

# THE LIBERTY

December 2016



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The Official Newsletter of the New York State  
Professional Process Servers Association

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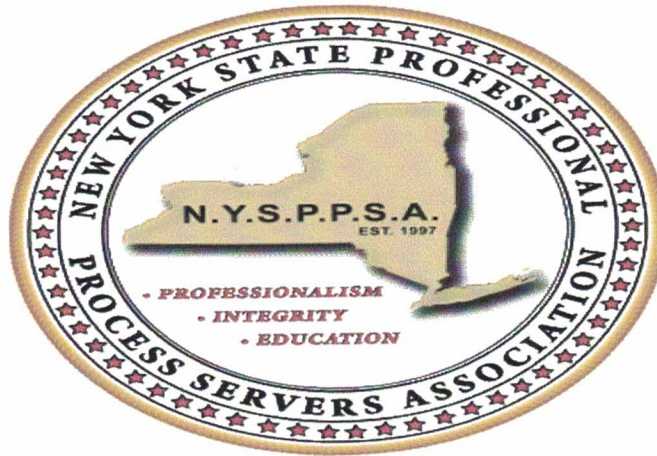
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## Robert Marcus Award for Professionalism & Distinguished Service

The NYSPPSA Board unanimously voted to establish an award intended to recognize a member who has demonstrated professionalism and distinguished service to our association and the process serving profession. The award was named after Robert Marcus, a devoted member of NYSPPSA, who has since passed away. He had always embodied the spirit of the award.

Past winners of this prestigious award are:

**Irving Botwinick**

**Bob Gulinello**

**Vincent Gillis**

**Joel Graber**

**Jillina A. Kwiatkowski**

**Larry Yellon**

**Gail Kagan**



## **President's Report**

Gail Kagan

I'm honored to have the opportunity to serve this organization as your president for 2016-2017. I'm looking forward to working with all NYSPPSA members. With that in mind, I would welcome your input regarding concerns you may have and your suggestions as to how we can become a more responsive and inclusive organization.

My goal is to make NYSPPSA more relevant to your business, as well as a factor in furthering the success of your business. I encourage you to contact me with your ideas and let me know what aspects of your business NYSPPSA can help with. I look forward to hearing from you.

In an effort to be more beneficial to all members we have several projects planned; and, in addition to the standard committees, several new committees have been organized, as follows:

- Communications: to reach out to the membership and keep members apprised of what we are working on and issues that may impact your business.
- Technology: to seek out and to keep you informed of anything and everything hardware or software that can help you in the day-to-day running of your businesses.
- Review Committee for the DCA: To keep our members informed about what to expect and aware of consent orders and demands from the DCA.

In addition, we are setting up a best practices information booklet to assist our members in contending with traverse hearings.

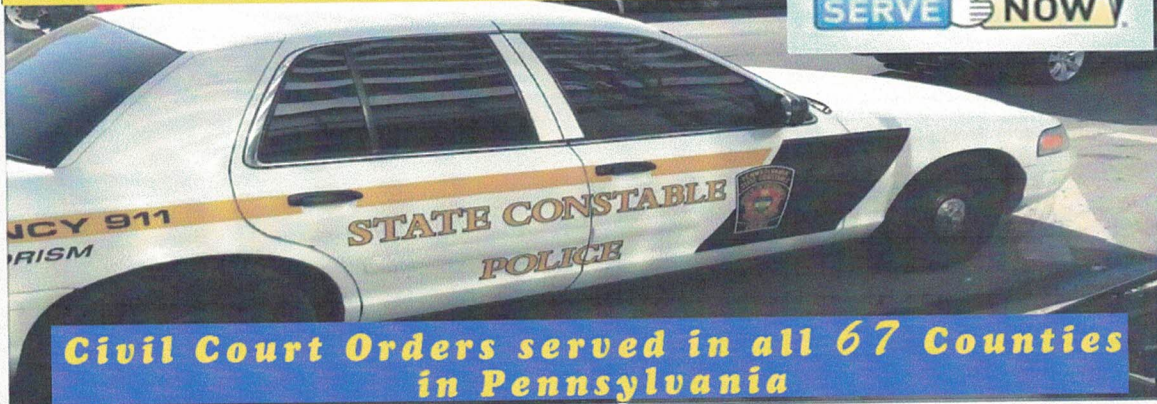
The first board meeting of 2017 has been booked for January 15, 2017 in Albany at the Hotel Indigo. We are planning on having one downstate in July. If you are free and in the area, please stop by and join the conversation.

I hope you all have a healthy and happy new year.



