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Queens Bar Bulletin

Queens County Bar Association / 90-35 One Hundred Forty Eighth Street, Jamaica, NY 11435 / (718) 291-4500 **Vol. 72 / No. 1 / October 2008**

Is the CIA the NYPD of a Globalized World?

BY PAUL E. KERSON

Paul E. Kerson

Is the CIA the NYPD of a Globalized World? Can a Federal Police Department go anywhere in the world arresting suspects who may or may not have plans to attack the United States? And what if they find individuals who have actually attacked the United States? Can such a person be held indefinitely without trial? Certainly Foreign Government soldiers who have attacked us in a war can be killed in a battle with the U.S. Army. But what if there is no army, no battle and no foreign government soldiers, but the threat is just as real? What does our law say then?

These are the frontiers of Constitutional Law in our time. There was no right answer until June 12, 2008, when Justice Anthony M. Kennedy of the U.S. Supreme Court announced his opinion for the 5-4 majority in *Boumediene v. Bush,* 2008 WL 2369628 (U.S. Sup. Ct. 2008). This is perhaps the most significant judicial opinion from any United States Court in generations. Justice Kennedy was appointed by President Ronald Reagan in 1987.

First some background. The United States was viciously attacked with its own hijacked domestic airplanes on Sept. 11, 2001. One was flown into the Pentagon in a Virginia suburb of Washington, D.C., causing major damage to the building and significant loss of life. Two were crashed into the World Trade Center in New York, killing 3000 people and knocking down the City's two tallest buildings. One plane was forced into the ground in Pennsylvania by brave passengers who overwhelmed the hijackers, killing all on board. It is thought that these criminals were aiming the plane to crash into the White House or the Capitol Building in Washington.

But the most significant event leading up to the landmark decision in *Boumediene v. Bush* did not occur in our time at all. It was the first successful motorized airplane flight on December 17, 1903 by inventors Wilbur and Orville Wright in Kitty Hawk, North Carolina. They had designed the world's first successful airplane in their bicycle shop in Dayton, Ohio. The Wright Brothers changed World History with this invention.

They changed it again in 1907, four short years later, when they redesigned their invention for use by the U.S. Army. The Army accepted the world's first military airplane from the Wright Brothers on August 2, 1909.

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Presidential Candidates Then & Now: Robert Kennedy Reconsidered

BY STEPHEN J. BOGACZ

June 5, 1968. A major presidential candidate's murder in a hotel kitchen altered the history of the last third of the twentieth century. The candidate had garnered an impressively broad spectrum of support in that Spring's primary elections. The ensuing forty years, however, witnessed a startling metamorphosis in the candidate's contemporary reputation. Robert Kennedy in 2008 is now firmly ensconced in the liberal pantheon, an acclaimed champion of the political left. Liberal candidates selectively quote him on issues that remain relevant today, to bolster their own "progressive" *bona fides*. Leftist journalists engage in similar exercises in support of their opinions. Kennedy is rapidly being stereotyped for posterity as a cherished liberal champion, nothing more.

Such post-mortem iconic enshrinement, however, accurately reflects neither the man nor his time. It misses the essence of the man and diminishes the breadth of his impact on our politics. This twenty-first century liberal "claim" to RFK is both spurious and illegitimate. At the moment of his death, he was *not* the hero of most liberals; Eugene McCarthy was. The Minnesota Senator had entered the presidential contest in early 1968 as the ideologically "pure" candidate of the left. He opposed Lyndon Johnson and his conduct of the Vietnam War at a time when no other anti-war Democrat, Kennedy included, dared to challenge the President for the party nomination. Many on the left, in fact, viewed Robert Kennedy's later entry into that race, only after McCarthy had bloodied President Johnson in the New Hampshire primary, as opportunistic and ruthless, or worse. Their enmity would not diminish until his assassination.

Looking back at Senator Kennedy's eighty-one day campaign that spring, it reflected neither liberal orthodoxy nor public opinion polls. By today's benchmarks of litmus tests and nuanced sound bites, it was nothing short of extraordinary in its honesty and candor. RFK viscerally understood that the problems confronting a nation are never homogeneous. They require individual

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Changing Of The Guard

New Queens Bar Association President Steve Orlow (L.) replaced outgoing President David Cohen. See pictures from the Annual Dinner and Installation of Officers, May 1, 2008, on pages 10 & 11.

Photo by Walter Karling

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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.

2008 FALL CLE Seminar & Event Listing

October 2008

Wednesday, October 22	Advanced Criminal Law Series, Part 1
Wednesday, October 29	Advanced Criminal Law Series, Part 2
Thursday, October 30	Fee Dispute Arbitration Training - All day course

November 2008

Wednesday, November 5	How to Start a Law Practice at St. John's Law School
Thursday, November 6	CLARO
Wednesday, November 12	Human Rights Committee Seminar
Thursday, November 13	Finding Hidden Assets
Monday, November 17	Stated Meeting - Update on Foreclosures
Wednesday, November 19	Landlord & Tenant Seminar
Thursday, November 20	Basic Federal Criminal Law Seminar

December 2008

Thursday, December 4	Holiday Party

CLE Dates to be Announced
Elder Law • Labor Law • Real Property Law • Taxation Law

NEW MEMBERS

Irene Angelakis
Daniel D. Baek
Lyle Bakst
Peter W. Beadle
Anne Behk
Ray Beckerman
John Anthony Bonina
Harry H. Burstein
Anne Donnelly Bush
John T. Chang
Bryan J. Coakley
John Eugene Coats
Michael Davidov
John Francis Diffley
Thomas J. Finn
Stanley H. Fischer
Michael Fitzpatrick
Robert Nathaniel Freeman
Chana Frid
David Gantz
Stephen Anthony Gargiulo
Christie Gelo
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Herman P. Gruber
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Kathryn A. Donnelly Gur-Arie
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Ashok Nihalani
Thomas Medardo Oliva
Laura Soledad Outeda
Elan Parra
Angelo R. Picerno
Tania Ju-Ann Redman
Michael Robb
Jorge Luis Rodriguez
Neal Simkovic
Robert B. Steinberg
Monica Courtney Trombley
Anna Tzakas
Wendy Whei-Jai Wang
Clark Whitsett
Cynthia N. Zamminer

NECROLOGY

Hon. Joseph P. Dorsa
Sylvester J. Garamella
James O'Connor *(Clerk to Hon. Agate)*
Fred Seliger
Donald J. Sheehan
Victor Zager

W A R N I N G Are your escrow deposits insured?

by Samuel Freed

Your master trust account, maintaining deposits of $100,000.00 or more, even for multiple clients, will only be protected to $100,000.00. However, each sub account, not exceeding $100,000.00, will be separately insured. Accounts in multiple banks may be your solution.

Get all of the facts 1 877 ASK FDIC (1 877 275 3342)
1 800 925 4618 for the hearing impaired

Read about FDIC insurance coverage www.fdic.gov/deposit/deposits
Calculate insurance coverage at the FDIC online electronic guide, www2.fdic.gov/edie.
You can visit your local banking institution for an FDIC depositor's guide.

Leslie S. Nizin

EDITOR'S MESSAGE

Dear members, this issue is the first of what will be a great year for the Bar Bulletin.
As always, I welcome your letters, poems, articles of interest and comments for publication in the Bulletin.
Kindly send all of your material to my attention care of the Bar Association, info@qcba.org, or to my e-mail address LNizin@gmail.com.

Lawyers Assistance Committee

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

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

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

If you or someone you know is having a problem, we can help. To learn more, contact QCBA LAC for a confidential conversation.

Lawyers Assistance Committee
Confidential Helpline
718-307-7828

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PRESIDENT'S MESSAGE

As the newly installed president of the Queens County Bar Association, I see this position as both a challenge and an opportunity.

No longer at a stage in my career where I am seeking embellishment of my resume, I look forward to contributing in some small way to a profession that has been such an important part of my life, and to the colleagues that participate with me in that profession.

I believe the single most important role of our Bar Association is to enhance the practice of law, in every possible way, for our members. As a starting point in that effort, and gratefully a truly wonderful one at that, are the recommendations of the Castellano Commission established by Chief Judge Judith Kaye. The Commission was established to make proposals to improve the practice of law for small firm and solo practitioners. Queens is, after all, a microcosm of the legal professions' demographics in New York State, where over 83% of practicing attorneys are in sole practice with an additional 15% practicing in firms of two to nine attorneys.

Steven Orlow

The Commission examined, analyzed and proposed suggestions involving the streamlining of court procedures, the greater utilization of technology in our courts, the lessening of the ever increasing costs of litigation, and the tempering of the burdens of current rules and regulations on the solo and small firm practitioner.

Our intention is to work and coordinate our efforts with Judges Jeremy Weinstein and Bernice Siegal, Administrative Judge of the Supreme Court and Supervisory Judge of the Civil Court, respectively, in identifying which suggestions are most susceptible to early application, and how we can eventually implement other suggestions that may be more difficult, yet very beneficial, to the attorneys in Queens County.

We intend to hold meetings with our membership with Judges Weinstein and Siegal, and others associated with the office of Court Administration, to raise the issues of greatest concern, and to delve into the programs that exist for implementing sought after changes.

These are difficult times for many in our profession. However, means presently exist to ameliorate many of the causes of the difficulties we face as small firm practitioners. It is your new administration's intent to make its very top priority the realization of these reforms.

If any of you should wish to either comment on the substance of this article, or to participate in developing the actions envisioned in this article, please feel free to contact me personally (e-mail: hiorlo@aol.com and note "QCBA Bulletin Article" in the "subject" line).

New York Parent Education and Awareness Program:

How the Court System is Succeeding in Protecting Children Whose Parents are Going Through Divorce, Separation or Other Child-Centered Litigation"

You do not have to know someone who is undergoing a separation, divorce or other child-centered litigation, and you do not have to experience it yourself, to recognize that putting children in the middle of the adult conflict can be detrimental to their health and well-being.

In 2001, in New York State, the Chief Judge, Judith Kaye, in her State of the Judiciary Address, announced an initiative to institutionalize parent education and awareness programs in New York State, and the creation of an advisory board to oversee this process. The Hon. Evelyn Frazee, A Supreme Court Justice in Rochester, is the Chair. This program is called the New York State Parent Education and Awareness Program.

What is the New York State Parent Education and Awareness Program? It is a program designed to educate divorcing or separating parents about the impact of their breakup on their children. The primary goal is to teach parents ways they can reduce the stress of family changes and protect their children from the negative effects of ongoing parental conflict in order to foster and promote their children's healthy adjustment and development.

What does the court system do? Following the guidelines developed by the Advisory Board, the Office of Court Administration certifies and monitors local providers of such services who wish to accept court-referred participants. The New York State Parent Education and Awareness Program has a website at www.nycourts.gov/ip/parent. It contains all of the guidelines and procedures for certification, and all of the forms that the providers of the program must use. There are currently 49 certified parent education providers in 61 counties offering classes in 91 locations. Judges may, in their discretion, order parents to attend these classes, parents may self-refer and agencies can refer parents.

Conclusion

This is just a brief overview of the current status of The New York State Parent Education and Awareness Program. Experience and research have shown that parent education does make a positive difference for children and their parents who are experiencing divorce or separation and it can help bring about a reduced need for court intervention. Currently, parent education is available in 61 counties. We are focusing on "getting the word out" about the certified programs so that more and more parents will utilize them. If you have any suggestions about how we can accomplish this, you can contact the Program by e-mail at nyparent-ed@courts.state.ny.us or at the toll-free number at 888-809-2798, or by mail at the New York State Parent Education and Awareness Program, 140 Grand Street, Suite 701, White Plains, New York 10601. Also, you can locate information about parent education at the parent education website at www.nycourts.gov /ip/parent-ed. Finally, please tell parents about this important program-it can make all the difference in the lives of children and parents in this State.

Tribute To The Honorable Joseph Dorsa

When I heard of Joe Dorsa's death my immediate reaction was to hope the information was incorrect. Although I had known Joe for many years when he was in private practice, he and I had eventually become very close friends, first sharing a chambers in Civil Court and later having chambers next to each other in Supreme Court. The knowledge that he would no longer be dropping in to say hello or that I would not be able to stop by to see him on a daily basis was shocking. There was an overwhelming sense of depression and loss.

However, the following day my wife, in passing, asked what I was smiling about. The news of Joe's death had me reminiscing about him and certain times we had shared in each other's company. While I still felt a profound sense of loss, ironically, all I could do was smile.

Joe Dorsa had that type of personality. There never was a day that I had spent in his company that was not filled with laughter. He loved being able to relax in the country and I was always teasing him about his "vast family compound" in the Catskills. In turn, he would always chide me about my "privileged, water front" upbringing (the East River) in Astoria.

Regardless of the circumstances or the purpose of the visit, there was always a story that had to be told or a joke exchanged before we parted. God knows Joe always had plenty of both.

And while Joe certainly was humorous, he was also extraordinarily intelligent. Though I could try and hold my own with him joke against joke, Joe certainly had a breadth of experiences in his professional and family life he could draw upon for stories that I could not match.

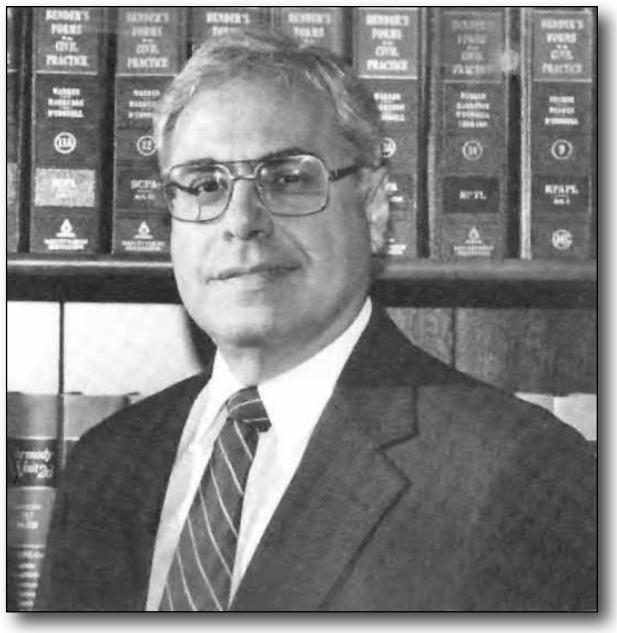
Often, when sharing experiences - especially regarding the activities of my children - he would take great pleasure in my apparent distress or confusion. He once told me hearing "Wait till you hear this..." was one of his '*favorite things*' - while humming the song to me no less. If I were involved in a lengthy trial or had a technical motion pending, he would find a way to belittle the situation and extol his legal prowess, often challenging me to finish the matter as perfunctorily as he certainly could.

Eventually, I began to realize that the stories he shared in return were not always being related to just amuse me - though I always was - but sometimes so I could put things in perspective and perhaps to glean some advice.

Joe was uniquely able to do this because he had the experience of coming from a working class background with strong familial ties. Joe worked hard to become an attorney and judge and knew what pitfalls and successes where involved in the effort. He was a devoted father and husband and who understood the importance of being present for your family regardless of their age or situation, the skill of balancing work demands and family needs, as well as the joys and heartaches necessarily encountered going through the process.

