



THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION



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GET INVOLVED IN DSBA LEADERSHIP!



The Delaware State Bar Association is looking for a number of talented members to join the 2021-2022 Executive Committee and lead the DSBA to continued success.

The following positions on the Executive Committee of the Association must be filled for the year 2021-2022:

Vice President-at-Large; Vice President, New Castle County; Secretary; Assistant Secretary; Treasurer; Assistant Treasurer; Six Members-at-Large

Note: The Vice President, Kent County and the Vice President, Sussex County will be those persons selected by, respectively, the Kent County Bar Association and the Sussex County Bar Association.

The following position must be filled for the term as noted:

One (1) DSBA Representative to the Delaware Bar Foundation Board:
Four-year term

One (1) DSBA Young Lawyer Delegate to the ABA House of Delegates: Two-year term

The Nominating Committee wants to consider all interested candidates. If you are interested in serving on the Executive Committee or would like to recommend a candidate, please send your name or the candidate's name along with a CV and at least one letter of nomination to Mark S. Vavala, Executive Director, by email at: mvavala@dsba.org or by mail at: Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE 19801 by February 12, 2021.

WE NEED YOUR HELP TO FIND
STRONG LEADERS FOR THE FUTURE!

The Nominating Committee consists of:

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Kelley M. Huff (2023)
Wilson A. Gualpa (2023)
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Brenda James-Roberts (2023)

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Melissa L. Dill (2023)

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Christophe Clark Emmert (2021)
Chase T. Brockstedt (2022)
Theresa McQuaid Hayes (2023)



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Wilmington, Delaware 19801
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The *Bar Journal* is the independent journal of the Delaware State Bar Association. It is a forum for the free expression of ideas on the law, the legal profession and the administration of justice. It may publish articles representing unpopular and controversial points of view. Publishing and editorial decisions are based on the quality of writing, the timeliness of the article, and the potential interest to readers, and all articles are subject to limitations of good taste. In every instance, the views expressed are those of the authors, and no endorsement of those views should be inferred, unless specifically identified as the policy of the Delaware State Bar Association.

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

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405 North King Street, Suite 100
Wilmington, DE 19801
or emailed to: rbaird@dsba.org

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

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THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

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Cover: DSBA Staff at Ramsey's Farm in Wilmington, DE at the DSBA Fall Festival on October 17, 2020.



Photos courtesy of Leo McTaggart

As we enter the eighth month of the current pandemic, we still have a number of our lawyers who are still working from home and trying to balance home/work/life responsibilities. For some, every day may seem like Groundhog Day, with one day running into the next.

I have found a quick escape. I have gotten into the habit, at the end of a long work day, and even on a weekend, to take a quick trip down to Old New Castle. This is a budget-friendly option as parking is free and so is the excursion through the town. For those of you traveling from the Wilmington area, you can also enjoy a free trip down on Route 141, which unfortunately is under construction again.

There is something about a walk through New Castle that is like a step

back into the historic time machine. Although the town has changed since 1640 when it was first founded, in many ways it has not. The streets still have cobblestones, there is still a Green in the heart of the town, and the original design of the streets is still in place.

But more importantly, the town of New Castle has a visual appeal yet also has a sense of simplicity, calm, and peacefulness. And a long walk through town can quickly allow one to forget for a few minutes about the day-to-day events of our current world.

The historical section of New Castle is rather small, measuring only about four blocks by five blocks. This small area, though, is jammed with a number of historical buildings, approximately 500, many of which have a connection to the practice of law in Delaware.

The most remarkable building is the New Castle Courthouse that sits prominently on Delaware Street as you enter the historic section of New Castle. This area is now part of the First State National Historical Park. The old Courthouse, built in 1732, was the Courthouse for New Castle County from before the creation of the Union until 1881 when court operations were moved to Wilmington. During a recent tour at the old Courthouse, I learned that after the closing of the building, it was for a time converted to a men's club and was used in part for basketball games. As much as I love basketball, it had no place in this beautiful historical Courthouse which has since been restored to resemble its original appearance.

Across the street from the Courthouse is the Old Capital Law Firm, which looks out over Delaware Street. There was a time when the vast majority of the Delaware Bar lived and worked in New Castle. In 2008, I assisted in the publication of a book¹ written by Alexander B. Cooper, Esquire, in 1917. Cooper lived and worked with many of the leading attorneys in the Bar in the time after the Civil War until around the end of World War I. Cooper had a bit of a good career himself, as he worked as a Deputy Attorney General under Attorney General George Gray, City Solicitor for New Castle, Delaware State Senator, and United States Attorney. Many of the houses of those leading attorneys of those days still stand. For example, Cooper's brother was the cashier of the old Farmers Bank Building near the corner of Delaware Street and the Strand. Cooper lived in an upstairs apartment in that building for many years.

A walk through New Castle would not be complete without a long walk along the Battery Park trail. This trail runs some

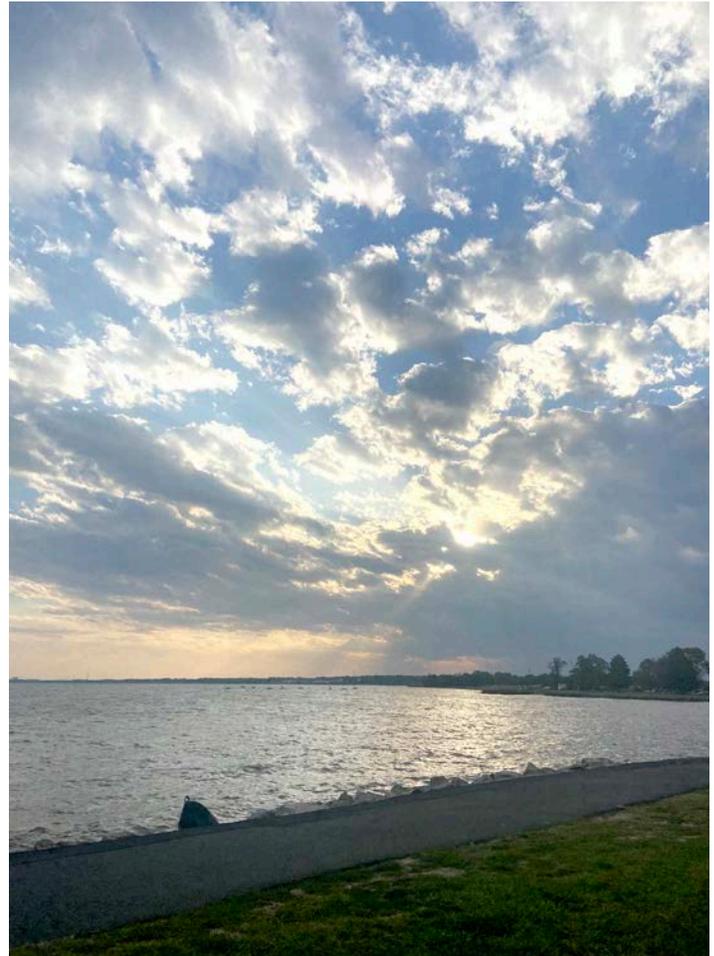
three and a half miles and includes stunning views of the Delaware Memorial Bridge and the Delaware River. You can also see just about any type of dog imaginable as they walk along the trail too. You might get a close-up view of the Kalmar Nyckel, which makes an occasional appearance in Battery Park. There are also almost daily views of monstrous tankers floating down the Delaware River. My former boss Gene Hall once said that the Delaware Department of Justice was like a tanker floating down the Delaware River, that it was hard to move off its course. I think he was in New Castle when he said that.

So shake off that monotony, get out of that home/office, lace up your shoes, and in the words of the Irish, go get a good stretch of the leg (of course in compliance with all CDC guidelines). I will look for you on my next trip to New Castle.² 🇮🇪

Notes:

1. Cooper, Alexander B. *The Bench and Bar of Delaware: as I Knew Them Fifty Years Ago*. Wilmington, DE: Delaware State Bar Association, 2008. The cover of the book is a reproduction of a painting of the New Castle Courthouse, courtesy of the New Castle Court House Museum.
2. Of course, a good walk in any other locale is also just as effective to get out of the house and get up and moving. The opinions expressed in this article are solely those of the author and do not reflect any opinion or statement of his employer.

Michael McTaggart is the current President of the Delaware State Bar Association. He is a Special Assistant United States Attorney in the U.S. Attorney's Office in Wilmington. In 2019, he retired from the Delaware Department of Justice after 31 years of service. He can be reached at MMcTaggart@dsba.org.



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It Was the Worst of Times, It Was the Best of Times... To Be Thankful

The coronavirus pandemic has been the worst of times. But it has also been the best of times. I told a friend that I was planning to write a piece for the *Bar Journal* about how great it has been these past six months, and (somewhat to my surprise) my idea was met with utter disdain.

"Are you nuts?" she asked. "This has been a terrible time. People are depressed and anxious. Hundreds of thousands in the U.S. alone have died. Do you realize how insensitive it would be to write an article about how great things are going?"

"Yes, I'm aware of all that," I replied. "I am fully cognizant of the difficulties. I choose, however, not to focus on them. Rather, for these past months, every day I have been thinking to myself how thankful I am for many, many things."

"Don't write a piece talking about how good you have it, Schwartz," she replied. "You're just going to jinx yourself and irritate everyone else."

Well, at the risk of appearing utterly insensitive to those suffering, and at further risk of jinxing my good fortune, I am going to share my outlook with you. And since my outlook is one of gratitude, you will accept my apology for the positive tone of this piece.

I always thought that if this practicing law thing does not work out, I could become a male model. Or a truck driver. But now I realize teaching second grade would probably be an option, too.

Back at the end of March, in my law firm, we made the decision to ask all our attorneys, paralegals, and our intake staff to work from home. This left three people remaining in the office: our Practice Manager, our receptionist, and one legal assistant who took on the responsibility of scanning in all incoming correspondence and distributing it to the paralegals and attorneys. Most of us are still working from home. I am thankful for the folks that remained in the office so that others could stay home, and I am thankful to those who stayed home and kept up with their clients and cases when they could have been watching Netflix.

I am thankful to be working from home myself. In the Spring, it allowed me to closely supervise the education of my eight-year-old son, Charlie. His lessons

and worksheets were posted every Sunday afternoon on his school's website. I would download and print everything every Sunday night during the Spring semester, and supplement the materials with my own lessons on cursive, poetry and art.

Every morning, I would wake up early and then wake Charlie up too, make him breakfast, and we would have "homeschool" until eleven o'clock or noon. Then he would have the rest of his day to play and I would have the rest of my day and evening to work.

This actually worked out just fine. I always thought that if this practicing law thing does not work out, I could become a male model. Or a truck driver. But now I realize teaching second grade would probably be an option, too.

I am super thankful that my clients now want to Zoom with me (and most have figured out how). For the past several years, although I live in Hockessin, I have been meeting with clients in Wilmington, Dover, Salisbury, and Baltimore.

Wilmington and Dover are easy drives, and Baltimore is an even easier commute — you hop on a train and work the whole way there and back. Salisbury, however, is about two and a half hours away from home (when there is no traffic).

