

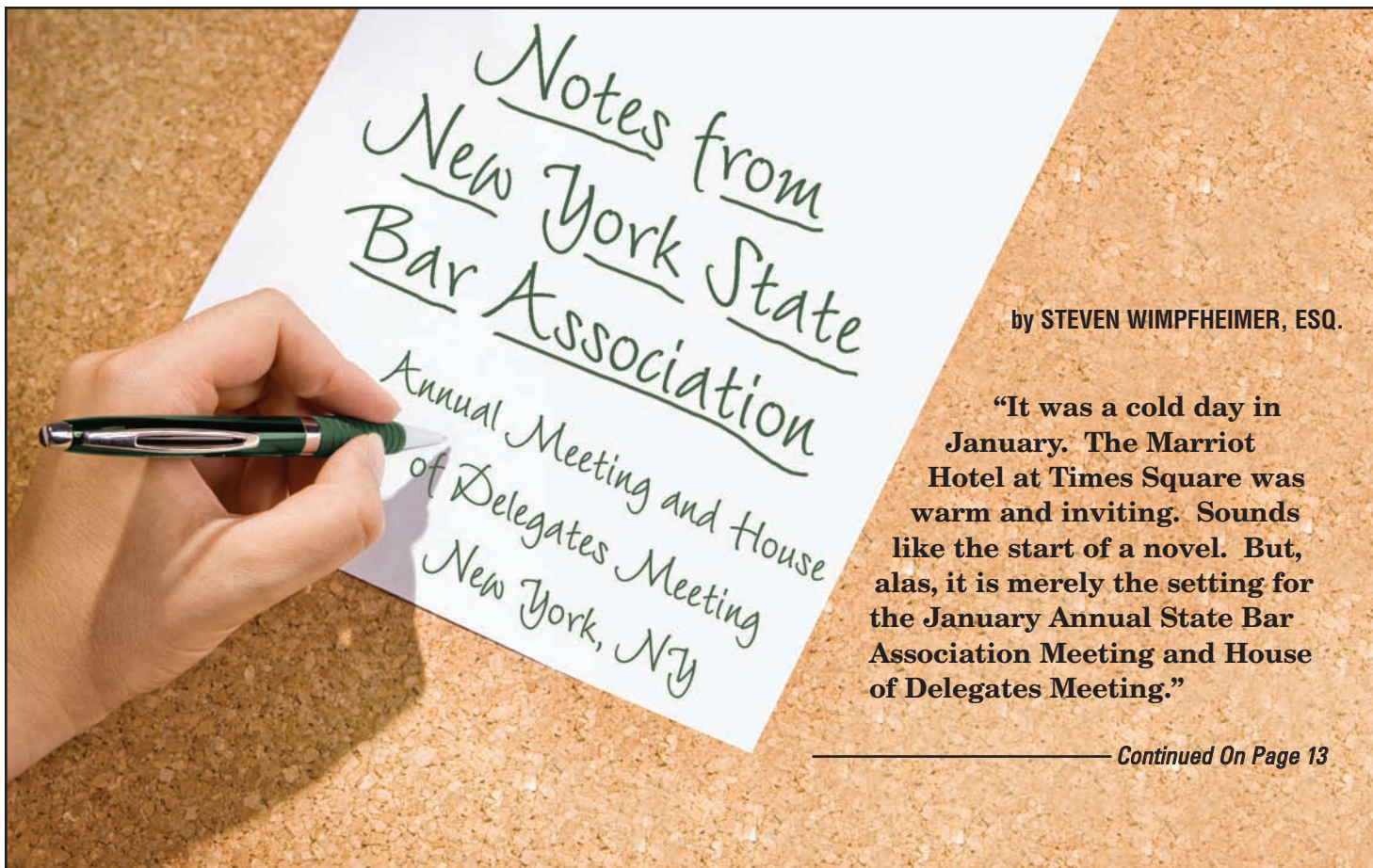


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Queens Bar Bulletin

Queens County Bar Association / 90-35 One Hundred Forty Eighth Street, Jamaica, NY 11435 / (718) 291-4500

Vol. 71 / No. 6 / March 2008



by STEVEN WIMPFHEIMER, ESQ.

“It was a cold day in January. The Marriot Hotel at Times Square was warm and inviting. Sounds like the start of a novel. But, alas, it is merely the setting for the January Annual State Bar Association Meeting and House of Delegates Meeting.”

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1876 Was A Very Special Year!

by STEPHEN J. SINGER

For those of you who have ever taken the trouble to scrutinize our bar association seal, you will recall that our founding date was in the year 1876. It would seem that the fact this was America's first centennial would make it special enough when that group of gentleman lawyers met in Garden City to form the Q.C.B.A., but that was hardly the case. This was also a year in which many of the most exciting historical events of an adolescent nation, just recovering from the Civil War, would occur.

I thought that it would be fun to outline just some of the truly exciting things that took place in that same time frame. With that end in mind, I have chosen to particularly highlight events which happened during that year in the “American West” because I have always been an avid fan of the Old West, and in particular, those of a criminal nature, because I have always been a criminal lawyer (as most of you know) and before that, a lawman.

On June 25th of the same year as our founding, George Armstrong Custer and 261 of his men from the now infamous 7th Cavalry met their doom at the Little Big Horn. At the time, it was termed the “Custer Massacre”, (which it really wasn't) because it served the interests of most Westerners, who were rabidly anti-American Indian, to create a country-wide hysteria in the hope that same would encourage the rapid extinction

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Article 730

Mental Disease or Defect Excluding Fitness to Proceed: Part II

by ANDREW J. SCHATKIN

In a previous article, entitled, “Article 730/Mental Disease or Defect Excluding Fitness to Proceed”, I considered and analyzed the issues, ramifications, and import of the first section in Article 730, Sec. 730.10, “Fitness to Proceed; Definitions”.

This second article will consider Section 730.20 of that statute, entitled, “Fitness to Proceed; Generally”. That Section sets forth the parameters and

schemata of the examination procedure to determine whether a criminal defendant is fit to proceed to trial, or better put, is incapacitated or lacks capacity, to stand trial. This Section overall has seven sections.¹

The first topic to be considered in this article's interpretation and analysis of this particular section is, the purpose of the statute. It has been held that the imbalance created by the official nature

of a psychiatrist's report on a defendant's mental capacity to stand trial was the main effect, which former CCP Sec. 662 (now this section) prohibiting receipt of such report in evidence, sought to avoid.²

It has also been held that the purpose of CCP Sec. 669 (now this section) was to substitute a new form of determining sanity, which would eliminate the expense to the county, incident to the

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THE DOCKET...

being the official notice of the meetings and programs listed below, which, unless otherwise noted, will be held at the Bar Association Building, 90-35 148 Street, 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 County Bar Association has been certified by the NYS Continuing Legal Education Board as an Accredited Legal Education Provider in the State of New York.

2008 Spring CLE Seminar & Event Listing

March 2008

Wednesday, March 5	Practice of Matrimonial Law Sponsored by MatLaw 6:00-9:00 pm
Wednesday, March 12	Article 81/Guardianship Training 2:30-5:00 pm
Wednesday, March 26	Criminal Law Series, Part 1 6:00-9:00 pm
Monday, March 31	Past President’s & Golden Jubilarians Night 5:30-8:30 pm

April 2008

Wednesday, April 2	Criminal Law Series, Part 2 6:00-9:00 pm
Wednesday, April 9	Civil Court Seminar 6:00-9:00 pm
Monday, April 14	Judiciary Night 5:30-8:30 pm
Wednesday, April 16	Equitable Distribution Law Update 6:00-9:00 pm

May 2008

Thursday, May 1	Annual Dinner & Installation of Officers 6:00-10:00 pm
Wednesday, May 7	Ethics Considerations 6:00-9:00 pm

CLE Dates to be Announced
Elder Law, Real Property Law, Surrogates, Estates & Trusts, Taxation Law

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EDITOR’S NOTE...

On behalf of the Bar Association, I welcome all members to participate in the many upcoming events that are planned for this month. As always, I encourage articles from members and news about our members. In that vein, I on behalf of the Bar Association congratulate Stephanie Zaro on her appointment by Mayor Bloomberg to the Criminal Court. Stephanie has been an active member of our Association, as Co-Chair of the Criminal Courts committee and as a member of the Board of Managers.

LAWYERS ASSISTANCE COMMITTEE

The Queens County Bar Association (QCBA) provides free confidential assistance to attorneys, judges, law students and their families struggling with alcohol and substance abuse, depression, stress, burnout, career concerns and other issues that affect quality of life, personally and/or professionally.

QCBA Lawyers Assistance Committee (LAC) offers consultation, assessment, counseling, intervention, education, referral and peer support.

All communication with QCBA LAC staff and volunteers are completely confidential. Confidentiality is privileged and assured under Section 499 of the Judiciary laws as amended by the Chapter 327 of the laws of 1993.

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P R E S I D E N T ' S M E S S A G E

As we are all aware there is a precipitous decline in the housing market. Foreclosures are at an all time high. One statistic I recently became aware of stated that ten percent of homeowners owe more on their mortgage than the current market value of their home. In Queens County, all one has to do is visit the foreclosure auctions conducted every Friday and see the large number of auctions with no bidders. The upset prices are so high that there is no equity left in most of the houses up for auction.

We are told that this crisis was caused by the widespread use of “sub-prime” adjustable rate mortgages. These loans had very low initial rates, but once they reached the initial adjustment period, the rate increases to an unaffordable level. There has also been a dramatic increase in mortgage fraud. Phony appraisals, altered certificates of occupancy, inaccurate income and asset reporting, you name it and it is being done.

Then these loans were packaged and used as collateral to secure the sale of billions of dollars of securities to investors. Obviously, as the defaults on the mortgages increase, the security decreases and the value of the bonds declines to almost worthless levels. This has caused the financial and credit markets to decline, thus causing a financial crisis of epic proportions.

At this point, I, as sure most of you are wondering why a bar association president is writing an article on the economy. Well here is why - I am troubled by the role that the legal profession has played in enabling this crisis to reach the dangerous point that it has,

What obligation does a lawyer have to a client to explain the details of the mortgage to a client? What is the lawyer's role when it comes to discussing with a client their ability of a client to meet the mortgage obligations? Does a lawyer just sit at a closing and tell a client where to



David Cohen

sign, or should the lawyer explain the meaning and cost of what a client is about to sign? Are we lawyers just there to earn the fee or do we serve a more important function, to protect our clients? Have we reduced our real estate closing fees to the point where all we are interested in is how quickly we can get to the next deal?

Most lenders are also represented by attorneys. Again, what is the role of the lender's attorney? Are they just the drafter of the documents and the inspector to insure that all forms are signed and or initialed in the correct places? Do they have any obligation to verify the ability of the borrower to repay the loan? Do the lenders really care if the loan can be repaid, or is it their primary objective to issue the loan and then sell it immediately as collateral?

Unfortunately, lawyers are all too often intimately involved in the fraudulent mortgage business. Whether as principles of mortgage companies, closing agents or mortgage brokers, lawyers have succumbed to greed.

Securities lawyers have also played a large role in this crisis. They had to create the bond indentures that utilized these “sub-prime” mortgages as collateral. Who did the due diligence to protect investors? What was their responsibility to the investing public?

Obviously, I am not placing blame on any one group for this crisis. That would be not only disingenuous, but overly simplistic. In my thirty-seven plus years of practice, I have been most impressed with the professionalism and the devotion to clients of most of my fellow attorneys. No matter what area of law we practice, our primary responsibility is to protect our clients. We must go that extra mile to insure that the client is our number one priority.

As always, I welcome your comments. Please contact me at the Bar Association or by email at dlccrimlaw@aol.com.



Queens County Bar Association

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As President of the Queens County Bar Association, I urge you to support this valuable community-based program.

Sincerely,

David L. Cohen
President

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1876 Was A Very Special Year!

Continued From Page 1

of or resettlement of all Native Americans. The Indians were simply viewed as standing in the way of progress (mining, farming, ranching and general western expansion). I say that it truly wasn't a “massacre” because it was Custer who attacked the

Indians first, not the other way around. The Indians, mostly Sioux and Northern Cheyenne, were, in fact, at that location for the equivalent of a religious convention. It has become widely accepted that Custer attacked, in spite of overwhelming odds against him and a specific order not to do so, in a vain attempt to catapult himself onto the

political landscape as a potential candidate for president. Most historians have come to share this point of view and now have renamed it “the Custer fight”, a compromise or politically correct descriptive phrase. Not to worry, the 7th Cavalry exacted their revenge when they conducted a true massacre of some 300 Indians (mostly old men, women and children) at Wounded Knee, South Dakota in 1890.

