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Queens Bar Bulletin

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

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"No-Match rule" implementation blocked by district court

By ALLEN E. KAYE

On October 10th, a federal district court in California granted a preliminary injunction preventing the implementation of the Department of Homeland Security's (DHS) final rule on Social Security Number (SSN) "no-match" letters. The rule was to go into effect on September 14th, and the Social Security Administration was set to begin disseminating letters to 140,000 U.S. employers in early September. Overall, the rule would affect some eight million employees. The court found that the plaintiffs, a consortium of unions and business groups, raised serious issues and that preliminary relief was warranted to prevent irreparable harm, including erroneous termination of lawfully employed workers because the no-match letters are based on incorrect SSA records. The court also held that the threat of criminal prosecution under the guise of the no-match rule's safe harbor provision reflects a major change in DHS policy and that DHS failed to make such change under mandated administrative requirements. The court's ruling is not a final adjudication of the merits of the claim, and the parties are expected back into court on October 12th to map out the details of the form of the injunction.

COMPELLING DHS ACTION ON LONG PENDING ADJUSTMENT AND NATURALIZATON CASES

Even before this summer's deluge of petitions and despite massive fee increases, the U.S. Citizenship and Immigration Services (USCIS) has been incapable of processing tens of thousands of applications for permanent residence and citizenship within a reasonable period of time. For some applicants, many years go by without a word about the resolution of their case, despite diligent follow-up with USCIS. Major processing delays reportedly affect up to 300,000 cases. Although lengthy delays are most common in citizenship and adjustment of status applications, unreasonable delays also affect applications for employment authorization and travel permission, petitions for nonimmigrant status, and green card renewals. Besides an overloaded immigration system, what causes these delays, and more importantly, what can be done to compel DHS action?

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Morality versus legal justification

by STEPHEN J. SINGER*

After more than forty years in the practice of law there are still issues that I observe on a regular basis that trouble me, not only because I am not always certain of the right answer when others ask me, but because sometimes I am the attorney in question. These are problems dealing not with strict matters of legal ethics, something for which you might get into trouble with the grievance people, but matters of conscience that linger long after the case is closed and the file stored away. I don't know if this is an old man's disease, this serious introspection about the profession and one's practice of it, or merely that I have more time to ponder such things now. Nevertheless, they bear some thought, even if the perusal of this article only stirs your interest until the last line is read.

Steven J. Singer

Some of these questions only arise within my own area of practice, criminal law, while others stray across all types of legal endeavors. I am speaking of those decisions that all of us make while doing what we do, that make you really wonder if it truly is all about the money, or perhaps, for some, something to do with the love of the law, the hardships we all endured to become lawyers, the significance of the legal profession to society at large and the great loss of respect we have all suffered over a generation or two in the eyes of the public.

I first thought about these issues when I heard the famous Monroe Friedman deliver a lecture concerning the proper way to deal with a client who you know intends to commit

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Save the Date

December 19, 2007

Holiday Party at Terrace on the Park

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.

2007 Fall CLE Seminar & Event Listing

November 2007	
Thursday, November 1	Commercial Leasing – ***Presented & Sponsored by Judicial Title***
Monday, November 5	CLARO Volunteer Seminar
Tuesday, November 13	Academy of Law Series Part 4
Wednesday, November 14	Landlord & Tenant Update
Monday, November 19	Stated Meeting
Wednesday, November 28	No Fault Update
December 2007	
Wednesday, December 12	UM/SUM Update
Thursday, December 19	Holiday Party Terrace on the Park
January 2008	
Monday, January 28	Stated Meeting - Tentative
February 2008	
Monday, February 25	Stated Meeting
Thursday, February 28	CPLR Evidence Update
March 2008	
Wednesday, March 5	Family Law Seminar
Wednesday, March 26	Basic Criminal Law Part 1
Monday, March 31	Past Presidents and Golden Jubilarians Night
April 2008	
Wednesday, April 2	Basic Criminal Law Part 2
Wednesday, April 9	Civil Court Seminar
Monday, April 14	Judiciary Night
Wednesday, April 16	Equitable Distribution Update
May 2008	
Thursday, May 1	Annual Dinner and Installation of Officers

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Francis J. O'Donnell

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Les Nizin

EDITOR'S NOTE...

As always, I welcome members old and new to send articles, poems, articles of interest and your comments for our newspaper. Kindly send all of your material to the undersigned care of the Queens County Bar Association or to my e-mail address, lnizin@aol.com.

LAWYERS ASSISTANCE COMMITTEE

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

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

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

If you or someone you know is having a problem, we can help. To learn more, contact QCBA LAC for a confidential conversation.

Lawyers Assistance Committee
Confidential Helpline
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PRESIDENT'S MESSAGE

David Cohen

The QCBA year has gotten off to a very busy and productive start. Our first Stated Meeting - the Annual Court of Appeals Update was a resounding success. More than 200 lawyers and judges attended and we were all treated to an informative lecture on Recent Developments in the Law. Those of us who stayed for dinner had a wonderful time eating, drinking and "schmoozing." In the future, I highly recommend that you attend the "fun" part of our meetings. The opportunity to socialize with members of the bench and bar is one of the most important aspects of bar association membership. We all can benefit from this networking opportunity.

As was noted in our last bulletin our CLE coordinator, Catherine Dolginko left us for California. Our Executive Director, Arthur Terranova and the office staff, especially Sasha Khan have managed to fill the void and our CLE calendar is as full as ever. We have numerous evening and lunch time programs available on a wide range of topics. Please utilize this resource to satisfy your mandatory CLE requirements. If you are not receiving our email notifications as to upcoming programs, please contact the office and provide your current email address. If you are still electronically challenged, we will mail you the flyers.

One of the QCBA's most important functions is keeping the lines of communication open between the bench and the bar. To that end we have scheduled open meetings with the Administrative Judges of the Criminal and Civil Terms of the Supreme Court and the Supervising Judges of the Criminal and Civil Courts. Your presence and participation in these events goes a long way to ensure that the lot of the practicing lawyers in Queens is as good as it can be. In addition, if specific issues or problems are brought to our attention, we can refer them to the Judicial Relations Committee, or raise them in my regularly scheduled meetings with our Administrative and/or Supervising Judges.

Our Elder Law Committee, under the leadership of John Dietz, is working on the creation of a Family Fiduciary Registry. This would be a list of highly qualified fiduciaries who have not only completed OCA's minimum requirements, but have also completed a series of courses to be given by the QCBA. These individuals would then be eligible to be selected by the family of an incapacitated person as the Court appointed fiduciary. As soon as this program is finalized, details will be sent to our members and published in the Bulletin.

I am sure that we all were quite pleased with the new format of our Bulletin. I for one was shocked that I could actually see who was in the photos. Our Editor, Les Nizin, and our Executive Director, Arthur Terranova, deserve our thanks for all the hard work that went into the selection of our new publisher. Our Directory will be out in January. In addition to the print version, we are working hard to have it available on our website.

As always, you can reach me at dlccrimlaw@aol.com., or by calling the QCBA. ■

"No-Match rule" implementation blocked

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Most USCIS processing delays result from so-called "background checks." These checks, which are distinct from fingerprint checks for a criminal history, match up names and dates of births of applicants with Federal Bureau of Investigation (FBI) databases, which, in turn, link up with other governmental databases. Often the background check will reveal the existence of a government record or "hit," even a benign hit, which must be investigated to determine if it presents information relevant to the adjudication of the application. Delays are sometimes caused for other reasons, including misplaced or simply neglected files. During this time, the USCIS informs the applicant that his or her case is pending background checks, or offers excuses, and advises that nothing can be done.

Something can, however, be done. Many applicants are turning to the federal courts to assert their right to a reasonable period of adjudication through a writ of mandamus, a type of lawsuit to compel government officials to act on their case. Many adjustment of status and naturalization applicants have succeeded in forcing the USCIS to adjudicate long pending cases. A writ of mandamus is not a request that the application be approved, but simply that the application be adjudicated. Approvable cases often are approved by USCIS after a writ of mandamus is filed. Once this occurs, the lawsuit is dismissed by agreement.

In the citizenship context, there is a separate legal action known as a "Section 1447(b) action," a provision of law that requires USCIS to decide applications for citizenship within 120 days of the examination. "Examination" generally has been held by the courts to be synonymous with the naturalization interview, although a minority of courts have held that "examination" refers to the entire process of deciding a naturalization application. The law gives applicants a right to ask a federal court to decide or to order USCIS to decide an application 120 days after the USCIS interview. Often the filing of a 1447(b) action will result in prompt adjudication of the naturalization application. However, like a mandamus cases, it is essential that the applicant's eligibility for naturalization be carefully evaluated before filing a 1447(b) action, as the government can and often does elect to oppose the court's intervention and will fight applications where it does not believe naturalization is warranted.

Maggio & Kattar's litigation practice group has filed dozens of mandamus and 1447(b) actions to compel adjudications for our clients, with excellent results. For more detailed information, please see the recent article on writs of mandamus and Section 1447(b) actions by Andres Benach posted on our web site.

MASSIVE ADJUSTMENT OF STATUS FILINGS MEANS MASSIVE PROCESSING VOLATILITY

With 320,000 adjustment of status applications and related employment authorization and travel document applications received by USCIS just this summer, in addition to huge numbers of other applications filed in advance of the July 13th fee increase, USCIS is experiencing tremendous "inventory overload." Consequently and significantly, USCIS has been unable to keep pace with receipting. Wide variations exist, and it is not uncommon for applicants who submitted cases early in July to have not yet received formal USCIS notification that their case has been received. Because USCIS is required by regulation to adjudicate employment authorization applications within 90 days, it will prioritize receipting adjustment cases and related employment authorization (EADs) and travel documents (advance parole applications). The ripple effect is likely to mean that the receipting and processing of naturalization applications will be delayed, among others. Reportedly, hundreds of thousands of naturalization applications alone were filed this summer to avoid the higher fees.

Going forward, what changes will USCIS make to avoid a repeat of the summer's chain of events? For starters, USCIS has informally announced that it is now not in any great hurry to finalize and roll out its planned green card replacement program, realizing that it must be in a better position to handle the volume, as well as tackle in advance issues addressing expiration of cards, validity periods, LPR eligibility, and other concerns. It is estimated that some 700,000 people will be affected. USCIS also is evaluating the mechanics of the H-1B application process, reviewing how it will handle on April 1, 2008 what is expected to be three times as many applications as there are visas. And, on a fast track, is a regulation to eliminate the requirement that an H or L with a pending adjustment application be in possession of an adjustment receipt notice in order to travel and be readmitted.

NOVEMBER IMMIGRANT VISA NUMBERS - EMPLOYMENT-BASED VISAS SHOW NO MOVEMENT FROM OCTOBER

Citing the need to determine what the impact of the summer forward movement of cut-off dates will have on demand, the Department of State's (DOS) November Visa Bulletin shows no forward movement of the employment-based immigrant visas from October where those categories that historically have been backlogged continue to have long waits and those historically "current" reflect visa availability. Those fortunate to qualify as priority workers (first preference) and members of the professions holding advanced degrees or exceptional ability foreign workers (second preference) are able to file employment-based immigrant visa applications and adjust their status, as they were in October despite predictions in September that these too may become backlogged. Nationals from China and India in the second preference category, however, with priority dates later than January 1, 2006 and April 1, 2004, respectively, still must wait. Immigrant visas for investors also are available. The cut-off date for skilled workers and professionals for all chargeability and the Philippines, however, is August 1, 2002, or where the cut off was almost a year ago. (For India and Mexico, the cut-off date is April 22, 2001; for China, September 1, 2001.) Other workers still have a long, six-year wait, as the priority date remains October 1, 2001.

