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Queens Bar Bulletin

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

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Valuable Legal Education, Mentoring & Internship Opportunities

BY SHARON ZIEGLER*

Students are often interested in learning about the legal world, yet they do not know how they can get involved in it. Referee Elizabeth Yablon is an extraordinary woman dedicated to helping students attain the vital resources that they so badly need. Currently, Hon. Yablon serves as a Referee of the New York State Supreme Court in Long Island City.

Hon. Yablon has recently become Chairperson of the National Association of Women Judges, District #2's Committee on "Legal Education, Mentoring & Internship Opportunities", as well as Chairperson of the "Equal Opportunities in the Profession Committee," for the New York State Women's Bar Association. She has also served as Chair of the Mentoring Committee of the Queens County Bar Association since 2003 and for the past two (2) years has been hosting a legal education mentoring and internship reception with the Chair of the Public Relations Committee, Gregory Brown, Esq.

Her goal is to provide access to a wide range of individuals who are interested in learning, and give them the opportunities to learn from experts in the field.

Referee Yablon has created and has been involved in various successful programs in the past which educated the youth about the law, and the legal profession in general. Hon. Yablon created a symposium, in 2006 titled "My Rights, My Nation, Constitutional Freedoms Now and Into the Future", which gives young people the opportunity to analyze and understand the freedoms guaranteed by the constitution and how they affect them, in the hope that they will be part of continuing to create advances and a better society for all. Regular panelists at this program include, Hon. Daniel Lewis, Justice, NYS Supreme Court, Hon. Jeffrey Lebowitz, Justice, NYS Supreme Court, Hon. Elizabeth Yablon, Referee, NYS Supreme Court, Alan Rothstein, Esq., General Counsel of the NYC Bar Association, Gabriel Brown, Director of Student Legal Education and Opportunities Program of the NYC Bar Association.

Hon. Yablon is presently creating a new up and coming website or blog called, "LEMIO" (Legal, Education, Mentoring & Internship Opportunities). The primary function of the website/blog will be to make legal internships and mentoring opportunities available to as many people as possible. The website will benefit attorneys, law and college students. The site will provide a list of mentoring and learning opportunities for students. There will be a calendar that will be updated on a regular basis listing past and future events being held by organizations. Anyone interested in either hosting or participating in a mentoring program can easily do so by clicking on "contact us" and filling out their name, e-mail address and a short message.

This website/blog will continue Referee Yablon's mission of helping attorneys in need of opportunities as well as to educate the youth and nurture their interest in the law. She has always worked at making law relatable and interesting for all; the launching of LEMIO is her next big step in doing so.

**Sharon Ziegler is presently a Senior at Queens College and plans to attend law school next fall. Intern to Hon. Elizabeth Yablon Referee, NYS Supreme Court*

Hypocrisy Derailed

ARNOLD H. RAGANO, ESQ.

Policing the world with arrogance
A ruinous course we doth pursue
We destroy and rebuild with negligence
Our vaunted democracy do we undo

Rome was destroyed by unlimited excesses
History replete, leaders unconcerned
Promising roseate futures without abysmal
recesses
Insouciant, hopefully remain unburned

Our fathomless expenses in wars not won
Draining the fisc with unlimited bent
Fostering hatred with work undone
In foreign nations grossly misspent

These funds to reconstruct
Our tottering structures in dire need
An economic stimulus would then conduct
A rash of employment this tactic will seed

Queens Bar President Honored

On October 12th at a ceremony celebrating Hispanic Heritage Month, Queens County District Attorney, Hon. Richard A. Brown presented an award honoring Queens County Bar Association President, Richard M. Gutierrez. President Gutierrez is the first Latino President of the Queens County Bar and a past President and founder of the Latino Lawyer's Association of Queens County.

To quote District Attorney Brown;

"To celebrate the contributions of the Latino community in Queens, each year during Hispanic Heritage month we honor individuals of Latino descent who exemplify the values of leadership, public service and commitment to excellence. In years past we have honored Judge Fernando Camacho, Senator Jose Peralta, the Latino Lawyers Association, Dr. Eduardo Marti and last year's honoree, Assistant District Attorney Mariela P. Herring. This year we are proud to add Richard M. Gutierrez to those to whom we pay tribute."

Other speakers at the ceremony were Assistant District Attorney Mariela P. Herring, Bureau Chief of the Gang Violence and Hate Crimes Bureau and Assistant District Attorney Frederica E. Jeffries, Supervisor, Special Prosecutions Division. Accompanying President Gutierrez for the ceremony was his wife of 24 years Yvette. In Richard's remarks he expressed his gratitude to the District Attorney for this honor especially considering that he, Richard, is a criminal defense attorney. This meant that much more to him that his "adversary" would honor him as a representative of the Latino community.

To mark Hispanic Heritage Month, Queens County District Attorney Hon. Richard A. Brown honored QCBA President Richard M. Gutierrez, the first Latino President of the Queens County Bar.

Save The Date

Queens County Bar Association

HOLIDAY PARTY

Thursday, December 15

Presidents of County Bar Associations, from left: John Z Marangos, Rockland County Bar Association; Chistopher M. Di Lorenzo, Bronx County Bar Association; Andrea E. Bonina, Brooklyn Bar Association; James B. Kobak, Jr., New York County Lawyers Association; Marc C. Gann, Nassau County Bar Association; Seymour W. James, Jr., President-Elect, and Vincent E. Doyle, President, New York State Bar Association.

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THE DOCKET . . .

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

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

November 2011

Tuesday,	November 29	Criminal Law Series - Pt 2
Wednesday,	November 30	Motion Practece 1-2 pm

December 2011

Tuesday,	December 5	Guadianship Training for Layperson 2:30 - 5:00
Thursday,	December 15	Holiday Party at Douglaston Manor
Monday,	December 26	Christmas Holiday - Office Closed

CLE Dates to be Announced

Elder Law	Insurance
Labor Laws	Supreme Court & Torts Section

NEW MEMBERS

Margaret Bennett
Adam P. Antreassian
Brittany S.R.A. Bisnott
Donald S. Domitrz
Dietrich P. Epperson
Sabine K. Franco
Jason Gines
Eric A. Greenbaum
Jose O. Hasbun
Kamil S. Karczmarczyk
Matthew Seung-Kwan Kim
Jessic s. Leis
Kelly S. Maharaj
Corry L. McFarland
Yitzhak Oppenheim
Makenna E. Porch
Patricia Sturm
Camelin-Arnold F. Telesfort
Josephine Wu
Roman Yushuva

NECROLOGY

David M. Kaplan
Milton Scher

Supreme Court Committee Report

BY: JOSEPH CAROLA III, CO-CHAIRPERSON

CHANGES TO THE PRELIMINARY CONFERENCE ORDER

Sometime last year Administrative Judge of Queens County, the Honorable Jeremy Weinstein, assembled a task force of sorts to address perceived inadequacies in the entire Preliminary Conference process, from the conference itself to the orders that emanate from these conferences. The task force, comprised of attorneys, court personnel, judges and referees, was charged with making the Preliminary Conference process relevant again. The result is a new Preliminary Conference Order, accompanied by Preliminary Conference Part Administrative Rules, which will go into effect early next year.

