

## COCKTAILS & CONVERSATION Bench/Bar Cocktail Party

— MEMBERS ONLY —

If you're looking for a great opportunity to relax with colleagues from the bench and bar while enjoying a two hour open bar and mouth-watering party fare, then Cocktails & Conversation fits the bill.

Scheduled for 6-8 pm, Monday, May 11th at Café Aldo Lamberti on Route 70 East in Cherry Hill, this "Members Only" event will include the presentation of official portraits to Hon. Ronald Freeman, J.S.C. (ret.) and Hon. Stephen Holden, J.S.C. (ret.), and the Foundation's 2015 Scholarships, in addition to being a terrific opportunity to mix and mingle with colleagues and Camden County judges of the Superior, US District, Bankruptcy and Workers' Compensation Courts, in a relaxed and festive atmosphere.

Admission is \$60 (\$50 for lawyers admitted less than 5 years), with advance reservations required. Refer to the Cocktails & Conversation Bench-Bar Cocktail Party insert in this month's *Barrister* for additional information and to make your reservation(s). **This is a member only event and early registration is encouraged for this traditionally "packed house" evening.**

## Nominations sought for Judge John F. Gerry Award

The Judge John F. Gerry Award was established by the Camden County Bar Foundation to acknowledge the continuing outstanding contributions of a member of the Bar of the State of New Jersey, or a member of the State or Federal Judiciary in New Jersey, to the administration of justice in the State of New Jersey, who exemplifies the spirit and humanitarianism of the individual in whose honor this award has been named.

The Foundation invites members of the bar and the public to nominate individuals to receive the 2015 Gerry Award, which will be presented at the Annual Gerry Awards Presentation in October. Nominations should be made in writing and sent to: Laurence B. Pelletier, Executive Director, Camden County Bar Association, 1040 N. Kings Highway, Suite 201, Cherry Hill, NJ 08034, no later than May 22, 2015. Nominations may also be emailed to Mr. Pelletier at: [lbp@camdencountybar.org](mailto:lbp@camdencountybar.org).

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## Chili Cook-Off Winner TV Bound

The goal of the CCBA Young Lawyer Committee and those enlisted to assist with the second annual Chili Cook-Off was to gather Association members and friends to witness a spirited competition to benefit both the Camden County Bar Foundation and the New Jersey Veterans Haven of Camden County. On all counts, this *Cook-off for a Cause* was a success. Entrants used their best chili and cornbread recipes to vie for the honor of being chosen winners. Unlike many cooking competitions (think *Hell's Kitchen*), while focused on succeeding, the participants were genial and genuinely enjoyed seeing the reactions of the tasters sampling the various offerings.

When the last fork was dropped, Heather Lowney was declared the winner of the cornbread competition. "I think what won fans was the texture," Heather observed with evident pride. "I know I wanted the recipe," Larry Pelletier remarked.

*(Continued on Page 3)*



## Advertise in the 2015 Dinner Dance Program Book

**Support the Bar Foundation's  
Community Service Programs**

This year's Annual Dinner Dance will take place on **Friday, June 12th** at the Woodcrest Country Club in Cherry Hill. Pay tribute to the Association's incoming President Jenifer Fowler, and the incoming Officers and Trustees of the Association and Foundation by placing an ad in the 2015 commemorative program book.

Proceeds from the Dinner Dance and Adbook support the Bar Foundation's many community service programs and projects that improve the quality of life for local residents, such as parties and picnics for disadvantaged kids, scholarship awards for deserving high school and law school students and scholarships for disabled students attending the Larc School.

Reserve a display ad for your firm or place your own personal display ad. To be included in this year's book, use the Adbook Flier in this month's inserts. To be included, your ad must be received by Bar Headquarters no later than **FRIDAY, MAY 29th**.

## THE DOCKET

### Saturday, April 11th

Young Lawyer Committee  
Children's Easter Party  
11 am

Anna Sample House, Camden

### Tuesday, April 14th

Civil & Administrative Remedies for  
Bullying and Harassment  
4 – 6:15 pm

Tavistock Country Club, Haddonfield

### Wednesday, April 15th

CCBA Board of Trustees Meeting  
4 pm

Bar Headquarters, Cherry Hill

### Wednesday, April 22nd

Lawyers Got Talent!  
6 pm

Colleen's International  
510 S. White Horse Pike, Magnolia

### Wednesday, April 29th

Effectively Representing a DWI Client  
4 – 6:15 pm

Tavistock Country Club, Haddonfield

### Thursday, April 30th

CLE on Tap! NJ Criminal Trial Preparation  
3 – 6:15 pm

Tavistock Country Club, Haddonfield

## Don't Delay, Renew Today!

Dues notices for the 2015-16 membership year should be on your desk, or soon will be, and are payable by June 1. Paying promptly ensures that your Association continues to serve you and the community with its many important programs and services.

As a CCBA member you receive numerous benefits, which more than justify the cost of dues:

- A wide array of affordable, convenient and informative CLE seminars, all offering New Jersey and Pennsylvania CLE credits. As a CCBA member, you receive a 30% tuition discount, which makes each credit almost \$11 less per credit than ICLE seminars. Additionally, our seminars are conveniently located which saves you valuable travel time.
- Discounted tuition and special offers on the many CLE programs available online through the *Camden County Online CLE Learning Center*.
- Our monthly publication, *The Barrister* provides updates on changes affecting you, your clients and practice, as well as substantive articles written by fellow Camden County practitioners, law practice management tips, and notices to the bar.
- Committees that offer opportunities to network with peers while shaping the future of your Association.
- Professional and social activities designed to enhance your law practice
- An online Member-to-Member Referral service
- Discounts on many legal products and services for you, your clients and your family members, and much more.

Now, more than ever, your membership in the CCBA provides the value-added benefits you need in today's economic climate.

Beyond the many tangible benefits of membership, you will also continue to enjoy the intangible benefits of supporting the CCBA. The Association has worked diligently since 1881 to improve the practice of law and Bench-Bar relations in Camden County, and to foster collegiality among its members. You, your profession, and society are better for the experience and the service you have performed.

Your CCBA membership supports these goals and benefits the entire community. Renew your membership, or join today, and support our mission to ensure that the Camden County legal community remains the finest in New Jersey.

## THE BARRISTER

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Views and opinions in editorials and articles are not to be taken as official expressions of the Association's policies unless so stated, and publication of contributed articles does not necessarily imply endorsement in any way of the views expressed.

## Tentative Agenda for April 15, Trustees Meeting

A tentative agenda for this month's regular Board of Trustees meeting follows. The meeting will begin at 4 pm, at Bar Headquarters in Cherry Hill. Meetings are open to the membership. Anyone interested in attending should notify and confirm their attendance by calling Bar Headquarters at 856.482.0620.

- I. Call to Order
- II. Minutes from Previous Meeting
- III. Treasurer's Report
- IV. President's Report
- V. Membership Committee Report
- VI. Executive Director's Report
- VII. Young Lawyer Committee Report
- VIII. Standing Committee Reports
- IX. Foundation Update
- X. NJSBA Update
- XI. New Business (if any)
- XII. Old Business
- XIII. Adjourn

Be an active participant  
in YOUR professional  
organization.

ATTEND MEETINGS  
AND FUNCTIONS!

## MEMBER ON THE SPOT



**NAME:**

**PRACTICE AFFILIATION:**

**YEAR ADMITTED TO NJ BAR:**

**OTHER BAR ADMITTANCES:**

**RESIDENCE:**

**Daniel L. Mellor**

**Tax & Estate Planning; Business Transactions**

**2010**

**New York; Pennsylvania; U.S. Tax Court**

**Lawrenceville, New Jersey**

**HIGH SCHOOL:** Stuyvesant High School (New York, NY)

**COLLEGE:** College of William & Mary

**LAW SCHOOL:** George Mason School of Law, J.D.  
Temple University, LL.M.

**WHAT LED YOU TO A LEGAL CAREER:** I graduated from college in 2002 having majored in Islam, studied in Lebanon for a summer, and taken Arabic for three years. I chose to go to law school because, in the wake of 9/11, I wanted to become an FBI agent. Three years later, I was ready to settle down and start my family and during that time found that I really enjoyed tax law.

**BEST PERSONAL/PROFESSIONAL ATTRIBUTE:** I do not miss deadlines. In fact, I rarely approach them. I do not make the mistakes that inevitably come with leaving work until the last minute.

