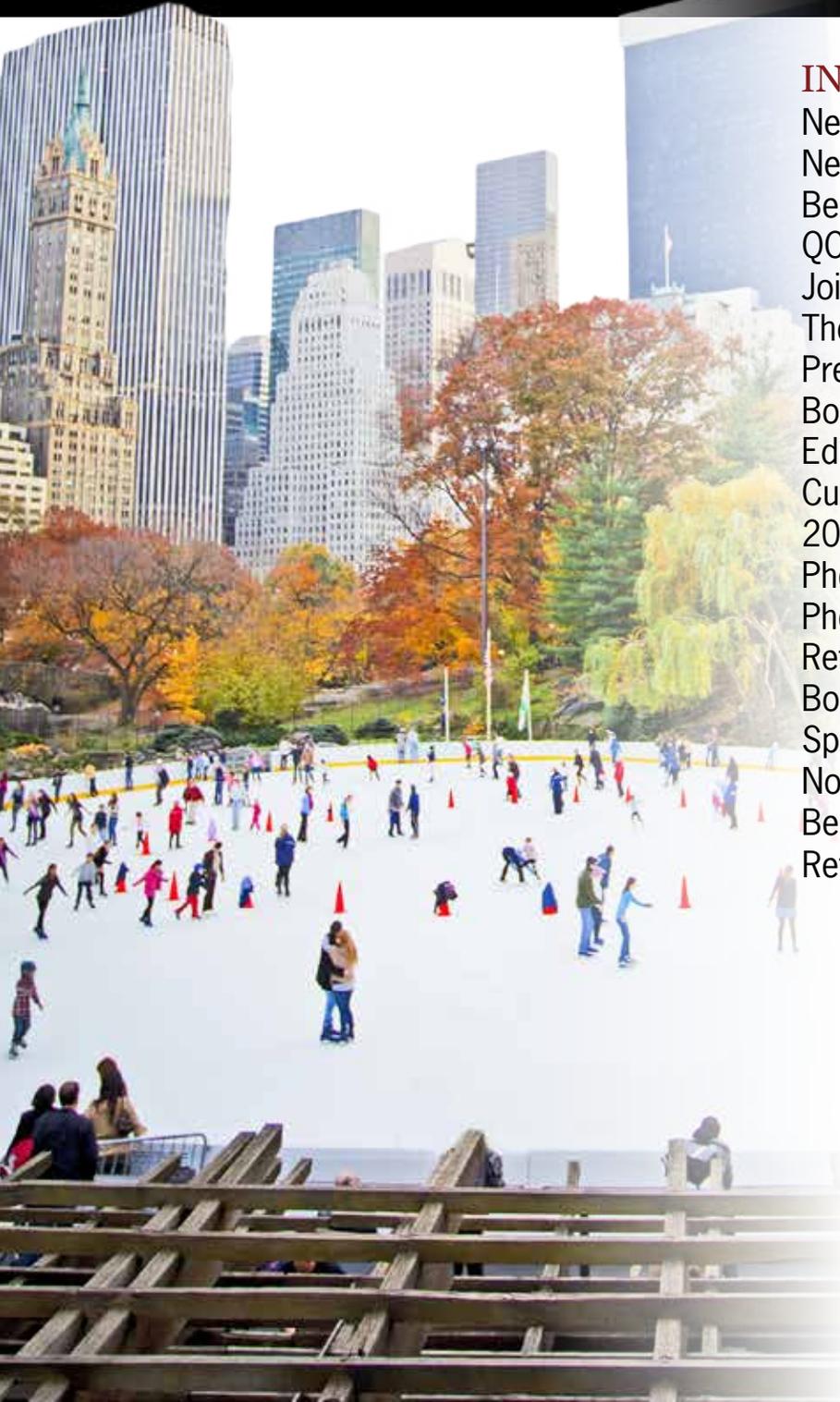


QCBA

BULLETIN



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NEW MEMBERS

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Ian T. Freeman	Tiffany I. McLaughlin	Shazana Zumpfe-Cochran
Raj Gajadar	Edward R. McNamara	
Kristina Marie Georgiou	Joseph G. Milizio	
	Stephannie A. Miranda	

