

# NEW YORK COUNTY LAWYER

The Beat of New York Law

## Going At It Alone: A Misnomer Why Running a Practice Takes a Village

By Jessica H. Hoffman, Esq.

When I first entered law school, I never imagined myself hanging out a shingle. I am a very sociable person and I love working in a team environment, so I figured working for myself would be very isolating. Plus, the idea of being thrown out into the legal workforce without the safety net of other attorneys and a steady paycheck seemed like a terrifying proposition. However, while working full time as an associate at a law firm, the opportunity came to me to join forces with another young lawyer and go out on our own. I decided to take it—and ever since, I have realized how incredibly wrong I was back in law school. Since the day we created our partnership, I have spent significantly more time meeting new people than in any other job, and every meeting has been an important part of the development of my firm. Without the help and support of many people, my firm would not be able to survive.

### My Partner

As a partner in a two-attorney law firm,



I am never truly alone. As a relatively young and green lawyer, having a partner has been invaluable. Starting a business in any industry is a risk, and I knew that opening a practice was, in some ways, even riskier. Since law firms cannot take on non-attorney investors, we have only ourselves to rely on for generating income. With my

partner, I have additional “rainmaker,” as well as a built-in sounding board, a second set of eyes, and a second legal brain. Moreover, having the support of a partnership where we can discuss our ideas, research together, and review each other’s work relieves a lot of the stress that comes with running a business.

### Other Lawyers

Once my partner and I had decided on agreement between ourselves as to how we would operate, we needed to get clients and set up the firm. But where would the clients come from? What would we charge? How would we get insurance? To find out, we did what all lawyers are trained to do first—research. After exhausting the Internet for clues, I took a more grass roots approach. I rephrased “networking” in my mind as “making friends” in order to make it less daunting and began reaching out to every lawyer I knew for advice. I called or met with anyone who would take the time to talk to me, at NYCLA CLE courses, at coffee shops, or at other professional associations and groups. My partner and I had done our best to stay in touch with our law school professors, who would at times provide guidance and, even better, connections. Anyone who could provide even one nugget of wisdom or advice was worth the time, and generally I came away with much more than that. I even met another, more experienced lawyer with a similar practice to mine at a movie screening because he overheard me talking about

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## Hanging Out a Shingle: What to Consider Before Going Solo

By Billie Watkins, Esq.

Many lawyers, at one point in their career, begin to consider solo practice or even starting their own firm. Maybe it’s the notion of freedom that comes with being their own boss and choosing their own cases and clients that’s most appealing. Or perhaps, flexible hours, a home office, and unlimited earnings potential trigger the attraction. Other times, it comes from economic necessity, when an attorney just can’t seem to land that associate position. Yet, running a law firm is much more than taking in clients and helping with legal needs. Unless they had previous experience, most lawyers aren’t trained in running their own business.

Being a successful lawyer is completely exclusive of being a proficient business owner and while some of the necessary skills can be learned—like understanding basic business or accounting concepts—others are inherent—like being a self-starter, being able to adapt to change, and being willing to accept risk.

To run a successful firm, you may want to assess your skill level and interest in the following:

**Leadership:** Heading up a firm requires strong executive and management skills. Be prepared to make daily decisions that



will have a large and lasting impact on business. You will have to take on a leadership role among internal staff, as well as external business contacts. It is the onus of yourself as a business-owner to cultivate a culture and environment that will help create an effective and productive team.

**Office administration:** The key to being efficient and successful is having a system in place which will help your business run efficiently. Office organization means keeping an up-to-date calendar, creating an effective filing system, and networking

the office’s computers.

**Financial challenges:** Before going at it alone, consider how many of your current clients might make the move with you and how you’ll handle bill collection. Most importantly, identify ways to minimize start-up costs. For example, it may be less expensive to occupy space in a serviced business center than to lease and furnish commercial office space in a comparable location.

**Marketing:** Building a client base and marketing your services requires staying active in the community and networking with other lawyers who might serve as mentors and provide referrals. In addition, brand awareness and recognition is crucial to the long-term viability of a firm. Nowadays, the most cost-effective way to project and maintain a firm’s identity in the market is through a company website and social media. Technological skills and additional energy will be required, so it may be wise for you to hire outside help or acquire the knowledge and skills for these tasks on your own.

**Staffing:** One important, but challenging task is determining the appropriate blend of full-time and part-time staff. Perhaps consider contracting temporary staff for part-time work before adding lawyers

{ See *Hanging Out* on page 3 }



# The Art of Saying I Don't Know

By Dwayne Allen Thomas, Esq.

I'd like to start this piece by asking you a few questions:

- Is a tree angrier than a shoe?
- What is the sound of one hand clapping?
- How many times did the Batmobile catch a flat?

How did you do? Was your first reaction to try and think of an answer to these questions? Don't worry, you're not alone; nearly one out of four adults will attempt to answer an unanswerable question, when

the best possible answer is "I don't know."<sup>1</sup> It is unclear why we do this, but one possible reason is that we are conditioned throughout our lives to believe that admitting a lack of knowledge is bad. In class, at job interviews, and at work, we are expected to know the answers to questions authority figures put to us. An answer of "I don't know" leads to admonishment. Reward for a correct answer and penalty for an incorrect answer becomes ingrained in our psyche. As a result, when faced with an unanswerable question, our default reaction is to attempt to answer the question rather than admit that we don't know the answer.