While waits of five and ten or more years in some categories on the family-based side are considered relatively short especially when compared to 15 plus year waits for certain nationals of the Philippines, there has been some steady movement, and the Department of State has predicted that more visas will be made available during the next couple of months.

Overall, however, with immigrant visas scarce and new H-1B specialty visas unavailable until next October, migration to the United States increasingly will become complex, laborious, and challenging for American business and foreign nationals alike.

LABOR CERTIFICATION UPDATE

The Department of Labor (DOL) recently advised that 99% of all backlogged labor certification cases have been adjudicated and that remaining cases are expected to be completed by the end of this month. DOL also advised that beginning in February 2008, it expects to review cases more thoroughly both in terms of recruitment and for possible fraud.

Employers and employees are reminded to review labor certifications that were certified prior to July 16, 2007 for which a visa petition has not yet been filed. Under rules that went into effect in July, labor certification applications certified prior to July 16, 2007 expire 180 days after July 16, 2007, or on January 12, 2008, unless filed with the USCIS prior to January 12, 2008 with an I-140, Immigrant Petition for Alien Worker.

For those who are interested in DOL case law trends, the Board of Alien Labor Certification Appeals (BALCA) recently addressed a number of issues in three binding decisions. These cases highlight issues that should be affirmatively addressed when preparing labor certifications. In one case, BALCA instructed that the so-called "Kellogg" doctrine governs PERM labor certification applications where employers indicates both primary and alternative minimum requirements for the job offered and the foreign national lacks the primary requirements. Kellogg instructs that specific language indicating that any suitable combination of education, training or experience is acceptable to the employer must be included in the labor certification application where the foreign national does not meet the primary job requirements and qualifies for the job only through the alternative requirements listed in the application. In this recent case, BALCA affirmed that a labor certification application is properly denied where the application involves a foreign national qualifying for the position under job alternative requirements, and where the specific language required under Kellogg is not included in the application. Picky, perhaps, but nevertheless important.

In another case, BALCA ruled that a labor certification application was properly denied where the Labor certification application contained a typographical error inadvertently omitting the period of experience required for the position, even though the advertising clearly showed the period of experience required. BALCA ruled that the request for correction of the omission should have been made at the time when a motion to reconsider could have been filed with the Certifying Officer, and

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perjury on the witness stand. The standard advice, "back in the day," was to warn the client that he would be committing a crime should he lie under oath, then if hepersisted, not to assist in eliciting the perjury by asking direct examination questions which might bring it out, to ask generic questions instead which permitted narrative responses, and finally, not to argue the perjurious testimony in closing argument. I never liked that answer, although I understood the logic of it. Protect your client's rights no matter what, was the thinking at the time, sometimes with less than worthy or acceptable results.

Today, knowing that your client intends to commit a crime, I believe that the new ethics standards would permit you to request that the Court relieve you from the representation at the very least, and at the other end of the spectrum to report the intended criminal activity. You may certainly report it in order to prevent harm to others. It truly depends on who you speak with when debating these responses. But is it merely a matter of whether or not you might get into grievance trouble, or do we have the right to correct terrible things, regardless of the end result to the client. Are we allowed to think occasionally as moral people, or only as hired legal servants, gunslingers bound by sometimes archaic principles that do not in fact serve the profession or the public good? Is this one of the reasons that the public has lost its respect for us, believing that Shakespeare was correct in his view of the law?

I understand well that clients must have the genuine expectation that confidential communications will remain confidential, no matter what. That the breach of that principle will defeat our special standing, akin to the priesthood in that regard, and will injure our ability to help them and to be trusted. What should we do then when morality clashes with principle? I read about a case in the law journal some years ago, when two attorneys representing a death row inmate received an admission from him that he had in fact committed a murder for which another man had been convicted and also faced the most severe sentencing possibilities. He refused to grant them permission to reveal this confidence and the second prisoner was due to be executed.

In the movie version of this case they located an attorney in another jurisdiction who was suffering a terminal illness, brought him into their defense team and he breached the ethical code, revealing the confidence without fear of reprisal because he was waiting upon his own death sentence and had nothing to lose. In real life the two lawyers remained silent and because of the nature of things involving death cases the second man received a stay of execution for reasons having nothing to do with their own client's confession. But what if the stay had not been granted? Were they right to permit an innocent man to die merely to protect the rule of confidentiality?

Recently, I was representing a young man, charged with participating in an armed robbery who I believed to be innocent. I commenced an investigation which solidified a good alibi from an unrelated third party, had him take a polygraph test which results supported his innocence, and located cell phone tower records which proved his placement of several cell phone calls from the area where his alibi had placed him, far from the scene of the crime at the time when it was committed. The prosecutor, young and perhaps overzealous, was not impressed with these facts and struck plea bargains with the two codefendants, both actually guilty of the crimes. The actual third participant had simply never been caught.

I contacted the attorney for the one young man who had yet to enter his plea of guilty, having learned that the prosecutor was conditioning their acceptance of these favorable plea bargains upon their acknowledgement under oath, at the time the plea would be taken, that my client was indeed the third man. If they refused this admission they would not be allowed their plea bargain, a clear example of coercion and one bound to achieve the most questionable results. I told this lawyer that his client had said not once, but several times, that he didn't even know my boy and asked if he had had the same experience. His refusal to answer that question in fact answered it.

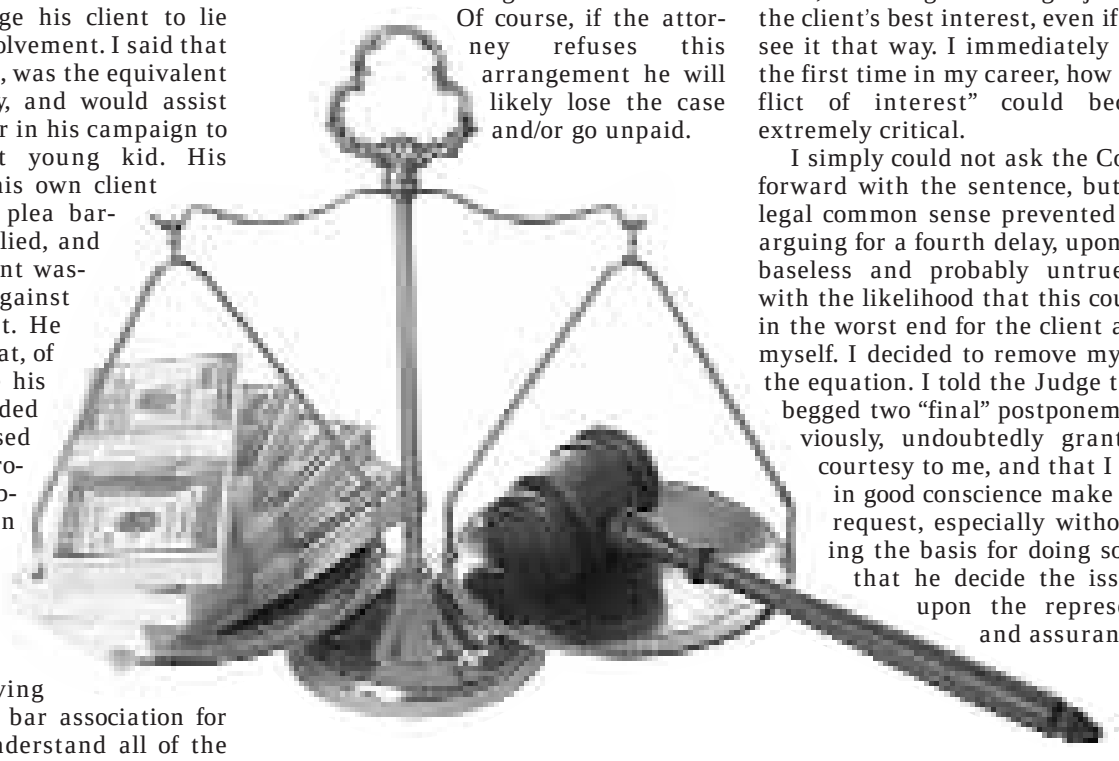
When I had explained all of the available exculpating evidence to him I asked him not to encourage his client to lie about my client's involvement. I said that it was morally wrong, was the equivalent of suborning perjury, and would assist this young prosecutor in his campaign to injure an innocent young kid. His response was that his own client could not have the plea bargain unless he complied, and that besides, his client wasn't going to testify against my boy in any event. He couldn't guaranty that, of course, because once his client's case was ended he no longer possessed Fifth Amendment protection and was subject to subpoena. In that case his client would have to stick with the lie or face additional perjury charges.

Believe me, having taught ethics at the bar association for many years, I do understand all of the factors at play here. If that attorney truly didn't know whether his client knew mine, he wasn't wrong to go ahead and to encourage the plea taking. If, on the other hand, as appeared to be the case here, he did know that it was merely a convenient fiction to obtain a desired end, the harm would be irreparable to my client and was morally questionable if not legally reprehensible. This is not a unique example, but one that arises almost daily in the criminal courts, where pleading defendants are "required" to inculpate their codefendants or lose their own beneficial plea bargain opportunity.

I put this example to many of my colleagues, and to a man, they all would have taken the plea as a matter of practicality, believing that the prosecutor would not subpoena their client to testify in any event, that the plea was most advantageous to their own client, and hiding behind the concept that "they couldn't really know what the truth was in any event." In my case, the same prosecutor is now throwing those plea allocutions at me as a sign that my client must really be guilty because the other two boys said so. What was the moral bottom line in that instance?

It has always been a questionable practice for criminal defense attorneys to accept bail assignments as part of their legal fee. The reasoning against this is sound. The elimination of the surety from the picture, usually a relative or the spouse of the defendant, virtually negates the entire concept of bail … standing to lose something of value were the defendant to fail to appear in court … inasmuch as the attorney owned all rights to the bail money in any event. Further, there is a built in conflict of interest concerning the innate desire on the part of the lawyer/surety to obtain his payment as swiftly and as safely as possible. The longer the case remains active, the greater the possibility of flight with the concomitant loss of the bail money.

We all are acutely aware of these problems, yet, for pecuniary and sometimes charitable reasons, most of us accept such assignments. Often, it is simply a dilemma posed by the family's inability to pay both the bail and the attorney fees. Accepting a bail assignment allows the defendant to be at liberty while securing representation of his choosing at the same time. Of course, if the attorney refuses this arrangement he will likely lose the case and/or go unpaid.



In any event, it is a practical solution to a difficult set of options. What happens when the attorney has performed his magic, everyone is satisfied that the plea bargain achieved is most advantageous to the client, it is time for the attorney to reap his reward, and the client insists that he request postponement of his sentence (when the bail is normally released), sometimes more than once?