**WHAT I DO TO RELAX:** CrossFit, fantasy baseball, plan trips, catch a movie

**HOBBIES:** I have two toddlers. What's a hobby?

**FAVORITE RESTAURANT:** Elements (Princeton, NJ)

**FAVORITE TELEVISION SHOW:** At the moment, *The Americans*, but all-time, *Breaking Bad*.

**FAVORITE MOVIES:** *Jaws*, *The Hustler*, *Charade*, *True Romance*, *Kiss Kiss Bang Bang*, *Pulp Fiction*, *Trainspotting*, *Moulin Rouge*, *12 Angry Men*, *Die Hard*, *Amadeus*, *Dr. Strangelove*

**FAVORITE AUTHOR/BOOK:** **Author:** Orson Scott Card  
**Book:** *Dune* by Frank Herbert

**FAVORITE VACATION PLACES:** Cape Cod

**FAVORITE WEBSITES:** fangraphs.com, grantland.com, avclub.com, taxprofblog.com

**FAVORITE MUSEUM:** The Vatican Museum is the single most amazing place, let alone museum, I've ever visited. If it weren't for the commute, I'd move there.

**FAVORITE WEEKEND GETAWAY:** Lancaster, PA

**ENJOY MOST ABOUT PRACTICING LAW:** Tax planning is very much like solving a puzzle. When I figure out how to accomplish the client's objectives within the bounds of the Code, there's a feeling of things snapping into place that is the most satisfying part of my practice.

**WHEN AND WHERE HAPPIEST?** Whenever I come home from work, my kids yell and jump into my arms and make me carry them upstairs to wrestle on the big bed.

**GREATEST FEAR:** Swimming in deep water with something the same size or larger than me.

**ALTERNATE CAREER CHOICE:** Conductor, NY Philharmonic Orchestra

**GREATEST LESSON LEARNED FROM PRACTICE OF LAW:** The devil is in the details.

**PET PEEVE:** When you're eating, and then unexpectedly bite down on something really hard and it makes a horrible crunching sound that makes you think you just bit through your molar.

**GREATEST ACCOMPLISHMENT:** Summer of 2010 – Finished my LL.M in Taxation, took the NJ and PA bar exams, my son was born, and I became an associate with Kulzer & DiPadova

**#1 PROFESSIONAL GOAL:** Help maintain Kulzer & DiPadova's standing as the best tax law firm in South Jersey

**#1 PERSONAL GOAL:** I have a list of places I want to visit someday, and I'd love to see them all. #2 is to write a crossword puzzle that gets published in the New York Times.

**LIFE EXPERIENCES WITH GREATEST IMPACT:** Volunteering with the Pennsylvania Special Olympics; moving from NYC to Virginia after my sophomore year of high school; walking up to the blond girl in my freshman dorm and saying, "Hey, don't I know you from somewhere?"

**ADVICE TO YOUNG LAWYER:** There's no perfect time to start your family, so don't put it off waiting for one to arrive.

**HOPE TO BE DOING IN 10 YEARS:** I'd like to be a regular professor for Temple's LL.M program.

**FAVORITE QUOTATION:** "Death is not the end. There remains the litigation over the estate." — Ambrose Bierce

## Chili Cook-Off Winner TV Bound

*Continued from page 1*

In the main event, chili with various degrees of heat and weight was served. The winning entry was that of David Hasner, who quickly conceded the real chef in the Hasner family is his mother, Peg. When asked whether there was any secret ingredient that made the Hasner chili stand out, David grinned and said it was partly the quality of the meat and partly the PED in the sauce that helped knock it out of the park. He was, of course, kidding...we think.

After Larry Pelletier sent a news alert to media outlets about the event, he was contacted by a representative of the Food Network who wanted to interview the Hasners for a possible appearance on *Food Finds*, a program hosted by Sandra Pickney. For this program, Sandra journeys across America to uncover home-cooked favorite foods that might lend themselves to a competition among amateur cooks. Sandra planned to be in Philadelphia for a chili competition in April and she wanted a South Jersey representative. Naturally, the Hasners were flattered and traveled to New York for the interview and to provide a taste of their chili. To their surprise, they were selected to participate and are working on refining the recipe for the television shooting on April 1st at the Palomar Hotel in Center City. "This would be extremely exciting," David remarked, "had the program invitation really happened and not been Jim Hamilton's annual April 'gotcha' article!" Yes, but a fundraising event like this deserves some extra attention!!



By Thomas D. Begley, Jr., CELA

# Structured Settlements

A structured settlement is an annuity that pays an injured plaintiff a series of periodic payments in connection with the settlement involving a physical injury or sickness over time, rather than in a single lump sum. The annuity is purchased by the defendant from a highly-rated life insurance company. The issuer of the annuity agrees to make future payments to the injured party. One of the advantages of a structured settlement is that the income component on the periodic payment is not taxable.<sup>1</sup> In order to qualify for the income tax-free treatment, the annuity must be purchased under a qualified assignment under I.R.C. §130. I.R.C. §130 enables a defendant's insurer to take an income tax deduction for the entire claim immediately, even though the plaintiff will not be receiving payments immediately, but rather will be receiving periodic payments over time.

## Advantages of Structured Settlements

There are a number of potential benefits to an injured plaintiff in utilizing a structured settlement:

- **Fiscal Restraint.** The structured settlement prevents the injured plaintiff from squandering the settlement. Many clients receiving personal injury settlements have never had money, have never learned financial discipline, and tend to squander the funds in a short period of time. The personal injury attorney has been held responsible in other states for failing to advise the plaintiff of the availability and advantages of a structured settlement.
- **Tax-Free Income.** Income from the Structured Settlement is income tax-free, if it is for a physical illness or sickness. If the individual dies during a guarantee period, the remaining portion of the guaranteed payments are included in the estate of the plaintiff for estate and inheritance tax purposes.
- **Lifetime Income.** A lifetime payment structure can provide lifetime income to the plaintiff. Alternatively, a structure can be for a period of years or can pay out nothing until the plaintiff reaches age 18, and then begin payments over a period of time or a lifetime. A structure can be designed to pay out monies at periodic intervals for payment for college tuition or purchase of a home.
- **Creditor Protection.** The structure guarantees an income that is free from the claims of the injured person's creditors until receipt.
- **Rated Age.** If the plaintiff has a medical condition warranting the establishment of a Rated Age, the periodic payment from the structured settlement can be considerably higher. A rated age is the insurance company's assessment of how long the plaintiff is likely to live based on his medical condition. A 30-year-old man may be rated as having the life expectancy of a 65-year-old man. This maximizes the settlement for the lifetime of the plaintiff. The insurance company assumes the risk as to how long the plaintiff will live. Payments are based on the insurance company analysis. If the plaintiff had the money in a lump sum, he would not know whether or not he would outlive his life expectancy and be without funds.

## Disadvantages of Structured Settlements

Three disadvantages of a structured settlement are:

1. **Rate of Return.** The rate of return in a low interest rate environment is locked in. It does not increase as interest rates go up.
2. **Lack of Liquidity.** If payments are fixed and an emergency arises, additional funds cannot be obtained short of commuting or factoring the annuity contract.
3. **Insurer's Solvency.** The solvency of the insurance company providing the structure must be carefully examined.

## Structured Settlement v. Lump Sum

It is important to decide in each individual case how much of a personal injury recovery should be structured and how much should be lump sum. The instinct of many personal injury attorneys is to structure as much as possible to avoid having a plaintiff squander the funds. A better approach would be as follows:

1. Identify immediate needs. A meeting of all interested parties should be held and the first step should be to identify the immediate cash needs of the plaintiff. Does he want to purchase a house, a vehicle, take a trip to Disney World, pay off debt, buy furniture, etc.? How much will all of this cost?
2. Set aside an emergency fund
3. Determine the amount of the structured settlement

Sophisticated people start the discussion with allocating 50% to a lump sum and 50% to a structure, and then go up or down from there. Financial advisors often consider the structured settlement as the debt portion of the individual's investment portfolio. In dealing with sophisticated plaintiffs who have developed a financial discipline over their lifetimes or in dealing with a professional trustee, this approach makes sense. However, if the plaintiff is going to receive the money themselves outside of a trust and has not developed financial discipline, then it often makes more sense to structure a higher portion of the settlement.

## Structured Settlements and Special Needs Trusts

A structured settlement can be paid into a special needs trust, provided the individual is under age 65 at the time the trust is established and the structure purchased. Payments are made into the trust and do not affect the individual's public benefits. In New Jersey, the policy of the State Medicaid Agency requires that there be a 100% commutation rider on the death of the beneficiary and that the payee on death be the special needs trust. This is to guarantee that Medicaid receives its payback on the death of the trust beneficiary.

## Structuring Attorneys' Fees

Personal injury work can be feast or famine, and by structuring fees the lawyer can spread out income over a period of time and achieve tax savings. Fees can also be structured until retirement. If a fee is structured and payment is deferred until retirement, the funds can be invested during the deferral period with the result that the payments will be increased once they begin. The attorney can defer paying tax until the fee is actually received. For example, if a fee is structured over a 10-year period, the income tax is spread over that 10-year period.

<sup>1</sup> Rev. Rul. 79-220





# April 15th is Coming, But We Aren't Just Concerned About Income Tax Returns!

By Martin H. Abo, ABV/CVA/CFF/CFF

Yep, you also need to consider gift tax returns as they are due at that time. Thus, this may be a very appropriate time to discuss the appraisals you may need to seek for you or for your clients.

