



THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

DELAWARE STATE BAR ASSOCIATION BENCH AND BAR CONFERENCE

FRIDAY, JUNE 17, 2016
CHASE CENTER ON THE RIVERFRONT
WILMINGTON, DE

2016

SEE PAGES 18 AND 19 FOR MORE INFORMATION AND
TO REGISTER FOR THE 2016 BENCH AND BAR CONFERENCE.

The Delaware State Bar Association gratefully recognizes Delaware State Bar Insurance Services, Inc. (DSBIS) as the Sponsor of the 2016 Bench and Bar Conference on June 17, 2016.

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The Delaware State Bar Association Presents

Law Day Luncheon 2016

Tuesday, May 17, 2016 • 12:00 noon

Gold Ballroom • Hotel du Pont • Wilmington, Delaware



Keynote Address by Paulette Brown

President, American Bar Association

Paulette Brown, Partner and co-chair of the firmwide Diversity & Inclusion Committee at Locke Lord LLP, is president of the American Bar Association.

Brown has held a variety of leadership positions within the ABA. She has been a member of the ABA House of Delegates since 1997 and is a former member of the ABA Board of Governors and its Executive Committee, as well as the Governance Commission. While serving on the Board of Governors, Brown chaired the Program, Planning and Evaluation Committee. Brown has served on the Commission on Women in the Profession and was a co-author of "Visible Invisibility: Women of Color in Law Firms." Brown also chaired the ABA Council on Racial and Ethnic Justice (now Coalition on Racial and Ethnic Justice) and is a past co-chair of the Commission on Civic Education in our Nation's Schools. Brown served on the Section of Legal Education's Council on Legal Education and Admissions to the Bar and its Executive Committee. Brown joined the ABA Young Lawyers Division in 1976. She became active in the Section of Litigation in 1995, which has continued to be her section "home" ever since. She is a former member of The Fund for Justice and Education (FJE), FJE President's Club and a Life Fellow of the American Bar Foundation.

Brown has held many positions throughout her career, including as in-house counsel to a number of Fortune 500 companies and as a municipal court judge. In private practice, she has focused on all facets of labor and employment and commercial litigation. Brown has been recognized by the National Law Journal as one of "The 50 Most Influential Minority Lawyers in America" and by the

New Jersey Law Journal as one of the "prominent women and minority attorneys in the State of New Jersey." She has received the New Jersey Medal from the New Jersey State Bar Foundation and currently serves on its Board of Trustees.

Brown has repeatedly been named as a New Jersey Super Lawyer and by *US News* as one of the Best Lawyers in America in the area of commercial litigation. In 2009, Brown was a recipient of the Spirit of Excellence Award from the ABA Commission on Racial and Ethnic Diversity in the Profession. In 2011, she was honored with the Margaret Brent Women Lawyers of Achievement Award by the ABA Commission on Women in the Profession. Brown, who served as President of the National Bar Association from 1993-1994, received the NBA's highest honor, The C. Francis Stradford Award, in 2015. Brown earned her J.D. at Seton Hall University School of Law and her B.A. at Howard University.

Awards Presentation

Liberty Bell Award

Presented to

John G. Moore, Sr.

United Way of Delaware

Community Service Award

Presented to

**The Honorable
Mary M. McDonough**

Court of Common Pleas

Myrna L. Rubenstein Professional Support Recognition Award

Presented to

Nancy Osborn

Law Day Luncheon • Tuesday, May 17, 2016 • 12:00 noon

Please reserve _____ place(s) for me at the Tuesday, May 17, 2016 Law Day Luncheon to be held at 12:00 noon at the Hotel du Pont.

\$55/per person. Please include names and DE ID numbers of all attendees with response.

Name: _____ DE ID No.: _____

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Refund Policy: Refunds will not be issued unless cancellation is received no later than one week prior to the luncheon.

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OF THE DELAWARE STATE BAR ASSOCIATION

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By Richard A. Forsten, Esquire

Administrative Law and Accountability: A Modest Proposal

Author's note: Elsewhere in this issue, I have reviewed the book "Is Administrative Law Unlawful?" That book got me thinking about something I had already been thinking about for a long time and so prompted this column. You may want to read the book review before reading further.

• • •

Over the years, on behalf of a variety of clients, I have complained to various state legislators about different regulatory provisions. Sometimes these complaints are over policy, and I wonder why it is an agency implementing a policy not necessarily contemplated by the authorizing legislation. Other times I question whether the regulation is fair or if it is really needed (For example, should the regulations governing day care providers really prohibit serving "sweetened" fruit juice?). Regardless of the issue, when a constituent or citizen has a complaint about a law or would like to see a change in the law, civics teaches us to go talk to our legislators.

And so, having followed the prescribed course, I think the most disappointing answer I have ever received, and I have received it on too many occasions, are words to the effect: "Don't blame me, I didn't vote for that regulation, it was [insert name of agency] who adopted it." Technically, of course, this response may be correct — but it points to a larger problem.

In a system of representative democracy, we are taught that if the voters are unhappy with the laws passed by the

legislature, they can "vote the bums out." But, what if "the bums" are not the ones who passed the offending laws? What if those laws are actually regulations adopted by an unelected regulatory agency? How, exactly, are the voters supposed to respond? They could vote against their legislators, but that does not remove those in the regulatory agency who adopted the offending regulations. Indeed, those agency employees may be career employees who cannot be voted out; and, indeed, those employees may be well-intentioned and think they are doing the right thing. But if we are a representative democracy, then at some point the voters are supposed to have the final say. Can some measure of accountability be implemented or restored?

Consider the case of *Delaware Dep't of Natural Resources & Environmental Control v. Sussex County*, 34 A.3d 1087 (Del. 2011), in which DNREC adopted a regulation requiring a 100-foot buffer from any body of water, such as a stream, pond, or wetland area. Various property owners in Sussex County, as well as the County government itself, challenged the regulation, claiming that it conflicted with existing Sussex County zoning requirements (which only require a 50-foot buffer). Property owners were understandably upset because the increased buffer and other requirements had the potential to render up to 10,000 acres of ground unbuildable and essentially valueless. The Supreme Court held DNREC lacked the power to adopt the regulation because State law forbid DNREC from adopting any regulations inconsistent with

other state law, including Sussex County's zoning law; but, imagine for a moment, if state law did not prohibit DNREC from adopting such a regulation.

The regulation at issue in *DNREC v. Sussex County* had the potential to severely affect many property owners throughout the state, causing substantial diminution in property values and other problems. DNREC obviously believed the benefits outweighed the costs — but, should the unelected employees of DNREC be making this call? The folks at DNREC are tasked with protecting the environment — a noble and important goal — but, given their mission, can they fairly and in an unbiased way balance the needs of the public versus the needs of private property owners (who are, of course, also members of the public)? Why should unelected administrators, as compared to elected legislators, accountable to the people, be deciding the issue? Why a 100' buffer as compared to a 75' buffer? Why wouldn't DNREC defer to the Sussex County Council, a body elected by all the citizens of Sussex County, which adopted only a 50' buffer?

Moreover, if the DNREC regulation had been upheld, what was a disappointed and frustrated property owner to do? Would complaining to a legislator have provided any relief? The legislator may easily have said, "I agree it seems excessive, but I didn't vote for that, you should talk to the Governor." The Governor (who represents the entire state, as compared to a single representative or senatorial district, and, if the regulation had been

“In a system of representative democracy, we are taught that if the voters are unhappy with the laws passed by the legislature, they can ‘vote the bums out.’”

adopted two years later would not have been running for re-election) might easily have said, “I didn’t enact this regulation, it was done by DNREC after it followed a process.” In short, there may not have been much a property owner could have done in a system where the folks directly responsible (DNREC) are not elected by the voters. That inability to seek accountability continues to exist today.

But, there is a possible solution. What if there was a way to allow legislators to weigh in on regulations? What if there was a better way to hold legislators and agencies accountable? What if the General Assembly required an agency to send it a copy of any proposed regulation before it went into effect, and the General Assembly was then given some period of time to either do nothing (thereby acquiescing to the proposed regulation) or adopt a resolution barring the proposed regulation?

Farfetched you say? Crazy? Can’t be done? In fact, according to the National Conference of State Legislatures, some 41 states have some type of authority to review administrative regulations, with the most popular form of review being a legislative veto by resolution of both houses (without signature by the Governor).

And so, to get the ball rolling, let me suggest the following. Why not require (except in emergency situations, of course) that a Delaware agency must present a regulation to the General Assembly at least 60 days before it is to become effective, and that if, during those 60 days, six or more members of the General Assembly introduce a resolution to veto the proposed regulation, then that resolution must, at a minimum, receive an up or down vote in the originating chamber (meaning it cannot be bottled up or killed in committee), and, if passed,

then proceed to the other chamber for an up or down vote?

Now, there can be any number of variations and permutations of the foregoing, but the idea is that if an agency knew its handiwork was subject to review by the General Assembly, and if legislators knew they might have to vote on proposed regulations, then the overall output might be better or at least represent a better balance of all interests concerned since elected legislators, representing all the people, will be more directly involved in the process. Accountability matters. Ⓢ

Richard “Shark” Forsten grew up in Delaware and is the current President of the State Bar Association, although the views expressed in his President’s columns are entirely his own. Shark has been writing monthly book reviews for the *Bar Journal* since 1998, and elsewhere in these pages you can find his latest review. He is a partner with the firm of Saul Ewing, LLP, where he practices in the areas of commercial real estate, land use, business transactions and related litigation, and can be reached at rforsten@saul.com.

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By Seth L. Thompson, Esquire

Lessons (Still Being) Learned While Walking the Beach

Taking a script page from Hollywood, I decided to circle back to an old production that may not have been received with high acclaim the first time around. With my nine-year anniversary as an Associate Editor in the rearview mirror, I dusted off my original article from the publication formerly known as *In Re*: and gave it a re-boot, with deletions as shown by strike through and insertions as shown by underline as follows...

“**W**rite what you know,” advised the patch-elbowed Creative Writing professor at Penn State, “and know your audience.” Flash forward nearly a ~~decade~~ two decades, and here I sit, staring at a blank laptop screen. The memory of that advice races through my mind. The thought that follows is: given the lofty legal accomplishments of this publication’s contributors and subscribers, this article could be a very short one. Having just celebrated my first tenth anniversary of admission to the Delaware Bar, I still feel like the lone regular fry in the bottom of the legal box of curly fries (read: lightly-seasoned). Of course, all of you were once, ~~or~~ currently are, or will be in a similar position. Hopefully some insight can be gleaned from a person who still fondly remembers ~~fresh from~~ cresting that final dune and surveying the scene of Delaware’s legal landscape, which can seem as big as the ocean to a newbie, but can feel like a race against Michael Phelps even a decade later.

You see, the beach initially brought me to Delaware, and it often serves as the backdrop to my most cherished memories. Long before first setting foot in the First State, my grandmother taught me to ride the waves off of Cape May, after which I would stuff the elastic cheeks of my youth with as many boardwalk sweets as possible. Those elastic cheeks have led to elastic waistbands. Many undergraduate summer weeks were then spent in Brigantine, the Ocean City of New Jersey, and eventually on the other side of the Delaware Bay, in the teeming houses of Dewey Beach.

Approaching the threshold of an undergraduate degree, on a May day, I overestimated my swim-

ming condition and underestimated the Outer Banks’ longshore drift. With no more sandbar to provide respite and all muscles aflame, I resorted to the elementary backstroke, first learned from my grandmother, to keep me afloat and near enough to shore for the changing tide to bring me in. Out of my near drowning came a newfound respect for Mother Nature and a personal statement for law school (possibly drafted on an electronic typewriter).

Fresh from finishing law school and the Pennsylvania and New Jersey bars, I found myself with a month of free time prior to starting a clerkship with Family Court. Thus, I headed to Avalon, New Jersey. The drive across water to barrier islands never fails to bring a heavy exhale from my shoulders and chest, as if I had been unknowingly holding my breath since the last time I left. But, it was not until an early morning jog that I felt completely relaxed. Coming out of a house on the bay were a boy with a bowl haircut and his father figure. After a gulp of the salty air, the boy jumped up for a high-five, accompanied by a deeply felt, if high-pitched “Vacation!” to which the man nodded and echoed reflectively, “Vacation.”

