



2012 Hon Peter J. Devine, Jr. Award recipient Past CCBA President **Mark V. Oddo** displays his award following its presentation by Devine Award Committee Member **Ed Sheehan**, CCBA President **Brenda Lee Eutsler**, and Devine Award Committee Member **Jim Hamilton**.

Best of the Brew!

Just in time for spring and the coming warm weather, prepare yourself for those backyard barbecues and get-togethers at the Bar Foundation's first Best of the Brew Beer Tasting! Scheduled for 6-9 pm, Friday, April 5, at the fabulous ELounge in Cherry Hill, this terrific tasting event will feature an assortment of the finest beers around for your tasting pleasure. Who knows, you might even find a new favorite brew!

Additionally, you will have the opportunity to taste and sample a fine selection of wines if you prefer the grape to the grain! Or enjoy a heartier beverage from the cash bar.

The evening will also feature exciting silent auction items, and you could go home with an iPad Mini or other great items if you're the lucky raffle winner.

Tickets for *Best of the Brew* are \$65 pp or \$60 for young lawyers admitted five years or less. Reserve your evening of early spring fun by calling Bar headquarters at 856.482.0620 or by sending the reservation reply from the flyer in this month's inserts.

This is an open event to support the Foundation, so invite your friends, family and neighbors to make it a real party. Complimentary valet parking will be available.

Grain or grape, we've got you covered, so let the tasting begin!

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 2013 Gerry Award, which will be presented at the Annual Gerry Awards Dinner 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 24, 2013. Nominations may also be emailed to Mr. Pelletier at: lbp@camdencountybar.org.

Foundation Seeks Silent Auction & Prize Items



"Hop" into the fun of *Best of the Brew!* tasting event and support your Bar Foundation by making a tax-deductible donation of an item or service for the Foundation's Silent Auction Friday, April 5, at ELounge in Cherry Hill.

Auction proceeds allow the Foundation to continue its community service programs, and support from Bar members and businesses is key to our success.

Weekend/Vacation getaways . . . sporting event tickets . . . sports or political memorabilia, are great items. If you can't offer an item, maybe the folks you do business with can! Jewelry . . . fine apparel . . . upscale restaurants . . . and other specialty items or services donated by local merchants can make a huge difference in our success!

Please support your Bar Foundation by calling Bar Headquarters at 856.482.0620 to arrange your donation, and by spreading the word to your favorite merchants.

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THE DOCKET

Monday, March 4th

*Brown Bag Seminar Series –
Social Media for Beginners*
Noon – 1:30 pm
Bar Headquarters, Cherry Hill

Tuesday, March 5th

Young Lawyer Committee Meeting
12:30 – 2 pm
Bar Headquarters, Cherry Hill

Wednesday, March 6th

Debtor/Creditor Committee Luncheon
Noon – 2 pm
Tavistock County Club, Haddonfield

Wednesday, March 20th

CCBA Board of Trustees Meeting
4 pm
Bar Headquarters, Cherry Hill

Thursday, March 21st

CLE on Tap! NJ Basic Estate Planning
3 – 6:15 pm
Brio Tuscan Grille, Town Place
Garden State Park, Cherry Hill

Saturday, March 23rd

Young Lawyer Committee Easter Party
Anna Sample House
Camden

Tentative agenda for March 20th Trustees Meeting

A tentative agenda for this month's regular Board of Trustees meeting follows. The meeting will begin at 4 p.m., at Bar Headquarters in Cherry Hill. All 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. Executive Director's Report
- VI. Membership Committee 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

(l-r) **Terence Lytle**, Assistant Camden County Public Defender; **Dennis Wixted**, Zucker Steinberg Sonstein & Wixted; Moderator **Mike Pinsky**, Law Offices of M.W. Pinsky; **Linda Anne Shashoua**, Assistant Camden County Prosecutor; **Hon. Thomas A. Brown, Jr., P.J. Cr.**; Assistant Camden County Prosecutor; and **Hon. Samuel D. Natal, J.S.C.** recently presented the **2013 Black Letter Criminal Law Blast** at Tavistock.



The Association recently co-sponsored the 20th Annual Bankruptcy Conference with the Burlington County Bar Association at Tavistock. Conference presenters: Moderator, **Michelle Badolato**, Brown & Connery; **Maureen P. Steady**, Mt. Laurel; **Isabel Balboa**, Chapter 13 Trustee; **Hon. Judith Wizmur**, U.S. Bankruptcy Court; **Ellen M. McDowell**, McDowell Posternock Law.

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.

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MEMBER ON THE SPOT



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OTHER BAR ADMITTANCES: **PA**

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RESIDENCE: Cherry Hill

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COLLEGE: University of Florida

LAW SCHOOL: University of Pennsylvania

WHAT LED YOU TO A LEGAL CAREER: Internship at the Dade County Public Defender's Office during first year of Law School

BEST PERSONAL/PROFESSIONAL ATTRIBUTE: I enjoy learning and keeping up with cutting edge legal developments in my practice fields.

GREATEST FAULT: Worrying and overanalyzing

WHAT I DO TO RELAX: Play Superheroes with my kids

HOBBIES: following the NBA, keeping up with the DC and Marvel Universes

FAVORITE RESTAURANT: Qdoba

FAVORITE TELEVISION SHOW: *Arrow* and *Hell's Kitchen*

FAVORITE MOVIE: *Mystery Men* and *Renaissance Man*

FAVORITE AUTHOR/BOOK: *1491* by Charles C. Mann

FAVORITE VACATION PLACES: Labadee, Haiti

FAVORITE WEBSITE: We're supposed to be honest, here, right? Facebook.

FAVORITE MUSEUM: Philadelphia Museum of Natural History

FAVORITE WEEKEND GETAWAY: Cherry Hill Public Parks

ENJOY MOST ABOUT PRACTICING LAW: Helping a struggling student finally achieve academic success.

MOST ADMIRED PERSON AND WHY: My grandfather, Aaron Becker. He was always honest and caring while keeping a wicked sense of humor.

WHEN AND WHERE HAPPIEST? At my house, with my wife and kids.

CHERISHED MEMORIES: When my daughter stole the show at her dance recital and when my son insisted on wearing his Robin mask for a whole week straight, including sleeping.

GREATEST FEAR: death

ALTERNATE CAREER CHOICE: Psychologist

GREATEST LESSON LEARNED FROM PRACTICE OF LAW: Just because a case is non-frivolous does not mean its non-ridiculous.

PERSON YOU'D MOST LIKE TO DINE WITH: Gordon Ramsey and Barack Obama

PET PEEVE(S): People who complain with no plan of action to remedy their situation

LIFE'S HIGHLIGHTS: Being a father twice

GREATEST ACCOMPLISHMENT: My kids

#1 PROFESSIONAL GOAL: To be a Judge

#1 PERSONAL GOAL: To maintain my sense of humor

LIFE EXPERIENCE(S) WITH GREATEST IMPACT: Deciding to practice law the way I feel comfortable and seeing my practice increase as a result.

ADVICE TO YOUNG LAWYER: If you don't believe in your client's case, don't bring it.

HOPE TO BE DOING IN 10 YEARS: Exactly what I'm doing now.

FAVORITE QUOTATION: "If you live long enough, you'll make mistakes.

But if you learn from them, you'll be a better person. It's how you handle adversity, not how it affects you. The main thing is never quit, never quit, never quit." — *Bill Clinton*



The **Civil Practice Blast** CLE seminar provided civil practitioners with the most recent updates on leading civil cases. Program presenters included **George Coan**, Civil Division Manager; Moderator **William F. Cook**, Brown & Connery; Hon. **Robert G. Millenky**, P.J. Civil; **John L. Slimm**, Marshall, Dennehey, et.al.; **Francis X. Ryan**, Green, Lundgren & Ryan; **Louis J. DeVoto**, Rossetti & DeVoto.

