Winning Oral Argument: Do’s And Don’ts

BY: HON. GERALD LEBOVITS

Lawyers are society’s best speakers. The speaker’s goal is to communicate. Communication skills are essential for all lawyers, not just litigators. For litigators, oral argument—what they do with the preparation, research, and writing that leads to the argument—is the ultimate, formal way to communicate. Except, perhaps, when arguing before a jury, nowhere more than at oral argument, whether before a trial judge or an appellate panel, is communicating effectively so essential. Effective oral argument is rewarding. Consistent with the rewards of oral argument are the difficulties and challenges. The challenge of oral argument explains why lawyers are paid to communicate. The challenge also explains why the lawyer who speaks well—why lawyers who argue fact and law persuasively—can win for the client while at the same time benefiting society and the administration of justice.

Real oral argument before a trial judge or appellate panel differs from a law-student’s Moot Court argument. Students work with a fact pattern. Lawyers work with a record they help shape or which was developed at trial. Students argue distinct points of law professors or their intramural Moot Court competition director created for them. Most student issues are academic, constitutional questions of first impression designed to be argued before the highest state appellate court or the United States Supreme Court. Lawyers take diffuse points and creatively weave them into issues. Mostly the issues are broad—and butler problems, sometimes with twists and turns but rarely of first-time constitutional dimension.

Students are graded or receive pass-fail academic credit to represent imaginary clients. Lawyers have real clients, and with real clients come real pressures. Students have abundant time to prepare and practice. Lawyers must balance their time based on many factors; lawyers in the real world sometimes have to wing it. Students are scored by Moot Court judges who critique to encourage them and enhance their skills. Lawyers’ performance is never scored by student criteria, and judges almost never critique or encourage; except by example, judges judge, not teach. Students almost always work in teams; Moot Court competitions are designed to have two issues, one for each student speaker. Lawyers work in teams when they write their briefs; they rarely argue orally in teams.

The biggest difference between Moot Court and real-life advocacy, however, is not in any of the above factors: The biggest difference is that law-school Moot Court stresses style while real-life advocacy stresses substance. Moot Court graders are told never to grade on the merits; grading on the merits would be unfair because students do not pick which side they argue. In real life, all that counts is the merits. Real judges do not decide which litigant wins on the basis of which side has the better lawyer. The lawyer’s goal in real life, therefore, is to tell the judge, “I’m just a country lawyer who can never do justice to the merits of my client’s case.” In Moot Court, the students must suggest to the judge, “I’ve been assigned to represent the worst pretend client, but don’t you agree that I’m doing a super-great job in this lousy case?”

Flowing from the difference between style and substance is that some believe that law school Moot Court winners are witty, charming, and gentle boy and girl scouts, whereas winning litigators are Rambo lawyers who intimidate and crush. The reality is that winning litigators aggressively fight for their clients with undivided loyalty and pursue litigation as a martial art, but they fight under the rules, and with integrity, because a good reputation and professionalism persuades. Professionalism for winning litigators means understanding: It is the honest understatement, never exaggeration or bluster that persuades.

Beyond fighting for the client and doing so with professionalism are some specific ways to increase the chances of winning when speaking to judges, whether before a trial judge or an appellate panel, and some ways to increase the chances of losing. Here are some dos and don’ts of oral argument.

Ten Oral Argument Dos

Start strong. Begin with a roadmap in which you introduce yourself, your client, and the issues you will argue. You must state what relief you seek and, quickly, why you should obtain that relief. It is ineffective to begin with or dwell on history and givens, why the case is so simple or interesting, or why it is such an honor to appear before the court.

Argue issues. Law school trains people to think like lawyers. Thinking like a lawyer means explaining in simple, clear, understandable English why you are right. The uninitiated will explain things by telling a story, perhaps in narrative form, and hope that the listener will figure it out. The novice will be better than the uninstructed and will talk about cases and statutes. The expert will first give the rule and then support the rule with authority and apply the authority to fact, understanding that what persuades is the rule and its application, not what this or that case said about such and such.

Limit your issues. Less is more, in oral argument as in everything else. Winning requires the guts to argue only those points that are likely to succeed. That means arguing only the strongest two or three, maximum four, issues, unless you are dealing with a real issue of first impression or a critically

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QCBA Celebrates Opening of New Tech Center and Pro Bono Office

BY MARK WELKEY

On the evening of September 22nd Queens Bar members celebrated the opening of QCBA’s new Tech Center and new offices for our pro bono program, the Queens Volunteer Lawyers Project (QVLP). These new facilities are part of the newly renovated law library on the second floor of the Association building. Members were treated to a wine and cheese reception and a tour of the new facilities. Members of the judiciary, a number of QCBA past presidents and QCBA members were in attendance.

The newly revamped Tech Center has three new computer work stations which have access to Westlaw and the internet. A new laser printer is networked to the
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.

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**THE DOCKET . . .**

being the official notice of the meetings and programs listed below, which, unless otherwise noted, will be held at the Bar Association Building, 90-35 148th Street, 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.

**CLE Dates to be Announced**

**Thursday, May 7 Annual Dinner & Installation of Officers**

May 2009

**Monday, April 20 Judiciary Night -**

April 2009

**Monday, March 23 Past Presidents & Golden Jubilarians Night -**

Monday, February 23 Stated Meeting - Small Firm & Solo Practitioners

February 2009

**Tuesday, January 20 Article MHL 81/Guardianship Training - 2:30 - 5:00 pm**

January 2009

**Monday, December 15 Foreclosure Intervention Seminar with NYSBA**

Wednesday, December 10 Insurance Law Seminar

Thursday, December 4 Holiday Party

December 2008

**Thursday, November 20 Civil & Criminal Practice in the Federal Court Seminar**

November 2008

**2008 FALL CLE Seminar & Event Listing**

November 2008

Monday, November 17 Stated Meeting - New Foreclosure Law

Tuesday, November 18 How Consumers Find Attorneys Online - 1:00 - 2:00 pm

Wednesday, November 19 Landlord & Tenant Seminar

Thursday, November 20 Civil & Criminal Practice in the Federal Court Seminar

December 2008

Thursday, December 4 Holiday Party

Wednesday, December 10 Insurance Law Seminar

Monday, December 15 Foreclosure Intervention Seminar with NYSBA

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March 2009

Monday, March 23 Past Presidents & Golden Jubilarians Night - TENTATIVE

April 2009

Wednesday, April 1 Equitable Distribution Update

Monday, April 20 Judiciary Night - TENTATIVE

May 2009

Thursday, May 7 Annual Dinner & Installation of Officers

**PRE-REGISTRATION IS GREATLY APPRECIATED!**

**Editors Message**

Leslie S. Nizin

**2008-2009 Officers and Board of Managers of the Queens County Bar Association**

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**NEW FORECLOSURE LAW**

**Program**

Queens County has been described as the mortgage foreclosure epicenter. Thousands of pro se defendants are involved in mortgage foreclosure proceedings, and the number is expected to only increase. A new law provides that some of these borrowers are entitled to a pre-foreclosure settlement court conference. Attorney Volunteers are needed to provide limited assistance to homeowners at the conferences.

