Introduction

Appellate lawyers dealing with criminal law cases usually gauge their chances of success on appeal by looking to start out with a core group of judges on the appellate panel which they categorize as either pro-prosecution or pro-defense. They then battle to convince “the swing votes” of the merits of their case. The question arises based upon this long utilized strategy; is there really a pro-prosecution or pro-defense predilection by some of the judges on the appellate courts? To test this long held theory, especially as it applies to the United States Supreme Court, I conducted an analysis of 291 recent criminal law decisions covering the

Is the United States Supreme Court Pro-Prosecution or Pro-Defense:
An analysis of 27 recent criminal law decisions

by SPIROS A. TSIMBINOS*

A Sad but Fond Farewell

This past June the Queens County Bar Association bade farewell to one of our most cherished friends. Our Association’s CLE and Events Coordinator for the past several years, Catherine Dolginko, has moved on to her new home in California. She will be dearly missed by anyone who had the good fortune of knowing her during her stay in Queens. Catherine not only showed great skill and professionalism in whatever task she was asked to perform but showed great warmth and charm to anyone she encountered. She was always a great ambassador for our Association. It is comforting to note that those qualities we came to appreciate in Catherine will now become known to a whole new community, even if they are on the Left Coast. Judge Martin E. Ritholtz, Dean of the Queens County Bar Association Academy of Law, presided at a special meeting in June to say goodbye and thank you to Catherine for her service to our Association. Academy members and Association committee chairpersons joined in wishing Catherine great happiness and success for her future. We will never forget you!

Continued On Page 12

Paul Kerson

I spent three weeks in China this summer. I rode a tour bus throughout the country with 13 other American tourists. We visited Beijing, Xian, Chengdu, Shanghai, Dazu, and Chongqing. I took a separate trip to Harbin. China calls itself a “Communist” country. This is a misnomer. They are having a construction boom fueled by the introduction of the mortgage bank 10 years ago. The whole country looks like the Empire State Building, Co-op City, North Shore Towers and Starrett City rolled into one and multiplied many thousands of times.

China today is a country of planned tall apartment houses and commercial communities on broad tree-lined boulevards. Privately run stores are everywhere, built into the ground floor of each of these new buildings. Privately run stores are everywhere, built into the ground floor of each of these new buildings. Her largest cities are bigger and more brightly lit than New York. Despite this advanced urban construction, China’s agriculture appears to be stuck in the 19th Century. I observed very few tractors. I saw no combines or reapers. They farm by hand on small family plots. In questioning our tour guides, it appears that crop rotation is not used. The Chinese have a long way to go if their 19th Century agricultural methods are to catch up with their 21st Century cities and factories.

The Chinese now sell us most of our industrial products. However, we in the

Continued On Page 13

Academy of Law and Committee Chairs Bid Farewell to Catherine Dolginko

The Law of China

by PAUL E. KERSON

The Law of China

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## 2007 Fall CLE Seminar & Event Listing

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## New Members

- Kewku Badoh Agyan
- Alvida Renee Alford
- Camille Tanaka Allen
- Jack Angello
- Matthew Kirsch Arad
- Maria Analilia Aragona
- Scott Matthew Arenowitz
- Guzy Azoulay
- Rakhil Bahadir
- Albert Baldeo
- Patrick Roland Barnhart
- Susan Bolduc
- Gregory Stephen Bougoouloos
- Robert H. Brown
- Patrick G. Burke, III
- Marybeth Campfield
- Heidi Harrison Chain
- Samantha Chung
- Catherine May Co
- Jacques Laurent David
- Dennis F. Dowd
- Emmanuel O. Fashakian
- Natalie Fortune
- Oda Friedheim
- Sheryl Frye-Gauntlett
- Matthew P. Gallagher
- Thomas J. Gerrity
- Bonnie Rebecca Gerhson
- Lorez Monica Gilli
- Katie Giusti
- Tamara M. Harris
- Wilfred W. Holness
- Katherine K. Hung
- Angela M. Ignezi
- Claude Kavanagh
- Jennifer Kim
- David Kirsch
- Stephen H. Klausner

## Necrology

- Kenneth S. Berkman
- Daniel M. Ebner
- Bernard M. Eiber
- Sidney Levis
- Herman Schmertz

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- James J. Wyrnn

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- Maria Haas
- Carmen Velasquez

## 2007 - 2008

### Queens Bar Bulletin Editor - LESLIE S. NIZIN

The Queens County Bar Association starts a New Year, we have a new publisher and a new look. As always, I welcome your articles, poems, articles of interest and your comments. Kindly send all of your material to the undersigned care of the Queens County Bar Association or to my e-mail address, lnizin@aol.com.
When you read this you will all be, “back to the office,” after what hopefully was an enjoyable and restful summer. Here at the Bar Association the summer has been quite busy. We had a meeting with all Committee Chairs in an effort to increase committee participation. A brainstorm on the first floor of the Queens County Bar Association's building near the LIRR station. In addition to state of the art law office, the possiblity of renovating CUNY Law School was discussed. We raised the possibility of new development of our location. If and when these concepts move forward, we will be an active participant so as to ensure that we remain the center of the legal profession in Queens.

If you recently called the Association you realize that we have a new automated phone answering system. This makes it easier for our staff to assist members. Our staff is more efficient and enables our members to get to speak to the proper person as quickly as possible. A listing of the extensions for our staff is printed elsewhere in this bulletin.

In June 1990, the judge began serving as a hearing court attorney in the Housing Part of the Civil Court of the City of New York, in the Bronx. She also has served as a Small Claims Arbitrator in the Civil Court. She says of that experience: “I found claims to be quite interesting. Quite often, people would stand on principles for $200, and say ‘it’s the principle.’”

