



# THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

## IN THIS ISSUE

<b>Upcoming CLE Seminars</b>	<b>P. 10</b>
<b>2018 Delaware Legal Directory Correction Form</b>	<b>P. 26</b>
<b>Nominations Sought for the 2017 Christopher W. White Distinguished Access to Justice Awards</b>	<b>P. 33</b>

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# Nominations Sought for 2017 Awards

The Delaware State Bar Association and the Awards Committee are seeking nominations for the following four awards\* \*\*:

**Daniel L. Herrmann Professional Conduct Award**  
**Outstanding Service to the Courts and Bar Award**  
**Distinguished Mentoring Award**  
**Government Service Award**

These and other awards will be presented in a special Awards Luncheon in December 2017 at the Hotel du Pont.

## Awards Description

### Daniel L. Herrmann Professional Conduct Award

Awarded to a member of the Delaware Bar who, over the course of time, has demonstrated those qualities of courtesy and civility which, together with high ability and distinguished service, exemplifies the Delaware lawyer.

### Outstanding Service to the Courts and Bar Award

Awarded to a Delaware lawyer or judge who, by exemplary service to the Delaware Courts and the Delaware Bar, has substantially assisted the courts and the Bar and has strengthened public trust and confidence in the courts in the state of Delaware and the administration of justice.

### Distinguished Mentoring Award

Awarded to a Delaware lawyer or judge who, by distinguished mentoring of other Delaware lawyers (or future lawyers) over a period of many years, has served as an inspiration to and a model for those lawyers in striving for and maintaining the highest standards in their professional careers and in their community involvement.

### Government Service Award

Awarded to a full-time government service employee in recognition of dedicated and distinguished contribution to the Administration of Justice.

*\* These are not necessarily annual awards. All or some of these awards will be presented only upon the recommendation of the Awards Committee and approval by the Executive Committee of the DSBA.*

*\*\* Please note that previous nominations must be renewed to be considered.*

---

## Delaware State Bar Association Awards Nomination Form

Name of Candidate: \_\_\_\_\_

Title/Occupation of Candidate: \_\_\_\_\_

Award: \_\_\_\_\_

Date: \_\_\_\_\_

Nominator: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Brief statement of reasons that candidate is deserving of Award (see above Award criteria). Please attach sheet if necessary.

\_\_\_\_\_

\_\_\_\_\_

Nominations should be submitted by **September 15, 2017** to Mark S. Vavala, Executive Director, e-mail [mvavala@dsba.org](mailto:mvavala@dsba.org) or fax to (302) 658-5212.

## DSBA BAR JOURNAL

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The *Bar Journal* is the independent journal of the Delaware State Bar Association. It is a forum for the free expression of ideas on the law, the legal profession and the administration of justice. It may publish articles representing unpopular and controversial points of view. Publishing and editorial decisions are based on the quality of writing, the timeliness of the article, and the potential interest to readers, and all articles are subject to limitations of good taste. In every instance, the views expressed are those of the authors, and no endorsement of those views should be inferred, unless specifically identified as the policy of the Delaware State Bar Association.

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All correspondence regarding circulation, subscriptions, or editorial matters should be mailed to:

Editor, DSBA Bar Journal  
Delaware State Bar Association  
405 North King Street, Suite 100  
Wilmington, DE 19801  
or emailed to: rbaird@dsba.org

Letters to the Editor should pertain to recent articles, columns, or other letters. Unsigned letters are not published. All letters are subject to editing. Send letters to the address above, Attention: Editor, Bar Journal.

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# THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

## FEATURES

- 2 Nominations Sought for 2017 Awards
- 13 DSBA Member Appreciation Month Highlights
- 26 Photographs from the 2017 Law Day Luncheon
- 26 2018 Delaware Legal Directory Correction Form
- 33 Nominations Sought for the 2017 Christopher W. White Distinguished Access to Justice Awards
- 34 DSBA Fiction Writing Competition: Third Place Story

## COLUMNS

- 4 President's Corner
- 6 Editor's Perspective
- 12 Tips on Technology
- 14 Commission on Law & Technology: Leading Practices
- 16 Ethically Speaking
- 18 Access to Justice Spotlight
- 20 DE-LAP Zone
- 22 LOMAP for the Delaware Lawyer
- 24 Book Review
- 27 Views from the Senior Lawyer
- 38 Judicial Palate

## DEPARTMENTS

- 7 Inbox
- 8 Section Connection
- 9 Side Bar
- 9 Why I Belong
- 10 Calendar of Events
- 11 Section & Committee Meetings
- 28 In Memoriam: Henry N. Herndon, Jr.
- 30 In Memoriam: Michael L. Sensor
- 36 Bulletin Board
- 37 Of Note

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#### Delaware State Sport: Bicycling

Delaware designated bicycling as the official state sport in 2014, per Chapter 253, Formerly House Bill No. 235.

"Bicycling." State Symbols USA. Accessed May 15, 2017. <https://statesymbolsusa.org/symbol-official-item/delaware/sports/bicycling>.



## PRESIDENT'S CORNER

By Miranda D. Clifton, Esquire

# Changing of the Guard

**T**he changing of the guard is a tradition in many countries in which there is a ceremony (usually extremely precise) at a very significant and important site when the security of that site passes from one guard who has finished his service to another coming to begin his shift. In the United States, this can be seen at Arlington National Cemetery. However, no changing of the guard ceremony is more well known as at Buckingham Palace.

We have reached that time of year when we have our own version of the changing of the guard within the Delaware State Bar Association with election of our new officers. We will complete our own ceremony and celebration at the Bench and Bar Conference, which is an excellent opportunity to meet some new people, get reacquainted with others, and update your knowledge in different practice areas, picking up some CLE credits in the process. If you miss it, you will miss a great time.



We are transitioning leadership and the baton will be passed to your new DSBA President, Michael Houghton. I have worked with Mike for several years on the Executive Committee and rest assured that the DSBA is in excellent hands. Mike is a visionary leader who will serve the DSBA and each of its members well.

This year has been a busy and productive year for the Delaware State Bar Association. We underwent a transition in Executive Directors in October. Mark Vavala has done an outstanding job of overseeing the

everyday business of the DSBA, igniting our CLE department, and overall being an excellent ambassador to our members.

We have also focused this year on expanding member benefits. We have introduced SOFI, a great financing option for refinancing student loans, intending to lighten the overwhelming burden to many of our newer members. We have also entered into a partnership with LawPay, for credit card processing. I am the MOST excited, however, about a benefit that will be rolled out on July 1, 2017 when we will be offering our members, free of charge, legal research services through Fastcase, which will save thousands of dollars, having a major impact especially on our solo and small firms.

We have also focused on reaching out to our newer attorneys by being involved in the pre-admission conference, admission ceremony, and (new this year) an informal “Real Talk” session with seasoned and mid-level attorneys about success strategies both professionally and with work/life balance.

In addition, we have taken steps this year to begin to secure the DSBA’s financial future, setting funds aside for an operating reserve account to protect our members from any interruption in member services due to unexpected financial uncertainties in the future.

Each of our sections and committees has done extraordinary work in each of their areas of expertise and I could not be more proud. I have had the privilege of leading a forward thinking, innovative, yet compassionate Executive Committee and have been immensely impressed at how they thoughtfully approach issues brought before it. Finally, I cannot say enough about the DSBA staff who are superstars individually, but together form an unstoppable force that is the mechanism that keeps legal services moving in our fine state. Their creativity and dedication is second to none and I am anticipating what they “have up their sleeve” during the next year.

I have thoroughly enjoyed meeting and interacting with attorneys from the greatest State in the Universe during this year as DSBA President. I am grateful for the tremendous leadership and talent portrayed by the generation above me. I am so impressed with the efforts made by current leaders. I am also extremely encouraged with the talent and innovation of the “up and coming” leaders.

The only thing left to say is thank you for entrusting such a great organization into my care for the past 12 months. It has been a privilege and an honor to serve you. ☎

**Miranda “Mindy” Clifton** has graduated from every college and university in the state of Delaware beginning with the letter “W” including Wesley (BS), Widener (JD) and Wilmington University (MBA). She is the current President of the Delaware State Bar Association. She has recently moved back to Dover to practice at Young & McNelis and continues to represent clients in all three counties. Mindy is also an adjunct professor in Wilmington University’s Graduate Business program. She can be reached at [mclifton@youngandmcnelis.com](mailto:mclifton@youngandmcnelis.com).



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## EDITOR'S PERSPECTIVE

By Seth L. Thompson, Esquire

# Fare Thee Well

*Editor's note: While attending a school library dedication several years ago, I was struck by former Poet Laureate Robert Pinsky's comment that the bequestor was wise in selecting a library, since our species is blessed to have the written word and, thus, the ability to touch endless generations. A little over a month ago, our Bar lost a cherished member far too soon. I had the fortune of working with Michael Sensor for several years as co-editors of the Bar Journal. His quarterly snapshot of life as a Delaware lawyer reflects in each column I write and may do so for many editors to come. Therefore, it is only appropriate that I yield this space as an opportunity for him to give a last good-bye. Below is Michael's final column for the Bar Journal, which appeared in the September 2015 issue.*

• • •

This is my last column as a co-editor of the DSBA *Bar Journal*. For eight years — yes, since 2007 — my words have appeared in the pages of this magazine, first in the form of food and restaurant reviews, then as a co-editor. Every three months during this time, I sat down and typed out 750 to 1000 pithy words of prose to share with virtually every member of the Delaware Bench and Bar. That was actually more challenging than it seems; while any lawyer worth their salt can crank out page upon page of legal documents, my goal as one of your co-editors was to specifically not write about the law, but rather share my thoughts and experiences as a human being first and a lawyer second. I hope you enjoyed the quarterly glimpse into my mind that my columns offered.

It would not be a true farewell without thanking the people who I worked with in crafting this column for the past eight years. First and foremost, I thank my friend and colleague Yvonne Takvorian Saville, who encouraged me to pick up the mantle of co-editor back in 2007 as she stepped down. Yvonne is a dear friend to me and my family and has provided me with more opportunities for professional growth than I can relate in the short space allotted to me in this column. The Delaware Bar is fortunate to have someone with her wisdom, energy, and enthusiasm as a member.

My wife, Patricia, has been an invaluable source of writing prompts and ideas for me over the years I have written this column. Thank you, my dear, for keeping me level-headed and full of ideas!

I also thank the DSBA's Director of Communications, Rebecca Baird, for her patience and tolerance of my occasional deadline-blowing. In the spirit of the great "gonzo journalist" Hunter S. Thompson, one of my literary idols, I sometimes viewed publication deadlines as mere suggestions, and surely caused her undue stress as an issue awaited my column for layout and proofing. Thank you for your understanding, Rebecca! (At least my columns did not come dictated from the Seal Rock Inn in San Francisco. True Thompson fans will get the reference.)

To my friend Ciro C. Poppiti, III — thank you for taking over my duties as Judicial Palate editor when the stress of writing about food each month plus writing this column every quarter got to be too much. And, thank you to Susan Poppiti for eventually taking those duties over from Ciro. It is indeed refreshing to still be able to read about fine food and drink every month.

To you, my readers — thank you for your emails and phone calls providing me with feedback and thoughts. When you write about things as far-flung as a visit to the Republic of Georgia to meteorological phenomena, you tend to get noticed, and people tend to tell you what they think of your writing. Fortunately, in the true spirit of the Delaware Bench and Bar, all the feedback has been positive. Fellow lawyers, Your Honors — I truly appreciate everything you have said or emailed to me. Thank you.

