



THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION



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Annual Breakfast & Statewide Day of Service

SAVE THE DATE

DATE/TIME

Monday, January 15, 2018
Breakfast: 8:00 a.m.

LOCATION

Chase Center on the Riverfront
815 Justison Street
Wilmington, DE 19801

TICKETS

\$35.00/person

R.S.V.P. Deadline: January 8, 2018

More information about the Keynote Speaker, Breakfast, and Service Projects will be forthcoming. Sponsorships, ads, and tables will also be available.



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to do **what is right.**”*

- Dr. Martin Luther King, Jr.

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

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THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

FEATURES

- 26 Photographs from the Delaware Corporate Law Anniversary Symposium
- 30 The Christopher W. White Distinguished Access to Justice Awards Breakfast Invitation and Registration
- 31 The Sequel Was Even Better Than the Original: DSBA's Second Movie Night Was a Night to Remember
BY MARK S. VAVALA, ESQUIRE, DSBA EXECUTIVE DIRECTOR

COLUMNS

- 4 President's Corner
- 8 Editor's Perspective
- 14 Tips on Technology
- 16 Commission on Law & Technology: Leading Practices
- 18 Ethically Speaking
- 20 DE-LAP Zone
- 24 Book Review
- 28 Access to Justice Spotlight
- 34 Judicial Palate

DEPARTMENTS

- 10 Side Bar
- 10 DSBA Happenings
- 11 Why I Belong
- 12 Calendar of Events
- 13 Section & Committee Meetings
- 32 Bulletin Board
- 33 Disciplinary Actions
- 33 Of Note



PRESIDENT'S CORNER

By Michael Houghton, Esquire

Alcohol and Substance Abuse in the Profession: A Disturbing Trend

A July 15, 2017, article in *The New York Times* captioned “The Lawyer, The Addict,”¹ recounted the tragic story of a successful, hard-charging Silicon Valley law firm partner, who, unbeknownst to his ex-wife, children, family, and friends, had become addicted to a combination of anti-depressants, pain relievers, and stimulants including Vicodin, Tramadol, Adderall, cocaine, Xanax, crystal meth, and various other prescription medications, and died as a result. The article came out right after I had taken over as President of the Delaware State Bar Association on July 1, 2017. Within 48 hours of the article, I received a large number of emails from local lawyers who were troubled by what they had read and the article’s discussion of the very disturbing trends in depression and substance abuse in the legal profession. The article identified a 2016 report from the Hazelden Betty Ford Foundation and the American Bar Association that showed at least 21 percent of lawyers are, based on well-established medical standards, problem drinkers, 28 percent struggle with mild or more serious depression, and 19 percent struggle with anxiety. Eighty-five percent of surveyed lawyers acknowledged using alcohol during the previous year — 20 percent higher

than the general population. Experts further speculate that drug use (often a mixture of prescription drugs and opioids) is also common, but because it is illegal, lawyers rarely admit to it, unlike alcohol consumption. One New York-based addiction expert quoted in the article noted a “significant rate of increase, specifically among attorneys using prescription medications that become a gateway to street drugs” and that almost every lawyer they see coming in for treatment — even if they drink — is also using Xanax, Adderall, opiates, and other drugs.

One mistaken assumption is that more senior lawyers, suffering from burnout of various sorts, are more likely to develop depression or alcohol and substance abuse problems. This is not the trend, however. A number of studies address the development and then escalation of stress and

depression, coupled with alcohol and substance usage, among law students. Significant usage of stimulants to increase concentration while studying, purportedly enhancing academic performance, and increasing alertness, is referenced in an Autumn 2016 *Journal of Legal Education* article.²

Law student alcohol consumption has increased materially over the last 20 years, along with rates of anxiety and depression among law students. There may be lots of reasons for these trends. Students are placed in the position of learning the “new language” of law, dealing with anxieties about their future, and managing significant debt that they have undertaken at the undergraduate and then graduate school level. Some of these challenges, like learning how to learn the law, have always been there, but others, like the financial burden of paying for a legal education, are greater now and competition for employment may well be more pronounced and difficult than 20 or 30 years ago.

The trend continues once these students transition into practice. Of the 21 percent to 36 percent of practicing lawyers who qualify as problem drinkers, younger lawyers, in their first 10 years of practice, and those working in



private firms, experience the highest rates of problem drinking and depression, all of which represents a shift from earlier research. Thirty-two percent (yes, almost one-third) of lawyers under age 30 qualify as problem drinkers.

There is reason for alarm in the profession, and Delaware lawyers cannot think they are somehow insulated from these trends. As the *New York Times* article shows, even highly stressed professionals who turn to drugs or alcohol for relief can continue to perform at high levels. A decline in performance and erosion in the quality of an attorney's work are often among the last indicators that there is a problem. We should not assume that just because work is getting done, our firms or our practices or our colleagues are as healthy as they need to be. The statistics alone prove otherwise. Lawyers suffer from higher rates of depression, as much as 3.6 times higher, than people in other occupations. Thinking like a lawyer often requires a significant degree of skepticism and pessimism, which can contribute to stress and depression over

time. Constant accessibility to clients and colleagues through technological advances and the incessant demand to be communicating about work can erode the health and well-being of some of us and eliminate the needed "safe time" when lawyers can "turn off" their work commitments to enjoy their family, their friends, and their lives.

others to find out that they need help, concerns regarding privacy or confidentiality, fear of disciplinary action, as well as a stigma that they believe attaches to requiring help for their problems. This was almost certainly the case for the attorney noted in the *New York Times* article who tragically and senselessly lost his life.

“While a majority of attorneys enjoy a life free from the burdens of alcohol or substance abuse and depression, we must recognize and address the fact that many of our colleagues struggle and do not know of a safe way to get assistance.”

While a majority of attorneys enjoy a life free from the burdens of alcohol or substance abuse and depression, we must recognize and address the fact that many of our colleagues struggle and do not know of a safe way to get assistance. There are barriers to a lawyer in trouble seeking help, including not wanting

I have lost loved ones, family members, friends, as well as colleagues in our profession to alcohol and substance abuse. Many of you reading this have as well. Developing a solution to any problem requires acknowledging that it exists, and there is no reason to think that the national statistics on impaired

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and struggling lawyers are any different for Delaware than they are for the rest of the country. All of the stakeholders in the legal community — the judiciary, employers, lawyer colleagues, and co-workers — need to know about these disturbing trends and develop solutions to help resolve the problems and their underlying causes.³ This involves educating the legal community about the existence of, and resources available through the Delaware Lawyer's Assistance Program, a free, confidential, non-disciplinary way for Delaware judges and lawyers to seek appropriate help before their career, health, or even life is at risk. Information about DE-LAP can be found at www.de-lap.org.

The Bar needs to further explore how we can address sources of unneeded stress on our colleagues and our co-workers. No solution is perfect, but we must begin somewhere. A few places to begin include eliminating artificial deadlines for work and unnecessary intrusions into associate or partner private time or private space. We could also focus on basic civility

in dealing with others, thoughtfulness concerning the need for attorneys to take vacation, compelling some people to take vacation, and respecting vacationing attorneys' time off.

Discussing law practice culture, let alone changing it, is never easy. In some circles, there will be a "if it isn't broke, don't fix it" attitude. But, recent trends show that some things are, in fact, broken and that we have problems as a profession with substance abuse and depression. We should all be encouraged to be thoughtful and considerate, to recognize physical and mental wellness and exercise as necessities — not luxuries — for our co-workers and employees. We should be proactive and helpful with colleagues and friends — and even the strangers — in our profession if we think they need help. DE-LAP is there as a great resource and I encourage everyone to reach out and seek instruction and information from DE-LAP. We can do better — we have to do better — for the sake of our profession, our friends, our colleagues, and ourselves. ☯

Notes:

1. Zimmerman, Eilene. "The Lawyer, the Addict." *New York Times*. July 15, 2017. Accessed September 21, 2017. <https://www.nytimes.com/2017/07/15/business/lawyers-addiction-mental-health.html?mcubz=3>.
2. Jerome M. Organ, David B. Jaffe & Katherine M. Bender, Ph.D., "Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns," 66 *Journal of Legal Education*, Autumn 2016, at 1, 116–56.
3. A number of thoughtful recommendations can be found in "The Path to Lawyer Well-Being and Practical Recommendation for Positive Change," The Report of the National Task Force on Lawyer Well-Being (August, 2017).

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.

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EDITOR'S PERSPECTIVE

By Seth L. Thompson, Esquire

A Rhys-on for Optimism

“**A**bout time,” my father said, as we discussed Rhys Hoskins’ call-up to “the show” the second week in August, after Major League Baseball rosters expand and allow teams like the Phillies to add some young players to their roster. The promotions give the players an opportunity to experience the big leagues. For fans of a baseball team with playoff hopes long since mathematically eliminated, such as this year’s Phillies, getting a glimpse of a potentially positive future can be a bright spot in otherwise watching a meaningless string play out.