When we started the process, the initial question was whether personal appearances at these conferences are even necessary anymore or would the process be more streamlined by adopting a system wherein the court simply issues the order on its own accord. After much discussion, it was agreed that, for many reasons, there remains a need for represented appearances at these conferences.

The next task was to determine what worked, and what did not work, in the process. One of the concerns expressed by the administration was that cases routinely appear on the trial calendar in which discovery is still not yet completed. The practitioner's knee jerk response to this is that "we are forced to file a Note of Issue, whether discovery is completed or not, as per the terms of the Compliance Conference Order". While this is true, this argument really ignores the fact that many practitioners are dilatory in prosecuting, as well as defending, their respective cases. Former Administrative Judge Steven Fisher was fond of reminding the bar that the court does not care what we do with respect to the prosecution, or lack thereof, of our cases prior to the filing of the Request for Judicial Intervention. We are free to do as much, or as little, discovery as we wish prior to asking the court to get involved. However, once the RJI is filed, the court now has an interest in ensuring the discovery is completed timely.

While it is easy to scapegoat the Compliance Conference part, the fact of the matter is we are ultimately charged with complying with the terms of the

Continued On Page 11

EDITOR'S NOTE

Introduction to "Electronic Filing"

BY PAUL E. KERSON

Paul E. Kerson

"Electronic filing" is the wave of the future. It eliminates reams of paper from the Court system. It saves the State a fortune in filing space costs. It has been formally adopted in some parts of the sprawling New York State Court system. Following is one example of how well it is working:

JUDGE: "Counsel, we are on for oral argument of the motion for summary judgment in this case. All I have is an empty Orange Folder marked "electronic filing". Where are the motion papers and extensive exhibits?

OVERWORKED PLAINTIFF'S ATTORNEY: "Judge, the Part Z Rules require 'electronic filing' so I paid American Clerical Service an extra fee to do just that. Here is my receipt from American Clerical showing that they electronically filed my motion with the Clerk of this Court.

JUDGE: "I don't care what you did with American Clerical. I want to know why the motion papers, with exhibit tabs, are not in the Orange Folder marked "electronic filing". You can't seriously expect me or my overburdened Law Secretary to decide any motion without exhibit tabs, do you? It is the exhibit tabs which enable us to quickly flip back and forth among the multi-page contracts, financial reports, police reports and medical reports so we can understand the evidence in this case without spending hours scrolling on a computer screen.

Continued On Page 9

2011-2012
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of the
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President's Message

When I became a member of the Queens County Bar Association in 1986, I never envisioned twenty-five years later, I would be addressing you as President. Being the President is a remarkable experience. Although it requires a great deal of time and hard work it is an opportunity I will cherish forever.

As a young lawyer, I joined the Association primarily to network, interact with other attorneys and to meet members of the judiciary. It seemed to be the best way to learn how to become a better lawyer. Membership permitted me to learn from seasoned practitioners how to practice law. From these lawyers I learned how to solve some of the legal issues I had never encountered before. Being a member of the Association also gave me the opportunity to mingle with many of the judges I would eventually appear before in court.

In addition, membership afforded me the opportunity to increase my knowledge of the law and to continue my development as an attorney. As I increased my participation in the Association, I began to meet and interact with the leaders of the legal community of Queens County. Membership, to this day, still continues to provide me with networking opportunities that have furthered my legal career.

For those lawyers who are not members of the Association yet, it is time to join. Don't let the opportunity to enhance your development as a lawyer slip by. Become a member today. We need you. Your ideas, knowledge and participation are crucial to our vibrancy and relevance. There are approximately 6,000 lawyers that either reside or have an office in Queens County. Unfortunately, most of these lawyers are not members of the Queens County Bar. If you know any of these lawyers, please try and persuade them to join.

Richard Michael Gutierrez

On October 4, 2011, the Association, held a free CLE seminar on Recent Significant Decisions from Our Highest Appellate Courts. The bar building was filled to capacity and buzzing. I was thrilled to learn that nearly three hundred members attended the event. It reminded me of the importance of CLE events held at the Association.

I want to thank the three speakers, J. Gardiner Pieper, Esq. Paul Shechtman, Esq. and Spiros A. Tsimbinos, Esq., for their scholarly presentations and continued support of our organization. Each year this event is made possible by the hard work and dedication of our past President Spiros A. Tsimbinos, Esq., and the staff of the Association.

In September, 2011 the Queens Volunteer Lawyers Project was recognized in the New York Law Journal for the outstanding pro bono service it provides to the residents of Queens County. Congratulations to Mark Weliky, Esq. the Pro Bono Coordinator, Corry McFarland, Esq. the Foreclosure Prevention Coordinator, Jason Gang, Esq. the Foreclosure Prevention Administrator and all the pro-bono attorneys that assist those persons who cannot afford to hire a private attorney. You have given those persons access to justice.

Over the last couple of months, I have tried to create a stronger and more significant relationship with St. John's Law School. My goal was to increase law student membership. This initiative was well received by St. John's Law School. In fact, on October 25, 2011 the Queens County Bar Association was invited to participate in St. John's Annual Public Service Specialty Roundtable Program. At this program members of the QCBA, along with Arthur Terranova, Executive Director of the Association, Jennifer Gilroy, Board of Managers member and I were present. We set up a table and were able to speak directly with students regarding the benefits of becoming a member. Collectively, we succeeded in obtaining eight law students to join the Association. Hopefully, this success is just the beginning and more St. John's Law students will become members. I will continue to pursue this initiative and will inform you of my progress.

On December 15, 2011the QCBA will hold its Annual Holiday Party at the Douglaston Manor. As in the past, this holiday event will be co-sponsored by the Brandeis Association, Hellenic Lawyers Association, Latino Lawyers Association of Queens County, Macon B. Allen Black Bar Association, Queens County Women's Bar Association and St. John's Law School Alumni Association of Queens County.

