By Lindsey A. Zahn, Esq.

Have you ever picked up a food item at the super market, scrutinized the label enough to realize that something about the product’s description or claims just seemed off, perhaps even misleading? Such is my daily life as a food and beverage attorney. Unfortunately, according to a study published in 2008 by The U.S. Federal Food and Drug Administration (FDA), only about 50 percent of consumers read the ingredients and nutrition facts panels before purchasing a food product for the first time.¹ What is the other half missing? In the world of food and beverage regulation, the answer is most likely a lot.

The FDA has primary jurisdiction over ensuring the safety of well-made food and beverage products in the United States.² The FDA also promulgates regulations that provide guidance on how manufacturers should label food or beverage products. The Federal Food Drug and Cosmetic Act (FD&C Act), which authorizes the FDA to oversee food safety, does not provide an express or implied private right of action to bring suit against a manufacturer for failure to comply with the Act.³

The Lanham Act, which prohibits a third party from using a competitor’s trademark in commerce to sell or promote its products, also provides no express private right of action.⁴ It’s primarily a statute that provides guidance on how manufacturers should label a product to prevent false or misleading advertising. Because advertising and labeling are generally not mutually exclusive, the regulation of certain products can present interesting situations, especially in the context of the food and beverages. For example, how do the Lanham Act and FD&C Act interact when a label is in compliance with the FD&C Act and enacting agency regulations, yet may present grounds for unfair competition claims? Such was an issue presented to the Supreme Court last year.

Pom Wonderful LLC, the producer and seller of pomegranate juices including a blueberry pomegranate juice, sued competitor Coca-Cola Company over Coca-Cola’s Minute Maid Pomegranate Blueberry juice.⁵ The Minute Maid label contained the words “blueberry pomegranate” in greater predominance than other text on the label that indicated the juice was a blend of five fruit juices.⁶ In actuality, the Minute Maid Pomegranate Blueberry juice contained 0.3 percent pomegranate juice and 0.2 percent blueberry juice, whereas 99.4 percent of the blend contained apple and grape juice.⁷ While this label may seem misleading on its face, Coca-Cola argued its labeling was actually in compliance with FDA rules and regulations.⁸ In its suit, Pom Wonderful alleged that the use of the label by Coca-Cola was misleading and deceptive under § 43 of the Lanham Act, which allows a competitor to sue another provider that it asserts unfair competition from false or misleading product descriptions.⁹ The Court of Appeals for the Ninth Circuit held that the FD&C Act precluded Pom Wonderful’s Lanham Act claim.¹⁰ Pom appealed, and the case reached the Supreme Court in 2014.

What issue was presented in Pom Wonderful?

The issue presented in Pom Wonderful was whether a competitor could bring a Lanham Act claim challenging a product label that is regulated and authorized by the FD&C Act.¹¹ Even though the FD&C Act and the FDA provide details on how a manufacturer can label a fruit juice of a blend of such, there generally is not a private right of action to bring suit against a party in violation of such. So a third party, like Pom Wonderful, would need to find separate grounds to bring a claim.

What was the result of Pom Wonderful?

Pom Wonderful holds that competitors [See Foods Laws on page 2]
FOOD LAWS
Continued from page 1

may bring a private right of action under the Lanham Act alleging unfair competi-

tion from false or misleading product descriptions on the labels of food or bev-

erages regulated by the FD&C Act.12

The FD&C Act's provisions do not preclude the statutory private right of action that derives from the Lanham Act.13 Effectively, the Supreme Court's holding means the FD&C Act will not serve as a limit to food regulations because Congress intended the Lanham Act and FD&C Act to ac-

company one another and be read together, as opposed to the latter trumping the former. As a result of the Pom Wonderful case, food and beverage companies are increas-

ingly more susceptible to these types of suits, and state court consumer protection actions may be on the rise. An important thing to note is that, even though a label or labeling may comply with FDA's regulations, it can still be misleading, deceptive, and possibly in violation of the Lanham Act.14 While not specifically addressed in the Pom Wonderful, similar claims were brought against alcohol beverage products boasting terms like “small batch,” “handmade,” and “handcrafted” on bev-

erage labels.15 Often, such alcohol labels require the Alcohol and Tobacco Tax and Trade Bureau—whose regulatory authority derives from the Federal Alcohol Admis-

sion Act—and since alcohol labels require pre-market approval from the federal government, some wonder whether the approval of such labels will be requi-

ied. This is yet to be seen, although some ambitious plaintiffs claim Pom Wonderful’s outcome should apply to alcohol labeling.16 However, there are also arguing that pre-market approval of an alcohol label is simply a floor and does not necessarily imply the producer is engaging in false advertising or unfair competition claims.

What is the most important thing to consider when advising food and bev-

erage clients?

Many times, food and beverage clients enjoy the benefits of a “limited partner” struc-

ture in their region because it is substantially more attractive than the alterna-

tive structure of the regional center (a limited partner in a limited partnership or a member, depending on the organiza-

tion itself). As a result, the SEC requires that sales of securities be reg-

istered with the SEC, a process that is long, arduous, and expensive. However, exemp-

tions to this registration requirement exist.

