



Criminal Law Cases

BY: ILENE J. REICHMAN, ESQ.

Over the past year, the New York Court of Appeals addressed a wide array of issues in the area of criminal law and procedure. This article will review and highlight several cases that will likely be of interest to criminal practitioners.

In *People v. Riley Williams*, 12 N.Y.3d 726 (decided February 13, 2009), the Court reviewed the trial judge's ruling pursuant to *People v. Sandoval*, 34 N.Y.2d 371 (1974) which permitted the prosecutor to question the defendant about one prior felony conviction and 45 prior misdemeanor convictions in the event he elected to testify on his own behalf. While the Court noted that "the trial court might have been more discriminating" in its ruling, it upheld the defendant's conviction on the basis that the ruling fell within the trial court's broad discretion. Of course, the Court left unanswered the question of how many prior convictions it would take before it determined that the trial court had abused its discretion in permitting impeachment of a defendant who testifies on his own behalf.

In *People v. Scott Weaver*, 12 N.Y.3d 433 (decided May 12, 2009), the Court decided that the use of a GPS (global positioning system) by the police without first obtaining a warrant violated constitutional protections provided under the New York State Constitution against unreasonable searches and seizures. In *Weaver*, the police surreptitiously placed a GPS tracking device inside the bumper of the defendant's van. For the next 65 days, the position of the vehicle was continuously monitored. Eventually, the defendant was charged with two separate commercial burglaries: the first occurring at a meat market; the second occurring at a K-Mart. At trial, the prosecution introduced evidence obtained from the GPS device that the defendant's van had traversed the K-Mart parking lot at the rate of six miles per hour on the evening that store was burglarized. The jury acquitted the defendant of the burglary of the meat market but convicted him of the burglary of the K-Mart.

In a 4-3 decision authored by Chief Judge Lippman, the Court acknowledged that a citizen's expectation of privacy was diminished when operating a car on a public thoroughfare. Nevertheless, the Court held that the massive and apparently limitless invasion of privacy entailed by the prolonged use of a GPS device was inconsistent with even the slightest reasonable expectation of privacy and that in the absence of a warrant, the use of such a device by the police constituted an illegal search, and ordered suppression of the evidence obtained from the GPS device.

In *People v. Wayne Decker*, 13 N.Y.3d 12 (decided June 9, 2009), the Court considered a motion to dismiss a second degree murder charge on the grounds that the prosecution had violated the defendant's right to due process by reason of a 15-year pre-indictment delay in commencing the prosecution. In this case, the victim was found beaten to death in her apartment in December, 1987. Decker was the only suspect at the time. However, at that time, the prosecution

determined that the evidence against him was of "doubtful quality" because the witnesses were drug addicts with pending cases who were afraid to assist in the investigation due to Decker's reputation for intimidating and threatening witnesses.

In 2002, the police reopened the case and attempted to obtain additional evidence through the use of modern scientific techniques including DNA testing. Although no further forensic evidence was obtained through those tests, the prosecution decided to charge Decker after determining that the witnesses had overcome their drug addictions and were now willing to testify. The defense moved to dismiss the indictment based on the lengthy pre-indictment delay. The trial court denied the motion, finding that the delay did not deny Decker his right to due process of law. In upholding the conviction, the Court of Appeals found that under the leading case, *People v. Taranovich*, 37 N.Y.2d 442 (1975), the 15-year delay in commencing the prosecution, while substantial, caused no serious prejudice to Decker. Moreover, since there was no indication that the prosecution had acted in bad faith, and since the jury was made aware of the witnesses' past conduct and were subject to cross-examination regarding their history of drug use, there was no violation of the defendant's due process right to a prompt prosecution.

In *People v. Victor Gomez*, 13 N.Y.3d 6 (decided June 30, 2009), the Court clarified the rules pertaining to inventory searches of vehicles by the police. In *Gomez*, the police observed the defendant driving his car in an erratic manner. After pulling the defendant over, the officers discovered that his driver's license was suspended. The defendant was arrested and his car impounded. Officers then searched the car's interior but found nothing. When the officers searched the trunk, they discovered a paper bag containing cocaine, a plastic bag with white residue, an electric scale and a small manila envelope containing red pills. While driving the defendant's car to the police station, an officer then discovered 45 plastic bags in the driver's side door panel.

In upholding the Appellate Division's decision reversing the defendant's conviction and suppressing the evidence seized, the Court of Appeals held that the People had failed to meet their burden of establishing a valid inventory search. While recognizing that the NYPD has a standardized, written protocol governing inventory searches in its Patrol Guide, the Court found that the People offered no evidence at the suppression hearing to establish that the police officers conducted their search in accordance with the protocol, or that they possessed justification to open and search the trunk of the car in question. In addition, the Court found that the police officer failed to prepare a meaningful inventory of the contents of the defendant's car since the officer failed to record the presence of any items in the car, other than the items of contraband that were seized.

In *People v. Quentin Abney* and a companion case,

Continued On Page 12

Estates Update - 2009

BY DAVID N. ADLER



David N. Adler

The year in Trusts and Estates is highlighted by a new Power of Attorney Law, an anticipated freeze of estate tax levels, and the designation of the Queens County Surrogate's Court as a pilot program for electronic filing.

POWER OF ATTORNEY

A new Power of Attorney Law went into effect on September 1, 2009 (General Obligations Law Section 5-1501). Any and all Powers of Attorney executed prior to that date shall remain valid. Any Powers of Attorney executed after that date must conform to the new law. For a detailed history and analysis of the law, kindly refer to the article entitled "Guardian and Elder Law: New Power of Attorney", by John Dietz, as contained in the May, 2009 issue of the Queens Bar Bulletin. This update shall attempt to briefly reflect the major amendments contained in the new legislation, as represented on the power itself.

The overall subjects upon which authority may be granted to act are similar, and the mode of designation of an attorney in fact is similar. Yet, 3 major changes clearly differentiate the new form. Firstly, the agent is also required to execute the document. There further exists language specifically directed at the agent explaining the special nature of the principal/agent relationship. This reflects a tangible attempt to alert the agent to his fiduciary obligation on behalf of the principal.

Secondly, the principal may designate a "monitor", to oversee and review any and all transactions performed by the agent. This provides a built in system of accountability on the operation of any Power of Attorney. Third parties are also directed to respect the monitor status with respect to furnishing records.

Finally, the issue of gifting and executing other inter vivos transfers is specifically addressed. In the event that a principal wishes to grant his agent the authority to make gifts or transfers of any nature, he must both note and clarify that on the basic Power of Attorney form (Section h), and on a separate Statutory Major Gifts Rider. This rider incorporates all manner of gifting and transfers to be elected by the principal, to wit: authority to gift to relatives amounts up to the annual gift tax exclusion amount; authority to gift or transfer any amount to any individuals as may be specifically

Continued On Page 6

INSIDE THIS ISSUE

Criminal Law Cases.....	1	Corrections	5
Estates Update	1	Restaurant Review	6
President's Message	3	Speaker's Bureau Report	6
Saturday Morning	3	Photo Corner: Holiday Party	7
Profile of		Marital Quiz.....	8
Hon. Leslie Purificacion.....	4	Culture Corner	9
Holiday Party a		Scholarship Fund Request	10
Huge Success	5	Books at the Bar.....	11
Of Interest	5		



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.

2010 SPRING CLE Seminar & Event Listing

February 2010

Wednesday, February	10	Evidence Seminar 6:00 - 8:00 p.m.
Friday, February	12	Lincoln's Birthday, Office Closed
Monday, February	15	President's Day, Office Closed
Monday, February	22	Stated Meeting
Tuesday, February	23	Small Claims Arbitrator Training

March 2010

Tuesday, March	2	QVLP Foreclosure Conference Pro Bono Training
Wednesday, March	3	Ethics & Real Estate Practice 1:00 - 2:00 p.m.
Thursday, March	4	Labor Seminar
Wednesday, March	10	NYSBA Volunteer Training 10:00 - 4:00 p.m.
Tuesday, March	16	MHL Article 81/Guardianship Training 2:30 - 5:30 p.m.
Thursday, March	18	No Fault Update
Monday, March	22	Past Presidents & Golden Jubilarians Night 5:30 - 8:30 p.m.

April 2010

Friday, April	2	Good Friday, Office Closed
Wednesday, April	7	CPLR & Evidence Update
Thursday, April	15	Insurance Seminar
Monday, April	19	Judiciary Night
Tuesday, April	20	Basic Criminal Law – Pt 1
Wednesday, April	21	Equitable Distribution Update 6:00 - 8:00 p.m.
Tuesday, April	27	Basic Criminal Law – Pt 2
Thursday, April	29	Selection of a Jury Seminar

May 2010

Thursday, May	6	Annual Dinner & Installation of Officers Terrace on the Park 6:00 - 10:00 p.m.
Monday, May	31	Memorial Day, Office Closed

CLE Dates to be Announced

Elder Law	Surrogate's Court, Estates & Trusts
Juvenile Justice Law	Taxation Law

NEW MEMBERS

Jessica Ann Almeida
Richard Anthony Celestin
Seerante Dhanraj
Torla Lynn Dixon

Damon John Hemmerdinger
Julie M. Milner
Shawn Anthony Turck
Barry M. Weiss



Leslie S. Nizin

EDITOR'S MESSAGE

My thanks to Ilene Reichman and David Adler for their updates in the areas of Criminal and Estates Law.

In this month's paper there is a new column by Mark Weliky in which he reviews a local restaurant.

Any member who cares to review a favorite local restaurant, please send your reviews to my attention.

