



ESTATES UPDATE

by David Adler

The year in Trusts and Estates was highlighted by expanded fiduciary obligations and options, prospective inheritance rights of posthumously conceived children, and ongoing state estate tax rule changes

DISCLAIMER

One of the more effective post death planning techniques consist of one's right to disclaim or renounce their inherited testate or intestate share. Said renunciation, having Federal and State implications, is codified in New York State at EPTL§ 2-1.11. All traditional facets of the statute remain in effect-the renunciation must be in writing, signed and acknowledged by the person renouncing, duly served and filed, accompanied by an Affidavit that no consideration was received for said renunciation, and effected within (9) nine months after the date of disposition. The net effect of a renunciation is that the property passes as if the renouncing party predeceased, essentially bypassing him or her.

A renunciation may be made by, among others, the personal representative of a decedent, but historically only with Court authorization. As of late last year, the requirement of prior Court approval was eliminated. As such, a fiduciary may unilaterally renounce, subject to the other parameters of the statute.

INTEREST ON LEGACIES

Traditionally, interest payable on delayed testamentary pecuniary legacies (unless the will provided otherwise) was at the rate of 6%. Further, said interest charge was only payable if the beneficiary made a demand for the interest before initiating a judicial proceeding. This is referenced in EPTL§ 11-1.5.(c)(d)

Said law has now been amended to make interest automatically payable on a pecuniary legacy unpaid within (7) seven months from the issuance of letters. Yet, the interest charge will now be tied to the federal funds rate, not set at a fixed 6%.



That is a legislative acknowledgement of current market conditions, and the reality of fluctuating rates. The Court retains authority to disallow interest and, levy surcharge. The application of this law, enacted late last year, and yet to be more formally qualified by judicial scrutiny, targets the removal of a fixed 6% interest rate, and the removal of the requirement of beneficiary demand for said interest.

INHERITANCE BY POSTHUMOUSLY CONCEIVED CHILDREN

Traditionally, pursuant to EPTL§ 4-1.1, distributee children maintain the right to inherit only if natural, conceived before the decedent's death and born alive thereafter, or if adopted. The possibility of a child being conceived after the death of his genetic parents was not anticipated by this statute. As a result of certain scientific advances, this option is now a reality. It has been addressed by new statute EPTL § 4-1.3, which incorporates new definitions of terms genetic parent, genetic material, and genetic child. These (3) three new terms are geared to the acknowledgement of an individual providing physical specimens that will be subsequently used to "conceive a child after the death of the man or the woman".

Further, beyond the new statutory definitions, there are (4) four conditions that must be met in order to qualify a genetic child for inheritance purposes, as noted in EPTL§ 4-1.3 (b) (1) (2) (3) (4). They are briefly summarized, as follows:

Continued on page 6

THE SUPREME COURT MOVES LEFT AS THE CONSERVATIVE COALITION WEAKENS

By Spiros Tsimbinos

Supreme Court Analyst Adam Liptak in his article in the New York Times of July 1, 2015 at page A1, concludes "overall the story of the last nine months at the Supreme Court was of leftward movement." Several other analysts in reviewing the most recent term arrived at the same conclusion. In Mr. Liptak's article, he quotes, among others, Lisa S. Blatt, who has argued more than thirty cases in the Supreme Court and studied its work for two decades, who stated "it's clearly the most liberal term I have seen since I have been watching the Court." My own analysis confirms the Court's movement to the left.



The movement leftward can be largely attributed to three significant developments; the movement of Chief Justice Roberts to the liberal group on several more occasions than he has in the past; the significant increase in the number of times Justice Kennedy has joined his liberal colleagues; and the cohesive coalition of the four liberal members who voted together almost all of the time.

When former President Bush selected Chief Justice Roberts and Justice Alito to fill vacancies on the Court, conservatives were elated and assumed that along with the votes of Justices Scalia and Thomas and the frequent support of Justice Kennedy, a conservative majority would control the Court for many years. A key factor in this analysis was that Chief Justice Roberts and Justice Alito would usually vote together. In fact, in the first few years as colleagues on the Court (Chief Justice Roberts took office in 2005 and Justice Alito in 2006), the two judges often voted together and the Court was described as having conservative leanings based upon the Roberts-Alito partnership and the expected support of Justices Scalia and Thomas. During the 2010-2011 term

Continued on page 6

Table of Contents

Estates Update and Supreme Court Moves Left	1
Docket, QCBA Board, New Members, Necrology	2
President's Message	4
Editor's Note	5
The Social Media Factor and the Legal Profession	7
Eulogy for Peter Cooperman	9,11
Golf & Tennis Outing 9-21-15	17
Annual Dinner & Installation of Officers 5.7.15	12, 13
When Your Client Pleads Not Guilty	14, 15
ABA Annual Meeting 2015	16
Classified Advertisements	19



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

CLE Seminar & Event Listing

October 2015

Wednesday, October 7	Creating Sanity & Balance in Your Everyday Practice: You Have the Power!
Monday, October 12	Columbus Day – Office Closed
Thursday, October 15	MHL Article 81 Guardianships, Advanced Issues – Pt 1
Thursday, October 22	MHL Article 81 Guardianships, Advanced Issues – Pt 2
Tuesday, October 27	Recent Significant Decisions & Developments from our Highest Appellate Courts
Wednesday, October 28	Pro Bono Recognition Night

November 2015

Tuesday, November 3	Election Day – Office Closed
Wednesday, November 11	Veteran's Day – Office Closed
Wednesday, November 18	Landlord/Tenant Seminar
Thursday, November 19	How to Start a Law Practice
Thursday, November 26	Thanksgiving Day – Office Closed
Friday, November 27	Thanksgiving Holiday – Office Closed

December 2015

Thursday, December 10	Holiday Party - Douglaston Manor
Friday, December 25	Christmas Day – Office Closed

January 2016

Friday, January 1	New Year's Day – Office Closed
-------------------	--------------------------------

SAVE THE DATE

April 20, 2016	Equitable Distribution Update
May 5, 2016	Annual Dinner & Installation of Officers

2015-2016 Officers and Board of Managers of the Queens County Bar Association

President - Paul E. Kerson
 President-Elect - Gregory J. Brown
 Vice President - Gregory J. Newman
 Secretary - Hilary Gingold
 Treasurer - Richard H. Lazarus

Class of 2016

Michael D. Abneri
 Frank Bruno, Jr.
 Marie-Eleana First
 Charles A. Giudice
 Joseph Risi

Class of 2017

Joseph F. DeFelice
 Adam M. Orlow
 Paula Pavlides
 Lourdes M. Ventura
 Clifford M. Welden

Class of 2018

Karina E. Alomar
 Joseph Carola III
 Deborah M. Garibaldi
 Jeffrey D. Lebowitz
 Michael Serres

Arthur N. Terranova . . . Executive Director
Queens Bar Bulletin
EDITOR

Charles A Guidice

Associate Editors

Gary C. Di Leonardo, Stephen D. Fink,
 Richard N. Golden

New Members

Michael M. Atzlan	Mary M. Holupka	Arlene Joan Rodriguez
Kyung Auh	Catherine Jones-Hankins	Israel Root
Sarah Tadros Awad	Michael Ira Josephs	Joseph H. Rotkowitz
Jaime M. Bello-Casais	James S. Kaplan	Matthew Sakkas
Durga Prasad Bhurtel	Stewart Lee Karlin	Bulban T. Salim
Joseph A. Brintle	Richard E. Lerner	Thomas J. Solomon
Johan P. Byssainthe	Barbara Lew	Patricia Sotirakis
Jihyun Choi	Jacob A. Malafsky	Alina Vengerov
Gina M. Ciorciari	Bernard R. Mazaheri	Duane O. Warner
Troy Patrick Cunningham	Nathan Landon Mendenhall	Zachary Withers
Dennis F. Dowd	Wayne F. Morgan	Xing Zhou
Irina Dularidze	Maurice E. Muir	Alexander J. Zimmer
Matthew A. Funk	Kim Q. Nguyen	Chaim C. Zlotowitz
Theodore Geiger	Steven Oh	Yin Zong
Alyssa Gillespie	John G. Papadopoulos	
Marissa Goldfaden	Lesa G. Pascal	
Maricel Gonzalez	Eric B. Perlmutter	
Joseph Greenberg	Martin A. Pollak	
Gabrielle Guzman	Aditi Puri	
Peter Hanschke	Humayun K. Rahman	
Evan M. Hess	Yanfei Ran	

Necrology

Burton J. Apat	Joyce D. Ringe
Jerome Cooper	Michael J. Wynne
Hon. Edwin Kassoff	Donald J. Zimmer
Jose A. Pinto	

QUEENS COUNTY BAR ASSOCIATION SCHOLARSHIP FUND

Dear Member:

The Queens County Bar Association's Scholarship Fund was created in 2005 to offer financial assistance to law students who are residents of Queens County or who attend law school in Queens County.

The recipients of the QCBA Scholarship are carefully chosen based on academic achievement, community service and/or service to the Bar and financial need and is awarded at the Annual Dinner in May.

