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Queens Bar Bulletin

Queens County Bar Association / 90-35 One Hundred Forty Eighth Street, Jamaica, NY 11435 / (718) 291-4500

Vol. 71 / No. 7 / April 2008

The Long Island City Courthouse

By LESTER SHICK*

The dictionary defines a landmark as, "a man made structure or an event or achievement that becomes a guiding precept or principle." The late Supreme Court Justice William O. Douglas is quoted as saying that, "The Fifth Amendment is an old friend. It is one of the great landmarks in man's struggle to be free of tyranny, to be decent and civilized." The Fifth Amendment is very apropos for this profile because it is forever invoked for our man made edifice, the Long Island City Courthouse.

In 1870, the state legislature authorized the move of the county seat to Long Island City. In 1872, funds were allocated for the erection of the Long Island Court House. George Hathorne was selected to design the building which was constructed between 1872-1876. The building was designed in the French Second Empire style. The most striking features of the courthouse were the centrally placed towers at the main façade and at the

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Sarkozy's Initiative on the Shoah:

Mandatory Holocaust Study

By HOWARD L. WIEDER

This year **HOLOCAUST REMEMBRANCE DAY** is observed on **FRIDAY, MAY 2, 2008**. Spurred by the extermination of 6,000,000 European Jews, during the Holocaust or "Shoah," and the world's silence to repeated calls to governments that could have saved many Jews, the State of Israel declared its independence on May 14, 1948, and this year Israel celebrates its 60th year of existence. Time has not assuaged the hatred of either Holocaust-deniers or those who still promise to drive Israel's citizens into the sea. So Jews and Israel need to be profoundly grateful for proven acts of friendship. It is in this spirit, and to commemorate **HOLOCAUST REMEMBRANCE DAY**, that I praise **PRESIDENT NICOLAS SARKOZY** of France [born January 28, 1955], who is Roman

Howard L. Wieder

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THE DOCKET...

being the official notice of the meetings and programs listed below, which, unless otherwise noted, will be held at the Bar Association Building, 90-35 148 Street, Jamaica, New York. More information and any changes will be made available to members via written notice and brochures. Questions? Please call (718) 291-4500

PLEASE NOTE:
The Queens County Bar Association has been certified by the NYS Continuing Legal Education Board as an Accredited Legal Education Provider in the State of New York.

2008 Spring CLE Seminar & Event Listing

April 2008

Wednesday, April 2	Criminal Law Series, Part 2
Wednesday, April 9	Damages Trial of A Motor Vehicle Accident
Monday, April 14	Judiciary Night 5:30-8:30 pm
Tuesday, April 15	Personal Injury Litigation
Wednesday, April 16	Equitable Distribution Law Update

May 2008

Thursday, May 1	Annual Dinner & Installation of Officers
Wednesday, May 7	Ethics Considerations
Tuesday, May 13	Small Claims Arbitrator Training
Thursday, May 15	Program for Attorneys Attempting to Start a Practice

June 2008

Thursday, April 5	Labor Law Seminar
Friday, April 13	Probate & Will Execution 1:00-4:00 p.m.

CLE Dates to be Announced

Elder Law • Real Property Law • Surrogates, Estates & Trusts • Taxation Law

NEW MEMBERS

Emmanuella Mary Agwu	Brandon Lamour Freycinet
Andrew Key Chong Chan	Steve Giano
Caitlin E. Cline	David Matthew Gross
Louisa M. DeRose	David William Schweikert
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NECROLOGY

Carl Holmes

A New Member Benefit from Queens County Bar Association

QCBA recently selected a credit card program that is specifically designed for law firms and sole practitioners. QCBA members receive reduced processing rates and multiple features built to properly process client-attorney transactions. Opening a Law Firm Merchant Account is easy and helps your practice.

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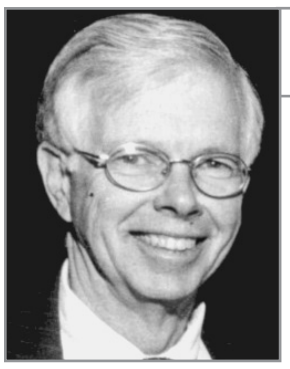

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EDITOR'S NOTE...

Spring has arrived, the trees are beginning to bloom, and the Queens Bar Association is abuzz with many activities to meet the varied needs of our members; whether it be the varied CLE programs, the Law Day informational program on April 30th, and the annual Law Day ceremony on May 1st.

Our Annual Dinner and Installation of Officers also takes place on May 1st at the Terrace on the Park.

We welcome your participation in YOUR Bar Association.

LAWYERS ASSISTANCE COMMITTEE

The Queens County Bar Association (QCBA) provides free confidential assistance to attorneys, judges, law students and their families struggling with alcohol and substance abuse, depression, stress, burnout, career concerns and other issues that affect quality of life, personally and/or professionally.

QCBA Lawyers Assistance Committee (LAC) offers consultation, assessment, counseling, intervention, education, referral and peer support.

All communication with QCBA LAC staff and volunteers are completely confidential. Confidentiality is privileged and assured under Section 499 of the Judiciary laws as amended by the Chapter 327 of the laws of 1993.

If you or someone you know is having a problem, we can help. To learn more, contact QCBA LAC for a confidential conversation.

Lawyers Assistance Committee
Confidential Helpline
718-307-7828

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President's Message

David Cohen

The theme for Law Day 2008 is "The Meaning of the Rule of Law and its Role in a Free Society". This concept stands as the corner stone of a free society. The rule of law protects the average citizen from overreaching, be it by the government, a rich and powerful organization, corporation, or individual. It also provides a mechanism for neighbors to peacefully resolve their grievances. It enables groups to seek redress for any perceived wrongs in our Courts rather than by violence or mob action. Those who feel that their rights have been violated have, under the rule of law a mechanism for the adjudication of disputes in a forum that is fair and impartial. As Justice Frankfurter stated: "There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny. Legal process is an essential part of the democratic process."

The rule of law incorporates the concept that in a free society no one person stands above the law. Recently we have had an unfortunate example of this right here in New York. Our former Governor resigned from office when it was alleged that he violated the law. Regardless of his power, wealth, and popularity, the rule of law applied and his misconduct drove him from office. "Ours is a government of liberty by, through and under law. No man is above it, and no man is below it." Theodore Roosevelt, 1903.

Not only does the rule of law provide us with a forum to obtain an independent resolution of our grievances, it also protects us in our everyday life. Rules regarding work place safety, pollution, the right to organize unions, and yes, even the rules of the road are there to provide a standard of conduct that protects us from the dangerous actions of others. Just think about a major intersection without traffic control devices, or what our air quality would be without laws regulating the level of pollutants that can be spewed from a chimney.

The doctrine of separation of powers and the system of checks and balances were put in to place to prevent an individual branch of government from having the ability to usurp our basic freedoms and suspend the rule of law. As John Adams wrote in Article XXX of the Constitution of the Commonwealth of Massachusetts, "In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men."

Executive power stems from control over the bureaucracy of government and over the army, national guard and police. Legislative power flows directly from its ability to enact laws and control the purse strings. Judicial power comes primarily from our belief that based upon the rule of law, our courts render fair and impartial justice. If the public came to the conclusion that decisions of our courts were not based upon law, but rather on favoritism and outside influence, then our democracy would be in jeopardy.

America was founded as a nation where the rule of law and not the power of a King or Queen would control. For us to remain a beacon of freedom we must insure that the rule of law continues to be the guiding concept of our democracy. ■

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
MAYOR'S ADVISORY COMMITTEE ON THE JUDICIARY
36 WEST 44th STREET, SUITE 1408
NEW YORK, NY 10036
(212) 944-6225 • FAX (212) 768-4115

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March 14, 2008

David Cohen, Esq.
President
Queens County Bar Association
90-35 148th Street
Jamaica, NY 11435

Dear Mr. Cohen:

The Mayor's Advisory Committee on the Judiciary is required to make recommendations to the Mayor concerning the qualifications of incumbent judges for reappointment to the Criminal, Family and Interim Civil Court. Attached is a list of Criminal Court judges whose terms will expire on December 31, 2008.

In preparing its recommendations, this Committee would very much appreciate your assistance in polling all of your members non-selectively and requesting that they individually inform this Committee of their personal experience, if any, regarding the judicial temperament, treatment of attorneys, litigants and court personnel, fairness, ethics, legal ability, industriousness, case management skills, knowledge of current substantive and procedural law, punctuality/leaving the bench early, and any other relevant observations concerning the qualifications of these judges.

In keeping with this Committee's standards for accuracy and fairness, if any materially adverse information is presented, we are requesting all available minutes of court proceedings demonstrating the facts in question. If minutes are unavailable, please state the captions of cases, docket numbers, dates of court proceedings, and a brief explanation of the issues deemed relevant to this Committee's evaluation. Only information that is specific and, in some manner, verifiable will be useful.

Because time is of the essence in completing these evaluations, we urge your members to forward this information directly to this Committee as soon as possible.