Joe also realized the importance of his faith, how it could bring comfort and reassurance, and how, by actually practicing what was preached, you could make life better not only for those who knew you but for yourself. While it is easier, most times, to turn your back or be unconcerned Joe always was helpful, regardless of the problem. He never delegated the responsibility of assistance to others, but did whatever it took, despite the inconvenience to him, to see that whatever could be done to resolve a situation was accomplished. The only real complaint he had regarding the practice of law was his perception as to how many lawyers today did not "look out" for one another.

The fulfillment that came from the ability to be of assistance to others was ultimately his greatest joy and the most significant lesson I obtained from him. To know at the end of a day or week that an effort on your part has helped a person is the not just a rewarding experience, but also the only way to ensure your own satisfaction and happiness, and something that will be repaid tenfold.



Honorable Joseph Dorsa

So, since August, the room next door has been quiet and my chambers has lost some of its charm. But, in quiet moments, Joe still brings a smile not just to me, but I am sure to anyone who pauses to remember him. That is because there was much to admire about Joe Dorsa, and everyone learned something simply from knowing him. My only regret is that, from my perspective, the lessons were too short.

And no Joe, that was not a shot.....

Hon. Peter Kelly

An Eminent Judge

I came to know Joe Dorsa in 1970 when, as a young Assistant District Attorney, I was about to venture into private practice.

Joe was running a two-attorney practice by himself as his cousin, now retired Justice Philip J. Chetta, had been recently appointed to the Criminal Court Bench.

I was introduced to Joe; we "made our deal" with a hand shake and so began twenty-seven years of practice by the law firm of Dorsa & Villoni.

Practicing with Joe was a professional endeavor, but more than that, it was a family experience. My wife, Pam, and our children became a part of his family and his wife, MaryAnn, and his two children became a part of our family.

Joe was born in Corona and was a true son of his community. Student and alter boy at St. Leo's, the local parish school, he distinguished himself at an early age.

But life was not to be easy for him. At ten years of age, his young father was taken from the family. His mother was left to care for her four children by using her most marketable skills as a sewing machine operator. Joe, as an only son, would soon assume the father's role and from then on, he knew only hard work and achievement.

A scholarship was earned from St. Francis College. With accustomed diligence and success he graduated Magna Cum Laude. St. John's University Law School beckoned with another scholarship where he continued to achieve as a law review scholar.

Never one to let others set his goals, Joe went into private practice with his cousin, Phil. Thus began a remarkable legal and civic career unsurpassed only, as he would say, by marrying his wife, MaryAnn, and having two wonderful sons, Joseph and John.

In rapid succession, he became President of the Corona Lions Club, the Corona Lawyers Association and the Columbian Lawyers Association. He then moved through community and religious leadership roles as President of the Broadway - Flushing Homeowners Association, Chairman of the St. Andrew Avellino Board of Education, Member of the Parish Council and Member of the Corona Community Planning Board.

When life as an attorney and community leader settled in, he turned his attention to his love of politics. He ran for and was elected to the Office of Democratic District Leader in the 25th Assembly District. In that office, he engaged in the daily rituals of politics and of advancing the political process. This culminated in his ascending to the bench in 1997 where he still served as a Supreme Court Justice at the time of his passing.

On the bench, as well as off, Joe was noted for his warmth and sincerity. He brought his considerable legal skills and humanity to every case he presided over. His judicial trademark and legacy is that he treated each case as he would want to be treated if it were he who was the litigant or the litigant's attorney.

Joe passed through this life with a simple vision and goal of doing good. He was an enormous success. He will be missed by his family, friends and the legal community in a way that cannot be expressed in words.

May you rest in peace, dear friend.

– Dominic A. Villoni

Like Family

I worked for Judge Dorsa as his secretary, along with his law secretary, Elizabeth Anderson, for almost nine years. We began in the Matrimonial Term in the year 2000 and eventually moved to Civil Term in 2004. What struck me most about Judge Dorsa right from the outset, was his memory, particularly with numbers. He was able to conference extremely complicated cases and six months later remember exactly what numbers were put on the table. Lauren Quondamatteo, his secretary of twenty years while he was in private practice, always said that he was a "walking calculator." With street smarts, shrewdness, a large dose of common sense and the uncanny ability to read people, Judge Dorsa was the master of the art of negotiation.

His dedication to his family, his kindness, generosity, and larger-than-life jovial personality were known and admired by all who knew him, particularly by Liz, Lauren and myself, who were so lucky to have worked with him. Although we worked hard, boy did we laugh. There was laughter - lots and lots of laughter.

People always stopped by chambers. Thinking about it now, there were always people in chambers because they'd love to hear any one of the Judge's stories. "I can hear the laughing all the way down the hall," they would say. That's what it was like working for Judge Dorsa - constantly laughing. Whether he told a story from his practicing days as an attorney or a story of a scene that played out in open court, Judge Dorsa could find something funny in just about everything.

I remember one particular time, the Judge and I were riding in a jam-packed elevator in the courthouse. One of the riders was an attorney who appeared regularly in front of the Judge. He must have had twenty files in his hands piled up precariously, one on top of the other, all the way up to his chin. Sweating profusely, hair falling in his eyes, he was having a tough time trying to keep it all together. I just knew that everyone in that elevator was holding their breath wondering when those files were going to start falling in every direction. After what seemed like eternity, the elevator stopped at his floor and the doors opened. Squeezing and maneuvering through all of us, he managed to make his exit. As he got through the doors, he turned around, looked at the Judge and said sheepishly, "Wow, Judge, I don't know what it is - I'm all discombobulated today." Judge Dorsa just smiled from ear to ear and with a playful twinkle in his eye said, "That's because you're a Republican." With that, the elevator doors closed and the whole elevator howled.

Whether a former client, an employee of the Court or an attorney who practiced before him, Judge Dorsa touched so many people's lives in so many ways. His passing and the sadness that is felt by so many, particularly by those who worked with him, shall be a constant for a long time to come. And yet, at the same time though, it can also be said that it is a blessing to have worked with him, a blessing to have learned from him, and, of course, a blessing to have laughed with him. Someone once told me as hard as it is and as hard as it can get, remember the blessings - remember the blessings, not the losses one experiences in life. So I will try and remember that and every time I think of Judge Dorsa, I will try to push past the sadness and always say to myself - I was truly blessed to have known him. It's the blessings not the losses. Blessings not losses.

– Dana Bahrey

Man of the People

When the Hon. Joe Dorsa passed away on the 12th day of August 2008, the bench lost a gifted jurist; the Bar, an experienced and knowledgeable attorney; the world, a giving and loving man; and I, a special friend and neighbor.

Joe Dorsa was above all else, a member of that innumerable class known as the common man and one who, having achieved great success in practice and universal respect as a judge, held that membership in the highest esteem; it was, after all, that which set him apart from most others. Joe knew life well and could readily understand the plight of people; he could see through a ruse as easily as he could view the plight of one not quite so facile in conveying the underlying circumstances of his or her predicament.

Justice Dorsa, having come to the bench after 36 years of private practice, brought with him that degree of legal pragmatism that can only be distilled from respect for clients, fellow attorneys, time factors, expenses, and paramount to all else, knowledge and love of the law.

Joe Dorsa while sitting in the matrimonial part, would never under any circumstances short of an emergency, take a lunch or other break, in the middle of settlement negotiations. After all, he reasoned, such interruptions would only lead to changes of mind or second-guessing by the parties.

It is impossible to separate the personal and professional facets of Joe Dorsa, so tightly were the threads of each aspect woven into the fabric of his career. Joe was a devout Catholic, being a Eucharistic Minister of St. Andrew Avellino Parish in North Flushing, where he also served as a Parish Trustee, Member of the Education Committee, and the Parish Council. He distributed ashes, the lenten symbol of repentance, reflection, and mortality, to thousands of Christians, non-Catholic and Catholic, every Ash Wednesday, and was an active participant in ecumenical dialogue with all religions. Respect for all was the keystone of the life of Joe Dorsa.

Every March 19th, Courtroom 45 was inundated with a flood of people gathered to celebrate Joe's annual observance of the Feast of St. Joseph, reflective of his ethnic pride as an Italian-American and maybe not quite so coincidentally, also the occasion of his birthday. Joe's generosity was never so apparent as with the amount of food and dessert that he so happily served. The more that was eaten, the broader was his smile. It was for Joe, yet another opportunity to bring people together.

It is difficult to write in retrospect of a friend's life and impossible to include all of which should be included. Notwithstanding his love of life, law, and people in general, paramount to all was Joe's love of his Maryann, who stood by his side as a true and equal partner for over forty years, and without whom, he often said, "I wouldn't know what I'd do." Joe and Maryann were the parents of Joseph and John and vicariously of John's wife, Beth. Joe watched over their welfare with the eyes of a hawk and the pride of an eagle as they achieved their own successes in life.

An extremely wealthy person I once was acquainted with, when asked for investment advice, responded simply that her most successful investments in life were "my memories, for after all," she stated, "they do pay the highest dividends, you know."

Joe Dorsa has provided us all a substantial annuity upon which to draw, until we all meet again.

– Hon. Lawrence V. Cullen

A Remembrance

The other day my secretary Lauren (who worked for Joe for twenty years when he was in private practice) and I were making our Friday lunch calls when we came upon Joe Dorsa's name. I didn't have the heart to cross him off our list.

Joe and I were friends for over thirty years, and though I did not see him every day, every time I did, it was with a laugh, a joke or a comment about the comings and goings of mutual friends and acquaintances.

When Joe passed away, I was personally surprised how deeply I felt the loss. He just seemed like a guy who would always be there. Lawyers loved him because he was fair, reasonable, and above all, practical in his application of the law. His colleagues admired him because he was always there with a word of advice when someone came knocking on his door.

He has left a huge hole in the heart and soul of the judiciary. He will be missed.

– Hon. Jeffrey D. Lebowitz

My Friend And Neighbor

Joe Dorsa was my friend and neighbor, maybe not in the traditional sense, but nevertheless, that is the way I will always remember him. Let me explain.

First, I consider a person a "friend" if he or she is the kind of person whom you know will always be there for you in good times and bad. Certainly, we were not friends in the so-called traditional way as our families never socialized. We hardly shared much of our own personal lives yet anytime I needed some sage advice or a little bolstering to get me through one of the rough moments in the matrimonial part, I always knew he was there for me. Since I succeeded him in Part 51, it was obvious that many of the cases I had were first worked on by Joe and his staff. So, to that extent, we did have a lot in common and often I would discuss some of these matters with him, the substance or just the quirks.

Joe practiced law for many years, had a very down-to-earth approach to things and while I was still in private practice, he told me of the benefits of working a matrimonial part. But for Joe, I never would be where I am today in the system and I will always be grateful for that. His insight was invaluable and as a "people person," there was no one better than Joe to point out the benefits of trying to help people in their most trying times.

When I say he was my "neighbor," I mean that in the literal sense. His chambers are next to mine on the 3rd floor and I cannot tell you what a comfort it was to know that he was just right there. On the spur of the moment, I could walk right in, sit down and discuss things with him and he always seemed to have the time for me. What a loss!

All of us have our own recollection of our involvement with Joe, from our annual get together for St. Joseph's Day, which he sponsored (and paid for) ever since he came on the bench, to his sense of humor and his enjoyment in being a judge, just to name a few, and as different as they may be, there is one common thread that connects us all - we knew a terrific guy and he will be remembered always.

– Hon. Sidney F. Strauss

A Kind And Generous Man

I am honored to be able to write a few words about my friend, the Hon. Joseph P. Dorsa. Of course, among his friends, I am a relative newcomer - I only knew him for around thirty years. Of all the words one could use to describe Joe: warm, kind, loveable, funny, loyal....the word that I think of is generous. And, though he was financially generous, it was the giving of himself that most struck me.

I first met Joe when I was in law school. After a few years as a judge's law secretary, I began to practice law. Joe was always kind to young lawyers. He would refer clients and then - in the days prior to continuing legal education - he'd provide all of the needed forms, and explain their use. Although he had a busy law practice (his office was always filled with Corona residents waiting to see him for advice), throughout the years Joe always made himself available and would never say no. I just felt badly that there was little I could do to reciprocate - what can you do for a man who didn't need a thing?

Joseph P. Dorsa was a kind, compassionate and generous man. A family man. A lawyer's lawyer. A judge's judge. I am proud to be have been his friend. And for all that he has done for me, I'd like to take this opportunity to say: Thanks, Joe.

– Hon. David Elliot

Remembrance

Q. Eleanor?

A. If you're Judge Dorsa, then I'm Elizabeth Anderson.

Thus began an almost nine year working relationship (and a continual running joke) with one of the most insightful, resourceful and humane individuals I've ever known. Judge Dorsa taught me many things over the years that I served as his principal law clerk; about the law, about offering solutions to people for the problems they brought before him, and most of all how to find humor and enjoyment in life.

He worked hard and accomplished much in his life, chief among these winning the respect and friendship of so many people from all walks of life. He treated everyone fairly, giving all who came before him a full chance to air their grievances.

He had a terrible memory for names, though, often referring to someone by the wrong name for years. No one ever seemed to really mind. But it was never wise to test his memory of the facts of a case, or the last offer and counter-offer on a settlement. If you bet against his memory, you'd lose.

He was a consummate story teller, using the story as parable to settle disputes, and he told some of the funniest stories ever, with perfect timing. As good speakers often are, he was equally appreciative when someone else told a good story or delivered a good speech.

For a man of rather small physical stature, he was a very large presence in my life, and I'll miss him always.

– Elizabeth (Eleanor) Anderson

Joe Dorsa, Corona, the North Side and Us

Of the many stories, vignettes and antidotes associated with the title, Joe figures in all of them. A close knit family, the Dorsa's and the Chetta's, Associate Justice Philip J. Chetta, is a first cousin, lived on a quiet residential block in what we all affectionately call Corona Heights.

We all know Corona Heights, the '39 and '64/65 World Fairs, or better yet, the Lemon Ice King of Corona, Potash's Fruit and Vegetables, Main Leo's Restaurant and more. We, all of us, were there before the World Fairs in the difficult times and facing many hardships. Joe, too faced those hardships and difficult times while growing up in Corona and he rose above them. A strong family commitment to education, Joe excelled and eventually becoming an Attorney at Law. He joined his cousin, Phil's law office on Roosevelt Avenue at Corona Station (that's the #7 line). Known for many fine attorneys practicing law in Corona we look back at Lou Duro, The Fisher brothers, Rocco Scalone, the Belluccis, the Marlowes, the Levine's along with Phil Chetta. Joe learned quickly on how to be a knowledgeable and good lawyer. Indeed the Corona's Lawyer's Club was a teacher for Joe and for all of us. Joe eventually became the club's President. Becoming President of the Corona Lawyer's is most significant. It is the only Lawyer's Club or Bar where its members pay no dues, the honor in resolving all club expenses are borne solely by it's President. Joe was so honored by that rule that he would not relinquish the Presidency. He remained for many, many years giving freely of his assistance to the newly admitted attorneys equally with his friendship. I know how long Joe was in his Presidency as I was the Vice President for many of those years.