Before the Pandemic, a client would call in and demand to meet with me in Salisbury. The conversation with my assistant would go something like this:

“Hello, Mrs. Crenshaw. Mr. Schwartz is scheduled to be in the Salisbury office two Tuesdays from now. How’s 10:00 a.m.?”

“Well I can’t wait that long! Can’t he be in Salisbury this afternoon?”

“No, he can’t. But we can set you up for a video call if you have Zoom or FaceTime”.

“Oh, for cryin’ out loud! I don’t wanna do that! I didn’t hire an attorney just to meet with him virtually!”

Now it seems the tables have turned:

“Hello, Mrs. Crenshaw. Mr. Schwartz will be in Salisbury two Tuesdays from now. He has the documents for your case and needs to meet with you to review and sign them.”

“Meet!?! He wants to meet!?! Like in person? Oh, for cryin’ out loud! Can’t we schedule a Zoom call and he can email the documents to me?”

See what I mean? I have not had to drive to Salisbury since before the Pandemic kicked off. And for that, I am ever so thankful.

Another thing I am thankful for is that with virtually no commuting, I have had time to think about what I am eating (and identify and break a cycle that was not healthy).

In the course of my normal, pre-pandemic life, my typical day involved giving essentially zero thought to food as I rushed from client appointment to case event to meeting. I would grab a cup of coffee and a breakfast sandwich at Dunkin’ or Wawa or Starbucks on my way to a morning deposition.

It would occur to me around 1:00 p.m. that I was hungry and angry (“hangry”). I would run through the Burger King drive-through and grab something.

That would keep me satisfied until about 7:00 p.m. when I would crash and realize I was hangry again. I would stop back at Wawa on the way home and, half out of my mind with hunger, order a club sandwich or a meatball sub or whatever looked good at that moment. In the grips of a hangry episode, I had no self-control.

I am very thankful to have had a change of pace and a change of place that allowed me to gain this knowledge.

I would grab a bag of peanut M&M’s or a packet of stroopwafels to eat with my foot-long meatball sub with extra provolone.

When you are caught in the cycle between being happily stuffed full of whatever-you-grabbed-at-Wawa, and then crashing and becoming hangry again a few hours later, you are roller-coasting your blood sugar levels and creating an insulin response.

The rise and fall of your blood sugar level will have you making decisions based mainly on emotion. When your blood sugar crashes, you will eat whatever you can get your hands on. And when you eat high-carbohydrate processed foods and your blood sugar level spikes, your body releases a hormone called insulin, which turns everything you just ate into body fat. After several hours, your blood sugar level will drop precipitously, making you hangry again. This is a difficult cycle to escape unless you are cognizant of what is happening, and why it is happening.

I figured out my cycle and I broke it. I started avoiding foods high in sugar and carbohydrates (starches: bread, beer, rice, pasta, etc.). I started eating one meal a day (dinner), and a variety of protein shakes, protein bars, hardboiled eggs, fried eggs, etc. throughout the day to ward off hunger.

Emotionally, I do not feel the ups and downs that came with the cycle I described above. I do not get hungry or angry. I do not feel like I am going crazy when I walk into a Wawa or a Dunkin’ Donuts or go through the Starbucks drive-thru. I am just not hungry through the day, and then I eat a normal dinner. The biggest problem I have is forgetting to eat.

I have dropped a few pounds, too. And, I feel better than I have felt in years. I wonder how many other people are caught in the same rollercoaster cycle I was in. (If this sounds like your daily experience, feel free to reach out via email. It is a miserable cycle to be in.) I am very thankful to have had a change of pace and a change of place that allowed me to gain this knowledge.

In any event, these are just some of the things I am thankful for. I could keep going, but do you really want me to? I did not think so. Until next time... 📞

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

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MEMBER BENEFIT OF THE MONTH

DSBA On-Demand CLE



Despite being around for three years now, there are still a lot of our members who do not realize that any CLE we offer is available about one week after the live event as an online CLE for purchase. And, given that the CLE Commission has relaxed its rules until December 2021, all of the online CLEs can count toward live credits!

Drop by www.dsba.org/cle and click the ONLINE tab, which will let you look over all of the CLEs we have offered for the past two years. Please be sure to only select something that will not expire before you watch, as the Commission requires us to retire anything over two years old.

If you are interested in watching the following CLEs, you do not have much more time, so get over to the 2018 tab on the CLE page and put these in your shopping cart: Medicare Basics (expires December 11); The Ethics of Adoption (expires December 13); Blockchain (expires April 11); or the great keynote from 2019's Bench and Bar on Guantanamo Bay (expires June 25).

There really is not an easier way to get your CLE credits than the convenience of watching at work or home and having multiple days to complete it. Visit www.dsba.org/cle for more information. 

TOP 5

FIVE OF THE BEST THANKSGIVING MOVIES

We all know the great Christmas movies like *Miracle on 34th Street*, *It's a Wonderful Life*, and for some, *Die Hard*. But what are the great Thanksgiving movies? Here are possible contenders:

1 You've Got Mail



This classic Tom Hanks/Meg Ryan rom-com features two thanksgiving dinners, song, and dance.

4 Planes, Trains, and Automobiles



This hysterical and underrated film features John Candy and Steve Martin at their best, going through every mishap trying to get home for Thanksgiving.

2 Alice's Restaurant



Based on the Arlo Guthrie song, this film follows the craziness that happens when the main characters are arrested after Thanksgiving dinner.

5 Avalon



Not completely about Thanksgiving, but this Barry Levinson film takes us to a holiday dinner for a Polish-Jewish family that includes sibling rivalry, outright dysfunction and the degrading "kid's table."

3 The Big Chill



A group of reunited friends celebrate many things including a regret-filled, insecurity-ridden, meal of angst and disillusionment.

YOUR WORDS

WHAT ARE YOU MOST GRATEFUL FOR?



"I am most grateful for my wife and kids. They remind me that there is more to life than my work in the law, but also why that work is so important."

MARK J. CUTRONA, ESQUIRE

Division of Research, Legislative Hall
DSBA MEMBER



"I'm most grateful for having such a big (and loud) tight-knit family. I didn't always appreciate our family gatherings when I was growing up, but looking back now I wouldn't trade the weekly Sunday night dinners or time we all spent together for anything."

NICOLE K. PEDI, ESQUIRE

Richards, Layton & Finger, P. A.
DSBA MEMBER



"Having experienced some recent losses, I am extremely grateful for the extra time I've had to spend with my family and pets while being able to work from home."

SHANA A. PINTER, ESQUIRE

The Law Office of
Denise D. Nordheimer, Esquire, LLC
DSBA MEMBER

Illustrations by Mark S. Vavala

FOR NEXT MONTH...

What life lesson did you learn the hard way?

Email Rebecca Baird at rbaird@dsba.org and your response could be in the next *Bar Journal*.

Invitation to Apply for *Delaware Law Review* Editor-in-Chief Position

The *Delaware Law Review*, published semi-annually by the DSBA, is devoted to the publication of scholarly articles on legal subjects and issues with a particular focus on Delaware law. The DSBA invites interested DSBA members to apply for the position of Editor-in-Chief ("EIC") of the *Delaware Law Review*. The new EIC will begin serving in December 2020. The position requirements include:

- Assuming the overall editorial and administrative responsibility of the *Delaware Law Review* including both short- and long-term planning of the publication.
- Overseeing the Editorial Board of the *Delaware Law Review* by scheduling regular meetings and ensuring that publication deadlines are met.
- Advocating for the *Delaware Law Review* by working with DSBA Section Chairs to develop content for the publication and recruiting new Editorial Board Members.
- Serving as a liaison with DSBA Executive Committee.
- Participating in the review of submitted articles to determine what manuscripts to accept for publication and making the final editorial decision on all articles to be published.
- Assigning Editors from the Editorial Board to edit submitted articles.
- Reviewing all galleys in preparation for publication.

Applicants should have an established track record of publishing articles in law reviews or management responsibility in publications. Skills that are important for the EIC to possess are: organization and attention to detail; commitment to the *Delaware Law Review* and a desire to build on the history of the publication and improve it; and an ability to work with and manage a diverse group of individuals.

If you are interested in serving as the Editor-in-Chief of the *Delaware Law Review*, please submit a current curriculum vitae and letter of interest to Rebecca Baird at rbaird@dsba.org no later than November 30, 2020. 

OF NOTE

Condolences to the family of **Joseph A. Rosenthal, Esquire**, who died on September 27, 2020.

Condolences to the family of **Peggy J. Marshall Thomas, Esquire**, who died on September 29, 2020.

Condolences to **James S. Green Jr., Esquire** and **Jared T. Green, Esquire**, on the death of their father, **James S. Green, Sr., Esquire**, who died on October 12, 2020.

Condolences to **Michael A. Pedicone, Esquire**, on the death of his father, John Pedicone, who died on October 15, 2020.

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



Open Call for Articles!

Do you have a great idea?

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



MEMBER NEWS



Congratulations to CLASI's first Holland Fellow, Anna J. Brousell, Esquire. Anna was admitted to the Delaware Bar in December 2018 and started at CLASI earlier that year on a fellowship funded by Vice President Joseph R. Biden and CLASI Board member Chris Sudell to handle domestic violence cases. The Holland Fellowship allows Anna to continue the important work statewide of CLASI's medical-legal partnership program which supports domestic violence and sexual assault survivors, among others. The Holland Fellowship was created in honor of Justice Randy J. Holland, who throughout his long and distinguished judicial career, modeled the fundamental legal principles of ethics, fairness, and justice.



Congratulations to retired Superior Court Judge Susan C. Del Pesco who received the 2020 Kandler Award, which the ACLU of Delaware has given for 35 years to a person who protects civil liberties throughout their career. During her time on the Superior Court she advocated for better services for female inmates. After leaving the bench, she also helped protect seniors by writing and helping enact a more robust power of attorney statute, and a statute to protect end of life medical choices. Most recently, Judge Del Pesco was a champion for the ERA in Delaware, and was an integral part of the team that achieved the amendment to the Delaware Constitution to protect equal rights. 

Professional Guidance Committee

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

New Castle County

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DSBA/DE-LAP Liaison

*Certified Practice Monitor

CALENDAR OF EVENTS

November 2020

Monday, November 9, 2020 • 9:00 a.m. – 11:00 a.m.

A Primer on Restorative Justice

2.0 Hours CLE credit

Live Webinar via Zoom

Tuesday, November 10, 2020 • 8:30 a.m. – 12:30 p.m.

Short Topics in Real Estate

3.8 hours CLE credit

Live Webinar via Zoom

Thursday, November 12, 2020 • 1:00 p.m. – 5:15 p.m.

Delaware Corporate Law: A CLE in Two Parts

Recent Developments in the Case Law and a Roundtable Discussion Among Distinguished Transactional Attorneys

4.0 Hours CLE credit

Live Webinar via Zoom

Friday, November 13, 2020 • 9:30 a.m. – 12:45 p.m.

The Impact of Videoconferencing on Alternative Dispute Resolution & Litigation

3.0 hours CLE credit including .5 hour Enhanced Ethics credit

Live Webinar via Zoom

Monday, November 16, 2020 • 4:00 p.m. – 5:30 p.m.