Thank you for your cooperation.

Very truly yours,

Desirée Kim

DK:sg

Criminal Court Judges (Terms expire December 31, 2008)

Steven L. Barrett	Danny K. Chun	Diane Kiesel	Sheryl L. Parker	Arlene R. Silverman
A. Kirke Bartley, Jr.	Abraham L. Clott	Gene R. Lopez	Ann T. Pfau	John P. Walsh
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Fernando M. Camacho	Arlene D. Goldberg	Suzanne M. Mondo	Micki A. Scherer	
John Cataldo	Joseph E. Gubbay	Mary R. O'Donoghue	Toko Serita	

The Long Island City Courthouse

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rear. Due to the fact of a number of delays and a construction scandal, the building was not in full use until March, 1877.

In 1904, a disastrous fire gutted the famed courthouse. According to the New York Times of November 27, 1904, Chief Croker of the Manhattan Fire Department stated, "In my opinion, some of the stuff in the storeroom had been ignited by a live wire. The total amount of damages is about $150,000." Peter M. Coco, one of the foremost architects in Long Island City at the time redesigned the Courthouse, rebuilding it without damaging the walls. His plans were initially rejected by the Art Commission who found the building too "handsome." While Coco was toning down his designs, all court cases were held at Flushing Town Hall.

The new courthouse was completed in 1909, consisting of four floors instead of the original two. It had an open stair hall connecting seven courtrooms, including the main one on the top floor, with a large stain glass ceiling. Some of the other finishing touches typical of the period were mosaic tile floors, elaborate iron banisters, and heavy bronze wall sconces. As a side note, Peter Coco and 13 others, including Borough President Joseph Bermel, were indicted and tried for corruption. Coco was convicted of grand larceny and sentence to two years in jail in the courthouse he designed.

Several years after completion, the Long Island City House of Detention was built. In 1935, under the auspices of President Franklin Roosevelt's W.P.A. - a sheriff's office was built on the south wing of the building and a district attorney's office on the north wing. The Long Island City Prison has housed some infamous people throughout the years, including Willie Sutton, Jack (Murf the Surf) Murphy, Joey Gallo and Frank James. In 1974, the House of Detention was closed "for economic reasons." The approximate 150 prisoners were then transferred to Rikers Island. In 1989, a municipal parking garage opened on the site which retained the original jailhouse walls.

According to Supreme Court Justice Robert McCann, who worked many years at the courthouse, "While presiding over a trial you get a true sense of history of the building." He recalls having rain delays during trials when the rain started dripping through the stained glass ceiling. Another anecdote told of early renovations in the 1890's of a broken glass door being replaced. Engraved on the broken door were the letters G.A.R. It was later learned that the glass door opened to a meeting room of the Grand Army of the Republic.

In 1927, the courthouse was the scene of the infamous Ruth Snyder - Henry Gray murder trial. They were accused of killing Mrs. Snyder's husband. The trial gained notoriety throughout the country. One hundred thirty-two newspaper reporters from all parts of the nation covered the proceedings. After an extensive trial, they were convicted and subsequently executed. The movie, "Double Indemnity," was loosely based on the facts of this case.

In 1970, a bomb exploded in the courthouse. The radical group, Weathermen, claimed responsibility for the damages. The building has also been a backdrop for movies including, "The Wrong Man," "Panic in Needle Park," and "Crazy Joe." More recently several episodes of "The People's Court" with Joseph Wapner was filmed there.

In 1976, the building was designated as a New York City Landmark. It is also listed on the New York State and National Registers of Historic Places. Last year a five million dollar renovation project was completed, restoring the historic Courthouse to its original majestic splendor. Administrative Judge Jeremy Weinstein indicates that in the Fall there will be a 100 year commemoration on the completion of the courthouse. Everyone is invited to come to this unique building and walk through its corridors and feel the sense of history enclosed within its walls. It is refreshing to note that over 30 years ago the Landmarks Preservation Commission saw fit to designate this structure. Maybe some of the members of the commission had been reading their bible where it states in Proverbs, chapter 22, verse 32, "Remove not the ancient landmark which thy fathers have set." ■

***Editor's Note: Lester Shick is an Associate Court Clerk in Part K-TRP in Kew Gardens, which part is presided over by Justice Barry Kron.**

Frivolous Recusal Motions and other Self-Defeating Misconduct

By HOWARD L. WIEDER

JUSTICE CHARLES J. MARKEY, sitting in Individual Assignment System Part 32 of Supreme Court, Queens County, in Long Island City, New York, and I, his Principal Law Clerk, will both remember the date of January 16, 2008. On that date, Justice Markey and I dealt with two recusal motions in two separate trials that had been sent by the Trial Assignment Part. The first recusal motion was directed at Justice Markey and the second aimed at me. I will set forth the circumstances of the two cases and the two recusal motions. Not only were the two motions frivolous, but the party making them engaged in other misconduct that both Justice Markey and I believe was inappropriate and bound to offend a court!

In the hope that the Bar can learn cathartically, I share with you my experiences on that day. All the facts contained in this article are true, accurate, and not exaggerated. I have deliberately not used the names of the offenders, my purpose being to uplift and elevate the quality of advocacy in a manner befitting the finest tradition of the **QUEENS COUNTY BAR ASSOCIATION,** and not to embarrass or castigate.

I was not present on Monday, Jan. 14, 2008, when Justice Markey received the first action, where a New York City firefighter, now retired for disability, was seeking to recover damages for his injuries against a property owner for the negligent maintenance of his property, pursuant to a state statute. Justice Markey, I later learned, informed trial counsel that one of his sons had retired from the New York City Fire Department for a job-related disability. While Justice Markey invited counsel to deliberate over this fact until Wednesday, his purpose being to further complete disclosure - - in complete contrast to the rogue arbitrators discussed in my cover story of the **QUEENS BAR BULLETIN's** December 2007 issue, **["SUBVERSION OF ADR: NONDISCLOSURE OF TIES BY APPOINTED AND ASPIRING ARBITRATORS"],** who deliberately made false statements, under written oath, denying knowledge of the parties and counsel. Anyone who has practiced before Justice Markey knows that he is patient and understanding with counsel, but, even more important, thoroughly principled and fair, and will over-disclose, rather than the opposite. He has a keen sense of what is intrinsically fair and correct.

On that important Wednesday, Jan. 16, 2008 date, defense counsel arrived promptly to the courtroom with the insurance adjuster, both having preceded plaintiff's counsel, who arrived late. Defense counsel, a noted lawyer in Queens County, wanted to give me a "heads up" on the case and therefore informed me that he intended to request, orally, Justice Markey's recusal and explained what had transpired on Monday. Since my immediate instinct was that such a motion was baseless, I asked, "Do you have cases to support this contention?" Defense counsel replied: "That's your job."

I hope that counsel's command to a law secretary will have the same effect on you as it did on me. Principal law clerks to Justices and court attorneys, throughout this State and country, serve an important function. We are fiercely devoted to the judges we serve and work hard to help our judges arrive at just results while helping counsel, by phone and in the courtroom, with myriad inquiries. While, later in the article, I make a plea to **CHIEF JUDGE JUDITH S. KAYE** and **SUPREME COURT JUSTICE JOSEPH GOLIA,** the President of the **ASSOCIATION OF SUPREME COURT JUSTICES OF THE STATE OF NEW YORK,** to abolish the attorney registration fee of $350 for law secretaries and court attorneys in this State, at the very least, we certainly do not deserve to be addressed in the condescending fashion used by counsel.

Even worse, when I challenged defense counsel on (1) his theory that courts had to chase for precedent to support a lawyer's motion and (2) the condescending way in which he framed it, he retorted, sitting in a courtroom, in front of his adjuster: "I suppose this means no more letters of recommendation." He was referring to letters of recommendation he had written, in support of my past attempts for a judgeship. His remark, especially made in a courtroom, was inappropriate. I answered: "Evidently not."

Aside from the poor interpersonal skills displayed by "That's your job," I immediately pointed out to counsel that we have differing viewpoints of the function of counsel. To my mind, it is the burden of a party and its counsel to cite cases to a court, and not to make a Judge and Chambers do the work. It was axiomatic at **GOLD, FARRELL & MARKS,** a [then-existing] Madison Avenue litigation boutique firm of high repute, where I was trained by the senior partners, **MARTIN R. GOLD, ESQ.** [today a partner at Sonnenschein, Nath & Rosenthal, LLP], **THOMAS R. FARRELL, ESQ.,** and **LEONARD M. MARKS, ESQ.** - - former Assistant United States Attorneys for the Southern District of New York who, then, were senior associates at Paul, Weiss, Rifkind, Wharton & Garrison. At Gold, Farrell & Marks, I spent countless hours researching the law to back creative motion practice, and preparing memoranda of law to both state and federal trial and appellate courts, all of which had a Table of Contents and a Table of Cited Authorities - - to help a court. In Queens County, I and my colleagues on the judicial side are grateful simply if a lawyer has added exhibit tabs to his/her motion. Then, on Jan. 16, 2008, although I had graduated from law school 30 years earlier, I was now being informed by counsel that it was my duty to do his research to support the recusal of my judge. Astonishing - - and this novel dictate was being pronounced by a veteran and influential member of the Queens Bar.

