Queens BAR BULLETIN

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Editor's Note

Justice for Ukrainian Refugees

By Paul E. Kerson

President Biden announced that the United States will accept 100,000 Ukrainian refugees. Because we are the most international county in the country, it is likely that many of these refugees will wind up living and working with us here in Queens County, New York.

We in Queens County are long accustomed to accepting economic, political and religious refugees from every country in the world. We are uniquely equipped to do so because of the welcoming attitude of our extremely diverse population and the welcoming attitude of our Queens County Court System.

Can we, the Queens County Bench and Bar, obtain justice for the numerous Ukrainian refugees who will soon be living and working among us?

The answer is a resounding Yes.

We have done it before, and we can do it again.

In *Nacher v. Dresdner Bank*, 198 F.R.D. 429 (D.N.J. 2000), 213 F. Supp. 2d 439 (D.N.J. 2002), 236 F.R.D. 231 (D.N.J. 2006), 240 Fed. Appx. 980 (3d Cir. 2007), Cert. Den. 552 U.S. 1098 (2008), we were able to obtain payment from the Dresdner Bank and other large German multinational corporations for wrongfully starting an unlawful war now known as World War II, and causing the pain and suffering of numerous refugees.

One such refugee was Ferdinand Nacher, who came into our law offices in 1994 seeking to recover for a large industrial empire of breweries, malt factories, hotels and restaurants known as Englehart Breweries, Inc. and 62% owned by his uncle, Ignatz Nacher all wrongfully seized at gunpoint by the Dresdner Bank in 1934 and used to start World War II and the Holocaust. We brought this case in our home court, the Queens County Supreme Court, and of course, the Dresdner Bank tried to get it dismissed.

I came up with a plan to help Mr. Nacher. This plan was carried out by myself and my law partners, our fellow QCBA members Marc C. Leavitt, Joseph Yamaner and Tali Sehati and our co-counsel, Larry Miller here in New York and Sebastian Scheutz in Berlin.

QCBA member Justice Joseph G. Golia of our home court decided against the Dresdner Bank, holding:

> "It appears from all the papers and documents submitted that the substituted parties are the proper parties in this matter and the case shall therefore proceed."(Index No. 10193/94 Decision dated October 26, 1999)

During the case, Ferdinand Nacher died, and this was our motion to substitute his nephew, Ronnie Mandowsky, as his Executor as Plaintiff. The Dresdner Bank opposed the motion, hoping to get the case dismissed. Justice Golia would have none of it. The

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Being the official notice of the meetings and programs listed below. Due to unforeseen events, please note that dates listed in this schedule are subject to change. More information and changes will be made available to members via written notice and brochures. Questions? Please call 718-291-4500.

CLE Seminar & Event listings

APRIL 2022

Friday, April 1	Meditation Friday with Diana The Happy Lawyer 1:10 pm Meeting ID: 817 2134 3753, Passcode: 734189
Tuesday, April 5	CLE: Equitable Distribution Update - Part 1
Wednesday, April 6	Academy of Law Committee Meeting - 1:00 pm
Friday, April 8	Meditation Friday with Diana The Happy Lawyer 1:10 pm Meeting ID: 817 2134 3753, Passcode: 734189
Tuesday, April 12	CLE: Equitable Distribution Update - Part 2
Friday, April 15	*Good Friday – Office Closed*
Friday, April 22	Meditation Friday with Diana The Happy Lawyer 1:10 pm Meeting ID: 817 2134 3753, Passcode: 734189
Tuesday, April 26	NYSBA Program: Recent Changes to the Commercial Division Rules 1:00 pm
Wednesday, April 27	CLE: Search & Seizure Update 2022 - 1:00 pm

MAY 2022

Tuesday, May 3	CLE: Ethics Seminar 2022 - Part 1
Thursday, May 5	Annual Dinner & Installation of Officers - Terrace on the Park
Friday, May 6	Meditation Friday with Diana The Happy Lawyer 1:10 pm Meeting ID: 817 2134 3753, Passcode: 734189
Wednesday, May 11	CLE: Ethics Seminar 2022 - Part 2
Friday, May 13	Meditation Friday with Diana The Happy Lawyer 1:10 pm Meeting ID: 817 2134 3753, Passcode: 734189
Tuesday, May 17	CLE: How Bankruptcy Law & State Law Interact
Wednesday, May 18	CLE: Update on 30.30 - 1:00 pm
Thursday, May 19	Civil Court Update with Supervising Judge Frias-Colon 1:00 pm
Friday, May 20	Meditation Friday with Diana The Happy Lawyer 1:10 pm Meeting ID: 817 2134 3753, Passcode: 734189
Friday, May 27	Meditation Friday with Diana The Happy Lawyer 1:10 pm Meeting ID: 817 2134 3753, Passcode: 734189
Monday, May 30	*Memorial Day – Office Closed*

JUNE 2022

Monday, June 20	*Juneteenth – Office Closed*

JULY 2022

Monday, July 4	*Independence Day – Office Closed*

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By Paul E. Kerson

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Nazis' bank, the Dresdner Bank's New York branch, would be held responsible for their crimes, torts and contract violations, even 60 years after the fact. We had successfully argued for an equitable tolling of the Statute of Limitations.

After Justice Golia ruled that the Dresdner Bank would have to stand trial at the Center of the Known Universe, our General Courthouse at 88-11 Sutphin Blvd., Jamaica NY 11435, the U.S. Treasury Department took over the case and settled with the New York branch of the Dresdner Bank, numerous other German corporations, and numerous governments around the world, resulting in a $5 billion settlement meaning a $7,000 recovery for every Holocaust Survivor in the world who applied. This was a small fortune in impoverished Poland, Romania and Latvia in the year 2000. The Nacher claims were sent to arbitration in Switzerland. We lost the arbitration. However, our German co-counsel started numerous Nacher cases throughout the former East Germany, and the Nacher family was thus able to recover a substantial part of its assets.

In 2015, I asked Justice Golia to swear me in as President of the QCBA. He was retired by that time, so I asked him why his opinion in the 1999 Decision allowing us to go forward against the Dresdner Bank was so brief, only one page. Justice Golia revealed his wisdom " I only wrote one page so that the Nazis' bank would have nothing to appeal." This strategy worked beautifully, as it was their lack of ability to appeal that caused the Dresdner Bank to directly contact the U.S. Treasury Department thus resulting in a major settlement for a major class of refugees all over the world. This all came from Justice Golia's wisdom. The U.S. Treasury Department then removed the case to the U.S. District Court in New Jersey to approve the settlement.

Nacher v. Dresdner Bank was not the only time QCBA members brought a large bank or government agency to justice for financing killings. In *Britt v. Garcia*, 457 F. 3d 264 (2d Cir. 2006) QCBA members John Duane and Ira Greenberg (now a Queens County Civil Court Judge) and I obtained a $7.65 Million jury verdict against the New York State Corrections Commissioner and the Deputy Superintendent of the Sing Sing Correctional Facility for ignoring death threats against our prisoner-client, resulting in multiple stab wounds where he nearly died.