I know that times are hard, but I would hope that you could donate to this worthwhile purpose and your tax deductible donation (of any amount) will help to support and recognize a deserving law student(s). The assistance we provide to the future lawyers, many of whom are struggling with enormous debt, also enhances the good name of our Association.

As President of the Queens County Bar Association, I thank you for your support of this valuable community-based program.

Sincerely,
 Paul E. Kerson
 President

Please make check payable to:
Queens County Bar Association Fund
 (all donations are tax deductible.)

For the 5th year in a row, NAM was voted the #1 ADR firm.

8 of NAM's Mediators voted in the top 10 "Best Overall Mediator" category. 7 of NAM's Arbitrators voted in the top 10 "Best Overall Arbitrator" category.



Robert Adams, Esq.
*Former Senior V.P. Risk Management,
Tishman Construction Corp, NYC*
✓ Best Individual Mediator



Hon. Elizabeth Bonina
Former Justice of the Supreme Court
✓ Best Individual Mediator
✓ Best Individual Arbitrator



Richard Byrne, Esq.
*Co-Managing Partner, L'Abbate, Balkan,
Colavita & Contini, L.L.P.*
✓ Best Individual Mediator



Hon. John P. DiBlasi
*Former Justice of the Commercial
Division of the Supreme Court*
✓ Best Individual Mediator



Hon. Robert W. Doyle
*Former Justice, Appellate Term, 9th & 10th
Judicial District, Supreme Court,
2nd Judicial Dept.*
✓ Best Individual Arbitrator



Joseph L. Ehrlich, Esq.
Hearing Officer
✓ Best Individual Mediator



Lawrence S. Farbman, Esq.
*Former Principal Law Clerk to Hon. Lally,
Hon. Levitt, Hon. Widlitz, Supreme Court*
✓ Best Individual Arbitrator



Hon. Jerome Gorski
*Former Assoc. Justice, Appellate
Division, 4th Dept.*
✓ Best Individual Arbitrator



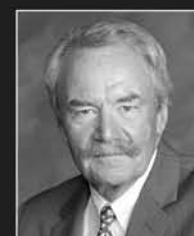
Kenneth Grundstein, Esq.
Former NYC Chief Settlement Negotiator
✓ Best Individual Mediator



Susan Hernandez, Esq.
*Former Chief of Staff to Presiding Justice
Appellate Division, 1st. Dept., Mediator,
Bronx County*
✓ Best Individual Mediator



Howard Kaplan, Esq.
Hearing Officer
✓ Best Individual Arbitrator



Hon. E. Michael Kavanagh
*Associate Justice, Appellate Division,
1st and 3rd Departments*
✓ Best Individual Arbitrator



Peter J. Merani, Esq.
Hearing Officer
✓ Best Individual Mediator



Hon. Ira B. Warshawsky
*Of counsel- Meyer, Suozzi, English &
Klein, P.C., Fmr. Justice of the Supreme
Court, Nassau Co. -Commercial Division*
✓ Best Individual Arbitrator



PRESIDENT'S MESSAGE

As a tourist on foot this summer in Washington, DC, I came upon the New York Avenue Presbyterian Church. Tourist signage pointed out that President Abraham Lincoln prayed at this Church regularly during the Civil War of 1861-1865, and that his pew was preserved.

The Church was vacant save for one Caretaker. He graciously unlocked the Sanctuary and let me sit in President Lincoln's pew and take photographs. They are reproduced here so the reader can feel in his or her heart what President Lincoln must have felt when he sat in this pew praying for Guidance.



President Lincoln's pew at NY Avenue Presbyterian Church in Washington. His pew is darker because the Church has been remodeled several times since 1876.

I sat in President Lincoln's pew for good long while. I broke into tears.

Descendants of the slaves President Lincoln freed made their way from the

South to Queens County, New York in the century following the Civil War to join the then-small African-American community already here. What would President Lincoln think if he knew that six generations later the descendants of their descendants were incarcerated in even more brutal conditions in places called the Prison Barge, Rikers Island, Dannemora, Sing Sing, Attica and Green Haven, New York?

I have seen the wounds from their beatings and stabbings with my own eyes while practicing law in our Queens County courthouses all these last 38 years.

As I sat alone in President Lincoln's pew in the New York Avenue Presbyterian Church in Washington, DC this past summer, the bloody bandages, the long scars on arms and legs, the vacant stares from repeated head traumas – they all came back to me one by one by one. This was 150 years after President Lincoln thought he freed the slaves.

Also this summer, I was honored to attend the Brandeis, Queens County Women's Bar and Latino Lawyers Boat Ride. It is no accident that these three Bar groups joined together for this event. We set sail at the World's Fair



Marina in Flushing Meadows – Corona Park and journeyed down the East River, under the Triborough (RFK), Queensborough, Williamsburg, Manhattan and Brooklyn Bridges to the Statue of Liberty.

When the Queens County Bar Association was founded in 1876, the Statue of Liberty had not yet been built, and today's Members of Brandeis, the Queens County Women's Bar and the Latino Lawyers would not have been welcome as members. In that sense, we have come a long way.

But not long enough. As we were sailing down the East River we passed Rikers Island on one shore and the Prison Barge on the other. We rode by them slowly. I was standing next to an African-American member of the Queens County Women's Bar. She had a long, sad look on her face as she stared at the Prison Barge. She looked to me as if in physical pain.

"That," she said, "is a slave ship."

And so it is. The Spirit of President Lincoln is talking to me now. He has been rolling around in my head since I sat in his pew this past summer.

"Hey there, you 21st century Bar Association President with all your new fangled gadgetry – i-phones, e-mails, Google any fact at any time – WHAT



This is the hitching post on NY Avenue outside the Church where President Lincoln hitched his horse after riding over from the White House a few blocks away. Note the plaque affixed to the post.

ARE YOU PLANNING TO DO ABOUT THE SLAVE SHIP IN YOUR MIDST? I did what I could in my time. What are you planning to do in your time? I thought by now you would have completed what I thought I was doing for you. I thought I was building the foundation for a better United States. How dare you tolerate a Slave Ship in your City?"

You will please call me right away and join our brand new Advocates for Prisoners Committee. The Spirit of President Lincoln requires your active participation in carrying out his Objectives, albeit 150 years late. Better late than never.

Paul Kerson, PRESIDENT

About the Publisher

QUEENS LEDGER | BROOKLYN STAR NEWSPAPER GROUP

Weekly Newspapers
It's Queens The Magazine
Websites
Blogs
Social Media
Email
SEO



718.426.7200

ADS@QueensLedger.com

John@QueensLedger.com

www.queensledger.com

EDITOR'S NOTE

By Charles A. Giudice*

"A good newspaper is a nation talking to itself." - Arthur Miller.

In almost ten years as Editor of the *Queens Bar Bulletin*, Paul E. Kerson Esq. provoked many conversations within the micro-nation that is the Queens County Bar Association. He traveled far and wide in search of our city's and our association's history, and never shied away from taking a stance. He reached out to practitioners in diverse fields to increase the perspectives and expertise featured in our newspaper.

Now, Mr. Kerson is president of our association, and cannot continue as editor. He has promised to remain involved, and his President's Message this month should certainly provoke conversation.

I'm his replacement for one of the following reasons: My previous experience, pre-law-school, of writing for newspapers, my writing ability or the fact that my office is located in the Bar Association building (with the Queens Volunteer Lawyers' Project) and I was willing to take on the job. Perhaps it is a little of each.

As the new editor of the *Queens Bar Bulletin*, I hope to build on the good work that has already been done. This edition shows some of our best – updates at the state and federal levels, in-depth case studies, practical advice, updates on fellow members and on the activities of our bar association. Our subject matter updates, like the Estates Update we are featuring this month, are invaluable for practitioners in Queens courts.

We have an agreement in principle with BQE media to print the Queens Bar Bulletin for the 2015 – 2016 term. They'll also make an electronic version available to be published on the QCBA website. Our members have demonstrated a clear preference for a printed bar bulletin over an electronic one. I'm firmly in that camp. Holding a newspaper is holding a piece of history. It may be a small piece, but it's a part

of the permanent record. I'm grateful to the officers and members of the Board of Managers who worked to restore this benefit of membership.

Writing for the *Queens Bar Bulletin* is also one of the benefits of membership in our association. Writers get their names known in our association for a good reason, and have something to talk about when meeting new people at one of our networking events. It's something to feature on a resume or C.V., or to talk about in a job interview.

Our association is growing. We have many new members, and several new active committees that have joined our already impressive list of active committees. In the coming months, I hope to continue featuring content from our long-term contributors while bringing new writers into the fold.

If you are knowledgeable, passionate about or even interested in a subject, why not try writing an article? Were you present at an award ceremony or an affinity bar event? Does the rest of the association know what your committee has been doing lately? Are you aware of a legal development elsewhere that impacts us here in Queens?

Do you agree or disagree with something you have read in these pages? Are you not seeing something you would like to see in these pages? Do you want to try your hand at writing something other than a litigation document? Are you

looking for a way to get more involved in your bar association?

The main function of a bar association in a state where membership is optional is to foster discussion among members.

This is our newspaper – our conversation among ourselves. Let it reflect who we are – all of us.

