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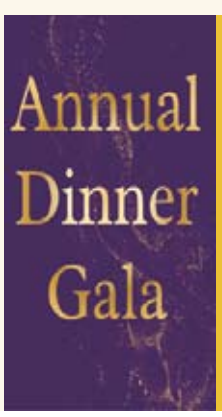

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A Home for Nassau County's Legal Community

Long hours, demanding clients, and constant deadlines can make the most dedicated attorney feel like they are practicing on their own. The Nassau County Bar Association exists to ensure no lawyer has to do it alone. Domus—the long-time "home" for NCBA Members is a hub for networking, community, knowledge, and comfort. Whether for educational meetings or social gatherings, Domus serves as the center of the Association's community. Its dining room is open to Members and guests throughout the week, and rooms are available for meetings and private gatherings. But the value of the Association extends far beyond its physical space.

Grow Your Business

The sense of connection is not just social—it's professional. For many Nassau County attorneys, membership in the NCBA is one of the most effective ways to grow their practice. With more than a dozen social events held each year—from BBQ on the Lawn, WE CARE Golf & Tennis Classic, and Judiciary Night in the fall, to Lunar New Year Celebration, LAP Walkathon, and Dinner Gala in the spring—Members can connect with colleagues, law students, judges, community leaders, and more.

Members can also receive client referrals from the Lawyer Referral Information Service, join the Assigned Counsel 18-B Criminal and Family Law Panels to represent indigent defendants, and author articles and advertise to promote their practice in *Nassau Lawyer*, the Association's monthly journal.

Continuing Legal Education

Alongside business development, the Association helps attorneys stay sharp in an ever-evolving legal landscape. With over 100 live classes offered each year, Members can continue to enhance their learning. CLE is available through the Nassau Academy of Law and 50+ committees, with most programs offered FREE to Members and in hybrid format, giving attendees the flexibility to receive CLE credit in a remote setting.

NCBA Members can also earn up to 12 FREE credit hours of recorded CLE On Demand in an extensive variety of practice areas at their own convenience. Members interested in presenting a timely and unique CLE program should contact Academy of Law Director Natasha Dasani at (516) 747-4077.

Leadership and Involvement

For those looking to take a more active role in the profession, the Association offers numerous opportunities to get involved. NCBA Members can cultivate close relationships and referrals through participation in its over 50 substantive and working committees that provide the opportunity to meet with leaders in the legal field and other attorneys who practice in their area of law. There is a place for everyone. Committee involvement helps Members make connections with one another and gain new perspectives.

Connection and Community

Beyond networking and professional development, Members say the most meaningful benefit is the sense of community that the NCBA creates. Much of that connection and collaboration happens inside Domus, the Association's home, just steps from the Mineola courthouses and County buildings. Domus is designed to support attorneys at every stage of their careers, giving Members access to meeting facilities, and offering the convenience of in-house dining.

Members also connect with colleagues and neighbors by volunteering for the Mortgage Foreclosure Assistance Project, providing pro bono legal services to Long Island homeowners at risk of losing their residences, and supporting the fundraising and public events of WE CARE, the charitable arm of the Association.

Supporting the Whole Lawyer

The Bar's support extends to one of the profession's most pressing challenges: mental health. The NCBA Lawyer Assistance Program (LAP) provides confidential services to lawyers, judges, law students, and their immediate families struggling with alcohol or drug abuse, depression, anxiety, stress, as well as other addictions and mental health issues. The legal profession can be isolating and demanding. LAP ensures that no member of the legal community has to face these challenges alone.

Join the Family

Whether attorneys are looking to expand their practice, stay current in the law, or connect with colleagues, the NCBA provides a place to belong. The Association offers something special—the chance to be a part of a welcoming and supportive community of nearly 4,000 legal professionals who share a passion for not only the law, but for helping others in the community.

For more information on NCBA Member benefits, contact Membership Department at (516) 747-4070.

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What It Means to Be a Lawyer

FROM THE PRESIDENT

James P. Joseph

As lawyers, we begin our careers with an oath. Not to a client. Not to a firm. Not to a political party or a particular cause. We swear to support the Constitution of the United States and the Constitution of the State of New York.

It is easy, over time, to treat that oath as ceremonial—something recited once and then filed away in memory. But it is not ceremonial. It is a statement of identity. It is a promise about how we will wield the privilege we have worked hard to obtain.

Upholding that oath becomes most critical in moments like these. In recent weeks, there has been renewed attention on the role of the judiciary and the pressures it faces. Public criticism of judges, sometimes pointed, sometimes personal, has increased in volume and frequency. Individual judges have found themselves at the center of intense scrutiny simply for carrying out their responsibilities within the judicial system.

Reasonable people can and will disagree with court decisions. That is part of our system. But as lawyers, our oath calls us to something more than agreement or disagreement with outcomes. It requires us to support the system itself.

That includes respect for the role of an independent judiciary, adherence to the rule of law, and a recognition that the legitimacy of our system depends not on any one decision, but on the integrity of the process as a whole.

Charles Hamilton Houston, often called "The Man Who Killed Jim Crow," who is profiled in this issue, once wrote that "a lawyer is either a social engineer or a parasite on society." There is no middle ground in that framing. It is a stark choice.

Because it reminds us that being a lawyer is not just a job. It is a profession, one that carries responsibilities beyond any individual case or client. And those responsibilities do not disappear when the environment becomes more difficult, when it is easier or "safer" to say nothing. If anything, our responsibilities become more important during such times.

In times like these, the role of institutions matters. And one of the most important institutions we have as lawyers is this Bar Association.

The NCBA is, at its best, a community that brings together lawyers from different backgrounds, different practices, and yes, different perspectives. It is a place where we can engage thoughtfully, disagree respectfully, and remain grounded in the shared principles that define us as a profession.

It is also a place where we can proactively respond to the challenges facing our profession and our system of justice.

With that in mind, last month I formed an Ad Hoc Presidential Task Force comprised of seven past presidents of this Bar Association, representing a range of perspectives and experiences.

I have asked this group to make such recommendations as they deem appropriate in support of the rule of law. This may include recommendations regarding statements, CLEs, or other initiatives. As always, any decision to issue a statement on behalf of the Bar will remain with the President or the Board, as provided in our by-laws.

My goal in forming this group was simple: to ensure that any response we consider is thoughtful, measured, and reflective of the collective wisdom of those who have served in this role before. Of course, if any member of our Bar has thoughts, concerns, or suggestions, I welcome you to share them with me.

As I approach the end of my term as President, I find myself increasingly appreciative of this community and the role it plays—not only in supporting our members, but in strengthening the profession as a whole.

In the coming weeks, we will have several opportunities to come together in that spirit.

On April 20, we will host the Peter Sweisgood Dinner at the Bar Association, supporting the critical work of our Lawyer Assistance Program and honoring Past President Kate Meng, whose continued service to this Bar and to our profession has been extraordinary. Personally, I am forever grateful for Kate's support, willingness to share her opinions, and to challenge both the status quo and, at times, me.

And on Saturday, May 9, we will gather for our Annual Dinner Gala at the Cradle of Aviation Museum where we will honor the Honorable Randall T. Eng with the Bar's highest award, the Distinguished Service Medallion. Justice Eng's distinguished career, including his service as Presiding Justice of the Appellate Division, Second Department, reflects a lifetime commitment to the rule of law and to public service. We will also celebrate our 50, 60, and 70-year honorees, whose careers are a testament to the enduring value of this profession.

The oath we take at the beginning of our careers is not self-executing. It is given meaning by how we choose to act—individually and collectively.

And in moments like these, that responsibility belongs to all of us.

FOCUS: LITIGATION

Usurious Loans Disguised as Merchant Cash Advance Agreements: A New York Analysis

Cynthia A. Augello

Over the past decade, merchant cash advance ("MCA") agreements have proliferated throughout New York's commercial finance landscape. Marketed as purchases of future receivables rather than loans, MCAs have been used to provide rapid capital to small and mid-sized businesses that are unable to obtain traditional financing. The legal significance of this structural distinction cannot be overstated. If a transaction constitutes a true sale of receivables, New York's usury statutes do not apply. If, however, the transaction is in substance a loan, it may be void under New York's civil or criminal usury laws.

New York has become the epicenter of MCA litigation, both because many agreements include New York choice-of-law clauses and because funders historically relied upon New York courts to enforce confessions of judgment. The resulting body of case law reveals a consistent judicial theme: courts will look beyond labels to determine whether the funder truly assumed the risk of nonpayment or whether the merchant bore an absolute obligation to repay. This article examines New York's usury framework, the legal standards courts apply when analyzing MCA agreements, and the consequences of recharacterization.

New York's Usury Framework

Under New York law, civil usury is governed by General Obligations Law § 5-501 and Banking Law § 14-a, which cap interest on loans at sixteen percent per annum. Criminal usury is defined in Penal Law §§190.40 and 190.42, which prohibit charging interest exceeding 25 percent per annum.[1]

If a transaction constitutes a criminally usurious loan, it is void *ab initio*. A lender may forfeit both principal and interest.[2] Importantly, usury statutes apply only to loans or forbearances of money. They do not apply to bona fide sales of receivables. The Court of Appeals has long held that substance, not form, governs the analysis.[3]

Corporate borrowers may not assert civil usury as a defense under General Obligations Law § 5-521. However, they may assert criminal usury as a defense. Thus, in New York MCA litigation, the primary question often becomes whether the transaction exceeds the 25 percent criminal threshold and whether it constitutes a loan in the first place.

Merchant Cash Advance Structure

MCA agreements are structured as purchases of future receivables. The funder provides an upfront lump sum, defined as the "purchase price," in exchange for the right to receive a specified dollar amount of the merchant's future receivables. The merchant agrees to remit a percentage of daily receipts until the purchased amount has been delivered.

On its face, this resembles factoring. If the merchant's revenue declines, the funder's recovery declines. There is no fixed maturity date, and payment fluctuates with performance. In theory, the funder assumes the risk that the merchant's receivables may not materialize.

However, litigation frequently reveals contractual provisions that substantially mitigate or eliminate that risk. New York courts have therefore developed a functional analysis to distinguish true receivables purchases from disguised loans.

Three-Factor Test in New York Courts

Although New York's Court of Appeals has not articulated a formal three-factor test specific to merchant cash advance agreements, appellate and trial courts have converged around three core considerations when determining whether an MCA constitutes a true receivables purchase or a disguised loan: whether the agreement contains a meaningful reconciliation provision, whether there is a finite term for repayment, and whether the funder assumes the risk of nonpayment. These factors are not applied mechanically. Rather, they reflect the broader principle articulated by the Court of Appeals in cases such as A*dar Bays, LLC v. GeneSYS ID, Inc.*, that courts must examine the economic reality of a transaction rather than its formal characterization.[4]

New York courts consistently emphasize that no single provision is dispositive. Instead, they assess the agreement as a whole, examining whether the structure reflects a genuine sale of receivables or an absolute obligation to repay money advanced.

