



Centralized Motion Part Rules

1. The Centralized Motion Part (CMP) will hear noticed applications on Monday thru Friday, at 2:15 PM. There will be only one calendar call promptly at 2:15 PM.
2. The CMP will hear all noticed applications except those filed involving Article 81 proceedings, Matrimonial matters, Election Law proceedings, Tax Certiorari proceedings, Unsafe Building proceedings, Nuisance Abatement proceedings, Condemnation proceedings and Article 75 (Uninsured Motorist) proceedings. Applications in these proceedings will be processed under their current system.
3. All noticed applications **MUST** be noticed to be heard at 2:15 PM in the Centralized Motion Part, Courtroom
- 25, located at 88-11 Sutphin Blvd., Jamaica, NY 11435, 718-298-1728.
4. All applications in matters involving the City of New York, in which the city is represented by Corporation Counsel, must be noticed for a Tuesday or a Wednesday.
5. Applications will appear on the CMP calendar as noticed, provided it is fee processed by the County Clerk and in the possession of the Motion Support Office a minimum of five business days in advance of the return date.
6. The court will be compelled to administratively resched-

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SUPREME COURT COMMITTEE QUEENS COUNTY BAR ASSOCIATION

THE NEW CENTRALIZED MOTION PART (CMP) IN SUPREME COURT, QUEENS COUNTY

BY JOSEPH CAROLA, III

On October 2, 2012, a new (or is it old) Centralized Motion Part (affectionately referred to herein as "CMP") has gone into effect at the Supreme Court, Queens County. On September 12, 2012, a seminar was held regarding the CMP. Tracy Catapano-Fox, the Chief Clerk, Civil Term, Supreme Court, Queens County and Referee Leonard Florio spoke about the proposed changes and the anticipated operation of the part. Thank you, both of you, for agreeing to speak about running a part that is not yet up and running.

The part rules have been posted in the Supreme Court, are reprinted in this issue of the Bar Bulletin and can also be found under "Announcements" on the QCBA website. If you are reading this article you no longer have plausible deniability. Instead of simply reprinting the rules for this article, I would like to take this opportunity to share some observations, thoughts and suggestions made during the seminar.

First, a disclaimer, I am not offering you legal advice. This article is not meant to treat, cure or prevent you from fouling up. You will not become more likeable or attractive by reading this article. Hopefully, however, you might be able to better navigate the, so far, murky waters of the CMP.

The initial observation I had was that people could not believe their new found freedom when they realized that they may now make motions to strike before the assigned IA Justice! The euphoria was palpable. The only thing missing was purple ink on the raised fingers of the attendees.

Admittedly, the seminar did not answer all questions as the CMP remains, very much, a work in progress. However, here are some thoughts/notes taken from the seminar:

The calendar will be called, by case name in alphabetical order, starting at 2:15 p.m. Monday through Friday. **THERE WILL ONLY BE ONE CALL OF THE CALENDAR.**

The City of New York and the New York City Transit Authority will have calendars called on

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QCBA Participates in ABA Bar Leadership Institute

Joining over 300 other emerging leaders of lawyer organizations from across the country at the American Bar Association's Bar Leadership Institute (BLI), March 14-16 was President-Elect Joseph Risi and Executive Director Arthur N. Terranova of the Queens County Bar Association.

The BLI takes place annually in Chicago. It offers incoming officials of local and state bars, special focus lawyer organizations and bar foundations the opportunity to confer with ABA officials, bar leader colleagues, executive staff and other experts on the operation of such associations.

Mr. Risi and Mr. Terranova joined ABA President Wm. T. (Bill) Robinson III of Florence, KY and ABA President-Elect Laurel G. Bellows of Chicago, IL in sessions on bar leadership, governance, and communications.

Various ABA entities briefed the participants on resources available from the ABA for local, state, national, and specialty bar associations and foundations.



The BLI is sponsored by the ABA Standing Committee on Bar Activities and Services and the ABA Division for Bar Services as part of the Association's long-standing goal of fostering partnerships with state and local bars and related organizations. Collaborating ABA staff entities included the Division for

Media Relations and Communications Services.

For BLI information, contact Karyn Linn, Staff Director of the Field Service Program, ABA Division for Bar Services, 321 N. Clark St., Chicago, Illinois 60654-7598, phone: 312/988-5350, e-mail: karyn.linn@american-bar.org

With nearly 400,000 members, the American Bar Association is the largest voluntary professional membership organization in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law.



New Leadership Sworn In

Incoming President Joseph Risi giving Past President Richard Gutierrez his Past President's Medallion at QCBA's annual installation dinner held in May. For more photos from the event see page 8.



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THE DOCKET . . .

being the official notice of the meetings and programs listed below, which, unless otherwise noted, will be held at the Bar Association Building, 90-35 148th St., Jamaica, New York. More information and any changes will be made available to members via written notice and brochures. Questions? Please call (718) 291-4500.

PLEASE NOTE:

The Queens Bar Association has been certified by the NYS Continuing Legal Education Board as an Accredited Legal Education Provider in the State of New York.

CLE Seminar & Event Listing

October 2012

Wednesday, October 17	Child Support Enforcement Seminar
Tuesday, October 23	Recent Significant Decisions from our Appellate Courts Honoring Hon. Carmen Beauchamp Ciparick

November 2012

Tuesday, November 6	Election Day - Office Closed
Thursday, November 8	Stress & Sanity in Your Everyday Practice
Monday, November 12	Veteran’s Day - Office Closed
Thursday, November 15	Landlord & Tenant Seminar
Thursday, November 22	Thanksgiving Day - Office Closed
Friday, November 23	Thanksgiving Holiday - Office Closed
Wednesday, November 28	Advanced Criminal Law Series - Pt 1

December 2012

Tuesday, December 4	Till Death or Divorce Do Us Part
Wednesday, December 5	Advanced Criminal Law Series - Pt 2
Thursday, December 13	Holiday Party at Douglaston Manor
Monday, December 24	Christmas Holiday - Office Closed
Tuesday, December 25	Christmas Day - Office Closed
Monday, December 31	New Year’s Holiday - Office Closed

January 2013

Tuesday, January 1	New Year’s Day - Office Closed
Monday, January 21	Martin Luther King, Jr. Day - Office Closed
Wednesday, January 30	Family Law Seminar

CLE Dates to be Announced

Civil Court
Elder Law
Insurance
Juvenile Justice
Professional Ethics
Real Property
Supreme Court & Torts Section
Worker’s Compensation

NEW MEMBERS

Angel Luis Agesta	Caitlin C. Donahue	Brenda Perina
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Of Interest...

Congratulations to **Hon. Randall T. Eng** on his appointment as Presiding Justice of the Appellate Division, Second Department.

Compliments to **Jennifer M. Gilroy-Ruiz** on being appointed as Deputy Chief of the New York City Law Department’s Family Court division.

Jonathan A. Darche received one of the NYSBA’s Citation for Special Achievement in Public Service on June 14, 2012. Good going, Jon.

Felicitations go out to **Kimberly D. Tivin** and **David R. Silversmith**, on their nuptials on June 10, 2012. Ms. Tivin is a member and daughter to the late Past President Barry S. Tivin.

Our condolences go out to **Justice Kenneth Holder** on the passing of his mother over the summer. Our prayers are with you.

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

If you or someone you know is having a problem with alcohol, drugs or gambling, we can help.
To learn more, contact QCBA LAC for a confidential conversation.
Confidentiality is privileged and assured under Section 499 of the Judiciary Laws as amended by Chapter 327 of the laws of 1993.

Lawyers Assistance Committee
Confidential Helpline 718 307-7828

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PRESIDENT'S MESSAGE

It is my honor to serve our members as President of the Queens County Bar Association.

I urge all our members to take the opportunity to visit our website @ WWW.QCBA.ORG to view upcoming events, register for valuable CLE programs and view articles published in our Bar Bulletin. Please take advantage of special discounts offered exclusively to our members by accessing the links provided on our website.

October 1, 2012 will mark the commencement of the New Centralized Motion Part, Supreme Court, Queens County. The Centralized Motion Part will hear noticed applications on Monday thru Friday with one (1) call of the Calendar promptly at 2:15 p.m. in Court Room 25 located at 88-11 Sutphin Blvd., Jamaica, NY. Please familiarize yourself with the Centralized Motion Part Rules which have been published on our website as well as on the OCA website.

I am optimistic that the New Centralized Motion Part will alleviate some of the long delays and multiple appearances that we now encounter. I trust that the benefits that may be derived from a Centralized Motion Part will outweigh the inconveniences which may impact solo and small practitioners, who have customarily reserved their afternoons to meet with clients and catch up on their demanding and overwhelming caseload.

We welcome your support and constructive criticism concerning this new Part and please do not hesitate to express your views and comments. This will be a learning period for all involved.

The Queens County Bar Association seeks and supports the efforts of an energetic, active and



Joseph Risi

ambiguous membership. I am committed to improving the expertise and availability of mentors to assist and guide our new members and those who may seek assistance in a new area of practice. I urge all of our members to reach out to each other, to support one another and strive to make the practice of law more enjoyable and profitable. Our commitment to each other is vital for the success of the Queens County Bar Association.

We are proud to launch the new Queens County Bar Association Job Board, where members can search for new positions and employers can post employment opportunities to our highly qualified members. Job seeking is always free and members enjoy significant discounts when posting jobs. Our hope is that this new resource will make a significant difference for our members as they

navigate their career paths.

The Queens County Bar Association Academy of Law has scheduled many lectures, CLE's and Seminars for this Fall which all our members should take advantage of. This is a great way to earn your CLE Credits and support our Bar Association. Please continue to visit our website and check your emails for our scheduled and future events.

I thank all of our members and sponsors for their continued support and I look forward to working with all of you throughout the year.

If you have any concerns, suggestions or comments please do not hesitate to contact me or by calling the Queens County Bar Association at (718) 291-4500 or by email at josephrisi.esq@gmail.com.

May we all enjoy and prosper in our wonderful Profession of Law.

Sincerely,

Joseph Risi, President

Queens County Bar Association

HISTORY CORNER

THE PRESIDENT AND THE SEAMSTRESS

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

— Sir Walter Scott

New York has provided several Presidents of this Country, some better than others. Theodore Roosevelt, Franklin Roosevelt, Martin Van Buren, Millard Fillmore and Chester A. Arthur have all represented our state in the highest office in the land.

Chester Alan Arthur should be of particular interest to the reader. While not generally regarded as one of our finer Presidents, he was a practicing attorney and lived in the City of New York. Many of us remember that he was James Garfield's Vice-President, and ascended to the office upon the latter's assassination. The facts and circumstances of his rise to office and his three years as President have been the subject of a number of books in the last few years. The reader is referred to the most recent book by Kenneth D. Ackerman entitled *The Dark Horse:*

The Surprise Election and Political Murder of James A. Garfield.

Chester A. Arthur, Lawyer

Little known to most of us is the period of time that Chester Arthur was a practicing attorney in New York City (Remember it was not until 1898 that the five counties were consolidated to form the City of New York).

Chester Alan Arthur was born on October 5, 1829 in Fairfield, Vermont. At the age of 16 he was enrolled at Union College where he studied a traditional

classical curriculum. He initially worked as an educator but in 1853 moved to New York City to "read the law" at the office of Erastus D. Culver, an abolitionist lawyer and family friend. Arthur was admitted to the bar in 1854 and joined the firm renamed Culver, Parker and Arthur.