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NJSBA UPDATE

De Novo or Not De Novo (That is the Question)

By Arnold Fishman

One of the most rewarding benefits of having become actively involved in your State Bar Association is the chance to work with the people who—and for you yourself to—have some influence in the development of the law. In the time that I have been your representative to the NJSBA Board of Trustees, those opportunities have come to me through being an amicus in landmark litigation, authoring a chapter in an AOC publication for *pro se* defendants as a guide to Municipal Court Appeals, being a member of the Supreme Court Municipal Court Practice Committee that proposes rule changes to the Supreme Court, being the Trustee Liaison to the NJSBA Municipal Court Section, and serving on the Supreme Court Special Committee on Telephonic and Electronic Search Warrants that was charged with the implementation of the Pena-Flores opinion. My latest project is to act as the voice of the many Municipal Court defense attorneys on a Subcommittee of the Supreme Court Criminal Practice Committee studying whether the standard of review for appeals from the Municipal Courts to the Law Division should be changed.

While we call these proceedings appeals, they are not. They are trials *de novo* on the record created in the Court below. I can remember when they were true trials *de novo*. There was no record in the Municipal Court, and the witnesses had to testify over again in the County Court. If you wanted to preserve testimony given in a Municipal Court, you had to hire your own court reporter. Now that there is a record and the professionalism of our Municipal Courts substantially improved, the question of the proper standard of review has been raised.

The standard of review in a *de novo* proceeding is different from the standard of review for a true appeal. In an appeal to the Appellate Division, for example, the Court is deciding if there was error below or whether the record contained sufficient evidence upon which the trial court's findings could have been made. In a *de novo* review, error is not the issue. The findings are made anew in the Law Division. Since the rules governing appeals from our Municipal Courts are found in Part III governing the Criminal Courts and not Part VII that applies to the Municipal Courts, the issue is before the Criminal Practice Committee. That Committee, however, sensitive to the importance this issue has to Municipal Court practitioners, has asked the Municipal Court Committee to designate some of its members to provide input to this Subcommittee.

Has the quality of Municipal Court proceedings gotten better over the almost half-century I have been at it? Certainly! Has it improved sufficiently to change the standard of review? No! While I remain skeptical of anecdotal evidence, permit me to relate an experience I had only last month. I argued a Municipal Court appeal where (after 22 months, 10 court appearances and one verbal and three written discovery orders)* I was successful in barring the breath test reading due to a failure of discovery, in keeping the admissions out of evidence due to a Miranda violation, in having the court sustain my objection to preliminary breath test results because it was not done with an approved instrument, and in keeping the results of the Horizontal Nystagmus Test out because there was no proof of scientific reliability. My client was convicted of DWI because he made a wide left turn "almost hitting the curb," crossed the dotted white line once, and this nervous insulin-dependant diabetic was less than perfect at walking

the line and standing on one foot at 3 AM with traffic whizzing by and the cop car's strobe lights flashing. (The officer admitted that he judged the defendant's performance with an expectation of perfection.)

The Superior Court Judge, in the process of finding my client not guilty, put on the record that the conviction rate for DWI in NJ where the offense is a bench trial is about 95%, while in States where it is a jury trial, the conviction rate falls to about 45%. He wondered out loud whether there is an institutional bias on the part of Municipal Court Judges to find people guilty of DWI. He allowed that if his task was to determine if there was evidence upon which the Court below could have predicated its findings, he would be constrained to affirm. But because he was obliged to make those findings himself, he could not do so. In his review of the record, the State had not proven the defendant's guilt beyond a reasonable doubt. Not only is there a Court bias but also, in this town as in many others, the Chief of Police stands over the prosecutor's shoulder to make sure he is uncompromising, and then adjourns to the courtroom and stands by the side of the bench during the entire trial to make sure that the Judge doesn't lose sight of his interest in the "successful" outcome of the prosecution. Those latter nuances are never reflected in the transcript. Municipal Court Judges are under tremendous pressure to convict and to raise money for the municipality.

We have gone to great lengths to insulate our Judges of the Supreme and Superior Courts from such pressures. Why do we expect the Judges of our inferior Courts to behave differently without those safeguards? Are they made of sterner stuff? If we are ever to change the standard of review for these appeals, we first need to change the way Municipal Court Judges are appointed and retained. Recent legislation has changed the appointment process for the Judges of Joint Municipal Courts from a Governor's appointment to a decision of the towns involved and for Regional Municipal Courts to the discretion of the County Executive. The town fathers, responsible for their Judge's appointments, are concerned that the Court generates sufficient revenue to balance its books and with keeping its police happy. The police can become the vocal opposition to the reappointment of a Judge with whom they do not agree. The solution to this dilemma and the way to establish the independence of the minor judiciary is

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Judge M. Allan Vogelson (Ret.)

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MUNICIPAL COURT

New Jersey Supreme Court Set to Resolve Long Standing Issue in DWI and Refusal Cases

By Gregory P. DeMichele

The New Jersey Supreme Court will soon resolve an issue that has been debated and argued amongst municipal court practitioners for quite some time now. The Supreme Court granted certification in State v. Roger Paul Frye and is set to rule on whether or not a prior DUI conviction can be used to enhance the penalty(s) for a subsequent breath-test refusal conviction. **A-30-12 State v. Roger Paul Frye (070975).**

It is clear that a prior breath-test refusal conviction **cannot** be used to enhance the penalties for a subsequent DUI conviction. However, the opposite is up for debate. In State v. Ciancaglini, 204 N.J. 597 (2011), the defendant had previously been convicted of refusal under N.J.S.A. 39:4-50.4a. Id. at 600. He was subsequently convicted of DWI and the issue was whether, based upon the prior refusal conviction, he should be sentenced as a first or second offender under N.J.S.A. 39:4-50, which provides for enhanced penalties for repeat offenses. Ibid.

The Defendant in Ciancaglini, relying on State v. DiSomma, 262 N.J. Super. 375, 383 (App. Div. 1993), argued that a prior breath-test refusal conviction should not enhance penalties for a subsequent DUI conviction. In State v. DiSomma, the Court held that a conviction for refusal was not a prior violation under the DWI statute, N.J.S.A. 39:4-50 and that N.J.S.A. 39:4-50 precludes a prior refusal conviction from being used as a sentencing enhancement for a subsequent DWI conviction.

When analyzing the relevant DWI statute, the Court in Ciancaglini recognized that:

N.J.S.A. 39:4-50 contains no reference whatsoever to the refusal statute. When listing the penalties for driving while intoxicated, it categorizes them based on being “[f]or the first offense,” “[f]or the second violation,” and “[f]or a third subsequent violation.” N.J.S.A. 39:4-50(a)(1), (2), (3). Nothing suggests that those references to prior “violations” are meant to refer to anything beyond the DWI convictions in violation of N.J.S.A. 39:4-50, and the Legislature made no relevant amendment to the DWI or refusal statute while otherwise strengthening the latter. Indeed, without any statutory cross-reference, or similar expression, the most natural reading of the statute would suggest that the “prior” violations described in the three subsections of N.J.S.A. 39:4-50 are meant to refer only to the section of Title 39, Chapter 4, in which they are contained, that is N.J.S.A. 39:4-50. Such a reading is consistent with the well-established principle that penal statutes must be strictly construed. Ciancaglini at 204.

Accordingly, the New Jersey Supreme Court, in State v. Ciancaglini, reversed the Appellate Division and ruled that a Defendant’s prior refusal conviction cannot be considered as a prior DWI violation for

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YOUNG LAWYER CORNER

Tough

By Michael J. Dennin

Members of our Association are tough people. It doesn't matter if you are an attorney or non attorney member. You are tough because you sacrifice time, effort and love for the group while simultaneously handling daily business and stress with ease. Having been practicing now for 8 years, I see what toughness is. Toughness is positive, and the Association staff at sets a positive tone.

