Calling All Members

Now is the time to come to the aid of your fellow citizens

BY SAMUEL B. FREED*

In September, 2008, the Chief Judge of the State of New York, Judith Kaye and the Chief Administrative Judge of the State of New York Ann T. Pfau called a meeting of the Bar Presidents of the City of New York and other concerned parties to solicit their aid in fulfilling the obligations under the new RPAPL law requiring, after September 1, 2008, that all mortgagees to respond to all foreclosure proceedings. The purpose of the conference was to take place within 90 days of the expiration of the 90-day period, during which time no other action can take place to enforce the foreclosure.

Foreclosures Increasing In Queens

BY TRACY CATAPANO-FOX*

In October 2008, Queens Supreme Court opened its first Residential Foreclosure Conference Pilot Program in New York State. The program was developed in response to Chief Judge Kaye’s determination that the courts get involved in addressing the foreclosure crisis, and also as a result of legislation passed this summer by the New York State Legislature and Governor David Paterson. Queens County has become the epicenter of the mortgage foreclosure crisis affecting the entire nation. Queens Supreme Court has seen foreclosure actions increase dramatically, resulting in five hundred new filings per month in 2007 and 2008. The judges have seen a tremendous increase in the number of ex parte applications for orders of reference and judgments of foreclosure. These foreclosure actions have historically proceeded by ex parte order, as approximately 90% of homeowners do not answer the Complaint or appear in the foreclosure action. The foreclosure crisis can be seen not only in the increased court filings, but also in the growing number of auctions held in court, which often result in a buy back of the property by the mortgagee banks.

In January 2008, Administrative Judge Jeremy S. Weinstein held a meeting with the Justices of Queens Supreme Court, Civil Term, to discuss the disturbing increase in foreclosure actions. At this meeting, the judges expressed their concerns and discussed the impact of this problem on litigants and the courts. To address these growing concerns, Chief Judge Kaye held a press conference announcing the Residential Mortgage Foreclosure pilot project. As Queens Supreme Court has one of the largest inventories of foreclosure actions in the state, it was chosen as the site for the project. The pilot project would allow homeowners to confer with the courts with the banks before the court with the hope of reaching a negotiated settlement. The pilot project would allow homeowners to confer with the courts with the banks before the court with the hope of reaching a negotiated settlement.
THE DOCKET . . .

2008 FALL CLE Seminar & Event Listing

December 2008
Thursday, December 4  Holiday Party
Wednesday, December 10  Annuity Law Seminar
Monday, December 17  Foreclosure Intervention Seminar with NYSBA

January 2009
Tuesday, January 20  Article MHL 81/Guardianship Training - 2:30 - 5:00 pm
Wednesday, January 21  Supreme Court & Torts Section Seminar

February 2009
Monday, February 23  Stated Meeting - Small Firm & Solo Practitioners
Thursday, February 26  Psychological Issues Underlying Lawsuits (rescheduled from Nov 08)

March 2009
Monday, March 23  Past Presidents & Golden Jubilarians Night - TENTATIVE

April 2009
Wednesday, April 1  Equitable Distribution Update
Monday, April 20  Judiciary Night - TENTATIVE
Wednesday, April 22  Selection of a Jury
Thursday, April 23  Basic Criminal Law Seminar – Part 1
Thursday, April 30  Basic Criminal Law Seminar – Part 2

May 2009
Thursday, May 7  Annual Dinner & Installation of Officers

CLE Dates to be Announced
Court Evaluator Training  Elder Law
Ethics Seminar  Juvenile Justice Law
Labor Law  Real Property Law
Surrogate’s Law  Taxation Law

NEW MEMBERS

Ana Lucia Alvarado  Jomarie Licata
Joseph P. Awad  Kap Misir
Sylvia Bishai  Shanise Jasmine O’Neill
Gregory Paul Haegle  Alexis Pimentel
Daniel J. Halloran  Jorge Edwardo Santos
Sendi M. Katalinic  Sarah C Varghese
Argyizios Katos  Jason S. Vishnick

NECROLOGY

William Cantwell  Daniel A. Fuccello

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THE QUEENS BAR BULLETIN – DECEMBER 2008

EDITOR’S MESSAGE

In this month’s paper there are several articles requesting participation in the December 15th program being held at the Queens Bar Association. As I write my notes, I am happy to report the Queens legal community has responded in magnificent fashion and the program is fully subscribed.

As we say farewell to 2008, there are great expectations that the New Year will bring peace and prosperity.

On behalf of the officers and directors of the Association I wish each of you and your families a healthy and happy holiday season.

Les Nizin

2008-2009 Officers and Board of Managers of the Queens County Bar Association

STEVEN S. ORLOW - President
GUY R. VITACCO, JR. - President-Elect
CHANWOO LEE - Vice President
JOSEPH JOHN RISI, JR. - Secretary
RICHARD MICHAEL GUTIERREZ - Treasurer

2008 - 2009 CLE Dates to be announced

Arthur N. Terranova . . . Executive Director

QUEENS BAR BULLETIN

EDITOR - LESLIE S. NIZIN

Associate Editors - Paul E. Kerson, Michael Goldsmith & Peter Carrozzo

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THE QUEENS BAR BULLETIN – DECEMBER 2008
Definitional Moments

Let me share a thought with you that came to my attention while reading a copy of the commencement address given by Professor John H. Blume of the Cornell Law School (my alma mater) to the graduating class of 2008. The core thought of Professor Blume’s address was that “... in every lawyer’s career, there will come a moment (or moments) that will define who you are as a lawyer and as a person.”

Professor Blume related his first “definitional moment.” I can recall mine which occurred when I was a very new, young Assistant District Attorney called into my Chief Assistant’s office. A seasoned defense attorney was already in the office. The “Chief” asked me if I would reconsider a refusal to take a misdemeanor plea for this attorney’s client. I recalled the case, a young man but with a pretty healthy criminal record for his age. I knew I was ambitious, in a relatively new position and eager to make my mark, and it was clear what was expected of me. But I just could not do it. I told the Chief he should feel free to replace me in the part, and the new Assistant District Attorney could do as he wished. I would make no fuss. Upshot: I remained in the part, and the felony plea stood. My conscience was clear. I do not think I suffered serious consequences.

We have all had “definitional moments” or, if not, it’s a sure bet you will.

