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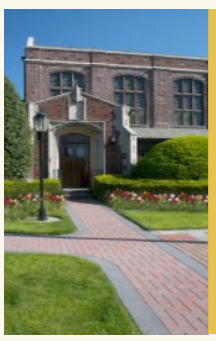

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Meet New President James P. Joseph

James P. Joseph, Managing Partner of Joseph Law Group, P.C., will be introduced as the Nassau County Bar Association's 123rd President at the NCBA Installation Ceremony on Tuesday, June 3, 2025, at Domus.

James brings more than three decades of dedicated service to the legal profession and the NCBA. Throughout his distinguished career, he has been an active member of the Bar, having served as a Director and Officer of the NCBA Board of Directors; been appointed to serve on both the Grievance and Judiciary Committees; and been an active member of, amongst other committees, the Matrimonial Law Committee, the Diversity & Inclusion Committee, and the General, Solo & Small Law Practice Management Committee.

Education and Career

James earned his Bachelor of Business Administration from Hofstra University in 1989, followed by a Juris Doctor from Hofstra Law School in 1993. During his time at Hofstra Law, James founded the Long Island Chapter of the Unemployment Action Center, Inc. Upon graduation, he was honored with the New York State Bar Association (NYSBA) Law Student Legal Ethics Award and the Hofstra Law Service to the School Award.

James joined a firm with a burgeoning matrimonial law practice in his second year after law school. Several years later, he left to start as a solo practitioner, while also serving as Chief Counsel to then New York State Senator Charles J. Fuschillo, Jr. James' firm, now known as the Joseph Law Group, P.C., focuses exclusively on matrimonial and family law. In addition to their reputation as skilled and effective litigators, they are proud of their reputation in the ADR community, offering both mediation and collaborative practice when appropriate. Today, Joseph Law Group, P.C., has five attorneys and a team of top-notch support staff.

Professional Associations and Memberships

James is admitted to practice in New York State since 1994 and is also admitted in the United States District Courts for the Eastern and Southern Districts of New York. In addition to his work with the NCBA, he is an appointed member of the NYSBA Law Practice Management and a member of both the NYSBA and American Bar Association's Matrimonial and Family Law Committees. In addition, he serves as a Lead Arbitrator on the Fee Arbitration Panel for the New York State Office of Court Administration. James has been a member of the Unified Court System's Matrimonial Special Masters Panel in Nassau County where he has been appointed to assist the courts in resolving particularly litigious matters. He has served as an Adjunct Instructor for the Intensive Trial Advocacy Program at Hofstra Law School.

James has lectured lawyers on matrimonial law, ethics and law firm management for the Nassau Academy of Law, the NYSBA and various other organizations. In addition, James has worked as an Adjunct Practice Advisor with Atticus, Inc., a management consulting firm. Through Atticus, he has coached lawyers to improve their practice to ensure that they are able to offer top quality legal representation, while enjoying a meaningful and productive life outside the practice of law, something he believes not only benefits the lawyers, but also their staff and their clients.

Community Activities

In addition to his work with the NCBA, James has held leadership roles on various non-profit boards, including at EAC Network, a large social services non-profit where he is a former Chairman. He is also a long-time volunteer, former board and executive committee member of the Long Island Chapter of the Leukemia and Lymphoma Society. Along with fellow bar members Thomas Foley and Brian Griffin, James cofounded and serves as Co-Chair of the annual Thanksgiving Day Massapequa Turkey Trot, an annual 5k event, the proceeds of which are donated to charity.

The Coming Year

As President for the 2025-2026 term, James plans to continue the momentum started by Immediate Past President Dan Russo who, despite a nationwide tide of decreasing bar membership, was able to not only increase the number of members during his tenure, but brought new life and energy to the Bar as it continued to recover from the impact of the Covid pandemic.

Under James' leadership, the Association recently held a unique and powerful Planning Conference. Along with the Executive Committee, James has committed to taking the necessary steps to increase both Bar membership and revenue by 10%, while also creating systems to help ensure continued future success. James is confident that with the help of staff, the Board of Directors and Members, the Nassau County Bar Association cannot only maintain but continue to build on the success of its various and numerous committees, the Academy of Law, WE CARE, LAP, and the Mortgage Foreclosure Project, to name but a few. He looks forward to a productive and exciting year for the NCBA.

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2025 Nassau County Bar Association

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From the President

James P. Joseph

Despite having been an active member of the Nassau County Bar Association for nearly all of my 32 years in practice, I still find myself regularly meeting members for the first time, often people who also devote extraordinary time and energy to our Association. To me, this speaks volumes about the strength, depth, and reach of our membership. Being part of this professional community is, in my view, one of the greatest privileges of bar membership.

So, in this first column as President, I will introduce myself to those I have not yet met and share my vision for the year ahead.

Those who know me well know that I try to live in a state of gratitude. That mindset does not come easily, particularly for lawyers. We are trained to issue spot—to identify anything and everything that might go wrong. Many of us guide people through some of the most difficult moments of their lives. The emotional weight of our profession is significant.

As the fortunate recipient of a lifesaving and cancer curing stem cell transplant almost 18 years ago, I try to appreciate every moment. When I forget how fortunate I am to be here today, in perfect health, I only need to look at my license plates—SCT 7507, a reference to the date of my stem cell transplant, July 5, 2007. It took many years for me to understand the impact of my cancer journey on my career path and life's journey. I was diagnosed when I was 34 years old, just three years after having started my own firm, at a time when my wife, Elsa Tobin (now the Chief of the Warrants Unit in the Nassau County District Attorney's Office), was seven months pregnant with our second child.

Cancer can be a most humbling experience. As lawyers, we are used to being in control, but in that moment, I had to place my trust and future in the hands of others. That journey taught me the importance of putting ego aside, recognizing when others know more than we do, and accepting help with grace. We all eventually face significant adversity in our lives but as lawyers we should also strive to remember how incredibly fortunate we are.

These lessons carried over into my professional life. Despite nearly ten years of uncertainty and frankly, deep fear, my practice thrived during our "cancer journey." This was in no small part because I was fortunate enough to find management consultants who coached me through the tough times. For over 20 years, I worked with the coaching and consulting group Atticus, both as a student and a coach. Their motto "Great Practice, Great Life" aligned with my goals—to ensure that my firm's clients receive the best possible representation while at the same time ensuring me and my team could lead fulfilled, enjoyable lives. Early in my career, these two goals seemed, sadly, incongruent, to say the least. I now know that with an excellent team, careful client selection, and strong systems, we could serve our clients more effectively, proactively rather than reactively, while also running a more successful firm and preserving time for life outside the practice of law.

I have no doubt I am here today, leading a successful and respected matrimonial law firm, and as President of the Nassau County Bar Association, because I put aside my need for control and instead found, trusted, and then relied upon others—great staff and lawyers, as well as outside experts, be they doctors, management consultants or mentors.

I bring those lessons with me into this presidency.

Last month, I hosted the annual President-Elect's Planning Conference. With the help of an outside facilitator, our Executive Committee, along with several others, examined our strengths, weaknesses, opportunities, and threats. The results were inspiring and reaffirmed not only how wonderful our Bar already is, but how much potential it continues to hold.

Across the country, bar associations have faced declining membership. Yet under Immediate Past President Dan Russo's outstanding leadership, our membership grew last year. Building on that momentum, we have set ambitious but achievable goals, including increasing both membership and revenue by 10% this year and have a plan to make this happen. With the help of the Board of Directors and our Members, we are confident that we can make Domus an even more appealing and beneficial place for Nassau County lawyers and other legal professionals to serve, to learn, to grow, to meet and network.

Of course, a one-year term is short, and unexpected challenges can derail the best-laid plans. We are in interesting times, to say the least. I am well aware that I now lead an organization where we regularly recite the Pledge of Allegiance and its closing phrase, which every American knows by heart, "with liberty and justice for all," and whose members all took a solemn oath upon admittance to the practice of law "to support the Constitution of the United States and the Constitution of the State of New York," "to faithfully discharge our duties… to the best of our abilities."

Regardless, we are prepared, energized, and aligned, and I look forward to working with our staff, Members, Board of Directors, and Executive Committee to continue the success we have enjoyed for 125 years. In the words of Past President Dorian Glover, "thank you, for what you have done, and for what you will do." I look forward to working with each of you to make this year one of continued progress, purpose, and pride—for our profession and for our community.

FOCUS: TAXATION

Depreciation vs. Expensing: What's the Difference and What's in Store?

Matthew E. Rappaport and Joelle M. Vilinsky

For businesses investing in equipment, vehicles, and capital improvements to real estate, up-front tax deductions are both a significant financial benefit and an economic incentive to accelerate future spending to the present day. Sections 168(k) and 179 of the Internal Revenue Code of 1986, as amended,[1] provide firms with a deduction of a significant portion—or even the full cost—of depreciable business assets in the year of purchase, rather than the normal stream of depreciation deductions over time that the companies might achieve through the default rules of the Modified Accelerated Cost Recovery System ("MACRS"). While the two provisions share a common goal, their distinct structures may make one more favorable than the other, depending on the size, nature, and cost of the relevant purchases.

The Tax Cuts and Jobs Act of 2017 ("TCJA")[2] greatly enhanced the benefits of both provisions by increasing deduction limits, expanding includible qualified property, and making tax treatment more favorable for businesses.[3] However, some of the benefits afforded by the TCJA were not permanent; bonus depreciation under Section 168(k), for example, is already phasing out, while Section 179 continues to be subject to annual limits.

With President Trump's re-election, speculation is growing over whether new legislation will restore or even expand these tax benefits. Rumors, some spurred by statements from the President himself, suggest an effort to potentially reinstate 100% bonus depreciation (that is, full expensing) under Section 168(k) or further increases for Section 179 limits. As policymakers once again reassess tax reforms under the new administration, business owners and tax professionals alike must stay informed about how these provisions may evolve with the passage of new legislation.

This article will discuss the differences between Sections 168(k) and 179, the impact of the TCJA on these two provisions, and forecasts about what might happen to them as Congress hashes out the details of a potential sequel to the TCJA.