I am leaving this column because I believe it is time to inject some new perspectives into the *Bar Journal*, and eight years is more than enough time to have shared mine. I am pleased to advise my readers that this column will be left in good hands. Starting after the end of September 2015, Ben Schwartz of Schwartz & Schwartz in Dover will be your new co-editor. Besides the fact that the *Bar Journal* will now have editorial representation from all three Delaware counties, Ben will bring to this column an intelligence and wit which I have greatly admired over the years. I am confident that he will provide you with

the same quality of insight that you have come to expect from all editors of the *Bar Journal*.

In closing, I leave you with a poem: *A Teamster's Farewell* by Carl Sandburg. I will truly miss the "crazy wonderful slamming roar" of my keyboard clicking away for you every three months.

*Fare thee well, all of you!*

*Good-by now to the streets and the  
clash of wheels and locking hubs,*

*The sun coming on the brass buckles  
and harness knobs.*

*The muscles of the horses sliding  
under their heavy haunches,*

*Good-by now to the traffic policeman  
and his whistle,*

*The smash of the iron hoof on the  
stones,*

*All the crazy wonderful slamming  
roar of the street —*

*O God, there's noises I'm going to  
be hungry for.* 🍔

*Bar Journal* Editor **Seth L. Thompson** is a shareholder with Sergovic Carmean Weidman McCartney & Owens, P.A., 406 S. Bedford St., Suite 1, Georgetown, Delaware. He may be reached at [seth@sussexattorney.com](mailto:seth@sussexattorney.com).

## INBOX

We'd love to hear from you! We welcome letters to the editor on issues presented in the *Bar Journal*. We reserve the right to edit letters for clarity and space. The *Bar Journal* does not print anonymous letters. Email letters to [rbaird@dsba.org](mailto:rbaird@dsba.org).

### It's Time to Abolish the ODC

I am writing in response to a recent ethics column in the February *Bar Journal* regarding the Office of Disciplinary Counsel titled, "Disciplinary Lists: Do's and Don'ts."

The lawyer disciplinary system needs reform. Lawyers are now targeted or forgiven by the ODC based on the say so of a Judge. Court influence inappropriately drives ODC actions.

The ODC has on numerous occasions utilized judicial *ipse dixit* to overlook lawyer misconduct or to transmute ethical lawyer conduct into a disciplinary violation:

Example #1: The ODC declined to investigate a clear-cut violation of DLRPC Rule 3.5: an in person *ex parte* communication with a Judge lobbying for entry of a contested, partially case dispositive Order. Nothing was done by the ODC since the Judge claimed no harm occurred. But, the *ex parte* cajoling occurred in spite of the offending lawyer's knowledge that the opposing counsel would not be present and a prior warning that the planned *ex parte* communication was an ethics violation.

Example #2: The ODC undertook a judicially requested "fishing expedition" against a lawyer that was targeted by the Court, based solely upon the submis-

sion of the entire litigation docket and record. The ODC willingly conducted the requested "fishing expedition," proceeding to cull through voluminous transcripts, pleadings, and other court filings in the hopes of finding the veritable "needle in a haystack" in order to appease the judicial complainant.

Example #3: The ODC failed to pursue a complaint regarding a lawyer who fraudulently procured Court Orders on 2 separate occasions, causing a waste of judicial and party resources to undo the Orders. The offense was compounded when the offending lawyer denied his misrepresentations and tried to divert the Court's attention by launching uncivil attacks on the opposing counsel. DLRPC Rules 3.3 and 8.4 were clearly violated. Yet, the ODC has done nothing since the Judge involved found no fault with the lawyer's conduct.

Members of the Bar should be concerned. A Judge's subjective opinion is followed and objective standards are ignored.

In order to bring balance and fairness to the system, an independent Disciplinary Counsel is needed. The Board on Professional Responsibility should select and supervise Disciplinary Counsel just as the Delaware Public Integrity Commission and the New Castle County Ethics Commission do.

*Richard L. Abbott, Esquire*

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Wednesday, June 21, 2017

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# SECTION CONNECTION



**Section Connection** will highlight DSBA's Sections each month. Sections cover a wide array of practice areas and membership in DSBA Sections provides networking opportunities, social events, and CLE opportunities. Learn what your Sections are up to here at the Section Connection!

## ENVIRONMENTAL LAW SECTION

### Chair

Todd A. Coomes  
Richards, Layton & Finger, P. A.  
coomes@rlf.com

### Regular Meeting

We have a lunch meeting every two months between September and May.

### Goals

With members from all sectors of the Delaware environmental legal community, our goal is to provide a collegial forum for the discussion of environmental topics amongst our members. And, we generally meet our goal.

### What Can Members Expect?

At most meetings we have a guest speaker that will lead a discussion on a current environmental topic. We also review and provide member updates on any interesting legislative or regulatory matters.

### Upcoming Events

Our annual half-day CLE will be on June 15, 2017. We've had great participation from DNREC and DOJ since I've been Chair, and this year will be no different with DNREC Secretary Garvin speaking.

### Recent Events

Brownfields has been a recent area of interest for the section. We've recently had members of EPA Region 3's Brownfields and Land Revitalization Branch speak with our section about EPA funding sources and held a meeting with DNREC on the State's program.

### Recent Events

Each year we do a summer social at a Delaware restaurant chosen by the members. It's a great way to meet members and spend a summer evening.

## Section Membership is a great way to connect at DSBA!

From Family Law to E-Discovery & Technology to Corporation Law to Environmental Law, there are all sorts of ways to get involved and informed through our 27 sections.

Alternative Dispute Resolution	Estates & Trusts	Multicultural Judges & Lawyers
Bankruptcy	Family Law	Real & Personal Property
Commercial Law	Government & Consumer Law	Small Firms & Solo Practitioners
Corporate Counsel	Health Law	Social Security Disability
Corporation Law	Intellectual Property	Taxation
Criminal Law	International Law	Torts & Insurance
E-Discovery & Technology	Labor & Employment Law	Women and the Law
Elder Law	LGBT	Workers' Compensation
Environmental Law	Litigation	Young Lawyers

For information on how to join a Section, contact Janice Myrick, Director of Bar Services & Membership, at [jmyrick@dsba.org](mailto:jmyrick@dsba.org).

## Early Bird?



## Night Owl?



Morning, noon, or night and anytime in between.



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## TOP 5 SONGS ABOUT LAWYERS

*"Now tonight back in old Pennsylvania,  
Among those beautiful pines,  
There's one less Philadelphia lawyer  
In old Philadelphia tonight."*

*Philadelphia Lawyer – Woody Guthrie*



- 1 Philadelphia Lawyer – Woody Guthrie (1937)
- 2 Lawyers, Guns and Money - Warren Zevon (1978)
- 3 Coming to Get You – Carly Simon (1979)
- 4 The End of Innocence – Don Henley (1989)
- 5 Lawyers in Love – Jackson Browne (1983)



*"Mother in-law, father in-law  
Lovers and lawyers in Arkansas  
Laid down the law."*

*Coming to Get You – Carly Simon*

### Featured Online CLE of the Month:

#### IDENTIFYING WITNESS DECEPTION



A USEFUL SEMINAR FOR LITIGATORS and OTHERS !

CAN YOU TELL IF THAT WITNESS OR JUROR IS LYING?

Original Date of Seminar: April 26, 2017

Speaker: Gregory "Brad" Bradshaw (Bradshaw Litigation Consulting, LLC)

Fun Facts: \* Bill Clinton exhibited 22 different signs he was lying when he uttered the line, "I did not have sex with that woman..." \* There is something called, "duping delight" which can help identify a liar. \* Looking down and to the right or looking up and to the left....mean nothing other than you are thinking. \* Your gender often affects how you lie. \* If someone starts a sentence with "Let me be clear..." you might want to check their facts.

CLE credits: 1.5 credits.

Log into the [www.dsba.org](http://www.dsba.org) website to see what you missed!

Since February, DSBA members have had a great new and convenient way to watch those CLEs they might have missed. Just log on to [www.dsba.org/CLE](http://www.dsba.org/CLE) and peruse the online catalog, purchase your CLE and sit back and watch at your leisure!

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"I went to a law school that encourages the idea of a 'citizen lawyer' — a lawyer dedicated not only to his or her craft, but committed to being a good citizen and leader of the community. I belong to the DSBA because it is comprised of citizen lawyers — people dedicated to making the Delaware Bar, the community, and our state great."



Max B. Walton  
Connolly Gallagher LLP  
DSBA MEMBER

"I belong to the DSBA because it allows me to connect with members of the bar outside my practice areas. Through my association with the DSBA, I have met many smart and interesting people and developed several long-lasting friendships. My DSBA membership also provides me the opportunity to receive Mark Vavala's creative CLE advertisements!"

Illustrations by Mark S. Vavala

Would you like to share why you belong to DSBA? Please let us know what DSBA membership means to you! Email Rebecca Baird at [rbaird@dsba.org](mailto:rbaird@dsba.org).

### Open Call for Articles!

Do you have a great idea?



For information on submitting articles for publication in the *Bar Journal*, please contact Rebecca Baird at [rbaird@dsba.org](mailto:rbaird@dsba.org).

## Professional Guidance Committee

This committee provides peer counseling and support to lawyers overburdened by personal or practice-related problems. It offers help to lawyers who, during difficult times, may need assistance in meeting law practice demands. The members of this committee, individually or as a team, will help with the time and energy needed to keep a law practice operating smoothly and to protect clients. Call a member if you or someone you know needs assistance.

### New Castle County

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DSBA/DE-LAP Liaison

\*Certified Practice Monitor

## CALENDAR OF EVENTS

### June 2017

**Thursday, June 15, 2017**

#### **Environmental Law 2017**

3.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James, LLP, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

**Wednesday, June 21, 2017**

#### **Arbitration Training and Certification in Employment Law**

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James, LLP, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

### September 2017

**Thursday, September 7, 2017**

#### **Movie Night at DSBA 2017: *And Never Let Her Go***

1.0 hour CLE Credit

Delaware State Bar Association, Wilmington, DE

**Tuesday, September 12, 2017**

#### **Racial Profiling**

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James, LLP, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

**Friday, September 29, 2017**

#### **Supreme Court Review 2017**

3.3 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James, LLP, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

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# SECTION & COMMITTEE MEETINGS

## June 2017

**Tuesday, June 13, 2017 • 4:00 p.m.**

**Small Firms & Solo Practitioners Section Meeting**

The Law Offices of Denise D. Nordheimer, Esquire, LLC, 2001 Baynard Boulevard, Wilmington, DE

**Wednesday, June 14, 2017 • 4:00 p.m.**

**Real & Personal Property Section Meeting**

The Kirsh Law Firm, 910 South Chapel Street, Suite 202, Newark, DE

**Thursday, June 15, 2017 • 12:00 p.m.**

**Executive Committee Meeting**

Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

**Thursday, June 15, 2017 • 4:00 p.m.**

**Elder Law Section Meeting**

Reger Rizzo & Darnall LLP, Brandywine Plaza East, Wilmington, DE

**Wednesday, June 21, 2017 • 4:00 p.m.**

**ADR Section Meeting**

Wilson Sonsini Goodrich & Rosati, 222 Delaware Avenue, Suite 800, Wilmington, DE

**Monday, June 26, 2017 • 4:00 p.m.**

**Taxation Section Meeting**

BBC Tavern and Grill, 4019 Kennett Pike, Greenville, DE

## July 2017

**Monday, July 10, 2017 • 12:30 p.m.**

**Senior Lawyers Committee Monthly Luncheon Meeting**

Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

**Wednesday, July 12, 2017 • 5:30 p.m.**

**LGBT Section Summer Reception**

Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street  
Wilmington, DE

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## TIPS ON TECHNOLOGY

By Richard K. Herrmann, Esquire

# Technology: Meeting the Expectations of the Bench

A Judge's Perspective: The Honorable Mary M. Johnston

**W**e have been discussing the impact of technology on the Bench and Bar for a number of years. It occurred to many of us on the Delaware Commission on Law & Technology that it would be helpful to share the insights and opinions of members of the Bench. After all, experience demonstrates the understanding and use of technology by the Bar is often driven by the expectations from the Bench.