Two tremendous years of clerkships with the Family Court — which somehow feel further distant than ~~eighteen months~~ a dozen years and ~~two inches of hairline~~ a head of hair ago — allowed days off to be spent on the beach. (My expanding forehead still bears the scar of a particularly warm and sunny Memorial Day dive into a jetty not yet marked for the in-season.) Nowadays, beach time is more limited largely nonexistent, consisting mostly of Saturdays and Sundays the occasional Saturday or Sunday morning, especially during the shorter

“You see, the beach initially brought me to Delaware, and it often serves as the backdrop to my most cherished memories.”

days of winter. Nevertheless, I am confident that retrospect’s rose-tinted glasses will refract nicely my future memories of the present time.

For me, the rhythmic waves and relative isolation of the ocean’s edge provides a quiet place, conducive to thought and reflection. I hope everyone has such a place.

With the water in its coldest, darkest, most ominous annual state usually too cold for a swim, I ~~occupy~~ occupied my time with my mother’s favorite beach pastime, collecting shells. ~~And I~~ These days, I often try to clear my mind but inevitably contemplate cases, trying to get a new angle, a fresh perspective. Like Tom Cruise holding his baseball bat in *A Few Good Men* (immediately available on Netflix), it just helps me think. This personal intersection of law and shells has led to a number of revelations. Here are but a few:

- **Prepare, prepare, prepare.** As you heard while hustling off to the bus stop, wear a jacket. Also, bring a bag, know your beach, arrive early, and know the environment. Otherwise, it will be a cold, fruitless jaunt. Judge Millman’s learning-at-lunch sessions often involved this adage. I have found that the proper preparation is not limited to the lawyer, but includes the client. Anticipate the other side’s arguments. Explain the reasons for the rules in argument and in consultation with clients. Manage expectations.
- **Keep a broad perspective, then hone in when necessary.** Find where the ocean has generally receded and deposited shells, and then skim for your favorites. Otherwise, you risk missing out. In my ~~main field~~ of family law practice, with its roots in equity and enumerated statutory factors, typically no single fact is wholly

Report of the Nominating Committee

The Nominating Committee met on April 4, 2016 and nominated the following for officers and membership on the Executive Committee for the year July 1, 2016 to June 30, 2017:

Vice President-at-Large:	David J. Ferry, Jr.
Vice President, New Castle County:	William P. Brady
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	Dawn L. Becker
	Crystal L. Carey
	David A. Felice
	Christofer C. Johnson
	David A. White

In addition, the Committee nominated:

Ryan C. Cicoski a 4-year term as the Delaware State Bar Association representative to the Delaware Bar Foundation.

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

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

dispositive. Focusing too much on particular fact or aspect of the case can prove detrimental, as you may miss what could have been the crux of your case.

- **Selfless effort on behalf of others yields far greater results.** Once I told myself, today I hunt for a family member in need of a bright spot. Never have I had such a fulfilling search, and those shells proved to be a far better Christmas gift than the latest kitchen gizmo. Similarly, in the dependency

cases in which I serve as attorney guardian *ad litem*, my kids let me share in their Christmas miracle, a reunited or newly formed family. Never have I felt more fulfilled by a case.

- **Dig deep, ever optimistic.** Like a semi-buried, probably-broken-but-potentially-whole shell, cases may be a bit of an iceberg. Unlike school, you are not limited to the facts on the four corners of the page, and yes,

Editor’s Perspective (continued on page 13)

Professional Guidance Committee

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

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*Certified Practice Monitor

CALENDAR OF EVENTS

Remember that CLE Videos are shown for CLE credit five days a week at the DSBA in Wilmington! Call (302) 658-5279 to make an appointment.

May 2016

Thursday, May 12, 2016

Fundamentals of Civil Litigation

6.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Kent County Courthouse, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Tuesday, May 17, 2016

Law Day Luncheon

Hotel du Pont, Wilmington, DE

Wednesday, May 18, 2016

Recent Developments in Delaware Corporate Law: Transactional and Litigation Perspectives

4.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Thursday, May 26, 2016

Selected Topics in Government and Consumer Law

6.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Kent County Courthouse, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

June 2016

Wednesday, June 1, 2016

Ethics for Mediators and Arbitrators

1.0 hour CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Kent County Courthouse, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Thursday, June 2, 2016

Best Practices: Petitions, Letters of Protest, and Other Matters Submitted to the Director of the USPTO in Trademark Cases

1.0 hour CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Kent County Courthouse, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Thursday, June 9, 2016

Overview of Medicare Benefits for Chronic or Extended Healthcare and Introduction to Long-Term Care Medicaid

3.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Kent County Courthouse, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Friday, June 17, 2016

Bench and Bar Conference CLE

Current Issues and Dilemmas: What's New and What's News

3.0 hours CLE credit

Chase Center on the Riverfront, Wilmington, DE

Thursday, June 23, 2016

Recent Legislative Changes in Commercial Law

3.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Tunnell & Raysor, Georgetown, DE

SECTION & COMMITTEE MEETINGS

May 2016

Tuesday, May 10, 2016 • 11:00 a.m.

LGBT Section Meeting

TBD

Tuesday, May 10, 2016 • 12:15 p.m.

Small Firms & Solo Practitioners Section Meeting

The Law Offices of Denise D. Nordheimer, Esquire, LLC, 2001 Baynard Boulevard, Wilmington, DE

Wednesday, May 11, 2016 • 4:00 p.m.

ADR Section Meeting

Berger Harris, LLP, 1105 North Market Street, 11th Floor, Wilmington, DE

Thursday, May 12, 2016 • 6:00 p.m.

Young Lawyers Section Happy Hour

TBD

Tuesday, May 17, 2016 • 12:30 p.m.

Labor & Employment Law Section Meeting

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

Thursday, May 19, 2016 • 12:00 p.m.

Executive Committee Meeting

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

Thursday, May 19, 2016 • 4:00 p.m.

Elder Law Section Meeting

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

Monday, May 23, 2016 • 4:00 p.m.

Taxation Section Meeting

DuPont Headquarters, 974 Centre Road, Chestnut Run Plaza, Building 735, Room 1135, Wilmington, DE

Thursday, May 26, 2016 • 4:00 p.m.

Family Law Section Meeting

Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE

June 2016

Thursday, June 2, 2016 • 4:00 p.m.

Real & Personal Property Section Meeting

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

Monday, June 6, 2016 • 12:30 p.m.

Senior Lawyers Committee Monthly Luncheon Meeting

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

Tuesday, June 7, 2016 • 3:30 p.m.

Estates & Trusts Section Meeting

Duane Morris LLP, 222 Delaware Avenue, Suite 1600, Wilmington, DE

Wednesday, June 8, 2016 • 12:00 p.m.

ADR Section Meeting

Berger Harris, LLP, 1105 North Market Street, 11th Floor, Wilmington, DE

Thursday, June 9, 2016 • 6:00 p.m.

Young Lawyers Section Happy Hour

TBD

Tuesday, June 14, 2016 • 11:00 a.m.

LGBT Section Meeting

TBD

Thursday, June 16, 2016 • 12:00 p.m.

Executive Committee Meeting

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

Thursday, June 16, 2016 • 4:00 p.m.

Elder Law Section Meeting

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

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TIPS ON TECHNOLOGY

By Richard K. Herrmann, Esquire

Two Very Important Issues on the Horizon

We continue to experience the problem of “glazing over” when we try to absorb too much “tech talk” in one session. I believe the fault lies with those talking more than with those trying to learn. We on the panel or faculty tend to present too much, too fast. If the audience is not yet familiar with the vocabulary and basic concepts, the discussion is difficult to follow. We have been trying a new approach at Delaware Law School. In our Advanced Law and Technology class, instead of listening to lectures, the students are researching the problems and presenting or writing about the issues themselves. The present assignment is to take opposing positions on two very real issues: (1) Should lawyers be required to report to the Delaware Supreme Court when a data breach occurs; and (2) Should Delaware follow Florida’s lead and require a certain number of CLE credits in technology.

Reporting Cyber Breaches

Supporting the Requirement: Certain forms of legislation require an organization whose customer or client data has been hacked to report the risk of loss of privacy to the real victim, the customer, or client. These statutes apply to lawyers to the same extent as Target or Home Depot. But, we as lawyers have a higher degree of responsibility. Not only do we hold very confidential client information, but we also have an independent ethical obligation to protect it. There is no central depository in Delaware collecting information as to whether attorneys and their confidential data are being targeted by hackers. The information is learned anecdotally, but, we do know it is occurring. The Delaware Supreme Court ought to have its hand on this information so that the Bench, the Bar and the clients they serve can be comforted in knowing that we are being exposed to a few isolated viruses and not an epidemic.

Against Supporting the Requirement: Requiring law firms to report breaches to the Supreme Court is unnecessary and creates further fragmentation in the breach reporting sector. A nonprofit, FS-ISAC (Financial Services Information Sharing and Analysis Center), exists to help gather information regard-

ing breaches, manages firm responses to breaches, and helps mitigate further breaches by conducting education and training programs to raise threat awareness. This has helped firms who are a part of FS-ISAC’s umbrella to quickly assess the threat level of breaches shortly after they occur and discern whether each individual breach is severe enough to meet the reporting requirements of severe breaches. By making this organization more widespread in lieu of mandating a reporting to the Supreme Court, a quicker, more efficient method of responding to breaches can be had since FS-ISAC has no governmental ties. This benefits both law firms whose information has been breached and the firms’ clients. Currently, there are no federally mandated reporting regulations in place, but many states have their own unique requirements which create an inconsistent baseline of what information needs to be reported. Providing a place for law firms to be aware of breaches, FS-ISAC’s threat database dates back to 1999, providing strong history of breaches from which the legal industry can learn and grow.

Joe Link and April Figueroa

CLE Required Technology Credits

Supporting Required Credits: Florida has recently decided that three technology CLE credits are now required every year in addition to the ethics and general CLE requirements already in place within the state. The driving force behind this change is the relationship that technology has with ethical concerns. Technology is pervasive; it affects every lawyer across all areas of practice, much like ethics. In addition, technology has made the practice of law significantly more complicated and simply using a device does not necessarily mean that the lawyer understands the ethical implications indicated by the use of the technology. Furthermore, technological competence is the responsibility of every lawyer in order to ensure ethical practice. Having an understanding of the benefits and risks posed by technology will aid lawyers in protecting client confidentiality and will further their ability to provide competent representation to each and every client. It is not enough for lawyers to simply

“We continue to experience the problem of ‘glazing over’ when we try to absorb too much ‘tech talk’ in one session. I believe the fault lies with those talking more than with those trying to learn.”

rely on technologically competent staff; they must be able to appropriately supervise and understand everything occurring under their authority or as a component of their caseload. For the foregoing reasons it appears that mandatory technology CLE credits are invaluable and should be required by the Delaware Commission on Continuing Legal Education.

Carli McClaflin and Gwen Lentine

Against Supporting the Requirement: “Technology” is an ever-changing, vastly expansive term, whose definition encompasses a wide variety of subjects. Given the malleability of this term, fashioning a mandatory Continuing Legal Education (“CLE”) requirement is an endeavor not easily satisfied. Even still, Florida has attempted this exercise in futility, requiring an additional three credit hours of “technology-related CLE courses.” Under the Model Rules of Professional conduct, as currently formulated, lawyers are required to provide their clients with competent representation. As such, in this digital age, competent representation necessarily invokes digital literacy. By requiring an additional class devoted solely to this subject, the CLE’s primary focus on furthering lawyers’ legal skills is effectively diluted. Furthermore, in response to Florida’s new requirement, the dissenting majority highlighted the disproportionate allocation of credit hours devoted to technology in comparison to that of ethics, professionalism, and substance abuse courses. While staying abreast of current trends in technology is undoubtedly a component of competence, it should not be afforded the same significance with regards to continuing legal education as ethics, professionalism, and substance abuse issues.

Michael Schwander and Melissa Frederick

• • •

In the event you have a view on these issues please email me at rherrmann@morrisjames.com. 

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

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

The Delaware Bar Foundation proudly announces the Bruce M. Stargatt Legal Ethics Writing Competition

Bruce M. Stargatt was one of the Delaware Bar’s preeminent practitioners and leaders in the second half of the 20th Century. He was regarded locally and nationally as a feared, but respected, advocate for his clients and recognized for his dedicated service to the Delaware Bench and Bar. Bruce excelled at all aspects of legal advocacy, but was especially known and acknowledged for his legal writing of which he was personally very proud.

