Addressing the Justice Gap for Poor New Yorkers

By Elise Brown, Esq.

Providing services in pro bono publico has been a feature of the American legal system since its inception. Today, attorneys throughout New York State have been galvanized by Chief Justice Lippman’s recent call to arms to assist the tens of thousands of poor New Yorkers who lack access to basic legal assistance. Most recently in his 2014 State of the Judiciary address, the Chief Justice announced a new Pro Bono Scholars Program, the latest effort to reach the nearly two million litigants who appear pro se in New York Courts each year. In response, new court-based pilot programs are being launched, law schools are modifying their curricula and creating new clinical opportunities, and legal services organizations are expanding their capacity to offer and supervise pro bono opportunities.

While almost no attorney doubts the importance of pro bono service, the new 50-hour aspirational goal set forth in Rule 6.1 of the New York Rules of Professional Conduct may be difficult for some attorneys to achieve. Particularly for solo practitioners and attorneys who work outside of the large-firm context where pro bono does not negatively impact the bottom line, the goal of facilitating access to justice is counterbalanced by the practical billing needs that keep the lights on. So how does one find that pro bono sweet spot where one is able both to observe fiduciary duties to partners and employees and also contribute meaningfully to our community’s efforts to address the justice gap? Alignment of an attorney’s expertise and availability with a pro bono opportunity makes the representation more efficient and thus more effective, for both the pro bono lawyer and her clients. Here are a few examples.

Project-Based Pro Bono Programs

NYCLA, through its Legal Counseling Project, offers opportunities for attorneys to volunteer on a program basis and discuss legal problems and explore options and solutions with members of the public who cannot afford legal counsel or are uncertain about how to obtain assistance to solve a particular problem. Volunteer attorneys provide counseling to clients four times a month on an appointment-only basis in the areas of family, employment, and landlord/tenant. They review documents, answer questions, discuss areas of concern that the client should be aware of, entering into certain agreements, or point out various methods whereby the client can either correct a problem or seek appropriate assistance and direction. Meanwhile, the New York State Courts Access to Justice Program, headed by the Honorable Fern Fisher, Deputy Chief Administrative Judge for NYC Courts, hosts a number of limited-time pro bono initiatives. For example, volunteers in the Uncontested Divorce Program provide assistance to unrepresented litigants in the preparation of uncontested divorce papers but do not represent the litigants in court or file papers on their behalf. Similarly, the court’s Housing Volunteer Lawyer for the Day Program allows attorneys to provide limited representation for unrepresented litigants in their nonpayment cases in the Housing Court’s Resolution Part. Many of the programs provide freeCLE trainings as an ancillary benefit or as a prerequisite to service.

The Matrimonial Pro Bono Project sponsored by The New York Women’s Bar Association limits representation to 25 hours in contested matrimonial actions in New York County. Volunteer attorneys, who must have a minimum of five years’ experience, are referred cases by the Court. Representation is limited to addressing issues related to grounds for divorce, child support, maintenance, and distribution of assets. The widespread success of this project in New York County Supreme Court has prompted the creation of a Kings County Supreme Court counterpart to be rolled out in 2014 and sponsored in part by the Brooklyn Bar Association’s Volunteer Law Project. Another highly successful limited-time representation program, Civil Legal Advice and Resource Office (CLARO), provides.

Information Privacy and the Law within the United States

By Joseph J. Bambara, Esq.

The right to privacy is not explicitly stated anywhere in the Bill of Rights. The idea of a right to privacy was first addressed within a legal context in the United States. Curiously not unlike today’s world, in 1864 advances in technology called for changes in the law. The invention of the Eastman Kodak “Brownie,” a handheld camera, made possible to take candid snapshots in public places. Attorneys Samuel D. Warren and future U.S. Supreme Court Justice Louis Brandeis feared this new technology would be used by the “sensationalist press.” They published an article called The Right to Privacy where they argued that the U.S. Constitution and common law allowed for a general “right to privacy.” Although their article did not immediately lead to any new law, eventually in the 1950s a court expert Dean Prosser argued that “privacy” or the “right to be left alone” was composed of four separate torts. The four torts were:

- Appropriating the plaintiff’s identity for the defendant’s benefit,
- Placing the plaintiff in a false light in the public eye,
- Publicly disclosing private facts about the plaintiff and
- Unreasonably intruding upon the seclusion or solitude of the plaintiff.

This article will primarily address the third bullet as it relates to “information privacy,” i.e., an individual’s right to control his or her personal information held by others. This article provides an overview of how the U.S. and the individual States currently protect information privacy. The current privacy laws in the United States are relatively new and are designed to regulate specific types of information including health, financial, information about children under 13, social media, and communications.

See Info Privacy on page 5}
Which Dog Will Be the Last to Die?

By Kevan Cleary, Esq.

Americans are a pet-loving people. In fact, 68 percent of American homes include a pet. The problem comes when the owner becomes ill and can no longer care for the beloved animal. Or it may come when the owner loses his or her job and then his or her living quarters and the pet is most unwelcome in the new quarters. Some people receive a puppy as a gift, but then a year later the little pup weighs 70 pounds and has never been trained. All of these scenarios and many variations play out every day in New York City. Whatever the cause, the pet is out. Sometimes they are tied to a park bench awaiting an owner who will never return. Sometimes they are brought to New York City Animal Care & Control, a non-profit organization under contract with the New York City Department of Health & Mental Hygiene, which rescues, cares for, and finds homes for homeless and abandoned animals in New York City.

During the 2013 mayoral campaign, Mayor Bill de Blasio promised a “No Kill City” if elected. But New York City Animal Care & Control is overwhelmed with abandoned dogs and cats now—many of which are very young and are very friendly. Since the system is so overwhelmed, even these highly adoptable animals are often needlessly and cruelly denied a chance to experience life and denied an opportunity to make themselves loved by some human family. And I can attest from years of experience walking such shelter dogs that they are very good at making humans love them.

There is no use in rehashing the City’s shameful reneging on its promise to build shelters in the Bronx and Queens. The damage has been done. There is no use in discussing the City’s failure to mobilize a real spay-neuter effort throughout the boroughs—especially in financially challenged neighborhoods. The explosion of unwanted animals, both dogs and cats, testifies to that.