NECROLOGY

Paul J. Kalina	Alexander J. Lapinski
Hon. Joseph M. Lane	John F. Scheich

- [Become a Member Today / QCBA Video](#)
- [Member Discount Programs](#)
- [Join a Committee](#)

December 2014

Tues, December 2 Back to Basics:
 Winning Motions-Perfect Papers 12:45 – 1:45 pm
 A Primer on Various Practice Areas - Pt 3

Fri, December 5 Back to Basics:
 Matrimonial & Accounting 1:00 – 4:00 pm

Thurs, December 11 .. Holiday Party - Douglaston Manor

Thurs, December 25 Christmas Day – Office Closed

Fri, December 26 Christmas Holiday – Office Closed

January 2015

Thurs, January 1 New Year's Day - Office Closed

Mon, January 19 Martin Luther King Jr. Day
 Office Closed

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 Street, Jamaica, NY. Due to unforeseen events, please note that dates listed in this schedule are subject to change. More information and changes will be made available to members via written notice and brochures. Questions? Please call 718-291-4500.

February 2015

Tues, February 10 QCBA Night Out With the Islanders

Wed, February 11 E-Discovery CLE – Farrell Fritz

Thurs, February 12 Lincoln's Birthday – Office Closed

Mon, February 16 President's Day – Office Closed

March 2015

Thurs, March 12 Buying & Selling a Business

April 2015

Fri, April 3 Good Friday, Office Closed

Wed, April 15 Equitable Distribution Update

Wed, April 22 CLE on Animal Law

Thurs, April 23 Civil Court Seminar

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PRESIDENT'S MESSAGE *by Joseph Carola, III*

Even though there's a chill in the air, things have been jumping in and around Queens, so without further ado, here's what you need to know:

New Protections for Referees in Foreclosure Cases

On September 23, 2014, and effective immediately, Governor Cuomo signed New York Assembly Bill 1582. The law prevents referees from being held liable for interest or penalties on transfer taxes to be paid on deeds filed in their capacity as referee pursuant to a judgment of foreclosure and sale.

Previously, pursuant to City Administrative Code 19 RCNY 23-08, referees in foreclosure proceedings could have been viable for interest and fees imposed by the City Department of Finance for the failure to timely file a Real Property Transfer Tax (RPTT) return following the sale of foreclosed property.

Pursuant to the new law, the Tax Law and New York City Administrative Code were amended as follows:

Tax Law -- 1422, 1437, 1438-p, 1439-p, 1439-pp, 1447-a, 1448-v, 1449-u, 1449-pp, 1449- ppp, 1449-pppp, and 1449-ppppp were amended to provide:

"Foreclosure Proceedings. Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the Referee or Sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter."

Tax Law ~1240 was amended to provide:

"Notwithstanding any other provision of law to the contrary, the authorization to impose tax upon the transfer of real property pursuant to subdivision (b) of section twelve hundred one of this article shall not, when the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, include the authorization to impose civil or criminal penalties, interest, or other liability upon the referee or sheriff effectuating the transfer."

Section 11-2119 of the Administrative Code of the City of New York has been amended to provide:

"Foreclosure proceedings: Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating the transfer shall not be liable for any interest or penalties authorized by this chapter or chapter forty of this title."

PRESIDENT'S MESSAGE *Continued*

Practitioners may also wish to consider adding the following language to Judgments of Foreclosure and Sale submitted for signature: "The Referee shall not be held responsible for the payment of penalties or fees pursuant to this appointment. The purchaser shall hold the Referee harmless for any such penalties or fees assessed".

Amendment of CPLR 3216

In the event that your county heard of and/or follows the CPLR, you may want to note this change to the dismissal for Want of Prosecution section. The changes dictate that when an action is taken for failure to prosecute, it must be with notice to all parties; made one year after the joinder of issue OR six months after the issuance of a Preliminary Conference Order.

Joseph Carola III
President

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Digital Cabs and Hotels New York City on the Ropes?