The Honorable Margaret McGowan was appointed as a judge to the Housing Court, Civil Court of the City of New York, Queens County, by Chief Administrative Judge Jonathan Lippman in 1998. She sat in Housing Court for eight years and was appointed to the Family Court of the City of New York, Queens County, by Mayor Michael Bloomberg in 2006 for a term until 2015.

We spoke about the similarities and the differences in her experience sitting as a judge in the two most infamously high volume high stress courts in the City. The judge was quick to point out that the first area of similarity in sitting as a judge in either Court is that you “really see women” bringing their problems to both courts. It is usually a woman who is being evicted in housing court, and usually a woman who needs the courts help in Family Court as well.

The judge says her greatest accomplishment in Family Court so far has been “preventing domestic violence from continuing and protecting children from witnessing or being a part of domestic violence.”

In comparing the volume, stress and caseloads of the busy Housing Court and the busy Family Court, the judge says, “Both have their own issues, both have heavy volume and stressful situations. Family court, however, deals with child issues and is more difficult and more stressful.”

The judge was asked how much she enjoyed the stress, and is more receptive to our suggestions when implementing new systems or policies. They have considered our positions and, when feasible, made changes to accommodate the needs of the membership.

The new Supervising Judge of the Civil Court, Honorable Brian Siegal, has also sought out the position of the Association on issues that affect our members. She is working with Mark Welisky, our Pro Bono Coordinator, on a number of pro bono opportunities. The Order of under-represented citizens of Queens County. It makes my job much easier a lease if the rent is paid up to date and they can return the apartment vacant.

The new legislation will come into effect on October 1, 2007. The judge thought that the “bar should have been more involved” before the new law was crafted. Our meeting was brief. The judge had her usual calendar of approximately ninety cases a day. That’s ninety families all needing some form of urgent assistance as this is their first or second appearance in the Court. It’s Family Court on the fast track. This is the M.A.S.H. unit of the Family Court, and Judge McGowan in Family Court’s Hawkeye—she sees the stress and appreciates the significance of the ninety plus decisions she makes everyday—but like Hawkeye she not only enjoys the stress, she seems to thrive on it. Maybe she finds it easier to have the world travel to appear in front of her, instead of her scrupling to go see the world—even if it was free. I would have asked her, but she had no time for such light pondering. Judge McGowan presides over an operating arena in which there is barely time to breathe. And barely time to meet with reporters for the Queens Bar Association who are curious as to how she does it all while remaining calm, I asked her to tell me about her most interesting case in Family court this past year, her first year—she said she was too busy to think of which one. The volume is so heavy she doesn’t have time to wonder what happened in the area of real estate, let alone real estate, when she no longer sees them. Fitting me in, albeit for ten minutes was not without difficulty in the judge’s schedule. I don’t know if the ten minutes would have been found if not for her court attorney, Jim McGuire, advocating for me. He, too, is a...
The New York Parent Education and Awareness Program

How the Court System is Succeeding in Protecting Children Whose Parents are Going Through Divorce, Separation or Other Child-Centered Litigation

You do not have to know someone who is undergoing a separation, divorce or other child-centered litigation, and you do not have to experience it yourself, to recognize that putting children in the middle of the adult conflict can be detrimental to their health and well-being.

In 2001, in New York State, the Chief Judge, Judith Kaye, in her State of the Judiciary Address, announced an initiative to prioritize parent education and awareness programs in New York State, and the creation of an advisory board to oversee this process. The Hon. Evelyn Faizey, a Supreme Court Judge in Rochester, is the Chair. This program is called the New York State Parent Education and Awareness Program.

What is the New York State Parent Education and Awareness Program? It is a program designed to educate divorcing or separating parents about the impact of their breakup on their children. The primary goal is to teach parents ways they can reduce the stress of family changes and protect their children from the negative effects of ongoing parental conflict in order to foster and promote their children’s healthy adjustment and development.

What does the Court system do? Following the guidelines developed by the Advisory Board, the Court of Office Administration certifies and monitors local providers of such services who wish to accept court-referred participants. The New York State Parent Education and Awareness Program has a website at www.nycourts.gov/p paternal. It contains all of the guidelines and procedures for certification, and all of the forms that the providers of the program must use. There are currently 49 certified parent education providers in 61 counties offering classes in 91 locations. Judges may, in their discretion, order parents to attend these classes, parents may self-refer and agencies can refer parents.

Conclusion

This is just a brief overview of the current status of the New York State Parent Education and Awareness Program. Experience and research have shown that parent education does make a positive difference for children and their parents who are experiencing divorce or separation and it can help bring about a reduced need for court intervention.

Currently, parent education is available in 61 counties. We are focusing on getting the word out about the certified programs so that more and more parents will utilize them. If you have any suggestions about how we can accomplish this, you can contact the Program by email at rparent-ed@courts.state.ny.us or at the toll-free number at 888-809-2798, or by mail at the New York State Parent Education and Awareness Program, 140 Grand Street, Suite 701, White Plains, New York 10601. Also, you can locate information about parent education at the parent education website at www.nycourts.gov/p paternal. Finally, please tell parents about this important program; it can make all the difference in the lives of children and parents in this State.

A B O U T  T H E  B E N C H . . .

Thank you to the following members and friends of the Queens County Bar Association for their generous support of our 2007 Annual Dinner Journal:

David Adler
AmeriGroup Funding
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State Bank of Long Island
Howard Stave
Sterling National Bank
Straus & Strauss
Arthur Terranova
Terrace On The Park
Thermo & Thornaidis
Touro School of Law
Steven Wimpheier

University of Perugia. She also loved Japan, Bali and Hong Kong. The visit travels, she says, have helped her deal with the multicultural litigant base in Queens County.