So why are they continuing to die—on the verge of rescue moments before the dawn of No Kill New York? But they don’t have to die if we take immediate concerted action.

New York Must Become No Kill City New York must adopt the San Francisco model. San Francisco has become the nation’s first No Kill City. Local animal welfare organizations agree with the city government that the welfare organizations will keep any cat or dog under its roof until a home is found for it. The only time an animal will be euthanized is if it is determined to be suffering medically or behaviorally.

The San Francisco model includes a set of tactics that, in combination, reduce the number of animals entering the shelter system and place most shelter animals in permanent homes. Some of these tactics are mobile adoption outreach units, aggressive early spay-neuter programs, medical treatment for treatable shelter animals, behavioral training in the shelter, training classes for the public, and structured adoption screening and matching.

Intensive Pro-Active Spay-Neuter Program. The immediate goal is to stabilize New York City’s pet population so as to prevent the present destructive and cruel cycle of over-breeding dogs and cats that end up euthanized in the City’s shelters. In underprivileged neighborhoods, the City would initiate intensive free spay-neuter programs.

A Shelter in Every Borough. Although Manhattan, Brooklyn, and Staten Island already have shelters for their lost and unwanted animals, the Bronx and Queens have been left out. The combined human population of the Bronx and Queens is approximately 3.6 million. The estimated combined dog and cat population of these two boroughs is 1.37 million. New full-service shelters should be constructed in Queens and the Bronx.

Enlist the Nation’s Foremost Veterinary Schools in an Effort to Improve Care for the City’s Pets. The New York City shelter system suffers from an extreme shortage of medical care for our pets. We must bring in academic expertise from our veterinary schools to help provide adequate care for our pets. We must also enlist our local colleges offering Associate of Science degrees in Veterinary Technology to send more interns to our public shelters.

Animal Care Should Be Taught in City Schools. Every child in New York City’s public schools should be taught about how to care for pets.

Deputy Mayor for Animal Welfare. This new position should be created in City Hall. This Deputy Mayor would oversee New York City Animal Care & Control, and would liaise with the NYPD to enhance training in animal cruelty prevention, and would coordinate with the five borough’s District Attorney’s animal cruelty enforcement units, the Board of Education to enhance animal welfare sensitivity training in the schools, the Board of Health on animal disease issues, and private grass-roots animal care groups to enhance their effectiveness. In addition, this position would reach out to major veterinary schools to entice them to open a branch in New York City.

No new legislation is required. What is needed is an allocation of more resources to these animals and a full push from City Hall to make this happen. The Mayor needs to convene all the animal-loving community and make this a grass roots effort encouraged and coordinated from City Hall. Making New York a No Kill City will ultimately fund itself in increased donations from charitable sources that are presently turned off by New York’s high kill rate. We New Yorkers can make this happen now. We owe it to the animals with which we share this City.

How To Help

• Volunteer at New York City Animal Care & Control.

• Work with an animal rescue group on their legal issues.

• When you want a pet, go to a rescue organization rather than buying one from a breeder.

Kevan Cleary, Esq., Co-Chair of NYCLA Animal Law Committee, is on the adjunct faculty of Brooklyn Law School.

I can’t believe I let my NYCLA Membership lapse…..

Even if your NYCLA Membership expired on December 31, 2013 we know how important your connection is to the only Manhattan bar association to offer an open committee structure, best-in-class CLE at great Member rates, and a hoard of benefits for both work and life. That’s why we offering you an opportunity to restate your membership today, with a bonus. Simply tell our Membership team that you saw this ad and you’d like $20.14 off your 2014 Membership renewal. Quick and easy — and on with your busy day.
Dear Readers: On March 5, we gathered at a NYCLA International reception to unveil a portrait of NYCLA’s Imme- diate Past President and 2011 Inductee, Stewart Aaron. Inducted in May 2011, Stewart served until May 2013 and oversaw numerous NYCLA initiatives and activities designed to promote the administration of justice and reform in the courtroom. Under Stewart’s leadership, NYCLA expanded its Legal Counseling Project to help individuals affected by Superstorm Sandy; issued a groundbreaking report on gun control reform; and led the charge for adequate funding of the federal and New York courts. In these and other areas, Stewart carried on the great tradition of NYCLA Presidents who over the years have helped NYCLA grow, thrive, and uphold the best values of the organized bar.

As a NYCLA Member, you have likely spent time in our magnificent auditorium, adorned with distinguished portraits of past Presidents dating back more than 100 years. Today, we have the wonderful opportu- nity to honor one of the most distinguished NYCLA leaders and的生命 to our current membership can stand.

Front and center in the Auditorium hangs a portrait of William Nelson Crom- well, NYCLA’s 12th President, who served from 1927 to 1938. He was the most significant benefactor NYCLA ever had, contributing nearly $200,000 (in 1923 dollars) to our organization and made the lots (at costs) on which the Home of Law now stands. His legacy continued upon his passing in 1948, when NYCLA received a generous share of his estate.

William Dean Emberry, whose portrait also hangs in the Auditorium, was NYCLA’s President from 1942 to 1944. During his term, two African-American NYCLA Members were inducted into the American Bar Association because of their race. NYCLA appointed a committee of board members to address this issue. By 1951, the Under 30 Committee, the ABA changed its policy—quite a coup.

Two decades later, Francis Benuel, who served as an Assistant United States Attorney, helped the Asso- ciation advocate for court reorganization and a centralized administration of the courts. Not only does his legacy live on through the portrait of him that hangs on the Auditorium wall, but we continue to serve.

(See MESSAGE on page 9)

Message from Barbara Moses President of NYCLA

Dear Member: On April 24 we are planning a one-day Spring Fundraiser, the NYCLA Foundation First Annual Spring Fundraiser: A Musical Tribute to the Honorable Betty Weinberg Ellerin.

We hope you come out in support of both the NYCLA Foundation and Justice Weinberg Ellerin for a night of music and remembrance of our colleagues as we celebrate the contributions of an esteemed NYCLA Member.

