



THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION



2018 DELAWARE STATE BAR ASSOCIATION BENCH AND BAR CONFERENCE

FRIDAY, JUNE 15, 2018

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THE DELAWARE STATE BAR ASSOCIATION PRESENTS

LAW DAY LUNCHEON 2018

FRIDAY, MAY 18, 2018 • 12:00 NOON
HOTEL DU PONT • WILMINGTON, DELAWARE

Keynote: John Dickinson — Citizen Lawyer

THE HONORABLE JOHN C. CARNEY
Governor of Delaware

RANDY J. HOLLAND, ESQUIRE
Wilson Sonsini Goodrich & Rosati



Delaware Governor John Carney has been working for the people of Delaware for more than 30 years. Governor Carney took office in January 2017, confronting significant challenges head on. He signed a balanced budget deal in July, despite significant financial challenges, and made historic investments in the Department of Correction. Working with the General Assembly, Governor Carney restructured the way Delaware conducts economic development, partnering strategically with the private sector, and directing more resources to small businesses and entrepreneurs. He also has traveled the state talking to small business owners, and listening to their ideas, at a series of Small Business Roundtables.

From 2011 to 2017, Governor Carney served as Delaware's lone member of the U.S. House of Representatives. During his three terms in Congress, Governor Carney worked with members of both parties to find solutions to the most important challenges facing the nation. He supported the revitalization of American manufacturing through the "Make It In America" agenda. He was a lead sponsor of the centerpiece of the Jumpstart Our Businesses (JOBS) Act that made it easier for small- and medium-sized businesses to grow and create jobs. He also introduced legislation that was signed into law to prevent critical prescription drug shortages, and he was the lead sponsor on a successful bill to help veterans more easily enter the job market.



Randy J. Holland, Esquire is Senior Of Counsel in the Wilmington office of Wilson Sonsini Goodrich & Rosati. Previously a Delaware Supreme Court justice for more than 30 years, Mr. Holland is recognized as an expert on corporation law, corporate governance, appellate practice, and state constitutional law. He has written more than 700 reported opinions, which include many seminal corporate law decisions.

Mr. Holland retired from the Delaware Supreme Court in March 2017. He was appointed to the court in 1986 by Governor Michael N. Castle, making him the youngest person to serve as a Delaware Supreme Court justice. In 2009, he became the longest-serving justice in Delaware history. Two years later, Mr. Holland was reappointed by former Governor Jack A. Markell and was unanimously confirmed by the Delaware Senate for an unprecedented third 12-year term.

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PRESIDENT'S CORNER

By Michael Houghton, Esquire

John Dickinson – Citizen Lawyer

There is a long tradition in the United States — and in Delaware — of lawyers leading the way in public affairs and civic life. As a young lawyer joining the law firm of Morris, Nichols, Arsht & Tunnell in 1982, I saw it all around me. Founder Judge Hugh M. Morris from Greenwood, Sussex County, Delaware had been an eminent jurist appointed to the U.S. Federal District Court Bench by President Woodrow Wilson. When he returned to private practice, he founded what is now Morris, Nichols, Arsht & Tunnell, had a prominent legal career, but also served his community in substantial ways including as a member of, and then President of, the Board of Trustees of the University of Delaware. James M. Tunnell, Jr., from Frankford, Sussex County, Delaware was the son of a U.S. Senator, a prominent attorney, a Justice on the Delaware Supreme Court, a member of, and then President of, the University of Delaware Board of Trustees, and a Democratic nominee for the United States Senate. Sam Arsht was not only one of the most prominent corporate lawyers of his generation, but he served on the Commission to revise the Delaware Code in the 1950s and lead the history making revision of the Delaware General Corporation Law in 1967. Andy Kirkpatrick and Gil Sparks were not only prominent litigators, but leaders of the firm and in the local and national Bar, as well as trustees and Chairs of the University of Delaware Board of Trustees. And, many other members of the firm have served as Bar and community leaders for decades.

The firm has had members serve on the Federal and State Bench, including former U.S. District Court Judges Hugh M. Morris, Edwin D. Steel, Jr., District Court and later Third Circuit Court of Appeals Judge Walter K. Stapleton, Delaware Supreme Court Justice Randy Holland and former Chancellor William Chandler, as well as former Chancellor William T. Allen and former Vice Chancellor Donald F. Parsons. All of them contributed to the development of Delaware law as lawyers and jurists but they also contributed to the political and civic life of the State. And, my closest mentor, O. Francis “Frank” Biondi, was an accomplished lawyer and a leading force in drafting and advocating for the Financial Center Development Act, a 1981 law that led to the employment of 30,000 Delawareans in the banking industry in this State. Like Judge Tunnell, Frank’s deep involvement in Delaware Democratic politics made him a power broker respected on both sides of the aisle, capable of molding and driving public policy in the state.

“The lessons of civic engagement which I learned from these and many other Delaware lawyers, have recently intersected with a renewed and growing interest in Delaware’s John Dickinson.”

The lessons of civic engagement which I learned from these and many other Delaware lawyers, have recently intersected with a renewed and growing interest in Delaware’s John Dickinson. In late 2017, I learned that Governor John Carney, former Delaware Supreme Court Justice Randy Holland, and retired *News Journal* Editorial Page Editor John Sweeney were all working at raising awareness of this forgotten Founding Father. These three — along with Professor Jane E. Calvert at the University of Kentucky, the foremost Dickinson scholar in the United States and the director/editor of the John Dickinson Writings Project — are leading a resurgence in interest in Dickinson the practicing lawyer, politician, philanthropist, and so much more.

Who was John Dickinson? John Sweeney, who has served as author and editor of the soon to be published collection of new and old material on Dickinson, *Delaware’s John Dickinson: The Constant Watchman of Liberty*, wrote in December of 2017:

Dickinson was the most important Founding Father you never heard of... Dickinson was born in Talbot County, Maryland. His family moved to Delaware when he was young, so he grew up in Kent County. No matter how famous he became, that house along the St. Jones River was always his home and refuge. Like another young Delaware lawyer, Thomas McKean, Dickinson moved to Philadelphia to practice law. And like McKean, he prospered in not only law but in both

Delaware and Pennsylvania politics. Dickinson would greatly influence the fate of both states... John Dickinson dominated the American cause against British overreach from 1765 to 1775. In fact, he invented most of the arguments against Parliament's taxing policy. His string of newspaper articles, "Letters From a Farmer in Pennsylvania," shaped and articulated the case for American rights throughout the Colonies, including John Adams' Massachusetts. He organized and trained the Pennsylvania militia, serving as a colonel when his unit deployed to the front lines. When the British invaded Maryland and marched to capture Philadelphia, he carried a musket as a private in the Delaware militia. He wrote the draft of the Articles of Confederation, the first national constitution. He was the only Founding Father who freed his slaves while he was still alive. He fought against slavery, spoke up for religious freedom and sought peace-

ful relations with Native Americans. He served as governor of Delaware and Pennsylvania — and, for a spell, both at the same time.¹

Today Dickinson's lack of place and recognition among the founding fathers may still in large part be traced to his principled opposition to the Declaration of Independence, his belief being that the conflict could be resolved without bloodshed, and the Declaration should wait until, among other things, the colonies themselves were better prepared and the prospect of foreign aid was more certain. As a consequence, Dickinson would not sign the Declaration, but he did not attempt to block others from doing so. Despite not believing the conflict with Great Britain should proceed, and not signing the Declaration as a matter of conscience, Dickinson entered the military, eventually serving as a private in a company of the Delaware Militia and declining higher military appointments as the Revolutionary War progressed.

Dickinson's legal training undoubtedly provided him with the skills he used

in advocating for his countrymen. His family were prosperous Quakers with roots in Maryland's Eastern shore, Pennsylvania, and Delaware. They provided him a good education and he was placed to apprentice with a prominent lawyer in Philadelphia. At the age of 21, he traveled to England to further his studies at the Middle Temple, one of the four Inns of Court entitled to call members to the English Bar as Barristers, where only a few fortunate Americans studied law.²

As former Delaware Supreme Court Justice James Tunnell noted in remarks at a dinner following a ceremony donating the John Dickinson Mansion to the State of Delaware in 1952:

... John Dickinson had somehow acquired and retained the gift of writing on subjects with the most monumental difficulty with remarkable directness and simplicity. In some mysterious way he was able to give the written word that vitality which others were rarely able to supply in conversation, debate, or oratory.³

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Over time Dickinson devoted himself almost entirely to the interest of the State and the Nation, his skill as a lawyer helping shape the new republic. John Sweeney has noted Dickinson's role as a public citizen, and citizen lawyer, was not over after the War of Independence:

Delaware named him a delegate to the Annapolis Convention in 1786. The other delegates selected him as chairman. When that convention on commercial treaties failed because of sparse attendance, he joined with James Madison and Alexander Hamilton to bring about the Philadelphia Convention in 1787.

In Philadelphia, he forged compromises, opposed the slave trade, and worked out a plan for a senate that was tied to the states. He also was a top leader of the coalition that stopped the big states like Pennsylvania and Virginia from rolling over the small states. They won a guarantee of equal representation in the Senate.

After the convention, he wrote a widely distributed series of essays called the "Letters of Fabius" that advocated ratifying the Constitution.

Finally, he was among the prime movers for a new Delaware Constitution in 1792.

For that, we owe him a lot, former Supreme Court Justice Holland says.

"The Delaware right to a jury trial, for example, is the same as it existed in the common law of England that Dickinson studied in London at the Middle Temple — 12 jurors who must be unanimous," he says. "This provides greater criminal jury trial rights in Delaware than the Sixth Amendment to the U.S. Constitution adopted the year before in 1791. Dickinson and others knew that..."⁴

Dickinson's position regarding slavery, his freeing of his own slaves, advocacy for others to do the same, and for ending the slave trade in Pennsylvania and Delaware were enlightened and bear more study and discussion.

Dickinson's position regarding slavery, his freeing of his own slaves, advocacy for others to do the same, and for ending the slave trade in Pennsylvania and Delaware were enlightened and bear more study and discussion. Study of his progressive views on individual rights, especially as reflected in his work as a practicing lawyer, is limited. This is in no small measure due to the significant work still required to transcribe, edit, and publish his papers — including his often almost indecipherable legal case notes. The effect of Dickinson's papers not being completely collected and published is a sore spot for Dickinson supporters, including those in the Bar. Professor Jane Calvert has been arguing for years that Dickinson is the only leading founder whose papers have not been collected and published, which is the main reason for his present obscurity:

Battle Robinson ... is a former Delaware Family Court judge and past president of the Friends of John Dickinson Mansion.

[She has noted] "[I]n my view it is a stain on Delaware that historians and officials in the state have not managed to compile and publish Dickinson's writings..."⁵

Hopefully, in the coming years the work of Professor Calvert and the John Dickinson Writings Project will provide a clear understanding of Dickinson's life as a successful practicing lawyer, and the impact of Quaker thought on his legal career, including efforts to secure rights for unfranchised individuals and groups.



