



THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

UPCOMING CLE SEMINARS
PG. 8

**NOMINATIONS SOUGHT FOR THE 2016
CHRISTOPHER W. WHITE DISTINGUISHED
ACCESS TO JUSTICE AWARDS**
PG. 31

**2017 DELAWARE LEGAL
DIRECTORY CORRECTION FORM**
PG. 33

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Nominations Sought for 2016 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 2016.

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 to Johnna Darby, Executive Director, e-mail jdarby@dsba.org or fax to (302) 658-5212.

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

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THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

FEATURES

- 2 Nominations Sought for 2016 Awards
- 10 Photographs from the 2016 Law Day Luncheon
- 18 2016 Bench and Bar Conference Announcement and CLE Registration
- 28 The Pursuit of Justice and the Proper Role of the DSBA
BY DANIEL G. ATKINS, ESQUIRE
- 29 A Final Reply
BY RICHARD A. FORSTEN, ESQUIRE
- 31 Nominations Sought for the 2016 Christopher W. White Distinguished Access to Justice Awards

COLUMNS

- | | |
|--|---------------------------------|
| 4 President's Corner | 22 DE-LAP Zone |
| 6 Editor's Perspective | 23 Views from the Senior Lawyer |
| 12 Tips on Technology | 24 Book Review |
| 14 Commission on Law & Technology: Leading Practices | 26 A Profile in Balance |
| 16 Ethically Speaking | 29 Success Secrets |
| 20 Access to Justice Spotlight | 34 Judicial Palate |

DEPARTMENTS

- | | |
|--------------------------------|--|
| 8 Calendar of Events | 32 Bulletin Board |
| 9 Section & Committee Meetings | 33 2017 Delaware Legal Directory Correction Form |
| 13 Bar News | |

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Old State House in Dover

Built in 1791, the Old State House served as Delaware's capitol during the United States' critical early years as a nation. With additions and modifications, the building continued to serve as the state capitol until 1933.

"State of Delaware - Search and Services/Information." State of Delaware. Accessed May 18, 2016. http://history.delaware.gov/museums/sh/sh_main.shtml.



PRESIDENT'S CORNER

By Richard A. Forsten, Esquire

My Last Column as Your Bar President Or Why *Love Actually* Is Such a Good Movie (Although, *Casablanca* Is the Greatest Movie)

So, here I am writing my last column as your DSBA President. It seems very hard to believe that another year has somehow slipped by (although my time sheets do confirm it). Writing a monthly column has been, at times, enjoyable, frustrating, difficult, time-consuming and fun — most of all, though, I hope I have managed to keep the columns interesting and thought-provoking.

I will, of course, continue to write my monthly book reviews after my presidency ends, and, as I was considering what to write for my final column, I remembered that the book review that received the most responses was not about the law, it was about movies. Specifically, it was my review of Roger Ebert's book, *The Great Movies*. Thinking about movies, in turn, led me to think of the movie *Love Actually* and how I might be able to use that movie as a basis for my last column.

Now, how does *Love Actually* tie into this column? Well, as it turns out, *Love Actually* is not just one story. The writer/director of the film is said to have taken a host of film ideas he had that would not support a full movie and put them all together in one film — a film that has become a classic and in many people's top ten list (indeed, when this year's DSBA Executive Committee met for the first time, and each member was asked

their favorite film, *Love Actually* received the most mentions). So, in the spirit of *Love Actually*, I thought I would string together a series of short paragraphs on topics that never made it to the status of full column.

There's no such thing as work/life balance. It has become fashionable in recent years for folks to say they want "work/life balance." But, let's be honest, can hard-working lawyers, dedicated to their craft, competitive type-A's, determined to represent their clients zealously, who take pride in their work, and whose clients are depending on them, ever truly have "work/life balance?" Especially in this age of 24/7 instant communications and technology that makes it virtually impossible to ever be off the grid. Moreover, one of the reasons many lawyers tend to be relatively well paid (as compared to many other professions) is because they work long hours. So, while I appreciate efforts to find work/life balance, at the same time, I question whether folks are not searching for something they will never find. At the end of the day, people find the time to do the things they want to do — I suspect that many lawyers work hard because they actually like the law, they like working hard, they are competitive by nature, and they want to succeed. As the cartoon character Pogo once said, "We have met the enemy, and he is us."

Should we still allow solo practitioners? I once joked at a bar conference when the moderator for our table discussion asked for provocative ideas to get the conversation going that we should not allow solo practitioners anymore and should instead require lawyers to practice in groups of at least four or more. I was met with crickets and some dirty looks, but, hey, the moderator asked for something provocative. Now, I have nothing but the greatest respect for solo practitioners; yet having practiced in a law firm my whole career, I wonder how they do it. I have enough trouble focusing on the many client matters I deal with on a day-to-day basis — how would I ever find the time to worry about making sure escrow accounts are properly managed (a solo practitioner friend once told me he stopped taking retainers because he did not want to deal with all the paperwork), that appropriate insurance (health, workers' comp, etc.) is in place, that a lease is being followed, that the computer network is up and running, that marketing, accounting, payroll forms, and all of the other administrative burdens are being met? The list goes on and on and on. And, when would I find time to take a vacation? In my firm, we have an office manager, and an accounting department, and a host of other folks who handle the administrative issues on a day-to-day ba-

sis. And, lawyers divide up responsibilities. Given all the reporting requirements and other obligations heaped on lawyers these days (certainly more than 20 years ago, certainly more than 50 years ago, and certainly more than when Clarence Darrow or Abe Lincoln practiced), should we really allow solo practitioners to take on these burdens alone anymore? Should we, perhaps, apply the principle of “strength in numbers,” and require lawyers to practice together? Given the large percentage of solo practitioners that make up our Bar and are successful in what they do, the answer must be “no” and so I must be overstating the burdens and understating the benefits of solo practice (remember that my initial suggestion was merely meant to be provocative). If the burdens of being a solo practitioner were too great, then so many would not be doing it.

Can we make better use of the *Bar Journal* (which, technically, is no longer called *In Re*; although many of us still use that name)? I continue to believe that *In Re*, or *The Journal of*

the Delaware State Bar Association, is one of the best things about Bar membership, but also one of our largest missed or underutilized opportunities. It is the one thing that goes out to every DSBA member on a regular basis in hardcopy, and I think many of us read it. But, are we providing ourselves enough content? For example, I would like to see a section in our *Journal* much like the one that appears in my quarterly alumni magazine listing recent news about members, including new jobs, births, marriages, condolences, retirements, significant other news, etc., etc. Sadly, in our busy professional lives, it is easy to lose track of former colleagues, friends at other firms, etc., and the *Bar Journal* might help address that. I would also like to see more ads (to defray costs

“At the end of the day, people find the time to do the things they want to do — I suspect that many lawyers work hard because they actually like the law, they like working hard, they are competitive by nature, and they want to succeed.”

and raise revenue), I would like to see more firm news, I would like to see more articles talking about what Sections are doing, what recent cases are important, I would just like to see more. But, of course, more content means we need more people creating that content. So, if you would like to see more content and want to contribute, contact Rebecca Baird, who does such a great job overseeing the *Bar Journal*.

Fixing education in Wilmington.

Much has been written and said about the state of education in Delaware, and particularly in Wilmington. Various plans have been bandied about, most of which call for spending extra money on education. But, at least in my view, spending

President's Corner (continued on page 11)

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EDITOR'S PERSPECTIVE

By Benjamin A. Schwartz, Esquire

June 10th Is National Ball Point Pen Day. How Will You Celebrate It?

According to the magazine *Fast Company*, on June 10, 1943, Laszlo and Georg Bíró filed a patent application on their design for a self-inking mechanical pen that rolled on a ball. Others had tried in vain to create such an instrument, but the Bírós perfected the design and opened a pen shop in Argentina. In 1945, Gimbel's in New York City became the first U.S. retailer of ball point pens when it began selling them for \$12.50 each (\$145 in today's dollars). Gimbel's sold \$125,000.00 worth of ball point pens on the first day. Bic bought the patent, and has sold more than 100 billion ball point pens since 1950. (See <http://www.fastcompany.com/1284673/ballpoint-pen-day>).

I went to law school in downtown Manhattan, graduated, and left town just before September 11 came and the Twin Towers fell. It was a wonderful place for a country boy from Dover to spend three years. My classmates and I would spend our time in class, or studying in the school's law library. For a diversion from our studies, we would just go out and walk around the downtown area. This was Mayor Giuliani's new and improved New York — clean, safe, and graffiti-free.

One day, my buddy and I stumbled upon the Fountain Pen Hospital on Warren Street while out on a mid-finals stroll. This was a store dedicated to selling new and vintage pens and accessories. We would ogle the shiny, rehabilitated Auroras and Parkers and drool over the Mont Blancs. The salesman let us hold them in our hands. They were sleek and heavy and perfectly balanced.

From that day on, whenever we needed some inspiration to study a little harder, we would walk over to the Fountain Pen Hospital and envision ourselves as fully employed, successful lawyers (usually of the Wall Street type) who might alight from the back of a Town Car, pop into a pen store, and drop a few thousand dollars on "business equipment."

In those days, we kept notes in class using ink pens, made our outlines using ink pens, and wrote our exam answers in our blue books using ink pens. We assumed that we would graduate from our blue Bic pens to much higher end instruments, and that the pen would be our most important tool.

After graduating from law school and joining my father in his law practice, I did not ride in the back of a Lincoln Town Car, I did not work on Wall Street, and I did not drop thousands of dollars on anything. But, I did accumulate a couple high-end pens. My wife (then fiancée) Sharon gave me a Mont Blanc, as did a very grateful client. I do not now know what I did with those pens. I am sure there is a court-appointed client or two who found himself in possession of a fancy looking black pen with a white star on the cap after signing his plea paperwork for his discombobulated and forgetful young attorney.

It is funny how perspectives change over time, especially in response to the massive changes in our industry resulting from the technology revolution. At one point, not that terribly long ago, I was a law student and then a young lawyer who believed that the "pen is mightier than the sword," to quote Edward Bulwer-Lytton.

Now, my motto might be "a dictated email using Siri on my iPhone is mightier than your snail-mail letter." The tools of our trade have gone from conventional to digital almost overnight. During the time I have been in practice, things sure have changed.

For most of my life, if my father wanted to write a letter, he would type it on an electric typewriter. When I was a kid, the predominant sound emanating from his office was the rapid-fire "pop, pop, pop" of the IBM Selectric. By the time I started practicing, I would quietly type a letter on a computer, silently print it, sign it, and place it in the mail.

“The tools of our trade have gone from conventional to digital almost overnight. During the time I have been in practice, things sure have changed.”

Then everyone started using email, which sped things up considerably. I recall being angry at my Treo 650 because I could not keep up with the volume of emails. I think I was getting half a dozen a day. (Now, I get hundreds a day and want my Treo back).