Bruce graduated from the University of Vermont in 1951 and Yale Law School in 1954. Shortly after graduation from law school, he was called to service in the United States Air Force, where for the next two years, he served as a judge advocate at Dover Air Force Base. Upon his discharge from the service in 1956, Bruce became associated in the practice of law in Wilmington with H. Albert Young, a distinguished lawyer who had shortly before been Delaware’s Attorney General. In 1959, Bruce was an original participant in the law firm that ultimately became Young Conaway Stargatt & Taylor where Bruce practiced formally until his retirement in 2000 and continued to participate thereafter until his death in 2012. From the few lawyers in 1959, the firm ultimately became one of Delaware’s largest and best known law firms, due in no small measure to Bruce Stargatt’s contributions, both as an attorney and as a leader.

Bruce was recognized nationally for his legal achievements as a member of the American College of Trial Lawyers and the American Law Institute. Bruce also received the American Judicature Society Herbert Harley Award and served for many years on the Board of Governors of the American Bar Association. His service to the local legal community included the presidency of the Delaware Bar Association, presidency of the Delaware Bar Foundation, receipt of the Delaware Bar Association’s First State Distinguished Service Award, and an award of the Order of the First State by the Governor of Delaware.

Bruce was survived by his wife and lifelong companion, the former Barbara Hirschfeld, by two children, seven grandchildren and three great-grandchildren. It is through the generosity of Barbara and others in his family that the Delaware Bar Foundation has received the funding to initiate the Bruce M. Stargatt Legal Ethics Writing Competition.

Submissions for the contest are due September 1, 2016. Cash prizes are available for the first, second, and third place papers. The winner will also be invited to the DSBA/DBF Annual Seminar in October. Please visit the Delaware Bar Foundation’s website www.DelawareBarFoundation.org/stargatt-writing-competition for further information and eligibility requirements. 

To Google or Not to Google Potential Jurors

By Molly DiBianca, Esquire

The question of whether counsel should, or even *may*, conduct Internet research about potential jurors is not an easy one to answer. There are good arguments on both sides. A recent example of the issue in practice can be found in the *Oracle Corp. v. Google Inc.* copyright dispute.

The Dispute

As the *Oracle Corp.* case approached trial, both parties requested that the jury pool be required to complete a two-page questionnaire. One side then wanted an extra day to review the answer. Then the other side wanted two days to do the same.

The judge, curious about why two days were needed to review a two-page questionnaire, concluded that counsel wanted to use the data to search the Internet for information about the venire. When counsel confirmed that this was, in fact, their intent, the Court took the matter under consideration, apparently having reservations about the appropriateness of such searches. The Court issued a written opinion, in which it identifies the risks of counsel's Internet investigation of potential jurors.

Reasons to Not Google

The Court acknowledged that Internet searches would be useful to lawyers during jury selection and that ongoing searches could reveal commentary about the case made to or from a juror. Nevertheless, the Court found that there were good reasons to restrict — or even forbid — online searches of jurors.

First, the Court reasoned, a juror who knew that he was the subject of an Internet search by a lawyer would be more likely to do his own Internet search of the lawyer or about the case. The Court acknowledged that jurors would be admonished regularly to refrain from any Internet research about the case, the parties, the lawyers, or the judge himself.

Still, the Court explained, it was a high-profile case with seemingly unlimited information available online. The Court also noted that both parties had hired online commentators to promote their respective positions on blogs and websites. Thus, there was an “unusually strong need” to prevent jurors from conducting their own Internet research. So, the Court concluded, “the apparent unfairness in allowing the lawyers to do to the venire what the venire cannot do to the lawyers will likely have a corrosive effect on fidelity to the no-research admonition.”

Second, the Court cited to the potential that Internet research would facilitate improper personal appeals to particular jurors. The Court suggests by way of example that, if a search revealed that a juror had a favorite book, counsel could construct a jury argument based on that book in an effort to pull at the juror's heartstrings. To “play up through such a calculated personal appeal” would be improper, the Court concluded.

Third, the Court pointed to the venire's privacy interests. Jurors, the Court reasoned, are not celebrities. They are citizens doing an important service. Thus, their privacy should not be subject to unnecessary intrusion.

The Compromise

The Court considered, but ultimately rejected requiring an outright ban on Internet research by counsel, which would restrict the lawyers from accessing information that would be available to the press. Instead, the Court offered a compromise.

The parties could voluntarily consent to a ban against Internet research on the potential and seated jurors until the end of the trial. If the parties did not both consent to the ban, the Court would require each side to inform the venire of the specific extent to which it would use Internet searches to investigate and monitor jurors.

Faced with these options, both parties agreed to the outright ban.

“The Court found that there were good reasons to restrict — or even forbid — online searches of jurors.”

Another Perspective

Although the Court's points are well taken, there is support for a different conclusion. In an ethics opinion issued in April 2014, the ABA concluded that lawyers *may* conduct Internet investigations of jurors. Anything that is online and public is fair game, the opinion concluded. The opinion reached the same conclusion both for potential jurors and for those jurors who are selected.

What lawyers may not do, though, is communicate with jurors through social media. For example, a lawyer may not send a Facebook friend request to a juror. Similarly, a lawyer may not have his investigator, paralegal, or other agent, send such a request.

In Delaware, the question remains open. But, if lawyers — or judges — begin to raise the issue in the courtroom, the answers may vary. 

Molly DiBianca practices employment law with Young Conaway Stargatt & Taylor, LLP, in Wilmington, Delaware.

Editor's Perspective (continued from page 7)

there will be math. Dig. If additional information is adverse, you are better equipped to buffer against it and avoid surprise at trial.

- **Keep it clean.** There are an inordinate number of fishers, sailors and the like that drink those grenade-shaped, tinfoil-topped fruit drinks that often awaited a bunch of thirsty thirteen-year-olds following dewy Saturday morning soccer games. Also, a lot of people out there are missing their UV protective eyewear, or at least half of it. There are no real legal lessons from this, save that a lot of littering goes uncited.

- **Each is unique.** Shells come in all manner of size, shape, and color. Identify them individually and understand their origin or rare aspects. The beautiful ones are not those pulled by professional divers, then polished, and placed in a case for any person to

purchase. Beauty is real and personal; it is walking on a winter beach just after sunrise and barely being able to believe your eyes, afraid that the rays reflecting off the water are playing tricks on you, until you touch a full Atlantic channeled Welch (now the State shell), Scallop, or Murex. No two cases are the same. And, even if the facts were the same, the larger needs of two clients can be extremely diverse. Remember, these are not simply clients. These are grandmothers

of children with a tremendous sweet tooth, mothers of collegians finding their own tones and experiencing the material of future personal statements, and fathers looking forward to a vacation, each unique and hoping to be found. 

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

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By Charles Slanina, Esquire

Rampant Ransomware

“**E**thically Speaking” has previously dealt with cyber threats to attorney accounts including spoofing and ransomware. These hack attacks threaten both confidential client information and funds. This month, we return to ransomware which has been both in the news and on the rise.

It begins with a click. Hackers send out “click bait” which are emails with attachments or websites offering downloads. Email recipients are advised that an invoice or requested document is attached. Instead (or in addition), the Trojan Horse contains the ransomware program. Other times, the hacker spoofs the identity of someone from the recipient’s contact list or that of the purported sender so that it appears that someone you know is sending you pictures, seminar materials, an agenda, etc. Opening the attachment downloads the ransomware onto your computer. Those programs have names like Cryptolocker, CryptoWall, CryptoDefense, and PCLock.

What typically follows is an email from the hacker announcing that the victim’s data and systems have been encrypted with a demand for a ransom in exchange for the decryption key. Victims are directed to a ransomware website which often has professional graphics and design and may even offer answers to Frequently Asked Questions (FAQ’s). These scams have become so sophisticated that ransomware attackers now offer tech support with easy-to-follow instructions and, in some cases, online assistance on how to purchase bitcoins (the preferred method of payment of the ransom) and the instructions for applying the encryption key. Some scammers offer a sample of their product by providing a decryption sample to unlock a small part of the hijacked data to prove that the decryption will work if the ransom is paid. Unfortunately, some victims pay the ransom, but never receive the decryption information.

According to a December 3, 2015, published letter from the Department of Homeland Security to Senator Thomas Carper, the ranking member of the Committee on Homeland Security and Governmental Affairs, the National Cybersecurity and Communications Integration

Center (“NCCIC”) received 337 ransomware-related reports since June 2015. According to the letter, there have been 7,694 ransomware complaints since 2005 with \$57,602,032.72 in losses.

However, according to an April 8, 2016, article by Dan Turkel in *Business Insider*, \$24 million of those ransoms were paid in 2015 alone. While that figure only represents the amount of reported ransoms paid (with individual ransoms typically between \$200 and \$10,000), there are usually additional costs incurred including changes to computer networks, the purchase of network counter-measures, the loss of productivity, legal fees and additional information technology (“IT”) services.

Reports of ransomware attacks have made national and international news. Kentucky-based Methodist Hospital announced an internal state of emergency after its files were encrypted for ransom. MedStar Health, a Baltimore, Maryland, hospital group had to shut down their entire computer network in March 2016 to stop the spread of an unidentified malware attack. One week later, Hollywood Presbyterian



Medical Center in California admitted paying \$17,000 in ransomware. The website for Norfolk General Hospital in Ontario also became infected with a ransomware variant.

Hospitals are certainly not the only targets. A number of major news websites including the New York Times, the BBC, AOL, and the NFL have been targeted. Recently, these schemes hit Mac users for the first time. Apple products had been thought to be immune. Examples of ransomware viruses have also been found on cell phones and Smart televisions.

Victims of ransomware attacks are dismayed to find that law enforcement is rarely able to provide any assistance. In fact, victims may be advised that it may be illegal to pay the ransom because the bitcoin payment may find its way offshore to a terrorist organization. A January 15, 2015, Threat Alert on the Federal Bureau of Investigation website (www.FBI.gov) is definitely worth a visit.

Failure to safeguard against these threats exposes attorneys to civil suits including malpractice claims. Falling victim to the schemes also implicates multiple professional conduct rules including: Rule 1.1 (Competency) and the new Comment [8] to that rule which requires attorneys to keep abreast of changes in relevant technology; Rule 1.3 (Diligence); Rule 1.6 (Duty to maintain client confidences); Rule 1.15 (Duty to safeguard client and third party property); Rule 1.15(d) (Duty to maintain financial records for at least five years); and under certain circumstances, Rule 5.3 (Failure to adequately supervise non-lawyer assistants).

Prevention is simple, but not fool-proof. Make sure that you purchase and enable a reputable anti-virus program on your computer and network. As with all computer issues, make sure that it is turned on and that the settings are high. Frequently download updates to keep abreast of the latest virus threats. Use your spam blocker.

Do not be quick to click. Only open email attachments from known send-

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ers. Make sure your staff is adequately informed, instructed, and supervised. Avoid opening or downloading attachments even from known senders if the attachment is unexpected in case the hacker is spoofing the identity of someone on your contact list. When in doubt, call to confirm that the sender is who the sender purports to be and that the email is safe. Even with those precautions, avoid opening attachments that were created by someone other than the sender and forwarded or re-forwarded many times to multiple persons.

Back up your computer and system daily. After the backup is concluded, disconnect the backup device from your system.

Buy cyber-insurance. Loss of computer data and access, including disruption of your ability to provide legal services or inability to bill for legal services performed, are insurable risks.

The next threat is already out there. Its name may be "GozNym" described as

a hybrid malware code that also arrives via a Trojan Horse through email attachments and links. It lies dormant until the user logs into a bank account at which time it sends account information and passwords to hackers.

Add these cautions to the "Ethically Speaking" list: Think before hitting send. Think before you click to open. Stay vigilant and informed.

"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. The columns from the past three years are available on www.dsba.org.

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

Supreme Court Decides Issue of First Impression Regarding Accrual of Bad Faith Insurance Claims

By Antranig Garibian, Esquire

In a case of first impression in Delaware, the Supreme Court recently addressed the issue of when bad-faith failure to settle claims against insurance companies accrue for purposes of the statute of limitations. In *Connelly v. State Farm Mutual Automobile Insurance Company*, 2016 WL 836983 (Del. Supr.), plaintiff, Christina Connelly, appealed the Superior Court's dismissal of her claim against State Farm Mutual Automobile Insurance Company. Connelly contended that the insured's claim accrues when that insured suffers a judgment in excess of policy limits *and that judgment becomes final and non-appealable*. State Farm, on the other hand, argued that the claim accrues when the insurer allegedly acts in bad faith and breaches its duty to the insured.

