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Queens Bar Bulletin

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

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Estates Update 2012

BY DAVID N. ADLER

David N. Adler

The year in trusts and estates was highlighted by the imposition of permanent estate and gift tax rules, notably with respect to threshold and rates, which should serve to finally stabilize the provisional tax remedies offered over the past decade.

HISTORY

In a span of just over ten years the estate tax threshold, also referred to as the exemption amount or exclusion amount, beneath which no federal estate taxes are due, has ranged, in varying years, from 675,000 to 5,000,000 to unlimited (one year only 2010). The rates applied to said tax have ranged from 35% to 55%. In some years the changes have been gradual and in some years the changes have been extreme. The net result of all this volatility has been confusion for individuals and tax planners alike. Certain viable planning techniques intended to maximize tax savings required serious adjustment on a regular basis, with a view to providing maximum flexibility, as future tax rules were indeterminate. The political wrangling only contributed to the general air of instability and confusion

FEDERAL ESTATE TAXATION

On January 1, 2013, Congress passed the American Taxpayer Relief Act of 2012 which was immediately signed into law by the president. In many ways it makes permanent aspects of the prior Tax, Relief Unemployment Insurance Reauthorization and Job Creation Act, of 2010. The lifetime maximum exemption equivalent is set at $5,000,000 and indexed for inflation. As such, the exemption equivalent for this year is $5,250,000. All estates with less than that amount have no federal tax consequences. Further, the top tax rate was raised from 35% to 40%.

As was also the case under the immediately prior law, the step-up in basis was maintained. Thus, for purposes of computation of capital gains on a particular asset, the basis upon which such gain is computed shall be its fair market value as of the date of death. This continues to wipe away any and all gains occurring between acquisition of that asset and death.

FEDERAL GIFT TAXATION

The gift tax lifetime exemption continues to be reunified with the estate tax lifetime exemption, and is set as $5,250,000 for 2013. Thus, lifetime transfers continue to provide the same numerical tax free benefit as do testamentary transfers, subject to the unified cap.

Further the gift tax annual exclusion, now $14,000 per person per year, was preserved. This remains a neglected planning tool. The exclusion, within its limits, is not chargeable to the estate/gift unified lifetime exemption, and essentially operates as a separate device for transfer of assets. A married couple may now transfer up to $28,000 to any individual every year completely free of gift tax and without reducing their lifetime threshold.

Finally the generation skipping tax exemption continues to parallel the federal exemption amount and is now set at $5,250,000. This tax applies to transfers 2 or more generations removed from the transferor and comprise a second level of taxation, often addressed in large estates.

PORTABILITY

A unique aspect of the new law preserved from the prior law, consists in the fact that any unused portion of a spouse's exemption amount may be utilized by the surviving spouse. By example, in the event that spouse #1 (first spouse to die) only utilized $2,000,000 of his exemption equivalent, (estate/gift), the surviving spouse would be able to utilize $8,500,000 of exemption equivalents (her own $5,250,000 plus the unused 3,250,000 from spouse #1).

This approach mirrors some facets of the traditional by-pass (credit shelter) trust in that the second spouse to die may use their exemption amount, plus the amount sheltered in trust in the first spouse to die's estate. One of the remaining advantages of said by-pass trust, is that appreciation and accumulated income remain sheltered in said trust, and continue to avoid taxation in the estate of the second spouse to die.

Further, portability must be formally elected by the executor on the estate tax return of the first spouse to die (form 706). Thus, even if no estate tax is due at that level, such election and filing must occur.

NEW YORK STATE

New York State has not altered exemption equivalents in many years. The New York exemption equivalent (state credit) is $1,000,000. Presumably more New York estates will now be required to file a New York estate tax return, and pay New York estate tax, but not file a federal estate tax return. The state tax rates are significantly lower than their federal counterparts and are capped out at 16%.

OVERVIEW

It is apparent that any planning tools executed over the past 15 years or more, will have to be reevaluated in light of the present tax structure and the portability feature. For example, certain plans viable a few years ago may, by their language, wind up over funding a by-pass trust and leaving nothing for the surviving spouse to utilize

(Continued on page 15)

Trials and Tribulations – Fifty Years of Family Court

BY MERYL KOVIT

Meryl Kovit

Part 4 of a series.

As the United States Supreme Court rendered its landmark decision in *Roe v. Wade,* 410 US. 113, (1973), Wayne Newton was crooning "Daddy Don't You Walk So Fast" on the American airwaves. This song, about the effect on a little girl of the breakup of her parents, was Wayne Newton's biggest hit, peaking at number 4 on the billboard chart in 1972.

As our story of the Family Court began, back in 1962, *Father Knows Best* was at the top of the chart — but, now "Daddy Don't You Walk So Fast" was at the top of the chart.

Robert Young never dealt with what happens when the daddy leaves the family on Father's Knows Best. "Daddy Don't You Walk So Fast," was for many former fans of *Father Knows Best*, an introductory course in how children deal with parental break up. Remedial programs are still being taught to this day, and if Family Court is any indication of how the society is doing as a whole and it is, then few people have ever passed the course. To be fair, most would flunk even after a private tutorial with Robert Young, because just like the issue raised in *Roe v Wade*, breaking up is not only hard to do, it is also a difficult subject to understand from all sides.

Roe was a turning point in the history of the world, and more importantly for our purposes here, in the history of the Family Court. *Roe* showed that the times were clearly changing, and it was clear that *Father knows Best* would never return to the airwaves. This was the world in which Simeon Golar took the bench in Queens Family Court.

Judge Golar became the chairman of the Board of the New York City Housing Authority in 1970. He was the first chairman to have lived in public housing. He was appointed to the bench by Mayor Lindsay in December of 1973.

Just two and one half years later, in 1976, the year of our nation's bicentennial, Judge Simeon Golar, Queens Family Court, resigned from his judgeship — he didn't go quietly. He wrote a res-

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

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

CLE Seminar & Event Listing

April 2013

Wednesday, April 3	Immigration Seminar - Rescheduled
Monday, April 8	Judiciary, Past Presidents & Golden Jubilarian Night
Wednesday, April 10	Civil Court Seminar
Wednesday, April 17	Equitable Distribution Update
Thursday, April 18	Medical Malpractice Seminar
Thursday, April 23	Administrative & Federal Law Seminar
Thursday, April 24	Cooperative/Condominium Law Seminar

May 2013

Thursday, May 2	Annual Dinner & Installation of Officers
Friday, May 3	Law Day Information Fair at Civil Court
Monday, May 27	Memorial Day - Office Closed

June 2013

Thursday, June 20	Juvenile Justice Committee Seminar

September 2013

Monday, September 2	Labor Day - Office Closed
Monday, September 9	Annual Golf Outing at the Garden City Country Club

CLE Dates to be Announced

Elder Law
Insurance
Real Property
Supreme Court & Torts Section
Worker's Compensation

New Members

Aveet A. Basnyat	Andrea S. Ogle
Steven Thomas Beard	Brad M. Popick
Bessie Chinboukas	Argilio Rodriguez
Shawn Clauther	Max Walter Romer
Alexander Der Garabedian	M. Marsden Scherer
Maria T. Gonzalez	Cindy Arlana Singh
Natalie Kachkarov	Lantao Sun
David J. Lawrence	Joseph A. Zayas
Francisco E. Mundaca	Lisa Marie Zayas

Necrology

Ezra Aboodi — Hon. Pearl B. Corrado — Joseph S. Moore

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

Lawyers Assistance Committee
Confidential Helpline 718 307-7828

Queens County Bar Association Scholarship Fund

Dear Member:

The Queens County Bar Association's Scholarship Fund was created in 2005 to offer financial assistance to law students who are residents of Queens County or who attend law school in Queens County.

The recipients of the QCBA Scholarship are carefully chosen based on academic achievement, community service and financial need and is awarded at the Annual Dinner in May.

I know that times are hard, but I would hope that you could donate to this worthwhile purpose and your tax deductible donation (of any amount) will help to support and recognize those deserving law students who provide community service to the residents of Queens County. It also enhances the good name of our Association.

As President of the Queens County Bar Association, I thank you for your support of this valuable community-based program.

Sincerely,

JOSEPH RISI
President

Please make checks payable to:
Queens County Bar Association Fund, Inc.
(all donations are tax deductible)

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President's Message

Dear Fellow Members:

I thank you for your support of the Queens County Bar Association. It truly is a pleasure to meet and socialize with each other at our events and seminars this year.

I believe the practice of law should be enjoyable, challenging and rewarding. I believe there should be a desire within all practitioners to treat each other with courtesy, respect and civility.

What is the reason for the lack of civility amongst members of our profession today?

Are emails making it too easy to de-humanize the practice of law and each other?

When was the last time you had a sit-down real estate contract signing? How many times have you sent out a Contract of Sale requesting to be advised if the other attorney desired changes and the following week a contract arrives with 20 hand written changes signed by the other side, none of which have been either discussed or agreed upon?

How often has your opposing counsel made this statement "I'm sorry but I have to follow the directions of my client?"

Is there no longer a desire to treat each other with courtesy, respect and civility?

We all need to make a conscious effort to practice civility. We should have that desire. It does make a difference for all of us.

Is the lack of civility a sign of dissatisfaction within our Profession?

Are we working harder making less?

Is there too much competition?

Are we failing to communicate with each other?

It actually takes more time and a lot more effort to make each other, our clients, judges and Court personnel miserable!

Joseph Risi

Why be a gladiator when we can work with one another and arrive at a fair and just result.

Remind yourself, each other and your staff of the importance of being civil.

As a refresher, I am briefly outlining The Standards of Civility which are contained in 22NYCRR Part 1200, Appendix A which are guidelines and principles of behavior to which the bar, bench and Court employees are encouraged to aspire and observe.

LAWYER'S DUTIES TO OTHER LAWYERS, LITIGANTS AND WITNESSES

I. Lawyers should be courteous and civil in all professional dealings with other persons.

II. When consistent with their clients' interests, lawyers should cooperate with opposing counsel in an effort to avoid litigation and to resolve litigation that has already commenced.

III. A lawyer should respect the schedule and commitments of opposing counsel, consistent with protection of the client's interest.

