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# NIAGARA FALLS REPORTER

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# Maid Of The Mist A New York Nightmare: Canadian Hornblower Niagara A Class Act

## Mike Hudson

We tried, we really did. The Niagara Falls Reporter did everything in its power to improve the experience for tourists and locals alike riding one of the sightseeing boats that operate at the base of the falls.

In Ontario, we were successful. Hornblower's

Niagara Cruises now offers state of the art, green technology catamaran vessels and computerized booking, evening cocktail cruises, fine dining and more.

In New York, we failed. Thrillseekers on this side of the river are forced to sail on stinky old diesel tubs that have been springing leaks since the 1970s. And that's only after waiting under the hot sun in lines a mile long for as long as three hours. Once on the boat, there's no place to sit down and no restrooms.

The operation, known as the Maid of the Mist, is owned by the politically very well connected Glynn family. Until 2012, the company also had the Canadian concession, but a government investigation spurred on by a series of articles in this newspaper uncovered enough impropriety, seeming corruption and general hanky panky to get them to yank the Glynn's contract and open it up to bidding, which Hornblower won.

The people of Ontario also won, as Hornblower agreed to pay \$300 million more than the Maid of the Mist for the contract.

For years, politicians in New York had argued that there was no open bidding for the tour boat concession because the Maid of the Mist had a lock on the Canadian side and was thus the "sole source provider." But then, when the Canadians cut their ties with Glynn's company, they all changed their minds.

The Maid of the Mist operated on docks



On the Canadian side with Hornblower there are no waits since passengers purchase timed tickets.



They board a nice sleek new Hornblower boat.



On the American side, there are no timed tickets. It is first come first served and you wait in line.... to ride the Maid of the Mist

located on the Canadian side, and New York politicians from Mayor Paul Dyster to Gov. Andrew Cuomo to U.S. Sen. Charles Schumer stumbled all over themselves to build new docks on the American side.

Suddenly, the Maid of the Mist wasn't



The lines run almost a mile on busy days as people literally wait for hours to take the 15 minute boat ride.



sometimes the lines are so long they double back again. On Saturdays and holidays the waits can be up to four hours. Tourists are advised to make the trip across the bridge and avoid the grueling wait times.

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### INTERNATIONAL FESTIVAL CHILDREN'S PAGEANT

SAT. JULY 9, 2016. 12:00PM  
NIAGARA STREET - GILL CREEK PARK

The contestants in this pageant will gain wonderful experience while participating in the festivities of the Niagara Street Area Business & Professional Association's Annual International Festival. Contestants must arrive at 11:30 am dressed and ready to go on stage. Spectators should bring a lawn chair.

**Registration Fee**  
Early registration fee of \$10.00 is required and must be submitted with application by July 8th. Late registration fee is \$15.00

Age Divisions		Boys
Girls		
Birth - 1 yr. old	International Babes	International Babes
1 - 2 yr. old	Jr. Miss	Mr. Globe
3 - 5 yr. old	Global Princess	Global Prince
6 - 8 yr. old	World Princess	

**RAIN**  
In the event that the festival is officially cancelled due to inclement weather, all application fees will be returned within 14 days.

**AWARDS**  
A crown, and pendant medallion will be given to the winner in each category. There will be 2 runners up in each category and each will receive a trophy.

**JUDGING**  
Contestants will be judged on-stage in their "Sunday best." There are no dressing or changing facilities available. Contestants should arrive ready to go on stage. All contestants three and older will be asked simple questions by the MC at the microphone. International costumes are optional, but would add to the festival theme.

--- DETACH AND MAIL WITH REGISTRATION FEE ---

CONTESTANT NAME \_\_\_\_\_  
 AGE \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  M  F  
 ADDRESS \_\_\_\_\_  
 CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
 PHONE \_\_\_\_\_  
 FAVORITE FOOD? \_\_\_\_\_ FAVORITE PERSON? \_\_\_\_\_  
 FAVORITE COLOR? \_\_\_\_\_  
 FAVORITE TV SHOW? \_\_\_\_\_  
 WHAT DO YOU WANT TO BE WHEN YOU GROW UP? \_\_\_\_\_

Enclose a 'non-refundable' check or money order payable to NSABPA and mail to Niagara Street Area Business Association, 481 16th St., Niagara Falls, NY 14303. Any questions, please call Adell at 816-9804 or Ron at 986-1744.



just a tour boat ride but an important historic and cultural institution. Open bidding would be a sacrilege, and both the contract and the new docks were handed over to Glynn's company.

Hornblower spokesmen said they would have been willing to pay at least \$100 million more for the contract, so the passengers were not the only losers. The taxpayers of New York took a soaking as well.

The accompanying photos may give you some idea of the difference in service that currently exists.

On the New York side, passengers are packed like sweaty sardines between railings and broiling under a hot sun, waiting to board one of the ancient scows sailed under the Maid of the Mist flag. Once they enter the queue there's no turning back, as the hundreds of sweating bodies packed in behind them make retreat impossible; the looks on their faces tell the sad story.

Every summer, ambulance calls respond to the scene as some elderly person or child passes out from the heat and exhaustion. The torturous ordeal imposed by Glynn certainly doesn't belong in the 21st century or even the 20th, but rather is reminiscent of the slave ships sailing from Africa to the New World, the comfort of their human cargo of no concern to the shipmasters.

By contrast, over at the Hornblower Cruises dock, there are no lines at all. That's because Hornblower employs a computerized timed departure system, where a tourist who wants to set sail at 3 o'clock on Friday afternoon merely has to say so when the ticket is purchased. Passengers breeze through an air conditioned terminal to the dock, where their boat awaits them as scheduled.

A picture is worth 1,000 words, and here it's pretty easy to see for yourself who got the good deal and who got stuck with the smelly end of the stick.



Gradually you make it to the front.



Once near the front you go down the elevators where you wait another hour or so to board the boat.



Finally after three hours you are packed in like sardines for your 15 minute tour. While over in Canada tourists had no wait and instead of spending 3 hours in line they had those Horus free to enjoy and spend money. No wonder three times as many people go to Canada as New York



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EOE



# New Train, Casino Entertainment Complex For Niagara Falls (Ont.)

## Mike Hudson

Don't look now, the Canadians are coming.

As the city's share of slot machine revenue from the Seneca Niagara Casino continues to plummet, and Niagara Falls Mayor Paul Dyster struggles unsuccessfully to get Amtrak, Greyhound, U.S. Customs, the Underground Railroad Heritage Commission or quite literally anyone to rent space in the \$44 million "intermodal transportation center" he's built on Whirlpool Street, our neighbors to the north delivered a one-two punch last week that may put our fair city even more on the ropes than it already is.

First, the Ontario Lottery and Gaming Commission selected five Canadian firms to bid on developing the long-awaited entertainment complex for its two Niagara Falls, Ont., casinos.

Requests for proposals were sent to: Falls Community Partners, Golden Horseshoe Partners, Niagara Falls Entertainment Partners, Niagara Falls LIVE! and Niagara Theatre Partners. All five have direct ties to the Niagara Falls and Southern Ontario

development industry as well as global connections.

The bids will focus on developing a 5,000-seat to 7,000-seat entertainment complex that would service not only patrons of Fallsview Casino Resort and Casino Niagara, but the entire region including those in both Southern Ontario and the immediate Buffalo Niagara region.

The venue, which would be used primarily for concerts and special events could also be able to host ice shows, boxing events and maybe even an Ontario Hockey League team, officials said. It would replace the 1,500-seat Avalon Ballroom in Fallsview Casino, which is considered too small by entertainment industry standards.

RFP terms dictate the venue may be located within the footprint of either casino and must include "direct and physical connection" to the gaming rooms.