Egged on by counsel's comment, I then immediately did the research, while we all awaited the very late arrival of plaintiff's counsel. The cases, around the country, disclosed that Justice Markey did not have to recuse himself, simply because one of his sons was a former member of the Fire Department. Justice Markey's son retired on disability under different circumstances, not from injuries sustained because of a property owner's alleged negligence in maintenance, and did not know the plaintiff in the action before the court. The case law was clear that, under the circumstances presented, there could be no viable claim of an impression of bias. *See, Southwestern Bell Telephone Co. v. F.C.C.,* 153 F.3d 520, 521 (8th Cir. 1998) (fact that judge's son had been hired by intervenor-party neither requires nor permits me to recuse myself from these cases.); *United States v. Edwards*, 39 F. Supp. 2d 692 (M.D. La. 1999) (judge was not required to recuse himself by reason of his son's membership as an associate in a law firm representing one co-defendant); *York v. United States*, 785 A.2d 651, 656 (D.C. Ct. App.. 2001) (appellant's claim of bias resting solely on the bare assertion that the judge's family relationships with police officers, in and of themselves, created an appearance of judicial bias warranting recusal, was without merit); *Gillispie v. City of Knoxville*, 2006 WL 1005155 (Tenn. Ct. App. 2006) (in a non-jury tort case, court ruled against next of kin of son who was shot negligently by police; [W]e do not agree that the simple fact that the trial judge's son is employed as a sheriff's deputy is sufficient to create a reasonable question as to the judge's impartiality.)

I shared the foregoing research with Justice Markey, supplying him with copies of the pertinent cases, who then asked that I convey to counsel that he was denying the motion seeking his recusal. Upon defense counsel being informed of the Court's decision, the case settled within 30 minutes. In taking the settlement, Justice Markey made clear on the record that his comments on the preceding Monday regarding his son's status was in the interest of making full disclosure and was not intended to convey the impression that Justice Markey could not be impartial. As stated by the appellate judge in *Southwestern Bell*, 153 F.3d at 521, supra: "I place this matter of record because it is the fundamental ethical duty of every judge to police his or her own disqualification status."

After the lunch break on January 16, Justice Markey received a telephone call from the Trial Assignment Part. That morning, **JUSTICE ROBERT MCDONALD**, an experienced and well-respected jurist, had recused himself from the trial of a case seeking attorneys' fees in an entertainment law transaction, and the action was being assigned to us for trial. Justice Markey requested that I hold a conference with the attorneys.

The associate for defense counsel was repeatedly seeking an adjournment of several weeks, although she failed to raise the matter in TAP. Both counsel and the plaintiff-attorney seeking recovery of her attorney's fees were present. The defendant was absent, although defense counsel said that he was in New York from Florida. First, I wanted to learn the facts of the case. The plaintiff had a claim for over $90,000 of legal work, done for the defendant in licensing songs in an entertainment law practice case. Defense counsel was offering $7,500 to settle. The plaintiff, despite her work, foolishly failed to secure a written retainer with the defendant. He undeniably profited from her work, but claimed that her work was done without his express permission and ordered only by a former executive of his company. As I learned more facts, I volunteered that I was happy to get such a case, adding that I handled entertainment litigation at Gold, Farrell & Marks, and, as a result of my familiarity with entertainment law issues, offered to facilitate a settlement of the case.

Plaintiff's counsel, referring to my statement of experience while at **GOLD, FARRELL & MARKS,** then asked: "The *Beatlemania* case?" I responded, "Why yes? How did you know?" *Beatlemania* was a Broadway musical that ran from 1977 to 1979, for a total of 1,006 performances, and then began a national and international tour. A lawsuit in California state court, by Apple Corps, Ltd., the Beatles' company, grounded upon an infringed right of publicity actionable under California law, was what closed the show. Evidently, as demonstrated by his reference to the show, the very able and professional litigation associate of plaintiff's counsel who was going to try this action had conducted a complete investigation of the background, past litigation, and assets of

the individual defendant. Plaintiff's counsel continued that the individual defendant was the principal and co-defendant in that *Beatlemania* action that concluded over 20 years earlier. Prior to his noting that fact, I totally forgot about the individual defendant's involvement in the *Beatlemania* lawsuit.

Let me explain. In or about 1983, 25 years ago, during my stay at **GOLD, FARRELL & MARKS**, I was assigned to help a Los Angeles law firm, with all of its discovery in New York City, in aid of the California state court action. The case centered on the Broadway and Los Angeles productions of the show "*Beatlemania*," representing **THE BEATLES** in an action against the producers of "*Beatlemania*" for invasion of publicity rights in performance, name and likeness; the case was tried in a six-week trial in which a precedent-shattering multimillion dollar judgment was awarded to the Beatles.

I was assigned by **LEONARD M. MARKS, ESQ.,** to work closely with and be responsible to **ROBERT F. MARSHALL, ESQ.,** a partner of the prominent firm then called **GREENBERG, GLUSKER, FIELDS, CLAMAN & MACHTINGER,** and today known simply as **GREENBERG GLUSKER.** I had known that Mr. Marshall and his partner **BERTRAM FIELDS, ESQ.,** tried the case and obtained a multi-million dollar verdict. I had forgotten the name of the individual defendant, with the lapse of 25 years, and, although I had known of the verdict, did not know, until the conference of the case before Justice Markey, that the California court issued an opinion, in mid-June 1986 [within a few days after I left Gold, Farrell & Marks], about the facts and legal issues of that case. Neither my name nor that of Gold, Farrell & Marks was included in the appearances of counsel in the California state court trial. My role in the action was limited to drafting discovery notices and helping and working with Mr. Marshall in the several examinations conducted before trial of the defendants and witnesses in New York City.

I have maintained my friendship with **ROBERT F. MARSHALL, ESQ.,** for 25 years, and he became the Chair of Greenberg Glusker's Entertainment Practice, where he has personally represented many noteworthy and Oscar-winning clients in complex contract negotiations and/or litigation, including Philip Seymour Hoffman, Andie MacDowell, Roseanne Barr, Lawrence Kasdan, James Cameron, Joel Silver, Oliver Stone, Dustin Hoffman, Mike Nichols, and Sam Shepard.

