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Queens Bar Bulletin

Queens County Bar Association / 90-35 One Hundred Forty Eighth Street, Jamaica, NY 11435 / (718) 291-4500

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Report from the State Bar Association

April 5, 2008

By STEVEN WIMPFHEIMER*

Good morning. It's 9:00 a.m. on Saturday morning, and I just arrived at the New York State Bar Association Headquarters for the April 2008 meeting of the House of Delegates. Unfortunately, I missed the usually enjoyable dinner at the Fort Orange club, held on Friday night. From all accounts it was a successful and delicious dinner.

Bernice Leber, the President-Elect of the Bar chaired the meeting. It was a pleasure seeing her once again. She had graced us with her presence the previous Monday night at our monthly meeting where she reported on her proposed programs for the coming year.

As usual, the day's event started off with the treasurer's report. As usual, the state bar is running in the black with a long-term reserve $15,534,000 and a 2007 cash surplus of $1,542,000. It should only happen to the Queens County Bar Association.

The next item on the agenda was the election of the nominating committee and an ABA House of delegates. The Queens members of the nominating committee are: Yours truly, Catherine Lomuscio, with Arthur Terranova as the alternate. Catherine is also our delegate to the ABA.

Kathryn Grant Madigan, then gave her final report as President of the Association. As usual, the number one item on the agenda was pay raises for our judiciary. She advised us of the Association's legislative priorities, which were given to the Governor including a proposal for equal rights for same-sex couples. She reported on the lobbying day held in Washington, where our representatives met with our federal legislative leaders and advise them of our priorities. She then reported on the successful ABA meeting, where the New York State delegation took the lead in proposing a plan for long term care financing, and a resolution in support of our colleagues in Pakistan. The next ABA meeting will be held in New York. The COSAC committee report was given to Judge Kaye and to the Presiding Justice of the four Appellate Divisions. As usual, the Bar leadership met with OCA to attempt to resolve members' problems. Finally, the president reported on her challenge to increase the membership from the present 78,000 members.

The Trial Lawyers then presented an award to the winning law school team in the trial lawyer's advocacy program to Syracuse University College of Law. GO ORANGE.

Several other Committees then reported mostly boring stuff.

The only really interesting report was the report of the Committee on Civil Rights which gave a short history of habeas corpus and its application to persons being held in Guantanamo Bay and then presented a preliminary report on Military Commissions Act of 2006 and Habeas Corpus. While It's Draft Recommendations and Conclusions have NOT been adopted by the House of Delegates, they are interesting enough for me to include them verbatim:

The final report was the Bar Foundation Report. Another sleeper.

This was George Nashak and Paul Goldblum's final meeting as members of our delegation to the House of Delegates. Our Bar Association owes them a vote of thanks for their efforts on our behalf. ■

2007 Criminal Law Legislation

By BARRY KAMINS*

This article reviews changes in the Penal Law, Criminal Procedure Law, and several related statutes that were enacted in the last legislative session and signed into law by the Governor. What follows is an overview of the changes and the reader is encouraged to read the new statutes to appreciate their nuances and complexities.[1]

In the past session, the Legislature enacted a number of procedural changes. Clearly, the most dramatic change was the Sex Offender Management and Treatment Act (SOMTA) that addresses the dangers posed by recidivist sex offenders.[2] This legislation was a response to a recent New York Court of Appeals decision[3] that rejected the state's attempt to use the involuntary civil commitment procedures in Article 9 of the Mental Hygiene Law to detain sex offenders following their periods of incarceration. The new law affords sex offenders the procedural safeguards that the Court found lacking in the prior commitment process.

The legislation creates a new Article 10 of the Mental Hygiene Law, that is premised on a legislative finding that certain sex offenders have mental abnormalities that predispose them to

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THE DOCKET...

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

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

2008 Spring CLE Seminar & Event Listing

May 2008

Wednesday, May 7	Ethics Considerations
Tuesday, May 13	Small Claims Arbitrator Training
Thursday, May 15	Program for Attorneys Attempting to Start a Practice

June 2008

Thursday, April 5	Labor Law Seminar
Friday, April 13	Probate & Will Execution 1:00-4:00 p.m.
Wednesday, April 18	Article 81/ Guardianship Training 2:30-5:00 p.m.

CLE Dates to be Announced

Elder Law • Real Property Law • Taxation Law

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Although we were unable to include his ad in our 2008 QCBA Annual Dinner Journal we would like to acknowledge the generous contribution to the Queens Volunteer Lawyers Project by

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EDITOR'S NOTE...

As this is the last bulletin for this year, I wish to thank all of our members who have contributed to the success of this year's paper. I wish to personally thank Ms Janice Ruiz, whose assistance has been invaluable. Congratulations to David Cohen on his term as President and best wishes to Steve Orlow as he takes over as President.

LAWYERS ASSISTANCE COMMITTEE

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

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

All communication with QCBA LAC staff and volunteers are completely confidential. Confidentiality is privileged and assured under Section 499 of the Judiciary laws as amended by the Chapter 327 of the laws of 1993.

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PRESIDENT'S MESSAGE

Well as the saying goes "all good things must come to an end." It has been an honor for me to serve as your President. I thank you for the opportunity to represent the legal community of Queens County.

David Cohen

Expressing the views of the Association at numerous meetings with other Bar Associations, Court Administrators and community groups has been a most rewarding experience. Insuring that the positions of the Queens County Bar Association were heard was one of my most important functions.

We have accomplished much since last May. We now have a modern Tech Center in our Association's library. New computers, printer and scanner are available for our members. The building is wi-fi accessible.

Seymour James, a Past-President has been elected Treasurer of the New York State Bar Association. This is the first time that one of our own has achieved such an honor, and it enables the QCBA to have influence at the highest levels with respect to all issues currently affecting the practicing lawyers of our State.

The Academy of Law, once again, has offered our members a magnificent array of programs to enhance their skills and comply, at a reasonable cost, with mandatory CLE requirements.

Our Administrative Judge, Jeremy S. Weinstein has sought our input on many of the changes that he has made, such as making the parts in Long Island City, all-purpose and proposals to establish mediation in matrimonial cases. He has been most considerate of our positions, and when possible has changed certain aspects of a given proposal to make it as lawyer friendly as possible.

Hon. Bernice Siegel, the Supervising Judge of the Civil Court, the Hon. Deborah Stevens Modica, Supervising Judge of the Criminal Court and the Hon. Stephen J. Bogacz, has reached out to the QCBA and worked with us on issues of mutual concern. The Queens Volunteer Lawyer Project, under the Direction of Mark Weliky, Esq., has had a banner year.

We have established a program at the Civil Court, in conjunction with St. John's Law School and with the guidance of Judge Siegal to assist pro se litigants in collection matters. By all accounts this CLARO program is a resounding success.

I thank the Officers and Members of the Board of Managers for their hard work and support. I know from working with these individuals that the QCBA will have exemplary leadership well into the future.

The backbone of any association are the committees. I thank all the chairs and members for their hard work. Without you we would not be able to provide CLE, screen judicial candidates and formulate Association policy in a number of practice areas.

Without the dedicated and hard-working staff, the QCBA would not be able to function. Led by our Executive Director, Arthur Terranova, Esq., they never failed in making my job easier and making me look good. I thank them all.

Goodbye and good luck.

Flash Report

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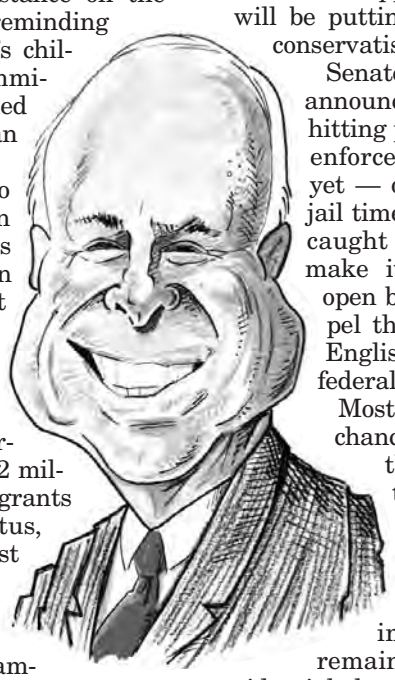
Will McCain throw "God's children" under the bus?

By ALLEN E. KAYE

Early on in the Republican nominating process John McCain raised the ire of much of his party when he admonished his fellow candidates as they attempted to each take a tougher stance on the issue of immigration by reminding them that "we're all God's children" and that each immigrant community had added to the vibrancy of American culture.



Yet, while appearing to take the high ground on immigration, McCain has been moving his position further to the right throughout the entire campaign season. As a recent, rather fawning, AP article pointed out; "Once a crusader for offering the nation's roughly 12 million undocumented immigrants a way to get legal status, McCain now says his first priority is fortifying U.S. borders."

Listen to McCain's speeches or look on his campaign web site now, and there's little mention of the fight to give illegal immigrants a way to stay in the U.S. lawfully. He instead emphasizes border security — the catch phrase of conservatives who scorned his earlier proposals.

…McCain told congressional Republicans in a closed-door meeting recently that he had been badly bruised by his push for immigration reform and had learned the hard way that sealing the border should be his priority.