At that time the firm was pursuing a *habeas corpus* action against Jonathan Lemmon, a Virginia shareholder who had been passing through New York when his eight slaves were taken from him. In *Lemmon v. New York*, Culver argued that since New York did not permit slavery, any slave arriving here was automatically freed. The argument was successful and upheld by the Court of Appeals in 1860. See, *Lemmon v. The People*, 20 N.Y. 562, 1860 WWL 7815 (NY) (1856). It was expected that the case would reach the United States Supreme Court (and probably reversed by the Taney Court), but the Civil War intervened.

While campaign biographers give Arthur much credit for this victory, in reality his role was minor. However, he was the lead attorney in the case of *Jennings v. Third Avenue Railroad Co.* This is the matter that desegregated the New York City street car lines.

The "First Rosa Parks"

The case of Elizabeth Jennings is the forgotten 19th century forerunner to the

Rosa Parks's incident. Jennings was a young Black school teacher who helped integrate New York City's transit system - with the assistance of the young lawyer, Chester Alan Arthur.



Stephen David Fink

Even though New York had abolished slavery in 1827, the status of free black citizens was tenuous at best. As in most states, New York followed a system of segregation. On Sunday, July 16, 1854, Elizabeth Jennings found herself running late to get to her church where she was the organist. When she and her friend reached the corner of Pearl & Chatham Streets, she boarded a horse drawn street car operated by the Third Avenue Railroad Company. However, the car lacked the requisite marking that it was for "Negro Persons." As a result the conductor tried to remove her by force. Eventually, with the aid of a police officer, Jennings was ejected from the street car. The incident was publicized in various newspapers and received national attention. Shortly after the incident Jennings wrote "I told him . . . I was a respectable person, born and raised in New York, did not know where he was born . . . and that he was a good for nothing imprudent fellow for insulting decent persons while on their way to church."

Just as Rosa Parks a century later, Elizabeth Jennings had her own backup. Through her father, a prominent tailor she was introduced to the young White lawyer named Chester Arthur, only recently admitted to the bar. Suit was brought in Superior Court in Brooklyn against the Railway Company and the judge ruled in favor of Jennings. He specifically found that ". . . colored person if sober, well behaved and 'free from disease' could not be excluded from public conveyances." The rules of the company, nor force or violence, could bar

black people from the public transportation system. A money judgment was rendered in favor of the plaintiff in the sum of \$250.00 (worth about \$5,000.00 today).

While Jennings' legal victory did not complete the integration of city transit, the precedent was tested, in part through the Legal Rights Association (founded by her father). By 1860 nearly all of the country's street car lines were open to African Americans. However,

Elizabeth Jennings seems to have faded into the obscurity that history can create. She did marry and even open a small day care center on West 41st Street in Manhattan.

As to her attorney, Chester A. Arthur, perhaps we should review his accomplishments more carefully before rejecting his importance.

Resources

As usual there is a lot out there to look at — especially on the internet. Try the New York Times site, including a 2005 article entitled "The schoolteacher on the streetcar" http://www.nytimes.com/2005/11/13/nyregion/the_city/12jenn.html?. Also see, http://en.wikipedia.org/wiki/Elizabeth_Jennings_Graham. For Chester Arthur, see the internet article http://en.wikipedia.org/wiki/Chester_A._Arthur. For a look at the Black experience in New York, the classic work is *Black Manhattan* by James Weldon Johnson, first published in 1930. For the *Lemmon* case see <http://llwww.scribd.com/doc/58578406/Lemmon-v-the-People-20-N.Y.-562-1856-NY-Court-of-Appeals>. Of course a Google search will probably find lots more!

STEPHEN DAVID FINK, ESQ.

EDITOR'S NOTE

A Better Life for Everyone

BY PAUL E. KERSON

This past summer, I went on a ten day tour of Turkey with the Friends of Queens College. It was a tour of Turkey's present and deep into its past. We toured the world of the Hittites, Asia Minor, Anatolia, Byzantium, Constantinople, Istanbul, the Ottoman dynasty, Rome, Alexander the Great, the early Christians and the sites of many of the stories of both the Old and New Testaments. Ironically, these names-out-of-time are all on the same piece of land, a country approximately the size of Texas sitting in both Europe and Asia. The Europe and Asia sides are linked by (you guessed it, shades of Robert Moses) near duplicates of the Verrazano and Throgs Neck Bridges, one for cars only, and the other for trucks and buses.

I was eligible for this tour because I have taken a Queens College pre-law student in my office every term for the past 20 years. They get four college credits for running around finding records at the Courthouses, City Register, and County Clerk. They also photograph crime and accident scenes and track down and interview witnesses. Their written reports are often the most valuable items in my case file.

I designed this internship to be similar to the one I had at the U.S. Attorney's Office back in 1974-75. In retrospect, the internship I had back then was the most useful course I took in both college and law school. (If you would like to be part of this program, give me a call at 718-793-8822).

But more to the point, my wife, Prof. Marleen Kassel (Kerson), was one of the organizers of the tour. She is Director of Asian Initiatives, and she teaches History of Asia at Queens College. During the tour, Marleen and three of her colleagues gave us college-level lectures.

Prof. Joel Allen, Chair of the History Department, spoke about "Constantinople and the New Rome and All That Entails". Joel took the position that Constantine used Christianity to consolidate his power, not for religion at all. He told how Constantine built basilicas such that the Emperor and the Altar were one.

Prof. Gloria Fisk of the Department of English and Comparative Literature gave a talk about the Works of Orhan Pamuk, the Nobel Prize winning Turkish novelist. Gloria explained that Pamuk was a bridge between East and West and has written his country into being for Western readers. His Turkey is perceived as a model for reform in the Middle East.

But more interesting for our QCBA membership, Gloria described how the current Turkish Government has prosecuted Pamuk for violating the Turkish Laws Article 301, the crime of insulting Turkishness. This statute was enacted in 2006 in direct response to Pamuk's 2005 novel, "Snow." (What an illustration of the importance of our American Constitutional ban on *ex post facto* laws).

Fortunately, Pamuk was acquitted by a Turkish Court, and his many books enjoy wide popularity both within Turkey and all over the world. With his Nobel Prize money, Pamuk erected a "Museum of Innocence" in today's Istanbul based on

his novel of the same name. We visited it. The man is a Salesmanship Genius. The Museum Shop sells only his books.

Unfortunately, certain elements of Turkish society have marked him for assassination. There have been conspiracy theories and arrests. What to do in such a situation? You guessed it, like so many eccentric dissidents before and after him, he lives among us here in New York, lecturing at Columbia University. He has also spoken at Queens College. Turkey's loss is our gain.

Prof. George Hendry spoke to us twice about Climate Change. George is Distinguished Professor of Environmental Science at Queens College's School of Earth and Environmental Sciences. He tried to impress upon us the fact that we all, collectively, emit too much carbon dioxide. This fact is causing the Earth to warm at a dangerous rate, melting polar icepacks and causing the Earth's Oceans to rise in height. This will soon imperil Staten Island, Coney Island, Far Rockaway, the Five Towns, the entire South Shore of Long Island, the entire East and West Coasts of the United States, and coastal cities everywhere. Because we are a wealthy country, we will probably cope. But Bangladesh will most likely be wiped out.

I gave George's talks a lot of thought. Should we legislate away the internal combustion engine and require only electric cars? George thought this would only help a small amount. What about requiring windmills and solar energy? Again, only a small amount of help. It is the rising industrialization of China and India that is causing the greatest change. George told us that the United Nations' Intergovernmental Panel on Climate Change (IPCC) is working on this.

This gave me much food for thought. Who created the United Nations anyway? Was that Harry Truman and George Marshall and Dean Acheson of the American Federal Government back in 1945? In hindsight, having just inspected the ruins of the Hittites, the Romans, Byzantium, the Greeks, and the Ottomans, the United States is looking rather like a shining star in the battered field of World History.

Although George's talk was cause for concern, I kept thinking back to Prof. Norman Borlaug (1914-2009), Father of the "Green Revolution," and winner of the Nobel Peace Prize, the Presidential Medal of Freedom, the Congressional Medal of Honor and the Padma Vibhushan, India's second highest civilian honor.

Borlaug prevented massive world starvation by figuring out how to maximize the yield of an acre of wheat by a factor of up to seven. He did this in 1964 to 1979 as Director of the International Wheat Program, a joint project of the Ford Foundation, the Rockefeller Foundation and the Mexican Government. From 1984 until his death in 2009, Borlaug was the Distinguished Professor of International Agriculture at Texas A&M University, a publicly funded



Paul E. Kerson

institution of higher education, where he continued his work increasing crop yields. It is estimated that one billion people alive today did not starve to death because of Prof. Borlaug.

We grew Norman Borlaug. We grew the Ford Foundation. We grew the Rockefeller Foundation. We grew Texas A&M. We will grow the solution to the problem of Global

Warming. In contrast to the ruins of the world of the Hittites, Byzantium, Rome, Constantinople, Alexander the Great, and the Ottoman Dynasty, we Americans have thrived on growth and constant change and challenge. That is the lesson one learns upon inspecting ancient ruins and considering current problems at the same time.

Marleen gave a talk about *The Silk Road*, the ancient overland trading route between Italy and China. In the beginning, no one traveled its whole length, although goods did, having been bought and sold along the way. In this way, silk (sericulture) came to Turkey from China, such that both countries are still today the leading producers of silk rugs.

Our Turkish national guide, the very knowledgeable Aydin Eroglu, made himself an expert on Turkish carpets and took us to a Turkish carpet factory, where we watched the hand weavers manufacturing silk carpets. Aydin told us he had visited Tuba City, Arizona, and had discovered that Navajo Indians use the very same designs. This led him to believe that the Navajos were descended from people who once lived along the Silk Road in Turkey.

Marleen also told us that blue and white Dutch porcelain came from China to Europe on the Silk Road. Peanuts, rhubarb and tulips also made this trip back and forth because of this Road. Along the way were Caravanserais, fortress like buildings that were combination hotels, trading posts, restaurants and barns for camels. We went to one Caravanserai in Kusadasi, Turkey, built in 1618, that had been modernized but maintained all of the exact same functions, except as a barn for camels. Fiats, Toyotas and the new Ford Transit Connect Van are the new "camels" of choice. Despite the so-called "anemic" American auto industry, Ford seems to have hit the nail on the head in Turkey with this new model.

Aydin told us that he was very thankful that the current Turkish Government had tripled the number of "divided" highways, thus greatly increasing commerce and trade within Turkey in recent years, not the least of which was Bus Tourism, his particular field. I could not help but think of General and President Dwight D. Eisenhower (1890-1969), "father of the interstate (divided) highway" who led the creation of the Interstate Highway System in the United States. This led to the development of the now-familiar "interstate standard:" very large green road signs with white lettering and a median strip with grass and fences designed to end, once and for all, head-on car, bus and truck accidents.

As I sat on that tour bus on those new "divided" Turkish highways with their

large green signs and white letters, barreling around the Ancient World of marble ruins, ancient Roman baths, early Christian churches, Mosques and 1900 year old Synagogues from Diaspora #1, I could not help but think that someday, the Interstate Standard will be the International Standard and that one system of "interstate" will link the whole world.

