



The Next New Subject - Internet Collision Law

BY PAUL E. KERSON

From the founding of the current United States Government in 1789 until the middle of the 19th Century, lawyers were preoccupied with boat accidents. Shipping was largely conducted on ships without adequate navigational tools. The nation's rivers, harbors, bays and inlets were the scenes of numerous boat accidents. The field of admiralty dominated our profession.

By the middle of the 19th Century, it was railroad accidents which took priority. From that point until the early 20th Century, railroad accidents took up much of the time of our courts. Cases concerned collisions between on-coming trains and horses and wagons; between on-coming trains and domestic animals; and between on-coming trains and pedestrians.

Then came the 20th Century and the automobile. Automobile collision law became a major subject for lawyers and our court system. Of course, automobile collision law is still with us. However, increased use of seat belts, drivers' education, the no-fault system and advanced automotive engineering has cut down on the number of automobile accident cases.

We are now entering the fourth major era of collision law. We have gone through admiralty, railroad accidents and we



Paul E. Kerson

are in the closing period of automobile accidents. We are now in the age of Internet Collision Law. The most important statute in the future will be the Federal Computer Fraud and Abuse Act (CFAA), 18 U.S.C. Section 1030. Primarily, this statute criminalizes fraud and abuse using a computer. It forbids "intentionally access(ing) a computer without authorization or exceed(ing) authorized access." See 18 U.S.C. Section 1030(a)(2).

However, despite its placement in Volume 18 of the United States Code, it contains a civil remedy. Today the internet is everywhere. Banking transactions, book orders, stock and bond transactions, airplane tickets, real estate listings, insurance transactions, department store purchases, and even the most personal of communications are now conducted via personal computer using the internet. Where fraud and abuse were formerly problems limited by pen, paper, telephone, and physical transportation, the possibilities for fraud and abuse over the internet are unlimited, except by human imagination.

It is thus predicted that 18 U.S.C. Section 1030(g) will be the most important law in the future. This section allows a private civil action for any kind of computer fraud or abuse:

"Any person who suffers damage or loss by reason of a violation of this section may maintain a civil action against the

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New York State Bar Association Summer Meeting Report

BY DAVID L. COHEN



David L. Cohen

As the NYSBA Vice President for the Eleventh Judicial District, I am a member of the State Bar's Executive Committee. That committee meets four times a year before each of the House of Delegates meeting. We also have numerous conference call meetings to deal with issues that require immediate attention. The Executive Committee reviews all matters that will come before the House of Delegates which is the policy making body of the State Bar.

This year's summer meeting, as usual, was held at the Otesaga Hotel in Cooperstown. The issue that was expected to be the most controversial was a motion to have the State Bar support legislation to authorize same sex marriage in New York State. The previous position of the State Bar had been to leave the form of recognition of a same sex union up to the State Legislature. This position was adopted by the house in 2005. The motion before the House, which was brought forth jointly by the Trusts and Estates Section and the Special Committee on LGBT People and the Law, was to change the Association's position to reflect that marriage was the only legislative solution to afford equal rights to same sex couples.

Some arguments in support of this change were that case law in New York recognized same sex marriages consummated in other States are recognized in New York, and the numerous legal problems that arise in the area of trusts and estates when parties are not deemed to be married.

After the motion was made, much to everyone's surprise, there was almost no debate and the motion carried. Anyone interested in more specifics can contact me and I will be happy to provide you with as much information as you want.

Most of the rest of the meeting was taken up with various reports prepared by Committees and Task Forces of the State Bar. The house approved a comprehensive Report from the Special Committee on Solo and Small firm Practice. This report highlighted many of the concerns that most of us who practice in Queens have. The State Bar

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Probation – The New Enemy

BY STEPHEN J. SINGER*

For as long as I can recall the Department of Probation was pretty much a benign entity. We rarely, if ever, came into direct conflict with them and as a further effort to avoid any potential confrontations, even their "recommendations" for sentencing were on a separate page of the pre-sentence report that we were not permitted to see. The sources for their information were always anonymous, they merely mimicked the language of the initial Criminal Court complaint as their "fact pattern", and rarely did anything of moment in terms of truly examining the family background of the offender or attempting to ascertain the motivations for his or her offense. Their reports were brief, usually too brief, added little to sentencing discussions and seemed to be copied from stock reports which were kept in some central index for such purposes. In short, they were essentially superfluous. Even when they filed violations of



Stephen J. Singer

probation, they rarely had their act together on the facts, normally made no recommendations on re-sentence or for additional treatment, and stood silently while the lawyers and the Court worked everything out. That was then.....

Welcome to the new, aggressive New York City Department of Probation as inspired by the outgoing Commissioner, Michael Horn ... who also served as the Commissioner of the Department of Corrections at the same time. Perhaps that connection said more about the new direction the probation people were

about to take than anyone could have imagined. Field officers were issued guns, were authorized to conduct unannounced raids on the homes of probationers, to search without consent or a search warrant, etc. I expect that before too long we will see them all wearing nylon jackets with the words "Probation Task Force" stenciled on the back!

In some other jurisdictions the Court requires counsel for the defendant to review the conditions of probation with their client before sentencing takes place and to state on the record that they have done so. It would make good sense for us to do the same. I fear that if our clients actually knew what they were signing and what rights of privacy and citizenship they were giving up in exchange for getting a probationary sen-

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Handing Over The Reins Steven Orlow with Guy R. Vitacco, Jr. at the Installation Dinner on May 7, 2009.

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.

2009 FALL CLE Seminar & Event Listing

October 2009

Tuesday,	October	20	The 'Frye' Hearing – A Civil Perspective 1:00 - 2:00 p.m.
Tuesday,	October	20	Electronic Filing in the Surrogate's Court 3:00 - 6:00 p.m.
Wednesday,	October	21	Summary Jury Trials & Trial Preparation 4-Part Luncheon Series Summary Jury Trials - A View from the Bench 1:00 - 2:00 p.m.
Wednesday,	October	21	Advanced Criminal Law Series - Pt 1 6:00 - 9:00 p.m.
Tuesday,	October	27	Unemployment Hearings & Appeals - Pro Bono Training Seminar Co-Sponsored by QVLP 12:30 - 3:30 p.m.
Tuesday,	October	27	Civil Court Pro Se Debtor Assistance & the CLARO Project at Brooklyn Bar Assn - Co-Sponsored by QVLP 6:00 - 9:00 p.m.
Wednesday,	October	28	Summary Jury Trials & Trial Preparation 4-Part Luncheon Series Summary Jury Trials - The Plaintiff's & Defendant's Perspective 1:00 - 2:00 p.m.
Wednesday,	October	28	Advanced Criminal Law Series - Pt 2 6:00 - 9:00 p.m.

November 2009

Tuesday,	November	3	Election Day - Office Closed
Wednesday,	November	4	Summary Jury Trials & Trial Preparation 4-Part Luncheon Series Trial Preparation - The Plaintiff 1:00 - 2:00 p.m.
Tuesday,	November	10	Summary Jury Trials & Trial Preparation 4-Part Luncheon Series Trial Preparation - The Defendant 1:00 - 2:00 p.m.
Wednesday,	November	11	Veteran's Day - Office Closed
Tuesday,	November	17	Nuts & Bolts of Appellate Practice - Appeal Tech 1:00 - 2:00 p.m.
Tuesday,	November	17	Ethics Seminar 6:00 - 9:00 p.m.
Thursday,	November	19	Landlord & Tenant Update 6:00 - 9:00 p.m.
Thursday,	November	26	Thanksgiving Day - Office Closed
Friday,	November	27	Thanksgiving Holiday - Office Closed
Monday,	November	30	Stated Meeting - Screening Process for Appt to the Criminal & Matrimonial Bench - Mayor's Advisory Committee 7:00 - 8:00 p.m.

December 2009

Tuesday,	December	1	Family Law Seminar 6:00 - 8:00 p.m.
Thursday,	December	3	Labor Law Seminar 6:00 - 9:00 p.m.
Monday,	December	7	Article MHL 81/Guardianship Training Seminar 2:30 - 5:00 p.m.
Thursday,	December	10	Holiday Party at Floral Terrace 6:30 - 10:30 p.m.
Friday,	December	25	Christmas Day, Office Closed

CLE Dates to be Announced

Elder Law Real Property Law Taxation Law

NEW MEMBERS

Stephanie Marie Adduci	Hilary Gingold	Kevin Michael O'Sullivan
Teslim Akerele	Simone Gordon	Yaser Refaat Othman
Gideon Bari	Panagiotis Gouvitsas	Eunhee Park
Beverly Benjamin-George	Patricia A. Griffiths	Marilyn Pierre
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Isidro Tomas Yulo	Daniel Earle Mitchell, Jr	Ni Yun
Garbanzos	Levan Natalishvili	David J. Yvars
Hon. Norman George		Lisa Y. Zheng

NECROLOGY

Clifford G. Bacharach	Harold Gellman	Mac M. Mordochay
Anthony F. Bellucci	Harold C. Harrison	Frederic P. Szostek
Hon. Philip J. Chetta	Joseph Lapatin	Joseph M. Walsh
Malcolm S. Cohen	Ira J. Lefton	Brad R. Wolk
Milton M. Fischel	Hon. Alfred D. Lerner	Hon. Alex J. Zigman

POETIC JUSTICE

BRAD LAWRENCE WOLK A Thoroughly Decent Man

Brad Wolk is gone
And we hardly had time to say
"Goodbye"
So I think of him
With a broken heart, and a tear in my
eye

For this is a man
In all ways unique
Of his life and loves
I'll briefly speak

A man of faith
A wonderful attorney
From DA's office
Where he began his journey

To fearless advocate
With an intellect to match
In all ways, Brad,
You're a joy to watch!