Active in politics is not to be equated with the improper meaning given to politics by certain others. Politics really means people, people of all races, creeds and religions. Here is where Joe excelled. He was in the forefront of giving pro bono service to the Corona community, giving assistance to those who were running for elected office. Indeed Joe's life in politics was made up of giving sage advice to all those who needed it, especially at the North Side Democratic Club. Working on Presidential campaigns and many others, a number of which were Joe Lisa, Jr.'s, they were always happy and fun times, they were enjoyable for the friendships that were made and Dorsa was right there at every step giving assistance. The campaigns with Joe Jr., my brother, Jim and myself, and later years with Jeff and Dave were important to Joe because he knew what the best things were for our Corona community. He worked tirelessly and with a great amount of effort to seeing that the right things were done. On Primary night and Election Night, Joe was the only one who tallied our district votes. He would sit in the back of the clubhouse with that old but steady hand-cranking and button-counting and trustworthy adding machine. As the votes came in he recorded Joe would tell us what had to be done and made sure it was done. Of course, Joe learned this first and foremost from Joe Lisa, Sr. our District Leader. If you wanted to learn and learn the right way you listened to Joe Lisa, Sr. Dorsa knew that. We knew that. When it came time to do the job you could always count on Dorsa to do it right. The North Side is now celebrating its 100th year of continuous service to Corona and its people, with Joe, Sr. at the helm it's no wonder the Supreme Court bench in Queens was favored with many Sons from Corona. Sons like Joe LoScalzo, Bill Giaccio, Phil Chetta, Joe Lisa, Jr., Jim Golia, Jim Robertson, Jeff Lebowitz, Dave Elliot, me. For the Us mentioned, none more at the top than Joe Dorsa. We should remember with fondness his dedication to public life, the sacrifices made for the people of Corona at the expense of his own family. Us Corona boys who grew up on the streets of the Heights-well we didn't do too badly. That was US. True to each other, loyal and strong advocates for the poor and those less fortunate. Public service is what he yearned for, public service is what he gave. Reflecting on the life of Joe Dorsa we are honored to have Joe pass our way.

– Hon. Joseph G. Golia

Report of New York State Bar Association Meeting

BY RICHARD M. GUTIERREZ

At the behest of Leslie Nizin, Past President of our Association, I am writing this article. I had no choice, just do it, he said. In this article, I will report on the New York State Bar Association House of Delegates summer meeting, held in Cooperstown, New York, on June 21, 2008.

Before reporting on the meeting, I would like to give a special thanks to Steven Wimpfheimer, also a past President of the QCBA for his insightful articles on subjects entertained at the House of Delegates.

For those of you who do not know, the House of Delegates of the New York State Bar Association consists of 287 members from all over the state. I along with Guy Vitacco, Jr., are the newest delegates from Queens County. Our new Secretary, Joseph Risi, Jr., is an alternate delegate.

Each year the House of Delegates meeting is held at the Otesaga Hotel, in Cooperstown, New York, about three blocks away from the baseball Hall of Fame. The Otesaga Hotel is a five star hotel nestled near the Adirondack Mountains, a majestic location for a summer meeting. As you walk out from the lobby onto the veranda you are treated to a spectacular and panoramic view of the mountains and Lake Otsego, and the fairway and green of the 18th hole of the Leather Stocking championship golf course running along the lake. The four hour ride was well worth it. My only regret is that I stayed one night and did not spend the entire weekend at this idyllic setting.

Richard M. Gutierrez

The other QCBA attendees at the meeting, were Arthur Terranova, our Executive Director, and his family, John Dietz, past President and his wife, Leslie Nizin and his wife, and David Cohen, immediate past President.

Now it's time to report on the 132nd meeting. The meeting commenced at 8:30 a.m., by a call to order and introduction of new members by Michael E. Getnick, the Chair of the House. The minutes of April 5, 2008 meeting were approved and the first report was delivered by the Treasurer, our very own Seymour James, past President of the QCBA. He reported, with respect to the current year through May 31, 2008, the total revenue is $18 million an increase of 1.2 million from the previous year, and the total expense is 9.9 million, a decrease of $281,000.00 from this point in 2007, while CLE revenue increased by $461,000.00.

The next order of business was the presentation of the ROOT-STIMSON Award. Michael Hassett the chair of the ROOT-STIMSON Subcommittee reported that this Annual Award honors members of the legal profession for their outstanding community service.

President Leber and Mr. Hassett presented the award to Charles C. Russo, Esq., of Hauppauge. Mr. Russo is a member of the firm of Russo, Karl, Widmaier & Cordano, PLLC, was honored for his efforts as the founder of Christmas Magic, as well as his work as Chairman of the Board at Hope House Ministries and several other charitable organizations in Suffolk County. His acceptance speech made you proud to be a lawyer. It was emotional, passionate, caring and inspirational. Mr. Russo brought the House to their feet. It was a special moment for him and for us.

The next topic of interest was the report and recommendations of the Committee on membership. A proposal by the Chair, Claire M. Gutekunst, for the addition of two seats to the House of Delegates, for non-resident members, to be appointed by the President, was outlined. After discussion regarding the increase in non-resident membership, a motion in favor of the Committee's recommendation was approved.

Next a report and recommendation from the Committee on Professional Discipline was given. Essentially the co-chair, Sarah Diane McShea and Committee member Peter V. Coffey, outlined a proposed amendment to DR §9-102 of the Code of Professional Responsibility, to provide for a successor signatory on the escrow account of an attorney who has disappeared, abandoned his or her law practice, becomes permanently or temporarily incapacitated, or has been suspended or disbarred. After discussion, a motion was adopted to approve the amendment for transmittal to the Appellate Division for its consideration.

The next topic on the agenda concerned programs and services for senior lawyers. Justin L. Vigloz, Chair of the Committee, reviewed a survey conducted by the Committee concerning the needs and viewpoints of senior lawyers. The survey included areas such as: retirement, preparation and planning for retirement, as well as pro bono work.

After this report was given, Ms. Bernice K. Leber was formally installed as President. Honorable Judith S. Kaye, Chief Judge of the State of New York, administered the oath of office and delivered brief remarks.

Ms. Leber, thanked everyone and then announced the theme for her term as President would be "Helping Lawyers, Helping Clients." She reviewed some of the Association's past initiatives and highlighted some of the initiatives she planned for the coming year, including membership; strategic family planning; and e-mail outreach to lawyers to elicit their thoughts concerning the challenge they face; and section and committee projects.

The next report and recommendation was presented by the Committee on Civil Rights. Fernando A. Bohorguez, Jr., Chair of the Committee on Civil Rights, and Patrick Campbell, reviewed the United States Supreme Court's decision in *Boumediene v. Bush*. The Committee requested that the Association defer any action on its recommendation, until the Committee had time to review the decision and consider the following issues: What standards are applicable to habeas proceedings after *Boumediene*? What are the rights of detainees in other extra-territorial locations under the defacto control of the United States? And, what are the rights that must be afforded to detainees in the proceedings against them? After, a lengthy discussion, a motion to table consideration of the report failed for lack of a second. Thereafter, a motion was adopted to approve the following resolution:

PROPOSED RESOLUTION
COMMITTEE ON CIVIL RIGHTS

WHEREAS. The writ of habeas corpus plays a time-honored role as an indispensable guardian against arbitrary and unlawful executive detention;

WHEREAS, the United States Supreme Court recently held in *Boumediene v. Bush* that the Suspension Clause has full effect at the Guantanamo Naval Base at Guantanamo Bay, Cuba and aliens designated as "enemy combatants" and detained at Guantanamo have the constitutional privilege of habeas corpus to challenge the legality of their detention;

WHEREAS, *Boumediene* further held that the Combatant Status Review Tribunal's designation of Guantanamo detainees as "enemy combatants" and the Detainee Treatment Act of 2005's procedures for review of that designation are not an adequate and effective substitute for habeas corpus;

WHEREAS, *Boumediene* held that the habeas-stripping provisions of Section 7 of Military Commissions Act of 2006 operate as an unconstitutional suspension of the writ;

NOW, THEREFORE IT IS

RESOLVED, that the New York Bar Association supports the *Boumediene* decision and the principles underlying that decision and it is further;

RESOLVED, that the New York State Bar Association accepts, with thanks, the Report of the Committee on Civil Rights entitled "Executive Detention, Habeas Corpus and the Military Commissions Act of 2006," as amended, which addresses important issues including the applicability of habeas corpus to detainees in Guantanamo and other extra-territorial detention centers under the de facto control of the United States; and it is further

RESOLVED, that in light of the *Boumediene* decision issued after submission of the Report by the Committee, the New York State Bar Association defers adopting the recommendations in the Report; and it is further

RESOLVED, that the New York State Bar Association recognizes and adopts the Report's principle that Guantanamo detainees are entitled fundamental due to process protections discussed in the Report; and it is further

RESOLVED, that the New York State Bar Association recognizes that the *Boumediene* decision did not determine the

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Remembering A Friend

What more can be said about a man who was universally loved and respected. Joe Dorsa was an outstanding lawyer, a superb judge and, most importantly, a genuine human being and friend.

I had the privilege of being his Supervising Judge in Queens Civil Court and his Administrative Judge in Queens Supreme Court. The word "no" was not in his vocabulary, as he accepted every difficult assignment and case when requested, and assisted his colleagues when needed.

Those of us in Queens Supreme Court will miss his guidance and experience, but most of all, we will miss his affability, good counsel and friendship.

– Hon. Jeremy S. Weinstein

My Fondest Memories

By: Lauren Quondamatteo

I have had the privilege of knowing the Honorable Joseph P. Dorsa for most of my life. Both of our families were born and raised in Corona. He attended St. Leo's School with my mother since the first grade and remained friends with her and our family since that time.

When I was about fourteen years old, I would babysit for his two sons, Joseph and John. Afterward, he would drive me home and tell me jokes and stories. I remember looking over at him and thinking to myself "what is wrong with this guy?" I guess at fourteen, I did not appreciate his wonderful sense of humor.

When I was eighteen and right out of high school, he hired me to work in his law office, Dorsa & Villoni, as a secretary. I remained an employee of the firm for the next twenty years. He and Mr. Villoni taught me everything I knew about the law; in essence, I received a free legal education. With their encouragement, I then proceeded to become a paralegal and the office manager. The office clientele was basically comprised of the same neighborhood people who kept returning year after year. The clients absolutely loved "Mr. Dorsa"and heeded his advice. He treated them with the utmost respect, made them feel at ease and assured them that he would do his best to handle their legal issues.

When he left to take the bench in 1997, I continued working with his law partner, Dominic A. Villoni, for the next six years. I then attained a position with the Honorable Jeffrey D. Lebowitz in the very same court where Justice Dorsa presided. I considered myself fortunate to again be able to interact with him every day for the next four and a half years. During his tenure on the bench, he earned great admiration from his colleagues, court personnel and attorneys because of his gracious demeanor.

Needless to say, I have a very long history with Justice Dorsa and all of those years will be memorable ones to me. I will always remember his jokes and his stories and the way he made me laugh every day. He had the gift to make light of every situation and made everyone he touched smile. On those rare occasions when he got angry, he never stayed angry. He was just a joy to be around.

I do not have to tell anyone who has had the pleasure of knowing Justice Dorsa what a wonderful, kind and selfless person he was. He was one of the "good ones." His passing is a great loss to all and he will be truly missed.

We will never forget you, Judge.

– Lauren Quondamatteo

So Long, Farewell, Auf Wiedersehen....

BY LESTER SHICK

"Hello, I must be going," these words uttered by one of the most famous social commentators of the 20th century, Groucho Marx, just about sums up my feelings on my upcoming retirement, at the end of January 2009. It is hard to believe that three and a half decades have gone by since I was a green court officer working the courtrooms of 120 Schermerhorn Street, Brooklyn.

My whole court career has been working on the criminal side. One may state that I've been privy to many of the high profile cases of this city since the mid 1970's. That would be a perfectly correct deduction. As an example; I stood in the courtroom when Judge Richard Brown arraigned "Son of Sam," David Berkowitz in Brooklyn Criminal Court; I worked the "lobster shift" with Judge William Booth arraigning defendants in Kings County, right after the Blackout in '77; I stood on the bench right next to Justice Thomas Demakos while the foreperson was reading the verdicts in the Howard Beach case; I worked the Black Liberation Army York-Laborde murder case with Justice Kenneth Browne, while William Kunstler was holding court, in an out of the courtroom.

It is interesting and exciting being involved in a high profile "media" case. That being said, I want to talk briefly about working as a Part Clerk in the courtroom environment over the past 20 years. To me the minutiae of the work day really makes it interesting. I've seen countless special moments in the courtroom. For example, I've been privy to a Damon Runyonesque witness asking a judge if he could light up a cigarette while testifying. I've also seen a witness during a fortune telling case involving Santeria, talk in one voice and then a totally different voice starts spewing invectives. Obviously, the jurors and all in the courtroom were stupefied. I've witnessed the sensationalism of an Assistant District Attorney give a magnificent summation next to a barrel of 100 bricks of cocaine, putting on rubber gloves and exhibiting the drugs to the jurors in the box. I guess you can say, "All in a day's work for a Part Clerk."

Lester Shick

Over these past two decades I have been a Part Clerk for four different judges. I worked briefly with Justices Ann Dufficy and Arthur Cooperman. The majority of my time has been working with the late Joseph Rosenzweig and currently with the Hon. Barry Kron. Four different judges, each with a different way of conducting a courtroom.

Over the years I have always prided myself in the work I do. I hope that has come across to the general the work I do. I hope that has come across to the general public. I try to be accommodating to the Judge and their needs, the attorneys and their hectic schedules, my fellow non-judicial employees and the public, who are very confused and scared coming into the courthouse.

If you have passed through one of my courtrooms over the years, you would have taken note (pardon the pun) of my true appreciation of music. From Beethoven to Bruce, Dylan to Sinatra, the Beatles to Bob Marley, Les Miz to the Allman Brothers, Brubeck to Clapton; you get the idea. We've had a lot of fun and many engaging conversations concerning different performers and songs. We even listed to a few occasionally. Travel was another subject we talked about a lot. My baseball park trips and stopping at True Americana historical sites of interest was always a hot topic. I've always appreciated stories attorneys related to me of their travels, sparking my interest to get to some of these places one day.

Most of you who are familiar with me know that two of my three daughters are still in college, a senior at the University of Michigan (applying to law school as we speak), and a sophomore at Penn States. It is fairly obvious that my leaving the Courts means employment somewhere else. I have feelers out now and who knows, I just may be seing some of you working in a different capacity.

Twenty-five years ago I met my wife, Brenda, in the courthouse when she was working as a probation officer. We share the same philosophy on life. We like to do things and appreciate them now. I've truly appreciated my time in the court system and quoting Judge Kron, during every voir dire conducted, "watch democracy at work." In the words of a song from French chanteuse Edith Piaf, "Non, Je Ne Regrette Rien." So here is an open invitation to members of the Bar, when you are in the main building, Kew Gardens, stop by Part K-2, 3rd floor and schmooze for a bit. Thanks for the memories.

Editor's Note: Lester Shick is an Associate Court Clerk in Part K-2 in Kew Gardens, which part is presided over by Justice Barry Kron.

The Culture Corner

BY HOWARD L. WIEDER

To longtime **Queens County Bar Association member RONALD B. HELLMAN, Esq**., his job as a lawyer in his own private practice in Douglaston, Queens, provides him with the financial wherewithal to fund his true passion: the stage. Skilled lawyer and well-read bon vivant, **RONALD B. HELLMAN** founded the **OUTRAGEOUS FORTUNE COMPANY (**"**Outrageous**"**),** a theatrical company now in its 16th season**. Outrageous** tries to produce plays that are new or not so famous.