Liability was sustained on appeal and the case was sent back to the District Court for a new trial. The case was settled on the eve on the second trial for an amount I cannot disclose. Thereafter, the New York State Department of Correctional Services adopted a policy of releasing prisoners early and closing prisons. That policy is still in effect today. Judge Lawrence McKenna (originally from Jackson Heights) of the U.S. District Court in Manhattan presided at the first trial and at the subsequent settlement negotiations.

Compare this experience with the current Ukrainian situation. Here we have an incredible legal advantage. On March 16, 2022, the International Court of Justice (ICJ), the Judicial Arm of the United Nations, ruled in a written decision in Ukraine v. Russian Federation, at Paragraph 60 as follows:

> "Under these circumstances, the Court considers that Ukraine has a plausible right not to be subjected to military operations by the Russian Federation for the purpose of preventing and punishing an alleged genocide in the territory of Ukraine." (See Google, ICJ)

This finding in the ICJ 's Section 60 of its March 16, 2022 decision is reflected in Section 81 of the same decision:

> "The Court considers that, with regard to the situation described above, the Russian Federation must, pending the final decision in the case, suspend the military operations that it commenced on the 24th of February 2022 in the territory of Ukraine."

This means that the Ukrainian war has been declared illegal. World War II was not declared illegal until after it was over. This was declared by the dropping of the atomic bomb on Japan, ending the world's deadliest war, 60 million people killed. We may witnessing the start of World War III today in Ukraine.

In the instant case, we have the incredible luxury of the Ukrainian war declared illegal while it is going on.

Now the question becomes who shall enforce the ICJ's decision.

In a learned article on this subject, Colton Brown has written that this question is not easily answerable. See: Colton Brown, "Enforcement of ICJ decisions in the United States Courts," 11 Maryland Journal of International Law 73 (1987).

However, we in New York actually have the answer under the current circumstances.

We brought Nacher v. Dresdner Bank in the Queens County Supreme Court pursuant to New York State Banking Law Section 200-b(1), which provides as follows:

> "An action or special proceeding against a foreign banking corporation may be maintained by a resident in this state for any cause of action." (emphasis added)

"Any cause of action?" Justice Golia ruled that starting World War II with the stolen funds of the Nacher family constituted "any cause of action" for purposes of holding foreign banks accountable in the Queens County Supreme Court for their crimes, torts and contract violations.

Today we have an even stronger argument: the ICJ in its March 16, 2022 decision has already declared the Ukrainian War illegal.

There are Russian banks and other foreign and domestic banks in New York City selling Russian Government bonds funding the illegal Russian Government war against Ukraine.

By use of CPLR Article 63, we can seek a preliminary injunction enforcing the ICJ's decision and getting a Queens County Supreme Court order forbidding the sale of Russian Government bonds by Russian banks and other foreign and domestic banks in New York City. This should certainly slow them down, if not cut off their funding entirely for a war that is already been declared illegal.

Further, damages can be awarded to the Ukrainian refugees who will be the Plaintiffs.

I recommend the following: I recommend numerous lawsuits on behalf of each and every Ukrainian refugee who comes to Queens County pursuant to New York State Banking Law Section 200-b(1) and the ICJ Decision of March 16, 2022 in *Ukraine v. Russian Federation*. If there are numerous cases with numerous index numbers, one of them is sure to result in a preliminary injunction.

In addition, numerous domestic banks also trade in Russian Government bonds. These banks should also be listed as Co-Defendants. They are also clearly violating the March 16, 2022 decision of the International Court of Justice of the United Nations. Certainly, it would be more than equitable in asking for injunctions against foreign banks selling Russian Government bonds to include domestic banks as well.

Indeed, by bringing all banks' Russian Government bonds sales in New York into judicial chambers to face one of our Justices and his or her law secretaries, an agreement can be reached that selling Russian Government bonds in violation of ICJ decision should be the subject of a voluntary agreement to cease trading Russian Government bonds while these cases for substantial damages for refugees are pending.

Domestic banks and pension funds are trading in Russian Government bonds as of this writing, despite the ICJ decision of March 16, 2022. See "Wall Street is pouncing on Russia's Cheap Corporate Debt", *Philadelphia Inquirer*, April 2, 2022 and "All Five NYC Pensions to sell Russian Assets Over Ukraine War", *Bloomberg News*, March 25, 2022.

The current sanctions issued by our United States Government do not go far enough. While these sanctions concern trade with Russia, they do not concern the financing of the Russian Federation by the sale of Russian Government bonds in New York City. This is where we come in.

The U.S. Treasury Department has started to place some restrictions on the sale and redemption of

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Russian Government bonds in the American Bond Market. However, these restrictions are only partial and do not go far enough. As of this writing, trade in Russian Government bonds in the United States continues with only certain restrictions. See "U.S. Blocks Russia's Access to Dollars for Bond Payments, Heightening Risk for Default", *The New York Times*, April 6, 2022.

Generally speaking, jurisdiction of treaties of the United States is vested in Federal Courts pursuant to the United States Constitution, Article 3, Section 2. The International Court of Justice of the United Nations is in existence because of a treaty signed by the United States in 1945. Thus, the United States Government would be put in a position of having to enforce the ICJ's decision of March 16, 2022 ordering, at Section 81 that "the Russian Federation must pending the final decision in the case, suspend the military operations that it commenced on the 24th of February 2022 in the territory of Ukraine." That would mean military action in Ukraine, which the Biden Administration rightly fears might cause World War III.

Along comes the genius of the Founding Fathers in setting forth overlapping jurisdiction with the several state court systems.

Founder Alexander Hamilton predicted this entire situation in The Federalist, No. 82, where Hamilton wrote:

> "The judiciary power of every government looks beyond its own local or municipal laws, and in civil cases lays hold of all subjects of litigation between parties within its jurisdiction, though the causes of dispute are relative to the laws of the most distant part of the globe. Those of Japan, not less than of New York, may furnish the objects of legal discussion to our courts. When in addition to this we consider the State Governments and the national governments, as they truly are, in the light of kindred systems, and as part of ONE WHOLE, the inference seems to be conclusive that the State courts would have a concurrent jurisdiction in all cases arising under the laws of the Union where it was not expressly prohibited." (Capitals by Hamilton)

Thus comes Hamilton's genius 244 years after he first wrote it.

Even if the Russian banks as Defendants seek removal of a potential Queens County Supreme Court Ukrainian refugee cases to the U.S. District Court in Brooklyn or Manhattan, the U.S. District Court will still be permitted to entertain jurisdiction under New York State Banking Law Section 200-b(1) because the case originally started in the Queens County Supreme Court. This should make any fight over jurisdiction resolvable in favor of the Plaintiff Ukrainian refugees.

Because we are the international banking center, New York State is within its rights as a sovereign state of the United States to enact New York State Banking Law Section 200-b(1) enabling residents of this state to sue foreign banks operating in our state "for any cause of action". In the United States, Federal Courts only have the jurisdiction that Congress gives to them. The New York State Legislature has the right, and the duty, to give jurisdiction to our New York State Courts. In the New York State Banking Law Section 200-b(1), the New York State Legislature has granted this jurisdiction "for any cause of action". That language, "for any cause of action" is far broader than any grant of jurisdiction that the United States Congress usually gives to any United States District Court.