A personal thank you to all of the members of the Bar Association for your hard work and dedication in 2012. This past year has been filled with dedication and results. We on the Young Lawyer Committee appreciate everything the staff at the Bar has done, including Larry Pelletier, Kathy DelPrato and Denise Whybark. Every event that was held went off perfectly. We take for granted how easy everything seems when we go to seminars, charity events and awards dinners. Since this is my first year as a Bar Trustee I am relatively new to the inner workings of our Bar. I can say that we Young Lawyers have been received and supported by the entire Association and we thank you again.

We've had a very positive year so far, and our events are only as good as the folks who attend and sponsor them. Involvement and

attendance at our events is most appreciated. We are continuing our year as we slowly move into the spring. The past several months have been a whirlwind. From Hurricane Sandy to the election to Newtown we have seen more than we need to for a long time. God Bless those who are struggling with these events—we cannot forget them. The days and months go by quickly and it can be easy to lose perspective in our busy days. It is tough to keep everything on our minds, especially when we are doing 20 different things in 20 different places at the same time. No one ever said being a lawyer was easy, or else everyone would do it. We like to inflict self punishment on behalf of our clients. That is part of the job.

The Young Lawyer group had a good February and is planning for the spring and summer. We enjoyed our 3rd Annual Dinner at Casona on February 22. The evening consists of a wonderful happy hour and dinner in Collingswood. It gives us time to get to know one another better in a social setting and to cut loose a bit on a weekend. New relationships and memories were formed and the atmosphere was great. Another very significant event was the Halo Ball. The Halo Ball is sponsored by the SJYPA, South Jersey Young Professionals



YOUNG LAWYER CORNER

Association, and it is a prom-like dance to raise money for the KROC Community Center in Camden. The KROC Center is now under constructions and is being built on a 24 acre site on the remediated old landfill in the Cramer Hill section of Camden. When completed, the Center will feature athletic facilities, a senior center, auditorium, food pantry and teaching kitchen, a social center and more additional amenities than I can count. This is the brightest project to come to Camden for quite some time. Most of the funding comes from the Salvation Army, while the remainder is raised privately. Being active in the SJYPA is good for YLC members, and a very good outlet for when we stop being young, but are not quite elevated to seasoned member status.

More events are happening, from the CLE on Tap series starting back up, to the Cathedral Kitchen and programs at the Anna Sample House, to Wills for Heroes and the Foundation's Beer Tasting event. Our plate is filling back up. We will soon announce the date for the September Lobster Bake and begin planning. It is tough to keep track of everything, but that is a good thing. Toughness is something familiar, but this is why we are lawyers, right?

WELCOME NEW MEMBERS

January 2013

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LAW PRACTICE MARKETING



It's a Great Time to Set Practice Goals: Improve Your Sales Skills (Part 2 of 3)

By Kimberly Alford Rice

In the first installment of this article, we introduced the idea that the ultimate reward of most, if not all, business development activities is to close more sales (i.e. retaining more clients). To be effective in winning more clients, lawyers must learn and refine their "closing skills." We addressed why pre-prospect meeting preparation is important; how to begin with "the end" in mind; and, how to connect with prospects once you have found them.

In this article, we will outline specific prospect presentation techniques and powerful closing tips.

While some lawyers have learned by the "sweat of their brow," others recognize that "sales" is not something they 1. know how to do (and/or do effectively); 2. have been trained in; and, 3. are particularly interested to do. ("I went to law school to become a lawyer, not a salesperson.").

Considering this mindset, we have found that firms who retain professional business development skills (aka "sales") trainers are pleased with the investment they make to help their lawyers overcome their reticence which is ever present in the highly competitive legal landscape and the guidance they receive with developing effective sales and closing tactics. *(another article for another day).*

You Scheduled a Prospect Presentation: Be Well Prepared – Training Can Help

To prepare for new business development opportunities, firms must leverage an arsenal of tactics to stand a "fighting chance." Business development skills training sessions that focus on practical, results-oriented principles, including the quality of your preparation and allowing the presentation to close the deal, are key to sales success. The following tried and true tactics will help you put your best foot forward:

Begin with opening arguments:

Similar to introducing a case to a judge and/or jury, it is important not to waste the time of your audience. Lose the facts about your company; they can be found online. Really, *don't go there*. If your prospect didn't think you were skilled enough, you would not have been invited to the party.

Start your presentation with what you can *do* for the prospective client, how your service and strategy will help them be successful, protect their interests and/or save them money.

Understand needs: Inquire about the challenges the prospect is facing and what their competitors are doing. Developing an understanding of the issues the prospect is facing will provide you greater insight into the best way to approach them, ultimately fostering open communication and a more productive relationship.

Continued on Page 15

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CRIMINAL LAW

Slowing Down the Train

IN STATE IN THE INTEREST OF V.A., 212 N.J. 1 (2012), (Decided September 12, 2012)
 THE NEW JERSEY SUPREME COURT BEGINS TO MEANINGFULLY LIMIT PROSECUTORS' DISCRETION
 TO WAIVE JUVENILES AGED 16 AND OVER PURSUANT TO N.J.S.A. 2A:4A-26(a)

*Standard of judicial review changed
 from "patent and gross abuse of discretion" to "abuse of discretion."*

By Joseph M. Moran, Esq.

The moving train that is the movement toward treating accused juvenile offenders more harshly really picked up steam in May, 2000, when the New Jersey legislature amended N.J.S.A. 2A:4A-26(a) to give prosecutors, rather than judges, discretion whether to waive juveniles aged 16 and over charged with serious crimes (Homicide, Robbery, Carjacking, Aggravated Sexual Assault, Sexual Assault, Kidnapping, Aggravated Arson, Possession of a Firearm for an Unlawful Purpose, etc.) to Adult Criminal Court. This "waiver train" has been moving forward with very little to slow it down ever since.

It is true that the 2000 amendment to the statute did provide some nominal safeguards against the unbridled use of the prosecutor's powers: i.e., it directed that the Attorney General to establish guidelines for prosecutors to promote uniformity, thereby attempting to prevent the arbitrary exercise of their discretion. The Attorney General Juvenile Waiver Guidelines direct prosecutors to take the following factors into account:

1. Nature of the Offense
2. Deterrence
3. Affect on Co-Defendants
4. Maximum Sentencing and Length of Time Served
5. Prior Record
6. Trial Considerations
7. Victim's Input.

The prosecutor is directed to prepare a written statement of reasons for waiver in order for the Court to determine whether or not the reasons for seeking waiver were arbitrary. *State in the Interest of J.M.*, 182 N.J. 402 (2005)

However, until the New Jersey Supreme Court opinion in *State in the Interest of V.A.*, 212 N.J.1 (2012) the Appellate Court had held that judicial review of the prosecutor's decision whether to waive a juvenile aged 16 and over charged with serious crimes was limited to deciding whether the prosecutor's decision was a "patent and gross abuse of discretion" *State in the Interest of R.C.* 351 N.J. Super.248, 260 (App. Div. 2002). This

gave the defense bar very little braking power to try to stop the train that was moving their juvenile client inexorably down the tracks to Adult Criminal Court.

In *State in the Interest of V.A.*, the New Jersey Supreme Court has given attorneys for juveniles aged 16 and older at the time of their alleged serious offenses a more effective tool to slow down the train. It has now expanded judicial review by substituting an "abuse of discretion" standard of review in place of the much more limited "patent and gross abuse of discretion" standard.

The Procedural History

In *State in the Interest of V.A.*, the Middlesex County Family Court found probable cause that 4 juveniles committed a "strong armed" robbery in the 2nd Degree and 2nd Degree Aggravated Assault. Three of the juveniles were aged 16 or over at the time of the offense. However, the Family Court concluded that the prosecutor's decision to waive these 3 juveniles constituted a patent and gross abuse of discretion and denied the State's motion for waiver. The Family Court stayed its ruling pending appeal by the State.

The Appellate Division granted the State's application for Leave to Appeal on all the cases, consolidated these appeals and reversed the Family Court, stating that the prosecutor's decision must be given the same deference as the review of a prosecutor's refusal to consent to a defendant's admission into the Pre-trial Intervention program. The Appellate Division concluded that the Family Court erred in determining that the State's decision constituted a patent and gross abuse of discretion. *State in the Interest of V.A.*, 420 N.J. Super. 302 (App.Div. 2011).

