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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. 72 / No. 3 / DECEMBER 2008**

Calling All Members

Now is the time to come to the aid of your fellow citizens

BY SAMUEL B. FREED*

Samuel B. Freed

In September, 2008, the Chief Judge of the State of New York, Judith Kaye and the Chief Administrative Judge of the State of New York Ann T. Pfau called a meeting of the Bar Presidents of the City of New York and other concerned parties to solicit their aid in fulfilling the obligations under the new RPAPL law requiring, after September 1, 2008, that all mortgagors, with sub-prime and high interest mortgages who respond to foreclosure proceedings have a right to have a conference before the court. The time for the conference must take place within 90 days of the foreclosure actions filing during which time no other action can take place to enforce the foreclosure.

At the time of the conference, the sub-prime and high interest mortgages appeared to be at the core of the foreclosure crisis and there was momentum for the Bar Associations to give attention to these matters. At that time of the conference, the Justices were unaware that the sub prime mortgage crisis, generally, would be only one aspect of the mortgage crisis affecting America.

On November 17, 2008, a stated meeting was held at the Queens Bar Association. Bar members appeared in overwhelming support to volunteer their services to these mortgagors, however, despite the wonderful turnout more volunteers are needed to address this crisis. Your specialty need not be real estate or real estate related matters. Attorneys of all specialties and languages are needed to volunteer time and talent to negotiate. Simply stated, and generally, the pro bono services you provide will be to attend the mandated Court conference(s) along with the mortgagors and the mortgagees to determine if the mortgage can be re-negotiated to allow the mortgagors to remain in their home.

Your individual efforts, when combined with your sisters and brothers of Bar, offers hope to the economic suffering of our local communities while providing a united voice and therefore strength in defense of their rights.

To earn 8 credits in Professional Practice, AT NO COST TO YOU, attend the December 15, 2008 jointly sponsored conference entitled "Dealing with Residential Foreclosures; Representing Homeowners in the New Mandatory Settlement Conferences". The one day conference will take place at the Queens County Bar Association, 8:30 am to 4:45 pm. This conference is sponsored by the New York State Bar Association, The Queens County Bar Association, the Queens Volunteer Lawyers Project, the Brooklyn Bar Association, the Brooklyn Volunteer Lawyers Project and the Empire Justice Center. You will receive an overview of the recent legislation from an expert faculty. The Federal government is continuing modifying and establish new programs to aid in the crisis which will be key to the foreclosure resolutions.

"How can I help" you ask - to register for the free one day conference on December 15th and earn 8 Professional Practice credits go to www.nysba.org/dealingwithresidentialforeclosures; do not call the Queens County Bar Association. However, if you attended the stated meeting of November 17th and the Queens County Bar Association has not heard from you indicating your intent to commit to the program and lend a much need helping hand, please do call the Queens County Bar Association. For additional information or questions, call the Associations' Department of ProBono Affairs at 518 487 5641 or e-mail to www.probono@nysba.org.

The adverse effect of these foreclosures is not confined solely to the homeowners who are facing foreclosure, neighborhoods generally will suffer from the consequences of multiple foreclosures. If you have given thought to pro bono services, THIS IS YOUR TIME TO ACT.

Respectfully, Sam Freed, Chair, Real Property Committee

Foreclosures Increasing Dramatically In Queens

BY TRACY CATAPANO-FOX*

In October 2008, Queens Supreme Court opened the first Residential Foreclosure Conference Part in New York State. This part was developed in response to Chief Judge Kaye's determination that the courts get involved in addressing the foreclosure crisis, and also as a result of legislation passed this summer by the New York State Legislature and Governor David Paterson.

Queens County has become the epicenter in New York for the mortgage foreclosure crisis affecting the entire nation. Queens Supreme Court has seen foreclosure actions increase dramatically, resulting in five hundred new filings per month in 2007 and 2008. The judges have seen a tremendous increase in the number of ex parte applications for orders of reference and judgments of foreclosure. These foreclosure actions have historically proceeded by ex parte order, as approximately 90% of homeowners do not answer the Complaint or appear in the foreclosure action. The foreclosure crisis can be seen not only in the increased court filings, but also in the growing number of auctions held in court, which often result in a buy back of the property by the mortgagee banks.

In January 2008, Administrative Judge Jeremy S. Weinstein held a meeting with the Justices of Queens Supreme Court, Civil Term, to discuss the disturbing increase in foreclosure actions. At this meeting, the judges expressed their concerns and discussed the impact of this problem on litigants and the courts. To address these growing concerns, Chief Judge Kaye held a press conference announcing the Residential Mortgage Foreclosure pilot project. As Queens Supreme Court has one of the largest inventories of foreclosure actions in the state, it was chosen as the site for the project. The pilot project would establish a foreclosure residential part that would enable homeowners to conference their cases with the banks before the court with the hope of trying to keep homeowners in their homes with reasonable, sustainable mortgages. Homeowners would also be given information with regard to legal and housing services available in Queens.

Subsequent to the selection of Queens County

Continued On Page 13

Ceremony of Renaming of Park for Hon. Moses M. Weinstein.

INSIDE THIS ISSUE

Foreclosures Increasing In Queens . 1
Calling All Members. 1
President's Message 3
Books at the Bar 4
Parent Education & Awareness 5
Report From The State Bar 6
Speaker's Bureau Report 6
Marital Quiz.....7
In The Navy.....7
Photo Corner.....8-9
Saturday Morning 10
Write To Win 11

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 148th St., 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 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 FALL CLE Seminar & Event Listing

December 2008

Thursday, December 4	Holiday Party
Wednesday, December 10	Insurance Law Seminar
Monday, December 15	Foreclosure Intervention Seminar with NYSBA

January 2009

Tuesday, January 20	Article MHL 81/Guardianship Training - 2:30 - 5:00 pm
Wednesday, January 21	Supreme Court & Torts Section Seminar

February 2009

Monday, February 23	Stated Meeting - Small Firm & Solo Practitioners
Thursday, February 26	Psychological Issues Underlying Lawsuits (rescheduled from Nov 08)

March 2009

Monday, March 23	Past Presidents & Golden Jubilarians Night - **TENTATIVE**

April 2009

Wednesday, April 1	Equitable Distribution Update
Monday, April 20	Judiciary Night – **TENTATIVE**
Wednesday, April 22	Selection of a Jury
Thursday, April 23	Basic Criminal Law Seminar – Part 1
Thursday, April 30	Basic Criminal Law Seminar – Part 2

May 2009

Thursday, May 7	Annual Dinner & Installation of Officers

CLE Dates to be Announced

Court Evaluator Training	Elder Law
Ethics Seminar	Juvenile Justice Law
Labor Law	Real Property Law
Surrogate's Law	Taxation Law

NEW MEMBERS

Ana Lucia Alvarado
Joseph P. Awad
Sylvia Bishai
Gregory Paul Haegele
Daniel J. Halloran
Sendi M. Katalinic
Argyizios Katos
Jomarie Licata
Kap Misir
Shanise Jasmine O'Neill
Alexis Pimentel
Jorge Edwardo Santos
Sarah C Varghese
Jason S. Vishnick

NECROLOGY

William Cantwell
Daniel A. Fuccello

Leslie S. Nizin

EDITOR'S MESSAGE

In this month's paper there are several articles requesting participation in the December 15th program being held at the Queens Bar Association. As I write my notes. I am happy to report the Queens legal community has responded in magnificent fashion and the program is fully subscribed.

As we say farewell to 2008, there are great expectations that the New Year will bring peace and prosperity.

On behalf of the officers and directors of the Association I wish each of you and your families a healthy and happy holiday season. Les Nizin

On a Personal Note

Speedy recovery to **Hon. Robert McGann** on his recent surgery.

Funds are being raised for the family of James DiMartino, an attorney from Suffolk County who was murdered during a robbery. Anyone wishing to make a donation should make checks payable to **Diane DiMartino** and mail to Tony Botta, ACC, Queens Supreme Court, Pt K-18 Annex, 125-01 Queens Blvd., Kew Gardens, NY, 11415 or to Victor Knapp, 125-10 Queens Blvd., Ste. 323, Kew Gardens, NY, 11415

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

2008-2009 Officers and Board of Managers of the Queens County Bar Association

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QUEENS BAR BULLETIN

EDITOR - LESLIE S. NIZIN

Associate Editors - Paul E. Kerson, Michael Goldsmith & Peter Carrozzo

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PRESIDENT'S MESSAGE

Definitional Moments

Let me share a thought with you that came to my attention while reading a copy of the commencement address given by Professor John H. Blume of the Cornell Law School (my alma mater) to the graduating class of 2008. The core thought of Professor Blume's address was that "... in every lawyer's career, there will come a moment (or moments) that will define who you are as a lawyer and as a person."

Professor Blume related his first "definitional moment." I can recall mine which occurred when I was a very new, young Assistant District Attorney called into my Chief Assistant's office. A seasoned defense attorney was already in the office. The "Chief" asked me if I would reconsider a refusal to take a misdemeanor plea for this attorney's client. I recalled the case, a young man but with a pretty healthy criminal record for his age. I knew I was ambitious, in a relatively new position and eager to make my mark, and it was clear what was expected of me. But I just could not do it. I told the Chief he should feel free to replace me in the part, and the new Assistant District Attorney could do as he wished. I would make no fuss. Upshot: I remained in the part, and the felony plea stood. My conscience was clear. I do not think I suffered serious consequences.

Steven Orlow

We have all had "definitional moments" or, if not, it's a sure bet you will.