Thus, our Judges from the most international county in the world, sitting in the Queens County General Courthouse, have the jurisdiction to stop the funding for the illegal war in Ukraine. Our judges have the right, and the duty, to stop the sale of Russian Government bonds in New York City, the international banking center of the world.

We in the Queens County Bar have it within our power to stop this madness. Just as soon as a Ukrainian refugee walks into your office, you must immediately determine the nature and extent of their personal injuries and property damage and show how the sale of Russian bonds by various foreign and domestic banks in New York City are directly related to those injuries.

Enough of these cases should shut down the funding of the Russian Government by stopping the sale of its bonds in New York City and thus shut down the war in Ukraine, and thus enforce the March 16, 2022 decision of the International Court of Justice, something that the United States Government and its powerful military cannot possibly do without causing further damage.

I thought up this blueprint. It is now up to each and every one of our members to bring these cases and it is up to each and every one of our Queens County Supreme Court Justices to shut down the financing of the Ukraine war by the sale of Russian Government bonds by New York foreign and domestic banks, and to award substantial money damages to be paid by each and every foreign or domestic bank that sells Russian government bonds. Each and every Ukrainian refugee that comes to live and work among us should thus receive a substantial recovery for their suffering.

And that is the very meaning of the County of Queens, the City of New York, the State of New York, and the United States of America. We are a different and a far better place than every other place for the reasons outlined above.

President's Message

By Frank Bruno, Jr.

In-person is the magic word of this article. Grab your favorite beverage and swig each time you read in-person. This past month the QCBA Bar Building was in full effect as we returned with an in-person Judiciary Night. The evening was open bar, catered food, two awards given, several speeches, some laughs and the night went exceedingly well. Administrative Judges were in full supply, with our great appreciation for their involvement and support. Private Attorneys, Court attorneys and Judicial in-person presence was high with more than 160 people in attendance.

Our next large scale in-person event shall take place May 5, 2022, with an "out with the old and in with the new event." We shall have our first in-person Installation Dinner since 2019 for incoming President Adam Orlow and new Board members. Although officially his term will not commence until June 1-so any big decisions in the month of May will probably be handled by the lame duck outgoing President Frank Bruno. We all know that we didn't like when Congress sat on President Obama's selection, so I hope that Congress supports my last-minute appointees, pardons and the like.

The Board of Managers held our first in-person Board meeting in the month of April. The meeting was well attended with a running time of about 2.5 hours. I think with the last twenty meetings or so being on zoom it will take us some time to adjust to in-person give and take with Robert's Rules of Order. My wife, said the same thing for her students that returned in-person to the classroom, there have been more fights and some problems because of the lack of socialization for the children. Not that the Board members, me included are children, but we were excited to see each other in-person and a little rambunctious!

Concerning the physical opening of the Courthouse, once again, I request that you check out the updated QCBA.org website. One recent item added will be of great benefit to those with compromised immune systems. Also, take a look at the ease of locating events, payment of dues and registration for events as well as an up-to-date News section. The News section has an important link. There has been some concern about the wholesale move back to in-person Court appearances with very little mitigation efforts. The temperature check at the door is not a high bar to admission. (Some segments of the attorney population, Bench and Bar want to go back all in quickly and others both Bench and Bar want to take it more slowly-let us know your opinion) On the website, in our news section, we link to the Office of Court Administration's online form for requesting disability accommodations under the Americans with Disabilities Act (ADA). It is now available for use in all NYC trial courts with all trial court users now having the option of using the online form to ask for an accommodation before coming to court. The online form can be used by litigants, attorneys, jurors, witnesses, and spectators, or by someone submitting the request on their behalf. To my contemporaries, in the wise words of Sergeant Phil Esterhaus, "Let's be careful out there." To the less seasoned among us, please google the phrase and watch some clips of the series where you can.

On the topic of in-person appearances, I will tell all that will listen and all that I come into contact with that we need to make use of the technology relied upon during the pandemic such as remote Court appearances, when we can, where we can. (I mentioned it to a number of people at our in-person Judiciary Night.) Remote appearances and hearings in the Cloud should remain.

Cloudlandia is infinite. Buildings are limited in space. Cloudandia is expansive, glorious and is accessible by desktop or cellular phone. Travel to the Courthouse buildings is expensive or dangerous. The railroad is costly. Subways are a disaster with so many people not wanting to place themselves in danger. That is when travel by subway is even possible, I cannot get to the Courthouse by subway or railroad. I must drive. Gasoline is at an all-time high price; parking lots are in short supply and expensive. Microsoft Teams allow us to travel to Court unencumbered by distance, effort, time or delay at no cost to the attorney or litigant. Microsoft Teams or Zoom for the uninformed is the Star Trek transporter brought to life. A transporter is a fictional teleportation machine used in the Star Trek science fiction franchise introduced in 1966. Transporters allow for teleportation by converting a person or object into an energy pattern then beaming the person to a target location where it is reconverted into matter. We can beam into Court from home or office. Litigants can beam into Court from work while saving a day off to attend a thirty-minute conference.

Cloudlandia (the Internet) can accommodate so many of our needs, a conference in every part simultaneously with zero-foot traffic and no travel through the use of Microsoft Teams. Every Referee, Judge, JHO, Law Secretary can conference or hold a motion calendar simultaneously without taking up one inch of real estate. The physical plant, the cramped elevators, the poor Courtroom acoustics are meaningless in the Cloud. Not enough Courtrooms? No worries. Not enough Chambers in 88-11 to house all the Judge? No worries. Too much foot traffic in Civil? Go to the Cloud. Family Court backlog with only two conference rooms in the entire building available to attorneys. Stand down, Cloudlandia has zoom conference rooms galore. For every attorney courtroom confiscated by the Court staff, every attorney can conference in the Cloud. Every Part can conduct hearings simultaneously and we are not limited by the Courtrooms available-we don't need to build another small Courtroom and take away a waiting area.

OCA must look into keeping this technology and not erasing the silver lining of the pandemic. They can hire more Referees and Magistrates. In-person appearances are useful when necessary, however why is the default in-person with the Cloud being the exception? Corporate America is finding out that staff wants the convenience and versatility of remote work for at least some of the time.

I have participated in dozens of Matrimonial matters and Guardianship Motion Calendar dates along with breakout room conferences and they have been fantastic. I have participated in remote trials and hearings and with some drawbacks are quite useful and advance the movement of a matter.

I have also been in-person on trial in Supreme Court for nearly twenty days since August 2021. I am not shy or afraid to go to Court but that was with hardly any foot traffic. To now go to Court to wait in the hallway or to be in a crowded room or to have significant down time, maybe my time can best be served by having Microsoft Teams conferences.

The old adage is that we save up for a rainy day, well the Clouds are up there now and are able to support us.

As attorneys we often argue in the alternative—we argue that the case should be dismissed, but if not, then 'x, y, z' should happen in the alternative. At first when you hear about this, it sounds incongruent. Then you realize it's a great way to argue for the best possible outcome. I can ask the Court to not give overnight visitation, but if that is not granted, I can ask for it to be limited to once per month. I can ask to have a lawsuit dismissed, but if it's not granted, I can ask for payment of a portion of what was requested. I can ask to knock out the other side's claim, but if it's not granted, address the claim to the smallest extent possible. In life outside of the Courtroom we can like two things that contradict each other. A strange conundrum of the human condition. I can like year-round sun and miss the cooler seasons. I can like the seasons but ultimately prefer not having them. But still also want them. I can like living in Manhattan but not the congestion and I can choose to move to the suburbs while still appreciating the city. I can love eating a Twinkie and hate the waistline. I can want the Ivy League education and not want the tuition that goes along with it, but I can still eat the Twinkie or take on the debt.