IV. A lawyer should promptly return telephone calls and answer correspondence reasonably requiring a response.

V. The timing and manner of service of papers should not be designed to cause disadvantage to the party receiving the papers.

VI. A lawyer should not use any aspect of the litigation process, including discovery and motion practice, as a means of harassment or for the purpose of unnecessarily prolonging litigation or increasing litigation expenses.

VII. In depositions and other proceedings, and in negotiations, lawyers should conduct themselves with dignity and refrain from engaging in acts of rudeness and disrespect.

VIII. A lawyer should adhere to all express promises and agreements with other counsel, whether oral or in writing, and to agreements implied by the circumstances or by local customs.

IX. Lawyers should not mislead other persons involved in the litigation process.

X. Lawyers should be mindful of the need to protect the standing of the legal profession in the eyes of the public. Accordingly, lawyers should bring the New York State Standards of Civility to the attention of other lawyers when appropriate.

LAWYER'S DUTIES TO THE COURT AND COURT PERSONNEL

I. A lawyer is both an officer of the Court and an advocate. As such, the lawyer should always strive to uphold the honor and dignity of the profession, avoid disorder and disruption in the courtroom and maintain a respectful attitude toward the Court.

II. A Judge should be patient, courteous and civil to lawyers, parties and witnesses.

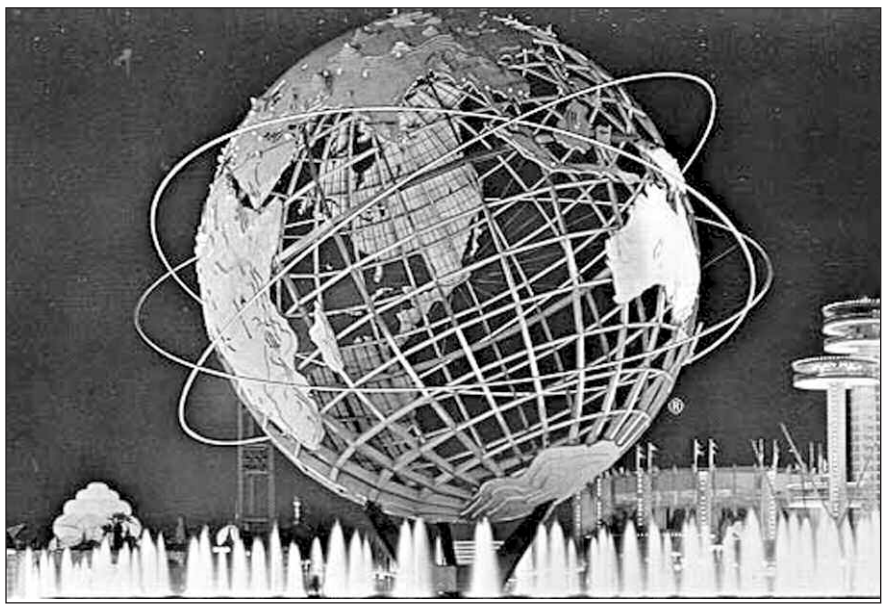
DUTIES OF COURT PERSONNEL TO THE COURT, LAWYERS AND LITIGANTS

I. Court personnel should be courteous, patient and respectful while providing prompt, efficient and helpful service to all persons having business with the Courts.

I hope you will take the time to review and be guided by these guidelines to insure that we as members of this honorable and respected profession remain healthy, happy and prosperous.

Sincerely,

Joseph Risi
President



Annual Dinner & Installation, May 2nd!

On Thursday evening, May 2nd, QCBA will celebrate its 136th Installation of Officers and Annual Dinner at Terrace on the Park. QCBA President Joe Risi will preside over the installation of the Association's new officers including President-Elect, Joseph F. DeFelice.

In conjunction with this event a souvenir journal will be published. The proceeds from publication of the journal will be used to support the work of the Queens Volunteer Lawyers Project, Inc. (QVLP). Members and friends of the Association are invited to submit their ad subscriptions and help support and expand QVLP initiatives such as the Queens Foreclosure Conference Project, the CLARO-Queens Consumer Debt Clinic and our Superstorm Sandy Disaster Relief clinics. Subscription rates for the journal are reasonable, having been frozen at 2007 levels. Sponsorship packages at varying levels are available. The cost of subscriptions and sponsorships is deductible as a charitable contribution, pursuant to I.R.C. § 501(c)(3). Please help us to help others by reserving your space in this year's journal. For more information about the annual dinner journal please contact Mark Weliky, QCBA Pro Bono Coordinator at (718) 291-4500 ext. 225. MWeliky@QCBA.org.

Just Use The Form – Are You Sure?

BY STEPHEN D. HANS

Stephen D. Hans

From the moment when we begin our journey in this profession, we learn that in many situations there is often a universally accepted form that can accomplish our goal faster and more efficiently. Our clients will readily execute and accept our forms since we, as lawyers, pledge allegiance to their contents and use. Forms, whether authored by Blumberg or others, are simply unavoidable in the practice of law. But are they what they purport to be?

There is a wonderful book, "Boilerplate" by Margaret Jane Radin, which essentially challenges our profession's endorsement of the forms we so often utilize. Ms. Radin raises provocative questions that may give lawyers some pause in their future use of these forms. She argues that while many well-established legal forms have been in existence for many decades, they are really not contracts at all, because their terms were never bargained over and thus were not consented to in any traditional sense. With respect to the terms of many forms, there is often no meeting of the minds between the parties, which we have learned is an essential component of any contract.

As Ms. Radin points out, the absence of a real agreement between parties using a boilerplate contract means that there is an inconsistency with the moral basis of contract law. For example, we use form contracts to transfer property and they are routinely accepted by the state despite the fact that no real bargaining over the specific terms has occurred. Hence, the government, which is a critical entity in the transfer, enforces a private agreement without any concern for the moral basis of contract law.

How many times have you been in a real estate closing where form documents were presented to you and your client which required signatures within minutes? How many times have you actually reviewed a form contract or a lease that contained language requiring that your client waive their right to a jury trial, or even language that substantially limits potential money damages for any future harm in a contractual relationship? Let us not forget those form contracts that contain venue clauses establishing some far away state as the proper forum in the event of a dispute. As Ms. Radin points out, "the party that constructs the boilerplate contract makes a kind of private legal system that displaces the public one."

The idea that an attorney has read

(Continued on page 13)

Editor's Note

The Five Dollar Solution to National Wealth Beyond All Dreams

BY PAUL E. KERSON

In legal, political, commercial and governmental circles today, there is much talk of "Immigration Reform." What should be the requirement to join us as American Citizens?

Coincidentally, this is the 100th Anniversary of the day my Grandfather Sol Kerson left Europe for America on foot. His journey took him three years, from 1913 to 1916.

Sol came from Orsha, Belarus, a town in the former Soviet Union where everyone was killed by Nazi gunfire in 1943. Sol and his descendants missed being exterminated.

He had survived the Pogrom of 1905, at age 11, when houses of Jewish residents were burned to the ground with the people in them. He resolved then, to come to America. Western Europe was difficult to get through, with its series of borders, guards and bureaucratic requirements.

So, at the age of 19, in 1913, Sol commenced walking East, across the Eurasian land mass that constitutes most of the land of the Earth. He reached Katrinaslav, Ukraine, where he got on the trans-Siberian railroad to Harbin, China.

Harbin is a city in China's Heilongjiang Province. This region sticks up into Russia much the way Maine is surrounded by Canada. The Russian Government had leased Harbin and sections of Heilongjiang Province to build a transcontinental railroad to their Pacific Ocean harbor city, Vladivostok. The railroad brought a small Russian Jewish community to Harbin, and it was there that Sol prepared for the rest of his trip to America.

Paul E. Kerson

Sol crossed the Sea of Japan in a small rowboat with four other Russian Jews, a Chinese guide, a black bread, a salami and one bottle of vodka. He arrived in Japan, walked across the entire main Japanese island, and reached Kobe, where he boarded a freighter bound for Seattle, Washington.

Whatever the legal requirement to enter America was in 1916, the actual requirement was five dollars. Sol borrowed this sum from a fellow immigrant aboard ship, as Sol had *absolutely nothing* in 1916. The U.S. Immigration Agent on the dock in Seattle took Sol's borrowed five dollars and asked his name. Whatever Sol said in Russian came out with the pronunciation and spelling the U.S. Immigration Agent wrote and stated for Sol on that dock. And so that has been the family name ever since, a name devised by the U.S. Government for one of its millions of five dollar immigrants.

Sol picked apples in Washington State for the train fare to New York, where he had two uncles, Louis Kalmanoff and Louis Kaplowitz, who had come to America 11 years earlier. Kalmanoff & Kaplowitz were in the business of painting stores, apartments and schools. They lent Sol $100 to buy a barber shop on 116 St. and Seventh Avenue in Manhattan in 1917. Sol later owned barber shops, beauty parlors and wholesale barber shop and beauty parlor supply stores all over the Bronx – 1029 Boston Road, 998 Boston Road and 526 Tremont Avenue.

Sol's descendants included and include: a U.S. Army Captain, a hospital administrator, two doctors, one dentist and one medical student, an editor, a labor union leader, a city planner, a museum fundraiser, a public school teacher, a book editor, a caseworker for the poor, a Port Authority administrator, a real estate agent, several young students and your Editor. Collectively, over the past 100 years, these people have paid multi-millions of dollars in taxes, and contributed far more in energy and effort. All from five dollars to the U.S. Immigration Agent on the dock in Seattle in 1916.

Sol's story is every American's story. Due to intermarriage and out-of-wedlock births, every citizen born here has an ancestor with a story just like Sol's. Americans have ancestors from every country in the world.

My wife, Marleen Kassel Kerson, teaches the History of China and Japan at Queens College, and she speaks these languages. So, in 2007, she arranged for us to go to Harbin. On the internet, I found that the Israeli Government had sent Prof. Dan Ben-Canaan to the University of Heilongjiang to teach English and Jewish History.

He is also responsible for preserving the now empty Harbin synagogue, Hebrew School, hospital, burial grounds and related buildings. When the Communists took over China, the private businesses of the Harbin Jews were confiscated, and all fled to Israel.

But in 2007, I told Sol's story to Prof. Ben-Canaan's class at the University of Heilongjiang. I thanked them for the Chinese guide, the black bread, the salami and the bottle of vodka that sustained Sol in the rowboat across the Sea of Japan in 1916.