Bringing a venue of that size to Niagara Falls would help fill in one of the missing pieces in its entertainment options and further cement its position as a major destination.

The facility would provide customers at Fallsview Casino Resort and Casino Niagara with an entertainment experience

that is similar to what is offered at other resort casinos in Ontario, like Caesars Windsor and Casino Rama.

Entertainment has become a significant factor in driving visitors to casinos, helping to build brand awareness and generating incremental gaming revenue. Non-gaming amenities are increasingly important for customers and are essential in competitive, tourism-driven environments like Niagara Falls.

Ontario Lottery and Gaming Corp. officials say they hope to name a designated developer by November and have the venue open by 2019.

The OLG announcement is the second significant detail for Niagara Falls in recent days designed to boost tourism in the region. Ontario provincial officials said the long-coveted direct GO Train service between Niagara Falls and Toronto will begin by 2023, at the latest.

GO Transit is the regional public transit service for the Greater Toronto and Hamilton Area, with routes extending to communities across southern Ontario. The trains carry over 65 million passengers a year.

Since May 1967, GO Transit has evolved from a single GO Train line along Lake Ontario's shoreline into an extensive network of train lines and bus routes. Since service began, more than a billion riders have taken the GO Train or bus – to work or school, to go home, or for leisure activities. GO provides its passengers with safe, fast, reliable, comfortable service to downtown Toronto and other urban centers.

Niagara Falls, Ont., currently welcomes more than 14 million visitors annually and direct GO Train service to Toronto will help see that number balloon, tourism officials said.

Meanwhile, on this side of the river, the local share of slot machine revenue the city gets from the Seneca Niagara Casino has plummeted from a high of nearly \$22 million in 2011 to less than \$17 million last year.

Will a major entertainment venue linked to the two casinos in Niagara Falls, Ont., cut into that even further? You bet.

The primary reason for the precipitous drop in casino revenue here has been the competition from Canada, Ohio and Pennsylvania, as well as casinos downstate, where as many as five new ones are currently



Five proponents will bid for the right to build a new entertainment complex servicing the city's two casinos.

being planned and built.

When the Seneca Niagara Casino opened, tour buses arrived every 15 minutes or half hour to drop off gamblers from Ohio, Pennsylvania and New York cities such as Rochester and Syracuse.

Today, those places have their own casinos or casinos easier to reach, and the tour buses have become a rarity. A quick visit to the city's former convention center, gifted to the Seneca by the state for use as the casino, will reveal that the vast majority of gamblers pressing the slot machine buttons are Niagara County residents.

The loss of the convention center itself has had an incalculable impact on the fiber of the city. Now the city makes do with a small, state operated "conference center," big enough to host large weddings or minor league boxing events.

And while the GO Train and its direct service between Toronto and Niagara Falls, Ont., is a reality, Dyster has spent \$44 million – including substantial casino revenue -- on his train station here, that remains largely a pipe dream.

No contracts have been signed with any tenants for the white elephant on Whirlpool Street, and Amtrak has not agreed to service it. The facility is ten times larger than what the railroad's published standards require for the number of passengers who use a train to get to or depart from the city, and it is Amtrak policy not to rent any more space than it actually needs.

The good people of Niagara Falls, New York, have seen fit to elect and reelect Dyster three times in a row. Their loyalty has been rewarded with the opportunity to live in the most dangerous and highly taxed city in the state, and the least friendly to senior citizens spot in the entire country (See related story).

Taxes are about to spike again with the reassessment, the state has been called in to try to get a reign on out of control spending (See related story) and nearly \$200 million in casino revenue has been squandered.

You get what you pay for, and before Dyster's current term is over, the chickens will have come home to roost.

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# Michalek Takes A Plea; Pigeon Presumed Innocent, And The Oxymoron Of Government Justice

**Jim Ostrowski**

Buffalo SUDDENLY is all a twitter about judicial corruption. I have been yelling, screaming, kicking, and litigating about judicial corruption of various kinds since 1977! Where have all of you concerned citizens been? I will answer that myself. AWOL. You reap what you sew.

I am not going to comment on the current case. It may be shocking but the fact that a judge pled guilty doesn't mean that much to me. People plead guilty all the time to avoid the risk of being (unjustly) convicted of much more serious charges and going to a nasty prison. The other defendant is entitled to a presumption of innocence. I know that concept is not binding on the media but I choose to be bound by it anyway.

The first thing I do when I get a new client with an active proceeding is I ask, "Who is the judge?" It matters greatly because, among other reasons, most judges are chosen by political bosses based largely on donations, connections and in-kind services provided over the years. There is the occasional general election but to get on you the ballot for state judge, you need the blessing of one of the party bosses as there is a strange animal called the judicial convention that they control. So, basically, in a community of a million people, the two non-lawyers who run the parties pick the judges. Madness! Tim Lovallo and I challenged the judicial convention system in 1977 but it persists today. There is no move to change it since the state legislators, with, like, one exception, are tools of the bosses and would not dare to propose a bill creating an open primary.

Naïve reformers think that appointing judges would "take the politics out of it." Nonsense. It makes the politics more secretive and more elitist but the politics remains. Many years ago, I walked into the FBI to ask them to investigate one of these so-called apolitical, appointed judges. They did nothing of course but were nice enough to tip off the targets of the complaint. Thanks guys. They could have gotten me killed. That's the last time I filed any complaint about judges. A waste of time. The system protects its own. Occasionally, there is a spat between politicians and a retaliatory investigation occurs.

I have heard stories about the old days—cash bribes in restaurants before court for example. Just so you know, I am talking about the 1950s-60's. That's not how it works these days. The machine installs judges and expects to be treated a little more equally than regular folks on any case that matters to them. I have seen it happen time and time again in 32 years. There is no need for a bribe. The job itself is the bribe!

Part of the problem is machine politics. The notion that the government exists as a sort of cash machine for the connected poisons the minds of the young lawyers who get sucked up into it and end up as judges. Good luck getting rid of machine politics. As I explained in my first book, Political

Class Dismissed, progressivism begets the machine. Progressivism makes government enormous; the machine then distributes the loot. Is it really possible to grow young lawyers into wise judges within such an intrinsically corrupt and evil system? The machine basically is an organization that engages in legalized theft. A sense of justice does not thrive in that environment.

Sadly, there are more and even bigger problems. Progressivism being the predominant ideology of both Americans and the law schools, one can expect a higher level and different form of corruption to prevail in the judiciary. As I have explained before, progressivism is rooted in pragmatism, the notion that truth is illusion for suckers and that the truth is "what works." So much for constitutions which assume that truth is objective and can be expressed in words with fixed meanings. In the Pork Lawsuit, the progressives on the Court of Appeals said the state constitutional ban on grants to private corporations means the exact opposite of what it says. The fact that ruling correctly would cut off billions of dollars from the governor who appointed them surely had no influence on their decision. That, I submit, is a form of corruption far, far worse than any alleged in Buffalo recently.

Just the other day, our illustrious, non-political, appointed New York Court of Appeals said that an appeal as of right of an anti-Second Amendment decision by the Appellate Division, was not in fact an appeal as of right and dismissed the case. Isn't that ruling a form of corruption—a departure from proper standards—as serious or more serious than what is alleged in Buffalo currently? The Attorney General not only did not indict any of the judges for corruption. His aide filed an approving brief.

Which leads me into my last point, a point I raised in Political Class Dismissed in 2004 and which was never answered or refuted: why should we expect government courts to do justice in the first place? I know. That's heresy. That's committing the mortal sin of noticing the obvious fact that the emperor is wearing no clothes.