This April 24th fundraiser for the NYCLA Foundation will begin at 6 p.m. with a reception followed by a 7 p.m. performance. Regular tickets are priced at $75, with premium tickets at $150. In addition, if you are a pro bono sector employee, you can purchase a ticket for $50. It’s easy to register—just sign up online at www.nycla.org and submit a check, made payable to the NYCLA Foundation indicating Spring Fundraiser, to NYCLA Foundation, Attn: Anne Wells, 14 Vesy St., New York, NY 10007.

We hope to see you at this very special evening honoring Justice Weinberg Ellerin, who served more than 20 years as an Appellate Division jurist before joining Alston & Bird as senior counsel and in the firm’s Litigation & Trial Practice Group. The first woman appointed as Deputy Chief Administrative Judge of the Supreme Court of New York City Courts and the first woman appointed as Associate Justice of the Appellate Division of the Supreme Court of the State of New York, Justice Ellerin is a legend who has helped make history in New York’s legal community. If you can’t make it to the Spring Fundraiser, consider making a gift to help NYCLA continue to provide meaningful services, NYCLA works to benefit both the profession and the public, providing pro bono services to the poor, impacting public policy, and more. NYCLA depends on the generous contributions of Members—through the NYCLA Foundation—so support these initiatives since membership dues do not cover them completely.

Please go to www.nycla.org, and choose “Giving to NYCLA.” It doesn’t matter how much you give. Because the NYCLA Foundation is recognized by the IRS as a 501(c)(3) organization, your gifts are deductible to the extent provided by law. Have a great April and see you later this month at the Fundraiser.

Lewis F. Tesser, President NYCLA Foundation

JOIN US TO HONOR A NY LEGAL LEGEND

Elisa Brown, Esq., a Member of NYCLA’s Committees on Pro Bono, is a Deputy Director & Chief Development Officer for Economic Justice at MFY

Legal Services, Inc.

Slide 1

JUSTICE GAP

Continued from page 1

legal advice to low-income New Yorkers being sued by debt collectors. Rather than representing debt collection defendants in court, the CLARO Program’s volunteer lawyers and consumer law experts meet with litigants and advise them on how best to represent themselves in court cases. CLARO volunteers—who can participate through NYCLA—explain the court process, discuss the possibility of a settlement, and help litigants understand the necessity of the events in the history of the very walls of NYCLA’s landmark building when tak- ing CLARO clients’ portrait, achieving a forum, or enjoying a reception. Our beautiful building and our portrait gallery preserve NYCLA past and help us to remember the impact that this long line of esteemed leaders has made on the organization and the New York legal community. More than just this portrait, the images of these past leaders continue to serve as both an inspira- tion and provide mighty shoulders upon which our current membership can stand.

For example, all cases referred from pro bono programs at MFY Legal Services are screened to reduce the likelihood of overly complicated or problematic repre- sentations. MFY staff provides representa- tion-specific CLE training and ongoing support to pro bono attorneys. Involved among the pro bono opportunities at MFY are the SSI Pro Bono Project, which assists indigent clients in Social Security appeals; the Supplemental Security Income Benefits project, which helps to resolve overpayments and the Re- Entry Pro Bono Project, which involves representation of indigent individuals who have been released from prison. Both types of representation entail interviewing clients, reviewing records, gathering evidence, and preparing for and conducting administrat- ing hearings. MFY’s Kinship-Caregiver Pro Bono Project assists caregivers who raise children who are not their biological sons and daughters to adopt those children in uncontested proceedings. Pro bono attorney- nes work with their client to file an adopt- tion petition and enjoy seeing their clients formalize the legal relationship to children in need of a family.

NYCLA’s Project Restore program pro- vides assistance to individuals with mis- deemembering amnesty and other possible state suspended licenses.

NYCLA’s Project Restore program pro- vides assistance to individuals with mis- deemembering amnesty and other possible state suspended licenses.

NYCLA’s Project Restore program pro- vides assistance to individuals with mis- deemembering amnesty and other possible state suspended licenses.

For example, all cases referred from pro bono programs at MFY Legal Services are screened to reduce the likelihood of overly complicated or problematic repre- sentations. MFY staff provides representa- tion-specific CLE training and ongoing support to pro bono attorneys. Involved among the pro bono opportunities at MFY are the SSI Pro Bono Project, which assists indigent clients in Social Security appeals; the Supplemental Security Income Benefits project, which helps to resolve overpayments and the Re- Entry Pro Bono Project, which involves representation of indigent individuals who have been released from prison. Both types of representation entail interviewing clients, reviewing records, gathering evidence, and preparing for and conducting administrat- ing hearings. MFY’s Kinship-Caregiver Pro Bono Project assists caregivers who raise children who are not their biological sons and daughters to adopt those children in uncontested proceedings. Pro bono attorney- nes work with their client to file an adopt- tion petition and enjoy seeing their clients formalize the legal relationship to children in need of a family.

NYCLA’s Project Restore program pro- vides assistance to individuals with mis- deemembering amnesty and other possible state suspended licenses.

NYCLA’s Project Restore program pro- vides assistance to individuals with mis- deemembering amnesty and other possible state suspended licenses.

For example, all cases referred from pro bono programs at MFY Legal Services are screened to reduce the likelihood of overly complicated or problematic repre- sentations. MFY staff provides representa- tion-specific CLE training and ongoing support to pro bono attorneys. Involved among the pro bono opportunities at MFY are the SSI Pro Bono Project, which assists indigent clients in Social Security appeals; the Supplemental Security Income Benefits project, which helps to resolve overpayments and the Re- Entry Pro Bono Project, which involves representation of indigent individuals who have been released from prison. Both types of representation entail interviewing clients, reviewing records, gathering evidence, and preparing for and conducting administrat- ing hearings. MFY’s Kinship-Caregiver Pro Bono Project assists caregivers who raise children who are not their biological sons and daughters to adopt those children in uncontested proceedings. Pro bono attorney- nes work with their client to file an adopt- tion petition and enjoy seeing their clients formalize the legal relationship to children in need of a family.

NYCLA’s Project Restore program pro- vides assistance to individuals with mis- deemembering amnesty and other possible state suspended licenses.

NYCLA’s Project Restore program pro- vides assistance to individuals with mis- deemembering amnesty and other possible state suspended licenses.
JAMS congratulates

HON. ARIEL E. BELEN (RET.)

for being named Chair of the NYCLA ADR Committee.