The judge advises to the rest of us on how to best cope with the stress of high volume, high stress courts is as follows: “Enjoy your work. Family court is not the place to be if you don’t like it or people. Take each case as it comes and never just go through the paces, Family court is too important not to let each person be heard.”
Some of the professional associations that David has been affiliated with include: President of the Criminal Courts Bar Association 1997-1999, New York State Association of Criminal Defense Attorneys' founding member, board member of the Brandeis Association, Assigned Counsel Plan-Capital Defense, Homicide and Felony Panels, member of the House of Delegates of the New York State Bar Association, Adjunct Faculty member Hofstra School of Law-Trial Advocacy Program, Queens Bar Association-Bar Panels and Criminal Courts Committee, CLE lecturer.

David and his wife Janet have been married for thirty-six years. They have two married daughters. Geri, lives in Chicago and is a first grade school teacher. Hillary lives locally and works for a Supreme Court Judge in Kings County. She is the mother of Matthew, David's grandchild.

David is a dyed-in-the-wool Yankee fan. Heenjoys playing golf, kayaking and travel.

He plans to focus on the modernization of the Queens Bar Association building, including the creation of a lawyer’s lounge and tech center. He also hopes to invigorate the committee system with a goal of increasing membership involvement by active committee participation. David intends to be pro-active as President and is looking forward to carrying out his goals for the Bar Association during his tenure.

*Editor's Note: Lester Shick is an Associate Court Clerk in Part KTRP in Kew Gardens, which part is presided over by Justice Barry Kron.
These lawyers uphold the highest traditions of our profession by providing legal assistance pro bono for indigent Queens residents, which is sponsored by the Queens Volunteer Lawyers Project (QVLP), the pro bono legal assistance program for indigent Queens residents, which is sponsored by the Queens County Bar Association.

The NYSSBA President’s Pro Bono Service Awards recognize attorneys who provide civil legal services, without compensation, to the poor and/or disadvantaged in their communities. These lawyers uphold the highest traditions of our profession and respond to the noblest of our ethical precepts by helping to assure that the poor have access to justice. The awards were presented on April 30th, 2007, at the State Bar Center at a ceremony held in conjunction with the Law Day celebration at the New York Court of Appeals. Speakers at the awards presentation included Hon. Victoria A. Graffeo of the Court of Appeals, NYSSBA President Mark H. Alcott and NYSSBA President-Elect Kathryn Grant Madigan (now President).

Ms. Alberty maintains a solo practice located in Forest Hills concentrating in family law, bankruptcy, real estate and probate matters.

**Congrats to Pro Bono Award winners!**

By MARK WELIKY*

A Queens County Bar Association member has been named the recipient of the New York State Bar Association (NYSBA) Pro Bono Service Award for 2007. This award for Matrimonial Law was presented to Stephen David Fink. Mr. Fink, a longtime and very active member of our pro bono volunteer panel, maintains a solo practice in Forest Hills with a focus on family, matrimonial and commercial law. The award was presented to Mr. Fink at the Association’s annual dinner on May 3rd at Terrace On The Park.

The Queens County Bar Association and the Queens Volunteer Lawyers Project saluted our award winners and all of the other pro bono volunteer attorneys who continue to provide invaluable service to our community.

**NYSBA President’s Pro Bono Service Award**

Regina Alberty receives NYSSBA President’s Pro Bono Service Award from QCBA Pro Bono Coordinator, Mark Weliky

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

---

20 years. 150 experts. 30,000 cases.

---

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- Machine controls, inductors

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- Electrical construction: means, methods, equipment
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- Safety instructions and warnings, product safety labels, adequacy of warnings

**Professional Liability**

- Reviews of agreements and contract documents
- Analysis of construction administration and post construction services
- Reviews of interdisciplinary coordination

**Parties & Interest**

By: ARTHUR N. TERRANOVA

Executive Director

The Legal Aid Society has decided to recognize our President, David L. Cohen, by presenting him with one of the Society’s 2007 Pro Bono Awards for his outstanding service to the Legal Aid Society and its clients.

During the summer our Bar Association phone system was upgraded. You can now contact the membership department, CLE department or myself directly. Below is the list of extensions for your use.

Operator - 0
CLE referral - 1
CLE and/or Membership - 2
Queens Volunteer Lawyer’s Project - 3
Directions to the Bar Association - 4
Shakema Oakley - 221
J nice Ruiz - 222
Janine Coakley - 223
Arthur Terranova - 224
Sasha Khan - 232

Note: Any members having items they wish to inform the membership about should forward same to me for future publications.
By: *MARK WELIKY

On the evening of Monday, November 5th a special CLE seminar will be presented by the Queens County Bar Association Academy of Law. The seminar will primarily be for attorneys who are volunteering for the new Civil Legal Advice and Resource Office (CLARO) at Queens Civil Court although all are invited to attend.

The CLARO project, which already is in operation at the Kings County Civil Court, will be co-sponsored in Queens by the Association of the Bar of the City of New York, our Queens Volunteer Lawyers Project, the St. John’s University School of Law, Elder Law Clinic, the Legal Aid Society and with the cooperation and assistance of the Queens County Civil Court, Supervising Judge Bernice D. Siegal.

Although rich in diversity, Queens County has a large indigent population. While the frequency and impact of Civil Court debt collection cases is expanding rapidly, legal service providers in Queens are not equipped to handle them. Elderly persons, single mothers, persons with low-level English proficiency, and low-income people are forced to represent themselves pro se against collection agency attorneys who have vastly greater knowledge of the Civil Court debt collection process and dangerously greater bargaining power.

CLARO attempts to remedy this inequity. Rather than attempt representation of just a relative handful of these debtors, the limited resources available are maximized by offering debtors the assistance of CLARO, a free walk-in clinic that provides legal advice on how to best represent themselves pro se.

CLARO will respond to the needs of these pro se litigants by advising them on various self-representation strategies. The CLARO office will be open on Friday afternoons at Queens Civil Court. Volunteer lawyers and law students will provide information to the pro se litigants and attempt to demystify the legal process while alleviating some of the anxiety experienced by the pro se litigant.