Please join us as we celebrate the holiday season and reflect on the joy and wonderment of this special time.

May the spirit of the season bring you and your family good health, happiness and prosperity. Have a safe and happy holiday.

Very truly yours,

Richard M. Gutierrez
President

Queens Bar Hosts 80th Annual Albany Trip

By Morgan Smith*

On June 2nd 2011, the Queens Bar Association continued its tradition of giving back to the community and investing in the enlightenment and education of the youth by hosting its 80th annual trip to Albany. The purpose of this trip is to give high school students the chance to learn how the government is organized and see how it operates on the state level.

The students gathered in front of Queens Borough Hall by 8:30 a.m. in their dapper fashions, understandably groggy yet eager to get on the road: The Executive Director, Mr. Arthur Terranova, checked off and accounted for all the students who wished to participate in the trip, and then we were off making our way up to Albany. I handed out ID badges as the students read, napped and talked amongst themselves. Halfway there, Justice Daniel Lewis introduced himself to the group, as well as the other chaperones for the trip: Mr. Arthur Terranova; the wife of a former president, Mrs. Linda Rosenthal; Jamaica High School Teacher and Law Coordinator Ellen Frank; Principal Law Clerk to Justice Justice Lewis, Mr. Richard Johnson and me, his Judicial Intern. Justice Lewis went on to explain our schedule for the afternoon and to show an informative film entitled, "The Chateau on the Hill," which was about the State government.

As we exited the bus, we were struck by the beauty of the state capitol buildings. We were given a brief view of the landscape before we headed inside the Legislative building for lunch. As the students enjoyed their complimentary meal, they were treated to a visit from Assemblyman Michael Dendekker and Senator Joseph Addabbo, Assemblyman Dendekker discussed the issue of unintended consequences with us, giving the example of laws established by the state in compliance with federal law, which results in the mass accumulation of unused re-election ballots that require costly storage.

After lunch, we made our first stop at the Court of Appeals, where we sat in on three cases. The seven judges presented an intimidating picture seated at the panel before us as they listened to and questioned the attorneys on each case. The first of these cases dealt with an accident near Genesee, New York, involving Ontario tourists. Here, the issue was whether Ontario Law and New York Law should apply and where the difference affected a financial cap in damages received. The next two cases addressed the issue of parole and resentencing under the Rockefeller Drug Law Reform Act. Following the conclusion of these proceedings, Judge Lewis addressed the crowd of students, questioning them about what they had learned to insure that they understood what they had seen. We were later greeted by Mr. Gary Spencer, Press Officer of the Court of Appeals, and Heather Davis, Esq., a motions clerk, who provided further insights into litigations and how the Court of Appeals functions.

We also visited the Executive Branch and the Governor's Blue room, where press conferences are held and talked to the Appointments Secretary to the Governor, Hon. Leslie Leach. Later, Assistant General Counsel to the Governor, Katherine Granger, Esq., gave a brief explanation of how a bill becomes a law. The students appeared deeply impressed by the informative aspects of the trip. The high point of our visit was when we met with the Sergeant at Arms of the Assembly, Mr. Wayne Jackson. Mr. Jackson immediately won over the high school students not only with his charm and charisma, but also with his provision of jelly beans and by allowing the students to sit in the chairs of the Assemblypersons as he explained the history and purpose of the room's layout.

The students were allowed to put their democratic rights into practice by voting on which movie to watch on the trip home, as various law materials were bring distributed for their perusal. We concluded the trip by eating in an upstate restaurant before heading back to Queens.

The Queens Bar Association was once again successful in assisting students in learning about their state government. Each student later expressed his/her gratitude for being afforded this opportunity. The experience has given us all great insight into the Court of Appeals and the Appellate process. We are uniform in our wish that the Bar Association will continue to provide this opportunity for students in the coming years.

**Ms. Smith is a junior at Penn State University and a Judicial Intern to the Hon. Daniel Lewis.*

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HISTORY CORNER

The Lincoln Assassination Conspiracy Trial

A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect.

——- ***Sir Walter Scott***

The Lincoln assassination has been an unending source of interest to all Americans. Few of us do not know that the actor John Wilkes Booth shot and killed the President at Ford's Theater in Washington, D.C. Most people are well aware of Booth's dramatic leap from the stage and his escape on horseback to Virginia. His death in a burning barn twelve days later brought his life to an end. There was no need for a trial.

However, far fewer Americans know that Booth's evil deed was part of a greater conspiracy. This included attempts to kill Vice-President Andrew Johnson and a vicious but unsuccessful attack upon Secretary of State Seward. After a vigorous manhunt, eight conspirators (Samuel Arnold, George A. Atzerodt, David E. Herold, Michael O'Laughlen. Dr. Samuel A. Mudd, Lewis Powell, Edman (Edward) Spangler. and Mary Surratt) were arrested. A trial was to be held as quickly as possible at the insistence of Secretary of War Stanton.

The Trial

For attorneys, the trial of these conspirators should be of great interest. The proceeding itself was before a specially appointed military commission in Washington. In fact, the initial legal issue was whether the trial would be a military or civilian one. Many of the same constitutional issues that are presented in today's terrorism trials were faced by Andrew Johnson's administration once the defendants were captured.

On May 1, 1865 (just a few weeks after the assassination and even before Lincoln was buried) President Johnson ordered that a military commission of ". . . nine competent military officers. . ." would be held. The trial was to ". . . be conducted by the " . . .Judge Advocate General. . . ." The members of the commission were well known general officers. Perhaps the most famous was Lew Wallace, the author of *Ben Hur* and a prominent Civil War general.

In making this decision, the President received the significant input of Secretary of War Stanton and Attorney General James Speed. In July of 1865 Attorney General Speed set forth a lengthy detailed written explanation of why a military tribunal was necessary. It still makes fascinating reading, especially when compared with the circumstances we face today.

Attorney General Speed held ". . .that if the persons who are charged with the assassination of the President committed the deed as public enemies. . .they not only can, but ought to be tried before a military tribunal. If the persons charged have offended against the laws of war, it would be probably wrong of the military to hand them over to the Civil Courts, as it would be wrong in a Civil Court to convict a man of murder who had, in time of war, killed another in battle".