Hoskins had impressive statistics for the Lehigh Valley Iron Pigs, the Phillies’ AAA affiliate, but nothing foretold his first 34 games — especially not his first few games, including one that I attended with my friends, when his batting average was a very round .000. Since his call-up and 0-for-10 start, Hoskins has surpassed marks set by Hall of Famers like Ted Williams. Through 34 games, he set records for most home runs (18) and most runs batted in (39). At that rate, his future is so bright, I will have to wear solar eclipse shades at the next game.

Of course, by the time you read this, Hoskins could be mired in a slump or simply experiencing some regression to his mean (which assumes this is not his mean, a safe assumption given how long baseball has been played). This leads to a debate format that I call “Would You Sign up?” Currently, I would probably

sign up for a mean of even half his current pace of 86 home runs and 185 RBIs over a 162-game season, if the Phillies get it for, say, a 7-year stretch, but I would have to sleep on it. In other words, I would need to give serious thought to declining 43 dingers and over 92 RBIs for seven seasons, because I do not want to sell short on his potential. During the Phillies’ ongoing rebuild, my father and I have had a similar debate on prior players who got off to hot starts only to cool substantially. I used to think my father’s tendency to watch Iron Pigs games over Phillies games during the last few years was a proximity preference, just following the home team. Lately, it seems more a product of secret optimism and enjoyment of what might be yet to come.

Similarly, I initially attributed my own enjoyment of the song “All Your Favorite Bands” by Dawes to the El Camino reference. Wikipedia describes the Chevrolet product as “a coupé utility/pickup vehicle” produced between 1959-60 and 1964-87. In our younger days, my friends and I called it a caruck (half car, half truck, all harbinger of the celebrity couple naming in the early 2000s).

While the El Camino is probably the best known caruck, the Subaru BRAT was a Japanese equivalent that was manufactured until 1994. A friend in my freshman dormitory parked his black BRAT with odd graphics in the lot on the south side, toward College Avenue. On the occasional walk back to the dorm, my roommate and I would hop in the back of our buddy’s BRAT and sit in the seats that faced to the rear of the vehicle and had hand grips like ski poles, just shooting the breeze.

Dawes caught my attention with the caruck, but I went back for the optimism.

*Late night drives and hot French fries,
And friends around the country,
From Charlottesville to good old Santa Fe.
When I think of you, you still got on that hat that says “Let’s party.”
I hope that thing is never thrown away.
I hope that life without a chaperone is what you thought it’d be.
I hope your brother’s El Camino runs forever.
I hope the world sees the same person
That you’ve always been to me,
And may all your favorite bands stay together.*

A couple weeks before Hoskins burst onto the scene, “All Your Favorite Bands” played in my car as I drove to proctor this year’s bar exam. Watching the focused faces, I thought of how, if history holds, after all of that effort and time, roughly one-third of the people in that room were probably going to be disappointed. From their appearance though, there was a collective optimism and determination that

“Watching the focused faces, I thought of how, if history holds, after all of that effort and time, roughly one-third of the people in that room were probably going to be disappointed.”

each individual would be in the passing two-thirds. As *Smith and Aitkenhead's Textbook of Anaesthesia* describes the issue, “The framing of risk changes perception of risk. A 90 percent success rate is better received than a 10 percent failure rate.” If you believe sports managers, Player X had a great game because he put in the work and is feeling confident.

In time, major league pitchers might find a hole in Rhys Hoskins' swing, and then he will have to make his adjustments. “Creative differences” could set in, leaving fans waiting for their favorite band's reunion tour that might never come. If I proctor the bar exam again next year, there could be some familiar faces. Odds are the El Camino will almost certainly not run forever. I might prepare for the worst, but I am going to enjoy the ride and hope for the best. ☺

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

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Women and the Law Section Helps Wilmington Family



Natalie S. Woloshin, Esquire, of Woloshin, Lynch & Associates, P.A. and the rest of the Women and the Law Section recently got involved with helping a struggling family in our Wilmington community. They raised money, with the help of Home Budget Mattress Store, to buy some residents on North Monroe Street a brand new memory foam mattress, box spring, and bed frame along with new bedding. Trudy Gibson and her husband never had a new bed and the one that had been donated to them had bed bugs. Now, thanks to Natalie and the WAL section, Trudy and her family happily cried over the generous donation of the new bed. The WAL section continues this effort to help people who are transitioning into stable housing and will collect donations toward new mattresses for more families. 📍



Photo by Melissa Steele

Former Justice Randy J. Holland helps Justice Gary F. Traynor with his robe at with the traditional robing ceremony held on August 28, 2017, at the Delaware Technical and Community College auditorium in Georgetown while Justice Traynor's wife, Kathleen Andrus, looks on.

BECOME A DSBA SECTION MEMBER



Section Membership provides the chance to exchange ideas and get involved.

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

DSBA HAPPENINGS

Announcements

Baby Sofia Daniela Pratcher, daughter of Executive Committee Vice President of Solo and Small Firms, **Samuel D. Pratcher III, Esquire**, and wife Steffany, was born on September 12, 2017, at 5:23 p.m. She weighed 8 lbs., 4 oz. and was 21 inches long.



DSBA Members **Adrian Sarah Broderick, Esquire**, and **Matthew B. Harvey, Esquire**, were wed on August 26, 2017. Adrian is a member of the DSBA Executive Committee and an associate at Wilson Sonsini Goodrich & Rosati. Matt is an associate with Morris Nichols Arsht & Tunnell LLP. 📍



TOP 5 FEATURES OF FASTCASE THAT MAKE IT A GREAT DSBA MEMBER BENEFIT

- 1 Um, it's free. Ask Westlaw for free legal research.
- 2 Users like Bernie Conaway say it's fantastic, which should make everyone use it.
- 3 The search within a search feature is convenient. You really can cut down on search time.
- 4 Webinars are invaluable for learning how to use it well. And, they are free, too.
- 5 Did we mention it's free? No, seriously, there are tons of great features. Check it out by logging into the Members Area of the DSBA website at www.dsba.org.



Richard K. Herrmann
Morris James LLP
DSBA MEMBER AND
BAR JOURNAL COLUMNIST



"What is all things to all attorneys: a place to learn, a place to network, a place to give back? The DSBA has been those things for me. It has made me a better lawyer."



Natalie S. Woloshin
Woloshin, Lynch & Associates, P.A.
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"The reason I belong to the DSBA is because I want to be able to play a role in the strong legal community in Delaware. Of course, the social events are the most appealing, but the community service and impact on legislation are important to me as well. Finally, I am a member because our Bar Association is very inclusive and makes women, minorities, and younger attorneys feel welcome and valued."

Megan A. McGovern
Bayard, P.A.
DSBA MEMBER



"I enjoy being a member of DSBA because it offers a wide variety of CLE topics and *pro bono* opportunities that encourage both professional and personal growth. The DSBA provides a strong sense of community and serves as a great resource to new and seasoned attorneys."

Illustrations by Mark S. Valala



The *Bar Journal* welcomes its newest editor, Laina M. Herbert. Laina will serve in the newly-created content editor position, a position

that President Michael Houghton felt would assist the current editors with the quality and content of articles, letters, and columns. As content editor, Laina will review submissions for inaccuracy or bias and will assist in the continuity of each edition of the *Bar Journal*.

Laina has been a previous member of the DSBA executive committee, the

MLK Breakfast Committee, the Roxana C. Arsht Fellowship Committee, and a team leader for Wills for Seniors. She has been a member of the Bar Association for 12 years, including previous stints as Chair of the Women and the Law Section. Laina litigates statutory appraisal actions and federal securities actions and is an associate with Grant & Eisenhofer P.A. (since 2016) and worked previously with Wilks, Lukoff & Bracegirdle, LLC (2015-2016) and Prickett, Jones & Elliott, P.A. (2005-2014).

DSBA is lucky to have her join the editorial staff and looks forward to her perspective and contributions to the *Bar Journal*. ⚖️



SOMETHING TO SHARE?

Send brief member news and notices for DSBA Happenings to Rebecca Baird at rbaird@dsba.org. Please send announcements by the 15th of the month prior to publication to guarantee inclusion.