**Moderator: John R. Dietz, Esq., QCBA Past President**

**Guest Speakers:**

TRACY CATAPANO-FOX, ESQ., Principal Law Clerk for Administrative Judge Jeremy S. Weinstein

SAMUEL B. FREED, ESQ., Chair, Real Property Committee

PAUL LEWIS, ESQ., Chief of Staff to the Chief Administrative Judge of the State of New York

APRIL A. NEUBAUER, ESQ., Queens Legal Aid Society

**Cocktails & Buffet Dinner - $30.00 5:30 p.m. to 7:00 p.m. Program - Free 7:00 p.m. to 8:45 p.m.**

**Tentative**

Monday, November 17, 2008 5:30 - 8:45 p.m.

**Pre-Lawdom**

**FOR MORE INFORMATION CONTACT: Queens County Bar Association, 90-35 148th Street, Jamaica, New York 11435 Tel: 718-291-4500 Fax: 718-657-1789**

**2008 Queens Bar Bulletin**

**Send letters and editorial copy to:**

Queens Bar Bulletin, 90-35 148th Street, Jamaica, New York 11435

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

Arthur N. Terranova . . . Executive Director

QUEENS BAR BULLETIN

Associated Editors - Paul E. Kerson, Michael Goldsmith & Peter Carrozzo

**Lawyers Assistance Committee**

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

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

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

Lawyers Assistance Committee
Confidential Helpline 718-307-7828
Impossible as it may seem to imagine anything good at all emerging from this crisis, let me suggest that we have seen an extraordinary effort at marshaling resources by several legal professionals, and then deal with, the foreclosure crisis and its devastating effect on our fellow Queens residents who face the loss of their homes. The office of our Queens Administrative Judge Jeremy Weinstein, Queens Legal Aid Society, Queens Legal Services and of course, your Queens County Bar Association have begun coordinating efforts which seek to remedy the problems apparent to much of our membership. Local ethnic and specialized bar associations in our county have also expressed interest in having their membership participate in our efforts. This may hopefully prove very fruitful, and our associations of the Queens legal communities' dedication to the highest ideals of our profession, in stepping forward and doing what we can to alleviate the suffering and anguish visited upon our neighbors and fellow Queens residents. The clarion call has gone out to our membership and to the Queens legal community at large. This is an opportunity to demonstrate the very best that we, as attorneys, can do.

For those of you interested in joining many of your colleagues in participating in various aspects of the foreclosure program we are establishing, please contact Janice Ruiz of our staff (718-291-4500 x222) and someone will be in touch with you shortly thereafter. In the event you read this message, please call 1761-347-6664, why don’t you drop in to our Stated Meeting dealing with this topic – and receive 2 CLE credits, for free, while you are at it.

BY MERYL KOVIT

In the spring of 1989, at a family dinner in the month of June celebrating Shavuot, the giving of the Ten Commandments to Moses at Mount Sinai, in between requests by the assembled to pass another blueberry blintz with some sour cream, I proudly announced to my then eighty-seven year old father that I had a job. I told him “I’m an attorney at the Queens County Family Court.”

My grandfather silently looked at me. He appeared to be confused. I tried again – I told my grandfather that I worked in a Court for mishpacha – I hoped that the word for family in his more familiar Yiddish might help him to understand. No luck. My husband tried raising his voice to say Family Court in a louder tone to accommodate hearing aid issues. This too just brought the same confused glare. Finally, my grandfather ventured to explain his confusion. He looked at us and began very slowly in his version of perfect English: I can hear you, I can understand you, but I don’t know what you are talking about, “Why do families need a Court?”

Culture is always a matter of perspective and one’s perspective on the culture of the Family Court is no different. The administration of the court system, working to meet the needs of the community served by the Family Court, and without the ability to consult my grandfather, - he died in 2000 - determined in recent times that not only do families need a Court, they need a Court that is available to provide vital services to families during regular business hours and during the early hours of the evening. Night Court commenced in Queens County in March of 2005. Referee Marilyn J. Moriber, who has sat in Night Court since its inception, (authorized by C.P.R. 43 to operate a court), presided that first night and has presided over Night Court every night thereafter.

Night Court is held in the grand ceremonial courtroom on the first floor of the Family Court on Jamaica Avenue, across from downtown Jamaica’s historic King Manor Museum. Every night, Referee Moriber’s trusted Senior Court Clerk, John Aiken, is at first night and has presided over Night Court every night thereafter.

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Referee Marilyn J. Moriber and Senior Court Clerk John Aiken, need the services of the Family Court after 5:00 p.m. Night Court is in session on Tuesday, Wednesday, and Thursday evenings commencing at 5:00 p.m. and concluding at 9:00 p.m.

The petition room, also on the first floor of the courthouse, accepts Night Court petition filings on these same evenings from 5:00 p.m. until 8:15 p.m. under the watchful supervision of Judy LaRose, Assistant Deputy Chief Clerk in charge of the petition room. She is also a regular presence every night and a vital part of the Night Court team.

Security for Night Court is, of course, as it is in day court - - a team effort. Everyone on the team takes their walking orders from Night Court Captain Patrick Kelly. Under Captain Kelly’s supervision all of the activities of the night court occur on the first floor of the Family Court building. The grand escalators located in the central atrium of the building, just outside the grand ceremonial courtroom, are not in operation after 5:00 p.m. and litigants within the building to the first floor. The many Court Officers needed to secure the building in the evening hours rotate on a daily basis, as do the many language interpreters needed to assist staff and litigants at every stage from the filing of a petition to the appearance before Referee Moriber. The petition room staff remains the same each evening.

John Aiken, the Referee’s clerk, has been with Referee Moriber in Night Court since the first night of the Court’s operation. He is a Senior Clerk who has been in the court system for thirteen years. His knowledge and background in the Family Court make him invaluable to the Referee and the entire Night Court operation. Night court is a pioneering team effort. The team works due to the respect and kind demeanor displayed from the top by the Night Court dynamic duo of Referee Moriber and Senior Court Clerk John Aiken. The often light hearted interplay between these two helps to keep the Night Court staff relaxed, respectful and ready to serve the often high stress litigants that arrive in need of their service.

Night Court tackles many of the same pressing social issues as the Family Court usually does during regular daytime hours –namely, petitions are accepted for orders of protection, violations of orders of protection, guardianships, removal of children and more. The most typical evening case is one that involves the relationship between the mother and her children who wish to be heard without being seen entering the courthouse, almost safer and more discreet to come to Court at night rather than be seen entering the Court during the day.

When the Court commenced evening hours, Judge Joseph M. Lauria, who was instrumental in getting this initiative underway during his term as the Administrative Judge for the Family Court of the City of New York, emphasized that the role of Night Court was to meet the needs of the community. With that in mind, the Administration for Children’s Services (ACS) became a regular fixture in the Night Court scene to assist with the urgent needs of the children who were often subjects of the petitions brought before Night Court.