The Supreme Court granted the juvenile's application for Leave to Appeal and granted the American Civil Liberties Union of New Jersey amicus curiae status in the appeal. 208 N.J. 34 92011); 208 N.J. 384 (2011)

The Opinion

The 3-2 majority of the Supreme Court, in an opinion delivered by Justice LaVecchia, and joined in by Chief Justice Rabner and

Justice Albin, went on to analyze Prosecutors' PTI decisions and decisions to consent to admission to Drug Court, and contrasted them with prosecutors' decisions to enhance punishment in situations like N.J.S.A. 2C:43-6(f) which mandates that the Court impose an extended term of imprisonment with a specified period of parole ineligibility for repeat drug offenders upon the prosecutor's application, *State v. Lagares*, 127 N.J. 20 (1992), or the prosecutor's decision to seek a forfeiture of public employment, *Flagg v. Essex County Prosecutor*, 171 N.J. 561, 571 (2002).

The majority of the Supreme Court distinguished between the exercise of the prosecutor's discretion in granting a benefit (PTI or Drug Court) with their exercise of discretion asking that an accused person receive an enhanced punishment (lengthier prison sentence for subsequent drug distributions or forfeiture of public employment). The majority of the Supreme Court noted that the "patent and gross abuse of discretion" standard of judicial review is appropriate where the prosecutor is extending a benefit to someone who is accused of a crime, but that the "abuse of discretion" standard of judicial review is appropriate when the prosecutor decides to more harshly punish someone. The Supreme Court held that the "abuse of discretion" standard will best further the goal of uniform application because it will provide an additional level of protection against arbitrariness in a decision affecting enhanced punishment for a juvenile.

The opinion of the majority of the Supreme Court went on to state that if the prosecutor's statement of reasons is a "mere regurgitation" of the guideline's language, that will not show that the prosecutor engaged in an individualized decision, rendering the overall decision susceptible to the claim that it is arbitrary and constitutes an abuse of discretion by the prosecutor.

Most importantly, the Supreme Court held that the State failed to explain how deterrence of each juvenile, and of others generally, was served by waiving each of the juveniles



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A Devine Luncheon

It was a clear and brisk day as friends, family and colleagues gathered at the Crowne Plaza in Cherry Hill for the Hon. Peter J. Devine, Jr. Award Luncheon to honor and congratulate past CCBA President Mark V. Oddo, recipient of the 2012 Devine Award, the Association's most prestigious honor.

Established in 1981 in honor of the popular Judge Devine, who served as president of the Camden County Bar in 1967-1968, Mark was chosen this year's recipient in recognition of his long record of distinguished service to the Bar Association and legal community. The Association congratulates Mark on receiving this recognition and high honor, and extends its gratitude for his many years of dedicated service.



A proud day for the Oddo Clan!



Rocco DePersia & Brenda Eutsler



Mark Oddo, Mark, II & Justice Wallace



Brenda Eutsler, Mark Oddo & Judge Colalillo



Barry Rosenberg & Judge Baxter



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Paul Snyder, Chuck Resnick & Dean Ray Solomon



Marty Abo, Immediate Past President Lou Lessig, Jim Herman & Sam Asbell



Judge Fox & Justice Wallace



Kerri Chewning, Tony LaRatta & Debra Rosen



Ed Kelleher & Susan Hodges



Andy Kushner & Len Baker



Linda Eynon & Jenifer Fowler



Ed Borden & Len Rossetti

Back in the Day



By Hon. Richard S. Hyland (ret.)

Readers have requested I write about some of my more interesting experiences while on the bench, and here are a few out of many. "Rocky" Donovan, my trusty Clerk of the Court, called and asked if I would marry the daughter of one of his staff the next day. The bride and groom arrived at my chambers at 8:30 am. As I was putting on my robe, Betty Sykes, my competent secretary, buzzed me and urged that I come out right away because the bride was going into labor. I rushed out with a copy of the pure vanilla marriage ceremony that Judge Dave Eynon had kindly given me and zipped through it at warp speed. I was concerned that she might have to deliver right on Betty's desk. If so, the only thing I knew to do was gleaned from old Western movies when during the birthing scene, the midwife always hollered out, "Boil plenty of hot water!" Fortunately, she got to Cooper Hospital in time to deliver a baby boy and thankfully did not name him "Richard" or "Judge"!

A current and now almost clichéd expression is to "Think outside of the box" which I did in a non-jury case involving boxes, of all things. Plaintiff manufactured cardboard boxes which were to be used for display cases by retailers when they were set up, but needed the two most dreaded words in the English language "Assembly Required." Defendant claimed he tried to do so many times when following the directions, but found it impossible so he refused to pay, although plaintiff claimed it was easy to do.

I was in a quandary since testimony from the parties would not aid me in deciding the ease of assembly. I suggested an experiment which the parties agreed to be bound by and selected my law clerk, court clerk, and court attendant to attempt to assemble one of these sets in 20 minutes. When I returned to the courtroom, only "Arnie," my attendant was successful with his, and the sets of the more educated clerks were in shambles with theirs. As agreed, I dismissed plaintiff's case. In another non-jury case, I discovered how hard it is to be politically correct all the time despite the best of intentions. The plaintiffs were two attractively dressed "thirty-ish" women who sued a foreign car dealer about the defects they discovered in a used car they had purchased. The testimony was very detailed and lengthy and since it was the last case on the docket I couldn't complete it that day and needed another date to hear the balance of it. To find an open date, I had the dealer call his office from the courtroom and had the plaintiffs do the same in my chambers. They pulled out large diaries and went

over with me all of the many places they had to fly to in the next few weeks; i.e. Tampa, Boston, Seattle, Atlanta, Austin etc. until they found some openings. While we waited to hear from the dealer, and to put them at ease, I attempted some small talk like "What airline are you with?" they answered with scowls and told me they were nuclear physicists who inspected nuclear power plants all over the country. If I could have crawled under the rug, I would have done so. Wasn't it reasonable to think they were flight attendants given their demeanor and constant flying? I guess not.

At the following date, I stepped in it again when they described all the defects with the Tele-Funken radio and I asked what the basis of their expertise was since they gave me no qualifications. They then rattled off a litany of FCC radio licenses they had earned and with the same scowls. At this point the dealer piped up and said he wanted to settle the case and he did. AMEN.

While beginning a drug sale case in the Criminal Division, I noticed the Assistant Prosecutor had some cash clipped to his file folder which was the "marked" money used in the sale. When I returned to the courtroom after a recess, he was ashen and hollered out that someone had stolen the money. I promptly called the Sheriff's Office to come up and investigate, and they found one of the defendant's witnesses trying to hide it in the men's room. They arrested and cuffed him and brought him into the courtroom together with the money. As he was being led out for processing, I asked his attorney if he was going to ask for a postponement. He replied that he wasn't going to call him now after the incident, and besides, he was just a "character" witness.

Please send any comments or feedback to me at rhylandatlaw@aol.com

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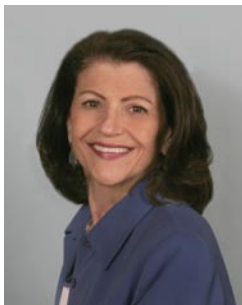


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PRESIDENT'S PERSPECTIVE

by Brenda Lee Eutsler

Dignity in Life and Death

I am sure you all well know that being a lawyer is very demanding. We are accountable to many (clients, judges, partners, office personnel, colleagues, AOC) and our time is stretched thin keeping pace with these demands. By the end of a long day, we just want to escape from the chaos and go home to relax and unwind. However, escape may be elusive because there are further demands and accountability on the home front. It is a sure bet, however, that if you own a pet, you can escape into a world of unconditional, undemanding, stress-free love and affection, at least for a short while each day.