Justice Belen was an Associate Justice of the Appellate Division, Second Department, from 2008-2012 and served as a Justice of the New York Supreme Court trial and appellate terms from 1995-2012. He helped create the Commercial Division in Kings County and then presided as a Justice, handling complex commercial cases from 2002-2005. Over the course of nearly 18 years of distinguished judicial service, he developed a reputation as a calm, intelligent, fair and hardworking jurist.

Since joining JAMS, Judge Belen has built upon his expertise to efficiently mediate and arbitrate numerous complex disputes covering a wide range of practice areas including business commercial, employment, insurance, personal injury/torts and estates/probate/trusts.
INFO PRIVACY

Continued from page

In state legislatures around the country, concern about the collection, trade, and hacking of personal data has spawned various laws. However, state data privacy laws passed in 2013. State lawmakers have acted because of the lack of action at the federal level to strengthen privacy laws. For business and organizations using the Internet, e-mail, and mobile messaging, the matrix of rules has grown to the point that they have to watch evolving laws to avoid noncompliance and ensuing penalties. The privacy landscape is growing in complexity with new developments, especially with respect to online privacy, a national, as well as an international issue. In February 2012, the White House issued a Consumer Privacy Bill of Rights, but Congress has not yet taken action. A proposed update to the 1986 Electronic Communications Privacy Act has also stalled.

According to a survey conducted in late 2013 by the Pew Internet Center, among Americans said they believed that existing laws were not adequate protection for their personal information. Another portion of ECPA dictates when the government has access to GPS tracking using cellphones. There has been some support in the House for the GPS Act, which would set policies for when the government can access location information of citizens. Senate bill passed last year was silent on this issue. There have been numerous efforts to change the privacy laws, but everyone wants an exemption. For a deeper review, see beta-congress.gov/bill/113th-senate-bill/077.

Children's Online Privacy Protection Act (COPPA)

The Children's Online Privacy Protection Act of 1998 (COPPA), 15 U.S.C. § 1301, revised July 1, 2013, applies to the online collection of personal information by persons or providers of online services directed to children under 13 years of age. It details what a website operator must include in a privacy policy, and when and how to seek verifiable consent from a parent or guardian if any of its operations has to do with children’s privacy and safety online including restrictions on the PI-104.191 establishes a comprehensive legal framework controlling the use and disclosure of individually identifiable health information by “covered entities,” principally health care providers and health plans. Renewable in 2013, was passed as part of the

the New York County Lawyer

Breach and Notification Act

The NYS Information Security Breach and Notification Act (NYS-S B 208) of the State Law and section 899-a of the General Business Law. State entities and persons or businesses conduct- ing business in New York who own or license computerized data which includes private information must disclose any breach of the data to New York residents. Additionally, under section 899-a of the General Business Law, persons or corporations conducting business in New York must also notify the NYS Attorney General, the NYS Division of State Police; and the Department of State’s Division of Consumer Protection of any breach of the data con- cerning New York residents.

Conclusion

This article is a mere overview of the current state of information privacy. A seemingly endless stream of data flows freely in the cyber world of today. We need to be vigilant and aware of our personal data and ensure that those to whom we have entrusted that data are legally bound and proactive about protecting it. We must continue to demand that enforce the practice of responsible data stewardship and hold the stewards accountable. We must empower and educate to protect their privacy, control their digital footprint, and enforce the protection of privacy and personal data a major priority for all.

Joseph J. Bambara, Esq.
Co-Chair of NYCLCA's CyberSpace Law Committee, is a partner at Boudreaux, Counsel and a VP of technology architecture at UNCY, Inc. where he serves as Counsel for financial technology with a focus on cloud computing, outsourcing contracts, intellectual property and email (SMS/mobile marketing). He can be reached at jjambara@uncy.com.
Social Responsibility & Wall Street: The Final Volcker Rules Take Effect on April 1, 2014

By Samuel Blaustein, Esq.

This month’s issue of The New York County Lawyer examines recent developments in financial regulatory responsibility and the law. One variant of social responsibility is corporate social responsibility. Generally, “corporate social responsibility recognizes the ethical and responsible methods of corporate operations and business practices.”1

The author addresses Congress’s latest attempt to legislate corporate social responsibility in the financial sector by way of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) with a focus on the “Volcker Rule,” which prohibits financial services companies from excessive risk taking in the wake of the 2008 financial crisis. Specifically discussed are the final agency rules promulgated on December 10, 2013 pursuant to the Volcker Rule following issuance of the report of the Financial Stability Oversight Council (FSOC) as established by Dodd-Frank.2

Historical Background

Historically, the financial industry has resisted government oversight and, absent instances of fraudulent conduct, the industry has been self-regulated.3 Self-government often finds itself at odds with the fact that corporations, including those in the financial sector, have an obligation to act in the interests of profit-driven shareholders, which in turn has resulted in a “sharply limited social responsibility.”4 Following the 1929 stock market crash, the United States Congress enacted the 1933 Securities Act, followed by the 1934 Securities Exchange Act.5 Also during the formative years of the modern financial system, Congress passed the Banking Act of 1933 (Glass-Steagall Act), which effectively segregated commercial banks from investment banks, insurance companies, and securities brokers.6 However, the Glass-Steagall Act was repealed by way of the 1999 Financial Services Modernization Act (Gramm-Leach-Bliley Act), which permitted for the rise, and ultimate fall, of large financial institutions such as Lehman Brothers and Bear Stearns.7 Ironically, the Gramm-Leach-Bliley Act was passed to create a system sufficiently large to benefit the financial services industry but, in order to aid the broader economy and benefit consumers.8

Thereafter, as more exotic products, notably mortgage-backed derivatives, such as collaterized debt obligations and credit default swaps (CDSs), became popular, large banks took on tremendous risks that ultimately led to the ensuing crisis that ushered in the 2008 financial crisis.9 The ongoing crisis has seen the failure of several hundred banks and unprecedented strain on the Federal Deposit Insurance Corporation (FDIC), which insures certain deposit accounts up to $250,000.00.10 Ultimately, the government was compelled to intervene and provide assistance, courtesy of the taxpayer public, to those financial sector companies that were deemed “too big to fail.”11

