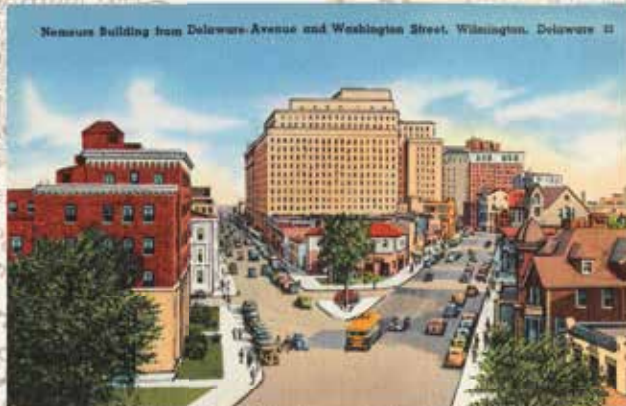




THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION



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THE DELAWARE STATE BAR ASSOCIATION 1923 - 1947

A Highlight of DSBA's Early Years / p. 26



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*First African American Chief Presiding Judge
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MARCH 2023 | VOLUME 46 • NUMBER 8

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THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

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Cover: Map / istockphoto.com/NSA Digital Archive; Vintage Delaware Postcards from The Tichnor Brothers Collection, Boston Public Library. All images ca. 1930–1945.



The Freedom to Move

Imagine receiving an offer as you graduate from law school, promising a robust salary and ample benefits, with a noncompete covenant included in the package.

The salary would melt those student loans within four years. Vacation, to the extent you actually take it, could last four weeks annually. The penultimate paragraph, though, says that if you leave the firm, you cannot, for 18 months, work for any “direct or indirect competitor” that is engaged in the practice of law in Delaware. After all, you would have had access to confidential information, as defined in the offering letter.

This scenario cannot happen to a lawyer, because lawyers have established rules that prevent it. Rule 5.6 of the Model Rules of Professional Conduct, adopted in Delaware and most other jurisdictions, prohibits law firms from imposing noncompete covenants on lawyers.

Enforcing a restriction that prevents a lawyer from moving to another firm would hurt society, the courts and ethical authorities agree, by impairing the ability of clients to choose their counsel freely.

This means that lawyers can elude the vise of these restrictive covenants. What about the rest of the world?

Our classmates who aced organic chemistry don't do quite as well. Recent surveys indicate that as many as half of all doctors — and a clear majority of younger physicians — have their career options truncated by covenants against competition. The American Medical Association discourages “unreasonable” noncompete covenants, but does not forbid them.

As a consequence, as residents graduate into practice, they confront hospital systems that might impose noncompete covenants of up to 2 years and 30 miles. If the hospital has branch campuses, those 30 miles can extend farther than the Walking Purchase. One nearby hospital's standard contract

Initially conceived to protect businesses from the loss of key executives, the noncompete has degenerated into a wage-suppressing bludgeon. It is imposed on tech workers, therapists, cooks, clerks, custodians — in all, studies say, at least 20 percent of all workers.

requires a physician who leaves for another health care provider within that time and zone to forfeit half of a year's salary as “financial damages.”

The relationship between doctors and patients appears to be less worthy of protection than the attorney-client connection.

Big Med has aggressively pushed these restrictions, reinforcing market dominance, hindering doctors' careers and, by restricting competition, hurting consumers. During the onset of the pandemic, doctors in many markets couldn't move to where they were needed most. As Wharton professor Lawton Burns

has written, hospitals in some regions form oligopolies, with doctors and other professionals as pawns, like ballplayers before 1976.

If physicians cannot elude noncompete restrictions, imagine how the greater workforce is affected. As surely as their keystrokes are monitored, vast numbers of workers are forced into signing contracts with noncompete clauses.

Initially conceived to protect businesses from the loss of key executives, the noncompete has degenerated into a wage-suppressing bludgeon. It is imposed on tech workers, therapists, cooks, clerks, custodians — in all, studies say, at least 20 percent of all workers.

Noncompete provisions also suppress competition, innovation, and market efficiency. By preventing businesses, particularly newly-formed ones, from hiring employees they want, they foster inertia and dampen entrepreneurship.

First confronted with noncompete clauses a century ago, the Court of Chancery sought to establish standards of fairness — reasonableness of scope and time, legitimate business purpose, and a written agreement. *Capital Bakers, Inc. v. Leahy*, 178 A. 648 (1935). Over 90 years, the courts have wrestled with these standards, each case presenting its own questions

of reasonableness or overbreadth, while the legislature has taken no action to give guidance. Litigation costs have ensured that most workers, those whose job changes would not cause “injury” in Chancellor Josiah Wolcott’s 1935 analysis, don’t litigate.

As a result, rules of thumb — 50 miles, 2 years, for example — are routinely inserted into employment agreements where traditional equity never intended them. A generation ago, most employment was based on a handshake, both parties aware that in Delaware, employment is at the will of the employer. Now, HR departments are putting that doctrine into writing — onto which they are routinely engrafting noncompete agreements.

Two months ago, the Federal Trade Commission, lately awakening from a 40-year siesta, issued proposed regulations that would prohibit contracts that prevents workers from accepting employment elsewhere. The proposal, 16 CFR § 910, would not apply to owners or business partners selling a business, nor would it prohibit non-solicitation or non-disclosure provisions. Trade secret protection would remain.

The proposal has bestirred the lobbyists whose success has created a nation with four major airlines and three rental car companies. After arguing that the FTC, which was established to prevent unfair commercial practices and restraints of trade, 15 U.S.C. § 45(a), lacks authority to address the subject, they suggest that abusive noncompete covenants should instead be addressed in litigation or in state laws.

Litigation is a fantasy. The conflict-of-laws briefing alone will consume most workers’ life savings.

Leaving this question to state law is equally unsatisfactory. Designed to be the United States of America, this nation has lately resembled the Holy Roman Empire in the Habsburg era: a confederation of city-states sharing language but not laws. Medical procedures lawful in one state are punishable by prison elsewhere. Possession of cannabis, an open-market business in one state, is a felony in another. Technicians can change jobs easily in one state, but are mired with bad employers in others. Basic rights should not depend on boundaries drawn 150 years ago.

Lawyers aren’t subject to these restrictions, and we don’t impose them on our paralegal and administrative staff. A legal community without laterals would be unimaginable.

Johnny Paycheck gave this country one of its signature phrases. It’s time that the law guarantees the ability of a worker to say, “Take this job and shove it.” 🎸

Chuck Durante, the President of the Delaware State Bar Association, is a partner at Connolly Gallagher LLP, fellow of the American College of Trust and Estate Counsel, chair of the Board of Editors of *Delaware Lawyer* magazine, president of the Delaware Sports Museum and Hall of Fame, trustee of the Delaware Historical Society and president of the Delaware Sportswriters and Broadcasters Association. He can be reached at cdurante@connollygallagher.com.

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Reflections on Creating Space: Leadership, Advocacy & Women

This month's "Creating Space: Law, Advocacy & Women" column on page 14 was submitted by a reader as a response to the column. Thank you, Ms. Wright, for your interest and efforts in responding thoughtfully to the content that our columnists have taken it upon themselves to contribute and for sharing your experience in response to Ms. Huller's most recent column contribution on salary negotiations.

Your response prompts me to address the column's mission statement, and to thank you again, dear reader, for advancing an opportunity to present a time and space to put the mission statement forward, albeit somewhat late. I do feel a need to explain why I am late on stating the column's mission statement for those of you who like to keep an orderly house and to those who do not know me and who do not know that I am a "cart before the horse" person in many cases. As with this column, action happens sometimes before a full plan is in place; that is how it happens when you have too many ideas, too much excitement, passion and — most of all — impatience, and are not afraid of some risk. I am also a "slow burn" person. I needed time to see how the column would play out in the legal community, in my life both personally and professionally, how the professional community at-large would respond, what type of content would be submitted, and to sit with my thoughts on exactly why I felt compelled to endeavor in this way. All this to say that any mission statement originated at the beginning of the column would have been overly idealistic and half-baked, anyway. Now that I've percolated, received your feedback, sat with my own thoughts, and contemplated why the issues dis-

Bar Journal Editor **Kristen Swift** is a Partner at Weber Gallagher and Immediate Past Chair of the Litigation Section. She can be reached at kswift@wglaw.com. Her full bio is available at www.wglaw.com. All opinions expressed are solely her own.

cussed in this column really matter to me and why I believe they are relevant to my colleagues, here's the drip: the LAW column is a tool to combat the attrition of women in the legal profession by engaging women thought leaders in our community to share their wisdom, experiences, and authorship, and to remind our women lawyer readers that they have a community to rely upon when they might otherwise question their belonging to the legal community.

I would be remiss not to take this opportunity to also address the general concept of a "women's column" or "women in the law" and what exactly that could mean and what it means in the context of the column. I often hear conflation with many educated people in what they understand to be the issues of gender bias/gender leadership styles and approaches to accomplishing goals or work. At baseline, it is important to recognize that gender and stereotyping gender expectations rarely align with reality, and this misalignment may cause miscommunications and cognitive dissonance. Sometimes the miscommunications and dissonance occur in a professional setting. Women lawyers face unique challenges that may arise because of a sex- or gender-based stereotype regarding how people assume they will handle work and women are underrepresented in the legal field. Designating this column as a "women's column" is meant to acknowledge the bias, explicit or implicit, within the legal profession that many women lawyers and professionals have experienced and to promote unity within the profession. 🌐

At baseline, it is important to recognize that gender and stereotyping gender expectations rarely align with reality, and this misalignment may cause miscommunications and cognitive dissonance.



The 2023
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Hyatt Place Dewey Beach
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MEMBER BENEFIT OF THE MONTH

New Free Research Benefit: Decisis



On July 1, 2023, DSBA will be ending its six-year relationship with Fastcase and moving to a platform we believe will be better for our members. Several groups have already tested this new way to research cases and have found the catalog of cases and opinions to be more complete and the ease of use to be superior.

Of course, as long as you remain a member of DSBA, this new research program will be free to you.

The new program is called DECISIS and it is a free research program division of Lexis.

There will be an opportunity to learn how to use Decisis on Tuesday, March 14th at 12:00 p.m. via Zoom. Contact Mark Vavala at mvavala@dsba.org for the Zoom login information.

To access your free research program, go to www.dsba.org and log in — then click Free Legal Research: Decisis.

We hope this new member benefit will provide you with a great tool for your business! ⚖️

Open Call for Articles!

Do you have a great idea?



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

Quick-Look ETHICS

A QUARTERLY CONTRIBUTION
BY LUKE W. METTE, ESQUIRE



“When You and Your Client Disagree (Part 1)”

Lawyers and their clients don’t always agree.

This quarter’s “Quick-Look Ethics” column is the first in a series that summarizes a lawyer’s options under the Delaware Lawyers’ Rules of Professional Conduct (the “Rules” or “DLRPC”) under certain scenarios when the lawyer and client disagree.