New York City is a transportation hub and meeting place perhaps the greatest in the world, certainly the largest in our country. From the far corners of the globe, people come to Kennedy Airport and take one of our thousands of yellow cabs to one of our hundreds of hotels.



Our yellow cabs, green cabs and black car services are closely regulated by the New York City Taxi and Limousine Commission (TLC). The TLC regulates every aspect of the cab and its driver – meters, equipment, ownership, insurance and driving offenses. Our hotels are regulated by the New York City Department of Buildings and the Fire Department. Every aspect is covered – fire extinguishers, fire exits, room size, and personnel.

Along comes digital world companies to upend years of carefully drawn rules and regulations that have built the world's most successful city.

Is this a good thing?

New York City is not a computer game or a pinball machine. One takes a digital cab at one's own peril. Any insurance there? Did the driver have any training? How about the condition of the cab? Did the TLC ever meet the digital driver or inspect the digital cab?

Is the digital cab taking you to a digital hotel room? What exactly were you planning to do if a fire broke out? Do you really think you'd find a fire extinguisher in a digital room or hallway? Were you planning to call the front desk? What front desk?

A modest proposal – digital cab companies should be required to register and be supervised by the TLC before being allowed to do business in New York City. Digital room services should be required to have every room in their inventory inspected and passed by the Buildings Department and the Fire Department before being given permits to operate in New York City.

Digital cab and hotel companies must be required to meet the same exacting requirements as do their current competitors.

The City Council and State Legislature need to act on this before we see the next tabloid headline – “Foreign tourist taken for five borough ride in digital cab to drug dealer's digital room and is arrested by mistake in drug raid”.

Our City has a seamier side. It is up to the City and State Governments to make sure our standing as the world's best meeting place is not ruined by unregulated digital cowboys out to undermine what works.

Need help with alcohol, drugs or gambling?

Call the Lawyers Assistance Committee Confidential Helpline 718-307-7828



Each day you enter the Supreme Court, you walk through the strong bronze doors featuring various law givers and up the grand marble staircase where you pass two portraits painted by Vincent Aderente. On the left staircase, the mural is titled "Mosaic Law." The mural on the right side of the staircase is titled "Constitutional Law."

Have you ever wondered who any of these figures represented? Thanks to The Smithsonian, wonder no more.

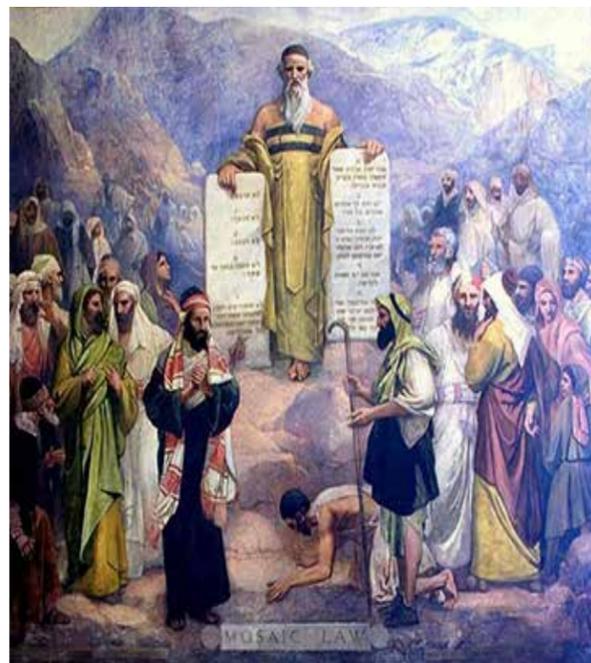
The figures on the bronze doors are: Hammurabi, Confucius, Moses, Manu, Gaius, Mohammed, Edward I and Grotius. (tip of the cap to Jeff Gottlieb)

CONSTITUTIONAL LAW

The Chief Justices of the Supreme Court are on the left side - Salmon P. Chase, Morrison Remick Waite, Roger Brooke Taney, Oliver Ellsworth, John Marshall, Melville Weston Fuller, John Jay, Edward Douglas White, William Howard Taft and Charles Evans Hughes. Our "Founding Fathers" are on the right side: George Washington, Thomas Jefferson, James Madison, George Clymer, James Wilson, Benjamin Rush, George Read, Alexander Hamilton, Benjamin Franklin, John Hancock and, because he was too antsy to sit still, Richard Henry Lee in profile.