Our nation is in turmoil. Each day the outlook on the economy grows bleaker. Our leaders are floundering, seeking solutions that seem to evade their grasp. Industries are collapsing and we each have felt that impact in some way. All we need do is look all around us and it is easy to see others impacted in ways in which our situations pale in comparison.

Lost jobs, loss of benefits such as health insurance, inability to meet mortgage payments, foreclosures, homelessness.

Queens has thousands of foreclosures pending and hundreds added to the rolls each and every month. The situation becomes more distressing when we realize the cause of so much misery was a combination of greed and ineptitude, at all levels of industry and government.

Both for those of us that have already experienced “definitional moments,” and for those who have not, let me suggest that this is now such a moment. Our neighbors’ anguish being so evident, do we each choose to remain silently passive?

The respect we garner as attorneys (and we all know that, “lawyer jokes” aside, our profession still commands considerable respect) is not based on an ability to generate income. The deep seated veneration, enjoyed by our profession over the ages, has been for those noble causes and endeavors for which our college forebears stood in the forefront. The Clarence Darrow’s, the Emile Zolas, the Thurgood Marshalls, are among those upon whose shoulders we stand. Is it not incumbent upon us to follow, in whatever modest fashion is available to each of us, the trail so nobly traveled by others? Please join with us in an unparalleled effort by the Queens County Bar Association, the minority, ethnic and neighborhood bars of Queens County, and the State’s Courts in responding to our joint “definitional moment” with which we are now faced.

For details on how you can help, please see the article by John Dietz elsewhere in this bulletin or call Sasha in our office (718-291-4500).
Books At The Bar

BY HOWARD L. WIEDER*

ENCYCLOPEDIA OF THE FIRST AMENDMENT
John R. Vile, David L. Hudson Jr., and David Schultz, Editors
CQ PRESS September 2008, Two-volume set, 1,464 pages
Hardbound, ISBN 978-0-87289-311-5, $240.00

Whether you are shopping for gifts for your colleague Judges, law firm partner, devoted associate who burns the midnight candle, Law Secretary who makes your life easier, law school student, your or a neighbor’s teenager who dreams of attending law school, or, especially, yourself, the above five titles are my choices for your Christmas/Chanukah list! Without a doubt, each of these titles will make a great reading selection, and will make you well thought of by the gift’s recipient!

1. ENCYCLOPEDIA OF THE FIRST AMENDMENT
John R. Vile, David L. Hudson Jr., and David Schultz, Editors
September 2008, Two-volume set, 1,464 pages
Hardbound, ISBN 978-0-87289-311-5, $240.00

Often, the best questions are posed by innocents. The Haggadah, read by Jews throughout the world on the first two nights of Passover, indeed, instructs the head of the household to encourage the timid to pose questions during the seder, the passover dinner service of the holiday’s first two nights. I thought of that fact when I AM INNOCENT! - A Comprehensive Encyclopedic History of the World’s Wrongly Convicted Persons
By Jay Robert Nash
Da Capo Press 2008, 808 pages

That simple question, as the writers and compilers of the Haggadah brilliantly understood, started me to explain that the 45-word First Amendment is actually not so simple. The First Amendment ratified with the rest of the Bill of Rights on December 15, 1791, states:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

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But framed in absolutes of encouraging dissent, assembly, free worship, and a robust press, for example, one has to examine the First Amendment in specific controversies in order to understand its robust press, for example, one has to examine the First Amendment in specific controversies in order to understand its

*Continued On Page 12

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The First Amendment is enlightening and comprehensive two-volume reference work that explores the political, historical, and cultural significance of the First Amendment. This authoritative work is certain to become a staple resource on the reference shelves of public, academic, and law school libraries. Its publisher, CQ PRESS is known for its objectivity, breadth and depth of coverage, and high standards of editorial excellence

With a foreword by award-winning journalist and founder of the First Amendment Center JOHN SEIGENTHALER, Encyclopedia of the First Amendment features seven incisive essays written by leading First Amendment scholars. These introductory essays address each of the five core freedoms of the First Amendment, as well as the future of the First Amendment and the extent to which First Amendment principles are respected throughout the world. More than 1,400 A to Z entries examine the people, organizations, laws, court cases, concepts and legal terms, events, and issues surrounding the freedom of religion, freedom of speech, freedom of the press, freedom of the press, freedom of association, and freedom of assembly.

In this landmark publishing event for lawyers, judges, librarians, students, and legal scholars alike, CQ PRESS has just published the first and only comprehensive work on the most basic of the liberties enshrined in the U.S. Constitution. Encyclopedia of the First Amendment is an enlightening and comprehensive two-volume reference work that explores the political, historical, and cultural significance of the First Amendment. This authoritative work is certain to become a staple resource on the reference shelves of public, academic, and law school libraries. Its publisher, CQ PRESS is known for its objectivity, breadth and depth of coverage, and high standards of editorial excellence.

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Parent Education and Awareness in Queens

BY MARK KLEIMAN

The article on the state-wide Parent Education and Awareness Program in the October edition of the Queens Bar Journal described a state-wide effort that successfully assists separating parents to lessen the negative impact on their children. Two important elements were missing from the article: research that proves its effectiveness and how to gain access for your clients in Queens.

The Unified Court System has certified curricula as well as programs through an intensive vetting process to make certain quality services are available to all families struggling with the consequences of a failed relationship and conflict over children. In Queens, Community Mediation Services, Inc. is the certified provider. From its inception there has been an intensive and consistent effort to have the participants evaluate the value of this program. Among the statistics released by the court for over 2,000 participants state-wide or sent by professionals or other families from March through August of 2008 are:

97% stated that local staff made enrolling easy.
98% said information regarding impact on children, how to lessen or prevent problems and where and how to go for other resources was very to somewhat relevant and helpful.
92.84% said information on importance of timely payments of support was very to somewhat relevant and helpful.
99.96% said information of the importance of protecting children from being caught in the middle was very to somewhat relevant and helpful.
97.91% said that suggestions for defusing conflict and managing anger was very to somewhat relevant and helpful.

Similar percentages expressed how helpful was information on parallel and cooperative parenting, the role of lawyers and the court and explanation of terms and description of various forms of dispute resolution. Most important 95% said the information learned would help them in parenting their children and 99.96% said the information learned will help with communication with the other parent. Similar numbers said the program was worthwhile and would recommend it to others.