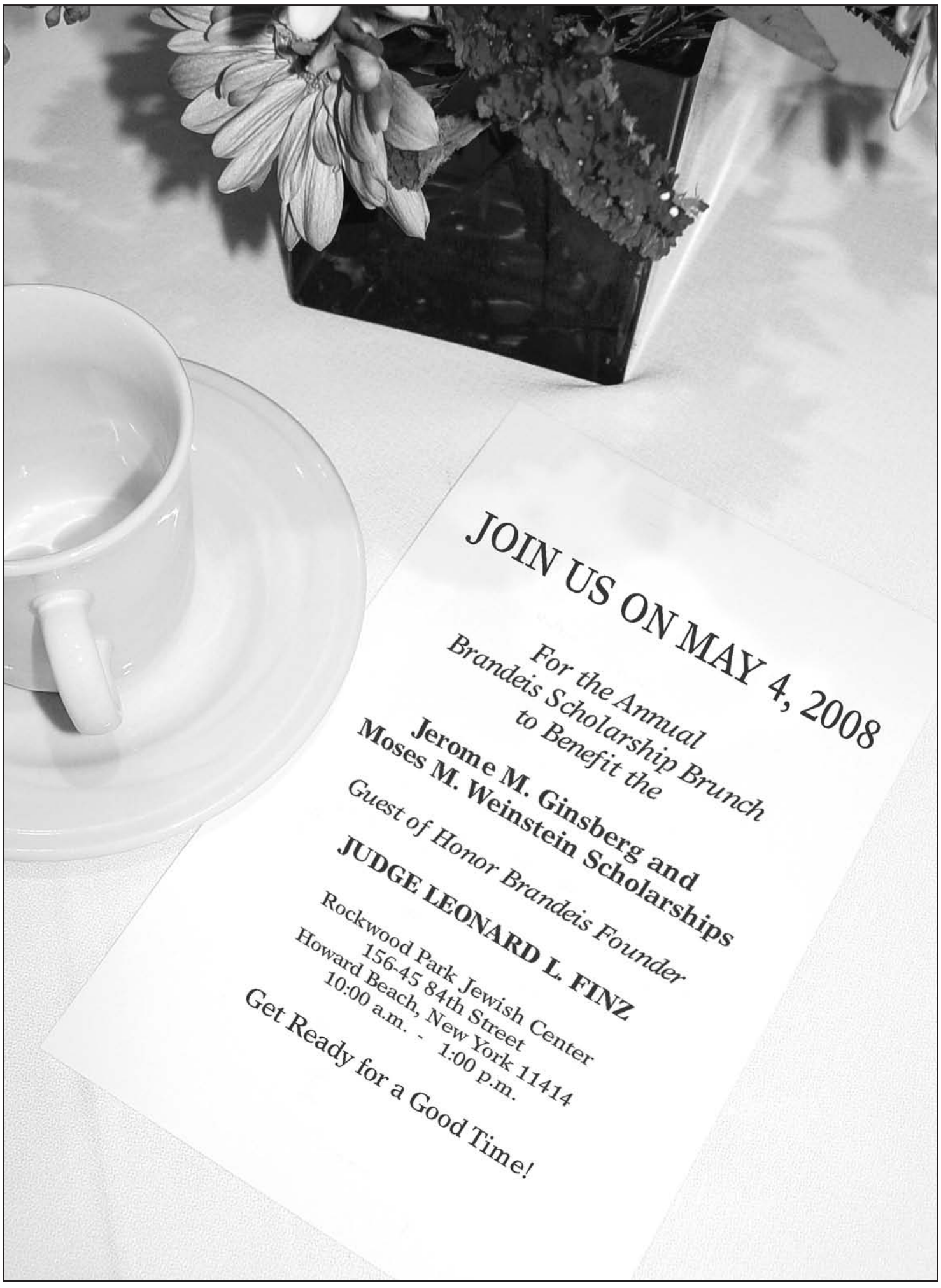
Like Justice Markey in the firefighter case that we had earlier in the day, I made full disclosure. Upon my disclosure, the associate of defense counsel then requested that Justice Markey recuse himself because of my involvement and participation in the discovery process of the Beatlemania case 25 years earlier. In an abundance of caution, we requested written submissions. The cases revealed that recusal was not required. *See, Williams v. New York Housing Authority,* 287 F. Supp 2d 247, 250 (S.D.N.Y. 2003) ("Past working relationships between members of the Court and parties appearing before it are a common occurrence, and only raise a necessity for recusal if the law clerk possesses personal knowledge of disputed facts, has a financial interest in the controversy, or exhibits some other personal bias or prejudice, among other factors.") *Accord, United States v. Persico, 2006* WL 2792761, 2006 U.S. Dist. LEXIS 64389 (E.D.N.Y. 2006) (court denied a recusal motion predicated on judge's law clerk's pending application to the U.S. Attorney's Office trying the case); *In re Food Management Group, LLC*, 2007 WL 203978 (Bankr. S.D.N.Y. 2007) (recusal motion denied even where law clerk, who was not involved in the proceeding, had previously worked on the matter while employed by a law firm representing the Chapter 11 Trustee).

On Friday, Jan. 18, Justice Markey held a telephone conference with counsel informing them of his decision denying the motion to recuse. Justice Markey made clear that he would rely on my research and recommendations in complex evidentiary issues, the preparation of the jury verdict sheet, and in any decision on a post-verdict motion. When the senior partner of defense counsel stated, "I assume that Mr. Wieder will be prejudiced!" Justice Markey retorted, "I assume just the opposite!" Because of the intervening Martin Luther King Jr. Holiday, Justice Markey concluded the telephone conference directing counsel to return to Court on Tuesday for jury selection. On Tuesday, Jan. 22, I received a conference call from the lawyers at 8:50 A.M. announcing that they reached a settlement of the matter for $45,000.

During that conference call, I raised another issue with the senior member of defense counsel. On Jan. 15, the associate of defense counsel claimed that she needed an adjournment of the matter because her client had cancer and had a doctor's appointment on Jan. 17 in Florida for treatment. She repeated this statement before me and Justice Markey on Jan. 16. She offered to provide a letter, claiming that it was from the doctor. I advised her that she could have the brief adjournment and declined to accept the letter, saying: "I don't need to see that. I trust you since you are an officer of the court."

She then asked to see Justice Markey and made a repeated pitch for a longer adjournment claiming that both the defendant and his wife have cancer and that the defendant is needed to care for his wife. None of these arguments were made to TAP. Justice Markey, on Jan. 16, said that with the submissions on the

Continued On Page 15



Sarkozy's Initiative on the Shoah:

Mandatory Holocaust Study

Continued From Page 1

Catholic and whose maternal grandfather, Aron Mallah, was Jewish.

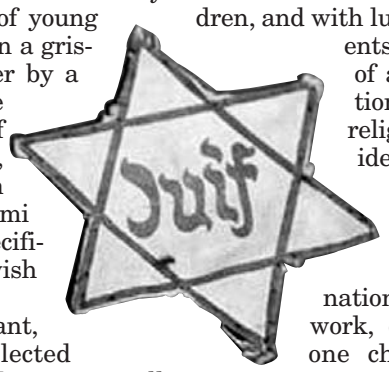
Bravo to French President **NICOLAS SARKOZY** for making compulsory in French education that each student learn about the life of a single French Jewish child killed during the Holocaust. President Sarkozy announced that, beginning with the September 2008 school year, every fifth grader [in France, level CM2] will have to learn the life story of one of the 11,400 French children killed by the Nazis in the Shoah. President Sarkozy stated: "Nothing is more moving, for a child, than the story of a child his own age, who has the same games, the same joys and the same hopes as he, but who, in the dawn of the 1940s, had the bad fortune to be defined as a Jew." Mr. Sarkozy continued that every French child should be "entrusted with the memory of a French child-victim of the Holocaust." French Education Minister **XAVIER DARCOS** explained later that the aim of the plan was to "create an identification between a child of today and one of the same age who was deported and gassed." [Elaine Sciolino, "By Making Holocaust Personal to Pupils, Sarkozy Stirs Anger," NY Times, Feb. 16, 2008].

President Sarkozy has shown great courage, sensitivity, understanding, and, above all, leadership in this initiative. Yet, he has come under intense fire, from many quarters, for it. Some pediatric psychologists believe that such an educational requirement, with its invocation of recounted violence, will traumatize children. The psychologists claim that such a requirement may provoke anxiety among 10-year olds who might begin to question whether adults will protect them from monstrous events. Other persons criticize why French Jewish children must learn about the Holocaust, rather than learn about non-Holocaust incidents that have caused the loss of Arab life. These psychologists also speculate that learning about the life of one of the 11,400 French children killed during the Holocaust will cause a feeling of survivor's guilt among the schoolchildren.

To top it off, **SIMONE WEIL**, a prominent Jewish Holocaust survivor who is the honorary president of the Foundation for the Memory of the Holocaust, stated on a French magazine web site: "It is unimaginable, unbearable, dramatic and, above all, unjust. You cannot inflict this on little 10-year-olds! You cannot ask a child to identify with a dead child. This history is much too heavy to carry."

Even though President Sarkozy did not explain the reason for the new addition to the French curriculum, permit me to offer some observations why his presidential action is appropriate and even necessary.

First, during the Holocaust, the puppet government known as Vichy France, under the Nazi occupation, surpassed the Nazis, even to the barbarians' bewilderment, in defining "Who is a Jew?" for purposes of deportation to the death camps. Second, the death on February 13, 2006, two years ago, of young French Jew, Ilan Halimi, in a grisly, barbaric torture-murder by a gang known as "The Barbarians," composed of over 20 young Muslims, shows that anti-Semitism still exists in France. Halimi was lured to his death specifically on account of his Jewish ethnicity.



Third, and most important, Sarkozy, who was elected President of France in May 2007, well understands that, by assigning a pupil in a French school to learn about the life of an individual French Jewish child who was exterminated during the Shoah, that a distinct, real face is understood, not an impersonal number. It is too easy to rattle the number 6,000,000 of European Jews killed during the Holocaust as a simple and cold statistic. Sarkozy wants to remind the French that injustice's victims have a face and personal identity.

Most important, by learning of the life of a French Jewish child who was the victim of barbarians, the student, as a formative human being, it is hoped, will then transcend and go on to abhor all injustice, hatred, and discrimination based on race, nationality, religion, and ethnicity.

Let me address the aforementioned various criticisms of President Sarkozy's plan. First, to those who claim that children will be psychologically harmed by being required to study about the Holocaust and exposed to its cruel violence, the same criticism can be leveled in ten-year old children being permitted to watch television programs and films and play video games where violence is not only depicted, but at its core. If the psychologists' arguments were taken to their logical extension, Cecil B. DeMille's 1956 epic film "The Ten Commandments" – although carrying a rating of "G" for "General Audience," signifying suitable for viewing by persons of all ages – should be barred to children because its opening shows not only the oppression of the Hebrew slaves, but the killing of their baby boys by Egyptian soldiers under orders from the Pharaoh, who, like Hitler, thought that the Jews were becoming too numerous. These psychologists conveniently forget that President Sarkozy's requirement has a mission in mind: not to glorify violence or traumatize children, but to sensitize children, and with luck even their adult parents, as to the abomination of all forms of discrimination and hatred based on religious, racial, and ethnic identity.