I welcome anyone with questions, suggestions, or who would like a little guidance or feedback on writing an article for us. You can reach me by email at cgiudice@qcba.org.

* Charles A. Giudice is a staff attorney at the Queens Volunteer Lawyers' Project and a member of the Queens County Bar Association Board of Managers Class of 2016.

THE LAW OFFICE OF *Bonnie Lawston*

EXCLUSIVE FOCUS ON PROBATE, ESTATES & TRUSTS
20+ YEARS OF EXPERIENCE



Whether you are a fiduciary or beneficiary, we can help you!

We make the job of Executor for an Estate easy for you.

We make the job of Administrator for an Administration estate easy for you.

NY ESTATE ATTORNEY

OUT OF STATE FIDUCIARY / HEIR ATTORNEY

Serving Nassau and Suffolk

ALL TYPES OF ESTATES & ANCILLARY PROCEEDINGS

Have you lost a loved one who lived in New York or had assets in New York, but you live out of New York? We can help you serve the estate and maximize your inheritance. Avoid pitfalls that estates fall into and take advantage of the tax laws and applications that will maximize your estate! We represent clients nationwide. If you are a fiduciary (executor, administrator, or trustee) an heir or beneficiary of a New York estate. If the decedent died in New York or has assets in New York State, we can help you. If you are chosen to represent the estate or if you are receiving an inheritance from a New York estate, contact our law firm today. *Deferred retainers available*

631.425.7299 | 1841 New York Ave. Huntington station 11746 | www.liestateattorney.com

Estate Update: continued from p.1

1) A writing signed not more than (7) seven years before the parent's death, must expressly consent to the use of genetic material for posthumous reproduction, and designate a person to decide how said genetic material is to be used.

2) The designated representative, noted above, must within (7) seven months of the issuance of letters (testamentary or administration), give notice of the existence of genetic material to the fiduciary of the genetic parent's estate.

3) The designated representative, noted above, must record the above referenced writing in Surrogate's Court within (7) seven months of the issuance of letters.

4) The genetic child must be in utero within 24 months or actually born within 33 months of the genetic parent's death

In the event that the definitions are properly applied and all conditions satisfied (writing, notice, filing, timing), said child will qualify as a distributee of the

genetic parent for all inheritance and succession purposes, including class gifts. The statute further contains a printed form reflecting and satisfying the writing requirement. This statute, highly controversial for a variety of reasons, was enacted in late November last year, and also awaits the test of judicial scrutiny

NEW YORK ESTATE TAXATION

Again, as will be the case until 2019, the basic New York exclusion amount (amount exempt from any tax) changed during the year. Until March 31, 2015, it was \$2,062,500; from April 1, 2015 to March 31, 2016 it is \$3,125,000; and as of April 1, 2016 it increases to \$4,187,500. These threshold numbers provide exemption from tax for any taxable estate beneath them. Yet, any taxable estate exceeding the exclusion amount, maintains estate tax consequences. Further, any taxable estate greater than 5% of the threshold amount is fully subject to estate taxation, with no credit whatsoever allowed.

Kindly bear in mind that the federal concept of portability still does not apply to New York State.

As such, the surviving spouse may not automatically acquire the first spouse to die's unused exclusion amount, (by election on a federal return). That may still be accomplished by utilization of the credit shelter trust.

QUEENS COUNTY

Our seminar last year focused on the Role of the Fiduciary in Estate Proceedings and incorporated a discussion of fiduciary duties, fiduciary powers, the Prudent Investor Rule, the role of the Public Administrator, and special problems fiduciaries face. We thank moderator and Surrogate Peter J. Kelly, and speakers Public Administrator Lois Rosenblatt, Scott G. Kaufman, Esq. and Gerard J. Sweeney, Esq., for their outstanding efforts and presentations.

Further, our Spring meeting included an update by Surrogate Kelly on the State of the Court, and a presentation by Louis M. Laurino, Esq. regarding the changing parameters of SCPA 1404 examinations. Wishing you all a happy and healthy year!

The Supreme Court Moves Left... Continued from p.1

for example, Chief Justice Roberts and Justice Alito voted together 96% of the time. In the 2011-2012 term, it was 90% of the time. The partnership helped to insure important conservative victories, such as, the decision on campaign financing in the Citizens United case. A recent survey by the New York Times based on an analysis of data from the Supreme Court Data Base published June 26, 2015, at page 13A indicated that the most conservative term of the Court since the Warren era occurred in 2008.

Beginning with the 2012-2013 term, however, Justice Roberts began to move more toward the middle of the Court and during that term the two Justices voted together only about 79% of the time with Justice Alito remaining firmly in the conservative camp. During the term which just ended, Chief Justice Roberts once again voted to uphold the Obama Healthcare Law and joined liberal members of the Court in several other cases. His record of voting together with Justice Alito was 84% with regard to the nineteen major cases I reviewed. On the conservative side, the strongest alliance this year was between Justice Alito and Justice Thomas who voted together 89% of the time.

Although Chief Justice Roberts continues to vote with the conservative group on several key cases, "the lean leftward" can largely be attributed to his movement to the center and his vote with the liberal block on several occasions this year, more so than in the past. The lean leftward was also accelerated by a more significant movement to the left by Justice Kennedy who this term voted more with the liberal block than with the conservative group. According to the article written by Adam Liptak, Justice Kennedy in thirteen controversial decisions involving 5-4 votes voted with the liberal group eight times and with the conservative block 5 times. In prior terms he had usually joined the conservative block approximately two-thirds of the time. My own analysis found that Justice Kennedy voted with Justice Kagan fourteen out of the nineteen major cases I reviewed or 73% of the time and thirteen times with Justice Ginsburg, or 68%.

As the conservative alliance between Chief Justice Roberts and Justice Alito weakened and Justice Scalia occasionally abandoned the conservative group to vote for the defense, the liberal group alliance of Justices Ginsburg, Sotomayor, Kagan and Breyer remained as strong as ever. Thus these Justices voted together in eighteen of the nineteen major decisions I reviewed or an astronomical 95% of the time. In the July 1, 2015 New York Times article by Adam Liptak, the author observed at pages A1 and A19:

"the stunning series of liberal decisions delivered by the Supreme Court this term was the product of discipline on the left side of the Court and disarray on the right. --- Many analysts credit the leadership of Justice Ruth Bader-Ginsburg, the

senior member of the liberal justices for leveraging their four votes. "We have made a concerted effort to speak with one voice in important cases." she said in an interview last year."

He further remarked at page A19, "The most interesting thing about this term is the acceleration of a long-term trend of disagreement among the Republican-appointed judges, while the Democratic-appointed judges continue to march in lock step, said Eric Posner, a law professor at the University of Chicago."

Although it is an often stated axiom that judges should be independent and should approach each case with an open mind and without any preconceived viewpoint, it is increasingly clear the four members of the liberal group have come to the Court with strongly held principles and ideological views with a purposeful intent to advance a particular agenda. Thus, the frank admission by Justice Ginsburg in the above cited interview "we have made a concerted effort to speak with one voice in important cases."

In addition, the four liberal Justices appear to be bound to the policies of and positions of the Presidents who appointed them. While Chief Justice Earl Warren issued many decisions which did not reflect the views of President Eisenhower who appointed him and Justice Kennedy has surely taken positions which would not be consistent with those of President Reagan who appointed him, the four liberal Justices have exhibited a strong allegiance to the policies and programs of the Presidents who appointed them. Thus, Justice Sotomayor and Kagan this term supported the positions of President Obama in every case in which the issue arose.

During this past term, while Chief Justice Roberts and Justice Kennedy voted with the liberal block on several occasions and even Justices Alito, Scalia and Thomas did so on some occasions, not once in the major decisions I reviewed, did a member of the liberal group vote with the conservatives.

Few people realize the critical importance the Supreme Court plays in American society. The term which ended resulted in a landmark decision and several very important rulings which will have a profound effect on the nation in the coming years. It also was a term in which the Court began moving toward a more liberal viewpoint on many social and political issues. A series of controversial issues continue to wait the Court's ruling as it opens its new term in October. Cases involving affirmative action, the meaning of one person one vote, abortion rights, religious freedoms, and additional death penalty issues are all on the Court's upcoming docket. Whether the Court continues its swing to the left or whether it will return to more conservative positions remains to be seen.

The Social Media Factor and the Legal Profession

by Kamilla Mishiyeva



It's 2015, and newly admitted attorneys are not just attorneys anymore. They must now be online marketers as well.

Lawyers looking to start off on their own right out of law school are in a financially tight position. Their budgets are currently locked in with office rent, malpractice insurance, professional clothing, and everyday expenses. Money for marketing can be scarce. This is what has been driving new lawyers to practice online marketing.

Two aspects that have become increasingly utilized with new lawyers are social media outlets and Search Engine Optimization (SEO). As most of us know, social media outlets refer to websites such as Facebook, LinkedIn, Reddit, YouTube, and Twitter.

SEO is the practice in which you rank yourself higher on search results for big name search engines like Google, Yahoo and Bing.