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

The DSBA Introduces New Content Editor of the *Bar Journal*

Professional Guidance Committee

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

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CALENDAR OF EVENTS

October 2017

Friday, October 13, 2017

Office & Trial Practice Update 2017

3.3 hours CLE credit including 2.3 hours Enhanced Ethics credit
Chase Center on the Riverfront, Wilmington, DE

Tuesday October 17, 2017

LOMAP: QuickBooks™ for the Law Office

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

Wednesday, October 25, 2017

LOMAP: The Software Rundown

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

Thursday, October 26, 2017

Christopher W. White Distinguished Access to Justice Awards Breakfast

Chase Center on the Riverfront, Wilmington, DE

Sunday, October 29, 2017

Wills for Seniors

Elsmere Fire Hall, Elsmere, DE

Tuesday, October 31, 2017

Fundamentals of Family Law

6.3 hours CLE credit including 0.5 hour Enhanced Ethics credit
Delaware State Bar Association, Wilmington, DE
Webcast to Morris James LLP, Dover, DE
Webcast to Tunnell & Raysor, Georgetown, DE

November 2017

Thursday, November 2, 2017

Select Topics in Government & Consumer Law

6.5 hours CLE credit including 1.5 hours Enhanced Ethics credit
Delaware State Bar Association, Wilmington, DE
Webcast to Morris James LLP, Dover, DE
Webcast to Tunnell & Raysor, Georgetown, DE

Wednesday, November 8, 2017

Recent Developments in Marijuana Law

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

Tuesday, November 14, 2017

E-Discovery & Technology

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

Wednesday, November 15, 2017

LOMAP: Staffing Your Law Practice

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

Visit www.dsba.org/cle for a complete list of upcoming CLE Seminars.

SECTION & COMMITTEE MEETINGS

October 2017

Tuesday, October 10, 2017 • 12:00 p.m.

Small Firms & Solo Practitioners Section Meeting

Brandywine Hundred Library, 1300 Foulk Road, Wilmington, DE

Wednesday, October 11, 2017 • 12:00 p.m.

LGBT Section Meeting

Stevens & Lee, P.C., 919 North Market Street, Suite 1300, Wilmington, DE

Wednesday, October 11, 2017 • 4:00 p.m.

Real & Personal Property Section Meeting

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

Thursday, October 12, 2017 • 8:30 a.m.

Multicultural Judges and Lawyers Section Meeting

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

Tuesday, October 17, 2017 • 8:30 a.m.

E-Discovery Section Meeting

Pepper Hamilton LLP, 1313 Market Street, Suite 5100, Wilmington DE

Thursday, October 19, 2017 • 12:00 p.m.

Executive Committee Meeting

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

Thursday, October 19, 2017 • 4:00 p.m.

Elder Law Section Meeting

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

Monday, October 23, 2017 • 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, October 24, 2017 • 12:30 p.m.

Labor & Employment Law Section Meeting

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

Thursday, October 26, 2017 • 4:00 p.m.

Family Law Section Meeting

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

Tuesday, October 31, 2017 • 12:00 p.m.

Litigation Section Meeting

Location TBD

November 2017

Wednesday, November 1, 2017 • 12:30 p.m.

Women and the Law Section Meeting

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

Monday, November 6, 2017 • 12:30 p.m.

Senior Lawyers Committee Monthly Luncheon Meeting

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

Tuesday, November 7, 2017 • 3:30 p.m.

Estates & Trusts Section Meeting

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

Wednesday, November 8, 2017 • 12:00 p.m.

LGBT Section Meeting

Location TBD

Wednesday, November 8, 2017 • 4:00 p.m.

Real & Personal Property Section Meeting

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

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

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By Kevin F. Brady, Esquire, and Richard K. Herrmann, Esquire

Technology: Meeting the Expectations of the Bench

A Judge's Perspective: The Honorable Michael K. Newell

We have been discussing the impact of technology on the Bench and Bar for a number of years. It occurred to us, it would be helpful to share the insights and opinions of members of the Bench. After all, experience demonstrates the understanding and use of technology by the Bar is often driven by the expectations from the Bench.

The Honorable Michael K. Newell was appointed as Chief Judge of the Family Court in 2015. He was first appointed to the bench as a judge in the Family Court in 2004.

• • •

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

We need to remain current in technology given the rapid advancements in this field. At the same time, we need to maintain our focus on our primary goal to dispense justice in a fair, equitable, and efficient manner to the people who appear before us.

Technology can assist the litigants through efilings, the Judicial Branch's website, online videos and information about our courts' procedures, and the publication of cases. Making this type of information and process available to litigants and the attorneys allows for an easier and more transparent process. Also, given the number of litigants who represent themselves, the quality of our hearings will improve if people have more information available to them in order to prepare for their court appearances.

Judges and Commissioners are able to use technology in the drafting and editing of their decisions. There are many editing software tools that assist us in preparing our decisions. Issuing decisions electronically enables all parties, including unrepresented litigants, to receive orders simultaneously. The delivery of decisions electronically puts everyone on equal footing.

Finally, the use of technology in the courtroom can facilitate the presentation of the case, eliminate the heavy use of paper,

and save time. The Richard K. Herrmann Technology Inn of Court recently did a remake of the famous *Gebhart v. Belton* case which was part of the *Brown v. Board of Education* case that went to the United States Supreme Court. For those who saw the presentation, they witnessed firsthand how technology made the evidence come alive and more impactful.

We also need to be careful not to chase the shiniest new item on the shelf. In the presentation by the Technology Inn, there was expert testimony and a Google Maps interactive demonstration of how Ethel Louise Belton had to travel to Howard High School past the all-white Claymont High School. This simple demonstration showed the long, time-consuming route that Ethel had to take to get to school. My point is that we all use MapQuest, Google Maps, or some other "App" that assists us in travel. The use of the app was not hi-tech, but it was highly impactful.

When used appropriately and correctly, technology enhances the presentation of the case.

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

There is a divide amongst the Delaware Bar in terms of technological competency and willingness to embrace the use of technology in the courtroom. The more that it is used, the more comfortable we will become with its use.

Cost to the client is also a consideration in the presentation of a case, but the wise use of technology can actually save the client money. Think of the mounting photocopying and binding costs for exhibit and trial notebooks. Now, think of one document that can be displayed on a document camera for all parties and counsel to view at a tablet located and secured on counsel table. With a click of a mouse a wireless printer can print the document for the court file and the multiple exhibit books are no longer necessary.

I am surprised by the fear that the term "courtroom technology" brings to the faces of those who already use technology in their everyday life.

Judges need to lead and advance the appropriate and efficient use of technology in court presentations. If attorneys know what the court (judge) expects, they will adapt.

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

Sometimes, basic and simple is all that is necessary. At our annual retreat in May of this year, Family Court was honored to have Richard Herrmann and Molly DiBianca present on various technology issues that the court encounters and ways to better facilitate the use of technology.

After the retreat and hearing our concerns, I was approached by Richard with a basic and inexpensive project. The creation of an “eCourtroom” using an inexpensive document camera, Microsoft Surface Pros, a router, and a wireless printer — with a total cost of what we might spend on an annual vacation.

The Melson-Arsht and Richard K. Herrmann Technology Inns of Court agreed to sponsor and underwrite some of the expense for this “experimental courtroom.” Judge Robert Coonin will lead the experiment in his courtroom and we will decide after some period of time the usefulness and effectiveness of this technology. If successful, it is likely that we could outfit all of our courtrooms with what it would take to wire and use conventional equipment for just two courtrooms!

We introduced this eCourtroom at the Melson-Arsht’s September meeting and we will present it again at the April meeting of the Technology Inn.

What is your perception of the trial Bar’s competency in eDiscovery? Has it improved over the last five years and if so, why?

Because of our slow progress in this area, we are rarely presented with issues of eDiscovery. However, given my limited knowledge of the subject I know that it is a specialty area of the law and there are the “haves” and “have

nots” who either have or do not have the competency in this area.

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

While not an expert and barely able to hold a conversation on this topic, I will still offer an opinion. I think it is becoming a specialty area and there are immersion programs such as that offered by the Sedona Conference that enhances one’s competency in this area.

What are your thoughts on whether your court should have a Commissioner with additional structured education in eDiscovery?

Given my response above, our court is not there yet.

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

When technology fails it can be embarrassing, time consuming, and thwarting. Trial runs are important. However, we must remain aware that mistakes will happen and malfunctions occur, but we need to work through them, not throw the technology away. If the latter was the approach, imagine where we would be today without the use of the telephone, television, or smart phones, and appliances. We need to soldier on and not be dissuaded by some intermittent failures.

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

See the “Commission on Law & Technology: Leading Practices” article in this edition of the *Bar Journal*, and my comments above.

How can lawyers enhance their competency in technology?

By wanting to use it and embracing it. At the same time, just like everything else — “practice makes perfect.”

• • •

Our thanks to Chief Judge Newell for his time and his insights. ⚖️



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

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The Future of Courtroom Technology – Today: Delaware’s eCourtroom Project

By Richard K. Herrmann, Esquire

For the last 20 years, courts have been investing in new hi-tech courtrooms. While the technology has evolved, the design and use has pretty much remained the same. Many courtrooms have raised floors to accommodate additions or changes in wiring. Projectors, monitors, large screen TVs, document cameras, and electronic control pads are now commonplace. In fact, The Center for Legal and Court Technology at William and Mary Law School, created and operated by world-famous Frederick I. Lederer, has been the incubator and laboratory for much of this development. For many years, Professor Lederer hosted the Courtroom Information Project, an on-line registry of hi-tech courtrooms in the United States.

