

NEW YORK COUNTY LAWYER

October 2009

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Volume 5 / Number 8

MESSAGE FROM THE NYCLA PRESIDENT

Ann B. Lesk

NYCLA Is Also the Grateful Recipient of *Pro Bono* Services

NYCLA could not function without generous contributions of time and expertise from many members and their firms. In addition to recognizing the many members who participate in NYCLA's *pro bono* programs for clients, I would like to thank all NYCLA's Board members and officers for their *pro bono* service to the Association. My colleagues in leadership positions devote substantial time to help NYCLA fulfill its mission to the public and the profession.

In addition, the chairs of NYCLA's committees, sections and task forces have initiated and overseen policy initiatives that have allowed NYCLA to take an active role in a wide range of public policy discussions. Special thanks are due to Hon. George Bundy Smith for chairing the NYCLA Justice Center, which sponsors many of NYCLA's public policy initiatives.

More than 130 volunteers serve on NYCLA's governance committees, providing oversight for NYCLA activities and



programs and offering guidance for future directions. The *Pro Bono* and CLE Committees are responsible for two major areas of activity for NYCLA. The Library Committee supervises the operation of our Library, including expansion of its on-line research tools in recent years. The Membership Committee has generated suggestions for new member benefits and for

initiatives to maintain and grow membership. The Communications Committee oversees the Association's print and online communications vehicles. Others, such as Finance, Investment and Audit, are essential to NYCLA's financial well-being. Still others select recipients of NYCLA's annual awards. All of these volunteers contribute mightily to NYCLA's programs and well-being.

I would like to single out a few special contributions. Unfortunately, space does not permit individual mention of everyone who has provided *pro bono* assistance to NYCLA. Contributions that are not mentioned below are still deeply appreciated.

First, NYCLA has received outstanding assistance in the preparation of *amicus* briefs. Most recently, Suhana Han (a current Director of NYCLA) and her colleagues Adam Brebner and Charles Korsmo of Sullivan & Cromwell LLP

(See President's Message on page 13)

NYCLA's Ethics Institute Welcomes Randy Cohen, "The Ethicist," *New York Times Magazine*, as Panelist

On Wednesday, October 14, at 6:00 PM, NYCLA's Ethics Institute is co-sponsoring a special live program at the Home of Law titled *Shysters, Sharks and Saviors: ARE LEGAL ETHICS IMMORAL?* The program features a conversation between **Randy Cohen**, writer of *The New York Times Magazine's* "Ethicist" column, and renowned Fordham Law School Ethics Professor **Bruce A. Green**, which will be moderated by **Lewis F. Tesser**, director of NYCLA's Ethics Institute, and focus on the ethical responsibilities of attorneys and their role in society. The provocative discussion will attempt to answer the following

questions:

Why do we give lip service to civility, but glorify the sharks?
Why do we protect the secrets of liars?
Why do we seek to exclude reliable evidence?
Why do we ask the court to let wrongdoers escape punishment?
Why do we encourage individuals who have done nothing wrong to settle?
Why do we find it is not economic to pursue "small" claims of less than \$100,000 or more, even if the wrong is blatant?

(See Ethics Institute on page 14)



Randy Cohen

Save the Date

NYCLA's 95th Annual Dinner

Hail to the Chiefs!

Honoring the Leaders of the State and Federal Courts of New York

Boris Kostelanetz President's Medal Honoree: Hon. Robert M. Morgenthau,
District Attorney for New York County

December 15, 2009 Waldorf Astoria
Dinner Chair Robert L. Haig

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Recognizing the
Importance of
***Pro Bono* Work**

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NEW YORK COUNTY
NYCLA
LAWYERS' ASSOCIATION

EVENTS CALENDAR

Events are subject to change; please check the Association’s website, www.nycla.org, for schedule changes and additions.

October

SECOND ANNUAL GANG PREVENTION CONFERENCE: SOCIAL EVOLUTION IN THE AGE OF OBAMA - FROM GANG COMMUNITIES TO COMMUNITY SERVICE

Tuesday, October 6 4:00-7:00 PM

Place: NYCLA Home of Law – 14 Vesey Street

FREE

Keynote Speaker: Dr. Robert P. Moses, civil rights pioneer with the Student Nonviolent Coordinating Committee
Confirmed Panelists: Frances Brown, chair, Mothers Against Gangs; Nigel Farinha, ADA, deputy unit chief, Special Narcotics Gang Unit, Manhattan DA’s Office; and A.T. Mitchell, chair, Man Up!
Sponsor: NYCLA’s Law-Related Education Committee’s Youth at Risk Subcommittee
Co-Sponsors: NYCLA’s Civil Rights & Liberties, Education Law and Minorities & the Law Committees and Criminal Justice Section, Gender Fairness Committee – 12th Judicial District, Bronx Women’s Bar Association and the New York Women’s Bar Association
RSVP: dlamb@nycla.org and write ‘Oct. 6 event’ in the Subject line.

PUBLIC FORUM: IT’S NOT JUST A SUMMONS!

Wednesday, October 21 6:00 PM

Place: NYCLA Home of Law – 14 Vesey Street

FREE

Each year nearly 600,000 New Yorkers receive a summons to a local criminal court and yet the procedures and issues concerning these criminal cases may be little understood by our citizens. Panelists will examine the New York City summons practice, from issuance to adjudication, and educate the public about the policies, procedures and collateral consequences of these summonses.

Sponsor: NYCLA’s Criminal Justice Section

Panelists: Hon. Eileen Koretz, former supervising judge and presiding judge of the Midtown Community Court, NYC Criminal Court – New York County; Robert Cassidy, supervisory clerk, Citywide Summons Operation, NYC Criminal Court; Gerianne Abriano, bureau chief, Kings County District Attorney’s Office for Red Hook Community Justice Center; McGregor Smyth, civil action project director, Bronx Defenders; Eve Rosahn, director, Parole Revocation Defense Unit, The Legal Aid Society; and Conway C. Martindale II, Esq., assigned counsel
Moderator: Hon. Michael J. Yavinsky, interim judge of the New York City Civil Court, assigned to Criminal Court
Co-Sponsors: NYCLA Justice Center and Civil Rights & Liberties Committee
RSVP: dlamb@nycla.org and write ‘Oct. 21 event’ in the Subject line.

SPECIAL EVENT: FEDERAL COURTS COMMITTEE’S LUNCHEON HONORING THE

FEDERAL COURTS IN NEW YORK CITY

Thursday, October 29 12:00 PM

Place: NYCLA Home of Law – 14 Vesey Street

Honoree: Hon. Gerard E. Lynch, United States Court of Appeals for the Second District, will receive NYCLA’s Edward Weinfeld Award for Distinguished Contributions to the Administration of Justice.

Award Presenter: Hon. Denise L. Cote, United States District Court, Southern District of New York

Tickets: \$100 each or \$1,250 for table of ten with firm placard

Sponsor: NYCLA’s Federal Courts Committee

RSVP: Please make checks payable to NYCLA and mail to: Hon. Joseph Kevin McKay, Luncheon Chair, New York County Lawyers’ Association, c/o NYS Supreme Court, 320 Jay Street, Suite 25.94, Brooklyn, NY 11201

November

SPECIAL EVENT: FABULOUS FALL FASHION BENEFIT FOR THE NYCLA FOUNDATION

Wednesday, November 4

5:30-8:30 PM

Place: Nina McLemore Showroom, 135 East 55th Street (between Lexington and Third Avenues), 7th floor

Come see Nina’s beautiful collection for working women. Enjoy informal modeling and refreshments and get a personal fashion consultation from Nina herself. A percentage of the evening’s sales, as well as purchases made at the showroom between October 28 and November 11, will benefit the NYCLA Foundation, which supports the Home of Law renovation and the Summer Minority Judicial Internship Program.

Benefit Committee Co-Chairs: Hon. Betty Weinberg Ellerin, Sylvia Di Pietro, Olivera Medenica and Monique J.

Mulcare

FREE

RSVP (by November 2): dlamb@nycla.org and write ‘Nov. 4 event’ in the Subject line. (For more information, please refer to the invitation on page 8.)

December

NYCLA’S 95TH ANNUAL DINNER – HAIL TO THE CHIEFS! HONORING THE LEADERS OF THE STATE AND FEDERAL COURTS IN NEW YORK

Tuesday, December 15

Reception: 6:30 PM

Dinner: 7:30 PM

Place: Waldorf Astoria Hotel – 49th Street and Park Avenue

Boris Kostelanetz President’s Medal

Recipient: Hon. Robert M. Morgenthau, D.A., New York County

Dinner Chair: Robert L. Haig, former NYCLA president

EDITOR’S NOTE

This Month’s Theme: Recognizing the Importance of *Pro Bono* Work

During the ABA’s first ever National *Pro Bono* Celebration, from October 25-31, 2009, hundreds of bar associations, law firms, courts, law schools and other law-related programs and groups will highlight the *pro bono* work lawyers do each and every day. The October issue of *New York County Lawyer* recognizes the dedicated service of the attorneys, jurists and non-attorneys who participate in NYCLA’s *pro bono* programs and extends a welcome to members to ‘step up to the plate’ and volunteer.

NYCLA’s *Pro Bono* Committee, chaired by Lisa E. Cleary, seeks to develop programs that increase access to justice for low-income New Yorkers. The programs, which range from providing legal information and assistance in resolving a problem before legal action is taken to representing individuals who are challenging an adverse decision, are administered by Lois Davis, NYCLA’s director of *Pro Bono* Programs. The Association will continue to explore novel and creative ways of providing *pro bono* legal services to those in need.

We thank the attorneys who shared their experiences by writing articles about their *pro bono* activities. There are articles about the: Article 81 Guardianship Project, by Davida P. Holmes; Elder Law Project, by Clifford A. Meiorowitz; Legal Counseling Project, by Joan Beck-Wall; Manhattan CLARO (Civil Legal Advice and Resource Office), by Adrienne Woods Blankley and Dora Galacatos; Mortgage Foreclosure Project, by Diane Bradshaw; Project Restore, by Daniel R. Antonelli, Collin D. Bull and Daniel Migden; and Uncontested Divorce Project, by Siuling Pun. A client, Maureen A. Finnegan, wrote an article about her experience with the Article 81 Guardianship Project.

NYCLA members also participate in an array of programs that serve summer associates, minority law students and high school students and teachers. In addition, the Joint Committee on Fee Disputes and Conciliation program enlists the support of arbitrators and mediators, both lawyers and non-lawyers, to resolve lawyer-client fee disputes.

We thank them all.

Financial Hardship

NYCLA is aware that many of our members are struggling and we want to help. If you are experiencing financial hardship, you can apply for a dues waiver. For an application, please email asegal@nycla.org or call Andrew Segal at 212-267-6646, ext. 208.

NYCLA Also Offers the Following Resources:

Discounted CLE courses – complete your 2009 bi-annual requirements
CLE scholarships are available
FREE Westlaw, Lexis and Bloomberg Law online research in our Library
FREE online job postings
FREE forums, programs and events
FREE and **OPEN** committees (great for networking)
FREE use of conference rooms
FREE Networking and Professional Development Programs
DISCOUNTS at over 40 retail establishments; to view benefits log in at www.nycla.org.

If you have any questions, please call Diana Kosanovich at 212-267-6646, ext. 213 or email dkosanovich@nycla.org.

Volunteers Needed for Manhattan CLARO

Volunteers are needed for Manhattan CLARO (Civil Legal Advice and Resource Office), an innovative, advice-only, volunteer lawyer program for *pro se* defendants with Civil Court cases in New York County. The project involves a partnership with the Feerick Center for Social Justice at Fordham Law School.