I will leave you with these excerpts from the book:

Let's begin at the beginning by pointing out a fact that is so obvious that it is almost entirely forgotten. It is taken for granted that, for the sake of peace, justice and order, the courts must have a monopoly on judicial power within the boundaries of their jurisdiction. Yet, the ability of today's courts to achieve any of these values with the monopoly power they possess is subject to serious doubt. Even if justice implies a court system with the monopoly power to do justice, the converse is not true. The mere existence of monopoly judicial power does not imply that it will be used justly. Whenever that monopoly power becomes unhinged from true justice, as it did, for example, in Stalin's Soviet Union or Hitler's Germany, that monopoly judicial power thereby becomes a great evil. One suffering under Hitler's or Stalin's judicial edicts would have wished to have recourse to

some judicial competition, to say the least.

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Whether judges are elected or appointed, they are all products of a political power structure. They therefore bring to the bench the general mindset of that power structure. They will tend to favor the interests of the power elite because of a similar outlook, loyalty, gratitude, or a desire for future appointments and other favors from the power brokers for themselves and their families and associates. Even federal judges, appointed during good behavior, in effect, for life, tend to look out for the interests of the power structure whence they came. Perhaps from modest backgrounds, they are now accepted into elite circles. Having achieved judicial power, many become social climbers, seeking the acceptance and the numerous and subtle favors elite circles can now confer. While such judges may fairly adjudicate disputes between ordinary private persons, when such persons litigate against the state, or members of the power elite, they will tend to discreetly favor the elite. They are usually clever enough to disguise the favoritism.

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In sum, the monopoly state provides no assurance that disputes will be resolved justly, merely that they will be resolved. Of course, all disputes at all times and all places are resolved one way or another.

Thus, today's court system consistently fails to deliver on its promise to provide peace, order and justice in exchange for the monopoly power it has been given. It resolves disputes slowly and expensively. Its legal principles are often inscrutable, its procedures arcane. Like the legislative and executive branches, it panders to special interests. The courts have consistently put their stamp of

approval on the ever-increasing growth of government and the resulting shrinkage of our liberties.

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Politics is seamless; it pays no attention to the civics book delineation of three separate and independent branches of government. Politicians use the courts for patronage and power. Judges too often reciprocate by giving the connected and the powerful favored treatment and by treating political troublemakers harshly. This favoritism in turn strengthens the machine and allows it to fend off its enemies. In the battle to take your town back from the power elite, don't expect any help from the legal command posts of society.

This discussion of judicial politics is admittedly disturbing. If I am right, judicial politics is merely a subset of politics per se, albeit a form of politics whose machinations are subtle and secretive. As we have seen, politics closely follows the Oppenheimer-Nock-Rothbard model: politics is the accumulation of wealth and power by the undeserving through non-economic means. Again, if I am right, this discussion casts grave doubt on the long-standing claims by political scientists, legal philosophers and judges themselves, that, given a monopoly on the provision of dispute resolution services, the state can and will provide justice for all. As we have seen, not even the prestigious federal courts are immune from self-serving and heavy-handed politics and from flouting their own highest legal principles.

*Jim Ostrowski is a trial and appellate lawyer in Buffalo, NY. He is CEO of Libertymovement.org and author of several books including Progressivism: A Primer on the Idea Destroying America.*

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# STUDY: Niagara Falls Worst City In Country For Retirees: Buffalo, Cheektowaga Close Behind

## Mike Hudson

A new study ranks a world renowned tourist attraction right here at home at the bottom of the list for retirees. The widely reported study, done by Bankrate.com, ranked Niagara Falls as the number one worst city in the entire country to retire.

The study looked at nine categories: Cost of living, weather, healthcare costs, healthcare quality, taxes, crime, well-being, walkability and cultural vitality.

According to the study, Niagara Falls was dragged down by high taxes, cold, snowy weather and a well above average crime rate.

Niagara Falls is not the only city in New York ranked on the worst list. Troy ranked as the seventh worst city to retire, Buffalo as came in sixth and Cheektowaga at number five.

The best ranked city to retire to was Arlington, Virginia. Several warm-weather states followed.

“We found that smaller cities and suburbs fared the best,” said Bankrate.com analyst Jill Cornfield in a statement. “Most seniors prefer to live in these types of communities because they offer access to big-city amenities without as much hustle, bustle and crime.”

But Niagara Falls is a small city. Unfortunately, under Mayor Paul Dyster’s reign of error, the city has been received high rankings in a number of undesirable categories.

Two separate studies named Niagara Falls as the “most dangerous” municipality in New York, and the state’s Financial Restructuring Board for Local Governments found that the city is the most highly taxed in the most highly taxed state in the nation.

After Arlington, Bankrate.com found Alexandria Va., Franklin, Tenn., Silver Spring, Md., West Des Moines, Iowa, Nashville Tenn., and Sarasota, Fla., as the best locations in the nation for retirees.

Joining Niagara Falls, Cheektowaga, Buffalo and Troy on the wall of shame were Milford, Conn., New Haven, Conn., and San Bernardino Ca.

Ironically, The Niagara Frontier is home to a disproportionate number of retirees, in part due to the fact that a shortage of good paying jobs has driven many younger workers out of the region.

The plight of senior citizens living on fixed incomes here, often forced to sell their homes because of high taxes and utility bills, is a disgrace that has gone all but unnoticed by what passes for the region’s political leadership.

In Niagara Falls, Dyster just got done blowing \$44 million on a new train station and, in his first two terms in office, managed to run through nearly \$100 million in revenue from the Seneca-Niagara Casino on a series of projects and programs that have failed to address the city’s economic plight in any meaningful way.



Despite the hype and promise of spinoff from a new casino in Niagara Falls, none of it happened. This building literally directly across the street from the Seneca Niagara Casino is one of scores of vacant buildings adjacent to the casino.

But when it comes to crime, taxes and poor living conditions for retirees, he can boast that his city is Number One with a bullet.

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# Jazz Greats, Juini Booth, Charles Gayle Offer Young Musicians A Chance To Perform At Upcoming Buffalo Gathering

## Mike Hudson and Frank Parlato

Legendary jazz bassist and Buffalo native Arthur 'Juini' Booth will be program director for the Buffalo Institute for Improvised Music and Performance (BIFIMAP), for an event on Tuesday, July 12, starting at 7:30 pm..

Booth will appear with celebrated jazz saxophonist, pianist, professor and improvisationist, Charles Gayle.

It will be more than a performance. It is a gathering, open to all, who want to come join two extraordinary musicians, and learn, play with and study the art of improvisation.

Or come and simply listen.

"Come join and experience how to open up your creative flow," Booth said, inviting musicians, young and old, to come to the event. "Take the challenge in improvising with others' collective, creative energies!"

Acoustic, electronic, and vocal/performance artists are welcome. So is the general public.

BIFIMAP is located in the Sugar City space at 1239 Niagara St. The gathering run from 730 to 1030 pm. For musicians who are starting out in the world of jazz, this is a seemingly tantalizing invitation. Perhaps a chance to learn, a chance to play with greats, perhaps a shot at stardom.

In addition to touring the world as a performer, Booth has lived variously in Los Angeles, Europe and New York City over the past half century. Now he is focused on teaching and performing in Buffalo, as well as continuing his recording and fulfilling touring dates around the world.

But Buffalo is his home. And he has many fond memories of the area.

"I got thrown out of every high school I ever went to, and it was all music related," he said. "If they had study hall, I'd cut and be in the auditorium practicing. And then, when I was 15 and 16, I had to skip school every Friday to take the train to Rochester. I was in Chuck Mangione's band then and he had a gig every Friday there."

By the time he was 18, Booth joined jazz drum great Art Blakey, acknowledged today as one of the inventors of bebop.