As Professor Calvert has written in her new essay on Dickinson's abolitionism:

Dickinson was concerned with the rights of four main groups of subordinated peoples — the “lower sorts” (i.e., the ordinary working people, the poor, criminals and prisoners); Native Americans; women; and blacks, both freed and enslaved. For the ordinary people (male and female) Dickinson sought religious liberty, education, political participation, justice under the law, and humane treatment. For women in particular, he sought religious liberty and freedom of speech, both religious and political. For Native Americans, he sought property rights and dignified treatment. For blacks, he sought personal physical liberty and a better quality of life, materially, intellectually, and spiritually. In each of the areas, Dickinson advocated legal arrangements — either constitutional or statutory — that were neither codified in the British Constitution, recognized as English rights, nor accepted by most Americans at the time.⁶

And, Dickinson addressed the rights of these groups both as a matter of public policy and as a practicing lawyer. He worked, in intimate ways, to improve the lives of the underprivileged. As one example, with respect to his concerns for female equity and justice under the law, Professor Jane Calvert has recently written in a forthcoming essay on his advocacy for women:

A glimpse into [Dickinson's] legal practice suggested he frequently accepted poor female clients in situations that were unique to women. Although little remains except for cryptic notes on which exhaustive research needs to be completed, we know that among his clients were “a poor Widow” in *Manlove v. Prior*, an impoverished woman and her two infant children in *Overseers of Marble Township v. Overseers of Newton Township*, and, perhaps the most intriguing, Rachel Francisco.

We know very little about the case of *Dominus Rex v. Rachel Francisco*

(1767). Francisco was a “free mulatto” servant woman who was charged with infanticide after her newborn infant was discovered dead. Dickinson's case notes reveal that he constructed a plausible defense for Francisco against both the charges of infanticide and concealment. But rather than adhering strictly to the facts in crafting his argument, he sought to humanize her. A few words at the top of the page set a surprisingly sympathetic tone: “Women have suff[er]ed no doubt” he wrote “for the Conc[ea]ll[ment] of a dead Child.” It was a “Harsh Statute” — the concealment statute — under which Francisco was being tried, and would have meant the death penalty had she been convicted... Even when research is completed on these notes, we will probably not know all of the details, such as how Dickinson came to represent the defendant or whether he took the case *pro bono*. But we can safely assume that he was not obligated to help this woman. It is probable that not all elite men in Pennsylvania would have such compassion for the plight of a woman of the lower sort who engaged in fornication and possibly infanticide.⁷

There has been much focus recently in Delaware and elsewhere on issues of access by the poor and underprivileged to resources and equity in our system of justice. This aspect of John Dickinson — the practicing lawyer personally advocating for the disenfranchised — may bring into focus, more than anything else, the best of the Delaware Bar's tradition of service as citizen lawyers.

Over the next several months, we will hear more about John Dickinson's role as a Founding Father and his influence on our state. The topic of the May 18, 2018, Law Day Lunch, “John Dickinson – Citizen Lawyer,” showcases the involvement and commitment of Governor John Carney and former Justice Randy Holland to that cause. The example of Dickinson has brought into focus, for me, the tradition of service to our community and reminded me of that tradition in my own law firm. It has been gratifying to learn about the

role this one man played in the founding of our republic and understanding more about his progressive principles, grounded in Quaker beliefs of consensus, non-violence and basic equity and fairness for all people, principles especially relevant now given the current political environment and the challenges we face to the fundamental principles of the rule of law.

We need not wonder how Dickinson himself would have wanted us to behave in our community. He believed that, as he put it, “all well disposed persons, and especially those in places of authority, will by their conversation and demeanor encourage and promote piety and virtue, and to their utmost contribute to the rendering these qualities truly laudable and honourable.” No doubt he would have hoped that we, the members of the Delaware Bar, would aspire to the example he set to make our state conform to “the laws of righteousness.”⁸ 📌

Notes:

1. Sweeney, John. “The Most Important Founding Father You've Never Heard Of.” *Delaware Today*, December 2017.
2. Stockdale, Eric, and Randy J. Holland. *Middle Temple Lawyers and the American Revolution*. Eagan, MN: Thomson/West, 2007. pp. 57-70.
3. Tunnell, James M., Jr. “John Dickinson and the Federal Constitution.” Essay on John Dickinson. 1952.
4. Sweeney, John. “The Most Important Founding Father You've Never Heard Of.” *Delaware Today*, December 2017.
5. Sweeney, John. “The Most Important Founding Father You've Never Heard Of.” *Delaware Today*, December 2017.
6. Calvert, Jane E. “An Expansive Conception of Rights: The Quaker Abolitionism of John Dickinson.” In *When in the Course of Human Events: 1776 in America and Beyond*, edited by William R. Jordan, 21-54. Macon, GA: Mercer University Press, 2018.
7. Calvert, Jane E. “The Friendly Jurisprudence and Early Feminism of John Dickinson.” In *Great Christian Jurists in American History*, edited by Daniel L. Dreisbach and Mark David Hall, 17-19. New York: Oxford University Press, forthcoming 2018.
8. John Dickinson, *A Proclamation* (Philadelphia: Francis Bailey, 1782).

Michael Houghton is the current President of the Delaware State Bar Association and is also Chair of the Delaware Economic and Financial Advisory Council (“DEFAC”), served as President of the Uniform Law Commission, serves as a member of the Boards of the Delaware Bar Foundation, the Delaware State Chamber of Commerce, the Delaware Public Policy Institute, and the Pete du Pont Freedom Foundation. Mike is a partner with the law firm of Morris, Nichols, Arsht & Tunnell LLP. He can be reached at mhoughton@mnat.com.



EDITOR'S PERSPECTIVE

By Benjamin A. Schwartz, Esquire

More Wei-Wu-Wei, Less Kodawari

I was fifteen and really into competitive cycling. When my friend Tom suggested he could get us a great deal on a pair of handmade Japanese bicycle frames, I was all ears. The frames were made by a small bicycle manufacturer called 3Rensho (pronounced “San Rensho”), meaning “three wins” or “three victories” in Japanese. These were not the types of racing bikes you could get in a bicycle store — rather, these were custom, super-high-end, hand-made racing bikes. I would end up racing mine in Europe and in North America with a great deal of success.

The 3Rensho bicycle factory was run by a man named Yoshi Konno. Yoshi had been a racer, and started manufacturing his bicycles in the 1970s to the most exacting standards of any maker. Yoshi was the embodiment of the Japanese concept of kodawari. Some believe that kodawari translates to perfectionism, but the truth is that there is no English word for it. It is more than perfectionism. It is what perfectionism would be if a perfectionist attempted to perfect it.

In fact, I heard a rumor when I was racing in Europe that Yoshi was such an obsessive maniac that he would walk around the factory each day examining his frame builders’ welds. The 3Rensho frames were well-known to be perfectly assembled, with zero imperfections. If Yoshi found even the slightest imperfection in the way a bicycle’s steel frame tubes were brazed, he would hacksaw out the welded joint and hang it on the end of a chain over the offending welder’s bench as a mark of

shame. He was dedicated to producing perfect racing bicycles, perfectly built. I have never been able to confirm this story, but I heard it in the U.S. too, and so even if untrue, it had legs.

At his peak, Yoshi was manufacturing and selling about 1,500 frames a year. They are still in high demand today, even though the 3Rensho factory stopped making bikes several decades ago. Unfortunately, from what I understand, Yoshi developed a drinking problem. He was involved in a car accident while driving drunk, and killed five people. He, himself, was paralyzed from the neck down.

I think a lot of lawyers have a kodawari problem. I do not begrudge anyone for performing at a high level, for maintaining exacting standards, or for wishing to be precise in written word or speech. But, when the attention to detail becomes that for which there is no English translation, kodawari is — to borrow a phrase — the enemy of the good.

Here is how to know if you might have a kodawari problem:

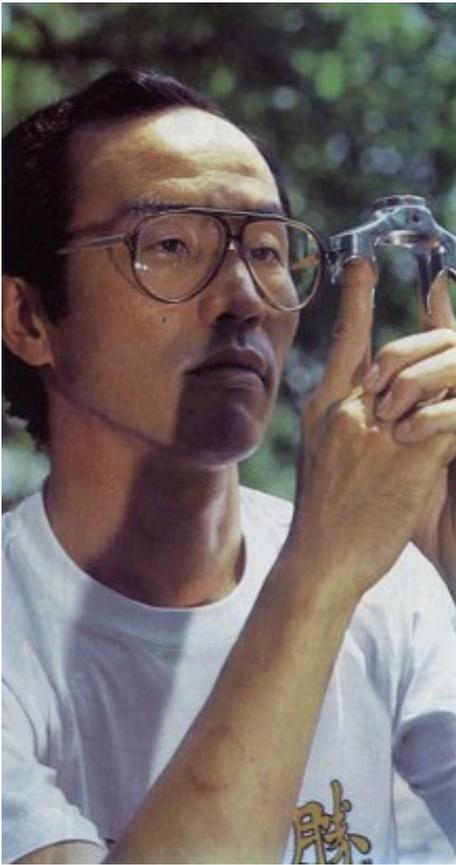
- If you have ever spent more than two minutes obsessing about whether you should use a comma, a semicolon, or a period and start a new sentence, then you might have a kodawari problem.
- If you find yourself reading and rereading letters, motions, and briefs into the late hours of the night because there is a slight possibility that there’s a typo, faulty parallelism, a dangling participle, or something else wrong that an eagle-eyed judge

might find, then you might have a kodawari problem.

- If you heard that your former paralegal thought you were “psycho” and went to work where there is a more “relaxed atmosphere,” then you might have a kodawari problem. (I feel I have softened since this happened).
- If the thought of a notice of brief deficiencies from the Clerk of the Supreme Court makes your head spin and makes you feel nauseous, then you might have a kodawari problem.

Now is the time for introspection. Is your perfectionism out of control? If so, feel free to meditate on this next story, a story of wei-wu-wei. Maybe, if you can trust the forces of the universe to get you where you want to go, you can let go of a little obsessiveness.

Another hobby I was really into when I was fifteen was fishing. If you have read some of my other stories, you have read about my “Beach Runner,” the Toyota 4-Runner that I currently use to go surf fishing. Well, when I was a teen, I saved my grass-mowing money and bought a twelve foot v-bottom aluminum boat and a 7.5 horsepower air-cooled Briggs and Stratton outboard motor, and I would go fishing in the Delaware Bay. I would launch my boat from South Bowers Beach, where my family had (still has) a house. The river that divides South Bowers from North Bowers Beach is the Murderkill. It is great fishing if you can handle it. The problem with the Murderkill River is that when the tide is coming in or going out, the water moves incredibly fast.



Yoshi Konno examining a fork crown for a racing bicycle. The photo was from an article in *Winning* magazine.

The best fishing in the Murderkill was upstream several miles, near the Town of Frederica. There is a bend in the river that is almost a complete switch-back. The perch fishing on the inside of that bend was amazing. You could toss your line in the water with three baited hooks, and as soon as it hit the water you would have three fish on your line. We would fill our coolers full of perch. Once back home, we would fillet them, then bread and fry the fillets, and they would come out of the frying pan like hot potato chips with flaky white fish in the middle. Delicious!

In any event, there was a trick to getting up the river to Frederica, and some danger involved because if you timed it wrong, you might not get home. The current was so strong that you could not row against it, and a seven and a half horsepower air-cooled outboard motor would overheat quickly if you tried to run against the tide.

