Queens County Bar Association

Right of Legal Residents To Travel Abroad Interpreted By Supreme Court

BY: JOSEPH F. DEFELICE* AND MARIE-ELEANÀ FIRST**

On March 28, 2012 the U.S. Supreme Court decided the case of Vartelas v. Holder, 566 U.S. ___ (2012). To more fully understand the holding in this case which dealt with the issue of retroactivity or non-retroactivity of certain Immigration legislation, some basic history and background of the facts is important.

Mr. Vartelas was born and raised in Greece and had resided in the United States for more than 30 years. He first entered the U.S. on a student visa in 1979. In 1989 he resided in the United States for more than 30 years. He first entered the United States if their travel had been a brief excursion, innocent or casual. Under this doctrine permanent residents would only be subject to the provisions regarding “entry” on his/her return to the United States if the trip could be viewed as “meaningfully disrupting” the alien’s residence or causing what might be viewed as a “disruption” of the residency. As such, Mr. Vartelas could, after his 1994 conviction, under the Fleuti doctrine continue to visit his aging parents in Greece as his trips would be considered casual and innocent excursions and not of the type that would lead anyone to believe that he might have abandoned his U.S. residency. So his return trips were not considered “entries”.

Under IIRIRA this all changed because in writing the legislation Congress changed the key word to “admission”. Admission meaning the lawful entry of the alien into the United States after inspection and authorization by an immigration officer. See 8 U.S.C. §1101(a)(13)(A).

The Board of Immigration Appeals subsequently determined that the legislation and alteration of the meaning of admission superseded the Fleuti case holding that Fleuti was no longer good law as it was rooted in the definition of “entry”. See In re Collado-Munoz, 21 I&N Dec 1061, 1065-1066 (1998). Relevant to Mr. Vartelas, the BIA also determined that an individual who had committed a crime of moral turpitude would be considered casual and innocent excursions and not of the type that would lead anyone to believe that he might have abandoned his U.S. residency. So his return trips were not considered “entries”.

374 U.S. 449 (1963). This interpretation became known as the Fleuti doctrine and centered around the concept of “entry” back into the United States. In Fleuti the U.S. Supreme Court determined that permanent residents were not making an “entry” back into the United States if their travel had been a brief excursion, innocent or casual. Under this doctrine permanent residents would only be subject to the provisions regarding “entry” on his/her return to the United States if the trip could be viewed as “meaningfully disrupting” the alien’s residence or causing what might be viewed as a “disruption” of the residency. As such, Mr. Vartelas could, after his 1994 conviction, under the Fleuti doctrine continue to visit his aging parents in Greece as his trips would be considered casual and innocent excursions and not of the type that would lead anyone to believe that he might have abandoned his U.S. residency. So his return trips were not considered “entries”.

The Board of Immigration Appeals subsequently determined that the legislation and alteration of the meaning of admission superseded the Fleuti case holding that Fleuti was no longer good law as it was rooted in the definition of “entry”. See In re Collado-Munoz, 21 I&N Dec 1061, 1065-1066 (1998). Relevant to Mr. Vartelas, the BIA also determined that an individual who had committed a crime of moral turpitude who now sought “admission” could be considered as a “disruption” of the residency. As such, Mr. Vartelas could, after his 1994 conviction, under the Fleuti doctrine continue to visit his aging parents in Greece as his trips would be considered casual and innocent excursions and not of the type that would lead anyone to believe that he might have abandoned his U.S. residency. So his return trips were not considered “entries”.

United States v. Jones, 132 S. Ct. 945, (2012) is a fascinating case which provides a glimpse into the future contours of the Fourth Amendment in these times of changing expectations of privacy and technological advances.

The facts of the case are quite simple. Antoine Jones came under suspicion for narcotics trafficking. The government began to watch a night club owned by Jones, installed a camera which monitored the entrance to the club, and applied for and obtained a pen register and a wiretap on his cell phone. Based upon information received from this investigation, the government obtained a warrant to place a GPS device on his automobile, which was registered to his wife, but conceded ownership of the defendant. The warrant specified that the device was to be placed on the vehicle within the District of Columbia within 10 days of the warrant. On the eleventh day, and in Maryland, the police placed the device on the undercarriage of the car while it was parked in a public parking lot.

For twenty-eight days, the position of the car was monitored. Jones was indicted and a portion of the information obtained from the GPS device was used against him in the trial. The government conceded that the placement of the device did not comply with the conditions of the warrant, but argued that no warrant was required to place the device on the car. The trial court had held that the monitoring information was admissible, despite the violation of the conditions of the warrant, because “a person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another.” United States v. Jones, 451 F. Supp. 2d 71, 88 (2006).

After an initial hung jury, the defendant was subsequently retried, convicted and sentenced to life imprisonment.

The issue in this case is whether the placement of the GPS device on the car constituted a search within the meaning of the Fourth Amendment. The thorny problem is that the placement of the device is not really a search in that the government was not really looking for anything specific.

Which One is Different from the Others?