Blakey was widely known for discovering young and talented musicians to add to his band, the Jazz Messengers, and Booth – being both young and hugely talented – fit the mold.

While Booth was too young to get into the Village Gate, Birdland and other New York Jazz clubs through the front entrance, the teenage Booth made his entrances through the stage door.

"I didn't care. If I'd have had to grow a mustache, smoke a cigar, you know, I would," he said, adding that music most likely saved him from becoming a juvenile delinquent, as did so many of the young men from his Buffalo neighborhood.

His discography and performance history reads like a who's who of Jazz and a hall of



McCoy Tyner Quartet, July 14, 1973 (from left: McCoy Tyner (p), Azar Lawrence (sax), Juini Booth (bass) and Alphonse Mouzon (drums)



Juini Booth will hold a gathering of musicians - all are invited.

fame of jazz recordings.

Booth has performed, recorded and/or toured with Chuck Mangione, Eddie Harris, Art Blakey, Sonny Simmons, Marzette Watts, Freddie Hubbard, Gary Bartz, Shelly Manne, Tony Williams's Lifetime, McCoy Tyner, Larry Young, Takehiro Honda, Masabumi Kikuchi, Hamiett Bluiett, Chico Freeman, Junior Cook, Elvin Jones, Charles Tolliver, Ernie Krivda, Beaver Harris, Steve Grossman, Joe Chambers, Franklin Kiermyer, s. He worked with Sun Ra as an electric bassist in 1989, playing both electric and upright bass with the Arkestra beginning in 1996.

After 50 years spent traveling the world making music, the Buffalo legend came home. Modern technology has made living in cultural centers such as New York, Los Angeles and Paris less vital than in years past. Anywhere with a telephone, Internet and access to a major airport can sustain artists in 2016.

Consequently, living in Buffalo today is one of the greatest living jazz bassists. Booth is evidently willing to teach others, and bring along his friends to teach as well.

Also from Buffalo, and also joining

Booth on July 12 is Charles Gayle. Gayle is a free jazz musician originally known as a saxophonist, who rose to fame in the late 1980s after decades of obscurity. Gayle also performs as pianist, bass clarinetist, bassist, and percussionist.

Gayle was homeless for approximately

20 years, playing saxophone on street corners and subway platforms around New York City. In 1988, he gained fame through a trio of albums – all recorded in one week – by a Swedish label, Silkheart Records. Since then he has become a major figure in free jazz, recording for labels including Black Saint, Knitting Factory Records, FMP, and Clean Feed. He also taught music at Bennington College.

Gayle described making a conscious decision to become homeless: "I had to shed my history, my life, everything had to stop right there, and if you live through this, good, and if you don't, you don't. I can't do the rent, the odd jobs, the little rooms, scratchin', and all that, no!" At the same time, this allowed Gayle to devote most of his time to playing music, although he often earned less than three dollars a day from busking.

"First of all, I played to play because I need to play," he said. "Second of all, the money, a dollar meant a lot to me at that time. Playing out there is obviously different than playing on a stage but that is so rich out there. Also I had to eat some way and I'm not the type to put my hand out. I'd stand there playing with a coffee cup sometime and people would put money in my coffee and you don't get that on the stage. That's beautiful."

On July 12th, at BIFIMAP, the evening will begin with demonstrative, narrative workshops with Booth, Gayle and other improvisers. The second part of the evening is for groups and performance artists to join in and participate.

"Buffalo Yo," Booth calls out, "are you ready to open up?"

Hey, if nothing more, young artists, it may be chance to say, someday, maybe 50 years from now, "I was once onstage with Juini Booth and Charles Gayle, back in July, 2016...."

' And from there I went on to be a star!"

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# Around and About: Schneiderman– Pigeon Political Feud Colors Indictment

## Tony Farina

Despite Big State Spending, Start-Up NY Falling Miles Short on Jobs

Almost lost in the unbelievable feeding frenzy over the indictment last week of political operative Steve Pigeon was the news that Gov. Andrew Cuomo's highly-touted job-creation program Start-Up NY has created more tax-free zones than jobs.

Empire State Development, the governor's chief economic development agency, released the disappointing numbers last Friday at the start of the holiday weekend apparently hoping they would fly under the radar, and that's exactly what happened. The news that Start-Up NY has only created 408 new jobs in its first two years--despite millions of dollars of state promotion--was tucked away as a footnote in the agency's Business Incentive Report and came more than 90 days late. Empire State Development, as we have reported numerous times, treasures confidentiality, especially when it comes to releasing information on how tax dollars are being spent.

For the record, the jobs program has created 441 tax-free areas in its first two years compared to 408 new jobs, and saddled with those numbers Empire State put the emphasis in the latest report on the commitment by companies to create 4,100 jobs in their first five years in return for their tax breaks with the actual job-creation numbers relegated to the footnote.

According to its state website, Start-Up NY "offers new and expanding businesses the opportunity to operate tax-free for 10 years on or near eligible university or college campuses in New York State." The University of Buffalo has attracted commitments but the job-creation numbers are the numbers, and the lackluster performance across the state has many observers second-guessing the effectiveness of the program with so few jobs to show for so much tax-dollar spending.

A spokesman for the Empire State Public Policy Center, Ken Giardin, was quoted by Gannett as saying "Start-Up NY was supposed to be a silver bullet, but instead it's just been a shiny object that's distracted state lawmakers from making the necessary changes to make the state truly attractive to business," calling the numbers clear evidence that the state's business climate isn't only being hindered by high taxes.

### Schneiderman Catches Up With Pigeon Seven Years After Coup

Speaking of the Pigeon feeding frenzy, there has certainly been no presumption of innocence in the wall-to-wall coverage of the veteran political operative and former Erie County Democratic Party chairman who pleaded not guilty to a nine-count corruption indictment returned last week by a special

grand jury led by his longtime political foe, State Attorney General Eric Schneiderman.

Pigeon's not-guilty plea followed a guilty plea to two felony counts the day before by now-former State Supreme Court Justice John Michalek who is now expected to be a cooperating witness against Pigeon who many believe was always Schneiderman's main target. Sources say Michalek, who pleaded guilty to taking a bribe and filing a false instrument in connection with cases involving Pigeon, faced even more serious charges that he apparently has escaped by agreeing to cooperate against Pigeon, hoping to avoid jail time.

Schneiderman and Pigeon have been bitter enemies since the 2009 State Senate coup led by Pigeon and billionaire Tom Golisano that gave control to Republicans for a short time, catching then-State Sen. Schneiderman by surprise at a time when Schneiderman was riding high in the Senate Democratic conference. Political insiders say the bad blood between Pigeon and Schneiderman has existed ever since and boiled to a head last week when Schneiderman came to town denounce Pigeon and report on the investigation by his office.

So how did Schneiderman get his shot at Pigeon? It started with claims from Mark Sacha that his former boss, Erie County District Attorney Frank Sedita III, and before that, DA Frank Clark, were protecting Pigeon by not investigating claims of election law violations. Sacha ranted and raved, and was eventually fired by Sedita although insiders say Sacha was given the heave-ho for conduct not related to his complaints but for other actions. Sacha is now one of three Democrats running for district attorney and rejoicing that Schneiderman chose to go after Pigeon beginning with a raid on Pigeon's waterfront condo in May of 2015 that resulted in the seizure of his computers.

It is interesting to note that Sacha went after Clark and Sedita for not targeting Pigeon even after both prosecutors were very supportive--and some say very helpful--when Sacha's daughter was accidentally shot and killed in her home in 2005 while reportedly playing with a rifle with her brother. It was a tragedy beyond comprehension and left the family understandable devastated, but Clark especially showed a great deal of support for Sacha, emphasizing that no charges would be filed in the case because it was clearly an accident and bringing the family's other two children into his home for a brief time as they dealt with the tragedy. Nonetheless, Sacha continued his attacks on the prosecutors because he felt they were giving Pigeon a pass, charges Pigeon vigorously denied.