The Honorable Mary M. Johnston, who was appointed to the Superior Court in 2003, served as Chief Counsel of the Delaware Supreme Court's Office of Disciplinary Counsel, prosecuting attorney discipline cases and unauthorized practice of law matters. Judge Johnston has agreed to share her thoughts with the Bar and we appreciate her willingness to take time to give us her perspective.

• • •

### **As a judge, what is it that interests you most about technology and the law?**

I am interested in the use of technology to better demonstrate actual facts in a case. For example, a properly-done accident reconstruction is very helpful to the jury and it can assist the parties in informed settlement of the case.

### **What is your perception of the trial Bar's use of technology in the Courtroom and what do you suggest that lawyers do differently?**

The biggest problem I see in the courtroom is that attorneys fail to properly test the technology in the courtroom where it will be used before it is going to be used. All too often, something goes wrong. Then, the jury and the judge are faced with an unwanted delay in trial or a hearing while the parties scramble to get the bugs out. Sometimes, attorneys are forced to forego altogether using the exhibit, which is a real waste. Counsel should contact the bailiffs to get into the courtroom

ahead of time and test the technology. If at all possible, counsel should bring a technical person into court so that they are ready to assist counsel during the hearing or the trial. The second mistake I see has to do with lawyers using PowerPoint slides during oral argument and essentially reading the slides to the court. Obviously, this is boring and ineffective.

### **If funding were available, what would you consider the best use of the funds in expanding technology in the Courtroom?**

All courtrooms should be equipped with video equipment like CourtCall or similar video technology to allow for remote appearances.

### **What is your perception of the Bar's competency in eDiscovery? Has it improved over the last five years and if so how?**

I think it is improving, but this is an area where the gap is huge between those attorneys who are experts in this area and those who are still learning.

### **Has eDiscovery become so complicated that it requires a specialty or some form of education more structured than CLE for lawyers to be considered competent?**

Yes. The technology has become so complicated, and it is clear to me that this is one area where we will have to have specialized training.

### **What are your thoughts on whether your court should have additional structured education in eDiscovery?**

All Judges and Commissioners should have additional structured education in eDiscovery.

### **What mistakes have you seen lawyers make when it comes to dealing with technology and why do you think those mistakes are made?**

Lawyers always have a hard time narrowing issues and related discovery requests. The old philosophy is to cast a broad discovery net to make sure you don't miss anything. That mindset dies hard. Out of necessity — both financial and time resources — eDiscovery must be carefully tailored. Attorneys need to take a closer look at their cases at the beginning. I have recently been advising counsel to draft (and continue to revise) a verdict sheet after the initial pleadings are filed (not to be disclosed until necessary), for the purpose of developing a discovery game plan and determining what issues will lead to the most favorable result.

**What do you see on the horizon for lawyers in terms of handling technology and discovery?**

Special discovery masters.

**How can lawyers enhance their competency in technology?**

Consult with Delaware lawyers who have developed a specialty and expertise in this area.

• • •

Our thanks to Judge Johnston for her time and her insights. ⚖️

**Richard K. Herrmann** is partner at Morris James LLP, handling many forms of complex litigation, including intellectual property, commercial, and technology. He can be reached at [rherrmann@morrisjames.com](mailto:rherrmann@morrisjames.com).

“Tips on Technology” is a service of the E-Discovery and Technology Law Section of the Delaware State Bar Association.

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# Meteorologist, Are My Clients Safe in the Cloud Today?

By Brian S. Legum, Esquire

**W**ith the abundance of mobile devices available, including smartphones, tablets, laptops, iPads, Microsoft Surface, etc., the desire to have access to a photo album of the family, a specific document, and other files across every device is a key feature. Mr. Gadge T. Lover wants to be able to work on one device and be able to pick up another, starting where he left off.

For example, I began writing this article on my iPad, using Microsoft Word, and saved the first draft. When I went to the office the next day to continue, I had left my iPad at home. While, at one time, this would have required me to turn around, today it was not a problem, as I was able to open the draft and finish it on my computer at the office. I had saved the document on OneDrive, a cloud-based storage solution provided by Microsoft. The electronic file room known as the Cloud, enabled this to happen (and saved me from turning around).

However, this article does not contain any privileged client information. If I am working on a confidential client document, can I use the “Cloud” in the same way? As an attorney, am I violating any of my ethical responsibilities to my client by using the Cloud to store information?

There is not yet a Delaware opinion on the permissibility of storing client data

in the Cloud. Nevertheless, under Rule 1.1 of our Rules of Professional Conduct, an attorney’s obligation of competent representation includes knowledge of the benefits and risks associated with the use of relevant technology.

Several states have issued opinions regarding a lawyer’s professional responsibility when storing client data on the Cloud. For example, the Illinois State Bar Association Committee on Professional Ethics issued an opinion permitting storage of client information on the Cloud as long as “the attorney uses reasonable care to make sure that client confidentiality and client information is protected.” In Tennessee, an attorney is permitted to store client confidential information on the Cloud, as long as reasonable care is taken to ensure the information remains safe and confidential.

By and large, the term “reasonable” jumps off the page when consolidating the opinions throughout the states that have discussed a lawyer’s obligation when using the Cloud to store client information. Below are some suggestions made in the opinion in order to satisfy the reasonableness standard:

## Selecting a Cloud Provider

- With technology ever changing (just like the clouds!), an attorney should look into the standards used

by the Cloud provider in keeping client information secure.

- Investigate the history and reputation of the provider.
- Check to see if provider has ever had any security issues in the past and how were these issues addressed.

## Confidentiality Agreement

- Demand a confidentiality agreement from the provider to ensure that the provider will take reasonable steps to adhere to a lawyer’s obligation of confidentiality and that any breaches will be reported immediately.
- Discuss the procedures a provider will take when receiving a third-party request for client information, ensuring that notice is given to the attorney before producing privileged information.

## Data Backup/Retrieval

- Attorneys need to ensure that the providers have procedures in place to back up the data that is stored. This data must be easily retrievable and restoreable in order to protect against data loss, data corruption (such as a virus), and inadvertent deletion.
- If a lawyer decides to no longer use the provider or the provider goes out of business, the law firm will have specific methods for obtaining its client data in a format that the firm can access.

“As an attorney, am I violating any of my ethical responsibilities to my client by using the Cloud to store information?”

## Safeguards

- A law firm should carefully review the terms of the firm's user license/agreement with the Cloud provider, especially regarding security policies when accessing client information.
- Education and training of not only the attorneys, but anyone in the firm who will be using the Cloud to ensure that firm policies are complied with, security measures are in place, and that passwords are sufficiently secured and changed regularly.

• • •

While the options a few decade ago involved 3.5" disk or magnetic tape backups and who had the key(s) to the storage room, the use of remote locations to store and manage client data is an appealing choice for law firms. It can be more cost-effective to use a Cloud storage provider than simply storing on a personal computer and/or on-site server.

There have always been risks involved in protecting client information, as confidentiality is at the core of our professional obligation to clients. Whether it is making sure a client letter is addressed correctly, placed in the proper envelope, and handed to your U.S. Postman with a delivery confirmation and signature request; or the use of the Cloud to electronically deliver client data — a lawyer's obligation remains the same — an attorney must act competently in protecting confidential client information, regardless of whether or not it is cloudy outside. ☁

**Brian S. Legum** is a bilingual associate at Kimmel, Carter, Roman, Peltz & O'Neill, P.A. focusing entirely on personal injury and workers' compensation law, especially as it relates to the Spanish-speaking community.



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By Charles Slanina, Esquire

# New ABA Opinion Reassesses Email Risks

**T**his column previously addressed the addendum to Rule 1.1 of the Delaware Professional Conduct Rules. Comment [8] to that Rule now counsels a lawyer to “keep abreast of changes in the law and practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.” Heeding that admonition, you no doubt all have some familiarity with ABA Formal Opinion 99-413 (March 10, 1999), in which the ABA Committee on Ethics and Professional Responsibility concluded that it is permissible for “a lawyer to transmit information relating to the representation of a client by unencrypted email sent over the Internet without violating the Model Rules of Professional Conduct (1998) because the mode of transmission affords a reasonable expectation of privacy from a technological and legal standpoint.” (Emphasis added). The Committee reached this opinion in part on the conclusion that internet email affords the same privacy provided by regular mail, telephone communications, and fax transmissions. However, the opinion recommended that the client be consulted about the selection of the mode of transmitting highly sensitive information relating to the representation.

Fast forward to May 11, 2017, when the same Committee issued Formal Opinion 477 to update that now eighteen-year-old advice in light of the near daily news of the latest attacks on the security of the internet. The ABA revised Opinion 99-413, stating, “[C]yber-threats and the proliferation of electronic communication devices have changed the landscape, and it is not always reasonable to rely on the use of unencrypted email...”

The revised and updated advice from the ABA cites the increased frequency of “cyber intrusion” noting that each device and each storage location offer an opportunity for the inadvertent or unauthorized disclosure of information relating to the representation, and thus implicate a lawyer’s ethical duties. The opinion falls short of an outright ban on unencrypted email. Instead, lawyers are advised to use a case-by-case analysis to determine whether the mode of communication is reasonable.

The Committee cites paragraph (c) to Rule 1.6 which requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third persons and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer’s supervision. The Comment notes that unauthorized access or inadvertent disclosure does not constitute a violation of Rule 1.6 if the lawyer has made reasonable efforts to prevent the access or disclosure.

For guidance, the opinion refers to the Comment [18] to Rule 1.6 which identifies the factors for determining what is required of attorneys to act competently to preserve client confidences. Such factors include (but are not limited to) the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer’s ability to represent clients, citing the example of making a device or communication method excessively difficult to use.

ABA Formal Opinion 477 expounds on this advice by offering seven “considerations” for lawyers to use when determining whether the use of unencrypted email is reasonable under the circumstances:

### Understanding the Nature of the Threat

The threat assessment should consider the sensitivity of the client’s information. Matters involving proprietary information such as industrial designs, mergers and acquisitions, trade secrets, healthcare, banking, defense, or education are cited as examples of being at higher risk for data theft warranting greater effort such as the use of encrypted emails to protect this information.

“As hacking, social engineering, ransomware, spoofing, and other threats to the internet increase, the definition of “reasonableness” is likely to evolve as more and more safeguards are required of attorneys to protect client confidences.”

### Reasonable Electronic Security Measures

The Committee noted that there a “a variety of options” to consider, such as the use of secure internet access like secure Wi-Fi, the use of a Virtual Private Network, or other secure internet portals in order to communicate with clients, or to access and store client information. The Committee advises that lawyers should use unique, complex passwords, and anti-malware software. In addition, lawyers are advised to consider refusing access to firm systems to devices failing to comply with those security protocols.

### Remote Activation of Device Access Denial

To the extent that lawyers or firms use portable devices such as cell phones, laptops, etc., programs and software should be employed to enable the lawyer to disable those devices remotely if they are lost or stolen to prevent access to the data stored on the devices.

### Talk to the Client

The Committee recommended that at the outset of the representation, lawyers should discuss security methods to be employed in the electronic communication about client matters. “A lawyer also should be cautious in communicating with a client if the client uses computers or other devices subject to the access or control of a third party.” The Committee warned, for example, that attorney-client privilege and confidentiality can be lost if the lawyer communicates with a client where the client is using a device or system owned or controlled by the client’s employer.

