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Don't Delay—Renew Your Membership Today!

The Nassau County Bar Association is one of the largest suburban bar associations in the country and the leading source for legal information and services for the legal profession and the local community in Nassau County.

Your membership includes unlimited FREE live CLE, FREE committee CLE, FREE Bridge-the-Gap weekend, ***and more:***

- **12 FREE credits of on-demand CLE programs**
- **In-person networking and social events**
- **Reduced advertising rates in *Nassau Lawyer***
- **FREE mental health and wellness seminars**
- **Community and pro bono volunteer opportunities**

BBQ at the Bar

To kick off the new bar year, the NCBA will host the popular BBQ at the Bar on the front lawn of Domus on Thursday, September 8—open to all NCBA Members and prospective members. We invite you to gather for a relaxing evening of networking and BBQ favorites. For additional information, see the insert within this issue.

Renew Today!

We are dedicated to providing you with the tools you need to succeed professionally and personally.

Renew online today at www.nassaubar.org or call the NCBA Membership office at (516) 666-4850. We can't wait to work with you this year.

WE CARE 26th Annual Golf and Tennis Classic

Bridget Ryan

Founded in 1988 by then NCBA President Stephen Gassman, the WE CARE Fund, part of the Nassau Bar Foundation, Inc., the charitable arm of the NCBA, is supported through donations and fundraising efforts of the legal profession and the community at large. Over $5 million has been raised by WE CARE to fund various programs. One hundred percent of the money that is raised is disbursed through charitable grants to improve the quality of life for children, the elderly, and others in need throughout Nassau County.

WE CARE's largest fundraising event, the Annual Golf and Tennis Classic, will be held on **Monday, September 19, 2022**. Founded in 1996 by Stephen W. Schlissel, the Classic brings the local legal and business community together for a day of fun and fundraising. Don't be fooled by the title—the Classic has something for everyone to enjoy. Attendees can play golf, tennis, or pickleball, or enjoy a day of yoga and wellness by the pool. Guests looking to learn the basics of golf are encouraged to join the Golf 101 session, where a professional teaches the ins and outs of the game as well as ways to improve one's skill. In addition to a day's worth of sports, activities, and an extravagant raffle room, the Classic boasts an impressive cocktail hour and buffet dinner.

Each year, the WE CARE Fund honors local community members for their service to WE CARE, the legal profession, and the community at large. At this year's Classic, WE CARE will honor **Ronald J. Bredow**, CEO and Co-Founder of NY Physical Therapy and Wellness, and **Geoffry R. Handler, Esq.**, Managing Partner of McLaughlin & Stern.

For more information regarding ticket, sponsorship, and journal ad opportunities, visit the WE CARE website at www.thewecarefund.com.

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BBQ AT THE BAR
THURSDAY, SEPTEMBER 8, 2022
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SAVE THE DATE
THE 26TH ANNUAL
WE CARE
GOLF & TENNIS
CLASSIC
MONDAY, SEPTEMBER 19, 2022
BROOKVILLE COUNTRY CLUB & THE MUTTONTOWN CLUB
www.wecaregolf.com
*The WE CARE Golf and Tennis Classic was Founded by Stephen W. Schlissel in 1996.

From the President

Rosalia Baiamonte

The challenge facing virtually every bar group is how to strengthen its membership base, foster membership retention, engage new members, and promote diversity (including gender, race, sexual orientation, ethnic and national origin, religion, geographic location, work experience, economic background, age, and disability).

One unused tool at our disposal is data-driven analytics, or more simply stated, a "survey." An annual membership survey is an invaluable tool to track the metrics for representation, retention, and recruitment. Periodic membership surveys can also be useful in evaluating methods of communication to members, improving awareness of NCBA services and benefits, developing recommendations to increase membership, mining recommendations for future programs and member services, and improving community outreach. To assist in this effort, I have asked the Chairs and Vice Chairs of various NCBA Committees, including Association Membership (Jennifer Koo and Adina Phillips), Diversity and Inclusion (Rudolph Carmenaty and Sherwin Safir), and New Lawyers (Byron Chou, Michael Berger, and Dari Last) as well as the Dean of the Academy of Law Susan Katz Richman to collaborate on this project. Together, we will strive to maintain a strategic focus on keeping NCBA membership diverse, inclusive, relevant, and valuable for all members of our Association.

It is both noteworthy and unprecedented that two women of color are serving as Chair and Vice Chair of Association Membership. Visibility and representation matter in outreach efforts. As such, plans are underway to visit area law schools to actively recruit new student members and showcase NCBA's educational opportunities, services, and benefits.

As a companion effort, a focus group has been formed under the guiding hand of Past President Martha Krisel, with an assist from past Elected Directors Michael Cardello III and Samuel Ferrara, to investigate ways to bring greater value to those who elect to become Sustaining Members of this Bar Association, and to re-engage past Directors of the Board.

In an effort to demonstrate NCBA's commitment to strengthening its relationships with its affinity bar groups and improve the communications between its organizations, I have extended an invitation to the Presidents of ten Affinity Bars (Amistad Long Island Black Bar Association; Asian American Bar Association; Catholic Lawyers' Guild; Columbian Lawyers' Association; Dominican Bar Association; Jewish Lawyers' Association; LGBT Bar Association of Greater NY; Long Island Hispanic Bar Association; Indian American Bar Association of LI & Queens; and the Women's Bar Association) for each to attend one of our monthly cocktail receptions which precede our NCBA Board of Directors meetings and to give a report to the Board regarding their featured organization. Additionally, each bar leader has been invited to submit an article for publication in *Nassau Lawyer*, as part of the newly created monthly "Affinity Circle Column." Such efforts will enhance NCBA's networking and membership opportunities, as well as provide a valuable sense of community.

One of NCBA's most exciting and ambitious initiatives will be the formation of a Scholarship and Pre-Law Society to promote diversity and inclusion. This idea was conceived by my dear friend and Past President Elena Karabatos. Through her generosity of spirit and philanthropy, this scholarship will be given the seed to germinate. While the NCBA-Karabatos Scholarship is only in its initial planning stages, the goal is to provide college students who are interested in a legal career with access to a mentor and the financing to afford LSAT preparatory courses and testing fees. This scholarship program will be an integral part of NCBA's pipeline of community outreach and will serve as an investment in our own future as a sustainable and diverse organization.

Financial considerations are an often-overlooked component of diversity and inclusion. In an effort to address this issue, at the first meeting of the NCBA Board of Directors on June 14, the Board unanimously approved my recommendations to reconstitute the NCBA's Financial Oversight Committee, which shall be comprised of Past Presidents Stephen Gassman and Elena Karabatos, and one elected Director from each of the three classes of Elected Directors, namely: Michael Antongiovanni, Jerome Scharoff, and Ellen Tobin. As provided by Article II, §8 of the NCBA By Laws, "The charge of the Financial Oversight Committee shall be to review and evaluate the reliability and integrity of the Association's accounting practices and conflict-of-interest policies; to review and evaluate the adequacy of the Association's internal financial controls; to review and evaluate the form and content of the Association's interim and year-end financial reports; and to make such recommendations to the Executive Committee and to the Board of Directors as it deems advisable regarding the Association's financial affairs, including but not limited to its investment policies, risk management policies, regulatory compliance, insurance coverage, accounting practices, conflict-of-interest policies, and internal financial controls."

> "Together, we will strive to maintain a strategic focus on keeping NCBA membership diverse, inclusive, relevant, and valuable for all members of our Association."

Lastly, diversity considerations were paramount in making seven new appointments to the Judiciary Committee, which were also enthusiastically approved by the NCBA Board of Directors. The 2022-2023 term of Judiciary Committee is comprised of Past President Dorian Glover (Chair), Past President Marc C. Gann (Vice Chair), Liora M. Ben-Sorek, Lauren Bristol, Jeffrey L. Catterson, Christopher J. Clarke, Matthew Didora, Tammy Feman, Mark E. Goidell, Past President Douglas J. Good, Dana Grossblatt, Joshua B. Gruner, Robert M. Harper, Jonathan E. Kroll, Katherine Lindo, Michael H. Masri, Past President Christopher T. McGrath, Oscar Michelen, Amy Monahan, James Murphy and Lisa R. Schoenfeld, thereby fulfilling the President's charge under Article VIII, §1, ¶B, to "endeavor that the Committee membership as a whole reflect a broad range of political participation and professional experience."

As a companion effort, a focus group has been formed under the leadership of Past President Marian C. Rice (also a Past Chair of the Judiciary Committee) to, among other things, review and institutionalize protocols for selecting diverse members to serve on this crucial Committee.

The challenges facing the Nassau County Bar Association are not unique but, in fact, are similar to those facing many bar groups at the national, state, and local levels. Buoyed by the enthusiasm of our membership, the dedication of our staff, and the innovation and commitment of our bar leadership, the Nassau County Bar Association is well positioned to meet these challenges.

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FOCUS: DIVERSITY AND INCLUSION

A Review of the Killing of Vincent Chin: A Re-Enactment

Jennifer Koo

Photo By: Hector Herrera

Heartbreaking. If one word can sum up the Vincent Chin case, that one word would be —heartbreaking. One would like to think that the justice system is fair to all people, no matter your age, gender, race, or sexual orientation. Unfortunately, there have been repeated examples throughout history that this is just not so, and the Vincent Chin case is just further proof of unfortunate sacrifices made to enact change.

For those unable to attend the event on May 4, 2022, at the Nassau County Bar Association, the Diversity and Inclusion Committee, with Rudy Carmenaty as Chair and Sherwin Saffir as Vice-Chair, put on a re-enactment of the Vincent Chin court cases. The cast consisted of the Hon. Maxine Broderick, David Carl, Byron Chou, the Hon. Darlene Harris, Justin Jannone, James Joseph, Steven Leventhal, Oscar Michelen, Adina Phillips, Daniel Russo, Elizabeth Sy, Ira Slavit, and Ingrid Villagran. Hector Herrera provided the technical support for the evening's presentation.

In 1982, Vincent Chin, a Chinese American that was only twenty-seven years old, went out with his friends for a bachelor's party. Ronald Ebens and Michael Nitz made racial slurs towards Vincent. Punches were thrown. Ebens grabbed a bat. Vincent ran away; Ebens and Nitz pursued him. Ebens slammed the bat repeatedly at Vincent's head until he killed him.

The Wayne County Circuit Court sentenced Ebens and Nitz to three years of probation and a $260 fine. The prosecutors did not appear at sentencing. The victim's family and friends were not notified and therefore, did not have an opportunity to appear at sentencing. The Justice Department then prosecuted Ebens and Nitz in federal court for interfering with Chin's right to use and enjoy a place of public accommodation on account of his race and conspiracy to do the same.

A big issue in the case was that Liza Chan, played by Elizabeth Sy, an attorney helping to prepare the prosecution's witnesses for trial, met with the three witnesses at the same time and taped their discussion. The jury found Ebens guilty of violating the civil rights of Vincent Chin on account of his race. Ebens was sentenced to 25 years.

Ebens appealed to the Unites States Court of Appeals for the Sixth Circuit. The judge remanded the case for a new trial. The defense corrected its errors that made it lose in the original trial and the jury ruled that Ebens was not guilty of violating Vincent Chin's civil rights.

Members of the Bar Association re-enacted the different trials, reciting wording from the actual court transcripts. As each person spoke, on the tv screen there appeared a picture of the actual person they were depicting. This was an excellent addition to the re-enactment—being able to see the judge that gave a murderer a sentence of only probation, the young attorney who did not realize the utmost importance of attorney-client privilege, and the tearful face of the mother that lost her son in a single act of violence.

The audience was engrossed in the story. Speaking to other attendees afterwards, many people were shocked to hear such testimony, not believing (or perhaps not wanting to believe) that these were words from the actual court transcripts. Whether it was a hate crime or not, it still resulted in a man's death. There was no dispute that a homicide occurred.

How could a judge sentence a murderer to probation, justifying his actions by saying "you don't make the punishment fit the crime, you make the punishment fit the criminal." How could the prosecution not attend the sentencing? How could an attorney meet with three witnesses at the same time while taping their conversation?

So many mistakes were made in the Vincent Chin cases, one could only shake their head at the injustice of it all. Perhaps with more experienced attorneys, Ebens would have been sentenced for violating Vincent Chin's civil rights. A hate crime DID occur.

The re-enactment was set up to imitate a court room, with the judge sitting at the front and the defense and prosecution sitting before the judge at separate tables, but with their backs turned towards the audience. My only critique would be that those playing the defense and prosecuting attorneys should face the audience when speaking so that they can be heard. I would have them sitting so as to face the audience the entire time, rather than face away and towards the judge. The audience would still understand the concept that the room was meant to imitate a courtroom.

Overall, the Committee did an excellent job of putting on the re-enactment, of making the audience feel the heartache of a mother who lost her son and the murderer only receiving a slap on the wrist. I especially loved hearing about the legacy of the Vincent Chin case and how it inspired change. In the years following the Vincent Chin case, federal and state laws were enacted giving victims greater rights. Hate crime laws were passed. The case initiated sentencing and plea-bargaining reform in the state of Michigan.

Not only did the Vincent Chin case bring about a change in the justice system, but his death brought about a change in how Asian Americans perceived their self-worth. As a first generation Asian American myself, it struck me as incredibly true how Asians are taught to not complain, to not create a scene. It is very motivating to hear of a case that inspired a whole ethnic community to speak out and seek justice, to make a change for the better.

A couple of years ago, when Asian hate was again rising in several areas including New York City, I received a phone call from my cousin asking if I was alright and whether my life was in danger. Luckily, living on Long Island, I never faced the Asian hate that others faced. But in the face of hate, Asians spoke out. Others came to their aid and spoke out as well.

While the case was heartbreaking, the re-enactment ended on a high note of inspiration and change.

Jennifer Koo is a Partner at Sales Tax Defense LLC, a consulting firm that specializes in sales and use tax. She is also the current Chair of the Association Membership Committee. Jennifer can be reached at 631-491-1500 ext. 16 or jkoo@SalesTaxDefense.com.

FOCUS: CONSTITUTIONAL LAW

Domestic Terrorism: The Sovereign Citizen Doctrine

Ian Bergstrom

Although the legal theories and terminology may vary, the self-proclaimed "Sovereign Citizens" and "Moorish Nationals" are individuals who challenge the legitimacy of American laws and governmental entities. Sovereign Citizens further perpetrate domestic terrorism, thereby causing the federal government to classify them as domestic terrorists. Sovereign Citizens and Moorish Nationals also commence civil lawsuits with the court system setting forth their ideology to adjudicate purported wrongdoing. An understanding of Sovereign Citizen and Moorish National ideology enables the judiciary to properly adjudicate same within the context of civil litigation.