Republicans who support McCain say he has no choice but to abandon his past approach on immigration in favor of one that causes less consternation among conservatives virulently opposed to providing undocumented people with legal status.

"What kind of an idiot can't figure out the route that you took didn't work? You don't keep charging the center line when you're getting your head bashed in, and John was on this," said former Sen. Trent Lott, R- Miss.

But it now appears that Republicans will be putting McCain's new-found conservatism to the test.

Senate Republicans are set to announce today the hardest-hitting package of immigration enforcement measures seen yet — one that would require jail time for illegal immigrants caught crossing the border, make it harder for them to open bank accounts and compel them to communicate in English when dealing with federal agencies.

Most of the bills stand little chance of being debated in the Democratic-controlled Congress. But the move by some of the Senate's leading Republicans underscores how potent the immigration issue remains, particularly in a presidential election year.

…The package — an enforcement smorgasbord assembled by at least eight lawmakers — consists of 11 bills, but it could expand to as many as 14. Some elements echo House bills, but others go beyond House proposals.

One would discourage states from issuing driver's licenses to illegal immigrants by docking 10% of highway funding from states that continue to do so.

Another would extend the presence of the National Guard on the border, and a third would end language assistance at federal agencies and the voting booth for people with limited English ability.

A bill by Sen. Jeff Sessions (R-Ala.), who is leading the effort, would impose a maximum two-year prison sentence on someone caught illegally crossing the border a second time.

Other bills in the package would:

* Block federal funding to cities that bar their police from asking about immigration status.
* Give the Department of Homeland Security the authority to use information from the Social Security Administration to target illegal immigrants.
* Require construction of 700 miles of fencing along the southern border, not including vehicle barriers.
* Impose sanctions on countries that refuse to repatriate their citizens.
* Deport any immigrant, legal or illegal, for one drunk-driving conviction.
* Enable local and state police to enforce federal immigration laws.

LA Times 3/5/08

This new legislative initiative puts McCain in a precarious position.

As he moves towards the general election he's looking for moderates, independents and most importantly Latinos, to help him offset the disadvantages that will mark most Republican candidates with an unpopular President, war and a faltering economy. But all those groups find McCain's previous position on immigration much more appealing. With 11 bills in the Senate, and others in the House, McCain will now be put on the hot seat. Favor, oppose or abstain ... McCain loses.

At first glance it appears as a no-win situation for the Arizona Senator.

(Sen. Jeff) Sessions said he had not consulted with the White House on the issue, nor had he talked directly with McCain.

…Sessions and other opponents of comprehensive immigration reform believe McCain has learned his lesson.

"He has said he got the message and believes the way to go is border enforcement first," Sessions said. "I think he'll be supportive of much of it."

"There's nothing in here that repre-

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PROFILE OF

Edwina Richardson-Mendelson

By MERYL L. KOVIT

I coveted the acquisition of a box of sixty-four Crayola crayons with the personal built-in crayon sharpener in the back of the box during my yearly school supply shopping ritual with my father. My father steadfastly refused to buy me the box of sixty-four crayons. Instead, he used our time together shopping for school supplies to explain that the number of crayons you have in first grade holds no bearing on your success in life. My father said that if I really thought I needed a box of sixty-four crayons, that, in effect, I was saying that my classmates from the nearby housing projects couldn't succeed, because most of their parents couldn't afford the big box of sixty-four. My father taught me that the children from the housing projects could succeed with boxes of sixteen or even a box of eight crayons — and so could I.

The new Supervising Judge of the Queens Family Court, Edwina Richardson-Mendelson, is living proof that my father was right. She's a native New Yorker, raised by her mother, a single parent, in a New York City housing Project in the Bronx, along with her six siblings — and as the Judge herself modestly puts it, becoming the Supervising Judge of the Queens County Family Court is no small mark of success. My dad would have been proud of her.

I interviewed the Judge in her new chambers which are worthy of a write up of their own. Let's just say the chambers have a conference table that seats eight to ten and there are a lot of people in this city who live in, so called, one bedroom apartments with a lot less square footage and windows. That said this is a journal for members of the bar, not a decorating journal.

Since her appointment as the Supervising Judge by Ann Pfau, the Chief Administrative Judge, on February 14, 2008, the Judge shared with me that the toughest part of her new position was learning how to be an administrator and most particularly how to delegate.

A tireless academic, the Judge holds two postgraduate degrees in addition to her law degree — so it's not surprising that she has acquired a book on how to be an administrator suited to her situation. When we met a copy of "Leaving Legacies, Reflections from the Prickly Paths to Leadership" by K. Candis Best was sitting on her desk. I inquired about the book and the Judge explained it was a gift from a friend about the time of her new appointment. The book is an autobiography by a lawyer who, like Judge Richardson-Mendelson, also did not have an MBA degree, but became a hospital administrator.

The Judge currently holds a law degree from C.U.N.Y. Law School, 1988, as well as a master of philosophy degree in criminal justice from the CUNY Graduate Center, 2000 and a PhD in criminal justice from the CUNY Graduate Center, 2002. She mentioned more than once in our interview that she thought the new position presented more of a challenge for her because she didn't have an MBA — stay tuned. I'm wondering if our new Supervising Judge has plans to add another post-graduate degree to her current collection.

The Judge began her education in the New York City public schools and went to the High School of Music and Art in Manhattan because the Bronx High School of Science, although visionary enough to accept the future jurist, wouldn't allow her to continue to play the cello, a pursuit commenced in her junior high school days. The Judge's mother, who the Judge describes as "the smartest woman I know," permitted her to attend the High School of Music and Art, the school where the movie FAME was filmed (the Judge was actually a student at the school at the time that the movie was filmed).

The Judge is an accomplished cello player who participated in both borough and city wide orchestras. She named her cello "Orville" but explained that, although she continues to play occasionally, Orville has bitten the dust and requires a replacement. Goals and planning are a permanent part of her life and she harbors a dream of buying a new cello and hiring a Queens College student to give her cello lessons during the lunch hour in the Queens County Family Court.

When the Judge was five years old she wanted to be a doctor. One day, her six year old sister threw up and her mom, a nurse, explained that sometimes doctors have to deal with people who throw up — her plan to become a lawyer crystallized at that moment. The Judge attended the Urban Legal Studies Program at the City College of New York which was a six year program leading to her law degree. The director of the Urban Legal Studies Program was Haywood Burns, who also served as dean of CUNY Law School. Haywood Burns was her mentor; there is a picture of her with Dean Burns in her chambers.

The Judge's first job out of law school was with the Legal Aid Society, Civil Division, from 1988-89. They had promised to place her in Family Court, as she wanted, but instead placed her in Housing Court because that was the greater need. She had turned down a job offer with the Juvenile Rights Division of The Legal Aid

Society which would have guaranteed her a position in the Family Court, but she would have lost that position if she didn't pass the bar. She played it safe and accepted the position with the Legal Aid Society, Civil Division. She then proceeded to pass the bar on the first try.

She began to practice in the Family Law arena in 1990-91, when she accepted a position representing battered women as the sole counsel to the newly founded Sanctuary for Families Center for Battered Women's Legal Services. In 1991 the Judge joined the 18B panel in New York Family Court. The Judge says she is "grateful to have been an 18B" not because she "worked miracles," but because the client contact did allow her the opportunity to help people change their lives, if they wanted to change their lives.

After ten years on the 18B panel, the Judge accepted a position as a Referee for the New York City Family Court. She was told the position would be in the Bronx Family Court. Once again, the job did not turn out to be as expected. At her first day on the job they gave her job in the Bronx Family Court to another new Referee named Dean Mendelson. She introduced herself and told him, "you stole my job." He asked if there was anything he could do to make it up (short of giving her the job). She suggested coffee, they became friends, and they are now the very happy parents of the large Richardson-Mendelson clan.

Our new supervising Judge gets up daily at four a.m. (Four a.m., this is not a typo). She used to get up at five a.m., but found this wasn't enough time in the early morning. She likes to read the Bible and pray in the early morning hours and believes her faith based life keeps her going. She also exercises and is a firm believer in fitness. She maintains a library of exercise tapes at home readily at her disposal in the early morning hours and sometimes works out at the YMCA. Family Court regulars may have observed the Judge, at lunch time, runs around the Jamaica neighborhood, which she volunteered was for extra exercise, not to make up for a missed morning, because she doesn't miss her morning exercise. She checks E-mails from home before heading across the bridge to Queens.

The Judge does seem to work an awful lot, but she works hard to be there for her large family as well. She says she learned from her own mother that "you can work around the clock and still be there for your family." Her office is adorned with many pictures of her husband, Dean Richardson-Mendelson, a Referee in the Bronx Family Court (she mentioned he should be given credit for creating their new blended name), her daughter Shirley, a 17 year old high school junior, her nieces Nikky, a 19 year old student at the Borough of Manhattan Community College, Tierra, a high school senior who will attend the Judge's alma mater CCNY next fall and Tianna, a 13 year old junior high student, along with stepsons, Ben the second 13 year old junior high student in the household and Brant, 22 years old and her daughter Shirley's older sister, Nneka, who is 27 years old and works in a homeless shelter.