On August 2nd of that same summer, James Butler Hickok was murdered in Saloon #10, in Deadwood, Dakota Territory. Hickok, a former lawman, gunslinger, stagecoach guard, actor in the Buffalo Bill Cody Wild West Show and possible horse thief, was renowned for his habit of always sitting with his back to the corner, so that he could eyeball the crowd in the various low level establishments in which he earned much of his living by gambling. On this singular occasion, “Wild Bill” as he came to be called in the Dime Novels of the time, failed to heed his own advice and did not take his usual seat. He was shot from the rear, much as he had always feared, by one Jack McCall, a local

drunk and ne'er do well. Hickok was holding aces and eights, forever termed the “Dead Man's Hand”.

On September 7th, the Minnesota farming community of Northfield was treated to a visit from the most famous sons of Missouri of all time ... the James brothers. This was the disastrous attempted bank job that broke up the professionals who, up until that time, made up the James Gang. After that, Jesse and Frank were only able to enlist amateurs and drifters, two of whom (Bob and Charlie Ford) later killed Jesse, either out of fear or for the reward, or both.

They had chosen Northfield for a variety of reasons, which included the geographical location ... far from their safe houses in Missouri ..., the reputation for that bank holding great sums of currency, and the fact that the owners of the bank included former Union officers who were much hated by the James boys (who were of course ex-Confederate guerillas). The gangsters were routed by the townspeople who killed two of them on the spot and

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Corrections for Directory

Changes are bold and italicized

COMO, Anthony - 125-10 Queens Blvd, **Ste 320**, Kew Gardens, NY 11415-1511.....**718-459-8700**

LOPRESTO, Charles S. - Criminal Court, Queens County, 125-01 Queens Blvd, Kew Gardens, NY 11415-1514

MUNSON, Gabriel R. - **233 Fifth Avenue, Ste 4A, New York, NY 10016-8733..212-251-0011 fax: 212-213-3152 email: munsonlaw@gmail.com**

MUSARRA, Michelle Ann - **Epstein Rayhill & Frankini, 48 Crossways Park, Ste 102, Woodbury, NY 11797-2905...516-364-7900 fax: 516-364-7930 email: michmus@aol.com**

ROSENTHAL, Norman L. - **30 Fern Drive, Roslyn, NY 11576-2202.....516-484-0476**

For Hon. Richard L. Buchter his Court Attorney is now Lisa Russell.

Judge Charles Lopresto is now sitting in the Criminal Court. His contact information is 125-01 Queens Blvd, Kew Gardens, NY 11415-1514, 718-298-0962, fax: 718-520-3992.

P R O F I L E O F . . .

Judge Bernice Siegal and the International Queens County Civil Court

By PAUL E. KERSON

Where has it been recorded in World History that 23 judges adjudicated 225,000 cases in 38 different languages in one county in one year? Well, that appears to be what happened here in the Queens County Civil Court in the year 2007.

In prior centuries, international law visionaries could not possibly have come up with such a positive result.

Nevertheless, this is the system presided over by Supervising Judge Bernice Siegal at the Capital of the Known Universe at 89-17 Sutphin Blvd., Jamaica, NY 11435.

What background could possibly qualify anyone to preside over a system that adjudicates 225,000 cases in 38 languages using only 23 Judges? Well, Judge Bernice Siegal certainly has the background for a job like this.

Supervising Judge of the Civil Court, Bernice Siegal was elected Judge of the Civil Court of the City of New York in November, 2001 and took the bench

January, 2002 in Civil Court, Queens County. In 2006, she was appointed Deputy Supervising Judge of that Court and in March, 2007, she was appointed to her current position. Since taking the bench, Judge Siegal has published dozens of opinions. Her first decision, *Macerich Queens Ltd. Partnership v. MIE Hospitality*, 192 Misc 2d 276, has been cited in McKinney's Cons Law of NY, 2003 Pocket Part, Book 7B, CPLR 3111, for its approach on jurisdiction for money judgments in non payment proceedings involving defaulting corporate tenants. A frequent lecturer for Continuing Legal Education courses at the Queens Bar Association and Women's Bar Association, she has lectured on enforcement of money judgments, no fault insurance litigation, motor vehicle jury trials and the significance of establishing the military status of defaulting litigants at continuing education forums sponsored by Queens Bar Association and for the JAG officers of



Paul E. Kerson



the New York Guard. Judge Siegal's presentation on military status of litigants culminated in the publication of *"Non-Military Affidavits: Providing Civil Relief at Home"* (Queens County Bar Bulletin, March 2003 & Landlord Tenant Practice Reporter, March 2003). Commencing in October, she will also be presiding with Justice Martin E. Ritholtz over the new summary jury trial part of Queens Supreme Court.

Previously, in the public sector, Judge Siegal was Counsel to a New York City Council Member, former chair of the Public Safety Committee. With extensive knowledge of zoning and land use, educational issues, housing matters and the legislative process, she crafted legislation and strategies to win significant legal and political battles. She also has special expertise in health care policy with a Masters in Public Administration from New York University and extensive experience overseeing the use of government funds at medical centers.

Judge Siegal graduated with honors from New York Law School as a member of its Law Review and National Moot Court Board Order of Barristers. In recognition, she received an Amjur Award for Excellence and the Alexander D. Forger Award for Distinguished Service to the Profession. As an attorney in her practice, Judge Siegal provided legal services to members of several labor unions as the director of the locals' legal services plans and distinguished herself by providing pro bono services, particularly in the field of landlord tenant matters. Prior to her election, she lectured on legal issues and legislative initiatives to community and civic groups. She has been honored by the former Queens Borough President Claire Shulman, Assemblyman Mark Weprin, Services Now for Adult Persons ("SNAP"), and the Former Manhattan Borough President Ruth Messinger.

She is a member of the board of directors of the Queens Women's Bar Association and of the National Association of Women Judges; member of the Queens County Bar Association;

Treasurer of the New York City Board of Civil Court Judges and President of the Brandeis Association.

She is married to Kevin Patrick Lynch and their family includes two wonderful daughters, Rebecca, who is a junior at Colby College and Co-President of its Hillel, and Sara, a freshman at Fordham University, and their dog, Nooch.

The 38 languages in use in the Queens County Civil Court are Albanian, American Sign Language, Arabic, Bengali, Cambodian, Cantonese, Croatian (including Serbo-Croatian, Montenegrin and Serbian), Farsi, French, Fulani, Greek, Haitian Creole, Hindi/Urdu, Hungarian, Igbo (Ibo), Italian, Japanese, Korean, Macedonian, Mandarin, Polish, Portuguese, Punjabi, Romanian, Russian, Shanghainese, Tagalog, Ukranian, Vietnamese, Spanish, English, Thai, Turkish, Pashto, Hebrew, Ga, Gujarti and Armenian.

It should be noted that Wednesdays are special days for Cantonese, Korean, Mandarin, Polish and Shanghainese. Russian is on Thursdays. Other language interpreters are present on specific dates. Spanish is every day.

Judge Siegal tells us, however, that the 225,000 caseload breaks down as follows: 185,000 are civil cases and 40,000 are Housing Part cases. Of the 185,000 civil cases, at least half are no-fault cases involving doctors and insurance companies. Nevertheless, these cases involve the underlying health of Queens County residents.

Judge Siegal went on to summarize the operations of the Queens County Civil Court: "We are a well oiled machine. We deal as expeditiously as possible in handling the problems of the people of Queens."

I asked Judge Siegal how she could possibly do this in 38 languages. Judge Siegal replied that "we try to ensure total impartiality with the highest level of translation available." The litigants speaking these 38 languages come from the far corners of the globe. Experience tells us that our foreign born Queens County residents regularly travel to their home countries. Thus, the decisions of the Queens County Civil Court have a world-wide impact. A \$15,000 or \$25,000 argument is a very large issue in most of the countries represented by these 38 languages. It is in these foreign nations where these disputes often originate.

Judge Siegal also indicated that the 23 Civil Court Judges rely heavily on the lawyers who appear in the Queens County Civil Court. The Judges rely on us to spend as much time as possible gathering all of the facts so that we may summarize the case in a Settlement Conference. It is in these Settlement Conferences with the Judge or the Court Attorney or Small Claims Arbitrator that the efficiency of the Queens County Civil Court is rooted. ■

Paul E. Kerson is a member of the Board of Managers and Associate Editor of this Bulletin. He is a partner in the law firm of Leavitt, Kerson & Duane.



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1876 Was A Very Special Year!

Continued From Page 3

another during their attempted flight out of Minnesota. Three more were severely wounded, captured and sentenced to 25 years in Stillwell Prison. These three were in fact the Younger Gang (Cole, Bob and Jim) who had joined up with the James brothers for this raid. Jesse and Frank were the only ones of the eight robbers who got away. This was one of those rare times when the James brother's actual deeds did not match up to the myth.

Interestingly, this same Younger Gang were the first cousins of the equally infamous Dalton Gang, four of whom were killed a few years later in Coffeyville, Kansas while attempting to rob two banks simultaneously. As with many of these American icons of that period, the Daltons alternatively served as U.S. Marshals, train robbers and bank robbers. Even the famous Wyatt Earp was both a U.S. Deputy Marshall and the defendant in a murder case. It is not widely known that Wyatt, two of his brothers and "Doc" Holiday were in fact arrested and subjected to a coroner's inquest, which was the equivalent of a pre-trial hearing, for their part in the O.K. Corral incident. The inquest lasted for weeks, dozens of witnesses were called, including character witnesses (but not for "Doc" Holiday) and the charges were dismissed. Incredibly, the corral shoot-out stemmed in part from a lost political contest between Wyatt and the local sheriff.

These were indeed rugged times. While the Northeast was progressing in a far more civilized fashion, the Western frontier retained its well deserved reputation as a highly dangerous and speculative place to live. The Philadelphia Exposition, by stark contrast, was held in 1876 as a tribute to the centennial. The telephone and typewriter were unveiled as new and exciting inventions as visitors munched on popcorn.

At the same time, gunman, outlaws of all kinds, rustlers and thieves, made up a disproportionate share of the population in the Western territories. There were more homicides by gunshot in the Arizona territory that year than in the rest of the entire country. What the Hollywood movie makers eventually dubbed as "gunslingers", were more accurately called "shootists" or "man killers" back in the day. Very few actual "gunfights" ever took place, and none of them ever remotely matched the choreography of modern day movies ... shoot-outs at 50 paces. These were usually one-sided affairs at very close range and often out and out murders. They were using pistols of varying types, sometimes with mismatched parts, of disputable accuracy and shooting unreliable ammunition. The concept of fairness had very little to do with contests between these men of low character, survival being their only concern. As noted herein, even the lawmen of that period had inconsistent backgrounds; brigands one year and law enforcers the next.

The law at that time was also peculiar as respects the gunfight and other violence of the day. In 1876 an Ohio court held that a "true man" had no duty to "fly" if threatened. In other words, there was no duty to retreat in the face of danger before using deadly force. Even shooting an aggressor in the back or after the threat had abated was not looked upon as murder. For quite a while, this remained the code of the West. Curiously, the State of Florida passed similar "no duty to retreat" legislation in 2005.