An Overview of Moorish Nationalism

Noble Drew Ali founded the "Moorish Science Temple."[1] Moorish Science is a "black Islamic sect."[2] The "Moors" profess allegiance to the Moorish Science Temple, Moorish Science, and Prophet Noble Drew Ali.[3] The sacred text is a variation of the Koran.[4] The majority of religious temples are situated throughout the American prison system.[5] The legitimacy of Moorish Science as a recognized and organized religion is unclear because federal courts have declined to comment.[6]

Noble Drew Ali preached that Moorish Science adherents are not American citizens because of their purported ancestry and nationalism.[7] Certain adherents "claim to be descendants of the Moors of Northern Africa," and others refer to the apparent "eighteenth-century treaties with Morocco as the basis to assert their sovereignty from United States law" or otherwise claim "the status … of … indigenous people" within America.[8] Moorish Nationalism traces its origins to "medieval Muslims" who lived from the Ninth to Fourteenth Centuries.[9] Despite the purported ancestry and nationalism, the belief system among Moorish Science adherents lack uniformity.[10]

The Birth of Sovereign Citizenship

After a federal court assessed the "concept of [the] Moorish movement," the judiciary became aware of the "sovereign citizenship movement."[11] In *Sterling v. 1279 St. Johns Place, LLC (In re Sterling)*, the United States District Court for the Southern District of New York described the "Sovereign Citizen movement… as a loosely affiliated group who believe that the state and federal governments lack constitutional legitimacy and therefore have no authority to regulate their behavior."[12]

Sovereign Citizens spearhead "a right-wing anarchist ideology originating the theories of a group called the Posse Comitatus."[13] Sovereign Citizens consist "of anti-government extremists who believe that even though they physically reside in this country, they are separate or 'sovereign' from the United States."[14] Sovereign Citizens disregard "federal, state, or local laws, policies, or regulations …."[15] Although Moorish Nationals and Sovereign Citizens are technically distinct, "individuals began merging these concepts by building on their alleged ancestry in ancient Moors."[16]

The terminology of "sovereign citizens," "secured-party creditors," "secured party," "sui juris," and "flesh-and-blood human beings" are interchangeable.[17] Sovereign Citizens believe that "the government uses … birth certificate[s] and social security card[s] to set up secret, individual Treasury trust accounts."[18] Such "accounts" are claimed to be comprised of monies that "the government holds in trust for the … rightful owners."[19]

Sovereign Citizens assert that they are "creditor[s] of the United States and holder in due course" regarding the purported monies, and Sovereign Citizens can "redeem their birth certificates" by means of "filing certain complex, legal-sounding documents" to access "their secret Treasury account."[20] After accessing the purported "account," Sovereign Citizens can "create money orders and sight drafts … to pay for goods and services."[21]

Sovereign Citizens are Domestic Terrorists

The Federal Bureau of Investigation deems Sovereign Citizens to be domestic terrorists.[22] Terry Nichols, recognized as a Sovereign Citizen, assisted Timothy McVeigh with the bombing of the Alfred P. Murrah Federal Building in Oklahoma City in 1993.[23] In *Liberty Insurance Underwriters, Inc. v. 7 World Trade Co. L.P.*, the federal court outlined the history of global terrorism before September 11, 2001, further characterizing Timothy McVeigh and Terry Nichols as "American extremists."[24] The federal court referenced, among other groups, the Irish Republican Army, Jewish Defense League, Puerto Rican terrorists, Lebanese terrorists, and Al Qaeda as terrorists and terroristic organizations.[25]

Sovereign Citizens perpetrate other terroristic methods throughout America, such as "paper terrorism" to accomplish their objectives.[26] Sovereign Citizens may file financial instruments with governmental entities tasked with processing same.[27] The financial instruments are considered "easy to file," but vacating the purported financial obligations are "very burdensome to remove."[28] Under UCC Article 9, Sovereign Citizens file fictitious and "abusive liens" as to prosecutors, judges, prison officials, correction officers, attorneys, and parole board members.[29] In *Faltine v. Murphy*, the United States District Court for the Eastern District of New York declared that Sovereign Citizens mistakenly believe that the filing of a financial instrument deprived the court of jurisdiction to adjudicate the criminal prosecution.[30]

The Adjudication of Sovereign Citizen and Moorish National Ideology

A court can sua sponte characterize an individual as a Sovereign Citizen after review of their allegations and legal theories harmonious with Sovereign Citizen "ideology."[31] For instance, a complaint may assert terminology such as "Aboriginal," "Indigenous," "Sovereign," "Moorish," "Al Moroccan," "Muur," and "Moor."[32] Federal courts unwaveringly hold that Sovereign Citizen ideology and the like are "frivolous and … waste[ful] of court resources."[33] Despite their personal belief systems, Sovereign Citizens and Moorish Nationals are charged with the obligation to comply with federal and state laws.[34]

Federal courts should dismiss lawsuits pertaining to Sovereign Citizen and/or Moorish National ideology on the ground that same fails to "state a plausible claim" pursuant to Federal Rule of Civil Procedure 12(b)(6) if the allegations do not satisfy the applicable legal standards.[35] New York State supreme courts should dismiss lawsuits pertaining to Sovereign Citizen and Moorish National ideology pursuant to CPLR 3211(a)(7) if the "Complaint is totally incomprehensible and states no cognizable cause of action that [the] Court can discern. Certain … terms used in the complaint [may] have no lawful meaning in our jurisprudence."[36] The judiciary should be aware that Sovereign Citizens may threaten court staff, physically fight court staff, and refuse to appear inside the courtroom during proceedings.[37]

1. See *United States v. James*, 328 F. 3d 953, 954 (7th Cir. 2003).
2. See *Bey v. Campanelli*, 19-cv-5304 (RPK) (PK), 2020 U.S. Dist. LEXIS 137895, *1-2, (E.D.N.Y. 2020).
3. See *id.*
4. See *id.*
5. See *Belton v. Malfeasance Task Force*, 12-3519 (RBK), 2012 US Dist LEXIS 150196, *3-4, (Dist. Ct., NJ 2012).
6. See *Johnson-Bey v. Lane*, 863 F. 2d 1308, 1308-9 (7th Cir. 1988).
7. See *United States v. James*, 328 F. 3d at 954; see *also Bey, supra n.2.*
8. See *Bey, supra* n. 2.
9. See *Bey v. Antoine*, 19-CV-1877 (PKC) (RER), U.S. Dist. LEXIS 67724, *3 (E.D.N.Y. 2019).
10. See *generally Bey, supra* n. 2.
11. See *Lane*, 863 F. 2d at 1308-9; see *also Moorish Science Temple of Am. 4th & 5th Generation v. Super. Ct.* of NJ, 2012 U.S. Dist. LEXIS 6997, *3 (Dist. Ct., N.J. 2012).
12. See *Sterling v. 1279 St. Johns Place, LLC (In re Sterling)*, 565 B.R. 258, 262 (S.D.N.Y. 2017).
13. See *Belton, supra* n. 5.
14. See *U.S. v. Graham*, 2019 U.S. Dist. LEXIS 95219, *13 (S.D.N.Y. 2019).
15. See *People v. Williams*, 189 A.D.3d 1978, 1981 (3d Dept. 2020).
16. See *Belton, supra* n. 5, *3-4; see *also Techu El v. Conetta*, 2022 U.S. Dist. LEXIS 63509, *2 (S.D.N.Y. 2022).
17. See *United States v. Benabe*, 654 F. 3d 753, 766 (7th Cir. 2011); see *also Aran v. Dept. of Treasury*, 2022 U.S. Dist. LEXIS 22532, *6-7 (E.D.N.Y. 2022).
18. See *2720 Realty Co. v. Williams*, 2012 NYLJ LEXIS 5582 (Civ. Ct., Kings Co. 2012).
19. See *id.*
20. See *id.*
21. See *id.*
22. *U.S. v. Ulloa*, 511 Fed. Appx. 105, 107 (2d Cir. 2013) (*citing Sovereign Citizens: A Growing Domestic Threat to Law Enforcement, FBI* (Sept. 1, 2011), available at https://bit.ly/3Aa4qNG; *Colar v. Heyns*, 2013 U.S. Dist. LEXIS 4316, *9 (W.D. Michigan 2013); *Wik v. Kunego*, 2014 U.S. Dist. LEXIS 60193, *21-2 (W.D.N.Y. 2014).
23. *Sovereign Citizens, supra n. 22; Oklahoma City Bombing*, FBI, available at https://bit.ly/3OMUTQm; Assistant Attorney General Carlin Delivers Remarks at the National Summit on Homeland Security Law, U.S. Dept. of Justice, available at https://bit.ly/3HXzRMR; *Liberty Insurance Underwriters, Inc. v. 7 World Trade Co. L.P. (In re September 11 Litig. Aegis Ins. Servs.)*, 865 F. Supp.2d 370, 377 (S.D.N.Y. 2011).
24. *Supra* n. 23
25. *Liberty Insurance Underwriters, Inc.*, 865 F. Supp. 2d at 377.
26. See Sovereign Citizens, *supra* n. 23; see *also Superior Court of NJ, supra* n. 11.
27. See *Monroe v. Beard*, 536 F. 3d 198, 203 (3d Cir. 2008).
28. See *id.*
29. *Id.; Williams*, 189 A.D.3d at 1979; *Bunting v. Fischer*, 2016 U.S. Dist. LEXIS 103575, *2 (W.D.N.Y. 2016); *Mancia v. Annucci*, 2022 U.S. Dist. LEXIS 87891, *6-7 (W.D.N.Y. 2022).
30. See *Faltine v. Murphy*, 2016 U.S. Dist. LEXIS 72757, *6–7 (E.D.N.Y. 2016).
31. *People v. Reid,* 2020 NYLJ LEXIS 285, *3 (Sup. Ct., Bronx Co. 2020); *NYC Commission on Human Rights v. American Constr. Assn., LLC*, 2020 N.Y. Slip. Op. 33265(U), *8-10 (Sup.Ct., N.Y. Co. 2020); *Williams*, 189 A.D.3d 1978; *Aran*, 2022 U.S. Dist. LEXIS 22532, *6-7; *Williams-Bey v. Webster Park Ave. Housing Development Fund Corp.*, 26 Misc. 3d 1224(A) *3-4 (Sup. Ct., Bronx Co. 2010).
32. See *The King v. Park Place Lexus Plano*, 2019 U.S. Dist. LEXIS 154107, *9 (E.D. Texas 2019).
33. See *generally Buchholz-Kaestner v. Fitzgerald*, 2017 U.S. Dist. LEXIS 81865, *6 (N.D.N.Y. 2017);

see *generally Vidurek v. Cuomo*, 2018 U.S. Dist. LEXIS 173169, *3 (N.D.N.Y. 2018); see *generally Wellington v. Foland*, 2019 U.S. Dist. LEXIS 123150, *10 (N.D.N.Y. 2019).
34. *NYC Commn. on Human Rights*, 2020 N.Y. Slip. Op. 33265(U), *8-9 (Sup. Ct., N.Y. Co. 2020); *Paul v. New York*, 13-CV-5047 (SJF) (AKT), 2013 U.S. Dist. LEXIS 158431, *8-10 (E.D.N.Y. 2013); *Sterling*, 565 B.R. at 262; *Charlotte v. Hansen*, 433 Fed. Appx. 660, 661 (Ct. App., 10th Cir. 2011); *Bey v. 279 Capital*, LLC, 2020 U.S. Dist. LEXIS 89126, *2 (E.D.N.Y. 2020); *Bey*, 19-cv-5304 (RPK) (PK), 2020 U.S. Dist. LEXIS 137895, *9-10; *Faltine*, 15-CV-3961 (RRM) (LB), 2016 U.S. Dist. LEXIS 72757, *6-7.
35. *See generally The King*, 2019 U.S. Dist. LEXIS 154107, *9; see *generally Fitzgerald*, 2017 U.S. Dist. LEXIS 81865, *6 (*citing Branton v. Columbia County*, 2015 U.S. Dist. LEXIS 67588, *3 (N.D.N.Y. 2015); see generally Fed. R. Civ. P. 12(b)(6).
36. *See generally Encarnacion v. RMS Asset Management, LLC*, 2018 N.Y. Slip. Op. 31807, *4 (Sup. Ct., NY Co. 2018) ("The Court finds that the allegations in the Complaint fail to state a cause of action."); see *generally Williams-Bey*, 26 Misc. 3d 1224(A) at *3-4; see *generally* CPLR 3211(a)(7).
37. *See Reid*, 2020 NYLJ LEXIS 285, *9-10.

Ian Bergstrom is a civil litigation attorney assigned to the Litigation Bureau within the Office of the Nassau County Attorney.

FOCUS: CONSUMER DEBT COLLECTION

New Statute Favors Consumer Debtors in Credit Collections

Jeff Morgenstern

On November 8, 2021, Governor Hochul signed a new law designed to provide additional protection for consumer debtors from debt collectors and credit card companies. The statute, the Consumer Credit Fairness Act of 2021 ("CCFA")[1] targets unfair and abusive tactics used in debt collection, primarily against the most vulnerable of consumers.

The highlights of the new statute are as follows:

The big "prize" for consumer debtors, is that the CCFA reduces the statute of limitations on actions arising out of consumer credit transactions, from six years to three years.[2] The CCFA provides that after the limitations period expires, any subsequent payment, written or oral affirmation of, or other activity on the debt does not revive or extend the limitations period.[3] It also requires an additional notice by mail to the debtor of a lawsuit arising from a consumer credit transaction. When plaintiff files proof of service of the summons and complaint, it must provide the court with the notice and a stamped envelope addressed to the debtor in no less than twelve-point type, in English and Spanish, with specific language to be included.

In addition, compliance with the additional mailing is necessary before a default judgment can be entered, with at least twenty days elapsing from the date of the mailing.[4] The complaint in such an action must be served with the summons.[5]

The contract or other debt instrument on which the action is based shall be attached to the complaint, except, in case of a revolving credit account, the charge-off statement may be attached instead. The complaint shall state the name of the original creditor, the last four digits of the account number on the last monthly statement reflecting activity; the date and amount of the last payment, or a statement that no payments were made; and the date a final statement of account was provided, if there is a cause of action for an account stated; an itemization of the amount sought; the account balance provided on the last monthly statement showing activity; whether the plaintiff is the original creditor; and if not, the details as to all assignments of the account.[6]

The 60-day rule for filing motions to dismiss on a defense for improper service which is raised in an answer, does not apply in consumer credit transactions.[7] On summary judgment motions, where the consumer defendant is acting pro se, plaintiff must also submit a stamped envelope addressed to the defendant along with an additional notice in English and Spanish, with specific details, is about the motion and instructions on how to oppose it. The motion cannot be granted unless there has been compliance with this section after at least fourteen days have elapsed from date of mailing by the clerk.[8]

Further, the additional mailing requirement added to CPLR 3212 applies to motions for summary judgment in lieu of complaint in a consumer credit transaction.[9]

If the plaintiff is not the original creditor, an application for a default judgment shall include a specific affidavit from the original creditor, and for each subsequent assignment or sale of the debt, an affidavit of sale by the debt seller; and an affidavit of the plaintiff including a complete chain of title of the debt; and an affidavit by plaintiff or its attorney that it has reason to believe that the statute of limitations has not expired.[10]

In arbitration cases involving consumer credit transactions, applications to confirm arbitration awards shall plead and attach the terms and conditions of the arbitration agreement.[11] The CCFA also requires the judiciary to make available Spanish translations of the additional notices and form affidavits required under this new statute.[12] It makes inapplicable to consumer credit transactions where there is change to the owner of a debt through a sale or assignment and no judgment exists, the requirement that a third-party entitled to enforce a judgment file with the clerk of the court a copy of the instrument giving authority to enforce the judgment.[13]

Finally, the entire statute takes effect and applies to lawsuits commenced on or after May 7, 2022, except Section 4 (providing for the reduced statute of limitations period) took effect on April 7, 2012.[14]

The purpose and intent of the statute is to strengthen the means by which consumers can be protected from predatory debt collectors, who also now have to be more transparent and honest in communicating with consumers.