Section 179 Expensing

Section 179 is specifically designed to benefit small businesses by allowing them to deduct the entire cost of certain business expenses up front, which helps encourage investment because the tax benefits ease the financial burden of making major capital investments. Section 179 allows businesses to elect expensing (i.e., a deduction) of up to 100% of the cost of eligible assets in the year the qualifying assets are placed in service.[4] Eligible assets include new and used Section 1245 tangible personal property deployed in an active trade or business that would normally be depreciable under Section 168; examples of these assets are machinery and business vehicles.[5] The TCJA modified the definition of Section 179 property to include certain improvements made to nonresidential real property, such as roofing; heating, ventilation, and air conditioning ("HVAC") systems; and fire protection, alarm, and security systems. Prior to TCJA, these assets were once treated as components of real property, so they were not considered eligible for Section 179 expensing.[6]

While Section 179 offers an attractive immediate deduction, it comes with two key limitations that can impact a firm's ability to fully benefit in the year of deploying the relevant assets. The first is the investment limitation, which places a cap on allowable deductions in a given tax year.[7] The TCJA raised the expensing allowance to $1 million and the phaseout threshold to $2.5 million in 2018 and indexed both amounts for inflation.[8] As of 2024, businesses can deduct up to $1.22 million in Section 179 property. However, this allowance phases out dollar-for-dollar once total cumulative spending on qualified property exceeds the threshold amount of $3.05 million, disappearing entirely at $4.27 million.[9] This restriction makes Section 179 less favorable for larger firms with substantial qualified asset purchases, potentially steering them away from making the election.

The second limitation, known as the income limitation,[10] ensures that the deduction cannot exceed taxable income derived from all active trade or businesses the taxpayer owns.[11] For example, if a taxpayer has $175,000 in taxable income from her trade or business and incurs $250,000 in Section 179-eligible expenses, she can only deduct up to $175,000, even though her eligible expenses exceed that amount. However, any unused deduction can be carried forward to future years.[12]

Section 168(k) Bonus Depreciation Deduction

Section 168(k) allows businesses to immediately deduct a certain percentage of the cost of eligible assets, but there are several important differences between Section 168(k) and Section 179. Under the TCJA, the types of property eligible for Section 168(k) bonus depreciation expanded to include both new and used property qualifying for MACRS with recovery periods of 20 or fewer years.[13] Eligible assets include machinery, equipment, off-the-shelf computer software, and qualified improvements to nonresidential real property (15-year property).[14]

Unlike Section 179, which allows for an immediate deduction up to a set limit, Section 168(k) provides a percentage-based deduction of the adjusted basis of the qualified property.[15] The TCJA set the bonus depreciation from 2017 to 2022 at 100%, meaning businesses could deduct the full cost of qualifying assets in the year they are placed in service.[16] However, this percentage decreased after 2023 and is scheduled to continue decreasing over the next few years: 40% in 2025, 20% in 2026, and 0% in 2027.[17]

Section 168(k) deductions tend to be more favorable for larger firms because, unlike Section 179, there is no dollar limit on the amount that can be deducted during a given taxable year, and there are no phase-outs or other limits based on total deductions or company income. But a firm is not limited to one statute or the other; the business may choose to claim both Section 179 expensing and Section 168(k) depreciation allowances in the same taxable year and even on the same asset. Section 179 must be applied first, reducing the asset's basis by the claimed amount. The firm can then apply Section 168(k) to the remaining basis.

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Any leftover basis will be depreciated according to the appropriate MACRS schedule.

Upcoming Legislative Forecast for Sections 179 and 168(k)

A primary goal for the new administration and the Republican-controlled Congress is to permanently extend and reinstate several provisions of the TCJA. In his State of the Union-style address before Congress in early 2025, President Trump alluded to restoring certain tax policies he signed into law under the TCJA, including the possibility of fully reinstating the 100% bonus depreciation allowance under Section 168(k) that existed from 2017 to 2022.[18] This suggests that the administration is likely to continue pushing for policies that stoke increased business investment, as the President did during his first term. Other possibilities include expanding the list of qualified property and making the change to the Code permanent.

For Section 179, we may see increases to the maximum expense limits and the list of qualified property. The President has expressed support for raising the expensing limit from $1.2 million (as adjusted for inflation from 2018) to $2 million (which would also be adjusted for inflation moving forward).[19]

Lastly, the President's effort to prioritize consumption of U.S. over foreign goods could lead to modifications in the definitions of Sections 179 and 168(k) eligible property, restricting them to U.S.-made vehicles or equipment.

Overall, Sections 179 and 168(k) are key tools in the arsenal of any U.S. business where capital is a material income-producing factor. In industries such as real estate, manufacturing and distribution, food and beverage, waste management, and information technology, these two statutes could have a significant impact on the tax treatment of activities essential to growing and maintaining companies. Tax and other practitioners would be well-served understanding how those provisions of the Code work and following what might happen to them if contemplated tax legislation gets signed into law.

1. Hereinafter the "Code."
2. P.L. 115-97 (Dec. 22, 2017).
3. *Tax Cuts and Jobs Act: A Comparison for Businesses*, Internal Revenue Service (last visited May 19, 2025), https://www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses.
4. § 179(a); see Gary Guenther, *The Section 179 and Section 168(k) Expensing Allowance: Current Law, Economic Effects, and Selected Policy Issues*, Cong. Res. Serv. RL31852, at 1.
5. § 179(d)(1)(B); *but* see § 179(b)(5).
6. P.L. 115-97, § 13101(b); § 179(e).
7. § 179(b)(1), (2); Guenther, *The Section 179 and Section 168(k) Expensing Allowances*, at 2.
8. P.L. 115-97, § 13101(a).
9. § 179(b)(2).
10. § 179(b)(3).
11. Id.; see Guenther, *The Section 179 and Section 168(k) Expensing Allowances*, at 2. Active conduct denotes that a taxpayer is meaningfully involved in the management or operation of a business. When applying the investment limitation and the income limitation, the former is applied first, with the latter getting applied only after the former.
12. § 179(b)(3)(B).
13. P.L. 115-97, §§ 13201, 13204; § 168(k)(2)(A)(i)(I).
14. § 168(k)(2)(A)(i).
15. The statute uses adjusted basis because it also applies to used property, although in most cases, the reference point for determining Section 168(k) depreciation will be cost basis.
16. § 168(k)(6)(A)(i).
17. § 168(k)(6)(A)(iv), (v).
18. Tim Shaw, *Trump Pledges to Restore TCJA Full Bonus Depreciation*, THOMSON REUTERS (March 6, 2025), https://tax.thomsonreuters.com/news/trump-pledges-to-restore-tcja-full-bonus-depreciation/.
19. *Preparing for the Trump Administration's Tax Policy Plans: A Sector-by-Sector Guide*, Elliott Davis (last visited May 19, 2025), https://www.elliottdavis.com/trump-administration-tax-guide.

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FOCUS: TAXATION

Resolving Federal Tax Liens

Scott Kestenbaum and Jill Monoson

The most common question civil and criminal tax controversy attorneys have received in 2025 is not whether the Internal Revenue Service is closing, but rather, how does a taxpayer resolve outstanding tax liens that are attached to my property?

Pursuant to IRS Code § 6321, "if any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person." The tax liability generally arises from self-assessment (when a taxpayer voluntarily files a return and reports the tax); substitute returns (if a taxpayer fails to file, the IRS may prepare a return and assess tax); or jeopardy and termination assessments (the IRS can immediately assess taxes if they believe collection is at risk). The IRS will file a Notice of Federal Tax Lien in the county where the property is located. The owner will not be able to sell or refinance without resolving the outstanding lien.

Tax liens are rarely just "tax issues" and can impact individuals and business across practice areas, including, but not limited to, real estate, bankruptcy, divorce proceedings, and estate planning. While the simplest option for a federal tax lien is to obtain a payoff letter and pay the balance off, there are four other options that should be considered: Certificate of Discharge, Withdrawal of Notice, Certificate of Non-Attachment, and Subordination of Notice.

Certificate of Discharge

Pursuant to IRS Code § 6325(b), the IRS can issue a Certificate of Discharge when a taxpayer with an outstanding liability requests the IRS release the notice of federal tax lien against a specific property in the county in which the notice of federal tax lien is filed.[1] There are five different bases for requesting a Certificate of Discharge.

The first basis is in Section 6325(b)(1), under which a discharge may be issued if the value of the taxpayer's remaining property attached by the lien is *at least double* the liability of the federal tax lien(s) plus other encumbrances senior to the lien(s). If there are mortgages, state and/or local taxes, mechanics liens, etc., the amount of these debts would be added to the amount of the tax liability and multiplied by two to determine if the remaining property is double the value of the tax lien.

Under § 6325(b)(2)(A), a discharge may be issued when the tax liability is *partially satisfied* with an amount paid that is less than the value of the governments' interest in the property being discharged. This provision is used when a taxpayer has other outstanding debts and judgments, including a mortgage or state tax liabilities that are senior to the IRS lien, where the IRS wouldn't receive full payment of their lien at closing.

Professionals will often call and suggest that the parties cannot close on the real estate transaction because there is not enough money to pay the IRS. This is not true! As long as taxpayer can provide a copy of the contract, a formal appraisal and broker's letter showing the property is being sold for fair market value, and proof that there are senior lienholders, the IRS will approve such an application, receive an amount less than what is owed, and discharge the lien.

Under § 6325(b)(2)(B), a discharge may be issued when it is determined that the government's interest in the property has no value. This provision is used when the debts senior to the federal tax lien are greater than the net proceeds from the sale of the property. Although hard to believe, the IRS will discharge liens even if they don't receive any proceeds from the sale! The same documents must be provided to the IRS to demonstrate that there are senior lienholders; once verified, the IRS will allow the transaction to go forward.

Sections 6325(b)(3) and 6325(b)(4) are rarely used, but they can be useful when the closing has already been held and proceeds of sale are held in escrow subject to the liens and claims of the government, or when there has been a deposit or bond furnished in amount equal to the value of the government's interest. These provisions are rarely used because most title companies require conditional approval from the IRS *prior* to closing and these provisions arise if the closing has already occurred and funds are in escrow.

Withdrawal of Notice of Federal Tax Lien

Pursuant to Internal Revenue Code § 6323(j)(1), a taxpayer can request that a lien be withdrawn which, if granted, acts as if the notice of federal tax lien never existed.[2] Withdrawal of tax liens are extremely difficult to get approved because the IRS generally does not file a notice of tax lien unless they have substantiated that there is a liability owed by the taxpayer.

Section 6323(j)(1)(b)(3) is the most commonly used withdrawal provision and used, when withdrawal will facilitate collection of outstanding liabilities. A taxpayer needs to demonstrate to the IRS that withdrawing the lien will cause the IRS to collect the debt faster and easier than if the lien remains attached to the property. This is a difficult burden to overcome but can be use if the lien impacts a taxpayer's ability to earn income (i.e. a taxpayer holds a special license and the lien causes them to lose this license so that they cannot earn income).

Other provisions allow for withdrawal in a variety of circumstances. Section 6323(j)(1)(b)(1) provides for withdrawal when the filing of the tax lien was premature or not compliant with administrative procedures. Section 6323(j)(1)(b)(2) is utilized when the taxpayer enters into an installment agreement with the IRS to satisfy the tax lien. This provision is generally used where the taxpayer has an assessed tax liability of under $25,000, and taxpayer agrees to a "direct debit" installment agreement. And § 6323(j)(1)(b)(4) is used when withdrawal is in the best interest of the government, though it must be approved by the National Taxpayer Advocate and the IRS. This provision is rarely used.