Night Court litigants can also file petitions for child support and spousal support in the evening and be provided with a return date to come back to the Court during daytime hours to be heard with both sides present. Referee Moriber, (a not for profit organization that assists individuals with problems related to domestic violence) always has a liaison from the organization present at Night Court.

The majority of litigants seen at Night Court do appear pro se; however, the occasional member of the private bar does accompany a client to file a petition in the evening. There are many benefits to client and to counsel. The clients, with or without counsel, are able to accomplish the first important Court date without missing any time from their jobs. Also, the Night Court team can generally get a litigant and their attorney in and out of the Family Court in just over one hour. Any regular practitioner in the Family Court can confirm that this is a major improvement over regular Court hours when the time required would usually be much greater. Private counsel are regularly represented in Night Court by way of the members of the 18B panel who volunteer to be present each evening to be available for assignment if an adult litigant or child needs the assistance of counsel.

The enormous volume of the regular Court, delays o’clock. Depending on the day, some of that overflow may end up before Referee Moriber on any given Tuesday, Wednesday, Thursday, Friday or even Saturday. The mere idea of availability of the Court have truly expanded in all respects.

Referee Moriber says that “as the Night

---Continued On Page 15---
The defendant to be incapacitated person, that each psychiatric examiner believes the court may, on its own Motion, conduct a Hearing to determine the issue of capacity. Finally, subdivision 4, in pertinent part, states when the examination submitted to the court show the psychiatrists are not unanimous in their opinion as to whether the defendant is an incapacitated person, or is not a dangerous incapacitated person, the court must conduct a hearing to determine the issue of capacity or dangerousness.1

This article will first consider the purpose of this specific statutory subsection. The leading case is People v. Greene2. In that case, the trial court held that the legislative intent, when providing the procedure, for determining mental competency of the accused to defendant criminal charges, was to allow the court complete discretion, irrespective of the findings of the official examiners, to determine whether the accused is capable of proceeding to trial, and therefore, where the court was of the opinion that the accused was incapable of understanding the charge against him, the proceedings, or making his defense, the accused would be committed to the state hospital, until sufficiently recovered so that criminal proceedings might be resumed despite the hospital examiner’s report contrary to the court’s opinion. The next issue to be considered in this article is the matter of the burden of proof. The weight of the case law is that the People have the burden of proving the defendant’s competence by a fair preponderance of the evidence. Thus, in People v. Breeden3, the Appellate Court held that the People’s burden of proving the defendant’s competency at the hearing to determine the defendant’s fitness to proceed to trial was met through testimony of psychiatrists at the facility, in which the defendant was confined for five months prior to the hearing, despite opinions of defendant’s expert witnesses who concedingly had less exposure to the defendant’s behavior, as the opinion of the psychiatrists who had more extensive opportunity to observe the defendant were of more value.4

It should be added that in general it is the law that the issue of mental competency may be raised on Appeal, despite the absence of objection at the trial level.5 The next topic to be considered here is the matter of the determination of fitness. In general, it is the law that it has been the court’s discretion to order an examination as to the defendant’s competence or sanity.5

The next issue to be considered here are what factors the court must consider in ordering an examination. People v. Franco7 is exemplary. In that case, the Appellate Court held that the defendant, who did not display any erratic or unusual behavior and who clearly answered questions of the court and clerk was oriented as to the time and the place, had an understanding of the proceedings, and was competent to stand trial. Similarly, in People v. Marmolejos8, the court held that the defendant was fit to stand trial, reasoning that the defendant did not exhibit any delusional thinking during trial, gave testimony in a rational and concise fashion, cooperated with counsel, and concedingly understood the role of his counsel, and other participants at trial, and qualified experts found defendant fit to proceed.

People v. Picozzi9, the Appellate Court analyzed what factors the court should consider on the issue of competency to stand trial. The Appellate Division held that the factors are whether the defendant is oriented as to the time and place; is able to proceed, recall, and relate; has an understanding of the process of trial, and the roles of judge, jury, prosecutor, and defense attorney; can establish a working relationship with his attorney; has sufficient intelligence and judgment to listen to the leading case is People v. Greene2. In that case, the trial court held that the legislative intent, when providing the procedure, for determining mental competency of the accused to defendant criminal charges, was to allow the court complete discretion, irrespective of the findings of the official examiners, to determine whether the accused is capable of proceeding to trial, and therefore, where the court was of the opinion that the accused was incapable of understanding the charge against him, the proceedings, or making his defense, the accused would be committed to the state hospital, until sufficiently recovered so that criminal proceedings might be resumed despite the hospital examiner’s report contrary to the court’s opinion. The next issue to be considered in this article is the matter of the burden of proof. The weight of the case law is that the People have the burden of proving the defendant’s competence by a fair preponderance of the evidence. Thus, in People v. Breeden3, the Appellate Court held that the People’s burden of proving the defendant’s competency at the hearing to determine the defendant’s fitness to proceed to trial was met through testimony of psychiatrists at the facility, in which the defendant was confined for five months prior to the hearing, despite opinions of defendant’s expert witnesses who concedingly had less exposure to the defendant’s behavior, as the opinion of the psychiatrists who had more extensive opportunity to observe the defendant were of more value.4

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Question #1 -
What are Tier I benefits of the Railroad Retirement System?
Your answer -

Question #2 -
Are Tier I benefits subject to Equitable Distribution?
Your answer -

Question #3 -
Is a former spouse of a railroad employee entitled to Tier I benefits of their own?
Your answer -

Question #4 -
What are Tier II benefits of the Railroad Retirement System?
Your answer -

Question #5 -
Are Tier II benefits subject to Equitable Distribution?
Your answer -

Question #6 -
Do Social Security benefits for a child reduce the parental obligation of support?
Your Answer -

Question #7 -
Is it proper for the Family Court to dismiss a petition for visitation because it was not filed in the county in which the children reside?
Your answer -

Question #8 -
If an action for divorce is discontinued and the parties continue to live separate and apart for a number of years before a second action for divorce is commenced, is the court permitted to fix the valuation date for marital assets as of the date the first action was filed?
Your answer -

Question #9 -
Is the Supreme Court permitted to appoint an 18B attorney in Custody proceedings?
Your answer -

Question #10 -
When a spouse, during a second marriage, incurs education loans for the education of a child of a prior marriage, is this marital debt to be shared by the parties in a divorce proceeding of the second marriage?
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 partner in the firm of Ramo Nashak & Brown. Answers Appear On Page 6
Profile of....

Steven S. Orlow

BY LESTER SHICK*

William Langland, famed 14th century English poet, wrote in his allegorical epic "Piers Plowman," "Like father, like son, every good tree maketh good fruits." This being said, Steven Orlow, new President of the Queens County Bar Association, has produced two fine sons whom together comprise the law firm of Orlow, Orlow & Orlow (Orlowlaw.com).