A fight over parental rights places the children at the center of conflict. No matter how hard the parents try there is a lasting effect on the children. The children always feel responsible for the break-up. They are made to witness all levels of conflict, some times being the target, have crises of loyalty as parents speak badly of the other and have constant stress as they adjust to the cataclysmic changes that are occurring in their lives. If the parents resolve their issues and are able to create new and healthy relationships, their children may not be doomed to struggle with their own relationships throughout their lives.

Everyone agrees that the cases that come to court are emotional and adversarial by nature a dangerous combination. It is clear and indisputable that the adversarial system exacerbates these relationships. There is no doubt that this has dangerous implications for children already at risk. All family attorneys experience frustration and pain from witnessing the damage to children caused by divorce.

I am therefore certain that lawyers who now know of the attributes of this program will urge their clients to experience this unequivocally positive and helpful program. Judges now have the power to order such participation.

The program is realistic and empowering, offering a clear and honest view of the situation in which parents find themselves, from a legal, emotional and behavioral perspective. It presents research on the impact of conflict on their children and parents witness children confirming this in a video. The experience occurs with others who struggle with the same issues. They receive opportunities to practice behaviors that can lower the level of conflict. Finally they see how respect for each party can normalize the situation for their children and begin healing. In summary it speaks to the best in the parties offering options for change.

Since 1995, Community Mediation Services, Inc. (CMS) has been operating parent education services for families enmeshed in the pain of divorce or separation in Queens. CMS initially partnered with Hofstra Law School to implement the P.E.A.C.E. (Parent Education and Custody Effectiveness) curriculum. For three years the program has used the court certified curriculum: ACT (Assisting Children through Transition). Presenters include lawyers, judges and mental health professionals. Parents receive excellent materials and resources along with the experience.

Clients can be enrolled in the program by calling Renee Holley at 718-523-6868 ext 254 at Community Mediation Services, Inc. The program consists of six hours of class split between two days. The sessions are conveniently located. Participants are given the choice of day or evening sessions. Cost is $100 with scholarships possible.
Report From The State Bar’s 2008 Halloween Meeting

BY STEVEN WIMPFHEIMER

Friday, October 31st – Halloween.
What a way to start the day. Dawn over the Hudson. A drive up the Palisades to a meeting of the State Bar Nominating Committee. There to choose the incoming officers and executive board members of the New York State Bar Association. Of particular import to us, is that we had to make sure that our own Seymour James would be re-elected to the position of Treasurer. We did not have to worry, he ran unopposed and was re-nominated by acclamation.

Back to the trip to Albany. The sun coming up and reflecting off the Hudson and off the last of the fall foliage is beautiful. There is nothing quite like the Hudson Valley and Catskills in the fall. If I were a painter I would just smear my pallet against the canvas and label the painting “Fall along the Hudson”, or “Fall in the Catskills”. The reds were deep, the oranges glazed, the browns were nutty and the yellows golden. It is no wonder and off the last of the fall foliage is beautiful.

Additionally, Bruce Lawrence of Monroe County was elected the President-elect. The meeting of the State Bar Nominating Committee were elected, some with, some without opposition.

It is worth a stop. (Don’t make a special trip to Albany to see it). As usual the meeting started at 9:30 AM with reports of the Treasurer and the Finance Committee. As usual, the Bar Association is in the black. However, there were dire warnings of fiscal problems as a result of our current economic crisis. As if we didn’t know and needed a reminder.

Next the Hon. Cheryl Chambers (Seymour James’ wife) reported on the recommended change to the By-laws to provide representation in the House for two (2) non-resident members of the Association. This recommendation was overwhelmingly passed.

Hon. George Bundy Smith then updated the Report and recommendations of the Special Committee on the Civil Rights Agenda. The Report is 257 pages long and covers such areas as education, juvenile justice, voting and criminal justice. It is full of recommendations to make New York and America “more inclusive.”

Our President, Bernice Lieber reported: A Task Force on Privacy was appointed. It will examine current policies, practices and legislation that threaten attorney-client privacy and make recommendations to safeguard this important right.

A task force on Global Warming has been created to address the profound impact of climate change.

A task force on the State of the Courthouses was appointed. They are in the midst of conducting a survey with the ultimate objective of making recommendations on how to improve conditions. As an editorial comment, this may be a vehicle to get our Administrative Judge and the Board of Justices to unite and stand in the yard that horrible fence in front of the Jamaica Supreme Court. It is an eye sore. It sends the wrong message to the public: that the Court is not part of the community, but an elitist organization, run by lawyers and Judges without care or input from the community at large.

There are seven (7) candidates for the job of Chief Judge. The Bar Association will be interviewing candidates for the job.

The Bar Association is working with local Bar Associations, including our Bar Association to conduct training programs for pro bono attorneys to assist in the ongoing mortgage foreclosure crisis.

The State Bar is searching for ways to assist all lawyers in coping with the current economic crisis including electronic job banks, assistance in moving to different geographic areas or different practice areas.

The next presentation was by Justin Vigor, who requested approval of a report and resolution recommending on how to make New York and America “more inclusive.”

That the state should adopt legislation to make New York and America “more inclusive.”

The meeting ended with reports of the Task Force on Privacy, Report of the Bar Association’s Board of Managers, Joseph Carola, as well as Past President John Dietz and Debra Edwards. The event was chaired by Supreme Court Justice Martin Ritholtz.

The next meeting is in New York City on January 30, 2009.

I was particularly interested in the Report of the Special Committee on Mandatory CLE. To my surprise more than 75% of the responders to a survey (3856 partial responders and 2640 full responders out of over 50,000 requests) agreed that Mandatory CLE improved their competency and approximately 35% agreed that MCLE improved the competency of attorneys generally. While there was a vocal minority of lawyers who originally objected to MCLE (me included) “the large majority of lawyers now recognize and endorse the concept of continuing legal education throughout their legal careers and view MCLE as an appropriate vehicle to help realize that goal.” (Report P.12).

The meeting ended with reports of the Task Force on Privacy, Report of the Bar Association (the charitable arm of the Association), administrative items and LUNCHEON.

