

## Professor Michael Hutter

### Bar Journals:

1. Hearsay: Principal Exceptions, Insurance, Compensation Law Section Digest, Spring 1993 (NYSBA).
2. New York's Public Records Hearsay Exception, Trial Lawyers' Digest, Spring 1996 (NYSBA).
3. Computer Generated Animations, Trial Lawyers' Digest, Winter 1996 (NYSBA).
4. "What Hath *Henry* Wrought?" Bill of Particulars, Winter 1999 (NYSTLA).
5. *Tyrell v. Wal-Mart*: Admissibility of Employee Statements, Bill of Particulars, Spring, 2002 (NYSTLA).
6. *Toure v. Avis*: The Court of Appeals Giveth and Taketh Away, Bill of Particulars, Fall, 2002 (NYSTLA).
7. *Johnson v. Lutz*: Admissibility of Statements in Police Accident Reports, Bill of Particulars, Winter, 2002 (NYSTLA).
8. Hospital Records and the Business Records Exception, Bill of Particulars, Summer 2004 (NYSTLA).
9. *Pommells*: The Facts, Nothing But the Facts, 78 NYSBA J. 42 (June, 2006) (with Horowitz).
10. Appealability of Rulings on Motions *in Limine*, Leaveworthy, Fall/Winter 2016 (NYSBA Committee on Courts of Appellate Jurisdiction).
11. Attorney-Client Update, 20 NY Business Law Journal 36 (Winter 2016) (NYSBA).
12. Attorney-Client Privilege and Communications between Company Employees and Their In-House Counsel, 22 NY Business Law Journal 37 (Winter 2018) (NYSBA).

13. The Attorney-Client Privilege and Its Application to Communications with Former Corporate Employees, 22 NY Business Law Journal 37 (Spring 2019) (NYSBA).
14. Keeping Current with Appellate Procedure Decisions, Leaveworthy, Spring 2020(NYSBA Committee on Courts of Appellate Jurisdiction).
15. Important Appellate Decisions, Leaveworthy, Spring 2021(NYSBA Committee on Courts of Appellate Jurisdiction).

**Professional Bar Journals:**

1. Remedies in Trade Secret Cases, Protecting Trade Secrets (PLI 1982).
2. Covenants Not to Compete, 4 Legal Notes Viewpoints Quarterly 73 (1983).
3. Trade Secrets: Legal Theories, Protecting Trade Secrets (PLI 1986).
4. Recovery of Attorney's Fees in Trade Secrets Cases, 1 Trade Secrets Reporter 288 (1986).
5. Trade Secrets, Protecting Secrecy, Protecting Trade Secrets (PLI 1992).

**Books:**

1. Editor in Chief, *Model Jury Charges in Business Tort Cases* (ABA, 1981).
2. Business Torts Volume in *Actions and Proceedings* (Callahan, 1985).
3. Contributing Author, Weinstein, Korn & Miller, *New York Civil Practice* (Articles 55-57) (Matthew Bender, 1983-1991).
4. Co-Author, *New York Litigation Forms* (Lawyers Cooperative 1995).
5. Contributing Author, *Emerging Problems Under the Federal Rules of Evidence* (Subsequent Remedial Repair Measures) (ABA, 1998).
6. Contributing Author, *Manual for Administrative Law Judges* (author of "Conducting the Hearing" and "Evidence" Chapters) (NYS Office of

Employee Relations, 2002).

7. Contributing Author, *Making A Modern Constitution* (Gubernatorial Succession Chapter) (NYSBA 2016).
8. Contributing Author, *Preparing for and Trying the Civil Lawsuit* (2d ed) (Evidence Chapter) (NYSBA 2018).
9. Contributing Author, *New York Appellate Practice* (2d ed) (New York Court of Appeals Chapters) (NYSBA (2021).