On a program "7 Jours sur la Planete," aired on TV-5, the all-French speaking international television cable network, on February 23, 2008, one child psychologist, who was critical of President Sarkozy's initiative, offered instead that children should be taught generally about adherence to law. This psychologist, I believe, is in dire need of re-education because barbarism and discrimination were built into Nazi laws. Teaching respect for all human life by simple respect of and adherence to law begs the question.

To those critics who oppose the teaching of the Holocaust, saying that one should teach individual acts of cruelty or violence directed at Arabs or other groups in France, they, too, can stand more education. I do not make more important my pain by belittling yours. The Holocaust was a monstrous scheme that was systematically and fanatically executed designed to rid Europe of all Jews. I still marvel when I encounter intelligent, well-educated professionals who are not aware that on the eve of World War II, there were 3,000,000 Polish Jews. In 1945, only 10,000 survived. Hitler and the Nazi barbarians killed 6,000,000 European Jews, adults and children, often with the co-operation of some non-Jewish citizens of the countries the Nazis invaded, eager to claim expropriated realty and possessions, and with the knowing silence and the failure of the world, the Vatican, the American government, and President Franklin D. Roosevelt – all of whom knew of the genocide – to do anything.

To the child psychologists who are critics of President Sarkozy's initiative, I remind them that we live in a world where children are exposed to random violence in "Play Station" games, nearly all of the Oscar contenders for Best Picture this past year dealt with psychopathic killers, and shows like "Dexter" about a serial killer who is supposedly on the side of good are featured on television. Such viewer participation by a 10-year old is more likely to desensitize a child to violence than a reading of **THE DIARY OF A YOUNG GIRL** (1962) by German-born Jew **ANNE FRANK** [who lived in the Netherlands], who was only 15 when she was killed by the Nazis in the Bergen Belsen concentration camp. Just like with **ANNE FRANK'S** famous diary, President Sarkozy's initiative will show to today's French school children that hatred, violence, and injustice have an individual face – that of a particular victim, or victims: 11,400 French Jewish children who were slaughtered by barbarians solely for being born Jewish. Especially when children are being desensitized by the media to violence, a face of the victim needs to be remembered. In this regard, President Sarkozy should take solace from his critics in the fact that when Anne Frank's Diary was published, it was denounced by Holocaust deniers as a fake.

Arab citizens of France who are critical of President Sarkozy's plan simply do not get the point. Studying about the Holocaust is not a Jewish or non-Jewish event. It should be required learning because we, as human beings – while we race on the roadway or scurry for a seat on the subway in our rush to work – should also want to pause and reflect upon what needs to be our collective and individual goal to better understand the meaning of human life, **before** we leave it, while we can make some contribution. Putting aside the role that physical abuse and mind manipulation must have played in *each* of their lives, would Youssouf Fofana, the self-styled "Brains of the Barbarians," and his other 20 French Muslim followers of the "Barbarians" gang who are accused of the kidnapping, torture over a three week period, and murder of young, French Jew, Ilan Halimi, have allegedly committed the atrocity if they, as 10-year olds, would have been under the educational requirement now imposed about President Sarkozy? I wonder. Instead, later this year, the 21 defendants will be tried for murder.

Significantly, to the critics of President Sarkozy's initiative who feel that the Holocaust – where 6,000,000 Jews were killed on European soil only 60 years ago – is "unfairly" being singled out for instruction in the schools, they discount their own responsibility. Parents should supplement the instruction and role of educators at home. Nothing in President Sarkozy's initiative prevents parents from **ADDING** to what he has done. While a child is assigned to report only on the life of a particular child among the 11,400 French Jewish children killed in the Shoah [the Holocaust] **DURING SCHOOL HOURS**, a responsible and upright parent would continue that theme **AT HOME**, instructing his or her child about injustices perpetrated on other groups, throughout the world, and covering world history, based solely on being a member of a certain religious, racial, or ethnic minority.

In this regard, about the value of parents, please indulge me. When I was only a boy, my mother **ETKA WIEDER** [1913-1975], the only survivor of a very large, prominent Jewish family in **TARNOW, POLAND**, by the name of **MANDELBAUM**, literally made me swear to her that I would, when adult, "help **ALL** people - - and not just Jewish people." I will never forget those words, which she repeated for reinforcement. She sent me to Jewish schools, but taught me Bible every day after school, and then supplemented the Bible study by her constant good deeds for others, of all religions and races, and made me

swear to follow in her example. I am thus praying that French parents, in this vein, will supplement and augment President Sarkozy's initiative, both at home and by personal example, and not detract from it.

Finally, Simone Weil, a Jewish critic of President Sarkozy's initiative, is misguided. What's the point of being the honorary head of a foundation designed to increase awareness of the Shoah, if you are going to oppose its teaching to those children, who are, at formative age, to learn about racial, religious, and ethnic tolerance and harmony? According to the prestigious French newspaper **Le Monde**, a spokesperson for **YAD VASHEM**, the most important Holocaust museum in the world, located in Israel, praised President Sarkozy's initiative and said that it was the first time such a Plan emanated from a Head of State or Government. Mr. **SERGE KLARSFELD**, the French Jewish historian who has devoted his life to recording the names and biographies of France's Holocaust victims, praised the president for his "courage." Klarsfeld added: "This is the crowning glory of long and arduous work. To those who say it's too difficult for young children – that's not true. What they see on television or in a horror film is much worse. This is not a morbid mission."

President Sarkozy generally has shown great courage in his new presidency. He risked political hatred when he secured the release of the Bulgarian nurses and Palestinian doctor held hostage and under death sentence in Libya by negotiating with its leader. Now, he has a mission of ending all ethnic hatred by this initiative of requiring the learning of the personal identity and life story of a French Jewish child who was a murdered victim of the Nazis during the Shoah. What a stark and refreshing contrast to Holocaust-denier Mahmoud Ahmadinejad! President Nicolas Sarkozy of France shows that he profoundly understands the meaning of human life.

President Sarkozy has shown the same steadfast commitment to Israel's security. American Jewish Committee ("AJC") Executive Director David A. Harris, returning recently from a trip to Paris in which he met with President Sarkozy and Prime Minister Francois Fillon, stated: "President Sarkozy and his administration have demonstrated a steadfast commitment to Israel's security, an unflinching awareness of the gravity of the Iranian threat, and an admirable determination to combat anti-Semitism and all forms of racism. We are proud to work with our French friends in the pursuit of our shared goals." Sarkozy, on February 13, 2008, became the first French President to address the annual dinner of French Jewish organizations, Conseil Représentatif des Institutions Juives de France ("CRIF"). The next day, Mr. Harris sent the French President a letter praising his "zero-tolerance approach to anti-Semitism." In his speech on Feb. 13 to the CRIF, President Nicolas Sarkozy said, referring to Iran's Mahmoud Ahmadinejad that he would refuse to greet any world leader who refused to recognize Israel. "I won't shake hands with people who refuse to recognize Israel," declared Sarkozy, who will visit Israel in May to mark the 60th anniversary of Israel's founding.

President Sarkozy also reaffirmed his strong support for international sanctions against Tehran over its nuclear program. Under his leadership, France has led the way in pressing for sanctions at the United Nations Security Council and in the European Union to get Iran to halt atomic work which Western powers fear is aimed at making bombs. Sarkozy added, in his speech to the CRIF: "Proliferation is a grave threat to international security. We cannot sit by and do nothing while Iran develops technologies which are in violation of international law."

Finally, returning to the principal theme of this article on Holocaust education let me relate an event that occurred to my late mother, **ETKA WIEDER**. She came home perturbed from an appointment for a test at a city health clinic. I asked what was wrong. It had nothing to do with her health. During the examination, she noticed that two nurses were laughing. She asked them what was funny. Giggling, they wondered why she wanted to have her telephone number tattooed on her left forearm. Obviously, these nurses had never been educated about the horrors of arrival at Auschwitz. This event should be recalled NOW, above and beyond all the hand-wringing and idle speculation of French child psychologists who question **PRESIDENT NICHOLAS SARKOZY'S** sound judgment.

BRAVO MONSIEUR LE PRESIDENT! COURAGE ET BONNE CONTINUATION! ■

HOWARD L. WIEDER's parents were the sole survivors of their large Polish Jewish families, from Tarnow, Poland, during the Holocaust. HOWARD L. WIEDER, a frequent visitor to Frejus, France, is a lawyer working in the New York State court system and a monthly columnist of both books and culture and writer on the law for The Queens Bar Bulletin in Queens County, New York.

YOU HAVE COME A LONG WAY, BABY

By Paul S. Goldstein

While I was doing a periodic review of a drawer in my desk in which ancient documents are stored, I came across the Queens County Bar Association "Recommended Minimum Fee Schedule," revised January 1, 1958.* (Back when such schedules were lawful). What was a recommended minimum fee? Here are a few examples.