### Mark It as Privileged

The Committee recommended that lawyers use disclaimers that the communication is “privileged and confidential.”

Doing so may invoke the application of Rule 4.4(b) which, in Delaware, requires an inadvertent recipient to notify the lawyer of the inadvertent receipt of the communication but does not prohibit the use of the information.

### Training Employees and Vetting Vendors

The opinion stresses the need to periodically train employees, subordinates and others in the use of reasonably secure methods of electronic communication with clients, citing Rules 5.1 and 5.3 governing the supervisory obligation of lawyers. The Committee also noted that those supervisory obligations also apply to third-party vendors employed by lawyers for outsourcing legal and non-legal services, citing the application of ABA Formal Ethics Op. 08-451 (July 9, 2008). Finally, the opinion recommended due diligence on the part of the attorney in selecting an outside vendor and then subsequently supervising the vendor’s performance of the outsourced duties. It is recommended that a lawyer outsourcing services should conduct reference checks, investigate the background of the service providers, and interview the service providers. Depending on the sensitivity of the information being provided to the service provider, it is also recommended that the lawyer investigate the security of the provider’s premises, computer network, and even its recycling and refuse disposal procedures.

As hacking, social engineering, ransomware, spoofing, and other threats to the internet increase, the definition of “reasonableness” is likely to evolve as more and more safeguards are required of attorneys to protect client confidences. For now, there is a sliding scale for due diligence based on the sensitivity of the information at risk. While unencrypted

email may still be acceptable for routine attorney-client communications (and data storage), more secure methods are required as risk and value increase.

### Moral of this Story

Pay attention to the news, bulletins from your malpractice carrier, your IT department, and this column. Take advantage of the frequent technology CLE’s being offered. Learn the latest threats and be ready for the next ones to protect your practice and clients.

*“Ethically Speaking” is intended to stimulate awareness of ethical issues. It is not intended as legal advice nor does it necessarily represent the opinion of the Delaware State Bar Association.*

*“Ethically Speaking” is available online. The columns from the past three years are available on [www.dsba.org](http://www.dsba.org).*

**Charles Slanina** is a partner in the firm of Finger & Slanina, LLC. His practice areas include disciplinary defense and consultations on professional responsibility issues. Additional information about the author is available at [www.delawgroup.com](http://www.delawgroup.com).

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By Susan Simmons

# My Advice for Doing Pro Bono Work: Find Your Niche

By The Honorable Karen L. Valihura, Justice, Delaware Supreme Court

*Columnist's Note: "The Access to Justice Spotlight" is proud to have as our guest writer this month The Honorable Karen L. Valihura, Justice, Delaware Supreme Court. Her Honor has a special perspective on Access to Justice and your pro bono aspirational goals.*

• • •

For those attending our session at this year's Bench and Bar Conference, "Beyond the Courthouse — The Lawyer as a Citizen in Service to the Community," you will hear some startling statistics about the unmet needs for legal services for the poor in Delaware. Our Access to Justice committees report that our Delaware legal aid organizations have the resources to serve the civil legal needs of only one-eighth of Delaware's low-income population. The bottom line is that we have a huge "justice gap" in our First State.

At a recent American Law Institute conference, Justice Sonia Sotomayor suggested that attorneys ought to be *required* to do *pro bono* work.<sup>1</sup> We have never had a mandatory requirement in Delaware, and my view (not speaking for the Court) is that we can achieve our goals without compulsion. I have always believed that the best way to motivate people is to inspire them.

We can all help address our "justice gap." I believe the best way is for each of us to ask ourselves what we are passionate about, and to find a way to use that energy to help close this gap. I thought I would share my own experience as an illustration. I will have to give you a very truncated version.

When I was three, my younger brother Ken was born with severe brain damage, cerebral palsy, and autism. The nature

1. One report quoted Justice Sotomayor as stating, "I believe in forced labor" and "[i]f I had my way, I would make *pro bono* service a requirement." Tony Mauro, *Sotomayor Urges Mandatory Pro Bono for All Lawyers*, NAT'L L. J. (May 17, 2016), <http://www.nationallawjournal.com/id=1202757812765/Sotomayor-Urges-Mandatory-Pro-Bono-for-All-Lawyers?slreturn=20170418095100>. In New York, applicants for admission to the bar are required to perform fifty hours of *pro bono* services prior to filing their applications for admission. See *Pro Bono Bar Admission Requirements*, NYCOURTS.GOV (Nov. 6, 2015), <http://www.nycourts.gov/ATTORNEYS/probono/baradmissionreqs.shtml>. Admitted attorneys are encouraged, but not required, to perform fifty hours of *pro bono* service per year. See *Pro Bono Reporting Requirements – Attorney Registration*, NYCOURTS.GOV (Dec. 1, 2016), <http://www.nycourts.gov/attorneys/probono/reportingreqs-intro.shtml>.

and extent of his disabilities were not immediately apparent. He was a beautiful baby with a bright smile. But, as the months went on, he did not develop any muscular coordination, and he showed limited cognitive development. He could not crawl. In fact, he was incapable of doing the things a baby, and then a toddler, should be doing. He did not speak, and never has spoken a word, and his IQ has remained that of a toddler. The doctors advised my parents that he should be "institutionalized" because he would always be a "vegetable" and that they should "go on with their lives." Even though I was a small child, I still remember the shock and pain that my parents experienced hearing that news.

*“Despite the trials we have faced as a family during our life’s journey, I cannot recall a single instance in which any of us ever regretted the decision to reject that shocking and heartbreaking initial advice.”*

Although many around them advised them to heed the doctor's advice, my parents rejected it. My mother had read about a revolutionary program developed by two researching pioneers in Philadelphia, Glenn Doman and Carl Delacato, for severely brain damaged infants.<sup>2</sup> After studying their work, she organized and implemented the Doman/Delacato in-home physical therapy program with the help of women from the neighborhood. It involved teams of three or four people, several hours a day, every day (with never a day missed) for over two years. Ken was laid on the kitchen table and three people would move

2. The Institutes for the Achievement of Human Potential was founded in 1955 by pioneers Glenn Doman and Carl Delacato. It provides instruction on patterning therapy. Glenn Doman's book, *What To Do About Your Brain-Injured Child*, influenced many families — including mine.

his head, arms, and legs in a coordinated fashion. Over time, he developed strength and coordination, and he learned to crawl and then walk. He celebrates his 51st birthday on June 20 this month and, although his brain damage at birth was permanent, has enjoyed a happy life — the first 21 years at home and, following that, in a terrific group home with 5 other severely disabled men. He enjoys walks with my mother, stepfather, and me (my father and older brother are deceased), and he enjoys music and good food.

Despite the trials we have faced as a family during our life's journey, I cannot recall a single instance in which any of us ever regretted the decision to reject that shocking and heartbreaking initial advice. Ken has been my source of inspiration. My life's experiences with him have kept me tethered to what is truly real and important in life. I believe the trials in those early years strengthened me for even more difficult assignments later on.

Ken inspired me to volunteer as a teenager in special education classes where my mother worked for decades in Pennsylvania. As a young associate at Skadden Arps, I got involved with Special Olympics of Delaware and served on that Board for about 18 years, including as its President and Chair. I worked with Dan Atkins of Community Legal Aid on several cases involving disabled Delawareans. I served as Skadden's *pro bono* coordinator for many years. Now, as a Justice, I am honored to serve on the Access to Justice Commission and as Liaison to the Delaware Bar Foundation.

None of that has ever seemed like a chore. I have been inspired by a person who has never been able to speak. In a way, I have always tried to be his voice and a voice for others who have none — and I am utterly humbled for that opportunity and privilege. 🌍

**The Honorable Karen Valihura** was sworn in as a Justice of the Supreme Court of Delaware in 2014. Prior to that, she was a partner at Skadden, Arps, Slate, Meagher & Flom, LLP, where she practiced law from 1989 until her appointment to the Court.

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## DE-LAP ZONE

A Message from the Delaware Lawyers Assistance Program

By Carol P. Waldhauser, Executive Director

# Mindfulness Out of the Box

**R**ealistically, we know that life has its ups and downs. In fact, life experiences, as well as life events can be, and often are, life-altering. No matter what age, to find new tools to deal with the stressors of life and stay grounded we often need to look outside the box. This month, “DE-LAP Zone” welcomes insights from Richard P. Beck, Esquire.

Dick’s practice in commercial real estate transactions and land use litigation over the past 45 years is no secret. But, until recently he has not been open about his 60 years of experience with transformational and contemplative practices. “When I came to the Delaware Bar in the late 1960s,” said Dick, “sharing one’s innermost questions with other lawyers, judges, or clients seemed unwise. Traditional church or synagogue attendance was certainly acceptable and reassuring; but other interests ranging from Christian Gnosticism, Hinduism, and Zen Buddhism to Sufism, Taoism, and Toltec Shamanism were associated in popular thinking at that time with beatniks, hippies, and drug users.”

Over the years, attitudes have evolved. Dick reported that, “In Florida, California, Massachusetts, and other areas along the western and eastern seaboard, ‘mindfulness’ and ‘meditation’ have been embraced by groups of attorneys, and are becoming part of law school curricula.” In the Fall of 2015, when Dick was among over 750 people who attended the Mindful Leadership Summit held in the District of Columbia, he found that,



“Executives from major corporations, elected officials of local governments, educators, and personal counselors are recognizing and embracing the benefits of yoga, mindfulness, and mediation.” This led him to wonder if it is now possible for attorneys to be more open in their exploration of the source traditions from which these transformational and contemplative practices are derived.

Expanding on his interview, Dick has written the following.

• • •

Attorneys must be solid, reliable, well-grounded — and need to be seen and thought of as such by their clients, judges, and other attorneys. As a corollary of reliability, attorneys are expected to have

answers. Our culture prizes answers: the success of education is gauged by the number of “right answers” students are able to give when tested. Correct answers are ultimately what attorneys and judges are paid to provide.

So, as an attorney or judge, how do you deal with your innermost questions? Not the questions that skitter across the surface tension of life, about which there is always “conversation” in abundance; but deep, unsettling questions regarding yourself, humanity, the universe, existence, for which you have yet to find a satisfying response. If you are not content with the answers provided by your religious or cultural background, family, and friends, which seem adequate or even obvious to everyone else, where

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can you as a Delaware attorney, without jeopardizing your reputation, find and engage with other people who experience a similar kind of inner questioning and search for deeper understanding?

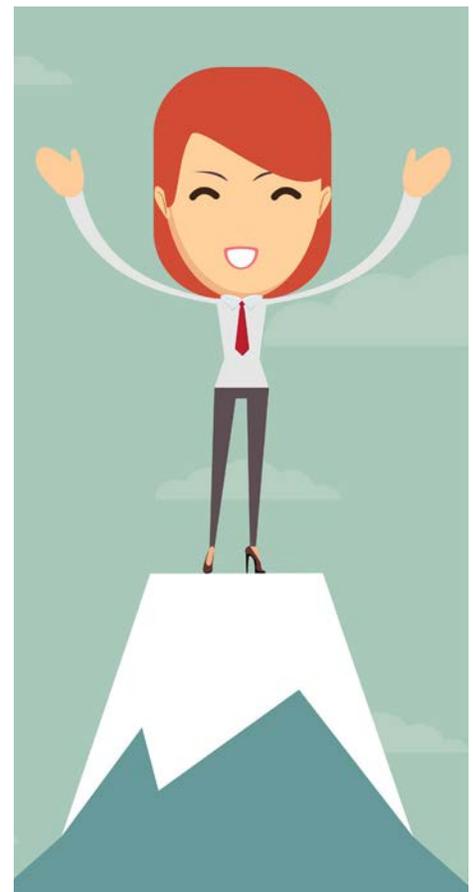
Bolstered by scientific studies of the brain and measurable physiological responses to meditation, mindfulness, and yoga, the benefits of these techniques are no longer regarded by the business world as “outside the box” of conventional thinking. On the contrary, they are increasingly recommended for stress relief, productivity, and wellness. Practicing yoga, meditation, and mindfulness to deal with stress, increase productivity, and enhance wellness can be immensely useful. But, that is not the same as delving into the spiritual and philosophical traditions from which these and other potentially transformative practices are derived.

