



ESTATES UPDATE

BY DAVID N. ADLER

The year in Trusts and Estates was highlighted by the implementation of new estate and gift tax rules, greater options for the creation of new trusts, and continued participation by the Surrogate's Court in Bar Association Activities

I) FEDERAL TAXATION

As of December, 2010, the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act seriously modified tax consequences of estates for the years 2011 and 2012. For those years the exemption equivalent is set at \$5,000,000 and indexed for inflation. As such, all estates worth less than \$5,000,000 have no Federal Tax consequences. Further, the top tax rate is 35%, a marked lowering of the top tax rate of prior years.

For assets owned by an individual at death, the step up in basis was reinstituted. Thus, for purposes of computation of capital gains on a particular asset, the basis upon which such gain is computed shall be its fair market value as of the date of death. This basically wipes away any and all gains occurring between acquisition of that asset and death.

II) GIFT TAXATION

The gift tax lifetime exemption was reunified with the estate tax lifetime exemption, and set at \$5,000,000, also adjusted for inflation. Thus, lifetime transfers provide the same numerical tax free benefit as do testamentary transfers, subject to the unified cap. The new exemption also remains subject to prior gifts, in that any amount of the gift tax exemption utilized previously shall be deducted from the present lifetime exemption. As an example, if one utilized \$500,000 of his gift tax exemption prior to 2011, his present available exemption is now \$4,500,000.

Further, the gift tax annual exclusion of \$13,000 per person per year was preserved. This is an often neglected planning tool. For example, a married couple can pass \$26,000 to any individual every year completely free of gift tax, and not chargeable to any lifetime exemption. When dealing with chil-



David N. Adler

dren and grandchildren as donees, the amount transferred over a period of years can be significant.

Finally, the generation skipping tax exemption amount, applying to transfers to individuals 2 or more generations younger than the transferor (ie grandchildren), was also set at \$5,000,000. This comprises an entire second level of taxation and is often addressed in large estates.

III) PORTABILITY

A unique aspect of the new law consists in the fact that any unused portion of a spouse's exemption amount, may be utilized by the surviving spouse. This approach mirrors one facet of the traditional by-pass trust. In the event that spouse #1 (first spouse to die) only utilizes \$2,000,000 of his exemption equivalent (estate/gift), the surviving spouse would be able to utilize \$8,000,000 of exemption equivalents (her own \$5,000,000 plus the unused \$3,000,000 from spouse #1). Portability must be formally elected by the executor on the deceased spouse's estate tax return (form 706). Such election must occur even if no estate tax is due on the deceased spouse's estate.

IV) NEW YORK STATE

New York State has not altered its estate tax thresholds in many years. The New York exemption equivalent (state credit) is \$1,000,000. As such, many estates will be required to pay New York estate taxes and file a New York estate tax return, but not a federal estate tax return. The State tax rates are significantly lower than federal rates and are capped out at 16%. As a practical matter, the New York estate tax return (ET-706) essentially requires the preparation and annexation of the federal estate tax return, as part of its return, even if the federal return is not itself required to be filed.

Kindly note that all the above federal taxation laws only operate until December 2012. It is widely anticipated that the exemption equivalents, and tax rates will change by 2013. If is therefore prudent for all tax planners to maintain flexibility in their options, conduct ongoing and frequent document review,

Continued On Page 8

QVLP Wins NYSBA Award

BY MARK WELIKY*



Mark Weliky

The Queens County Bar Association's Volunteer Lawyers Project has been named the recipient of the New York State Bar Association's (NYSBA) 2012 Angelo T. Cometa Award. The award is in recognition of its significant community outreach and free legal services in various areas of civil law.

The award, sponsored by NYSBA's Committee on Lawyer Referral Service, annually recognizes individuals or groups in New York that demonstrate an extraordinary commitment toward advancing the goals of the State Bar's Lawyer Referral and Information Service (LRIS), which is a program that helps coordinate a lawyer referral and information system, as well as provides the public with information about available legal services. Named after NYSBA past President Angelo T. Cometa, the award will be presented on March 30th at the State Bar's House of Delegates Dinner in Buffalo. QCBA past President and QVLP board member, David L. Cohen will accept the award on behalf of the project.

The committee recognized QVLP for its Foreclosure Prevention Program, CLARO-Queens Consumer Debt and for the various other areas of civil law which free legal assistance is provided for, such as landlord-tenant matters, uncontested divorce, Family Court matters and the drafting/execution of wills and ancillary documents. The vast majority of the legal assistance

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Non-compete Agreements

BY RICHARD H. APAT

The phone rings and your client tells you he has been served with a summons and complaint alleging he has violated a non-compete agreement he had with his former employer. Most employees unless they are at the higher levels of compensation will not seek private counsel to review these agreements before signing them. Unfortunately your client did not understand the implications of the agreement when signing it and did not consult counsel when starting a new job with a competing company or opening their own company.

Even agreements which seem clear and unambiguous can often be subject to varying interpretation based upon the industry involved, whether or not trade secrets are involved, whether confidential customer lists are really confidential and whether or not

activity your client has engaged in was actually prohibited by the agreement.

More often than not, we see these agreements at the litigation stage when the facts have already transpired. In today's electronic age, transactions are often documented by e-mails and other forms of electronic media and communication.