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## **1<sup>st</sup> Vice President's Report**

Jillina Kwiatkowski

I'd like to congratulate our newly-elected President, Gail Kagan. Gail was not only elected as our President; in case you haven't already heard, she was this year's recipient of the Robert Marcus Memorial Award. Gail's hard work and diligence, along with that of Larry Yellon, was instrumental in getting our Assault Bill signed into law. This new law is unique in this country as it is the only one that encompasses the "use of an animal" in the scope of the assault. I would personally like to say thank you to Gail, Larry and all those involved who helped this cause.

With the new year right around the corner, I'd like to remind everyone to take some time to re-evaluate your business. Are you at a comfortable volume or would you like to get some new clients? If you're ready to expand, take the time to make sure your company is getting the exposure you desire. Use social media to its fullest advantage. Create printed material that you can readily provide to prospective clients. Contact your local Bar Association for some possible leads. Be creative and think "out of the box."

I've also noticed that we've had more committee volunteers this past year than we've ever had. THANK YOU! If you are interested in working on a committee or just have some thoughts and suggestions, please contact the appropriate committee chairperson. Your input will always be welcome.

Wishing you and your families a very happy, healthy & prosperous New Year ~ Happy Holidays to all!

## **ADMINISTRATOR'S REPORT**

It was a great pleasure seeing all who attended the 12<sup>th</sup> Annual NYSPPSA Convention in Saratoga Springs, NY. Ellen Eakley and Jillina Kwiatkowski did another amazing job with exhibitors, speakers, entertainment, food and accommodations.

Congratulations to the new 2016-17 Board of Directors. I look forward to working with each of you.

A special congratulations to Gail Kagan elected President, but especially for receiving the Robert Marcus Memorial Award, very much deserved.

The first board meeting will be held Sunday, January 15, 2017 at the Hotel Indigo in Albany, NY. A breakfast will start the morning at 8:30 am and the meeting will begin promptly at 9:00 am. Rooms reservations are available at \$109/night. Contact me by 12/20/16 if you need a room.

The 2017-18 membership renewals will be distributed in February!

I wish everyone a very blessed and happy holiday season and new year.

Please do not hesitate to contact me should you have any questions regarding your membership.

Respectfully submitted,

Brenda Geedy  
Administrator  
P.O. Box 925  
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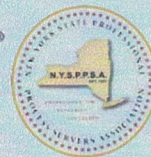


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## GETTING MORE TARGETED FACEBOOK LIKES

Social Media Chair/2<sup>nd</sup> Vice President  
Ellen Eakley

If you are wondering how businesses get more targeted Facebook likes or how some businesses have more likes than others? It's all about the following seven weird tricks.

- Invite your friends to like your page - This is so simple because there is a section on your page where Facebook encourages you to go through your list of contacts to invite.
- Creating Inspiring shareable posts – nothing ignites the human spirit more than something that inspires them to be a better person or create a better business. Ask yourself, what would inspire my audience? That answer, becomes your content.
- Ask your employees to help you out – Employees are the best brand ambassadors. Tap into their knowledge and inspiration.
- Add a call to action in your messaging – You might say “Like us on Facebook” or “Review us on Facebook”. You have to tell people what to do, give them some direction in this ever distracting world we live in.
- Measure your performance – Measuring your performance means checking your posts over a 30-90 day period. Which ones get the most likes, which ones are viewed the most, which ones have comments. You could actually repost them in a slightly different way a few months later, yes reuse it.

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## MEMBERSHIP EXPANSION

By Kim Letus, Secretary

As Membership Chair of NYSPPSA, I, along with the members of my committee, have embarked on a diligent membership drive. As we all know, there is strength in numbers. NYSPPSA needs to gain members to keep up the important work we're doing, such as promoting passage of the Process Server Assault Bill (which went into effect on November 1st, thanks in no small part to the efforts of NYSPPSA, especially current President Gail Kagan and Past President Larry Yellon); the Log Book Bill (which we're still working on); and monitoring the activity of the NYCDCA as it pertains to process servers and intervening as necessary (ongoing).

Not only will we be working toward enlisting agencies and process servers who are not members to join our ranks, we will be promoting the "Supporting Membership" tier to attorneys and others who work closely with the process serving industry. In that regard, I am writing an article about the passage of the Assault Bill and NYSPPSA's role in that, which will also include information about Supporting Membership and its benefits to law firms who heavily rely on competent process servers. My committee members and I will be working to obtain agreement by various New York State bar associations to publish the article in their newsletters. I have already received agreement from one county bar association to publish and am currently working on others in my area. I believe the involvement of attorneys in NYSPPSA would be a huge benefit, as most attorneys are not aware of pending or new statutory changes directly affecting service of process, which will ultimately trickle down and affect attorneys as well. If attorneys are receiving information from NYSPPSA of statutory changes which could prove costly to them down the line, they may be more likely to take an active stance against those changes.