Perhaps the time is right to offer a forum where Delaware lawyers can exchange questions, compare experiences and explore ideas with other attorneys

who are similarly inclined. The purpose of such a forum will not be to focus on, or advocate, any particular spiritual, philosophical, religious, secular, or political (most assuredly not political) point of view. To gauge whether there is sufficient interest, DE-LAP and the DSBA are sponsoring an informal BYOB (Buy Your Own Breakfast) as a first step towards establishing a monthly, free workshop on Contemplative Practices.

The first such breakfast is scheduled for Tuesday, June 27, at 7:30 a.m. at the Panera Bread restaurant at 5601 Concord Pike, Wilmington, DE. While advance reservations are not required, please contact DE-LAP at [www.de-lap.org](http://www.de-lap.org) or call (302) 777-0124 if you plan to attend, so that we can be sure of adequate seating and can inform you in the event of any last minute changes. ⚖️

**Carol P. Waldhauser** is the Executive Director of the Delaware Lawyers Assistance Program and can be reached at [cwaldhauser@de-lap.org](mailto:cwaldhauser@de-lap.org).



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By Alison W. Macindoe

## A Backward Glance

Guest Columnist: Denise D. Nordheimer, Esquire

**D**uring the past two years, I have had the great job of serving as the Chair of the DSBA's Small Firms and Solo Practitioners Section. Although I am looking forward to being a regular member next year, I can say that I have thoroughly enjoyed watching the Section grow, not just in numbers, but in friendship. The Small Firms and Solo Practitioners Section is potentially the most powerful networking group a Delaware-barred attorney can belong to, and many of our members understand that. When we meet, we typically discuss the challenges of owning our own small businesses, but a big benefit is that we also seek referrals for our clients among our Section members. My understanding is that now in bigger firms, more senior attorneys are essentially running their own "firm within a firm" and that makes the information and referrals we are exchanging valuable to even more members of the DSBA than would typically fly under the flag of "Small Firm or Solo." We all need referrals.

*"The Small Firms and Solos Section is potentially the most powerful networking group a Delaware barred attorney can belong to, and many of our members understand that."*

In addition to meeting and socializing with one another (lunch has been a big draw), we have been inviting professionals to each meeting who can potentially help us run our businesses better. Whether the topic is computer networks, human resources, commercial real estate, disability insurance, or how to collect old receivables, we are having discussions and answering questions that can make a difference to our members in a very practical way. The response from both the members and the guests has been overwhelmingly positive.

I was also fortunate enough to become Chair at a time when the DSBA (with encouragement from the Supreme Court) decided to focus more resources toward helping members who were Solos or Small Firms. Toward that end, the DSBA created a position for a Law Office Management Assistance Program (LOMAP) person, who would work on developing materials and programs for members who were thinking about hanging out their own shingle, or had already done so, but could use some help. This past year, we had the good fortune of having Alison Macindoe serving in that role. Alison's knowledge of the DSBA membership from years of running our CLEs, along with her willingness to seek out answers for any and all member questions, became a tremendous support system for our Section. We wish Alison a long and happy retirement after this year and look forward to working with LaTonya Tucker, as she becomes the Section's main point of contact at the DSBA for the upcoming year.

For the past two years we have had our annual CLE at the Atlantic Sands in Rehoboth, and both years I extended the trip so that I could take advantage of the rare opportunity for business travel that is the unicorn of the small firm estate planning attorney. During these trips, I have learned so much and had so much fun that I cannot accurately describe it. The DSBA acted as the "laboring oar" with most of the meeting, so I had the great job of showing up and getting to meet and learn with our members all day long. It is my sincere wish that we continue our (now) tradition of a great after-party on these occasions. They have been a lot of fun and they give members a much-needed opportunity for getting to know one another in a social setting. The goodwill these parties have generated has always run higher than the bar bill.

I would just like to close by saying "thank you" to our members and the staff at the DSBA. The time I have spent serving the Section has not only been enjoyable, but a tremendous growth experience for me personally. I look forward to seeing how the Section evolves over time and take away with me many new friendships as precious mementos of my time spent as Chair. 🍷

**Denise D. Nordheimer** practices estate administration, estate planning, adult guardianships, and fiduciary litigation at Nordheimer Law and can be reached at [denise@nordheimerlaw.com](mailto:denise@nordheimerlaw.com).



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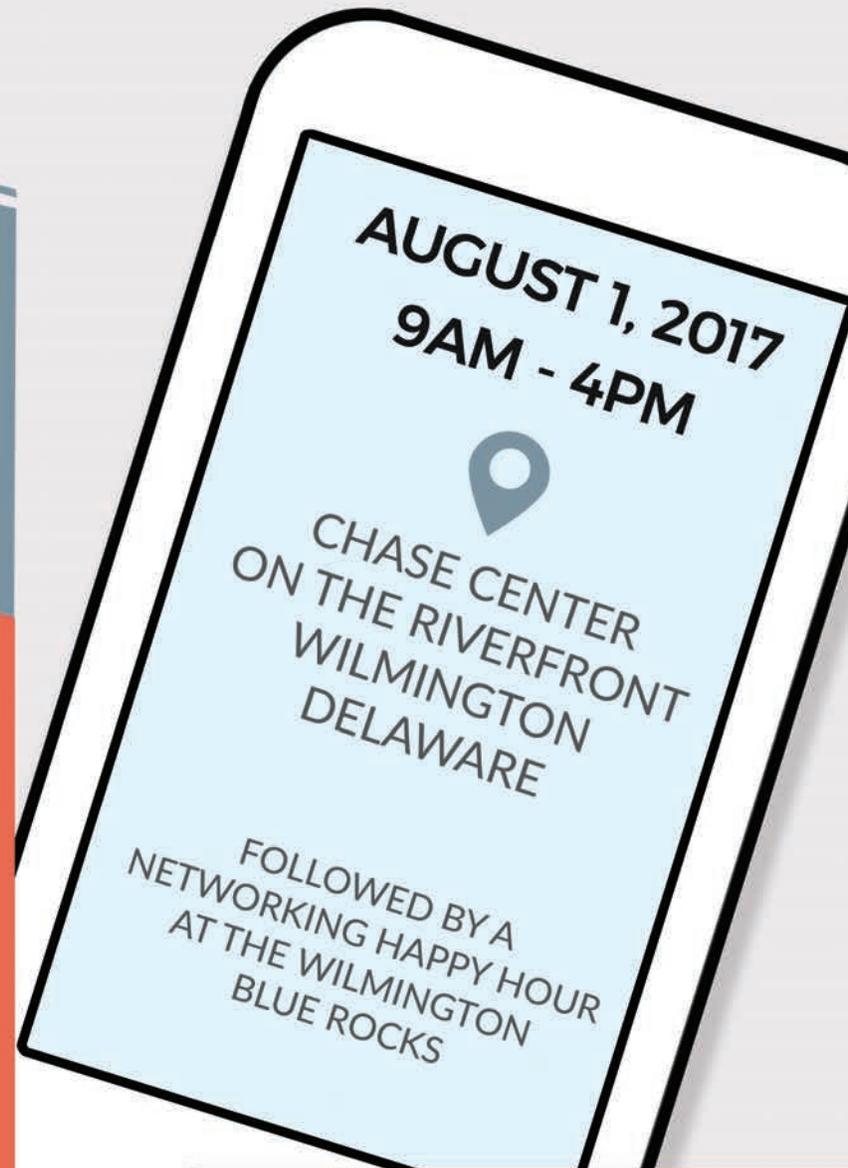
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## BOOK REVIEW

Reviewed by Richard A. Forsten, Esquire

# You Must Remember This

## *We'll Always Have Casablanca: The Life, Legend, and Afterlife of Hollywood's Most Beloved Movie*

By Noah Isenberg (W.W. Norton & Co., 2017)

*Reviewer's note: If you have never seen Casablanca, shame on you and please go out, rent it, and watch it immediately. You'll be glad you did.*

. . .

Of all the books reviews, over all the years, in all the *Bar Journals*, the books about movies always generate the most responses. Nearly everybody has a favorite movie, and asking someone to name their favorite movie is a great conversation starter. It is also a great interview question (you can often learn a lot about a person from their favorite movie).

Now, strictly speaking, of course, there is no right or wrong answer. Everyone is entitled to their own favorite movie and their reasons why. But, as people who know me already know, I would submit that there is one movie which is better than all the rest: *Casablanca*.

Released in 1942, and the winner of three Oscars (best picture, best director, and best screenplay), *Casablanca* was a timely movie when it was released, but has become a timeless classic since. In *We'll Always Have Casablanca: The Life, Legend, and Afterlife of Hollywood's Most Beloved Movie*, Professor Noah Isenberg tells the story of how the script of an

unproduced play called *Everybody Goes To Rick's* became one of the greatest movies of all time.

The story of how *Casablanca* would become one of the most beloved films of all time is one of those stories that "could only happen in the movies," but happened in real life. At the time, though, no one involved would have guessed what *Casablanca* would become. It was one of those rare, serendipitous moments where everything came together exactly right and could never be recreated no matter how hard some have tried.

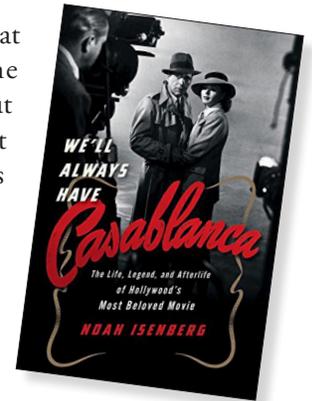
The movie started with an unproduced play written in 1940. Murray Burnett, one of the original two playwrights and a high school English teacher in Manhattan, had been inspired during a 1938 trip to Europe. After seeing up close the effects of the Nuremberg Laws (the German anti-Semitic laws) in Austria, he and his wife were in a smoke-filled café in the south of France full of various characters speaking a multitude of languages, with an African-American pianist providing music for the patrons. Burnett purportedly turned to his wife and said, "what a setting for a play" — and the idea for what would become *Casablanca* was born.

Two years later, Burnett and his writing partner finished the play *Everybody Goes To Rick's*. It had many of

the elements that would become *Casablanca*, but it was different in several ways as well (for example, the character Ilsa Lund was a more-worldly American, Lois Meredith).

The play was marketed to Broadway and Hollywood, and was eventually bought by Warner Brothers — and this is where an unproduced play, through an incredible amount of collaboration and luck, became an iconic movie.

The first bit of luck was the script process itself. Brothers Julius and Philip Epstein wrote the first draft of the screenplay and were involved throughout, constantly tweaking the dialogue. They were known for their sophisticated, light comedic touch, and much of the dialogue they wrote has this flavor. Howard Koch (who would share the best screenplay Oscar with the Epsteins) took a more serious approach, such as bulking up Rick's heroic credentials (for example, adding references to Rick's gun-running in Ethiopia and anti-Fascist involvement in Spain). Other screenwriters contributed to the process as well, and it is this combination of ap-



proaches that gives *Casablanca* much of its staying power. The cast and director are said to also have contributed, with Humphrey Bogart purportedly providing two of Rick's more famous lines ("Here's looking at you, kid," and "Of all the gin joints in all the towns in all the world, she had to walk into mine"), and director Hal Wallis providing the movie's memorable closing line (which, for those of you who have not seen the movie, I will not repeat here — go and watch the movie).