Dodd-Frank, the Volcker Rule, and Social Responsibility

The resulting public outcry from citizens who lost homes, retirement savings, and jobs on account of the financial sector’s unsustainable over-leveraging compelled Congress to enact Dodd-Frank in 2010 in an effort to impose some degree of social responsibility on the financial industry.12 The stated objectives of Dodd-Frank was to “keep systemic risk from emerging, prevent banks from becoming ‘too big to fail,’ and protecting taxpayers from future government bailouts.”13 Simply put, Dodd-Frank seeks to limit systemic risk without stymieing innovation that promotes economic growth.14 With respect to social responsibility, one primary justification for Dodd-Frank was that critical financial sector companies allegedly obfuscated information or failed to inform investors of the inherent risks in derivative and other exotic investments in order to realize profits.15 Suffice to say, Dodd-Frank has been met with skepticism by the financial industry, as well as by federal agencies, specifically the SEC, which are tasked with enforcing it.16 The Volcker Rule is included at Section 619 of Dodd-Frank and adds a new Section 16 of the Bank Holding Company Act of 1956. Generally, the Volcker Rule requires financial institutions to separate their investment activities from proprietary trading (hedge fund) units from their consumer lending units in order to prevent banks from serving as both advisor and creditor, thereby creating a conflict of interest between banks and clients.17 Among people who speak very rapidly are often suspected of wanting to deceive the listener (think of the phrase “a fast-talker”), and those who speak very slowly are often viewed as lacking intelligence.

The study also found that speakers who used frequent, short pauses were more successful at having someone pay attention to them. Pauses are “completely ‘fluid.’” In conversation, most people naturally pause about four or five times per minute. Listeners’ cues were filled with some kind of sound or not. The University of Michigan study revealed that when speakers never paused, they had the lowest success rate in getting listeners to do what they wanted them to do. This was attributed to the speakers sounding “scripted.”

The author then引用了John L. Bodig著名的说法，即，当使用Shakespeare时，句子的时间是最重要的部分。他指出，当句子被使用时，它们会受到攻击，它们可能会被争论。

the well-timed pause: • Takes your listeners by surprise: Unexpected silence captures attention by providing sharp contrast to a stream of utterances. • Creates suspense: It teases your listeners, increasing their desire to find out what will come next. • Gives your listeners a window into your inner world and creates variety in your delivery. Listening audiences expect “what is going on” with the speaker underneath the words. A well-timed pause (when the speaker “fills” it with meaning) captures attention and serves to provide an opening for listeners to view the speaker in a different manner on expressiveness and gain additional perspectives. As a savvy attorney, one way to gain your listeners’ attention/comprehension and pace your speech effectively is to allow your speakers to “land.” Do the following as you rehearse aloud (and remember to inter- nalize content, instead of memorizing it): • This is a thought, not in words; Pursue your relentless, not-in-words; Pursue briefly between each completed thought, to breathe and allow the previ- ous thought to be internalized by your listeners. To draw your listeners in, pause; don’t race

Footnotes available by emailing Ariella Greenbaum, Social Media Manager, at agreenbaum@nycla.org.

By Maria Guida

Successful attorneys, like good actors, are focused on their listeners and are masters of pacing. Whether you are in the courtroom or the boardroom, the tempo of your spoken word has a strong impact on your listeners and directly influences the way you are perceived. While spon- taneous speech can be helpful in making a point, it is important to make deliberate choices about pacing during your preparation/rehearsal for any important speaking moment or event. The University of Michigan conducted a study of various speech characteristics and how they influence listener decisions. In the study’s sample, speakers who spoke at a faster rate (5 words per second on average) were more successful in getting listeners to agree with them—compared to those who talked very fast or very slowly.

People who speak very rapidly are often suspected of wanting to deceive the listener (think of the phrase “a fast-talker”), and those who speak very slowly are often viewed as lacking intelligence.

The study also found that speakers who used frequent, short pauses were more successful at having someone pay attention to them. Pauses are “completely ‘fluid.’” In conversation, most people naturally pause about four or five times per minute. Listeners’ cues were filled with some kind of sound or not. The University of Michigan study revealed that when speakers never paused, they had the lowest success rate in getting listeners to do what they wanted them to do. This was attributed to the speakers sounding “scripted.”

The author then引用了John L. Bodig著名的说法，即，当使用Shakespeare时，句子的时间是最重要的部分。他指出，当句子被使用时，它们会受到攻击，它们可能会被争论。

the well-timed pause: • Takes your listeners by surprise: Unexpected silence captures attention by providing sharp contrast to a stream of utterances. • Creates suspense: It teases your listeners, increasing their desire to find out what will come next. • Gives your listeners a window into your inner world and creates variety in your delivery. Listening audiences expect “what is going on” with the speaker underneath the words. A well-timed pause (when the speaker “fills” it with meaning) captures attention and serves to provide an opening for listeners to view the speaker in a different manner on expressiveness and gain additional perspectives. As a savvy attorney, one way to gain your listeners’ attention/comprehension and pace your speech effectively is to allow your speech to “land.” Do the following as you rehearse aloud (and remember to internalize content, instead of memorizing it): • This is a thought, not in words; Pursue your relentless, not-in-words; Pursue briefly between each completed thought, to breathe and allow the previous thought to be internalized by your listeners. To draw your listeners in, pace; don’t race

Footnotes available by emailing Ariella Greenbaum, Social Media Manager, at agreenbaum@nycla.org.
NYCLA Honors Newly Elected, Appointed, Re-Elected, and Re-Appointed Judges

At NYCLA’s Judicial Reception on February 19, the Association honored newly elected, appointed, re-elected, and re-appointed judges.

Left: Hon. Fern Fisher (center), Deputy Chief Administrative Judge for New York City Courts, who welcomed attendees to NYCLA’s Judicial Reception, poses with NYCLA President Barbara Moses (left) and event Co-Chair Morrell I. Berkowitz.