Certificate of Non-Attachment

Pursuant to Internal Revenue Code § 6325(e), IRS will file a Certificate of Non-Attachment when a Notice of Federal Tax Lien is filed against the wrong person or confused one taxpayer of a similar name with another.

There is no formal IRS form to request this relief. The procedure for this request is write a letter to the appropriate IRS Advisory Group[3] pursuant to the instructions in IRS Publication 1024—How to Apply for a Certificate of Non-Attachment of Federal Tax Lien.

Subordination of Notice of Federal Tax Lien

Pursuant to Internal Revenue Code § 6321(d), the IRS will also subordinate their tax lien if it increases taxpayer's ability to pay the tax liability.[4] IRS will explore this option if there is sufficient equity in a property such that a bank/lender would be able to refinance, issue a home equity line of credit, issue a new loan, or do a reverse mortgage. Understanding tax liens and their consequences is crucial for taxpayers facing IRS tax collection actions. Whether dealing with a lien discharge, installment agreements, or negotiating an Offer in Compromise, professional tax guidance is essential in navigating complex tax laws and securing the best outcome.

1. In order to obtain a Certificate of Discharge, the taxpayer must complete and submit IRS Form 14135.
2. To obtain a Certificate of Discharge, the taxpayer must complete and submit IRS Form 12277.
3. See IRS, *Collection Advisory Offices Contact Information*, Publication 4235, available at https://www.irs.gov/pub/irs-pdf/p4235.pdf.
4. To obtain a Certificate of Subordination of a Federal Tax Lien, taxpayer must complete and submit IRS Form 14134.

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FOCUS: PERSONAL INJURY

Court of Appeals Restores Negligence Liability in Domestic Animal Attacks

Christopher J. DelliCarpini

In *Flanders v. Goodfellow*, the Court of Appeals recently held that persons injured by domestic animals may now bring claims not just in strict liability, but also in ordinary negligence.[1]

The decision reversed almost 20 years of precedent since *Bard v. Jahnke*,[2] offering a theory of liability in domestic animal attack cases. But *Flanders* also illustrates when and how we might successfully petition to change even long-standing and apparently settled precedent.

Liability for Domestic Animals Before and After Bard

Before *Bard*, New York's liability standard was as restated in *Collier v. Zambino*: "the owner of a domestic animal who either knows or should have known of that animal's vicious propensities will be held liable for the harm the animal causes as a result of those propensities."[3] Where the owner had no reason to know of their animal's vicious propensities, however, liability in New York was less clear. In *Hyland v. Cobb*, the Court almost a century ago restated that "negligence by an owner, even without knowledge concerning a domestic animal's evil propensity, may create liability."[4] This was in accord with the Restatement (Second) of Torts § 518, which many jurisdictions had adopted.[5]

In *Bard*, however, the Court of Appeals expressly rejected negligence liability where the animal had no known vicious propensities. A carpenter repairing the defendant's dairy barn was attacked by the owner's bull, and he sued for strict liability and negligence. The defendant obtained summary judgment, which the Court ultimately affirmed, holding that without evidence of known vicious propensities the plaintiff could not recover in strict liability or negligence.

The Court considered Section 518, which adds that owners should be "required to realize that even ordinarily gentle animals are likely to be dangerous under particular circumstances and to exercise reasonable care to prevent foreseeable harm."[6] But the Court stated: "We have never, however, held that particular breeds or kinds of domestic animals are dangerous, and therefore when an individual animal of the breed or kind causes harm, its owner is charged with knowledge of vicious propensities."[7] Therefore the only remedy was strict liability per *Collier*.

This holding was never without criticism. Three judges dissented in *Bard*, pointing out that "at least 20 states appear to follow the Restatement rule" and that the Appellate Division had allowed recovery in negligence.[8] In *Hastings v. Sauve*, the Court declined to extend *Bard* to bar negligence claims where a farm animal caused injury off the owner's property.[9] And the First Department, even as it followed *Bard*, openly suggested that it "may be neither prudent law nor prudent policy."[10]

The strongest rejection of *Bard* came in Judge Fahey's dissent in *Doerr v. Goldsmith*.[11] The majority summarily affirmed summary judgment in the two dog-bite cases heard together on appeal,[12] but Judge Fahey argued at length for rejecting *Bard*. "Before *Bard* was decided," he wrote, "our Court's decisions were consistent with the rule, set out in the Restatement (Second) of Torts § 518, that a plaintiff whose injuries were caused by a domestic animal may bring a negligence claim against the owner, as an alternative to an allegation that the owner is strictly liable."[13] Judge Fahey also noted that "a large majority of jurisdictions" still followed the Restatement.[14] He deemed *Hastings* an "ad hoc exception to *Bard*," and argued for New York to return to the Restatement standard and allow plaintiffs to plead and prove negligence regardless of vicious propensities.[15]

Flanders: The Court of Appeals Overrules *Bard*

In *Flanders*, postal carrier Rebecca Flanders was attacked by the Goodfellows' dog while delivering packages to their residence, and she sued in strict liability and in negligence. The defendants moved for summary judgment under *Collier* and the trial court granted the motion, finding no issue of fact "as to whether the Defendants knew or should have known of Murdock's alleged vicious propensities."[16] Interestingly, neither the defendants nor trial court cited *Bard*; only the plaintiff did in opposition, to argue that "An animal's propensity to cause injury may be proven by something other than prior comparably vicious acts."[17]

The plaintiff appealed, arguing primarily issues of fact on vicious propensities but throwing in an argument for reversal of *Collier*.[18] Defendants responded with a string of precedent affirming *Collier* and *Bard*.[19] The plaintiff in reply omitted the reversal argument.[20] The Fourth Department affirmed, relying on its own post-Bard jurisprudence.[21]

The plaintiff then moved in the Court of Appeals for leave to appeal, again leading with her issues-of-fact argument but adding that "this Court should return to the basic principle that dog owners like all others with all other instrumentalities of harm must exercise reasonable care to prevent foreseeable injury."[22] She largely cribbed Judge Fahey's dissent from *Doerr* but added a quote from then-Associate Judge Wilson's concurrence in *Hewitt v. Palmer Veterinary Clinic, PC* on the apparent inequity of *Bard* letting animal owners off the hook for negligence, but still holding "non-owners responsible for injury-causing animals."[23]

The Court granted leave to appeal,[24] and Ms. Flanders in her brief made an even more fulsome attack on Bard and Collier, going back to English common law before picking up New York precedent in the nineteenth century and going into more depth than Judge Fahey had in *Collier*.[25] She then attacked the reasoning in *Bard*[26] and traced the challenges courts have faced applying the "unworkable" rule.[27] It was the Goodfellows who offered the shorter argument, contending that *Bard* in fact followed New York precedent and ordinary tort principles, and that any misapplications by lower courts did not warrant overruling *Bard*.[28] In reply Ms. Flanders challenged Judge Abdus-Salaam's concurrence in *Doerr*, which the Goodfellows had taken as the Court's justification for upholding *Bard*.[29]

At oral argument, the Court appeared ready to overrule *Bard*. Judge Rivera openly stated that "at least four members, perhaps more, of the court, think [*Bard*] was wrongly decided."[30] She and Judge Wilson questioned whether there would even be need for a strict liability cause of action if negligence claims were allowed.[31]

In a unanimous decision, the Court reversed, holding that issues of fact existed not just on the strict liability claim but also on the negligence claim, and overruled *Bard*:

> Experience has shown that this rule is in tension with ordinary tort principles, unworkable, and, in some circumstances, unfair. Continued adherence to *Bard* therefore would not achieve the stability, predictability, and uniformity in the application of the law that the doctrine of stare decisis seeks to promote.[32]

Domestic Animal Claims After *Flanders*

After *Flanders*, plaintiffs have two options: "If the owner knew or should have known the animal had vicious propensities, the plaintiff may seek to hold them strictly liable. Or they can rely on rules of ordinary negligence and seek to prove that the defendant failed to exercise due care under the circumstances that caused their injury. Of course, a plaintiff might also assert both theories of liability, as *Flanders* chose to do."[33]

Flanders does not change the law on strict liability for domestic animal attacks, restated in PJI 2:220: the plaintiff must prove that the animal was owned or harbored by the defendant, that the animal had vicious propensities, and that the defendant knew or should have known of those propensities. "In such case," the charge states, "[the defendant] will be liable even though (he, she, it) was not negligent in the manner of keeping the animal, and whether or not the incident occurred on [the defendant's] property."

Flanders restores the negligence claim in domestic animal attacks, but how do we litigate such claims? No specific pattern charge currently exists, but we may be guided by the general negligence charge, PJI 2:10, and Section 518 of the Restatement:

> Except for animal trespass, one who possesses or harbors a domestic animal that he does not know or have reason to know to be abnormally dangerous, is subject to liability for harm done by the animal if, but only if, (a) he intentionally causes the animal to do the harm, or (b) he is negligent in failing to prevent the harm.

What is the standard of care in preventing domestic animal attacks? This will depend not necessarily on the species or breed, but more so on the animal's current circumstances. The Restatement warns of "[t]he high temper normal to stud animals" and the likelihood of attack from "an ordinarily gentle bitch or cat ... caring for her puppies or kittens."[34] Negligence will likely be clearer where the animal has broken free, and certainly when it causes injury on another's property, though even then unleashed dogs and cats will not be *res ipsa loquitur* under PJI 2:65.[35]

How to Unsettle "Settled Law"?

Why was *Bard* ripe for reversal—and how did Ms. Flanders know that her case could be the catalyst? And when and how should we argue for a change in the law?

Obviously, the best indication of an unsettled precedent is the Court of Appeals' own admission, in dissenting or concurring opinions if not majority opinions themselves. *Bard* itself was a 4–3 decision, and subsequent Court of Appeals decisions showed that the holding was never fully accepted.[36]

Lower-court decisions are also of some help in gauging the acceptance of precedence. The Appellate Division's distinguishing of *Bard* and its reluctance to extend the holding were a sign that a rule, as in *Flanders*, "is in tension with ordinary tort principles, unworkable, and, in some circumstances, unfair."[37]

Once you have found a precedent that is vulnerable, however, it takes resources to marshal the argument. The difference between the cursory argument for reversal of *Bard* that Ms. Flanders presented in Supreme Court and the Appellate Division and her comprehensive criticism of the precedent in her motion for leave and her briefs in the Court of Appeals shows the comprehensive effort required to marshal precedent and policy to reverse statewide precedent.