Attendees at the November 5th seminar will be granted a total of 3 CLE credits (2 credits in SKILLS and 1 credit in ETHICS). Tuition will be waived for attorneys volunteering for 6 hours of service at CLARO. Seminar topics will include: the debt collection process, defenses to debt, CPRN Nuts & Bolts (service of process/answers and motions), restraints on bank accounts and the court process and settlement. Refreshments will be provided before the seminar and free parking is available.

Anyone interested in volunteering for CLARO or for more information contact Mark Weliky at (718) 291-4500, MWeliky@QCBA.org.

*Mark Weliky is Pro Bono Coordinator for the Queens County Bar Association
Annual Dinner and Installation, May 3, 2007

Annamarie Policriti, Carolyn Herman and Bert Herman

Carmen Velasquez, Chanwoo Lee, Hon. Peter O'Donoghue and Hon. Steven Paynter

Chris Renfroe, Hon. John Milano, John Dietz and James Wynn

David Cohen and Judge Arthur Cooperman

David Cohen, President, being sworn in by Judge Cooperman

Dr. Arthur Flug, Hon. Phyllis Orlikoff Flug, RoseAnn Darche, Gary Darche

Guests, Hon. James Dollard, Guest and Hon. Robert Nahman

Hon. Barry Kron, Hon. Richard Buchter and Ronald Rubinstein

Hon. Joseph Risi and Arthur Terranova

Hon. Darrell Gavrin, David Cohen, Hon. Margaret Partsi McGowan and Edward Guida

Assemblyman Joseph Lentol, David Cohen and Martha Holstein


Photos by Walter Karling
Members of the Board being sworn in by Judge Cooperman

Hon. Lawrence Cullen receiving his gavel from John Dietz


Hon. Seymour Boyers and Ed Rosenthal

Hon. Richard Buchter, Hon. Robert Kohm and Hon. Timothy Dufficy

Hon. Sidney Strauss, Hon. Barry Kron, Chris Renfroe


John Dietz giving Catherine Dolginko a going away gift

Paul Pavlides, Arthur Terranova and George Campos

Officers of the Board being sworn in by Judge Cooperman

Hon. Steven Fisher, David Cohen, Elizabeth Yablon and Hon. Leslie Leach

Morton Povman, Hon. Randall Eng and Hon. Stephen Knopf
The exhibition is "Alfred Dreyfus: The Fight for Justice," that will run at the Yeshiva University Museum, at 15 West 16th Street, from October 14, 2007 - February 17, 2008. A study of the Dreyfus Affair should be cathartic on many levels: failure of a corrupt judicial system that permitted the consideration of manufactured, forged, and perjured evidence by judges without disclosure to defense counsel; the heinousness of one of the most monumental cover-ups in human history designed to protect an "image" of a military establishment at the expense of an innocent man lan-
guing in shackles on Devil's Island, and jailed for treason. His trial and the trial of Alfred Dreyfus: The Fight for Justice will be on view at the Yeshiva University Museum beginning October 14, 2007, marking the exhibition's first North American venue. The show was organized by the Musée d'Art et d'Histoire du Judaïsme in Paris, France, where it was on view in the Fall of 2006 before travelling to the Jewish Museum in New York in early 2007. The exhibition comprises some 200 objects from the Dreyfus family archive, including photographs, posters, letters, and the original "J'accuse...!" newspaper article, written by renowned author-journalist Emile Zola to the president of France in 1898. The majori-
ty of the objects will be on public view in the United States for the first time. The exhibition begins in 1870, after France was defeated by Germany in the Franco-Prussian war, and retells the story of how one man's false conviction fueled, suddenly and contemporaneously, both (1) political and humanitarian activism and (2) Anti-Semitism in France and around the world. In 1884, Jewish French army officer Captain Alfred Dreyfus (1859-1935) was accused of giving beginning military secrets to Germany and was wrongfully arrested and jailed for treason. His trial and the political scandal that ensued left France bitterly divided for decades, with "Dreyfusard" liberal intellectuals on one side and "anti-Dreyfusard" dergy and military personnel on the other. Every action begets a reaction. Thus, in the aftermath of Nazi barbarism that led to the extermination of 6,000,000 European Jews, the State of Israel was established in 1948. Alfred Dreyfus, similarly, contributed to many important 20th centu-
ry world developments and had a significant effect on Theodor Herzl, the father of Zionism -- the belief that Jews need a homeland of their own. Herzl, an assimili-
lated Jewish journalist covering the trial of Alfred Dreyfus in Paris for an Austrian newspaper, would change the face of Jewish history. Viennese journalist Theodor Herzl was so shaken by the mobs of people shouting "Death to the Jews" and riding against Jews that resulted in deaths at the time of the Dreyfus trial that he decided that the only solution to anti-Semitism was for Jews to have their own national home-
land. He immediately plunged into organizing and amassing support for the founding of a Jewish state and, in 1897, convened the first Zionist congress in Basel, Switzerland. Herzl's pioneering efforts attracted the attention and sup-
port of Louis D. Brandeis, the first Jewish Justice to sit on the United States Supreme Court. In 1895, an innocent Alfred Dreyfus narrowly escaped a lynching before being committed to solitary confinement on Devil's Island in French Guiana for 10 years. During that time, he wrote hundreds of letters to his wife Lucie, his brother Mathieu - - who valiantly fought the truth, Jewish government officials, and various supporters to pur-
se both his own fight for honor and human rights in a democratic society. The exhibition at the Yeshiva University Museum includes a sampling of these original letters and will also feature an evening of drama and discussion "From the Depths of My Heart: The Letters of Alfred and Lucie Dreyfus" will take place at the Museum on November 29.