Our nation is in turmoil. Each day the outlook on the economy grows bleaker. Our leaders are floundering, seeking solutions that seem to evade their grasp. Industries are collapsing and we each have felt that impact in some way. All we need do is look all around us and it is easy to see others impacted in ways in which our situations pale in comparison. Lost jobs, loss of benefits such as health insurance, inability to meet mortgage payments, foreclosures, homelessness.

Queens has thousands of foreclosures pending and hundreds added to the rolls each and every month. The situation becomes more distressing when we realize the cause of so much misery was a combination of greed and ineptitude, at all levels of industry and government.

Both for those of us that have already experienced "definitional moments," and for those who have not, let me suggest that this is now such a moment. Our neighbors' anguish being so evident, do we each choose to remain silently passive?

The respect we garner as attorneys (and we all know that, "lawyer jokes" aside, our profession still commands considerable respect) is not based on an ability to generate income. The deep seated veneration, enjoyed by our profession over the ages, has been for those noble causes and endeavors for which our collegial forebears stood in the forefront. The Clarence Darrows, the Emile Zolas, the Thurgood Marshalls, are among those upon whose shoulders we stand. Is it not incumbent upon us to follow, in whatever modest fashion is available to each of us, the trail so nobly traveled by others?

Please join with us in an unparalleled effort by the Queens County Bar Association, the minority, ethnic and neighborhood bars of Queens County, and the State's Courts in responding to our joint "definitional moment" with which we are now faced.

For details on how you can help, please see the article by John Dietz elsewhere in this bulletin or call Sasha in our office (718-291-4500).

Books At The Bar

BY HOWARD L. WIEDER*

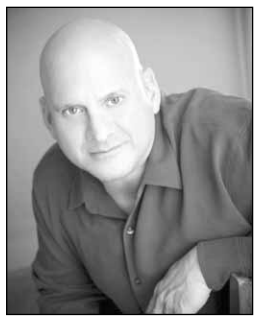
ENCYCLOPEDIA OF THE FIRST AMENDMENT
John R. Vile, David L. Hudson Jr., and David Schultz, Editors
CQ PRESS September 2008, Two-volume set, 1464 pages
Hardbound, ISBN 978-0-87289-311-5, $240.00

LANDMARK DECISIONS OF THE UNITED STATES SUPREME COURT, 2nd Ed.
Paul Finkelman and Melvin I. Urofsky
CQ PRESS November 2007, 818 pages
Hardbound, ISBN 978-0-87289-409-9, $250.00

THE U.S. CONSTITUTION A TO Z, 2nd Ed.
CQ PRESS July 2008, 693 pages
Hardbound, ISBN 978-0-87289-764-9, $85.00
The CQ Press American Government A to Z Series (Five volume set)
ISBN 978-0-87289-977-3, $340.00

THE DEVIL'S GENTLEMAN: PRIVILEGE, POISON, AND THE TRIAL THAT USHERED IN THE TWENTIETH CENTURY
By Dr. Harold Schechter
Ballantine Books 2007
Hardcover, ISBN 978-0-345-47679-1, $27.50

I AM INNOCENT! - - *A Comprehensive Encyclopedic History of the World's Wrongly Convicted Persons*
By **Jay Robert Nash**
Da Capo Press 2008, 808 pages
Paperbound, ISBN 978-0-306-81560-7, $24.95


Howard L. Wieder

Whether you are shopping for gifts for your colleague Judges, law firm partner, devoted associate who burns the midnight candle, Law Secretary who makes your life easier, law school student, your or a neighbor's teenager who dreams of attending law school, or, especially, yourself, the above five titles are my choices for your Christmas/Chanukah list! Without a doubt, each of these titles will make a great reading selection, and will make you well thought of by the gift's recipient!

1. **ENCYCLOPEDIA OF THE FIRST AMENDMENT**
   John R. Vile, David L. Hudson Jr., and David Schultz, Editors
   September 2008, Two-volume set, 1,464 pages
   Hardbound, ISBN
   978-0-87289-311-5, $240.00

Often, the best questions are posed by innocents. The *Haggadah*, read by Jews throughout the world on the first two nights of Passover, indeed, instructs the head of the household to encourage the timid to pose questions during the seder, the passover dinner service of the holiday's first two nights. I thought of that fact when **JUSTICE CHARLES J. MARKEY'S** court officer, **Supreme Court Officer JOHN IONTA**, saw this new two-volume work on the First Amendment to the United States Constitution sitting on my desk. Awed by the impressive size of this handsome, hardbound, **two** volume work, **OFFICER IONTA** asked me: "Isn't the First Amendment short?!?"

That simple question, as the writers and compilers of the Haggadah brilliantly understood, started me to explain that the 45-word First Amendment is actually not so simple. The First Amendment ratified with the rest of the Bill of Rights on December 15, 1791, states:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

While framed in absolutes of encouraging dissent, assembly, free worship, and a robust press, for example, one has to examine the First Amendment in specific controversies in order to understand its dimensions: gag orders, parade permits, prohibitions of crèches on public property, etc., among many circumstances that may show that there are limits on liberty and freedoms.

In this landmark publishing event for lawyers, judges, librarians, students, and legal scholars alike, **CQ Press** has just published **the first and only** comprehensive work on the most basic of the liberties enshrined in the U.S. Constitution. **Encyclopedia of the First Amendment** is an enlightening and comprehensive two-volume reference work that explores the political, historical, and cultural significance of the First Amendment. This authoritative work is certain to become a staple resource on the reference shelves of public, academic, and law school libraries. Its publisher, **CQ PRESS** is known for its objectivity, breadth and depth of coverage, and high standards of editorial excellence

With a foreword by award-winning journalist and founder of the First Amendment Center **JOHN SEIGENTHALER**, **Encyclopedia of the First Amendment** features seven incisive essays written by leading First Amendment scholars. These introductory essays address each of the five core freedoms of the First Amendment, as well as the future of the First Amendment and the extent to which First Amendment principles are respected throughout the world. More than 1,400 A to Z entries examine the people, organizations, laws, court cases, concepts and legal terms, events, and issues surrounding the freedom of religion, freedom of speech, freedom of the

Continued On Page 12

Parent Education and Awareness in Queens

BY MARK KLEIMAN

The article on the state-wide Parent Education and Awareness Program in the October edition of the Queens Bar Journal described a state-wide effort that successfully assists separating parents to lessen the negative impact on their children. Two important elements were missing from the article: research that proves its effectiveness and how to gain access for your clients in Queens.

The Unified Court System has certified curricula as well as programs through an intensive vetting process to make certain quality services are available to all families struggling with the consequences of a failed relationship and conflict over children. In Queens, Community Mediation Services, Inc. is the certified provider. From its inception there has been an intensive and consistent effort to have the participants evaluate the value of this program. Among the statistics released by the court for over 2,000 participants statewide ordered or referred from the Family and Supreme Courts or sent by professionals or other families from March through August of 2008 are:

97% stated that local staff made enrolling easy.

98% said information regarding impact on children, how to lessen or prevent problems and where and how to go for other resources was very to somewhat relevant and helpful.

92.84% said information on importance of timely payments of support was very to somewhat relevant and helpful.

99.96% said information of the importance of protecting children from being caught in the middle was very to somewhat relevant and helpful.

97.91% said that suggestions for defusing conflict and managing anger was very to somewhat relevant and helpful.

Similar percentages expressed how helpful was information on parallel and cooperative parenting, the role of lawyers and the court and explanation of terms and description of various forms of dispute resolution. Most important 95% said the information learned would help them in parenting their children and 89.96% said the information learned will help with communication with the other parent. Similar numbers said the program was worthwhile and would recommend it to others.

A fight over parental rights places the children at the center of conflict. No matter how hard the parents try there is a lasting effect on the children. The children always feel responsible for the break-up. They are made to witness all levels of conflict, sometimes being the target, have crises of loyalty as parents speak badly of the other and have constant stress as they adjust to the cataclysmic changes that are occurring in their lives. If the parents resolve their issues and are able to create new and healthy relationships, their children may not be doomed to struggle with their own relationships throughout their lives.

Everyone agrees that the cases that come to court are emotional and adversarial by nature a dangerous combination. It is clear and indisputable that the adversarial system exacerbates these relationships. There is no doubt that this has dangerous implications for children already at risk. All family attorneys experience frustration and pain from witnessing the damage to children caused by divorce. I am therefore certain that lawyers who now know of the attributes of this program will urge their clients to experience this unequivocally positive and helpful program. Judges now have the power to order such participation.

The program is realistic and empowering, offering a clear and honest view of the situation in which parents find themselves, from a legal, emotional and behavioral perspective. It presents research on the impact of conflict on their children and parents witness children confirming this in a video. The experience occurs with others who struggle with the same issues. They receive opportunities to practice behaviors that can lower the level of conflict. Finally they see how respect for each party can normalize the situation for their children and begin healing. In summary it speaks to the best in the parties offering options for change.

Since 1995, Community Mediation Services, Inc. (CMS) has been operating parent education services for families enmeshed in the pain of divorce or separation in Queens. CMS initially partnered with Hofstra Law School to implement the P.E.A.C.E. (Parent Education and Custody Effectiveness) curriculum. For three years the program has used the court certified curriculum: ACT (Assisting Children through Transition). Presenters include lawyers, judges and mental health professionals. Parents receive excellent materials and resources along with the experience.