We have come to a period in the evolution of courtroom technology where we can look back and evaluate how we have progressed. In making this evaluation, it is clear:

- Jurists and those lawyers embracing courtroom technology agree its use adds to the efficiency of the trial process. While I have seen no empirical studies, most seem to think a paperless trial can reduce trial time as much as 20 to 25 percent;
- Hi-tech courtrooms promote the use of graphic demonstrative evidence, which is helpful to the trier of fact, particularly a jury;

“We have come to a period in the evolution of courtroom technology where we can look back and evaluate how we have progressed.”

- The initial investment of courtroom technology is expensive and worth the investment if used;
- With a few exceptions, lawyers tend not to embrace the use of courtroom technology unless the case is large enough to warrant the additional time, and sometimes expense, in preparing for the use of the technology in court;
- Unstable technology creates such a distraction that those who experience it are less likely to want to risk its use again; and
- Those lawyers not adequately trained, and *pro se* parties, cannot take advantage of the efficiencies because the technology is off-putting or intimidating.

I am sure others will add their own experience to the list above, but it appears obvious the path to the future hi-tech courtroom is clear. The drivers to the advancement of courtroom technology must be ease of use, stability, and reasonable costs.

Courtroom technology, and its use in the Family Court of the State of Delaware, has been a topic raised by the Court’s Chief Judge Michael Newell.

With an enthusiastic offer by Family Court Judge Robert Coonin, Chief Judge Newell cleared the way for the development of an experimental hi-tech future courtroom project, with the above drivers in mind. User friendliness is particularly important in light of the large *pro se* representation in Family Court. The project has been dubbed The eCourtroom Project. The “e” stands for either “experimental” or “electronic,” or both. It is a joint project with the Family Court, sponsored by Delaware’s Technology Inn and the Melson-Arsht Inn of Court. The eCourtroom Project was installed in August 2017. Installation took less than three hours.

The goal of the eCourtroom design is to develop an approach to courtroom technology which is “Plug and Play” right out of the box. A design that is disarmingly inexpensive and bullet-proof. Because of the sensitive nature of family law, it is important that the technology is secure. The design calls for a wireless network (a router), internal to the courtroom with no access to any other networks or the internet. The design also calls for a wireless printer on the network, so that screens can be printed and marked into evidence.

Microsoft Surface Pros are disbursed at the podium, counsel tables, the bench, witness stand, etc. In addition, a document camera is connected to the podium Surface.

The intent allows the document camera to always be available to the person presenting at the podium. This eliminates the need to hand a cell phone to the judge to view a picture or text message. Instead, the phone is placed under the document camera, the screen is printed, and the image is marked as an exhibit. Similarly, deposition transcripts and other documents can be distributed to all screens from the document camera. The witness can annotate with a stylus and the result can, once again, be printed and marked to protect the record.

The design of the eCourtroom also includes the ability to view any image, document or video clip from a flash drive at the podium. It is anticipated that future courtroom technology will eliminate the need for attorneys use their laptops and instead use flash drives. This

will ensure the security and stability of the design. The cost of creating an eCourtroom is surprisingly inexpensive compared to the traditional wired hi-tech courtrooms. The savings to a court system could be significant when dozens of courtrooms are being implemented. The stability of the design will be tested as the project proceeds. ⚖️

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

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ETHICALLY SPEAKING

By Charles Slanina, Esquire

Rev Up Your Fee Agreements: Part III

“Ethically Speaking” concludes a review of fee agreements begun in the April and September 2017 columns. Having previously recommended that practitioners use written fee agreements for all matters and that the agreements are selected with care to be certain that they are compliant with the Delaware Rules of Professional Conduct, this month we fine tune those agreements to meet the specific needs of your practice by a discussion of alternative fee agreements.

While form fee agreements are generally preferable to not having any fee agreement, one-size-fits-all may not be best for you or your clients. There are lots of available options to traditional hourly, flat fee, or contingency agreements.

The following should be viewed as examples rather than a complete list. Additional options can be found by both research and the exercise of your own imagination.

1 Blended Flat Fee and Hourly:

While a portion of the fee may be flat or fixed, specify any services which will be charged at a separate hourly rate. For example, the agreement can call for preparation of a will or trust for a specified flat or fixed fee. However, meetings with the client or others can be charged at a specified hourly rate. This mixed agreement protects the attorney from clients who might otherwise abuse or exploit the flat fee agreement by unnecessary calls or office visits.

2 Flat Fee with Performance Bonus (Success Fee):

Similar to a contingency fee agreement, the attorney shares the risk associated with the legal matter. (Note that this arrangement might be prohibited in criminal and domestic cases). For example, in permitted matters, such an agreement can include an hourly or flat fee for the handling of an appeal with a bonus payment if the appeal is successful. The amount of the

bonus could also be based on the value to the client resulting from the successful outcome of the appeal.

3 High-Low (Fixed or Capped):

Hourly rates are stated in this agreement. However, the total fee for the described matter cannot be lower or higher than stated amounts regardless of the number of hours the matter takes.

4 Statutory Fees: Determine whether your client’s cause of action is eligible for statutory or court-ordered award of attorneys’ fees. The fee agreement should reflect the effect of such awards on the client’s liability for the attorney fee.

5 Task Based: This is a variation on Flat Fee Agreements where specific fees are earned as specific phases of the legal matter are completed. For example, in a criminal case, a stated part of the fee could be earned as stated upon entry of appearance, the attorney’s attendance

at arraignment, case review, pre-trial motions practice, and finally, at trial or appeal.

6 Variations to Hourly Rates:

Is your hourly rate the same even if the legal services are provided at night? On weekends? Holidays? Does it make a difference whether you are working nights, weekends, or holidays because of an emergency? Who gets to define what constitutes an emergency? What if the overtime is only for the client’s convenience or is necessitated by the client’s own conduct or misconduct?

If there is no disincentive in the fee agreement to a client’s request for a call or meeting outside of regular business hours, why wouldn’t a client request (or even insist on) such an accommodation? Non-regular hour surcharges can always be waived by the attorney, but cannot really be added if they are not part of the original fee agreement.

7 Expedited Case: A variation on the surcharges covered above, clients sometimes, as a result of their own conduct, present with cases that need immediate action. The agreement to handle the matter on an expedited basis can include an increased hourly rate, increased percentage on a contingency, a separate fixed fee, or a blend.

8 Subscription Fee: Monthly or other periodic payment by clients, usually in a commercial setting to secure availability of legal services or advice during the period covered by the pay-

ment. The client is often offered some economy reflected in the number of hours to be provided during the period in excess of the normal rate for the same number of hours. However, such agreements may be use-it-or-lose-it for the client. Any hours not used in the paid period may be deemed lost and the pre-paid subscription fee to the attorney treated as earned although the subscription may permit some number of hours to be carried over.

9 Rights Upon Termination: In contingency fee matters, what are your rights upon termination? Clients may argue that you agreed to a percentage of the recovery, and if there is no recovery, you are entitled to a percentage of nothing. Attorneys generally take the position that they are entitled to a *quantum meruit* recovery based on the time and effort creating value in the case even if there is a termination of the attorney-client relationship prior to the recovery. The difficulty in those situations is determining the value created or added by the attorney before termination.

Your fee agreement can address this situation by providing for an hourly rate alternative to the contingency for such cases. However, this provision requires the attorney to maintain time records (which many attorneys are loathe to do in contingency fee cases). The agreement should also obtain the client's consent to have successor counsel pay the converted fee from the recovery.


Conclusion

Use written fee agreements. Clients want and need to know what your legal services will cost. You want and need a written fee agreement in order to facilitate the collection of those fees and costs. But, make sure that your written fee agreements comport with the Professional Conduct Rules. Be aware that some specific provisions are required while others are prohibited. Used correctly, carefully crafted fee agreements specific to your practice area benefit your practice while meeting the needs and expectations of your clients.

Bonus Content:

There is a correction to the September 2017 column. That column states that the Delaware State Bar Association Fee Dispute Committee will not arbitrate matters with more than \$100,000 in controversy. The Committee recently revised its rules to remove the \$100,000 limit.

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

"Ethically Speaking" is available online. Columns from the past three years are available on www.dsba.org. 