Unregistered Securities

Unregistered securities are securi-

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Message from Lew Tesser
President of NYCLA
Building Careers

Dear Member:

You may have attended a NYCLA event or program organized by our vibrant and active Young Lawyers’ Section in the past. One might say that this group is the pulse of the organization, bringing members together to learn, socialize, and network. Run by Co-Chairs Dan Wigg, counsel at Municipal Credit Union and Adjunct Law Professor at St. John’s University School of Law, and Adam Roth, Associate at Wingate Russotti Shapiro & Halperin, LLP, the group actively seeks to make NYCLA membership meaningful for those who belong to it.

Each year a myriad of events and programs are organized for members, targeting those admitted about 10 years or less. A variety of activities help members build their careers and shape their lives—including CLEs, small-group meet and greets with judges, happy hours, networking events, and recognition programs. Recent CLEs included “So You Want to Be a Judge?” and “All About Debt” while members had the opportunity to meet with Hon. Jenny Rivera, Associate Judge, New York Court of Appeals at an “In Chambers” program. Nearly 500 connections were made at the group’s recent Speed Networking program, and members are in the process of submitting nominations for the group’s Young Lawyers Awards, which will be held this May honoring attorneys and law students who deserve recognition for their contributions to the legal profession.

Law students are also encouraged to join the group and attend programs like NYCLA’s annual Lunch with a Judge program held each June that offers real-world education for summer associates. Attendees witness real motions and arguments and experience face-time with judges in intimate, small-group settings. Other programs for law students include the annual Mentor Auction and the law student correspondent program through which representatives from area law schools host on-site events to give their colleagues and friends a glimpse into NYCLA.

Another initiative organized by the Young Lawyers’ Section is the exclusive peer-to-peer Resume Review Service, which is available only to NYCLA members and run by program Co-Founders and Co-Chairs Katherine Hwang, Esq., Young Lawyers’ Section Vice Chair and Assistant Attorney General, New York State, and Mitch Huzar, Esq., The Matays Law Group, P.C. Now in its third year, volunteers help members refine their resumes for particular practice areas and also help those seeking supervisory and lateral positions.

If you’re admitted less than 10 years or if you’re a law student and not already a member of the Young Lawyers’ Section, I highly recommend that you join this energetic and resourceful group. Looking to give their colleagues and friends a glimpse into NYCLA.

Join us as NYCLA’s Law and Literature Committee presents its Law and Literature award to Gilbert, author of the 2013 Pulitzer Prize winning book Devil in the Grove: Thurgood Marshall, the Groveland Boys and the Dawn of a New America, a beautifully written account of four black men falsely accused of raping a 17-year-old white woman in Groveland, Fla., in 1949. It explores, in painstaking detail, the tactics used by their lawyer, Thurgood Marshall, to chip away at the foundations of Jim Crow laws.

After accepting the award, Mr. King will make a presentation about the case and how he researched it by gaining access to unredacted FBI files, conducting interviews, while alsoconvincing the NAACP to allow him review of the files of its Legal Defense and Education Fund.

The evening concludes with a panel discussion commenting on criminal justice and civil rights issues raised by the book and by Justice Marshall’s career among Mr. King, Barbara D. Underwood, NY Solicitor General, former law clerk for Associate Justice Thurgood Marshall Bruce Green, Louis Stein Professor at Fordham Law School, former law Clerk for Associate Justice Thurgood Marshall and Gloria Browne-Marshall, John Jay College of Criminal Justice and former litigator at NAACP Legal Defense and Educational Fund, Inc.

Law and Literature Award Ceremony and Program

Award Presented to

Gilbert King

Author of the 2013 Pulitzer Prize Winning Book

Devil in the Grove: Thurgood Marshall, the Groveland Boys and the Dawn of a New America

Panel Discussion: Thurgood Marshall’s Legacy

Tuesday, April 14, 2015

6:00 PM – 8:15 PM

2.5 NY Credits: 2.5 PP

2.5 NJ Credits: 2.5 General

Transitional and Non-transitional

www.NYCLA.org

Message from the NYCLA Foundation
Celebrate Women’s History Month in March

Dear Member:

We educated, privileged lawyers have a professional and moral duty to represent the under-represented in our society, to ensure that justice exists for all, both legal and economic justice. —Justice Sonia Sotomayor

At the 2014 Annual Dinner, we heard from Justices Ruth Bader Ginsberg and Sonia Sotomayor about their experiences on the Supreme Court and their journeys to the bench. All attorneys, women and men, have been inspired by their stories of triumph and true love of the law. Their work continually shapes our society every day, and I am sincerely encouraged by their wisdom. So, as we move into spring, it is important that we celebrate not only their achievements as women in law, but that of the many incredibly talented women attorneys who are members of NYCLA and the work they are doing to further the lives of other women in society. What better time to do so than Women’s History Month in March.