And one quality
That always comes through
You generated respect
Of all who knew you!

But, most of all
Whenever we'd chat
The love of your family

Was your favorite
hat

How he loved his
home
With Jana, his
soul mate
And the pride in
his eyes
For Adam – as he'd relate

His son's good deeds
In school – on the courts and fields
And Brad was always there
As coach – and pal – his
Sage advice he always wields;

Vacations he loved
To share with his gang
A cruise – or Woodloch Farms
Gave him a bang!

A loving son
A valued friend
You'll be part of our lives
That will never end,

So Brad, we'll miss you
As husband, Dad, great attorney
We wish you Godspeed
On this, your new journey!



Robert E. Sparrow

By Robert E. Sparrow

2009-2010 Officers and Board of Managers of the Queens County Bar Association

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PRESIDENT'S MESSAGE

GUY R. VITACCO, JR.

Well, my year as President of the Queens County Bar Association has gotten off to a fast start. I assumed the office of the President on June 1, 2009. However, my year started well before that with a trip to the Bar Leadership Institute Convention in Chicago, Illinois in March, 2009. Arthur Terranova, our Executive Director and I flew to Chicago for the convention. Arthur acted as a tour guide since he spent his law school days in Chicago. I truly had a wonderful experience and would like to thank Arthur for his guidance and companionship.

Our Annual Dinner and Installation of Officers was held on May 7, 2009 and I would like to thank all those who attended

for making it a success. As always, Justice Sidney Strauss, our Chairman, did a wonderful job. With over 400 attendees it was truly a festive night for the Queens County Bar Association.

This being my first President's Message you will be receiving this issue of the Bar Bulletin sometime in October, 2009. Our Bar Association will be off and running. On September 10, 2009, our Annual Golf and Tennis Outing will have been held at the North Hills Country Club run by our Outing Chair David Cohen.

On 9/11 I was asked to speak at a commemorative ceremony for the fallen heroes



of 9/11, especially court officers, Captain Harry Thompson, Sergeant Mitch Wallace and Sergeant Thomas Jurgens. I would like to thank the Office of Court Administration and our Administrative Justices Jeremy S. Weinstein and Fernando M. Camacho for this tribute, which was attended by more than 300 people and

webcast on Courtnet television.

Also, in September we will have had our Annual Frank Polestino Court of Appeals Update as our first Stated Meeting. Our thanks, every year, goes out to Spiros Tsimbinos who always puts together our Court of Appeals Update in fine fashion.

Our Program Chairman, Joseph Carola, III, is working on our Stated Meeting for November and I hope to see all in attendance. Don't forget our Annual Holiday Party this year is on December 10, 2009 at the Floral Terrace in Floral Park run by our Chair, Joseph Nicholas.

Our Academy of Law, Chaired by our resident Dean Justice Martin Ritholtz, has a host of CLE seminars in store for you all year long. It is a great way to earn your MCLE credits and support your Bar Association.

Again, I am looking forward to a rewarding and successful year and if anyone has any questions or concerns, please do not hesitate to contact me.

I look forward to seeing you all at our various events.

Profile Of Guy Vitacco, Jr. – The Man

BY STEPHEN J. SINGER*

Whenever I am asked to write a "profile" of our newest celebrity I wince. Those articles are almost always so boring. So I try to approach the topic from a different perspective, if possible. In this instance I had no trouble coming up with an angle ... just talking about Guy the way he would tell it ... Guy the "Guy", not Guy the celebrity. He's very humble when speaking about himself and reticent to say anything which might be taken as puffing. I had to drag the information out of him. He's a low key, but dedicated QCBA'er who will undoubtedly do us all proud as the new boss.

And talk about being a "Queens Guy" (no pun intended), Guy was born in Astoria General in 1963. His parents owned a home in Elmhurst, quite close to where their law office stands today. Guy told me that it was called "Garfield" at that time. Not too long after, the family moved to Manhasset. Guy was a graduate of the Muncie Park Elementary School. Pretty fancy neighborhood even back then. He attended Manhasset High School where he was one of the standout "Jocks" of all time. He was a three letter man, as it was known back then ... or maybe that was in my time, or perhaps my father's time ... at any rate, he was on three different sports teams. He was All County Catcher on the baseball team, the center on a then undefeated Manhasset High School football team who were the County Champions that year, and although he was too short for the basketball team, he was their statistician and technically on that team as well. He still loves sports, almost more than anything (except this family and the Queens County Bar, of course), has a box at Citifield, and coaches his two boys in Little League.

Guy was one of the lucky ones, a Long Island kid who grew up in a great neighborhood with sports and good schools, plenty of friends ... a truly idyllic childhood. He was a popular, good natured sort of person even then, just as he is today. As he puts it, "he even got along with the mathletes" ... Guy was too nice to say "the Nerds". I was one of the Nerds, so I appreciated that. Next, he attended Adelphi, where he was an accounting major (and he was calling me a "Nerd"). Nope, he didn't get involved in sports while in college. According to Guy, he "devoted himself to his education" ... personally, I think he is covering up some deep, scandalous secret,

but that's what he told me. Even I didn't devote myself to my education in college.

He was a truly hardworking kid though, working in the summers unlike the spoiled neighborhood guys who went to fancy summer camps every year and then spent a year in Europe, finding themselves. He worked as a clerk in the Vitacco Law Office. That's where the bug bit him! Guy, Sr. was the President of the Q.C.B.A. in 1984-85, the same time frame that Guy, Jr. graduated from college and realized that he did not wish to spend the remainder of his life working in 1/16" boxes, doing boring accounting work. He entered New York Law School in 1985, did manage to graduate ... I guess he was "devoting himself to his studies" again ... and went directly to the Vitacco Law Office. His father had been an assistant district attorney prior to going into his own solo law practice. At Guy, Jr.'s swearing in, his Dad handed him his first professional business card ... Vitacco & Vitacco ... most of us weren't lucky enough to enjoy a day like that one must have been. I don't know whether it was a dream come true for Guy, Sr. or Guy, Jr., or both. The only other thing that his Dad told him was that he had to join the Queens County Bar.

As a young local lawyer and the son of a former president, Guy had a lot to live up to. He began by running the video camera to record all of the early C.L.E. programs (before they were mandatory, of course). He got free C.L.E. that way and may have even learned a thing or two in the process. He soon became the Chairman (we didn't say "chairperson" then) of the Young Lawyers Committee ... which he chaired until he was no longer anyone's idea of a "young" lawyer. He got married along the way, in 1994, to his present wife (I had to say that because so few of us are still with the first ones) Janine. She is a nursery school teacher in the Manhasset school system. I know that has nothing to do with Guy or his career, but he told me that I had to include that.

All kidding aside, what I envy about Guy and his life, besides the fact that it was almost perfect, is that he and his Dad have practiced law together from the day he was sworn in, in the law office his Dad founded in Elmhurst those many years ago. They live less than a mile from each other to this day and Guy drives his Dad to and from work daily. How great is that!



Guy does mostly plaintiff's personal injury work (and no, he doesn't get his cases from the Russians). Sounds a bit mundane to me, but probably pays better than most of my criminal cases.

I had to ask Guy about his plans and goals for the Bar Association ... that's mandatory in all of these profile type interviews, in case you are assigned to do one in the future. He was on the New York State Bar Young Lawyers Committee for many years, in addition to heading our own committee of the same name. He does realize what all of us old timers have seen coming for a long, long,

time. There is a dearth of younger lawyers at all of our important functions and stated meetings. Accordingly, he has co-sponsored the promulgation of free membership to law students (targeting St. John's and CUNY in particular), has agreed to experiment with a project offering a year's free CLE with new membership for attorneys practicing less than three years, and has approved lower membership rates for government attorneys, public defenders, and the like. Clearly, one of his goals is to recruit more young lawyers, especially many of our attorneys belonging to Asian and Hispanic bar associations only. Guy has been a member of the Board of Managers since 2002, was Program

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Legal Career Night & Internship Opportunities Columbia University

BY SOLOMON KIM

In October, the Columbia Undergraduate Law Review (CULR) will be hosting an event at Columbia University for its undergraduate students entitled, "Legal Career Night: A discussion and networking event with legal professionals." The purpose of the event is to give students interested in law the opportunity to learn and gain exposure to the experience of working in the legal field from various professionals, including attorneys and judges, who will be speaking about their career experiences. "Legal Career Night" will be held in the form of an informal discussion panel so that during the night students will be free to ask questions that are most relevant to them and have the opportunity to meet individually with the panelists. Legal professionals will be also speaking about potential internships that may be available to undergraduate students. This is the first time CULR has hosted this type of event, but it has decided to do so after receiving a high demand for such an event by Columbia students.