My thanks to Richard Gutzierrez for writing the Cooperstown report.
Marital Quiz

Question #1 -
Does a provision in a separation agreement for the termination of maintenance in the case of "the cohabitation of the wife with an unrelated adult for a period of sixty (60) substantially consecutive days," require sexual intimacy or creation of an economic unit?

Your answer -

Question #2 -
In order to modify or set aside a separation agreement or a stipulation of settlement that has been incorporated into a judgment of divorce, but did not merge therein, are you required to bring a plenary action?

Your answer -

Question #3 -
Is a plenary action necessary in order to enforce the terms of a separation agreement or a stipulation of settlement that has been incorporated into a judgment of divorce, but did not merge therein?

Your answer -

Question #4 -
Under amendments to Treas. Reg. 1.152-4, which became effective July 2, 2008, who is entitled to the dependency exemption?

Your answer -

Question #5 -
Under amendments to Treas. Reg. 1.152-4, if the child resides with each parent for an equal number of nights during the calendar year, who is entitled to the dependency exemption?

Your answer -

Question #6 -
Since custody ends at 18, who is entitled to the dependency exemption for children 19 and older?

Your answer -

Question #7 -
Can a dependency exemption be taken for a child over 21 years of age?

Your answer -

Question #8 -
The father has custody of the parties’ son. In calculating the mother’s child support obligation, is her maintenance income from the father taken into consideration?

Your answer -

Question #9 -
If a settlement agreement, which was incorporated but not merged in a judgment of divorce, does not address the child’s extracurricular activities, can the custodial parent obtain contribution from the other parent?

Your answer -

Question #10 -
Defendant wife succeeds in having plaintiff husband’s complaint for a divorce dismissed, is the court permitted to award defendant wife counsel fees?

Your answer -

*Editor’s Note: Mr. Nashak is a Past President of our Association and Vice-Chair of our Family Law Committee. He is a partner in the firm of Ramo, Nashak & Brown.

— ANSWERS APPEAR ON PAGE 11

In The Navy

BY JOSEPH F. DEFELICE

A young man did bail jump, on a felony they say, the underlying charge a criminal mischief,
by the way, no other crime or arrest had he no record by the way
The underlying act disposed thru this con one day, a violation under New York Law that is all there was that people saw
Ne’er before was he in trouble a high school student was all he was, he graduated and made his family proud, the day he walked diploma aisle
And now he sought to serve his land by entering on the sea, yes serve his land and join the Navy
But no they said you see young man a felony bail jump still is charged, while felony charge did mark his head he could not see the sea
So his lawyer did beseech the Court a Clayton motion is what he sought, let’s Clayton this case and dismiss, all charges should be gone, and let this man do his bid and serve unto his land
Oh no, the prosecutor claimed Oh no, this is not just A felony is what this is let justice brand him so, and he will only leave this Court a felon that we know
The Court did rule the prosecutor right oh Clayton you be gone,

Joseph F. DeFelice

In The Navy

BY JOSEPH F. DEFELICE

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Oh no, the prosecutor claimed Oh no, this is not just A felony is what this is let justice brand him so, and he will only leave this Court a felon that we know
The Court did rule the prosecutor right oh Clayton you be gone,

And off he went to the trial and trial judge did say, be fair and let us all be just, this young man seeks to serve his land, the judge did say, I do not see fairness in the prosecutor’s choice to brand a felon in this Court, a record this young man has not except the dis con all I see, a high school grad is he, a young man here who seeks to serve his land and serve it well at sea
But no the prosecutor say T’is a slam dunk case we have today, it’s easy for all to see, That this young man will ne’er see the sea, the jury will applaud our zeal A felony you’ll see

And off to trial did he go, the jury watched him close, and day to day the trial went, a verdict did the jury find not guilty did they say
The tears of joy rolled on his cheek the young man did cry so
And thank his lawyer and kiss his mom and off to Navy did he go

Joseph F. DeFelice
Stated Meeting: The New Foreclosure Law
Monday, November 17, 2008
Stated Meeting: The New Foreclosure Law
Monday, November 17, 2008

April Newbauer, Attorney-in-Charge, Queens Legal Aid Society, Civil Division.


Joseph Carola, III, Chair, Program Committee.


Paul Lewis, Chief of Staff to the Chief Administrative Judge of the State of New York.

More Attendees.

Standing-Madeleine Egelfeld and Tracy Catapano-Fox Sitting Lori Hellman, Agnes Kirschner, Zenith Taylor and Sally Unger.

Tracy Catapano-Fox, Principal Law Clerk to Administrative Judge Jeremy Weinstein.tif

Helmut Borchert, Joshua Deutsch, James Rabor, Brian Goldberg and Robert Frommer.

Photos by Walter Karling
When Bob Greiner attempted to open the door to his law office the pile of mail at his morning doorstep was discouraging. There was one large package and numerous items of first and third class mail jammed beneath the door. After some wiggling of the door and careful prodding with the toe of his shoe did he manage to gain entry, turn on the lights and toss the mail onto his secretary’s empty desk. The package turned out to be a replacement for the toner on his copy machine and fax machine, both of which were in serious disrepair and hopelessly outdated. Like many sole practitioners, Bob was not interested in modernizing it if cost more than a hundred dollars. He was not gad- get crazy, did not own a blackberry, often forgot to charge or turn on his cell phone, and was happy with everything “just the way it was.” This made him the butt of ongoing jokes by his much younger secretary who would always put Bob’s computer into a soft boot-up and text messaging.

Bob sorted through the mail, not even bothering to read the third class stuff, dummied up the fourth class stuff, and set the contents of the package from the district attorney’s office, and one letter from a prison facility. This was the one he left out of the pile for a read. It always came from one of the former clients who were now doing time in an upstate location. Their correspondence varied from requests for free legal assistance to demands for greater annoyance of letters of criticism about his past performance. This letter belonged in the second category and would prove to be more than a little irritating.

Raul Santiago was not a success story. He was not one of Bob’s better legal memories and was certainly an individual who fit into the category of one of the most evil men he had ever met. Santiago and a young co-defendant had been professional burglars who had been captured while trying to burgle the home of a drug dealer. They had figured that he wouldn’t dare to call the police because of his own fear of any contact with law enforcement. Bob had managed to suppress all annoying letters of criticism about his past performance. This letter belonged in the second category and would prove to be more than a little irritating.

