *Washington Square News* (New York University) and *The Spectrum* (State University of New York). (Has served as a source and consultant on press law issues for academics and news organizations in the U.S. and Canada.)

CONTRACTS (SIGNIFICANT CASES)

- *Kenford Company, Inc. and The Dome Stadium, Inc. v. The County of Erie, et al.* Special Counsel to the defendant County and related entities in a breach of contract action seeking damages of over six hundred million dollars in alleged reliance and expectancy damages for failure of the defendants to construct a domed stadium in 1970. Longest civil jury trial in New York state court history (thirteen months). Defendants' conservative damages theories prevailed. The New York Court of Appeals' (the state's highest court) decisions, known as *Kenford I* and *Kenford II*, are acknowledged to be the most important recent contracts damages determinations in New York jurisprudence and are widely influential in commercial cases in which lost profits damages are at issue.
- *Occidental Chemical Corporation, et al. v. The Hartford Accident and Indemnity Company, et al.* Prosecution of claims under contracts of insurance for reimbursement of defense costs and damages paid for environmental liabilities stemming from, among other disposal sites, the Love Canal. Approximately one billion dollars of defense and indemnity claims were asserted under more than three hundred insurance contracts issued during a period of five decades by over fifty domestic and foreign carriers. The nation's most visible and most-watched environmental coverage case. Organized and managed litigation teams and coordinated the efforts of in-house and co-counsel, at times scores of attorneys and paralegals and over one hundred technical workers, in various litigation tasks, including a document review involving over 23,000,000 pages that resulted in document productions totaling over 9,000,000 pages. Achieved, by settlements, recovery of over three hundred million dollars--some of the largest settlements in the environmental coverage area.

- *Camp Dresser & McKee Inc. v. The City of Niagara Falls.* Representation of design engineer/construction manager in contract action/construction-and-design-failure litigation involving high-profile wastewater treatment plant project widely covered by the media (including, among others, the CBS News weekly news magazine, *60 Minutes*).

PUBLIC INTEREST LITIGATION

- Selected by major Western New York charitable foundation to develop and lead a legal challenge to federal approval of a New York State/Native American (Seneca Nation of Indians) Gambling Compact, adopted pursuant to the federal Indian Gaming Regulatory Act (“IGRA”), which designated the city of Buffalo as a venue for construction and operation of a major off-reservation casino gambling resort. Formed a ten-attorney legal team and developed a legal strategy involving separate litigations in state and federal courts. Developed an oversight entity consisting of leading citizens to coordinate legal and media activities. See discussion of *Citizens Against Casino Gambling in Erie County, et al. v. Kempthorne, Secretary of the Interior, et al.*, within *SIGNIFICANT AND REPRESENTATIVE DECISIONS* below. See, e.g., *The New York Times*, April 17, 2006 ‘A Casino Proposal that was Once Lauded is now Drawing Criticism,’ by David Staba (Section B, Page 3); *The New York Times*, “Buffalo Looks for Work but Debates Casino’s Value,” by Ken Belson, February 19, 2007; *The Wall Street Journal*, “The Property Report: Blueprint Buffalo,” by Maura Webber Sadovi, B6, February 21, 2007.

ENVIRONMENTAL

- Listed by *The American Lawyer* (April 2013) as a ‘Top Rated’ lawyer in Energy, Environmental and Natural resources law.
- Ongoing representation of a major public utility client in environmental litigation and administrative proceedings involving disposal sites across New York, including substantial Clean Air Act and Superfund litigations, proceedings and negotiations with government agencies, as well as legal representatives of corporate potentially responsible parties (PRPs); CERCLA cost-recovery actions and negotiations; negotiation of participation agreements; service on PRP steering committees for litigations and clean-up projects; participation in allocation proceedings; management of defense of private damages claims (including class actions) related to contamination and disposal sites.

ANTITRUST

- *Zimmerman v. RCA, et al.* Successful defense of multi-million dollar state law antitrust allegations against consumer electronics manufacturer.
- *Captain’s Cove of Erie County, Inc. et al. v. Marine Trades Association of Western New*

York, Inc., et al. Successful defense of multi-million dollar federal antitrust law claims; ongoing compliance counseling of trade association client.

PATENTS AND TRADEMARKS

- Successfully defended New York City garment district generic parts manufacturer and distributor against patent and trademark infringement claims. *See Eastman Machine Company v. Diamond Needle Corp.*, below.

SIGNIFICANT AND REPRESENTATIVE DECISIONS

- FIRST AMENDMENT/MEDIA/LIBEL & DEFAMATION

Michael C. Cimasi v. The Buffalo News Inc., New York Supreme Court, Erie County, Index Number 814088/2022, successful defamation defense of daily newspaper against a claim of local criminal defense attorney based on an error in a news report incorrectly attributing a quotation to him; motion to dismiss pursuant to New York's anti-SLAPP statute granted in an order, filed August 16, 2023, dismissing all claims and awarding mandatory attorney's fees.