Lawyers today become active in the social media universe by blogging about their services and "friending" other lawyers and potential clients. Why? This method is a free way of getting your name known. Newly admitted attorneys who have taken the entrepreneurial route right out of law school are taking advantage of this medium. The simple truth is that everyone is using social media today - consumers, industry leaders, and legal professionals. The high usage of social media is also becoming a great supporting tool for SEO purposes.

A good SEO campaign is dependent on many factors, including an informative website that is also mobile friendly, unique and captivating content,

frequent blogging, and a strong presence on all of the social media outlets. Living in the highly competitive metropolitan area of New York City, I have found that many of the new attorneys I am acquainted with are constantly reading up on their practice areas (making them better lawyers) and researching the best way to create a strong online presence.

With social networking sites such as Avvo, Yelp, and Google+, it has become increasingly difficult to provide poor quality legal services and get away with it. Consumers are not afraid to give bad reviews and call attorneys out on poor performance. Social media will lead solo practitioners to accommodate all clients walking through their door in fear of receiving a bad review. This strengthens the quality of services provided to clients. Transparency will increase standards and promote better quality in customer service in the legal profession.

YOUR WEBSITE ON THE FIRST PAGE OF GOOGLE

\$150 / MONTH

CUSTOM WEBSITE DESIGN

SEO OPTIMIZATION

SOCIAL MEDIA MANAGEMENT

EMAIL MARKETING



QUEENS
LEDGER
BROOKLYN
STAR
NEWSPAPERS

718.639.7000

QUEENSLEDGER.COM



**Pro Bono
Recognition
Party**

**All pro bono volunteer lawyers for the
Queens Volunteer Lawyers Project
are invited for an evening of food and drinks
(no speechifying!)**

**Wednesday, October 28th, 6-9
at the Queens County Bar Association**

RSVP REQUIRED!

*Please RSVP by October 21st to
MWeliky@QCBA.org*



**Sponsored by
Deitz Court Reporting
&
PM Investigations**



EULOGY for Peter Cooperman, Esq.

by: Joram J. Aris, Esq.

The following impromptu eulogy, in sum & substance, was rendered by a fellow attorney, a litigator of 36 years' experience, and a friend of Peter Cooperman, Esq. before the decedent's congregation members; his wife, Stella Cooperman; his natural son from a prior marriage, Matthew Cooperman; his step-son through his marriage to Stella Cooperman, to wit: Kelly Tawfik. This impromptu eulogy was made in response to the President of the Congregation asking its members, after hearing from Peter Cooperman's wife, Stella, his niece and step-son, "Does anyone else want to say anything? Anyone?"

Please correct me if I am missing anyone or misstating anyone's name. Stella, I don't know Peter as well as you do. You're his wife. Matthew, I don't know Peter as well as you do. You're his son. Kelly, I don't know Peter as well as you do. You're his step-son. But also, you've been his right hand man in so many activities.

PETER COOPERMAN, ESQUIRE. Attorney AT law. Counselor OF law. OFFICER of the Court. Held to "A HIGHER STANDARD." All these titles and more represent different sets of obligations and responsibilities of a practicing attorney. And Peter Cooperman lived up to those obligations and responsibilities with aplomb. With a degree of high competence, capability and professionalism as befits the highest standards of the legal profession.

I know Peter Cooperman in this synagogue as a fellow attorney; and as a fellow litigator in the practice of law. It was a comfort to me and to us both to be able to discuss and review amongst ourselves the challenges and difficulties we met and worked hard to overcome, within the legitimate confines of legal practice. Between the two of us, Peter and I had in excess of over 70 years' experience in the practice of law. We were not competitors. We had our own, separate practices. But we shared similar problems and difficulties in the course of doing our utmost to properly and competently represent our respective clients, to the best of our abilities. And while there are many excellent practitioners of law, it must be said that Peter Cooperman was himself an excellent and highly competent practitioner of law.

Stella, Peter discussed with me over the past two months, the difficulties he was experiencing with a ... I was

about to say a crazy & difficult judge. But judges aren't crazy. They are merely imbued with the awesome responsibility and authority to render decisions and pronounce judgments, to the best of their abilities, as they see fit. Unfortunately, in too many instances, judges fail to appreciate the very real and difficult challenges which a practicing attorney invariably must confront and deal with in the normal course of the practice of law. Those challenges are a stressful reality of the practice of law. As the saying goes, "It comes with the territory."

I know that Peter felt enormously stressed by declarations and rulings rendered by a judge before whom he was practicing; and also by the unreasonable expectations and demands of his client. It was Peter Cooperman, Esq., attorney at law, who had to navigate through the demands of the Court and the demands of his client - while at all times, doing his utmost; doing his best, to properly and competently represent his client's interests within the bounds of the law.

In the military, it is a well-known fact that 80% of uniformed soldiers perform "support services" for the front line troops. And "the tip of the spear" soldiers, the U.S. Marines Corps. and the Special Forces, be they Delta Force, Green Berets, Seal Teams and the like are "the best of the best."

Well, Peter Cooperman was a trial attorney. A litigator. And in my opinion, amongst all the various and different categories and types of attorneys, it is the trial attorney, the litigating attorney who is "the best of the best." For my money, Peter Cooperman was and always shall be "the best of the best."

For it is the litigator who works in the trenches and stands between his Client and the forces that, all too often in the practice of a litigator, seek to deprive that Client of his or her Respect or Reputation or Business or Money or Life Savings or Child or Family or even the Freedom & Liberty of not being incarcerated behind bars. It is the litigator who stands in lieu of his Client; in place of his Client; in the stead of his Client before the Court & against either opposing attorneys or governmental agencies.

Stella, what I'm about to say is not about me. It's about Peter and what I think of him. In the Summer of 1973, before the October, 1973 Yom Kippur

War, I had concluded a year of study at York University, England. During the Winter of 1972/1973 I found myself spending about 10 days in Athens, Greece and about 3 weeks in Turkey. There was a right wing government in Turkey at that time. People were being shot, left and right, on the streets. The Greek government was more of a left wing government at that time. People in Greece "disappeared" and were never heard from again. It was the time of the Cold War; and the work and studies I did at that time involved the Cold War both in Europe and Middle East.

When I travelled to Greece and Turkey, no one was willing to talk to me about anything of deep substance. No one except attorneys. While travelling on ferries over the Bosphorous Straits of Istanbul, THE ONLY PEOPLE WHO HAD THE GUTS & COURAGE to speak with me WERE ATTORNEYS! The same held true in Greece. While travelling the ferries between the Greek islands, THE ONLY PEOPLE WHO HAD THE GUTS & COURAGE to speak with me WERE ATTORNEYS! I was so impressed by their courage; their decency; their inner strength & fortitude that allowed them to risk their very lives by speaking to me while laughing at the risks they faced in doing so; their highly tuned sense of self-respect and high honor that I decided that I too would become an attorney.

And with that in mind, I acknowledge and say that Peter Cooperman, trial attorney and litigator, had exactly those esteemed qualities of courage; decency; inner strength and fortitude with a highly developed sense of humor; self-respect and high honor - all of which made me privileged to have known Peter as a fellow attorney and as a friend.

I don't know any attorney who does not smile, or even laugh when "a lawyer joke" is said. But I've been practicing law for over 36 years now. And I can say to you..."GOD HELP YOU! if you need an attorney!" Because if it was "so simple" or "so easy", the client could and should do it himself or herself. If the end-result of "winning a money judgment" or having criminal charges "dismissed" was so self-apparent and clear - then the client should do it himself or herself.

But when a client comes to an attorney, if the attorney ultimately "takes the case", it's because the end-result, the sought for end-result, the money

judgment or the acquittal of criminal charges IS NOT "so simple; WAS NOT "so easy"; and certainly, the end result WAS NOT so self-apparent and clear.

For what purpose does a lawyer appear before any Court for a client? Certainly, not to lie. Not to misrepresent. Not to deceive. But rather, to present the facts & circumstances of the case in a manner and in a perspective that is most beneficial and appropriate to the client. And in doing so, the lawyer attempts to open the eyes of whomever presides over the case to see the facts & circumstances that had occurred in such a manner that is more attuned and closer to the truth of the matter, as perceived and understood by the lawyer's client.

It has been, quite properly and accurately said, that Peter had a highly tuned sense of humor. And he always had "a story to tell." Everyone who knew Peter smiles at the truth of this fact. But, as an attorney, I always saw Peter's stories differently. I saw Peter's stories as recollections of a colleague and from a fellow litigator and trial attorney.

All of Peter's stories were, in a sense, what we attorneys refer to as "war stories." Stella, I'm sure Peter never told you or revealed to you any confidences of any of his Clients. [Stella Cooperman nodded]. But I'm sure you knew, nonetheless, that Peter was coping and dealing with the difficulties; the quandaries; the ethical & moral problems he encountered in the practice of law.

A practitioner of law, like Peter Cooperman, always learns the truth sooner or later. A trial attorney or litigator, like Peter, learns things about his Client that NO ONE ELSE should know or does know. Not the Client's spouse; not the Client's partner; not the Client's relatives; and CERTAINLY, NOT THE CLIENT'S CHILDREN! Unless a Client says otherwise, it is the lawyer who takes those confidences with him to the grave - as mandated and required by the legal profession. There's a price to pay and a burden to bear for such ongoing confidentiality. Peter paid that price and bore that burden as an attorney.