They gave me a Standing Ovation. Later that day, Prof. Ben-Canaan took Marleen and me to a banquet with the President of the University to thank us for coming all around the world to thank them for life itself, for the chance to be an American.

So, for me at least, the policy choice is obvious. Following should be our new immigration law:

1. Anyone in the world who wants to be an American is welcome and will be given a Green Card upon arrival.
2. The requirement is five dollars.
3. The five dollars is waived for any immigrant who does not have the money.
4. All other immigration laws are hereby repealed.

Prediction: If this is our new immigration law, as it was actually in 1916, all of our Budget problems will be solved within one generation or less.

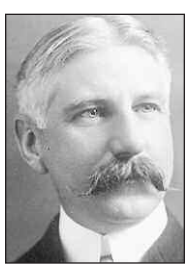
HISTORY CORNER

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

—— Sir Walter Scott

One of the major reasons for my love of history is that it leads the reader to be surprised by items they think they know. Here are three I present to my colleagues for their enjoyment.

The Outerbridge Crossing



Eugene Harvey Outerbridge

From time to time, many of us need to take the bridge which connects Staten Island (NY-440) and Perth Amboy, New Jersey. Most New Yorkers mistakenly assume the name derives from the fact that it is the most remote bridge in New York City and the southernmost crossing in New York State.

Actually it is named after Eugene Harvey Outerbriidge (1860 - November 11, 1932). He was a businessman, promoter of patent fiberboard and the first chairman of, what was then known as, the Port of New York Authority. He was a resident of Staten Island. His sister, Mary Ewing Outerbridge was the founder (in 1874) of American Lawn Tennis, which was the progenitor of modern lawn tennis.

As far as the bridge, it is a cantilever type construction which spans the Arthur Kill. It opened simultaneously with the Goethals Bridge on June 29, 1928. Both spans have a similar design. For further reading see:
http:/en.wikipedia.org/wiki/Eugenius_Harvey_Outerbridge

William Rufus King: The First Gay Vice-President

William Rufus King

You may be aware that King County, Washington State (home of Seattle) was once named after Vice President William Rufus DeVane King (1786-1853). He was elected to his office (as a Democrat) with President Franklin Pierce and has the distinction of having served in the office for less time than anyone else - just 45 days. He actually took the oath of office in Cuba where he was attempting to cure his tuberculosis. He returned to the United States on April 17, 1853, but died the next day on his Alabama plantation at the age of 67.

King was an accomplished politician with a long history of public service. In 1811, he began as a congressman from North Carolina at the age of 25. In 1819, he became a Senator from the newly created state of Alabama. He remained in this position until 1844 when he became the minister to France. He returned to the Senate four years later where he remained until December of 1852 when he resigned to become Vice President. King was a highly respected Senator known for his probity and moderation.

King was a lifelong bachelor who lived with future President James Buchanan for fifteen years. At the time Washington insiders speculated as to the nature of their "friendship." It was widely rumored that there was a romantic connection although the word "gay" was certainly not used back then.

King was a strong supporter of slavery - not unusual for his time. He was so well respected that in 1852 the Oregon territory named King County after him. A year later this became part of Washington territory which became a state in 1889. In fact, the Kingdome (1976 - 2000) Seattle's baseball - football domed stadium was probably named in honor of William King.

However, in recent years the County Board took action to rename the County after Martin Luther King. While opposed by the gay community it was reaffirmed on April 19, 2005. The change was not made to "diss" William King but rather to honor of Dr. King.

While it has been argued whether or not William Rufus King was gay, there is significant evidence that both he and Buchanan were lovers. There is also a great deal to be found on the internet as to him. For further reading see:
http://goqnotes.com/12673/william-rufus-king-first gay-u.s.-vice-president/
http://en.wikipedia.org/wiki/William_R._King
http//www.seattlepi.com/local/article/A-look-at-King-County-s-original-ex-namesake-11...

Willie "The Actor" Sutton

Wille Sutton

For those of us that have appeared in the Long Island City Courthouse, there is a plaque that refers to the infamous bank robber William "Willie" Sutton. Sutton is known, albeit apocryphally, for the statement that he robbed banks "because that's where the money is." However, he always stated that he never made this statement and that it was actual-

(Continued on page 10)

Volunteer Lawyers Respond To Sandy

Provide free consultations to Queens residents rebuilding after the storm

BY CHARLIE GIUDICE*

Repairing a storm-damaged home and advising disaster victims seeking assistance can be approached with the same goal in mind.

"It's chaos, and you just have to keep pushing to bring order to it," said Theresa Mohan, a senior regional counsel at IBM.

Mohan organized one of the first clinics for survivors of Superstorm Sandy in the Rockaways. A native of Belle Harbor, Mohan's mother's house was among those affected by Sandy.

The idea behind the clinics was to provide "triage" – answers to basic questions and assistance in applying for aid.

"I really felt that there was this need for people to have someone to talk to about their legal issues" arising from Sandy, Mohan said. "Everybody was struggling with the same issues."

Planning the response began almost as soon as Sandy had left the region. On November 1, Queens County Bar Association President Joe Risi participated in a statewide conference call, the first of several, with the New York State Bar Association and other local bar associations. That same day, he sent out a letter to the membership of the Queens County Bar Association, asking attorneys to consider volunteering as part of the Sandy relief effort. On November 5, Risi met with Queens County Bar Association Executive Director Arthur Terranova and Queens Volunteer Lawyers Project Executive Director Mark Weliky to plan a response to Sandy. The three discussed issues likely to come up in the recovery and what QVLP and QCBA could do to help.

"There was a call to arms," Risi said, pointing to the Queens County Bar Association's 136 year history of service to the community. "I think we invigorated the membership to volunteer."

Soon thereafter, Risi gave a statement to Reuters, indicating that QVLP would be coordinating on Sandy-related issues such as insurance problems, contractor fraud and consumer protection.

Since November, QVLP has provided free legal assistance to more than 200 Queens residents recovering from Sandy's devastation. Beginning on November 10, QVLP staff and volunteer attorneys held legal clinics every weekend in the warming tent at St. Francis De Sales Roman Catholic Church. Starting in December, QVLP organized and held two additional clinics each week, with the Queens Borough President's Mobile Disaster Response Unit and in the New York City Restoration Center/FEMA Recovery Center in Arverne. More than 30 clinics have been held to date. QVLP has committed to holding at least one free legal clinic each week that the FEMA Recovery Centers remain open.

Clinic visitors sign a waiver acknowledging that the scope of the assistance being provided by the volunteer attorneys is limited, that there is no charge for the consultation and that attorney-client confidentiality applies. Often, the consultation is a one-time service. However, in some situations, QVLP may provide additional assistance including canvassing the Sandy relief panel for a volunteer attorney to undertake representation on a *pro bono* basis.

"You can't do outreach like this unless you have the ability to follow up," Weliky said, pointing to some of the more egregious cases QVLP had encountered at the clinics.

The first clinic was held in the tent at St. Francis De Sales on Saturday, November 10. QVLP staff and volunteers joined Mohan and volunteers from IBM, Skadden Arps, Jenner & Block and several other firms. Volunteer attorneys wore name tags made from duct tape and created handwritten signs to inform visitors of the free legal assistance they were providing.

"It's a surreal thing when I think back on it," Mohan said.

Ali Arain, a litigation associate at Jenner & Block who was also volunteering that day, noted how challenging the conditions were. "The lack of power really presented a challenge for lawyers used to being connected all of the time," Arain said. "But we made it work."

The church, at Rockaway Beach Boulevard and Beach 129th Street, sat in the middle of several blocks of homes that burned as a result of the flooding. The church was mostly spared, but suffered damage in the flood. It became a central point of contact for survivors – a place where they could meet with representatives from FEMA, get a hot meal, and pick up food, blankets, and cleaning supplies donated to the relief effort.

"My own personal takeaway from this is how important legal clinics and limited scope legal assistance are because they are well suited to disaster assistance," Arain said. "Getting answers to questions about eligibility is key to getting life-sustaining assistance."

St. Francis De Sales continued as a central relief point until the final weekend in December. On Saturday, December 29, the tent was evacuated and closed as a precaution against exceptionally strong winds. David Shapiro and Peter Lomtevas, lawyers volunteering with QVLP as part of the relief effort, were evacuated even as they were providing advice.

Janet Ray Kalson, an attorney at Himmelstein McConnell Gribben Donoghue & Joseph in Manhattan, was driving down Cross Bay Boulevard on her way to volunteer at St. Francis De Sales on November 10. Almost two weeks after Sandy struck, she recalled, cleanup had barely begun.

Upon reaching Howard Beach, Kalson said, "I saw complete, utter devastation – flooding, no lights, businesses shuttered. Then I went over the bridge to Broad Channel and it was even worse."

Sandy's impact in Queens, however, was strongest on the Rockaway peninsula.

(Continued on page11)

Attorneys interested in joining QVLP's Sandy relief panel should email Executive Director Mark Weliky at mweliky@qcba.org or call (718) 291-4500 Ext. 225.

Books At The Bar

BY HOWARD L. WIEDER

My March column is dedicated to books of quotations. When chosen and placed properly and used smartly, quotations can enliven a memorandum of law, set of motion papers, appellate brief, and a judicial opinion. A fitting quotation, with proper attribution, can punch home a point, and leave your document memorable in the minds of your reader and targeted audience. That is what any litigator and judge should strive for.

In my experience, judges and law secretaries assigned to an Individual Assignment Part in the New York State court system will tell you that the average intake of motions per week is 25 to 40. The importance of that statistic for the working litigator is that a judge and law secretary has precious time and needs to get to the heart of a motion quickly.

Many factors go into writing a good set of motion papers. The statement of facts, favorably framed towards one's client if written by a litigator or towards the eventual outcome if written by a judge or law secretary, is critical. Of course, while favorably framed, facts must be stated honestly and accurately for the future *ethos* and credibility of the writer.