Beyond the Bench: First in a Zoom CLE Series with Retired Judges

1.5 Hours CLE credit

Live Webinar via Zoom

Tuesday, November 17, 2020 • 9:00 a.m. – 12:15 p.m.

Commercial Law

3.0 Hours CLE credit

Live Webinar via Zoom

Tuesday, November 17, 2020 • 12:00 p.m. – 1:00 p.m.

DE-LAP's Behind the Cool Image Series: Lawyering in the 21st Century The Burden of Proof: Letting Go of Unwanted Perfectionism

1.0 Hours CLE credit in Enhanced Ethics

Live Webinar via Zoom

Wednesday, November 18, 2020 • 10:00 a.m. – 12:00 p.m.

E-Discovery & Technology

2.0 hours CLE credit in Enhanced Ethics

Live Webinar via Zoom

Friday, November 20, 2020 • 9:00 a.m. – 12:15 p.m.

Supreme Court Review 2020

3.0 hours CLE credit

Live Webinar via Zoom

December 2020

Tuesday, December 1, 2020 • 10:00 a.m. – 12:00 p.m.

Transitioning Toward Authenticity

2.0 hours CLE credit in Enhanced Ethics

Live Webinar via Zoom

Tuesday, December 8, 2020 • 8:30 a.m. – 3:45 p.m.

Making Your Case with a Better Memory

6.0 hours CLE credit in Enhanced Ethics

Live Webinar via Zoom

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

SECTION & COMMITTEE MEETINGS

November 2020

Wednesday, November 4, 2020 • 12:30 p.m.

Women & the Law Section Meeting

Zoom Meeting, see Section listserv message for link and password

Tuesday, November 10, 2020 • 12:00 p.m.

Litigation Section Meeting

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

Tuesday, November 10, 2020 • 3:30 p.m.

Estates and Trusts Section Meeting

Zoom Meeting, see Section listserv message for link and password

Wednesday, November 11, 2020 • 4:00 p.m.

Real and Personal Property Section Meeting

Teleconference Meeting, see Section listserv message for call-in information

Friday, November 11, 2020 • 12:00 p.m.

Workers' Compensation Section Meeting

Teleconference Meeting, see Section listserv message for call-in information

Wednesday, November 18, 2020 • 9:00 a.m.

ADR Section Meeting

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

Thursday, November 19, 2020 • 11:45 a.m.

Executive Committee Meeting

Zoom Meeting, link will be sent via email

Thursday, November 19, 2020 • 12:15 p.m.

Torts and Insurance Section Meeting

Teleconference Meeting, see Section listserv message for call-in information

Thursday, November 19, 2020 • 3:30 p.m.

Corporation Law Section Meeting

Zoom Meeting, see Section listserv message for link and password

Thursday, November 19, 2020 • 4:00 p.m.

Elder Law Section Meeting

Teleconference Meeting, see Section listserv message for call-in information

Friday, November 20, 2020 • 12:30 p.m.

LGBTQ+ Section Meeting

Teleconference Meeting, see Section listserv message for call-in information

Wednesday, November 25, 2020 • 12:00 p.m.

Government and Consumer Law Section Meeting

Teleconference Meeting, see Section listserv message for call-in information

December 2020

Tuesday, December 1, 2020 • 3:30 p.m.

Estates and Trusts Section Meeting

Zoom Meeting, see Section listserv message for link and password

Wednesday, December 2, 2020 • 12:30 p.m.

Women & the Law Section Meeting

Zoom Meeting, see Section listserv message for link and password

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

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Selfies

A New Field of Law

If I were West Publishing Company, it would be time for me to assign legal issues relating to Selfies their own set of Key Numbers (assuming in this digital age that West still does that sort of thing). It was not until I began the research that I realized how many fields of law are touched by the innocuous, even childish, act of memorializing oneself in an unusual place or unique situation. Of course, I never would have thought a lawyer could make a career out of litigating coffee because it was served too hot. But, here we are.

Let's start with the statistics. As of 2018 there have been approximately 260 deaths caused by people attempting to take the perfect picture. The year 2016 was considered by many to be the "year of the selfie." According to one insurance study, four percent of all drivers admitted to taking pictures of themselves while driving. While you may be skeptical about these kinds of numbers, remember, many new millennials practiced texting while driving when they were getting their learners' permits. CBS News has referred to the act of young people taking their own pics as a form of "fatal attraction."¹

Of course, motor vehicle accidents and selfies are the obvious, even pedestrian, connection with the law. However, that is not what drew me into looking further into the connection between the law and selfies. Lawyers are creative. Let me give you some examples.

Sports Law and Selfies

In 2018, Plaintiff Brian Borruso was a spectator at the Valspar Gold Tournament in Palm Harbor, Florida. According to the complaint, plaintiff was simply engaged in the act of taking a selfie, with Tiger Woods in the background, when Woods' caddie intentionally pushed him aside causing the alleged injuries. Borruso claimed damages in excess of \$30,000.²



Intellectual Property

It seems obvious that one taking a selfie ought to expect some form of copyright ownership in the result. That was the issue in a 2015 lawsuit filed by PETA against David Slater, a wildlife photographer. The selfie at issue was not of Slater, but rather an Indonesian named Naruto — a macaque monkey using Slater's camera. The case was settled while in the 9th Circuit Court of Appeals. Slater agreed to donate 25 percent of the revenues from the images to an organization protecting Naruto and his relatives.³

Constitutional Law

Who would have ever thought that the selfie would become a First Amendment issue? It seems reasonable there might be laws banning the use of cameras at or near election polling booths. These laws are aimed at encouraging voting and protecting voters from intimidation. Since cameras are involved, the law also prevents a voter from taking selfies while in the voting booth. The statute was challenged in Michigan as a violation of the First Amendment and the right to free speech. The "ballot-selfie ban" contest was settled by permitting voters to "selfie" the ballot in the booth, but not the individual voting.⁴

Medical Malpractice

We should expect lawyers to be marketing this growing area of law. After all, this may be a new niche market. Take a look, for example, at the Strom Firm in Columbia, South Carolina. In January of this year, the firm posted a page on its website devoted to Medical Malpractice selfie liability. “Doctors that Take Selfies with Patients is a Strange Internet Trend that Could Lead to Medical Malpractice Charges.”⁵ Is this a stretch? Probably not.

Legal Ethics

In closing, it is just a matter of time before the issue of selfies and lawyers will be before the court.⁶ So, before you snap the picture of you in front of the winning jury, be sure (1) you have asked the judge for permission, (2) you have the appropriate releases from the jurors, and (3) you have selected the panoramic view on your iPhone 12, so that everyone is in the image. You might find yourself in *Above the Law*. 

Notes:

1. Leefeldt, Ed. “Fatal Attraction for Drivers: Taking a ‘Selfie’ on the Highway,” May 11, 2017. <https://www.cbsnews.com/news/selfies-while-driving-a-fatal-attraction-for-drivers/>.
2. McCann, Michael. “Analyzing The ‘Selfie Lawsuit’ Against Tiger Woods,” April 10, 2020. <https://www.si.com/golf/2020/04/10/tiger-woods-selfie-lawsuit-joe-lacava-analysis>.
3. Slotkin, Jason. “‘Monkey Selfie’ Lawsuit Ends With Settlement Between PETA, Photographer.” NPR. NPR, September 12, 2017. <https://www.npr.org/sections/thetwo-way/2017/09/12/550417823/animal-rights-advocates-photographer-compromise-over-ownership-of-monkey-selfie>.
4. Oosting, Jonathan. “Michigan Set to Allow Ballot Pics under ‘Selfie’ Settlement.” The Detroit News. The Detroit News, May 8, 2019. <https://www.detroitnews.com/story/news/local/michigan/2019/05/08/michigan-allow-ballot-selfies-under-settlement/1140106001/>.
5. Strom, Pete. “New Trend of ‘Doctor Selfies’ Could Lead to Malpractice Lawsuits.” Strom Law Firm, August 24, 2020. <https://stromlaw.com/doctors-selfie-lead-to-medical-malpractice-charges/>.
6. Patrice, Joe. “Is It Ethical To Take Selfies With Your Acquitted Client?” *Above the Law*. Above the Law, September 30, 2015. <https://abovethelaw.com/2015/09/is-it-ethical-to-take-selfies-with-your-acquitted-client/>.

Richard K. Herrmann is a Visiting Professor at Delaware Law School. He can be reached at rkherrmann@widener.edu.

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

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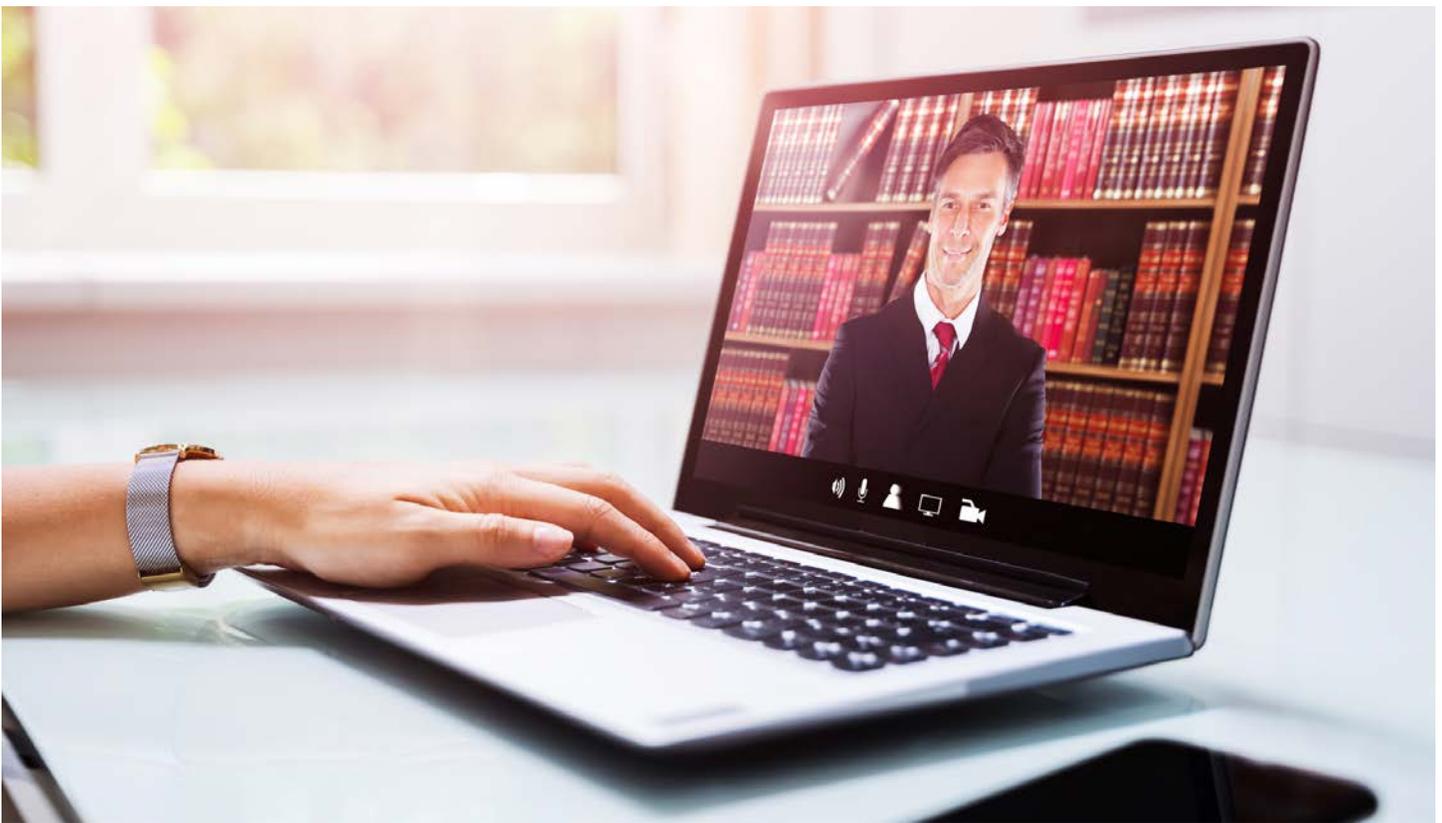