Matthew Spina and The Buffalo News Inc. v. Erie County Sheriff's Office, et al., New York Supreme Court, Erie County, Index Number 812735/2022, CPLR Article 78 proceeding successfully contesting Sheriff's refusal to release videography of jailhouse beating of an inmate by a sheriff's deputy and release of all responsive videos (a total of 12 videos recorded on 6 body-worn cameras) to the news organization.

Investigative Post Inc. v. Empire State Development Corp. New York Supreme Court, New York County, Index number 160769/2021, successful representation of nonprofit investigative news organization in Freedom of Information Law action against state public benefit corporation, including an award of attorney's fees in favor of the news organization.

KS-DOE-24 v. WKBW TV NewsChannel 7 (Scripps Media), et al., New York Supreme Court, Erie County, Index number 811297/2021, successful defense of the news media organization against claims of Child Victims Act plaintiff.

Swiezy and Greenleaf Development & Construction, LLC v. Investigative Post, Inc. and Daniel Telvock, Index No. 804436/2017, successful defamation defense of nonprofit investigative news organization against claims by developer and development Corporation; order, filed August 12, 2022, awarding summary judgment/dismissal of all claims pursuant to New York's amended (effective November 10, 2020) anti-SLAPP statute and award of attorney's fees, *appeal pending* to New York State Supreme Court, Appellate Division, 4th Department (CA 22-01465).

Reus V. Plattsburgh Press-Republican, et al., New York Supreme Court, Clinton County

(Plattsburgh), 72 Misc. 2d 479, 148 N.Y.S. 2d 663, 202 NY Slip Op 21130, 2021 NY Misc. LEXIS 2262, 2021 WL 1837673, Index No. 2018 -1669, RJI No. 09-1-2019-0111, May 6, 2021 (Lawliss, J.), *appeal pending* to New York State Supreme Court, Appellate Division, 3rd Department, Docket Nos. *aff'd*, ___ N.Y.S.3d___, 2022 WL 617904 (3d Dep't March 3, 2022), successful defamation defense of newspaper and reporter in which the court granted the news organization defendants' motion for summary judgment on the bases of substantial truth and the fair report privilege of New York Civil Rights Law §74; and in the first state-court application of the amended New York SLAPP statute (Civil Rights Law sections 70-a and 76-a, amendments effective November 2020) applied the statutorily mandated heightened fault standard (essentially the "Actual Malice" or Constitutional Malice standard regardless of the status of the plaintiffs as public or private figures) and awarded the prevailing press defendants their costs and attorney's fees; the Appellate Division's affirmance constituted the first New York State appellate court determination that the 2020 anti-SLAPP amendments were retroactive to cases pending as of the effective date. *See* Media Law Resource Center, *MediaLawLetter* (March 2022) at p. 14: "New York Appellate Court Affirms Anti-SLAPP Legal Fees to Newspaper."

Reddy v. WSYR NewsChannel 9 (ABC News), Newport Television, LLC and Christie Casciano, New York Supreme Court, Onondaga County (Syracuse), Index No. 2011-2453, November 14, 2017 (Karalunas, J.), *aff'd* 2018 NY Slip Op 07576 (4th Dep't Nov. 9, 2018), Defamation defense of news organization defendants in which court granted motions to declare the plaintiff a public figure and awarding summary judgment dismissing claims asserted by dentist over a news report and broadcast in which the station erred by reporting she had been banned from practice as a result of unprofessional conduct when in fact her practice had only been restricted to certain procedures. The court later denied plaintiff's motion to reconsider and for relief from the judgment (Order entered January 2, 2018). The decisions are on appeal to the Appellate Division, 4th Department (Oral argument scheduled September 13, 2018).

Swiezy and Greenleaf Development & Construction, LLC v. Investigative Post, Inc. and Daniel Telvock, Index No. 804436/2017, December 5, 2017 (Montour, J.), plaintiffs in defamation action against independent investigative news agency declared to be public figures.

The Buffalo News, Inc. and WKBW-TV (Scripps Media/ABC News) v. Buffalo Police Department, et al., New York Supreme Court, Erie County, Index No. 813301/2016 (November 30, 2016), Special Proceeding contesting police department's refusal to release graphic video of brutal beating of African-American arrestee by Caucasian police officer; the beating resulted in imposition of federal felony charges against the officer for civil rights violations. Settled during pendency of appeal to Appellate Division, Fourth Department, with release to the press clients of jailhouse beating video. *See* "Buffalo police officers watch as handcuffed man is beaten," *The Buffalo News*, February 20, 2019, A-1; "Cellblock beating video stirs outrage: City officials say images are 'disturbing'," *The Buffalo News*, February 21, 2019, B-1; "Editorial: A win for public access as jailhouse video is released..." *The Buffalo News*, February 25, 2019; "Jurors quizzed about jail beating video in unrelated police brutality trial," *The Buffalo News*, February 21, 2019.