Law school professors use the Socratic method to attempt to break future lawyers out of this habit, but it often backfires. While Socrates himself is noted for saying that admitting to a lack of knowledge is the beginning of wisdom,<sup>2</sup> the foremost thought in a law student's mind is that he must be fully prepared for every class in the event that the professor calls on him or her. Professors are, indeed, concerned how prepared their students are, but the series of questions a professor asks using the Socratic method typically starts with fact-based questions the student easily knows the answer to and often ends with opinion-based questions based off these facts that many students find hard to answer. These difficulties seem to arise most often when the student doesn't want to give an incorrect (including politically incorrect) answer or where the only correct answer would violate the student's pre-existing beliefs.

Here, the professor is attempting to encourage students to take the facts that they learn and use those facts to take a position and defend that position. Students, on the other hand, often misunderstand the reason for the continued use of the Socratic method. Rather than seeing it as a tool to help build much-needed lawyering skills, some consider it as nothing more than an annoyance. In the worst misunderstandings, students believe the professor is trying to make them look stupid. Unless professors can clearly communicate to students what is expected of them, or can find a way to incentivize an answer of "I don't know" followed by attempts by the same student at coming up with creative solutions, students will lose opportunities to increase their creative problem-solving skills.

This is not to say that we aren't creative. Wikipedia lists more than 100 fallacies<sup>3</sup>—types of "erroneous reasoning that render arguments logically unsound."<sup>4,5</sup> The existence of so many fallacies may be a manifestation of *status quo bias*. *Status quo bias* arises when individuals prefer to maintain the current state of affairs rather than change, when the change is actually the better option for the individual. Studies have shown that "individuals disproportionately stick with the status quo."<sup>6</sup> Psychologists have also found that we tend to seek out and give more weight to information that supports what we believe while dismissing information that does not fit in with these beliefs.<sup>7</sup> Finally, some believe that we argue not to seek truth, but to win debates by persuading others that our point of view is correct.<sup>8</sup> It is, therefore, entirely possible that our own natural tendency to attempt to maintain the status quo presents a huge obstacle for professors who are trying to get their students to "think differently."<sup>9</sup>

These same tendencies can lead to serious real-world consequences. In the criminal context, a prosecutor can be "so focused

on the belief that a defendant is guilty, they don't see that [a] document points away from the defendant's guilt."<sup>10,11</sup> In the civil context, an individual can spend years seeking out legal assistance from various attorneys in an effort to prove an unwinnable (and sometimes irrelevant) point.

The stakes aren't always so high, but remember that clients don't call lawyers unless the consequences are serious to them, and until you reach expert status, your client's best chances of getting the best possible resolution is for you to thoroughly research the issues as if you were looking at them for the first time. Therefore, the issue remains: How can one go from perceiving "I don't know" in a negative light to seeing a lack of knowledge as something useful? The ideal, of course, is to have someone (or multiple someones) you know and respect drill this idea into you while you're still in the process of learning. On a personal note, my "multiple someones" included my seventh grade history teacher (who informed me I had the right to question authority); a wise old college English professor (who told me that I can only fight facts, not opinions); a law school professor (who suggested that I research everything before giving out answers or legal advice); and a supervisor at my final legal internship (who literally forced me to say "I don't know" when I tried to think of answers to questions I didn't know the answer to).<sup>12</sup> But, let's say that you haven't come across people who are willing to push your mind in this direction. What can you do instead?

**Switch sides:** I've made this suggestion to people before, and the response has always been a near universal, "No. No way. Not going to do it." Even if I hadn't mentioned status quo bias earlier, it's easy to see why this suggestion gets a lot of resistance; it literally asks someone to give up his or her point of view (even if it is only temporarily) to fight for something he or she doesn't believe in. Despite this, I continue to endorse switching sides because I've actually done it<sup>13</sup> and doing so was one of the most useful experiences of my professional career.

**Take up journalism or teach a class:** Investigative journalists generally start their research from "I don't know." This position allows the journalist to ask questions and contact people and resources he might not if his goal is to tell a story that simply parrots his boss' point of view. Likewise, researching from "I don't know" can prove incredibly instructive to someone who is trying to teach a class. In both situations, understanding as much of the available information as possible leads one to a greater understanding than if that person simply conveys whatever information he thinks is correct.

**Watch the news, then use the Internet:** This is probably the most low-risk and least time-intensive suggestion on this list. But, it works. The Internet allows us to look up nearly anything in the privacy of our own home. We can read the same story from multiple points of view, look up scientific literature, and even find out who funded the study last week that came to the conclusion we didn't like so that we can try to find evidence of bias in the story. No one needs to know what you're researching.<sup>14</sup> Getting in the habit of researching might lead you to a different conclusion than you might have reached without it, but that's the point of taking time to research in the first place.

Not everyone will appreciate "I don't know" in answer to questions. But most<sup>15</sup> will appreciate a sincere effort on your

part to try and find the correct answers. Ultimately, admitting ignorance may not be the most comfortable thing you can do. But, it's definitely one of the most useful things you can do.



Dwayne Allen Thomas, Esq., a Member of NYCLA's Solo and Small Firm Practice Committee, is a recently admitted NY/NJ attorney

operating his own practice in Queens, NY, where he focuses on small business, estate practice, and criminal law. Prior to law school, Dwayne earned a Bachelor of Business Administration in Finance from Baruch College and spent several years in management and sales positions. You can read more of Dwayne's writing on Facebook (<https://www.facebook.com/dwaynethomasseq>) or on his blog (<http://dtlaw.wordpress.com/>).

<sup>1</sup> *The Three Hardest Words in the English Language: Full Transcript*, Freakonomics, (July 7, 2014, 1:30AM), [freakonomics.com/2014/05/15/the-three-hardest-words-in-the-english-language-full-transcript/](http://freakonomics.com/2014/05/15/the-three-hardest-words-in-the-english-language-full-transcript/)

<sup>2</sup> "I am wiser than this man, for neither of us appears to know anything great and good; but he fancies he knows something, although he knows nothing; whereas I, as I do not know anything, so I do not fancy I do. In this trifling particular, then, I appear to be wiser than he, because I do not fancy I know what I do not know." Plato, *Apology* (399 BC).