NYCLA has always been the bar association of inclusion. This is our bread and butter. Women, minorities, and LGTBQ attorneys all have had a place at the Home of Law from the beginning. Because of this diversity, we are able to adapt and work with each other and help others through our pro bono programs with an open mind. We are helping everyone from veterans to convicted felons get back on their feet after great life changes. But what is particularly surprising about the people who are benefitted by our programs, is that at least 3 of our pro bono programs (Legal Counseling, State Central Registry and CLARO projects) 50% of the clientele helped by our volunteer attorneys are women. This means, that NYCLA members are doing a wonderful job of contributing to the community, and empowering women to take charge of their affairs and become better members of society. I think, the Justices would be especially proud of the work we are doing.

We could not hope for better progress or better representation of NYCLA’s philosophy—that everyone should be included and helped if they need it. Not only are so many of the women attorneys in New York City (and the nation) thriving in law, but we are also empowering other women to get back on their feet by providing key legal services they would not otherwise be able to afford. NYCLA wants to continue to provide these services for years to come, and with your help, we will do just that. I strongly encourage you to donate to these effective and life-changing pro bono programs when you can. Our service to women and families is just one more way NYCLA is making a difference in the community.

Carol Simmond
President, NYCLA Foundation
When I tell other attorneys that I rep- resent family offices, many are puzzled and say “oh, so you do matri- monial law?” Well, no.

One popular term “family office” refers to a family-owned business. That may be closer to the truth.

So what is a family office? Essentially, it’s a private alternative to handling a wealthy family. The Investopedia reference website defines family offices as “private wealth management advisory firms that serve ultra-high net worth investors. Family offices are different from traditional wealth management shops in that they offer a total outsourced solution to managing the financial and investment side of an affluent individual or family.”

Family offices can serve very different purposes, providing services ranging from simply acting as a concierge service, arranging vacations and the like, to managing all the day-to-day operations for a family, including payroll activities, accounting, and legal issues.

The Family Office Exchange (FOX), the largest association of family offices, defines family offices as those serving wealthy families and their family offices. It notes seven common office types, although many family offices are hybrids of the branded office types. These are: (1) Founder’s Office; (2) Business Owner Office; (3) Diversified Business/Private Equity Office; (4) Investment Office; (5) Compliance Office; (6) Philanthropy Office; and (7) Multi-Generational Office.

The Founder’s Office model is designed to support the founding family of the business and generally concerned with addressing issues outside the scope of the actual operating business. In contrast, a Business Owner’s Office provides aid to the shareholders regarding the control and maintenance of the primary business. The Diversified Business/Private Equity Office assists the family office in focusing on their business activities beyond the original business. An Investment Office supports ownership of the family business by managing non-business investments. A Compliance Office serves in the area of wealth management, functioning to control costs. Sometimes the purpose of the family office is to aid the family in its philanthropic ventures and activities, with that type of office recognized as a Philanthropy Office. Finally, there is a Multi-Generational Office tasked with the challenge of delivering a broad range of offerings for family members of different generations.

The array of family office types means that different family offices have vastly different legal needs, with some offices needing a full complement of legal services. A family office may need legal counsel related to tax planning, estate and succession planning, trust planning, investment management, corpo- rate governance, real estate, employment, privacy, regulations, and insurance, to name just a few.

Family offices are designed to serve the ultra-wealthy. Indeed, the first modern family offices, as they exist today, were formed back in the 1840s to manage the expanding fortune of the Rockefeller family. However, their popularity continues to rise.

Many celebrities, including Oprah Win-frey, have opted for a family office to handle their wealth. Some of today’s legendary investors have poured their funds into family offices. Steve Cohen, founder of SAC Capital Advisors, transformed his hedge fund into a family office in 2014, fol- lowing his $695 million insider trading allegations against his company. George Soros also decided, in 2011, to change his hedge fund into a family office. These are just a few examples from among the many renowned investors who have chosen the family office structure to man- age their portfolios.

While it is true that family offices origi- nally catered only to the extremely wealthy, there has been a growth in family offices as the structure’s appeal becomes clear to oth- ers whose assets are slightly more modest. While there’s little formal data definitively accounting for the number of family offices, FOXC estimates that there are 2,500 to 5,000 family offices in the U.S., with another 6,000 informal family offices operating inside privately-controlled businesses. Moreover, in Europe and Asia, where family offices are a newer development, the number of family offices is surging.

In conformance to classifying family offices according to their focus, as in the seven main categories above, family offices can also be categorized according to the num- ber of families they represent: a single-fami- ly office (SFO) and a multi-family office (MFO). A SFO is a structure that manages the financial and personal affairs of only one wealthy family. A MFO is broader in focus and supports multiple families in managing their affairs. Although this distinction is helpful in organizing the work, it can be quite complex, and determining the established structure of the family office is critical for regulatory purposes.

Historically, family offices steppet the SEC regulation imposed by the Investment Advisers Act of 1940 (IAA). The IAA, until recently, contained a “private advisor exemption” under Section 203(b) (3) (15 U.S.C. 80b-3(b)), which allowed an investment adviser with fewer than 15 clients to avoid registration with the SEC. Under the “pri- vate advisor exemption” many hedge funds, private family offices, and family offices, which would include properly-structured multi-family offices, were excluded from SEC oversight.