MOSAIC LAW

This mural was described by Mr. Aderente as depicting: "In center of panel, Moses presents to his people the tablets on which are inscribed the ten commandments. Left foreground, a priest with prayer shawl. Back of him, the merchants and Aaron, brother of Moses, in the act of calling the tribes. Right, in foreground, the shepherd and the slave kneeling, to his right, the wealthy man with his family, above him, the holy man. In the background, the multitude coming over the mountains to hear Moses speak."



I was not able to attend this year's Annual ABA Meeting taking place in Boston, Massachusetts due to a scheduling conflict.

However, I was able to obtain some interesting information regarding the House of Delegates meeting that took place on August 11th and 12th of this year, the culmination of the annual meeting.

The HOD is the association's policy making body. It is made of 560 members representing state and local bar associations.

During the two-day session, the HOD adopted policies relating to cybersecurity, domestic and sexual violence and LGBT rights. One of the highlights of the meeting was the address given by Chief Justice John G. Roberts, Jr. He discussed the influence of the Magna Carta on the rule of law in the world and kicking off the ABA's celebration leading up to the great Charter's 800th anniversary on June 15, 2015.

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PHOTO GALLERY

"Recent Significant Decisions and Developments From Our Highest Appellate Courts 9-30-14." Photos by Walter Karling



J. Gardiner Pieper, Pres of Pieper Bar Review, NY Ct of Appeals Associate Judge Jenny Rivera, Spiros Tsimbinos, QCBA President Joseph Carola



Associate Judge of the NY Court of Appeals Jenny Rivera speaking about recent developments in the Court.



Art Terranova, Wally Leinhardt, Hon. Phyllis Orlikoff Flug, Hon. Seymour Boyers and Hon. Allen Beldock



Hilary Gingold, Maureen Heitner, Hon. Rudy Greco, Hon. Jodi Orlow and Hon. Terrence O'Connor



PHOTO GALLERY

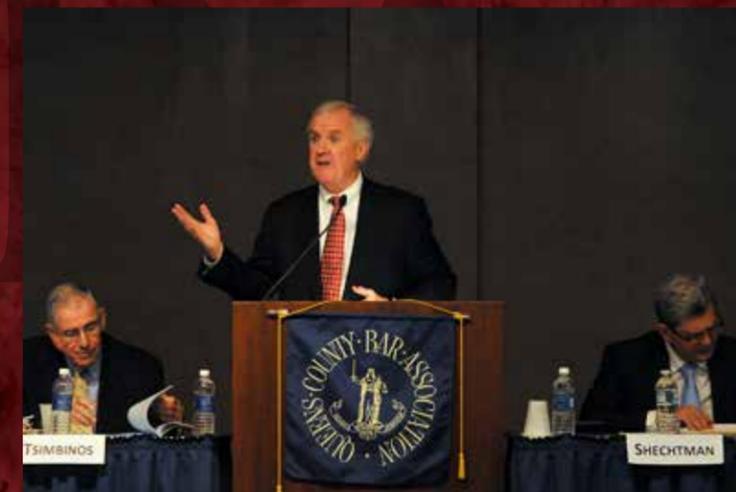
"Recent Significant Decisions and Developments From Our Highest Appellate Courts 9-30-14." Photos by Walter Karling