<sup>3</sup> List of fallacies, Wikipedia, (July 7, 2014, 1:30AM), [en.wikipedia.org/wiki/List\\_of\\_fallacies](http://en.wikipedia.org/wiki/List_of_fallacies)

<sup>4</sup> Fallacy, Dictionary.com, (July 7, 2014, 1:30AM), [dictionary.reference.com/browse/fallacy?s=t](http://dictionary.reference.com/browse/fallacy?s=t)

<sup>5</sup> You may remember fallacies as "one-half of the LSAT."

<sup>6</sup> William Samuelson and Richard Zeckhauser, *Status Quo Bias in Decision Making*, *Journal of Risk and Uncertainty*, 1:7, 7 (1988) [www.hks.harvard.edu/fs/rzeckhau/SQBDM.pdf](http://www.hks.harvard.edu/fs/rzeckhau/SQBDM.pdf)

<sup>7</sup> Raymond S. Nickerson, *Confirmation Bias: A Ubiquitous Phenomenon in Many Guises*, *Review of General Psychology*, Vol. 2 No. 2 (1998), available at [psy2.ucsd.edu/~mckenzie/nickersonConfirmationBias.pdf](http://psy2.ucsd.edu/~mckenzie/nickersonConfirmationBias.pdf)

<sup>8</sup> Patricia Cohen, *Reason Seen More as a Weapon than Path to Truth*, N.Y. Times, June 14, 2011 [www.nytimes.com/2011/06/15/arts/people-argue-just-to-win-scholars-assert.html?\\_r=5&](http://www.nytimes.com/2011/06/15/arts/people-argue-just-to-win-scholars-assert.html?_r=5&)

<sup>9</sup> If you didn't get this joke, feel free to contact me and ask.

<sup>10</sup> Wilson Dizard, *Prosecutorial integrity: Lawyer errors can mean prison for the innocent*, Al Jazeera America, July 3, 2014, 9:00AM. [america.aljazeera.com/articles/2014/7/2/prosecutor-misconduct.html](http://america.aljazeera.com/articles/2014/7/2/prosecutor-misconduct.html)

<sup>11</sup> It should be noted here that there are real consequences not to the prosecutor, but to a third person, which may also be a factor in a prosecutor's refusal to consider a defendant's innocence.

<sup>12</sup> I interned at the Kings County District Attorney's Office, writing complaints based on police and witness interviews. In that context, all of my guesses were irrelevant. If I didn't know something, I had to go back and ask the witness.

<sup>13</sup> I came into law school very "pro-defense." In addition the internship at the prosecutor's office, I also took several "pro-police" and "pro-prosecutor" courses.

<sup>14</sup> Except the NSA.

<sup>15</sup> You can't please everyone. \*shrug\*

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## Message from Lew Tesser President of NYCLA



Dear Readers:

In recent years, attacks on state and Federal judges, attorneys, and the judicial system have become an increasingly prominent part of our political process. During the 2012 election cycle alone, spending on television ads in state court races exceeded \$31 million, a new record. Many of these campaigns featured prominent “attack ads,” questioning the qualifications or integrity of individual judges or judicial candidates. Judges on the bench are also berated with claims of “judicial activism” and questions about their impartiality and the propriety of individual judicial decisions. Many of these attack ads unfairly question the integrity of capable and good judges; dangerously, *ad hominem* criticisms undermine the public’s faith in the entire judicial system.

Undoubtedly, litigants or the media are sometimes understandably frustrated with judicial outcomes with which they do not agree. Some criticism of judges’ decisions is, of course, acceptable and even desirable as part of the political process. Often though, criticism of judges’ decisions, and in particular, unsupportable criticism of judges’ motives, oversimplifies complex legal disputes. Instead of focusing on the intricacies of any given proceeding or dispute, critics often just focus on the outcome and ask themselves, “Is this the result I want?”

What critics often fail to recognize is that the rules of law, which may seem to delay proceedings or occasionally lead to unpopular outcomes, have actually been put in place to protect complex and nuanced social, economic, and legal interactions. For example, members of the public may express frustration when a criminal defendant appears to be “let off on a technicality just because the police have conducted an improper investigation.” Or, parties to a civil suit may complain about the judge or tribunal because of the amount of time necessary to issue a determination. While the judicial process may sometimes be frustrating, attorneys and judges operate accord-

ing to rules, which are designed to protect people, the community, and the integrity of the system. Although the public may view certain issues as technicalities, attorneys and judges often focus on police actions, investigations, or procedure in order to ensure that people’s rights are not violated or that the state does not overstep its powers. Similarly, a judge—often faced with a backlog of civil cases—may take substantial time to render a decision precisely because he or she wants to devote the necessary amount of time to a matter to ensure that he or she “gets it right.” Simply put, failure to honor the rule of law risks depriving all of us of the rights and protections that we enjoy—the benefit of expediency, categorically, is not worth this trade-off.

Some of the rules that have been put in place to protect people’s rights and the integrity of the judicial process also make it difficult for judges to respond to public criticism. Thus, when a critic oversimplifies a complex legal dispute and attacks a judge’s decision, the judge often cannot respond. The result is that certain unjustified attacks and oversimplification of legal issues or procedure go unanswered, undermining the public’s confidence in the judicial process.