Standing: Seymour James (01-02), Robert Bohner (93-94), Hon. James Dollard (85-86), Douglas Krieger (81-82), Howard Stave (82-83), Steven Wimpfheimer (99-00), Steven Orlov (08-09), David Adler (98-99) and David Cohen (07-08), Sitting: Michael Dikman (78-79), Wallace Leinheiser (77-78), Paul Goldblum (79-80), Jules Haskel (73-74), Herbert Rubin (71-72), Edward Rosenthal (82-83), Chanwoo Lee (10-11) and Gary Darche (89-90).”

(Answer on page 2)
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.

CLE Seminar & Event Listing

May 2012
- Thursday, May 3: Annual Dinner & Installation of Officers
- Tuesday, May 15: CPLR Update Seminar
- Wednesday, May 16: Matrimonial Law CLE
- Thursday, May 24: Retirement Decisions Workshop - MetLife (no CLE credit)

June 2012
- Tuesday, June 19: Small Claims Arbitrator Training

September 2012
- Monday, September 10: Annual Golf Outing

CLE Dates to be Announced
- Civil Court
- Elder Law
- Worker’s Compensation

New Members

Placidus Aguwa
Sulesda Inshira Arias
Munir Avery
Anthony Aitar
Arthur Burkle
Peggy Collen
Amanda Connor
Ernest Jerome Dubose
Jeffrey J. Estrella
Michal Falkowski
Reuben S. Frankel
Samantha Gilles
Christos Hilaris
Leoney A. Lee
Amanda L. Lewis
Anthony John LoCalbo
Elena K. Makau
Elias Maljouzakis
Helena Man
Christian P. Myrill
Vikrum Singh Panesar
David Scott
Jacob Sherman
Bikram Singh
Anton Skuratovsky
Eun Chong Thorsen
Liang-Fu Wang
Aaron Ward
Jason David Weissman
Stephen Z. Williamson
Chak Lun Wong

Necrology

Donald R. Schechter

If you or someone you know is having a problem with alcohol, drugs or gambling, we can help.
To learn more, contact QCBA LAC, for a confidential conversation.
Confidentiality is privileged and assured under Section 499 of the Judiciary Laws as amended by Chapter 327 of the laws of 1993.

Lawyers Assistance Committee
Confidential Helpline 718 307-7828

TO ADVERTISE in Queens Bar Bulletin, New York County Lawyer and The Suffolk Lawyer
CALL
631-427-7000

Worker’s Compensation
Board Job Posting

The New York State Workers’ Compensation Board is presently recruiting attorneys in the NYC metropolitan and Nassau County areas who are interested in acting as part-time, outside arbitrators in Employee Claims Resolution (“ECR”) cases to adjudicate the workers’ compensation claims of designated employees of the Board and the State Insurance Fund. The work is sporadic and the per case pay is modest.

If there are any attorneys in your area who have been admitted to practice for at least five years and currently do not appear before the Workers’ Compensation Board who might be interested in an ECR arbitrator position, they can forward their resume to Andrew Mair, ECR Administrator, New York State Workers’ Compensation Board, Office of General Counsel, Room 401, 20 Park Street, Albany NY 12207. Membership in the American Arbitration Association or other recognized alternative dispute resolution organization is a plus. Alternatively, resumes may be emailed to andrew.mair@wcb.ny.gov

Response to Which One is Different from the Others?
(from page 1)
Seymour W. James, Jr. will be the first Queens County Bar Association Past President to become President of the New York State Bar Association. Congratulations on this great accomplishment Seymour!

2011-2012
Officers and Board of Managers of the
Queens County Bar Association

President - Richard Michael Gutierrez
President-Elect - Joseph John Risi, Jr.
Vice President - Joseph F. DeFelice
Secretary - Paul E. Kerson
Treasurer - Joseph Carola, III

Class of 2012
- Jennifer M. Gilroy
- Richard Harris Lazarus
- Gary Francis Miret
- Steven S. Orlow
- James R. Pieret

Class of 2013
- Gregory J. Brown
- Tracy Catapano-Fox
- Monia Haas
- Gregory J. Newman
- Guy R. Vitacio, Jr.

Class of 2014
- Chanwoo Lee
- Timothy B. Rountree
- Zenith T. Taylor
- Lourdes M. Ventura
- Clifford M. Welden

Arthur N. Terranova . . . Executive Director
QUEENS BAR BULLETIN
EDITOR - Paul E. Kerson (kersompaul@aol.com)
ASSOCIATE EDITORS
Richard N. Golden (goldenlaw@nyc.rr.com)
Stephen D. Fink (finkylaw@aol.com)
Gary C. DiLeonardo (garygcd@aol.com)
Manuel Herman (manuelherman@aol.com)
Ilene J. Reichman (momster8931@aol.com)

Publisher:
Long Islander Newspapers, LLC, under the auspices of Queens County Bar Association. The Queens Bar Bulletin is published monthly from October to May. All rights reserved. Material in this publication may not be stored or reproduced in any form without permission.

©2012 The Queens County Bar Association.
Advertising Offices:
Long Islander Newspapers, 149 Main Street, Huntington, New York (631) 427-7000

Send letters and editorial copy to: Queens Bar Bulletin, 90-35 148th Street, Jamaica, New York 11435

Editor’s Note: Articles appearing in the Queens Bar Bulletin represent the views of the respective authors and do not necessarily carry the endorsement of the Association, the Board of Managers, or the Editorial Board of the Queens Bar Bulletin.