Alfred Dreyfus: The Fight for Justice is organized chronologically into eight sections, beginning before the Affair in 1870; covering the trial and retrial of Dreyfus and the trial of Dreyfus's champion Emile Zola in the 1890s; and concluding with a section on how the 20th century addressed issues of rehabilitation and the challenge of com-
memoration. The exhibition's original objects and documentary materials will reveal how the Dreyfus Affair affected history, culture and legislation in France, and the intermittent waves of anti-
Semitism in late nineteenth century Europe. A two-part international sympo-
sum dedicated to these issues has been organized by the Yeshiva University Museum and the Cardozo Law School and is scheduled to take place on or about February 5, 2008.

The greatest day in the history of jour-
nalism was January 13, 1898. French novelist Emile Zola (1840-1902), who was not Jewish, wrote a masterpiece of an article entitled "J'accuse," published in the newspaper L'Aurore, an article that gave birth to a series of other cover-
ups and delivered more unjust verdicts; that gave birth to a series of other cover-
or, notably by Emile Zola [1840-1902], a [non-jewish] novelist and journalist, entailing enormous self-sacrifices to
expose the truth.

Yeshiva University Museum will pres-
ent the first major exhibition to address the history and consequences of the Dreyfus Affair through the personal effects of Alfred Dreyfus himself. Alfred
which Dreyfus had been wrongfully convicted, and Zola, who had been arrested Zola and charged Zola was found guilty. Gregori, who was caught red-handed as tried - - acquired, a fact that speaks enough about French anti-Semitism in the nineteenth and twentieth centuries.

For more information on the Dreyfus Affair, I urge you to get the following materials and share them with all of your family members:

1. The DVD (released in February 2005, "Special Edition" DVD) of "The Life of Emile Zola," made by Warner Brothers in 1937, which was the first biographical film to earn the Oscar for Best Picture of the Year. The film starred Paul Muni (1895-1967), born in Meshellaneous, Meer Weisfen, who was nominated 6 times for an Oscar for Best Actor, a Leading Role (and won the Oscar for "The Story of Louis Pasteur") and Joseph Schildkraut, who won the Academy Award for Best Supporting Actor for his portrayal of Alfred Dreyfus. The movie is a classic and still, and oddly, the word "jew" is never uttered.

2. Frederick Brown, ZOLA: A LIFE, chapter 27, at 796 (Farrar Straus & Giroux pubs. 1995).

3. An essay, available on the internet, by Professor Donald E. Wilkes, Jr. of the University of Georgia School of Law, titled "J'Accuse!" and Joseph Schildkraut, who won the Academy Award for Best Supporting Actor for his portrayal of Alfred Dreyfus. The film is a classic and still, and oddly, the word "jew" is never uttered.


FREDERICK BROWN is one of the world's contemporary truly great nonfiction writers and essayists. Every single work he produces receives accolades from The New York Times. Living in New York City, Brown is one of the world's most renowned authorities on French literature and culture, and history. In addition to ZOLA:A LIFE, among others.

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period May 1, 2006 to June 30, 2007. This time period coincides with the appointment of Justice Samuel Alito to the Court and thus covers the Court’s outlook with its full compliment of Justices. My analysis revealed some interesting results as follows:

A High Percentage of 5-4 Decisions and a Small Number of Unanimous Results

The first significant observation which emerged from the analysis was that there were a high number of 5-4 decisions. Of the 27 decisions 10 or 37% were 5-4 votes. The number of 5-4 results in criminal cases was somewhat higher than in civil cases. A recent report on the Court’s caseload for the prior term stated that of the total number of 70 decisions issued 19 or 27% resulted in 5-4 decisions.

Further, with respect to the criminal cases in almost every situation the composition of the 5-4 breakdown was the same. The analysis revealed that of the 27 results only 7 involved unanimous rulings or just about 26% of the total. This situation is indicative that when viewing the present composition of the United States Supreme Court we do start out with two blocks of Justices, one group having a pro-prosecution bent and the other significantly more favorable to the defense.

The Pro-Prosecution Group

Five Justices of the Court have a pro-prosecution decision rate of over 60%. This group consists of Chief Justice Roberts, and Justices Alito, Kennedy, Scalia, and Thomas. Of the 27 decisions considered Justice Alito issued a pro-prosecution ruling in 21 cases for a 77.8% rating. Justice Alito, during his first few months on the Court, voted in favor of the defense in several cases. Toward the end of the current term, however, his number of pro-prosecution decisions greatly increased and he continued largely coming from the top. Chief Justice Roberts and Justice Thomas had the highest percentage rates with 87% and 87.8%, respectively. Each with 74% Justice Kennedy had issued pro-prosecution ratings in 19 cases for a 70% rating and Justice Scalia had 17 pro-prosecution decisions for a pro-prosecution rating of 63%. Overall, a large number of the consistent voting of the five pro-prosecution Justices, the Court as a whole has rendered 18 pro-prosecution decisions and nine which were favorable to the defense for a pro-prosecution rating of slightly over 66%.

The Pro-Defense Group

A group of four Justices, to wit, Ginsburg, Souter, Stevens, and Breyer manifested a pro-defense inclination. Each of these Justices had a pro-defense vote of over 73% and a pro-prosecution rating of 26% or less. Justices Ginsburg and Breyer issued a pro-prosecution decision in only 7 of the 27 decisions for a rating of 26%. Justice Stevens voted for the prosecution 8 times out of 27 for a rating of 23.3% and Justice Souter voted for the prosecution 10 times out of 27 for a rating of 18.5%.

The huge disparity between the groups is highlighted by the fact that even between the lowest pro-prosecution Justice (Scalia) and the highest pro-prosecution Justice (Scalia) there is a gap. Between the highest percentage of Justice in the pro-prosecution group (Alito) and the lowest in the pro-defense group (Souter) there is a gap of 59%.