This law changed in 2010 when President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) into law. The new law elimi- nated the “private advisor” exemption, forc- ing entities that had previously been exempt from oversight to register with the SEC.

When Dodd-Frank was first passed, family offices recognized that the elimina- tion of the exemption could compel family offices to register with the SEC. In response, family office representatives joined to form the Private Investor Coalition, which spear- headed a lobbying effort to establish a for- mal definition of the term “family office.”

After lobbying effort succeeded in creat- ing a “family office exemption” from SEC registration, although this exemption was not as broad as multi-family offices in the SEC concluded in creating the exemption, there was no way “to distinguish in any meaningful way between [multi-family] offi- ce and a single-family office or to manage the expanding fortune of the Rockefeller family. However, their popularity continues to rise.

Many celebrities, including Oprah Win-
By Laury A. Betha, Esq.

As the maxim from Justice Oliver Wendenholmes, Jr. reminds us: “The life of the law has not been logic, it has been experience.” In late 2014, NYCLA’s Civil Rights and Liberties Committee, Federal Courts Committee, and Minorities and the Law Committee held a panel discussion of four current and former experienced judges. NYCLA members and non-members in attendance were fortunate to hear the personal stories, and professional legal tales of the Honorable George Bundy Smith (Ret.), NYS Ct. of Appeals, the Honorable Ronald Ellis, Magistrate Judge, Southern District of New York (SDNY), the Honorable Jenny Rivera, Eastern District of New York (EDNY), and the Honorable Pamela Chen, District Judge, Eastern District of New York (EDNY).

In keeping with the theme of the panel’s discussion, the panel was moderated by Catharine Christian, Esq., a former NYCLA President and NYCLA’s first and only African-American President.

Honorable George Bundy Smith

Attendees learned of the early education, and achievement of Judge Smith (Ret.). Born in New Orleans, LA, and raised in Washington, DC, Judge Smith observed segregation at a very young age, and wondered why some schools were better than others, and better schools than black children. Even then, he knew that he could make a change in the educational conditions of all children.

Before setting out on his activist work, he was educated on a full scholarship at Phillips Academy, Andover, MA, where he received his B.A. in history in 1959, and a law degree in 1962. Later in life, he earned an MA from New York University and an LL.M from the University of Virginia School of Law. He worked as a judge in the New York State courts for 31 years. Judge Smith joined the faculty of the University of Baltimore in 2002, he joined Chadbourne & Parke, LLP as a partner, where he remained for five years. He is currently semi-retired from the practice of law, but still litigates and mediates cases around the country.

During undergrad, Judge Smith joined a freedom ride from Atlanta, Georgia to Montgomery, Alabama where he was arrested at a lunch counter. His intention was to join other freedom riders in Jackson, Mississippi, but he was refused. He was convicted of breach of the peace, and unlawful assembly. Two trial courts found him guilty, and the Court of Appeals of Alabama affirmed. The National Association for the Advancement of Colored People Legal Defense Fund (NAACP-LDF) appealed his conviction to the Supreme Court of Alabama, but the court refused to hear the case. The LDF then appealed to the US Supreme Court where the conviction was unanimously reversed.

Judge Bundy Smith’s civil rights protests gave him his first experiences with litigation, and he began his legal career as an assistant by challenging segregation. Whether on the bench or in practice, the heart of his legal work was to change educational, social, and legal conditions. Judge Smith’s Federal Court experience is certainly the legacy of the 1964 Civil Rights Act.

Honorable Ronald Ellis

Judge Ellis was born 60 miles southeast of New Orleans in the Bayou country. Judge Ellis told the attendees that, “Segregation was such a major part of what was happening [in Louisiana], I did not question it.” However, ironically enough, in his youth, Judge Ellis had only white teachers. It was clear to his parents from their occupations of common laborer and domestic, that the occupational opportunities for Judge Ellis, and his siblings would be limited if the family remained in Louisiana.

Starting with his father, the family migrated to New York City and settled in Harlem. He described his upbringing as “uneventful.” He earned a bachelor’s in electrical engineering from Polytechnic Institute of New York in 1972, and a law degree from New York University in 1975. Judge Ellis is the first African-American to obtain an LL.M with the NAACP-LDF while in law school where he drafted discovery and interrogatory requests. After graduating from law school, he was hired full time at the LDF where he remained from 1976 until 1993. Since 1993, he has been on the bench in the SDNY as a magistrate judge.

As a staff attorney with the LDE, he traveled throughout the South litigating cases in voting rights, employment law, and other areas. He was shocked by the entrenched racism he encountered how in one company town he was told: “If it needs a key, it is a white man’s job.” Judge Ellis thoroughly enjoyed his civil rights work, and stated that he would have “considered his legal career a success if he had worked only at the LDF.” Judge Ellis pointed out that the 1964 Act is “part of a whole” and “a continuum from the World War II civil rights legislation.”