Accompanying the new statute, are new regulations from the New York Consumer Financial Protection Bureau including such restrictions as follows:

• Debt collectors may not call consumers more than seven (7) times in a seven-day period

• After making contact by phone, debt collectors must wait seven (7) days before calling again

• Debt collectors cannot call between 9:00 p.m. and 8:00 a.m. local time.

• Debt collectors cannot contact consumers by any or all means of communication, or at a place of work, if the consumer asks them not to

• Debt collectors generally cannot contact consumers by work e-mail address, public social media postings, or through third parties

• Debt collectors must provide consumers with key information about their debt within five (5) days of their first communication

• Consumers have a right to dispute their debt and debt collectors must provide information on how to do so in "validation notices"; once such a dispute is made, the collector must stop all attempts to collect until it provides the information supporting its claim

• Before accepting payments, debt collectors shall notify the consumer if the debt is time-barred; and, suing or threatening to sue for a time-barred debt is an automatic violation of Federal law

Attorneys representing credit card companies, debt collectors and debt buyers, as well as consumer debtors, are urged to carefully review the CCFA before taking on the commencement or defense of a consumer credit transaction.

1. S.153/A. 2382, signed 11/8/21.
2. CCFA §4, adding new CPLR 214-i.
3. CCFA §4, adding new CPLR 214-i.
4. CCFA §5, adding new CPLR 306-d.
5. CCFA §6, amending CPLR 3012.
6. CCFA §7, amending CPLR 3016.
7. CCFA §8, amending CPLR 3211(e).
8. CCFA §9, amending CPLR 3212.
9. CCFA §10, amending CPLR 3213.
10. CCFA §11, amending CPLR 3215(f).
11. CCFA §12, amending CPLR 7516.
12. CCFA §13, amending Judiciary Law 212.
13. CCFA §14, amending CPLR 5019.
14. CCFA §15.

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FOCUS: PLAINTIFF'S PERSONAL INJURY

Scaffold Law Cases and Interlocutory Appeals After *Bonczar*

Christopher J. DelliCarpini

In *Bonczar v. American Multi-Cinema, Inc.*, the Court of Appeals recently affirmed a defense verdict in a Labor Law §240(1) case.[1] Along the way, the court also held that it could not review the Appellate Division's interlocutory order that reversed the trial court's grant of partial summary judgment for the plaintiff. Some see *Bonczar* as a watershed in Section 240(1) litigation, but a deeper look reveals that the decision does less and more than is apparent at first.

Plaintiff Wins Summary Judgment, then Loses on Appeal and at Trial

David Bonczar sued after falling off a ladder while renovating a movie theater. He was running wires through the drop ceiling for a smoke detector in the cash room,[2] and as he testified, "I was on a six-foot ladder, and as I descended the ladder back down through the drop ceiling, the ladder shifted, wobbled—I lost my balance and fell to my back on the floor."[3] He brought suit in Erie County Supreme Court against American Multi-Cinema ("AMC") as owner of the premises, alleging common-law negligence and violation of the Labor Law.[4]

In particular, Mr. Bonczar sued under Labor Law §240(1), the "Scaffold Law," which imposes absolute liability on certain contractors, owners, and their agents when their failure to provide an adequate safety mechanism injures a worker in a gravity-related accident.[5] The statute applies to "scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices." This duty is nondelegable; owners are liable even though they exercised no supervision or control.[6]

In *Blake v. Neighborhood Housing Services of New York City, Inc.*, however, the Court of Appeals clarified—or qualified—causation under Section 240(1):

> [I]f a statutory violation is a proximate cause of an injury, the plaintiff cannot be solely to blame for it. Conversely, if the plaintiff is solely to blame for the injury, it necessarily means that there has been no statutory violation.[7]

Courts have come to call this the sole proximate cause defense, and have accordingly dismissed Section 240(1) claims "where the plaintiff … misused an otherwise proper safety device, chose to use an inadequate safety device when proper devices were readily available, or failed to use any device when proper devices were available."[8]

Mr. Bonczar successfully moved in Supreme Court for summary judgment on liability under Section 24091). Citing *Gordon v. Eastern Railway Supply and Haimes v. New York Telephone Co.*, he argued: "[t]he Court of Appeals has recognized that a fall from a ladder caused by the ladder's instability establishes a violation of Labor Law §240(1)."[9] In opposition, AMC argued that "there are issues of material fact as to (1) whether there was a defect in the ladder provided and (2) whether the Plaintiff was the sole proximate cause of the accident."[10] In reply, Mr. Bonczar relied on the Fourth Department's decision in *Woods v. Design Center, LLC*, to argue that the fact that the ladder failed "to give proper protection to the plaintiff" established a statutory violation.[11] In a brief order, the trial court summarily granted the motion.[12]

AMC appealed, and the Fourth Department, in a 3–2 split decision, reversed the decision below. "Plaintiff did not know why the ladder wobbled or shifted," the majority noted, "and he acknowledged that he might not have checked the positioning of the ladder or the locking mechanism, despite having been aware of the need to do so."[13] But two dissenting Justices noted: "a plaintiff who falls from a ladder that 'malfunction[s] for no apparent reason' is entitled to 'a presumption that the ladder . . . was not good enough to afford proper protection.'"[14]

Mr. Bonczar did not seek leave to appeal to the Court of Appeals, and the case went to trial, where the jury returned a defense verdict. The verdict sheet first asked, "[w]as Labor Law 240(1) violated by a failure to provide proper protection?" which the jury answered "NO."[15] For reasons not apparent on the record, the verdict sheet then directed the jury to four more questions, each of which the jury answered in the affirmative, establishing that Mr. Bonczar's failure to properly position the ladder was "the only substantial factor" in his fall.

Mr. Bonczar then moved for a directed verdict or new trial, which the trial court denied. Citing Mr. Bonczar's testimony that "he could not recall having checked the spreader arms/locking mechanism immediately before going up the ladder the time that it wobbled and caused him to fall," as well as the testimony of AMC's expert witness that the only possible cause of Mr. Bonczar's fall was his failure to check that the spreader arms were locked, the trial court found "that a rational jury could conclude that the Plaintiffs [sic] conduct was the sole proximate cause of the accident."[16]

Plaintiff Appeals the Judgment—but Can't Appeal the Interlocutory Decision

Then Mr. Bonczar appealed the judgment. He pointed to his trial testimony that while he did not check when he ascended the ladder immediately before his fall, "he determined the ladder was properly positioned, and that the spreader bars were fully open, before he began the installation work."[17] Mr. Bonczar argued that the facts created a presumption that the ladder did not provide proper protection, and that to blame him for the accident would be speculation.[18] In opposition, AMC argued that "the jury could have reasonably believed … that Plaintiff alone was responsible for losing his balance, releasing his hands, missing a step, and falling to the ground."[19]

In a one-sentence order, the Fourth Department unanimously affirmed the judgment.[20]

Mr. Bonczar then moved in the Court of Appeals for leave to appeal the judgment—but in the same motion, argued that under CPLR 5601 he was entitled to appeal as of right the Fourth Department's 2018 decision reversing summary judgment, as "an order on a prior appeal in the action which necessarily affects the judgment" with two justices dissenting. "If the Court of Appeals reverses the Appellate Division's prior nonfinal order and reinstates the Supreme Court order granting plaintiff's motion for partial summary judgment," he contended, "both the final judgment and the Appellate Division's order affirming that judgment will necessarily have to be reversed."[21]

In an unpublished disposition, the court granted the motion.[22] Ultimately, however, the Court of Appeals unanimously ruled against Mr. Bonczar in every respect.

The court first held that the 2018 decision was not reviewable. CPLR 5501(a)(1), which defines reviewability, also requires that a nonfinal order "necessarily affects the final judgment." The court conceded, "It is difficult to distill a rule of general applicability regarding the 'necessarily affects' requirement" and "[w]e have never attempted, and we do not now attempt, a generally applicable definition."[23]

The critical inquiry, the court stated, was "whether the nonfinal order 'necessarily removed [a] legal issue from the case' so that 'there was no further opportunity during the litigation to raise the question decided by the prior non-final order.'"[24] In the 2018 decision, the court concluded, "the question of proximate cause and liability was left undecided. The parties had further opportunity to litigate those issues and in fact did so during the jury trial."[25]

After that discussion, the court's decision on the appeal from the judgment itself was an anticlimax: "A rational trier of fact could have found in defendant's favor on the Labor Law §240(1) claim."[26]

Bonczar and Scaffold Law Litigation

Defense counsel have been quick to crow about the Court of Appeals' decision. A recent New York Law Journal column praised the decision as a "refreshing anomal[y] amid the landscape of New York courts reflexively granting summary judgment on §240(1) claims in ladder fall cases and will produce significant ripples in the area."[27]

But *Bonczar* does less for Labor Law §240 cases than might appear. The key to the 2018 decision was that Mr. Bonczar could not even say why he fell, yet two Appellate Division justices were ready to affirm summary judgment for the plaintiff. And while the majority opinion was grounded in precedent, the lengthier dissent well might prove more persuasive in another department. Nor does *Bonczar* warrant any threshold jury question on sole proximate cause in Section 240(1) cases. The Fourth Department found nothing improper in the verdict sheet, whose first question was: "[w]as Labor Law 240(1) violated by a failure to provide proper protection?"[28]

Yet *Bonczar* does show how, in a limited number of cases, to defeat a plaintiff's summary judgment motion in a Section 240(1) case. This was a single-witness case, and in opposition to summary judgment AMC did not even offer the expert opinion that it presented at trial. Rather, it successfully argued that Mr. Bonczar failed to make a *prima facie* case with his own deposition testimony. The Fourth Department's decisions here also show that defendants who defeat such a motion should argue that the denial is not reviewable as long as it leaves all issues to be litigated at trial.

Despite the defense verdict, *Bonczar* offers some guidance and hope for plaintiffs in Section 240(1) cases. The case appears to have hinged on Mr. Bonczar's patchy recollection of his fall. Conceivably, Mr. Bonczar could have offered in support of his motion an affidavit as to his checking of the ladder before starting work, which defense counsel did not ask him about at deposition.[29] Such affidavits can be admissible if the plaintiff does not self-servingly contradict his prior testimony, and expressly addresses or clarifies issues not squarely asked about at deposition.[30] More importantly, counsel must closely question potential clients at intake, and must prepare clients to testify confidently and truthfully at deposition.

Bonczar and Reviewability of Interlocutory Orders

The larger potential impact of Bonczar may be on the reviewability of interlocutory appeals. One might think that a nonfinal order would be reviewable if a reversal would have removed issues from the jury. What mattered, however, was whether the actual order removed issues from trial. So if the Fourth Department had affirmed summary judgment for Mr. Bonczar, then the Court of Appeals could have granted leave to appeal. But since the reversal of summary judgment left everything for the jury, then under CPLR 5602(a)(1) the Court of Appeals could only hear the appeal from the judgment.

In hindsight, Mr. Bonczar's only recourse was to move in the Fourth Department under CPLR §5602(b)(1) for leave to appeal the 2018 decision. Then the Court of Appeals could have reviewed the decision without regard for whether it "necessarily affects" any final judgment. But what if Mr. Bonczar had done so, and the trial court rendered judgment one way or another before the Court of Appeals decided that appeal? Under *Matter of Aho*, entry of final judgment terminates all appeals from interlocutory orders.[31] At that point, Mr. Bonczar would have wasted the time and expense of one appeal and ended up in the same position, appealing the final judgment and trying to convince the Court of Appeals that the 2018 decision was also reviewable.

Unless and until CPLR §5501 is amended, however, parties who unsuccessfully move for summary judgment will have to either appeal with all haste and perhaps move for a stay of trial until the appeal is decided, or marshal more evidence and try for a judgment at trial that obviates that interlocutory order.

1. 38 N.Y.3d 1023 (2022).
2. *Bonczar v. American Multi-Cinema, Inc.*, No. 084799/2014, NYSCEF 7 at 3.
3. *Id.*
4. *Bonczar, supra* n.2, NYSCEF 1.
5. *Fabrizi v. 1095 Avenue of the Americas, L.L.C,* 22 N.Y.3d 658, 664–65 (2014).
6. *Gordon v. Eastern Ry. Supply*, 82 N.Y.2d 555, 559 (1993).
7. 1 N.Y.3d 280, 290 (2003).
8. *Salinas v. 64 Jefferson Apts., LLC,*170 A.D.3d 1216, 1222 (2d Dept. 2019).
9. *Bonczar, supra* n.2, NYSCEF 7.
10. *Bonczar, supra* n.2, NYSCEF 15.
11. *Bonczar, supra* n.2, NYSCEF 17 (citing Woods, 42 A.D.3d 876 (4th Dept. 2007)).
12. *Bonczar, supra* n.2, NYSCEF 19.
13. *Bonczar v. American Multi-Cinema, Inc.*, 158 A.D.3d 1114, 1115 (4th Dept. 2018).
14. *Id.* at 1116 (Whalen, P.J., and Lindley, J., dissenting).
15. *Bonczar, supra* n.2, NYSCEF 180.
16. *Bonczar, supra* n.2, NYSCEF 189.
17. *Bonczar v. American Multi-Cinema, Inc.,* CA 19-00899, NYSCEF 12 at 17.
18. *Id.* at 21.
19. *Bonczar, supra* n.17, NYSCEF 19 at 28.
20. *Bonczar,* 185 A.D.3d 1423 (4th Dept. 2020).
21. *Bonczar,* Motion for Leave to Appeal to the Court of Appeals at 15. Motion papers to the Court of Appeals are searchable on Court-PASS, available at https://bit.ly/38zwuyr.
22. *Bonczar,* 36 N.Y.3d 901 (2020).
23. *Bonczar, supra* n.1 at 1025 (quoting *Siegmund Strauss, Inc. v. East 149th Realty Corp.*, 20 N.Y.3d 37, 41–42 (2012), and *Oakes v. Patel*, 20 N.Y.3d 633, 644 (2013)).
24. *Id.* at 1026 (quoting Siegmund Strauss).
25. *Id.*
26. *Id.*
27. Sofya Udanov *et al.*, "Court of Appeals Tackles Ladders And Labor Law 240(1)," New York Law Journal (May 3, 2022).
28. *Bonczar, supra* n.2, NYSCEF 180.
29. *Bonczar, supra* n.13, NYSCEF 12 at 16.
30. *See Haxhia v. Varanelli,* 170 A.D.3d 679, 682 (2d Dept. 2019).
31. 39 N.Y.2d 241 (1976).

