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**Criminal Law Cases**

By Ilene J. Richman, Esq.

Over the past year, the New York Court of Appeals addressed a wide array of issues in the area of criminal law and procedure. This article will review and highlight several cases that will likely be of interest to criminal practitioners.

In *People v. Riley Williams*, 12 N.Y.3d 726 (decided February 13, 2009), the Court reviewed the trial judge’s ruling pursuant to *People v. Sandoval*, 34 N.Y.2d 371 (1974) which permitted the prosecutor to question the defendant about prior felony conviction and 45 prior misdemeanor convictions in the event he elected to testify on his own behalf. While the Court noted that “the trial court might have been more discriminating” in its ruling, it upheld the defendant’s conviction on the basis that the ruling fell within the trial court’s broad discretion. Of course, the Court left unanswered the question of how many prior convictions it would take before it determined that the trial court had abused its discretion in permitting impeachment of a defendant who testifies on his own behalf.

In *People v. Scott Weaver*, 12 N.Y.3d 433 (decided May 12, 2009), the Court decided that the use of a GPS (global positioning system) by the police without first obtaining a warrant violated the defendant’s right to due process. The use of GPS technology was inconsistent with the apparently limitless invasion of privacy entailed by the prolonged use of a GPS device. The judgment of the Appellate Division was affirmed.

In *People v. Taranovich*, 37 N.Y.2d 442 (1975), the 15-year delay in commencing the prosecution, while substantial, caused no serious prejudice to Decker. Moreover, since there was no indication that the prosecution acted in bad faith, and since the jury was made aware of the witnesses’ past conduct and were subject to cross-examination regarding their history of drug use, there was no violation of the defendant’s due process right to a prompt prosecution.

In *People v. Victor Gomez*, 13 N.Y.3d 6 (decided June 30, 2009), the Court clarified the rules pertaining to inventory searches of vehicles by the police. The Court held that the police observed the defendant driving his car in an erratic manner. After pulling the defendant over, the officers discovered that his driver’s license was suspended. The defendant was arrested and his car impounded. Officers then searched the car’s interior but found nothing. When the officers searched the trunk, they discovered a paper bag containing cocaine, a plastic bag with white residue, an electric scale and a small manila envelope containing red pills. While driving the defendant’s car to the police station, the officer then discovered 45 plastic bags in the driver’s side door panel.

In upholding the Appellate Division’s decision reversing the defendant’s conviction and suppressing the evidence seized, the Court of Appeals held that the People had failed to meet their burden of establishing a valid inventory search. While recognizing that the NYPD has a standardized written protocol governing inventory searches in its Patrol Guide, the Court found that the People offered no evidence at the suppression hearing to establish that the police officers conducted their search in accordance with the protocol, or that they possessed justification to open and search the trunk of the car in question. In addition, the Court found that the police officer failed to prepare a meaningful inventory of the contents of the defendant’s car since the officer failed to record the presence of any items in the car, other than the items of contraband that were seized.

In *People v. Quentin Allen* and a companion case, determined that the evidence against him was of “doubtful quality” because the witnesses were drug addicts with pending cases who were afraid to assist in the investigation due to Decker’s reputation for intimidating and threatening witnesses.

In 2002, the police reopened the case and attempted to obtain additional evidence through the use of modern scientific techniques including DNA testing. Although no further forensic evidence was obtained through those tests, the prosecution decided to charge Decker after determining that the witnesses had overcome their drug addictions and were now willing to testify. The defense moved to dismiss the indictment based on the lengthy pre-indictment delay. The trial court denied the motion, finding that the delay did not deny Decker his right to due process of law. In upholding the conviction, the Court of Appeals found that under the leading case, *People v. Taranovich*, 37 N.Y.2d 442 (1975), the 15-year delay in commencing the prosecution, while substantial, caused no serious prejudice to Decker. Moreover, since there was no indication that the prosecution had acted in bad faith, and since the jury was made aware of the witnesses’ past conduct and were subject to cross-examination regarding their history of drug use, there was no violation of the defendant’s due process right to a prompt prosecution.

Finally, the issue of gifting and executing other inter vivos transfers is specifically addressed. In the event that a principal wishes to grant his agent the authority to make gifts or transfers of any nature, he must both note and clarify that on the face of the power of attorney. Any Powers of Attorney executed after that date must conform to the new law. For a detailed history and analysis of the law, kindly refer to the article entitled “Guardian and Elder Law: New Power of Attorney”, by John Dietz, as contained in the May, 2009 issue of the Queens Bar Bulletin. This update shall attempt to briefly reflect the major amendments contained in the new legislation, as represented on the power itself.

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**Estates Update - 2009**

By David N. Adler

The year in Trusts and Estates is highlighted by a new Power of Attorney Law, an anticipated freeze of estate tax levels, and the designation of a Queens County Surrogate’s Court as a pilot program for electronic filing.

POWER OF ATTORNEY

A new Power of Attorney Law went into effect on September 1, 2009 (General Obligations Law Section 5-1501) and all Powers of Attorney executed prior to that date shall remain valid. Any Powers of Attorney executed after that date must conform to the new law. For a detailed history and analysis of the law, kindly refer to the article entitled “Guardian and Elder Law: New Power of Attorney”, by John Dietz, as contained in the May, 2009 issue of the Queens Bar Bulletin. This update shall attempt to briefly reflect the major amendments contained in the new legislation, as represented on the power itself.

The overall subjects upon which authority may be granted to act are similar, and the mode of designation of an attorney in fact is similar. Yet, 3 major changes clearly differentiate the new form. Firstly, the agent is also required to execute the document. There further exists language specifically directed at the agent explaining the special nature of the principal/agent relationship. This reflects a tangible attempt to alert the agent to his fiduciary obligation on behalf of the principal.

Secondly, the principal may designate a “monitor”, to oversee and review any and all transactions performed by the agent. This provides a built-in system of accountability to the original grant of any Power of Attorney. Third parties are also directed to respect the monitor status with respect to furnishing records.

