CELEBRATING
FIRSTS FOR WOMEN IN DELAWARE’S BENCH AND BAR

The Honorable Katharine L. Mayer
Judge, Court of Common Pleas

The Honorable Rae Meredith Mims
Judge, Court of Common Pleas

Tammy L. Mercer, Esquire
Young Conaway Stargatt & Taylor, LLP

Allison L. Land, Esquire
Skadden, Arps, Slate, Meagher & Flom LLP
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Over the last thirty years there has been progress in gender equality in law school graduating classes, with women comprising fifty percent of the class. This may have led to the perception that it would be just “a matter of time” for the legal profession to catch up. However, the landmark 1988 report by the American Bar Association’s Commission on Women, *The Status of Women in the Legal Profession*, found that time alone was unlikely to remedy the gender disparity in the legal profession. The follow-up report in 1995, *Unfinished Business: Overcoming the Sisyphus Factor* and the 2006 report on the Commission’s 2003 hearings and data report, showed that while progress had been made, “it [was] clear that the American legal profession ha[d] not yet come close to achieving gender equity.” The disparity was even greater when it comes to women of color. At the current pace, projections suggest that gender equity in the profession will not occur until 2181.

Women’s participation in leadership roles continues to lag. Experienced women lawyers are leaving the profession at the height of their careers for a variety of reasons, including promotion disparity and pay disparity. The ABA’s research shows that 45 percent of women reported feeling that they had been denied business opportunities because of their gender.

COVID-19 has also had a significant impact on women in the workforce, especially for women caring for children or parents. According to a report by McKinsey & Company and LeanIn.org, one in four women are contemplating leaving the workplace or “downshifting” their careers due to COVID-19. “The study concludes that COVID-19 has disrupted workplace advancement for women and potentially is ‘unwinding years of painstaking progress toward gender diversity.’” While the report is not specific to lawyers, there is no doubt COVID-19 has had a significant impact on women in the legal profession.

You are probably saying: “Wait a minute. This doesn’t sound like a reason to celebrate. The cover said we are celebrating.” The data, reports, and studies tell us that there is work to be done to promote and retain women in the profession. But progress is being made. So, we celebrate! We celebrate these strong, amazing women in leadership. And it’s important to celebrate the advancement of women in the profession. Why? Just like Olympians Allyson Felix, Katie Ledecky, and Simone Biles inspire young women and girls to attain their goals, seeing women in leadership positions in the law lets other lawyers or aspiring lawyers know what is possible. See them, be them.

The cover of this issue celebrates advancements in Delaware’s judiciary. The significance of the appointment of Kathaleen S. McCormick as the first woman Chancellor of the Court of Chancery in 229 years is surely felt beyond the borders of our state because the Court is widely recognized as the preeminent business court in the nation. At an event this summer I witnessed many women expressing to the Chancellor how much her new role meant to them. Read more about this historic appointment in Kristen Swift’s article in this issue.

We celebrate the appointment of Judges Rea M. Mims, Monica A. Horton, and Katharine L. Mayer to the Court of Common Pleas. They join Judges Anne E. Hartnett and Kathaleen Amalfitano to comprise five members of the nine-member Court. For the first time, the Court has a majority female judges, two of whom are women of color. Read more about the evolution of change in this Court in the article by Mae Oberste, Esquire, with contributions from Honorable Rosemary Beauregard (Ret.), the first woman to serve in the Court, and the Honorable Katharine L. Mayer.

We celebrate the appointment of Judge Reneta L. Green-Streett as the first woman and the first person of color to the Superior Court Bench in Kent County. Judge Green-Streett has been an active member of the Women and the Law and the Multicultural Judges & Lawyers Sections of the DSBA, working to promote the advancement of women and lawyers of color in the Delaware Bar.

There have also been important milestones in private practice. For example, Tammy L. Mercer, Esquire, partner at Young Conaway Stargatt & Taylor, LLP, was elected as the first woman chair of the firm’s Corporate Litigation and Counseling Section, and Allison L. Land, Esquire, partner at Skadden, Arps, Slate, Meagher & Flom LLP, was elected as the first woman to chair the DSBA’s Corporate Law Council.

Tammy, who focuses her practice on alternative entity law and merger and acquisition and stockholder litigation, plans to continue to inspire women in her new leadership role. She said:

I am truly honored to have been elected to this position at Young Conaway. It confirms my choice to pursue my career there. I have been blessed to have had many strong and capable female mentors and colleagues. My goal is to continue that legacy and mentor and inspire other women. Personally, it has been rewarding for me to use this leadership role to develop my
young sons’ perceptions of women as being strong, capable leaders who can successfully pursue careers and family.

Allison, head of the M&A/Corporate Group in Skadden’s Wilmington office, is a Chambers USA: America’s Leading Lawyers for Business ranked attorney, focusing on mergers and acquisitions. She said:

I look forward to the opportunity and challenge of serving as Chair of the Corporation Law Council, and I’m honored to be the first female to serve in this role. While I’ve seen the number of female attorneys increase dramatically over the course of my career, the increase in women practitioners focusing on corporate and transactional law is a relatively recent phenomenon, and one in need of even further expansion, as recent studies have demonstrated. I’ve been proud to serve as mentor to many female attorneys within Skadden over the years, and I hope that, in my role as Council Chair, I’ll be able to serve as a role model to a greater number of women lawyers interested in a career in corporate law, and demonstrate that women can succeed in what has traditionally been a predominantly male practice area.

Thank you all to those who lead and inspire us. Your impact is far wider and deeper than you know.

Notes:
3. Id., p. 5.
4. Id., p. 4.

Kathy Miller is the current President of the Delaware State Bar Association. She is a partner at Smith, Katzenstein & Jenkins LLP where she focuses her practice on corporate and commercial litigation and corporate bankruptcy matters. She can be reached at kmiller@skjlaw.com.
EDITOR’S PERSPECTIVE | BY KRISTEN S. SWIFT, ESQUIRE

The DSBA Bar Journal’s Very Own Contemporary First:
A Column Focused on Women Lawyers

Building on its longstanding tradition of delivering relevant and noteworthy authorship, the Delaware State Bar Association Bar Journal has begun publishing a woman lawyer focused column. The inaugural article for this column appeared in the May 2021 issue as my inaugural “Editor’s Perspective” article commenting on gender wage disparity.

The gender wage article was discussed by the Bar Journal leadership as a “test the water” run to answer the question, or more accurately, concern: Are the community of thought leaders we call Delaware lawyers ready for this content?

I’ll admit that writing the article felt a little risqué. Maybe I am overly cautious, but I could see my concern mirrored in others when I discussed their potential contributions to a woman lawyer focused column and recalled an experience when I was fresh out of law school and asked to write an article offering tips to new lawyers on how to interact with your managing partner and firm leadership. The publication offered ghostwriting — where I would publish under someone else’s name — to protect me from sharing my thoughts and experiences “in case your firm reads the article.” I declined the offer and wrote under my own name and then I sent it out to my firm to tell them I was published.

The overall response to the wage gap article was positive (or to the extent that it was not, no one mentioned that to me directly). Inasmuch as the article was a “test” of readiness then I guess we all passed. Yet part of me is tired of waiting for readiness. I’m impatient. Women have been so patient, waiting for the “right time” across decades. My gender and I disagree on managing patience. I picture the proverbial man on the faceless crowded city street corner holding the sign: “The Time is Nigh!”

Another part of me sees that our community is so much more than ready. The Delaware legal community is starved for this content, whether or not they have insight into recognizing that feeling for what it is. Naturally, there are those who cringe at the idea of a women-focused column.

In an ideal world a column like this would be published absent balancing the political tensions between not ready, ready, and overly ready, and people would
just read the articles and take away what they find useful and leave the rest or turn the page. But you do not need me to tell you that we are not in an ideal world and that is what keeps things interesting.

The *Bar Journal* plans to publish the column quarterly into 2022. The ultimate goal is to have a woman lawyer focused column printed in every publication. What does that mean? What is a woman lawyer focused column? I’ll let you know when I figure that out… Or you could read the column and see for yourself.

All kidding aside, the column is intended to provide a platform for Delaware women lawyers to discuss and promote issues and ideas they find relevant. We are so very fortunate to have a wealth of women role models and leaders, as this issue highlights, and some questions I always have when encountering these women are: How did they get to that place? What did they go through to get to where they are now? Who, if anyone, supported them? Who were they supporting? What can be learned from their experience? Where does their strength come from? These are questions I imagine you would ask any mentor if you had the chance or the nerve. The *Bar Journal* hopes this column answers these questions and demystifies and promotes women achieving success in the legal field, highlights women and their perspectives, and acts as a figurative outstretched hand to help women lawyers forward on their career paths. So, no lofty goals here!

If you have an idea and would like to discuss developing that idea into an article for the column or want to offer a submission, contact me at kswift@wglaw.com. The *Bar Journal* is excited to offer this column and opportunity for you to submit content and we look forward to hearing from you.

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View the full online CLE catalog at [www.dsba.org/cle](http://www.dsba.org/cle).
DSBA’s Committee on Professional Ethics has written an opinion addressing a concern that many members have had regarding practicing remotely from a jurisdiction in which they are not licensed.

The Committee’s opinions, which have not been updated since 2012, are not binding authority but they carry the weight of professionals who have analyzed the ethical question addressed therein fully. In Delaware, only the Supreme Court (through the Office of Disciplinary Counsel) can officially dictate what is considered unlawful practice of law. The new ethics opinion addresses whether an attorney licensed in Delaware may practice Delaware law while working remotely from another jurisdiction in which the lawyer is not licensed, such as from a home office, without engaging in the unauthorized practice of law in violation of Rule 5.5(a) of the Delaware Lawyers’ Rules of Professional Conduct (“DLRPC”).

The Committee concluded that lawyers licensed in Delaware may ethically engage in the practice of Delaware law, for clients with Delaware matters, while physically present in another jurisdiction in which they are not admitted unless a statute, rule, case law, or opinion of the local jurisdiction prohibits the conduct. The committee warned that such lawyers may not hold themselves out as being licensed to practice in the local jurisdiction and may not advertise or otherwise hold themselves out as having an office in the local jurisdiction, or provide or offer to provide legal services for matters subject to the local jurisdiction, unless otherwise authorized.

All of the Ethics Committees opinions are available on the DSBA website at https://www.dsba.org/publications/ethics-opinions-index/.

DSBA’s Wall of Firsts Gallery

Come see the new art installation at DSBA entitled “Firsts” created and donated by Executive Director Mark Vavala. The current six panels are the first installment and depict DSBA’s first women attorneys Sybil Ward and Evangeline Barsky; first Black attorney Louis Redding; first Hispanic attorney Aida Waserstein; first Asian attorney Shakuntla Bhaya; first Black female Judge Haile Alford; and the first DSBA member to become President of the United States, Joseph Biden. Other firsts will be honored in future projects.

Top 5

1. **Susan C. Del Pesco, 1987-1988**
   - The first woman to be elected President of DSBA. She was known as an astute and formidable opponent in the courtroom and after breaking the glass ceiling with the Bar Association, she did it again as the first woman to serve on the Superior Court of Delaware.

2. **Anne Naczi, 1996-1997**
   - Another strong civil attorney who hailed from Sussex County; her first proposal as President was to create a Standing Committee on Legal Services to Low Income People.