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FOCUS: GENERAL LAW

The Batman: Vigilante Bat or State Actor?

Cynthia A. Augello

Forget the argument about which actor portrayed Batman the best or whether Batman or Superman is the better superhero. The argument everyone should be having is whether or not Batman is a state actor for constitutional purposes or, if he is just a man in a bat costume seeking justice. Many people are unaware that Bruce Wayne is seemingly a lawyer with a degree from Yale Law School.[1] If that is true, he may want to take a few refresher courses.

This article will first discuss the background and development of an individual's rights under the Fourth Amendment. It will secondarily discuss the state actor doctrine and analyze whether Batman would qualify as a private or state actor for search and seizure purposes. Whether Batman is a state actor depends not only on Batman's ongoing relationship with the police, but the relationship at the specific time the search occurs as well as the applicability of the exclusionary rule.

The Constitution Says that Your Body and Your Stuff Cannot Be Messed with Arbitrarily

The U.S. Constitution places limits on what the government or state can do during criminal investigations and prosecutions. The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[2]

There are two parts to this rule: first, a person is protected against unreasonable searches and seizures; and second, only a warrant justifies a search into a protected area.[3] Warrants are based on probable cause, requiring a written affidavit to be approved by a judge.[4] The judge examines a warrant application and determines whether it is supported by substantial evidence, whether the items sought are connected with particular criminal activity, and whether it is probable that the items will be found at the location described in the application.[5]

Over the years, the protections of the Fourth Amendment have grown. Traditionally, individuals were protected from searches of private property.[6] In 1967, the Supreme Court expanded the rule to protect against government intrusion upon a person's legitimate expectation of privacy.[7] The Court in *Katz* held that what a person "seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."[8]

The Fourth Amendment Does Not Usually Apply to Private Citizens

The Supreme Court first addressed the issue of private parties and Fourth Amendment implications in *Burdeau v. McDowell*,[9] which was decided prior to the Development of the exclusionary rule.[10] In Burdeau, a company employee opened the safe of a terminated employee and stole incriminating papers which were then turned over to the government.[11] The court held that the evidence was admissible, reasoning:

> "It is manifest that there was no invasion of the security afforded by the Fourth Amendment against unreasonable search and seizure, as whatever wrong was done was the act of individuals in taking the property of another."[12]

The Supreme Court has consistently thereafter held that Fourth Amendment restrictions do not apply to actions taken by private individuals, even if their actions are unreasonable.[13] In *Jacobsen*, FedEx employees inspected a package that had been damaged by a forklift and discovered a bag containing a white, powdery substance. The FedEx employees contacted the United States Drug Enforcement Administration or 'DEA.'

The DEA, without obtaining a warrant, tested the substance and demonstrated to be cocaine. The DEA then arrested the individuals the package was addressed to. In its' 7-2 decision, the court found the actions of the FedEx employees "did not violate the Fourth Amendment because of their private character."[14]

Private Actions Can Violate the Fourth Amendment with Sufficient Government Involvement

The actor conducting a search or seizure is not the sole determining factor of whether the Fourth Amendment applies. If the DEA called the FedEx employees in *Katz* before the employees searched the damaged package and asked them to search the bag and then let the DEA know the results, the court would likely have held differently. The court may have determined that the actions violated the Fourth Amendment. While there is no singular, simple test to determine whether a private action becomes subject to the Fourth Amendment, courts weigh government participation in the private party's activities.

Time to Talk Batman—He is a Private Citizen

Bruce Wayne is not on the Gotham City Police Department ("GCPD") payroll or, theoretically, on their organizational chart. Batman is not an elected or appointed position, and he is likely not an independent contractor in the view of the IRS.[15] It would be unlikely that the comic or the movies would show a scene where Batman went before a judge to request a warrant. As such, it is unlikely that Batman's actions are initially subject to the Fourth Amendment.

The State Actor Doctrine

For the Fourth Amendment and the exclusionary rule to come into play, the alleged constitutional violation must have been caused by a state or government actor. This requires a determination as to who is a state actor. To determine who is a government official, the Supreme Court employed a two-part test in *Lugar v. Edmondson Oil Co*.[16] under civil claims pursuant to 42 U.S.C. §1983. The first requirement is that the "deprivation must be caused by the exercise of some right…created by the state or by a rule…imposed by the state or by a person for whom the state is responsible."[17]

Thereafter, courts look into whether it would be "fair" to attribute to the state, which may happen when a private party "has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the state."[18] Easily, the police, government officials, and any type of governmental law enforcement acting for the public would fall under the umbrella of state actor. Under this analysis, Batman may be a state actor so long as he receives aid from the GCPD.

Batman's Role in Connection with the GCPD…What About the Bat Signal?

In the 1960s television show, *Batman*, Commissioner Gordon maintained a direct phone line with the bat cave and often spoke with Batman giving Batman information about a crime. In fact, Commissioner Gordon would often rely on and request Batman's services to stop a future crime. In this context, it would be difficult to argue that Batman was not a state actor. On the contrary, where Batman acts completely on his own and delivers information to the GCPD, there is likely no Fourth Amendment issue. In such a scenario, Batman acted on his own, without the knowledge of the GCPD and without any input from the GCPD.

The Bat Signal was created by the GCPD to summon Batman to help the GCPD and Commissioner Gordon whenever they needed Batman to do something or get something the GCPD could not do or get. Batman and Commissioner Gordon often strategized and communicated concerning what Batman should do or get and how he should do it.

Additionally, Batman is often-times seen speaking with the Commissioner at police headquarters, at crime scenes and has even been allowed inside interrogation rooms during interviews of suspects.[19] It would be difficult to make a straight-faced argument that the GCPD take a passive approach towards Batman's actions even where the Fourth Amendment applies to the Caped Crusader's actions, a determination must still be made as to whether the actions infringe on the privacy rights of others.

Do Batman's Actions Violate the Fourth Amendment?

They certainly do. All of them. All the time. The theme song for Batman should actually be "Na Na Na Na Na Na Na Na Na Na Na Na Na Na Na Na Violation" (go ahead and sing it, it is catchy). Batman spends his nights on a rooftop deciding which hideout he is going to sneak into, which computer he will hack and which devices he is going to wiretap. One question would be whether the

criminal actors (Penguin, Carmine Falcone, the Riddler, etc.) have a reasonable expectation of privacy in the hideouts they utilize.

Many of the villains in Batman utilize abandoned warehouses for their operations.[20] Because these locations are generally not open to the public, a warrant would be required to be obtained by the police to enter and search.[21] Let's face it, if the GCPD were able to get a warrant in many of the scenarios portrayed in *Batman*, they would not need Batman to obtain the evidence he regularly does.

Moreover, the issue of Batman's intent on finding evidence to be used in a criminal prosecution is relevant. Courts have found the intent of the private party determinative of whether the individual is a state actor. Under a ratified intent theory for state actors, a private individual's intent to gain evidence for use in a criminal prosecution requires the evidence to be suppressed.[22] Batman's goals are typically that he intends to aid the government authorities in ongoing investigations. It could be argued that in most cases, any evidence seized by Batman should likely be excluded.

Would Exclusion of Evidence Deter Batman?

The exclusionary rule serves the purpose of creating a deterrent effect against police misconduct.[23] It is designed by the courts to deter illegal government conduct. In order to justify excluding evidence seized by Batman, the exclusion would need to deter Batman's conduct. Like a police officer, a court can exclude the evidence in order to deter Batman from his vigilante wats as vigilantism is not accepted in society.

The downside to this, however, is that the GCPD would be prevented from using evidence that they obtained with clean hands and no knowledge of Batman's actions to the extent that scenario takes place. In all likelihood, if courts began to exclude the evidence procured by Batman's efforts, Batman may cease working with the GCPD or the GCPD may change its working relationship with Batman starting with destroying the Bat Signal.

Conclusion

Perhaps the Fourth Amendment tests should include a Batman Test where a court could analyze whether the private actor works with the government in obtaining evidence so regularly that the private actor could be considered to be an extension of that government for Constitutional purposes.

1. https://bit.ly/3MlgE8q.
2. U.S. Const., amend. IV.
3. *Id.* see *also See v. City of Seattle*, 387 U.S. 541, 543 (1967).
4. *See, e.g., Dalia v. United States*, 441 U.S. 238, 255 (1979).
5. *Id.*
6. *See, Olmstead v. United States*, 277 U.S. 438, 463 (1928).
7. *Katz v. United States*, 389 U.S. 347 (1967).
8. *See id.* at 359.
9. 256 U.S. 465 (1921).
10. The Supreme Court adopted the exclusionary rule for violations of the Fourth Amendment in 1961 with its decision in *Mapp v. Ohio*, 367 U.S. 643 (1961).
11. 256 U.S. at 472-73.
12. *Id.* at 475.
13. *United States v. Jacobsen*, 466 U.S. 109 (1984).
14. *Id.*
15. https://bit.ly/38ZSDX7.
16. 457 U.S. 922 (1982).
17. *Lugar*, 457 U.S. at 937.
18. *Id.*
19. The Dark Knight (Warner Bros. 2008).
20. *See, e.g., Batman: The Animated Series: Read My Lips* (Fox television broadcast May 10, 1993).
21. *See Marshall v. Barlow's Inc.*, 436 U.S. 307 (1978).
22. *Knoll Associates, Inc. v. FTC*, 397 F.2d 530 (1968).
23. *United States v. Leon*, 468 U.S. 897, 909 (1984).

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FOCUS: LAW AND AMERICAN CULTURE

The Not-So Secret Answer is ... Scandal: The Quiz Shows of the 1950s

Rudy Carmenaty

The 1950s are remembered as the Golden Age of Television. But like so many things cloaked in nostalgia, the era turned out to be not so golden. The decade ended with the quiz show scandals which tarnished the public's perception of a new medium that was rapidly becoming the dominant facet of American life.

Once the fraud was exposed, headlines were generated across the country, grand juries were impaneled in Manhattan, and Congressional hearings were held in Washington. The audience felt betrayed. President Eisenhower said at the time "*it was a terrible thing to do to the American people*.[1]

Congress enacted legislation to prevent such a thing from ever happening again. The television industry, at least for the moment, reformed its ways. The three broadcast networks—CBS, NBC, and ABC—gained greater control of their prime-time schedules as the influence of advertisers and sponsors momentarily waned.

The fall-out from the revelations ruined careers and reputations. But no one went to jail, for at the time it was not a crime to rig a game show on television. Although the deception itself was not illegal under then-exiting law, a handful faced perjury charges for lying before a New York County grand jury.

The medium lost a great deal of credibility, but not its appeal. Television was here to stay; nothing could change that. By 1955, seventy-seven percent of households in the United States had a TV; by 1960 ninety percent would.[2] The television set became the new electronic hearth in every American home.

TV quiz shows find the origins in radio. The Federal Communications Commission originally tried to ban such programing from the airwaves calling radio giveaways a kind of illegal lottery. In 1954, the Supreme Court ruled that broadcast programs that offer contestants prizes were not a form of gambling.[3]

With the arrival of television, a more potent advertising medium came into being. The calculation was made–the bigger the stakes, the greater the ratings, the greater the profits. For instance, *Take It or Leave It*" on radio, the precursor of the wildly popular *$64,000 Question*, offered a top prize of only $64.[4]

In response to the enormous success of the *$64,000 Question* and its companion program *$64,000 Challenge*, NBC countered with *Twenty-One* in 1956. The show was created by Jack Barry-Dan Enright Productions, a production company formed by Jack Barry (the on-air emcee) and Dan Enright (the program's producer).[5]

Twenty-One's initial broadcast was played straight, without any manipulation. The program was a fiasco. Under pressure from the show's sponsor Geritol, Enright decided that *Twenty-One* needed to be fixed or rigged. The entire program would be orchestrated with the outcomes predetermined leaving nothing to chance.

Everything was calculated for its effect—the isolation booth, reaction shots from the studio audience, the use of music, the ticking clock. Contestants were cast as if they were performers. Enright wanted viewers to become emotionally engaged as *Twenty-One* showcased heroes and villains the audience could root for or against.

Contestants were told how they should behave, how they should speak, what they should wear. They were given instructions on which questions to answer correctly and which ones to miss. They were told to take pauses for dramatic effect, and they were instructed to mop their brow when answering. It was all a pretense.

Herbert Stempel was the reigning 'Champion' on *Twenty-One* for five weeks in 1956.[6] Viewers resented Stempel, put-off by his unappealing personality. Adroitly manipulated by Enright, Stempel was seduced with the lure of easy money and the recognition that comes from being on TV.

Stempel would be forced by Enright to take a dive. He was told he had to lose because his ratings had slipped. But he was no dupe. An intelligent man, he had been a knowing, willing participant in the fraud. It was an embittered Stempel who first divulged the whole sorted affair to the press.

Stempel 'lost' by failing to name the Oscar winning movie for 1955,

Marty.[7] He answered instead *On the Waterfront*. Stempel knew the correct response and could have defied Enright. It was a live show after all. Stempel went along, believing Enright promised him a tv career in exchange for his taking the dive.[8]

Stempel agreed to a "settlement," wherein he accepted less than his posted winnings on the show and which included a signed statement that affirmed that *Twenty-One* was legitimate.[9] Enright was later able to characterize Stempel as an embittered crank and portrayed him as being mentally imbalanced.

If Stempel was someone the audience loathed, viewers became enamored of the man who 'defeated' him—Charles Van Doren. The offspring of a prominent literary family, the clean-cut Van Doren was seen as a soothing alternative to such 1950s teen idols as Marlon Brando or James Dean or even Elvis Presley.[10]

Van Doren became an instant celebrity. He would 'win' $129,000 in total prize money, far above his annual salary as an instructor at Columbia.[11] His popularity led to a contract from NBC to appear on the *Today* show. Reluctant to cheat, Van Doren gradually gave-in to the temptation. He deceived the public and himself.

As Van Doren's star rose, Stempel returned to obscurity. The simple fact was that Van Doren was telegenic, Stempel was not. Stempel became envious of Van Doren, resenting his rival's celebrity. Stempel was not without some savvy, telling his story to a rival media — the newspapers.

Stempel, with his obnoxious demeanor, hurt his own credibility. What was needed for his charges to stick was for someone to come forward to substantiate his contentions. Without proof, it was Stempel's word against everyone else. Turning against his fellow conspirators, he was also guilty of the very same sin.

The corroboration came from contestant James Snodgrass. Although he saw nothing particularly wrong in the scam, Snodgrass wanted to protect himself. So, he mailed to his home address the questions, the answers and the stage directions provided by Enright certified mail prior to his scheduled appearances.[12]

These unopened envelopes provided conclusive proof *Twenty-One* was rigged. When the Manhattan DA opened an envelope before the grand jury and matched the answers with the responses recorded on kinescopes, it was clear that Snodgrass had gotten the answers beforehand.[13]

The question became did Van Doren get the same help? Manhattan DA Frank Hogan refused to believe that Van Doren was involved in the scam.[14] The grand jury was convened for nine months and heard from over one-hundred witnesses. Those who testified lied about their actions or their knowledge of the deception.