1. 2025 N.Y. Slip Op. 02261 (Apr. 17, 2025).
2. 6 N.Y.3d 592 599 (2006).
3. 1 N.Y.3d 444, 446 (2004).
4. 252 N.Y. 325, 326–27 (1929).
5. *Doerr v. Goldsmith*, 25 N.Y.3d 1114, 1147–48 (Fahey, J., dissenting).
6. *Id.* at 598 (quoting Restatement (Second) of Torts § 518 comment h).
7. *Id.* at 599.
8. *Id.* at 600–01 (Smith, J., dissenting).
9. 21 N.Y.3d 122 (2013).
10. *Scavetta v. Wechsler*, 149 A.D.3d 202, 203 (1st Dep't 2017). *See also, e.g., Hastings v. Sauve*, 94 A.D.3d 1171 (3d Dep't 2012).
11. 25 N.Y.3d 1114 (2015).
12. *Id.* at 1116.
13. *Id.* N.Y.3d at 1143 (Fahey, J., dissenting).
14. *Id.* at 1147–48 (Fahey, J., dissenting).
15. *Id.* at 1157 (Fahey, J., dissenting).
16. *Flanders v. Goodfellow*, 002769/2020 (Sup. Ct., Onondaga Co.), NYSCEF 63, Decision and Order at 6.
17. *Id.* NYSCEF 55, Affirmation in Opposition at 17.
18. *Flanders v. Goodfellow*, CA 22-01292 (4th Dep't), NYSCEF 4, Appellant's Brief.
19. *Id.* NYSCEF 6, Respondents' Brief at 19–20.
20. *Id.* NYSCEF 12, Reply Brief.
21. *Flanders v. Goodfellow,* 215 A.D.3d 1248, 1249–50 (4th Dep't 2023) (quoting *Vikki-Lynn A. v. Zewin*, 198 A.D.3d 1342, 1343 (4th Dep't 2021)).
22. *Flanders v. Goodfellow*, Motion for Leave to Appeal at 4–5.
23. 35 N.Y.3d 541, 552–53 (Wilson, J., dissenting).
24. *Flanders v. Goodfellow*, 40 N.Y.3d 904 (2023).
25. *Flanders v. Goodfellow*, Brief for Plaintiff-Appellant at 30–48.
26. *Id.* at 48–52.
27. *Id.* at 52–60.
28. *Flanders v. Goodfellow*, Respondents' Brief at 14–25.
29. *Flanders v. Goodfellow*, Reply Brief at 4–20.
30. *Flanders v. Goodfellow*, Oral Argument Transcript at 36.
31. *Id.* at 10–16.
32. 2025 N.Y. Slip Op. 02261 at *1.
33. *Id.*
34. Restatement (Second) of Torts § 518 Comment h.
35. Id. Comments j–k.
36. See *Petrone v. Fernandez*, 12 N.Y.3d 546, 551 (Pigott, J., concurring); *Doerr v. Goldsmith*, 25 N.Y.3d 1114, 1140 (Lippman, C.J., concurring in part); *Id.* at 1142 (Fahey, J., dissenting); *Hewitt v. Palmer Veterinary Clinic, PC*, 35 N.Y.3d 541, 550 (Wilson, J., concurring in result).
37. *Flanders*, 2025 N.Y. Slip Op. 02261 at *1.

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FOCUS: FREEDOM OF INFORMATION LAW

An Examination of Public Officers Law § 87(2)(A)—Focusing on the Attorney/Client Privilege and Attorney Work Product

Bryan Barnes

The Public Officers Law (POL) § 87(2)(a) is essentially the catch-all exemption under the Freedom of Information Law (FOIL) in that POL § 87(2)(a) exempts from disclosure anything that is "specifically exempted from disclosure by state or federal statute."[1] So long as there is a clear legislative intent to establish and preserve confidentiality of records, a state statute need not expressly state that it is intended to establish a Freedom of Information Law (FOIL) exemption.[2] Therefore, the FOIL exemption under POL § 87(2)(a) is a recognition that the FOIL exemptions contained in the Public Officers Law are not a complete, exhaustive list of everything that is exempt from disclosure.

This article will focus on the use of POL § 87(2)(a) to incorporate the attorney/client privilege pursuant to CPLR § 4503(a) and the related protection of attorney work product pursuant to CPLR § 3101(c) into that category of law which is exempt from FOIL or other disclosure provisions.

Attorney/Client Privilege and Attorney Work Product

The New York Civil Procedure Law and Rules (CPLR) contains a protection against disclosure for communications between attorney and client as codified in CPLR § 4503(a) known as the attorney/client privilege.[3] Similarly, CPLR 3101(c) provides a protection against disclosure of attorney work product, which is "limited to those materials which are uniquely the product of a lawyer's learning and professional skills, such as materials which reflect his or her legal research, analysis, conclusions, legal theory or strategy."[4] This privilege applies to advice given by municipal attorneys to municipal officials.[5]

The attorney/client privilege applies where there is an attorney-client relationship; the Committee on Open Government stated that the parameters of the attorney-client relationship has been held to be:

> "In general, 'the privilege applies only if (1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom the communication was made (a) is a member of the bar of a court, or his subordinate and (b) in connection with this communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion on law or (ii) legal services (iii) or assistance in some legal proceeding, and not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client.'"[6]

In addition, for the attorney/client privilege to apply, the primary or predominant focus of the communication must be of a legal nature and for the purpose of facilitating the rendition of legal advice or services.[7] The critical inquiry is "whether, viewing the lawyer's communication in its full content and context, it was made in order to render legal advice or services to the client."[8]

Court of Appeals determination

On December 19, 2023, the Court of Appeals made a determination on this issue in the case *Matter of Appellate Advocates v. New York State Dept. of Corr. & Community Supervision*. The case was an appeal to determine whether the Department of Corrections and Community Supervision (DOCCS) properly withheld as privileged eleven documents prepared by its counsel for the Board of Parole.[9] The Court upheld the determination that the documents were privileged and that the Appellate Division had properly invoked POL § 87(2)(a).[10]

In defending the invocation of the attorney/client privilege, DOCCS submitted an affirmation from the attorney for the Board of Parole asserting that the documents were prepared for the purpose of offering legal advice, elaborating that some of the documents were instructions to commissioners advising them of their legal obligations.[11] Other documents summarized recent court decisions, advised on how to apply statutes and regulations as well as including guidance on that drafting of parole decisions.[12]

The Petitioner Appellate Advocates made four arguments in favor of disclosure, all of which the Court addressed. The first argument raised was that the privilege should only apply when there is a real anticipation of litigation.[13] The Court held that such a limited application of the privilege would undermine the advisory role of an attorney to give confidential advice in order to avoid litigation in the first place.[14]

Appellate Advocates then argued that there needs to be a direct request for advice in order for the privilege to apply.[15] The Court noted that the attorney's role is to "assess the client's needs and possible risk exposure" as well as to advise the client on legal issues and regulations that would be of assistance in ordering their affairs.[16]

The third argument was that the documents were training materials when could be disclosed; and the last argument was that public policy favored disclosure. The Court disposed of the third argument quickly by stating that federal courts have long agreed that training materials are exempt from disclosure.[17] As for the final public policy argument, the Court noted that the public policy of transparency does not trump the equally important public policy of protecting the attorney/client privilege.[18]

Conclusion

As stated above, POL § 87(2)(a) is a catch-all FOIL exemption that incorporates disclosure exemptions contained in other areas or state and federal law. In the context of the attorney/client privilege and related attorney work product doctrine codified in the CPLR, the recent Court of Appeals decision in *Appellate Advocates* made clear that the public policy of confidentiality underlying those two doctrines is carried over into FOIL through POL § 87(2)(a).[19] The protections under the attorney/client privilege and attorney work product doctrine are not lessened or overridden by the transparency goal underlying the FOIL statutes contained in the Public Officers Law.

1. POL § 87(2)(a).
2. *Matter of Wm. J. Kline & Sons v County of Hamilton*, 235 AD2d 44, 46, 663 NYS2d 339 [3d Dept. 1997].
3. See *Matter of Gartner v. New York State Attorney General's Office*, 160 AD3d 1087, 1091 [3d Dept. 2018].
4. *Matter of Gartner*, 160 AD3d at 1091-1092, *quoting Cioffi v. S.M. Foods, Inc.*, 142 AD3d 520, 522 [2nd Dept. 2016].
5. See *Steele v. NYS Department of Health*, 464 NY2d 925 [NY 1983].
6. Comm. on Open Govt FOIL-AO-19176, *quoting People v. Belge*, 59 AD3d 307, 309 [4th Dept. 1977].
7. *Spectrum Sys. Intl. Corp. v. Chemical Bank*, 78 NY2d 371, 377-378 [NY 1991].
8. *Spectrum Sys. Intl. Corp.*, 78 NY2d at 379.
9. *Matter of Appellate Advocates v. New York State Dept. of Corr. & Community Supervision*, 40 NY3d 547, 549 [NY 2023].
10. *Matter of Appellate Advocates*, 40 NY3d at 555.
11. 40 NY3d at 553.
12. *Id.* at 553.
13. *Id.* at 553.
14. *Id.* at 553.
15. *Id.* at 553.
16. *Id.* at 553.
17. *Id.* at 554.
18. *Id.* at 555.
19. *Id.* at 555.

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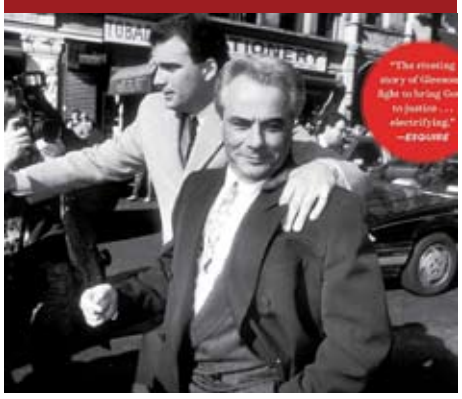
FOCUS: BOOK REVIEW

Clear and Concise and Chilling: The True Story of "The Gotti Wars"



Adrienne Flipse Hausch

"In Mid-December 1985, Paul Castellano, the boss of the Gambino Crime Family of La Cosa Nostra, was on trial with nine other gangsters in the Southern District of New York. It was one of those lumbering, multi-defendant affairs that the Southern District then specialized in. It had been underway in the imposing courthouse in Foley Square in Lower Manhattan for more than three months, and there seemed to be no end in sight. Castello was being defended in the case by Jimmy LaRossa, one of the best criminal trial lawyers of his day."

So begins the report of the saga dubbed the "Gotti Wars" by author John Gleeson.

John Gleeson is not just an author, but the man who lead the team that prosecuted John Gotti and others and is credited with bringing down La Cosa Nostra—"This Thing of Ours"—which terrorized New York for decades before an event triggered the outbreak of intergang violence that led to the prosecution of those in organized crime who operated in the shadows, and then in the light of day, to the horror of so many.