The Judge readily acknowledges that having a child who grew up as a tenant of the New York City Housing Authority now serve as the Supervising Judge of the Queens Family Court was made possible because "there are many more opportunities for many more people in our society now because things have changed.". While acknowledging that life is better now, the Judge says that "we still have to realize that there are tremendous difficulties for some children in our society. We haven't fixed the many issues involving children in trouble for all sorts of reasons." The Judge suggests that one reason is that you "need an education to survive in this society — you just can't support yourself working at Dunkin Donuts."

We spoke about what she perceives to be the most important needs of the Court from her new perch as the Supervising Judge. First and foremost she notes that the Judges need a "cost of living adjustment — she will not call it a raise." She points out that it is impossible for people who reside in the City of New York to go for ten years without an increase in pay. She acknowledges that this is a position for "someone dedicated to public service" and "that no one takes this job to become rich, nonetheless, she feels that it is inappropriate for the Legal Aid Society, Corporation Counsel, and the District Attorney's office to pay their high level administrators more than the Judges are paid ." She says this with the same conviction that she tells a litigant or lawyer in her Courtroom that their request is "inappropriate."

Judge Richardson-Mendelson also notes the need for more Family Court resources. She acknowledges the tremendous job and the invaluable assistance provided by the Referees — but notes that this does not replace the dire need for more Judges and, just as important, more support staff for the Judges. She stressed the desperate need for more Court Officers, especially for the Referee parts which are all handling highly sensitive and emotionally charged matters and do not have Court Officers. The Judge believes this presents a safety issue for all in the Courthouse. As well, more court clerks are needed to provide the Judges with the necessary administrative assistance in carrying out their important work.

As well, the Judge would like to address the need to contain the sheer volume of cases currently before the Court. The numbers are creating a situation where Judges are working "morning, noon and night" to address the simple fact that "everyone walking into the building is in crisis." The volume must be contained somehow, or the staff of Judges, court officers and court clerks has to increase to properly provide the needed service.

Children do seem to be a big part of the Judge's life outside of Court — and while it doesn't seem that she has lots of spare time to go home and bake cookies with her kids — it does seem she must share with them what she does at her workplace, why she enjoys it, why what she does is important and why her own family is so important to her. There is a kiddie style cigar box diorama done as a school project by the Judge's daughter, Shirley, many years ago, hanging in the Judge's chambers, which best describes Shirley's mom's success as both a mother and a Judge. The art project is accompanied by a brief written statement by Shirley in which she explains that her mom is:

"A Queens Family Court Judge. She likes her job but it is emotionally draining because she is the one to decide to keep a family together or separate the family. She doesn't wish that she had another job and she plans to stay as a Family Court Judge. I admire my mother because she has set goals and has achieved them."

The cigar box art project includes a tiny little picture of the Judge's head attached to Shirley's drawing of a judicial robe and an artistic rendition of Judge Richardson-Mendelson's Court Officer Jim Dugan — Shirley seems to understand the importance of court officers in a court room. The Judge may be the most important person in the courtroom, especially if the Judge is your mother, but even in a cigar box diorama of a courtroom, with such limited space, you have to include the Court Officer because Shirley knows that court officers are very important people to have in a courtroom — her mother's point well taken. Anybody can download a recipe for chocolate chip cookies off the internet and toss the delicacies together — but taking the time to share with your child the importance of court officers, priceless.

While the Judge has failed to maintain "Orville," her cello, over the years, her child's cigar box diorama is in pristine condition. This is a Judge who cannot only juggle, she can prioritize.

The Judge looks forward to her new role and hopes to continue to see the Queens Family Court be a "friendly court." A court where the staff care about the people that walk into the building. She's been walking the building in her new role to see the jobs performed by so many all over the vast building. In her walks about the building she has observed petition clerks working very hard with very difficult consumers of our legal resources — but observed the clerks always being polite. The Judge appreciates the very difficult work done by all staff members in our building. She sees her new position as an opportunity to support the very "special people who choose to work in the Queens Family Court." ■

Meryl Kovit is an attorney in private practice with an office in Floral Park. She is a member of the 18B panel in Queens Family Court.

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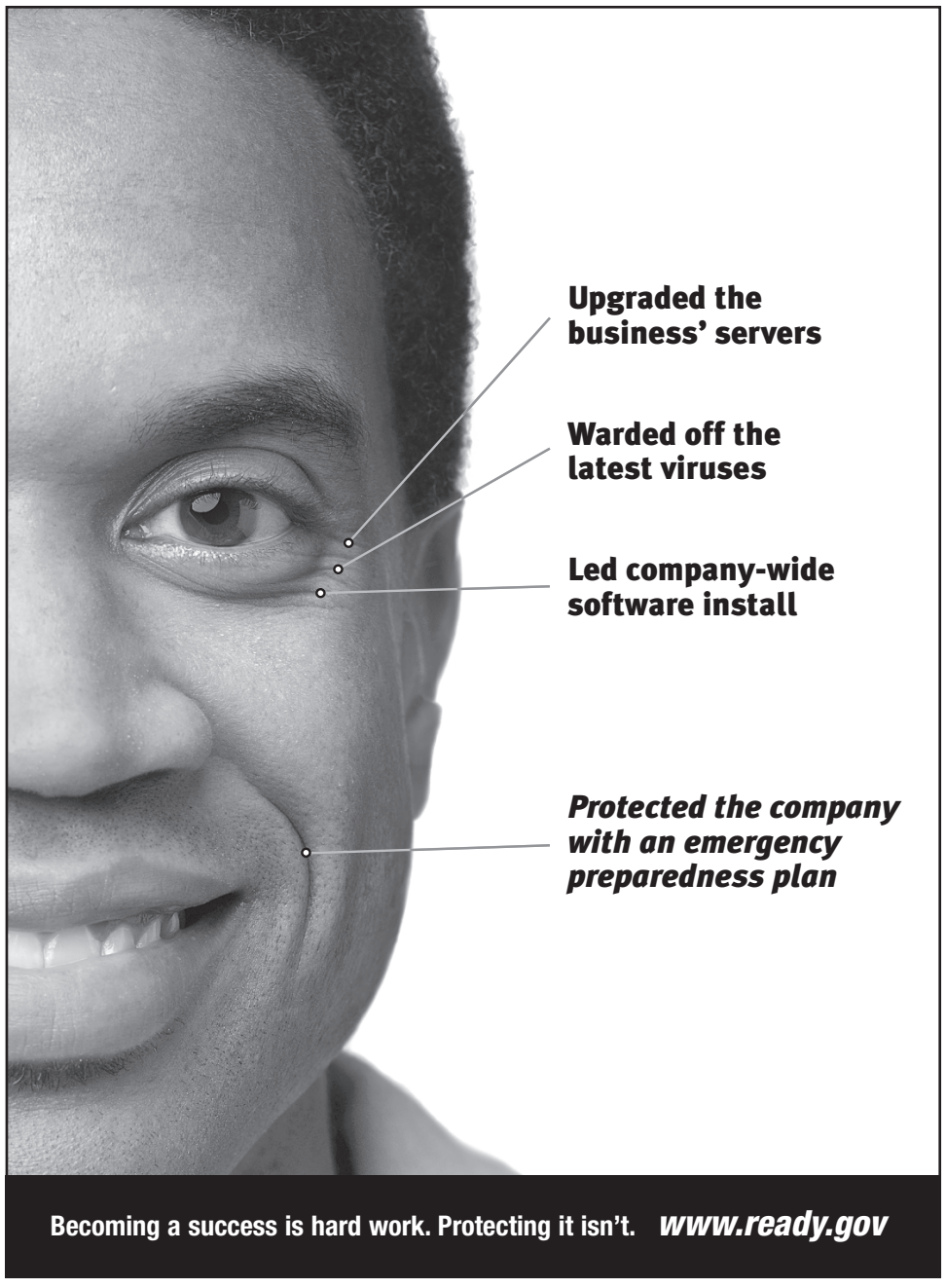

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2007 Criminal Law Legislation

Continued From Page 1

engage in repeated sex offenses.[4] To address this problem the legislation provides, under certain circumstances, either continued custodial detention or strict post-release supervision. Both the detention and the supervision can last for the remainder of the sex offender's life.

Nineteen other states have enacted similar legislation and approximately 2,700 men are being held involuntarily in civil commitment programs around the country. In upholding the constitutionality of civil confinement statutes, the United States Supreme Court has held that such confinement is lawful if a sex offender is "mentally abnormal" and dangerous.[5] The Court later held that the state must be able to prove that such offenders have serious difficulty in controlling their behavior.[6]

New York's legislation applies to all persons convicted of felony sex offenses under Article 130 of the Penal Law. In addition, it applies to the newly created crime of a "sexually motivated felony." An individual is guilty of a sexually motivated felony when he or she commits one of twenty-four designated non-sex crimes for the purpose, in whole or part, of the offender's sexual gratification.[7] Thus, if a defendant commits the crime of Arson in the First Degree and the arson is sexually motivated, the defendant has committed a sexually motivated felony and is subject to the civil commitment law. Only defendants serving state prison sentences are subject to the law; thus, defendants sentenced to local jail terms or probation are not vulnerable.[8] The law also applies to all defendants serving state prison sentences who were sentenced *prior* to April 13, 2007 for any felony sex offense under Article 130 of the Penal Law or any designated non-sex crime that, by clear and convincing evidence, was sexually motivated.