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Lights, Camera, Zoom

Presenting Via Videoconference

BY MOLLY DIBIANCA, ESQUIRE



The era of videoconferencing has arrived. And, from the looks of it, it is here to stay. Video appearances have replaced in-person meetings and phone calls. Court appearances, committee meetings, and client calls now take place via Zoom, Skype, and Microsoft Teams. Lawyers are experts in many things, but experts in videography we are not. Pre-COVID-19, lawyers merely had to dress appropriately to present a professional appearance. But when it comes to video, there is more involved than clothing.

Angles Matter

The angle of the camera matters tremendously. Prior to the start of a videoconference, be sure to adjust the angle of your webcam in order to portray yourself in a court-appropriate and professional manner.

Be sure to have the camera at least as high as eye level and preferably higher. Any good Instagrammer knows that people look their best when the camera is aimed at the face from a vantage point higher than eye level. Whatever you do,

do not have the camera set to look up at you from a lower angle. Unless you want the other participants looking at your nostrils, raise the camera. This may mean that you need to elevate your computer with a stack of books, for example. Just remember, you do not want to look down — literally or figuratively — on the others on the call.

Not Too Close

Ergonomics dictate that your computer screen should be approximately an arm's length away from you while you

NOTICE

The Supreme Court Commission on Law and Technology (the “Commission”) is accepting nominations and applications for new members. Members are appointed by the Delaware Supreme Court and serve a three-year term. The Commission’s members include judges, IT directors, and attorneys in private practice, public service, and in-house. Potential members need not be technology experts but should be interested in the impact technology has on the law.

The names of interested persons should be submitted to the Commission’s co-chairs, Ed McAndrew (ed.mcandrew@dlapiper.com) and Molly DiBianca (mdibianca@clarkhill.com) before January 30, 2021.

type. Be sure that you carry that rule into your videoconferences. Save the closeup for photographs and spare participants from having to see every line, spot, and wrinkle. Remember, the court would normally be seated many feet away from you if you were presenting in a courtroom. Seat yourself at least a couple of feet away from the webcam to maintain that distance in a virtual setting. The image on the screen should include not only your face but also your shoulders. If your face fills the screen, you are seated too close to the camera.

Lighting Is Everything

It is next to impossible to have too much light so, when in doubt, add more lighting. Turn on all of the lights in the room and, whenever possible, be seated near a source of natural lighting like a window. The brightest source of light should be just behind and to the side of your webcam. Do not have the light source set up behind you — the shadows will obscure your face and your image will be dark. If you are seated in front of a window, rearrange your setup so that the light is in front of you.

If your room is not bright enough, consider adding a lamp or other light source just behind the computer. LED

ground of our videocalls are likely the walls we have decorated with framed diplomas, photos, or bookcases. Presumably, your office is not filled with items that would be inappropriate in a professional setting. In that case, so long as your camera angle is correct (and the camera is not aimed at the drop ceiling tiles or the upper ledge of the doorframe), your background is likely fine.

Lawyers are experts in many things, but experts in videography we are not. Pre-COVID-19, lawyers merely had to dress appropriately to present a professional appearance. But when it comes to video, there is more involved than clothing.

ring lights are an excellent option. Ring lights are adjustable, lightweight, portable, and do not produce heat that can be problematic with traditional light sources. They also are relatively inexpensive. I purchased a professional LED ring light from B&H Photo Video for \$80 and there are many less expensive options, as well.

Background Checks

For those of us lucky enough to have returned to an office setting, the back-

But, if you are working from home, you may not want to display your actual background on video, particularly if you are not one of the lucky ones with a private home office. In that case, consider utilizing Zoom’s virtual background feature. This feature enables you to choose a photo or other image that can be used as your background. I have used or seen others use photos of places they have traveled (a street corner in Paris, for example) and even outdoors scenes (like the idyllic Brandywine Park).

For court appearances and other situations where decorum is paramount, I have used an image of the Delaware state flag as my virtual background. I have also used plain colors as my background. A simple google search for “Zoom backgrounds for lawyers” will give you a virtually unlimited number of potential options, including photos of bookshelves filled with legal texts.

If you want to have the cleanest image possible for your background, consider investing in a portable green screen. You can buy one online or at a video supply store. They come in a variety of sizes but the smaller it is, the closer it will have to be to you in order to fill the frame. It can be any shade of green — the key is to have a solid and vibrant color that the camera can easily detect. If you do use a green screen, be sure to avoid wearing any green or similarly colored clothing or accessories, including neckties. 🚫

Molly DiBianca is the Member In Charge of Clark Hill, PLC’s Wilmington office, where she practices labor and employment law. Molly is the Co-Chair of the Delaware Supreme Court Commission on Law and Technology. She can be reached at mdibianca@clarkhill.com.



The Slow Tide of Change and the Move Toward Non-Lawyer Partners and Practitioners

No one actually sees the coming tide. The change is so gradual, it goes unnoticed until you realize that the water is deeper. The same could be said about non-lawyer partners and practitioners.

American Bar Association Model Rule 5.4(b) states, “A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.” Delaware’s Rule 5.4(b) mirrors the Model. Most, if not all, jurisdictions adopted the Model or similar rule.

In 1991, the District of Columbia Bar abandoned the Model to permit lawyers to practice law with non-lawyer partners or owners. The rule came with conditions. The non-lawyers could only provide professional services within the firm. The law firm can solely offer legal services. Finally, the non-lawyers in the firm are bound by the rules of lawyer professional conduct.

D.C. law firms have used the Rule to add economists, lobbyists, public relations experts, and other non-lawyer specialists to the partnership ranks. Large accounting firms have used the Rule to add legal services. Law firms have added medical and other scientific expert partners as litigation resources.

D.C. led the way, and for almost 30 years, no one followed. But recently,

there has been renewed interest and some action toward multi-disciplinary practice and an expanded role for paraprofessionals.

On August 27, 2020, Arizona became the first state to eliminate its ethics rule barring non-lawyers from having an economic interest in a law firm or participating in fee sharing. Firms were invited to propose alternative business structures, including non-attorney owners, to the Court as part of a “rigorous application process.” Any approved non-traditional legal businesses will have to comply with a new code of conduct including the employment of an internal compliance attorney.

Per the Arizona task force that recommended the elimination of Arizona’s Rule 5.4(b), the ban that prohibits lawyers and non-lawyers from co-owning businesses that engage in the practice of law has long been controversial. The task force concluded that the ban “was not rooted in protecting the public but in economic protectionism.”

The Arizona report went on to say, “The legal professional cannot pretend that lawyers operate in a vacuum, surrounded and aided only by other lawyers or that lawyers practice law in a hierarchy in which only lawyers should be owners. Non-lawyers are instrumental in helping lawyers deliver legal services, and they bring valuable skills to the table.”



As part of the Arizona Supreme Court adoption of a series of reforms intended to expand access to justice, the Court also approved a new category of non-lawyer licensee called “Legal Paraprofessionals” who will be permitted to represent clients in court.

Arizona’s new Legal Paraprofessionals (who will be known as LPs) will practice as affiliate members of the State Bar subject to the same ethics rules and discipline process as lawyers. An Arizona Supreme Court statement says that those interested in becoming LPs would have to meet education and experience requirements, pass a professional abilities examination,

Not to be outdone, the Washington, D.C. Bar is considering further relaxing its Rules related to non-lawyer law firm ownership, fee splitting, and non-lawyer practitioners. The D.C. Bar’s Global Legal Practice Committee solicited public comments on “alternative business structures” and “multidisciplinary practice” noting that the United Kingdom also permits alternative business structures and non-attorney legal service providers. The Committee is soliciting comments regarding how law firms could benefit from sharing fees with non-lawyers especially in the context of firms who currently work with third party litigation funders.

The changes under consideration could allow external investment in a law firm or even non-lawyer ownership. It could also expand the roles of non-attorney or paralegal professionals in providing representation and other legal services.

and pass a character and fitness process. They will be permitted to handle administrative law, family law, debt collection, and landlord/tenant disputes with limited jurisdiction in civil and criminal matters.

Washington State has allowed non-lawyer practitioners since 2012 when it created the Limited License Legal Technicians (LLLT) initiative. However, Washington sunset the LLLT program in June 2020, citing cost concerns and a lack of applicant interest. Utah permits Licensed Paralegal Practitioners.

The California State Bar and the Chicago Bar Association also have task forces which are examining similar potential revisions. The California initiative was met by an outpouring of critical public comments expressing concerns that Big Law would be replaced by the Big Four of accounting. The ABA’s House of Delegates also considered a resolution that would encourage jurisdictions across the U.S. to experiment with new regulatory models.

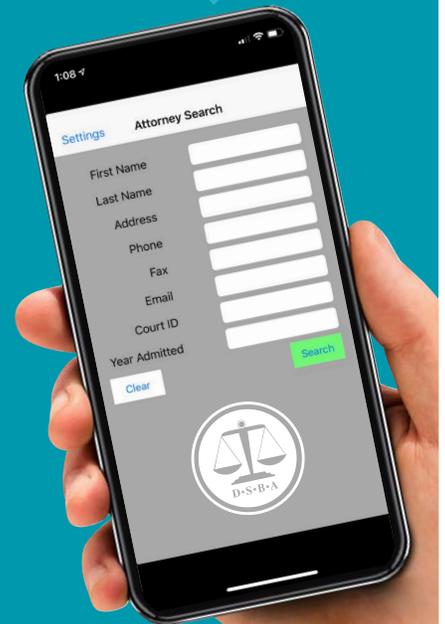
The changes under consideration could allow external investment in a law firm or even non-lawyer ownership. It could also expand the roles of non-attorney or paralegal professionals in providing representation and other legal services. These changes warrant attention. Will D.C. remain an outlier, or is it the bellwether for changes to the way we will all be practicing law in the future?

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

“Ethically Speaking” is available online. Columns from the past five years are available on www.dsba.org. 