Those of us who are old enough know that a reference to "Sparks Steakhouse" brings a shiver to all who remember the killing of Paul Castellano and his driver Tommy Bilotti as John Gotti and Sammy Gravano literally watched.

No Hollywood movie comes close to the horror of the stunning reality of organized crime—and the telling of that story from the perspective of a young prosecutor who is thrust into the arena right here in the Eastern and Southern Districts of the United States District Courts of New York. (Gleeson also served as a Judge of the United States District Court for the Eastern District of New York from 1994 to 2016.)

Gleeson presents a clean and clear account of the massive case and its aftermath (including Gotti's time in prison) in which his participation was a critical part. However, more fascinating is the clear, heart-throbbing account of a crime syndicate that had control of so much of the industry of this country from the manufacture and distribution of consumer goods, the food industry, shipping, construction and more. Little was left of legitimate business or any business that was not terrified to defy any of the rival gangs of New York.

In addition to the jaw dropping account of the takedown of organized crime, Gleeson, who began his career as a federal prosecutor the minute he was eligible to do so, chronicles the journey of a young lawyer who wants nothing more than to be a prosecuting attorney. His insights into the federal courts are not simply educational—they humanize a system that can be intimidating to even experienced attorneys.

"Riveting" may be considered a cliché but it suits the *Gotti Wars* as each and every event, every description, and every narrative makes an extremely complex litigation understandable and intriguing.

Gleeson's narrative is blunt and uncensored, explaining the whys of so much of the federal court system for laymen and lawyers alike. The best word to describe this book remains "fascinating" and, oddly, "entertaining" because it is possible to forget that it is a true story and let our heads return it to that Hollywood sound stage.

And not to be missed: the twists and turns in the intrigue from informants to protected witnesses to corruption within the system itself.

Adrienne Flipse Hausch is the principal attorney of Adrienne Flipse Hausch & Associates, a litigation firm that concentrates in family and matrimonial law, criminal defense, and guardianship. She can be reached at (516) 741-2000.

Insights from Behind the Bench: Lunch and Learn with New York's Chief Judge

Madeline Mullane

On Monday, April 21, the Honorable Rowan D. Wilson, Chief Judge of the State of New York Court of Appeals, visited Domus for lunch and conversation with the NCBA Law Student and New Lawyers Committees. Prior to the question-and-answer session, attendees enjoyed a casual lunch and the ability to network and converse with colleagues and the Chief Judge. Hon. Vito DeStefano, Administrative Judge of the 10th Judicial District, Nassau County, was also in attendance and made himself available to speak and engage with all present.

Once everyone had the opportunity to fuel up with some lunch and coffee, Chief Judge Wilson sat down with Madeline Mullane, Director of the Mortgage Foreclosure Assistance Project and Pro Bono Attorney Activities, for the moderated question and answer portion of the program. The conversation started off with the Judge's favorite fruit (acai bowls—but specifically ripe blackberries) and preferred board games (unsurprisingly "Risk" was mentioned amongst others), and, for over an hour, evolved into a magnetic discussion based on moderated and audience-prompted questions.

The attendees asked questions that developed into fascinating conversations about the Judge Wilson's experience leaving private practice and ascending to the bench, the different prongs of his role as the highest judge in New York State, the qualities the judge looks for, and how he spends his time when he's not "Judge Wilson" but a dad and a husband. He also mused about his love of reading and writing, that if he was not a judge, he might be a professor of the English language.

Some dialog took place regarding the recent challenges to the judiciary and the Rule of Law. Judge Wilson imparted inspirational and wise words about the need for more education and involvement in civics and government as the foundation to increase civic knowledge and engagement in our society.

The opportunity to have "regular" conversations with esteemed members of our judiciary is a distinctive one that Nassau County Bar Association members are able to avail themselves to. Listening to Judge Wilson speak about his experiences and insights left all who joined in this unique and special lunch feeling inspired. Perhaps not only as law students or new lawyers, but as engaged and committed citizens.

A rather famous quote from the Dr. Seuss book, The Lorax, comes to mind, when considering Judge Wilson's remarks. "Unless someone like you cares a whole awful lot, nothing is going to get better, it's not."

Madeline Mullane is the Director of the NCBA's Mortgage Foreclosure Assistance Project, as well as Director of Pro Bono Attorney Activities. She can be contacted at mmullane@nassaubar.org.

NASSAU ACADEMY OF LAW

June 3 (Hybrid)

Dean's Hour: Intellectual Property Issues Related to Fanworks

With the NCBA Women in the Law and Intellectual Property Law Committees

12:30PM

1.0 CLE Credit in Professional Practice

NCBA Member FREE; Non-Member Attorney $35

Did you ever watch a television show and really hate the ending? Think you could write your own? Is that even legal? This CLE will discuss the intellectual property issues of fandom, including fanfiction, fanart, and cosplay, as well as the potential implications of sharing and selling such work online and at conventions like Comic Con, and what that means for fans creating works based on their favorite characters.

Guest Speaker:

Ariel E. Ronneburger, Cullen and Dykman LLP

June 10 (Hybrid)

Dean's Hour: Ads to Closing Statements: Ethical Considerations for the Personal Injury Attorney

With the NCBA Plaintiff's Personal Injury and Defendant's Personal Injury Committees

12:30PM

1.0 CLE Credit in Ethics & Professionalism

NCBA Member FREE; Non-Member Attorney $35

This program will cover a broad range of ethical issues relevant to personal injury attorneys to ensure that they maintain integrity in legal practice. Topics that will be covered include fee sharing, false or misleading advertising, handling of client funds, conflicts of interest, and solicitation of clients.

Guest Speaker:

Michael Markowitz, Law Office of Michael A. Markowitz, P.C.

June 11 (Hybrid)

Dean's Hour: Successfully Mediating a Labor Law Case

With the NCBA Plaintiff's Personal Injury and Defendant's Personal Injury Committees

12:30PM

1.0 CLE Credit in Skills

NCBA Member FREE; Non-Member Attorney $35

The court system has yet to return to pre-COVID norms. Cases take longer to get to trial; Labor Law cases can take five to seven years from inception to trial or settlement. Mediation is an effective way to resolve these cases in less time, without exorbitant trial expenses. This program lets participants know how to effectively work up your file and gear things with an eye toward mediation—and hopefully a settlement down the road—from the sign up of the case phase through discovery, filing of the note of issue, motion practice, submissions to a mediator, and the presentation of your case to the mediator.

Guest Speaker:

Anthony J. Emanuel, Bornstein & Emanuel, P.C.

June 17 (Hybrid)

Dean's Hour: How Trauma-Informed Lawyering Can Improve Your Law Practice

With the NCBA Lawyer Assistance Program

12:30PM

1.0 CLE Credit in Ethics & Professionalism

NCBA Member FREE; Non-Member Attorney $35

Being a trauma-informed lawyer is crucial for effective and ethical legal practice because it acknowledges the profound impact of trauma on individuals and allows you to tailor your legal work accordingly. Practicing law from a trauma-informed perspective can improve your practice by building trust and rapport with clients, improving client communication and disclosure, minimizing re-traumatization, improving legal outcomes, promoting a more just legal system, and preventing vicarious trauma for lawyers.

Guest Speakers:

Elizabeth Eckhardt, LCSW, PhD, NCBA Lawyer Assistance Program

Heather Davis Karabec, Legal Services of Long Island

June 18 (Hybrid)

Dean's Hour: Recent Executive Orders Concerning Title VI and Title IX in the Educational Setting

With the NCBA Education Law Committee

12:30PM

1.0 CLE Credit in Professional Practice

NCBA Member FREE; Non-Member Attorney $35

This program will examine recent executive orders and court decisions related to Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972, including litigation re Harvard University, DEI, and the Office for Civil Rights. The panel will discuss the impact of the executive orders on colleges and school districts and their attorneys, administrators, staff, and board members.

Guest Speakers:

Daniel Levin, Frazer & Feldman, LLP

Howard Miller, Bond, Schoeneck & King, PLLC

Lauren Schnitzer, Bond, Schoeneck & King, PLLC

PROGRAMS CALENDAR

July 9 (Hybrid)

Adventures in Preservation
3PM—5PM
2.0 CLE Credit in Skills
NCBA Member FREE; Non-Member Attorney $25

The ability to preserve the record for appellate review is critical for both trial and appellate attorneys. This program will provide an overview of the four golden rules of preservation and discuss practice tips on topics, including jury selection and prosecutorial misconduct in summations.

Guest Speakers:
Robert S. Dean (ret.), Center for Appellate Litigation
V. Marika Meis, Center for Appellate Litigation

July 10 (Hybrid)

Dean's Hour: The Court Closest to the People—Presiding and Practicing in Village Court
12:30PM
1.0 CLE Credit in Professional Practice
NCBA Member FREE; Non-Member Attorney $35

This program will offer an overview of law and procedure for elected and appointed village judges, attorneys practicing in the village courts, and village court clerks. Topics include judicial conduct and campaign ethics, special considerations for *pro se* and teen defendants, traffic and village code violations, pleas, warrants, sufficiency of accusatory instruments, speedy trial, bench trials, trials in absentia, dismissals in furtherance of justice, responsibility for court funds, and courtroom safety.

Guest Speaker:
Steven G. Leventhal, elected Village Justice for the Village of Lattingtown and Managing Member, Leventhal, Mullaney & Blinkoff, LLP

ON DEMAND PART 36 CERTIFIED TRAINING PROGRAMS

To serve as Guardian, Court Evaluator, or Attorney for Alleged Incapacitated Persons (API), pursuant to Article 81 of the Mental Health Law, a person is required to receive training approved by the Guardian and Fiduciary Services of the Office of Court Administration. Our Nassau Academy of Law On Demand programs include:

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- **Supplemental Needs Trustee**

Purchase includes seminar material, paperwork to be submitted to the court for proof of training, and CLE credit for completing the training.

Questions? Contact academy@nassaubar.org.

Dean's Hour: What Legal Practitioners Should Know to Protect LGBTQ+ Clients, Their Families, and Their Assets (HYBRID)

FRIDAY, JUNE 20
12:30 PM

1.0 CLE Credit in Diversity, Inclusion & Elimination of Bias

With the NCBA Access to Justice, Diversity & Inclusion, Law Student, and LGBTQ Committees; Mortgage Foreclosure Assistance Project; Legal Services of Long Island; The Richard C. Failla LGBTQ Commission of the New York State Courts; and the Volunteer Lawyers Project (a joint venture of Legal Services of Long Island and the NCBA)

Celebrate Pride Month by learning something new and supporting the LGBTQ community. This program will provide information that all attorneys should know, including recognizing concerns that are particularly acute for LGBTQ+ clients and their families: documents everyone should have, including estate planning concerns, protections when healthcare or disability are a concern, LGBTQ+ families and their children, the challenges of same sex couples whether married or single, and the possibility of legal same sex marriage not being recognized nationally in each state.