Over the years, colleagues, friends and clients have recounted their "coming home" rituals with their pets. It is clear with each tale that pet owners take great comfort in knowing their pets will be happy to see them and, other than having to feed their pets, there are few other demands. I have often heard people say, "It's a lot easier to raise my cats than my

children and they don't talk back!"

Our miniature dachshunds, Raptor and Jezebel, greet me each evening when I come through the door with excited wagging tails. In her excitement, Jezebel will "run track," looping several times around the living room, to the dining room and through the kitchen back to the foyer. Raptor, the aristocrat of the two, remains at my feet while I rub his chest, and should I dare to stop, he will look up at me with his puppy dog eyes, place his paw gently on my hand, asking "please continue." Ah, the stress of the day just fades away!

Pet owners become so close to their pets that the pets become an integral part of the family. In family law matters, a pet can be taken "hostage" or become a "pawn" in divorce negotiations. My will clients often lament over who will take care of their pets and whether a "life estate" trust should be established for the pets' financial support. These considerations are similar to those given to minor children

under a will. Leona Helmsley left millions in trust for the care of her dogs. Although I have not had a millionaire doggie, I have established trusts under wills for dogs, cats, horses, guinea pigs and an iguana. Iguanas have a very long life expectancy (about 20 years), get quite large and have a healthy diet (greens, protein and grains), which is probably why they live so long. Needless to say, finding a home for an iguana is not easy, unless you are a millionaire!

The downside of having pets is that they, like humans, become sick and eventually die. Over the past several weeks, Raptor has been quite ill. At this writing, he has rebounded from two hospital stays and has a little spring back in his step. Raptor is now 17 1/2 and he has been with us since my son, Brian, was 9. The sadness in our family, and especially for Brian, has been great as we react to the highs and lows of Raptor's illness. We pray for his comfort.

Continued on Page 19



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WINE FOOD

By Jim Hamilton

Now that you have gotten your fill of Valentine's Day sweet treats (hopefully including a dessert wine or two), it is a good time to look for some nice dry wines to enjoy as we revisit those already broken New Year's fitness resolutions. As any European centenarian will attest, and Mediterranean diet fans will support, a glass of wine with dinner is a natural accompaniment to a wholesome meal. While the search for wines to fit dining needs and budget tolerance is a never ending one, the opportunity to attend large scale wine tastings gives me the chance to scout out prospects for your consideration. Since the audience for Bordeaux futures buying is very limited, other than to observe that most reds are not nearly as approachable as the 2009s, I shall spare you my take on many of the 2010 Bordeaux wines I had a chance to taste recently in Manhattan. Instead, I shall offer some thoughts about wines I enjoyed at the latest Michael Skurnik Wines event, also in the city that doesn't sleep.

Portuguese table wines continue to make inroads in our market, and the impressive entry level wines from Quinta do Sagrado should serve to further that advance. **2010 PV Wines Douro Branco Egle** is a crisp and unadorned white wine made from grapes with which most will be unfamiliar – Rabigato, Viosinho and Larinho, primarily. The wine has lime and melon fruit flavors that are ripe and reasonably weighty. There is a texture to the wine conveying a chalky, calcium quality. The red sibling is the **2009 PV wines Douro Tinto**, and if anything, it is an even bigger bargain. The nose and palate impressions are of blackberries and black cherries packed in a surprisingly substantial framework. The fruit is fleshy, but not jammy or cloying, and is supported by dusty, ripe tannins from mid-palate to the finish. While the wine sees some oak aging, the barrels are used rather than new and the duration of exposure is limited. Consequently, it is forward fruit made from a blend of indigenous grapes that carries the day.

Another country producing wines that are making their way to more area shelves is

Austria. Austria long had been a player on the world wine stage, but suffered significantly after a mid-1980s scandal that arose when some producers were found to have adulterated wines by adding diethylene glycol. Fortunately, the Austrian wine industry recovered. If there is anything that has slowed its acceptance by American consumers it probably has been the prices charged for wines made from grape varieties with which most American wine drinkers are unfamiliar. As you know from past columns, an increasing number of affordable Austrian wines, many in one liter bottles, have become available to us. I previously touted the one liter Grüner Veltliner made by Bernhard Ecker, so this time let me suggest a red wine from this producer. **2011 Ecker Zweigelt** provides an affordable introduction to the Zweigelt grape. There is one liter of ripe, easy drinking wine conveying a medium body, dark and gently brambly fruit spiced with a touch of black pepper that is common to the varietal. It is an uncomplicated wine that will offer a nice alternative to beer for that pizza you picked up on the way home from a hectic day.

Let's stay with Austria, but talk about a familiar grape – Sauvignon Blanc. For many, Sauvignon Blanc wines can be too aggressive. They can be too green tasting, be it herbal, grassiness or green vegetables. There also can be a distinctive "cat pee" note that polite people prefer to call "boxwood" (yes, the smell of fresh cut boxwood). Whether from New Zealand, France's Loire Valley or any region where the grape's assertive qualities are, for better or worse, at center stage, the grape has both its fans and detractors. If you are in the latter group, I think you may find the **2011 Glatzer Sauvignon Blanc** more to your liking. It is softly structured, featuring slightly tart Granny Smith apple fruit, a sprig of spice and a flinty edge. It is an approachable wine



that offers interest without walking on the wilder side of the grape's flavor spectrum.

Now, if you are one who prefers your Sauvignon Blanc with some bite, you may enjoy white Bordeaux. With its traditional minor cast of Semillon and Muscadelle grapes (a total of 15%), the **2011 Chateau du Cros** is a grassy wine with fruit resembling under-ripe Delicious apples paired with gooseberries. The wine still offers enough roundness to avoid being too aggressive, but it definitely shows real Sauvignon Blanc characteristics in a Bordeaux that won't break the bank.

I had the chance to taste through a broad lineup of wine from Clos du Mont-Olivet with the winemaker, Thierry Sabon. This is a traditional southern Rhone producer that, like many, is known best for its Chateauf-du-Papes. Indeed, Thierry brought magnums of two library wines, the 1983 and 1985 Chateauf-du-Papes. While both of these red wines were lovely (there are white Chateauf-du-Papes produced), a less costly introduction to the winery's style is through their Côtes du Rhône offerings. They all were very good, but from a value perspective let me highlight the **2010 Clos du Mont-Olivet Côtes du Rhône Montueil la Levade Vieilles Vignes**. As the name explains, the grapes come from old vines ("vieilles vignes"), and the blend is dominated by Grenache, the leading southern Rhône grape variety. The

LAW PRACTICE MARKETING

It's a Great Time to Set Practice Goals: Improve Your Sales Skills

(Part 2 of 3)

Continued from Page 8

Ask the Right Questions

Closing more sales requires asking targeted open-ended questions and actively listening to the responses from your prospects as they tell you what they want and how they need to be sold on the services that you provide. Consider these:

Questions to Uncover Aspirations and Problems:

1. What keeps you up at night? (An oldie, but goodie.)
2. In the best of all possible worlds, what do you think you could do with your business?
3. What's holding you back from reaching your revenue (or profit, or other) goals?
4. If there were no restrictions on you, what business difficulties would you erase? Share with me why you say that.
5. What does success look like for you and your business?

Questions to Uncover Impact of Solving (or Not Solving) Aspirations and Problems: Ask these open-ended questions to place a monetary value on solving your prospects' problems or achieving their aspirations.

1. If you could overcome these challenges, how would it impact your company's financial situation?

2. If you were to make this happen, what would it mean to your career?

3. How would implementing these changes affect your ability to compete?

4. How do you think senior management would evaluate the success of this initiative?

5. If you don't solve (insert the particular challenge here), what kind of difficulties will you face going forward?

Sometimes all you need is to ask one open-ended question and your prospect will share with you all the information you need to help them. Other times, you may need to ask a few but make sure you don't overdo it.