For the first time in all my years of practice, this is exactly what happened to me a few months ago. Attorneys from my law firm achieved not one, not two, but three postponements for the young man in question who was due to commence a two year jail term. When the day for sentencing next came about, the case having been marked "final for sentence" on two occasions, his parents asked us to get the case over with, making it clear that he was just stalling, perhaps with bad intent. He showed up several hours late for the sentencing proceeding, without explanation or apology at having made me wait for this long period, and was surly when questioned about it. His tardiness caused the case to drift into the afternoon session and cost me several additional hours in court. He had said nothing to me about seeking an additional adjournment, probably sensing my loss of patience with him.

When the case was called and the proceeding began, the defendant launched into a most impressive appeal for yet another delay of sentence, which came as a complete surprise to me. It was a matter of alleged medical necessity, although he had brought no doctor's note or proof of any kind. The judge, a friend who believed he might be doing me a good turn, asked me point blank whether "I was asking him to grant yet another delay." I knew this was strictly intended as a courtesy to me and not because the defendant had made out good cause for this result.

I stood to gain the immediate release of the bail money if the sentencing took place that day. I also believed that it was becoming more and more likely that this client never intended to appear to actually be sentenced and go to jail if he could help it. If he did fail to appear, I would not only lose the bail money but he would be sentenced to three and one half years instead of the two years promised to him. Surely I would have the most "practical" basis for urging that the sentence go forward, including sound legal judgment in the client's best interest, even if he didn't see it that way. I immediately knew, for the first time in my career, how this "conflict of interest" could become so extremely critical.

I simply could not ask the Court to go forward with the sentence, but my best legal common sense prevented me from arguing for a fourth delay, upon a totally baseless and probably untrue reason, with the likelihood that this could result in the worst end for the client as well as myself. I decided to remove myself from the equation. I told the Judge that I had begged two "final" postponements previously, undoubtedly granted as a courtesy to me, and that I could not in good conscience make a further request, especially without knowing the basis for doing so. I asked that he decide the issue solely upon the representations and assurances made by the defendant himself, noting specifically on the record that I would not say or do anything against the interests of my client. The sentence went forward, the bail was released, and I still question my own judgment and performance to this day.

Most of you will never have any of the experiences I have just related, but you will have equal or lesser situations which call for the exercise of moral judgment versus legal justification. Taking a fee from a client when you know that your services are not really required to achieve the desired result, taking a fee when the prior attorney is being discharged for no good reason and has already settled the case, charging more because "the client can afford it," changing the fee arrangement because of the excellent results achieved are all examples of things I have witnessed on a regular basis within the profession. Perhaps it is time that the legal profession took a long, hard look at itself. ■

***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.**

New Sentencing Commission Issues Preliminary Recommendations

By SPIROS A. TSIMBINOS*

With the passage of the Sentencing Reform Act in 1995 and Jenna's Law in 1998 many sentences in New York State were changed from indeterminate terms to determinate terms. In addition, many new concepts were introduced into New York sentencing structure including the requirement of post-release supervision. In the enabling legislation with respect to the 1995 bill it was specifically contemplated that a Sentencing Commission would monitor the effects of the sentencing changes and would make recommendations for improvements. Although the creation of a Sentencing Commission was attempted during Governor Pataki's administration, the Commission never really functioned and no report or recommendations were ever issued.

When Governor Spitzer took office, however, he immediately resurrected the concept of a Sentencing Commission and established an eleven-member group headed by his Commissioner of the Division of Criminal Justice Services, Denise O'Donnell. The Commission which was established in April, 2007 by an executive order from Governor Spitzer has held several public hearings during the last few months and has begun issuing its recommendations for changes in New York's sentencing structure. Several members of the defense community who have so far testified before the Commission have called for greater judicial discretion in the imposition of sentences. Some members of law enforcement organizations have raised concerns that the recent changes in the Rockefeller drug laws have made sentences too lenient and have again led to an increase in crime. The Commission issued its first draft report with recommendations in late October with a final report to be completed by March 1, 2008. The Commission has stated that it hopes to have legislative proposals available for consideration by the State Legislation before it concludes its session in June of 2008. The sentencing structure in New York has grown increasingly complex over the last several years and any proposed changes should be of interest and concern to members of our Association. We will keep on top of this issue and will report developments as they occur. The chief recommendations of the Sentencing Commission as issued in its preliminary report are summarized as follows:

- Streamline the current "hybrid" system of indeterminate and determinate sentences by creating new determinate sentences for more than 200 non-violent offenses.
- Permit the diversion of non-violent, drug-addicted felony offenders to community-based treatment facilities instead of state prison if the court, defense and prosecution agree.
- Improve availability of community-based drug treatment centers.
- Use curfews, home confinement, electronic monitoring and other means to sanction parolees for violations of parole rules in lieu of returning them to prison.
- Expand prison-based educational and vocational programs.
- Give crime victims a more significant role in the criminal justice process.
- Establish a permanent commission to advise the Governor and Legislature on future sentencing decisions. ■

*** Editor's Note: Spiros A. Tsimbinos is a Past President of the Queens County Bar Association and the Editor of the New York State Bar Association Criminal Newsletter.**

OUR TROOPS STILL NEED YOUR SUPPORT!

Over four years ago the Queens County Bar Association formed a Volunteer Military Panel to provide in-court pro bono or reduced fee legal assistance to deployed soldiers and their eligible dependents. We had no idea that the need for this program would continue over such a lengthy period of time. However, our troops are still deployed overseas fighting a war and they still need the help of members of the Bar.

Mobilization and deployment puts a great financial and emotional strain not only on the concerned soldier but on their families as well. Legal problems arise for deployed soldiers and they need in-court assistance. The soldiers and family members seeking assistance must show proof that their legal problem somehow arises out of the deployment/mobilization. Cases in point include a landlord seeking to evict the family of a deployed soldier who has been unable to keep up with the rent, or a bank refusing to lower the interest rate on a home loan pursuant to the Soldiers and Sailors Civil Relief Act.

Accordingly, the areas of law requiring the most attention are in the areas of landlord-tenant and debtor-creditor law. In addition, many soldiers need assistance with matrimonial and family law issues.

If you are willing to devote some of your valuable legal skills and time to help a deployed soldier and his/her family with a legal problem, this may be your opportunity to not only do some valuable volunteer legal work but also to show your appreciation to those who risk their lives so we can all continue to live in a safe and free nation.

The views contained herein are solely those of the Queens County Bar Association and do not necessarily represent the views of the U.S. Department of Defense or its components.

Join the Volunteer Military Legal Panel!

Return completed form by fax or mail to QCBA

□ *Yes*, I can volunteer for the Volunteer Military Legal Panel and help deployed soldiers and their families.

Types of cases I can accept

□ Family Law □ LL&T □ Foreclosure □ Matrimonial

□ Consumer Law □ Other _____

Name _____ Phone# _____

Address _____ FAX# _____

_____ E-mail _____

VOLUNTEER MILITARY LEGAL PANEL
QUEENS COUNTY BAR ASSOCIATION
ATTN: MILITARY LAW COMMITTEE
90-35 148TH STREET, JAMAICA, NY 11435
PHONE (718) 291-4500 FAX (718) 657-1789

"No-Match rule" implementation blocked

Continued From Page 3

would not be considered when the case was on appeal.

In a third case, BALCA held that the appropriate Certifying Office required to be to listed on the Notices of Filing postings must be the one with jurisdiction over the state or territory for the area of intended employment. Failure to include the correct address on the Notice of Filing under PERM will result in denial, with extremely narrow exceptions.

MISCELLANEA: DHS GOOGLE SEARCHES, NEW CITIZENSHIP TEST, AND MORE ON E-VERIFY

The following immigration news is noteworthy:

Beware that Department of Homeland Security (DHS) now routinely seeks information about foreign nationals, their employers, and those who support them in immigration cases from Google and even MySpace and YouTube. Immigration adjudicators including judges and U.S. Customs and Border Protection (CBP) agents have been known to use the Internet to obtain information used to deny entry into the United States and other immigration benefits. This, of course, is not surprising given the overall usefulness of the Internet. However, the reach of DHS in this context can be particularly broad because applicants for admission to the United States must prove their admissibility, and needless to say, not everything said on the Internet is true.

U.S. Citizenship and Immigration Services (USCIS) has moved forward on its revamped naturalization exam; the new test goes into effect for most applicants on October 1, 2008. While USCIS has stated that the goal of a revamped citizenship exam is to increase immigrants' knowledge of U.S. history rather than just memorize facts, many are concerned that the test will place unreasonable burdens on immigrants and will serve as an impediment to naturalization. Indeed, CNN's Anderson Cooper could not answer correctly one of the new questions that may be asked: name one of the three author's of The Federalist Papers, a document which served as a basis for the U.S. Constitution. Cooper, on his evening news program's story about the new test, failed to give the correct answer despite three attempts and an elite education. The new naturalization exam questions are available on the USCIS web site.

USCIS has added photographs to its voluntary electronic employment eligibility program, E-Verify, which now allows employers to access USCIS records to view a copy of photos from documents some employees present to an employer to prove work eligibility. This is part of the government's multi-step process to expand use of the E-Verify by increasing data sources to verify an individual's identity and work authorization.

"ALL POLITICS IS LOCAL": STATES AND CITIES WITNESS COMPLEXITY OF IMMIGRATION POLICY

In the wake of Congressional failure to enact comprehensive immigration reform, states and municipalities across the country are taking immigration matters into their own hands, considering legislative proposals and resolutions aimed at undocumented foreign nationals. According to the National Conference on State Legislatures, at least 1,400 pieces of immigration-related legislation have been introduced this year among the 50 state legislatures and 170 already have become law. In fact, almost all areas of states' public policy are covered, including education, employment, health, human trafficking, identification and drivers' licenses, law enforcement, legal services, public benefits, and voting. In some states like Virginia, where all General Assembly seats are on the ballot this fall, immigration has become a key statewide issue. States, counties, and municipalities are, however, running into the reality of how to fund such measures. For example, in Prince William County, Virginia, where one of the nation's most aggressive local enforcement efforts was passed this summer, budget constraints have meant delays in implementation. In Riverside, New Jersey, an ordinance that penalized anyone who employed or rented to an undocumented immigrant resulted in thousands of immigrants relocating, wreaking havoc on the local economy. The ordinance was repealed. Similar laws have been repealed elsewhere. Additionally, lawsuits have enjoined other such measures. For example, the use of the federal E-verify database: Arizona apparently passed a bill requiring employers to use the new federal database to avoid hiring unauthorized workers, while lawmakers in Illinois passed a bill barring businesses from using the same database, saying it contained too many errors. (The Department of Justice recently filed a lawsuit in federal district court seeking to invalidate the Illinois state law on the grounds that it conflicts with federal law.)

At the same time, stepped up enforcement by the U.S. Immigration and Customs Enforcement (ICE) has meant widespread raids and arrests throughout the country. While some enforcement activity has targeted criminals and fugitives - just last week some 1,300 people in Los Angeles were the target of the largest special enforcement action carried out by ICE - other activity has focused on the workplace. In both contexts, those apprehended are detained and often transferred to remote locations. Left behind are not only spouses and minor children - many of whom are U.S. citizens and legal residents - but also jobs many employers are unable to fill. A recent raid at eleven McDonald's in northern Nevada resulted in boycotts of business, children too afraid to go to school, and general panic in the community. This has evoked the ire of mayors, superintendents of schools, and other civic leaders, not to condone undocumented immigration but to disapprove of ICE's tactics and to recognize the short- and long-term negative implications for their communities.

