Should The United States Government Continue To Act As The World’s Police Department?

BY PAUL E. KERSON

As of this writing, the United States Government keeps 65,000 Marines in Okinawa, Japan, despite the fact that we last fought there in 1945, 65 years ago. There are similar large scale military installations in Germany, where the last fighting occurred also in 1945, 65 years ago. Current plans for disengagement in Iraq call for 50,000 U.S. Troops to remain there indefinitely. Our current United States Navy is larger than the next 12 largest national navies combined. The U.S. Navy patrols all the commercial sea lanes of the world to make certain that international oceanic trade in all manner of goods is not disrupted by other national navies or by pirates.

Further, our Central Intelligence Agency and its numerous subsidiaries actually are stationed all over the world, and regularly arrest people for attacking United States soldiers and/or installations abroad. These individuals are brought to a federal prison in Guantanamo, Cuba, for pre-trial incarceration, or perhaps unlimited incarceration. This activity may or may not be authorized by our current laws, depending on who is interpreting them. Can we continue to treat the world as one big city, and continue to treat our President as the Mayor? Can we continue to treat the federal prison in Guantanamo, Cuba, as a precinct lock-up? And if we do, should we have a U.S. District Court Judge assigned to Guantanamo, together with public defenders appointed under the Criminal Justice Act (CJA)?

Military expenditures are the single largest chunk of our United States Government’s budget. That budget continues to operate at a multi-trillion dollar deficit. Are these facts sustainable? Should we continue to provide police services for the entire world? Or, in the alternative, should the entire world be paying us to do so? This is the fundamental question facing every American voter at this time. There are very good arguments on all sides of this issue. Continued On Page 13

Response From Our District Attorney, Hon. Richard A. Brown

Dear Paul,

I have your letter of August 26th enclosing a copy of your proposed Bar Bulletin article.

Early on in my tenure as Queens County’s chief law enforcement officer, and in view of the fact that our county is a home to two of our nations busiest airports, we established an Airport Investigations Unit which investigates and prosecutes criminal activity at those locations and interacts with our many federal, state and local law enforcement partners. Following the tragic events of September 11, 2001, we added a Counter Terrorism Unit which, among other things, shares on a daily basis vital information with our colleagues and lends support in coordinating our efforts.

In addition, we have a permanent seat on the Joint Terrorist Task Force and assist in gathering intelligence by conducting targeted debrieffings of arrestees from countries that sponsor terrorism. We give particular attention to investigating and prosecuting specific precursor crimes to terrorism including identity theft, money laundering, counterfeit trademarking and the forgery or illegal procurement of identification documents. As a result, we have been able to provide valuable information to both the NYPD’s Intelligence Division and the Joint Terrorist Task Force and work collaboratively with them on significant classified investigations.

Our efforts have not only been successful in keeping our county safe and secure but have contributed as well to our national security.

Warm regards.

Sincerely,

RICHARD A. BROWN
DISTRICT ATTORNEY

Domestic Violence And Family Law Legislative Update October 6, 2010

BY JANET FINK, DEPUTY COUNSEL

NEW YORK STATE UNITED COURT SYSTEM

The 2010 New York State Legislative session culminated in the passage of several significant measures with respect to legal representation, domestic violence, child welfare, juvenile justice, child support and matrimonial proceedings, all of which have been signed by the Governor. All are summarized below. Texts and supporting memoranda are available on-line at www.nysenate.gov or www.nysassembly.gov or by calling 1 800 342 9860.

1. REPRESENTATION OF CHILDREN AND ADULTS:

1. Change of term “law guardian” to “attorney for the child” [Laws of 2010, ch. 41]: Consistent with the recommendations of the Matrimonial Commission in its report to the Chief Judge in 2006 and Rule 7.2 of the Rules of the Chief Judge, which was promulgated shortly thereafter, this measure, submitted by the Chief Administrative Judge’s Family Court Advisory and Rules Committee, replaces all statutory references to “law guardian” with the term “attorney for the child.” The use of the term “attorney” more accurately reflects the mandate for client-directed representation except in very limited circumstances, consistent with attorney ethical requirements. The measure amends the Civil Practice Law and Rules, the Domestic Relations Law, the Executive Law, the Judiciary Law, the Family Court Act, the Public Health Law and the Social Services Law to substitute “attorney” or “counsel” for “law guardian.” Effective: April 14, 2010.

2. Indigent Defense Commission [Laws of 2010, ch. 56; A 9706-c/S 6606-B, Part E]: This measure, part E of the language bill accompanying the Public Protection Budget for Fiscal Year 2010-2011, establishes an Office of Indigent Legal Services within the Executive branch, with responsibility to “monitor, study and make efforts to improve the quality of services provided pursuant to Article 18-B of the County Law.” Its full-time director must be nominated by the Governor for a five-year term and reports to an appointed nine-member Indigent Legal Services Board. The director, who may be removed for cause by a 2/3 vote of the Board, must have had at least five years experience in public defense and have a “demonstrated commitment to the provision of quality public defense representation to and to the communities served by public defense providers.” The Board, chaired ex officio by the Chief Judge, must be appointed by the Governor for three-year terms as follows: one each recommended by the President Pro Tempore of the Senate and Speaker of the Assembly, one from a list of at least three from the NYS Bar Association, two from a list of at least four from the NYS Association of Counties, one from a list of at least two from the Chief Administrator of the Courts, one who has at least five years public defense experience and one additional attorney. The Board must evaluate existing indigent legal services programs and determine the “type of indigent legal services...to best serve the interests of persons receiving such services,” must consult with and advise the Office of Indigent Legal Services, must accept, reject or modify recommendations from the Office and annually report to the Governor and the Legislature. Effective: April 14, 2010.

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

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Queens Bar Bulletin
Dear Fellow QCBA Members:

After only 25 years as Associate Editor (or is it 30?), I was recently appointed Editor of the Queens Bar Bulletin. Actually, I was co-Editor one year in the 1980s with a relatively new Law Secretary named Marty Ritholz, now Justice Ritholz.

Our new Queens Bar Bulletin Committee has the most meetings of any Committee in the QCBA. Richard Golden, Stephen Fink, Gary DiLeonardo (a second generation QCBA member) and Manny Herman (a QCBA Golden Jubilarian plus 10) and I meet several times per week at 1 p.m. at the Redwood Deli on (where else?) Queens Blvd. and Union Tpke. on the Forest Hills side, not the Kew Gardens side. (For zip code mavens, this is where the 11375 meets the 11415).

We can see at the Redwood discussing all of the articles that are about to appear in the next issue of the Queens Bar Bulletin. When we are not discussing this most pressing issue, we discuss exactly who did what to whom at the Capital of the Known Universe - I refer of course to the Queens County Supreme, Civil and Surrogate's Courts on Sutphin Blvd., the Queens County Family Court on Jamaica Avenue, the Queens County Criminal Court and Supreme Court Criminal Term in Kew Gardens, and the all important Long Island City Courthouse, especially including its garage.

We discuss the law as it was actually promulgated by the late, great lawyer of all time, the comedian Lenny Bruce: "In the halls of justice, most of the justices in the halls."

We aim to make the Queens Bar Bulletin the best it has ever been - to inform and entertain our readers with recent and/or interesting articles about the law as it pertains to the practice of law and the administration of justice in Queens County, the most international municipal entity since ancient Rome.

So, find us at the Redwood, and give us your articles. What we experience in a day at the Capital of the Known Universe does not occur to lawyers in a normal county in a lifetime. Your cases, experiences and ideas are anything but ordinary. Write it down and forward to us so we can all learn together. Our e-mail addresses appear in the box below. Sincerely.

Paul E. Kerson
Editor, Queens Bar Bulletin

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If you or someone you know is having a problem with alcohol, drugs or gambling, you can help. To learn more, contact QCBA IAC for a confidential conversation. Confidentiality is privileged and assured under Section 499 of the Judiciary Laws as amended by Chapter 267 of the laws of 1992.

Lawyers Assistance Committee
Confidential Helpline 718 307-7828

The Docket...

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

October 2010
Tuesday, October 5
MHL Article 81 Guardianship Training for the Lay Guardian 2:30-5:00 p.m.

Monday, October 11
Columbus Day, Office Closed

Wednesday, October 13
Advanced Criminal Law, Pt 1

Thursday, October 14
Art of Cross Examination, 1:00-2:00 p.m.

Wednesday, October 20
Advanced Criminal Law, Pt 2

Tuesday, October 26
Recent Significant Decisions from our Appellate Courts

November 2010
Tuesday, November 2
Election Day, Office Closed

Tuesday, November 9
Landlord/Tenant Seminar

Wednesday, November 10
Professional Ethics Seminar

Thursday, November 11
Veteran’s Day, Office Closed

Thursday, November 25
Thanksgiving Day, Office Closed

Friday, November 26
Thanksgiving Holiday, Office Closed

December 2010
Wednesday, December 1
Insurance Law Seminar

Wednesday, December 8
Holiday Party at Floral Terrace

Friday, December 24
Christmas Eve, Office Closed

Friday, December 31
New Year’s Eve, Office Closed

CLE Dates to be Announced

Elder Law
Labor Law

New Members

Elana Ades
Dania R. Antonelli
Emilio E. Arnu Hortal
George Asllani
Hilarie Jayne Bauer
Nelson Raymond Belen
Karen Best
Andrea Blair
Bruce Bronson
Nicoles L. Brzezwicki
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Mohammad Akif Saleem
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Dennis R. Smith
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Joseph David Levy
Judie M. Ilus
David Lawrence Jadidian
Alexandria Jean-Pierre
Joseph F. Kasper
Paul Kilminter

Necrology

David E. Bryan, Jr.
Robert M. Jupiter
Joseph Francis Lane
Edward J. Ledogar
Charles F. Kubano
Hon. Mark Spies
Joseph M. Walsh

2010 Fall CLE Seminar & Event Listing
The first seminar will be held on October 19, 2010, from 6-9 p.m. This event, which offers a FREE ethics CLE, will begin with a wine and cheese reception hosted by Stephen P. Younger, President of the New York State Bar Association and the Hon. Fern Fisher, Deputy Chief Administrative Judge of New York City courts. (Our thanks also go to Judge Fisher for helping QCBA publicize this event). The seminar will focus on training lawyers to provide pro bono legal advice and limited representation for unrepresented litigants in the Queens County, Civil, Family and Supreme Courts.