On February 4, 2010, the Mayor's Office let a Request for Proposal that could affect many of our members that are on the 18B Assigned Counsel Panel. The new plan would, in effect, diminish the present need for assigned counsel.

The Bar Association will be meeting with members to update them into what options are available to prevent the devastating impact on our members.

To each of you and your loved ones a Happy Valentine's Day.

2009-2010
Officers and Board of Managers
of the
Queens County Bar Association

President - Guy R. Vitacco, Jr.
President-Elect - Chanwoo Lee
Vice President - Richard Michael Gutierrez
Secretary - Joseph F. DeFelice
Treasurer - Joseph John Risi, Jr.

Class of 2010	Class of 2011	Class of 2012
Gregory J. Brown	David L. Cohen	Jennifer M. Gilroy
Joseph Carola, III	Paul E. Kerson	Richard Harris Lazarus
John Robert Dietz	Zenith T. Taylor	Gary Francis Miret
Mona Haas	Timothy B. Rountree	Steven S. Orlow
Gregory J. Newman	Clifford M. Welden	James R. Pieret

Arthur N. Terranova . . . Executive Director
QUEENS BAR BULLETIN
EDITOR - LESLIE S. NIZIN

Associate Editors - Paul E. Kerson and Michael Goldsmith

Publisher:
Long Islander Newspapers, LLC.
under the auspices of
Queens County Bar Association.
Queens Bar Bulletin is published
monthly from October to May.
All rights reserved.
Material in this publication may
not be stored or reproduced in
any form without permission.
©2009

Send letters and editorial copy to:
Queens Bar Bulletin, 90-35 148th Street,
Jamaica, New York 11435

Editor's Note: Articles appearing in the
Queens Bar Bulletin represent the views of
the respective authors and do not necessarily
carry the endorsement of the Association,
the Board of Managers, or the Editorial Board
of the Queens Bar Bulletin.

"Queens Bar Bulletin"
(USPS Number: 0048-6302) is published monthly
except June, July, August and September by Long
Islander Newspapers, LLC., 149 Main Street,
Huntington, NY 11743, under the auspices of the
Queens County Bar Association. Entered as periodical
postage paid at the Post Office at Jamaica, New York
and additional mailing offices under the Act of
Congress. Postmaster send address changes to the
Queens County Bar Association, 90-35 148th Street,
Jamaica, NY 11435.

The Queens County Bar
Association, Advertising Offices,
Long Islander Newspapers,
149 Main Street, Huntington,
New York (631) 427-7000

ADVERTISE
TO 27000
LAWYERS

in Queens, Kings, New York, Nassau
& Suffolk Counties



866-867-9121

PRESIDENT'S MESSAGE

As you may be aware, with the recent enactment of Chapter 416 of the laws of 2009, important changes were put into place for electronic filing in State Courts. Federal Courts have had mandatory e-filing for some time, but now they are coming to the State Courts.

The Queens County Bar Association recently received a memo from Ann Pfau, Chief Administrative Judge, State of New York Unified Court System. She informs us that the new legislation allows for the establishment of a pilot program for mandatory e-filing in certain Supreme Court cases. The pilot program for mandatory e-filing is

authorized in three locations as follows:

- In New York County for commercial cases where the amount in controversy is more than \$100,000.00;
- In Westchester County for tort cases; and
- In a County outside of New York City for all civil cases in Supreme Court except Matrimonial, Article 81 Mental Hygiene, Article 78 and Election Law cases.

The legislation provides for an opt-out provision with regard to mandatory e-filing. An attorney who certifies, in good faith, that he or she lacks the hardware, electronic connection or knowledge necessary to participate in

electronic filing will be exempt. The Court also may exempt an attorney upon a showing of good cause.

The Board of Managers of the Queens County Bar Association is in the process of reviewing this pilot program. However, it looks like the future is here and all members should be ready.

GUY R. VITACCO, JR.



Guy R. Vitacco, Jr.

Saturday Morning

BY STEPHEN J. SINGER

James Fitzpatrick Fenton worked in his father's law office. His Dad had first opened up his practice in Woodside many years earlier, but when the neighborhood began to change from being a commuting locale for cops, firemen and sanitation workers to a home for the new wave of immigrants who settled in Queens County, he moved on to Metropolitan Avenue in Forest Hills. There were folks there he could "relate" to and frankly, who were more likely to seek out an old Irishman like himself as their attorney than were any of the new minorities who tended to stick to lawyers who spoke their language. It was a cultural and comfort level thing for both Fenton and the newcomers.

James attended St. Johns as an undergraduate, and managed to pull good enough grade point averages to be accepted in New York Law School. The only question was whether that was a bigger surprise to him or his parents, who were not too certain that he would amount to much in the long run. James graduated in the lower half of his class which dictated that many of the higher level employment opportunities were well out of his reach. He applied for and obtained a position as an attorney with the New York City Police Department. The Department was none too clear in their concept of what that position called for and he was relegated to providing advice to police officers on issues of "probable cause" and to settling jurisdictional disputes between precincts. Not terribly glamorous or exciting and offering extremely limited opportunities to expand his legal expertise, James was less than thrilled with his position. After just two years at that job he had enough and quit to enter his father's general practice in Queens.

Having literally never been inside a courtroom, not counting his one exposure to that venue to answer a summons for smoking weed in Forest Park, never having drafted any legal documents to initiate or respond to a law suit, and having no experience in commercial, real estate or family law, he was of limited value to anyone other than his own father, who was simply proud to display him to anybody who went through their storefront office. He was a trophy son, as James often put it to his closest friends, but he was not too proud to accept his paycheck or ambitious enough to strike out on his own. Likely as not, he was handed all of the scut work in the office, since he was ill prepared for anything else ... serving and filing legal papers, copying documents, going to the bank with deposits and sometimes, if his Dad was tied up in a serious matter, he was permitted to take the initial interview with a new client of questionable worth. Not

great, but at least he was practicing law ... so to speak. If nothing else, it sounded better when charming a new date, than saying he worked for the Police Department.

It was the early 70's and lawyers like the Fentons still came in on Saturdays for half a day and stayed into the early evenings during the week to accommodate to the schedules of their working class clientele. The older Fenton had a heavy cigar habit and James' first job upon entering the office on Saturday morning was to open the windows, even on the coldest days, just to usher the stale tobacco smells on their way outside. He would sometimes play with a cigar himself, when they were handed out at the end of a wedding or when his Dad forced one on him at Thanksgiving or Christmas dinner, but he never liked the resulting havoc with his breath, hair and clothing that naturally occurred. His father insisted that even on Saturdays, James at least put on a shirt, tie and blazer, just in case a client might drop in unannounced. With that attire plus his penny loafers (he could not break the schoolboy loafer thing) and chinos, he looked as though he was cutting classes at the local Catholic high school.

James sorted the mail, made certain that the Law Journals were all neatly stacked and dawdled over his roll and coffee while awaiting his father's arrival at ten o'clock. This was the new luxury that Fenton Senior provided himself now that he had a Junior to open up for him. It was just a tad shy of 9:30 when the disheveled man knocked on the front door. Taken aback by the man's physical appearance, James hesitated for a moment, but then decided to let the fellow in, on the theory that anyone could be a new client. It was clear that this middle aged man was a laborer, based upon his rough dress and the nature of his hands ... dirty nails and calloused fingers. He appeared to be in his late fifties, but of course, inasmuch as James was only twenty nine himself, everyone over thirty five or so appeared to be middle aged to him. The man had no foreign accent of any kind and spoke decent enough English to qualify him as a potential Fenton client, but first, James had to calm the fellow down so that he could even have the possibility of making sense of his narrative.

It seems that Mr. Cromartie's son, Alex, had been contacted by the police who wanted him to come down to the precinct in Forest Hills "to speak about a matter". It probably had to do with Alex picking up a Stewardess at Kennedy Airport a few days ago, according to the excited father, but he couldn't be certain. James explained that he really needed to speak to the younger



Stephen J. Singer

Cromartie if he was to make sense of the affair. Alex Cromartie was waiting just outside the front door to the law office, apparently none too pleased to have contact with anything that had the word "law" in its title. His father excused himself for a moment and went outside to drag the younger man in. Alex was better dressed than his parent, not bad looking and sprouted a thick moustache over his upper lip that seemed out of place for a younger man of that era. James decided that the man had acquired the "stash" to take attention away from his seriously receding hairline.

Alex related that he was at Kennedy Airport a few nights ago, driving his restored MGB sports car ... James stored away the fact that such an automobile would be particularly memorable ... when he saw an attractive, blonde stewardess who looked as though someone had forgotten to pick her up at the arrival gate. Being a "good soul," Alex volunteered to give her a lift back to Kew Gardens, where many of the airlines people lived at that time. "One thing led to another," "She gave me the go-ahead sign and we began to make out," according to Alex. James was not too pleased with the "one thing led to another" retelling, the same being a bit vague and perhaps purposefully so. He claimed that she volunteered oral sex, which he happily accepted, dropped her off where she asked, somewhere on Austin Street, "and that was that."

"So what was the problem?" asked James. "If everything was consensual and both parties were pleased with the outcome, why were the police requesting an interview?" "After all", as James hastened to add, "The police don't issue such invites merely to make new friends."

Alex had no idea what the difficulty could be. The elder Cromartie, perhaps being a bit more forthright than his son, conceded that the police were likely following up on a complaint from the young stewardess and that this could spell serious trouble for his son. "Could the young lawyer call the detectives and find out what they wanted?"

Normally, James would have waited for his father to arrive and have him handle the situation, especially to quote the legal fee. However, this seemed to be an opportunity not to be passed up. James thought himself equal to any legal task, although his personal learning and experience might argue against that. Perhaps it was hubris, perhaps it was just youthful enthusiasm, but James determined to jump in with both feet.