Too often, people are too hard on themselves for having these "contradictory" preferences or beliefs. As if they're upsetting the fabric of reality or something. That's not how this works. We can be contradictory. We are contradictory. Those contradictions don't all have to be resolved. They can just be. And we can adjust.

Eat the twinkie and exercise or move to the suburbs and visit Broadway.

See you all at the May 5 Installation, we expect a big in-person crowd! And let's remember, live in the Magic out there!

USCIS Updates - Expansion of Premium Processing

USCIS has announced some very welcomed news, that they are moving forward with various implementations to reduce backlogs that have been created by the previous administration and because of the covid-19 pandemic. The agency has announced new plan goals of processing which includes among other goals: 2 week processing for premium processing cases, 2 months for non premium I-129 worker cases, 3 months for Work Authorization, Travel Authorization, and Extensions or Changes of Status, and 6 months on N-400 Citizenship, I-360 for Vawa and Religious Workers, I-140 for Workers and I-130 for Family Members as well as I-290B for Motions and Appeals, and I-485 adjustment of status among a few other categories. All really positive news.

Moreover, the agency has announced an expansion of premium processing, which is an expedited adjudication service now available only to petitioners filing a Form I-129, Petition for a Nonimmigrant Worker, and to certain employment-based immigrant visa petitioners filing a Form I-140, Immigrant Petition for Alien Workers.

This final rule expands the categories of forms ultimately eligible for premium processing services, **including Form I-539, Application to Extend/Change Nonimmigrant Status; Form I-765, Application for Employment Authorization; and additional classifications under Form I-140.**

USCIS intends to begin implementing, through a phased approach, premium processing availability of Form I-539, Form I-765 and Form I-140 in fiscal year 2022. USCIS will also adhere to the congressional requirement that the expansion of premium processing must not cause an increase in processing times for regular immigration benefit requests.

USCIS plans to begin this phased implementation process by expanding premium processing eligibility to Form I-140 filers requesting EB-1 immigrant classification as a multinational executive or manager, or EB-2 immigrant classification as a member of professions with advanced degrees or exceptional ability seeking a national interest waiver.

BY DEV B. VISWANATH, ESQ.

The Practice Page

Assumption Of The Risk

BY HON. MARK C. DILLON
Serves on the Appellate Division, Second Department

A new sports season is upon us, raising the connection between baseball practice on the fields and New York Practice in the courts.

Until 1975, a plaintiff's assumption of risk was a bar to the recovery of damages. CPLR 1411, effective on September 1, 1975, directed that in actions for personal injury, injury to property, or wrongful death, the plaintiff's assumption of risk no longer barred the recovery of damages, but merely diminished the damages proportionally in relation to all culpable conduct. The statute was part of the legislative reforms triggered at that time after the 1972 Court of Appeals' decision in *Dole v Dow Chemical Co.*,[1] which collectively transitioned New York to the pure comparative negligence state we know today.

Notwithstanding the broadly-worded language of CPLR 1411, assumption of the risk continues to bar the recovery of damages in many actions involving sporting and recreational activities. That bar is a creature of decisional law, not statute. The reason given by the Court of Appeals for this carve-out from the general rule is that "by freely assuming a known risk, a plaintiff commensurately negates any duty on the part of the defendant to safeguard him or her from the risk."[2] In other words, a property owner's duty that would otherwise exist is limited by the plaintiff's prior implied consent to engage in activities that have known and inherent risks.[3] In that sense, sports-related assumption of the risk is not so much a defense based on the nature of the particular plaintiff's conduct, but on the suspension of any *duty* owed by the defendant toward the plaintiff when the conduct is undertaken.[4]

"Primary" assumption of the risk applies in the classic context of sporting events. A baseball player who is injured by tripping on the bag at second base has consented to that risk, as it is comprehended or obvious at all times, and is implicitly assumed by the athlete's election to play in the game at the outset. Spectators assume the risk of being struck and injured by foul baseballs, subject to the defendant's compliance with screening regulations.[5] A football player assumes the risk that there may be natural bumpiness to the ground.[6] The property owner's duty is to merely make conditions as safe as they appear to be for the sporting purpose intended to be conducted there.[7] These principles are applied universally to all sporting and recreational activities, including hockey, basketball, soccer, skiing, ice skating, canoeing, gymnastics, and even skydiving where there is an assumed risk that the parachute may fail to open.[8]

The owners and operators of sports facilities may still be liable for injuries where the conditions caused by their own negligence are "unique and create[ ] a dangerous condition over and above the usual dangers that are inherent in the sport."[9] Those unique conditions must themselves be actually or constructively known to the defendant, and must be assessed against the background and skill of the particular plaintiff.[10] Thus, a defendant whose negligent maintenance of a playing facility creates risks and conditions that are not ordinarily associated with the sporting activity, or which are latent, may be found liable despite the athlete's decision to play there.[11]

Outside the context of sporting or recreational activities, plaintiffs' general risk-assuming conduct is treated as a factor of comparative negligence which does not bar the recovery of damages, but which proportionally reduces the damages in relation to the percentage of negligence assessed to all parties culpable.[12]

Will see you at Yankee stadium …unless you are scheduled to be in court. Do not conduct a virtual court conference from your laptop while behind the dugout, as that assumes a much different kind of risk.

Mark C. Dillon is a Justice of the Appellate Division, 2nd Dept., an Adjunct Professor of New York Practice at Fordham Law School, and is a contributing author of CPLR Practice Commentaries in McKinney's.

1 30 NY2d 143.
2 *Trupia v Lake George Cent. School Dist.*, 14 NY3d 392.
3 *Turcotte v Fell*, 68 NY2d 432.
4 *Morgan v State of New York*, 90 NY2d 471.
5 *Akins v Glens Falls City School Dist.*, 53 NY2d 325.
6 *Ninivaggi v County of Nassau*, 177 AD3d 981.
7 *Turcotte v Fell*, 68 NY2d at 439.
8 *Nutley v SkyDive the Ranch*, 65 AD3d 443.
9 *Owen v R.J.S. Safety Equip.*, 79 NY2d 967.
10 *Maddox v City of New York*, 66 NY2d 270.
11 *E.g. Wyzykowski v State of New York*, 162 AD3d 1705; Herman v Lifeplex, LLC, 106 AD3d 1050.
12 CPLR 1411.

Allen E. Kaye

Immigration Questions

Proposed Rule: Public Charge Ground of Inadmissibility

Joseph DeFelice

The U.S. Department of Homeland Security (DHS) has announced a *Notice of Proposed Rulemaking* (NPRM) on the public charge ground of inadmissibility that would help reduce fear and confusion among immigrant communities and U.S. citizens, leading to fair and consistent adjudications for those seeking admission at ports of entry or adjustment of status to that of a lawful permanent resident inside the United States. The proposed rule will have a 60-day public comment period that begins on the date specified in the forthcoming *Federal Register* notice.