Another important criteria, considering the limited amount of time that your, the litigator's, motion may command by the reader, is catching and maintaining the Court's interest in your papers. A well-prepared and eloquent set of motion papers will get read, and more important, will get remembered by the reader. One way of catching that interest is, as stated above, is by the proper use of quotations to punctuate a point. On top of the you, the writer, doing an eloquent exposition of the facts, a well chosen quotation in a set of motion papers or judicial opinion is like hitting a home run. Quotations, aphorisms, proverbs, and the like – when well-chosen and placed in your document, and not just used gratuitously – can ignite and illuminate an already well-written document.

I recommend that you buy three books of quotations recommended in this column. The three books described in this column are superb. The three books of quotations recommended are: ***THE YALE BOOK OF QUOTATIONS*** *and* ***THE OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS***, both edited by Professor **FRED R. SHAPIRO OF THE YALE LAW SCHOOL**, and the new **18TH EDITION OF *BARTLETT'S FAMILIAR QUOTATIONS***, edited by **GEOFFREY O'BRIEN, EDITOR**.

THE YALE BOOK OF QUOTATIONS
by FRED R. SHAPIRO, EDITOR
Editor: Fred R. Shapiro
Foreword: Joseph Epstein
Publisher: YALE UNIVERSITY PRESS
Published: October 2006
ISBN10: 0300107986
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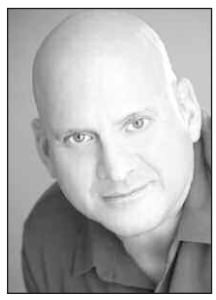
Size: 7.25 X 2 X 9.5
Weight: 3.55 lbs.
Copyright: 2006
Subject: REFERENCE QUOTATIONS

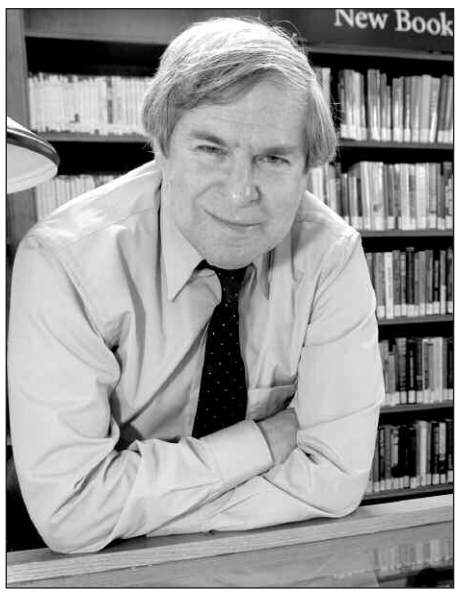
THE OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS
by FRED R. SHAPIRO, EDITOR
Editor: Fred R. Shapiro
Publisher: OXFORD UNIVERSITY PRESS
Published: May 1993
ISBN10: 0195058593
ISBN13: 9780195058598
Format: Hardcover
Copyright: 1993
Subject: LAWGENERAL

FRED R. SHAPIRO, of the **YALE LAW SCHOOL**, is probably the world's leading authority on quotations and their origins. His two excellent books of quotations are: ***THE YALE BOOK OF QUOTATIONS*** *and* ***THE OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS***. They are available, inexpensively, either at a local bookstore of rare and used books or in both new and used condition through purchase at www.amazon.com under "Books."

In addition to **FRED R. SHAPIRO's** two masterful works, ***THE YALE BOOK OF QUOTATIONS*** *and* ***THE OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS***, my home study's library contains several rows of books of quotations, including: *Bartlett's Familiar Quotations* [18th ed. by Geoffrey O'Brien, editor], *Bartlett's Familiar Quotations* [17th ed. Justin Kaplan, editor], *ENCARTA Quotations, The Oxford Dictionary of Quotations, The Macmillan Book of Quotations, Words of Wisdom* [by Safire and Safir], *Good Advice* [by Safire and Safir], *Leadership* [by Safire and Safir], *The Oxford Dictionary of Political Quotations, Simpson's Contemporaneous Quotations, The New Dictionary of Thoughts, The International Dictionary of Thoughts, Familiar Medical Quotations, A Dictionary of Legal Quotations, The Quotable Lawyer, The Wisdom of the Supreme Court, The Concise Columbia Dictionary of Quotations, The Book of Legal Anecdotes, The Home Book of Quotations, Leo Rosten's Treasury of Jewish Quotations, A Treasury of Jewish Quotations, The Doubleday Christian Quotation Collection, Bartlett's Shakespeare Quotations, Bartlett's Bible Quotations, Bartlett's Words to Live By, The Delights of Reading, The Life 101 Quote Book,* among many others.


Howard L. Wieder

I enthusiastically recommend the purchase of **FRED R. SHAPIRO's** two masterful works, ***THE YALE BOOK OF QUOTATIONS*** *and* ***THE OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS*** because they are American-based, well organized, fun to read, and their attributions have been reliably confirmed by Professor **FRED R. SHAPIRO**.



Prof. Fred Shapiro of Yale Law School

FRED R. SHAPIRO is a world recognized authority on quotations. Just as etymologists can describe the origins of words and phrases, **FRED R. SHAPIRO** is a recognized expert in the history of quotations and where a phrase was first used. **FRED R. SHAPIRO** edited the outstanding ***THE YALE BOOK OF QUOTATIONS*** and the award winning ***OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS,*** and his researches on quotations and words have been the subject of numerous articles in ***The New York Times*** and other media, including a front page profile in ***The Wall Street Journal***. **FRED R. SHAPIRO** was the principal investigator for a grant from the Andrew W. Mellon Foundation for study of the applications of Internet resources for research into quotations and terminology.

FRED R. SHAPIRO is co-editor of ***Trial and Error: An Oxford Anthology of Legal Stories*** and editor of ***Stumpers!: Answers to Hundreds of Questions That Stumped the Experts*** and four other books. **FRED R. SHAPIRO** is a major contributor to the Oxford English Dictionary and has published numerous articles on language, law, and information science. **FRED R. SHAPIRO** is an associate librarian and lecturer in legal research at Yale Law School.

I. THE YALE BOOK OF QUOTATIONS
by FRED R. SHAPIRO, EDITOR

This reader friendly volume of ***THE YALE BOOK OF QUOTATIONS*** contains more than 12,000 famous quotations, arranged alphabetically by author. ***THE YALE BOOK OF QUOTATIONS*** is unique in its focus on American quotations and its inclusion of items not only from literary and historical sources, but also from popular culture, sports, computers, science, politics, law, and the social sciences. Anonymously authored items appear in sections devoted to folk songs, advertising slogans, television catchphrases, proverbs, and others.

For each quotation, a source and first date of use is cited. In many cases, new research for this book has uncovered an earlier date or a different author than had previously been understood. It was Beatrice Kaufman, not Sophie Tucker, who exclaimed, "I've been poor and I've been rich. Rich is better!" William Tecumseh Sherman wasn't the originator of "War is hell!" It was Napoleon.

Numerous entries are enhanced with annotations to clarify meaning or context for the reader. These interesting annotations, along with extensive cross references that identify related quotations and a large keyword index, will satisfy both the reader who seeks specific information and the curious browser who appreciates an amble through entertaining pages.

II. THE OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS
by FRED R. SHAPIRO, EDITOR

The practice of law rests heavily on the incisive, pithy, and occasionally witty language of the best technical writing, and law related themes are often found at the core of

(Continued on page 13)

Free Speech As A Defense Against Prosecutorial Abuses of Discretion

BY: THOMAS F. LIOTTI*


Thomas F. Liotti

Ordinarily the First Amendment is not a defense to criminal charges because it is the *actus reus* which represents the gravamen of the substantive crime. Speech may be added as an element of proof to show the *mens rea* and culpability of the defendant. But when the speech itself becomes the substantive crime or is solely used to prove a conspiracy to commit a substantive crime which is based upon speech, then the First Amendment is implicated.

On December 3, 2012, the United States Court of Appeals for the Second Circuit issued its long awaited opinion in *U.S. v. Alfred Caronia*[1], (Docket No. 09-5106-cr) vacating my client's conviction on First Amendment grounds. The case is being widely reported and is rumored to be a likely contender for possible Supreme Court of the United States review. The case is considered to be a blockbuster for a variety of reasons but mostly because it puts in check the Government's attempts to regulate commercial speech while also expanding the potential market of FDA regulated products.

Caronia was a sales representative for Ophan Medical, later Jazz Pharmaceuticals. He had been a teacher with no criminal record and with a Master's in Education. His territory was the northeast. He was selling a pharmaceutical drug called Xyrem, approved for the treatment of Narcolepsy by the F.D.A. In his travels Caronia marketed the drug to Medical Doctors where, unbeknownst to him, he encountered a confidential informant, a Medical Doctor with a checkered past, striving to work off his own criminal charges. He was wired by the F.D.A., tape recording his conversations with Caronia and egging him on to speak "off label" about the unapproved use of Xyrem. This is characterized as misbranding by the F.D.A. and is, or was, a crime. Manufacturers and sales representatives may not speak about off-label use and may prescribe any F.D.A. approved drug for an "off label" use.

"Off label" speech may include discussing scientific or medical studies involving the, as yet, unapproved use of a particular drug. So for example, if a drug has been F.D.A. approved for the treatment of heart disease but has been prescribed by physicians for other maladies for which a drug is not F.D.A. approved, a manufacturer and their sales representatives are precluded from discussing the additional uses with physicians or others. What they have to say "off label" may have to do with scientific studies or medical journal reports, both published and unpublished. Consumers, patients and Medical Doctors are free to read about or investigate these additional uses but manufacturers and sales representatives were not free to talk about them unless approved by the F.D.A. Thus, the F.D.A. has for many years extracted huge sums in settlements and fines from pharmaceutical companies allegedly deviating from the F.D.A. regulatory scheme regarding off label use. The penalties may include a company's preclusion from the market place. It, therefore, made economic sense for companies to settle out of court rather than be subject to criminal prosecutions or injunctive relief that would in essence shut down their businesses.

