Morality versus legal justification

By STEPHEN J. SINGER*

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

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

I first thought about these issues when I heard the famous Monroe Friedman deliver a lecture concerning the proper way to deal with a client who you know intends to commit a crime.
THE QUEENS BAR BULLETIN - NOVEMBER 2007

E D I T O R ’ S  N O T E...

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

LAWYERS ASSISTANCE COMMITTEE

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

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

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2007 Fall CLE Seminar & Event Listing

November 2007
Thursday, November 1
Commercial Leasing - Presented & Sponsored by Judicial Title

November 2008
Monday, November 5
Commercial Leasing - Presented & Sponsored by Judicial Title

December 2007
Thursday, December 12
Unsum Update

January 2008
Monday, January 28
Stated Meeting

February 2008
Monday, February 4
Landlord & Tenant Update

March 2008
Wednesday, March 5
Family Law Seminar

April 2008
Wednesday, April 2
Basic Criminal Law Part 2

May 2008
Thursday, May 1
Annual Dinner and Installation of Officers

A New Member Benefit from Queens County Bar Association

QCBA recently selected a credit card program that is specifically designed for law firms and sole practitioners. QCBA members receive reduced processing rates and multiple features built to properly process client-attorney transactions. Opening a Law Firm Merchant Account is easy and helps your practice.

- Safeguard and segregate client funds.
- Properly process retainers.
- Attract clients and win business.
- Improve cash flow and reduce collections.

With a Law Firm Merchant Account credit cards that are accepted for retainers are deposited into your trust account while processing fees are paid from the operating account to avoid the commingling of client funds.

If you are considering or already accept credit cards in your practice, we encourage you to confirm that your program is competitive and can properly processes transactions. Call for a no obligation consultation with our partner Affinscape Merchant Solutions, 800.376.0965 or click here for more information.

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

Something can, however, be done. Many applicants are turning to the federal courts to assert their right to a reasonable period of adjudication through a writ of mandamus, or order to compel government officials to act on their case. Many adjustment of status and naturalization applicants have succeeded in forcing the USCIS to adjudicate long pending cases. In addition to going to court, it is not required that the application be approved, but simply that the application be adjudicated. The USCIS is required to adjudicate applications that have been pending for over a year. Thus, if an application is pending for over a year, a federal court can order the USCIS to finally decide the case.

In the citizenship context, there is a separate legal action known as a "Section 1447(b) action," a provision of law that requires USCIS to decide applications for citizenship within 120 days of the examination, "Examination" generally has been held by the courts to be synonymous with the naturalization interview, although a minority of courts have held that "examination" refers to the entire process of deciding a naturalization application. The law gives applicants a right to ask a federal court to decide or to order USCIS to decide an application 120 days after the USCIS issues a notification of a "formal" action. A 1447(b) action will result in prompt adjudication of the naturalization application. However, there are several caveats. It is essential that the applicant's eligibility for naturalization is not in question, and the application has been filed in the United States. USCIS may oppose the court's intervention and will often elect to file a 1447(b) action, as the government can and often does elect to intervene before filing a 1447(b) action, as the government can and often does elect to intervene before filing a 1447(b) action, as the government can and often does elect to intervene before filing a 1447(b) action, as the government can and often does elect to intervene before filing a 1447(b) action, as the government can and often does elect to intervene. In the future, I highly recommend that you attend the "fun" part of our meetings. The opportunity to socialize with members of the bench and bar is one of the most important aspects of bar association membership. We all can benefit from this networking opportunity.

As was noted in our last bulletin our CLE coordinator, Catherine Didginko left us for California. Our new coordinator is Attorney Marcia Terranova and the office staff, especially Sasha K. Kettering, who will have the void and our CLE calendar as full as ever. We have a number of evening and lunch time programs available on a wide range of topics. If you would like to utilize this resource to satisfy your mandatory CLE requirements, if you are not receiving our email notifications as to upcoming programs, please contact the office and provide your current email address. If you are still electronically challenged, we will mail you the flyers.