CLARO’s Mission

Volunteer lawyers are needed to assist the ever-growing numbers of *pro se* litigants who have a pressing need for legal assistance on a host of consumer law

issues, particularly consumer debt. The exploding increase in consumer debt cases has inundated the Civil Court. These cases can be overwhelming for *pro se* litigants; for example, many litigants learn of a lawsuit after their wages have already been garnished or their bank accounts frozen. CLARO provides advice-only *pro bono* assistance to *pro se* litigants with consumer debt matters in Civil Court.

(See *Volunteers Needed For CLARO* on page 15)

Job Listings

NYCLA provides online local and national job listings, linked directly on the NYCLA website, through LegalStaff.com. Members can search job listings, as well as list job openings online, by logging on to www.nycla.org and clicking on Benefits in the Members-Only section. The Career Center also has a resource center with articles, strategies and helpful tips for job seekers.

And check out NYCLA’s online Job Postings. Log on to www.nycla.org and click on Jobs in the Members-Only section.

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MESSAGE FROM JAMES B. KOBAK JR.
PRESIDENT OF THE NYCLA FOUNDATION
AND NYCLA PRESIDENT ELECT

October 2009
Dear Friend:

Last year, NYCLA celebrated its Centennial—100 years of serving the public and the profession. Thanks to the generosity of our members and law firms, both large and small, our Centennial Capital Campaign raised \$1.6 million, which is now being invested in the initial renovations on the Home of Law's roof, façade and windows.

More needs to be done to repair our landmarked building. More needs to be done to provide a sound financial basis for our *pro bono* programs for low-income New Yorkers, for our Summer Minority Judicial Internship Program and for our services for lawyers of all ages needing extra help in these difficult financial times. With these needs in mind, the NYCLA Foundation has launched a Second Century Campaign to secure NYCLA's future as a dynamic bar association providing resources for members and the public in a welcoming, comfortable environment.

In addition, to retain members who are par-



ticularly hard hit by the recession, NYCLA has granted far more dues waivers this year than in the past. A contribution to the Foundation earmarked for "Dues Waiver Relief" will be used by NYCLA to compensate for the income lost through dues waivers and will enable the Association to continue to have a generous dues waiver policy.

We invite you to join your colleagues and fellow members in contributing to the Second Century Campaign. With a gift of \$250, we will send you *Brethren and Sisters of the Bar: A Centennial History of the New York County Lawyers'*

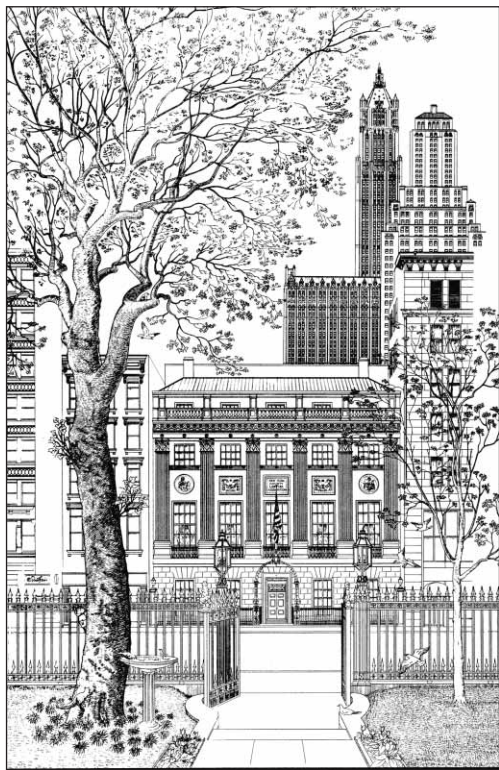
Association. Other special gifts are available for larger contributions.

Although we hope you'll give generously, we welcome a gift in any amount. You can make your contribution online by going to NYCLA's website at www.nycla.org and clicking on NYCLA Foundation or by mailing a check payable to the NYCLA Foundation to: NYCLA Foundation, 14 Vesey Street, New York, NY 10007. As the Foundation is recognized by the IRS as a 501 (c)(3) organization, your gift is deductible to the extent provided by law.

Our Second Century Campaign needs your support. The scaffolding now at the Home of Law is a reminder that your contribution will help erect the financial scaffolding for NYCLA's future.

Sincerely,

James B. Kobak Jr.
President of the NYCLA Foundation



Plan for the Future: Remember NYCLA in Your Will

Gifts received through wills and estate plans are vital to the much-needed renovations and improvements underway at the landmarked Home of Law and to the success of NYCLA *pro bono* and educational programs and resources for lawyers, including: its Law Library and free access to information sources, discounted CLE programs, committees open to all members, professional ethics programs and hot-line resources, and activities for lawyers in transition.

A planned gift makes a lasting contribution to the future of the Home of Law and NYCLA's services for lawyers and the public.

Please consider NYCLA in your will or estate plan.

For more information, please email the Foundation's Executive Director, Marilyn J. Flood, at mflood@nycla.org or call her at 212-267-6646, ext. 222.

Second Century Campaign

Please join your NYCLA colleagues and fellow members and contribute to the Second Century Campaign and to the restoration and repair of the Home of Law.

CONTRIBUTION LEVEL

Contribution	Designation	NYCLA Foundation Gift/Recognition
\$100	Member	NYCLA Centennial DVD
\$250	Friend	Autographed Centennial Book
\$500	Partner	Limited Edition Print
\$1,000	Fellow	Autographed Centennial Book and Limited Edition Print
\$2,500	Supporter	Autographed Centennial Book, Limited Edition Print and Recognition on Plaque at the Home of Law
\$5,000	Patron	Autographed Centennial Book, Framed Limited Edition Print, Tiffany Crystal Windham Box and Recognition on Plaque at the Home of Law
\$15,000	Leader	All Patron Gifts and Recognition, Plus a Naming Opportunity at the Home of Law

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New York County Lawyer is
published by
Long Islander Newspapers
under the auspices of
the New York County Lawyers'
Association. For advertising
information, call 631-427-7000.
Mailing address: 149 Main Street,
Huntington, NY 11743.

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New York County Lawyer is published monthly (except January and August) for \$10 per year by New York County Lawyers' Association, 14 Vesey Street, New York, NY 10007. Periodicals postage paid is mailed at New York, NY and additional mailing offices. POSTMASTER: Send address changes to: New York County Lawyer, 14 Vesey Street, New York, NY 10007-2992.

USPS #022-995
ISSN: 1558-5786

\$10.00 of membership dues is deducted for a one-year subscription to the New York County Lawyer.

A Lawyer's Perspective: Manhattan CLARO

Manhattan CLARO (Civil Legal Advice and Resource Office) is an innovative, advice-only, volunteer lawyer program for *pro se* defendants with Civil Court cases in New York County. The project was created in partnership with Fordham Law School's Lincoln Square Legal Services, Fordham Law School's Feerick Center for Social Justice and Dispute Resolution, and City Bar's Committee on the Civil Court.

By Dora Galacatos

Along with the mortgage foreclosure crisis, the issue of consumer debt has been in the headlines since the economic downturn. Consumer debt and debt collection affect millions of Americans, particularly those on fixed incomes and the working poor. Consumer debt cases have overwhelmed court dockets. For example, the New York City Civil Court has reported that consumer debt cases now exceed landlord/tenant cases – a first-time development. According to the Court, in 2008, original creditors and debt buyers filed 319,500 consumer cases. It is not uncommon in these cases, particularly those brought by debt buyers, for significant legal issues to be present, including statute of limitations defenses and extensive gaps in evidentiary support. Moreover, systemic problems with personal service plague debt collection cases. Unfortunately, the vast majority of debtor-defendants cannot afford representation and legal services organizations have limited capacity to assist them. Some advocates estimate that over 95 percent of consumers defend themselves in Civil Court debt collection cases.

During a June 13, 2008 public hearing of the New York City Department of Consumer Affairs, then-Administrative Judge for the

New York City Civil Court, Justice Fern A. Fisher,¹ reported that between March 2008 and June 2008, the citywide rate at which debtor-defendants failed to file Answers was 75 percent. Justice Fisher also reported that during this timeframe, fewer than 200 Traverse hearings were conducted to adjudicate claims of improper service. On July 23, 2009, in an unprecedented move, Chief Administrative Judge Ann Pfau announced that the court would seek to reopen more than 100,000 default judgments obtained throughout the State as a result of the suspected systematic failure of a process server organization to properly serve debtor-defendants. Attorney General Andrew M. Cuomo has filed a civil suit on the Court's behalf; in April 2009, Attorney General Cuomo brought criminal charges against that firm's owner.

In the face of such extensive problems, the New York City Civil Court, bar associations, legal services providers and law schools have banded together to provide assistance to the growing numbers of New Yorkers struggling with debt collection. With the support of the court system, these partners have established Civil Legal Advice and Resource Office (CLARO) Programs. CLARO Programs run weekly clinics in Civil Court and provide limited legal advice to unrepresented debtor-defendants. CLARO currently operates in Brooklyn, Queens, Manhattan and the Bronx. Although the model has been tweaked in each of the counties, the program essentially runs as follows. County bar associations, such as NYCLA, recruit and train volunteer lawyers, who participate in the weekly clinics. Law schools recruit, train and supervise volunteer law students, who provide administrative and programmatic support and help administer the weekly clinics by, among other activ-

ities, screening visitors. Legal services organizations make available consumer law experts, who are onsite to provide backup support and answer any questions that volunteer lawyers may have.

NYCLA serves as the county bar association partner for the Manhattan CLARO Program, working alongside Fordham Law School and, in particular, the Feerick Center for Social Justice. The Manhattan CLARO Program has served a total of 351 debtor-defendants during 551 visits since its launch in February 2008.

One client, whom I'll call Ms. A.D., provides a great example of how CLARO volunteers assist in consumer debt cases. Ms. A.D. was employed but could not afford a lawyer. In December 2006, because her bank account was frozen, she found out suddenly that she had a default judgment against her. Ms. A.D. was never properly served, so she did not have an opportunity to appear and defend herself in court. She was sued by a debt buyer on a credit card, which originally had a limit of \$2,000, for over \$3,000, the increase over principal due to interest, late fees and other penalties.² Ms. A.D. negotiated an oral agreement over the phone and sent a check for \$1,078 to settle the case. At that time, she never came to court and never received any written confirmation of the agreement or of any payment. In June 2008, Ms. A.D.'s bank account was frozen again and she found out that she was being sued again by the same law firm for the same debt. Once again, Ms. A.D. defaulted because she had never been served. This time, Ms. A. D. came to CLARO, where she received assistance with filing an Order to Show Cause to set aside the default judgment, then filed an Answer and, in time, made a demand for discovery that had been ordered by the Court. After the plaintiff failed to pro-

duce the documentary evidence, the Court dismissed the case with prejudice.

Unrepresented debtor-defendants like Ms. A.D. receive invaluable assistance on a weekly basis through the CLARO Program. Currently, Manhattan CLARO operates only once a week, on Thursday nights from 6:00-8:00 PM. NYCLA hopes to expand the Manhattan CLARO Program to assist additional litigants, particularly seniors and families with young children, for whom evening clinics are difficult to attend. Expanding to a daytime session will require recruitment of lawyer volunteers with the ability to attend 2:00-4:00 PM sessions. An upcoming basic CLARO training is scheduled for **Tuesday, October 27, 2009**, from 6:00-9:00 PM, at the Brooklyn Bar Association at 123 Remsen Street in Brooklyn Heights. For more information, NYCLA members can contact Lois Davis, director of *Pro Bono Services*, at 212-267-6646, ext. 217.

Ms. Galacatos is senior counsel at the Feerick Center for Social Justice at Fordham Law School. She is a recipient of NYCLA's 2009 Public Service Award.