If your prospect answers a question but you want her/him to expand a bit more, ask "how so?," or "that's interesting, tell me a little more about that." You'll be surprised at just how much you can learn, and the difference it will make in your ability to help your prospect (to become client) succeed.

Speaking Skills Check Up: Preparing for Prospect Meetings

It's extremely important to hone your speaking skills so that you can present an effective, convincing message when delivering presentations both within your firm, at industry conferences and at individual and prospect/client meetings. Professional training can help here.

THE CLOSE – Uncomfortable But Imperative

Obvious, perhaps, but you *must* ask for the work. Yes, this can be uncomfortable especially if you have not had much practice, so here's how you do it:

Look the prospect right in the eye and say:

- I'd be delighted to work with you.
- I'd be honored to support you on this project.
- Do you see any reason why we should not work together?
- From what I have heard, I am confident that we are the right firm for this project. Let's get started.

Business development tactics are not complicated. The following tactics are easy to implement during scheduled meetings and are surprisingly effective:

- During every meeting with a prospect, iterate the benefits that your service offers.
- As the meeting wraps up, restate the challenges and opportunities as the prospect sees them.
- Close every call, meeting, or pitch with agreements on the next steps. Until your prospect has signed the engagement letter, there are ALWAYS "next steps."
- Don't walk out of the meeting until "Next Steps" have been defined and agreed upon by prospect.

In the final installment of this article, we will examine more steps in the closing process and how to position yourself for success by honing your closing skills and effectively handling rejection.

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VERDICTS OF THE COURT

Superior Court of New Jersey

VERDICT: No Cause (1/4/13)
Case Type: Contract
Judge: Robert G. Millenky, J.S.C.
Plaintiff's Atty: Alan Schorr, Esq.
Defendant's Attys: Benjamin Folkman, Esq. and Heidi Kopelson, Esq.
L-4035-9 Jury

VERDICT: No Cause Damage Verdict in favor of Defendant: SO (1/4/13)
Case Type: Auto
Judge: Deborah Silverman Katz, J.S.C.
Plaintiff's Atty: Joseph Walsh, Esq.
Defendant's Atty: Robert Kaplan, Esq.
L-3939-10 Jury (7)

VERDICT: Damage Verdict: \$12,500 in favor of Plaintiff Steven Pressman & \$35,000 in Favor of Plaintiff Max Pressman (1/8/13)
Case Type: Auto Negligence Damages Only
Judge: Lee A. Solomon, J.S.C.
Plaintiff's Atty: Daniel Zonies, Esq.
Defendant's Atty: James Nolan, Jr., Esq.
L-2462-10 Jury

VERDICT: Case Settled (1/9/13)
Case Type: Medical Malpractice
Judge: Deborah Silverman Katz, J.S.C.
Plaintiff's Atty: Robert Hunn, Esq.
Defendant's Atty: Jay Blumberg, Esq.
L-4646-08 Jury (8)

VERDICT: No Cause (1/9/13)
Case Type: Auto Negligence
Judge: Robert G. Millenky, J.S.C.
Plaintiff's Atty: Jeremy Weitz, Esq.
Defendant's Atty: Everett Simpson, Esq.
L-230-11 Jury

VERDICT: No Cause Damage Verdict: SO Against Defendant (1/10/13)
Case Type: Auto Negligence
Judge: Stephen Holden, J.S.C.
Plaintiff's Atty: Dave Cuneo, Esq.
Defendant's Atty: Chuck Blumenstein, Esq.
L-674-11 Jury

VERDICT: No Cause (1/15/13)
Case Type: Auto Negligence
Judge: Lee A. Solomon, J.S.C.
Plaintiff's Atty: Melissa Iacobucci, Esq.
Defendant's Atty: Everett Simpson, Esq.
L-1084-11 Jury

VERDICT: No Cause (1/17/13)
Case Type: Medical Malpractice
Judge: George S. Leone, J.S.C.
Plaintiff's Atty: Alexander Wazeter, Esq.
Defendant's Attys: William Theroux, Esq. and John Jackson, Esq.
L2404-08 Jury

VERDICT: No Cause (1/17/13)
Case Type: Auto Negligence
Judge: Robert G. Millenky, J.S.C.
Plaintiff's Atty: David Paul Daniels, Esq.
Defendant's Atty: Robert Kaplan, Esq.
L-4330-10 Jury

VERDICT: Damage Verdict: 1,940,000 less 35% against Defendants Denise Fog, D.O. & Dr. Joan F. O'Shea - Mis-trial (1/18/13)
Case Type: Medical Malpractice
Judge: John T. Kelley, J.S.C.
Plaintiff's Atty: Gary Ginsberg, Esq.
Defendant's Attys: John Talvacchia, Esq. and Thomas Walsh, Esq.
L-4964-08 Jury (8)

VERDICT: No Cause (1/18/13)
Case Type: Contract
Judge: Deborah Silverman Katz, J.S.C.
Plaintiff's Atty: Jeffrey Hark, Esq.
Defendant's Atty: Steven Kudatzky, Esq.
L-678-12 Jury (7)

VERDICT: No Cause Liability Verdict Against Plaintiff: 30%; Liability Verdict Against Defendant: 70%; Damage Verdict: SO (1/28/13)
Case Type: Auto Negligence
Judge: Stephen Holden, J.S.C.
Plaintiff's Atty: Christopher Moyer, Esq.
Defendant's Atty: Rodd DeWitt, Esq.
L-2690-10 Jury

VERDICT: Damage Verdict: \$150,000 Against Defendant (1/30/13)
Case Type: Auto
Judge: Deborah Silverman Katz, J.S.C.
Plaintiff's Atty: Anthony Leonard, Esq.
Defendant's Atty: Everett Simpson, Esq.
L-2239-11 Jury (6)

VERDICT: No Cause (1/30/13)
Case Type: Auto
Judge: John T. Kelley, J.S.C.
Plaintiff's Atty: Ernest Alvino, Esq.
Defendant's Atty: Robert Kaplan, Esq.
L-1533-11 Jury (6)

WINE FOOD

Continued from Page 14

wine has ripe, but not overripe, dark berry fruit, a touch of cocoa, nice dusty tannins that are supportive without being intrusive, and a pulpy but clean mouth feel.

Awhile back, I touted the virtues of the **2009 Chateau Briot**, a nice Cabernet Sauvignon-dominated Bordeaux blend from the vaunted 2009 vintage. I again had the chance to taste the wine, which surprised me because I thought the demand for such an inexpensive Bordeaux would have exhausted the distributor's supply. It remains an excellent value, but allow me to report on another 2009 Bordeaux that costs only a dollar or so more than Chateau Briot and also is worth considering, **2009 Chateau Pascaud** is, in a way, a "right bank" counterpart to the "left bank" Briot. The "banks" are the left (west) or right (east) side

of the Gironde River that bisects the Bordeaux wine region. There are general differences in the blend of grapes employed on each side of the river. The left bank wines typically feature Cabernet Sauvignon, usually complemented by one or more of the permitted grape varieties, usually including Merlot. Wines from the right bank often rely on Merlot as the primary grape, and quite often the Cabernet in the blend is Cabernet Franc. Indeed, the Chateau Pascaud is 85% Merlot and 15% Cabernet Franc, and offers fruit that is at once riper and redder than the Briot. The flavors tend toward red cherries, with a supple, round body that is uncomplicated by oak influence. It is a wine that is juicy, forward and, in view of the ever rising prices of the better known Bordeaux estates, exceptionally affordable.



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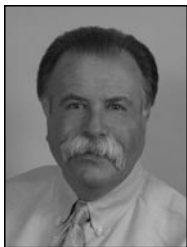
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SPINNING MY WHEELS

Return to Sports Car Sanity

By: Andrew Kushner

While I am apt to refer to the days of my youth as a time “when the earth was still cooling,” as each year passes, the clichéd analogy becomes less extreme. Back in the late 1960’s there were distinct groups of cars for one’s taste: Immense-engined Detroit iron with minimal brakes and rudimentary steering. “Foreign” cars, some of which were delicately engineered and constructed (read: English or Italian manufacture). Others were equally well engineered but had the benefit of greater reliability (read: German). Into this mix entered the Japanese, testing the waters with cars such as the Datsun 1600 and 2000 roadsters, thought of at the time as lightly disguised copies of the British open two-seater. Only later would the inherent goodness and reliability of these cars be recognized as the beginning of the wave of products that would refocus the auto industry over the following four decades.