Below: Honorees from the United States District Court, Southern District of New York; New York State Court of Appeals; Appellate Division, First Department; and First Judicial District, gather at this event hosted by NYCLA’s Supreme Court Committee.
NYCLA Foundation First Annual Spring Fundraiser: A Musical Tribute to the Hon. Betty Weinberg Ellerin in Honor of her Exemplary Contributions to NYCLA

Thursday, April 24
Reception – 5:30 p.m.; Performance – 6:30 p.m.
Public Sector Ticket: $50, Regular Ticket: $75; Premium Ticket: $150, includes special seating and listing in the program. Send check payable to the NYCLA Foundation indicating Spring Fundraiser to NYCLA Foundation, 14 Vesey Street, New York, NY 10007 and register at nycla.org.

NOTICE OF ANNUAL MEETING & RECEPTION
May 29, 2014 at 5:30 p.m. • NYCLA Home of Law, 14 Vesey Street
Annual Report of the President • Treasurer’s Report • Election of Officers and Directors

May

2014 Law Day Luncheon
Friday, May 9
Law day remarks by Errol Louis, Host of NY1’s Inside City Hall; Recognition of the New York Law Journal on its 125th anniversary, acceptance by Kris Fischer, Editor-in-Chief Reception – 11:30 a.m.; Lunch–12:30 p.m. Cipriani Wall Street, 55 Wall Street
Sponsored by NYCLA’s Supreme Court Committee
2014 Annual Meeting: Induction and Reception
Thursday, May 29–5:30 p.m.
All NYCLA members are invited to attend the Association’s annual induction ceremony of NYCLA officers and members of the Board.

NYCLA Foundation’s First Annual Spring Fundraiser: A Musical Tribute to the Hon. Betty Weinberg Ellerin

In Honor of her Exemplary Contributions to NYCLA

April 24, 2014
Reception – 5:30 p.m.; Performance – 6:30 p.m.
Public Sector Ticket: $50
Regular Ticket: $75 | Premium Ticket: $150, includes special seating and listing in the program
Register at nycla.org and send check payable to the NYCLA Foundation, indicating Spring Fundraiser, to NYCLA, Attn: Anne Wells, 14 Vesey Street, New York, New York 10007

You Are Invited to Celebrate Law Day 2014
American Democracy and the Rule of Law: Why Every Vote Matters
At its Annual Law Day Luncheon
The Justice Louis J. Capozzoli Gavel Award will be presented to
*** Hon. O. Peter Sherwood ***
Supreme Court, New York County, Commercial Division
Friday, May 9, 2014 • Reception: 11:30 – 12:30 p.m. • Lunch: 12:30 – 2 p.m.
CIPRIANI WALL STREET • 55 Wall Street • New York, NY
A New York landmark featuring stately Corinthian columns and a 70-foot Wedgwood dome ceiling
RESERVE YOUR SPACE—VISIT NYCLA.ORG
Questions? Contact Christina Andujar • candujar@nycla.org

We’ve got a Patent on Experience

• Over 10,000 patents granted
• Over 17,000 trademarks obtained
• Over 45 years of experience

• Our expertise extends to all areas of technology
• We represent everyone from individuals to multinational corporations
• We serve clients with distinction in both foreign and domestic intellectual property law
• We help clients identify emerging technologies and ideas

For more information, call us today at 516.365.9802 or fax us at 516.365.9805 or e-mail us at law@collardroec.com
1077 Northern Blvd., Roslyn, NY 11576 www.collardroec.com
Formbooks in the NYCLA Library

In the NYCLA Library, many lawyers use formbooks as an aid as they draft various legal papers. Form sets can be transactional or oriented toward litigation. Formbooks in the NYCLA Library are now nearly exclusively in digital form. Both Lexis and Westlaw/Next allow the forms to be downloaded or sent by email in Word, WordPerfect or PDF. There is also no charge for printing from the NYCLA Library PCs. Downloading or e-mailing a form to oneself in Word or Word-perfect allows you to avoid the keystrokes of retyping the entire document.

Major litigation form sets for New York include:

- **Carmony-Wait 2d — New York Practice with Forms** — Westlaw/Next
  This is a procedural encyclopedia (Civil and Criminal), with forms and covers the CPLR, CPL, DRL, the Judiciary Law, the SCPA, RPAPL and all legislation and court rules relating to practice. This set is beloved by many lawyers.

- **West’s McKinney’s Forms** — Westlaw/Next
  BCL, CPLFR, Construction Law, CPL, Employment Law, EPTL & SCPS, Local Government, Matrimonial and Family Law, NPCL, Real Property Practice, Selected Consolidated Laws, Tax Practice and Procedure and UCC.

- **Bender’s Forms of Pleading (NY)** — Lexis
  In book form this set comprises 27 volumes. It covers pleadings in law and equity in all types of actions. The set contains complaints, defense pleadings, bills of particulars, counterclaims, third party complaints, special proceedings and Surrogate’s Court proceedings.

- **Bender’s Forms for the Civil Practice (NY)** — Lexis
  In book form this set comprises 40 volumes. The first sixteen volumes are organized by specific CPLR provisions and subsequent volumes are geared to RPAPL (3 volumes), most major practice statutes (two volumes), Court Acts (two volumes), Domestic Relations Law and the Family Court Act (five volumes), and the SCPA and related matters (eleven volumes).

- **Bender’s Forms for the Consolidated Laws of New York** — Lexis
  In book form this set comprises 54 volumes. It is organized by all the titles of the New York Consolidated Laws. Litigation forms, legal instruments, official forms, departmental forms, and forms promulgated by administrative agencies. Thousands of forms!

Not infrequently, it is necessary to look in several of the above sets to find a form that meets your particular needs on a particular matter. As an example two NYCLA Members came in looking for a complaint for professional malpractice against a professional (not a lawyer or a physician). Carmony-Wait 2d described the substance of such an action but offered no form for the particular complaint. Bender’s Forms of Pleading (NY) did have the exact complaint form sought and also offered related documents (the form of an answer, and other pleadings).

Next month we’ll cover transactional forms in this column—stay tuned!

Most NYCLA Members qualify for the New York State Library Attorney Borrower’s Card. Have you applied? It is available to New York state residents admitted to practice law in New York. For information about this free internet-based access to legal information, contact Dan Jordan at djordan@nycla.org for an application for the NYSL-ARC.