Reconciliation Provisions

The presence and enforceability of a reconciliation clause is often pivotal. In *Principis Capital, LLC v. I Do, Inc.*, the Appellate Division held that an MCA agreement was not a loan where it provided for reconciliation of payments based on actual receivables and did not require absolute repayment. The court emphasized that the funder's right to collect depended upon the merchant's actual revenue stream and that the agreement permitted adjustment of remittances if receipts declined.[5]

Where reconciliation provisions are illusory or discretionary in practice, courts have been more skeptical. In *Fleetwood Services, LLC v. Ram Capital Funding, LLC*, the court examined whether the funder meaningfully honored reconciliation requests or whether the provision existed merely as contractual window dressing. The analysis focused not only on the presence of reconciliation language but also on the practical mechanics of invoking it, including whether the merchant bore burdensome procedural requirements or whether approval was left entirely to the funder's discretion.[6]

Trial courts have repeatedly held that where a reconciliation provision is so narrow, conditional, or discretionary that it does not provide a realistic mechanism for adjusting payments, it will not shield an agreement from recharacterization. If a merchant's daily remittance is effectively fixed in operation and reconciliation is impracticable or routinely denied, courts may find that the transaction resembles a loan with fixed repayment obligations rather than a purchase of contingent receivables.

In this context, the enforceability and good-faith administration of reconciliation provisions can be as significant as their textual inclusion. Courts have increasingly examined whether the funder's conduct reflects a genuine willingness to adjust payments in response to declining revenue.

Finite Term

Loans typically have a maturity date or defined repayment period. MCA agreements purport to avoid this characteristic by tying repayment solely to receivables and eliminating any fixed end date. In *LG Funding, LLC v. United Senior Properties of Olathe, LLC*, the Appellate Division noted that the absence of a fixed term weighed in favor of characterizing the agreement as a receivables purchase rather than a loan. The court observed that because repayment depended entirely on the generation of receivables, the agreement did not impose a definite obligation to repay within a specified timeframe.[7]

However, courts have looked beyond formal disclaimers to examine whether the practical structure of the agreement effectively imposes a finite term. If daily remittances are calculated to amortize the purchased amount over a short and predictable period, and if default is declared upon relatively minor interruptions in business operations, the functional reality may resemble a short-term high-interest loan.

New York courts have recognized that a purported absence of a maturity date does not preclude recharacterization if the agreement's economic structure guarantees repayment within a defined window regardless of business performance. Where payment amounts are fixed in such a way that the purchased amount will almost certainly be delivered within a set number of months, courts may view the lack of a stated maturity date as formalistic rather than substantive.

Thus, while the absence of a finite term remains an important indicator of a true receivables purchase, courts analyze whether the agreement, in operation, allows for open-ended repayment contingent upon performance or instead creates a de facto repayment schedule.

Assumption of Risk

The most critical factor in the analysis is risk allocation. In *Champion Auto Sales*, the First Department emphasized that the defining characteristic distinguishing receivables purchase from a loan is whether the funder assumes the risk that the merchant's business may fail or that receivables may decline. Where repayment is contingent upon actual receivables and the funder's recovery depends on business performance, the transaction lacks the absolute obligation that defines a loan.[8]

The court reasoned that because the funder's right to payment was conditioned upon the merchant's revenue stream, the agreement did not create a debtor-creditor relationship in the traditional sense. This reasoning has been echoed in subsequent decisions upholding MCA agreements where risk genuinely shifted to the funder.[9]

However, when agreements include sweeping default provisions, personal guarantees that trigger regardless of revenue, security interests in all assets, and confessions of judgment permitting immediate enforcement, courts scrutinize whether the funder truly bore risk or instead created a mechanism ensuring full recovery. If a merchant's temporary business interruption or technical covenant breach permits acceleration of the full purchased amount, the supposed contingency of repayment may be undermined.

New York courts have therefore examined whether default provisions are tied to the failure to generate

receivables or instead to collateral business events unrelated to revenue. Where default triggers operate independently of performance, they may suggest that the merchant bears the ultimate risk of repayment. Ultimately, the risk inquiry asks whether the funder has placed capital at genuine hazard. If the agreement ensures repayment under virtually all circumstances and shifts operational risk entirely to the merchant, courts may conclude that the transaction is a loan notwithstanding its receivable terminology.

Confessions of Judgment and Enforcement Practices

New York historically permitted the filing of confessions of judgment under CPLR 3218. MCA funders frequently required merchants to execute confessions at the outset of the transaction. Upon alleged default, the funder could file the confession and obtain immediate judgment without notice.

This practice drew significant criticism and led to legislative reform. In 2019, New York amended CPLR 3218 to prohibit the filing of confessions of judgment against non-New York residents.

In litigation, courts have examined whether aggressive use of confessions of judgment undermines the claim that the funder assumed risk. If the funder can accelerate repayment and enforce immediately upon minor breaches unrelated to receivables performance, the argument that it purchased receivables rather than extended a loan weakens.

Criminal Usury and Recharacterization

If an MCA is recharacterized as a loan, courts calculate the effective annual interest rate. In *Adar Bays*, the Court of Appeals clarified that when assessing usury, courts consider all amounts that function as interest, including contingent or variable components.[10]

Many MCA agreements require repayment of 130 to 160 percent of the purchase price within months. If characterized as a loan, such transactions often exceed the 25 percent criminal usury threshold.

In such circumstances, the agreement may be void. The lender may be barred from recovering principal. This consequence is consistent with longstanding New York precedent voiding criminally usurious loans.

Policy Considerations and Judicial Trends

New York courts have generally upheld MCA agreements where the contractual structure genuinely shifts risk to the funder. However, courts remain vigilant against arrangements that merely disguise fixed repayment obligations with receivables terminology.

The Second Department's decision in *Principis Capital* reflects a willingness to respect properly structured receivables purchases. At the same time, trial courts increasingly examine the operational reality of the agreement, including how reconciliation requests are handled and whether defaults are declared opportunistically.[11]

The judiciary's approach reflects a balance between protecting freedom of contract in commercial transactions and enforcing New York's strong public policy against criminal usury.

Conclusion

In New York, the legal distinction between a merchant cash advance and a usurious loan depends on economic substance rather than contractual labels. Courts focus on whether the funder assumes genuine risk of nonpayment, whether payments fluctuate with receivables, and whether the merchant's obligation is absolute.

Where the funder's recovery is contingent upon the merchant's revenue and the agreement includes meaningful reconciliation rights without a fixed term, New York courts have upheld MCA agreements as lawful receivables purchases. Where, however, the structure ensures full repayment regardless of performance, courts may recharacterize the transaction as a loan subject to criminal usury statutes, rendering it void.

As MCA litigation continues in New York, careful drafting and faithful operational compliance remain essential for funders. For merchants, understanding the practical implications of reconciliation provisions, guarantees, and default triggers is critical. Ultimately, New York's courts will continue to evaluate these agreements through the lens of substance over form, consistent with the state's longstanding commitment to enforcing its usury laws.

1. Penal Law § 190.40.
2. *Hammelburger v. Foursome Inn Corp.*, 54 N.Y.2d 580 (1981).
3. *Adar Bays, LLC v. GeneSYS ID, Inc.*, 37 N.Y.3d 320 (2021); *Feinberg v. Old Vestal Rd. Assocs.*, 157 A.D.2d 1002 (3d Dept 1990).
4. *Id.*
5. *Principis Capital, LLC v. I Do, Inc.*, 201 A.D.3d 752 (2d Dep't 2022).
6. *Fleetwood Services, LLC v. Ram Capital Funding, LLC*, 2022 WL 1997207 (S.D.N.Y. June 6, 2022).
7. *LG Funding, LLC v. United Senior Properties of Olathe, LLC*, 181 A.D.3d 664 (2d Dep't 2020).
8. *Champion Auto Sales, LLC v. Pearl Beta Funding, LLC*, 159 A.D.3d 507, 72 N.Y.S.3d 1 (1st Dep't 2018).
9. *Id.*
10. *Adar Bays, LLC v. GeneSYS ID, Inc.*, 37 N.Y.3d 320 (2021).
11. *Principis Capital, LLC v. I Do, Inc.*, 201 A.D.3d 752 (2d Dep't 2022).

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FOCUS: CONTRACT

When Surrender Sets the Guarantor Free: The Court of Appeals Interprets a "Good Guy" Guaranty[1]

Maria Paciullo

Ambiguity in a contract can lead to lengthy and costly litigation. *1995 Cam LLC v West Side Advisors LLC*, a case with strong opinions from both the majority and the dissent, is an important reminder of the value of precise drafting.

A landlord and tenant entered into a commercial lease for Manhattan office space.[2] Later, as part of a lease amendment agreement, a principal of the tenant signed a guaranty. The tenant vacated the property 27 months before the end of the lease's expiration, and the parties then spent years litigating whether the guarantor was responsible for post-vacatur damages. In a 5-2 split, the New York Court of Appeals interpreted the guaranty as a "good guy" guaranty that limited the guarantor's liability to pre-vacatur damages.

What Is a Guaranty, and What Is a "Good Guy" Guaranty (In Real Estate Terms)?

A guaranty, in the landlord-tenant context, is a legal promise by a third party (guarantor) to cover a tenant's lease obligations (e.g., rent, expenses, damages) if the tenant defaults. In commercial real estate, a principal of the tenant often signs a good guy guaranty. Conditions of any individual contract may vary, but a traditional good guy guaranty is a limited guaranty that holds a guarantor liable only until the time that the tenant vacates the property and surrenders possession.[3] A good guy guaranty carries the particular benefit of providing a landlord an assurance that, if a tenant defaults, the premises will be promptly vacated and open for the landlord to re-rent, rather than leaving a non-paying tenant in place during lengthy eviction proceedings.[4]

Facts of This Case

In 2004, the landlord and the tenant entered into a lease that included a provision stating that there would be no *surrender* of the premises unless the landlord accepted surrender in a writing signed by the owner, and that delivery of keys to an unauthorized person would not constitute surrender. Later, a personal guaranty was executed (as part of a 2016 amendment to the lease). The guaranty incorporated the terms of the lease, and it also specified, in particular, that the guarantor agreed to guarantee the tenant's monetary obligations under the lease up to the date the tenant gave at least 30 days prior written notice, completely vacated the premises, and surrendered possession free of occupants, with a clause providing that the terms of the guaranty would control over inconsistent terms in the lease.