Investigative Post, Inc. and Gannett Inc. v. Fort Schuyler Management Corporation, New York Supreme Court, Albany County, Index No. 2764-15 (May 15, 2015), proceeding by press organizations to require disclosure of documentation concerning bidding on public benefit projects associated with Gov. Andrew Cuomo's "Buffalo Billion" economic development project; after the proceeding commenced, the defendant affiliate of the State University of New York produced all requested records; clients' press coverage based on the released documentation led directly to indictments by U.S. prosecutor Preet Bharara against state officials and private contractors. *See* "IPost Sues over Suppression of Records," May 19, 2015; "State Relents on Buffalo Billion Records," July 28, 2015; "Round Investigative Post's Reporting Buffalo Billion," September 22, 2016 (www.investigativepost.org).

Christopher J. Alf v. The Buffalo News, Inc., 100 A.D. 3d 1487, 953 N.Y.S. 2d 797, 2012 N.Y. App. Div. LEXIS 7783, 2012 NY Slip Op 7785 (4th Dep't 2012), 21 N.Y.3d 988, 972 N.Y.S. 2d 206, 995 N.E.2d 168 (2013), New York Court of Appeals unanimous affirmance of newspaper's trial court and Appellate Division victories on summary judgment under N.Y. Civil Rights Law fair report privilege: the paper's reports of the criminality of plaintiff's air cargo company and its multi-million dollar cheating of the U.S. government were fair and true. *See* Media Law Resource Center, *MediaLawLetter* (July 2013), at pp. 16-18.

Hamburg Central School District, et al. v. Stephenson, et al. (Application to Quash Subpoena Seeking to Identify Anonymous Blogger Journalist), New York Supreme Court, Erie County (Devlin, J.), Index No. 2012-002141, June 17, 2013: successfully asserted the First Amendment right to publish anonymously on a motion to quash government agency subpoena which sought court order to force Google Inc. to release information that would identify an anonymous blogger/citizen journalist who maintained a website reporting news about local school district, lampooning the actions of its School Board and administrators. *See The Buffalo News*, 'Thorn-in-the-side blogger to stay anonymous,' by Barbara O'Brien, June 18, 2013 (City and Region, p.1); *see also The Buffalo News*, Editorial: "Hamburg School Board should drop effort to intimidate blogger into silence," May 16, 2013; *Artvoice*, "Hamburg and the Constitution," by Alan Bedenko, May 10, 2013; Media Law Resource Center *MediaLawDaily*, June 18, 2013. *And see* hamburgschoollethics.blogspot.com.

The Buffalo News, Inc., Petitioner, v. The School District of the City of Buffalo, Dr. Pamela C. Brown, et al., Respondents, New York Supreme Court, Erie County (Index No. 2012-3936), filed November 26, 2012: successful Art. 78 proceeding by newspaper to dislodge records concerning fired School District administrator accused of financial mismanagement and improprieties in distribution of \$100,000,000 in annual federal grants.

White v. Berkshire Hathaway, Inc. and Henry L. Davis, 10 Misc.3d 254, 802 N.Y.S. 2d 910 (Sup. Ct. Erie Co. 2005) – headline of article (to which plaintiff limited his case after an earlier decision granting defendants' motion to declare him a public figure, *see below*) –which read, "Unscrupulous operation gouges nursing home," was 'fair index' of accompanying article and, thus, was not separately actionable and, in any event, the use of the verb, "gouges," was not malicious in the context of the case. *See The New York Law Journal* October 14, 2005, "Suit by Libel Plaintiff

Deemed a Public Figure is Dismissed,” by John Caher (Albany Bureau Chief); Reporters Committee for Freedom of the Press, *News Media Update*, October 17, 2005 (October 31, 2005, Vol. 11, No. 21), “Developer ruled limited purpose public figure, loses defamation suit,” by Casey Murray; Media Law Resource Center, *MediaLawDaily*, October 19, 2005, by Raphael Cunniff.

Cottrell v. Berkshire Hathaway, Inc., ___ Misc. 2d ___, 798 N.Y.S. 2d 846, 2004 WL 3390053 (Sup. Ct. Erie Co. 2004) (Mahoney, J.), *aff’d* 26 A.D. 3d 786, 809 N.Y.S. 2d 714 (4th Dep’t 2006) – use of the term ‘rival’ to describe the relationship of the plaintiff with the subject of the article, a notorious murderer, drug dealer, gang leader and extortionist who was about to be tried on federal indictments, was not grossly irresponsible, even though the plaintiff had no criminal record, when reporter relied on police and prosecutorial information in compressing the facts of the enmity between the two into the single word at issue. *See The New York Daily Record* June 22, 2005, “Defamation Case Against Newspaper Dismissed,” by Helen Nguyen.