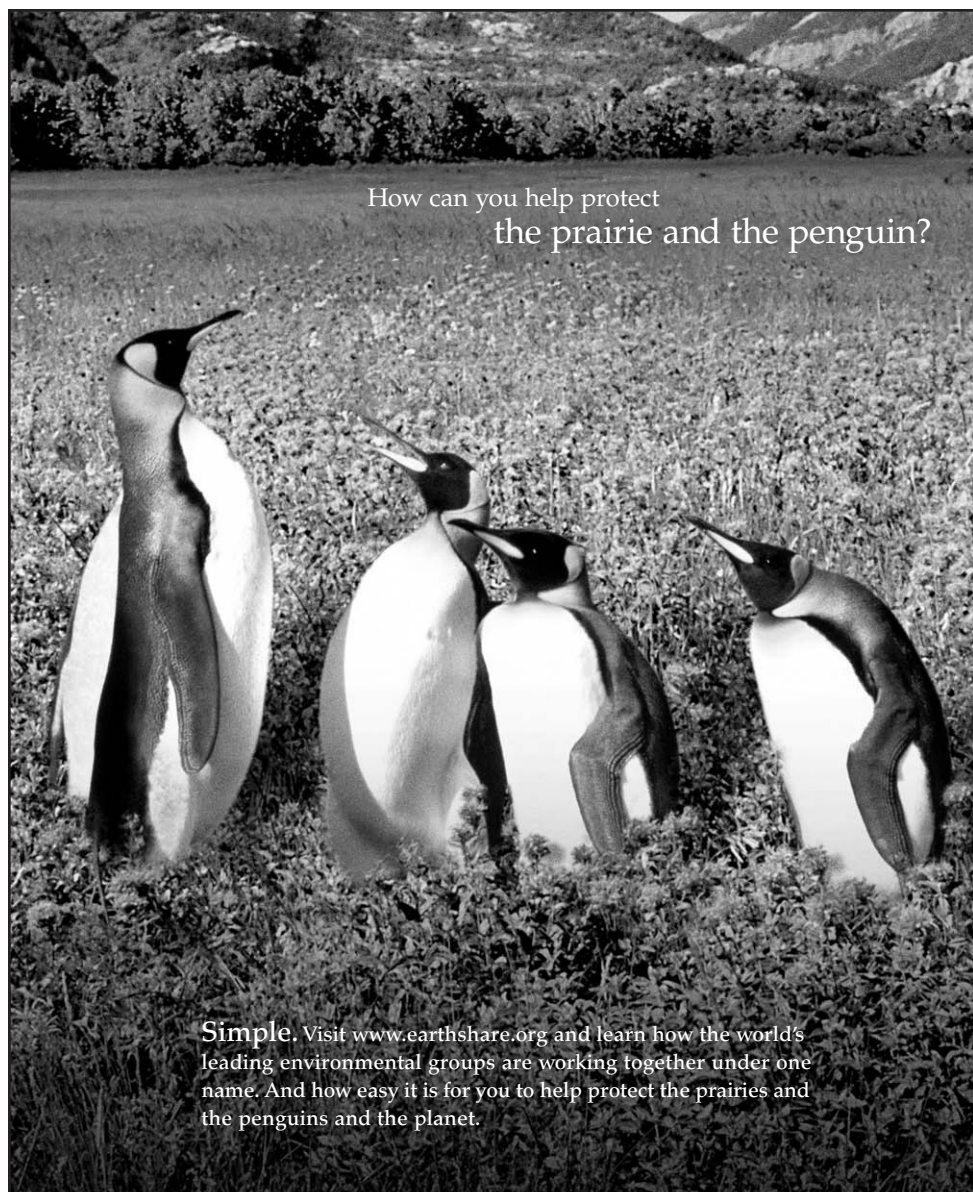
This was also the year that William/Henry McCarty/Antrim/Bonney ... later known as "Billy the Kid", turned 17 years of age. He committed his first felony that year and killed his first man the next. Although the Dime Novelists, many of whom were situated in the East, attempted to link Billy with New York and make it his birthplace, all apparent efforts by serious historians to do so has met with naught. Billy the Kid or Kid Antrim, like so many other local criminals called "the Kid" ... which in reality was merely the nickname given to juvenile criminals of the time ... was a boy raised in a single parent home, whose father was unknown, whose mother died at an early age of consumption (tuberculosis) when he was a teenager, who thereafter resorted to criminal activities out of a combination of necessity, simplicity and excitement. Not too different from our local criminals in Queens County today.

The 1876 year also witnessed the

completion of Central Park in New York City, the invention of the first mimeograph machine, the introduction of the Dewey Decimal System in our libraries, Colorado entering the Union and the publication of "The Adventures of Tom Sawyer". This was the scene of the most hotly contested presidential election of our history. Rutherford Hayes, the Republican, running on a platform of "the investigation of Oriental immigration", defeated Samuel Tilden, the Democrat, who was a former District Attorney and Governor of New York, running on a platform of "restricting Oriental immigration", by one electoral vote. Sounds somewhat familiar. There were many assertions of election fraud, as usual, but the results stood. There was an electoral participation of allegedly 81% at that time.

There were, of course, many other less violent and more notable occurrences in 1876, but perhaps none which grabbed the imagination as much as those I have noted in this article. In this time of political excitation it is also of interest to point out that in 1876, the saloon owners, cattle barons and mining entrepreneurs were Republicans, while the outlaws, shootists and rustlers of that time were usually Democrats. Nothing much has changed. ■

***Editor's Note: Stephen J. Singer is a Past President (96-97) of the Queens Bar Association and Co-Chair of its Criminal Court Committee. Mr. Singer is also a partner in the firm of Sparrow, Singer and Schreiber.**



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Article 730/Mental Disease or Defect Excluding Fitness to Proceed: Part II

Continued From Page 1

commission method, theretofore prevailing.³

The second topic to be considered in this article is that of cost. In general, it has been held, that the cost of a psychiatric examination of a defendant is a county charge, as is the cost of transporting a defendant to a state hospital for mental observation under this section.⁴

The next topics to be considered in this article are the criteria and issues surrounding commitment and maintenance. An example is found in *Hummel v. Simril*⁵. In that case, the trial court held that the commitment of the defendant-son seemingly for the purpose of securing his person, in case horror of his actions caused an emotional reaction, was not a valid reason for commitment under this section.

In *Application of Eton*⁶, the trial court held that, under this Section, the Order of Commitment of the defendant in Syracuse Psychopathic Hospital for examination as to sanity was not required to be signed by a Justice, but could be signed by a Clerk or Deputy Clerk, and the county was not relieved of liability to pay for maintenance, care, and treatment of a committed defendant, because commitment orders were signed by a Clerk or a Deputy Clerk rather than a Justice.⁷

The next issue to be considered in this article is what constitutes the contents of the report. Thus, in *People v. Lowe*⁸, the Appellate Court held that deviations from statutory requirements under CPL Sec. 730.10 for determining whether the defendant was competent to stand trial were substantial, thus depriving the defendant of a full and impartial determination of his mental capacity, where only one psychiatrist examined the defendant, and the psychiatrist's report was merely a letter stating cursorily that the defendant was competent. The psychiatrist's letter failed to state that he was a qualified psychiatrist, and failed to state the nature and the extent of the examination as required by CPL Sec. 730.10, and the psychiatrist apparently was not eligible to serve as an examiner.

Again, in *People v. Blank*⁹, the trial court had occasion to examine what should constitute a proper report in terms of its contents. In that case, the court held that the psychiatrist examining the defendant to ascertain sanity at the time of the alleged commission of the

crime, was required to include, in the report, all information concerning questions and answers involving commission of the alleged crime, and any acts performed thereafter by the defendant, which might be construed of an incriminating nature, so that defense counsel, would have a copy of the report, would be aware of what had been revealed, and could move the court with respect to any information he considered to be improperly obtained.¹⁰

The next area to be considered in this article is that of examiners and the appointment of examiners. There are many cases considering these particular subjects. For example, in *People v. Mullins*¹¹, the Appellate Court held that the trial court, having ordered the defendant be examined to determine his competency to stand trial, was required to fully comply with the requirement that defendant be examined by two psychiatric examiners, irrespective of whether the determination to order the examination was triggered by a finding of possible incapacity, or whether there was any basis in the record for such finding. Apropos of the subject of examiners, in *People v. Lopez*¹², the trial court held that the People bear the burden of establishing that the examining psychiatrists, for the purposes of the statute are, "qualified psychiatrists".

The subject of the appointment of the psychiatrist has given rise to much case law. In *People v. Phelps*¹³, the Court of Appeals held that the designation of a psychiatrist and a psychologist, rather than two psychiatrists, to conduct the examination of the defendant to determine his mental competency, would be presumed regular, and in accordance with the statutory directive, in the absence of any evidence to the contrary; the defendant objected to the designation of the psychologist for the first time on appeal, when there was no factual reference sufficient to permit review of the contention.¹⁴

The next issue to be considered in this article is the issue of the refusal to answer questions. An example of the law on this subject is found in *Lee v. County Court of Erie County*¹⁵. In that case, the Appellate Division held that where one of two psychiatrists appointed to determine the question of the sanity of the defendant, who had been indicted for a felony, resigned and, before another psychiatrist had been designated to fill the vacancy, the other psychiatrist thereafter

attempted to conduct the competency examination, the defendant was entitled to refuse to answer questions propounded by the psychiatrist.

An added issue under this statute is that of psychiatric testimony. There has been a great deal of case law in this area. The following are some representative cases. In *People v. Marmolejos*¹⁶, the Appellate Division First Department held that the defendant was fit to stand trial. The court stated that the defendant did not exhibit any delusional thinking during trial, gave testimony in a rational and concise fashion, cooperated with counsel, and concededly understood the role of its counsel on other participants at trial, and qualified experts found the defendant fit to proceed.

Another pertinent case is *People v. Weech*¹⁷. In that case, the Appellate Division held that the fact that the expert who had examined the defendant, and rendered an opinion as to the defendant's competency at the time he stood trial, and was convicted of Murder in the Second Degree., might not have been a qualified psychiatrist, did not warrant the conclusion that his testimony could not be considered in a reconstruction proceeding to determine whether the defendant was competent at the time he stood trial.¹⁸

The final topic of this article is that of what constitutes reports. Again, there has been much case law concerning this area. For example in *People v. Robustelli*¹⁹, the Appellate Division First Department held that the trial court could determine that evidence before it, which included written reports from four psychiatrists that defendant was depressed, but that further time was required to determine his competency to stand trial, was sufficient to base its determination that defendant was fit to proceed; testimony by psychiatrists revealed that only issue to be resolved was whether defendant, who had stated that president was Kennedy, and that one plus one equals 121, had exaggerated or fabricated his inability to sensibly respond in questions, and the court had defendant under intermittent observation for ten months, and under almost constant observation during trial.

Another example of a case interpreting this area is found in *People v. Roth*²⁰. In that case, the Appellate Division held that in a prosecution for Murder, with the defense of insanity, post-crime records from the mental hospital to which the defendant had been committed, independent of the official psychiatrists' report, were admissible when offered by the defendant, but the report of the examining psychiatrist was not admissible.²¹

CONCLUSION

This second article, in a series of seven articles, analyzing Article 730 of the Criminal Procedure Law, has considered a number of topics in this analysis of CPL 730.20, entitled, "Fitness to Proceed; Generally". The topics that were considered and analyzed in this article have been 1.) the purpose of the statute; 2.) who should bear the cost of the examination; 3.) the criteria and issues surrounding commitment and maintenance; 4.) the issues surrounding the contents of the report; 5.) the subject of examiners and the appointment of examiners; 6.)

the issue of the refusal to answer questions; 7.) the subtopic of psychiatric testimony; and finally 8.) the subject of what constitutes reports.

It is hoped that this series of articles will elucidate this statute in its entirety, and be a guide to the criminal practitioner, whether prosecution or defense.

END NOTES

¹ 730.20 Fitness to Proceed; generally

1. The appropriate director to whom a criminal court issues an order of examination must be determined in accordance with rules jointly adopted by the judicial conference and the commissioner. Upon receipt of an examination order, the director must designate two qualified psychiatric examiners, of whom he may be one, to examine the defendant to determine if he is an incapacitated person. In conducting their examination, the psychiatric examiners may employ any method which is accepted by the medical profession for the examination of persons alleged to be mentally ill or mentally defective. The court may authorize a psychiatrist or psychologist retained by the defendant to be present at such examination.

2. When the defendant is not in custody at the time a court issues an order of examination, because he was theretofore released on bail or on his own recognizance, the court may direct that the examination be conducted on an outpatient basis, and at such time and place as the director shall designate. If, however, the director informs the court that hospital confinement of the defendant is necessary for an effective examination, the court may direct that the defendant be confined in a hospital designated by the director until the examination is completed.

3. When the defendant is in custody at the time a court issues an order of examination, the examination must be conducted at the place where the defendant is being held in custody. If, however, the director determines that hospital confinement of the defendant is necessary for an effective examination, the sheriff must deliver the defendant to a hospital designated by the director and hold him in custody therein, under sufficient guard, until the examination is completed.

4. Hospital confinement under subdivision two and three shall be for a period not exceeding thirty days, except that, upon application of the director, the court may authorize confinement for an additional period not exceeding thirty days if it is satisfied that a longer period is necessary to complete the examination. During the period of hospital confinement, the physician in charge of the hospital may administer or cause to be administered to the defendant such emergency psychiatric, medical or other therapeutic treatment as in his judgment should be administered.

5. Each psychiatric examiner, after he has completed his examination of the defendant, must promptly prepare an examination report and submit it to the director. If the psychiatric examiners are not unanimous in their opinion as to whether the defendant is or is not an incapacitated person, the director must designate another qualified psychiatric examiner to examine the defendant to determine if he is an incapacitated person. Upon receipt of the examination reports, the director must submit them to the court that issued the order of examination. The court must furnish a copy of the reports to counsel for the defendant and to the district attorney.