In 2020, the tenant fell behind on utility charges and then stopped paying rent. In October 2020, the tenant gave 30 days prior written notice that it would surrender the premises as of November 30, 2020. At the end of November 2020, the tenant vacated the premises, returned the keys to the building superintendent, and relinquished possession of the space. The landlord did not sign any written acceptance of surrender and later claimed that both the tenant and the guarantor remained liable for rent and other charges after November 30, 2020. The issue on appeal was whether, under the guaranty, the guarantor's liability ended when the tenant vacated the premises and handed over the keys, or if, on the contrary, the guarantor's liability continued because the landlord had not accepted surrender in a signed writing.

Specific Language in the Guaranty and the Lease

The guaranty, in relevant part, read as follows:

> Guarantor guarantees... that he shall pay to Owner when due [all Tenant's monetary obligations]... that have accrued under the terms of the Lease... to the date that is the latest date that Tenant and its assigns, licensees and sublessees, if any, and shall have completely vacated and *surrendered* the Demised Premises to Owner free and clear of any and all subtenants and/or occupants pursuant to the terms of the Lease (which date may be earlier than the stated expiration date in the Lease.[)] Tenant shall provide Owner with not less than thirty (30) days prior notice of the date that it will be vacating and surrendering free and clear of any and all subtenants and other occupants.[5]

The guaranty agreement also contained a conflicts provision that read, "In the event there is any inconsistency between the terms of the [REBNY] Lease and the terms of this Agreement, the terms of the Agreement shall control."[6]

The terms of the lease were expressly incorporated into the guaranty, and the lease contained two provisions regarding "surrender." The first of these two relevant lease provisions was the ¶ 22 "End of Term" provision that read:

> "Upon the expiration or other termination of the term of this Lease, Tenant shall quit and *surrender* to Owner the Demised Premises, broom clean, in good order and condition, ordinary wear and damages which Tenant is not required to repair as provided elsewhere in this Lease excepted, and Tenant shall remove all its property.[7]"

The lease's second provision relevant to the term "surrender" was the ¶ 25 "No Waiver" provision of the lease that read:

> "No act or thing done by Owner or Owner's agents during the term hereby demised shall be deemed an acceptance of a surrender of said premises, and no agreement to accept such surrender shall be valid unless in writing and signed by Owner. No employee of Owner or Owner's agent shall have any power to accept the keys of said premises prior to the termination of the Lease and the delivery of keys to any such agent or employee shall not operate as a termination of the Lease or a surrender of the premises.[8]"

Majority's Reasoning[9]

Was the surrender of possession sufficient to release the guarantor from further liability, or was the guarantor on the hook until the end of the lease term unless the landlord gave written acceptance of surrender?

Although the Court noted that "[i]t would be a simple matter for parties intending to enter into a 'good guy' guaranty to say so explicitly,

with clear language,"[10] it nonetheless held that the guarantor was not liable for post-vacatur damages. The majority focused, in particular, on the rule that a contract should not be read in a way that makes negotiated language superfluous or meaningless.

The Court treated the vacate-and-surrender language in the guaranty and its 30-day notice requirement as negotiated conditions that had to be considered as having meaning. Under the guaranty, the guarantor was liable only for amounts that had accrued under the lease up to the date when the tenant had (a) given at least 30 days prior written notice, (b) "completely vacated and surrendered" the premises "free and clear of any and all subtenants and/or occupants," and (c) done so "pursuant to the terms of the Lease." All of those triggers were within the tenant's control.

The majority reasoned that if the parties had intended a full, coterminous guaranty that simply matched the tenant's liability under the lease, there would have been no need for this tenant-controlled checklist that included the "completely vacated" requirement and a fixed 30-day notice period. Interpreting "surrender" in the guaranty to require written acceptance under the lease's ¶ 25 No Waiver provision would, in effect, have erased the specific conditions listed in the guaranty and would have thereby created a full guaranty, which the Court declined to do.

The 30-day notice feature was especially important to the Court's analysis. The lease did not require the tenant to give notice 30 days before the lease expiration. The majority reasoned that including a 30-day notice obligation in the guaranty only made sense if the guaranty was capable of terminating before the lease expired, on a date the tenant selected. Moreover, if "surrender" in the guaranty meant "surrender that the Landlord later accepts in writing," the tenant would have had to give 30 days' notice of a date that depended entirely on the landlord's future decision to issue written acceptance, which was a result the Court described as "impossible and nonsensical." The Court reasoned that the 30 days clause reinforced the conclusion that the parties had negotiated a separate, tenant-controlled surrender mechanism for purposes of ending the guarantor's liability.

The majority also relied on the conflicts clause in the guaranty, which provided that, if there was any inconsistency between the terms of the lease and the terms of the guaranty, the guaranty would control. In the Court's view, the ¶ 25 No Waiver provision existed to protect the landlord against claims that its conduct or casual key delivery had terminated the lease absent a signed writing. That lease-level protection could not be used to extend the guarantor's obligation beyond the explicit release mechanics the parties had negotiated in the guaranty, particularly where the parties had agreed that the guaranty would govern in the event of conflict.

Taking these points together, the majority held that the guaranty operated as a traditional good guy guaranty, and the guarantor was liable only for amounts accruing before the tenant gave the required notice, completely vacated the premises, and surrendered possession free of occupants. Once those steps occurred, the guarantor's obligation ended, even though the lease itself remained in effect, and the tenant remained liable, as the landlord had never signed a written acceptance of surrender.

Dissent's Reasoning[11]

In the dissent's view, the key feature of the guaranty was its requirement that the tenant surrender "pursuant to the terms of the Lease." Because the guaranty did not define "surrender," the dissent treated that phrase as importing the lease's surrender mechanics wholesale, including the ¶ 25 No Waiver provision that clearly stated a valid surrender required two things: (1) written acceptance by the landlord in a writing signed by the landlord, and (2) delivery of the keys only to an authorized person. The tenant gave the keys to the superintendent, but the landlord had not specifically authorized the superintendent to take them, and the landlord never signed a written acceptance. Thus, in the dissent's view, there was no surrender "pursuant to the terms of the Lease," and the guarantor's obligation was never cut off.

The dissent also addressed the majority's reliance on the "no superfluous language" canon but reached the opposite conclusion. It treated "completely vacated" and "surrendered" in the guaranty as two distinct requirements. "Completely vacated" described the physical condition of the premises (no people or property remaining), while "surrendered" referred to the legal act of surrender, which, once the lease was incorporated, necessarily included the formal requirements of the ¶ 25 No Waiver provision. Giving each word independent meaning therefore required layering the lease's formal surrender mechanics on top of the tenant's vacatur, not stripping those mechanics away.

More broadly, the dissent emphasized that New York's lower courts had consistently enforced the standard REBNY ¶ 25 No Waiver provision as written in both lease and guaranty cases, holding that there is no surrender and no termination of a tenant's or guarantor's obligations without a signed writing from the landlord. Given that backdrop, and the absence of any clear statement in the guaranty that it was intended to be a traditional good guy guaranty, the dissent would simply have applied those established rules and held the guarantor liable until a surrender was accepted in writing.

In short, the majority and the dissent started from the same general canon of law regarding contract interpretation and read the agreements as written, but they parted ways on what it meant to honor the text.

On April 1, 2026, the NCBA Real Property Committee will present a CLE that includes an analysis of this case and a discussion of contract drafting issues, including defining terms, incorporation by reference, conditions precedent, conflicts provisions, force majeure, and allocation of risk.

1. *1995 CAM LLC v West Side Advisors, LLC*, 2025 N.Y. Slip Op. 05782 (10/21/25) reargument denied, motion to amend, remittitur granted 44 N.Y. 3d 1046 (2026).
2. Landlord = 1995 CAM LLC (the owner of the premises)
Tenant = West Side Advisors, LLC
Guarantor = Gary Lieberman, a principal of the tenant
Premises = eighth floor commercial office space at 1995 Broadway in Manhattan
Lease = office lease for the premises
Second Amendment = extended the Lease and included a guaranty
Guaranty = the guaranty contained in the Second Amendment
3. *1995 CAM LLC*, 2025 N.Y. Slip Op. 05782, at *1 & n. 1, citing 7 *Warren's Weed New York Real Property* § 84.02(9) (2023); 2 N.Y. Practice Guide: Business and Commercial § 12.05(5) (2023); *Russo v. Heller*, 80 A.D.3d 531, 532 (1st Dept. 2011).
4. *Id.*
5. *Id.* at *1, quoting the Guaranty, as contained in ¶ 9 of the Second Amendment (emphasis added).
6. *Id.* at *2, quoting the Guaranty.
7. *Id.* at *1, quoting the Lease, ¶ 22 (emphasis added).
8. *Id.* at *1, quoting the Lease, ¶ 25 (emphasis added).
9. *Id.* at *1–*2 (Wilson, Ch. J.; Rivera, Cannataro, Troutman and Halligan, JJ., concurring).
10. *Id.* at *2.
11. *Id.* at *2-*5 (Singas, J., dissenting; Garcia, J., concurring).

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FOCUS: TECHNOLOGY

Writing with Style(s) in Microsoft Word

Christopher J. DelliCarpini

Almost every lawyer is a professional publisher, yet most of us approach this aspect of our work like amateurs. Our business inevitably entails preparing written work, from court filings to contracts, for an audience outside our employer if not the general public. Yet we typically treat the actual placing of words on paper as an afterthought, getting by on whatever we or our staff learned writing papers in school or picked up on the job.

Good enough may be good enough, but true professionals take full advantage of the tools at their disposal. Generating documents with only the most basic word-processing techniques is like driving a new car without ever learning how to get out of first gear.

An example of these overlooked tools is styles, a powerful feature for giving our documents a consistent appearance. Knowing how to create, edit, and apply styles can make us better and more efficient writers, and can even help us organize our thoughts as we write.

What are Styles, And Why Start Using Them Now?

An electronic document is a set of instructions to be read by a piece of software. For example, a file ending in ".doc" is a set of instructions to be read by Microsoft Word. Those instructions include the substance of a document, that is, the words and their punctuation, and the form, which includes settings for fonts and paragraphs.[1]

Font settings apply to individual characters and words. Besides the basics of the font and the point size, we can set text effects like boldface and italics, as well as advanced settings like letter spacing. (Ever notice that all-caps seems a little crowded?)

Paragraph settings apply to all the lines between two "hard returns," for those of us who remember typewriters. They include justification (left, right, center, or full), indents, and line spacing. We can also set paragraphs to avoid "widows" and "orphans," single lines at the top or bottom of a page; and to keep lines together or with the subsequent paragraph, which is particularly valuable when setting up headings.