The New York County Lawyers’ Association has taken an active role in defending judges against unwarranted attacks. NYCLA has defended judges who have been unfairly accused in the media of bias or incompetence, those who politicians have demanded be removed from the bench because the politicians disagreed with individual judicial decisions, and those who, without the ability to defend themselves in the media, have been made scapegoats or targets in political debate. In doing so, NYCLA has worked for decades to defend the judicial process while respecting vigorous political debate. This coming year, NYCLA will be hosting a series of conferences about the importance of the role of the rule of law in helping our public and private institutions balance complex issues.

Lew Tesser, President  
New York County Lawyers’ Association

## Message from the NYCLA Foundation Honoring Our Work by Honoring Those Who Have Served Our Country

*The willingness of America’s veterans to sacrifice for our country has earned them our lasting gratitude. – Jeff Miller*



Dear Member:

In my last message, I stressed the importance of thinking creatively, being innovative and enterprisingly, as we continue to

brainstorm the future of NYCLA. I urged you to take stock in the wonderful charitable programs we offer and to support them generously. I will continue to stress these ideas and encourage new ways to think outside of the box. In the interim, I want to start a dialogue and delve deeper into what we are doing to help the New York City community and how you can be more involved.

As of late, the topic of veterans and their health has taken center stage in the media, and NYCLA is sitting at the table on a very key and under-highlighted issue facing many returning veterans from the recent wars. Our Veterans Discharge Upgrade Program, coordinated by our Board Treasurer and former Naval Officer Steve Lessard, touches on a wide-range of issues faced by men and women in uniform, but most clearly focuses on helping those soldiers who return home from war and receive a “less than honorable” discharge due to inferior performance or misconduct. This discharge characterization is usually due to undiagnosed or misdiagnosed post-traumatic stress disorder (PTSD), traumatic brain injury (TBI) and military sexual trauma (MST) and leads to the inevitable loss of military benefits. This issue affects more veterans returning from the recent gulf wars than we realize. NYCLA stands at the forefront of this issue, addressing the needs and concerns of local veterans and their families. Not only are we working to address the legal issues facing each veteran, but we are also

advocating for their health and well-being, assisting them with locating drug and alcohol rehabilitation programs and housing. Currently, we are the only *pro bono* program in New York City working these cases.

I don’t have to tell you how profoundly important it is to assist our veterans with their transition back into society. We don’t have to pretend to understand their experiences or traumas as a result of their service. These men and women serve our country with pride and integrity; helping veterans who have had a harder run during their service is the least we can do to say thank you. More importantly, it’s part of our duty as lawyers.

At this time, there are almost 200 veteran discharge upgrade cases awaiting assistance through our partnerships at the Urban Justice League. We’d love to help them all, and we can with more volunteers and more funding. As we actively pursue grant opportunities from organizations representing the interest of veterans, I hope that you will consider supporting the work of the Veterans Discharge Upgrade Program in a much larger way. Take a moment to reflect on veterans you know, their quality of life, and their struggles. Reflect on your current professional networks—who do you know that’s been touched by war or has a family member who has been afflicted?

Will they give a gift to NYCLA in support of this project?

I hope you take a moment to reflect on who you know who has been affected by the recent wars, and ask them to join you in supporting a project that is changing the lives of veterans for the better.

Carol Signford  
President, NYCLA Foundation

## GOING ALONE

*Continued from page 1*

my new practice to the woman next to me. Out of that diligence and openness, I have found that the legal community is full of attorneys who eagerly want to pay it forward. Many have mentored me, supported me, referred clients to my firm, and have become some of my closest friends. Without their guidance and mentorship, I likely would have spent hundreds of hours researching problems that they were able to help me solve in minutes. As an added bonus, I now have a trusted network to lean on or refer clients to in the event that neither my partner nor I knows exactly how to handle a given client issue.

### Clients: Current and Prospective

Of course, no law firm is really a law firm without clients. They are the most important piece of the framework. My partner and I work mainly with startups, a rapidly expanding area of law. Early on, we found that most people attending the “meetup”

events in that industry were non-lawyers. We packed our schedules with hackathons, demo days, tech weeks, and as many other startup-focused events as we could find. We even met people unassumingly while hanging out with our friends, all of who had great ideas but had no clue where to find a lawyer to help them. Those interactions have provided the foundation of our law firm and allowed us to grow.

Now that we have a small stable of clients, it is an essential part of our practice to nurture those relationships, as well as new relationships with prospective clients. My day-to-day is generally filled with client calls, emails, or meetings, more so than I ever had as an associate, which, for the most part, is thrilling.

### Entrepreneurs

My firm is a startup in itself. Though providing legal services is the crux of our business, it is just that—a business. We had to learn the management side of things, and who better to learn from than others who were running businesses? The entrepreneurs we spoke to comforted us

by letting us know we were in good company, with the same rollercoaster-type feelings and having similar struggles as they had. We also were able to learn from their mistakes, especially when it came to the dynamics of partners working together as a team.

Certainly, venturing out can at times mean working completely alone, but it is in no way isolating. The instability of life without a steady paycheck is absolutely real, but it lights a fire for us to stay busy and involved in the community. For the most part, my schedule is more socially jam-packed than ever before, and it feels wonderful to be a small part of a larger, thriving, legal ecosystem.



Jessica H. Hoffman, Esq., a NYCLA Member, is a Partner at Hoffman Luque LLP, a small (but rapidly growing!) firm dedicated to providing creative legal solutions to startups and entertainers.

## HANGING OUT

*Continued from page 1*

and paralegals on a permanent basis. Once the firm has developed a strong client base and survived the first year, expanding staff becomes less risky.