Clients can be enrolled in the program by calling Renee Holley at 718-523-6868 ext 254 at Community Mediation Services, Inc. The program consists of six hours of class split between two days. The sessions are conveniently located. Participants are given the choice of day or evening sessions. Cost is $100 with scholarships possible.

Report From The State Bar's 2008 Halloween Meeting

BY STEVEN WIMPFHEIMER

Friday, October 31st – Halloween. What a way to start the day. Dawn over the Hudson. A drive up the Palisades to a meeting of the State Bar Nominating Committee. There to choose the incoming officers and executive board members of the New York State Bar Association. Of particular import to us, is that we had to make sure that our own Seymour James would be re-elected to the position of Treasurer. We did not have to worry, he ran unopposed and was re-nominated by acclimation.

Back to the trip to Albany. The sun coming up and reflecting off the Hudson and off the last of the fall foliage is beautiful. There is nothing quite like the Hudson Valley and Catskills in the fall. If I were a painter I would just smear my pallet against the canvas and label the painting "Fall along the Hudson", or "Fall in the Catskills". The reds were deep, the oranges glowed, the browns were rusty and the yellows golden. It is no wonder that the Hudson River School of painting was and is so popular.

Enough waxing poetic. After a heated discussion, Stephen P. Younger of New York City was elected the President-elect. Additionally, Bruce Lawrence of Monroe was elected Secretary, without opposition and the remainder of the Executive Committee were elected, some with, some without, opposition.

Fortunately or unfortunately, I did not attend the usual Friday evening dinner. This year the dinner honored our outgoing Chief Judge. From all accounts it was a successful and entertaining evening.

Saturday, we returned to the Bar Association Building for the Fall meeting. For those of you who have never been to the State Bar Building in Albany, it is worth a stop. (Don't make a special trip to Albany to see it).

As usual the meeting started at 9:30 AM with reports of the Treasurer and the Finance Committee. As usual, the Bar Association is in the black. However, there were dire warnings of fiscal problems as a result of our current economic crisis. As if we didn't know and needed a reminder.

Steven Wimpfheimer

Next the Hon. Cheryl Chambers (Seymour James' wife) reported on the recommended change to the By-laws to provide representation in the House for two (2) non-resident members of the Association. This recommendation was overwhelmingly passed.

Hon. George Bundy Smith then updated the Report and recommendations of the Special Committee on the Civil Rights Agenda. The Report is 257 pages long and covers such areas as education, juvenile justice, voting and criminal justice. It is full of recommendations to make New York and America "more inclusive."

Our President, Bernice Lieber reported:

A Task Force on Privacy was appointed. It will examine current policies, practices and legislation that threaten attorney-client privacy and make recommendations to safeguard this important right.

A task force on Global Warning has been created to address the profound impact of climate change.

A task force on the State of the Courthouses was appointed. They are in the midst of conducting a survey with the ultimate objective of making recommendations on how to improve conditions. As an editorial comment, this may be a vehicle to get our Administrative Judge and the Board of Justices to unite and tear down that horrible fence in front of the Jamaica Supreme Court. It is an eye sore. It sends the wrong message to the public: that the Court is not part of the community, but an elitist organization, run by lawyers and Judges without care or input from the community at large.

There are seven (7) candidates for the job of Chief Judge. The Bar Association will be interviewing candidates for the job.

The Bar Association is working with local Bar Associations, including our Bar Association to conduct training programs for pro bono attorneys to assist in the ongoing mortgage foreclosure crisis.

The State Bar is searching for ways to assist all lawyers in coping with the current economic crises, including electronic job banks, assistance in moving to different geographic areas or different practice areas.

The next presentation was by Justin Vigdor, who proposed that a new Section be established for senior lawyers (55 and above). This section would help senior lawyers with pre and post retirement planning and familiarization with technological advances. It would also serve as a pool of lawyers with energy and expertise for pro bono work.

The Committee for Access to Justice requested approval of a report and resolution, which suggested:

That the state should adopt legislation to provide a right of counsel for vulnerable low income people who face eviction or foreclosure.

That the right of counsel for unemployment insurance should attach earlier in the appeals process and should be implemented in a more effective manner.

I was particularly interested in the Report of the Special Committee on Mandatory CLE. To my surprise more than 75% of the responders to a survey (3856 partial responders and 2640 full responders out of over 50,000 requests) agreed that Mandatory CLE improved their competency and approximately 35% agreed that MCLE improved the competency of attorneys generally. While there was a vocal minority of lawyers who originally objected to MCLE (me included) "the large majority of lawyers now recognize and endorse the concept of continuing their legal education throughout their legal careers and view MCLE as an appropriate vehicle to help realize that goal." (Report P.12).

The meeting ended with reports of the Task Force on Privacy, Report of the Bar Foundation (the charitable arm of the Association), administrative items and ***LUNCH***.

The next meeting is in New York City on January 30, 2009.

My thanks to Richard Gutierrez for writing the Cooperstown report.

Report of the Speaker's Bureau Queens County Bar Association

Guy R. Vitacco, Sr.

Sept. 3, 2008

David Cohen, Past President of the Queens Bar Association, spoke at the Hillcrest High School Career Day Event. Also other speakers from the Queens Bar Association were current President Steve Orlow, James Wrynn, member of the Board of Managers and members of the Bar Association's Board of Managers, Joseph Carola, as well as Past President John Dietz and Debra Edwards. The event was chaired by Supreme Court Justice Martin Ritholtz.

Maura Nicolosi gave a talk to the Aviva Chapter of Jewish Women International at the North Hills chapter of the Queens Public Library on topics of interest to the members of the group pertaining to the law and the courts.

Supreme Court Justice Martin Ritholtz also conducted a Law Day at the Jamaica High School along with members of his staff. The school assembly was very pleased with the program presented.

Respectfully submitted,

Guy R. Vitacco, Sr.
Chair of Speakers' Bureau

Marital Quiz

BY GEORGE J. NASHAK JR.*

Question #1 -
Does a provision in a separation agreement for the termination of maintenance in the case of "[t]he cohabitation of the wife with an unrelated adult for a period of sixty (60) substantially consecutive days," require sexual intimacy or creation of an economic unit?

Your answer -

Question #2 -
In order to modify or set aside a separation agreement or a stipulation of settlement that has been incorporated into a judgment of divorce, but did not merge therein, are you required to bring a plenary action?

Your answer -

Question #3 -
Is a plenary action necessary in order to enforce the terms of a separation agreement or a stipulation of settlement that has been incorporated into a judgment of divorce, but did not merge therein?

Your answer -

Question #4 -
Under amendments to Treas. Reg. 1.152-4, which became effective July 2, 2008, who is entitled to the dependency exemption?

Your answer -

Question #5 -
Under amendments to Treas. Reg. 1.152-4, if the child resides with each parent for an equal number of nights during the calendar year, who is entitled to the dependency exemption?

Your answer -

George J. Nashak Jr.

Question # 6 -
Since custody ends at 18, who is entitled to the dependency exemption for children 19 and older?

Your Answer -

Question #7 -
Can a dependency exemption be taken for a child over 21 years of age?

Your answer -

Question #8 -
The father has custody of the parties' son. In calculating the mother's child support obligation, is her maintenance income from the father taken into consideration?

Your answer -

Question #9 -
If a settlement agreement, which was incorporated but not merged in a judgment of divorce, does not address the child's extracurricular activities, can the custodial parent obtain contribution from the other parent?

Your answer -

Question #10 -
Defendant wife succeeds in having plaintiff husband's complaint for a divorce dismissed, is the court permitted to award defendant wife counsel fees?

Your answer -

**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 APPEAR ON PAGE 11

In The Navy

BY JOSEPH F. DEFELICE

Joseph F. DeFelice

A young man did bail jump,
on a felony they say,
the underlying charge a criminal mischief,
by the way,
no other crime or arrest had he
no record by the way

The underlying act disposed thru this con one day,
a violation under New York Law
that is all there was that people saw

Ne'er before was he in trouble
a high school student was all he was,
he graduated and made his family proud,
the day he walked diploma aisle

And now he sought to serve his land
by entering on the sea,
yes serve his land and join the Navy

But no they said you see young man
a felony bail jump still is charged,
while felony charge did mark his head
he could not see the sea
So his lawyer did beseech the Court
a Clayton motion is what he sought,
let's Clayton this case and dismiss,
all charges should be gone,
and let this man do his bid
and serve unto his land

Oh no, the prosecutor claimed
Oh no, this is not just
A felony is what this is
let justice brand him so,
and he will only leave this Court
a felon that we know

The Court did rule the prosecutor right
oh Clayton you be gone,
go take a felony
plea young man
or face the jury's scorn

And off he went to the trial
and trial judge did say,
be fair and let us all be just,
this young man seeks to serve his land,
the judge did say, I do not see fairness
in the prosecutor's choice
to brand a felon in this Court,
a record this young man has not
except the dis con all I see,
a high school grad is he,
a young man here
who seeks to serve his land
and serve it well at sea

But no the prosecutor say
T'is a slam dunk case we have today,
It's easy for all to see,
That this young man will ne'er see the sea,
The jury will applaud our zeal
A felony you'll see

And off to trial did he go,
the jury watched him close,
and day to day the trial went,
a verdict did the jury find
not guilty did they say

The tears of joy rolled on his cheek
the young man did cry so,
And thank his lawyer and kiss his mom
and off to Navy did he go

PHOTO CORNER

Stated Meeting: The New Foreclosure Law Monday, November 17, 2008

John Dietz, Steven Orlow, Tracy Catapano-Fox, Paul Lewis, Sam Freed, Joseph Carola and April Newbauer.