“Queens Bar Bulletin”
CSPS Number: 252-520 is published monthly except June, July, August and September by Long Islander Newspapers, LLC, 149 Main Street, Huntington, NY 11743, under the auspices of the Queens County Bar Association. Entered as periodical postage paid at the Post Office at Jamaica, New York and additional mailing offices under the Act of Congress. Postmaster send address changes to the Queens County Bar Association, 90-35 148th Street, Jamaica, NY 11435.
President’s Message

BY ROBERT D. MCCREANOR*

Richard M. Gutierrez

Being the President requires a lot of support and dedication from our members. I am fortunate to have a Board of Managers and Officers who worked together with me to make the Association relevant and responsive to the needs of our members. Thank you for your help, support and confidence in my leadership. I want to thank Janice Ruiz, Sasha Khan and Shakesma Oakley for all their help throughout the year. Each and every one of you worked hard to assure the Association runs efficiently. Without some of us all know and respect, the Bar would not be as successful as it is. Presidents come and go but one person who over 25 years has dedicated his career to the Association. Our Executive Director, Arthur Terranova, watches over the Association with great care and pride. I want to thank you for your wisdom, guidance, support and friendship during my term. I want to congratulate our new President, Joseph Risi. As I said, at his installation, he is a man of integrity and vision and I wish him much success.

Before I finish, I want to inform you that the New York State Bar Association has given its support to legislation to amend the CPLR to increase the liability of referees for interest and penalties on deeds. The following revised language of the bill by the New York State Bar is recommended for passage:

“A referee shall not be liable for any interest or penalty in connection with any stated or local transfer taxes imposed upon a deed delivered by a referee transferring a property pursuant to a judgment of foreclosure and sale”.

Finally, I want to thank you for your unwavering support, loyalty and friendship. I will always cherish the opportunity I had to lead this great Association.

Thank you,

Richard M. Gutierrez

Reflection of Minimum Wage

Last year when I was installed as President, I told you that my primary goal was to increase our membership and to focus on increasing membership by creating a stronger alliance with our two local law schools to create an outreach program that would utilize interested first year law students in our Association in providing internships and externships to their students.

I have met with Michael A. Simons, the Dean of St. John’s University Law School and am meeting with Sarah Valentine, Associate Dean of Students at CUNY School of Law. I believe providing second and third year law students with the opportunity to align themselves with a seasoned practitioner will be beneficial to them and our Association. Clearly, an inflow of new law students members, will demonstrate our understanding of their significance in the legal community and our importance to our Association. I encourage any interest- ed members to contact either me or a staff member at the Association so that we may add you to the list.

During my term, the Officers, Board of Managers and I had hoped to increase membership by providing informational research to paid members. Unfortunately due to the cost of this benefit and the Association’s financial condition we were not able to provide this service. However, it is our hope that in the future we will have the resources to do so.

When I took office, I was charged with implementing the First Year of Workforce Plan. That plan was to improve the services provided by the Bar to our members and the commu- nities we serve. Although this plan is our vision of where we should be over the next four years, I believe we succeeded in establishing the importance and relevancy of our organization to the communities we serve. I am sure our new President, Joseph Risi, and his successors will con- tinue to implement the plan and continue to show we are the “go to” organization for the legal profession in our county and the citizens we serve.

Richard M. Gutierrez

By Robert D. McCrea nor∗

On a recent Wednesday evening, in the community room of St. Sebastian’s Roman Catholic Parish in Woodside, Queens, around one hundred people gathered to listen to a presentation about the ongoing campaign to raise New York State’s minimum wage. Standing on the side of the room with a microphone in hand, and facing the faces of my former and current clients, mostly low-income folks who immigrated to this country sometime in the past thirty-five years. Roughly reflect- ing the composition of the apartment buildings and neighborhoods where I’ve spent my career organizing, from par- ticipating in tenant meetings, holding legal clinics and occasionally enjoying meals served to me on my days off. This recent organizing project, this group includes many of the post-1965 waves of migration to New York City: Elderly Colombian widows who have been here since the 1970’s, Ecuadorians who came in 1990’s and now have teenage, U.S. born children; Mexican families who came from places like Oaxaca and are served with eviction papers, they stand the feelings of my clients is serious- ly limited by the reality that my own life’s work to get help. Many of the Hispanic women in the group work as cleaners, some in office buildings with a union contract, and others as day laborers and restaurant workers. The audience who is in her 70’s and still works in a movie theater or travelling outside of the city—ever. Personally, I am far removed from min- on an income of less than $20,000 per year. The audience, at least two thirds, is unemployed. Of course, any attempt by me to under- stand the feelings of my clients is seriously limited by the reality that my own life’s work to get help. Many of the Hispanic women in the group work as cleaners, some in office buildings with a union contract, and others as day laborers and restaurant workers. The audience who is in her 70’s and still works in a movie theater or travelling outside of the city—ever. Personally, I am far removed from min- on an income of less than $20,000 per year. The audience, at least two thirds, is unemployed. Of course, any attempt by me to under- stand the feelings of my clients is seriously limited by the reality that my own life’s work to get help. Many of the Hispanic women in the group work as cleaners, some in office buildings with a union contract, and others as day laborers and restaurant workers. The audience who is in her 70’s and still works in a movie theater or travelling outside of the city—ever. Personally, I am far removed from min- on an income of less than $20,000 per year. The audience, at least two thirds, is unemployed. Of course, any attempt by me to under- stand the feelings of my clients is seriously limited by the reality that my own life’s work to get help. Many of the Hispanic women in the group work as cleaners, some in office buildings with a union contract, and others as day laborers and restaurant workers. The audience who is in her 70’s and still works in a movie theater or travelling outside of the city—ever. Personally, I am far removed from min- on an income of less than $20,000 per year. The audience, at least two thirds, is unemployed. Of course, any attempt by me to under- stand the feelings of my clients is seriously limited by the reality that my own life’s work to get help. Many of the Hispanic women in the group work as cleaners, some in office buildings with a union contract, and others as day laborers and restaurant workers. The audience who is in her 70’s and still works in a movie theater or travelling outside of the city—ever. Personally, I am far removed from min- on an income of less than $20,000 per year. The audience, at least two thirds, is unemployed. Of course, any attempt by me to under- understand the feelings of my clients is seriously limited by the reality that my own life’s work to get help. Many of the Hispanic women in the group work as cleaners, some in office buildings with a union contract, and others as day laborers and restaurant workers. The audience who is in her 70’s and still works in a movie theater or travelling outside of the city—ever. Personally, I am far removed from min-
Minimum Wage