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It was only a week later that he learned the motion had been denied, solely on the basis of his testimony. “Great!” he thought. Why couldn’t they have relied upon some esoteric legal fiction instead of placing it all on his shoulders? There were a few more telephone calls, mostly non-threatening, simply requesting an explanation of the defense attorney and what to do next to pursue his legal remedies. Bob referred them back to the assigned attorney. After a while, the calls stopped.

Saturday Morning

BY STEPHEN J. SINGER

Stephen J. Singer
Write To Win

BY HON. GERALD LEBOVITZ

Mastering the art of written advocacy is critical for lawyers. They must write to win. Written briefs are the first and best opportunity to persuade the court. Sometimes they are the only way to persuade the court. Often little or no time is allotted for oral advocacy. Even if oral argument takes place, the judge or law clerks might not recall the argument or might not have paid attention, but they will still have the briefs to help them.

Lawyers write persuasive briefs by making them easy to understand. They should write for the decision maker, not for their client or for their adversary. They should consider the reader’s needs. Judges are busy professionals. They need to be educated, they want to rule correctly, and they have no time to waste. Lawyers must make every word count by ensuring their briefs are organized and concise. Good briefs follow the twin pillars of persuasion: They make the court want to rule in the lawyer’s favor, and they make it easy for the court to do so.

Good writing enhances lawyers’ credibility. It shows that the lawyer took the case seriously, and so should the court. It also helps the court trust the lawyer. A court that finds the lawyer trustworthy is more likely to rule for the client.

Poorly written briefs create bad impressions, not only about the lawyer’s forensic skills, but also about the client’s case. Poor writing means losing. Poorly written briefs are long, boring, and lack coherence. Well-written briefs are clear, effective, and focused. Poor brief writing misses arguments and does not apply law to fact. Good brief writing is a martial art.

Here are ten pointers to guide lawyers in persuading the court through written advocacy.

1. Argue the issues. For briefs to persuade, lawyers should stress issues, not citations. An issue is an independent ground on which the relief sought can be granted if the reader agrees with the argument on that issue and disagrees with everything else. Lawyers should discard trivial issues. Unless the lawyer must preserve the record for appeal, the lawyer should winnow the argument to no more than three or four issues. Otherwise, the weaker issues will dilute the stronger. Lawyers should present their issues by strength, starting with the argument most likely to succeed. If they are unsure which argument is the strongest, they should pick the argument with the biggest relief for their clients. There are two exceptions to that rule. The first is when lawyers have a dispositive threshold issue - jurisdiction or statute of limitations. The threshold issue should become the first argument. The second is that lawyers must follow the order established by a statute or the factors articulated in a leading case.

After lawyers have explained their argument, they should address the other side’s position to contradict it. They should begin with their argument, however, to show that they are right because they are right, not merely because the other side is wrong.

Lawyers submitting opposition or response papers should not copy the way the other side ordered the issues. They should tell the court which issues they oppose but order them the way it works for their clients. Briefs should be written to persuade the court. Briefs are not meant to be law-journal articles, which give objective, neutral, and fuzzy exposures of the law, not hard-hitting reasons why one side should win and the other side should lose.

2. Be clear. Lawyers must explain their point of view so that courts can understand them in their first read. Confusing briefs will frustrate judges, who might simply give up and rely on the other side’s brief. To get their points across, lawyers should not assume that their readers agree with them. They should assume, instead, that their readers know nothing about the case. They should not write in a conclusory way. They must show; they must not tell. They show by describing people, places, and things. They use concrete nouns and vigorous verbs and limit adjectives. For example, they do not say that the man was “very tall” but rather that the man was seven feet tall.

Lawyers should also state clearly and repeatedly what relief they seek. Clarity is more important than concession. Good briefs should never let two sentences pass without letting the reader know which side the lawyer represents, using emotional, policy-driven arguments without arguing emotionally. Lawyers should write directly, not indirectly. (“Justice is an important concept.” Becomes: “This Court should reverse the conviction.”) Lawyers should also always mention and argue the standard of review and the burden of proof. Doing so tells the court how to evaluate the arguments.

3. Be succinct and concise. Lengthy briefs are boring; judges might not read or understand them. The best lawyers keep their briefs short and sweet. They delete the obvious and do not dwell on givens. One way to ensure succinctness is to establish a theme. Themes help lawyers explain that they are right, not just because of the law, but also because if their clients lose, the bad will prosper and the good will suffer. Lawyers should include everything important and helpful authority, fact, and issue that supports their theme or which contradicts the other side’s theme. They should exclude everything else. They should eliminate irrelevant dates, facts, people, places, and authorities. They should not try to fit every possible argument into their briefs. They should stick to their stronger contentions. Weaker arguments will undermine their credibility and make the lawyer seem untrustworthy.

They should also limit themselves to the case law that adds weight to an argument rather than those that add bulk and impress only non-lawyers.

Lawyers should also replace coordinat conjunctions with a period and start a new sentence. Doing so shortens the sentence and thus is concise, even though it might add text. They should not start a sentence with “in that.” (“In that the judge’s counsel was a litigant, the judge recused herself.” Becomes: “The judge recused herself because her counsel was a litigant.”)

They should excuse unnecessary prepositions like “of” and delete the following metaphors, course, or wordy running starts: “in fact,” “as a matter of fact,” “the fact is that,” or “given the fact that.” Lawyers should also watch out for redundant “The” (“Advance planning” becomes “planning.”)

4. Be logical. From the presentation of facts to the argument, structure is vital. Arguments should come naturally, without being interrupted. Lawyers must know how to win.

Question #1 - Does a provision in a separation agreement for the termination of maintenance in the case of “[the cohabitation of the wife with an unrelated adult for a period of sixty (60) substantially consecutive days] require sexual intimacy or creation of an economic unit?”


Answer: To Marital Quiz On Page 7

Question # 6 - Since custody ends at 18, who is entitled to the dependency exemption for children 19 and older?

Answer: No. The custodial parent can no longer claim the dependency exemption for a child at 19 years of age. Handel v. Handel, 54 A.D.3d 345; 862 N.Y.S.2d 571 (2nd Dept. 2008).

Question #9 - If a settlement agreement, which was incorporated but not merged in a judgment of divorce, does not address the child’s extracurricular activities, can the custodial parent obtain compensation from the other parent?