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



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DE-LAP ZONE

A Message from the Delaware Lawyers Assistance Program

By Carol P. Waldhauser, Executive Director

You Control the Door to Your Thinking

Tips, Tricks, and Resources for an Attitude Adjustment




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Let's face it. Being a lawyer is extremely stressful. In fact, studies show that it is one of the most stressful occupations. Evidence shows that this stress often contributes to the profession's high rate of burnout, substance abuse and dependence, and depression. Contributing to the stress of practicing law are client, partnership, administrative, technology, and financial issues. And, to make matters even worse, life itself deals its blows to each one of us. Whether setbacks occur in our personal or professional lives, they can ruin our dreams for success. But, only if we let them.

It is said that our happiness and success depend not so much on the problems we face, but on how we respond to them. Have you ever noticed how some people not only survive, but also emerge from soul-shattering personal crises stronger and more capable? Data suggests that people are more alike than they care to admit. However, one little difference usually makes a big difference in all individuals; and that little difference is attitude. But, is that attitude positive or negative?

Maintaining a positive "can-do" attitude is the key to resilience when we are experiencing life's bumps in the road. Our attitude, along with a balanced lifestyle, is what gives us the stamina to navigate the journey down life's road. No matter what bump, a positive attitude enables individuals to move on when life has dealt them one or more cruel blows (*i.e.* the death of a loved one, a chronic illness, a grave financial loss, no partnership, letter from disciplinary counsel, or all of the above at the same time).

Individuals who know how to bounce back have the ability to transform personal tragedy into a positive experience. For some individuals, this is natural, but for others it takes determination (and moxie) to learn, implement, and sharpen, consistently, such coping skills. Fortunately, however, it is never too soon, or too late, to learn and implement the skills needed to adjust your attitude. You have the control to open the door to positive thoughts; plus, close it for negative ones too.

If you make a habit of seeing yourself as a powerful force in your own life and not a victim of circumstance, you will then be a powerful force when you hit the bumps in the road. Your life is all up to you. Make it the best it can be. You owe it to yourself, your family, and your clients. For more information on work/life issues and other matters that influence your quality of work and life, contact the Delaware Lawyers Assistance Program (DE-LAP) by calling (302) 777-0124 or emailing cwaldhauser@de-lap.org. 

“Individuals who know how to bounce back have the ability to transform personal tragedy into a positive experience.”

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

Tips and Tricks to Make an Attitude Adjustment

Attitude is Everything

The amazing thing about a positive outlook is that it is an energizing quality that it is within our control. We choose and are responsible for how we react to stress, disappointments, and what we let influence our life. We have a choice regarding the attitude that we will embrace for that day. We have the ability to start our day over at any point. We cannot change the past, nor can we change the inevitable; we can, however, change our attitude and response at any time.

For example, one of the most important ways to handle stress is to ask yourself, "Is this situation a 1 or a 10?" with 1 being small annoyances and 10 being traumatizing life events. Then, look for help when you need it. This can range from talking with a friend to seeking professional counseling. If you feel overwhelmed, start by focusing on handling some small inefficiency or problem. Take baby steps towards that Attitude Adjustment.

Accentuate the Positive

A positive outlook allows you stand up and take control of your life and it helps to quash fears and anxiety. When an individual experiences a traumatic event, that person will at first grieve the loss. However, the resilient individual is determined at some point to stop isolating and seek additional support when necessary. As time passes, the resilient individual manages to heal from the tragedy. Emphasize "healing," not "forgetting." This is done in three ways: by building faith in yourself; by finding refuge from personal troubles with positive coping mechanisms; and by believing in your own resilience.

Resilience demands optimism, and optimism is the ability to accept negative events without allowing them to destroy our resolve.

"Resilience depends on creating a life in which you are surrounded by positive forces," says Frederic F. Flach, M.D., author of *Resilience: the Power To Bounce Back When The Going Gets Tough*. He states that "if you work on developing a sense of self-esteem, you'll recover more quickly from difficult times."

Adversity Can Teach

When you have faced disaster, you can eventually learn from it rather than worrying about it. The skill is in replacing worry with hope. Remind yourself of all the difficult situations that you have handled in the past. Remember that you may have been terribly upset then, but you were still able to act with reason and intelligence. You can do so now, too.

Also, avoid "awfulizing." Playing the "what if" game is a sure way to intensify your fears. "What ifs" let your fears run away with you. Some call it "stinky thinking." Actively stop such thoughts and substitute other thoughts to fill the vacuum. Internal doom dialogue only feeds panic. Whether you say, "I cannot cope with this," or you say, "I can cope with this," you will be right.

Keeping Goals

Unwavering and passionate belief in dreams and goals is a necessary rule for "resiliency." This enables an individual to be motivated or recharged. Without belief in dreams and goals, old or new, the opportunities to give up will look too tempting and you could easily take the path of least resistance and quit.

Victim or Victor: It's Up to You

Every person going through a hard time should feel free to cry. The skill is to allow that time and then know when to quit. Our lives are filled with potholes, roadblocks, and detours. However, when times get tough, persisting with every fiber you can is paramount to "resiliency." Surviving a major tragedy can also give you an indispensable sense of perspective.

Whether we succeed or fail is completely dependent upon the decisions we make every day. Most of the decisions are quite small, but when added together determine your future. The same fate can befall two people, but winners will react one way – even making attitude adjustments along the way; and losers another. It is not the outside force that turns people into winners or losers. It is the inside force.

Winners look for ways to solve the problems while losers look for someone or something to blame. Instead of wasting energy looking for a scapegoat, look for an answer and support. When something goes wrong, it is easy to wallow in self-pity. Losers will always ask, "Why did this happen to me?" Conversely, winners will ask, "Now, what should I do?" Winners are self-confident people who make attitude adjustments along the way and who allow a positive attitude to turn tragedy into a triumph.

To jump-start your attitude adjustment and cultivate your coping skills, try the following as stated in Joe Torre's "Ground Rules For Winners" in *12 Keys to Managing Team Players, Tough Bosses, Setbacks and Success*:

- Focus on the present (mindfulness)
- Maintain your perspective (bring your thinking back to positive; close it to negative)
- Control what you can, let go of the rest
- Feel the fear, succeed anyway
- Keep your cool

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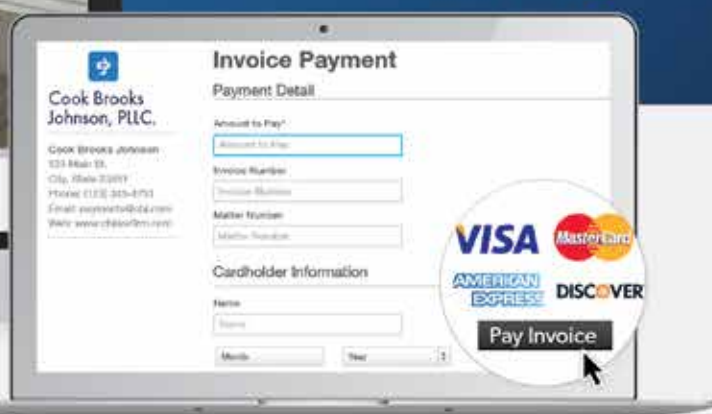
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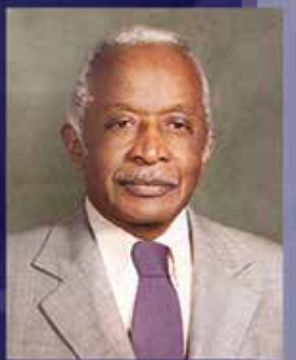
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BOOK REVIEW

Reviewed by Richard A. Forsten, Esquire

Never Forget: *The Blood of Emmett Till*

By Timothy B. Tyson (Simon & Schuster, 2017)

Emmett Till — the name will be instantly recognizable to some, vaguely familiar to others, and have no meaning to still more. Indeed, one suspects that for many Americans today, particularly younger ones, the name will bring blank stares. And, that should not be the case.

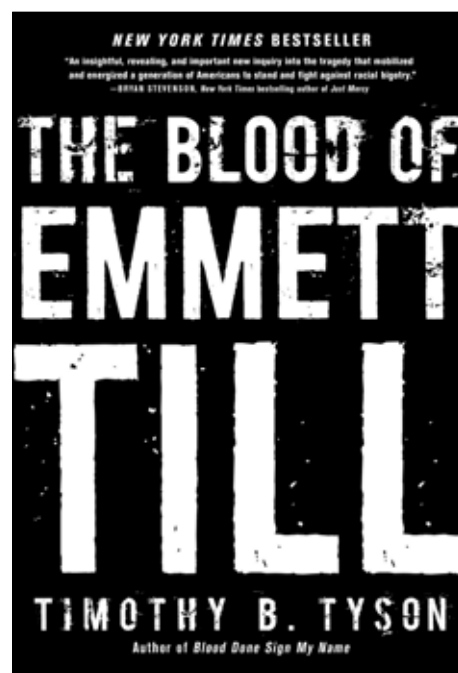
Emmett Till was a fourteen year-old African American from Chicago visiting relatives in the Mississippi delta region in the summer of 1955. A few days after arriving, he and a group of friends were out and about. Till allegedly made “insulting remarks” to the sales clerk, a 21-year-old white woman, at a small grocery store in a small town near his uncle’s house. Exactly what was said has never been made clear, nor his conduct (he allegedly asked her out, put his arm around her, and later whistled at her). One of Till’s cousins came in and pulled him out of the store, and the clerk then went to her car to get a pistol, but Till and company quickly left the scene.