Continued From Page 3

St. Sebastian’s. I do have thoughts informed by my work in which I try to help my clients navigate the legal issues that permeate life in New York’s low-wage immigrant workforce. I consider first that some of my clients here tonight have come to our office seeking legal assistance after working for weeks or months without being paid at all. Many come to us precisely because, like the pitahaya factory workers, they are paid substantially less than the minimum wage and no overtime. So, for these folks, what is the significance of a proposed increase in the minimum wage?

Reflecting on the somber response to tonight’s presentation, it also strikes me that the notion of an increase to $8.50 per hour is, in itself, a less than inspiring concept of justice much more clearly.

I would like to publicly thank my law partners and associates for working with me all these years: Marc Leavitt, John Duane, Joseph Yamaner, Ira Greenberg, Isaac Abraham, Alexandra Mishali, Tali Sehati, Andrew Fintzel, Jay Gellman, Howard Mandel, Wayne Greenwald, Eric Turkewitz, Manny Herman, the late Ben Shaw, the late Lenny Herman, and the late Michael Josephson. I hope we continue for many years to come. Without them, I could not try to put more justice into the world in every business day. I believe that everyone in law, the legal profession, and the Court System itself, we will not be, and the formulation of New Deal policies (and nicknamed the Right Revered New Dealer), Msgr. Ryan wrote his doctoral dissertation on the minimum wage issue and it was published in 1986 under the title A Living Wage. He believed that issues of economic and social justice were fundamental to the faith. As I think about the minimum wage presentation at St. Sebastian’s parish center that evening, I wonder what the proper focus of our faith, our laws, our legal system and the Court System itself, there will be none.

The scene being set, Mr. Vartelas continued to make his trips to Greece even after IIRIA and returned without any difficulty until 2003 when an Immigration Officer determined that he was seeking “admission” and was an alien with a prior conviction for a crime of moral turpitude. See United States ex rel. Volpe v. Smith, 229 U.S. 422, 423 (1913)—which held counterfeiting is a crime of moral turpitude.

Mr. Vartelas was, after appearing before an Immigration Judge, ordered removed back to Greece, the Judge denying him any requests for relief. The Board of Immigration Appeals affirmed that decision and Vartelas, with the assistance of new counsel, sought to reopen his proceedings arguing among other things that his prior attorney had provided ineffective assistance of counsel and that IIRIA should only be viewed to operate prospectively. His requests for relief continued to be denied in the Immigration Courts and was also rejected by the U.S. Court of Appeals for the Second Circuit. The U.S. Supreme Court granted certiorari to resolve a conflict among the Circuits as both the U.S. Court of Appeals for the Fourth and Ninth Circuits had determined that IIRIA should be viewed prospectively and should not be interpreted retroactively.

That is, under the interpretation of the other two Circuits, a permanent resident alien returning to the United States could not be denied admission because he had committed a crime of moral turpitude prior to IIRIA.

The U.S. Supreme Court ruled in favor of Mr. Vartelas by determining that IIRIA retroactively created a “new disability” on him which severely prejudiced him by causing any travel abroad for purposes of visiting family, financial interests, emergencies etc. subject to potential banishment from the United States.

The Court also rejected the Government’s argument that Vartelas could simply have avoided any adverse consequences by simply staying home in the United States rather than visiting his parents. The Court noted that the loss of the ability to travel abroad is in itself a harsh penalty which is made all the more devastating if it means enduring separation from family members living abroad. Interestingly, in a footnote the Court quoted from Kent v. Dulles, 357 U.S. 116, 126 (1958) where it was stated “Freedom of movement across frontiers...may be as close to the heart of the individual as the choice of what he eats, or wears, or reads”.