A call to the 112 precinct and the sex squad detectives, to whom he was direct-

ed, produced a response from a Detective Jolson. The detective would say little except that they would like to interview Alex or whoever was driving a dark green MGB bearing New York license 4783 JRL on Tuesday evening last. Inasmuch as the car was registered to Alex, they presumed that he was the driver. Apparently, a young woman had registered a complaint about a sexual incident involving the operator of that car who had given her a drive to her neighborhood from Kennedy Airport. James asked for the description of the alleged "perp" (to make himself sound more experienced), which the detective refused to provide. They mutually agreed that Alex or the operator of that car on the time and date in question would appear at their offices at four o'clock that afternoon for a lineup.

James was excited, nervous and virtually intoxicated at the opportunity. He related the entire conversation to both the Cromarties who agreed upon a retainer of one thousand dollars so that James would attend the lineup and protect Alex from being interviewed about the incident. The elder Cromartie returned an hour later with the cash and they arranged to meet in front of the 112th precinct at 3:30 that afternoon. James was thrilled and quite happy with himself for having arranged everything without any input from his father. When the senior Fenton arrived at ten o'clock, learned what had been arranged and received the cash retainer, there was little to be said or done. He was pleased, of course, but more than a bit nervous as to whether his son was capable of dealing with senior police detectives in a matter of this magnitude. A serious sex felony could carry heavy upstate jail time if handled badly. He felt powerless to interfere however, given what his son had put together and seeing the young man's excitement about the case. He gave him some pointers, offered to stay by the telephone in case James needed some assistance and wished him well.

At 3:30, James had already been waiting outside of the precinct for fifteen minutes. If truth be told, he was both excited and nervous, never having attended a lineup or even having seen one. He was quite certain that he could figure it all out and pushed aside any and all doubts that nagged at his conscience. When Alex and his father arrived, James was shocked by the younger man's appearance. His clothing was the same as he had worn earlier in the day, although it was doubtful that made any difference since the incident had occurred inside of a very small sports car in the dark. The remarkable change was that Alex was now clean shaven. The brushy moustache which was probably one of the most tell tale features of his

Continued On Page 12

The New York Center for Neuropsychology & Forensic Behavioral Science

Dr. N.G. Berrill, Director

Over 20 Years

Providing Consultation to Attorneys & the Courts on Psycho-legal Matters

- **Criminal Cases:** Competency Issues, Criminal Responsibility, Extreme Emotional Disturbance, Risk Assessment, Sex Offender Workups & Dispositional Planning
- **Matrimonial & Family Court Cases:** Custody/Visitation, Neglect/Abuse, Termination, Delinquency, Family Violence, & Adoptions
- **Civil Cases:** Competency Issues, Head Trauma, Sexual Harassment, Discrimination, Immigration, & Post-Traumatic Stress Disorders

Comprehensive Diagnostic & Treatment Services

26 Court Street, Suite 912, Brooklyn, NY 11242
718-237-2127

&

45 North Station Plaza, Suite 404, Great Neck, NY 11021
516-504-0018

WWW.NYFORENSIC.COM

Judge Leslie John Purificación: A Profile

BY STEPHANIE GOLDSTONE

Judge Purificación was elected to sit as a Queens County Civil Court Judge in 2007. In April 2009, he was asked to sit for a term in the Commercial Landlord/Tenant Part. As the time approached for Judge Purificación to change parts, he offered to stay full-time. He thoroughly enjoys presiding there.

Judge Purificación graduated from the challenging and prestigious Amherst College in 1976, where he founded La Causa, its first Latino student organization and is a founding member of the Amherst College Latino Alumni Association. He was also a student member of the College's Admissions Committee. Judge Purificación graduated from New York Law School in 1991, where he was a Patricia Roberts Harris Fellow, and is a past president of the Latino Law Students Association and was a member of the Asian American Law Students Association.

Judge Purificación's work at Civil Court involves calendar calls each morning and trials most afternoons. Because of the downturn in the economy, there has been an increase in the number of local businesses that are failing. Landlords have mortgages to pay and real estate taxes continue to rise. A major challenge has been keeping viable businesses open while insuring landlords of an income flow to meet their obligations. Judge Purificación notes that the lawyers who come before him in the Commercial Landlord/Tenant Part are knowledgeable and courteous.

Judge Purificación is extremely affable and well spoken. He has a long history in the legal profession. He taught legal studies at Mercy College while in private practice. He's worked in a number of different areas of the law, including personal injury, matrimonial, criminal, real estate and employment matters. He is a former staff attorney of the Office of the Appellate Defender, where he represented indigent defendants in criminal appeals in state court and collateral proceedings in state and federal courts.

Judge Purificación was an associate at the firm of Medina & O'Brien, P.C., and then returned as a partner after his work in the Office of the Appellate Defender.

Judge Purificación worked for a number of judges before becoming a judge himself. He was an intern to the Honorable Nicholas Tsoucalas, US Court of International Trade, and an intern to the Honorable William J. Davis, Justice of the Supreme Court, New York County, Civil Division.

Judge Purificación also was the principal law clerk to the Honorable Luther V. Dye, Justice of the Supreme Court, Queens County, and after that, principal law clerk to the Honorable Simeon Golar, Justice of the Supreme Court, Queens County.

Judge Purificación's last stop before ascending to the bench himself was working as principal law clerk to the Honorable Robert L. Nahman, Surrogate



Judge Leslie John
Purificación

of Queens County. His responsibilities in that position included presiding over kinship trials. Together with the Surrogate he wrote The Compromise Proceeding in Queens County Surrogate's Court in the publication Bill of Particulars, in the Spring of 2004. He has also been a CLE speaker for the Queens County Bar Association's Surrogate's Court, Estates & Trusts Committee.

Judge Purificación certainly acquired ample experience before ascending to the bench. He now has a corner office in the Queens

County Civil Court building on Sutphin Boulevard. During our visit beautiful classical music was playing, streaming from "Pandora's Box" on the internet.

Prior to his work as a lawyer, Judge Purificación made substantial accomplishments working in the field of publishing. He loves to read and write. That love has served him well in the world of courtrooms, and continues to do so.

Judge Purificación's work in publishing began right after college, as an editor at Scholastic, Inc., where his job was to acquire and edit high interest/easy reading books, and to author teaching materials. Judge Purificación wrote his own book for children, entitled Karate Ace, that was published during his junior year in college. He has also written over twenty short stories and plays since then.

Judge Purificación's later publishing experience at Hayden Book Company and Simon & Schuster showcased his well-honed skills developing and editing fiction and non-fiction books.

As to life outside the Courthouse, Judge Purificación has been married since 1978. He and his wife have two grown sons. Judge Purificación's wife is an elementary public school teacher working with Deaf and Hard of Hearing children. To quote Judge Purificación, "My wife works tremendously hard and is extremely dedicated to her students. As difficult as my job may be at times, her work is equally, if not more challenging." Their eldest son is a recent graduate of SUNY Albany and their youngest is currently enrolled in a culinary arts college.

Judge Purificación has been a resident of Queens County for most of his adult life. He is of Puerto Rican and Filipino descent, and is the first elected judge of Filipino ancestry in the County of Queens.

Judge Purificación's hobbies include photography and woodworking. Before the days of digital photographs, Judge Purificación did his own darkroom work. He also recently began playing the flute again.

As our interview came to an end and the Judge walked me to the elevator at around 5 P.M., he commented to me that the day was not over. Judges in Civil Court have crushing caseloads, and preparation and writing are often done after the courthouse closes.

It has been an honor to interview the very affable and accomplished Judge Purificación. We wish him continued health and satisfaction in all of his endeavors.

Holiday Party A Huge Success!!!

At first, it was a little difficult locating the catering hall in Floral Park because I didn't realize that the addresses were renumbered when you cross the Nassau County border. Once I did find the corner at 250 Jericho Turnpike (the Floral Terrace) everything went perfectly from that moment on. The place was well appointed, well lighted, fully staffed with hospitable personnel, even to the point of offering peach champagne in fluted glasses when you walked in the door after leaving your car with the valets. The room set aside for us on the third floor was just right for our purposes and the size of our party. Thanks to the two primary organizers, George Nicholas and Diana Gianturco, as well as our own extraordinary staff (Arthur and his women) we hit an attendance high of over 240 people. Just for comparison, in years past the average attendance was in the 130 – 150 range.

One of the really nice things about this event was that George and Diana and all of the participating co-sponsoring bar

associations brought together many newcomers who we had never met previously. That alone made the party more fun (some younger and more enthusiastic blood) and provided an opportunity to forge new relationships and promote networking (one of the intended byproducts of all bar association functions). The band was excellent, choosing music that garnered a full dance floor from almost the beginning of the evening. It must be noted that Diana and her incredible dancing skills was an additional catalyst which brought many of us wallflowers up to the dance stage.

Most of the attendees hopped on the pass-around appetizers without restraint and they just kept on coming; both the hors d'oeuvres and the grasping attendees. Almost as soon as the tastings stopped the buffet line was opened and we were treat-



Stephen J. Singer

ed to a plethora of different and well prepared dishes. From the carved roast pork, the falling off the bone ribs, the super veal dishes, calamari, Caesar salad, cold antipasto and the many vegetable sides, most folks left the buffet line with plates piled high. I heard no complaints about the variety or quantity of the fixings. The catering hall staff was anxious to refill drinks, clear off plates, bring more ice cold water or anything else that might be desired, all with a smile.