There is more than just a good script to *Casablanca's* success. The actors are all pitch perfect. Rick Blaine is Humphrey Bogart's most famous role, and, contrary to popular legend, neither Ronald Reagan nor George Raft was seriously considered for the part. Ingrid Bergman was under contract to David O. Selznick (the legendary producer of *Gone With The Wind*), who had to be persuaded to allow Bergman to appear in the film. Because the script was constantly being tweaked and revised, even as shooting was ongoing, Bergman was not sure who her character would end up with, and when she sought

direction on this from the director was told "we don't know yet — just play it . . . in between." Hindsight being 20/20, Bergman's uncertainty no doubt contributed to her performance and made it better.

But, Bogart and Bergman are not the only great cast members. Each member of the cast, including Claude Rains, Sydney Greenstreet, Peter Lorre, Dooley Wilson, is excellent, and *Casablanca* would not be *Casablanca* without them. Interestingly, many of the smaller character roles went to refugees from Europe, and *Casablanca* is in many respects a case of art imitating life.

When *Casablanca* was released, Warner Brothers knew it had a good movie, but no one could have predicted its success. Warner Brothers made a lot of movies in 1942, and, to a certain extent, *Casablanca* was just one more — made using the old studio system with actors and actresses under contract to a studio, paid weekly, and told what movie(s) they would be appearing in. It was something of an assembly line process that, in this instance, produced a classic. *Casablanca*

would win the Academy Award for Best Picture and go on to a revered status among films. It was the most shown movie on television in the 1970s, and is ranked as the third greatest film by the American Film Institute (behind *Citizen Kane* and *The Godfather*). *Casablanca* endures today, 75 years after its release, because something magical came together at the Warner Brothers' film lot in 1942 — a great story, great acting, great execution and, perhaps, most importantly, a great message.

In *We'll Always Have Casablanca*, Noah Isenberg has told a story of old Hollywood, and how everything came together to make a truly great film. For fans of *Casablanca*, or movies in general, it is a fascinating behind the scenes look at the creative process and a bygone era. Now, go watch *Casablanca* (again). 🎬

**Richard "Shark" Forsten** is a Partner with Saul Ewing LLP, where he practices in the areas of commercial real estate, land use, business transactions, and related litigation. He can be reached at [rforsten@saul.com](mailto:rforsten@saul.com).

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1. DSBA President Miranda D. Clifton, Esquire, welcoming guests to the 2017 Law Day Luncheon.

2. Keynote Speaker, The Honorable Collins J. Seitz, Jr., Justice, Supreme Court of Delaware, addressing the luncheon attendees.



3. Community Service Award recipient Kathleen Furey McDonough, Esquire, of Potter Anderson & Corroon LLP with presenter Fred C. Sears II.

4. Liberty Bell Award recipient Carol P. Waldhauser, Executive Director, The Delaware Lawyers Assistance Program (DE-LAP) with presenter Rina Marks.

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Please let us know if there have been any changes in your place of business, address, telephone number, fax number, or email address. Please send changes for the 2018 Legal Directory to Janice Myrick at [jmyrick@dsba.org](mailto:jmyrick@dsba.org). Please send photographs for the 2018 Legal Directory to Rebecca Baird at [rbaird@dsba.org](mailto:rbaird@dsba.org).

In order to have the correct information published in the 2018 Delaware Legal Directory, corrections must be received no later than September 15, 2017 – no exceptions!

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**DEADLINE FOR LEGAL DIRECTORY CORRECTIONS AND PHOTOGRAPHS: SEPTEMBER 15, 2017**

By Daniel M. Kristol, Esquire

## Lowering Standards Will Harm Potential Law Students

**A**s a senior lawyer observing the evolution of the Delaware Bar, I note that lawyers taking the Delaware Bar exam typically have a passage rate of about 66%. Many states have worse pass rates.

Shocking to me were the July 2016 statistics for California with a 56% pass rate for those taking the Bar exam for the first time, 43% for all exam takers and about 52% combined Bar passage rate for graduates of ABA-approved law schools, according to the published "General Statistics Report."

Nevertheless, pass rates for graduates of a law school in order for the school to maintain accreditation appears to be 75% as a general rule under ABA Standard 316.

Failure of a law school to comply with ABA standards could lead to sanctions, such as public or private censure, monetary payment, a possible required refund to students, withdrawal of approval, or similar impositions.

However, the number of applicants to law schools appears to be dropping, as well as the overall ability of those applying to law school based on their LSAT exam scores.

ABA Standard 501(b) prohibits a law school from admitting applicants "who do not appear capable of satisfactorily completing its program of legal education and being admitted to the Bar."

Apparently law schools with low LSAT profiles tend to have low bar passage rates by their graduates. Their students often incur extensive student loan debt that will likely be difficult to discharge, a lifetime burden. A recent ABA article listed 10 law schools whose students in 2015 were still unemployed 10 months after their 2014 law school graduation, ranging from over 30% for the worst employment success and over 22% for the tenth worst.

No statistics were provided for how many were burdened with student loan debt. However, according to the *U.S. News & World Report*, of 2016 graduates at Widener University Delaware Law School, 89% had student loan debt averag-

ing \$135,151; 75% of Temple University law students had debt averaging \$86,937, and Villanova Law School had 71% of their graduates carrying an average of \$99,736 in debt.

Law schools have seats to fill and I fear they may be reaching lower and lower on the proficiency scale to fill them.

As a senior lawyer observing these trends I fear that many college graduates are convincing themselves that law is the career for them. They then incur substantial debt to pursue their dream without being properly advised that they may be creating an intolerable burden that they may likely bear the rest of their lives.

Lacking the necessary skills to be successful as a lawyer may financially doom those carrying substantial student loan debt because of the difficulty they will have in generating the income necessary to bear that debt burden, as well as the burden of normal living expenses.

Lowering standards to increase Bar pass rates or to increase apparent aptitude for law school would ultimately be akin to fraud on the law student as well as fraud on the public. Further, law is a rule-laden profession and its practitioners are often engaged by others to interpret and apply rules on their behalf. Having the ability to understand and comply with rules appears to me to be fundamental to the profession.

Further, I was thinking in the transactional law context how inappropriate use of pronouns instead of defined terms, spelling errors, and inadvertent omissions often lead to conflict between the contracting parties, or often will result in failure of a recorded document to be indexed properly in the public records (possibly lost forever?).

Therefore, from a senior lawyer perspective, I am troubled when sex, national origin, or race plays any part in determining who is likely to master the law school curriculum and meet the pass standards of the state Bar. To lower such standards is to encourage many to incur substantial student debt that will be a lifetime burden. 🗣️

# Henry N. Herndon, Jr., Esquire

1930 - 2017

By P. Clarkson Collins, Jr., Esquire, and Edward M. McNally, Esquire



Our mentor and long-time partner, Henry N. Herndon, Jr., died on April 5, 2017. Henry was a past President of the Delaware State Bar Association, a Fellow of the American Bar Foundation, the American College of Trust and Estate Counsel and the American College of Trial Lawyers. He had a varied, successful career as a Delaware lawyer and his many accomplishments were recognized by the DSBA's First State Distinguished Service Award in 1993 and the DSBA's Daniel L. Herrmann Professional Conduct Award in 1999.

Henry was born in San Antonio, Texas. His father, Henry N. Herndon, Sr. was an Episcopal priest. Henry literally rode horses to school in his early years. Eventually, Rev. Herndon moved his family to Wilmington, Delaware, where he was the minister at Calvary Church. Rev. Herndon was himself an outstanding person. Appointed to head the Delaware Commission on Human Rights to end segregation in the 1950s, one downstate legislator called Rev. Herndon "the most dangerous man in Delaware" because of his strong advocacy for equal rights. By the way, Rev. Herndon was about 5'2" tall and 120 pounds. Henry had his father's spunk.

After moving to Delaware, Henry graduated from St. Andrew's School in Middletown. He would one day become Chair of St. Andrew's School Board of Trustees. After his graduation, Henry chose to attend the University of Mississippi, even though he had been admitted to Princeton University. Henry justified that choice by saying he thought going to Princeton was possible because of his Father's connections and Henry wanted to be his own man. He never lost that desire.

After graduating from Ole Miss in 1952, Henry spent a few years in the United States Navy to fulfill his Navy ROTC obligation. He then attended Columbia Law School in New York City, where he met his future wife, Lin. They were married in All Saints Chapel of Trinity Church on Wall Street. After graduating from Columbia in 1958, Henry and Lin moved back to Delaware. Lin and Henry eventually had two children, Dr. Brooke Herndon (a physician at Dartmouth Medical School) and Matt Herndon, a lawyer in Boston. Henry adored the grandchildren Brooke and Matt gave him.

Henry began and ended his legal career at Morris James LLP, where he retired in 2002 and moved to New Hampshire to be closer to his children. Among many other accomplishments besides being President of the DSBA and serving the Bar in other capacities, for fifteen years Henry served on what was then the "Censor Committee" of the Supreme Court of Delaware, now known as the Board of Professional Responsibility. He was Chairman from 1978-1980. That was hard duty, for the Bar was then very small and taking other Delaware lawyers to task meant having to deal with your acquaintances. The job did not come with any pay. On at least one occasion, Henry had to secure the disbarment of a prominent Delaware lawyer for serious misconduct. But, consistent with his character, Henry then helped that former lawyer succeed in a new job.

Henry also did criminal defense work in the 1960s before there was an established public defender system. Delaware lawyers were then appointed to act as defense counsel in serious cases. In one case, Henry defended a man facing a possible death penalty and argued that man's appeal all the way to the United States Supreme Court. *See Jenkins v. Delaware*, 395 U.S. 213 (1969). Again, all of that was done without monetary compensation.

For the most part, however, Henry's practice focused on civil litigation. He had many significant cases, such as representing the Howard Hughes Medical Institute in its litigation over Howard Hughes' estate. He appeared in literally hundreds of cases in his over 40 year career as a Delaware lawyer.

Perhaps the highlight of Henry's career was his representation of the New Castle County School District in the late 1970s. That School District was created to combine all the existing non-vocational schools as part of their desegregation in the *Evans v. Buchanan* litigation. Henry faced the difficult task of working with the Plaintiffs' national civil rights counsel who wanted everything done tomorrow, while also dealing with the multiple counsel for the many school district defendants who wanted tomorrow to never come. Henry's role as counsel was of necessity performed in public and not necessarily always understood or appreciated. But, like Rev. Herndon, Henry never backed away from what he saw as his duty. For example, it was Henry Herndon who was largely responsible for keeping a high school in Wilmington when all

the suburban defendant school districts wanted to close down the Wilmington schools. Henry often had few supporters in or outside of court on those sensitive issues.

Henry was also active in serving our community. He served on the vestry of Immanuel Church in New Castle for years and was a Trustee of the Common in New Castle, besides his service to St. Andrew's.

Finally, Henry was our mentor. He was not always easy to work for and did not hesitate to let us know when he thought we had not done our best. But, he also gave us the responsibility he thought we could handle, even letting associates argue appeals in the Delaware Supreme Court. That all made us better lawyers.