The new law provides numerous procedural steps that must precede any finding that a sex offender should be civilly committed. First, at least four months prior to the anticipated prison release of a sex offender, the Department of Corrections must notify the Office of Mental Health and the Attorney General.[9] A committee of professional personnel will preliminarily review the file to determine if the offender should be referred to a "case review team" for further evaluation. The statute is silent on what factors the committee should use in determining that a further evaluation is necessary. Although an inmate may have a scheduled release date from prison, once his case is subject to review for possible civil management, his release can be postponed if the Attorney General files a securing petition with the court.

If the committee refers the case for further review, the offender (now known as the respondent) is notified and the matter is sent to a case review committee that is comprised of fifteen members who are appointed by the Commissioner of the Office of Mental Hygiene.[10] Any three of these members may sit as a team to review a particular case. If the case review team determines that the respondent is a sex offender requiring civil management, it must notify the respondent and the Attorney General. The notification must be made within 45 days of the notice of the anticipated release of the offender.[11] It must be accompanied by a written report from a psychiatric examiner that includes a finding as to whether the respondent has a "mental abnormality" as that is defined in the statute.[12] If the case review team recommends that the Attorney General file a civil management petition, it is in the Attorney General's discretion whether to do so; if a petition is filed, it must be filed within thirty days.[13] A petition is filed in the Supreme Court or County Court in the county where the respondent is incarcerated.[14] If the case review team determines that the respondent *does not require* civil management, no petition will be filed.

Should a petition be filed by the Attorney General, the respondent is entitled to court-appointed counsel. No bail is permitted during civil management petition proceedings. Within thirty days of the filing of a petition, the court must conduct a probable cause hearing; if probable cause is found to believe that the respondent requires civil management, a trial is ordered.[15] If probable cause is not established, the petition is dismissed and the respondent is released. The trial must be conducted within sixty days of a probable cause determination.[16]

The offender may choose a trial by a jury of twelve jurors or a bench trial and may ask to remove the trial to a county in which he was sentenced, although the court, upon application of the Attorney General, can deny the application. At trial, the burden is on the Attorney General, by clear and convincing evidence to establish that the respondent suffers from a mental abnormality.[17] That abnormality must be a condition or disorder that affects the volitional capacity of the individual in a manner that predisposes him to the commission of a sex offense and that results in a serious difficulty in controlling such conduct. The verdict of the jury must be unanimous.[18] If the jury is unable to reach a unanimous verdict, the court must schedule a second trial within 60 days.[19] If a second jury is unable to reach a unanimous verdict, the court must dismiss the petition. If a unanimous jury, or a judge, finds that the respondent suffers from such an abnormality, then it is the *court's* ultimate responsibility to determine the respondent's fate: confinement or intensive supervision.[20]

Following submission of additional evidence, the court must determine, by clear and convincing evidence, whether the respondent has a mental abnormality involving such a strong predisposition to commit sex offenses and an inability to control behavior, that the respondent must be confined to a secure treatment facility. If the court does not so find, it must order the respondent to submit to strict and intensive supervision by the Division of Parole. Such supervision may include electronic monitoring, polygraph testing and residence restrictions. A respondent may appeal from either decision by the court.

It should be noted that the period of confinement and the period of supervision are both indefinite and can theoretically last for the remainder of the sex offender's life. Civilly committed sex offenders have an ongoing right to court-appointed counsel and can challenge their continued confinement once a year.[21] Offenders under strict supervision may move for termination of supervision or modification of conditions once every two years. If an offender violates a condition of strict supervision, the Attorney General may file a petition for confinement or modification of the terms of supervision.

The Legislature enacted a number of other procedural changes. A new law liberalizes the ability of a judge to determine that a child, under the age of fourteen, is a "vulnerable witness", thus allowing the child to testify by two-way closed-circuit television.[22] This provision was originally enacted to provide child witnesses an alternative to in-court testimony when that experience would be mentally or emotionally harmful to the child. The amendment no longer requires a prosecutor to demonstrate "extraordinary circumstances" in order to utilize this procedure and only requires a prosecutor to establish that the child would suffer "serious" rather than severe mental or emotional harm.

Two new procedural changes will affect defendants who are on probation. First, rules involving the transfer of Probation from one jurisdiction to another have been tightened.[23] When a probationer resides in another jurisdiction within the state, the sentencing court will now be required to transfer the supervision of the probationer to the Probation Department in the other jurisdiction. In addition, a sentencing court can no longer retain jurisdiction over the probationer for purposes of re-sentence in the event of a violation of probation. Second, a pilot program has been authorized for four counties outside New York City in which Probation authorities would have the legal authority to issue temporary detainer warrants for high-risk probationers, who have been convicted of sex offenses or family offenses.[24] This would allow Probation Officers to bring a probationer to jail for temporary detention even when a court is not in session. The pilot program is scheduled to sunset on March 31, 2010.

In the past session, the Legislature created several new crimes that will effectively address serious and continuing societal problems. In an effort to toughen the drunk driving laws, the Legislature created two new crimes: Aggravated Vehicular Homicide and Aggravated Vehicular Assault.[25] These crimes were a response to a particularly grisly death of a seven year-old girl who was killed while returning from her aunt's wedding in Long Island. It is interesting to note that there is currently no crime of "Vehicular Homicide" (although there is a crime of Vehicular Manslaughter) and thus it might be a misnomer to create a crime that appears to increase the penalties of a crime that does not exist. It would seem that the legislature used the word "homicide" in the title of the crime to stress the seriousness with which it treats this important subject.

In any event, the new crime of Aggravated Vehicular Homicide is a class B felony, punishable by up to 25 years in prison. A person is guilty of Aggravated Vehicular Homicide when he or she engages in reckless driving under the Vehicle and Traffic Law, commits the crime of Vehicular Manslaughter in the Second Degree, and one of six aggravating factors is present. These factors include the following: a blood level content of .18% or more at the time the car

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is operated; the defendant causes the death of more than one person; the defendant causes the death of one person and the serious physical injury of another person; the defendant's license is suspended pursuant to various drunk driving laws; or the defendant has previously been convicted of intoxicated or impaired driving within the prior ten years. The new crime of Aggravated Vehicular Assault (a class C felony), increases the penalties of Vehicular Assault by the presence of similar aggravating factors.

Another new crime addresses sex and labor trafficking. New York now joins twenty-nine other states and the federal government in attempting to combat human trafficking. The United States Department of State has estimated that 14,500 to 17,500 people a year are brought into the United States and then used for forced labor, involuntary domestic servitude, or sexual exploitation. Trafficking also originates domestically, and the Office of Children and Family Services recently estimated that over 2,500 children in New York State are exploited for purposes of commercial sexual activity each year. Although there are federal laws against human trafficking, they are usually invoked only against the largest trafficking rings rather than smaller operations such as sweatshops and brothels.

New York's new law is one of the strongest anti-trafficking measures in the country. It addresses the problem in three significant ways. First, it creates new crimes that specifically target the methods used by traffickers to exploit their victims. Second, it provides the delivery of social services to trafficking victims who are currently ineligible to receive such services. Finally, it creates a task force to improve training to help prosecutors and police recognize trafficking situations.

The legislation creates two new crimes: Sex Trafficking, a class B felony and Labor Trafficking, a class D felony.[26] A person is guilty of Sex Trafficking when he or she intentionally advances or profits from prostitution by using any of five methods to compel or induce a victim to engage in prostitution. These means include providing the victim with certain drugs, using materially false or misleading statements, withholding or destroying documents including passports or immigration papers, or requiring that prostitution be performed to repay a real or purported debt. In addition, the crime is committed if the trafficker coerces the victim by threatening physical injury or death, deportation, unlawful imprisonment, exposing secrets, or a variety of other possible harmful acts. The new crime of Labor Trafficking tracks the language of sex trafficking and prevents an individual from forcing a victim into labor servitude.

Other changes in the Penal Law and Criminal Procedure Law have been made to address sex and labor trafficking. The crime of Promoting Prostitution in the Third Degree, has been amended to preclude "prostitution tourism", in which a person in New York knowingly sells travel-related services for the purposes of prostitution services in another jurisdiction.[27] International sex trafficking is an enormous problem and each year thousands of young women are trafficked across international borders for the purpose of commercial sexual exploitation. In addition, the new legislation provides that a trafficking victim shall not be deemed to be an accomplice of the trafficker.[28] This provision relieves prosecutors of the evidentiary burden of corroborating the victim's testimony in a criminal prosecution. The new law also authorizes wiretapping of a trafficker's telephone[29] and adds Sex Trafficking and Labor Trafficking to the list of felonies that are designated as criminal acts for purposes of prosecuting Enterprise Corruption.[30] Finally, Patronizing a Prostitute has been elevated from a B misdemeanor to an A misdemeanor.[31]

A second component of the anti-trafficking legislation provides social services for trafficking victims.[32] These services may include emergency temporary housing, health care, mental health counseling, drug addiction screening and treatment, language and translation services, job training and placement assistance. The Office of Temporary and Disability Assistance (OTDA) may also coordinate with the federal government to help victims obtain special visas to remain in this country to testify against traffickers.