Finally, any Powers of Attorney and other inter vivos transfers is specifically addressed. In the event that a principal wishes to grant his agent the authority to make gifts or transfers of any nature, he must both note and clarify that on the face of the power of attorney. Any Powers of Attorney executed after that date must conform to the new law. For a detailed history and analysis of the law, kindly refer to the article entitled “Guardian and Elder Law: New Power of Attorney”, by John Dietz, as contained in the May, 2009 issue of the Queens Bar Bulletin. This update shall attempt to briefly reflect the major amendments contained in the new legislation, as represented on the power itself.

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The year in Trusts and Estates is highlighted by a new Power of Attorney Law, an anticipated freeze of estate tax levels, and the designation of a Queens County Surrogate’s Court as a pilot program for electronic filing.
**THE DOCKET . . .**

being the official notice of the meetings and programs listed below, which, unless otherwise noted, will be held at the Bar Association Building, 90-35 148th St., 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 Bar Association has been certified by the NYS Continuing Legal Education Board as an Accredited Provider in the State of New York.

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**2010 SPRING CLE Seminar & Event Listing**

**February 2010**

Wednesday, February 10  
Evidence Seminar 6:00 - 8:00 p.m.

Friday, February 12  
Lincoln’s Birthday, Office Closed

Monday, February 15  
President’s Day, Office Closed

Monday, February 22  
Stated Meeting

Tuesday, February 23  
Small Claims Arbitrator Training

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**March 2010**

Tuesday, March 2  
QVLP Foreclosure Conference Pro Bono Training

Wednesday, March 3  
Ethics & Real Estate Practice 1:00 - 2:00 p.m.

Thursday, March 4  
Labor Seminar

Wednesday, March 10  
NYSBA Volunteer Training 10:00 - 4:00 p.m.

Tuesday, March 16  
MHL Article 81/Guardianship Training 2:30 - 5:30 p.m.

Thursday, March 18  
No Fault Update

Monday, March 22  
Past Presidents & Golden Jubilarians Night 5:30 - 8:30 p.m.

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**April 2010**

Friday, April 2  
Good Friday, Office Closed

Wednesday, April 7  
CPLR & Evidence Update

Thursday, April 15  
Insurance Seminar

Monday, April 19  
Judiciary Night

Tuesday, April 20  
Basic Criminal Law – Pt 1

Wednesday, April 21  
Equitable Distribution Update 6:00 - 8:00 p.m.

Tuesday, April 27  
Basic Criminal Law – Pt 2

Thursday, April 29  
Selection of a Jury Seminar

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**May 2010**

Thursday, May 6  
Annual Dinner & Installation of Officers  
Terrace on the Park 6:00 - 10:00 p.m.

Monday, May 31  
Memorial Day, Office Closed

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**CLE Dates to be Announced**

Elder Law  
Surrogate’s Court, Estates & Trusts  
Juvenile Justice Law  
Taxation Law

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**NEW MEMBERS**

Jessica Ann Almeida  
Richard Anthony Celestin  
Seerante Dhanraj  
Toria Lynn Dixon

Damon John Hemmerdinger  
Julie M. Milner  
Shawn Anthony Turk  
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Associate Editors - Paul E. Kerson and Michael Goldsmith

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As you may be aware, with the recent enactment of Chapter 416 of the laws of 2009, important changes were put into place for electronic filing in State Courts. Federal Courts had already adopted this method for some time, but now they are coming to the State Courts.

The Queens County Bar Association recently received a memo from Ann Pfla, Chief Administrative Judge, State of New York Unified Court System. She informs us that the new legislation allows for the establishment of a pilot program for mandatory e-filing in certain Supreme Court cases. The pilot program for mandatory e-filing is authorized in three locations as follows:

- New York County for commercial cases where the amount in controversy is more than $100,000.00;
- Westchester County;
- A County outside of New York City for all civil cases in Supreme Court except Matrimonial, Article 81 Mental Hygiene, Article 78 and Election Law cases.

The legislation provides for a one year opt-out provision with regard to mandatory e-filing. An attorney who certifies, in good faith, that he or she lacks the hardware, electronic connection or knowledge necessary to participate in electronic filing will be exempt.

The Court may also exempt an attorney upon a showing of good cause.

The Board of Managers of the Queens County Bar Association is in the process of reviewing this pilot program. However, it looks like the future is here and all members should be ready.

GUY R. VITACCO, JR.
Judge Leslie John Purificación: A Profile

BY STEPHANIE GOLDSTONE

Judge Purificación was elected to sit as a Queens County Civil Court Judge in 2007. In April 2009, he was asked to sit for a term in the Commercial Landlord/Tenant Part. As the time approached for Judge Purificación to change parts, he offered to stay full-time. He thoroughly enjoys presiding there.

Judge Purificación graduated from the challenging and prestigious Amherst College in 1976, where he founded La Causa, its first Latino student organization and is a founding member of the Amherst College Latino Alumni Association. He was also a student member of the College’s Admissions Committee. Judge Purificación graduated from New York Law School in 1991, where he was a Patricia Roberts Harris Fellow, and is a past president of the Latino Law Students Association and was a member of the American Asian Law Students Association.

Judge Purificación’s work at Civil Court involves calendar calls each morning and trials most afternoons. Because of the downturn in the economy, there has been an increase in the number of local businesses that are failing. Landlords have mortgages to pay and real estate taxes continue to rise. A major challenge has been keeping viable businesses open while insuring landlords of an income flow to meet their obligations. Judge Purificación notes that the lawyers who come before him in the Commercial Landlord/Tenant Part are knowledgeable and courteous.

Judge Purificación is extremely affable and well spoken. He has a long history in the legal profession. He taught legal studies at Mercy College while in private practice. He’s worked in a number of different areas of the law, including personal injury, matrimonial, criminal, real estate and employment matters. He is a former staff attorney of the Office of the Appellate Defender, where he represented indigent defendants in criminal appeals in state court and collateral proceedings in state and federal courts.