3. **Patricia C. Hannigan, 2002-2003**
   - Pat was DSBA’s first government attorney to serve as President. She used her background with the Federal Courts to push for transparency between the Executive Committee and the members of the Association.

4. **Helen L. Winslow, 2005-2006**
   - Upon the birth of her son, Helen became one of the first women to work part-time in a legal practice, leading the way for others to choose a similar path, if desired. She was an intellectual and a music virtuoso and she left us too soon.

5. **Elizabeth M. McGeever, 2007-2008**
   - As a woman working in mergers and acquisitions, Betsy was well-aware of the rigorous life of a corporate attorney. Still, she took time to serve as DSBA’s fifth woman President and filled her months with building ties with the courts, the law school, the pro bono services organizations, and, of course, the members.
DSBA STAFF NEWS

DSBA’s Susan Simmons to Retire

Susan Simmons, the face of CLEs for DSBA, who checked everyone in, provided lunch and snacks, and helped countless members with all sorts of questions about Continuing Legal Education, has decided to retire as of September 1, 2021.

Susan, who started with the Association back in 2010, had a previous career as an event planner and it showed with her attention to detail with all of DSBA’s events, particularly the Bench and Bar. The menu for every event went through her rigorous review and attendees for all sorts of functions celebrated how good her choices were.

Susan initially began her work with DSBA as the Director of Pro Bono services, managing the associations relationship with Delaware Volunteer Legal Services, Community Legal Aid, and the Legal Services Corporation. She managed the Access to Justice Awards ceremonies among other duties, and was a constant help in every other aspect of DSBA, including serving as the proofreader for every Bar Journal. In 2017, she assumed her next role as CLE Director and helped usher DSBA through the pandemic by helping develop dozens of Zoom CLEs.

Every member of the staff recognizes Susan as the “soul” of DSBA, someone whose heart was in everything she did and whose inimitable personality will be missed.

OF NOTE

Condolences to Ellen W. Slichts, Esquire (The Honorable Joseph R. Slichts III) on the death of her father, Coke L. Westbrook III, who died on May 20, 2021.

Condolences to April Caso Ishak, Esquire, on the death of her son, Eric Matthew Ishak, who died on June 4, 2021.

Condolences to Jennifer Anne Hartnett, Esquire, on the death of her husband, Stephen Walter Ferris, who died on June 27, 2021.

Condolences to the family of John A. Herdeg, Esquire, who died on June 27, 2021.

Condolences to Kiadii S. Harmon, Esquire (Kate Harmon, Esquire) on the death of his father, Emmett Richard Harmon, who died on July 3, 2021.

Condolences to The Honorable Joseph R. Slichts III (Ellen W. Slichts, Esquire) on the death of his father, Joseph R. Slichts, Jr., who died on July 4, 2021.

Condolences to John F. Brady, Esquire, and William Patrick Brady, Esquire, on the death of their father, John P. Brady, Esquire, who died on July 26, 2021.

Condolences to Thomas C. Grimm, Esquire, and John S. Grimm, Esquire, on the death of their father, Eugene L. Grimm, Esquire, who died on July 26, 2021.

Condolences to the family of the Wilkin E. Thomas, Jr., Esquire, who died on August 2, 2021.

Condolences to Sheila McVey Mangan, Esquire (Kevin J. Mangan, Esquire) on the death of her mother, Joan “Dunal” McVey, who died on August 9, 2021.

Condolences to the family of the Kathless D. Hadley, Esquire, who died on August 10, 2021.

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

It’s time to update your contact information and photo for the DSBA printed Legal Directory and Online Legal Directory.

NEW CONTACT INFO?
Let La Tonya Tucker know at ltucker@dsba.org.

NEW PHOTO?
Send it to Rebecca Baird at rbaird@dsba.org.
Professional Guidance Committee

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

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*Certified Practice Monitor
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CALENDAR OF EVENTS

September 2021

Thursday, September 9, 2021 • 10:00 a.m. – 11:00 a.m.
Cyber Security for the New Normal in Law Practice
1.0 hour CLE credit in Enhanced Ethics
Live Seminar at DSBA with Zoom Option

Tuesday, September 14, 2021 • 12:00 p.m. – 1:00 p.m.
Behind the Cool Image: Lawyering in the 21st Century’s Post Pandemic Environment 2021
1.0 hour CLE credit in Enhanced Ethics
Live Seminar at DSBA with Zoom Option

Wednesday, September 22, 2021 • 10:00 a.m. – 11:00 a.m.
1.0 hour CLE credit
Live Seminar at DSBA with Zoom Option

Wednesday, September 29, 2021 • 12:00 p.m. – 1:00 p.m.
Hookah v. the Indoor Clean Air Act
1.0 hour CLE credit
Live Seminar at DSBA with Zoom Option

October 2021

Tuesday, October 5, 2021 • 8:30 a.m. – 4:00 p.m.
Fundamentals of Real Estate 2021
6.0 hours CLE credit including 0.5 hour in Enhanced Ethics credit
Live Seminar at DSBA with Zoom Option

Sunday, October 17, 2021 • 1:00 p.m. – 4:00 p.m.
Fall Festival
Ramsey’s Farm, Wilmington, DE

Tuesday, October 19, 2021 • 9:00 a.m. – 11:00 a.m.
Wills for Seniors Training hosted by DVLS
Live Seminar at DSBA with Zoom Option

Wednesday, October 20, 2021 • 10:00 a.m. – 12:00 p.m.
Social Security Disability Insurance for Your Practice: Supplemental Security Income and Ethical Considerations and Social Security Overpayments: Appeals and Waivers
2.0 hours CLE credit
Live Seminar at DSBA with Zoom Option

Thursday, October 21, 2021 • 9:00 a.m. – 12:15 p.m.
Supreme Court Review 2021: A Discussion of Decisions at the Highest State and Federal Judicial Levels
3.0 hours CLE credit
Live Webinar at DSBA with Zoom Option

Sunday, October 24, 2021 • 10:00 a.m. – 4:00 p.m.
Wills for Seniors
Elsmere Fire Hall, Elsmere, DE

Monday, October 25, 2021 • 8:00 a.m.
Christopher W. White Distinguished Access to Justice Awards Breakfast
Hyatt Place / Riverfront Events, Wilmington, DE

Friday, October 29, 2021 • 9:00 a.m. – 11:00 a.m.
Demystifying the Path to Judiciary
2.0 hours CLE credit
Live Seminar at DSBA with Zoom Option

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

September 2021

Friday, September 10, 2021 • 12:00 p.m.
Workers’ Compensation Section Meeting
Zoom Meeting, see Section listserv message for link and password

Tuesday, September 14, 2021 • 12:00 p.m.
Litigation Section Meeting
Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Wednesday, September 15, 2021 • 9:00 a.m.
ADR Section Meeting
Zoom Meeting, see Section listserv message for link and password

Thursday, September 21, 2021 • 4:00 p.m.
Executive Committee Meeting and Retreat
Torbert Street Social, 305 Torbert Street, Wilmington, DE

Tuesday, September 28, 2021 • 12:00 p.m.
Multicultural Judges and Lawyers Section Meeting
Zoom Meeting, see Section listserv message for link and password

October 2021

Tuesday, October 12, 2021 • 12:00 p.m.
Litigation Section Meeting
Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Thursday, October 14, 2021 • 12:00 p.m.
Executive Committee Meeting
Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Wednesday, October 20, 2021 • 9:00 a.m.
ADR 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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#DSBA #WeAreRaisingTheBar
Ryan P. Newell is a partner at Young Conaway Stargatt & Taylor, LLP. He can be reached at RNewell@ycst.com.

During the midst of the pandemic related shutdown, I had occasion to speak with a highly acclaimed senior partner at one of the most prestigious firms in the country. He was sharing his thoughts on how the pandemic has affected his practice. Before his firm closed its office doors in the pandemic and despite his seniority, he still worked long, full days at the office. At the end of each day, he would speak with his junior colleagues on his various matters. He would then depart for home knowing that his colleagues had matters under control and, if an emergency arose, that they would call him.

Now, without those physical opportunities to touch base before day’s end, this veteran attorney found himself being added to email chains that seemed to endlessly persist without regard for the hour of the day. Prior to this past year, he knew the younger attorneys worked tirelessly. Their billable hours alone told him that. But he was unaware that the practice had devolved, right beneath his nose, into a 24/7 profession. In my experience, as I shared with him, this has been the case for my entire career. Indeed, a phone that allowed me to receive email at any time of day, was among the suite of office “supplies” given to me on the first day of practice. But in my experience and based on my conversations with many friends in our Bar, the pandemic has only further obliterated work-life boundaries.

Whether or not our profession will revert back to pre-pandemic practices, technology has advanced in ways that can help us gain some control in the ever-present tug of war between work and our personal lives. Here are some technology tips that may help you work better and experience more of life.

**E-readers**

For functionality, it is hard to beat a laptop or tablet. Some laptops can now convert to tablets. For better or worse, work is always accessible through one of these devices.

The downside, however, is that their colorful displays render them useless in sunlight and the beautiful resolutions strain your eyes. Further, according to some studies, the blue light can disrupt sleep and decrease serotonin levels after normal working hours, which can send us into a negative spiral if unchecked. Unlike laptops and tablets, e-readers use “e-ink,” which is easier on the eyes and can be read in direct light. A common e-reader is a Kindle. However, until recently, e-readers have largely been targeted to those looking for a convenient way to read novels. While their portable size is great for pleasure reading, reviewing, for example, a brief or opinion would be difficult. A new line of e-readers has emerged targeted at academics and lawyers, who often have to read large PDFs. I have been using with great success the Onyx Boox. It comes in many sizes, but I have enjoyed using the largest that allows me to view a full page in one screen. It also allows you to annotate as you read. With USB connectivity, I have a folder on my computer’s desktop...
in which I deposit files to read over the weekend. Then, on Saturday morning, I simply plug in my USB to my Boox and can take my files with me. For those looking to watch a child’s sporting event or to catch some rays at the pool or beach, it is an excellent solution.

### Voice Apps

Many of us listen to the radio or podcasts as we drive to work, do chores around the house, walk the dog, etc. While a good podcast is always preferable to work, sometimes there is only so much time in the day. I have recently been testing some voice apps that will read text from work files to me. For example, this past week, I was preparing for trial and needed to review the pre-trial conference transcript. Instead of trying to squeeze in one more task into my pre-trial efforts, I listened to the transcript as I got ready for work, let the dogs out, and did some tidying up around the house before heading into the office. As of now, I have found good success with the Speechify app, but there are many options.

### Dictation Devices

Dictation devices are nothing new. As a child, there were numerous times my dad had to re-do dictations because one or more of his sons (not me) were doing what young boys do in the background (wrestle, scream, injure themselves or others, etc.). While it would probably take me longer to dictate a letter than to write it, dictation devices are extraordinarily helpful when preparing for oral arguments. By recording my prep sessions and then listening to them on my phone when time permits, I have found that I have reduced the time needed to internalize my arguments while also improving the quality of my presentation (although I defer to the members of our judiciary on this latter point). If you have an iPhone, the free voice recording app on your phone is more than capable.

### Integrated Phones and Wireless Headphones

With voice over internet phone systems, many firms have the capability to roll calls from your office phone to your cell phone. This can allow you the flexibility to take calls from anywhere. For example, schedule a call for your commute to allow you to get home sooner. Moreover, the advances in wireless headphones over the last year have been significant. You do not need to break the bank anymore to find a good pair that will not only allow you to be hands free as you move about your office or home, but most will even improve the audio quality that you might otherwise get if you were using your speaker phone — an important consideration when speaking with clients or the court.