Disagreements over Litigation Tactics and Strategy

DLRPC 1.2(a) provides that, subject to the Rule 1.2(c) and (d) “a lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.” It is clear that a lawyer “shall abide by a client’s decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.” *Id.*

The distinction between “objectives” and “means” is not always

so clear-cut, however. Moreover, at least in the context of Sixth Amendment jurisprudence, there are some thought-provoking opinions regarding the dignity and respect a lawyer should pay to a client when they disagree over litigation strategy.

This issue becomes even more complex when a lawyer represents a client with diminished capacity. DLRPC 1.14(b) provides that “[w]hen the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client’s own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.” This Rule is rarely invoked and poorly understood.

“Mere” Disagreements Versus “Fundamental” Disagreements

DLRPC 1.2(b) provides “[a] lawyer’s representation of a client,

including representation by appointment, does not constitute an endorsement of the client’s political, economic, social or moral views or activities.” And the Rules expressly contemplate that sometimes lawyers should abide by their clients’ poor judgment. See DLRPC 1.13, cmt. 3 (“When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful”).

At the same time, however, a lawyer may be able to withdraw from a representation when “a client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.” DLRPC 1.16(b)(4). There is little caselaw regarding what is “repugnant” in this context, and “mere” disagreements are not sufficient for permissive withdrawal under the Rules. 🗞️

Luke W. Mette is a partner at Armstrong Teasdale LLP. He has been a Delaware lawyer for 34 years and was Chief Disciplinary Counsel in Delaware from 2019-2021. He can be reached at LMette@atlip.com.

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

March 2023

Wednesday, March 15, 2023 • 8:30 a.m. – 4:00 p.m.

Fundamentals of Real Estate

6.0 hours CLE credit including 0.5 hour in Enhanced Ethics
Live Seminar at DSBA

Tuesday, March 21, 2023 • 12:00 p.m. – 1:00 p.m.

Not Only for Kids: Lawyers and Video Game Addiction

1.0 hour CLE credit in Enhanced Ethics
Seminar via Zoom

Thursday, March 30, 2023 – Friday, March 31, 2023

Women & The Law Section Retreat 2023

8.0 hours of CLE credit including 5.8 hours in Enhanced Ethics
Live Seminar at Hyatt Place, Dewey Beach

April 2023

Tuesday, April 4, 2023 • 12:00 p.m. – 1:00 p.m.

A Higher Bar: How to Exceed Client Expectation in a Virtual World

1.0 hour CLE credit in Enhanced Ethics
Seminar via Zoom

Wednesday, April 5, 2023 • 9:00 a.m. – 12:15 p.m.

Labor and Employment Law Update 2023

3.0 hours CLE credit including 0.8 hour Enhanced Ethics
Live Seminar at DSBA with Zoom Option

Wednesday, April 19, 2023 • Friday, April 21, 2023

Superior Court Mediation Training

TBD
Live Seminar at DSBA

Wednesday, April 26, 2023 • 12:00 p.m. – 1:00 p.m.

Legal Malpractice: What Lawyers Need to Know and How to Avoid It

1.0 hour CLE credit in Enhanced Ethics
Seminar via Zoom

Dates, times, and locations of Events and CLEs may occasionally change after time of press. Please consult the DSBA website for the most up-to-date information at www.dsba.org.

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SECTION & COMMITTEE MEETINGS

March 2023

Tuesday, March 7, 2023 • 3:30 p.m.

Estates and Trusts Section Meeting

Zoom Meeting, see Section listserv message for link and password

Tuesday, March 14, 2023 • 12:00 p.m.

Litigation Section Meeting

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

Wednesday, March 15, 2023 • 9:00 a.m.

ADR Section Meeting

Zoom Meeting, see Section listserv message for link and password

Wednesday, March 15, 2023 • 12:30 p.m.

LGBTQ+ Section Meeting

Zoom Meeting, see Section listserv message for link and password

Thursday, March 16, 2023 • 12:00 p.m.

Executive Committee Meeting

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

Thursday, March 16, 2023 • 4:00 p.m.

Elder Law Section Meeting

Estate and Elder Law Services of Delaware, P.A., 2961 Centerville Road, Suite 350, Wilmington, DE and Zoom Meeting, see Section listserv message for link and password

Friday, March 17, 2023 • 12:00 p.m.

Workers' Compensation Section Meeting

Zoom Meeting, see Section listserv message for link and password

Thursday, March 23, 2023 • 4:00 p.m.

Family Law Section Meeting

Zoom Meeting, see Section listserv message for link and password

April 2023

Tuesday, April 4, 2023 • 3:30 p.m.

Estates and Trusts Section Meeting

Zoom Meeting, see Section listserv message for link and password

Tuesday, April 11, 2023 • 12:00 p.m.

Litigation Section Meeting

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

Refer to the DSBA Section Listserv messages for the most up-to-date information on Section Meetings. Please contact LaTonya Tucker at ltucker@dsba.org or (302) 658-5279 to have your Section or Committee meetings listed in the Bar Journal.

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Threading the Labyrinth of Modern Email Collections

BY JOSEPH LEONARD, ESQUIRE



Joe Leonard is an attorney at Morris James, LLP in Wilmington, with over ten years of experience in the field of eDiscovery. He has practiced in Pennsylvania and New Jersey, and was recently admitted to the Delaware Bar in 2022. He can be reached at jleonard@morrisjames.com.

At this moment, communication is more instantaneous and readily available than at any other point in recorded history, and “recorded history” grows exponentially with each passing year. Across the globe, we collectively produce over 2.5 quintillion bytes of new data every day.¹ Over 90 percent of the world’s data was created in this decade alone.

It is an undeniable irony that the explosion of communication allowed by modern technology in turn imposes an increasing number of obligations regarding data management and information governance. While the amount of recorded data and number of communications continues to increase, the standard for discoverable information in a legal dispute under Rule 26 remains largely the same:² “any non-privileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” The proliferation of communication enabled by advancing technology is myriad — email, text, instant message, internet posting, chats — and all these communications are subject to discovery.

As we create more data, we must also preserve, review, and produce more data in the context of litigation. Fortunately, the same technology that drives these enormous data sets also provides tools for parsing and analyzing it. Advances in analytics and AI continue to push forward the boundary

of what is possible, but an attorney’s best tool for efficient analysis is well-established, and an early entrant into the analytics arena.

Despite the continued emergence of new communications technologies, the most cumbersome part of an eDiscovery review is generally sifting through email messages. Email collections represent the lion’s share of collection in most matters, and a vital tool for cutting through the volume is email threading.

Email threading is both a process for organization of data sets and a tool for reduction of data volume through what is essentially content deduplication.

Email threading is an established practice that should now be part of every eDiscovery attorney’s standard workflow, whether it is applied to narrow the scope of review and production, or simply used as a touchstone around which to organize the review workflow.

In threading, a computer program analyzes both the metadata and the text of documents in a data set, assigning each communication a thread group value. The thread group consists of related communications, replies and forwards to an initial message, plus any attachments. Email programs can perform the same function at the user level. For instance, Microsoft Outlook allows a user to filter to “find related messages in this conversation,” and many email programs group conversation threads as the default view.

Email conversations can span weeks, months, or even years, and recipients may drop off or be added as the conversation continues. Threading analytics tools can identify branching conversations by using both metadata (comparing subject line, dates) and text recognition (comparing relative weight of message content) and treat these branches accordingly as separate thread groups. Once the thread groups are identified, the threading tool can then identify unique content, elevating it to the top of the review queue.

At this point, threading becomes akin to deduplication. If one has a set of email correspondence in which two people are emailing back and forth, then the latest-in-time email should contain all the previous correspondence, inline below the latest communication.



Therefore, reviewing the earlier-in-time documents won't necessarily add any new information to the review.

In litigation, if both parties agree, counsel can review only the "inclusive" email communications, which consists of the latest-in-time emails plus any lesser included emails that contain attachments. It is important to review attachments with their transmittal emails, for full context. The reduction in review volume that results from threading and review of only inclusive material can represent a significant cost savings to the client and can also save valuable time and effort on the part of the attorneys involved. This is especially important in expedited litigation.

While email threading is a powerful tool, it is important to account for any material excised from review. If only the inclusive email is produced, the content of the non-inclusive emails will be visible on the face of the production image. However, the metadata for those communications will not necessarily be included in the production. Because metadata is a discoverable component of a document, parties may agree to provide metadata exports for unproduced documents, especially if a document chain is withheld due to privilege.

Even if parties cannot agree on an email threading scheme at the outset of discovery, the threading process is an invaluable tool for organizing a document review. When a single attorney reviews an entire email thread, consistency of coding across the set is better ensured. In addition, reviewers are likely to move through material faster when they are familiar with the context of the entire thread. Then, on the second pass level, the attorney can review only the inclusive email, and then any coding corrections can be pushed down through the

thread. This practice can help streamline reviews, reduce time and cost, and produce more consistent results.

It is important to remember that threading is generally relative to the data set as a whole, and not inherent in the document data itself. It is entirely context specific. For instance, opposing productions may contain the same documents, but the thread values assigned to each set upon threading by their respective counsel will be different. Thread ID numbers derived from separate applications of threading will provide no insight into the relative relationship between documents across those sets, even if the sets contain exact duplicates. If Plaintiff sent an email to Defendant, both parties' productions would contain that email, but any thread value associated with each instance of the document would have no bearing on the opposing production. Additionally, threading must be updated as collection sources are added, whether they be new custodians entirely, or refreshed collections. The best practices for email threading are well established, and your discovery vendor will be able to assist you through the process.

While email threading adds some complexity to a review workflow at the outset, the savings in time and cost of review make this analytical tool a powerful and important option in an eDiscovery attorney's toolbox. ⚖️

Notes:

1. Marr, Bernard. "How Much Data Do We Create Every Day? the Mind-Blowing Stats Everyone Should Read." *Forbes*. *Forbes Magazine*, May 21, 2018. <https://www.forbes.com/sites/bernard-marr/2018/05/21/how-much-data-do-we-create-every-day-the-mind-blowing-stats-everyone-should-read/>.
2. Rule 26 was amended in 2019 to include language regarding "proportionality", however the revised rule still requires initial consideration of all data sources at the outset of discovery.

It is an undeniable irony that the explosion of communication allowed by modern technology in turn imposes an increasing number of obligations regarding data management and information governance.



The Robots Aren't Coming; They're Here

BY MOLLY DIBIANCA, ESQUIRE

Don't let the term "artificial intelligence" ("AI") scare you. AI is built into every online legal-research database, such as WestLaw and Lexis Nexis. It is built into timekeeping and document-management programs. It is the technology that makes Alexa and other smart assistants possible. It allows us to unlock our phones using facial recognition. And ChatGPT, a generative AI tool available to the public, has the potential to transform the practice of law.