GUEST SPEAKERS:
Jess A. Bunshaft, Chair, NCBA LGBTQ Committee
Johanna C. David, Forchelli Deegan Terrana LLP
Concetta G. Spirio (she/her), Collaborative Divorce Attorney and Mediator

FREE FOR ALL ATTENDEES

These programs are appropriate for newly admitted and experienced attorneys. Newly admitted attorneys should confirm that the format is permissible for the category of credit.

The Nassau Academy of Law provides CLE financial aid and scholarships for New York attorneys in need of assistance. For more information, please email academy@nassaubar.org at least five business days prior to the program.

FOCUS: ARTIFICIAL INTELLIGENCE

Contracts and Generative AI: Legal Risk Assessment Under New York and U.S. Law

Michael Patrick Schmitt

In New York's evolving digital economy, procurement contracting has transformed from a manual, compliance-heavy process into a digitally enabled strategic function. The rise of generative artificial intelligence (AI) in contract lifecycle management is accelerating this evolution, redefining how legal teams and procurement professionals draft, negotiate, and govern agreements.

As these technologies mature, however, New York attorneys and contracting officers must ensure their use remains compliant with federal privacy law, state-level data security mandates, and professional rules of conduct.

Understanding Generative AI in Legal Contracting

Generative AI tools—such as GPT-4, Gemini, and custom legal platforms—are built on large language models trained to recognize and reproduce sophisticated legal and contractual language. These tools are being used to automate initial drafts of contracts, redline clauses, summarize terms, and benchmark against internal playbooks.

New York attorneys using these tools must remain compliant with the New York Rules of Professional Conduct, particularly:

- Rule 1.1: A lawyer shall provide competent representation, including technological competence.[1]
- Rule 1.6: Confidential information must not be revealed or exposed without client consent.[2]
- Rule 5.3: Lawyers are responsible for ensuring that the conduct of nonlawyers, including AI vendors and tools, is compatible with the lawyer's professional obligations.[3]

Use of generative AI in this setting can be valuable, but it requires structured supervision, legal validation, and data privacy controls.

Privacy, Security, and New York-Specific Legal Concerns

As of 2025, New York has not enacted a comprehensive consumer data privacy law. However, Assembly Bill A4947, the New York Privacy Act, remains under consideration.[4] If enacted, it would impose duties of data minimization, purpose limitation, and transparency on companies collecting personal data from New York residents, similar to California's CCPA and the EU's GDPR.

Until then, the Stop Hacks and Improve Electronic Data Security (SHIELD) Act remains the enforceable data security framework.[5] It requires businesses that own or license private information of New York residents to implement reasonable safeguards for data protection, particularly when working with vendors or technology providers.

Organizations transmitting contract data to generative AI platforms must consider whether the data includes names, financials, proprietary terms, or other identifiers triggering SHIELD Act protections.

Under New York Judiciary Law § 478, non-attorneys may not practice law.[6] If an AI-generated contract is deployed by procurement or business staff without attorney supervision, it may constitute unauthorized practice. For attorneys, reliance on AI without validation may raise ethical concerns under Rules 1.1 and 1.3, regarding diligence and competence.[7] Best practice: Attorneys should supervise every step of AI-involved drafting, document how outputs were reviewed, and clearly communicate the role of AI in governance documents and retainer agreements.

Legal Risk Assessment in a New York Procurement Context

Generative AI can produce contracts that include unenforceable provisions under New York law, such as overly broad indemnities, perpetual renewals, or restrictive covenants in violation of public policy.[8] Attorneys must validate that liquidated damages clauses do not impose penalties;[9] governing law and venue clauses comply with the CPLR;[10] and arbitration clauses are enforceable under CPLR Article 75.[11]

Generative tools often default to multi-jurisdictional templates. In New York contracts, especially those involving public entities, specific venue and law clauses are critical. Typically, New York County Supreme Court or Albany County is designated, with governing law clauses explicitly citing New York law.[12]

All contracts must be preserved in compliance with New York's Civil Practice Law and Rules (CPLR) and relevant Records Retention and Disposition Schedules for public entities.[13]

AI-assisted contracts should include audit trails of AI-generated language modifications; documentation of attorney oversight for each version; and logs showing tool usage, prompts, and personnel involved.

Generative AI Platforms Used in NY Legal Workflows

Prominent tools include:

- DraftPilot—tailored for public procurement clause drafting
- Harvey AI—used for redlining and risk scoring in legal departments
- ChatGPT Enterprise—summarization and policy training in secure environments
- Thomson Reuters CoCounsel Core—integrated with New York case law
- Icertis ExploreAI—embeds NYS compliance logic in contract workflows[14]

These platforms must be reviewed through vendor risk assessments, privacy reviews, and legal compliance evaluations, especially for data localization.

Governance Strategies for NY-Based Legal Teams

Legal teams should first perform regular, risk-based audits of AI outputs to assess legal accuracy and enforceability. Second, it is essential to establish written internal policies governing AI tool usage, oversight, and documentation. Third, retainer and procurement agreements should be updated to clearly disclose when AI is used in drafting or negotiation. Finally, legal and procurement teams should receive ongoing training to ensure they understand ethical obligations and technical limits.

The Path Forward: Strategic Use of AI, Not Blind Reliance

AI is a powerful legal assistant, but

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not a lawyer. While generative tools can support contract workflows, attorneys remain the gatekeepers of fiduciary responsibility, legal accuracy, and professional conduct. In a jurisdiction like New York, where procurement integrity and legal standards are high, success will depend not on how advanced your AI is, but how deliberately and lawfully you deploy it.

Conclusion

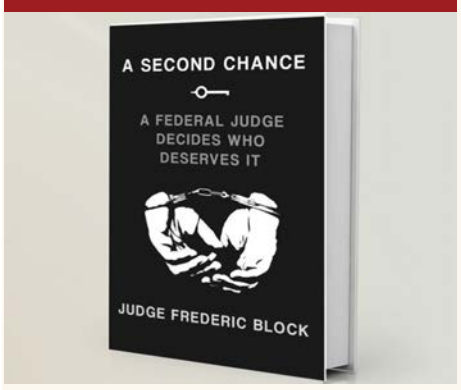
Across New York, from hospitals and government agencies to fintech startups and universities, AI is reshaping legal contracting. But its use must be grounded in legal supervision, statutory compliance, and professional ethics. By leading with competence, care, and accountability, New York attorneys can ensure generative AI becomes a trusted partner, not a legal risk.

1. New York Rules of Professional Conduct, Rule 1.1, https://nycourts.gov/rules/jointappellate/Part1200.pdf.
2. Ibid., Rule 1.6.
3. Ibid., Rule 5.3.
4. New York Privacy Act, Assembly Bill A4947 (2023), https://www.nysenate.gov/legislation/bills/2023/A4947.
5. New York SHIELD Act, N.Y. Gen. Bus. Law § 899-bb, https://www.nysenate.gov/legislation/laws/GBS/899-BB.
6. N.Y. Judiciary Law § 478, https://www.nysenate.gov/legislation/laws/JUD/478.
7. NYRPC Rule 1.3 – Diligence.
8. BDO Seidman v. Hirshberg, 93 N.Y.2d 382 (1999).
9. Truck Rent-A-Center v. Puritan Farms 2nd, 41 N.Y.2d 420 (1977).
10. CPLR 501 and 327.
11. CPLR Article 75.
12. NYS OGS Standard Contract Templates.
13. New York State Archives, https://www.archives.nysed.gov/records/retention-schedules.
14. Vendor websites: https://www.icertis.com/, https://harvey.ai/, https://www.draftpilot.com/.

Michael Patrick Schmitt is an attorney based in Sea Cliff, with a strong foundation in business and technology, holding both a J.D. and an MBA and having been an IT consultant at PwC, Deloitte, Oracle and Computer Sciences Corporation. He can be reached at michaelpschmittesq@gmail.com.

FOCUS: BOOK REVIEW

Second Chance Requires More Than a Glance



Joseph W. Ryan, Jr.

Federal Judge Frederic Block's newly released book, *Second Chance*,[1] has become a "hot item" for practitioners, prosecutors. and judges—as a frank, compelling assessment of the "compassionate release" program under the First Step Act.[2] Since its 2019 enactment, more than 30,000 inmates have been released prior to the expiration of their sentence. Judge Block hails the First Step Act as a "resounding success…[and] it is imperative that the states also 'step up to the plate.'"[3]

Profiling six cases on his calendar, Judge Block explains—in frank detail—why he granted "compassionate releases" to some defendants and why not to others.

Second Chance offers a rare, inside view of the reasoning process the judge applied when confronted with competent, opposing submissions and attempting to comply with guidance divined from Second Circuit holdings.

Far from a boring textbook style, Judge Block draws on his creative talent as a former musical playwright, accomplished pianist and author of several novels to make his points entertaining. Betsy, the Judge's attractive girlfriend at that time, decided to watch the Peter Gotti Mafia trial where the defendants' wives sat on one side of the courtroom, while the defendants' girlfriends sat on the opposite side. Unwittingly, Betsy sat among the girlfriends causing consternation among the defendants as to who Betsy "belong to." When defense counsel explained that Betsy was the Judge's girlfriend, "They were astonished …their respect went through the f-----g roof."

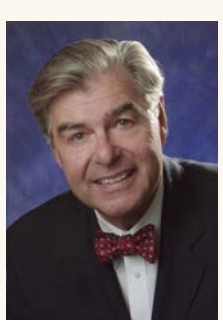
Second Chance offers more than "compassionate release." For example: "I can legally buy a handgun in many states, but I cannot possess one in New York without a New York license…a gun-carrying citizen travelling across state lines may be lawfully in possession of a firearm in one state but not in another,[and may be] exposed to criminal prosecution…Our country's gun culture has been bolstered by the effective lobbying efforts of the NRA to keep Congress at bay. The result is the highest rate of gun deaths in the developed world."

Other topics make *Second Chance* a "page turner." The sudden and unexpected death of a judicial colleague who sat with Judge Block on a Ninth Circuit appeal panel may have precluded a reversal advocated by Judge Block's dissent.

Death threats against judges have risen. In fact, Mafia hit man Anthony "Gaspipe" Casso threatened to kill Judge Block after the judge imposed a life sentence as a result of the judge's denial of Casso's motion to enforce a cooperating witness agreement. Twenty-two years later Judge Block regretted his recent ruling against Casso: "I should have granted Casso's compassionate release motion—even though he threatened to kill me—when he was now a feebleminded, terminally ill, old man who just wanted to die at home."