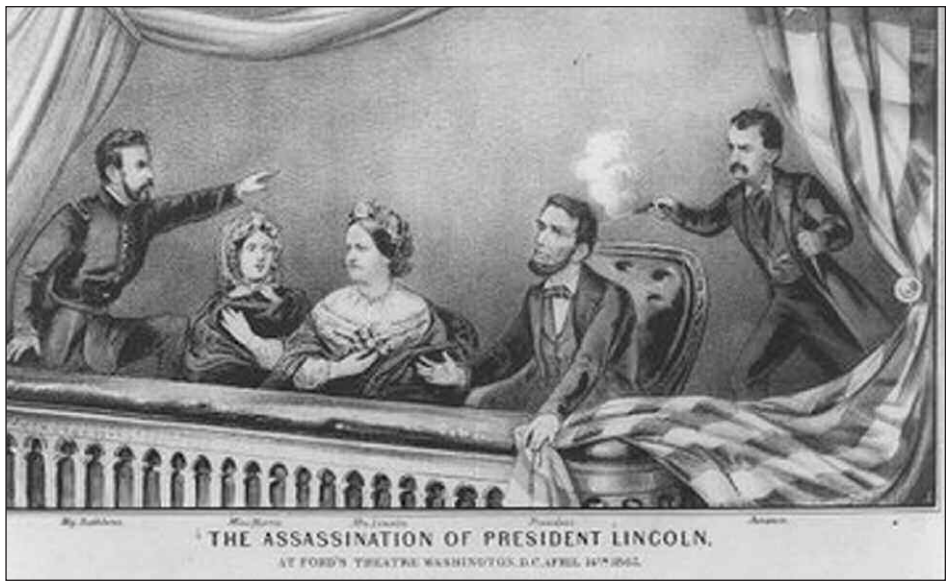
The use of military tribunals for civilians was later found to be unconstitutional by the Supreme Court in ***Ex Parte Mulligan.***

Conduct of the Trial

The presiding judge at the trial was Judge Advocate General of the Army, Joseph Holt. He had been the Secretary of War in the Buchanan administration and had served in the Civil War rising to the position of general. He was a well known politician and had even been considered for the Vice Presidential nomination in 1864 (Andrew Johnson was the nominee).

Even though the cases against these defendants were being prosecuted by the military, there was no conflict perceived.

Each of the defendants had their own attorney. Defense counsel had varying degrees of experience and expertise. The proof as to each defendant differed. For example, there was little question as to the vicious attack by Lewis Powell (no relation to the United States Supreme Court justice of the 20th century) upon Secretary of State Seward. There were several witnesses and ample proof available. In contrast, the case against Mary Surratt was rather tenuous and her lawyers believed that she would be acquitted. Even though the trial took two months to complete. On most days the defendants (except Dr. Mudd and Mary Surratt) were brought into Court with hoods over their heads. This was at the direction of the Secretary of War who was convinced of a conspiracy by the remains of the Confederate government. The appearance was shocking,



and one of the members of the tribunal even compared the proceedings to the Spanish Inquisition. The hoods were to be worn at all times, even when the defendants were in their cells. There were slits for the eyes and for eating purposes. Drawings of what this looked like are available including an interesting one by General Wallace. Later in the trial the hoods were removed. They also had to wear wrist irons and anklets connected to a 75 pound ball.

Conviction and Punishment

On June 30, 1865 the tribunal found all eight guilty. As noted four of them (Mary Surratt, Lewis Powell, George Atzerodt and Michael O'Laughlen) were sentenced to be hanged just a day later. Photos of these defendants hanging on the gallows are available.

It was the decision as to Mary Surratt that created the major controversy after the sentencing. In fact, on July 7, 1865, Andrew Wylie, a Judge of the (Supreme) Court of the District of Columbia issued a writ of habeas corpus. It directed General Winfield Hancock, the military officer in charge of the proceeding (a war hero and later a candidate for President) to appear and produce Mary E. Surratt.

This led President Johnson to utilize his authority and suspend the writ of habeas corpus. Despite this General Hancock did appear before Judge Wylie. However, the judge held that he was powerless to take any further action and he declined to make any further order. Accordingly, the writ was unsuccessful and May Surratt was hanged. The controversy as to her guilt continues today.

As to the four conspirators that were sent to prison. However, Dr. Mudd was pardoned and released on March 1869 due to good deeds in the yellow fever epidemic at the prison. By that time, the same disease had killed Michael O'Laughlen. Edward Spangler and Samuel Arnold were released at the same time as Dr. Mudd.

On November 13, 1866, the last defendant, John Surratt (Mary's son) was finally arrested in Alexandria, Egypt. He was the ninth (and final) conspirator. However, he was not subjected to the military tribunal due to the decision of the United States Supreme Court in ***In Re Mulligan***. Instead he was tried by a civil jury which led to a mistrial. He was never retried because by that time the conspiracy trial was no longer of interest to the public. John Surratt lived out his life as any citizen of the United States.

Conclusions

The details of the conspiracy trial will be fascinating to most attorneys. There are numerous resources available in books and internet sites where the interested lawyer can get enough information to satisfy his or her curiosity. I would recommend Anthony S. Pitch's fine book They Have killed Papa Dead! The Road to Ford's Theatre, Abraham Lincoln's Murder and the Rage for Vengeance." For a good internet site try "The Trial of the Lincoln Assassination Conspirators" by Doug Linder (2009), law.umkc:edu/faculty/projects/lincolnconspiracy.

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It's called miraculous,
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Quite spectaculous!

Well, the moral of the story
Is that nature prevails,
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Bob Sparrow

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Annual Dinner & Installation Pt. 2 - May 5, 2011

Hon. Darrell Gavrin, Hon. Joseph Risi, Michael Reich and Hon. Edwin Kassoff.

Richard Gutierrez with his wife Yvette and sons, Christopher and Michael.

Dave Adler, Hon. Sid Strauss, Art Terranova and David Cohen.

Hon. A. Gail Prudenti, Hon. Fred Santucci and Mike Dikman.

Dom Chiariello, Tom Grippa, Jerry Chiariello and Hon. Rudy Greco.

Hon. Janice Taylor, Hon. Marguerite Grays and Nicole McGregor-Mundy.

Hon. Cheryl Chambers, Seymour James, David and Helene Gugerty.

Hon. Bernice Siegal, Giovanni Escobedo, Nicole Bruszewski, Hon. A. Gail Prudenti and Susan Lovett.

Hon. Stephanie Zaro, Robert Arena, Ilene Kass, Sue Borko and Hon. Fernando Camacho.

Photos by Walter Karling

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Annual Dinner & Installation Pt. 2 - May 5, 2011

Catherine Glover, Hon. Orlikoff Flug and Donna Furey.