One of the QCBA’s most important functions is keeping the lines of communication open between the bench and the bar. As always, we are very happy to meet with the Administrative Judges of the Criminal and Civil Term of the Queens County Court, the Supervising Judges of the Criminal and Civil Courts. Your presence and participation in these events goes a long way toward ensuring that a lot of the practicing lawyers in Queens is as good as it can be. In addition, if specific issues or problems are brought to your attention, we can refer them to the Judicial Relations Committee or raise them in my regularly scheduled meetings with our Administrative and Supervising Judges.

Our Elder Law Committee, under the leadership of John Dietz, is working on the creation of a Family Fiduciary Registry. This would be a list of highly qualified fiduciaries who have not only completed OCAB minimum requirements, but who also have a good working knowledge of the law as it relates to the OCBA. These individuals would then be eligible to be selected by the family as the fiduciary on an expedited fiduciary. As soon as this program is finalized, details will be sent to our members who request them.

I am sure that we all are quite pleased with the new format of our Bulletin. For one was shocked that someone who was so well known as the photo. Our Editor, Les Nizz, and our Executive Director, Attorney Marcia Terranova, deserve our thanks for all the hard work that went into the selection of our new publisher. Our Directory will be out in January. In addition to the print version, we are working hard to have it available on our website.

As always, you can reach me at dcohen@skld.com, or by calling the QCBA.

Continued From Page 1

NOVEMBER IMMIGRANT Visa NIL-EMPLOYMENT-CONTAINED VISAS SHOW NO MOVEMENT FROM OCTOBER

Citing the need to determine what the impact of the summer forward movement of cut-off dates will have on the Department of State’s (DOS) November Visa Bulletin, this shows no forward movement of the employment-based immigrant visas from October to November. However, with priority dates later than January 1, 2006 and April 1, 2004, respectively, still must wait. Immigrant visas for investors also are available. The cutoff date in this category, work for professionals for all chargeability and the Philippines, however, is August 1, 2002, still must wait. Immigrant visas for investors also are available. The cutoff date in this category, work for professionals for all chargeability and the Philippines, however, is August 1, 2002, still must wait. Immigrant visas for investors also are available. The cutoff date in this category, work for professionals for all chargeability and the Philippines, however, is August 1, 2002, still must wait.

SOADY DATE REMAINS OCTOBER 1, 2001.

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MORALITY VERSUS LEGAL JUSTIFICATION

Continued From Page 1

Judgment is an important factor in the decision-making process of a criminal defense attorney. It involves ethical considerations and the need to balance the interests of the defendant with the interests of society. The attorney must weigh the potential benefits of a particular strategy or action against the potential drawbacks and consequences.

In many cases, the attorney may have to make difficult choices that involve sacrificing the client's interests for the greater good. This can be particularly challenging when the attorney believes that the client's actions are incorrect or illegal. In such situations, the attorney must consider whether the client's rights and interests are sufficiently protected by the law and whether the attorney's ethical obligations require a different course of action.

One scenario that illustrates this dilemma is the case of a defendant who is charged with a crime that they believe is unjust. The attorney may be faced with the decision of whether to pursue a plea bargain or to continue fighting the case through trial. If the attorney believes that the plea bargain is not in the client's best interest, they may decide to fight the case to the end. However, this can have serious consequences for the client, who may end up serving a longer sentence or facing additional charges.

In other cases, the attorney may be faced with the decision of whether to report a client's illegal activities. This can be particularly challenging if the client is a close friend or family member. The attorney must consider whether the client's rights are sufficiently protected by the law and whether the attorney's ethical obligations require a different course of action.

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In many cases, the attorney may be faced with the decision of whether to report a client's illegal activities. This can be particularly challenging if the client is a close friend or family member. The attorney must consider whether the client's rights are sufficiently protected by the law and whether the attorney's ethical obligations require a different course of action.

In the end, the attorney must consider the potential consequences of their actions and make a decision that is in the best interests of their client. This can be a difficult task, but it is essential for maintaining the integrity of the legal profession and upholding the rule of law.
New Sentencing Commission Issues Preliminary Recommendations

By SPIROS A. TSIMBINOS*  

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

When Governor Spitzer took office however, he immediately resurrected the concept of a Sentencing Commission and established an eleven-member group headed by his Commissioner of the Division of Criminal Justice Services, Denise O’Donnell. The Commission which was established in April, 2007 by an executive order from Governor Spitzer has held several public hearings during the last few months and has begun issuing its recommendations for changes in New York’s sentencing structure. Several members of the defense community who have so far testified before the Commission have called for establishment of a Sentencing Commission and would monitor the effects of the sentencing changes and would make recommendations for improvements.  