In understanding the advancement of human civilization in world history, that would put Dwight Eisenhower up there with Norman Borlaug. Is it an historical "accident" that Dwight Eisenhower and Norman Borlaug came from the same very young country at nearly the very same time?

Is there such a thing, then, as American Exceptionalism, or is this just a jingoistic, ultra-nationalistic concept designed to make us feel good amidst our continuing economic, scientific and political problems?

After this trip, I have come to the inescapable conclusion that we are far beyond American Exceptionalism. Our country has built *A Better Life for Everyone* because of certain specific American laws:

1. *New York Civil Practice Law and Rules (CPLR) Article 78* (and similar state and federal laws). "Any body or officer" is forbidden to act in a manner that is "arbitrary and capricious or an abuse of discretion." The statutory words "any body" includes every corporation, government agency, aggregation of persons or individuals, in other words, everybody and every group of everybody.

This law is older than the United States itself. It comes from the Magna Carta of 1215, when English noblemen won the right to sue their King for his misdeeds. It is a statute from New York's British colonial days that survived the American Revolution and is still with us.

If Turkey had New York CPLR Article 78, they could not prosecute a novelist for writing a novel. He could bring an Article 78 Petition against the Prosecutor.

2. *The First Amendment to the U.S. Constitution* - We guarantee freedom of speech, press, religion and the right to petition the Government for a redress of grievances. Prosecuting a novelist for writing a novel is impossible under this section.

3. *The New York State Human Rights Law* (NY Executive Law Section 296) and the Federal and State Civil Rights Laws that copied it. We do not tolerate discrimination in employment, public accommodations or real estate transactions due to age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, or domestic violence victim status.

4. *The Americans with Disabilities Act* - Public spaces must be made accessible for the physically disabled. We require wheelchair ramps, handrails, and elevators in our public spaces. We require handicapped parking spaces nearest the train station and store front door.

5. *Social Security, Medicare, Medicaid and Obamacare* - We provide a "safety net" of income and health insurance for

Continued on page 10

Top Ten 10 Misconceptions About Bankruptcy – Updated!

BY NEIL E. COLMENARES

Bankruptcy is everywhere. Bankruptcy affects everyone including, but not limited to, Debtors, Creditors, Lending Institutions, Accountants, Financial Analysts, Mortgage Brokers, Real Estate Agents, All Types of Lawyers, Potential Homebuyers, Owners of Real Property, The President of the Bank of Mom & Dad, etc. Therefore, an understanding of the Bankruptcy Code and the principals enunciated therein are essential for everyone. Bankruptcy law is extremely complex and, like other specialties, takes a significant investment of time to master. The purpose of this article is not to make you an expert in Bankruptcy law. This article is intended merely to apprise you of various misconceptions about Bankruptcy that arise every day. As with any area of the law, you should seek the advice of an experienced attorney before taking any action.

There are several misconceptions about Bankruptcy that everyone should be aware of. I will attempt to dismiss the most blatant misconceptions. Here is my Top 10 list of Common Bankruptcy Misconceptions.

1. The Debtor must be broke to file Bankruptcy.¹ Nothing can be further from the truth. With limited exceptions, the only requirement to file for Bankruptcy is that the Debtor cannot pay their bills as they come due (sometimes referred to as financial distress). This makes sense when given some thought. If a person had to be broke to file Bankruptcy, that person would not be able to pay their attorney, which would lead to a proliferation of pro se

Debtors which would clog the Courts and drive the entire Bankruptcy Court system insane.

Next, if the “broke” Debtor cannot file Bankruptcy, they would in all likelihood become public charges since they have nothing left to live on. To avoid this burden on the government, Congress has permitted “exemptions” to allow Debtors to keep a certain amount of property despite the Bankruptcy filing. For example, in New York a person filing for Bankruptcy is permitted a choice of either New York or Federal Exemptions.

New York Exemptions include \$150,000 in equity in a home (depending on the county), \$5,000 in cash, \$4,000 in equity in an automobile as well as unlimited funds placed in a qualified 401K plan.²

Federal Exemptions include \$21,625 in equity in a home, up to \$10,825 in cash, \$3,450 in equity in an automobile as well as unlimited funds placed in a qualified 401K plan.

Finally, because individuals and businesses normally wait till they are broke to seek Bankruptcy advice, this unnecessary delay precludes options available to them that may help them reorganize their finances and permit them to keep part or all of their property. For example, an individual normally waits until the day before a foreclosure sale to seek Bankruptcy advice where had they sought advice earlier; their chances of saving the property would have been greatly improved.



Neil E. Colmeneres

2. If an individual files Bankruptcy, his/her credit will be ruined and (s)he will not qualify for credit in the future.

A blatant lie! The fact that an individual files for Bankruptcy will appear on the individual's credit report for up to ten years.

While this may seem draconian, this is not as bad as it may first appear.

First, if an individual is considering filing Bankruptcy, their credit is probably not that great to begin with. Filing Bankruptcy may be their best bet to “get good credit” again. Why you ask? The rationale is simple. When a Debtor files for Bankruptcy under Chapter 7 of the Bankruptcy Code and receives a discharge,³ a Debtor cannot receive another discharge under Chapter 7 for at least eight (8) years.

Let's pretend you are the head of a credit card company in charge of deciding to whom to extend credit and you have two identical applicants with one exception, one of the applicants filed Bankruptcy three months ago. Who would you extend credit to? Applicant #1 who never filed for Bankruptcy and who could file Bankruptcy at any moment after taking your money thereby discharging your debt? Or would you extend credit to Applicant #2 who filed for Bankruptcy three months ago and who recently received a discharge under Chapter 7 of the Bankruptcy Code thereby insuring that your loan cannot be discharged under Chapter 7 for at least the next eight (8) years?

The answer is simple, in the above hypo-

thetical, the person who recently filed Bankruptcy is the better credit risk because an individual can receive only one discharge under Chapter 7 every eight (8) years. This, in reality results in the individual who filed Bankruptcy receiving dozens of new credit card offers within weeks of filing Bankruptcy!

3. If a person files Bankruptcy, they cannot buy a house in the future. Another lie! All banks are willing to take risks with people who filed Bankruptcy if they have enough security. This normally means a higher interest rate but remember the bottom line here: banks are looking to make money. If a person who filed Bankruptcy in the past applies for a mortgage and that individual has a sufficient down payment, banks will be tripping over themselves to give them a mortgage.

4. If a person owns a home and files for Bankruptcy, they will lose the house. Yes and no. An individual in the five boroughs of New York, Long Island and Westchester is allowed to keep the first \$150,000 in equity in their homes above all liens and encumbrances despite the Bankruptcy filing (the exemption is \$300,000 for married couples filing Bankruptcy together). This is called the “homestead exemption.” Let's look at a couple of common scenarios:

“The individual is current on the mortgage, there is little equity in the property and has a lot of credit card debt.” Let's assume that the property is worth \$650,000 and there is a mortgage of \$500,000 on the property. In this

Continued On Page 12

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Best Practice Estate Planning Considerations for Foreign National Clients

BY LISA L. BRITTON, ESQ.*

Jean Luc is a French national whose daughter, Barbara, resides in Phoenix, Arizona. Jean Luc is married to Emily, also a French national. Emily owns a condominium in New York City; however, her permanent home is in France. Jean Luc gives his daughter, Barbara, a cash gift in the U.S. of \$135,000 in March of 2012. In November of 2012, Emily passes away. What are the estate and gift tax consequences?

Individuals who are non-resident aliens or who are married to a non-resident alien spouse may be subject to different estate and gift tax rules.¹ Some of the more common considerations affecting a non-resident alien are the (1) low estate tax exemption amount of \$60,000;² (2) lack of lifetime credit for gift tax making transfers of real or tangible property located in the U.S. subject to gift tax;³ (3) receipt of certain foreign gifts from a non-resident alien in excess of \$100,000 are subject to mandatory reporting by the U.S. recipient on Form 3520;⁴ (4) inability to utilize the unlimited marital deduction if married to a non-resident alien spouse;⁵ and (5) estate and gift tax treaties should be consulted when advising a foreign national client with cross-border considerations.

Domicile determines whether an individual is considered a resident for U.S. estate and gift tax purposes.⁶ An alien individual domiciled in the U.S. at the date of death will be considered a U.S. resident. There are several factors affecting the domicile determination, including the intention of the party to remain in the U.S. with no definite plans to leave. Even if an alien lives in the U.S. for a short period of time, the intention is the determining

factor and not the duration.⁷ A few other determining factors supporting intention might include the reasons an alien spends time in the U.S., such as poor health or the avoidance of political persecution,⁸ situs of valuable or meaningful tangible personal property,⁹ or where close friends and family are situated.¹⁰

If an alien individual is determined to be domiciled, and therefore a U.S. resident, at the date of death, then estate tax is generally levied on their worldwide assets. A resident should receive the same lifetime exemption and estate tax rates as a U.S. citizen. Otherwise, a non-resident alien is taxed on their U.S. situs assets. The alien is entitled to an exemption amount of \$60,000 for 2012, which is significantly less than the \$5.12 million estate tax exemption amount for U.S. citizens or residents in 2012.

Non-resident alien gifts are subject to gift tax if they are transfers of real or tangible property located in the U.S., which could include a gift of cash not given in check form.¹¹ Generally, U.S. citizens and residents are permitted a lifetime exclusion amount, which is the same \$5.12 million as the estate tax exemption. Non-resident aliens are permitted only the annual exclusion amount of \$13,000 for 2012. If a U.S. person receives a gift transfer in excess of \$100,000 from a foreign national, then the U.S. person is generally obligated to complete Form 3520 as an informational return. Failure to complete Form 3520 may result in penalties.

Gifts to non-resident alien spouses of up to \$100,000 are exempt from gift tax,



Lisa Britton

whereas gifts to citizen spouses may be unlimited. Citizen spouses may utilize the unlimited marital deduction to defer estate tax; however, transfers to a non-resident alien spouse may be subject to estate tax, minus the exemption amount of \$60,000, unless a Qualified Domestic Trust is implemented or if the surviving alien spouse becomes a U.S. citizen within a certain time period.¹²

Estate and gift tax treaties may be applicable and should be thoroughly reviewed when advising a client. There are currently estate and gift tax treaties in the following jurisdictions: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Netherlands, Norway, South Africa, Sweden, Switzerland, and the United Kingdom.

Jean Luc's cash gift to Barbara should be subject to gift tax because cash is considered to be a tangible gift and the cash was transferred in the U.S. Barbara may be obligated to complete Form 3520 to report the receipt of the foreign cash gift in excess of \$100,000. Jean Luc may have to complete Form 709 for the gift tax reporting obligation and be responsible for paying any gift tax due. Should the IRS be unable to collect from Jean Luc, the burden of payment might be transferred to Barbara.

Generally, Emily's New York City condominium, as a U.S. situs asset, should be subject to U.S. estate tax. Emily is not domiciled in the U.S. because her permanent home is in France, so the non-resident alien rules apply to Emily. As such, Emily's estate may utilize an exemption of

up to \$60,000 for the condominium. Certain deductions may apply even though they may have a foreign nexus, such as funeral expenses. This area of the law encompasses subtleties which may greatly affect the planning and results for certain foreign clients, and should be carefully considered.