In the autumn of 1970 a new sports car appeared on the scene that almost single-handedly dealt a fatal blow to moderately priced British and Italian two seat sports cars. Within 10 years of the appearance of the original Datsun 240Z, Triumph, MG, and Sunbeam were either out of business entirely or were on government sponsored life support. Italian giant Fiat packed it in around 1983, leaving the US market devoid of sports cars available to Everyman. In 1989 however, the stirring of an accessible sports car began again with the introduction of the Mazda Miata, a further Japanese reinvention of the traditional European two seat sports. Small and nimble and relying not on brute force, the Miata became a favorite and has survived over two decades of continued improvement and success.

Sports cars, by definition are not intended to be practical. A two seat or “2+2 is the standard arrangement and storage is limited to that which can be packed into a shallow hatch or trunk. These are special purpose cars, purchased by the young or as a second or third car by those of greater means as well as age. The Miata excepted, there have been few true sports cars that can fit the budget of the average driver. Now this deficit has been filled by the Subaru BRZ.

The BRZ is a joint venture of Subaru

and Toyota (sold by that company as parts of its Scion line) and is an unlikely result in a market dominated by cars crammed full of electronic, mechanical and luxury features that all conspire to add weight, cost and sophistication to the end product. Working against type, Subaru and Toyota have developed a back to basics rear wheel drive 2+2 sleek hatch that is neither turbo charged or supercharged; has a minimum of gee gaws and wrings a legitimate 200 bhp out of its boxer four cylinder engine. Moreover, the weight has been kept down to about 2,700 pounds, a mere lightweight in today’s automotive scene. Base price and nicely equipped: about \$26,000.

It appears however, that the BRZ is, and will continue to be, sold in small quantities so you may not see examples of either company’s model that frequently. I have sought a test drive for a couple of months and after several phone calls to Subaru of Cherry Hill, I was finally successful even though the model had to be driven off the showroom floor. Before my drive I read every article I could on the car and the reviews by mainstream automotive journalists. While the opinions were uniformly positive, sometimes glowing, many found nits to pick. Some found fault with the comfort of the seats, some with the ergonomics of the dash, others with the somewhat disconnected feel of the steering.

I must have driven a different car. Perhaps automotive journalists drive so many high-end, exotic cars that they cannot see the proverbial forest for the trees. The bright red BRZ six speed manual that I had the immense pleasure of driving for all of a half hour in Cherry Hill rush hour traffic was as much of a revelation as my first drive in a BMW 2002 in 1969. Were the seats low? Sure. Was the dash a bit stark? Perhaps. But to paraphrase James Carville, “It’s a sports car, stupid!” From Route 70 eastbound to the 295 on and off ramps to local side streets, I fleetingly thought of just “booking” with the car and letting them catch up with me later. It took me only about three starts with the light clutch to get the sense of the take up to match the engine. Thereafter it was smooth sailing even in rush hour traffic. Driving a car like the BRZ serves to punctuate the difference between it and other wannabe sports cars. Subaru places an oversize tachometer right in the center of

the display cluster with an embedded digital speedometer in the right center section. To the left of the tach is an analog speedometer but it is almost superfluous in light of the combination within the central gauge. Sure I would have liked to see battery and oil gauges but these have generally gone the way of the buggy whip. BMW doesn’t even provide a dipstick to check the oil. You are to be informed of a problem by a dashboard light.

Gearing matches the engine output perfectly. I found that the relatively “short” gearing had me involved in shifting if I wished, getting into sixth gear fairly quickly if I chose but still loping along at 75 mph under 3000 rpm. The suspension was moderately stiff, as was to be expected, but not harsh even over potholed sections. Navigation is standard at this price with a nice large screen. HVAC controls are basic and immediately usable. In short, I have nothing negative to say about this car. One would not expect a sports car to fulfill the same duties as a family hauler.

One of the major car magazines recently did a “comparison” test between the BRZ’s cousin, the Scion model, and the original 1970 Datsun 240Z. While over 40 years had intervened since the Datsun’s appearance in the market, giving consideration to the world of changes in automotive technology, the Scion and the Z had more in common than appearance. The return to simplicity with the Subaru and Toyota versions of this car has the potential of affecting the market in a similar manner as did the 240Z some four decades ago. Except for several things: First, we of the boomer generation can no longer regularly haul ourselves in and out of a low slung car anywhere near as easily as we could back in the day. Second, there are alternative traditional sedans or coupes which can provide almost all of the driving excitement with the added practicality that the BRZ cannot offer. Subaru’s own WRX, Mitsubishi’s Evo, even the six cylinder versions of the Camaro and Mustang could compete. But let’s not quibble about which choice is the most rational. If you are looking at a BRZ or its Toyota cousin, trunk space, ease of entry, seating position and other such tertiary factors are not at issue. For a buyer with less than \$30K to spend who has already decided on a two door sports car with appropriate sound and fury, this is really the only choice.

CRIMINAL LAW

Slowing Down the Train

IN STATE IN THE INTEREST OF V.A., 212 N.J. 1 (2012), (Decided September 12, 2012) ...

Continued from Page 9

to Adult Criminal proceedings. The Court noted that the concept of deterrence involves the notion of individual deterrence, i.e., that the punishment will dissuade the offender from repeating his criminal acts. It also includes the principle of general deterrence. Because the State failed to individually address the merits of deterrence through adult versus juvenile proceedings, the Supreme Court remanded the matter for the State to provide a fuller explanation of the deterrence assessment of each juvenile.

Evidence Shows that Waiving Juveniles Actually Increases Rate of Recidivism

The Supreme Court's emphasis on the deterrence factor creates a significant braking tool to try to stop the "waiver train" because the concept that waiver to Adult Criminal Court deters juveniles from later committing crimes has been shown to be a falsity: A comprehensive review of six published studies by the Task Force on Community Preventive Studies of the National Center for Disease Control concluded that "youth transferred to Adult Criminal Court were 34% more likely to be re-arrested for a violent or other crime than were youth retained in the juvenile justice system." Center For Disease Control Recommendations and Reports November 30, 2007/56 (RR09); 1-11.

Additionally, the United States Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency

Prevention recently reviewed all of the research on the general and specific deterrent effects of transferring juveniles to Adult Criminal Court. Their report concluded that "the practice of transferring juveniles for trial and sentencing in adult criminal court has, however, produced the unintended effect of increasing recidivism, particularly in violent offenders, and thereby promoting life-course criminality" Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* *Juvenile Justice Bulletin*, June 2010 www.ojp.usdoj.gov

In addition, the U.S. Supreme Court, in holding that juveniles can not constitutionally be subject to the death penalty or to life without parole, *Graham v. Florida*, 130 S. Ct. 2011 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005), recognized that adolescents lack the adult capacity to make decisions because of their high levels of impulsivity and susceptibility to pressure. The reasoning of these cases, born out by medical research in the area of brain science, bolster the argument that a decision to waive a juvenile will not deter juveniles in general or individually. Juveniles simply lack the capacity to be deterred by legal mechanisms which tend to work to deter adult offenders from re-offending.

Conclusion

There is no doubt that prosecutors will now have to more carefully prepare and review their written statement of reasons for waiver in light of the opinion in State in the Interest of V.A. Prosecutors will also have to address the Supreme Court's concern that the issues of individual and general deterrence be analyzed in their written statement of reasons for waiver. Otherwise, they risk attack from the juvenile's attorney that their decision to seek waiver is an "abuse of (their) discretion" and a denial of their motion to involuntarily transfer the case to Adult Criminal proceedings.