### **New York Law Journal Evidence Columns:**

1. Admissibility of Patient's Statement in Medical Record, NYLJ, 12/2/10, p. 3, col. 1.
2. Admissibility of Patient's Statement in Medical Record Redux, NYLJ, 2/3/11, p. 3, col. 1.
3. Privilege Issues: Client Use of E-Mail to Communicate with Attorney, NYLJ, 4/7/11, p. 3, col. 1.
4. Admissibility of Statements of Pain and Physical Condition, NYLJ, 6/2/11, p. 3, col. 1.
5. *Letendre* Hearsay Exception For Testifying Witnesses, NYLJ, 8/4/11, p. 3, col. 1.
6. Use of Disciplinary Adjudications to Impeach a Witness, NYLJ, 10/6/11, p. 3, col. 1.
7. Compensating the Fact Witness: Rules and Limits, NYLJ, 12/1/11, p. 3, col. 1.
8. Admissibility of Government Investigative Reports in Civil Cases, NYLJ, 2/2/12, p. 3, col. 1.
9. Applicability of *Noseworthy* Doctrine: Issues and Their Resolution, NYLJ, 3/30/12, p. 3, col. 1.

10. Admissibility of Unaffirmed Medical Reports: A Proposed Rationale, NYLJ, 6/7/12, p. 3, col. 1.
11. Scope of Waiver Effected by Disclosure of Attorney-Client Privileged Matter, NYLJ, 8/2/12, p. 3, col. 1.
12. Inadvertent Waiver of Attorney-Client Privilege, NYLJ, 10/4/12, p. 3, col. 1.
13. Refreshing Recollection Doctrine Revisited, NYLJ, 12/6/12, p. 3, col. 1.
14. Flurry of Decisions in 2012 on ‘Other Crimes’ Evidence, NYLJ, 2/7/13, p. 3, col. 1.
15. *Pealer* and Forensic-Related Records: Confronting *Crawford* and Its Progeny, NYLJ, 4/4/13, p. 3, col. 1.
16. ‘Speaking Agent’ Hearsay Exception: Time to Clarify, If Not Abandon, NYLJ, 6/6/13, p. 3, col. 1.
17. Use of Convictions to Impeach in a Civil Action, NYLJ, 7/30/13, p. 3, col. 1
18. *Floyd Y.*: The Professional Reliability Basis for Expert Opinion, NYLJ, 12/5/13, p. 3, col. 1.
19. *Oddone: Frye’s* (Non)-Applicability to Experience-Based Expert Opinion, NYLJ, 2/6/14, p. 3, col. 1.
20. ‘Missing Witness’ Rule Revisited, NYLJ, 4/3/14, p. 3, col. 1.
21. Toxic Mold Case: Experts, Gatekeeping, Admissibility, NYLJ, 6/6/14, p. 3, col.3.
22. Excited Utterances and Present Sense Impressions: Time to Reevaluate? NYLJ, 8/17/14, p. 3, col. 1.
23. Admissibility of Habit Evidence in Negligence Actions, NYLJ, 10/2/14, p. 3, col.3.

24. Admissibility of Prior Consistent Statement, NYLJ, 12/4/14, p.3, col. 1.
25. Attorney-Client Privilege: *Ambac's* New Exception to Waiver, NYLJ, 2/5/15, p.3, col.3
26. Proposed Evidence Rules Cover Privilege, Experts, Hearsay, NYLJ, 4/2/15, p. 3, col. 1.
27. Expert Testimony: Necessity or Helpfulness Standard, NYLJ, 6/4/15, p. 3, col. 1.
28. Recent Confrontation Clause Testimonial Decisions, NYLJ, 8/6/15, p.3, col. 3.
29. Impeachment of Witnesses and Out-of-Court Hearsay Declarants, NYLJ, 10/1/15, p. 3, col. 1.
30. Impeachment of Trial Witnesses and the Collateral Evidence Rule, NYLJ, 12/3/15, p. 3, col. 1.
31. Exception to Privilege in Shareholder Actions, NYLJ, 2/3/16, p.3, col. 1.
32. Admissibility of Evidence Obtained from Facebook, NYLJ, 4/7/16, p. 3, col. 1.
33. Judicial Notice of Website Information, NYLJ, 6/2/16, p. 3, col. 1.
34. Attorney-Client Privilege and Related Common Interest Doctrine, NYLJ, 8/1/16, p. 3, col. 3.
35. *Stock* and the Application of the Intra-Law Firm Privilege, NYLJ, 10/4/16, p. 3, col. 1.
36. *People v. Smith* and 'Bad Acts' Impeachment, NYLJ, 11/30/16, p. 3, col. 1.
37. Admissibility of Business Records Containing Out-of-Court Statements, NYLJ, 2/1/17, p. 3, col. 1.