Steve was born in Manhattan and his family moved to the borough of Queens when Steve was six years old. His dad worked in the retail and wholesale end of the jewelry and handbag industry. Steve attended Queens College, graduating in 1965, with a Bachelor of Arts Degree and went on to Cornell Law School, receiving his Juris Doctor degree in 1968. He was admitted to the New York Bar in 1969.

Steve’s first job was working as an Assistant District Attorney in Kings County. He worked under the auspices of then District Attorney, Eugene Gold. He prosecuted numerous narcotic cases. After three years, he became counsel to the Queens Borough President, Donald Manes. He worked there from 1972-1980.

Steve coordinated the rehabilitation of the Carlton Apartments in Kew Garden Hills. The development had 250 units that were in total disrepair.

In 1975, Steve was approached by his Rabbi and other members of his community with the idea of establishing the first Eruv, a thin monofilament line strung from light pole to light pole to symbolically extend a Jew’s private domain to everything within the loop. It would enable orthodox Jews to carry keys and push strollers on the Sabbath without violating Halacha or Jewish law. The Eruv was created for the Kew Garden Hills neighborhood.

Steve has been a member of the Brandeis Association Board for over twenty years. He is also a member of the New York State Trial Lawyers Association. He is a past president of the Young Israel of Queens Valley. Steve has been active in a variety of charitable organizations, including being the founding and current president of the One Israel Fund. This organization has been in existence for 15 years. Its primary concern is the well being and physical safety of the Jewish residents residing in the areas of Judea and Sumaria in Israel. He is also a board member of the Orthodox Union. This entity is the main umbrella organization comprising the union of Orthodox congregations in America. He has been a tireless fundraiser for the groups over the years.

Steve and his lovely wife, Susan, have been married for thirty-eight years. They first met not in New York, but on a tour to England, France, and Italy. They had their first child in 1977. Since then, they have a daughter, Miriam, who is a speech therapist for the Board of Education. In addition, they have five beautiful grandchildren.

Steve Orlow is a man who embodies the characteristics of loyalty and commitment. He has always taken a “hands on” approach to everything he gets involved in. The County Bar Association has made a wise choice in its selection of their new President.

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ANSWERS TO MARITAL QUIZ ON PAGE 5

Question #1 - What are Tier I benefits of the Railroad Retirement System?
Answer: These benefits are similar to Social Security benefits.

Question #2 - Are Tier I benefits subject to Equitable Distribution?
Answer: No

Question #3 - Is a former spouse of a railroad employee entitled to Tier I benefits of their own?
Answer: Yes, if he or she meets the following requirements:
1. Both the participant and alternate payee are 62 years of age.
2. The parties’ marriage lasted at least 10 consecutive years.
3. The alternate payee did not remarry.
4. The participant has retired and began receiving a railroad retirement or disability.

Question #4 - What are Tier II benefits of the Railroad Retirement System?
Answer: Tier II benefits represent the portion of the benefit.

Question #5 - Are Tier II benefits subject to Equitable Distribution?
Answer: Yes, these benefits are valued and distributed like any other pension benefit.

Question #6 - Do Social Security benefits for a child reduce the parental obligation of support?
Answer: No, Family Court Act §174 is to transfer the proceeding to the proper county.

Question #7 - Is it proper for the Family Court to dismiss a petition for visitation because it was not filed in the county in which the children reside?
Answer: No, the proper procedure under Family Court Act 174 is to transfer the proceeding to the proper county.

Question #8 - If an action for divorce is discontinued and the parties continue to live separate and apart for a number of years before a second action for divorce is commenced, is the court permitted to fix the valuation date for marital assets as of the date the first action was filed?

Question #9 - Is the Supreme Court permitted to appoint an 18B attorney in Custody proceedings?
Answer: Yes, Judiciary Law §35 (8).

Question #10 - When a spouse, during a second marriage, incurs education loans for the education of a child of a prior marriage, is this marital debt to be shared by the parties in a divorce proceeding of the second marriage?

The first five questions and answers were derived from an email newsletter of Pension Appraisers, Inc. Pension Appraisers, Inc. has given permission for the use of their material in this Marital Quiz. If you would like to receive their email newsletter, free of charge, your request should be emailed to "penapp@pensionappraisers.com."
Sex Offender Management And Treatment Act

BY PETER DUNNE* 

On March 14, 2007, Governor Eliot Spitzer signed into law the Sex Offender Management and Treatment Act[1] which went into effect April 13, 2007. This law will have enormous consequences in the prosecution and defense of sex offenders.

This article will examine the major points of the law, review the legal basis and constitutional issues of the act, and finally, describe difficulties for practitioners in representing sex offenders.

First, and most importantly, the law establishes a new sex offender civil commitment procedure under the Mental Hygiene Law.

In addition, it creates a new felony sex offense entitled “sexually motivated felony”, introduces new sentencing requirements, enhances some post release supervision periods, and designates certain Class D and E felonies and “violent” felonies.

According to the legislative history, the primary purpose of the legislation is “to enhance public safety by allowing the State to continue managing sex offenders upon expiration of their criminal sentences, either by civilly confining the most dangerous recidivistic sex offenders, or by permitting strict and intensive parole supervision of offenders whose prior offenses involved harm.”[2]

The civil commitment procedure outlined by the act is the most revolutionary aspect of the act.[3] It applies to all persons who have been convicted and sentenced to prison for all felonies contained in Penal Law article 119, and to those found incompetent to stand trial pursuant to C.P.L. 730.4[4] and to those found incompetent to stand trial by reason of mental disease or defect, in penal or mental institutions.11[5]

The defendant is to be notified when his or her case is referred to the Attorney General for review of the records and reports provided by the District Attorney of the County where the respondent has been convicted and sentenced to state prison for all felonies contained in Penal Law article 119.12[6]

Within 30 days of receipt of the case review panel’s recommendation, the Attorney General may file a civil management petition in Supreme Court of County where the defendant is located. The petition must allege “facts of an evidentiary character tending to support the allegation that the respondent is a sex offender requiring civil management.”[7] The petition must be served on the respondent, and it triggers the respondent’s right to counsel.[8]

Within 30 days of filing, the court must conduct a probable cause hearing. Certified psychiatric reports are admissible without testimony from the examiner, and the respondent may not testify against the underlying offense.[9]

Within 60 days after the probable cause determination, the respondent must be tried before a jury of twelve. The respondent may waive a jury trial and choose a bench trial. During the trial, commission of the underlying sex crime shall be deemed established and cannot be re-litigated. Plea minutes and prior trial testimony are all admissible.[10]

The burden of proof is on the Attorney General to prove by clear and convincing evidence that the respondent suffers from a mental abnormality.[11] The verdict must be unanimous in the case of a jury trial. The Court must charge the jury that commission of the sex offense cannot be the sole basis of the finding that the respondent suffers from a mental abnormality.