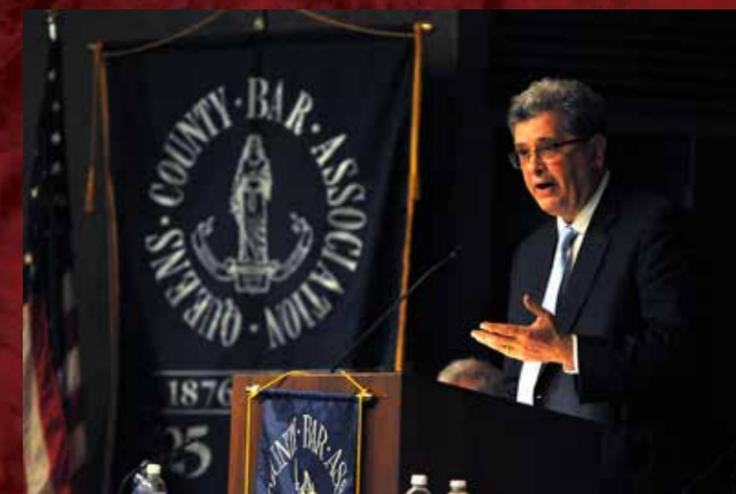
Zenith Taylor and Hon. Bernice Siegal



Spiros Tsimbinos, Hon. Jenny Rivera, Chanwoo Lee and Hon. Joseph Zayas



Speaker J. Gardiner Pieper going over the most recent civil cases that have been brought before the NY Court of Appeals.



Speaker Paul Shechtman discussing criminal cases before the NY Court of Appeals.



Jennifer Levy, Sylvia Nunez, Kristen Dubowski and Emilie Simone



RETHINKING THE LIFE ESTATE *by Ann Margaret Carrozza*

Life Estates were historically my “go-to” vehicle to help clients avoid both probate and long term care claims on the primary residence. This is no longer the case.



Background - Since the late 1990s, when NYS enacted ‘Transfer on Death’ legislation for brokerage accounts, most of a decedent’s assets can now avoid going through probate at death. That is, except for the primary residence. The Life Estate was long utilized to avoid probate by naming beneficiaries of a house directly on the deed.

The life estate is created by transferring ownership of the house from “Mary Smith” to “Mary Smith, for life, Remainder Interest to Mary, Susie, and Johnny”. In this arrangement, Mary owns the present and the kids own the future. Upon the death of Mary Smith, the remainder beneficiaries own the property immediately. The life estate also serves to protect the house against long term care claims, provided that it was created prior to the applicable Medicaid “look-back” period. This all sounds great, so why have I stopped using the life estate?

Because in ten out of ten situations, I find that a properly drafted trust will accomplish one’s planning goals more effectively.

Medicaid Look-Back - Prior to 2006, the so-called Medicaid look-back period for life estates was 3 years. This gave it an advantage over a trust, the look-back for which was always 5 years. Since 2006, however, the look-back period on everything is 5 years. Therefore, the life estate no longer enjoys this advantage.

Sale of House During a Parent’s Life - Both the trust and the life estate allow for the sale of the property during the parent’s life. The problem with selling the house in a life estate is two-fold: The parent will receive a percentage of the sale proceeds outright. The actuarial value of the life estate (determined by reference to the ‘life insurance tables’) is payable directly to the parent. This leaves them with totally unprotected assets and the need to “start over” in terms of protecting this money

If the parent is on Medicaid and in a nursing home at that point, the parent’s ‘life estate’ portion of the sale proceeds must be turned over to Medicaid. As if this weren’t bad enough, selling a home in a life estate will also deprive the family of “mom’s” full \$250,000 capital gains exclusion. This is because she only owned a percentage of the house (“the now”) and therefore, isn’t entitled to the full exclusion. . . . *Continued on page 13*

RETHINKING THE LIFE ESTATE *Continued*

By contrast, selling the house from within the trust, results in all of the sale proceeds being paid directly to the trust. These monies can then remain protected within the trust and invested in any asset class, including a replacement residence for mom’s use. The trust (if properly drawn) will also entitle the family to the full \$250,000 capital gains exclusion).

Second Marriage Planning - The life estate is often employed to help clients balance the competing goals of protecting a surviving spouse against the desire to leave the primary residence to one’s adult children of the first marriage. This life estate can be created in the will and reads as follows: “I leave my house to Jane, for her life, and then to Mary, Susie, and Johnny as tenants in common.”