A few days later, a group of white men appeared at Till’s uncle’s house in the middle of the night and took young Emmett. Three days later, his body was found miles away in the Tallahatchie River. He had been badly beaten. His skull had been broken. His one eye was hanging out of its socket. He had been shot in the side of the head. A large iron fan had been tied around his neck with barbed wire to weigh the body down.

Lynchings are a horrible dark side of American history. No precise number exists, and figures vary, but the Equal Justice Initiative estimates that between 1877 and 1950, approximately 3,959 African-Americans were lynched. That time frame, of course, excludes the years immediately after the Civil War, as well as the years after 1950.

Emmett Till might well have gone down as simply another lynching. Another victim of the South’s terrible racism. Another forgotten name. But, that did not happen. His case garnered national and international attention, and Emmett Till’s murder is credited by many as one of the critical moments in the civil rights movement.

In *The Blood of Emmett Till*, Professor Timothy B. Tyson tells the tragic tale of young Emmett Till, the murder trial that followed, and the after effects of a story that was reported worldwide. One of the things that makes his book especially interesting is that he was able to interview Carolyn Bryant, the woman Till allegedly propositioned, in 2008. In her interview, Bryant said she could not remember what Till said, but the claims that he physically assaulted her, or did anything menacing or sexual, were not true. Although she could not remember precisely what Till said, Bryant emphatically concluded that “nothing that boy did could ever justify what happened to him.”



Till’s death is not forgotten today because his mother refused to let Till die in vain. The Chicago papers took the lead in writing about the story. A crowd of one thousand was gathered at the Chicago train station when Till’s body arrived from Mississippi. Till’s mother insisted on an open casket for the viewing and the funeral. The number of people paying respects was estimated at somewhere between 100,000 to 250,000. An overflow crowd of several thousand stood outside the church during the funeral.

Meanwhile, in Mississippi, two white men (Carolyn Bryant’s husband and

another man) were arrested for the murder and trial was quickly scheduled. The courtroom was packed. Overflow crowds waited outside the courthouse. Till's mother came down for the trial from Chicago. Congressman Charles Diggs, an African-American representative from Michigan, attended the trial as well. Scores of reporters from across the country and around the world were in attendance.

The trial itself was remarkable in several ways. No one thought there was any chance that defendants would be convicted. White men in the old south simply were not convicted in these circumstances, despite whatever the evidence might show. Here, though, there were intense press scrutiny, determined prosecutors, a scrupulously fair trial judge (who ruled against the defense on several key points), and an engaged local black population which located several witnesses who might not have otherwise testified. It was, though, all for naught. The jury "deliberated" for all of an hour before returning a verdict of "not guilty" — and, they would not have taken an hour, except that it was hot and they sent out for some cold soda at the start of their deliberations.

Several years later, nine of the twelve jurors (who were, of course, all white men) were interviewed and conceded that they all knew the defendants were guilty, but nevertheless were not going to return a conviction. The defendants also both admitted in later interviews that they had indeed killed Till.

In the aftermath of the Till verdict, mass meetings to protest the verdict were held throughout the country. His mother and uncle spoke at numerous gatherings. By November, the NAACP estimated that more than 250,000 people had heard Till's mother or uncle speak. Although Till's name may not be as well known today, it was on the lips of many in 1955 and 1956, and Till's murder and the ensuing trial is credited with energizing the then still nascent civil rights movement.

The Blood of Emmett Till is well-written and moves briskly, but, at the same time, it is a horrifying, depressing, and

sad story. Nevertheless, it is well worth reading — but, given that it is horrifying, depressing, and sad, one might ask why it is worth reading? There are many ways to answer that question, but perhaps the best answer comes from an unlikely source — the old television series *The Twilight Zone*.

In an episode the series entitled "Deaths-Head Revisited," a former Nazi returns to the Dachau concentration camp after the war and is driven insane by the spirits of those he tortured and killed. At the end of the episode, a doctor at the hospital treating the now-insane Nazi asks a simple question: "Dachau. Why does it still stand? Why do we keep it standing?" Rod Serling, the show's creator and narrator, provides the answer in a voice-over as the episode ends:

There is an answer to the doctor's question. All the Dachaus must remain standing. The Dachaus, the Belsens, the Buchenwalds, the Auschwitzes — all of them. They must remain standing because they are a monument to a moment in time when some men decided to turn

the Earth into a graveyard. Into it they shoveled all of their reason, their logic, their knowledge, but worst of all, their conscience. And, the moment we forget this, the moment we cease to be haunted by its remembrance, then we become the gravediggers. Something to dwell on and to remember, not only in the *Twilight Zone* but wherever men walk God's Earth.

And, so now too, as memories fade and time passes on, the stories of Emmett Till and Medgar Evers and George Lee and Lamar Smith and Charlie Lang and Ernest Green, and the countless others, must all be remembered. *The Blood of Emmett Till* is a part of that effort. Something to dwell on and to remember — a reminder that more needs to be done to keep memory alive. 📖

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

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DELAWARE CORPORATE LAW ANNIVERSARY SYMPOSIUM

September 26 & 27, 2017 | Hotel du Pont, Wilmington, Delaware



The Welcome Address was given by Stephen P. Lamb, Esquire, Former Vice Chancellor, Court of Chancery.



The Honorable Andre G. Bouchard, Chancellor, Court of Chancery, gave the Opening Keynote Address.



Attendees at the Delaware Corporate Law Anniversary Symposium.



Lunch and Address Interview on Day One with Martin Lipton. The interview was conducted by The Honorable Andre G. Bouchard.



Henry duPont Ridgely, Esquire, and William D. Johnston, Esquire.



Lewis H. Lazarus, Esquire, and The Honorable Tamika R. Montgomery-Reeves.



Donald F. Parsons, Jr., Esquire, and Edward M. McNally, Esquire.



Francisco Antunes Maciel (Chico) Mussnich, Esquire, and Professor Elizabeth Pollman.



David C. McBride, Esquire, and Theodore N. Mirvis, Esquire.



Robert J. Katzenstein, Esquire, and Henry E. Gallagher, Jr., Esquire.

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By Susan Simmons



The Delaware State Bar Association began recognizing *pro bono* with an Awards Ceremony starting in 2007. Many of you have been involved in Celebrate *Pro Bono* Week since the first Celebration in 2009. Some of you have even been recipients of the Delaware State Bar Association's Christopher W. White Distinguished Access to Justice Awards, which are given at an Awards Breakfast each year during Celebrate *Pro Bono* Week. But, some may not know who Christopher White was and why we named our Awards Ceremony after him. Some may also not be aware of the background of the *Pro Bono* Celebration in general.

The Christopher W. White Distinguished Access to Justice Awards Breakfast will be held on Thursday, October 26, 2017, at the Chase Center on the Riverfront. This very popular event held in conjunction with the Celebrate *Pro Bono* 5K, which was held on September 16, 2017, and the upcoming Wills for Seniors on October 29, 2017, are ways for our membership to become involved in a national commitment to *pro bono*. The Awards Breakfast serves as an opportunity to recognize lawyers for their service to the community in honor of the breakfast's namesake, Chris White. Chris was a long-time attorney with the Community Legal Aid Society of Delaware, and member of the Delaware State Bar Association, who tragically died in April 2010 at the 48 years old. Chris was widely known and respected for his advocacy work on behalf of the poor, homeless, disabled, elderly, troubled, and downtrodden people of Delaware.

We are proud to be a part of the National Celebration and congratulate the 2017 Awardees and those many nominees whose colleagues felt should be recognized for their outstanding work in promoting Access to Justice.

The National Celebration and recognition of *pro bono* started (coincidentally) the same year that I began working at the Delaware State Bar Association staff. I was hired as part of then-DSBA President Matt Greenberg's initiative to staff the DSBA with a

Pro Bono Coordinator. I discovered there was something called Celebrate *Pro Bono* Week and I was enthusiastic about making this event a reflection of our efforts here in Delaware. Below is the background and summary of the National Celebration of *Pro Bono*:

When the Standing Committee on *Pro Bono* and Public Service announced its plans for the first National Celebration of *Pro Bono*, questions were raised about the value of a nationally coordinated strategy for recognizing *pro bono* across the country. The *Pro Bono* Committee believed strongly that the initiative, focusing on local projects held during a designated time frame, would capture the interest and energy of the legal community. That confidence has born fruit: in the past three years, hundreds of event sponsors and individuals supported and coordinated more than 2000 exciting and well-attended events in 48 states, Puerto Rico, the District of Columbia and Canada.