The reduced number of licensed process servers in New York City has reduced the pool of servers available to recruit into NYSPPSA. We have lost city agencies as well, as some previous members I have spoken with have closed their businesses entirely due to the DCA issues. However, there are still many agency owners throughout the state who are involved in process serving full time but are not members.

While I have a wonderful committee helping me (Erin Burruto, Heather Morigerato and Joey Knight), it always helps to have assistance from members with local connections. Therefore, I would be grateful for the involvement of any member who has connections in the counties they serve. This could be either principals of process serving agencies (regular membership), independent process servers (basic membership) or paralegals, attorneys, etc. (supporting membership). Also, if there is an out-of-state server that you work with frequently, associate membership would be available to that server.

I urge the membership to become involved to help cement the future of NYSPPSA. Anyone with input or questions, or who is willing to help, please feel free to email me at [KimLetus@RondoutLegal.com](mailto:KimLetus@RondoutLegal.com) or call me at 845-331-6029, Ext. 23.

Happy holidays to all members. May your New Year be bright and filled with good things!



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Director's Report  
Erin Burruto

Hello NYSPPSA members

We are now in my favorite time of year. The change of seasons, no matter whether it's the arrival of Spring, Fall, Summer or Winter is always welcome. Some people fear change. These people will generally be left behind.

All of us have reached out and grasped change. By joining this association you have been an instrument of change. Your input has steered NYSPPSA in the direction it has taken. The action on the Legislation front was due to issues that servers in NYC were having. The new Felony to Assault a Process Server law was in reaction to issues that have arisen throughout our state.

The change of seasons from Fall to Winter is a more visceral change. The kids have settled into a routine in school. Vacation season is mostly over and business has settled down to a consistent routine.

And now the holidays begin. Christmas, Chanukah and Malid an-Nabi are the major holidays that come to mind this season. Each recognized in its own way and celebrated by its followers; all bringing joy to the congregants.

But to me this change of seasons means snow fall. Many of us have seen our first snow of the season. In Rochester on 11/18 it reached 78 degrees while a scant three days later there was 18 inches of snow on the ground. While snow may seem like a pain to many, it can be a boon to our business.

I like to use the snow as a barometer for the action that takes place at a residence that we are trying to serve.

In closing, we can choose to ignore change and get passed by. We can accept change and ride along with it. Or, we can embrace change and steer the course it takes.

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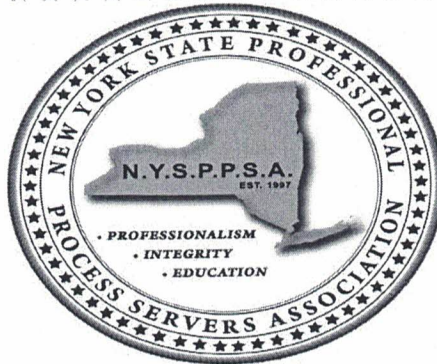
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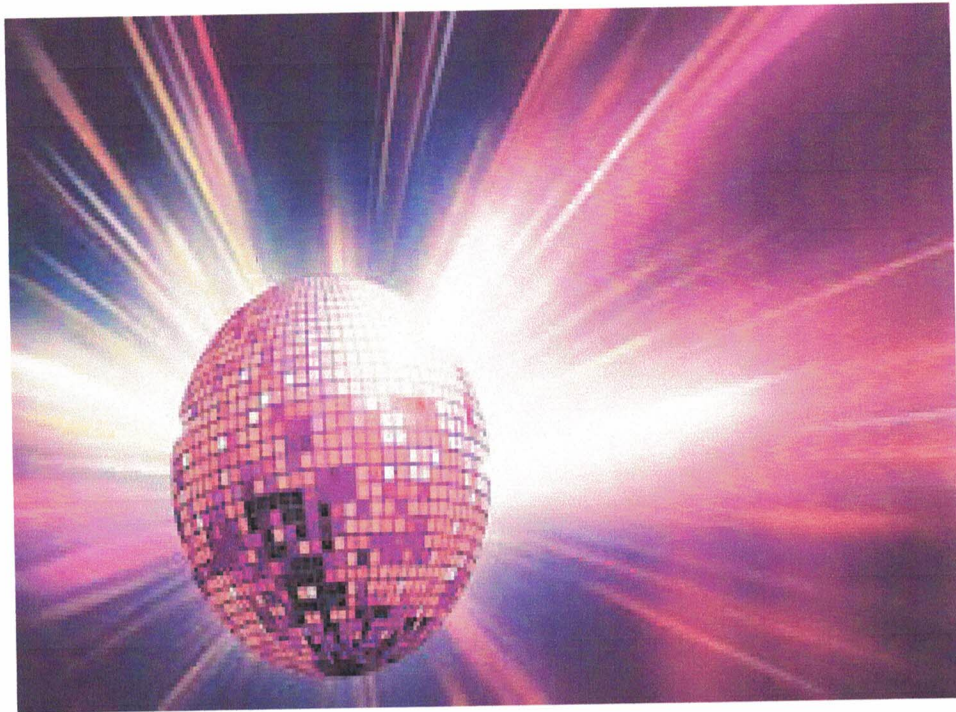
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**Convention Committee**  
Jillina Kwiatkowski