For its 45th production, **Outrageous** and **RONALD B. HELLMAN** are presenting, during November 14-23, 2008, **"YELLOW FACE,"** a play written in 2007 that gave Tony Award-winning Chinese American playwright **DAVID HENRY HWANG** his third Obie Award and made him a finalist, for the third time, for the Pulitzer Prize. **"YELLOW FACE,"** which will be performed at the **QUEENS THEATRE IN THE PARK** at Flushing Meadow, is a hilarious comedy about racial identity.

While **"YELLOW FACE"** details the playwright's evolution and enlightenment about his own ethnicity as a Chinese-American, its theme is universal. How do we define ourselves? For years, persons posed the question of whether American Jews, in the unlikely event that Israel and the United States became enemies, would be more loyal to America or to Israel. Ultimate allegiance to which country? "Jewish Americans" or "American Jews"??? Irish-Americans and Italian-Americans have been confronted with similar questions.

In **"YELLOW FACE,"** the above hypotheticals, while seeming to be ridiculous, was not at all absurd for the Chinese-American community. Specifically, in the late 1990's, **THE NEW YORK TIMES** and Congressional committees spearheaded investigations of many Chinese Americans, as the People's Republic of China emerged to be a major player on the international economic, military, and political stages. Americans became fearful of a strange alphabet, different skin color and foreign features, and a people that seemingly chose to be content by huddling together, rather than assimilating. Xenophobia set in. Unlike Jewish-Americans, Italian-Americans, and Irish-Americans, whose loyalty to the United States was never seriously questioned, Chinese-Americans came under intense scrutiny by **THE NEW YORK TIMES** in dozens of articles, the Federal Bureau of Investigation, and congressional committees.

Howard L. Wieder

The life of **WEN HO LEE**, an American nuclear scientist, was ripped apart when he was falsely accused of espionage of handing secrets to China. Articles in **THE NEW YORK TIMES**, a great paper generally respected for its commitment to truth, portrayed Lee as a guilty traitor. The fact was that **WEN HO LEE** was innocent. He was a loyal American. He, however, spent months in subhuman solitary confinement. He was finally exonerated of an espionage charge with the federal district court judge, a conservative Reagan-appointee, apologizing, on behalf of the United States, to Dr. Lee for the injustice and degrading confinement he suffered. Cardozo, once rightly and eloquently recognized: "Reputation . . . is a plant of tender growth, and its bloom, once lost, is not easily restored." *People ex rel. Karlin v. Culkin*, 248 NY 465, 478, 162 NE 487 [1928]. Three excellent, insightful articles by Robert Scheer in **THE NATION** chronicle this sad episode of injustice in our courts. See Mr. Scheer's articles "The Persecution of Wen Ho Lee," August 7, 2000, "No Defense - - How the 'New York Times' Convicted Wen Ho Lee," October 5, 2000, and "The *Times* and Wen Ho Lee," February 8, 2001, found in **THE NATION** or www.thenation.com.

"**YELLOW FACE"** exposes the sleazy underbelly of journalism and power politics when Chinese Americans, in the late 1990's, became prey on a witch-hunt organized by powerful Congressional leaders and a **NEW YORK TIMES** journalist too-eager to expose the evils of the People's Republic of China. This theme is searingly and chillingly presented in the unforgettable Second [and last] Act. Despite the seriousness of the second act, the play is unusual in that it is also a comedy, as it spoofs celebrities of the worlds of theatre, politics, television, journalism, and culture. The mixture of a comedy of racial identity in one act combined with the frightening dramatic portrayal of journalistic and governmental power gone berserk in the next act led one theater denizen, established critic Ben Brantley, to describe **"YELLOW FACE"** as resembling a late night call from an anguished and delirious friend in crisis. See gA Satirical Spin on Stereotypes at Home, Abroad, and on Broadway," N.Y. Times, December 11, 2007.

Despite such criticism, **"YELLOW FACE"** will long be remembered for blazing a new trail, in pioneering advances in dramatic-comedy. The wit is biting in its sharp impersonations of real life celebrities. **DAVID HENRY HWANG**, who won the Tony Award for the Broadway hit **"M. BUTTERFLY,"** makes himself a protagonist in **"YELLOW FACE,"** based on real events facts, concerning his casting in the Broadway-bound flop "Face Value."

The brilliance of **"YELLOW FACE"** is that Hwang is unsparing in placing his failures under mercilessly bright and unflattering spotlights: his hypocrisy in not standing up for truth after attaining success for **"M. BUTTERFLY**," his narcissism, his willingness to sell out "artistic freedom" when he realizes that his self-interest would be jeopardized by standing for truth, and his willingness to perpetuate lies and injustices to members of his own ethnicity in not getting involved in order to feel comfortable. May we all engage in Hwang's honest introspection. His idea to hide and enjoy the trappings of his comfort are suddenly changed when a **NEW YORK TIMES** reporter, casting too wide a net of suspicion, starts researching the playwright-protagonist's elderly father. The father, who basks in attaining "the American dream," is now threatened by an obsessed reporter who sees the "Red Menace" EVERYWHERE.

As described in "**YELLOW FACE**," Hwang organized an unsuccessful protest to the casting of Welsh actor Jonathan Pryce in "Miss Saigon" [who won a Tony Award for the role]; yet, Hwang, when realizing his colossal error in the casting of his own play, "Face Value," tries to justify it and then lies in order to save a $2 million production. Hwang also alternates successfully between describing his own hypocrisy in racial identity and racial politics when, with impressive self-delusion, he casts a white actor in a part calling for an Asian and his own cowardice in not speaking against some of the outrages perpetrated against Chinese Americans.

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The Culture Corner

Continued From Page 8

The events depicted in **"YELLOW FACE"** are true, and the characters are based on real persons. The hilarity of Act I, involving the playwright-protagonist's predicament, caused by his own self-deception, stands in contrast to the seriousness of Act II. In the second act of the play, an overzealous **NEW YORK TIMES** reporter, described as **"NAME WITHHELD ON ADVICE OF COUNSEL" ("NWOAOC")**, targets HYH [the late successful banker Henry Y. Hwang], convinced of his "theory" that HYH is a financial soldier aiming to help China's alleged planned infiltration and domination of the United States. Researching the role of NWOAOC, it becomes evident that the character is based on Jeff Gerth, a Pulitzer Prize-winning journalist, whose latest work is a controversial and not critically well-regarded biography concerning Senator Hillary Rodham Clinton. Jeff Gerth has been criticized as a "corner-cutting" and "shoddy" journalist, whose "convoluted tales" and "over-the-top accusations" were presented to readers "without a hint of skepticism." See discussion in Eric Boehlert, "Jeff Gerth, Meet Judith Miller," Media Matters for America, May 30, 2007, at Before his several stories were questioned and scrutinized, Gerth was repeatedly □auded and rewarded□by **THE NEW YORK TIMES**, whose credibility suffered a serious set-back, as a result. *Id*.

Tickets to **Outrageous' production of "YELLOW FACE" this November** are going to sell fast. Not only is producer **RONALD HELLMAN an attorney,** but two lawyers, including this columnist, have been cast in significant roles. **HELLMAN** is contemplating stretching the run of **"YELLOW FACE"** to eight performances, thereby enabling this forthcoming production eligible for consideration by the jury of judges of the **NEW YORK INNOVATIVE THEATRE AWARDS,** for nominations and awards for best production, performances, ensemble acting, and directing by an Off-Off-Broadway production.

This production is directed by **SOFIA LANDON GEIER**, who is an accomplished actress, having appeared for several years on two famous daytime serials or "soap operas," "Days of Our Lives" and "Another World," and then becoming a successful and award-winning script writer, professor of drama, and director. Director Sofia Geier is aided by stage manager **VICTORIA PITTL**, an aspiring actress. The eight members of the ensemble cast are: **FENTON LI**, a graduate of a prestigious dramatic academy, in the starring role of DHH, **TOM ASHTON**, talented actor-musician known for three successful television commercials for 1-800-CABLE, in the role of Marcus G. Dahlman, the white man mistakenly cast as an Asian, **ANASTASIA MORSUCCI,** a formidable black actress who plays both a devoted Chinese wife and a white mother, **RAY CHAO**, a lawyer who gives a hysterical, priceless, and poignant performance of Henry Y. Hwang, the playwright-protagonist's Chinese-born father, **JENNIFER GEGAN**, wildly funny in a variety of roles, **JADE JUSTAD,** brilliant as girlfriend first to DHH and later to Marcus, **SCARLETT AHMED** in multiple roles, and **me.** I play the Announcer and **NWOAOC,** the Jeff Gerth-inspired *New York Times* reporter, who actually wrote dozens of articles in the late 1990's depicting China, as a threat to the United States. I make my acting debut at age 55.

Producer **RONALD HELLMAN,** proud of the casting, states that the eight "cast members' ethnic backgrounds mirror the diversity of New York City and, in particular, Queens County." Several of the performances will be followed by an audience-generated Question-and-Answer session moderated by a prominent Chinese-American.

Tickets are $22 with an advance purchase, and $25 the door [if any are available, by then]. The theater's capacity, however, is strictly limited to 90 seats. Tickets may be purchased by sending checks directly to:

THE OUTRAGEOUS FORTUNE COMPANY
42-24 Douglaston Parkway
Douglaston, NY 11363,
tel. 718-428-2500, ext. 20

"**YELLOW FACE"** will be performed on: Friday, November 14, 8 P.M.; Saturday, Nov. 15, 8 P.M.; Sunday, Nov.16, 3 P.M.; Thursday, Nov. 20, 8 P.M., Fri., Nov. 21, 8 P.M.; Sat., Nov. 22, 8 P.M., and Sun., Nov. 23, 3 P.M. A Saturday matinee, on Nov. 22, at 2 P.M., **might** be added. Many of the performances, except for the opening [Nov. 14] and closing [Nov. 23], will be followed by an audience-generated Question-and-Answer ("Q&A") session moderated by a distinguished Chinese-American. Already agreeing to moderate a Q&A session [as of September 26, 2008] are: **MARGARET FUNG**, **ESQ**., the Executive Director of the Asian American Legal Defense and Education Fund [who is portrayed in David Henry Hwang's play], who was also my classmate at N.Y.U. School of Law, Class of 1978; **HON. DOROTHY CHIN-BRANDT**, an Acting Justice of State Supreme Court in Queens County, and **GRACE MENG, ESQ**., who is the Democratic Party's candidate for the Assembly from Flushing, Queens.

Free parking is available at the theater. Free shuttle trolleys will be running from the #7 train at Shea Stadium/Willet's Point to the theater, running one hour before and after all performances. The **QUEENS THEATRE IN THE PARK** is located in the heart of Flushing Meadow's World's Fair Park and can be found at Exit 9-P from Long Island and Exit 9-E from Manhattan.

HOWARD L. WIEDER, who writes both "THE CULTURE CORNER" and the "BOOKS AT THE BAR" columns in THE QUEENS BAR BULLETIN, is the Law Secretary to State Supreme Court Justice Charles J. Markey.

Why Bar Association?

BY STEPHEN J. SINGER

One of the most serious predicaments facing almost all bar associations is the lack of a growing membership. This problem is debated endlessly, committees are formed to inspire new membership and hands are offered to graduating students from all of the local law schools, usually with few rewards. The result is the loss of revenue as older members retire or pass on and the inability to fund new projects or to keep costs down on current programs.

When younger lawyers are queried as to their lack of participation in their local bar associations many explanations are offered, beginning with a refusal to attend meetings or functions that occur after five in the afternoon. Frankly, many committee meetings are now conducted during the lunch hour solely because members will not show up after work. Attendance at stated meetings and other evening functions is falling and more attorneys are getting their C.L.E. from rented or purchased tapes. The most frequent explanation however, regardless of how far we lower the cost of various functions, is that younger lawyers don't recognize the importance of supporting the association or see themselves as deriving any personal benefit from membership.

Personal benefits are actually plentiful and easily enumerated; group rates on all kinds of personal and professional insurance plans, reduced cost C.L.E., rotating legal referral panels, cost free rooms for conferencing and computers for legal research, etc. The more esoteric reasons for continuing bar association membership and support are not as easily recognized. I am constantly reminded of these benefits because as the co-chair of an important committee I am often directly involved. However, they normally go unpublicized and it is worthwhile to point out some very recent examples.

Stephen J. Singer

We received a panicked telephone call the other day from a younger attorney who had just been ordered to "show cause" why he should not be held in contempt and sanctioned, by a Judge in Queens Family Court. We immediately sprang into action and arranged for the young man to sit with one of our senior lawyers who spent literally two hours drafting a written response and faxing it to the Judge's chambers, just in time to beat the deadline. Contact was made with our President who directed our Vice-President to appear with the lawyer in court the next day, as a representative of the bar association. Whether it was the well drafted response, the appearance of one of our officers, or a combination of the two, the Judge backed off and no punishment of any kind was imposed. That young lawyer will be grateful for years to come.

One of the members of our Criminal Courts Committee was in contact after observing that a new "high tech" methodology for language interpretation was being initiated in our Kew Gardens facility. O.C.A. had undoubtedly received a "grant" and had provided our local interpreter staff with some new gadgets. The reporting lawyer observed a trial with three Hispanic defendants, who were seated apart from their three Non-Hispanic lawyers, all defendants wearing headphones and the Spanish language interpreter sitting ten rows back in the audience. For the several hours that the reporter sat and observed, there was literally no communication of any kind between the attorneys and their clients. How could there be? To speak to their clients they would have had to stop the proceedings, request that the interpreter leave her place in the audience and come to the front, disable the audio and translate between the two parties. How often could the lawyer or client do this without creating a serious nuisance? And would this not damper the desire of either party to communicate because of the trouble it would cause?

Clearly, this was a terrible idea … technical advances run amok. When questioned, the interpreters could only say that they could hear better from the audience (highly questionable), and that they did not want to sit next to the defendants because they might be tubercular or "dangerous" (a condition that has not prevented normal interpretation arrangements for the past one hundred years or so). The chairpersons of the Criminal Courts Committee immediately recognized the potential for harm and the possibility of trial reversals if the arrangement was duly objected to. They wrote to Judge Weinstein who, much to his credit, immediately responded and sent out a memo to all sitting Judges that if any defense attorney objected to this procedure "strong consideration should be given" to their request to return to the normal – pre-high tech way of doing things. Situation cured!

Our County is preparing to establish a sex offender's part, similar to the drug and mental health courts already operating, where the emphasis would be on treatment rather than punishment. Two representatives from our bar association have been taking part in the organizational meetings to ensure that our perspective is heard and that proper procedures are put in place from our point of view. Thus far, we have been among the most vocal and influential of all the parties involved. Of course, this kind of representation and participation at all levels of court evolution is ever ongoing and simply part of what we do as a bar association. The problem is that save for occasional articles like this one, no one knows about it.

It is obvious then that there are significant personal and professional reasons to continue to be part of a bar association. There is the business networking, the personal touch of our Judicial Relations Committee, the social aspects, etc. Personally, I always advise young lawyers that if they have limited financial resources they should save the membership dues money for their local bar association rather than spend them on the ABA or some other distant organization. Can you picture Queens County without a Queens County Bar Association?