Pigeon is represented by prominent Buffalo attorney Paul Cambria who can be expected to present a strong defense, saying after Pigeon's arraignment last week that "he



Steve Pigeon

vehemently denies any wrongdoing. We're looking forward to our day in court. The grand jury is a one-sided event. It's just an accusation. We'll deal with it in court." Will Cambria go into the Schneiderman-Pigeon political battles, possibly claiming it was behind the investigation? We'll have to wait and see in what could be one of the most sensation trials in local history.

### Will This Be the Year Bills End Playoff Drought? Only Time Will Tell

I want to use a little space this week to issue my annual warning about the torrent of media hype about to head our way about how this Buffalo Bills team will finally break the NFL's longest playoff drought dating back to 1995.

Now I think Tyrod Taylor, who passed for over 3,000 yards last year and rushed for 568 yards, has shown enough to be taken seriously as an NFL quarterback and we should give him a chance this year to prove that he belongs. But he still has a lot to prove, like consistency over the middle and reading de-

fenses when it counts, but he's been the best we've seen around here for a long time, even though that's not saying much.

As for the rest of the team, there are still a lot of question marks as far as I'm concerned. Can Rex Ryan instill the kind of discipline this team needs to be a playoff contender? Okay, so he's a player's coach. But teams can't win unless they play with composure and this team in Ryan's first year had almost no discipline. That will have to change if they are finally going to make the playoffs and reward our wonderful fans the way the Cavaliers did for the Cleveland faithful with that marvelous NBA championship run led by LeBron James.

We don't have a LeBron James on this team, but maybe Taylor will emerge as a true leader who can get this team to the promised land of the NFL playoffs for the first time this century. In the meantime, expect a full-scale promotion from the Bills' front office, something it can do much better than fielding a winning team. When camp starts, you will hear Taylor is on target, Shady McCoy is really ready to deliver, and all the other pieces are in place to make a run. We won't know for some time if any of it is true, and as a long-time follower of this franchise, I will have to see it to believe it. But Rex being Rex, the bullhorn will be out and fans should be careful not to believe everything they hear until they see it.

Watching the Cleveland fans celebrate after so many years of sports failures was a real treat--a cold, winless city, much like Buffalo, breaking through to make the sports world take notice and put the city on the national stage, even for just a blink of an eye. It happened and we can only hope it will happen here sometime soon. No, we don't have LeBron James or Tom Brady, but we do have world-class fans and hopefully they will have something to celebrate this year. My advice: hold your powder until the season begins and don't get caught up too much in all the hype. Talking doesn't do it; winning does.

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# State Finance Board, Reassessment On The Way: Hold Onto Your Wallets!

## Mike Hudson

If there's one thing Niagara Falls Mayor Paul Dyster can't get enough of, it's money. And not money like you work for, Dyster wants other people's money.

Those who contribute to his campaign war chest are routinely rewarded with valuable city real estate, consulting contracts and city jobs. He's blown through nearly \$200 million in revenue from the Seneca Niagara Casino and Resort during his eight and one half years in office and has done everything in his power to ensure that his Niagara Falls is the highest taxed municipality in the highest taxed state in the nation.

Now he's angling for a \$5 million grant from the state Financial Restructuring Board for Local Governments, but he may find he's getting more than he bargained for.

The board accepted the city's plea for assistance, in part due to the fact that the tax rate here – which averages \$20.14 for every \$1,000 in value – is the highest in the state.

And even with that, Dyster managed to run up a \$12.5 million budget deficit last year that required the city to plug the hole using casino cash, which is only supposed to be used for economic development projects.

Longtime city Comptroller Maria Brown warned against such irresponsible spending habits so Dyster fired her.

He's been trying to get the state to step in for three years, but the city Council twice shot the proposal down. So Dyster and Council Chairman Craig Touma created a local Financial Advisory Panel to recommend what he wanted in the first place. The panel released its report late last year, recommending that the state be called in, and the Council was swayed.

Dyster called the state run board's June resolution accepting Niagara Falls into its



Mayor Paul Dyster has led Niagara Falls to the most precipitous and disastrous decline in the city's history. And it wasn't easy.

program a "positive development," and representatives from the board are expected to begin poking around in this city this month.

The board will grant a municipality up to \$5 million, but only if the local government accepts its recommendations. For Dyster, that could get a bit tricky.

Would any responsible financial advisor permit the wanton use of casino cash to plug holes in a totally out of control general budget, for example?

The state board, created by Gov. Andrew Cuomo, features a 10-member review committee that makes budget cutting recommendations for cities, towns, villages and counties that enter the program.

"You've got the panel with experts and expert staff behind them looking at a lot of cities and I think that comparative analysis would be helpful," Dyster said.

The mayor has been seeking, and the Council recently approved, a citywide reassessment that will result in real tax increases here of between 17 and 40 percent,

depending on what part of town you own property in.

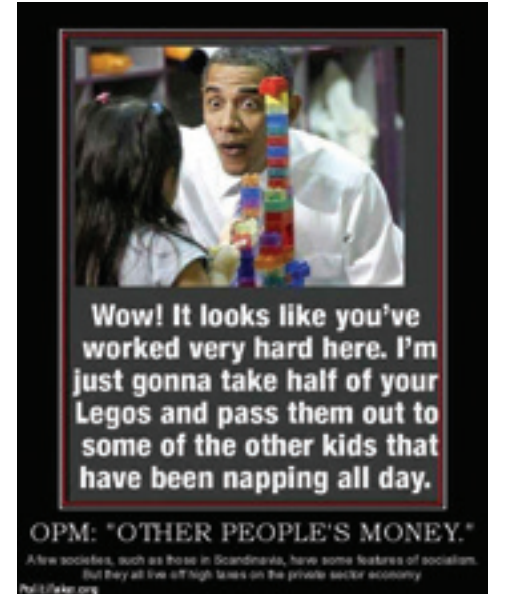
"It's been a long time since the city has had a reassessment," the mayor said. "It seems that we are getting to the point where a reassessment needs to be done."

The last time the city attempted a reassessment was in 2004, but it was never completed. Howls from politically connected property owners in LaSalle brought a halt to the program.

Homes and businesses in the city are currently assessed at between 60 and 83 percent of their purported value. Niagara Falls, according to the city's most recent budget reports, presently list residential property at \$876.5 million value and its commercial property at \$398.4 million value.

In other words, the reassessment will result in tax assessments spiking on average from between 17 and 40 percent.

Dyster has raised taxes repeatedly over the past nine years, but the \$28 million or \$29 million derived from property tax revenue has



remained static.

The reason? People are just walking away.

The mayor himself pointed out that, between 2010 through last year, the city's property tax revenues remained relatively stagnant, rising only about 8 percent over that time, well below the rate of inflation, and despite his numerous tax increases.

City services and economic opportunity in Niagara Falls are such that the city has among the highest rates of crime, unemployment and poverty of any municipality in New York State. It was recently selected as the worst city in the United States for retirees (See related story). Many if not most city residents live in subsidized housing or in neighborhoods most people would describe as slums.

Welcome to the world of Paul Dyster. Since the turn of the century, he's spent four years as the most influential member of the city Council, and nearly nine years as mayor. More than any other living individual, he is responsible for the current state of the city.

## Cuomo Attempts Appeasement, Ignores "Blunderfalls"

### Robert J. Edwards Guest View

Governor Cuomo has seems to have taken an interest in making a show in Niagara Falls. His most recent visit was the "fantastic" news that Albany was going to do something for the city, or so they would like you to believe. The governor's visit was a rehash of two previous statements: a comment that the Robert Moses Parkway will be renamed to the much less inflammatory "Niagara Scenic Parkway", and that a chunk of money had been set aside for Niagara Falls State Park.