Justice Kennedy Is the Key Swing Vote

Of the nine Supreme Court Justices, Justice Anthony Kennedy has dearly emerged as the Court’s swing voter whose decision can make the case go one way or another. Justice Kennedy was in the majority in 24 of the 27 decisions, or nearly 90% of the time. His high pro-prosecution rating of slightly over 70% was largely responsible for a pro-prosecution majority in many decisions. His importance to the pro-prosecution block is illustrated by the fact that when he broke with his pro-prosecution brethren on an issue it usually led to a different result. Thus Justice Kennedy sided with the pro-defense group in four cases involving the Texas death penalty resulting in a 5-4 pro-defense vote in those matters.

Justices Scalia and Ginsburg - Less Predictable Than Expected

Many criminal law practitioners might have the tendency to immediately pigeonhole Justice Scalia as strongly pro-prosecution and likewise Justice Ginsburg as strongly pro-defense. Although both of these Justices fall within their respective camps, they have a tendency to deviate on occasion and to cross over to the other side with respect to certain issues and circumstances. Thus Justice Scalia among the five pro-prosecution Justices has the lowest pro-prosecution rating and during the last few years he has taken strong pro-defense positions which have carried the Court on pro-defense issues most notably the Crawford line of cases with respect to the right of confrontation and the Apprendi sentencing cases which have led to changes with respect to the federal sentencing guidelines and the nullification of many state sentencing procedures. Among the 27 decisions Justice Scalia broke with his pro-prosecution colleagues Justice Alito and Kennedy to vote on the side of the defense in Cunningham vs. California, 127 S. Ct. 856 (2007), which struck down California’s persistent offender’s sentencing statute. Similarly, Justice Ginsburg had the highest pro-prosecution rating among the pro-defense group and sided with the pro-prosecution majority in Dixon vs. United States, 126 S. Ct. 2437 (June 22, 2006) where the Court held that jury instructions did not run afoul of the due process cause when they placed the burden on a defendant to establish a due process defense by a preponderance of the evidence. Justice Ginsburg has also, on occasion, joined the pro-prosecution group with respect to certain search issue cases (see for example, Brigham City Utah vs. Stuart, 126 S. Ct. 1943 (2006)).

All Five Pro-Prosecution Justices Were Nominated by Republican Presidents

It is an accepted premise that in making their selection for United States Supreme Court Justices Presidents will usually select someone who is compatible with their political and judicial philosophy. Thus it is not surprising that the five Justices who were in the pro-prosecution group were selected by Republican Presidents who expressed a law and order viewpoint and tended to fall within a Republican-Conservative philosophy. Chief Justice Roberts and Justice Alito were selected by George W. Bush, our current President. Justices Ginsburg and Kennedy were selected by President Ronald Reagan and Justice Thomas was picked by former President George H.W. Bush.

However, among the group of four pro-defense Justices some surprises and unexpected results have occurred. Although Justice Ginsburg and Breyer were selected by President Bill Clinton, a Democrat, and might be expected to manifest a pro-defendant and pro-civil liberties viewpoint Justice Stevens, was nominated by Republican President Gerald Ford and Justice Souter by Republican President George H.W. Bush. Both of these Justices appear to have departed quite a bit from the positions they may have been expected to take. It is therefore not surprising that many Conservative and Republican voters are somewhat disappointed in the positions taken by Justice Stevens and Justice Souter with possible regrets regarding their selection.

Conclusion

I hope that this analysis regarding the voting record of the various Justices of the Supreme Court with respect to criminal law decisions has provided some valuable insight for criminal law practitioners. With the opening of the Court’s new term in October, 2007, we look forward to future decisions. As we look to the future and attempt to predict results, it is important to have an understanding of what has occurred in the past.

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

1 The cases included the same case concerning the Texas death penalty procedures. They were all decided by 5-4 votes and involved the same breakdown of Justices. Thus for analytical purposes these three cases were counted as one as so not to distort the overall analysis.

2 The cases are Smith vs. Texas, 127 S. Ct. 1686; Abdu-Karim vs. Quarters, 172 S. Ct. 1564; and Brewer vs. Quartman, 127 S. Ct. 1706 (all decided April 25, 2007); Penati vs. Quartman, 127 S. Ct. 2642 (June 28, 2007).
The Law of China

Continued From Page 1

United States have perfected industrialized agriculture. The American family farm is a thing of the past. Perhaps we should stop paying American agricultural corporations to lose their land fallow. We should allow full production so that we can balance our trade with China by selling there our agricultural products produced with 21st Century technology. This is the great American strength, and can be used to correct our currently unbalanced trade with China.

Karl Marx, who invented and defined Communism in his 19th Century book, “Das Kapital” would not recognize today’s China at all.

What China is today is a self-perpetuating oligarchy based on an ancient Confucian principle: “The Emperor takes care of the country as if he was a Father. The Father takes care of the family as if he was an Emperor.” The laws of the Chinese “father” are summed up by the “Chengdu Municipal Rules Pertaining to Civilized Tour” found at all their public attractions. Upon reflection, it appears that these are fairly good rules for living generally in any country.

Following is an exact text, complete with English language mistakes, that tourists and our citizens, please abide it. Do not force other people to buy or sell something. Do not occupy public facilities. Do not destroy the public facilities. Don’t paint or carve on the historical relics. Don’t climb up the historical relics. No photos without permit.