To get upriver to the perch fishing grounds, you would need to start your expedition at or shortly after low tide. As the tide flowed in, you could ride the tide

up the river until you got to the fishing grounds. Once there, you anchored the boat and fished until high tide. When the direction of the tide switched and started going out, you pulled up anchor and let the tide sweep you back down and out of the mouth of the river, and back into the bay where you could beach the boat and go home. This method mainly relied upon the tide to transport you. It was truly *wei-wu-wei*.

Wei-wu-wei is an ancient Chinese idea. It means “action without action.” In my perch fishing days, my knowledge of the timing and strength of the tides allowed me to travel miles upstream and then back home without any real effort. That is action without action.

Compare that with what would have happened had I attempted to go upstream as the tide was going out. Or, think what would have happened if I finished my fishing and tried to get home when the tide was coming in. My little engine would have overheated and I never would have gotten home.

Here is an example of *wei-wu-wei* in legal practice: I handle car accident personal injury cases. The normal way to settle a car accident personal injury case is to obtain all the relevant medical records and bills, summarize all the injuries and treatment documented in the records, and provide all the documentation to the at-fault driver’s insurance adjuster along with a settlement demand. That is a bunch of work and it is not cheap to obtain the medical records.

Here is where the inaction part comes in. Under Delaware law, the injured plaintiff’s medical expenses and lost wages are paid by her own insurance company under her Personal Injury Protection (PIP) provision in her automobile insurance policy. The PIP carrier has a right to get paid back what it paid for accident-related medical treatment and lost wages, but only from whatever is remaining on the at-fault driver’s liability insurance policy after the injured Plaintiff receives her settlement.

One day when I was a young lawyer, it occurred to me that I might be able to get a settlement out of an at-fault driver’s liability insurer if I just sent a copy of the

PIP log of payments. I called my client’s PIP adjuster and asked how much they had paid out for medicals and indemnity. “Twelve thousand five hundred dollars,” the adjuster told me. I asked that adjuster to send me the PIP payment log and they faxed it right over. I then faxed it directly to the at-fault driver’s insurance adjuster and called him on the telephone. It turned out that the at-fault driver carried the minimum liability insurance limit, \$15,000. If the liability adjuster settled my client’s case for \$2,500 or more, they would end up sending the full remaining balance of the liability policy to my client’s insurance company.

I discussed the case with the adjuster, who agreed it was worth more than \$2,500. I pointed out that the question was not whether the full policy would be paid out, but rather whether the policy would be paid out solely to my nice, deserving client or rather partially to my client and partially to the opposing, competing insurance company. That resulted in a policy-limit offer: \$15,000 for my client, \$0 for the PIP insurer. Just by knowing the “tides,” I was able to navigate that accident case into a full policy-limit settlement offer without having to order and pay for medical records, and without having to spend hours summarizing medical charts.

My point, of course, is that I see a lot of lawyers stressing themselves out to make sure their work is exact, precise, and perfect. But, nobody should expect anybody else to be perfect and that obsessive attention to detail can have destructive consequences. If we took some of the obsessive energy that goes into practicing legal *kodawari* and instead used it to meditate on the idea that the tides will get us where we want to go, then wouldn’t the practice of the art of law be so much more pleasurable? 🌀

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

OF NOTE

Condolences to **Anne E. Connolly, Esquire**, on the death of her mother, Christina Janson Eldridge, who died on March 27, 2018.

Condolences to the family of **William M. Aukamp, Esquire**, who died on April 1, 2018.

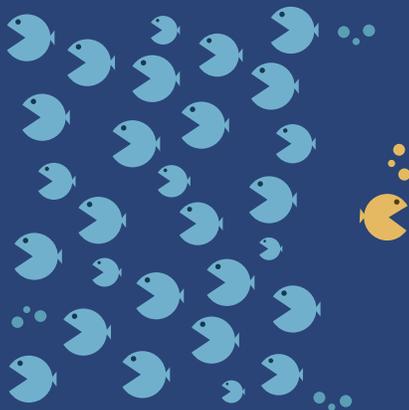
Condolences to **Barbara A. Brodoway, Esquire**, on the death of her father, Nicolas "Nick" Brodoway, who died on April 10, 2018.

Condolences to **The Honorable Jennifer L. Mayo**, on the death of her husband, Jeffrey Allen Pompeo-Mayo, who died on April 11, 2018.

Condolences to **Edward R. McNamara, Esquire**, on the death of his wife, Susan Mary McNamara, who died on April 14, 2018.

If you have an item you would like to submit for the Of Note section, please contact Rebecca Baird at rbaird@dsba.org.

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Why Should I Join DSBA?

By Mark S. Vavala, Esquire, DSBA Executive Director



Illustration by Mark S. Vavala

In a few days, you will be receiving a letter with an invoice, asking you to renew your dues for another year of membership with DSBA. Some of you have joined throughout your entire careers. Some of you have joined sporadically. Some of you have only recently entered the profession and your first six months were free. And now, you face the question as to "What's in it for me?" I challenge you to ask a different question. "What's in it for the profession?" You decided to be an attorney for a reason. You were clearly smart enough to be anything you wanted to be, but you chose the law. You respect the rule of law and the things it protects, whether you are an AG or a PD, a plaintiff's attorney or in insurance defense, a government attorney or a judge. Membership in this Bar Association makes you part of

something bigger than you; one of many who respect the profession. The Bar Association advocates on behalf of sections, lends its formidable weight on bills that you endorse, recognizes peers who honor the profession through extraordinary practice, produces excellent Continuing Legal Education in areas that other free providers cannot, and serves you well... our staff is second to none. I could rattle off a number of benefits we provide like discounts on education, free legal research (Fast Case), discounts for members, great deals on insurance, etc. And, for only a few dollars a month, you can get all that. But, the Bar Association's impact on the profession is priceless. And, we want all of you to be a member because losing even one of you lessens the voice we can project on behalf of everyone.



CALL FOR BAR JOURNAL PARTICIPATION

The DSBA Bar Journal is looking for brief announcements about DSBA Members for a new feature called **DSBA Happenings**. We welcome brief news items and photos about your activities and accomplishments — examples include Honors, Appointments, Marriages, and Births. Notices are printed at no cost and must be submitted by email to Rebecca Baird at rbaird@dsba.org. If sending a photo, please send a high resolution photo (300 dpi).

Talks, speeches (unless they are of national stature), CLE presentations, political announcements, and announcements for new associates or firm changes are not accepted. In addition, the DSBA Bar Journal will not print notices of honors determined by other publications (e.g., *Super Lawyers*, *Chambers USA*, etc.). Paid professional announcements are also available. Contact Rebecca Baird at rbaird@dsba.org for a rate sheet.



TOP 5 FAMOUS LEGAL BATTLES IN SPORTS

- 1 *Clay v. United States, 403 U.S. 698 (1971)*
 Muhammad Ali (formerly Cassius Clay) was convicted in 1967 for refusing to report for induction in the U.S. military during the Vietnam War as a “conscientious objector.” The U.S. Supreme Court reversed the conviction finding that Ali’s convictions were founded on the tenets of Islam, as he understood them. The legal battle deprived Ali of four prime fighting years, but he still went on to regain his champion belt.
- 2 *USFL v. NFL, 704 F. Supp. 474 (1989)*
 A jury found that the NFL did, indeed, violate anti-trust laws by monopolizing professional football, but awarded the USFL only \$1 in damages. It was tripled to \$3 in treble damages. USFL team owner Donald Trump (New Jersey Generals) was not happy with the verdict.
- 3 *PGA Tour, Inc. v. Martin, 532 U.S. 661 (2001)*
 Born with a congenital blood vessel condition in his right leg, Casey Martin sued the PGA to allow him to ride in a golf cart between shots. The PGA rules required golfers to walk. The U.S. Supreme Court sided with Martin.
- 4 *Illinois v. Edward v. Cicotte, et al. (1921)*
 The famous “Black Sox Trial” ultimately acquitted the 8 Chicago White Sox players (including Shoeless Joe Jackson) of fixing the 1919 World Series, but the players were banned for life from baseball.
- 5 *Richards v. U.S. Tennis Association, 93 Misc.2d 713 (1977)*
 Dr. Richards underwent male-to-female sex reassignment surgery and was denied entry into the U.S. Open in 1976, which required genetic screening for female players. The New York Supreme Court ruled in her favor.



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BECOME A DSBA SECTION MEMBER

Section Membership provides the chance to exchange ideas and get involved.
 For information on how to join a Section, call DSBA at (302) 658-5279.



The Honorable Jan R. Jurden
 President Judge of the Superior Court of the State of Delaware
 DSBA MEMBER

“I became a member of the Bar Association as a lawyer and continue to be part of it as a judge. Throughout the years, I have found membership provides many benefits. It affords me with the opportunity to connect with so many members of the Bar, to support the organization that supports our Bench and Bar, to attend excellent CLE programs, and to laugh every time I open one of the Executive Director’s emails. I am very proud to have been a member of the DSBA for almost thirty years.”



Stephen A. Spence
 Baird Mandalas Brockstedt, LLC
 VICE CHAIR OF THE REAL & PERSONAL PROPERTY SECTION

“I belong to the DSBA because of the people and the resources. Being a member and section officer has helped me make connections, get involved in the legal community, and establish friendships. And, membership provides access to knowledgeable fellow members and valuable continuing education.”



Jason D. Angelo
 DLA Piper LLP (US)
 CHAIR OF THE LGBT SECTION

“The DSBA keeps me up to speed with the latest happenings in our legal community and facilitates countless opportunities for professional development and networking. As a member, I look forward to the creative, well-designed CLE programs and appreciate the DSBA’s focus on mindfulness and wellness in the context of our practice.”

Illustrations by Mark S. Vavala

Please let us know what DSBA membership means to you! Email Rebecca Baird at rbaird@dsba.org.

Professional Guidance Committee

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

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*Certified Practice Monitor

CALENDAR OF EVENTS

May 2018

Tuesday, May 8, 2018

Lunch & Learn: Getting to Settled

A Series of Three ADR Seminars on 4/10, 4/28, 5/8
1.0 hour CLE credit

Delaware State Bar Association, Wilmington, DE
Webcast to Morris James LLP, Dover, DE,
Webcast to Tunnell & Raysor, Georgetown, DE

Wednesday, May 16, 2018

The Anything-But-Wonderful World of Disney

5.0 hours CLE credit including 1.0 hour Enhanced Ethics credit
Delaware State Bar Association, Wilmington, DE
Webcast to Morris James LLP, Dover, DE,
Webcast to Tunnell & Raysor, Georgetown, DE

Friday, May 18, 2018

Law Day Luncheon

Hotel du Pont, Wilmington, DE

Tuesday, Wednesday, and Thursday, May 22, 23, and 24, 2018

Superior Court Mediation at DSBA – A Three-Day Training Seminar

18.0 hours CLE credit including 1.0 hour Enhanced Ethics credit
Delaware State Bar Association, Wilmington, DE

June 2018

Friday, June 1, 2018

Environmental Law Update

3.0 hours CLE credit
Delaware State Bar Association, Wilmington, DE
Webcast to Morris James LLP, Dover, DE,
Webcast to Tunnell & Raysor, Georgetown, DE

Wednesday, June 6, 2018

Corwin, Appraisal, Alternative Entity Developments and Other Hot Topics: A View from the Bench and Bar

4.0 hours CLE credit
Delaware State Bar Association, Wilmington, DE
Webcast to Morris James LLP, Dover, DE,
Webcast to Tunnell & Raysor, Georgetown, DE

Thursday, June 7, 2018

Recognizing The Opportunities of Business Immigration

2.0 hours CLE credit
Delaware State Bar Association, Wilmington, DE
Webcast to Morris James LLP, Dover, DE,
Webcast to Tunnell & Raysor, Georgetown, DE

Friday, June 15, 2018

Bench and Bar Conference

3.0 CLE credits in Enhanced Ethics
Chase Center on the Riverfront, 815 Justison Street, Wilmington, DE

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.