Jane Doe et al. v. New York University, In Re The Washington Square News, Intervenor, 6 Misc.3d 866, 786 N.Y.S. 2d 892-904 (Sup. Ct. New York Co. December 8, 2004)(Edmead, J.) (with Michael J. Grygiel, Esq., McNamee, Lochner, Titus & Williams, Albany, New York) – Successful motion to intervene on behalf of *The Washington Square News* to oppose prior restraint against publication of names of sex offense victims in their civil action against University for assaults that occurred in dormitory; newspaper had obtained the information during standard news gathering activities, *i.e.*, routine court docket searches; also successfully opposed plaintiffs’ request to seal the record of the civil proceedings. A case of first impression on issues concerning student press at private University. Opinion of Hon. Carol Robinson Edmead, J.S.C. *See Columbia Spectator*, December 3, 2004, p. 1, “Court Says NYU Paper Can Print Student Names,” by Kira Goldenberg; *Washington Square News*; *New York Law Journal* December 1, 2004, p.1, “Bid to Impose Prior Restraint on Student Newspaper Fails,” by Elizabeth Stull; Media Law Resource Center, *MediaLawDaily*, December 3, 2004; Media Law Resource Center, *MediaLawLetter* December 2004 at 28; *see also* Student Press Law Center, *News Flash*, December 17, 2004, www.splc.org; *FSView and Florida Flambeau* (The Student Newspaper of the Florida State University), December 21, 2004, www.fsunews.com. *SPLC Report: College Censorship-- “Newspaper Not Bound by Court Order (Trial Court Ruling Grants NYU Student Newspaper Independent Status),”* Vol. XXVI, No. 3 (Fall 2005), p.23.

Sydney Cottrell v. Berkshire Hathaway, Inc. d/b/a The Buffalo News, Murray B. Light and Dan Herbeck, Supreme Court of New York, Erie County Index No. I 1995-7354 (November 24, 2003)– Motion for Judicial Disqualification or Recusal (based on threats by jurist, before whom newspaper was defendant in defamation action, to ‘harm’ newspaper when it refused to cooperate with his demands regarding publication of news article regarding unrelated case); *see The New York Law Journal*, December 5, 2003, “Judge’s Threat to Paper Leads to His Recusal,” by John Caher; Pointeronline, Romenesko, December 2, 2003, “Judge who wants to ‘hurt’ newspaper won’t hear libel case;” *Editor & Publisher Magazine*, E & P News, December 9, 2003, “Did judge try to buffalo editors? Allegedly threatened to ‘hurt’ newspaper,” by Joe Strupp; Reporters Committee for Freedom of the Press, *News Media Update*, (Bulletin) December 1, 2003, “Judge threatens

newspaper; recuses himself from libel case—After making retaliatory threats against *The Buffalo News* if it published a story about an arrested attorney, a state trial judge stepped down from a libel case he was presiding over that involved the paper,” by Jim Lemberg, *and see News Media Update*, December 15, 2003, Vol. 9, No. 24; *The Buffalo News*, November 25, 2003, “Judge is asked to step aside in case against The News,” by Michael Beebe; *The Buffalo News*, December 2, 2003, “Judge takes himself off case against The News,” by Robert J. McCarthy; Media Law Resource Center, *MediaLawLetter December 2003*, p. 18, “Judge Recuses Himself from Libel Suit After Threatening Newspaper in an Unrelated Case,” by Charles Burger.

United States v. Mohamed Kaid, et al., Case No. 99-CR-131-A (W.D.N.Y., subpoena dated October 2003) – successfully negotiated U.S. Attorney’s withdrawal of subpoena issued to investigative reporter regarding his reportage of cigarette-smuggling operation.

Data Track Account Services Inc., et al. v. Curtis W. Lee (Supreme Court, Erie Co. Index No. I-1999-960, proceedings from July 2001 through October 2002) – successful resistance of subpoena of investigative reporter’s notes of interview with and documents allegedly received from ‘whistle-blower’ in civil contempt trial of utility company’s claims concerning disclosures and related news coverage; resisted testimony concerning both confidential and unpublished non-confidential news provided by source; successfully vacated orders of three previously assigned judges sealing court records and denying access to courtroom proceedings, obtained both release of records and courtroom access throughout trial.