One thing is certain: no one will regret ever reading *Second Chance*.

1. Frederic Block, A Second Chance: A Federal Judge Decides Who Deserves It, 238 (1st ed. 2024).
2. https://www.bop.gov/inmates/fsa/overview.jsp.
3. Judge Block is a Past President of SCBA.



Joseph W. Ryan, Jr. served as President of the Nassau County Bar Association from 1993 to 1994. He can be reached at joeryanlaw@earthlink.net.

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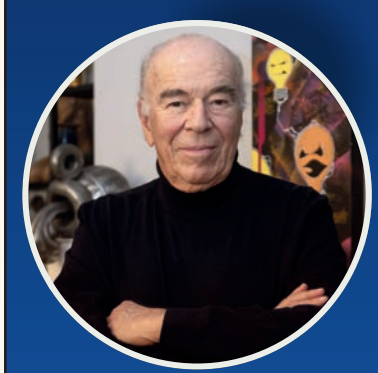

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FOCUS: LAW AND AMERICAN CULTURE

The Case That Started It All

Rudy Carmenaty

With the Supreme Court's term having recently concluded, various constitutional questions were decided upon. The high court's authority to determine what does or does not pass muster under the Constitution can be traced to *Marbury v Madison*, an 1803 decision from John Marshall.[1]

Thanks to *Marbury v Madison*, the Court acquired the power of judicial review, the capacity to declare acts of Congress unconstitutional. This ruling furnishes the basic building block of constitutional adjudication. Even if the particulars don't readily come to mind, the holding in the case is ingrained in our collective psyches.

While contemplated by Alexander Hamilton in Federalist No.78, judicial review is not found in the Constitution as written.[2] Rather it was extrapolated from Marshall's reading of the document, with Marshall proclaiming: "It is emphatically the province and duty of the judicial department to say what the law is."[3]

In a single stroke, Marshall made his Court the arbiter of what the Constitution means and put it on a par with Congress and the Executive. Once an anemic afterthought in the body politic, with Marshall at the helm the federal judiciary acquired the gravitas necessary to develop a sustained corpus of law for a fledgling nation.

He began his tenure as a lame duck appointment by John Adams, as the latter was on his way out in 1801. John Marshall was many things, but he was never lame. He took a job which no one wanted, and which his immediate predecessors, no doubt all able men, had frankly failed at.[4]

From this inauspicious start, Marshall served for 34 years as Chief, longer than any of his predecessors or eventual successors. Nor was he merely marking time. Under Marshall more than a thousand opinions were issued, of which he authored roughly half.

Marshall also believed the Court should speak with one voice. To that end, he altered the mode of decision-making allowing the Court to present clear, concise determinations. Prior to his arrival, the justices delivered seriatim opinions, wherein each outlined his view of a given case and the governing principle.

Marshall changed all that. Going forward, the Supreme Court would instead issue a sole majority opinion. When expounding on a freshly minted Constitution, this innovation proved invaluable. More to the point, Marshall was a dedicated institutionalist.

What George Washington represents to the presidency, Marshall came to epitomize in the role of the Chief Justice. Not surprisingly, Marshall's life-long hero was General Washington, dating back to his days as a junior officer during the Revolutionary War.

Remembered for being charismatic, gracious, and utterly persuasive, Marshall was a formidable politician. A Federalist, Marshall stood in stark opposition to the Jeffersonian Republicans.[5] Thomas Jefferson, Marshall's second cousin once removed, is the one man in public life the convivial Marshall actively despised.[6]

Their contempt was mutual. It would find its most consequential manifestation in *Marbury v Madison*. Marshall's ruling was widely seen as a stinging reproach to Jefferson's administration. Although the specifics have been long neglected, it should be remembered *Marbury v Madison* was born of partisan intrigue.

The controversy stemmed from the fallout following the election of 1800. This was the nascent stage of American party politics, as rival factions, the Federalists and the Republicans, vied for control of the national government. The Federalists were anxious to hold on to some sliver of influence after their defeat at the polls.

Congress enacted the Judiciary Act of 1801 in a lame duck session. At the eleventh hour, Adams handed out a flurry of patronage judicial posts to party stalwarts so as to thwart Jefferson. The recipients of Adams' largess are known to history as the "Midnight Judges."

Marshall's appointment was made with this same calculation in mind. Ironically, the man whom it fell to deliver the commissions was none other than the Secretary of State, one John Marshall. Marshall was then pulling double duty as he was simultaneously serving as the newly installed Chief Justice.

Marshall unwisely deputized his brother James with the task of hand-delivering the parchments containing these controversial commissions. William Marbury of Maryland was destined to be disappointed as he failed to receive his anticipated appointment prior to the expiration of Adams' term on March 4, 1801.[7]

This dereliction prevented Marbury from assuming a coveted post as a justice of the peace in the District of Columbia. Jefferson ordered James Madison, Marshall's successor as Secretary of State, to halt further distribution contending that any undelivered parchments rendered the assignments contained therein void.

Marbury sued in the Supreme Court as a matter of original jurisdiction. Marbury wanted to obligate Madison to fulfill the commitment made to him by the outgoing Adams administration. At issue was when did his commission take-effect? When sealed by John Marshall or when conveyed by James Marshall?

The case put Marshall in a quandary. If he sided with Marbury, he would have no choice but to issue a writ of mandamus. Yet the judiciary, unlike the Executive, has no means of enforcement if and when Madison refused to comply with said writ. Siding against Marbury would embolden Jefferson still more.

It seemed like a no-win situation. Marshall, however, fashioned a clever solution which resolved this dilemma effectively check-mating Jefferson, while enhancing the Court's power. Marshall's handiwork is a masterpiece of judicial craftsmanship.

He achieved this bit of Jiu-jitsu by holding that the Court did not possess the authority to grant Marbury the relief he sought. Marshall's reading of the applicable statute, the Judiciary Act of 1789, provided the twist that occasioned judicial review, conferring upon his Court its penultimate authority.

The written opinion is detailed reasoning at its finest. At the outset, Marshall determines if Marbury is entitled to the undelivered commission. Marshall concludes he is. The parchment was properly prepared and issued, signed by the President (Adams) and sealed by the Secretary of State (Marshall).

Jefferson was mistaken when asserting that non-delivery, not having the parchment already placed in Marbury's eager hands, renders the commission a nullity. Marshall rules delivery a mere formality, not a prerequisite.[8] Marbury has a clearly defined property right entitling him to his commission.

But does there exist a mechanism to address his cause of action? Marshall holds there most certainly is, a writ of mandamus should suffice. A writ of mandamus requires a government official to fulfill his duties. What's more, a statutory basis exists for empowering the Court to issue just such a writ.

The Judiciary Act of 1789, which created the federal courts, under Section 13 contemplates and permits this action:

> That the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, where a state is a party, except between a state and its citizens; and except also between a state and citizens of other states, or aliens, in which latter case it shall have original but not exclusive jurisdiction. And shall have exclusively all such jurisdiction of suits or proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, as a court of law can have or exercise consistently with the law of nations; and original, but not exclusive jurisdiction of all suits brought by ambassadors, or other public ministers, or in which a consul, or vice consul, shall be a party. And the trial of issues in fact in the Supreme Court, in all actions at law against citizens of the United States, shall be by jury. The Supreme Court shall also have appellate jurisdiction from the circuit courts and courts of the several states, in the cases herein after specially provided for; and shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction, and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States.[9]

The language contained in Section 13 is somewhat ambiguous as to whether mandamus is available in matters of original jurisdiction or is restricted to the appellate clause in the statute. Marbury contends Section 13 grants the Court authority in both original and appellate jurisdiction.

Marshall again resolves this ambiguity in Marbury's favor. So far so good. Marbury seems well on his way to becoming a Justice of the Peace as the determinations rendered thus far have gone in his favor. The Court is authorized to issue a writ to compel delivery.

Yet, and here is the rub, Section 13, per Marshall's reading, enlarges the Court's jurisdiction beyond that intended under the Constitution. He concludes, after this painstaking analysis, if Section 13 authorizes a writ of mandamus in matters of original jurisdiction it does so in violation of the explicit language contained in Article III.

Article III, Section II delineates the Supreme Court's original jurisdiction as follows:

> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.[10]

The Court has original jurisdiction only over matters where a state is a party to a lawsuit or where the case or controversy involves foreign dignitaries. Marbury, an American citizen, in this instance is challenging Madison's refusal to deliver the disputed commission.

Article III, Section II, does not grant the Court the ability to hear this case. Section 13 improperly enlarges the ambit of original jurisdiction. Marshall rightfully determines that Congress by statute cannot increase the Court's original jurisdiction beyond what is specified in the Constitution itself.

The Court has no alternative but to strike down Section 13. In so doing, Marshall curtails his Court's own jurisdiction. Marbury loses his cause of action because, in an ironic turn, the Court eschews power authorized under a duly enacted statute in order to remain faithful to the Constitution's text:

> Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument.[11]

As a political actor, Marshall triumphed by navigating through a thicket, partly of his own making. If Marbury's commission had been timely delivered there would have been no dispute to speak of. An added bonus was the delight Marshall took in holding the administration to account.

Much to Jefferson's chagrin, Marshall had outflanked him. Jefferson did get the tangible result he wanted, the denial of Marbury's commission. Nonetheless, it proves a pyrrhic victory. As Marshall denies Jefferson the opportunity to publicly rebuff him or make his court appear impotent in the face of executive authority.

Neither Jefferson nor the Congress were given cause to call for Marshall's impeachment or removal. If that were not enough, Marshall's Court has now accrued the ability to declare what is and is not in conformity with the very Constitution the president has taken an oath to "preserve, protect and defend."[12]

To provide additional context, the case was heard in 1803. The Judiciary Act of 1802, passed by a Republican Congress, reorganized the entire federal judiciary. The act postponed the Court's term, which prevented Marshall from hearing Marbury's case during the prior calendar year.

As the nation's most prominent Federalist, Marshall sought not only to mollify Jefferson, but as well stave-off a hostile Congress from eviscerating the federal judiciary. After all, under Article III the Court's composition and its jurisdiction is determined by, and all inferior courts are creatures of, Congress.[13]

Marbury v Madison demonstrates Marshall's tactical genius. Marshall manages to do more than artfully avoid a nasty political confrontation. He affirms that the Constitution is supreme, and of equal import, it is in the hands of the Supreme Court to oversee and interpret constitutionality in each and every circumstance.

The Supreme Court would not again declare an act of Congress unconstitutional until 1857.[14] By then Marshall had been dead for twenty-two years, still the die had been cast. *Marbury v Madison* proved a harbinger of things to come. It represents the beginning, not the culmination, of John Marshall's achievement.