By way of background, this case arose out of an automobile accident involving State Farm's insured, Ronald Brown, and Ms. Connelly. Connelly sued Brown for injuries she suffered and State Farm provided Brown with legal counsel. After trial and a jury verdict, Brown was found to owe \$333,246.29 to Connelly, \$151,601.93 of which State Farm paid to her, leaving a balance of \$181,644.36. Thereafter, Connelly brought a claim against State Farm and Brown as Brown's judgment creditor, alleging that State Farm acted in bad faith, maliciously, and without any reasonable justification when it refused to settle her claim against Brown in May 2011, when she offered to settle her case for

\$35,000. Connelly obtained an assignment of Brown's rights to pursue legal action against State Farm and on May 8, 2015, State Farm moved to dismiss Connelly's complaint on the ground that it was barred by the three-year statute of limitations under 10 *Del. C.* § 8106 that, according to State Farm, began to run either on May 10, 2011 when Connelly made her settlement offer or on June 9, 2011, when the offer expired.

On July 22, 2015, the Superior Court granted State Farm's motion to dismiss Connelly's claims, concluding that "the statute began to run at the time of the wrongful act, which ... is the date [State Farm] denied [Connelly's] settlement demand" because it was then that Connelly was "made aware of the possibility that her claims would be denied, putting her on notice as to possible causes of action." Connelly appealed that ruling and the Supreme Court reversed, holding that a claim against an insurer for acting in bad faith by failing to settle a third-party insurance claim accrues when an excess judgment against an insured becomes final and non-appealable.

The Supreme Court noted that this approach would conserve litigant and judicial resources and align the incentives of the insurer and its insured by allowing them to join efforts in defending the underlying third-party insurance claim without a stayed breach-of-contract claim that might lead to a conflict of interest between them. Further, the Court noted that insureds who pursue

claims against insurers for breach of the implied duty to act in good faith would be unable to plead damages for those suits without a final excess judgment entered against that insured.

The Court also noted that its holding was consistent with Delaware's traditional approach to indemnity claims, which are analogous to insurance claims in that both involve a contractual obligation to compensate the indemnified party that arises only once certain conditions are met. Moreover, in both cases, it is required that the underlying cause of action must be resolved and the indemnified party must suffer a loss before the indemnifying party is required to cover the indemnified party's liability. This decision aimed to avoid premature suits that may never need to be brought and ensures that litigation ensues only when necessary and when the key facts are settled. ⚖️

Antranig Garibian is the founder of Garibian Law Offices, P.C. He maintains an active litigation practice throughout the state and federal courts of Delaware, New Jersey, New York, and Pennsylvania. Mr. Garibian advises clients ranging from individually held businesses to international companies on issues such as commercial contract disputes, liability claims, corporate governance, loss prevention, and general business matters. He can be reached at ag@garibianlaw.com.

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Bench and Bar Conference CLE

CURRENT ETHICAL ISSUES AND DILEMMAS: WHAT'S NEW AND WHAT'S NEWS

FRIDAY, JUNE 17, 2016

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

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REGISTRATION BREAKFAST, VENDOR VISIT, AND TRANSITION TO SESSION | 7:30 A.M. - 9:00 A.M.

A lively discussion regarding current ethical dilemmas facing our practitioners and courts. What's New and What's News? In addition to the plenary CLE session, for the first time, attendees have five breakout sessions from which to choose, composed of members of our Bench and Bar. Come join us on this new frontier!

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9:00 A.M. - 10:30 A.M. | 1.5 HOURS CLE CREDIT IN ENHANCED ETHICS

BANKRUPTCY	EQUITY	FAMILY	CIVIL	CRIMINAL
<p>Moderator The Honorable Brendan Linehan Shannon, Chief Judge <i>U.S. Bankruptcy Court, District of Delaware</i></p> <p>Panelists The Honorable Christopher S. Sontchi, Judge <i>U.S. Bankruptcy Court, District of Delaware</i></p> <p>Pauline K. Morgan, Esquire <i>Young Conaway Stargatt & Taylor, LLP</i></p> <p>Derek C. Abbott, Esquire <i>Morris Nichols Arshnt & Tunnell LLP</i></p>	<p>Moderator The Honorable J. Travis Laster, Vice Chancellor <i>Delaware Court of Chancery</i></p> <p>Panelists The Honorable Tamika R. Montgomery-Reeves, Vice Chancellor <i>Delaware Court of Chancery</i></p> <p>Sean J. Bellew, Esquire <i>Duane Morris LLP</i></p> <p>David A. Felice, Esquire <i>Bailey & Glasser LLP</i></p> <p>Sidney S. Liebesman, Esquire <i>Montgomery McCracken Walker & Rhoads, LLP</i></p>	<p>Moderator The Honorable Natalie J. Haskins, Judge <i>Family Court of the State of Delaware</i></p> <p>Panelists The Honorable Danielle S. Blount, Commissioner <i>Family Court of the State of Delaware</i></p> <p>Dana L. Reynolds, Esquire <i>Law Offices of Dana L. Reynolds, LLC</i></p> <p>Kathryn J. Laffey, Esquire <i>Kelleher & Laffey</i></p>	<p>Moderator The Honorable Mary M. Johnston, Judge <i>Superior Court of Delaware</i></p> <p>Panelists The Honorable Vivian L. Medinilla, Judge <i>Superior Court of Delaware</i></p> <p>The Honorable Charles W. Welch III, Judge <i>Court of Common Pleas</i></p> <p>Samuel D. Pratcher III, Esquire <i>Weik, Nitsche & Dougherty</i></p> <p>Jeffrey Alexander Young, Esquire <i>Young & McNelis</i></p>	<p>Moderator The Honorable Ferris W. Wharton, Judge <i>Superior Court of Delaware</i></p> <p>Panelists The Honorable Paul R. Wallace, Judge <i>Superior Court of Delaware</i></p> <p>James Brendan O'Neill, Esquire <i>Delaware Office of the Public Defender</i></p> <p>Thomas A. Pedersen, Esquire <i>The Law Office of Thomas A. Pedersen</i></p> <p>Kathleen M. Jennings, Esquire <i>Delaware Department of Justice</i></p>

REFRESHMENT BREAK AND VENDOR VISIT | 10:30 A.M. - 10:45 A.M.

PLENARY SESSION

10:45 A.M. - 12:15 P.M. | 1.5 HOURS CLE CREDIT IN ENHANCED ETHICS

Moderator
Michael P. Kelly, Esquire,
McCarter & English, LLP

Panelists
The Honorable
Richard G. Andrews, Judge
*United States District Court
District of Delaware*

The Honorable
James T. Vaughn Jr., Justice
Supreme Court of Delaware

The Honorable
Andre G. Bouchard, Chancellor
Delaware Court of Chancery

The Honorable
Richard F. Stokes, Judge
Superior Court of Delaware

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

Yvonne Takvorian Saville, Esquire
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Presentation of the First State Distinguished Service Award

Recognition of individuals who have been members of the Delaware Bar for more than 50 years

Recognition of Delaware State Bar Insurance Services, Inc. Board Members

Election of Executive Committee Members

Passing of the Gavel to the new Delaware State Bar Association President, Miranda D. Clifton, Esquire

CONFERENCE SCHEDULE AT-A-GLANCE

Registration Breakfast/Vendor Visit: 7:30 a.m. - 8:45 a.m.

Break/Vendor Visit/Transition: 8:45 a.m. - 9:00 a.m.

CLE - Breakout Sessions: 9:00 a.m. - 10:30 a.m.

Refreshment Break/Vendor Visit: 10:30 a.m. - 10:45 a.m.

CLE - Plenary Session: 10:45 a.m. - 12:15 p.m.

Refreshment Break/Vendor Visit: 12:15 p.m. - 12:30 p.m.

Annual Meeting: 12:30 p.m. - 1:30 p.m.

Reception: 1:30 p.m. - 3:00 p.m.

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By Susan Simmons

Update on the Access to Justice Program at DSBA

I am devoting my article this month to updating you on the strategies, initiatives, and successes of the Access to Justice Program at DSBA. We have been very busy.

The Christopher W. White Distinguished Access to Justice Awards

The Christopher W. White Distinguished Access to Justice Awards Breakfast will be held on Tuesday, October 25, 2016, at the Chase Center on the Riverfront. This very popular event has been made even more current with the addition of some new undertakings of the Delaware State Bar Association. There are many ways in which many of our partners participate in activities that honor the winners of the Christopher W. White Distinguished Access to Justice Awards, held in conjunction with National Celebrate *Pro Bono* Week. This breakfast serves as an opportunity

to recognize lawyers for their service to the community in honor of the breakfast's namesake, Chris White. Chris was a long-time attorney with the Community Legal Aid Society of Delaware, and member of the Delaware State Bar Association, who died in April 2010 at the age of 48. Chris was widely known and respected for his advocacy work on behalf of the poor, homeless, disabled, elderly, troubled, and downtrodden people of Delaware.

The United Way of Delaware also honors participants in their *pro bono* services to the community, with the United Way of Delaware Christopher J. Battaglia Memorial Awards, also given at this breakfast.

Attendance at this event has grown every year and, this year, for the first time, we are including the opportunity to sponsor the breakfast. The sponsorship will allow your firm or corporation to be associated with this event.

SPONSORSHIP OPPORTUNITIES

Christopher W. White Distinguished Access to Justice Awards

GOLD SPONSOR – \$2,500

- Company name and logo listed in the invitation, sent to the entire DSBA membership, prior to the event; in the event program distributed at the event; and DSBA website recognition at the Gold level
- One table (up to 10 tickets) for the breakfast and a table tent with Company name

SILVER SPONSOR – \$1500

- Company name and logo listed in the invitation, sent to the entire DSBA membership, prior to the event and in the event program distributed at the event at the Silver Level
- One table (up to 10 tickets) for the breakfast and a table tent with Company name

BRONZE SUPPORTER – \$1,000 OR LESS

- Company name and logo listed in the invitation, sent to the entire DSBA membership, prior to the event and in the event program distributed at the event at the Bronze Supporter level
- (Up to 4 tickets) for the breakfast

The Legal Professional *Pro Bono* Service Award

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

Legal assistants, paralegals, and other legal professionals serve important roles in *pro bono* work for the DSBA. One example is that of the paralegals, working alongside and under the supervision of attorneys, who participate in our Wills for Seniors program, where elderly individuals can obtain legal services regarding estate-planning issues. The paralegals are a welcome and integral element in this and many other *pro bono* initiatives. They will be recognized by the DSBA with the addition

NOTE: Wills for Seniors will be held on Sunday, October 23, 2016 at the Elsmere Fire Company as part of Celebrate Pro Bono Week.

of this award at the Awards Breakfast in October of this year. If your firm or organization appreciates the efforts of someone who deserves this Award, please let us know, by nominating him or her, when the nominations form appears in a future Bar Journal and listserv notice.

Pro Bono Partnership

The DSBA continually renews its commitment to *pro bono* by promoting and encouraging the participation of our members. One way to ensure this is our *Pro Bono* Partners Breakfast (or Luncheon), which the DSBA has offered to firms in the past. These Breakfasts or Luncheons have given our *Pro Bono* Partners an opportunity to present the *pro bono* needs of their organizations or projects to a large group of Delaware attorneys who have interest in performing *pro bono*, but may be unfamiliar with how and where to go, to get involved.

At these gatherings, the firm or corporation will provide the attorneys breakfast or lunch, and we will provide the information they need to start volunteering for more than fifteen of our *Pro Bono* Partners' organizations or projects.

Please let me know of your interest and availability and I will continue to put this initiative into motion at your firm or corporation.

The Access to Justice Video

We are very lucky to have, as part of the DSBA staff, Antonio Byrd, Director of Media and Cinematography. Antonio has great talent in producing videos, among other things. We want to take advantage of this expertise in creating a video that portrays *Pro bono* publico — “for the public good” — not just in the sense of professional work undertaken voluntarily and without payment, but also in the sense of a public service to those who are unable to afford the services of skilled professionals.

The graphic is a stylized blue food truck on a yellow background. At the top, it reads "Delaware State Bar Association's" in a red, curved font, followed by "MEMBER APPRECIATION MONTH" in large, bold, black letters with two blue stars on either side. Below this, "May 2016" is written in a blue, cursive font. A red dotted line separates the header from the main text: "For all that you do for the Bar Association and its communities, you are cordially invited to Food Truck Fundays for lunch on us." Below this, in a smaller red font, it says "Details will be sent by listserv." The truck's body features the text "DELAWARE STATE BAR ASSOCIATION'S FOOD TRUCK FUNDAYS" in large, bold, orange letters. To the right of the text is a circular logo with a scale of justice and "D-S-B-A" below it. Below the truck's body, it lists the dates: "Thursday, May 5 in Sussex County | Friday, May 13 in Kent County | Friday, May 20 in New Castle County". There are two logos on the truck: "SEA HOGG" on the left and "WILDWICH" on the right. Below the truck, it says "Sponsored by The Delaware State Bar Association and Delaware State Bar Insurance Services, Inc." At the bottom of the graphic, it repeats the dates: "May 5 in Sussex County | May 13 in Kent County | May 20 in New Castle County".