The chief recommendations for changes in New York’s sentencing structure are summarized as follows:

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

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

OUR TROOPS STILL NEED YOUR SUPPORT!

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

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

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

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

Join the Volunteer Military Legal Panel!

Return completed form by fax or mail to QCBIA.  

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

Types of cases I can accept  

☐ Family Law ☐ LL&T ☐ Foreclosure ☐ Matrimonial

☐ Consumer Law ☐ Other

Name ___________________________ Phone# ___________________________

Address ___________________________ FAX# ___________________________

E-mail ___________________________

VOLUNTEER MILITARY LEGAL PANEL  
QUEENS COUNTY BAR ASSOCIATION  
ATTN: MILITARY LAW COMMITTEE  
90-35 148th Street, Jamaica, NY 11435  
PHONE (718) 291-4500 FAX (718) 657-1769
Undeservedly, probate has taken on a negative reputation. Many people have a fear of probate, which is based upon the misconception that the process is extremely expensive. The information contained in this article will demonstrate that probate does not deserve its negative perception. With this in mind, the probate process can be broken down into the estate planning process. This article will dispel the myths about the probate process as well as explain how probate may be beneficial to estate planning.

What exactly is probate? Probate is the process by which the Surrogate's Court, a specialized Court dealing with issues related to a decedent's estate, determines what a person's Last Will and Testament is. It is determined to be the final statement of that person's wishes regarding the distribution of his/her property at death. Probate is also the process by which the executor named in a person's Will is formally appointed by the Court thereby, granting that person/persons the authority to marshal and distribute estate assets according to their stated wishes. At the heart of the probate process therefore, is a person's Last Will and Testament. It should be noted that it is only necessary to subject a Will to probate if the testator/descendant owned property in her own name at death. Property owned jointly with another person, in the event of the joint owner's death, is not affected by a person's Will. These assets, called testamentary substitutes, do not pass according to the Will and are usually distributed in accordance with the wishes of the surviving joint owner.

What follows from the above distinction between a probate estate and a testamentary substitutes is that there is another commonly held misconception about the probate process called the "myth of probate," that the process is extremely expensive. Many people associate the expense of probate with the cost of preparing a Court filing fee. This filing fee is prescribed by statute and is proportional to the value of a person's probate estate.

For example, using the above example, although the decedent has a gross estate of one million dollars, his probate estate is only $300,000, and the filing fee is based on the gross estate. If the filing fee in this instance would be $215.00. Below is a chart indicating the Surrogates Court current filing fees.

From the example, we can see, this is all relative, and thus, not prohibitively expensive in light of the assets being affected by probate. In a New York State residual estate of $1 million dollars, the filing fee would amount to approximately $215.00.

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

By WALLACE L. LEINHEARDT

On September 7, 2007, Hon. Sidney Leviss passed away at age 90. Born on July 21, 1917 in Flushing, Judge Leviss had a long and distinguished career of public service. He attended New York University undergraduate and then NYU Law, from which he graduated in June 1941. He was admitted to the Bar in January 1942, and the day after his admission, he joined the Army Air Corps to fight in World War II. While in the service, he rose from Corporal to Captain.

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

He took the Supreme Court Bench in 1971 and served in that capacity for 22 years when he reached the mandatory retirement age of 76. He was then appointed as a Judicial Hearing Officer and continued to serve in that capacity until his death.

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

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

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

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

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

PERSONAL AND UNOFFICIAL

September 28, 2007

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

Dear Messer:

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

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

Thank you very much.

Very truly yours,

Leslie G. Leach

ANNE M. COOK
ATTORNEY GENERAL

LESLIE G. LEACH
EXECUTIVE DEPUTY ATTORNEY GENERAL
DIVISION OF PUBLIC HEALTH
Annual Frank S. Polestino Memorial Lecture:
Recent Significant Decisions from our Appellate Courts

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

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

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

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

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

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


David Cohen, Steven Orlow and Hon. Martin Ritholtz

George Nashak, Susan Beberfall and Thaddeus Gorycki

Photos by Walter Karling
October represents the spring of New York's cultural life season. Following a long summer, the world tours and the famous concerts throughout the City open their doors to the public in late September and October. It is also the time when many orchestras and all the venues in one monthly column or to go any length, depth, pene- tration, and critical, or even研究所, for any one performance. I can offer only a few helpful comments about concerts or cultural events that I saw and heard in the hope that judges and lawyers will spend their money and free time wisely, taking a break from the routine of motion and trial practice.