**SAVE THE DATE ~ MARK YOUR CALENDARS!**

Our 13th annual convention will be held at the **Saratoga Raceway & Casino on September 15th & 16th, 2017**. There will be a buffet dinner and cocktail hour on Friday evening. Our committee is working on a fresh, informative, interesting slate of speakers for Saturday morning. Our general board meeting and yearly election of officers will be held on Saturday afternoon. Then the weekend will culminate on Saturday evening with a 70's Disco-themed Awards Party & Banquet.

Those of you who attended last year's conference know what a beautiful, exciting and accommodating venue this is. For those of you who didn't, be sure to make your plans now to attend ~ I want everyone to do the "L.A. Walk" to their nearest "Bus Stop" and "Hustle" to Saratoga Springs.





## **Member Benefits**

Jillina Kwiatkowski

I have been named the new chairperson for NYSPPSA's Member Benefits Committee. My committee members and I are working on some new exciting discounts for you to use in both your business and personal lives. As soon as we have some concrete deals set up, I will keep you updated. Keep your eye on this section of The Liberty for new programs as they become available.

Most of you, however, are probably asking yourselves "What can I expect from my NYSPPSA membership right now? First and foremost, you can expect to work within a network of professional colleagues who will go the extra step to get the job done. But, your membership also affords you:

1. a legislative committee who is constantly monitoring all legislation that affects our profession. We are looking out for and working for our members and process servers all over New York State.
2. a formal education program
3. a listing on our website and an annual membership directory
4. a quarterly newsletter to keep you informed of what's going on currently with the association.
5. the opportunity to attend the annual conference and network with your colleagues.
6. an in-depth, thorough arbitration and grievance procedure.

Lastly, many of you are also members of NAPPS. Take a moment to look into the discount programs that have been put into place. There are a variety of discounts available that I'm sure will pertain to all.

As always, I welcome any thoughts or ideas you may have. I will explore anything you'd like me to look into. The sky is the limit! Please contact me at [jillina@smartserveprocess.com](mailto:jillina@smartserveprocess.com).



## **Director's Report**

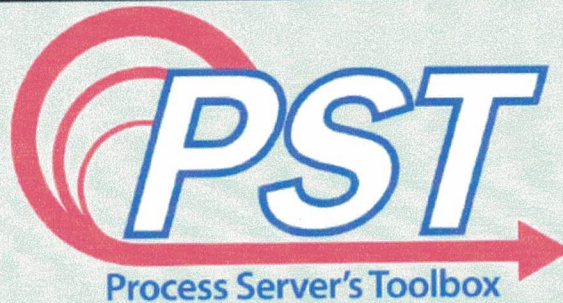
Larry Yellon

Immediate Past President

It is certainly strange after 7 years, 6 as President, to submit a report in a different role. It is more difficult as summarizations of current events are best left in the hands of the current President. With that in mind, I will relate a recent occurrence that I think is worthy to note.

About a week ago, a client came to my office seeking assistance vacating a default judgment of \$83,000.00 and a warrant of eviction against his corporate client. His defense was weak at best, and he obviously overlooked a salient feature of the process server's affidavit of service. Since this was a landlord tenant proceeding, the affidavit of service is possibly the most instrumental part of the proceeding. RPAPL section 735 is the governing statute regarding service of process against individuals and corporations. An examination of the affidavit revealed that the corporate tenant was served through service on the secretary of state pursuant to CPLR 311(a) using BCL 305. That service, although allowed by an uninformed Nassau District court judge is statutorily improper. I advised my client of such and showed him the reasons why. Needless to say, he was very happy. The sad part is that he didn't know, nor do many occasional landlord tenant practitioners. Yet, through the knowledge we obtain from experience and participation in a professional association, know that it is one of best professional attributes.