The State Bar recognizes that an active *pro bono* program is one of the major benefits a local bar association can provide, while meeting the legal needs of the low-income members of the community. *Pro bono* enhances the reputation of the legal profession and can serve as a strong recruitment incentive for new members.

DSBA helps promote *pro bono* through our monthly articles in the *Bar Journal*, and the Bar Association hopes to encourage members to bring their expertise to local legal services programs by creating a video that will promote the Access to Justice program and mentor members and volunteers.

I am calling on our membership to help in the development of a new video

that speaks to the story of DSBA *Pro Bono*; please join us and let me know if you are interested in participating. This and our other program initiatives will make us a strong Bar Association, known for our *pro bono* efforts! 📺

Susan Simmons is the Director of Development & Access to Justice Coordination at the Delaware State Bar Association and can be reached at ssimmons@dsba.org.



DE-LAP ZONE

A Message from the Delaware Lawyers Assistance Program

By Carol P. Waldhauser, Executive Director

A Realistic Plan for Managing Your Time



As Jim slammed down the receiver, he mumbled to his associate: “There is just not enough time in the day to finish everything. I feel I have not gotten anything done again today. In fact, I need to call and cancel my plans for this evening.” Jim’s associate replied, “You know, Jim, good time management depends on being realistic about what you know you must do within a certain time period, knowing what you want to do, and organizing your life to achieve a balance between the two.”

At first, Jim was ready to respond with a classic zinger, but then he stopped and thought, “What if Trisha is right?” Rarely has Jim not seen her having enough time to do the things she wants to do. Jim thought, “There must be a realistic plan for managing my time.”

Generally for lawyers, time pressures are a major issue. Additionally, lawyers too often are unrealistic about time. So, what is a lawyer to do?

Dr. Jane Burka, Ph.D., a Berkley, California Psychologist states that individuals either overestimate

how long something will take or they underestimate. She suggests that “the first thing to do is anticipate realistically how long a task will take and how much time you can spend on it. For instance, if a project (Motion) is due in a week and you are feeling optimistic about that deadline, check your calendar. Are your in-laws coming to visit on one of those days? Do you have an all-day meeting another day?”

Dr. Ronald Drabman, Ph.D., Professor and Director of Clinical Psychology at the University of Mississippi Medical Center adds, “You have to take steps now to ensure that you will complete what you have to do.” For instance, tell your assistant today that you have to be uninterrupted tomorrow while you work on your Motion. Working without interruption is difficult to do when it is already tomorrow and you’re constantly interrupted by calls, emails, and texts all day. Subsequently, Dr. Drabman suggests that if you set aside the time to work, you should also have a clear sense of your priorities. A good plan is to consider all the tasks you have to do, then put them in order of importance. And chances are, if you do not get to some of the lower priorities on your list, they were not very important — or they were things you could not possibly have done, given your timetable.

Also, analyze how you use your time. Make a simple daily log. This log is not for billing purposes, but for you and what you do throughout the day. It is a visual of where you are and where you are going. Then, look back and analyze your daily logs for problems related to how you spend your time. It may reveal time wasters of which you might not be aware. It might also reveal other problems, like having too much on your plate or not having the right tools or resources.

Once you have learned to block out time and analyzed your time, learn to take baby action steps. In other words, big projects can be intimidating. Instead of becoming stuck or overwhelmed by the enormity of the task ahead of you, divide the project into smaller, achievable steps — baby steps — one step at a time. Yes, even lawyers can take baby-steps!

Other sound tips for managing your time include, but are not limited to the following, according to Trevor Powell in *The Keys to Good Time Management*:

1 Know your Goals in Life
Identify the activities you value most and your main goals at work and at home. These goals are the map you need to direct your life and schedule your time. Break down your main goals into smaller, more manageable tasks.

2 Rank Priorities
Ask yourself how important a particular task is to you. Activities can be ranked according to their importance. Try identifying the activities that produce the greatest reward. Give these activities priority over others.

3 Write Down your Plans
A written plan enables you to take a more detached view of your commitments. Keep a diary of important dates and tasks to be done. A daily “to do” list can give direction and a sense of achievement once tasks have been accomplished.

4 Delegate Tasks
Trying to do everything yourself is often a major cause of stress. Take a look at your schedule and work out what you can hand to somebody else to do. You can still monitor other people’s progress and maintain a level of control.

5 Work out a System
Disorganization makes work and wastes time. Organize your environment so that everything has its place. Keep a note pad and calendar by the phone and set up a filing system for bills. Establish a daily routine.

6 Do it Now – Not Later
By putting off today’s tasks until tomorrow you are simply storing up work for yourself. Ask yourself, “Why am I putting it off?” Set realistic deadlines for each day and then do your best to keep to them.

7 Allow Slack in Timetable
Never overfill your timetable. Always allow some slack. Then, if there is an emergency, you can accommodate it. If you know that your time is not stretched to the limit you will feel less stressed. Plan time for rest and relaxation.

8 Learn to Say No
If you cannot say no to the demands of others, you will end up being a servant to their priorities, never able to say or do what you want. Stay in control of your own time, and say no to time wasting and unnecessary activities.

9 One Thing at a Time
You may have many things to do, but you cannot do them all at once, especially since important tasks usually require energy and concentration. You will find it less stressful if you can finish one task before starting another.

10 Know your Prime Time
Identify when you work best and plan that time for your most important or demanding tasks. For most people, this is early in the morning. Allocate undemanding tasks to times when your energy may be low.

11 You are not Perfect
If you are a perfectionist, you may become bogged down in detail and find it difficult to vary your speed according to priorities. Learn to assess the situation in advance, so you can work within set time limits.

12 Keep a Balance
Planning time for work, rest, and play will help maintain your health and enthusiasm and allow you to keep a balanced

perspective. Break your routine and plan time to relax during the day. Take regular vacations.

According to Jim, he admits that there are still days that his time management and balance go right out the window because of a pleading, new client, and/or family emergency. Fortunately, however, things are getting better for him.

Today, Jim is a man with a purpose. Through time and personal management, Jim is finding a balance in life and serenity. He has even found time to thank his associate for helping him implement a realistic plan for time management and is not running around with a clock yelling, “Got no time!” like the rabbit in *Alice in Wonderland*.

For more information regarding this topic or if you, or someone you know, is having difficulty that is affecting his or her professionalism or quality of life contact The Delaware Lawyers Assistance Program (DE-LAP) on our confidential line at (302) 777-0124 or toll-free at 1-877-24delap or email cwaldhauser@de-lap.org.

REFERENCE:

Trevor Powell, *The Keys to Good Time Management, Free Yourself from Harmful Stress, Life Skills*, p. 95. 

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



WELLNESS TOUR THROUGH HISTORY

“Health is not only to be well, but to use well every power we have.”

Florence Nightingale



Reviewed by Richard A. Forsten, Esquire

You be the Judge: *Is Administrative Law Unlawful?*

By Philip Hamburger (Chicago Univ. Press, 2014)

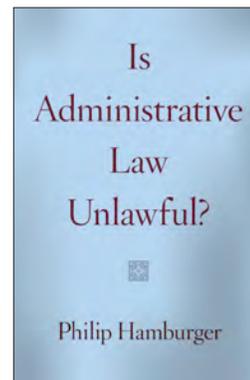
Growing up, we all learned about the three branches of government — the legislative, executive, and judicial. Those of us of a certain age, who remember Saturday morning cartoons, may even remember “Schoolhouse Rock,” a series of short educational commercials/cartoons with catchy songs that taught history, civics, and other subjects (for those of you who have no clue what “Schoolhouse Rock” is, I suggest you go to www.youtube.com and search for “Schoolhouse Rock”). In particular, one of the classic “Schoolhouse Rock” cartoons was “I’m Just a Bill,” which described how laws were made. Absent from “Schoolhouse Rock,” though, and, indeed, absent from most, if not all, grade school courses is any discussion of administrative law.

Where did administrative law come from? How has it evolved? Is it lawful? These questions (and more) are addressed by Philip Hamburger in his book, *Is Administrative Law Unlawful?*

Although we think of administrative law as a relatively new phenomenon, Hamburger begins his analysis in the late middle ages. English monarchs claimed the power to make and enforce the law. The people resisted. Magna Carta, which just celebrated its 800th anniversary, was part of that resistance. Well after Magna Carta, though, the English king still claimed the power to create binding law outside of Parliament. Parliament fought back, arguing that only it could enact binding law; in the end, Parliament triumphed.

Thus, at the time of the founding, with their knowledge of English history, Americans created in their various state constitutions, as well as the United States Constitution, the familiar three branches of government. “All” legislative power was vested in Congress. Executive power was vested in the President, who “shall take care that the laws be faithfully executed.” Finally, the judicial power was vested in the Supreme Court and such inferior courts as Congress might create. With “all” legislative power vested in Congress, the Founders left no doubt that the president and executive branch could not claim the power to creating binding law, as claimed by English kings of old.

Now, it is important to note exactly what Hamburger means when he refers to “administrative law.” For him, administrative law is the power (or at least the attempt) to create binding rules applicable to citizens (*i.e.*, regulations) or to making binding determinations with respect to individuals (*e.g.*, administrative law



decisions). Hamburger has no problem with the President issuing executive orders which direct his staff and members of the executive branch (for example, the workday starts at 8:00 a.m., or setting the qualifications for different posts in his administration) — these sorts of executive orders are not binding on the

citizenry as a whole, and instead set up how the executive branch is to be run. The President (or other officers in the executive branch) might also decide with whom the government will contract, what offices to rent or construct, etc. The executive branch may also administer licensing and permitting programs — but in administering these types of programs, the executive branch is applying established criteria with respect to the applicant, not creating binding rules or regulations applicable to all, and the individual license or permit decision is subject to judicial review — at which point the applicant is bound. Criminal prosecutions, police work, and many other functions performed by the executive branch are not caught up in Hamburger’s critique.

Suffice to say that Hamburger believes administrative law is unlawful as

“Hamburger has written a compelling book on the potential dangers of administrative law. He offers, however, no practical remedies.”

a violation of the separation of powers. He reviews its origins, looks at the earliest actions of Congress as inconsistent with modern administrative law as currently understood and practiced, and vigorously rejects the defenses and arguments usually raised to defend modern administrative law. In doing so, however, he never truly addresses the caselaw supporting those defenses, such as delegation of legislative authority, as well as other cases upholding aspects of administrative law. For example, Hamburger never discusses *Whitman v. American Trucking Associations, Inc.*, 531 U.S. 547 (2001), in which Justice Scalia, writing for a unanimous court, upheld Congress’ delegation of authority to the Environmental Protection Agency to establish certain air quality standards. While Hamburger may believe that the Constitution forbids delegation of authority to agencies, he needs to more directly address existing caselaw.

Nevertheless, even if he does not fully address existing caselaw, Hamburger does present strong arguments concerning the dangers of administrative law — but, having said that, he never says or explains what should be done. Put another way, Hamburger offers no remedies. If administrative law is unlawful, should all administrative regulations (at least those purporting to have binding, legal effect) be declared unconstitutional? Should courts adopt a “go and sin no more” approach, where existing regulations would be upheld, but future regulations be more closely reviewed or not allowed? And, what of decisions by administrative bodies? Should boards, commissions, and administrative law judges be allowed to issue binding decisions, or should all enforcement actions and other actions for binding judicial decisions be brought in a judicial court?

Hamburger’s concluding chapter is full of rousing language on the danger of absolute power:

Although binding administrative power is widely said to be a novelty, which developed in response to the necessities of modern life, it is as ancient as the desire for consolidated power outside and above the law. It returns to the absolute prerogative, replete with similar legislative and judicial evasions, and similar justifications in necessity. Administrative power thus is dangerous and unlawful in ways not conventionally recognized.... Over time, administrative power has become familiar, but it remains profoundly dangerous.... [t]he underlying problem is absolute power itself. On account of its administrative revival, this danger now threatens the constitutional law that was designed to defeat it. Absolute power, however, remains unlawful. Whether extralegal, supralegal, or consolidated, it is unconstitutional and contrary to the very nature of Anglo-American constitutional law and society.