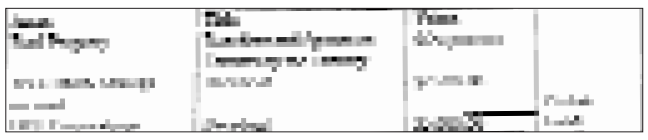
We would like to thank the firm of Maggio and Kattar in Washington D.C. for allowing us to use this material from their recent Newsletter of October 2007. ■

Redeeming Probate

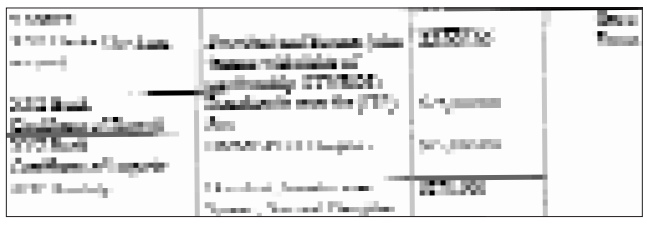
Undeservedly, probate has taken on a negative reputation. Many people have a fear of probate which, is based upon the misconception that the process, among other things, takes years to complete and is extremely costly. People sharing this view will go to any extent to avoid the probate process, lending credence to this overrated phobia.

The information contained in this article will demonstrate that probate does not deserve its negative perception. Furthermore, the probate process can be a helpful tool in the estate planning process. This article will dispel the myths of probate, and reveal how probate may be beneficial to estate planning.

What exactly is probate? Probate is the process by which the Surrogate's Court, a specialized Court dealing with issues related to a decedent and their estate, determines that a person's Last Will and Testament is valid. To further clarify, probate ensures a person's Will was executed in accordance with New York's statute on Wills[1], and is determined to be the final statement of that person's wishes regarding the distribution of his/her property at death. Probate is also the process by which the executor nominated in a person's Will is formally appointed by the Court thereby, granting that person/persons the authority to marshal and distribute estate assets according to their stated wishes. At the heart of the probate process therefore, is a person's Last Will and Testament.[2] It should be noted that it is only necessary to subject a Will to probate if the testator/decedent owned property in their own name at death. Property owned jointly with another person, in trust for another person, or with a named beneficiary is not affected by a person's Will. These assets, called testamentary substitutes, do not pass according to a person's Will, but rather pass by operation of law. You will see why this method of transfer may not be a good idea for some estates. Additionally, testamentary substitutes, although not part of a probate estate, are included in the gross estate for estate tax purposes.[3] Worth repetition then, is the fact that all of a person's assets may NOT be included in their probate estate, but are included in their gross estate. Below is an example of an estate with a probate value of $30,000.00, and a gross estate value of one million dollars. This estate would have to file a New York State estate tax return but would, most likely, not be liable for estate taxes due to allowable deductions like funeral and administration expenses.



[1] Estates, Powers & Trusts Law §3-4.1.
[2] The importance of this and other advanced directive documents should be addressed with your attorney.
[3] Current estate tax thresholds for the year 2007 are one million dollars on the New York level and two
million dollars on the federal level. Meaning that if the decedent's gross estate is less than 1 million dollars no estate tax will be due.

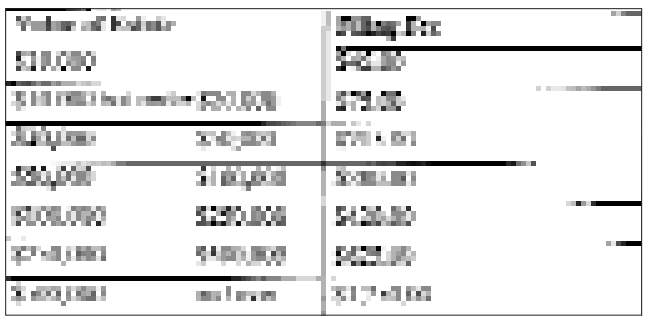


What flows from the above distinction between a probate estate and a gross estate is the invalidation of the first myth of probate, that the process is extremely expensive.

Many people associate the expense of probate with the Court's filing fee. This filing fee is proscribed by statue and is proportional to the value of a person's probate estate.

Therefore, using the above example, although the decedent has a gross estate of one million dollars, his/her probate estate is only $30.000.00, and the filing fee is based upon that $30,000.00. The filing fee in this instance would be $215.00. Below is a chart indicating the Surrogate's Court current filing fees.

From the example, we can see, this is all relative, and thus, not prohibitively expensive in light of the assets being affected by probate.



Myth #2: Probate is Exceptionally Time Consuming

The process of probate, or declaring a Will valid and having a person's nominated executor appointed by the Court, can take a matter of weeks provided the situation is a harmonious one. Contrary to popular belief, a majority of situations involving probate are harmonious, and involve cooperation amongst the decedent's family members in moving toward a common goal; that goal being to bring closure to the decedent's estate. Where then does this misconception come from?

Protracted and complicated probate proceedings are most often the result of one of the following:

- A dated Will of more than 10 years old,
- A lack of next of kin information, or
- A Will contest

Having a dated Will often means it is difficult to locate the Will's draftsman as well as the witnesses to the Will's execution. Additionally, older Wills routinely do not have an affidavit of attesting witnesses attached thereto, which is required to be filed in connection with a probate proceeding. Accordingly, a periodic review and, if necessary, updating of a person's Will would avoid this impedence to a speedy probate process.

When a Will is submitted for probate it is necessary to provide notice of such proceeding to the decedent's next of kin, This obligation can prove cumbersome when the decedent is not survived by a spouse or children. It is worthy to

Continued On Page 10

Sidney Leviss, Former supreme court justice and Queens borough president dies

By WALLACE L. LEINHEARDT

On September 7, 2007, Hon. Sidney Leviss passed away at age 90.

Born on July 21, 1917 in Flushing, Judge Leviss had a long and distinguished career of public service. He attended New York University undergraduate and then NYU Law, from which he graduated in June 1941. He was admitted to the Bar in January 1942, and the day after his admission, he joined the Army Air Corps to fight in World War II. While in the service, he rose from Corporal to Captain.

Following the War, he became an Assistant Queens County District Attorney, an Assistant Commissioner in the Queens Borough Works, and subsequently Queens Deputy Borough President. He served in that position until he was elected and took office as Queens Borough President in January 1969.

He took the Supreme Court Bench in 1971 and served in that capacity for 22 years when he reached the mandatory retirement age of 76.

He was then appointed as a Judicial Hearing Officer and continued to serve in that capacity until his death.

Three of his closest colleagues were speakers at his funeral service.

District Attorney Richard A. Brown remembered how it was Judge Leviss who got the Supreme Court Judges together every Friday for lunch and who organized and ran the annual dinner of the Queens County Supreme Court Justices at La Baraka Restaurant in Little Neck.

Retired Appellate Division Justice Seymour Boyers, recalled with great fondness Judge Leviss' "great human qualities - his warmth, his friendliness, his kindness, his humor and his modesty." Judge Boyers observed that he thought "the key to Sid's success with people was that he truly was comfortable in his own skin - he never tried to be anything other than which he naturally was and he lived completely in the present."

Retired Appellate Division Presiding Justice Alfred D. Lerner, another speaker, told of Judge Leviss "hard work and productivity" even when dealing with "the most complicated cases." Judge Lerner noted that in the last two and a half years alone, JHO Leviss had disposed of some 200 civil cases sent to him for trial…94 by settlement and the balance by decision after trial.

My own high opinion of Judge Leviss was formed following a favorable verdict I received in a non-jury case I tried before him many years ago. The case involved provisions of the UCC dealing with forged endorsements - a somewhat esoteric area of the law that was not the usual case tried in Queens County. Not only did I (obviously) find the decision well researched and correct, but so did the Appellate Division, which affirmed "upon the opinion below."

Judge Leviss will be missed by his daughters Jeanne and Nancy, his colleagues, the members of the bar and especially by the litigants to whom he dispensed justice. ■

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ANDREW M. CUOMO
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LESLIE G. LEACH
EXECUTIVE DEPUTY ATTORNEY GENERAL
DIVISION OF STATE COUNSEL

PERSONAL AND UNOFFICIAL

September 28, 2007

David L. Cohen, President
Arthur N. Terranova, Executive Director
Queens County Bar Association
90-35 148th Street
Jamaica, New York 11435

Dear Messrs:

I have enclosed my 2007-2008 dues. However, I am also compelled to express my gratitude for the Queens County Bar Association's recognition of the financial sacrifices made by those of us dedicated to public service.

While I certainly appreciate the government service discount, I am even more appreciative of the Association's willingness to actually do something to acknowledge our contributions to society.

Thank you very much.

Very truly yours,

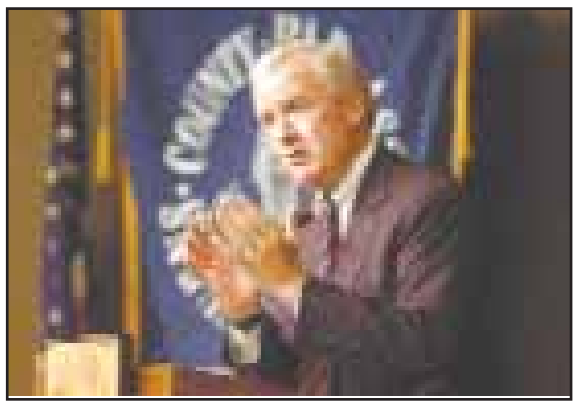
Leslie G. Leach

120 Broadway, New York, NY 10271 ● (212) 416-8525 ● Fax (212) 416-6001 ● http://www.oag.state.ny.us

PHOTO CORNER

Annual Frank S. Polestino Memorial Lecture: Recent Significant Decisions from our Appellate Courts

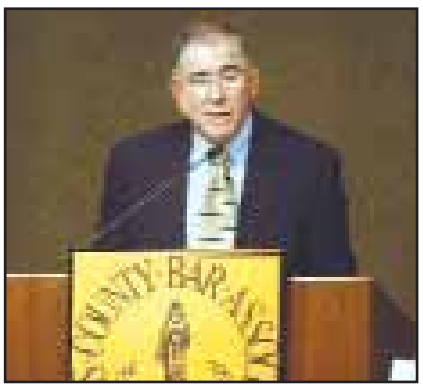
Annual Frank S. Polestino Memorial Lecture - Recent Decisions from our Appellate Courts



John Gardiner Pieper, President of the Pieper Bar Review and Professor of Law

David Cohen, Hon. Theodore Jones, Arthur Terranova and Spiros Tsimbinos

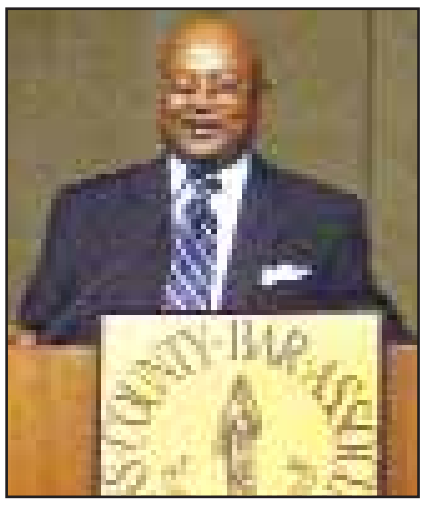
John Castellano, Chief of Appeals, Queens District Attorney's Office



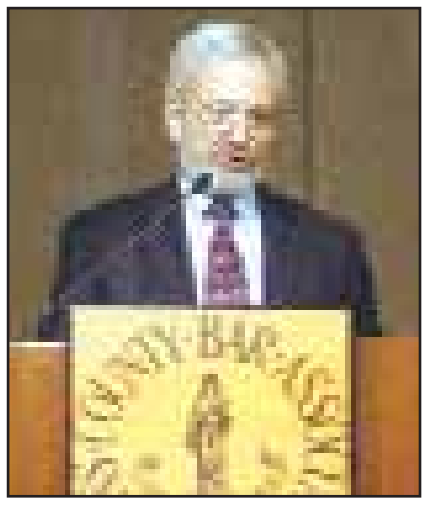
Spiros Tsimbinos

John Saketos, Josephine Benton, David Cohen, Hon. Theodore Jones, Spiros Tsimbinos, Hon. Bernice Siegal, and Joseph Cristiano

David Cohen, Hon. Theodore Jones, Spiros Tsimbinos, Alan Chevat and John Castellano



Hon. Theodore Jones, Associate Judge of the New York Court of Appeals



Alan Chevat, Chief Court Attorney, Appellate Division, 2nd Dept.