These are just some solutions to help balance our demanding profession with even more important relationships that exist outside the office — our families and friends, our health, our personal pursuits and hobbies, to name a few. Misused, these advances in technology could further compound the work-life balance problems resulting from the pandemic. Used properly, they can help us gain back some control and not miss out on what truly matters. As we know, “Life moves pretty fast. If you don’t stop and look around once in a while, you could miss it.”

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Notes:
As cybercrime continues to explode across the country, the Supreme Court of the United States recently weighed in on the scope of the federal Computer Fraud and Abuse Act for the first time in the Act’s 37-year history. The Court’s June 2021 decision in Van Buren v. United States helpfully clarifies that much “commonplace computer activity” — virtually all of which was unimaginable when the CFAA was originally enacted in 1984 — does not violate the Act. It unhelpfully limits the CFAA as a tool to combat malicious insider activity.

Codified at 18 U.S.C. § 1030, the CFAA primarily creates criminal and civil liability for any person who “intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains” virtually any type of information stored on an Internet-connected device. Resolving a deep circuit split, the Supreme Court held that a person does not “exceed authorized access” to a “protected computer” under the CFAA when he uses information obtained from accessing that computer for an unauthorized purpose.

At issue was a Georgia police sergeant’s use of his authorized username and password to obtain information from a law enforcement database with the intent to sell it to an FBI confidential informant for $6,000. As part of the FBI sting operation, the informant requested the information for the ostensible purpose of confirming that a woman of romantic interest to him was not an undercover police officer. Van Buren was authorized to use the database for law-enforcement purposes only.

The Eleventh Circuit affirmed Van Buren’s conviction under Section 1030(a)(2)(C), finding sufficient evidence that he “intentionally…exceeded[ed] authorized access and thereby obtain[ed]…information from any protected computer” for an unauthorized purpose (i.e., to sell it to a third person).

The Supreme Court reversed in a 6-3 decision with Justice Barrett writing for a majority that included the Court’s liberal bloc and Justices Kavanaugh and Gorsuch. The Court’s reasoning was rooted deeply in its textual analysis of Section 1030(e)(6), which defines “exceeds authorized access” as “to access a computer with authorization and to use such access to obtain or alter information in the computer that the accessor is not entitled so to obtain or alter.” (emphasis added) The Court focused heavily on the word “so” in the italicized clause as limiting the “exceeds authorized access” prong to situations in which a person “accesses a computer with authorization but then obtains information located in particular areas of the computer — such as files, folders, or databases — that are off limits to him.” The Court announced a new bright line rule that determining whether one accesses a computer “without authorization” or “exceeds authorized access” is a “gates-up-or-down inquiry — one either can or cannot access a computer system, and one either can or cannot access certain areas within the system.”

The Court clarified that the CFAA “does not cover those who…have improper motives for obtaining information that is otherwise available to them.” Adopting such a “circumstance-dependent” approach, the Court reasoned, “would attach criminal penalties to a breathtaking amount of commonplace computer activity” that may technically violate acceptable use policies, website or app terms of use, or other restrictions placed on the use of Internet-connected devices or platforms.
This clarification is critically important. As Van Buren and various Amici argued, premising CFAA liability on violations of policy, contract, or terms of use would potentially criminalize a large swath of everyday computer activity — from social media activity and security research to digital newsgathering. The decision also bolsters the view that data scraping of publicly facing websites does not violate the CFAA, at least where no technological access barrier is circumvented. Van Buren leaves open whether the CFAA proscribes the data scraping through automated software or the circumvention of a pay wall or other authentication/access controls.

Most consequentially, the CFAA will not apply to most computer or data misuse by malicious insiders — those who are authorized to access a computer for work-related or other limited purposes, but who exceed such authorization by accessing information for an improper purpose.

The decision also leaves unresolved what factual proof will be sufficient to satisfy the “exceeds authorized access” prong of Section 1030(a)(2). The Court strongly suggested that an authorized computer user must circumvent a technological barrier (i.e., “access control”) to obtain information that he is not authorized to access. Unfortunately, the Court then reserved that very question by stating, “we need not address whether this inquiry turns only on technological limitations on access, or instead also looks to limits contained in contracts or policies.”

In clarifying the limits of the CFAA, the Court’s decision also illustrates how ill-suited the Act is to address certain types of digital misconduct. The decision undoubtedly will bolster calls to amend the CFAA and other cybercrime-focused statutes enacted decades ago.

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Delaware Lawyers Working Remotely Outside of Delaware

This month, “Ethically Speaking” welcomes back the Delaware State Bar Association Committee on Professional Ethics. On July 9, 2021, this DSBA Committee emerged from hibernation issuing Formal Opinion 2021-1, which appears to be the first published Opinion issued since 2011. The Committee addressed the question as to whether an attorney licensed in Delaware may practice Delaware law while working remotely from another jurisdiction in which the lawyer is not licensed. Specifically, they advised attorneys working from a home or vacation office located out of state and whether that practice constitutes the unauthorized practice of law in violation of Rule 5.5(a) of the Delaware Lawyers’ Rules of Professional Conduct (“DLRPC”).

The Opinion both tracks and concurs with the conclusions reached in the December 15, 2020 Formal Opinion 495 issued by the Standing Committee on Ethics and Professional Responsibility of the American Bar Association.

The DSBA Committee concluded that:

Subject to any contrary law of the local jurisdiction in which a Delaware lawyer may be practicing remotely, the Committee adopts the reasoning (citing ABA Formal Opinion 495) with respect to Model Rule 5.5(b) (1) as applicable to lawyers licensed in Delaware who are providing legal services remotely in a local jurisdiction. The purpose of Rule 5.5 of the DLRPC is to protect the public from unlicensed and unqualified practitioners of law. This purpose is not served by barring Delaware-licensed lawyers from practicing the law of Delaware, for clients with matters in Delaware, just because such lawyers are physically located in a local jurisdiction where they are not licensed, providing that the law of the local jurisdiction does not prohibit such conduct, and such lawyers do not hold themselves out publicly as a lawyer in that jurisdiction or offer to or accept representation of clients in that jurisdiction.

While it is important to note that the DSBA Opinion does not have the force or effect of a professional conduct rule, rule comment, disciplinary case law, or other pronouncement of the Delaware Supreme Court, there are no reported cases of Delaware attorneys being disciplined after detrimentally relying on such advice.

This Advisory Opinion is also consistent with the conclusion reached by the Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility and the Philadelphia Bar Association Professional Guidance Committee in their Joint-Formal Opinion 2021-100 (March 2, 2021) cited in the Delaware Opinion. It is also consistent with the opinion offered by the Utah State Bar in Opinion 19-03, which was not cited by the Delaware Committee. In that Opinion, Utah stated, “We can find no case where an attorney has been disciplined for practicing law out of a private residence or out-of-state clients located in the state where the attorney is licensed.” Utah also noted that there were likely federal constitutional problems with any attempt to regulate such practice.

I would, however, add some specific caveats to the DSBA Opinion lest it be misread as a carte blanche license to practice on a full-time or permanent basis from out of state. Delaware still has a bona fide office rule. While it may be permissible to work occasionally or perhaps on an extended basis during the pandemic from an out-of-state location, there is still a brick-and-mortar requirement for an office located in Delaware. The same Rule 5.5 which permits multijurisdictional practice contains some significant limitations. As noted by both ABA Opinion 495 and DSBA Opinion 2021-1, you should make sure that the jurisdiction from which you are practicing remotely does not have a rule that prohibits such practice. Not all states have adopted Model Rule 5.5.

Rule 5.5, while prohibiting the practice of law in jurisdictions in which the attorney is not admitted, permits a limited practice with an admitted attorney where that practice is reasonably related to the attorney’s practice in a jurisdiction in which the lawyer is admitted. The
Delaware still has a bona fide office rule. While it may be permissible to work occasionally or perhaps on an extended basis during the pandemic from an out-of-state location, there is still a brick-and-mortar requirement for an office located in Delaware.

Rule also prohibits the establishment of a regular and systematic presence for the practice of law where the attorney is not admitted.

The DSBA Committee only concluded that practicing Delaware law on behalf of Delaware clients remotely from out of state does not violate Delaware’s Professional Conduct Rules. That practice may be prohibited by the jurisdiction from which you are practicing. Second, the ABA noted that Model Rule 5.5 prohibits a lawyer from “establishing an office or other systematic and continuous presence in a state in which an attorney is not licensed. That means that the lawyer cannot hold out to the public that they are practicing law remotely from the state in which they are not licensed. Those attorneys should not advertise on letterhead, business cards, websites, or advertisements that they have an office in the state in which they are not licensed. In addition, they should not in any other way hold themselves out in the foreign state that they are able to practice law in that state. The Committee opined that lawyers could also avoid holding themselves out as being admitted or available in the jurisdiction in which they are not admitted by noting in correspondence, letterheads, business cards, etc. those jurisdictions in which they are admitted. The ABA recommended that lawyers working remotely from another state in which they are not licensed note the out-of-state address as for mail delivery only and that they avoid scheduling appointments in the state in which they are not licensed.

In response to the pandemic, in 2021 the ABA has twice addressed virtual and remote practice issues. In addition to Opinion 495, Formal Opinion 498 covered several other virtual practice issues and the implicated Model Rules. Those included Rules 1.1, 1.3, 1.4, and 1.6 dealing with competence, diligence, communication, and client confidentiality and the 5.1 and 5.3 duties to supervise other attorneys and staff.

Thanks again to the DSBA Committee on Professional Ethics. As a reminder, past DSBA opinions are available on the DSBA website. Welcome back!

“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.

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Caught Between A Rock and a Hard Place: When a Client or Witness Wants to Bend the Truth

BY KATHLEEN M. VAVALA, ESQUIRE

An unenviable dilemma arises when a lawyer’s current client or witness seeks to provide testimony or documentary evidence to a court that the lawyer knows (or suspects) is not truthful. A lawyer so situated may be caught between professional duties owed to the client versus the lawyer’s duties to the court. The Delaware Lawyers’ Rules of Professional Conduct (“Rules”) and its corollary comments, as well as Delaware common law, provide specific guidance for reconciling these, at times, competing duties.

While confidentiality is a cornerstone of the lawyer-client relationship, there are narrow exceptions to a lawyer’s duty of confidentiality. Rule 1.6 instructs “[a] lawyer shall not reveal information relating to representation of a client unless the client gives informed consent” or the disclosure is permitted under limited exceptions. Rule 1.6(a) and (b). Among the exceptions, a lawyer “may” reveal confidential information…to the extent the lawyer reasonably believes necessary” to: “prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer’s services;” “prevent, mitigate, or rectify substantial this injury where such fraud or crime has already occurred;” or “to comply with other law or court order…” Rule 3.3(b). Thus, as a general rule, absent informed consent, a lawyer may only reveal confidential information regarding her client after determining she may do so under an exception enumerated in Rule 1.6(b). In most instances, a lawyer’s decision not to disclose confidential information under one of the exceptions does not violate Rule 1.6; however, false evidence offered to a court is treated differently.