Of course, none of this has much direct impact on the city of Niagara Falls, contrary to what Albany wants you to think. The idea that



Wonderfalls - unlikely to happen, but a good campaign tool for Cuomo.

the state park would be able to trickle-down the economy to Niagara Falls is a weak theory at best. The more there is to do in the park, the less time people will spend out of it.

On top of this, Cuomo stayed silent on the Seneca "Power Station". Now that Albany doesn't have any chips in the game, it seems they are content to let this play out on its own.

What about the Rainbow Centre, or as Cuomo calls it, "Wonderfalls"? The state guts two thirds of the mall down to the concrete, takes down all signage with the exception of a now pointless "mall closed" sign, and squats for a few years. Contract disputes are laughable considering how much favoritism Buffalo has seen in recent times. At this point, "Blunderfalls" would be a much more suitable name not just for the mall, but for our at best tepid relationship with Albany.



# Chalk Festival Returns To Lockport



Eric Maruscak poses with one of his creations



An aerial view of the Sweet Chalk event

Lockport, NY – The 4th Annual 2016 Sweet Chalk Festival in Lockport is slated for Sat-Sun, July 16 -17, in the municipal parking

lots at Pine and Main Streets.

More than 50 artists are expected to participate.

This year there will be chalk recreations of works by Vincent Van Gogh, Edward Hopper, Gustav Klimt and Winslow Homer, as well as pop art depictions of Elvis, animals and cartoon superheroes.

According to Festival organizer Ellen Martin, “Over the years this has grown into a tremendous event for people of all ages. It’s just a great way to bring out the community.”

Children are permitted to attempt drawing anything they choose in chalk. Visitors can participate by voting for their ‘Fan Favorite’.

Artists are encouraged to bring an umbrella/stand (for shade), something to sit/ kneel on/knee pads; hat, sunscreen, gloves,

eraser, vibrant chalk/artist pastels, chair, broom to sweep area, tempera paint and brush to paint space first, something for helpers to sit, hairspray, yardstick, a one page biography and inspiration piece to put alongside image.

As for what an artist may not chalk out, the event’s website says “No religion/politics/nudity. [unless recreating Renaissance Art]”

This year’s Festival is made possible by a grant from the Grigg Lewis Foundation and Lockside Art Center.

For additional information, please visit [www.sweetsweetsummer.com](http://www.sweetsweetsummer.com) or contact Martin directly at 443.418.8720 or email her at [baltogal@gmail.com](mailto:baltogal@gmail.com).

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# Why 12 Jurors Represent America And Why Anyone May Veto Unjust Laws

## Frank Parlato

Here is a history lesson, a lesson on historical freedom principles that in our growing authoritarian state, you may want to consider.

To our founding fathers, who placed the importance of freedom above the need to rule over and micro manage everyone through the force of government, the number 12 represented Divine justice. Twelve is the number of hours. Twelve is the number of months. (12 are the signs of the zodiac.)

In the Bible, from where our forefathers said they derived much of their learning, 12 signified perfection of government. There were 12 patriarchs from Shem to Jacob. There were 12 sons of Israel. There were 12 tribes of Israel, whose families formed the 12 tribes of Israel. The high priest's breastplate, used for judgment, had 12 stones representing the 12 tribes. During the period of judges, 12 judges judged Israel. Solomon appointed 12 officers over Israel.

In the New Testament, there were 12 apostles.

With 12 on an American jury, our forefathers presumed the whole of the people would be, symbolically, represented.

Men knew, in those brave times, that no law was valid unless it was so fair and just so as to be able to get the unanimous assent of 12 jurors, chosen at random, from a defendant's own community.

Before government could take from a man his property, his liberty or his life, 12 men had to unanimously agree in their judgment of the facts, the law and the applicability of the law as being fair.

This requirement of a jury of 12 – and its unanimity – led to self-governance rather than authoritarian government where merely a government paid judge or a governor decided who would lose life, liberty or assets.

The mandate that a unanimous jury of 12 is required for a conviction was devised to ensure that laws must be fair and just to the whole of the nation, since even one among 12 jurors can preserve the liberty of a man who breaks an (unjust) law by hanging the jury. With a hung jury the government cannot punish the defendant, even if 11 others in the jury favor conviction.

A jury gives the power to the people over the government, something that most fools today have forgotten.

Our forefathers, contrary to the socialists and progressives of today, did not believe in the ultimate wisdom of using the force of government to create a better society. They believed in the divine justice of God. They did not trust government, (knowing it is comprised of men who can be corrupted). They therefore chose to limit government authority.

It is important to note also that our forefathers did not even believe in a majority-rule government. This is the reason for requiring an unanimous jury verdict, instead of a majority verdict to convict. It is also the



Symbols of the Twelve Tribes of Israel

reason that a sole juror can (still) hang a jury and protect the liberty of someone who has a minority opinion of justice.

The government then (and still, now, actually) cannot make laws curtailing freedom unless they have the consent of the "nation" as represented symbolically by 12

average jurors. The people were meant to be the "supreme" court, because they had (and still do have) the power to decline to enforce unjust laws, through their vote on a jury.

Although few understand it, the Bill of Rights provides us with a government that is a voluntary contract of people individually with each other. Each man who is part to the government and contributes to its support

must freely consent to it. This has been largely forgotten in our present, unconstitutional age of government expansion of power and authority, and our cowardly acceptance of dwindling freedoms.

By jury nullification, by jurors – even a single juror – voting to acquit someone unjustly charged of breaking an unjust law – we can restore lost freedoms.

When one or more jurors refuse to convict a person of a law they feel is unjust, even if that person broke the actual law, that is called jury nullification. The founding fathers crafted a constitution knowing that with jury nullification, the minority did not assume authority over the majority. The minority can refuse to surrender their liberties into the hands of the majority through jury nullification and the hung jury.

This is amply demonstrated in the writings of the founding fathers and evidenced in the Bill of Rights.

This is why we have both suffrage (voting where majority rules) and juries (where a minority of one can hang a jury and prevent enforcement of a bad law).

Voting permits the majority to elect representatives to make laws. But there is no truth that the majority has a right to rule over the minority because they are more numerous. Two men have no more natural right to rule one, than one has to rule two.

Because of the jury, laws enacted by the majority can only be enforced with the consent of a unanimous jury. The minority can veto laws that do not meet the approval of an average jury of 12. This is our constitution. The government will have to limit itself, no matter how unhappy it may be about it, to the confines of our constitution.

The jury has the power to make our government obey the constitution. For remember the jury – and each individual on it, has the final say.

The government cannot punish a jury (or a single juror) for its verdict. Take, for example, Obamacare, or non violent adult to adult sale of marijuana. No informed jury of 12 randomly selected, will be likely to unanimously vote to convict a person for not obeying a law that requires men to give up their freedom of choice for health care and force them to purchase something they may not want.

If you were on a jury, would you vote to acquit a man for breaking the marijuana law where an adult may be imprisoned for growing a plant for his own use or sale to a consenting adult? How about back in the 19th century when slavery was illegal. If you had been on the jury in a Fugitive Slave Law prosecution, would you have voted to acquit the man who helped a slave escape?

Even if you were the only one of 12, even if the judge and other jurors berated you, would you still dare to do what you thought was right?

If you answer yes, then you are a patriot. It is such as you who will bring freedom back to America.



The world is ready to give up its secrets if we only know how to knock, how to give it the necessary blow. The strength and force of the blow come through concentration.