* Lisa L. Britton focuses her practice on international taxation and estate planning. Ms. Britton is a member of the New York State Bar and the District of Columbia Bar. She lectures frequently for various organizations on topics of interest in taxation. Ms. Britton received her LL.M. in taxation from Boston University School of Law.

1. Unless otherwise indicated, all references to "the code" or "IRC" and sections therein refer to the Internal Revenue Code of 1986, as amended.

2. IRC § 2102(b)(1).

3. IRC §§ 2501(a)(1); 2501(a)(2), and 2511(a).

4. Dept. of Treas. Form 3520: Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.

5. IRC § 2056A; Treas. Reg. § 20.2106-1(a)(3).

6. Treas. Reg. § 20.01(b) and 25.2501-1(b).

7. Id.

8. See *Fokker Est. v. Comr.*, 10 T.C. 1225 (1948) and *Nienhuys Est. v. Comr.*, 17 T.C. 1149 (1952).

9. See *Farmers' Loan & Trust Co. v. U.S.*, 60 F.2d 618 (S.D.N.Y. 1932).

10. See *Nienhuys*.

11. IRC §§ 2501(a)(1); 2501(a)(2), and 2511(a).

12. Treas. Reg. § 20.2106-1(a)(3).

Law Day in Florida

BY SPIROS A. TSIMBINOS

Many of you know that I have long been active in Bar Association activities, almost from the beginning of my admission to the Bar in 1968. The high point of my involvement was reached in 1994 when I had the privilege of serving as President of the Queens County Bar Association. One of the events which I enjoyed the most and which involved the significant participation of the Queens Bar was the annual ceremonies held on Law Day. Programs were held at each of the three Courthouses in Queens, and various speakers, including a member of the Queens County Bar Association, were invited to speak on the Law Day topic. For many years, the Queens Bar Association also presented a monetary stipend to the winner of its high school essay contest, who then read the winning essay at the Law Day ceremonies.

During the past few years since I retired to Florida, I had not been able to attend any Law Day activities in Queens.

This year I was pleased when some Florida Attorneys who I have gotten to know invited me to attend the Law Day ceremonies sponsored by the Clearwater Bar Association. The Clearwater Bar Association has a membership category to cover licensed attorneys from other states who like myself have retired to Florida but are not admitted to practice in

that State. I joined the Clearwater Bar Association three years ago and have enjoyed some of their activities, and have been able to contribute some of my articles to their Journal.

This year's Law Day ceremonies, sponsored by the Clearwater Bar Association, involved a luncheon and meeting, free and open to all members, which were held at the beautiful and historic Safety Harbor Spa and Resort. This is a famous old resort and hotel going back to the early 1900's, and its walls are lined with historic and interesting photos from the past. The Clearwater Bar Association has a membership of approximately 900 members, and the turnout for the Law Day event was 190, or slightly more than 20% of the membership. The Clearwater Bar Association serves Pinellas County in Florida, which has a population of nearly one million people. Our own Queens County Bar Association, on the other hand, has slightly over 2,000 members and serves a County with a population of over two million. The luncheon began with the presentation of colors by the Naval Junior ROTC cadets currently attending Dunedin High School. Several awards were presented to members who have made special contributions to either the Bar or the community. The



Spiros Tsimbinos

Clearwater Bar is also active in fostering education programs, and awards were also presented to high school essay winners and participants in the Teen Court Program. I also learned that the Clearwater Bar Association conducts an active People's Law School, and that it has a substantial and positive effect in the local community.

The Clearwater Bar, as in Queens, also maintains a close working relationship with members of the judiciary, and many Judges from the various Courts attended the Law Day luncheon. The Clearwater Bar Association's Law Day luncheon was prominently reported in both of the local newspapers, the Tampa Bay Times and the Tampa Tribune.

My attendance at the Clearwater Bar Association luncheon was most informative and enjoyable. I found the Florida attorneys who attended to be very much like the lawyers I knew in Queens, that is, very friendly and courteous, and with a deep commitment to promote both the legal system and the community at large. In becoming acquainted with the various activities conducted by the Clearwater Bar Association, I wonder why our own Queens County Bar Association has allowed to lapse some of the same type of programs which we were deeply involved in in the past. This would include the

high school essay contest, as well as the high school speaker's program, both of which we no longer run. I also was surprised to learn that the Law Day ceremonies in Queens are no longer conducted at the local Courthouses, and that no formal Law Day recognition program is held in Queens County. Perhaps it is time to see whether these positive programs should be reinstituted.

I also learned, just as in Queens, that the members of the Clearwater Bar Association know how to enjoy themselves and have fun. They host barbecues, oyster roasts and put on comical plays and presentations. We used to do the same things in Queens. I remember, for example, when I was a young lawyer, going to a football game at West Point, which was sponsored by the Bar Association, as well as attending trips to Washington D.C. for Supreme Court swearing-in sessions. Too many of our social activities have also been neglected, and perhaps it is time to resurrect some of those functions also.

The Queens County Bar Association, in which I am still active, gave me my start in the legal profession. The Clearwater Bar Association has welcomed me in my senior years. I owe a debt of gratitude to both Bar Associations for enabling me to participate in their various activities, and for continuing to promote the ideals of what Law Day is about.

Trials and Tribulations — Fifty years of Family Court

BY MERYL KOVIT

Is the Family Court still relevant as it celebrates its golden anniversary? Do we need a Family court in a recession or could the Court's closure solve a lot of problems for a financially troubled court system in two thousand and twelve?

This article will attempt to explore the history that led to the establishment of the Family Court of the State of New York in 1962, the reasons for the founding of the Court, and review the highlights of the first fifty years of the story of the Family Court.

It should be historically noted that as I write this in 2012, the Rolling Stones, Bob Dylan and the Beach Boys¹ are also celebrating their respective golden anniversaries this year. This article will not address whether their music is still relevant so as to not offend anyone who is attempting to read what I write here with an open mind. It should be noted at the outset, however, that a select group of hip east coast girls are now often sporting black judicial robes. Let us begin by looking back in time to see how the Family Court came to be on a spectrum of the past few hundred years of history.

The creation of the Family Court coincided with a strong societal recognition of the need to protect women and children. Today, litigants and counsel alike will often complain that the Court has an ingrained bias toward women. One can argue that is not true. One can also argue that the Court has remained true to the *raison d'être* for its creation.

Before there was a Family Court, there was Blackstone writing about coverture in 1769, a legal doctrine whereby, upon marriage, the husband and wife were one person in law.² A century later, there was Charles Dickens, and the beginning of a social conscience on both sides of the Atlantic, that began to recognize the simplistic fact of our humanity that women and children often need protection from others stronger than they are in order to make our society a fair and just one.

In *Oliver Twist*, when the character Mr. Bumble is informed that "the law supposes that your wife acts under your direction," Mr. Bumble replies, "If the law supposes that... the law is an ass".³ Family



Meryl Kovit

Court can truly be seen as the court system's best effort to disprove Mr. Bumble.

In the world of Mr. Bumble, Dickens and *Oliver Twist*, Judge Sir Francis Buller, in the 1780's, stated under English common law that a husband can physically chastise his wife as long as he did not use a stick thicker than his thumb.

This becomes known as the rule of thumb. There are claims that there is no reference to this statement in English common law. It is clear that in 1665 the Massachusetts Bay Colony prohibited domestic violence⁴ – It is also quite clear that the Mississippi Supreme Court said in 1824 that, "The only question submitted for the consideration of the Court is whether a husband can commit an assault and battery upon the body of his wife....family broils and dissensions cannot be investigated before the tribunals of the country, without casting a shade over the character of those.... engaged in the controversy.... let the husband be permitted to exercise the right of moderate chastisement, in cases of great emergency, and use salutary restraints in every case of misbehavior, without being subjected to vexatious prosecutions.... (citing Blackstone).⁵

I am pleased to report here that in 2012, the current state of family law in the State of New York as to hitting can be summed up simply: You're not supposed to hit. As well, just 150 years after the founding of the American Society for the Prevention of Cruelty to Animals in 1866,⁶ the Family Court Act can be included amongst the many laws we now have to protect animals. A petitioner can now request that an order of protection be extended to include that a respondent "stay away" from the petitioner's dog.⁷ (Family Court Act, Section 842).

A tribunal dedicated to the protection of dogs is still only a thought amongst the more enlightened in our society.

The human race's historical record on children is dismal — from Dickens *Oliver Twist*, in which young children were used as chimney sweeps, to our own record in America of exploiting children by their labor in mines and factories. The notion of special protections

Continued On Page 14

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Eucharistic Minister Joseph Cristiano saying the Invocation.



Guest Speaker Hon. A. Gail Prudenti



Hon. Joseph Risi swearing in Joseph Risi as the new President of the QCBA and wife Karen Risi.



Hon. Martin Ritholtz with Academy Award winner, Paul Goldstein.



Arthur Terranova with Priscilla Molina, Law Student Scholarship winner.



Officers being sworn in: Jennifer Gilroy-Ruiz, Secretary, Joseph F. DeFelice, President-Elect, Joseph Carola, III, Vice President and Paul E. Kerson, Treasurer.



Master of Ceremonies Hon. Sidney Strauss with newly inducted President Joseph Risi.



Outgoing President Richard Gutierrez making the closing remarks.

Golf Outing A Success

The Annual Golf and Tennis Outing was held at the Garden City Country Club on September 10, 2012. The event was co-sponsored by the Brandeis Association; Columbian Lawyers and the Queens County Women's Bar Association. More than 100 lawyers, judges and friends of the Associations had a great day in the sun playing golf, tennis and enjoying the wonderful facilities and gourmet meals.

The golf tournament was a great success. More than 90 golfers participated and the course was in great shape. The President's Cup, low score by a member, was won by Larry Murphy. Rich Kerins won the guest low score. Men's closest to the pin was won by Rich Kerins and Steve Bamundo had the men's longest drive. Donna Furey won women's longest drive and Gigi Gribbon won the women's closest to the pin.

The Outing would not have been possible without the generosity of our sponsors. Please utilize their services and remind them that you are QCBA members. The Dinner was sponsored by Empire Bail Bonds; Brunch was sponsored by Duffy and Posillico Court Bond Specialists; Tees were sponsored by Scott Baron, Esq.; Eric Bauman Forensic Social Worker; Scott Kaufman, Esq.; Signature Bank; Sterling National Bank; Robson Forensic; Diamond Court Reporting; Donna Furey, Esq.; Ridge Abstract; Bee Court Reporting; Joseph Baum, Esq.; Deitz Court Reporting; Louis Laurino, Esq.; Sydney Frank Importers.

My thanks to Sasha and Janice of the office staff and our Executive Director, Arthur N. Terranova, for all their assistance in making this wonderful day possible. See you next year! September 9, 2013!!!!

David L. Cohen
Golf Outing Chair



Al Lapinski and Peter Gorycki.



Drew Wasserman, Paul Pavlides, Joe Baum and George Nashak.



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Gary Darche



Dave Adler and Hon Denis Butler.



Hon. Joseph J. Risi with QCBA President Joseph Risi.



Steve Hans



Steve Wimpfheimer

Congratulations to Judge Newbauer!