38. *People v. Vining*: Adoptive Admissions by Silence, NYLJ, 10/5/17, p. 3, col. 1.
39. Using Employer's Server for Personal Communications: Privilege Protected?, NYLJ, 5/31/17, p. 3, col. 1.
40. Notable Decisions from the 2016-2017 Court Term, NYLJ, 8/2/17, p. 3, col. 1.
41. Notable Decisions from the 2016-2017 Term, Continued, NYLJ, 10/4/17, p. 3, col. 1.
42. Revisiting the Character Witness for Untruthfulness, NYLJ, 12/6/17, p. 3, col. 1.
43. Take a Break with This Evidence Quiz, NYLJ, 1/30/18, p. 3, col. 1.
44. Protecting Attorney-Client Privileged Communications Disclosed to Retained Professionals, NYLJ, 4/4/18, p. 3, col. 1.
45. Excited Utterances and the Quest for Reliability in *Cummings*, NYLJ, 6/6/18, p. 3, col. 1.
46. New York's 'Professional Reliability' Rule, NYLJ, 8/1/18, p. 3, col. 1.
47. New York's 'Professional Reliability' Rule: Part Two, NYLJ, 10/3/18, p. 3, col. 1.
48. Questioning Adverse Parties and Hostile Witnesses on the Direct Case: New York's Approach, NYLJ, 12/5/18, p. 3, col. 1.
49. Streamlining the Authentication Process: Two New CPLR Article 45 Amendments, NYLJ, 2/6/19, p. 3, col. 1.
50. Attorney-Client Privilege: Client's Confidential Communications, NYLJ, 4/3/19, p. 3, col. 1.
51. *Markel* and the Discovery Privileges, NYLJ, 6/6/19, p.3, col. 1.

52. *People v. Smith* and the Missing Witness Charge, NYLJ, 7/31/19, p. 3, col. 1.
53. Waiver of Physician-Patient Privilege in Aftermath of *Brito*, 10/3/19, p. 3, col. 3.
54. Evidence Quiz – 2019, NYLJ, 12/5/19. P. 3, col. 3.
55. Excited Utterances and the Quest For Reliability, Redux, 2/6/20, p. 3, col. 3.
56. Admissibility of Demonstrations And Experiments, 4/2/20. P. 3, col. 3.
57. Attorney-Client Privilege: Can a Former Employee Speak for a Corporate Client?, 6/8/20. P. 3, col. 3.
58. Application of New York's Rape Shield Law to Civil Actions, 8/6/20. P. 3, col.3.
59. Admissibility of Medical Reports of Consulting Physicians Kept in Treating Physician's File, 9/30/20, p. 3, col. 3.
60. Consultation Reports in Physicians' Office Records, 11/30/20, p. 3, col. 3
61. A Potpourri of Business Records Hearsay Exception Decisions, 12/4/21, p.3, col.3.
62. Admissibility of Party Admissions Contained in Business Records, 2/3/21, p.3, col. 3.
63. NY's Position Regarding Evidentiary Uses Of Learned Treatises: Time To Change?, 6/29/21, p. 3, col. 3.
64. Loss of Privilege and Protection For Witness Preparation Documents, 8/5/21, p.3, col. 3.,
65. Attorney-Client Privilege: Recent Instructive Opinions, 10/7/21, p.3, col.3
66. New York's Habit Evidence Rule as Applied by the Appellate Division, 12/2/21, p.3, col.3