Honorable Jenny Rivera

Judge Rivera was born and raised in New York City. She reported that she grew up in the lower East Side of Manhattan and in the Baruch Houses. She enjoyed her NYC upbringing, and fondly remembers protesting with her mother against the exclusion of Puerto Ricans from public housing. She reported that she was a very small child, and did not know exactly what they were doing, but knew that there was a reason for standing in a circle with the neighborhood women, and shouting about housing discrimination.

According to the Judge, all the Latino families who could afford to, put their children in Catholic schools to avoid the Latino schools available to Latinos. She states that Latinos were not given “the resources” available to whites which was a barrier to educational advancement.

Judge Rivera attended catholic schools from fifth grade through high school. She earned her bachelor's from Princeton University (1982), her LL.M from New York University (1985) and an LLM from Columbia University School of Law (1989). She also received her law degree from the University of Michigan (1983), and her law degree from Georgetown University Law Center (1986). She worked in private practice in Washington, DC before working for the US Department of Justice, and then as an assistant US attorney for the EDNY.

Judge Chen presented on the very difficult and timely civil rights issue of human trafficking. This was her second time hosting Judge Chen’s presentation on this topic, and each time it is gripping, but very difficult to listen to because of the brutal treatment of some of the world’s most vulnerable by a small segment of society who would prey on fellow country persons, and abuse their immigration hopes and expectations.

At the time that she prosecuted a human trafficking ring based in Queens, New York, she was the chief of the criminal section of the Civil Rights Litigation Unit. The Mexican family of human traffickers preyed upon poor, young women in a rural community in Mexico. The family members transported the women to the United States, and forced them into prostitution. The family also illegally brought to the United States hearing impaired men and women, beat them, and forced them to work, and forced them to go on the subways of NYC.

Since this family was from the community, they gained the trust of the residents, and were even thought of as powerful and prestigious. The human trafficking ring continued for more than a decade.

Judge Chen and her team of assistant United States attorneys were able to use the Trafficking Victims Protection Act (TVPA) of 2000 to charge several ring-leaders with a wide range of criminal and civil violations. The defendants received long sentences. Judge Chen reported that this is the “modern face of slavery in this country.”

The judge cited the representative cases in this area of United States v Carreno, 553 F3d 152 (2nd Cir. 2009), United States v Sathani, 599 F3d 215 (2nd Cir. 2010).

NYCLA started its inclusive mission of membership without regard to race prior to the 1964 Act, and has continued this mission to the present day. In remarks made at a luncheon, Judge Rivera said, “For the US District courts in NYC, the President of NYCLA, Lewis Tessier, told of the Association’s history “as the first major bar association in the country to admit all attorneys as members without regard to their background.” Thus, it was fitting to have a panel of civil rights trailblazers present their personal stories in commemoration of the 1964 Act to the NYCLA members. The organization has been a vanguard organization in the admission of attorneys without regard to race or gender.

** Lew Tesser, President 
New York County Lawyers’ Association
Two United Nations Conferences to Advance Women's Rights and Empowerment

By Barbara T. Rochman, Esq.

Over 700 women gathered from November 3rd to 5th, 2014, at the Palais des Nations in Geneva, Switzerland, for the 4th World Conference on Women in Beijing, China in 1995. This groundbreaking document committed UN Member States to a comprehensive agenda for advancing women's rights and empowerment. Marilyn J. Flood and Barbara T. Rochman, two of NYCLA representatives at the UN, attended the Geneva Forum. NYCLA is a registered Non-Governmental Organization (NGO) at the UN. Geneva was one of five preliminary regional conferences held worldwide in preparation for the 59th session of the United Nations Commission on the Status of Women (CSW 59), which is taking place this month at the United Nations Headquarters in New York City. The UN Commission on the Status of Women is the principal global intergovernmental body exclusively dedicated to the promotion of gender equality and the empowerment of women. The principal theme of CSW 59 is review of the Beijing Declaration and Platform for Action (Beijing+20). The regional forums were organized to, “...contribute to the Beijing + 20 review process...by providing vital perspectives, information and recommendations from a large base of NGOs and women's rights advocates...” One overarching concern among participants in Geneva was the lack of implementation of, and the need to hold governments accountable for, their commitments and obligations to women's human rights and gender equality under the Beijing Declaration and Plan of Action. Since 1995, UN reviews have been conducted every five years to monitor progress in the 12 critical areas of concern:

- Women and Poverty;
- Education and Training;
- Women and Health;
- Violence against Women;
- Women and Armed Conflict;
- Women and the Economy;
- Women in Power and Decision-making;
- Institutional Mechanisms for the Advancement of Women;
- Human Rights of Women;
- Women and the Media;
- Women and the Environment;
- The Girl Child