Stay abreast of cases of interest, attend meetings, ask questions and use all the resources of NYSPPSA to sharpen your educational tools. I intend to make my participation in this publication a bit of education.



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**Identify Yourself, In a Professional and Ethical Manner**  
**By John Perez, NYSPPSA Member**

It has been long understood that in the interaction among private process servers within the communities that they perform their professional duties, identifying themselves, and expressing the purpose of their contact with individuals, is vital, and practical. On September 24, 2016, at the annual meeting of the New York State Professional Process Servers Association (NYSPPSA) in Saratoga Springs, NY, the members acknowledged this by unanimously approving an amendment to its Canons of Professional and Ethical Conduct for Professional Process Servers. That amendment dealt with the use and display of identification cards by private process servers.

In New York State, with the exception of New York City, private process servers are not required to be licensed or registered. The New York Civil Practice Law and Rules, specifically CPLR 2103(a), provides that “legal process may be served by any person not a party, of the age of eighteen or older”. There are no rules as to how a process server should identify himself when doing so.

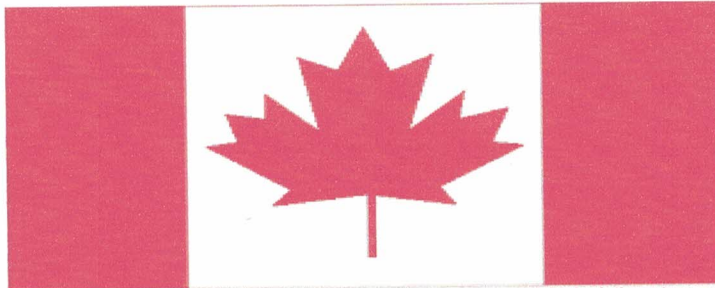
Common sense and experience, however, dictates that a person serving civil process will verbally identify himself, state the purpose of the visit, and the general nature of the papers being served. This affords the recipient the proper notice required by the due process clauses of the state and federal constitutions. In that interaction, it is imperative that the process server conduct himself in a professional and ethical manner, so expressed the NYSPPSA members.

The essence of the Canons of Ethics amendment is that any identification card displayed by a private process server should not bear any unauthorized title, seal, logo or emblem inferring that a private process server is a law enforcement officer, or other governmental position, unless that person actually is a law enforcement officer, or lawfully holds a governmental position. In all instances, a private process server should avoid the appearance of impropriety, the Canons state.

The NYSPPSA Canons of Professional and Ethical Conduct for Professional Process Servers are applicable only to NYSPPSA members. However, by stating, in writing, what has long been understood to be proper and expected, NYSPPSA has taken the lead among other professional process server associations in making this known to the public.

Congratulations! Job well done!

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# JASTA: NOT A REALISTIC SOLUTION FOR 9/11 FAMILIES

*By Karina Shreefer, Esq., Tom McLean, Esq. and Victor Hertz, Legal Language Services*

We were all touched by the events of 9/11, none more so than the families of the 2,996 people killed in the attacks, including 2,606 people in the World Trade Center and surrounding area. Many of those victims' families believe Saudi Arabia funded the attacks and they would like to seek financial compensation from the Saudi government.

Unfortunately, under US law, foreign governments are immune from most US lawsuits. There are exceptions to this immunity and those exceptions are identified in the Foreign Sovereign Immunities Act (FSIA). Generally a foreign government can be sued if it or its representative engaged in a commercial activity which caused harm or commits a tort like a car accident.

In 2016, the JUSTICE AGAINST SPONSORS OF TERRORISM ACT (JASTA) was passed by Congress, overturning one of the few vetoes of the Obama presidency. It purports to add another exception to sovereign immunity. JASTA is a short piece of legislation. The key parts of the Act:

1. Amend the FSIA to recognize another exemption to sovereign immunity, specifically conspiracy to commit or aid and abet (by knowingly providing substantial assistance) an act of international terrorism committed by a designated terrorist organization.
2. Recognize the substantive causes of action for "aiding and abetting" and "conspiracy" liability set forth in *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983). In the *Halberstam* case, the Court had to decide how to define "conspiracy" and "aiding and abetting". The Court concluded that a conspiracy was an "agreement" and that "aiding and abetting" occurred when one provided substantial aid.
3. Authorize the US court to put a proceeding on hold if the Secretary of State certifies that the US is engaged in good faith discussions with the foreign state defendant concerning resolution of the claims brought against it.