Arthur Terranova, Hon. Darrell Gavrin, Hon. Randall Eng, Hon. Allen Beldock and Hon. Bernice Siegal

David Cohen, Steven Orlow and Hon. Martin Ritholtz

George Nashak, Susan Beberfall and Thaddeus Gorycki

Photos by Walter Karling

Spiros Tsimbinos, Alan Chevat and Morton Povman

Don Zimmer, Susan Beberfall, Edward Ledogar, Mona Haas and Hon. Thomas Raffaele

Thomas McCullough, Hon. Denis Butler and David Cohen

Hon. Jeffrey Lebowitz, Ed Rosenthal, Anthony Bellucci, and Hon. Charles LoPresto

Hon. Charles Lopresto, Hon. Leslie Purificacion, Hon. Bernice Siegal and Bernard Vishnick

Hon. Thomas Raffaele, Hon. Stephen Knopf, Jerry Patterson and Jeffrey Kim

Jeffrey Kim, Jerome Patterson, Susan Beberfall and Hon. Bernice Siegal

John Castellano, Thomas McCullough and Ronald Rubinstein

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Hon. Denis Butler and David Cohen

Ted Gorycki, Bernard Vishnick and Spiros Tsimbinos

Steven Orlow, Hon. Martin Ritholtz, Hon. Herbert Posner, Warren Hecht and Abraham Hecht

THE CULTURE CORNER

October represents the spring of New York's cultural life season. Following a long summer, the cultural venues throughout the City open their doors to the public in late September and October. It is almost impossible to cover all the many venues in one monthly column or to go to any length, depth, penetrating critique, or analysis about any one performance. I can offer only a few helpful comments about concerts or cultural events that I saw and heard in the hope that judges and lawyers will spend their money and free time wisely, taking a break from the routine of motion and trial practice.

1. INTERNATIONALLY RENOWNED CLASSICAL PIANISTS IVAN MORAVEC, LARS VOGT, AND CEDRIC TIBERGHIEN

IVAN MORAVEC, a Czech concert pianist, whose performing and recording career, spanning nearly half a century, has gained him a world-wide following, performed a beautiful program to a packed Saturday night audience at the Rogers Auditorium of the Metropolitan Museum of Art. Moravec, who will turn 77 years old on November 9, began with a straightforward and satisfying account of Haydn's Sonata in D Major. His virtuoso and vibrant rendition of two major piano works by Debussy, *Estampes and Pour le Piano*, earned a standing ovation right before the intermission break. In my opinion and those of other music afficionados, Moravec is the most brilliant interpreter of Debussy since legendary German pianist Walter Gieseking.

Following intermission, Moravec turned to a staple of his repertoire for which he is justly acclaimed, the Chopin *Nocturnes*. His rendition of the Nocturnes is recorded and should be purchased immediately. If you don't have the time to enjoy Moravec's musicianship for its beauty, I suggest that you purchase his CDS and play them while doing your work and writing.

Howard L. Wieder

Moravec, himself a protégé of legendary pianist Arturo Benedetti Michelangeli, is known for his generosity in helping to train tomorrow's musicians. Wherever he travels in the world, Moravec conducts master classes, and he is spending this fall at Princeton University to teach classes in classical piano to promising virtuosos, before resuming a demanding international concert schedule this December. Thankfully, Moravec shows no sign of slowing down.

Moravec is smartly represented by Ms. Linda Marder of the prestigious CM Artists. His boxed set of 4 CDs is superb, as well as his recordings of the Brahms Piano Concertos, the Schumann Piano Concerto, and "Ivan Moravec Plays Czech Music," on the Supraphon Label. Representing the love that music lovers have for this fine gentleman, at the concert, a woman sitting next to me, excited during the applause, exclaimed, "I hope he plays [works of Bedrich] Smetana for his encore." Moravec chose more works by Chopin for his encores, but his superb rendition of Smetana is featured on the "Ivan Moravec Plays Czech Music."

Unlike a Broadway musical, most concert goers rarely leave humming the bars of a piece as they file out of the hall. Not so with Moravec. His moving interpretations stay in your head, even an hour after the concert, leaving an exhilarating sensation.

LARS VOGT, German classical pianist about 37 years old, has international stature. He opened his program with Mozart's sonata in A major with its famous explosive closing of the Rondo Alla Turca. Similar to the theme of the Mozart, Vogt's interpretation of the Schubert "Drei Klavierstucke" was also fiery. Vogt is most famous for his interpretations of Brahms, and few classical pianists today have Vogt's gift for understanding and interpreting Brahms. Closing the program at the Rogers Auditorium on October 16, Vogt played Brahms's Sonata in F Minor with finesse and intensity. Be on the lookout for Vogt's CDs, especially his interpretations of Brahms.

Finally, **CEDRIC TIBERGHIEN**, **the 32 year old French classical pianist**, made his long awaited solo recital New York City debut at the Frick Museum. **Tiberghien** played works by Beethoven, Sonata No. 27 in E Minor, Op. 90, and Sonata No. 32 in C Minor, Op. 111; Chopin, Ballades Nos. 1 and 4; and Franck, Prélude, Choral, et Fugue. Not only does Tiberghien have a wonderful technique, but he understands the emotive power of a piece. His final piece, Beethoven sonata #32, played with raw energy and emotive, fiery, and mature understanding was the finest interpretation of this important Beethoven work.

The irony, for me, was evident. Tiberghien's power at the keyboard was reminiscent of the legendary and gifted Russian pianist Emil Gilels, someone who Tiberghien personally adores. Gilels recorded most of the Beethoven sonatas, but not all. Conspicuously missing from the boxed set of Gilels' recordings of the Beethoven Piano Sonatas is Sonata #32. Tiberghien concluded his program with this piece, and my prayer is that, in future years and with even greater experience, Tiberghien should apply his Godgiven, awesome, and brilliant talents to recording the complete cycle of Beethoven piano sonatas.

I own all of Tiberghien's recorded solo piano recordings, on the Harmonia Mundi label, including his recording of Brahms and Chopin Ballades, Beethoven variation, Debussy piano works, and Bach partitas numbers 2, 3, and 4. I look forward to the release of Tiberghien's recordings of Brahms's Piano Concerto number 1, with the BBC Orchestra. To date, the greatest interpretation of this work is by Emil Gilels with Eugen Jochum conducting, on the DG label. It will be interesting to hear Tiberghien's interpretation of this emotionally and intensely haunting work. Judging from Tiberghien's performance at the Frick, it promises to be brilliant.

Although Tiberghien has world representation by Askonas Holt Ltd., astonishingly, this extraordinarily gifted pianist - - who is probably among the top ten pianists in the world - - has no representation specifically for the United States. To listen and see Tiberghien play, watch his video clips on

Redeeming Probate

Continued From Page 6

note the rational behind this notification requirement before discussing ways to remedy a resultant delay. Notifying the decedent's natural heirs protects against the possibility of fraud, that the decedent did not know that they signed a Will, and undue influence, that the decedent drafted a Will favoring one individual over another in contradiction of the decedent's expressed wishes. If, for example, a "friend" of the decedent coerced him/her into making a Will leaving the decedent's entire estate to said friend, as well as making themselves executor, when this Will was offered for probate by the friend as nominated executor, the decedent's natural heirs would have no way of knowing of the offering without the notification requirement. Hypothetically, this Will could be declared valid and the friend would have inherited all of the decedent's assets without the family's knowledge.

Customarily, notice does not pose a setback, However, if there is little information concerning the decedent's heirs, the Court will order a diligent search effort be undertaken that may include the employment of a genealogist. Having a simple family tree or a listing of one's next of kin, or consulting with an attorney in the preparation of your Will, can alleviate this possible obstacle.

Similarly, consulting with an attorney in the preparation and execution of a person's Will can severely limit the Will's vulnerability to a contest; the third most common reason for a long-drawn-out probate proceeding. A Will contest, often the result of disgruntled relatives, is a rare occasion. A successful Will contest, one in which the person objecting to the Will succeeds in having that Will declared invalid, is even more unusual. There are only four reasons one may object to a Will:

- The Will was not properly executed in accordance with New York Law
- The testator/decedent did not have capacity to make a Will
- The decedent did not know they were signing a Will (fraud)
- The decedent was unduly influenced into making the Will offered for probate.

If a person's Will is prepared by an attorney and is execution supervised by an attorney, the first three reasons are relatively unquestionable, and a person has successfully tied one of those disgruntled relative's hands in moving against their Will.

Probate and its Benefits

Aside from bringing closure to a decedent's estate, there is another glaring benefit to subjecting a Will and concurrently, an estate, to the probate process; that is saving on estate taxes in the case where a married couple has credit shelter trusts drafted into their Wills. A credit shelter trust[4] also referred to as an A-B trust or a marital deduction trust, allows a married couple to maximize tax savings while also retaining flexibility in light of changing laws. Utilizing New York's estate tax exemption of one million dollars as an example, a married couple can potentially pass two million dollars free of a transfer tax. Generally, upon the death of the first spouse the credit is wasted because all of the couple's assets were held jointly and pass by operation of law to the surviving spouse. There is no tax upon this transfer due to the unlimited marital deduction. There is also no liability, and where there is no liability there is no opportunity to use the first spouse's credit.

Alternatively, the surviving spouse can disclaim their interest in some of the couple's assets. A disclaimer, in effect, tells the world to treat the surviving spouse as if they had predeceased the decedent thereby, converting the jointly held asset into an individual asset and subjecting it to a probate proceeding. Once probate is accomplished that asset can be placed into the credit shelter trust for the benefit of the surviving spouse. Accordingly, it is the credit shelter trust in conjunction with the probate proceeding that enables a married couple to pass two million dollars free of estate tax.

Avoidance of Probate: Revocable Trusts

For those not yet convinced that probate isn't so bad, and who are as well leaning toward creating a revocable trust as a means of probate avoidance, the following will demonstrate that revocable trusts are not necessarily a prudent method of evasion.