Of course, the world was much different when we were growing up as Henry's apprentices. Every year he and Lin would disappear to their home on Martha's Vineyard for three weeks in August where they did not have a telephone. We cannot imagine doing that today. But, remember what he did in helping a defendant facing the death penalty, aiding his fellow Delaware lawyers to practice ethically, representing major businesses in billion-dollar litigation, and helping children get their right to an equal education. We all should have such a career. Thanks, Henry! ⚖️

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# Michael L. Sensor, Esquire

1970 - 2017

By James T. Perry, Esquire



I first met Mike in 1996 through John Thomas, a mutual friend. My partner, Jules Kommisaroff, had retired approximately two years earlier, and it was time to get some much needed help. As a sole practitioner, I approached hiring with trepidation.

We met in Wilmington before he graduated from law school. Following that meeting I received an unsolicited call from one of his professors. He commented that he “didn’t make calls like this” but that Mike was brilliant, loved the law, and I would be missing a real opportunity if I did not hire him. Shortly after that conversation, Mike was hired as an associate. He later became a partner. We worked together closely, learned from each other and complemented our respective strengths. He expanded the scope of the practice and became someone I could trust to represent the firm. He was a tremendous asset and I was proud to put him on the masthead.

Mike had a brilliant intellect and a genuine love and respect for the law. He approached his craft with enthusiasm and great energy. He was always willing to undertake new and challenging cases, seeing them as an opportunity to grow. He was particularly interested in unsettled areas of the law, and is directly responsible for a significant amount of the case law clarifying coverage and subrogation issues involving the Delaware Insurance Guaranty Association. Mike embraced the challenges of litigation fearlessly, yet in a quiet and deliberative way. Whether representing a plaintiff or defendant, he looked for opportunities to make good Delaware law.

He was a mentor to the clerks and associates in the office and maintained many of those relationships after they went on to the next phase of their lives. He had a wonderful temperament. I never saw him angry. He understood that there was no inconsistency in being an aggressive litigator and also a gentleman. At a time when the Courts and Bar are recommending courses in professionalism and civility, Mike needed no instruction. He met collaborators and opponents with equal and genuine kindness.

Mike accepted appointments from Delaware Volunteer Legal Services and assignments from the Court of Chancery in contested guardianships. He was an editor and collaborator on various *Bar Journal* initiatives, and worked closely with the Delaware State Bar Association and Delaware Trial Lawyers

Association. He enjoyed the affection and respect of his colleagues. He was admired for his intellect and uncanny memory of case law. He had tremendous writing skills and was generally regarded as a “wordsmith.” He always made time for anyone who needed to discuss a pressing issue.

One morning, I walked into his office and asked if we could discuss a case I was embroiled in. He generously agreed. About ten minutes into the discussion he told me, almost apologetically, that he had a Supreme Court argument and had to leave for Dover. He asked if we could continue the discussion that afternoon. He was unflappable.

But, who was this brilliant person of such varied and eclectic interests? While he eludes definition, I think Mike was a Renaissance man. He began his college studies in meteorology and graduated with a major in German. He had great interest in Russian folk music and sat on the Board of the Eastern European Folklife Center. He played a variety of musical instruments, but had a particular affection for the balalaika, a musical instrument used in playing Balkan folk music. Mike had a keen interest in history, especially the Civil War. He visited Civil War battlegrounds including Gettysburg and Valley Forge, and others in the South. He loved trains and traveled throughout the United States and Europe by rail. He volunteered with the Wilmington and Western Railroad on weekends and was frequently a conductor. He enjoyed travel and had a special affection for Iceland and the Republic of Georgia.

Mike was a voracious reader and enjoyed writing short stories and an occasional poem. He was a foodie, enjoying ethnic dishes from all over the world. He was always willing to recommend a favorite restaurant for whatever ethnic interest one might have.

Despite all of these interests, his primary focus was family. Mike was a son of Erie, Pennsylvania. His parents, Bob and Linda and brothers Chad and Joe, were the fountainhead of the values and strength of character he brought and shared with us in Delaware. Mike loved his family more than anything. His wife Patricia and daughters, Keti and Clara, were the loves of his life. He could not discuss his “girls” without that broad gentle smile we all came to recognize.

With all this said, Mike’s clearest character trait was his generosity of spirit. He was one of the “good guys” who left us far too soon. I join the chorus of those who are grateful to have known him. Mike, we will miss you. 🕊

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# Nominations Sought for the Delaware State Bar Association's 2017 Christopher W. White Distinguished Access to Justice Awards

The DSBA and the Awards Committee are seeking nominations for the 2017 Distinguished Access to Justice Awards formerly known as the Distinguished *Pro Bono* Service Awards. The change in name is based on a desire to be more inclusive in designating those deserving of recognition. The awardees will be announced during Celebrate *Pro Bono* Week.

**The Christopher W. White Distinguished Access to Justice Awards Ceremony**  
Thursday, October 26, 2017, Chase Center on the Riverfront

**There are five categories for which individuals, firms, or organizations can be nominated.**

## The Leadership Award

This award is presented to a legal organization (legal department or law office) that has demonstrated outstanding leadership in the field of *pro bono* service to Delaware's indigent population based on the following criterion:

- The number of *pro bono* hours the organization contributes to the direct representation of indigent clients.
- The number of cases the organization accepts for *pro bono* representation.
- Flexibility and accessibility in accepting cases.
- The organization's commitment and service on committees dedicated to promoting and supporting the provision of legal services to those in need.
- Financial support to agencies providing legal services to Delaware's indigent population.
- The percentage of attorneys in the organization who accept *pro bono* cases.
- Fostering a culture, which recognizes the value of *pro bono* service.

## The Commitment Award

This award is presented to a member of the Bar who has demonstrated a sterling commitment to *pro bono* work throughout his or her career by dedicating time and energy to the support and provision of legal services. The criterion includes, but is not limited to:

- The number of *pro bono* hours devoted to legal representation of indigent clients over the lawyer's career.
- The number of cases accepted for *pro bono* representation over the lawyer's career.
- The lawyer's commitment and service on committees dedicated to promoting and supporting the provision of legal services to those in need over the lawyer's career.

## The Achievement Award

This award is presented to a member of the Bar who has shown an exemplary recent contribution to *pro bono* services (generally in the past one to three years) and stands as a role model to other attorneys. The criterion includes, but is not limited to:

- The number of *pro bono* hours recently devoted to legal representation of indigent clients.
- The number of cases accepted for *pro bono* representation.
- Consistency, flexibility, and accessibility in accepting cases.
- The lawyer's commitment and service on committees dedicated to promoting and supporting the provision of legal services to those in need.

## Service to Children Award

Awarded to an individual lawyer, legal professional, or organization principally including lawyers, which demonstrates outstanding commitment to, and work for, children in the provision of legal or community services. It may be given to volunteers or those employed in the provision of legal services for children. This award is given as warranted, not necessarily annually.

## Legal Professional *Pro Bono* Service Award

Awarded to a person, qualified by education, training or work experience, who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity, who performs *pro bono* legal work in the pursuit of Access to Justice. This is a newly-created award that is given as warranted, not necessarily annually.

## Delaware State Bar Association Awards Nomination Form

Name of Candidate: \_\_\_\_\_

Title/Occupation of Candidate : \_\_\_\_\_

Award: \_\_\_\_\_

Date: \_\_\_\_\_

Nominator: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Brief statement of reasons that candidate is deserving of Award (see above Award criteria). Please attach sheet if necessary.

\_\_\_\_\_

\_\_\_\_\_

**Nominations should be submitted to Susan Simmons, Director of Continuing Legal Education and Access to Justice Coordination, e-mail [ssimmons@dsba.org](mailto:ssimmons@dsba.org) or fax to (302) 658-5212. The deadline for nominations is August 11, 2017.**

# Two Aspiring Roving Adventurers



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By Justin P. Callaway, Esquire

**T**he air rolling across the roadway put a chill in Sarin's back. It was getting cooler outside as the sun set over the distant horizon. The summer season was waning and fall would be upon the land shortly. As Sarin plodded over the crest of the hill, the small town of Haven came into view. A jumble of no more than fifty buildings with twice as many hovels and shacks that played home to the local populace, Haven was little more than a stopgap for travelers as they passed through to larger and more prosperous territories. With that being said, it held the promise of a warm meal, four walls and a soft bed.... Sarin could use some respite from the road.

Taking in the town before her, Sarin viewed the mixture of cats, rabbits and other species that made up the residents of Haven. At first glance she didn't see any foxes but that hardly meant that she wouldn't be welcome. Everyone is welcome when they have enough coin in their pouches; even a red fox such as herself. As she walked down the hill she adjusted the scimitar on her hip and patted her tunic to release some of the dirt and dust that inevitably clung to road weary travelers such as herself.

It had been five years since Sarin had last been to Haven, but she seemed to remember that the best inn in town was the Two Stone Inn. The Two Stone was the largest inn Haven had to offer. Opening the front door, Sarin was accosted with the sounds of a raucous common room filled with patrons drinking, eating, laughing, and sharing stories. In the far right corner of the commons a mouse played a lute to those who would listen and offer their coin for the privilege of his entertainment.

Walking to the bar, Sarin turned to the barkeeper and put a gold coin on the bar. "Ale, bread and whatever meat you already have made." Palming the coin, the barkeeper, a fat and aging groundhog, shuffled to the backroom and returned a couple minutes later placing a mug and plate before her. Holding another gold coin in her hand she asked, "I'm looking for work, what's going on about town?"

Looking her up and down and taking in the scimitar on her waist, he gave her a suspicious eye. "Depends. You don't have the look of a merchant; or any other respectable trade.... But if you are looking for work you can always get hired on as a guard with one of the merchant caravans that pass through." Throwing the coin on the bar, the barkeeper deftly slid the coin into the pocket of his apron and returned to work.

The Delaware State Bar Association is pleased to present the third place story from the DSBA Fiction Writing Competition, *Two Aspiring Roving Adventurers*, by Justin P. Callaway, Esquire, of Salmon Ricchezza Singer & Turchi LLP.

Turning back to look at the commons as she ate and drank, she listened to the banter of the patrons. One of the local town guards, a Siberian Husky by the looks of him, was regaling his "adventures" and "exploits" to a captivated barmaid. An elderly muskrat was boring three rabbits that were sitting at his table with advice about avoiding paying taxes.

As Sarin contented herself to simply take in her surroundings, a voice over her left shoulder caught her attention. "Taloan." Turning to face the speaker, the mouse performer from earlier saddled up to the barstool next to her. He greeted her with an insincere smile as he began to casually pluck food off a nearby plate who's owner was passed out on the bar.

"Excuse me?" she said.

"Taloan. My name is Taloan. I noticed you eyeing me up when you first entered. I appreciate the interest but I'm married to my music, not much else." He slapped the side of the lute that hung over his shoulder as though to emphasize the point.

Unavoidably letting a look of derision cross her face, "I hardly would call a passing glance, 'eyeing you up.'" Sarin turned back to her food.

"Pretty handy with that blade are you?" he questioned over her shoulder.

Clearly Taloan would not relent in his attempts to strike up a conversation. "What are you talking about?" she said as she turned back to him.

"Well I was just asking how good you are. You're going to need it in a minute. You shouldn't walk around here stealing coin purses." Taloan casually glanced down at her waist. Following his eyes, a coin pouch with an embroidered "W" was tied to her belt. Cupping the pouch in her paw, "This isn't mine." She said incredulously.

"I know it isn't. It's mine!" a booming voice from behind her declared. A firm and sharp claw spun her around on the barstool. Sarin looked up to a badger that towered over her. Reflecting briefly on the size of his muscles, "Hey look, I don't know what this mouse told you, but I didn't take this." Sarin pointed over her shoulder to where Taloan was sitting.

"What mouse?" replied the gruff badger.

