



INSIDE THIS ISSUE

Buffalo Harley-Davidson Success	2
New NYS Tax Crimes Law	3
Advisory Board Names Schofield	4

Dr. Alison Des Forges Memorial Set for February 11; Magavern Firm Represents Victims of Air Disaster

A powerful voice for human rights and justice was stilled on February 12, 2009, when Dr. Alison Des Forges perished with fellow passengers in the crash of Continental Flight 3407 in Clarence Center, New York.

Dr. Des Forges, a Buffalo resident, was the world's leading expert on the genocide in Rwanda in the 1990s and its aftermath. Also an authority on human rights violations in Burundi and the Democratic Republic of Congo, for nearly 20 years she had served as Senior Adviser to the New York City-based Human Rights Watch's Africa Division.

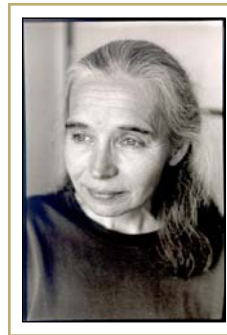
Best known for her award-winning book, *Leave None to Tell the Story*, Dr. Des Forges dedicated her life and work to understanding Rwanda. She courageously exposed the killings, kidnappings and other rights abuses, and she worked to help bring about justice and change.

"Alison did everything humanly possible to save people," said Kenneth Roth, executive director of Human Rights Watch.

Dr. Des Forges appeared on expert panels about genocide convened by the United States Congress, the United Nations, and the legislatures of the United Kingdom, France and Belgium, as well as testifying at trials in Belgium, Switzerland, Canada, and the Netherlands. The United States Holocaust Memorial Museum website describes Dr. Des Forges' book as "a meticulously detailed description of the organization of the campaign that killed some half million Tutsi," and points to her analysis of the international community's failure to intervene.

In addition to raising a family, Dr. Des Forges devoted much of her early career to scholarship on African History, including her doctoral dissertation, which will be published posthumously by Wisconsin University Press. She also was involved in enhancing the quality of public education in Western New York, especially the Bennett Park Montessori Center in downtown Buffalo.

Dr. Des Forges is survived by her husband, Dr. Roger V. Des Forges, a historian who is a China expert and University at Buffalo professor; daughter Jessie, son Alexander, and three grandchildren, of Boston, MA; and her brother, Douglas Liebhafsky, of New York.



Dr. Alison Des Forges

Reflecting her influence on three continents, memorials were held for Alison this past year in Buffalo, Cambridge, Madison, New York City, Montreal, London, Paris, Geneva, and Kigali.

The Alison L. Des Forges Memorial Fund Committee has created a fund in her memory at the UB Foundation. The Committee will sponsor its inaugural fund-raising event on February 11 – the

Opening Night Reception when the acclaimed one-person play, "Miracle in Rwanda," dramatizing the life of a survivor of the genocide, is performed at the Student Union Theater on UB's North Campus. Requests to purchase tickets for the play and reception or to contribute to the Fund may be directed to ALDMemorial@gmail.com or 881-1384.

Magavern Magavern Grimm LLP is representing the family of Alison Des Forges and the survivors of two other Flight 3407 passengers, working as co-counsel with Kreindler & Kreindler LLP, a New York-based law firm that is nationally known for its aviation practice. Richard A. Grimm, III, Magavern firm partner, is serving as a member of the Plaintiffs' Executive Committee, the group of attorneys responsible for directing litigation efforts on behalf of all of the crash victims for whom claims have been made.

Seven Magavern Firm Attorneys Listed as Super Lawyers

Seven Magavern Magavern Grimm LLP attorneys are listed in *Super Lawyers, Upstate Edition's* 2009 publication.

Cheryl Smith Fisher is included in two categories – business litigation, and top 25 women attorneys. Joining her in receiving the Super Lawyers honor are: James A. Magavern, municipal law; William J. Magavern, II, business/corporate; Edward J. Markarian, appellate; Bruce D. Reinoso, elder law; Robert W. Grimm, Jr., real estate; and Thomas E. Schofield, business/corporate.