1. INTERNATIONALLY RENOWNED CLASSICAL PIANISTS IVAN MORAVEC, LARS VO GT, AND CEDRIC TIBERGHIE N

IVAN MORAVEC, a Czech concert pianist, is growing and recording career, spanning nearly half a century, has gained him a world-wide following. Performing a beautiful program to a packed Saturday night audience at the Rogers Auditorium of the Metropolitan Museum of Art, Moravec, who will turn 77 years old on November 9, began with a moving performance of the Scherzi, Op. 43 of Haydn's Sonata in D Major. His virtu- oso and vibrant rendition of two major piano works by Debussy, Estampes and Pour le Piano, earned a standing ovation right before the intermission break. In my opinion and those of other music affi- doniados, Moravec is the most brilliant interpreter of Debussy since legendary German pianist Walter Gieseking. Following intermission, Moravec turned to a staple of his repertoire for which he is justly acclaimed, the Chopin Nocturnes. His rendition of the Nocturne number 1, with the BBC Orchestra. To number 1, with the BBC Orchestra. To

LARS VO GT, German classical pianist about 37 years ago. Vogt's interpretations of Brahms's, for example, a work of Bedrich Smetana for the Kohn & Company, promises to be brilliant.

CEDRIC TIBERGHIE N, the 32 year old French classical pianist, made his long awaited solo recital at the Frick in November. Tiberghien was represented by the prestigious CM Auditorium on October 16, Vogt played Brahms's Sonata in F Minor with finesse and intensity. He be on the lookout. Vogt's CD's, especially his interpretations of Brahms's Beethoven Piano Sonatas...
The Frick is a wonderful place to enjoy concerts at very reasonable prices, and you may want to check its schedule at www.frick.org. Right before concert time, tour the museum, and then pick up a copy of Allan Kozinn's book "The New York Times Essential Library: Classical Music - A Critic's Guide to the 100 Most Important Works and the Best Recordings" (2004 Times Books, $35.00). Kozinn discusses opera without a trace of elitism. He was just getting going,"[page 28].

British music critic Norman Lebrecht, a gifted pianist and biographer, gives his picks and juicy commentary. Lebrecht's book also sells classical music CDs and DVDs. Before you pay inflated prices elsewhere, this is the place to shop. The store is open on Saturdays until 8 PM and on Sundays until 7 PM, but don't come in 20 minutes before closing time. You will want to spend some time and money getting bargains. Especially with the holidays approaching, this is a great place to buy gifts without going bankrupt.

ACADEMY RECORDS & CDs

New York Times

4340, you can find a treasure trove of classical music CDs and DVDs.

POSSIBLE ON THE AISLE

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British music critic Norman Lebrecht, a gifted pianist and biographer, gives his picks and juicy commentary. Lebrecht's book also sells classical music CDs and DVDs. Before you pay inflated prices elsewhere, this is the place to shop. The store is open on Saturdays until 8 PM and on Sundays until 7 PM, but don't come in 20 minutes before closing time. You will want to spend some time and money getting bargains. Especially with the holidays approaching, this is a great place to buy gifts without going bankrupt.
Danza presented three ballets choreographed by the director, Natascha Barbieri: "Por Vos Muero," "Casandra," and "White Darkness." Though I am not a critic of dance, I enjoyed the evening immensely. The choreography of Mr. Duato, born in Spain, did not provide for the dancers to lie in the grass of the Bishoi Ballet, but their grace, suppleness of movement, energy, preparation, and artistry were absorbing, captivating, and breathtaking.

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

For those judges and lawyers who don't drive, BAM is located within short walking distance to the Atlantic Avenue subway stops of the 2, 3, 4, 5 trains, and the LIRR. There are several dining options and also several bars to enjoy a drink and laugh. Please consult your schedule for the starting time of the performance, because these programs can be long. The show I attended, began at 7:30 PM, not 8 PM.