Perhaps the hallmark of the tremendous success of that evening was that around ten o'clock, when my wife and I decided to head home following a really long day, the dance floor was still full and there were well over a hundred people remaining on the premises. I can recall many holiday events in the past when everyone had departed before nine. Anyone who unfor-

tunately failed to attend this party missed a golden opportunity. I can say, without fear of contradiction, that as far as I am concerned that was truly the best holiday party we have ever thrown. All of the folks at our table felt the same. The next day, as I went through the courthouse in Kew Gardens, all I heard were accolades along the same line. The general sentiment was that we should book the same place, the same band and with some very minor tweaking, keep everything the same for next year. If I were you, not only would I be planning on putting this down in my diary as a "must attend," I would bring friends and book early, because I have the strong suspicion that next year may be a sell out!

As a final word, thanks again to George, Diane, Arthur and our staff, as well as the co-sponsoring bar associations for a job well done. Happy holidays to all and I can't wait to do this again next year.

STEPHEN J. SINGER

Of Interest

Justice Daniel Lewis has been reelected to the Supreme Court. Congratulations on your reelection.

Civil Court **Judges Diccia T. Piñeda-Kirwan** and **Thomas D. Raffaele** have been elected to Supreme Court. Congratulations on your election.

Richard Latin and **Jodi Orlow Mackoff** have been elected to Civil Court. Congratulations on your election.

**If anyone has something of interest to our members, please call Les Nizin, 718-263-2411 or Janice, 718-291-4500, to pass on the information.*

Corrections

Our apologies go out to the members below. Their names were misspelled in the 2010 Directory.

Patrick A. Griffiths

Christine Julien

EMPLOYMENT & LABOR LAW

STEPHEN D. HANS & ASSOCIATES P.C.
Counsel to the Profession

- | | |
|--|---|
| <input type="checkbox"/> Sexual Harassment | <input type="checkbox"/> Union Representation |
| <input type="checkbox"/> Americans with Disabilities Act | <input type="checkbox"/> Title VII - Discrimination |
| <input type="checkbox"/> Education Law | <input type="checkbox"/> Pension Issues |

☐ Arbitrations

Counsel to the Profession - over three decades
Chairperson - Labor Relations Committee - Queens County Bar.
Association of the Bar - Employment Law Panel Member.

45-18 Court Square, Suite 403, Long Island City, New York 11101
Telephone 718-275-6700 Fax 718-275-6704
E-mail: shans@hansassociates.com

Louis R. Lombardi LEGAL SERVICES

RESEARCH, BRIEFS & APPEALS

▲ **Responsive** ▲ **Reliable** ▲ **Rewarding**

"A Firm Believer in the Basics."



- Over ten years experience
- Affordable
- High Quality



Call today 1-866-462-9633
or visit: www.LouisLombardiLaw.com

FLORIDA ATTORNEY

Law Offices of Randy C. Botwinick

Formerly of Pazer & Epstein



Concentrating in Personal Injury

25 Years Experience

Co-Counsel and
Participation Fees Paid

Miami Office

One Biscayne Place
11098 Biscayne Blvd.
Suite 405
Miami, FL 33161
P: 305 895.5700
F: 305 892.1107

Palm Beach Office

Peninsula Executive Center
2385 NW Executive Center Dr.
Suite 100
Boca Raton, FL 33431
P: 561 995.5001
F: 561 962.2710

Toll FREE: 1-877-FLA-ATTY (352-2889)
www.personalinjurylawyer.ws

Fantastic Cajun Cuisine in Queens? Garonteed!

BY MARK WELIKY*

Want Cajun cooking at its best? Come to Cooking With Jazz in Jamaica Estates. Lovers of Cajun and Creole cooking were devastated when this restaurant's Whitestone location closed a couple of years ago because of a lease dispute. Chef/owner Steve VanGelder searched for a new venue in Queens and reopened his restaurant in December in a lovely location on Union Turnpike, most recently occupied by Vino which served Italian cuisine. Chef Steve's fans are ecstatic! Steve served a four year tour of duty at K-Paul's Louisiana Kitchen in New Orleans and world renowned Cajun chef Paul Prudhomme's cooking talent sure rubbed off. Diners can enjoy spicy meals that feature starters such

as Chicken and Andouille Gumbo, Tasso and Shrimp Ravioli or Cajun Shrimp Remoulade. Cajun entrees are highlighted by Blackened Fish or Steak, Chicken Jambalaya, Red Beans and Rice or Chicken Etouffe. There is also a "Not So Cajun" menu featuring pastas, steak, salads and burgers. If you could possibly have room left for dessert your choices include Bread Pudding, Pecan Pie and a New Orleans favorite, Bananas Foster.

The outstanding cuisine is accompanied by live jazz two nights a week (usually Thursday and Sunday). It doesn't get any better than this and it's conveniently located just a few blocks from St. John's University. Chef Steve also offers Cajun cooking classes on Saturdays from 10-2 (call for info). Cooking With Jazz is open Wednesday through

Sunday serving dinner from 5 p.m. and is closed Monday and Tuesday except for private parties. Highly recommended, you won't be disappointed!

Cooking With Jazz is located at 179-22 Union Turnpike, Jamaica Estates, NY 11366

Phone (718) 380-0896 www.COOKINGWITHJAZZ.com

*Mark Weliky is the Pro Bono Coordinator for the Queens County Bar Association

(NOTE: Any members who would like to submit a review for a Queens restaurant should do so – call (718) 291-4500 for info)

Correction

Please note that the names of the participants were combined in the last issue of the Bar Bulletin. The correct names are listed below both photos.



Art Terranova, Joe DeFelice, Dave Adler, Arthur Mosley and Dave Cohen



Bernie Vishnick, Larry Litwack, Ed Rosenthal and Jim Pieret

Estates Update - 2009

Continued From Page 1

instructed by the principal, or left to the agent's discretion; and authority to gift or transfer to the agent subject to enumerated limitations and guidelines imposed by the principal. This major gifts rider must be executed by the principal in a manner similar to the basic power of Attorney form, but must also be witnessed by 2 individuals. The relative intricacies heretofore designating the power to gift and transfer, reflect the legislative response to prior abuses of authority by agents. In furtherance of these goals, the present law also

authorizes the commencement of a special proceeding (GOL Section 5-1510) to address any perceived abuses by the agent. This proceeding, by its terms, is more readily accessible to a variety of parties, and more easily effected.

TAXATION

At the time of this writing of this Article, no change to the federal estate tax law has yet been passed. It is strongly anticipated that the estate tax threshold amount shall be frozen at last year's value of \$3,500,000.00. In the improbable event

that no new legislation is effected, under present law the federal estate tax is repealed this year, and reverts to a threshold of \$1,000,000.00 next year. The prior scenario is extremely unlikely, yet the new year has not brought new law as of yet. It is also anticipated that the maximal estate tax rate shall also be frozen at 45%.

ELECTRONIC FILING

The ability to file Court papers and documents electronically via the computer has been effected in certain areas of practice in the State of New York, notably the Commercial, Tax Certiorari and Tort areas. The overall process is known as the NYS Courts Electronic Filing System. Presently, the State has been targeting certain Counties to operate as pilot counties for the initiation of electronic filing in the Surrogate's Court. Queens County has been designated as one of said pilot counties, and it is anticipated that electronic filing will be available here by the late Spring.

The basic procedures for electronic filing in Surrogate's Court are set forth in the Rules of the Chief Administrative Judge, at Uniform Rules Section 207.4-a. At this time, said filing remains voluntary, and is initiated by registration with the Office of Court Administration. The unique nature of estates practice also necessitates the filing of original documents (Wills, Codicils), and their filing must still be directly made to the Court within two days after the initial electronic filing of papers commencing the proceeding.

Commonly used hardware and software systems are all that is required. This manner of practice is available to virtually everyone with minimal computer literacy, subject, of course, to the expense of computer maintenance and adaptability. I

direct anyone interested in the mechanics of electronic filing in Surrogate's Court to our Seminar, noted below, which is available on tape with annexed printed material. Said Seminar consisted of a hands on description and analysis of electronic filing conducted by the Statewide Coordinator for said filing.

This appears to be the wave of the future, and the future will be arriving in Queens County shortly.

QUEENS COUNTY

In response to the recent legislative changes, our Bar Association, in conjunction with the Surrogate's Court, conducted two well attended Seminars over the past year. In June, we presented a program entitled Hot Topics in Estates Practice which focused on the new Power of Attorney legislation, and ethical requirements of fiduciaries. Our excellent panel of speakers included Lee Coulman, the Chief of the Law Department, Gerard Sweeney, the Counsel to the Public Administrator, and John Dietz, our Elder Law Chairman.

In October, we presented a Seminar on Electronic Filing in the Surrogate's Court. Our outstanding faculty included Wallace Leinhardt, Past Chair NYSBA Trusts and Estates Section, Alicemarie E. Rice, Chief Clerk, Surrogate's Court, and Jeffrey Carucci, Statewide Coordinator for Electronic Filing, NYS Office of Court Administration. Many thanks to all involved, notably Surrogate Robert L. Nahman for serving as moderator of both Seminars, and for his ongoing commitment to our Bar Association and the field of legal education.

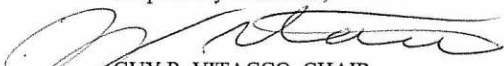
We await the impact of the new legislation and hope for the best. Happy New Year to all!