BY MARK WELIKY*

On August 2nd Brooklyn Borough Hall was the site for the induction ceremony of April A. Newbauer as a judge of the Court of Claims of the State of New York after her nomination by Governor Cuomo and confirmation by the New York State Senate. Judge Newbauer, a longtime member of the Queens County Bar Association was Attorney-in-Charge of the Queens Civil Division of the Legal Aid Society for the past fifteen years. A large gathering of family, friends and colleagues were in attendance for the swearing in and reception that followed. The Queens Women's Bar Association furnished Judge Newbauer with her new judicial robes, with that association's President, Donna Furey, doing the honors. Judge Newbauer was sworn in by Deputy Chief Administrative Judge Fern Fisher as her family looked on. Among the speakers congratulating Judge Newbauer was fellow NYU Law School alumnus Hakeem Jeffries, Assembly Member from Brooklyn's 57th Assembly District and the Democratic Party nominee for Congress from New York's 8th Congressional District.

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



Above: Family and friends were on hand as longtime QCBA member April A. Newbauer was sworn in as a judge of the Court of Claims of the State of New York on August 2, 2012.



Above right: Queens County Womens Bar Association President Donna Furey presents Judge Newbauer with her robes.



Bottom right: Judge Newbauer with Hakeem Jeffries.

Editor's Note

Continued From Page 4

the elderly once their productive years are gone. We provide medical care for the poor under the Medicaid program. In 2010, health insurance was greatly expanded under a patchwork new law nicknamed Obamacare after our current President, Barack Obama, who persuaded Congress to pass it.

6. *The 4th, 5th and 6th Amendments to the U.S. Constitution* - We try to make sure that every criminal prosecution is as fair-minded as possible. Search warrants are required except under limited exceptions. One cannot be forced to testify against oneself. Jury trials are required. The Right to Defense Counsel is guaranteed and paid for, in the case of poor people. The Government must produce the witnesses against the defendant, and the Defense Counsel has the right to subpoena witnesses for the defense.

7. *Patents, Copyrights and Bankruptcies* - Article I, Section 8 of the U.S. Constitution gives Congress the power to create "uniform Laws on the subject of Bankruptcies throughout the United States." This Section 8 goes on to give Congress the Power "to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

8. *The Morrill Act of 1862* - Led by

Senator Justin Morrill, in this historic measure Congress declared that higher education was no longer for the wealthy. There were to be major public universities in every state subsidized by a federal grant of land in each state. These Universities were to be open to everyone who could qualify.

We have lots and lots of laws in the United States, its fifty states and its thousands of cities, towns and counties. But it is these eight groups of laws, acting together, which have provided the most remarkable society in World History.

Following the American Revolution of 1776-1783, the U.S. Constitution was adopted in 1789. From the year 1 to the year 1789, the following useful items were invented in Europe: the printing press, the microscope and the telescope. Guiding philosophies included the Crusades for 200 years and the Inquisition for 400. A person in 1789 had the same problems dodging horse droppings as a person in year 1. Free thought was restricted.

With the establishment in America of a Constitution featuring the Bill of Rights and laws protecting patents, copyrights and bankruptcies, the following were invented or improved in 223 short years: the steamboat, the steam railroad, the sewing machine, the cotton gin, the electric stove, the refrigerator, the photoelectric cell, plastic, synthetic fibers, the assembly line, electric power, the light bulb, the phonograph, the storage battery, the Dictaphone, the motion picture, the airplane, the helicopter, the spaceship, rockets, the telegraph, the

telephone, the trans-Atlantic cable, antibiotics, the Salk vaccine, the power loom, the credit card, the tractor, gasoline, the Interstate Highway, the photocopying machine, the fax machine, the supermarket, radio, recorded music, automobiles, television, cable television, computers, the personal computer, the cell phone, the I-phone, the Internet, the World Wide Web, Microsoft Word, AOL, Yahoo, Google, Facebook and the Cloud.

During this time, with the aid of this dizzying array of inventions, the life span of the average American doubled.

The first ten Amendments to the U.S. Constitution are collectively known as the Bill of Rights. Read together, they protect free thought. Copyright and patent laws protect success from that most precious of natural resources: the human mind. Bankruptcy laws protect against failure: if at first you don't succeed, try, try again.

Our country's special contribution is this: The rest of the world now realizes that so long as Wilbur and Orville Wright can tinker in their bicycle shop leading to the airplane, and Steve Jobs can fool around in his garage leading to the I-phone, anything is possible. Today, we have finally reached the Starting Point: where every Wright, Jobs and Galileo in the whole world can start to ponder the inner recesses of his or her own mind without fear of offending those in power, and with the promise of great wealth if he or she succeeds.

Always to be remembered about our country is the following: The above listed eight groups of laws constitute a coherent American Philosophy of *A Better Life for Everyone*. This Philosophy goes beyond "Honor Thy Father and Mother" that is at the root of Judaism and Christianity. These eight groups of laws require that we honor Everybody's Father and Mother and Everybody's Children. That is Social Security, Medicare, Medicaid, Obamacare, the Human Rights Laws, and the Morrill Act taken and read together.

Once every mind is free, a country can grow a Dwight Eisenhower and an Interstate Highway System, and a Norman Borlaug and a solution to world hunger.

Another thing always to be remembered about our Country is this: There was a competing Philosophy of Death that almost took over the world in 1934-1945. That Philosophy required that Jews, political dissidents, the physically and mentally handicapped, gay people and Gypsies be executed for the good of the State.

Our country raised a mighty army, invented new weapons, and stopped them after four bloody years of hand-to-hand combat. Of all the Nazis did, it is the execution of the

physically handicapped that must give us the most pause. For nearly each and every one of us is destined to become physically handicapped as the end of life nears. The Nazis believed that the physically handicapped are a burden on the State.

We believe that the physically handicapped get the best parking spaces. That is our Law. For you never know if the next Norman Borlaug or the next Dwight Eisenhower may walk with great difficulty with a cane. But inside his mind may be a plan to greatly improve our world. The summary of the eight groups of laws above is this: We believe that every human life is of infinite value, and we will not let anyone fall off the Wagon Train as it heads west.

And that is the job of every Bar Association Member in every State, County and City Bar Association in America: If, as and when our government and corporate officials forget their duty under these eight groups of laws (as they often do), it is our duty to write the petitions and complaints that bring them to Court so they can be brought back into line. It is America's Highest Calling. And that too, is something the rest of the world is slowly learning.

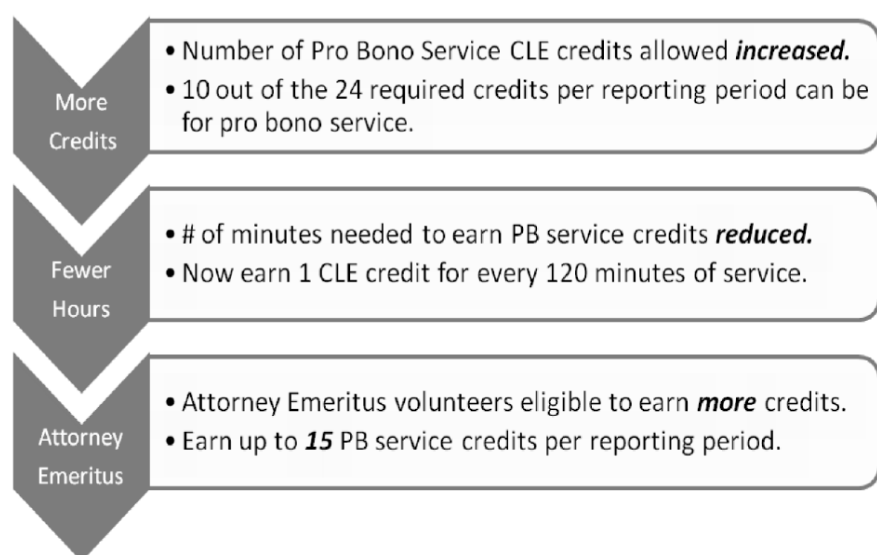
I am hopeful that this article will be read by every Bar Association member, every law school student and every pre-law college student in the world in every generation. I thought it up on the tour bus riding around Turkey looking at the remains of seemingly great civilizations that fell, and trying to understand why. I wrote the first draft the day I came back, using Google and my personal library.

In Turkey, at the end of the day I would often cry. I would cry for all the Europeans and Asians who died in the World History of relentless military conquest and Philosophy of Selfishness. I would cry for my murdered ancestors, the Jews of Europe. I would cry for the incredible good fortune of my parents, who were admitted to Hunter College and City College, respectively, in New York, in the very years their aunts, uncles and cousins were being slaughtered in Europe.

I would cry because I knew that their New York City public university education meant I was raised with much of this knowledge, and I could understand it all as One Unit. I call it the American Philosophy of *A Better Life for Everyone*. I am hopeful that this essay will be passed around the World Wide Web quickly, and that every Country will adopt this Philosophy, and the Laws that go with it, as soon as possible. Once every human mind is free, humanity's only limitation will be our collective imagination.

New Liberal Rules for Earning Pro Bono Service CLE Credits

The New York State CLE Program Rules have been revised **increasing** the number of pro bono service credits which may be used to satisfy the 24 credit biennial CLE requirement and **reducing** the length of time required to earn these credits.



NYS CLE Program Rules – Revised §1500.22(j) Credit for Performing Pro Bono Legal Services

"Credit may be earned for performing uncompensated legal services for clients unable to afford counsel pursuant to (a) assignment by a court; or (b) a program, accredited by the CLE Board, of a bar association, legal service provider or other entity."

Pro Bono Service CLE Credits for Newly Admitted Attorneys

Newly admitted attorneys may earn pro bono CLE credit solely for the purpose of carrying over credits to the following biennial reporting cycle. A maximum of six (6) CLE credits, including pro bono CLE credit, may be carried over to the following biennial reporting cycle.

The Queens Volunteer Lawyers Project, Inc. (QVLP), the pro bono program of the Queens County Bar Association, is an **accredited Pro Bono Service CLE Provider**. Volunteer attorneys may earn pro bono service CLE credits for assisting with foreclosure conferences, for serving at the CLARO-Queens Consumer Debt Clinic (Friday afternoons) or for legal assistance provided on a variety of other civil law matters, such as evictions, uncontested divorce and drafting of wills. Contact Mark Weliky, QCBA Pro Bono Coordinator to find out about volunteering. E-mail @ MWeliky@QCBA.org or call (718) 291-4500 ext. 225

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NY State Legislative Update Is the Coop/CondoTax Abatement Program in Jeopardy?

BY GEOFFREY MAZEL, ESQ.

On June 21, 2012 Coop and Condo owners in New York City were put in great peril when the New York State Legislature failed to pass the Coop/CondoTax Abatement before the end of the Legislative session. The Coop and Condo Tax Abatement expired on June 30, 2012 and now it is in legislative limbo until the Legislature reconvenes, which hopefully will be soon. It has been reported that they are not scheduled to reconvene until the next Legislative session in January, 2013, but could call a Special Session before that time.

Let's take a brief look back into the history and purpose of the Coop tax abatement. As the Coop and Condo form of ownership became more prevalent in the late 1980's it became apparent that they were paying a disproportionate amount of real estate taxes and they were paying far more than owners of one, two and three-family homes. In the early 1990's, then Mayor David Dinkins, established a commission that clearly determined that owners of Cooperatives and Condominiums were paying more in real estate taxes than owners of one, two and three-family

homes. In 1996, the first Tax Abatement was passed and put into effect for a period of three years. At this point in time is was the general consensus in the State legislature that a fair and equitable tax bill would be passed within a three year period providing relief for Coop and Condo owners. More than twenty years have passed and nothing has been passed by the State legislature.