In advising clients who have been convicted of crimes and who desire to travel abroad, Vartelas is now an important reference point for review if not a must read.
Judiciary, Past Presidents and Golden Jubilarian Night, April 16, 2012


Chanwoo Lee being presented with her Past President’s Scroll by Joseph Risi.


Hon. Ira Margulis, Hon. Thomas Raffaele, Seymour James and Howard Stave.


Hon. Peter Vallone, Hon. Seymour Boyers and Ed Rosenthal.

Hon. Randall Eng, Hon. Carmen Velasquez, Tom Principe.

Hon. Ronald Hollie, Hon. Cheree Buggs and Steven Orlow.


Photos by Walter Karling
Judiciary, Past Presidents and Golden Jubilarian Night, April 16, 2012


Jim Pieret, Hon. Peter Kelly and Tom Principe.


Joseph Carola, III, Chairperson of the Program Committee.

Joseph Risi, President-Elect of the Queens County Bar Association.

Seymour James, President-Elect of the NYSBA, Guest Speaker and Past President 2001-2002 of QCBA.

Maureen Heitner, Caren Samplin, Mona Haas, Liz Forgione and Norman Burack.

Frank Gonzalez, Tim Rountree and Paul Kerson.

Hon. Randall Eng, Hon. Carmen Velasquez, Tom Principe.

Joe Carola, Hon. Jeremy Weinstein and Hon. Fernando Camacho.

Photos by Walter Karling
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, but then decided to learn film-making, enrolling at the New York Film Academy, earning a scholarship. His first film SOCKS AND CAKES, went on to win a Golden Ace Award at the 2010 Las Vegas Film Festival. ANTONIO PADOVAN’s subsequent film PERRY ST. was accepted by fifteen film festivals across the United States, earning numerous awards.

His following film, MIA, a 20 minute short romantic comedy, played at major film festivals. The film was shot in New York’s West Village, a favorite locale for all of Padovan’s shooting. ANTONIO PADOVAN adores filming in Manhattan’s West Village because its locales are beautiful and photo-genic, and some of its streets look like they were built for a motion picture set.

First, the not-for-profit school and organization that excites ANTONIO PADOVAN is:

**ONE UPON A TIME, INC.**

8761 111th St
Richmond Hill, NY 11418
Telephone: (718) 846-9182
Email: onetime@aol.com
Nearest subways: 111 St (J, Z subway line) or 104 St (J, Z)

Once upon a time, INC. does not have a web site as of yet, so you must call the aforementioned telephone number or send an email to onetime@aol.com in order to get more information regarding its programs.

Once upon a time, INC.’s mission is that art can save lives. It has numerous programs and classes, at very low cost, in the creative arts for persons of all ages. ANTONIO PADOVAN will soon be teaching a once-a-week class in film making at ONCE UPON A TIME, INC. ANTONIO PADOVAN’s class will cover the entire gamut of film making from script development to the all-important search for financing, to the choices a director makes in the final cut of the edited movie. Anyone with a passion for film is welcome to enroll, including beginners.

Hearing ANTONIO PADOVAN talk with earnest about ONE UPON A TIME, INC., gave a clue into ANTONIO PADOVAN’s character. He kept emphasizing the great work of ONE UPON A TIME, INC., gently deflecting my questions concerning his own talents and career plans.

With a company named JAJ, ANTONIO PADOVAN has been shooting several commercials, including for Japan tourism and for the forthcoming European soccer games. On May 18, 2012, at 7:00 PM, ANTONIO PADOVAN directed the evening’s show of the popular, long-running STICKY series, produced by BLUE BOX PRODUCTIONS, playing at the Bowery Poetry Club [www.bowerypoetry.com].

GETTING CLOSER will be Padovan’s first film as both writer and director. Together with co-writer LIBBY EMMONS - a highly regarded producer and writer [see, www.libbyemmons.com]. ANTONIO PADOVAN wrote the feature GETTING CLOSER regarding two women in their 40s, and the love relationship that develops between one of the women and her friend's 18-year-old son. The feature film is an esoteric treatment of a “Mrs. Robinson Syndrome” [see, THE GRADUATE (1967)] or a “May-December” romance. GETTING CLOSER explores the emotional consequences and toll of a sincere, love relationship of an older woman and a younger man, and the love relationship’s effect upon the two female best friends.

GETTING CLOSER is a romantic comedy, PADOVAN’s specialty. The subject matter of GETTING CLOSER, of course, by its nature, does involve drama. PADOVAN dislikes the word “dramedy,” as a cheapening of both comedy and drama.

In arriving at the subject matter of GETTING CLOSER, Padovan asked himself, “Does Hollywood usually turn its back on aging actresses [as opposed to the survivability of older male actors to find film work or of fresh faces of older men to embark in film]?” PADOVAN was also stimulated by the question of why society accepts a love relationship between an older man and a young woman, but the opposite - older woman and a young man in love - until recently, has been treated as taboo. These questions stimulated PADOVAN into writing GETTING CLOSER.