Judge Purificación was an associate at the firm of Martin & O’Brien, P.C. and then returned as a partner after his work in the Office of the Appellate Defender. Judge Purificación worked for a number of judges before becoming a judge himself. He was an intern to the Honorable Nicholas Tsoucalas, US Court of International Trade, and an intern to the Honorable William J. Davis, Justice of the Supreme Court, New York County, Civil Division.

Judge Purificación also was the principal law clerk to the Honorable Luther V. Dye, Justice of the Supreme Court, Queens County, and after that, principal law clerk to the Honorable Simeon Golar, Justice of the Supreme Court, Queens County.

Judge Purificación’s last stop before ascending to the bench was working as principal law clerk to the Honorable Robert L. Nahman, Surrogate of Queens County. His responsibilities in that position included presiding over kinship trials. Together with the Surrogate he wrote The Compromise Proceeding in Queens County Surrogate’s Court in the publication Bill of Particulars, in the Spring of 2004. He has also been a CLE speaker for the Queens County Bar Association’s Surrogate’s Court, Estates & Trusts Committee.

Judge Purificación certainly acquired ample experience before ascending to the bench. He now has a corner office in the Queens County Civil Court building on Sutphin Boulevard. During our visit beautiful classical music was playing, streaming from “Pandora’s Box” on the internet.

Prior to his work as a lawyer, Judge Purificación made substantial accomplishments working in the field of publishing. He loves to read and write. That love has served him well in the judicial field of courtrooms, and continues to do so.

Judge Purificación’s work in publishing began right after college, as an editor at Scholastic, Inc., where his job was to acquire and edit high interest/easy reading books, and to author teaching materials. Judge Purificación wrote his own book for children, entitled Karate Ace, that was published during his junior year in college. He has also written over twenty short stories and plays since then.

Judge Purificación’s later publishing experience at Hayden Book Company and Simon & Schuster showcased his well-honed skills developing and editing fiction and non-fiction books. As to life outside the Courthouse, Judge Purificación has been married since 1978. He and his wife have two grown sons.

Judge Purificación’s wife is an elementary public school teacher of the Deaf and Hard of Hearing children. To quote Judge Purificación, “My wife works tremendously hard and is extremely dedicated to her students. As difficult as my job may be at times, her work is equally, if not more challenging.” Their eldest son is a recent graduate of SUNY Albany and their youngest is currently enrolled in a culinary arts college.

Judge Purificación has been a resident of Queens County for most of his adult life. He is of Puerto Rican and Filipino descent, and is the first elected judge of Filipino ancestry in the County of Queens.

Judge Purificación’s hobbies include photography and woodworking. Before the days of digital photographs, Judge Purificación did his own darkroom work. He also recently began playing the flute again.

As our interview came to an end and the Judge walked me to the elevator at around 5 P.M., he commented to me that the day was not over. Judges in Civil Court have crushing caseloads, and preparation and writing are often done after the courthouse closes.

It has been an honor to interview the very affable and accomplished Judge Purificación. We wish him continued health and satisfaction in all of his endeavors.

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Holiday Party A Huge Success!!!

At first, it was a little difficult locating the catering hall in Floral Park because I didn’t realize that the addresses were renumbered when you cross the Nassau County border. Once I did find the corner at 250 Jericho Turnpike (the Floral Terrace) everything went perfectly from that moment on. The place was well appointed, well lighted, fully staffed with hospitable personnel, even to the point of offering peach champagne in fluted glasses when you walked in the door after leaving your car with the valets. The room set was excellent, choosing music that garnered a full dance floor from almost the beginning of the evening. It must be noted that Diana and her incredible dancing skills was an additional catalyst which brought many of us wallflowers up to the dance floor.

Most of the attendees hopped on the pass-around appetizers without restraint and they just kept on coming; both the hors d’oeuvres and the grasping attendees. The band was excellent, intended byproducts of all bar association functions). The bar was well stocked, offering peach champagne in fluted glasses when you walked in the door after leaving your car with the valets. The room set was excellent, choosing music that garnered a full dance floor from almost the beginning of the evening. It must be noted that Diana and her incredible dancing skills was an additional catalyst which brought many of us wallflowers up to the dance stage.

Perhaps the hallmark of the tremendous success of that evening was that around ten o’clock, when my wife and I decided to head home following a really long day, the dance floor was still full and there were well over a hundred people remaining on the premises, I can recall many holiday events in the past when everyone had departed before nine. Anyone who unfortunately failed to attend this party missed a golden opportunity. I can say, without fear of contradiction, that as far as I am concerned that was truly the best holiday party we have ever thrown. All of the folks at our table felt the same. The next day, as I went through the courthouse in Kew Gardens, all I heard were accolades along the same line. The general sentiment was that we should book the same place, the same band and with some very minor tweaking, keep everything the same for next year. If I were you, not only would I be planning on putting this down in my diary as a “must attend,” I would bring friends and book early, because I have the strong suspicion that next year may be a sell out!

As a final word, thanks again to George, Diane, Arthur and our staff, as well as the co-sponsoring bar associations for a job well done. Happy holidays to all and I can’t wait to do this again next year.

STEPHEN J. SINGER

Of Interest

Justice Daniel Lewis has been reelected to the Supreme Court. Congratulations on your reelection.

Civil Court Judges Décia T. Plíteda-Kirwan and Thomas D. Raffaele have been elected to Supreme Court. Congratulations on your election.

Richard Latin and Jodi Orlow Mackoff have been elected to Civil Court. Congratulations on your election.

*If anyone has something of interest to our members, please call Les Nizin, 718-263-2411 or Janice, 718-291-4500, to pass on the information.

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Corrections

Our apologies go out to the members below. Their names were misspelled in the 2010 Directory.

Patrick A. Griffiths
Christine Julien

THE QUEENS BAR BULLETIN – FEBRUARY 2010

Stephen J. Singer

Congratulations on your election.