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

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Dealing with Life Quakes

Jane Doe was born to a first-generation Polish family. Growing up, Jane remembers her grandparents speaking Polish in their home, as did her parents, especially when discussing issues that they did not want her nor her siblings to hear. Jane's upbringing was modest, but healthy. Jane grew up in a middle-class neighborhood with loving parents. She attended parochial grade school and a prestigious college preparatory school. Jane was popular and life was good.

Jane was the first to finish college in her immediate family. Then, like many women in the late 1960s and early 1970s, Jane married and started a family. Jane recalls that raising her two children was the best time in her life. Still, Jane wanted more. As the children grew and became more independent, she entered a dual program of graduate work in Public Policy and Law.

During this time, Jane experienced horrific disruptions that included her mentor and future law partner being diagnosed and subsequently dying of bone cancer; caregiving and opening her home to her mother who suffered a stroke; and financial disruptions. Jane was witnessing her dreams being quashed one by one. She was devastated and needed help. In the 1980s, however, the word distress (long-term chronic stress) was considered something women complained about. A wellbeing toolkit was for the future, not in Jane's present. She felt that no one understood the grief and distress that she was experiencing, especially not the academic institution that she was attending at night.

Jane was unprepared for these life quakes. She felt like a failure. Jane was taught — and she believed — that if she worked hard all her dreams came true: a healthy and happy family, financial health; her solo law practice in the city. Right? Wrong!

Disrupters, or life quakes, can and do happen to all of us. Jane learned this the hard way that she must be aware of these life quakes and sharpen positive coping skills to navigate successfully through change, distress, and transition. Life is full of disruptions and we need to master the shift and cope with change. This is especially imperative today with election stress, the COVID-19 pandemic, and life in general.

Understand, React, and Adapt to Life Disruptions

Charles Darwin is quoted as saying: "It is not the strongest of the species that survives, nor the most intelligent, but the one most responsive to change." Whether it is planned or unplanned, voluntary or involuntary, big or little, sudden or gradual, the only thing in life that is certain is change from life disruptions and quakes.

Change may range from minor everyday events to major life events such as Jane's life disruptions, or presently, COVID-19 or election fatigue. It can be about our behaviors or our environment; it can be about bad stuff or good stuff. We cannot prevent it. We can, however, improve the way we understand it, react to it, and adapt to even unplanned or catastrophic change. Hence, change is not something to fear nor resist. Rather, by embracing and adapting to it, we learn more about who we are and what we can do while gaining confidence.

Understanding Life Disruptions and Change

The definition of "change" is the act or instance of making or becoming different. Perhaps you are confronting change, whether planned or unplanned. Perhaps you are experiencing loss or grief that is implementing unwanted change. Or, like Jane, you are experiencing all of these disruptions and know that you are losing your edge at work and need to find new ways to use your skills. Whatever the change — you are not alone. Life is fluid and we all experience change.

The father of stress research, Hans Selye, in *The Stress of Life*, states:

Life is largely a process of adaptation to the circumstances in which we exist — resisting change wears down our bodies, taxes our minds, and deflates our spirits.¹

He explains further that the secret of health and happiness lies in successful adjustment to the ever-changing conditions in our personal world. Knowing that change is inevitable is important; but understanding the process of adapting to change is crucial.

Change is often similar to moving through grief. Whether planned, or unplanned, change is a loss and we need to move through it.

- We react to our loss with shock, numbness, and disbelief.
- We begin the difficult journey of understanding that our loss is real.
- We allow ourselves to experience the pain of our grief in all of its forms.
- We identify how our environment has changed and begin to develop new roles, routines, and skills in response to the changes.
- We eventually come to a point where we choose to say “yes” to life again.

Basic changes will necessitate many other changes in order to completely transition to a new situation. In *Psychology Today*, Abigail Brenner, M.D. offers key points to help you transition through change while taking the fear and drama out:

- 1. Transition takes you from here to there.** It is the essential piece that defines change. Transition can be a vehicle, a conscious catalyst to set a desired goal in motion. For example, you may have been held back from making changes in your life for any number of reasons: too disruptive to your life, un-negotiable with significant others, or restrictive financial consideration. But, the life you once knew is gone. In this case, transition may afford you a window of opportunity to start over again, this time focusing on what you really want out of life.
- 2. Fear of the unknown is totally rational.** Otherwise, we would be rushing into places we should not go. Rational fear allows us to cautiously explore what we have little or no idea about so that we can make careful and sound decisions about how to best proceed.
- 3. The preparation for the journey requires that you take only what you absolutely need with you.** In part, this means assessing the situation to fully understand your options before you actually make the transition. When you process in this way, you streamline your efforts so that you can fully focus your attention on the task at hand.
- 4. Beyond any spiritual connotation, enlightenment means to achieve clarity, to shed light on that which had been unknown.** Traveling “light” means leaving your excess baggage behind, before you start your journey. Take only the bare essentials, things you absolutely need to move forward.
- 5. Gain reasonable closure on what is left behind.** Although you may experience any number of emotions around this, try to understand the reason and purpose for the existence of this experience in your life. Try to see its value to you, although you might have previously thought of it as nothing more than an obstacle in your path, or as an albatross around your neck.
- 6. Your missteps and mistakes, your disappointments and disasters are the raw material for new opportunities and challenges.**²

Remember Jane? Her story has a happy ending. Devastation was her first reaction to seeing her dreams float away. Rather than be defeated, Jane, with the support of others, realized that this transition could have a silver lining. In fact, Jane decided to leave the law and study organizational counseling at a prestigious university. Now, twenty years later, Jane is grateful for learning to ask for help, having the courage to

SIDEBAR

In his book, *How to Survive Change...You Didn't Ask for: Bounce Back, Find Calm in Chaos, and Reinvent Yourself*, M.J. Ryan offers a clear and concise game plan for accepting a new reality, thoroughly exploring the available options and taking concrete steps toward regaining control over planned or unplanned change.

His guide to adaptability to change includes, *Seven Truths about Change*:

1. Change Is the One Thing You Can Count On.
2. It Is Not Personal.
3. Your Thinking Is Not Always Your Friend.
4. Change Isn't the Enemy, Fear Is.
5. There's a Predictable Emotional Cycle to Change.
6. You're more Resilient Than You May Think
7. Your Future Is Built on a Bedrock That Is Unchanging.³

embrace her horrific life disruptions and quakes, and the strength and wisdom to adapt to change facilitated by her life disrupters and life quakes.

Should you, or anyone you know, want more information or help regarding this subject or other issues that may be affecting either your work productivity or personal life call DELAP at (302) 777-0124 or email cwaldhauser@de-lap.org. We do together what need not be done alone. And, attend our free webinar series, workshops, and support groups. Happy Thanksgiving and wishing all of you a healthy and happy holiday season. 🍷

Notes:

1. Selye, Hans, and Hans Selye. *The Stress of Life*. New York: McGraw-Hill, 1956.
2. "5 Key Points to Help You Change Your Life | Psychology Today." Accessed October 23, 2020. <https://www.psychologytoday.com/us/blog/in-flux/201805/5-key-points-help-you-change-your-life>.
3. Ryan, M. J. *How to Survive Change...You Didn't Ask for: Bounce Back, Find Calm in Chaos, and Reinvent Yourself*. San Francisco, CA: Conari Press, 2014.

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

Pro Hac Vice and the Ethical Implications of Serving as Delaware Counsel

BY KATHLEEN M. VAVALA, ESQUIRE

As some aspects of public discourse devolve, Delaware lawyers share the important task of ensuring that standards of civility and professionalism in our courts remain intact. One area where Delaware lawyers must be particularly vigilant is in sponsoring out-of-state lawyers for *pro hac vice* admission. Like bringing a guest to a party, a Delaware lawyer who moves the *pro hac vice* admission of an out-of-state lawyer in a Delaware court bears more than nominal responsibility for that guest's conduct.

Like bringing a guest to a party, a Delaware lawyer who moves the *pro hac vice* admission of an out-of-state lawyer in a Delaware court bears more than nominal responsibility for that guest's conduct.

Delaware's *pro hac vice* rules impose professional obligations on out-of-state counsel.¹ *Pro hac vice* counsel must agree to be bound by the Delaware Lawyer's Rules of Professional Conduct and review the Principles of Professionalism for Delaware Lawyers as conditions of their limited admission.² In the vast majority of cases, *pro hac vice* counsel comport themselves in accordance with these standards. However, when things

go awry, out-of-state counsel may both jeopardize their *pro hac vice* status and subject themselves to discipline for professional misconduct. It is well settled law that Delaware courts may revoke³ or allow the withdrawal⁴ of out-of-state counsel's *pro hac vice* status. Notwithstanding that revocation, the Delaware Supreme Court also has the authority to impose professional discipline on non-Delaware lawyers who provide legal services in this jurisdiction.⁵ This authority extends to lawyers admitted *pro hac vice*, and the Court has imposed professional discipline on *pro hac vice*

counsel on several occasions.⁶ However, what of the Delaware counsel who sponsored the admission of these errant out-of-state lawyers?

Delaware counsel's professional conduct may be scrutinized where they fail to exercise adequate supervision over either the case corpus or the "guest" lawyer. First, Delaware counsel moving the *pro hac vice* admission of out-of-state counsel must provide a certification to

the court as to the out-of-state counsel's good standing,⁷ including a reasonable investigation into qualifications of the out-of-state attorney.⁸ Next, unless excused by the court, Delaware counsel has a duty to enter their appearance, sign or receive service of all notices, orders, pleadings, or other papers filed, and attend all proceedings before the Court.⁹ In some instances, this may include the obligation for Delaware counsel to be present during phone calls with the court. Finally, the *pro hac vice* lawyer's admission does not relieve Delaware counsel of their duty of candor to the court or their "responsibility to comply with any Rule or order of the Court."¹⁰ Delaware counsel who fail to take more than a *de minimis* role in the representation may be subject to discipline.¹¹ Depositions by out-of-state counsel present particular concerns. While Delaware counsel's attendance at a deposition may not be required by court rule, the Delaware Supreme Court has observed, "Delaware counsel moving the admission of out-of-state counsel *pro hac vice* also bear responsibility...[to] ensure that out-of-state counsel understands what is expected of them in managing deposition proceedings outside the courthouse so that the litigation process is not abused." *In re Shorestein Hays-Nederlander Theatres, LLC Appeals*, 213 A.3d 39, 78-79 (Del. 2019). In addition, when *pro hac vice* counsel's inappropriate conduct has been brought to the attention of Delaware counsel, counsel should not

turn a blind eye and instead take immediate remedial action.

Delaware counsel's vigilance in investigating and carefully supervising the work of out-of-state *pro hac vice* counsel will ensure the integrity of Delaware court proceedings is not compromised by failure to control witnesses or undermined by abusive litigation tactics. 