If I want to skip the text-based communication altogether, I can send a snap on Snapchat. Or, I can shoot a quick video on my iPhone and send it as a text message.

We went from mailing copies of documents to faxing copies of documents. Now, if my client has a paper document they want me to review, they can take a photograph and text it to me from their phone.

As a young attorney, I would walk into the Prothonotary's office with my paper pleadings and clock them in. Now my pleadings are uploaded to FileandServe, CM-ECF or E-Flex.

I used to run ads in the Yellow Pages so prospective clients could let their fingers do the walking. Now my clients find my number or email address on Google. (For you younger members of the Bar, the Yellow Pages was a big book that the phone company used to deliver that contained a directory of all the businesses in the area. “Let your fingers do the walking” was the official slogan.)

People used to make appointments to meet face-to-face for job interviews. I recently lucked into a resume from Jessie, in her second year at Howard, and who was looking for a summer clerkship. She is Editor of her *Law Review*. I did not want to waste any time getting her on board for the summer. I interviewed her via Facetime. She was in Washington, D.C. and I was in Wilmington. And, I got the jump on the rest of you Managing Partners, and snapped her up!

This June 10th, this National Ball Point Pen Day, I will be reflecting on how far we have come since the brothers Bíró

figured out how to get a little tiny ball into the end of a tube of ink and make it write smoothly and without clogging, jamming, or leaving big blobs of black or blue on the paper.

I will be reflecting on how incredibly wrong I was to assume that my pen would be my most used and thus most important piece of equipment.

I will be reflecting on all the ways I am more productive with the incredible advances in technology that have occurred in my short career.

I will be reflecting on the negatives too, like why people who were content to receive a response to their letter in a week fifteen years ago now need a response to their email in an hour, and why these folks (you know who you are) send a second email asking whether I got the first when I do not immediately respond. (Sheesh! I was writing an article for the *Bar Journal*.)

Anyway, have a happy Ball Point Pen Day sisters and brothers! ⚖️

Bar Journal Editor **Ben Schwartz** is Managing Partner of Schwartz & Schwartz, where he helps people recover after catastrophic injuries and accidents. He is a frequent speaker, writer, and blogger. For more information, go to facebook.com/schwartzandschwartz or email ben.schwartz@schwartzandschwartz.com.

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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.

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CALENDAR OF EVENTS

Remember that CLE Videos are shown for CLE credit five days a week at the DSBA in Wilmington! Call (302) 658-5279 to make an appointment.

June 2016

Wednesday, June 8, 2016

Ethics in ADR

Series of three 1.0 hour ADR seminars: 6/8, 6/22, 6/29/16

1.0 hour CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Kent County Courthouse, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Thursday, June 9, 2016

Overview of Medicare Benefits for Chronic or Extended Healthcare and Introduction to Long-Term Care Medicaid

3.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Kent County Courthouse, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Friday, June 17, 2016

Current Issues and Dilemmas: What's New and What's News

Bench and Bar Conference

3.0 hours CLE credit

Chase Center on the Riverfront, Wilmington, DE

Wednesday, June 22, 2016

Participant-Oriented Mediation for Family Court, Adult Guardianships, Elder Mediation

Series of three 1.0 hour ADR seminars: 6/8, 6/22, 6/29/16

1.0 hour CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Kent County Courthouse, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Thursday, June 23, 2016

Recent Legislative Changes in Commercial Law

3.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Kent County Courthouse, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Wednesday, June 29, 2016

Nuts and Bolts of Arbitration

Series of three 1.0 hour ADR seminars: 6/8, 6/22, 6/29/16

1.0 hour CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Kent County Courthouse, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

September 2016

Friday, September 30, 2016

Supreme Court Review 2016

3.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Kent County Courthouse, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Remember that CLE Videos are shown for CLE credit five days a week at the DSBA in Wilmington! Call (302) 658-5279 to make an appointment.

SECTION & COMMITTEE MEETINGS

June 2016

Friday, June 10, 2016 • 6:00 p.m.

Young Lawyers Section and LGBT Section Happy Hour

The Greene Turtle, 17388 North Village Main Unit 21, Lewes, DE

Monday, June 13, 2016 • 12:00 p.m.

Young Lawyers Section Meeting

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

Tuesday, June 14, 2016 • 11:00 a.m.

LGBT Section Meeting

TBD

Tuesday, June 14, 2016 • 5:30 p.m.

Torts Section Meeting

Weik, Nitsche & Dougherty, 305 North Union Street, Second Floor, Wilmington, DE

Thursday, June 16, 2016 • 4:00 p.m.

Elder Law Section Meeting

Kleiner & Kleiner LLC, 501 Silverside Road, Suite 46, Wilmington, DE

Tuesday, June 21, 2016 • 12:30 p.m.

Labor & Employment Law Section Meeting

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

Monday, June 27, 2016 • 4:00 p.m.

Taxation Section Meeting

DuPont Headquarters, 974 Centre Road, Chestnut Run Plaza, Building 735, Room 1135, Wilmington, DE

July 2016

Monday, July 11, 2016 • 12:30 p.m.

Senior Lawyers Committee Monthly Luncheon Meeting

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

Tuesday, July 12, 2016 • 11:00 a.m.

LGBT Section Meeting

TBD

Please contact Janice Myrick at jmyrick@dsba.org or (302) 658-5279 to have your Section or Committee meetings listed each month in the *Bar Journal*.

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DELAWARE STATE BAR ASSOCIATION

BENCH AND BAR CONFERENCE

FRIDAY, JUNE 17, 2016
CHASE CENTER ON THE RIVERFRONT
WILMINGTON, DE

2016

SEE PAGES 18 AND 19 FOR MORE INFORMATION

Law Day Luncheon 2016

Tuesday, May 17, 2016 • 12:00 noon

Gold Ballroom • Hotel du Pont • Wilmington, Delaware



1. DSBA President Richard A. Forsten, Esquire, welcoming guests to the 2016 Law Day Luncheon.

2. William D. Johnston, Esquire, introducing Keynote Speaker Paulette Brown, Esquire.



3. Keynote Speaker Paulette Brown, Esquire, President of the American Bar Association.

4. Liberty Bell Award recipient John G. Moore, Sr., with presenter Yvonne A. Lomax, J.D.



5. Community Service Award recipient The Honorable Mary M. McDonough with presenter Nora McDonough Crawford.

6. Myrna L. Rubenstein Professional Support Recognition Award recipient Nancy Osborn and award presenter Maria Paris Newill, Esquire.

Your Name in Print



For information on submitting articles for publication, please contact Rebecca Baird at rbaird@dsba.org.



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more money on education is not the answer (Delaware already ranks pretty high nationally in that category). If I could do one thing to make education better in the city, I would go to Amazon, offer them incentives, and get them to build their next distribution center in Wilmington. Imagine 1,500-2,000 jobs in a city of roughly 70,000. The economic impact would be tremendous and, I submit, the better the Wilmington economy, the more money in the pockets of Wilmington families, the better students in Wilmington will do.

The practice of law is in flux, but it is always in flux. LegalZoom, Rocket Lawyer, Avvo, legal technicians, mushrooming law school debt — as the old Chinese curse says, “May you live in interesting times.” However, the practice of law has been in flux throughout my entire career — from Westlaw and Lexis (which were once brand new things), to

“I will miss being Bar President far more than the burdens it sometimes imposes.”

the personal computer revolution that resulted in computers on every lawyer's desk, to the internet, to the reduction (or elimination) of law libraries and hardcopy books. The practice of law is always changing.

I blame L.A. Law for high law school tuition. Once upon a time, law school tuition was not all that expensive, relatively speaking. But, then the TV show *L.A. Law* came along. Suddenly, the practice of law was glamorous and sexy and always interesting. All the time. And, characters drove expensive cars and had fancy offices and had lots of money. And, they were always in court, one week arguing the First Amendment, the next week a thrilling criminal case, then an expensive corporate case. Law school tuition started rising, and as long as everyone thinks they are the one who is going to be making the big bucks at a big New York or L.A. law firm, who re-

ally cares what the tuition is — you will be able to pay it off with your first year's bonus! One wonders where tuition would be without *L.A. Law*. And, one wonders if law schools could not charge less.

I am still a property rights guy. In my first column, I told you I was a property rights guy. I still am. Time and space prevents me from expounding on this important principle in a second column, but even if I did not completely persuade you with my first column, I hope you can at least acknowledge that property rights are important for an economy to thrive.

It is still the economy stupid. In a couple of my columns, I focused on economic issues. Times continue to be difficult for many people in our state and country. The surest way to improve upon so many of our social ills is a thriving economy. I again urge you all to focus on policies and actions that can improve the economy here in Delaware. Everyone should ask themselves every day, “How can I make Delaware better?”

Being Bar President is both easier and harder than you think. People thank me from time to time for serving as Bar President. They all assume it is a lot of hard work. And, sometimes it is. But, it is also fun, and we do have a great, hard-working staff, and much of the day-to-day operation runs itself. I will miss being Bar President far more than the burdens it sometimes imposes.

Should DSBA officers serve longer? Should our Executive Committee serve staggered terms? It seems like the past year has gone by pretty quickly — but, a year is not a very long time. There are some things that I was able to get done, others I was not. Given how short a year is, I sometimes wonder whether it makes sense to extend officer terms to two years? Also, I wonder if terms on the Executive Committee should be staggered? At the same time, though, we have a lot of talented people in the Bar, and I would not want to limit the ability of other folks to serve.

Casablanca is the greatest movie of all time. Whenever I interview someone, at some point I like to ask them what their favorite movie is (I also ask what book are they currently reading, and other non-job related questions). As you can imagine, I have gotten all sorts of answers, and it is sometimes interesting to watch folks, who have prepared for every possible question they thought they might be asked, stumble a bit as they answer. But, I do think you can learn a lot about someone when you ask them an unexpected question, and I also think you can learn a lot as they explain why a particular movie is their favorite. I started this column discussing *Love Actually*, but *Casablanca* is, without question, the greatest movie of all time. Humphrey Bogart. Ingrid Bergman. A great script. Heroism. Lost love. Self-sacrifice. Humor. Great lines. It is everything a great movie should be. There are many other great movies to be sure, but *Casablanca* is the greatest. And so, I bid you adieu with my last column as Bar President, but I hope these columns have been the beginning of a beautiful friendship. ☺

Richard “Shark” Forsten grew up in Delaware and is in his last month as President of the State Bar Association. The views expressed in this column, as with all his previous columns, are entirely his own. In addition to serving as Bar President, Shark is involved in a number of other community, charitable and business organizations, including President of the Appoquinimink School Board, President of the Everett Theatre in Middletown, Delaware, board member for Goodwill of Delaware, and board member for the Delaware Homebuilders' Association. He has also been writing monthly book reviews for the *Bar Journal* since 1998, and elsewhere in these pages you can find his latest review. Richard is a partner with the firm of Saul Ewing, LLP, where he practices in the areas of commercial real estate, land use, business transactions and related litigation, and he can be reached at rforsten@saul.com.