Essentially JASTA adds "international terrorism" as an exemption to the immunity of a sovereign. JASTA allows a cause of action to be brought against a foreign government if that government recklessly or intentionally had an agreement with, or provided substantial aid to, the perpetrators of the terrorist act.

So far so good. To determine if JASTA will really help 9/11 families obtain as compensation some of the \$750 billion Saudi Arabia has stashed in US banks, we need to consider two practical issues.

First, how do you serve a JASTA action upon Saudi Arabia? In amending the FSIA, all JASTA did was add a cause of action. Accordingly, JASTA left in place the FSIA's rules for service of process upon a foreign government. *See* 28 U.S.C. §1608(a). In brief, these rules provide for service in a hierarchical fashion, as follows:

1. According to a pre-existing agreement between the plaintiff and the foreign state
2. Where there is no agreement, then in accordance with an international convention like the Hague Service Convention

3. If service cannot be made under option (1) or (2), then by mailing via the Clerk of the Court
4. If service cannot be made within 30 days under paragraph (3), then by diplomatic channels

Prior to a terrorist act, the victim will almost certainly not have an agreement with the terrorist state for service of process. Saudi Arabia is not a member of any international convention on service of process. In the wake of JASTA, the Saudi government is likely to be disinclined to sign for any mail delivery from the Clerk of a Court. So service of process on the Saudi Arabian government will likely ultimately have to be via diplomatic pouch.

The second practical issue is how to prove Saudi Arabia “aided and abetted” the terrorist attack. The “smoking gun” evidence that Saudi Arabia provided substantial aid to the 9/11 hijackers comes from the 9/11 Commission Report -- more exactly, from 28 redacted pages of that Report that were recently declassified. (The release of these pages seems to be the true driver behind the JASTA legislation). A copy of this 28-page document can be found at:

<http://apps.washingtonpost.com/g/documents/politics/read-the-long-classified-28-pages-on-alleged-saudi-ties-to-911/2079/>.

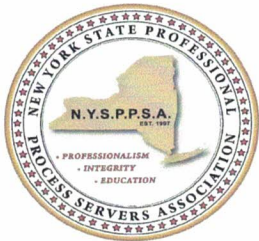
As evidence, just how good is this 28-page document for demonstrating that the Saudi government aided the hijackers? Not very good. According to the Washington Post, these 28 pages “do not appear to add significantly to information collected in subsequent investigations, including the 9/11 Commission report, published in 2004, and numerous other documents that have since been made public.”

The solution? Find more evidence. To show that the Saudi government had an agreement with or aided the 9/11 hijackers, there are two sources of evidence. One source is the files of US government officials. Collecting such evidence will likely require many Freedom of Information Act (FOIA) filings -- which, in turn, will likely be rejected because the requested documents remain classified. The second source is the files of officials in the Saudi Arabian government. Obtaining this sort of evidence from the Saudi Arabian government is likely impossible.

So, while JASTA allows litigation to be brought against Saudi Arabia (or any other nation that sponsors or supports terrorism) for the damage done by the 9/11 hijackers, anyone who contemplates filing such a case probably will not be able to recover any financial compensation from the Saudis.

Moreover, while politically popular, JASTA creates problematic precedents which will complicate American foreign policy for years to come.





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Highlights of NYSPPSA Convention & General Meeting  
September 23-24, 2016

The following is a synopsis of the highlights of this year's convention and general meeting. Full detailed minutes will be subsequently prepared.

First of all, we were honored to have in attendance for the Convention NAPPS Administrator Gary Crowe, NAPPS President Lance Randall, NAPPS Past President and current Director Eric Vennes, NAPPS Past President John Perez and NAPPS Committee Chair (Secure Document Trading) Bob Musser.

The general meeting began with the announcement by President Larry Yellon that he is concluding his sixth and final year as President of NYSPPSA. During his tenure, NYSPPSA accomplished the most impressive milestone in its history - passage of the process server assault bill on the state level. Additionally, navigation through the DCA debacle and the constant oversight and intervention by NYSPPSA was discussed as a major accomplishment of President Yellon's time at the helm.

Membership Numbers were announced:

130 regular members, 36 associate members and 7 basic members. Total: 173 members

It was noted that there is now only 472 licensed servers in NYC. It is essential that we promote membership going forward and make a concerted effort to recruit new members.

Advertising - Administrator Brenda Geedy is seeking advertisers for 2017. Those interested in advertising in NYSPPSA publications and/or on the website should contact Brenda.