Many of these cases are litigated in Federal District Court, however in both District Court as well as in State Court. Most of these agreements provide for injunctive relief if violated. The requirements for a preliminary injunction are: 1) a likelihood of ultimate success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) a balancing of equities in favor of the movant's position (see *Family-Friendly*



Richard H. Apat

Media, Inc. v. Recorder Tel. Network, 74 A.D.3d 738, 739, 903 N.Y.S.2d 80; *Glorious Temple Church of God in Christ v. Dean Holding Corp.*, 35 A.D.3d 806, 807, 828 N.Y.S.2d 442). "A party seeking the drastic remedy of a preliminary injunction must establish a clear right to that relief under the law and the undisputed facts" (*Omakaze Sushi Rest., Inc. v. Ngan Kam Lee*, 57 A.D.3d 497, 497, 868 N.Y.S.2d 726). *Radiology Associates of Poughkeepsie, PLLC v. Drocea*, 87 A.D.3d 1121, 930 N.Y.S.2d 594, 2011

Another complicating factor in this litigation is that the employer often times makes the case personal and pursues the case beyond what they are entitled to just for the purpose of hurting the former employee who they feel has betrayed

their trust. Given the fact that the employer usually has far superior resources and that this type of litigation has many forms of disclosure available, (notices to admit, notices for document production, interrogatory demands, bills of particular etc.) it is very easy for the employer to try and crush their opponent. Representing a client in this position, who is facing the stress of this litigation can be challenging. The client must know they are in good hands and reminded on a regular basis what to expect in these cases.

In future articles on this topic we will explore the law related to this area, practical suggestions and techniques for discovery, depositions, trial preparation and the actual trial.

Editor's Note: Richard H. Apat is a partner in the firm of Pearlman, Apat, Futterman, Sirotkin & Seinfeld, LLP, with offices in Kew Gardens, New York and Hicksville.

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THE DOCKET . . .

being the official notice of the meetings and programs listed below, which, unless otherwise noted, will be held at the Bar Association Building, 90-35 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.

CLE Seminar & Event Listing

March 2012

Tuesday, March 6	New Image and E-Verify Systems at St. John’s Law School
Tuesday, March 13	Commercial Leasing
Wednesday, March 14	Basic Criminal Law - Pt 1
Monday, March 19	Stated Meeting - Social Media in Your Law Practice
Wednesday, March 21	Basic Criminal Law - Pt 2
Tuesday, March 27	Article 81/Guardianship Training for the Layperson - 2:30-5:00 pm

April 2012

Friday, April 6	Good Friday - Office Closed
Monday, April 16	Judiciary, Past Presidents & Golden Jubilarians Night
Wednesday, April 18	Equitable Distribution Update
Sunday, April 29	ARTorneys Art Show at Queens College 3:00-6:00 pm

May 2012

Thursday, May 3	Annual Dinner & Installation of Officers
Tuesday, May 15	CPLR Update Seminar
Thursday, May 17	Matrimonial Law CLE

CLE Dates to be Announced

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Elder Law
Insurance
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SCHOLARSHIP FUND

Dear Member:

The Queens County Bar Association’s Scholarship Fund was created in 2005 to offer financial assistance to law students who are residents of Queens County or who attend law school in Queens County.

The recipients of the QCBA Scholarship are carefully chosen based on academic achievement, community service and financial need and is awarded at the Annual Dinner in May.

I know that times are hard, but I would hope that you could donate to this worthwhile purpose and your tax deductible donation (of any amount) will help to support and recognize those deserving law students who provide community service to the residents of Queens County. It also enhances the good name of our Association.

As President of the Queens County Bar Association, I thank you for your support of this valuable community-based program.

Sincerely,

RICHARD M. GUTIERREZ
President

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PRESIDENT'S MESSAGE

Before I begin my message, I would like to apologize to our members for the late delivery of the Bar Bulletin during my term. Unfortunately, the printer of the publication, despite repeated requests from the Association, failed to timely print the articles submitted to it. As a result each issue of the bulletin has been delivered late. In addition, the Annual Bar directory that you traditionally receive in January has not yet been printed.

I am bringing this problem to your attention with the hope that your suggestions or recommendations can help the Association resolve this matter. Perhaps, you have some ideas that you can offer so that my successor will not have to deal with this problem. Please contact the Bar with any thoughts or ideas.

At the end of January 2012, I attended a conference at the Annual meeting of the New York State Bar Association, in New York City. This conference, called the Presidential Summit, addressed two significant topics that affect the practice of law in our country. The topic I will discuss is the impact of recent budget cuts on the administration of justice in the New York State Courts.

In Queens County and in other coun-

ties throughout the state, the impact of the reduction in funding for New York State Courts has been harmful and widespread. Beginning in 2011-2012, budget cuts have limited courthouse hours, reduced the workforce of non-judicial personnel and caused the judicial system to be less efficient and effective. Consequently the administration of justice for both routine and urgent matters has suffered.

Recently, while on trial in a civil matter it took two days to complete jury selection. In the past it would have taken one day to complete this process but due to the reduced courthouse hours it now takes longer.

Additionally, the budget cuts have caused a reduction in the resources of the jury system, which negatively impact on jurors, attorneys and litigants.

While at the Presidential summit, the statewide effect of the budget cuts in the court system were discussed. A Report of the Executive Committee of the New York State Bar Association was provided to all attendees. In this report information was gathered by the Vice Presidents of



Rihard M. Gutierrez

each of the thirteen Judicial Districts regarding the impact of the budget cuts in their respective counties. The data for this report was obtained by use of a survey and it dramatically indicates that the efficiency and expediency of the administration of justice has been substantially and negatively affected due to a lack of funding.

I am sure most of you have experienced delays in courthouse operations that have been caused by either a reduction of staff or shorter court days. Unfortunately, in either circumstance your practice has felt the repercussions.

Another factor affecting the administration of justice is the reduction in the number of judicial hearing officers utilized by the court system. Their help in moving calendars and reducing the volume of cases being determined by one judge is sorely missed.

Also the stress of reduced funding has limited the court's ability to effectively provide justice to the poor. One example is the limited access to small claims courts which is now in session only once a month in most counties.