The confluence of two circumstances made the timing of the National Celebration of *Pro Bono* particularly important: the increasing need for *pro bono* services as economic conditions worsened, and the unprecedented response of attorneys to meet this need. Although national in breadth, this initiative provides an opportunity for legal organizations across the country to collaboratively commemorate the vitally important contributions of America's lawyers and to recruit and train the many additional volunteers required to meet the growing demand.

The *Pro Bono* Committee undertook this initiative to provide a format for showcasing the incredible difference that *pro bono* lawyers make to our nation, to our system of justice, to our communities and, most of all, to the clients they serve. With the enthusiastic involvement of national, statewide and local partners, from all components of the legal profession, the National *Pro Bono* Celebration is creating a


wave of positive energy about the *pro bono* movement in this country. *Pro bono* lawyers have been recruited and trained, new projects were started, volunteers were recognized for their outstanding service, law students were exposed to the power of *pro bono* and new partnerships were developed. There was an outpouring of positive media exposure about lawyers, the legal profession, the American Bar Association and the legal services community in the printed press and on radio, television and the Internet.

The 2009 week was capped by a letter from President Barack Obama recognizing the important contributions of *pro bono* lawyers in providing access to justice for those living on the social margins. In his letter of October 30, 2009, the President observed that, “*Pro bono* lawyers work tirelessly to break down barriers to opportunity and justice, volunteering countless hours to provide critical legal services to our most vulnerable citizens.” The National Celebration of *Pro Bono* helps to spread this important message to communities throughout America.

Nearly 70 percent of the events held in the past two years were either direct service clinics, volunteer training and recruitment events, or new initiative launches. The Celebration is an important vehicle for broadening and deepening services to Americans living on the social margins. (National *Pro Bono* Celebration Resource Guide at www.probono.net)

The National Celebration of *Pro Bono* has extended the opportunity to expand the celebration of *Pro Bono* by encouraging us to host events serving Homeless Youth on or around International Day for Street Children, April 12, 2017. I welcome your firm, agency or Section of the DSBA to help remove legal barriers in an effort to improve outcomes for this highly vulnerable population by planning an event or CLE that assists this effort.

If you or your firm is interested or already participates in *Pro Bono*, let us know:

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

Congratulations to the Christopher W. White Distinguished Access to Justice Awards 2017 Awardees

The Achievement Award

MARC J. WIENKOWITZ, ESQUIRE
LAW OFFICE OF MARC J. WIENKOWITZ

This award is presented to a member of the Bar who has shown an exemplary recent contribution to *pro bono* services (generally in the last one to three years) and stands as a role model to other attorneys. The criteria includes, but is not limited to: The number of *pro bono* hours recently devoted to the legal representation of indigent clients over the lawyer's career; the number of cases accepted for *pro bono* representation; consistency, flexibility, and accessibility in accepting *pro bono* cases; and the lawyer's commitment and service on committees dedicated to promoting and supporting the provision of legal services to those in need.

The Commitment Award

KARA M. SWASEY, ESQUIRE
BAYARD, P.A.

This award is presented to a member of the Bar who has demonstrated sterling commitment to *pro bono* work throughout his or her career by dedicating time and energy to the support and provision of legal services. The criteria includes but is not limited to: The number of *pro bono* hours devoted to the legal representation of indigent clients over the lawyer's career; the number of cases accepted for *pro bono* representation over the lawyer's career; and the lawyer's commitment and service on committees dedicated to promoting and supporting the provision of legal services to those in need over the lawyer's career.

The Leadership Award

PEPPER HAMILTON LLP

This award is presented to a legal organization (legal department or law office) that has demonstrated outstanding leadership in the field of *pro bono* service to Delaware's indigent population based on, but not limited to the following criteria: The number of *pro bono* hours the organization contributes to the direct representation of indigent clients; the number of cases the organization accepts for *pro bono* representation; flexibility and accessibility in accepting cases; The organization's commitment and service on committees dedicated to promoting and supporting the provision of legal services to those in need; financial support to agencies providing legal services to Delaware's indigent population; the percentage of attorneys in the organization who accept *pro bono* cases; and fostering a culture that recognizes the value of *pro bono* services.

The Service to Children Award

LISA A. MINUTOLA, ESQUIRE
OFFICE OF THE PUBLIC DEFENDER

Awarded to an individual lawyer, legal professional, or organization principally including lawyers, which demonstrates outstanding commitment to, and work for, children in the provision of legal or community services. It may be given to volunteers or those employed in the provision of legal services for children. This award is given as warranted, not necessarily annually. The sculpture reflecting this award was created by Charles Allmond, Esquire, and donated by the former and current partners of the Wilmington office of Duane Morris LLP and is on display in the offices of the Delaware State Bar Association. A plaque is given to the recipient in recognition of this award.

The Legal Professional Pro Bono Service Award

HEIDI COLEMAN, AACP, DCP
SULLIVAN HAZELTINE ALLINSON LLC

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

2017 Christopher W. White Distinguished Access to Justice Awards Breakfast



Thursday, October 26, 2017

Chase Center on the Riverfront, Wilmington, DE

Breakfast at 8:00 a.m.

\$37 Per Person • Please RSVP by October 19, 2017



AWARDS PRESENTATION

MARC J. WIENKOWITZ, ESQUIRE

Law Office of Marc J. Wienkowitz

Achievement Award

KARA M. SWASEY, ESQUIRE

Bayard, P.A.

Commitment Award

PEPPER HAMILTON LLP

Leadership Award

LISA A. MINUTOLA, ESQUIRE

Office of the Public Defender

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PROGRAM WILL ALSO INCLUDE:

Presentation of the DSBA Access to Justice Recognition to
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and

Presentation of Pro Bono Celebration Week Proclamation
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Please RSVP by October 19, 2017 • Please include names and DE ID numbers of all attendees with response.

If you're a DSBA member, you may register online at www.dsba.org.

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The Sequel Was Even Better Than the Original

DSBA's Second Movie Night Was a Night to Remember

By Mark S. Vavala, Esquire, DSBA Executive Director

Over 60 people filled the seminar rooms at DSBA on Thursday, September 7, to watch *And Never Let Her Go*, the made-for-TV film about Delaware's infamous Thomas Capano murder case. On hand after the movie were: the presiding judge, William Swain Lee, Esquire; the U.S. Attorney brought in by Governor Carper and President Clinton, Colm F. Connolly, Esquire; and the two Delaware defense attorneys, Eugene J. Maurer, Esquire, and Charles M. Oberly, Esquire. While the movie was so-so, the hour-long CLE got rave reviews.

The Capano case captured the news in the late 1990s because it involved the murder of Anne Marie Fahey, a scheduling secretary for then-Governor Carper. It also involved a very powerful and political attorney, Thomas Capano, who had worked for key Democratic players in Delaware and who belonged to the powerful Capano Real Estate family. Capano, known for his arrogance and philandering, refused to let Anne Marie break their affair, killed her, and buried her at sea.


Perhaps the most dramatic moment of the seminar came when Colm Connolly answered a question posed from the audience as to how he discovered Capano's secret notes. "I've never told this to anyone before," Connolly admitted, "Not even during the investigation, but we received a tip from a confidential informant." Patrick G. Rock, Esquire, who attended this event, posted on Facebook, "Great event. More than one point of illumination."

Miranda D. Clifton, Esquire, who also attended, said that the seminar was "absolutely fascinating," and that she enjoyed the candor of the panelists. Connolly had also mentioned that Capano had been reported to the predecessor of the ODC, an ethics review panel, who cleared Capano of stalking another woman, years before he murdered Fahey. Judge Lee replied that "it was a different time" and that lawyers often tried to find ways of protecting "brothers" from discipline if they could find a way to get them to fix the problems they created. He acknowledged that things were much better now and that while attorneys still wanted to protect their "brothers and sisters" in the law, there was a focus on

what should be done within the ethics rules to help them. Carol Waldhauser, who attended the CLE, echoed Judge Lee's comments, stating, "Attorneys should not feel anxious about seeking help for their colleagues. DE-LAP is always a phone call away."

Some of the best back-and-forth of the evening came when Gene Maurer and Charlie Oberly discussed the difficulties of representing someone Oberly called, "One of the worst human beings I've ever encountered," despite having been friends before he represented Capano. Both attorneys agreed that Capano's desire to remain in control was a significant hindrance — from his desire to have his daughter commit perjury, to his insistence of keeping young female jurors on the panel because they would "fall in love with [him.]" They disagreed on one main point: Oberly maintains that Capano should have testified because it was his only possible defense to have the jury believe he did not murder Fahey while Maurer stated it was fatal to the case and that once Capano testified, there was no way he could have gotten a lesser-included Murder 2 conviction.