IRS regulations detail the information that is necessary to support a proper valuation of gifts reported on a gift tax return so that the taxpayer can avoid an unlimited statute of limitations for inadequate disclosure of gifts. (With an unlimited statute of limitations, the IRS has unlimited time to assess taxes, penalties and interest.) If there is adequate disclosure, there is a 3-year statute of limitations. Under the regulations, to start the running of the statute of limitations, taxpayers must provide the following support for the gift:

- Description of the transferred property and any consideration received.
- Identity of, and relationship between, transferor and transferee.
- The trust I.D. number and copy of the trust document if the transfer is made to a trust.
- Detailed description of the method of determining fair market value of the assets, including relevant financial information and qualified appraisals.
- A statement describing positions taken contrary to published regulations or rulings.
- An explanation of why the transfer is not a gift, if that is the taxpayer's claim.

Although taxpayers are not required to file a gift tax return when there are no gifts for the year to a single donee that exceed the \$14,000 annual exclusion amount, to start the three-year statute of limitation running under the regulations, it may be advisable to file a gift tax return. This would be particularly true when: transferred assets are difficult to value; the transfer involves the right to withdraw property from a trust (Crummey power), or there is uncertainty about whether the gift will be treated as a completed gift.

Not to sound self-serving but the requirements of stating the methods of valuation are met by the submission of a qualified appraisal of the transferred property. The appraiser must:

- Be an individual who holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis; and
- Be qualified to make appraisals of the type of property being valued because of the appraiser's qualifications. Such is described in the appraisal detailing the appraiser's background, experience, education and membership, if any, in professional appraisal associations.

The deadline for filing a gift tax return, IRS Form 709, is typically the same as for the personal income tax return, Form 1040.

If more time is needed to get Form 709 or the appraisal together, we, as CPAs, or other tax practitioners can easily file an extension for you, Form 4868, before the taxes are due. This will extend the deadline for

(Continued on Page 16)

## Abo and Company, LLC • Abo Cipolla Financial Forensics, LLC

This is something you should file and retain

Great news is worth repeating, so we wanted to make sure you know that Martin H. Abo, CPA/ABV/CVA/CFF and Joseph P. Cipolla, Jr., CPA/ABV/CFF/PFS, CFE are now Co-Managing Members of Abo Cipolla Financial Forensics, LLC.

Abo Cipolla Financial Forensics, LLC is an affiliate of the two, separate core accounting firms of Abo and Company, LLC and Cipolla & Co., LLC, exclusively providing expert witness testimony on financial matters, and other litigation support services as well as business valuations.

Through the years our clients' needs often required expanded technical expertise for complex litigation. The judicial, legal and insurance communities and their clients often demand a full range of dispute resolution, valuation, and forensic services. To meet the many needs of our clients, we added Abo Cipolla Financial Forensics to our existing practices.

Marty Abo has always honestly stated, "I know what I don't know!" He has also confidently affirmed, "I know who knows what I don't know!"

It is for this reason that logic dictated an alliance with a strong associate. Cipolla & Co., successful in their own right, shares our commitment to high ethical standards. Together we form a much larger organization with increased depth, additional skilled staff, and an extremely expanded range of expertise that complements both of our firms.

Abo and Company and Cipolla & Co. have shared support relationships for many years. The combination of our experience and our professional service teams makes a formidable ally in any legal scenario. Frankly, we at Abo and Company already knew what the survey of lawyers polled by the *New Jersey Law Journal* revealed in awarding Cipolla & Co. for **2012, 2013 and 2014, Best Economic Damages Firm, Best Matrimonial Financial Expert and Best Forensic Accounting Firm.**

The Best got better!

Should you wish to simply confer on an issue, we welcome the conversation. Go to [www.aboandcompany.com](http://www.aboandcompany.com) to look over the curriculum vitae of the principals of Abo Cipolla Financial Forensics as well as a general profile of the valuation and litigation support aspects of our existing practices. We are here to assist our judiciary and legal colleagues in any accounting, tax, valuation, investigative or litigation support project where our team may be of benefit.

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## BANKRUPTCY

# Danger in Fraudulent Transfers and Asset Protection Schemes—Transfers in the Distant Past can be Attacked and Undone by Creditors or a Bankruptcy Trustee

By Steven R. Neuner

For those who seek to protect assets from claims of creditors through “Asset Protection” transfers to another person, the major concern has to be when, if or whether a creditor or a bankruptcy trustee could file suit to undo (or “avoid” the technical term) such a transfer to bring the asset back where it can be sold, levied or executed on to pay one’s debts. Too often, mounting debt results in a bankruptcy filing, or aggressive collection action. Yet many attorneys counseling those in debt or trying to avoid loss of property to creditors have misconceptions about the true nature and scope of this threat. This is the first of a series of articles seeking to clear up the confusion.

It is easy to think from a quick reading of the New Jersey Uniform Fraudulent Transfer Act, N.J.S.A. 25:2-20 et seq., [“**NJUFTA**”] that once four years have passed from a transfer, the transfer is safe from avoidance actions by creditors. This is not the case. Under the **NJUFTA**, transfers can be avoided by creditors or a bankruptcy trustee as “constructively fraudulent” regardless of actual intent to hinder, delay or defraud if the transferor is insolvent, undercapitalized or facing threat of financial difficulties. N.J.S.A. 25:2-25(b) and 25:2-27(a). For these types of actions, a general four-year statute of limitations applies. N.J.S.A. 25:2-31

Federal and New Jersey governmental agencies have even longer. Under the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 et seq. the Internal Revenue Service and other federal governmental agencies can bring avoidance actions within six years after the transfer was made or the obligation was incurred or, if later, within two years after the transfer or obligation was or could reasonably have been discovered by the claimant. 28 U.S.C. § 3306(b). For New Jersey state governmental agencies, the period is ten years. N.J.S.A. 2A:14-1.2. **G-I Holdings Inc. v Those Parties Listed on Exhibit A (In re G-I Holdings, Inc.)**, 313 B.R. 612, 635-636 (Bankr D.N.J. 2004), **affirmed**

**in part, and vacated in part as to other issues sub nom Official Comm. of Asbestos Claimants v Bank of N.Y.**, 2006 U.S. Dist. Lexis 55510, 2006 WL 1751793 (D.N.J. 2006).

For transfers shown to have been made with actual intent to hinder, delay or defraud creditors, the exposure might be much longer, if not unlimited. For these, the time for any creditor to sue is extended to one year **from actual discovery**. N.J.S.A. 25:2-31(a) (Avoidance actions under N.J.S.A. 25:2-25(a) may be timely filed “within four years after the transfer was made or the obligation was incurred **or, if later, within one year after the transfer or obligation was discovered by the claimant**”) This statute was amended effective November 18, 2002. New Jersey L.2002, chap 100 §1. The legislative commentary to that amendment explained that “[t]his bill provides that the one year of statute of limitations for certain fraudulent transfers runs from the time a creditor actually discovers a fraudulent conveyance, rather than when a creditor ‘could reasonably’ have discovered the fraudulent conveyance, and **thus eliminates the need to conduct unnecessary annual asset searches during the term of every loan that goes into default.**” (Emphasis added)

So as long as the Plaintiff did not have actual knowledge of the transfer (as opposed to implied knowledge from a public record), the time for action could be unlimited. If a bankruptcy is filed, a bankruptcy trustee (and in Chapter 11 or Chapter 13 cases, the debtor) enjoy certain “strong arm” powers afforded by 11 U.S.C. 544(a). This section of the Bankruptcy Code gives a trustee or DIP [hereinafter collectively referred to as “trustee” for convenience] all the rights which any creditor would have as of the Petition date to avoid transfers. Since Code section 544(a) affords the trustee the avoidance rights of a hypothetical judgment holder, levying lien creditor or (as to real estate) a bona fide purchaser for value of real estate, “without regard to any knowledge of the trustee or of any creditor”

it follows that a trustee would have one year from appointment or filing of bankruptcy to avoid any transfer made at any time in the past, so long as he can prove actual fraud.

However, the trustee must also prove standing to sue. Courts have held that trustees only succeed to the avoidance rights of unsecured creditors in existence on the date of bankruptcy filing. This requires that trustees show the existence of at least one creditor who would have had an avoidance claim that is not time barred. **Official Comm of Unsecured Creditors of Cybergenics Corp. v Chinery**, 226 F.3d 237, 243 (3d Cir 2000), **vacated on other grounds**, 310 F.3d 785 (3d Cir 2002); **G-I Holdings**, 313 B.R. at 632-633.

This will usually not be a difficult hurdle for a trustee, as there will commonly be at least one unsecured creditor without knowledge of the transfer to be avoided. Alternatively, the existence of a creditor who first became aware of a claim or cause of action within one year before the bankruptcy filing will suffice as the creditor would have no reason until then even to inquire about a possible fraudulent transfer. **See G-I Holdings**, 313 B.R., at 640. Once one such qualifying creditor exists, the trustee, as the representative of the bankruptcy estate, can pursue avoidance for the benefit of all unsecured creditors. **Id.**, 313 B.R., at 636.