CULR aims to provide Columbia University, and the public, with an opportunity for the discussion of law-related ideas and the publication of undergraduate legal scholarship. Though recently revived only 2 years ago with an entirely new Executive

Board, CULR has already made an impact on Columbia's campus not only through its bi-semesterly publication, but also by hosting its first event last year. Last spring, CULR helped host a seminar geared towards educating students about the judicial system in general and more specifically that of New York. The seminar included lecturers from various legal backgrounds, including a law professor, judge and court referee.

Solomon Kim CC'11 and Madeleine Goldstein CC'10 are the current Co-Editors-in-Chief of CULR.

Leading the planning, organization and execution of this event along with the Editors-in-Chief of CULR is Honorable Elizabeth Yablon. Hon. Yablon has had much experience in establishing and participating in many legal education programs for various bar associations, including the Queens County Bar Association at which she serves as the Chairperson of the Mentor Committee. Most recently, she conducted a seminar for the Judicial Academy of the National Association of Women Judges. Through the President's and General Counsel's office of the New York City Bar Association, Hon. Yablon created a program entitled, "My Rights, My Nation, Constitutional Freedoms Now and into the Future," which has been a

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Queens Bar Hosts Annual Trip To Albany

BY MORGAN SMITH*

Last year I had the privilege of accompanying Justice Daniel Lewis and several of my peers on a trip to Albany. This was done in continuation of the Queens County Bar Association's forty year tradition of teaching and enlightening high school students about the New York State government. For twenty years Justice Lewis has been an active participant in the Bar Association's youth outreach mission, collaborating with Justice Peter O'Donoghue in the past to help make these trips possible. In addition to this, he has contributed his time and knowledge to The New York City Bar's Thurgood Marshall Law Internship, of which I am an alumnus and is currently replacing James Wrynn, Esq. as Chair of the Queens Bar's American Principles Committee by appointment of President Guy R. Vitacco, Jr.

On May 20, 2008, I was one of approximately twenty-five students selected from a myriad of Queens high schools given the chance to both see and experience how the judicial, legislative and executive branches operate. The group was extremely diverse, encompassing people from all walks of life and systems of schooling. We met in front of Queens Borough Hall and, upon boarding the bus, received literature pertaining to the trip and were given a brief overview of what our visit would entail. We heard from the Principal Law Clerk to the Justice, Richard Johnson, as well as the

President of the Queens Bar Association, David Cohen and Executive Director, Arthur Terranova. During the course of the two-hour trip we watched a DVD entitled "Chateau on the Hill," which gave us the legislative chambers and the "Million Dollar" staircase. The documentary reviewed the events surrounding the construction of these two legislature landmarks and further fueled our excitement to see them firsthand.

The first stop on our tour was to the Court of Appeals, where we were seated in the spectator section of a court room and addressed by their public relations expert. He answered all of our questions concerning the Court and discussed how it has developed and diversified over time. Along the walls were portraits of Chief Justices and Associate Judges, two of which were African-American. It was revealed that further changes would be made to the panel, with the addition of Chief Judge Judith Kaye's portrait following her retirement.

We then broke for lunch in the legislative building, where we were treated to pizza and the opportunity to hear from several legislators. Among these were Senators Toby Ann Stavisky, Shirley Huntley, Frank Padavan, Serphin Maltese, and Malcolm Smith, as well as Assemblypersons Mark Weprin, Ellen Young, Barbara Clark, Vivian Cook, Jeffrion L. Aubry, Michael N. Gianaris and

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About The Bench... Judge William Viscovich

BY STEPHANIE S. GOLDSTONE

I was given the privilege by our Bar Association to interview the smart, kind and civic minded Honorable Judge William Viscovich.

His office, a corner one in the Civil Court building on Sutphin Boulevard, reflects the presence of our good Judge - awesome.

First, a little biographical information about Judge Viscovich. His civic involvement first as a citizen, and later as a lawyer, spans decades.

Judge Viscovich was born in Astoria in 1961, and has been a Queens County resident his entire life. His parents' credo in raising their children was "hard work, honesty, good food and good wine." Judge Viscovich thoroughly enjoys the diversity of Queens County.

While Judge Viscovich is a Civil Court Judge, and the first Croatian-American in New York City to reach that position, he is equally proud of his Italian heritage. His father was born an Italian citizen in Istria, which was then part of Italy. After World War II that region became part of Yugoslavia and his father escaped back to Italy as the first step towards America. As a young man Judge Viscovich worked in his father's two Italian restaurants, on Long Island and in New York City.

Judge Viscovich's work in law began during his college years at the State University in Albany and continued through his years at Albany Law School. He first worked as an intern for Congressman Gary Ackerman, who was then a State Senator. He then worked for and with Assemblywoman Nettie Mayersohn, and in fact managed her office during those years. In working with Assemblywoman Mayersohn, Bill helped shape public law and policy. Together they wrote the law that guarantees that HIV-infected newborns receive treatment. In 1991 he drafted the law that requires food



William Viscovich

handlers to wear gloves when handling food. Later, on behalf of Assemblywoman Mayer-son, he drafted legislation, which became law that provides for a victim impact statement, wherein a victim may speak at the sentencing hearing of a criminal and make a recommendation as to sentencing.

From 1986 to 1988 Judge Viscovich was an Assistant District Attorney in Bronx County, prosecuting mostly misdemeanors and felonies. Subsequently, he was an Assistant Special Narcotics Prosecutor for the City of New York from 1988 to 1989.

Before ascending to the bench, Judge Viscovich was a solo practitioner in Queens for 19 years, concentrating on real estate, family law and criminal defense matters. He did trial work in Family Court as part of the "18B" panel; appeared as counsel in numerous parole revocation proceedings and represented several not-for-profit organizations on a *pro bono* basis. He is able to frame issues quickly and effectively.

As an adjunct to his law practice, Judge Viscovich had the requisite skills and good fortune to serve as counsel to Queens County Clerk Gloria D'Amico in a part-time capacity where he concentrated on a wide variety of employment issues within the County Clerk's office. "Between Gloria D'Amico and Nettie Mayersohn, I spent most of my career learning from two of the toughest and nicest people in politics."

Judge Viscovich's current caseload includes mostly no-fault cases. He is constantly in the courtroom trying cases, and feels very fortunate to have Jay Abrahams, Esq. as his court attorney. Mr. Abrahams has extensive experience as a court attorney in the courthouses in Queens, and he makes Judge Viscovich's life as a rookie judge "100 times easier than it might otherwise have been." Like

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EMPLOYMENT & LABOR LAW

STEPHEN D. HANS & ASSOCIATES P.C.
Counsel to the Profession

- | | |
|--|---|
| <input type="checkbox"/> Sexual Harassment | <input type="checkbox"/> Union Representation |
| <input type="checkbox"/> Americans with Disabilities Act | <input type="checkbox"/> Title VII - Discrimination |
| <input type="checkbox"/> Education Law | <input type="checkbox"/> Pension Issues |

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Golf Outing

The Annual Golf and Tennis Outing was held on September 10, 2009. Almost 100 golfers, tennis players and dinner guests enjoyed a wonderful day of fun and food. While the turn out was less than usual, due to economic realities, the QCBA still managed to provide to all who attended a great day - yes - in the sun.

We owe a great deal of gratitude to those who sponsored the Outing. They make it possible for the event to take place. Without their support we could not provide the amenities that we do. BIG APPLE ABSTRACT (Larry Litwack), EMPIRE BAIL BONDS sponsored our dinner and brunch. Sterling National Bank (Liz Forgione and Rosemarie Henry), Signature Bank (Tom Grippa), HSBC (Norman Burak), Ridge Abstract (Louis Spano), Flushing Savings Bank (Frank Pelliccione), Bianco and Dooley, Scott Kaufman, Esq., Louis Laurino, Esq., Orlow, Orlow & Orlow, Esqs., sponsored teas. Please patronize our sponsors to show your appreciation. Thanks to all those who donate raffle prizes - Joe Baum, George Nashak, Jr, Lou Laurino, HSBC, Signature Bank, CBS Insurance, and Big Apple



David L. Cohen

Abstract.
Congratulations to the winners.

Gross

Member - Drew Wasserman -

77

Guest - Peter Gorycki - 79

Net

Member - Joe DiBlasi

Guest - Kevin Berry

Long Drive

Men - Peter Gorycki

Women - P. Collella

Closest to Pin

Men - Scott Kaufman

Women - P. Collella

As always, our Executive Director deserves a thank you for all his efforts to make this event the enjoyable day that it was. Thanks to Spiros for running the tennis. Last but not least, thanks to all who came to play. See you next year.

David Cohen
Golf Committee Chair.