Hamburger has written a compelling book on the potential dangers of administrative law. He offers, however, no practical remedies. With the horse having left the barn, all that seems available is the remedy which citizens have always had — stay alert, monitor government, and sound the alarm when necessary. The price of liberty has always been eternal vigilance. ⚖️

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A PROFILE IN BALANCE

By James G. McGiffin, Jr., Esquire

Kara Swasey

It's all Fun on the Kara Swasey Team

If I aspire to be the best lawyer I can be, I must first try to be the best person I can be. I am fortunate to know many lawyers who have succeeded in their work, in part, because they are excellent people. This column in The Bar Journal will feature an article on one such lawyer. Each featured lawyer will exemplify the art of balance in life. I have learned much from these people. Perhaps readers will also benefit.

- Jim McGiffin

• • •

Kara Swasey is fun. It is evident in her smile and her demeanor. Though she can be serious, fun is a priority in her life. This cannot be said of enough Delaware lawyers.

A Buffalo native and daughter of a college professor, Kara chose to attend the University of Delaware because it was available to her through a tuition exchange program. Business was her course of study. Her career plan was to lead a major corporation some day. Pretty serious stuff. And yet, she earned her science requirement credit by studying “chocolate” as a freshman. Fun.

Kara chose Villanova for her next academic endeavor. She enrolled in and completed the joint JD/MBA program in three years. Kara described the program this way: attend law school during the day and business school in the evening. That is very serious. After graduation she went with Bayard, P.A. to work in corporate litigation. To her surprise, she found that the Chancery Court litigation did not light her fire. She thought she should explore another practice area offered by the firm, so she started accepting family law appointments from Bayard director Curtis Bounds, a renowned family law attorney. She was happy to discover that a family law practice requires a great deal of client contact and courtroom time, in contrast to the corporate work that involved little of either. For Kara, family law was just more fun.

As she transitioned her practice from corporate work to family work, Kara took a number of steps to acquaint



herself with the new environment. She joined a group of family law attorneys who meet regularly for lunch. She joined DSBA’s Family Law Section. Family law attorneys are fun. She volunteered for the Attorney for the Day program run by Delaware Volunteer Legal Services, handling Protection from Abuse cases for abuse victims on Fridays. She volunteered with the Domestic Violence Advocacy Program. She joined the Melson-Arsht American Inn of Court. She volunteered with the Office of the Child Advocate. All the while she enjoyed the mentorship of Curtis Bounds and the support of Bayard, where she is now a director, herself.

Kara really has the most fun with her family. Her husband, Dan, actually has fun for a living. He is a physical education teacher and soccer coach at St. Mark’s High School. Kara tells a revealing story about arriving home at 1:00 a.m., bleary-eyed after a night of “corporate litigation” and inquiring of Dan about his day. “It was great!” He explained, “We did the ping-pong unit today.” And these folks love sports. Kara is particularly proud of the fact that Dan took her to a baseball game for her birthday in 2008 and that the Phillies won the World Series in that very game. That must have been great fun.

“Kara Swasey is fun. It is evident in her smile and her demeanor.”

Kara and Dan have two sons, Tom and Greg. Tom is six years old, and he is a sports prodigy. Not only does he play many sports well (he hits the ball over the fence from the tee), but he is also an amazingly knowledgeable fan. For example, he picked the winners in the 2015 NCAA Men’s Basketball Tournament (when he was five). Greg, while also athletic (and faster than Tom, apparently), is the family comedian. And, these sports fans have lots of fun. They attend Flyers, Phillies, and University of Delaware games as a family. They also attend St. Marks games to cheer on Dad and the team. Kara admits that son Greg is actually named for a St. Marks soccer star who scored three goals in the state championship final (though he was credited for only two — he was robbed of the third by the ref).

Kara Swasey brings much to all that she does. She is smart and hard-working. She is respected and knowledgeable. But, where Kara is unique is in the degree of another trait she brings to all she does: mirth. And, everyone who has contact with her is better for it. ☺

James G. McGiffin, Jr. is a Senior Staff Attorney with Community Legal Aid Society, Inc. and a former President of the Delaware State Bar Association. He can be reached at jmcgiffin@declasi.org.

Delaware’s **SMALL FIRMS** and **SOLO PRACTITIONERS CONFERENCE:** *A Retreat for the Practitioner*

04 | 01 | 16 Atlantic Sands Hotel & Conference Center, Rehoboth Beach, DE



On April 1, 2016 over 50 attendees gathered at the Atlantic Sands Hotel & Conference Center in Rehoboth Beach, DE to attend the **Small Firms and Solo Practitioners Conference: A Retreat for the Practitioner**, sponsored by Small Firms and Solo Practitioners Section of the Delaware State Bar Association and the Delaware Lawyers Assistance Program. Attendees from all over the state came out for the premiere event. Some even opted to take the free shuttle from Wilmington provided by DSBIS.



The seminar included relevant topics that directly affect small firms and solo practitioners, including social media and technology; marketing ethics; owning and operating a small firm or solo practice; pro bono service; investment planning; disciplinary complaints and malpractice, as well as views from the Bench. A sponsored lunch with a presentation was provided by Ginger Ward from UBS Wealth Management. The event also included a vendor hall with exhibitors: Career Planning Services; Caron Treatment Centers; Fastcase, Inc.; and LawPay. In addition, the morning break was sponsored by Just Legal, Inc. and the afternoon break was sponsored by Mirmont Treatment Center.



The day concluded with social events provided by both the DSBA, sponsored by DSBIS, and the Small Firms and Solo Practitioners Section. The event was deemed so successful that 2017 Conference plans have already begun. ☺

Your Name in Print



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



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With Liberty and Justice for All ... Ensuring Access to Counsel for Children

By Lisa A. Minutola, Esquire and Dawn M. Williams, Esquire
Delaware Office of Defense Services

“**T**he condition of being a boy does not justify a kangaroo court.”
— Justice Abe Fortas
In re Gault

With these words, almost fifty years ago, the stage was set for sweeping juvenile justice reform. *In re Gault*, the landmark United States Supreme Court decision, held that children in delinquency proceedings are entitled to the same constitutional rights as adults.¹ *Gault* is a defining moment because it forever guarantees due process and equal protection for all children. It is the moment that affirmed that a child’s loss of liberty is no less important than that of an adult. It is the moment that ensured that every child has an advocate through the absolute right to counsel.

Although great strides have been made in the representation of children, we fail to truly honor what *Gault* intends when we fail to ensure that all children have meaningful access to competent counsel. Merely providing a child with an attorney, who has little or no specialized training, at some point in the court process, makes *Gault* nothing more than a hollow promise. While the promises of *Gault* are clear, delivery of these promises has been challenging for many indigent defense systems. Throughout the country, children are still unrepresented in delinquency proceedings or represented by inadequate counsel.

Children Are Not Miniature Adults

Children are different from adults. This critical distinction is one that is

1. *In re Gault*, 387 U.S. 1 (1967).

based in science, common sense, and, most recently, the law.² It is a distinction that further makes the representation of children a specialized area of legal practice which requires particular knowledge, skills, and advocacy.³ To ensure the promise of *Gault*, children must be afforded meaningful access to well-trained counsel from the time of arrest through post disposition proceedings.

The responsibility of providing access to competent counsel and ensuring a constitutionally sound system, however, falls not only on the defense bar, but equally on all juvenile justice stakeholders. As former United States Attorney General Eric Holder stated:

For too long, the Supreme Court’s promise of fairness for young people accused of delinquency has gone unfulfilled in courts across our country... Every child has the right to a competent attorney who will provide the highest level of professional guidance and advocacy.

Fulfilling the Promise of *Gault* in Delaware

In 2015, the United States Department of Justice recognized that the promise of *Gault* was still unfulfilled and, for the first time, prioritized indigent juvenile defense by issuing a grant solicitation for the “SMART on Juvenile Justice: *Enhancing Youth Access to Justice*

2. *Miller v. Alabama*, 567 U.S. ____ (2012); *Graham v. Florida*, 560 U.S. 48 (2010); *Montgomery v. Louisiana*, 577 U.S. ____ (2016).

3. *TEN CORE PRINCIPLES For Providing Quality Delinquency Representation Through Public Defense Delivery Systems*, National Juvenile Defender Center and the National Legal Aid and Defender Association (July 2008, 2nd Edition).

Initiative.” The goal of this state planning grant is to “[fund] efforts that reduce recidivism and ensure that children receive the guarantees of due process and equal protection...”

Delaware, through its Criminal Justice Council, is one of only four states to receive this grant. This grant represents a tremendous opportunity to create a model indigent juvenile defense system and to further systemic reform for children in Delaware’s juvenile justice system. Through the grant, Delaware is tasked with drafting an indigent juvenile defense strategic reform plan by June 2016. The plan will focus on enhancing access to quality, competent counsel through all stages of delinquency proceedings, including in post-disposition, collateral matters. A State Juvenile Justice Advisory Committee has been convened and work groups are engaging in a comprehensive review of current laws, policies, and practices.⁴ Through this review, areas of reform will be identified and recommendations for sustainable change, particularly within the defense system, will be made.⁵

This initiative will not only better legal services provided to children, but it will also provide numerous opportunities for pro bono work for members of the Bar in areas where there is a great need for legal representation. Even minimal involvement in the delinquency system can result in ongoing, collateral consequences

4. The advisory committee consists of various agencies including the Office of Defense Services, the Attorney General’s Office, the Division of Services for Youth and their Families, the Delaware State Bar Association, various law firms, and the Superior and Family Court.

5. Additional federal funding may be available through the competitive grant process for implementation of the strategic plan.

for children that can belie their continued rehabilitation and success. Through the strategic plan, it is anticipated that collaborations will be established with local law schools, the Delaware State Bar Association, and community organizations. These collaborations will allow children to have access to counsel in post-disposition matters, such as expungement proceedings, and for continued advocacy long after they have left the courtroom.

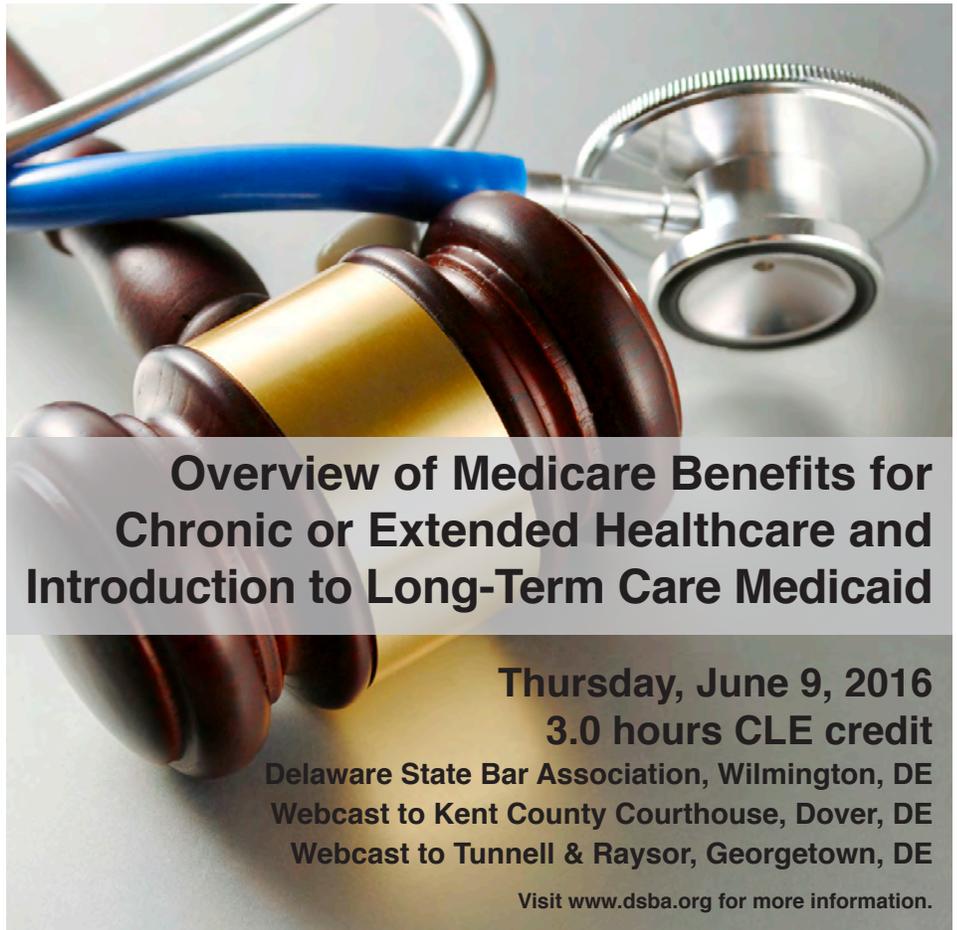
"Be the change you want to see in the world."