This article is dedicated to the Hon. Gerard Lynch, Senior Judge of the U.S. Court of Appeals for the Second Circuit, who taught me all about Marbury v Madison and constitutional law long ago at Columbia Law School.

1. *Marbury v Madison*, 5 U.S. (1 Cranch) 137 (1803).
2. Federalist No. 78, "The Judiciary Department" dated May 1788, Hamilton, writing under the alias Publius, advocates for the federal judiciary to have this authority as it is the "least dangerous branch" and must rely on the other two for enforcement.
3. *Marbury v Madison*, at 177.
4. John Jay was the first Chief serving from 1789 until 1795. He was followed by John Rutledge, who though receiving a recess appointment was not confirmed, in 1795. Oliver Ellsworth joined the Court in 1796 and resigned due to poor health in 1800.
5. Today's Democratic party traces its origins to Jefferson's Republicans.
6. Marshall and Jefferson share a common bond as members of the distinguished Randolph dynasty of Virginia.
7. The quadrennial transition of presidential administrations from 1793 to 1933 took place on March 4th. With the passage of the Twentieth Amendment, the interregnum was shortened to January 20th.
8. *Marbury v Madison*, supra.
9. The Judiciary Act; September 24, 1789, Sec. 13, Yale Law-Avalon Project, at https://avalon.law.yale.edu.
10. U.S. Constitution, Article III, Section II.
11. *Marbury v Madison*, at 180.
12. U.S. Constitution, Article II, Section I, Clause VIII.
13. U.S. Constitution, Article II, Section VIII, and Article III, Section I.
14. *Dred Scott v Sandford*, 60 U.S. 393 (1857).

Rudy Carmenaty is Deputy Commissioner of the Nassau County Department of Social Services. He is the President-Elect of the Long Island Hispanic Bar Association. Rudy can be reached at Rudolph.Carmenaty@hhsnassaucountyny.us.

Wellness Tips for Lawyers

The legal profession is known for its demanding and stressful nature, which can significantly impact lawyers' well-being. Here are some wellness tips tailored to male lawyers to help them thrive both professionally and personally:

1. Prioritize Physical Health
- Exercise Regularly—Aim for 30 minutes of moderate-intensity exercise most days of the week.
- Eat a Balanced Diet—Focus on whole, unprocessed foods.
- Get Enough Sleep—Aim for seven to nine hours.
- Hydrate—Drink plenty of water throughout the day.

2. Nurture Mental Well-being
- Set Boundaries—Learn to say "no."
- Seek Support—Don't hesitate to reach out. LAP is here for you!
- Make time for activities you enjoy outside of work.
- Limit Social Media—Excessive use can increase anxiety and stress.

3. Build Strong Social Connections
- Make time for friends and family.
- Engage in professional networking and social events.
- Volunteer—Get involved in a cause you care about.

Consistency is Key: Integrate these wellness practices into your daily routine for long-term benefits.
By prioritizing your physical and mental well-being, you can build a more balanced, fulfilling, and sustainable career in the legal profession.

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The NCBA Lawyer Assistance Program is directed by Beth Eckhardt, PhD and the Lawyer Assistance Committee is chaired by Dan Strecker, Esq.
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Annual Dinner Gala

On May 10, 350 Members and guests gathered at the Cradle of Aviation Museum for the NCBA 125th Annual Dinner Gala. The evening featured gourmet food, live music, recognition of 2025 Distinguished Service Medallion honoree, Hon. John Gleeson (ret.), and a celebration of esteemed members who have practiced law for fifty, sixty and seventy years.

Photos by Hector Herrera

2024-2025 Sustaining Members

The NCBA is grateful for these individuals who strongly value the NCBA's mission and its contributions to the legal profession.

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Your contribution enables the NCBA to continue its legacy for years to come, and demonstrates a commitment to the NCBA and dedication to the legal profession.

To become a Sustaining Member, call the NCBA Membership Office at (516) 747-4070.

May 1, 2025 Law Day Awards Dinner

The Thomas Maligno Pro Bono Attorney of the Year Award was presented to Evelyn Lee by Samantha Flores, NCBA Mortgage Foreclosure Assistance Project Settlement Conference Coordinator and Staff Attorney.

NCBA President Daniel W. Russo presented the Liberty Bell Award to CARECEN, the Central American Refugee Center.

The Peter T. Affatato Court Employee of the Year Award was presented to John Cialone, Associate Court Clerk of Nassau County Supreme Court, by Nassau County Administrative Judge Vito M. DeStefano.

Major Gerald Gangaram, U.S. Army (Ret.) gave an inspirational keynote speech on this year's Law Day theme, *The Constitution's Promise: Out of Many, One*.

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CALENDAR | COMMITTEE MEETINGS

COMMITTEE CHAIRS

Access to Justice	Samuel J. Ferrara and Rezwanul Islam
Alternative Dispute Resolution	Christopher J. McDonald
Animal Law	Harold M. Somer and Michele R. Olsen
Appellate Practice	Tammy Feman and Andrea M. DiGregorio
Asian American Attorney Section	Jennifer L. Koo and Michael Kwon
Association Membership	Adina L. Phillips and Ira S. Slavit
Awards	Daniel W. Russo
Bankruptcy Law	Scott R. Schneider
Business Law Tax and Accounting	Raymond J. Averna
By-Laws	Ira S. Slavit
Civil Rights	Patricia M. Pastor
Commercial Litigation	Danielle J. Marlow and Michael H. Masri
Committee Board Liaison	Hon. Maxine S. Broderick
Community Relations & Public Education	Ingrid J. Villagran and Melissa A. Danowski
Conciliation	Karl C. Seman
Condemnation Law & Tax Certiorari	Robert L. Renda
Construction Law	Adam L. Browser and Robert J. Fryman
Criminal Court Law & Procedure	Brian J. Griffin
Cyber Law	Nicole Osborn
Defendant's Personal Injury	Brian Gibbons
District Court	Matthew K. Tannenbaum
Diversity & Inclusion	Hon. Maxine Broderick and Hon. Linda Mejias-Glover
Education Law	Liza K. Blaszcyk and Douglas E. Libby
Elder Law, Social Services & Health Advocacy	Christina Lamm and Dana Walsh Sivak
Environmental Law	John L. Parker
Ethics	Thomas J. Foley
Family Court Law, Procedure and Adoption	Tanya Mir
Federal Courts	Michael Amato
General, Solo & Small Law Practice Management	Jerome A. Scharoff
Grievance	Robert S. Grossman and Omid Zareh
Government Relations	
Hospital & Health Law	Kevin P. Mulry
House (Domus)	Christopher J. Clarke
Immigration Law	Sylvia Livits-Ayass
In-House Counsel	
Insurance Law	Michael D. Brown
Intellectual Property	Elizabeth S. Sy
Judicial Section	Hon. Linda K. Mejias-Glover and Hon. Ellen B. Tobin
Judiciary	Dorian R. Glover
Labor & Employment Law	Lisa M. Casa
Law Student	
Lawyer Referral	Peter H. Levy
Lawyer Assistance Program	Daniel Strecker
Legal Administrators	
LGBTQ	
Matrimonial Law	Joseph A. DeMarco
Medical Legal	Nicole M. LaGrega
Mental Health Law	Jamie A. Rosen
Municipal Law and Land Use	
New Lawyers	Andrew B. Bandini
Nominating	Sanford Strenger
Paralegal	
Plaintiff's Personal Injury	Steve Z. Gokberk
Publications	Cynthia A. Augello
Real Property Law	
Senior Attorneys	Peter J. Mancuso
Sports, Entertainment & Media Law	Lauren Bernstein
Supreme Court	Clifford S. Robert
Surrogate's Court Estates & Trusts	Maria L. Johnson and Cheryl L. Katz
Veterans & Military	Gary Port
Women In the Law	Rebecca Sassouni and Melissa Holtzer-Jonas
Workers' Compensation	Craig J. Tortora

TUESDAY, JUNE 4
Women in the Law
12:30 p.m.

WEDNESDAY, JUNE 5
Real Property
12:30 p.m.

THURSDAY, JUNE 6
Hospital & Health Law
8:30 a.m.

Publications
12:45 p.m.

Community Relations & Public Education
12:45 p.m.

TUESDAY, JUNE 11
Education Law
12:30 p.m.

Labor & Employment Law
12:30 p.m.

WEDNESDAY, JUNE 12
Intellectual Property
12:30 p.m.

Commercial Litigation
12:30 p.m.

Matrimonial Law
5:30 p.m.

THURSDAY, JUNE 13
Diversity & Inclusion
6:00 p.m.

THURSDAY, JUNE 20
Association Membership
12:30 p.m.

FRIDAY, JUNE 21
Sports Entertainment and Media Law
12:30 p.m.

TUESDAY, JUNE 25
Plaintiff's Personal Injury
12:30 p.m.

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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.

Schroder & Strom, LLP is proud to announce that **Anthony Forzaglia** has been promoted to Partner; **Michael P. Spellman** has been admitted to the NYS Bar, thereby beginning his position as an Associate Attorney; and Partner Joseph C. Packard has been named 2025 Industry Leader by *New York Real Estate Journal*.

Meyer, Suozzi, English & Klein, P.C. Managing Attorney **Patricia Galteri** accepted the Corporate Partner of the Year Award on behalf of the firm at The Viscardi Center's 58th Annual Celebrity Night held on April 28. Meyer Suozzi was recognized for its nearly 30 years of steadfast support for The Viscardi Center and its mission to educate, employ, and empower individuals with disabilities.

Forchelli Deegan Terrana LLP welcomes **Adam L. Browser** to the firm's Construction practice group as a Partner. The firm will be recognized at *Long Island Business News*' 2025 Real Estate, Architecture & Engineering Awards.

Bond, Schoeneck & King PLLC is pleased to announce that effective May 5, the firm's Melville and Garden City offices have combined to become an even stronger Long Island presence of over 40 attorneys and 20 professional staff. The Bond Long Island office is located at 68 South Service Road, Suite 400, Melville, NY 11747, on the border of Suffolk and Nassau Counties.

Robert S. Barnett, Founding Partner of Capell Barnett Matalon & Schoenfeld LLP, is presenting "Entity Redemption & Buy-Sell Agreements After Connelly" at the AICPA & CIMA Engage 25 Conference in Las Vegas, and "Mastering Partnership Distributions: Minimizing Tax Liability" for MyLawCLE on June 20. Partner **Yvonne R. Cort** will be speaking on a panel at the NYU Tax Controversy Forum in June on "Handling Disputed Tax Issues in Bankruptcy" and presenting a webinar on June 17 on NYS residency, including tips and traps for taxpayers moving out of New York. The firm is proud to sponsor the Sisters of St. Joseph 5K Walk to raise funds for the charitable work of the Sisters of St. Joseph, including outreach in education, ecology, and justice.

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