SECTION & COMMITTEE MEETINGS

May 2018

Wednesday, May 9, 2018 • 12:00 p.m.

LGBT Section Meeting

DLA Piper LLP (US), 1201 North Market Street, Suite 2100, Wilmington, DE

Thursday, May 10, 2018 • 12:00 p.m.

Government Law Section Meeting

Delaware Community Reinvestment Action Council, Inc., 600 South Harrison Street, Wilmington, DE

Tuesday, May 15, 2018 • 12:00 p.m.

Litigation Section Meeting

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

Thursday, May 17, 2018 • 12:00 p.m.

Executive Committee Meeting

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

Monday, May 21, 2018 • 4:00 p.m.

Taxation Section Meeting

E.I. du Pont de Nemours and Company Chestnut Run Plaza, Building 735, Floor 1, Room 1135, 975 Centre Road, Wilmington, DE

Tuesday, May 22, 2018 • 12:30 p.m.

Labor & Employment Law Section Meeting

Eckert Seamans Cherin & Mellott, LLC, 222 Delaware Avenue, 7th Floor, Wilmington, DE

Thursday, May 24, 2018 • 4:00 p.m.

Family Law Section Meeting

The Yeager Law Firm, 2 Mill Road, Suite 105, Wilmington, DE

June 2018

Monday, June 4, 2018 • 12:30 p.m.

Senior Lawyers Committee Monthly Luncheon Meeting

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

Tuesday, June 12, 2018 • 3:30 p.m.

Estates & Trusts Section Meeting

Bessemer Trust Company of Delaware, N.A., 1007 North Orange Street, Suite 1450, Wilmington, DE

Thursday, June 21, 2018 • 12:00 p.m.

Executive Committee Meeting

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

Monday, June 25, 2018 • 4:00 p.m.

Taxation Section Meeting

E.I. du Pont de Nemours and Company Chestnut Run Plaza, Building 735, Floor 1, Room 1135, 975 Centre Road, Wilmington, DE

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

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Executive Director





TIPS ON TECHNOLOGY

By Richard K. Herrmann, Esquire

The Internet and Whatever Happened to the Right to be Let Alone?

The Freedom of Speech is a Constitutional Right, which we hold sacred. But, the right to privacy does not appear to be all that important to us. Some of us would like it to be. To me, it ought to be right up there with Life, Liberty, and the Pursuit of Happiness.

We have traded convenience, information, and instant access to everything, with an open window into our lives. Commercial businesses can track us, “friends” can follow us and anyone can say almost anything about us on the internet; and there is little we can do to protect ourselves. Of course, certain privacy laws are being developed to protect certain types of information, so we cannot be unlawfully exploited by identity thieves. But, that is not the privacy issue I have in mind.

Once you are a target on the internet, there is little you can do about it. The “click and agree” practices we never read, but must consent to before we reach the next screen, shred whatever right

we think we have. In the old days of the Uniform Commercial Code, those agreements would be considered unconscionable.

How many times do clients complain that they have been unfairly targeted on the Internet and now they appear on the first page of Google when their name or business is searched? Their choice is limited to burying it by trying to get their name to positively appear enough times that the bad reference is too far down to be meaningful.

The European Union has been dealing with this issue for a number of years.¹

In many respects, the EU’s concern over privacy rises to the level of freedom

of speech here in the U.S. The European courts have developed the doctrine of “The Right to be Forgotten.” Under certain circumstances, an individual or organization can require search engines, such as Google, to remove all links to an inappropriate or unfortunate reference. And, Google has the technical capabilities of doing just that. According to Google reports, there have been more than 650,000 requests to remove 2.5 million links since 2014 and Google has agreed to 43% of these demands.²

This appears to be a very controversial concept in Europe due to concerns over censorship, and certainly would not trump freedom of speech here in the United States. But, now that we know unlinking is technically available, it would be refreshing to consider the thought of some Internet Court here in the U.S., resolving disputes relating to rights to individual privacy. It does not have to be government controlled — might even be designed and operated by Google. It is unfortunate that the entire concept of “The



Right to be Forgotten” actually presumes that someone’s privacy has already been invaded. And, that is what needs to be fixed.

The thought of being able to pursue one’s life outside of the prying eyes of others is not new. While it may not have risen to a constitutional right, outside of unlawful search and seizure, “The Right to be Let Alone” was shaped long before the Internet. In 1890, Samuel Warren and Louis Brandeis, published an article in the *Harvard Law Review* called “The Right to Privacy.” It is difficult to imagine they did not have Google and the Internet in mind when they put quill to paper:

Recent inventions and business methods call attention to the next step which must be taken for the protection of the person, and for securing to the individual...the right "to be let alone" ... Numerous mechanical devices threaten to make good the prediction that “what is whispered in the closet shall be proclaimed from the house-tops.”³

Of course, it appears the right to privacy may be a generational issue. Certainly, the privacy expected by the baby boomers is far different than those of Generation Z. Many of the latter do not care and there are those in the former group who actually think privacy still exists. Next month, we will debate the “Right to be Let Alone” with the “Freedom to Yelp.”

Notes:

1. Toobin, Jeffrey. "The Solace of Oblivion." *The New Yorker*. June 19, 2017. Accessed April 23, 2018. <https://www.newyorker.com/magazine/2014/09/29/solace-oblivion>.
2. "People Have Asked Google to Remove 2.4 Million Links About Them. Here's What They Want to Forget." *Fortune*. Accessed April 23, 2018. <http://fortune.com/2018/02/28/google-right-to-be-forgotten-europe-reasons-eu/>.
3. Warren, Samuel D., and Louis D. Brandeis. "The Right to Privacy." *Harvard Law Review* 4, no. 5 (December 15, 1890): 193-220. <http://www.cs.cornell.edu/~shmat/courses/cs5436/warren-brandeis.pdf>.

Richard K. Herrmann is a partner at Morris James LLP, handling many forms of complex litigation, including intellectual property, commercial, and technology. He can be reached at rherrmann@morrisjames.com.

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

Report of the Nominating Committee

The Nominating Committee met on March 12, 2018 and nominated the following for officers and membership on the Executive Committee for the year July 1, 2018 to June 30, 2019:

Vice President-at-Large:	Michael F. McTaggart
Vice President, New Castle County:	Michael W. Arrington
Secretary:	Charles J. Durante
Assistant Secretary:	Reneta L. Green-Streett
Treasurer:	Kate Harmon
Assistant Treasurer:	Ian Connor Bifferato
Members-at-Large:	Adrian Sarah Broderick
	Crystal L. Carey
	Mary Frances Dugan
	Ian R. McConnel
	Kathleen M. Miller
	James Darlington Taylor, Jr.

In addition, the Committee nominated:

The Honorable Laurie Selber Silverstein to a 4-year term as the Delaware State Bar Association representative to the Delaware Bar Foundation.

Benjamin Strauss as the Delaware State Bar Association representative to the ABA House of Delegates.

This report is being filed pursuant to Section 6.16(e) of the Association bylaws. Section 6.16(f) of the Bylaws of the Association provides:

“Any ten members of the Association may nominate other members in good standing of the Association for any office for which nominations have been made by the committee by filing a signed written petition with the Secretary of the Association within ten days after the report of the Committee has been published. If a petition nominating other candidates be duly filed the Secretary shall publish notice, in a Bar Association publication or by any other reasonable means of notification, of the petition with the name(s) of the candidate(s) proposed so that the membership has notice of at least fourteen days prior to the election of the names of all candidates so nominated. There shall be no other nominations.”

DELAWARE'S SOLACE COMMITTEE

Announcement from
DE-LAP to follow.

Can Publicly Available Information Also Be Privileged Information? The ABA Says "Yes"

By Molly DiBianca, Esquire

In March 2018, the ABA's Standing Committee on Ethics and Professional Responsibility published Formal Opinion 480, titled "Confidentiality Obligations for Lawyer Blogging and Other Public Commentary" (the "Opinion"). The Opinion touches on topics far beyond blogging, though, and has potentially far-reaching implications for all lawyers.

The Scope of the Opinion

The Opinion purports to speak to lawyers who blog or "engage in other public commentary." As defined in the Opinion, "public commentary" includes presentations at CLEs, webinars, or other events, as well as articles (such as this one) in industry publications, scholarly writings, and, really, any other situation in which a lawyer is making a statement or comment in a non-privileged context. The Opinion concludes, perhaps obviously, that lawyers who communicate about legal topics in public commentary must comply with the Rules of Professional Responsibility (the "Rules").

Positional Conflicts of Interest

One risk of public commentary by lawyers is the creation of a positional conflict of interest. The Opinion warns that lawyers who blog, write, or speak at CLEs, for example, should exercise caution when stating a position on an issue so as to avoid taking a position adverse

"A lawyer who comments about a particular issue on his or her social media can unintentionally create a conflict by contradicting the lawyer's firm on an issue in a pending case."

to a client's interests and thereby creating a conflict inadvertently. A lawyer who comments about a particular issue on his or her social media can unintentionally create a conflict by contradicting the lawyer's firm on an issue in a pending case.

Confidentiality

Rule 1.6, which addresses confidentiality, defines confidential information as "information relating to the representation of a client." The Rule provides that a lawyer may not disclose confidential information unless the client gives informed consent or the situation fits one of the specific exceptions enumerated in Rule 1.6(b). Comment [3] to Rule 1.6, however, goes further. It states that the confidentiality Rule "applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source." In other words, Rule 1.6 protects much more than privileged information. Just how much more, though, may surprise you.

For example, the mere fact that an attorney-client relationship exists is considered confidential information protected by the Rule. Thus, the Opinion explains, absent the existence of an exception under Rule 1.6(b), a lawyer is prohibited from revealing the identity of her client unless the client expressly consents to such disclosure. Accordingly, even if the lawyer is named on a publicly available court filing, when speaking publicly, whether at a seminar or in an article or other publication, the lawyer may not disclose that she represents the client unless the client consents. The same conclusion will be reached when a lawyer offers a "hypothetical" scenario if it is reasonably likely that a third party could ascertain the identity or other factual information about the client or the case from the facts contained in the hypothetical.

And, this is a critically important point. The Opinion explains that Rule 1.6 does not provide an exception for information that is contained in a public record

or even for information that is “generally known.” Therefore, if a lawyer represents a defendant in a highly publicized criminal trial, the lawyer may not later offer public commentary about the case or about the client without running afoul of Rule 1.6. In other words, lawyers may not, whether around the dinner table, at a social event, in a blog, or anywhere else, reveal information relating to a representation that is protected by Rule 1.6, including information contained in a public record, unless disclosure is authorized under the Rules.