6. THE METROPOLITAN OPERA

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

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

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

7. THE JOYCE HATTO and WILLIAM BARRINGTON-COPE SCANDAL

Earlier this year, in a column, I described the fraud perpetrated by pianist Joyce Hatto and her husband, record producer William Barrington-Coupe. The classical music world was shocked to learn that Hatto and Barrington-Coupe perpetrated a fraud of massive proportion, stealing the recorded works of virtuoso pianists and passing them off as Hatto's. Journalist Mark Singer recently elaborated on this international hoax, theft, and fraud in a well-researched, well-written, gripping, and fascinating article "Fantasia for Piano," appearing in the September 17, 2007 issue of The New Yorker magazine available at www.newyorker.com. The fraud by Hatto and her husband, which duped even major music critics, would never have been uncovered without recent technological advances.

8. "DAMAGES" ON TELEVISION

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

"DAMAGES," which is a super star plain-tiff's attorney Patricia ("Patty") Hewes, a ruthless litigator aiming not only to best the other side, but to destroy the opposing litigator, Arthur Frosbisher [played by talented Ted Danson in a beautifully nuanced performance], a villainous Enron-type CEO who has ruthlessly left his employees without their pensions when he unloaded his company's stock.

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

Although accepting the ABA's award for her pro bono commitments and contributions, Hewes is no saint. Hewes [Glenn Close's character] is a woman so driven, so unthinking and hurtful Lt. Benjamin Patty, was adored by her college sweet-heart, but when Patty's "child" was bitten by a dog, she asked him to pay for the dog's medical bills. Patty, without emotion, continues that he is a witness, but because of his flaw, he is not allowed to testify. Patty then asks him to sign an agreement that he has been lying about his age and marital status. Patty then asks him to sign an agreement that he has been lying about his age and marital status. Patty then asks him to sign an agreement that he has been lying about his age and marital status.

Yes, I loved every minute of the show! Glenn Close, portraying a dismal mother, but, she is doing so well that this show's success, in addition to Glenn Close's magnificent acting, is the way she alternates between flash-forward action, in the drama surrounding the tiff's attorney Patricia ("Patty") Hewes, without emotion, continues that he is a witness, but because of his flaw, he is not allowed to testify. Patty then asks him to sign an agreement that he has been lying about his age and marital status.

In a critical moment, when Patty hands Emily a potentially piece of incriminating evidence, she asks her first year associate: "Can I trust you?" This formented and intensely important question is followed by the superlative, ruthless, and charismatic litigator who has previously by both word and example, "over-did" the show's success, in addition to Glenn Close's magnificent acting, is the way she alternates frequently between flash-forward action, in the drama surrounding the tiff's attorney Patricia ("Patty") Hewes, without emotion, continues that he is a witness, but because of his flaw, he is not allowed to testify. Patty then asks him to sign an agreement that he has been lying about his age and marital status.

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“Don’t Be Left Out – Fight!”

By MARK WELIKY*

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

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

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

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

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

The respondent tendered a resignation wherein she acknowledged that she could not successfully defend herself on the merits against charges that she, inter alia, converted $45,000 from her escrow account in relation to one matter and $92,592.38 in relation to another matter.

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

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

Steven Pasternak (July 10, 2007)

By order of the Supreme Court of New Jersey dated February 24, 2005, the respondent was disbarred for the knowing misappropriation of trust funds and was permanently disbarred. Upon the Grievance Committee’s motion for reciprocal discipline, pursuant to 22 NCCR 693.3, the respondent was disbarred in New York, effective immediately.

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

In or about August 2004, the respondent was charged in a New Jersey county court with multiple counts of issuing a false instrument for filing in the first degree; multiple counts of insurance fraud; multiple counts of grand larceny in the third degree; one count of scheme to defraud in the first degree; and one count of enterprise corruption. On September 29, 2005, the respondent was convicted, after a non-jury trial, of one count of scheme to defraud in the first degree, and four counts of enterprise corruption for the filing in the first degree. By virtue of his felony conviction, the respondent is deemed to be an attorney and counselor-at-law pursuant to Judiciary Law §904(a)(4) and was automatically disbarred.