1. Please keep the environment clean.
2. Please follow the public order. Keep silent. Don’t jump the queue. Please do not talk loudly in public places.
3. Please protect the ecological environment. Don’t step on the grassland. Don’t pick flowers or fruits. Don’t chase or beat animal. Don’t give animal any food without permit when you are in the zoo.
4. Protect the historical relics and sites. Don’t paint or carve on the historical relics. Don’t climb up the historical relics. No photos without permit.
5. Value the public facilities. Don’t dirty or destroy any installment in the hotel. Don’t destroy the public facilities. Do not be out for small advantages. Save water and electricity. Don’t waste food.
6. Respect other people’s rights. Don’t force foreign tourists to take photos. Don’t force other people to buy or sell something. Do not occupy public facilities for a long time. Respect people in the service sector. Respect religious customs of different nationalities.
7. To be polite. Wear clean and proper clothes. Do not wear clothes exposing the neck or shoulders in public places. Take care of the elderly, children, the sick and the handicapped. Do not utter dirty words.

The commission of tourism and culture of BaoGuang Temple and Guillu Park of Xindu county The administrate office of BaoGuang Temple 2006.12.

Except at the top, there are no elections. There are no labor unions. The press is Government-controlled. Western newspapers do not circulate, except in tourist hotels. However, CNN is available on television. The Internet is available, but censored.

Despite its efforts, China will not be able to permanently censor worldwide television and the worldwide web. Ultimately, China will loosen up, and there will there be more of a free press, there will be labor unions, and more elections held. When China finally gets free elections, labor unions and a free press, watch her soar!

From what I saw, the United States Government’s days as the leading Government in the world are numbered. As soon as China loosens up, it will be very difficult to match her energy and industry.

Paul E. Keran is Associate Editor of this Bulletin, and a Member of the Board of Managers.

STATEMENT OF OWNERSHIP, MANAGEMENT AND CIRCULATION

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I certify that the statements made by me above are correct and complete.
Arthur N. Terranova, Executive Director

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

Anthony Bellettieri (May 1, 2007)
The respondent tendered a resigna-
tion wherein he acknowledged that he
could not successfully defend himself on
the merits against charges that he failed
to properly operate, oversee and manage
several attorney trusts at complex
funds entrusted to him as a fiduciary; know-
ing that he misappropriated escrow funds
in a pattern and practice of failing to
 cooperate with the Grievance Committee.

Duane Williamson (May 22, 2007)
The respondent tendered a resigna-
tion wherein he acknowledged that he
could not successfully defend himself on
the merits against charges that he failed
to timely cooperate with the Grievance
Committee; improperly com-
municating with clients; failed to return
cash; and failing to maintain required
records for her ICLA account.

J ohn Vassar (June 19, 2007)
On July 10, 2003, the respondent
pleaded guilty in Supreme
Court, Queens County, to
the crime of unlaw-
ful imprison-
ment in the
first degree, a
class B felony.
He was sen-
tenced to five
years' probation
on October 31, 2003.
As a result of his New
York State felony
conviction, the respon-
dent was dis-
barred by order of law
pursuant to Judiciary Law §4A.

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

Joseph G. Amato, A Suspended Attorney (April 15, 2007)
The respondent was found guilty, after a disciplinary hearing, of engaging in conduct adversely reflecting on his fitness to practice law by failing to cooperate with the Grievance Committee.

William M. Joyce, admitted as
Peter A. Gioia, admitted as
Andrew Strishak (June 11, 2007)
The respondent was found guilty, after a disciplinary hearing, of engaging in conduct adversely reflecting on his fitness to practice law by failing to cooperate with the Grievance Committee.

E rone Joseph Gallusco (June 12, 2007)
The respondent was found guilty, after a disciplinary hearing, of engaging in conduct adversely reflecting on his fitness to practice law by failing to communicate with a client; engaging in conduct prejudicial to the administration of justice and adversely reflecting on his fitness to practice law by failing to change his office address with the Office of Court Administration (OCA) and failing to cooperate with the Queens County Fee Dispute Committee; engaging in conduct prejudicial to the administration of justice and adversely reflecting on his fitness to practice law by failing to cooperate with the Grievance Committee; and engaging in conduct prejudicial to the administration of justice and adversely reflecting on his fitness to practice law by failing to pay an arbitration award issued by the New York City Bar Arbitration Panel. He was suspended from the practice of law for a period of two years, commencing July 12, 2007, and continuing until further order of the Court.

Shelley A. Rivera, admitted as
Donald J. Neidhardt (May 1, 2007)
The respondent was found guilty of professional misconduct immediately threatening the public interest based upon uncontroverted evi-
dence of her professional misconduct.

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

Donal d J. Neidhardt (May 1, 2007)
The respondent was publicly censured by order of the Supreme Court of the State of Montana dated July 19, 2006, as a result of his having deceived the client who swore him in that it was proper for the judge to administer an oath of admission; having attempted to deceive the United States District Court for the District of Montana by applying for admission even though he was not admitted to the State Bar of Montana; having been disciplined by one court in which he made appearances; having misrepresented his status to the opposing counsel and parties in the cases in which he made appearances; and having misled his employers about his abili-

Shelley A. Rivera, admitted as
Gregory Lance Wood (May 8, 2007)
The respondent was found guilty, after a disciplinary hearing, of engaging in conduct adversely reflecting on his fitness as an attorney as a result of failing to comply with a judicial subpoena so ordered by the court; having engaged conduct prejudicial to the administration of justice as a result of failing to re-register as an attorney with OCA; and having engaged in conduct prejudicial to the administration of justice as a result of failing to cooperate with the Grievance Committee. Inasmuch as the respondent ultimately cooperated with the Grievance Committee and complied with OCA filings, certifying therein that she had retired from the practice of law, the interim suspension previously imposed by decision and order on motion dated May 1, 2006, was vacated, and she was publicly censured for her profes-
sionalf ellow.