This conclusion may come as a surprise to many Delaware lawyers. Let’s say, for example, that a lawyer is contacted by a potential new client seeking representation. The lawyer previously represented the potential client’s ex-husband in a business dispute. The lawyer knows that the two individuals do not get along and suspects that the new client would seek different counsel if she knew that the lawyer used to represent her ex-husband. What should the lawyer do?

On one hand, if the lawyer takes the case and does not reveal his former representation of the potential client’s ex-husband, the relationship may be soured if the potential client later makes the discovery on her own. On the other hand, the lawyer cannot tell the potential client about the lawyer’s former representation because to do so would be to reveal the ex-husband’s identity as a client, which, according to the Opinion, would violate Rule 1.6.

Conclusion

Although Delaware courts have not weighed in on whether publicly available information that is learned in the course of the attorney-client relationship constitutes privileged information, all Delaware lawyers should be aware of the ABA Opinion and its potentially serious implications. ⚖️

Molly DiBianca is a Partner at Smith Katzenstein & Jenkins, LLP, where she practices employment law. She may be reached at MMD@skjlaw.com.

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2018

DELAWARE STATE BAR ASSOCIATION

BENCH AND BAR CONFERENCE

FRIDAY, JUNE 15, 2018 | CHASE CENTER ON THE RIVERFRONT | WILMINGTON, DE

AN EVOLVING PROFESSION: IMPROVING THE WAY WE DO BUSINESS

3.0 hours CLE credit in Enhanced Ethics for Delaware and Pennsylvania attorneys



REGISTRATION BREAKFAST, VENDOR VISIT, AND TRANSITION TO SESSION | 7:30 A.M. – 8:30 A.M.

BREAKOUT SESSION I

8:30 A.M. – 10:00 A.M. | 1.5 HOURS CLE CREDIT IN ENHANCED ETHICS

Making the Most of a Deposition

Hear from the author who literally wrote the book on depositions and a panel of attorneys who consistently raise the bar in this field of practice. Learn the best way to prepare for and conduct a deposition, lodge effective objections, and make the most of this pre-trial device.

Moderator

Dennis R. Suplee, Esquire
Schnader Harrison Segal & Lewis LLP (Philadelphia)

Richard Galperin, Esquire
Morris James LLP

Joel Friedlander, Esquire
Friedlander & Gorris, P.A.

Panelists

David Evan Ross, Esquire
Ross Aronstam & Moritz LLP

Meeting the Challenges of Domestic Violence in Custody Cases

Making decisions in custody cases is difficult when domestic violence is present. The panel will discuss considerations for victims who are seeking custody, the Court's approach to making decisions after a finding of domestic violence, and the greatest challenges. Finally, the panel will highlight recent work being done to improve the ability of Family Court to reach the best solutions in these cases.

Moderator

The Honorable Jennifer B. Ranji
Family Court of the State of Delaware

Kelly Cloud Ensslin, Esquire
Office of the Child Advocate

Kara M. Swasey, Esquire
Bayard, P.A.

Panelists

The Honorable Mary Susan Much
Family Court of the State of Delaware

The Honorable James G. McGiffin, Jr.
Family Court of the State of Delaware

Eleanor B. Torres, Esquire
Family Court of the State of Delaware

Arbitration Rule 16.1: The Comeback... (& Introduction to Path to Trial Committee)

This panel will discuss the various ways Courts are addressing effective dispute resolution including the Superior Court's revived and improved Rule 16.1, the Court of Common Pleas Special Election and Expedited Docket (SPEED), and an introduction to the newly formed Path to Trial Committee, which is assessing the need for revisions to existing speedy trial guidelines and court rules, with a view toward enhancing efficiency and effectiveness at each step along the "path to trial" (and beyond).

Moderator

The Honorable Eric M. Davis
Superior Court of the State of Delaware

The Honorable Anne Hartnett Reigle
Court of Common Pleas of the State of Delaware

Panelists

The Honorable Gary F. Traynor
Supreme Court of the State of Delaware

Frederick S. Freibott, Esquire
The Freibott Law Firm, P.A.

Mary E. Sherlock, Esquire
Weber Gallagher Simpson Stapleton Fires & Newby, LLP

Raising the Bar by Closing the Gap

Does having the "keys to the courthouse doors" obligate attorneys to ensure that there is justice for everyone? A panel of practitioners and judicial officers explore what responsibilities come hand in hand with the decision to join this profession.

Moderator

The Honorable Karen L. Valihura
Supreme Court of the State of Delaware

Mark L. Desgrosseilliers, Esquire
Womble Bond Dickinson (US) LLP

Frederick H. Alexander, Esquire
Morris Nichols Arsh & Tunnell LLP

Panelists

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

Gregory P. Williams, Esquire
Richards, Layton & Finger, P.A.

Professor James Teufel
Director of Public Health & Assistant Professor, Moravian College

REFRESHMENT BREAK AND VENDOR VISIT | 10:00 A.M. – 10:15 A.M.

DSBA ANNUAL MEETING

10:15 A.M. – 11:15 A.M.

Presided over by Michael Houghton, Esquire, Delaware State Bar Association President

Presentation of the First State Distinguished Service Award to Elizabeth M. McGeever, Esquire

Election of 2018-2019 Executive Committee Members

Passing of the Gavel to the new Delaware State Bar Association President, David J. Ferry, Jr., Esquire

BREAKOUT SESSION II

11:30 A.M. – 1:00 P.M. | 1.5 HOURS CLE CREDIT IN ENHANCED ETHICS

Blockchain II: Where No Contract Has Gone Before

Part II (Part I was on April 17 at DSBA) delves further into this new commercial law topic which is poised to change the world of commerce and the legal profession.

Moderator

James H. S. Levine, Esquire
Pepper Hamilton LLP

Doneene Keemer Damon, Esquire
Richards, Layton & Finger, P.A.

Jalak Jobanputra
Future Perfect Ventures

Panelists

The Honorable Sam Glasscock III
Court of Chancery of the State of Delaware

Valerie A. Szczepanik, Esquire
Security and Exchange Commission

Lewis R. Cohen, Esquire
Hogan Lovells (NY)

Professor Aaron J. Wright
Benjamin N. Cardozo School of Law

New Expectations in Forensic Science

Forensic evidence is entering a new era of scrutiny and this panel will look at accepted evidentiary forensics and how science is showing that your case may not necessarily be airtight. Hear from experts and practitioners about firearms identification and DNA.

Moderator

The Honorable William L. Witham, Jr.
Superior Court of the State of Delaware

Robert M. Thompson, Senior Forensic
Science Research Manager
National Institute of Standards &
Technology

Panelists

Sheila Willis
Former Director of Forensic
Science Ireland

Lisa M. Schwind, Esquire
Office of Defense Services

Barzilai K. Axelrod, Esquire
Department of Justice

Best Practices in State Court Cases: Special Immigrant Juvenile Status (SIJS) and Violence Against Women Act Confidentiality

Immigrant children come before state court judges in cases that can have a profound impact on the child's health, welfare, well-being, and best interests. This workshop will discuss cases in which courts will encounter SIJS eligible children and best practices for these issues and will include distribution of a bench book. Courts are seeing a rise in cases in which litigants and defendants are using discovery as a tactic to obtain information about an abused immigrant's immigration case; this seminar will focus on federal protection for such information.

Moderator

Professor Leslye E. Orloff
Director, National Immigrant
Women's Advocacy Project

Panelists

The Honorable Rosemary Collins
Judge, 17th Judicial Circuit,
Rockford, IL

The Honorable Paula T. Ryan
Family Court of the State
of Delaware

The Honorable Loretta M. Young
Family Court of the State
of Delaware

Laura Carothers Graham, Esquire
Community Legal Aid Society, Inc.

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End the day by making new connections and reconnecting with friends and colleagues. Relax, mingle, eat, and drink. Casual dress encouraged!

Hosted by

The Honorable Leo E. Strine, Jr.,
Chief Justice of the Supreme Court of Delaware,
Justices Karen L. Valihura, James T. Vaughn, Jr.,
Collins J. Seitz, Jr., and Gary F. Traynor,
The Delaware Judicial Conference,
and the Delaware State Bar Association

CONFERENCE PROGRAM AT-A-GLANCE

7:30 a.m. - 8:30 a.m.	Registration Breakfast
8:30 a.m. - 10:00 a.m.	CLE Breakout Session I
10:00 a.m. - 10:15 a.m.	Refreshment Break
10:15 a.m. - 11:15 a.m.	Annual Meeting
11:15 a.m. - 11:30 a.m.	Refreshment Break
11:30 a.m. - 1:00 p.m.	CLE Breakout Session II
1:00 p.m. - 2:30 p.m.	Reception

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Check/Charge in the amount of \$ _____ enclosed. Please make checks payable to DSBA.

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Refunds issued only if cancellation is received no later than one week prior to seminar.

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ETHICALLY SPEAKING

By Charles Slanina, Esquire

A Massage to the Medium? Are Changes Coming to the Advertising Rules?

With apologies to Marshal McLuhan, rather than the medium being the message, your message may soon be massaged. The ABA is re-evaluating the Model Rules relating to attorney advertising. The Standing Committee on Ethics and Professional Responsibility is in the process of adding final tweaks to the Model Rules to modernize and simplify advertising regulations to reflect both changes in technology and current practices. The Committee’s proposals when completed will be submitted as a report and resolution to the ABA House of Delegates at the ABA annual meeting in August.

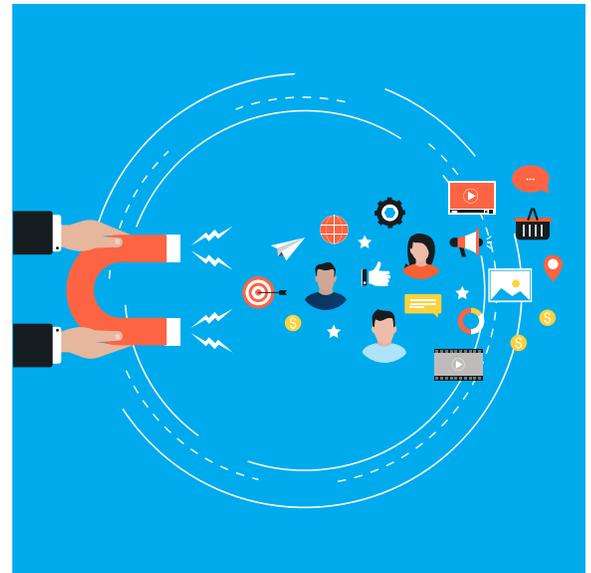
There are currently five Model Rules regulating attorney advertising:

- **Rule 7.1** simply prohibits false and misleading statements including both misrepresentations of fact or law and the omission of facts necessary to prevent the statement from being misleading.
- **Rule 7.2** permits advertising but prohibits lawyers from getting “anything of value” from a person for recommending the lawyer’s services. The remainder of the current rule permits attorneys to purchase advertising and to participate in legal service plans, and in a provision that I always thought was misplaced, permits a lawyer to purchase a law practice pursuant to Rule 1.17.
- **Rule 7.3** regulates how and when attorneys may solicit clients. The Rule prohibits in-person or live solicitation under many circumstances while permitting written or electronic communication as long as the solicitation is marked as “Advertising Material.”
- **Rule 7.4** permits attorneys to advertise that they practice in a particular area of law but prohibits a lawyer holding himself out as a certified specialist unless certain conditions are met. Finally,
- **Rule 7.5** regulates the use of firm names and letterheads.