This false grand jury testimony resulted in the few criminal charges levied. In a surprise move, the findings of the grand jury were then sealed by Supreme Court Justice Mitchell Schweitzer.[15] The reason given was to protect the reputations of those who testified.

Hoping the audience would move on, those behind the fraud almost got away with it. But Congressional inquiries soon followed. Hearings held by Arkansas Congressman Oren Harris, Chair of the House Committee on Interstate and Foreign Commerce, blew the lid off the quiz show scandals in the fall of 1959.[16]

Stempel, Snodgrass, and Enright testified. Enright admitted his involvement and refused to implicate anyone else. Network executives and

advertisers denied any involvement. None were held accountable for their role in the scandals, claiming that game show producers, like Enright, acted without their knowledge.

At the hearings, Van Doren admitted under oath that he had gotten the answers beforehand. His displays of brilliance were nothing more than performance art. Van Doren testified for ninety minutes, reading a statement prepared by his attorney Carl Rubino.[17] Harris initially lauded Van Doren for finally coming clean.

The verdict of the audience however was rendered in the words of Long Island Congressman Steven Derounian who sternly noted:

> *Mr. Van Doren, I am happy that you made the statement, but I cannot agree with most of my colleagues who commended you for telling the truth, because I don't think an adult of your intelligence ought to be commended for telling the truth.*[18]

Acknowledging his complicity, Van Doren's reputation was forever damaged. By then, he had already perjured himself before the grand jury.

It was the stuff of high drama. The repercussions from Van Doren's congressional testimony were swift in coming. NBC fired him from his post on *Today*. The trustees of Columbia University, in deference to his father, offered him the opportunity to resign from his teaching position.[19]

The point should be reiterated that what the producers and the contestants were doing, the faking of a television quiz show by exchanging the answers, was not illegal at the time under either federal or New York law. Prevailing fraud statutes were inapplicable. The law had not caught up with the medium of television.

The Federal Communications Act was amended in 1960 to make the fixing of televised contests of intellectual knowledge or skill a felony.[20] New regulations promulgated by the Federal Communications Commission were issued to better define and regulate broadcast standards.[21]

The legal fall-out in New York City was ambiguous at best. The only crime that could be charged was perjury before the grand jury. Over a hundred people had testified falsely under oath that the shows were honest and that they were not involved. Just twenty were charged with second degree perjury.[22]

Those charged were all first-time offenders with clean records. All would plead guilty, all got suspended sentences. None served any time in jail. For those who faced prosecution, it was a chastening experience. One they would rather forget. Van Doren's true punishment was his humbling retreat from public view.

In retrospect, the quiz show scandals were a morality play performed on a national stage. The entire episode, which went well beyond Van Doren and *Twenty-One* involving other shows and numerous contestants, disillusioned the entire country. It dawned on people that seeing was no longer believing when it came to TV.

More importantly, it marked a profound shift in the American character. If someone of the stature of Charles Van Doren could falter, then no one would be immune from the siren song of television. In many ways, today's media saturated culture, with all its foibles, can trace its origins to the quiz show scandals.

1. David Schwartz, Steve Ryan and Fred Wostbrock, *The Encyclopedia of TV Game Shows*, xx (2nd Ed. 1995).
2. *NuNumber of Televisions in the US – The Physics Factbook at* https://hypertextbook.com.
3. *FCC v ABC, Inc.* 347 U.S. 284.
4. Maxene Fabe, The Big Quiz Scandals in TV Book edited by Judy Fireman 91 (1st Ed. 1977).
5. Among the game shows Barry and Enright created were *Tic Tac Dough, Concentration*, and their comeback program *The Joker's Wild.* Both men were blacklisted from the industry for about a decade following the scandal.
6. Joseph Stone and Tim Yohn, *Prime Time and Misdemeanors*, 30 (1st Ed. 1992).
7. *Id.* 43.
8. Erin Blakemore, *The Rigged Quiz Shows That Gave Birth to 'Jeopardy'*, (March, 29, 2019) at https://www.history.com.
9. Stone and Yohn, *supra*, 32.
10. His father was Mark Van Doren, the Pulitzer Prize winning poet and professor at Columbia; his mother Dorothy was a novelist; and his uncle Carl Van Doren wrote a Pulitzer Prize winning biography of Benjamin Franklin.
11. Harry Castleman and Walter J. Podrazik, *Watching TV*, 115, (1st Ed. 1982).
12. Stone and Yohn, *supra*, 87.
13. *Id.* 132.
14. An alumnus of Columbia, Hogan was deeply concerned about protecting the reputation of the University.
15. Castleman and Podrazik, *supra*, 133.
16. *Id.*
17. Stone and Yohn, *supra*, 238.
18. Steven Derounian at https://www.armenianbd.com.
19. Stone and Yohn, *supra*, 254.
20. See Communications Act Amendments, September 13, 1960, at wwwvisitthecapitol.gov.
21. Fabe, *supra*, 93.
22. Castleman and Podrazik, supra, 134.

Rudy Carmenaty is the Deputy Commissioner of the Nassau County Department of Social Services. He also serves as Co-Chair of the NCBA Publications Committee and Chair of the Diversity and Inclusion Committee.

Meet The New Dean: Susan Katz Richman

Susan Katz Richman was elected Dean of the Nassau Academy of Law for the 2022-23 membership year. Richman is a Past President of the Nassau County Bar Association (NCBA) and was the first court employee to hold that position. She is also a Past Chair of the WE CARE Fund, part of the Nassau Bar Foundation Inc., the charitable arm of the NCBA. Richman's countless previous NCBA activities include Chair of the Community Relations and Public Education Committee, mentoring and inspiring students for 23 years as the volunteer coach of the State Championship Roslyn High School Mock Trial team, Editor-in-Chief of the *Nassau Lawyer*, and Chair of the NCBA's Strategic Planning Committee. She is also a past recipient of the NCBA Directors' and President's Awards.

Susan Katz Richman has devoted her 40 plus year career to public service through the New York State Courts. After serving eight years as a Nassau County prosecutor, Richman became counsel to and worked with many judges, including Deputy Chief Administrative Judge of the Courts Outside NYC Hon. Norman St. George, Nassau Administrative Judge Anthony Marano, County Court Supervising Judge William C. Donnino, and the Hon. Sandra J. Feurstein. Having also served as Chief of the Nassau County District Court Law Department for six and a half years, Richman is currently the Guardianship Compliance Referee for Nassau County. She also presides as the Village Justice in Plandome Manor, having served 20 years as Associate Village Justice for Sea Cliff, as well as Acting City Court Judge for Glen Cove and Long Beach—the

first woman to hold those positions. In 2019, Richman, a Past President of the Nassau County Magistrates Association, was the recipient of the Hon. Frank J. Santagata Memorial Award, in honor of the late Frank J. Santagata, who served as the Acting Village Justice of Westbury for 30 years, as well as Past President of the Nassau County Bar Association and the Magistrates Association. The award is presented on an ad hoc basis to a Nassau County Magistrate Court Justice for exemplary ethics, professionalism, and devotion to justice for all.

As Dean, Richman's goal is to have the key components of the NCBA—the Bar, and its committees and programs, the Assigned Counsel Defender Plan, WE CARE Fund, and the Nassau Academy of Law—work together to best serve NCBA members, other professionals, and the public. To that end, a CLE evening program on endowments is being planned for January 2023, as is a lunch program on cybersecurity, being coordinated by a WE CARE community liaison.

Of utmost importance to Richman is to maintain the battle against implicit bias by continuing programs like the recent "Fair Housing on a Diverse Long Island," in conjunction with the Equal Justice in the Courts Committee. To that end, lunchtime programs on jury selection and Batson, as well as jury instructions addressing implicit bias during trial, are in the works.

Finally, a new "Nuts and Bolts" series is being developed, specifically tailored for young and new attorneys and those returning to the workforce, be it after a COVID break, taking care of a family member, or trying a different career path. This is in addition to the staple Hon. Joseph Goldstein Bridge the Gap program, which has grown particularly popular with our veteran attorneys as well.

In addition, the following attorneys were elected to Nassau Academy of Law leadership positions for the 2022-23 membership year: Associate Dean **Michael E. Ratner** of Abrams Fensterman, LLP, Lake Success; Assistant Deans **Gary Petropoulos** of Catalano, Gallardo & Petropoulos LLP, Jericho and **Lauren B. Bristol** of Kerley Walsh Matera & Cinquemani, PC, Seaford; Secretary, **Matthew V. Spero** of Rivkin Radler LLP, Uniondale; Treasurer, **Christopher J. DelliCarpini** of Sullivan Papain Block McGrath Coffinas & Cannavo P.C., Garden City; and Counsel, **Omid Zareh** of Weinberg Zareh Malkin Price LLP, New York.

The new membership year got underway on July 1, 2022.
Please note that dues must be paid for the new Bar year in order to receive CLE credit for programming and CLE on Demand viewing.
Please contact Membership to renew.

NAL PROGRAM CALENDAR

AUGUST 11 (HYBRID)

Dean's Hour: The Not-So Secret Answer is...
Scandal—The Quiz Shows of the 1950s
(Law and American Culture Lecture Series)
12:30 PM – 1:30 PM
1 credit in professional practice

SEPTEMBER 14 (HYBRID)

Stress, Wellness, and the Legal Community: The Ethics of Healthy Lawyering
12:30 PM – 1:30 PM
1 credit in ethics

Missed a REESE-cent program?
Watch it via CLE ON DEMAND

12 credits of CLE on Demand are included with NCBA membership. Part 36 is excluded.

Additional credits over 12 available at $22/credit for members

AUGUST 25 (HYBRID)

What's in Store Going Forward in NY Courts?
A Fireside Chat
A joint program of the Long Island Hispanic Bar Association, the Nassau County Bar Association and the Nassau Academy of Law
6:00 PM – 8:00 PM at the NCBA

GUEST SPEAKERS

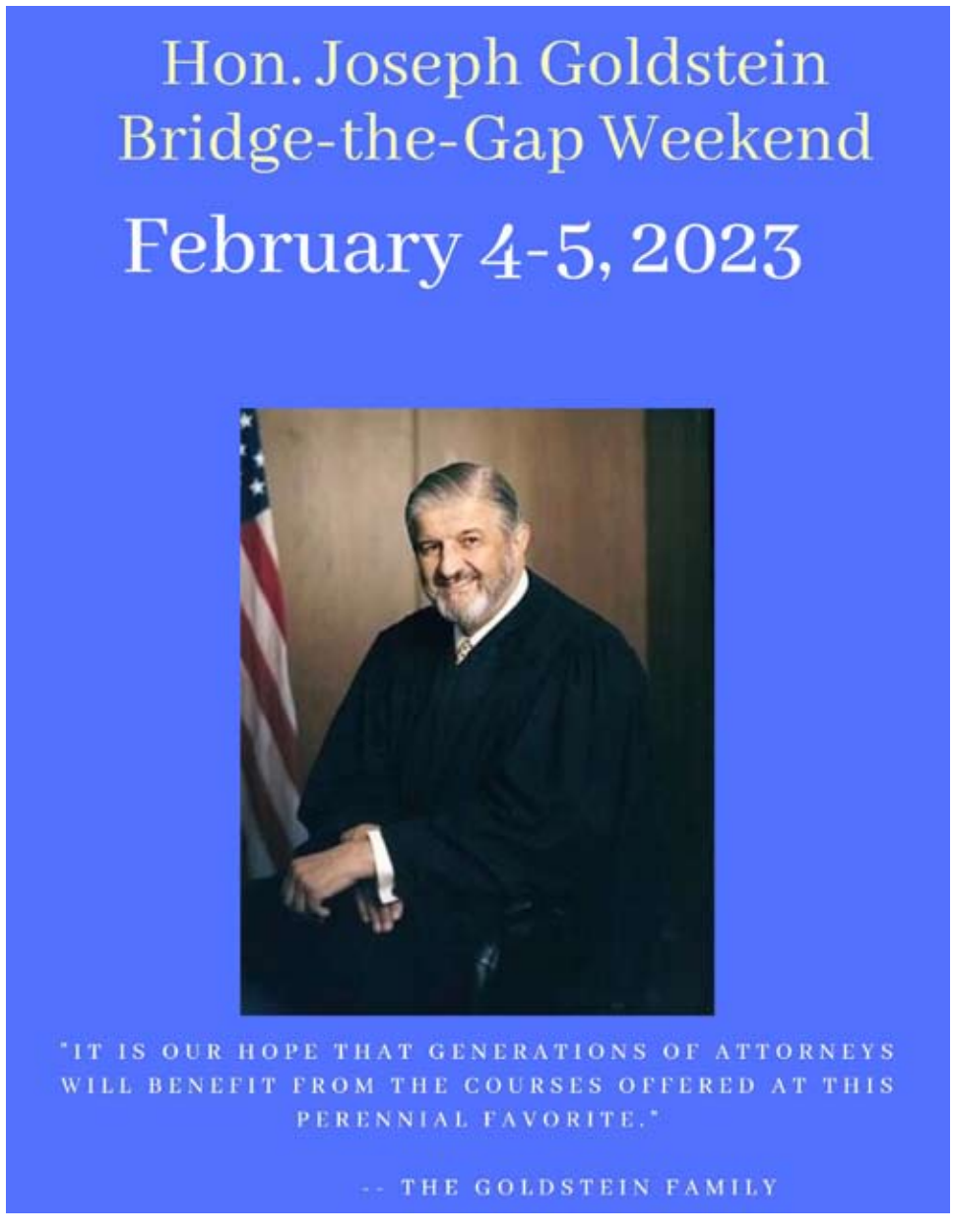
Hon. Norman St. George
Deputy Chief Administrative Judge for Courts Outside NYC
Hon. George J. Silver
Deputy Chief Administrative Judge for the New York City Courts

MODERATORS

Oscar Michelen, Esq.
Nassau County Bar Association Board of Directors
Veronica Renta Irwin, Esq.
President, Long Island Hispanic Bar Association

This event will address what COVID-related procedures and systems will remain in place and what will revert to pre-COVID methods and will include a discussion of any possible innovations the courts may have to reduce the current trial backlog and docket overload caused by COVID. With Judge DiFiore now retiring in August, her court consolidation plan may now be in jeopardy so that topic may also be discussed. We envision this program as a dialogue between the bench and bar.

Program is free to attend for informational purposes and will NOT be offered for CLE credit



FOCUS: LAW AND AMERICAN CULTURE

Whatever it is, I'm against it! Groucho Marx on Life, Liberty, and the Pursuit of Hilarity

Rudy Carmenaty

Thelma Todd: *I didn't know you were a lawyer. You're awfully shy for a lawyer.*
Groucho: *You bet I'm shy. I'm a shyster lawyer!*

from *Monkey Business* (1931)

Groucho Marx (1890–1977) was the master of the biting wisecrack and the ever-suggestive leer. He amused audiences from vaudeville to Broadway, from the Golden Age of Hollywood to the early days of Television. But he was more than an entertainer. Groucho was a comic sage. His humor touched upon the human condition in ways that were hilarious yet profound.