You likely know that you can change many of these settings, and you may have very particular ideas about how you want your documents to look. But what if you could make those formatting changes all at once, without having to make each change over and over?

A style is just that—a collection of font and paragraph settings, ready to be applied with a single click.[2] After fiddling with a paragraph until it's just the way you want all your text to look, you can assign those settings to a style. Then you can move your cursor to other paragraphs and with a click assign that exact same style. And should you edit a style, all paragraphs assigned that style with automatically update their appearance. All styles in a document are automatically organized in the Styles Pane, a pop-out sidebar you can access in Microsoft Word from the Home ribbon.

Creating and Editing Styles

The easiest way to start using styles is to edit the styles already in your document. You may not know it, but every Microsoft Word document comes with several styles for a variety of uses, from headings to endnotes. In fact, your documents by default use the Normal style, which you can edit and use as the basic setting for your documents.

You can edit a style by changing its settings directly from the Styles Pane. To the right of each style's name is a drop-down list, from which you can choose to modify the style. Selecting this will allow you to edit the style using the same windows that open whenever you want to edit a font or paragraph. In fact, within each style you can indicate what style will follow a hard-return, a useful setting if you'd like certain headings to be followed by body text, for example.

You can also edit a style by formatting a paragraph the way you'd like it and then telling the style to match that paragraph. Once you've got your paragraph just the way you want it, leave the cursor in the paragraph and click on the drop-down for that style and select to update that style to match the current paragraph.

Using Styles in Multilevel Lists

After updating the Normal style, you'll probably want to set styles for body text, quotes, and however many headings you typically use in documents. A good start would be to customize the Body Text style for the bulk of your document's words, then edit some headings styles for document sections and for your points of argument. You could also customize

styles for block-quotes and bullet lists—though there's no need to worry just yet about the bullet itself, or any outline numbering.

Once you've done that, you can apply styles manually, especially if you're applying them to text already in a document. But for applying styles as you type, the best way is with a "Multilevel List"—an outline, to you and me.

Multilevel lists can assign to each level not just a style, but also numbering. You can pull up this feature from the drop-down button on the Home ribbon that looks like, well, a multilevel list. From there you can define a new multilevel list; it's probably easiest to start from scratch.

You can make your section headings Level 1 and then go through your usual Harvard-outline levels, assigning heading styles and adding numbering and adjusting margins. Then you assign your body text, quote, and any other styles.

Once you've set your list, then in the document once you're typing in one of those styles you can move from one style to another, up and down your list, by pressing Tab or Shift + Tab.

Creating Tables of Contents with Styles

One of the most valuable features of styles is that they allow you to automatically create and update a table of contents.

First place your cursor where you want the table of contents. Then, from the References ribbon select *Table of Contents* and then *Custom Table of Contents*.... From there click *Modify* to assign styles to levels in your table of contents; each level will get its own style within the table. Don't assign styles that you don't want to see repeated in the table! Click *OK* out of the windows and you'll see a table of contents composed of text in your designated styles from throughout your document. The formatting may be off, but when you manually adjust the paragraph formatting within a table of contents the style automatically updates throughout.

This is an obvious time-saver, but generating tables of contents through styles can be a great help at every stage of writing a document. You can start your document by writing the headings, and then generate a table of contents before writing any of your body text. Depending on how descriptive your headings are, your table of contents will then be a syllogism, an outline of your argument. And with this top-level perspective, you can tweak your headings until your overall argument solidly builds from point to point. Then, as you flesh out your document, you can edit your headings as needed and see at a glance whether the updated argument still flows.

Using Styles with Style

An article can introduce you to these features, but to learn them requires some time playing around. Copy a document and use it as your test bed, trying out the techniques described here. And if you're looking for guidance, the internet has ample resources; these days, if you ask ChatGPT or Google's Gemini, they'll give you a plain-English, step-by-step guide to any aspect of working with styles.

Once you know how to edit styles, you'll need to know how to edit them well. Which fonts work better than others? Should I full-justify my text or leave that right-side edge ragged? Is it still okay to write my point headings in all caps?[3] Two books in particular are invaluable aids to lawyers looking to present their arguments effectively on paper.

The first is *Typography for Lawyers* by Matthew Butterick. It's a word you likely never heard in law school, but typography is the art of arranging text, and every lawyer is a practitioner of typography. So it behooves us all to learn the principles of this art, at least to avoid the bad habits that we inherited from the typewriter era. Most of Butterick's wisdom is available on his website,[4] but his slim paperback is well worth having on-hand in the office.

The other book is Bryan A. Garner's *The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts*. A nationally-renowned legal writing instructor, Garner has written several works worth your time. But The *Winning Brief* contains much of his wisdom in simple, digestible lessons, each building on its predecessors, covering legal writing in form as well as substance. Like Butterick, he challenges us to confront the presumptions and prejudices of the typewriter era and to present ourselves today using all the advantages our technology affords us.

The technology already in your office computer allows you to enhance your documents in ways you never thought possible. Take the time to educate yourself on the tools of our trade, to benefit your clients and your career.

1. Word-processing documents also include settings for the layout of the document or its sections, but those settings are not included in styles.
2. This article is written from the perspective of Microsoft Word, but styles in one form or another are found in almost all word-processing programs.
3. Not if you want people to read them, no.
4. https://typographyforlawyers.com/.

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FOCUS: CIVIL RIGHTS

Charles Hamilton Houston: The Unsung Legal Strategist Behind the Civil Rights Movement

Richard J. Washington

The beginning of March marks the end of Black History Month. It is virtually impossible to reflect on Black History Month without considering segregation, Jim Crow, and the civil rights movement. It could be argued that civil rights litigation served as a measuring stick for progress during the Jim Crow era.

In the context of law, no attorney is more synonymous with civil rights advocacy than Thurgood Marshall. Before he was the first Black U.S. Supreme Court justice, Marshall was the foremost civil rights attorney in the country. Not only did the young attorney Marshall litigate constitutional and criminal questions in courts throughout the nation, the future Justice argued thirty-two cases before the Supreme Court, winning all but three of them.[1]

Before the advocate who would become Justice Marshall could argue groundbreaking cases, his mentor and predecessor fought for desegregation and made considerable strides toward integration. He did so while operating under the "separate but equal" framework established in *Plessy v. Ferguson*.[2] Known as "The Man Who Killed Jim Crow," Charles Hamilton Houston laid the blueprint that Marshall followed and ultimately built upon.[3]

Charles Hamilton Houston was born in Washington, D.C. He attended Amherst College, and—although he was the only Black student in his class—he graduated magna cum laude and was named class valedictorian.[4] Houston was an officer in the Army during World War I.[5] He returned home from service and went on to graduate cum laude from Harvard Law School, where he was the first African American elected to the Harvard Law Review.[6] The following year, he became the first African American to earn an S.J.D. degree from Harvard Law School.[7]

Despite his demonstrated patriotism, status as a war veteran, and undeniable intellectual ability, Houston was denied entry into the American Bar Association.[8] The organization did not admit Black attorneys at the time. In response, Houston and other Black lawyers founded the National Bar Association.[9] Today, more than a century after its founding, the National Bar Association is the nation's oldest and largest national association of predominantly African American lawyers, judges, educators, and law students.[10]

Houston was a groundbreaking legal thinker who used his expertise in law to impact society and bring about change. In the wake of the "separate but equal" doctrine articulated in *Plessy v. Ferguson*,[11] Houston argued a series of cases aimed at making a plain showing that separate but equal was not a fiscally sound or realistic manner of maintaining the constitutionality of segregation.

In perhaps his most famous case, *Gaines v. Canada*, Houston argued on behalf of a Black law school applicant who was denied admission to the Missouri University law school.[12] The student, Lloyd Gaines, had graduated from Lincoln University, the Black college in Missouri.[13] There were no Black law schools in the state at the time, and Supreme Court of Missouri affirmed the decision to deny the student admission based upon his race.[14] Houston appealed to the U.S. Supreme Court on the student's behalf.[15]

Houston did not attack segregation directly in advocating for Mr. Gaines. Instead, his argument focused on the Equal Protection Clause.[16] The State of Missouri argued that because there was no law school for Black students, Lincoln University should be required to establish one, or alternatively to pay for the student to attend law school elsewhere until an in-state law school for Black students had been established.[17]

Houston rejected the State's argument and contended that the Equal Protection Clause was violated because, even if the student could attend law school elsewhere at the state's expense, he was nonetheless denied the ability to attend law school within Missouri as his White counterparts were permitted to do.[18] The U.S. Supreme Court agreed with Houston's arguments.[19] The Court found that the operation of the state law created a privilege for White law students that was being denied to Black students by reason of their race.[20] The State of Missouri was ordered to provide an in-state legal education to the prospective law student Mr. Gaines.[21]

Houston not only utilized his legal training and expertise to challenge segregation in education—he was also instrumental in challenging the systematic exclusion of Blacks from jury service and fought against discrimination in labor unions.[22] Additionally, Houston served as the dean of Howard University School of Law, where he encountered and eventually mentored the young law school student Thurgood Marshall.

Houston and Marshall appeared together before the Supreme Court to argue in *Shelley v. Kraemer* against the use of restrictive covenants as a means to refuse to sell property to qualified buyers solely on the basis of race.[23] To be sure, it was Houston's legal philosophy regarding "separate but equal" doctrine that was deployed in *Brown v. Board of Education*.

Although Houston was the architect of those arguments that ultimately ended segregation, and although he trained the lawyers who argued the cases that ended segregation, Houston did not live to see the seeds he planted bear their full fruit. Charles Hamilton Houston died on April 22, 1950. He was only 54 years old.

Although his life was relatively short, Houston's contributions to the law, the legal profession, and society as a whole are remarkable. His legacy lives on in the law that he argued, the attorneys he trained, and the organizations he founded. While Charles Hamilton Houston does not enjoy the widespread popularity of Thurgood Marshall or the first female federal court judge Constance Baker Motley,[24] he is indeed a legend in both the African American community and the American legal community. He should be remembered accordingly.

He lived in an era and was a part of a subset of the legal community that viewed cases as quests—those civil rights attorneys who saw the law as a calling to stand on the front lines in the fight for justice and equality. He was among the attorneys who operated as traveling advocates. The courtroom was their battlefield. These attorneys took cases involving matters of constitutional law based upon merit rather than geographic location or economic ability.

For those lawyers, changing the law and ensuring justice for future generations took precedence over all else, including salary, payment, and even their own safety. Make no mistake: an African American attorney arguing against segregation in the 1930s, 1940s, and 1950s took their life into their own hands. So many members of today's society may not immediately recognize the name Charles Hamilton Houston, but they are nonetheless indebted to Mr. Houston and his disciples for the changes that they advocated for and created in our society. His efforts and their efforts must not go unnoticed.