Although we were unable to include their ads in our 2009 QCBA Annual Dinner Journal we would like to acknowledge the generous contribution to the Queens Volunteer Lawyers Project by

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Speaker's Bureau Report by Guy R. Vitacco, Sr.

August 21, 2009

Barbara Berwitz spoke at the Newtown Civic Association in Elmhurst, New York. The talk was given at the local senior's center and was appreciated by all who attended including the Directors and Board Members of the organization. The topic was Wills, Estates and Elder Law.

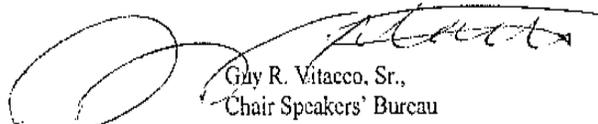
President-Elect **Chanwoo Lee** represented the Bar Association at the career day meeting of the Holmes School, 36-41 28th Street, Long Island City. The topic was everyday lawyer's duties and how to pursue a law degree.

The Honorable Justice **Duane Hart**, of the Supreme Court, spoke at the career day of Public School 52, 148 Terrace, Jamaica, New York. The topic among other things was how to prepare yourself for a career in the Legal System. Justice Hart's presentation was well received by the students and teachers at the event.

The Honorable **Martin Ritholtz**, Justice of the Supreme Court, spoke at Jamaica High School on Law Day at the school. He presented various opportunities that are available to students who are looking toward a legal career. He also spoke on the contributions of the legal system and the courts, and the role of lawyers in the common good of the country.

Jason Stern spoke at the Friendship club of Samuel Field Y in Little Neck, New York, on accidents and negligence law in general. Mr. Stern's presentation was well received by those who attended the meeting.

Respectfully submitted,



Guy R. Vitacco, Sr.,
Chair Speakers' Bureau

Parties & Interest

BY ARTHUR N. TERRANOVA, EXECUTIVE DIRECTOR

Barton R. Resnicoff, an attorney in Great Neck, New York, has been reelected to a second term as a member of the Council of the Section of Family Law of the American Bar Association, its governing body, which also promulgates policy on Family Law issues nationwide. He has been designated as a Board Certified Family Law Trial Specialist, certified by the National Board of Trial Advocacy¹, May, 1996; recertified, May 2001 and May, 2006. He is currently a member of the Section's CLE Committee and has been on the faculty of its Trial Advocacy Institute and is past Chair of the SCOPE and Correlations, Child Support, Marital Property Committees, and an executive member of the section's Custody and Alimony Committees; as well as a member of the Family Law Section of the New York State Bar Association and its Committee on Substantive Law Relating to the Family; as well as a member of the Queens, Nassau and Suffolk County Bar Associations and their matrimonial and family law committees. He is a past Chair and Vice Chair of the Committee in Queens; and a past Co-Chair of the Custody Sub-Committee in Nassau. He has written articles and/or authored chapters for publications of the American, New York State, Queens and Nassau County Bar Associations, as well as lec-

turing to the American, Queens and Nassau County Bar Associations and other organizations concerning matrimonial and family law.

Note: Any members having items they wish to inform the membership about should forward same to me for future publications.

¹ The National Board of Trial Advocacy is approved by the American Bar Association to offer certification in Family Law, Civil and Criminal Trial Advocacy. Pursuant to 22 NYCRR §1220.10(c)(1), the National Board of Trial Advocacy is not affiliated with any governmental authority. Certification is not a requirement for the practice of law in the State of New York and does not necessarily indicate greater competence than other attorneys experienced in this field of law.

Congratulations to **James J. Wrynn** on being appointed as the Superintendent of the New York State Insurance Department on September 10, 2009, by Governor David Paterson. We wish him well in his new endeavor.

Our condolences go out to the members' families that have passed away during the summer. We will miss them greatly.

Note: Any members having items they wish to inform the membership about should forward same to me for future publications.

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THE CULTURE CORNER

BY HOWARD L. WIEDER

Part of my role as a culture critic is to comment on the culture of our times. The pornography of our times is often not what is depicted on the screen, but the incivility among us. If public figures, who often serve as role models, cannot control their impulses, then what is to be expected from the rest of us? Three publicized outbursts by public figures - - unhappy that things didn't go their way - - serve as recent examples: those of Congressman Joe Wilson [R-S.C.], tennis player Serena Williams, and singer Kanye West. All three persons apologized for their outbursts, but an apology does not erase the degrading spectacle from the minds of conscientious adults and impressionable children who witnessed these events on television and cannot cleanse the stains they leave on the national conscience.

When President Obama recently addressed a nationally televised and internationally followed joint session of Congress on his pioneering package of health care reforms and said truthfully that no illegal aliens could recover benefits under the proposed federal program, Representative Joe Wilson loudly shouted: "You lie!" Putting aside that Representative Wilson was probably projecting his own mendacity by his appalling outburst, such behavior is inexcusable. No judge would tolerate such a scene in an American courtroom. Yet, the Democratic leadership in the House and specifically Speaker Nancy Pelosi was willing to let Wilson off the hook without any reprimand by the House, letting "bygones be bygones." Under our laws, Wilson was free to say whatever he wanted about the President or the program, but his outburst in the chamber of the House of Representatives violated a House rule, aside from being disrespectful to the President and the presidency, and no one held Wilson accountable or responsible. Is that a lesson we want future generations to learn?

Unhappy that a call by a line judge at the U.S. Open did not go her way, tennis star Serena Williams launched into an unending stream of profanity at the line judge. That publicized event was another televised spectacle that hurt children who have viewed Williams as a role model. Rap singer Kanye West, unhappy that *his* nominee did not win, jumped on stage at the Video Music Awards while young singer Taylor Swift was giving her acceptance speech, grabbed the microphone from her, and ranted on how he believed that the award should have gone to Beyonce [who recognized West's inappropriate behavior

by later inviting Taylor Swift back to the stage when she, Beyonce, won an award during the program].

These outbursts reflect poor impulse control, a lack of boundaries, and a sense of grandiose importance and narcissism. If these public figures could not control their vitriol in televised events, then how do you correct some of the hysterical, illogical, disturbing, and disgraceful behavior that occurred during public hearings on the health care package? We live in sad times.

Seventy years ago, a psychotic named Hitler began his vision for world dominion and the extinction of the Jewish people by invading Poland on September 1, 1939. No dissent was tolerated. In our democracy, we prize and need to protect the right to dissent. Our free expression, however, needs to be done responsibly and with civility, not demagogic, my-finger-in-your-face-foaming-at-the-mouth, hysterical ranting. Despite technological advances, human behavior often has not shown growth from the time of the caveman.

The Honorable Thomas M. Reavley, a cherished friend who has served on the United States Court of Appeals for the Fifth Circuit for more than 30 years, after serving as a Texas state court judge, in an e-mail to me on August 23, 2009, eloquently discerned the problems facing modern society. Judge Reavley stated:

"[W]e live in a time where dishonesty has permeated our society. We must live by our values and, as we can, urge others to do so. . . . I hate to be so negative but I fear for our country and world. The falsehoods and pornography, the corruption surrendering to money and celebrity, and the appeal of pure depravity leave us poorly prepared for the perils of this time. We survived the horrors of Hitler, but can we make it this time?"

We all need to reflect upon Judge Reavley's thought-provoking comments. As the inappropriate and offensive outbursts of Joe Wilson, Serena Williams, and Kanye West evidence, our society is threatened by the enemy within: unprovoked incivility. Those offenders, in their thirst for election victories, tennis titles, music awards, and attention-grabbing headlines, have lost the mark. President Richard M. Nixon, in his first inaugural address on January 20, 1969, cogently observed: "We cannot learn from one another until we stop shouting at one another - - until we speak quietly enough so that our words can be heard as well as our voices." *I Do*



Howard L. Wieder

Solemnly Swear: The Inaugural Addresses of the Presidents of the United States 1789-2001 p. 352, at p. 357 [Chelsea House Publishers 2001].

THE BOYCHICK AFFAIR

Family incivility or dysfunction, displayed openly at a big family celebration, is the thesis of "The Boychick Affair," written and directed by AMY LORD. The show continues its

Off-Broadway run at the Times Square Arts Center on Eighth Avenue, right near the corner of West 42nd Street in Manhattan. Think of the outrageous behaviors by Joe Wilson, Serena Williams, and Kanye West and multiply them ten-fold. Family and guests are assembled to celebrate the Bar Mitzvah of Harry Boychick. Put simply, the family members need a lot of psychological help.

The divorced parents of the Bar Mitzvah boy, Cheryl and Aaron, bring their constant bickering to the make-shift *shul* [synagogue]. Harry, the Bar Mitzvah boy, does his *Haftorah* [Bible] recitation, actually doing the holy "Shma Yisroel" prayer, in English, but in rap. His rendition enjoys the choreography of the Shalom Sanchez Dancers in the background. His mother, Cheryl, terribly embarrassed, runs up and down the aisle apologizing to the guests. Harry's Bar-Mitzvah speech is also delivered in rap until scolded by his mother to translate the remarks into formal, understandable, mainstream English. Harry says, in part: "I'd like to thank my homies and my peeps for coming to God's crib. It means a lot to me that you all hit up my Bar Mizzy, fa shizzle!"