Mr. Markarian also appears in the January/February 2010 publication of *Super Lawyers, Corporate Counsel Edition*, in the area of appellate practice.

Super Lawyers recognizes attorneys throughout the United States who receive the highest point totals as chosen by their peers and through independent research.

Buffalo Harley-Davidson Achieves Success by Fulfilling Dreams

Buffalo Harley-Davidson takes fun very seriously.

John and Dianne Brinkworth and their son, John Jr., operate one of the oldest Harley dealerships in the world at two locations in Western New York. They have created a business dedicated to enhancing the fun of owning and riding motorcycles, offer the latest in accessories, apparel and collectibles; and back it all with superior customer service.

Magavern Magavern Grimm LLP Offices

1100 Rand Building
14 Lafayette Square
Buffalo, New York 14203
(716) 856-3500

3080 Delaware Avenue
Kenmore, New York 14217
(716) 874-2111

810 Main Street
Niagara Falls, New York 14301
(716) 285-1550

www.magavern.com

Founded in 1921 as a small motorcycle shop in Buffalo, Buffalo Harley-Davidson, Inc. has achieved tremendous success and growth since Mr. and Mrs. Brinkworth purchased the dealership in 1979. They operate a 50,000 sq. ft. facility at 4220 Bailey Avenue in Amherst, a 50,000 sq. ft. facility set on seven acres at 140 Mid County Road in Orchard Park, and have a staff of 35.



While Harley has 40 percent of the nation's overall motorcycle sales, the brand captures more than 65 percent of the Buffalo area market, thanks to the Brinkworths. Their locations are destination points for riders attracted by a combination of professionalism, vast experience and warm friendliness.

According to John Jr., who joined the business in 1990, the family owes much of its success to living Harley-Davidson's mission statement: *We fulfill dreams*. "Our customers often are people who have been thinking about a motorcycle for 30 or 40 years and finally, this is their opportunity," he said. "The mortgage is paid, the kids are done with college, and they are at a comfortable income level."

Buffalo Harley-Davidson's strategic plan for growth includes reaching out to capture the excitement of a relatively new target group of riders – women.

According to Magavern Magavern Grimm LLP attorneys Jim Carlo and Bob Grimm, who have provided longtime legal counsel to the operation, that success is due to the Brinkworths' vision, hard work and commitment to quality. "They do everything right," Mr. Grimm said. "They are completely dedicated and honest businesspersons."

Mr. Carlo noted that the Magavern firm has assisted the Brinkworths from the original purchase agreement to various credit arrangements, leases, contracts with the national franchiser, employee benefit plans, and a profit-sharing plan, and serve as general counsel for litigation matters.

"What we appreciate most about the Magavern lawyers is that they always have our 100 percent best interest in mind," said John, who is vice president of the corporation and holds an MBA degree. "That is what sets them apart. Anytime I call, I get immediate attention. I believe that the firm shares our company's attitude about customer service. I tell my employees that the best thing they can do for our company is to take excellent care of our customers."

Harley-Davidson's *We fulfill dreams* slogan is especially meaningful to John Sr. He left a job working in the blast furnace at Bethlehem Steel in the 1970s to pursue something for which he had a special talent – become a motorcycle mechanic. From there he fulfilled his own dream, becoming the dealership's service manager, then parts manager, then general manager before, with the full support of his wife, purchasing the company.

The Brinkworths welcome the public to visit the museum inside their Amherst location, featuring 35 classic and rare motorcycles, antique photographs and memorabilia. They own most of the museum's antique motorcycles, many of which have been restored by John Sr. Among the motorcycles on display are a 1917 Model J, a 1934 VLD, a 1941 Knucklehead, a 1951 Vincent, a 1965 Honda Dream, and a 1966 BSA. The Orchard Park location has a museum area with 15 vintage motorcycles. Admission is free.