Answer: No, unless the custodial parent can show the agreement was unfair or inequitable at time entered, that an unanticipated and unreasonable change in circumstances occurred resulting in a concomitant need or that the child’s right to receive adequate support is not being met. American Academy of Matrimonial Lawyers Esq. from Miami Florida, for the American Academy of Matrimonial Lawyers.
press, the right to assemble peaceably, and the right to petition the government. A chronology traces the First Amendment's historical antecedents and events in the development of its protections over the centuries.

The two volume set enables you to find content quickly and easily with multiple table of contents and index tools. Alphabetical and topical tables of contents by subject and court case help readers locate material. Thorough subject and case indexes are provided along with a selected bibliography and listing of online resources.

The editors of this great work deserve recognition. JOHN R. VILE is professor of political science and dean of the University Honors College at Middle Tennessee State University. He is the author or coauthor of twenty books (including A Companion to the United States Constitution and Its Amendments. Vile is a member of the board of the American Mock Trial Association and a recipient of the Congressman Neal Smith award for contributions to law-related education, and a 2008 inductee into the American Mock Trial Association Wall of Fame.

DAVID L. HUDSON JR., is a scholar at the First Amendment Center at Vanderbilt University. He teaches First Amendment classes at the Nashville School of Law and Vanderbilt Law School. Hudson is a contributing editor to the American Bar Association's Quarterly of the First Amendment. He is the author or coauthor of twenty books and has been quoted on First Amendment issues in numerous media outlets, including New York Times, New York Daily News, The Washington Post, The Chicago Tribune and USA TODAY.

DAVID SCHULTZ is a professor in the School of Business at Hamline University and a senior fellow and professor in the Institute of Law and Politics at the University of Minnesota School of Law, where he is the author of more than twenty-five books and seventy articles, including The Encyclopedia of the United States Constitution (2008) and The Encyclopedia of the United States Supreme Court (2005). He is a past vice president of the Texas and Minnesota chapters of the American Civil Liberties Union.

2. LANDMARK DECISIONS OF THE UNITED STATES SUPREME COURT, 2nd Ed. Paul Finkelman and Melvin I. Urofsky


Landmark Decisions of the Supreme Court, Second Edition, published by the prestigious CQ Press, has been thoroughly updated with nearly 500 new cases added since the first edition in 2001. This acclaimed volume explores the historical context and current implications of 1,200 of the Supreme Court cases that have impacted the U.S. justice system and our society. Landmark Decisions of the Supreme Court provides an easily accessible, comprehensive treatment through the 2006-2007 Court term, along with 80 historical cases that did not appear in the original book, offering at least one case for every Supreme Court term since the end of the 18th century.

No other single volume on this topic has the scope and depth of coverage of Landmark Decisions of the United States Supreme Court. Carefully researched and organized chronologically and include case name, citation, decision date, vote and vote allies, author of the opinion of the Court, authors (and justices joining) of concurring and dissenting opinions. Each case is then explained and analyzed thoroughly, enabling the reader to understand both the litigant’s and the Court’s perspectives. The summaries also feature extensive case cross-referencing to illustrate the evolution of judicial decisions and their historical context. Extensive cross-referencing allows users an engaging format in which to explore the events of recent years including court cases with impact on Constitutional rights. Each of the more than 250 entries, arranged in encyclopedic A to Z format, provides accessible insight into the key questions readers have about the U.S. Constitution. At an affordable price of $85.00, librarians in high school, undergraduate, and public libraries will be able to add this essential title to their reference collections without breaking the bank.

The new and exciting user-friendly design engages readers with “Closer Look” sidebars and extensive cross-references.

The encyclopedia has when ordered by gift sets.

The complete five-volume American Government A to Z Series is available for $340, a 20% savings from the price of all five volumes.

The U.S. Constitution A to Z is also available in an easy-to-navigate Online Edition that makes all of its content even more accessible. This advanced search capabilities, customization options, and instant citation.

4. THE DEVIL’S GENTLEMAN: PRIVILEGE, POISON, AND THE TRIAL THAT USTERED IN THE TWENTIETH CENTURY

By Dr. Harold Schechter


JUSTICE SIDNEY F. STRAUS is not only has a First Class legal mind, but is the late HONORABLE WILLIAM GLOVER of Blessed Memory, is a schoolteacher who comes to the Bench with a fine, broad, and far-reaching appreciation of history, world literature, the arts, and culture. I am in debt for having brought to my attention DR. HAROLD SCHOCH’T’S meticulously researched and brilliantly written book concerning one of the most sensational murder cases in New York’s history. The book is a riveting account of the persons involved in the murder prosecution of handsome, athletic, society scamp Roland Molineux. Present-day readers of criminal law will readily recall the “Moleneux rule.” Evidence of uncharged crimes is generally excluded based upon the human tendency more readily to believe in the guilt of an accused person when it is known or suspected that he has previously committed a similar crime.” Exceptions to this general rule are recognized by the well-known Moleneux rule, where the purpose of admission is to prove motive, intent, absence of mistake or accident, and such like. The next day, the commission of two or more related crimes such that proof of one tends to prove the other[s], and identity of the person charged. People v. Molineux. 168 N.Y.

264, 313 [1901].

As People v. O.J. Simpson was the most sensational case of the twentieth century, the third month trial of Roland Molineux was the most controversial American trial of the nineteenth century. Molineux was a person of fortune, born into a famous family. His father was a revered general during the Civil War. Dr. Schechter catches you by the throat as he skillfully narrates the facts, breaking them back to life.

This book is a fast and enjoyable read. One reason for its great readability is that the story was not told by a lawyer using request via a process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.”

When I was a boy, my late mother, in the event I was lost, instructed me that police officers are your best friend. Years later, I saw her distress when, after she gave me advice she found on the street that had been lost by someone, to two police officers, they did not return it to the woman who lost it, searching frantically a few minutes later and pocketed it themselves! Where some rogue police officers lie, other bad apples arrest innocent persons on inadequate or no investigation.