67. New CPLR 4549: Admissibility of Agent/Employee Statements, 2/16/22, p.3, col.3
68. Evidence Quiz Time – Again, 4/7/22, p.3, c, 3
69. Discussions With Your Client During A Deposition: An Unlimited Right?, 6/2/22, p.3, col.3
70. Court of Appeals Evidence Decisions Update, 08/4/22, p.3, col.3
71. Revisiting New York’s Witness Sequestration Rule, 10/6/22, p.3, col. 3
72. Admissibility and Discovery of a Witness’s Compensation History 12/14/22, p.3, col. 3
73. Attorney-Client Privilege: 2022 Instructive Decisions, 2/2/24, p.3, col.3
74. Parent-Child Privilege- Alive and Well, 3/31/23, p.3, col. 3
75. Parent-Child Privilege: Alive and Well But With Uncertain Conditions, NYLJ, 4/3/23, p. 3, col. 3
76. NY's Rule of Completeness: An Effective Tool in Presenting Your Case, NYLJ, 6/1/23,p. 3, col.3
77. Impeachment by Prior Inconsistent Statement: A Refresher. NYLJ, 8/3/23, p.3 , col. 3
78. Quiz Time: Evidentiary Dispute of This Past Judicial Year, NYLJ, 10/5/23, p. 3, col. 3

**Monographs:**

1. No-Fault: Serious Injury, National Law Foundation (2002).
2. Expert Testimony, National Law Foundation (2006).
3. New York Evidence, National Law Foundation (2008).
4. Business Torts, National Law Foundation (2014).
5. Enforcing Covenants-Not-to-Compete, National Law Foundation (2014).



6. Trade Secret Misappropriation, National Law Foundation (2014).
7. Trademarks and Unfair Competition, National Law Foundation (2014).
8. Hearsay, National Law Foundation (2014).
9. Covenants Not-to-Compete, National Law Foundation (2014).

10. Admissibility of Electronically Generated Evidence, National Law Foundation (2014).
11. Federal Deposition Practice, National Law Foundation (2015).
12. Witnesses: Trial and Depositions, National Law Foundation (2015).
13. Labor Law Basics, National Law Foundation (2015).
14. Attorney-Client Privilege, National Law Foundation (2016).
15. Work-Product Protection, National Law Foundation (2016).
16. Medical Malpractice, National Law Foundation (2016).
17. Effective Use of Covenants-Not-to-Compete, National Law Foundation (2017).
18. Intellectual Property: Patents, Copyrights, Trademarks, Trade Secrets, and State Law of Unfair Competition (Misappropriation), National Law Foundation (2017).
19. New York Tort Law, National Law Foundation (2018).
20. Business Torts – Update and Refresher, National Law Foundation (2019).
21. Deposition Practice in Federal Court, National Law Foundation (2019).
22. Expert Testimony, National Law Foundation (2019).
23. *Ford Motor*: Supreme Court Updates Specific Personal Jurisdiction Doctrine, National Law Foundation (2021).
24. Newly Amended (12/1/20) FRCP 30(b)(6): Best Practices And Avoiding Traps, National Law Foundation (2021).
25. "Snap" Removal To Federal Court, National Law Foundation (2021).
26. Effective Depositions, National law Foundation (May 2022)

27. Intellectual Property Law Update (June 022)

28. Revisiting Covenants Not to Compete (July 2022)

## **REPORTER**

Reporter for Guide to New York Evidence, NYS Uniform Court System  
Judicial Committee, appointed by Chief Judge Janet DeFiore (2017-  
present) <http://www.courts.state.ny.us/JUDGES/evidence/>