Justice Daniel Lewis and Richard Latin have been elected to Civil Court.

Jodi Orlow Mackoff and Judges Diccia T. Plíteda-Kirwan have been elected to Supreme Court.

Garo God incidence and supplement to the Queens County Bar. Congratulations on your election.

Richard Latin and Jodi Orlow Mackoff have been elected to Civil Court. Congratulations on your election.

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THE QUEENS BAR BULLETIN – FEBRUARY 2010

Stephen J. Singer

Congratulations on your election.
Fantastic Cajun Cuisine in Queens? Garanteed!

BY MARK WELIKY*

Want Cajun cooking at its best? Come to Cooking With Jazz in Jamaica Estates. Lovers of Cajun and Creole cooking were devastated when this restaurant’s Whitestone location closed a couple of years ago because of a lease dispute. Chef/owner Steve VanGelder searched for a new venue in Queens and reopened his restaurant in December in a lovely location on Union Turnpike, Jamaica Estates, NY 11436.

The outstanding cuisine is accompanied by live jazz two nights a week (usually Thursday and Sunday.) It doesn’t get any better than this and it’s conveniently located just a few blocks from St. John’s University. Chef Steve also offers Cajun cooking classes on Saturdays from 10-2 (call for info). Cooking With Jazz is open Wednesday through Sunday serving dinner from 5 p.m. and is closed Monday and Tuesday except for private parties. Highly recommended, you won’t be disappointed!

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

(NOTE: Any members who would like to submit a review for a Queens restaurant should do so – call (718) 291-4500 for info)

Correction

Please note that the names of the participants were combined in the last issue of the Bar Bulletin. The correct names are listed below both photos.

Art Terranova, Joe DeFelice, Dave Adler, Arthur Mosley and Dave Cohen
Bernie Vishnick, Larry Litwack, Ed Rosenthal and Jim Pieret

Estates Update - 2009

Continued From Page 1

instructed by the principal, or left to the agent’s discretion; and authority to gift or transfer to the agent subject to enumerated limitations and guidelines imposed by the principal. This major gifts rider must be witnessed by 2 individuals. The relative intricacies heretofore designating the power to gift and transfer, reflect the legislative response to prior abuses of authority by agents. In furtherance of these goals, the present law also authorizes the commencement of a special proceeding (GOL Section 5-1510) to address any perceived abuses by the agent. This proceeding, by its terms, is more readily accessible to a variety of parties, and more easily effected.

TAXATION
At the time of this writing of this Article, no change to the federal estate tax law has yet been passed. It is strongly anticipated that the estate tax threshold amount shall be frozen at last year’s value of $3,500,000.00. In the improbable event that no new legislation is effected, under present law the federal estate tax is repealed this year, and reverts to a threshold of $1,000,000.00 next year. The prior scenario is extremely unlikely, yet the new year has not brought new law as of yet. It is also anticipated that the maximal estate tax rate shall also be frozen at 45%.

ELECTRONIC FILING
The ability to file Court papers and documents electronically via the computer has been effected in certain areas of practice in the State of New York, notably the Commercial, Tax Certiorari and Tort areas. The overall process is known as the NYS Courts Electronic Filing System. Presently, the State has been targeting certain Counties to operate as pilot counties for the initiation of electronic filing in the Surrogate’s Court. Queens County has been designated as one of said pilot counties, and it is anticipated that electronic filing will be available here by the late Spring.

The basic procedures for electronic filing in Surrogate’s Court are set forth in the Uniform Rules of the Chief Administrative Judge, at Uniform Rules Section 207.4-a. At this time, said filing remains voluntary, and is initiated by registration with the Office of Court Administration. The unique nature of estates practice also necessitates the filing of original documents (Wills, Codicils), and their filing must still be directly made to the Court within two days after the initial electronic filing of papers commencing the proceeding.

Commonly used hardware and software systems are all that is required. This manner of practice is available to virtually everyone with minimal computer literacy, subject, of course, to the expense of computer maintenance and adaptability. I direct anyone interested in the mechanics of electronic filing in Surrogate’s Court to our Seminar, noted below, which is available on tape with annexed printed material. Said Seminar consisted of a hands on description and analysis of electronic filing conducted by the Statewide Coordinator for said filing.

This appears to be the wave of the future, and the future will be arriving in Queens County shortly.

QUEENS COUNTY
In response to the recent legislative changes, our Bar Association, in conjunction with the Surrogate’s Court, conducted two well attended Seminars over the past year. In June, we presented a program entitled Hot Topics in Estates Practice which focused on the new Power of Attorney legislation, and ethical requirements of fiduciaries. Our excellent panel of speakers included Lee Coulman, the Chief of the Law Department, Gerard Sweeney, the Counsel to the Public Administrator, and John Dietz, our Elder Law Chairman.

In October, we presented a Seminar on Electronic Filing in the Surrogate’s Court. Our outstanding faculty included Wallace Leinheardt, Past Chair NYSBA Trusts and Estates Section, Alicearnine E. Rice, Chief Clerk, Surrogate’s Court, and Jeffrey Carucci, Statewide Coordinator for Electronic Filing, NYS Office of Court Administration. Many thanks to all involved, notably Surrogate Robert L. Nahman for serving as moderator of both Seminars, and for his ongoing commitment to our Bar Association and the field of legal education.

We await the impact of the new legislation and hope for the best. Happy New Year to all!

THE QUEENS BAR BULLETIN – FEBRUARY 2010

The Queens County Bar Association Spokes Bureau Report from Guy R. Vitacco, Sr., Chair of Bar Association Speakers’ Bureau:

1. Barry Seidell spoke at the Townsend High School on the general topic of law office management and lawyers court room experience.

2. Barbara Berwitz gave a talk at the Newtown Civic Association of the Elmhurst Memorial Hall on Elder Law and Guardianships.