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Alexandra Zervopoulos, Ed Rosenthal and Mona Haas.

Sue Borko, Hon. Margaret Parisi-McGowan, Richard Gutierrez and Hon. Carol Stokinger.

Aidee Reyes, Hector Santiago and Alex Rosado.

Richard Gutierrez's Staff-Zelideth Maguina, Karla Pineda and Survanni Tineo.

Steve Wimpheimer, Norman Burak, Liz Forgione and Hon. Phyllis Orlikoff.

Richard and Yvette Gutierrez with members of the Latino Lawyers Assn of Queens County.

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MARITAL QUIZ

BY GEORGE J. NASHAK JR.*

Question #1 - Was the award of 9% interest on a distributive award a provident exercise of discretion by the trial court?
Your answer -

Question #2 - In valuing the shares of a close corporation, the expert applied a 25% discount for lack of marketability. Was this proper?
Your answer -

Question #3 - Is a life insurance policy on wife's parents, with defendant wife as beneficiary, purchased during the marriage and premiums were paid, in part, with marital funds, marital property?
Your answer -

Question #4 - May the court suspend child support payments, if the non-custodial parent established that his or her right of reasonable access to the child has been unjustifiably frustrated by the custodial parent?
Your answer -

Question #5 - Husband prior to commencement began taking classes necessary to earn Bachelor of Science and Doctorate degree in physical therapy. Twenty-one months after the wife's commencement an action for divorce, the husband was awarded both degrees. Is the wife entitled to equitable distribution of a portion of the husband's enhanced earnings?
Your answer -

Question # 6 - Can child support payments be waived prospectively, before the obligation to make such payments has accrued?
Your Answer -

Question #7 - Can the court set aside the child support provisions of a stipulation of settlement which was incorporated but not merged into the judgment of divorce, upon the motion of one of the parties?
Your answer -

Questions #8 - If a pending action was commenced prior to the "no-fault" legislation, may the defendant start a new action on "no-fault" grounds?
Your answer -

Question #9 - Are motions to enforce the terms of a stipulation of settlement subject to a statutes of limitation?
Your answer -

Question #10 - Is an action to enforce a distributive award in matrimonial action governed by the six-year statute of limitations?
Your answer -

**Editor's Note: Mr. Nashak is a Past President of our Association and Vice-Chair of our Family Law Committee. He is a member of the firm of Ramo Nashak Brown & Garibaldi LLP*

ANSWERS APPEAR ON PAGE 11.

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Introduction to "Electronic Filing"

Continued From Page 2

OVERWORKED PLAINTIFF'S ATTORNEY: "Well, Judge, I happen to have the Original original motion papers right here. The Clerk of this Court will not accept them any more now that we have "electronic filing." I can hand them up if you wish. I have inserted exhibit tabs, just as I always have these last 35 years.

OVERWORKED DEFENDANT'S ATTORNEY – "Judge, I have my Original original motion papers with exhibit tabs right here also. I think we both consent to hand them up to Your Honor for your consideration.

JUDGE: "Absolutely not. How do I know that your so-called "Original original" is in fact the "Original original" that American Clerical filed with the Electronic Filing Clerk of this Court In Charge of Empty Orange Electronic Filing Folders? (EFCCCEOEFF) No, no, no. Both of you are directed to immediately report to Room 1313, where the EFCCCEOEFF will print out what you "originally" filed and place it in the Orange Electronic Filing Folder for consideration by me and my Law Secretary.

OVERWORKED PLAINTIFF'S ATTORNEY – But Your Honor, we know for a fact that the Office of Court Administration (OCA) has no budget for exhibit tabs. Even if the EFCCCEOEFF in Room 1313 diligently prints out our motion papers and the hundreds of pages of exhibits, there will be no exhibit tabs.

JUDGE – Don't question me, counsel, I'll sanction you. Report to Room 1313 immediately with the empty Orange Electronic Filing Folder. All other business will be suspended until you return.

The Attorneys for the Plaintiff and Defendant then reported to Room 1313, as ordered.

OVERWORKED PLAINTIFF'S ATTORNEY TO EFCCCEOEFF – The Judge in Part Z requested that this empty Orange Electronic Filing Folder be filled with our motion papers. We told him we could just hand him our Original originals, but he directed us to report to you for immediate printing of our Electronic Filing of the Original originals we are currently holding in our hands. And by the way, do you have any exhibit tabs and an oversized stapler?

EFCCCEOEFF – OCA does not have a budget for exhibit tabs and oversized staplers.

OVERWORKED DEFENDANT'S ATTORNEY – Only Jerry, George, Kramer and Elaine would understand this scene. It is about nothing, but it is about everything. See Costanza v. Seinfeld, 279 A.D. 2d 255, 719 N.Y.S. 2d 29 (1st Dept. 2001). (This is a real citation. Readers can judge for themselves how to characterize Electronic Filing, Empty Orange Folders and the EFCCCEOEFF.)

It is respectfully submitted that "Electronic Filing" is NOT ERGONOMICALLY CORRECT. It does not account for the eyes of the Judges and Law Secretaries, and the absurd amount of scrolling that would be necessary if they had to read motions and extensive exhibits without being able to flip back and forth easily using exhibit tabs. Electronic cues for flipping back and forth are insufficient. These do not allow the reader to make his or her own choices as to which of hundreds of pages of exhibits are more important than others.

The human eye is not a technological device. OCA abuses our eyes at its peril, the peril of a justice system destroyed.

Is there a reason the U.S. Supreme Court, U.S. Court of Appeals, New York State Court of Appeals and our four Appellate Divisions have declined to adopt "electronic filing"?

Perhaps OCA could allow us to file the time-tested way, with paper, and then, after the case is settled or tried, convert the files to electronic storage. This would save our eyes from the pain of endless scrolling, and still save the State a fortune in storage costs. Why, exactly, did this logical step not occur to them earlier?

Death Notice: Bennett Oppenheimer

BY RANDOLPH C. OPPENHEIMER

OPPENHEIMER - Bennett Oppenheimer of Lighthouse Point, Florida, an attorney who practiced law in New York City and Fort Lauderdale for more than 60 years, died Wednesday, August 24, 2011. He was 90 years old. A private funeral service was held.

Born in Windsor, Ontario, he earned his bachelors, law and masters in law degrees from New York University, and began his law practice in New York City in 1951. In 1977 he established an office in Fort Lauderdale, where he maintained an active Family Law practice for the next 34 years. He was licensed to practice law in both New York and Florida, and was a member of the Queens County Bar Association for more than 60 years.