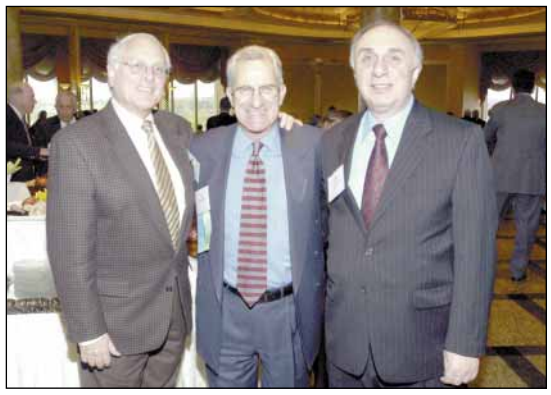
Editor's Note: Stephen J. Singer is a Past President of the Queens County Bar Association, Co-Chair of the Criminal Court Committee and a partner in the firm Sparrow, Singer and Schreiber.

PHOTO CORNER

Annual Dinner & Installation Of Officers - May 1, 2008

Alexander Rosado and Hon. Jeffrey Lebowitz

Amanda Beltz, recipient of Law School Student Scholarship from Leslie Nizin



Bernard Vishnick, Paul Pavlides and Joseph DeFelice

Borough President Helen Marshall and Steven Orlow

Brian, Adam and Rivky Orlow and Judy and Howard Hahn

David Adler, Nora Marino and Arthur Terranova

David Adler, Richard Ortiz and Kenneth Brown

David Cohen, Hon. Randall Eng and Janet Cohen

Denise Foster, Hon. Bernice Siegal, Hon. Cheryl Chambers and Janet Cohen

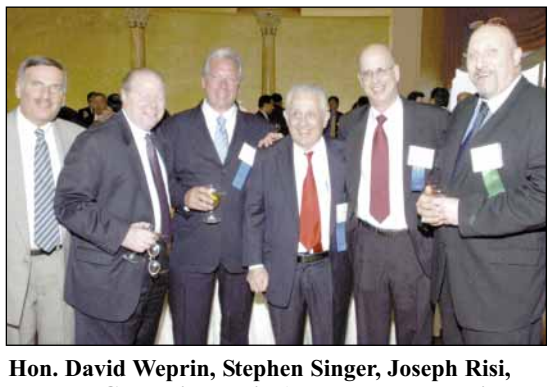
District Attorney Brown swearing in new President, Steven Orlow

District Attorney Brown swearing in the Board of Managers

District Attorney Brown swearing in the new officers

District Attorney Brown with Steven and Susan Orlow

Hon. Cheree Buggs, George Nashak and Hon. Phyllis Orlikoff Flug



Hon. David Weprin, Stephen Singer, Joseph Risi, Jr., Paul Goldstein, David Adler and Nelson Timken

Photos by Walter Karling

PHOTO CORNER

Annual Dinner & Installation Of Officers - May 1, 2008

Hon. Jeffrey Lebowitz and Hon. Bernice Siegal with award recipient Steven Orlow

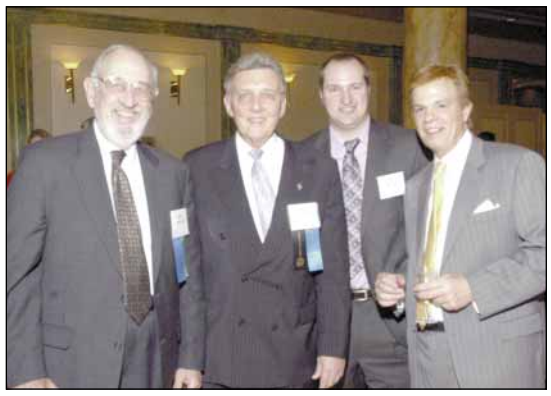
Hon. Martin Ritholtz, Steven Orlow and Arthur Terranova

Hon. Maureen Healy, Helmut Borchert and Robert Frommer

Hon. Peter Vallone, Hon. Leroy Comrie and Hon. Daniel Joy

Janet Cohen, Yvette and Richard Gutierrez and Seymour James

Jerome Patterson, Steven Wimpfheimer and Chanwoo Lee



Joseph Baum, Hon. Robert Nahman, and Stephen Hans

Leslie Nizin, DA Richard Brown, Hon. Seymour Boyers and Jay Abrahams

Mark Weliky with Dorothy Atchison, recipient of the QVLP ProBono Award

Peter Vallone, Sr., Helen Marshall, Gloria D'Amico, Mark Gelfand, Hon. Peter Vallone, Jr. and Paul Vallone

Stephen Smith, Kenneth Brown, Hon. Charles Markey and Thaddeus Gorycki

Steven Wimpfheimer, Gary Darche, Allan Botter, Paul Goldblum and Michael Dikman

Steven Orlow with Family and Friends

Timothy Rountree, Seymour James, David Cohen, Hon. William Erlbaum and Bernard Vishnick

Photos by Walter Karling

Court Notes

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

Steven Lipton, admitted as Steven Alan Lipton (March 25, 2008)
On June 25, 2007, the respondent pleaded guilty in the United States District Court for the Southern District of New York to one count of Possession of Child Pornography Transported in Interstate or Foreign Commerce, a class C felony. Inasmuch as the elements of the federal offense are essentially similar to the New York State felony of Possessing a Sexual Performance by a Child, the respondent's was name was stricken from the roll of attorneys in New York.

Jason Cohen, admitted as Jason Alan Cohen (April 8, 2008)
On November 14, 2003, the respondent pleaded guilty in the United States District Court for the Eastern District of New York to Conspiracy to Commit Securities Fraud and Conspiracy to Commit Money Laundering. Inasmuch as the federal felony of Conspiracy to Commit Money Laundering is essentially similar to the New York State felony of Conspiracy to Commit Money Laundering, the respondent's name was stricken from the roll of attorneys in New York.

Thomas V. Zacharia (April 8, 2008)
The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against allegations that checks drawn on his attorney trust account at Citibank were dishonored due to insufficient funds.

Anthony L. Chin-Quee, admitted as Anthony Lloyd Chin-Quee (April 29, 2008)
The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against allegations that he, *inter alia*, failed to safeguard client funds.

Joseph La Mattina, a suspended attorney (April 29, 2008)
By Decision and Order of the Appellate Division dated November 27, 2006, the respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest based on his substantial admissions under oath. Following a disciplinary hearing, the respondent was found guilty of aiding nonattorneys in the unauthorized practice of law and failing to safeguard funds in his possession incident to his practice of law within the meaning of Disciplinary Rule 9-102(A) of the Lawyer's Code of Professional Responsibility [22 NYCRR §1200.46(a)].

Arnold Zabinsky (April 29, 2008)
On September 27, 2000, the respondent pleaded guilty to enterprise corruption, a class B felony, in Supreme Court, New York County (Yates, J.) On July 7, 2005, the respondent was sentenced to a term of imprisonment of one to three years, and directed to make restitution in the sum of $191,000. By virtue of his felony conviction, the respondent ceased to be an attorney upon his plea of guilty, and was automatically disbarred on September 27, 2000.

Barry Stephen Zornberg (April 29, 2008)
On December 22, 2006, the respondent entered a plea of guilty in the County Court, Suffolk County, to one count of Grand Larceny in the second degree, a class C felony, and one count of criminal possession of a forged instrument in the second degree, a class D felony. On July 27, 2007, the respondent was sentenced to a term of probation of five years, restitution in the sum of $534,462 and a mandatory DNA fee in the sum of $50. By virtue of his felony conviction, the respondent ceased to be an attorney upon his plea of guilty, and was automatically disbarred on December 22, 2006.

Edward W. Donnelly, admitted as Edward Warren Donnelly, a suspended attorney
(May 13, 2004)
By Decision and Order of the Appellate Division dated December 28, 2007 (amended January 3, 2008), the respondent was suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest based on his failure to cooperate with the lawful demands of the Grievance Committee, his substantial admissions under oath that he committed acts of professional misconduct, and other uncontroverted evidence of professional misconduct. The respondent was thereafter disbarred, on default, upon charges that he failed to answer a complaint of professional misconduct; neglected a legal matter entrusted to him; made false and misleading statements to a client concerning court filings allegedly submitted, and work allegedly performed, when none had, in fact, been submitted or performed; failed to refund a fee paid by a client that was not earned; and failed to provide a Statement of Client's Rights and Responsibilities and a written retainer agreement to a client in a domestic relations matter.

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

Terrence P. Tormey, admitted as Terrence Patrick Tormey (March 25, 2008)
By Order of the Supreme Court of New Jersey dated May 9, 2007, the respondent was suspended from the practice of law for a period of two years, effective June 11, 2007, for gross neglect; lack of diligence; failure to communicate with a client; conflict of interest; failure to safeguard funds; and conduct involving dishonesty, fraud, deceit and misrepresentation. Upon the Grievance Committee's motion for reciprocal discipline, pursuant to 22 NYCRR §691.3, the respondent was suspended from the practice of law in New York for a period of 18 months, commencing March 25, 2008, and continuing until further order of the Court.

Donahue G. George (March 27, 2008)
The respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest as a result of his failure to comply with the lawful demands of the Grievance Committee.

Diana J. Szochet

Daryll Boyd Jones (April 1, 2008)
The respondent was found guilty, after a disciplinary hearing, of 11 charges of professional misconduct, including multiple acts of conversion, commingling, failure to maintain escrow records, making cash withdrawals from his escrow account, and engaging in a lack of candor. Although initially disbarred, the respondent sought leave to reargue, resulting in his suspension from the practice of law for a period of five years, commencing 30 days from service upon him of the order of suspension, and continuing until further order of the Court.

John G. Broetsky, admitted as John Gerard Broetsky (April 8, 2008)
The respondent was found guilty, after a disciplinary hearing, of engaging in conduct prejudicial to the administration of justice by failing to duly re-register as an attorney with the Office of Court Administration (OCA); engaging in conduct prejudicial to the administration of justice and/or adversely reflecting on his fitness as a lawyer by failing to cooperate with the Grievance Committee; neglecting a legal matter entrusted to him; engaging in conduct adversely reflecting on his fitness as a lawyer by failing to communicate with an attorney in the course of business; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation by misrepresenting to the Grievance Committee the status of lost United States Postal Money Orders; and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation by misrepresenting to the Grievance Committee that he was duly registered with OCA. He was suspended from the practice of law for a period of six months, commencing May 8, 2008, and continuing until further order of the Court.

Robert M. Cronk, admitted as Robert Michael Cronk, a suspended attorney (April 8, 2008)
By Decision and Order on Motion of the Court dated March 13, 2007, the respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest as a result of his failure to cooperate with the Grievance Committee, his own admissions under oath, and other uncontroverted evidence of professional misconduct. After a disciplinary hearing, the respondent was found guilty of engaging in conduct prejudicial to the administration of justice and/or adversely reflecting on his fitness as a lawyer, by failing to cooperate with the lawful demands of the Grievance Committee; failing to maintain and produce required bookkeeping records for his escrow account; engaging in conduct adversely reflecting on his fitness as a lawyer by failing to account for funds deposited into and disbursed from his escrow account; making improper cash withdrawals from his escrow account; commingling personal funds in his attorney escrow account; engaging in conduct prejudicial to the administration of justice by failing to re-register as an attorney with the Office of Court Administration (OCA); engaging in conduct prejudicial to the administration of justice, which adversely reflects on his fitness as a lawyer, by failing to appear with a client for scheduled court proceedings; and failing to obtain permission of the Court to withdraw from the representation of a client in a criminal proceeding. The respondent was thereupon suspended from the practice of law for an additional two years, commencing immediately, and continuing until further order of the Court.

Daniel D. Tartaglia, admitted as Daniel David Tartaglia (April 15, 2008)
The respondent was convicted on January 29, 2008, upon a plea of guilty, of a single count of failing to file a New York State Tax Return, a class A misdemeanor. On the Appellate Division's own motion, the respondent was immediately suspended from the practice of law, pending further proceedings, as a result of his conviction of a serious crime pursuant to Judiciary Law §90(4)(f).

William L. Netusil (April 29, 2008)
After a disciplinary hearing, the respondent was found guilty of conduct prejudicial to the administration of justice, which adversely reflects on his fitness as a lawyer, by failing to comply with the legitimate demands of the Grievance Committee and failing to file a biennial registration statement with the Office of Court Administration (OCA) as well as failing to pay the biennial registration fee, as required by Judiciary Law §468-a and part 118 of the Rules of the Chief Administrator of the Courts. He was suspended from the practice of law for a period of six months, commencing May 29, 2008, with leave to apply for reinstatement upon the expiration of said period.

G. Warren A. Cohen, admitted as Warren Alan Cohen, a suspended attorney (May 7, 2008)
By Decision and Order of the Appellate Division dated March 9, 2007, the respondent was immediately suspended from the practice, pending further proceedings, upon a finding that he was guilty of professional misconduct immediately threatening the public interest in that he failed to answer a complaint as directed and failed to comply with numerous lawful demands of the Grievance Committee. Following a disciplinary hearing, the proceeding was held in abeyance pending receipt of a report from a qualified medical expert assigned to examine the respondent to determine whether he was incapacitated from continuing to practice law. Upon receipt of a report from Azariah Eshkenazi, M.D., dated March 4, 2008, the Court ordered that the respondent be suspended pursuant to 22 NYCRR §691.13(b)(1), until further order of the Court, on the ground that he is incapacitated from continuing to practice law, and that the disciplinary proceeding against him continue to be held in abeyance.

Joseph Foglia, admitted as Joseph A. Foglia (May 9, 2008)
On November 27, 2007, the respondent entered a plea of guilty in the United States District Court for the District of New Jersey to one count of tax evasion and one count of making false statements. On the Appellate Division's own motion, the respondent was immediately suspended from the practice of law in New York (following his suspension on an interim basis in New Jersey) pending sentencing and/or a final sanction by the New Jersey disciplinary authorities

Continued On Page 18

Is the CIA the NYPD of a Globalized World?

Continued From Page 1

Thereafter, the United States began to control the world's sky, winning World Wars I and II with Air Power that did not exist before.

And after that, the entire world became dotted with airports in every major city. Jet airplanes linked the entire planet. Anywhere could be reached from anywhere else in *less than one day*. Air Traffic Control became a brand new science and technology. Highways were erected in the sky using radio beams for airplanes to follow. All over the world, (except in Quebec), airplanes must be landed in American English, and every airplane pilot and air traffic controller in the world must, by necessity, speak American English and be part of the American airplane culture.

And so, by Sept. 11, 2001, the United States, home to that bicycle shop in Dayton, Ohio, run by two inventive brothers named Wilbur and Orville, came to dominate the planet Earth in a way no tribe, nation, or empire ever had before. The United States literally shrunk the whole planet Earth into an entity the size of a large city.

Before Wilbur and Orville Wright, a journey to the other side of the world meant weeks and months of travel by railroad and steamship. The implications were overwhelming. No culture on this planet was untouched. No one could keep his or her tradition and culture and language uninfluenced by those giant American machines bringing people from every country together every day, 365 days per year, every year, year in and year out.

Such an amazing integration of this planet was bound to come apart some time. Someone was bound to resent the complete dilution of every culture that came before by those two fantastically imaginative inventors in their bicycle shop in Dayton, Ohio. No one since the unnamed inventor of the wheel in pre-literate times can claim this kind of influence on humanity.