ANTONIO PADOVAN states: “When a director becomes an adjective, that’s wrong.” PADOVAN explains that the public needs to be respected. The public is asked to spend at least $13 for admission to a film and then asked to give up 2 hours of its time. A film must tell a story, and a director should never push to force an imprint of his or her own style to detract from the meaning, purity, and beauty of the story unfolding.

ANTONIO PADOVAN cited TERRIENCE MALICK’S THE TREE OF LIFE [2011] as an example of a self-absolute directorial style, where the use of almost visually striking images clouded the story. TIM BURTON and the COEN BROTHERS [Joel and Ethan] are other examples, according to PADOVAN, of talented directors who need to be more conscious of their need to stamp a film in their own image. “When one leaves the cinema after seeing a good movie,” says Padovan, “the praise should be on the story and not on the greatness of a particular director or actor.”

ANTONIO PADOVAN continues: “Just because a director attains rock star status does not make him better than an unknown director, who does a lot of good films in an indistinct style. A truly good director adapts to the demands of the story and does not demand that the story bend to the director’s forced impression.”

“A film can begin to succeed,” according to ANTONIO PADOVAN, “if its director does not impose a particular style or stamp on it, but permits it to breathe.”

“The cinematography of THE TREE OF LIFE failed to tell the story. Its director indulged in self-gratification,” states ANTONIO PADOVAN. According to Padovan, BRIDESMAIDS [2011] was a far better film than TOY STORY 3 [2010] because it succeeded in telling a story.” Padovan continues that, in the same vein, he thought and still believes that TOY STORY 3 [2010] was a far better film and a worricker recipient for the Oscar for Best Picture than THE KING’S SPEECH [2010].

I was mesmerized by ANTONIO PADOVAN’s expression and innocent boldness. He continued that the public should be trusted in its choices. He derided “Angelika hipsters” referring to devoted denizens of the Angelika Film Center & Café, a well-known cinema on Manhattan’s West Houston Street that showcases only independent films, who, without adequate basis or facts, minimize Hollywood-produced, big budget film, only because it is “non-Indie.”

ANTONIO PADOVAN states with regard to his films, he engages in intense pre-production work. He does not believe in over-directing actors. “Cast good actors and get out of their way,” is PADOVAN’s policy. Only if an actor starts to get nervous as the shooting day approaches is it becomes necessary to feed them little lies just to bolster their self-confidence.

ANTONIO PADOVAN states that after his process of intense pre-production, he actually enjoys the days on the set shooting a film, because it is like, after days of rehearsal, actually performing at a concert and enjoying the moment. When shooting a film, on the set, ANTONIO PADOVAN likes to create “a bubble,” trying to build a tranquil, calm, and happy atmosphere, making both cast and crew feel comfortable.

The most depressing thing about film making according to ANTONIO PADOVAN is the editing process. As you review the takes, you see what could have been done better and what didn’t work. Anything less than the original mental image that a director had pictured will become depressing to a director reviews dailies and takes sequences. Editing may also produce surprises, but it has disappointments, as well.

Although ANTONIO PADOVAN takes on film assignments of directing another writer’s work, but he worries, “It is far less agonizing to direct a film based on your own writing than to direct another writer’s work.” ANTONIO PADOVAN explains that in directing someone else’s work, the worry always is if he has achieved his writer’s image and earned his writer’s satisfaction.

Asked what current movies he would recommend to our readership, ANTONIO PADOVAN unhesitatingly responded with two romantic comedies: SALMON FISHING IN THE YENEN [2011] by LASSE HALLSTROM and FRIENDS WITH KIDS [2011] by JENNIFER WESTFELDT.

Howard L. Wieder

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.

Film director Antonio Padovan instructing cinematographer Nicola Raggi on a shot.

Film Director Antonio Padovan with cinematographer Nicola Raggi.
Floridian Culture

We wintered in Florida—Wonderful weather, warm sun, But in analyzing its “civilization” Comparable to that of the Hun!

True - there are birds Beautiful ocean and sand - And it’s no longer A cultural wasteland...

But some recent legislation And its grotesque laws Are enough to give one Reason to pause...

One in particular- It’s called “stand your ground.” And thus a new way to murder With impunity is found

No longer the need To retreat if one can- It’s now open season For any gun fan!

And of fans there are many It’s sad to relate That Florida is now Called the “gunshine state!”

What’s more, we now find That we must fear a Congressman who restores The McCarthy era...

Where is the “collegiality” And congressional cooperation When he accuses a hundred of his colleagues Of being part of a communist organization?

I truly wonder If anyone has the ability To restore that beautiful state to a modicum of civility.

Robert E. Sparrow
However, what is intriguing is that the car constituted a search within the meaning of the Fourth Amendment. Jones, at 958. Justice Alito was of the view that “the attachment of the GPS device was not itself a search” and it was not a seizure because nothing was taken and the use of the automobile was not compromised. Rather, the minority opinion took the view that “the gathering of information from the placement of the device which violated the Fourth Amendment. "Relatively short-term monitoring of a person’s movements on public streets accords with expectations of privacy that our society has recognized as reasonable, but the use of longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy.” Jones, at 964.