A Sergeant in the Army, he served in Europe in World War II, earning the Good Conduct Medal, a European-African-Middle Eastern Theater Ribbon with one silver and one bronze battle star, one service stripe and two overseas service bars.

He was married for 49 years to the late Sondra Haber Oppenheimer. He is survived by his daughter Hayley (Scott) Houston, his sons Randolph (Cynthia) Oppenheimer and Laurence (Andrea) Oppenheimer; his grandchildren Alexis and Hope Houston, and Daniel, Jordan, Jacob, Adam, Benjamin, Madeline, Elizabeth, Andrew and Phillip Oppenheimer; and his great-grandchildren Ethan, Phoenix and Phoebe Oppenheimer.

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THE CULTURE CORNER

EDITOR'S APOLOGY:

"The Culture Corner" column that appeared in the October issue contained several errors by the publisher, including an incorrect identification of director-writer ANTONIO PADOVAN, and also failed to separate the discussion of an Ibsen play from the prior segment regarding MR. PADOVAN. The Editor apologizes to HOWARD WIEDER, the author of the column, MR. PADOVAN, and director-writer MARCO CHIAVARELLI. To correct the errors, we are reprinting the correct version of Mr. Wieder's October 2011 "The Culture Corner" column in this issue.

BY HOWARD L. WIEDER

My column this month focuses on two young Italian film makers who live in Manhattan and who are earning a lot of attention as director-writers: **MARCO CHIAVARELLI** and **ANTONIO PADOVAN**. Even though they both trained at New York Film Academy in Manhattan, they are separate film makers and have not collaborated on any project. Both have a lot in common, aside from being born in Italy, both **MARCO CHIAVARELLI** and **ANTONIO PADOVAN** are fluent in English, they are creative individuals, and they have spurned other careers in order to focus on their true passion and calling in life - - movie-making. Both of them have recently won prestigious awards for their films. Both of them shun the dependency to rely on special effects to grab an audience's attention in favor of doing films that concentrate and depict individuals encountering life's situations.

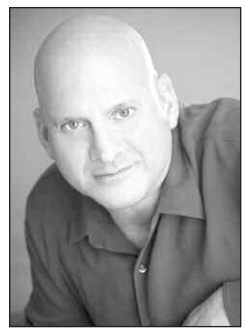
MARCO CHIAVARELLI, who has also done films of crime drama and documentaries, specializes in writing and directing films that depict the absurdist comedy and poignant irony of life's situations. **ANTONIO PADOVAN** also likes to take individuals encountering slices of ordinary life and favors the romantic comedy genre.

MARCO CHIAVARELLI

Born in Rome, Italy, to affluent and educated parents, **MARCO CHIAVARELLI** resisted the invitation and easy temptation to go into the family's hotel business. Instead, after working on films in Europe, he came to New York City, without knowing anyone, and enrolled in **NEW YORK FILM ACADEMY**. Living modestly in a basement apartment, **MARCO CHIAVARELLI** took the classes seriously and then took other classes, including acting, in order to familiarize himself with every area that a director should know.

MARCO CHIAVARELLI is determined to write and direct scripts that focus on the absurdist comedy inherent in life. **MARCO CHIAVARELLI**'s most recent short film **BUBBLEGUM** is a case in point. **BUBBLEGUM**, starring young and dynamic actor **ANDREW CHAMBERLAIN** is about a boy who craves a piece of bubblegum, despite the sharp resistance by his well-meaning mother, who does not want to expose her son to sugary sweets. **BUBBLEGUM** is a bittersweet comedy with a surprise ending. **BUBBLEGUM** was a hit at the **NEW HOPE FILM FESTIVAL**, known internationally as a cutting edge film festival, in New Hope, Pennsylvania, where **BUBBLEGUM** won the coveted Audience Prize.

MARCO CHIAVARELLI recently did a 30 minute documentary, **THE BIRD MAN**, interviewing the individual known as "the bird man" of Washington Square Park in Manhattan. The subject of the documentary has received a lot of media attraction because of the way pigeons flock to him. Most New Yorkers, by reflex, would steer a mile away from this man. Yet, the genius of **MARCO CHIAVARELLI**'s interview shows a man who is not a "looney," but a thoughtful individual who has a fondness for birds and a low tolerance for religious fanaticism. Labels of "crazy" may thus be in the eyes of the beholder, and the point of the documentary, at least to my mind, is that one ought not to be making snap judgments about persons without first talking with them.



Howard L. Wieder

Director-writer Marco Chiavarelli with the star of his hit short film Bubble Gum, at the New Hope Film Festival, accepting award as audience's favorite film.

Again in T**HE BIRD MAN**, **MARCO CHIAVARELLI** reveals a profound and humanist understanding that life has bittersweet elements - - a characteristic feature that runs through all of **MARCO CHIAVARELLI**'s films, regardless of genre.

MARCO CHIAVARELLI has been working with Korean director **HYOJIN AN** on their film **THE LUCKY DAY**, a crime drama regarding corrupt businessmen, crooked cops, and a hapless immigrant working long hours to support his family as a taxi driver in New York City. A scene for that film was recently shot on a weekend in the Law Offices of **KIM, PATTERSON & SCIARRINO**, on Bell Boulevard, in Bayside, Queens County, New York.

MARCO CHIAVARELLI is a versatile writer-director. His creative versatility is astonishing, and his knowledge about the history of European and American filmmaking is astonishing. **MARCO CHIAVARELLI** is a humble individual, whose knowledge of the great film directors is extraordinary. He could have easily succumbed to a life of ease, but instead has pursued his passion, even at self-sacrifice. I have great admiration for both **MARCO CHIAVARELLI** as a person and for his talent and artistry.

Talking with **MARCO CHIAVARELLI** is an engaging process. He is funny, intelligent, outgoing, and caring. He has great love for his family, especially for his parents. MARCO CHIAVARELLI's next step is to form a production company.

ANTONIO PADOVAN

Arriving in New York in 2007, the original goal of **ANTONIO PADOVAN** was to work in architecture. He soon landed a job at a New York architectural firm, where he worked on several high profile projects. Not content with architecture, **ANTONIO PADOVAN** decided to learn film-making, enrolling at the New York Film Academy, earning a scholarship.