1.	Preparation of petition Non-payment or holdover	$ 50.00
2.	Purchase a house up to $50,000.00 over $50,000.00 - 1/2 of 1% of excess	1%
3.	Preparation of deed	25.00
4.	Simple Will	25.00

Of course, today's fees are much bigger and, in many cases, there is more work required to achieve similar results. So it is fair to say that things have changed, but some things have not changed. We still have the same challenge when it comes to getting a client, doing a professional job and earning a fee.

Law today is more complicated, procedurally and substantially. For the inexperienced lawyer, it is even truer today than 50 years ago. What is the inexperienced lawyer to do? The guiding hand of the seasoned attorney can be invaluable, as well as the teaching and learning which goes on at the Continuing Legal Education seminars which are offered by our Association. Unfortunately, the seminars may not be enough.

PLEASE TAKE NOTICE that later this year the inexperienced attorney is going to have a once in a lifetime opportunity to attend a seminar, the likes of which has never before and never again been offered by the C.L.E. of the Queens County Bar Association. You might learn some of the survival techniques of the profession (like such an obvious thing as being certain to carry and offer your card at all opportunities) AND how to make the best use of your limited experience and knowledge. I am not talking smoke and mirrors, but hard work and sound professional methods.

This C.L.E. seminar will be given on May 15, 2008. The journey of the attorney is long and hard, and so, baby, it is hoped that this seminar will ease the way for those of you who have started down a slightly unknown and unexplored path.

Paul S. Goldstein
Former President of Q.C.B.A.

*This does not represent the opinion of the Queens County Bar Association.

PHOTO CORNER

Judicial Selection: Panel Discussion on Judicial Selection, Post Lopez/Torres, Monday, February 25, 2008

Audrey LeVine, Hon. Charles Lopresto, Susan Beberfall and Lance Evans

Bernard Vishnick, Mark Alcott, Hon. Seymour Boyers, Michael Reich and David Cohen

Bernard Vishnick, member of the QCBA Judiciary Committee and the Independent Judicial Election Qualified Commission

David Cohen introducing the speakers of the Judicial Selection Meeting

Hon. Allen Beldock, Hon. Bernice Siegal, Hon. George Heymann, Jodi Orlow, Steve Hans and Martha Taylor

Ted Gorycki, Hon. Nicholas Garaufis, Martha Taylor and Mike Dikman

Bernie Vishnick, Hon. Seymour Boyers, Hon. Nicholas Garaufis, Wally Leinheardt, Joe Risi, Jr. and Hon. Charles Lopresto

Chanwoo Lee, Angelo Picerno, Hon. Phyllis Orlikoff Flug and Jim Pieret

George Nashak, Hon. Seymour Boyers, Mark Alcott and David Cohen

Photos by Walter Karling

Louise Derevlany, Gary Darche, Neldra Zeigler and Matt Lupoli

Jim Pieret, Angelo Picerno and Ed Rosenthal

Mark H. Alcott, Past President of the New York State Bar Association

Hon. Seymour Boyers, Moderator, Retired Associate Justice, Appellate Division, 2nd Dept

Michael H. Reich, Secretary to the Queens Democratic Party

Cathy Lomuscio, Hon. Stephen Knopf, Nelson Timken and Gary Miret

Hon. Maureen Healy, Ed Rosenthal, Jim Wrynn, Martha Taylor, Steve Hans, Albert Baldeo, Hon. Bernice Siegal and Hon. Rudy Greco

The Practice Of Matrimonial Law Wednesday, March 5, 2008

Photos by Sasha Kahn

George J. Nashak, Jr. & Jacqueline Luciano, MatLaw Systems, Sponsor

Hon. Jeffrey D. Lebowitz, Stephen D. Fink, Esq., Michael Dikman, Joseph Trotti, Esq., Deborah G. Fiss, Esq., George J. Nashak, Jr., Esq., Gregory J. Brown, Esq. and Hon. Sidney F. Strauss

MARITAL QUIZ

By GEORGE J. NASHAK JR. *

The first three questions of this quiz involve Family Court Act §413(1)(g), which reads:

"(g) Where the court finds that the noncustodial parent's pro rata share of the basic child support obligation is unjust or inappropriate, the court shall order the noncustodial parent to pay such amount of child support as the court finds just and appropriate, and the court shall set forth, in a written order; the factors it considered; the amount of each party's pro rata share of the basic child support obligation; and the reasons that the court did not order the basic child support obligation. Such written order may not be waived by either party or counsel; provided however, and notwithstanding any other provision of law, including but not limited to section four hundred fifteen of this act, the court shall not find that the noncustodial parent's pro rata share of such obligation is unjust or inappropriate on the basis that such share exceeds the portion of public assistance grant which is attributable to a child or children. In no instance shall the court order child support below twenty-five dollars per month. (Emphasis supplied) Where the noncustodial parent's income is less than or equal to the poverty income guidelines amount for a single person as reported by the federal department of health and human services, unpaid child support arrears in excess of five hundred dollars shall not accrue."

Question #1
Does this section conclusively fix a minimum $25.00 per month floor in all cases?

Question #2
If the annual income of the noncustodial parent is below the poverty level, is the court required to order the non-custodial parent to pay $25.00 per month?

Question #3
If the annual amount of the noncustodial parent's basic child support obligation would reduce the non-custodial parent's income below the poverty level, is the court equired to order the non-custodial parent to pay $25.00 per month?

New topics.

Question #4
Is a conversion divorce permitted if the separation agreement upon which it is based is found to be void ab initio?

Question #5
Are trial courts required to follow the law in other Appellate Division Departments f the department in which the trial court sits, and the Court of Appeals, are silent on the issue?

Question #6
What is the statute of limitations on maintenance?

Question #7
What is the statute of limitations on child support?

Question #8
Can you file a note of issue in Queens County without a Statement of Proposed Disposition?

Question #9
Are Statements of Proposed Disposition still required?

Question #10
Are unemployment benefits attachable for child support?

***Editor's Note: Mr. Nashak is a Past President of our Association and Vice-Chair of our Family Law Committee. He is a partner in the firm of Ramo Nashak & Brown.**

Answers on Page 15

Best Have Your Papers In Order:

New Immigration Legislation Could Effect Millions of US Workers

By ALLEN E. KAYE

By all accounts, the failure of the "immigration issue" to deliver at the polls for the Republican Party should have sounded the death knell for any attempts at passing get-tough type legislation in Washington before this year's election cycle was over.

With McCain as the presumptive nominee, one would think that down-ticket Republicans wouldn't want to re-hash the "immigration wars" and put their candidate in a position where he would have to once again revisit the issue.

But then again, that would assume that politics is based upon logic and McCain isn't more that willing to even further pander to anti-immigrant sentiment despite his previous record.

Facing the specter of having to run on their accomplishments over the last eight years, nervous Republicans are scrambling for an issue to distract the electorate from their records. With that in mind, The House Immigration Reform Caucus, now under the of leadership Brian Bilbray, an ex- lobbyist for the hate group FAIR, has gone back to beat a dead horse in an attempt to get an election year distraction on the Congressional agenda.

Back in November, Bilbray, with the help of freshman, red-state Democrat, Heath Schuler, introduced the newest incarnation of the House's failed enforcement-only style legislation; The Secure America through Verification and Enforcement ("SAVE Act") of 2007 (H.R. 4088).

Normally, a bill that would put the jobs of over 12.7 million US citizens in direct jeopardy, force a possible 2.5 million a year to be classified as unauthorized to work, criminalize the work of churches and humanitarian groups - mandating penalties up to 5 years imprisonment, and force all local law enforcement to become immigration agents.. all in the name of attrition and deportation.. would be rejected out of hand by Congressional Democrats.

But, thanks to the work of Rahm Emanuel and other Dems, it's moving closer to enactment.

The bill itself is chock full of flaws and outrages.

The right-wing, zero-immigration group, NumbersUSA, rightfully touts the bill as an "Attrition Through Enforcement" effort. According to the group, the bill's goal is to "make it extremely difficult for unauthorized persons to live and work in the United States. (So) they will buy their own bus or plane tickets back home if they can no longer earn a living here".

Yet, reading the bill, it's obvious that its goal goes even beyond ruthlessly trying to "starve" undocumented workers out of the country. It requires local law enforcement to begin the process of mass deportations by requiring them to become immigration agents at every traffic stop and domestic dispute.

But perhaps the most troubling part of the legislation is it's reliance on the DHS's flawed Basic Pilot/E-Verify Electronic Employment Verification system, and the Social Security Administration's error-ridden "No-Match List" to determine whether millions of US workers, many US born citizens, would be eligible to earn a living.

The "SAVE Act" would:

• Require mandatory use and rapid expansion of the Basic Pilot/E-Verify Electronic Employment Verification system for all employers. The "SAVE Act" would require that within 4 years, all employers in the U.S. – approximately 6 million – use Basic Pilot/E-Verify to verify the work authorization of ALL workers – immigrant and U.S. citizen, new hires and the current workforce. Slightly more than 50,000 employers currently voluntarily use Basic Pilot for new hires – less than one percent of all employers; only 4 percent of all new hires are currently verified through Basic Pilot.