New Power of Attorney Law Subject of Bar Association Program

As part of the Bar Association of Erie County's Noonday Lecture Program, Bruce D. Reinoso, a partner at Magavern Magavern Grimm LLP, and former Dean of the Erie Institute of Law, recently was a featured speaker about New York State's new Power of Attorney law.

More than 100 lawyers attended the program, which covered the basics of the law as well as more advanced issues related to the new statute and forms.

Two Magavern firm associates, Ellen G. Spencer and Raymond W. Walter, prepared a paper on the drastically revised law. Their work is recognized as one of the best writings available on the subject.

New York State Steps Up Enforcement of Tax Crimes



Brendan McCafferty

New York State launched a major enforcement effort in 2009 to punish tax evasion and fraud. Needless complexity in the former criminal tax laws often caused uneven enforcement and more severe penalties for minor misdeeds than major offenses. Law-abiding taxpayers will be encouraged to learn that the State has improved its ability to close the gap between taxes that are owed and taxes that are actually collected, and to impose penalties for tax offenses in a more effective, rational and fair way. Given the State's projected budget shortfall of \$1.7 billion, the State's tax collection efforts take on greater importance for all New Yorkers.

The new criminal tax laws re-codify all tax offenses into eight types of tax fraud, increase criminal and civil penalties for tax fraud, streamline the standards of proof for the 13 types of taxes collected by the State, expand local enforcement of false tax filing offenses, and increase participation of Tax Department attorneys in local prosecutions.

For offenses committed on and after April 7, 2009, the new law defines eight types of tax fraud, all requiring a finding of "willful" behavior, the minimum culpable mental state. To act "willfully" is to act "with either intent to defraud, intent to evade the payment of taxes or intent to avoid a requirement of [the Tax Law], a lawful requirement of the [tax] commissioner or a known legal duty." Now, whether an accused has cheated the State by failing to file a return or by filing a false return, the minimum criminal intent standard is the same.

The eight types of tax fraud are:

(1) Willful failure to file a return or other required document

Under the old law, the deliberate failure to file an income tax return was a felony only when the failure occurred over three consecutive years and taxes were due in each year. The deliberate failure to pay taxes in a single year, even if millions were owed, was only a misdemeanor. By contrast, a filer who exaggerated a charitable deduction, however small, faced a Class E felony charge.

The new law makes the willful failure to file a tax return of any kind a felony when there is intent to evade or defraud and the unpaid tax exceeds \$3,000.00. The failure is punishable in a single year. The severity of the charge increases as the unpaid tax increases, i.e., Class D felony, more than \$10,000.00, Class C felony, more than \$50,000.00, Class B felony, more than \$1,000,000.00.

(2, 3) Willfully and knowingly making or filing a false return or supplying false information

Filing false documents is tax fraud when a person acts willfully (as defined above) while "knowing that a return, report, statement or other document...contains any materially false or fraudulent information, or omits any material information." The law covers written submissions and oral statements by the taxpayer or an agent acting on his behalf who knowingly provides false documents or assertions. The law also covers untimely filings, and not simply those that are materially false.

A false filing involving an amount less than \$3,000.00 is a misdemeanor. Amounts over \$3,000.00 bring felony charges, when the behavior is willful and there is intent to evade or defraud.

These new tax laws supplement but do not replace Penal Law sections that prohibit false tax filings. Those laws treat as felonies all knowing filings of false documents with public officials, when there is intent to evade or defraud. Thus, a filer who willfully falsifies his return or any documents filed with the return with the requisite intent faces a felony charge regardless of the size of the unpaid tax.

(4) Willfully engaging in a scheme to defraud the State in connection with any matter under the Tax Law

This section criminalizes schemes to defraud the State by false or fraudulent pretenses or material misrepresentations or promises in connection with any tax owed. The section is broad and is intended to include criminal earnings that are unreported, such as those involving counterfeit cigarette tax stamps and other bootleggers.

(5) Willfully failing to remit taxes collected on behalf of the State

Collecting, but not remitting, taxes, falls under this section. It is in addition to Penal Laws that criminalize the failure to remit collected tax amounts subject to trust, when there is intent to evade or defraud.