John Dietz, Moderator.

Steven Orlow, President, QCBA.

Jerry Patterson, Steve Orlow and Martha Taylor.

Jerry Patterson, Ed Rosenthal, Greg Newman, Tracy Catapano-Fox, George Nicholas, Janet Deluca and Jeff Boyar.

Hon. Morton Povman, Hon. Arthur Lonschein, Richard Lonschein, Gary Darche and Hon. Herbert Posner.

Hon. Edwin Kassoff, Paul Lewis, Joseph Risi, Jr., Joseph Cusumano and Dominick Masiello.

Sam Freed, Chair, Real Property Committee.

Gary Darche, Steven Goldenberg and Gary Di Leonardo.

Ed Rosenthal, Tracy Catapano-Fox, John Dietz and David Cohen.

Standing-Peter LaLumia, Jim Wrynn, Ed Rosenthal, John Meglis, Michelle Baptiste and Martin Chow; Sitting-Sam Freed and Steve Wimpfheimer

Attendees to the New Foreclosure Law Meeting.

Photos by Walter Karling

PHOTO CORNER

Stated Meeting: The New Foreclosure Law
Monday, November 17, 2008

April Newbauer, Attorney-in-Charge, Queens Legal Aid Society, Civil Division.

John Meglio, James Wrynn, Larry Litwack, Ed Rosenthal and Gary Darche.

Joseph Carola, III, Chair, Program Committee.

Jim Wrynn, Larry Litwack, Ed Rosenthal and Gary Darche.

Paul Lewis, Chief of Staff to the Chief Administrative Judge of the State of New York.

More Attendees.

Standing-Madeleine Egelfeld and Tracy Catapano-Fox Sitting Lori Hellman, Agnes Kirschner, Zenith Taylor and Sally Unger.

Tracy Catapano-Fox, Principal Law Clerk to Administrative Judge Jeremy Weinstein.tif

Helmut Borchert, Joshua Deutsch, James Raborn, Brian Goldberg and Robert Frommer.

Photos by Walter Karling

Saturday Morning

BY STEPHEN J. SINGER

When Bob Greiner attempted to open the door to his law office the pile of mail from Saturday morning blocked his entry. There was one large package and numerous items of first and third class mail jammed beneath the door. After some wiggling of the door and careful prodding with the toe of his shoe he did manage to gain entry, turn on the lights and toss the mail onto his secretary's empty desk. The package turned out to be a replacement for the toner on his copy machine and fax machine, both of which were in serious disrepair and hopelessly outdated. Like many single practitioners, Bob was not interested in modernizing if it cost more than a hundred dollars. He was not gadget crazy, did not own a blackberry, often forgot to charge or turn on his cell phone, and was happy with everything "just the way it was". This made him the butt of ongoing jokes by his much younger secretary who was very into her computer, ipod and text messaging.

Bob sorted through the mail, not even bothering to read the third class stuff, dumping it immediately into the trash can with his other hand, assembly belt style. The first class mail included the usual bills, which would have to wait until the fifteenth, several notices of "readiness" from the district attorney's office, and one letter from a prison facility. This was the one he left out of the pile for a read. It always piqued his interest to hear from former clients who were now doing time in an upstate location. Their correspondence varied from requests for free legal assistance in front of the parole board to annoying letters of criticism about his past performance. This letter belonged in the second category and would prove to be more than a little irritating.

Raul Santiago was not a success story. He was not one of Bob's better legal memories and was certainly an individual who fell into the category of one of the most evil men he had ever met. Santiago and a younger co-defendant had been professional burglars who had been captured while escaping from their entry into the home of a drug dealer. They had figured that he wouldn't dare to call the police because of his own fear of any contact with those particular civil servants, but they were wrong. They were dressed in Ninja style black garb, carrying all sorts of classic burglar's tools, a police radio and the "loot", when cornered by a canine police team. They had been literally "sniffed out" while cowering behind a tall hedge in a neighboring back yard. There really was no legal defense to the case once their spurious motion to suppress all of that evidence had been denied and Bob and his co-counsel were perplexed as to what their next move was.

The plea offers on the table consisted of a moderate prison term for the younger cohort who had no prior record … two to six seemed to have stuck in Bob's memory bank … but a much different story for his own client who would have no such luck. He was a four time loser with one prior felony conviction. He was looking at double digits and was hearing none of it. On the day when they were scheduled to start their trial the assistant district attorney requested a chambers conference and then confided to counsel and the Judge that their main witness had disappeared. This was the girlfriend of the drug dealer who had been maintained in a cooperative mode with the singular threat that her jewelry would not be returned if she didn't return … to court that is. The case was adjourned with all parties sworn to secrecy, particularly from their own clients, who were understandably the prime suspects.

Stephen J. Singer

After saying goodbye to their lawyers in the courthouse entrance hall, police swept them up, took them to far flung locations and worked on them until the younger man confessed to their having killed the girl and then led the police to where the body was buried. Santiago had held out for a full twenty hours more, but eventually gave up the ghost as well and signed a complete confession. Now there are few things worse than murder in the general criminal scheme of things. Some of those include serial murders, torture murders, kidnap murders, murdering a cop and murdering a government witness. There would be no deal of any kind for persons charged with these special category murders.

Bob had gone to trial on the Santiago case only because he was reasonably retained and had no legal basis for resigning from the matter. Dislike of your client or his actions were not generally acceptable excuses for that purpose. This was a high profile trial and engendered much publicity, particularly in the Hispanic community (the woman had come from Colombia). For a while, he was even a "star" on Channel 41 … "Cuarenta Y Uno" to the initiated. Bob got through the trial and predictably lost, but with great aplomb, if he had to say so himself. The Judge and opposing counsel were quite happy with his performance ... it is always easier to be complimentary to the losing attorney ... and had become friends as the result of their shared experience.

Santiago had received the equivalent of several life terms, under differing theories of the law and charges, as was to be expected. Bob dutifully filed a notice of appeal, closed his file and was prepared to forget Raul Santiago. Then the letter arrived.

Raul began in a respectful enough fashion, even calling him "doctor" in the South American mode of address for lawyers, and then promptly launched into an angry critique of the tactics, lack of enthusiasm, and unhappy result of the representation provided by Bob. He ended by demanding that Bob continue his representation, without charge, and perfect the appeal himself. Bob turned on his computer and typed out a letter which although taking issue with the critical portions of Raul's letter … after all, he was a defense lawyer … was tactful in his refusing to pursue the matter further on the grounds that he was not an appellate lawyer. The reply letter was duly mailed the next business day. Having been angered by the stinging words in his former client's letter, he also sent out a bill for the balance of his unpaid fee to the client's mother.

There were several follow-up letters from Santiago, all in the same vein, all of them negative in tone. They had progressed from "respectful" to plain nasty. There were veiled threats of retaliation, perhaps even violence. There was even one anonymous telephone call threatening to kill Bob if he sent any further bills to Santiago's family. Bob was non-plussed, but he did determine to let the billing go by the boards as a modest precaution. He had never had this experience before and even thought about going to the authorities for assistance. He recognized that they could do little for him however. After all, the letter writer was in prison, far away, and any move to limit his correspondence would create even more hostility. Finally, clearly any potential action would be coming from Raul's constituents on the outside and they remained unknown for the moment. Bob decided that time was his only defense for now. The letters did eventually stop.

Then the 440 motion arrived, attacking him as "ineffective counsel" and seeking a new trial. As happens with all attorneys who are attacked as incompetent, the initial reaction is one of great affront. After all, their dignity, reputation and respect were all being assaulted simultaneously. Once Bob calmed down he pulled his resources together, read through the motion with a lawyer's eye, culled out the key points and prepared to compose a reply. He was contacted within a day by the assistant district attorney from the appeals bureau who was assigned to the case. Bob put together an affirmation which he believed had covered all bases adequately. There was one glitch however.

The main point of the motion for a new trial had concentrated on Bob's failure to put forth an alibi defense. Although he had filed a notice of intention to use an alibi and had obtained a lengthy written statement from the proposed alibi witness, he never mentioned any of this to the jury and did not call the witness at trial. The reason was quite simple. Bob knew, both from his own client's admissions and the facts (the co-defendant having both confessed to their jointly murdering the woman and leading the police to the spot where together, they buried her) that the alibi was patently false. Raul had admitted to participation in the deed and had even offered to cooperate with the D.A. after his sentence, with the avowed purpose of exposing the leader of his burglary ring who had ordered the "hit" on this woman. There was absolutely no question about his guilt.

Bob was not about to assist in committing perjury by calling the alibi witness and told this to Santiago as the trial was progressing. At the time, the defendant had resigned himself to letting the false testimony go unspoken. Now, for the first time, this issue was reconstituted through the vehicle of this motion attacking Bob's performance. Surprisingly, another letter from Raul arrived prior to the proposed hearing date on the motion. Raul reiterated that he had great regard for Bob's legal talent, but that despite any ethical reservations Bob might have, he expected him to "do the right thing". This obviously meant that Bob should bite the bullet and accept complete responsibility for the conviction … leaving out, of course, any reference to the client's admission that he was guilty.

Next, Bob began to receive some strange telephone calls from men with low voices and heavy Spanish accents, making inquiry about the Santiago case. They would begin by simply asking how things were going and would then progress to promises of many additional cases being referred to him, a marked increase in his popularity in the local Hispanic criminal community, and the like. Bob was polite in explaining that he was now a hostile witness to Raul and really could not be expected to be of much assistance or to discuss the case with them. The calls turned ugly. There were expressions of great "disappointment" with his attitude, discussions hinting about turning him in to the I.R.S. with regard to large cash payments received which they presumed had not been reported, friends of Raul who were saddened by the tack Bob had taken, etc.