ANTONIO PADOVAN's first film **SOCKS AND CAKES**, went on to win a Golden Ace Award at the 2010 Las Vegas Film Festival. **ANTONIO PADOVAN**'s next film **PERRY ST.** starring Catherine Mary Stewart, has been accepted by fifteen film festivals across the United States, earning four awards, and one honorable mention. PERRY ST. screened in New York City at the International Film Festival in August. Last year, the film first screened as a Best New York City Film winner at the Village East Cinema. A few days later, the film screened in the Big Apple Film Festival at the Tribeca Cinemas.

His latest film **MIA**, a 20 minute short romantic comedy, is opening now at major film festivals. The film was shot in New York's West Village.

The following is a portion of my interview with **ANTONIO PADOVAN**:

Question: What age were you when you arrived to the USA?
Antonio: 21

Question: What are your plans in film - - I'm sure to persist as a writer director?
Antonio: I am about to finish a film called **TILLMAN**, shot between Queens and Long Island. I have a couple of possible little projects in China for October that could lead to a bigger project. And I just finished the first draft of a New York based story for a feature that I intend to film next year.

Question: What genre of films would you like to specialize in?
Antonio: Romantic Comedies. Or any kind of film that deals with situations that I can relate to.

Question: What film-makers, if any, inspire you the most and why?
Antonio: Billy Wilder, [Federico] Fellini, Woody Allen, Alexander Payne, [Roberto] Rossellini, Ferzan Ozpetek. More that a specific director I am inspired by a type of films.

Question: What three films do you like and why?
Antonio: THE TERMINAL - I think for the acting mostly but also for something else that I've never been able to describe, probably the mood that creates; **HANNA & HER SISTERS** - for the storytelling structure and the acting; [and] **HOWARD THE DUCK** - that's a guilty pleasure from when I was young.

Question: Do you see a difference between European filmmakers and American filmmakers, and what do you like about both?
Antonio: Yes, I see differences about film in general and therefore directors as well. In the US there is a more specific and well known "structure", that leads most of the time to an excellent result in terms of quality. Unfortunately, sometimes the story is not worthy.

In Europe, probably a director is more like an "author" sometimes, meaning - - he has more control over the final result. Still, I don't think that anyone can make a film by themselves, so I always feel funny when someone writes "a film by . . ." In Europe, we are closer to that approach.

Most people have the wrong idea that if something is generated from money or makes money is not art anymore. But how can you make the point that a film like **TRANFORMERS** (which I didn't like) is less art than any indie film that they will play at the Angelika? People that work on big Hollywood productions are usually more experienced and talented.

Question: The New York Times recently ran an article on the glut of film students on the market. What does Antonio see about the present market of filmmakers?
Antonio: Film-making is the most competitive business in the world, for everybody involved, from director to actors, to AC or producers. We are all in the same boat, or trying to get in the same boat.

Director, Writer
ANTONIO PADOVAN

ON WHEELS PRODUCTION'S OF *AN ENEMY OF THE PEOPLE*

This summer, I attended the **ON WHEELS PRODUCTION of HENRIK IBSEN's AN ENEMY OF THE PEOPLE**. The company, **ON WHEELS PRODUCTION**, was founded by physically challenged actor **TONY PALMIERI,** who played the lead role of Dr. Thomas Stockman [sometimes spelled as "Stockmann"].

For those readers not familiar with **IBSEN**, a great nineteenth century Norwegian playwright, his plays were remarkably ahead of their time. In **A DOLL'S HOUSE**, for example, **IBSEN** was a forerunner of feminism and the women's movement. In **AN ENEMY OF THE PEOPLE**, published in 1882, IBSEN explored whistle-blowing and their shaking consequences on the lives of individuals whose morals lead them to expose corruption over concerns of their own physical comfort.

In **AN ENEMY OF THE PEOPLE**, Dr. Thomas Stockman has been appointed as the doctor to the baths of a town by his brother, Peter, the town's Mayor. The town's mineral bath is its greatest source of income, luring customers and tourists from far away. Dr. Thomas Stockman discovers that the baths are infested with some unhealthy germ or parasite and must be shut down for further tests and remedial action. Of course, doing so would pose economic disaster for the townspeople. Does one remain silent and enjoy a lucrative position or should the truth be spoken at great personal sacrifice?

IBSEN explored these whistle-blower themes 100 years before films like **SILKWOOD** (1983) with **MERYL STREEP** and **CHER** or **THE INSIDER** (1999) with **RUSSELL CROWE** and **AL PACINO.**

Famous actors have played the role of Dr. Thomas Stockman, including **KONSTANTIN STANISLAVSKI**, considered "the Father of Method Acting," Oscar-winner **FREDRIC MARCH**, and Tony Award winner **SIR IAN MURRAY McKELLEN**. It takes a great actor to do justice to this role, especially with the long stretches of monologue in the second half of the play. The long passages by IBSEN can sound terribly didactic unless well-acted. Unfortunately, **TONY PALMIERI** was not right for the role of Dr. Thomas Stockman, and, as a consequence, the text came off as didactic, and numbingly so.

Here is an example of **IBSEN**'s text from

Continued On Page 11

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Marital Quiz

ANSWERS TO MARITAL QUIZ ON PAGE 8.

Question #1 - Was the award of 9% interest on a distributive award a provident exercise of discretion by the trial court?

Answer: Yes, *Cooper v. Cooper* 2011 NY Slip Op 3989 (2nd Dept.).

Question #2 - In valuing the shares of a close corporation, the expert applied a 25% discount for lack of marketability. Was this proper?

Answer: Yes, *Cooper v. Cooper* 2011 NY Slip Op 3989 (2nd Dept.).

Question #3 - Is a life insurance policy on wife's parents, with defendant wife as beneficiary, purchased during the marriage and premiums were paid, in part, with marital funds, marital property?

Answer: *Yes, Weintraub v, Weintraub* 912 N.Y.S.2d 674 (2nd Dept. 2010).

Question #4 - May the court suspend child support payments, if the non-custodial parent established that his or her right of reasonable access to the child has been unjustifiably frustrated by the custodial parent?

Answer: Yes, *Matter of Thompson v. Thompson* 2010 NY Slip Op 08120 (2nd Dept.).

Question #5 - Husband prior to commencement began taking classes necessary to earn Bachelor of Science and Doctorate degree in physical therapy. Twenty-one months after the wife's commencement an action for divorce the husband was awarded both degrees. Is the wife entitled to equitable distribution of a portion of the husband's enhanced earnings?

Answer: Yes, *Kuznetsov v. Kuznetsova* 913 N.Y.S.2d 325 (2nd Dept. 2010).

Question # 6 - Can child support payments be waived prospectively, before the obligation to make such payments has accrued?