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Swami Vivekananda

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# Director Comey Said What?



**J. Gary DiLaura** **The Right Side**

You have got to be kidding me! First let me say this, FBI Director Comey is human, puts his pants on one leg at a time and

makes mistakes ( boy does he), the same as you and me. This was absolutely a BONE HEAD decision by Director Comey. First of all it was not his decision. It is the Grand Jury's decision as there was plenty of Probable Cause to believe Hillary violated numerous Sections of Title 18 some of which DO NOT Require Criminal Intent!

I heard several former FBI Assistant Directors speak out, some of whom I know, and they say the same thing. Comey screwed up. However, there was no mention of the Clinton Foundation investigation nor anything about Clinton's staff who are also under investigation!?

Speaker Ryan also says the same thing! I don't know why Comey did it as it makes no sense. Hillary Clinton absolutely violated

the law and it is not up to the FBI Director nor the Attorney General nor the President to decide whether there is PC to bring her to a trial. There is plenty of evidence out in the public to bring her actions before a Grand Jury! She showed herself to be totally untrustworthy, irresponsible, of extremely poor judgment and all that makes a good Democrat Candidate for President of the United States!?

Would you put your military son or daughter's well being in the hands of HER? Not me!

Comey's only salvation is that he refers the Clinton Foundation for Grand Jury action! If not we can safely say he's in the tank with Obama. I sure hope not, as we all believed in the FBI !

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**Government is the great fiction, through which everybody endeavors to live at the expense of everybody else.**

*Frederic Bastiat*



A question from a reader...

Q: What happens when you cross a corrupt politician with a crooked lawyer?

A: Chelsea Clinton....

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**Ask the Judge – Question #6**

Dear Judge Bayger:  
What is "Lavern's Law" and would it help or hurt injured persons in New York?  
Signed, L.W. in Niagara Falls



Judge Frank R. Bayger

Answer: Thank you for the question. "Lavern's Law" is, or was, a bill pending before the New York State Legislature that would change the statute of limitations in medical malpractice cases. It would be most helpful for cancer patients because it would extend the time to bring lawsuits against physicians and hospitals.

A little background may be helpful. Currently under New York law, the time to bring a lawsuit for medical malpractice commences at the time of misdiagnosis or when the malpractice allegedly occurred. At that point, you would have two and a half years (30 months) to bring the case against a private doctor or non-profit hospital. If it were against a public hospital, the time is a year and a half, 15 months.

Given the nature of certain slow-moving cancers, a misdiagnosis could develop into a major problem or life-threatening (or ending) condition, which could be treated or prevented with timely medical intervention. As such, timing is very important.

Lavern's Law would change the operative date from the date of the alleged malpractice to the date of discovery of the injurious condition. In the United States, 44 states use this as the standard; only 6 states, including New York, do not.

Unfortunately, this year, the New York

Legislature did not pass Lavern's Law. In 2015, the Assembly passed the measure, but the Senate did not. The Assembly did nothing in 2016, and waited to see what the Senate would do. It is likely that the medical lobby influenced the Senate, which could not reach a consensus on the issue. The session ended without a bill.

The failure to pass this legislation is a boon to the medical community, who can escape responsibility from their mistakes by allowing the clock to run out. It effectively denies patient's their day in court and forces them to second guess their doctors to ensure their diagnosis is correct. The Legislature, particularly the State Senate, has put the needs of the medical community ahead of the people they represent. Many observers have called this putting profits before patients; I call it a shame.

*(Retired State Supreme Court Justice Frank R. Bayger is inviting you to submit legal questions pertaining to personal injury or wrongful death cases to him for a published response. Email your questions to Judge Bayger, a Hall of Fame trial lawyer, and the judge will respond in writing in the Niagara Falls Reporter. Send your email to frankrbayger@gmail.com.)*

**Obituary**

**Randolph Harris**

Sunrise 5/11/1954 Sunset 6/26/2016



Randolph was born to Samuel Harris and Andrea Martinez Harris in Los Angeles, California.

Randolph graduated from William H. Taft High School in 1972. He went on to be a medical biller for 10 years, afterward, started his career as a builder. He built several homes in California. He then became a site manager over several Beverly Hills estates for Castle Asset Management Inc. He was also employed by the Niagara Falls Reporter.

He married his beloved wife Jennifer Schuller 11/19/2011 where they resided in Niagara Falls, New York.

Randolph was kind and giving. He was liked or loved by all those that knew him. He always stood out in a crowd, because of his unusual handsomeness.

Most of all he was a man of great faith. The fruit of the spirit (Galatians 5:22, 23) was present and abundant in his person.

He leaves behind his beloved wife, 3 daughters, 1 son, 3 step-daughters, a step-son; 8 grandchildren, great-granddaughter, and 10 step grandchildren; and a host of friends and family.





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## **FOR THE RECORD: OSHA'S NEW INJURY REPORTING RULE**

Since OSHA's inception, employers have been required to keep records of injuries and illnesses in their workplaces. Though employers had to track this information, they weren't required to report much of it to OSHA. With the announcement of a new final rule on May 12th, 2016, those requirements are changing for employers in high-hazard industries like construction:

- Employers with 250+ or more employees must submit their OSHA Form 300A Summary electronically starting July 1, 2017 and their OSHA Form 300 Log and Form 301 Injury and Illness Incident Report starting July 1, 2018.
- Employers with 20-249 employees must submit their Form 300A Summary electronically starting July 1, 2017. These employers aren't required to submit additional injury data under the new rule.
- Employers with less than 20 employees are exempt from these new requirements.
- State OSHA programs must adopt an equivalent rule by November 12, 2016.
- Reporting is only required once a year.

In addition to improving worker safety and health, this rule also has the potential to help level the playing field for LIUNA's signatory contractors. Transparency will only highlight the differences between LIUNA's responsible signatory contractors and employers who keep costs low by putting workers at risk. OSHA is aware that posting this information online could create further incentives for dishonest employers to discourage reporting.

To help prevent underreporting and encourage accurate data, the new rule also requires employers to:

- Inform employees of their right to report injuries and illnesses without fear of retaliation.
- Have procedures for reporting injuries and illnesses that do not deter or discourage reporting.
- Not retaliate against employees for reporting.

Previously, if a worker was discriminated against for reporting an injury, they had to file a case under OSHA Act section 11(c). Now, OSHA can issue a citation against the employer for discrimination. This new rule will help bring worker safety and health into the 21st century and provides an incentive for companies to make their workplaces even safer. Despite all the progress we have made, with three million workplace injuries a year in the U.S., there is still a long way to go.

## **LEGAL CORNER**

### **When Are You Wrongfully Terminated From Your Employment?**



In New York, as in other states, employees work at will. This means an employee can generally be fired at any time and for any reason, or for no reason at all. The at-will rule is viewed as an equitable approach to employment termination decisions not only because it grants the employer the right to terminate, at any time, for any reason, but also because it provides the employee with that same right; accordingly, an at-will employee has the liberty to quit, at any time, for any reason. As with any rule, there are exceptions. Even though you may be an employee at will, you cannot be fired for reasons that may violate your constitutional or statutory rights. For example, if your employer fires you for discriminatory reasons, in violation of an employment contract, or in retaliation for exercising your rights, you may have a legal claim against your employer for wrongful termination.

This article covers some of the common legal grounds you might have for suing your employer for wrongful termination. But it's not a comprehensive list of New York employment rights, which can change as courts issue new rulings and legislators pass or modify laws. To find out the full extent of your claims, speak to an experienced New York employment lawyer.