¹ Judge Lippman appointed Justice Fisher to serve as Deputy Chief Administrative Judge for the Courts in New York City on March 11, 2009. Justice Fisher also oversees the statewide Access to Justice Program.

² It is not uncommon for CLARO visitors to be sued for significantly more than the amount of the principal due, sometimes twice as much, because of charges such as interest, late fees and other penalties. The Credit Card Accountability, Responsibility and Disclosure Act of 2009 seeks to address a number of abusive billing practices in the credit card industry.

MESSAGE FROM BARI CHASE, DIRECTOR OF THE CLE INSTITUTE

Special Programs Abound in October at the CLE Institute

This October, NYCLA's CLE Institute has a full lineup of special programs and events that you won't want to miss.

Program Chairs **David Jaffe**, *FINRA*, and **Ernest E. Badway**, *Fox Rothschild LLP*, have assembled an all-star roster of panelists for a full-day program, **Financial Regulators Speak and Listen 2009**, on Thursday, October 15 from 9:00 AM-5:00 PM. Spend the day interacting with the leading regulators in the financial and securities fields and hear about the latest developments from those in the know. Panels include discussions on federal civil regulator enforcement; Self-Regulatory Organization (SRO)/Public Company Accounting Oversight Board (PCAOB)

Enforcement; federal criminal enforcement; and state civil and criminal enforcement. Visit our website at www.nycla.org for further details about the program, as well as a complete list of confirmed speakers.

The CLE Institute will reprise its popular **Federal Criminal Practice Institute**, co-sponsored by the **Federal Bar Council**, beginning with a cocktail reception and introduction on Thursday evening, October 15. The two full-day program on Friday and Saturday, October 16 and 17 is specifically designed for state criminal practitioners seeking to acquire the knowledge and skills necessary to establish and develop a federal criminal practice.

Completion of the program enhances an attendee's prospects for acceptance to the CJA Panels in the Southern and Eastern Districts of New York. Program Chairs **Mark B. Rosen**, *John Jay College of Criminal Justice*, **Mariana Hogan**, *New York Law School*, and **Alan Vinegrad**, *Covington & Burling LLP*, have assembled an unparalleled faculty drawn from the bench, bar and academia. Visit our website at www.nycla.org for a complete list of the faculty, as well as additional program details.

We welcome back **Gloria J. Browne-Marshall** to the CLE Institute to reprise an updated and expanded version of her lecture series, **Race, Law and American**

Society—2009 Update. Although the series was planned before the recent incident with Dr. Henry Louis Gates, that confrontation reminds us that issues of racial profiling and discrimination are part of America's past and present. Professor Browne-Marshall will chronicle the denial of equal protection of the law in the criminal justice system and educational opportunities, as well as voting rights. Attend all three lectures in the series, or pick and chose the topics that most interest you. Individual sessions include:

Race, Law and Criminal Justice – October 20
Race, Law and Voting Rights: An Update (See Message From Bari Chase on page 15)

Have you planned for the unexpected?

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NYCLA offers exclusive access to the following quality insurance programs:

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- 10/20-Year Level Term Life Insurance
- Long Term Care Insurance
- Long Term Disability Income Insurance
- Accidental Death & Dismemberment Insurance

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Another Lawyer's Perspective: Manhattan CLARO

By Adrienne Woods Blankley

I am a lawyer who specializes in the creditors' rights side of corporate bankruptcy. By assisting individuals being sued by creditors in Civil Court, I am, in professional terms, about as far outside my comfort zone as I can imagine. Nonetheless, like many volunteers at CLARO, I cannot think of a more rewarding way to spend Thursday nights. CLARO affords its volunteers a unique opportunity to meet someone new, every week, and improve his/her lives in an immediate and tangible way.

The current economic climate has affected most of us and the legal profession certainly has not been immune to the staggering job losses felt nationwide. New York's neediest often lack any type of social safety net and are disparately affected by the economic crisis. Many who were previously scraping by are now coping with a total loss of income and the inability to purchase even basic necessities, let alone make payments on their debts.

Creditors seeking to enforce their rights often turn to overzealous and sometimes disreputable collection agencies and even law firms, which may not respect legal boundaries. Clients often come to CLARO after a judgment was already entered against them, because they ignored the summons and complaint or, more often, because process servers did not serve them and lied on affidavits of service. Indeed, this problem is so widespread that Attorney General Andrew M. Cuomo recently sued 35 law firms and two process servers, seeking to vacate an estimated 100,000 default

judgments for which the summons and complaints were never served.

It is disturbingly common for CLARO clients – many of whom are completely reliant on disability or social security – to first learn of lawsuits against them when their bank accounts, containing only exempt income, are illegally frozen. Further, they have unrealistic, draconian ideas of creditors' rights, believing that creditors have unlimited rights to take everything, from wedding rings to beloved pets, and even to incarcerate them. Because our clients were often unaware of their rights in the collection process, they

became easy targets for unethical and sometimes illegal collection tactics.

Far from seeking to take advantage of the system, most CLARO clients are deeply embarrassed by their inability to pay their debts. While bankruptcy may be their best option, many will not even consider it because all they want to do is pay their debts. They try to impress upon volunteers the notion that they are not trying to shirk their obligations; it is often of paramount importance that volunteers believe them. It is an act of courage for them to come to CLARO to seek help and face seemingly insurmountable debts.

Not every client evokes sympathy. Some are angry and hostile towards a system that they think treated them poorly.

Some are right. All of our clients, however, provide us with an opportunity to learn more about the law and the need to work towards greater social justice.

Ms. Blankley is an attorney with Arent Fox LLP, representing clients in insolvency and restructuring matters with a creditors' rights focus.



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NYCLA Acknowledges Jurists, Lawyers and Educators for *Pro* *Bono* Contributions to NYCLA's Educational Programs

NYCLA salutes the jurists, lawyers and educators who participate in educational programs for summer associates, minority law students and New York City public school students and teachers.

Summer Associates Attend Lunch with a Judge Program

The Lunch with a Judge Program, created 17 years ago by the Association's Young Lawyers' Section, has provided summer interns with an opportunity to hear judicial perspectives on topics of importance to new lawyers, such as ethical issues and appropriate courtroom behavior. This year's program was co-chaired by Hon. Karla Moskowitz, Associate Justice, Appellate Division, First Department, and Jeffrey M. Kimmel, co-chair, NYCLA's Young Lawyers' Section and NYCLA Board member. NYCLA acknowledges the judges who participated in the 2009 program.

Hon. Richard F. Braun, Supreme Court, Civil Branch, New York County
Hon. Denny Chin, U.S. District Court, Southern District of New York
Hon. Paul Crotty, U.S. District Court, Southern District of New York
Hon. George Daniels, U.S. District Court, Southern District of New York
Hon. Bernard Fried, Supreme Court, Civil Branch, New York County
Hon. Debra James, Supreme Court, New York County
Hon. Marcy Kahn, Supreme Court, New York County
Hon. Shirley Kornreich, Supreme Court, Civil Branch, New York County
Hon. Doris Ling-Cohan, Supreme Court, New York County
Hon. Loretta A. Preska, U.S. District Court, Southern District of New York

Summer Minority Judicial Internship Program

NYCLA's Summer Minority Judicial Internship Program, established by NYCLA Past President Hon. Harold Baer Jr. and his wife, Dr. Suzanne Baer, celebrated its 20th anniversary this year. The program, a testament to NYCLA's leadership role in seeking to promote equal opportunity throughout the legal profession, gives

law students of color the unique opportunity to complement their law school career with paid summer judicial internships. Since its inception, more than 160 law students have participated in the program. NYCLA acknowledges the judges who participated in this year's program.

Hon. Deborah A. Batts, U.S. District Court, Southern District of New York
Hon. Cheryl E. Chambers, Appellate Division, Second Department
Hon. Richard B. Lowe III, New York State Supreme Court, Commercial Division
Hon. Jack B. Weinstein, U.S. District Court, Eastern District of New York

If you would like to contribute to the Summer Minority Judicial Internship Program, please send a check payable to "NYCLA Foundation" to Marilyn J. Flood, Executive Director of the NYCLA Foundation, at NYCLA, 14 Vesey Street, New York, NY 10007 or visit NYCLA's website at www.nycla.org and click on NYCLA Foundation.

NYCLA's Youth Law Educational Programs

Youth Law Education Project Volunteers

In addition to the lawyers, law students and judges listed below, who volunteered as presenters at the teacher training seminar and high school student conference in 2009, Debra Lesser, executive director of the Justice Resource Center, NYCLA's partner in the Youth Law Education Project, and Arnold Osansky, director of educational outreach, John Jay College of Criminal Justice, deserve special recognition. Hon. Richard Lee Price, chair, NYCLA's Law-Related Education Committee, has guided this project since its inception and continues to contribute wisdom and inspiration.

Collin Bull
Gregg Cooper
Maria Cortese

(See NYCLA Acknowledges Pro Bono Contributions on page 14)

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Mentors Needed for Legal Counseling Project

NYCLA's *pro bono* Legal Counseling Project, a *pro se*, appointment-only, consultation clinic, is recruiting mentors for its volunteer attorneys, who have received training in the areas of landlord/tenant, consumer bankruptcy, labor/employment and family law. Mentors provide support to the clinics' volunteer attorneys, who may have quick questions about these four practice areas that need to be addressed while they are counseling clients.

Mentors may either come to the evening clinics, which are held from October through August, or be available by telephone between the hours of 6:00-8:30 PM. Mentors are not required to do research or represent clients.

If you have expertise in landlord/tenant, consumer bankruptcy, labor/employment or family law and would like to serve as a mentor, contact Lois Davis, director of *Pro Bono* Programs, at ldavis@nycla.org. Volunteer mentors may sign up for one or more clinic sessions.

Consumer Debt Lawyer for the Day Project

In an effort to assist the New York County Civil Court cope with the exponentially growing numbers of consumer debt filings, NYCLA will employ an attorney to assist with the on-site supervision of lawyers volunteering with the Consumer Debt Volunteer Lawyer for the Day Project. The project, co-sponsored by NYCLA and the New York County Civil Court, will provide advice and limited representation to individuals in connection with consumer debt proceedings.

NYCLA members interested in learning more about the attorney position can log on to www.nycla.org and click on Jobs in the Members-Only section. Please send resumes and references to: Lois Davis, director of *Pro Bono* Programs, NYCLA, 14 Vesey Street, New York, NY 10007.

Public Policy Developments

September 10, 2009 – NYCLA's Appellate Courts Committee filed an *amicus* brief commenting on *People v. Juan Rivera*.

September 14, 2009 - NYCLA endorsed a report prepared by its Task Force on Judicial Selection in response to the issuance by the New York State Commission on Judicial Nominations of a set of Proposed Rules for the Commission.

To read reports, *amicus* briefs, comments, letters and other documents related to NYCLA's public policy initiatives, visit www.nycla.org and click on News & Publications.

**SPECIAL GUEST
PANELIST**
RANDY COHEN
"The Ethicist" for The New York Times

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Pro Bono Projects

A Lawyer's Perspective: Elder Law Project

The Elder Law Project's mission is to facilitate the preparation of basic estate-planning documents (Wills, Living Wills, Health Care Proxies and Powers of Attorney).

By Clifford A. Meirowitz

In December 2008, NYCLA's *Pro Bono* Elder Law Project sponsored a forum that focused on three common advanced directives – Durable Powers of Attorney, Health Care Proxies and Living Wills. This forum was open to the community and interested attorneys. The documents were described in detail and information was provided to the participants about their uses. Options that exist for each of these directives were discussed, as well as things to think about before executing the documents. Further, these directives were presented in the context of being a simple way to avoid facing a costly

and time-consuming guardianship proceeding in the event of incapacity.