According to the UN ECE, “...Since 1995, progress has been stagnant, uneven and there has been a reversal of gains in some areas. Measures dealing with the financial crisis have been gender [insensitive].” Women face a plethora of threats to the Beijing commitments, including pervasive violence against women and girls and violations of and threats to girls and women's sexual and reproductive health and rights. Women in vulnerable situations, including indigenous women and women with disabilities, experience disproportionate rights violations, and girls and older women lack social protections. However, gains have been made. The ECE includes some of the most advanced and progressive countries on women’s rights, and also, Canada, the United States, and the United Kingdom. But it contains less developed countries, especially in Eastern Europe and some former Soviet Republics in Asia. Turkey is also within the region. The draft report of the Geneva Forum cited “tremendous” progress in education in many countries in the region. Fewer women die in pregnancy and childbirth from preventable causes and more women have access to modern contraception. There have been increases in the numbers of women in decision-making, although progress is uneven. There are some strong institutional mechanisms for the advancement of women at national and international levels, the report stated, citing the establishment of the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women). However, these remain largely under-funded and poorly resourced, particularly in countries that have reduced their annual revenues through tax cuts and other fiscal measures.”

Mechanisms to hold countries accountable are limited because the UN has no ability to require countries to implement UN resolutions, agreed conclusions, conventions or protocols, even where Member States may have signed such documents. These documents generally “urge” Member States to take action, but cannot tell them to do so. It is up to stakeholders in each country to press for implementation and action. Obviously, civil society has greater success in calling for action in some nations, while in some countries citizen involvement is limited, if not dangerous. Participants at CSW 59 will include representatives of Member States, UN entities, and accredited NGOs from all regions of the world. UN Women facilitates the
**Recent Events**

**Judge Fisher Receives Black History Month Award**

NYCLA and the Metropolitan Black Bar Association presented the Ida B. Wells-Barnett Justice Award in honor of Black History Month to Hon. Fern A. Fisher (center), Deputy Chief Administrative Judge, New York City Courts, Director, New York State Courts Access to Justice Program, on February 3. Pictured alongside Judge Fisher are NYCLA President Lew Tesser (left) and Hon. Pam Jackman Brown (right), Justice of the Queens County Supreme Court and Chair of the Ida B. Wells-Barnett Justice Award Committee.

**Nearly 500 Connections Made at Speed Networking Program**

On January 29, NYCLA’s Young Lawyers’ Section held a Speed Networking program during which nearly 500 connections were made by attendees who were matched up with other professionals.

**NYCLA’s Young Lawyers Section Sponsors So You Want to Be a Judge**

The Young Lawyers’ Section held a Continuing Legal Education course, “So You Want to Be a Judge,” on January 14. The program was moderated by Adam Roth, Wingate, Russotti, Shapiro & Halperin, LLP; and featured panelists Darren Marks, President, Lexington Democratic Club; Hon. Arlene Bluth, NYC Civil Court; Jeanine Johnson, Chief of Staff and General Counsel, Assemblyman Keith L.T. Wright; Hon. Peter Moulton, Supervising Judge, Civil Court of the City of NY; and Hon. James d’Auguste, NYC Civil Court.

**Former SDNY US Attorney Discusses Memoir**


**Touro Law Students Learn About NYCLA**

Several Members spread the word about NYCLA to law students at a Bar Association Fair at Touro Law School on February 24 including (left to right) Touro Correspondent Dorothy Kong, Philip Sanchez, Darren Marks, and Karen Lumpkin.
NY Bar Groups Show Support for Lynch as Attorney General

New York Law Journal
January 27, 2015

New Rule Requiring Specificity in Discovery Objections
Litigation Insider
January 27, 2015
http://www.litigationinsider.com/PublicArticleCLI.jsp?id=1202716318486&New_Rule_Requiring_Specificity_in_Discovery_Objections&articleid=201500014667

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

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:

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<tr>
<th>Month</th>
<th>Name</th>
<th>Phone</th>
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<tr>
<td>March 16-31</td>
<td>Richard Maltz</td>
<td>212-705-4804</td>
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<td></td>
<td>Robert Malinek</td>
<td>212-906-1816</td>
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<tr>
<td></td>
<td>Don Savatta</td>
<td>212-983-6000</td>
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<tr>
<td>April 1-15</td>
<td>Jim Kobak</td>
<td>212-837-6757</td>
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<td>Mark Bower</td>
<td>212-240-0700</td>
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<td>Sarah Diane McShea</td>
<td>212-679-9090</td>
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Please Note: Assignments are subject to change.

Questions to the hotline are limited to an inquiring attorney's own conduct under New York's Rules of Professional Conduct. Also, the hotline does not answer questions that are being litigated in a pending legal proceeding or before a grievance committee, or questions of law. Calls to the hotline are confidential but not privileged. 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.

Taxpayer Bill of Rights and Importance of Paying Taxes

By Carmela Walrond, Esq.

In June 2014, the Internal Revenue Service (IRS) adopted the Taxpayer Bill of Rights (TABOR), with the intention that it serve as a “cornerstone document” to better inform taxpayers of their rights. In constructing TABOR the IRS extracted the critical rights pre-existing in the present tax-code, groupings them into 10 primary taxpayer rights. In accepting and promulgating these rights, as part of the IRS publications, notice was sent, this past year, to millions of taxpayers as part of the IRS publications, notice was sent, this past year, to millions of taxpayers to better advise them of their rights with respect to issues relating to audits, deficiency notices, and collections, with these rights being publicly displayed in every IRS facility.