Under the third component of the legislation, the Interagency Task Force on Human Trafficking is created and will be co-chaired by the Commissioners of the Department of Criminal Services and OTDA.[33] The task force is responsible for collecting data on the extent of trafficking in New York, establishing training programs for law enforcement personnel and evaluating the state's progress in preventing and prosecuting trafficking. The Task Force must report to the Governor and legislature by November 1, 2008 and the term of the Task Force expires on September 1, 2011.

The Legislature also enacted new offenses relating to service animals. A recent survey indicated that 89% of disabled individuals who used service animals had experienced some type of harassment, interference or attack by individuals or uncontrolled animals. A new crime, Interference, Harassment or Intimidation of a Service Animal, constitutes a B misdemeanor, and an individual is guilty of this offense when he or she makes it impractical or dangerous for a service animal to perform its responsibilities.[34] One is guilty of Harming a Service Animal in the Second Degree, a class A misdemeanor, when a person causes physical injury to or the

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David Cohen introducing Guest Speaker Bernice Leber, President-Elect, NYSBA

David Cohen with Golden Jubilarians Hon. Sol Wieselthier, Marvin Small, Hon. Daniel Joy and Marvin Leicher

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Violet Samuels, Chanwoo Lee and Timothy Rountree

Photos by Walter Karling

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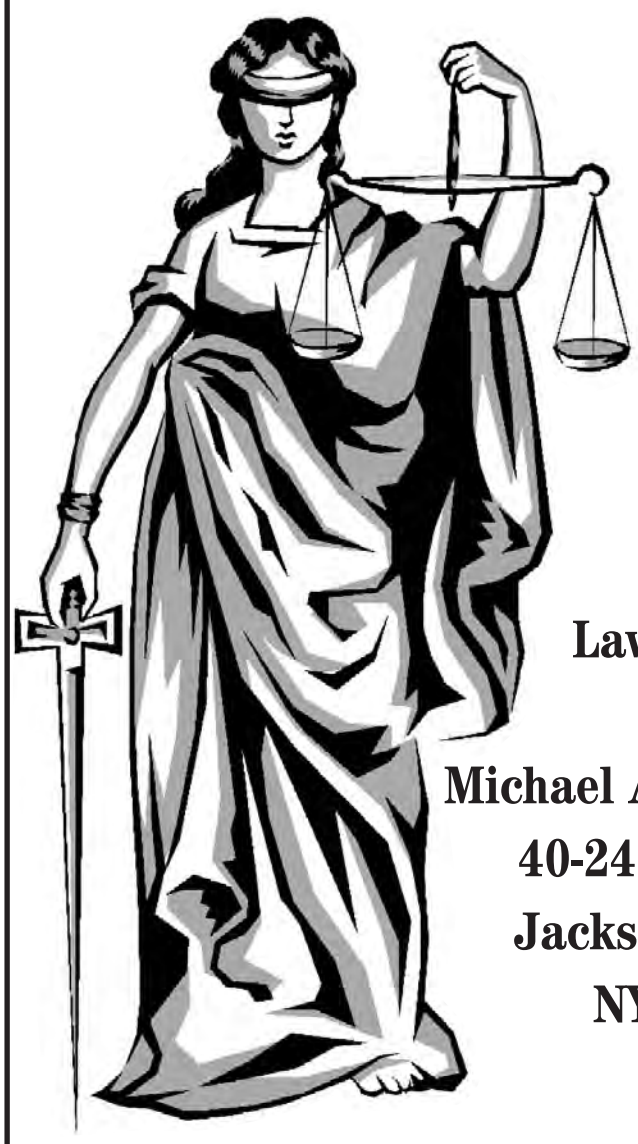

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MARITAL QUIZ

By GEORGE J. NASHAK JR. *

Question #1
Can maintenance be awarded when none was awarded in the divorce judgment?

Question #2
Can a judgment of divorce be modified to reinstate maintenance payments when the original durational period of support has expired?

Question #3
Does the law require an allegation of change of circumstances, when application to modify a maintenance award is based on "inability to be self-supporting"?

Question #4
Does payer spouse have the right to recoup temporary maintenance paid under a pendente lite order that is eliminated on appeal?

Question #5
Are trial courts required to follow the law in other Appellate Division Departments f the department in which the trial court sits, and the Court of Appeals, are silent on the issue?

Question #6
Are you permitted to serve a trial subpoena directed to a party by serving his or her attorney of record?

Question #7
What is Judicial Estoppel?

Question #8
If you require answering papers to your motion to be served at least 7 days before the return date, how many days do you have to serve your motion papers before the return date?

Question #9A
What is the monetary penalty for disobedience of a subpoena?

Question #9B
To whom is it paid?

Question #10
Do counter-orders and judgments have to be marked to indicate changes?

*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.

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2007 Criminal Law Legislation

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death of a service animal.[35]

In the past session, the Legislature enacted numerous measures that will expand both the definition of and the penalties for existing crimes. For example, the crime of Disseminating Indecent Material to Minors[36] has been expanded to include the communication of indecent material by *words*, as well as by graphic or visual images. The amendment was unnecessary, however, because the Court of Appeals recently interpreted the prior statute to include the use of words.[37] The crime of Unlawful Surveillance has been expanded to include the use of a cellular phone that is used to take photographs.[38] The Legislature addressed the problem of cemetery desecration in a variety of ways. It expanded the crime of Cemetery Desecration by making it a crime to *steal* property from a burial place in addition to damaging property.[39] In addition, a new crime of Aggravate Cemetery Desecration was created.[40] A person is guilty of this crime, an E felony, if he or she removes a body part or any object from a casket or crypt. This crime will address a rash of thefts in cemeteries upstate in which individuals have removed cemetery markers, statues, uniforms, and Civil War relics from the graves of war veterans.

The recent legislative session focused its attention on a growing problem of unlawful sexual interaction between employees at correctional facilities and inmates. Accordingly, the Penal Law was amended to expand the definition of "employee" to increase the number of individuals who can be prosecuted for such activities. Previously, only those who worked at the institution could be prosecuted. Under the amendment, any person who enters the facility as an employee of a government agency, or as a volunteer, is prohibited from engaging in any sexual activity with an inmate.[41] This will include employees of the Department of Education, employees of the Department of Health and Mental Hygiene, contractors, maintenance crews, medical staff and food service workers.

Finally, the Legislature has expanded the enterprise corruption statute and money laundering statutes to add Trademark Counterfeiting to the list of crimes that may form the basis for prosecution.[42] While it has been recognized for some time that the production and sale of counterfeit goods is a growing problem, what has been overlooked is the fact that those involved in street-level distribution of these goods are also known to engage in violent criminal activity. By amending the Penal Law, the Legislature has given law enforcement the tools needed to target the larger criminal networks engaged in fraud and violence.

Each year the Legislature enacts measures addressing concerns of crime victims and this year was no exception. With respect to domestic violence cases, an amendment expands a judge's ability to revoke an individual's firearm license when the individual has previously violated an Order of Protection by causing physical injury to another.[43] In addition, a new law allows victims of domestic violence to move out of their residence in order to ensure their safety without breaking a lease agreement.[44] The victim must establish that if he or she remains in the premises that there is a substantial risk of physical or emotional harm to the victim or such person's child and that the landlord has refused to permit a termination of the lease.

Victims of certain sex crimes have received increased benefits under a new law that authorizes a court to issue a pre-trial order compelling a defendant to undergo HIV testing.[45] Previously, a court could only issue that type of order *after* a defendant had been convicted. Under the new law, a victim can request a pre-trial order if the sex offender includes sexual intercourse, or oral or anal sexual conduct. The victim must submit a written application within six months of the date of the crime and file it prior to, or within forty-eight hours of the filing of an Indictment or Superior Court Information. The results of the testing cannot be disclosed to the court and can only be given to the victim and, if requested, to the defendant. Any information obtained during a hearing on the application for an order cannot be used in a civil or criminal proceeding. It is interesting to note that had the Legislature not enacted this bill, New York State would have lost federal funds for failing to comply with the provisions of a provision known as Federal Grants to Encourage Arrest Policies.

Victims will also benefit from a new law that authorizes a court to issue a Temporary Order of Protection when a defendant is remanded.[46] This addresses situations in which defendants violate Temporary Orders of Protection while in custody by making telephone calls or sending mail that harasses or threatens a victim. In addition, under an amendment to the Penal Law, municipalities and other providers of emergency response services can now seek restitution for their costs in responding to a false report of bomb or hazardous substance.[47]

Finally, victims of identity theft will benefit from a new law that requires the law enforcement agency that has jurisdiction over the identity theft offense to take a police report of the matter, provide the victim with a copy of the report at no charge and begin an investigation.[48] Police reports are the first step in helping identify theft victims clear their names and recover from identity theft. Victims need these reports to document the crime and to notify credit bureaus who, upon request, must block the reporting of inaccurate information about the victim. When a copy of a police report is provided to them, the three largest nationwide credit reporting companies (Experian, Equifax and TransUnion) must place an extended fraud alert in the victim's credit file for seven years. The alert entitles the victim to free credit reports.

For the second year in a row, the Legislature addressed an area that it

Continued On Page 13

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COURT NOTES

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

Stuart Ronald Moshell
(March 11, 2008)

The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against allegations that he violated Disciplinary Rule 9-102(A) of the Lawyer's Code of Professional Responsibility (22 NYCRR 1200.46[a]).