Bob began to take precautionary measures towards his own self preservation. He stopped coming to the office on Saturdays, when it was too quiet for comfort, began varying his routes to and from the office, and left by five o'clock. He spoke to the assistant in charge of defending against the 440 motion, but without names and without specific threats, there was little to be done. Bob even changed his answering machine message, deleting the private call number for emergencies, so that the calls would not come through to his home. As a divorcee, there was no one home with whom to share his anxieties. Bob suffered alone.

The hearing dates came and went, predictably, and then ultimately came to reality one unexpected afternoon in April. The A.D.A. called him that morning, expressing great confidence that the motion would be denied after the hearing. Bob was not certain that victory was in his own best interests however, and was not buoyed by this prediction. After sitting hall side with the other witnesses for an hour, he was called into the courtroom, testified briefly on direct and was then subjected to an extensive cross examination by Raul's assigned attorney. As a matter of legal irony, once a 440 is filed attacking the defense attorney and the attorney called to testify, all "privilege" is waived … the result was devastating to Raul's legal positions.

While Bob struggled to remain low key and present an image of great discomfort at having to reveal his client's confidences, the stares he received from the defendant were both ominous and frightening. It was only a week later that he learned the motion had been denied, solely on the basis of his testimony. "Great!" he thought. Why couldn't they have relied upon some esoteric legal fiction instead of placing it all on his shoulders? There were a few more telephone calls, mostly non-threatening, simply requesting an explanation as to where Raul would have to go next to pursue his legal remedies. Bob referred them back to the assigned attorney. After a while, the calls stopped.

Bob resumed his normal schedule of activities once again, even staying later in the office during weekdays. He thought about dropping his few remaining criminal clients and doing only civil work, but his pocketbook dictated otherwise. Although it seemed to him that the worst was behind him, he still looked around before going to his car after leaving the office at night, having developed protective habits that he did not feel secure in abandoning. Then the grievance arrived a few weeks after the ruling on the motion, accusing him of ethical misconduct in

Continued On Page 15

Write To Win

BY HON. GERALD LEBOVITS

Mastering the art of written advocacy is critical for lawyers. They must write to win. Written briefs are the first and best opportunity to persuade the court. Sometimes they are the only way to persuade the court. Often little or no time is time is allotted for oral advocacy. Even if oral argument takes place, the judge or law clerks might not recall the argument or might not have paid attention, but they will still have the briefs to help them.

Lawyers write persuasive briefs by making them easy to understand. They should write for the decision maker, not for their client or for their adversary. They should consider the reader's needs. Judges are busy professionals: They need to be educated, they want to rule correctly, and they have no time to waste. Lawyers must make every word count by ensuring their briefs are organized and concise. Good briefs follow the twin pillars of persuasion: They make the court want to rule in the lawyer's favor, and they make it easy for the court to do so.

Good writing enhances lawyers' credibility. It shows that the lawyer took the case seriously, and so should the court. It also helps the court trust the lawyer. A court that finds the lawyer trustworthy is more likely to rule for the client.

Poorly written briefs create bad impressions, not only about the lawyer's forensic skills, but also about the client's case. Poor writing means losing. Poorly written briefs are long, boring, and lack coherence. Well-written briefs are clear, effective, and focused. Poor brief writing misses arguments and does not apply law to fact. Good brief writing is a martial art.

Here are ten pointers to guide lawyers in persuading the court through written advocacy.

Gerald Lebovitz

(1) *Argue the issues.* For briefs to persuade, lawyers should stress issues, not citations. An issue is an independent ground on which the relief sought can be granted if the reader agrees with the argument on that issue and disagrees with everything else. Lawyers should discard trivial issues. Unless the lawyer must preserve the record for appeal, the lawyer should winnow the argument to no more than three or four issues. Otherwise, the weaker issues will dilute the stronger. Lawyers should present their issues by strength, starting with the argument most likely to succeed. If they are unsure which argument is the strongest, they should pick the argument with the biggest relief for their clients. There are two exceptions to that rule. The first is when lawyers have a dispositive threshold issue — jurisdiction or statute of limitations. The threshold issue should become the first argument. The second is that lawyers must follow the order established by a statute or the factors articulated in a leading case.

After lawyers have explained their argument, they should address the other side's position to contradict it. They should begin with their argument, however, to show that they are right because they are right, not merely because the other side is wrong. Lawyers submitting opposition or response papers should not copy the way the other side ordered the issues. They should tell the court which issues they oppose but order them the way it works for their clients. Briefs should be written to persuade the court. Briefs are not meant to be law-journal articles, which give objective, neutral, and fuzzy exposés of the law, not hard-hitting reasons why one side should win and the other side should lose.

(2) *Be clear.* Lawyers must explain their point of view so that courts can understand them in their first read. Confusing briefs will frustrate judges, who might simply give up and rely on the other side's brief. To get their points across, lawyers should not assume that their readers agree with them. They should assume, instead, that their readers know nothing about the case. They should not write in a conclusory way. They must show; they must not tell. They show by describing people, places, and things. They must use concrete nouns and vigorous verbs and limit adjectives. For example, they do not say that the man was "very tall" but rather that the man was seven feet tall.

Lawyers should also state clearly and repeatedly what relief they seek. Clarity is more important than concision. Good briefs should never let two sentences pass without letting the reader know which side the lawyer represents, using emotional, policy-driven arguments without arguing emotionally. Lawyers should write directly, not indirectly. ("Justice is an important concept." *Becomes:* "This Court should reverse the conviction.") Lawyers should also always mention and argue the standard of review and the burden of proof. Doing so tells the court how to evaluate the arguments.

(3) *Be succinct and concise.* Lengthy briefs are boring; judges might not read or understand them. The best lawyers keep their briefs short and sweet. They delete the obvious and do not dwell on givens. One way to ensure succinctness is to establish a theme. Themes help lawyers explain that they are right, not just because of the law, but also because if their clients lose, the bad will prosper and the good will suffer. Lawyers should include every important and helpful authority, fact, and issue that supports their theme or which contradicts the other side's theme. They should exclude everything else. They should eliminate irrelevant dates, facts, people, places, and procedural history. They should not try to fit every possible argument into their briefs. They should stick to their stronger contentions. Weaker arguments will undermine their credibility and make the lawyer seem untrustworthy. They should also limit themselves to the case law that adds weight to an argument rather than those that add bulk and impress only non-lawyers.

Lawyers should also replace coordinating conjunctions with a period and start a new sentence. Doing so shortens the sentence and thus is concise, even though it might add text. They should not start a sentence with "in that." ("In that the judge's cousin was a litigant, the judge recused herself." *Becomes:* "The judge recused herself because her cousin was a litigant.") They should excise unneeded prepositions like "of" and delete the following metadiscourse, or wordy running starts: "in fact," "as a matter of fact," "the fact is that," or "given the fact that." Lawyers should also watch out for redundancies. ("Advance planning" *becomes* "planning.")

(4) *Be logical.* From the presentation of facts to the argument, structure is vital. Arguments should come naturally, without being interrupted. Lawyers must know

———————Continued On Page 14

Answers To Marital Quiz On Page 7

Question #1 - Does a provision in a separation agreement for the termination of maintenance in the case of "[t]he cohabitation of the wife with an unrelated adult for a period of sixty (60) substantially consecutive days," require sexual intimacy or creation of an economic unit?

Answer: In *Graev v.Graev*, 2008 NY Slip Op 07945, the Court of Appeals found that the word "Cohabitation" does not have a "plain" meaning in the separation agreement and sent the case back to the Supreme Court to determine what the parties intended "cohabitation" to mean.

Practice note: Define the word "cohabitation" in your separation agreement and stipulations of settlement.

Question #2 - In order to modify or set aside a separation agreement or a stipulation of settlement that has been incorporated into a judgment of divorce, but did not merge therein, are you required to bring a plenary action?

Answer: Yes, *Luisi v. Luisi*, 5 A.D.3d 398, 775 N.Y.S.2d 331 (2nd Dept. 2004)

Question #3 - Is a plenary action necessary in order to enforce the terms of a separation agreement or a stipulation of settlement that has been incorporated into a judgment of divorce, but did not merge therein?

Answer: No, *Luisi v. Luisi*, 5 A.D.3d 398, 775 N.Y.S.2d 331 (2nd Dept. 2004)

Question #4 - Under amendments to Treas. Reg. 1.152-4, which became effective July 2, 2008, who is entitled to the dependency exemption?

Answer: The custodial parent, who is defined as the parent with whom the child resides for the greater number of nights during the calendar year, Treas. Reg. § 152-4(d)(I).

Question #5 - Under amendments to Treas. Reg. 1.152-4, if the child resides with each parent for an equal number of nights during the calendar year, who is entitled to the dependency exemption?

Answer: The parent with the higher adjusted gross income for the calendar year would be treated as the custodial parent, Treas. Reg. §1.152-4(a).

Question # 6 - Since custody ends at 18, who is entitled to the dependency exemption for children 19 and older?

Answer: The parent who provides over half of that child's support, I.R.C. § 152(f)(1).

Question #7 - Can a dependency exemption be taken for a child over 21 years of age?

Answer: Yes, if the child is a student and has not attained the age of 24 at the close of the calendar year, I.R.C. § 152(c)(3)(A)(ii).