If there is a unanimous verdict that the respondent does not suffer from a mental abnormality, the court must issue a discharge order and dismiss the petition. If there is not a unanimous verdict, the respondent must be retried within 60 days.[12]

If there is a unanimous verdict that the respondent does suffer from a mental abnormality, the jury will be discharged and the trial will move on to a second stage to determine the appropriate “post-sentence treatment.”[13]

This phase is for the Court alone. The question is whether the respondent is a “dangerous sex offender requiring confinement” or a sex offender requiring strict and intensive supervision. If the court finds by clear and convincing evidence that the respondent has a mental abnormality involving such a strong disposition to commit sex offenses and such an inability to control behavior that the respondent is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility, then the court will find the respondent to be a dangerous sex offender requiring confinement.[14]

The only other choice is to find that the respondent is a sex offender requiring strict and intensive supervision. No other choice is given to the court once the jury has unanimously determined that the respondent suffers from a mental abnormality.[15]

Commitments to a secure facility are indefinite. Annual reviews are authorized by the Act.[16]

For years, New York has had a mechanism in place which authorized the civil commitment of individuals who represented a danger to himself or herself or others.[17] Briefly, under this section of the

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APPEARANCES IN 
QUEENS COUNTY

DIANA C. GIANTURCO 
ATTORNEY AT LAW

THE QUEENS BAR BULLETIN – NOVEMBER 2008

__________________Continued On Page 16
Recent Significant Decisions from our Appellate Courts - Monday, September 22, 2008

Photos by Walter Karling
Recent Significant Decisions from our Appellate Courts - Monday, September 22, 2008

Judge Bellacosa speaking about when he worked with Chief Judge Kaye.

Judge Ciparick speaking about working with Chief Judge Kaye.

Spiros A. Tsimbinos, Moderator.

Spirou Tsiminos, Hon. Fred Santucci and Hon. James Golia.


Steven Orlow, Gary Miret and Carmen Velasquez.

Steven Orlow, Andrew Fine, John Castellano, Alan Chevat, Hon. Alan Scheinkman and Spiros Tsiminos.


Photos by Walter Karling
The grass is always greener, as the saying goes. I spend most of my year dreaming of vacations to my friends’ home in Provence and the Côte d’Azur. My friends there, on the other hand, say they are deadly bored by the lack of the stuff to do or see. The mountains and sea are breathtakingly beautiful, they say, but they yearn for New York City. I understood City’s cultural wealth, too, as a result of my commitment in accepting a role in THE METROPOLITAN OPERA New York City during the month of October. In October, I saw and heard German coloratura DIANA DAMRAU give a mesmerizing performance and thrilling vocal account with a brilliant supporting cast. It was the finest LUCIA I have heard. Also brilliant were SEAN PANNIKAR as Arturo, whose performance last year in Manon Lescout I featured in my March 2008 column, Polish tenor PIOTR BECZALA as Edgardo, Lucia’s true love, and Russian baritone VLADIMIR STOYANOV as Lord Enrico Ashton, as Lucia’s overbearing, destructive, and manipulative brother. STOYANOV has a wonderful baritone voice, and his acting skills will hopefully improve since a control-freak can be portrayed with greater depth than the constant banging on a table.

The first-rate cast was undeterred by a major, mechanical failure of the set in the third and final act that prevented the proper set from being placed. In January, 2009, another all-star cast comes in to the Met to perform LUCIA. Don’t miss it. Check www.metopera.com for details.

Composer John Adams was rightly brought on stage for curtain calls follow-
Innovative New York Lawyers Use Online Video to Get New Clients

BY GERRY OGINSKI, ESQ.

As the internet has taken hold and more lawyers have recognized the benefits of marketing online, one marketing tool is defining the standard of advertising on the web. Online video. It is the newest, hottest tool available for lawyers to communicate their message on the web. Admittedly, attorney videos are one-way communication, but they offer significant advantages over other advertising mediums.

Most attorneys have failed to understand the true value of video and how it can improve their chances of a potential client calling them over their competitor. Legal marketing experts agree that the sooner you start to see the value of video marketing, the sooner you’ll see the results.

Larry Bodine (www.lawmarketing.com) recently commented that putting video on your website is “…a great opportunity to present how you look, how you talk, and how you advertise your practice. It’s a great business-getting technique.” The key to encouraging a website visitor to call you, is with video. Static websites and fancy graphics just do not cut it anymore, and fail to distinguish you from your competition.

Tom Foster, CEO of Foster Web Marketing (www.fosterwebmarketing.com) says “If you get in early by putting video on your website, you can take advantage of good search engine rankings and make your website video search-engine friendly.”

If you thought that internet video was for the MTV crowd, you’d be wrong. If you thought that video was only for geeky tech-lawyers, you’d be wrong too. If you thought that putting a video of yourselves online was useless, you’d definitely be wrong. In fact, Google thinks you’re so wrong that they recently paid one billion dollars to buy a video sharing site called YouTube. To give you an idea, YouTube’s internet video has, consider a ten minute video clip by comedian and ventriloquist Jeff Dunham; his video has been viewed over 60 million times. Most attorney videos are viewed in the hundreds of times, but it is obviously a good idea to have video. Plus, if done correctly, does not cost you anything more if it is watched 100 times or 100,000 times.

Pre-historic times

In the pre-internet age, lawyer advertising was limited to television, radio, yellow pages, billboards, newspapers and magazines. Since the 1970’s when the Supreme Court of the United States decided that lawyers could advertise (Bates v. State Bar of Arizona), the general public has been bombarded with lawyer ads. Every jurisdiction in every state has its own peculiar set of ethical rules regarding what lawyers can and cannot say in their advertisements. Cheesy lawyer advertisements have been the bane of late-night talk shows and comedy shows for decades.

Lawyers trying to get a foothold in their particular market often looked upon lawyer advertising as a necessary evil. Many felt it was beneath them to advertise. Not many lawyers wanted to be in the same category as a salesman looking to pitch his latest slicer and dicer. Traditional advertising is costly. Lawyers often complained that the cost to advertise in each medium was prohibitive. The advertisement itself was not able to be viewed repeatedly for the same cost, and unless a potential client was looking for an attorney at that moment, they would likely ignore the daily messages they were inundated with.

The new millennia – The Internet

With the dawn of the internet, attorneys began to develop websites as an accessory to their name and their “get their name” into the public eye. Many New York lawyers felt, and still do, that they’d rather busy themselves practicing law, rather than developing websites for lawyers. Many did not know what a website could be used for and how it could be advantageous to law firms.

Video allows the attorney not only to convey their marketing message, but allows viewers to see, hear, and determine whether the lawyer inspires confidence and knows what he is talking about. Video allows for more than a 30 second commercial that screams at you. Online video gives lawyers the opportunity to explain to viewers how they are different from every other lawyer who is competing with them.

Video Is The Key To Show You Are Different

How does video distinguish you from everyone else? By creating a personal bond with your viewer. Admittedly, it’s a one-way conversation, but it allows the viewer to see you, hear you, and judge for themselves whether you sound confident and intelligent enough to want to call you.