Gregory Lance Wood (May 8, 2007)
By order of the Superior Court of New Jersey, dated April 27, 2005, the respondent was suspended from the practice of law in that State for a period of one year, effective May 17, 2005, for neglecting a legal matter entrusted to him; missing court appearances in that State; and failing to cooperate with the New York State Office of Court Administration (OCA).
The Following Suspended or Disbarred Attorneys Were Reinstated At An Attorney Hearing and Counselors-At-Law By Order Of The Appellate Division, Second Judicial Department:

Peter Brogan, a disbursed attorney (J une 5, 2007)

Shahriar Kashanian, a disbursed attorney (J une 5, 2007)

Maureen McNamara, Admitted as Maureen Margaret McNamara, a suspended attorney (J une 8, 2007)

At The Regular Meeting Of The State Of New York Grievance Committee For The Second And Eleventh Judicial Districts Held On May 8, 2007, The Committee Voted To Sanction Attorneys For The Following Conduct:

- Failing to re-register as an attorney with OCA (13)
- Depositing personal funds in an escrow account to evade creditors
- Permitting a person who recommended the attorney to use the attorney’s name to direct his or her professional judgment
- Failing to maintain a contemporaneous ledger for an escrow account and failing to pay appropriate attention to said account, resulting in numerous errors
- Failing to safeguard clients’ funds

At The Regular Meeting Of The State Of New York Grievance Committee For The Second And Eleventh Judicial Districts Held On June 12, 2007, The Committee Voted To Sanction Attorneys For The Following Conduct:

- Failing to timely re-register as an attorney with the New York State Office of Court Administration (OCA) (14)
- Neglecting a legal matter
- Neglecting a legal matter; representing multiple clients with conflicting interests; failing to file a Retailer Statement with OCA; and failing to cooperate with the Grievance Committee
- Violating the rules of client confidentiality by ostensibly transferring a client’s file to another attorney with out obtaining the client’s consent and thereafter neglecting the matter by failing to ensure it’s continued prosecution for two years
- Engaging in a pattern of neglecting legal matters and failing to maintain communication with Court personnel concerning said matters
- Simultaneously representing clients with differing interests without obtaining their prior consent
- Failing to ensure that adequate funds were on deposit before issuing an escrow check; failing to withdraw earned fees from an escrow account in a timely fashion; and failing to maintain a contemporaneous ledger or similar record of deposits into, and withdrawals from, an escrow account as required by DR 9-102.
- Allowing the Statute of Limitations to expire on a client’s matter without timely informing the client; failing to properly withdraw from the client’s case; and failing to provide the client with all of the papers to which he/she was entitled
- Writing escrow checks prior to receiving the corresponding funds for deposit
- Failing to maintain adequate commenting with clients and failing to maintain records of developments in their cases
- Diana J. Szczep, Assistant Counsel to the State of New York Grievance Committee for the Second and Eleventh Judicial Districts, has compiled this edition of COURT NOTES.

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NOTES FROM NEW YORK STATE BAR ASSOCIATION

ANNUAL MEETING AND HOUSE OF DELEGATES MEETING

By: Steven Wimpheiniker

What a delightful way to start the summer, the Summer Meeting of the House of Delegates at the Otsega Hotel on beautiful Lake Otsego in Cooperstown, the home of Baseball’s Hall of Fame.

Because of terrible floods the week before, the road we normally take to Cooperstown was washed out. Because of a long detour we arrived late and I missed my scheduled tennis game with our President, David Cohen. No matter, we spent a delightful hour talking to Arthur Terranova, Carol Terranova and David’s wife Janet in the elegant hotel lobby with gentle breezes coming off the Lake. The discussion was rudely interrupted by David and Wally Linn from the bar’s sweary appearances announcing the winner of their doubles game (I can’t remember who won). After cleaning up we were treated to the usual delicious dinner and welcoming remarks by the Bar President, Paul Goldblum.

Enough chit chat. Onto the House of Delegates meeting.

The House welcomed 112 new members.

Treasurers’ Report—As usual the Bar Association is in the black. The Treasurer reported that the long term critical factors are membership is flat, membership is flat and CLE fluctuates as usual, depending on when members have attended the requisite number of CLE hours. The Treasurer is looking for non-resident members. This was opposed an increase in dues for out-of state members. This was passed.

No conclusion.

No conclusion.

The newly installed President spoke of his goals and plans for the Association in the forthcoming year, as the year was also contained in an eight-page letter, I will merely summarize:

I. Staff Directory with face pages and pictures; and

II. Theme of Administration: Leadership through Services;

III. Three year membership challenge (20% increase per year) including a goal that every lawyer in New York becomes a member of the Association;

IV. Greater accountability for resources, including strategic financial planning;

V. President’s Blog at http://nysbar.com/blogs/president (I actually read this address and it worked);

VI. A living history of former Presidents on DVD;

VII. Access of Justice for all; and

VIII. Increase in Judges salaries; and

IX. Need for civil legal services for the poor and increase of funding?

The Bar Foundation announced that it gave away a $20,000 scholarship to one law school. It also went over some proposed changes in Ethics rules. The only dissenting voice for a change from the current rule concerning conflicts of interest came from our own Paul Goldblum.

The current rule provides that an attorney may not accept a case where there may be “differing interests” between clients. The proposed rules provide that it is a conflict where interests are “directly adverse.” In Paul’s opinion this is a significant lowering of the standard. Stephen Krane, in supporting the change, stated that the term “differing interests” has caused problems and New York State is the only state that uses the term differing interests. Mr. Krane’s position was sustained by a majority of the house, with the Queens delegation supporting Paul’s position.

An informational report on Senior Lawyers was presented, taking the position that Senior Lawyers (the age was not defined) should be used for the good of the public in areas such as mentoring younger lawyers, pro bono work, arranging programs concerning retirement and the continuation of services to clients and financial planning for retirement. It was also suggested that there be a reverse mentoring program where junior lawyers could teach their seniors the use of modern technology.

Finally, and just in time for lunch, the Bar Foundation announced that it gave away $10,000 grants to four small projects.

The Lake was on the Veranda overlooking the Lake and then homeward bound.

Next report from Albany in November.
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