3. Hon. Martin Ritholtz Justice of the Supreme Court Queens County addressed the Friendship Club Meeting of the Samuel Field Y on Little Neck Parkway, Little Neck, New York on “What is the jurisdiction of the courts in Queens County.”

4. Joseph DeFelice, Secretary of the Queens Bar Association gave a talk at the meeting of the AARP ozone Park Chapter 4163 at Christ Evangelical Lutheran Hall on the topic of Wills and Estates.

5. Barbara Berwitz addressed the Jewish Women’s International Organization at the Public Library on Marathon Parkway and Long Island Expressway in Douglaston on the latest Elder law rules, regulations and Law.

Respectfully Submitted,

GUY R. VITACCO, CHAIR SPEAKERS’ BUREAU

January 15, 2010

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January 15, 2010

The Queens County Bar Association Spokes Bureau Report from Guy R. Vitacco, Sr., Chair of
Photo Corner

Holiday Party, Thursday, December 10th 2009

Annamarie Policriti Brown, Gary Muraca, Mona Haas and Pam Hirschhorn

Janet Kearney, James Cowley and Michelle Vlosky

Jeff Boyar, Diana Gianturco, Pam Hirschhorn and George Nicholas

Tracy Catapano-Fox, Hon. Bernice Siegal, Sue Beberfall, Pam Jordan and Dan Halloran

Zenith Taylor, Bart Resnicoff and Jacqueline Wagner

Photos by Walter Karling
Question # 1 - Is it proper for the Family Court to deny a noncustodial parent visitation after refusing that parent’s request for forensic evaluations? Your answer -

Question # 2 - Is the Family Court permitted to delegate to the Administration for Children’s Services the authority to determine whether and when the father was entitled to visitation? Your answer -

Question # 3 - Is the Family Court permitted to condition future unsupervised visitation on the mother’s successful completion of therapy? Your answer -

Question # 4 - Is the Family Court permitted to direct the mother to attend therapy as a component of supervised visitation? Your answer -

Question # 5 - Does the Family Court in New York have jurisdiction to issue its own support order, if a prior order of support for the subject children was issued by the State of Vermont and the custodial parent still resides in the State of Vermont? Your answer -

Question # 6 - After a child support order was issued by a Pennsylvania Court, the parents and the subject child moved to New York. Under Pennsylvania law, child support ends at age 18. Does the New York Family Court have the right to order child support until age 21? Your answer -

Question # 7 - Would your answer to question 6 be different if prior to the child reaching the age of 18, the New York Family Court so-ordered a stipulation of the parties’ which increased the father’s child support obligation? Your answer -

Question # 8 - At a trial, may a party seek to rebut the presumption that any commingled separate property funds became marital property? Your answer -

Question # 9 - If your answer to question 8 was yes, how? Your answer -

Question # 10 - Can “social abandonment” of a spouse qualify as “abandonment” and provide a ground for divorce? 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 12
**LINCOLN, A POETIC OPERA**

**L**INCOLN, A POETIC OPERA written by New York composer, GEORGE ANDONIADIS, had its world premiere recently at Holy Trinity Church in Manhattan. Harold Holzer, renowned author and Lincoln scholar, gave an engaging pre-concert talk on Lincoln, the man. Holzer is Co-Chairman of the American Lincoln Bicentennial Commission, which officially endorsed Mr. Andoniadis’ opera. Singing the role of Abraham Lincoln, arguably America’s most revered President, was tenor Timothy Bentch, a gifted interpreter of song, whose powerful voice captured Lincoln’s anguish at the suffering of his country’s citizens during the Civil War. Elizabeth Racheva lent her glistening soprano to the sympathetic role of Mary Todd Lincoln.

The Manhattan Choral Ensemble, a group GEORGE ANDONIADIS has written for twice previously, electrified the audience with a musical theater piece, with lyrics by GEORGE ANDONIADIS’s sister SOFIA LANDON GEIER, from their musical Home, based on E. Nesbit’s popular children’s novel, “The Railway Children.” Elizabeth Racheva and Timothy Bentch also performed during the song portion of the concert.

**Thomas Cunningham,** founder and director of The ManhattanChoral Ensemble, conducted the entire evening with strength and sensitivity.

**LINCOLN, A POETIC OPERA** is an exciting piece. The audience gave full attention to the haunting, gutty work, embracing both Lincoln’s courage as a man and President and the nation’s torment.

**GEORGE ANDONIADIS** is a composer whose compassion blends with intelligence to create music that rivets the listener. **LINCOLN, A POETIC OPERA** speaks to us of Abraham Lincoln and also resonates with President and the nation’s torment. **GEORGE ANDONIADIS**’s music is musically versatile and has world-wide exposure and recognition.

**CDs of LINCOLN, A POETIC OPERA** will be available soon at www.imagination-sound.com. The piece is a musical theater piece, with lyrics by George Andoniadis and a musical score by George Andoniadis. A novel, “The Railway Children,” is a sample of the composer’s music. The performance received wide exposure and is available for purchase along with the composer’s choral sheet music. The performance will be featured on the ASCAP and Chorus America’s We’re All One campaign.

**THE GREAT PERFORMER SERIES AT LINCOLN CENTER**

In order to enable you to view the exciting programs, I have highlighted the performers, dates, and the programs to be performed by world famous artists during the exciting Spring 2010 season of LINCOLN CENTER’S GREAT PERFORMERS SERIES. For ticket prices and availability, order online at www.lincolncenter.org.