Moreover, the responsibility of the judiciary to protect and serve the public has also been negatively affected due to a lack of funding.

During this summit, many potential solutions were suggested to ameliorate the detrimental consequences of the budget cuts. One speaker recommended that a nominal filing fee be charged in Family Court to generate income and discourage revenge litigation. While another speaker suggested the elimination of the town court system in favor of a regional system staffed by professional judges and attorneys. Hopefully, these suggestions and others will be implemented by the court system to alleviate the impact on the administration of justice throughout the State.

Our system of justice must continue to display to the public a sense of confidence and demonstrate that the true administration of justice is the firmest pillar of good government.

Finally, I want to congratulate Justices Timothy J. Dufficy, Rudolph E. Greco, Jr. and Pam Jackman Brown on their ascension to the Supreme Court of the State of New York. Good luck as you embark on a new phase in your career.

HISTORY CORNER

WILLIAM H. SEWARD AND THE INSANITY DEFENSE

*A lawyer without history or literature is a mechanic,
a mere working mason; if he possesses some knowledge
of these, he may venture to call himself an architect.*

-- Sir Walter Scott

BY STEPHEN DAVID FINK

Most of us are familiar with the name William Seward. He was a prominent New

York State politician for a large portion of the 19th century. He was Secretary of State under President Lincoln after being one of his "rivals" for the 1860 Presidential election. Seward also served under President Andrew Johnson and was instrumental in the purchase of Alaska from Russia – the so called "Seward's folly."

However what you (probably) did not know about was Seward's involvement in one of the first New York State trials to utilize the insanity defense.¹

The trial of William Freeman

Enter the case of William Freeman.

Freeman was a young man of African and Native American descent. At the age of 16 he had been arrested and sentenced to 5 years of hard labor for the theft of a horse. In jail he was beaten by a guard on the head with a piece of lumber. This left him nearly deaf and with brain damage. However, he was eventually released when his innocence was proven.

However, the man who came out of prison was different from what he had once been. In addition to the loss of his hearing he seemed slow of wit and had a constant vacant smile. He reportedly told his brother-in-law that someone had to pay for what had happened to him.

In March of 1846 (about 6 months after his release) a wealthy farmer and his family were brutally murdered outside of

Auburn, New York. Once again Freeman was arrested and identified by a surviving witness to the attack. While Freeman was being brought to the county jail an angry mob actually tried to lynch him.

It is at this point that William H. Seward came into the case. He had heard of the arrest and after visiting Freeman in jail, agreed to represent him. The brutality of the killings and Freeman's bizarre behavior following his capture led to questions about the defendant's mental health.

Accordingly, Seward raised the insanity defense at the threshold of the criminal proceeding. A battle of "experts" began with a parade of doctors who worked at mental institutions testifying for each side. This was followed by various Auburn residents testifying as to the difference in Freeman before and after his earlier incarceration. Other witnesses, including a minister and a Sunday school teacher also gave their opinions as to his mental health.

All of this was done before a jury. It returned a verdict that Freeman was "sufficiently sane to stand trial." This rather vague result was challenged, but the judge ordered the trial to continue.

Certainly the general public was convinced of Freeman's guilt. The reader must understand the mentality of pre-Civil War New York. Slavery had only been abolished on July 4, 1827.²

Seward was vilified by the Auburn community for his representation of Freeman. On the day the trial began his fellow Auburn residents burned Seward in effigy.

Tensions were so high that the local district attorney deferred prosecution to New York State Attorney General John Van Buren, son of the former President.³

During the trial the prosecution's experts argued that Freeman was perfectly sane. In fact, it was claimed that his slow speech and erratic behavior were due to his descent from African slaves and "savage" Indians. Seward contested this by submitting proof of the history of insanity in the Freeman family tree.

While a mob gathered outside the Courthouse the jury deliberated. It had little choice but to return a guilty verdict. Yet, on appeal the conviction was reversed with the Appellate Court noting that the preliminary finding of the jury as to insanity was defective and did not properly reach the point in issue.

Unfortunately it was too late for Freeman. He had died in jail on August 21, 1847. An autopsy showed that he suffered from advanced brain deterioration.

Seward's gallant defense is forgotten by most of us but is still honored by a plaque in front of the Courthouse. It reads:

"In 1846, William H. Seward in Cayuga County Court House defended a man accused of murder and based his plea on the unprecedented grounds of insanity. Although scorned and humiliated by many for his stand at the time, history has since vindicated him as a man of principle, courage and foresight."

For further reading see, The William Freeman Murder Trial: Insanity, Politics, and Race, by Andrew W. Arpey.

The Insanity Defense Today

While few of us will ever try a murder case, most recall hearing of the 1843 Daniel M'Naghten case, in England's House of Lords. The defendant was

acquitted of the homicide of Edward Drummond who he thought was the British Prime Minister Robert Peel.⁴ The rule set by the panel of judges was, that at the time of the commission of the criminal act due to severe mental disease or defect, the defendant was unable to appreciate the nature and quality of wrongness of his acts. "The party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it that he did not know he was doing what was wrong."

New York has acknowledged the importance of the M'Naghten rule. It has been codified to some extent in Section 40.15 of the Penal Law.

It is the defendant who needs to raise insanity as an affirmative defense. The burden of proof is a "preponderance of evidence" as per Section 25.00(2) of the Penal Law.

In an expansion of the M'Naghten rule, the defendant must show a lack of "substantial capacity" rather than the total impairment as previously required.

None of this relieves the People of the burden of proving the various elements of the offense charged, particularly "culpable mental state" as per Section 15.00(6) of The Penal Law.