January 15, 2010

The Queens County Bar Association Speakers Bureau Report from Guy R. Vitacco, Sr., Chair of Bar Association Speakers' Bureau:

1. Barry Seidel spoke at the Townsend High School on the general topic of law office management and lawyers court room experience.
2. Barbara Berwitz gave a talk at the Newtown Civic Association of the Elmhurst Memorial Hall on Elder Law and Guardianships.
3. Hon. Martin Ritholtz Justice of the Supreme Court Queens County addressed the Friendship Club Meeting of the Samuel Field Y on Little Neck Parkway, Little Neck, New York on "What is the jurisdiction of the courts in Queens County."
4. Joseph DeFelice, Secretary of the Queens Bar Association gave a talk at the meeting of the AARP Ozone Park Chapter 4163 at Christ Evangelical Lutheran Hall on the topic of Wills and Estates.
5. Barbara Berwitz addressed the Jewish Women's International Organization at the Public Library on Marathon Parkway and Long Island Expressway in Douglaston on the latest Elder law rules, regulations and Law.

Respectfully Submitted,


GUY R. VITACCO, CHAIR
SPEAKERS' BUREAU

PHOTO



CORNER

Holiday Party, Thursday, December 10th 2009



Annamarie Policriti Brown, Gary Muraca, Mona Haas and Pam Hirschhorn



Janet Kearney, James Cowley and Michelle Vlosky



Jeff Boyar, Diana Gianturco, Pam Hirschhorn and George Nicholas



Tracy Catapano-Fox, Hon. Bernice Siegal, Sue Beberfall, Pam Jordan and Dan Halloran



Zenith Taylor, Bart Resnicoff and Jacqueline Wagner

Marital Quiz

BY GEORGE J. NASHAK JR.*

Question # 1 - Is it proper for the Family Court to deny a noncustodial parent visitation after refusing that parent's request for forensic evaluations?

Your answer -

Question # 2 - Is the Family Court permitted to delegate to the Administration for Children's Services the authority to determine whether and when the father was entitled to visitation?

Your answer -

Question # 5 - Does the Family Court in New York have jurisdiction to issue its own support order, if a prior order of support for the subject children was issued by the State of Vermont and the custodial parent still resides in the State of Vermont?

Your answer -

Question # 8 - At a trial, may a party seek to rebut the presumption that any commingled separate property funds became marital property?

Your answer -

COMPLIMENTARY ESTATE ADMINISTRATION SERVICES

Complimentary:

- Estate Valuations for 706 Schedule B
- Security Transfers/
Consolidation of Assets

- Upon receipt of a list of all items in the estate, we will provide a 706 Schedule B Ready Valuation within 3 business days
- We will contact transfer agents, dividend reinvestment plans, financial institutions, etc. and provide you with a list of documentation required to deposit and consolidate all assets to one professionally managed estate account

Leverage your Time & Streamline
your Trust and Estate Practice
by Outsourcing to Us

The
**David J.
YVAR**
GROUP, INC.
FINANCIAL SERVICES • PORTFOLIO MANAGEMENT
...Building Wealth for Generations

Serving the Trust & Estate Community
for 28 Years

400 Columbus Avenue
Valhalla, NY 10595
(914) 741-9700
www.yvarstrustservices.com

Question # 3 - Is the Family Court permitted to condition future unsupervised visitation on the mother's successful completion of therapy?

Your answer -

Question # 6 - After a child support order was issued by a Pennsylvania Court, the parents and the subject child moved to New York. Under Pennsylvania law, child support ends at age 18. Does the New York Family Court have the right to order child support until age 21?

Your answer -

Question # 9 - If your answer to question 8 was yes, how?

Your answer -

Question # 4 - Is the Family Court permitted to direct the mother to attend therapy as a component of supervised visitation?

Your answer -

Question # 7 - Would your answer to question 6 be different if prior to the child reaching the age of 18, the New York Family Court so-ordered a stipulation of the parties' which increased the father's child support obligation?

Your answer -

Question # 10 - Can "social abandonment" of a spouse qualify as "abandonment" and provide a ground for divorce?

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 12

More work than you can get to?

Not enough hours in the day?

**Let me help you increase your profits
and get that work off your desk.**

**Call today for top-quality research,
writing, & litigation support.**

GAIL M. BLASIE, ESQ.

Licensed in NY and CA

(516) 457-9169



1134 Lake Shore Drive, Massapequa Park, NY 11762 www.blasielaw.com

We've got a
Patent
— on —
Experience

Over 8,000 patents granted

Over 15,000
trademarks obtained

Over 40 years of experience



- Our expertise extends to all areas of technology
- We represent everyone from individuals to multinational corporations
- We serve clients with distinction in both foreign and domestic intellectual property law
- We help clients identify emerging technologies and ideas

For more information, call us today at
516.365.9802 or fax us at 516.365.9805.

Collard & Roe, P.C.
PATENT, TRADEMARK, COPYRIGHT ATTORNEYS

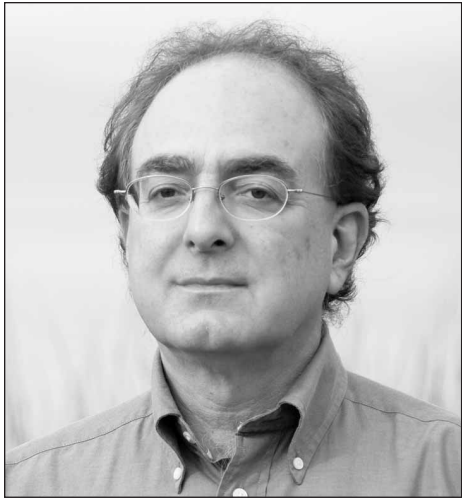


1077 Northern Blvd., Roslyn, NY 11576
www.CollardRoe.com

THE CULTURE CORNER

BY HOWARD L. WIEDER

This month's column reviews the recent world premiere of composer **GEORGE ANDONIADIS's** work **LINCOLN, A POETIC OPERA**. I also am delighted to print below and heartily recommend the exciting classical music performers offered by **LINCOLN CENTER'S GREAT PERFORMER SERIES** during the spring season of 2010.



George Andoniadis

LINCOLN, A POETIC OPERA

LINCOLN, A POETIC OPERA written by New York composer, **GEORGE ANDONIADIS**, had its world premiere recently at Holy Trinity Church in Manhattan. Harold Holzer, renowned author and Lincoln scholar, gave an engaging pre-concert talk on Lincoln, the man. Holzer is Co-Chairman of the American Lincoln Bicentennial Commission, which officially endorsed Mr. Andoniadis' opera. Singing the role of Abraham Lincoln, arguably America's most revered President, was tenor **Timothy Bentch**, a gifted interpreter of song, whose powerful voice captured Lincoln's anguish at the suffering of his country's citizens during the Civil War. **Elizabeth Racheva** lent her glistening soprano to the sympathetic role of Mary Todd Lincoln.

The **Manhattan Choral Ensemble**, a group **GEORGE ANDONIADIS** has written for twice previously, electrified the audience with its majestic and, at times, terrifying sound as the vanquished, bitter Southerners. **Kristin Ditlow**, a frequent accompanist with The Manhattan Choral Ensemble, played brilliantly throughout the concert.

The hour-long presentation of **LINCOLN, A POETIC OPERA**, was preceded by the performance of a handful of lovely songs written by **GEORGE ANDO-**

NIADIS, with music set to poems by Emily Dickinson and Edna Saint Vincent Millay. The first half of the concert concluded with a musical theater piece, with lyrics by **GEORGE ANDONIADIS's** sister **SOFIA LANDON GEIER**, from their musical **Home**, based on E. Nesbitt's popular children's novel, "The Railway Children." Elizabeth Racheva and Timothy Bentch also performed during the song portion of the concert.

Thomas Cunningham, founder and director of The Manhattan Choral Ensemble, conducted the entire evening with strength and sensitivity.

LINCOLN, A POETIC OPERA is a moving piece. The audience gave full attention to the haunting, gutsy work, embracing both Lincoln's courage as a man and President and the nation's torment.

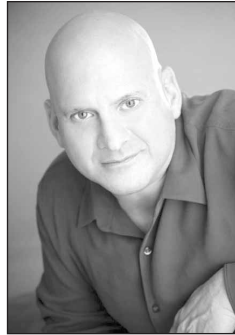
GEORGE ANDONIADIS is a composer whose compassion blends with intelligence to create music that rivets the listener. **LINCOLN, A POETIC OPERA** speaks to us of Abraham Lincoln and also resonates with the pain suffered in other wars and other times. **LINCOLN, A POETIC OPERA** is musically meritorious and deserves world-wide exposure and recognition.

CDs of **LINCOLN, A POETIC OPERA** will be available soon at www.imagination-sound.com, where many genres of **GEORGE ANDONIADIS's** music can be sampled and are available for purchase along with the composer's choral sheet music. **GEORGE ANDONIADIS** has composed numerous theater scores and much vocal music, both solo and choral, and has received world premiere performances from the Gregg Smith Singers, the Bowdoin College Chamber Choir, the University of Southern Maine Chamber Singers, the Choral Art Society of Portland, Maine, the Manhattan Choral Ensemble, and the Hobart and William Smith Colleges Cantori. **GEORGE ANDONIADIS's** music has also been featured on concerts of the Ohio University Chamber Singers and the Lancaster Chorale.

GEORGE ANDONIADIS is a member of ASCAP and Chorus America, has been a grant recipient from Meet the Composer, Inc., and was a winner of the Composition Competition of the Festival of Contemporary Choral Music in America sponsored by Bowdoin College. His work has been included in the Bates College New American Music Festival and has been featured on Maine Public Radio.

THE GREAT PERFORMER SERIES AT LINCOLN CENTER

In order to enable you to view the exciting



Howard L. Wieder

programs, I have highlighted the performers, dates, and the programs to be performed by world famous artists during the exciting Spring 2010 season of **LINCOLN CENTER'S GREAT PERFORMERS SERIES**. For ticket prices and availability, order online at www.lincolncenter.org.