Amin Khalil Hussain-El, a suspended attorney (March 18, 2008)

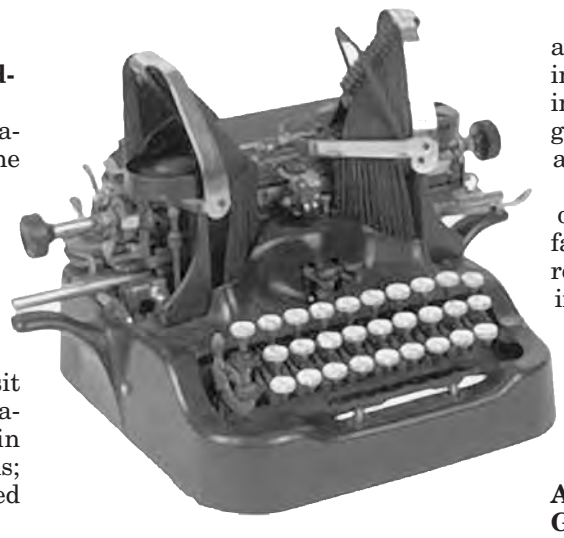
The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against charges that he, inter alia, failed to properly preserve escrow funds entrusted to him as a fiduciary; failed to promptly pay or deliver funds and other property to the client of a third party entitled to receive same; failed to promptly deposit funds belonging to his client in a separate account; failed to maintain required bank and bookkeeping records; and failed to comply with a so-ordered subpoena.

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

J. Bennett Farrell, admitted as

John Bennett Farrell
(February 20, 2008)

The respondent was immediately suspended from the practice of law, pending further proceedings, based upon a finding that he was guilty of professional misconduct immediately threatening the public interest as a result of his failure to comply with lawful demands of the Grievance Committee.



Loel H. Seitel
(March 5, 2008)

On July 19, 2007, the respondent pleaded guilty in the United States District Court, Southern District of Florida, to the federal felony of conspiracy to defraud the United States by making a false statement. The respondent was immediately suspended from the practice of law in New York, pending further proceedings, based upon a finding that he was guilty of professional misconduct immediately threatening the public interest as a result of his conviction of a serious crime.

Maureen Abato
(March 18, 2008)

The respondent was found guilty, after a disciplinary hearing, of converting funds entrusted to her as a fiduciary, incident to her practice of law; commingling funds entrusted to her as a fiduciary, incident to her practice of law, with personal funds; engaging in a pattern of drawing IOLA checks to cash; and failing to maintain required bookkeeping records for her IOLA account. Taking into consideration substantial mitigation, including the absence of venal intent, the Court suspended the respondent from the practice of law for a period of six months, commencing April 17, 2008.

At The Last Meeting Of The Grievance Committee For The Second And Eleventh Judicial Districts, 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 (1)
- Neglecting a legal matter
- Accepting money from clients for legal services that were not performed; failing to communicate with clients; and failing to timely cooperate with the Grievance Committee
- Inappropriate conduct of a sexual nature in the workplace
- Failing to honor a medical lien signed by the attorney
- Communicating with a represented party on the subject of the representtion
- Failing to properly safeguard client funds
- Failing to clearly distinguish between legal and non-legal services, which were both provided by the attorney, such that an individual mistakenly believed that said non-legal services were the subject of an attorney-client relationship, in contravention of Disciplinary Rule 1-106 of the Lawyer's Code of Professional Responsibility (22 NYCRR 1200.5-b). ■

Diana J. Szochet, Assistant Counsel to the State of New York Grievance Committee for the Second and Eleventh Judicial Districts and President-Elect of the Brooklyn Bar Association, has compiled this edition of COURT NOTES. The material herein is reprinted with permission of the Brooklyn Bar Association.

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2007 Criminal Law Legislation

Continued From Page 11

had not focused on previously: the collateral consequences of criminal convictions. Two new laws give added protection to applicants for jobs and current employees who have a criminal record. Under one law, employers can no longer ask prospective employees about prior non-criminal convictions (violations) or youthful offender adjudications.[49] Under a second new law, employers cannot discriminate against current employees with convictions that predate their employment and where the convictions are unrelated to the job and do not constitute a threat to safety.[50] Previously, such protection had only been afforded to applicants for employment but not current employees.

Another bill will greatly assist the reentry of individuals who leave prison. Previously, individuals who entered local or state prisons had their Medicaid benefits terminated and they were required to reapply for these benefits after being released. Frequently, there were significant time period before the reinstatement of benefits and individuals were without medical care, drug treatment and mental health services. A new law mandates that Medicaid benefits be *suspended*, but not terminated, upon incarceration, and that the benefits are reinstated immediately upon release.[51] Finally, one new law actually *reduces* privileges to ex-offenders. Persons convicted of violent felony offenses or class A-1 felonies can no longer obtain a firearm license even if they receive a Certificate of Relief From Disabilities or a Certificate of Good Conduct.[52]

In the area of sex offender registration, the Legislature responded to reports from numerous police agencies that sex offenders throughout the state are failing to register or update their registrations. As a result, the penalty for failing to register has been increased to an E felony for the first offense, and a D felony upon the second offense.[53]

A number of new laws were enacted that will affect motorists who violate the Vehicle and Traffic Law. For the past twenty years there has been a pilot program in seven counties[54] in which an ignition interlock device has been utilized to combat drunk driving. This device, once installed, permits a car to be started only after an alcohol analysis of the operator's breath; if the analysis indicates a blood alcohol level that is above the legal limit, the car will not start. A new law extends the program state-wide and courts will now be able to require the use of an ignition interlock device as a condition of probation.[55] The law also permits the device to be installed on any car the probationer owns or operates. Individuals who are issued conditional driver's licenses and who are on Probation, will be issued licenses that indicate that the car must contain an ignition device. Finally, a new law increases the penalties for snowmobiling while intoxicated when the offender is on the private property of others.[56]

Several new laws will affect prisoners. Inmates serving determinate sentences for drug offenses are now eligible for early parole release for the purpose of deportation.[57] This change will affect hundreds of individuals who were sentenced to determinate sentences pursuant to the 2004 and 2005 Drug Reform Acts.

A second bill, not yet signed by the Governor, will affect approximately 8000 mentally ill inmates currently within the New York Sate prison system.[58] Frequently, mentally ill inmates are disciplined by placing them in solitary confinement. Studies have shown that such treatment causes inmates to engage in acts of self-mutilation and to commit suicide at a rate three times higher than inmates in the general prison population. The new law requires mental health clinicians to evaluate individuals who exhibit signs of mental illness. If the inmate meets one of numerous criteria, the inmate must be assigned to a residential mental health treatment program jointly operated by the Office of Mental Health and the Department of Corrections.

The Legislature enacted a new law that will protect individuals who *report* crimes or suspicious behavior. In November, 2006, six Muslim imans were removed from a U.S. Airways flight awaiting takeoff after a number of passengers and crew onboard reported to authorities what they believed to be suspicious behavior. After receiving these reports, airport security and federal air marshals agreed that the actions were suspicious enough to warrant the removal of the imans from the plane. The men were detained and ultimately released but later sued U.S. Airways and are seeking the names of the passengers who reported their activities.

In response to that incident, the Legislature enacted the Freedom to Report Terrorism Act.[59] Pursuant to this statute, a person who acts in good faith and reports allegedly suspicious behavior of another person shall be immune from civil and criminal liability. The person making the report must have a reasonable belief that such suspicious behavior constituted or is indicative of an act of terrorism. It is interesting to note that the statute also protects an individual who reports allegedly suspicious behavior that is indicative of a *crime* as long as the report is based upon a reasonable belief. It remains to be seen how this statute will interact with civil actions for false arrest or malicious prosecutions.

A number of minor or technical new laws were enacted in the past session. Suffolk County became the twenty-third county in which defendants can appear for non-substantive proceeding by video conferencing in lieu of a personal appearance.[60] The crime of Failure to Disclose the Origin of a Recording in the First Degree is now a "designated offense" for which an eavesdropping or video surveillance warrant may be issued.[61] Criminal Mischief is now a crime for which criminal courts and Family court may exercise concurrent jurisdiction when committed between members of the same family or household.[62] The current ticket scalping law has been repealed and there are no longer restrictions on the maximum resale price of tickets.[63] However, it is an A misdemeanor for "ticket speculators" to sell tickets and the statute still precludes the resale of tickets within 1500 feet of sites that seats at least 5000 individuals. Finally, a technical amendment of the crime of Non Support of a Child, provides that a prior conviction for either the second or first degree offense within the preceding five years, elevates the crime to a class E felony.[64]

***Editor's Note: Barry Kamins (bkamins@fljhlaw.com) is a partner at Flamhaft, Levy, Kamins & Hirsch and practices criminal law. He is an adjunct professor of law at both Fordham and Brooklyn Law School, author of New York Search and Seizure, President of the New York City Bar Association and a Vice President of the New York State Bar Association. He is a graduate of Columbia College and received his law degree from Rutgers Law School.**