1. For a history of the insanity defense see: http://en.wikipedia.org/wiki/Insanity_defense

2. The history of slavery in the North is a particularly interesting topic but not for this article. The reader is referred to www.slaveryinamerica.org

3. John Van Buren is another interesting individual. See, http://en.wikipedia.org/wiki/John_Van_Buren.

4. For a full copy of the decision see: <http://wings.buffalo.edu/law/bclc/web/mnaghten.htm>

EDITOR'S NOTE

The Two Most Important Legal Books of the 21st Century (So Far)

BY PAUL E. KERSON

So, our new century is now an even dozen years old. For those of us who have been around for awhile, this is a little hard to believe. But there it is. So how has our legal system been holding up in this new century?

Two very important books give us the answer.

On the criminal side, there is Ted Conover's masterpiece, *Newjack* – *Guarding Sing Sing*, Random House, New York 2000. Ted was a journalist who took the New York State Civil Service test to become a Correction Officer. He did this with the specific purpose of writing a book about an American prison.

Even for those of us with decades of experience in the Criminal Justice System, *Newjack* is a shocker.

Here is Ted's graphic description of the New York State Department of Corrections and Community Supervision's (DOCCS) "Special Housing Unit" (SHU), otherwise known as "solitary confinement" or "the Box":

"Officially, the dark squat building was the Special Housing Unit, abbreviated SHU and pronounced *shoe*. But officers

called it the Box. It was solitary Confinement, a place of punishment within a place of punishment...

Half the inmates in the Box, it turned out – all thirty on the upper floor – were not disciplinary cases but men under protective custody, of which there were two kinds. Those who had asked to be protected were rats or rape or slicing victims who had identified their assailants – people who had enemies and, if left in the general population, might reasonably be expected to be hurt or killed." (Conover, page 126-127).

Let's give this scene an 8th Amendment analysis and see if it stands up: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

1. "Rape Victims" – Since when is rape permitted under the 8th Amendment in an institution under absolute armed State Control?

2. "Slicing Victims" – Since when is "slicing" (violent stabbing) permitted under the 8th Amendment in an institution under absolute armed State Control?



Paul E. Kerson

3. "Might reasonably be expected to be hurt or killed" – Since when is violent harm and violent death permitted under the 8th Amendment in an institution under absolute armed State Control?

Where have we gone wrong? What can be done about it? Can any judge, justice, prosecutor or criminal defense attorney ever send any fellow human being into DOCCS "care, custody and control" in good conscience? And how about the oath we all took to "preserve, protect and defend" the Constitution of the United States, which, the last time I looked, included the 8th Amendment?

And how about DOCCS itself? How can anyone work there, knowing what Ted Conover has told us (and what we all knew anyway, but do not like to think about).

Solution: DOCCS should not be run by "professional" prison administrators. DOCCS should be run by SUNY (the State University of New York) and CUNY (the City University of New York). DOCCS is all about young men (and some young women), and **correcting** whatever it was that caused them to be convicted and sentenced. DOCCS is about preparing its

charges for their ultimate release back into our cities, counties and towns.

In this respect, DOCCS mission is the same as SUNY's and CUNY's – the preparation of young people for the rest of their lives. I daresay SUNY and CUNY know how to do this far better than DOCCS. Let SUNY and CUNY run DOCCS – SUNY and CUNY, with their world-renowned Psychology Departments, Medical School Psychiatry Departments and Schools of Social Work. Only then will we live up to the Constitutional standards we all swore to uphold.

Our Governor in Albany should appoint the President of SUNY and the President of CUNY as the Co-Commissioners of DOCCS. Our State Legislature in Albany should redefine the job of the DOCCS Co-Commissioners to include the re-education of every DOCCS prisoner such that he or she is sufficiently educated to re-enter our cities, counties and towns as a working, productive and proud citizen upon release.

* * * * *

As important as Ted Conover's book is on the criminal side, we are all indebted to Prof. Jay M. Feinman of the Rutgers University Law School for his first rate study of the civil side; *Delay, Deny*, _____ *Continued On Page 5*

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LETTER TO THE EDITOR

Dear Paul,

I very much enjoyed reading “The Ethical Roots of our Profession” in the latest edition of the Queens Bar Bulletin. In reading about Donne, Rabbi Hertz and Debs (“WEVD”), I could not help but thinking of Tom Joad, he of the Oklahoma dust bowl and the frantic migration to California, he spawned from the unfettered imagination of John Steinbeck, he of the collective us:

“I’ll be all around in the dark. I’ll be ever’-where - wherever you can look.

Wherever there’s a fight so hungry people can eat, I’ll be there. Wherever there’s a cop beatin’ up a guy, I’ll be there. I’ll be in the way guys yell when they’re mad - I’ll be in the way kids laugh when they’re hungry an’ they know supper’s ready. An’ when the people are eatin’ the stuff they raise, and livin’ in the houses they build - I’ll be there, too.”

So Steinbeck “was involved in mankind” as well.

Ira Hofher

Editor’s Note

Continued From Page 4

Defend – Why Insurance Companies Don’t Pay Claims and What You Can Do About It, Penguin Group, New York 2010.

Prof. Feinman explains that the American insurance industry was designed by none other than Benjamin Franklin, the very same fellow who had a hand (maybe more than one hand) in designing the United States Constitution.

In 1752, long before there was a United States, Franklin founded the one of the oldest insurance companies in America – The Philadelphia Contributorship for the Insurance of Houses from Loss by Fire.

The Philadelphia Contributorship was owned exclusively by its policy holders – a mutual insurance company. In order to own part of it, you had to own a house and an insurance policy with the Contributorship. This meant that the company was happy to pay claims – because the owners of the company were all policyholders, all potential claimants one day.