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Article 730/Mental Disease or Defect Excluding Fitness to Proceed: Part II

6. When a defendant is subjected to examination pursuant to an order issued by a criminal court in accordance with this article, any statement made by him for the purpose of the examination or treatment shall be inadmissible in evidence against him in any criminal action on any issue other than that of his mental condition, but such statement is admissible upon that issue whether or not it would otherwise be deemed a privileged communication.

7. A psychiatric examiner is entitled to his reasonable traveling expenses, a fee of fifty dollars for each examination of a defendant and a fee of fifty dollars for each appearance at a court hearing or trial but not exceeding two hundred dollars in fees for examination and testimony in any one case; except that if such psychiatric examiner be an employee of the state of New York he shall be entitled only to reasonable traveling expenses, unless such psychiatric examiner makes the examination or appears at a court hearing or trial outside his hours of state employment in a county in which the director of community mental health services certifies to the fiscal officer thereof that there is a shortage of qualified psychiatrists available to conduct examinations under the criminal procedure law in such county, in which event he shall be entitled to the foregoing fees and reasonable traveling expenses. Such fees and traveling expenses and the costs of sending a defendant to another place of detention or to a hospital for examination, of his maintenance therein and of returning him shall, when approved by the court, be a charge of the county in which the defendant is being tried.

² People v. Butchino, 13 AD2d 183, 215 NYS2d 321 (3rd Dept. 1961)

³ People v. Pershaec, 172 Misc. 324, 15 NYS2d 215 (Ct. of Gen. Sessions, NY Co. 1939)

⁴ 11 Op.State Compt. 55, 1955; 8 Op.State Compt. 344, 1952.

⁵ 52 Misc.2d 1096, 277 NYS2d 438 (City Ct. of Buffalo, 1967)

⁶ 196 Misc. 648, 92 NYS2d 461 (S. Ct. Onondaga Co. 1949)

⁷ See also on this, Op. Atty.Gen. Dec. 29 (1967); 7 Op.State Compt 230, (1951); Op.Atty. Gen. 243, (1945)

⁸ 109 AD2d 300, 491 NYS2d 529 (4th Dept. 1985)

⁹ 64 Misc.2d 730, 315 NYS2d 647 (Co. Ct. Nassau Co. 1970)

¹⁰ For cases on defects, errors, and omissions in the report see, People v. Whyson, 175 AD2d 576, 572 NYS2d 243 (4th Dept. 1991) and People v. Lowe, Id.

¹¹ 137 AD2d 227, 528 NYS2d 698 (3rd Dept. 1988)

¹² 126, Misc.2d 1072, 484 NYS2d 974 (S. Ct. Kings Co. 1985)

¹³ 74 NY2d 919, 550 NYS2d 259 (1989)

¹⁴ For other cases considering what constitutes the proper appointment of qualified psychologists under this appointment, See, People v. Armlin, 37 NY2d 167, 371 NYS2d 691, 332 N.E.2d 870 (1975); People v. Miller, 167 AD2d 958, 562 NYS2d 300 (4th Dept. 1990); People v. Verrone, 96 AD2d 955, 466 NYS2d 411 (2nd Dept. 1983); People v. Foster, 54 AD2d 595, 387 NYS2d 480 (3rd Dept. 1976) People v. Ross, 50 AD2d 1064, 375 NYS2d 714 (4th Dept. 1975);

People v. Weis, 32 AD2d 836, 301 NYS2d 186 (3rd Dept. 1969).

¹⁵ 32 AD2d 885, 302 NYS2d 171 (3rd Dept. 1969)

¹⁶ 197 AD2d 394, 602 NYS2d 141 (1st Dept. 1993)

¹⁷ 105 AD2d 1085, 482 NYS2d 174 (4th Dept. 1984)

¹⁸ For other cases considering this issue, See, People v. Forgione, 134 AD2d 514, 521 NYS2d 101 (2nd Dept. 1987); People v. Wise, 47 AD2d 969, 366 NYS2d 78 (3rd Dept. 1975); People v. Szwalla, 31 AD2d 979, 297 NYS2d 843 (3rd Dept. 1969); People v. Colavecchio, 11 AD2d 161, 202 NYS2d 119 (4th Dept. 1960); People v. McNamee, 145 Misc.2d 187, 547 NYS2d 519 (S. Ct. NY Co. 1989)

¹⁹ 189 AD2d 668, 592 NYS2d 704 (1st Dept. 1993)

²⁰ 13 AD2d 295, 216 NYS2d 590 (1st Dept. 1961)

^{xxi} For other cases on this, See, People v. Forgione, Id.; People v. Butchino, 13 AD2d 183, 215 NYS2d 321 (3rd Dept. 1961); People v. Draper, 278 App. Div. 298, 104 NYS2d 703 (4th Dept. 1951); People v. Baldensko, 111 Misc.2d 605, 444 NYS2d 537 (S. Ct. Queens Co. 1981); and People v. Leach, 42 Misc.2d 143, 247 NYS2d 198 (Erie Co. Ct. 1964) ■

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CULTURE CORNER

The month of March offers an assortment of cultural delights for judges and lawyers who want to be well-rounded. As described below, if **CHIEF JUDGE JUDITH S. KAYE** can find the time from her busy schedule, you can devote a few hours each month to enrich yourself culturally.

92 STREET Y

Founded in 1874 by a group of visionary Jewish leaders, the **92ND STREET Y** has grown into a wide-ranging cultural, educational and community center serving people of all races, faiths and backgrounds. The 92nd Street Y's mission is to enrich the lives of the over 300,000 people who visit each year. The 92nd St. Y is located at the southeast corner of Lexington Avenue and 92nd Street in Manhattan's Upper East Side.

On February 9, I attended, at the 92 St. Y, a performance by the **TOKYO STRING QUARTET**. The performance was Haydn's String Quartet in C Major, an avant garde string quartet by Japanese composer Toshio Hosokawa [born 1955], which received its New York premiere that evening, and a thrilling account of Brahms's String Quartet in A minor. The **TOKYO STRING QUARTET** will be next performing at the 92 St. Y on Saturday, March 15, at 8 PM, where its program will consist of: Webern's String Quartet, Webern's Rondo for String Quartet, Haydn's String Quartet in D Major, and Dvorak's String Quartet no. 12 in F major.

Audience favorite **Emanuel Ax** kicks off a new season of the **92nd Street Y's ACCLAIMED PIANO SERIES, MASTERS OF THE KEYBOARD, ON MARCH 9, 2008. Ax returns for his first appearance at the Y in 15 years** to perform chamber music with **members of the New York Philharmonic**. Renowned for his poetic temperament and unsurpassed virtuosity, Ax's ensemble performances are unusually exceptional, and this **not-to-be-missed performance** features Mozart's String Trio in E-flat Major, K. 563 and Schumann's Quartet for Piano and Strings in E-flat Major, Op. 47. Ax's recently released interpretations of Brahms's Piano Concertos received great acclaim.

The Masters of the Keyboard series continues on **April 5** with **acclaimed pianist Peter Serkin (in his only New York recital this season)**, which features a **World Premiere by composer Charles Wuorinen**, with whom Serkin has had a long-standing relationship. **Scherzo for Piano is a commission by the 92nd Street Y.**

On **April 13, Lang Lang** makes his **92nd Street Y debut** with members of the New York Philharmonic in an afternoon of chamber music. Lang Lang is a Chinese pianist that has been delighting Western audiences with his dramatic, intense interpretations at the keyboard.

The season wraps up on **May 10** with the **92nd Street Y debut of Paul Lewis**, one of the most exciting artists of his generation. Paul Lewis is a master interpreter of Beethoven and Schubert, among other composers. If you are lucky enough to find his CDs, purchase them immediately. His interpretations and performances are of the highest, most extraordinary caliber.

A series subscription is available for \$120; single tickets are \$40 (\$25 for ages 35 and under) and may be purchased by calling 212.415.5500, visiting www.92Y.org/concerts, or at the box office.

It bears repetition; please mark these dates on your calendar: March 9, April 5, April 13, and May 10. Let me elaborate:

SUNDAY, MARCH 9, 2008, AT 3 PM | **EMANUEL AX, PIANO** *with members of The New York Philharmonic: Sheryl Staples, violin | Cynthia Phelps, viola | Carter Brey, cello* WOLFGANG AMADEUS MOZART (1756-1791): String Trio in E-flat Major, K. 563 (1788) ROBERT SCHUMANN (1810-1856): Quartet for Piano and Strings in E-flat Major, Op. 47 (1842) *Sheryl Staples, Cynthia Phelps, Carter Brey, Emanuel Ax*

SATURDAY, APRIL 5, 2008, AT 8PM | **PETER SERKIN, PIANO (ONLY NEW YORK RECITAL)** JOSQUIN DES PREZ (c.1450-1521): *Ave Christe* (reset for piano by Charles Wuorinen, 1988) OLIVIER MESSIAEN (1908-1992):



Howard L. Wieder

Petites esquisses d'oiseaux (1985) JOHANNES BRAHMS (1833-1897): Theme and Variations in D minor (1860) (arr. of *Andante, ma moderato* from String Sextet No. 1 in B-flat Major, Op. 18) CHARLES WUORINEN (b. 1988): Scherzo for Piano (2007) (world premiere, 92nd Street Y commission) BRAHMS: Variations and Fugue on a Theme by Handel in B-flat Major, Op. 24 (1861)

SUNDAY, APRIL 13, 2008 AT 3PM | **LANG LANG, PIANO (92ND STREET Y DEBUT)** *with members of The New York Philharmonic: Michelle Kim, violin | Carter Brey, cello | Cynthia Phelps, viola; LUDWIG VAN BEETHOVEN* (1770-1826): String Trio in C minor, Op. 9, No. 3 (1797-1798) FRANZ SCHUBERT (1797-1828): Piano Trio in B-flat Major, Op. 99 (1828) *Michelle Kim, Carter Brey, Lang Lang*

SATURDAY, MAY 10, 2008 AT 8PM | **PAUL LEWIS, PIANO (ONLY NEW YORK RECITAL)** WOLFGANG AMADEUS MOZART (1756-1791): Fantasia in C minor, K. 475 (1785) GYÖRGY LIGETI (1923-2006): *Musica ricercata* (1951-53) MOZART: Rondo in A minor, K. 511 (1787) FRANZ SCHUBERT (1797-1828): Sonata in G Major, D. 894 (1826).

THE FRICK COLLECTION

One of the greatest cultural treasures in New York City lies inside the walls of the famed mansion on Central Park East between east 70th and 71st Street. The **FRICK COLLECTION** has a treasure of priceless sculptures, bronzes, and paintings. Admission to the **FRICK COLLECTION** is fairly modest at \$15 for an adult [\$10 for senior citizens], and for those persons on limited budgets, admission on Sunday between 11 A.M. to 1:00 P.M. is by any contribution you may wish to give. These concerts often get sold out, and the Frick permits persons to listen to its concerts for free, by audio, in the indoor, glass-topped garden, adjoining the performance hall.

On Sunday, February 10, I spent less than an hour touring the art works at the Frick Collection, hardly making a dent in gazing at the beauty of the many sculptures and paintings. It was an eye-opener to realize that not all the priceless art treasures are housed at the Metropolitan Museum of Art in New York or the Louvre in Paris. At the Frick Collection, I saw masterpieces by Rembrandt, Vermeer, Ingres, Turner, Renoir, Monet, Hans Holbein the Younger, Bronzini, Titian, Gainsborough, and Whistler. There is a huge painting of a countess by Ingres that captivated me. Like the genius of Da Vinci's Mona Lisa, who looks at you no matter where you stand vis-a-vis the painting, Ingres, in executing this painting of the countess, achieved the same effect. And, as I left the painting, I overheard a French couple, as they literally rushed to the painting, saying to each

other how they wanted to find Ingres's great masterpiece. The countess and Ingres are both dead, but her beauty and Ingres's genius live on, for many generations to admire!

I marveled at the productivity and creativity of these immortals. I paused, appreciating the irony, that as I devoted on average no more than a minute per painting, these great immortals slaved for countless, intense hours on only a portion of the canvas, let alone imagine the effort in finishing the whole tableau! There's a sense of pain that I feel upon seeing a great masterpiece. I marvel at the beauty of the work and the hours it must have taken Turner, for example, to create the atmospheric looks of the sky in his paintings. The poor man is dead, and I wondered whether my spending 60-90 seconds appreciating the beauty of each of his works on display is a sufficient tribute or a sign of great disrespect to a master?