Convention - The consensus was that the location of the convention this year was exceptional; so much so that we are seeking to book next year's convention at the same locale. The hotel was brand new, the rooms were terrific, and food and services were outstanding. We were only their fourth convention, and I think all present would agree that the hotel went above and beyond for us.

Financial - Treasurer William Mlotok advised that net profit at the end of the year is projected to be approximately \$2,040. The two regular expenses of the association are the administrator's contractual fee and the repayment to NAPPS toward the \$25,000 loan. This is a non-interest loan and is being repaid in increments of \$1,700 to \$2,000 per year. The exact payment credited is based on number of NYSPPSA members who are also members of NAPPS. We are therefore requesting that any NYSPPSA members who are not members of NAPPS consider joining. It would be beneficial to the member, as well as to the organization.

Legislation - Gail Kagan, who was very instrumental in promoting the assault bill, discussed the considerable victory we have accomplished with the passage of this bill. The bill goes into affect November 1st. This bill was initially conceived by the founders of NYSPPSA and its passage is the result of many tireless years of work by many NYSPPSA officers, directors and members.



As to the DCA, Gail met with them in July to discuss settlement of our lawsuit and issuance of temporary licenses. Also, as to the log book issue, it is Gail's belief that the DCA wants to perpetuate use of the log book as a way of asserting control over agencies and as a source of revenue (fines), and that it is clear that they do not have a clear understanding of the process serving industry. Court administration has maintained a neutral position.

NYSPPSA was recruited by plaintiffs' attorney to take part in a lawsuit against the DCA. This participation is at no cost to NYSPPSA, but we are participating at request of plaintiffs to lend credence to the case.

Marketing - The primary marketing taking place at this point is through social media, per Ellen Eakley.

Public Relations - Gail Kagan believes our accomplishments this year have acted in our favor and has highlighted the importance and effectiveness of our association.

Web Site - Brenda Geedy is working with Bob Musser to implement secure document trading through our website. Bob Musser offered to maintain our site at no cost to us.

#### New Business/By-Laws

John Perez proposed that the association issue ID cards to members and post on web site. He believes this would encourage servers to join. Several state agencies have used them, and they have worked out well. They assist the process server with, among other things, gaining access to gated communities. Proper language is essential in designing ID cards, and professional parameters should be observed. Use or display of the ID would not be mandated. John Perez' proposal is attached. Motion was made to approve the by-law change to implement John's proposal, was seconded, voted on and passed.

#### Elections:

Newly elected officers and directors are:

President:	Gail Kagan
First VP:	Jillina Kwiatkowski
Second VP:	Ellen Eakley
Secretary:	Kim Letus
Treasurer:	William Mlotok
Directors:	Erin Burruto
	Bernard Hughes
	Jason Tallman
	Larry Yellon (elected to serve as director as immediate past president)

Robert Marcus Award:

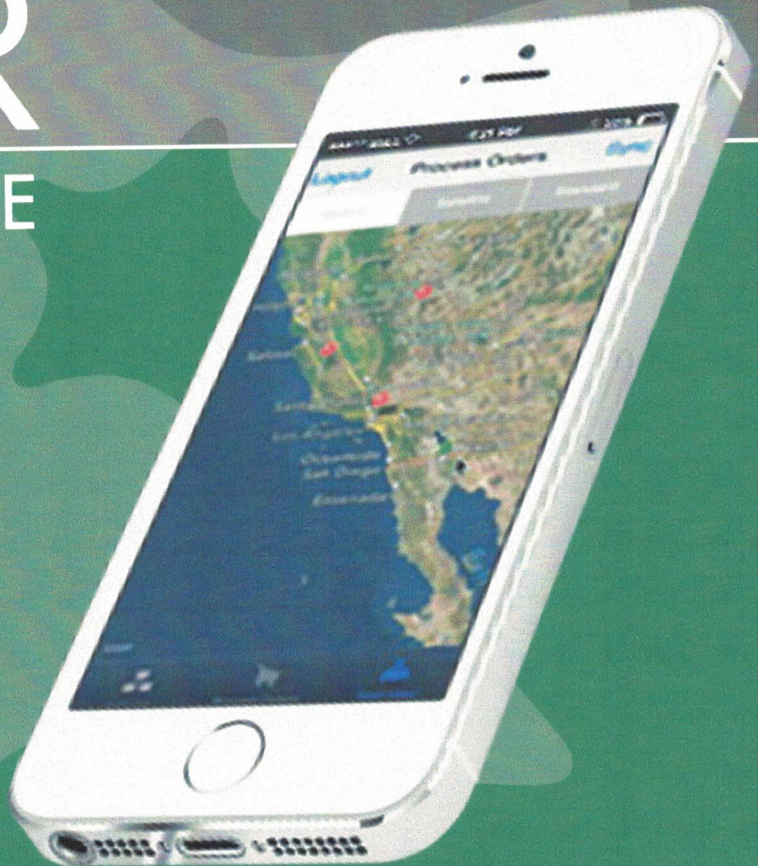
Congratulations to Gail Kagan!