Listen to Prof. Feinman’s description of the mess our generation has made of this concept:

“One indication of the shift in emphasis was the move through the 1980s and 1990s by dozens of insurance companies to **demutualize**, or to shift from being mutual companies to stock companies. Mutual companies are owned by their policy holders, so policy holders share in the company’s profits through the payment of dividends on their policies, effectively a reduction in the premium rate. Stock companies are like any other corporations, owned by their shareholders to whom management is responsible and who reap the financial rewards if the company is profitable.” (Feinman, page 48).

And guess what happened after demutualization – you got it – MANAGEMENT CONSULTANTS. And what did the Management Consultants recommend? You guessed it – stop paying claims in

order to improve the bottom line. This was and is the exact opposite of the insurance industry Ben Franklin set up for us.

Prof. Feinman describes how this insidious “advice” has warped civil practice in our courts. Prof. Herbert Kritzer wrote “The Commodification of Insurance Defense Practice” in Vol. 59 of the Vanderbilt Law Review at 2053 (2006). In his book, Prof. Feinman summarizes Prof. Kritzer’s findings:

“Defense lawyers interviewed by Kritzer reported that the companies’ control often is without legal foundation, or is ethically questionable. One company required its lawyer to refuse to turn over materials that it claimed was privileged, even though there was ‘no doubt’ the plaintiff’s lawyer could successfully bring a motion to compel the materials’ production. Another company insisted that a claimant appear in person at an arbitration hearing rather than by telephone, even though (perhaps because) it would cost the claimant more to travel from his out-of-state home than the case was worth. A third company had made ‘a business decision’ to fight no-fault cases even though it had no valid defense, to deter future claimants.” (Feinman, page 85).

Solution: By its very nature, a stock insurance company cannot do any insuring as Ben Franklin envisioned that idea. A stock insurance company is the opposite of insurance. The core Federal and State Constitutional Concepts of Due Process and Equal Protection are violated when the insurance company is owned by anyone other than its own policy holders.

Our State Legislature in Albany and our Congress in Washington should pass legislation requiring all insurance companies to re-mutualize – to be henceforth only owned by their own policy holders.

If we pay close enough attention to Ted Conover and Prof. Jay Feinman, and we undertake the necessary solutions listed above, then we will be true to the legacy Ben Franklin left to us. Otherwise, the Spirit of Old Ben will remain very disappointed.

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PHOTO



CORNER



Arthur Mosley, David Cohen, David Adler and Arthur Terranova.



Attendees to the Holiday Party.



Hon. Seymour Boyers, Richard Gutierrez and Seymour James with David Dikman in the background.



Janet Keller, Paula Pavlides, Paul Pavlides and Mark Keller.



Lucille Di Girolomo, Louis Laurino, David Adler and Richard Gutierrez.



Having a great time at the Holiday Party.

PHOTO



CORNER



Maureen Heitner, Hon. Robert Nahman, Louis Laurino and Hon. Peter Kelly.



Michelle Vlosky and Donna Celardo tripping the night fantastic.



Milene Mansouri, Jim Pieret, Emilio Gonzalez and Ricardo Rengifo.



Nicole, Kerry and Valerie Katsorhis.



Russ Rodriguez, Richard Spivack, Christina McGreevy, Michael Mongelli, Peter Sarandrea, Heidi Henle and Michelle Vlosky.



Hilary Gingold, Donna Celardo, Geo Nicholas, Charles Haviv, Mona Haas, Caren Samplin, Maureen Heitner and Sue Beberfall.

POETIC JUSTICE

SOMETHING I ATE

While sitting in court
And forced to wait -
Mind wanders afar -
Tends to ruminate.

The Judge tells the D.A.
To set a new date
And hopes the defendant
Won't beat up his mate.

A warrant will issue
If this gal is late - Or
A death certificate causes
That case to abate.

A decision is made
It becomes a mandate -
A prior directive
It tends to vitiate.

For the objective observer
It can fascinate
More than Houdini, who
could self-levitate.

To watch the players
All coordinate -
In seeking to determine
Another guy's fate.

The crack addict approaches
With wobbly gait -
The judge takes note
That his pupils dilate.

He wants to get out
His breath does bate -
"Time served, you say?
Yo, man, that's great!"

Then back to the streets
"Where I can operate -
My favorite 'product'
I can again disseminate!"

An old man
appears
his veins pulsate
At the side of
his temples
Beneath his
balding pate.

A feeling of
pity
Does permeate
For he sat in his car
to masturbate.

Or maybe he wanted
to excavate,
Or perhaps to merely,
Propagate.

If he goes to jail
We'll all pay the freight
We'll clothe him, amuse him
Put food on his plate.

And send him to school
Teach him to conjugate
And give him a diploma
he can laminate.

I can continue my musing
At this pace and rate
You'll easily perceive
My bemused mental state.

So I'll give up the ghost
And call it a fait (accompli)
An blame the whole thing
on something I ate.



Robert E. Sparrow

Bob Sparrow

FRIVOLOUS VERBIAGE

Bombastic with endless vocal rants
An advocate with irate tones who prance
Vituperate and slanderous beyond compare
Whom, but the deluded will he really ensnare?

"Silence is golden," oft repeated
A cerebral attorney has him deleted
His paucity of words with biting irony
Humbles him with acid mockery.

Has not our verbose profession learned
That needless language is truly spurned?
Cogent judges separate wheat from chaff
Their erudite opinions sow our meticulous craft.

The cataline conspiracy in assembled court
Emasculated by Cicero with seething fire
Averting a sanguinary quagmire
Castigating each conspirator an unmitigated liar
Words of expressive emotional import.