The second Seminar, scheduled for November 4, 2010, from 6-9 p.m. at the QCBA, will focus on consumer debt. And on November 16, 2010, our third National Pro Bono Week seminar (also held from 6-9 p.m. at QCBA) will focus on uncontested divorce volunteers. I urge each of you to attend this seminar, because of the significant statutory changes in Domestic Relations and Family Law that will take effect on October 12, 2010, regarding No Fault, maintenance, child support and counsel fees.

I also urge you to bring a local colleague to these events. One of the goals during my year as president of the QCBA is to attract younger attorneys to the QCBA. Pro bono trainings are an excellent way to recruit new members and new volunteers. The series is also a great opportunity for newly admitted attorneys and new volunteers to learn from the experts and expand their areas of practice while serving the public. It is a win-win situation for us, as lawyers, and for the community.

Finally, in the spirit of National Pro Bono Week, I want to recognize David Siegel, Kendyl Hanks and Jonathan Pressment of the law firm of Haynes and Boone, LLP for their pro bono representation of the five County Bar Associations' lawsuit against New York City. As you know, in May of this year, QCBA, along with the city's other four County Bar Associations, initiated a lawsuit against Mayor Michael Bloomberg, the City of New York and John Feinblatt, the Mayor's Criminal Justice Coordinator, for their unilateral attempt to modify the New York City's Indigent Defense Plan. From the inception of this lawsuit, HB has worked tirelessly to represent the five County Bar Associations without any payment — because they are committed to Pro Bono Publico.

Can we, as public-spirited lawyers, do less?

Sincerely,

Chanwoo Lee, President
Queens County Bar Association

Queens County Bar Association Annual Dinner and Installation
New President: Ms. Chan Woo Lee
May 6, 2010 Terrace on the Park 6:00PM-10:00PM

"Blessed are they who maintain justice, who constantly do what is right.”

(Psalms 106:6)

Loving God,

We thank You for the annual gathering of the Queens County Bar Association this evening, especially as they install the new president, Chan Woo Lee, and the other officers and managers onto leadership and service to the over 2,000 members of this organization, who serve the most ethnically diverse population in the world.

And how appropriate and historic it is that Chan Woo becomes the first Asian American, and the 3rd woman president of the association on this day in May, as we celebrate Asian American Heritage Month. We ask that You bless Chan Woo and bless the QCBA through her as she leads with integrity, wisdom, humor, and grace. May the association continue its work of justice and advocacy, as it has done for over 130 years, for all the people who need their expertise, guidance, and representation.

We ask that You will bless the other officers, speakers, honoree, and all the participants gathered here tonight. Let this be a time of wonderful fellowship, strong networking, and a good reminder that we all are a part of a greater community of those seeking justice for the health and well-being of our society.

As we break bread together, bless the meal we are about to eat. And as we partake of the abundance before us, may we realize how fortunate we are and not take this for granted. Help us to realize that You do not bless us only for ourselves, but so that we can bless and serve others.

May our conversations be seasoned with grace, may old and new friendships be forged and strengthened, may a good time be had by all.

We lift up all the members of the Queens County Bar Association and their family and friends, and we ask that we may all act justly, love mercy, and walk humbly with You, our God. (Micah 6:8). We give You all glory, honor, power, and praise, and we pray all these things in Your Name.

Amen.

Rev. Eun Joo Kim
Staff Chaplain at New York Hospital Queens
Since 1936, there has been a “Sparrow” walking the halls, and appearing in Court, in the “Halls of Justice” of Queens County and the Metropolitan area. My father, Sidney G. Sparrow, became a legend in his own time – as a skilled, charismatic, popular defense attorney (as well as an artist, poet, athlete, etc.)

Now, after “only” 53 years at the Bar, I too, shall “fade away” (not quite equaling Sid’s 65+ years).

Born and raised in Brooklyn, gaining degrees at Columbia College (55’) and Law School (57’), I moved to Queens County after my marriage to Marcia in April, 1957 – barely two months before taking the Bar Exam. I enlisted in the army for a tour of 6 months active (a very cold basic training at Fort Dix) and 6 years of active reserve. During that tumultuous time (the Cuban Missile Crisis, the Berlin Wall, and war in Laos presaging Vietnam), we became the parents of Laurie (1960) and David (1964). I had also started practice in 1957, resumed in 1958 after service and a cross country trip of 6 weeks. (In those days, a motel room in South Dakota cost $4.00 a night!)

The practice of law in the late 50’s was very different! Our offices were on Catalpa Avenue in Ridgewood (opposite the “Felony Court”, and in Court Square, Long Island City, near the County Court and Court of Special Sessions, predecessors to Supreme Court Criminal Term and the Criminal Court. We made daily trips from Ridgewood to Long Island City, often triple parking with the help of a well liked and well rewarded minion of the Law.

We handled thousands of cases, ranging from shoplifting and intoxicated driving, to major murder cases (such as People v. Winston Moseley, the killer of Kitty Genovese in 1964, People v. Joseph Baldi, and many bizarre and interesting cases). The Moseley case alone would take a book to describe the unique twists and turns (such as finding .22 Caliber bullets in each of 6 “stab wounds” in an exhumed victim’s body; or the relationship that developed in Creedmoor between two separate parents, each acquitted of killing their own children, based on a verdict of insanity).

By 1961, the Courts, consolidated, had moved to Kew Gardens, and we followed that year into the Silver Tower, where we remain to this day.

Through the years, Marcia and I did extensive traveling – to exotic locations such as the Soviet Union, China, India, Alaska, a photo Safari in East Africa, Egypt, Morocco, Iceland, much of Europe, Israel, Australia – New Zealand, South America, Alaska, Antarctica – and, the most beautiful of all, our own United States of America!

In my time I became a Certified Scuba Diver (many a tale to tell), a licensed Pilot, and a nationally ranked Handball player (I played, for years, in National Handball Tournaments).

My son David, a Harvard graduate, is a journalist. He lives in Manhattan with his...
BY: STEPHEN DAVID FINK, ESQ.

We as attorneys have very little time to enjoy the benefits of reading. Here are two books that should occupy some of your precious free time.

FOR THE THRILL OF IT ALL
by Simon Beaty

This is the story of the Leopold and Loeb trial. So you thought “O.J.” was the trial of the century, but maybe not after you read this book.

Nathan Leopold and Richard Loeb were two young men from Chicago who came from wealthy families. For some reason (and that is the real question in the book) they decided to kill a local teenage boy who they had chosen arbitrarily. While they thought they had performed the perfect crime, it all quickly unraveled. They soon confessed to what they had done and faced the death penalty.

It was at that point that the family retained Clarence Darrow who was the most famous lawyer of his day. He put together a fabulous defense team for the defendants. It was not his intent to get them acquitted but rather to save them from the death penalty.

In the end, Judge John Caverly made his decision based not upon the expert testimony but on the young age of the two defendants. Life imprisonment was the eventual sentence. Although Richard Loeb died in prison, Nathan Leopold was released in March of 1958. Darrow went on to even greater fame in the so-called Scopes “Monkey trial.”

Perhaps this was truly the greatest trial of the 20th Century. The book is well written for lawyers and non-lawyers.

CONTEMPT OF COURT:
by Mark Corrigan & Leroy Phillips, Jr.

Here is a story you probably did not know but should. I bet you did not know that in the history of the United States Supreme Court there has been only one trial before it. That was the case of United States v. Joseph Shipp, et al., decided May 24, 1909.

In 1906 Chattanooga, Tennessee was, by Southern standards, a relatively liberal city as to race relations. However, the city was still a racially divided one. It was in January of that year that a white woman by the name of Nevada Taylor was allegedly raped on her way home from work. While she did not get a good view of her attacker, there was some indication that the man might have been a “Negro” (that was the "p.c." word at the time).

The police and Sheriff Joseph F. Shipp eventually led to a “Negro” by the name of Ed Johnson. While he had numerous alibis witnessing indicating he was working at a local bar at the time of the rape that did seem to matter. Soon he was charged with the crime which was punishable by death.

Quickly the word of the crime spread through the city. Almost immediately a white lynch mob formed outside the local jail – even though Johnson was not there. Somehow the mob was dispersed. It only took a week or so for the trial to begin. The local Criminal Court Judge (Samuel D. McReynolds) had appointed three white lawyers to represent Johnson. They did what appears to have been their best having had limited resources and only a few days to investigate and prepare. The all white male jury quickly convicted Johnson. This was after one juror had actually stood up during the trial and openly threatened the defendant.

After the conviction, Johnson’s attorneys had him waive his right to an appeal. They told Johnson that, unless he did this, the mob would probably lynch him. This way he could die properly at the hands of the State.

It was at that point that two local black attorneys, Noah Parden and his partner, Styles L. Hutchins entered the case. At that time there were not a lot of black lawyers in Chattanooga. The few that were in private practice basically handled only a black clientele. Parden and Hutchins are generally seen as forgotten “heroes” of the Civil Rights movement.