So what of Peter's stories that always were recounted with a smile?

In all of Peter's stories, there was an adventure. Well, in every adventure there's risk. And with every risk, there's

Continued on page 10

Eulogy for Peter Cooperman continued...

danger. And to me, all of Peter's stories revolved around the adventures he experienced while practicing law. And in each of Peter's stories, his adventures always carried risks. And with every risk there was danger. I identified with Peter's stories, as every practicing attorney would. And certainly, every litigator and trial attorney.

So, to me, when Peter recounted his stories, I appreciated that Peter wasn't merely telling me a story to make me laugh or smile knowingly. Rather, I understood that this was therapy for Peter.

That Peter Cooperman, attorney at law, was recounting to me the dangers he faced on behalf of his clients; the risks he took while representing his

clients; and the ultimate adventures he now was able to tell me. Of course, in no event were any specific names or confidences of a client ever revealed.

Peter, I'm sorry we won't be able to proceed with that unlawful arrest case we were going to work on together, after I concluded my side of the case in Criminal Court. But I end by saying that Peter Cooperman practiced the profession of law with panache; with élan; with a highly attuned degree of professional competence that made him second to none. It was my privilege to have known Peter as a friend, a colleague, a fellow attorney. I shall miss him dearly. And, I thank you all for appearing here tonight on his behalf.

Bee Reporting Agency, Inc.

COURT REPORTERS

is proud to support
the Queens Bar Association.

Special Rates for Members!

Eight Convenient Locations:

Queens, Brooklyn, Bronx, Staten Island,
Manhattan, Westchester, Nassau and Suffolk

(212) 327 - 3500
(516) 485 - 2222

Fax: (516) 594-2424

Email: info@beereporting.com

www.BeeReporting.com

FLORIDA ATTORNEY

LAW OFFICES OF RANDY C. BOTWINICK

Formerly of Pazer, Epstein & Jaffe, P.C.

CONCENTRATING IN PERSONAL INJURY



RANDY C. BOTWINICK
30 Years Experience

- Car Accidents • Slip & Falls • Maritime
- Wrongful Death • Defective Products
- Tire & Rollover Cases • Traumatic Brain Injury
- Construction Accidents



Co-Counsel and Participation
Fees Paid



JAY HALPERN
35 Years Experience

Now associated with Jay Halpern and Associates, we have obtained well over \$100,000,000 in awards for our clients during the last three decades. This combination of attorneys will surely provide the quality representation you seek for your Florida personal injury referrals.

MIAMI
150 Alhambra Circle
Suite 1100, Coral Gables, FL 33134
P 305 895 5700 F 305 445 1169

PALM BEACH
2385 NW Executive Center Drive
Suite 100, Boca Raton, FL 33431
P 561 995 5001 F 561 962 2710

Toll Free: 1-877-FLA-ATTY (352-2889)

From Orlando to Miami... From Tampa to the Keys
www.personalinjurylawyer.ws

Pro Bono Corner

The Queens Volunteer Lawyers' Project will hold a volunteer recognition dinner/party on October 28, 2015, from 6 to 9 PM here in the Social Hall of the Queens County Bar Association.

Sponsored by Deitz Court Reporting and PM Investigations, the event promises hot food, cold drinks and a speech-free environment to thank volunteers for their efforts in defending low-income residents of Queens County in civil matters.

Pro Bono volunteers and invited guests should email QVLP Executive Director Mark Weliky (mweliky@qcba.org) by October 21 to RSVP.

June 7, 2015

Peter's Eulogy

A Testament of Love

August 9, 1943 ~ June 1, 2015

By Stella Cooperman



On June 1, my family and I lost Peter. We are devastated~~~It has left a deep gashing wound where our hearts once was. He was a father, a grandfather, brother and brother in law, an uncle, a friend and the love of my life. He was a giver of love and joy to us and to all his

family and friends. Everyone loved him. Everyone has a story to share about him.

Peter was a great story teller and did he ever love to talk! His stories were funny. His stories were colorful. Sometimes you chuckled and sometimes they made you think ~ but they were never boring! Sometimes they were exaggerated ~ like when he told people that he married a Persian princess. They believed him and I would be embarrassed when they alluded to that.

Peter had great wit and sometimes a wicked one. He liked to tell of an incident when he was walking one of his dogs. The vet needed a stool specimen and Peter carried a red plastic spoon with him. When the dog finally relieved herself, Peter bent down and carefully picked it up. A woman was looking at him in horror. Without batting an eye Peter said, "Lady, you should try it! It is delicious!" Thinking she had encountered a mad man, she quickly scurried away and Peter resumed his walk chuckling to himself.

Peter was a true gentleman. He never failed to open a door for people. One day he was going to the bank. A woman was coming out so he held the door for her. Instead of thanking him, she called him a sexist pig. With a little bow Peter replied, "Pardon me, I took you for a lady."

Peter had a joy for life like no one I have ever met. Whatever he did, he did to the fullest. He loved his family and he loved his friends. He loved and cared for his clients and his clients loved him right back. This past Saturday night we got a text message on his cell asking, "Are you still alive?" Thinking it was a malicious joke, Kelly called the number. It turned out to be a widow with two young sons. She had needed legal help when her husband had died a few years ago. They had stayed in touch and had become friends. Apparently they spoke frequently. When she had not heard from him she wrote that message.

Peter was a person who cared about people. He was passionate about people. He got involved in so many lives and cared for so many and always did that tirelessly and with a smile. I am desolated to say that because of that he lost his life.

Peter was generous of himself and his money. I remember one Christmas many years ago. Peter and his former partners had withdrawn money for the long holiday week ahead. Before he came home he decided to drop in on the family of one of his clients, a man who was in jail. He went to their home and what did he see? A grandmother caring for numerous scrawny children. The apartment was cold, the children were scantily dressed and seemed to be hungry. What did Peter do? He went out and bought them warm clothes and food and little gifts for Christmas. By the time he came home he had spent all his cash ~ but he was happy! He had brought cheer to one family.

Peter always did everything with a smile. When he came home he would cry out joyfully, "Hello!" in a sing song voice. Just hearing his voice made my heart pitter patter with joy. I am a kind of impetuous person and when I got excited or upset about something he would say, "Stella, Stella take it easy," He would hold my hand and I would calm down.

Peter had a way of making life seem magic with his love and caring. Often he would call from work and say, "I have got a surprise for you." "What is it?" I would ask curiously. "I am not telling you!" he would reply, "for then it would not be a surprise." And it would be something that would please me a small crystal vase, some flowers, a bottle of perfume, a piece of jewelry that I had admired ... Living with Peter made me feel as if I was encased in a cocoon of love.

There is so much that was special about Peter. Some of my friends used to call him St. Peter and he was. It would take a book to sing the praises of my Peter, and praises have been sung just reading all the messages on Facebook is a testament of the man. It is overwhelming, overpowering and comforting.

I was blessed to be married to such a man.

There will never be another as wonderful, as loving or giving as he. My family and I have lost a treasure. We shall only have our memories of him to comfort us.

I hug you to my heart my Peter, my soul mate, the greatest love of my life and find comfort knowing that you are now with your mother and father and Evan, whom you sorely missed. I know they are going to love you and cherish you there as we love cherish you here. As long as we are alive you are alive in our hearts and memories. You will never be forgotten. We love you so very much Peter. I know that God has welcomed you in heaven because you were one of his special angels here on earth.

In closing, I want to thank you all for your outpouring of love. You comfort us greatly. Thank you for being his friend. You have enriched his life and ours in doing so. Thank you for being here for us. Thank you.

JOHNE. LAWLOR, ESQ.

ATTORNEYS AT LAW

Securities Litigation and Arbitration. State and Federal

30+ years handling securities litigation / arbitration

Contingent and hourly fee arrangements available:

Free Consultation



516-248-7700 | JLawlor@johnelawlor.com

www.johnelawlor.com

129 Third Street, Mineola 11501



Newly inducted President Paul Kerson speaking about his expectations for the year



Wally Leinhardt, Hon. Seymour Boyers and Hon. Robert Nahman



Paul Kerson, Hon. Darrell Gavrin, Briana Heymann and Ilene Fern



Seymour James, Awardee of the Froessel Award with Hon. Richard Brown and George Nashak, Chair of the Froessel Committee.



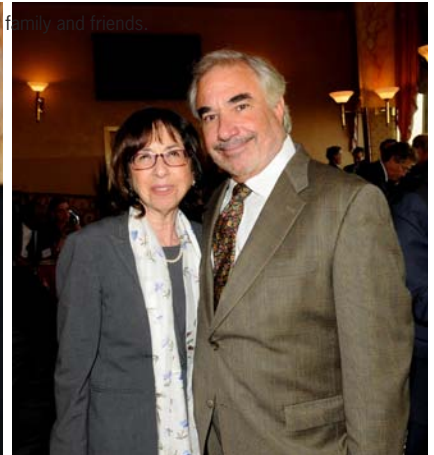
Incoming President Paul E. Kerson with Current President Joseph Carola III



Hon. Martin Ritholtz, Hon. Robert Nahman and Hon. Fred Santucci.