After my presentation, four volunteer attorneys were available to sit down individually with attendees, answer any additional questions and, if desired, assist the individual with preparing a health care proxy.

The attendance exceeded expectations and many attendees took advantage of the opportunity to meet one on one with the volunteer attorneys. Given the good turnout, the Elder Law Project is planning to host another forum at NYCLA on November 18, 2009 at 5:30 PM. At this upcoming forum, the presentation will include discussion of the new Statutory Power of Attorney that took effect on September 1, 2009 and its Major Gifts Rider, and provide some background on why the change was made. The discussion will also include the fact that Powers of Attorney executed before September 1, 2009 remain valid and there is no need to execute a new Power of Attorney until and

unless the principal needs or wants to make changes to the terms of the original document.

If anyone is interested in participating at the next forum as a volunteer attorney, please contact my firm by sending an email to Jim@trustsestates.com.



Mr. Meirowitz is the founder of Clifford A. Meirowitz & Associates, PLLC, a firm specializing in the areas of elder law and trusts and estates. Mr. Meirowitz, chair of NYCLA's Elder Law Project, is an adjunct professor at the NYU School of Continuing and Professional Studies and has spoken at many community and advocacy groups, as well as CLE programs for NYCLA, the New York City Bar and New York State Bar Association.

Three Lawyers' Perspectives: Project Restore

By Collin D. Bull

"The chief factor which influences the reduction of recidivism is an individual's ability to gain 'quality employment.'"

—Special Committee on Collateral Consequences of Criminal Proceedings, New York State Bar Association

In furtherance of NYCLA's goal to lessen collateral consequences of criminal convictions, the Civil Rights & Liberties Committee launched a pilot program, Project Restore, in April 2008 to provide *pro bono* counsel to individuals with misdemeanor and felony convictions who are denied vocational licenses by the New York Department of State (DOS), despite the fact that, in some instances, they had studied and learned their trade while in prison. Counsel is provided for applicants whose adjudicated criminal history pre-dates the employment license application and is the basis for denial.

DOS jobs requiring licensure, certifica-

tion or registration include: barber, security guard, cosmetologist, athlete agent, bail enforcement agent, hearing aid dispenser, notary public, pet groomer, private investigator, real estate appraiser/broker/salesperson and telemarketer. All applicants must submit to a background check by both the New York State Division of Criminal Justice Services and the Federal Bureau of Investigation.

Thus far, thanks to the stellar efforts of some of the Project's *pro bono* attorneys – Daniel Antonelli, Peter Choy, Erika Garcia, Daniel Migden and Natalie Sulimani – nine of ten clients have received their licenses. The clients were referred to NYCLA by the Re-entry Law Project, The Fortune Society, National H.I.R.E. Network (Helping Individuals with criminal records Reenter through Employment), Community Service Society of New York and MFY Legal Services, Inc.

The Legal Action Center also collaborates with Project Restore by helping



From left to right: Daniel R. Antonelli, Lois Davis, director of *Pro Bono* Programs, Daniel Migden and Collin D. Bull

clients to clean up their rap sheet and to obtain a Certificate of Relief from Disabilities or Certificate of Good Conduct.

Mr. Bull is the former chair of the Civil Rights & Liberties Committee.

FABULOUS FALL FASHION BENEFIT



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A percentage of the evening's sales, as well as purchases by NYCLA members and friends made between October 28 and November 11, will benefit the NYCLA Foundation, which supports the Home of Law renovation and the Summer Minority Judicial Internship Program.

Benefit Committee Co-Chairs

Hon. Betty Weinberg Ellerin, Sylvia Di Pietro, Olivera Medenica, Monique J. Mulcare

PLEASE RSVP (by November 2) to: dlamb@nycla.org and write 'Nov. 4 Fundraiser' in the Subject line.

Project Restore

By Daniel R. Antonelli

I had the privilege of taking on Project Restore's first referral. My client had been denied a security guard license on the basis of a 20-year-old manslaughter conviction. As you might expect, I was taken aback by the seriousness of the crime but was unexpectedly intrigued by my client. Throughout the process, I was continually captivated, surprised and enlightened by the experience.

At the time I received this case, I had had about one year of experience as an attorney. I was new to both administrative law

and to the general practice of law, but after completing the NYCLA training, I felt secure about my knowledge of licensing issues. However, this feeling did not last long. I felt some trepidation once I met with my client and learned of the underlying conviction. I thought to myself, "How on earth would the State grant a security guard license to a person convicted of manslaughter?" I discussed this question with colleagues, who unanimously concurred that our chances of overturning the denial were essentially zero.

Then, I consulted with Lois Davis,
(See Project Restore on page 11)

Project Restore

By Daniel Migden

I am not a squeamish person. Aside from horseshoe crabs or watching someone drink plain milk, few things can turn my stomach. Yet, I admit that visceral misgivings overcame me when I received my first assignment for Project Restore.

It was the client's prior conviction for sexual abuse of a minor that put me off. I had never dealt with anyone who had sexually preyed upon minors. And I could not grasp the possibility of a sexual pred-

ator obtaining the public's trust by being granted a security guard license with my help. Nevertheless, I steeled myself against these gut reactions. Indeed, I had volunteered for Project Restore in search of a new challenge. Eventually, all qualms quickly dissipated for it soon became clear that the matter was far more than a man whose horrid crime had led to a categorical denial of a New York State security guard license.

After I spent half a day observing
(See Project Restore on page 11)

Pro Bono Projects

A Lawyer's Perspective: Mortgage Foreclosure Project

Attorneys for the Mortgage Foreclosure Project, NYCLA's newest *pro bono* project, represent Bronx County homeowners at their mandatory settlement conferences, which are a new, integral component in the foreclosure process for subprime loans. The *Pro Bono* Department is working with the Bronx Neighborhood Office at The Legal Aid Society on this project.

By Diane Bradshaw

In April 2009, I took advantage of the NYCLA-sponsored training session for the Mortgage Foreclosure Project's mandatory settlement conferences. Our trainers came from the Empire Justice Center, The Legal Aid Society and the Neighborhood Economic Development Advocacy Project. In exchange for the free training, participants agreed to consult at mandatory foreclosure settlement conferences in Bronx County. The experience has had profound repercussions on my life. In June, after a follow-up training session at the Bronx Neighborhood Office at The Legal Aid Society, I offered to shadow the foreclosure settlement conferences. After sitting in on some intake counseling sessions and settlement conferences, I was hooked.

The foreclosure counseling program is desperately short staffed. Aileen Kilcommons, associate court clerk in the Residential Foreclosure Part of the Supreme Court of New York, Bronx County, says, "Any *pro bono* counseling would be a much welcomed

addition to help ease the burden of both the overwhelming caseload for legal services and the distress of homeowners."

I have attended the mandatory settlement conferences in Bronx County Court and volunteered as a staff attorney to fill in at the Bronx Neighborhood Legal Aid office. Every distressed homeowner's story is different, but patterns emerge. The homeowners are all in financial difficulty, despite the fact that some have good jobs and have enjoyed financial security in the past. The foreclosure process is intimidating and many homeowners have difficulty getting a straight story from their lenders. The banks and the homeowners struggle to make sense of the new legislation, which can be confusing.

All of these homeowners are emotionally distressed. Some cry. Others berate themselves for having allowed circumstances to reach these proportions. Many have panicked and, at some point, have handed over considerable sums of up-front money to abusive or predatory "distressed property consultants," receiving little or no relief in return. Sometimes, a catastrophic illness resulted in the loss of accustomed income. One man was the victim of a swindle, betrayed by a friend who walked away with a large chunk of equity in the man's house through an ill-advised refinancing deal. Some just fall behind in payments when home repairs and other financial obligations outpace even a relatively substantial income.

The Legal Aid attorneys analyze, counsel and advocate.

They assist homeowners in responding to court summonses and working out settlement packages with lenders. According to Ms. Kilcommons, the parties are expected to be prepared when they come to court so that "a meaningful conference can be held."

Government programs or a bank's internal loan modification plan can often provide the basis for a repayment plan and the home can ultimately be saved. However, there are times when the numbers just won't cooperate and the attorney can provide little else than a shoulder to cry on.

I urge my colleagues who have the time and inclination to donate their services in the foreclosure counseling area. Even a little bit of time can make a huge difference by providing comfort and relief where panic and despair have prevailed.

Ms. Bradshaw, a newly admitted attorney in New York and New Jersey from an entertainment background, has participated in several *pro bono* programs while seeking permanent employment. She has also served as a court evaluator in an Article 81 Guardianship proceeding and practiced in the areas of estate planning, elder law and real estate. She can be reached at dtbradshaw@usa.net.



Photo credit: 2009 Girard Communications

A Lawyer's Perspective: Uncontested Divorce Project

The Uncontested Divorce Project provides counseling and representation to low-income individuals, many of them victims of domestic violence, in obtaining uncontested divorces.

By Siuling Pun

When I first signed up for NYCLA's Uncontested Divorce Project in October 2007, I was mainly interested in the training and experience that I was going to receive. During my time volunteering for the Project, I represented two clients in their uncontested divorce proceedings and, I have to admit, I actually gained much more than legal experience. First, Lois Davis, NYCLA's *pro bono* director, and my mentors were always supportive. Whenever I had a question, all I had to do was email Ms. Davis and, without fail, an expert would respond, telling me exactly what to do. In addition, the two people I represented were amazing and showed their appreciation.

Everyone treated me as if I had done something great, even though all I had done was that which I had obligated myself to do when I signed up for the Project.

The first client I represented, whom I will call R.M., was a woman in her late 50s. When she came to my office, she was accompanied by a young woman in her 20s. Both were neatly dressed, polite, soft spoken and not very talkative. Throughout my representation of her, she was cooperative and provided me with everything I needed without delay. I cannot remember most of what R.M. told me without referring to my notes, but there is one thing she said that is crystal clear. It was, "I thank you." I hear "thank you" all of the time but the way R.M. said it left a deep impression on me. I truly felt her appreciation when she uttered those three words.

The second client I represented was M.C. M.C. was a woman in her 40s who was very friendly and pleasant. She talked much more than R.M. did and told me a lot about her children and their daily lives. During our con-

versations, she came across as a good mother who was trying to do all that she could to provide for her children.

Both clients turned out to be two of my best clients ever and I wish them great happiness and success in their new lives. I believe that divorce was something that they wanted – something that should have occurred long ago – but they lacked the resources to get it done. I thank NYCLA for giving me the opportunity to participate in this rewarding project.

Ms. Pun, a solo practitioner with an office in Chinatown, has a practice that includes real estate and immigration law, in addition to uncontested divorce. She speaks the Chinese dialects of Mandarin, Cantonese and Fuzhounese.



A Lawyer's Perspective: Legal Counseling Project

The Legal Counseling Project provides counseling to clients four times a month on an appointment-only basis in the areas of family, employment, consumer bankruptcy and landlord/tenant law. No representation of any kind is undertaken. Many clients are prepared during these sessions – typically lasting 30–45 minutes each – for *pro se* representation; referrals are made to a variety of sources if the volunteer attorney determines that legal representation is necessary or desirable.

By Joan Beck-Wall

I have been involved in NYCLA's Legal Counseling Project for almost a decade. My early involvement with the Association's volunteer programs was as a volunteer attorney in its Uncontested Divorce Project. There, volunteer attorneys were assigned to assist specific clients throughout the entire *pro se* divorce process. Then, I trained for NYCLA's Legal Counseling Project.