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[1] A discussion of several new laws can also be found in the Criminal Law Column, New York Law Journal, October 11, 2007.
[2] Article 10, Mental Hygiene Law; Chapter 7, eff. April 12, 2007.
[3] *State of New York ex rel Harkavy v. Consilvio*, 7 N.Y.3d 607, 825 N.Y.S.2d 702, 859 N.E2d 508 ("*Harkavy, I.*") (2006). In a later case, *State of New York ex rel. Harkavy v. Consilvio*, 8 N.Y.3d 645 (2007) ("*Harkavy II*"), the Court held that a second group of sex offenders were also improperly committed under Article 9 of the Mental Hygiene Law. While the Court noted that the new legislation addressed the procedural flaws identified in *Harkavy I*, it did not rule on the propriety of the standards enunciated in SOMTA.
[4] Mental Hygiene Law 10.01; Chapter 7, eff. April 13, 2007.
[5] *Kansas v. Hendricks*, 521 U.S. 346 (1997).
[6] *Kansas v. Crane*, 534 U.S. 407 (2002). The new legislation tracks that language. See 10.03(i) Mental Hygiene Law.
[7] See 10.03(f), Mental Hygiene Law, for a list of specified offenses. A "sexually motivated" felony does not subject the defendant to increased incarceration; however, as noted, it subjects the defendant to the civil commitment law.
[8] Mental Hygiene Law 10.03(a)(g); Chapter 7, eff. April 13, 2007.
[9] Mental Hygiene Law 10.05(b); Chapter 7, eff. April 13, 2007.
[10] Mental Hygiene Law 10.05(e); Chapter 7, eff. April 13, 2007.
[11] Mental Hygiene Law 10.05(g); Chapter 7, eff. April 13, 2007.
[12] Mental Hygiene Law, 10.03(i). Chapter 7, eff. April 13, 2007. A court has recently ruled that a sex offender has no right to counsel at the initial psychiatric interview that is conducted to aid the review team in determining whether the offender is in need of civil management. *State of New York v. Davis*, N.Y.L.J. 9/25/07 (Sup. Ct. Bronx Co.) The issue of when the right to counsel attaches is one of the issues in *Mental Hygiene v. Spitzer*, a challenge to the constitutionality of the statute, pending in the Southern District.
[13] Mental Hygiene Law 10.06(a); Chapter 7, eff. April 13, 2007.
[14] Mental Hygiene Law 10.06(a)(b); Chapter 7, eff. April 13, 2007.
[15] Mental Hygiene Law 10.06(g); Chapter 7, eff. April 13, 2007.
[16] Mental Hygiene Law 10.07(a); Chapter 7, eff. April 13, 2007.
[17] Mental Hygiene Law 10.07(a); Chapter 7, eff. April 13, 2007.
[18] In August, a jury in Washington County heard the first civil confinement trial under the new law and found that the offender did not suffer from a mental abnormality requiring civil confinement. He was released from custody. Later that month, an offender finishing a 16 year prison sentence in Greene County became the first offender to be civilly confined, after waiving a probable cause hearing and trial and consenting to indefinite civil confinement.
[19] Mental Hygiene Law 10.07(e); Chapter 7, eff. April 13, 2007.
[20] Mental Hygiene Law 10.07(f); Chapter 7, eff. April 13, 2007.
[21] Mental Hygiene Law 10.09(a); Chapter 7, eff. April 13, 2007.
[22] Criminal Procedure Law 65.10; Chapter 548, eff. 8/15/07.
[23] CPL 410.80; Chapter 191, eff. 9/1/07.
[24] CPL 410.92; Chapter 377, eff. 7/18/07
[25] Penal Law 125.14 and 120.04-a; Chapter 345, eff. 11/1/07.
[26] Penal Law 230.34 and 230.36; Chapter 74, eff. 11/1/07.
[27] Penal Law 230.25(1); Chapter 74, eff. 11/1/07.
[28] Penal Law 230.36; Chapter 74, eff. 11/1/07
[29] CPL 700.05(8)(b); Chapter 74, eff. 11/1/07.
[30] Penal Law 460.10(1)(a); Chapter 74, eff. 11/1/07.
[31] Penal Law 230.04; Chapter 74, eff. 11/1/07.
[32] Social Services Law, Article 10-D; Chapter 74, eff. 11/1/07.
[33] Social Services Law, 483-ee; Chapter 74, eff. 11/1/07.
[34] Penal Law 242.05 Chapter 582, eff. 11/1/07.
[35] Penal Law 242.10; Chapter 582, eff. 11/1/07.
[36] Penal Law 235.25; Chapter 8, eff. 3/19/07.
[37] *People v. Kozlow*, 8 N.Y.3d 554 (2007).
[38] Penal Law 250.40; Chapter 291, eff. 11/1/07.
[39] Penal Law 145.22 and 145.23; Chapter 353, eff. 7/18/07.
[40] Penal Law 145.26 and 145.27, Chapter 376, eff. 11/11/07.
[41] Penal Law 130.05(3)(e) and (3)(f); Chapter 335, eff. 11/1/07.
[42] Penal Law 460(1)(a) and 700.05(8)(b); Chapter 568, eff. 11/1/07.
[43] CPL 530.14; Chapter 198, eff. 8/3/07.
[44] CPL 530.12(g) and Real Property Law 227-c; Chapter 571, eff. 11/1/07.
[45] CPL 210.16; Chapter 571, eff. 11/1/07.
[46] CPL 530.12 and 530.13, Chapter 137, eff. 7/3/07.
[47] Penal Law 60.27(11); Chapter 519, eff. 8/15/07.
[48] Executive Law 646; Chapter 346, eff. 7/18/07.
[49] Executive Law 296(16); Chapter 639, eff. 11/1/07.
[50] Correction Law 751; Chapter 284, eff. 7/19/07.
[51] Social Services Law 366(1-a) Chapter 355, eff. 41/08.
[52] Correction Law 701(2); Chapter 235, eff. 10/16/07.
[53] Correction Law 168-t; Chapter 373, eff. 8/17/07.
[54] Albany, Erie, Nassau, Onondaga, Monroe, Westchester and Suffolk.
[55] Penal Law 65.10(k-1); Chapter 669, eff. 10/27/07.
[56] Parks, Recreation and Historic Preservation Law 25.24; Chapter 311, eff. 11/1/07.
[57] Executive Law 259-i (2)(d); Chapter 239, eff. 7/18/07.
[58] Correction Law 137(6); S. 333-B approved by both houses and sent to the Governor for signature; eff. eighteen months after it is signed into law.
[59] Penal Law 490.01; Chapter 651, eff. 8/28/07
[60] CPL 182.20; Chapter 29, eff. May 14, 2007.
[61] CPL 700.05(8)(b); Chapter 570, eff. 11/1/07.
[62] CPL 530.11(1) and Family Court Act 812 (1); Chapter 541, eff. 11/13/07.
[63] Arts and Cultural Affairs Law, Article 25; Chapter 61, eff. 5/31/07.
[64] Penal Law 260.06; Chapter 310, eff. 11/1/07. ■

AMERICAN BAR ASSOCIATION

NEWS RELEASE

RELEASE: IMMEDIATE

Contact: Joanne O'Reilly
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Queens County Bar Association Participates in ABA Bar Leadership Institute

CHICAGO—Joining some 300 other emerging leaders of lawyer organizations from across the country at the American Bar Association's Bar Leadership Institute (BLI), March 13-15 was Steven S. Orlow, President-Elect, Arthur N. Terranova, Executive Director, David N. Adler, Past President of the Queens County Bar Association.

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

Mr. Orlow, Mr. Terranova and Mr. Adler joined ABA President-Elect Tommy H. Wells of Birmingham, AL, and ABA Executive Director Henry F. White in sessions on bar governance, finance, communications, and planning for a presidential term.

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

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

For BLI information, contact Pamela Robinson, Associate Director, ABA Division for Bar Services, 321 N. Clark St., Chicago, Illinois 60611-3314, phone: 312/988-5345, e-mail: robinsonp@staff.abanet.org.

The American Bar Association is the largest voluntary professional membership organization in the world. With more than 410,000 members, the ABA provides law school accreditation, continuing legal education, information about the law, programs to assist lawyers and judges in their work, and initiatives to improve the legal system for the public.

We Have Come a Long Way

Q: What two (2) things do the following lawyers have in common?

David Adler
Joe Baum
John Dietz
Paul Goldstein
George Nashak
Steve Singer
Hon. Sidney Strauss
Spiros Tsimbinos

A: *They are all former Presidents of the Queens County Bar Association and they all will be participating in the seminar, "We Have Come a Long Way" on May 15, 2008.*

Q: What is the purpose of this seminar?

A: *It is tailored to give the inexperienced attorney or the veteran attorney, who has limited the scope of his or her practice, thumbnail guidance and suggestions to enable him or her to work intelligently in many areas of the law in which the attorney is unfamiliar. (Hopefully, this will aid the attorney in widening the practice and increasing the income.)*

Q: What areas of the law will be discussed?

A: *Probate issues, ethics, Medicaid eligibility, real estate closings, matrimonial issues, criminal matters, practice in the Court and appellate matters.*

Q: Will there be an in depth review and discussion of a particular area of law?

A: *No.*

Q: If the attorney wants or needs an in depth discussion of a subject, what should he or she do?

A: *Take a seminar where one topic is reviewed and discussed in detail.*

Q: What is the goal of this seminar?