Looking over her shoulder, Taloan was nowhere to be seen. "Look, this was a simple mistake, I didn't take this purse. You can have it back." Sarin began untying the pouch from her belt.

"I am going to have it back, and you're going to jail. Guards!" The badger waved over the town guard. Turning his attention from the previously swooning barmaid, the Husky guard began to rise from the table and walk towards the bar, his hand on his longsword.

"Hey look, there isn't any need for this. I didn't take this pouch." Sarin waived her hands in a sense of surrender. "This is getting out of control. Just take it back."

At this point half the bar was watching this exchange and the guard had already waved to two other members of the guard that were scattered throughout the room. As the enormity of her situation sank in, Sarin couldn't help but rub her temple and shake her head. Thinking privately to herself, *I just wanted a quiet night and a soft bed.*

Looking up at the badger, who had turned to watch the oncoming guards, Sarin knew her only chance was to run. Sarin kicked out with her left foot, hitting the badger in the right kneecap and dropping him to the ground. Using her mug as a club she smashed it across the now kneeling badger's face. While this loosened the badger's grip on her shoulder, allowing her to wiggle free, this also set a light to the guards who immediately drew weapons and charged forward.

Standing between her and the front door, Sarin's only avenue of escape was the staircase leading upstairs to her left. As she sprinted towards the stairs, confused and scared patrons jumped out of the way.

Running up the stairs two at a time, she could hear the commotion downstairs as the guards gave pursuit.

The second floor of the Two Goats was just as she remembered it, a long corridor lined with rooms which ended at a T intersection. The pungent smell of stagnant beer hung in the air. Running to the end of the hallway a confused and half-dressed mole quickly looked out, saw Sarin and slammed the door shut. Reaching the end of the corridor she turned left and right looking for another staircase up or down as anything would do at this point. Seeing nothing except for more doorways and windows, she turned to gauge how far behind her the guards were. Ducking to the right she barely dodged the downward swing of a guardsman; his longsword becoming lodged in the wooden wall.

Pulling her scimitar, Sarin narrowly parried the thrust of the next guard as she quickly scanned for a quick exit. While she was skilled enough to effectively parry the guard's attacks, there was no way for Sarin to get past them and back to the staircase without injuring them, and further implicating herself. Seeing only one option, Sarin turned and fled down the hallway straight towards the window at the end of the hall. As she reached the window she lunged forward doing her best to cover her eyes from the glass.

As the window shattered against her momentum she could hear the trailing shouts of the guards as they re-grouped, determining instead to go back down the stairs the way they came. Falling one story to the ground, the impact forced the air out of her lungs and left a stinging pain in her left arm. As she impacted she rolled in order to blunt any more trauma and hopefully save herself from any lasting injuries. Finally coming to rest after colliding with a barn door, Sarin slowly stood and took stock of her injuries. Her left arm was numb and hung at her side; her left hip also had a twinge; and there was a slight pain in her head from impacting the barn door. Thankfully there was no noticeable pain in her legs. The guards hadn't yet reached the outside so she still had time to escape.

Using the adrenaline that pumped through her veins, Sarin sprinted as quickly as she could towards the closest road out of town. The peaceful chirps and buzzing of the autumn night was punctuated with Sarin's labored breathing and the shouts from the guards behind her. Turning left and right in an effort to snake her way out of town and avoid future entanglements, the shouts from behind her slowly died away as she reached the east edge of town.

After reaching the roadway Sarin continued to jog down the road for another quarter mile before the adrenaline began to wane and the acid in her lungs felt like it would boil over. Slowing down to a limping trudge she continued to move eastward for fear that the guards might eventually attempt to search the surrounding area. Slowly continuing down the road, Sarin did her best to get her breathing under control. After ten minutes, her breathing back to normal and her adrenaline wearing off, Sarin began to have the unnerving feeling that she was being watched. After another mile she could no longer ignore her sense of uneasiness. Slowly turning around a smiling Taloan sauntered up behind her, his hands lazily stuck in the pockets of his trousers.

"Well I was wondering when you were going to stop and wait for me," he said nonchalantly. "You can give me my coin purse back now," he said as he held out his hand, a grin on his face.

Nearly pulling her sword and offering the sharp edge to him instead, Sarin used her self-control to keep her voice down, "How dare you walk up to me with that grin on your face. You nearly got me killed. I can't ever go back there. I ought to march you back and hand you over to the guards."

Pulling his hand back and placing it on his hip, he replied "That didn't work last time. Do you think the guards will be any more receptive if we go back?" Taloan began to walk past her going down the road. "Come on. There's another town just a ways down the road. We can get there in a couple hours."

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is seeking a Delaware-licensed attorney with 1-3 years of corporate litigation experience in the Delaware Court of Chancery. Applicants should be entrepreneurial by nature, have a strong background in finance or economics, superior academic credentials, strong writing skills and a desire to succeed. Prior non-legal business experience preferred. Applications should include a cover letter, transcripts, resume and writing sample. Candidates should send applications to Joanne Hamill at [jchamill@prickett.com](mailto:jchamill@prickett.com).

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**ATTORNEY:** Legal Services Corporation of Delaware, Inc., seeks an Attorney for its Wilmington office. Litigation experience and Delaware Bar admission preferred. Please fax resume to (302) 575-0478 or e-mail to [karen@lscd.com](mailto:karen@lscd.com). EOE.

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## OF NOTE

Condolences to the family of **Laurie Schenker Polleck, Esquire**, who died on April 29, 2017.

Condolences to **Kathleen Duffy Smith, Esquire**, on the death of her mother, Mary Louise Duffy, on May 3, 2017.

Condolences to the family of **Sidney Balick, Esquire**, who died on May 18, 2017.

*If you have an item you would like to submit for the OfNote section, please contact Rebecca Baird at [rbaird@dsba.org](mailto:rbaird@dsba.org).*

### Roving Adventurers (continued from page 35)

Sarin looked at the receding mouse, the lute bumping against his back as he sauntered down the road. Letting out a deep breath, her shoulders sagging, she began to limp down the road after him.

“By the way, I don’t think I ever got your name,” he said as Sarin caught up to him.

Looking down at his diminutive form, Sarin gave one final thought to throttling him. “My name’s Sarin..... and Taloan?”

Taloan looked up at her waiting. “Taloan, I really don’t like you.”

Giving her a half smile, “I know. But I’ll grow on you.”

They slowly continued down the road, the silence of the night pockmarked by the wind in the trees and the chirping of the crickets. 

**Justin P. Callaway** is an associate at Salmon, Ricchezza, Singer & Turchi, LLP. Mr. Callaway focuses his practice on premises, product and trucking litigation.

### ADMINISTRATOR’S NOTICE

In re: The Estate of Dorothy F. Ludwig, Deceased  
late of North Franklin Township, Washington County, PA.

Letters Testamentary upon the above Estate having been granted to the undersigned

by the Register of Wills Office of Washington County, Pennsylvania. The Administrator is unable to locate a named beneficiary in the Last Will and Testament of Testator. The Administrator asks that any individual representing “Lutheran Brotherhood Neighborhood House of Wilmington, Delaware” to present its claim as a beneficiary in writing to the Administrator at the address below:

Gerald J. Smith, Administrator, CTA  
Stephanie M. Sewak, Attorney  
11 East Beau Street  
Washington, PA 15301

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## In a Clear Broth You Can See Forever

**A**s the temperature rises, many of you are heading to the Delaware beach or the Jersey shore – toward the fresh ocean air. This month’s column pays tribute to the ocean by showcasing a recipe from Rhode Island, the Ocean State.

Prior to a recent visit to Providence, my knowledge of clam chowder was limited to two varieties: New England and Manhattan. I had never enjoyed the clear broth version. A lunch at famed seafood restaurant Hemenway’s along the Providence River introduced me to New England clam chowder’s sister soup – Rhode Island clam chowder – sans heavy cream.

Once you decide to go the RI route, you must settle on the type of clam. You could opt for quahogs or “chowder clams,” the largest of the hard-shells with a four inch or more diameter. Or, you could seek out cherrystones, one step down in size but not in flavor. In either case, the clams would require chopping. My chowder clam of choice is the bite-size littleneck, which goes in whole.

This recipe will serve as dinner for two with leftovers or as a soup course for four. The key, as in many dishes, is the bacon! 🍴

## Rhode Island Clam Chowder

### Ingredients

- 3 Yukon Gold potatoes, cut into ½ inch cubes (Why bother peeling?)
- 4 thick slices smoked slab bacon, cut into ¼ inch cubes
- 2 tablespoons extra virgin olive oil
- 2 tablespoons salted butter
- 1 small Vidalia onion, cut into ¼ inch cubes
- 3 8 ounce bottles clam juice (Try Bar Harbor brand for deep flavor.)
- 1 8 ounce bottle lobster juice (Again, go with Bar Harbor’s Maine Lobster Juice.)
- ½ cup Rosé wine from Provence
- 1 bay leaf
- 1 pint littleneck clams, shucked
- 2 tablespoons chopped fresh chives
- Sea salt
- Fresh ground black pepper

### Instructions

Boil the potatoes until tender and set aside. In a large pot, sauté the bacon in the olive oil over medium-low heat. Stir occasionally, and cook until the bacon is browned around the edges, about 10 minutes.

Leave the bacon in the pot, and add the butter and onion. Stir occasionally, and cook until the onion is softened, about 6 minutes. Add the clam broth, lobster broth, wine, potatoes and bay leaf.

Stir, turn the heat up to medium and bring to a boil. Then, reduce the heat and simmer while you make an arugula salad or enjoy some radishes with butter (Just a few suggestions!)

When ready to dine, add the clams and chives. The clams will take just a few minutes to cook. Season with salt and pepper to taste, and discard the bay leaf before serving.

Consider adding some crushed red pepper or Piment d’Espelette for heat. Some thinly sliced jalapeño also makes for a bright addition. And, don’t forget small, salted oyster crackers or a few slices of crunchy baguette.

Then, sit back and breathe in the ocean air.

**Susan E. Poppiti** is a mathematics teacher and director of the legal shadowing program at Padua Academy High School and managing member and cooking instructor for La Cucina di Poppiti, LLC and can be reached at [spoppiti@hotmail.com](mailto:spoppiti@hotmail.com). Other recipes and cooking tips are available on Susan’s food blog at [www.cucinadipopppiti.com](http://www.cucinadipopppiti.com).

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**Morris James LLP is pleased to announce**

**K. Tyler O'Connell**

has joined the firm as a Partner in its  
**Corporate and Business Law Groups**

K. Tyler O'Connell has joined Morris James LLP effective May 9, 2017 as a partner focusing on alternative entities, corporate and fiduciary litigation and corporate governance counseling. Mr. O'Connell has over ten years of experience representing parties in the Delaware Court of Chancery in disputes over the ownership, control, and management of Delaware business entities, including corporations, partnerships and limited liability companies. He also has significant experience in commercial litigation matters in Delaware's state and federal courts, including, representing parties in the Complex Commercial Litigation Division of the Delaware Superior Court and in proceedings before the United States District Court for the District of Delaware.

Mr. O'Connell is active in the American Bar Association's Business Law Section and is the current Vice Chair of the Corporate Governance Committee's Subcommittee on the Governance of Financially Distressed Entities. He also is the past Chair of the Business and Corporate Litigation Committee's Subcommittee on Corporate Counseling and Litigation. Mr. O'Connell graduated cum laude from Wake Forest University School of Law in 2003 after earning his Bachelor of Arts degree at Davidson College in 2000, cum laude. He can be reached at 302.888.6892 or at [toconnell@morrisjames.com](mailto:toconnell@morrisjames.com).

[www.morrisjames.com](http://www.morrisjames.com)