Over the years, I have attended every fall training session. Although the Project's focus has continued to be in the same four areas of law, every season has been exciting

and challenging. Training-session presenters have consistently been enthusiastic, knowledgeable and approachable – often generously offering their expertise beyond the confines of the training seminars. It has always impressed me that these very busy attorneys were (and are) so willing to commit their time and talents to the Legal Counseling Project. For me, this has served to bolster my own desire to commit to this worthwhile effort. After completing training, attorneys volunteer (on average) for one night per month. On the designated evening, the volunteer attorney is assigned to assist a client for that evening. The attorney is not assigned to a particular client for the duration of the entire legal process. Clients may request the opportunity to return for another counseling session as their *pro se* cases develop.

As I reflect on the clients that I have counseled over the years, specific cases stand out. For me, the most rewarding counseling experiences have occurred when the clients are in the initial stages of seeking guidance and information. Client A.G., for example, was seeking advice on how to proceed in a *pro se* uncontested divorce action. He and his wife had one minor child and he had no knowledge of the

legal process or requirements. After we established that New York State had jurisdiction over the marriage (residency requirement), A.G. discussed in detail his reasons for seeking a divorce. He was extremely attentive as we discussed the grounds for divorce and requirements for resolving child custody and support issues. He took notes as we reviewed the uncontested divorce package. At the end of our session, he indicated that he felt greatly relieved and empowered as he now had information and a plan of action. For me, the session was equally rewarding.

Ms. Beck-Wall is a former assistant district attorney in the Bronx County DA's Office. She is currently an administrative law judge with the New York City Office of Administrative Trials and Hearings/Environmental Control Board (OATH/ECB).



A Lawyer's Perspective: Article 81 Guardianship Project

The Article 81 Guardianship Project provides assistance to lay guardians appointed in New York County who are responsible for the property management and/or personal needs of an incapacitated person who has low or no assets. Volunteer attorneys provide basic counseling, assistance in obtaining the commission and help in preparing the initial and annual reports.

By **Davida P. Holmes**

My parents always taught me to give back and never forget about those who had sacrificed for me. With that idea of giving back, I enrolled in NYCLA's Article 81 Guardianship Project to

become certified as a guardian, court evaluator and counsel for an alleged incapacitated person (AIP).

As the *pro bono* attorney, you help the guardian prepare the required initial report, which is prepared within the first 90 days after the appointment, and the annual report, due every May. The lay guardian is generally overwhelmed by the entire process, especially by the "legalese" included in all of the instructions and forms. That's where the attorney comes in, like a 'knight on the white horse' coming to the rescue. Just as I do with other clients, I always establish rapport.

Prior to my first meeting with a guardian, I instruct him or her to bring all of the necessary documents for completion

of the report. The guardian's level of preparedness can either help or hamper my progress. The time required for completion also depends on the amount and complexity of the assets held by the AIP. The greatest complication I have encountered was the sheer magnitude of expenditures for one AIP. However, the guardian had been meticulous in her recordkeeping so that this task was not as daunting as it could have been.

After completing the first report for the guardian - whether it is the initial or annual report - the guardian may request additional help. In two cases, I assisted the guardian with the final reports upon the death of the AIP.

Donating one's time and effort benefits

not only the guardian but the attorney as well. I have learned the ins and outs of Article 81 guardianship and the court system that protects AIPs, while, at the same time, giving back to my community.

Ms. Holmes, a solo practitioner with an office in Bedford Stuyvesant, has a practice that includes family law, medical malpractice and real estate. She is a graduate of Hofstra University School of Law.



A Client's Perspective: Article 81 Guardianship Project

By **Maureen A. Finnegan**

I learned about NYCLA's Article 81 Guardianship Project in the summer of 2007. At that time, the Guardianship and Fiduciary Support Office at 60 Centre Street was assisting me with an application for lay guardianship. As I proceeded with my application, it became clear that I would require additional assistance in order to meet the reporting responsibilities outlined in Article 81. As we approached the final phase of the application process, the attorney at the Support Office suggested I contact NYCLA to receive further counseling and assistance to comply with the initial and annual report requirements set forth in Article 81. That recommendation and my subsequent contact with NYCLA proved to be one of my most important steps toward understanding the scope of accountability inherent in the guardianship role.

As many a lay guardian will attest, the attention to detail and meticulous record keeping required by the Court can be daunting for even the most well-organized person. The amount of time and expertise required to prepare the reports and accompanying documents is significant. In my own case, I was preoccupied by the health care needs of my mother, the designated incapacitated person. My sense of accountable guardianship centered on my mother's personal and emotional care; I didn't think about the consequences from a legal per-

spective. I was completely absorbed with such quality-of-life issues as maintaining her comfortably at home with family and friends.

My mother had been struck by a motorist in November 2005. She sustained traumatic brain injury and, within a short time, we noted a progressive decline in cognitive functioning. It was unbearable to witness the changes as my mother had always been a very independent, intelligent woman. She believed intensely that community service should be integrated into everyday life and was the embodiment of a marathon volunteer. I was shaken by her cognitive deterioration, the lack of confidence she felt in social situations and the loss of her former self. Her decline had a profound impact on our family. In addition, I was very concerned about finances for although my mother had a small reserve of savings, I knew these funds could be depleted at any time. I had no idea what medical or caregiving issues could arise. I didn't know if she would remain at home, if she would need round-the-clock home care or if a medically supervised living situation would become the next step. We planned from week to week and then, more realistically, from day to day. Finally, as deadlines for submission of the court-required initial and annual reports drew near, I knew I needed help. I reached out to NYCLA *Pro Bono* Director Lois Davis.

At our first meeting, I was deeply impressed with Ms. Davis's balance of pro-

fessional expertise and compassion. She provided me with an overview of NYCLA's *pro bono* services and we discussed the looming deadline for submission of my initial report. Ms. Davis responded to my urgent requests for information and, soon after, Davida Holmes, a *pro bono* attorney, contacted me. Over a two-year period, she and I met many times and I feel an enormous sense of gratitude because I would not have been able to submit the reports without her assistance. Gradually, I became aware of Ms. Holmes's other *pro bono* activities, her commitment to the community and the steadfastness with which she applied both legal skills and sound judgment. To my advantage, Ms. Holmes had also worked with other lay guardians, understood my needs and quickly assumed the role of legal guide and interpreter. As previously stated, preparation of legal documents can be a challenge for the lay guardian and non-attorney. I consider myself to be a well-organized, detail-oriented individual, but the court-mandated regulations require knowledge of the law and familiarity with the legal lexicon. Over time, Ms. Holmes and I would meet to review and submit both the initial and annual reports. The schedules and appendices seemed interminable and I recall Ms. Holmes reviewing bank statements and stapling clusters of disbursements with deliberation and endless patience, often referring to Article 81.

After my mother's passing in 2008, Ms.

Holmes and I met four more times to help with the final settlement process, even though she was not obliged to do so. These sessions often lasted for hours and would only come to an end because NYCLA's custodial staff were about to lock up the building for the night. Ms. Davis, too, always made herself available during these periods, whether it was to clarify process or download the numerous forms from the Guardianship Office. Ms. Holmes and Ms. Davis were able to resolve issues more expeditiously just by picking up the telephone and accessing the right person. In the end, I always felt assured that reports were accurate, complete and of the highest standard. Their commitment to assisting me meet court-imposed deadlines was critical throughout my guardianship tenure.

The mandate and mission of NYCLA have been clearly advanced through the efforts of these two individuals in NYCLA's *Pro Bono* Department. In my case, their advocacy and guidance were essential, ultimately enabling me to fulfill the duties of guardian rather than be overwhelmed by them.

I am impressed by the range of *pro bono* services and highly qualified and caring *pro bono* attorneys available at the New York County Lawyers' Association. Equally important, NYCLA creates a problem-solving forum, whose purpose empowers the individual and strengthens the community through appropriate legal recourse.

New York Parent Education and Awareness Program

How the Court System Protects Children Whose Parents are Going Through Divorce, Separation or Other Child-Centered Litigation

By: **Susan L. Pollet**

You do not have to know someone who is undergoing a separation, divorce or other child-centered litigation and you do not have to experience it yourself to recognize that putting children in the middle of the adult conflict can be detrimental to their health and well-being.

In 2001, former Chief Judge Judith Kaye, in her State of the Judiciary Address, announced an initiative to institutionalize parent education and awareness programs in New York State and the creation of an advisory board to oversee this process. Hon. Evelyn Frazee, a Supreme Court Justice in Rochester, chairs the program, which is called the New York State Parent Education

and Awareness Program (PEAP).

What is PEAP? It is a program designed to educate divorcing or separating parents about the impact of their breakup on their children. The primary goal is to teach parents ways they can reduce the stress of family changes and protect their children from the negative effects of ongoing parental conflict in order to foster and promote their children's healthy adjustment and development.

What does the court system do? Following the guidelines developed by the Advisory Board, the Office of Court Administration certifies and monitors local providers of such services who wish to accept court-referred participants. PEAP has a website at www.nycourts.gov/parent-ed that contains all guidelines and procedures for certification and all forms that the providers of the program must use. There are currently 50 certified parent education providers in 62 counties offering classes in 94 locations. By Court Rule (July 24,

2006), Family Court judges and Supreme Court matrimonial justices were empowered to order, at their discretion, parents of children under the age of 18 years old who are involved in custody, visitation, divorce, separation, annulment or child support court actions or proceedings to attend PEAP-certified parent education programs. The Court Rule was subsequently revised (May 15, 2007) to clarify that judges cannot order parents to attend parent education where there is any history, or specific allegations or pleadings, of domestic violence or other abuse involving the parents or their children.

This is a brief overview of the current status of the New York State Parent Education and Awareness Program. Experience and research have shown that parent education can have a positive impact on both the children and parents who are experiencing divorce or separation, and it can help bring about a reduced need for court intervention.

Currently, parent education is available in all 62 counties of New York State. We are focusing on "getting the word out" about the certified programs so that more and more parents will utilize them. If you have any suggestions about how we can accomplish this, you can contact the Program by email at nyparent-ed@courts.state.ny.us or at the toll-free number at 888-809-2798, or by mail at the New York State Parent Education and Awareness Program, 140 Grand Street, Suite 701, White Plains, NY 10601. Also, you can locate information about parent education at the parent education website at www.nycourts.gov/parent-ed. Finally, please tell parents about this important program - it can make all the difference in the lives of children and parents in this State.

Ms. Pollet is counsel and director of the New York State Parent Education and Awareness Program.