Ophan and Jazz attempted to circumvent these constraints by hiring a Medical Doctor as a consultant who would then accompany Alfred Caronia to promotional meetings with Medical Doctors, including, in this case, a Government informant. Ophan and Jazz worked out a deal with the F.D.A. to pay $28,000,000.00 to settle the F.D.A.'s claims against them. Part of that deal included testifying against the Medical Doctor/consultant they had hired, namely Dr. Peter Gleason and their sales representative Alfred Caronia. The Government's prosecutor at the time, Assistant United States Attorney Geoffrey Kaiser, elected to prosecute Gleason and Caronia on felony charges. Gleason wound up pleading to misdemeanor charges, but in 2010 succumbed to depression associated with the wrongful prosecution and committed suicide. Caronia was left to stand alone. He was fired from his job. He could not get his teaching job back so he tried to work as a handyman/contractor in his native Long Island community of Point Lookout, recently struck by hurricane Sandy. Caronia's wife works in the pharmaceutical industry and has been embarrassed beyond repair. Their marriage has been severely damaged. But Caronia soldiered on.

The prosecution was assigned to Hon. Eric N. Vitiliano, a United States District Court Judge in the Eastern District of New York. Judge Vitiliano denied our pre-trial motions including those to dismiss on First Amendment grounds. *U.S. v. Caronia*, 576 F. Supp. 2d 385 (E.D.N.Y., 2008). The case went to trial in 2009 and Caronia was convicted of one misdemeanor charge of conspiracy to introduce a misbranded drug into interstate commerce. He was sentenced to probation which he has since completed and then appealed. The appeal focused on First Amendment issues with *amicus curiae* joining in on the appellant's side. The *amicus curiae* on this case were the Washington Legal Foundation and the Medical Information Group. Collectively these *amicus* represented more than fifteen major pharmaceutical companies.

One would think that these commercial free speech issues were decided long ago but that is clearly not the case where the government's regulatory scheme and its financial interests by the imposition of fines, conflict with the economic interests of manufacturers of pharmaceutical products. Caught in the middle of this Constitutional log jam are the little people like Alfred Caronia, the sales representatives and agents for large pharmaceutical companies thrown into the vortex of this lion's den, scapegoating corporate accountability and futhering the Government's Orwellian program by pleas or findings of guilt. Corporations go free except for the payment of monies while the representatives they taught and trained run the risk of jail and other personal ruination.

(Continued on page11)

PHOTO CORNER

Hurricane Sandy and Relief Efforts

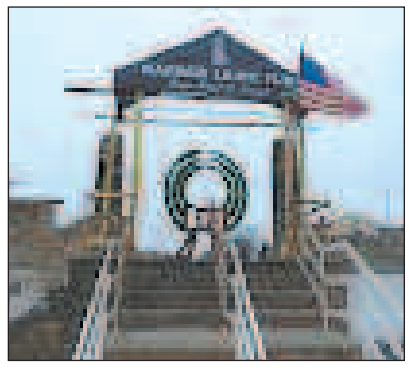













Photos by Charles Guidice

PHOTO CORNER

Hurricane Sandy and Relief Efforts

Thank You

Thank you to the following organizations and firms who have supported our Superstorm Sandy disaster relief efforts;

Queens County Bar Association Board of Managers
City Bar Justice Center
Skadden, Arps, Slate, Meagher & Flom LLP
Jenner & Block
Pro Bono Net
Center for New York City Neighborhoods
New York State Bar Association
St. John's University School of Law
Feerick Center for Social Justice
IBM
GE
LawHelp.org/NY
Office of Queens Borough President
Federal Reserve Bank of New York
Office of New York State Attorney General
IOLA Fund of the State of New York

Current Developments in Law Affecting Representation of Servicemembers and Recently Separated Veterans Wednesday, March 20, 2013

Thomas Principe introducing Col. (Ret.) Hon. Randall T. Eng, Presiding Justice of the Appellate Division, Second Department.

Col. (Ret.) Hon. Randall T. Eng, Presiding Justice of the Appellate Division, Second Department.

Marital Quiz

BY GEORGE J. NASHAK JR.*

George J. Nashak Jr

Question #1 - Plaintiff's counsel failed to substantially comply with the matrimonial rules regarding periodic billing statements. Is the Plaintiff's counsel precluded from seeking unpaid fees from the Plaintiff?

Your answer -

Question #2 - In question #1 is Plaintiff's counsel also precluded from seeking counsel fees from the Defendant?

Your answer -

Question #3 - Is there a right to dispute an allegation of irretrievable breakdown under the no-fault divorce ground provided by DRL § 170 (7)?

Your answer -

Question #4 - Is animosity between a grandparent and the grand child's parents sufficient to deprive the grandparent of visitation with the grandchild?

Your answer -

Question #5 - Can a distributive award in a judgment of divorce be modified?

Your answer -

Question #6 - Can an equitable distribution award in a judgment of divorce be modified?

Your answer -

Question #7 - In awarding temporary maintenance, should the court consider the care of disabled adult children that inhibited or continues to inhibit a party's earning capacity or ability to obtain meaningful employment?

Your answer -

Question #8 - In awarding temporary maintenance, should the court consider the care of elderly parents or in-laws that inhibited or continues to inhibit a party's earning capacity or ability to obtain meaningful employment?

Your answer -

Question #9- Can a substantial distributive award preclude the granting of counsel fees to the recipient of the distributive award?

Your answer -

Question #10- In a child support proceeding in the Family Court, after a hearing, may the Support Magistrate order a party represented by assigned counsel, to pay attorneys fees to his assigned counsel?

Your answer -

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

ANSWERS APPEAR ON PAGE 15.

John W. Casey - A Remembrance

BY JOHN C. MACKLIN

As many of you know our good friend John Casey died on September 16, 2012. I feel honored to have been his close friend for almost 40 years. His death at the age of 65 was sudden and chilling.

He was a zealous advocate for his clients. He was active in the Queens Bar Association and the Queens legal community. He was previously a Chairman of the Mental Health and the Law Committee, an active member of the Bar Panels Screening Committee and a former President of the Long Island City Lawyer's Association.

He was a large presence in Queens Family Court, both in the Courtroom and in its corridors. His Irish wit and wisdom were qualities we all enjoyed tremendously. He could dish out the wise cracks. He could also take his share of playful verbal abuse.

As an experienced attorney he was always available to provide younger attorneys with encouragement and advice.

We respected John as an attorney. Nevertheless, for those of us who were his close friends we shall more vividly recall the ball games, cards games, lunches, Atlantic City trips, etc. John will be missed but not forgotten.

On our next Atlantic City sojourn, we will raise a glass to him. We will do so with the knowledge that he is with members of the Bar and at the Heavenly Bar. John will be having a cold one and sitting along with Joe Leary, Al Annenberg, Floyd Sheeger and others.

As I stated at John's Memorial Service, when I join you up there, I'll bring a six pack and a deck of cards.

History Corner

(Continued from page 4)

ly the invention of a newspaper reporter.

Willie Sutton (born June 30, 1901) did rather well in his profession. It is estimated that he made millions of dollars worth of ill gotten gain. He was known as a daring and respectful robber who liked to use disguises and trickery. He was not a typical thug. Instead he was described as polite and even a gentleman.

He has also been described as a bright eyed little man who stood 5 feet 7 inches. He was talkative and a chain smoker. When he was in jail he did not have to worry about assault because his mafia friends looked after him.

Sutton was an accomplished bank robber. He usually carried a pistol or a Thompson submachine gun. However, they were never loaded because he was afraid he would hurt someone. From the late 1920s to his final arrest in 1952 he had robbed about 100 banks and also broken out of several prisons. In March of 1950 he also landed up on the brand new FBI Ten Most Wanted list.

In Queens County, Judge Peter T. Farrell presided over his 1952 trial in which Sutton was charged with the theft of almost $64,000.00 (worth ten times that today) from a Sunnyside Bank. He was sentenced to 30 to 120 years in Attica. Judge Farrell suspended the sentence in December, 1969 due to Sutton"s good behavior in prison and poor health from emphysema. At that time he was retired from his life of crime.

Sutton died on November 2, 1980 apparently regretting all his years in jail. However, when asked why he robbed banks, he stated "because I enjoyed it. I loved it.

For further reading see:

http://en.wkipedia.org/wiki/Willie_Sutton
http://www.snopes.com/quotes/sutton.asap
Willie-Sutton-"That's where the money is.";
http//www.nndb.com/people/116/000062927/
Edward Linn, *Where the Money Was: The Memoirs of A Bank* Robber (1976) [partly ghost written autobiography]

—STEPHEN DAVID FINK, Esq.
Forest Hills, New York

QVLP Responds With Sandy Relief

(Continued from page5)

"It was so obvious that the water had completely engulfed Belle Harbor from both sides," Kalson said. "There was sand everywhere, water everywhere."

David Shapiro and Lisa D'Agostino, two partners at Zelenitz, Shapiro & D'Agostino, P.C., also responded to QVLP's canvass for volunteers on November 10, and have been deeply involved in QVLP's ongoing response.

"We wanted to reach out and help people in the borough," Shapiro said.

While volunteering in the tent at St. Francis De Sales over the course of several weekends, Shapiro met with a Rockaway homeowner who had lost almost everything. He had been displaced from his home by the storm surge. His cell phone and glasses had been washed away in the flood.

When the homeowner finally received a settlement check from his insurance company, he discovered that it was made out to both him and his mortgage holder.

Shapiro, operating on a pro bono basis, contacted the mortgage company and eventually made his way through channels to the company's CEO. The two negotiated a deal where the proceeds of the insurance settlement were deposited into Shapiro's escrow account. Shapiro then promised that the funds would be used for their intended purpose – repairs to the home – and distributed the proceeds to the homeowner, so repairs could be made.

"He was in desperate shape," Shapiro said, pointing out that the holes in the floor, freezing pipes and lack of a boiler would have exacerbated the flood damage if not repaired right away.

The issue of multiple party checks has hindered many homeowners in their attempts to repair Sandy's damage. Insurance settlement checks are made out to both the homeowner and the mortgage holder when a mortgage is outstanding on the property, even when the homeowner is up to date on the payments. This protects the mortgage holder's interest in the property.

To ensure that the insurance proceeds are spent on the repairs for which they are intended, banks and mortgage servicing companies generally release portions of the proceeds after inspecting to make sure repairs are being completed in a workmanlike fashion. Homeowners are often required to submit documentation such as contractor estimates and receipts for labor and materials before the funds are released.

Unfortunately, many homeowners simply do not have the resources to pay out of pocket for repairs until the insurance proceeds are released.