Harry's father, Aaron, has brought his *shiksa* [gentile] girlfriend, Penelope or "Penny," a Born-Again Christian, to the Bar Mitzvah. At the party following the service, she gives Harry a gift of a large size portrait of Jesus, publicly urging him that there's still time to be saved.

Aaron owes the mob a million dollars. His grandiosity, narcissism, and stinginess is beyond cure. He asks guests [the audience] whether they can cash a check, announces that he is Mr. Broadway, and scolds the catering staff who serves audience members their food at the reception not to be so generous with the portions. Aaron angrily forces guests to get up during the reception, while they are eating, to search for a particular chair that Aunt Rita has favored. Aaron's check to the caterer bounced, but the *simcha* [celebration] is saved by Tito Sanchez, a family friend, who has made it big in the Latino food industry by inventing gefilte fish-flavored tacos and empanadas.

The Bar Mitzvah boy's grandmother is sexually starved and secretly hands out condoms to a few favored guests at the synagogue service. Harry's two cousins, adopted from Ethiopia, are a total trip. One, Bobby Grossman, is flamboyantly gay, arriving to the synagogue in spandex shorts and wearing a pink, rhinestone-studded cowboy hat. His sister, Nechama Grossman, dressed in African garb breaks into an African dance in the aisle. The services are presided by Rabbi Jules, a pregnant lesbian, who has spearheaded the "Go Green Jew" movement, by collecting refuse gathered from the beach of Coney Island and turning it to covers for *challah* [bread used for the Jewish Sabbath and festivals]. The reception cascades to dramatic revelations.

The large ensemble of actors keeps in

character as they mingle and interact constantly with the audience, the guests at the Bar Mitzvah. One particular actor was superlative and gifted in a supporting role: ANDRE MONTAL as Tito Sanchez. ANDRE MONTAL is a director and gifted actor who has worked in New York theater for many years, although little can be found about him on the internet [a reason why actors are urged to have personal web sites]. His intermingling with the guests and his portrayal of good-guy Tito Sanchez were riotously funny, on target, and excellent!

Ticket information is available at www.boychickaffair.com. Shows are on Saturdays at 6:30 PM and Sunday at 3 PM. For those who keep kosher, you should attend the Sunday performance where the food provided is by Essex on Coney. If you keep kosher, please call Essex on Coney with any questions about the *kashruth* [adherence to kosher laws]. The show has extended its run through the end of October, but do not delay in buying tickets to see this cast of characters whose behavior would make Joe Wilson, Serena Williams, and Kanye West feel right at home.

92 STREET Y

The 92nd Street Y opens the 2009-2010 season on Saturday, October 17 with a recital by Hungarian pianist Denes Varjon, part of both 92Y's *Masters of the Keyboard* and *Hungarian Accents* series. With this concert, Denes Varjon makes his New York City recital debut. He appeared at 92Y this past March in a three-concert series with Steven Isserlis, and his performance earned such critical and audience praise that 92Y immediately invited him back.

First prize winner in three competitions, Denes Varjon has also been awarded the Ferenc Liszt Prize, the highest cultural distinction by the Hungarian Government. He is a regular guest at the most prestigious festivals such as Salzburg, Lucerne, Schleswig-Holstein, Venice Biennale, Ruhr, Edinburgh, and Marlboro. Orchestral engagements have included the Tonhalle, Budapest Festival Orchestra, Camerata Bern, and the orchestras of Athens, Bremen, and Toulouse.

Mr. Varjon's program is dedicated to solo works of Janacek, Veress, Bartok, and Liszt, and he is joined by pianist Izabella Simon in piano four hands with works by Schubert, Dvorak, Bach, and Kurtag.

Hungarian Accents is part of *Extremely Hungary*, a year-long festival showcasing contemporary Hungarian visual, performing, and literary arts in New York and Washington, D.C., throughout 2009. The festival is organized by the Hungarian Cultural Center in New York, which sponsors a range of programs celebrating Hungary's past, present, and future, and is made possible in part by funding from the Hungarian Ministry of Education and Culture. For more information, visit the festival's website at www.extremelyhungary.org.

Single tickets are \$48/\$38 (ages 35 & younger, \$25) | Series Subscription: \$125/\$95 (ages 35 & younger, \$60). Tickets may be purchased by calling 212.415.5500, visiting www.92Y.org/Concerts, or at the Box Office. The 92nd Street Y is located at 1395 Lexington Avenue at 92nd Street.

THE METROPOLITAN OPERA

On September 21, the Metropolitan
Continued On Page 7

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The Culture Corner

Continued From Page 6

Opera began its 2009-2010 season with an entirely new production of the crowd favorite "Tosca," by Puccini, with beautiful and talented **KARITA MATTILA** in the title role. The web site of the Met Opera is user friendly and more information on each of the operas can be found at either www.metopera.org or www.metopera.com. You don't have to buy season subscriptions; single tickets for individual operas are also available. I heartily recommend the Met Opera!

MAGGIE'S LITTLE THEATER: ALL SHOOK UP

"All Shook Up" is a musical inspired by and featuring the music of Elvis Presley. It enjoyed a revival at St. Margaret Parish Hall's Maggie's Little Theater, right near Metropolitan Avenue in Middle Village in Queens County. The show was a fine form of community theater. The cast featured many fine performers. I especially enjoyed the performance of **SCARLETT AHMED** in the key supporting role of conservative, prudish Mayor Matilda Hyde. **SCARLETT AHMED** is a gifted actress and fine, talented singer. The next event at Maggie's Little Theater is the Christmas show. For more information, consult maggieslittletheater@gmail.com.

NO SEX PLEASE, WE'RE BRITISH

"No Sex Please, We're British" had an Off-Off-Broadway revival this summer at the Chernuchin Theatre on West 54th Street in Manhattan. "No Sex Please, We're British" is a British comedic play written by Alistair Foot and Anthony Marriott. The show ran for about a decade, beginning in 1971, in London, to packed audiences, although universally disliked by the critics. Hitting Broadway in 1973, the show closed after only 16 performances. For some reason, unknown to me, the show, even in America, remains a favorite on the revival and community theater circuits.

"No Sex Please, We're British" is a farce where a young, conservative banker and his wife suddenly start receiving repeated shipments of Scandinavian pornographic materials, when all they ordered was glassware. By some glitch, the flood of pornographic shipments cannot be stopped despite the best, but unsuccessful, attempts to get someone at the company to respond. Of course, the banker's mother has decided to move in with the couple when the uninvited materials start arriving, and the embarrassment grows when the bank's top boss arrives frequently at the apartment, since he has taken a romantic liking to his employee's mother. The mayhem that ensues is the rush to hide the never-ceasing delivery of the pornographic materials from being seen by mother, boss, and a visiting cop. Of course, there would be no comedy if someone would simply explain that the materials being delivered were not requested or solicited.

Audiences to early television in the 1950s will recall, as I do [at least in reruns], the same basic plot-line of comedic mayhem in a conservative environment. Leo G. Carroll, in "Topper," for example, played Cosmo Topper, the dapper, elegant, and serious vice-president of a bank. Since only *he* can see and thus communicates with the ghosts of the former owner-occupants of his house, fun-loving, jet-setting George and Marian Kirby, killed in a

ski avalanche, the otherwise conservative Topper's sanity is always questioned by the household help and a source of exasperation for his boss at the bank, Mr. Schuyler (played by Thurston Hall).

Another television sit-com of the early 1950s, "My Little Margie," starring the recently deceased Gale Storm as Margie Albright, was similar in structure. Margie would constantly get into trouble as she tried to provide well-intentioned, but unsolicited, aid to her father Vernon Albright (played by Charles Farrell), a widowed executive at the financial investment-counseling firm of Honeywell & Todd, to the annoyance of its top boss George Honeywell (played by Clarence Kolb). In those shows, the lunacy ensued from the juxtaposition of the antics of wacky and lovable characters in a conservative envi-

ronment with curmudgeon or old-fashioned characters. A similar plot line was developed several years later in the television hit "Bewitched," where the husband Darrin Stephens was constrained to explain to his boss at a big advertising firm the byproducts or results of the occasional sorcery of Darrin's wife Samantha (played by Elizabeth Montgomery), a lovable witch.

While I recall with glee and thoroughly enjoyed those aforementioned television classic hits, "No Sex Please, We're British" - - as a play, and not because of this revival's director or cast - - was boring. Again, the material is not the fault of director **CHRISTINE VINH WEEMS** who kept the pace of this production brisk and lively.