The Buffalo News, a Division of OBH, Inc., et al., Complainants, v. John Barry d/b/a Bronx Consumer, Inc. f/k/a Domains or Best Domains, Respondents, National Arbitration Forum (James A. Carmody, Esq., Panelist), March 31, 2003, Claim No. FA0302000146919—successful action within ICANN Uniform Domain Name Dispute Resolution Policy against cybersquatter for transfer of domain name based on bad faith confusing use of trademark.

White v. Berkshire Hathaway, Inc., The Buffalo News and Henry Davis, Supreme Court of New York, Erie County, Index No. 1995/3771, 195 Misc. 2d 605, 759 N.Y.S. 2d 638, 2003 N.Y. Misc. LEXIS 211, 2003 W.L. 1700100 (Lane, J.), decided March 25, 2003, *aff’d* 5 A.D.3d 1083, 773 N.Y.S.2d 664 (4th Dep’t 2004) (adopts expansive multi-factor public figure analysis and holds plaintiff is limited purpose public figure despite 12-plus year gap in publicity prior to allegedly defamatory article and editorial); *see* Media Law Resource Center *MediaLawLetter* April 2003, pp.23-ff.; *see also* Reporters Committee for Freedom of the Press *News Media Update* Vol. , No. (April , 2003); *see also* *The [Rochester, N.Y.] Daily Record* May 30, 2003, Number 104, pp. 1, 3.

People v. James C. Kopp (Indictment No. 98-2555-S01) – anti-abortion activist committed sniper-style murder of abortion physician in his home; defendant confessed to the crime in a jailhouse interview with two newspaper reporters, resulting in exclusive story in nationally-covered prosecution (*see* decision below regarding successful motion for camera coverage of murder trial); defended reporters from District Attorney subpoenas to testify and produce notes during murder trial.

People v. Kopp, The Buffalo News, et al., Intervenors. The Buffalo News, A Division of OBH Inc. and Robert Kirkham, Plaintiffs v. The State of New York, et al., Defendants, 2003 N.Y. Misc. LEXIS 211, 756 N.Y.S. 2d 830-835 (Sup Ct. Erie Co. 2003), Index No. I2002-13043, Indictment No. 98-2555-S01 (intervention to photograph trial of right-to-life sniper murder of abortion provider and declaratory judgment action asserting constitutional challenge to N.Y. Civil Rights Law Section 52, a ban on camera coverage of state court proceedings) – newspaper prevailed in construing statutory camera ban to be inapplicable to still photography; *see* The New York Law Journal (American Lawyer Media)(January 21, 2003); decision published, The New York Law Journal, February 14, 2003; *see also* Reporters Committee for Freedom of the Press *News Media Update* Vol. 9, No. 4 (February 24, 2003); *see also* Media Law Resource Center *MediaLawLetter* April 2003, pp. 57-ff.; *and see* *The Buffalo News, et al. v. The State of New York, et al.*, 195 Misc. 2d 605, 756 N.Y.S.2d 830 (Sup Ct. Erie Co. 2003), noted *supra*.

People of the State of New York v. James Charles Kopp, Supreme Court of New York, Erie County (June 6, 2002) (Sniper Murder of Abortion Provider, Dr. Barnett Slepian, M.D.)–newspaper access to cover arraignment proceedings using still photography; *see* Reporters Committee for Freedom of the Press *News Media Update* Vol. 8, No. 12 (June 17, 2002).

Elibol v. Berkshire Hathaway, Inc. (The Buffalo News) and Henry L. Davis, Supreme Court of New York, Erie County Index No. 9991/98, on plaintiff’s appeal, 298 A.D.2d 944, 747 N.Y.S.2d 649 (4th Dep’t 2002)–summary judgment awarded to media defendants in private-figure case regarding article containing error in report of physician professional misconduct proceeding, when the court found: “Plaintiff Elibol has failed to make a showing that the publisher acted in a grossly irresponsible manner. A transcription error, where the gist of the article is correct, runs between ordinary negligence by reporter or editor, and a simple typographical error. It is not actionable.” (Fahey, J.).

Muscarella v. Berkshire Hathaway, Inc. d/b/a The Buffalo News, Jerry Zremski and Thomas J. Dolan, 278 A.D.2d 854, 721 N.Y.S.2d 432 (4th Dep’t 2000), *mot lv app den*, 724 N.Y.S.2d 143 (4th Dep’t 2001)–reversal of trial court denial of newspaper’s motion for summary judgment, dismissing complaint by public development corporation manager against paper and its reporters who, in covering HUD audit that disclosed waste and mismanagement in housing program, published that plaintiff had “. . . tried to pocket . . .” program funds the auditors determined he improperly had received as fees for housing inspections.