This arrangement has intuitive appeal, but is flawed in several respects. Giving the surviving spouse lifetime ownership means just that. During all of the days of “Jane’s” life, the children are unable to sell the house. This is true, even if Jane has moved away or is in a nursing home. A better result can be achieved by using a trust which gives Jane occupancy rights “until the earlier of her death, voluntary vacatur, stay in a nursing home, remarriage, or cohabitation with an unrelated person”

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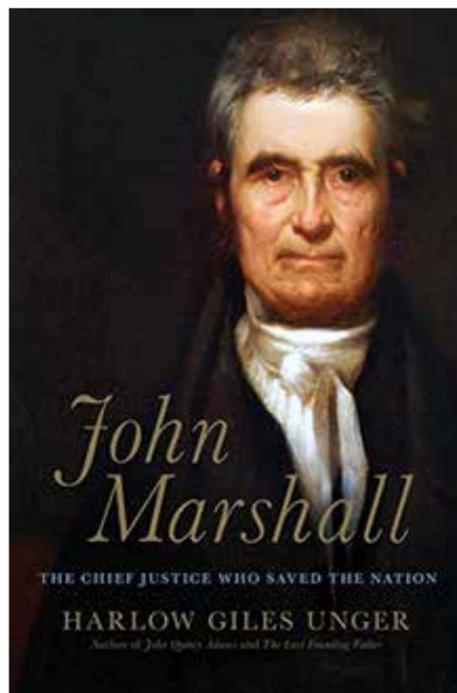
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John Marshall: The Chief Justice Who Saved the Nation

By Harlow Giles Unger
October 1, 2014
Hardcover \$27.99
374 Pages
ISBN: 978-0-306-82220-9
History/Biography



HARLOW GILES UNGER's recent biography of the greatest legal mind this nation has produced - - John Marshall - - does justice to its subject who was passionately devoted to justice. Unger's biography describes the courage, brilliance, genius, and modesty of the fourth Chief Justice in this country's history. The ability of courts to strike down laws, under the rubric of judicial review, stemmed from John Marshall's mind and pen, even though the concept is nowhere contained in the Constitution.

Creating judicial review was not the only act of Marshall's courage. A young John Marshall stood up to the eloquent Patrick Henry who argued that Virginia should not enter into the Union. Virginia was then the most populated and prosperous state and had it voted against entry into the Union, the result would have been disastrous, whatever the result by the other 12 colonies. How many persons could have stood up to Patrick Henry, whose eloquence was unparalleled? John

Marshall rose to the task in the crucial debate of Virginia's entry. He exposed Henry's act as governor in having a man executed without conducting a trial. The revelation was crucial in that it hammered Henry down several pegs from the high stature in which he was held, and thus the act of exposing Henry's one-time ruthlessness was instrumental to legislators deciding whether Virginia should enter the Union.

The humanity of John Marshall is shown by his loyalty and devotion to his wife. Upon her death, he walked miles each day to visit her grave.

Marshall's influence in this country's political history is inestimable. In the wake of George Washington's death, the country was in chaos. . . . *Continued on page 15*

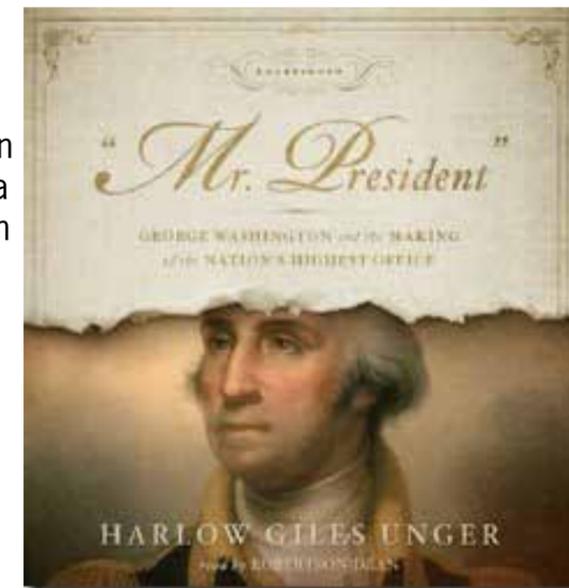
In the absence of their first commander-in-chief, the remaining founding fathers entered into bitter rivalry. Literal fistfights broke out on the floor of the House, and high-ranking officials challenged one another to duels. There were plots to publicly disgrace, wrongfully imprison, or even murder political adversaries. Even John Adams and Thomas Jefferson, both original signers of the Declaration of Independence, broke their oaths, attempted to void the Bill of Rights, and urged certain states to effectively secede from the Union.