Frivolous verbiage in discarded debris
Inanities littering a contaminated sea
The bon mot in splendor regal dress
Embellishes our language with a flavorful zest.



Arnold H. Ragano

Arnold H. Ragano, Esq.

QVLP Awarded

Continued From Page 1

provided by QVLP is performed by our pro bono volunteer lawyer panels, which are comprised of several hundred attorneys from Queens and neighboring counties. Administrative support for the program is provided by QVLP staff attorneys Corry McFarland and Jason Gang with significant support services provided by student interns. Many of these students are from the St. John's University School of Law and from the Touro Law Center. In addition, legal studies majors from the St. John's University Service Learning Program have provided significant support both in the screening and referral process for applicants to our program as well as at the CLARO-Queens Consumer Debt Clinic. The staff of

the Queens County Bar Association's Lawyer Referral Service, Janice Ruiz, Sasha Khan and Shakema Oakley has also been crucial in assisting many applicants to our program who may not be eligible for pro bono assistance.

Of course, most of the credit for this award must go to the many pro bono volunteers, who have made QVLP a success since its inception in 1991 and incorporation as a not-for-profit charitable organization in January, 1992. Through these years QVLP has had the strong backing of QCBA's Officers and Board of Managers and has been the recipient of grant support from the New York State Interest on Lawyers Account Fund (IOLA) every year since 1991.

**Mark Weliky is Pro Bono Coordinator for the Queens County Bar Association and Executive Director of the Queens Volunteer Lawyers Project, Inc.*

Estates Update

Continued From Page 1

and advise clients with respect to the volatility of the tax environment

V) TRUSTS

The capability for creation of new trusts has been expanded by the enactment of Estates, Powers and Trusts Law (EPTL) 10-6.6 (b)-(t). Traditionally, EPTL 10-6.6 permitted a trustee who had absolute discretion to invade the principal of a trust to create a new trust for the individuals for whom he could have invaded that principal. This is generally referred to as decanting. The restrictions on this invasion and creation consist in the fact that no fixed income interest of any income beneficiary is reduced, and no violation of public policy is effected. The reasons for new trust creation include tax benefits, consolidation of administration expenses, limitation of liability and ease of management. The essential statutory prerequisite to said secondary trust creation was the power of absolute trustee discretion to invade principal. The new law no longer makes absolute discretion a prerequisite.

Specifically, a trustee with any authority to invade principal on behalf of a beneficiary may utilize said principal in creation of a new trust. An ascertainable standard for invasion (such as health, maintenance, support, and education), or other limited purpose may substantiate appropriate invasion and creation. Yet, the new trust must maintain the same standards of distribution, and incorporate the same class of beneficiaries as the original invaded trust. Finally, at all times the creator's intent must be considered and the

beneficiaries rights protected. The above represents a basic summary of major provisions, as the new statute is relatively complex and only 6 months old. Its breadth and impact remain to be seen.

VI) QUEENS COUNTY

The Surrogate's Court, in conjunction with our Bar Association continues to play a leading role in legal education of all types in this County. In the Spring, Surrogate Peter J. Kelly and Chief Clerk Margaret Gribbon attended a Meet and Greet reception at the Bar Association Building. Both interacted in an informal capacity with our members, and gave interesting and timely presentations on recent Court activity.

In November, Judge Kelly participated as a moderator and speaker in our seminar on Guardian Ad Litem Training. Additional outstanding speakers included Louis M. Laurino, Scott G. Kaufman, John R. Dietz, Gerard J. Sweeney and Michael F. Mongelli.

The seminar served as an accreditation tool and incorporated training in a wide variety of areas, including, but not limited to Probate, Administration, Accounting, Supplemental Needs Trusts, Wrongful Death Actions and Fiduciary Ethics. Both the Meet and Greet, and the Seminar were well attended and continue to enhance our reputation as a source of professional education for the Bar at large. Much thanks to our Surrogate for his interest in our Association, and to our speakers who continue to make our seminars vibrant and state of the art. Let's go Giants!

David N. Adler is a Past President (98-99) of the Queens County Bar Association and Chairperson of its Surrogate's Court, Estates and Trusts Committee.

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CULTURE CORNER

BY HOWARD L. WIEDER

YEVGENY KUTIK, violin
Compact Disc: "Sounds of Defiance"
 Music of Shostakovich, Schnittke, Pärt, and Achron
Timothy Bozarth, piano
 ALFRED SCHNITTKE: Sonata No. 1 for Violin and Piano
 JOSEPH ACHRON: *Hebrew Melody*, Op. 33
 JOSEPH ACHRON: *Hebrew Lullaby*, Op. 35, No. 2
 DIMITRI SHOSTAKOVICH: *Sonata for Violin and Piano*, Op. 134
 ARVO PÄRT: *Spiegel im Spiegel*
Release Date: January 31, 2012 on Marquis Classics
Marquis Classics - Catalog: MAR 429

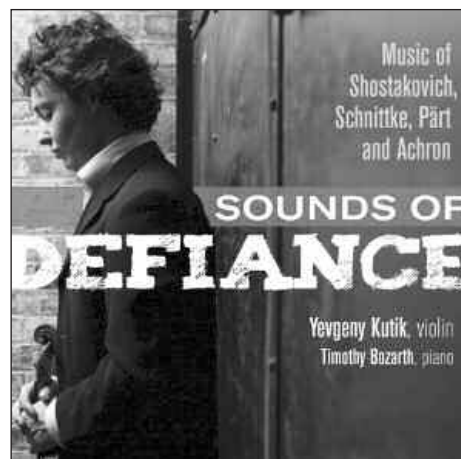
VIOLINIST YEVGENY KUTIK'S COMPACT DISC: "SOUNDS OF DEFIANCE" ON MARQUIS CLASSICS

One of the outstanding performances of classical music has just been released by virtuoso violinist YEVGENY KUTIK. On January 31, 2012, Marquis Classics released *SOUNDS OF DEFIANCE*, the debut album from emerging Russian-American violinist YEVGENY KUTIK. "*SOUNDS OF DEFIANCE*" features music of twentieth century Russian composers Shostakovich, Schnittke, Pärt, and Achron.