- The cost of creating an revocable trust, as well as funding the trust, can be equal to or greater than the cost of commencing a probate proceeding.
- A person must ensue that ALL assets have been transferred into the trust in order to entirely avoid probate.
  - In this respect, it is a good idea to create a pour-over Will when establishing a revocable trust so that any assets not re-titled in the trust's name would pour-over into such trust after death. Doing so however, generates an added expense, and would require probate to declare the pour-over Will valid and allow your executor the right to transfer/re-title those residual assets.
- Although having a revocable trust would negate payment of executor's commissions, it would necessitate the payment of Trustees commissions, which are due on a yearly basis, as opposed to a one time Executor's fee.
  - Incidentally, executor's commissions are relative to your probate estate, fixed by statute, and can be opted out of by adding language in your Will to that effect.
- Trusts can be the subject of a challenge, as well as other various Surrogate's Court proceedings, including a yearly accounting.
  - These proceedings all have fees associated with them.

[4] Credit shelter trusts are very useful estate planning tools. The discussion in this article relative to such trusts is not comprehensive, and they should be more fully explored with your attorney.

- There is no estate tax savings because all assets of the trust are fully includable in calculating the value of the decedent's gross estate for tax purposes.
- Although utilizing a trust addresses privacy concerns, it also nullifies the notice requirement of probate, leaving the decedent's heirs vulnerable to unscrupulous individuals. Additionally, should the trust be challenged disputes will be heard in the Surrogate's Court thus, making the trust document, and any statements of the trust account available for public viewing.
- Creating a revocable trust does not avoid the creator's creditors.

Despite the above listed, there are circumstances when a revocable trust (and maybe even an irrevocable trust) are appropriate for an estate plan. The goal in exposing a revocable trust's limitations is simply to show that creating such a trust merely to avoid probate is not worth it.

As one can see, probate does not deserve the negative perception it has received. It is a relatively inexpensive and timely procedure. There are ways to avoid impediments to that timeliness. Lastly, the procedure can be useful to estates in some situations. Probate is therefore, not something to be avoided but something to be discussed in connection with a solid forward thinking estate plan. ■

THE CULTURE CORNER

www.cedrictiberghien.com.

The Frick is a wonderful place to enjoy concerts at very reasonable prices on a Sunday evening. Please check its schedule at www.frick.org. Right before concert time, tour the museum and see some of the world's great art masterpieces by Rembrandt, Turner, Titian, and other immortal painters. I urge you to buy tickets **NOW** at the Frick before they are sold out: French pianist Alain Planes [December 2, 2007], the chamber group The Trio Wanderer [February 10, 2008], and German pianist Markus Groh [February 24, 2008].

For the Rogers Auditorium of the Metropolitan Museum of Art ["Met Museum"] on Fifth Avenue near East 83rd Street, I heartily recommend that you buy tickets for French pianist Helene Grimaud in a chamber performance [December 16, 2007], British pianist Stephen Kovacevich [February 21, 2008], and Brazilian pianist Nelson Freire [April 29, 2008]. You will **NOT** be disappointed in ANY of the aforementioned recommendations, on my word and guarantee.

2. BOOKS ON CLASSICAL MUSIC AND OPERA BY ALLAN KOZINN, NORMAN LEBRECHT, AND ANTHONY TOMMASINI

How do you start a classical music collection, especially for the novice listener? The first step is the purchase of **ALLAN KOZINN'S** excellent book **THE NEW YORK TIMES ESSENTIAL LIBRARY: CLASSICAL MUSIC - - A CRITIC'S GUIDE TO THE 100 MOST IMPORTANT RECORDINGS** [2004 Times Books/Henry Holt & Co. $17.00]. The title is not grandstanding or immodest. Kozinn's book **IS** essential. Kozinn modestly warns that his book is NOT meant to be the definitive guide, but as I reviewed his picks and juicy commentary, I couldn't disagree with one!! Kozinn's book is strictly limited to classical music, and it does not cover operatic recordings.

With so many recordings available of Tchaikovsky's brilliant 4th, 5th, and 6th Symphonies, he soundly steers buyers to the set by Mravinsky conducting the Leningrad Philharmonic Orchestra, still to this day unrivaled for its intensity. While everyone mourns the deaths of Chopin, Schubert, and Mozart, all of whom died while in their 30's, Kozinn also points out to the genius of Spanish composer Juan Crisostomo Arriaga, who died while only 19 years old. Kozinn will advise you which of Arriaga's works to get and by which interpreter.

Which conductor's Beethoven cycle of Nine Symphonies to buy? Mystery is the spice of life, and you'll have to read Kozinn's insightful suggestion on page 86 of this indispensable, superbly written, and easily understandable book. So if you're overwhelmed by different books on classical music, and don't have the time to test different interpretations or to spend a lot of time poring over the Penguin Guide to Classical Music, order this book at www.bn.com or www.amazon.com.

To most devotees of classical music, Allan Kozinn's well-written reviews regularly gracing the pages of **The New York Times**, are required reading. Kozinn has the gift for making classical music come alive, without indulging in snobbish terms. Kozinn's knowledge of the music world and industry is vast, and his book on **THE BEATLES** [Phaidon Press 1995] is still the tops - - by far - - in a crowded market.

British music critic **NORMAN LEBRECHT** is always provocative, and his recent book **THE LIFE AND DEATH OF CLASSICAL MUSIC** [Anchor Books 2007] is interesting, and even vital for your collection. Lebrecht's book also makes recommendations on operatic works, mixed with interesting commentary. In describing a recording of conductor Lorin Maazel, Lebrecht writes of Maazel's temperament: "The Vienna Philharmonic played through gritted teeth and intrigued against Maazel behind a facade of imperial courtesies. . . . Maazel sacked the English producer, David Mottley, who, years later, told friends he still had nightmares of the conductor's glaring eyes." [*Id*., page 287].

Lebrecht's book **THE SONG OF NAMES** [Anchor Books 2002] is a wonderful, entertaining read, describing the world of classical music and Jewish life in London. With a gift for character description and adjectives, this book will sustain your interest. You don't have to be Jewish, British, or lover of classical music to delight in this award-winning, fictional work.

Turning to the world of opera, the book to buy is **THE NEW YORK TIMES ESSENTIAL LIBRARY: OPERA - - A CRITIC'S GUIDE TO THE 100 MOST IMPORTANT WORKS AND THE BEST RECORDINGS** [2004 Henry Holt & Co. $18.00], chief classical music critic for **The New York Times** Anthony Tommasini discusses opera without a trace of elitism. Tommasini, a gifted pianist and biographer of **VIRGIL THOMSON: COMPOSER ON THE AISLE** [also in my library], will write an essay on the opera of Lucia di Lammermoor and mix it with reminiscences from his childhood of watching a Looney Tunes Elmer Fudd cartoon featuring a famous sextet from Act II of that opera. How do you beat that?!

Tommasini will inform you of how Christoph Williabald Gluck was a poor street musician who played the Jew's harp on the street [page 70] and opine that the cruelest loss to opera was the untimely death of *Carmen's* composer Georges Bizet, who died at age 36, not realizing the success of his great work. "He was just getting going," [page 28]. If you *think* you hate opera, please read Tommasini's book - - you'll be converted by his wit, charm, and insights. If you love opera, you need to order this book before you read the rest of my column!

3. 12th STREET BOOKS and ACADEMY RECORDS & CDs

Aside from ordering on line, whoever visits the Union Square/14th Street area in Manhattan is in store for a treat. Everyone knows the Strand Bookstore at East 12th Street and Broadway. But not many persons know about a little shop, just around the corner from Cardozo Law School, named **12TH STREET BOOKS**, at 11 East 12th Street, between Fifth Avenue and University Place. At **12TH STREET BOOKS**, tel. 212-645-4340, you can find a treasure trove of rare and hard-to-find books at phenomenal prices, usually lower than that charged by Strand Bookstore.

Upon reading the aforementioned books by Kozinn, Lebrecht, and Tommasini, you will **DEFINITELY** want to buy CDs. Without breaking your budget, the best place to buy classical music and opera CDs at very affordable prices is **ACADEMY RECORDS & CDs**, 12 West 18th Street, between 5th and 6th Avenues, only a few blocks away from **12TH STREET BOOKS**.

ACADEMY RECORDS & CDs, tel. 212-242-3000, without ANY doubt, has the most helpful and knowledgeable staff of any music store in the tri-state area. It sells both new and used CDs. From owner Joseph Ganun, to sales associates John T. Greene, Berna, Aliberto, Fred, and others, the aim is to assist you in your selections, not pitch a sale.

ACADEMY RECORDS & CDs also sells non-classical music CDs and DVDs. Before you pay inflated prices elsewhere, this is the place to shop. The store is open on Saturdays until 8 PM and on Sundays until 7 PM, but don't come in 20 minutes before closing time. You will want to spend some time and money getting bargains. Especially with the holidays approaching, this is a great place to buy gifts without going bankrupt.

4. BROOKLYN ACADEMY OF MUSIC

The Brooklyn Academy of Music ("BAM") [www.bam.org] offers a cultural season of music, dance, and film that is simply superb. Thanks to a friend's invitation, I attended a performance of the Madrid troupe Compañía Nacional de Danza. The Compañía Nacional de

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THE CULTURE CORNER

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Danza presented three ballets choreographed by its artistic director, Nacho Duato: "Por Vos Muero," "Castrati," and "White Darkness." Though I am not a critic of dance, I enjoyed the evening immensely. The choreography of Mr. Duato, born in Spain, did not provide for the dancers to do leaps in the manner of the Bolshoi Ballet, but their grace, suppleness of movement, energy, preparation, and athleticism were absorbing, captivating, and breathtaking.

A common denominator of the three ballets, with vastly different themes, was the constant movements and pairings of the entire company. Unlike other ballets featuring a principal with a corps de ballet in the background, Mr. Duato clearly involves the entire company in his creative and deft choreography. The sound engineering, lighting, and costumes were also superb. When I left that evening, I knew that I would return to BAM again.

For those judges and lawyers who don't drive, BAM is located within short walking distance to the Atlantic Avenue subway stops of the 2, 3, 4, 5 trains, and the LIRR. There are several excellent dining establishments within two blocks of BAM. Please consult your schedule for the starting time of the performance, because several performances, like the one I attended, began at 7:30 PM, not 8 PM.

5. THE 92D STREET Y

This season again, **THE 92ND STREET Y** offers compelling reason to subscribe to its musical and lecture season, without having to pay bloated ticket prices and subscriptions of both Carnegie Hall [as reported by **The New York Times**, Carnegie Hall is embroiled in controversy by its messy eviction of longtime tenants and questionable assignment of contracts] according to an expose and the New York Philharmonic.

The Tokyo String Quartet and internationally acclaimed violinist Christian Tetzlaff are among the prominent performers who will play at the 92d Street Y. Check out the exciting schedule at www.92y.org.

6. THE METROPOLITAN OPERA

Among the excellent operas offered by The Metropolitan Opera, under the management of Peter Gelb, were *Aida*, *Madama Butterfly*, and *Lucia di Lammermoor*. The three operas are big hits largely owing to the three gifted sopranos who play the title characters: Angela Brown [*Aida*], Patricia Racette [*Butterfly*], and Natalie Dessay [*Lucia*].