The changes to the Model Rules, if adopted, are significant but not dramatic:

Revised Rule 7.1

In keeping with the ABA’s stated goal to simplify the Rules, the Committee proposes to leave Rule 7.1, described as the “cornerstone” of advertising regulation, unchanged. However, the Committee would eliminate the current Rule 7.5 dealing with firm names and letterheads by moving



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it to Rule 7. Like Rule 7.1, Rule 7.5 also prohibits misleading statements.

Revised 7.2

Rule 7.2 is currently and generically named “Advertising.” The Committee proposes that it be changed to “Communications Concerning a Lawyer’s Services: Specific Rules.” The proposed amendment to Rule 7.2 would provide an exception to the general provision against paying for referrals. The Rule would now specifically permit nominal “thank you” gifts while specifying that lawyers and employees who recommend a lawyer from the same firm are not included in the prohibition on paying for a recommendation.

The current Rule requires that any communication pursuant to the Rule must include a name and office address of at least one lawyer of the firm responsible for the content of the solicitation. The re-

vised Rule would indirectly recognize that attorneys practice in multiple jurisdictions and may have cyber or technology-based “offices.” The new Rule would only require that “contact information” be contained in the communication.

Revised Rule 7.3

The current Rule 7.3 which restricts in-person solicitation of clients for monetary gain would be indirectly modified by a change to the definition of “solicitation.” A new Rule 1.0(l) would define solicitation as “a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person known to be in need of legal services in a particular matter and that offers to provide, or can reasonably be understood as offering to provide, legal services for that matter.”

Live person to person solicitations would continue to be prohibited including “face to face, telephone, and real-time” contacts with a new and noteworthy exception. The revised Rule 7.3(a)(2) would permit live person to person solicitations of “experienced users of the type of legal services involved for business matters.” The Committee noted that the exception was intended to apply to in-house counsel and small business owners who regularly engage lawyers.

A new Comment [2] to Rule 7.3 would define “live person to person contact” as in-person, face to face, telephone and real-time person to person communications such as Skype or Facetime or other visual/auditory communications where the prospective client may feel obligated to speak with the lawyer. Such person to person contacts do not include chat rooms, text messages or other written communications that recipients may easily disregard.

A new Comment [8] would permit communications authorized by law or ordered by a court or tribunal including a notice to potential members of a class in class action litigation.

Many attorneys will be happy to see that the proposed changes to Rule 7.3 eliminate the “Advertising Material”

labeling requirement for targeted mailings although the prohibition against mailings that are misleading, coercive, or involve duress or harassment remains.

Revised Rule 7.4

Rule 7.4 dealing with the communications of fields of practice and specialization will remain largely the same. References to Patent attorney and Admiralty attorney are eliminated. Instead, attorneys would be permitted to state that they “concentrate in” or are a specialist based on the lawyer’s experience, specialized training or education rather than the current requirement that they be certified as a specialist by an organization approved by a state authority.

Revised Rule 7.5

Eliminated by incorporation into Revised Rule 7.1.

Delaware

The Delaware Supreme Court has a recent history of being an early adopter of changes to the Model Rules. Since the

proposed changes are not particularly radical and reflect the Committee’s goals of encouraging national uniformity and simplification of both interpretation and enforcement of the Rules, I think its reasonable to expect that we may be seeing these changes to the Delaware Lawyers’ Rules of Professional Conduct sooner rather than later.

“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. Additional information about the author is available at www.delawgroup.com.

“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.delawgroup.com.



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2018-2019 Dues Statements will be mailed in late May.





DE-LAP ZONE

A Message from the Delaware Lawyers Assistance Program

By Carol P. Waldhauser, Executive Director

Coping with Transition

Guest Columnist: Carol J. Antoff, Esquire

This month DE-LAP'S guest columnist, Carol J. Antoff, Esquire, writes her views on the impact that transition and change have made in her life. Initially, Ms. Antoff started her professional career as a special education teacher; then spent several years working from home as a stay-at-home wife and mother. As her children grew and were high school age, Carol decided to enter Widener (Delaware) Law School. After successfully completing law school and passing the Delaware Bar, Carol worked for the last twenty years as an in-house litigation attorney. Amazingly, Carol is making yet another career move and is studying to become a certified Wellness Inventory Coach. Presently, Carol is working as a part-time intern at DE-LAP on non-confidential matters.

• • •

Everyone experiences transition in his/her life. It is a fancy word for change. Transitions come in many forms and at many times. Very often the transition changes the way you perceive yourself and/or the way the world sees you. When you get married you change from being a single to being a duo. When you get divorced you change from being part of a couple to being single. When you graduated from law school you changed from being a student to being an attorney. When you welcome a child into your family you go from being you to being someone's parent (yes, you are still you, but hopefully you see the point). When you leave the work force, whether you retire or are downsized, your daily routine changes. Same thing



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happens when you enter a new job, re-enter school or start classes, move out of your parent's house, move out of your house, etc. Not all transitions are negative things to avoid, some are very pleasant. But, all transitions are changes in your life.

Based on my readings and what I have heard in seminars, as well as in my personal experiences, the human brain is adverse to change. Just ask any psychologist, or anyone in a counseling profession for that matter, and they will be happy to confirm that dealing with life's changes is a major issue of concern. It has something to do with stress (doesn't everything?). There is a biological/neuroscientific explanation for this adversity to change. As with just about anything else that relates to basic human nature, an individual's reaction to change goes back to the original fight or flight instinct humans' ancient ancestors needed and the human body still has. Of course, how the scientific and medical communities define stress is a lot different than how the legal community defines it. (Ever hear anyone say or ever think for yourself: "Stress?! You do not know stress!" Or, "I thrive on stress. I'm more efficient when stressed.")

Turns out that physically, any change — even a minor change such as waking in the morning — causes the human body to secrete the stress hormone cortisol,

which escalates the sympathetic nervous system which then elevates heart rate and decreases blood flow to internal organs (thereby affecting cognitive functioning — one does not need to analyze the danger when faced with a saber-toothed tiger's charge after all).

This fight or flight response may be good in certain circumstances, but since it occurs constantly over the course of a day, without some period of de-stressing, all it is doing to an individual is elevating blood pressure and heart rate, thereby increasing the risk for numerous undesirable cardiovascular conditions.

Since any change is physically stressing your body, every transition is “stressful.” Often your mind remains blissfully ignorant of the stress your body is experiencing, or chooses to pretend it is not there, or believes you can rise above it and function well on little sleep and sheer willpower (and caffeine, of course). But, just as often, you know you are stressed or those around you know that you are stressed. You are not a “happy camper”; you are irritable or downright angry; little things that you usually can ignore may suddenly be the breaking point of your professional manner; you wolf down your lunch or dinner and still feel hungry; you are tired, but not sleepy; you are sleepy, but cannot fall asleep at night; etc. The list goes on and on and is as individual to each of us as we are.

As for my personal experiences with transitions, I have had several. The most recent were having my five-year life-plan suddenly destroyed by having my law office close without warning, returning to school, and changing careers. I am still sane (it is all relative) and happy and, even better, I am thankful. So, I want to share with you what to expect when a sudden transition is forced upon you, such as an ill parent or a lost job, and share the secret of how to cope with those transitions in your life.

First, realize that the transition — *i.e.* the change in your life — is stressful and will need to be treated that way. Helping your body and mind de-stress will go a long way to helping you cope

with the changes to your routines, plans, and life. Take a big calming breath (I could probably write an entire article on the importance and mechanics and benefits of proper breathing). Literally. I am not kidding. Breathe so deeply that your belly extends as though it were a balloon, then exhale so fully that you think there is no air left in you. While you are breathing this way, only think about your breathing (give your mind a break from that spinning). Then repeat this pattern two more times. If you are not feeling instantly calmer, then take slow breaths in and out for three minutes. Yep, three. It takes about that long for the body to release the excess cortisol it has produced. (Remember fight or flight?)

Second, recognize how you are feeling and acknowledge to yourself that those feelings are fine. Do not feel guilty or ashamed. If you are angry, be angry — but, do not be mean to anyone. If you are scared, be scared — but, make an action plan anyway.

For me, it was easier because I believe in a loving, higher power. But, it works even if you do not. Think positively. Believe everything will work out for the best. Think of that line from *The Best Exotic Marigold Hotel*, “Everything will be all right in the end. If it's not all right, then it's not the end.”

Then put your plan into work.

That is it. It is not really a secret. You already knew all of this yourself. But, when stressed, it is difficult to think rationally and calmly unless you have a method in which to turn. This one works: breathe, plan, believe.

For more information about change, transition and/or other issues that affect your quality of life and/or quality of professionalism — email Carol Waldhauser at cwaldhauser@de-lap.org or call (302) 777-0124. 📞

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

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BOOK REVIEW

Reviewed by Richard A. Forsten, Esquire

Is There a Dream Solution?: *Tocqueville's Nightmare: The Administrative State Emerges in America, 1900-1940*

By Daniel R. Ernst (Oxford Univ. Press, 2014)

By high school, we all learned there are three branches of government — legislative, executive, and judicial. We also learned about the separation of powers. Those who make the laws do not enforce the laws. Those who enforce the laws do not judge guilt or innocence. Our Constitution has an article for the legislative branch, an article for the executive branch, and an article for the judicial branch. But, our high school education was incomplete. In so much of day-to-day life there is a fourth branch. This branch is not mentioned in our Constitution. It is not necessarily subject to the separation of powers. It is, of course, the “administrative” branch.

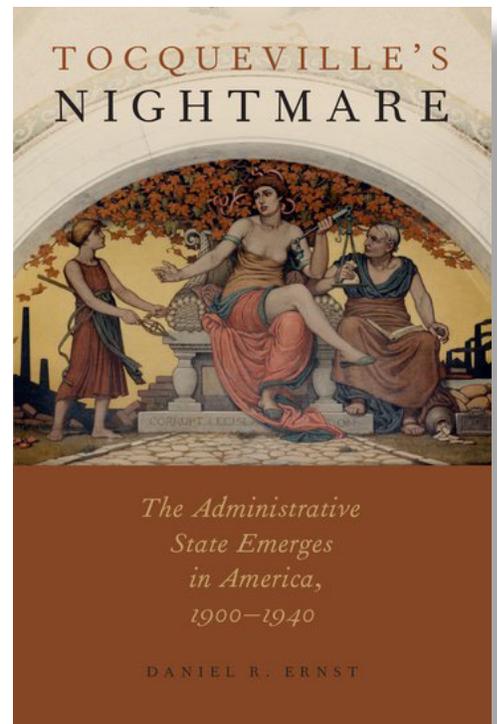
Administrative law is hard stuff — at least theoretically. Unelected government employees, through agencies and departments, create regulations and rules with the force of law, but are unaccountable to the people. They cannot be voted out of office the way legislators can. Unelected government employees, having created regulations and rules, may also seek to enforce them. Ultimately, enforcement decisions will be subject to judicial review, but this review often comes with a great deal of deference to the administrative agency.