The child of Jewish immigrants, Groucho was born as Julius Henry Marx. His mother Minnie was the ultimate stage mother. Circumstances forced him to leave school at an early age, forgoing his dreams of a college education. Completely self-educated, Groucho was an exceptionally well-read individual.

The Marx Brothers—Chico (Leonard), Harpo (Adolph), Groucho and occasionally Zeppo (Herbert)—satirized bourgeois society with their anarchistic brand of subversive comedy on stage and screen.[1] Groucho had a genius for deflating the pompous. He levelled the playing field with his rapier wit, impeccable timing, and calculated insults.

His persona consisted of the ubiquitous cigar, the horn-rimmed glasses, a grease-paint moustache, with a stooped walk. He was audacious while being sardonic. Marx's verve, or more appropriately his moxie, bespeaks to his restless nonconformity. But as cutting as his wisecracks were, he himself was never off-key or off-color.

It is known he and his brothers received their stage moniker from vaudevillian Art Fisher. Chico because he chased the ladies or "chicks" and Harpo, quite obviously, because he played the harp. Three explanations have been put forward for the choice of "Groucho":

1. the grouch bag: a grouch bag was a small drawstring bag worn around the neck to keep one's money secure; Groucho also had a reputation for being stingy and suffered from insomnia after losing all his money in the 1929 stock market crash;[2]

2. his disposition: Fisher apparently named him "Groucho" just because he was the "dour one" among the brothers;[3]

3. Groucho's explanation: Groucho always maintained that he was named for a character in the comic strip *Knocko the Monk*, which encouraged the craze for nicknames ending in the letter "o."[4]

No sacred cow was safe in Groucho's sights. Margret Dumont, who portrayed an aristocratic dowager in several Marx Brothers films, served as his perfect comic foil. Often referred to as the fifth Marx Brother, the audience assumed the two were a married pair. In real life, Groucho was married and divorced three times and never found marital bliss.[5]

In 1974, Groucho received an Oscar "*in recognition of his brilliant creativity and for the unequalled achievements of the Marx Brothers in the art of motion picture comedy*."[6] Such films as *The Cocoanuts* (1929), *Animal Crackers* (1930), *Monkey Business* (1931), *Horse Feathers* (1932), *Duck Soup* (1933), *A Night at the Opera* (1935), and *A Day at the Races* (1937) are rightly considered classics of the cinema.

Groucho's comedy had a literate flair conveyed in an improvisational tone. A master of the ad-lib, Groucho achieved his most enduring success on *You Bet Your Life,* his 1950s quiz show which aired on radio and television. The contest itself was secondary. Along with announcer George Fenneman, the magic of the program revolved around Groucho's exchanges with the contestants.

Groucho's wit and whimsey have lost none of their vitality. Groucho's trademark mustache-glasses-cigar are so well-defined they are instantly recognizable decades after this passing. His estate and those of his siblings have successfully sued under the right of publicity or personality rights those who would profit from recreating their act without permission.[7]

For an attorney, Groucho provides an inspired, if wacky role

model. Despite his irreverence (which a judge may not always appreciate), he was a brilliant advocate for his position taking every argument to its ultimate and uproarious conclusion. Any adversary would be hard pressed to match his repartee, and heaven help any witness subjected to his cross-examination.

Groucho's off-the-cuff witticisms played lyrically along the periphery of the law. More than being merely funny, Groucho's insights struck a responsive chord with the audience. No doubt, they would strike a responsive chord with a jury should the appropriate occasion arise. Groucho offers a unique example for attorneys to emulate, exercised with the proper caution of course.

Groucho was madcap not mendacious. As the British philosopher Sir Isiah Berlin once noted:

The world wouldn't be
In such a snarl
If Marx had been Groucho
Instead of Karl.[8]

In that vein, below is a compilation of Groucho Marx on a variety of legal topics and related themes which may be of some use in court or at the very least may bring on a smile. A sublime comic creation, Julius Henry Marx truly was the one, the only…Groucho.

Groucho on Law

When you're in jail, a good friend will be trying to bail you out. A best friend will be in the cell next to you saying, 'Damn, that was fun'.

There's one way to find out if a man is honest — ask him. If he says 'yes' you know he is a crook.

This isn't a particularly novel observation, but the world is full of people who think they can manipulate the lives of others merely by getting a law passed.

One morning I shot an elephant in my pajamas. How he got in my pajamas, I don't know…. But that's entirely irrelephant.

I wish to be cremated. One tenth of my ashes shall be given to my agent, as written in our contract.

Groucho: *What are you planning to do after college?*
Student: *Be a lawyer.*
Groucho: *A lawyer. I see. Are you planning to go into politics or go straight?*

Groucho on Politics

All people are born alike... except Republicans and Democrats.

Politics is the art of looking for trouble, finding it everywhere, diagnosing it incorrectly, and applying the wrong remedies.

The difference between a politician and a snail is that the snail leaves its slime behind.

Those are my principles, and if you don't like them...well I have others.

Everyone must believe in something. I believe I'll have another beer.

Margaret Dumont: *I've sponsored your appointment because I feel you are the most able statesman in all Freedonia.*
Groucho: *Well, that covers a lot*

of ground. Say, you cover a lot of ground yourself.

Groucho on Home and Organizations

Any place I hang my head is home.

I refuse to join any club that would have me as a member.

I've had a perfectly wonderful evening, but this wasn't it.

I have nothing but respect for you—and not much of that.

Hello, I must be going, I cannot stay, I came to say, I must be going. I'm glad I came, but just the same, I must be going.

Groucho on Love, Marriage, and Divorce

Love flies out the door when money comes innuendo.

You're the most beautiful woman I've ever seen, which doesn't say much for you.

I've been looking for a girl like you–not you, but a girl like you.

She got her looks from her father. He's a plastic surgeon.

Remember, we're fighting for this woman's honor—which is probably more than she ever did.

Marriage is a wonderful institution... but who wants to live in an institution?

I was married by a judge. I should have asked for a jury.

Marriage is the chief cause of divorce.

Paying alimony is like feeding hay to a dead horse.

Groucho: *Why do you have so many children? That's a big responsibility and a big burden.*
Contestant: *Well, because I love my children and I think that's our purpose here on Earth, and I love my husband.*
Groucho: *I love my cigar, too, but I take it out of my mouth once in a while.*

Groucho on Education and Edification

I love to read. My education is self-inflicted.

I'll put off reading Lolita for six more years, until she turns 18.

I find television very educating. Every time somebody turns on the set, I go into the other room and read a book.

Laugh and the world laughs with you, cry and you're probably watching the wrong channel.

Be open-minded, but not so open-minded that your brains fall out.

Since my little daughter is only half—Jewish, would it be all right if she went in the pool only up to her waist? [Said in response to a country club which did not admit Jewish members]

Well, art is art, isn't it? Still, on the other hand, water is water! And east is east and west is west and if you take cranberries and stew them like applesauce they taste much more like prunes than rhubarb does. Now, uh... now you tell me what you know.

Groucho: *I suppose you'll think me a sentimental old fluff, but would you mind giving me a lock of your hair?*
Margaret Dumont: *A lock of my hair? Why, I had no idea you…*
Groucho: *I'm letting you off easy. I was gonna ask for the whole wig.*

Groucho on Business

Sell a man a fish; he eats for a day. Teach a man how to fish, you ruin a wonderful business opportunity

Money frees you from doing things you dislike. Since I dislike doing nearly everything, money is handy.

I always had a real fear of poverty. It came from years of living in boarding houses, bad hotels, bum clothes, and cheap shoes.

Groucho on Life

Learn from the mistakes of others. You can never live long enough to make them all yourself.

My mother loved children — she would have given anything if I had been one.

Time wounds all heels.

He may look like an idiot and talk like an idiot, but don't let that fool you. He really is an idiot.

I never forget a face, but in your case I'll be glad to make an exception.

If you find it hard to laugh at yourself, I would be happy to do it for you.

I am not crazy about reality, but it's still the only place to get a decent meal.

My plans are still in embryo, a town on the edge of wishful thinking.

1. The Marx Brothers appeared in thirteen films, of which Zeppo appeared in five.
2. Simon Louvish, *Monkey Business*, 100 (1st Ed. 1999).
3. Stefan Kanfer, *Groucho*, 46 (1st Ed. 2000)
4. William Wolf, *The Marx Brothers*, 33 (1st Ed. 1975).
5. Groucho's first wife was Ruth Johnson, a chorus girl ten years his junior, who was the mother of his son Arthur and daughter Miriam, they were married from 1920 until 1942; his next marriage was to Kay Gorcey (1945-1951), he was 54 and she was 21, with whom he had a daughter Melinda who often appeared on the quiz show; his third wife was the model Eden Hartford, she was 24 and he was 64, the marriage lasted from 1954 to 1969.
6. Groucho Marx – Awards – IMDb at https://www.imdb.com.
7. See *Groucho Marx Productions, Inc. v Day & Night Co.*, 523 F. Supp. 485 (SDNY 1981).
8. Lawrence W. Reed, *If Marx Had Been Groucho*, (August 31, 2007) at https://www.nassauinstitute.org.

FOCUS: CONTINUING LEGAL EDUCATION

Preparing, Presenting, and Promoting CLEs at NCBA

Christopher J. DelliCarpini

CLEs can benefit everyone involved, but for those who have not presented one before, the task can seem daunting. CLEs directly promote the profession by improving the acumen of attorney attendees. They also promote the presenter by demonstrating their expertise. And when presented by NCBA committees or the Nassau Academy of Law, CLEs promote the association by offering a valuable and visible benefit to membership.

Less obvious, however, is how to conceive, organize, promote, and present a CLE. This article, adapted from a NAL presentation delivered in June 2022 and available on-demand, offers a starting point for prospective presenters, a method that any attorney could adopt and adapt.

Choosing Your Topic

Any CLE must meet the standards in 22 NCYRR §1500.4(b). Most important is that the program must deliver "significant intellectual or practical content…to increase the professional legal competency of the attorney." Programs must provide at least 50 minutes of instruction each hour. At least one attorney in good standing must present, though non-attorneys with relevant experience may also participate. Every CLE must also provide "thorough, high quality, readable and carefully prewritten materials."

A particularly good topic for CLEs is any significant decision, legislation, or regulation recently issued or enacted. Appellate decisions, especially those with substantive dissents, often make for interesting presentations. But even trial court decisions can make for a valuable CLE on new legal issues.

If nothing comes to mind from one's own practice or news reports, anyone can find recent and relevant decisions and new laws or rules with a few minutes of online research. The web sites for the Legislature and government agencies commonly highlight recent laws and rules changes.

Other prospective CLE topics are perennial problems, particularly those that arise infrequently or involve intricate solutions. CLEs on ethical issues can be valuable if they help attorneys avoid such issues. CLEs on practice management can explain concrete issues of accounting, marketing, or technology with which attorneys may be unfamiliar. CLEs on diversity and inclusion can offer concrete tips on reaping the benefits of a diverse work force.

Interviews with legal professionals also can make a worthwhile CLE if they impart practical legal knowledge. Judges and officials are understandably constrained in their comments, but they can give insight on their institutions and general advice on practicing before them. Experienced attorneys may have a perspective to share beyond "war stories" that can directly benefit practitioners today. Experts on non-legal fields may also have valuable expertise.

Planning Your CLE

Once you have a topic, the next step is to schedule your CLE. The easiest approach is to host CLEs at NCBA committee meetings, which are often scheduled months in advance. NAL Dean's Hours can be more difficult to schedule among the other lunchtime meetings at Domus—all the more reason to request a date as early as possible. Evening presentations are possible for large events and longer presentations, but if you don't have the budget for refreshments then such events are best held exclusively virtual.

Daytime CLEs can be exclusively in-person, virtual, or hybrid. In-person CLEs may be more difficult for members to attend, but the opportunities for conversation and collaboration can be worth the effort, and lunchtime programs allow us to support our caterer! Virtual CLEs, however, will always be more convenient for members to attend. A prudent approach may be to offer hybrid CLEs, but "sell" in-person participation by highlighting the in-room conversation.

CLEs can have one or more presenters. A panel discussion can be lively and engaging, but the challenge is coordinating the presentation. The advantage of a solo presentation is the simplicity of delivery and may be best for CLEs without a need to present two sides of an issue.

CLE sponsorship is an opportunity for revenue and networking. Presenters are encouraged to contact NAL about prospective sponsors, but NAL also works to find sponsors for upcoming presentations. Sponsors are entitled to mention in targeted advertising for the CLE; attendance by up to two representatives; acknowledgement at the beginning of program and 2-3 minutes to address attendees; and the option to raffle gifts. NAL sets rates for sponsorship per meeting and for a year's sponsorship of a given committee's meetings.

In *Nassau Lawyer*, e-blasts, and targeted committee e-mails, NAL will promote all NCBA CLEs, but presenters are free to promote presentations on their social media and their firms'. Such posts should make clear that attendance is limited to NCBA members and direct readers to www.nassaubar.org.

Structuring Your CLE

One approach to designing a CLE is what I call the "25 slides" method. No one has to incorporate an actual slide show into a NCBA CLE, but this approach helps break any presentation into manageable chunks.

First, simply jot down 25 topics to discuss, perhaps only a word or two at first. Then, come up with two minutes' worth of discussion about each topic, which might require only 3–5 points. Once you have this simple outline where you want it, you can split it up among slides in an actual PowerPoint or simply use the list to pace your presentation.

Each CLE naturally lends itself to a structure, which will help you devise your 25 "slides." A CLE about a recent decision or recently amended statute or regulation can cover:

- the background law before the new decision or law
- the facts of the case, or the legislative impetus for change
- the actual decision, covering the majority and dissenting reasoning; or new law and its change to existing law
- advice to counsel, on both sides, for best representing their respective clients under the new law.

Five to seven topics under each of these broad categories will give you 25 slides!

CLEs on perennial issues can open with an introduction to the issue, including the background law, rules, and decisions. After that, you probably want to discuss at length broad aspects of the issue, possibly walking attendees through the issue as it arises in practice. Discussion could include the consequences of good and bad practices on this issue as described in case law; each decision likely offers some lesson to future counsel.

Interview-based CLEs must ensure that the information imparted will be substantive and that the interviewee is comfortable giving such information. Perhaps begin with their career experience, and lead into a look "behind the curtain," an explanation of the processes within a courthouse or agency. The CLE can then sketch possible courses of action for counsel, making clear that matters will be decided on the circumstances and facts before the official at the time.

To PowerPoint, or Not to PowerPoint?

PowerPoint slide shows are a common feature of CLEs and required by some organizations, but NCBA allows presenters to forgo them as they see fit. PowerPoints do present several advantages, however, and are easier to create than you might expect. Microsoft offers a Quick Start Guide, available online at https://bit.ly/3xDUZTu; with a few minutes of playing around in the software, you can learn enough to put together a presentation for a CLE.

To create a PowerPoint, you can simply break up your outline across as many slides as you need. In presentation, each screen's bullet points can serve as prompts for the presenter as well as cues for the audience. PowerPoint's many printing options allow you to easily export your presentation as hard-copy materials. PowerPoint provides dozens of templates that make creation as simple as dragging in blank slides and entering text, but also allow you to reformat text.