The push to have the IRS issue TABOR to clearly define a taxpayer’s rights was spearheaded by the Office of the Taxpayer Advocate, an independent office within the IRS, headed by National Taxpayer Advocate Nina E. Olson. In fact, in her 2013 Fiscal Year Report to Congress, Olson listed the adoption of a Taxpayer Bill of Rights as her top objective for the IRS. She articulated in her report that “[a] thematic, principle-based list of core taxpayer rights would serve as an organizing principle for tax administrators in establishing agency goals and performance measures, provide foundational principles to guide IRS employees in their dealings with taxpayers, and provide information to taxpayers to assist them in their dealings with the IRS.”

Since 2007, Olson has been promoting the idea of establishing TABOR. Olson noted that while multiple pieces of legislation with the purported title of a “Taxpayer Bill of Rights” has passed, her office’s taxpayer surveys “found that most taxpayers do not believe they have rights before the IRS and even fewer can name their rights.” Olson further remarked that the listing of core taxpayer rights will better enable “taxpayers [to] better understand their rights in dealing with the tax system.” The IRS Commissioner, John A Koskinen, acknowledged that the Taxpayer Bill of Rights would provide taxpayers with “fundamental information” concerning their rights, better summing these “important protections in a clearer, more understandable format than ever before.”

The importance of paying taxes cannot be understated. Without taxes we would not enjoy many of the public benefits that we currently take for granted, such as public schools, public parks, streets, and highways to name just a few of the benefits we currently enjoy. Of particular importance is that without public funds the government and military would not be able to operate. We have all seen the dysfunction that comes with a government shutdown. Thus, it is essential for every individual to file a tax return to empower the IRS with the ability to determine an individual’s tax liability. Every year the IRS evaluates whether an individual owes taxes or is owed a refund, with the IRS providing a refund for any excess taxes paid.

An in-depth analysis of the Taxpayer Bill of Rights will be discussed at NYCLA’s upcoming CLE on March 26. Learn more and register at nycla.org.

Committee Reports

NYCLA frequently reports, comments on, and supports issues affecting the New York legal community:

- Report by NYCLA’s Criminal Justice Section on Raising the Age of Juvenile Jurisdiction
- Federal Courts Committee Comments on Proposed Amendments to the Federal Rules of Civil Procedure
- Federal Courts Committee Comments on Proposed Amendments to the Federal Rules of Appellate Procedure

Part 2: Don’t Let Your Body Language Betray You

By Maria Guida

In my last article, I described compelling research about the importance of non-verbal communication and its power to enhance or jeopardize your persuasive power as an attorney. Here are additional, specific points to bear in mind about your physical demeanor when you speak, both in and outside of the courtroom.

Your face-to-face listeners are observing five basic non-verbal communication pathways: eye contact, facial expression, posture/posture, and the physical distance you establish between yourself and your listeners. Messages communicated through body language vary according to culture. Here are four additional aspects of body language to remember about general perception among people raised in the United States:

1. Pointing with a finger (and especially with an object, such as a pen) often sends a message of aggressiveness/hostility.
2. A subtlety of disagreement is sent when your arms are crossed over your chest.
3. When you are leaning, leaning back in your chair with fingers joined behind your back communicates confidence, relaxation, and pleasure in what the speaker is saying.

Here are some suggestions for a wide range of speaking situations:

1. Keep your hands open and available for natural gestures; not inside your pockets or behind your back.
2. When you are standing, a waist-level position for the hands (with palms relaxed and fingers slightly curved) is often effective. When gesturing, use both hands whenever possible.
3. Put pens and pointers down when you are not using them.

Savvy attorneys consider non-verbal communication the same way that actors do: by routinely (1) asking themselves, “how might my physical behavior impact my listeners?” and (2) making necessary adjustments in behavior. Be mindful of any physical behaviors you exhibit that may be sending unintended messages. This self-monitoring will dramatically enhance your ability to elicit the kind of responses from your listeners that you desire, both in and outside of the courtroom.
The NYCLA Library has substantially moved from being a book-based library to being digital library through our access to Westlaw, Lexis, and a number of other databases that said, the NYCLA Library still keeps many sets in print form. The sets in print include McKinney’s New York Consolidated Laws, the New York Code Books, Rules and Regulations, the New York City Charter and Administrative Code, and the Rules of the City of New York.

In addition, the Library keeps in print the Housing Court Reporter, Scherer’s Landlord Tenant Law (also on Westlaw), and the newsletters Apartment Law Insider and Landlord e-Tenant. The library’s holdings also include the entire run of the New York Law Journal (in microform and print). And finally, Finkelstein’s Landlord and Tenant Practice in New York and Rasch’s treatises Landlord and Tenant and New York Rent Control are part of our Westlaw subscription. These resources comprise a strong collection that should be of interest to any attorney practicing Landlord Tenant law.