TIPS ON TECHNOLOGY

By Kevin F. Brady, Esquire

How Will Artificial Intelligence Change the Practice of Law?

“Ava, while I am working out, please draft a brief for me in the *Apple v. FBI* case objecting to the Order entered by Magistrate Judge Sherri Pym of the Central District of California. I want the brief to rebut the application of the All Writs Act forcing Apple to create a code to allow the FBI to get into an iPhone by disabling the feature that would lock investigators out if they made 10 unsuccessful attempts to determine the correct password. Please have it ready for me in two hours when I get back.”

“While no one is suggesting that machines will replace lawyers or judges altogether, there are certain legal tasks that are being done by machines today, and many more machine-learning tasks are on the horizon.”

While this might be an unfair request to a young associate on a Friday afternoon, what if I was talking to Ava, the android with artificial intelligence (AI) from the movie *Ex Machina*? Still sound too sci-fi? How long do you think it will be before lawyers are replaced by artificial intelligence (AI) life forms like Ava, a computer, or even an app?

AI is already influencing many daily activities: driverless cars, virtual personal assistants (Google’s Siri and Amazon Echo’s Alexa for example), exercise trackers, fraud detection services, and smart homes devices, just to name a few. Despite the growing prevalence of AI in our lives, many argue that computers will not replace lawyers, at least not any time soon. These optimists contend that AI lacks creativity, empathy, judgement, intuition, and values which lawyers must have [please feel free to insert your favor-

ite lawyer joke here]. Lawyers provide advice, make decisions; they also use their judgment based on past experiences (which machines can replicate), and intuition (which machines supposedly cannot replicate... or can they?).

Man v. Machine

Just in the past five years, the volume of digital information has increased ten-fold due in large part to the network of physical objects embedded with technology that enables our digital devices to communicate with each other — the so called “Internet of Things.” It is estimated that by 2020, the number of devices connected to the Internet of Things will grow from 5 billion to 25 billion. Many of these devices (like fitness monitors, GPS in cars, smartphones, and cloud computing storage devices, which are already emitting a staggering amount of

data), will function at speeds that will outpace human intervention, thus requiring machines with AI to operate them.

In 1997, IBM’s supercomputer Deep Blue defeated world chess champion Garry Kasparov using its ability to calculate the outcomes of more moves than Kasparov could. Recently, Google DeepMind’s AlphaGo AI beat a professional player at a game of Go, a 2,500 year-old Chinese game of strategy where players take turns placing black or white stones on a 19x19 square board trying to capture the opponent’s stones or surround empty space to make points of territory. According to Google DeepMind, “Go is a game of profound complexity. There are more possible positions in Go than there are atoms in the universe.” Google DeepMind’s researchers trained the system to play Go on its own and then matched their system against itself to enable it to increase its skill and ability. Notably, unlike chess, Go is played using intuition and feel, and not simply brute force computing. So, does that mean that machines now have intuition?

Is the AI Lawyer Already Here?

While no one is suggesting that machines will replace lawyers or judges altogether, there are certain legal tasks that are being done by machines today, and many more machine-learning tasks are on the horizon. The most prevalent of these is document review, where sophisticated language algorithms are used

to produce more accurate, more efficient reviews than eyes-on reviews conducted by humans. AI permits faster, cheaper, and more effective analysis of large data sets, and it draws connections in information at a rate that no human attorney could ever match. For example, AI could access and search hundreds of electronic dockets throughout the country for relevant filed documents (including briefs and unpublished opinions), a task even the best-staffed law firm could not reasonably undertake.

Given the vast amount of preexisting legal work product that machines can analyze and learn from, it will not be long before AI devices replace many activities that lawyers engage in: drafting legal documents, handling digital information in discovery, and citing legal authority for clients. While it may seem preposterous to suggest that there will come a time when a machine will be taking a contentious deposition, engaging in meet and confer with opposing counsel, or arguing before the United States Supreme Court, the time is not far off that machine-learning will drive arguments and strategy based strictly on data analytics.

Will AI free lawyers to focus on their craft rather than the mundane tasks they are bogged down with on a daily basis? For example, can a computer research and draft a basic, acceptable brief, which the lawyer can fine tune into a powerful, sophisticated piece of advocacy? Will AI allow lawyers to focus on relationships with their client and opposing counsel? Or, will it be

like many innovations in technology that heralded great changes, but in fact made the practice of law more stressful and demanding?

In April 2016, Vanderbilt Law hosted an event entitled “Watson, Esq.: Will Your Next Lawyer Be a Machine?” The event focused on how artificial intelligence is changing the practice of law. ROSS Intelligence introduced ROSS, a legal research platform that leverages machine learning capabilities to continuously improve its search capabilities. Lawyers can ask ROSS a question in natural language, and ROSS will identify specific sections in court decisions or briefs for a particular jurisdiction that are directly relevant to the query without the need to narrow searches which is typical of today’s legal research. And, on May 2, 2016, ROSS Intelligence announced that AmLaw 100 law firm BakerHostetler had agreed to license ROSS for use in BakerHostetler’s bankruptcy and restructuring group.

Oh, gotta go, Ava has finished the brief 📞

Kevin F. Brady is Of Counsel at Redgrave LLP in Washington D.C. and can be reached at kbrady@redgravellp.com.

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

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BAR NEWS

Fourth Annual Supreme Court Review Seminar to be held on Friday, September 30, at Bar Center

The Fourth Annual Supreme Court Review Seminar will be held on Friday, September 30, at the Bar Center. The discussion at this popular morning seminar of recent United States and Delaware Supreme Court decisions has become well received among Bar members. Delaware Supreme Court Justice Karen L. Valihura will serve as a co-chair of the seminar. Harvey Bernard Rubenstein, Esquire, a past president of the Bar Association, continues as a co-chair. We thank Justice Randy J. Holland for his prior contributions to this seminar.

The U. S. Supreme Court decisions once again will be presented by Professor Alan E. Garfield of the Widener University Delaware Law School. Professor Garfield is a magna cum laude graduate of Brandeis University and received his J.D. degree from the U.C.L.A. School of Law (Order of the Coif).

A panel of Delaware practitioners will discuss the leading decisions of the Delaware Supreme Court. The panel will consist of Thomas A. Foley, Esquire; Gretchen S. Knight, Esquire, of Morris James LLP; Thomas P. McGonigle, Esquire, of Drinker Biddle & Reath LLP; and Jennifer C. Voss, Esquire, of Skadden, Arps, Slate, Meagher & Flom LLP.

The seminar offers 3.3 credit hours. 📞

Stream-of-Consciousness Planning with Note-taking Software

By Bruce E. Jameson, Esquire

Lack of Information and Planning Are the Main Sources of Malpractice Claims

In a prior article, I wrote about document management software that helps lawyers benefit from and leverage past work based on specific types of documents.¹ This article focuses on software, generally referred to as “note-taking” software that helps you manage and leverage all the bits and pieces of information received during the life of a case.

According to an ABA article from 2010, the three most common causes of legal malpractice claims in the United States are: (i) failure to know or apply the law, (ii) planning errors, and (iii) inadequate discovery or investigation.² Number seven on the list is procrastination. I suspect there is a direct relationship between numbers one through three and seven because when lawyers wait until the last minute to prepare something, they generally do not have adequate time to research and analyze the relevant facts and law.

One way to mitigate those types of problems is to utilize what I call “stream-of-consciousness planning and preparation” in your matters. Stream-of-consciousness planning is the idea behind case preparation software such as CaseMap and Case NoteBook. The basic

concept behind those products is that a lawyer can randomly enter information about a case on an ongoing basis as she learns it without knowing specifically where (or if) it fits into the big picture. The software automatically links related information together in an organized way. By doing so, case preparation software helps lawyers avoid overlooking important information or points when they are preparing a brief or preparing for trial at the last minute. Those software products are great at what they do, but do not lend themselves to information entry anytime and anywhere.

Anytime, Anywhere Stream-of-Consciousness Information Organization and Planning with Note-Taking Apps

Note-taking software apps such as Evernote and OneNote facilitate the retention and ordering of information anytime and anywhere. Evernote and OneNote both work with iOS, Android, and Microsoft operating systems and therefore run on your computer, tablet, and smart phone regardless of the type(s) you use. Information entered on one device synchronizes across all your devices. Evernote is my favorite primarily because it has a simpler, more intuitive interface. OneNote is set up to look and feel like traditional paper note books with individual pages but I find the format more cumbersome. Because both products allow you to designate information easily into notebooks and

tags or categories, you can randomly save information in general categories, such as “liability” or “damages” and then organize all your random thoughts into related groups later when it is time to draft a brief or try the case. Additionally, you can run text searches across all the information contained in either product.

Both programs allow you to input notes using your phone dictation capabilities, snapping a photo, clipping a web page or link, or by manual typing. You also can handwrite notes and input them in multiple ways such that your handwritten notes are fully text searchable. In Evernote, you can also send an email to a designated email address that will convert your email into an Evernote note. If you read an article on the train that discusses an issue relevant to a damage issue in your case of



1. Jameson, Bruce. Document Management Software: Never Practice Law Without It, *The Journal of the Delaware State Bar Association*, June 2015: 12-13. Print.

2. Pinnington, Dan. The Most Common Legal Malpractice Claims by Type of Alleged Error, *Law|Practice*, July/August 2010. Web. May 12, 2016. (http://www.americanbar.org/publications/law_practice_home/law_practice_archive/lpm_magazine_webonly_webonly07101.html).

Smith v. Jones, you can take a photo of the article with your phone and email it to Evernote. By including the designations “@SmithVJones and “#Liability” in the subject line, Evernote will automatically relate that note to your “Smith v. Jones” note book and tag it as relevant to the “liability” issue in that case. Later, when you are working on a brief or other project, you can easily review all your notes (i.e. your stray thoughts and materials) relating to an issue by sorting them, thereby reducing the risk that you will overlook or omit some point or issue that occurred to you during your development of the case.

Because these products utilize cloud structures, the information can be accessed through any computer (even if it does not have Evernote or OneNote loaded on it) via a web browser. Of course, that also means that security must be considered. Evernote encrypts information during transit and allows users to encrypt notes, however encrypting attachments requires the use of third party software that might limit the ability to access those attachments from mobile devices. OneNote supports more comprehensive encryption. Consider the sensitivity of the information you will be storing when deciding which product is right for you.

Technology Can Mitigate, but Not Fix Human Nature

No software or app is a panacea against lack of preparation, incomplete research or procrastination. Still, note-taking software can help lawyers organize thoughts and information on the go and thereby help reduce the risk that they will miss, forget or overlook important information when they are preparing important parts of their cases under significant time pressures. Human nature cannot be completely over-ridden by technology, but it can perhaps be mitigated to some extent. ☺

Bruce Jameson is a Director at Prickett Jones & Elliott, PA. He can be reached at bejameson@prickett.com.