Hon. Joseph Golia, the Installing Officer for the Evening



Hon. Bernice Siegal and Larry Litwack

Annual Dinner & Installation Officers | 5.7.15



Diana Gianturco, Stuart Spitzer and Jeff Boyar



Hon. Carmen Velasquez, Hon. Joseph Golia and Carmencita Gutierrez



Hon. Leonard Livote and Referee Elizabeth Yablon



Hon. Richard Brown, Hon. Sid Strauss and Kenneth Brown



June Briesse, Joe Cristiano and Hon. Margaret Parisi McGowan



NYSBA President's Pro Bono Service Award Winner Brandy Beltas and Mark Weliky.



Peter Thomas, Joseph Carola and Hon. Martin Ritholtz



Seymour James, Hon. Cheryl Chambers and Arthur Terranova



Frank Lopresto, Steve Hans and Hon. Peter Vallone



Hon. David Elliot, Hon. Paul Vallone, Joe Cristiano and Frank Kahn



Hon. Leslie Leach, Richie Gutierrez, EJ Thorsen and Joe Trotti



Hon. Robert Caloras, Hon. Audrey Pheffer, Hon. Jeremy Weinstein, Hon. Seymour Boyers and Wallace Leinhardt



Officers Richard Lazarus-Treasurer, Gregory J. Newman-Vice President and Hilary Gingold-Secretary being inducted



President Joseph Carola with newly elected Judge Mojgan Lancman



Steven Orlow, George Nashak, Bernard McGovern and Larry Litwack



Paul Kerson with family and friends



Members of the Board being Installed for the year 2015-2016



Tom Murphy with Adam, Steve and Brian Orlow



Hon. Leslie Purificacion, Kristen Dubowski and Michael Barba



Hon. Sandra Sgroi, Hon. Sheri Roman and Hon. Bernice Siegal



Michael Pyrros, Alex Rosado and David Wasserman



Paul Kerson with wife Marlene Kassel Kerson featuring the list of sponsors for the souvenir journal



Guest Speaker Hon. Richard Brown addressing the attendees



Hon. Joseph Golia and Paul Kerson



Hon. Leslie Leach, Sadatu Salami-Oyakhilome, Michael Goldman, Zenith Taylor and Hon. George Heymann



Hon. Roger Rosengarten, Ben Darche, David Cohen and Gary Darche



Hon. Joseph Golia Installing Paul Kerson as the 2015-2016 President



Richard Gutierrez and Hon. Peter Vallone Jr.



Richard Apat, Maria Dudley and Hon. Robert Caloras



Tawakalitu M. Amusa, recipient of the Law Student Scholarship with Mark Weliky

WHEN YOUR CLIENT PLEADS NOT GUILTY

By William A. Sandback*

For many criminal practitioners, plea bargaining is viewed as a necessary part of the legal system, anticipated rather than pondered. The following is a cautionary tale of representation that illustrates that good advocacy often detours to places that lack road signs.

The murder took place during the early morning hours in the lobby of a quiet apartment complex in Queens. Within forty-eight hours, Ricardo F. was charged with what, at first, was thought to be a senseless killing. An indictment quickly followed. His assigned counsel entered a plea of not guilty to Murder in the Second Degree and he was remanded without bail. Like most cases, serious or not, the facts revealed merely set the stage. The assistant district attorney trumpeted the skill and resourcefulness of the police in apprehending the perpetrators, describing the crime as an assassination of a resident of a peaceful community. However, upon becoming Ricardo's attorney, I soon became aware that something was grossly wrong with the prosecution's view of the case.

The police, acting on a 911 call, responded to the lobby of a three story apartment building and found the bullet-riddled body of a tenant. Armed with a description of a car leaving the scene at the time of the shooting, the police then canvassed the neighborhood. Not long thereafter, the police came upon a parked car from which exited two individuals from the passenger compartment and one from the trunk. It was "trunk man" who would provide the bizarre details that caused the arrest of Mr. F and his alleged co-defendants.

"Trunk man's" statement made him the centerpiece in an extraordinary story. He alleged that the male co-defendant sent him and others out of state to buy guns and fronted the money. When they came back empty handed, the co-defendant kidnapped "trunk man" and had his girlfriend, the other co-defendant, drive them around, displaying his displeasure in losing his money. Using this situation as leverage, he then solicited "trunk man" to take care of a problem for him, i.e., kill someone the co-defendant thought needed killing. He was placed in the trunk when he refused to do the killing. He eventually noticed the car stopping and someone else entering the car. When he was removed from the trunk, he recognized Ricardo, who he claimed also solicited him to do the killing.

He watched as Ricardo exited the car at their destination and walked towards the

building. After shots were fired, he observed him return to the car and make a now familiar statement, "Mission accomplished." He was then returned to the trunk and brought to another stop which would be his last of the night. The trunk opened and he stepped literally into the hands of the police, but Ricardo was not in the car.

So this was the testimony that was going to be used to convict my client. Initial interviews established he was never with "trunk man" that day either in the car or anywhere else. The problem of course was that there was no verifiable alibi to counter the allegations. But still, the client vehemently protested his innocence. It was no secret that my client's exposure was a life sentence, but on the short run, the more pressing problem was that CPL Section 30.30, providing for a speedy trial, did not apply to Murder in the Second Degree. The client wanted out and the prosecutor was in slow mode because he could be. What to do?

When in doubt, make motions, lots of them. And so I did, demanding everything that the CPL discovery statutes could provide and then some. The first thing that the prosecutor admitted was that there was a video surveillance tape of the lobby area during the shooting time. Since Mr. F was the alleged shooter, ordinarily this would be game over, but I had to painfully extract this information. The tape turned out to be useless—the camera had malfunctioned and the quality of the film was so bad that it was impossible to tell who was doing what to whom. I then learned that the film was sent to the FBI for enhancement, the implication being that time was not on my side, and perhaps I should discuss a plea with cooperation against the co-defendants.

If your client says he is not guilty, you are forced to confront your ethical obligations concerning recommending a change of plea. Before entering into territory plagued with legal land mines, lawyers may be tempted to analyze the situation from the perspective of what is good for the lawyer, but not necessarily for the defendant. If the defendant believes in his case and thinks you are caving in, he loses respect for your abilities, and may discharge you. This has bleak financial implications. On the other hand, the defendants who are in denial or lack the intellectual skills to timely assess their situation need the



perseverance of someone who will tell it like it is. If you can walk that tightrope, you need to know the applicable law.

The starting point for any ethical analysis of what to advise your client concerning a proposed plea bargain necessarily begins with The New York Rules of Professional Conduct, effective April 1, 2009.

Rule 1.2(a): Scope of Representation and Allocation of Authority between Client and Lawyer provides in part that,

"In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive a jury trial and whether the client will testify."

Rule 1.3 Diligence states:

"A lawyer shall act with reasonable diligence and promptness in representing a client"

Although this rule appears to be self-evident but not necessarily insightful, Comment(1) therein provides some guidance:

"A lawyer should pursue a matter on behalf of a client despite opposition (emphasis added), obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and

dedication to the interests of the client and in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued..."

Rules 1.2(a) and 1.3 recognize that disagreement may arise between a defendant and a lawyer in the course of the plea bargaining process and a lawyer appears to have great latitude in the means to pursue the defendant's objectives, and that means keeping the client well informed.

This is not just good common sense. It is mandated by Rule 1.4(a)(3) which requires,

"A lawyer shall keep the client reasonably informed about the status of the matter."

Anyway you parse these rules, you are left with the overriding principal that when it comes to plea bargaining, the defendant's decision trumps all others. A lawyer's ethical position is similarly determined. A deviation from ethical conduct is often complained of by a defendant alleging threats, intimidation or some form of coercion and becomes the springboard for motion practice to withdraw a guilty plea, or post-conviction remedies either by direct appeal or collateral attack pursuant to CPL Article 440.

The courts rarely grant a hearing to set aside a guilty plea, or render a decision favorable to the defendant


Tradition Title Agency
Serving You with Knowledge, Experience & Trust

Full Service Title Insurance
From the simplest refinance to the most complex commercial deal.
Swift turnaround. Smooth closings. Clear titles.

Ask about our Continuing Legal Education Programs:
(631) 328-4410 or TraditionTA.com

Continued on page 15

post-conviction for lack of factual corroboration. See, *People v. Leonard*, 306 AD2d 940; re argument denied, 309 AD2d 1073; *People v. Telfair*, 299 AD2d 429 (2002); leave denied, 99 N.Y. 2d 620 (2003); *People v. Patterson*, 295 AD2d 966 (2002); leave denied, 99 N.Y.2d 538 (2002); *People v. Cooper*, 281 AD2d 903; leave denied, 96 N.Y.2d 900 (2001); *People v. Dashnow*, 260 AD2d 658; leave denied, 93 N.Y.2d 968 (1999); *People v. Cook*, 252 AD2d 595; *People v. Contreras*, 219 AD2d 495; appeal denied, 87 N.Y.2d 845 (1995), *People v. Mohammed*, 208 AD2d 118; leave denied, 85 N.Y.2d 941. *People v. Sparks*, 227 AD2d 310; appeal denied, 88 N.Y.2d 985 (1996).