Aida featured superb sets and the voice of gifted soprano Angela Brown in the title role. *Madama Butterfly* had superb singing and acting performances by Patricia Racette in the title role in an intense, nonstop, tour de force performance. Check out www.patriciaracette.com. Also superb were tenor Roberto Alagna, overcoming the international controversy of his walk-off from the stage in Act I of *Aida* at La Scala. Alagna brought good voice and multi-nuanced performance as the cad in portraying the unthinking and hurtful Lt. Benjamin Franklin Pinkerton. Also memorable was the highly underrated and gifted mezzo-soprano Maria Zifchak for her role as Suzuki, Butterfly's loyal and discerning servant. I have long admired her superb singing of Mozart, recorded on

CD, and it was a thrill to see her play the smart, dependable, intensely loyal and suffering Suzuki. With this all star cast, method acting at its BEST hit the operatic stage!

There is a reason why the cover of the Metropolitan Opera's season booklet features Natalie Dessay as Lucia di Lammermoor in composer Gaetano Donizetti's masterpiece. This French soprano and actress, in her portrayal of the fragile Lucia, dominated and driven mad by a controlling, manipulative, and narcissistic brother, has laid claim to the finest performance **ever** given in this role, exceeding the portrayals of other famous Lucias, Joan Sutherland and Maria Callas.

In the performance I saw, Mariusz Kwiecien, the Polish baritone playing Lord Enrico Ashton, withdrew after Act II. Talk about being in the right place at the right time, I was in the press office when the call came from backstage about Kwiecien. He gave an excellent performance, and his understudy, Stephen Gaertner, making his Met Opera debut in a major role, was equally robust in voice. In Act III, scene 1, Stephen Gaertner was nervous as a last-second understudy replacement, but, in this nose-to-nose confrontation between the two alpha males of the opera, Lucia's lover Edgardo versus her controlling brother Enrico, Gaertner inexplicably stepped back, thereby signaling fear, something that the controlling and violent Enrico would **never** do! Still, the circumstances of a last-second change require forgiveness. Gaertner certainly has the vocal equipment to be a staple of the Met's star lineup.

Mary Zimmerman's production of *Lucia* was, in short, brilliant, and her diligence in visiting Scotland to study mansions and landscapes paid off handsomely in this visually arresting production.

7. THE JOYCE HATTO and WILLIAM BARRINGTON-COUPE SCANDAL

Earlier this year, in a column, I described the fraud perpetrated by pianist Joyce Hatto and her husband, record producer William Barrington-Coupe. The classical music world was shocked to learn that Hatto and Barrington-Coupe perpetrated a fraud of massive proportion, stealing the recorded works of virtuosi pianists and passing them off as Hatto's.

Journalist Mark Singer recently elaborated on this international hoax, theft, and fraud in a well-researched, well-written, gripping, and fascinating article "Fantasia for Piano," appearing in the September 17, 2007 issue of **The New Yorker** magazine, available at www.newyorker.com. The fraud by Hatto and her husband, which duped even major music critics, would never have been uncovered without recent technological advances.

8. "DAMAGES" ON TELEVISON'S FX NETWORK STARRING GLENN CLOSE

Television, too, at its best, is a cultural event. And the FX Network's production of the legal thriller had me riveted to the television set Tuesday nights at 10 PM, throughout its 13 week run, concluding with the finale on October 23. "Trust no one!" is the mantra and dictum that resonates throughout the serial. You may continue reading because I will not divulge important scenes from the show's first season.

Glenn Close plays superstar plaintiff's attorney Patricia ("Patty") Hewes, a ruthless litigator aiming not only to best the other side, but to destroy the opposing litigant, Arthur Frobisher [played by talented Ted Danson in a beautifully nuanced performance], a villainous Enron-type CEO who has ruthlessly left his employees without their pensions when he unloaded his company's stock.

Glenn Close

Although accepting the ABA's award for her pro bono commitments and contributions, Hewes is no saint. Hewes [Glenn Close's character], in a scene reminiscent of the boiled bunny in "Fatal Attraction," has star witness Katie Conner's [Anastasia Griffith] beloved pet canine Saffron knifed to death in order to induce the witness into the false belief that Frobisher ordered the killing to induce her silence. In another telling moment, Hewes relates to Ellen Parsons [brilliant co-star Rose Byrne], her hard-working, first year associate, that she, Patty, was adored by her college sweetheart who worked night and day, holding two jobs, to put her through law school. Hewes, without emotion, continues that the moment she received her J.D. degree, she dumped him! Why? "He lacked ambition."

The drama is played by an ensemble cast with sensitivity and brilliance. Each of the characters is flawed in various degrees and respects. Litigator Ray Fiske [Zeljko Ivanek], Patty's chief adversary, is protective of witness Gregory Malina [Peter Facinelli], not simply because he is a witness, but because of his attraction to him, and yet wants to protect his loving wife from emotional harm. But even Ray has his ethical code, refusing to "tank" a case to Patty.

Also rounding out the cast are excellent supporting role performances by actors Philip Bosco [this 77 year old actor with a mellifluent voice was a carnival worker and trailer truck driver before turning to acting], Michael Nouri, and Tate Donovan.

Throughout the 13-week run there is enough criminality that would keep the legal staffs of both law enforcement and a disciplinary committee occupied. The sad part of the show is that somehow, in a high stakes litigation, much of the conspiratorial action and ruthless prevarication is altogether possible.

Yet, I loved every minute of the show! Glenn Close, portraying a dismal mother, but super sharp litigator who can dish out excellent homespun advice about life one moment and attempt to blackmail her opponent in another, gives a tour de force performance. The show's success, in addition to Glenn Close's magnificent acting, is in the writing and the editing process which alternates frequently between flashback and forward action, in the drama surrounding the death of Dr. David Conner [Noah Bean], associate Ellen's fiancé.

In a critical moment, when Patty hands Ellen a potentially piece of incriminating evidence, she asks her first year associate: "Can I trust you?" This tormented and intensely important question is posed by the superstar, ruthless, poised, and charismatic litigator who has previously, by both word and example, taught her protégé to "trust no one!"

I have been reliably informed that *Damages*' creators and executive producers, Todd A. Kessler, Glenn Kessler, and Daniel Zelman, recently got the green light to proceed with a second season. If the first season gets repeated or appears on DVD, don't miss out on the suspense and nail-biting excitement. If you have children, parental discretion is required because of the language and violence. [During a weekend daytime marathon of the series leading to the finale, interestingly, and perhaps required by the FCC, a lot of the foul language was edited]. If you have throw pillows on your sofa, prepare to have them re-stuffed! Interesting scripts, tight direction, excellent acting, superb editing, and an excellent background musical score result in a masterful thriller, rivaling that of "24." Finally, remember Patty's advice: **"Trust No One!"** ■

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 [Civil Term] in Long Island City, New York.

"Don't Be Left Out – Fight!"

By MARK WELIKY*

"Don't Be Left Out – Fight!" was the motto for the 7th Annual Queens Fair Housing Conference. The Queens County Bar Association again was a cosponsor of the conference which was held on June 23rd at the The Tabernacle of Prayer in Jamaica. Other sponsors were the Queens Legal Services Corporation, New York Urban League/HPD and the Jamaica branch of the NAACP. QCBA President David L. Cohen provided welcoming remarks for the conference and the keynote speaker was Assistant Attorney General Lois M. Booker-Williams.

The conference which was free and open to the public featured representatives from various community service organizations and governmental agencies providing information on a wide range of information important to residents of Queens County. Issues relevant to both homeowners and renters were addressed. Topics covered included, housing for seniors, predatory lending, consumer fraud, housing discrimination and various loan programs available. Free refreshments were provided and there were drawings for free prizes, such as DVD players and television sets. There was an enormous turnout for the Saturday afternoon conference and attendees were very appreciative for the valuable information they received. Carl Callender, the Director of Queens Legal Services and his staff, including staff attorney Cindy Katz did a great job of organizing this event. ■

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

COURT NOTES

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

Denise D. Cooper, admitted as Denise D. Rosenberg (June 26, 2007)

The respondent tendered a resignation wherein she acknowledged that she could not successfully defend herself on the merits against charges that she, *inter alia*, converted $40,000 from her escrow account in relation to one matter and $92,592.38 in relation to another matter.

Joseph C. Levine, admitted as Joseph Charles Levine (June 26, 2007)

The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against charges that he, inter alia, drew checks on his attorney trust account that were dishonored due to insufficient funds; that he failed to safeguard at least $250,000 of a client's personal injury settlement; and that he failed to safeguard a $60,000 down payment on a real estate contract.

Steven Pasternak (July 10, 2007)

By order of the Supreme Court of New Jersey dated February 24, 2005, the respondent was disbarred for the knowing misappropriation of trust funds and was permanently disbarred. Upon the Grievance Committee's motion for reciprocal discipline, pursuant to 22 NYCRR 691.3, the respondent was disbarred in New York, effective immediately.

Daivery Taylor, admitted as Daivery Gerard Taylor (July 10, 2007)

In or about August 2004, the respondent was charged in Nassau County with multiple counts of offering a false instrument for filing in the first degree; multiple counts of insurance fraud; multiple counts of grand larceny in the third degree; one count of scheme to defraud in the first degree; and one count of enterprise corruption. On September 29, 2005, the respondent was convicted, after a non-jury trial, of one count of scheme to defraud in the first degree, and four counts of offering a false instrument for filing in the first degree. By virtue of his felony conviction, the respondent ceased to be an attorney and counselor-at-law pursuant to Judiciary Law §90(4)(a) and was automatically disbarred.

Robert A. Heghmann (August 7, 2007)

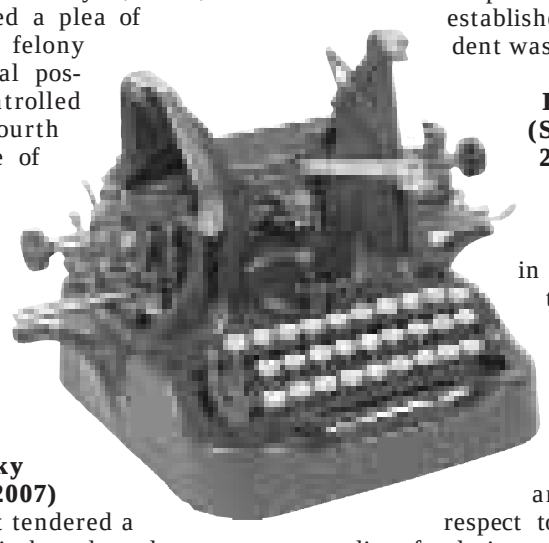
By order of the Supreme Court of the Judicial District of Hartford dated September 28, 2005, the respondent was disbarred in the State of Connecticut " 'having failed to appear for trial, and Disciplinary Counsel having appeared with witnesses and ready for trial.' " The disciplinary complaint in Connecticut charged the respondent with failing to diligently pursue a client's matter and failing to return an unearned fee of $10,000 after abandoning the client's case and spending the money on himself. Upon the Grievance Committee's motion for reciprocal discipline, pursuant to 22 NYCRR 691.3, the respondent was disbarred in New York, effective immediately.