The lawyers immediately brought a writ of habeas corpus in Federal Court. They also secured a stay of the execution. A full hearing was soon held before the Federal Court, but the writ was denied. However, a further stay was granted so that an application could be made to the United States Supreme Court. Parden and Hutchins, with the help of a local Washington, D.C. attorney, made that application to the Supreme Court. Luckily it was Justice John Marshall Harlan who received the request. At the time Justice Harlan was the senior member of what was known as the “Fuller Court.” He was famous for his dissent in Plessy v. Ferguson (“separate but equal”). Justice Harlan signed the stay of execution pending review by the full Court.

The reaction to this back in Chattanooga was outrage by the white community. Just hours later a mob appeared at the jail. Johnson was taken from his cell and lynched. There was virtually no effort by local authorities including Sheriff Shipp to stop the lynching.

Justice Harlan and every member of the Court were incensed. It was decided by the Justices (and then President Theodore Roosevelt’s Justice Department) that a hearing would be held as to whether Sheriff Shipp and others (including possible members of the mob) would be held in contempt. The only “trial” ever held in the Supreme Court (actually tried before a “Commissioner”) led to the conviction of Sheriff Shipp and several others. He was sentenced to 90 days in jail.

This surprisingly little known episode in American judicial history is worth of your attention.

P.S. Take a few minutes. Did you know that New York State has had two lynchings - one white and one black. On June 2, 1892, Robert Lewis (alias Jackson) was lynched in Port Jervis, Orange County for assaulting a white woman. It is believed that this real event formed the basis for “The Monster” in Stephen Crane’s (best known for Red Badge of Courage) Tales of Whilomville.
BY HOWARD L. WIEDER

Since the October Term is the first term in the United States Supreme Court’s year, it is fitting that I begin the review of books with a marvelous, two volume book, written in riveting style on the nation’s highest court by DAVID G. SAVAGE, journalist for The Los Angeles Times. MR. SAVAGE is probably one of the top five analysts and commentators of the Supreme Court. He knows the history of the Court, its decisions, Justices, and his new 2-volume book, published by OUP Press this year is written beautifully.

In my effort to get lawyers to write better, I include three books on film. A good screenwriter tells a compelling story. In my duties as Law Secretary to JUSTICE CHARLES J. MARKEY, I spent time reading motion papers, where lawyers spend precious time reminding me of basic facts governing the grant or denial of summary judgment, but do not go into the facts in a clear way. A litigator must inform the Court as to what happened. Tell your story in a concise fashion, and preferably one that is well-written. Some lawyers write as though boredom were an emotion. You need to tell the Court of what happened to your client. Convince the Court. Remember that JUSTICE LOUIS BRANDEIS of the U.S. Supreme Court [its first Jewish Justice] reserved for himself the writing of the facts of each opinion he wrote, delegating to his law clerks the research and writing of the law. Justice Brandeis well understood that once the reader were to finish reading the factual account, the decision should be almost obvious even before the legal discussion.

JUSTICE LOUIS BRANDEIS also knew that there is no such thing as good writing — “only good re-writing,” he declared! What better way to get lawyers to write better and to describe the narrative of their case in a coherent way than referring them to books on film writing. I discuss three excellent books on film and film-writing.

GUIDE TO THE U.S. SUPREME COURT [FIFTH EDITION] By DAVID G. SAVAGE

Date: 06/22/2010
Format: Print
Cloth Price: $410.00
Pages: 1544
available at www.cqpress.com

WRITING DRAMA: A COMPREHENSIVE GUIDE FOR PLAYWRIGHTS AND SCRIPTWRITERS [June 2005 edition]

By Yves Lavandier
Translated from the French by Bernard Besserglik

June 2005 edition
Language: English
600 pages
Dimensions: 17 x 24 cm
Paperback, 38 Euros, and can be ordered only on the web site of www.clown-enfant.com

FILM THEORY AND CRITICISM [Seventh Edition] By Leo Braudy and Marshall Cohen

Paperback: 912 pages
Publisher: Oxford University Press, USA; Seventh Edition
(January 14, 2009)
Language: English
ISBN-10: 0195365623
Product Dimensions: 9.2 x 6.1 x 1.7 inches
Shipping Weight: 2.8 pounds

HOW TO READ A FILM: MOVIES, MEDIA, and BEYOND [Fourth Edition]

By James Monaco

Price: $32.95
Format: Paperback 688 pp. 350 halftones, 75 line illus., 6.4” x 9.1”
ISBN:10-0195321057
Publication date: April 2009
Imprint: OUP US

I. GUIDE TO THE U.S. SUPREME COURT [FIFTH EDITION] By DAVID G. SAVAGE

This brand new edition of Guide to the U.S. Supreme Court reflects the substantial changes in the makeup of the High Court and landmark rulings from recent Court terms. No other reference on the Court offers so much detail and insight in such a readable format. Updated through the 2008–2009 term, this classic resource explains everything readers need to know about the Supreme Court, from its origins and how it functions to the people who have shaped it and the impact of its decisions on American life and the path of U.S. constitutional law.

DAVID G. SAVAGE’s two-volume work is written engagingly and makes a perfect gift for any lawyer or aspiring lawyer. The beauty of DAVID G. SAVAGE’s writing is one not need be a lawyer to understand his discussion. He covers the subjects covered by the Court and the leading decisions in each field, and, of course, discusses the Court’s history.

Updates include:
The appointments of Chief Justice John G. Roberts, as well as Associate Justices Samuel Alito and Sonia Sotomayor, featuring biographies and background information.

A new chapter on the emergence of Second Amendment protections for the Right to Bear Arms.

New content on individual rights

New information and detail on how cases currently get to the Court, and how the process has changed over time.

Expanded content on selecting justices and the confirmation politics of judicial appointments

Landmark decisions and key cases:

District of Columbia v. Heller (2008)—gun rights and the Second Amendment

Boumediene v. Bush (2008)—

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Chairperson - Labor Relations Committee - Queens County Bar.
Association of the Bar - Employment Law Panel Member.

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APPEARANCES IN
QUEENS COUNTY
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Please join us as we celebrate the career and retirement of our dear friends and colleagues,
Bob Sparrow & Steve Singer

When: Wednesday, October 27, 2010
Where: Portofino’s Restaurant
109-32 Ascan Avenue
Forest Hills, NY 11375
(718) 261-1230
Time: 12:45 pm
Cost: $42.00
RSVP: Chanwoo Lee clee970@aol.com 917-951-1101
Les Nitin lnnitin@aol.com 718-263-2411

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APPEARANCES IN
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The Civil Rights Statue, 42 U.S.C. Sec. 1983, is one of the most frequently found denizens of the Federal Court System, and as such the “John Doe” defendant is a common and frequently preferred plaintiff. This article proposes to examine some case law resolving and interpreting unnamed defendants.

The question arises therefore, and it is a neat one: is using the term “John Doe” or unnamed defendant a permitted and permissible legal practice? There has been some case law resolving and interpreting this particular issue. This article proposes to review the case law and derive from it an analysis and examination of any rules concerning the use of “John Doe” or the use of an unnamed defendant in Civil Rights actions brought under 42 U.S.C. Sec. 1983.

One of the leading cases analyzing this issue is Wakefield v. Thompson. In Wakefield, plaintiff Timothy Wakefield alleged the District Court’s dismissal of his Sec. 1983 action against “John Doe,” a correctional officer at the San Quentin Prison. Mr. Wakefield alleged that the “John Doe” officer violated his 8th Amendment right by refusing to provide him with prescription psychotropic medication upon his release from prison. Plaintiff Wakefield asserted that “John Doe” exhibited deliberate indifference to his serious medical needs (Wakefield suffered from an organic delusional disorder). According to Wakefield’s allegations, he met with a doctor shortly before he was released from San Quentin and the doctor wrote Wakefield a prescription for two weeks worth of Navane to be filled by prison officials and dispensed upon Wakefield’s release from prison. On the day of his release, Wakefield asked “John Doe,” the officer handling the release procedure, for his two-week supply of Navane and “John Doe” replied that “there wasn’t any medication available.” Despite Wakefield’s protestations concerning his need for the medicine, “Doe” refused even to call the prison medical staff to check on Wakefield’s prescription. When Wakefield was released from San Quentin Prison without the medicine to control his mental illness, he suffered a relapse that led to a violent outburst and his subsequent arrest.

The District Court dismissed Wakefield’s Civil Rights action, stating that “Doe Defendants” are not favored in the 9th Circuit and accordingly the “Doe Defendants” were dismissed. Wakefield appealed the dismissal in favor of the defendant “John Doe.” The court analyzed the case by applying the holding in Gillespie v. Civiletti. The court stated that the District Court’s conclusion that dismissal of the “defendant John Doe” was required, under Gillespie, was incorrect since the Gillespie Court stated that although there was a general rule that “John Doe” defendants are not favored, where the identity of the defendant is not known prior to the filing of a Complaint, the plaintiff should be given an opportunity through discovery to identify the unknown defendants, unless it is clear that discovery would not uncover the identities or that the Complaint would be dismissed on other grounds. The 9th Circuit also noted that it had concluded in Gillespie that the District Court’s dismissal of the Complaint against the “John Doe” defendant was in error. The 9th Circuit is clear in its holding that the use of “John Doe” defendants is fully allowed and permissible as long as, through discovery, the correct identity of the “John Doe” defendant can be found. The United States Court of Appeals for the 10th Circuit in Roper v. Grayson reached a similar conclusion. In Roper, a pro se detainee brought a Sec. 1983 Civil Rights Action against a detention facility and several other defendants for alleged injuries from forcible administration of insulin to the defendant while he was in custody. The court upheld the district court’s dismissal of the “defendant John Doe” (Continued On Page 13)
You've Come a Long Way -- But You Still Have a Thing or Two to Learn About Venue - Part III

By Paul E. Kerson

In Perry v. Schwarzenegger, 2010 WL 3025614 (N.D. Cal. Aug. 4, 2010), U.S. District Judge Vaughn Walker held that California’s ban on same-sex marriage violated the 14th Amendment to the U.S. Constitution.