At this point there is no resolution and the stop gap measure of the Tax Abatement is now the subject of political football.

Leaders of both State Houses have been working towards extending the Tax Abatement. In the Assembly, Speaker Sheldon Silver and in the State Senate, Senator Martin Golden introduced Assembly Bill number 10071 and Senate Bill number 7091 respectively, back in May, 2012. Both of these legislative initiatives extend the tax abatement program for four more years, up to June 30, 2016.

Unfortunately, as the legislative session went on, these two bills became part of a complex set of legislative ini-



Geoffrey Mazel

tiatives that was presented to the State Legislature at the last hours before the session was to expire on June 21, 2012. These new bills included many political prizes for the various interests of the elected officials, and this relatively simple initiative of Silver and Golden got caught up in this political morass. As the dust settled it became clear that there was enough support to pass the Tax Abatement in both legislative branches. To most insiders' astonishment, Governor Cuomo refused to waive the aging requirement of legislative initiatives, which is three days from when a bill is introduced to when it can be voted on. Governor Cuomo expressed that it was a matter of "good government" to give legislators three days to review anything they will be voting upon and would only waive the three day waiting period in emergency situations. Therefore, the Legislature never got to vote on this extension and the Tax Abatement expired on June 30, 2012.

Although the failure to pass the Tax

Abatement extension sent shivers down the spines of Coop and Condo owners in the City of New York, there is light at the end of the tunnel. Recently, Assembly Speaker Sheldon Silver stated to the media that tax relief has been agreed upon by both Houses of the State Legislature and the Governor. He expressed confidence that the legislation would be signed into law later this year.

It was reassuring to see the Speaker of the Assembly state with such confidence that the Tax Abatement bill will be extended by the end of this year. Despite this reassurance, owners of Coops and Condos are left in limbo and at stake is \$430 million dollars in tax liability. I think it is safe to assume that the sooner the legislature reconvenes the better, in the eyes of the owners of Coops and Condos in the City of New York.

Editor's Note: Geoffrey Mazel is a partner in the firm of Hankin & Mazel, PLLC and is Co-Chairperson of the newly formed Cooperative and Condominium Committee of the Queens County Bar Association.

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Misconceptions About Bankruptcy

Continued From Page 5

instance, that individual can file for Chapter 7 and still keep their house.

Let's change the facts a bit. Let's say the same house is worth \$650,000 but the individual has a \$400,000 mortgage on the property. After we take into consideration the \$150,000 homestead exemption, the individual is left with \$100,000 in non-exempt equity. If this individual files for Chapter 7, the Chapter 7 trustee⁴ will sell the property and the individual will be given the first \$150,000 from the proceeds of the sale. The point that needs to be emphasized here is that the individual will lose the house under Chapter 7 unless after the filing of the Bankruptcy the individual can come up with \$100,000 to pay the trustee the non-exempt equity. These funds can come from a post-bankruptcy mortgage or a loan from family and/or friends.

Next example: "The individual is behind on their mortgage, there is substantial equity in the property and has lots of credit card debt." In this example, assuming there is money left over each month after paying the regular monthly bills (the mortgage payment not including arrears, gas, electricity, food, etc.), if this left over money can satisfy the arrears on the mortgage over a period of not to exceed five years, the individual may be able to keep the house in under Chapter 13. Chapter 13 is quite complicated but its principle is simple. As long as the individual repays the debt, they can keep the property. This may be an oversimplification but the point to remember is there are options.

5. Taxes cannot be discharged in Bankruptcy. Wrong! Certain taxes are dischargeable in Bankruptcy such as certain personal income taxes that are more than three years old if certain requirements are met. As a general rule, fiduciary taxes (e.g. – sales taxes) are not dischargeable. The Bankruptcy Code's provisions relating to taxes are quite complex and differ depending on the Chapter filed under but suffice it to say, certain taxes are dischargeable. Check out our website for the requirements to eliminate personal income taxes in Bankruptcy.

6. Student loans are non-dischargeable. Generally speaking this is true. However, like every other rule there are exceptions. If the Debtor can prove certain hardship, student loans can be eliminated in Bankruptcy. This is normally an uphill battle but certainly not impossible. Check out our website for the requirements to eliminate student loans in Bankruptcy.

7. An individual can file for Bankruptcy, but not include certain creditors in the Bankruptcy. Wrong! One of the principles behind the Bankruptcy Code is to treat similarly situated creditors equally. When a Debtor does not list a creditor in their Bankruptcy and decides to pay that creditor back, that Debtor is prejudicing the other creditors. If a Debtor does this, the Court considers this fraud and the Debtor can risk losing their discharge and in extreme circumstances face jail time as well as a hefty fine. Don't do it!

8. If I have to list all creditors in the Bankruptcy, I will end up cheating my mom by discharging the money she loaned me. Although a Debtor must list all their creditors in the Bankruptcy; in certain instances the Debtor can repay a creditor after the Bankruptcy is filed. This is commonly known as a "Reaffirmation." All reaffirmations are subject to court approval.

The reason most Debtors agree to pay back a debt they have no legal obligation to pay is to maintain an existing business relationship. In our example, the court would likely approve the reaffirmation if the Debtor lives with mom and worries that mom may throw him out.

9. I signed a piece of paper stating I cannot get rid of this debt in Bankruptcy and I am therefore stuck with it forever. This is yet another scare tactic. Although the Bankruptcy Reform Act of 2005 has modified this somewhat, there are state law remedies available. Consult with your Bankruptcy Attorney about these provisions.

10. I could lose my job if I file for Bankruptcy. If you lose your job, you can sue your boss! The law states that if an individual can prove that an employer fired an employee solely because the employee filed Bankruptcy, the employee can sue the employer. As a caveat, if the Debtor/employee looks for another job after the filing of the Bankruptcy, the potential employer can use the Bankruptcy filing as a factor (not the sole factor) in deciding whether to grant that individual employment.

As the above information indicates, there are lots of misconceptions about Bankruptcy. For individuals that are reading this article, I strongly urge you to contact this office to schedule a consultation should you be in need of assistance.

For professionals who are reading this article, you are perhaps in the best position to advise your clients regarding their financial condition. Most individuals and business owners are in denial about their financial situation. It normally takes the intervention of a professional to apprise the Debtor they need help. This is analogous to a person with a physical illness. The sooner they seek help, the greater the chances for a speedy recovery. As professionals we have fiduciary duties incumbent upon us that can be at times overwhelming. If we exercise these duties responsibly and take care to advise our clients of potential problems and things they can do now to stave these problems off, we will be in their eternal gratitude as well as helping society as a whole. But if we fail, then we will continue to perpetuate derogatory stereotypes and have failed not only ourselves, but also our clients who have come to us for help.

Editor's Note: Neil E. Colmenares is the Bankruptcy Committee Chair at the Queens County Bar Association and can be reached at www.NYcounselor.com or 718-888-3108 for questions or comments.

FOOTNOTES

1. A "Debtor" is an individual or entity that owes money. The Bankruptcy Act of 1898 which was replaced by the Bankruptcy Code of 1978 substituted the term "Bankrupt" for "Debtor." One of the reasons for this change in nomenclature was to help remove some of the social stigma involved in filing Bankruptcy. Remember, we are all Debtors.
2. For a complete list of exemptions for Debtors who are domiciled in New York, see the New York CPLR Sections 5205 and 5206, New York Debtor and Creditor Law Sections 282 – 285 and the New York Insurance Law Sections 3212 – 3213 and the United States Federal Exemptions located at 11 U.S.C. 522.
3. A discharge is a court injunction relieving the Debtor of the obligation to repay most debts and preventing creditors from collecting for same.
4. A "Trustee" is a person appointed by the Court to administer the Debtor's estate. The Trustee's main function is to sell the Debtor's non-exempt property and use the proceeds to pay creditors.

POETRY CORNER

A Unique "Rush"

Rush to park, rush to courtroom,
Hurry up - and wait -
Endless waiting, under pressure,
That's the lawyer's fate.

Due in two Courts -
Maybe three,
Calculated risk
As to where, first, to be.

Make your choice,
But odds are strong,
Wherever you go
Your choice was wrong!

Adversary missing,
No probation report,
And top it all off
With a court officer's smart retort.

Your client's late,
The Judge is ill -
Frustration mounts -
You'd like to kill.

So what's the motive
What can you gain
While subjecting yourself
To so much pain?



Bob Sparrow

Perhaps the answer
Lies within -
And it's not even dependent
On whether you lose or win.

It's how you perform
When you're under the gun -
And the self-satisfaction
Of a job well-done.

Thus, although there be many
A defect or flaw,
There's no more rewarding profession
Than the practice of law!

Bob Sparrow

THE COOK

by Joseph F. DeFelice*

The cook she is ready
as she walks thru the door
to her New York apartment,
with kitchen so tiny and small,
and armed with her apron
a spoon, fork and more
she enters her kitchen
which she truly adores

Oh yes, walk thru the doorway
with kitchen so wide, yet so small,
inside you will see her cabinets all,
shining so white, bright and so tall,
with wall tiles so blue,
they match her eyes
just as much as they match the sky

She then finds the tools needed
and works with them all,
spoons and forks
and knives and more,
so numerous the tools
like a deep cooking pot
that some call Karoki,
and even a Rotiboard to roll out some
dough, and yes in the drawer find a
whisk that is wooden that's called a
molinillo, and to cut all her vegetables a
mandoline she does use.

Oh clearly she has every imaginable tool,
like measuring cups and measuring
spoons, potato peeler and spatula, a bain-
marie and slotted spoon, and a wire mesh
vessel which to some called a spider.

And on to a meal to prepare she must go,
cause company is coming and the time is
quickly running

So potatoes to start
after boiling she mixes,
adding vinegar, salt, pepper and more,
so quickly she moves
adding celery, onions, and chives
and some eggs, the hard boiled a must
and while that's a chillin she continues
with more

And it's lamb
chops she makes,
that she chooses
as next
the organic is
best, adding
salt, some pepper
and olive oil too

Then red velvet
cupcakes is great for dessert she mixes
the flour and all that's delicious, like
baking soda, salt, cocoa and more, the
frosting she prepares to add when it's
done

And the guests quickly sit to eat and
enjoy, the lamb chops melting in their
mouths a taste so fine it is sublime, and
the cold potato salad is a flavor that is,
oh so divine and finally the cupcakes, the
taste is so sweet and with coffee it really
is a great treat

This all to the delight of family and
friends, and when they are gone it's onto
the couch while blinking her eyes and
fighting a sleep she sits with a sigh as the
cooking is done

Oh what a joy it is to watch a cook, such
as this, work in her small kitchen with
such wonder and joy and as she's relaxed
she thinks, oh my! What is next?
for tomorrow another dinner is needed,
will it be summer corn and tomatoes?
or swordfish kebabs?