Before I could continue my self-flagellation in existential introspection, I realized that the purpose of my trip to Frick this particular Sunday was now about to occur! For 1 to 2 Sundays per month, from October through April, the Frick offers what has got to be New York's cheapest seat for a concert of first-rate classical music celebrities. **THE ASTONISHING WOMAN WHO DEVOTES HER LIFE TO MAKING THESE CONCERTS A SUCCESS IS MS. JOYCE BODIG.** Joyce Bodig, on behalf of the Frick, single-handedly combs the world of classical music artists who have already received great critical acclaim, but usually and unfortunately, who have not yet received great celebrity.

From October, I saw that February would be my month to visit the Frick Collection, because the performers that month were the **TRIO WANDERER** [on February 10], a three-person French chamber music group whose artistry is appreciated by music-lovers throughout the world and German pianist Markus Groh [on February 24], whose CD of Liszt, on the Arvie label, I placed in my top ten classical music CDs for 2006 ["Culture Corner" column, Queens Bar Bulletin, December 2006]. Since I am required to submit this column in early February, my review of the Markus Groh concert will have to wait another issue. I wanted to hear the **TRIO WANDERER** live in concert for a long time; could you imagine my surprise when I learned that I was the only reviewer to attend their concert! To be the only reviewer in attendance was surely exhilarating for me in scoring another coup [I know talent when I see and hear it - - and I am still entitled to bragging rights for advocating the selection of Alan Gilbert as the next Music Director of the New York Philharmonic, which I did in my "Culture Corner" column for February, 2007, published in the March 2007 issue of the Queens Bar Bulletin and repeated in our April issue, well before his selection in July of that year, when the world asked "Alan who??" - - and I was the **ONLY reviewer** to call that selection correctly, to the consternation of my competitor celebrity critics who write for daily newspapers]. Yet, I immediately understood how distressing this must be on the performers of the **TRIO WANDERER**, who need a well-oiled PR machine to make them famous. Their talent is extraordinary!

The **TRIO WANDERER** consists of Vincent Coq on the piano, Jean-Marc Phillips-Varjabedian on the violin, and Raphael Pidoux on the cello. It must be agonizing for these super-talented performers, who, despite an impressive discography on the Harmonia Mundi label, still have not reached the celebrity which they are justly and long overdue! So let me address the segment of Francophobes who still cling to "Freedom Fries": "Get off it!" There are two reasons

to be very pro-French today: first, a new, pro-American French President, **NICHOLAS SARKOZY** and, second, **THE TRIO WANDERER!** Having listened to their live concert on February 10, I have never heard a Chamber group, since the Beaux Arts Trio; give such a technically spectacular and emotionally compelling performance, ever! I was not alone. The **TRIO WANDERER** was greeted with a standing ovation at the concert's conclusion!

The **TRIO WANDERER** performed a vibrant account of Mendelssohn's [1809-1847] Trio number 2 in C Minor. Their technical precision and playing in unison, attentive to each other, was breath-taking. When I studied their backgrounds, it was revealing that Messieurs Coq, Pidoux, and Phillips-Varjabedian, the members of the **TRIO WANDERER**, studied with masters of the craft, including pianist Menahem Pressler, the head of the Beaux Arts Trio, and Czech cellist Janos Starker, who now teaches at Indiana University [and has written an autobiography].

Next on the program was Trista from La Vallee D'Obermann by Liszt [1811-1886], also superbly rendered. After the intermission, the Trio Wanderer played an emotional, dynamic account of Ravel's [1875-1937] Piano Trio in A, with its unrelenting fast tempos, setting the heart of the piece. The **TRIO WANDERER** was gracious, in light of the standing ovation, to play an encore, the final movement of Dvorak's Dumky Trio.

Do yourself a favor: buy the discs of the **TRIO WANDERER**. The Harmonia Mundi label is slightly more expensive, but it's worth it. A recent release by the group, Brahms's Complete Piano Trios, is a 2-CD set and is SUPERB!!

The concert series at the Frick collection are only \$25 a seat. The concerts are played in a beautiful, intimate music room of the mansion, whose acoustics are superb. Tickets may be purchased for the three remaining concerts of this season at www.frick.org, and then hitting the CONCERTS button on the web site.

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The Fall/Winter season of the **NEW YORK CITY OPERA** was a major triumph, especially with that company's ability to recruit famous, talented singers to perform operas as Vanessa, Carmen, and Cendrillon, with imaginative staging. Similar to the circumstances in the contest for the Democratic Party's nomination for President, **PETER GELB**, the dynamic General Manager of the Metropolitan Opera has to work all that harder knowing that his next-door neighbors at the New York City Opera are formidable and talented competitors. Enjoy the Spring season in April and May at the City Opera's location, before it gets remodeled, forcing that company to secure another site to perform for the 2008-2009 season.

Schedules and tickets, at reasonable prices, may be found at www.nycopera.com.

THE METROPOLITAN OPERA

January and February were blockbuster months for the **METROPOLITAN OPERA**, which is continuing to score one major critically acclaimed coup after another.

Continued On Page 10

CULTURE CORNER

Continued From Page 9

er in its season, which concludes in mid-May. Please don't get caught as being so work-consumed that you are forced to be a one-dimensional, uncultured, and soul-less lawyer. Cultural riches abound at the Metropolitan Opera.

In 1996, I attended, at the **METROPOLITAN OPERA**, **Franco Zeffirelli's** bustling and colorful production of "Carmen." The Zeffirelli production returned to the MET OPERA in February 2008, starring **OLGA BORODINA**, perhaps the world's greatest mezzo-soprano in the title role as the gypsy vamp and temptress and Russian soprano **MAIJA KOVLEVSKA** as the sweet, loyal Micaela. **BORODINA** and **KOVLESKA** delivered memorable, knock-out performances. In the 2006 season, **KOVLEVSKA** was brilliant in the starring role of Mimi in "La Boheme" in 2006 at the Met Opera, and **BORODINA**, who always gives a commanding performance, was vocally exquisite in "Don Carlo." Seeing **BORODINA** and **KOVLEVSKA** perform in the same opera was a treat.

A Zeffirelli production is fraught with danger. Let me explain. In his production of Carmen, no expense is spared. There are townsfolk and soldiers parading in this setting of a Spanish town in or about the early nineteenth century. In the first and fourth acts, there are, in addition, a large children's chorus, several horses, three dogs, and two or three donkeys, all parading and being paraded on stage. At "Carmen's" season premiere night of Monday, Feb. 4, just as **KOVALEVSKA** was singing her first lines of the opera, a donkey relieved itself on stage, prompting the packed audience into gales of laughter. Not taking any

chances, when the opera was next performed on Friday, Feb. 8, costumed actors erected a mini-wall on stage, behind which the donkeys were kept, in the event they needed to respond to nature's call in the middle of a star's aria.

In January 2008, German composer Engelbert Humperdinck's [1854-1921] opera "**HANSEL und GRETEL**" was staged at the Met Opera with creative staging and costumes. At the performance of Saturday evening, Jan. 26, 2008, sitting eight rows directly in front of me, in the orchestra section on the aisle, was the **HONORABLE JUDITH S. KAYE, CHIEF JUDGE OF THE NEW YORK COURT OF APPEALS. CHIEF JUDGE KAYE** was handsomely attired for the Saturday evening performance, and I witnessed how she graciously got up from her seat to greet every single well-wisher who approached her, engaging them in conversation.

On the heels of her triumph in "*Jenufa*," beautiful, Finnish soprano **KARITA MATTILA** added another landmark role to her Met Opera repertory, the free-spirited beauty Manon Lescaut. Puccini, who was difficult on his collaborators, used seven librettists before being satisfied with the story. The story is that of the magnetic attraction between two young lovers and how young and foolish Manon Lescaut thought that she could have her cake and eat it, too. In the opera, the title character falls in love with a handsome young man, but is fatally attracted to the wealth and luxury offered her by an old, and vindictive suitor. **MANON LESCAUT**, which was also broadcast into select movie theaters for an HD showing on Feb. 16, displayed Finnish soprano **KARITA MATTILA'S** exhilarating charisma, especially when matched by

the ardent tenor of **MARCELLO GIOR-DANI**. Music Director James Levine conducted his first Met performances of the work since 1981.

Act I of **MANON LESCAUT** begins with a rousing vocal rendition of several minutes duration by the character of Edmondo, a fellow student of the character played by lead tenor **MARCELLO GIOR-DANI**. Edmondo was played by the young, handsome, and remarkable tenor **SEAN PANIKKAR**. If **SEAN PANIKKAR'S** performance can be equated to baseball parlance, he hit a grand slam! I was unfamiliar with him, but when he began singing with a supple, strong, and lyrical tenor voice, my first impulse was to reach for the program, which amazingly had no biographical notes about him! He kept his character as a seducer of women and kept singing, even though one of his attempted sexual conquests threw a pail of water on him. The beauty of **SEAN PANNIKAR'S** voice defies description and even threatened to out-perform Giordani, the lead, whose voice was insufficiently warmed up when the opera began.

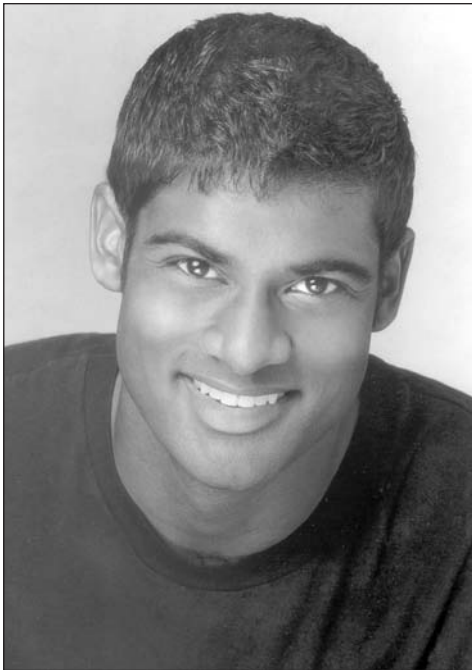
Why is **SEAN PANNIKAR** not being cast in lead tenor roles? The **MET OPERA** may have no choice but to give Pannikar lead roles, because Giordani may be emailing his fellow star tenors not to perform in the same opera with Sean Pannikar, especially if preceded in vocal appearance by him. A recent graduate of the San Francisco Opera Adler Fellowship, **SEAN PANIKKAR** is quickly becoming known for his "surpassing musicality and passion, commanding self-confidence and gorgeous expression." The American tenor of Sri Lankan heritage made his San Francisco Opera debut as Chaplitsky in *The Queen of Spades*, but first was introduced to San Francisco audiences at the Merola Opera Program's Yerba Buena Gardens Concert, where he sang Nadir in excerpts from *Les Pêcheurs de Perles*. He went on to sing the title role in the San Francisco Opera Center's production of *Le Pauvre Matelot* and since has performed in Company productions of *The Maid of Orleans*, *Fidelio*, *Norma*, and *The Magic Flute* (an abbreviated version for children).

Other engagements in 2007-2008 include Alfredo in *La Traviata* at the Arizona Opera and the role of Gomatz in Mozart's *Zaide* at the Aix-en-Provence Festival, in the south of France, in a production directed by Peter Sellars and conducted by Louis Langrée.

Last season, Mr. Panikkar appeared with the San Francisco Opera as the Young Sailor and Shepherd in *Tristan und Isolde* and as Edmondo in *Manon Lescaut* both under the baton of Donald Runnicles. He also performed Beethoven's *Symphony No. 9* with the San Francisco Symphony Youth Orchestra, Mahler's *Das Lied von der Erde* (in the chamber arrangement by Arnold Schönberg) with the Saint Paul Chamber Orchestra at the Ojai Festival, Die Zauberflöte with Leonard Slatkin at The Hollywood Bowl, and he joined Esa-Pekka Salonen and the Los Angeles Philharmonic for The Tristan Project in Los Angeles and at Lincoln Center.

SEAN PANIKKAR was a Metropolitan Opera National Council Pittsburgh District winner and Great Lakes Regional Finalist (Encouragement Award winner). He recently was honored by the George London Foundation with the 2007 Robert Jacobson Memorial Award. He is a former member of the Pittsburgh Opera Center, Central City Opera Studio Artist program, and Seagle Music Colony. He holds Masters and Bachelor degrees in Voice Performance from the University of Michigan. He and his wife currently reside in San Francisco.