1. See https://naacp.org/find-resources/history-explained/civil-rights-leaders/thurgood-marshall.
2. 163 U.S. 537 (1896).
3. The Man Who Killed Jim Crow: The Legacy of Charles Hamilton Houston, Brett Milano, September 5, 2019, https://hls.harvard.edu/today/the-man-who-killed-jim-crow-the-legacy-of-charles-hamilton-houston/.
4. See Harvard & the Legacy of Slavery Initiative, https://legacyofslavery.harvard.edu/legacy-of-leadership/charles-hamilton-houston/.
5. *Id.*
6. *Id.*
7. *Id.*
8. See Howard University School of Law: Preparing for Struggle, Smithsonian National Museum of American History, https://americanhistory.si.edu/brown/history/3-organized/hu-law-school.html.
9. *Id.*
10. National Bar Association, History of the NBA, https://members.nationalbar.org/NBAR/NBAR/content/history.aspx.
11. 163 U.S. 537 (1896).
12. *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938).
13. *Id.* at 342.
14. *Id.*
15. *Id.* Houston was lead counsel on the case, together with two others, Sidney Redmond and Leon Ransom.
16. *Id.* at 344.
17. *Id.* at 342-343.
18. *Id.* at 345.
19. *Id.*
20. *Id.* at 349.
21. *Id.* at 352.
22. See *Hollins v. Oklahoma*, 295 U.S. 394 (1935) (holding that excluding Blacks from jury service solely on account of their race and color denies the Black person charged with crime the equal protection of the laws under the Fourteenth Amendment) and *Steele v. Louisville & N. R. Co.*, 323 U.S. 192 (1944) (holding that labor unions have a duty to equally protect the interests of all its members regardless of race or color).
23. 334 U.S. 1 (1948).
24. Constance Baker Motley was the first African American woman appointed to the federal judiciary. Like Thurgood Marshall, she was a product of the civil rights legal tradition that Charles Hamilton Houston pioneered, having worked alongside Marshall at the NAACP Legal Defense Fund.

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A Reflection on Civil Rights: Then, Now, and Always

Rasheim Donaldson

On March 4, 2026, the Nassau County Bar Association hosted "Civil Rights: Then Now & Always—A Commemorative Black History Month CLE." The NCBA's Civil Rights Committee and the Diversity & Inclusion Committee collaborated to organize the program, which was generously sponsored by The Law Office of Rhonda L. Maco PLLC and The Law Office of Patricia M. Pastor PLLC.

Legendary civil rights lawyer Charles Hamilton Houston once declared that "a lawyer is either a social engineer or a parasite on society." Decades later, following significant advancements in civil rights, his protégé, future U.S. Supreme Court Justice Thurgood Marshall, reflected that Black Americans were "enslaved by law, emancipated by law, disenfranchised and segregated by law; and, finally, they have begun to win equality by law."

To commemorate the trailblazers of civil rights, the program provided a historical perspective on civil rights laws and the pivotal role of Black lawyers in the development of the legal framework all Americans depend on today.

The program featured a compelling keynote address by prominent civil rights attorney, NCBA Member and adjunct law professor Frederick K. Brewington, who underscored the critical role Black attorneys have played in securing the civil rights we enjoy today. Mr. Brewington shed light on lesser-known aspects of the monumental impact of Charles Hamilton Houston, often called "the man who killed Jim Crow." Houston played an instrumental role in shaping early civil rights litigation but did not live to see the U.S. Supreme Court's landmark ruling in *Brown v. Board of Education*. The keynote challenged lawyers to embrace their responsibility as social engineers in advancing justice.

Following the keynote address, Civil Rights Committee Vice Chair Nairuby L. Beckles moderated an engaging panel discussion featuring distinguished panelists, including Hon. Valerie M. Cartright, Justice of the Suffolk County Supreme Court; Lanessa Owens-Chaplin, Director of the Racial Justice Center at the New York Civil Liberties Union; and Oscar Michelen, civil rights attorney and adjunct law professor.

The panel began by defining civil rights and the evolution of civil rights. Next, the panel explained the role of social movements, protests, and organizing in the history of civil rights. Panelists then turned to the role of attorneys, describing why civil rights should matter to every lawyer, regardless of practice area. Panelists also examined the role institutions play in enforcing civil rights protections and ensuring accountability for violations. Panelists discussed the civil rights issues of our time and explained the significance of each. Finally, panelists reflected on the enduring lessons drawn from the historic contributions of Black attorneys and how those lessons continue to shape the way we approach today's civil rights challenges.

The panel offered a thoughtful examination of the development of civil rights, where we stand today, and the path forward. The program provided practical strategies for lawyers to safeguard, celebrate, and build upon the historic contributions of Black legal pioneers and civil rights champions. What the audience gleaned from the program was clear: although civil rights challenges have taken on different forms, the need for strong civil rights protections and meaningful enforcement remains urgent. Every attorney should understand how civil rights laws shape our lives and why the legacy forged by Black attorneys is not confined to the past but continues to guide and inform the work of today.

Like Black History Month, the program aptly titled "Civil Rights: Then, Now, and Always" ended, but the pursuit of justice continues. In the profound words of Dr. Martin Luther King Jr., "The arc of the moral universe is long, but it bends toward justice."

While current threats to civil rights are troubling and reminiscent of harsh realities of the past, participants left the program encouraged and reminded that lawyers from all backgrounds and practice areas can be social engineers. Attorneys can help move the arc forward by understanding our history, recognizing that each of us has a role in the pursuit of justice, pushing forward, supporting meaningful causes, and stepping courageously beyond our comfort zones.

Rasheim Donaldson is a personal injury attorney at Grey & Grey, PLLC in Farmingdale. He is Vice Chair of the NCBA Plaintiff's Personal Injury and Diversity & Inclusion Committees. He can be reached at rasheim.donaldson@icloud.com.

NASSAU ACADEMY OF LAW

April 8 (Hybrid)

Dean's Hour: Defending Non-Citizen Clients—LIRIAC's Protocol, Immigration Safe-Harbors, and Immigration Enforcement

With Nassau County Assigned Counsel Defender Plan

12:30PM

1.0 CLE Credit in Professional Practice

NCBA Member FREE; Non-Member Attorney $35

This program will discuss the practical steps you can take to ensure that you meet your obligations to provide effective assistance of counsel when representing a non-citizen in Criminal or Family Court. The panel will explain how LIRIAC can help to secure analysis of your client's immigration status, explore the potential immigration consequences of the charges and any potential conviction, identify "immigration safe-harbors" to guide plea negotiations, and connect with your client to deliver advice. Panelists will also provide updates regarding the real risk of immigration enforcement as a result of your client's arrest, and discuss the latest changes in immigration decision-making that may impact your clients.

Guest Speakers: **Jackeline Saavedra-Arizaga**, Legal Aid Society of Suffolk County, Immigration Unit and Long Island RIAC, and **Michelle Caldera-Kopf**, Legal Aid Society of Nassau County, Immigration Unit and Long Island RIAC

April 9 (Hybrid)

Dean's Hour: Using Tables in Microsoft Word

12:30PM

1.0 CLE Credit in Skills

NCBA Member FREE; Non-Member Attorney $35

Tables are one of Microsoft Word's most versatile tools. This program will show you how tables can arrange and present text with a more professional look. You will also learn how tables can organize and process information like any spreadsheet.

Guest Speaker: **Christopher J. DelliCarpini**, Sullivan Papain Block McManus Coffinas & Cannavo, P.C.

April 16 (Hybrid)

Dean's Hour: The Model Policy for Law Firms and Legal Departments Addressing Impairment

With NCBA Lawyer Assistance Program

12:30PM

1.0 CLE Credit in Ethics & Professionalism

NCBA Member FREE; Non-Member Attorney $35

This program will detail what the Model Policy is, what "impairment" means, what "impairment" looks like and how to identify it in yourself and others, core components of an impairment policy, and how organizations can implement the Model Policy.

Guest Speakers: **Elizabeth Eckhardt, LCSW, PhD**, NCBA Lawyer Assistance Program, and **Daniel R. Strecker**, Harris Beach Murtha

April 21 (Hybrid)

Dean's Hour: Justice Antonin Scalia—The Guardian of the Original Meaning of the Constitution

With NCBA Appellate Practice Committee

12:30PM

1.0 CLE Credit in Professional Practice

NCBA Member FREE; Non-Member Attorney $35

Justice Antonin Scalia was many things — articulate, brilliant, combative. The scholarly stalwart of the Supreme Court's conservative bloc, Scalia savored debate and made his case with an incisive wit. Most of all, he was a jurist animated by and dedicated to the original meaning of the Constitution. Moving beyond the legal profession, Justice Scalia altered how the Supreme Court was perceived by the public. Not only were his opinions accessible, but his judicial persona spoke to millions of regular people who ordinarily cared little if at all about the judicial process.

Guest Speaker: **Rudy Carmenaty**, Nassau County Department of Social Services

April 23 (Hybrid)

Trust Accounts and Trust in Technology: Ethics for Lawyers in the Age of AI

With Nassau County Women's Bar Association

5:30PM

1.0 CLE Credit in Ethics & Professionalism

NCBA Member FREE; Non-Member Attorney $35

As artificial intelligence tools become more common in legal practice, attorneys must ensure that their teams use these technologies ethically and responsibly. This program examines a lawyer's duty to supervise the use of AI by associates, paralegals, and staff under the New York Rules of Professional Conduct. The program will also review core requirements and common pitfalls in attorney escrow account management. Designed as a practical guide for modern law offices, the session will offer concrete strategies for maintaining ethical compliance while embracing new legal technologies.

Guest Speakers: **Thomas Foley**, Foley Griffin, LLP, and **Danielle N. Murray**, Nassau County Supreme Court

PROGRAMS CALENDAR

APRIL 29 (IN PERSON ONLY)

PFAS Forever Chemicals are Changing Water Quality, Public Health, and Increasing Costs: A Legal and Technical Review

With NCBA Environmental Law, Municipal Law & Land Use, and Government Relations Committees and sponsored by

ROUX BioLargo We Make Life Better

1:00PM–6:35PM
2.5 CLE Credits in Professional Practice

NCBA Member $25; Non-Member Attorney $75

Long Island communities face many challenges in providing clean drinking water to their residents as well as addressing and remediating historic and legacy contamination found on sites throughout New York and the United States. Municipalities and the companies continue to be engaged in efforts to address the class of contaminants known as "forever chemicals."