To make suggestions about book, ebook, or database purchases for the NYCLA Library, please contact Dan Jordan, Director of Library Service, at djordan@nycla.org or at 212-267-6646, x281.

BY DAN JORDAN

**Abattoir**

Liberty Notes

**MESSAGE**

Continued from page 3

to carry on his dedication to court reorganization in the work we do to this day.

Other Presidents whose portraits hang at the Home of Law, like Wilbur H. Friedman, are known for their efforts to educate the public about particular legislation. During his term from 1975 to 1977, he published a series of letters to the Editor of the New York Times, on behalf of the Association, about New York’s Plain English law and ambiguity.

Craig A. Landy, whose portrait hangs on the left side of the Auditorium, was President on September 11, 2001. Under his leadership, NYCLA organized efforts to help those affected by this horrific time in American history, including relief efforts like the Death Certificate Project to help affected families find documentation for insurance and other benefits.

In 2007, NYCLA’s second female President—and its first African American President—was inducted. Catherine Christian, who served until 2008, was instrumental in helping to establish pro bono programs to assist formerly incarcerated individuals with successful reentry into the workforce and to counsel low-income persons plagued by consumer debt. Her portrait now hangs in the Auditorium, and the programs that she championed continue today.

On your next visit to the Home of Law, I hope you will make a point of visiting the Auditorium and taking in these portraits, which are both valuable works of art and reminders of the valuable work that NYCLA has done for the bench, the bar, and the community since its founding in 1908.

Feel free to tweet me at @nycalpacs, or email at bmoses@maglaw.com, with your take on NYCLA’s impact on history.

Barbara Moses, President
New York County Lawyers’ Association

**LEGAL PROFESSIONAL CORNER**

To advertise in the Legal Professional Corner, contact Kathleen Pishotta at 888-371-4933 or by email at kathleen@apogeepublications.com.

**Electronic Research Center CLE Programs**

**April**

Westlaw: Introduction to Westlaw Next
April 8 – 10:11 a.m. 1 MCLE Credit: 1 Skills; Transitional

Westlaw: Form Finder/Form Builder on Westlaw Next
April 8 – 11:30 a.m. – 12:30 p.m. 1 MCLE Credit: 1 Skills; Transitional

Lexis: Basic Legal Research
April 10 – 10:30 a.m. – 11:30 a.m. 1 MCLE Credit: 1 Skills; Transitional

Lexis: Legal Research Update
April 10 – 12 – 1 p.m. 1 MCLE Credit: 1 Skills; Transitional

Lexis: Company & News Research
April 10 – 1:30 – 2:30 p.m. 1 MCLE Credit: 1 Skills; Transitional

U.S. Bankruptcy Court Electronic Case Filing System
April 23 – 10 a.m. – 12:30 p.m. 2.5 MCLE Credits: 2.5 Skills; Transitional (Also NJ) Member: $65; Non-member: $85; Non-legal Staff: $35

Westlaw: Advanced Research on Westlaw Next
April 24 – 1:30 – 2:30 p.m. 1 MCLE Credit: 1 Skills; Transitional

Westlaw: Public Records Research on Westlaw Next
April 24 – 3 – 4 p.m. 1 MCLE Credit: 1 Skills; Transitional

Register at nycla.org

Questions? Contact Irina Chopinova at ichopinova@nycla.org or 212-267-6646 Ext. 203.
37TH ANNUAL
CIVIL TRIAL INSTITUTE
A BRIDGE THE GAP FOR LITIGATORS

Program Chair Robert Kelner, Kelner & Kelner and Co-chair Emeritus Hon. Robert Lippman (Ret.), have brought together an extraordinary faculty of judges, experienced litigators, academics and medical experts for the 37th Annual Civil Trial Practice Institute. The program will take attendees through the entire state civil trial process. You will learn ways to develop and improve trial preparation and litigation techniques within the context of personal injury and commercial cases.

This program will also satisfy the first or second year NY MCLE requirements for first or second year newly admitted attorneys. It will also serve as an excellent refresher for more experienced practitioners.

Topics Include:
• Civil Pre-Trial Practice: Commercial Litigation & Personal Injury Litigation
• Preparation of Plaintiffs and Defendants
• Conference and Settlement – Personal Injury Litigation
• Courtroom Techniques: Dealing with Expert Testimony and Hearsay
• Ethical Issues for Litigators
• Dealing With Evidentiary Problems During Trial
• How to Conduct a Voir Dire, With Demonstration
• Preparation of Opening Statements
• Direct and Cross Examination of Lay and Expert Witnesses, With Demonstration
• Preparation of Summations

Tuition Assistance is available for qualified attorneys.

Friday & Saturday
May 2 & 3, 2014
9:00AM – 5:00PM

16 NY Credits:
3 Ethics; 7 PP/LPM; 6 Skills

16 NJ Credits:
3 Ethics; 13 General

Transitional & Non-Transitional

Program Chair:
Robert Kelner, Kelner & Kelner

Program Co-chair Emeritus:
Hon. Robert Lippman (Ret.)

Faculty (In Formation):
Brian Kalman, London Fischer LLP; Hon. Richard F. Braun, NYS Sup. Ct., Civil Term; Robert J. Conway, Marshall Conway & Bradley, P.C.; Tracee Davis, Zeichner Ellman & Krause LLP; Professor Richard T. Farrell, Brooklyn Law School; Hon. Barbara Jaffe, NYS Sup.Ct., Civil Term; David Jaroslawicz, Jaroslawicz and Jaros LLC; Robert Kelner, Kelner & Kelner; Hon. Israel Rubin (Ret.), Greenberg Traurig; Jay G. Safer, Locke Lord LLP; Hon. Saliann Scarpulla, NYS Sup. Ct., Commercial Division; Harold Lee Schwab, Laster Schwab Katz & Dwyer, LLP; Richard L. Spingardi, Proskauer Rose LLP; Hon. Michael Stallman, NYS Sup. Ct., Civil Term; Barry Temkin, Mound Cotton Wollan & Greengrass

WWW.NYCLA.ORG
A roundup of recent national and local news stories featuring NYCLA and its members

**Law360.com**

**Silence On Court Funding, Fracking Draws Out Cuomo Critics**

January 9, 2014

After Governor Cuomo gave his State of the State address, Law360.com published this article highlighting the speech. NYCLA President Barbara Moses is quoted saying, “We at NYCLA were disappointed that in a speech focused heavily on making New York friendly to both businesses and individuals, the governor did not address the state of the New York courts, which are now significantly underfunded. For New York to maintain or increase its status as a hub of business activity, it must have an effective and efficient court system to adjudicate disputes. NYCLA calls upon Governor Cuomo and the legislature to provide the third branch of government with the resources it needs to be part of New York’s renaissance.”