- Mahatma Gandhi

With these words, almost fifty years later, the stage is again set for sweeping juvenile justice reform. Through this grant, Delaware has been given the tools to create a national model not only for indigent juvenile defense, but for our entire juvenile justice system. Delaware has the opportunity to become the first state to ensure *Gault's* fifty-year-old promise of meaningful access to competent counsel for all children. As Delaware lawyers, we have an even more valuable opportunity. We, as advocates, have the ability to be the change that we should see in Delaware and fulfill this promise for all of Delaware's children. 🌐

Lisa A. Minutola is the Chief of Legal Services for the Office of Defense Services (ODS). Ms. Minutola has worked for ODS since 1996 and, in her current role, advocates for criminal and juvenile justice reform.

Dawn M. Williams is the Director of Training and Development for the Office of Defense Services (ODS). Ms. Williams has worked in various roles at ODS since 1999.



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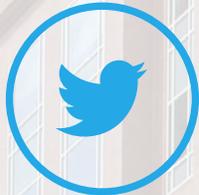
Pre legal background in engineering and construction: Engineering undergraduate degree and three years of field experience as a chemical engineer for DuPont and as a construction engineer for the U.S. Army Corps of Engineers.

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Play for a Cause: The Fourth Annual Combined Campaign Cup

By Makenzie Windfelder, Esquire and Charles Vincent, Esquire

We are pleased to announce that the Fourth Annual Combined Campaign Cup to benefit the Combined Campaign for Justice will take place at the DuPont Country Club on Monday, July 18, 2016. This year's tournament has something for everyone — in addition to the golf and doubles tennis tournaments, this year's outing also features a lawn games tournament, including lawn bowling, horseshoes, and baggo. Last year's Cup netted \$24,000, and to make this year's Cup the best yet, we need your help! All members and friends of the DSBA, Combined Campaign for Justice, and the general public are welcome to participate in the day's activities.

Do not miss out on a great opportunity to network with members and friends of the DSBA while raising money to support the vital programs made possible by Combined Campaign for Justice. The BBQ lunch and dinner are included in the registration fee for golf, tennis, and lawn games, or may be purchased separately. This year's silent auction boasts an impressive array of gift certificates to restaurants, museums and theaters, golf packages to local courses (including DuPont and Bidermann), tickets to sporting events, and other great items. Bid early and often!

Everyone who participates in the day's events is sure to have a great time. Registration opens at 10:30 a.m. The BBQ lunch will take place from 11 a.m. to 1 p.m. Golf (shotgun start, scramble format) will start at noon. Tennis and lawn games tournaments will begin at 1 p.m. All tournaments will offer opportunities for participants to compete for prizes by testing their skills and luck, including a chance to win \$10,000 in our annual putting contest. Prizes will be awarded to the teams who place first

or second in their respective event. Winning the Combined Campaign Cup also means bragging rights good for 364 days. Congrats again to the 2015 Cup champions: Tony Flynn, Esquire; Dan Johnson, Esquire; Bill Gamgort, Esquire; Richard Levine, Esquire (Championship Course); Dimitri Kipa, Gene Vadas, Rob Greenberg, Esquire; Seth Reidenberg, Esquire (Nemours Course); Bill Larson, Esquire; and John Ellis, Esquire (Tennis Tournament).

Firms, businesses, and individuals can support the Combined Campaign Cup by sponsoring the event, registering to participate in one of the activities, purchasing tickets for lunch or dinner, or by donating items for the silent auction. A wide variety of sponsorship levels are available. Beginning at the \$500 level, sponsors will be recognized on all printed materials as well as on the Combined Campaign Cup's registration page, on social media and in post-tournament press, and also have the opportunity to include an item in the giveaway bag provided to all tournament participants. Sponsors at the \$1,000 level and above receive additional perks, including (for golfers), a guarantee to play on the DuPont Championship Course.

All proceeds from the Cup benefit the Combined Campaign for Justice. David Stratton, managing partner at Pepper Hamilton's Wilmington office, and one of the Co-Chairs of Combined Campaign for Justice, is looking forward to the event: "Now in its fourth year, the Combined Campaign Cup has become one of our most successful annual events, and we look forward to this year's tournament. It is a great opportunity to connect with many members of the Bench and Bar."

The Combined Campaign for Justice is a partnership of the DSBA, Community Legal Aid Society, Inc. ("CLASI"),

Delaware Volunteer Legal Services ("DVLS"), and Legal Services Corporation of Delaware, Inc. ("LSCD"). Together, these agencies work to provide Delaware's indigent population, including individuals and families, children, veterans, seniors, people with disabilities, victims of domestic violence, and the homeless, with access to civil legal services. Specifically, CLASI provides legal services to low income Delawareans, to people who are 60 and over, or those who have a disability. DVLS provides *pro bono* legal representation to indigent clients facing dire — and sometimes life-threatening — circumstances, including protection from abuse, divorce, and custody cases involving domestic violence. LSCD counsels and assists low income Delawareans in matters including bankruptcy, repossession, eviction, foreclosure, and unemployment benefit problems. In 2015, these agencies provided legal services in 4,744 cases, affecting over 12,100 low-income Delawareans.

Registration for the Combined Campaign Cup is open and filling quickly. Individual golfer registration is \$200, and foursomes are \$700. Tennis players may register for \$100 a player, or \$175 for doubles. All registrants receive lunch and admission to the dinner and silent auction. Tickets for the lunch and/or dinner may be purchased separately for \$40 or \$60 respectively. A portion of the registration fees and sponsorships are tax-deductible. For more information or to register, please visit the Combined Campaign Cup link on the Combined Campaign for Justice website (www.delawareccj.org). You can also contact Charlie Vincent at charlie@innovinent.com or (302) 566-8008. We look forward to seeing you on July 18 at DuPont! 

The Honorable Henry Ridgely Horsey

1924 - 2016

By Robert S. Saunders, Esquire

In a long and well-lived life on and off the Delaware Supreme Court, Justice Henry Ridgely Horsey blended a historian's respect for the past with a fiduciary's concern for the future. He died peacefully on March 3, 2016, at age 91.

Justice Horsey was intensely proud of his family heritage. Beginning in 1767, seven generations of Ridgelys flourished in the Ridgely House on the Green in Dover, just across the street from the Old State House and the Delaware Supreme Court, producing among others a delegate to the First State Constitutional Convention, an Attorney General of Delaware, and a United States Senator.

Justice Horsey's own contributions to Ridgely history began with his birth in 1924 in Lewes. Drafted into the United States Army after high school, Justice Horsey served as an infantryman and combat engineer in Europe during World War II and was honorably discharged with the rank of Sergeant. He entered Harvard College at age 22, and graduated from Harvard Law School in 1952. He was admitted to the Delaware Bar in January 1953 and practiced at Berl, Potter & Anderson until 1962, and then was a trust officer at the Wilmington Trust Company until 1965, when he inherited the Ridgely House and returned to Dover. After several years as a Deputy Attorney General and a sole practitioner, he was a partner in the Dover office of Morris, James, Hitchens & Williams until 1978. In 1978, the General Assembly expanded the Delaware Supreme Court from three Justices to five, and Governor du Pont appointed Justice Horsey and former Chancellor William T. Quillen to the new seats. (Justice Horsey smilingly referred to himself as the "less obvious selection.")

In his sixteen years on the bench, Justice Horsey authored dozens of reported opinions on a host of topics, many of which are still taught in law school and pored over by practitioners. As a former trust officer, Justice Horsey understood first-hand what it meant to be a fiduciary, and his corporation law opinions held fiduciaries to a high standard. Two of Justice Horsey's most famous opinions, *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985) and *Cede & Co. v. Technicolor, Inc.* ("Technicolor



II"), 634 A.2d 345 (Del. 1993) hinged on the fiduciary duty of care. Before *Van Gorkom*, it appeared to some legal commentators that the business judgment rule had swallowed the duty of care and fostered a corporate culture in which directors were no more than a ceremonial rubber stamp for management. By holding that Trans Union's directors breached their duty of care by failing to inform themselves of all information reasonably available before approving a sale of the company, *Van Gorkom* gave life to the rule that only informed and careful directors earned the benefit of the deferential business judgment rule. In *Technicolor II*, Justice

Horsey's opinion for the Court made clear that the duty of care was of "equal and independent significance" to the duty of loyalty. As he later suggested in an article published in the Delaware Journal of Corporate Law after his 1994 retirement from the bench, Justice Horsey believed that "directors, as quasi-trustees, should be judged by fiduciary standards of not simply good faith but prudent conduct." 19 Del. J. Corp. L. 971, 974 (1994). The opinions he authored presaged, and arguably contributed to, today's more active and engaged corporate boards.

Justice Horsey's concern for stewardship famously extended beyond jurisprudence to Delaware's environment. In 1962, sand dunes that protected property in south Rehoboth Beach were wiped out in a storm. Twenty-five years later, Justice Horsey and his children sought to restore the dunes by erecting a snow fence and planting dune grass on family lands east of the boardwalk. The Town of Rehoboth Beach shortsightedly opposed this effort and sought unsuccessfully to enjoin it, only to embrace it belatedly years later. (Justice Horsey was ahead of his time in another respect. He imposed his own private ban on smoking in his chambers long before the State of Delaware joined him in recognizing the dangers of second-hand smoke.)

Justice Horsey is survived by his seven children (Henry Jr., Edmond, Therese, Ridgely, Revell, Robert, and Elizabeth) and eleven grandchildren, his wife Linda, and his former wife Ann. 

AMERICAN COLLEGE OF TRIAL LAWYERS DELAWARE CHAPTER

The Delaware Fellows of the American College of Trial Lawyers are proud to announce the induction of the following lawyers as new Fellows of the College:

Colm F. Connolly of Morgan Lewis & Bockius, LLP

Robert S. Saunders of Skadden Arps Slate Meagher & Flom, LLP

Kevin R. Shannon of Potter Anderson & Carroon, LLP

The American College of Trial Lawyers is a professional association of lawyers skilled and experienced in the trial of cases and dedicated to improving the standards of trial practice, the administration of justice, and the ethics, civility and collegiality of the trial profession.

Fellowship in the College is limited to not more than one percent of the practicing bar in any state or province; is by invitation only after rigorous, confidential investigation and review; and is only offered to those lawyers whose professional careers have demonstrated the highest standards of trial advocacy, ethical conduct, professionalism, civility and collegiality. To be considered for Fellowship, a lawyer must have a minimum of 15 years of trial experience with significant lead attorney experience.

The Delaware Fellows of the College congratulate and welcome these new Fellows.

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Twenty-Fifth Anniversary of the Delaware High School Mock Trial Program

By The Mock Trial Committee

Over 250 students from twenty-five public, private, parochial and charter schools throughout Delaware competed in the 25th Annual Delaware High School Mock Trial Competition. The event, sponsored by the Delaware Law Related Education Center (DELREC), took place in the courtrooms of New Castle County Courthouse in Wilmington on Feb. 26 and 27, 2016.

Students in each school spent two days arguing both sides of a simulated criminal case involving an alleged murder, presenting opening statements, closing arguments and questioning “witnesses.” Two finalists emerged after four rounds of competition.

Justice Collins J. Seitz, Jr. of the Delaware Supreme Court presided over the finals, which pitted Wilmington Friends School against Sussex Central High School, marking the first time that a Sussex County school has made it to the final round. Wilmington Friends ultimately took home top honors in the closely contested competition. Wilmington Friends will now represent Delaware in the National High School Mock Trial Championship in Boise, Idaho on May 12-14.

Wilmington Charter, Wilmington Christian, and Tower Hill schools earned third through fifth place respectively. Eight students also received ceremonial gavels for exemplary performance as the “best witness” or “best attorney.” To mark the competition’s 25th year in Delaware, DELREC Board Member, Anthony Iannini, provided medallions commemorating the 25th anniversary to each student participant.