Background

Since March 9, 2021, DHS has been applying the public charge ground of inadmissibility consistent with the 1999 Interim Field Guidance, the policy that was in place for two decades before the 2019 public charge final rule was implemented. DHS removed references to the 2019 public charge final rule from the Code of Federal Regulations after a federal court order vacating the rule went into effect on March 9, 2021.

The publication of the new NPRM does not change how DHS is currently applying the public charge ground of inadmissibility. Until DHS publishes a new final rule and implements any such new regulations, U.S. Citizenship and Immigration Services will continue to apply the public charge ground of inadmissibility consistent with the *1999 Interim Field Guidance*, the policy that was in place for two decades before the 2019 public charge final rule was implemented.

Proposed Rule

DHS proposes to prescribe how it will determine whether a noncitizen seeking admission at a port of entry or adjustment of status to that of a lawful permanent resident in the United States is inadmissible under section 212(a)(4) of the Immigration and Nationality Act because they are "likely at any time to become a public charge." Under this proposed rule, a noncitizen would be considered likely at any time to become a public charge if they are likely at any time to become "primarily dependent on the government for subsistence," as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.

Under the proposed rule, DHS would only consider the following public benefits when making a public charge inadmissibility determination:

- Supplemental Security Income (SSI);
- Cash assistance for income maintenance under the Temporary Assistance for Needy Families (TANF) program;
- State, Tribal, territorial, and local cash assistance for income maintenance; and
- Long-term institutionalization at government expense.

DHS would not consider noncash benefits like food nutrition assistance programs such as Supplemental Nutrition Assistance Program (or its predecessor program, food stamps), the Children's Health Insurance Program, most Medicaid benefits (except for long-term institutionalization at government expense), housing benefits, and transportation vouchers. Additionally, DHS would not consider disaster assistance received under the Stafford Act; benefits received via a tax credit or deduction; or Social Security, government pension, or other earned benefits.

Most noncitizens who are eligible for public benefits are not subject to the public charge ground of inadmissibility. Moreover, the proposed rule would generally not affect noncitizens who have already become lawful permanent residents (LPRs). LPRs are generally not subject to public charge inadmissibility determinations.

Additionally, the proposed rule includes a list of the categories of noncitizens who are exempt from the public charge ground of inadmissibility under existing statutes and regulations, in order to better ensure that the public understands which applicants for admission and adjustment of status are exempt. Some categories of noncitizens exempt from the public charge ground of inadmissibility are refugees, asylees, noncitizens applying for or reregistering for temporary protected status, special immigration juveniles, T and U nonimmigrants, and self-petitioners under the Violence Against Women Act.

The proposed rule also describes the groups of noncitizens who are eligible to apply for a waiver of the public charge ground of inadmissibility, as permitted by existing statutes and regulations. DHS also proposes to exclude from consideration the receipt of public benefits by noncitizens who received those benefits while in an immigration category that is exempt from the public charge ground of inadmissibility and by noncitizens who, while not refugees admitted under section 207 of the Act, are eligible for resettlement assistance, entitlement programs, and other benefits available to refugees admitted under section 207 of the Act.

To Submit Comments

The proposed rule will have a 60-day public comment period that begins on the date specified in the forthcoming *Federal Register* publication. You may submit comments through *Regulations.gov* under docket number USCIS-2021-0013. Please follow the instructions for submitting comments. DHS may not review comments submitted in a manner other than the one listed above, including emails or letters sent to DHS or USCIS officials.

DHS will carefully review public comments before publishing any subsequent public charge final rule. It is committed to providing opportunities for meaningful feedback and encourages the public to take advantage of the opportunity. Any final rule DHS issues as a result of this proposal will be coupled with a comprehensive communications strategy that makes clear which groups of noncitizens are subject to the rule, which are exempt, and how the final rule will affect public charge inadmissibility determinations for applicants for admission or adjustment of status. This strategy will include outreach to immigrant communities and those representing them.

Additional Information

DHS drafted the NPRM after considering comments on the Advance Notice of Proposed Rulemaking (ANPRM) (published on Aug. 23, 2021), and feedback provided during public listening sessions. These efforts sought to better ensure a proposed rule that does not cause undue fear among immigrant communities or present other obstacles to immigrants and their families, including U.S. citizens, from accessing public services legally available to them, particularly considering the COVID–19 pandemic and the resulting long-term public health and economic impacts in the United States.

Please visit the USCIS Public Charge Resource page (*www.USCIS.gov*) for more information, including a comprehensive list of answers to common questions from the immigrant community and benefit-granting agencies.

BY ALLEN E. KAYE AND JOSEPH DEFELICE

Allen E. Kaye and Joseph De Felice are Co-Chairs of the Immigration and Naturalization Committee of the Queens County Bar Association.

An Ordinary Day – Until…

a human interest story

BY LEONARD L. FINZ

Jane (fictitious) started her ordinary day as she always did, picking up the Wall Street Journal outside her door; a light breakfast in her comfortable apartment; a hurried shower; face make-up; fashionable casual attire; an exit; a quick pace to the elevator that descended to a nicely appointed lobby; a neighborly "Good Morning" to other tenants she would encounter; her departure from the 20 story structure located in a desirable section of the big city; and a doorman who would flash his customary warm smile. Life was good for Jane, a 32-year-old who had earned a college degree in Business Administration and 2 years later, having received her MBA from a top university.

The next event would be Jane's journey to her employment by utilizing the railroad that transported her within walking distance of her office building. Jane was a financial planner and consultant whose employer was a nationally established financial house.

Jane repeated her ordinary routine each morning. In addition, she enjoyed a most pleasant social life! Friends of both sexes! A face and figure that was attractive! A future full of promise! Yes, life was good! But this day was not ordinary! Something tragic would happen that would change Jane's life forever…

Regarding the railroad on that ordinary day, Jane entered the train. All seats were occupied. Thus, she walked through one train car to another looking for a place to sit down. As she was proceeding between two cars, she suddenly fell between the connecting cars and onto the tracks. A passenger who witnessed the frightening scene immediately pulled the emergency cord. The train came to a sudden halt.

Within a short time, paramedic crews rushed to the scene. Jane was unconscious, but alive. Her left foot and right leg, however, were severed. Railroad and local Police who responded sped Jane to the nearest hospital. Within minutes, trained medical assistants placed her severed limbs in ice bags and funneled them to the same hospital by Police Car.

Immediately upon arrival, a waiting crew rushed Jane to the O/R where a team of microsurgeons operated on her for almost 10 hours in their extremely delicate attempt to re-attach her severed limbs. Unfortunately, her right foot was totally beyond attachment, as was her left leg above her ankle. Working in shifts, the surgeons succeeded in performing the most intricate procedure of microsurgery by, "re-attaching her left foot to her right leg."

Sometime thereafter, Jane brought an action against the railroad which court documents disclosed was settled before trial. The theory of liability focused upon the dangerous open space between the two connecting trains large enough for such a horrible accident to occur.