Judge Walker held that California’s controversy law, known as Proposition Eight, violated the principles of equal protection and due process. Judge Walker held that excluding same-sex couples from a functional marriage “exists as an artifact of time when the genders were seen as having distinct roles in society and in marriage...that time has passed.”

Or has it?

In the new hit movie, “The Kids are All Right,” Mia Wasikowa plays Joni, and Josh Hutcherson plays Laser. Joni and Laser are teenage children conceived by artificial insemination. In one of the most unusual scenes in a movie, Joni calls their Sperm Donor Father, played by Mark Ruffalo. She has never met him before. But she and her brother are the “best 50%” of their biological origins.

Without giving away the plot, the movie explores a topic that was pure science fiction as recently as two generations ago.

The August 2010 edition of Scientific American estimates that humanity is approximately 195,000 years old. (“When the Sea Saved Humanity,” page 55).

During the first 194,950 of those years, children were conceived by the natural method. It is only in the last 50 years that successful artificial insemination by a Sperm Donor Father has been technologically possible. We are now “blessed” (I use that term loosely) with commercial sperm donor clinics. These clinics enable single mothers, lesbian couples and conventional sperm donors are encouraged to have children by this method.

New York Domestic Relations Law (DRL), Section 240, prescribes the statutory standard of “best interests of the child” in all custody and visitation disputes in Family Court. The standard is also applied to the “best interests” of the child conceived by artificial insemination.

This is a cutting edge technical, medical, social, religious, governmental, political, and legal question. How should it be answered?

In custody and visitation disputes involving a child conceived by artificial insemination, should the child’s lawyer seek out the Sperm Donor Father? Does this further complicate an already messy situation? However, does failure to contact the legal sperm donor father harm the “best interests” of the child?

The stunning performances by Mia Wasikowa, Josh Hutcherson and Mark Ruffalo in “The Kids are All Right” would indicate that children of artificial insemination are most interested in knowing their Sperm Donor Father. As time goes on, and artificial insemination will be more and more popular, and more and more of our fellow citizens will have this technology as their origin. Artificial insemination is a work of science fiction less than two generations ago. How shall children who were conceived in this way cope with this fact?

As so often happens, art leads the law. In studying how the writers, directors, and actors of “The Kids are All Right?” dealt with this topic, we can begin to see some insights.

There are two scenes in the movie which are particularly compelling. Upon reaching her 18th birthday, Joni calls the previously anonymous Sperm Donor Father. The Director shows us the facial expression of Joni speaking on her cell phone. The next scene shows the Sperm Donor Father making a call on his cell phone. The look of shock, surprise, and awe on each of their faces is unforgettable.

In another scene in the movie, 15 year old Laser is sitting in the front of his newly found Sperm Donor Father’s pick-up truck. Laser asks his Sperm Donor Father why he donated sperm. The Sperm Donor Father replies, “I was helping someone who could not have children otherwise and that he “needed the money at the time, $60, which would be $90 today.” The horrified look on young Laser’s face told us volumes about the emotional impact of sperm donation on the person who is the product of it. “But I would do it again,” says the Sperm Donor Father. The look on Laser’s face is one of partial relief. The viewer can see the wheels turning in the young teenager’s head - is this what my existence means? Someone who needed $60?

One comes away from the movie with the strong feeling that the law must no longer consider sperm donation as in the same category as blood donation. While donating blood saves lives, donating sperm creates life. This is an entirely different kind of donation. Somehow the law must mature to recognize this fact.

In Debra H. v. Janice R., 14 N.Y.3d 576 (May 4, 2010), the New York State Court of Appeals concluded that a civil union under Vermont law between two women entitled both women to possible visitation and/or custody of an artificially inseminated child. The Court of Appeals remanded the case to the New York County Supreme Court “for a best-interest hearing in accordance with this opinion.”

However, the Court of Appeals was silent as to whether or not the child’s Law Guardian should contact the child’s Sperm Donor Father in connection with this decision.
Estate Tax Planning in the Year of No Estate Tax

BY ANN-MARGARET CARROZZA & HOWARD M. ESTERCES

Contrary to many of our 2009 predictions, the Federal estate tax did, in fact, expire on December 31, 2009. It is scheduled to reappear in 2011 with a reduced exemption of $1.0 million and higher rates. There is a possibility that the 2009 exemption level of $3.5 million will be enacted during 2010 with retroactive applicability to January 1, 2010. However, it isn’t clear whether the courts will uphold imposition of an estate tax retroactively; and the provisions of future legislation are uncertain. Given the still fragile state of the economic recovery, the reimposition of some form of Federal estate tax is almost certain.

How then should an estate planner advise clients during this period (however brief) of no Federal estate tax? Should we advise them to wait and see? Hire a food taster? Instead, we can and should advise clients during this period (howev-

er brief) of no Federal estate tax? Should we advise them to wait and see? Hire a food taster? Instead, we can and should get down to the imperative business of reviewing existing documents in order to determine the consequences of a death in the era of repeal. Of particular concern are previously executed estate planning documents.

Way back in the year 2002, the Federal and New York State estate tax thresholds were both $1.0 million. The most basic concern of estate tax planners back then was to prevent the inadvertent loss of this exemption. This occurred under simplistic Wills that left everything outright to a surviving spouse who, in turn, left everything to children. The unlimited marital deduction under the Internal Revenue Code provides that there is no estate tax liability on transfers to a surviving spouse. If for example, a couple had an estate of $1.5 million and the husband died in 2002 with a simple will, his wife received everything free of estate tax. But, because there was no tax liability upon the first death, there was no opportunity to use his exemption. It died with him. Later that year, upon the death of the surviving spouse, the children could only use her exemption of $1.0 million – thus exposing $500,000 to both Federal and New York State estate taxes.

To prevent the loss of the first exemption, estate planners created a so-called Credit Shelter Trust for the first spouse to die which would receive a portion of the estate thereby preventing the over-utilization of the marital deduction.

There were several formulas used to fund this trust. The most common was the following:

I give my Trustee, hereinafter named, the maximum amount that can pass free of Federal estate tax …” Well, for a couple in 2002 with a $2.0 million estate, the result was for $1.0 million to go into the Credit Shelter Trust upon the first death and the surviving spouse kept the remaining $1.0 million. Upon her death, the children received everything free of any estate tax. By 2009, the Federal exemption increased to $3.5 million, but the New York exemption remained at $1.0 million.

Fast forward to the present – Those documents have dramatically different results. Now, the “maximum amount that can pass free of Federal estate tax” is unlimited. Therefore, for someone dying in 2010, all of the first decedent’s separate assets will go into the trust. Depending upon how assets are titled, this could leave the surviving spouse with nothing! The survivor could pursue elective share rights, but this is an incomplete and inefficient solution. Moreover, funding the Credit Shelter Trust with more than $1.0 will trigger an immediate New York State estate tax consequence. This is because New York State has a $1.0 million exemption.

Our Surrogates Courts will also be burdened with determining the intent of decedents who die in 2010 with formula provisions in their wills based on a non-existent Federal estate tax. As a New York Assemblywoman, Ann-Margaret Carrozza, one of the authors of this article, introduced legislation to prevent

continued on Page 14

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Guy Vitacco, Sr. being presented with the Froessel Award from Hon. Sidney Strauss.

Pres-Elect Richard Cutierrez, Vice Pres Joseph Risi, Jr., Treasurer Joseph DeFelice and Secretary Joseph Carola, III being installed.

Chanwoo Lee with Guest Speaker NYC Comptroller John Liu.

Chanwoo Lee with her mom after being installed as President.

Chanwoo Lee with Hon. Cheree Buggs

Council Member Peter Koo presenting City Council Citations to Chanwoo Lee and Guy Vitacco, Jr.

Reverend Eunjoo Kim delivering the invocation.

Gideon Bari, Hilary Gingold and Mark Gottlieb.

Guy Vitacco, Jr. with his father Guy, Sr. and mother, Loretta.

Guy Vitacco, Jr. presenting Judges Jodi Orlow and Richard Latin with gavels from QCBA.

Chanwoo Lee with her mom after being installed as President.

Hon. Sidney Strauss and Guy Vitacco, Sr. showing his Froessel Award.

Guy Vitacco, Sr. being presented with the Froessel Award from Hon. Sidney Strauss.

Mark Welisky presenting Hilary Gingold with the NYSBA 2010 President's Pro Bono Service Award.

Photos by Walter Karling
Members of Board being installed.

Outgoing President Guy Vitacco, Jr.

Guy Vitacco, Jr. and Chanwoo Lee.

Guy Vitacco with family.


Mona Haas, George Nicholas and Diane Vitacco.

PHOTO CORNER

Hon. Martin Ritholtz delivering the benediction.

Installing Officer Hon. Randall Eng with President Chanwoo Lee.

Master of Ceremonies Hon. Sidney Strauss.

Hon. Sid Strauss, Chanwoo Lee and Steve Singer.

Guest Speaker NYC Comptroller John Liu.

Photos by Walter Karling
Books at the Bar
Continued From Page 6 –
Guantanamo and habeas corpus
Roger v. Simmons (2005) – on death penalty and juveniles
GUIDE TO THE U.S. SUPREME COURT [FIFTH EDITION] covers the High Court’s entire history; its operations; its power in relation to other branches of government; major decisions affecting the other branches, the states, individual rights and liberties; and biographies of the justices.
Appendices provide additional information on the Court such as the Judiciary Acts of 1789 and 1925 and a list of Acts of Congress found by the Court to be unconstitutional. A general name and subject index speeds research, and a case index quickly guides readers to all decisions discussed in the GUIDE TO THE U.S. SUPREME COURT.