At the banquet following the competition, DELREC presented its Pete Jones Award for outstanding service to the mock

trial program to Jason C. Jowers, the Chair of Mock Trial Committee and a partner at Morris James LLP, and the Award for Excellence as a Classroom LRE Educator to M. Dwayne Caldwell of Brandywine High School. Finally, River Shannon, a student at Newark High School, received a scholarship award of \$500 provided by Mr. Iannini for winning the Mock Trial Competition Essay Contest.

The 2016 Mock Trial Case Committee, chaired by Jason C. Jowers, Esquire, included The Honorable M. Jane Brady, Judge, Superior Court and President of the Board of Trustees of DELREC; Daniel M. Attaway, Esquire; Sean M. Brennecke, Esquire; N. Christopher Griffiths, Esquire; Lisa M. Grubb, Esquire; Francis “Pete” J. Jones Jr. Esquire; Kathryn S. Keller, Esquire; Paul Sunshine, Esquire; Andrew Vella, Esquire; and Pat Quann, Executive Director of DELREC. The Committee organized the case material and helped coordinate the competition. The Honorable Paul R. Wallace, Judge, Superior Court, served as the Committee’s Liaison to the Court. Thanks also to our Scoring Room volunteers DELREC Board members Barry Townsend and Eileen Wilkinson, and Chris Kenton, Carol Anderson, and Rick Lane.

Organizers thank the Delaware Supreme Court for their support, along with the Administrative Office of the Courts, Capitol Police, bailiffs, and security officers for providing assistance during the two-day event and the Delaware Bench and Bar, as well as the Delaware Paralegal Association, for providing many of the volunteers that helped organize and operate the competition. DELREC also thanks GE Capital and Grotto Pizza for donating lunch for the teams on Friday and Saturday. We also thank Wilmington University and Amy Odell, Esquire, for donating vests for our runners.

We are very grateful for the commitment of the following Attorney Advisors who gave so much help to our Mock Trial teams.

Jodi Barillare, Esquire	Caitlin M. Gregory, Esquire	Michelle Nerozzi, Esquire
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David Goldberg, Esquire	Douglas E. McCann, Esquire	Chandra Williams, Esquire
Deborah Gottschalk, Esquire	Linda McKinstry, Esquire	

The Competition would not be possible without the support from our scoring and presiding judges. We are very grateful to Margie Touchton of Morris James LLP for recruiting and coordinating the following volunteers:

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Additional volunteers served as runners and bailiffs from The Delaware Paralegal Association, Wilmington University, and the Delaware Law School at Widener University. Thanks to Rose Green, DCP and Amy L. Odell, Esquire, for coordination of these volunteers.

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-DISCIPLINARY ACTIONS-

REINSTATEMENT

In re Ronald G. Poliquin, Esquire
Supreme Court No. 129, 2016
Effective Date: April 5, 2016

By Order of the Delaware Supreme Court dated April 5, 2016, Ronald G. Poliquin is reinstated to the Delaware Bar. The Court imposed a two-year probation with specified terms and conditions:

1. reimburse ODC for the costs of the proceeding;
2. obtain certification from the Commission on Continuing Legal Education of compliance;
3. continue monitoring by DE-LAP;
4. remain in active recovery from his addiction by his continued participation in Narcotics Anonymous;
5. be monitored by a practice monitor, other than his employer;
6. cooperate with ODC in monitoring compliance with the terms of probation;
7. provide ODC with evidence of malpractice insurance before he begins practicing; and
8. not engage in the practice of law as a solo practitioner.

PRIVATE PROBATION

ODC FILE No. 112629-B
Effective Date: April 6, 2016

A Delaware lawyer was placed on private probation for two years for violations of the Delaware Lawyers' Rules of Professional Conduct ("Rules") in connection with his failure to maintain his law practice's books and records. The private sanction was offered by a Panel of the Preliminary Review Committee and imposed with the consent which revealed deficiencies in the books and records. The Lawyer also made misrepresentations as to the status of the firm's books and records to the Supreme Court on his 2014 Certificate of Compliance. 

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A MEATY MAY

I consider myself a versatile griller, able to achieve juicy pork loins and tender flank steaks. Yet, over the last few months I decided to try my hand at different cuts. My focus has been two cuts of meat that are typically packaged in individual servings — a ribeye steak and a pork loin chop. Instead of purchasing two standard 1 to 1 1/2 inch ribeyes, I ask the butcher to cut one really thick steak — about 3 inches. And, rather than two 1 inch thick pork chops offered in the case, I request two center cut pork-loin chops, each about 2 1/2 inches thick. Both quantities are ideal for dinner for two and leftovers to top a lunch salad.

The cooking method involves two stages — searing the outside to a golden brown and cooking the inside to the desired temperature. Also, the meat is intended to be served in slices rather than an entire steak or chop. This has proven to be a more pleasant dining experience — “less is more.”

RIBEYE "ROAST"

Ingredients:

- One boneless ribeye (3 inches thick)
- Sea salt
- Fresh ground black pepper
- Salted Irish butter
- Maytag blue cheese
- Truffle oil

Turn up the heat on one side of a gas grill to maintain 325 degrees. Pat both sides of the steak with salt and pepper. Place the ribeye on the non-heated side of the grill and cook it covered until its internal temperature is 100 degrees. This should take about 10 to 15 minutes, depending on the meat's thickness.

Once the ribeye reaches 100 degrees, move it to the hot side of the grill. The goal at this point is to sear the outside of the steak 3 minutes per side. Then, leave the ribeye on the heat until the internal temperature is 130 degrees for medium rare. Remove the meat from the grill and let it rest for a few minutes on the cutting board before slicing it against the grain to your desired thickness.

I like to serve the ribeye with two butters. Blue Cheese Butter: Combine two tablespoons of salted Irish butter to one tablespoon of crumbled Maytag blue cheese. Cream together with a fork. Truffle Butter: Do the same with two tablespoons of salted Irish butter to one teaspoon of truffle oil.

PORK "PORTERHOUSE"

Ingredients:

- Two center cut pork-loin chops (2 1/2 inches thick)
- 1 shallot, chopped
- 2 tablespoons brown sugar
- 2 tablespoons Mirin (Japanese rice wine)
- 2 tablespoons rice wine vinegar
- 2 tablespoons olive oil
- 1 teaspoon fennel seeds
- Salted Irish butter
- Extra virgin olive oil

The subtle sweetness of the brown sugar and Mirin make a “nice” marinade for the pork porterhouse, which has the loin on one side of the bone and the tenderloin on the other. Combine the shallot, brown sugar, Mirin, rice wine vinegar, olive oil and fennel seeds in a bowl. Season both sides of the chops with salt and fresh ground pepper and place them in a gallon plastic bag. Add the marinade and seal the bag, making sure the marinade is covering all sides of the chops. Let the pork steep at least one hour or up to all day.

Heat the grill to 450 degrees. Then heat one tablespoon of butter and one tablespoon of olive oil in a large nonstick frying pan over medium heat. Cook the chops in the pan until golden brown, about 3 minutes per side. Transfer the pan to the grill and cook until the pork's internal temperature reads 135 degrees. This will take about 12 minutes. Let the chops rest for a few minutes before transferring to a cutting board. Slice the pork against the grain and top with the pan juices.

Ideas for Greens

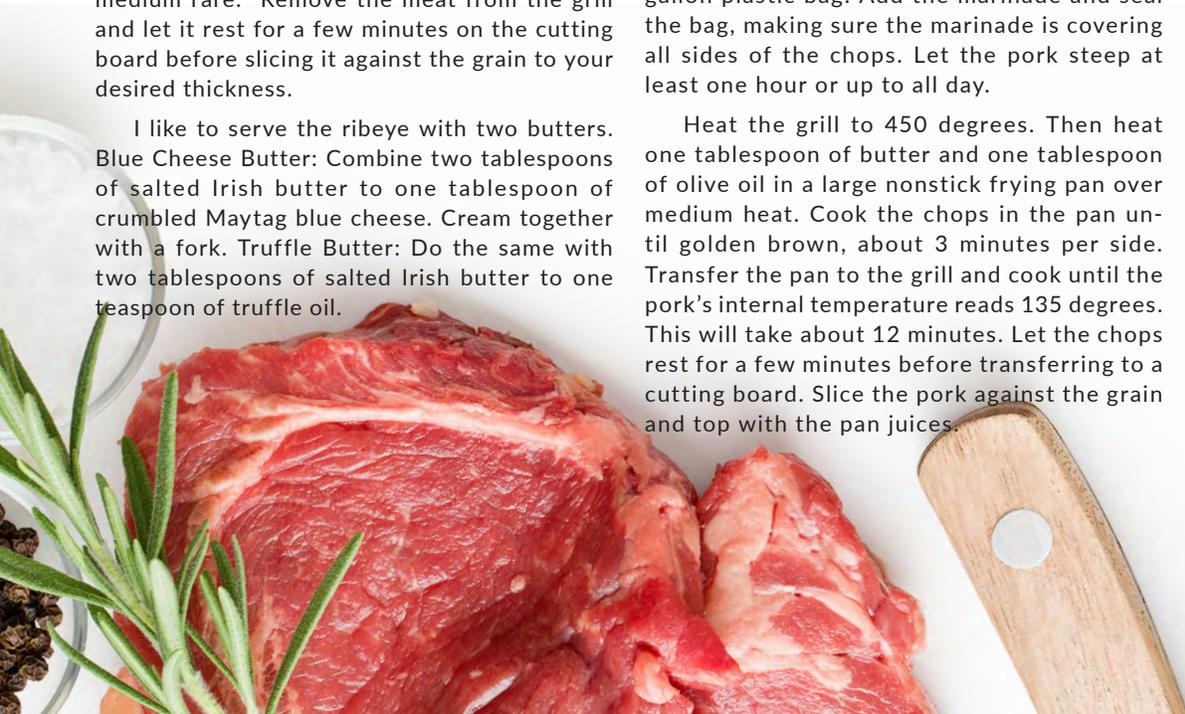
To serve alongside either meat

Ramps These greens are foraged in the spring and are neither a scallion nor a leek. They have vivid green leaves and dark rose and white stalks. Simply cut off the roots, rinse well and sauté in butter and olive oil until tender. I like the leaves to crisp slightly.

Watercress This peppery green makes for a salad with a kick. Toss the watercress with thinly sliced fennel, the juice of a freshly squeezed blood orange, olive oil, salt and pepper. As many varieties of blood orange are available through May, you can make this traditional Sicilian winter salad a springy one.

Sizzle with some thick cuts of meat this May! 🍖

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



Nominations Sought for 2016 Awards

The Delaware State Bar Association and the Awards Committee are seeking nominations for the following four awards* **:

- Daniel L. Herrmann Professional Conduct Award**
- Outstanding Service to the Courts and Bar Award**
- Distinguished Mentoring Award**
- Government Service Award**

These and other awards will be presented in a special Awards Luncheon in December 2016.

Awards Description

Daniel L. Herrmann Professional Conduct Award

Awarded to a member of the Delaware Bar who, over the course of time, has demonstrated those qualities of courtesy and civility which, together with high ability and distinguished service, exemplifies the Delaware lawyer.

Outstanding Service to the Courts and Bar Award

Awarded to a Delaware lawyer or judge who, by exemplary service to the Delaware Courts and the Delaware Bar, has substantially assisted the courts and the Bar and has strengthened public trust and confidence in the courts in the state of Delaware and the administration of justice.

Distinguished Mentoring Award

Awarded to a Delaware lawyer or judge who, by distinguished mentoring of other Delaware lawyers (or future lawyers) over a period of many years, has served as an inspiration to and a model for those lawyers in striving for and maintaining the highest standards in their professional careers and in their community involvement.

Government Service Award

Awarded to a full-time government service employee in recognition of dedicated and distinguished contribution to the Administration of Justice.

** These are not necessarily annual awards. All or some of these awards will be presented only upon the recommendation of the Awards Committee and approval by the Executive Committee of the DSBA.*

*** Please note that previous nominations must be renewed to be considered.*

Delaware State Bar Association Awards Nomination Form

Name of Candidate: _____

Title/Occupation of Candidate: _____

Award: _____

Date: _____

Nominator: _____

Phone: _____ Fax: _____ E-Mail: _____

Firm: _____

Address: _____

Brief statement of reasons that candidate is deserving of Award (see above Award criteria). Please attach sheet if necessary.

Nominations should be submitted to Johnna Darby, Executive Director, e-mail jdarby@dsba.org or fax to (302) 658-5212.



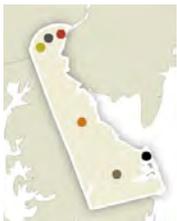
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