The one fault that I found with this pro-

duction was the lack of attention to detail. It takes only one mistake to break the audience's willing suspension of reality. One of the characters referred by name to the British newspaper he was reading, despite conspicuously holding to the audience's view **THE WALL STREET JOURNAL**, with the masthead title positioned for everyone in the audience to see. It would not have taken a lot of money for the producer or someone to have purchased from a newspaper stand or store the British paper or to have copied its masthead from its web site and paste it onto another paper. Also, when Peter Hunter played by **TOM HODGSKIN** was asked by an elderly character for a glass of water to take a pill, he ran into the kitchen and carelessly brought out a glass of whiskey

Continued On Page 11

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CORNER

Annual Dinner & Installation Of Officers Thursday May 7, 2009



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Greg Brown, Liz Yablon and George Nashak



Guy Vitacco, Jr. with his parents Guy, Sr. and Loretta Vitacco



Guy Vitacco, Jr. with his wife, Janine and sons, Guy, III and Nicholas



Hon. Carmen Velasquez, Borough President Helen Marshall and Annamarie Policriti Brown



Hon. George Heymann, Hon. Richard Brown and Hon. Seymour Boyers



Hon. Jeremy Weinstein installing members of QCBA Board of Managers



Hon. Jeremy Weinstein swearing in Guy R. Vitacco, Jr. as the new President of the QCBA



Hon. Marguerite Grays, Amanda J. Goun, recipient of QCBA Law Student Scholarship and Hon. Sidney Strauss

PHOTO



CORNER

Annual Dinner & Installation Of Officers Thursday May 7, 2009



Hon. Martin Schulman, Steve Orlow and Hon. Martin Ritholtz



Hon. Michael Yavinsky and Hon. Carmen Velasquez



James Wrynn, Joe Baum and Scott Kaufman



Jim O'Connor, Dave Wasserman and Bob Bellone



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Kathryn Donnelly Gur-Arie, Hon. Jeff Lebowitz, Hon. George Heymann and Estelle Roond



Mark Weliky with Matthew Lupoli, the QVLP Floyd Alan Sheeger Pro Bono Family Law Award Winner



Mark Weliky, Pro Bono Coordinator with Nicholas De Cesare, NYSBA President's Pro Bono Award Winner



Nestor Diaz, Hon. Jeff Lebowitz, Hon. Joe Risi, Hon. Phyllis Orlikoff Flug and Ralph Pliskin



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About The Bench... Judge William Viscovich

Continued From Page 4

all the Civil Court judges in Queens, he may have a dozen cases on his trial calendar in a given day. He is impressed by how his colleagues in Queens County work hard every day, and he believes that our courthouses may be the busiest in the country in terms of the number of pending cases. Judge Viscovich told this writer that he approaches lawyers, after a proceeding before him, to ask for their comments and critique believing in their being comfortable giving a judge their opinions about his performance. "I appreciate the positive compliments but I learn more

from the critical ones", he says. He is on the bench around 15 months and acknowledges that he has a lot to learn.

The Judge is a people's judge and a lawyer's judge. He is always mindful of the concerns of lawyers and tries to move his calendar as efficiently as possible. He understands the business of law practice and the need for lawyers to make a living.

Judge Viscovich suggests to all of us, young lawyers and others who practice here, to get involved in the Queens County Bar Association's activities. The QCBA offers Continuing Legal Education, and it has committees addressing every possible aspect of law practice. He feels that the Queens County Bar Association offers a good way to communicate with the judiciary about issues pertaining to practitioners and their clients, and that the QCBA can provide a buffer between lawyers and the judges before whom they practice.

Judge Viscovich is very proud to be

married to his lawyer/wife, Felicia Varlese-Viscovich, with whom he has two young children that they adore. In fact the Judge told me that he is the second best lawyer in their house: his wife is the first. His father-in-law, Rocco Varlese, has practiced law in Queens for over 50 years, and the Judge considers him a role model as to ethics and professionalism.

This writer noted that as soon as the Judge completed his duties on the bench on the day that I met with him in his chambers, the first thing he did was to call his children to inquire about how their day at school was, and what they were planning for the balance of the day until their parents returned home and relieved their kind and capable neighbor who provides them with excellent childcare.

Judge Viscovich is an involved and activist parent. In the year 2000 the Judge was photographed on the cover of the Queens Chronicle newspaper among oth-

ers protesting cell phone antenna towers near St. Mel's School because of the danger the towers might cause to young children's development.

Judge Viscovich makes time to go to the gym up to three times each week. His hobbies include listening to his CD collection of 60's and 70's music, folk music and alternative country music, and a computer music channel introduced to him by the Honorable Supreme Court Justice Lee Mayersohn, a friend and colleague for years.

In conclusion, this writer acknowledges with gratitude the opportunity she was given to interview the very accomplished and equally cordial Judge William Viscovich, and wishes him continued health and satisfaction in his many endeavors.

Editor's Note: Stephanie S. Goldstone is a member of the Queens County Bar Association and a solo practitioner in Queens County.

The Culture Corner

Continued From Page 7

used in a previous scene, and the character who asked for it drank it without comment. My point is inattention to details, despite the furious pace, breaks the audience's sense of suspended reality.

The talented ensemble worked at fever-pitched capacity. Of the cast, I particularly enjoyed the supporting performances of the very funny and talented **KAREN BRELSFORD** playing prostitute Susan and **PEGGY QUEENER** as the visiting mother, Eleanor Hunter. **CHARLIE MENGINE** was funny as the hysterical, timorous, frantic, and scared bank clerk, but sometimes his repeated hysterical panic attacks kept repeating the same one note and eventually became wearing. **TOM HODGSKIN**, **GRETCHEN FERRIS**, and **EDWARD MONTEROSSO** also gave fine performances.

INTERNATIONAL KEYBOARD INSTITUTE & FESTIVAL

JEROME ROSE, accomplished international pianist, is the Founder and Director of the **INTERNATIONAL KEYBOARD INSTITUTE & FESTIVAL**. The Festival Director is **JULIE KERDERSHA**. This summer, at **MANNES COLLEGE THE NEW SCHOOL FOR MUSIC**, on the Upper West Side, I attended a performance by **BYRON JANIS**. I was not alone. Despite the humidity on a summer Sunday

afternoon, the auditorium was packed, with numerous persons standing.

BYRON JANIS lives in Manhattan with his wife Maria, the daughter of legendary film star Gary Cooper. I have many CDs by **BYRON JANIS** in my CD collection. **JANIS** is one of the great classical pianists. He combines power and poetry at the keyboard. The life story of America's **BYRON JANIS** is breathtaking. He overcame the loss of a finger and severe arthritis to become one of the greatest, internationally acclaimed pianists of the twentieth century. For those of my readers who are unfamiliar with Janis, you must buy the CDs and DVDs of his performances available at **ACADEMY RECORDS** on West 18th Street near Fifth Avenue in Manhattan.

THE OUTRAGEOUS FORTUNE COMPANY

RON HELLMAN, ESQ., a member of the QCBA, has another exciting season of plays with the Off-Off-Broadway productions by **THE OUTRAGEOUS FORTUNE COMPANY**, performed at the renovated Queens Theatre in the Park in the heart of the Flushing World's Fair Park right near the Unisphere. This season's plays are:

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HOWARD L. WIEDER is the writer of both "THE CULTURE CORNER" and the "BOOKS AT THE BAR" columns, appearing regularly in THE QUEENS BAR BULLETIN. He is also Principal Law Clerk to Justice Charles J. Markey in Supreme Court, Queens County, Part 32, in Long Island City, New York.

Legal Career Night

Continued From Page 3

huge success and now runs biannually. The program was created "to encourage bright young people of the next generation to think about important issues earlier, understand the structure of our legal system and empower themselves, so as to create a better future for us all." Since its creation, the program continues to enjoy great success, attracting approximately 300 high school students from 80 different New York

City public and private high schools annually. Hon. Yablon was also instrumental in organizing the program on the judicial system for the Columbia Undergraduate Law Review last spring.

Currently Hon. Yablon serves as Referee of the New York State Supreme Court, Queens County where she supervises the Preliminary Conference Part for all civil cases of the Supreme Court and presides over non-jury commercial and civil trials.

For those interested in participating in the event or who would like to offer any available internships please contact Hon. Elizabeth Yablon at eyablon@courts.state.ny.us.

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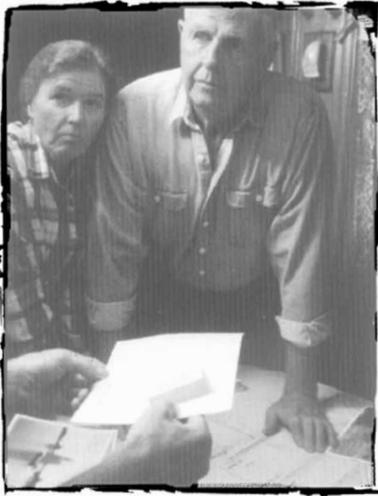
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Probation – The New Enemy

Continued From Page 1

tence, they might opt for a moderate jail sentence instead.