Inspired by his family history and cultural heritage, violinist YEVGENY

KUTIK and frequent collaborator, pianist TIMOTHY BOZARTH, recorded works created during some of the darkest periods in the lives of Alfred Schnittke, Joseph Achron, Dmitri Shostakovich, and Arvo Pärt. Despite the turbulent, resigned, even angry sense these works may convey, they each contain themes of faith - - faith in God, faith in the human spirit, and faith in art. Violinist YEVGENY KUTIK writes: "It is their unyielding faith that provided these composers with a powerful weapon against tyranny - - defiance."

Inspired by his family history and cultural heritage, Kutik and frequent collaborator, pianist TIMOTHY BOZARTH, perform works created during some of the



Howard L. Wieder

darkest periods in the lives of twentieth century classical composers Alfred Schnittke, Joseph Achron, Dmitri Shostakovich, and Arvo Pärt.

SOUNDS OF DEFIANCE was funded via Kickstarter. When violinist YEVGENY KUTIK was five years old, his family left Belarus and immigrated to the United States. As Soviet Jews living in the USSR, they experienced unjust pressures that permeated every aspect of life: life at school and work, public and private interaction, and the inability to openly practice their religion. These same pressures were experienced by a wide array of religious, ethnic, and social groups, politicians, and artists who suffered brutally for their beliefs in the former Soviet Union.



Violinist Yevgeny

Violinist YEVGENY KUTIK writes, "Although I have few memories of the Soviet Union, I feel a profound connection with its history and culture. Partly, this is due to all I have gathered about my family's life in Belarus yet, maybe equally so, it has come from the

incredible Russian music I've heard and studied since I first picked up the violin. This music features prominently in the soundtrack to my personal, cultural, and philosophical world view."

Each of the composers featured on *SOUNDS OF DEFIANCE* was affected by the darkness of Soviet and pre-Soviet repression. JOSEPH ACHRON was born into a very devout Jewish family in turn-of-the-century Russia, a time when anti-Semitism was rampant and violent. Stalin and his Composers Union, which lived on long after his death, hounded DMITRI SHOSTAKOVICH for much of his life. ALFRED SCHNITTKE ran afoul of the Composers Union for his compositional style and musical experimentation, resulting in blacklisting by Soviet authorities for many years. ARVO PÄRT was born in Estonia immediately prior to its occupation by the Soviet Union and, though Estonian, lived under the same frustrating Soviet bureaucracy that plagued the lives of Schnittke and Shostakovich.

A bold experimenter, constantly pushing musical boundaries, Alfred Schnittke's *Sonata No. 1 for Violin and Piano* pleads for maximum attention with unwavering expression. Joseph Achron's *Hebrew Lullaby* and *Hebrew Melody* radiate tremendous emotional depth, and convey a beautiful sense of longing and pain. Dmitri Shostakovich's *Sonata for Violin and Piano, Op. 134* is a monu-

Continued On Page 11

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BOOKS AT THE BAR

BY HOWARD L. WIEDER

New York Legal Publication Corporation, with a web site at www.nylp.com, offers some excellent publications for attorneys. This column discusses two of its recently revised publications: **GOLDFEDER'S MODERN ELECTION LAW - THIRD EDITION** and the latest revision to the two-volume, bound edition of **BYER'S CIVIL MOTIONS**. They are both excellent purchases for your library.



Howard L. Wieder

GOLDFEDER'S MODERN ELECTION LAW — THIRD EDITION

LOOSE-LEAF 8 ½ X 10 INCH BINDER WITH DIVIDERS, 716 PAGES
New York Legal Publishing Corp.: tel. 518-459-1100, 800-541-2681

Goldfeder's Modern Election Law: Pricing

Election Law: Single loose-leaf volume (includes online access)	\$140.00
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New York's election law is thorny - - and that's an understatement. I can use any number of metaphors: it is a minefield; it is quicksand, where the unwary amateur will soon be submerged over his head; it is a voracious thicket. You get the idea. Justice Keegan, began the court's opinion in *Cook v Unger*, 2002 WL 32067509, 2002 N.Y. Slip Op. 50602(U) [Sup ct Albany County 2002], stating: "An apparent new slick spot has developed for New York Election Law practitioners as they thrust and parry 'from stone to stone across the morass.' (Governor's Mem approving L 1992, ch 79, 1992 McKinneys' Session Laws of NY, at 2878)."

In my opinion, the outstanding treatise that helps even the most experienced election law practitioner navigate the treacherous waters of New York's Election Law is **GOLDFEDER'S MODERN ELECTION LAW** - - just released in a Third Edition. It has already been cited in New York State judicial opinions. **JERRY H. GOLDFEDER, ESQ.**, is the outstanding attorney in his field, and, last year, I attended his interesting Continuing Legal Education lecture on Election Law at the Appellate Division, Second Judicial Department, where he prepared court attorneys and special referees for the pitfalls and problems that they may encounter in ruling on petitions.

This Third Edition is greatly expanded from the earlier versions, with up-to-date citations through December 2011, and brand new or revised chapters.