Aside from the legal consequences, the human interest aspect rested upon the miraculous microsurgery performed by a superb team of surgeons who combined extraordinary skill, unique creativity, and surgical inspiration to leave Jane with at least one viable foot. It was reported in the print media that, "The re-attaching of the severed left foot to her right leg was the very first micro-surgical lower limb transposition ever performed in the United States."

For one year, Jane experienced unimaginable pain and stress as she navigated from one specialized rehab center to other medical institutions. Outfitted with a prosthesis that substituted for an absent foot, and learning how to ambulate on that device, was like walking on a left foot inserted into a tight right shoe. It all resulted in Jane's deep depression and total withdrawal from friends and society.

After all rehab and psychotherapy were near completion, Jane returned to her prior employment. At first, life was not good but slowly, she began to feel less stressed by her awkward physical appearance. Her emotional strain lessened. As days became merged into months, Jane, an initially strong-willed fighter vowed to restore her self-worth and esteem. And eventually, she did!

Against all odds, Jane rose in rank and even earned a position of Executive Vice President of the financial firm that originally recruited her upon achieving her MBA Degree.

What Jane accomplished, despite her horrific and tragic experience, was remarkable – and certainly, not ordinary! That even, "The worst of times" (as scripted by Charles Dickens) can be reversed into, "The best of times" (Charles Dickens).

Jane is an extraordinary role model who by her incredible action transmits the powerful message that although tragedy can strike at any time without warning, an ordinary life can be transformed and molded into a magical one, and without doubt whatsoever, Jane is the consummate proof of that!

END OF STORY

Leonard L. Finz 97, is a former New York State Supreme Court Justice, (Queens County), a decorated WWII Veteran (1st. Lt., Field Artillery, Philippines), inducted into the prestigious U.S. Army OCS Artillery "Hall of Fame", and most recently inducted into the elite Army OCS "Hall of Fame", by order of the United States Department of Defense, the author of four published thriller novels, Peer-Reviewed as "One of America's pre-eminent lawyers", an active member of the QCBA for 67 years, and the founder of Finz & Finz, P.C.

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- recognition from the podium

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How Can Your Subconscious Mind Help You Figure It Out?

BY DIANA C. GIANTURCO*
Chair, Lawyers' Assistance Committee

Our conscious mind is that self-talk we hear all day long. Telling us where to go and what to do. Reminding us to pick up the dry cleaning or stop for cat food. It's always operating and seems to have all the answers. But sometimes we don't have the answers we need? How can we resolve that difficulty at work, the issue with the loved one, or that nagging feeling that we "just are not getting it done?" Once we have exhausted all the answers in our conscious mind, the only place left to go is our subconscious mind.

Our subconscious mind is operating all the time. Neuroscience has proven that our subconscious mind runs 90% of our day – and we are not aware of it. (If we were aware of it, it would be in our conscious mind.) These are the things we learned as children from trusted sources like parents, teachers, siblings, society, and other significant influences. These are engrained ideas that we practice routinely without question. Unfortunately, these often include self-doubt, fear of failure and inadequacy. These subconscious blocks can stall progress.

If you are trying to get something done and we have exhausted our conscious mind, it's time to ask our subconscious mind for help. When you ask a question in your mind, your conscious mind will look for the most immediate answer and then stop – even if that answer is "No." However, your subconscious mine will continue to look for answers.

If you have a goal and are stuck and don't know what to do next, ask yourself the following questions:

Who would I have to talk to if I want to go to the next step?

Where would I look to get information on this project?

When would be the best time to work on this goal?

What would it look like if I have everything I want? (My favorite)

Once you ask these questions, your conscious mind may look for the most immediate answer and stop there. However, your subconscious mind will keep looking for the answers. The answers may not come right away. Your subconscious mind will pass by the easy answers that your conscious mind was satisfied with and will go for the deeper less obvious answers. Give it time and stay open to answers you have not thought of yet. For even better results, ask these questions right before you go to sleep. Your conscious mind shuts off when you sleep but your subconscious mind is wide awake and active.

So, ask these questions, sleep on it, and listen for new answers.

Diana C. Gianturco, Chair
Lawyers Assistance Committee

For additional resources from the Lawyer's Assistance Committee, visit www.qcba.org/XXXXX

WHY CAN'T WE HAVE A TRULY 'UNIFORM' COURT SYSTEM?

In today's technological world, the processing of litigation cases in our Courts should not be the challenge that it appears to be in current practice.

Case in point; Queens County Supreme Court, to their credit, has been and is now issuing pre-printed and filled in Preliminary Conference and Compliance Conference Orders and delivering them to litigants through the e-file system.

These Orders set time frames for all discovery and provide a method to resolve disputes.

Why can't every County use these same forms and process?

New York County used to do this for years through the DCM Part. Now New York County is doing something completely different.

As is Kings County and Bronx County! Ugh!

And, to make matters more confusing to attorneys and their clients, motion practice is different from County to County and Judge to Judge.

Why doesn't the OCA create one set of forms and rules the way they did on February 1, 2021, so that we can all be on the same page.

In addition, everyone talks about injustice and inequality these days.

Our Courts are for many a last resort for justice and a leveler of inequality.

As a result of COVID, our Courts were basically closed for a lengthy period of time and now face tremendous backlogs and seem to be having trouble getting back some sense of normality.

Another case in point.

Queens County Civil Court, also to its great credit, has been holding virtual calendars of over 100 cases a week since the Summer of 2020.

Those calendars move cases. Some settle, some get new dates, some result in further dialogue between the litigants. But, at least there is a movement in a significant way.

If Civil Queens can do this, why can't the Supreme courts in our City do the same?

I am sure that many of us are working harder than ever before. I give credit to those Administrators, Judges, Clerks and Court Officers who have also been working harder to keep the Courts moving. They give voice to the vital importance of our Courts and their role as public servants and help me to keep employees employed.

If you agree, don't sit and do nothing. Take your pen or keyboard and contact our Administrators, Bar Associations, News publications and Social Media platforms and voice your opinion. Maybe a sense of urgency will result.

A TRULY "UNIFORM COURT SYSTEM" SHOULD BE ATTAINABLE!

Thanks for listening.

Respectfully yours,
MICHAEL A. CERVINI, Esq.
QCBA Member
NYSBA Member
NYSTLA Member
Law Office of Michael A. Cervini, PC

BY HON. GEORGE HEYMANN

Book Review:

A Compelling Political Story of Spiro … Who?