Juxtaposed against Rule 1.6 is Rule 3.3 addressing a lawyer’s duty of candor to the tribunal. Rule 3.3(a) prohibits false statements made to a court by lawyers, clients, or witnesses that are material to the case. As delineated in Comment 2 of Rule 3.3, the public policy behind a lawyer’s duty of candor to the court is axiomatic: as an officer of the court, a lawyer must avoid any conduct that undermines the integrity of the adjudicative process. Consequently, a lawyer’s duty of confidentiality to a client is qualified by (and subordinate to) the lawyer’s duty of candor to the court, which prohibits all lawyers from allowing the court to be “misled by false statements of law or fact or evidence that the lawyer knows to be false.” Id.

A lawyer facing this quandary would do well to review Rule 3.3 and its Comments. Comment 6 states that when the lawyer knows the client intends to testify falsely or offer false evidence through the lawyer, the lawyer should try to persuade the client not to do so. Rule 3.3 cmt. 6. If persuasion fails, the lawyer must refuse to offer the evidence or, if only a portion of the evidence is false, the lawyer may call the client or witness to testify but should not elicit or otherwise permit them to present testimony the lawyer knows is false. Id. The lawyer must know the proffered evidence is false to justify disclosure of confidential information; this knowledge may be inferred from the circumstances. Id. A lawyer’s reasonable belief evidence is false does not preclude offering the evidence to court, but the lawyer may refuse to offer testimony or other evidence reasonably believed to be false. Rule 3.3 cmt. 9. However, an exception exists for criminal cases. Rule 3.3(a)(3) and Comment 9 explain that a lawyer may not refuse to offer a criminal defendant’s testimony that she reasonably believes is false but does not know is false. Id. Clear as mud? Well, the Delaware Supreme Court offered guidance on this issue in Shockley v. State, finding a criminal defense attorney must have knowledge beyond a reasonable doubt before he can conclude his client intends to commit perjury and refuse to offer a defendant’s testimony. 565 A.2d 1373 (Del. 1989).
An unenviable dilemma arises when a lawyer’s current client or witness seeks to provide testimony or documentary evidence to a court that the lawyer knows (or suspects) is not truthful.

Notwithstanding a lawyer’s persuasiveness, there will be instances when a client ignores the lawyer’s advice and persists in offering false evidence. “Although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.” Rule 3.3 cmt. 9. When false evidence that is material to the case has been offered, the lawyer should first confidentially remonstrate with the client and seek the client’s consent to withdraw the false statement or evidence. Rule 3.3 cmt. 10. Barring that cooperation, the lawyer should seek to withdraw from the matter. See Rule 1.16(a)(1) (a lawyer shall withdraw if the representation will result in a violation of the Rules). However, if withdrawal is not permitted or will not undo the effect of the false evidence, the lawyer has an affirmative duty to disclose information to the court, as is reasonably necessary, to remedy the false statement — even if that requires the disclosure of confidential client information protected by Rule 1.6. Rule 3.3(a)(3), Rule 3.3 cmt. 10, and Rule 1.6 cmt. 17.

So what should a lawyer do when a client or witness wants to offer false testimonial or documentary evidence? As a preliminary matter, determine if the evidence is, indeed, false or whether there is only a reasonable belief as to its falsity. Investigate further if necessary. Consider that knowledge may be inferred from the circumstances. After conducting that analysis (perhaps more than once), the lawyer may conclude she has a reasonable belief the evidence is false versus knowledge the evidence is false. If only a reasonable belief exists, the lawyer may choose — or refuse — to offer the evidence, unless it is a criminal defendant’s testimony. Conversely, if the lawyer concludes the evidence is false, the lawyer should consider taking the following steps: First, explain the lawyer’s duty of candor to the court and try to dissuade the client from offering the false evidence. Second, consider withdrawal and discuss with the client. Third, refrain from calling the client or witness (except a criminal defendant) or limit your examination to subjects about which the client or witness will be truthful. Fourth, if false evidence is offered to the court, try to convince the client to withdraw the false evidence. If the client refuses, again, consider withdrawing your representation. Sixth, if withdrawal will not cure the false testimony or the court will not permit withdrawal, inform the court of the false evidence offered. Disclose any confidential information in a manner and only to the extent necessary to identify and remediate the false evidence offered. But, if the court asks a question, the lawyer must answer truthfully and not allow the court to be misled. See Rule 3.3(a)(1) and Rule 8.4(c). Finally, seek the advice of counsel, colleagues, mentors, or even prospective guidance from ODC’s hotline. The odds are that other lawyers have faced the same conundrum, and having the benefit of their collective wisdom may assist you in navigating your professional obligations when a client or witness wants to bend the truth.

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.
The Hidden World of Sexual Harassment in the Workplace

The “DE-LAP Zone” this month is offering a brief summary, a nuts and bolts refresher, of what sexual harassment in the workplace is, and the hidden world that exists.

Sexual harassment in the workplace in U.S. labor law has been considered a form of discrimination on the basis of sex in the United States since the mid-1970s.¹ There are two forms of sexual harassment recognized by United States law:²

* Quid pro quo sexual harassment: An employee is required to tolerate sexual harassment in exchange for employment, a raise or job benefit, or promotion.
* Hostile work environment: Sexual harassment in the workplace results in an offensive work environment or unreasonably interferes an employee’s work performance.

History of Protection Under the Law

Civil Rights Act of 1964

In the United States, the Civil Rights Act of 1964 prohibits employment discrimination based on race, sex, color, national origin or religion. Initially only intended to combat sex discrimination against people based on sex alone, (42 U.S.C. § 2000e-2) the prohibition of sex discrimination now extends to discrimination based on sexuality and transgender identity.³ This discrimina-
tion occurs when the sex of the worker, the worker’s sexual preference, or the worker’s sex at birth, is made a condition of employment (e.g., all female waitpersons or male carpenters) or where this is a job requirement that does not mention sex but ends up preventing many more persons of one sex than the other from the job (such as height and weight limits). This act only applies to employers with 15 or more employees.


In 1980, the Equal Employment Opportunity Commission (EEOC) issued regulations defining sexual harassment and stating it was a form of sex discrimination prohibited by the Civil Rights Act of 1964.

Civil Rights Act of 1991

The Civil Rights Act of 1991 added provisions to Title VII protections including expanding the rights of women to sue and collect compensatory and punitive damages for sexual discrimination or harassment.

Thus, protection under law? Don’t let these characterizations lull you into a false sense of security. Sexual harassment is a problem that affects everyone — not just those in high-profile positions or industries. Sexual harassment is more rampant than you want to think.

Overall, about one in three people (31 percent) in the U.S. admit to having been sexually harassed at work, according to a poll from MSN.

For women, the situation is drastically more dire.

Overall, 45 percent of women polled said they have been sexually harassed at work. This translates to about 33.6 million women in the U.S.

The group that experienced the most harassment were women between the ages 30 and 44 — almost half (49 percent) said they had been sexually harassed at work. Not far behind, 47 percent of women ages 45 to 64 said they were sexually harassed at work, followed by 41 percent of women ages 18 to 20, and finally 40 percent of women 65 or older.

Moreover, sexual harassment at work doesn’t just affect women.

While 15 percent of men said they had been sexually harassed at work, a higher proportion of men between the ages of 30 and 44 said they had been sexually harassed in the workplace: 22 percent.

Narrowing the Scope to the Legal Profession

On December 7, 2020, the U.S. District Court for the Eastern District of Pennsylvania enjoined enforcement of RPC 8.4(g) Pennsylvania Rules of Professional Conduct to include but not be limited to:

[1] In the practice of law, by words or conduct, knowingly manifest bias or prejudice, or engage in harassment or discrimination, as those terms are defined in applicable federal, state or local statutes or ordinances, including but not limited to bias, prejudice, harassment or discrimination based upon race, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or socioeconomic status. This paragraph

SIDEBAR

TIPS FOR A SAFER WORKPLACE

As more workplaces navigate a return to the office, media outlets have highlighted the rise of hybrid workplaces, with employees scattered across central offices and remote environments.

These types of work setups present new challenges and require organizations to take a nimble approach that accounts for sexual misconduct, harassment, and abuse in both in-person and virtual settings. Here are some key tips that can help employers build policies that create equitable, safe, and respectful environments:

Think outside the office walls. Harassment doesn’t just occur in physical offices. Building workplace policies that specifically acknowledge virtual harassment — and that it will be treated as seriously as in-person harassment — is an important first step.

Ensure open lines of communications. To keep the virtual workforce from falling behind the in-person workforce in terms of their safety and vulnerability, share regular company-wide reminders about how to report misconduct. Even better is sharing information or setting meetings specifically addressed to remote workers emphasizing that they are a priority and should seek help through the proper channels if they are in need.

Optimize training for hybrid settings. If your workforce remains a mix of in-person and remote employees, ensure bystander training and other sessions on harassment are accessible to all — this means presentations that can be shared on screens, and planning for virtual breakout rooms on a video conferencing service if you want to incorporate group work into the training.

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DE-LAP ZONE
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does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude advice or advocacy consistent with these Rules.

A new Comment [4] defines harassment as “conduct that is intended to intimidate, denigrate or show hostility or aversion toward a person on any of the bases listed in paragraph (g).” Harassment specifically includes sexual harassment, and examples of conduct constituting sexual harassment are set forth.

New Comment [5] defines “discrimination” as:

Conduct that a lawyer knows manifests an intention: to treat a person as inferior based on one or more of the characteristics listed in listed in paragraph (g); to disregard relevant considerations of individual characteristics or merit because of one or more of the listed characteristics; or to cause or attempt to cause interference with the fair administration of justice based on one or more of the listed characteristics.

The amendment became effective on August 25, 2021.

Finally, other examples of harassment in the workplace include derogatory jokes, racial slurs, personal insults, and expressions of disgust or intolerance toward a particular race. Abuse may range from mocking a worker’s accent to psychologically intimidating employees by making threats or displaying discriminatory symbols. And hands off!

If you, or someone you know, wants additional non-legal information on this topic or have other issues to discuss that may be affecting your quality of life or quality of professionalism, contact DE-LAP’S free, confidential, program cwaldhauser@de-lap.org or (302) 777-0124.

Notes:

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

ROXANA C. ARSHHT FELLOWSHIP

The Roxana C. Arsht Fellowship Is Soliciting Eligible Candidates for Three-Year Financial Stipend

The Women and the Law Section and the Delaware State Bar Association founded the Roxana C. Arsht Fellowship in November 1998 to encourage law students, recent law school graduates and attorneys newly admitted to the Delaware Bar to pursue careers in the non-profit sector in Delaware. In an effort to encourage attorneys to work in non-profit positions, regardless of financial considerations, the Fellowship offers financial assistance for three years to each recipient selected. Applicants must be within three years of law school graduation and working with a non-profit organization that provides legal services that benefit the Delaware community, underrepresented groups, or indigent persons in Delaware. An applicant’s annual salary may not exceed $63,000 to be eligible for the Fellowship.

Application Process

For the year 2021, the Fellowship Committee will accept applications from August 16 through October 15, 2021. Applications are available at https://media1.dsba.org/public/Website/Documents/2021ArshtFellowshipApplication.pdf

A decision will be announced by December 15, 2021 with one award being approved.

Important Dates:

Application Start Date: August 16, 2021
Application Deadline: October 15, 2021
Decision Announced By: December 15, 2021

Those wishing to make donations to the Roxana C. Arsht Fellowship Fund may do so by sending a check payable to the Delaware Community Foundation, 100 W. 10th Street, Suite 115, Wilmington, DE 19899 and noting “Roxana C. Arsht Fellowship Fund” in the memo line or by donating to the Roxana C. Arsht Fellowship Fund online at www.delcf.org.