A recent independent evaluation of Basic Pilot/E-Verify concluded that employers currently using the system often misuse it, and that the system requires significant improvements before further expansion. The Basic Pilot/E-Verify system relies heavily on the Social Security Administration (SSA) database that, according to government sponsored studies, contains unacceptably high error rates. SSA estimates that 17.8 million of its records contain errors related to name, date of birth, or citizenship status, and 12.7 million of those records relate to U.S. citizens. DHS databases contain similarly high error rates. If the databases are not dramatically improved, the errors in the SSA database alone could result in 2.5 million workers a year being misidentified as unauthorized for employment or as no-matches. Workers, including U.S. citizens, will get caught in this faulty system and will lose their jobs.

The "SAVE Act" contains no assurances that government databases will be accurate and updated, no privacy protections for the vast amounts of personal information to be handled by employers, and no recourse for workers who are wrongfully denied employment. Most importantly, the "SAVE Act" will not prevent unscrupulous employers from

Continued On Page 14

COURT NOTES

The Following Attorneys Were Disbarred By Order Of The Appellate Division, Second Judicial Department:

Mark Marcus (January 22, 2008)

The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against allegations that he failed to satisfy judgments; failed to safeguard client funds; and failed to re-register with the Office of Court Administration (OCA) for three registration periods.

Peter A. Gioia, admitted as Peter Anthony Gioia, a suspended attorney (January 29, 2008)

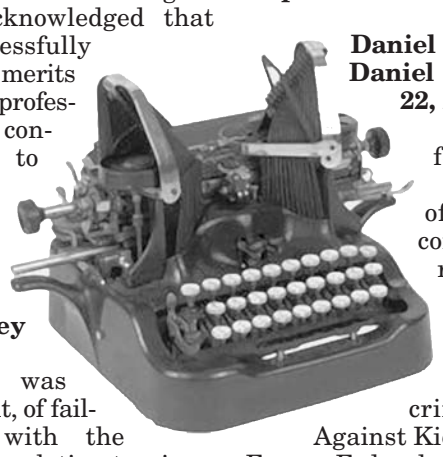
The respondent tendered a resignation in which he acknowledged that he could not successfully defend himself on the merits against pending charges of professional misconduct.

Keith G. Rubenstein, a suspended attorney (January 29, 2008)

The respondent was found guilty, after a disciplinary hearing, of allowing non-attorneys to exercise control over his law practice; sharing legal fees with a non-lawyer; engaging in a pattern and practice of paying for client referrals; engaging in a pattern of filing improper Retainer and Closing Statements with the OCA, which contained false and misleading information; engaging in a pattern and practice of failing to safeguard escrow funds entrusted to him as a fiduciary, incident to his practice of law; failing to maintain required bookkeeping records for funds coming into his possession as a lawyer; and engaging in conduct involving dishonesty, deceit, fraud or misrepresentation by, *inter alia*, certifying to OCA that he was in compliance with Code of Professional Responsibility DR 9-102 and falsely holding himself out as a partner with another attorney.

Paul S. Shemin, admitted as Paul Stephen Shemin (January 29, 2008)

The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against allegations of professional misconduct concerning his failure to maintain funds entrusted to him as a fiduciary.



Andre Strishak, a suspended attorney (January 29, 2008)

The respondent was found guilty, on default, of failing to cooperate with the Grievance Committee relative to nine complaints of professional misconduct lodged against him.

The Following Attorney Was Suspended From The Practice Of Law By Order Of The Appellate Division, Second Judicial Department:

Warren Scott Goodman (January 24, 2008)

The respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest as a result of his failure to comply with lawful demands of the Grievance Committee and other uncontroverted evidence.

The Following Attorneys Were Publicly Censured By Order Of The Appellate Division, Second Judicial Department:

Daniel Curtin, admitted as Daniel F. Curtin (January 22, 2008)

The respondent was found guilty, after a disciplinary hearing, of engaging in illegal conduct that adversely reflects on his honesty, trustworthiness or fitness as a lawyer, in that he was convicted of the serious crime of Prohibition Against Kickbacks and Unearned Fees, a Federal misdemeanor.

William Lewis Ostar (January 29, 2008)

The respondent was found guilty, after a disciplinary proceeding, of engaging in conduct that adversely reflects on his honesty, trustworthiness or fitness as a lawyer, in that he was convicted of the crime of Criminal Possession of a Weapon in the Fourth Degree, a New York State misdemeanor.

The Following Disbarred Attorneys Were Reinstated To The Practice Of Law By Order Of The Appellate Division, Second Judicial Department:

Scott Eric Garil
(January 29, 2008)

John J. Connolly
(February 1, 2008)

At The Last Meeting Of The Grievance Committee For The Second And Eleventh Judicial Districts, The Committee Voted To Sanction Attorneys For The Following Conduct:

• Failing to re-register as an attorney with OCA (9)

• Neglecting a legal matter; failing to refund an unearned fee; and failing to timely respond to the Grievance Committee

• Neglecting a legal matter and securing an improper release of liability from the client

• Neglecting a legal matter; reneging on an agreement to refund an unearned fee; and failing to communicate with the client

• Failing to properly safeguard client funds including, but not limited to, failing to designate a fiduciary account in accordance with the requirements of DR 9-102(B)(2) and failing to maintain a ledger or similar record of deposits into, and withdrawals from, escrow as required by DR 9-102(D)(1)

• Commingling personal funds with funds maintained by the attorney as a fiduciary

• Leaving untoward messages for a client and improperly communicating with a party known by the attorney to be represented by counsel

• Failing to enter into a written retainer or letter of engagement with a client; practicing under a false and misleading firm name, which improperly implied that the attorney was associated with other lawyers; improperly delegating client intake to a non-employee whom the attorney failed to adequately supervise, resulting in a client believing the non-employee was a lawyer; and failing to promptly refund an unearned fee

• Failing to adequately supervise a law graduate employed in the attorney's office, who, consequently, gave a client ill-advised legal advice

• Failing to timely resolve outstanding liens on behalf of a client and failing to timely communicate with the Grievance Committee

• Engaging in conduct adversely reflecting on fitness to practice as a result of an out-of-state misdemeanor reckless driving conviction

Diana J. Szochet, Assistant Counsel to the State of New York Grievance Committee for the Second and Eleventh Judicial Districts and President-Elect of the Brooklyn Bar Association, has compiled this edition of COURT NOTES. The material herein is reprinted with permission of the Brooklyn Bar Association.

Honoring Judge Leonard L. Finz

By WALLACE LEINHEARDT

LEONARD L. FINZ, a former Queens Supreme Court Justice is being honored by the Brandeis Association, a group of Jewish lawyers and Judges in recognition of his distinguished career on the bench and at the bar.

Born, raised and educated in New York City, he attended the High School for Music and Art. He served 44 months in the Army as a decorated Field Artillery Officer in the Philippines during World War II. Upon his return home he embarked on an extraordinary career as a professional musician, singer and TV/night club performer.

Following his graduation from NYU Law School he began an illustrious career as an attorney in Jamaica. He was elected a Civil Court Judge in 1965 and eight years later a Justice of the Supreme Court.

Throughout his years as a judge, he authored opinions that were so highly regarded as to have them specifically selected for publication in the Official Reports of the State of New York, with many being featured on the front page of the New York Law Journal. In all, more than 100 opinions were published during his almost 13 years of judicial tenure - a rare accomplishment at the time.

Judge Finz voluntarily left the bench in 1978 (a major factor, even then, being judicial salaries) to become a partner and trial lawyer in a prominent personal injury firm. In one of his first trials upon leaving the bench, he obtained a verdict in the sum of 1.5 million dollars which was reported in the New York Times and described as the highest medical malpractice verdict at the time. Since then, he has had verdicts in the millions of dollars, combined with settlements in excess of 100 million dollars.

A prolific writer, Judge Finz has written many articles which have been published in a host of publications. Judge Finz is also a skilled teacher of the law having taught trial advocacy, trial techniques, and medical practice as an Adjunct Professor of Law, in addition to teaching judges throughout the nation at the National Judicial College in Reno, Nevada. Especially note worthy was the 8-week program done in 1968 at the Queens County Bar Association entitled The Anatomy of a Trial - The Art of Advocacy and Persuasion. Long before so called "interactive programs" were used, the attendees were selected to play the various roles in conduct of a trial, and their performance was then analyzed by the Judge and the other participants.

Founder of the Finz & Finz, P.C., in Jericho, NY, Judge Finz enjoys traveling with his wife, Pearl; and visiting his daughter Sandi and her family, and his son (and partner) Stuart and his family. ■

Best Have Your Papers In Order:

New Immigration Legislation Could Effect Millions of US Workers

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avoiding the system by hiring undocumented workers under the table, thereby growing the informal economy.