Notes:

1. See generally Del. Supr. Ct. R. 71(b)(ii); Chan. Ct. R. 170(c)(ii); Del. Super. Ct. Civ. R. 90.1(b)(ii); Del. CCP Civ. R. 90.1(b)(ii); and Del. Fam. Civ. R. 90(b)(2)(B).
2. See, e.g., Del. Supr. R. 71 and Ct. Chan. R. 170 (c)(ii).
3. *State v. Mumford*, 731 A.2d 831, 835-36 (Del. Super. 1999)(Delaware Superior Court revoked out-of-state lawyer's *pro hac vice* admission based on his failure to control witness's offensive behavior during deposition); see also *State v. Grossberg*, 705 A.2d 608 (Del. Super. 1997)(Delaware Superior court revoked lawyer's *pro hac vice* admission for violating a court order). See also *Kuang v. Cole Nat'l Corp.*, 2004 WL 1921249 (Del. Ch.)(*Pro hac vice* admission denied based on out-of-state *pro hac vice* counsel's abusive litigation tactics).
4. See, e.g., *Lendus, LLC v. Goede et al.*, 2018 WL 6498674 (Del. Chan. Dec. 10, 2018)(Court of Chancery granted defendants' motion to withdraw the admission of *pro hac vice* counsel who engaged abusive conduct during deposition).
5. Delaware Lawyers' Rule of Professional Conduct 8.5(a).

6. See, e.g., *In re McCarthy*, 173 A.3d 536 (Del. 2017) (Pennsylvania lawyer admitted *pro hac vice* was subject to discipline by Delaware Supreme Court for, inter alia, concealing unfavorable discovery) and *In re Alex Brown*, 103 A.3d 515 (Del. 2014) (Maryland lawyer was publicly reprimanded for violating a court order).
7. See, e.g., Del. Supr. R. 71(b).
8. *Paramount Communication, Inc. v. QVC Network, Inc.*, 637 A.2d 34, 55-56 (Del. 1994)(emphasizing the importance of Delaware counsel's certification); *Beck v. Atlantic Coast PLC*, 868 A.2d 840, 856 (Del. Ch. 2005)(same). See also *The Principles of Professionalism for Delaware Lawyers, Subpart C* ("Before moving the admission of a lawyer from another jurisdiction, a Delaware lawyer should make such inquiry as required to determine that the lawyer to be admitted is reputable and competent...")
9. Del. Supr. Ct. R. 12(c).
10. Del. Supr. Ct. R. 71(a) and Ct. Chan. R. 170(b).
11. See, e.g., *Private Admonition*, ODC. File No. 2012-0297-B (July 2, 2013)(Delaware lawyer who sponsored the *pro hac* admission of an out-of-state law partner was privately admonished where he failed to adequately supervise discovery and litigation, failed to correct false statements, and failed to disclose fraudulent behavior by out-of-state law partner).

Kathy Vavala has been Deputy Disciplinary Counsel for the Office of Disciplinary Counsel of the Supreme Court of Delaware since 2013. She also teaches as an Adjunct Professor at Delaware Law School and Saint Joseph's University. Kathy can be reached at Kathleen.Vavala@delaware.gov.



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2020 Virtual Awards Ceremony

Wednesday, September 30, 2020

Because the annual Law Day Luncheon and Bench and Bar 2020 were cancelled due to COVID-19, the DSBA honored the Award recipients, traditionally recognized at these events, at a virtual Awards Ceremony on September 30, 2020 with over 100 people in attendance via Zoom.



1. Samuel D. Pratcher III, Esquire, of Pratcher Krayter LLC was awarded the Community Service Award by presenter Charles H. Toliver IV, Esquire, of Leroy A. Tice P.A. (not pictured).
2. Robert F. Garey (R) of the Delaware Agricultural Lands Preservation Foundation was presented with the Liberty Bell Award, by Michael T. Scuse, Secretary of Agriculture for the State of Delaware (L).
3. Myron T. Steele, Esquire, of Potter Anderson & Corroon LLP was the recipient of the First State Distinguished Service Award. He was presented this award by Kathleen Furey McDonough, Esquire, of Potter Anderson & Corroon LLP (not pictured).

Fall Festival

Saturday, October 17, 2020 | Ramsey's Farm

On a crisp autumn day at Ramsey's Farm in Wilmington, over 30 DSBA members and DSBA staff spent the afternoon enjoying a bonfire, going on hayrides, navigating the corn maze, and enjoying snack and drinks. Join us next year for more fall fun! 🍂



The Alternative Dispute Resolution Section to Present Kimmel-Thyng Award

November 13 Presentation of the ADR Section's Kimmel-Thyng Award to Yvonne Takvorian Saville to be Followed by CLE Program Addressing the Impact of Videoconference Technology on ADR and Litigation

On Friday, November 13, the DSBA's ADR Section will present its Kimmel-Thyng Award to Yvonne Takvorian Saville, Esquire. The Section established the Award in 2019, with the support of the Association's Executive Committee. The Award recognizes excellence in promoting effective alternative dispute resolution in Delaware. It is named after the late Morton Richard Kimmel and The Honorable Mary Pat Thyng. Last year, the first recipients of the Award were Mr. Kimmel (with posthumous presentation to his son, Larry) and Chief Magistrate Judge Thyng.

This year's recipient of the Award, Yvonne Takvorian Saville, exemplifies excellence in all that she does as a "go-to" ADR professional. In addition to being a talented litigator as a partner at Weiss, Saville & Houser, P.A., she is one of the Delaware Bar's most sought-after mediators. And her leadership at the Bar is well-known, having served with distinction as President of the Delaware Trial Lawyers Association (twice) and President of the Delaware State Bar Association.

The virtual award presentation will take place at 9:00 a.m. At 9:30 a.m., the ADR Section and the Torts & Insurance Law Section will co-sponsor a virtual CLE program entitled, "The Impact of Videoconference Technology: Best Practices and Potential Pitfalls." The program, as the title suggests, will explore current trends, best practices, and potential pitfalls. The program will conclude by 12:45 p.m.

Please see the registration materials circulated via the Association's listserv. 

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The Honorable Helen S. Balick

1931 - 2020

BY THE HONORABLE CHRISTOPHER S. SONTCHI

The Honorable Helen S. Balick died on September 24, 2020. Judge Balick was a pioneer in too many ways to recount fully here. Her 24 years of judicial service saw monumental changes in the Delaware bankruptcy practice and led the way to the eight-member court of today. She was an outstanding jurist with an occasionally feisty judicial demeanor. She also had an excellent sense of humor. She was cordial to all and particularly kind to young lawyers, quickly learning their names.

Judge Balick was born in Bloomsburg, Pennsylvania. She took an unusual path to the legal profession. She worked as a secretary in a local law firm while still a student in the commercial section of her high school class. Upon graduation, she continued with the firm, performing duties that are now those of a paralegal. Judge Balick was encouraged to attend law school. Although lacking a college degree, she was accepted by The Dickinson School of Law based upon her performance on various Graduate Records tests and the Law School Aptitude Test. Judge Balick was one of only three women to be admitted into her law school class. In that class, she met her future husband, The Honorable Bernard Balick. After graduation, Judge Balick became a member of the Pennsylvania Bar and thereafter moved to Delaware. Although she was a member of the Pennsylvania Bar, the Delaware Board of Bar Examiners required her to pass tests in several subjects given by University of Delaware professors to satisfy undergraduate requirements.

Judge Balick was the 13th woman admitted to the Delaware Bar. She was in private practice, served as a lawyer with the Legal Aid Society, and as a Master in Family Court. In 1974, she was appointed to serve as both Magistrate Judge for the



Portrait by David Larned

District Court and the Bankruptcy Judge, becoming the first female federal judge in Delaware. After the Bankruptcy Code became effective in 1978, Judge Balick became the full-time bankruptcy judge in Delaware, a role she held until she retired in 1998. Indeed, she was the sole member of the Bankruptcy Court until 1993.

Judge Balick was a member of a number of boards, including the Board of Trustees of The Dickinson School of Law, the Board of The Jewish Historical Society of Delaware, the Wilmington School Board, and was the first president of the Board of the statewide Community Legal Aid Society. Judge Balick received numerous awards, including Dickinson's Outstanding Alumni

Award and the Career Achievement Award, The Delaware Alliance of Professional Women Trailblazer Award, and the Delaware State Bar Association's Women's Leadership Award. She was a Fellow in The American College of Bankruptcy, was inducted into The Hall of Fame of Delaware Women, and was honored by the establishment of The Helen S. Balick Chair in Business Bankruptcy Law at the Widener University School of Law.

Judge Balick is the foundation upon which the Delaware Bankruptcy Court is built. She presided over the explosive growth of the Delaware bankruptcy practice in the 1990s. To say things were crazy back then is a colossal understatement. Judge Balick single-handedly managed an increasingly busy docket with the largest and most important bankruptcy cases of the day, including *Continental Airlines*, *Marvel*, and *TWA* to name just a few. And, just like Ginger Rogers did what Fred Astaire did, but backwards and in heels, she handled a docket similar to the current one, managed by eight judges, on her own and without the aid of electronic docketing, on paper (on blue backers), without claims agents, without Court Call and

Zoom, and with no local rules. When Judge Peter Walsh came to her rescue in 1993 it was like putting a thumb in a dike. There was still an overwhelming caseload. Several of the current bankruptcy judges had the pleasure (and it was a pleasure) to appear before her. To my memory, she had an incredible ability to see right through an evasive or dishonest witness and a fallacious legal argument. She was also very cordial and kind to her Delaware lawyers, especially the young ones.

Judge Thomas Ambro of the Third Circuit remembered her fondly at the presentation of her portrait to the Bankruptcy Court in 2019.

For many of us in this room, our memories of Helen are more personal. Nearly every one of us who appeared before her has a story to tell, usually of her sparing us embarrassment for a mistake we made. I dare say that Helen saved more professional embarrassment and no doubt some careers than any judge I know. She might appear, to use her words, as a “school marm” on the outside, but she had on the inside the softest and most forgiving of hearts. She achieved in this State the highest status you can get — she was known simply as “Helen,” just as to say “Joe” or “Ruth Ann” gets immediate recognition.