Reaction to the seminar was dramatic and positive. Richard Levine, during the intermission remarked, "I only have one question. Why aren't there more people here?" He noted that this was a wonderful opportunity to connect with people who were deeply involved in Delaware legal history.

DSBA's first movie night on April 20 was *Deliberate Intent* — a movie about the first amendment and the right to sue a publisher and featured the author of the book on which the movie was based, Dean Rod Smolla from Delaware Law School. The third movie night is now scheduled for December 13 just in time for Christmas. Registration will be out shortly for *Miracle on 34th Street* and will feature a CLE on civil commitment law in Delaware. For purists, we will show the black and white version. 



DSBA Executive Director, Mark Vavala, introducing the film *And Never Let her Go* to the CLE attendees on September 7, 2017.

POSITIONS AVAILABLE

ATTORNEY OPENING: Campbell & Levine, LLC seeks an attorney with 1 – 7 years of experience to work in the areas of insolvency law, transactional law and 524(g) asbestos trusts. This position will include research, writing and some litigation. The candidate must have strong research and writing skills and be admitted to the Delaware Bar. Please submit resumes to Marla Eskin at meskin@camlev.com.

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ATTORNEY: City of Wilmington Law Department seeks attorney for position of Senior Assistant City Solicitor. Must be City resident or become resident within 6 months. Salary commensurate with experience. Responsibilities related to litigation, employment and labor, transactional, and economic development. Experience in complex transactional and/or employment and labor preferred. Submit cover letter and resume by October 20 to mscatast@wilmingtonDE.gov or mail: Law Department, 800 N. French Street, 9th Floor, Wilmington, DE 19801. EOE.

MARKS, O'NEILL, O'BRIEN, DOHERTY & KELLY is seeking a Delaware licensed Associate to work in Wilmington. Candidates should have 0 to 2 years of related experience, strong writing ability, good organizational skills and be a team player. Competitive Salary & Benefits. Send resumes to ksimmons@moodklaw.com.

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WILMINGTON INSURANCE DEFENSE FIRM is looking for an associate with 1 to 5 years of experience. DE bar required, PA and/or NJ is a plus. Solid academic and employment credentials expected. Please send resume and writing sample to jgorman@rjm-law.com.

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LOST WILL

LOST WILL: Virginia L. Eberle, Newark, DE. Died 2/17/17. Looking for original or copy of a Will or Codicil. Please contact Shana Pinter at (302) 655-4500 or shana@nordheimerlaw.com.

LOST WILLS: Dorothy M. Williams a/k/a Dorothy Megee Williams. Died 9/6/2016. Charles L. Williams a/k/a Chuck Williams. Died 11/24/2015. Looking for original or copy of a Will. Please contact Jason Powell at (302) 650-1572 or jpowell@delawarefirm.com. ☎



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-DISCIPLINARY ACTIONS-

DISABILITY INACTIVE

In re William J.P. Mulgrew, III
Supreme Court No. 363, 2017
Effective Date: September 8, 2017

By Order dated September 8, 2017, the Delaware Supreme Court transferred William J.P. Mulgrew, III, Esquire to disability inactive status effective immediately pursuant to Rule 19(b) of the Delaware Lawyers' Rules of Disciplinary Procedure. Mr. Mulgrew is prohibited from practicing law in Delaware until such time as he is reinstated to active status. ☎

OF NOTE

Condolences to the family of **Emmett J. Conte, Jr., Esquire**, who died on September 6, 2017.

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

Don't miss the DSBA Bi-annual Musical !!

NOV. 17th & 18th at 7 PM in the Tatnall Theatre, Wilmington & NOV. 19th at 2 PM, Central Middle School Auditorium, Dover

The PUBLIC ENEMY Runnin' Wild



This musical treats you to the 1920s approaching Prohibition. It was a time that pitted the combined forces of The Woman's Christian Temperance Union and the Chicago gangsters on the side of pushing for "the Noble Experiment" against the alcohol industry, the medical profession, the Catholic Church, and everybody else with any common sense on the other. With more than 20

songs, notable dancing, and a live band of 10, all from dedicated, if slightly loony, lawyers, judges, and Court personnel, you'll have a great time.

Tickets are available at the door, or online at www.dsba.org or www.profundobono.com or through anyone you might know in the cast or band. They are priced (as they have been for 15 years!) at \$25.00 each — a great value for a great piece of entertainment for the great cause of the Combined Campaign for Justice. Hope to see you there!



Turn Over a New Leaf

In this October article I add a new ingredient to “The Judicial Palate” — a question and answer portion entitled “Susan Says, Mommom Muses.” I ask you, the reader, to email me with questions about cooking, entertaining, dining out, etc. Each month, I will select one question and provide a response along with my regular column. In addition to my answer, I will include a little something that my Italian Mommom Seda would have remarked relevant to your question. After all, we learn from each other’s inquiries and, most of all, from our ancestors who cooked before us. Below is an example of how this would work. Please note that I will not publish your name unless you specifically request that I do so. Here goes...


Question: “What should I do if I am dining in a restaurant and think the bottle of wine I ordered is bad?”

- Signed: Decanting in Delaware

Susan: Dear Decanting in Delaware, if you taste something funny, say something. Follow your instinct. Ask the server to taste the wine to confirm your impression. If the wine is truly bad, the server should not hesitate to bring you another bottle. If you lack confidence in your wine tasting abilities, just think, the worst thing that could happen is that the wine is fine, yet does not suit your palate. In that case, the server may ask if you would like to try another variety. There are several ways in which wine can go bad. It could become “corked” by being tainted with a bad cork; oxidized as a result of improper storage; or “cooked” if kept in too warm temperatures.

On one occasion, there was no question that the Cabernet Sauvignon I ordered was cooked, as it tasted like a sweet dessert wine, such as Port. More recently, I ordered a French Rhône that turned out to have a slight effervescence. It wasn’t a sparkling wine, but I understood from the server that the bubbles were likely the result of the wine undergoing another fermentation in the bottle. Both times, I told the servers I believed the wine was bad and requested that they taste it and let me know their thoughts. They tasted, agreed, and opened us another bottle. So, follow your taste buds.


Mommom: Dear Decanting in Delaware, why did you go out in the first place when you have a perfectly good kitchen and nice wine at home?!



Speaking of wine, I recently found a lovely cake that would complement a rich red. While looking for a light dessert to follow a paella dinner, I stumbled upon the website *La Tienda: The Best of Spain* (<https://www.tienda.com/>), which offers a myriad of Spanish products as well as recipes. La Tienda’s Marcona Almond Citrus Olive Oil Cake was a hit both times I made it — olive oil used in place of butter lightens this cake, and the Marcona almonds add a savory element. 🍷

La Tienda’s Marcona Almond Citrus Olive Oil Cake

Ingredients:



- 1 1/2 cups all-purpose flour
- 2 teaspoons baking powder
- 1/2 teaspoons salt
- 1 cup sugar
- 3 large eggs
- 2 teaspoons orange zest
- 2 teaspoons lemon zest
- 1/4 cup whole milk
- 3/4 cup extra virgin olive oil
- 2/3 cup Marcona almonds, toasted and finely chopped
- Powdered sugar, for sifting

Preheat oven to 350 degrees and lightly oil an 8-inch diameter cake pan.

Whisk flour, baking powder and salt in a medium bowl to blend. Using an electric mixer, beat sugar, eggs and zests in a large bowl until pale and fluffy. Beat in milk, then gradually beat in oil. Add the flour mixture and stir just until blended, then stir in almonds. Transfer batter to pan and place on baking sheet to collect any spills.

Bake until a tester inserted into center of cake comes out with moist crumbs attached, about 35 minutes. Transfer to rack and cool for 15 minutes. Remove cake and place on serving platter, top side up. Sift powdered sugar over the cake.

Look forward to hearing from you as the October leaves fall.

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





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Ross C. Karsnitz' practice focuses on real estate and commercial litigation matters. He handles a wide variety of civil litigation including personal injury, workers compensation, business and real estate.

After graduating from Delaware Law School, Mr. Karsnitz clerked for the Honorable Jan R. Jurden, President Judge of the Delaware Superior Court. Following his clerkship, he practiced criminal defense for the Office of Defense Services, rising through the ranks in Family Court, the Court of Common Pleas and Superior Court in Kent County and New Castle County. By the end of his time at the Office of Defense Services, he was litigating first chair on capital murder cases.

Mr. Karsnitz graduated from Delaware Law School, cum laude, in 2010 and received his B.A. from the University of Delaware in 2006. He was admitted to practice law in Delaware in 2010. He can be contacted at rkarsnitz@morrisjames.com or 302.856.7158.

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