Answer: Yes, *Stevens v. Stevens* 2011 NY Slip Op 1830 (2nd Dept.).

Question #7 - Can the court set aside the child support provisions of a stipulation of settlement which was incorporated but not merged into the judgment of divorce, upon the motion of one of the parties?

Answer: No, a plenary action to set aside a stipulation of settlement is required, *Brody v. Brody* 2011 NY Slip Op 1782 (2nd Dept.)

Questions #8 - If a pending action was commenced prior to the "no-fault" legislation, may the defendant start a new action on "no-fault" grounds?

Answer: Yes, *Heinz v. Heinz* 203438/10, NYLJ 1202483036423 at *1 (Sup., NA Decided February 16, 2011)

Question #9 - Are motions to enforce the terms of a stipulation of settlement subject to a statutes of limitation?

Answer: No, *Bayen v. Bayen* 2011 NY Slip Op 01421 (2nd Dept.)

Question #10 - Is an action to enforce a distributive award in matrimonial action governed by the six-year statute of limitations?

Answer: Yes, *Bayen v. Bayen* 2011 NY Slip Op 01421 (2nd Dept.)

Supreme Court Committee Report

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orders issued by the court. In this regard, in the rush to complete the Preliminary Conference Order, we tend to lose sight of the importance of this document, as well as the obligations it imposes upon us.

With respect to the above, two important changes are going into effect. The first will be publication of updated Administrative Rules for the Preliminary Conference Part. These rules will also be posted outside of the Preliminary Conference Part. Of significance, the rules call for "preclusion, the striking of a pleading and/or the imposition of costs associated with any motion to enforce" based upon the failure to "substantially perform in accordance with the terms of this stipulated Order." Likewise, "any motion brought to enforce the terms of this Order which is determined to be premature or which, following the inquiry by the Court, has not been preceded by specific and diligent attempts to resolve the issues raised by said motion" shall be considered an abuse of motion practice and subject to possible costs and/or sanctions." Finally, "[a]ll parties are expected to fully comply with the discovery mandates set forth in this Order. The failure of one's adversary to comply does not constitute the basis for failure to fully comply with one's own discovery mandates."

One of the arguments raised during our conversations is that, while attorneys may be dilatory, enforcement of the terms of the Preliminary Conference Order rests with the IAS judge to whom the case is assigned. What the above provisions mean is that if you expect the court to enforce the terms of the Preliminary Conference Order, you have a concomitant duty to make sure that you come into court with clean hands and to make sure that you are in compliance with the terms of the Order as well.

The second major change in the order is the closing of, what we colloquially call "the Ritholtz loophole." That is, attorneys who hope to avoid appearing before Justice Martin Ritholtz for a Compliance Conference, simply file a Note of Issue prior to the conference date thereby obviating the need to hold the conference. This premature filing of the Note of Issue routinely leads to cases appearing before Referee Florio and/or on the TSP calendar with discovery still outstanding. Avoiding Justice Ritholtz and the Compliance Conference part will not be as easy with the new Preliminary Conference Order. Specifically, the Preliminary Conference Order provides that the "[f]iling of a Note of Issue prior to the Compliance Conference must include a **written stipulation fully executed by all parties** acknowledging that all discovery has been completed. Failure to comply with this provision **will** result in vacatur of the prematurely filed Note of Issue."

As is evident from the above that the Court intends to take enforcement of the Preliminary Conference Order more seriously. It is suggested that the practitioners do likewise.

Culture Corner

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AN ENEMY OF THE PEOPLE:

"Lack of oxygen dulls the conscience. And there must be a woeful dearth of oxygen in the houses of this town, it seems, if the entire solid majority can numb their consciences enough to want to build this town's prosperity on a quagmire of duplicity and lies."

SIR IAN MCKELLAN would make that text soar. **KONSTANTIN STANISLAVSKI**, who cherished the role of Dr. Thomas Stockman as his favorite, lived at a time of political unrest, and **AN ENEMY OF THE PEOPLE** was very popular with the Russian pre-revolution populace. People yearned for a hero who could tell the truth strongly and bravely. **AN ENEMY OF THE PEOPLE** became the favorite play of the revolutionists, despite the fact that Dr. Thomas Stockman himself despised the majority and believed in individuals. The appeal of the play was, and still remains, that Dr. Thomas Stockman protests injustice and duplicity and that he told the truth.

In the last act, Dr. Thomas Stockman, rearranging his room which has been stoned by the crowd, finds his black coat in the general chaos. Seeing a tear in the cloth, he says to his wife: "One should never put on a new coat when going to fight for freedom and truth."

That line by **HENRIK IBSEN** - - "One should never put on a new coat when going to fight for freedom and truth" - - regarding the mud that will be thrown at any honest person fighting for a greater good, in a ruthless effort to sully and ruin his reputation - - are words to be relished by actor and audience. The opportunity, however, was lost and the words were uttered as mundane and ordinary in **TONY PALMIERI**'s rote, unexciting, and unmoving performance. As my mind wandered during Palmieri's recitation of lines, I started imagining funny cast changes, such as having **JACKIE MASON**, gifted, Jewish-accented comedian, play the lead role of Dr. Thomas Stockman. I was yearning for **IBSEN**'s lines to have flesh, embodiment, meaning, vitality, and power.

TONY PALMIERI does deserve recognition for showing that actors with physical disabilities do have significance in the theater, and his production company provides opportunities for a cast composed of those without disabilities performing alongside those who are physically challenged. **MR. PALMIERI,** however, needs to learn that a role as a producer is significant and reward enough. He does not need to perform the lead role, especially when he is not up to its several demands and challenges.

Several performances of this production of **IBSEN**'s **AN ENEMY OF THE PEOPLE** deserve mention: **KATIE LABAHN**, a wheelchair-bound actress, made a formidable and convincing Katherine Stockman, wife of Dr. Peter Stockman. **FRANK HENDRICKS** was a solid, ruthless character as Mayor Peter Stockman. **DAVID CONKLIN** was wonderful and genuine as Captain Horster, the strong, dependable, true, and only friend of the Stockman Family when they became pariahs. **DAVID CONKLIN** had an exciting stage presence and showed real depth in his role.

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HOWARD L. WIEDER is the writer of both **"THE CULTURE CORNER"** and the **"BOOKS AT THE BAR"** columns, appearing regularly in **THE QUEENS BAR BULLETIN**, and is **JUSTICE CHARLES J. MARKEY**'s **PRINCIPAL LAW CLERK** in Supreme Court, Queens County, Long Island City, New York.

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