Meet ChatGPT

If you haven't yet heard of ChatGPT, let me be the first to introduce you. ChatGPT allows users to input questions or other prompts and receive conversational responses. Currently the technology is free for use, although there is talk of a potential subscription fee in the future. You can register for a free account and start using it today — assuming the site isn't "at capacity" due to heavy use, which I find is often the case.

ChatGPT is extremely easy to use. You merely input a question (or a "prompt") and the software spits out an answer within seconds. You can modify the prompt to get a response that better suits your needs as many times as you'd like. Students are using the software to write essays

and exam answers. Doctors are using it to save time preparing medical records. And executives are using it to draft email responses and corporate communications.

When I asked ChatGPT to “explain sexual harassment in 500 words,” it gave what this employment lawyer would consider a perfect answer. When I asked it for the “history of the Delaware Supreme Court,” the answer was not only accurate but well written.

How accurate is ChatGPT? It’s not perfect — at least not yet. But it is pretty good. Good enough, in fact, to pass a management exam with a B- at the University of Pennsylvania’s Wharton School in December.¹ It also passed the torts and evidence sections of a multiple choice, multistate bar exam.² Although the software’s responses are not always correct, they often are more than sufficient to get the user “close enough.”

ChatGPT in the Law

ChatGPT has been publicly available for just a few months but is already making news in the legal world. A company called DoNotPay claims to have created “The World’s First Robot Lawyer” using generative AI and that its AI chatbot would represent an actual defendant in traffic court in New York. The company claimed that the chatbot could advise the “client” in live time through a smartphone and an earbud.

Perhaps not surprisingly, the company’s CEO was contacted by multiple states’ disciplinary counsel and warned that the unauthorized practice of law is, in many jurisdictions, a felony. Apparently persuaded by the possibility of jail time, the CEO announced that the “robot lawyer” would not be making its debut performance as planned.

There are ethical questions for judges’ use of AI, as well. In January 2023, a judge in Colombia used ChatGPT in reaching his decision in a case involving the costs of a minor child’s medical treatments.³ He argues that he has a duty to utilize technology that could improve the justice system, which ChatGPT can do by reducing time the judge spent on what he described as secretarial parts of the opinion.

As with the implementation of any new technology, the use of AI in the legal field comes with risks. But it also comes with potential benefits.

For example, the use of AI to simplify court-related tasks, especially for pro se litigants, could have significant impact on the issue of access to justice. Louisiana Judge Scott U. Schlegel uses AI-powered chatbots to help parties in both civil and criminal cases to obtain basic court information and schedule hearings.

Lawyers are using live chat and chatbots (both powered by AI) to engage with clients and potential clients. There is a chatbot on the website for Judge Schlegel’s courtroom to assist users in finding additional information or to help them complete necessary forms. Law firms also use chatbots and live chat for intake of new matters or billing questions. Truly, the possibilities seem endless.

ChatGPT and other similar programs may seem like futuristic technology. But the future is here, so those of us in the legal profession should turn towards — not away from — the possibilities. Consider getting an account (it’s free!) and asking ChatGPT to explain nuclear fusion, slang used by Millennials, or the rule against perpetuities (three things that both interest and terrify me). 🗣️

Notes:

1. Kessenides, Dimitra. “Chatgpt Passed a Wharton MBA Exam. Are Professors Worried?” Bloomberg.com. Bloomberg, February 4, 2023. <https://www.bloomberg.com/news/articles/2023-02-04/chatgpt-passed-a-wharton-mba-exam-are-professors-worried>.
2. Weiss, Debra Cassens. “AI Program Earned Passing Bar Exam Scores on Evidence and Torts; Can It Work in Court?” ABA Journal, January 12, 2023. <https://www.abajournal.com/news/article/ai-program-earned-passing-bar-exam-scores-on-evidence-and-torts-can-it-work-in-court>.
3. Taylor, Luke. “Colombian Judge Says He Used Chatgpt in Ruling.” The Guardian. Guardian News and Media, February 3, 2023. <https://www.theguardian.com/technology/2023/feb/03/colombia-judge-chatgpt-ruling>.



Molly DiBianca is the Member In Charge of the Delaware office of Clark Hill, PLC, where she mediates commercial and employment disputes. She can be reached at mdibianca@clarkhill.com.

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Procrastination

I've been planning to write this column for a while. Very few lawyers can claim that they have never procrastinated. When we do, we should be aware of whether that procrastination is harmless human nature, a personality trait, or symptomatic of an underlying medical issue that can harm ourselves or others.

Lawyers may be especially prone to procrastination. Our stock in trade is the time that we spend on client matters. We are usually provided exceptional latitude in determining when a client needs our services as opposed to when they want those services. It is difficult to turn down work. Our egos can impair our ability to say no and to admit that we can't do something within the time expected or required. Financial constraints may make it near impossible to tell clients or employers that we are overextended and overwhelmed.

Work-life balance can sometimes be a juggling act. At the same time we are trying to meet the demands and needs of our employers, clients, and the courts, lawyers can also face competing demands in our personal lives. Adding another ball in the air, such as impairment due to drugs, alcohol, or mental health issues, can push procrastination to the point of a professional conduct violation.

A quick survey of the digest of disciplinary decisions maintained by the Office of Disciplinary Counsel disclosed 144 cited Rule 1.3 violations. Rule 1.3 requires that a lawyer act with diligence and promptness in representing a client. While some of these violations may not

have directly resulted from procrastination, my experience suggests that many of them do. I also counted 94 Rule 1.4 violations of the duty to provide reasonable communication to clients, which is also frequently the result of procrastination. ODC has issued a large compendium of Rule 1.15 books and records cases. Many of those violations were the result of procrastination.

Courts routinely sanction attorneys outside the regular disciplinary process for procrastination which results in dilatory and less-than-diligent performance. The Delaware Supreme Court metes out sanctions and attorney discipline, including suspensions for practice deficiencies often rooted in procrastination arising from late, deficient filings, non-compliance with Continuing Legal Education requirements, or failure to file Annual Registrations.

How can you prevent a common human trait from making you a disciplinary statistic? Self-awareness is the key. If you find that your procrastination is becoming systemic or that harm is resulting to you or your clients, conduct a self-audit.

Is your procrastination the result of avoidance? Am I avoiding specific clients or cases? "Ethically Speaking" has previously discussed the need to screen clients and matters to identify problem clients and cases. (Avoid them now to avoid avoiding them in the future.) Are you neglecting a client because the client makes you fearful or anxious? Is the client insulting, bullying, or otherwise objectionable? Be selective but always remember your option to timely and ap-

propriately terminate the attorney-client relationship. (Rule 1.16)

Are you avoiding a client matter because you are at an impasse as to what to do in the case? This paralyzing fear of failure can be self-fulfilling if you choose procrastination rather than help or withdraw. Do you resent working on the matter because you're not getting paid? Or are you simply overextended to the point where you don't have the time to do that which you know needs to be done? Again, consider withdraw rather than avoidance.

At some point, procrastination may not be explainable as mere situational avoidance. It can also be a sign of professional burnout or an underlying condition such as depression. Depression can lead to a vicious cycle where the depression keeps you from performing the legal services while the procrastination exacerbates the depression.

What can attorney do to address these troublesome warning signs? Procrastination is treatable. Procrastination stemming from anxiety and depression may be treated with medication as can other disabilities such as ADHD or other mental focus inhibitors. Other health issues associated with aging, sleep apnea, recent surgery and allergies should also be considered.

It should be noted that procrastination, even if medically related, is at best a sanction mitigator. The underlying medical condition contributing to procrastination can only be successfully asserted as a defense if it can be proven that the condition caused the misconduct.

Attorneys can revise their practice and practice settings to pursue the work and clients that they enjoy. Making a change can reinvigorate a practice. Avoid working in isolation if you find yourself prone to procrastination. Co-workers can serve as practice monitors inhibiting procrastination. Isolation enables procrastination.

Outside help is also available. Contact the Delaware Lawyers Assistance Program and the Professional Guidance Committee. Attend one of the many DE-LAP Wellness seminars to assist in striking a better work-life balance. The Professional Guidance Committee can offer practice pointers to help you work smarter rather than harder. The Delaware State Bar Association practice sections allow camaraderie to combat the isolation that can facilitate procrastination.

Finally, watch for an upcoming seminar on procrastination sponsored by the DSBA. That seminar will feature representatives of ODC to talk about the disciplinary consequences that can arise from procrastination. Scott Godshall, the new Executive Director of DE-LAP, will talk about Wellness, and therapist and attorney Richard Lombino will discuss the psychology and treatment of procrastination. I'll round out the panel talking about my experiences with procrastination in representing disciplinary defendants. We'll also discuss the *Procrastination Workbook* by William Knaus, Ed.D.

This seminar is long overdue. Our apologies for not offering it sooner.

"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. Columns from the past five 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.dlawgroup.com.



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ODC Update: 2022 Year in Review

BY DAVID A. WHITE, ESQUIRE

In this periodic column from the Office of Disciplinary Counsel (“ODC”), I wanted to provide members of the DSBA with a statistical snapshot of some of the good work my colleagues and I were involved in last year. As we say at all of the CLE seminars at which we speak, ODC views itself as a resource to the members of the Delaware Bar. The three primary responsibilities of ODC are Education, Compliance, and Prosecution and we work very hard on each. Here is a snapshot of 2022:

Continuing Legal Education (CLE) Presentations

As stated, we view education as a primary responsibility of the ODC. In 2022, ODC spoke or gave presentations at 29 CLE seminars, including presentations at a traditional CLE setting, judicial retreats, and law school classes. That number is a healthy increase from 2021, which we attribute to the opening up of our courts, law offices, and a host of other things related to the legal profession following the COVID-19 pandemic. Most of the CLE presentations in 2022 were in affiliation with our friends at the DSBA or through its various Sections.

Ethics Hotline

2022 was a Big Year: Under the theory it is always better to ask for permission than for forgiveness, ODC also touts its Ethics Hotline at every CLE presentation... and it seems to be paying off. We would like to think each Ethics Hotline call or email we receive/resolve might be one less disciplinary complaint that is filed. As many of you already know, through the Ethics Hotline ODC provides informal, non-binding guidance

to lawyers (not legal advice) regarding compliance with the Delaware Lawyers’ Rules of Professional Conduct (DLRPC). Calls or emails to the Ethics Hotline should relate to a lawyer’s contemplated, prospective conduct. Ethics Hotline calls and emails are not viewed as requests for legal advice and the guidance provided does not establish an attorney-client relationship. All guidance given by ODC is confidential, but the lawyer seeking guidance from ODC through the Ethics Hotline may waive confidentiality in any subsequent disciplinary proceeding related to the conduct on which the guidance was provided and on which the lawyer is named as a respondent in a subsequent disciplinary proceeding. In 2022, ODC received and resolved 98 Ethics Hotline calls and emails, a record number, and it feels like 2023 may very well eclipse that number. Stay tuned. To reach the Ethics Hotline, please call ODC at: (302) 651-3931 and advise the receptionist you are making an Ethics Hotline call. You can also email the Ethics Hotline request to: ARMS_ODC_EHOTLINE@delaware.gov.