Administrative law arose, however, in response to the increasing complexities of the modern economy and everyday life. Broadly speaking, with rules and regulations being made by administrators with specialized knowledge in a particular field, better outcomes should result, or so the theory goes. Even so, administrative law, as it has evolved, seems to violate the separation of powers and accountability principles built into the Constitution.

In *Tocqueville's Nightmare: The Administrative State Emerges in America, 1900-1940*, Professor Daniel R. Ernst looks at the rise of the administrative state and how lawyers and the courts grappled with the issues that rise presented. For example, how could due process be ensured? How should courts review administrative decisions? And, what role should the legislative branches play? The administrative state, as presented by Professor Ernst, did not arrive full blown; rather, it evolved over time, and continues to evolve, as the issues confronting administrative bodies continue to evolve.

Not surprisingly, the standard of judicial review was the most contested question of administrative law in the early twentieth century. Just how much review should be applied?

De novo review would render most of what an administrative body did as, essentially, advisory. Should courts rely on the record created by the administrative body, or create their own record, if they were going to be fact finders? Alternatively, if courts were going to be extremely deferential to administrative bodies and agencies, how could they



ensure just decisions and prevent abuse of discretion and unfair biases and results?

For most of the nineteenth century, it seems as though courts, in reviewing administrative decisions, would create their own record and make their own decision. Gradually, though, through trial, error, fits and starts, this process was replaced with the more generous “substantial evidence” standard — that is, a court would accept the agency’s factual findings, so long as they were supported by “substantial evidence” in the record. A clear definition of “substantial evidence” still bedevils courts to this day, but for the vast majority of cases, the “substantial evidence” standard has proven workable.

However, if courts are going to defer to administrative agencies, they are going to insist on fair and proper procedures. According to Professor Ernst, this was the great innovation of the early twentieth century lawyers and judges. If administrative agencies followed due process in their rulemaking and adjudicatory functions, courts would relax their review of those

outcomes and trust to due process to ensure a better result. As Ernst explains in his concluding paragraph:

The American administrative state has been neither Tocqueville’s nightmare nor Vedder’s Good Administration. Its twentieth-century creators did not let the risk of misgovernment keep them from expanding the state to make life better, and they were not fooled by a vision of apolitical expertise into thinking that government would control itself. Instead, working under the particular political and professional conditions of their day, they imaginatively reworked the law they had to create the government they needed.

The history of administrative law in the first 40 years of the twentieth century (the approximate time frame of Ernst’s book) is as much a study of political theory as it is law. In whole areas of the economy, the three branches of government were joined by a fourth — an administrative branch creating,

interpreting and enforcing its own rules and regulations. Courts wrestled with the implications and a meaningful way to provide judicial review, ultimately settling on a requirement of due process and substantial evidence to support a decision. Criticism of administrative law continues to this day, some justified, some not, and some the same as it was one hundred years ago. Ernst’s book is an interesting look at a period of time when administrative law was still relatively new, the law itself uncertain, and the possibilities many. Sometimes the best way to understand why the law is the way it is to understand where it came from, how it evolved, and what else it might have been. Ernst’s book is an overview of a now-largely forgotten time in American legal history, but an interesting and informative one nonetheless. 📖

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

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An Open Letter to the Delaware Bar

It is with great appreciation that we write this open letter to the legal community to thank all those who supported Profundo Bono's most recent original musical comedy entitled *The Public Enemy: Runnin' Wild!*, the proceeds of which benefited the Combined Campaign for Justice. *The Public Enemy* was the 7th such biennial show over the past 15 years, and the first production Profundo Bono undertook as a stand-alone 501(c)(3) organization. We are proud to be among the approximately fifty people involved in the production.

For anyone unaware, the show was written, directed, acted, and musically accompanied completely in-house by the Delaware legal community: current and retired judges, court personnel, lawyers, and paraprofessionals. The approximately 40 member cast and band — as well as the author, the director, the stage manager, the music director, and the two choreographers — represent a true cross section of the legal community including the large Wilmington law firms, the Attorney General's Office, all of our Courts, the Office of Defense Services, solo and small firms, and mid-sized offices, up and down the State of Delaware. Unbeknownst to those that have not seen any of the productions is the fact that many of the cast and band members were music and/or theater majors in college and have considerable musical theater experience. Suffice it to say that the talent level is high and, after four months of rehearsals (at considerable personal sacrifice by all), the result was a great evening's entertainment. If you are interested, Judge Young, who has written each of the shows since, has seven hefty scrapbooks available for inspection in his office, each providing quite a picture of the show commemorated. We would be happy to set up a tour.

As previously noted, all the net proceeds go to the Combined Campaign, and this year, due to the generosity of one of our major sponsors, DLS Discovery, our traditionally most significant expense — the printing of programs, tickets and advertising materials — was donated, resulting in literally thousands of additional dollars being contributed to the charitable efforts of CCJ.

The tremendous effort and generosity did not stop with the cast, the musicians, and the directors. Adult beverages, donated by Dogfish Head Craft Brewery Inc. and Hockessin Wine and Spirits, were served free of charge during intermission by volunteer bartenders — family members and friends of the cast and crew. All of the tips collected at the intermission were donated to CCJ as well. Even the use of the incredibly lavish, sophisticated theater facilities were donated by The Tatnall School. And

a special shout-out must go to DSBA, whose support over the last decade and a half has made all of this possible.

The proceeds we generate from the show for CCJ come from primarily three sources: ticket sales, sponsorships/program ads, and in-kind donations. This year our program was so packed full of ads that we actually had to reduce the font size of the lyrics to keep the number of pages manageable, and we are proud to say that over 75 law firms, businesses, and individuals either sponsored the show or placed an ad in the program, many of which have supported our organization for years.

Ticket sales this year were a little disappointing, which we attribute to the fact that we do not really have a unified marketing strategy. We are hopeful that every year, our audience members will refer others so that we can fill the 500+ capacity of these great theaters, but we do not have (or at least want to spend) the resources on a marketing budget that would eat into the money we donate to CCJ. At a recent CCJ breakfast in which he presented a \$40,000 check to CCJ, Judge Young addressed the leadership of Delaware's legal community regarding the importance of filling the seats for future shows, noting that every ticket purchased constitutes money donated directly to CCJ, and every ticket holder gets a night of fun-filled entertainment. A win-win for everyone.

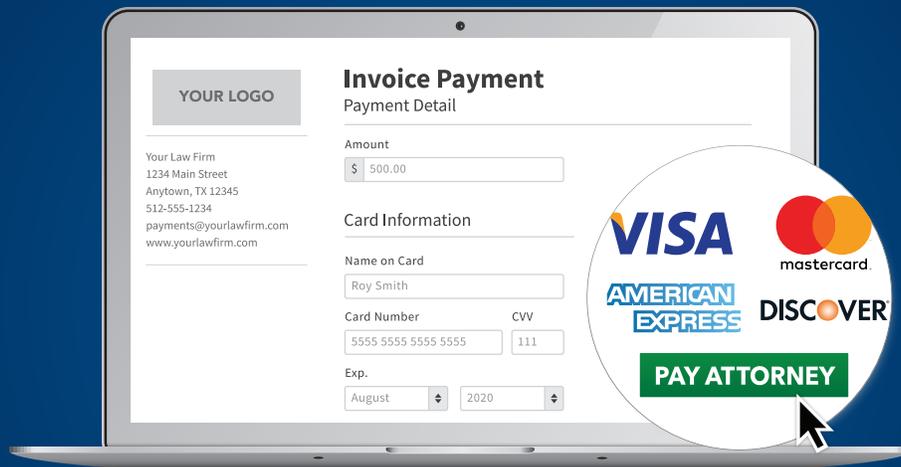
We are currently contemplating producing another show in 2019 and hope that we can continue to count on the support of the Delaware legal community and our generous benefactors. If you are interested in receiving email notice of future shows, please sign up to be on our mailing list at: www.ProfundoBono.org. You can also check the website from time to time for updates and announcements.

Janine Salomone, Esquire
President of Profundo Bono, Inc.
Producer of *The Public Enemy*

Adam Hiller, Esquire
Secretary of Profundo Bono, Inc.
Associate Producer of *The Public Enemy*

Janine Salomone has practiced corporate law in Delaware for over 20 years and is the President of Profundo Bono, Inc.

Adam Hiller is a solo practitioner located in Wilmington and focuses on clients in bankruptcy, state law insolvency, collections, and commercial litigation matters. He is the Secretary of Profundo Bono, Inc. as well as the Company's puppeteer. 302.442.7677, ahiller@adamhillerlaw.com.



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Morton R. Kimmel, Esquire

1940 - 2018

By Edward B. Carter, Jr., Esquire

It was certain. He was going to live forever. He lived the healthiest, cleanest, most charitable life of any person I know and would ever know, so I was certain that Morton Richard Kimmel would outlive all of us doing his good deeds and making the State of Delaware and the Delaware Bar a better place to live and work in. But, God had other plans and Mort died on March 17 in Christiana Hospital surrounded by family and friends. He died from complications of multiple myeloma. Ironically, he died on the 20th anniversary of the Blue-Gold Basketball games played at the University of Delaware. It was an event he founded and fostered over all those years to not only provide a meaningful experience to high school senior boys and girls, but to raise millions of dollars for individuals with cognitive and developmental disabilities. An even more unique irony because of his extraordinary passion for all sports, but especially basketball.

For most of us who are members of the Delaware Bar, he was a terrific lawyer with over 100 jury trials, the vast majority of them successful verdicts for his clients. He was an extraordinary mentor to so many lawyers, both within the firm he founded in 1972 and among members of the Bar too countless to enumerate. When I first joined the firm in 1979, I sat second chair with him in a case in which he was representing an insurance carrier in a personal injury lawsuit. The plaintiff's lawyer was struggling and the judge was giving that lawyer a hard time. At a break in the trial, Mort advised me that he was going to tell that lawyer how to get a piece of evidence into trial. He



was certain that the trial judge would make it difficult for the opposing counsel to admit the evidence, thus embarrassing that lawyer in front of his client. I was stunned and tried to dissuade him. He said it was the right thing to do and besides it would not be that impactful on the results of the trial. He was right on both counts. I was in his office on numerous occasions when he would receive a call from another lawyer, someone with whom he had only a passing acquaintance, soliciting his advice on a case. Mort would patiently guide that lawyer on how to prepare his case.

He would spend countless hours in our offices preparing his own cases and mentoring the lawyers in his firm. We would all be in the office on Saturday preparing our upcoming week. On occasions some of us would come in Sunday, especially if we had a trial or hearing the coming week. He would be in there work-

ing, but would stop and take the time to review our case and offer suggestions.

Most of the younger lawyers in our Bar are unaware that he was the mover and shaker of many of the legal programs and civil justice procedures that we practice under today. Many years ago he was appointed by Governor Russell Peterson to modernize and organize the Justice of the Peace Court System. Before Mort undertook the task, each court was its own fiefdom, meting out justice as that judge saw fit without any consequences or particular relationship to the overall judicial system. Mort traveled the state, meeting with judges and staff and organized the court into a statewide system where the public could expect a fair hearing.

He helped to write and implement the arbitration rules of Superior Court, meeting regularly with Superior Court Judges to put the system in place despite working full time in his practice. He served for many years as a Trustee on the Client Security Trust Fund (now known as the Lawyers' Fund for Client Protection) assisting efforts to make whole those citizens who may have been wronged by a lawyer. For many years he taught seminars to the Delaware Bar on civility and ethics.