**Wednesday, February 17, 2010, at 8:00 PM, Avery Fisher Hall:**
Rotterdam Philharmonic Orchestra
Yannick Nézet-Séguin, conductor
Messiaen: Les offrandes oubliées, méditation symphonique
Liszt: Piano Concerto No. 2 in a major
Strauss: Ein Heldenleben, Op. 40

**Friday, February 19, 2010, at 8:00 PM, Avery Fisher Hall:**
Pre-concert lecture with Walter Frisch at 6:45
Stanley H. Kaplan Penthouse
Rotterdam Philharmonic Orchestra
Yannick Nézet-Séguin, conductor
Viktoria Mullova, violin
Brahms: Violin Concerto in D major, Op. 77
Theo Verhey: Largo: Piano Concerto No. 2 in a major
Bartók: Concerto for Orchestra, BB 123

**Sunday, February 21, 2010, at 11:00 AM, Walter Reade Theater:**
David Greilsammer, piano
Program to include works by Rameau, Ligeti, Mozart, Satie, Monteverdi, Janáček, Scarlatti, and John Adams

**Gates:**
Rameau: Gavotte et six doubles, part 1
Ligeti: Musica ricercata, No. 7
Mozart: Suicide in C major, K.399, part 1
Satie: Gnoisienne No. 3
Monteverdi (arrangement): Aria from Orfeo, part 1
Janáček: Piano Sonata, “The Presentment,” first movement
Scarlatti: Sonata in D major, K.492
Adams: China Gates
Scarlatti: Sonata in D minor, K.213
Janáček: Piano Sonata, “The Death,” first movement
Monteverdi (arrangement): Aria from Orfeo, part 1
Satie: Gnoisienne No. 2
Mozart: Suicide in C major, K.399, part 2
Ligeti: Musica ricercata, No. 5
Rameau: Gavotte et six doubles, part 2

**Monday, February 22, 2010, at 7:30 PM, Walter Reade Theater:**
What Makes It Great? Rob Kapilow, host
St. Lawrence String Quartet
Thomas Cunningham, host
Janáček: Piano Sonata, “The Presentment,” first movement
Anna: Musica ricercata, No. 5
Rameau: Gavotte et six doubles, part 2

**Monday, February 22, 2010, at 8:00 PM, Avery Fisher Hall:**
Pre-concert talk at 6:45 by Leon Botstein, Avery Fisher Hall
American Symphony Orchestra, Leon Botstein, music director
After the Show
Alek¸ lokhshin: Symphony No. 4, “Sinfonia Stretta”
Boris Tchaikovsky: Concerto for Cello and Orchestra
Boris Tishchenko: Symphony No. 5, Op. 67
Boris Tchaikovsky: Music for Orchestra

**Sunday, February 28, 2010, at 5:00 PM, Alice Tully Hall:**
Simon Keenlyside, baritone
Pedja Muzugaj, piano
Schumann: Dichterliebe, Op. 48
Wolf: Four Lieder on poems by Mörike
Gesang Weylas, No. 46
Schoenberg: Nine Lieder
An Sylva, D.891 (Shakespeare)
Die Einsiedelei, D.337 (Salis-Seewis) (verses 1 & 3 only)
Verklärung, D.529
Freiwiliges Versinken, D.700 (Mayrhofer) Gruppe aus dem Tartarus, D.396 or D.583 (Schiller)
Himmelsfunken, D.651 (Silbert) (verses 1 & 2 only)
Stündchen (Rellstab?)
Die Sterne, D.939 (Leitner)
Auf der Bruck, D.853 (Schulze)

**Monday, March 1, 2010, at 8:00 PM, Avery Fisher Hall:**
London Philharmonic Orchestra, Vladimir Jurowski, conductor
Thomas Zehetmair, violin
Beethoven: Violin Concerto in D major, Op. 61
Brahms: Symphony No. 2 in D major, Op. 73

**Sunday, March 7, 2010, at 3:00 PM, Avery Fisher Hall:**
London Philharmonic Orchestra, Vladimir Jurowski, conductor
Alexander Toradze, piano
Shostakovich: Five Fragments, Op. 42
Ravel: Piano Concerto in G major 23” Shostakovich: Symphony No. 4 in C minor, Op. 43

**Sunday, March 14, 2010, at 11:00 AM, Walter Reade Theater:**
Leon McCawley, piano
Barber: Nocturne (Homage to John Field), BB 119

---Continued On Page 10---
Continued From Page 9

Op. 33
Chopin: Sonata in B-flat minor, Op. 35
Chopin: Nocturne in C-sharp minor, Op. 27, No. 1
Barber: Sonata, Op. 26
Sunday, March 21, 2010 at 2:00 Alice Tully Hall
Post-concert discussion with Garrick Ohlsson Alice Tully Hall
Garrick Ohlsson, piano
All-Chopin program
Three Nocturnes, Op. 9
Two Polonaises, Op. 40: No. 1 in A minor, No. 2 in C minor
Sonata in B-flat minor, Op. 35
Mazurkas Op. 7, Nos. 1 in B-flat major, 2 in A minor, and 3 in F minor
Mazurka in C-sharp minor, Op. 30, No. 4
Waltz in A-flat minor, Op. 42
Scherzo in B-flat minor, Op. 31

Monday, March 22, 2010, at 7:30 PM, Alice Tully Hall:
What Makes It Great? Rob Kapilow, host
Sally Wilfert, soprano
Michael Wariner, tenor
Gershwin Songs

Thursday, March 25, 2010, at 8:00 PM, Alice Tully Hall:
Pre-concert lecture by Nicholas Kenyon at 6:45
Stanley H. Kaplan Penthouse
Orchestra of the Age of Enlightenment, Ivan Fischer, conductor
Al-Beethoven program
Symphony No. 2 in D major, Op. 36
Symphony No. 3 in E-flat major, Op. 55 ("Eroica")

Friday, March 26, 2010, at 8:00 PM, Alice Tully Hall:
Orchestra of the Age of Enlightenment, Ivan Fischer, conductor
All-Al-Beethoven program
Symphony No. 1 in C major, Op. 21
Symphony No. 8 in F major, Op. 93
Symphony No. 5 in C minor, Op. 67

Saturday, March 27, 2010, at 8:00 PM, Alice Tully Hall:
Budapest Festival Orchestra, Ivan Fischer, conductor
All-Al-Beethoven program
Symphony No. 4 in B-flat major, Op. 60
Symphony No. 7 in A major, Op. 92
Sunday, March 28, 2010 from 1:00 to 2:30