A few principles make for a more effective PowerPoint. Maintain a consistent look by using as few slide formats as possible. Adjust the fonts to at least 24-point to ensure visibility at a distance. And experience has shown that 3 to 6 bullet points per slide totaling 25 words or less gives the audience enough to follow along without getting bogged down.

Your PowerPoint can serve as the core of your handout, supplemented by case law or other authorities. A cover sheet can help by giving an overview of the materials.

Presenting Your CLE

You can read from a script or speak from notes, each of which has advantages and disadvantages. Reading from a script may make delivery easier, but it requires extensive writing beforehand, requires rehearsal to determine pacing, and is not as interesting for your audience as a looser delivery. Speaking from notes is more engaging, but it still requires rehearsal and a certain amount of confidence in public speaking. However you plan your delivery, make a note to deliver the required CLE codes provided by NAL.

As closely as possible, rehearse with the technology that you will use in your presentation. Be prepared to deliver your CLE without some or all of that technology, however, should an unsolvable glitch arise the day of your presentation.

Arrive 30 minutes early to prepare your delivery and to test any technology. Set up in advance any PowerPoint, web site, or electronic images for display. If you are using a PowerPoint or other computer images, share your first screen as soon as possible and be ready to switch between screens as necessary.

In any virtual or hybrid presentation, turn off attendees' cameras and microphones at the outset, and instruct them to save questions until the end or place them in the chat. Begin with NAL's ground rules for CLE credit; you'll get the script beforehand. Either you or a moderator should monitor the chat for questions and raise them as appropriate. And as you deliver your CLE, keep an eye on the clock.

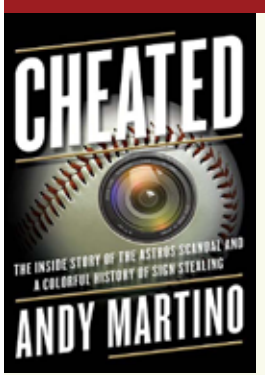
To spark a post-CLE discussion, you can arrange with colleagues to ask particular questions or prepare questions yourself and ask them of the audience. The limitations of microphones in the presentation room usually require the presenter to repeat any questions before answering them or opening up discussion.

Maximizing Your CLE

Any promotional efforts on social media before the CLE can also be used afterwards to trumpet your expertise. A CLE presented at a committee meeting may be appropriate for subsequent presentation to another bar association, as an in-house CLE for your firm, or even a non-legal outside group. Many CLE presentations also lend themselves to repurposing as an article for *Nassau Lawyer*.

There is no one way to conceive, construct, or convey a CLE. Whatever your style, you'll be contributing to your own practice and the practice of law in our community.

FOCUS: BOOK REVIEW



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Cheated—The Inside Story of the Astros Scandal and A Colorful History of Sign Stealing

By Andy Martino

Ira S. Slavit

On January 13, 2020, Major League Baseball ("MLB") Commissioner Robert D. Manfred, Jr., announced that an investigation found that during the 2017 baseball season the Houston Astros stole the opposing catcher's pitch signs. These signs were then communicated to the batter at the plate, so he knew the type of pitch that was coming.

Houston had won the 2017 World Series by cheating. Although it had been strongly suspected, confirmation of the scandal first came in November 2019 in an interview former Astros Pitcher Mike Fiers gave to *The Athletic*. Manfred suspended Astros GM Jeff Luhnow, Manager A.J. Hinch, and former bench coach Alex Cora for one year. Houston was fined $5 million, the maximum amount allowable, and stripped of four high draft picks. But the Astros were not stripped of their championship. Carlos Beltrán, the only player mentioned in the report, was not punished because the league had granted immunity to all players in exchange for their cooperation with the investigation.

Andy Martino, a writer for the New York Daily News and a sports anchor for SNY (SportsNet New York), captivatingly tells the story of the Astros scandal in his book, *Cheated-The Inside Story of The Astros Scandal and A Colorful History of Sign Stealing*. He provides interesting information and insight into the MLB of the 2000's and baseball's history of sign stealing (euphemistically called "pitch decoding" in baseball parlance).

Cheated prefaces the Houston outrage with an overview of sign stealing history. Pearse "What's the Use" Chiles's use in 1900 of opera glasses and an electric shock device located underneath the third base coach's box and a 1910 scandal involving the Yankees, then known as the Highlanders, sign stealing is almost as old as the game itself.

The most infamous incident was the "Shot Heard Around the World," Bobby Thomson's home run off a Ralph Branca fastball that won the 1951 National League pennant for the New York Giants over the Brooklyn Dodgers. Thomson had been tipped the pitch was coming.

Martino masterfully weaves together the main threads that coalesced to form Houston's scheme. These include the baseball and life experiences of the scheme's protagonists, MLB's use of ever more sophisticated technology intended to improve the game but misused by Houston, and the "morally flexible" culture of Houston's organization created by GM Luhnow that valued and rewarded results over other considerations.

For the uninitiated, before each pitch the catcher signals the pitcher the type and location of pitch to throw. The catcher, while crouching, gives signals by extending a certain number of the fingers of his non-glove hand downward between the thighs. In its simplest form, the catcher gives two signs, one for the pitch's type and the other its location.

But to disguise the signs from prying eyes, the catcher gives extra signs in quick succession. The pitcher and catcher set a system beforehand to know which numbers are the real ones. For example, they could decide that the real numbers are those that immediately follow the number "2" in the sequence. Complicating matters, the pitcher and catcher can establish more than one sign system and switch between the systems during play by using another set of gestures, called indicators.

Thus, in order to successfully steal signs, a team must see them, know which signs are the real ones, and get that to the batter before the pitch is thrown. There is a game-within-the-game as each team tries to decipher the opponent's signs while protecting their own.

Cheated makes clear that stealing signs is not necessarily illegal and is an accepted part of baseball when done within the rules. Being adept at decoding pitches by detecting a "tell," such as a pitcher flaring his glove before throwing a curveball or a catcher rising in his crouch when calling for a fastball, is a respected and admired skill.

Martino uses a 1926 Ty Cobb quote to explain:

> If a player is smart enough to solve the opposing system of signals, he is given due credit. … There is another form of sign stealing which is reprehensible and should be so regarded. That is where mechanical devices worked from outside sources … are used. Signal-tipping on the fields is not against the rules, while the use of outside devices is against all the laws of baseball and the playing rules. It is obviously unfair.

The use of technology is not per se improper. For example, a runner on second base who before a game studied video of the opponent's signs may legally use what he learned to view the catcher's signs and signal the batter. But not legal, and what Houston did, is using team-controlled video feeds from a center field camera to decode their opponent's signs and then quickly communicate that information directly to the batter, all in real time.

Pivotal to the ability to use a team-controlled video feed was MLB's institution for the 2014 season of a system allowing managers to challenge umpire calls, spurred by a horribly blown call on June 2, 2010. Unforgivably, the twenty-seventh batter was called safe at first although he was clearly out, costing Detroit Tigers pitcher Armando Galarraga a perfect game.

Under the challenge system, a team employee designated as the replay coordinator reviews video from cameras placed throughout the stadium and advises the manager whether to challenge an umpire's call. Previously, teams could access only a television feed over which it had no control. Now teams could view what they wanted during games.

The Astros devised an Excel spreadsheet they called "Codebreaker" to log and decode catcher signs. Mr. Martino reports that late in the 2016 season an Astros intern, spreadsheet in hand, approached a superior and exclaimed, "Hey, look, we've got sign stealing." Computer-age sign stealing had come a long way since 1997 when then-Mets Manager Bobby Valentine spent hours after games decoding pitches using FileMaker Pro and video.

Paradoxically, although Houston used high-tech equipment to decipher the signs, they for the most part used rudimentary means to directly alert the batter of the imminent pitch, such as banging on a trash can in the dugout, whistling, clapping, and using a massage gun like a power drill to drill into a wall that separated the dugout from the clubhouse replay room. Getting signs to the batter using a manager, coach or player's gestures took too long to be effective.

Critical to the Astros' guilt is that their misconduct in the 2017 American League Championship Series and the World Series immediately followed MLB's September 15, 2017, announcement that the Red Sox were being fined for using an Apple Watch to communicate pitch signs from the clubhouse to a coach in the dugout earlier that season.

MLB's news release said, in part:

> … it is important to understand that the attempt to decode signs being used by an opposing catcher is not a violation of any Major League Baseball Rule or Regulation. Major League Baseball Regulations do, however, prohibit the use of electronic equipment during games and state that no such equipment 'may be used for the purpose of stealing signs or conveying information designed to give a Club an advantage.

The news release explicitly warned all clubs that future similar violations would be subject to sanctions more serious than a fine, including the possible loss of draft picks. MLB had set the "rules of the road," and the Astros promptly broke them.

A major trend in the early 2000s, successfully employed by Sandy Alderson and Billy Beane in Oakland (*Moneyball)* and Theo Epstein in Boston, was to increasingly base decision-making on data and analytics rather than gut feelings. Martino writes that GM Luhnow was obsessed with innovation, and Houston's research-and-development department had legally acquired an abundance of data and hi-tech equipment. In 2015, they were the first team to purchase the Edgertronic camera, a high-speed device that can capture 1,000 frames per second, using it to improve their pitchers' and hitters' mechanics.

Houston's manager, A.J. Hinch, had previously experienced a traumatic and unsuccessful term as the Arizona Diamondbacks manager during which his own coaches and players undermined and publicly humiliated him. Although Hinch knew of the Astros' cheating while it was ongoing, he did not want a repeat of the mutiny by taking a strong stand against it.

New to the Astros in 2017 were Carlos Beltrán, then a 41-year-old veteran ballplayer, and Alex Cora, the team's bench coach. They brought with them reputations as highly intelligent and serious students of the

game having an extraordinary ability to observe pitchers and catchers to ascertain their habits and tendencies. They believed that decoding pitches was important to winning baseball games and encouraged other players on the team to learn that skill.

All the ingredients—players, hi-tech, and an intense, manic franchise culture—had come together. In the "video annex" behind the Astros' dugout in Houston's Minute Maid Stadium, a keyboard and mouse allowed the team's replay operator to toggle the monitor between the Edgertronic feed and a live feed from a camera mounted in center field that had a clear view of the catcher's signs. Add a pinch of trash can, and voilà, a scandal.

Martino counts nine pitchers who lost their jobs immediately after facing the Astros in 2017. One, Mike Bolsinger, filed a suit against the Astros in Los Angeles Superior Court that was dismissed on jurisdictional grounds. He refiled suit in Texas state court. Jeff Luhnow, fired by the Astros, sued the team alleging that he was made a scapegoat so that the team could avoid paying his contract and keep its World Series title. Both sides settled.

Ten days after Houston's punishments were announced, a class action complaint was filed in the SDNY alleging fraudulent misrepresentations and omissions, negligent misrepresentations, violations of various state consumer protection laws, and unjust enrichment. The plaintiffs and the potential class competed in DraftKings fantasy baseball contests.

The U.S. Circuit Court of Appeals affirmed the District Court's dismissal of the suit.[1] Writing for the Court, Circuit Judge Joseph F. Bianco found that "[a]t its core, this action is nothing more than claims brought by disgruntled fantasy sports participants, unhappy with the effect that cheating in MLB games may have had on their level of success in fantasy sports contests."

Pertinent to this article, he continued:

> … no consumer of fantasy baseball competitions could plausibly allege that, in paying to participate in the competition, they reasonably relied upon these statements in believing that the sport of major league baseball was free from intentional violations of league rules by teams and/or individual players. Instead, any reasonable spectator or consumer of sports competitions—including participants in fantasy sports contests based upon such sporting events—is undoubtedly aware that cheating is, unfortunately, part of sports and is one of many unknown variables that can affect player performance and statistics on any given day, and over time.

Since the Astros' scandal, MLB has taken steps to reduce sign stealing. New for this season, teams have the option to use wearable devices, referred to as PitchCom, that enable the catcher to signal pitches using a pad with buttons on the wrist of the gloved hand directly to the pitcher through a listening device. Its features include an encrypted channel and the capability of using multiple languages and programming code words to replace pitch names like "fastball" or "curveball."[2]

Houston's transgressions were an egregious breach of baseball players' brotherhood bonds and trust, Martino emphasizes. Though competitors on the field, opponents work out together during the off-season and share agents. *Cheated* contains more behind-the-scenes nuggets than this article's space allows. It is a good read for baseball fans of any intensity.

Sign stealing will be the topic of a Nassau Academy of Law Dean's Hour on September 21, 2022.

1. *Olson v. Major League Baseball*, 29 F.4th 59 (2022).
2. https://www.mlb.com/news/pitchcom-approved-for-use-in-2022-regular-season.

Ira S. Slavit is Chair of the NCBA Community Relations and Public Education Committee and immediate past Chair of the Plaintiff's Personal Injury Committee. He is an attorney with Levine & Slavit, PLLC with offices in Manhattan and Mineola, and can be reached at islavit@newyorkinjuries.com or at (516) 294-8282.

NCBA Mortgage Foreclosure Assistance Project Hosts 250th Clinic

On June 6, 2022, the NCBA Mortgage Foreclosure Assistance Project and its staff hosted a reception for volunteer attorneys, law student interns, and other Project supporters to recognize its extensive efforts of direct service to the Nassau County community. The Project, which hosted its 250th free legal information clinic on that date, has been assisting homeowners facing mortgage foreclosure and related issues for over a decade.

The reception was attended by Nassau County Civil Service Commission Executive Director, NCBA past President, and Project founder Martha Krisel; dedicated attorney volunteers Harold Somer, George Frooks, Stanford Kaplan, Jon Probstein, Michael Aronowsky, and Donna Fiorelli; and volunteer paralegal–and retired NYS Court Officer–Sharon Levy. The Project also received support at the reception from NCBA President Rosalia Baiamonte, Immediate Past President and current President of the Nassau Bar Foundation, Gregory S. Lisi, and NCBA Treasurer James P. Joseph.

Somer, who maintains his own successful solo practice, and who has volunteered at both court and clinics since the Project began, shared, "I am glad to have been a part of this project from its inception. I know that my colleagues and I get enormous satisfaction from being able to provide the attendees with guidance, and

hopefully a feeling of some relief in better understanding the process and their rights."

After lunch and some reminiscing, the afternoon shifted back into clinic mode, where attorney volunteers consulted one-on-one with homeowners to speak confidentially regarding their foreclosure matter and other related legal issues. Housing counseling agencies from HOPP—including Community Development Corporation of Long Island and American Debt Resources—were also in attendance to offer housing counseling to complement the legal information received by attendees. Many of the clients served left the clinic grateful and relieved that they received pertinent information regarding their situation from a volunteer attorney.