Risi first encountered this issue when volunteering at the tent at St. Francis. He immediately reached out to the New York State Department of Financial Services and the New York State Bar Association. Soon thereafter, Gov. Andrew M. Cuomo announced that his administration had brokered an agreement with a number of banks and mortgage servicers to expedite the release of insurance proceeds to homeowners rebuilding from Sandy. Many other banks and servicers, however, were not part of the deal.

"We still see people in Queens having the same problems," Risi said, pointing out that the delay in getting the funds into the hands of the homeowners is "counterproductive" when trying to rebuild from a natural disaster like Sandy. "People are still waiting to be paid from their insurance carriers or for their money to be released by their lenders."

In addition to insurance matters, volunteer attorneys have fielded a large number of landlord-tenant questions from both tenants and landlords. A major question has been whether tenants displaced by the storm still owed rent and, if so, how much rent they owed. Many Rockaway renters stayed in their apartments in the weeks following Sandy despite a lack of essential services such as heat, hot water and electricity. Others evacuated before the storm and stayed elsewhere until services were restored.

In the most general of terms, a tenant displaced by the storm owes $0 in rent for the period when he or she was not living in the rental unit. This is considered a constructive eviction under Multiple Dwelling Law § 227. Renters with leases for rent stabilized units filed a form that allowed them to pay a nominal rent of $1 to preserve their right to return to the apartments when services were restored and repairs completed.

QVLP advised tenants who remained in their rentals without essential services to attempt to negotiate rent abatements with their landlords. As tenants were deprived of essential services, landlords were asked to agree to reduce the amount of rent owed for the period that the services were not provided.

Kimon Thermos, a landlord-tenant practitioner in Astoria, drew up a form agreement that tenants could use in negotiating rent abatements. The goal of negotiation was to put any agreement to reduce the rent in writing and avoid disputes ending up in Housing Court.

Landlord-tenant is one of many areas in which people sought answers to legal questions. "It really was a diverse set of legal issues that folks were faced with," Arain said.

Volunteers found themselves assisting small business owners with commercial leases, homeowners with insurance questions, deed questions, estate issues and family law matters further complicated by the storm's disruptions.

Kalson, who previously chaired the New York City Bar's Civil Court Committee, spoke about the "differing sets of needs" between the west and east ends of the Rockaway peninsula. The eastern side of the peninsula has a high concentration of New York City Housing Authority developments, whose populations struggled with poverty before Sandy. After Sandy, many remained in project apartments lacking heat, hot water and electricity.

"People were so desperate and needy, attending to their basic survival needs that talking to a lawyer was something of a luxury," Kalson said.

Going forward, the recovery effort will confront new issues. One widespread prediction is that there will be an increase in foreclosures in the affected areas, as homeowners are faced with significant repair expenses and landlords are deprived of rental income from displaced tenants. Mold will flourish in the warmer weather ahead. Risi pointed out that many insurance policies now exclude coverage for mold. Kalson, whose practice includes landlord tenant litigation over mold, also predicts that mold will remain a major issue as the recovery progresses.

Queens residents faced with legal questions relating to their recovery from Sandy are encouraged to visit the FEMA Recovery Center on Beach 68th Street. Various New York State Agencies will also be present at the center. Queens residents may also call QVLP's Intake Line at (718) 739-4100 with questions.

The volunteer attorneys have brought residents of the affected areas "a sense of peace and control in a situation that was out of control," Mohan said. "So many people have been helped."

Volunteering in the recovery effort has reinforced the already-strong commitment to public service among attorneys in Queens. In spite of busy practices and family commitments, lawyers have "risen to the occasion," as Risi put it.

"You've got to give back to the community," Shapiro said. "These people are really, really, really hurting."

"I'm really glad to have had the opportunity to do this," Kalson said.

**Charlie Giudice is a staff attorney at QVLP. He has been part of the Sandy relief effort since November.*

Free Speech

(Continued from page 7)

In *Virginia State Board of Pharmacy v. Virginia Consumer Council*, 425 U.S. 748 (1976) the Court struck down a state statute which had declared that it was unprofessional conduct for a licensed pharmacist to advise the prices of prescription drugs. The Court noted that: "those whom the suppression of prescription drug information hits the hardest are the poor, the sick and particularly the aged. A disproportionate amount of their income tends to be spent on prescription drugs, yet they are the least able to learn, by shopping from pharmacist to pharmacist, where their scarce dollars are best spent."

The *Caronia* case is of course a criminal case and the Circuit's opinion reaches the protection of free speech against penal sanction from the F.D.A. It may not affect its regulatory scheme in other respects where it might be shown to be "demonstrably necessary to achieve a compelling objective. See *Linmark Associates, Inc. v. Township of Willingboro*, 431 U.S. 85 (1977) and Professor Laurence H. Tribe, *American Constitutional Law, Second Edition* (Vol. II, 1988) @ § 12-15, p. 893.

In addition to the legal issue of penalizing free speech, the Court also found problems with the charge to the jury and the verdict since Caronia was acquitted of the related charges. The Court found that both the charge and the verdict sheet led to inconsistent verdicts.

The Court requested post oral argument submissions following the Supreme Court's ruling in *Sorrell v. IMS Health, Inc.*, 131 S. Ct. 2653 (2011) wherein the Court held that: "Speech in aid of pharmaceutical marketing…is a form of expression protected by the Free Speech clause of the First Amendment." The Circuit Court concluded "…, the government clearly prosecuted Caronia for his words — for his speech."

Similarly in *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991), the Court upheld an attorney's First Amendment right and his duty to advocate for a client. Justice Kennedy wrote:

"An attorney's duties do not begin inside the courtroom door. He or she cannot ignore the practical implications of a legal proceeding for the client. Just as an attorney may recommend a plea bargain or civil settlement to avoid the adverse consequences of a possible loss after trial, so too an attorney may take reasonable steps to defend a client's reputation and reduce the adverse consequences of indictment, especially in the face of a prosecution deemed unjust or commenced with improper motives. A defense attorney may pursue lawful strategies to obtain dismissal of an indictment or reduction of charges, including an attempt to demonstrate in the court of public opinion that the client does not deserve to be tried."

In *Bolger v. Youngs Drug Products Corp.,* 463 U.S. 60 (1893) the defendants were distributing pamphlets containing information about product names and prices but also about venereal disease and contraception. The Court reasoned that this was protected free speech because "it sought to convey truthful information about important social issues such as family planning and the prevention of venereal disease [,] …the First Amendment interest served by such speech [was] paramount." Id.at 69.

Caronia was not accused of disseminating untruthful information and the Circuit raises the question as has the Supreme Court before it of why less punitive measures could not easily suffice. In the meantime Caronia's life and career are in ruins thanks to the United States Government and his former employer.

**Thomas F. Liotti is an attorney in Garden City, NY and the attorney for Alfred Caronia.*

1. *U.S. v. Alfred Caronia*, 576 F.Supp.2d 385 (E.D.N.Y. 2008) (Hon. Eric N. Vitaliano) See Noeleen G. Walder, *Judge Rejects Commercial Free Speech Defense in 'Off-Label' Drug Promotion*, New York Law Journal, September 26, 21008 at 1 and 6 and Decisions of Interest, New York Law Journal, September 26, 2008 at 1, 25, 33 and 34 - *Commercial Speech Restriction Challenge to Charge of Promoting Medication for "off-Label' Uses Rejected* - Defendant drug firm sale representative was charged with violating the Food, Drug and Cosmetic Act's (FDCA) misbranding provisions by conspiring to promote a medication for a doctor's prescription for "off-label" uses not approved by the U.S. Food and Drug Administration (FDA). His dismissal motion challenged the misbranding charges as an unconstitutional restriction of commercial speech under the First Amendment. Despite deeming the promotion of "off-label" uses of an FDA-approved prescription drug speech, not conduct, the court denied dismissal. Applying the tests in *Bolger v. Young Drug Products Corp. and Central Hudson Gas v. Public Service Commission of New York* the court, discussing *Washington Legal Foundation v. Friedman* and *United States v. Caputo*, determined that the restriction of manufacturer promotion of off-label uses directly advanced the government's substantial interest in promoting the health and safety of its citizens, and that the FDCA's restrictions on manufacturer promotion of off-label uses were not more extensive than necessary. Mr. Liotti's client, the defendant herein, was initially charged with felonies that were reduced to misdemeanors. He went to a jury trial in October, 2008 and was found guilty of conspiracy and not guilty of misbranding. Rule 29 and 33 motions were denied. Defendant sentenced to no jail. Case is currently on appeal to Second Circuit. The Washington Legal Foundation by the law firm of Jones Day has appeared as *amicus curiae* counsel with the consent of the parties and on behalf of Mr. Liotti's client. Jennifer L. McCann. Esq., Mr. Liotti's Associate, has acted as co-counsel to Mr. Liotti throughout the case. See also, Frederick R. Ball, Erin M. Duffy and Nina L. Russakoff, *How Hard Should It Be To Imprison Someone For Telling The Truth*? *FDA Advertising Regulation Enforcement*, Food and Drug Law Institute Newsletter, Sept./Oct., 2009 @ 6, 7, 8, 9, 10, 11, 12 and 13. This is an entire article about the *Caronia* case; Thomas M. Burton, *The Free Speech Pill, Drug Firms See Opening to Push for End to Off-Label Marketing Ban*, The Wall Street Journal, November 3, 2011 at B1 and B2.

Poetry Corner

SLOWLY GRIND THE WHEELS

BY ROBERT E. SPARROW

Bob Sparrow

Drag your heels,
Meditate!
Bench Conference -
Procrastinate!

Due in another Court -
Please call my case -
Don't need high blood pressure -
Don't want to race!

Piles of indictments,
Files galore,
Cases and cases,
By the score.

Pleas are taken
Some guys balk -
"Go in the bullpen, counselor,
Have a good talk."

And if he won't
come out of the pen,
We can bring him tomorrow
and start all over again!

Just Use The Form

(Continued from page 3)

and actually consented to the terms of the form presented to the client is a fallacy which is often endorsed by the judiciary because it appears that the attorney had such an opportunity. Ms. Radin argues that the real conditions under which one would consent to a contract would include facts that, if examined, would support the moral basis of contract law.