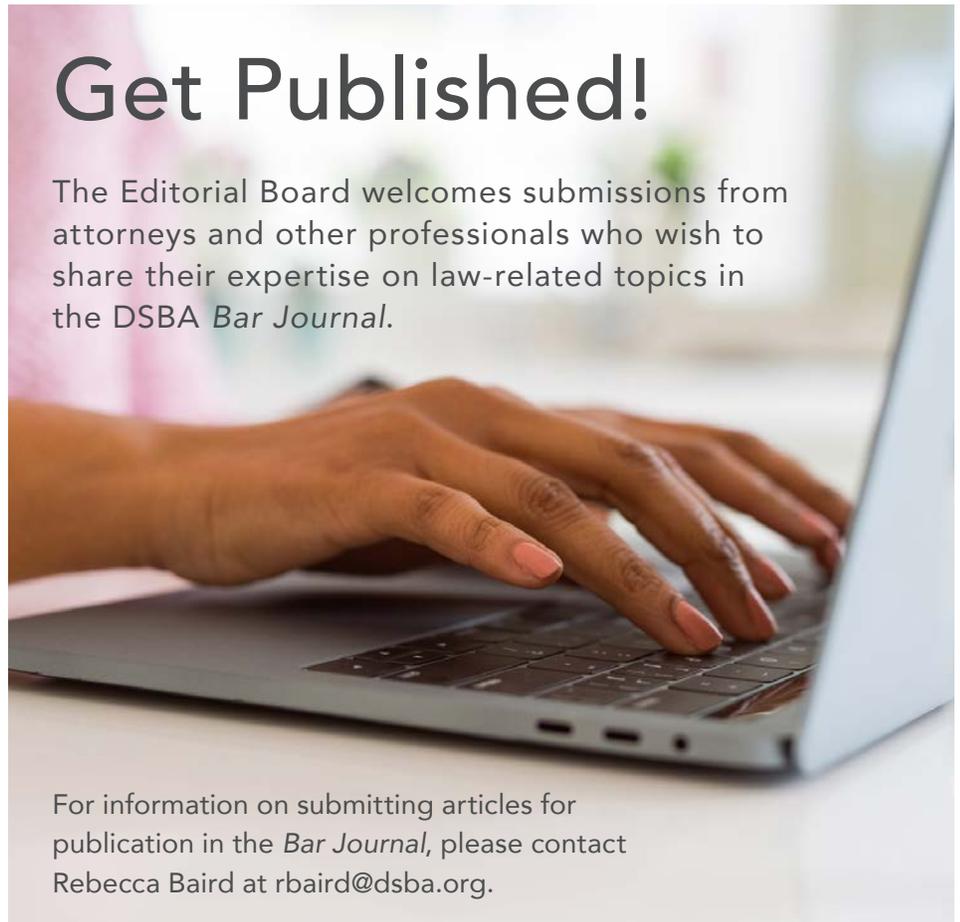
Many lawyers feel the same way. Bill Bowden of Ashby & Geddes who started his bankruptcy career in front of Judge Balick said, “She made a young, inexperienced, and terrified bankruptcy lawyer feel welcome and respected.” I could not agree more.

Judge Balick leaves behind a formidable legacy. We all owe a great deal of gratitude to her for her 24 years of service to the Bankruptcy Court and the pioneering role she played in the Delaware bar and in making our Bankruptcy Court what it is today. Ⓜ

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Joseph A. Rosenthal, Esquire

1931 - 2020

BY NORMAN M. MONHAIT, ESQUIRE

The Delaware Bar lost a distinguished member when Joe Rosenthal passed away on September 27, 2020 at age 88.

A graduate of Yale University (1953) and Harvard Law School (1956), Joe actively practiced law in Delaware from 1957 until 2012. I was privileged to be his professional colleague for the latter 32 years of that tenure. Joe consistently modeled for me and all the lawyers at Rosenthal, Monhait, Gross & Goddess creative and thoughtful analysis of legal problems, integrity, civility, and commitment to community.

Often referred to as a lawyer's lawyer and the Dean of the Plaintiff's Bar, Joe was an intellectual force in the litigational development of the law of corporations and fiduciary duty through the robust expansion of activity in the Court of Chancery in the 1980s and 1990s and beyond, working with lawyers from all parts of the country to craft strategy on behalf of investor litigants. Also significant for Chancery practice in that era was Joe's mediation of competition among firms vying for leadership on the plaintiffs' side; that relatively few leadership disputes were litigated in that time resulted significantly from Joe's ability to constructively channel the energies of many capable lawyers.

Joe personally litigated many corporate cases successfully, but one particularly contributed to maintaining Delaware as a forum for corporate litigation. In 1977, the United States Supreme Court in *Shaffer v. Heitner*, 433 U.S. 186 (1977) held unconstitutional Delaware's sequestration of stock method of acquiring personal jurisdiction over corporate managers. Without a means to bring alleged wrongdoers before the Court, Delaware's status as a corporate litigation forum was



impered. Joe was a member of a small committee of the Council of the DSBA's Corporation Law Section that drafted and facilitated the passage of 10 *Del. C.* § 3114 within a month of the *Shaffer* decision. Joe then successfully defended the statute's constitutionality in *Armstrong v. Pomerance*, 423 A.2d 174 (Del. 1980). Section 3114 and its constitutional validation formed a necessary foundation for much of the litigation in the Court of Chancery over the last 40 years.

Joe's prominence as a corporate litigator obscured the breadth of his practice. In his initial decades at the Bar, Joe was a general practitioner, representing clients in all types of litigation, divorces, real estate transactions, estate plan-

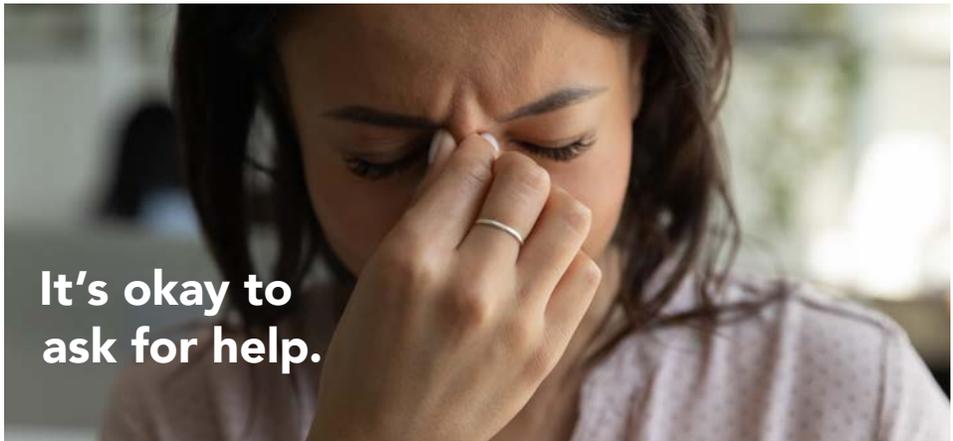
ning, and business advising. During the years of his work on Chancery litigation, Joe also litigated business disputes and remained a trusted counselor of many Delaware businesses, assisting in structuring and effecting a broad range of business and real estate transactions.

In all his dealings with clients, adversaries, and colleagues, Joe was a model of integrity and civility. Judges and lawyers knew that Joe was worthy of trust, and both co-counsel and adversaries knew discussions with him of differing views would be reasoned and cordial.

Joe made substantial contributions to the Delaware community. He and his wife Joan were among the founders of the Delaware Affiliate of the American Civil Liberties Union in 1961. Joe handled many *pro bono* civil liberties cases, including working on the school desegregation and Ferris School litigations. Joe and Joan also devoted substantial effort to Planned Parenthood of Delaware. Joe served as president of the Skating Club of Wilmington from 1979-1981. He helped the DSBA establish Delaware Volunteer Legal Services and chaired

it from 1981-87. In 1986, the DSBA honored Joe's commitment to the legal profession and the community with the First State Distinguished Service Award. The Delaware ACLU recognized Joe and Joan with its highest award, the Gerald E. Kandler Memorial Award, in 1994.

Joe lived a full life. He enjoyed opera, the Philadelphia Orchestra, skating, horticulture, history, investing, food, wine, and travel. Most of all, Joe cherished his 66 years with Joan, his children Ellin and Ted, their spouses Ron Faleide and Kate, and his grandchildren Jaren Faleide, and Matt and Ali Rosenthal. They, Joe's clients, the Bar, and his professional colleagues were all privileged to be part of his life. I confidently speak for all the lawyers who comprised Rosenthal Monhait Gross & Goddess in saying our association with Joe enriched our lives personally and professionally, and we say goodbye with deep gratitude. ⚖️



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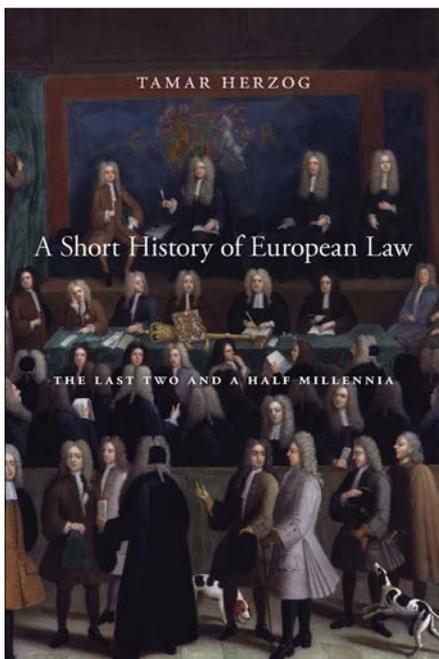
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Tomorrow and Tomorrow and Tomorrow



A Short History of European Law: The Last Two and a Half Millennia

By Tamar Herzog
Harvard Univ. Press, 2018

Change is constant. And yet, because human beings so readily adapt to new circumstances and new situations, we often fail to appreciate the change that is going on all around us. We want certainty and predictability in our lives, and so, as we adapt to the changes, we also tend to trick ourselves into thinking that things really have not changed and that is the way things have always been.

The iPhone dramatically changed cellphones, and yet the iPhone only debuted thirteen years ago. Still, it is hard now to remember what life was like before iPhones, and even harder to remember life before cellphones, and even harder to remember life before the internet, email, and all sorts of other technology which we find indispensable today (until it is outdated tomorrow).

So too it is with the law. The law is ever-changing and evolving, and yet we like to think that the law is immutable and that the important cases of today will still be the important cases of tomorrow — even though we know, as a general matter, that the great cases of today will be but mere footnotes 20, 30, or 50 years from now.

In *A Short History of European Law: the Last Two and a Half Millennia*, Professor Tamar Herzog takes us on the grand tour — a very grand tour — of European legal history, with a brief side trip to America at the founding and its impact on European law. As one can imagine, this is a big subject, but Herzog paints with a broad enough brush so as not to bog down in endless details and keeps the story moving.

The professor starts with Roman law, a subject about which whole books have been written, before moving to the early middle ages, followed by the late middle ages, the early modern period, the nineteenth century and an epilogue discussing the current European Union. Over the grand sweep of time, it is the story of a constantly evolving, ever-changing legal system adapting to the technology and crises of the various ages, even as, on the surface, at any one given moment, the law otherwise appeared constant and consistent.

Perhaps the most interesting question over the course of European legal history is why the English common law diverged from the rest of the continent. England was a part of the Roman empire, and so started with the same general legal system as most of the continent. Why is there a common law distinct from the legal process and procedure in the rest of Europe? The short answer seems to be that there is no single reason. The law in England simply took a different path. Perhaps the English Channel did more than act as a defensive barrier (other than in the year 1066). But, whatever the reason, the common law of England is different, with different customs and processes than the continent.

Because the American legal system (with the notable exception of Louisiana) is based primarily on the common law, the chapters on the development of the common

The law is ever-changing and evolving, and yet we like to think that the law is immutable and that the important cases of today will still be the important cases of tomorrow — even though we know, as a general matter, that the great cases of today will be but mere footnotes 20, 30, or 50 years from now.

law are the most interesting, and Herzog does a nice job tracing the development of the common law courts, the writs, and the rise of equity. The *Magna Carta* comes into play, but as the recent celebration of the Great Charter a few years ago demonstrated, the document was hardly as significant and important in its own time as it later came to be. *Magna Carta* has great power and symbolism today, but that power and symbolism came centuries after 1215.