Wednesday, February 17, 2010, at 8:00 PM, Avery Fisher Hall:

Rotterdam Philharmonic Orchestra
Yannick Nézet-Séguin, conductor
Jean-Yves Thibaudet, piano
Messiaen: Les offrandes oubliées, méditation symphonique
Liszt: Piano Concerto No. 2 in A major
Strauss: Ein Heldenleben, Op. 40

Friday, February 19, 2010, at 8:00 PM, Avery Fisher Hall:

Pre-concert lecture by Walter Frisch at 6:45
Stanley H. Kaplan Penthouse
Rotterdam Philharmonic Orchestra
Yannick Nézet-Séguin, conductor
Viktoria Mullova, violin
Brahms: Violin Concerto in D major, Op. 77
Theo Verbey: Conciso
Bartók: Concerto for Orchestra, BB 123

Sunday, February 21, 2010, at 11:00 AM, Walter Reade Theater:

David Greilsammer, piano
Program to include works by Rameau, Ligeti, Mozart, Satie, Monteverdi, Janáček, Scarlatti, and John Adams

Gates

Rameau: Gavotte et six doubles, part 1
Ligeti: Musica ricercata, No. 7
Mozart: Suite in C major, K.399, part 1
Satie: Gnossienne No. 3
Monteverdi (arrangement): Aria from *Orfeo*, part 1
Janáček: Piano Sonata, "The Presentiment," first movement
Scarlatti: Sonata in D major, K.492
Adams: China Gates
Scarlatti: Sonata in D minor, K.213
Janáček: Piano Sonata, "The Death," first movement
Monteverdi (arrangement): Aria from *Orfeo*, part 2
Satie: Gnossienne No. 2
Mozart: Suite in C major, K.399, part 2
Ligeti: Musica ricercata, No. 5
Rameau: Gavotte et six doubles, part 2

Monday, February 22, 2010, at 7:30 PM, Walter Reade Theater:

What Makes It Great? Rob Kapilow, host
St. Lawrence String Quartet
Todd Palmer, clarinet
Oswaldo Golijov: The Dreams and Prayers

of Isaac the Blind

Wednesday, February 24, 2010, at 8:00 PM, Avery Fisher Hall:

Pre-concert talk at 6:45 by Leon Botstein, Avery Fisher Hall
American Symphony Orchestra, Leon Botstein, music director
After the Thaw
Alexander Lokshin: Symphony No. 4, "Sinfonia Stretta"
Boris Tchaikovsky: Concerto for Cello and Orchestra
Boris Tishchenko: Symphony No. 5, Op. 67
Boris Tchaikovsky: Music for Orchestra

Sunday, February 28, 2010, at 5:00 PM, Alice Tully Hall:

Simon Keenlyside, baritone
Pedja Muzijevic, piano
Schumann: Dichterliebe, Op. 48
Wolf: Four Lieder on poems by Mörike
Gesang Weylas, No. 46
Heimweh, No. 37
Auf eine Christblume II, No. 21
Lied vom Winde, No. 38
Schubert: Nine Lieder
An Sylvia, D.891 (Shakespeare)
Die Einsiedelei, D.337 (Salis-Seewis) (verses 1 & 3 only)
Verklärung, D.59
Freiwilliges Versinken, D.700 (Mayrhofer)
Gruppe aus dem Tartarus, D.396 or D.583 (Schiller)
Himmelsfunken, D.651 (Silbert) (verses 1 & 2 only)
Ständchen (Rellstab?)
Die Sterne, D.939 (Leitner)
Auf der Bruck, D.853 (Schulze)

Monday, March 1, 2010, at 8:00 PM, Avery Fisher Hall:

London Philharmonic Orchestra, Vladimir Jurowski, conductor
Thomas Zehetmair, violin
Beethoven: Violin Concerto in D major, Op. 61
Brahms: Symphony No. 2 in D major, Op. 73

Sunday, March 7, 2010, at 3:00 PM, Avery Fisher Hall:

London Philharmonic Orchestra, Vladimir Jurowski, conductor
Alexander Toradze, piano
Shostakovich: Five Fragments, Op. 42
Ravel: Piano Concerto in G major 23"
Shostakovich: Symphony No. 4 in C minor, Op. 43

Sunday, March 14, 2010, at 11:00 AM, Walter Reade Theater:

Leon McCawley, piano
Barber: Nocturne (Homage to John Field),

Continued On Page 10

Diana C. Gianturco
ATTORNEY AT LAW

P.O. BOX 419
LONG BEACH, NY 11561
Tel: 888-805-8282
Fax: 516-706-1275
Text: 321-480-1678

APPEARANCES IN
QUEENS COUNTY

E-mail: DianainQueens@aol.com



DUFFY & POSILICO AGENCY INC.
Court Bond Specialists
BONDS * BONDS * BONDS * BONDS

Administration • Appeal • Executor • Guardianship

Injunction • Conservator • Lost Instrument

Stay • Mechanic's Lien • Plaintiff & Defendant's Bonds

Serving Attorneys since 1975

Complete Bonding Facilities

IMMEDIATE SERVICE!

1-800-841-8879 FAX: 516-741-6311

1 Birchwood Court • Mineola, NY 11501 (Across from Nassau County Courts)
NYC Location: 108 Greenwich Street, New York, NY 10006

The Culture Corner

Continued From Page 9—————
Op. 33
Chopin: Sonata in B-flat minor, Op. 35
Chopin: Nocturne in C-sharp minor, Op. 27, No. 1
Barber: Sonata, Op. 26
Sunday, March 21, 2010 at 2:00 Alice Tully Hall
Post-concert discussion with Garrick Ohlsson Alice Tully Hall
Garrick Ohlsson, piano
All-Chopin program
Three Nocturnes, Op. 9
Two Polonaises, Op. 40: No. 1 in A major, No. 2 in C minor
Sonata in B-flat minor, Op. 35
Mazurkas Op. 7, Nos. 1 in B-flat major, 2 in A minor, and 3 in F minor
Mazurka in C-sharp minor, Op. 30, No. 4
Waltz in A-flat major, Op. 42
Scherzo in B-flat minor, Op. 31

Monday, March 22, 2010, at 7:30 PM, Walter Reade Theater:
What Makes It Great? Rob Kapilow, host
Sally Wilfert, soprano
Michael Winther, tenor
Gershwin Songs

Thursday, March 25, 2010, at 8:00 PM, Alice Tully Hall:
Pre-concert lecture by Nicholas Kenyon at 6:45 Stanley H. Kaplan Penthouse
Orchestra of the Age of Enlightenment, Iván Fischer, conductor
All-Beethoven program
Symphony No. 2 in D major, Op. 36
Symphony No. 3 in E-flat major, Op. 55 (“Eroica”)

Friday, March 26, 2010, at 8:00 PM, Alice Tully Hall:
Orchestra of the Age of Enlightenment, Iván Fischer, conductor
All-Beethoven program
Symphony No. 1 in C major, Op. 21
Symphony No. 8 in F major, Op. 93
Symphony No. 5 in C minor, Op. 67

Saturday, March 27, 2010, at 8:00 PM, Alice Tully Hall:
Budapest Festival Orchestra, Iván Fischer, conductor
All-Beethoven program
Symphony No. 4 in B-flat major, Op. 60
Symphony No. 7 in A major, Op. 92
Sunday, March 28, 2010 from 1:00 to 2:30

Stanley H. Kaplan Penthouse
Panel Discussion: *On Interpreting Beethoven*
Ara Guzelimian, moderator

Sunday, March 28, 2010, at 3:00 PM, Avery Fisher Hall:
Budapest Festival Orchestra, Iván Fischer, conductor
Lisa Milne, soprano
Kelley O’Connor, mezzo-soprano
Jorma Silvasti, tenor
Kristinn Sigmundsson, bass
The Dessoff Symphonic Choir
James Bagwell, director
All-Beethoven program
Symphony No. 6 in F major, Op. 68 (“Pastoral”)
Symphony No. 9 in D minor, Op. 125

Wednesday, March 31, 2010, at 8:00 PM, Alice Tully Hall:
Ian Bostridge, tenor
Julius Drake, piano (equal billing)
All-Brahms program
Lieder und Gesänge, Op. 32
Four Lieder on poems by Heine
Sommerabend, Op. 85, No. 1
Mondenschein, Op. 85, No. 2
Meerfahrt, Op. 96, No. 4
Der Tod, das ist die kühle Nacht, Op. 96, No. 1
Thirteen Lieder
Es träumte mir, Op. 57, No. 3
Auf dem Kirchhofe, Op. 105, No. 4
Herbstgefühl, Op. 48, No. 7
Der Gang zum Liebchen, Op. 48, No. 1
Geheimnis, Op. 71, No. 3
Minnelied, Op. 71, No. 5
Alte Liebe, Op. 72, No. 1
Sommerfäden, Op. 72, No. 2
O kühler Wald, Op. 72, No. 3
Verzagen, Op. 72, No. 4
Über die Heide, Op. 86, No. 4
Mein Herz ist schwer, Op. 94, No 3
Botschaft, Op. 47, No. 1

Friday, April 9, 2010, at 8:00 PM, Avery Fisher Hall:
Pre-concert talk at 6:45 by Leon Botstein
Avery Fisher Hall
American Symphony Orchestra, Leon Botstein, music director
Scenes from Goethe’s Faust
Schumann: Scenes from Goethe’s Faust

Sunday, April 11, 2010, at 5:00 PM, Alice

Tully Hall:
Thomas Hampson, baritone
Co-presented by the New York Philharmonic and Lincoln Center’s Art of the Song Series.
Monday, April 12, 2010, at 7:30 PM, Walter Reade Theater:
What Makes It Great? Rob Kapilow, host
Shai Wosner, piano
Schumann: Fantasy in C major, Op. 17