PROGRAM MODERATOR:
John Parker, Sahn Ward Braff Coschignano PLLC

Legal Issues in Regulation and Litigation Issues of PFAS Contamination Cases

1:00PM–2:30PM
Sin Senh, PG (Roux Associates) and **James Simpson, Esq.** (Napoli Shkolnik PLLC) focus on regulatory and litigation issues, and PFAS factual issues in these matters—including fate, transport, and allocation, regulated community concerns, and municipal government obligations.

Technical Considerations and Issues with PFAS in Removing, Treating, and Filtering These Chemicals

2:45PM–3:45PM
Tonya Chandler (BioLargo Equipment, Solutions & Technologies), **Michael G. Savares, PE** (D&B Engineers and Architects), and **Richard Desrosiers, PG, CT-LEP** (GZA GeoEnvironmental) focus on the impacts of forever chemicals on environmental remediation efforts and costs, drinking water filtration technologies currently available, and the next generation of cleanup technologies for drinking water.

Keynote Address and Networking Reception

4:00PM–5:00PM
Robert Bilott, Esq., Partner at Taft, Stettinius & Hollister LLP, will present a keynote address followed by networking reception and buffet dinner.

Documentary Screening

5:00PM–6:35PM
Watch ***Revealed: How to Poison a Planet***, a documentary exposing the shocking contamination of toxic chemicals that sparked an international environmental catastrophe and the devastating impacts on contaminated communities who are fighting for justice.

May 5 (In Person Only)

Wrongful Convictions: The Path to Justice and Freedom

With Federal Bar Association–EDNY Chapter
5:30PM Dinner; 6:00PM–8:30PM CLE Program
2.0 CLE Credits in Professional Practice
NCBA Member $35; Non-Member Attorney $70

Jeffrey Deskovic—attorney, founder and President of the Jeffrey Deskovic Foundation—was wrongfully convicted in 1990 at the age of 17 for the rape and murder of a high school classmate in Peekskill, New York, and spent over 16 years in prison before his exoneration. **Martin H. Tankleff**, attorney and Visiting Professor at Georgetown University, was wrongfully convicted in 1990 for the murder of his parents in their home on Long Island, and spent over 17 years in prison before his exoneration. Mr. Deskovic and Mr. Tankleff will discuss the failures in the criminal justice system that led to their wrongful convictions, their inspiring path to becoming attorneys following their exoneration and release from prison, and their ongoing mission to help others who have been wrongfully convicted and to promote reforms in the legal system to minimize the risk of wrongful convictions in the future.

Moderator: Hon. Joseph F. Bianco, U.S. Circuit Judge for the Second Circuit

These programs are appropriate for newly admitted and experienced attorneys. Newly admitted attorneys should confirm that the program 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, email academy@nassaubar.org at least five business days prior to the program.

ON DEMAND PART 36 CERTIFIED TRAINING PROGRAMS

To serve as a Guardian, Court Evaluator, or Attorney for Alleged Incapacitated Persons (AIP), 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:

- **Article 81/Court Evaluator/Attorney for AIP**
- **Guardian Ad Litem**
- **Receivership**
- **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.

FOCUS: LAW AND AMERICAN CULTURE

One Auteur's Rage Against the Machine

Rudy Carmenaty

One of the oldest and most tasteless tropes in Hollywood is about the starlet, who, not being particularly bright, slept with the writer to advance her career. This awful anecdote is not so much a commentary on the relative intelligence of ingenues, but instead a reminder of just how little clout writers have in the movie business.

Among cineastes, film is considered a director's medium. This is due in large measure to the auteur theory. The auteur theory holds that the director is the one individual who functions as the principal author of a film, responsible for infusing the finished product with their own personal stamp.[1]

However, the possessory screen credit "A film by" is in all practicality a contractual privilege negotiated collectively by the Directors Guild of America on behalf of its members.[2] The DGA, under its Basic Agreement with the Association of Motion Picture and Television Producers, is the driving force behind this on-screen designation.

That being said, there was one writer, and he was an angry scribe at that, who defied industry custom and practice. Paddy Chayefsky mastered the realms of television, the movies, and Broadway. While his early scripts bore a gentler tone than his subsequent efforts, they still managed to convey a smoldering intensity.

Chayefsky, according to historian Arthur Schlessinger, Jr., "was a man of passion, and his life had the lucidity of his passion."[3] "He had a rage against pomposity, a rage against stupidity, a rage against injustice," Schlessinger observed, and "a rage for humanity."[4]

He insisted, contractually as well as artistically, that he be recognized as the author/auteur of his work-product. Fittingly, the movie which became his magnum opus was *Network*, his prescient send-up of television. With *Network*, Chayefsky, literally and legally, assumed the mantle of the screenwriter as auteur.

Released during the bicentennial year of 1976, the film remains a testament to Chayefsky's anxieties vis-a-vis life in contemporary America. Adamant that neither the director nor the cast dilute his words, *Network* appears on the screen just as Chayefsky intended.

Chayefsky held control over the creative reins because he had final cut. Final cut refers to the contractual right to determine the film's edited version for purposes of distribution and exhibition. Final cut is typically accorded to the director, assuming sufficient bargaining power.

Possessing such leverage himself, Chayefsky successfully navigated the legal logistics not only to have final cut, but also to have the final say on who the director would be. He also selected the actors and insisted there would be no ad-libbing.

Beginning with his script for *The Hospital* in 1971, Chayefsky obtained the "same covenant the Dramatist Guild secured for its members—total involvement and authority."[5] During production, Chayefsky was on the set like a playwright for the stage. He exerted an influence that screenwriters from an earlier era would have envied.

This backstage autonomy is reflected in Chayefsky's on-screen attribution. After the names of the four stars are noted above the title—*Faye Dunaway, William Holden, Peter Finch, Robert Duvall in Network*—the next acknowledgement reads *by Paddy Chayefsky*. This credit is distinct. Indeed, it is unique.

Network is "by" Chayefsky, not written by or original story by, but simply "by." Moments later it's revealed the film was *Produced by Howard Gottfried* and *Directed by Sidney Lumet*. *Network* is Chayefsky's creation, as if he had written it for the theater or had it published in print.

After all, it is always Arthur Miller's *Death of a Salesman* or Norman Mailer's *The Naked and the Dead*. That year Chayefsky received the Oscar for the Best Original Screenplay.[6] Presenting the award was Mailer, who conceded "I suspect it's more difficult to be a great screenwriter than a great novelist."[7]

Five years earlier, Chayefsky received an Oscar for *The Hospital*. Sixteen years before that, in 1955, he was recognized by the Academy for *Marty*, the movie adaption of the television play which first brought him to public acclaim. Chayefsky is the only writer to win three solo Oscars without a collaborator.[8]

"Paddy" was born Sidney Aaron Chayefsky. Awarded the Purple Heart in World War II, he got his stage name while serving in the army. He once tried getting out of KP duty claiming he needed to attend mass. His bemused superior summarily dismissed the Jewish Chayefsky's lame excuse by saying "OK, Paddy."[9]

Somehow, he and the nickname survived the war, and it became his professional moniker. A decade later, during the Golden Age of Television, Chayefsky cut his teeth writing teleplays for the small screen. At that time, TV was produced in New York. It was live and glittering with possibilities.

A post-war generation of dramatists—Chayefsky, Rod Serling, Tad Mosel, Reginald Rose—honed their craft writing for the medium. Chayefsky burnished his legend with *Marty*, and he became the laureate of the common man. This little drama tells the story of a lonely Bronx butcher who finds love.

Marty, unlike its protagonist, was universally embraced. United Artists released a film version which won the Oscar for Best Picture and the Palm D'Or at Cannes. *Marty* led to a succession of films and stage plays. Chayefsky emerged as a marquee name in his own right.

But if unrequited love characterized this early phase of his oeuvre, then an acerbic wit marked his artistic maturity. Chayefsky's writing took on a caustic tone. Whereas *Marty* shyly alluded to the possibility of happiness, in *Network* any semblance of human affirmation appears exceedingly remote.

Network tells the tale of Howard Beale, anchorman on the nightly newscast for the fictitious UBS broadcast network. This being 1976, there are no 24-hour cable news channels, much less YouTube or TikTok. People get their news and information from men like Beale and his stentorian brethren.

A newsman in the mold of Walter Cronkite or Edward R. Murrow, Beale, comparable to his real-life counterparts, serves as a latter-day sage. In contrast to Cronkite and Murrow, Beale is guilty of the one cardinal sin in broadcasting, his ratings have plummeted. He is being fired.

Rather than go quietly, Beale shocks his viewers by telling them he will be committing suicide on a future program. This on-air meltdown precipitates his being rebranded the "Mad Prophet of the Airwaves" by Diana Christensen, a programming executive who callously exploits Beale.

Whether inspired or insane, Beale provides Chayefsky the perfect vehicle to vent his rhetorical spleen. A McLuhanesque messiah, Beale assaults a litany of sacred cows, including television itself:

> We deal in illusions, man! None of it is true! But you people sit there day after day, night after night, all ages, colors, creeds. We're all you know! You're beginning to believe the illusions we're spinning here! You're beginning to think that the tube is reality and that your own lives are unreal! …. This is mass madness, you maniacs! In God's

name you people are the real thing! We are the illusion![10]

The movie's most iconic moment occurs when Beale implores his viewers to stick their heads out of their windows and scream: "I'm mad as hell, and I'm not going to take this anymore!"[11] This dialogue has entered the national lexicon. The American Film Institute rated it #19 on its *100 Years...100 Movie Quotes* in 2005.[12]

Delivered with verve by Peter Finch, the actor died from a heart attack while promoting the film. Finch was posthumously bestowed with an Oscar for his performance. The line, as with the character of Beale, is subverted and stage-managed by corporate interests for their own purposes.

The revamped Howard Beale Show becomes a hit thanks to his populist rantings. "The American people," Christensen explains, "want someone to articulate their rage for them."[13] The same could be said of Chayefsky, as he laces tongue-in-cheek satire with his pungent insights.

Television's function is to amuse and to distract. Beale facilitates this purpose, giving credence to Aristotle's perception "that no great mind has ever existed without a touch of madness."[14] That is until one night Beale, much to the chagrin of his corporate masters, goes too far.