• Greatly expand the SSA "no-match letter" program. – a program that was halted by a federal judge in 2007. A no-match occurs when the information in the SSA database does not match the information submitted by an employer on the W-2 form. There are many reasons that workers receive a no-match letter that have nothing to do with immigration, including name changes and employer error in entering data. The "SAVE Act" taps the SSA to play an unprecedented role of reporting and cooperating with the DHS by requiring the SSA to notify employers of ALL no-matches and to notify DHS of all unresolved no-matches. Workers who wrongfully receive a no-match letter will have 10 days to resolve the problem, or be fired. A judge recently found that the DHS no-match rule, which gave employers and workers 90 days to fix errors, placed a large burden on employers, and may result in tremendous harm – including loss of employment – for U.S. workers.

• Link the Social Security Administration and Department of Homeland Security to enforce immigration laws. The "SAVE Act" requires SSA to notify all employees in cases where their social security number (SSN) has been reported by two or more employers and requires those workers to prove they are using a valid SSN and are employed by multiple employers simultaneously. This would be tremendously burdensome for the many workers who hold multiple jobs, and would place additional burdens on the already overstretched and underfunded SSA, resulting in delays providing Social Security benefits to the retired and disabled.

The "SAVE Act" also requires SSA to report all unresolved no-matches and multiple use SSNs to the Department of Homeland Security, increasing the amount of personal taxpayer information about workers (including U.S. citizens) that is shared between government agencies, overriding current laws protecting the privacy of taxpayer information.

Who would get caught up in this bureaucratic nightmare:

Why would a worker receive a no-match letter?

According to SSA, there may be several reasons why information submitted for a worker does not match SSA records, including:

- A typographical or clerical error was made on a W-4 or W-2 form (such as misspelling a name or transposing a number in the SSN)
- The worker's name has changed due to marriage or divorce
- Information provided on the W-4 or W-2 form is incomplete
- The worker's middle name was transposed (for example, "David Juan Jimenez" instead of "Juan David Jimenez").

Back In October, when U.S. District Court Judge Charles Breyer ruled against the DHS's implementation of it's "No Match Program" for 141,000 social security mismatches, he pointed to the SSA's inability to process the large volume of request the program would require in a timely matter (90 days,) and the number of mistakes in the SSA database as his grounds for preventing the DHS from going forward.

The Save Act not only vastly increases the numbers of workers who would need to correct their information …but cuts the time to accomplish that task down to ten days. Anyone who's every dealt with a government agency, from the Dept of Motor Vehicles to the Internal Revenue Service, knows that accuracy and timeliness are not traits generally attributed to them.

So why would 48 Democratic Representatives sign on to such a flawed piece of toxic legislation?

In one word …Rahm Emanuel.

Emanuel has long been advising vulnerable Dems to break with the party, turn their backs on Comprehensive Reform and run with a Republican-lite position on immigration to counter Republican charges of being "soft on immigration." Sources with ties close to the Congressional Hispanic Caucus confirm that Emanuel has been actively lobbying for the bill, and has gone so far as to suggest putting it up alongside the flawed STRIVE Act from last year - ensuring the passage of at least one of the bills before the election.

Emanuel, who fought against the fifty-state strategy that has been so successful in revitalizing the Democratic Party, and warned Democrats who didn't recognize that immigration was a "third rail" issue weren't really "with the American people"… is now advising Democrats to sign on to the Republican's last-ditch, Hail-Mary, plan to salvage their faltering electoral prospects with yet another draconian, deportation, immigration bill.

Sometimes one must wonder which side of the aisle Rahm is really on.

Tell your Representative that you want Compressive Reform and not attrition and deportation ... no matter what Rahm Emanuel thinks …Stop the SAVE Act

We would like to thank Migra Matters for allowing us to use this article. ■

Frivolous Recusal Motions and other Self-Defeating Misconduct

Continued From Page 5

recusal motion, he wanted detailed affidavits from both the defendant and his wife to be faxed to Chambers by the next day. Interestingly, the defendant, although alleged to be in New York did not come to the courtroom and thereby be examined as to his alleged cancer.

No medical affidavits were ever furnished by defense counsel. It was later reported to us by plaintiff's counsel during the Friday, Jan. 18 telephone conference that the claim of cancer was bogus and that the senior partner of the defense law firm advised him in the evening of Jan. 16 that there was no cancer, but that the defendant "had a fear of cancer." When I questioned defense counsel on Jan. 18 and 22, whether the defendant actually went to a doctor on Jan. 17, the very reason for affording him an adjournment, I received no clear, direct response. I reminded defense counsel that he had an absolute duty to fax or telephone the court to correct any false statement conveyed by his associate to Justice Markey and me regarding their client's health. They failed to do so. On Jan. 22, after being informed of the settlement, I told defense counsel that his firm and associate were "playing with fire" if they had made false representations to secure an adjournment or in not taking **IMMEDIATE** action to notify Chambers to correct a representation as soon it is learned to be false.

Later, seeing Justice McDonald after the settlement was conveyed to us, I told him what had transpired regarding the recusal motion, and he explained why he had recused himself. Justice McDonald then told me that the associate of defense counsel claimed to him four times unequivocally, in demanding an adjournment, that the defendant "has cancer."

I relate these facts to you because the credibility of all lawyers will suffer if defense counsel plays fast and loose with the Court in securing an adjournment or in failing to advise the Court of the true facts of defendant's health immediately upon learning of them. Once bitten, twice shy. It only takes a few bad apples to compromise the whole barrel. As in the first case, not only was a frivolous recusal motion made, thereby diminishing the future credibility of counsel, but it was accompanied by offensive and self-defeating conduct.

To conclude, let me return to the first case and the imperious attitude displayed to a court attorney/principal law clerk to a judge. Law secretaries and court attorneys, when treated with respect, are devoted to their judges. Law secretaries/court attorneys do not earn the fees of outside counsel, are limited by enforced court rules as to the amounts of our political donations and permissible activity, are prevented from accepting private, fee-generating cases, and have to get permission to represent a friend or indigent party pro bono publico. Under these circumstances, and because of my great, personal admiration for both **CHIEF JUDGE JUDITH S. KAYE** and **JUSTICE JOSEPH GOLIA**, both fair-minded reformers of the administration of justice, I urge them to **take all measures to abolish the $350 biennial attorney registration fee imposed on law secretaries and court attorneys, now**.

In my opinion, the **ASSOCIATION OF SUPREME COURT JUSTICES OF THE STATE OF NEW YORK** should be lobbying for the abolition of the hefty biennial fee imposed on law secretaries, as though we were attorneys in private practice. When I approached one Supreme Court, Queens County jurist, who was a law secretary, with this issue [not Justice Joseph Golia], he said that "the Association had more important priorities" and had "no time to be bothered" by the registration fee affecting law secretaries.

May I respectfully remind this jurist, if he reads this article and all others that leadership is the ability of a commander to think of the welfare of **all** of his troops, even and especially the lowest in rank. Please show us that our loyalty does not run on a one way street. **Please remove the awful and demoralizing biennial registration fee imposed upon court attorneys and law secretaries.** ■

HOWARD L. WIEDER is JUSTICE CHARLES J. MARKEY's Principal Law Clerk in IAS Part 32 of Supreme Court, Civil Term, in Long Island City, New York. HOWARD L. WIEDER is also the sole editor/writer of both "THE CULTURE CORNER" and the "BOOKS AT THE BAR" columns, appearing regularly in THE QUEENS BAR BULLETIN.

ANSWERS TO MARITAL QUIZ ON PAGE 10

Question #1 - No. If the noncustodial parent subsists solely on Social Service financial aid. Matter of Rose v. Moody, 83 NY2d 65; 629 N.E.2d 378; 607 N.Y.S.2d 906 (Ct. of Appeals 1993) cert denied sub nom. Attorney Gen. Of N.Y. v. Moody 511 US 1084.

Question #2 - Yes. Paige v. Austin, 27 A.D.3d 474; 811 N.Y.S.2d 114 (2nd Dept. 2006).

Question #3 - Yes. Bluemer v. Bluemer, 47 A.D.3d 652; 850 N.Y.S.2d 514 (2nd Dept. 2008).

Question #4 - No. Weinstock v. Weinstock, 167 A.D.2d 394; 561 N.Y.S. 2d 807 (2nd Dept. 1990).

Question #5 - Yes. Mountain View Coach Lines v. Storms, 102 A.D.2d 663; 476 N.Y.S.2d 918 (2nd Dept. 1984); People v. Turner 5 N.Y.3d 476 (2005) citing Mountain View approvingly; Nachbaur v. American Transit Insurance Co. 300 A.D.2d 74; 752 N.Y.s.2d 695 (1st Dept. 2002).

Question #6 - 20 years from the date of the default. §211 CPLR, effective date August 7, 1987.

Question #7 - 20 years from the date of the default. §211 CPLR, effective date August 7, 1987.

Question #8 - Yes, based on personal experience.

Question #9 -Yes, §202.16 (h) Uniform Rules of Trial Courts.

Question #10 - Yes, NY Labor Law § 596 [2][b].