And that some time came on Sept. 11, 2001. Wilbur and Orville's invention was turned on humanity by someone other than a nation-state. It was used as a Weapon of Mass Destruction by a small group of Saudi Arabians who deeply resented the intrusion the airplane has caused on every country and culture on Planet Earth.

It is said that the Law is always ten years behind developments in science, technology and culture. Well, here is has been seven years behind. Let us recap the developments.

The Administration of President George W. Bush was deeply embarrassed by the events of Sept. 11, 2001. The President was reading to school children in a Florida elementary school at the moment of the attack. Vice President Dick Cheney in Washington gave an order to the U.S. Air Force to shoot down the hijackers *after* the hijacked planes had already done their damage. The Air Force never fired a shot. So much for paying taxes for the world's strongest military.

Careful study of the situation led the U.S. Government to conclude that we were trying to hit a flea with a sledgehammer. Nuclear weapons and large armies are completely ineffective against an ideologue with a box cutter determined to commit suicide by hijacking a civilian airplane.

The Transportation Security Administration was established. Airplane travel for the general public was made hellish. The Fourth Amendment's ban against unreasonable searches and seizures went out the window. *Everybody* getting on an airplane was forced to submit to an unreasonable search and seizure of, you guessed it, nail clippers and safety razors. Why, you never know when someone might use their nail clippers to hijack an airplane, said our Government.

Then the Department of Homeland Security was established. I thought this was the job of the Defense Department. Well, I guess they forgot that defending the United States from foreign attack was why they were set up in the first place. Now that we have a Department of Homeland Security to give "security" grants to inland states such as Kansas and Wyoming, we are certainly all a lot "safer," whatever that may mean.

It turned out the 9-11 hijackers were members of a loose fraternity of madmen known as "Al Qaeda" and hanging out in Afghanistan as guests of the fundamentalist Muslim governing party known as the Taliban. President Bush dispatched the U.S. military to Afghanistan and the Taliban were quickly squashed. However, Al Qaeda's leader, Osama Bin Ladin, a disgraced relative of the Saudi Arabian royal family, was never located. He is rumored to be in hiding in the sparsely populated forbidding mountains between Afghanistan and Pakistan.

Then a very strange thing happened. Despite the fact that the "enemy" was located and thrashed in Afghanistan, the Bush Administration insisted they were also in Iraq. This was false. Nevertheless, we are in a major military operation in Iraq fighting an enemy who is not there. Four thousand brave young American military personnel have died in this fiasco.

Along the way, numerous individuals alleged to be part of Al Qaeda were arrested by the Central Intelligence Agency (CIA) and other U.S. Government entities in Afghanistan, Iraq and other parts unknown. For reasons that escape any kind of reality, the Bush Administration decided to jail these people at the U.S. Naval Base in Guantanamo, Cuba.

Cuba is an unfriendly foreign country 90 miles off the coast of Florida. In another U.S. Government fiasco, an attempt was made to overthrow the Government of Cuba in 1962. This was known as the "Bay of Pigs," and has poisoned U.S.-Cuba relations ever since. However, in 1898, after winning the Spanish American War, the U.S. Government signed a lease with Cuba allowing us to maintain a U.S. Naval Base at Guantanamo. It was to this base that prisoners were brought from 2001 to date.

So, were they Prisoners of War? What War? The U.S. Government neglected to declare war on Saudi Arabia in 2001. It is one of our allies, and sells us much of our gasoline. So, despite the Saudi Arabian citizenship of the 9-11 hijackers, this would never do. The Governments of Afghanistan and Iraq were overthrown by the U.S. Military in a matter of months. We certainly were no longer at war with any foreign governments in Afghanistan or Iraq. Were we at war with ourselves?

So, these prisoners in Guantanamo? What law applies? Despite the sore temptation to ask Inspector Clouseau, Officers Toody and Muldoon or a Keystone Cop, this was not possible.

It appeared that the people in the White House had never gone to law school. They insisted that they could hold these prisoners as "enemy combatants" indefinitely, without trial, despite the fact that we have yet to define who the enemy is, other than a group of deranged deadly individuals, not unlike the Crips or the Bloods. No proof was ever shown to any judicial authority that we had the right defendants, or that these prisoners had anything to do with anything, besides being in the wrong place as the wrong time.

Our system of justice may be slow, but it works.

Our most dedicated lawyers found their way to Guantanamo. In *Hamdi v. Rumsfeld,* 542 U.S. 507 (2004), the U.S. Supreme Court held that a U.S. citizen detained as an "enemy combatant" on American soil must have a meaningful opportunity to challenge his confinement. The prisoner in *Hamdi* had been transferred from Guantanamo to a U.S. Navy jail in Virginia.

In *Rasul v. Bush,* 542 U.S. 466 (2004), the U.S. Supreme Court ruled, 6-3, that the Naval Base at Guantanamo, Cuba was within U.S. judicial jurisdiction due to the 1903 lease between the U.S. Government and the Cuban Government. Thus, some sort of due process was required for prisoners held by the U.S. Government at Guantanamo.

The Bush Administration then decided it could establish Military Commissions without Congressional approval to try the Guantanamo prisoners. No, No, said the U.S. Supreme Court in *Hamden v. Rumsfeld,* 548 U.S. 557 (2006). Military Commission trials required an Act of Congress.

The Congress acted. Led by Senator John McCain, Congress then authorized Military Commissions to try the Guantanamo prisoners, and *specifically deprived the federal courts of all jurisdiction over them*. See 28 U.S. Code Section 2241(e).

And this test of wills among all three branches of Government led us to the most recent decision, *Boumediene v. Bush*, cited above. In language that will live for all time, Justice Anthony M. Kennedy secured his rightful place in American History:

"Our basic charter cannot be contracted away like this. The Constitution grants Congress and the President the power to acquire, dispose of, and govern territory, not the power to decide when and where its terms apply. Even when the United States acts outside its borders, its powers are not 'absolute and unlimited' but are subject 'to such restrictions as are expressed in the Constitution.'…See 2008 WL 2369628 at 29.

The real risks, the real threats, of terrorist attacks are constant and not likely soon to abate. The ways to disrupt our life and laws are so many and unforeseen that the Court should not attempt even some general catalogue of crises that might occur. Certain principles are apparent, however. Practical considerations and exigent circumstances inform the definition and reach of the law's writs, including habeas corpus. The cases and our tradition reflect this precept. See 2008 WL 2369628 at 41.

Officials charged with daily operational responsibility for our security may consider a judicial discourse on the history of the Habeas Corpus Act of 1679 and like matters to be far removed from the Nation's present, urgent concerns. Established legal doctrine, however, must be consulted for its teaching. Remote in time it may be; irrelevant to the present it is not. Security depends upon a sophisticated intelligence apparatus and the ability of our Armed Forces to act and to interdict.

There are further considerations, however. Security subsists, too, in fidelity to freedom's first principles. Chief among these are freedom from arbitrary and unlawful restraint and the personal liberty that is secured by adherence to the separation of powers. It is from these principles that the judicial authority to consider petitions for habeas corpus relief derives." See 2008 WL 2369628 at 43.

It is most important to understand what the U.S. Supreme Court did not do in its historic opinion in *Boumediene v. Bush,* cited above. No prisoner was freed. However, 28 U.S. Code Section 2241(e) was struck down as unconstitutional. The U.S. Supreme Court held that Congress and the President cannot deprive the federal courts of jurisdiction to hear Guantanamo prisoners' habeas corpus petitions challenging their confinement.

In a very real sense, the U.S. Supreme Court's decision in *Boumediene v. Bush* recognizes that the network of American inspired airports ringing the world has made the CIA into the NYPD. There really is now a Federal Police Department, running around the world arresting people and bringing them into the Station House in Guantanamo, just as surely as if it was the 103 Police Precinct in Jamaica, Queens County, NY. The beauty of the *Boumediene* decision is this: If the CIA wants to act like the NYPD, well then, they will have to play by the same rules, the ones we've lived by since 1791, when the U.S. Constitution and its Bill of Rights came into blessed existence.

Paul E. Kerson is Chair of the Queens County Bar Association's Bar Panels Committee, in charge of certifying applicants to serve as court-appointed lawyers securing the Bill of Rights for indigents in the Courts of Queens County.

Presidential Candidates Then & Now: Robert Kennedy Reconsidered

Continued From Page 1

solutions, not the formulaic application of political philosophies. He realized that no one ideology, however well-intentioned, enjoys a monopoly over the best approach to dealing with the nation's difficulties in a meaningful fashion. He perceived, perhaps more fully than most, the inherent limitations of viewing society's problems - and their political solutions - through a single prism. His final campaign, and indeed his public career, reflected that awareness. Kennedy triumphed in four out of five primary contests that Spring precisely because he appealed to a wide array of voters, while McCarthy's votes came almost exclusively from the left.

"My father was never a liberal," declared Robert F. Kennedy, Jr., in the February 12, 2007 issue of *New York* magazine[1]. That assessment is both candid and correct. His father was defined not by philosophy, but by superb political and moral instinct, and an ability to think outside the box (now an even more admired quality than in 1968). Robert Kennedy was far too innovative and open-minded to be restrained by a single ideology. Historians have not fully appreciated this aspect of his *persona*. Yet, to attempt to define him as a "liberal", or by use of any other label, is simply too limiting.

This is not to suggest that RFK lacked significant support from the left. Liberals, in fact, did welcome many of his positions on the issues of his day. They applauded his stand against the Vietnam War, and his relentless championing of the poor and the dispossessed in our society. Yet even in apparent agreement on these "core" issues, RFK's independent views still brought discomfort to the left.

Take the Vietnam War. By 1968, ideological purity on the war demanded support of an immediate American withdrawal from that conflict. While Kennedy staunchly opposed ongoing American involvement in Vietnam from 1966 onward, he was equally against our immediate withdrawal (might one hear an echo here in the current debate over our situation in Iraq?). He supported instead a negotiated settlement of the war, which by then was no longer palatable to many on the left.

Nor did RFK stop there on Vietnam. College students in the mid-1960's were among the most vocal opponents of the war. Kennedy did not simply (and safely) play to that opposition, even though it mirrored his own. He challenged college audiences over their deferments from the military service draft. He caused more than a little squirming when he bluntly - and accurately - confronted student groups with the unsettling reality that their deferments were fundamentally unfair, since those deferments were causing poor and minority American youths to bear the brunt of the fighting and dying in Vietnam.

In a similar vein, RFK enthusiastically supported the cause of equal rights and equal opportunities for all Americans, again consistent with liberal orthodoxy. He did not, however, join the many on the left who justified and excused the racial turmoil and rioting that characterized much of inner-city America in the mid-1960's. Instead, Kennedy repeatedly advised African-American audiences that violence and lawlessness were unacceptable means of achieving their goals. He was obviously sympathetic to the plight of urban minorities. Yet while he recognized how important it was that everyone be fully aware of the meritorious reasons behind inner-city discontent, he stressed equally that "to understand is not to permit"[2] in discussing the violent unrest that crossed the lines of lawful behavior.

This left many liberals ill at ease, a discomfort that grew measurably when Kennedy also emphasized in several campaign speeches that as Attorney General in his brother's administration, he functioned as the nation's chief law enforcement officer and promised significant crime reduction efforts as a major plank in his platform. RFK was tough on crime and not reluctant to say so. He understood the reality that most victims of street violence were in fact poor minorities.

RFK's "law and order" stance, when coupled with the memory of the former Attorney General's recent "crusade" against organized crime, only added to the left's anxiety level. His dogged ten-year pursuit of Teamsters Union president Jimmy Hoffa, first as Counsel to the Senate Rackets Committee and then throughout his tenure as Attorney General, had additionally earned him a reputation for being ruthless and too energetic a prosecutor. The more distant recollection of his youthful and brief work on Senator Joseph McCarthy's notorious committee completed the historical case for liberal distrust.

This lingering unhappiness with Robert Kennedy was rooted in the left's more active hostility toward his appointment as Attorney General in 1961. Well-respected Yale Law School Professor Alexander Bickel, among others, was singularly outspoken in his opposition. Critics pointed to RFK's relative inexperience and the obvious appearance of nepotism that emanated from his nomination for that office by his brother. While the nepotism charge undoubtedly had some merit, Kennedy's performance as Attorney General silenced and even converted several of his opponents. Indeed, seven short years later, Professor Bickel would enthusiastically support his presidential bid.

Under RFK, the Justice Department, a department so often used as a patronage haven, became conspicuous for high ideals and a quest for excellence. Kennedy attracted superb lieutenants. Biographer William Shannon observed that "no Attorney General in twenty years had assembled so distinguished a team."[3] RFK infused a dynamism rarely witnessed in a federal agency. He introduced personal accessibility and visibility to the stale corridors of his department. Justice Department historian Victor S. Navasky significantly noted that Kennedy was also "sternly incorruptible where political wrongdoing was concerned."[4] In Mr. Shannon's judgment, RFK "proved in those three and a half years that he [was] capable of directing a major department of the government and performing effectively."[5]

Organized crime and civil rights came to dominate Robert Kennedy's tenure as Attorney General. From his service as Counsel to the Senate Rackets Committee, he knew quite well the debilitating impact of organized crime on the nation and the extent to which it permeated our daily existence. Yet he found it necessary to pressure FBI Director J. Edgar Hoover into even simply acknowledging the existence of organized crime. Hoover did not share RFK's agenda. The federal government, for example, procured indictments against only nineteen organized crime figures in 1960. Under Kennedy, that number climbed to 687 in fiscal 1964. Long-time Manhattan District Attorney Robert Morgenthau has reflected that "[i]t really wasn't until Robert F. Kennedy became Attorney General that an organized crime program was developed."[6]

Kennedy employed a multi-faceted strategy in this effort. He began by enlightening the nation to the danger posed by organized crime. He enhanced the status and raised the priority of the Justice Department's Organized Crime Section. He enlisted the active cooperation of other affected government agencies. He also developed a centralized unit to investigate, indict and try major cases against key rackets defendants.

The fight against organized crime inevitably led RFK to vigorously prosecute corruption in the Teamsters Union, then headed by Jimmy Hoffa. Working from information first developed during the Rackets Committee hearings in the 1950's, the Kennedy Justice Department won indictments against one hundred Teamster officials and ninety others identified as close personal or business associates of the Teamsters. And if he pursued that corruption at the highest levels of the Teamsters Union, and Hoffa as its very embodiment, with an enthusiasm and passion that discomfited certain circles, his fervor was well-grounded. By the time Kennedy left Justice in 1964, 115 of those defendants had been convicted. Hoffa himself was convicted of jury tampering and fraud in connection with improper loans from the Teamster pension fund.

Robert Kennedy administered an effective and ethical prosecutor's office. He viewed organized crime as a profound menace to the fabric of American society and he devoted a great deal of his and Justice's energy to its eradication. This, of course, did nothing to diminish his earlier and undeserved reputation for ruthlessness. His record, however, reveals an unfailing regard for seeking justice and for "playing within the rules." While a steadfast prosecutor, he never lost respect for the legitimacy of constitutional safeguards, and did not try to circumvent them. As Attorney General, he authored a major legislative initiative on wiretapping that was so circumspect as to provoke approval from even the aforementioned Professor Bickel.