Sunday, April 18, 2010, at 11:00 AM, Walter Reade Theater:
Moscow String Quartet
Borodin: String Quartet No. 2 in D major
Shostakovich: String Quartet No. 4 in D major, Op. 83

Wednesday, April 21, 2010, at 8:00 PM, Alice Tully Hall:
Sergey Khachatryan, violin
Lusine Khachatryan, piano
Bach: Violin Sonata No. 4 in C minor, BWV 1017
Brahms: Violin Sonata No. 2 in A major, Op. 100
Beethoven: Violin Sonata No. 9 in A major, Op. 47 (“Kreutzer”)

Sunday, May 2, 2010, from 6:00 to 7:30 PM, Irene Diamond Education Center
Panel Discussion: A Musical Peace
Ara Guzelimian, moderator, with Karen Armstrong, Osvaldo Golijov, and Jordi Savall

Sunday, May 2, 2010 at 8:00, The Allen Room:
Orient—Occident
A Dialogue of CulturesJordi Savall, director, vièle, lira d’arco, and rebabHespèrion XXI with guests Yair Dalal, Driss El Maloumi, and Gaguik Mouradian

Monday, May 3, 2010, at 7:30 PM, Walter Reade Theater:
What Makes It Great? Rob Kapilow, host
ARTEK
Gwendolyn Toth, director
Monteverdi: Madrigals

Monday, May 3, 2010, at 7:30 PM, Rose Theater:Pre-concert discussion with Jordi Savall and Ara Guzelemian at 6:15 Rose TheaterJerusalem, City of Heavenly and Earthly PeaceJordi Savall, director, vièle, lira d’arco, and rebabMontserrat Figueras, sopranoLior Elmalich, Muwafak Shahin Khalil, Razmik Amyan, Marc Mauillon, vocalists; Luís Vilamajó, tenor; Begoña Olavide and Andrew Lawrence-King, psaltery; Yair Dalal and Driss El Maloumi, ouds; psaltery; Gaguik Mouradian, kamāncheh; Al-Darwish; La Capella Reial de Catalunya; Hespèrion XXI; Trumpets of Jericho

Sunday, May 9, 2010, at 3:00 PM, Avery Fisher Hall:
Pre-concert talk at 1:45 by Leon Botstein
Avery Fisher Hall
American Symphony Orchestra, Leon Botstein, music director
Apollo and Dionysus
Bliss: Hymn to Apollo
Dallapiccola: Frammenti sinfonici, from the ballet Marsia
Hans Werner Henze: Symphony No. 3
Holst: Hymn to Dionysus
Roussel: Bacchus et Ariane, Op. 43, Suites Nos. 1 and 2

Sunday, May 9, 2010, at 5:00 PM, Alice Tully Hall:
Pre-concert lecture by Michael Beckerman at 3:45 Stanley H. Kaplan Penthouse
Emerson String Quartet
Jeffrey Kahane, piano
The Folk Music
Dvo_ák: String Quartet No. 10 in E-flat

major, Op. 51
Dvo_ák: Cypresses Nos. 1–4
Janá_ek: String Quartet No. 1 (“The Kreutzer Sonata”)
Dvo_ák: Piano Quintet in A major, Op. 81

Sunday, May 16, 2010, at 5:00 PM, Alice Tully Hall:
Post-concert discussion with the Emerson String Quartet and Ara Guzelimian Alice Tully Hall
Emerson String Quartet
The Late Quartets
Dvo_ák: Cypresses Nos. 5 and 6
Dvo_ák: String Quartet No. 14 in A-flat major, Op. 105
Janá_ek: String Quartet No. 2 (“Intimate Letters”)
Dvo_ák: Cypresses Nos. 7 and 8
Dvo_ák: String Quartet No. 13 in G major, Op. 106
Wednesday, May 19, 2010 at 8:00 Alice Tully Hall
Emerson String Quartet
Paul Neubauer, viola
From the New World
Dvo_ák: Cypresses Nos. 9–12
Martin_: Duo No. 1, “Three Madrigals,” H.313
Dvo_ák: String Quartet No. 12 in F major, Op. 96 (“American”)
Dvo_ák String Quintet in E-flat major, Op. 97 (“American”)

Thursday, May 20, 2010, at 8:00 PM, Avery Fisher Hall:
Los Angeles Philharmonic, Gustavo Dudamel, conductor
Jean-Yves Thibaudet, piano
Bernstein: Symphony No. 2, “The Age of Anxiety”
Tchaikovsky: Symphony No. 6 in B minor, Op. 74 (“Pathétique”)

Saturday, May 22, 2010, at 8:00 PM, Avery Fisher Hall:
Post-concert discussion with Gustavo Dudamel, Deborah Borda, and John Schaefer Avery Fisher Hall
Los Angeles Philharmonic, Gustavo Dudamel, conductor
John Adams: City Noir (Los Angeles Philharmonic commission/ New York premiere)
Mahler: Symphony No. 1 in D major

THE CASE OF THE BLUE OYSTER GANG

THE CASE OF THE BLUE OYSTER GANG was a fun, charming comedy with music that played recently at the Workman’s Circle Auditorium on East 33rd Street by Park Avenue. The original comedy, in a film noir style, was written by Ben Richards.

The cast was composed of dedicated, young and energetic actors: **STUART WILLIAMS, BEN BERGIN, LELAND WHEELER, LIZ CURTIS, CHRISTINE MCKENNA, KAREN BRELSFORD, CHANEL THOMAS, AND MIKE HENRICI.** The well-paced direction was by **BEN BERGIN**, the lively Musical Direction was by **KEITH PANZARELLA**, and the excellent lighting and sound was by **CHARLOTTE BERGIN.** They were all talented, and I hope they keep pursuing their artistic craft and ambitions.

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.

Queens County Bar Association

90-35 148th Street, Jamaica, New York 11435

Tel 718-291-4500 Fax 718-657-1789

QUEENS COUNTY BAR ASSOCIATION

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,

GUY R. VITACCO, JR.

President

SERVICE DIRECTORY

LAWYER TO LAWYER

**SECURITIES
LAW**

John E. Lawlor, Esq.
Securities
Arbitration / Litigation;
FINRA Arbitrations;
Federal and State
Securities Matters
(516) 248-7700
129 Third Street
Mineola, NY 11501
johnelawlor.com

OFFICE FOR RENT

Wall Street Office

**Phone & Mail \$125/mo.
Mail Service Only \$79/mo.**
• Beautiful corporate setting
• Attended reception area
• Personalized phone services
• Msg e-mail relay -
Patching - Voice Mail
• Mail receiving, photocopier,
fax, secretarial services
• Conference rooms,
furnished offices
at 110 Wall St., 11th Floor
(800) 205-7685
www.yourwallstreetoffice.com
info@yourwallstreetoffice.com

GOT LEGAL NOTICES?

Suffolk Life may be gone, but you can still get your
Long-Island Legal Notices Published



Long-Islander

NEWSPAPERS

Call 866-867-9121
and ask for Linda

GROW YOUR PRACTICE. CALL 866-867-9121 TO ADVERTISE

Lawyer-to-Lawyer Advertising at reasonable rates



REACH members of the bench and, bar in SUFFOLK, NASSAU, QUEENS, NEW YORK & KINGS COUNTIES through
LEGAL MEDIA PUBLISHING'S ATTORNEY PUBLICATIONS

866-867-9121

BOOKS AT THE BAR

BY HOWARD L. WIEDER

SELECT LEGAL TOPICS

Publisher: University Press of America
(July 28, 2009)

Language: English

ISBN-10: 0761846441

ISBN-13: 978-0761846444

ANDREW J. SCHATKIN, Esq., has a passion for the law. A prolific writer, **ANDREW J. SCHATKIN**, a QCBA member, has written for this newspaper and numerous other publications on assorted legal subjects. The array and versatility of his subject matter is breathtaking. His latest work, containing many of his well-written essays and useful works is his new book **SELECT LEGAL TOPICS**.

SELECT LEGAL TOPICS is a compendium of legal journal articles in the areas of criminal law, evidence, civil procedure, family law, labor and employment law, civil rights, tort law, and federal procedure, covering a wide spectrum of topics

in these fields. Laymen, students, lawyers, and law professors will find this book informative.

THE LAW FIRM OF ANDREW J. SCHATKIN specializes in Employment; Criminal; Civil Rights; Appeals; Personal Injury; Divorce; Family and Commercial Matters. **ANDREW J. SCHATKIN** has been practicing law for over 25 years and has briefed and argued over 150 appeals, civil and criminal, federal and state, to all appellate courts in New York State. **ANDREW J. SCHATKIN** has tried over 100 jury and non-jury trials in both Federal and State courts, civil and criminal. **ANDREW J. SCHATKIN** has successfully obtained significant acquittals in numerous criminal cases and has also had success in civil litigation, not only on the trial level, but in obtaining successful settlements against major corporations.



Howard L. Wieder

ANDREW J. SCHATKIN is the author of over 150 professional publications and has contributed to 5 books in the fields of Evidence, Criminal Law, Family Law, and Labor Law. In addition to his law degree, **ANDREW J. SCHATKIN** has a Certificate in International Law from The Hague in the Netherlands and a Certificate in International Human Rights from the Institut International des Droits de l'Homme, Strasbourg (France). In December of 2007, the William Fulbright Scholarship Award, the Bureau of Education and Cultural Affairs of the Department of State and the Council for the International Exchange of Scholars approved **Andrew J. Schatkin's** candidacy for the Fulbright Grant. **ANDREW J. SCHATKIN** is listed in *Who's Who in America*, *Who's Who in the World*, and *Who's Who in American Law*.