Starting and successfully maintaining an independent law firm can be one of the most exciting and rewarding journeys for an entrepreneurial-minded attorney. With careful and thoughtful planning, the benefits can far outweigh the risks of becoming your own boss.



Billie Watkins, Esq. is the Northeast District Director for Robert Half Legal. Robert Half Legal, a division of Robert Half International, places highly skilled professionals, including attorneys, paralegals and legal support personnel, on a project and full-time basis. Robert Half Legal offers online job search services at [www.roberthalflegal.com](http://www.roberthalflegal.com).

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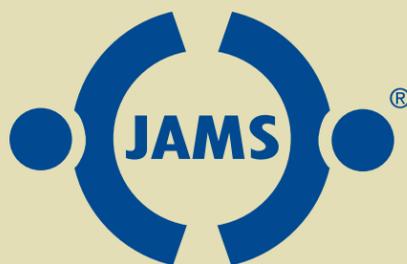
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**for being named Chair of  
the NYCLA ADR Committee.**



Justice Belen was an Associate Justice of the Appellate Division, Second Department, from 2008-2012 and served as a Justice of the New York Supreme Court trial and appellate terms from 1995-2012. He helped create the Commercial Division in Kings County and then presided as a Justice, handling complex commercial cases from 2002-2005. Over the course of nearly 18 years of distinguished judicial service, he developed a reputation as a calm, intelligent, fair and hardworking jurist.

Since joining JAMS, Judge Belen has built upon his expertise to efficiently mediate and arbitrate numerous complex disputes covering a wide range of practice areas including business commercial, employment, insurance, personal injury/torts and estates/probate/trusts.



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# The “Telemachus Principle”

By **Elan Weinreb, Esq.**

I have been fortunate to have had the honor and privilege of practicing civil litigation in New York for more than a decade in both “BigLaw” (seven years) and small firm (four-and-a-half years) environments. Now, as a solo practitioner who hung out his shingle at the beginning of this year, I have embarked upon a new chapter in my legal career. During the past couple of months, I have been guided by a concept which I call the “Telemachus Principle,” a personal shorthand for “flexibility, mobility, and versatility achieved through powerful and cost-effective technology.” The Telemachus Principle takes its name from Telemachus, a character from Homer’s *Odyssey*, whose name in Greek means “far fighter” or “one who strikes from afar.” Its use has the potential to enable the solo or small-firm lawyer to compete with mid-size and large law firms—even the 1,000+-attorney BigLaw behemoths.

The Telemachus Principle is based upon one key proposition: The modern lawyer who takes advantage of technology is not limited to the confines of physical space. Rather, he or she can effectively use technology to provide legal services on demand, in any location, at any time, and thus attain the capability of “striking from afar” like Telemachus. In this regard, the Association of the Bar of the City of New York, in Formal Opinion 2014-2: *Use of a Virtual Law Office by New York Attorneys* (June 2014) ([www.nycbar.org/ethics/ethics-opinions-local/2014opinions/2023-formal-opinion-2014-02](http://www.nycbar.org/ethics/ethics-opinions-local/2014opinions/2023-formal-opinion-2014-02)) recently observed that “[g]iven the prevalence of alternative work arrangements (telecommuting, work-sharing, office sharing, etc.), members of the public no longer assume that a physical street address is equivalent to a traditional...brick-and-mortar office.” In other words, today’s clients have come to accept and even expect the practice of law from near or far—in line with the Telemachus

Principle—as just another part of the attorney-client relationship.

## The Path of the Remote Warrior or the Remote Counselor

While there are many paths to becoming the Telemachian “Remote Warrior” (or “Remote Counselor” for those who do not practice litigation), there are also many potential pitfalls (particularly in the realm of professional responsibility). Furthermore, entire books have been authored on the technologies—even specific programs—that are necessary for traveling upon such paths. It is beyond the scope of this article to discuss either the risks that one may encounter in adopting the Telemachus Principle or specific technologies related to it in detail. However, it is possible to relate some advice based upon personal experience concerning the particular path that I have followed.

## Remote Control

“Power is nothing without control” is not only the well-known slogan of the Pirelli Tire Company but a personal creed. Without instant access to necessary information—be it discovery, notes, research, due diligence materials, etc.—the Remote Warrior or Remote Counselor has only a remote (at best) chance of success.

While a laptop computer, tablet, or similar device is the first choice for accessing such information, occasions arise when carrying same is virtually impossible. In addition, any such device is only as good as the electronics powering it. The price of one cup of inadvertently spilled water can be tens of thousands of dollars.

Avoid such vulnerability by maintaining at least **two** (2) methods of access to all necessary information (which should be electronically stored and preserved in its entirety) that do not depend upon an individual electronic device. For example, relatively inexpensive remote-access software, such as LogMeIn Pro or GoToMyPC, can serve as one method, and the other can be

an online backup service, like Carbonite or Mozy, that permits individual file retrieval. In the spilled water situation mentioned earlier, one would first ensure that the damaged device has been safely powered down and secured. Next, one would immediately use the first available computer, tablet, or similar device to access firm information via one of the auxiliary methods described above. Yes, the broken device will have its repair or replacement cost, but relative to the cost of losing a client, such cost is insignificant in the long run. If your client happens to witness your adaptability, you may even be able to profit from the situation. I remember when I once attended a meeting with a rabbi in Brooklyn at his residence regarding a Jewish law arbitration that involved the provisions of CPLR Article 75. My client, boss, and another attorney working with us happened to be in attendance as well. The rabbi asked to see a copy of a particular document that had been left in the office inadvertently. My boss asked if the rabbi had a fax machine, and while he did have one, it was not functional at that time. I then asked if the rabbi had a computer with a working Internet connection and a printer, and he responded in the affirmative. I then told him that if he would give me permission to use these resources, within 15 minutes, I would be able to provide everyone at the meeting with copies of the document. And so it was. Quick use of the LogMeIn account that I had linked to my office computer enabled me to securely access the needed document and interface with the rabbi’s printer. I proceeded to print copies, without ever picking up a telephone or otherwise sending out an SOS e-mail or text to office personnel. Needless to say, everyone was impressed at my having demonstrated, paraphrasing Pirelli, that “power is everything with (remote) control.”