“I AM INNOCENT!” - - the most recent acquisition to my library - - is a remarkable work. This inexpensive and supremely readable work chronicles, from ancient times to the present, hate, revenge, lunacy, deception, greed, corruption, stupidity, and common error sent innocent persons to their fate. The next time you see and hear a panel of talking heads on CNN’s “Larry King Live,” for

---Continued On Page 13---
Foreclosures

Continued From Page 1 –

as the center of Judge Kaye’s pilot project, the New York State Legislature and Governor Spitzer passed the New York foreclosure legislation that would require all counties to create a program similar to that developed in Queens. The legislation directed the courts to hold mandatory conference in all cases that fit the legislative criteria, specifically that: the mortgages were subprime, high-cost or nontraditional loans; the mortgages were entered into during the period of January 1, 2003 through September 1, 2008 and the action was commenced after September 1, 2008; and the property involved was owner-occupied, residential, one-to-four family homes. Plaintiffs who commence actions after September 1, 2008 that fit the legislative criteria would be required to file a new foreclosure Request for Judicial Intervention, and a conference would be scheduled within sixty days from the date of filing. For those actions that were commenced after September 1, 2008 and for which a judgment of foreclosure has not been signed, the legislation permitted homeowners who fit the above legislative criteria to request a conference. The legislation also imposes a notice requirement that the borrower must provide notice of foreclosure to the homeowners at least 90 days prior to commencing a foreclosure action.

The first conferences were held in Queens County on October 8, 2008. The conferences have been held in Courtroom 42A and were presided over by Court Attorney Referee Leonard Florio, with Justice Augustus C. Agate and Justice David Elliott as the presiding judges. During the conference, Referee Florio determines if the case fits the legislative criteria for a conference by asking the homeowner and bank a series of questions. If the matter does not fit the legislative criteria, the parties are directed to proceed with the litigation, but are encouraged to communicate and attempt to resolve the action before the assigned judge. If the matter does fit the legislative criteria, Referee Florio schedules a conference and extends extensive discussions with the parties, determining the possibility of reinstating the mortgage, renegotiating the terms of the mortgage, or alternatives that can assist the homeowner in alleviating the financial burden of the mortgage with the least amount of negative repercussions. The parties are required to bring any financial documents requested by the Court, which often include the loan reissuance statement paper, prior mortgage documentation, and any paperwork reflecting the homeowner’s current financial status. Since October, 89 cases have been heard in the residential foreclosure conference part. However, in almost all of the cases the homeowner was not represented by counsel, creating significant difficulties for the parties and the court in trying to conference these cases. Further, despite the 90% default rate, the Office of the Self-Represented has begun seeing a significant increase in homeowners coming to court seeking guidance on impending foreclosure proceedings and requesting access to legal and housing services. To that end, Queens Supreme Court encourages all attorneys to consider join- ing the Queens County Bar Association’s Volunteer Lawyers Project. On Monday, December 15, 2008, the Queens County Bar Association will be holding a CLE training session for those attorneys who agree to represent homeowners in the residential foreclosure conference part. In return for the free CLE training, the attorneys must accept at least one client for representation. These attorneys will provide legal services such as assisting homeowners through the conferences, explaining the proceedings, gathering documentation to help the homeowner, determining any available legal defenses such as fraud, and trying to negotiate a resolution for homeowners. These services will result in more effective communication in the conference between the banks and the homeowners and hopefully positive resolutions of some of the foreclosure actions. If you have any questions with regard to the Residential Foreclosure Part, please contact Dominic Ventiere, the Residential Foreclosure Conference Part management coordinator, or Raymond Zawrotnik, senior court clerk, at 718-298-1092.

Books At The Bar

Continued From Page 12 –

example, ready to convict someone who was just arrested or indicted, reach for this book before rushing to judgment! From Jay Robert Nash, a leading expert on the history of crime who has been called “America’s Crime Expert” by Roger Ebert, comes the long-overdue account of history’s famous trials that wrongly convicted the innocent. “I AM INNOCENT!” presents - in an encyclopedic format and fully accompanied by hundreds of illustrations - every major criminal case in history involving wrongly convicted persons. Here, true-crime buffs and lovers of history can find all the famously, or infamously, “innocent”- - from Mary, Queen of Scots to Alfred Dreyfus, from Leo Frank to the Scottsboro Boys, from Dr. Sam Sheppard to Anthony Porter, from Joan of Arc to Lindy Chamberlain - as well as hundreds of other cases that have, until now, been lost in obscurity. Landmark cases, such as Sacco and Vanzetti, where wrongful convictions without exonerations occurred, are also included. For those of you who recall my column on the recent exhibit at Yeshiva University’s excellent exhibition on the trial of Alfred Dreyfus, in the October 2007 issue of this paper, the book begins with that trial. The title of this book, “I AM INNOCENT!” - the words shouted by poor Alfred Dreyfus, a Jewish captain in the French Army who was falsely accused of treason and whose false conviction was the backdrop for countless works, including<em> Life of Emile Zola</em> - - and, sadly, I have encountered many, even among young Jewish lawyers! - - and for parents who want to sensitize their children to fight for justice, I heartily recommend, in addition to buying this book, to purchase the DVD [released in February 2005, “Special Edition” DVD] of<em> Life of Emile Zola</em>. That movie, made by Warner Brothers in 1937, was the first biographical film to earn the Oscar for Best Picture of the Year. The film starred Paul Muni [1895-1967, born Meshilem Meier Weisenfreund], who was nominated 6 times for an Oscar for Best Actor in 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 memorable portrayal of Alfred Dreyfus. I thoroughly enjoyed the organization of “I AM INNOCENT!” The travesties of justice are well-organized by categories. Consider some of the chapter headings from the Table of Contents: Insufficient Evidence, Conviction by Coercion, Mismatched Innocent, False Professions, Railroaded, Framed, Perjured Testimony, and Crimes That Never Happened, among others. “I AM INNOCENT!” contains nearly 1,200 cases, as well as a comprehensive glossary of legal and law enforcement terms; a list of movies based on wrongly convicted individuals; an extensive chronology and bibliography; and a full cross-referenced index. This is the first complete collection of history’s “innocents” - - and their trials and tribulations. Jay Robert Nash, the author - - is widely recognized as one of the world’s foremost historians, biographers, and encyclopedists, called “the dean of American crime writers” by the <em>Chicago Tribune</em>. He has authored more than seventy single-volume books, a best-selling true crime multi-volume reference works, including<em> The Motion Picture Guide</em> and the highly acclaimed<em> Encyclopedia of World Crime</em>. He is the only author to receive four Best Reference citations from the American Library Association. He has worked as a reporter, columnist, editor, and publisher in newspapers and magazines, and is a longtime resident of Chicago.