The assessment of RFK as ruthless originated during his time as Counsel to the Rackets Committee when he harshly examined several witnesses who appeared to be less than forthcoming in testifying before the Committee. The unpleasant manner he often displayed in running JFK's presidential campaign only served to embellish that reputation. If the "ruthless" label had any genuine basis in the 1950's - a debatable proposition at best - it had long-since ceased to have any legitimacy in the 1960's, and most certainly by 1968. Yet it endured for some as a convenient and knee-jerk substitute for reasoned analysis and judgment where Kennedy's growth and maturity were concerned.

Robert Kennedy resigned from the Cabinet in August 1964, to seek and win a Senate seat from New York. While serving in the Senate, he put forth a very new approach to dealing with the issue of poverty. It was not only innovative, it was equally and particularly out of step with a leftist philosophy that preached governmental intervention on a grand scale as the best means of eradicating poverty in our society. Wealthy capitalists were generally anathema to the left. Yet RFK embraced the private sector as the key to his bold anti-poverty initiative in the Bedford-Stuyvesant community in Brooklyn. He purposefully reached out to bankers and business leaders in fashioning this unique program. Biographer Jack Newfield characterized it as an "unorthodox mixing [of] self-help and capitalism with black power."[7]

Kennedy focused on employment as the one essential way for people living in poverty to escape their circumstances. He made that the linchpin of the Bedford-Stuyvesant Restoration Corporation, but not in its anticipated form, i.e., government-sponsored jobs. He recognized that employment was the goal, but not a program in itself. Kennedy instead enlisted the "energies, resources and talents of private enterprise"[8], through tax incentives, to invest in this community-based venture. He also insisted, as a key component, that control of the corporation remain with the community, rather than with the investors.

It was daring; it was risky; and it worked. Of course, RFK's ingenuity wasn't hurt by the fact that he could enlist the help of business leaders, like Thomas Watson of IBM, who were also personal friends. But he wasn't too timid to recruit them, either. The bottom line remains enduring success. That corporation continues to be a productive undertaking today, and served as a working model for various "enterprise zones" that were created in other urban areas several years later. Such long-lasting viability validates both Kennedy's vision and his ability to bring it to fruition.

Another aspect of Robert Kennedy's personality that unnerved many liberals was his comfort level with, and even affinity for, the party "bosses" who epitomized the "old politics" in the late 1960's. He was not one of them. He and his brother had been decided outsiders in 1960, after all. Yet during their drive to the presidential nomination that year, RFK gained the bosses' grudging respect, and slowly became accepted as an equal. He showed that he could play old-fashioned country hardball - political hardball - with the best of them.

Kennedy inherently recognized that the game of national politics plays out on many levels, and that the old-style leaders had their place in the process. And if this process was not always democratic, the results often were, at least to the bosses' local constituents, who tangibly benefited from the basic services the leaders made certain to always provide. While RFK undoubtedly did not prefer the old system, he both acknowledged and accepted its reality. Indeed, one of his final telephone conversations on the evening of his twin victories in the California and South Dakota primary elections was with Mayor Richard Daley of Chicago, the archetypical party boss. His sense that "Dick Daley is the ball game"[9] in terms of the Democratic nomination in 1968 was well known to his campaign intimates.

Kennedy was, in fact, equally as at home in the rough-and-tumble world of ward politics, as in the intellectual world of political theory and in the practical world of executive branch policy formation. While he was an idealist, he was one clearly without illusion. He never lost sight of either the practical or the possible. As such, he was in many ways the perfect

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bridge between the traditional politics of the 1950's and early 1960's and the emerging "new politics" of the late 1960's and beyond.

Robert Kennedy also exuded empathy to a degree uncharacteristic of most public figures. This quality defined the last five years of his life and his quest for the presidency. He identified with the plight of Cesar Chavez's migrant farm workers in California long before it was fashionable to do so. His first-hand look at the effects of chronic and severe poverty in Mississippi and in Kentucky fundamentally impacted his public positions. RFK also visited Native American reservations and was equally moved by the pervasive sense of hopelessness he observed. He was clearly "ahead of the curve" in identifying and suggesting solutions to these problems. All three became recurrent themes in his presidential campaign, even though few votes were to be gained by focusing on Native Americans and migrant farm workers. And while calling attention to the deplorable conditions in which African-Americans lived in rural Mississippi placed Kennedy in the liberal mainstream, his equal focus on the poverty of the essentially Caucasian population of eastern Kentucky did not, liberals of his day generally paying far greater attention to the plight of minorities.

While remarkable enough in its own time, when viewed through the prism of contemporary presidential politics, Robert Kennedy's 1968 campaign was nothing short of extraordinary. Which of today's candidates would run the risk of challenging his/her own supporters? Who sounds campaign themes with negligible impact on voters, even if those issues need to be brought to the forefront of public consciousness? Which candidate is truly comfortable taking positions that are outside the orthodoxy of that candidate's core of support?

Former Mayor Rudy Giuliani, originally a Democrat who actually worked as a volunteer in RFK's 1964 Senate campaign, was in the best position to do the latter. He initially emphasized his strong leadership in directing New York City's recovery during the immediate aftermath of the September 11, 2001 terrorist attacks, and the ensuing "war on terror", to build a solid lead in the early presidential preference polls. His pro-choice position on abortion and his support of both gay rights and gun control, however, placed him at odds with the traditional Republican base. His front-running campaign first began to stumble in the spring and summer of 2007 when he rather clumsily attempted to finesse his stance on those issues so as to least offend that base. He simply did not abide by Kennedy's lesson, and it significantly damaged his public trust and therefore his support. His campaign ultimately collapsed in early 2008.

By way of contrast, Robert Kennedy, in 1968, forged a coalition of astonishing diversity: minorities, blue-collar workers, big-city ethnic groups and young college students. We must not underestimate, first and foremost, the extent to which these groups were not in agreement with one another on some of the vital issues of their day. Students by and large were opposed to the Vietnam War and favored ongoing and active assistance to underprivileged minorities. Blue collar workers, on the other hand, generally supported the war and were against any more "handouts" to minorities. Yet large numbers of each group enthusiastically supported RFK's candidacy.

How did he achieve this? In large measure, by taking thoughtful and heartfelt positions on these and other issues, by stating his opinions with obvious and sincere conviction and maintaining those positions consistently, whomever his audience happened to be. RFK's honest approach engendered trust among these disparate groups, even when they did not always agree with him on the particulars. And this trust in his integrity directly translated into political support. Blue collar workers, for example, rallied around his firm anti-crime stand, and accepted without agreement his opinions on the war and help to minorities. Minority voters and students did the reverse. Of greatest import, Kennedy did not attempt to finesse or nuance his positions and his adherents loved him all the more for it. They were held together in supporting him by their trust in him and their conviction and hope that he could effect meaningful improvements in our society.

Long-time Kennedy associate Edwin Guthman later recounted campaign chronicler Jack Newfield's description of an event before the Indiana primary election that compellingly illustrates this point. RFK was proceeding in a motorcade "through the racially divided and tense steel town of Gary [Indiana]. The black mayor, Richard Hatcher, was balanced on one side of Kennedy, and Tony Zale, the Slavic warrior who came out of Gary's blast furnaces to twice win the middleweight boxing championship, was braced on the other side of the candidate. The open cars rode through the white part of Gary, and then the black part, and Kennedy said precisely the same thing to both races: jobs were better than welfare, because welfare created dependency and work conferred self-respect; we had to be tough on crime; riots were no solution to the problems . . . The reaction was equally enthusiastic in each half of the city."[10]

Think about that. Since Robert Kennedy, has any candidate come close to doing that? Has any candidate enjoyed broad enough support to even attempt to do that? Look back in history. With the possible exception of Franklin Roosevelt, has any candidate been able to say identical things to two competing and often antagonistic groups of supporters and receive equally enthusiastic reactions? That 1968 motorcade in Gary, Indiana may well have been one of the truly unique moments in our national life.

Kennedy simply defied definition by ideology. In current parlance, he was "conservative" on crime, "liberal" on Vietnam and "radical" on urban problems. In other words, he was innovative and open to new ideas and solutions. How refreshing such a candidate would be in our contemporary time of focus groups and litmus tests.

Honesty and open-mindedness were not the only qualities that set RFK apart. He was also endowed with superb instinct. He possessed an exceptional sense of when to ignore caution and resist the advice of the majority; of when to eschew the safe course of action and conventional wisdom. Two defining moments of John Kennedy's presidency were products of this instinct: JFK's stirring civil rights address to the nation and the successful resolution of the Cuban Missile Crisis.

January 20, 1961 did not find the nation's sixty-fourth Attorney General in the forefront of the civil rights effort. He was the first to acknowledge that his awareness evolved over time. Once his interest was aroused, however, he brought the "passion and conviction of an eleventh-hour convert"[11] to the endeavor. Initially, Kennedy simply reacted to contemporary events. He worked to transform the beatings suffered by the "freedom riders" into an ICC order desegregating interstate bus travel. He served as the administration's point person in addressing the violent reaction to the enrollment of African-American students at the Universities of Mississippi and Alabama, and in keeping those students safe from harm.

RFK slowly shifted into a more activist approach by which he began to shape events. He placed an early focus of the Justice Department on voter registration litigation and thirty-seven suits were filed by May 1963. Kennedy chose to personally argue *Gray v. Sanders*[12] before the United States Supreme Court. This groundbreaking apportionment case served as a key complement to the landmark decision *Baker v. Carr*[13]. Together, these cases firmly established the one person-one vote principle in American jurisprudence. This, in turn, became a critical corollary to the voter registration effort. The Attorney General concentrated federal attention on the South, where much of the overt discrimination was occurring. He compelled the FBI to re-order its priorities with respect to investigating civil rights violations. The number of agents in Mississippi expanded from three to one hundred and fifty in less than two years.

By the late-spring of 1963, Robert Kennedy had become "the Administration's leading in-house proponent of strong civil rights legislation."[14] As a result of his leadership on this issue, the President submitted a comprehensive civil rights bill to Congress. This same bill was ultimately passed and signed into law by President Johnson in 1964, after President Kennedy's assassination. In June 1963, when JFK was weighing the possibility of delivering a nationally televised speech on this powder-keg topic, his brother was literally the lone voice in the Administration urging him to do so. The President's more conventional advisors, with an eye toward the 1964 re-election campaign, sounded notes of caution and delay. Robert Kennedy simply saw it as the right thing to do, whatever the political repercussions.

After President Kennedy finally opted to heed his Attorney General's advice, RFK also had a major hand in fashioning the content of that address. And that content was unprecedented; it elevated civil rights to a moral issue at the presidential level. Arthur Schlesinger called the speech "a passionate declaration on racial justice never before uttered by an American President."[15] Former Deputy Attorney General Burke Marshall recalled that "[t]he conclusive voice [regarding civil rights] within the government at that time, there's no question about it at all, that Robert Kennedy was the one."[16]

RFK had earlier made two critical contributions toward resolving the Cuban Missile Crisis in October 1962. The Soviet Union had surreptitiously introduced offensive nuclear missiles into Cuba and was hurriedly making them operational. When this was confirmed by U-2 reconnaissance overflights of Cuba, the President assembled his most trusted advisors to discuss various options. An early consensus was forming in support of a pre-emptive air strike to destroy those missiles before they became operational. Robert Kennedy came to ardently oppose such a strike, characterizing it as "Pearl Harbor in reverse" and his argument ultimately and fortunately prevailed. Scores of Soviet soldiers and technicians would have been killed in such an attack. Escalating responses and counter-responses could easily have propelled both countries into nuclear holocaust. The President instead took an intermediate step and imposed a naval "quarantine" around Cuba. Tensions, however, continued to mount as a temporary stand-off ensued. The blockade effectively prevented any new weapons from entering Cuba. It did not, on the other hand, stop the ongoing work to make the existing missile sites operational.

As the stalemate continued, the Soviets sent two successive letters to President Kennedy. In the first, Premier Nikita Khrushchev proposed a reasonable settlement. He would remove the missiles in exchange for an American pledge to not invade Cuba. The President was preparing to settle on these terms when the second letter arrived, and raised the stakes. The Soviets now demanded that the United States also remove its missiles from Turkey as part of the settlement. While this appeared to also be a reasonable trade on its face, it represented a major stumbling block, given the negative implications of such a unilateral agreement upon America's NATO allies: that the United States would readily "sell out" an ally in its own self-interest.

As the President's group pessimistically sought a way out, RFK advanced an ingenious recommendation. He proposed accepting the terms of the first letter as if the second did not exist. President Kennedy, after skeptical but non-productive debate on the merits of this unusual proposal among his advisors, ultimately followed this suggestion. He transmitted to Premier Khrushchev a formal acceptance of the proposal contained in the first letter. Concomitantly, Robert Kennedy met with Soviet Ambassador Anatoly Dobrynin. During their discussion, RFK conveyed the administration's intention to remove the Turkish missiles in less than a year in any event. Kennedy stressed to Dobrynin that while this was the plan, there could be no public linkage of it with any settlement of the crisis. Left undisclosed was the second half of that plan: to replace the obsolete land-based missiles with the more mobile submarine-launched Polaris missiles based in Turkish waters, thereby providing Turkey with enhanced protection.

In any event, as a result of these steps, an agreement was successfully concluded and the crisis passed. Had it not, JFK was prepared to order an invasion of Cuba within days. It wasn't until after the break-up of the Soviet Union that we learned that the Soviets had also introduced tactical nuclear weapons into Cuba, and further that Soviet field commanders stationed in Cuba had been given the discretion to use them against such an invasion force. Given our doubtless response to such an annihilation, thermonuclear war would have been likely, if not inescapable.

Robert Kennedy had also displayed his innate sense of the right course of action during the critical concluding days of his brother's campaign for the presidency. In October 1960, Dr. Martin Luther King, Jr. was arrested for engaging in a civil rights

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sit-in at a department store in Georgia. Since King was already on probation from a previous case emanating from a minor traffic offense, the new arrest constituted a probation violation. He was sentenced to four months at hard labor on that violation. Given the conditions then existent in the Georgia penal system, legitimate concern was expressed for Dr. King's safety and even for his life. With his brother's election hanging in the balance, and prudence and restraint being universally advised (even initially by RFK himself), Kennedy ultimately relied on his sense of outrage and his instinct. Despite both the potential impropriety and likely political fallout, he directly telephoned the sentencing judge and persuaded him to release King on bail.

A final example of Robert Kennedy's exceptional instinct took place when Dr. King was assassinated in Tennessee in April 1968. Kennedy was scheduled to deliver a campaign speech to a racially mixed crowd in Indianapolis, Indiana. His aides feared for his safety upon hearing of King's murder, and implored him to cancel his speech. He instead heeded his instinct and extemporaneously delivered one of his finest addresses, eulogizing Dr. King and calming the crowd by sharing his own distress with them. It is particularly noteworthy that, of all our major urban centers, only Indianapolis escaped the rioting and looting that took place in the wake of the King assassination.

While RFK's instincts were usually sound and on the mark,[17] being human, he did not always follow them. Perhaps the most consequential time when he failed to follow his intuition was his initial decision to forego a presidential run in early 1968. Beset by overwhelming advice from several trusted advisors that he simply could not win that race, Kennedy essentially permitted himself to be talked out of mounting a challenge to a president that he viscerally desired to make. He was still recovering the ground he lost from that fateful non-decision at the moment he was killed.