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ETHICALLY SPEAKING

By Charles Slanina, Esquire

Ethics News You Can Use

As a service to the faithful readers of this column, I have provided a digest of ethics and professional responsibility items that have been in the news recently. Each might merit a column on its own. Collectively they represent ethics in the news that you can use today.

Debt-Collecting Prosecutors

“Ethically Speaking” previously dealt with the practice of prosecutors allowing their letterhead to be used by private debt collectors. (January 2015 and November 2012). In those columns, I shared the criticism of partnerships between prosecutors and debt collectors. More than 300 District Attorneys across the country routinely permit debt collection agencies to use prosecutors’ letterhead for correspondence to debtors, especially in connection with bad checks.

Recently, the U.S. Supreme Court held that outside attorneys appointed by the Ohio Attorney General to collect state debts did not violate the Fair Debt Collection Practices Act by using state letterhead in their collection efforts. *Sheriff v. Gillie*, U.S., No. 15-338, 5/16/16, rev’g 785 F.3d 1091. Justice Ruth Bader Ginsburg, writing for a unanimous Court, noted that while the FDCPA bars “false and misleading representations” with debt collections, the Ohio Attorney General had authorized “special counsel” to use his letterhead in sending the debt collection communications. However, the Court cautioned in a footnote that while Ohio law permits appointment of outside “special counsel” to collect debts owed to the state, the opinion only addresses the “special counsel” arrangement and the ruling “may not carry over to other debt collector relationships.”

Changes to the Advertising Rules?

Rule 7.3(a) of the Delaware Professional Conduct

Rules prohibits a lawyer from in-person, live telephone, or real-time electronic contact to solicit professional employment. Recently, the Association of Professional Responsibility Lawyers (“APRL”) (of which I am a member) recommended, as part of its report on regulation of lawyer advertising and solicitation, that the ABA revise the Model Rules to eliminate the ban on “real-time electronic contact” and should also authorize in-person solicitation of sophisticated legal service users.

The Model Rule ban on “real-time electronic contact” was based on the Supreme Court decision in *Ohralik v. Ohio State Bar Ass’n*, 436 U.S. 447 (1978) which found that in-person solicitation may constitutionally be banned under circumstances that pose dangers of overreaching and was based on fairly egregious facts: a lawyer solicited employment from an accident victim who was lying in traction in a hospital room. APRL’s argument is that online solicitations are closer to written communications than to the type of solicitation banned in *Ohralik* because any threat of overreaching in an online communication with a potential client can be remedied by the client who can simply terminate the solicitation at any time. In addition, the argument is that any risk of overreaching is outweighed by the benefit to the consumer.

APRL’s recommendation is part of a broader report that recommends that the ABA eliminate most of its model rules on lawyer advertising, substituting a single rule banning false or misleading statements. It also urges that complaints about lawyer advertising be handled through non-disciplinary means in most cases.

Referral Fees Are Not Free

Rule 1.5(e) of the Delaware Professional Conduct Rules permits a division of fees between lawyers not in the same firm if certain conditions are met. However, a



lawyer seeking a fee for referring a client should first determine whether the matter would be a conflict for the referring attorney and whether the client consents to the fee sharing. ABA Formal Opinion 474, 4/21/16.

The Committee found that the rule on conflicts applies because the referring lawyer “represents” the referred client even if the lawyer does not provide the legal services. In effect, the referral is the legal service. The Committee went on to conclude that Model Rule 1.5(e) governing division of fees among lawyers who are not in the same firm applies even where the referral fee is up front rather than based on a shared fee at the conclusion of the matter.

The Committee offered an example in which a referring lawyer has long represented the owners of a flower shop jointly. In this hypothetical, one of the owners is in a car accident while on a personal errand driving a car owned by the shop. She asks the lawyer to refer her to a personal injury lawyer and consents to the referring lawyer receiving a referral fee for doing so.

The Committee concluded that no conflict exists and the referral fee is permitted if the owner of the flower shop was not at fault while driving. However, a conflict would exist if fault is in dispute and both the driver/owner and the flower shop are possible defendants or there is a potential conflict between the owner/driver and the flower shop. The Committee concluded that if the driver and non-driver owner assert claims against each other in the suit, client consent would not cure the conflict to permit the referring attorney to receive a referral fee.

Not Cool

Hiring a lawyer to force a trial judge’s recusal is unethical and warrants the lawyer’s suspension from federal court practice according to the U.S. Court of Appeals for the 5th Circuit. The strategy was ruled improper even though it did not cause the judge to leave the case. *In re Mole*, 5th Cir., No. 15-3647, 5/4/16. The Court noted that the sanctioned lawyer was not the one who accepted the

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employment to disqualify the judge. Instead, he was the attorney hiring the other attorney with the intent to achieve the same purpose. According to the opinion, Mole identified a lawyer who was a close friend of the trial judge and arranged for the client to hire him. Mole claimed he did so at the client’s urging to provide insight into the judge’s temperament and thought processes.

However, the Court noted that Mole left a paper trail about the purpose for hiring the attorney who had no experience in that type of litigation. The attorney intended to cause the conflict was paid an initial retainer fee of \$100,000 with provisions for an additional \$100,000 severance fee “in the event that [the judge] withdraws or if the case settles prior to trial.”

The Court noted that such a practice gives an impression that the lawyer is available for manipulation of the justice system and tarnishes the concept of impartial justice citing an opinion thirty years prior by the same Court. Such con-

duct was found to violate Rules 8.4(d) (conduct prejudicial to the justice system) and 8.4(e) (stating or implying an ability to influence a judge or to achieve results by unethical or illegal means) of the Louisiana Rules of Professional Conduct.

Conclusion

Read it. Learn it. Live it. Have a great summer!

“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.

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.

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BREAKOUT SESSIONS

9:00 A.M. - 10:30 A.M. | 1.5 HOURS CLE CREDIT IN ENHANCED ETHICS

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Moderator
The Honorable
Brendan Linehan Shannon,
Chief Judge
U.S. Bankruptcy Court,
District of Delaware

Panelists
The Honorable
Christopher S. Sontchi, Judge
U.S. Bankruptcy Court,
District of Delaware

Pauline K. Morgan, Esquire
Young Conaway Stargatt &
Taylor, LLP

Derek C. Abbott, Esquire
Morris Nichols Arshat &
Tunnell LLP

EQUITY

Moderator
The Honorable
J. Travis Laster, Vice Chancellor
Delaware Court of Chancery

Panelists
The Honorable
Tamika R. Montgomery-Reeves,
Vice Chancellor
Delaware Court of Chancery

Sean J. Bellew, Esquire
Duane Morris LLP

David A. Felice, Esquire
Bailey & Glasser LLP

Sidney S. Liebesman, Esquire
Montgomery McCracken
Walker & Rhoads, LLP

FAMILY

Moderator
The Honorable
Natalie J. Haskins, Judge
Family Court of the State of
Delaware

Panelists
The Honorable
Danielle S. Blount,
Commissioner
Family Court of the State of
Delaware

Dana L. Reynolds, Esquire
Law Offices of
Dana L. Reynolds, LLC

Kathryn J. Laffey, Esquire
Kelleher & Laffey

CIVIL

Moderator
The Honorable
Mary M. Johnston, Judge
Superior Court of Delaware

Panelists
The Honorable
Vivian L. Medinilla, Judge
Superior Court of Delaware

The Honorable
Charles W. Welch III, Judge
Court of Common Pleas

Samuel D. Pratcher III, Esquire
Weik, Nitsche & Dougherty

Jeffrey Alexander Young, Esquire
Young & McNelis

CRIMINAL

Moderator
The Honorable
Ferris W. Wharton, Judge
Superior Court of Delaware

Panelists
The Honorable
Paul R. Wallace, Judge
Superior Court of Delaware

James Brendan O'Neill, Esquire
Delaware Office
of the Public Defender

Thomas A. Pedersen, Esquire
The Law Office of
Thomas A. Pedersen

Kathleen M. Jennings, Esquire
Delaware Department of
Justice

REFRESHMENT BREAK AND VENDOR VISIT | 10:30 A.M. - 10:45 A.M.

PLENARY SESSION

10:45 A.M. - 12:15 P.M. | 1.5 HOURS CLE CREDIT IN ENHANCED ETHICS

Moderator
Michael P. Kelly, Esquire
McCarter & English, LLP

Panelists
The Honorable
Richard G. Andrews, Judge
United States District Court
District of Delaware

The Honorable
James T. Vaughn Jr., Justice
Supreme Court of Delaware

The Honorable
Andre G. Bouchard, Chancellor
Delaware Court of Chancery

The Honorable
Richard F. Stokes, Judge
Superior Court of Delaware

The Honorable
Michael K. Newell, Chief Judge
Family Court of the State of Delaware

Yvonne Takvorian Saville, Esquire
Weiss & Saville, P.A.

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DSBA ANNUAL MEETING | 12:30 P.M. TO 1:30 P.M.

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Presentation of the First State Distinguished Service Award to Charles S. McDowell, Esquire

Recognition of individuals who have been members of the Delaware Bar for more than 50 years

Recognition of Delaware State Bar Insurance Services, Inc. Board Members

John C. Andrade, Esquire, and William H. Sudell, Jr., Esquire

Election of Executive Committee Members

Passing of the Gavel to the new Delaware State Bar Association President, Miranda D. Clifton, Esquire

CONFERENCE SCHEDULE AT-A-GLANCE

Registration Breakfast/Vendor Visit: 7:30 a.m. - 8:45 a.m.

Break/Vendor Visit/Transition: 8:45 a.m. - 9:00 a.m.

CLE - Breakout Sessions: 9:00 a.m. - 10:30 a.m.

Refreshment Break/Vendor Visit: 10:30 a.m. - 10:45 a.m.

CLE - Plenary Session: 10:45 a.m. - 12:15 p.m.

Refreshment Break/Vendor Visit: 12:15 p.m. - 12:30 p.m.

Annual Meeting: 12:30 p.m. - 1:30 p.m.

Reception: 1:30 p.m. - 3:00 p.m.

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For Office Use Only



By Susan Simmons

Engaging Law Students in *Pro Bono*

A largely untapped resource for support of *pro bono* work is the law students of law schools in our area. Widener University Delaware Law School has several programs that encourage law students to become involved.