The looseleaf treatise, in its third edition, includes: an in-depth explanations of campaign finance laws; the way Initiative and Referendum work in our state, cities, town and villages; an historical analysis of election law relating to the nomination and election of President of the United States; and an entire chapter devoted to New York's new Election Reform and Modernization Act. Also included are samples of a variety of pleadings, as well as Board of Elections and campaign finance forms for New York State and New York City. There are also very detailed indexes to assist the reader in locating particular subjects, cases, articles, statutes or political personalities.

The TOPICS INCLUDE:

The Petitioning Process
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Election Day and Post-Election Day Issues
Recounts under the new Election Law Reform and Modernization Act
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Campaign Finance Law in New York State and New York City
Independent Expenditures and SuperPACs
Initiative and Referendum in New York
The Nomination and Election of the President of the United States
Also includes the NYS Board of Election Rules, the NYS Election Law, plus the following forms:
Litigation Forms
Board of Election Forms
Campaign Finance Registration Forms
NYC Campaign Finance Board Forms

This New York Election Law treatise includes election forms and reports, tables of cases, statutes and other authorities. The New York State Board of Election Rules and Regulations and the updated consolidated NY Election Law as well. One loose-leaf volume updated annually.

ABOUT THE AUTHOR:

JERRY H. GOLDFEDER is Special Counsel at Stroock & Stroock & Lavan, LLP, specializing in election and campaign finance law, government relations and public integrity defense.

ADDITIONAL CONTRIBUTORS:

DANIEL M. BURSTEIN is an associate at Willkie Farr & Gallagher LLP.**JOON H. KIM** is an associate at Stroock & Stroock & Lavan, LLP.**JASON SCHAFFER** is a partner at Mungoven & Associates.**STEVEN R. SCHLESINGER** is a prominent election lawyer who is the Managing Partner and Chair of the Litigation Practice Group of Jspan Schlesinger.**HALE YAZICIOGLU** is an associate at the Boston law firm of Bartlett Hackett Feinberg P.C.

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The Soldiers' and Sailors' Civil Relief Act.

ABOUT THE AUTHOR:

HOWARD LEVENTHAL, ESQ., is a superb writer, having recently retired from the Unified Court System of the State of New York, where he enjoyed a long and distinguished career as a referee presiding over a wide variety of civil litigation.

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

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Culture Corner

Continued From Page 9

mental and challenging work that epitomizes the unbearable pressure and struggles he endured in the Soviet Union. **Arvo Pärt's** *Spiegel im Spiegel* exists on a plain of mystical and spiritual calm, creating an overwhelmingly gorgeous effect.

ABOUT YEVGENY KUTIK:

Hailed for his dazzling command of the violin and its repertoire, as well as a communicative immediacy that hearkens back to the legendary Romantic masters, Russian-American violinist **YEVGENY KUTIK** has become a highly sought-after artist on the concert stage worldwide.

In his German debut with the WDR Rundfunk Orchestra, violinist **YEVGENY KUTIK** "enraptured the crowd" (*Der Westen*) with his performance. Of his New York City orchestral debut with the Riverside Symphony, *The New York Times* said his violin projected "an old-fashioned

rhapsodic style, which was magnified by (his) rich, sweet tone."

Kutik's other recent performances have included highly successful appearances with the Tokyo Vivaldi Ensemble in Japan, the world-premiere performance of the concerto *Versus* by Ron Ford with the Tanglewood Music Center Orchestra, which received praise from both *The New York Times* and *The Boston Globe*, and a return appearance with the Boston Pops and Keith Lockhart. As a recitalist, he has been presented by the Phillips Collection in Washington D.C., National Arts Club in New York City, Dame Myra Hess Series in Chicago and in Europe at the esteemed Ludwigsburger Schlossfestspiele (Germany) and Verbier (Switzerland) festivals.

Violinist **YEVGENY KUTIK** continues his close association with the Jewish Federations of North America Speaker's Bureau, annually performing throughout the United States, in order to raise awareness and promote the assistance of refugees from around the world, a cause to which he is particularly dedicated. A native of Minsk, Belarus, violinist

YEVGENY KUTIK immigrated to the United States at age five. Shortly thereafter, he began violin lessons with his mother, Alla Zernitskaya, and continued with the late Zinaida Gilels. Other principal teachers have included Shirley Givens, Roman Totenberg and Donald Weilerstein. Mr. Kutik holds a bachelor's degree (cum laude) from Boston University and a master's degree from the New England Conservatory in Boston where he makes his home.

ABOUT TIMOTHY BOZARTH:

Since being named a Beethoven Fellow of the American Pianist Association, **TIMOTHY BOZARTH** has performed around the globe as soloist and collaborative pianist, being heard in many of the world's greatest concert halls.

Born in Abilene, Texas, constantly moving as a youth, and finally settling in the small, remote town of Valdez, Alaska, **TIMOTHY BOZARTH** was an autodidact as a musician and did not give his first public piano performance until after entering college.

Pianist **TIMOTHY BOZARTH** earned music degrees and an Artist Diploma at the Cleveland Institute of Music, studying with Paul Schenly. He also pursued his piano studies with Vitya Vronsky Babin and Jerome Lowenthal. In addition to being a Beethoven Fellow, **TIMOTHY BOZARTH** is a prizewinner of the Robert Casadesus and San Antonio Competitions. At the Casadesus International Piano Competition, **TIMOTHY BOZARTH** was awarded the S.A.C.E.M. prize for best performance of a work by a 20th-century French composer. He lives in Brookline, Massachusetts with his wife Miki and daughter Ai.

HOWARD L. WIEDER is the writer of both "THE CULTURE CORNER" and the "BOOKS AT THE BAR" columns, appearing regularly in **THE QUEENS BAR BULLETIN**, and is **JUSTICE CHARLES J. MARKEY'S PRINCIPAL LAW CLERK** in Supreme Court, Queens County, Long Island City, New York.

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