If these hurdles are met, and if the statute of limitations had not expired as to at least one creditor when the bankruptcy was filed, the trustee could arguably have two years from appointment to file an avoidance action. 11 U.S.C. 546(a).

So for those trying to move assets out of their names to insulate them from possible claims of creditors, a healthy dose of caution is in order.

In the next article, we will review how a trustee or creditor can prove, using “badges of fraud” that a transfer was made with actual intent to hinder, delay or defraud creditors. It is not nearly as hard as one might think.

**About the Author:** Steven R. Neuner has 31 years of practice representing debtors, creditors and trustees in bankruptcy and related matters. He is certified as a Business Bankruptcy Specialist by the American Board of Certification, and ABA approved certification agency. He served as a New Jersey bankruptcy panel trustee for 24 years.

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## CRIMINAL LAW

# Technology: Fourth Amendment Catching Up with the Times

By Assistant Camden County Prosecutor Alex Levin

As we move full steam ahead into the 21st century, technological advances continue to shape our society with both their ability and accessibility. It can hardly be thought that the drafters of the Constitution envisioned mini-computers in our pockets or telephones on our wrists. We have finally, at least in some respects, reached a time where what was the science fiction of television and movies of our youth has now become part of our daily lives. Of course, with any advances in society it, too, creates challenges, particularly as to how the protections of the Fourth Amendment should be interpreted, expanded, or restrained to balance the ever-dueling principles of individual privacy rights and law enforcement goals to protect society. In the past few years, both New Jersey courts and the United States Supreme Court have begun to address this exact interplay of technology, specifically with respect to cell phones, and how the law should be molded around these advances.

In 2012, the New Jersey Appellate Division addressed one's reasonable expectation of privacy in his phone number in *State v. DeFranco*.<sup>1</sup> In that case, defendant pled guilty to second-degree aggravated sexual assault after police intercepted a phone call between the victim and defendant with the victim's consent.<sup>2</sup> Through testimony elicited at the suppression hearing, the original phone number known to the victim had been disconnected. In an attempt to locate an updated number for the defendant, the police

employed the assistance of the school resource officer, who was law enforcement, who retrieved defendant's number from the school where he worked from the Employee Handbook and Directory.<sup>3</sup> The Appellate Division held that that was not a case where defendant had an unlisted number or the number contained a key to details of the lives of those to which the "seemingly innocuous initial information pertained."<sup>4</sup> Yes, in some circumstances the court did note that a telephone number could provide details about some individuals' lives, but not in that case where the phone number was simply a phone number and not a subjectively reasonable expectation of privacy that would be recognized by society.<sup>5</sup> The Appellate Division looked to several New Jersey cases where it distinguished the privacy interest in one's phone number compared to a right to privacy in garbage held in a closed container,<sup>6</sup> bank records,<sup>7</sup> requiring a subpoena to obtain utility records,<sup>8</sup> and the privacy rights in the list of telephone numbers dialed from one's home telephone.<sup>9</sup> One's phone number is not within the realm of informational privacy that the state constitution protects, but that was simply a number, which was assigned to defendant in that case, and provided no insight about an individual.<sup>10</sup>

One year later, the New Jersey Supreme Court decided *State v. Earls*,<sup>11</sup> where the Court held that law enforcement officers were required to get a warrant when attempting to use a cell phone's GPS to locate an

(Continued on Page 14)

## WE ARE DELIGHTED TO ANNOUNCE THAT New Jersey Superior Court Retired Judge Irvin J. Snyder HAS JOINED OUR FIRM AS SPECIAL COUNSEL

Judge Snyder will offer ADR services including mediation, arbitration and arbitration neutral services to attorneys throughout New Jersey. He will also assist attorneys as a fact finder for settlement conferences and with many other forms of case management.

He can be reached at [i.snyder@gpeff.com](mailto:i.snyder@gpeff.com).

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## VERDICTS OF THE COURT *Superior Court of New Jersey*

VERDICT: No Cause (2/3/15)  
Case Type: Auto Negligence  
Judge: Louis R. Meloni, J.S.C.  
Plaintiff's Atty: Joseph DiGiovanni, Esq.  
Defendant's Atty: Michael DeBona, Esq.  
L-1332-13

VERDICT: Damage Verdict Against Defendant \$77,898.13 (2/3/15)

Case Type: Contract  
Judge: Michael J. Kassel, J.S.C.  
Plaintiff's Atty: Joseph Garemore, Esq.  
Defendant's Atty: Athanasios Kalavrouziotis, Pro se  
L-3525-13

VERDICT: No Cause (2/11/15)  
Case Type: Auto Negligence  
Judge: John A. Fratto, J.S.C.  
Plaintiff's Atty: Ernest L. Alvino, Jr., Esq.  
Defendant's Atty: John J. Delany, III, Esq.  
L-484-13

VERDICT: No Cause (2/13/15)  
Case Type: Medical Malpractice  
Judge: Robert G. Millenky, P.J.Cv.  
Plaintiff's Atty: Jeffrey Keiser, Esq.  
Defendant's Atty: Joseph K. Cooney, Esq.  
L-4040-12

VERDICT: No Cause Damage Verdict Against Defendant: \$0 (2/13/15)  
Case Type: Personal Injury  
Judge: Anthony M. Pugliese, J.S.C.  
Plaintiff's Atty: Andrew Ballerini, Esq.  
Defendant's Atty: Marc Zingarnini, Esq.  
L-213-13

VERDICT: Damage Verdict: \$466,000 Against Defendant (2/17/15)  
Case Type: Auto Negligence  
Judge: David M. Ragonese, J.S.C.  
Plaintiff's Atty: Kenneth Andres, Jr., Esq.  
Defendant's Atty: Rachel Vicari Haninczak, Esq.  
L-4741-12

VERDICT: No Cause (2/19/15)  
Case Type: Auto Negligence  
Judge: Michael J. Kassel, J.S.C.  
Plaintiff's Atty: Joel Garber, Esq.  
Defendant's Atty: Thomas Murphy, Esq.  
L-172-13

VERDICT: No Cause Liability Verdict: 100% Against Defendant; Damage Verdict: \$0 (2/19/15)  
Case Type: Auto Negligence  
Judge: Anthony M. Pugliese, J.S.C.  
Plaintiff's Atty: Eric Berg, Esq.  
Defendant's Atty: Danielle Smith, Esq.  
L-498-13

VERDICT: No Cause (2/24/15)  
Case Type: Auto Negligence  
Judge: John A. Fratto, J.S.C.  
Plaintiff's Atty: Philip T. Ciprietti, Esq.  
Defendant's Atty: Marc G. Esposito, Esq.  
L-1798-13

VERDICT: No Cause Liability Verdict Against Plaintiff: 0% (2/25/15)  
Case Type: Auto Negligence  
Judge: Robert G. Millenky, P.J.Cv.  
Plaintiff's Atty: John D. Borbi, Esq.  
Defendant's Atty: Patrick Reilly, Esq.  
L-4794-12

VERDICT: Liability Verdict For Plaintiff (2/25/15)  
Case Type: Probate  
Judge: Nan S. Familiar, P.J.Ch.  
Plaintiff's Atty: Ethan Ordog, Esq.  
Defendant's Atty: Michael Szomborski, Esq.  
CP-19-14

VERDICT: No Cause Liability Verdict: 100% Against Defendant; Damage Verdict: \$0 (2/25/15)  
Case Type: Personal Injury  
Judge: Anthony M. Pugliese, J.S.C.  
Plaintiff's Atty: John Eichmann, Esq.  
Defendant's Atty: Joanna Inglessis, Esq.  
L-305-13

VERDICT: No Cause (2/27/15)  
Case Type: Auto Negligence  
Judge: David M. Ragonese, J.S.C.  
Plaintiff's Atty: Scott Goldberg, Esq.  
Defendant's Atty: Jennifer Hinderman, Esq.  
L-235-13



**Andrew B. Kushner, Esq.**, Andrew B. Kushner, LLC, and **Charles C. Bratton, II, Esq.**, Rothamel & Bratton, presented the **New Jersey Basic Estate Administration** seminar. This program is part of the Association's **CLE On Tap!** series for newly admitted attorneys.



## LEGAL BRIEFS

**John C. Connell**, a Partner and Shareholder in Archer & Greiner's Haddonfield office, has been elected as the Chair of the Board of Trustees of NJ Supreme Court's Interest on Lawyer Trust Accounts (IOLTA) Fund of the bar of New Jersey. The appointment was effective March 1, 2015 for a one year term. Mr. Connell was first appointed to the IOLTA Board by the New Jersey Supreme Court in 2012.

Mr. Connell works in the Government Litigation, Employment, and Business Litigation Groups as trial counsel in litigated matters such as civil rights claims, CEPA and employment discrimination actions, federal and State constitutional claims, media and communications law disputes, and general commercial matters. He is also a member of the firm's healthcare law section.