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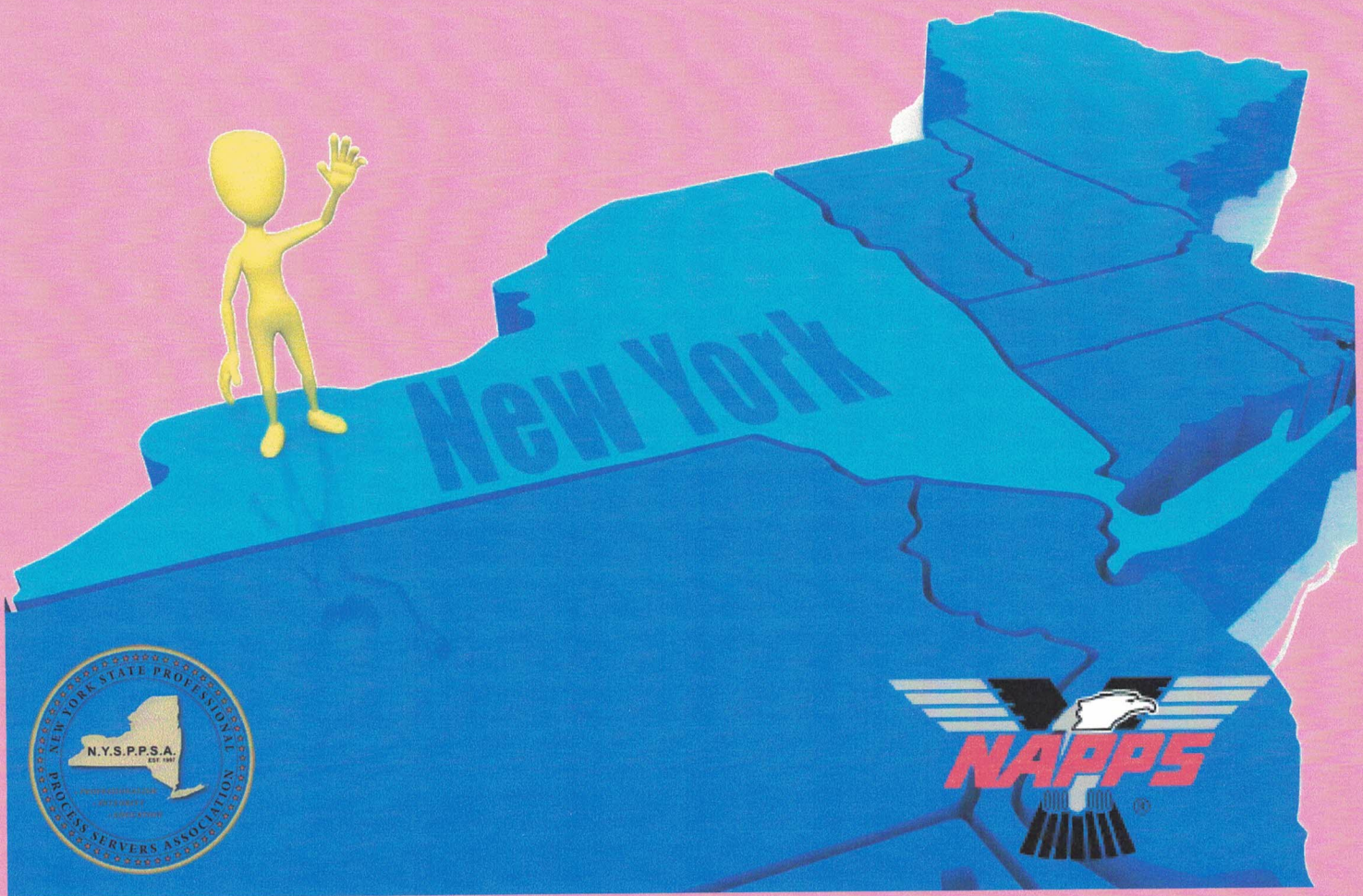


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