Operating through the Nassau Bar Foundation, and funded by a grant from the New York State Attorney General's Office through the Homeowner Protection Program (HOPP), the Project provides free, direct service to homeowners both at free legal information clinics held monthly at Domus, and in Nassau County Supreme Court for their mandatory settlement conferences. Throughout the pandemic and presently, the Project has worked with the Nassau Supreme Court and other HOPP entities on outreach efforts and trainings for foreclosure practitioners, focusing on changes and updates to court protocols. The Project is constantly brainstorming other ways to provide information to the residents of Nassau County regarding the availability of these HOPP services and opportunities for free representation and assistance.

This year, the Project represented many homeowners for appearances in a dedicated, temporary COVID-19 status conference part for foreclosure motions that were also held in Nassau Supreme Court. As foreclosure moratoriums have ended on both the state and nationwide level, mortgage foreclosures and tax lien foreclosures are now back to proceeding through the judicial process in the normal course. The Project anticipates that due to the current economic climate, on the heels of the pandemic, the efforts of the staff and volunteers will be vital in helping as many individuals understand the process, their rights, and their options regarding their situation.

The Project is staffed by Madeline Mullane, Esq., Director of Pro Bono Attorney Activities and the Mortgage Foreclosure Assistance Project (mmullane@nassaubar.org); Paralegal and Project Coordinator Cheryl Cardona (ccardona@nassaubar.org); Settlement Conference Coordinator Christina Versailles, Esq. (cversailles@nassaubar.org); and Paralegal Omar Daza (odaza@nassaubar.org). For more information regarding upcoming events and opportunities to volunteer with the Project, please reach out to any member of the staff to learn more about how you can help.

Installation of NCBA and NAL Officers and Directors
June 7, 2022

Joshua B. Gruner, NCBA President Rosalia Baiamonte, Past President Stephen Gassman

NCBA Executive Committee (L-R)
Sanford Strenger, President-Elect; Rosalia Baiamonte, President; Gregory S. Lisi, Immediate Past President; Hon. Maxine S. Broderick, Secretary; James P. Joseph, Treasurer

Nassau Academy of Law Dean Susan Katz Richman and NCBA President Rosalia Baiamonte

Newly Elected NCBA Board of Directors

The firm of Gassman Baiamonte Gruner, P.C.

NCBA President Rosalia Baiamonte sworn in by Past President Stephen Gassman

New Members

We Welcome the Following New Members Attorneys

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Gianna Marie Amore
Gina Antoun
Julianna Grace Augello
Angelica M. Barcsansky
Brittany Rose Battista
Katherine Delaney Bessey
Amanda Boating
Nicholas G. Bohatyritz
Dustin Boone
Gabby Borg
Nicholas George Calabria
Shannon Lynn Chiarelli
Maxwell G. Cohn
Samantha M. Davis
John M. Di Leo
Thomas Joseph Doherty
Ryan Dougherty
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Matthew Tyler Harrison
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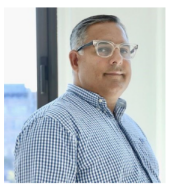

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NCBA Corporate Partner Spotlight

Meet Our New Partner

Legal Hero Marketing, Inc.

Bryan Osima
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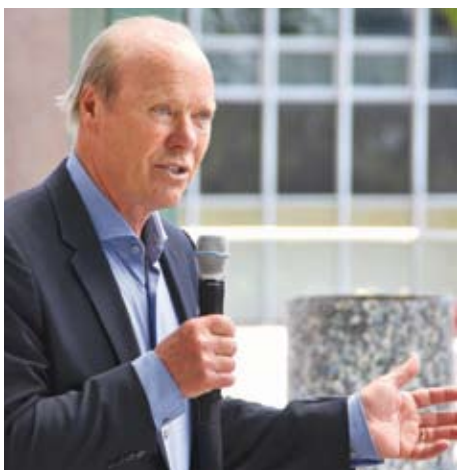
Legal Hero Marketing Inc. is a full-service digital marketing company that helps busy attorneys and law firms that are overwhelmed with the challenges of successfully marketing their legal practice in a digital world consistently find their ideal clients and GROW with a concierge digital marketing partnership.

WE CARE Goods and Services Auction



The WE CARE Fund would like to thank all those who supported and attended the first ever Goods and Services Auction honoring the New York Islanders on June 5, 2022. The event was held at the Heineken Terrace at UBS Arena at Belmont Park and was a great success! Attendees were able to listen to Nassau County Executive Bruce Blakeman speak, meet Islanders Alumni Butch Goring, as well as Islanders owner Jon Ledecky, and even take photos with Islanders mascot Sparky. All proceeds raised from ticket sales, sponsorships, and auction sales will go directly to benefit those most in need throughout Nassau County.

NCBA Committee Meeting Calendar August 3, 2022 – September 8, 2022

Questions? Contact Stephanie Pagano at (516) 747-4070 or spagano@nassaubar.org.
Please Note: Committee meetings are for NCBA Members.
Dates and times are subject to change. Check www.nassaubar.org for updated information.

WEDNESDAY, AUGUST 3
REAL PROPERTY LAW
12:30 PM
Alan J. Schwartz

THURSDAY, AUGUST 4
COMMUNITY RELATIONS & PUBLIC EDUCATION
12:45 PM
Ira S. Slavit

THURSDAY, AUGUST 4
PUBLICATIONS
12:45 PM
Rudolph Carmenaty/Cynthia A. Augello

TUESDAY, AUGUST 9
ASSOCIATION MEMBERSHIP
12:30 PM
Jennifer L. Koo

TUESDAY, AUGUST 16
ACCESS TO JUSTICE
12:30 PM
Daniel W. Russo/Hon. Conrad D. Singer

WEDNESDAY, AUGUST 17
ALTERNATIVE DISPUTE RESOLUTION
12:30 PM
Suzanne Levy/Ross J. Kartez

THURSDAY, SEPTEMBER 1
PUBLICATIONS
12:45 PM
Rudolph Carmenaty/Cynthia A. Augello

TUESDAY, SEPTEMBER 6
APPELLATE PRACTICE
12:30 PM
Amy E. Abbandondelo/Melissa Danowski

WEDNESDAY, SEPTEMBER 7
REAL PROPERTY LAW
12:30 PM
Alan J. Schwartz

THURSDAY, SEPTEMBER 8
COMMUNITY RELATIONS & PUBLIC EDUCATION
12:45 PM
Ira S. Slavit

Labor and Employee Committee Honors Memory of Prominent Jurists


Photo By: Hector Herrera

On June 1, 2022, the NCBA Labor and Employment Committee held its annual Lawrence Solotoff Labor and Employment Recognition Dinner where it honored the memory of six exceptional jurists: Judge Dorothy Eisenberg, Judge Sandra Feuerstein, Judge Arthur Spatt, Magistrate Judge Kathleen Tomlinson, Judge Leonard Wexler, and Judge Jack Weinstein.

The former clerks and law secretaries of the jurists were each presented with a framed decision that was signed during the time that they worked for that judge.

WE CARE

We Acknowledge, with Thanks, Contributions to the WE CARE Fund

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Hon. Denise L. Sher	The installation of the new Officers of the Nassau County Bar Association
Vito Palmieri	Michael Masri, Esq., a man who gives the greatest gift of all, his time
Dana Finkelstein	Hector Herrera receiving the NCBA Matrimonial Law Committee Service Recognition Award
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DiMascio & Associates, LLP	Larry M. Schaffer receiving the 2020 Fruerlicht-Manning Award
DiMascio & Associates, LLP	Mark A. Green receiving the 2022 Fruerlicht-Manning Award
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Gregory S. Lisi	The Graduation of Dylan Lisi
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In Brief

Kathleen Deegan Dickson, a partner in the firm Forchelli Deegan Terrana LLP's (FDT) Land Use and Zoning practice group and Co-Chair of its Cannabis practice group, was selected to be featured in the inaugural edition of *Long Island Business News*' (LIBN) Power List: Long Island's Most Powerful Women. The firm will also be recognized by *Long Island Business News* with respect to the following projects: Top Office Renovation—FDT's office at The Omni in Uniondale; IDA Project of the Year—Nassau: Park Lake Residences in Hempstead; Top Industrial Redevelopment—Nassau: Century 21 store in Westbury; Top Office Project—Newsday offices in Melville; Top Industrial Project—LI E-Commerce Center in Melville; and Top Mixed-Use Project—Nassau: 301 Warner in Roslyn. Banking and Finance Partner **James C. Ricca** was appointed Counsel of the Mortgage Bankers Association of New York.

Jad S. Sayage has joined Jaspan Schlesinger LLP as an Associate in the firm's Real Estate practice group.

Chris E. Wittstruck presented the paper, "Mast v. Fillmore: A Perfect 50th Birthday Present for Yoder" at the 2022 Amish Conference, "The Amish and Their Neighbors," at the Young Center for Anabaptist and Pietist Studies of Elizabethtown College, PA on June 3, 2022.

Scott B. Silverberg of the Law Firm of Stephen J. Silverberg has become a member of the Estate Planning Council of Nassau County, a member chapter of the National Association of Estate Planners and Councils (NAEPC).

Marc Hamroff, Managing Partner of Moritt Hock & Hamroff, is pleased to announce that **Frank A. Mazzagatti** has joined the firm as a Partner in its Corporate and Healthcare practice groups. **Christine H. Price**, Counsel in the firm's Garden City office has been chosen as a recipient of the 2022 Secured Finance Network's (SFNet) 40 Under 40 Awards. **Michael Calcagni**, Counsel at the firm, was recently appointed to serve as Co-Chair of the Surrogate's Court Estates and Trusts Committee of the Nassau County Bar Association

Karen Tenenbaum, LL.M. (Tax), CPA, tax attorney, was honored as a part of the *Long Island Business News* "Most Powerful Women on Long Island" as well as the *Long Island Press* PowerList. Her firm, Tenenbaum Law, P.C., was nominated by the *Long Island Business News* for "Best Tax Law Firm." Karen and her team spoke for the NYS Society of CPAs for the Taxation of Individuals/New York State and Multistate Committees and the Manhattan-Bronx Chapter on Post COVID-19 IRS and New York State tax topics. Karen also appeared on the Punturo Financial Fitness Radio Show entitled "Think You're Not a New York State/New York City Resident? Think Again." Her article, "What You Need to Know About Changes to the New York 2021 Nonresident Audit Guidelines," was recently featured in the *Suffolk Lawyer*. Karen gave an overview of what has changed in tax collection since the pandemic on "I am CEO" Podcast with Gresham Harkless Jr. and spoke about "What to do if You Owe Money to the IRS or NYS" on Bob Clark's 808 Podcast. In addition, she appeared on Phil Knight's "Life is…" podcast and Vincent Lanci's "That Entrepreneur Show." Her article "2022 Changes to the IRS Offer in Compromise Program" was recently featured in the NCCPAP Newsletter and her article "How to Obtain First Time Penalty Abatement from the IRS" was published in the Suffolk County Bar Association July digital edition. Furthermore, Karen and her legal team spoke at a webinar hosted by the New York Restaurant Association which served as a refresher for restaurant owners on various tax situations and issues.

Marian C. Rice

Ronald Fatoullah and the firm of Ronald Fatoullah & Associates hosted their annual informational Medicaid luncheon virtually. The event featured special guest Ralph Torres, Divisional Director of the Nursing Home Eligibility Division of the Human Resources Administration Program.

Mariselle Harrison has joined the firm Jaspan Schlesinger LLP as an Associate Attorney focusing in matrimonial and family law. **Simone Freeman** was the recipient of the *Long Island Business News* Real Estate, Architecture, and Engineering Award for Top Community Project. Co-managing partner Steve Schlesinger was recently honored as a member of the *Long Island Press 2022* PowerList. In recognition of the firm's 75th anniversary in 2021, Jaspan Schlesinger LLP created the Heart of the Community Award to honor 75 not-for-profits. Co-managing partner Steve Schlesinger announced the Tunnel to Towers Foundation was selected to receive the 75th and final award.

Patricia A. Craig has joined Cona Elder Law as an Associate Attorney in the firm's recently expanded Special Needs practice group.

Michelle Dantuono has become a Partner of the firm Kurre Schneps LLP.

Capell Barnett Matalon & Schoenfeld LLP Partner **Yvonne Cort** was featured in the article "Some Second-Home Owners Could Avoid New York Income Tax Under Court Decision," for *The Southampton, The East Hampton*, and *The Sag Harbor Press*. In addition, at the annual Tax Enforcement Update, an in-person event attended by tax professionals from across the country, Partner Yvonne Cort spoke about utilizing current IRS technology. In other news, Partner **Robert Barnett** has published the article "Passive Activities Meet At-Risk Limitations" in the *Journal of Accountancy*. Partner **Gregory Matalon** will be presenting, "New York Probate and Trust Litigation" for the National Business Institute with **Damianos Markou**.

Joseph Milizio, Managing Partner of the firm Vishnick McGovern Milizio LLP (VMM), was honored on July 13 by Pride for Youth (PFY), which dedicated the main reception area of the Deer Park center in his name. Mr. Milizio was also named to *Crain's New York Business* 2022 Notable Diverse Leaders in Law on July 11 and to *Crain's New York Business* 2022 Notable LGBTQ Leaders and Executives on June 20, for the second consecutive year. VMM Partner **Joseph Trotti** published an article in *AM New York* on July 5 about what the *Roe v. Wade* overturn means for New Yorkers. Mr. Trotti was also profiled in the June issue of *Forest Hills Living*. VMM **Partner Avrohom** Gefen published an article on July 8 about working past retirement age in *The Island Now* newspapers, including *Great Neck News, Manhasset Times, New Hyde Park Herald Courier, Port Washington Times, Roslyn Times, Williston Times*, and theisland360.com. Mr. Milizio is pleased to share that on June 27, the firm's attorneys and staff donated blood at the New York Blood Center in New Hyde Park and on June 13, the firm's LGBTQ Representation practice sponsored the North Fork Women 2022 Pride Golf Celebration.

Matthew A. Marcucci, of Meyer, Suozzi, English & Klein, P.C., recently launched his new blog: *New York Breach of Fiduciary Duty Claims*. **Michael J. Antongiovanni** was appointed by the President of the Nassau County Bar Association, Rosalia Baiamonte, to serve as a member of the Association's Financial Oversight Committee. The New York State Bar Association appointed Michael J. Antongiovanni as a member of the Civil Practice Law and Rules Committee.

The IN BRIEF column is compiled by Marian C. Rice, a partner at the Garden City law firm L'Abbate Balkan Colavita & Contini, LLP, where she chairs the Attorney Professional Liability Practice Group. In addition to representing attorneys for 40 years, Ms. Rice is a Past President of NCBA.

Please email your submissions to nassaulawyer@nassaubar.org with subject line: IN BRIEF

The *Nassau Lawyer* welcomes submissions to the IN BRIEF column announcing news, events, and recent accomplishments of its current members. Due to space limitations, submissions may be edited for length and content.

PLEASE NOTE: All submissions to the IN BRIEF column must be made as WORD DOCUMENTS.

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Founded in 1976, Forchelli Deegan Terrana LLP is one of Long Island's largest and most distinguished law firms. Headquartered in Uniondale, NY, the firm employs over sixty-five attorneys collaborating across more than a dozen practice groups. FDT is committed to providing exceptional service to a broad range of national, regional and local clients.

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