Key Features
Covers three new Supreme Court justices and the confirmation process
Demonstrates how cases get to the Court
New content on individual rights
New chapter on the Second Amendment

DAVID G. SAVAGE is a leading observer and commentator of the United States Supreme Court and covers the High Court for The Los Angeles Times.

II. WRITING DRAMA: A COMPREHENSIVE GUIDE FOR PLAYWRIGHTS AND SCRIPTWRITERS by Yves Lavandier

If you have the time and money to buy one book to help you write better then I must encourage you to purchase WRITING DRAMA by YVES LAVANDIER.

YVES LAVANDIER has written a sharp, engrossing account of how to write drama. It is a book well suited not only for playwrights and screenplay writers, but for lawyers. The book is entertaining. YVES LAVANDIER makes his points by citing numerous works from film, and he explains situations for those persons who are not acquainted with his examples.

The English translation of this excellent book is available only at the publisher’s web site of www.cloven-enfant.com. That fact is unfortunate, and it is almost criminal that the book is not sold at www.amazon.com, or at the Drama Bookshop in Manhattan or Barnes & Noble. The book costs 38 Euros, and, considering that the Euro has weakened considerably in the last few months, I urge you to buy it now.

YVES LAVANDIER writes: “If the story is well written, it will affect the professional, as much as the amateur, the spectator who knows the rules of drama as much as the spectator who does not [reference omitted]. This is why drama, when it takes the trouble to make itself accessible to all and bases its appeal on what we all have in common, is such a democratic medium. It is also why [actor Charlie] Chaplin - - whose language moreover is so visual - - is the most universal of dramatic artists. He is, as [director]Otto von Goetz put it, the esperanto of laughter.”

YVES LAVANDIER, WRITING DRAMA, p. 140.

YVES LAVANDIER was born on April 2, 1959. After taking a degree in journalism, he began to scriptwrite throughout Europe and published a treatise on the subject: Writing Drama. For the occasion he founded his own publishing and production company, LE CLOWN & L’ENFANT. Writing Drama is now considered a bible amongst European screenwriters and playwrights, and YVES LAVANDIER is a renown script consultant. In August and September 2000, he shot his first feature film as writer-director. Yves Lavandier is married with four children.

III. FILM THEORY AND CRITICISM by Leo Braudy and Marshall Cohen

Since publication of the first edition in 1974, LEO BRAUDY and MARSHALL COHEN’S FILM THEORY AND CRITICISM has been one of the most influential anthologies about film. Now, in its seventh edition, this landmark text continues to offer excellent coverage of more than a century of thought and writing about the movies. Incorporating classic texts by pioneers in film theory including Rudolph Arnheim, Siegfried Kracauer and Andre Bazin, and cutting-edge essays by such contemporary film scholars as David Bordwell, Tania Modleski, Thomas Schatz and Richard Dyer.

Building upon the wide range of selections and the extensive historical coverage that marked previous editions, this new compilation stretches from the earliest attempts to define the cinema to the most recent efforts to place film in the contexts of psychology, sociology, and philosophy, and to explore issues of gender and race. Reorganized into eight sections, each comprising the major fields of critical controversy and analysis, this new edition features reformulated introductions and biographical headnotes that place the readings in context, making the text more accessible than ever to students, film enthusiasts, and general readers alike.

A wide-ranging critical and historical survey, FILM THEORY AND CRITICISM remains the leading text for undergraduate courses in film theory. FILM THEORY AND CRITICISM is also ideal for graduate courses in film theory and criticism.

Leo Braudy is University Professor and Bing Professor of English at the University of Southern California. Among other books, he is author of Native Informant: Essays on Film, Fiction, and Popular Culture (Oxford University Press, 1991), The Frenzy of Renown: Fame and Its History (OUP, 1986), and most recently, From Chivalry to Terrorism: War and the Changing Nature of Masculinity (OUP, 2003).

Marshall Cohen is University Professor Emeritus and Dean Emeritus of the College of Letters, Arts, and Sciences at the University of Southern California. He is co-editor, with Roger Copeland, of What Is Dance? Readings in Theory and Criticism (OUP, 1983) and founding editor of Philosophy and Public Affairs.

IV. HOW TO READ A FILM: MOVIES, MEDIA, AND BEYOND (Fourth Edition) by James Monaco

Richard Gilman referred to JAMES MONACO’S HOW TO READ A FILM as "a timely book of its kind." Film critic Janet Maslin in The New York Times Book Review marveled at James Monaco’s ability to collect "an enormous amount of information and assemble it in an exhilaratingly simple and systematic way."

Now, JAMES MONACO offers a special anniversary edition of his classic work, featuring a new preface and several new sections, including an "Essential Library: One Hundred Books About Film and Media You Should Read" and "One Hundred Films You Should See." In previous editions, Monaco once again looks at film from many vantage points, as both art and craft, sensibility and science, tradition and technology. After examining film’s close relation to other narrative media such as the novel, painting, photography, television, and even music, the book discusses the elements necessary to understand how films convey meaning, and, more importantly, how we can come to discern what a film is attempting to communicate. In addition, Monaco stresses the still-evolving digital context of film. One of the new sections looks at the emergence of digital images and sound. Monaco’s chapter on multimedia brings media criticism into the twenty-first century with a thorough exploration of topics like virtual reality, cyberspace, and the proximity of both to film.

With hundreds of illustrative black-and-white film stills and diagrams, HOW TO READ A FILM is an indispensable addition to the library of everyone who loves the cinema and wants to understand it better.

JAMES MONACO, an American film critic and author, has written several other books, including The New Wave: Truffaut, Godard, Chabrol, Rohmer, Rivette (1976), How To Read A Film (1977) and American Film Now (1979), and edited four others. He has written for several leading publications, including The New York Times, The Village Voice, and The Christian Science Monitor.

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.

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A Note of Gratitude

BY CORRY L. McFARLAND*

As we are sure you are all aware, the Queens Foreclosure Conference Project, a program of the Queens Volunteer Lawyers Project, Inc., has been working closely with the Queens Supreme Court Office of the Residential Foreclosure Part to assist Queens’ residents in danger of losing their homes to foreclosure. Below is a thank you letter to Referee Leonard N. Florio in gratitude of the exemplary work being done by the Residential Foreclosure Part. We wish the Part much continued success in their efforts assisting Queens’ homeowners through the foreclosure crisis.

Referee Florio:

Your firmness and professionalism have brought to us this positive end.

You were determined to have documentation to substantiate verbalizations that we did not qualify.

This was the turning point to our success.

We bless you and wish good things come your way as you continue to execute your daily duties in your current capacity.

With heartfelt gratitude from:

Jones* and Family

*Redacted

*Corry L. McFarland is the Foreclosure Prevention Coordinator for the Queens Volunteer Lawyers Project

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THE QUEENS BAR BULLETIN – OCTOBER 2010
Should The US Act
As World Police?

Continued From Page 1

Our foreign policy for the past 65 years was set forth by President Harry Truman on his first day in office. The incident is recounted by Merle Miller, in his important book, Plain Speaking - An Oral Biography of Harry S. Truman, Berkley Publishing Corp., New York, NY, 1973, Pages 198-199:

"Merle Miller: "Mr. President, can you tell me about the day Franklin Roosevelt died?"

Harry Truman: "...and we all sat around the Cabinet table...and they all wanted to know if there was going to be the United Nations in San Francisco. As I said then, I had been, and I said it most certainly was. I said it was what Roosevelt wanted, and it had to take place if we were going to keep the peace. And that's the first decision I made as President of the United States," (emphasis added)

And this has been our foreign policy ever since. I'm the nation that's going "to keep the peace."

Harry Truman made that decision on his first day in office. He later went on to order the dropping of the atomic bomb on Japan, which finally ended World War II. Harry Truman never went to college. His career included service as a foot soldier in World War I and a retail clothing merchant in Independence, Missouri, as an elected County Commissioner (called a County Judge in Missouri), as U.S. Senator, and as Vice President. He was hardly prepared to enunciate a foreign policy which would lead the United States to have the largest military in the history of the world and to take on the role of an enforcement officer, Hon. Richard Brown, D.C. "inside baseball"?

Probably not.

To answer this question, the Queens Bar Bulletin sent a draft of this article in advance to our learned and thoughtful law enforcement officer, Hon. Richard Brown, our District Attorney. We reprint his most informative response adjacent to this article. It appears that in 2010, because of the "Pax Americana," we have burdened ourselves, our children and our grandchildren with a debt that has never been seen before in the history of the world.

How can these competing considerations be reconciled?

Further, at the current time, we do not face foreign national armies out to conquer our country. There is no Nazi Germany, an Axis threat such as during World War II. There is no Soviet Union which we could face in the Cold War. There are no Armies of Great Britain and Canada (1776-1783), the Armies of the American Indians (1776-1890), the Armies of Germany, Japan and Italy (also known as the Axis) (1941-1945), the Army of North Korea (1950-1953), the Army of North Vietnam (1953-1975), the Army of Iraq (1991) and 2002 to date, and an Unclear Enemy in Afghanistan (2001 to date).

Does the current problem merely amount to whether or not the threat is assigned to the Justice Dept. or the Defense Dept. Is this only Washington D.C. "inside baseball"?