If you have any questions regarding donating to or fundraising for the Fellowship, please contact Sarah M. Ennis at (302) 888-6800 or sennis@morrisjames.com.
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Notable “Firsts” of the Court of Common Pleas

BY MAE OBERSTE, ESQUIRE
n 1917, the legislature created a Court of Common Pleas (CCP) similar to the CCP we know today. Its purpose then was to hear civil suits where the amount in controversy was less than $500, and its criminal jurisdiction was limited — it did not try criminal cases; it could only receive guilty pleas and impose sentences. However, the CCP’s success in reducing a backlog of cases in the Superior Court led the legislature to broaden its jurisdiction. Today, the CCP’s jurisdiction includes civil suits where the amount in controversy is less than $75,000, appeals in civil and criminal matters from the Justice of the Peace Courts, criminal misdemeanor cases and preliminary hearings in felony cases. The CCP has evolved into a court that is vital to the Delaware Court system. Its nine judges across the three counties manage a busy docket of approximately 100,000 matters statewide.

During its more than 100-year tenure, not only did the CCP’s jurisdiction evolve, but its Bench changed greatly. At the CCP’s inception, there was no singular judge dedicated to the CCP; rather, a Superior Court judge presided over CCP matters. This changed in 1931 with the creation of a Kent County Court of Common Pleas judgeship. As CCP’s caseload grew, so did its Bench.

Not many will be surprised to hear that diversity was absent from the Bench for many years. For three quarters of a century, the CCP lacked any diversity amongst its jurists. That started to change when in 1994 then-Associate Judge Alex J. Smalls moved from the Municipal Court of the City of Wilmington to the CCP. In 1997, he became the first African American to become a Chief Judge of a Delaware Court. Chief Judge Smalls presided over the CCP for 24 years before retiring this year.

The CCP also proudly boasts that the first Native American Delaware jurist, Kenneth S. Clark, Jr., joined the Bench in 2000. Judge Clark was not only the first Native American admitted to the Delaware Bar, but his appointment to the CCP in 2000 made him the first minority judge in the two lower counties. As the longest sitting jurist of CCP, he has seen the Court evolve through jurisdictional changes, numerous new appointments, and of course, changes to how hearings are handled due to COVID.

One year prior to Judge Clark’s appointment, the first woman was appointed to the CCP through the nomination by then-Governor Carper of Rosemary Betts Beauregard, now retired, who presided for more than 20 years. Prior to seeking the appointment, she was hesitant to think Delaware was ready to expand the court to women. However, she watched her role models and trailblazers like Susan Del Pesco, appointed to the Superior Court, and Carolyn Berger, appointed to the Court of Chancery, who instilled confidence that change was possible. Ret. Judge Beauregard saw many other jurists appointed to the CCP, but it took 10 years before another woman was appointed — Judge Anne E. Hartnett and Judge Andrea L. Rocanelli (now a retired Superior Court Judge). These two appointments were an important shift for the CCP. It now had gender diversity in each county. That had a big impact on Ret. Judge Beauregard and the Bench overall, and she became hopeful that women jurists were finally breaking through the glass ceiling.

Nevertheless, another decade would pass before the balance truly shifted. The year 2020 is known to all as the year of unprecedented events. This also applies, happily, to Delaware judicial appointments. Governor Carney nominated Judge Kathleen K. Amalfitano; Judge Rae M. Mims, an African American woman, filled the vacancy created by Ret. Judge Beauregard’s retirement; and Judge Monica A. Horton became the first African/Asian American jurist appointed to the Bench. A year later, Judge Katharine L. Mayer was appointed, thereby tipping the balance of the Court, which now includes five women and four men.

Without doubt, the increasing diversity of the CCP, and more generally of the Delaware Bench and Bar, is a continuing positive change.

When asked her thoughts about the current Bench, Ret. Judge Beauregard responded that she couldn’t have predicted in 1999 that women jurists would outnumber men. She is grateful to former Governors Carper and Markell for their forward-thinking approach to creating more diversity on the Bench when she was appointed and is now proud to see how it has developed.

Ret. Judge Beauregard speaks fondly of her experience at the CCP and found strength in its small numbers of jurists who worked in harmony with a common sense approach to its docket.

Without doubt, the increasing diversity of the CCP, and more generally of the Delaware Bench and Bar, is a continuing positive change. It cannot be overemphasized. Greater diversity on the Bench increases public trust and confidence in the judiciary and leads to greater access to justice. These changes impact not only the courtroom, but also the larger community.

I appreciate the challenges — both large and small — that these judges faced as they forged their paths to the Bench. It might not have been their goal to become trailblazers, but that is just what they have done. These notable firsts of the CCP inspire many future “firsts,” who will continue making positive changes for the judiciary and for all Delawares. ☺

Thank you to Retired Judge Rosemary Betts Beauregard and Judge Katharine L. Mayer for their assistance with this article.

Mae Oberste practices corporate litigation at Block & Leviton LLP in Wilmington, Delaware, and is currently a member of the Executive Committee of the Delaware State Bar Association. She can be reached at mae@blockleviton.com.
Chancellor Kathaleen S. McCormick graciously agreed to contribute to the September issue to further our theme and celebration of Delaware Women Firsts, considering she is the first woman to be appointed Chancellor on the Court of Chancery since its inception in 1792. Apropos then, for this recognition and historical first, is the equitable maxim: *Equity will not suffer a wrong without a remedy.*

Chancellor McCormick is what many Delawareans consider a home-grown hometown hero. She grew up in Smyrna, Delaware, attending public schools through high school. She credits in-part her time in the Smyrna School District and the mentorship she received there for her success. She had many teachers and community members who were supportive to her and her classmates. Chancellor McCormick recalls fondly the “incredible, loving, nurturing community and schools in the town.” Smyrna was a place “where everybody was really invested in the next generation’s success.” Her parents were also extremely supportive, striving to show her new experiences and expose her to new things.
That investment paved the Chancellor’s path to Harvard University, where she studied philosophy. As one could imagine, Chancellor McCormick described culture shock when transitioning from small town Delaware, where the culinary options are “McDonald’s and … McDonald’s,” to Cambridge, Massachusetts, where food and other choices abound and the streets are always bustling, filled with some of the greatest minds in the world. The culture shock was a positive and eye-opening experience.

Chancellor McCormick did not set out to become a lawyer, but she did always feel motivated to help those in need. During her third year at Harvard, she became involved with a non-profit that assisted low-income Cambridge residents with landlord-tenant and consumer issues.

The Chancellor’s desire to serve others lead her to recognize the legal field as a viable path towards that goal, and she enrolled in law school at The University of Notre Dame.

It was heartening to learn that Chancellor McCormick and I had a shared experience of being pregnant during our last year of law school. After Chancellor McCormick graduated from law school, she returned home to Delaware to be near her parents as she started her family and legal career.

Chancellor McCormick had her first child in June of the same year she graduated law school and, as all of us Delaware lawyers know, that means she sat for the Delaware Bar Exam in July, with a one-month-old baby at home.

After law school, Chancellor McCormick worked at Delaware’s Community Legal Aid Society, Inc. (CLASI) under a Fair Housing grant, litigating housing disputes in all three Delaware counties. This experience impressed upon her the inherent dignity of every person who steps into the courtroom. She strives to “always be a gracious host and attentive listener” to all litigants in her courtroom.

After CLASI, she worked in private practice, becoming a Partner at Young Conaway Stargatt & Taylor, LLP.

She was motivated to apply to the Bench because she felt called to serve in a field she had come to love. She was excited about the chance to be a judge and joined the Court of Chancery as a Vice Chancellor in 2018. She became Chancellor on May 5, 2021, and is tasked with navigating the Court through a global pandemic while managing the changes the pandemic has brought to the Bench and legal profession.

While this is no small task, the Chancellor’s experiences at home caring for her very “Brady Bunch style family of eight people she claims as her children,” with the assistance of her supportive partner, has readied her for the challenge.

Chancellor McCormick, perhaps aiming to lead by example, emphasized during our conversation that it is important for career-driven women to know that they can succeed in their chosen calling while also raising a family. She has crossed paths with many women who shared stories of waiting for “the right time” to start a family. She quipped, “There may never be an optimal time!” While she would not deign to tell anyone what to do as to these personal choices, she offers her experience solely as an indicator that building a family and a career contemporaneously is possible.

Chancellor McCormick offers these insights to women lawyers: “Do not be afraid to fail and be open to opportunity. Be willing to recognize an opportunity when it is presented and be confident in your ability to succeed. Be willing to make mistakes and recognize that if you are overly risk adverse you will never accurately assess risk for your clients and may never take actions that could have a huge payoff for yourself.”

Notes:

Bar Journal Editor Kristen Swift is a Partner in Weber Gallagher’s Delaware Office and is Chair of the Litigation Section. She can be reached at kswift@wglaw.com. Her full bio is available at www.wglaw.com All opinions expressed are solely her own.
Report: 2021 First-Ever “Hybrid” Annual Meeting of the ABA House of Delegates

BY WILLIAM D. JOHNSTON, ESQUIRE

In follow-up to the first-ever Virtual Annual Meeting of the American Bar Association’s House of Delegates in August 2020 and the 2021 Virtual Midyear Meeting, the first-ever “hybrid” 2021 Virtual Annual Meeting of the House of Delegates took place on August 9-10 in Chicago and remotely. Approximately a third of the almost 600 members of the House of Delegates met in-person and the remainder joined via Zoom. This article offers some highlights of what, by all accounts, was a very successful meeting during which the business of the House occurred.

The Delaware Delegation

As I’ve noted in previous reports, the House of Delegates is the principal policy-making body of the ABA. For the most recent meeting, the Delaware Delegation included The Honorable William C. Carpenter, Jr., Delegate-at-Large and immediate past member of the ABA Board of Governors; the Honorable Vivian L. Medinilla, Delegate representing the National Association of Women Judges; Ben Strauss, DSBA Bar Delegate; Lauren DeLuca, DSBA Young Lawyer Bar Delegate; John “Jack” Hardin Young, Senior Lawyers Division Delegate; and yours truly, State Delegate. The Delaware Delegation was delighted that Judge Carpenter was re-elected as Delegate-at-Large for a second three-year term.

Preparations for the Hybrid Meeting

As with the Annual Meeting in 2020 and the Midyear Meeting in 2021, as soon as the decision was made to hold the first-ever hybrid meeting of the House, preparations for the meeting began in earnest with no time to spare. As before, from my perspective, the ABA volunteer leaders and superb professional staff left no stone unturned. Every effort was made to ensure that the work of the House would be accomplished within the time allocated and that there would be an opportunity for meaningful debate when appropriate. As always, ABA entities as well as bar associations were encouraged to submit resolutions for consideration by the House. The great challenge, of course, was that the Annual Meeting would occur as essentially two, parallel meetings — in-person and remote. And at at least twice the cost of an in-person meeting.

As was the case with the 2021 Midyear Meeting, in light of the number of resolutions to be considered during the Annual Meeting’s one and a half-day session, the House adopted a special rule limiting the number of speakers in connection with resolutions to three per side. Where there was no opposition to a resolution and the resolution had not been put on the consent calendar of the House, the Chair had the discretion to invoke rules of limited debate (five minutes for the movant, two minutes for other speakers).