So far, the biggest uses of online video for law firms have been personal injury and medical malpractice lawyers. These attorneys have gotten in on the ground floor and are just now learning how to optimize their videos so that the major search engines identify the videos and improve their video search engine ranking for their firm.

Google – Why You Need To Know How It Works

Today’s internet has exploded with creative and useful ways to educate and inform millions of viewers. A “Google search” has become commonplace to search for anything and anybody with a click of a button. Google has cornered the market on creating the easiest and arguably most powerful search tool on the internet today. Why is this important to lawyers looking to compete on the internet? Because, if you are not using video, you have a distinct advantage. If it doesn’t need to look critically at what you are doing in order to improve your online presence.

Typically, a potential client will do a Google search if they are looking for an attorney online. Obviously there are many search engines, but Google’s popularity cannot and should not be ignored. The results that pop up on Google will likely determine if your website will be clicked on. If you are on page 10 of a Google search result, it is unlikely your website will be found. The same reasoning applies if you had a full page ad in the yellow pages and were at page 30. The yellow pages represented always managed to explain that even if you were at page 30, “just one client” would be enough to pay for your ad. Unfortunately, the yellow pages represented can not help you communicate that to a nameless, faceless visitor to your website.

Generating Half The Calls To His Office

Oginski says “These educational videos together with my informative website have caused my phone to ring. In fact, they generate half of all the calls to my office.” He explains that this is a dramatic increase from the previous year when he only had his website online.

Virginia Personal Injury Trial Lawyer Ben Glass, who teaches marketing to lawyers all over the country says that after viewing Oginski’s website and the videos he created, Glass’s website received no calls from the other 29 lawyers in front of you. However, if your website comes up on page one of Google, there is a good chance that a website visitor will call your site. Unfortunately, with all the competition today, that alone does not get a potential viewer to call you.

Once a viewer actually clicks on your site, what do they find? Is the website static and filled with fancy graphics or is there video that does nothing to differentiate your site from the other 30 lawyers in front of you? Is the search engine ranking for your website? That’s the golden key that every attorney who advertises online appears to strive for. To be able to say that “Out of 4 million websites, Google thinks my site is #1 in their organic search rankings,” is indeed, a feat to strive for and emulate.

Why a Potential Client Would Call You

If a potential client is searching for a lawyer online, what makes them choose them over the other 30 lawyers with the same credentials? You each have a website. You each have similar experience. You each charge basically the same for similar services. So, how are you different, and how can you communicate that to a nameless, faceless visitor to your website?

A video that tells a visitor who you are and welcomes them, has already gained brownie points. What should you do then? How can you do it better? What makes you the golden key that every potential client wants to know and trusts you before they ever walk into your office?

Gerry Oginski is an experienced medical malpractice & personal injury trial lawyer practicing law in New York since 1988. He has created, produced and uploaded over 100 educational videos online about New York medical practice, wrongful death and personal injury law. Gerry’s popular video blog (http://medicalmalpracticetutorial.blogspot.com) consistently comes up #1 in the organic search results when you do a Google search for "New York Medical Malpractice Lawyer." Gerry’s video blog can be seen at http://medicalmalpracticetutorial.blogspot.com.
In accordance with federal requirements, the respondent was automatically disbarred as of September 9, 2005, pursuant to Judiciary Law §90(4).

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

Sergey Khaitov (May 20, 2008)
On September 9, 2005, the respondent pleaded guilty in the Supreme Court, Queens County, to Grand Larceny in the second degree, a class C felony. Thereafter, the respondent failed to comply with the requirement of Judiciary Law §90(4)(a) regarding notification of his conviction to the Appellate Division within 30 days. As a result of his plea of guilty to a New York State felony, the respondent was automatically disbarred as of September 9, 2005, pursuant to Judiciary Law §90(4)(a).

Ida D’Angelo (June 10, 2008)
On March 29, 2007, the respondent pleaded guilty in the Supreme Court, Kings County (Gerges, J.) to one count of False Business Records in the first degree, a class E felony. As a result of her plea of guilty to a New York State felony, the respondent was automatically disbarred as of March 29, 2007, pursuant to Judiciary Law §90(4)(a).

Mario F. Rolla (June 10, 2008)
The respondent tendered a resignation in light of his plea of guilty in the United States District Court for the Northern District of New York (Hurd, J.) on March 9, 2007, to an information charging him with conspiracy to violate the Clean Air Act in connection with his having entered into a contract or contracts to remove asbestos with intent to conceal or Papers to ensure that the work would be performed in accordance with federal requirements.

Robert A. Shuster, a suspended attorney (June 10, 2008)
On August 17, 2007, the respondent pleaded guilty in the County Court, Nassau County (Ruskin, J.) to one count of Grand Larceny in the second degree, a class C felony. As a result of his plea of guilty to a New York State felony, the respondent was automatically disbarred as of August 17, 2007, pursuant to Judiciary Law §90(4)(a).

Michele M. Monopoli (June 17, 2008)
The respondent tendered a resignation wherein she acknowledged that she could not successfully defend herself on the merits against charges predicated upon a violation of Disciplinary Rule 1-102(A)(4) [dishonesty, fraud, deceit or misrepresentation] of the Lawyer’s Code of Professional Responsibility (22 NYCRR §1200.3(a)(4)).

Gregory E. Ronan, admitted as Gregory Edward Ronan (June 17, 2008)
The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against charges predicated upon two fraud judgments entered against him.

Gary S. Shaw, admitted Gary Stuart Shaw (June 17, 2008)
On September 25, 2007, the respondent pleaded guilty in the Supreme Court, Kings County (Gerges, J.) to one count of Falsifying Business Records in the First Degree, a class E felony. By virtue of his plea of guilty, the respondent was automatically disbarred as of September 25, 2007, pursuant to Judiciary Law §90(4).

Roger L. Cohen, admitted as Roger Lee Cohen (July 29, 2008)
The respondent tendered a resignation wherein he acknowledged that he could not successfully defend himself on the merits against charges predicated upon his mishandling of client funds.

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

Seth Muraskin (June 5, 2008)
Pursuant to 22 NYCRR §691.13, the respondent was suspended from the practice of law until further order of the court due to a mental or/or emotional infirmity.

Vincent Siccardi (June 10, 2008)
Following a disciplinary hearing, the respondent was found guilty of neglecting three legal matters entrusted to him. He was suspended from the practice of law for a period of six months, commencing July 10, 2008, with leave to apply for reinstatement upon the expiration of said period.

Cheryl K. Brodsky, admitted as Cheryl Kim Brodsky (June 17, 2008)
The respondent was immediately suspended from the practice of law, pending further proceedings, upon a finding that she was guilty of professional misconduct immediately threatening the public interest as a result of her failure to comply with lawful demands of the Grievance Committee.

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

Michael A. Cintron, admitted as Michael Anthony Cintron (May 20, 2008)
Following a disciplinary hearing, the respondent was found guilty of failing to cooperate with the investigative committee of complaints of professional misconduct conducted by the Grievance Committee and failing to comply with the Committee’s lawful demands, as well as failing to re-register as an attorney with the New York State Office of Court Administration (OCA).