Disciplinary Complaints

In 2022, ODC received and screened 141 disciplinary complaints. By comparison, in 2021 ODC received 130 disciplinary complaints. Of the 141 disciplinary complaints filed in 2022, most were filed by former clients or opposing parties rather than by Delaware judges or Delaware lawyers.

Disciplinary Complaints Resolved or Disposed of

In 2022, ODC resolved or disposed of 139 disciplinary complaints. By comparison,

in 2021 ODC resolved or disposed of 124 disciplinary complaints. Of the 139 complaints resolved or disposed of in 2022, almost all of them were dismissed after Screening, Evaluation, or Investigation by ODC.


Discipline in 2022

In 2022, one Delaware lawyer was disbarred (by stipulation) and one Delaware lawyer was transferred to Disability/Inactive status.

Unauthorized Practice of Law (“UPL”) Complaints

In 2022, ODC received and resolved nine UPL complaints. By comparison, in 2021 ODC received and resolved five UPL complaints.

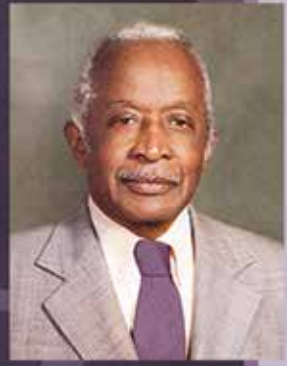
Rule 1.15A(d) Overdraft Notices:

In 2022, ODC received 10 Overdraft Notices from financial institutions and we resolved all of them. In 2021, ODC received and handled 14 Overdraft Notices. 



Dave White has been a member of the Delaware bar for nearly 35 years. He became Chief Disciplinary Counsel at ODC in March,

2021. For 13 years prior to that, he was a Partner, and the Managing Partner, of the Wilmington office of McCarter & English, LLP. He also served as a Commissioner on the Superior Court for nearly 8 years. He is a former member of the Board of Bar Examiners and he is currently a member of the Executive Committee of the DSBA, a member of the Professional Guidance Committee, and former New Castle County Chair of the Combined Campaign for Justice. He can be reached at david.white@delaware.gov.



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COMPREHENDING SUICIDE

This article discusses sensitive topics that some readers may find distressing.

This month’s column is the second of three columns focused on suicide risk among our colleagues, our families, and our friends. The February article discussed Experiencing Suicide; the March article, below, addresses Comprehending Suicide; Preventing Suicide will be covered in the April Article.

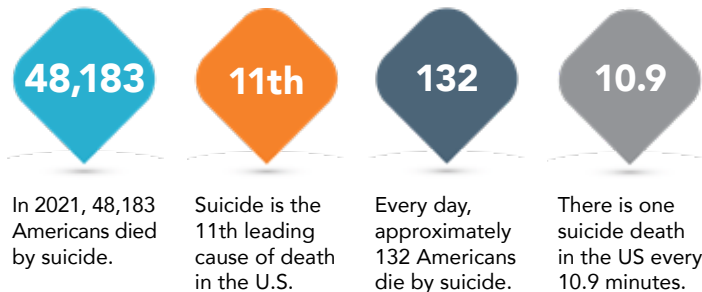
Nature and Scope

Suicide is a complex public health issue. “Comprehending” suicide, as used here, refers to understanding the nature and scope of suicide in our everyday lives.

Because suicide can be a sensitive topic to discuss, how we talk about suicide matters. While the term “committed suicide” is common, we avoid saying “committed suicide” as it can have judgmental connotation. Furthermore, because suicide is a health issue it is important to talk about suicide in the same way we talk about other health issues, such as cancer or cardiac arrest. For example, we wouldn’t say, “committed cancer” or “committed a heart attack,” we say “died from cancer” or “died of a heart attack.” The same goes for suicide. Instead, we encourage using the phrases “died by suicide” or “death by suicide.”

When talking about suicide attempts, we avoid referring to suicide attempts as “failed” or “successful” as these words imply judgment. Instead, we encourage the use of the phrases “suicide attempt,” “died by suicide,” or “ended their life.”

2021 U.S. Suicide Statistics¹



3rd Suicide is the 3rd leading cause of death for 15 to 24 year old Americans.

The highest suicide rates (per 100,000) in the U.S. are among white males (26.4), followed by American Indian/Alaska Natives (25), and Black males (14.1).



1/25 There is one suicide death for every estimated 25 suicide attempts.

There are approximately 1,204,575 annual attempts in the U.S. or one attempt every 26.2 seconds.

26.2

Suicide Statistics By Gender²



One male dies by suicide every 13.7 minutes in the U.S.



There are 3.9 male deaths by suicide for each female death by suicide.



There are three female attempts for each male attempt.



One female dies by suicide every 53.5 minutes in the U.S.

“ Because suicide can be a sensitive topic to discuss, how we talk about suicide matters. ”

Suicide Statistics By Age³

20%

Older adults made up 16.8 percent of 2021 population, but 20 percent of suicides.

30.4%

Middle-aged people made up 25.2 percent of the 2019 population, but were 30.4 percent of suicides.

13.5%

Young people made up 13 percent of 2020 population and 13.5 percent of suicides.

3rd

Suicide is the 3rd leading cause of death for 15 to 24 year old Americans.

Rate of Suicide by Race/Ethnicity⁴

- ▶ In 2021, the highest suicide rate by race is white (16.5 per 100,000).
- ▶ The second highest rate in 2021 was among American Indian/Alaska Native (14.6 per 100,000).
- ▶ From 2020, suicide rates increased slightly for Blacks (from 7.04 to 7.5).
- ▶ Suicide rates increased slightly for American Indian/Alaska Natives by .96 from 2019 (13.64 to 14.6).
- ▶ Suicide rates for Hispanic/Latinos remained 7.5 per 100,000 in 2020 from 2019.

Suicide Statistics by Sexual Orientation and Gender⁵



Lesbian, gay, and bisexual kids are three times more likely than straight kids to attempt suicide at some point in their lives.⁶

Medically serious attempts at suicide are four times more likely among LGBTQ youth than other young people (CDC).

4x



African American, Latino, Native American, and Asian American people who are lesbian, gay, or bisexual attempt suicide at especially high rates.⁷

Forty-one percent of trans adults said they had attempted suicide, in one study (National Transgender Discrimination Survey).

41%

61%

The same study found that 61 percent of trans people who were victims of physical assault had attempted suicide.⁸

Lesbian, gay, and bisexual young people who come from families that reject or do not accept them are over eight times more likely to attempt suicide than those whose families accept them.⁹



2x

Each time an LGBTQ person is a victim of physical or verbal harassment or abuse, they become 2.5 times more likely to hurt themselves.¹⁰

Mental Health Data¹¹

90%

Ninety percent of those who died by suicide had a diagnosable mental health condition at the time of their death.

72%

Seventy-two percent of communities in the United States did not have enough mental health providers to serve residents in 2021, according to federal guidelines.

Delaware 2021 Statistics¹²



Both Sexes Combined: 13.7 per 100,000 / 40th highest rate among 50 State rates.



Adults (65+ years): 14.9 per 100,000 / 40th highest rate among 50 State rates.




Young (15-24 years): 20.7 per 100,000 / 12th highest rate among 50 State rates.

Research¹³

Why do people take their own lives? There is no single cause, but rather multiple intersecting factors. One of the most important things learned through research is that there is no single cause for suicide. In fact, suicide most often occurs when several stressors and health issues converge to create feelings of hopelessness and despair. Suicide research has consistently shown that the majority of people who die by suicide have a mental health condition at the time of their death, although it may or may not have been diagnosed or adequately treated. That said, mental health conditions are common. In the United States, one in five people will experience a mental health condition in any given year, and most do not go on to die by suicide.¹⁴

Conclusion

The American Foundation for Suicide Prevention (AFSP) research shows that most people who are suicidal are ambivalent about taking their life; part of them wants to live, part of them wants to die. Critical to suicide prevention, therefore, is helping the person connect with reasons for living while at the same time, helping them foresee a time when the unbearable pain will end, and therefore may consider suicide as a way to end the pain. Research provides clear evidence that in that moment of crisis, time and distance can be lifesaving measures.

Next month, we'll wrap up this discussion and provide tools for preventing suicide by colleagues, friends, and family. If you need help or would like more information, call DE-LAP at (302) 777-0124 or email sgodshall@de-lap.org. All correspondence is confidential. 

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2. *Id.* SAVE recognizes that its data is "non-inclusive of all genders."
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4. *Id.*, as derived by Drapeau and McIntosh, *supra*.
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9. Caitlin Ryan, David Huebner, Rafael M. Diaz, Jorge Sanchez; "Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults." *Pediatrics* January 2009; 123 (1): 346–352. 10.1542/peds.2007-3524.
10. Ann P., Philip L. Rodgers, and Jody L. Herman. *supra*.
11. "Suicide Statistics." American Foundation for Suicide Prevention. American Foundation for Suicide Prevention. <https://afsp.org/suicide-statistics/>.
12. Compiled by John McIntosh, Ph.D, Indiana University South Bend, last updated 12 January 2023; Source: CDC.
13. Research results arise for the work done for the American Foundation for Suicide Prevention. afsp.org/research/; Talk Saves Lives. AFSP is the largest private funder of suicide prevention in the U.S.
14. *Id.*

Scott Godshall is the Executive Director of the Delaware Lawyers Assistance Program and can be reached at sgodshall@de-lap.org.

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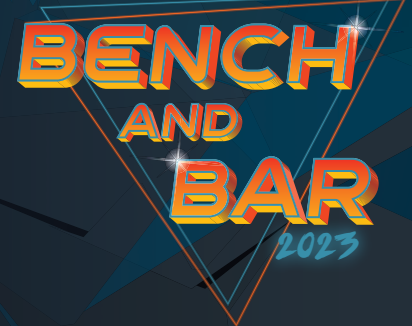
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Dear Kristen:

A Letter from a Reader on Women and the Practice of Law



This month's "Creating Space: Law, Advocacy & Women" column was submitted by a reader as a response to Karen Huller's most recent column contribution on salary negotiations. Thank you, Ms. Wright, for your interest and efforts in responding thoughtfully to the content that our columnists contributed and for sharing your experience.

Dear Kristen,

Thank you for your new column focused on issues surrounding women and the practice of law. I have gained insight into various aspects of the practice of law, as well as the triumphs and hurdles of my fellow female attorneys. The information shared has been enlightening. But, admittedly, there have been times when I have finished your column feeling discouraged.

Take, for example, the recent article by Karen Huller, "Embrace Your Negotiation Power to Advocate for Yourself and All Women," featured in the November 2022 issue. I was dismayed by the statement in Ms. Huller's opening paragraph that female law partners make 33 percent less than their male counterparts. Thirty-three percent! How could this be? Ms. Huller's article provided the statistic and gave women advice for how to help themselves increase their pay, however, I wanted more information on the reasons behind the disparity.