Delaware Law School students volunteer for the **DLS Patent *Pro Bono* Program**, where low-income inventors can get free advice from a patent attorney or patent agent. The USPTO recognizes that patent professionals are already very busy assisting paying clients with their intellectual property needs. That makes the

Delaware Volunteer Legal Services (DVLS) is a non-profit corporation established by the Delaware State Bar Association in 1981. Staffed by Delaware Law School students, volunteer attorneys, and staff attorneys, its mission is to provide quality *pro bono* legal services to low-income Delawareans with meritorious civil legal problems. There are volunteer opportunities in Delaware in many areas of law: consumer, debt/credit/bankruptcy, disability, elder law, family & juvenile, housing, life planning, and personal injury defense. The populations served are domestic violence victims, elderly, low income, military/veterans, and persons with disabilities. *Pro bono* opportunities exist for: Law School Clinic, law students, lawyers, mentors, and senior lawyers.

5 Reasons to Engage Law Students in *Pro Bono*

1. LAW STUDENTS PROVIDE SUBSTANTIAL RESOURCES

Law students can perform client intake, perform client interviews, develop written materials, and conduct presentations. Students with foreign language speaking skills can translate written materials or provide oral interpretation services. In addition, students who are certified under applicable student practice rules can provide direct representation in court or administrative hearings under attorney supervision.

Students can perform online research and writing opportunities from home, regardless of location.

2. LAW STUDENTS WANT TO VOLUNTEER

Students recognize that employers today cannot afford to train young lawyers like they did previously. In order to be marketable, they must demonstrate substantial practice experience and legal skill development.

The frequent press showcasing large firm *pro bono* also influences students seeking law firm and corporate counsel positions. Inspired by this work, they seek *pro bono* opportunities while in law school and expect the same in their future legal career.

3. LAW SCHOOLS WANT IT

Current developments in legal education call for increased experiential learning opportunities that integrate practical lawyering experiences into the curriculum. In addition, ABA law school accreditation Standard 302(b)(2) requires schools to offer substantial opportunities for student participation in *pro bono*.

commitment of the volunteers in this program all the more meaningful and makes USPTO grateful to all those who have dedicated their professional expertise to making the Patent *Pro Bono* Program a success.

Veterans Law Clinic (VLC) was founded in 1997 and expanded significantly in 2006. The VLC in Wilmington, Delaware, is a Delaware Law *pro bono* clinical program. VLC faculty, students, staff attorneys, and legal fellows honor and protect low-income and disabled veterans and their families who reside in Delaware, Pennsylvania, and surrounding areas. They offer free legal representation to veterans with meritorious VA claims that have been denied by a regional VA office.

As a result, law schools are expanding opportunities that serve the dual goal of providing hands-on skills training and developing a sense of the professional responsibility to provide *pro bono* legal services. This creates a ripe opportunity for legal services to develop and expand partnerships with law schools.

4. PARTNERSHIP OPPORTUNITIES ABOUND!

With so many law school faculty and staff charged with developing *pro bono* and public service opportunities, there is increased potential to build effective collaborative models. While clinics, externships and short-term *pro bono* opportunities are all wonderful ways to partner, consider other options, such as alternative winter and spring break projects, doctrinal courses with public service components, and more.

5. STUDENTS ARE FUTURE LEGAL PROVIDER STAFF, VOLUNTEERS, AND DONORS

Legal service and *pro bono* programs frequently report that law student volunteers return to the organization as staff and those who go into private firms often remain connected either as volunteers or as donors. The key to establishing this long-term connection is to provide students with meaningful experiences through quality supervision, mentorship, feedback, and a range of responsibilities that will both challenge and strengthen students' skills-sets.

If you or your firm are interested in or already participate in *Pro Bono*, please let us know:

Susan Simmons
Director of Development
& Access to Justice Coordination
Delaware State Bar Association
405 North King Street
Wilmington, DE 19801
ssimmons@dsba.org
(302) 658-5279 ext. 101

Susan Simmons is the Director of Development & Access to Justice Coordination at the Delaware State Bar Association and can be reached at ssimmons@dsba.org.

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DE-LAP ZONE

A Message from the Delaware Lawyers Assistance Program

By Carol P. Waldhauser, Executive Director

Taming That Anger

During a lengthy, all consuming trial, Charles learned that his father, with whom he was very close, was diagnosed with a terminal illness. Immediately, Charles thought of what life would be like without his father. Suddenly, and without warning, Charles' thoughts then switched to how he would need to support his family – both emotionally and financially. To Charles, this was not how his life was to unfold. Presently, Charles is an angry person and an angry attorney.

In fact, stressed and tired, Charles was in Court today. Unfortunately, the Judge reprimanded Charles for his unacceptable tone and unprofessional behavior against the Prosecutor and State's witness. Charles could not shake the comments of the Judge regarding his angry tone and outbursts in Court.

At first, Charles thought that he was being singled out for zealously representing his client. However, that night, Charles took a long look into the mirror and asked himself: "Was I too aggressive and unprofessional?" Charles decided to rethink the way that he was handling his emotions and anger.

Similarly, Charles decided to sharpen his anger management tools not only to bounce back from his courtroom outburst; but tame his temper too!

The Angry Attorney

When in traffic, do you fume when someone cuts you off? Does your blood pressure boil when someone refuses to cooperate with you? Anger is a normal and even healthy emotion — but it is important to deal with it in a positive way. Uncontrolled anger can take a toll on you and those around you. Plus, it can be harmful to your health.

Attorneys are said to be even more vulnerable to the emotion of anger because of the adversarial nature of their profession; the fear of being perceived as weak; and the perception of some that anger can foster success. On the other hand, the very components of professionalism (i.e., courtesy, civility, candor, loyalty to client, meritorious claim, and zealous representation) are affected directed by poor anger management skills.

Anger Management Tools

The Mayo Clinic offers some tips to tame your temper. In fact, the Mayo Clinic staff states, "Keeping your temper in check can be challenging. Use simple anger management tools — from taking a timeout to using "I" statements — to stay in control."

1. Think Before You Speak

In the heat of the moment, it is easy to say something you will later regret. Take a few moments to collect your thoughts before saying anything — allow others involved in the situation to do the same. (This goes for emails too.)

2. Once You Are Calm, Express Your Anger

As soon as you are thinking clearly, express your frustration in an assertive, but non-confrontational way. State your concerns and needs clearly and directly, without hurting others or trying to control them.

3. Get Some Exercise

Physical activity can help reduce stress that can cause you to become angry. If you feel your anger escalating,



go for a brisk walk or run, or spend some time doing other enjoyable physical activities.

4. Take a Timeout

Timeouts are not just for kids. Give yourself short breaks during times of the day that tend to be stressful. A few moments of quiet time might help you feel better prepared to handle what's ahead without getting irritated or angry.

MORE TIPS FROM DE-LAP

► **TAKE SEVERAL DEEP BREATHS**
while sitting or lying down.

► **CHANGE YOUR ENVIRONMENT**
Move a muscle; change a mood!

► **SLOWLY COUNT TO 10**
(or 20 or more) and again
think before you respond.

► **LAUGH AWAY YOUR ANGER**
by finding the humor
in minor upsets.

► **TAKE A BREAK AND LISTEN TO
YOUR FAVORITE MUSIC:**
70s, 80s, 90s, Motown,
Hard Rock, etc.

5. Identify Possible Solutions

Instead of focusing on what made you mad, work on resolving the issue at hand. Does your child's messy room drive you crazy? Close the door! Is your partner late for dinner every night? Schedule meals later in the evening — or agree to eat on your own a few times a week. Remind yourself that anger will not fix anything and might only make it worse.

Recognizing that much of his anger shared space with his deepest fears, our attorney Charles decided that he needed both an anger-management workshop and therapy. Additionally, Charles learned problem-solving techniques, stayed in shape, turned complaints into requests, learned to let go of resentments, and made sure that he put a statute of limitations on his anger.

Moreover, Charles bounced back from his angry outburst in Court by apologizing to the Judge and then by forgiving himself. Although embarrassing, getting angry is not a crime. Criticizing yourself and keeping yourself on the hook will only entangle you in a cycle of shame and self-preoccupation. Get over it — self-forgiveness is the secret to emotional balance. Charles realized, too, that carrying his happiness with him was lighter than carrying his anger!

For more information on this subject, or if you, or someone you know needs support and help, contact the Delaware Lawyers Assistance Program (DE-LAP) at (302) 777-0124 or e-mail cwaldhauser@de-lap.org. 📞

Carol P. Waldhauser is the Executive Director of the Delaware Lawyers Assistance Program and can be reached at cwaldhauser@de-lap.org.

views from the SENIOR LAWYER

By Daniel M. Kristol, Esquire

At some stage in a lawyer's career a point is reached where the lawyer is a threat to clients, the profession, and oneself. The fifty or so cases once routinely handled become an overwhelming burden not effectively disposed.

How do you know when to step aside from active practice and pursue occasional *pro bono* guidance or Osher Life Long Learning? This is but one of many significant questions confronting lawyers as they age.

How about personal issues, relating to health, stress, Medicare, prescription drug coverage, and addictive behaviors? Or, professional issues such as: "tail" for malpractice coverage, records preservation, or financial commitments related to the practice?

Presently senior members of the Bar are represented by the DSBA Special Committee To Study and Recommend to the Executive Committee Proposals to Assist Senior and Retired Lawyers, chaired by Dan Kristol since the time beyond the memory of most senior lawyers (i.e., when J.R. Julian was Bar President). The first meeting was held April 20, 1999 at the former DSBA offices on Orange Street. Because of the dramatic growth in the number of senior lawyers, has the time come to have a Senior Lawyers Section of the Delaware State Bar Association? Is there a group of three or four senior Bar members who wish to undertake the work necessary to create a Bar section?

In addition to becoming active with the Senior Lawyers Committee and pursuing lifelong learning, as senior lawyers wind down their practice, opportunities arise such as providing time to Bar sections, sharing knowledge and expertise through mentoring and written articles, serving as *pro bono* guardian *ad litem*, participating with Delaware Volunteer Legal Services, seeking out opportunities to assist small not-for-profit organizations, assisting on *pro bono* will writing, assisting organizations by providing Medicaid and Medicare guidance, seeking opportunities to assist small business, getting involved with political organizations, looking for opportunities to serve on state and local government panels, serving on boards of local charitable and public service organizations, or whatever other passion you have had, but did not have the time to get involved.

In any case, the volunteer opportunities and programs appropriate to give significance and meaning to one's suddenly available free time are out there to keep active minds of senior lawyers from growing stagnant. Hopefully, in "Views from the Senior Lawyer," focus will be made from time to time on specific subjects of relevance to the many who are winding down long and demanding careers in the law.

Many thanks to the Bar leadership for recognizing that Delaware's senior lawyers need and can now find a platform focusing on issues relevant to them. 📞



BOOK REVIEW

Reviewed by Richard A. Forsten, Esquire

Worth Remembering: *The Forgotten Presidents, Their Untold Constitutional Legacy*

By Michael J. Gerhardt (Oxford Univ. Press, 2013)

History can be fickle, but the judgment of history can be hard to escape — and the judgment of history depends, to a large degree, upon what one is being judged against. Abraham Lincoln may rightly be regarded as our greatest President for leading the nation through the Civil War. A lesser man might have folded. Had George McClellan been elected in 1864, he would have sought peace, and our United States might instead today be two countries. George Washington, Thomas Jefferson, Franklin Delano Roosevelt, Ronald Reagan — each is generally regarded as great, although some may question a particular President or two. Other presidents, though, do not fare as well in the judgment of history. Some are considered poor or ineffectual. Others are rarely discussed (relatively speaking) and one might consider them “forgotten.”