**Law360.com**

**Budget Slip May Force NY Judiciary To Make Tough Choices**

January 22, 2014

NYCLA President Barbara Moses is quoted in this article saying, “It really does seem unfair to shortchange the judicial system now—and the New Yorkers who depend upon it—because court administrators were frugal last year and the year before. Nor should the judiciary have to choose between equally pressing needs, such as keeping courtrooms open a full day, getting orders out in a timely fashion, and deploying enough court officers to provide security.”

**New York Law Journal**

**NYCLA Report Highlights Impact of Court Cuts**

January 9, 2014

After NYCLA issued its Task Force on Judicial Budget Cuts Report, the Law Journal published an article about it, highlighting its focus and reasons for publication.

**Law360.com**

**NT Lawyer Group Says Another Lean Year Would Damage Courts**

January 8, 2014

This article also highlights NYCLAS recently published Budget Cuts Report.

**New York Times**

**Letter to the Editor: When Sheriffs Ignore Gun Laws They Don’t Like**

December 25, 2013

A letter written by NYCLA President, Barbara Moses, NYCLA Immediate Past President, Stewart D. Aaron, and NYCLA Board Member, Jacqueline Wolff, to the Editor of the New York Times, in response to an article published about law enforcement officials not following gun laws, was published.

---

**NYCLA Comments on and Supports Issues**

NYCLA frequently reports, comments on, and supports issues affecting the New York City legal community and has recently commented on or supported the following issues:

- NYCLA Judicial Section and Supreme Court Committee Comment on Proposed 22 NYCCRB §202.5-a of the Uniform Civil Rules for the Supreme Court, which would implement recently enacted legislation addressing the retaliatory filing of false financial statements against certain state and local government employees and criminal defense attorneys.
- NYCLA receives letter from Hon. John Bates, Director of Administrative Office of the United States Courts, regarding the Associations “Courts in Crisis” report
- NYCLA President Barbara Moses Presents Testimony at the Public Hearings on the Executive Budget before the Joint Fiscal Committees of the Senate and Assembly

Learn more on the News & Publications section of nycla.org.

---

**NYCLA in The News**

**COMING SOON !**

The 2014 Edition of the Attorneys’ Guide to Civil Practice in the New York County Supreme Court

Now in its 19th year, the Attorneys’ Guide provides a wealth of information about the operations of the Supreme Court, Civil Branch, New York County—biographies of the Justices, summaries of key procedures and operations, current phone and office numbers, and more. Practice in this important court! Access additional information and order a copy at nycla.org.

---

**Ethics Hotline**

The Committee on Professional Ethics accepts both written and telephone inquiries on ethics matters and provides advisory opinions. For additional information, call the members listed below.

Questions to the Hotline are limited to an inquiring attorney’s prospective conduct. The Hotline does not answer questions regarding past conduct, the conduct of other attorneys, questions that are being litigated or before a disciplinary committee or ethics committee, or questions of law. This notation shall not be construed to contain all Hotline guidelines. For a full discussion of Ethics Hotline guidelines, please see the article “Guidelines on NYCLA’s Ethics Hotline,” published in the September 2006 issue of New York County Lawyer.

<table>
<thead>
<tr>
<th>April 1-15</th>
<th>April 16-30</th>
<th>May 1-15</th>
<th>May 16-31</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mark Bower</td>
<td>Don Savatta</td>
<td>Ron Minkoff</td>
<td>Allison Jacobs</td>
</tr>
<tr>
<td>212-240-0700</td>
<td>212-983-6000</td>
<td>212-705-4837</td>
<td>212-566-7081</td>
</tr>
</tbody>
</table>

Please Note: Assignments are subject to change.

---

**BUSINESS TO BUSINESS**

**Employment Lawyer**

**Arbitrations/Mediations**

**Patents & Trademarks**

**LAW OFFICES OF RANDY C. BOTWINCK**

Specializing in Personal Injury

From Orlando to Miami... From Tampa to the Keys

1-877-FLA-ATTY (352-2889)

www.personalinjurylawyer.us

---

**JAMS**

**New York Resolution Center**

Resolving Disputes Worldwide

620 Eight Avenue, 34th Floor
New York, NY 10018

212.751.2700

www.jamstrad.com

---

**NAM**

**National Arbitration and Mediation**

**The Better Solution**

Complex Commercial & Employment Personal & Catastrophic Injury

122 East 42nd Street, Suite 803
New York, NY 10168

(800) 358-2550 • www.namadr.com

---

**What’s Tweeting?**

A sample of social responsibility-related posts on Twitter this past month

@gloriavigil The shift from corporate social responsibility to creating shared value; especially what Coca Cola is doing, w... @-linkedincbt/TwtoH2

@ABAAbot ABA has history of legal aid funding, pro bono and legal access for those in need. We have challenges. #ABAMidyear

@StartMeme Beyond pro bono, @equaladay or @explain why #CSR for #law firms calls for leadership, lateral thinking + change ow.ly/trvU #legal

@AnnelyAngenna New York Governor: Investigate the discrimination of the bully breed at New York City Animal... fb.me/X46y5Kq

@YaleEnviron Pine Beetles, Environmental Law, and Climate Change Adaptation: legal-planet.org/2014/02/06/pin...

Follow us on Twitter @nycla

---

**Collard & Roe, P.C.**

Patent, Trademark & Copyright Attorneys

Over 10,000 patents granted

Over 17,000 trademarks obtained

Over 45 years of experience

516.365.9802

www.collardroe.com
In the New York Law Journal Reader Rankings Survey, 7 of NAM’s mediators and 8 of their arbitrators ranked in the top 10. With such a wealth of skilled arbitrators and mediators NAM is able to handle even the most complex of cases.