Endnotes
1 177 F.3d 1160 (4th Cir. 1999)
2 629 F.2d 637 (9th Cir. 1980)
3 81 F.3d 124 (10th Cir. 1996)
4 758 F.2d 1254 (3rd Cir. 1984)
5 627 F.2d 83 (7th Cir. 1980)
6 403 U.S. 388, 91 S. Ct. 2999, 29 L. Ed. 2d 619 (1971)
7 719 F. Supp. 683 (N.D. Ill. 1989)
9 70 F.R.D. 51 (U.S. Dist. of Columbia 1979)
10 160 F.R.D. 565 (N.D. Ill. 1995)

The Queens Bar Bulletin - October 2010
Sparrow Leaves The Nest

Continued From Page 4 ———————————
wife Darcy, and children, Matthew (11) and Isabella (6).

Our daughter Laurie, a Brooklyn Law graduate, was an Assistant District Attorney in the Bronx for 17 years. When she experienced kidney failure, I donated her kidney in 1990. With my kidney, she made us proud grandparents of Dallas and Isabella (6).

After a rocky period for all of us, the Cody. Tragically, we lost our Laurie in 1990. With my kidney, she received from each and every one of these provisions for the spouse. Provisions for

| SAVING “GOODBYE” |

Continued From Page 3 ————————————

Saying “GOODBYE”

Continued From Page 9 ————————————

Spouses from being inadvertently disinherited. The bill, A.9857-a provides that wills, trusts, and beneficiary forms with formula credit shelter provisions executed before 2010 by persons who die in 2010 when the Federal estate tax is not in effect will be construed based on estate tax laws applicable to decedents who die on December 31, 2009. A similar provision will apply to the generation shipping transfer tax. This bill was signed into law this Summer.

Although the new legislation applies to persons who have not changed their wills and other testamentary documents, the better approach is to review these documents with competent estate planning counsel. Many persons may wish to provide specifically how their wealth will pass if there is no estate tax at death, and to otherwise use one of the alternatives below.

One approach for many older estate plans would be to change the Credit Shelter Trust funding to a disclaimer mechanism. This would provide that all assets pass to the surviving spouse with the exception of whatever amount he or she chooses to disclaim into the trust. The Internal Revenue Code § 2518 allows nine (9) months from the date of death for a disclaimer to be made. This gives us the advantage of making a decision in light of the Federal and New York State tax laws as they exist at that time.

Another possible approach is to provide that amounts of up to $1 million pass to a credit shelter trust, with any balance passing to the spouse. Provisions for

| ESTATE TAX PLANNING |

Continued From Page 9 ————————————

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Domestic Violence And Family Law

Continued From Page 1

modify the Office’s allocation of funds and agrees that an annual report to the Governor, Legislature and Judiciary.

The measure also amends the State Finance Law to provide that the Indigent Legal Services Fund must be used to fund the Office of Indigent Legal Services, to assist counties and New York City to improve the quality of Article 18-B representation and to assist the State with respect to assigned counsel under Judiciary Law §35. State funds provided to localities may not supplant existing funds and “every diligent effort” is required.

Effective: June 26, 2010.

II. CHILD WELFARE MEASURES

1. Termination of parental rights of incarcerated parents [Laws of 2010, ch. 113]: This measure amends Social Services Law §384-b to add an explicit prerequisite to “child’s best interests” and extends to incarcerate or participation in a substance abuse treatment program is a "significant factor in why the child is in foster care" if

• the parent maintains a meaningful role in the child’s life; and

• the agency has not documented a reason why the parent would not be appropriate to "file a TPR petition."

The assessment of "meaningful role in the child’s life" must be based upon evidence, which may include:

• expressions or acts manifesting concern for the child, such as letters, telephone calls, visits and other forms of communication with the child;

• efforts by the parent to work with the agency, foster parent or “other individu- als who have the child’s best interest,” attorneys for the parent and child and agencies providing services to the parent, including correctional, mental health and substance abuse "for the pur- pose of planning an appropriate service plan and repairing, maintaining or building the parent-child relationship;"

• positive response by the parent to the agency’s efforts to "complete the permanency plan" and

• whether the parent’s continued involvement in the child’s life is in the child’s best interests.

The agency must obtain input regarding these factors from an "individuals and agencies in a reasonable position to help make this assessment” and the court may direct the agency to "take such steps to aid in completing its assessment."

With respect to permanent neglect cases, the measure requires the court to consider certain "factors that may be "the result of the incarceration or residential drug treatment program, including, but not limited to, limitations upon family contact and "unavailability of social or rehabilitative services."

2. Subsidized kinship guardianship [Laws of 2010, ch. 127, §7 (permanency pro- c. Part F)]: This measure, which is part of the Fiscal Year 2010-2011 New York State budget, incorporates and expands §384-b of the Family Court Act and Rules Committee’s proposal to establish a subsidized kinship guardianship assistance program. Taking advantage of the oppor- tunity to add money from federal funds made "applicable to guardianships with relatives, pursuant to the Fostering Connections to Success and Increasing Adoptions Act of 2008 (PL 110-315) Subsection (b)." This measure amends Family Court Act §1055-b and 1089-a to permit the Family Court to order subsidized kinship guardianship at or after the time when the child’s best in- terests if a "clear and convincing proof established that the best interests of the child and the family support services. Finally, the state would be required to authorize use of audio- or video-conferencing technology in order to permit parents in prison or in residential drug treatment to consult in the development and periodic review of family service plans and requires the plans in such cases to "reflect the special circumstances and needs of the child and the family."

Effective: June 15, 2010.

3. Adoption registry [Laws of 2010, ch. 342]: This measure, developed by the Family Court Advisory and Rules Committee measure amends the statutes regarding termination of parental rights to allow the Family Court, in narrowly defined circumstances, to modify the additional orders concerning guardianship and custody of children in and to reinstatement of parental rights. A petition to restore parental rights would be permitted to be filed by any person who either

• has been discharged from foster care within the age of 18 would require the youth’s

extensions of trial discharges of youth over 18; hearings until youth reach the age of 21; and

Effective: Nov. 11, 2010.

5. Trial discharges of youth in foster care and the rights of youth under 21 to youth into foster care [Laws of 2010, ch. 342]: This measure, developed by the Family Court Advisory and Rules Committee, amends the Family Court of Children and Family Services must submit a State plan amendment to the United States Department of Health and Human Services for its approval and makes any necessary revisions to its rules and regulations in advance of that date. NYS OCFS must report annually, starting February 1. The Family Court is also required to "establish the criteria and procedures regarding the implementation of the program statewide." Effective: April 1, 2011. &

3. Adoption registry [Laws of 2010, ch. 181]: This New York State Department of Health measure provides that upon receiving a report of a foreign adoption, the NYS Commissioner of Health, rather than a local registrar, must file a birth certificate, provided that there is no other birth certificate other than a birth certificate issued in the State of birth. The birth certificate must be filed upon proof that the parent (not “or the child”) resides in New York State at the time of the foreign adoption; that the parent is not simply an IR-3, visa or a successor immigrant visa, suffices. Grandfathering in reports of foreign adoptions made to local registrars, the measure provides that "any existing certificates of birth data shall continue to be effective" and requires that reports made to local registrars and supported by documents submitted by foreign authorities, as was specified in the Judiciary Law §378-a. Additionally, individuals aggrieved by a local social services district’s failure to act upon an application must file a petition under Article 6 of the Social Services Law §378-a. In determining whether to approve the petition, the court is required to determine that neither adoption nor return home would be appropriate permanency options, that the child has a "strong attachment to foster parent, that there is evidence of inappropriate or inappropriate consultation with the foster parent for at least six consecutive months. The department is precluded to consider the financial status of the foster parent, but must consider the guardian’s need to provide for the child’s best interests. The guardianship assistance agreement includes provision of non-recurring expenses up to $2000 and remains in effect for 12 months after the guardian’s filing or failure to make payments or by the amount of such payments may apply to the child or by the amount of such payments made for the guardian’s or other party’s filing of a TPR petition. Because the child has been living with the relative as a "voluntary, juvenile delinquency or Persons in Need of Supervision placement cases in which the first permanency hearing has been completed. As prerequisites, the prospective relative guardian must have entered into a signed guardianship assistance agreement with the local social services department and must have cared for the child as a foster parent for at least six months prior to the application for the agreement. The relative must have also been certified as a foster parent under the Family Court Act or Article 17 of the Surrogate’s Court Procedure Act with the court presiding over the child protective or permanency plan "the case is "in the child’s best interests" and shall have "no further permanency hearings would be held and no services or supervision would be provided. In addition to the above prerequisites, in order to determine whether this option would further the child’s best interests, the Family Court must determine that the proposed kinship guardianship is appropriate and the relationship between the child and the relative. The Court would "consider the appropriate permanency options. The Court must "hold a" and "hold a" unless the child is fourteen or older, the Court must ascertain whether the child is "seven years of age or older. The Court must also provide that the local social services department’s "complete the permanency plan," and "the orders of permanency and family court’s order for guardianship. The Court must "issue notice of, and be made parties to, any subsequent proceedings to vacate or modify the order of guardianship."

The measure adds a new Title 10 of Article 6 of the Social Services Law [SSL §§458-a - 458-i], which sets forth defini-
Domestic Violence and Family Law

Continued From Page 15

motions before the Family Court that would allow the victim to have a meaningful ability to foster care. In such cases, the Family Court would be required to find that the youth has no reasonable alternative to foster care, that the youth has requested to attend an appropriate educational or vocational program and that such return is in the youth’s best interests. The local department of social services would have to present to the child’s reentry unless the Court finds that the consent had been unreasonably withheld. Effective: Nov. 10, 2011.