The conditions of probation are to be found in Penal Law section 65.10 and Criminal Procedure Law 410.10. Upon reading these conditions, a wish list submitted by extremist probation people with an agenda similar to the F.B.I., one is struck by the similarity to conditions of parole. There is one major distinction between the two (probation and parole) that seems to have been lost by those members of the State Legislature who voted in these new conditions. Parole is for offenders who have completed upstate prison terms, often for serious, violent offenses, who include repeat offenders and some who still constitute a potential danger to society at large. Probation is usually given to non-violent, first offenders, who are viewed as reclaimable individuals who need to be supervised while achieving assistance in dealing with substance abuse problems, educational needs or job training and who are not considered a potential danger to society at large.

The conditions of probation are now so numerous and all encompassing that they are set forth on two overlarge, typed pages. First, they include a recitation of any fines imposed, a mandatory surcharge, a mandatory crime victims compensation fee, a DNA Databank fee, a Sex Offender Registration fee, a Supplemental Sex Offender Victim fee, and “other fee/surcharges”. If the defendant has no money left he or she may go to the Legal Aid Society office to get carfare home. Given that most of the defendants are represented by one of the various public defender offices because they have been found indigent, the plethora of fees, fines and surcharges would seem particularly ironic.

Next, they include those items which anyone would anticipate finding there ... “avoid injurious or vicious habits” “do not consort with disreputable people”, “refrain from frequenting unlawful or disreputable places”, “lead a law-abiding life”, and the like. Certainly, one cannot take issue with such concepts, although a bit vague and perhaps pedantic for our clients who can barely read. Nor can one take issue with rules which say that the probationer must notify the Department if they are re-arrested or change their address or employment. After these mundane requirements however, things begin to get a little dicey.

“Answer all reasonable inquiries by the Probation Officer”, for example, may include the equivalent of waiving Miranda Rights for as long as they are on probation. After all, what they tell their P.O. is not privileged and if it includes an admission about additional criminal conduct it will surely lead to a new arrest. Indeed, the probation officers often work in tandem with other law enforcement groups or act as a shill for them, setting their probationers up for an arrest by arranging that they come in for an unscheduled visit for the convenience of the arresting officers, enable the police to accompany them on home visit/raids, or attempt to extract admissions/confessions about new criminal conduct which the police might not be able to do.

“Keep a curfew”, may seem harmless, but there are no guidelines which provide that the probationer has any rights at all in

this regard. I have seen adults under supervision given 8:00 p.m. curfews for no apparent reason other than “they can get in trouble during late hours and are better off at home”; as the supervising probation officer explained to me when I questioned this on behalf of a thirty-three year old male client who is single and now cannot even have a social life. While this may be appropriate for youths under 21, or some unusual situations involving adult offenders, this is completely unreasonable for most adult persons under probation supervision and yet the curfew rule is now being enforced regularly.

“Remain within the jurisdiction” sounds quite reasonable, except that rule is often applied unreasonably. I always thought that the “jurisdiction” was the State of New York, not a particular county or even the City of New York. I believe that this clause is actually an unreasonable infringement upon a constitutional right of freedom of movement when it is applied so as to limit a probationer to within the limits of the City of New York. I’m not even certain that the Legislature ever envisioned this as a natural consequence. Probationers are sometimes told that they cannot attend graduation ceremonies for relatives in neighboring Nassau County because they didn’t give their P.O. at least one month’s advance notice ... Why??? Irrational, at best. One of my clients asked permission to move in with his cousin in Nassau County so that his widowed mother could rent the apartment he presently occupied and thereby gain additional income which she desperately needed since the death of her husband. He was refused permission because the reason wasn’t deemed sufficient by his P.O. ... although after I explained this to her supervisor, he agreed that might have been unreasonable and promised a re-evaluation of the request. Clearly, granting permission to attend family gatherings, graduation ceremonies and the like, should be given freely and without exception, save for special and unique reasons.

“Post a bond for the performance of any or all conditions imposed” is one that I have never seen actually utilized, although I find it offensive in concept and can imagine no justification for any such requirement.

“Consent to a search conducted by a Probation Officer and his or her agent, of his/her person, vehicle and place of abode”, may actually be appropriate when dealing for example with a probationer with a history of drug abuse or who is suspected of other ongoing illegal activity. I cannot imagine who the “agent” of the Probation Officer might be who should be able to search the probationer’s vehicle or home without a search warrant, except that as I mentioned previously herein, the P.O.’s often act as shills for local police officials and this may cover their being able to search along with the Probation Officer ... thereby, once again, taking away additional constitutional rights from these people. The problem is that this provision is being abused in its exercise rather than in its concept. Clients of mine have had their homes “raided” by their P.O. at 3:00 a.m. and 5:00 a.m. and then the P.O. didn’t even bother to search their room, thereby eliminating any justification for the raid.

The Department appears to have lost sight of its mission. If you ask a Probation Officer what their job is ... they will typically answer that they are “law enforcement officials”. While it is technically correct that they do enforce the laws and regulations as set by the sentencing jurist, they are not viewed by those of us in the system as law enforcement officials. It is the general-

ly accepted view by defense attorneys, prosecutors and Judges, that Probation is an arm of the Court, is there to conduct preliminary investigations and interviews in aid of sentencing and to supervise, in a classic social service sense, those individuals deemed worthy of the special privilege of being placed on probation in lieu of incarceration. It is inherent in this understanding that the persons normally placed on probation are first offenders, low level offenders, non-violent offenders and who are people in need of assistance to achieve their rehabilitation and reintroduction into general society. These people are not hard core offenders, are not usually repeat offenders, are often people convicted of white collar crimes, and are not people who any of us in the system view as a threat to society at large. With this as a background, we view Probation as a group of social workers who are there to assist in the rehabilitative process Not as some hybrid social worker cops! Once they were given guns, the right to fix arbitrary curfews and travel restrictions and the right to raid probationer’s homes without constraint, they morphed into a whole other group of beings.

I have had to go to Court on more than one occasion to challenge their arbitrary rule applications. Insisting on a client attending a sex offender clinic when he wasn’t convicted of a sex offense, was in fact cleared of that accusation by the District Attorney’s Special Victims Unit, merely because a sex crime was alleged in the original Criminal Court complaint, without more, is one example of form over substance in the application of silly policies which take common sense out of the equation. The supervising Probation Officer in that instance told me it was departmental policy that if a sex crime was alleged in the original charging instrument ... even if the defendant was not convicted of a sex offense ... it was their rule that he had to attend sex offender counseling. The sentencing judge in that case sided with me in requiring that they at least conduct a psychological evaluation to justify such a mandate. The Department withdrew their insistence on this issue rather than risk setting a permanent precedent which would have required them to apply a common sense approach.

It has become clear that the Department of Probation is in direct conflict with the rest of us in the criminal justice system as to the nature and definition of their mission statement. We view them as a social service adjunct to the Court while they have come to see themselves as some form of police agency with slight social service undertones.

They have become more aggressive in Court in dealing with violations of probation as well. They ask for remand or incarceration sentencing when a probationer has

been re-arrested, but not yet convicted of anything. In most other jurisdictions, while they might file a violation upon a re-arrest for a serious offense, they normally hold off requesting additional bail or a jail sentence until the new offense results in a conviction. Not so in Queens County. Even in Nassau County, once viewed as the Gestapo East branch of probation, they hold off judgment until conviction is had on the newer offense. Queens County and the other New York City branch offices have taken on a completely new character, and not for the better. They have become abusive, arbitrary and often mean spirited in the application of the new regulations.

Probation was never meant to be the equivalent of parole. Probation is for the presumably reclaimable defendant who doesn’t deserve to be abused for having been granted that privilege. Probation Officers should be attempting to establish a positive rapport with their charges, not a confrontational or hostile relationship. It is certainly much more productive to conduct rehabilitation in a supportive context than in one where the P.O. is viewed as the enemy. Sadly, in many instances today, probation is merely perfunctory or has become substantially hostile. There has to be a complete re-evaluation of their goal orientation and their mission statement if they are to continue as a meaningful resource for the criminal justice community.

Stephen J. Singer

Profile Of Guy Vitacco, Jr. – The Man

Continued From Page 3

Chairman for the Bar from 2002 until the present (a major obligation, by the way), was the Co-Chair of the Supreme Court Committee until he became President, is a member of the Q.C.B.A. Grievance Committee and a member of the real one as well.

Guy and his father are the third in a unique father-son President theme for the Q.C.B.A. The other two are the Dikmans (Leo & Mike) and the Strauss’s (Harold & Sid). He’s a terribly nice man, a genuine kind of guy with old school values (which I personally admire) ... and will do his Dad proud as our newest President, I am quite sure. It is a pleasure to introduce him to those of you who don’t know him yet ... when you attend the next Q.C.B.A. function walk up to him and say “Hello”, he’s a bit shy ... you will be pleased that you made his acquaintance.

New York State Bar Association Summer Meeting Report

Continued From Page 1

is committed to implementing as many of the recommendations as possible in an attempt to make it less cumbersome for solo and small firm practitioners.

The Task Force on the State of Courthouses also presented a report. Again, many suggestions were made to

improve our Court facilities. This will be an ongoing effort to improve the conditions in our physical facilities for litigants and lawyers.