Joseph DeFelice

**Joseph F. DeFelice is President-Elect of the Queens County Bar and practices Criminal and Immigration law from his office in Kew Gardens, NY. His poem is dedicated to all the hard working women who cook so hard and long especially during the holiday seasons.*

CULTURE CORNER

BY HOWARD L. WIEDER

The 2012-2013 season of culture in New York City promises to be exciting. This month's column covers Yves Lavandier's excellent book on scriptwriting and playwrighting that is a great writing resource for litigators, New York singer Elizabeth Randel, French singer Patricia Kaas's concert of "Kaas Chante Piaf" in Carnegie Hall for one night ONLY on November 20, 2012 and the "Great Performers" series of Lincoln Center.

Yves Lavandier's Writing Drama: a Comprehensive Guide for Playwrights and Scriptwriters [Paperback]

Supreme Court Justice Louis D. Brandeis valued good writing. Justice Louis Brandeis stated: "There is no such thing as good writing. There is only good rewriting." Justice Brandeis often revised his writing 15 or more times, until satisfied. He so valued it that he reserved for himself alone the writing of the statement of facts of each Supreme Court opinion that he wrote. Justice Brandeis permitted his law clerks to research and write only the principles of law. Why? Justice Brandeis well understood that case law does not grow in a vacuum, but is derived from facts. Justice Brandeis believed that the formulation of facts in an opinion is so crucial that when the reader finishes reading the facts, he or she should be able to expect the outcome of the opinion.

As a young litigator, I learned the value of Justice Brandeis's wisdom. Especially in important cases, I would write the statement of facts in an appellate brief or memorandum of law in such a way as to tell a narrative story. Many lawyers unfortunately write in a way as though boredom were an emotion. Legal writing does not have to be that way. Legal writing, like all good writing, needs to tell the reader - - whether an appellate court, a law student, or lay person - - a narrative story of the facts from the position of the client and then draw in, discuss, or debate the applicable or arguable principles of law.

In order to help my readership of judges, litigators, and lawyers tell a story, I cannot emphasize the importance of a great and inexpensive book that is now available for ordering at www.amazon.com: Yves Lavandier's excellent book *Writing Drama: a Comprehensive Guide for Playwrights and Scriptwriters*, previously reviewed in this column. When I originally reviewed *Writing Drama: a Comprehensive Guide for Playwrights and Scriptwriters*, it was very difficult to order. Now, you have no excuse. It is available at amazon.com, at an inexpensive price of \$35.00. Here are the details: **Writing Drama: a Comprehensive Guide for Playwrights and Scriptwriters [Paperback]** by Yves Lavandier and translated by Bernard Besserglik

- available at www.amazon.com
- Paperback: 595 pages
- Publisher: Le Clown & L'enfant (2005)
- Language: English
- ISBN-10: 291060604X
- ISBN-13: 978-2910606046
- Product Dimensions: 9.1 x 6.4 x 1.9 inches
- Shipping Weight: 2 pounds

ELIZABETH RANDEL

The sound of 1930's jazz delighted listeners on a hot summer day in the shopping district around 46th Street and Queens Boulevard, as the concert took place underneath the Sunnyside arch in Sunnyside, Queens County. **Elizabeth Randel**, a gifted, young, and beautiful soprano was the featured performer, with the South Shore Syncopators, a dance orchestra highlighting music of the 1930s, on August 4, 2012, at the 12th Annual Bix Beiderbecke Memorial Jazz Concert.

The concert was in recognition of **Leon "Bix" Beiderbecke**, a highly acclaimed jazz musician who lived at 43-30 46th Street, in Sunnyside, before dying of alcoholism on August 6, 1931, at the age of 28.

The highlight of the afternoon was Ray Osnato's South Shore Syncopators and listening to featuring performer **Elizabeth Randel**. Randel is a soprano who sings opera, church, and pop music. At the concert in Sunnyside this past August, **Elizabeth Randel** sang solos of: *Cooking Breakfast for the One I Love* by Billy Rose and Henry Tobias (recorded by Fanny Brice); *Mysterious Mose* written by Walter Doyle (it was featured in an animated short with an early Betty Boop); and the encore piece was *Home* by Harry Clarkson, Geoffrey Clarkson, and Peter van Steeden.

More information on The South Shore Syncopators and its talented and knowledgeable director, **Raymond Osnato**, is available at www.syncopators.blogspot.com. More information on the beautiful, lustrous **Elizabeth Randel** is available at her web site of www.elizabethrandel.com.

Lincoln Center "Great Performers" series

Lincoln Center offers many events and concerts, but one of my favorites is the well-run "Great Performers" series. **The London Symphony Orchestra** is performing two different programs on October 22 and 24, 2012, both devoted to the music of BRAHMS. Great French classical pianist **Jean-Yves Thibaudet** is performing on November 10, 2012. The calendar of events, available at www.lincolncenter.org and then looking for "Great Performers," also includes American Grammy Award-winning violinist **Joshua Bell** and English classical pianist **Paul Lewis**.

PATRICIA KAAS: KAAS CHANTE PIAF

EDITH PIAF was the greatest French singer of the twentieth century. She became a legend in her own lifetime with such recording hits as *Hymne à l'amour* ("A Hymn to Love"), *La Vie en Rose* ("Life seen through rose-colored glasses"), and *Non, je ne regrette rien* ("No, I have no regrets").

EDITH PIAF was born Édith Giovanna Gassion on December 19, 1915, in Paris,



Howard L. Wieder

and died on October 11, 1963, in the hamlet of Plascassier, in the French Riviera, of liver cancer, the product of her alcohol and morphine addiction, at the age of 47. **EDITH PIAF's** friend, French poet and novelist Jean Cocteau, reportedly learning of Piaf's death, died on the same day of a heart attack. **EDITH PIAF's** funeral in Paris on October 14, 1963, brought

Parisian traffic to a gridlock. She is buried in the renowned Pere Lachaise Cemetery in Paris.

EDITH PIAF's father was a Norman circus artist and her mother, of Italian-Moroccan-Berber descent, was a singer, so from an early age Edith was exposed to the limelight. Like actress Joan Crawford, **EDITH PIAF** had an unstable early childhood. Her mother abandoned the infant **EDITH PIAF**, who was left in the care of a madam at a brothel, until age 7, when she was reunited with her father.

EDITH PIAF was able to forge some contacts, secure her first contract, record her first title, and meet her first mentor, **Louis Leplée**, during her tumultuous adolescence. Leplée changed the singer's name to Piaf, as the name "môme Moineau" ("Piaf" is slang for "Moineau," or sparrow) already existed. **EDITH PIAF** quickly created a solid repertoire and became the darling first of Paris, then of France, before she became the most famous French singer outside France, particularly in the United States. Several films have been made of Piaf's life, the most recent, *La Vie En Rose* (2007), the title of the film in the United States, with French actress **Marion Cotillard** winning the Oscar for her intense portrayal of **EDITH PIAF**.

PATRICIA KAAS.

French singer and actress **PATRICIA KAAS** was born on December 5, 1966, in Forbach, Lorraine, France, a town near the border between France and Germany, to a miner father, and a stay-at-home mother who raised seven children. **PATRICIA KAAS's** birth at this border town, and her fluency of both France and Germany, explains her popularity in both countries. **PATRICIA KAAS** was the family's youngest child, and many psychologists report that the youngest child is the emotional connector of the family and are also drawn to creative professions and performing arts.

PATRICIA KAAS today is getting the international acclaim that she deserves, as she is about to embark on the dramatic adventure and exciting challenge of bringing **EDITH PIAF's**, **KAAS CHANTE PIAF**, comes to New York, for one night only, at Carnegie Hall, on November 20, 2012, as described in this column, and with a soon-to-be-released compact disc, with the same name.

In 1988, I was living in Manhattan's Upper West Side, where a Japanese friend and neighbor - - who did not understand French, but was enthralled by Ms. Kaas's verve, style, and passion - - insisted that I listen to an album he had just purchased "*Mademoiselle Chante le Blues*." That title was the first compact disc released by **PATRICIA KAAS**, which has since sold over 2,500,000 copies. Ever since listening to her first album in 1988, I have been a fan of **Patricia Kaas**, with her style of pop-cabaret-blues-jazz, and purchasing **PATRICIA KAAS's** albums for my friends, repaying forward the favor done to me.

Songs on that first album, including "*Mon mec à moi*" and "*Mademoiselle Chante le Blues*," became major hits of the 90s. In 1998, **PATRICIA KAAS** dominated the music scene, winning six "Victoires de la Musique" award and enchanting millions of fans worldwide. Now, at the beginning of the 21st Century, **PATRICIA KAAS**, approaching the age when Piaf died, and with enduring physical beauty, lustrous voice, and experience, is worthy of the mantle of being one of the most renowned French singers.

Earlier this 2012 year, on one late winter night, I walked on the famous Promenade de la Croisette in Cannes, to find promotional banners streaming from nearly every lamp post on the Croisette announcing that **PATRICIA KAAS** was going to embark on a new project, of touring the world starting this fall, 2012, with a show and new compact disc exclusively dedicated to the songs of **EDITH PIAF**. That show, **KAAS CHANTE PIAF**, comes to New York City for one night only, at the Stern Auditorium of Carnegie Hall on November 20, 2012. **I urge you to buy seats immediately** at www.carnegiehall.org or at www.livenation.com. As I viewed the seating chart online at www.Carnegiehall.org, a month ago, seats for **KAAS CHANTE PIAF** were selling quickly.

The endeavor by **PATRICIA KAAS** of **KAAS CHANTE PIAF** is a wonderful challenge. **EDITH PIAF's** discography is still available, including a wonderful ten-disc set issued by Capitol Records in 1993, abridged in a two-set version that same year. Other noted and talented singers - - including **ELAINE PAIGE**, **RAQUEL BITTON**, and **MIREILLE MATHIEU** - - moreover, have released entire albums devoted to re-creating and interpreting the best of **EDITH PIAF's** ballads and songs. **PATRICIA KAAS** has the unique blend of voice, talent, and experience with the pop, blues, jazz, and cabaret styles to make her version of Piaf memorable.

Clips of **KAAS CHANTE PIAF** are already available at www.youtube.com, and the album by Ms. Kaas of **KAAS CHANTE PIAF** will be released in New York in early November, just before the **CARNEGIE HALL** concert of November 20, 2012.

More about PATRICIA KAAS

In 2002, **Patricia Kaas** landed her first major film role, as an actress, acting under the direction of Claude Lelouch, "*And now... Ladies & Gentlemen*," also starring actor **Jeremy Irons**.

In 2008, after selling over 16 million albums in more than 47 countries, **PATRICIA KAAS** created *Kabaret*, a show that is her personal and passionate tribute to the 1930s. It was more than just a performance tour; it was a treasure trove of beloved songs, a collection of this great artist's most famous titles. With more than 20 songs, *Kabaret* was the most successful and elegant variety show **Kaas** ever performed. An extraordinary journey through 1930's cabaret, the show was performed 145 times in 35 countries over two years. The *Kabaret* album sold over 800 000 copies worldwide. **Patricia Kaas** is considered as a

Continued on Page 14



Singer Elizabeth Randel



Kaas Chante Piaf - Kaas Sings Piaf



Singer Patricia Kaas

Culture Corner

Continued From Page 13

popular singer in Russia, France, Germany, Switzerland, and Belgium, and the European ARTE television channel recently did a film devoted to her continuing life and talent.