Such determinations obviate the need for probing a lawyer's ethical obligations and resolve themselves by a finding that the lawyer acted within the bounds of zealous advocacy. Perhaps nowhere is this more illustrative than in *People v. Spinks*, 227 AD2d 310, where the court denied the defendant's motion to withdraw his plea based on coercion without a hearing, finding,

"Far from being coercive, the defense counsel's advice, as related by the defendant, that the case could not be won, and that the two, who had a social relationship, would have a chance of playing basketball together again only if the defendant accepted the plea offer, fulfilled defense counsel's duty to warn his client of the risks of going to trial."

Given the importance of making the right decision for my client, I chose an option not immediately obvious—I did nothing, and let events play out. The surveillance tape would soon come back from the FBI and it would be either disastrous or never find its way into the trial. In the meantime, I noticed something, or rather the lack of something in the people's case. The discovery material revealed no forensic evidence concerning my client. There were no latent prints anywhere, no ballistic evidence of gunpowder on his clothes or person, no weapon recovered, and finally, no statement was ever elicited from him. When I learned that the tape could not be enhanced, I thought this case was looking better and better.

In spite of my optimism, the case languished even though I made multiple applications for an immediate trial or alternatively that reasonable bail be set. All were denied. As we were closing in on our third year, a new prosecutor was assigned. The people assessed the realities of their case and offered a plea deal to my client that was unexpected. If he would accept six years, the case would go away. With credit for time served, he would be eligible for release in little over a year. Continuing on, his exposure was twenty-five years to life.

So crunch time had arrived. I could no longer straddle the fence. I met with my client to present what I thought was a compelling offer, but his response was simply, "I am innocent."

I conveyed every logical argument I could think of to convince him to reconsider, but he remained adamant. When the court, at my insistence, finally set a firm trial date and agreed to set bail in the amount of \$500,000, I tried one more tactic to change my client's mind. I sent his family to discuss the matter with him. When we later spoke, I knew the die was cast.

The case moved to trial, albeit without the female co-defendant whose case could not be tried with her co-defendants. All the prosecution had was the testimony of "trunk man" and a dead body, but in my view that was still formidable. His story, at least in the first telling,

hung together and if he was well prepped, he may hold up under cross examination. The other nagging problem was what to do with the client. Should he testify or remain silent? This was a decision that he and I would not make until the last minute.

The people's witness list contained all the expected names with exception of a female whose name was unfamiliar, and had not been discussed by the prosecutor. She was called almost as the last witness, that position being reserved for "trunk man." Her testimony established that she lived in the apartment building above the lobby. She was awoken by gun fire and looked out her window. She observed a male exiting out the front door and enter a car which as described was the co-defendant's vehicle. She then described the male as a vision in black, such that she could not even determine his race.

When "trunk man" finally testified, he presented himself as a young man influenced by bad people, but would never agree to commit murder. From the defense vantage, he had the makings of a credible witness. The crux of the case occurred midway into his cross examination. He endured the acknowledgment of prior inconsistent statements, the commission of crimes and a reason to conceal the truth and testify falsely against my client. I finally asked about the clothing that Mr. F allegedly wore that evening before he went off to do the shooting. Although he said he remembered dark clothing, he admitted that he wore a white hoody. With that one statement, reasonable doubt finally emerged into the trial.

It would be fair to say that the people's main witness left the witness stand bloodied but alive. This trial was certainly in play and it was anyone's guess what direction it was going. My client left the decision to me as to whether he should testify. Ordinarily, this would not require much deliberation. This jury knew nothing about my client and was probably awaiting his explanation. But they were not going to get it. Both defendants elected to rest without testifying. The final twist of events came after three days of deliberation. A jury note asked if it were possible for them to find one defendant not guilty of all charges and the other guilty of everything. They were advised in the affirmative and deliberations continued.

It is at times like this that second guessing becomes inevitable. Six years! How could I have let my client turn that down? But then I realized if ever there was a time to strike a deal with the prosecutor, this was it. After all, my client was the alleged shooter. A plea bargain, even if more onerous than the one previously



Diamond

Reporting & Legal Video
When You Need Us - Where You Need Us

Proud to Support the Queens Bar Association

Court Reporters | Legal Video | Transcript Repository | Deposition Centers
Interpreters | Courtroom Presentations | Video Conferencing & Streaming

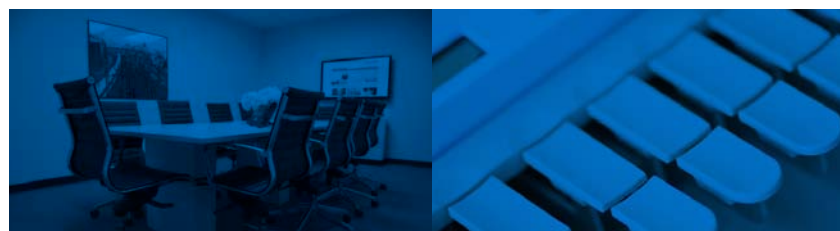
With Deposition Centers in

Brooklyn, Manhattan, Midtown East Grand Central, Midtown West Penn Station
Bronx, Queens, Staten Island, Mineola, Melville, White Plains
Albany, Buffalo and New Jersey

And now Servicing the Hudson Valley!

Orange, Ulster, Sullivan, Dutchess, Putnam & Rockland

877.624.3287 ♦ www.diamondreporting.com



on the table, would not be life imprisonment. Likewise, for the prosecutor, it would salvage a difficult case. However, as I observed my client, the reality of his case sunk in. Plea bargaining was never an option for him. I consoled myself with the belief that short of coercion, I tried my best to precipitate a plea.

As I sat outside the courtroom later that afternoon with my client's family discussing the jury's verdict, the courtroom door opened and Ricardo joined us. He said little to me, presuming that I also shared his innate view of justice. What the jury never knew was that he had been previously charged with five different crimes and each time went to trial and was found not guilty.

If there is any lesson to be learned from this case, it may be that sometimes your client rides the crest of life, and you may have to take a ride with him, if only for a brief time.

* Mr. Sandback is a former prosecutor of Nassau County DA's Office, County Court Trial Bureau. He spent several years as law secretary to Hon. John Lockman, Nassau Sup. Ct., Crim. Pt. The balance of his career has been spent handling serious felonies in state and federal courts.

American Bar Association Annual Meeting 2015

By Joseph F. DeFelice*

In August, 2015 the American Bar Association (ABA) held its annual House of Delegates (HOD) meeting in Chicago, Illinois.

The meeting marked an historical event in that Paulette Brown, a labor and employment attorney from New Jersey, took office as the first African-American female to serve as President of the American Bar Association which is the nation's largest professional association of lawyers.

A number of issues were raised and discussed and a summary of some of the more interesting matters is provided below.

Initially and relative to proposals made by the New York delegation, the New York State Bar Association (NYSBA) had requested that the ABA adopt the "Standards of Representation of Clients in Immigration Cases". These standards were developed by the NYSBA Committee on Immigration Representation and have been adopted by the NYSBA. The standards help to serve as a guideline for attorneys in the proper representation of aliens so that these individuals can be served with effective representation. The guidelines had been drawn after the Chief Justice of the U.S. Second Circuit Court of Appeals, Hon. Robert A. Katzmann, had discussed the need for effective representation of aliens in the Immigration Court and in representation in the Federal Court. Due to the concerns of other State delegations in the ABA, this proposal to have the ABA adopt these standards was withdrawn so that other State delegations might have the opportunity to review the standards and make recommendations for possible changes. It is expected that this matter will be revisited at a future HOD meeting.

Another proposal was presented by a delegate from the Virgin Islands seeking to amend the Constitution of the ABA to include language which would indicate a support for "right to life" for the unborn. Specifically, the wording proposed was: "to defend the right to life to all innocent human beings, including all those conceived but not yet born". This proposal has been made each year for

the past 10 years and each time the House of Delegates has voted to postpone any vote on this issue. This year the HOD again voted to "punt the football" and chose to indefinitely postpone any vote on the issue.

The HOD did vote to approve a reduction in the membership threshold needed for additional delegates for State and local bar associations. This came about due to the reduction of membership in many local bar associations and serves to allow these associations to continue to meet the threshold necessary to have representation in the House of Delegates.

Also, those delegations without a young lawyer have been authorized to add a delegate provided that the individual is less than 36 years old or admitted to his or her first bar within the past five years at the beginning of his/her term. This is consistent with the definition of young lawyer as it has been defined by the ABA and nearly all other bar associations including our own Queens County Bar Association. It will not affect New York as New York already has a young lawyer representative.

In reference to the definition of what the ABA refers to as Goal III members at large, which allows additional representation on the Board of Governors in the ABA for minority groups, this definition was amended to include individuals who identify themselves as LGBT or having a disability. The goal is to have individuals on the Board with different perspectives who can provide different viewpoints and who can better contribute to discussions on the Board.



One other resolution should also be mentioned. The HOD approved a resolution to urge Congress to increase funding to effectively educate schools about their obligations to keep campuses safe from sexual harassment, sexual assault, stalking and gender-bias and intimate partner violence. The resolution urges that the Violence Against Women Act and other relevant laws be enforced by the schools.