As the NYCLA Library collection has migrated from print to digital, nearly all the titles discontinued in print are available online through Westlaw, Lexis, and other sources.

While WestlawNext is the primary digital resource in the NYCLA Library, there is also a not-to-be-overlooked Lexis subscription, available on one computer in the North Reading Room. The Lexis subscription includes national primary source materials, a short list of secondary source materials geared to New York practice, the LexisNexis Legal Directory, including the LexisNexis Law Digest Archive. The searchable secondary source materials are:

- Bender’s Forms for the Consolidated Laws
- Bender’s Forms for Civil Practice [including CPLR, RPAPL, DRL, GML and EPTL/ECCA coverage]
- Bender’s Forms of Pleading in the State of New York
- Weinstein, Korn and Miller’s New York Civil Practice [all fifteen volumes]
- Weinstein, Korn and Miller’s New York Civil Practice [four volume set]
- New York Appellate Practice

Relevant portions of nearly all other Matthew Bender/Lexis treatises can be accessed through the Lexis “Get a Document” feature. Ask the library staff for assistance on best use of the “Get a Document” feature for your project.

Mantindale Hubbell, now owned by Internet Brands Inc., is no longer part of Lexis. The same information formerly found in Mantindale Hubbell can now be found in the LexisNexis Law Directory database in the NYCLA Lexis subscription. In addition to having firm and individual attorney listings this database also includes the LexisNexis Law Digest Archive (through 2010). The Law Digest provides an overview to the law of the 50 states and many foreign countries, while also including citations to the primary source materials through 2010.

Use the NYCLA library’s free based services from anywhere. When you need assistance, send an email to reference@nycla.org. Having trouble finding a case, a statute, a Record and Brief, an NYSURR provision? Need some research in an unfamiliar area of law? Contact the NYCLA Library for guidance and assistance at reference@nycla.org.

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, ext. 201.
FOOD LAWS

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134 S. Ct. 2228.

1 Id.

2 Id. See also Ben Weil,ford, Minute Maid Pomegranate Juice Is Actually 99.4% Apple And Grape Juices; Supreme Court Rule Competitor Can Sue, Meat CI. Dec., June 13, 2014, available at http://www.


3 Id.

4 Id.

5 Id.

6 Id. 

7 Id.

8 Id. 

9 Id.

10 This was generally argued in Pem Won-
derful.


able at http://www.courthousenews.

12 See, e.g., Michael Lipkin, Anheuser-

buoyed-by-pem-ruling-6th-circ-told.


or indirectly on transactions in securities; (ii) is not an associated person of a broker or dealer; and, (iii) is not subject to a statu-
tory disqualification, as defined in Section 3(a)(39) of the Exchange Act.10 However, the SEC makes the final determination of
whether the activities of an associated per-
son rises to the level of broker-dealer and
requires registration on a case by case basis.

Impact on Potential EB-5 Investors

What do these regulatory guidelines mean to prospective EB-5 investors? At the outset, it appears that these guidelines pri-
marily concern regional centers. However, it is imperative that prospective investors, broker-dealers and immigration attorneys fully understand these guidelines as well.

When the primary objective of the investor is to turn a profit, investors must understand that USCIS approval for a regional center does not mean that a governmental agency has approved the business plan or financial soundness of such a regional center. Thus, it is crucial that investors understand the nature of regional centers, the obligation of regional centers to disclose certain information and to evaluate the soundness of the selected regional center's financial strategy. As is usually the case though, the primary objective of a prospective EB-5 investor is not to turn a profit but instead to acquire permanent resident status. In such a case, it is perhaps even more important that an investor understand how the SEC guide-
lines affect their applications. A violation of either of the two main categories of regulatory guidelines mentioned above—unregistered securities and broker-dealer registration—can potentially deny an EB-5 investor status, or at the very least result in a substantial delay.

Unregistered Securities Regulatory Violations

Unregistered securities violations can arise from numerous circumstances, the most common of which is a violation of the general soliciting or advertising guide-
lines. As noted, when an issuer uses general soliciting or advertising to market offers of unregistered securities, such issuer must take reasonable steps to ensure that none of the investors

U.N. CONFERENCES

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participation of NGOs in sessions of the CSW. There is limited space for represen-
tatives of NGOs such as NYCLA to attend official meetings. They can freely attend side events organized by Member States

and UN entities, as well as parallel events organized by NGOs and held outside of UN premises. Opportunities for written or oral presentations are very limited and must be requested in advance. NGO re-
presentatives can also be called upon with short brief question and answer periods at most side and parallel events. CSW 59 will be a jam-packed two weeks, with attendees, including NYCLA represen-
tatives, rushing from one event to another, and with meeting rooms often filled to overflowing. CWSN 59 will be filled with con-
troversy as well. In recent years the women’s rights agenda has become increasingly polit-
icized at the UN. Issues of controversy will likely include prevention of violence against women, reproductive rights, and economic and educational equality—all critical to the empowerment of women.