In the United States, **Kaas** has twice filled the Beacon Theatre on Manhattan's Upper West Side twice, with her personal repertoire. In 2011, **Kaas'** autobiography "*L'Ombre de ma Voix*" (The Shadow of My Voice) was published in March by Flammarion. This bestseller is sold throughout Europe, and has already been translated into more than 6 languages.

PATRICIA KAAS, in 2012, played the magnificent role of a woman wounded by life for the television production "*Assassinée*" ("Murdered"), by Thierry Binisti. In 2012-2013, **KAAS CHANTE PIAF** will tour 45 countries to celebrate worldwide the 50th anniversary of the death of **Edith Piaf**.

ABEL KORZENIOWSKI

Working with **PATRICIA KAAS** on **KAAS CHANTE PIAF** is the talented **ABEL KORZENIOWSKI**, a fast-rising talent in film music today. Golden Globe nominee composer **Abel Korzeniowski** has impressed the Hollywood community with his passionate, evocative and original music. **Abel Korzeniowski's** music inspired fashion leader turned film director Tom Ford to collaborate with him on Ford's debut "*A Single Man*," starring Colin Firth. Born in Cracow, Poland's cultural (not political) capital, **Abel Korzeniowski** graduated from the prestigious Cracow Music Academy, completing his masters in the study of cello and also in composition. His studies were under the close direction of famed composer **Christopher Penderecki**.

While in Poland, **Abel Korzeniowski** composed music for various avenues including theater, film, and live symphony orchestra. His most interesting endeavor was a live to film commissioned performance of his newly written score to Fritz Lang's *Metropolis*. In 2006, **Abel Korzeniowski** moved from Cracow, Poland, to Los Angeles, California, to begin work on the George Clooney, Peter Berg, and Steven Soderberg produced picture "*PU-239*." The film was inspired by a Ken Kalfus's short story and was written/directed by Scott Z. Burns. Since then **Abel Korzeniowski** has composed and collaborated on the following films: *30 Days of Night*, *Battle For Terra*, *What We Take From Each Other*, *Tickling Leo*, *Confessions Of A Go-Go Girl*, *Copernicus' Star*, *A Single Man*, and Madonna's directed *W.E.*



Composer Abel Korzeniowski

Fifty Years of Family Court

Continued From Page 7

for children only began to come into the American Law in the late 19th century.⁸ Prior to that time, there were no children's rights in family law, no protections against abuse, no juvenile justice system. Laws have clearly altered the way children are treated in our society. More laws still be need to be written – as children still need protection.

In 1871, Alabama is the very first state to rescind the legal right of men to beat their wives, eleven years later in 1882, Maryland becomes the first state to pass a law that makes wife beating a crime punishable by 40 lashes or a year in jail. Advancements are not all in one direction — in 1886, North Carolina declares that a criminal indictment cannot be brought against a husband unless the battery is so great so as to result in permanent injury, endangering the life of the wife, or is malicious beyond all reasonable bounds.⁹

Back in England, Queen Victoria, ascends the throne,¹⁰ on June 20, 1837, and reforms for women flourish. A new era begins, as life threatening beatings are considered grounds for divorce and wives and daughters can no longer be sold into prostitution. As Dickens begins firing up the pens in full force, back here in New York, in 1824, the House of Refuge for children is giving indeterminate sentences in effect until age 21, the Women's Suffragette Convention takes place upstate in Seneca Falls in 1848,¹¹ and a Juvenile asylum to house impoverished and neglected children is begun. In 1853 the Children's Aid Society is founded to "rescue" immigrant children from the streets and poor houses. 1865 brings the "Disorderly child's act", which focuses more on the child committing the act, rather than the act itself. In effect, this is the first Person In Need of Supervision¹² (PINS- Article 7 of the current Family Court act) act in New York State. Soon after, in 1877, the State Legislature enacts the "Act for protecting Children," in effect the first child protective proceeding, what we would now consider to be Article 10 of the Family Court Act.¹³

In 1881, child neglect, juvenile delinquency and adoptions were all held in criminal court.¹⁴ The case loads were increasing, as were the development of the social sciences and a discussion began as to whether holding these proceedings in a criminal court was appropriate. In 1901, the city of Chicago created the first juvenile court in the United States. About this same time, New York segregated juvenile cases into separate parts — but

still not in a court dedicated to children. In 1919, women are allowed to vote.¹⁵ By 1922, New York State created a separate children's court which develops the ideas of confidentiality, privacy of proceedings and the disuse of due process standards.

There are problems: split jurisdiction, absence of legal representation, a problem we will remember was shared across the Atlantic by Oliver Twist, and procedural anarchy.¹⁶

Through the 1950's and 60's tremendous change occurs throughout the United States as a result of the civil rights movement. The Feminine Mystique is published in 1963 by Betty Friedan.¹⁷ This begins a discussion. An important participant in that discussion is Gloria Steinem, who fires up her ballpoint pen and writes, "After Black Power, Women's Liberation,"¹⁸ in 1969, launching a 20th century shot heard round the world. As Dickens' quill pen had attracted a worldwide audience as he suggested change because the law was an ass..... Steinem's ball point pen, over one hundred years later, declared the time had now come for the law to cease to be an ass. Ms. Steinem, unlike Mr. Dickens, doesn't hide behind fictional characters to deliver the message. The jury may still be out as to whether the law is an ass – but Family Court is the result of a century of people working on both sides of the Atlantic to accord respect to the law by having it provide justice for all, for once and for all, to all—including women and children.

Interestingly, the Family Court, still today, is often referred to in the popular literature as the stepchild of the system rather than the jewel in the crown, to defend against the accusation that the law is an ass. It was former Chief Judge of the New York State Court of Appeals, Sol Wachtler, who publicly described Family Court as the stepchild of the New York State court system about twenty five years ago.¹⁹

More recently, in an interview in 2011, the Commissioner of the New York City Administration for Children's Services, Ronald Richter, himself a former Judge of the Queens Family Court, said that the Family Court:

*"is the most interesting Court in New York....I don't see the Family Court as the stepchild of the court system....The more that we can have the people involved in the practice of Family Court start to experience it as the critical place it is, the less we will experience ourselves as any kind of stepchild."*²⁰

Over the past 50 years, Family Court has morphed again and again to accommodate and accord respect to the many changes in American society. Family Court is the best evidence of the ability of the American Judicial system to adapt and change to reflect changing societal norms and to continue to provide for the protec-

tion of women and children in a changing world. Mr. Dickens would be proud.

NEXT: The story continues, Family Court opens, children get counsel and the search for a building to house the Queens Family Court begins.....

Meryl Kovit regularly practices before the Family Court. She wants to thank Briana Hart and Julia Gonikman, Stony Brook University students, for their help in researching this article.

FOOTNOTES

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Centralized Motion Part Rules

Continued From Page 1

ule in the following situations:

- Any application noticed for a holiday
- Any application noticed for a Saturday or a Sunday
- Any application filed untimely as mentioned above in #5
- Any application involving the City of New York, where the city is represented by Corporation Counsel, which is noticed for a day other than Tuesday or Wednesday.

7. Should the court administratively

reschedule, the movant will be responsible for notifying all parties of the administratively rescheduled date which can be ascertained at the e-court's web site at <http://iapps.courts.state.ny.us/webcivil/courtsMain>.

8. **Mandatory appearance** will be required for an Order to Show Cause, Writ of Habeas Corpus or any application seeking discovery or to vacate a note of issue. The Court directs that any attorney appearing on a case for any purpose MUST be familiar with the case, prepared and authorized to resolve any and all issues. On the return date, any application seeking discovery will be conferenced with the expectation that the issues will be resolved by stipulation. All stipulations must indicate that the motion, and where appropriate the cross-motion, is/are being withdrawn pursuant to the

stipulation and must be signed by the attorneys appearing at the calendar call.

9. A stipulation withdrawing an application and resolving all issues can be submitted on the morning of the return date in the CMP office, room 24A, or prior to the call of the calendar in Courtroom 25 and may be filed by Calendar Service.

10. The answering papers on a substantive motion, including cross-motions, affirmations in opposition and reply affirmations, will be accepted on the morning of the return date in the CMP office, room 24A, or at the call of the calendar and may be filed by Calendar Service.

11. The court will entertain an application for an adjournment on any substantive

motion, only, at the call of the calendar and will not be entertained by mail, fax or by telephone. Only one adjournment will be permitted issuing specific dates on which all responsive papers are to be served.

12. On any application subject to e-file, the working copy will be required. In such events, per rule, each working copy will include, firmly affixed thereto, a copy of the confirmation notice received from the NYSCEF site upon the electronic filing of such documents. A party that has opted out of participation in e-file will file documents in hard copy which will include, on a separate page firmly affixed thereto, the "NOTICE OF HARD COPY SUBMISSION-E-FILED CASE" form, which can be found on the NYSCEF site at <https://iapps.courts.state.ny.us/nyscef/forms/EFM-3.pdf>.

New Centralized Motion Part

Continued From Page 1

Tuesdays and Wednesdays. Other than this, you no longer have to notice any particular Justice's motion on any one particular day.

The new CMP will go into effect for motions noticed for or after October 1, 2012. The motions are to still be made returnable before the IA Justice but must be addressed to the Centralized Motion Part, Court Room 25, 718-298-1728. There is a thought that there might be instances where cases noticed for late September before the individual IA Justices' respective parts might be administratively adjourned to CMP. As you may or may not receive notice of such an

adjournment it is urged that you check the court's calendar the day prior, or the day of your motion to make sure you are in the right part. The motions presently returnable before individual IA Justices will stay with those Justices and will be called in their respective parts until resolved and/or submitted.

The court encourages the parties to resolve cases by stipulation and will make room 24 available for submission of stipulations throughout the day prior to the calendar call. Stipulations submitted earlier than the calendar call will not be "So Ordered."

Requests for adjournments must be made in person.

While CMP is a "submission" part for substantive motions, this does not necessarily mean that you should not appear on the return date of your motion. This is especially so in the event that you do not have opposition papers by the return date

due to short service. In such an event, the court personnel will grant one, relatively, moderate adjournment.

As of the end of the seminar, there was still some discussion as to the time that a TRO would expire (i.e., the date it is submitted in CMP, the date that a hearing is held before the IA Justice, etc.). While a final determination, at least as of the time that the seminar ended, was not made, it was discussed that it might very well be that the TRO will be immediately routed to the IA Justice on the date that it is submitted in CMP.

With respect to discovery motions, they are expected to be resolved by way of stipulation. You may agree to have a determination made by one of the referees assigned to the part. It also seemed like you may request the matter be referred to the IA Justice. Finally, for those having withdrawal symptoms, it appears that telephone conferences may still be avail-

able/conducted by Justice Ritholtz.

As noted above, CMP remains a work in progress and it might very well be that changes are made before this article sees the light of day. While I do not suggest that I speak for them, I am sure that the Referees Lee Florio, Kerian Finnegan and Anna Grimaldi, as well as other court personnel associated with the day to day operation of the part, would appreciate your courtesy, cooperation and patience as we all try to get the part up and running.

Please feel free to drop me a line or grab me in court if you have any suggestions or comments for improving the way CMP is being administrated.

Editor's Note: Joseph Carola, III is the Vice President of the Queens County Bar Association and Co-Chair of its Supreme Court Committee.



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