Beale convinces the public to pressure the government into blocking the network's acquisition by the Saudis. Enter the conglomerate's overlord Arthur Jensen. In Jenson's eyes, Beale's transgression is far graver than having "stopped a business deal," for the anchorman has "meddled with the primal forces of nature."[15]

Decades before 'Globalization' became the order of the day, Jensen paints for Beale a bleak panorama. "There are no nations, there are no peoples," Jensen intones, "There is no America. There is no democracy. There is only IBM and ITT and AT&T and DuPont, Dow, Union Carbide, and Exxon."[16]

"We no longer live in a world of nations and ideologies," pure and simple, "the world is a business."[17] Jenson envisions a "perfect world, in which there's no war or famine, oppression or brutality. One vast and ecumenical holding company, for whom all men will work to serve a common profit, in which all men will hold a share of stock."[18]

On receiving this revelation, Beale begins to preach the "corporate cosmology of Arthur Jensen."[19] "It's the individual that's finished," Beale explains, "It's every single one of you out there that's finished."[20] Previously Beale was the conduit of the audience's ire. He has morphed into an oracle of resignation and lament.

Beale's contention, that "The whole world is becoming humanoid, creatures that look human but aren't" lacks the passion of his populist crusade.[21] No longer a raging messiah, his ratings slip once again. This time however, he can't be fired. Jenson sanctions Beale's new gospel and wants him kept on the air.

Those who oversee the network's day-to-day operations now have a problem. They are prevented from firing Beale though his ratings have tanked. The solution, befitting a conspiracy from the 1970s, is to have Beale assassinated. In getting rid of Beale, they can with the same stroke bolster the ratings of another show.

Christensen's 'Mao Tse Tung Hour' is a progenitor of the reality TV show genre before the proliferation of reality TV. It showcases the 'Ecumenical Liberation Army,' a motley assortment of urban guerillas patterned after the Symbionese Liberation Army which kidnapped Patty Hearst.

The film concludes with Beale being shot to death in a hail of bullets by the Ecumenicals as he opens his news program. The film concludes on a sardonic note, "This was the story of Howard Beale: The first known instance of a man who was killed because he had lousy ratings."[22] The television industry cried foul.

Critics dismissed *Network* as farce. If its plot seems far-fetched, it wasn't to a generation of Americans who came of age witnessing Jack Ruby shoot Lee Harvey Oswald on live TV in 1963. *Network* is saturated with such over-the-top elements conveyed so convincingly they seem not only plausible but rooted in fact.

For instance, in 1974 news personality Christine Chubbuck announced: "TV 40 presents what is believed to be a television first. In living color, an exclusive coverage of an attempted suicide."[23] Chubbuck then shot herself before the cameras. It was an actual scenario Chayefsky could have contemplated.

Amidst all this depravity is UBS News president Max Schumacher. If Beale is the mouthpiece for Chayefsky's discontents, Schumacher epitomizes the withered values the author pines for. A character inspired by deposed CBS News President Fred Friendly, Schumacher personifies gravitas and old-fashioned integrity.

Still, Schumacher is a flawed man. He leaves his wife for Christensen, a younger woman whom he knows can't ever truly love him. Diana is part of the television generation. "She learned life from Bugs Bunny," he wryly observes, "the only reality she knows comes to her from over the TV set."[24]

Schumacher can save himself only by leaving her. "You're television incarnate," he tells her, "indifferent to suffering, insensitive to joy. All of life is reduced to the common rubble of banality. War, murder, death are all the same to you as bottles of beer. And the daily business of life is a corrupt comedy."[25]

Schumacher mournfully concludes: "You're madness, Diana. Virulent madness. And everything you touch dies with you. But not me. Not as long as I can feel pleasure and pain and love."[26] *Network* does a great deal more than take the media to task for the mindless drivel it incessantly delivers.

Chayefsky anticipated much of the current infotainment landscape. Long considered a loss-leader, news programming was not expected to make money. These days it must. Narratives are spun and dictated. Journalism has been replaced by tabloid fodder. Anchors are not reporters but performers.

Tellingly, *Network* depicts the mass media assuming the function of a mass narcotic corrupting society and debasing the human condition. If written today, no doubt Chayefsky would be urging people to turn away from their cellphones, stop texting, and start re-engaging with other human beings.

This conundrum is as old as recorded time. Remember that the Romans placated the masses with bread and circuses. *Network* is as much a warning as it is entertainment. In 2000, the Library of Congress selected *Network* for inclusion in the National Film Registry for its cultural, historical, and aesthetic significance.[27]

A half-a-century after its release, the movie continues to resonate. Using his typewriter like a surgeon's scalpel, Paddy Chayefsky cuts to the bone. The rise of the corporation at the expense of the individual is in fact his principal theme. The most profound question this irate auteur posits is one which should give each of us pause:

> Well, the time has come to say, is dehumanization such a bad word? Because good or bad, that's what is so.[28]

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2. *Credits* at https://www.dga.org.
3. Shaun Considine, *Mad As Hell*, (1st Ed. 1994) 398.
4. *Id.*
5. *Id.* 273.
6. Chayefsky was recognized by the New York Film Critics, the Los Angeles Film Critics, the Writers Guild and the Golden Globes.
7. Afflictor.com, "I Suspect It's More Difficult To Be A Great Screenwriter…" (January 15, 2015) at https://afflictor.com.
8. Billy Wilder, Francis Ford Coppola and Woody Allen have each won three writing Oscars, but their various wins were shared with a collaborator. Allen's Oscar for *Annie Hall* was shared with Marshall Brickman. His two subsequent awards were for scripts he wrote by himself.
9. Considine, 18.
10. Paddy Chayefsky, *The Collected Works of Paddy Chayefsky The Screenplays*, (1st Ed. 1995), 183-184.
11. *Id.* 174.
12. American Film Institute, AFI's 100 YEARS...100 MOVIE QUOTES at https://www.afi.com.
13. Chayefsky, 139.
14. Aristotle, BrainyQuote, at https://www.brainyquote.com.
15. Chayefsky, 205.
16. *Id.* 206.
17. *Id.*
18. *Id.*
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21. *Id.* 207.
22. *Id.* 222.
23. Lauran Hamm, *Blood with a Twist: On-Air Suicide, The Arapahoe Pinnacle* (May 2, 1988) at https://arapahoenews.com.
24. Chayefsky, 193.
25. *Id.* 216.
26. *Id.*
27. Library of Congress, Complete National Film Registry Listing at https://www.loc.gov.
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FOCUS: MENTAL HEALTH

Mental Health Parity—Past, Present, Future

Marc Apsis and Lavanya Sathyamurthy

Post-traumatic stress disorder. School shootings. Suicide. Eating disorders. Post-partum depression. Help lines for high-stress professions. Devastating mental health by-products of COVID-19 and of nearly 20 years of constant American warfare. This begs the question: Is the United States in the midst of a mental health crisis? According to the Centers for Disease Control and Prevention (the "CDC"), the answer is an unequivocal "yes."[1]

A 2024 report from Mental Health America shared that 23.08% of U.S. adults, equivalent to nearly 60 million Americans, are suffering from a mental illness, and 17.82% of U.S. adults have a substance use disorder.[2] In 2023, the White House stated that less than half the people with a mental health condition and fewer than one in ten people with a substance abuse disorder were receiving care.[3]

While we may think of this as a relatively recent phenomenon, Congress recognized that access to mental health care is a problem and passed the original Mental Health Parity Act in 1996 (the "1996 Act"). In the intervening 30 or so years, the basic tenets of the 1996 Act have remained largely unchanged, but other factors surrounding those basic principles have changed.

Mental Health Parity Act of 1996

The Mental Health Parity Act (the "Act") is a federal law[4] that requires both group and individual health plans to cover mental health and substance use disorders in a similar way as medical and surgical benefits are covered.[5] Employers who do not comply with the mental health parity requirements may be subject to stiff financial penalties under Internal Revenue Code (the "Code") section 4980D. Importantly, the law does not require group health plans to cover mental health and/or substance use disorders; rather, it only applies to plans that cover mental health and/or substance abuse.

The law was initially passed in 1996 and required group health plans with 50 or more employees that offered mental health coverage to apply the same lifetime and annual dollar limits to mental health benefits as those applied to medical and surgical benefits.[6] The law is codified in both ERISA and the Code. The law did not apply to other limits on mental health coverage, such as visit limits, and it did not require parity for substance use disorders.[7]

The Mental Health Parity Act was amended in 2008 to extend parity requirements to substance use disorders as well.[8] Furthermore, the law also requires that financial requirements (for example, coinsurance and copays) and treatment limitations (for example, visit limits) cannot be more restrictive for mental health and substance use disorders than for medical and surgical benefits.[9]

The regulations were amended again in 2013 to become applicable to all non-federal governmental plans with more than 50 employees, to group health plans of private employers with more than 50 employees, and to individual health plans.[10] The Act specifies that health plans that offer medical/surgical coverage and mental health/substance use coverage must provide mental health and substance use coverage in all classifications in which medical and surgical benefits are provided. Classifications include inpatient in-network, inpatient out-of-network, outpatient in-network, outpatient out-of-network, emergency and prescription drugs.[11]

The law also requires that financial requirements such as deductibles and out-of-pocket limits must combine both physical and behavioral health coverage, which encompasses mental health and substance use disorders.[12] For example, there can only be an overall deductible that applies to both types of services, rather than a separate deductible for each category.[13]

Finally, the Act distinguishes between quantitative treatment limitations, such as visit limits, and non-quantitative treatment limitations, such as requiring pre-authorization for treatment.[14] The Act eliminates an exception that allowed for different nonquantitative treatment limitations for physical and behavioral health benefits "to the extent that recognized clinically appropriate standards of care may permit a difference."[15]

Most recently, the Mental Health Parity Act received another update in 2024. In September 2024, the U.S. Departments of Labor, Health and Human Services, and the Treasury—the three federal agencies responsible for enforcing the Act (the "Departments")—issued a rule (the "Final Rule") to prohibit any material differences in "meaningful benefits" provided for physical and behavioral health conditions, as measured by key outcomes data on access to care.[16]

ERIC's Challenge to the Mental Health Parity Act

In January 2025, the Employee Retirement Income Security Act Industry Committee ("ERIC"), a nonprofit organization that represents the interests of several large employer health plans, filed a lawsuit against the Departments, challenging the 2024 amendment to the Act.[17] ERIC asserted that it "should have no obligation to ensure there is no 'material difference in access to SUD/MH [substance use disorder/mental health] services.'"[18] More specifically, ERIC claimed that the law is impermissibly vague and arbitrary, which makes it difficult for health insurance plans to comply with the requirements.[19]

The Administrative Procedure Act prohibits agencies from passing regulations that are "arbitrary and capricious," meaning there is no rational connection between the reasoning for the rule and the law itself.[20] For example, ERIC's complaint alleged that the reliance on outcome measures, such as rate of service utilization, is arbitrary because access to mental health benefits may depend on state laws and provider shortages rather than insurance coverage.[21] Also, ERIC stated that the law does not clearly define key terms like "material differences" and "meaningful benefits."[22] Furthermore, ERIC alleged that the rule's ambiguities may also violate the Due Process Clause, since health insurance plans do not have fair notice of their obligations.[23] For these reasons, ERIC asserted that the Mental Health Parity Act is overly burdensome to implement.[24]