Question #8 - The father has custody of the parties' son. In calculating the mother's child support obligation, is her maintenance income from the father taken into consideration?

Answer: Yes, *Krukenkamp v. Krukenkamp* 54 A.D.3d 345; 862 N.Y.S. 2d 571 (2nd Dept. 2008).

Question #9 - If a settlement agreement, which was incorporated but not merged in a judgment of divorce, does not address the child's extracurricular activities, can the custodial parent obtain contribution from the other parent?

Answer: No, unless the custodial parent can show the agreement was unfair or inequitable at time entered, that an unanticipated and unreasonable change in circumstances occurred resulting in concomitant need or that the child's right to receive adequate support is not being met. *Handel v. Handel* 2008 N.Y. Slip Op. 06590 (2nd Dept.)

Question #10 - Defendant wife succeeds in having plaintiff husband's complaint for a divorce dismissed, is the court permitted to award defendant wife counsel fees?

Answer: Yes, *Cioclano v. Cioclano* 863 N.Y.S.2d 766 (2nd Dept. 2008).

Questions and answers 4, 5, 6 and 7 were derived from an article "Frumkes Tax Counsel" written by Melvyn B. Frumkes, Esq. from Miami Florida, for the American Academy of Matrimonial Lawyers.

Books At The Bar

Continued From Page 4

press, the right to assemble peaceably, and the right to petition the government. A chronology traces the First Amendment's historical antecedents and events in the development of its protections over the centuries.

The two volume set enables you to find content quickly and easily with multiple tables of contents and index tools. Alphabetical and topical tables of contents by subject and court case help readers locate material. Thorough subject and case indexes are provided along with a selected bibliography and listing of online resources.

The editors of this great work deserve recognition. **JOHN R. VILE** is professor of political science and dean of the University Honors College at Middle Tennessee State University. He is the author of numerous books, including A Companion to the United States Constitution and Its Amendments. Vile is a member of the board of the American Mock Trial Association, a recipient of the Congressman Neal Smith award for contributions to law-related education, and a 2008 inductee into the American Mock Trial Coaches Hall of Fame.

DAVID L. HUDSON JR., is a scholar at the First Amendment Center at Vanderbilt University. He teaches First Amendment classes at the Nashville School of Law and Vanderbilt Law School. Hudson is a contributing editor to the American Bar Association's Preview of United States Supreme Court Cases. He is the author or coauthor of twenty books and has been quoted on First Amendment issues in numerous media outlets, including The New York Times, The Washington Post, The Chicago Tribune and USA TODAY.

DAVID SCHULTZ is a professor in the School of Business at Hamline University and a senior fellow and professor in the Institute of Law and Politics at the University of Minnesota School of Law. He is the author of more than twenty-five books and seventy articles, including **The Encyclopedia of the United States Constitution** (2008) and **The Encyclopedia of the Supreme Court** (2005). He is a past vice president of the Texas and Minnesota chapters of the American Civil Liberties Union.

2. **LANDMARK DECISIONS OF THE UNITED STATES SUPREME COURT, 2nd Ed.**
Paul Finkelman and Melvin I. Urofsky
November 2007, 818 pages
Hardbound, ISBN 978-0-87289-409-9, $250.00

Landmark Decisions of the Supreme Court, Second Edition, published by the prestigious CQ Press, has been thoroughly updated with nearly 150 new cases added since the first edition in 2001. This acclaimed volume explores the historical context and constitutional perspective of 1,200 of the Supreme Court cases that have impacted the U.S. justice system and our society. *Landmark Decisions of the Supreme Court* features 65 new case summaries through the 2006-2007 Court term, along with 80 historical cases that did not appear in the original book, offering at least one case for every Supreme Court term since the end of the 18th century.

No other single volume on this topic has the scope and depth of coverage of *Landmark Decisions of the United States Supreme Cour*t. Case summaries are organized chronologically and include case name, citation, decision date, vote and vote alliances, author of the opinion of the Court, authors (and justices joining) of concurring and dissenting opinions. Each case is then explained and analyzed thoroughly, enabling the reader to understand both the litigant's and the Court's perspectives. The summaries also feature extensive case cross-referencing to illustrate the evolution of judicial decisions and their historical connections, and bibliographical references to facilitate further research.

Other helpful features include alphabetical lists of cases by decade, the text of the U.S. Constitution, a chronological table of Supreme Court nominations, a detailed record of membership changes on the Court, a historical seat chart of the justices, and a new insert of individual justice and sitting court photographs and illustrations. Case and subject indexes complete the volume.

This book would make a great holiday gift for a lawyer, judge, law student, and anyone desiring to go to law school or who has an interest in our judicial branch of government.

Its editors deserve acknowledgment. **PAUL FINKELMAN** is the President William McKinley Distinguished Professor of Law and Public Policy at Albany Law School. He is the author or editor of more than twenty-five books and reference volumes. His other works with CQ Press include *The Encyclopedia of American Political History* (2000), *Impeachable Offenses: A Documentary History from 1787 to the Present* (1999), and upcoming works on race, policy, and the law, and on Abraham Lincoln.

MELVIN I. UROFSKY is a professor of public policy and law at the Douglas Wilder School of Government and Public Affairs at Virginia Commonwealth University. He is the author or editor of more than two dozen books on constitutional law, Supreme Court history, and religious freedom. His other publications with CQ Press include *Biographical Encyclopedia of the Supreme Court* (2006), *The Public Debate over Controversial Supreme Court Decisions* (2006), and *100 Americans Making Constitutional History* (2004). Professor Urofsky is probably the leading expert on the life and writings of **LOUIS D. BRANDEIS**, the first Jew to serve as a Justice of the United States Supreme Court.

3. **THE U.S. CONSTITUTION A TO Z, SECOND EDITION**
July 2008, 693 pages
Hardbound, ISBN 978-0-87289-764-9, $85.00

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4. **THE DEVIL'S GENTLEMAN: PRIVILEGE, POISON, AND THE TRIAL THAT USHERED IN THE TWENTIETH CENTURY**
By Dr. Harold Schechter
Ballantine Books 2007
Hardcover, ISBN 978-0-345-47679-1, $27.50

JUSTICE SIDNEY F. STRAUSS not only has a First Class legal mind, but like the late **HONORABLE WILLIAM GLOVER** of Blessed Memory, is a scholarly jurist who comes to the Bench with a fine, broad, and far-ranging appreciation of history, world literature, the arts, and culture. I am in his debt for having brought to my attention **DR. HAROLD SCHECHTER'S** meticulously researched and brilliantly written book concerning one of the most sensational murder cases in New York's history. The book is a riveting account of the persons involved in the murder prosecution of handsome, athletic, society scamp Roland Molineux. Practitioners of criminal law will readily recall the "*Molineux* rule." Evidence of uncharged crimes is generally excluded based upon the human tendency more readily "to believe in the guilt of an accused person when it is known or suspected that he has previously committed a similar crime." Exceptions to this general rule of exclusion are recognized under the well-known *Molineux* rule, where the purpose of admission is to prove motive, intent, absence of mistake or accident, common scheme or plan embracing the commission of two or more related crimes such that proof of one tends to prove the other[s], and identity of the person charged. *People v. Molineux*, 168 N.Y. 264, 313 [1901].

As *People v. O.J. Simpson* was the most sensational case of the twentieth century, the three month trial of Roland Molineux was the most controversial American trial of the nineteenth century. Molineux was a person of fortune, born into a famous family. His father was a revered general during the Civil War. Dr. Schechter catches you by the throat as he skillfully narrates the facts, bringing them back to life.

This book is a fast and enjoyable read. One reason for its great readability is that the story was not told by a lawyer using legalese but by Dr. Schechter who is a Professor of English at Queens College. One word of caution: after reading the chilling account by Dr. Schechter, you will think twice before ingesting anything sent to you in the mail.

5. **I AM INNOCENT! - - *A Comprehensive Encyclopedic History of the World's Wrongly Convicted Persons***
By Jay Robert Nash
Da Capo Press 2008, 808 pages
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I have been practicing law for almost 30 years, and I can tell you that this book is one of the best five books on law and crime that you should ever purchase and read, not just in 2008, but ever!

In or about 1978, when I was starting my legal career in the prosecutor's office in Queens County, I asked, in my office, a police officer, with respect to the facts of a case, what had actually occurred. When I pressed for facts, his telling response was to ask me: "What would you like me to say?" At about the same time, during a tour of duty in the complaint room, I noted in the intake folder that the complainant noted that she would not be able to make a good identification at a lineup. I was later upbraided by a more senior prosecutor for "[having] created *Brady* material!" - - referring to the Supreme Court case that required production to defense counsel of exculpatory material. *Brady v. Maryland*, 373 US 83, 87 [1963] ["We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."].

When I was a boy, my late mother, in the event I was lost, instructed me that police officers are your best friend. Years later, I saw her distress when, after she gave money she found on the street that had been lost by someone, to two police officers, they did not return it to the woman who lost it, searching frantically a few minutes later for it, but pocketed it themselves! Where some rogue police officers lie, other bad apples arrest innocent persons on inadequate or no investigation.