In the Matter of the Application of The City School District of the City of Buffalo for an Order to Compel Discovery and Inspection against Non-Parties WBEN-Entercom Corporation, WGR-Entercom Corporation, WKBW-Granite Broadcasting, WIVB-Lynn Broadcasting, WGRZ-Gannett Broadcasting and The Buffalo News-Berkshire Hathaway, Before Trial, Prior to Instituting Suit, Supreme Court of New York, Erie County Index No. 2000-7717–successfully represented daily newspaper, CBS television news affiliate and local news-radio stations in opposing municipality’s petition for pre-action discovery of news gathering information (including reporters’ notes and

outtakes of press conferences, interviews of union leaders and accounts of union meetings) for a suit against the union in the context of a threatened teachers' strike; the Court dismissed the proceeding in favor of the media, Order (Dillon, J.) September 2000.

In the Matter of the Adoption of Gabriela: Jacqueline and Jimmy Galeas, Petitioners v. Judy Oliver and Brian Bratton, Respondents, Niagara County Family Court (Hon. John F. Batt), December 22, 1999—court access proceeding; Petitioners and Respondents objected to newspaper reporter's courtroom presence during hearings on adoption/custody dispute in which would-be adoptive father was convicted sex offender included in the State's Sex Offender Registry; negotiated on-record full courtroom access resulting in front-page feature article and follow-ups.

People of the State of New York v. Kindt, Indictment No. 99-87—in a case of apparent first impression, the Court upheld media access rights over a defendant's Sixth Amendment claim of entitlement to continue seal on two written "confessions" pending his appeal from a bargained guilty plea to murder in a sensational case; in reliance both on a statute and a special agreement with the prosecutor, the 15-year old mentally challenged defendant retained his right to appeal the trial court's denial of his suppression motion despite his plea, and argued that the seal should continue to protect his fair trial rights in the event of a successful appeal, Order (Himelein, J.) May 3, 2000; see Reporters Committee for Freedom of the Press *News Media Update* Vol. 6, No. 6 (May 15, 2000).

Pellegrino v. The Buffalo News, A Division of Berkshire Hathaway, Inc. and Joseph P. Ritz, 265 A.D.2d 841, 696 N.Y.S.2d 740 (4th Dep't 1999) – reversal of trial court award of summary judgment to plaintiff and award of summary judgment to defendants, dismissing the complaint; error in reporting plaintiff had pleaded guilty to a felony when he had actually pleaded guilty to a misdemeanor is not gross irresponsibility sufficient to establish liability under the applicable standard of care.

Matter of The Buffalo News, a Division of Berkshire-Hathaway, Inc., The Associated Press and Salamanca Press, Petitioners, v. Hon. Larry M. Himelein, Cattaraugus County Court Judge, Honorable William H. Mountain, III, Salamanca City Court Judge, Edward M. Sharkey, Cattaraugus County District Attorney, and Edward K. Kindt, Respondents, 262 A. D. 2d 1072, 692 N.Y.S. 2d 247 (4th Dep't 1999)—representation of newspapers and press association in case involving media access to preliminary hearing and subsequent trial proceedings.

Geraci, et al. v. The Buffalo News, et al., Supreme Court of New York, Erie County Index No. 3072/92 (Michalek, J.), decided October 5, 1999, order filed December 8, 1999—summary judgment awarded to media defendants in action arising from series of reports investigating payroll, vacation and overtime corruption in municipal streets and sanitation departments.

In the Matter of the Application of the Buffalo News ... for the Unsealing of Documents (Oklahoma City Bomber Timothy McVeigh Investigatory Files), 969 F. Supp. 869 (W.D.N.Y. 1997)— successful assertion of newspaper's right of access to warrant information and search/investigatory results of federal law enforcement searches of Buffalo-area native McVeigh's home (The Oklahoma City

bombing of the Murrah Federal Office Building).

The Buffalo News v. Buffalo Enterprise Development Corp., 84 N.Y. 2d 488, 644 N.E. 2d 277, 619 N.Y.S. 2d 695, 23 Media L. Rptr. 1187 (1994), 201 A.D. 2d 988, 608 N.Y.S. 2d 755 (1994); 83 N.Y. 2d 993, 640 N.E. 2d 142, 616 N.Y.S. 2d 475 (1994) – media access to records of public corporation.

Parlato and Ardmore Inc. v. Roman d/b/a Herbert Roman Galleries, et al. (Supreme Court, Erie Co. Index No. 5683/92) and *Curry d/b/a/ Williston Auctions et al. v. Roman* (Index No. 14584/92) – in defamation action among participants in auction of savings & loan’s assets, successfully moved to quash subpoenas for testimony of three non-party newspaper reporters; Order filed August 30, 1994 (Flaherty, J.); see decision of underlying proceedings at *Curry v. Roman*, 217 A.D.2d 314, 635 N.Y.S.2d 391 (4th Dep’t 1995), *appeal den.*, 88 N.Y.2d 804, 646 N.Y.S.2d 984(1996).