Robert A. Hegmann (August 7, 2007)

By order of the Supreme Court of the Judicial District of Hartford dated September 28, 2005, the respondent was disbarred in the State of Connecticut “having failed to appear for trial, and Disciplinary Counsel having appeared with witnesses and ready for trial.” The disciplinary complaint in Connecticut charges the respondent with fraudulently pursuing a claim on behalf of a client who was defrauded, and as a result, the respondent was charged with fraudulently pursuing a claim on behalf of a client, and engaging in an impermissible conflict of interest when he failed to submit an answer to complaints of professional misconduct and/or funds of multiple clients and failed to cooperate in an investigation of his conduct. Based on the Grievance Committee’s motion for reciprocal discipline pursuant to 22 NCCR 693.1, the respondent was disbarred in New York. Upon finding that the respondent had failed to cooperate in an investigation of the merits against the public interest in that he failed to submit an answer to complaints of professional misconduct and/or funds of multiple clients and failed to cooperate in an investigation of another matter.

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

By decision and order of the Appellate Division dated March 9, 2007, the respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest in that he failed to answer the petition of charges served upon him, the charges in the petition were deemed established and the respondent was disbarred.

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

Robert Tavon (July 18, 2007)

The respondent was immediately suspended effective immediately in further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest by inter alia, upon his failure to cooperate in the investigation of multiple complaints of professional misconduct lodged against him.

Jack Fisher, admitted as Jack Fisher (July 18, 2007)

By order of the Appellate Division, Second Judicial Department dated March 1, 2007, the respondent was immediately suspended effective immediately in further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest by inter alia, upon his failure to cooperate in the investigation of multiple complaints of professional misconduct lodged against him.

The respondent was found guilty, after a disciplinary hearing, of engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation by failing to include a provision in his client’s retained agreement addressing payment of a legal fee in the event that litigation was not necessary; failing to provide a client in a contingent fee matter with a writing stating the method by which his fee would be determined; conducting involving dishonesty, fraud, deceit, or misrepresentation by mischaracterizing his prior contact with the Grievance Committee while under oath. He was suspended from the practice of law for a period of three months in the State of New Jersey, effective immediately, and further order of the Court. The New Jersey order was based upon a decision of the Disciplinary Review Board of the Supreme Court of New Jersey dated October 19, 2006, finding that the respondent negligently misused court records and public data files, and failed to file an answer to a complaint and to comply with the terms of an Agreement in Lieu of Discipline. Upon the Grievance Committee’s motion for reciprocal discipline, pursuant to 22 NCCR 693.1, the respondent was suspended in New York for a period of six months, commencing August 30, 2007, with leave to apply for reactivation upon the expiration of said period.

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

The respondent was found guilty, after a disciplinary hearing, of engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation by failing to include a provision in his client’s retained agreement addressing payment of a legal fee in the event that litigation was not necessary; failing to provide a client in a contingent fee matter with a writing stating the method by which his fee would be determined; conducting involving dishonesty, fraud, deceit, or misrepresentation by mischaracterizing his prior contact with the Grievance Committee while under oath. He was suspended from the practice of law for a period of six months, commencing August 30, 2007, with leave to apply for reactivation upon the expiration of said period.

By decision and order of the Appellate Division dated August 15, 2005, the respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest in that he failed to answer the petition of charges served upon him, the charges in the petition were deemed established and the respondent was disbarred.

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

By order of the Appellate Division of the State of New York, Second Judicial Department, the respondent was disbarred in New York. Upon finding that the respondent had failed to cooperate in an investigation of the merits against the public interest in that he failed to submit an answer to complaints of professional misconduct and/or funds of multiple clients and failed to cooperate in an investigation of another matter.

Luis A. Medina (September 11, 2007)

By decision and order of the Appellate Division of the State of New York, Second Judicial Department dated August 21, 2007, the respondent was deemed found guilty, after a disciplinary hearing, of engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation by failing to include a provision in his client’s retained agreement addressing payment of a legal fee in the event that litigation was not necessary; failing to provide a client in a contingent fee matter with a writing stating the method by which his fee would be determined; conducting involving dishonesty, fraud, deceit, or misrepresentation by mischaracterizing his prior contact with the Grievance Committee while under oath. He was suspended from the practice of law in New York for a period of one year, effective immediately.