The New York Court of Appeals reached the same conclusion in People v. Weaver, 12 N.Y.4d 433 (2009). In 2005, the New York State Police placed a GPS device inside the bumper of the defendant’s car, without a warrant, and monitored it for 65 days. In a 4-3 decision, Chief Justice Lippman held that “The manner in which the police come to know a container was subsequently revealed to the suspect, and the government tracked the movements of the container on public roads. The Supreme Court held that this monitoring did not constitute a search because it merely substituted for or supplemented visual surveillance that would have revealed the same facts. United States v. Knotts, 460 U.S.276 (1983). Under this holding, because GPS tracking mirrored visual surveillance, it would appear that no violation of the Fourth Amendment occurred. In dissent Justice Brandeis stated, "The protection guaranteed by the Amendments is much broader in scope [than the protection of property]. The makers of the Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man and his interests and of his intellect. They knew that only a part of the pain, pleasure and satisfaction of life are to be found in material things. They knew that the technology of government in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone— the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment." Olmstead, 478-479. Olmstead was eventually overturned by Katz.

Katz, in Katz, a listening device was placed on the outside of a telephone booth, and the voice of the defendant was listened to. "The Government’s activities in electronically listening to and recording the petitioner’s words violated the privacy upon which he justifiably relied while using the telephone booth, and thus constituted a ‘analogous seizure’ within the meaning of the Fourth Amendment. The fact that the electronic device employed to achieve that end did not happen to pertain the wall of the booth can have no constitutional significance.” Katz, at 353. Katz was significant because it established the rule that a search can entail more than a physical intrusion. Even though the phone booth was accessible to the public, while the defendant was in the booth and using it for its intended purpose, its expectation that his conversation would be private was reasonable.

From then on, Fourth Amendment jurisprudence was concerned primarily with the expectation of privacy. In an early electronic tracking case, the Government placed a primitive tracking device referred to as a “beeper” inside a container which was subsequently delivered to the suspect, and the government tracked the movements of the container on public roads. The Supreme Court held that this monitoring did not constitute a search because it merely substituted for or supplemented visual surveillance that would have revealed the same facts. United States v. Knotts, 460 U.S.276 (1983). Under this holding, because GPS tracking mirrored visual surveillance, it would appear that no violation of the Fourth Amendment occurred.

However, the Court of Appeals in Weaver found a difference in degree between the use of a “beeper” and the GPS monitor. "Disclosed in the data retrieved . . . will be trips the indisputably private nature of which takes little imagina- tion to conjure: trips to the psychiatrist, the plastic surgeon, the abortion clinic, the AIDS treatment center, the strip club, the criminal defense attorney, the by-hour motel, the union meeting, the mosque, synagogue or church, the gay bar and on and on. The government, with its workable technology, can store the records with breathtaking quality and quantity is a highly detailed profile, not simply of where we go, but by easy inference, of our associations . . ." Weaver, at 441-442. Therefore, according to the minority opinion in Jones, and the Court of Appeals decision in Weaver, it is not a placement of the device on the car which constituted a search, but rather the long-term monitoring which violated the Fourth Amendment. GPS monitoring constitutes a violation of the Fourth Amendment and a warrant based upon probable cause is required.

However, a number of questions remain. First, Justice Alito concedes that a shorter time period of monitoring may not constitute a search. “We need not identify with precision the point at which the tracking began” in McDivitt, “for the line was surely crossed before the 4-week period.” Jones, at 964. Therefore, it is tracking for a week without a warrant permissible? Under Weaver there is no question. All routine GPS tracking requires a warrant.

Second, both Jones and Weaver recognize that there may be exigent circumstances where GPS monitoring will be permitted without a warrant. “We also need not consider whether prolonged GPS monitoring, in the context of investigations involving extraordinary offenses would similarly intrude on a constitutionally protected sphere of privacy.” Jones at 964. Similarly in Weaver, the California Supreme Court, in the absence of exigent cir- cumstances, the installation and use of a GPS device to monitor an individual’s whereabouts requires a warrant supported by probable cause.” Weaver, at 447. What constitutes extraordinary offenses or exi- gent circumstances under these cases? If the police were investigating kidnapping, would they be permitted to place a device on a car without a warrant? What about a murder case? What about a terrorist threat? A further problem is that as a result of these cases there is a disinjunction in the warrant requirement for long term moni- toring. Most people today carry with them a GPS device, known as a cell phone. Telecommunications companies retain a record of where the cell phone was when a call was made. These records are available to the government pursuant to a court order. 18 U.S.C. §2703. Under this law, the government is not required to establish probable cause. Rather, the government need only show “specific and articulate facts . . . that a warrant supported by probable cause is required.” 18 U.S.C. §2703(b). We have no information to believe that the [cell phone records] are relevant and material to an ongoing criminal investigation.” 18 U.S.C. §2703(b). A further problem is that basing these opinions on the notion that long-term monitoring violates the Fourth Amendment, the question of visual surveillance may now be questionable. For example, although, a GPS device can transmit its location, visual surveillance not only pinpoint the target’s location, but also iden- tifies what a person is doing and to whom he or she is talking. This seems to be much more intrusive than just the location.