Enter John Marshall, who vaulted from the obscurity of a log cabin in Virginia to the national political stage, serving as John Adams' Secretary of State, and later rising to the position of Chief Justice of the Supreme Court, a title he would hold for more than thirty years. John Adams, in reflecting on his life in public service, would recall the appointment of John Marshall as his greatest gift to the nation and "the pride of my life." In **JOHN MARSHALL: THE CHIEF JUSTICE WHO SAVED THE NATION**, **author and historian HARLOW GILES UNGER** shows how John Marshall's rulings reshaped the nation's crumbling judiciary system, preserved the Constitution as we know it today, and protected the United States from tyranny.

This book is a great read. I urge its purchase!

HARLOW GILES UNGER is a former distinguished visiting fellow at Mount Vernon. A highly acclaimed historian, he is the author of more than twenty books including *The Last Founding Father*, *Lion of Liberty*, *American Tempest*, *John Quincy Adams*, and "Mr. President." Harlow Giles Unger wrote the three-volume *Encyclopedia of American Education*. Prior to becoming a biographer, Unger was a journalist for the *New York Herald Overseas Service* in Paris, and later worked in both Britain and Canada. He is also reported to be a former associate professor of English and journalism and is an alumnus of both Yale University and California State University.

HOWARD L. WIEDER is a Principal Law Clerk in Supreme Court, Queens County, in Jamaica.





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NOMINATING COMMITTEE NOTICE

NOTICE OF NOMINATING COMMITTEE MEETINGS:

Please take notice that those members who wish to be considered for nomination as Officers or Members of the Board of Managers of the Queens County Bar Association should submit written requests and resumes highlighting your activities in the Association prior to January 16, 2015.

Tentative meetings pursuant to the by-laws have been scheduled by the Nominating Committee on January 21, 2015 and finally on January 28, 2015. Said meetings are scheduled for 5:00 P.M. in the Board of Managers Room - in the Headquarters Building, 90-35 148th Street, Jamaica, N.Y.

At those meetings you may present the names of the persons whom you desire to have considered by the Nominating Committee for nomination to offices to be filled at the Annual Meeting. Hearings will be held at those times for that purpose pursuant to the by-laws.

Gregory J. Newman
Secretary

Please submit your requests in writing to the attention of the:

Nominating Committee
Queens County Bar Association
90-35 148 Street

Jamaica, N.Y. 11435 The Annual Election of Officers and Managers will be held on March 6, 2015. The newly elected Officers and Managers will assume their duties on June 1, 2015.

Dated: December 3, 2014, Jamaica, NY



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OCTOBER 15 – DECEMBER 15 “REFER A COLLEAGUE” CONTEST

Dear Colleague:

The Queens County Bar Association is holding a “**Refer A Colleague**” contest, where the member who refers the most nonmembers that become paid members (admitted attorneys only) by the end of the contest will win a \$150 gift card/certificate.

If you are interested in participating, refer them to apply online at www.qcba.org/membership/join/ or in writing with a paper [application](#). Make sure you or they let us know that you were the person who referred them.

Good Luck and Happy Referring!

Yours truly,

QCBA



Rules

Be a member of QCBA in good standing.

Prospective member referred has to have their membership dues paid in full before contest ends.

Person with most referrals will receive a \$150 gift card/certificate.

In the event of a tie, the winner will be drawn at random.

Board members are excluded from participating.

QUEENS COUNTY BAR ASSOCIATION

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Start: October 15, 2014
End: December 15, 2014



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