Also critically important, of course, was again determining how best to ensure timely and accurate electronic voting by delegates in connection with resolutions and other matters to come before the House. The 2020 Annual Meeting used two electronic platforms for the House meeting: a Zoom webinar for all matters other than voting, and a Sync voting platform — all of which required using two devices simultaneously. For the 2021 Midyear Meeting, and this time around, we used a single platform on our phones, which simplified life!

House Chair Barb Howard did a great job convening and facilitating the meeting, including responding to the inevitable number of speakers who were still “on mute” or suddenly had become unavailable to join remotely. And the ABA Policy and Administration staff, together with the House Rules and Calendar Committee, did their usual, superlative job behind-the-scenes and on-the-spot during the meeting.
Remarks from ABA Officers and Others

During the session of the House, we heard from ABA officers and others. Speakers, all refreshingly live and in-person, included, among others, Chair of the House Barb Howard, ABA President Trish Refo, ABA Treasurer Kevin Shephard, ABA Secretary Pauline Weaver, ABA President-Elect Reggie Turner, ABA President-Elect Nominee Deborah Enix-Ross, and ABA Executive Director Jack Rives. During the Meeting, Ms. Enix-Ross was elected President-Elect. At the conclusion of the Meeting, Mr. Turner became President.

We also heard from President of the Canadian Bar Association Bradley Regehr and from Legal Services Corporation Chair John Levi. Larry Fox received the ABA Medal, the Association’s highest award. A nationally prominent “issues of concern” panel addressed voting rights issues. The House’s Resolution and Impact Review Committee highlighted the practical impact of resolutions previously adopted by the House as ABA policy.

Resolutions Adopted by the House

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

As I’ve previously reported, during the 2021 Midyear Meeting, the House amended its Rules of Procedure to require that a resolution must advance one or more of the ABA’s four goals in order to be germane. Those co-equal goals, adopted by the House in 2008, are: (i) serve our members; (ii) improve our profession, (iii) eliminate bias and enhance diversity, and (iv) advance the rule of law. Also adopted by the House in 2008 is the ABA’s mission statement: “To serve equally our members, our profession and the public by defending liberty and delivering justice as the national representative of the legal profession.”

Adopted resolutions with bar associations as their lead sponsor(s) addressed the following: law schools offering courses on the law of U.S. territories and reaching the Insular Cases as part of existing courses on constitutional law (300); Congress amending legislation or enacting new legislation to permit federal district court judges appointed to serve in the Virgin Islands, Guam, and the Northern Mariana Islands to serve as voting members of the Judicial Conference of the U.S. and the judicial conferences of their respective circuits (200); and creating safer campus communities by clarifying and affirming the broad meaning of Title IX and addressing gaps in Title IX coverage (802).

Three proposed amendments to the ABA Constitution were presented. The first was to include as one of the purposes of the Association, “To define the right to life of all innocent human beings including those conceived but not yet born.” The House voted to postpone indefinitely consideration of the resolution. The second proposed amendment was to postpone until the conclusion of the 2023 Annual Meeting a determination whether representation of ABA sections and state and local bar associations should be reduced based upon membership numbers, in order to permit an appropriate and thoughtful review of those entities’ representation in the House. That resolution was adopted. Third, there was a proposal to amend various sections of the Association’s Constitution, Bylaws, and Rules of Procedure of the House to change gender binary language to gender non-binary language (using the singular “their,” “them,” and “they.” That resolution was adopted.

In addition, adopted resolutions with ABA sections, divisions, forums, and other entities taking the sponsorship lead addressed the following: amending the ABA Model Rule for Registration of In-House Counsel to clarify an ambiguity between it and Rule 5.5 of the ABA Rules of Professional Conduct (100); adopting the revised ABA Standards for the Provision of Civil Legal Aid (101); urging members of the legal profession to devote at least 20 hours each year to efforts that advance and promote diversity, equity, and inclusion in the legal profession (102); urging federal agencies to adopt policies, practices, and procedures eliminating barriers to participation in professional associations (202); urging the federal government to eliminate the Medicaid bias favoring institutional settings by amending policies in order to require that states and territories implement home and community-based services under Medicaid State Plans (601); urging bar associations and legal employers, in connection with a safe return to the workplace, to develop and implement policies and practices that address the COVID-19 pandemic’s disproportionate impact on people of color, women, individuals with disabilities, individuals who identify as LGBTQ+, caregivers, and seniors (602); encouraging bar associations and legal employers to develop, disseminate, and provide guidance and resources to assist with the implementation of policies and best practices for the safe and effective return to the workplace as a consequence of the COVID-19 pandemic (603); urging the adoption of the ABA Principles on Law Enforcement Body-Worn Camera Policies (604); urging improved diversity in the legal profession, and especially in the judiciary, by urging jurisdictions to systematically collect demographic data on judges and government attorneys (605); promoting expanded and improved civics education in the U.S. (606); adopting the updated principles for Homeless Court Programs (607); urging the enactment of legislation to provide to all employees a living wage (608); opposing any legislation, regulation or policy that prohibits transgender students from participating in athletics in accordance with their gender identity (609); and recommending the adoption of the American Bar Association Election Administration Guidelines and Commentary, and that all election officials ensure the integrity of the election process through the adoption, use, and enforcement of the Guidelines (610).

Other adopted resolutions with ABA sections and other entities taking the sponsorship lead addressed; renewal of the ABA recommendation that Congress ratify and accede to the United Nations Convention on the Rights of the Child (301); creating a Campaign to Address the Needs of the Multilingual Elderly (602); urging the federal government to require health care providers to report and provide information to the Centers for Medicaid and Medicare Services (601); urging the federal government to implement the Medicaid bias favoring institutional settings by amending policies in order to require that states and territories implement home and community-based services under Medicaid State Plans (601); urging bar associations and legal employers, in connection with a safe return to the workplace, to develop and implement policies and practices that address the COVID-19 pandemic’s disproportionate impact on people of color, women, individuals with disabilities, individuals who identify as LGBTQ+, caregivers, and seniors (602); encouraging bar associations and legal employers to develop, disseminate, and provide guidance and resources to assist with the implementation of policies and best practices for the safe and effective return to the workplace as a consequence of the COVID-19 pandemic (603); urging the adoption of the ABA Principles on Law Enforcement Body-Worn Camera Policies (604); urging improved diversity in the legal profession, and especially in the judiciary, by urging jurisdictions to systematically collect demographic data on judges and government attorneys (605); promoting expanded and improved civics education in the U.S. (606); adopting the updated principles for Homeless Court Programs (607); urging the enactment of legislation to provide to all employees a living wage (608); opposing any legislation, regulation or policy that prohibits transgender students from participating in athletics in accordance with their gender identity (609); and recommending the adoption of the American Bar Association Election Administration Guidelines and Commentary, and that all election officials ensure the integrity of the election process through the adoption, use, and enforcement of the Guidelines (610).

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Finally, ABA entities took the lead in sponsoring adopted resolutions that addressed: urging Congress to enact the Pregnant Workers Fairness Act or similar legislation which (i) explicitly and affirmatively guarantees pregnant workers the right to reasonable accommodations so they can continue working without jeopardizing their pregnancy, (ii) prohibits employers from denying pregnant workers employment opportunities based on the employer’s need to make reasonable accommodations, and (iii) provides pregnant workers the same rights and remedies as those established under Title VII of the Civil Rights Act of 1964 (511); urging Congress to amend the U.S. Bankruptcy Code to permit student loans to be discharged in bankruptcy without needing to prove undue hardship (512); urging the prioritizing of environmental justice and ensuring that communities of color, indigenous communities, low-income communities, and other vulnerable populations are included as stakeholders in decision-making and implementation processes (513); urging adoption of federal and local hate crime legislation, including crimes against the AAPI community, while specifying both civil remedies and First Amendment protections (514); urging the inclusion in the curriculum of publicly-funded school of information about the historical and social contributions of LGBTQ+ individuals, as well as LGBTQ+-inclusive sexual health education to promote public health best practices and improve youth mental health outcomes (515); urging the federal government to institute a review of the advisability and feasibility of phasing in size and design standards for nursing homes that would require small, household model facilities with single rooms and private baths, given their safety and infection control advantages in public health emergencies such as the COVID-19 pandemic (800); and urging support of the U.S. Department of the Interior’s Federal Indian Boarding School Initiative and the Truth and Healing Commission (801).

For a detailed description of each resolution (and of other resolutions considered by the House or withdrawn from consideration at the Annual Meeting), please see www.americanbar.org. And, while on the ABA’s landing page, please click on the link to the “Practice Forward” homepage. There, you will find valuable content reflecting practice and wellness tips to the benefit of each of us during the pandemic and beyond.

As I’ve noted previously, the practical effect of the House of Delegates adopting policy, as reflected in the above resolutions, is that elected officers of the Association, staff, and volunteer leaders are then authorized to advocate those policy positions — whether with legislators, courts, or others. This, importantly, can translate into grassroots advocacy in Washington (such as the annual ABA Day on Capitol Hill, to take place virtually in 2022 on April 5-6) and in state legislatures to urge, for example, increased funding of legal services for the poor through the Legal Services Corporation.

Membership

The ABA pursued a broad-based effort to study how best to deliver value to ABA members. The thoughtful, resulting recommendation, embraced by the Board of Governors, included simplifying dues-paying categories and reducing dues and other benefits.

As I’ve urged before, if you currently are an ABA member but are not yet engaged in the work of ABA sections, divisions, or forums (and their respective committees and subcommittees), please consider increased involvement. And, if you currently are not an ABA member, please consider joining (or re-joining) as a complement to your DSBA membership. I and other members of the Delaware Delegation would be delighted to discuss with you all of the opportunities that ABA membership presents, including during the ongoing pandemic. Again, special thanks to Lauren DeLuca for her service as State Membership Chair for Delaware. As President Reggie Turner exhorted in his remarks during the recent Annual Meeting, “Each one, reach one!”

It continues to be my privilege and pleasure to serve as your State Delegate to the ABA House of Delegates. The House will next meet on February 14 during the 2022 ABA Midyear Meeting in Seattle. My working assumption (and hope) is that that meeting will be in-person only, with other ABA meetings and CLE presentations taking place remotely in the meantime as-needed. As always, if you have any questions or comments, please let me know at wjohnston@ycst.com or (302) 571-6679. Most of all, please stay safe and well.

Bill Johnston is a partner with Young Conaway Stargatt & Taylor, LLP. He is a Past President of the Delaware State Bar Association, serves in the ABA House of Delegates as State Delegate from Delaware, is a Former Chair of the ABA Business Law Section, and is Past President of the American Counsel Association.
This year marks 75 years of civil legal aid in Delaware! And coincidentally, each of Delaware’s civil legal aid agencies are celebrating “divisible by 5 anniversaries”—Community Legal Aid Society, Inc. (CLASI) is 75, Delaware Volunteer Legal Services, Inc. (DVLS) is 40, and Legal Services Corporation of Delaware, Inc. (LSCD) is 25. The Combined Campaign for Justice (CCJ) was formed in 1999 to raise critical additional funds to support the work of these agencies. CCJ is throwing a Garden Party to celebrate the special anniversaries of these nonprofit organizations that do so much to ensure equal access to justice for many thousands of low income and vulnerable people each year.