What factors are at play in the salaries male partners are receiving versus their female counterparts? How are firms jus-

tifying the inequality? More importantly, how could a profession centered on principles of equity and justice allow for such an enormous gap in pay?

Ms. Huller's article also reminded me Kristen, of your previous article, "It is Time to Mind the Gap," in the May 2021 issue of the *Bar Journal*. There you shared with readers that women — across many professions — earn, on average, \$0.82 for every \$1.00 their male counterparts earn. You went on to find that while a \$0.18 difference initially does not yield cause for concern, this concern is felt when you consider a female attorney making \$82,000 for every \$100,000 earned by her male colleague. I was left to wonder — is my male colleague in my department, who came in the same year I did, netting over \$1000 more each month simply because he is a man? Does my employer pay him more than me for the same job? How can I even find out if this is true?

These and other questions arose as I thought about and considered yours and Ms. Huller's articles. But, what really concerned me in thinking about the wage gap was not the gap itself. Rather, the really troublesome thoughts came when I considered the investment potential of the gap and the astounding difference \$0.18 could make.

Let's consider again your male attorney who makes \$18,000 more than his female counterpart. What if the male attorney invested the \$18,000 difference? Investing just one year of the \$18,000 difference at a small rate of return — 3 percent — would generate \$32,510 at the end of 20 years.

Now take it one step further. What if the male attorney continues, year after year, to invest his \$18,000 difference? Invested each year at a rate of 3 percent over the next 20 years would net the male attorney about \$516,176 more than his female counterpart. The wage gap has now gone from an \$0.18 crack to a \$516,176 gulf! The male attorney is in a better position to provide for his family, send his children to college, and retire.

I recognize Ms. Huller's article places some responsibility on female attorneys to help bridge the wage gap. I certainly understand women must learn to advocate for themselves and demand higher pay. But, I have tried some of her suggestions and the results have not always been positive. For example, while working for a firm, I was assigned to a case that lasted for over a year. I took the client from the initial stages of her case to litigating in court and eventually obtaining a judgment in her favor. I was then successful in helping the client collect on her judgment.

Proud of my accomplishments, I did just as Ms. Huller suggested: I self-promoted. I let my boss know about the work done and the successful result for the client. My boss congratulated my effort and then sent an email to the firm. When the firm-wide email came out congratulating me on my work on the case, kudos was also extended to my male colleague. But Kristen, here's the kicker — my male colleague had not done any work on the case! I brought this information to my boss's attention. Do you know what my boss did next? Nothing. She did not apologize for the error,

retract her email, or send out a correction to the firm. My male colleague received a "job well done" for a job he did not do.

To be honest, what was most troubling about my situation was not the response of my boss. Rather, it was the lack of a response from my colleague. He never said he did not work on the case. Instead, he accepted the kudos from our boss (as well as the congratulatory emails from the other employees) without any acknowledgement that he had not done any work on the case. My attempt at self-promotion backfired.

I agree with Ms. Huller's advice encouraging women to advocate for themselves. But, I believe the gap for women will not begin to close until our male colleagues also begin to speak against the gap. Moreover, let's begin to hold firms accountable for the salary decisions they are making. Firms should provide more information about the salaries of their associates, not just details on the starting salary for first years. They should also provide more information about what associates at different levels are making broken down by gender and race. If women have information on the range of salaries for associates at their level, they can know where they stand and advocate for themselves accordingly. All parties — women, men, and firms — need to play their part in bridging the wage gap.

Thank you again, Kristen, for shining a light on this important issue. Continue the good work of providing Delaware attorneys more information on the triumphs, as well as the barriers and setbacks, of women and the practice of law.

Sincerely,
Margaret J. Wright

All parties — women, men, and firms — need to play their part in bridging the wage gap.

THE DELAWARE STATE BAR ASSOCIATION

1923 – 1947

BY ELIZABETH M. MCGEEVER, ESQUIRE

The Association's 1923 bylaws listed its objectives as "the advancement of the science of jurisprudence, the securing of proper statutory reforms, the preservation for a proper standard of admission to the Bar, the maintenance of the honor and dignity of the profession, the upholding of the principles of legal ethics, the cultivation of fraternal relationships among the Lawyers of Delaware, and the perpetuation of legal history."¹ This article highlights some of the steps taken to advance these objectives during the Association's early years.²

Statutory Reforms

Much of the Association's early work involved legislation. In the 1920s and 1930s, the Association opposed federal bills aimed at overhauling the U.S. Supreme Court, including President Roosevelt's "court packing plan."³ In 1932, after protracted debate, including whether the Association should even weigh in on the subject, the Association voted to support efforts to repeal the Eighteenth Amendment and the Volstead Act.⁴ The Association also regularly proposed and weighed in on legislation in Dover. Over time, two separate legislative committees developed: one to address the General Corporation Law, and another to consider more general legislative matters.⁵ Then, as now, lawmakers looked to the Association for guidance on revisions to the corporate statutes.⁶

One major and protracted effort involved updating pleading and practice in the state law courts. As early as 1924, the Association heard from several speakers

on the advantages of common law versus code pleading. A Committee on English and Pennsylvania Civil Practice Acts (also known as the "Simplified Pleading Committee") studied the subject,⁷ as did a later created Committee on Pleading and Practice and a subsequent standing committee created in 1943 called the Committee on Improving the Administration of Justice.⁸ In 1947, the Association's revised rules for the Superior Court were finally accepted.⁹

The Association worked in many other ways to support and to modernize the judiciary. In December 1924, it urged members to go to Washington D. C. to support Congressional efforts to increase federal judicial salaries.¹⁰ In 1933, it opposed legislation reducing state judicial salaries and it began a sustained effort to lobby for the creation of a separate Delaware Supreme Court.¹¹ In 1947, the Association's bill increasing state judicial salaries (salaries that had been fixed in 1931 and before they were subject to federal income tax) passed.¹² The ad hoc committee responsible for the salary increase was referred to as the "Feeling the Pulse Committee" because it had to feel its way around reluctant lawmakers to gain their support for the increase.¹³

Bar Admission Standards

At the turn of the twentieth century, three county boards of bar examiners,

Many of the attorneys practicing during the Association's early years had not attended a four-year college or law school. They "learned" the law through a three-year apprenticeship with a practicing lawyer.



Certificate of Commendation awarded to the DSBA. Courtesy of the Delaware Public Archives.

appointed by the Superior Court, oversaw bar admission in each county applying varying admission standards.¹⁴ The Association’s Bylaws established a standing Committee on Admission to the Bar that was “charged with the duty of examining and reporting what change it is expedient to propose in the system and mode of admission” to the Bar.¹⁵ In 1931, a single Board of Examiners with representatives of all three counties was established under the aegis of the Supreme Court.

Many of the attorneys practicing during the Association’s early years had not attended a four-year college or law school. They “learned” the law through a three-year apprenticeship with a practicing lawyer. In 1926, the Association voted to recommend “to the Judges that the general educational qualifications” for Bar admission “be at least sufficient to entitle [applicants] to admission to the Junior Class of the University of Delaware in the Arts and Science course.”¹⁶

The Association welcomed law students at its meetings but they were not allowed to vote.¹⁷ In 1936, it established an annual \$100 scholarship to be awarded to a “deserving law student” residing in Delaware.¹⁸

Honor and Dignity of Bar

The Association supported its members in many ways. As noted, practicing lawyers trained law students imparting qualities not taught in law schools, including professional judgment and practical skills. During the Depression, Association dues (\$5 annually) were waived for members unable to pay and a committee was created to help Bar members who needed financial assistance.¹⁹

The Association promoted the legal profession through public outreach and civic engagement. Although Association President James Morford lamented in 1942 that “too little has been done and too few have done it,”²⁰ the Association was very active in the war effort. In 1942, it appointed committees in each county to work with the Superintendent of Public Safety to enroll members as auxiliary policemen and to instruct the same.²¹ It also worked with the ABA on ways to provide legal services to members of the Armed Services.²²

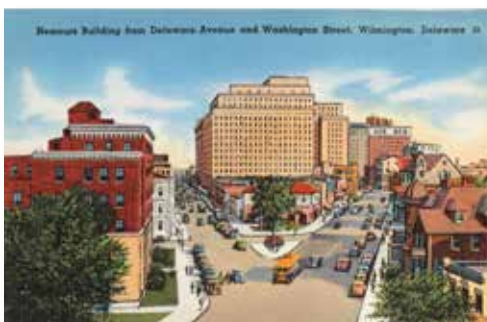
The Association earned a Certificate of Commendation from the Headquarters Second Service Command for work during World War II.²³

In late 1945, after some of its proposed legislation failed to pass, concern arose over the Association’s “loss of influence and prestige” with the Legislature.²⁴ As a result, a new public relations committee was created to examine and to publicize Delaware’s “archaic laws” and to develop better relationships with legislators and the public.²⁵ The Association hosted a series of 15-minute weekly radio shows aired on WILM. Topics addressed included veterans’ legal issues as well as broader issues such as election laws.²⁶

The Association was also instrumental in establishing the Legal Aid Society of Delaware. In 1946, Association members donated enough money to support the Society’s start-up budget of \$4,000.00.²⁷ The budget included the salaries of a part time attorney and a full time stenographer, as well as office furniture and supplies.²⁸

Upholding Principles of Legal Ethics

The Association’s formation documents provided for both a Grievance Committee and a Code of Ethics Committee. The Grievance Committee’s charge was to investigate complaints of professional misconduct, breaches of ethics and other acts “unbecoming a member of the bar.”²⁹ It had three months to complete its work and to issue a report that was then subject to vote by all Association members.³⁰ The Grievance Committee existed into the 1940s, although in 1928 its procedures were streamlined. Instead of presenting its findings to the Association, it was authorized to file petitions to show cause for why a member’s name should not be stricken from the Bar.³¹ In 1934, the Court had appointed its own Grievance Committee and composition of the Association’s committee was changed to include the Court’s appointees.³²



By 1940, the Code of Ethics Committee no longer existed, most likely because the Association had adopted the ABA's Code of Ethics in 1938.³³ During the 1930s and 1940s, the Association devoted substantial time and effort to unauthorized practice of law issues. The primary concern was the drafting of wills, trusts and other testamentary documents by banks and trust companies. In 1931, a committee was appointed to work with the banks and trust companies to see if agreement could be reached on the scope of documents that non-lawyers could draft.³⁴ Over the next 15 years, a Joint Conference Committee of Attorneys and Bankers met, debated and exchanged counter proposals before a final agreement was reached in 1946.³⁵

Fraternal Development

The Association provided various social opportunities for its members. They attended regular lunch meetings held at the Hotel DuPont or the Hotel Rodney. In 1927, the Association met at the Henlopen Hotel for an afternoon session followed by an evening banquet. The Rehoboth annual meeting tradition continued although it was suspended during the war years, when it became "impossible for members of the Bar to travel any distance by automobile."³⁶

The Association's meetings often featured speakers including several ABA presidents. A dinner to honor ABA President Hon. Jacob M. Lashley in 1941 was the first event to which "lady guests" were invited.³⁷ Other speakers included Henry C. Black (1923); Professor Edwin R. Keedy (1926); Harvard Law Dean Roscoe Pound (1926); ABA President Hon. Gurney E. Newlin (1929); Third Circuit Hon. Herbert F. Goodrich (1945); William J. ("Wild Bill") Donovan (1946); and British Ambassador Lord Halifax (1946).³⁸

The Association was predominantly male in its early years. Two women, Evangelyn Barsky and Sybil Ward, were admitted to the Bar in 1923.³⁹ In 1931, Marguerite Hopkins Bodziak was elected as a member of the Association (and promptly asked to serve as the temporary secretary of the meeting in the absence of the official secretary).⁴⁰ The Minutes do not record active participation by the women in Association business, although Sybil Ward did serve on both the Membership and the Memorial committees in the 1940s.⁴¹ In 1942, Hon. Roxana C. Arshnt was elected to membership.⁴² Louis L. Redding, the first African American member, was elected in 1945,⁴³ 16 years after he was admitted to the Delaware Bar.