Stanley H. Kaplan Penthouse
Panel Discussion: On Interpreting Beethoven
Ara Guzelian, moderator

Sunday, March 28, 2010, at 3:00 PM, Avery Fisher Hall:
Budapest Festival Orchestra, Ivan Fischer, conductor
Lisa Milne, soprano
Kelley O'Conor, mezzo-soprano
Jorma Lillivst, tenor
Kristinn Sigmundsson, bass
The Dessoff Symphonic Choir
James Bagwell, director
All-Al-Beethoven program
Symphony No. 6 in F major, Op. 68 ("Pastoral")
Symphony No. 9 in D major, Op. 125

Wednesday, March 31, 2010, at 8:00 PM, Alice Tully Hall:
Ian Bostridge, tenor
Julius Drake, piano (equal billing)
All-Brahms program
Lieder und Gesänge, Op. 32
Four Lieder on poems by Heinrich Heine, Op. 85, No. 1
Mondnacht, Op. 85, No. 2
Meerliede, Op. 96, No. 4
Der Tod, das ist die kühle Nacht, Op. 96, No. 5
Thirteen Lieder
Es träumte mir, Op. 57, No. 3
Auf dem Kircchhofe, Op. 105, No. 4
Herbstgestühl, Op. 48, No. 7
Der Gang zum Liebenich, Op. 48, No. 1
Geheimnisses, Op. 71, No. 3
Minnelied, Op. 71, No. 5
Alte Liebe, Op. 72, No. 1
Sommerfáden, Op. 72, No. 2
O kühler Wald, Op. 72, No. 3
Zverzen, Op. 72, No. 4
Über die Heide, Op. 86, No. 4
Mein Herz ist schwer, Op. 94, No. 3
Botschaft, Op. 47, No. 1

Friday, April 9, 2010, at 8:00 PM, Avery Fisher Hall:
Pre-concert talk at 6:45 by Leon Botstein
Avery Fisher Hall
American Symphony Orchestra, Leon Botstein, music director
Scenes from Goethe’s Faust
Schumann: Scenes from Goethe’s Faust

Sunday, April 11, 2010, at 5:00 PM, Alice Tully Hall:
Thomas Hampson, baritone
Co-presented by the New York Philharmonic and Lincoln Center’s Arts of the Song Series
Monday, April 12, 2010, at 7:30 PM, Avery Fisher Hall:
What Makes It Great? Rob Kapilow, host
Shai Wosner, piano
Schumann: Fantasy in C major, Op. 17

Sunday, April 18, 2010, at 11:00 AM, Walter Reade Theater:
Moscow String Quartet
Borodin: String Quartet No. 2 in D major
Shostakovich: String Quartet No. 4 in D major, Op. 83

Wednesday, April 21, 2010, at 8:00 PM, Alice Tully Hall:
Sergey Khachatryan, violin
Georgy Kh分散chyan, piano
Bach: Violin Sonata No. 4 in C minor, BWV 1017
Brahms: Violin Sonata No. 2 in A major, Op. 100
Beethoven: Violin Sonata No. 9 in A major, Op. 47 ("Kreutzer")

Sunday, May 2, 2010, at 8:00, The Allen Theater:
Overture—Occident
A Dialogue of Cultures
Jordi Savall, director, vièle, lira d’arco, and rebab
Hespèrion XXI

Sunday, May 9, 2010, at 5:00 PM, Alice Tully Hall:
Lisette Oropesa, soprano
Nicholas Youll, piano
All-Shostakovich program
Symphony No. 5 in C major, Op. 107
"The Late Quartets"
Emerson String Quartet

Monday, May 10, 2010, at 7:30 PM, Walter Reade Theater:
What Makes It Great? Rob Kapilow, host
ARTÈK
Gwendolyn Toth, director
Monteverdi: Madrigals

Monday, May 10, 2010, at 7:30 PM, Rose Theater:
Pre-concert discussion with Jordi Savall and Ara Guzelian at 6:15
Rose Theater/Jerusalem, City of Heavenly and Earthly Peace/Police/Israel
Jordi Savall, director, viola, lira, d’arco, and rebab
Jordi Savall, violin
Gergia Orawade and Andrew Lawrence-King, psaltery
Yair Dalal, Driss El Maloumi, ouds, psaltery
Gaguik Mouradian, kamancheh
Al-Darwish, La Capella Reial de Catalunya; Hespèrion XXI; Trumpets of Jericho

Sunday, May 9, 2010, at 3:00 PM, Avery Fisher Hall:
Pre-concert talk at 1:45 by Leon Botstein
Avery Fisher Hall
American Symphony Orchestra, Leon Botstein, music director
Apollo and Dionysus
Emerson String Quartet
Paul Neubauer, viola
Paul Neubauer, violin

THE CASE OF THE BLUE OYSTER GANG

THE CASE OF THE BLUE OYSTER GANG was a fun, charming comedy with music that played recently at the Workman’s Circle Auditorium on East 33rd Street by Park Avenue. The original comedy, in a film noir style, was written by Ben Richards.

The cast was composed of dedicated, young and energetic actors: STUART WILLIAMS, BEN BIRD, ELIANE WHEELER, LIZ CURTIS, CHRISTINE MCKENNA, KAREN BRELSFORD, CHANEL THOMAS, and MIKE HENRI. The well-paced direction was by BEN BERGIN, the lovely Musical Direction was by KEITH PANZAREL- LA, and the excellent lighting and sound was by CHARLOTTE BURTON. They were all talented, and I hope they keep pursuing their artistic craft and ambitions.