People v. Weaver - NY's High Court Provides Roadmap for Federal Constitutional Privacy Protection Concerning Unlimited Round-the-Clock Government GPS Surveillance

By Susan J. Walsh
and Ivan Dominguez

In the face of previously unimaginable technological advances, on May 12, 2009, the New York State Court of Appeals held that the New York State Constitution prohibits judicially unregulated searches that enable secret and remote surveillance without limitation as to duration or location. In *People v. Weaver*, the Court held that the surreptitious installation of a GPS tracking device on a citizen's automobile to remotely monitor and record movement without any limitation as to duration and location is unconstitutional in the absence of exigent circumstances or a warrant supported by probable cause.¹ That decision not only revitalizes New York's tradition of providing broader protection of its citizens' privacy under the New York State Constitution than under the federal Constitution, but crafts a careful and well-reasoned roadmap to advance parallel protections under the United States Federal Constitution.² The Court's decision rests on far more than dis-

tinguishing primitive technology from more sophisticated ones.³ In fact, the decision does more than ensure "as one court has succinctly (and perhaps disapprovingly) put it, that Fourth Amendment jurisprudence 'keep(s) pace with the march of science,'" but instead, ensures that the march of science remains "consistent with even the slightest reasonable expectation of privacy," that the Fourth Amendment was designed to protect.⁵ The Court finds that "[t]he massive invasion of privacy entailed by the prolonged use of the GPS device" is inconsistent with that expectation.⁶

In the early morning hours of December 21, 2005 the State Police, under cover of night, crawled under Scott Weaver's van and installed a GPS tracking device. As the Court repeatedly noted throughout the opinion, "upon this record, it is impossible to discern any reason, apart from hunch or curiosity, for the [GPS device's] placement."⁷ At oral argument, the prosecution admitted that indeed, the prosecution would have had trouble establishing probable cause to justify the multiple nocturnal visits

to Weaver's car to plant and recharge the device, and download and memorialize the record of its movements for longer than two months.⁸ Before the Court was "a defendant whose movements, [had] for no apparent reason, been tracked and recorded relentlessly for 65 days."⁹ The crux of the case against Weaver, aside from the GPS tracking records, which revealed that his van had been near the scene of a burglary of a K-Mart hours before the crime, was one witness who claimed that she had been present with Weaver and another to scope out the target location. "Notably, her initial statement to the police did not implicate defendant in the K-Mart burglary, but rather indicated that [another person] had committed the crime with a different individual," and not Mr. Weaver.¹⁰ After trial, Weaver was convicted of the burglary and sentenced to 2-1/3 to 7 years in state prison.¹¹

The prosecution argued and the lower court held that no justification for law enforcement's secret "placement and monitoring ... to track [Weaver's] van over a period of more than 2 months" was required

because there was no search and thus Fourth Amendment protections were not implicated.¹² The lower court and the prosecution's narrow rationale against affording constitutional protection for unlimited monitoring was that there is no reasonable expectation of privacy on a public road, thus the police could, without any justification, plant the device, follow, track and remotely monitor and record movements of whomever they want, wherever they want, for as long as they want without any judicial oversight whatsoever. Given that the prosecution's position was that the Constitution permits anyone to be tracked for no reason, a position repeated throughout the oral argument, the use of the word "suspect" to identify targeted individuals in David Frey's June 23 analysis of the decisions is, itself, suspect.¹³

Rejecting that position, the Court of Appeals clearly distinguishes the technology of the leading U.S. Supreme Court case in which a beeper was utilized to follow contraband, *U.S. v. Knotts*, 460 U.S. 276

(See *People v. Weaver on Page 14*)

Project Restore

(Continued From Page 8)

NYCLA's *pro bono* director, and Collin Bull, Project Restore's supervising attorney, who had a slightly different take on the matter. This case was undoubtedly an uphill battle, but the only thing we are asked to do, and the only thing we can do, is put forth our best argument. And so we proceeded.

Over the course of about six months, I met several times with the client, enrolled her in various self-help programs, dealt with housing and public assistance issues and prepared her for the hearing. All the while, I had the help and unending support of Mr. Bull and Ms. Davis.

The hearings, which are before an administrative law judge, are relatively straightforward and less formal than typical court proceedings. Considering my lack of courtroom experience, this alleviated some of my apprehension. However, the hearing was unlike anything I had ever experienced. My client's testimony climaxed with a genuine display of emotion as she recounted her story. Through tears of sadness and anger, she described the physical and

mental abuses that had led her to commit such a devastating crime.

I didn't realize it until afterward, but her story was so gut wrenching that it had brought tears to the eyes of the spectators. Following the hearing, several other appellants approached my client and offered effusive praise for her courage and determination in attempting to overcome the abuse, poverty and adversity that life had dealt her. In a display of humanism that I have rarely seen, they offered their sympathy and encouragement, and wished us luck.

As it turned out, the idea that this case was unwinnable was wrong. Investigating beneath the surface of a criminal conviction can reveal the story of a person, not always congruent with the crime committed. Fortunately, we were able to convince the State that my client's crime was, in fact, incongruent with the person she is today. A few months after the hearing, I received a decision from the State overturning the original denial and granting my client her license to work as a security guard.

Mr. Antonelli is a member of Antonelli & Antonelli. His practice includes estate planning, probate and real estate.

Project Restore

(Continued From Page 8)

administrative proceedings before the NYS Department of State Administrative Hearings, something became glaringly evident: those who represent themselves were as good as lost. Not so much as lost in overcoming the intricacies of the statutory nuances, the legal process and evidentiary burdens, rather, lost in a society that has crushed the human spirit for countless people. It seemed impossible for ex-offenders to exhibit the requisite level of remorse and personal rehabilitation that the administrative law judges (ALJ) wanted. Those with previously directionless lives did not seem oriented towards personal expressions of reflection and awareness. As they encountered hurdles to attaining a licensed low-wage profession, such as security guard or barber, they were met with an apparent State inquisition. From my observations, it was evident that my role as an attorney was essential - I was to assist my client in picking up the pieces of a shattered life through the necessity of self reflection and introspection. My unease over the nature of the convictions mattered little anymore.

Interestingly, the handful of former attorneys, disbarred

for criminal acts, seemed the least able to express any remorse or demonstrate rehabilitation and, therefore, in the eyes of the ALJs, least deserving of the public's trust. The State wanted to see change. The self-represented disbarred could not give up their lawyerly hubris and reveal a spirit prepared to contribute to society. Instead, they chose to argue the law.

Thus far, all of my clients' cases have ended in success. They have won their chances to repair their lives and have found a strength of mind that can lead to a modicum of hope. In turn, I have benefited, not just from the satisfaction of legal victories, but also from the fundamental humanity that I witnessed. Through Project Restore, I have disinterred my professional impetus, which became buried under the rigors of law school and promissory notes that financed my way. I have not been an attorney long, but I am now an attorney who is me.

Mr. Migden, a former Peace Corps volunteer in Estonia and Brooklyn Law School graduate, has practiced complex commercial litigation since law school. When not pursuing his intellectual fascination with cats and animal law, he also provides *pro bono* assistance for *pro se* litigants in New York Supreme Court.

ELECTRONIC RESEARCH CENTER CLE PROGRAMS

Thursday, October 8 10:00 - 11:00 AM
WESTLAW: BASIC

1 MCLE Credit: 1 Skills; Transitional
Member: Free Non-Member: Free

Thursday, October 8 11:30 AM- 12:30 PM
WESTLAW: TRUST AND ESTATES

1 MCLE Credit: 1 Skills; Transitional
Member: Free Non-Member: Free

Wednesday, October 14 10:30-11:30 AM
LEXIS: II

1 MCLE Credit: 1 Skills; Transitional
Member: Free Non-Member: Free

Wednesday, October 14 12:00-1:00 PM
LEXIS: TRANSACTIONAL ADVISOR

1 MCLE Credit: 1 Skills; Transitional
Member: Free Non-Member: Free

Wednesday, October 14 1:30-2:30 PM
LEXIS: NEWS AND BUSINESS

1 MCLE Credit: 1 Skills; Transitional
Member: Free Non-Member: Free

Wednesday, October 21 10:00 AM-12:30 PM
U.S. BANKRUPTCY COURT ELECTRONIC CASE FILING SYSTEM

2.5 MCLE Credits: 2.5 Skills; Transitional
Member: \$65 Non-member: \$85
Non-legal Staff: \$35

Thursday, October 22 11:00 AM-12:15 PM
BLOOMBERG PROFESSIONAL: INTRODUCTORY CLASS

1.5 MCLE Credits: 1 Skills; .5 Law Practice Management; Transitional
Member: Free Non-Member: Free

Thursday, October 29 1:30 - 2:30 PM
WESTLAW: INTERMEDIATE

1 MCLE Credit: 1 Skills; Transitional
Member: Free Non-Member: Free

Thursday, October 29 3:00 - 4:00 PM
WESTLAW: SECURITIES

1 MCLE Credit: 1 Skills; Transitional
Member: Free Non-Member: Free

Joint Committee on Fee Disputes and Conciliation

In 2002, NYCLA, City Bar and the Bronx County Bar Association established a Joint Committee on Fee Disputes and Conciliation, which seeks to resolve lawyer-client fee disputes in a variety of ways. Whatever the means employed, whether by arbitration or mediation, the goal is to provide a private and economical means of resolving disputes in an atmosphere of mutual understanding. NYCLA acknowledges the arbitrators and mediators, both lawyers and non-lawyers, who participated in the program this past year. A special thank you to Committee Chair Michael C. Lang for his invaluable support and guidance.

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NYCLA is a qualified tax-exempt organization under Section 501 (c) (3) of the Internal Revenue Code and is not affected by the provisions in the Revenue Reconciliation Act of 1993 dealing with lobbying and political expenditures.

To Join NYCLA

1. Join online at www.nycla.org. Click on Membership – Applications.
2. Call 212-267-6646, ext. 208. Request an application.
3. Email asegal@nycla.org. Request an application.

Ethics Hotline

October 1-15
Nance Schick
212-619-1498

October 16-31
Barry Temkin
212-804-4221

Questions to the Hotline are limited to an inquiring attorney's prospective conduct. The Hotline does not answer questions regarding past conduct, the conduct of other attorneys, questions that are being litigated or before a disciplinary committee or ethics committee, or questions of law. This notation shall not be construed to contain all Hotline guidelines. For a full discussion of Ethics Hotline guidelines, please see "Guidelines on NYCLA's Ethics Hotline," September 2006, *New York County Lawyer*, Vol. 2, No. 7.

Metropolitan Museum Concert and Lecture Series



NYCLA members receive a 20 percent discount to the following concerts and lectures at the Metropolitan Museum of Art, located at Fifth Avenue and 81st Street. To purchase tickets, call 212-570-3949. (You must mention code NYCLA89 and provide your NYCLA ID number to get the discount.) To order tickets online, register or log in with the source code NYCLA89, then proceed to the event on the C&L Calendar (www.metmuseum.org/tickets).

Concert Series

MMArtists in Concert

Friday, October 16 at 7:00 PM

Mozart—Duo for Violin and Viola No. 2 in B flat Major, K.424; Sofia Gubaidulina—Sonata for Violin and Cello, "Rejoice!" (Freue Dich); Mozart—Divertimento for Violin, Viola, and Cello in E flat Major, K.563
Ticket price: \$32 (regularly \$40)

Till Fellner Beethoven Complete Piano Sonatas

Friday, October 30 at 7:00 PM

Sonata in G Major, Opus 79; in F sharp Major, Opus 78; in D Major, Opus 28; "Pastorale"; in E Minor, Opus 90; in E flat Major, Opus 7
Ticket price: \$36 (regularly \$45)

Pacifica Quartet

Saturday, October 24 at 7:00 PM

Mozart—Quartet No. 19 in C Major, K.465, "Dissonant"; Janáček—Quartet No. 2, "Intimate Letters"; Brahms—Quartet in A Minor, Opus 51, No. 2
Ticket price: \$36 (regularly \$45)

Haydn Trio Eisenstadt

(Only New York concert)

Saturday, November 21 at 7:00 PM

Haydn—Trios in C Major, Hob. XV:27, and in E flat Major, Hob. XV:29; Scottish Songs for Soprano and Tenor; Bolcom—Piano Trio "Haydn Go Seek" (U.S. Premiere); Krammer—Piano Trio (U.S. Premiere)
Ticket price: \$32 (regularly \$40)

Lecture Series

An Evening with Robert Frank

Friday, October 9 at 6:00 PM

Robert Frank is a photographer and filmmaker. Born in Switzerland in 1924, he is one of the great living masters of photography. In a rare New York City appearance, he will discuss with curators Jeff L. Rosenheim and Sarah Greenough his career in photography and film, and the conception, execution and response to his groundbreaking book of photographs, *The Americans*, which is celebrating its 50th anniversary.
Ticket price: \$18 (regularly \$23)

Art Words

Saturday, October 10 at 6:00 PM

Robert Storr is dean at the Yale University School of Art. When people speak of images in art, they usually mean more or less recognizable pictures, but from the early modernists like Pablo Picasso and Joan Miró to Jean-Michel Basquiat, John Baldessari, Bruce Nauman and Jenny Holzer, artists have chosen to represent reality and speak their minds with texts rather pictures. This talk will address the larger issues of that dramatic change through close examination of some of the most important "wordsmiths" in the visual arts.
Ticket price: \$18 (regularly \$23)

President's Message

(Continued From Page 1)

prepared NYCLA's *amicus* brief to the Appellate Division, First Department in the *Larabee* case seeking a declaration that the lack of judicial raises in more than ten years is unconstitutional. Former Director Stephanie Wheeler and her colleagues Bradley Smith and Amanda Davidoff, also of Sullivan & Cromwell LLP, prepared NYCLA's *amicus* brief to the United States Supreme Court in the *Lopez Torres* case challenging the constitutionality of New York State's system of judicial selection. Before that, they had prepared NYCLA's submissions to the Southern District of New York and to the Second Circuit.