The next time one of your friends and neighbors, provoked by a sensational headline, starts howling for the death penalty or railing against the great writ of habeas corpus, give them a copy of this book. Its contents should send a chill down the spine of any person with an ounce of humanity. Perhaps the person indicted by the media, whether it be a headline in The New York Post or a panel discussion on “Larry King Live,” may actually be INNOCENT!

HOWARD L. WIEDER is the writer of both “THE CULTURE CORNER” and the “BOOKS AT THE BAR” columns, appearing regularly in THE QUEENS BAR BULLETIN, and is JUSTICE CHARLES J. MARKEY’s Principal Law Clerk in IAS Part 32 of Supreme Court, Civil Term, in Long Island City, New York.

WARNING

Are your escrow deposits insured?

by Samuel Freed

Your master trust account, maintaining deposits of $100,000.00 or more, even for multiple clients, will only be protected to $100,000.00. However, each sub account, not exceeding $100,000.00, will be separately insured. Accounts in multiple banks may be your solution.

Get all of the facts

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You can visit your local banking institution for an FDIC depositor’s guide.
Lawyers should write persuasively.

Presentation always helps. Writing a persuasive brief requires lawyers to write clearly and focus on the key issues. In the Conclusion section, lawyers should state the relief they seek on the issues they argued in the first Conclusion section. CRARC allows lawyers to present their arguments in the shape of a funnel or an inverted pyramid. Arguments should go from general (the conclusion) to specific (the details). Getting to the point fast goes beyond the judges in case they do not read further. Being organized is important in written advocacy because lawyers should not have to explain English to the reader. They should say it once, all in one place.

Lawyers should also use headings and subheadings that summarize essential facts and legal authority. They should use roman numerals for their point headings (I., II., III.) and letters for subheadings (A., B., C.). Headings and subheadings should be concise, descriptive, and short. The point headings in a brief should answer the Questions Presented. Lawyers should not use contractions like “I’ve,” “we’ll,” “they’ll.” The solution is to proofread. Lawyers should review their arguments to make them efficient; they should take out any unnecessary and flowery language. They should also watch out for negatives words like “except,” “fundly,” “rather,” “never,” “nor,” “provided that,” and “unless.” For example, “Good lawyers do not write in the third person.”

(10) Review the brief. Writing a persuasive brief takes time and effort. Lawyers should not believe they are done after their first draft. Editing a brief is an ongoing process, and lawyers’ work will not be taken seriously if it has grammar, punctuation, or spelling errors. Typos distract from the substance of the writing and make the brief unpersuasive.

Persuading the court through writing is hard, but a well-written brief puts lawyers on the winning side of their arguments. When writing a brief, lawyers should always keep judges in mind. They should put themselves in their shoes and ask themselves what would convince them. They should never underestimate the importance of effective analysis — both to the client and, in our adversary system, to the administration of justice.

Gerald Lebovits is a judge of the New York City Civil Court. He taught at St. John’s University School of Law in Queens, New York, where he teaches trial and appellate advocacy. Judge Lebovits graduated magna cum laude from the University of Ottawa, Civil Law Section, his alma mater, for her research help.

Write To Win

Continued From Page 11

their goal — what their client seeks — to communicate logically. Judges should be able easily to follow from point to point and to the final conclusions.

Lawyers who present their arguments illogically, jumping from issue to issue, will lose the court’s attention. Lawyers cannot start each paragraph with a topic or transition sentence. A topic sentence introduces what is going to be discussed in the paragraph. A transition sentence connects the end of one paragraph to the start of the next paragraph by linking or repeating a word or concept. The best writing does not rely on conjunctive adverbs — “first, second, and third” — along the same lines,” “however,” or “moreover” — to transition from one sentence to the next. If the logic and movement of the ideas are clear, those transitional conjunctions will not be needed. Lawyers should also end their paragraphs with a thesis sentence that summarizes and answers the topic sentence. The topic sentence relates to the next, to the one before it, to the topic sentence, and to the thesis sentence.

Lawyers should also avoid logical fallacies, such as the post hoc fallacy, because it happens after something else, the post hoc fallacy assumes that “If A happens after B, then A caused B.” Example: “Every time I tell my colleagues that I am going to win a trial, I lose.” The fallacy is that if the person does not tell colleagues they are going to win the trial, they will win. Rather, the brief should rely on syllogism and move the reader from the general to the specific. Example: “If the post hoc fallacy assumes that because one thing happens after something else, the first caused the second. Example: “Because one thing happens after something else, the second is caused by the first.”

Writing should not be pompous. Lawyers should write in simple, short words. They should use common words to complex and long words: “Ameliorate” becomes “improve” or “get better.” They should keep it simple but still formal. “They should use simple words, but they should not use abbreviations: “i.e.” “e.g.” “etc.””

The majority of lawyers know that they should not use contractions like “I’ve,” “we’ll,” “they’ll.” The solution is to proofread. Lawyers should review their arguments to make them efficient; they should take out any unnecessary and flowery language. They should also watch out for negatives words like “except,” “fundly,” “rather,” “never,” “nor,” “provided that,” and “unless.” For example, “Good lawyers do not write in the third person.”

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Saturday Morning

Continued From Page 10 — revealing confidential communications and failing to adequately protect and advance the interests of his client, Raul Santiago.

Bob wasn’t worried about the grievance, but it was another embarrassment and would require a good deal of his time to answer. The following Saturday, Bob decided that it was time to get back to the office on weekends. He had gotten used to a five day per week work week, but somehow, somehow, he missed the solitude of early Saturday mornings at the office and how much work he was able to accomplish then. He arrived just as the fire trucks were pulling up. The office was pretty much a total loss, including most of his files. Fire marshals concluded that the fire was “suspicious”, but never managed to resolve the issue of causation. He would never know for sure, but the thought that Raul Santiago would have liked to have witnessed the devastation would never leave him. He thought, “Losing criminal cases can sometimes mean more than just losing criminal cases.”

Editor’s Note: Stephen J. Singer is a Past President of the Queens County Bar Association, Co-Chair of the Criminal Court Committee and a partner in the firm Sparrow, Singer and Schreiber.

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