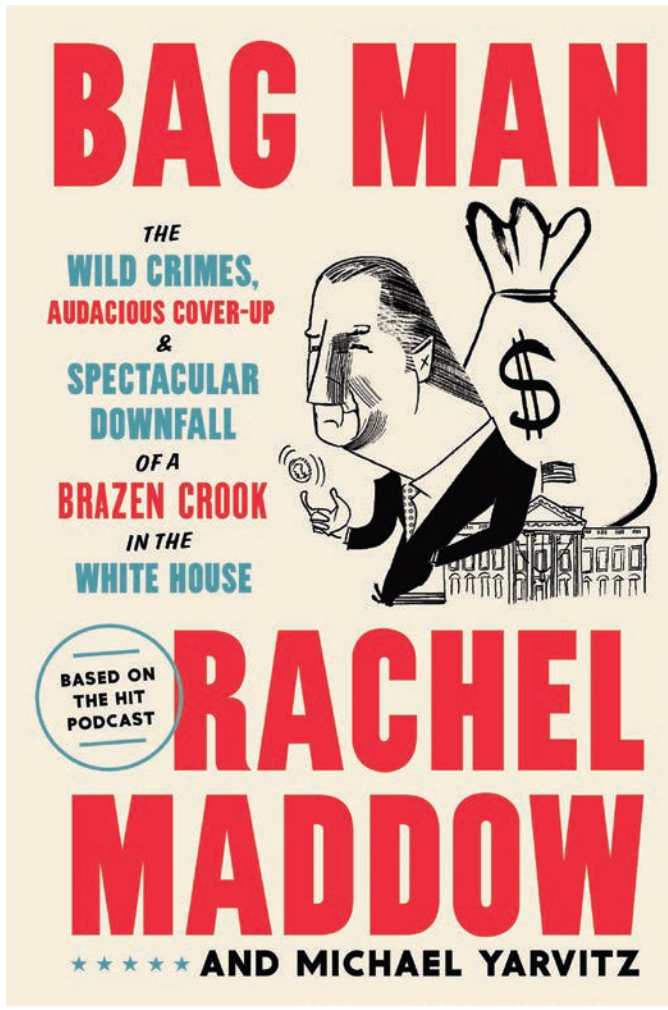
This is a compelling story of a man who rose from obscurity to become just one heartbeat away from the presidency. In the span of only five years, Agnew's story ends tragically, post-vice presidency, as an ignominious member of society.

1968 was a watershed year in U.S. politics, whose events shaped the trajectory of American history for generations to come. In March of that year, President Lyndon B. Johnson, mired in the Vietnam War, announced, unexpectedly, at the end of a nationally televised address, that he would "not seek" and would "not accept" his party's nomination for another term as President. One month later, the Rev. Martin Luther King Jr. was assassinated and, on June 6th, Sen. Robert F. Kennedy was assassinated as he was on the precipice of becoming the Democratic nominee for President. That prize ultimately went to the incumbent Vice President Hubert Humphrey, who selected as his running mate Edmund Muskie, a well-known and respected Senator from Maine, who eventually capped his career as Secretary of State under President Jimmy Carter. The Republicans nominated, for the second time, Richard M. Nixon as its standard bearer and in the biggest political comeback in presidential elections, Nixon won by a mere 0.7 percentage points—one of the narrowest margins in U.S. election history.

On the eve of the convention, after much anticipation and second guessing, Nixon finally announced his surprise selection for vice president, Gov. Spiro T. Agnew of Maryland. With all the well-known talent in the Republican Party, why him? It left an entire country scratching their collective heads saying "Spiro Who?".

In this exciting book of political intrigue, the authors ironically begin their book with the chapter titled "What's a Spiro Agnew?" (not as short and pithy as the two words uttered a half century earlier, but clearly the identical sentiment). Theirs is a compelling story of a man who rose from obscurity to become just one heartbeat away from the presidency. In the span of only five years, Agnew's story ends tragically, post-vice presidency, as an ignominious member of society.

Nixon was known as a great political mastermind who left nothing to chance. He calculated that his ticket to the White House would be through the Southern states and the "silent majority" of the Midwest. Nixon predicted—correctly—that if Gov. George Wallace of Alabama were to run as a third-party candidate, Nixon would lose the deep South. Thus, the selection of Agnew was nothing more than political expedience. Maryland was the border state that separated the eastern states to the north, yet had enough sway with upper southern states such as Tennessee, the Carolinas, and Virginia to vote for the Nixon-Agnew ticket. Qualifications and/or an ability for the two men to work together as a team were of little consequence. The authors apprise us of the fact that Nixon had little regard for Agnew once in office and "marginalized" him in every way possible from being involved in any major decisions.



Spiro Theodore "Ted" Agnew was the son of Greek immigrants who put himself through law school after his discharge from the military. He was not a career politician and only served in one political office—four years as Baltimore county executive—before his "fluke" election as governor. Because the candidates of the Democratic Party's major power brokers were competing against each other in their primary, they split the vote and a "kook" segregationist, supported by the KKK, pulled an upset, only to lose in the general election. Yet, even after a year in the statehouse, as an "undistinguished and unremarkable" governor, few people in Maryland, much less the rest of country, had ever heard of Agnew.

The authors take us on a fascinating dual journey throughout the book: describing in detail the misdeeds of Agnew that lead to his resignation and the dogged determination of the U.S. Attorney for Baltimore and the three AUSAs who uncovered his crimes. Their unyielding efforts to see Agnew pay the price for breaching his Constitutional oaths as county executive, governor and the second highest elected official in the land is forceful reading.

As a candidate for Vice President, Agnew became the attack dog for the ticket while (the "New") Nixon stayed above the fray; the same role Nixon was forced to play as Eisenhower's running mate in 1952 and 1956. Agnew relished his role and used every opportunity to bash those that he described as the "radic-libs" (radical-liberals). His unfiltered, no-holds-barred rhetoric continued even in office and was fodder for the news media: He attacked "weak-kneed liberals" for their "pusillanimous pussyfooting on the critical issue of law and order" and dismissed Nixon's critics as "nattering nabobs of negativism" (my favorite!). Agnew was becoming the darling of the country's conservative movement, even surpassing Nixon in that regard. His favorite target was the media and he loved to spar with them and demean them in the same fashion as we witnessed with Trump five decades later.

Years before Agnew attained his first government/political job as Baltimore county executive, government officials had been receiving bribes and kickbacks from builders, contractors, and construction companies seeking to obtain lucrative contracts with the city. This was a common-place way of life. Most people just considered such conduct the cost of doing business, as routine as a family going to religious services on the weekends. Agnew enjoyed living beyond his means and saw this as a golden opportunity to earn some extra cash. Not only did he carry on this tradition as county executive but continued to do so after he became governor and, more audaciously, during his tenure in the vice presidency. Although he was no longer involved in doling out of contracts in Baltimore once he moved into the statehouse, he felt that he should continue to reap what he sowed in the county government and expand it into the state government as well. The parties to this scheme played along without objection.

In January 1973, Baltimore's U.S. Attorney and his three special assistants began a major investigation into the city's corruption. They were determined to "follow the money" and, without warning, covered the city with federal subpoenas serving private individuals, companies and government employees. Although completely unrelated to their initial investigation, on the morning of May 24, 1973, a first term Maryland congressman committed suicide which brought to the country's attention the ongoing corruption in Maryland that was, heretofore, given little attention, if any. This became a further impetus for the team to ferret out the bribe-givers and the bribe-takers. They discovered that in order for these individuals to maintain a buffer between themselves, the money passed hands through a third party known as the "bag man" who delivered the money, in cash, in plain white envelopes.

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Register online: WWW.QCBA.ORG or EMAIL: CLE@QCBA.ORG

Book Review:

A Compelling Political Story of Spiro … Who?