After more than a year of canceled events due to COVID, the Garden Party will be a festive and casual way to celebrate the good work of our legal aid agencies, and will also be an opportunity for many in our legal community to see each other and socialize in person. The outdoor event will be held at Brantwyn Estate at the DuPont Country Club in the spring of 2022. It will feature cocktails and hors d’oeuvres, live music by Rob and the Youngsters, lawn games, and a silent auction. Several pre-Garden Party options are available for those who want to take advantage of the beautiful DuPont Country Club facilities, including a nine-hole golf tournament on the Montchanin Course or an opportunity to play for an hour on the golf simulators at the new indoor Golf Centre.

For 75 years, Delaware’s legal aid agencies have helped ensure fairness for Delaware’s most marginalized residents — particularly those who are poor, people with disabilities, and elderly people. Additionally, investing in legal aid makes good business sense: a study commissioned by the Longwood Foundation found that every $1 invested in civil legal aid in Delaware returns $7.23 in economic and social benefits to Delaware and its communities.

We are honored to be chairing this special event and hope that many of our friends and colleagues will join us in sponsoring and attending both the Garden Party as well as the golf pre-events. For questions or more information about signing up and sponsoring, please reach out to Molly McPheeters at mmcpheeters@declasi.org. We look forward to celebrating with you in 2022!
Carl Schnee, Esquire
1936 - 2021

BY B. WILSON REDFEARN III, ESQUIRE

A Man for all Seasons

Carl Schnee never compromised his principles. His sense of fairness was remarkable. From the impecunious defendant to the highest judge, all were treated equally.

Similar words of praise were proffered by President (then Senator) Biden to President Clinton when he submitted Carl’s name to serve as the United States Attorney for the District of Delaware. Those present at the many events honoring him heard similar expressions of admiration. His awards included:

- The Distinguished Service Award from the Delaware State Bar Association
- The Outstanding Service Award from the Delaware Council on Crime and Justice
- The Outstanding Service Award from the YMCA
- The Lifetime Achievement Award from Common Cause
- The Order of the First State presented by Governor Jack Markell

Should I have had the chance, I would have awarded Carl the Excellence in Humor award for this trait which equally defined his demeanor. Never did I hear his character questioned, nor did I hear him utter an unkind word. (Well, almost never.) Carl sought and found the best in everyone.

Should you have been invited to a gathering with Carl after business hours, it is not unlikely that you would be greeted by an unpretentious guy wearing an Eagles t-shirt and cut-offs. Carl never boasted about the legendary cases that he handled. He did, however, on one occasion confide to me that he was soon to be depicted on television in an episode about his defense of “The Gentleman Bandit,” Fr. Pagno, the priest accused of bank robbery. He suggested that he might best be played by Paul Newman. I agreed.

In addition to his legal endeavors, Carl served the community as a teacher of law and history at the University of Delaware’s Osher Lifelong Learning Institute. Having earned a Master of Liberal Arts degree following law school, Carl was also the President of the Delaware Art Museum and was on the Board of the Delaware Center for the Contemporary Arts. He also served on the Delaware State Arts Council.

Carl’s last years were not comfortable. Most of them were spent in an assisted living unit of the Country House on the Kennett Pike. When he pondered his memories of a life well-lived, his thoughts were not about his courtroom victories or public accomplishments. Rather, he reminisced about his family adventures of times past: terrorizing his sister, Judy, during grammar school; his admiration for Sada Goldblatt, his mensch throughout the formative years; the bedtime stories he told his daughter, Linda, where the hero somehow always turned out to be the wise and clever criminal defense attorney. He loved biking with the Delaware Blue Hen riders as well his Sunday morning bicycle trips to Dunkin’ Donuts with his sons, Michael and Paul.

In the year before his death, Carl was, with few exceptions, prevented from being with his family because of COVID restrictions. He would customarily talk to Doris, his wife, on the phone, before they went to bed. On the day before his death, they talked about their wonderful life together.
Both chose to believe there would be a new future.

Down, down, down into the darkness of the grave
Gently they go, the beautiful, the tender, the kind
Quietly they go, the intelligent, the witty, the brave
I know. But I do not approve and I am not resigned

Edna St. Vincent Millay
Last stanza of “Dirge Without Music”

I retired after practicing for 50 years. During this time, I was honored to have Carl as a treasured friend, legal partner, and business associate, in that order.

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Don’t Wear White After Labor Day

We’re all familiar with dress codes, although I suspect that when most of us think of dress codes, we think of either unwritten norms or employer or school policies that call for a certain minimum level of attire. Perhaps we think of the sign posted at some restaurants: “no shoes, no shirt, no service.” But, whatever we may think, as law professor Richard Thompson Ford discusses in his book, *Dress Codes: How the Laws of Fashion Made History*, dress codes of one form or another have been around since ancient times; and, more often than not, these dress codes, which were often codified and had the force of law, were put in place not for reasons of good taste, but for maintaining social status or political control.

In 1510, the first Parliament of King Henry VIII passed “An Act Against Wearing of Costly Apparrell,” which limited the cost of apparel worn by a person to a certain set amount, depending on one’s social status. For example, men under the rank of lord could not wear “any cloth of gold or silver, sables or woolen cloth made [outside] of England, Wales, Ireland, or Calais [then a part of the crown’s holdings].” Those under the rank of knight could not wear velvet, silk or damask, and ordinary commoners could not wear clothing worth more than two shillings. And these laws (and others like them) were enforced. In 1565, one Richard Walwrey, a mere servant, was arrested for wearing “a very monstrous and outraygeous greate payre of hose.”

Over time, of course, the rules of fashion have changed. In particular, beginning in around 1760, men’s fashion became much less ornate in what has been dubbed the “Great Masculine Renunciation.” During a period of roughly thirty years, the fanciful dress associated with the Renaissance gave way to a simpler style of wool and linen in more somber colors of dark blue, gray, brown, and black, and a style which, in many ways, was the precursor to the modern business suit. Sumptuousness and extravagance was left to women, and, to this day, women are afforded a wider range of styles and dress than men.

Dress codes have been used for more than just attempts to maintain social status. Slave codes in the antebellum south restricted what slaves could wear. Laws in medieval and renaissance Europe imposed certain dress requirements on Jews. Italian Jewish women, for example, were required to wear earrings in the late Middle Ages to indicate their faith; although in other times and places, such as ancient Egypt and Greece, earrings were a sign of high social rank.

The Twentieth Century has seen much change in fashion, and Ford walks us through it all. In many respects, the history of fashion can be seen as a history of the country more broadly. Ford’s book is, at times, a sobering analysis and critique of society more generally, while at other times a light-hearted and entertaining story of fashion trends and styles. From the high-heeled shoes of Persian cavalrymen (used to help keep feet in the stirrup and believed to be the first use of high

*Dress Codes: How the Laws of Fashion Made History*  
By Richard Thompson Ford  
Simon & Schuster, 2021
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.

Dress codes will, in short, always be with us, and will often tell us interesting things about society as a whole.

heels) to the red-soled high heels of designer Christian Louboutin (protected by federal trademark law), and from cage crinoline dresses and corsets to the flapper movement, to today’s modern styles, there is something of interest to just about anybody with an interest in history or fashion.

Ford closes his book with some interesting and thought-provoking comments on dress codes more generally. He sees a value in dress codes (particularly for employers, restaurants, schools, etc.), but at the same time believes dress codes need to reasonable and flexible under the circumstances. As lawyers, men wear suits with white shirts and ties in court as a sign of respect and seriousness, and women wear similarly professional and appropriate attire, but if just working in the office, then perhaps we are all a bit more casual (some would say too casual). Doctors wear white coats, often with stethoscopes (one might be concerned about a doctor wearing cut-off shorts and a ratty t-shirt). Even “business casual” frequently comes with a written dress code (at least for men), most often consisting of khaki pants and either a blue button-down shirt or golf shirt. Dress codes will, in short, always be with us, and will often tell us interesting things about society as a whole. Moreover, clothes do make the man (and woman) and our own dress often conveys a message to others before we even utter a single word. Richard Thompson Ford’s book reminds us that dress codes are something worth noting and paying attention to.

(Reviewer’s follow-up: The “rule” about not wearing white after Labor Day arose, it is said, like so many other fashion rules, so as to distinguish those with money and taste from those without. In the early nineteen hundreds, in the northeast, those with money often vacationed at length during the hot summer months away from the city and they wore white and other lighter colors during this time, only to don their more formal attire upon their return to city life at the end of summer. One didn’t wear white after Labor Day, the end of summer, because it was time to return to serious pursuits and to end summer frivolity.)

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Perhaps you can visualize her red cookbook, first published in 1950, on your childhood kitchen counter. Maybe you’ve used one of her boxed mixes when you didn’t have time to create a Devil’s Food Cake from scratch. Surely, you would recognize the red spoon logo...

Yes, I am referring to Betty Crocker, the First Lady of Food, who continues to be a source of uncomplicated recipes and reliable baking products. Betty Crocker has been so popular over the years that in April of 1945, Fortune magazine named her “the second best-known woman in America, following First Lady Eleanor Roosevelt.”

Just recently, I learned that Betty Crocker has been a Fig Newton™ of our imaginations, as General Mills created her persona to respond to consumers’ baking questions. Yet this realization does not diminish her stature as a culinary icon. Betty Crocker recipes and products (from Bisquick to Brownie mix) are ubiquitous. Her easy-to-follow recipes are ideal for back-to-school meals. In this month’s column, I include the Betty Crocker website recipe for Slow-Cooker Mole Chili, along with my twist on a Bison Chili.

**Slow-Cooker Mole Chili**

**Ingredients**
- 1 ½ lb lean (at least 80%) ground beef
- 2 medium onions, chopped (1 cup)
- 6 cloves garlic, finely chopped
- 1 can (28 oz) diced or whole (coarsely chopped tomatoes, undrained)
- 1 jar (16 oz) Old El Paso™ Thick ‘n Chunky salsa
- 2 cans (15 to 16 oz each) pinto beans, undrained
- 2 tablespoons unsweetened baking cocoa
- 1 tablespoon chili powder
- 2 teaspoons smoked paprika
- 2 teaspoons ground cumin
- 1 to 2 teaspoons chipotle chili powder
- ½ teaspoon salt
- ½ cup chopped fresh cilantro

In 12-inch skillet, cook beef, onion and garlic over medium-high heat 5 to 7 minutes, stirring frequently, until beef is thoroughly cooked; drain. In 4- to 5-quart slow cooker, mix beef mixture and remaining ingredients except cilantro. Cover; cook on low heat setting 7 to 8 hours. Top individual servings with cilantro.
Bison Chili

Ingredients

• 3 teaspoons extra virgin olive oil
• 1 ½ pound ground bison
• 5 garlic cloves, thinly sliced
• 1 poblano pepper, chopped
• 1 medium onion, chopped
• 1 tablespoon chili powder
• 1 tablespoon chipotle chili powder
• 1 teaspoon ground ancho chile

• 1 teaspoon ground cumin
• 1 teaspoon paprika
• Sea salt
• 1 27 ounce can crushed San Marzano tomatoes
• 1 15.5 ounce can black beans, undrained
• 1 15.5 ounce can pinto beans, undrained
• 1 handful cilantro
• 1 lime, sliced into wedges

Heat the olive oil in a Dutch oven over medium-high heat. Add the bison and brown, breaking it up with a wooden spoon. Using a slotted spoon, transfer the meat to a plate. Add the garlic, pepper, and onion to the pot, and cook for a few minutes until softened. Add the spices and stir. Then, add the tomatoes and bring to a simmer. Add the bison back to the pot along with the beans, stir, and bring to a boil. Reduce the heat, and simmer, covered, for about 30 to 45 minutes. Season with salt to taste. Garnish with sprigs of cilantro and a lime wedge.