Association meetings were, on occasion, social events. For example, in 1945, Association President William Prickett hosted a meeting at his Centreville home at which "[m]any of the members enjoyed buck bathing."⁴⁴ Afterwards, Chief Justice Layton spoke on "How Does the Delaware Bar Look to the Delaware Bench?" ("... pleasingly modern, more than average handsome, well groomed, cultured, reasonably honest and conscientious in their litigations.")⁴⁵

Perpetuation of Legal History

The minutes of the Association and related documents chronicle the Bar's early history. Memorial resolutions detail the lives and accomplishments of Association members. These testaments resonate a century later. On the death of John G. Gray in 1924, Senator Willard Saulsbury, Jr. wrote that Gray was not "fond of the hard and relentless grind and tedium of a law office..."⁴⁶

William F. Smalley, who died in 1925, was said to have “purposely avoided the contests — sometimes unfortunately acrimonious — of the trial lawyer’s life, and employed his really great talents and sound learning in other channels” such that he “practiced law only as a means of living in other ways that were more congenial.”⁴⁷ Caleb E. Burchenal, who passed in 1926, may have worked himself to an early death: “He succeeded beyond the limits of the average lawyer. His efforts to succeed, by so much hard labor, and sleepless nights, was a constant drain on his physical manhood, resulting, no doubt, in a premature death.”⁴⁸ Of Chief Justice James Pennewill, who died in 1935, it was said “[h]is life was clean, his tastes modest... and his aspirations to serve were without ostentation or display.”⁴⁹

Advancement of Science of Jurisprudence

The Association worked closely with the newly formed American Law Institute to develop and clarify the law.⁵⁰ At the Association’s second meeting, William Draper Lewis, a founding director of the ALI, spoke on its purpose and work on restatements of the common law. Lewis’ address was described as “most interesting and instructive and was listened to with the closest attention by those present.”⁵¹ In 1926, the Association created committees to represent Delaware in assisting ALI’s restatements work, including committees on conflict of laws, torts, contracts, agency and criminal code.⁵² The Association’s work with the ALI, which included annotating Delaware decisions, continued into the 1930s and 1940s. It represented a concerted effort to assist in “straightening out the confused mass of law in America.”⁵³ Similarly, the Association was involved with the Conference of Commissioners on Uniform State Laws, a group established in 1892 to provide states with legislation designed to clarify critical areas of state statutory law.⁵⁴ 

Notes:

1. Article I of Laws for the Government of The Delaware State Bar Association adopted Feb. 8, 1923 (“By-laws”).
2. The primary sources of this article are the minutes of meetings of the Association and the New Castle County Bar Association.
3. Minutes of Oct. 19, 1923 and Feb. 13, 1937 Meetings.
4. Minutes of Feb. 25, 1932 Meeting (the issue so contentious that it was put to a postcard vote of the Association’s full membership with 70 members voting for repeal; 31 against; two abstaining; and 39 not responding.)
5. Minutes of Nov. 20, 1930 Meeting.
6. Minutes of Oct. 8, 1926 Meeting (noting that the Legislature “looked to the Bar Association for suggestions as to changes” in the corporate law).
7. Minutes of Sept. 12, 1924 Meeting.
8. Minutes of July 30, 1943 Annual Meeting.
9. Minutes of May 16, 1947 Meeting (noting that the proposed rules were to be presented to the Supreme Court for adoption). The effort took over 20 years as enabling legislation had been passed in 1925 permitting courts to adopt rules of practice and procedure. In 1947 Delaware was one of the few states that still adhered to common law pleading. Aug. 28 1946 letter from W. Reese Hitchins to Bates Lowry.
10. Minutes of Dec. 12, 1924 Meeting.
11. Minutes of Feb. 18, 1933 Meeting.
12. Minutes of May 16, 1947 Meeting.
13. Minutes of Feb. 7, 1947 Meeting.
14. *The Delaware Bar in the Twentieth Century* (1994) (“*The Delaware Bar*”) at p. 279.
15. Bylaws, Article V, Section 32. The Bylaws also stated that the Committee would “establish a uniform standard for examination and admission to the Bar.” The uniformity provision was deleted in the Bylaws as adopted. Minutes of Feb. 21, 1923 Meeting.
16. Minutes of Feb. 12, 1926 Meeting.
17. Minutes of March 14, 1924 Meeting.
18. Minutes of June 18, 1936 Annual Meeting.
19. Minutes of Jan. 8, 1933 Meeting.
20. Speech by James Morford delivered on June 26, 1942 to the Association’s Annual Meeting.
21. Minutes of Jan. 30, 1942 Meeting.
22. Minutes of Jan. 14, 1943 Meeting.
23. Minutes of Oct. 26, 1945 Meeting.
24. Minutes of Dec. 21, 1945 Meeting. The failed bills would have shortened the time for a final divorce decree and provided for an absolute annulment decree. They were opposed by religious groups that “misunderstood the real meaning of the Bills and thought that lawyers were attempting to create a divorce factory.” *Id.*
25. *Id.*
26. Aug. 8, 1947 Report of Thomas Cooch.
27. Minutes of April 19, 1946 Meeting.
28. April 19, 1946 Report of the Committee on Legal Aid.
29. Bylaws, Article VI, Section 29.
30. *Id.*
31. Minutes of May 18, 1928 Meeting.
32. Minutes of May 3, 1934 Annual Meeting.
33. Minutes of May 7, 1938 Meeting.
34. Minutes of June 27, 1931 Meeting.
35. Minutes of Oct. 18, 1946 Meeting.
36. June 3, 1942 letter from Houston Wilson to William Marvel.
37. Draft letter dated June 4, 1941 from Association President James Morford.
38. Corporate practitioners may be interested to know that as early as 1945, a New York practitioner spoke on the “Scope of Judicial Review of Corporate Mergers and Consolidations in Delaware.”
39. *The Delaware Bar* at p. 64.
40. Minutes of Dec. 10, 1931 Meeting.
41. Minutes of Oct. 25 and Nov. 29, 1940 Meetings.
42. Minutes of June 26, 1942 Annual Meeting.
43. Minutes of March 9, 1945 Meeting.
44. Minutes of June 15, 1945 Meeting.
45. *Id.*
46. Speech of Willard Saulsbury, Jr. attached to Minutes of December 10, 1924 Meeting of New Castle County Bar Association (“NCCBA”). Gray, who was admitted in 1863, may not have relished private practice but he served as Delaware Attorney General, a U.S. Senator, a Third Circuit Judge and a member of the Permanent Court of International Arbitration at the Hague. He held numerous Presidential appointments, was an incorporator of the American National Red Cross and a Regent of the Smithsonian Institution.
47. Minutes of Feb. 26, 1926 Meeting of NCCBA and remarks of John F. Neilds attached to Minutes.
48. Speech of W. W. Knowles attached to Minutes of May 26, 1926 Meeting of NCCBA.
49. Minutes of Jan. 30, 1936 Meeting.
50. The ALI was founded in 1923 to “promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice and to encourage and carry on scholarly and scientific legal work.”
51. Minutes of March 30, 1923 Meeting.
52. Minutes of May 14, 1926 Meeting.
53. Minutes of June 27, 1930 Meeting, describing a speech delivered by ABA President Henry U. Sims urging local Bar associations to help to clarify law.
54. Minutes of March 30, 1923 Meeting.

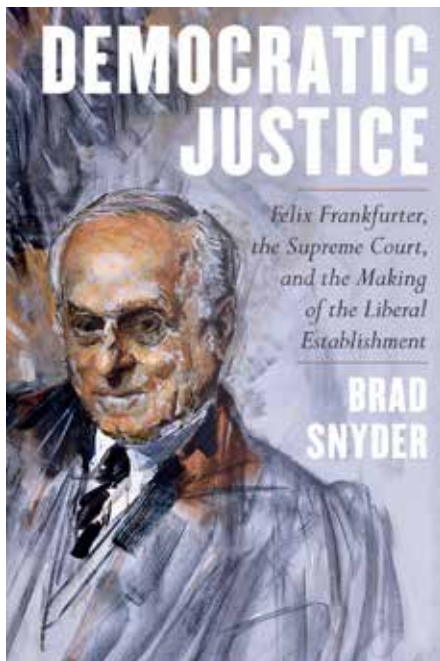
Vintage Delaware Postcards from The Tichnor Brothers Collection, Boston Public Library. All images ca. 1930–1945.



Elizabeth M. McGeever is Of Counsel at Prickett, Jones & Elliott, P. A. She is a former president of the Association and a member of the 100th Anniversary Committee. She can be reached at EMMcGeever@Prickett.com.



Justice for the Justice



Democratic Justice: Felix Frankfurter, the Supreme Court, and the Making of the Liberal Establishment

By Brad Snyder
W.W. Norton & Co., 2022

The conventional take on Justice Felix Frankfurter is that he was a brilliant law professor, a well-connected, behind-the-scenes political operative who was friends with both Teddy Roosevelt and Franklin Roosevelt, and an intellectual leader of progressive causes, for whom great things were predicted when he ascended to the Supreme Court bench — but who ultimately disappointed. Frankfurter was never a leader. His professorial style alienated many of his colleagues (due to his lecturing them as if they were law students during the Court’s conferences). He also proved to be more conservative than other liberal members of the Court (Black, Douglas, Warren, Murphy, etc.), which hindered his effectiveness. In the end he was generally unable generate consensus. At least, that is the conventional take. Professor Brad Snyder does much to correct this caricature, though, in his new book — and the first major biography of the Justice — *Democratic Justice: Felix Frankfurter, the Supreme Court, and the Making of the Liberal Establishment*.