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The U.S. attorneys, in conjunction with the IRS, were basically focused on the then current county executive, the most important Democrat in the state, who immediately succeeded Agnew in that position six years earlier. His scheme of taking bribes from architects, engineers, and the like was soon exposed, along with another county employee who was, in fact, the bag man in this scheme. The latter initially feigned ignorance and surprise when previously questioned about the matter, but under great pressure from the feds, finally succumbed to acknowledging his role. Although the prosecutors knew they caught some big fish, they continued with their probe to see where it would lead them. Little could they anticipate what was about to transpire next.

Up to this point, the prosecutors had kept their quest to find additional culprits strictly in-house, acting independent of and without any notification to the Justice Department and the U.S. Attorney General, Richard Kleindienst. Unexpectedly, one afternoon in February 1973, only a month after their investigation started yielding results, the Baltimore's U.S. Attorney received a call from the Attorney General (AG) to inform him that a "very nervous" vice president was extremely concerned about these investigations, which up to that point the AG was completely unaware of. The AG was assured that their efforts in seeking out corruption was, at that point, limited to local public officials. When the U.S. Attorney subsequently informed his young associates of his conversation with the AG, one of them had the epiphany that Agnew, himself, could be a major player.

At the outset, the prosecutors knew that even if Agnew had taken bribes as county executive, he was no longer subject to prosecution because the six-year statute of limitations had expired—*unless* he continued to take them after he left that position. As the inquiries continued, the dam broke wide open when the partner of one of the engineering firms with lucrative city contracts under investigation finally admitted Agnew's role of demanding "kickbacks of 3 to 5 percent of the total value of the county contracts." Of even greater import was the fact that Agnew continued this scheme in the governor's mansion for even "much larger and more lucrative state contracts. Enormous contracts." And then, eureka, the big reveal came when this witness stated that Agnew continued taking kickbacks in his D.C. office as vice president directly across the street from the White House! Gotcha!

The Baltimore U.S. Attorney knew he had to immediately bring this news directly to the Attorney General in person, as it was too delicate to discuss over the telephone. After several failed attempts to schedule an appointment, he and his three assistants drove from Baltimore to D.C. and showed up, unannounced, in the AG's office. It was July 3, 1973. In April 1973, Kleindienst had been removed from office as part of a White House purge resulting from the ever-widening Watergate scandal. He was replaced by the highly esteemed Boston Brahmin Elliot Richardson who, in one of his first acts, appointed Archibald Cox as special Watergate prosecutor. When finally apprised of the situation, he was "[u]nsurprised, perhaps, but clearly far from sanguine about what he was hearing." Notwithstanding what the country was going through with Watergate, Richardson told the prosecutors that the allegations must be fully investigated. Now, for first time in history the U.S. Attorney General was overseeing criminal investigations of both the president and vice president at the same time.

In order to get some perspective on the issue, the AG directed the Office of Legal Counsel (OLC) to research and prepare a report as to whether both the president and vice president could be indicted and prosecuted while in office. Richardson had no problem with indicting a sitting vice president because his removal from office would not impact on the day to day functioning of government, whereas prosecuting a sitting president could totally prevent him from carrying out his duties while defending himself. Thus, he concluded that any such prosecution would have to be put on hold until the president is no longer in office. Richardson had come to this conclusion before the report was written and instructed the members of the OLC to find the rational to support that conclusion. (Ironically, more than four decades later, that very report/memorandum, which was just an internal guideline without the force of law, played a major role in the recent Mueller investigation and the two impeachments and trials of President Trump.)

At this point, the authors take us through the final process of Agnew's resignation from office and the disparate positions of the AG and the Baltimore prosecutors in that regard. Believing that they were about to embark on the greatest case of their career with the AG's blessing, the young prosecutors returned to Baltimore with much anticipation of the task awaiting them. Meanwhile, AG Richardson faced a major conundrum. What the young prosecutors were unaware of was that Nixon, according to all of Richardson's intel, was teetering on the brink of being removed from the presidency, perhaps within a matter of weeks or months. Should that occur before Agnew was removed from office, he would become the president, notwithstanding any ongoing investigations. Richardson was very concerned about the duality of the situation between Nixon's and Agnew's precarious positions of both facing criminal prosecutions simultaneously. Should Agnew succeed to the presidency, something Richardson was looking to prevent at all costs, as per the OLC's memorandum he could not be prosecuted while in that office. Richardson knew he had to act quickly. Time was of the essence. Richardson reached out to Agnew's counsel to negotiate a deal for him to stepdown from his office.

The biggest stumbling block was the bombastic Agnew himself. Having been apprised that he was a target of the Baltimore investigation, he knew that he was backed into a corner; a political checkmate. However, aware that Nixon's scandal was consuming both the country and the president himself, Agnew used his current position as leverage to its fullest advantage. Through his attorneys he let it be known that he would only resign his office if the following conditions were met: He would not plead guilty to any charge but would plead "nolo contendere" (no contest); he would only plead to a tax charge, not bribery; he refused to be fingerprinted or have a mug shot taken and, finally, and most importantly, he would not serve any jail time. The last provision being nonnegotiable. Agnew considered the whole process a "witch hunt." (Sound familiar?)

After much back and forth negotiating between the parties, AG Richardson approved the sweetheart deal to quickly remove from office. On Oct. 10, 1973, Agnew appeared in court to accept his fate. At that very moment, a formal letter of resignation was handed to the Secretary of State, Henry Kissinger. Addressing the court first, the AG stated that had the government pursued its bribery case, it "would have likely inflicted upon the Nation serious and permanent scars." Agnew then addressed the court denying that he ever solicited or accepted bribes. Agreeing with Richardson, that fighting the charges over a prolonged period of time "would seriously prejudice the national interest," he accepted the plea. The judge then sentenced Agnew to a $10,000 fine and three years of unsupervised probation. As the authors point out, Agnew entered the courtroom second in line to the presidency and left a convicted felon; the first vice president to resign in disgrace.

Notwithstanding Richardson's heroic efforts to spare the country of an Agnew presidency, the young prosecutors from Baltimore were "sickened" by Agnew's special treatment in avoiding jail time and having to pay only a fine, while many others convicted in the same bribery scandals were serving lengthy time behind bars. In 1976, several law students in a "legal activism" class at the George Washington University Law School brought a lawsuit on behalf of the taxpayers in Maryland and in 1981 a judge ordered Agnew to pay the state $268,482 which consisted of the bribe money plus interest he had accumulated as governor and vice president.

Agnew spent his remaining 23 years of life a defiant and embittered man who tried to convince others, as he had himself, that he did nothing wrong, even going so far as to blame the "unremitting Zionist efforts to destroy me." He never forgave Nixon for not protecting him from being removed from office and the two men never spoke again. They disdained each other. Yet, when Nixon died in April 1994, Agnew reached out to Nixon's family for permission to attend his funeral. While not making any personal references about Nixon the man, when questioned by reporters and others about his presence Agnew simply stated "I'm here to pay my respects for his accomplishments." After 20 years, it was time to set aside the animosity. Agnew died two years later on Sept. 17, 1996.

Maddow and Yarvitz provide an informative, easy-to-read insight into an enigmatic political figure during a very traumatic period in U.S. history. The timing of the book is such that it draws comparisons of recent events to the past. I highly recommend it to history buffs, even if you grew up in the late '60s and early '70s during Watergate, thinking you know the whole story of "Spiro Who?".

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