**Anthony R. LaRatta**, a Partner in Archer & Greiner's Haddonfield office, has recently been named as a Fellow to The American College of Trust and Estate Counsel (ACTEC). Mr. La Ratta concentrates his practice in the area of Trust & Estate litigation, with an emphasis in litigation involving probate matters, estates, trusts, guardianships, and fiduciaries.

We rely on members to provide announcements for the Legal Briefs section. If you have a new member of the firm, you've moved or you or a member of your firm has received an award or recognition for a professional or community activity, we want to know and share it with fellow bar members. Please email your submissions to [lbp@camdencountybar.org](mailto:lbp@camdencountybar.org).

New Jersey Employer Support of the Guard and Reserve (ESGR), a Department of Defense office, announced that the Gibbsboro law offices of **Beckman Ogozalak Paglione Londar** were honored with an *Above and Beyond Award* in recognition of extraordinary support of their employees who serve in the New Jersey Guard and Reserve. Also, Anthony H. Ogozalek, Jr. Esq. was honored with a Patriot Award in recognition of his extraordinary support of employee, **First Lieutenant Martin G. Murphy** who is currently deployed.

Capehart Scatchard is pleased to announce that **Vincent T. Cieslik** has been named Chair of the 2015 Gloucester County March of Dimes March for Babies being held on April 26 at Rowan University. Mr. Cieslik has taken on the role to raise awareness and important funding to help babies born prematurely or with birth defects. Mr. Cieslik handles high risk litigation for insured and self-insured companies, and represents individuals and companies in sophisticated real estate and banking matters.





## FOUNDATION UPDATE

# Holy Cannoli Batman, it Was a Cold Winter

By Brenda Lee Eutsler

Wind chills in the minus teens. . .sidewalks and lakes in a constant freeze. . .frozen squirrels falling from trees. . .stranded cars with dead batteries. . . snowmen as permanent figures on lawns. . .blankets of snow from dusk to dawn. These were just some of the “wonders” of the Winter of 2015 to which I say “GOOD RIDDANCE!”

I am sure looking forward to trading Winter cabin fever for Spring fever. Sure, we will have lots of April showers before the blooming of the May flowers and the prospects for the Phillies’ season will again be gloomy. But I cannot imagine there being anything which can chill my enthusiasm for the coming of Spring, well except perhaps for one thing—a forecast of rain for the one day in April when I finally find the time to play golf!

Spring brings new seedlings and one of the newest “seedlings” for the Camden County Bar Foundation is our “Lawyers Got Talent” show on April 22. Our colleagues and friends will entertain us by singing, playing musical instruments and making us laugh.

Our very own Matt Portella will be the MC for the evening. Aside from being a well-known criminal attorney, Matt is also a popular singer/songwriter and a must-see performer.

He has shared the stage with some of the most acclaimed names in the entertainment industry including Dave Mason, Kevin Bacon, Jeffrey Gaines, and John Eddie. He performs regularly either as a solo artist or with his band which includes members of The Hooters.

Joining us as talent judges will be the Hon. Stephen M. Holden, Ret. J.S.C., himself a musician and a member of the Dovells and Fran Smith, Jr., the bass player for The Hooters. We will soon announce our third judge and the contestants who will be performing at the show.

The show is being held at Colleen’s International on the White Horse Pike in Magnolia. Our good friend Chef Les is now one of the

owners at Colleen’s. Les has catered many events for CCBA (Meet the Judges and Law Clerks, Holiday Party) so we know the food will be great. An open bar will be available all evening.

Lawyers Got Talent is a new event for the Foundation. The event committee is working very hard to make it a successful fundraiser and one that everyone will enjoy. There will be prizes for the contestants. The audience will participate in the voting. There are also some surprises in store for the audience.

Please join us for this very entertaining evening as we raise funds to support the Foundation’s charitable projects for disadvantaged children, student scholarships and other community programs which enhance the quality of life for Camden County residents.

## Working Together...Lawyer Referral, Law Firms & Lawyers

### Open Enrollment Begins for 2015-2016 Lawyer Referral Service Panel

Enrollment is now open for the Association’s successful Lawyer Referral Service (LRS) for the coming year. Panel membership is open to any lawyer who meets the necessary qualifications. The new LRS Panel will begin on June 1, and will continue through May 31, 2016. **Members serving on the current panel must re-enroll for the new LRS year.**

Each year, the LRS makes more than 5,000 referrals for callers with legal problems, who are able to afford a private attorney, to LRS Panel members; many of them fee generating cases. You can be a part of this growing venture that helps expand your client base through pre-qualified referrals for the cost of a good dinner at one of the area’s fine restaurants. This is the only Lawyer Referral Service sponsored and operated by the Camden County Bar Association, and provides a terrific community service for individuals requiring legal services.

The annual registration fee remains only \$75 for those admitted to the New Jersey Bar for up to five years or \$150 for those admitted six years or more. Please note that LRS panel members are subject to a fee sharing arrangement whereby attorneys are required to remit 10% of fees in excess of \$500 for all matters received from the LRS back to the Association. The fee applies to any referral received from the LRS and is payable when the participating attorney receives payment for services rendered.

A completed application, together with the appropriate enrollment fee and required original certificate of malpractice insurance coverage, must be returned to the Bar Association before any referrals can be made.

Applications may be downloaded from the Association’s website, [www.camdencountybar.org](http://www.camdencountybar.org), or by calling Denise Whybark at Bar Headquarters at 856.482.0620. Questions about the LRS? Contact Denise by phone or via e-mail at [dkw@camdencountybar.org](mailto:dkw@camdencountybar.org).



**Ethical Issues In Representing Emotional Clients** was the topic of an ethics seminar recently held at Tavistock. Program faculty included: **William S. Donio, Esq.**, Cooper Levenson, Avril, et. al.; **Gerald “Buzz” Mingin, Ph.D.**, Educational Consultant; **Joseph A. Connell, Sr., Ph.D.**, Attorney & Counselor; **Craig David Becker, Esq.**, Craig David Becker-Attorney at Law, LLC; **Kevin M. Costello, Esq.**, Costello & Mains, PC. Not pictured, **Scott J. Levine, Esq.**, Gerstein Grayson & Cohen, LLP.

# WINE & FOOD

By Jim Hamilton

Since the vast majority of the 180 or so *Wine and Food* columns published here have been devoted to wine, most of you justifiably expect that wine again will be the focus of this month's discussion. However, I thought it might be time we spoke about a food product that commonly is associated, and paired, with wine—cheese. While trolleys laden with cheeses rarely are encountered, better restaurants still may offer a cheese course or plate. Furthermore, the higher end food markets at which many of us shop offer a sizeable array of cheeses, and there are independent cheese shops staffed with people eager to share their knowledge and product. I expect that those of you who enjoy the often complementary relationship between wine and cheese are not buying commercial cheeses stacked by the milk in supermarket dairy cases, but rather seek out cheeses of a different pedigree. Yet as with wine, the world of cheese is broad, deep and more complicated than we may appreciate. To help us unlock some of the mysteries, and pleasures, cheese may hold, I shall turn to someone who long has had a true passion for cheese, Dr. Stefan Rotman. A Philadelphian whose early retirement has allowed him to spend considerable time abroad, Stefan is a true cheese geek who is willing to share his expertise, whether in casual conversation, as an expert in radio broadcasts...or now for us.

**Jim:** *In wine, there are many ways one may acquire knowledge, be it by reading, developing a relationship with a trustworthy retailer or by buying and trying different wines. How would you suggest someone wanting to become more familiar with cheeses approach that goal?*

**Stefan:** Logically the approach should be the same. Cheeses, while only from a few milks compared to many more grapes, are in my view far more varied than wine. The differences may be subtle, but often are great among them and this is one of the reasons cheeses please me so much.

**Jim:** *Let's talk about the different milks used to make cheese. What, if any, differences might one expect to experience if the milk comes from cows, goats or sheep?*



**Stefan:** Generally, cheeses made from cow and goat milk are less expensive than sheep milk cheeses since it takes more sheep milk to create those cheeses, which have a higher fat content making them seem richer. Goat cheeses usually will be more acidic, allowing them to pair well with Loire Valley Chenin Blanc and white Burgundies. Goat cheeses tend to be similar in their flavor profile, with aging a key to differentiating one from the other. For example, a Loire Valley cheese such as Valancay tasted at age 2 weeks, 6 weeks and 12 weeks will evolve markedly in its taste, completely changing as it ages. Since most cheeses are made from cow's milk, there will be a broad range of options among them, from gentle to stinky, hard to pudding-like and from tiny to enormous. While pigs also produce milk, like humans their lactating is limited to feeding offspring. As such, their milk really is not available for producing cheese.