## Protect and Serve

Telemachus would not have been much of a warrior if his mother’s suitors had disarmed him, took his weapons, and then used them against him. It thus behooves

the Remote Warrior—whose weapons constitute information—to take steps to secure such information and protect against it being turned against him or her. Moreover, by taking such steps, the Telemachian attorney simultaneously serves client interests. Exclusivity is the touchstone of information security, and data encryption, much like a lock on a door, is the means by which one obtains such exclusivity (in addition to strong passwords composed of uppercase and lowercase letters, numbers, and symbols, firewalls, antivirus/antimalware solutions, and personnel training concerning deceptive e-mails and malicious websites). In my practice, I have found Microsoft’s BitLocker (which comes along with certain versions of Windows 7 and Windows 8) to be useful for drive encryption and 7-Zip (which is free) to be useful for the encryption of individual files (especially when these have to be sent via e-mail to a hired accountant, investigator, other expert, or otherwise uploaded to a publicly-accessible location). Other encryption utilities—all priced at the extremely attractive price of the air that we breathe—can be found at [lifelhacker.com/5677725/five-best-file-encryption-tools](http://lifelhacker.com/5677725/five-best-file-encryption-tools). Somewhat ironically, it is in the realm of information security and data encryption that the solo and small firm practitioner has an advantage over larger firms, notwithstanding their massive resources. Generally speaking, compared to the giant computer networks of larger firms, solo and small firm networks are significantly smaller, employ fewer individuals, and have less access points. As such, they are usually easier to protect than large firm networks and less susceptible to attack from undesirable people or organizations. In short, the small guy or gal is less of a target. However, this does not mean that solo and small firm practitioners should let down their guard. Just as even a small pocketknife in hostile hands can cause lethal damage, so too can the compromise of even a single file cause great harm.

{ See Telemachus on page 7 }

# The Incredible Lightness of Being

By **Maria Guida**

Jurors and business listeners respond to a lightness of being and positive energy in attorneys, no matter how serious the topic. As an attorney, you can project this kind of lightness in and out of the courtroom by doing a quick emotional preparation before speaking—the way actors do before a performance. Before you have that important conversation, presentation, or moment in the courtroom, do the following:

Take your “emotional temperature”: identify your current feeling-state; happy, sad, afraid, disappointed, excited, angry, etc.

Find a private area to release these emotions, even if it feels “phony” to you: jump for joy, scream, bring on a few tears if possible, laugh out loud, etc.

Then stretch arms, legs, back, shoulders, etc., to further release the emotions.

When you acknowledge your current feelings and then *make movements and sounds* to help release them right before

you speak for business, you are less likely to bring any uncomfortable emotions into your conversation, presentation, or courtroom speaking.

You will be more “present” and available to respond quickly on your feet: with a lightness of being, freedom and authenticity. These qualities help give you real power to persuade.



*Maria Guida is a speaking strategist and coach. With her experience as an actor on Broadway, TV, and film (working with Paul Newman, James Earl*

*Jones, and Kevin Kline), she helps attorneys enhance credibility and generate business by speaking with poise, passion, and persuasive power. Clients include Shearman & Sterling, Allen & Overy, and Paul Weiss. Maria can be reached at [maria@successfulexpressinc.com](mailto:maria@successfulexpressinc.com) or by phone at 718-884-2282.*

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If you can't attend all 4 sessions, mix and match the sessions that fit your needs and your schedule. These sessions also serve as great refreshers for more experienced attorneys looking to learn about new practice areas, brush up on their skills or learn about recent developments in the law.

**Topics include:**

- BYOD: Using Personal Devices in the Workplace
- Ethics
- Privilege and e-discovery
- What You Need to Know About Privacy Law
- 12 Cases from the Past Year Every Real Estate Attorney Should Know

Check our website for updates and September course schedule!

[www.NYCLA.org](http://www.NYCLA.org)

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LAWYERS' ASSOCIATION

## NYCLA Hosts Reception Honoring Glenn Lau-Kee

On Wednesday, July 16, NYCLA's Asian Practice, Federal Courts and Solo/Small Firm Committees, along with AABANY, hosted a joint reception honoring the newest NYSBA President, Glenn Lau-Kee. Mr. Lau-Kee is the 117th President of the State Bar Association and the first Asian-American to assume the presidency.



Left to right: Lew Tesser, President NYCLA, Hon. Debra James, Hon. Eileen Bransten, Hon. Lillian Wan, Hon. Gary F. Marton, Presiding Justice Hon. Randall T. Eng, Glenn Lau-Kee, Hon. Sheila Abdus-Salaam, Sandra Ung, Special Asst., Yang Chen, Exec Director, AABANY, William Wang, President-Elect, AABANY, Vincent Chang, Margaret Ling.

## NYCLA's Summer 2014 Social Event Outing at Yankee Stadium

On Friday, June 20, NYCLA hosted a night of baseball and networking at Yankee Stadium. Members and Non-Members gathered for the Yankees vs Baltimore game in a private suite with an escorted tour of Monument Park and Yankee Museum, and unlimited fan-food and soft drinks.



Mentees, Members and Non-members gather for CLE program, Networking event and Yankee game in private suite on June 20.