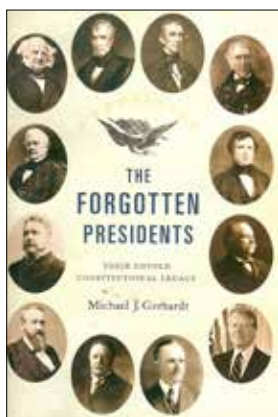
In *The Forgotten Presidents, Their Untold Constitutional Legacy*, Professor Michael J. Gerhardt looks at the constitutional legacy of twelve “forgotten” presidents. He begins with an attention-grabbing description:

Faced with one of the worst economic downturns in American history, the nation turned to the new president for leadership. As a senator, he had left little mark and seemed to have studiously avoided controversy, but hopes were high. The president’s fellow Democrats quickly rallied to his side, while opposition leaders vowed to do everything they could to ensure that he was a one-term president. To the surprise of many, he promised bold, radical reform. His plan divided Americans and encountered stiff resistance in Congress. But, by a largely party line vote, Congress eventually approved it. Furor over the plan intensified, as its fate became a major issue in the midterm elections. The president’s critics denounced him as elitist and arrogant and his plan as extreme, unprecedented, dangerous, despotic, un-American, and plainly unconstitutional. While one might have expected the conservative Supreme Court to strike the plan down, it did not. Through his bid for reelection, his opponents railed against the radicalness of his plan, which they vowed to repeal.

Yet, while many might read the foregoing paragraph and think of our current President, in fact, Gerhardt is describing Martin Van Buren. Van Buren came into office during the midst of the country’s first severe recession, yet his plans for the economy (ending paper money, reorganizing federal depositories, and, in general, taking the view that the federal government had limited powers) did very little for the economy and he lost his bid for reelection.

Gerhardt reviews the constitutional legacies of Van Buren and eleven other “forgotten” presidents. He selected these presidents based on various criteria (number of mentions in school history books, number of biographies in university libraries, public recognition, expert rankings, length of term, etc.). Specifically, the twelve presidents discussed are: Martin Van Buren, William Henry

Harrison, John Tyler, Zachary Taylor, Millard Fillmore, Franklin Pierce, Chester Arthur, Grover Cleveland, Benjamin Harrison, William Howard Taft, Calvin Coolidge, and Jimmy Carter. Yet despite their relative obscurity, Gerhardt reminds us that every president faces constitutional questions and issues, and that even the most forgotten of presidents has nevertheless had an impact on the constitutional framework of our country.



“History can be fickle, but the judgment of history can be hard to escape — and the judgment of history depends, to a large degree, upon what one is being judged against.”

John Tyler would be important for constitutional history if only because he was the first sitting vice-president to succeed to the office of the presidency due to the death of the president. He assumed office upon the death of William Henry Harrison in 1841, after Harrison died from pneumonia he developed during his inaugural address (Harrison spoke without an overcoat in icy winds and died one month after the ceremony). But what, exactly, did it mean for the vice-president to become president? Was he still the vice-president, but with the president's powers? Was he the “acting” president? Or was he truly the president? Harrison's cabinet initially took the position that Tyler was still the vice-president and so addressed Tyler upon their first meeting with him after Harrison's death. Tyler, though, argued that he was the president and instructed the cabinet to address him as president. After a lengthy meeting, the cabinet did so. However, some in Congress resisted the notion that the vice-president became the president, but ultimately the matter was settled — the vice-president became the president.

Still, Tyler was involved in other numerous constitutional issues. He was the first president to have a veto overridden. He fought with Congress over the power of the president to remove officers. He fought with the Senate over “advice and consent,” with seven of twenty cabinet nominations rejected and a record eight of nine Supreme Court nominations rejected. Tyler fought for the annexation of Texas (which was approved just as his term of office expired), and he played an important role in defining and enforcing the Republican Guarantee Clause of the Constitution.


Grover Cleveland is the only president to serve non-consecutive terms. During his first term, he vetoed more

than twice the number of bills as had been vetoed by all the presidents before him. In his second term, he changed his approach to Congress, and, unlike his first term, where he took a largely passive and deferential approach towards Congress, with his second term he exercised leadership and arm-twisting on desired legislation and started the presidency on the path to the more modern style we take for granted today.

Jimmy Carter may seem like an odd choice for a “forgotten” president, but Gerhardt reminds us that many people today were born after his presidency and he only served one term. Although Carter is not as forgotten as the other presidents selected, Gerhardt predicts he will be remembered less and less as time marches on. For those who remember Carter's presidency, the chapter will jog memories and remind folks that, in many ways, Carter was his own worst enemy as president.

It is often said that some are born to greatness, others have it thrust upon them. America's forgotten presidents suffer, in part, for presidencies with little perceived lasting impact, although as Gerhardt demonstrates, even the most forgotten of presidents has contributed to our constitutional legacy and affected history in ways simply not remembered. Ⓢ

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.



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A PROFILE IN BALANCE

By James G. McGiffin, Jr., Esquire

Drew Gonser

Calm in the Midst of Cacophony

If I aspire to be the best lawyer I can be, I must first try to be the best person I can be. I am fortunate to know many lawyers who have succeeded in their work, in part, because they are excellent people. This column in The Bar Journal will feature an article on one such lawyer. Each featured lawyer will exemplify the art of balance in life. I have learned much from these people. Perhaps readers will also benefit.

- Jim McGiffin

• • •

One does not find many truly calm people in the hectic world of family law practice, but your writer has found one: Wilmington attorney Drew Gonser. Perhaps even more remarkable is that Drew and his wife Kristina have five children at home. And yet, he remains calm. How does he do it?

Drew began life in Little Rock, Arkansas. His father was employed by a DuPont subsidiary at that location. When Dad (Delaware lawyer William A. Gonser, Jr.) went to work for the DuPont legal department, the family relocated to Delaware. Drew began his high school career at Brandywine, but the family had an opportunity to go overseas, and Drew spent more than three years in Tokyo, Japan, graduating from an American high school there.

The University of North Carolina – Greensboro was the place where Drew began his college work. As his family was still in Japan, Drew transferred to Texas Tech. His family returned to Delaware from Japan and Drew, recalling his passion for the game of soccer and his acquaintance with the coach at the University of Delaware, transferred once again, and completed his degree while also competing on the pitch as a Fighting Blue Hen.

A natural people-person, Drew began his professional career in sales with a staffing company called Aerotek, and then with the financial firm Vanguard. A benefit offered by Vanguard was tuition reimbursement. Drew discussed with his family the prospect of furthering his education and, subtly, his mother (she, a lawyer's wife, after all) gave him an LSAT preparation book for Christmas. Though perhaps not an original idea, law school seemed like a good idea.

Drew did not begin this part of the adventure alone. He had met the lovely Kristina Shafer while they both worked at Aerotek. By the time

Drew started law school, they were married and had a child. The result of Kristina having a glass of red wine and Drew walking around shirtless, he says. Drew was very busy working full-time at Vanguard in Malvern, Pennsylvania, attending Widener University Delaware Law School in the evening, and adding two more children to the family before graduation. He probably needed more shirts.

After sitting for the Delaware Bar Examination, Drew clerked for Superior Court Judge (now President Judge) Jan Jurden. He describes that year as “an amazing experience.” The day after he completed his job at the Superior Court, Drew did what few do — he hung out his shingle.

This was not a whim. Nor was it a last resort. Drew had a plan and lots of sales experience. Four months later, his Dad retired from the DuPont Legal Department and joined him. After seven months, the fledgling law firm was paying its bills.



The firm now boasts six lawyers and continues to expand. They do work in the areas of family law (Drew's primary area of interest), estate work, alternative dispute resolution, and some personal injury work.

Like many family law practitioners, Drew volunteers a lot of time to the DSBA Family Law Section (he is a former Chair), the Melson-Arsht Inn of Court, the Office of the Child Advocate, the Family Court Resource Center, and the various programs for domestic violence victims. In addition to these activities, Drew is a member of the state's Public Integrity Commission. The PIC meets monthly to discharge its responsibility to administer and implement Delaware's ethics law for the Executive Branch, its financial disclosure law for all three branches, and its lobbyists' registration and expense reporting laws. Drew explains he enjoys this service very much. He knows a great deal more about Delaware's geography and government.

Although Drew has cut his own trail in the legal world, what really defines him is his family. Drew and Kristina have 5 children between the ages 5 and 18. And, life with these children is action-packed. For example, there was the time Drew delivered their youngest in the car, having pulled over to the side of the Concord Pike. Did not quite make it to the hospital. When the family listened to the 9-1-1 recording made at the time as part of the baby's first birthday celebration, the other kids got to hear Dad's colorful exclamations as he explained the situation to the dispatcher.

Not all the days in the Gonser household are that eventful, but they are all full, and Kristina is the coordinator. During one recent year the five children attended five different schools. The children are all athletes, playing soccer year-round and dabbling in other sports. They are all musicians, as well. And, they are all good students. Drew is well-suited to coaching his young soccer players. Not only did he play the beautiful game through high school and in college, he once tried out for the Philadelphia Union, and he

has the T-shirt to prove it. He continues to play both outdoor and indoor soccer, reconciled to his amateur status. Four of his five kids will even watch English Premier League soccer with him on Saturday mornings, all wearing appropriate team scarfs. The youngest, however, prefers *SpongeBob SquarePants*. Logistical challenges aside, this family loves travel, particularly to the great National Parks. His children have been to Acadia, Mesa Verde, Arches, the Rockies, Yellowstone, Grand Teton, and the Grand Canyon.

Drew, himself, has visited all 48 of the continental United States.

Drew Gonser is serene in a chaotic world. He is earthy and sophisticated. He is a businessman and a trusted counselor. He can only be all of these things because he is also a balanced person. ☯

James G. McGiffin, Jr. is a Senior Staff Attorney with Community Legal Aid Society, Inc. and a former President of the Delaware State Bar Association. He can be reached at jmcgiffin@declasi.org.

ATTORNEY ETTA R. MAYERS JOINS THE LAW OFFICES OF TUNNELL & RAYSOR, P.A.

Tunnell and Raysor, P.A. is pleased to announce that Etta R. Mayers, Esquire is joining the law firm on June 6, 2016. Ms. Mayers was born and raised on the Delmarva Peninsula. She graduated from the University Of Iowa College Of Law in 2001. After passing the Delaware Bar, she joined the law firm of Richards, Layton and Finger P.A. focusing on litigation, restructuring and bankruptcy. In 2009, she was hired by the law firm of Potter, Anderson and Coroon LLP in Wilmington to handle restructuring, bankruptcy, litigation and commercial transactions.