**Jim:** *What books would you recommend to a cheese novice?*

**Stefan:** Assuming a coffee table book is not required, I can think of four one might consider. While from the '90s, *A Cheese Primer*, by Steven Jenkins is still an accurate view of a lot of product. *French Cheeses*, a DK Eyewitness Handbook co-written by Masui and Yamada, is comprehensive, wonderfully photographed and informative. It is my bible. Further, another fine DK publication is *World of Cheese* edited by Julie Harbutt. Finally, there is American Max McCallum's *Cheese: a Connoisseur's Guide*.

**Jim:** *Are there stores or shops in our area you find to be good cheese shopping options?*

**Stefan:** As I spend half the year in Europe and most of that in France, I am so spoiled in quality, selection, and price that I hesitate to recommend anywhere in Philadelphia and its environs. The main reason is that good help often is lacking because the pay is poor. Therefore, bright cheese nerds often do something else for a living. Selling for the fun of it as I did is atypical. Still, Jack Morgan at Downtown Cheese in Reading Terminal Market knows his stuff. DiBruno's should be mentioned for its large selection, but many products are already cut and plastic wrapped, a death knell for cheese. If possible, always have your choices hand cut and wrapped in cheese paper. Many Wegman's and Whole Foods stores have decent selections, but again get it cut for you.

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(Continued on Page 13)





By Casey Price

# PRESIDENT'S PERSPECTIVE

## It Was the Summer Wind, John Lennon, Paul Simon and Etta James—What Could I Do? Instant What???

I discovered something last month—if you mention \$1,000,000 in the title of your article people will read it, and comment on it. One comment I received more than once was what I meant by my Instant Karma reference. Well, here is the answer to that question...

In 1988 Nike received permission from John Lennon's widow, Yoko Ono, to use the song Instant Karma in an advertising campaign. The commercials featuring the song along with images of high level athletic performance and the slogan, "Just Do It" became a cultural phenomenon. The idea of "Just Do It" is the antithesis of sitting back and wishing for something. I thought it provided a fantastic contrast to the message of the song "If I Had \$1,000,000" that I was discussing in the article.

If you run a search on You Tube with the words Nike and Instant Karma you can see the commercials for yourself. See if you get the urge to get off the couch and just do something after you watch it—the message is hard to resist.

### While We're On The Subject...

I don't want to get sappy but have you ever listened to the lyrics of the John Lennon song "Imagine?" I must have heard it a thousand times in my life but it was only the other day that I really heard it. Wow. What a message. Agree with me or disagree—there are all sorts of things that people can think—it doesn't match their politics or religion or favorite color—but the message of living for today, living life in peace, sharing all the world, and the world will be as one—is so simple in concept yet, for some unknown reason, so difficult in execution.

### Have I Lost You Yet?

One more thing regarding John Lennon, have you heard the song, "Beautiful Boy (Darling Boy)?" Not to go too far into the Cat's Cradle—that is one reference you have to look up on your own because I refuse to elaborate on that next month—but if you have a son this is a must listen. If you ever watched the movie Mr. Holland's Opus you have heard this song (it is part of Mr. Holland's concert for deaf children). Again, there is such a great message in the lyrics. You can listen for yourself but consider the following verse: "Before you cross the street, take my hand, life is just what happens to you, while you're busy making other plans." What a great message and something to remind us to, as the song *Imagine* says, live for today.

### What About the Girls?

All right, you made it this far and just read a few lines about a song for the boys but now you want to know what about the girls? Here's an obscure reference for you. Have you ever seen *The Wild Thornberrys Movie*? *The Wild Thornberrys* was a cartoon series on Nickelodeon from the late 1990's and early 2000's. That was just around the time when my oldest son first discovered cartoons and *The Wild Thornberrys*, with its jungle theme, was one of his favorites. The movie (What don't they turn into a movie anymore?) came out in late 2002, just around the time he started going to the movies and we saw it together. The story revolved around a father and his daughter as part of an adventure their family had.

The end of the movie features a song by Paul Simon called, appropriately, "Father and Daughter." If you are a father and have a daughter—daddy's little girl—this song will make your heart melt. There is nothing I can say that is more appropriate than actually sharing some of the lyrics. My favorite part is: "I'm gonna watch you shine, gonna

watch you grow, gonna paint a sign, so you'll always know, as long as one and one is two, there could never be a father who loved his daughter more than I loved you." I don't know what more can be said about this.

### At Last...

Can you talk about the kids without talking about the spouse? A yin needs a yang. A right needs a left. An Unger needs a Madison. A Burns needs an Allen. I need Valerie. Etta James hit the mark in her song "At Last." She said what a whole bunch of people are thinking, yours truly included, when she sang: "At last, my love has come along, my lonely days are over and life is like a song."

### My Apologies

One of our esteemed Executive Director's jobs is to make sure *The Barrister* goes to press on time. One of the most common delays with that is getting the president's article—or at least this president's article. Sometimes he only has to ask once, sometimes he has to ask many times and sometimes he has to ask emphatically (read threaten).

I sincerely apologize to Larry for all the late articles. Thankfully I haven't missed a printing although this month I am pressing my luck. Life sometimes runs too fast and when you have two Beautiful Boys, have to paint a sign and your life is like a song, time can be short.

### Ending On a High Note

It won't be long until the summer wind comes blowing in from across the sea. Until then I wish you and all of your families large and small all the best.

— Casey

## Nominations Sought for CC Bar Foundation Board of Trustees

### *Lawyers Strengthening our Community*

The legal profession is committed to helping others and to further that ambition the Camden County Bar Foundation (CCBF) was created in 1986 as the Association's charitable partner. Through a wide range of annual community service programs and projects, the Foundation provides joy, comfort and hope to members of our community who most need and deserve it, while fostering a greater understanding of the legal system.

If you enjoy making smiles happen, letting others know that there are people who care about them, and helping deserving law students find the financial resources necessary to complete their education, then you should consider taking a leadership position as a Bar Foundation Trustee.

We're looking for members who want to make a difference, who have creative and new ideas to expand and improve existing programs while developing new ones, who find satisfaction in helping others and who are interested in taking a leadership position.

If this is YOU, then please submit a letter of interest and resume to Bar Headquarters by **Friday, May 1**. You CAN make a difference!

# YOUNG LAWYER HAPPENINGS



## YOUNG LAWYER CHAIR

# 5 Things You Learned in Law School (even if you didn't realize it)

By Matt Rooney

Or at least you SHOULD have learned these things.

In 2015, there is an extremely active debate roiling in American legal circles about the value of a law degree after an entire generation of lawyers graduated only to find few jobs and falling salaries to compensate them for historic student debt loads. Attendance is dropping as a result.

My experience? While no one is going to defend the prices, what I learned over those three years was ultimately worth *just about* every penny spent, and to the surprise of none, those lessons rarely directly related to the actual subject matter of my classes:

## (1) Perseverance

Law school attendees often didn't have to work too hard to get good grades in high school or college. Unfortunately, life isn't that easy. For starters, you're almost guaranteed to take some lumps your first year studying the law and that's a very good thing. The fictional Thomas Wayne once rhetorically asked his son, the future Batman, "Why do we fall, Bruce? So we can learn to pick ourselves up." No one is going to hand you a cape or a batmobile at law school graduation (I wish!), but the ability to handle adversity without constant praise to buoy your ego is no less potent a weapon for aspiring superhero lawyers. The Judge, adversary, and high-paying client don't care about your feelings.

## (2) Time Management

Professional practice is completely unpredictable because life is unpredictable. Client crises (real or imagined), urgent calls from the Court, heated calls from an adversary, and the sometimes seemingly-arbitrary demands of your managing partner won't wait to happen at your convenience! Law school students learn that important lesson and develop an ability to organize and prioritize accordingly in order to be prepared for anything.

## (3) Social skills

Yes, you should be able to make a friend and land a date by age 22+... ideally. Learning to interact on an adult, professional level is another matter altogether. Introductions? Networking? Managing awful personalities? Working collaboratively on complex projects to meet deadlines? Learning what's appropriate and totally out-of-bounds in each social context? Law school is boot camp in this respect if you made an effort to come up for air and leave the library at least once every few weeks.

## (4) Communication Skills

Smart ain't enough. Some students begin their law school careers with plenty of intellectual prowess but a less-than-impressive ability to express it in written or spoken form, and whether you choose a transactional career where you never see the inside of a court room or a litigation practice where you're rarely at a desk for more than five minutes, an inability to communicate will ultimately prove professionally fatal. Law school cures this deficit for (most) students in need of corrective action. You have no choice! Professors force you to think on your feet and Type A "gunners" in your classes are always ready to force an issue. ANY issue. 24/7. A bit annoying and often nerve-racking? Yes, and that's the point! It's invaluable practice for the future.

## (5) Humility

I touched on this point above in item #1. Most law students got there in the first place because they performed at a high level academically throughout most of their respective educational careers. Suddenly, on day one of 1L year, they're thrust into an environment where everyone is accustomed to earning straight A's, landing on the Dean's List, scoring well on standardized testing, and participating in an obnoxiously

absurd amount of extracurricular activities. You aren't so special after all, huh? And I know we're the self-esteem generation and everyone is supposed to feel special at all times but, if I may be so bold in offering a partial dissent to this cultural trend, I believe a little lesson in humility is extremely useful in the nascent stages of legal career.