#### **Discriminatory Firing**

Under federal law, it is illegal for an employer to fire an employee based on a protected characteristic. Federal law prohibits employers from firing employees based on race, color, national origin, sex, pregnancy, religion, age (if the employee is at least 40), disability, citizenship status, or genetic information. However, only employers with a minimum number of employees must comply with these laws. Most types of discrimination are prohibited once an employer has at least 15 employees. However, for age discrimination the minimum is 20 employees, and for citizenship status discrimination the minimum is 4 employees.

New York law prohibits employment discrimination based on race, color, national origin, sex, pregnancy, religion, age (18 and older), disability, genetic information, sexual orientation, marital status, gender identity, arrest and conviction record, military status or service, observance of Sabbath, political

activities, unemployment status, or status as a victim of domestic violence. New York employers must comply with these laws if they have at least 4 employees. These laws also make it illegal for an employer to retaliate against you for asserting your rights. For example, if you complain to your company's personnel department that you believe you were discriminated against because of your race, your employer may not discipline or fire you for your complaint. Likewise, your employer cannot fire you for participating in an investigation of a discrimination complaint (no matter who made the complaint), testifying in court, or making other efforts to stop discriminatory practices.

Before filing a discrimination or retaliation lawsuit, you must file a complaint with the appropriate government agency. The New York Division of Human Rights enforces the state's laws prohibiting discrimination. In many cases, state fair employment practices agencies will record your complaint with the Equal Employment Opportunity Commission (EEOC), the agency that enforces federal anti-discrimination laws.

#### **Breach of Contract**

In addition to discriminatory firings, you may also have a legal claim for wrongful termination if you have a written employment contract promising you job security. If you have an employment contract or are a member of a union you are NOT an at-will employee. Typically, the terms and provisions of your employment contract, as with any contract, will control whether your termination is justified or illegal.

New York also recognizes employment contracts based on oral promises supported by documentation or statements in an employee handbook or manuals, which an employee reasonably relied upon. For example, if your employee handbook says that you will not be fired unless certain disciplinary steps are taken, your employer may have to follow the promised steps before firing you. Under certain circumstances, some employee manuals have been found to create an implied contract of employment entitling an employee to all the protections against discharge that are written into the manual. Check your employee manual and consult your attorney if you have been discharged in violation of its' terms. Discharge in violation of either a written or implied contract of employment might entitle an employee to sue his employer for reinstatement and lost wages.

Finally, you cannot be terminated if you are what is called a "whistleblower". An employee who is fired for reporting to a supervisor or to a public agency a violation of law which creates and presents a substantial and specific danger to public health and safety, or who is fired for refusing to participate in such conduct is a "whistleblower". If you are terminated for being a "whistleblower", you can sue your employer for reinstatement, back pay and attorney's fees.

*Written by local Niagara Falls attorney,  
Nicholas A. Pelosino, Jr., Esq.*

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# Your Weekly Horoscope

By Jean Topascani



**Aries: (March 21 - April 19)**

Your heart was a frozen block of ice, scarred by the skate blades of broken relationships, until new lover comes along and like a beautiful Zamboni floods your heart with warmth, scrapes away the ugly slushy bits, and dumps them in the empty parking lot of his soul. Fire is a hazard you won't want to ignore this week. Insure everything for 125% of original cost.



**Cancer: (June 21 - July 22)**

A car accident awaits you in the coming week, which is unfortunate, as it's the kind that involves too many Mountain Dews and not enough gas stations. Standing there powdering your nose, which is a bit large for your face, you remind others of a slice of pizza whose point curled up after a night in the refrigerator. Saturday PM: Love is in the air, but not for you.



**Libra: (September 23 - October 22)**

Your equestrian lover broke horses – not in the same way you broke your mother's china, nor the way you broke the outhouse door, not even the way your lover broke your heart, which is surprising since one would think breaking a horse and breaking up with an ass would be similar. Drink alcohol instead of milk.



**Capricorn: (December 22 - January 19)**

You are a Pop Tart kind of person, but your new lover always eats four Aunt Jemima pancakes with Land o' Lakes unsalted butter and Mrs. Butterworth's maple syrup, so you should never marry because of your differences, but you can still fool around. Tues: Try to impress attractive waitress with your poetic artistic sensibilities by asking for a pastrami sandwich on rye with heartbreak, onions, and ennuui on it, wrapped to go in the soul of a sheep.



**Taurus: (April 20 - May 20)**

You will meet a 39-year-old tax attorney and sufferer of severe lactophobia, the tragic result of having been abandoned in an empty milk bottle carrier as an infant. Sat: You're drunk but not too drunk to read off your 16-digit credit card number and security code. Throw away clocks that don't work.



**Leo: (July 23 - August 22)**

Sat: You never did see the truck and the red light, the last thing you will see is a plus-size girl in a petite ensemble, giving her the appearance of a marshmallow tightly wrapped in dental floss. Tues: Bad dairy could cause embarrassing abdominal discomfort. Proceed with EXTREME CAUTION.



**Scorpio: (October 23 - November 21)**

Yours is a prima facie case of ugliness. And your body is ugly too. You are a perfect match for Donald whose personality is vaguely sticky, like the outside of a squeezable honey container or anything handled by a three-year-old. You were the answer to a prayer. Your parents prayed that the world would be made to suffer and here you came along. Mon. AM: You learn why co-workers call you Pinocchio.



**Aquarius: (January 20 - February 18)**

You are a mermaid equally at home on land and water because of your dual-membrane lungs. Even though you brush your teeth, your date can still smell garlicky breath. You're so ugly, when you walk into taco bell, EVERYONE runs for the border! You're the best at all you do – and all you do is make people hate you. Tues. pm: You should wear sensible shoes, but no, your vanity will not allow it!



**Gemini: (May 21 - June 20)**

A feline type, but unattractive, is drawn to you like a yellow cat to navy blue pants. Weds. Am: You will take an around the world cruise. Fri: Pm: Sharks circle your leaking life raft like a pack of rabid personal-injury attorneys at a five-car pileup, and you will taste the fear (which tastes like chicken) and wonder morbidly if you too, might taste like chicken. Your parents grew up in a small village where you met an elderly couple who later died.



**Virgo: (August 23 - September 22)**

You have more daddy issues than Boy's Life magazine published in the late 1970s. At a bar when a certain person sidles up next to you, you feel fuzzy all over, kind of like dark blue corduroys get when they're matted with yellow cat hair. Weds: Order an extra shot of espresso in your grande non-fat sugar free one pump raspberry syrup two pumps vanilla syrup soy latte. Do not get whip cream.



**Sagittarius: (November 22 - December 21)**

Love affair becomes fruity. It wasn't sour grapes – you know your parents just plum disapprove of your Kiwi lover; try as you might to explain that the love between you is all peachy you might as well have been comparing apples to oranges, so although you are bananas for your lover, and the ring was certainly no lemon, you are forced to reply to "Honey, do you?" with a mournful "You know I just can't elope." AM: Sunday: Hobbies good for emotional well being. But make sure life insurance is current. Mon: Avoid fungal toenail infections.



**Pisces: (February 19 - March 20)**

Your overdue corporate mcBump from shift supervisor to assistant manager is delayed when you're fired at MacDonald's. Your new love comes upon you completely by surprise -- like when you're looking into your rearview and side mirrors to decide whether it's feasible to switch into the passing lane and you think you're in the clear, but then you find yourself utterly sideswiped. Sat. You have a drink in your hand and a hole in your heart. Sun. am: Let your Rotweilers enjoy a feast and hope the forensic investigators won't find any traces of DNA in the back yard.

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"Such was the will of the Father that his Son, blessed and glorious, whom he gave to us, and who was born for us, should by his own blood, sacrifice, and oblation, offer himself on the altar of the cross, not for himself, by whom "all things were made," but for our sins, leaving us an example that we should follow his steps."

St Francis of Assisi



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