The State Bar’s Task Force on Wrongful Convictions, of which I am proudly a member, issued its final report which was approved by the House. This report carefully examined more than fifty wrongful convictions to ascertain the root causes. The report made numerous findings and recommendations which have received wide spread praise, both in the media and in the legislature.

All in all it was an interesting and productive meeting. As always, I will be more than happy to provide you with any information on issues that are being discussed by the State Bar.

Thank you to the following members and *friends* of the Queens County Bar Association for their generous support of our Annual Dinner Journal

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The Next New Subject Internet Collision Law

Continued From Page 1

viator to obtain compensatory damages and injunctive relief or other equitable relief. A civil action for a violation of this section may be brought only if the conduct involves 1 of the factors set forth in subclauses (I), (II), (III), (IV), or (V) of subsection (c)(4)(A)(i). Damages for a violation involving only conduct described in subsection (c)(4)(A)(i)(I) are limited to economic damages. No action may be brought under this subsection unless such action is begun within two years of the date of the act complained of or the date of the discovery of the damage. No action may be brought under this subsection for the negligent design or manufacture of computer hardware, computer software, or firmware.” (Emphasis added)

The factors listed in 18 U.S.C. Section 1030(c)(4)(A)(i) are as follows:

- “(I) Loss to 1 or more persons during any 1-year period (and, for purposes of an investigation, prosecution, or other proceeding brought by the United States only, loss resulting from a related course of conduct affecting the number 1 or more other protected computers) aggregating at least \$5,000 in value;
- (II) The modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of 1 or more individuals;
- (III) Physical injury to any person;
- (IV) A threat to public health or safety;
- (V) Damage affecting a computer used by or for an entity of the United States Government in furtherance of the administration of justice, national defense, or national security...”

In other words, virtually any kind of fraud or abuse using the internet can and will be the subject of federal civil actions.

A review of some of the cases brought by creative plaintiffs’ counsel under 18 U.S.C.

Section 1030, the CFAA, shows how the internet has invaded many of our traditional state law subjects.

In *Becker v. Toca*, 2009 WL 1706628 (E.D. La. 2009), and 2008 WL 4443050 (E.D. La. 2008) and *Bailey v. Bailey*, 2008 WL 324156 (E.D. Mich. 2008), Federal District Courts were called into matrimonial cases under the CFAA. In all three of these cases, the defendant in the federal computer fraud and abuse case hacked into the plaintiff’s computer to gain a tactical advantage in the underlying state matrimonial case. This resulted in federal cases being brought for computer fraud and abuse.

I spot a trend. Matrimonial cases can be

hotly contested. Before the break-up, it is common for married couples to share computers and passwords. Imagine what is coming in the future. Every state court matrimonial case has a built-in federal component for computer fraud and abuse when one spouse starts raiding the other spouse’s private financial information kept in his or her personal computer. It looks like the Matrimonial Bar will now have to get up to speed on federal practice.

Patrick Patterson Custom Homes, Inc. v. Bach, 586 F. Supp. 2d 1026 (N.D. Ill. 2008) took place in an employment context. An Administrative Assistant for a home improvement contractor decided to use the company’s computer system to produce checks made out to herself and electronic transfers to her own account and her creditors’ accounts! This formerly was accomplished by stealing the check book. Now, one can use the company’s computer to wreak even more havoc. The U.S. District Court for the Northern District of Illinois was not pleased.

Creative Computing v. Getloaded.COM LLC., 386 F. 3d 930 (9th Cir. 2004), took place in the context of the use of the internet in the trucking industry. Before the internet, trucks would frequently “dead-head” back from their destination. In other words, a tractor-trailer would go fully loaded from a manufacturer to a warehouse in another state, unload the truck, and return empty. Of course, this wasted gasoline and wasted the trucker’s time. With the advent of the personal computer and the internet, information about the need for trucks became more readily available. Thus, “dead-heading” was greatly reduced. A trucker who unloaded in one city could pick up a new load by finding out about it on the internet and return it to his native city. Naturally, stealing truckloads over the internet became a problem. The U.S. Court of Appeals for the 9th Circuit was not pleased, and sustained a complaint under the CFAA.

And then there is the world of computer technology itself.

In *Peridyne Technology Solutions, LLC v. Matheson Fast Freight, Inc.*, 117 F. Supp. 2d 1366 (N.D. Ga. 2000), the defendant was an employee of a corporate defendant that hired the corporate plaintiff as a computer consultant. The individual defendant hacked into the plaintiff’s servers and directories, downloaded files, directory listings, proprietary source code, software, financial books and records, research and development materials, white papers, and personal directories of plaintiff’s employees. The U.S. District Court for the Northern District of Georgia was not pleased.

U.S. District Courts now have mandatory electronic filing. Perhaps this explains why they are so sensitive to CFAA claims.

In any event, this would appear to be the next tidal wave of litigation about to hit us. It is hereby predicted that CFAA cases will soon supercede all of the automobile collision cases, railroad accidents and admiralty cases on our dockets.

As society is now progressing, transactions that formerly occurred by ship, railroad and automobile are fast moving to the internet. Thus, the forever unchanging human ability to screw things up must cause us to expand into a new field of law. Indeed, a new cause of automobile accidents is texting on a hand-held personal computer while driving. These texting/driving cases are also likely to become CFAA matters.

How much of the current national financial crisis is undetected computer fraud and abuse? How many financial services “professionals” posted deliberately inflated and/or inaccurate numbers on the internet? It is hereby predicted that there are thousands of potential CFAA cases underlying the current recession. The meltdown started in September 2008. The two year Statute of Limitations of the CFAA is fast running out. See Section 18 U.S.C. Section 1030(g). There is no time to waste. Investigating a CFAA claim is highly technical and time-consuming.

Does any reader out there think that financial services “professionals” are any differ-

ent than the warring spouses in *Becker and Bailey*, or the Administrative Assistant in *Patrick Patterson*, or the truckers in *Creative Computing*, or the tech support employee in *Peridyne*?

While the CFAA may be technically different, the underlying human emotion remains the same - people looking to cut corners and to go too fast through life. However, the method of so doing is now much more sophisticated. It is hereby predicted that there will now be a new cottage industry in CFAA computer consultants. Fortunately, this writer already has a very capable computer expert lined up for all of the CFAA cases about to come down the pike, or should I more accurately say, over the net.

But whether it is speeding by boat, train, car or internet, the advice to the client must be the same: slow down, take your time, enjoy what is yours. Don’t crash into someone else’s computer any more than you would run them down with your boat, train or car.

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Queens Bar Hosts Annual Trip To Albany

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several others. In the past, groups have been greeted by such esteemed legislators as Audrey L. Pheffer, Nettie Mayersohn, Margaret Markey, Catherine Nolan and William Scarborough among others.

When we were finished eating, we continued the tour in the respective chambers of the Senate and the Assembly and watched as bills were addressed and voted upon. We were acknowledged in the Assembly chamber by the person sitting in for Speaker Sheldon Silver and addressed both by the Sergeant-at-Arms and James Wrynn, Esq.

Afterwards the group paused to take pictures with legislators on the Million Dollar staircase. These photos serve as proof of how actively supportive legislators have been towards Queens Bar Association’s endeavors, stretching as far back as when Assemblyman Denis Butler and now Assemblywoman Ann Carrozza assisted the Bar in organizing these trips.

Our final stop was to the Executive branch. We met with the Associate Counsel for Legislative Affairs. The

Harvard trained attorney showed us bills and explained the role of the executive branch in the law making process. On past visits students were greeted by Governors Cuomo and Pataki, Lieutenant Governors McCaughey and Donoghue, Counsels Elizabeth Moore and James McGuire, Cabinet Secretaries and others. Unfortunately, due to illness Governor Paterson was unable to meet with us, but sent his regards.

Upon the conclusion of our tour, Justice Lewis, his Law Clerk and Bar personnel made sure that we were all accounted for before feeding us dinner and answering all of our questions. On the ride back to the city we animatedly discussed the experience amongst ourselves, well aware of its impact on our goals and dreams and in our lives.

I am grateful for the wonderful opportunity which Justice Lewis and the Bar Association has afforded me and many others. This trip has opened my eyes and given me insight to how the government in Albany functions. I commend all of those who have contributed to this amazing experience and hope that students will continue to take advantage of all that the Bar Association has to offer in the future.

*Morgan Smith is a Queens resident, a sophomore at Penn State University and a new student member of the Queens Bar Association.

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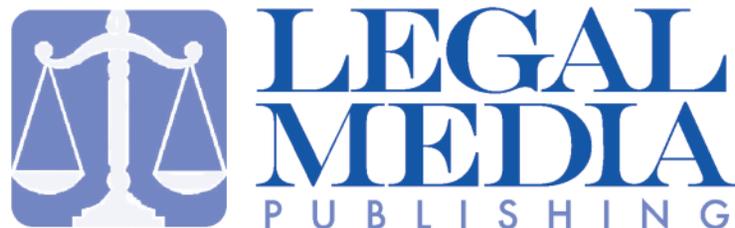
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