So what are we to make of all this? What is Robert Kennedy's relevance forty years after his death? Let's start with being genuine. We live in a time when public opinion polls control candidates' positions, when litmus tests on key issues determine party nominations. Political candidates most often take soundings and employ focus groups *before* taking a position on an issue, and even then, those positions are almost always nuanced. Orthodoxy rules, be it on the left or on the right. Witness Senator Hillary Clinton's increasingly convoluted efforts to take the "correct" position on Iraq, or to avoid taking any firm position on whether to issue driver's licenses to illegal aliens during her unsuccessful campaign. Recall how Governor Mitt Romney traveled from pro-life to pro-choice and back again on abortion, depending upon the office he sought, ultimately losing his bid for the Republican nomination.

Today's politicians also refuse to ever admit having made a mistake. Senator Clinton stressed how she was "misled" by President Bush on Iraq. Contrast that with Robert Kennedy's candid acknowledgment of the errors he, and his brother, made in deepening our nation's involvement in Vietnam. He accepted his fair share of responsibility when he began his opposition to that war. Such public self-assessment requires both personal and political courage. When engaged in responsibly, of course, it also engenders trust from the electorate. It's most unfortunate that it has become such a rare commodity. Such candor is now almost universally seen as weakness by politicians.

In early 2008, the two Senators who ultimately claimed the major party nominations offered a glimmer of hope of restoring RFK-style honesty and integrity to this year's presidential campaign. Barack Obama presented himself in the primary elections as the candidate of genuine change, unaffiliated with the "Washington way" of conducting business. John McCain ran as "the original maverick." Each of them initially took unorthodox positions on a few issues that underscored the apparent freshness of his candidacy. Yet, as soon as the nomination was secured, each subtly - and sometimes not so subtly - changed his stance, so as to more safely appeal to the center of the electorate. And somewhere, Richard Nixon, the original master of such tactics, was smiling.

We, the people, are entitled by birthright to the best thinking of our elected officials. It's the sad truth that we rarely receive it nowadays. Independent thought might sometimes lead to radical ideas or solutions that might deviate from "appropriate" and accepted philosophical parameters. To a large extent, Robert Kennedy embodied this approach to politics and government. He was not without his faults, of course. He could be abrupt, impatient and demanding. But he was, if nothing else, far more authentic than today's "leaders."

We lost more than a Senator, more than a presidential candidate that terrible night in June forty years ago. Looking back at the nine subsequent presidential campaigns, we lost genuine discourse and debate, and respect for the intelligence of the electorate. We lost the sense of obligation on the part of the candidates, during televised debates, to actually respond to a question, rather than simply using it as a vehicle to deliver a prepared message. Such "sound bite" campaigning was foreign to Robert Kennedy, yet it is now entrenched in every candidate's strategy. The nation, of course, suffers immeasurably from such trivialization of both the issues and the candidates' positions on them.

Robert Kennedy was, in the last analysis, a figure of major historical import. Like a monumental Vintage Port, perhaps the magnificent 1927 Fonseca that was produced just two years after his own birth, he was maturing in 1968 at just the right time. The abrupt personal manner and simplistic world view of his youth had faded, replaced by humility and far deeper comprehension. His exceptional qualities were by then slowly blending into balanced complexity, showing mature subtlety, but remaining powerful and full-bodied just the same.

Had RFK lived and gone on to win the White House, he would have been the ideal bridge between the "old politics" of the big-city ethnic bosses and the then-emerging "new politics" of activism and personal involvement, a President perfectly suited to his times. With his non-ideological and innovative approach to problem-solving and the breadth of his support, the potential for greatness beckoned. The mists of history must not consign him to an unwarranted status as nothing more than a stereotypical liberal; let alone as the liberal he never even was. He cannot be remembered simply as the prisoner of an ideology that he so readily transcended in reality.

John Kennedy remains a glowing figure in the American pageant. Historians continue to mine his life, presidency and death for the few nuggets that remain undiscovered. His reviews remain essentially favorable, for the most part, more than forty years after his death. His place in history appears assured. He continues to maintain his long-standing high profile from both public and historical perspectives.

Robert Kennedy, on the other hand, appears to be slipping into relative oblivion as nothing more than his brother's second act, and an incomplete second act at that. He is in grave danger of being reduced to just another liberal hero, albeit one with considerably more charisma than most. This is simply wrong. It is also tragic from the standpoint of history.

For Robert Kennedy was of arguably greater historical import than his brother, even though he never attained the high office he died seeking. John Kennedy was in large measure a product of his era. RFK, on the other hand, helped to actually define his times. He offered hope to a troubled nation, and innovation, sincerity and commitment. Much like the 1870's, had Abraham Lincoln survived, the 1970's would have unfolded in fundamentally different ways had Robert Kennedy lived and achieved the presidency. That in turn would have influenced subsequent decades in ways that defy prognostication. The effect of RFK's assassination upon subsequent history is undeniable. As is the impact of the actual events of those forty years upon Robert Kennedy's place in that history. We are now in the tenth presidential election season since his passing. We have yet to see a candidate even remotely approaching his stature.

Foot Notes

1. Jacobson, Mark, "American Jeremiad," *New York Magazine*, February 12, 2007.
2. Kennedy, Robert F., *To Seek a Newer World* (Garden City, NY: Doubleday 1967), p. 21.
3. Shannon, William V., *The Heir Apparent* (New York: Macmillan 1967), p. 62.
4. Navasky, Victor S., *Kennedy Justice* (New York: Atheneum 1971), p. 365.
5. Shannon, p. 67.
6. Navasky, p. 63.
7. Newfield, Jack, *Robert Kennedy, A Memoir* (New York: Bantam 1970), p. 101.
8. Kennedy, p. 41.
9. Schlesinger, Arthur M., Jr., *Robert Kennedy and His Times* (Boston: Houghton-Mifflin 1978), p. 865.
10. Guthman, Edwin (ed.) & Allen, C. Richard (ed.), *R.F.K.: Collected Speeches* (New York: Viking 1993), p. 380.
11. Shannon, p. 64.
12. 372 U.S. 368 (1963).
13. 369 U.S. 186 (1962).
14. Navasky, p. 441.
15. Schlesinger, p. 344.
16. Navasky, p. 99.
17. During the period between the final primary election and the Democratic convention in 1968, Senator Kennedy intended to embark on a then unprecedented, mid-campaign trip to Europe that would have included stops in Poland and West Germany. He had received enthusiastic receptions in both countries just a few years earlier and expected even more tumultuous welcomes as a presidential candidate. In July 2008, Barack Obama carried out an almost identical pre-convention excursion to almost universal acclaim. This trip validated still another aspect of RFK's superb political instinct and acumen, albeit forty years later.

Stephen J. Bogacz *is Judge of the New York State Family Court, Queens County and author of New York Juvenile Delinquency Practice (LexisNexis, 2002, 1998) and several articles.*

Court Notes

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as a result of his plea of guilty to a serious crime.

Philip Dale Russell (May 9, 2008)
On or about December 21, 2007, the respondent was convicted in the United States District Court for the District of Connecticut of one count of misprision of a felony. On the Appellate Division's own motion, the respondent was immediately suspended from the practice of law in New York, pending further order of the Court, as a result of his conviction of a serious crime.

Mary H. Richardson, admitted as Mary Helen Richardson (May 13, 2008)
By Order of the Supreme Court of New Jersey dated July 14, 2005, the respondent was suspended from the practice of law in that state for a period of six months, and continuing until further order of that court, for failing to safeguard client funds; failing to deliver funds; failing to comply with record-keeping requirements; failing to expedite litigation; failing to engage in requisite fairness to opposing counsel and others; failing to engage in requisite truthfulness in statements to others; engaging in criminal conduct that reflects adversely upon her honesty, trustworthiness or fitness as a lawyer; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and engaging in conduct prejudicial to the administration of justice. Upon service of the Grievance Committee's motion for reciprocal discipline, pursuant to 22 NYCRR §691.3, the respondent demanded a hearing. Following said hearing, the respondent was suspended from the practice of law in New York for a period of one year, commencing June 13, 2008, and continuing until further order of the Appellate Division.

Donna A. Campbell, admitted as Donna Antoinette Campbell (May 19, 2008)
The respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that she was guilty of professional misconduct immediately threatening the public interest as a result of substantial admissions under oath that she committed acts of professional misconduct and other uncontroverted evidence of professional misconduct.

The Following Attorney was Publicly Censured By Order of the Appellate Division, Second Judicial Department:

Janice L. Jessup, admitted as Janice Lorraine Jessup (March 25, 2008)
By order of the Supreme Court of Ohio dated December 2, 2005, the respondent was directed to immediately cease and desist from the practice of law in that State due to her failure to file a Certificate of Registration for the 2005-2007 biennial period. In addition, the Ohio Supreme Court issued an order filed April 27, 2007, immediately suspending the respondent from the practice of law in that State for failing to comply with the applicable Continuing Legal Education provisions. Based upon the Grievance Committee's motion for reciprocal discipline pursuant to 22 NYCRR §691.3, the respondent was publicly censured in New York.

The Following Disbarred Or Suspended Attorneys And/Or Voluntary Resignees Were Reinstated To The Practice Of Law In New York By Order Of The Appellate Division, Second Judicial Department:

Kevin R. Gorry, a suspended attorney
(May 7, 2008)
James L. Tenzer, admitted as James Lawrence Tenzer, a suspended attorney
(May 7, 2008)
Mandy Roth, a voluntary resignee[1]
(May 7, 2008)
Suzana Frlan-Zovko, a suspended attorney
(May 9, 2008)
Anthony J. Figoni, a suspended attorney
(May 14, 2008)

At The Last Meeting Of The Grievance Committee For The Second And Eleventh Judicial Districts, The Committee Voted to Sanction Attorneys For The Following Conduct:

Failing to re-register as an attorney with the New York State Office of Court Administration [OCA] (7)

Engaging in a conflict of interest in a real estate matter; failing to maintain a ledger and other records for the attorney's escrow account; and exhibiting a lack of candor with the Grievance Committee

Failing to communicate with clients; failing to specify in Retainer Agreements what the attorney was undertaking to do for clients; neglecting legal matters; failing to reduce important understandings with clients to writing; failing to timely refund an unearned fee; and repeatedly failing to timely cooperate with the Grievance Committee

Engaging in frivolous conduct before a Court; engaging in conduct that served merely to harass or maliciously injure another; knowingly advancing claims that were unwarranted under existing law; and undignified or discourteous conduct which was degrading to a tribunal

Engaging in impermissible conflicts of interest

Violating the rules governing sexual relations with clients in matrimonial matters and lacking candor with the Grievance Committee

Failing to inform a client, in writing, that the attorney no longer wished to pursue the client's matter and failing to file Retainer and Closing Statements with OCA in accordance with the Rules of the Appellate Division, Second Judicial Department

Improperly exercising notarial authority

Failing to take adequate steps to ensure that sufficient funds were on deposit in the attorney's IOLA account before issuing checks from said account

Failing to maintain adequate communication with a client, including, but not limited to, failing to inform the client of court dates

Failing to adequately safeguard client property

Charging a non-refundable fee and failing to have a written Letter of Engagement or Retainer Agreement that notified the client of his or her right to fee arbitration

Failing to exercise adequate supervision over law office staff and failing to ensure that adequate funds were deposited in escrow before drawing checks

Representing clients with differing interests without advising them thereof and/or obtaining a waiver of the conflict

Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; engaging in business transactions with a client, absent the disclosure(s) required by Disciplinary Rule (DR) 5-104 of the Lawyer's Code of Professional Responsibility [22 NYCRR §1200.23], which damaged said client; and engaging in conduct adversely reflecting on fitness as a lawyer

Failing to safeguard client funds; failing to maintain proper escrow records in accordance with DR 9-102(D) [22 NYCRR §1200.46(d)]; and engaging in improper conflicts of interest by simultaneously representing borrowers and lenders in the same transaction(s) and failing to disclose a personal interest in the abstract company participating in said closings

Neglecting a legal matter; attempting to limit malpractice liability to a client without advising the client to seek independent legal advice; and deliberately withholding material information from, and/or misrepresenting information to, a client

Neglecting a legal matter; failing to provide a written retainer agreement in a domestic relations matter; and failing to provide a refund to a client after acknowledging that a refund was due and advising the Grievance Committee that same would be forthcoming

Neglecting a legal matter; failing to reduce a fee agreement to writing and/or failing to provide a client with a Letter of Engagement where the legal fee was expected to be at least $3,000; and failing to return telephone calls from other attorneys, as well as the client

Failing to promptly pay or deliver funds, which a third person was entitled to receive, as required by DR 9-102(C) [22 NYCRR §1200.46(c)]

Failing to obtain a client's consent to transfer his or her matter to another attorney and failing to timely file Retainer and Closing Statements with OCA

Failing to maintain bookkeeping records in accordance with DR 9-102(D) [22 NYCRR §1200.46(d)] and failing to ensure that adequate funds were on deposit and available before issuing an IOLA check

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

[1] By Decision and Order on Motion of the Appellate Division dated April 27, 2004, Ms. Roth's voluntary resignation as an attorney and counselor-at-law in good standing in New York was accepted, and her name was stricken from the roll of attorneys without prejudice to an application for reinstatement.

Report of New York State Bar Association Meeting

Continued From Page 7
following important issues:

a) The standards applicable to the habeas proceedings concerning Guantanamo detainees that will follow the *Boumediene* decision;

b) The specific rights that must be afforded to the Guantanamo detainees in the proceedings against them; and

c) The specific rights of non-citizens detainee as "enemy combatants" in other extra-territorial locations under the de facto control of the United States; and it is further

RESOLVED, that the New York State Bar Association directs the Committee on Civil Rights to further consider the issues enumerated above and to prepare a revised report and recommendations as soon as possible; and it is further

RESOLVED, that the New York State Bar Association authorizes the Executive Committee to adopt the Committee on Civil Rights' revised report and recommendations consistent with the *Boumediene* decision.

The last significant topic discussed at this meeting was the report and recommendation of the Commercial and Federal Litigation Section. Carrie H. Cohen, immediate past chair of the Section's Committee on Civil Practice Law and Rules, outlined a report recommending amendments to Article 31 of the CPLR, with respect to electronic discovery. Currently, the pertinent CPLR provisions refer to documents and do not resolve issues relating to materials stored in electronic form. The proposed amendment would incorporate some of the recent changes to the Federal Rules governing discovery into the CPLR.

Basically the changes to be made at the State level are to provide a uniform statewide practice for managing e-discovery. The amendments would be to CPLR 3120, 3122, 3126 and 3131. The changes would impact on the electronic discovery and storing of relevant, non-privileged information that is reasonably accessible. The standard would be one of good faith retention of documents unless production would be unduly burdensome. After discussion, a motion to amend the proposal by deleting the sanctions provision was defeated, as was a motion to table consideration of the report to the November 2008, meeting. A motion was then adopted to approve the report and recommendation as proposed.

For other noteworthy topics discussed at the meeting, contact the New York State Bar Association, for a copy of the minutes.

Finally, I would like to thank C. Bruce Lawrence, Secretary of the New York State Bar Association, and our Executive Director, Arthur Terranova, for their assistance in the preparation of this article.

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