"I AM INNOCENT!" - - the most recent acquisition to my library - - is a remarkable work. This inexpensive and supremely readable work chronicles how, from ancient times to the present, hate, revenge, lunacy, deception, greed, corruption, stupidity, and common error sent innocent persons to their fate. The next time you see and hear a panel of talking heads on CNN's "Larry King Live," for

Continued On Page 13

Foreclosures

Continued From Page 1

as the center of Judge Kaye's pilot project, the New York State Legislature and Governor Paterson enacted mortgage foreclosure legislation that would require all counties to create a program similar to that developed in Queens. The legislation directed the courts to hold mandatory conference in all cases that fit the legislative criteria, specifically that: the mortgages were subprime, high-cost or nontraditional loans; the mortgages were entered into during the period of January 1, 2003 through September 1, 2008 and the action was commenced after September 1, 2008; and the property involved was owner-occupied, residential, one-to-four family homes. Plaintiffs who commence actions after September 1, 2008 that fit the legislative criteria would be required to file a new foreclosure Request for Judicial Intervention, and a conference would be scheduled within sixty days from the date of filing. For those actions that were commenced prior to September 1, 2008 and for which a judgment of foreclosure has not been signed, the legislation permitted homeowners who fit the above legislative criteria to request a conference. The legislation also imposes a notice requirement on the banks, in that banks must send a notice of foreclosure to the homeowners at least 90 days prior to commencing a foreclosure action.

The first conferences were held in Queens County in October 2008. The conferences have been held in Courtroom 42A and were presided over by Court Attorney Referee Leonard Florio, with Justice Augustus C. Agate and Justice David Elliot as the presiding judges. During the conference, Referee Florio determines if the case fits the legislative criteria for a conference by asking the homeowner and bank a series of questions. If the matter does not fit the legislative criteria, the parties are directed to proceed with the litigation, but are encouraged to communicate and attempt to resolve the action before the assigned judge. If the matter does fit the legislative criteria, Referee Florio engages in extensive discussions with the parties, determining the possibility of reinstating the mortgage, renegotiating the terms of the mortgage, or alternatives that can assist the homeowner in alleviating the financial burden of the mortgage with the least amount of negative repercussions. The parties are required to bring any financial documents requested by the Court, which often include the loan reinstatement paperwork, prior mortgage documentation, and any paperwork reflecting the homeowner's current financial status.

Since October, 89 cases have been heard in the residential foreclosure conference part. However, in almost all of the cases the homeowner was not represented by counsel, creating significant difficulties for the parties and the court in trying to conference these cases. Further, despite the 90% default rate, the Office of the Self-Represented has begun seeing a significant increase in homeowners coming to court seeking guidance on impending foreclosure proceedings and requesting access to legal and housing services.

To that end, Queens Supreme Court encourages all attorneys to consider joining the Queens County Bar Association's Volunteer Lawyers Project. On Monday, December 15, 2008, the Queens County Bar Association will be holding a CLE training session for those attorneys who agree to represent homeowners in the residential foreclosure conference part. In return for the free CLE training, the attorneys must accept at least one client for representation. These attorneys will provide legal services such as assisting homeowners through the conferences, explaining the proceedings, gathering documentation to help the homeowner, determining any available legal defenses such as fraud, and trying to negotiate a resolution for homeowners. These services will result in more effective communication in the conference between the banks and the homeowners and hopefully positive resolutions of some of the foreclosure actions.

If you have any questions with regard to the Residential Foreclosure Part, please contact Dominic Ventiere, the Residential Foreclosure Conference Part case management coordinator, or Raymond Zawrotniak, senior court clerk, at 718-298-1092.

Books At The Bar

Continued From Page 12

example, ready to convict someone who was just arrested or indicted, reach for this book before rushing to judgment!

From Jay Robert Nash, a leading expert on the history of crime who has been called "America's Crime Expert" by Roger Ebert, comes a comprehensive account of history's famous trials that wrongly convicted the innocent. **"I AM INNOCENT!"** presents - - in annotated encyclopedic format and lively prose, accompanied by hundreds of illustrations - - every major criminal case in history involving wrongfully convicted persons. Here, true-crime buffs and lovers of history can find all the famously, or infamously, "innocent"- - from Mary, Queen of Scots to Alfred Dreyfus, from Leo Frank to the Scottsboro Boys, from Dr. Sam Sheppard to Anthony Porter, from Joan of Arc to Lindy Chamberlain - - as well as hundreds of other cases that have, until now, been lost in obscurity. Landmark cases, such as Sacco and Vanzetti, where wrongful convictions without exonerations occurred, are also included in this work.

For those of you who recall my column on the recent exhibit at Yeshiva University's excellent exhibition on the trial of Alfred Dreyfus, in the October 2007 issue of this paper, this book begins with that trial. The title of this book, **"I AM INNOCENT!,"** were the words shouted by poor Alfred Dreyfus, a Jewish captain in the French Army who was falsely accused of treason and whose actual innocence was known to France's top military leaders and Minister of War/Defense. Dreyfus, who was supremely loyal to France, was paraded and humiliated in a public spectacle following his court martial, as he kept shouting to journalists and to anyone who would listen, "I AM INNOCENT!" The scene is vividly depicted in the film "The Life of Emile Zola," the title of the movie referring to the famous author-journalist who sacrificed everything he owned to prove Dreyfus's innocence, in a climate that wanted to see Dreyfus put to death!

Incidentally for younger judges and lawyers who do not know the names of "Alfred Dreyfus" or "Emile Zola' - - and, sadly, I have encountered many, even among young Jewish lawyers!! - - and for parents who want to sensitize their children to fight for justice, I heartily recommend, in addition to buying this book, to purchase the DVD [released in February 2005, "Special Edition" DVD] of **"The Life of Emile Zola**." That movie, made by Warner Brothers in 1937, was the first biographical film to earn the Oscar for Best Picture of the Year. The film starred Paul Muni [1895-1967, born Meshilem Meier Weisenfreund], who was nominated 6 times for an Oscar for Best Actor in a Leading Role [and won the Oscar for "The Story of Louis Pasteur"] and Joseph Schildkraut, who won the Academy Award for Best Supporting Actor for his memorable portrayal of Alfred Dreyfus.

I thoroughly enjoyed the organization of "I AM INNOCENT!" The travesties of justice are well-organized by categories. Consider some of the chapter headings from the Table of Contents: Insufficient Evidence, Conviction by Coercion, Mistaken Identity, False Confessions, Railroading and Framing, Perjured Testimony, and Crimes That Never Happened, among others.

"I AM INNOCENT!" contains nearly 1,200 cases, as well as a comprehensive glossary of legal and law enforcement terms; a list of movies based on wrongly convicted individuals; an extensive chronology and bibliography; and a cross-referenced index. This is the first complete collection of history's "innocents"- - and their trials and tribulations.

Jay Robert Nash, the author**,** is widely recognized as one of the world's foremost historians, biographers, and encyclopedists, called "the dean of American crime writers" by the *Chicago Tribune*. He has authored more than seventy single-volume trade and multi-volume reference works, including *The Motion Picture Guide* and the highly acclaimed *Encyclopedia of World Crime*. He is the only author to receive four Best Reference citations from the American Library Association. He has worked as a reporter, columnist, editor, and publisher in newspapers and magazines, and is a longtime resident of Chicago.

The next time one of your friends and neighbors, provoked by a sensational headline, starts howling for the death penalty or railing against the great writ of habeas corpus, give them a copy of this book. Its contents should send a chill down the spine of any person with an ounce of humanity. Perhaps the person indicted by the media, whether it be a headline in *The New York Post* or a panel discussion on "Larry King Live," may actually be **INNOCENT**!

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Write To Win

Continued From Page 11

their goal — what their client seeks — to communicate logically. Judges should be able easily to travel from point to point and to the final conclusions. Lawyers who present their arguments illogically, jumping from issue to issue, will lose the court's attention. Lawyers should start each paragraph with a topic or transition sentence. A topic sentence introduces what is going to be discussed in the paragraph. A transition sentence connects the end of one paragraph to the start of the next paragraph by linking or repeating a word or concept. The best writing does not rely on conjunctive adverbs like "additionally," "along the same lines," "however," or "moreover" to transition from one sentence to the next. If the logic and movement of the ideas are clear, those transitional conjunctions will not be needed. Lawyers should also end their paragraphs with a thesis sentence that summarizes and answers the topic sentence. Each sentence must relate to the next, to the one before it, to the topic sentence, and to the thesis sentence.

Lawyers should also avoid logical fallacies. A fallacy is an invalid way of reasoning; it leads to incorrect conclusions. For example, the post hoc fallacy assumes that because one thing happens after something else, the first caused the second. Example: "Every time I tell my colleagues that I am going to win a trial, I lose." The fallacy is that if the person does not tell colleagues they are going to win the trial, they will win. Rather, the brief should rely on syllogisms and move the reader from the general to the particular.

(5) *Be precise.* Lawyers should write precise arguments supported by precise citations. Correct pinpoint citations are persuasive. They build lawyers' credibility by showing the integrity of their research and analysis. They also make it easy for the reader to find the point in a lengthy case or secondary authority. Not using pinpoint citations suggests that the citation might not stand for the position the lawyer is asserting. Lawyers should also cite adverse case-law precedent and statutory authority. Doing so offers an opportunity to explain why the authority is unpersuasive or not on point.

Lawyers should avoid string citing; string citations are not useful or impressive except when necessary to understand authority or a split in authority. They should also limit quotations to those written better then the lawyers could write them and use block quotations only for the essential part of seminal cases, statutes, and contracts. Instead of block quoting, lawyers should summarize the law in their own words. Block quotations will be skipped. If the quotations are important enough, lawyers should first explain why they are being quoted by explaining what the reader will get from reading them. They should also use ellipsis and square brackets to shorten long quotations through omissions and alterations.