NYCLA also receives much-needed *pro bono* legal services in dealing with legal issues that arise in the course of NYCLA's programs and activities.

Although less glamorous than *amicus* briefs, these contributions are just as vital to NYCLA's work. NYCLA has relied on a number of firms for continuing advice in several areas. For over a decade, Past President Rosalind Fink of Brill & Meisel has assisted us with personnel matters. Current Board Member Steven Landis of Steven S. Landis, PC has recently provided similar assistance. For many years, former Director Sue Jacobs of Goodman & Jacobs LLP has provided counsel on NYCLA's insurance matters and has helped to negotiate NYCLA's insurance contracts. Past President Klaus Eppler's firm, Proskauer Rose LLP, has counseled NYCLA about its employee retirement plans. William Banfield of Podell, Schwartz, Schechter & Banfield, LLP has represented us for many years in real property tax assessment review proceedings.

NYCLA has also received welcome, prompt assistance on numerous stand-

alone legal matters. President-Elect Jim Kobak arranged for his firm, Hughes Hubbard & Reed LLP, to undertake several projects. Amy Danner is leading a team of her colleagues, Meredith Stead and Andrea Engels, seeking recategorization of the NYCLA Foundation as a supporting organization to NYCLA. Perla Kuhn is working on registering the new NYCLA logo. Former Director Dyan Finguerra-DuCharme's firm, Wilmer Hale, provided an opinion letter on use of the NYCLA name and logo on internet networking sites. Current Board Member Barbara Moses and her colleague Thomas Keane of Morvillo, Abramowitz, Grand, Iason, Anello, & Bohrer, P.C. have provided invaluable counsel to NYCLA in connection with certain claims that NYCLA has against third parties. Robert LoBue and Ravi Sitwala of Patterson Belknap Webb & Tyler LLP and Ina Bort of Kornstein Veisz Wexler & Pollard, LLP have represented NYCLA in separate fee dispute

matters.

Finally, the members of NYCLA's Task Force on the Building have devoted countless hours over the last two and a half years to formulating an affordable plan for much-needed repairs to the Home of Law. Chair Rhea Dignam deserves special thanks for her diligence in coordinating this effort. In addition, the Task Force could not have done its work without the major contributions of time and knowledge of Board member Carol Sigmond of Dunnington, Bartholow & Miller LLP. In addition to advising the Task Force on construction industry practices, Carol has negotiated our contracts for the Home of Law renovation, and she and Rhea Dignam are NYCLA's principal volunteer liaisons to the contractors who are performing the renovation work.


A list like this inevitably omits far too many people. NYCLA thanks the unmentioned contributors equally for their assistance to NYCLA. You know who you are. Thank you to all.

PRACTICE OF LAW SERIES

FREE programs led by experienced attorneys in informal settings to help you manage your practice

<p>Keeping Your Firm's Finances October 8, 2009 - Speaker: Richard Klass</p> <p><i>Discussion of various financial matters concerning starting and running your law practice, including taxes, insurance, bookkeeping, software, time recording and office systems.</i></p>
<p>Legal Ethics You Need to Know October 15, 2009 - Speaker: Lewis F. Tesser</p> <p><i>An inside look at the attorney disciplinary process. How to avoid disciplinary complaints. How to respond to disciplinary complaints. Professionalism and civility-not as simple as it appears.</i></p>
<p>Manage Your Relationships with Clients, Judges and Opposing Counsel, So That They Don't Manage You! October 22, 2009 - Speaker: Clyde Eisman</p> <p><i>An analytical and practical approach to anticipate, be prepared for, handle and avoid conflicts with other players in the legal profession. Discussion of problems that attorneys routinely face (including the "unexpected" curveballs) and suggested resolutions. Attendance limited to 20.</i></p>
<p>What Judges Want You to Know October 29, 2009 - Speaker: Jeffrey M. Kimmel</p> <p><i>An experienced trial attorney shares his insights. Get important tips on what judges expect during motion practice, preliminary conferences, pre-trial conferences, settlement conferences and the trial. Proper courtroom etiquette and behavior will also be discussed.</i></p>

<p>Preparing a Trial Notebook November 5, 2009 - Speaker: Jeffrey M. Kimmel</p> <p><i>Learn the basics of preparing a trial notebook, issuing subpoenas, jury selection, opening/closing statements and direct/cross examination. Evidentiary issues including in limine motions, demonstrative evidence and objections will be discussed.</i></p>
<p>Trial Techniques for Beginners November 12, 2009 - Speaker: Jeffrey M. Kimmel</p> <p><i>Detailed discussions concerning trial strategy, witness preparation, jury selection, opening/closing statements and direct/cross examination. Hearsay objections and other evidentiary issues will be discussed.</i></p>
<p>What Every Lawyer Needs To Know About The Part 137 Fee Dispute Resolution Program November 19, 2009 - Speakers: Martin L. Feinberg and Heidi Leibowitz</p> <p><i>Your rights and responsibilities when your client disputes your fees and the law requires that you arbitrate.</i></p>
<p>Litigating Your Fee Dispute December 3, 2009 - Speaker: Doron Zanani</p> <p><i>No need to arbitrate? Go to court. Practical suggestions to recover your fees from former clients who refuse to pay. Covers discovery, motion practice, pretrial conferences, inquests, trials and more. Based on actual experience.</i></p>



FREE TO NYCLA MEMBERS.

Refreshments are provided.

LOCATION: Home of Law, 14 Vesey St. (between Church Street and Broadway) **TIME:** 6:00 - 8:00 pm

REGISTRATION: Circle dates of all programs you wish to attend and fax to: 212-406-9252 or email: cfragliossi@nycla.org.

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Committee Membership

Membership on NYCLA committees is open and free to all members. Committees cover every aspect of legal practice and are a great place to network and learn in a friendly, supportive environment. To join, log on at www.nycla.org and click on Members Only - Join a Committee. Or call Andrew Segal at 212-267-6646, ext. 208.

NYCLA Acknowledges Pro Bono Contributions

(Continued From Page 6)

Jacqueline Deane
Dyan Finguerra-Du Charme
Karen Funk
Suhana Han
Fred Hartwell
Sara Katz
David Krell
Susan Kunstler
Hon. Joseph Kevin McKay
Olivera Medenica
Oroma Mpi
Brian Rauer
Marie Richardson
Hon. George Bundy Smith
Alan Sputz
Charles Tolbert
Susan J. Walsh

Lawyers in the Classroom

NYCLA acknowledges the attorneys and judges who participated in the Lawyers in the Classroom program this year by visiting public schools throughout New York City to discuss law-related topics. The program is overseen by the Law-Related Education Committee.

Rene Aponte
Nelson Aviles
Sid Baumgarten
Marian Burnbaum
Hon. Cheryl Chambers
Hon. David Cohen
Gregory Cooper
Julie Deleon
Monica Dula
Alix Duroseau
Bruce Feffer
Jacqueline Flug
Donna Furey
Hon. Sherry Klein Heitler
Louis Klieger
Deidra R. Moore
Ann Peters
Hon. Richard Lee Price
Hon. Nelson Roman
Mike Stokamer
Gary Weil

15th High School Essay Contest

The 15th annual New York City High School Essay Contest, overseen by the Law-Related Education Committee, drew 155 entries from nine high schools throughout New York City this year. The essay topic was: "*As Chief Legal Counsel to President Barack Obama, discuss at least three legal issues specific to undocu-*

mented immigrants." NYCLA acknowledges the attorneys and jurists who judged the competition.

Larry Carbone
David W. Druker
Hon. Noreen Healey
Margo E.K. Hirsch
Hon. Galen Kirkland
Douglas G. O'Brien
Hon. Richard Lee Price
Robert Ashley Stern
Michael P. Stokamer
John E. Tsavaris II
Susan M. Vairo

Law Day 2009

NYCLA's Law-Related Education Committee continued its tradition of providing speakers to New York City high schools during Law Day Week to discuss various legal topics. NYCLA acknowledges the attorneys and jurists who participated in this project.

Sid Baumgarten
Michael Dougherty
Donna Furey
Alexandra Keeling
Derek Lynton
Hon. Eileen Nadelson
Gerald Schriffen

Kalyn Stephen
Gary Weil

NYCLA's Law-Related Education Committee's Youth at Risk Subcommittee

NYCLA's Law-Related Education Committee's Youth at Risk Subcommittee is hosting its second annual gang prevention conference, "Social Evolution in the Age of Obama: From Gang Communities to Community Service," on October 6 from 4:00-7:00 PM at the NYCLA Home of Law. NYCLA acknowledges the Subcommittee's judges, attorneys and educators who are working on the conference.

Adam Adler
Nelson Aviles
Marian Burnbaum
Marvina D. Denny-Brewster
Hon. Noreen Healey
Margo Hirsch
Sara Katz (Law Student, LRE Co-Chair)
Alexandra Keeling
Hon. Galen Kirkland
Debra Lesser
Maritza M. McConneghey
Mary Alice Miller
Lynn Moses
Aysha Schomberg
Susan M. Vairo

People v. Weaver

(Continued From Page 11)

(1973), with the GPS technology used in *Weaver*. The New York Court of Appeals recognizes that the constitutionality of the "dragnet-type of law enforcement practices" now capable of being employed by this newer technology was an unanswered question left wide open in the Supreme Court's decision in *Knotts*. *Knotts*, *supra* at 283-84 (announcing that if the "twenty four hour surveillance of any citizen of this country will be possible, without judicial knowledge or supervision" . . . dragnet type law enforcement practices as respondent envisions should eventually occur, there will be time enough then to determine whether different constitutional principles may be applicable.")

Given the *Weaver* Court's holding based on independent State constitutional grounds, at least New York citizens have less reason for concern that the risk of abuse will go unchecked and law enforcement can rest assured that legitimate police efforts to fight crime based on probable cause will be validated by a scrupulous and independent judiciary. If federal courts follow the lead of New York's high court's analysis, others throughout the U.S. soon can enjoy the same protection.

1. *People v. Weaver*, 2009 NY Slip Op 03762.
2. The Court noted that it has "on many occasions interpreted our own Constitution to provide greater protections when circumstances warrant and have developed an independent body of State law in the area of search and seizure. (*see eg: People v. Scott*, 79 NY2d 474 (1992); *People v. Harris*, 77 NY2d

- 434 (1991); *People v. Dunn*, 77 NY2d 19 (1990); *People v. Torres*, 74 NY2d 224, 228 (1989)."
3. *See* David Frey, *NYLJ* June 23, 2009, *High Court's GPS Ruling Leaves Questions for Law Enforcement*
4. *People v. Weaver*, *supra*., at 11, *quoting United States v. Garcia*, 474 F3d 994, 997 (7th Cir. 2007)[Posner, J.].
5. *Weaver*, *supra*., at 11.
6. *Weaver*, *supra*. at 14.
7. *Weaver*, *supra*. at 15; *see also*, *Weaver* at 2 ("It is not clear from the record why defendant was placed under electronic surveillance.").
8. A webcast of the entire oral argument is available at <http://www.nycourts.gov/ctapps/032409No53.aspx>.
9. *Weaver*, *supra* at 2.
10. *Weaver*, *supra* at 3.
11. On May 29, 2009, on remand for a new trial after the Court of Appeals decision, the prosecution conceded it could not prove the case beyond a reasonable doubt and the case was dismissed against *Weaver*. There had already been a motion pending based in part on the recantation of the sole witness.
12. *Weaver*, *supra* at 16.
13. Frey, *NYLJ*, June 23, 2009.