To begin, even before his appointment, Frankfurter had an extraordinary career and impact on American politics and law, such that he would be of interest to historians. Born in Vienna in 1882, Frankfurter and his family came to the United States when he was 12 years old, knowing not a word of English. Yet he graduated first in his 1906 Harvard Law School class. In an age of pervasive anti-Semitism, Frankfurter was the first Jewish lawyer hired by Hornblower, Byrne, Miller & Potter (today’s Wilke, Farr & Gallagher), although he was there only a few months before receiving a call from the U.S. Attorney for the Southern District of New York, Henry L. Stimson — thus beginning a lifelong career of public service and teaching.

Frankfurter was a top campaign aide to Stimson when he ran unsuccessfully for Governor of New York, and, during that campaign, Frankfurter got to know Teddy Roosevelt (he would later work on Roosevelt’s 1912 presidential campaign, not the last Roosevelt presidential campaign on which he would work). Frankfurter came to Washington, D.C. in 1911 and took a job in the War Department when Stimson was named Secretary of War. Already friends with Louis Brandeis before moving to Washington, during Frankfurter’s time in the nation’s capital he was introduced to, and became friends with, Justice Oliver Wendell Holmes, Jr. The boarding house in which Frankfurter, and other young idealistic lawyers and professionals, lived was dubbed the “House of Truth,” and became known as one of the leading intellectual gathering places in the capital.

With the end of the Taft administration, Frankfurter became a professor at Harvard law, where he remained a professor until his appointment to the Supreme Court in 1939. But even during his time at Harvard, Frankfurter would be called back periodically to Washington. He worked in the War Department during the First World War, and President Wilson appointed the still only 35-year-old Frankfurter head of the newly-created War Labor Policies Board, a move praised by the press. It was also during this time that Frankfurter got to know Franklin Roosevelt, who was then serving as Secretary

of the Navy (they had met years before, but were only acquaintances). During the 1920s, Frankfurter was a founding member of the American Civil Liberties Union (although he was never particularly active in it). He worked behind the scenes on the Sacco and Vanzetti murder trial and later wrote a book criticizing the trial and its outcome. He continued to write articles and was generally recognized as one of the country's leading lawyers.

With Franklin Roosevelt's election to the presidency in 1932 (Frankfurter had been an advisor to the campaign), Frankfurter's influence reached its greatest heights. He was a frequent visitor to the White House, offering the President views on numerous policy matters. The President offered to appoint Frankfurter Solicitor General, but the Harvard law professor said "no," recognizing that the position would be too time-consuming for all his various pursuits and interests. Finally, in 1939, after passing over Frankfurter for two previous openings on the Court, Roosevelt nominated Frankfurter. Great things were expected.


But Frankfurter's sin, so to speak, was that while he was a liberal progressive in political and legislative matters, he was also an ardent supporter of "judicial restraint," believing that the political process should be honored, except in the most extraordinary of cases. *Lochner* had been decided while Frankfurter was still in law school, and, no doubt, greatly influenced his lifelong conviction that the Court should respect the political process, and resist the notions of substantive due process and judicial activism, except in the most glaring of circumstances.

One of those circumstances, and one where Frankfurter's role is often overlooked, was *Brown v. Board of Education*. After the initial arguments, when it appeared as though the Court would decide the matter with multiple opinions and dissents, it was Frankfurter who first suggested, and successfully pursued, the idea of re-argument, so as to give the Court time to focus on the case even more and to see if a fractured Court, with multiple opinions and dissents, could be avoided. Re-argument was ordered for

But Frankfurter's sin, so to speak, was that while he was a liberal progressive in political and legislative matters, he was also an ardent supporter of "judicial restraint," believing that the political process should be honored, except in the most extraordinary of cases.

the next term, and, during the summer recess, Chief Justice Vinson suffered a fatal heart attack and was replaced by Earl Warren. Upon hearing the news of Vinson's death and recognizing what it would mean for *Brown*, Frankfurter is supposed to have told one of his former clerks that "this is the first solid piece of evidence I've ever had that there really is a God." Warren would go on to write the Court's unanimous decision in *Brown*, but he only had that opportunity because of Frankfurter's efforts. Although Warren usually receives the praise and credit for the decision in *Brown*, Snyder's behind-

the-scenes account rightly restores much credit to Frankfurter.

No one will agree with every Frankfurter opinion or vote, nor should that necessarily be the case; but Snyder's biography is compelling and interesting throughout, and there is much that can be learned from the life of Justice Felix Frankfurter, not just on the Court, but off it as well. 

Richard "Shark" Forsten is a Partner with Saul Ewing Arnstein & Lehr LLP, where he practices in the areas of commercial real estate, land use, business transactions, and related litigation. He can be reached at Richard.Forsten@saul.com.



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Report: 2023 Midyear Meeting of the ABA House of Delegates

BY WILLIAM D. JOHNSTON, ESQUIRE

This is my report on the 2023 Midyear Meeting of the ABA House of Delegates. The meeting took place in New Orleans on February 6 and was in-person only (not hybrid). With your hoped-for indulgence, I offer some highlights of what once again was a very successful meeting during which the business of the House was accomplished.

The Delaware Delegation

As I've noted in previous reports, the House of Delegates is the principal policy-making body of the ABA. For the most recent meeting, the Delaware Delegation included The Honorable William C. Carpenter, Jr., Delegate-at-Large and immediate past member of the ABA Board of Governors; Ben Strauss, DSBA Bar Delegate; Lauren DeLuca, DSBA Young Lawyer Bar Delegate; John "Jack" Hardin Young, Senior Lawyers Division Delegate; and yours truly, State Delegate. The Delaware Delegation thanks Judge Carpenter, on the occasion of his recent retirement from the bench, for his distinguished service as a member of the Superior Court of the State of Delaware and for his decades of public service (including serving as U.S. Attorney for Delaware). We look forward to his continued service in the House.

Remarks from ABA Officers and Others

During the session of the House, as is typical, we heard from ABA officers and others. Speakers included Chair of the House Gene Vance, ABA President Deborah Enix-Ross, ABA Treasurer

Kevin Shepherd, ABA Secretary Pauline Weaver, ABA, ABA President-Elect Nominee Bill Bay, and ABA Executive Director Jack Rives.

We also heard from the President of the Conference of Chief Justices, Loretta H. Rush, Chief Justice of the Indiana Supreme Court.

Resolutions Adopted by the House

The House adopted a variety of resolutions and, in doing so, articulated ABA policy embodying the substance of each resolution.

As I've previously reported, the House Rules of Procedure require that a resolution must advance one or more of the ABA's four goals in order to be germane. Those co-equal goals, adopted by the House in 2008, are: (i) serve our members; (ii) improve our profession, (iii) eliminate bias and enhance diversity, and (iv) advance the rule of law. Also adopted by the House in 2008 is the ABA's mission statement: "To serve equally our members, our profession and the public by defending liberty and delivering justice as the national representative of the legal profession."

The House did not concur in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments to Standards 501 and 503 of the ABA Standards and Rules of Procedure for Approval of Law Schools (Resolution 300). Most notably, those amendments would have made the LSAT on optional consideration for law schools.

In addition, adopted resolutions with ABA sections, divisions, forums, and other entities taking the sponsorship lead addressed the following: the creation of policies and practices to improve the treatment of persons living with dementia who are involved in the criminal justice system (600); possession of firearms on property owned, operated, or controlled by any public or private institutions of higher education (603); design, development, deployment, and use of artificial intelligence systems and capabilities (604); application of state separation-of-powers principles, in state constitutions, to the elections of members of Congress (605); and any questions, in bar admission applications, that ask about sexual orientation or gender identity (606).

Other adopted resolutions with ABA sections and other entities taking the sponsorship lead addressed: ABA policy that opposes federal agencies adopting standards of practice to govern the professional conduct of attorneys (500); the *Ten Principles to Achieve Gender Equity in the Criminal Legal Profession* (501); the use of stigmatizing and inhumane



labels to refer to people who are or have been involved in the criminal legal system (502); the e-APP (e-Apostilles and e-Registers) program (503); the American Bar Association Best Practices for Remote Depositions (505); the unlawful invasion of Ukraine by the Russian Federation (506); laws, restrictions, and other measures placed on civil society actors that are inconsistent with international law (507); a wildlife crime protocol (508); disaster preparedness for farmers and other animal producers who seek federal government funding (509); attempts to impose medical or surgical intervention on minors with intersex traits without the minor's informed consent (511); a person's right to refuse unwanted medical treatment (512); the right of any individual to travel interstate to access medical care (513); anti-semitism and measures to combat it (514); and participation of junior lawyers in courtroom proceedings (515).

ABA entities and others also took the lead in sponsoring resolutions that

addressed: approval of the Uniform Commercial Code Amendments promulgated by the National Conference of Commissioners on Uniform State Laws (701); approval of the Uniform Electronic Estate Planning Act promulgated by the National Conference (702); and obtaining or accessing beneficial ownership information (704).

Finally, bar associations took the lead in sponsoring three resolutions adopted by the House: urging the U.S. Supreme Court to adopt a code of ethics binding on the Court (400); adopting a bench card for addressing best practices for judges in using inclusive language and pronouns in the courtroom (401); and removing racial and ethnic symbols of the Confederate States of America and depictions of Confederate leaders from any facilities in which judicial proceedings are held (402).

For a detailed description of each resolution (and of other resolutions considered by the House or withdrawn from consideration at the Midyear Meeting), please see www.americanbar.org.

As I've noted previously, the practical effect of the House of Delegates adopting policy, as reflected in the above resolutions, is that elected officers of the Association, staff, and volunteer leaders are then authorized to advocate those policy positions — whether with legislators, courts, or others. This, importantly, can translate into grassroots advocacy in Washington (such as the annual ABA Day on Capitol Hill) and in state legislatures to urge, for example, increased funding of legal services for the poor through the Legal Services Corporation.

Membership

As I've reported on previously, the ABA pursued a broad-based effort to study how best to deliver value to ABA members. The thoughtful, resulting recommendation, endorsed by the Board of Governors and adopted by the House, included simplifying dues-

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MIDYEAR MEETING

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paying categories and reducing dues, and other benefits.

In particular, the current dues structure has new bar admittees through fourth year attorneys paying \$75, fifth through ninth year attorneys paying \$150, tenth through fourteenth year attorneys paying \$250, fifteenth through nineteenth year attorneys paying \$350, and twenty-plus year attorneys paying \$450. At the same time, government, solo, and small firm attorneys, as well as retirees, pay \$150. Paralegals pay \$75, affiliated professionals pay \$150, and international lawyer members pay \$150. In addition, law firms and other legal employers can achieve even greater savings by enrolling in the ABA's "full firm membership" program. (I'm happy to say that YCST continues to be a proud participant in that program.)


As I've urged before, if you currently are an ABA member but are not yet

engaged in the work of ABA sections, divisions, or forums (and their respective committees and subcommittees), please consider increased involvement. And, if you currently are not an ABA member, please consider joining (or re-joining) as a complement to your DSBA membership. I and other members of the Delaware Delegation would be delighted to discuss with you all of the opportunities that ABA membership presents.