Notes:

Susan E. Poppiti is Associate Faculty 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.

I conclude with some food for thought…whether a First Lady in the kitchen or the courtroom, tenacity is key. In an interview for Girls Scouts, Carla Hall, celebrity chef, entrepreneur, and Girl Scout alum, said: “I don’t give up. I don’t take no for an answer. Even if it’s putting together a bookcase: if it’s wrong, I will take it apart and put it together again as many times as I have to in order to get it right.”

Insurance Services for Delaware Attorneys

The Delaware State Bar Insurance Services (DSBIS) offers comprehensive, highly customized insurance solutions and risk control services to protect lawyers from professional exposures and provide enhanced member services.

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SMALL NEWARK LAW OFFICE is looking for a Delaware licensed attorney to help grow the practice. Must have interest and/or experience in estate planning and/or residential real estate. Part-time position with the possibility to transition to full-time in the future. Great opportunity for the right candidate to have control over their own client base. Portable business a plus. Maryland or Pennsylvania bar a plus. Send resume to vcarr@carrlawde.com.

MORRIS JAMES LLP seeks an experienced litigation associate to join its Corporate and Commercial Litigation Group, based in Wilmington, Delaware. An ideal candidate would have two to six years of experience, with exposure to complex contract disputes, shareholder litigation, breach of fiduciary duty claims, and other corporate litigation issues, including summary proceedings under Delaware’s business statutes (e.g., control disputes, advancement and indemnification proceedings, and books and records demands). Experience counseling fiduciaries on governance, transactional, and investigatory matters under Delaware law would be a plus. Our Corporate and Commercial Litigation Group regularly represents clients in high-value, high-stakes litigation in the Delaware state and federal courts. Our group offers the advantage of dedicated and experienced eDiscovery attorneys that effectively and efficiently manage all aspects of eDiscovery in collaboration with our partners and associates. Join our thriving, friendly, and collegial working environment with opportunities for significant substantive responsibility early in your career. The position offers attractive benefits, bonus opportunities, and competitive salary commensurate with experience. Please email cover letter, resume, and writing sample to Albert J. Carroll at acarroll@morrisjames.com.

MANNING GROSS + MASSenburg LLP (MG+M) is recruiting an Associate with 0-5 years of experience for our Wilmington, Delaware office. This associate will be working primarily on Delaware litigation. Delaware bar license is required. This is an excellent opportunity to join a nationally recognized and growing defense firm with opportunities to perform challenging legal work on day one. Candidates should have strong work ethic, writing ability, and organizational skills. MG+M offers an excellent benefits package. Please email resume to wlarson@mgmlaw.com.
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HIRING BONUS - $5,000.00. For Delaware Barred attorneys in our Newark, DE office, we are offering a $5,000.00 hiring bonus. $2,500.00 paid after 90 days of employment, $2,500.00 paid after 180 days of employment. We have two attorney positions open in our Newark, DE office: Workers’ Comp Defense and Liability Litigation Defense. Litigation Description: Hands-on, autonomous, position with heavy defense litigation in transportation, products, and premises liability. Delaware Bar required. WC Description: Hands-on, autonomous, position with heavy Workers’ Comp cases. Delaware Bar required. Requirements: 3 – 5 years insurance defense experience, experience with billing hours, the ability to communicate effectively and frequently with clients, opposing counsel, and all levels of management. Delaware Bar required. Benefits: F&P provides competitive salaries and a comprehensive benefits package, including health, life/ADD, STD, LTD, 401K with profit sharing, flex spending, immediate leave accrual, paid holidays, and other company perks. Additional Information: F&P employs a diverse workforce of 150+ employees across seven office locations. Our hiring needs stem from the growth of our business and the subsequent addition of more attorneys! The firm offers generous compensation and benefits, including domestic partner eligibility, and prides itself on maintaining a casual professional environment with an emphasis on work-life balance. Please send resume and salary requirement to employment@fandpnet.com.

ELZUFON AUSTIN & MONDELL, P.A. seeks a full-time attorney for its active and growing professional liability department. Candidate must be a member of the Delaware Bar. Membership in PA Bar also strongly preferred, but not required. Personal Injury and/or Professional Liability litigation experience preferred. Please submit cover letter and resume in confidence to: John Elzufon, Esq., P.O. Box 1630, Wilmington, DE 19899 or jelzufon@elzufon.com.

ATTORNEY(S) OPENINGS IN NORTH WILMINGTON: Two plus years’ experience, full or part-time. Delaware bar admission required. Salary commensurate with experience. For further details, send resume with cover letter to hr@kolliaslaw.com

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LSCD: Legal Services Corporation of Delaware, Inc. seeks an attorney to be based in our Wilmington office. This is an opportunity to join a small, collaborative firm with immediate opportunities to perform challenging and fulfilling legal work. Litigation experience preferred but you will gain courtroom experience in several Delaware courts in a variety of practice areas such as consumer law, including consumer bankruptcy, and housing/eviction defense. We offer an excellent benefits package. Delaware Bar admission preferred. Please respond in confidence by submitting a resume with cover letter to cindy@lscd.com.

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RICHARDS, LAYTON & FINGER seeks a labor & employment law associate, on a part or full time basis. The ideal candidate will have at least two years of employment law experience. The successful candidate will work on a variety of employment matters, including employment litigation. The candidate will defend and litigate lawsuits involving a broad range of employment-related claims and agency charges of discrimination, including expedited restrictive covenant and trade secret litigation. The candidate will have direct client contact, and will provide employment advice on a wide range of general employment issues such as non-compete agreements, employee discipline and termination issues. They will provide employment law related trainings addressing topics such as sexual harassment and discrimination. The candidate will draft workplace policies and employment contracts for clients. This candidate will assist in the representation of clients before the EEOC, the Delaware Department of Labor and in state and federal courts on issues such as discrimination, harassment, wage and hour, and family leave. The expected work hours for this position are flexible, depending on the needs of the candidate and the firm, and consistent with the firm’s remote work policy for attorneys. Additional details on these items will be discussed with candidates during the application process. A current Delaware Bar admission is preferred. If candidate is licensed elsewhere, they must agree to sit for the Delaware Bar Examination in July, 2022. All applicants must possess strong academic credentials, excellent written and oral communication skills and a pro-active nature. To apply, please submit resume, cover letter, and law school transcript to Samantha Stern, Hiring Manager, at stern@rlf.com. All new attorney hires must be legally entitled to work in the U.S. and not now or in the future require sponsorship for employment visa status.

CLASI IS HIRING ATTORNEYS. Please check our website for details about the positions. http://www.declasi.org/employment/.

THE WILMINGTON OFFICE OF BLANK ROME LLP has an opening for Litigation Associate with 1-3 years of experience. This position primarily will support attorneys in the Commercial and Corporate Litigation Group. Candidates must have excellent verbal, writing, and legal research skills. Candidates must be self-motivated, personable team players and have outstanding academic and professional credentials. Candidates must be admitted to the DE Bar or have sat for the DE Bar Exam. To apply for this position, interested candidates should email their resume, law school transcript, and a writing sample to Dayna Browne, Senior Attorney Recruiting Specialist, at dkbrowne@blankrome.com.

WILMINGTON, DE – LITIGATION ASSOCIATE: Fox Rothschild LLP has an opening in the Wilmington, DE office for an associate with 3 – 5 years of complex commercial litigation experience. A strong academic record and excellent writing skills are required. Large law firm and federal clerkship experience are preferred. Must be admitted to practice in the State of Delaware. Equal Opportunity Employer – vets, disability. We are not currently accepting resumes from search firms for this position. Link to apply: https://www.foxrothschild.com/careers-for-attorneys/open-positions.

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All Bulletin Board ads must be received electronically and prepayment is required. Submit the text of the Bulletin Board ad and payment to rbaird@dsba.org. For more information, contact Rebecca Baird at (302) 658-5279.
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From the DSBA Archives

1. Justice Tamika R. Montgomery-Reeves and President Judge Jan R. Jurden take turns interviewing U.S. Supreme Court Justice Ruth Bader Ginsburg at an event in D.C. commemorating 95 Years of Women in the Delaware Bar.  

2. First woman Judge of the Superior Court, Susan C. Del Pesco speaking in 1998 at the 75th Anniversary of Women in the Delaware Bar.  

3. Justice Carolyn Berger (center), first woman to serve as on the Bench of both the Court of Chancery and later the Delaware Supreme Court, stands with Justice Randy J. Holland and Widener Law School Dean Arthur N. Frakt and the two winners of the law school’s 1995 oral argument competition.  

4. Delaware’s first woman judge and fifth woman member of the Bar, Roxanna Arsht (far right), celebrating in 1981 at the DSBA Dinner Dance.  

5. Claire M. DeMatteis and Judge Arsht celebrate the 75th anniversary of women in the Delaware Bar with U.S. Supreme Court Justice Sandra Day O’Connor.  

Heckler & Frabizzio is proud to announce our new workers’ compensation Partner, Nicholas Bittner, effective July 1, 2021. As a new partner Mr. Bittner will continue to further the firm’s mission statement as THE Preeminent Delaware law Firm.

Mr. Bittner was admitted to practice law in Delaware in 2016. He graduated from Bucks County Community College with an A.A. in Police Administration in 2011, Temple University with a B.A. in Criminal Justice in 2013 and obtained his J.D. from Villanova University School of Law in 2016. Mr. Bittner has an extensive background in investigation and litigation, owing from a work and educational history of private security and criminal justice, including two years of experience in criminal defense and nearly two years of experience working in the New Castle County Court of Common Pleas. In law school, Mr. Bittner served on the Honor Board for three years, was published in the Jeffrey S. Moorad Sports Law Journal, and served as an editor on the Sports Law Journal. Mr. Bittner is also an accomplished guitarist, a stand-up comedian, and the author of two books on philosophy.

Heckler & Frabizzio has one of the largest workers’ compensation defense practices in the state of Delaware and has extensive experience in trying workers’ compensation and general liability cases. We will provide the best information to manage each claim to the best result as quickly and economically as possible. We will provide our services to insurance carriers, self-insureds, third-party administrators, and employers. We will choose to hire the best people that have a strong work ethic and are willing to adopt a team player philosophy. We look forward to our new partner providing added value to our clients and team.
The Delaware State Bar Association Insurance Program, advised and administered by USI Affinity, offers a proprietary, comprehensive Lawyers’ Professional Liability program. Along with other business insurances to attorneys and law firms in Delaware.

As a leading insurance broker for Lawyers’ Professional Liability, USI Affinity has been protecting Lawyers for over 50 years. We understand the business and the risks that attorneys and law firms face every day.

**Lawyers Professional Liability**
The DSBA Insurance Program Lawyers Professional Policy offers proprietary savings and coverages specifically designed to mitigate risk and close gaps in coverage.

**Directors and Officers Liability**
Directors & Officers Liability insurance protects the past, present, and future directors and officers of a law firm from losses arising from “wrongful acts”.

**Employment Practices Liability**
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