Force and Criminal Justice Section. Ms. Walsh is also a member of the Criminal Justice Act panel of attorneys in the Southern District of New York. Her concentration is in criminal defense in both federal and state jurisdictions, both trial and appeals. In addition, Ms. Walsh services clients in a variety of civil matters and has tried cases from money laundering to murder. She is a member of the National Association of Criminal Defense Lawyers and the primary author of that Association's *amicus* brief challenging the use of GPS tracking device technology without judicial supervision before New York's highest court. Ms. Walsh is an adjunct professor at New York Law School.

Mr. Dominguez is the assistant director of public affairs and communications at the National Association of Criminal Defense Attorneys (NACDL). He served on the team that prepared NACDL's *amicus curiae* brief in *People v. Weaver*.

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Ethics Institute

(Continued From Page 1)

Why do we lawfully delay and confuse?
Why do we assist individuals in committing heinous acts (e.g., establishing sweatshops in third world countries)?
Why do we use litigation to pummel and deflect?
Why do we inconvenience witnesses and jurors to settle private vendettas?
Why do we force police off the street to testify about a \$25 ticket?

Why is it acceptable for good lawyers to do bad things?

Randy Cohen has written humorous articles, essays and stories for newspapers and magazines, including *The New Yorker*, *Harper's* and *The Atlantic*. He has also been a writer for "Late Night With David Letterman," for which he won three Emmy Awards, and won a fourth Emmy Award for his work on "TV Nation." For two years, he wrote and edited "News

Quiz" for the online magazine **Slate**. Mr. Cohen has written several books, including *The Good, The Bad & The Difference: How to Tell Right from Wrong in Everyday Situations*.

Bruce A. Green is the Louis Stein Professor of Law at Fordham Law School, where he directs the Louis Stein Center for Law and Ethics. He teaches and writes primarily in the areas of legal ethics and criminal law. He serves on NYCLA's Board of Directors and on the Ethic Institute's Board of Advisors. Prior to joining the Fordham faculty, Professor Green was a law clerk for Judge James L. Oakes and Justice Thurgood Marshall, and an assistant U.S. attorney and chief appellate attorney in the Office of the U.S. Attorney for the Southern District of New York.

To see each panelist strategize and prepare, go to: <http://www.youtube.com/watch?v=CwQ1OtjkuY>.

Visit NYCLA's website at www.nycla.org for program details, pricing and tuition assistance.

Ms. Walsh, a partner at Moskowitz Book & Walsh, LLP, is a member of NYCLA's Board of Directors and Executive Committee, and previously chaired NYCLA's Criminal Court Task

Correction

The Editor thanks Bruce Somerstein for correcting information in an article that appeared in the September 2009 issue. Below is the corrected version.

New Requirements for Power of Attorney

Effective September 1, 2009, New York State has changed its law regarding the requirements necessary to have a valid financial power of attorney. Some of the changes include:

- The agent must now sign the power of attorney and have his/her signature notarized;
- If you want your agent to make gifts for tax planning (or any other purpose), you must execute a Major Gift Rider and two people must witness the Grantor's signature; and
- You may now have an independent person act as a monitor for the agent.

Powers of attorneys executed prior to September 1, 2009 remain valid. To access the New York State statute authorizing the changes and a copy of the new Power of Attorney form, go to the News section on NYCLA's homepage at: http://www.nycla.org/siteFiles/News/News110_0.pdf

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LEGAL
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Message From Bari Chase

(Continued From Page 4)

on the *Obama Factor* – October 27

Race, Law and Education – December 1

Understanding financial and accounting principles is crucial to properly representing and advising your clients. The CLE program *Accounting for Attorneys: What Every Lawyer Needs to Know About Accounting, Audits, Financial Statements and Forensic Accounting*, presented by *Marcum Rosenfarn* on Tuesday evening, October 13, will provide attorneys with an understanding of: basic concepts of accounting; basic financial statements; how financial statements relate to each other; building blocks that created the current accounting framework; how to read basic financial statements and footnotes; intermediate accounting concepts, including audits and audit opinions, audit committees, internal controls and Sarbanes-Oxley; and forensic accounting concepts, including obtaining and organizing evidence, document discovery techniques and electronic evidence. Finally, we welcome back the *Community Housing Improvement Program (CHIP)* as a co-sponsor of *Defending Against Violations at the Environmental Control Board (ECB)* on Wednesday morning, October 14. Gain an overview of the new ECB hearing rules and the Department of Building's façade regulations. Learn the common procedural and substantive defenses that you can use at the ECB when challenging City-issued violations.

Please note: Tuition Assistance is available for qualified attorneys for live programs offered by the CLE Institute. Check our website at www.nycla.org for more information and how to apply for Tuition Assistance. Check our website for course details, faculty, complete program descriptions and pricing.

CLE Programs in October

Wednesday, October 7 6:00 – 8:05 PM
EVERYTHING YOU NEED TO KNOW ABOUT GETTING AND SERVING ON NON-PROFIT BOARDS

2.5 MCLE credits: 1 Ethics; 1.5 Skills; Transitional and Non-Transitional
Early Registration Fee: (on or before 10/5)
Member: \$25 Non-Member: \$50
Registration Fee: (10/6 – 10/7)
Member: \$50 Non-Member: \$75
Law Office Staff: \$0

Tuesday, October 13 6:00 – 8:30 PM
ACCOUNTING FOR ATTORNEYS: WHAT EVERY LAWYER NEEDS TO KNOW ABOUT ACCOUNTING, AUDITS, FINANCIAL STATEMENTS AND FORENSIC ACCOUNTING

2.5 MCLE Credits: 2.5 Skills; Transitional and Non-Transitional
Early Registration Fee: (on or before 10/11)
Member: \$100 Non-Member: \$150
Registration Fee: (10/12 – 10/13)
Member: \$125 Non-Member: \$175

Wednesday, October 14 9:00 AM – 12:00 PM
DEFENDING AGAINST VIOLATIONS AT THE ENVIRONMENTAL CONTROL BOARD (ECB)

3 MCLE Credits: 1.5 Skills; 1.5 Professional Practice; Transitional and Non-Transitional
Early Registration Fee: (on or before 10/12)
Member: \$75 Non-Member: \$100

Registration Fee: (10/13 – 10/14)
Member: \$100 Non-Member: \$125
Law Office Staff: \$35

Wednesday, October 14 6:00 – 8:00 PM
SHYSTERS, SHARKS AND SAVIORS: ARE LEGAL ETHICS IMMORAL?

2 MCLE Credits: 2 Ethics; Transitional and Non-Transitional
Early Registration Fee: (on or before 10/12)
Member: \$75 Non-Member: \$125
Registration Fee: (10/13 – 10/14)
Member: \$100 Non-Member: \$150
Law Office Staff: \$25

Thursday, October 15 9:00 AM – 5:00 PM
FINANCIAL REGULATORS SPEAK AND LISTEN 2009

8 MCLE Credits: 2 Ethics; 6 Professional Practice; Transitional and Non-Transitional
Early Registration Fee: (on or before 10/13)
Member: \$195 Non-Member: \$245
Registration Fee: (10/14 – 10/15)
Member: \$220 Non-Member: \$270
Thursday, October 15 6:00 – 8:00 PM
Friday, October 16 & Saturday, October 17 9:00 AM – 5:00 PM
FEDERAL CRIMINAL PRACTICE

INSTITUTE- THREE-SESSION PROGRAM
17 MCLE Credits: 3 Ethics; 7 Skills; 6 Professional Practice; 1 LPM; Transitional and Non-Transitional
Early Registration Fee: (on or before 10/13)
Member: \$255 Non-Member: \$355
Registration Fee: (10/14 – 10/15)
Member: \$280 Non-Member: \$380

Tuesday, October 20 6:00 – 8:05 PM
RACE, LAW AND CRIMINAL JUSTICE: 2009 UPDATE
2.5 MCLE Credits: 1 Ethics; 1.5 Professional Practice; Transitional and Non-Transitional
Early Registration Fee: (on or before 10/18)
Member: \$30 Non-Member: \$55
Registration Fee: (10/19 – 10/20)
Member: \$55 Non-Member: \$80

Tuesday, October 27 6:00 – 8:05 PM
RACE, LAW AND CRIMINAL JUSTICE: 2009 UPDATE
2.5 MCLE Credits: 1 Ethics; 1.5 Professional Practice; Transitional and Non-Transitional
Early Registration Fee: (on or before 10/25)
Member: \$30 Non-Member: \$55
Registration Fee: (10/26 – 10/27)
Member: \$55 Non-Member: \$80

Volunteers Needed For CLARO

(Continued From Page 2)

Hours of Operation

The program operates on Thursday evenings from 6:00-8:00 PM in New York County Civil Court, 111 Centre Street.

Upcoming Training

A three-hour training session will be held on **Tuesday, October 27**, from 6:00-9:00 PM at the Brooklyn Bar Association

at 123 Remsen Street in Brooklyn Heights. Volunteer lawyers, who must be admitted to the New York State Bar and be a NYCLA member, are required to attend this October 27 session. Three CLE credits (non-transitional, professional practice) will be awarded for attending the training session contingent on volunteers completing six hours of service (i.e., three two-hour CLARO sessions). For more information or to register, please contact Lois Davis at ldavis@nycla.org.

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(Act of Oct. 23, 1974: Section 4360, Title 39. United States Code)

Date of filing: Sept. 28, 2009
Title of publication: New York County Lawyer
Frequency of publication: Monthly, except February and August
Location of known office of publication: 14 Vesey Street, New York, NY 10007-2992
Location of headquarters or general business of publishers: 149 Main Street, Huntington, NY 11743
Name of Publisher: Long Islander, LLC, 149 Main Street, Huntington, NY 11743
Editor: Anita Aboulafia, 14 Vesey Street, New York, NY 10007-2992
Managing Editor: Marilyn J. Flood, 14 Vesey Street, New York, NY 10007-2992
The owner is: New York County Lawyers'

Association, 14 Vesey Street, New York, NY 10007-2992
Average No. of Copies Each Issue During the Preceding 12 Months:
Total No. Copies Printed (Net Press Run): 11,072
Paid In-County Circulation: Mail Periodicals Subscription: 6878
Paid Out-of-County Circulation: Mail Periodicals Subscription: 4042
Total Paid Circulation: 10,921
Free Distribution (including Samples) by Mail, Carrier or Other Means: 300
Copies Not Distributed: 25
Total Distribution (Sum of C & F): 11072
Total Equals Net Press Run Shown in A

No. Copies of Single Issues Published Nearest to Filing Date (Sept. 2009)
Total No. Copies Printed (Net Press Run): 11246
Paid In-County Circulation: Mail Periodicals Subscription: 6,878
Paid Out-of-County Circulation: Mail Periodicals Subscription: 4,043
Total Paid Circulation: 10,921
Free Distribution (including Samples) Carrier or Other Means: 300
Copies Not Distributed: 25
Total Equals Net Press Run Shown in A: 11,246
I certify that the statements made by me above are correct and complete.
Peter Sloggatt 9/28/08

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