On the subject of great opera singers, I have one request of you: please do not miss the chance to see the extraordinary baritone **DMITRI HVOROSTOVSKY, discussed below**, perform in "UN



Sean Pannikar

BALLO IN MASCHERA," the final performances of which will be held at the Met Opera on **APRIL 16, APRIL 19, AND APRIL 23**. In those performances, the role of Amelia will be played by the gifted **ANGELA BROWN**, who earlier this season was brilliant in the title role of **AIDA**. **ANGELA BROWN** is taking over the role of Amelia from **MICHELE CRIDER**, a wonderful soprano. Both **ANGELA BROWN** and **MICHELE CRIDER** are African-American operatic star sopranos who are in top form! Previously, one had to look back to Leontyne Price and Marian Anderson to find African-American women who achieved the super-strata of the operatic world. Now, both **MICHELLE CRIDER** and **ANGELA BROWN** provide great artistry to the major leagues of the operatic world. And please do not forget **CHERYL WARFIELD**, another immensely talented African-American soprano, whose performance as Santuzza in "Cavalleria Rusticana" I praised in my column on the **AMATO OPERA** in the "Culture Corner" column of the Queens Bar Bulletin's December 2007 issue. **CHERYL WARFIELD'S** blog on opera appears regularly on the web site of www.nysun.com.

The Met Opera's season ends in mid-May. Please go to either www.met-opera.com or www.metopera.org to see schedules and buy tickets for "UN BALLO IN MASCHERA," "LA TRAVIATA" - - starring Ruth Ann Swenson, "LUCIA DI LAMMERMOOR" - - with Natalie Dessay, who got rave reviews for her brilliant performance, "PETER GRIMES," "TRISTAN UND ISOLDE," "ERNANI," "THE GAMBLER" - - Prokofiev's opera, crowd pleaser and Met Opera staple "La BOHEME," "SATYA-GRAHA," an opera on the life of Ghandi by Philip Glass, Donizetti's "LA FILLE DU REGIMENT" - - starring Juan Diego Florez, "DIE ENTFUHRUNG AUS DEM SERAIL," "THE FIRST EMPEROR," and Mozart's "LA CLEMENZA DI TITO."

DMITRI HVOROSOTVSKY

Talking of superlative talents, **DMITRI HVOROSTOVSKY** has got to be the greatest operatic baritone in the world in active practice. His latest CD is "Heroes and Villains" on the Delos label. The handsome, charming, supremely gifted, Russian baritone performs concerts and operas world-wide. Yet, I believe he is still under-appreciated. A recent signing in New York City, after Christmas at the Met Opera gift shop, did not produce the long lines that I imagined would appear for a talent of this magnitude. Perhaps the bad scheduling had to account for the attendance. Another reason is that bari-

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tones are usually written by operatic composers in supporting roles, thus making it harder for a great talent to be recognized.

DMITRI HVOROSTOVSKY has an impressive discography, and I urge you to buy any of his many recordings. Among the great opera DVDs featuring his performances are **IL TROVATORE**, where **HVOROSTOVSKY** portrays the malevolent Count di Luna whose obsession for revenge boomerangs, to his horror, at the opera's denouement and **EUGENE ONEGIN**, where **DMITRI HVOROSTOVSKY** gives a not-to-be-missed performance of the title character whose narcissism manages to destroy the lives of an adoring girlfriend and a best friend. You will not be disappointed by these DVDs and CDs. That's a promise you can count on!

HVOROSTOVSKY was born in the central Siberian city of Krasnoyarsk. As a teen singing "rock 'n' roll," he discovered his voice was far too rich and complex for rock and began to study music, piano, and conducting while living in Communist-controlled Russia. In 1987, he won first prize at a national singing competition and again first prize at the Toulouse Singing Competition in 1988. He won the Cardiff Singer of the World Competition in 1989.

From the moment he won the Cardiff Singer of the World Competition in 1989, **Dmitri Hvorosotvsky** has been likened by critics to the great voices of the century. The silver-haired Russian baritone is one reason opera audiences around the world are getting younger, but it is the beauty of his voice -- refined and powerful -- that cuts across barriers of age and taste.

One of the opera world's biggest stars, performing in all of America's great opera houses and concert halls on a regular basis, there is an audible stir when Dmitri Hvorostovsky strides on stage. It is his voice, combined with a fiery passion and an acute musical intelligence that transfuses audiences everywhere. Few singers today concentrate on the expressive content of a piece with such intensity. This rare balance of musical power and passion, coupled with his cultivated expansive voice, has made Hvorostovsky one of the leading performers of his, or any, generation.

When Dmitri Hvorostovsky takes his bow at the Metropolitan Opera or La Scala, he can make rock concert audiences look shy and retiring. The handsome singer is a phenomenon. The moment he steps onto the stage there are cheers, signifying the public's love and respect for his artistry. Hvorostovsky also loves doing recitals, a simpler, subtler, more direct form of music making, and is widely considered to be the finest recitalist performing in the world today. Audiences and critics alike marvel at his experimen-

tation on the recital stage and praise his acting aplomb in operas.

The sheer beauty of his voice, his dramatic stage presence and smoldering good looks, have prompted many comparisons to movie stars. Not many opera singers have made it onto People Magazine's annual list of the world's most beautiful people. But be warned, says CBS News, "Hvorostovsky is hardly opera's 'Pin-up Boy' -- he sings Tchaikovsky like a God!" The scope of Hvorostovsky's repertoire is unprecedented. His great intellect and love for music drive him to explore every facet of the arts. This balancing act of traditional opera productions and recital performances show a willingness, or rather, an *enthusiasm* to take bold artistic chances.

Hvorostovsky made his film debut in a contemporary film adaptation of Mozart's opera *Don Giovanni*, produced by Rhombus Films. Titled *Don Giovanni Unmasked*, Dmitri had the feature roles as both Don Giovanni and Leporello. *Don Giovanni Unmasked*, which aired on PBS "Great Performances" and television networks worldwide in the fall of 2000, earned international critical acclaim for the baritone. The film won a number of prestigious awards, including The Silver Rose for Music (top prize in this category) at the Golden Rose Festival in Montreux, Switzerland and the Gold World Medal, Performing Arts Special at the New York Festival.

Dmitri Hvorostovsky's numerous recordings for Delos Records include: a recent CD of hauntingly beautiful Russian war songs titled "*Where Are You My Brothers*"; his CD "*Passione Di Napoli*," a blockbuster of Neapolitan songs, including such evergreen favorites as "*O Sole Mio*" and "*Santa Lucia*," marking the first time he has ventured into this repertoire; a disc of Verdi arias accompanied by Verdi specialist Mario Bernardi; a disc of Russian folk songs, *Moscow Nights*, accompanied by Constantine Orbelian leading the Moscow Chamber Orchestra and a traditional Russian ensemble, the Style of Five; music from the great Russian composer Sviridov entitled *Sviridov: A Vocal Poem*. Hvorostovsky's latest release "*Heroes and Villains*" features arias from "Boris Godunov," Wagner's "Tannhauser" and Verdi's great villains.

Recent seasons showcased the baritone's impressive wide range, from his lavishly praised performances in "*Eugene Onegin*," "*War and Peace*," and "*Don Carlo*" at the Metropolitan Opera. Hvorostovsky also remains deeply committed to introducing Russian music to audiences around the world and retains strong musical and personal contacts with Russia. Recent recitals and concert works include Hvorostovsky singing the world premiere of the great Russian composer Georgi Sviridov's song cycle (written expressly for Hvorostovsky).

OPERA ON FILM: EMERGING PICTURES BROADCASTS FROM LA SCALA

Following **ANGELA GHEORGHIU'S** celebrated La Scala debut as **Violetta** in the 2007 production of *La Traviata*, **EMERGING PICTURES** brought this performance to theaters as part of its High Definition opera series. Cinemas across the U.S. and abroad will be participating in these screenings. Gheorghiu (playing Violetta) leads an all-star cast in this outstanding film staging from the great stage of the La Scala opera house in Milan, Italy. The outstanding cast includes Mexican tenor **RAMÓN VARGAS**, in a splendid performance as Violetta's lover Alfredo Germont, and Italian baritone **ROBERTO FRONTALI**, as Alfredo's meddling father Giorgio Germont. This film version of *La Traviata* is a wonderful, tear-jerker per-

formance. I warn you that you need to be coldly emotionless if you are not reaching for a handkerchief or tissue during Act III. The film was shown at **SYMPHONY SPACE** on Manhattan's Upper West Side on both Feb. 13 and Feb. 17, 2008.

MAESTRO LORIN MAAZEL, about to start his last year as the Music Director of the New York Philharmonic, is on the podium in this filmed opera and does a masterful job! **MAESTRO MAAZEL** leads the orchestra of the famed La Scala opera house with a high voltage performance, especially in the closing Act III. Having seen several live versions of Verdi's "*La Traviata*," this one, brought on film by Emerging Pictures, is brilliantly acted and an emotional powerhouse.

The film "**LA TRAVIATA**" is superbly directed by **LILIANA CAVANI**, who cleverly used flashbacks right in the opening to Act III, the high-charged denouement. The filmed opera is designed by Dante Ferretti and choreographed by Micha van Hoecke.

In the United States, **EMERGING PICTURES** is presenting this series through Emerging Cinemas, its network of digital venues comprised of museums, performing arts centers, art houses and cultural centers nationwide. Emerging Pictures has again partnered with Screenvision for distribution of the operas to movie theaters nationwide. Screenvision is a leading cinema advertising and movie pre-show entertainment company, and also provides a variety of alternative content programming to its network of U.S. movie theatres via its Screenvision Programming Services division.

The operas are presented via digital cinema servers, enabling theaters to select the date and time of single or multiple presentations. With the release of *Aida* in December 2007, Screenvision and Emerging Pictures were the first companies worldwide to bring opera to cinemas equipped with the 2k systems of Texas Instruments DLP Cinema technology conforming to the guidelines set by the Digital Cinema Initiative (DCI) experts which provide the absolute best image for the viewers.

In addition to "*La Traviata*," productions slated for big screen release are Donizetti's "*Maria Stuarda*" (La Scala), Puccini's "*Il Trittico*" (La Scala), Verdi's "*La Forza del Destino*" (Maggio Musicale) and Puccini's "*La Rondine*" (Teatro La Fenice). Emerging Pictures' first two opera releases, "*Aida*" (La Scala) and "*Tristan und Isolde*" (La Scala), continue screening in theaters across the United States, United Kingdom, Brazil and Canada.

Movie showings are at Symphony Space, and you may check www.symphonyspace.org for details. Movie theater tickets for these operas are priced at about \$20, with a discount for seniors.

The producer of these films, **EMERGING PICTURES**, was founded in 2002 by Barry Rebo, Giovanni Cozzi, and Ira Deutchman to create a new theatrical distribution process for independent, international and documentary films through the use of digital technology. Emerging has grown into a distribution, marketing and exhibition company through its network of affiliated theaters, Emerging Cinemas, which bring first-run art house cinema and other specialty programs, such as operas, concerts, and Syndicated Film Festivals and series to cities and communities that would otherwise not usually have access to such films. See www.emergingpictures.com.

PRODUCTION AND CAST INFORMATION of the High Definition, Digital, Surround Sound Screening of the remaining operas on film, to be shown in Manhattan's **SYMPHONY SPACE** are: **MARIA STUARDA**

Film Viewing: at Symphony Space, on Sunday, March 16, at 3 PM,

and Thursday, March 20, at 7:30 PM. La Scala, by Gaetano Donizetti, directed, designed and costumed by Pier Luigi Pizzi Conductor: Antonino Fogliani Cast: *Includes* Mariella Devia (*Maria Stuarda*), Anna Caterina Antonacci (*Elisabetta*) **LA FORZA DEL DESTINO**

Film Viewing: at Symphony Space, on April 6 and April 23, 2008 Teatro del Maggio Musicale, Florence, by Giuseppe Verdi, directed by Nicolas Joel Conductor: Zubin Mehta **Design:** Ezio Frigerio **Costumes:** Franca Squarciapino **Cast:** *Includes* Violeta Urmana (*Donna Leonora*), Carlo Guelfi (*Don Carlos di Vargas*), Marcello Giordani (*Don Alvaro*), Julia Gertseva (*Preziosilla*) **IL TRITTICO**

Film Viewing: at Symphony Space, on May 18 and May 19, 2008 La Scala, by Giacomo Puccini, directed by Luca Ronconi Conductor: Riccardo Chailly Design: Margherita Palli Costumes: Silvia Aymonino Cast: *Includes* Juan Pons (*Michel*), Miro Dvorski (*Luigi*), Paoletta Marrocu (*Giorgetta*), Anna Maria Popescu (*Frugola*), Barbara Frittoli (*Suor Angelica*), Mariana Lipovsek (*Zia Principessa*), Leo Nucci (*Gianni Schicchi*), Nino Machaidze (*Lauretta*), Cinzia De Mola (*Zita*), Stefano Secco (*Rinuccio*) **LA RONDINE**

Film Viewing: at Symphony Space, on June 8 and June 12, 2008 Teatro La Fenice, Venice, directed by Graham Vick Conductor: Carlo Rizzi **Design:** Peter J. Davison **Cast:** *Includes* Fiorenza Cedolins (*Magda*), Massimo Giordano (*Ruggero*)

THE NEW YORK CITY BALLET

This spring, the New York City Ballet will celebrate Jerome Robbins, the groundbreaking choreographer and director who transformed American musical theater, and who also made the New York City Ballet ("NYCB") his artistic home for nearly 40 years.