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

By decision and order of the Appellate Division dated August 15, 2005, the respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest based upon his repeated failure to keep pertinent records, and failed to file an answer to the petition of charges predicated on the foregoing.

Barry Lee Chasky (September 11, 2007)

The respondent tendered a resignation wherein it he acknowledged that he could not successfully defend himself on the merits against charges that he, inter alia, drew on his attorney trust account that were dishonored due to insufficient funds; that he failed to safeguard at least $250,000 of a client’s personal injury settlement; and that he failed to cooperate in an investigation of another matter.

Kevin J. Cummings, admitted as Kevin D. Cummings (September 11, 2007)

By decision and order of the Appellate Division dated August 15, 2005, the respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest based upon his repeated failure to keep pertinent records, and failed to file an answer to the petition of charges predicated on the foregoing.

Peaches H. Drummond (September 18, 2007)

The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against charges that he was guilty of professional misconduct involving an immoral or dishonorable act in connection with a cause in which he was interested. The respondent had failed to establish any defenses to the imposition of reciprocal discipline, and was automatically disbarred.

By order of the Appellate Division of the State of New York, Second Judicial Department dated March 9, 2007, the respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest in that he failed to submit written answers to an agency information request and with three separate complaints, and in conduct adversely reflecting on his fitness to practice law. Having thereafter failed to answer the petition of charges served upon him, the charges in the petition were deemed established and the respondent was disbarred.

The Grievance Committee’s motion for reciprocal discipline pursuant to 22 NCCR 693.1, the respondent was disbarred in New York. Upon finding that the respondent had failed to cooperate in an investigation of the merits against the public interest in that he failed to submit an answer to complaints of professional misconduct and/or funds of multiple clients and failed to cooperate in an investigation of another matter.

By order of the Appellate Division of the State of New York, Second Judicial Department dated March 9, 2007, the respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest in that he failed to submit written answers to an agency information request and with three separate complaints, and in conduct adversely reflecting on his fitness to practice law. Having thereafter failed to answer the petition of charges served upon him, the charges in the petition were deemed established and the respondent was disbarred.

The Grievance Committee’s motion for reciprocal discipline pursuant to 22 NCCR 693.1, the respondent was disbarred in New York.
after a disciplinary hearing, of misappropriating funds entrusted to him as a fiduciary, engaging in conduct prejudicial to the administration of justice by failing to re-register with the Office of Court Administration (OCA) and engaging in conduct adversely reflecting on his fitness to practice law by failing to cooperate with the lawful demands of the Grievance Committee.

Mark J. Nerenberg, admitted as counsel-at-law by order of the Supreme Court of New York. The respondent was publicly censured in 2007.

Mark S. Benham, a suspended attorney (September 11, 2007) by order of the Supreme Court of New York was publicly censured by order of the court. He was found guilty of failing to cooperate with the lawful demands of the 9th Judicial District Grievance Committee; neglecting a legal matter; failing to communicate with the client; intentionally misrepresenting the status of the matter; and failing to pay the client pursuant to a stipulation executed and filed in a court of law.

By order of the Supreme Court of New York, the respondent was suspended from the practice of law in that State for a period of three months, effective February 24, 2007, for, inter alia, failing to safeguard funds by impermissibly allowing the use of a signature stamp on trust account checks; failing to properly supervise law office assistants; sharing fees with a non-lawyer; and assisting a non-lawyer in the unauthorized practice of law. Subsequently, by order of the Supreme Court of New Jersey dated May 25, 2007, the respondent was restored to the practice of law in New Jersey and directed to practice under the supervision of an attorney approved by the Office of Attorney Ethics for a period of one year and until further order of the court. Upon the Grievance Committees' motion for reciprocal discipline pursuant to 22 NYCRR 691.3, the respondent was publicly censured in New York.

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

Sheldon Goldklang, a suspended attorney (October 1, 2007) by order of the Supreme Court of New York, the respondent was suspended from the practice of law for three years, commencing on his fitness to practice law as a result of failing to cooperate with the lawful demands of the Office of Attorney Ethics.

ALAN ZIGMAN

Diana J. Sochet, Assistant Counsel to the State of New York Grievance Committee for the Second and Eleventh Judicial Districts, has compiled this edition of COURT NOTES.

Flash Report

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