Personal Note


I am pleased to share that, during the Midyear Meeting, I was introduced as a candidate for Chair of the House of Delegates for the 2024-26 term. I am grateful for the encouragement that I have received from fellow members of the Delaware Bar and beyond. Please share with me, at any time, your thoughts as to how the House of Delegates and, more broadly, the American Bar Association,

can be responsive to your and your clients' needs and can faithfully live into the mission of the ABA and its four goals.

It continues to be my privilege and pleasure to serve as your State Delegate to the ABA House of Delegates. The House will next meet August 7-8 during the 2023 ABA Annual Meeting in Denver. As always, if you have any questions or comments, please let me know at wjohnston@ycst.com or (302) 571-6679. 

Bill Johnston is a partner with Young Conaway Stargatt & Taylor, LLP. He is a Past President of the Delaware State Bar Association, serves in the ABA House of Delegates as State Delegate from Delaware, is a Former Chair of the ABA Business Law Section, and is a Past President of the American Counsel Association.





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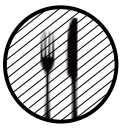
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A Water Sign

This month I pay tribute to the Pisces readers with thoughts on several seafood dishes — one to prepare at home and the others to enjoy at an oyster bar.

Hearty dishes like braised short ribs and butternut squash soup have kept us warm over the winter months. Now, with the Equinox around the corner, bright and fresh seafood dishes can help us spring forward.

First, I share a recipe for shrimp spring rolls, which can serve as an appetizer or stand center stage as a main course accompanied by sliced avocado drizzled with sesame oil and lime juice. These rolls are quite substantial, so I recommend three per person as a main course.

Shrimp Spring Rolls at Home

Ingredients:

- 6 spring roll wrappers
- 1 cup iceberg lettuce, shredded
- 1 large carrot, shredded
- 3 red radishes, thinly sliced
- 1½ dozen large shrimp, shelled, deveined, and steamed
- ½ cup cilantro leaves
- 1 lime, sliced in wedges

Once cooled, cut the shrimp in half lengthwise where the vein was located. In my view, the thinner pieces of shrimp make the rolls friendlier to bite. Prepare the wrappers, one at a time, according to the package directions, which involves soaking in warm water for about 15 seconds until softened. Then, place each wrapper on a towel, fill with the above ingredients, and fold. As you create each roll, positioning the ingredients along the center, consider

how you would like the fillings' shades of orange, red, and green to shine through the delicate, translucent rice paper. This is a great opportunity to let your creative juices flow, especially for you Pisces out there.

Serve alongside lime wedges and a dipping bowl of tamari, a wheatless soy sauce. Add a few thin slices of jalapeño to the tamari for extra zing.

Small Plates at Greystone Oyster Bar

On Church Street in nearby West Chester, Greystone Oyster Bar is just what an oyster bar should look like in my mind's eye. The marble bar and sleek subway tile are bright and fresh, just like the seafood.

Last month, on our first visit to Greystone, Vincent and I enjoyed a late lunch



of oysters and small plates. The oyster menu contained an impressive nine varieties, with five of the nine on the regular rotation. Some of my favorites were those from our own Northeast: Wellfleets from Massachusetts (ideal if you enjoy a plump oyster with intense brine, like I do); Great Whites from Long Island (a nice balance of salty and sweet); and Mystics from Noank (large and plump with a nice brine). On our next visit, I'll try one of Greystone's interesting cocktails, but the oysters warranted a local sparkling Blanc de Noir.

Next, we shared two small plates — fried calamari

and the Lobster Napoleon. The fried calamari were large rings covered with a crispy lager batter. The perfect bite included a piece of cherry pepper and a dollop of the tomato sauce accompaniment. The precisely stacked Napoleon featured finely shredded lobster meat atop avocado, with a mango citrus drizzle. Crisp wonton chips surrounded the colorful layers and added some textural contrast. For me, the highlight of the dish was the delicate shred of the lobster meat, no big chunks. I'll look forward to those in the lobster roll next time. Welcome Spring... 🍷

Susan E. Poppiti is a mathematics educator and is pursuing qualifications in wine. Susan can be reached at spoppiti@hotmail.com.



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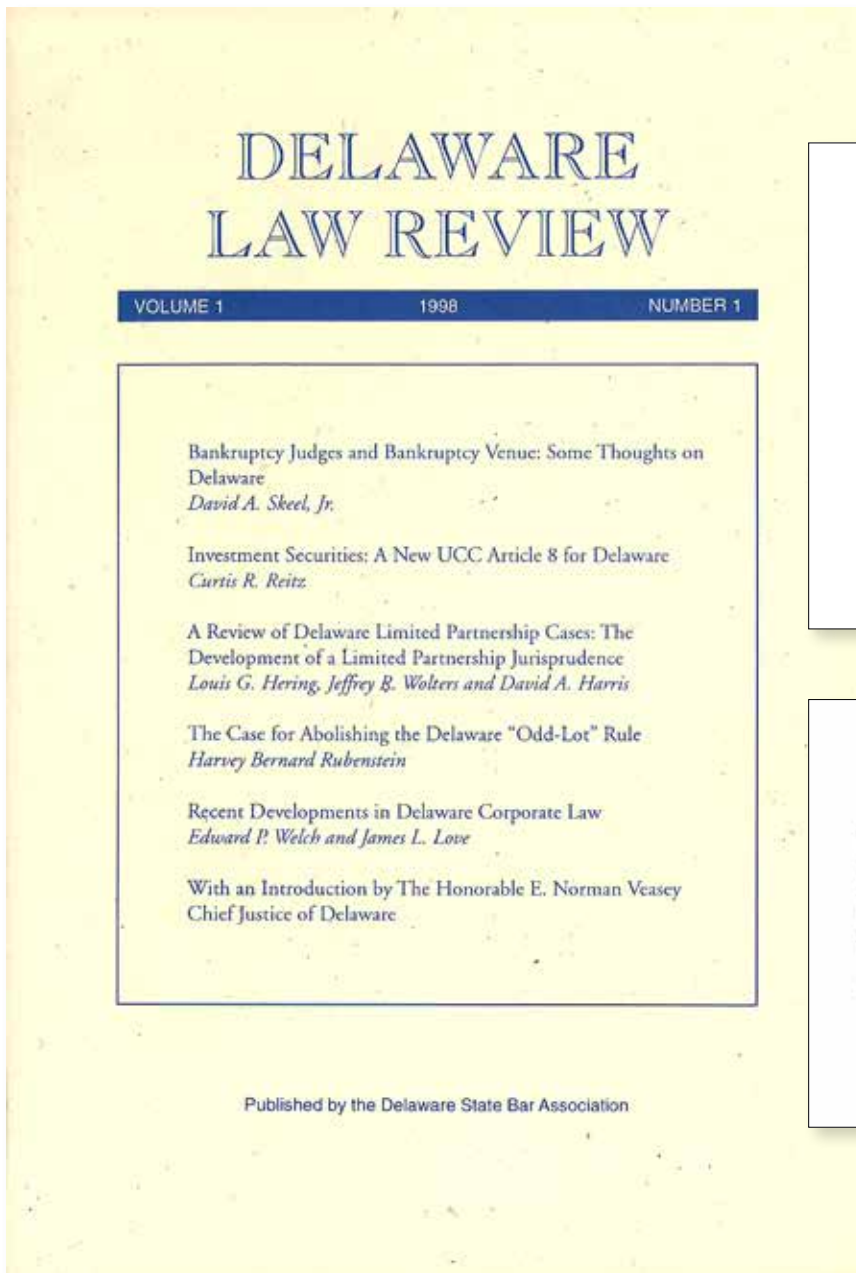
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From the DSBA Archives

The first issue of the *Delaware Law Review* was published 25 years ago in the spring of 1998. The concept of a scholarly journal published by the DSBA was presented by Harvey Bernard Rubenstein, Esquire, and was approved by the Executive Committee, as detailed in the Editor's Note below. Then-Chief Justice E. Norman Veasey provided an Introduction to the issue, congratulating the founders of the project, predicting that the *Delaware Law Review* would be used as reference for years to come. Now, 25 years later, the board of the *Delaware Law Review* is preparing for the publication of Volume 18, Number 2 with Anthony A. Rickey, Esquire, serving as Editor-in-Chief and Anthony V. Panicola, Esquire, serving as Assistant Editor-in-Chief. 



DELAWARE LAW REVIEW

VOLUME 1 1998 NUMBER 1

Bankruptcy Judges and Bankruptcy Venue: Some Thoughts on Delaware
David A. Skeel, Jr.

Investment Securities: A New UCC Article 8 for Delaware
Curtis R. Reitz

A Review of Delaware Limited Partnership Cases: The Development of a Limited Partnership Jurisprudence
Louis G. Hering, Jeffrey R. Wolters and David A. Harris

The Case for Abolishing the Delaware "Odd-Lot" Rule
Harvey Bernard Rubenstein

Recent Developments in Delaware Corporate Law
Edward P. Welch and James L. Love

With an Introduction by The Honorable E. Norman Veasey
Chief Justice of Delaware

Published by the Delaware State Bar Association

EDITOR'S NOTE

When I presented the concept of a scholarly journal to the bar association's executive committee almost two years ago, I did not anticipate that the first issue would be realized so quickly. The recent publication of *The Delaware Bar In The Twentieth Century* and *The Delaware Constitution Of 1897 — The First One Hundred Years*, both of which were met with enthusiasm and even acclaim, suggested that the bar association might want to pause for a moment to catch its breath. Fortunately, I was told to proceed.

Now, this latest venture has been launched. It is designed to enrich the professional life of our legal community, to provide commentary and analysis of important issues, and to give direction for the future of Delaware law. In the accomplishment of this project, I acknowledge with gratitude the contribution of the editors and the guidance of Supreme Court Justice Randy J. Holland.

As the bar association nears the centennial of its birth on March 16, 1901, and the 75th anniversary of its reorganization on February 21, 1923, the *Delaware Law Review* should mark yet another advancement in the reputation of our bench and bar.

Harvey Bernard Rubenstein
Editor-In-Chief

INTRODUCTION

As Chief Justice of Delaware, I salute this first issue of the *Delaware Law Review* of the Delaware State Bar Association. This publication is unique in that the scholarly articles that are contained within these pages in this first issue, as well as the articles that will be featured in future issues, will focus entirely on Delaware. The principal role of the *Delaware Law Review* will be to publish articles of excellence from distinguished judges, practitioners, and scholars on subjects related solely to Delaware and its jurisprudence. I am confident that in the years ahead the *Delaware Law Review* will be an invaluable reference to those interested in current issues pertaining to our state.

I congratulate the founders of this project and commend the editors and staff for this knowledgeable resource to the edification of the bench, bar and academia.


E. Norman Veasey
Chief Justice

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