Mark Easton (May 20, 2008)
Following a disciplinary hearing, the respondent was found guilty of neglecting legal matters entrusted to him by failing to timely and/or diligently pursue such matters, and conduct involving dishonesty, fraud, deceit or misrepresentation, by misleading his clients as to the status of the legal matters entrusted to him.

Jeffrey A. Irving (June 10, 2008)
On May 24, 2004, the respondent pleaded nolo contendere in the Vermont District Court, Unit 1, Windham Circuit, to three misdemeanor counts of shoplifting. As a result of the foregoing, the respondent was found guilty, following a disciplinary hearing, of engaging in illegal conduct adversely reflecting on his honesty, trustworthiness, or fitness as a lawyer in violation of DR 1-102(A)(3); engaging in conduct adversely reflecting on his fitness as a lawyer in violation of DR 1-102(A)(7); and professional misconduct as a result of his conviction of a “serious crime” involving theft within the meaning of Judiciary Law §90(d) and 22 NYCRR §691.7.

Edward C. Klein, admitted as Edward Carl Klein (June 10, 2008)
On or about June 6, 2006, the respondent pleaded guilty in the District Court, Nassau County, First District, to attempted reckless endangerment in the second degree, a class B misdemeanor; disorderly conduct by creating a hazardous or physically offensive condition by an act which serves no legitimate purpose, with intent to cause public inconvenience, annoyance or alarm or recklessly creating a risk thereof, a violation; and harassment in the second degree by striking, shoving, kicking, or otherwise subjecting another person to physical contact, or attempting or threaten-

Friends, Romans and Brethren, Lend Me Your Ear

It has come to the attention of the Queens County Bar Association’s Academy of Law that on a fairly regular basis in the Tech Center and Pro Bono Office

QCBAB Celebrates Opening of New Tech Center and Pro Bono Office

Continued From Page 1 computers and there is a copying machine available for library and Tech Center use. The law library now has wall to wall carpeting, is fully air-conditioned and the Tech Center has new seating as well. The law library also has free Wi-Fi access. The new office of the Queens Volunteer Lawyers Project, allows several staff members to work simultaneously at new work stations with networked computers and telephones. This will greatly increase the efficiency of the program and increase the number of pro bono clients who can be assisted.

All QCBA members are urged to stop by and view the newly refurbished facilities when they are open to the public. The QCBA has worked with the Tech Center staff and the Queens County Bar Association to make these improvements a reality.
**Winning Oral Argument: Do’s And Don’ts**

**Continued From Page 1**

important case in which you must preserve the record for appeal or further appeal. Vary from that format only to begin with a threshold argument like statute of limitations or when you must present issues in the order presented by the factors laid out in a statute or seminal case. If two issues are of equal winning weight, begin with the issue that will give your client the greater relief. Do not begin with rebuttering the other side’s points. You need to communicate that you are right because you are right, much more than you are right because the other side is wrong.

**Apply fact to law.** The judges might know the law, but they do not know your facts, and law without context is meaningless. Everything depends on the facts. When applying facts do not simply raise facts or even argue them: Apply them to the issues of the case.

Introduce, then amplify. Tell the court at every turn what you will argue. For example, “There are three reasons: First...; second...; and third...” Then argue each in turn. That provides organization to speaker and listener alike, and it offers necessary, persuasive repetition.

Answer: then explain. You need to make it easy for the court to rule for you. One way to do that is answer with a yes or no, and then to explain why. Beginning the answer with a narration without first answering the question will frustrate the judge and possibly lead to confusion. The goal is to help the judge, not to speak for the court. Do not use pauses for the sake of self-importance. Your client’s rights are at stake – not your ego.

**Make eye contact.** Looking at the judge means not reading. It lets you know that you are answering the judge’s question, whether you are having a conversation, and whether the judge is listening. Looking at the judge and – before an appellee panel looking at all the judges without darting your eyes – forces the judge to look at you, and therefore to focus and engage, not bored or distracted.

For the time being, write your brief, and reading your brief means wasting the opportunity to address the concerns the court might have after it has read your brief. This rule requires you to take to the podium only those things that are essential to your argument.

**Be confident but restrained.** Speak slowly, loudly (without yelling), and clearly. Maintain good posture; do not distract by slouching, leaning on the podium, or moving your body and hands; you want the court to listen to you, not watch you move. Do not hold on the podium or make noises that a microphone will amplify. Be politely assertive, not comical or tentative. Argue emotional facts without arguing emotionally. Keep passion in check; be even-tempered. Project! assuredness, but do not personally vouch for the validity of the argument or the honesty of the client. Stay within the four corners of the record.

**Rely on visuals.** A technique that always works well before a trial court and especially, I might add, when before an appellate court, is to use visual aids: Blow-ups of crucial evidence, diagrams, and charts. It is trite but true: A picture is worth a thousand words.

**Ten Oral Argument Don’ts**

**Do not characterize or mischaracterize.** The worst argument focuses on lawyers’ making things personal. It will not help the court rule for you to attack, use biased modifiers, or impugn motives. Stay away from the adverbial excesses like “clearly” and “obviously.” Do not miscite the record or misquote the record. (June 10, 2008)

**Do not debate.** Effective lawyering means communicating by addressing the court’s concerns. Answer questions in a respectful manner. You never know why a judge is raising a question. You might ask you tough questions, but perhaps, because the judge is speaking to counsel, he or she is seeking to rein in a judge who wants to rule for you and needs to fill in a gap, because the judge wants to understand your point and learn, or, frankly, because the judge is mean, cantankerous, and without doubt concerned about the record. To help the court rule for you, you need to make that person believe that your point is strong. You must make it easy for the court to rule for you. One way to do that is answer with a yes or no, and then to explain why. Beginning the argument without first answering the question will frustrate the judge and possibly lead to confusion. The goal is to help the judge, not to speak for the court. Do not use pauses for the sake of self-importance. Your client’s rights are at stake – not your ego.

**Conclusion**

Oral argument is difficult but exhilarating. Oral argument affects cases. Cases, and of course their outcomes, will be won and lost at oral argument. The advocate uses oral argument to correct misunderstandings, reinforce points, limit issues, rebut the opponent’s arguments, and address concerns. Oral argument is an opportunity, never to be taken lightly, and always to be taken advantage of.

Editor’s Note: Gerald Lebovits is a judge of the New York City Civil Court, Housing Part, and an adjunct professor at St. John’s University School of Law, New York, where he teaches trial and appellate advocacy.
JENNIFER GEGAN, playing a variety of roles, including the owner of a sleazy porn shop, was last seen as Virginia in the)#7 train at Shea Stadium/Willet's Point. Free shuttle trolleys will be running from the heart of Flushing Meadow's World's Fair Park and can be found at Exit 9P from Long Island and Exit 9E from Manhattan.