Continued From Page 1
Right to Travel
Continued From Page 5
Currently, there are other issues which may also need to be interpreted under the reasoning of Vartelas. For instance, what if the determination as to whether a crime is one of moral turpitude changes from the time an alien takes a plea? In 1966 the Board of Immigration Appeals found that misprision of a felony (withholding information about a felony) was not a crime of moral turpitude. See Matter of Sloan, 12 I&N Dec. 840 (A.G. 1968, BIA 1966). But in 2006 Sloan was overruled and the BIA held that misprision of a felony was in fact a crime of moral turpitude. See In re Robles-Urrea, 24 I&N Dec. 22 (BIA 2006). See also, Itani v. Ashcroft, 298 F.3d 1213 (11th Cir. 2002). What will happen to those aliens who with the advice of counsel and the understanding of the Immigration Laws at the time of a conviction entered a plea to a crime which at the time was not considered a crime of moral turpitude but was then later interpreted to, in fact, be a crime of moral turpitude? It would seem that under the reasoning of Vartelas and St. Cyr, that any retroactive interpretation would be rejected and is a violation of the U.S. Constitution. The Supreme Court rulings of Vartelas, St. Cyr and Padilla were constructed with the overall focus not only that an alien is entitled to effective assistance of counsel in any decision which would effect their residence in the United States but also on the notion that people have a right to adequate notice and information regarding the law under the Fifth Amendment’s Due Process Clause, Ex Parte Fausto Clause, and the Contract Clause. The holdings of these cases serve to protect those who come under the purview and jurisdiction of the legislative and judicial systems.

Of course retroactivity of laws in the Immigration arena have been actively litigated. The 2010 decision of the Supreme Court in Padilla v. Kentucky, 130 S.Ct. 1473 (2010) has resulted in divergent opinions from Courts at nearly every level holding the ruling in that case either retroactive or nonretroactive 1 with the Court’s struggling with the retroactivity issues and prejudice to the aliens under the Federal Standard for ineffective assistance of counsel set forth in Strickland v. Washington, 466 U.S. 668 (1984). In sum, the jury is still out on these latter issues and others of a similar nature and it will be left to further clarification by the Courts.

*Editor’s Note—In the merry-go-round of Immigration decisions, the Ninth Circuit decided Robles-Urrea v. Holder, F.3d (9th Cir. 4/2/12) while this article was being sent to print. The Ninth Circuit reversed the Board of Immigration Appeals and held the misprision of a felony was not a crime of moral turpitude. It also held the reasoning of the Eleventh Circuit in Itani v. Ashcroft, supra, is flawed. The Court noted that a crime of moral turpitude is one that involves fraud or one that involves grave acts of baseness or depravity such that its commission offends not only the most fundamental values of society. The fact that the offense conveys “societal duties” is not enough to make it a crime of moral turpitude. The Court noted that if it was enough then every crime would involve moral turpitude. The BIA and Itani case had reasoned that misprision of a felony was a crime of moral turpitude because it involved knowledge of a crime and some affirmative act of concealment or participation and that such conduct runs contravention to accepted social duties. However, the Ninth Circuit reasoned that the second crucial consideration for a crime of moral turpitude: that the crime involved some level of depravity or baseness so contrary to the moral law as to give rise to moral outrage, was missing.]

*Joseph F. DeFelice is President-Elect of the Queens County Bar Association and practices Immigration and Criminal Law from his office in New Gardens.
**Marie-Eleana First is a member of the Queens Bar Association practicing Immigration Law from her office in Manhattan.

5. The Court mentioned Padilla v Kentucky, 130 S.Ct. 1473 (2010) and noted that it had on several occasions noted the severity of the sanction of banishment from the United States. See also, INS v. St. Cyr, 535 U.S. 289 (2002).
6. Whether this applies to those convicted on a plea only rather than after trial as interpreted by the Supreme Court in INS v. St. Cyr, 535 U.S. 289 (2002), another case dealing with issues of retroactivity in the Immigration law as it related to the former relaxed加之该法的逐条解释及序言为国家移民法, did not address this.

A sample of cases resolved by our commercial panel:

- Claim against indenture trustees for not making appropriate claims in bankruptcy of major airline, resulting in loss of $75 million.
- Dispute between two hedge funds and Russian mathematicians concerning codes and models involving statistical arbitrage.
- Alleged breach of fiduciary duty by lawyers hired to represent former finance minister of oil-rich country.
- Accounting malpractice claim by high-income clients based on tax shelter recommendations made by national accounting firm.
- Dispute between satellite company and giant entertainment network about appropriate charges for television channels.
- Commercial libel and tortious interference claim on media personality’s contract covering his on-air statements.
- Dispute concerning control of a magazine between popular television host and publishing company.
- Dispute between prominent film maker and financial backer concerning allocation of costs and profits on a series of six movies.
- Dispute between a landowner and a municipality regarding road construction and drainage easement.
- Dispute about quality of manuscript submitted by popular author and book publisher.
- Brokerage fee dispute involving properties sold for over of $20 million.
- Breach of an agreement to insure against the criminal acts of Bernard Madoff in his capacity of financial advisor/security broker which resulted in an investor loss in excess of $20 million.
- Fraud and breach of contract involving the construction of a large condominium.