HOWARD L. WIEDER is the writer of both "THE CULTURE CORNER" and the "BOOKS AT THE BAR" columns, appearing monthly in THE QUEENS BAR BULLETIN, and is JUSTICE CHARLES J. MARKEY’S PRINCIPAL LAW CLERK in Supreme Court, Queens County, Long Island City, New York.
ANDREW J. SCHATKIN, Esq., has a passion for the law. A prolific writer, ANDREW J. SCHATKIN, a QCBA member, has written for this newspaper and numerous other publications on assorted legal subjects. The array and versatility of his subject matter is breathtaking. His latest work, containing many of his well-written essays and useful works is his new book **SELECT LEGAL TOPICS**.

**SELECT LEGAL TOPICS** is a compendium of legal journal articles in the areas of criminal law, evidence, civil procedure, family law, labor and employment law, civil rights, tort law, and federal procedure, covering a wide spectrum of topics in these fields. Laymen, students, lawyers, and law professors will find this book informative.

**THE LAW FIRM OF ANDREW J. SCHATKIN** specializes in Employment; Criminal; Civil Rights; Appeals; Personal Injury; Divorce; Family and Commercial Matters. ANDREW J. SCHATKIN has been practicing law for over 25 years and has briefed and argued over 150 appeals, civil and criminal, federal and state, to all appellate courts in New York State. ANDREW J. SCHATKIN has tried over 100 jury and non-jury trials in both Federal and State courts. ANDREW J. SCHATKIN has successfully obtained significant acquittals in numerous criminal cases and has also had success in civil litigation, not only on the trial level, but in obtaining successful settlements against major corporations.

ANDREW J. SCHATKIN is the author of over 150 professional publications and has contributed to 5 books in the fields of Evidence, Criminal Law, Family Law, and Labor Law. In addition to his law degree, ANDREW J. SCHATKIN has a Certificate in International Law from The Hague in the Netherlands and a Certificate in International Human Rights from the Institut International des Droits de l’Homme, Strasbourg (France). In December of 2007, the William Fulbright Scholarship Award, the Bureau of Education and Cultural Affairs of the Department of State and the Council for the International Exchange of Scholars approved Andrew J. Schatkin’s candidacy for the Fulbright Grant. ANDREW J. SCHATKIN is listed in Who’s Who in America, Who’s Who in the World, and Who’s Who in American Law.

SELECT LEGAL TOPICS by ANDREW J. SCHATKIN is available at www.amazon.com and book stores. You can reach ANDREW J. SCHATKIN at:

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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 Supreme Court, Queens County, Long Island City, New York.
Saturday Morning

Continued From Page 3

drop someone off anyway, and so she
had gotten into the small, green sports car.
On the way out of the airport he had taken
a few turns off the regular highway and
stopped up a darkened cul de sac in a res-
idential neighborhood. He pulled out a
small knife and threatened to cut her face
if she didn’t perform oral sex on him. She
succumbed, shaken and scared to death,
and would have preferred exiting the car
right then and there and fleeing to one of
the private homes for assistance, but the
perpetrator insisted on driving her home.
She provided a phony street address a few
blocks from her actual residence and man-
gaged to memorize most of the license
and identification numbers to be rendered
small, green sports cars with New
York plates which began with the numbers
4783 and the letters J-. Even fewer were
males in the suspect’s age category. The
cops were certain they had the right man.
James was now pretty sure they were right.
The detectives provided five “fillers”
(non-suspects who would stand in the line-
up along with the suspect) who were all
policemen. It was quite reasonable inas-
much as all of them and Alex were
Caucasian and in their mid twenties. The
police had adjusted for the fact that when
Alex showed up he appeared clean shaven.

Criminal Law Cases

Continued From Page 1

People v. Gregory Allen, 13 N.Y.3d 731
(2009) and especially

Question # 2 - Is the Family Court per-
mitted to delegate to the Administration
for Children’s Services the authority to
determine whether and when the father
was entitled to visitation?

Answer: No, Matter of Rhodie v. Nathan
2009 NY Slip Op 08108 (2nd Dept.)

Question # 3 - Is the Family Court per-
mitted to condition future unsupervised
visitation on the mother’s successful com-
pletion of therapy?

Answer - No, Matter of Bonhta v. Bonhta
2009 NY Slip Op 08613 (2nd Dept.)

Question # 4 - Is the Family Court per-
mitted to direct the mother to attend ther-
apy as a component of supervised visita-
tion?

Answer - Yes, Matter of Bonhta v. Bonhta
2009 NY Slip Op 08613 (2nd Dept.)

Question # 5 - Does the Family Court in
New York have jurisdiction to impose its
own support order, if a prior order of sup-
port for the subject children was issued by
the State of Vermont and the custodial
parent resides in the State of Vermont?

Answer - No, Mansfield v. Mansfield
2009 Slip Op 08619 (2nd Dept.)

Question # 6 - After a child support order
was issued by a Pennsylvania Court, the
parents and the subject child moved to
New York. Under Pennsylvania law, child
support ends at age 18. Does the New York
Family Court have the right to order child
support until age 21?

Answer - No, In the Matter of Epstein v.
Shoshani 2009 NY Slip Op 7839 (2nd Dept.)

Question # 7 - Would your answer to ques-
tion 6 be different if prior to the child
reaching the age of 18, the New York
Family Court so-ordered a stipulation of the
parties’ which increased the father’s
child support obligation?

Answer - The result would be the same.
In the Matter of Epstein v. Shoshani
2009 NY Slip Op 7839 (2nd Dept.)

Question # 8 - At a trial, may a party seek
to rebut the presumption that any
commingled separate property funds
became marital property?

Answer: Yes, Masella v. Masella 2009 NY Slip Op 08190 (2nd Dept.)

Question # 9 - If your answer to question
8 was yes, how?

Answer - By tracing the source of the
funds with sufficient particularity.
Masella v. Masella 2009 NY Slip Op 08190 (2nd Dept.)

Question # 10 - Can “social abandon-
ment” of a spouse qualify as “abandon-
ment” and provide a ground for divorce?

Answer: No, Davis v. Davis 2009 NY Slip Op 08579 (2nd Dept.)

The QUEENS BAR BULLETIN – FEBRUARY 2010

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