Lawyers should not write in generalities, using cowardly words like "generally," "typically," or "usually," unless the lawyer wants to reader to reach an exception, and in that case the lawyer should give the rule first, then the exception.

Lawyers should always cite the record. Accurate and precise references to the record add credibility to the client's claims. When writing for New York courts, lawyers should follow the citation rules in the New York Law Reports Style Manual (Tanbook) (available on PDF online; download from http://www.courts.state.ny.us/reporter/NYStyleMan2007.pdf). When writing for a federal court, lawyers should use the Bluebook, now in its eighteenth edition.

(6) *Be simple.* Simple arguments are winning arguments. Sentences should be short and declarative. Sentences with more than 25 words are hard to digest. Each sentence should contain one thought and about 15-18 words, with some variety. A paragraph should rarely be longer than six sentences or two-thirds of a page (double space) and one large thought. What is stated simply is easy to understand. Briefs are no exception to that rule. Lawyers should use plain English; no Latin or foreign words. They should replace Latin terms with English equivalents. For example, "Ergo" *becomes* "therefore." They should also eliminate all legalisms. ("Enclosed herewith is my brief." *Becomes:* "Enclosed is my brief.") They should limit adverbs like "absolutely," "clearly," or "obviously." They incite people to disagree with you and suggest that those who disagree with you are stupid.

Writing should not be pompous. Lawyers should prefer simple, short, Anglo-Saxon words to complex and long words: "Ameliorate" *becomes* "improve" or "get better." They should keep it simple but still formal; writing is planned, formal speech. They should not use abbreviations: "i.e.," "e.g.," "re," "etc.," and "N.B." They should not use contractions like "aren't," "couldn't," or "you're." They should also define as acronyms terms and nouns they will use again. Example: Department of Housing Preservation and Development (DHPD).

Writing must grammatical and simple. Lawyers should not confound their reader by using nominalizations — converting verbs to nouns. ("They gave a description of the motion." *Becomes:* "They described the motion.") They should not confuse by using the passive voice or the double passive voice. (Double passive voice: "The brief was written." Passive voice: "The brief was written by the lawyer." *Becomes:* "The lawyer wrote the brief.") They should refer to the parties by name so that the judges need not check the title of the proceeding to know whom the lawyers are writing about. Subjects should go next to their predicates. ("The motion of the petitioner seeking summary judgment should be granted." *Becomes:* "This Court should grant petitioner's motion for summary judgment.") Modifiers should go next to the word or phrase they modify. ("I threw the lawyer down the stairs a motion" *Becomes:* "I threw the motion down the stairs to the lawyer.") Briefs should be easy to follow: Lawyers should not write fiction novels with complicated plots or drive readers to a dictionary.

(7) *Be organized.* Lawyers should start the process of writing a brief by outlining their argument section using the CRARC method, an IRAC-variant that stands for Conclusion, Rule, Analysis, Rebuttal and Refutation, and Conclusion. In the first Conclusion section, lawyers should state the issue in persuasive terms. In the Rule section, they should state their points from the strongest to the weakest. After each rule, they should cite the authority from the strongest to the weakest and from the most binding down. In the Analysis section, lawyers should apply the law to the facts of the case. In the Rebuttal and Refutation section, they should state the other side's position honestly and refute it persuasively. Discussing the other side's factual and legal arguments builds credibility because it shows the court they are not trying to hide anything. Doing so also offers the opportunity to demolish the other side's position. In the second Conclusion section, lawyers should state the relief they seek on the issues they argued in the first Conclusion section. CRARC allows lawyers to present their arguments in the shape of a funnel or an inverted pyramid. Arguments should go from general (the conclusion) to specific (the details). Getting to the point fast gives judges the conclusion in case they do not read further. Being organized is important in written advocacy because lawyers should not repeat themselves. They should say it once, all in one place.

Lawyers should also use headings and subheadings that summarize essential factual and legal argument. They should use roman numerals for their point headings (I., II. III.) and letters for subheadings (A., B., C.). Headings and subheadings should be one sentence long. They must be concise, descriptive, and short. The point headings in a brief should answer the Questions Presented. Lawyers should not use too many headings; they will break up the text too much. But too few headings will make the document disorganized. To see whether there are enough headings, lawyers should read the table of contents, which should be composed of all the headings: The argument should reveal itself in the table of contents.

(8) *Presentation.* Presentation always counts. Most courts have rules on how legal documents should be drafted and what they must include. Cheating on small procedural rules involving page limitations, table of contents, fonts, paper color, or spacing make the brief unpersuasive. It suggests that if the lawyers are willing to cheat on small rules, they might also lie about the record or neglect to cite controlling authority. Lawyers should also create briefs that are pleasant for the eyes. They should keep plenty of readable, white space on every page. Margins should measure at least one inch, up to 1.25 inches, on the bottoms sides, and top. All paragraphs should be indented one tab from the margin. Documents should be typed in Word or WordPerfect but not both; combining the two destroys proper formatting.

Lawyers should choose one font — preferably Times New Roman, 12-point type — and stick to it. They should italicize case names; italics are easier to read than underlining. Lawyers should never bold, italicize, underline, capitalize, or use exclamation points or quotation marks to emphasize or show sarcasm. They should also number each page (but should suppress the first page) and paragraph in an affirmation or affidavit. Lawyers should make their briefs visually appealing. For trial briefs, they should attach the leading cases they cited and highlight the relevant text in the attachment. They can also attach maps, charts, diagrams, photographs, and tables. Exhibits convey information more effectively than text.

(9) *Be ethical.* Lawyers win through professionalism. Being ethical in written advocacy means being fair and accurate. Lawyers who engage in personal attacks in their briefs distract the court from the important issues. Lawyers should not use terms like "absurd," "disingenuous," or "preposterous." They give the impression they are hiding a weakness. They should never exaggerate or overstate. Understating shows not only integrity but also persuades because doing so stresses content, not the writing or the writer. Ethics also demands gender neutrality in writing. Non-gender-neutral writing is discrimination in print, and gender neutral writing allows the reader to focus on content, not style, and thus does not distract from the message. (*Not:* "A perfectionist likes her briefs to be perfect." *Also not:* "A perfectionist likes their briefs to be perfect." *Also not:* "A perfectionist likes his or her briefs to be perfect." *Correct:* "A perfectionist likes perfect briefs." (Making the antecedent neutral.) *Also correct:* "Perfectionists like their briefs to be perfect." (Making the subject plural.))

Lawyers win by stating the facts accurately and then by providing strong explanations and evidence to prove their conclusions. Lawyers should not obsess over accuracy. Obsessing leads to adding irrelevant details, brings about writer's block, and causes documents to be submitted late. Lawyers should not mislead by misrepresenting legal authority, misquoting, or mischaracterizing the record. They should also adopt a tone of deference and respect toward the court by using words like "should" rather than "must."

(10) *Review the brief.* Writing a persuasive brief takes time and effort. Lawyers should not believe they are done after their first draft. Editing is essential to writing. Lawyers' work will not be taken seriously if it has grammar, punctuation, or spelling errors. Typos distract from the substance of the writing and make lawyers appear unprofessional. The solution is to proofread. Lawyers should review their arguments to make them efficient; they should take out anything unnecessary and rewrite anything unclear. Lawyers should also watch out for negatives words like "except," "hardly," "neither," "not," "never," "nor," "provided that," and "unless." For example, "Good lawyers do not write in the negative." *Becomes:* "Good lawyers write in the positive."

Lawyers should ask a competent editor unfamiliar with the case to read the brief to make sure that the brief is easily understood. Lawyers can also set the brief aside for a few days, if they have time, and then read it again. That will give them a new perspective and allow them to catch mistakes. Lawyers, who should start writing early but edit late, should also keep their research available and updated and should throw nothing away until the case is over to avoid redoing research and wasting time. Lawyers should also keep a back-up copy of their briefs to avoid the panic of losing their work.

Persuading the court through writing is hard, but a well-written brief puts lawyers a step ahead of their adversary in the martial art that is persuasive brief writing. When writing a brief, lawyers should always keep judges in mind. They should put themselves in their shoes and ask themselves what would convince them. They should never underestimate the importance of effective analysis — both to the client and, in our adversary system, to the administration of justice.

Gerald Lebovits is a judge of the New York City Civil Court, Housing Part, in Manhattan and an adjunct professor at St. John's University School of Law in Queens, New York, where he teaches trial and appellate advocacy. Judge Lebovits thanks Amélie Plouffe Deschamps, a law student from the University of Ottawa, Civil Law Section, his alma mater, for her research help.

Saturday Morning

Continued From Page 10 ———
revealing confidential communications and failing to adequately protect and advance the interests of his client, Raul Santiago.

Bob wasn't worried about the grievance, but it was another embarrassment and would require a good deal of his time to answer. The following Saturday, Bob decided that it was time to get back to the office on weekends. He had gotten used to a five day per week work week, but somehow, somehow, he missed the solitude of early Saturday mornings at the office and how much work he was able to accomplish then. He arrived just as the fire trucks were pulling up. The office was pretty much a total loss, including most of his files. Fire marshals concluded that the fire was "suspicious", but never managed to resolve the issue of causation. He would never know for sure, but the thought that Raul Santiago would have liked to have witnessed the devastation would never leave him. He thought, "Losing criminal cases can sometimes mean more than just losing criminal cases."

Editor's Note: Stephen J. Singer is a Past President of the Queens County Bar Association, Co-Chair of the Criminal Court Committee and a partner in the firm Sparrow, Singer and Schreiber.