A: *Get acquainted with areas of the law which may be unfamiliar to you.*

Q: Is the seminar of interest to the attorney who has been in practice for twenty (20) years or more?

A: *It is a resounding yes. Based on my many years on the mentor panel, it has become painfully clear from the questions asked of me by "experienced" attorneys that many attorneys lack experience and a working knowledge in various areas of law in which they are not regularly involved.*

CONCLUSION

This seminar is formatted in such a fashion as to enable an attorney to get his or her "foot in the door" in matters which the attorney may have otherwise turned down. The Queens County Bar Association is now offering a seminar in which day to day working tools will be furnished and discussed. Hopefully, this will enable the attorney to expand his or her practice. We can proudly say that the Bar is offering those in attendance a "dream team" of lecturers who have a wealth of experience and knowledge which will be shared with those in attendance. This is, truly, a once-in-a-lifetime opportunity to expand your skills by attending this seminar, the likes of which has never before been offered by our Association. ■

Paul S. Goldstein
Former President, Queens County Bar Association

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Will McCain throw "God's children" under the bus?

Continued From Page 3

sents an attempt to embarrass him," Sessions was quick to add.

… The package of proposals unveiled by McCain's colleagues may only inflame the immigration debate. Sen. David Vitter (R-La.), for example, has proposed withholding federal law enforcement money for "sanctuary cities" that have lax immigration enforcement. Sen. John Barrasso (R-Wyo.) wants to dock states 10 percent of their highway funding if they give licenses to illegal immigrants. And Sen. James Inhofe (R-Okla.) has a bill that would make English the "national language."

Sessions, who made a name for himself by spending hours at a time on the Senate floor last year, fighting the doomed immigration bill, has proposed mandatory minimum prison sentences for illegal immigrants.

… In the House, Republicans were making a more concerted effort to coordinate their immigration message with McCain.

Some House Republicans were moving ahead full-throttle to force a vote on an immigration enforcement measure offered by Democratic Rep. Heath Shuler of North Carolina. But leaders have temporarily applied the brakes to that effort until they have more time to coordinate with the McCain campaign.

Politico

But McCain could possibly use the situation to his political advantage. With such a large smorgasbord of bills to pick from, McCain can pick and choose. He could choose to accept a few of the less egregious proposals while rejecting others. If played wisely, he could confirm his anti-immigrant bona fides to the right, while being able to still say to moderates and Latinos that he opposed the harshest measures.

Angela Kelley, director of the Immigration Policy Center …. suggested that the Senate bills could provide political protection to Sen. John McCain (R-Ariz.), who has clinched the GOP presidential nomination.

…If McCain endorsed the Senate package, that could "create a platform for McCain to look tough on immigration, create distance from Ted Kennedy [D-Mass.] and erect a shield around the amnesty charge," Kelley said.

LA Times

But it's a very dangerous game:

… Sen. Bob Menendez (D-N.J.), one of only three Hispanic senators, has called on McCain to reject the GOP proposals, saying the package would only create a "wedge" issue come November.

"The Republican Party might think this is a wedge issue for November, but their strategy only dims their chances this year and for generations to come," Menendez said. "Latinos are not a group on the fringes of our society that can be manipulated to score political points. If this presidential primary season has shown us anything, it is that Latinos are no longer the sleeping giant in American politics – they are fully awake, active and making a difference. This is the type of cynical effort that serves to deepen the divisions in our nation that we should be working to bridge."

Politico

I'm not a betting man ….but my money's on McCain trying to figure out a way to throw "God's children" under the bus ….as quietly and as inconspicuously as possible …and he certainly won't roll back and forth over them as his Republican brethren would wish …but under the wheels they shall be none the less.

We would like to thank Migra Matters for allowing us to use this article. ■

ANSWERS TO MARITAL QUIZ ON PAGE 10

Question #1 - Yes. Wilson v. Pennington, 301 A.D.2d 445; 752 N.Y.S.2d 887 (1st Dept. 2003).

Question #2 - Yes. Sass v. Sass, 276 A.D.2d 42; 716 N.Y.S.2d 686 (2nd Dept. 2000).

Question #3 - No. Wyser-Pratte v. Wyser-Pratte, 66 N.Y.2d 715; 496 N.Y.S.2d 991 (1985).

Question #4 - No. Samu v. Samu, 257 A.D.2d 656; 684 N.Y.S. 2d 295 (2nd Dept. 1999). In the First Department, the answer is yes. Johnson v. Chapin 2008 NY Slip Op 02203.

Question #5 - Three (3) years from the date of commencement of divorce action. The Statute of Limitations is tolled until process has been served in a matrimonial action or the death of one of the parties. DRL § 250 (2) effective July 3, 2007.

Question #6 - Yes, §2303-a CPLR effective January 1, 2008.

Question #7 - Prohibits inconsistent position taken in a prior proceeding. In Anonymous v. Anonymous, 137 A.D.2d 739; 524 N.Y.S.2d 823 (2nd Dept. 1988) an action to set aside a separation agreement which was incorporated in a judgment of divorce was precluded under Judicial Estoppel.

Question #8 - 16 days. CPLR §2214(b) changed 12 to 16 effective July 3, 2007.

Question #9A - $150.00. CPLR § 2308(a) effective January 1, 2008.

Question #9B - The person on behalf of whom the subpoena was issued.

Question #10 - Yes, 22 N.Y.C.R.R. §202.48 (c) (2), effective September 1, 2007.

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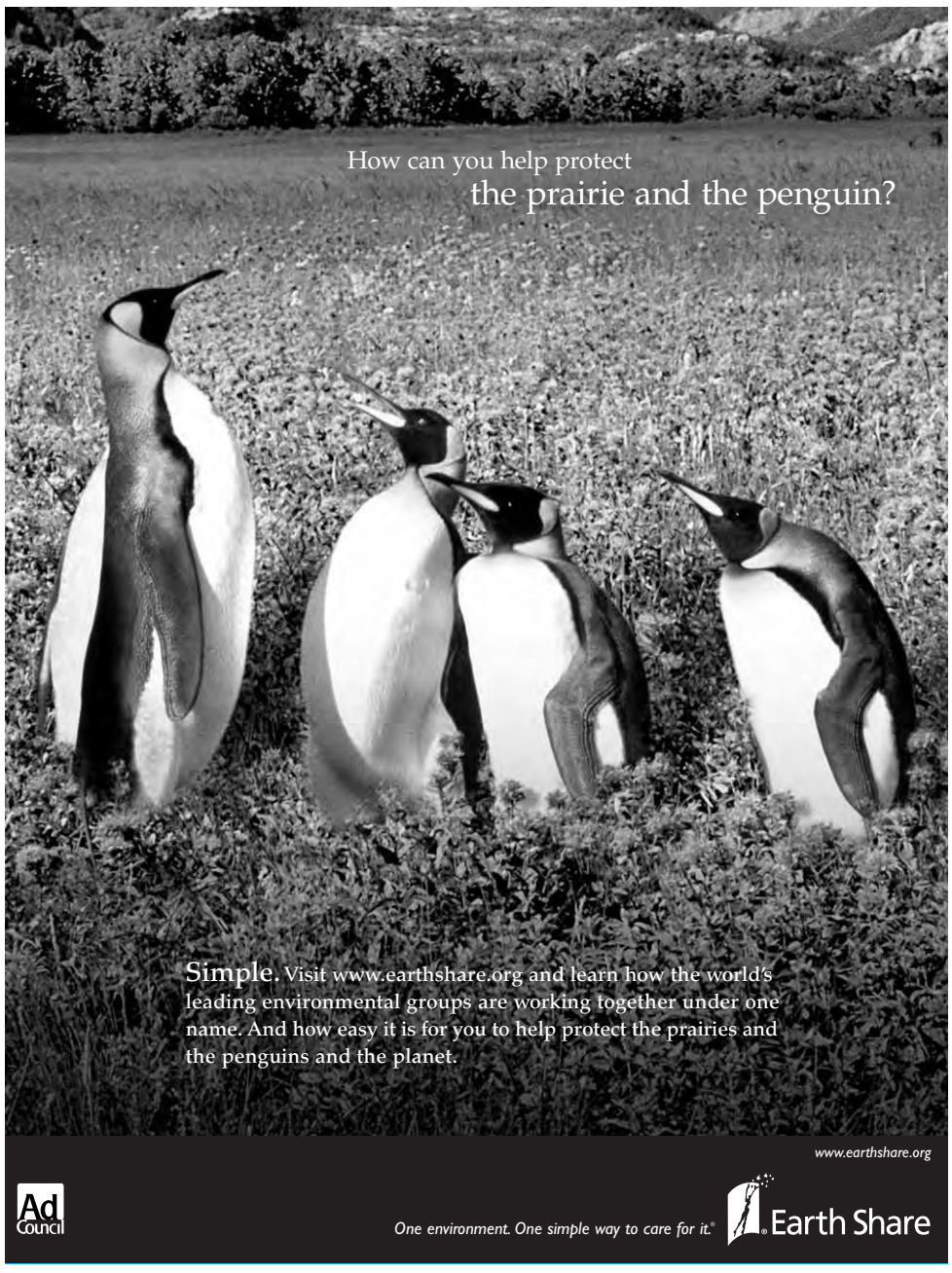

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