THE AMATO OPERA
I try to go to the AMATO OPERA, on the Bowery, in the East Village, in Manhattan as often as I can. I see them operatic talent, I make it a point to go to AMATO OPERA, which gives voice career opportunities to aspiring opera singers, whenever talented and beautiful JORDAN C. WENTWORTH is performing there. I delighted seeing her performances last season as Norina in “Don Pasquale” by Gaetano Donizetti, Adina in “L’Elisir d’Amore” by Donizetti, and Violetta in “La Traviata” by Giuseppe Verdi. JORDAN C. WENTWORTH was on “The Morning Show with Mike and Juliette.” Her performances include roles and solo engagements with the Liceu de Opera of Barcelona, Austin Civic Opera, Benaroya Hall and Civic Light Opera of Seattle, and the Bellingham Theatre Guild. Her recent roles have included “Brindisi” in The Barber of Seville, “Musetta” in La Boheme, “Ophelia” in Hamlet, “Adele” in Die Fledermaus, “Norina” in Don Pasquale and “Juliette” in Les Contes d’Hoffman. She has also composed music and is a featured guest on “The Morning Show with Mike and Juliette.”

How many opera performers do you know who are also teaching? JORDAN C. WENTWORTH, the gorgeous opera singer and actress performer, is one of the most vocally and physically challenging female roles in opera. Violetta is not a prostitute, but a kept woman. She finally finds her true love, only to find it shattered by her lover’s father, too self-absorbed with his money, power, and influence. Whether you see JORDAN C. WENTWORTH play Violetta on November 7 or another gifted opera singer and actress perform the lead, you will be delighted to see it at THE AMATO OPERA.

If you love “La Traviata,” as I do, since it is one of the most popular operas ever, you will also be delighted to see it during November at THE METROPOLITAN OPERA in Franco Zeffirelli’s opulent production. The Met Opera’s production stars ANJA BAR TÉROS as Violetta and MASSIMO GIORDANO as her lover. La Traviata’s last performance at the Met Opera for the season is on Thursday, November 20. Check the calendar at www.metopera.com.

JORDAN C. WENTWORTH was recently on “The Morning Show with Mike and Juliette.” Her performances include roles and solo engagements with the Liceu de Opera of Barcelona, Austin Civic Opera, Benaroya Hall and Civic Light Opera of Seattle, and the Bellingham Theatre Guild. Her recent roles have included “Brindisi” in The Barber of Seville, “Musetta” in La Boheme, “Ophelia” in Hamlet, “Adele” in Die Fledermaus, “Norina” in Don Pasquale and “Juliette” in Les Contes d’Hoffman. She has also composed music and is a featured guest on “The Morning Show with Mike and Juliette.”

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 in JUSTICE CHARLES J. MARKEY’S PRINCIPAL LAW CLERK.
Continued From Page 3 –
Court referee: I am in the unique position of being able to immediately provide a petitioner in need of services with not only an attorney, but also with assistance from ACS and Safe Horizons. She finds that she is able to call upon agencies such as ACS and Safe Horizons to invest more time in each individual case during Night Court than during regular court hours. ACS, Safe Horizons and interpreters are more readily available to provide important services to the litigants during Night Court hours. There is always a Spanish language interpreter available in Night Court and, since many of the Spanish language interpreters usually speak a third language, Night Court has the enhanced ability to sometimes provide interpretation in languages other than Spanish.

Cases heard in Night Court are given a return date to return during the daytime. The visitation, custody and guardianship cases are returnable to Referee Moriber, sitting as Part 49, on the third floor of Family Court during the daytime. The family offense petitions are returned to the CVO part located in the ceremonial courtroom on the first floor during the day to be heard by Referee Jane McGrady.

Referee Moriber says that she draws on her sixteen years of experience with the Queens District Attorney which bestowed upon her “a continuous desire to serve the public in a way that can better the community.” The Referee said that “it is incumbent upon me to help anyone who comes to Court and to answer any questions they might have about the court process, without offering legal advice. If the litigant is eligible, I will assign an 18th attorney to the litigant in order to further provide legal assistance.”

There are no plans to open the Queens Family Court for filing on weekend days, however, Family Court Juvenile Delinquency matters have recently begun to be heard on weekends in Manhattan pursuant to a new Court initiative announced in May, 2008 by Mayor Bloomberg. According to the Mayor, this was a first for New York State. The Mayor explained in announcing the new program that seven day per week juvenile processing, a standard already in place for those under the age of sixteen who do the same thing would see a fifteen year old who does the same thing would see a fifteen year old who does the same thing would see a fifteen year old who does the same thing would see a fifteen year old who does the same thing would see a fifteen year old who does the same thing would see a fifteen year old who does the same thing would see a fifteen year old who does the same thing would see a fifteen year old who does the same thing would see a fifteen year old who does the same thing would see a fifteen year old who does the same thing would see a fifteen year old who does the same thing would see a fifteen year old who does the same thing would see a fifteen year old who does the same thing would see a fifteen year old who does the same thing would see a fifteen year old who does the same thing would see a fifteen year old who does the same thing would see a fifteen year old who does the same thing would see a fifteen year old who does the same thing would see a fifteen year old who does the same thing would see a fifteen year old who does the same thing would see a fifteen year old who does the same thing
**Sex Offender Management And Treatment Act**

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Mental health law, a court is authorized to civilly commit a person when the court is “in substantial danger of harming himself or herself mentally ill and is conducting himself or herself in a manner... which is likely to result in serious harm to himself or herself or others.”

Such a finding triggers a series of psychiatric evaluations and judicial reviews revolving around a finding that the person “is in need of mental health services” in that he or she is a person who has “a mental illness for which care and treatment as a patient in a hospital is essential to...”

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The Sex Offender Management and Treatment Act is an outgrowth of this procedure.

One difference between the two sections is in the definition of the mental condition which is the predicate for indefinite detention.

There are two obvious constitutional issues presented by the act. First, does the act deprive the respondent of due process by its definition of “mental abnormality?” Second, does the act present an issue of double jeopardy? All right, all right, what constitutes under this statute, sufficient ground upon which to justify involuntary commitment the person who “has a mental abnormality, without a finding of dangerousness was usually coupled with a finding of mental illness.”

The Court of Appeals will certainly review this Act in the future. There is one striking difference, which the Court may, notice, between the New York law and the New York law, which passed the statute. The difference is in the burden of proof. In the Kansas law, the state had to prove beyond a reasonable doubt that the respondent suffered from a “mental abnormality.” 32 Under the New York law, the burden of proof is by “clear and convincing evidence.” Whether this difference is significant is an interesting question.

As of this date, there has been one reported case of the act being used. In the Matter of Douglas Juncos, in Wash., County, a probable cause hearing was held, and the court found that there was sufficient proof to cause to hold a trial. There has been no report that such a trial was held or what the determination was.

As of now, the act has put an incredibly difficult burden of the practitioner in the defense of an individual charged with a sex crime. Specifically, defense counsel has absolute no idea as to what the likelihood of a petitition being filed against a client.