## TELEMACHUS

*Continued from page 5*

### Portability Through Replication

To strike from afar, one must be able to access and use information from any location. While the Cloud-based, remote control resources discussed earlier are certainly an option for attaining this capability, it is not always the case that the required Internet connection for using them is continuously available. As such, to be optimally effective, the Telemachian attorney must have available

the option of quickly transferring necessary information to a laptop, tablet, or similar device on demand. Various replication (a/k/a synchronization) programs exist to achieve such portability. Some come packaged along with backup suites, like Acronis True Image 2014 Premium (which also will allow one to completely resurrect an entire hard drive in the event of hardware failure as it stood prior to its demise). Others are standalone replication programs, such as FreeFileSync. As its name implies, the latter is free and serves to replicate system folders/directories on demand over intranets.

In conclusion, there are many paths to becoming the Remote Warrior. The suggestions and advice that have been provided here are by no means exhaustive, nor should the mention of any particular program or technology here be considered as an endorsement. But no matter which path one ultimately chooses, the benefits for the solo or small firm practitioner of adopting the Telemachus Principle are the same: the ability to even the odds and compete with mid-size and large firms, attract new business, impress current clients, enhance productivity, and ultimately achieve greater satisfaction and contentment

in the practice of law.



*Elan E. Weinreb, Esq., a Member of NYCLA's Solo and Small Firm Practice Committee, is the Managing Member of The Weinreb Law Firm, PLLC (www.weinreblaw.com), a civil litigation firm located in Garden City, New York. He is a creative and insightful civil litigator who is in his 12<sup>th</sup> year of practicing law.*



By Dan Jordan

The NYCLA Library offers free CLE certified training in Lexis and WestlawNext every month. Check the schedule and register on the CLE Calendar on the NYCLA website at [www.nycla.org](http://www.nycla.org) website. The NYCLA Library is becoming more of a digital library all the time. NYCLA Library patrons are urged to continuously hone your research skills.

The NYCLA Library staff, with years of experience in law libraries, is very interested in assisting Members with your projects. Always feel free to ask questions. The NYCLA Library offers a full array of services for our members both free and fee based. The NYCLA Lexis and Westlaw/WestlawNext

subscriptions are available at no cost, on site, to Library patrons, and there is free printing! Fee-based services include sending our patrons PDFs of cases, articles, forms, NYCRR provisions and statutes (current and historical), and records and briefs as requested. Fee-based services offer good value.

#### Westlaw Resources on Workers' Compensation

NYWC-ADMIN

**Database Name:** New York Workers' Compensation Administrative Decisions

**Database Identifier:** NYWC-ADMIN

**Coverage:** Begins with 1985

**Content Highlights:** Decisions rendered by the New York Workers' Compensation Board. Coverage begins with 1985.

Another database has a combination of Workers' Compensation cases and administrative decision. It is:

NYWC

**Database Name:** New York Workers' Compensation Cases and Administrative Decisions

**Database Identifier:** NYWC

**Coverage:** Begins with 1799 cases

**Content Highlights:** Workers' compensation-related cases from the New York state courts and decisions from the New York

Workers' Compensation Board. Coverage begins with 1799 for court cases and with 1985 for administrative decisions.

The NYCLA Westlaw/WestlawNext subscription also contains the treatise:

NYPRAC-WC

**Database Name:** New York Practice Series - New York Workers' Compensation

**Database Identifier:** NYPRAC-WC

**Coverage:** Database updated May 2014.

**Content Highlights:** New York Workers' Compensation is a database that provides legal analysis and advice concerning the workers' compensation law and practice in New York State. This database provides information on topics including:

- Coverage
- Benefits
- Discrimination
- Disability benefits
- Occupational disease
- Hearings and appeals
- Relationship to federal laws and benefits

**Author(s):** Martin Minkowitz

Andrea Kishner, one of the NYCLA Law Librarians, also identified the Workers Compensation Board site where selected Workers' Comp decisions can be found, [www.wcb.ny.gov/](http://www.wcb.ny.gov/).

Click the radio button <Laws Regulations and Decisions> on the right side. About a third of the way down this next page, you will see the radio button for <Decisions>. This site only seems to have selected decisions of the last 12 months arranged by month.

For free home access to legal research materials, most NYCLA members qualify for the New York State Library-Attorney Borrower's Card, which is available to New York state residents who are admitted to practice law in New York. For information about this free internet-based access to substantial legal and non-legal databases, contact Dan Jordan at [djordan@nycla.org](mailto:djordan@nycla.org) for an application for the NYSL-ABC.

Lawyers have a professional obligation to be proficient in legal research, and the NYCLA Library stands ready to help our NYCLA members as needed.

To make suggestions about book, ebook, or database purchases for the NYCLA Library, please contact **Dan Jordan**, *Director of Library Service*, at [djordan@nycla.org](mailto:djordan@nycla.org) or at 212-267-6646, x201.

## October

### 51st Charles Evans Hughes Memorial Lecture

Monday, October 6 – 6 p.m.

Speaker: Loretta E. Lynch, U.S. Attorney, Eastern District of New York

## November

### Construction Committee Annual Dinner

Thursday, November 6 – 6 p.m.

BLT Prime, 111 East 22nd Street

Don't miss this opportunity to network with several of the prior chairs of the Construction Committee while eating some of the best steak in NYC. Price includes everything. Cost of tickets: \$155 per person

## December

### 2014 Annual Dinner

Wednesday, December 17 – Reception 6:30

p.m., Dinner 7:30 p.m.