She is returning home after 15 years in Wilmington and will be working with the clients of Tunnell and Raysor, P.A. in the areas of commercial law, real estate, estates and general business litigation.

Ms. Mayers is also admitted to the United States District Court for the District of Delaware and the United States Court of Appeals for the Third Circuit. She is a member of the American Bar Association, IWIRC and the Delaware Bar Association. She will be available for appointments in any of the four law offices of Tunnell & Raysor, P.A. located in Georgetown, Rehoboth Beach, Lewes, and Bethany Beach.

Please call 302.856.7313 or go to Tunnell & Raysor, P.A.'s website at www.tunnellraysor.com for more information or an appointment.

The Pursuit of Justice and the Proper Role of the DSBA

By Daniel G. Atkins, Esquire, Executive Director
Community Legal Aid Society, Inc.

In the April 2016 issue of the *DSBA Bar Journal*, DSBA President Richard Forsten argued that “politics has no place” in the workings of the DSBA. I am writing to offer what I hope is a friendly amendment.

The genesis of the article appears to be the plan by another state bar association to create a Political Action Committee. Richard is persuasive in making the case that a non-partisan bar association should not be creating PACs, and indeed, the association in question abandoned the effort. I am inclined to agree with Richard: that sort of politics — partisan politics — is almost by definition outside the scope of a bar association’s activities.

But politics, of course, can have a broader meaning, and it would be one very large step beyond Richard’s initial position to take the view that political values should never inform the work of the DSBA.

In 1945, Harrison Tweed, the venerable corporate lawyer and one of the namesakes for Milbank, Tweed, Hadley and McCoy, spoke at the American Bar Association (“ABA”) convention in Cleveland. He remarked that he would “...like to see this Association engage more wholeheartedly, and perhaps even a little dangerously, in things which concern the public good and are ... things of which lawyer possess special knowledge.” In the room that day were Collins Seitz and Bill Poole, and on the airplane home they decided that the DSBA should advocate the formation of the Legal Aid Society in Delaware (what is now known as Community Legal Aid Society, Inc.). The ABA has heeded Tweed’s call. It now has four goals as its purpose — 1) serving its members through benefits,

programs and service; 2) improving our profession through legal education, ethical conduct, and public service; 3) eliminating bias and enhancing diversity in our profession and justice system; and 4) advancing the rule of law by working for just laws including human rights and assuring meaningful access to justice for all persons. Some might argue that at least two of those goals are political and controversial. But, does that make them less appropriate for a bar association to champion?

In 1965, the Rev. Martin Luther King, Jr. spoke at the New York City Bar Association. The Civil Rights Act of 1964 had been passed and the Voting Rights Act was to be signed in a few months, yet the ABA remained silent on civil rights legislation. Dr. King noted that no one is better positioned and qualified than lawyers “... to better understand the mortal danger to the very fabric of our democracy when human rights are flaunted.” He explained that “the road to freedom is now a highway because lawyers throughout the land, yesterday and today, have helped clear the obstructions, have helped eliminate roadblocks, by their selfless, courageous espousal of difficult and unpopular causes.”

Today, the ABA’s tagline is “Defending Liberty, Pursuing Justice.” Liberty and justice are of course imbued with political subtext. Nevertheless, we should not ever forget how special our responsibility as lawyers really is and that we must lead and not abdicate in the effort to make our justice system more equitable. After all, our silence in the face of injustice manifests an undeniable political stance. In such circumstances, we can, we must, speak out.

Certainly, every bar association in the region takes this view: it is in defense of justice that the State Bar Association of Maryland weighed in on the state’s proposed Rape Survivor Family Protection Act; that New Jersey’s held a summit on the value of diversity and inclusion; that New York’s called for reductions in the use of solitary confinement; that Pennsylvania’s spoke out in opposition to a weakening of the state’s predatory lending laws.

Richard suggests that the DSBA should engage in “politics” only in those areas “in which it historically has been engaged without division or question.” He offers Corporate Law and Real Property law as two examples. By way of friendly amendment, I simply would add a third: the pursuit of “justice.”

The meaning of that term, of course, is not self-evident. But, in every area of law — even in corporate law and real property — the drawing of lines is always difficult and often controversial.

That should not compel our Bar Association to refrain from advocating for equal access to the courts and socioeconomic and racial fairness in our legal system. Harrison Tweed in that same ABA speech in 1945 implored that “[e]very lawyer and every layman should help with mind and money, heart and soul, until the objective of justice for all has been attained. Then, but not until, we can all go fishing.” ☯

Daniel Atkins is the executive director of Community Legal Aid Society, Inc., where he has worked since 1990.

A Final Reply

By Richard A. Forsten,
Esquire

Author's Note – since it was my April column that prompted Dan Atkins' answer on the previous page, I thought I might take the opportunity to do a short reply in the classic opening/answer/reply model that we lawyers know all so well.

In my April, 2016 President's Column, entitled "Check Your Politics at the Door," I wrote that "politics has no place" in our Bar Association, as the Association is made up of a broad and diverse group of lawyers, with differing political and other views, and that "[o]nly by respecting all such views can our Association do right by all its members." I argued that "[t]he only 'politics' in which the DSBA should be engaged are those in which it historically has been engaged without division or question — that is, in those discrete areas of statutory law where the need for updates and modernization is necessary and, in some cases, constant." Of all the columns I have written, this one received the most compliments.

Dan Atkins, the Executive Director of Community Legal Aid Society, Inc. ("CLASI"), has responded to my column by offering a friendly amendment: that the DSBA weigh in on matters involving "the pursuit of 'justice.'"

On the surface, this amendment seems friendly enough — after all, no one can seriously be against "the pursuit of justice." I would simply caution however, that one man's "justice" may be another man's "tyranny" or someone else's "anarchy."

For example, in my original column I argued that no bar association should weigh in on the death penalty, either pro or con. Good lawyers line up on both sides of the issue. Looking at the question through the lens of "justice," some might

Reply (continued on page 20)

SUCCESS SECRETS

EXCELLENCE IN CLIENT SERVICE

By Alison Kinsey, Professional Development Manager, Ballard Spahr LLP

Excellence in the practice of law is a given, but clients are also demanding greater value from their lawyers. Thus, client service has become increasingly important. Below are a several tips you can follow to provide a high level of service to your clients.

Understand your client's business. You must know what your clients do as well as the risks they face. With all of the information available on the Internet, it is a relatively easy proposition to research your client's business, their industry, their competitors, the key players, and emerging legal trends. Gathering this intelligence could be as simple as reading the company's public disclosure statement. By understanding your client's business and industry, you will be better equipped to develop a sense of what legal solutions are the most practical and risk-appropriate. Of course, clients want a lawyer who has experience and deep knowledge in a particular area of law, but the true value-add is when their lawyer can bring an educated sense of judgment to a legal issue by calling upon their understanding of the client's business.

Be responsive. The legal issues facing your clients are omnipresent. The individuals responsible for handling those issues — whether in-house counsel, HR professionals or an owner — have their own internal clients to whom they report or provide guidance. Thus, responsiveness to their question or issue is a vital component of providing excellent client service. Although an immediate answer is not always necessary, at a minimum, clients need to know that the issue has been received and triaged. By providing a time frame in which you will provide a response, it allows your client to manage their own internal client expectations.

Communicate appropriately. Excellent customer service also hinges upon your understanding a client's preferred method of communication at the outset of a matter. The best lawyers, before delving into the substantive issue, ask the client several key questions — what they want; what form they want it; when they need it; and who is involved. The best lawyers are also thoughtful in tailoring the format of their response to each situation. For example, if litigation is imminent, a detailed legal analysis will likely be needed. If the issue is more sensitive or there are certain nuances that need to be conveyed, however, a phone conversation may be more appropriate.

Embrace legal project management. Clients are expecting more efficient, predictable, and cost-effective legal service. As a result, lawyers are under pressure to price legal services more competitively as well as to engage in more active matter monitoring and management. Legal project management (LPM) is an effective tool to address client needs while maintaining profitability. The first element in LPM is to understand the client's expectations early in the matter, which involves asking: (1) what the client considers a successful outcome; (2) what the client's priorities are, both overall and for a particular matter; and (3) who the primary decision makers are, especially when it comes to fees. (*Legal Project Management Quick Reference Guide*, 3 ed., Jim Hassett, Ph.D et al). A communication plan is also essential. You should provide regular status updates to your client. You must also immediately contact your client if there will be a change in the scope of the matter or budget.

Be engaged. Clients have a multitude of lawyers and law firms to obtain a substantive answer to a particular problem. Most lawyers are capable of handling the day-to-day tasks in a deal or litigation. However, it is those lawyers who have fresh ideas and develop out-of-the box solutions who demonstrate their commitment to excellent client service. Likewise, clients are also more likely to reach out to lawyers who demonstrate that the client is at the forefront of their mind even when there is no immediate legal issue on the horizon. A brief email to a client attaching an article on an emerging issue in the client's industry goes a long way to fostering a client relationship.

"Success Secrets" is curated by Emilie R. Ninan, Esquire. If you have a success secret to share, please contact her at ninane@ballardspahr.com. 

claim that elimination of the death penalty furthers “justice,” others might conclude that it weakens “justice.”

Similarly, California recently changed its laws regarding shoplifting — making shoplifting a misdemeanor for goods up to \$950 (the previous limit had been \$400). Some might argue that convicting someone of a felony for stealing \$500 worth of goods or clothing is unjust, and that a misdemeanor makes more sense because of prison overcrowding, limited police, and judicial resources, etc. But, California retailers have seen a 12-15% increase in shoplifting since the monetary limit was changed. Was the lessening of the penalty a furtherance of “justice?” What about “justice” for the shop owners who are told that the police will no longer bother to investigate a \$900 theft since it is now only a misdemeanor?

Finally, consider the 1994 federal crime bill, which, among other things, funded additional police and toughened sentences. Some credit the bill for a decrease in violent crime, while others say it unfairly (or un-

justly) increased incarceration rates. Would it be in the pursuit of “justice,” to pursue legislation reducing incarceration rates? Some would say yes, that there is too much incarceration in this country already and that there are better alternatives, at least for some crimes. Others disagree or fear a rise in crime rates.

My point in all of this is simply that the use of the term “justice” does not really provide meaningful guidance. “Justice” to some may be “injustice” to others.