Ms. Radin does offer some solutions. She suggests that the jurist charged with reviewing a form contract that is the subject of a dispute is in the best position to achieve justice. For example, the Court could treat the abusive boilerplate treated as an intentional deprivation of basic legal rights. This is very similar to the way that courts often handle abusive restrictive covenant language in employment contracts: they red lines the offensives parts and redraw the remaining terms as necessary. Frankly, it is surprising that consumer advocates have not pressed more strongly on this issue.

The bar may argue that the reduced usage of forms will undoubtedly increase legal fees. Hence the conundrum is the unfair boilerplate form vs. the rule of law. Ms. Radin points out that our profession is riddled with these sorts of contradictions and tradeoffs. For example, she mentions the vast amount of procedural and substantive safeguards built into the public criminal trial before punishment can be meted out. Yet despite these protections, "90% of felony convictions are based upon plea bargains" which often are a result of off the record; anything goes, conversations involving the jurist and lawyers.

Ms. Radin argues that our toleration of boilerplate forms is a legal anomaly and that it is incompatible with the rule of law. Restricting usage of boilerplate forms would surely result in increased legal fees, a problem that the public wants to avoid. There is no doubt we will continue to utilize existing legal forms, and surely new ones will be created in the future.

How all of these contradictions can coexist with the rule of law is baffling. The bargained-for contracts must remain an important practice because the forms remove so many transactions from the realm of the law. Perhaps the best that we can do is to balance the onerous rule of law with the practical considerations that each case presents.

Editor's Note: Stephen D. Hans is a Chairperson of the Labor Relations Committee and frequent contributor to the Queens Bar Bulletin. He is a senior partner of a firm that specializes in employment matters.

Books at the Bar

(Continued from page 6)

works of literature, politics, and other fields. Pre-vious compilations of legal quotations have been limited, with significant gaps; many books quoted rarely from American sources. For example, Supreme Court Associate Justice Potter Stewart's famous quip about pornography of "I know it when I see it" appears in no other work.

THE OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS is the most scholarly and most complete legal quotation reference ever published. It includes a comprehensive collection of the most famous passages of American judges and legal commentators. This work also contains the wittiest sayings from literature, humor, motion pictures, and even song lyrics relating to American law. Oliver Wendell Holmes, Jr., Clarence Darrow, and Abraham Lincoln share the pages with Mark Twain, Will Rogers, Kurt Vonnegut, Woody Allen, and Bob Dylan.

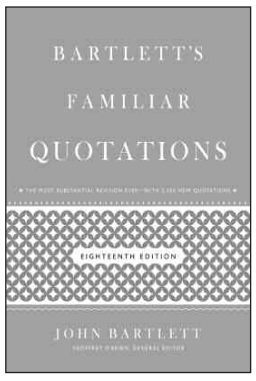
Over 3,000 entries are presented in a subject arrangement. An author index and an extensive "key word" index further facilitate location of desired quotations. Each quotation has been verified from the original sources, with the precise citations needed for legal reference.

Not only do I have ***THE YALE BOOK OF QUOTATIONS*** *and* ***THE OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS,*** both edited by **FRED R. SHAPIRO,** in my personal library, I have bought copies of both as gifts. They make an excellent gift for judge, lawyer, law student, and for a well-rounded, literate lay person.

III. THE NEW 18TH EDITION OF BARTLETT'S FAMILIAR QUOTATIONS
by GEOFFREY O'BRIEN, EDITOR

BARTLETT'S FAMILIAR QUOTATIONS [18th ed.],
edited by GEOFFREY O'BRIEN, EDITOR
Author: John Bartlett
Editor: Geoffrey O'Brien
Publisher: Little, Brown and Company
Published: October 2012
ISBN 10: 0316017590
ISBN 13: 9780316017596
Format: Oversize Hardcover
Copyright: 2012
Subject: REFERENCE QUOTATIONS

As most Jews know, the number "18" is very lucky. Any multiple of 18 is considered lucky [e.g., so a donation to a charity of $36 or "two times chai" or $180 or "ten times chai" is considered lucky]. Hebrew letters have numerical equivalents, and the numerical equivalents for the letters in the Hebrew word for life called "chai" [the origin of the Hebrew name Chaim] add up to 18. According to Jewish tradition, the famous publishers of Little, Brown and Co., should be very lucky with the sales of the new, 18th edition of ***BARTLETT'S FAMILIAR QUOTATIONS.*** The name ***"BARTLETT'S"*** is to quotations what **"COKE"** is to cola beverages. For each new edition, stalwart publisher Little, Brown and Company selects an excellent editor for its prized famous book of quotations, and for the 18th edition, New York City author and editor **GEOFFREY O'BRIEN** was selected for the honor of compiling the new 18th edition. Mr. O'Brien has done a masterful job!



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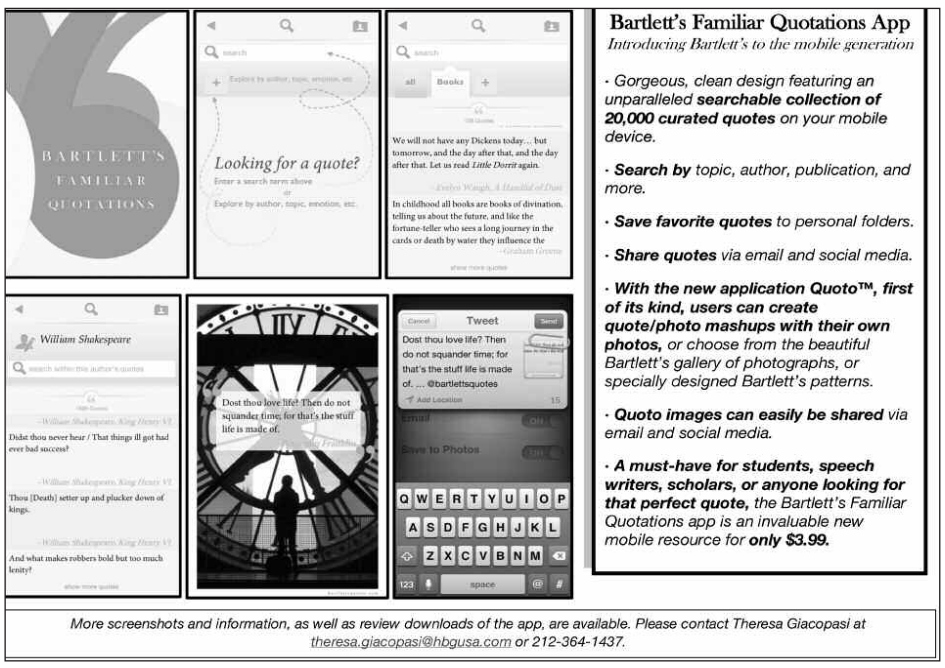

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GEOFFREY O'BRIEN is the Editor-in-Chief of the Library of America, and author of fifteen books, most recently *The Fall of the House of Walworth*, and other works, including *Hardboiled America, Dream Time, The Phantom Empire, The Times Square Story, The Browser's Ecstasy, Castaways of the Image Planet,* and *Sonata for Jukebox*. He has contributed frequently to ***The New York Review of Books, Artforum, Film Comment,*** and other publications.

* *

HOWARD L. WIEDER is the writer of both **"THE CULTURE CORNER"** and the **"BOOKS AT THE BAR"** columns, appearing regularly in ***THE QUEENS BAR BULLETIN,*** and is **JUSTICE MARTIN E. RITHOLTZ'S PRINCIPAL LAW CLERK** in Supreme Court, Queens County, Jamaica, New York.

Fifty Years of Family Court

(Continued from page 1)

ignation letter to Mayor Beame and somehow, to the benefit of our story of the Family Court, the letter ended up as an Op-Ed piece in The New York Times.

Judge Golar said he was resigning because he took serious issue with the working conditions of the Family Court, so he was going to "return to the practice of law" and return to "being active in public affairs and politics."

He went on to explain to the mayor, in his resignation letter, that when he sat in an intake part in Queens Family Court he often heard 125 cases in a day, which gave him an allotment of about three minutes per case.

Judge Golar, in rendering his final judgment on the Family Court, in his resignation letter from the bench, said that "a judge needs more time than a moment or two to decide whether to take away a mother's child, or to have a man arrested or imprisoned for non-support, or to remand someone for psychiatric examination. Those who appear before the court.....are entitled to better than this." A lot of reasonable people might consider these edicts to be self evident —and based on what we can glean from the writings he too left behind, Dickens would have been such a reasonable individual. The historical record, however, should reflect, that efforts to make these edicts self evident is still an ongoing process.

Judge Golar took particular issue with what he called the Family Court's "greatest failing" in the area of juvenile delinquency. He spoke of the system's failure to neither punish nor rehabilitate. The Family Court's "greatest contribution" over the past three generations had been to divert the "occasionally delinquent sons and daughters of the immigrant poor from adult criminal courts and jails." They were mostly returned to communities where "schools....churches and synagogues.....provided opportunities for the children to learn skills." Judge Golar said the system now failed these children in need because "our schools fail to teach large numbers useful skills." He complained to the Mayor that the city seemed to have abandoned the urban poor of the 1970s who he noted "now happen to be largely black and Spanish speaking."

Judge Golar identified a problem He ventured on to suggest some solutions. From a historical perspective, it appears I may be Judge Golar's most devoted reader, as it doesn't appear that many read what he wrote, or if they did, it appears the improvements he suggested were not implemented. We know this because, according to The New York Times, the problems Judge Golar identified still remained on the occasion of the 25th anniversary of The Family Court in 1987.

The New York Times reported on November 15, 1987, that "more than 200 New York judges, lawyers, social workers and others interested in family and child welfare issues gathered at the .....New York City Bar Association for a daylong seminar "celebrating" the 25th anniversary of Family Court."

New York State's Chief Judge of the day, Sol Wachtler, spoke in his remarks, at the seminar, of the "rapid increases of child mistreatment" which he said illustrated the "societal misfunction" that must concern the Family Court. He said that in New York City the child neglect cases had risen from 3,757 in 1984 to 13,500 in 1987.

He said that the Family Court, the Court which is intended to handle these cases, had been the "stepchild" of the judicial system and received fewer resources and support. Judge Wachtler said that this was an "intolerable" situation because "there is no more important court in the state ....than the Family Court." He supported a popular political idea being floated for the Family Court to merge with the Supreme Court because he said the Supreme Court "has greater resources."