Anthem Class Action

In April 2020, plaintiffs filed a class action against the insurance company, Anthem, in New York federal court, alleging that the insurance company applied overly restrictive criteria, such as requiring that services must be medically necessary to be covered, to claims for residential inpatient behavioral health treatment.[25] The Mental Health Parity Act states that health plans cannot place more restrictions on claims for behavioral health treatment, compared to those applied in the medical and surgical context.[26] The court denied Anthem's motion to dismiss the case in February 2022.[27]

In March 2024, the court granted declaratory relief, an order that clarifies the insured parties' right to coverage of behavioral health services, and issued a retroactive injunction requiring Anthem to reprocess claims for mental health treatment.[28] In July 2025, Anthem agreed to pay $13 million to settle a class action lawsuit that alleged the company had violated the Mental Health Parity Act.[29] This payment, after deducting costs such as attorney fees, will be distributed to settlement class members who were denied behavioral health coverage, which encompasses mental health and substance use disorders, by Anthem.[30] Each member will receive a nominal payment of $100 or a reimbursement based on their individual claims.[31] More than 3,500 violations of the Act were investigated by the U.S. Department of Labor between 2010 and 2018.[32]

Current Enforcement

In May 2025, the U.S. Departments of Labor, Health and Human Services, and the Treasury released a public statement that they will not enforce the Final Rule to the Mental Health Parity Act before the court reaches a final decision in the ongoing litigation, as well as an additional 18 months after the decision, although health plans must still comply with 2013 and earlier guidance.[33]

In addition to the above-mentioned litigation, Kaiser Foundation Health Plan reached a settlement agreement with the U.S. Department of Labor in February 2026 for failing to maintain adequate provider networks for mental health and substance use disorder care.[34] Kaiser will pay a $2.8 million penalty to the federal government and must compensate at least $28 million for the costs incurred by its members in seeking out-of-network mental health and substance use disorder services.[35]

The Departments have also not provided any timeline for determining whether to rescind or modify the law,[36] which would involve the Administrative Procedure Act's notice and comment process.[37] The process requires agencies to publish a proposed rule in the *Federal Register* and provide the public with an opportunity to submit comments for a certain time period.[38] The Departments have encouraged states to similarly halt enforcement of the law and notified state health departments that they will not be penalized by the U.S. Department of Health and Human Services for doing so.[39]

Importance of the Mental Health Parity Act

The Mental Health Parity Act is a crucial civil rights accomplishment as a response to health plans' (and society's) historical discrimination against people with mental illnesses and substance use disorders.[40] Before this law was passed, hundreds of health insurance plans did not cover medications for opioid use disorder.[41] More than a million people were denied coverage for nutritional counseling for mental health conditions such as anorexia nervosa and binge-eating disorder.[42] Additionally, the Act contributes to the overall public health of the nation.

Looking Ahead

The future enforcement of this law remains unclear. Organizations, such as the CEO Alliance on Mental Health, are advocating for enforcement of the Act by sending letters to Congress.[43] Meanwhile, employers should continue complying with all requirements of the Mental Health Parity Act until the case reaches resolution.

Importantly, only the 2024 Final Rule to the Act is in question. Original obligations—such as the documentation of a comparative analysis of a plan's treatment limitations for physical and behavioral disorders, including geographic restrictions—will remain in place regardless of the litigation's outcome. As awareness of mental health and substance use disorders continues to increase, the government may enforce the Mental Health Parity Act more strongly, through thorough investigation and sanctions, and demand more equitable coverage from insurers. Until then, we may have to wait and see.

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Criminal Court Law & Procedure	Brian J. Griffin
Cyber Law	Nicole E. Osborne
Defendant's Personal Injury	Brian Gibbons
District Court	Matthew K. Tannenbaum
Diversity & Inclusion	Hon. Maxine S. Broderick and Hon. Linda K. 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
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Labor & Employment Law	Lisa M. Casa
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Lawyer Referral	Peter H. Levy
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Matrimonial Law	Joseph A. DeMarco
Medical Legal	Nicole M. LaGrega
Mental Health Law	Jamie A. Rosen
Municipal Law and Land Use	Elisabetta T. Coschignano and Anthony C. Curcio
New Lawyers	Andrew B. Bandini
Nominating	Sanford Strenger
Paralegal	
Plaintiff's Personal Injury	Steve Z. Gokberk
Publications	Cynthia A. Augello
Real Property Law	Suzanne Player
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, MARCH 31

Access to Justice
12:30 p.m.

Surrogate's Court Estates & Trusts
5:30 p.m.

A "meet and greet" with new Nassau County Surrogate, Hon. David P. Sullivan, and his Principal Law Clerk, Lawrence Schaeffer.

WEDNESDAY, APRIL 1

Rel Property Law
12:30 p.m.

Maria Paciullo and Dan Blumenthal will speak on "Good Guy Guaranties and Drafting to Avoid Litigation: Lessons from 1995 CAM LLC v. West Side Advisors, LLC."

TUESDAY, APRIL 7

Publications
12:45 p.m.

TUESDAY, APRIL 9

LGBTQ
12:30 p.m.

MONDAY, APRIL 13

Access to Justice
12:30 p.m.

Asian American Attorney Section
5:30 p.m.

TUESDAY, APRIL 14

Education Law
12:30 p.m.

Labor & Employment Law
12:30 p.m.

WEDNESDAY, APRIL 15

Intellectual Property
12:30 p.m.

Business Law, Tax, & Accounting
12:30 p.m.

Association Membership
12:30 p.m.

Matrimonial Law
5:30 p.m.

Hon. Jeffrey S. Sunshine, Statewide Coordinating Judge for Matrimonial Matters, will provide updates on all things matrimonial law and the rules impacting the matrimonial law practice.

THURSDAY, APRIL 16

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

New Lawyers
Law Student
5:30 p.m. – 8:00 p.m.

Spring Outing at Garden Social Beer Garden & Kitchen, East Meadow

TUESDAY, APRIL 21

Women in the Law
12:30 p.m.

Surrogate's Court Estates & Trusts
5:30 p.m.

Diversity & Inclusion
6:00 p.m.

THURSDAY, APRIL 23

Commercial Litigation
12:30 p.m.

Judicial Section
12:30 p.m.

FRIDAY, APRIL 24

Condemnation Law & Tax Certiorari
12:30 p.m.

Nassau County Supreme Court Supervising Francis Ricigliano will discuss his involvement with the Tax Certiorari Part in Nassau County Supreme Court.

WEDNESDAY, APRIL 29

District Court
12:30 p.m.

WEDNESDAY, MAY 6

Real Property Law
12:30 p.m.

Law Student
5:30 p.m.

THURSDAY, MAY 7

Education Law
12:30 p.m.

Frazer & Feldman, LLP Partners Joseph Lilly and Dennis O'Brien will discuss investigations of school district employees.

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

Publications
12:45 p.m.

The Access to Justice Committee
Invites You To Our

PRO BONO RECOGNITION EVENT

Honoring those who have provided exemplary legal service to the community in 2025 in furtherance of access to justice

Sips, Bites & Program

Thursday, April 16, 2026
5:30PM—7:30PM

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M. KATHRYN MENG, ESQ.

AT THE ANNUAL LAP PETER SWEISGOOD DINNER

APRIL 20,2026
6:00 PM

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LAP presents the Peter Sweisgood award to Kathryn Meng for her tireless commitment to the LAP/LAC and to attorneys in need.

Highlights of her illustrious career:

- Past President, NCBA
- First Female Attorney Member, Former Director, Officer, and President, Criminal Courts Bar Association (CCBA)
- Former Dean, Nassau Academy of Law (NAL)
- Former President and Current Director at the Legal Aid Society–Nassau County (LAS)
- Member of the Character and Fitness Committee for the 2nd Dept. for the admission of new attorneys to the NYS Bar (1983–present)
- Adjunct Professor of Law and Ethics in Higher Education, Graduate School of Education at Hofstra University (2011–2016)
- Adjunct Professor in the Criminal Justice Department, Nassau Community College (45 years)

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These Members' contributions enable the NCBA to continue its legacy for years to come, and demonstrate 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.

Lunar New Year Celebration

On February 26, the Asian American Attorney Section hosted their Third Annual Lunar New Year Celebration at Domus. Attendees gathered for a night of traditional food and drinks, raffles, and performances by the Great Neck South High School and Great Neck Senior Chinese Folk Orchestra. The evening was a showcase of community and culture, featuring a lively lineup of entertainment that included a traditional Lion Dance, folk music, Chinese Yo-Yo, Wushu martial arts demonstrations, Chinese Ribbon Dance, Korean Drum, and K-Pop dance.

Photos by Hector Herrera

New Members

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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.

Rivkin Radler partner **Benjamin Malerba** was ranked in the Legal 500 inaugural Elite City Focus: New York—Cybersecurity & Data Protection series and was recognized by *City & State NY* as a 2026 Trailblazer in Law.

Capell Barnett Matalon & Schoenfeld LLP congratulates three partners who have been invited to speak at the National Business Institute: Founding Partner **Gregory L. Matalon** on "Commencement of Proceedings and Information Gathering" on May 7; **Matalon** and Partner **Erik Olson** on "Handling Estate Administration Tax Issues"; and Founding Partner **Robert S. Barnett** on "S Corporations: Pass Through Mechanics, Basis, AAA & Compensation" for the FAE Financial Leadership Certificate Program: Taxation of Business Entities Series on May 7. Partner **Yvonne R. Cort** will speak about IRS liens, levies and resolutions for TRT CLE. On May 12, **Barnett** and **Olson** will present "S Corporation Stock and Debt Basis & Form 7203" for Strafford/ BARBRI.

Hon. Ruth Kraft, formerly partner and chair of the Labor & Employment Law Group at Falcon Rappaport & Berkman, is pleased to announce the formation of Kraft Employment Law Group PLLC, focusing on representation of business management in transactional, advisory and litigation matters. Judge Kraft has also been named to the executive board of the Nassau County Women's Bar Association.

Forchelli Deegan Terrana LLP is proud to announce the launch of Tax Break Down, a new blog designed to help businesses and individuals better understand today's complex and evolving tax landscape. The blog will feature contributions from members of the firm, including **Lorraine S. Boss**, and **Mary E. Mongioi**. Together these attorneys will share perspectives and practical guidance drawn from their own experiences advising clients on complex tax matters.

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