The resolution does go on to further urge Federal, State and local

governmental authorities to fully fund and adopt meaningful remedies for enforcement of these laws and to also assure that the rights of those accused of such acts are recognized, respected and protected. This last clause was added to show the concern of the ABA for those who might be accused. So that they may be afforded due process and a right to be able to present a defense.

* Joseph F. DeFelice is Past President of the Queens County Bar Association and currently serves as the Association's delegate to the American Bar Association.

INSURANCE

JASPER SURETY AGENCY, LLC.

**SERVICING ALL FORMS OF
COURT BONDING AND
PROFESSIONAL LIABILITY
INSURANCE NEEDS OF THE
LEGAL COMMUNITY.**

★

Call us for immediate assistance 516-742-8815
or email: jregine@jaspersurety.com

Visit us at www.jaspersurety.com. Like us on Facebook!

GOLF AND TENNIS OUTING

by David Louis Cohen, Chair Golf Outing Committee

The Annual Queens County Bar Association Golf and Tennis Outing was held on September 21, 2015, at the Garden City Country Club. This Outing helps to fund the Queens Volunteer Lawyers Project, which provides free legal services to residents of Queens County who cannot afford counsel in civil matters. Over 90 golfers, tennis players and dinner guests had a most enjoyable day.

The weather cooperated and the staff at the Club made sure that a great time was had by all.



Presidents Cup-Member Low Gross Winner
Joshua Katz and David Cohen

We are most grateful to our sponsors whose participation enables us to run a first class event. Investors Bank sponsored the dinner and we are most grateful to them for their generous support. Empire Bail Bonds was our brunch sponsor and their support is much appreciated. Thanks to Big Apple Abstract, Signature Bank, Deitz Court Reporting and Duffy and Posillico Court Bond Agency for donating prizes for our raffle. The Golf Committee offers a special thank you to Joseph Risi who arranged for the use of the Club and for his raffle prize donation.



Kristen Reed - Womens Long Drive with David Cohen



Woman Closest to Pin - Kathleen Gallo with David Cohen

Our Tee Sponsors were: Crowley & Kaufman, Esqs., Signature Bank, Big Apple Abstract, Duffy & Posillico Court Bond Agency, NAM, Hankin & Mazel, Esqs., Flushing Bank, Phillip J. Rizzuto, Esq., Plaine & Katz, Esqs., Muss Development Corp., Appeal Tech, Subin & Associates, Deitz Court Reporting, Investors Bank and Empire Bail Bonds. Please, if you are able, utilize the services of our sponsors. We at the QCBA and all those who attended the Outing thank you for your continuing support of this event.



Mens Closest to Pin - Nick Motola

Our prize winners were:

President's Cup-Low Gross Member - Joshua Katz
Closest to the Pin - Nick Motola and Kathleen Gallo
Long Drive - Jeremy Hankin and Kristen Reed

I hope you all had a wonderful time and we look forward to seeing you next year on September 12, 2016 - Garden City Country Club.

QUEENS COUNTY BAR ASSOCIATION

MEMBERSHIP APPLICATION

Please check the appropriate box(es) below:

- ☐ I wish to join the Queens County Bar Association.
☐ I wish to update my Membership Information.
☐ I wish to join the Committees checked on the reverse side. (QCBA membership required)

ENROLLMENT INFORMATION

Name _____

Business Address _____

City _____ State _____ Zip _____

Home Address _____

City _____ State _____ Zip _____

Office phone () _____

Home phone () _____

Cell phone () _____

Fax Number () _____

Email Address _____

Website _____

Contact via: _____ Email _____ Mail _____

Mailing Preference: _____ Business _____ Home _____

Date of Birth _____

College _____

Graduation Year _____ Degree _____

Law School _____

Graduation Year _____ Degree _____

Date of Admission to the NYS Bar _____

Judicial Department _____

ANNUAL MEMBERSHIP DUES

- ☐ Combined Sustaining Membership **\$ 615.00**
(Includes 12.0 CLE Credit coupons for any live Continuing Legal Education Programs)
- ☐ Sustaining Membership **\$ 340.00**
Member who voluntarily provides additional funds to further support the Association (Includes 3.0 CLE Credit coupons for any live Continuing Legal Education Programs)
- ☐ Government Sustaining Membership **\$ 238.00***
- ☐ Attorney Admitted 10+ years **\$ 290.00**
- ☐ Government Attorney Admitted 10+ yrs **\$ 203.00***
- ☐ Attorney Admitted 5-9 years **\$ 215.00**
- ☐ Government Attorney Admitted 5-9 years **\$ 150.00***
- ☐ Attorney Admitted 1-4 years **\$ 125.00**
- ☐ Government Attorney Admitted 1-4 years **\$ 88.00***
- ☐ Associate Membership **\$ 50.00**
(Must meet eligibility requirements)
- ☐ Admitted less than 1 year **Free**
- ☐ Law Student **Free**
(Current Law School student or recent graduate awaiting admission)

*Members who are in Government Service (Judges, Court Attorneys, Law Secretaries, Legal Aid Society, Queens Legal Services, District Attorneys, Queens Law Associates, Corporation Counsel, etc.) pay 30% less than their respective rate.

18B Assigned Counsel Plan Members pay 20% less than their respective rate.

Discounts are also available for members of other local (Queens) bar associations who have never belonged to the Queens County Bar Association.

Membership dues can be made in one payment or by installments.

DUES PAYMENT

☐ Check Enclosed ☐ MasterCard ☐ Visa ☐ Amex ☐ Discover

Credit Card Number _____

Expiration Date _____

Signature _____

Date of Application _____

QUEENS COUNTY BAR ASSOCIATION

90-35 148TH STREET
JAMAICA, NEW YORK 11435

TEL - 718-291-4500

FAX - 718-657-1789

WWW.QCBA.ORG

Classified Advertisements

Office Space For Rent

Forest Hills law firm is looking to rent windowed office space, consisting of 100 square feet. The office is conveniently located in the heart of Forest Hills at 104-70 Queens Blvd, 3rd Floor (Parker Towers), few blocks from the E,F, M & R trains, in an existing suite with other attorneys. The space includes indoor parking and utilities, shared reception area and conference room. Referrals are a certainty.

Please call Raisa at (718) 344 7866 or email at raisa@cohenpc.com.



Two offices for rent in Jamaica, Queens. Three office suite walking distance from the Supreme and Civil Courthouses. Space available for secretary and use of conference room included.

Each office approximately 9' x 10'. Perfect for attorney or accountant. Door man with security cameras.

\$1,250 per month per office.

Call Mark J. Keller, Esq. at (718) 297-1890 or email markjkelleresq@yahoo.com.



Office Space (Astoria/Long Island City)

Broadway between Crescent and 29th Street. Two blocks from N and Q trains. Two interior offices with skylights, approx 9x12 each, fully furnished, with work spaces for paralegals, waiting room, reception, conference room, kitchen, internet, and phone system with voicemail.

Asking 2,000 per month. Negotiable. Plug in and be up and running immediately.

Call Larry Dorman (917) 699-5129 or E-mail at lawdor@optonline.net





Founded in 1946, Jaspán Schlesinger LLP is a premier full-service law firm with offices in Garden City and Suffern, New York. The Firm's attorneys provide quality legal services in virtually every area of practice including complex commercial litigation, matrimonial and family law, banking and financial services, education and library matters, corporate and commercial transactions, real estate, tax certiorari and condemnation matters, land use and zoning, labor, trusts and estates, taxation, municipal matters, and creditors' rights.

Jeffrey D. Lebowitz, Esq.,
NYS Supreme Court Justice (Ret.), is Special Counsel in the Firm's
Matrimonial and Family Law, and Litigation Practice Groups

These Groups handle the following matters:

MATRIMONIAL AND FAMILY LAW

- Post-Divorce Modification Orders and Agreements
- Separation, Cohabitation, Prenuptial, and Postnuptial Agreements
- Spousal Maintenance, Support, and Alimony
- Equitable Distribution of Marital Assets and Debts
- Child Custody and Visitation Rights
- Child Support Payments, Enforcement, and Modification
- Domestic Violence, Restraining and Protective Orders
- Contempt of Court Proceedings
- Domestic Partnerships
- Mediations
- Appeals of Family Law Litigation

LITIGATION

- Bench and Jury Trials
- Appeals
- Administrative Hearings
- Arbitrations and Mediations
- Complex Commercial Litigation
- Business and Partnership Disputes
- Shareholder Derivative Suits
- Corporate Dissolution Litigation
- Real Estate Litigation
- Landlord/Tenant
- Construction Litigation
- Zoning
- Class Actions
- Employment Discrimination
- Employment Practices
- Insurance Defense in Private and Public Sectors

GARDEN CITY OFFICE

300 Garden City Plaza, Garden City, NY 11530
T: 516.746.8000 | F: 516.393.8282

SUFFERN OFFICE

56 Park Avenue, Suffern, NY 10901
T: 845.357.0036 | F: 845.357.0297

www.jaspanllp.com