Nancy E. Cohen, admitted as Nancy Ellen Cohen, a suspended attorney (August 21, 2007)

By decision and order of the Appellate Division dated November 8, 2006, the respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that she was guilty of professional misconduct immediately threatening the public interest in that she failed to answer a complaint of professional misconduct and/or appear pursuant to a judicial subpoena, and that there existed other uncontroverted evidence of professional misconduct against her. Having thereafter failed to answer a petition of charges alleging failure to cooperate with the lawful demands of the Grievance Committee; failure to properly maintain her attorney registration; failure to appear pursuant to a judicial subpoena; and pleading guilty to operating a motor-vehicle while intoxicated, an unclassified misdemeanor, in the Lewisboro Town Court, Westchester County, the charges in the petition were deemed established and the respondent was disbarred.

Steven Arthur Bloomberg (September 11, 2007)

On or about February 4, 2005, the respondent entered a plea of guilty to the felony offense of criminal possession of a controlled substance in the fourth degree. By virtue of his felony conviction, the respondent ceased to be an attorney pursuant to Judiciary Law §90(4)(a) and was automatically disbarred.



Barry Lee Chasky (September 11, 2007)

The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against charges that he improperly loaned in excess of $1 million dollars in fiduciary funds held on behalf of First American Title Insurance Company of New York ("First American") to James H. Gomez and/or 213 Union Street Realty Corporation without First American's knowledge or consent.

Kevin J. Cummings, admitted as Kevin John Cummings, a suspended attorney (September 11, 2007)

By decision and order on motion of the Appellate Division dated August 15, 2005, the respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest based upon his repeated failure to timely and fully cooperate with lawful requests of the Grievance Committee and uncontroverted evidence of his failure to preserve funds entrusted to him by his clients. The respondent thereafter tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against charges predicated on the foregoing.

John C. King, admitted as John Crane King (September 11, 2007)

By order of the Supreme Court of Kansas dated October 14, 2004, the respondent was disbarred in that State based upon the undisputed findings of a disciplinary panel of the Kansas Board for the Discipline of Attorneys that he failed to properly safeguard the property and/or funds of multiple clients and failed to cooperate in an investigation of his conduct. Based on the Grievance Committee's motion for reciprocal discipline pursuant to 22 NYCRR 691.3, the respondent was afforded a hearing in New York. Upon finding that the respondent had failed to establish any defenses to the imposition of reciprocal discipline, he was disbarred in New York.

Herbert M. Kuschner, a suspended attorney (September 11, 2007)

By decision and order of the Appellate Division dated March 9, 2007, the respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest in that he failed to submit an answer to complaints of professional misconduct and/or failed to comply with the lawful demands of the Grievance Committee. Having thereafter failed to answer the petition of charges served upon him, the charges in the petition were deemed established and the respondent was disbarred.

Luis A. Medina (September 11, 2007)

The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against charges of overreaching; breach of fiduciary duty with respect to the handling of client funds; impermissible conflict of interest; failure to provide zealous representation to a client; and other conduct adversely reflecting on his fitness as a lawyer.

Nancy E. O'Brien (September 11, 2007)

On May 26, 2005, criminal informations were filed in the City Court of Long Beach charging the respondent with operating a motor vehicle while intoxicated and aggravated unlicensed operation of a motor vehicle in the first degree. On August 4, 2005, the respondent entered a plea of guilty to operating a motor vehicle while under the influence of drugs or alcohol, a class E felony, and aggravated unlicensed operation of a motor vehicle in the second degree, an unclassified misdemeanor. By virtue of her felony conviction, the respondent ceased to be an attorney and counselor-at-law pursuant to Judiciary Law §90(4)(a) and was automatically disbarred.

Peaches H. Drummond (September 18, 2007)

The respondent tendered a resignation wherein she acknowledged that she could not successfully defend herself on the merits against charges that she engaged in an impermissible conflict of interest in a real estate transaction and neglected a client matter.

Jack Martin, a suspended attorney (September 18, 2007)

By decision and order of the Appellate Division dated November 8, 2006, the respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest in that he failed to submit written answers and/or supply information in connection with three separate complaints, and failed to comply with the lawful demands of the Grievance Committee. Having failed to answer the petition of charges served upon him, the charges in the petition were deemed established and the respondent was disbarred.

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

Robert Tavon (July 18, 2007)

The respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest based, *inter alia*, upon his failure to appropriately cooperate in the investigation of multiple complaints of professional misconduct lodged against him.

Jack Fisher, admitted as Jack Robert Fisher (July 31, 2007)

The respondent was found guilty, after a disciplinary hearing, of entering into an agreement charging an illegal or excessive fee for legal services; engaging in conduct adversely reflecting on his fitness as a lawyer as a result of the foregoing; engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation by providing misleading information to his client's accountant relative to the representation; engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation by failing to include a provision in his client's retainer agreement addressing payment of a legal fee in the event that litigation was not necessary; failing to provide a client in a contingent fee matter with a writing stating the method by which his fee would be determined; conduct involving dishonesty, fraud, deceit, or misrepresentation by mischaracterizing his prior contact with the Grievance Committee while under oath. He was suspended from the practice of law for a period of one year, commencing immediately and continuing until further order of the Court.

Thomas A. Giamanco (July 31, 2007)

By order of the Supreme Court of New Jersey dated November 17, 2006, the respondent was suspended from the practice of law for a period of three months in the State of New Jersey, effective immediately, and until further order of the Court. The New Jersey order was based upon a decision of the Disciplinary Review Board of the Supreme Court of New Jersey dated October 19, 2006, finding that the respondent negligently misappropriated client funds, failed to keep pertinent records, and failed to file an answer to a complaint and to comply with the terms of an Agreement in Lieu of Discipline. Upon the Grievance Committee's motion for reciprocal discipline, pursuant to 22 NYCRR 691.3, the respondent was suspended from the practice of law in New York for a period of six months, commencing August 30, 2007, with leave to apply for reinstatement upon the expiration of said period.

Eugene A. Romano, admitted as Eugene Anthony Romano (July 31, 2007)

The respondent was found guilty,

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after a disciplinary hearing, of misappropriating funds entrusted to him as a fiduciary, incident to his practice of law, and failing to maintain required bookkeeping records. He was suspended from the practice of law for a period of two years, commencing August 31, 2007, and continuing until further order of the Court.

Clayton V. Blankston (September 11, 2007)

By order of the Supreme Court of Louisiana dated June 29, 2001, the respondent was suspended from the practice of law in that State for a period of one year and one day, followed by a one-year period of probation. By further order dated October 3, 2003, the respondent was suspended in Louisiana for a period of two years, with that suspension running concurrently with the prior suspension. Upon the Grievance Committee's motion for reciprocal discipline pursuant to 22 NYCRR 691.3, the respondent was suspended from the practice of law in New York for a period of two (2) years, effective October 11, 2007, and continuing until the further order of the Court.

Mark J. Nerenberg, admitted as Mark Joel Nerenberg, a suspended attorney (September 11, 2007)

By opinion and order of the Appellate Division dated December 1, 2003, the respondent was suspended from the practice of law for three years, commencing January 2, 2004, based upon a prior disciplinary proceeding involving four charges of professional misconduct, including failing to safeguard funds entrusted to him as a fiduciary; commingling; and conduct involving dishonesty, fraud, deceit or misrepresentation. Following a further disciplinary proceeding, the respondent was found guilty of engaging in acts constituting the practice of law in violation of the Court's prior order of suspension; failing to comply with the rules of the Court governing the conduct of disbarred, suspended or resigned attorneys; and filing a false and misleading affidavit of compliance with the Court and the Grievance Committee. Based upon the foregoing, the respondent was suspended from the practice of law for a period of five (5) years, commencing immediately and continuing until the further order of the Court.

Judah J. Taub, admitted as Judah Joseph Taub, a suspended attorney (September 11, 2007)

By decision and order on motion of the Appellate Division dated June 6, 2006, the respondent was suspended from the practice of law, pending further proceedings, as a result of his conviction on July 19, 2004, of the serious crime of offering a false instrument for filing in the second degree, a class A misdemeanor. Following a disciplinary proceeding, the respondent was suspended from the practice of law for five (5) years, commencing immediately and continuing until the further order of the Court.

Warren M. Gould, admitted as Warren Morris Gould (September 18, 2007)

Following a disciplinary proceeding, the respondent was found guilty of engaging in conduct prejudicial to the administration of justice and/or reflecting adversely on his fitness to practice law as a result of failing to cooperate with the lawful demands of the Westchester County Bar Association Grievance Committee; engaging in conduct prejudicial to the administration of justice and/or reflecting adversely on his fitness to practice law as a result of failing to cooperate with the lawful demands of the 9th Judicial District Grievance Committee; neglecting a legal matter entrusted to him; engaging in conduct reflecting adversely on his fitness to practice law as a result of failing to communicate with his client; and engaging in conduct prejudicial to the administration of justice and/or reflecting adversely on his fitness to practice law as a result of failing to pay a debt incident to his practice of law. He was suspended from the practice of law for a period of two (2) years, commencing October 18, 2007, and continuing until the further order of the Court.

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

Cheryl Frankel, admitted as Cheryl Barbara Greenbaum (September 11, 2007)

Following a disciplinary proceeding, the respondent was found guilty of engaging in conduct prejudicial to the administration of justice by failing to re-register with the Office of Court Administration (OCA) and engaging in conduct adversely reflecting on her fitness to practice law by failing to cooperate with the lawful demands of the Grievance Committee.

Maria Ines Gonzalez (September 25, 2007)

By order of the Supreme Court of New Jersey dated January 23, 2007, the respondent was suspended from the practice of law in that State for a period of three months, effective February 24, 2007, for, *inter alia*, failing to safeguard funds by impermissibly allowing the use of a signature stamp on trust account checks; failing to properly supervise law office assistants; sharing fees with a non-lawyer; and assisting a non-lawyer in the unauthorized practice of law. Subsequently, by order of the Supreme Court of New Jersey dated May 25, 2007, the respondent was restored to the practice of law in New Jersey and directed to practice under the supervision of an attorney approved by the Office of Attorney Ethics for a period of one year and until further order of the court. 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:

Sheldon Goldklang, a suspended attorney (October 1, 2007)

Sol Wachtler, admitted as Solomon Wachtler, a disbarred attorney (October 1, 2007)

Alan Zigman, admitted as Alan Scott Zigman, a suspended attorney (October 4, 2007)

At The Last Regular Meeting Of The State Of New York Grievance Committee For The Second And Eleventh Judicial Districts, The Committee Voted To Sanction Attorneys For The Following Conduct:

- Failing to timely re-register as an attorney with OCA (17)
- Neglecting a legal matter
- Neglecting a legal matter and failing to keep the client apprised of developments
- Neglecting a legal matter; failing to communicate with the client; intentionally misrepresenting the status of the matter; and failing to pay the client pursuant to a stipulation executed and filed in a court of law
- Failing to communicate with a client and/or handle the client's matter expeditiously absent Grievance Committee intervention
- Failing to adequately supervise law office staff
- Endorsing a client's name on a settle ment check without authority to do so and failing to adequately supervise law office staff including, but not limited to, non-lawyers
- Knowingly taking an action and/or advancing a claim on behalf of a client that was unwarranted under the law and/or served merely to harass or maliciously injure another
- Improperly communicating with a represented party without the knowledge or consent of that party's attorney
- Failing to maintain a proper ledger book for an escrow account
- Engaging in various escrow account improprieties
- Lacking candor before the Grievance Committee

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