Learning, of course, does not stop at the classroom door.

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# WINE & FOOD



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**Jim:** More people seem to be enjoying making their own wine or beer, and artisan products are increasingly viewed as being better than those not produced "by hand." Is it practical for someone to make cheese at home that is fit for serving to people they like?

**Stefan:** It is not practical for me. Getting the proper milk, hopefully raw, is very difficult. A large amount of equipment may be necessary as well. Even though I have made my own beer, cheese is something I leave to the experts. I have found that homemade product, while interesting, rarely is as interesting as when it is done by people who have been doing it for years...or in some cases centuries.

**Jim:** How big an impact does our country's regulation of imported cheese have on its quality?

**Stefan:** HUGE, and the worst part is most of the regulations come from the Belgian headquarters of the EU. It is now almost impossible to get a raw milk cheese with short shelf life from France in other countries of the EU, let alone in the States. When I worked in stores, small or large, we offered all customers what was in our display cases, but kept some product tucked under the shelf for the special ones. These were items that managed to find a way around regulatory restrictions and were eagerly sought by more cheese savvy customers. Unfortunately, these under-the-counter items are not available now in our country. However, under current importation laws, you may bring back with you from international sites any and all cheeses and butters—again ANY and ALL—whether raw, young, gooey...whatever. If you want to schlep them, you can bring them

home. As I am sure many of your readers know, this also applies to alcoholic beverages.

**Jim:** Finally, one of the things readers of this column seem to like is value. Can you suggest a few cheeses we may be able to buy that represent smart buys?

**Stefan:** If value is your goal, most American cheeses will be excluded. Since most North Americans will not work for the wages paid in other countries, our cheeses are far more expensive. I went to Bobolink Farms located an hour or so away from Princeton and the prices of their products at the farm ranged from \$28 to \$46 a pound. By comparison, I just bought for \$20/lb. a Mimolette from Wegman's I thought was unavailable because of a cheese mite problem. A two or three years old, cave-aged Gruyere from Emmi remains a top cheese bargain. Finally, Bleu de Causses is blue cheese made from cow's milk in the same caves as the better known Roquefort, by the same process, and usually sells for one-third the price of Roquefort made with Lacaune sheep's milk.

My thanks to Stefan for offering this brief, but hopefully insightful, overview of a product most of us enjoy and which we now may appreciate even more.

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**CRIMINAL LAW****Technology: Fourth Amendment Catching Up with the Times**

Continued from Page 7

individual. The Court further held that individuals have a reasonable expectation of privacy in the location of their cell phones under the state constitution.<sup>12</sup> The Appellate Division noted that New Jersey courts afford greater Fourth Amendment protection than that of the Fourth Amendment of the United States Constitution.<sup>13</sup> The importance of that decision is that it addresses the benefits that technology offers to society, and the significant risk it poses to an individual's privacy interest.<sup>14</sup> People do not buy cell phones to serve as tracking devices or reasonably expect them to be used by the government in such a manner. Modern-day cell phones are no more a phone than they are mini-computers and an infrastructure across the nation has been created to deal with cell phones' increased demand and function. The Court noted that there was close to a 200% increase in the number of cell towers from 2000 to 2012 totaling 301,779 cell towers in the United States. This allows for greater service for the cell phones, but also, the ability to accurately locate cell phones within 10 meters.<sup>15</sup>

The New Jersey Supreme Court analyzed several United States Supreme Court opinions in reaching that decision that deal specifically with this issue of GPS tracking. In United States v. Knotts,<sup>16</sup> the Supreme Court upheld the warrantless monitoring of a beeper placed on a container due to the nature of its travel, which restricted surveillance to public streets and highways where there is no reasonable expectation of privacy. In contrast, in United States v. Karo,<sup>17</sup> the Supreme Court found that when police placed a beeper on a container that traveled on public roads, but was stored in private homes, that search was unconstitutional because the government had no right to see what occurs within the privacy of one's home without a warrant. Furthermore, the Supreme Court in 2013 also decided United States v. Jones,<sup>18</sup> where police were required to get a warrant when a physical GPS device was placed on a car for a month-long investigation. Due to the accuracy of modern GPS devices, law enforcement was able to narrow down an individual's movements to 50-100 ft., which constituted a trespass onto private property and was unreasonable due to the length and intrusion into an individual's reasonable expectations of privacy. All of these cases were used to shape the New Jersey Supreme Court's opinion in Earls.

Now that cell phones have become an indispensable part of everyday life and go wherever we go, the fact of the matter is that our movements are recorded just by virtue of the manner in which cell phones work. Any time a cell phone call is made, a text sent, or a search of the Internet occurs, really, as long as the phone is on, one's location is recorded.<sup>19</sup> When an individual chooses to carry a cell phone in his pocket and sign up for service, there is no expectation that one would be tracked due to this modern convenience. The obvious conclusion, as addressed by the Court in Earls, is that cell phones are not meant to serve as tracking devices to locate their owners wherever they may be. There is no way to determine, at least initially, where an individual is located, if one is on public streets or highways or in a private residence.<sup>20</sup> Clarity was thus provided as to the fact that individuals have a reasonable expectation of privacy that their cell phone will not be used as a tracking device. Therefore, law enforcement is required to get a warrant when attempting to obtain the GPS location of a cell phone.<sup>21</sup>

In June 2014, the United States Supreme Court in Riley v. California<sup>22</sup> addressed whether law enforcement may search digital information on a cell phone seized from an individual as a result of a lawful search incident to his arrest. The Court addressed the

reasonableness of such a search when taking into account the advanced nature of the modern day cell phone, which is recognized to be an integral part of everyday life and far more than just a telephone. The Court analyzed the search of a cell phone in the context of the concerns established in Chimel<sup>23</sup> for officer safety and evidence preservation.

The Court stated that digital data itself, stored on a phone, cannot be used as a weapon in order to harm officers, and it does not limit officers from looking at the physical aspects of the phone or if something is concealed within the phone's case.<sup>24</sup> The United States and California argued in support of the need to search the phone regarding officer safety because information stored on a phone could ensure officer safety in indirect ways, such as by alerting of confederates nearby or future plots. The Court was unwilling to expand a search for officer safety concerns when the potential threat under Chimel was limited to that of the arrestee himself.<sup>25</sup>

The Riley Court, in addressing the destruction of evidence, spent significant time analyzing that Chimel concern. The United States and California argued in that instance that such problems as data encryption and remote wiping make it essential that phones be searched immediately because data and evidence could be destroyed. Even with this being a valid concern, the Court did not find it persuasive enough to permit such a routine warrantless and invasive search of a device that holds so much personal information. The Court took the position that a warrantless search would not make a difference when searching cell phones. Taking the government's concerns about data encryption and remote wiping into consideration, the Court reasoned that law enforcement would not be able to justify the destruction of evidence as a reason to search the phone because such destruction of evidence could happen in an instant. As long as the phone is on, the device can lock preventing law enforcement from searching it, or a third party could wipe it clean the instant the individual is arrested or is known to have been arrested. The simple answer provided by the Court was to turn the phone off, remove its battery, or alternatively to leave it on and place it in "Faraday bags,"<sup>26</sup> which isolate the phone from radio waves and thus prevent any data wiping.<sup>27</sup>

The Supreme Court addressed the significant distinction between the search of a person's wallet (physical possession/evidence) found on them compared to the data within a cell phone:

[A] cell phone collects in one place many distinct types of information an address, a note, a prescription, a bank statement, a video that reveals much more in combination than any isolated record. Second, a cell phone's capacity allows even just one type of information to convey far more than previously possible. The sum of an individual's private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions; the same cannot be said of a photograph or two of loved ones tucked into a wallet. Third, the data on a phone can date back to the purchase of the phone, or even earlier.<sup>28</sup>

All of this personal and private information carried on a person is the societal norm and to allow a categorical search of a phone found on a person searched incident to his arrest would be far more invasive, and thus, the Court considered it to be unreasonable under the Fourth Amendment. The Court's conclusion was not that all information on a cell phone is immune from search and seizure by law enforcement,

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## CRIMINAL LAW

## Technology: Fourth Amendment Catching Up with the Times

Continued from Page 14

but instead, that generally a warrant would be required before such a search is conducted.<sup>29</sup>

In conclusion, the state of the law regarding cell phones is becoming increasingly clear. The opinions of both the New Jersey courts and the United States Supreme Court show that technology, in particular cell phones, shine a light into the everyday life of citizens. Technology provides each and every one of us the opportunity to make life easier and things we use in everyday life that much more accessible, whether keeping a calendar in our pocket, access to friends, family, memories, and the vast amount of information on the internet. Yet, that light that allows us such untethered access to many aspects of our lives can continue to shine through to allow law enforcement the exact same insight; therefore, the courts have begun to shape the law to protect our privacy interest. Whether that is to protect our location or the actual information contained on our phones, law enforcement is now required to obtain warrants to conduct such intrusive searches into our lives upon a showing of probable cause. At the end of Chief Justice Roberts's opinion in *Riley*, he states:

Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans "the privacies of life"... The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought. Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple get a warrant.<sup>30</sup>

The more interesting aspect of this area of search and seizure law is anticipating where it is heading. It seems that, when the right case presents itself, courts will need to determine what truly constitutes exigency or an emergency to allow law enforcement officers the ability to circumvent the search warrant requirement. There is clearly foreshadowing articulated by both the New Jersey and United States Supreme Courts in *Earls*<sup>31</sup> and *Riley*.<sup>32</sup> Had exigency or an emergency presented themselves, those searches could have been upheld as constitutional under the state and federal constitutions, respectively. As technology continues to advance, so must the law where the courts will unquestionably be addressing and adapting the law to ensure whatever someone can dream and create technologically may be protected constitutionally.