National Bar Ass’n–Buffalo Chapter v. Capital Cities Broadcasting Corp., The Buffalo News, 1987 WL 19103, 14 Media L. Rptr. 1917 (W.D.N.Y. 1987) – defense of charges of racial/gender bias in reportage.

Buffalo Evening News, Inc. v. Small Business Administration, 666 F. Supp. 467 (W.D.N.Y. 1987) – media access to corporate records.

- FEDERAL ADMINISTRATIVE PROCEDURE/INDIAN LAW

Citizens Against Casino Gambling in Erie County, et al. v. Kempthorne, Secretary of the Interior, et al., 2007 WL 108466 (January 12, 2007 W.D.N.Y)(Skretny, J.) – federal judge, deciding defense motion to dismiss, Native American motion to dismiss and plaintiffs’ motion for summary judgment held in plaintiffs’ favor that federal officials were arbitrary and capricious in improperly approving a Native American nation’s gambling ordinance to conduct casino gambling on land it owned at Buffalo, New York; vacated the National Indian Gaming Commission’s (“NIGC”) approval of the Seneca Nation’s Gaming Ordinance (without which casino gambling cannot occur); and remanded the matter to the NIGC Chairman with specific instructions to determine whether the Buffalo parcel is “Indian Lands” as defined in the Indian Gaming Regulatory Act (“IGRA”) and to consider, if necessary, the applicability of Section 20 of IGRA (which prohibits gaming on Indian lands acquired after 1988) to the Buffalo parcel, and to provide an explanation of the bases for his determinations. Accordingly, the present status of the Seneca’s Buffalo parcels is that they are not eligible for Indian gambling under federal law, and the Seneca Nation does not have an approved Gaming Ordinance authorizing the tribe to conduct gambling operations in the City of Buffalo.

- LAW OF CONTRACTS

Kenford Company, Inc. v. The County of Erie, et al., 73 N.Y. 2d 312, 537 N.E. 2d 176, 540 N.Y.S. 2d 1 (1989) (“*Kenford II*”) – foreseeability of damages; damages within contemplation of parties; prospective appreciation of value as damages; see “Written In Blood. The Pursuit of Justice – A Century of Western New York’s Most Sensational Trials,” *The Buffalo News* June 27, 1999 by

Nicole Peradotto

Kenford Company, Inc. v. The County of Erie, et al., 138 A.D. 2d 946, 526 N.Y.S. 2d 282 (4th Dep't 1988) – same

Kenford Company, Inc. and The Dome Stadium, Inc. v. The County of Erie, et al., 67 N.Y. 2d 257, 493 N.E. 2d 234, 502 N.Y.S. 2d 131 (1986) (“*Kenford I*”) – requirement of reasonable certainty of proof of lost prospective profits damages; damages as within the contemplation of the parties; stricter proof required by new business regarding expectancy damages in contract

Kenford Company, Inc. and The Dome Stadium, Inc. v. The County of Erie, et al., 108 A.D. 2d 132, 489 N.Y.S. 2d 939 (4th Dep't 1985) – same

Dunlop Tire Corp. v. Occidental Chemical Corp., 177 A.D. 2d 969, 577 N.Y.S. 2d 1014 (4th Dep't 1991), *aff'd*, 79 N.Y. 2d 1040, 594 N.E. 2d 943, 584 N.Y.S. 2d 449 (1992) – preclusion of summary judgment on contractual obligations/warranties

Camp Dresser & McKee Inc. v. The City of Niagara Falls, 142 A.D. 2d 973, 530 N.Y.S. 2d 391 (4th Dep't 1988) – preclusion of summary judgment on contractual account stated

- LITIGATION/PROCEDURE

Eastman Machine Company v. Diamond Needle Corp., ___F. Supp. ___, 2000 WL 1887827 (W.D.N.Y. 2000) (99-CV-0450E) (Elfvig, J.)—defense of patent, trademark and unfair competition claims; court permits defendant to move for recovery of legal fees from plaintiff as condition to permitting plaintiff's amendment of complaint to withdraw certain claims

Occidental Chemical Corp., et al. v. Hartford Accident and Indemnity Company, et al., 184 A.D. 2d 1038, 584 N.Y.S. 2d 247 (4th Dep't 1992)--attorney-client privilege; preservation of privilege claims

Kenford Company, Inc. and The Dome Stadium, Inc. v. The County of Erie, et al., 97 A.D. 2d 982, 468 N.Y.S. 2d 1019 (4th Dep't 1983)--venue; jury selection; related constitutional principles

Kenford Company, Inc. and The Dome Stadium, Inc. v. The County of Erie, et al., 93 A.D. 2d 998, 461 N.Y.S. 2d 628 (4th Dep't 1983)--ad damnum increase

Kenford Company and The Dome Stadium, Inc. v. The County of Erie, et al., 96 A.D. 2d 1134, 467 N.Y.S. 2d 1021 (4th Dep't), 60 N.Y. 2d 558, 457 N.E. 2d 89, 469 N.Y. S. 2d 1026 (1983)--taxpayers' intervenor motion denied

Stewart v. New York Telephone Company v. Niagara Mohawk Power Corp., 136 A.D. 2d 907, 524 N.Y.S. 2d 923 (4th Dep't 1988)--third-party plaintiff separate burden of proof vis-a-vis third-party defendant.