In 1986 the Legal Aid Society's caseload in the Family Court included 9,800 children who were the subject of child protective proceedings. At the time of the November 1987, conference, that number was expected to reach 17,000 by the end of 1987 — an expected increase of 75 percent. This was the era of the crack epidemic and drug abuse was involved in about 50 percent of all of the child protective proceedings. The 1980's saw an almost 50 percent increase in the number of new child protective proceedings seen in the Family Court.

While some pressed their concerns about the rising caseload, concerns over the building appearance also continued into the third decade of The Family Court. In 1989, The Fund for Modern Courts, a "private watchdog" group issued a report in which they noted that in all five boroughs their observers found "people waiting for their cases to be called, packed in degrading and inhuman conditions." The group reported that they saw "overcrowded waiting rooms where battered women are thrown together with those who abused them."

The report of the Fund for Modern Courts questioned "how could anyone in those deplorable facilities have any respect for the majesty of the law?" Mayor Edward Koch issued a response stating that "There is no question that the Family Court system, as well as the other courts in the city, need to be improved and expanded." Modern Fund was concerned the Family Court would be shortchanged in a plan for all the courts as the money available, 750 million in the city's 10 year capital budget, was deemed insufficient. The report recommended that the Family Court building on Parsons Boulevard in Jamaica, Queens add two floors to its annex.

Judge Golar's critique of the job of Family Court Judge, as unflattering that it may have been, did not, it would appear, in the years to come, stop others from wanting to obtain the position, because like Judge Golar, and like Dickens, there will always be members of a society who want to throw their hat into the ring to try to make a difference.

Judge Judith B. Sheindlin was one of the many who stepped up to the plate in the post Golar era. About December 15th, 1987, a New York Times reporter name Jane Gross, sat in Judge Sheindlin's courtroom. She wrote about the Judge's trouble sleeping at night due to the suffering she saw by day in her courtroom. Judge Sheindlin said of her courtroom, "in this place, in emotional terms, everything's an emergency."

The Times reported that the florescent lights in her courtroom flickered, and the sun could not shine through the soot filled windows of the waiting area outside her courtroom; but Judge Sheindlin didn't focus on the need to replace bulbs, or even clean the windows. Judge Sheindlin created characters for the media to report on, and characters that the public could absorb — in much the same way that Dickens had created characters for the public to focus on so as to understand the downtrodden of his day, one hundred and fifty years before Sheindlin.

Judge Sheindlin told the reporter in tones that could be reported and easily understood on the street: on being a Family Court Judge, "Our job is not just to hear and determine, If you know the system is not functioning optimally, you just can't move papers from one pile to another." On grandmothers being foster parents to their own grandchildren..... "When you hit a certain age, there isn't that burn to do certain things. When you're 16, you care about dates — Saturday night, New Year's Eve. Then you get older and you care about other things, like regularity. You calm down and become a reasonable resource for the children." Her comments were probably not the makings of a winning brief for the Court of Appeals, however, her comments were quite on point for the media she was working.

Judge Sheindlin, as Judge Judy, worked the media in the 20th century as Dickens had in the 19th century. Judge Sheindlin and Dickens both understood that "the medium is the message." They made the world understand a problem and hoisted themselves to fame and fortune in so doing.

You cannot tell the history of the fifty years of the Family Court without telling the story of Judith Sheindlin — just as you must tell the story of Charles Dickens to understand the origin of our society having a Family Court. You can't understand the social issues of "Dickens's England," if you haven't read Dickens.

Judge Judy is a product of the Family Court and the only Family Court product currently marketed worldwide. The Family Court has produced the most financially successful person in the entire Court system, of any court system, in any time. Judith Sheindlin reportedly earns forty five million dollars a year.

In Judge Judy's lifetime we have seen the public interest in books, television shows, songs, soap operas and now reality shows — all about family. We watched Father Knows Best and listened to Daddy Don't You Walk So Fast, for the same reasons they read Dickens in the 1800's. The folks will tune in at four to hear Judge Judy rule on real people conflict. They would not tune in for a southern district ruling on copyright or SEC trade regulations. The public has voted with the remote control; the verdict is in. The Family Court is the most important Court according to the popular vote. The people's favorite court, however, gets the least resources. Dickens would be scratching his head— and reloading the quill with more ink, for clearly the story he began has truly not been finished.

Next: A monumental building to house Queens Family Court is built.....

Editor's Note: Meryl Kovit regularly practices before the Family Court. She wants to thank Briana Hart and Julia Gonikman, Stony Brook University students, for their help in researching this article.

FOOTNOTES:

1 "Daddy Don't You Walk So Fast", Wayne Newton, 1972, www.wikipidia.org/waynenewton

2 Thames, Cindy, The Rock Hill Herald, May 1, 1972, at www.news.google.com

3 Golar, Simeon, "A Judge Judges Family Court, The New York Times, Op-Ed, May 6, 1976 @ http://query.nytimes.com/mem/archive

4 id.

5 id.

6 id.

7 Marriott, Michel, "Family Court is Struggling with Caseload, Experts Say, The New York Times, November 15, 1987, @ http//www.nytimes.com/1987

8 id.

9 id.

10 Lambert, Bruce, The New York Times, "Family Court Buildings Found "Deplorable", @http://www.nytimes.com/1989

11 id.

12 Gross, Jane, "Family Court: Stage for Suffering and Crises", The New York Times, November 15, 1987, @ http://www.nytimes.com/1987

13 Marshall McLuhan, The Medium is the Message, 1967, all media are "extensions" of our human senses, bodies and minds, www.wikipedia.org/marshallmcluhan.

14 "judge judy makes 865,00 for each day she works," www.thealtlanticwire.com, February 18, 2013

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ANSWERS TO MARITAL QUIZ ON PAGE 10

Question #1 - Plaintiff's counsel failed to substantially comply with the matrimonial rules regarding periodic billing statements. Is the Plaintiff's counsel precluded from seeking unpaid fees from the Plaintiff?

Answer: Yes, *Rosado v. Rosado* 2012 NY Slip Op 7977 (2nd Dept.)

Question #2 - In question #1 is Plaintiff's counsel also precluded from seeking counsel fees from the Defendant?

Answer: Yes, *Rosado v. Rosado* 2012 NY Slip Op 7977 (2nd Dept.)

Question #3 - Is there a right to dispute an allegation of irretrievable breakdown under the no-fault divorce ground provided by DRL § 170 (7)?

Answer: No, *Palermo v. Palermo* 2012 N.Y. Slip Op 7528 (4th Dept.) affirming *Palermo v. Palermo,* 35 Misc. 3d 1211 (A)*; 950 N.Y.S.2d 724.*

Question #4 - Is animosity between a grandparent and the grand child's parents sufficient to deprive the grandparent of visitation with the grandchild?

Answer: No, *Gray v. Varone* 2012 NY Slip Op 9064 (2nd Dept.)

Question #5 - Can a distributive award in a judgment of divorce be modified?

Answer: No, *Wasserman v. Wasserman* 2013 NY Slip Op 1078 (2nd Dept.)

Question #6 - Can an equitable distribution award in a judgment of divorce be modified?

Answer: No, *Wasserman v. Wasserman* 2013 NY Slip Op 1078 (2nd Dept.)

Questions #7 - In awarding temporary maintenance, should the court consider the care of disabled adult children that inhibited or continues to inhibit a party's earning capacity or ability to obtain meaningful employment?

Answer: Yes, DRL §236 B 5-a, c, (2) (xii).

Question #8 - In awarding temporary maintenance, should the court consider the care of elderly parents or in-laws that inhibited or continues to inhibit a party's earning capacity or ability to obtain meaningful employment?

Answer: Yes, DRL §236 B 5-a, c, (2) (xii).

Question #9 - Can a substantial distributive award preclude the granting of counsel fees to the recipient of the distributive award?

Answer: Yes, *Heymann v. Heymann* 958 N.Y.S. 2d 448 (2nd Dept. 2013)

Question #10 - In a child support proceeding in the Family Court, after a hearing, may the Support Magistrate order a party represented by assigned counsel, to pay attorneys fees to his assigned counsel?

Answer: Yes, in an amount representing the difference between what the attorney charges a privately retained client and what he received from the assigned counsel plan. *Matter of Olga Cherrez v. Jose Antonio Lazo* 102 A.D.3d 782; 957 N.Y.S.2D 889 (2nd Dept. 2013)

Estates Update

(Continued from page 1)

during her lifetime. Allocation of assets between spouses will often have to be adjusted.

Some practitioners, in potential anticipation of the estate tax exemption amount plummeting, encouraged extensive gift giving towards the end of 2012. Many of these gifts may now prove to be non-feasible. The utilization of beneficiary disclaimer, (EPTL§2-1.11) as long as made within nine months of the transfer, may serve as a correction mechanism for these "accidental" gifts. Certain gifts can be disclaimed by the donee if done before acceptance of any of the benefits of the transfer. The state renunciation statute noted above satisfies all the requirements of the federal disclaimer statute (IRC§2518), and is sufficient.

Finally, the allocation of traditional estate tax deductions (i.e. commissions, legal fees, accounting fees) will need to be reconsidered, as said deductions, may no longer be needed for the large benefits they served on federal estate tax returns. If no federal tax is required, these deductions may either be taken on the New York State estate tax return or the federal estate income tax return (fiduciary return 1041) where they may now be more valuable. Fiduciary income tax rates are generally significantly higher than state estate tax rates. In certain cases, if there is no necessity for filing a federal estate tax return at all, they may be taken on both.

QUEENS COUNTY

In consideration of the much delayed tax changes, our anticipated November Seminar on estate planning was justifiably and voluntarily postponed, and shall be offered in the spring. Further, we intend to offer a practical skills seminar next fall notably focusing on litigation practice and procedure in Surrogate's Court. Surrogate Peter J. Kelly and his excellent staff continue to keep the Court functioning at an exceptional level, despite the recent wave of cutbacks over the past (2) two years. We wish all of our friends who continue to struggle in Sandy's aftermath a peaceful and productive year

David N. Adler is a Past President (98-99) of the Queens County Bar Association and Chairperson of its Surrogate's Court, Estates and Trusts Committee.