SELECT LEGAL TOPICS by **ANDREW J. SCHATKIN** is available at www.amazon.com and book stores.

You can reach
ANDREW J. SCHATKIN at:

The Law Firm of
Andrew J. Schatkin
350 Jericho Turnpike
Jericho, NY 11753

Tel: (718) 229-276, (516) 932-8120,
Website: www.schatkin.com
Fax: (718) 279-7247, (516) 465-7068
Email: schatkin@yahoo.com

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.

Saturday Morning

Continued From Page 3 —————
physical appearance, was totally gone!

James was inwardly conflicted. He knew that the original description undoubtedly included the fact that the “perp” had a brushy moustache and now his client had altered the evidence demonstrably, in order to obtain a more favorable but fraudulent result. Obviously, James could say nothing about his clients’ actions in altering his facial appearance. That would constitute an ethics violation he was quite certain. Yet, he felt substantial discomfort in taking part in the charade to come, knowing the result to likely favor his client and now concerned that he had been fed a pack of lies about what really happened.

Once they were all upstairs and his clients ensconced in a waiting room the detectives felt more comfortable in sharing additional facts with James. The complainant was indeed a young stewardess who had just arrived from a lengthy domestic flight and was waiting for a friend to pick her up at the airport. The weather was nasty, it was late, she was exhausted and she foolishly accepted the offer of a ride from a stranger who looked like a decent, middle class guy. He had made some excuse for being at the airport

to drop someone off anyway, and so she had gotten into the small, green sports car. On the way out of the airport he had taken a few turns off the regular highway and wound up in a darkened cul de sac in a residential neighborhood. He pulled out a small knife and threatened to cut her face if she didn’t perform oral sex on him. She succumbed, shaken and scared to death, and would have preferred exiting the car right then and there and fleeing to one of the private homes for assistance, but the perpetrator insisted on driving her home. She provided a phony street address a few blocks from her actual residence and managed to memorize most of the license plate. There weren’t that many locally registered small, green sports cars with New York plates which began with the numbers 4783 and the letters J--. Even fewer were of males in the client’s age category. The cops were certain they had the right man. James was now pretty sure they were right.

The detectives provided five “fillers” (non-suspects who would stand in the lineup along with the suspect) who were all policemen. It was quite reasonable inasmuch as all of them and Alex were Caucasian and in their mid twenties. The police had adjusted for the fact that when

Alex showed up he appeared clean shaven. Never having attended such a proceeding before, and being too proud to call his father for advice, James brazenly entered the room where all of the suspects were lined up and stood in the corner. He foolishly thought that he was lending his client moral support by standing inside the same room. Of course, that left the two senior sex crimes detectives and the viewer all alone on the other side of the viewing window with no one to hear what was said or to ensure that no coaching occurred.

There was a knock on the window, which James had been told meant that the viewing would then be taking place and that all the suspects should look towards the window. James had cleverly ... he thought ... placed his client on one end of the review. After a few minutes there was another knock on the window, which James correctly presumed was a signal that the lineup was over. He left the room and the detectives informed him in a most sober manner that his client had been picked out. Now, because James was on the wrong side of the glass when the viewing occurred, he had no idea as to what had actually happened and was compelled to accept the result as reported. His client,

when told of the identification, went understandably hysterical; now being charged with a sexual assault in the first degree and facing fifteen years in prison. He just kept repeating that he couldn’t understand how the woman could have identified him. His father was likewise dismayed at the result. They had both believed that they would beat the odds by their tactic of shaving off Alex’s moustache and that had failed.

When James related the details to his father, the elder Fenton quietly apprised the young man that he had screwed up by standing on the wrong side of the viewing mirror, thereby providing the cops with carte blanche as to their dealings with the viewing victim. They may well have indicated the correct number to her after she failed to make an initial identification because none of the men bore a moustache. They would never know.

It was the 70’s, women were not yet empowered and the courts simply had too many serious felons to deal with to provide trials to them all. Alex only received a sentence of five years and insisted, even after he was sent away, that something had gone very, very wrong. James wasn’t quite certain how he felt about the result.

Answers To Marital Quiz

ANSWERS TO MARITAL QUIZ FROM PAGE 8

Question # 1 - Is it proper for the Family Court to deny a noncustodial parent visitation after refusing that parent’s request for forensic evaluations?

Answer: Yes, if the “...The Family Court possessed sufficient information to render an informed decision regarding custody consistent with the subject child’s best interests.” *Matter of Rhodie v. Nathan* 2009 NY Slip Op 08108 (2nd Dept.)

Question # 2 - Is the Family Court permitted to delegate to the Administration for Children’s Services the authority to determine whether and when the father was entitled to visitation?

Answer: No, *Matter of Rhodie v. Nathan* 2009 NY Slip Op 08108 (2nd Dept.)

Question # 3 - Is the Family Court permitted to condition future unsupervised visitation on the mother’s successful completion of therapy?

Answer - No, *Matter of Bonthu v. Bonthu* 2009 NY Slip Op 08613 (2nd Dept.)

Question # 4 - Is the Family Court permitted to direct the mother to attend therapy as a component of supervised visitation?

Answer - Yes, *Matter of Bonthu v. Bonthu* 2009 NY Slip Op 08613 (2nd Dept.)

Question # 5 - Does the Family Court in New York have jurisdiction to issue its own support order, if a prior order of support for the subject children was issued by the State of Vermont and the custodial parent still resides in the State of Vermont?

Answer - No, *Mansfield v. Mansfield* 2009 NY Slip Op 08619 (2nd Dept.)

Question # 6 - After a child support order was issued by a Pennsylvania Court, the parents and the subject child moved to New York. Under Pennsylvania law, child support ends at age 18. Does the New York Family Court have the right to order child support until age 21?

Answer - No, *In the Matter of Epstein v. Shoshani* 2009 NY Slip Op 7839 (2nd Dept.)

Question # 7 - Would your answer to question 6 be different if prior to the child reaching the age of 18, the New York Family Court so-ordered a stipulation of the parties’ which increased the father’s child support obligation?

Answer - The result would be the same. *In the Matter of Epstein v. Shoshani* 2009 NY Slip Op 7839 (2nd Dept.)

Question # 8 - At a trial, may a party seek to rebut the presumption that any commingled separate property funds became marital property?

Answer: Yes, *Masella v. Masella* 2009 NY Slip Op 08190 (2nd Dept.)

Question # 9 - If your answer to question 8 was yes, how?

Answer - By tracing the source of the funds with sufficient particularity. *Masella v. Masella* 2009 NY Slip Op 08190 (2nd Dept.)

Question # 10 - Can “social abandonment” of a spouse qualify as “abandonment” and provide a ground for divorce?

Answer: No, *Davis v. Davis* 2009 NY Slip Op 08579 (2nd Dept.)

Criminal Law Cases

Continued From Page 1 —————
People v. Gregory Allen, 13 N.Y.3d 731 (decided October 27, 2009), the Court again considered the standards for determining when a trial court should admit expert testimony on the reliability of eyewitness identification. In these cases, the Court reviewed its rulings in a series of recent cases including *People v. Lee*, 96 N.Y.2d 157 (2001), *People v. Young*, 7 N.Y.3d 40 (2006) and especially *People v. LeGrand*, 8 N.Y.2d 449 (2007) in which the Court set forth the factors which a trial judge should consider in deciding whether to admit such testimony. In *Abney*, the Court found that the trial judge’s preclusion of expert testimony on eyewitness identification was an abuse of discretion since there was no evidence connecting the defendant to the crime, other than the 13

year old robbery victim who did not describe the perpetrator as possessing any distinctive physical characteristics. In contrast, in *Allen*, the Court found no abuse of discretion due to the preclusion of such expert testimony since there were two eyewitnesses to the crime and both had some prior familiarity with the perpetrator.

In *People v. Michael Brown*, 13 N.Y.3d 332 (decided November 19, 2009), the Court decided whether a defendant’s Sixth Amendment right to confrontation was violated by the admission of a DNA report prepared by a private laboratory and introduced through the testimony of a biologist employed by the Office of the Chief Medical Examiner. In *Brown*, a nine year old victim was sodomized in 1993. Though a rape kit was promptly prepared at a local hospital, DNA testing was not

done at that time due to a large backlog of cases. In 2002, after receiving additional funding to address the backlog, the Medical Examiner sent the rape kit to a private laboratory which had been subcontracted to perform DNA tests. The private laboratory isolated a male DNA specimen from the rape kit and produced a report containing machine-generated data of the male’s DNA characteristics. That report was subsequently entered into a national database. In 2003, a routine search of the database linked the defendant’s DNA to the profile found in the victim’s rape kit. Subsequently, a biologist from the Medical Examiner’s Office took a DNA sample from the defendant and matched it to the specimen from the victim’s rape kit.

In rejecting the defendant’s argument that admission of the report containing

data of the male’s DNA characteristics violated his right to confrontation, the Court found that the report was not “testimonial” because it contained no conclusions, interpretations or comparisons and because the technicians who prepared the report would not have been able to offer any testimony other than how they performed certain procedures and could not be considered analysts under the Court’s definition in *People v. Meekins*, 10 N.Y.3d 136 (2008). Moreover, because the biologist who conducted the actual analysis linking the defendant’s DNA to the profile in the rape kit testified at the trial, no Sixth Amendment violation could be said to have occurred under the United States Supreme Court’s ruling in *Melendez-Diaz v. Massachusetts*, 557 U.S. ___, 129 S. Ct. 2527 (2009).