Waldorf Astoria Hotel

NYCLA 100th Annual Dinner Honoring the United States District Court for the Southern District of New York on its 225th Anniversary

Remarks by The Honorable Ruth Bader Ginsburg, Associate Justice, Supreme Court of the United States, and The Honorable Sonia Sotomayor, Associate Justice, Supreme Court of the United States

All events, unless otherwise noted, will be held at NYCLA Home of Law, 14 Vesey Street. Visit the Association's website, [nycla.org](http://nycla.org) for more details, schedule changes and additions, and to R.S.V.P. for events, which are subject to change.

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## Electronic Research Center CLE Programs

### September

**Lexis: Beginning Legal Research**

September 23 – 10:30 - 11:30 a.m.

1 MCLE Credit: 1 Skills; Transitional

**Lexis: Advanced Legal Research**

September 23 – 12:00 - 1:00 p.m.

1 MCLE Credit: 1 Skills; Transitional

**Lexis: Expert Witness Research**

September 23 – 1:30 - 2:30 p.m.

1 MCLE Credit: 1 Skills; Transitional

**Westlaw: Advanced Research on Westlaw Next**

September 25 – 10:00 - 11:00 a.m.

1 MCLE Credit: 1 Skills; Transitional

**Westlaw: Employment Law Research on Westlaw Next**

September 25 – 11:30 a.m. - 12:30 p.m.

1 MCLE Credit: 1 Skills; Transitional

### October

**Westlaw: Introduction to Westlaw Next**

October 8 – 10:30 - 11:30 a.m.

1 MCLE Credit: 1 Skills; Transitional

**Lexis: Advanced Legal Research**

October 8 – 12:00 - 1:00 p.m.

1 MCLE Credit: 1 Skills; Transitional

**Lexis: Litigation Solutions and Strategies**

October 8 – 1:30 - 2:30 p.m.

1 MCLE Credit: 1 Skills; Transitional

**Westlaw: What's New on Westlaw Next**

October 9 – 10:00 - 11:00 a.m.

1 MCLE Credit: 1 Skills; Transitional

**U.S. Bankruptcy Court Electronic Case Filing System**

October 22 – 10 a.m. - 12:30 p.m.

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

**Westlaw: Advanced Research on Westlaw Next**

October 28 – 1:30 - 2:30 p.m.

1 MCLE Credit: 1 Skills; Transitional

**Westlaw: Securities Law Research on Westlaw Next**

October 28 – 3 - 4 p.m.

1 MCLE Credit: 1 Skills; Transitional

Unless otherwise noted, courses are free and open to the public.

Register at [nycla.org](http://nycla.org)

Questions? Contact **Irina Chopinova** at [ichopinova@nycla.org](mailto:ichopinova@nycla.org) or 212-267-6646 Ext. 203.

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

**New York Law Journal**  
**Judicial Internships and**  
**Pro Bono Rule 520.16**  
**July 21, 2014**

This article, written by Judge Richard Lee Price, discusses the 50-hour *pro bono* service requirement for candidates seeking bar admission and mentions NYCLA's task force on the student rule.

**Poughkeepsie Journal**  
**Local Attorney Receives**  
**Rising Star Award**  
**July 16, 2014**

This article celebrates NYCLA Member Kyle A. Steller, staff attorney with Legal Services of the Hudson Valley as she received the New York Law Journal Rising Star Award.

**New York Law Journal**  
**State Bar Delegates Allow More Time for**  
**Pro Bono Accord**  
**June 24, 2014**

This article addresses New York State Bar Association President Glenn Lau Kee's request to delay a resolution calling for the repeal of Chief Judge Jonathan Lippman's *pro bono* reporting requirement in May 2013. Lew Tesser, NYCLA President, is quoted.

**The Metropolitan Corporate Counsel**  
**Letter from The President of the**  
**New York County Lawyers' Association**  
**June 19, 2014**

This article shares Lew Tesser's letter to the readers of the Metropolitan Corporate Counsel where he addresses NYCLA membership.

## Ethics Hotline

The Committee on Professional Ethics accepts both written and telephone inquiries on ethics matters and provides advisory opinions. For additional information, call the members listed below.

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 the article "Guidelines on NYCLA's Ethics Hotline," published in the September 2006 issue of *New York County Lawyer*.

**September 16-30**  
**Glen Schlever**  
 212-558-7284

**October 1-15**  
**Ellen Yaroshefsky**  
 212-790-0386

**October 16-31**  
**Sarah Jo Hamilton**  
 914-725-2801

**November 1-15**  
**Phil Schaeffer**  
 212-819-8740

**November 16-30**  
**Malvina Nathanson**  
 212-608-6771

**December 1-15**  
**Gordon Eng**  
 203-769-8812

**December 16-31**  
**David Wiltenberg**  
 212-837-6880

*Please Note: Assignments are subject to change.*



### What's Tweeting?

A sample of posts on Twitter this past month related to going solo

@LawFirmSuites: Why is setting aside time for firm administration so important? [hubs.ly/q0Hbm0](http://hubs.ly/q0Hbm0)

@LegalTalkNet: Why are so many #solos and #smallfirms not encrypting their confidential client data? <http://bit.ly/1k6lkvA>

@plainlegal: Advertising v. Marketing: Why small firms & solos need to make each impression count <http://bit.ly/1lJoOZk>

@ABAGPSolo: Starting a practice? Need Forms? ABA has a great resource page for #soloattorneys <http://bit.ly/1lyfsu7>

@SoloPracticeU: Staying Motivated While Starting A Solo Law Practice <http://bit.ly/1r5XMhG>

@LawyerLocate: The Pros and Cons of Co-Working and Solo Practice for Lawyers #solopractice <http://bit.ly/1nOuFx9>



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