The Jerome Robbins Celebration, which will mark the 90th anniversary of the choreographer's birth in 1918, will take place at the New York State Theater from April 29 through June 29, 2008, and will feature 33 ballets that Robbins created over a span of more than 50 years.

Highlights of the celebration, which will focus on Robbins' work for the ballet stage, will include an historic recreation of his original 1965 staging of Les Noces, as well as his 1983 collaboration with Twyla Tharp, *Brahms/Handel*, which has not been performed since 1991. The season will include several other ballets that have not been performed by NYCB for many years, including *Watermill*, *Other Dances*, and *Four Bagatelles*.

The Jerome Robbins Celebration will begin on Tuesday, April 29 with a special one-time-only Spring Gala performance featuring *Circus Polka*, *The Four Seasons*, and *West Side Story Suite*. The celebration will continue through June 29 and will feature ten all-Robbins programs, each showcasing a different aspect of the choreographer's work.

In addition to the ten all-Robbins programs, NYCB's 2008 spring season will include seven additional programs featuring ballets by George Balanchine, Mauro Bigonzetti, Peter Martins, Alexei Ratmansky, Susan Stroman, and Christopher Wheeldon. These 17 unique programs will feature a total of 54 different ballets. More information is available at www.nycballet.org. ■

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



Dmitri Hvorostovsky

C O U R T N O T E S

The Following Attorneys Were Disbarred By Order Of The Appellate Division, Second Judicial Department:

John M. Claydon, Jr., admitted as John Mitchell Claydon, Jr. (December 18, 2007)

On March 30, 2007, following a plea of guilty, the respondent was sentenced to 20 years' imprisonment by the Superior Court of the State of Connecticut for multiple counts of larceny in the first degree; multiple counts of larceny in the second degree; and multiple counts of larceny in the third degree. The Appellate Division found that the Connecticut offenses of larceny in the first and second degree are essentially similar to the New York felony of grand larceny in the third degree, and that the Connecticut offense of larceny in the third degree is essentially similar to the New York felony of grand larceny in the fourth degree. Pursuant to Judiciary Law §90(4), the respondent automatically ceased to be an attorney and counselor-at-law upon his felony convictions.

Kevin J. Shortall (December 18, 2007)

The respondent tendered a resignation wherein he acknowledged that he could not defend himself on the merits against allegations that he handled a legal matter without adequate preparation, and engaged in conduct prejudicial to the administration of justice, which reflects adversely on his fitness as a lawyer.

Dennis Emil Vourderis, a suspended attorney (December 18, 2007)

On March 3, 2007, the respondent appeared in the Supreme Court, Richmond County (Rienzi, J.) and pleaded guilty to grand larceny in the second degree, a class C felony, and the practice of law by an attorney who has been disbarred, suspended, or convicted of a felony, a class A misdemeanor. By virtue of his felony conviction, the respondent automatically ceased to be an attorney and counselor-at-law pursuant to Judiciary Law §90(4).

Eugene A. Cordaro, admitted as Eugene Anthony Cordaro, a suspended attorney (December 26, 2007)

The respondent was deemed guilty, on default, of 20 charges of professional misconduct predicated upon his failure to respond to the Grievance Committee's numerous requests for information with respect to six matters; his failure to comply with a judicial subpoena and two judicial subpoenas *duces tecum*; uncontroverted evidence that he failed to maintain and preserve client funds in his escrow account; misappropriation of client funds entrusted to him as a fiduciary; testifying falsely under oath; and submitting a document to the Grievance Committee which he knew, or should have known, to be fraudulent.

Richard L. Glachman, admitted as Richard Louis Glachman (December 26, 2007)

By order of the Supreme Court of Florida dated January 27, 2005, the respondent was disbarred in that State, effective immediately. The order directed that restitution be made to one Fred Weinstein in the amount of \$24,500 and to one Jay Hyman in the amount of \$17,900, and granted the Florida Bar judgment against the respondent for the recovery of costs in the amount of \$2,265.50. Based upon the Grievance Committee's motion for reciprocal discipline pursuant to 22 NYCRR §691.3, the respondent was disbarred in New York.

Christopher W. Meyers, admitted as Christopher William Meyers (January 8, 2008)

The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against allegations of, *inter alia*, neglect of legal matters and/or conduct involving dishonesty, fraud, deceit or misrepresentation.

The Following Attorneys Were Suspended From The Practice Of Law By Order Of The Appellate Division, Second Judicial Department:

Michael Jay Smith (December 26, 2007)

By order of the Indiana Supreme Court dated July 24, 2006, the respondent was suspended from the practice of law in that State for 60 days, effective September 11, 2006, and placed on probation for 12 months, upon a finding that he failed to have a written contingency fee agreement signed by his client; failed to have an identified attorney trust account for his client's funds; commingled his own funds with those of his client; and failed to appropriately safeguard his client's money. Upon the Grievance Committee's motion for reciprocal discipline, the respondent was suspended from the practice of law in New York for a period of two years, commencing January 28, 2008, and continuing until the further order of the Court. Previously, the respondent was publicly censured in New York based upon charges of failing to cooperate with the Grievance Committee; failing to re-register as an attorney with the Office of Court Administration (OCA); and failing to notify OCA of his change of address.

Edward W. Donnelly, admitted as Edward Warren Donnelly (December 28, 2007)

The respondent was immediately suspended from the practice of law, pending further proceedings, upon a prima facie finding that he was guilty of professional misconduct immediately threatening the public interest based upon his failure to comply with lawful demands of the Grievance Committee, his substantial admissions under oath and other uncontroverted evidence.

The Following Attorney Was Publicly Censured By Order Of The Appellate Division, Second Judicial Department:

Hector M. Roman, admitted as Hector Manuel Roman, Jr. (December 26, 2007)

The respondent was sanctioned \$1000 by the United States Court of Appeals for the Ninth Circuit and suspended from the practice of law before that Court for a period of six months, as a result of his failure to supervise a subordinate attorney and failure to have an adequate system in place to monitor that attorney's cases. Upon the Grievance Committee's motion for reciprocal discipline pursuant to 22 NYCRR §691.3, the respondent was publicly censured in New York.

The Following Suspended Or Disbarred Attorneys Were Reinstated As Attorneys and Counselors-At-Law By Order Of The Appellate Division, Second Judicial Department:

Mark Lewis Brecker,
a suspended attorney
(January 16, 2008)

Rebecca E. Carmen,
a suspended attorney
(January 16, 2008)

Daniel Paul Foster,
a disbarred attorney
(January 16, 2008)

Edward C. Katz, admitted as Edward Charles Katz, a suspended attorney
(January 16, 2008)

At The Last Meeting Of The Grievance Committee For The Second And Eleventh Judicial Districts, The Committee Voted to Sanction Attorneys For The Following Conduct:

- Negligently notarizing a general release outside of a client's presence, which release purported to bear the client's signature but, in fact, did not
- Failing to appear in court as directed and failing to pay sanctions imposed by the court as a result
- Surreptitiously taking and copying the work product of an adversary in the course of a proceeding
- Failing to maintain adequate books and records of escrow transactions; commingling personal and fiduciary funds; and permitting automatic funds transfers out of the attorney's escrow account
- Improperly depositing a client's settlement proceeds into the lawyer's business account; improperly making ATM withdrawals from the lawyer's escrow account; and failing to adequately supervise attorney and lay staff associated with and/or employed by the lawyer's office
- Maintaining earned fees on deposit in an escrow account; paying personal expenses against those fees; failing to maintain a ledger book or similar record of deposits into, and withdrawals from, escrow; and improperly drawing an escrow check to "cash" ■

Diana J. Szochet, Assistant Counsel to the State of New York Grievance Committee for the Second and Eleventh Judicial Districts, has compiled this edition of COURT NOTES. The material herein is reprinted with permission of the Brooklyn Bar Association.

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Notes from New York State Bar Association

Annual Meeting and House of Delegates Meeting, New York, NY

Continued From Page 1

This is the way I started my report last year. This year it was cold and raining. Not a pleasant way to go to a meeting of the State Bar.

As usual the meeting started with a report by the president of the New York Bar Foundation who extolled the virtues of becoming a member and donating money to a very worthwhile cause, the Bar Foundation. The Bar Foundation is the charitable arm of the state Bar Association. In fact our own association has in the past been a recipient of their largess when we were setting up our pro bono panel.

After the Bar Foundation report and various house-keeping reports the next item on the agenda was an address by our Chief Justice Judith Kaye. This is Judith Kaye's last report as she will reach mandatory retirement age (at least from the Court of Appeals) this year. As expected the major part of her report is criticism of the political process and its inability to provide for judicial pay raises. She has so far declined to schedule her "State of the Judiciary Address" to the state legislature until the salary increase is approved.

Had she given her address, she would have told them that the salary for our judges is the lowest of any state in the union. In fact she characterized it as the United States judiciary "poster child". How sad.

She then went on to state that the judges are dedicated to serving the public and have not taken any harmful action (strikes, slow downs, etc.) The disdain and humiliation imposed upon the judiciary is devastating to them and to the Court system. In order to remedy this situation, after the salary increase there must be an independent judiciary salary commission and to a rebuilding of the state judiciary's morale.

She went on to say that had she given the speech her fantasy address would have been covered to the

following issues:

Family Justice – last year there were 700,000 filings in the family courts of the State, more than double the previous year. In all, there were more than 2 million court appearances with only 153 Family Court Judges presiding. While the Legislature saw fit to add 21 new judges it only approved one new Family Court Judge. There must be reforms in the foster care system and defending the indigent.

The second initiative to be undertaken is court reform and she specifically addressed the family court system and the town and village justice court system. She referred to the Dunn commission report which is studying the town and village justice system. Their task will be completed shortly.

Finally, she spoke in glowing terms of this year's Ruth G. Schapiro Memorial Award recipient, Justice Jacqueline Silberman.

Judge Kaye's speech was followed by the award to Jacqueline Silberman. Judge Silberman was cited for her initiatives in mentoring women, providing alternative work arrangements for women, eradicating gender bias and innovative practices in family law.

President Kate Madigan presented her report, which included a discussion of her meetings with Judge Pfau concerning issues of importance to the Association. She discussed the authorization of an amicus brief to be submitted on the hearing of the Lawyer Advertising case. Parenthetically, the amicus brief is being submitted pro bono by Ahrens Fox, Esq., our president-elect's law firm.

She went on to expound that the Bar Association's legislative priorities are: judicial salary increases, court reform, access to justice, the rights of same-sex couples, long term care financing and support for the legal profession. She welcomed the formation of a new 13th

District to cover Staten Island, effective January 1, 2009.

The Bar Association received awards from the American Bar Association for an outstanding Law Day activities and former Judge of the Court of Appeals, George Bundy Smith, received the Spirit of Excellence award.

The Committee on Membership reported that the State Bar now has a membership of 74,075 persons. The president seeks to increase the membership by 10% (I don't recall over what period of time this was to occur).

The report of the Committee on Eminent Domain submitted its report. It passed unanimously. Essentially, the report proposed additional safeguards and transparency when the government proposes to take private property for ultimate private development (Think Atlantic Yards in Brooklyn or Willets Point in Queens). This report was initiated after the United States Supreme Court rendered its decision in the case of Kelo v. New London. The New York State Bar Association is the only Bar Association to undertake the task of forming a task force to review this area of law.

The report and recommendations of the Bar Association's Committee to study the Town and Village Justice Court system was passed. The substance of that report is: all Town and Village Justices should be attorneys; we must find ways of overcoming barriers to attorneys becoming village and town justices, the village and town justices, as well as the Clerks and support personnel must be better trained to perform their duties and they must be given greater assistance by professionals at the State level.

Finally, there were reports by the special committee on a civil right's agenda and medical malpractice.

Okay, time to go back to work.