Despite his active practice, Mort was an exceptional family man. He loved Marcia, his wife of 50 years, more than anything and he was a father/grandfather extraordinaire, rarely missing a sporting event of one of his children or grandchildren. And, he made it a point to tell all the lawyers in his firm that family was first and law practice was second. One time I was working diligently on a Mon-

day afternoon and he stuck his head into my office. "What are you doing here!" he exclaimed. "Doesn't your son have a JV football game this afternoon? I told him yes, but I was trying to wrap up a case before the end of the day. "Go," he said. "I know you will come back and finish it."

Besides the love for his family, Mort cared deeply about his community. The charities that he was involved in and served on their boards are too numerous to list in this note on Mort and his life. But, it is safe to say that there will be a tremendous void in Delaware due to his active involvement in charities throughout Delaware. To make my point, in January 2017 Mort received the Order of the First State Award from Governor Jack A. Markell, the highest honor bestowed on a citizen of the State of Delaware. It was in recognition of all his good deeds and charitable work throughout our community.

Mort had a special relationship with the police in Delaware. Due to Tom Roman, our partner and a retired State Police Captain, as well as Mort's lifelong friendship with Father Oscar Frundt, the long-time chaplain of the State Police, our firm represented hundreds of police officers from the State, County, and many municipalities through the years. But, Mort felt that was not enough. He founded the Police Protection Fund and raised thousands of dollars to help the various police agencies by assisting them in purchasing equipment such as protective vests and surveillance cameras within our various communities.

I met Mort playing basketball at the Jewish Community Center in 1971. A Shiva was held there following his interment at the cemetery. It was so appropriate. His love for sports and his family's extraordinary involvement in Jewish charities made it the right place to say goodbye to one of the great ones of the Delaware Bar, Morton Richard Kimmel.

Besides his wife Marcia, Mort is survived by his children Wayne Kimmel, Larry Kimmel, Michelle Penner, Karen Legum, their spouses, and many beloved grandchildren. 

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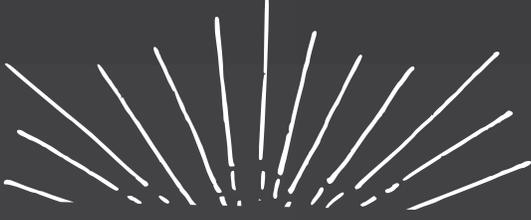
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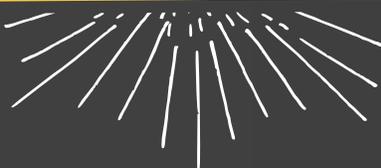
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A balmy day in May would make for an ideal day trip to The Big Apple — not too hot, not too cold, just right. Choose between two itineraries or stay overnight to experience both.

Option 1: The Dramatic Day Trip

Start at the New York Public Library for the Performing Arts at Lincoln Center. While this library is known for its collection of theater-related items, it also offers vibrant exhibitions relating to the performing arts. Exhibitions we visited over the years include one celebrating the Frank Sinatra Centennial and one highlighting musicals performed on both Broadway and the London stage (one of my top five, *A Chorus Line*, was among them!) This will whet your palate for lunch and the matinée.

Cross Broadway to Boulud Sud on 64th Street. This is the perfect location for pre-theater lunch and is my favorite of Chef Daniel Boulud's restaurants. The cuisine is truly Mediterranean, showcasing dishes from France to Spain to Italy to Greece to Morocco to Israel to Turkey. The setting is casually elegant with ceramic tagines bordering the open kitchen and Cezanne inspired landscapes decorating the walls. Some dishes I recommend are:

- ▶ Octopus à la Plancha with Marcona Almonds, Arugula, Jerez Vinegar
- ▶ Sicilian Sardine Escabèche with White Raisins, Toasted Pine Nuts
- ▶ Spicy Moroccan Hummus, Herb Falafel, Babaganoush
- ▶ House-Made Taramasalata Smoked Cod Roe, Dill Potato Chips
- ▶ Chicken Tagine
- ▶ Tunisian Brik Confit Tuna, Capers, Gruyère, Egg
- ▶ Grapefruit Givré — This requires an elaboration as it is one of the most unique and tasty desserts I have ever encountered. A whole hollowed out grapefruit lined with grapefruit sorbet, filled with fresh grapefruit segments, topped with white sesame foam, topped with rosy cubes of Turkish delight and halva crumbles, draped with caramelized tuile, then topped with halva shreds that resemble cotton candy.

After dessert and coffee, make your way back to Lincoln Center for a production at one of its many venues — the Metropolitan Opera House, the David H. Koch Theater for dance, the Philharmonic's home at David Geffen Hall, or a musical at the Vivian Beaumont Theater. In April we saw Kelli O'Hara star in Mozart's opera buffa, *Così Fan Tutte*, updated to take place in 1950s Coney Island. It will have closed by the publication of this article; however, a revival of Lerner & Loewe's *My Fair Lady* will play through 2018.

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Option 2: The Gourmand Getaway

Start your day with an espresso at Eataly, the Italian marketplace that reminds me of Philly's Reading Terminal Market on steroids. This feast for the eyes and palate is located on 5th Avenue facing Madison Square Park, just steps from the majestic Flatiron Building. Stroll by fishmongers, butchers, bakers, cheesemongers, and pasta makers. Children will especially enjoy watching chefs stretch and shape mozzarella and roll out sheets of fresh pasta. While Eataly contains dining venues serving dishes from charcuterie boards to pizza, I recommend working up an appetite. You should also browse the cookbook stalls, kitchen gadgets, and fresh fruits and veggies.

Next head about seven blocks south to the Union Square Greenmarket at the northwest side of Union Square Park on 17th Street. The open-air market is open Mondays, Wednesdays, Fridays, and Saturdays from 8:00 a.m. to 6:00 p.m. Here you will find fruits, vegetables, cheeses, meats, flowers, herbs, and spices. If only I could shop for groceries here and at Eataly every week!

For a leisurely late lunch, walk one block east to Casa Mono at 17th and Irving Place. While Casa Mono is among the upper echelon of restaurants — it has been awarded a Michelin star every year since 2009 — it is relaxed, cozy, and not pretentious. The tapas inspired by the cuisine on Spain's Costa Brava are prepared in an open kitchen. The tables are tight, but the clientele is friendly. Some tapas I recommend with a sparkling rosé cava are:

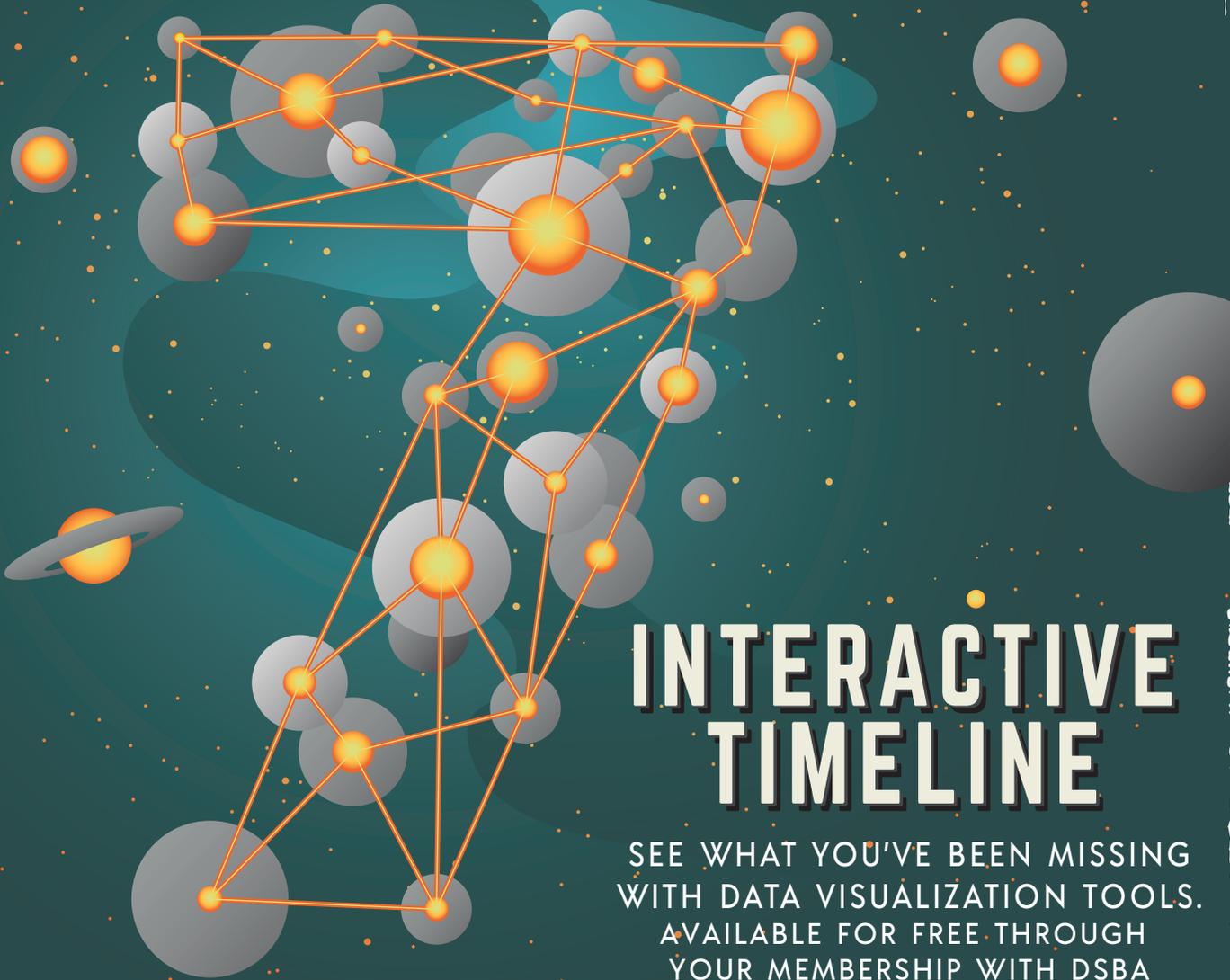
- ▶ Burrata with Beer Battered Acorn Squash, Marcona Pesto and Cured Egg Yolk — wonderful contrast between the crispy squash and the creamy burrata.
- ▶ Fluke Crudo with Blood Orange, Lemon and Ancho Dust — refreshing with a kick.
- ▶ Skirt Steak with Romesco and Onion Mermelada — zingy, peppery romesco pairs perfectly with the tender beef.
- ▶ Razor Clams a la Plancha — admire them at Eataly but enjoy them here.

Whichever route you follow, savor the food, culture, and energy of New York. 🗽



Susan E. Poppiti is a mathematics teacher and director of the legal shadowing program at Padua Academy High School. She is also the "head chef" of the school's culinary club "The Hungry Pandas." Susan can be reached at spoppiti@hotmail.com.

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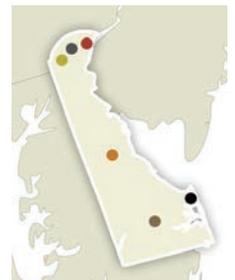
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