6. Abandoned infants [Laws of 2010, ch. 447]: This measure amends Penal Law §260.00 to provide that a person is not guilty of abandonment if he or she drops off, leaves, or intends to leave the infant in a safe place, or in a suitable location and the person who leaves the child prompts notify an appropriate person of the child’s location; and (c) the child is not more than thirty days old. The measure is an amendment made to Penal Law §260.10, endangering the welfare of a child, a Class A misdemeanor. By repealing the affirmative defenses contained in the abandoned infant protection law [Laws of 2000, ch. 156; Penal Law §§260.03 and 260.15], therefore, these amendments make these factors elements of the crime and also increase the ages of the abandoned children covered from five to thirty days old. Effective: Aug. 30, 2010.


III. JUVENILE JUSTICE AND RELEVANT CRIMINAL LAW MEASURES

1. Sexual contact [Laws of 2010, ch. 193]: This measure amends sections 310.03(3) and 260.31(2) of the Penal Law to remove the marital exemption from the definitions of “sexual contact” and to add “emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.” The latter change enables charges to be brought of endangering the welfare of a vulnerable elderly, incompetent or disabled person, a Class E felony, as well as sexual abuse in all three degrees (a Class D felony or a Class A or B misdemeanor, respectively), instead of simply Class B misdemeanor of public lewdness [Penal Law §245.00]. Effective: Oct. 13, 2010.

2. Orders of protection for designated witnesses [Laws of 2010, ch. 421]: This measure, similar to a measure proposed by the Family Court Advisory and Rules Committee to amend Family Court Act §352.1 to Family Court Act §352.2 to provide that upon issuance of an adjudgment in contemplation of dismissal under Family Court Act §352.2, a court may issue an order of protection prohibiting the respondent from intimidating or attempting to intimidate any designated witness specifically named in the order. As a prerequisite, the Court must make a finding that the respondent “did previously or is likely to continue to intimidate or attempt to intimidate such witness...” [Note: the new provisions protecting designated witnesses apply as well to court of supplementary jurisdiction. Family Court Act §304.2(2) authorizes temporary orders of protection, which may be issued any time after a juvenile is taken into custody or is the subject of an appearance ticket or after a petition has been filed, to contain any of the conditions enumerated in Family Court Act §352.3]. Effective: Nov. 28, 2010.

3. School bullying [Laws of 2010, ch. 482]: This measure, known as the Dignity for All Students Act §240-a, amends Article 2 to the Education Law to protect public school students from discrimination and harassment by students and school employees on school property and at school functions on the grounds of “actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, mental or physical abilities, sexual orientation, gender identity, or gender expression.” Additionally, “sexual orientation” includes “gender identity or gender expression” and “gender expression” includes “actual or perceived sex-related behaviors, gender identity, or gender role.” Effective: Oct. 29, 2010.

4. Juvenile Sex Trafficking: Safe Harbor Act Amendments [Laws of 2010, ch. 58, Pt. G]: The NYS budget contains provisions that would implement the Safe Harbor Act [Laws of 2008, ch. 569], which, inter alia, authorize the Family Court, where an accused or adjudicated juvenile delinquent or PINS may have been a victim of sex trafficking, to release the juvenile prior to disposition to an available short-term safe house and, if the courts finds the juvenile to be in need of a short-term safe house, the juvenile as a disposition with the local department of social services to reside in an available long-term safe house. Effective: April 1, 2010.

IV. DOMESTIC VIOLENCE MEASURES

1. Electronic and facsimile transmission of orders of protection for service [Laws of 2010, ch. 261]: This measure amends Family Court Act §153-b and Domestic Relations Law §§232-c and 232-d to permit orders of protection, temporary orders of protection and “any associated papers that may be served simultaneously” to be sent via facsimile or email. Domestic relations court proceedings to be transmitted to police or police officers electronically or by facsimile so that they can provide “expedited service.” By making the authorization statewide and permanent, it thus expands upon the temporary authority in Laws of 2007, ch. 330, for the judiciary to adopt and implement projects in counties for electronic and facsimile transmission of orders to law enforcement. The measure also fully conforms Domestic Relations Law §232-c and Family Court Act §153-b to incorporate the presumption of service of temporary orders of protection and orders issued upon default by a police or police officer unless the party requesting the order states on the record that he or she will make alternative arrangements. Effective: July 30, 2010.

2. Crime of endangering the welfare of an incompetent or physically disabled person [Laws of 2010, ch. 341]: This measure amends Penal Law §§260.32 and 34 to expand the crimes of endangering the welfare of vulnerable elderly persons in the second degree, to include “incompetent or physically disabled persons.” The definition of “caregiver” in Penal Law §150.10 is expanded to include a “person of the same household or family” in the defendant’s home who is unable to care for himself or herself because of physical disability, mental disease or defect. Effective: May 22, 2010.

3. Special ballots for Victims of Domestic Violence [Laws of 2010, ch. 38]: Expanding upon the statute permitting victims of domestic violence to cast a ballot at the polls at the Board of Elections, rather than having to appear at their local polling stations [Laws of 1996, ch. 702], this statute conforms the definition of “victims of domestic violence” within the scope of the statute to include “any individual who is a victim of dating violence, or stalking who is a victim of domestic violence, or stalking by an ex-spouse, a person with whom the victim has a child in common, a person to whom the victim is related by consanguinity or affinity within the third degree, or a person who is a member of an intimate relationship with the victim.” Domestic violence is defined to include an act or acts that resulted in actual physical or emotional injury or created a substantial risk of physical or emotional harm to the victim or the victim’s child that involved commission of a violent felony, domestic battery, or disorderly conduct, harassment in the first or second degree, aggravated harassment in the second or third degree, stalking, in the fourth or second degree, malicious mischief, menacing in the second or third degree, reckless endangerment, assault in the third degree or an attempted assault. Upon granting of such an order, the records must be kept separate from other records and not be made available for inspection or copying except by election officials when such records are needed for the purpose of their performance of their official duties. Effective: May 5, 2010.

5. Strangulation [Laws of 2010, ch.405]: This measure amends the Penal Law, the Criminal Procedure Law and the Family Court Act to create new crimes of strangulation and to include the new crimes in the list of family offenses for which criminal and Family Courts exercise concurrent jurisdiction. The new crime of strangulation is defined as “any intentional conduct, or commission of a violent felony, criminal obstruction of breathing or blood circulation, a Class A misdemeanor, to criminal strangulation in the first and second degree, a Class C and D violent felonies. It is a valid affirmative defense if a strangulation procedure was performed for a valid medical or dental purpose. Effective: November 11, 2010.

6. Orders of Protection: Non-contemporaneous events [Laws of 2010, ch. 341]: Overruling a line of appellate cases, this measure amends the Family Court Act and Domestic Relations Law to provide for domestic violence protection orders that shall not be denied simply because the events alleged are not “relatively contemporaneous” with the application. Effective: August 13, 2010 (applies to OP’s pending and entered after that date).

7. Extensions of orders of protection [Laws of 2010, ch. 325]: This bill authorizes the Family Court to extend an order of protection for a “reasonable period” of time upon a showing of good cause (instead of the current standard of “reasonable period not to exceed six months from the date the parties’ consent.” The fact that abuse hasn’t occurred during the pendancy of the order may not be a ground to deny the extension. The court must state “a basis for its decision” on the record. Effective: August 13, 2010 (applies to OP’s pending and entered after that date).

8. Extension of referee and judicial hearing officer authority to hear ex parte applications for temporary orders of protection [Laws of 2010, ch. 363]: This measure extends the referee and judicial hearing officer authority to hear ex parte applications for orders of protection statewide at any hour. Effective: August 13, 2010.

9. Service of referrals and Violations of Orders of Protection [Laws of 2010, ch. 446]: This Family Court Advisory and Rules Committee measure amends Family Court Act §153-b to provide litigants with the same options of providing notices to the parties’ counsel, submitting copies of the petition and referral to a judge or hearing officer, and providing orders of protection and “any associated papers that may be served simultaneously” to be made available for inspection or copying except by election officials when such records are needed for the purpose of their performance of their official duties. Effective: Continued On Page 18.
Best Interests Of The Child

Continued From Page 8

“best-interest hearing.”

Artificial Insemination is such a new
demonstrative change of circumstances, in order
New York Domestic Relations Law
section that it cuts
demonstrate an unanticipated and unrea-
domestic relations. Following is a sample of views on this
demonstration of Children Born by Artificial
ought to see “The Kids are All Right.”
section, 73, is entitled “Legitimacy
artificial insemination has banned artificial insemination
funds of artificial insemination has been set
come closest to asking the right ques-
dominated the legitimate, birth child of the
with respect to such

Connecticut Statutes, Section 45a-777, provides that
a child born as a result of artificial insemi-
Connecticut Statutes, Section 45a-777, provides that
a child conceived through artificial insemination cannot inherit
Connecticut State Legislature also

Any child born to a married woman by
means of artificial insemination performed
by persons duly authorized to practice
medicine and with the consent in writing of
the woman and her husband, shall be
deemed the legitimate, birth child of the
husband and his wife for all purposes.”

Our New York State Legislature has left
unanswered whether the “best interests of
the child” standard of DRL Section 240 is
violated when the Sperm Donor Father
remains unknown to the child.

Oregon Revised Statutes, Section
109.239 provides that the Sperm Donor
Father “shall have no right, obligation, or
interest with respect to a child born as a
result of the artificial insemination; and (2) a
child born as a result of the artificial
insemination shall have no right, obliga-
tion, or interest with respect to such
donor.”

The Oregon State Legislature clearly
has not seen “The Kids are All Right.”

Connecticut Statutes, Section 45a-773,
provides that all artificially inseminated
children must be registered with a
Connecticut Probate Court.

Connecticut Statutes, Section 45a-775,
provides that the donor of sperm or eggs
“shall not have any right or interest in any
child born as a result of artificial insemi-

Connecticut State Legislature apparently
did not see “The Kids are All Right.”

The secular Muslim Nation of Turkey
has banned artificial insemination entirely.
Further, Turkey has made it a crime for
a Turkish woman to be artificially insemi-
nated in a foreign country. See www.
prl.org/world/turkey.