<sup>1</sup> *State v. DeFranco*, 426 N.J. Super. 240 (App. Div. 2012).

<sup>2</sup> *Id.* at 242.

<sup>3</sup> *Id.* at 245.

<sup>4</sup> *Id.* at 249.

<sup>5</sup> *Id.* at 249-50 (citing *State v. Evers*, 175 N.J. 355 (2003)).

<sup>6</sup> *State v. Hempele*, 120 N.J. 182 (1990).

<sup>7</sup> *State v. McAllister*, 184 N.J. 17 (2005).

<sup>8</sup> *State v. Domicz*, 188 N.J. 286 (2006).

<sup>9</sup> *State v. Hunt*, 91 N.J. 338 (1982).

<sup>10</sup> *DeFranco*, *supra*, 426 N.J. Super. at 249.

<sup>11</sup> *State v. Earls*, 214 N.J. 564 (2013).

<sup>12</sup> *Id.* at 568.

<sup>13</sup> *State v. Reid*, 194 N.J. 386 (2008).

<sup>14</sup> *Ibid.*

<sup>15</sup> *Id.* at 578-79.

<sup>16</sup> *United State v. Knotts*, 460 U.S. 276, 103 S. Ct. 1081, 75 L. Ed. 2d 55 (1983).

<sup>17</sup> *United States v. Karo*, 468 U.S. 705, 104 S. Ct. 3296, 82 L. Ed. 2d 530 (1984).

<sup>18</sup> *United States v. Jones*, 565 U.S. —, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012).

<sup>19</sup> *Earls*, *supra*, 214 N.J. at 577.

<sup>20</sup> *Id.* at 587-88.

<sup>21</sup> *Id.* at 589.

<sup>22</sup> *Riley v. California*, 134 S. Ct. 2473 (2014).

<sup>23</sup> *Chimel v. California*, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969).

<sup>24</sup> *Riley*, *supra*, 123 S. Ct. at 2485.

<sup>25</sup> *Id.* at 2485-86.

<sup>26</sup> After the English scientist Michael Faraday.

<sup>27</sup> *Id.* at 2486-87.

<sup>28</sup> *Id.* at 2489.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Riley*, *supra*, 123 S. Ct. at 2494-95.

<sup>31</sup> *Earls*, *supra*, 214 N.J. at 589.

<sup>32</sup> *Riley*, *supra*, 123 S. Ct. at 2494.



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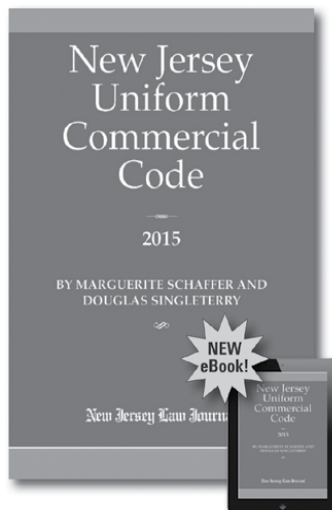
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## April 15th is Coming, But We Aren't Just Concerned About Income Tax Returns!

Continued from Page 5

both the donor's/taxpayer's 1040 and 709 to October 15th (alas, it does NOT extend the payment of any taxes deemed due). Alternatively, Form 8892 can be filed to extend the Form 709 but not the 1040. That's for the tax returns. For business appraisals I and a number of colleagues locally have the proper credentials of ABV (Accredited in Business Valuation awarded by the American Institute of Certified Public Accountants) and CVA (Certified Valuation Analyst awarded by the National Association of Certified Valuators and Analysts). For other property appraisals, such as real estate or personal property, other credentialed appraisers should be used.

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## LAW PRACTICE MARKETING

# Ask Yourself These Questions to Optimize Your Practice (Part 1)

By Kimberly Alford Rice

The “new” normal in legal services these days is that of “free agency.” Long-time attorneys and even equity partners are transitioning into more favorable work environments, sometimes despite earnings and due to high billable hour requirements. On the other end of the spectrum, new lawyers may seek their first legal position to find few prospects. Do not lose heart before you begin.

Below are lists divided by attorney class which every attorney contemplating a move should consider. Gone are the days that lawyers can simply “do good work” and expect to effortlessly make a move from one organization to another. As with anything, there are exceptions. Planning, however, is key to *every* transition.

### Foundational questions:

- **Personal brand** – do you have an accurate sense of what your name means in the open market? How well is your name recognized in front of your targeted audiences (those individuals who are in a position to retain you and/or refer you to someone who can)?
- **Digital Assets** – how strong is your Internet reputation? When you Google yourself, where does your name and/or law firm rank? In our global connectedness, if you cannot be found on the Internet without using your name as key words, then you have some work to do.
- **Network** – How do you get and stay in touch with your network? How do you manage your network to continuously increase it and make connections for others? Legal service client retentions are predicated upon relationships which result from building, growing and sustaining a robust network.

A **cautionary word:** do not delude yourself that your accomplishments as a lawyer will be sufficient in the ultra-competitive marketplace. There may be exceptions, of course, if you practice in a highly coveted niche area, but, as a general rule, a transition on your own would be difficult.

### Partners

- **Performance.** Do you know your performance metrics—i.e. hours, originations, total receipts, realization, etc.—for the past three years? If not, you should, and you need to keep track of these. If the answer is “no,” put this at the top of your list of to-do items. Without assigning a total dollar value to your “portable” practice, you are in a vulnerable position for transitioning.
- **Clients.** How often do you get in front of your key clients? Those you would count on to transition with you? Competition for legal work is fierce, and regardless of how secure you may think your client relationships are there are untold lawyers working hard to supplant your relationship. Take steps to gain face time with your clients, especially if you expect those clients to move with you on quick notice.
- **Business planning.** Do you have a written document which outlines precisely your business building and growth goals?

How comprehensive is it? If you cannot point to this document for a prospective new employer and/or law firm management to know precisely what your growth intentions are, you’ll want to invest time in your business to outline clearly and precisely areas of your planning intentions.

- **Team support.** If you are planning a move and have a considerable practice, you likely have a team who assists and supports you. Would they make a move with you? Do you know? Similar to your client relationships, you want to ensure that valuable team members understand your gratitude for helping you build and grow your practice. Do not take these relationships for granted. Invest face time with each valuable member to gain a sense if they are willing to follow you to the next professional stop.
- **Professional accomplishments.** Unless you have a public relations team to track your accomplishments and media mentions for you, you must function as your own publicist and keep your professional accomplishments (list of speaking engagements; web profile; professional recognitions, etc.) updated on all digital assets as well as on your print CV.

Successful rainmakers tend to be active speakers and authors as a means to build relationships and demonstrate expertise in their areas of practice. Do you keep a copy of all your presentations and published works? If you seek to be recognized thusly, it is important to show that the proof is in the pudding, in writing and in news clips. Do not overlook this important part of your reputation building.

In part two of this article, we will outline questions that associate attorneys and in-house counsel should ask themselves to create a better business model for their practice.



**Matthew R. Litt, Esq.**, Chair, Appellate Practice & Persuasive Writing Group at Capehart Scatchard, presented **The Definitive Legal Writing** seminar recently at Tavistock. Mr. Litt is also an Adjunct Legal Writing Professor at Seton Hall School of Law.

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<sup>1</sup>TD Bank refers to the U.S. retail business segment of TD Bank Group. <sup>2</sup>Based on total deposits as of December 30, 2013. Source: SNL Financial Largest Banks and Thrifts in the U.S. by total deposits. <sup>3</sup>A "Business Day" is a non-federal holiday weekday. The end of a Business Day varies by Store, but it is no earlier than 8pm EST. Deposits may not be available next business day. Please refer to Business Deposit Account Agreement for complete details. Restrictions and fees may apply; check your account agreement for information. <sup>4</sup>Based on assets as of January 31, 2014 (for Canadian peers) and March 31, 2014 (for U.S. peer).

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