(6) Willfully failing to collect a sales, excise or withholding tax that is required to be collected

Failure to collect sales, excise and withholding taxes is a common form of tax evasion. Under the old law, a felony involved \$10,000.00 or more or 10 failures to collect involving at least \$100 each. Now, if the willful failure to collect taxes exceeds \$3,000.00, the failure constitutes a felony, when there is intent to evade or defraud.

(7) Willfully and with intent to evade any tax, failing to pay a tax due

This catchall section requires that the failure to pay a tax be willful and with intent to evade payment. Amounts over \$3,000.00 can for the first time result in felony prosecutions.

(8) Issuing false exemption certificates

This section applies to exemption certificates, interdistributor sales certificates, resale certificates and other documents evidencing a claim that taxes do not apply to a transaction, when the taxpayer behaves willfully, that is, when he does not believe the document is true and correct as to a material matter, or when the document omits material information, or when it is false, fraudulent or counterfeit. When the amount exceeds \$3,000.00, the tax fraud is punishable as a felony.

Overall, the new laws are expected to increase collection of income, corporate and excise taxes. Tax offenses involving these taxes have tended to escape prosecution, unlike sales and withholding tax evasions. Monetary penalties for tax fraud will increase to double the amount of the unpaid taxes or to \$50,000 for individuals and \$250,000.00 for corporations. The maximum fines for tax misdemeanors will remain \$10,000 for individuals and \$20,000.00 for corporations.

The new law permits prosecution in any county where the economic activity took place, and not simply where a filing occurred. The law also beefs up enforcement powers related to subpoenas issued by the Tax Department. Willful failure to comply is a misdemeanor.

For more information, contact Brendan McCafferty at 856-3500 or bmccaf-ferty@magavern.com.

WNED Trustees Choose Theresa Quinn To Serve as 2010 Board Secretary



Theresa E. Quinn

Magavern Magavern Grimm LLP Attorney Theresa E. Quinn was elected secretary of the WNED Board of Trustees and a member of its Executive Committee.

WNED serves a bi-national region of 3.1 million households across Western New York and Southern Ontario, operating WNED-TV, WNED-HD, Thinkbright TV, WNED-FM Radio

and WNED-AM Radio.

Thomas Schofield on New UB Board



Magavern Magavern Grimm LLP Partner Thomas E. Schofield is an inaugural member of the Community Advisory Board of the Canadian Studies Academic Program of the University at Buffalo.

The Board, comprised of community stakeholders from both sides of the border, will be consulted on University curriculum, programming, research initiatives and opportunities related to Canadian-American relations and the bi-national region.

Mitsubishi Caterpillar Forklift of America Inc. Becomes New Client

Edward P. (Ned) Perlman, resident partner in Magavern Magavern Grimm LLP's Niagara Falls, New York office, has been retained by Tokio Marine Insurance Company. Tokio Marine is the insurer for Mitsubishi Caterpillar Forklift of America Inc., a manufacturer and distributor of material handling equipment and parts. Specifically, Mr. Perlman will handle the defense of products liability and personal injury claims.

Mr. Perlman is a veteran trial attorney who handles personal injury cases as well as municipal and commercial litigation.

Walter Elected to County Legislature

Raymond W. Walter, an associate at Magavern Magavern Grimm LLP, has been elected to a full term in the Erie County Legislature. He represents District 4, which encompasses the towns of Clarence and Newstead and portions of Cheektowaga and Amherst.

Mr. Walter will continue to be a lawyer with the Magavern firm, where his practice areas are estates and trusts and elder law.



Raymond W. Walter

Rosa Svisco Heads Parish Council



Rosa S. Svisco

Rosa S. Svisco, special counsel to the Magavern firm, is president of the Parish Council at St. Mary's Catholic Church in Swormville, NY.

Ms. Svisco also is serving as vice president of the International Institute Board of Directors.

Her practice concentrates in immigration law.