Rabbi Elliot N. Dorff, in an article entitled
“Artificial Insemination in Jewish Law,”
summarizes Judaism’s view on this topic:

“By and large, rabbis who have ruled on
these matters thus far have maintained that
for the purposes of this commandment, (be
fruitful and multiply), the father is the man
who provides the semen. That would make
a man who impregnates his wife through
artificial insemination the father of his
child in Jewish law, and it would also
make a semen donor the father of any chil-
dren born through the use of his semen.”

See www.myjewishlearning.com/
beliefs/issues/
Bioethics/fertility.

The Roman Catholic Church’s teaching
on artificial insemination has been set
forth by Martin L. Cook in the publication
of the Jesuit’s Markkula Center for
Applied Ethics of Santa Clara University.
Mr. Cook summarizes the Church’s posi-
tion as follows:

“(The Church) opposed all technologi-
cal interventions into the process of human
reproduction. More specifically, the docu-
ment condemned artificial insemination and
embryo transfer, in vitro fertilization,
and surrogate motherhood under all cir-
cumstances. It all opposed experimentation
on all embryos when such experi-
ments were not of direct therapeutic
fit to the fetus, and amniocentesis (a pro-
cedure used to detect fetal defects) when
done for the purpose of deciding whether
or not to abort the fetus.”

See www.scielo.br/scielo.php?script=sci_arttext&
lang=pt

The Rev. Edward Schneider, writing on
‘artificial insemination’ for the
Evangelical Lutheran Church in America,
stated his view as follows:

“More serious from an ethical stand-
point is the moral assessment of the role
played by the donor. Though not explic-
itly dealt with in the ethical considera-
tions discussed above, that discussion
does bear implicitly on the donor’s
responsibility for his actions. The donor
clearly exercises his procreative powers
apart from any marital bond or commit-
tment. He remains anonymously hidden
from both the mother and the child, refus-
ing his responsibility as a father.
His function remains that of a sperm
salesman, failing to take full responsibil-
ity for his biological offspring. Even
though it may be argued that he does
what he does as an act of love to provide
a child for a childless couple, neverthe-
less love can never oblige one to perform

an action which by its nature violates the
fundamental unity of the personal and
biological dimensions of sexual inter-
course within the covenant of marriage.”

See www.alca.org (What We Believe -
Social-Issues/Journal-of-Lutheran-
Ethics.)

The science of artificial insemination
has placed humanity on the precipice of a
brand new world.

The U.S. District Court for the Northern
District of California, the New York State
Court of Appeals, the Legislatures of New
York, Oregon and Connecticut, Rabbi
Elliott N. Dorff, the Roman Catholic
Church, and Rev. Edward Schneider, can-
not provide us with answers, or even any
semblance of answers.

The writers, directors, producers and
actors of the film “The Kids are All Right”
have come closest to asking the right ques-
tions in the scenes they so movingly pre-
sented between and among two teenagers
conceived through artificial insemination
in their first meetings with their Sperm
Donor Father.

In the Old Testament, King Solomon
was asked to decide the custody of a child
whose parentage was disputed. His solu-
tion has given rise to the phrase “The
Wisdom of Solomon.” See First Kings,
3:16-28. Each one of our Supreme Court
Matrimonial Term Judges must act as King
Solomon every day as they decide disputed
child custody and child visitation cases.

It is hoped that this article will advance
the law on this subject and help us to con-
tinue our common humanity in light of the
science and popularity of artificial insemi-
nation.

BY GEORGE J. NASHAK JR.*

Question #1 - If a party is a member of the
Federal Employees Civil Service
Retirement System, should that party’s
pension for the purposes of equitable dis-
tribution be reduced in an amount equiva-
lent to Social Security benefits?
Your answer -

Question #2 - In order to obtain an
upward modification of child support from
a court order entered on consent of the par-
ties, is it required to demonstrate an unic-
terrupted and unreasonable change in cir-
cumstances?
Your answer -

Question #3 - When is it necessary to
demonstrate an unanticipated and unreas-
onable change of circumstances, in order
to obtain an increase in child support?
Your answer -

Question #4 - True or false, a
family offense must be estab-
lished by a fair preponderance of
the evidence?
Your answer -

Question #5 - Are a physician’s office
records admissible in evidence as business
records under CPLR 4518(a)?
Your answer -

Question #6 - True or false, medical
reports, as opposed to day-to-day business
entries of a treating physician, are not
admissible as business records where they
contain the doctor’s opinion and expert
proof?
Your answer -

Question #7 - If one spouse
transfers marital assets into cus-
todial accounts for the parties’
children, without the consent of
the other spouse, is the other
spouse entitled to an equitable
share of the transferred funds?
Your answer -

Question #8 - In calculating child sup-
port in accordance with the CSSA,
do you deduct FICA taxes from all of the income
of the parties?
Your answer -

Question #9 - Can a client waive the
rule that in matrimonial cases an attorney
must act as King Solomon every day as they
deide disputed child custody and child visitation cases.

It is hoped that this article will advance
the law on this subject and help us to con-
tinue our common humanity in light of the
science and popularity of artificial insemi-
nation.

*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 19
V. CHILD SUPPORT AND MATERI-
MONIAL MEASURES:
1. “Low Income Support Obligation and Performance Improvement Act;” modification of child support orders
[NYS OTDA bill; Laws of 2010, ch. 182]:

a. Modifications of child support orders, judgments and stipulations:
Incorporating a proposal made by the Family Court Advisory and Rules Committee, this bill, submitted to the New York State Office of Temporary and Disability Assistance, resolves the disparity between public and private child support orders by offering a way for the court to seek court-ordered modification. Under present law, in Title IV-D cases, including both cases of custodial parents on public assistance whose rights are assignable to the Department of Health and agencies of the Department of Social Services and custodial par-
ents who have requested child support services, child support petitioners may obtain complete review of child support orders by objecting to the periodic cost of living adjustments [Tompkins County Support Collection Unit on behalf of Linda S. Chamberlin, 99 N.Y.2d 328 (2003)], in contrast to private litigants, including parents not in receipt of child support services, who must demon-
strate an unforeseen change in circumstances. The measure amends the Family Court Act to afford the Support Collection Unit, that links to an on-line calculator. The measure establishes a formula for cal-
culating presumptive guideline amounts for temporary post-marital maintenance, expands the factors to be utilized in deter-
ing final orders of maintenance and requires the Law Revision Commission to perform a study to guide legisla-
tion, particularly with respect to final orders of maintenance. It directs the court to promulgate any necessary rules in order to implement the statute. Significantly, the measure only amends the Domestic Relations Law and Family Court Act, and thus applies on a retroactive basis to orders issued prior to the effective date of subdivision 5-a of the measure. All child support orders must contain a notice of the right to apply for a modification of the order based upon the passage of three years, or a 15% change in the gross income of either party subsequent to the issuance of a final order of a review of the economic consequences of the order. Where the change in income is due to court-ordered modification, the court must consider and reason for its determination.

b. Employer obligations:
The measure requires employers to report whether an employer is currently or would be the lesser of:
• 30% of the payor’s income up to the income cap minus 20% of the payee’s income
• 40% of the SUM of the payor’s income up to the income cap plus the payee’s income MINUS the payee’s income (i.e., for the purpose of calculating the payee’s income from 40% of the sum of the payor’s income up to the income cap plus the payee’s income)
If the payor’s income is up to or including the income cap of $500,000 (adjustable every two years, starting January 31, 2012, based upon Consumer Price Index changes), the guideline amount for temporary maintenance would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero. If the presumptive temporary maintenance award would be zero.
ANSWERS TO MARITAL QUIZ FROM PAGE 17

Question #1 - If a party is a member of the Federal Employees Civil Service Retirement System, should that party’s pension for the purposes of equitable distribution be reduced in an amount equivalent to Social Security benefits?


Question #2 - In order to obtain an upward modification of child support from a court order entered on consent of the parties, is it required to demonstrate an anticipated and unreasonable change in circumstances?

Answer - No, the parties seeking the increase need only demonstrate a change in circumstances sufficient to warrant a modification. Matter of Jewett v. Monfoletto 2010 NY Slip Op 02953 (2nd Dept.).

Question #3 - When is it necessary to demonstrate an anticipated and unreasonable change of circumstances, in order to obtain an increase in child support?

Answer - When modifying a separation or settlement agreement incorporated, but not merged, into a judgment of divorce. Matter of Jewett v. Monfoletto 2010 NY Slip Op 02953 (2nd Dept.).

Question #4 - True or false, a family offense report is evidence against the defendant which is admissible on the issue of guilt? 2010 NY Slip Op 03396 (2nd Dept.).

Question #5 - When modifying a separation or settlement agreement incorporated, but not merged, into a judgment of divorce, is it required to demonstrate an anticipated and unreasonable change in circumstances?


Question #6 - True or false, medical reports, as opposed to day-to-day business entries of a treating physician, are not admissible as business records where they contain the doctor’s opinion and expert proof?


Question #7 - If one spouse transfers marital assets into custodial accounts for the parties’ children, without the consent of the other spouse, is the other spouse entitled to an equitable share of the transferred funds?


Question #8 - In calculating child support in accordance with the CSSA, do you deduct FICA taxes from all of the income of the parties?

Answer - No, just from the income upon which FICA taxes are “actually paid.” Brevits v. Brevits 2010 NY Slip Op 03396 (2nd Dept.).

Question #9 - Can a client waive the rule that in matrimonial cases an attorney must send the client itemized bills at least every 60 days?


Question #10 - Was it error for the Supreme Court to order a parent to pay for the college education of a child who at the time of the order was seven years of age?

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