Herzog also takes the reader on a brief detour to early colonial America and the colonies' legal systems. As Herzog tells it, the Declaration of Independence, the various state constitutions, the Constitu-

tion, and the Bill of Rights, all broke new legal ground and formalized certain legal ideas and principles that, in turn, travelled back across the Atlantic to influence European law.

European civilization in the twenty-first century is vastly different than it was in the first century. The law is vastly different as well. The law, like society more generally, was ever-changing; and, yet, to anyone living in one particular era, the law would have seemed static. The vast tides of history are not necessarily noticeable or appreciated from the perspective of a single lifetime.

So too, Delaware law has changed, and changed much over time, even in just

the last 40 or 50 years. None (or almost none) of the great corporate cases had been decided fifty years ago. Today we take them for granted. The Family Court is a relatively new court. Zoning laws did not exist for any of Delaware's counties until only 70 years or so ago. The landlord/tenant code, the administrative procedures act, the coastal zone act — all of these statutes are still young in the grand scheme of things, and yet we treat them as settled. Other areas of the law have also seen changes, even though, at any one moment, the law may seem constant.

Herzog's book is titled *A Short History of European Law*, and the book lives up to its title, in that it is fairly "short." Yet despite its relative brevity (243 pages), it covers a wide sweep of time, and demonstrates just how far our legal system has come in roughly 2500 years. ⚖️

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



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Soup with a Side of Puzzle

Mashed potatoes, sweet potatoes, candied yams...why not potato leek soup? Potato leek soup, known as Vichyssoise, is usually enjoyed cold. However, hot and creamy, this soup is ideal to warm the autumn chill. In fact, it would make for a delicious first course on Thanksgiving or a leftovers lunch alongside a turkey sandwich.

The recipe, which serves eight, is very simple. Also, I like using buttermilk rather than regular milk for its pleasant tang.

Ingredients:

- 6 tablespoons unsalted butter
- 4 large leeks (not the green part), rinsed and thinly sliced
- 1 yellow onion, sliced
- 8 medium Yukon Gold potatoes, peeled and thinly sliced
- 6 cups chicken stock
- Juice of ½ lemon
- 3 cups buttermilk
- 2 cups heavy cream
- Freshly ground black pepper
- Sea salt
- Fresh chives for garnish

Melt the butter in a large pot over medium heat. Add the leeks and onion and sauté for about 15 minutes. Then add the potatoes, stock, and lemon juice. Stir and bring to a boil. Cook on low heat for about 45 minutes. Remove from the heat and let cool until lukewarm.

You can process in batches in a blender, but I prefer a hand (immersion) blender. This gadget cuts down on the clean-up! The soup should be smooth, but a few chunks are okay. Season to taste with salt and pepper. Return to low heat and stir in the buttermilk and cream. Simmer until heated through.

Top each bowl with snipped fresh chives. 🍴



Susan E. Poppiti is an adjunct faculty member in Mathematics at Immaculata University and an AP Calculus instructor at Johns Hopkins Center for Talented Youth. To further her commitment to mathematics education, she also serves as a math content expert for UPchieve, an ed-tech nonprofit providing free, online STEM tutoring to high school students. Susan can be reached at spoppiti@hotmail.com.



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PUZZLE

The goal is to form a word for each word fragment by adding letters to the beginning and/or end of each fragment. All of the words created are Thanksgiving foods. Please note that you may not add letters to the middle of the fragments, nor can you rearrange letters. Also, the same word may not occur more than once.

The first reader to email me with correct answers will receive a mélange of fall spices for the pantry.

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ran	ine	rnb	ars
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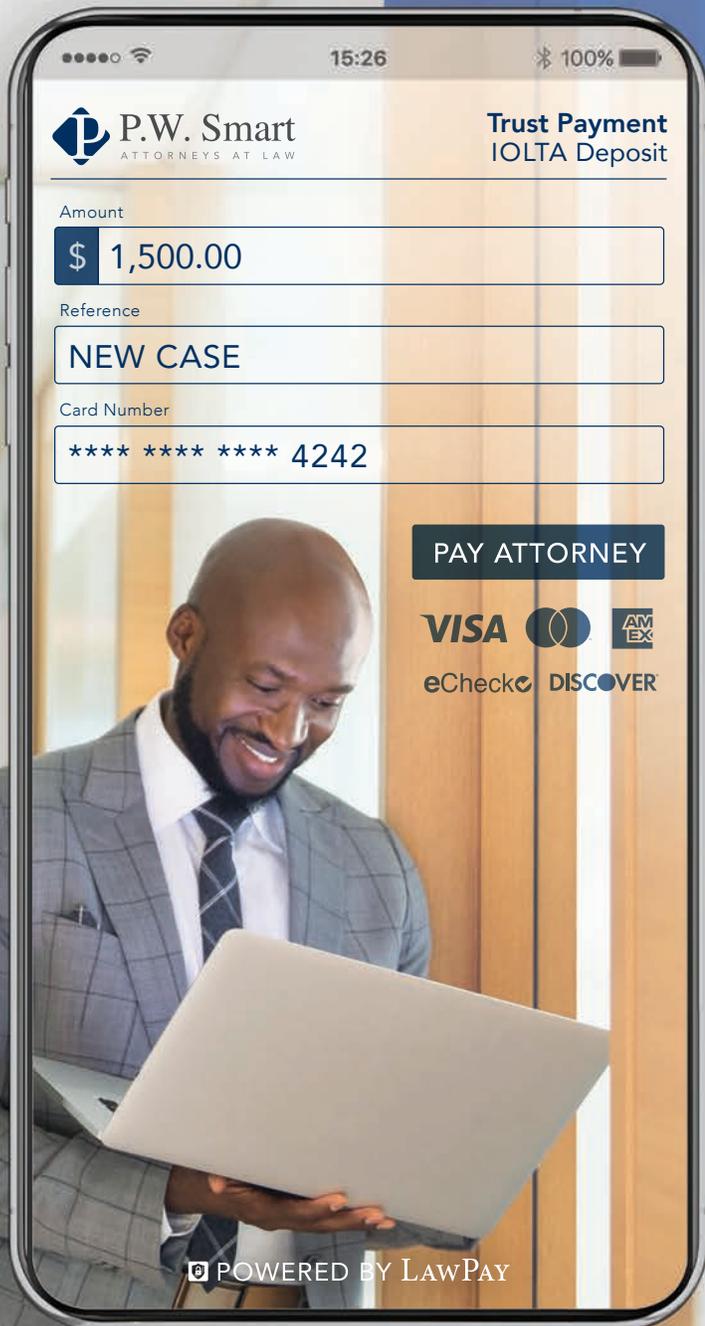
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LOST WILL: Lost will for Susan Schultz, Seaford, DE. Died 9/11/2020. Contact andrewowens@dwt.com or (347) 647-0856.

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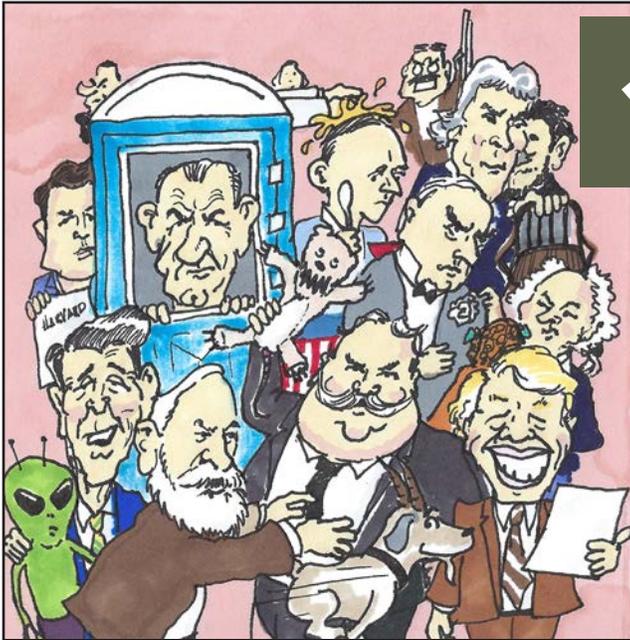
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10 THINGS

You Might Not Know about Past U.S. Presidents

BY MARK S. VAVALA, ESQUIRE
EXECUTIVE DIRECTOR
DELAWARE STATE BAR ASSOCIATION

Illustration by Mark S. Vavala

In honor of our nation’s most recent presidential election, we thought we would look at the human side of the men who have held the office, so here are ten things you might not know about past U.S. Presidents.

1 The 23rd President, Benjamin Harrison, kept a billy goat in the White House, to which he affixed a tiny cart to shuttle his grandchildren around. In fact, the goat got loose one time and Harrison chased the runaway goat and his grandson all over the White House grounds.

2 33rd President Calvin Coolidge’s morning ritual included eating a bowl of boiled wheat while a servant massaged his scalp with Vaseline.

3 William McKinley believed carnations were his good luck charm and wore them everywhere. One day, on September 6, 1901, he gave a little girl his carnation and was assassinated a few hours later.

4 Ronald Reagan, our 40th President, had an informal agreement with the Soviet Union’s Mikhail Gorbachev that if either country was invaded by space aliens, the two would suspend the Cold War and work to save the other.

5 36th President Lyndon Johnson really had to use the bathroom during World War II, so he got off his bombing mission plane to use the facilities. The plane ultimately took off without him and crashed in the South Pacific — all on board perished.

6 In 1981, Jimmy Carter delivered a speech to an audience of Japanese college students in which the 39th President began with a joke that caused the room to erupt with laughter. Knowing the joke was not that great, Carter asked the translator what he said. He told the audience, “President Carter told a funny story. Everyone must laugh.”

7 Our second and third presidents, John Adams and Thomas Jefferson, visited the home of William Shakespeare and chipped off a piece of one of the Bard’s chairs as a souvenir.

8 James Garfield, the 20th president, was known to write in Greek with one hand and Latin with the other hand...at the same time! After Garfield was shot by an assassin in 1881, doctors used a new-fangled invention created by Alexander Graham Bell called the “metal detector” in order to find the bullet. Unfortunately, the metal bed springs resulted in the doctors cutting numerous times in the wrong locations.

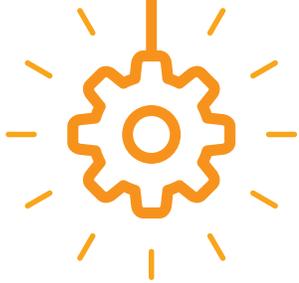
9 William Howard Taft, our 27th President, was so jealous of Teddy Roosevelt (our 26th) and the fact he had the “teddy bear” named after him, Taft sanctioned a stuffed animal to be named after him named Billy Possum. Unfortunately, unlike the teddy bear which was created because Roosevelt spared a baby bear cub, Bill Possum never caught on because it was based on Taft eating a huge opossum one night for dinner.

10 John F. Kennedy’s father wrote his Harvard recommendation for him, stating JFK was “careless and lacks application.” Harvard accepted him (and his father’s generous donation) anyway. 🍷

Mark S. Vavala is the Executive Director of the Delaware State Bar Association. He can be reached at mvavala@dsba.org.

2021

DELAWARE LEGAL DIRECTORY



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