The next meeting will be in Albany on April 5, 2008.■

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BOOKS AT THE BAR

By HOWARD L. WIEDER

With the official arrival of Spring, thoughts in March drift toward day excursions and exotic travel, leading to the following suggestions for book purchases.

DK EYEWITNESS TRAVEL GUIDES
Having read several guides, I confess my partiality to one brand that stands mountains over the competition: **DK EYEWITNESS TRAVEL GUIDES**. They are illustrated and photographed beautifully. Many other travel books lamentably lack any photographs. Indeed, in recognition of their distinctive individuality of featuring numerous, color photographs, this year’s editions of **DK EYEWITNESS TRAVEL GUIDES** state: **“THE GUIDES THAT SHOW YOU WHAT OTHERS ONLY TELL YOU.”**

In my home library, I have one entire bookcase devoted to **DK EYEWITNESS TRAVEL GUIDES**. The descriptions of each of the tourist sites are written engagingly and accompanied by colorful photographs. Of the destinations I have visited, such as Provence, the Cote d’Azur, and countries in Europe, the descriptions contained in **DK EYEWITNESS TRAVEL GUIDES** are reliably accurate.

The books also cover many destinations, give helpful cultural pointers to Americans who may not be acquainted with local custom, and are rich in handsome photographs. Whether your destination is **CRACOW, DUBLIN, PARIS, SPAIN, IRELAND, GERMANY, MEXICO, EGYPT, INDIA, AUSTRALIA, or JERUSALEM AND THE HOLY LAND**, it is more than likely that there is a **DK EYEWITNESS TRAVEL**

GUIDE on the country or region. The DK Eyewitness Travel Guides cover not only particular countries, but also cities and regions: **MILAN AND THE LAKES, FLORENCE AND TUSCANY, VENICE AND THE VENETO, SICILY, PROVENCE AND THE COTE D’AZUR, DORDOGNE AND SOUTHWEST FRANCE**, and the **LOIRE VALLEY**.

Many of the DK Eyewitness Travel Guides are edited annually, supplementing new information. I have found **DK EYEWITNESS TRAVEL GUIDES** so well-regarded that when I update my library with the newest edition of a Travel Guide, I give the prior edition to a deserving and appreciative friend. Even at book stores selling used books, I constantly find that the shelves of travel books are depleted of **DK EYEWITNESS TRAVEL GUIDES** since these books, even in older editions, are snatched up immediately by the buying public. Plan for your trip now! Search for the DK Travel Guide you want at dk.com, amazon.com, or bn.com.

ANTIQUES INVESTIGATOR: TIPS AND TRICKS TO HELP YOU FIND THE REAL DEAL

Even up to five or ten years ago, going on hunts for antiques was traditionally associated with mature women and a small segment of the male community. Changing, evolving mores, combined with the desire for a quick fix Lotto-type ticket to fortune, accelerated by the great cultural medium of television, has now made the audience for antiques universal. On television, the popular PBS reality series

“Antiques Roadshow” shows all types of persons, who have hauled some object for appraisal, waiting on line for the chance that an expert appraiser will tell them that an item purchased by an ancestor and kept in an attic would, for example, fetch up to “\$50,000 conservatively” if sold at auction [“too bad you didn’t keep the artist’s original frame; then the painting would have been worth \$70,000”], with pointers on what preservation and insurance steps may increase and protect the object’s value. Since all of us have some material possession or heirloom that we value, whether an ancestor’s necklace or a football jacket that turns out to have been made specially for Johnny Unitas, “Antiques Roadshow” appeals to all Americans, not a stereotypical demographic group.

Other television programs followed. Almost daily, BBC-America [Time Warner channel 106] runs similar television shows, such as “Bargain Hunt” and “Cash in the Attic.” In “Bargain Hunt,” two teams are each given 200 British Pounds and let loose on a flea market, where they are each required to buy three items. Those items are then auctioned, and the team with the greatest monetary profit or the least financial loss wins. In “Cash in the Attic,” two experts go into a family’s home and help the family members find objects that could be auctioned in the hope of funding a worthwhile objective. Those items are then auctioned, and the audience can be amused, disappointed, or thrilled to see how close the expert’s prediction came to the actual sales price at auction, and whether the amount gained at auction was adequate to meet

the objective.

The greatest “equalizer” in making “antiquing” appealable to mainstream America perhaps is eBay, the online auctioneer found at www.ebay.com. The popularity and cross-appeal of “eBay” became obvious during a recent television PR campaign, buying expensive ad time during “manly” sporting events, urging its viewers to “Shop Victoriously.”

JUDITH MILLER’S excellent book, **ANTIQUES INVESTIGATOR: TIPS AND TRICKS TO HELP YOU FIND THE REAL DEAL** [DK Publishing Co. 2007, hardcover, 240 pages, \$25] is full of essential information on what to look for when buying glass, metalware, ceramics, furniture, and other objects. For persons who are inclined to spend time at flea markets and at auctions, looking to make a fortune at what really is a treasure find, [and for those who want to satisfy such desires in their significant others], Judith Miller’s book is insightful and indispensable. Certainly, in light of eBay and the many television programs devoted to antiques and their valuation, anyone would enjoy **JUDITH MILLER’S** smartly written books. Other books on the valuation of antiques that are written or supervised by expert **JUDITH MILLER** and published by **DK PUBLISHING COMPANY** can be found at www.dk.com. ■

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



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REPORT OF THE NOMINATING COMMITTEE

The Nominating Committee of the Queens County Bar Association, after due and timely notice, in accordance with the provisions of the By-Laws of the Queens County Bar Association, have nominated the following list of members for the positions to be filed at the coming election at the Annual Meeting of the Association on March 7, 2008.

TO THE QUEENS COUNTY BAR ASSOCIATION:

We, the undersigned, members of the Nominating Committee do hereby respectfully report that pursuant to the provisions of Article VI, Section 3, of the By-Laws of the Queens County Bar Association, we have nominated for the respective offices the following named members:

OFFICERS 2008-2009

For President	STEVEN S. ORLOW
For President-Elect	GUY R. VITACCO, JR.
For Vice President	CHANWOO LEE
For Secretary	JOSEPH J. RISI, JR.
For Treasurer	RICHARD M. GUTIERREZ

FOR FOUR MEMBERS OF THE BOARD OF MANAGERS FOR A TERM OF THREE YEARS (expiring May 31, 2011)

PAUL E. KERSON
TIMOTHY B. ROUNTREE
ZENITH T. TAYLOR
JAMES J. WRYNN

FOR ONE MEMBER OF THE BOARD OF MANAGERS FOR A TERM OF THREE YEARS AS IMMEDIATE PAST PRESIDENT (expiring May 31, 2011)

DAVID L. COHEN

FOR ONE MEMBER OF THE BOARD OF MANAGERS FOR A TERM OF ONE YEAR (expiring May 31, 2009)

GARY F. MIRET

NOMINATING COMMITTEE

Seymour W. James, Jr.	Joseph A. Baum	Cheree A. Buggs
Paul Pavlides	Edward H. Rosenthal	Madeleine S. Egelfeld
Elisabeth A. Vreeburg	Spiros A. Tsimbinos	Wallace L. Leinhardt

The following members have been designated by petition, pursuant to the By-Laws of the Association, as candidates for election to the office of members of the Nominating Committee to serve for a period of three years (expiring May 31, 2011)

LUCILLE S. DI GIROLOMO	STEPHEN J. SINGER	STEVEN WIMPFHEIMER
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THE ANNUAL MEETING of the Queens County Bar Association will be held in the Bar Headquarters Building, 90-35 148th Street, Jamaica, New York on FRIDAY, MARCH 7, 2008, at 4:00 P.M. The election of officers will take place at that time, together with such other business as may regularly come before the meeting. **SINCE NO INDEPENDENT NOMINATIONS HAVE BEEN FILED WITHIN THE TIME LIMITED BY THE BY-LAWS, THE ELECTION WILL BE PRO FORMA.**

Dated: Jamaica, N.Y.
February 13, 2008

CLARO OPENS TO RAVE REVIEWS

By MARK WELIKY*

CLARO-Queens, has opened at Queens Civil Court to rave reviews. CLARO-Queens is the newest program of the Queens Volunteer Lawyers Project, the pro bono arm of the Queens County Bar Association. CLARO, the Civil Legal Advice and Resource Office provides free legal assistance to Queens residents faced with consumer debt cases. The program which is staffed by volunteer lawyers and by volunteer law students from the St. John's University School of Law advises these litigants on self-representation and negotiation strategies. The CLARO program was first initiated in Kings County and has been in operation there for over two years. Major kudos must go to April Newbauer, Attorney-in-Charge, of the Legal Aid Society, Queens Civil Practice the driving force behind the CLARO concept and Professor Ann Goldweber, Director, St. John's University School of Law, Elder Law Clinic and Professor Gina Calabrese, Associate Director, St. John's University School of Law, Elder Law Clinic for their invaluable assistance in making CLARO-Queens a reality. The cooperation of the Supervising Judge of Queens Civil Court, Bernice D. Siegal and her staff, has been crucial in facilitating the creation of this program.

Impending Consumer Debt Crisis

We are now well aware of the sub-prime mortgage crisis and the devastating effects it is having on the housing market in general and indeed on the entire national economy. Although many had sounded the alarm on this impending crisis it only really made the headlines when the banking industry began to report huge multi-billion dollar write-downs caused by this "house of cards." Similarly, warning signs are rampant that the next big economic crisis will involve a looming tidal wave of defaults on credit card debt. Civil courts in New York City and courts throughout the nation are already seeing a huge upswing on consumer debt filings. The CLARO initiative is an attempt to assist the usually unsophisticated litigant in facing the growing problem of frozen bank accounts, income executions and ruined credit histories which are resulting from the aggressive and sometimes abusive practices of debt collectors.

Public Response

Visitors to CLARO-Queens in the first weeks of the clinic's operation have consistently expressed their appreciation for the help they received. In the words of one visitor "Who can we thank for this service? This is so wonderful!" Although Queens Civil Court personnel do a great job in helping litigants navigate through court procedures they are of course constrained from offering legal advice. CLARO can go further than merely offering information and can offer pro se representation strategies to these litigants.

Volunteer Praise

The volunteer lawyers and law students at CLARO are also giving it "boffo" reviews. The law students are excited to be involved in interviewing and assisting people who really need help. The volunteer lawyers are happy to be useful in giving legal advice while not having an open-ended pro bono commitment (all legal assistance provided by CLARO takes place within the clinic session – volunteer attorneys do not represent the litigants in court). In addition, volunteer lawyers can earn Pro Bono-CLE credits for their service.

Volunteer Lawyers Needed for CLARO-Queens

Lawyers who would like to volunteer and take part in the Friday afternoon CLARO-Queens clinic sessions still have an opportunity to sign-up for the program. The CLARO training seminar which was held in November was recorded and is available for CLE credit (2 credits in Skills and 1 credit in Ethics) on DVD, VHS or CD along with the written seminar handout. Seminar CLE credits are awarded after the volunteer lawyer appears for two clinic sessions.

Any lawyer wishing to participate in CLARO-Queens should please contact Mark Weliky at (718) 291-4500, MWeliky@QCBAA.org or return the following form by mail or fax to QCBAA, 90-35 148th Street, Jamaica, N.Y. 11435, fax# (718) 657-1789. ■

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

FREE RECORDED CLE SEMINAR FOR VOLUNTEER ATTORNEYS
for
CLARO-QUEENS
THE CIVIL LEGAL ADVICE AND RESOURCE OFFICE
AT QUEENS CIVIL COURT

CLARO is a new project for unrepresented debtors sued by their creditors in Queens Civil Court. CLARO volunteers will advise debtors on Friday afternoons on self-representation strategies.

Seminar topics covered include:

- The debt collection process
- CPLR Nuts & Bolts (service of process/answers & motions)
- Defenses to debt
- Restraints on bank accounts
- The court process and settlement
- Ethics of working with a Pro Se litigant
- counseling a debtor

CLE Credits: 2 Credits in SKILLS and 1 credit in ETHICS will be awarded for the seminar. Transitional Program – Valid for All Attorneys

CLARO volunteers are issued CLE seminar credits upon completion of six (6) hours of service.

Accreditation: The Queens County Bar Association has been certified by the NYS Continuing Legal Education Board as an Accredited Continuing Legal Education Provider in the State of New York. Application for renewal has been filed and is currently pending. Queens County Bar Association Academy of Law, Hon. Martin E. Ritholtz, Dean

- ☐ I agree to volunteer for CLARO-Queens and would like to be loaned a copy of the recorded seminar and receive a copy of the written seminar materials.

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