PUBLICATIONS

Member, New York State Bar Association, Special Bar Committee, Task Force on Free Expression in the Digital Age, (Report Issued June 2021 [Task-Force-on-Free-Expression-in-the-Digital-Age-FINAL-with-edits-from-HOD-meeting-and-cover.pdf \(nysba.org\)](#)).

(Keynote Speaker) “Challenges to Free Speech and Press in a Digital Age,” Bar Association of Erie County (N.Y.), Annual Law Day Ceremonies, Statler City, Buffalo, N.Y., May 2, 2019 (Later published in: Erie County Bar *Bulletin*; *Voir Dire* (magazine of the American Board of Trial Advocates)).

Victor P. Goldberg, *Rethinking Contract Law and Contract Design* (Northampton, MA and Cheltenham, UK: Edward Elgar Publishing 2015), Finnerty quoted throughout Chapter 9, “*Buffalo’s Field of Dreams: Kenford Company v. Erie County*,” pp. 96 – 114.

“*Buffalo News Wins Summary Judgment: Strong Headline Makes for Strong Headline Law*,” *MediaLawLetter* November 2005, pp. (New York: Media Law Resource Center).

“Old Public Figures Never Die, Nor Do They Fade Away: A Multi-factor Approach to Public Figure Analysis,” *Media LawLetter* April 2003, pp.23-ff. (New York: Media Law Resource Center).

“Where You Stand Is Decisive—*People v. Kopp*: New York’s Statutory Courtroom Camera Ban Does Not Apply to Still Photography,” *Media LawLetter* April 2003, pp. 57-ff. (New York: Media Law Resource Center).

(Author) Media Law Resource Center Committee Report (Pre-Broadcast/Prepublication Review Committee) “Media Liability for Breach of Promise to Maintain a Source’s Confidentiality after *Cohen v. Cowles Media Co.*,” May 2004.

(Contributor) Media Law Resource Center Committee Report (Pretrial Committee) “Issue Checklist for Motions to Dismiss and Summary Judgment in a Defamation Action” August 2004.

(Contributor) Media Law Resource Center Committee Report (Pretrial Committee) “Discovery Roadmap” October 2004.

SPEAKING/LECTURES/OTHER

June 1, 2019 Appointed by Henry M. Greenberg, Pres., New York State Bar Association, to Membership on the Task Force on Free Expression in the Digital Age (Cynthia Arato and David McCraw, Co-Chairs). Report published June 2021: [nysba.org/app/uploads/2021/06/...](#)

Keynote Speaker, The Bar Association of Erie County, Law Day, May 2, 2019: “Challenges to Free Speech and Press in the Digital Age.”

October 19, 2017 Investigative Post, 2017 Distinguished Service Award For Contributions to Investigative Journalism.

April 24, 2017 Presentation on the New York Freedom of Information Law (with Mickey H. Osterreicher, National General Counsel to the National Press Photographers Association) to the State University of New York at Buffalo, School of Law, Civil Liberties and Transparency Clinic.

January 17, 2017 Presentation (with Mickey H. Osterreicher, National General Counsel to the National Press Photographers Association) to the Media Law Committee of the New York State Bar Association, New York City, New York, regarding the “Four Corners” photo journalism project.

March 2015 Investigative Post (investigativepost.org) Event Series, Panelist: “Dodging Accountability,” a discussion of the growing effort by government at the local, state and federal levels to thwart transparency and accountability.

October 2014 Investigative Reporters and Editors (IRE) Buffalo Watchdog Workshop, Panelist: FOI and Avoiding Legal Pitfalls.

October 2012 Syracuse University, S.I. Newhouse School of Public Communications, Guest Lecturer, Graduate Program.

April 2011 MLRC Institute, Panelist: *The Business of Media in the Age of the Internet.*

March 2011 Syracuse University, S.I. Newhouse School of Public Communications, Guest Lecturer, Graduate Program.

March 2009 MLRC Institute, Panelist: *On the Front Lines -- State Secrets and Journalist Shield Laws/What Next?*

CIVIC

The Landmark Society of the Niagara Frontier, Trustee 2004-2010.

The Campaign for Greater Buffalo History, Architecture and Culture, Board of Directors and Recording Secretary 2011-2014.

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