Although I have concern over Mr. Atkins’ use of the term “justice” as too open-ended, I think he and I are actually very much closer to agreement on the bigger picture. Certainly I can agree with Mr. Atkins that it is entirely appropriate for the DSBA to be “advocating for equal access to the courts and socioeconomic and racial fairness in our legal system.” When it comes to the administration of the justice system — obtaining necessary judicial resources and ensuring that the system operates in a fair and unbiased manner — the Bar Association is well-positioned to play and, indeed, should play an important

role. Similarly, when Mr. Atkins cites to the formation of the Legal Aid Society of Delaware in the 1940s (the predecessor of today’s CLASI), I think we can all agree that the formation and promotion of an organization dedicated to providing legal services to the poor is something a bar association can and should endorse.

But, when the issues are more in the nature of public policy, and good lawyers can and do disagree, then I think the Bar Association should stay out of the matter, whether one views the issues involved as a matter of “justice” or not. Potter Stewart once said that he could not define obscenity, but he knew it when he saw it. So too, it may be difficult to provide a working definition of precisely when the DSBA should or should not weigh in on a particular issue, but I think most of us, for most cases, know it when we see it. ⚖️

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.



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Nominations Sought for the Delaware State Bar Association's 2016 Christopher W. White Distinguished Access to Justice Awards

The DSBA and the Awards Committee are seeking nominations for the 2016 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

Tuesday, October 25, 2016, 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 Access to Justice Coordination, e-mail ssimmons@dsba.org or fax to (302) 658-5212. The deadline for nominations is August 5, 2016.

POSITIONS AVAILABLE

ARTESIAN WATER COMPANY is seeking an attorney with a minimum of five years of experience with contract and transactional work to draft new contracts or review and revise those provided by third parties as required for business relationships. Assist in State, County and municipal land use matters and Public Service Commission regulatory process and related matters. Assist in risk management insurance related matters including but not limited to, adequacy of coverage and coordination of legal matters handled by insurance company. Qualified applicants should e-mail resume with salary requirements to pcumpston@artesianwater.com.

ASSOCIATE ATTORNEY: Opportunity for attorney with minimum 5 years of experience in either corporate bankruptcy or commercial litigation to anchor Wilmington Delaware office for California-based law firm with expertise in corporate bankruptcy, creditors' rights and commercial litigation. Must be ambitious and seeking responsibility and growth. Excellent salary, bonus, health benefits and retirement. Email resume to: ksherwood@blakeleyllp.com.

THE LEGISLATIVE COUNCIL'S DIVISION OF RESEARCH has a vacancy for a Legislative Attorney to serve as nonpartisan staff to the General Assembly to draft and proofread legislation, research and analyze legislation, perform legal and general research, and testify before the General Assembly and its committees. Incumbent must be licensed to practice law. For additional information please e-mail the Division at legislative.council@state.de.us.

ASSOCIATE OPPORTUNITY: Small corporate litigation boutique seeks an associate with 3-5 years' experience for its busy practice. Please submit resume and writing sample to HR Partner, P.O. Box 1450, Wilmington, DE 19899.

ATTORNEY OPENING: We have an opening for an attorney to work in our Milford office in the areas of Personal Injury and Worker's Compensation. This is an excellent opportunity to start a practice near the beach. Email your resume to ShakuBhaya@dplaw.com.

WE ARE AN ESTABLISHED LAW firm in Dover, DE. We are searching for an associate attorney with 0-5 years' experience to expand our firm. The position is in the areas of plaintiff's personal injury/criminal defense, domestic law, and/or workers' compensation. The successful candidate will have excellent oral and written communication, time management, negotiation skills as well as the ability to analyze complex cases. We offer a competitive compensation package and benefits including medical, long-term disability and 401K. If you are interested please submit both a cover letter and your resume to gquell@schmittrod.com.

BANKRUPTCY ASSOCIATE 2-4 YEARS' EXPERIENCE: Morris James LLP's Wilmington, Delaware office seeks an attorney with 2-4 years' experience as a Bankruptcy Associate. Candidate should have strong academic credentials, strong writing and advocacy skills and a knowledge and understanding of bankruptcy law. Prior admission to the Delaware Bar is required. This position offers a competitive starting salary, health benefits and the possibility of bonus and raises based on performance. Please submit a résumé, writing sample and transcripts to Thomas E. Hanson, Jr., Esq. at thanson@morrisjames.com.

LEGAL ASSOCIATE: The Norman Law Firm, LLC, is looking for an associate attorney admitted in Delaware to work in its Sussex County office. Practice includes a wide range of practice areas including civil litigation, and real estate settlements. Applicants should be technically savvy, research proficient, and a solid writer. Willing to train the right candidate. Interested applicants should email a resume with cover letter to snorman@thenormanlawfirm.com.

TRUSTS & ESTATES: Morris James LLP seeks an attorney to join its substantial tax, trusts, estates and business practice. Minimum 3 to 5 years' law firm or trust counsel experience is required; LLM preferred but other qualified candidates will be considered. This position requires superior communication, drafting and research skills, with the ability to work both independently and as a team member. Primary practice areas include estate planning – from basic to sophisticated – estate administration, and income and transfer tax planning, with significant exposure to Delaware trust practice, S corporations, LLCs and business succession planning. Morris James is consistently rated among the best places to work in Wilmington, providing a collegial atmosphere and excellent staff support. This position offers unlimited potential for the right person. Email résumé to: Mary M. Culley, Esquire; mculley@morrisjames.com.

EMPLOYMENT OPPORTUNITIES: 5-7 year corporate transactional associate, 3-5 year commercial litigation associate, 2-4 year bankruptcy associate and many more. Please contact kgattuso@kllegalconsulting.com. All inquiries are confidential.

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LOST WILL

LOST WILL: Georgianna Dodd, Wilmington, DE. Died 9/15/13. Looking for original or copy of a Will or Codicil. Please contact Bill Brady at (302) 482-4124 or wbrady@bradylawde.com. 

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Keep your information up-to-date with DSBA **Delaware Legal Directory correction form**

Please let us know if there have been any changes in your place of business, address, telephone number, fax number, or e-mail address. Please send changes for the 2017 Legal Directory to Janice Myrick at jmyrick@dsba.org. Please send photographs for the 2017 Legal Directory to Rebecca Baird at rbaird@dsba.org.

In order to have the correct information published in the 2017 Delaware Legal Directory, corrections must be received no later than September 16, 2016 – no exceptions!

(Please type or print clearly)

Name: _____ Bar ID # _____

Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____ Fax number: _____

E-mail address: _____

Please mail, fax, or e-mail completed form by September 16, 2016 to:
Delaware State Bar Association • 405 North King Street, Suite 100 • Wilmington, DE 19801
Fax: (302) 658-5212 • E-mail: Janice Myrick at jmyrick@dsba.org

DEADLINE FOR LEGAL DIRECTORY CORRECTIONS AND PHOTOGRAPHS: SEPTEMBER 16, 2016

Fifty Shades of Golden

I celebrate my golden (not cherries) jubilee of “Judicial Palate” articles by reaching back into my recipe bank from the last 50 articles for some “golden oldies.” From bright yellow lemons to the subtle caramel color of rice pudding, all of these recipes are as good as gold.

Champagne Cocktail

Douse a white sugar cube in Angostura bitters and place into a Champagne flute. Add 24 ml of brandy, then gently top up with dry Champagne. The most famous of Champagnes — a Veuve Clicquot Brut — is an excellent choice for this drink.

Hummus

2 - 16 ounce cans chick peas
5 cloves garlic
4 tablespoons tahini
Juice of 3 lemons
2 tablespoons olive oil
7 dashes Tabasco sauce
Sea salt to taste
Fresh ground pepper to taste

Place all ingredients in a food processor and blend until coarsely puréed. You may add more olive oil and/or lemon juice to achieve a smoother texture. You may also adjust the quantity of Tabasco sauce depending on your desired level of heat. Serve the hummus chilled or at room temperature, using it as a dip for crusty bread, radishes or endive leaves.

Fried Duck Egg and Duck Bacon

1 duck egg per person
2 slices of duck bacon per person
Fingerling potatoes (about 3 per person)
Sea salt
Fresh ground pepper
French butter
Extra virgin olive oil
1 lemon

Wash and cut the fingerling potatoes. Use the tricolored (red, white and purple) fingerlings if available as they will add a vibrant color to the dish; otherwise, any fingerlings will work well. Place the potatoes in a baking dish and season with sea salt and fresh ground pepper to taste. Squeeze the juice of one lemon and drizzle olive oil over the potatoes. Place the baking dish in an oven preheated to 400 degrees, and bake for about 40 minutes or until the potatoes are soft when you poke with a fork. When the potatoes are almost finished, prepare the bacon and then the eggs.

Place the strips of duck bacon in one layer in a nonstick frying pan. Place the pans over medium heat and cook the bacon until browned and slightly crisp. Set aside the bacon on a paper towel. Fry the eggs in the same pan that you used to cook the bacon. Place 2 tablespoons of butter and 2 tablespoons of olive oil in each pan over medium heat. When the butter is foaming, break and place the eggs in the pans. Turn the heat down to medium-low and cook the eggs for about 3 minutes so that the whites are set but the yolks are runny.

While cooking the eggs, place a serving of potatoes on each plate. When the eggs are ready, remove them from the pan using a spatula, and place one egg on top of each serving of potatoes. Place two slices of bacon on top of each egg.

Grilled Apricot Quail

4 semi boneless quail
4 tablespoons apricot jam (Bonne Maman is the best!)
Extra virgin olive oil
Sea salt
Fresh ground pepper
1 lemon

Semi boneless quail from D'Artagnan is ideal for this recipe. A package of four of these tiny birds is just the right amount to serve two. Blend the jam and two tablespoons of olive oil in a small bowl. Use a kitchen brush to coat the quail with this mixture. Then, season the quail with sea salt and fresh ground pepper to taste.

Heat the grill to medium high heat. Use tongs to place the quail on the grill, and cook for two minutes with the lid down. Then, turn the quail, brush again with the jam mixture and grill for another three minutes with the lid down. Both sides of the quail should be nicely browned. Remove the quail from the grill and top with some freshly squeezed lemon juice before serving.

Coconut Rice Pudding

½ cup of short grain pudding rice
3 tablespoons of superfine sugar
½ teaspoon of vanilla extract
1 ¼ cups of whole milk
1 ¾ cups of coconut milk
7 tablespoons of light cream
2 tablespoons of shredded coconut

Soak an unglazed clay pot, such as a Römer-topf, in cold water for 15 minutes and then drain the pot. Add the rice, sugar, vanilla, milk, coconut milk and cream. Cover the clay pot and place it in a cold oven. Set the oven to 350 degrees and cook for 1 hour. Remove the lid, stir the pudding, then replace the cover and cook for 30 to 45 minutes until the rice is tender. Remove the lid and stir the pudding. Sprinkle the pudding with the shredded coconut and bake uncovered for 15 minutes. Serve at room temperature.

Cheers to another 50! 🍷



Susan E. Poppiti is a mathematics teacher 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. Other recipes and cooking tips are available on Susan's food blog at www.cucinadipoppiti.com.

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To benefit the Combined Campaign for Justice

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