It has now become somewhat easier to try to slow down the "waiver train."



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Prior to joining the bench, Judge Uhrmacher served as the Chief of the Civil Division of the U.S. Attorney's Office for the District of New Jersey. Additionally, she was Attorney-in-Charge of the Trenton U.S. Attorney's Office, and appointed to a Senior Litigation Counsel position. She also served as an Assistant U.S. Attorney for the District of New Jersey.

Throughout her career, Judge Uhrmacher has been active in Teaching and Continuing Legal Education programs. Currently, she serves as Chair, Haydn Proctor Inn of Court, Monmouth County and will be teaching a Trial Advocacy course in the Fall.

Judge Uhrmacher has received consistently high ratings from attorneys appearing before her in each of the New Jersey Law Journal surveys of the Judiciary.

Judge Uhrmacher received a JD from the University of Texas at Austin and a BS from Simmons College, Boston, Massachusetts.

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Capehart Scatchard is pleased to announce that **Nikitas Moustakas** has recently joined the Firm as a shareholder. A Mount Laurel resident, he counsels corporate and individual clients on a variety of legal matters including real estate/business acquisitions and sales, estate planning and administration, business transactional law, and community and homeowners associations.

Capehart Scatchard is pleased to announce that **Vincent T. Cieslik** has recently joined the Firm as a shareholder. Mr. Cieslik is Co-Chair of the Business and Banking Litigation Department. He represents banking and financial institutions and businesses in complex real estate and mortgage transactions and high-risk litigation. He also represents professionals such as accountants and lawyers, small businesses, large corporations, industrial and financial institutions in complex litigation.

William H. Tobolsky recently presented at the *Construction Fraud – From the Field to the Back Office* seminar before a large audience of CFMA members and guests. He and other panelists discussed numerous elements of fraud in the construction industry, including

financial fraud and tax evasion by owners, misappropriation and theft by employees, IT fraud, fraud on the job-site itself including no-show billed hours, substituting inferior products for the one's specified and billed for, Ponzi schemes and job pyramiding, and finally, detection of fraud, through tips, IT audit, internal procedures, and the like. His range of practice provides counsel to a large array of businesses including regional construction companies, employers representing the manufacturing and service sectors, as well as non-profits, religious institutions and charitable foundations and others in dispute. He is a member of the Marketing and Education and Governmental Affairs Committees of the Associated Builders and Contractors – New Jersey Chapter and has also served as co-chair of the Construction Law Section Newsletter Committee of the New Jersey State Bar Association, and a subcommittee of the American Bar Association Committee on Business and Commercial Litigation.

Capehart Scatchard Shareholder **Amy C. Goldstein**, recently spoke at a National Business Institute seminar on "Applying the Rules of Evidence: What Every Attorney Needs to Know" in Cherry Hill. Ms. Goldstein

presented on the various aspects of hearsay objections and exceptions. Ms. Goldstein has practiced all aspects of family law for 30 years. Her practice areas include marital and civil union dissolutions, alimony, child support, cohabitation and prenuptial agreements, child custody and related matters.

The law firm of Helmer, Conley and Kasselmann is pleased to announce that **James P. Lynch, Esq.** and **Michael D. Miller, Esq.** have joined the firm as of counsel. Mr. Lynch is well known to many through his former roles as First Assistant Prosecutor in both Gloucester and Camden Counties, as Acting Prosecutor in Camden county, as an Assistant US Attorney and through his many educational presentations to members of the bar and law enforcement community. He will expand the firm's practice in Federal charges and white collar crime as well as handling other criminal matters. Mr. Miller, also a former assistant prosecutor in Camden, has been in private practice in Camden County since 1983 and will continue to focus his practice in criminal and personal injury matters. He has served on the State Bar Ethics and Fee Arbitration committees.

PRESIDENT'S PERSPECTIVE

Dignity in Life and Death

Continued from Page 13

Recently, the NJ Assembly cleared a bill referred to as the "Death with Dignity Act." If the proposed bill is approved by the Senate, the bill will be presented to the voters. If enacted, the bill would allow doctors to prescribe terminally ill patients (diagnosed with less than six months to live) lethal doses of medication which they could take on their own. Supporters see this bill as providing options to the terminally ill, while opponents see it as a mandate for suicide. New Jersey has been in the national forefront of "death and dying" issues since our Supreme Court's decision in *In re Quinlan*, 70 N.J. 10 (1976), which allowed the parents of Karen Ann Quinlan, who was in a persistent vegetative state, to authorize discontinuance of life-support as Karen's legal guardians.

I know that when Raptor's suffering outweighs his quality of life, we will want to end his pain and allow him to die with dignity. The vet will tell us when that time comes. The voters of New Jersey will have to decide whether this option becomes available to our citizens.

NJSBA UPDATE

De Novo or Not De Novo (That is the Question)

Continued from Page 5

to introduce the same system that has worked so well for the upper Courts. Municipal Court Judges should be vetted before the now defunct County Judicial Appointments Committees for their initial three-year appointment and their first and second reappointment. On that second reappointment—now having served in the position for six years—they should receive tenure.

Thus far the NJSBA Municipal Court Practice Section and the NJSBA Board of Trustees have passed Resolutions recommending against a change. Interestingly the Attorney General agrees with us, arguing that the present practice provides a more developed record for review before the Appellate Division. It will be interesting to see if the Criminal Practice Committee heeds this advice, and how the Supreme Court ultimately resolves this thorny issue.

Send comments to:
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* In addition to finding the defendant not guilty, the Superior Court found a violation of the defendant's right to a speedy trial.

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MUNICIPAL COURT

New Jersey Supreme Court Set to Resolve Long Standing Issue in DWI and Refusal Cases

Continued from Page 6

enhancement purposes.

Recently, the Appellate Division, in *State v. Korpita*, was faced with the inverse of what occurred in *State v. Ciancaglini*. In this case, the Defendant was sentenced as a second offender on his refusal conviction, even though his only prior conviction was for DWI.

Based on the rulings in *Ciancaglini* and *Korpita* the issues surrounding sentencing for Defendants convicted of DWI and refusal appeared to be resolved. However, the New Jersey Supreme Court recently granted certification in *State v. Frye*, A-30-12. One of the issues before the Supreme Court is whether prior DWI offenses can be counted to sentence a defendant as a repeat offender on a refusal conviction, the opposite factual scenario in *State v. Ciancaglini* and the same as *State v. Korpita*.

In *State v. Frye*, the Defendant, who had two prior DWI convictions, plead guilty to a refusal charge. Based on his two prior DWI convictions, he was sentenced as a three-time offender and his driver's license was suspended for 10 years. Defendant, thereafter, filed a motion for reconsideration of the sentence based on the Court's decisions in *State v. Tekel*, 281 N.J. Super. 502 (App. Div. 1995), as well as *State v. DiSomma*, 262 N.J. Super. 375 (App. Div. 1993). The judge denied defendant's motion, concluding that defendant's two prior DWI convictions could be considered in imposing the sentence. *State v. Frye* N.J. Super 2012. The Defendant then filed a Motion to withdraw his guilty plea based upon his assertion that he was unaware of the 10

year loss of driving privileges when he entered his plea. This motion was also denied. *State v. Frye* N.J. Super 2012.

On appeal the Defendant argued that the Court imposed an illegal sentence when he was sentenced to a 10 year loss of driving privileges based upon the Supreme Court's decision in *State v. Ciancaglini*, 204 N.J. 597 (2011), which held that the penalty provisions in N.J.S.A. 39:4-50 and 39:4-50a are not interchangeable. *State v. Frye* N.J. Super 2012. In *State v. Ciancaglini*, 204 N.J. 597 (2011), the Supreme Court held that a defendant's prior refusal conviction could not be considered a prior conviction for purposes of enhancing the sentence for a subsequent DWI conviction. *State v. Ciancaglini*, 204 N.J. 597 (2011).

The Defendant also argued he should have been permitted to withdraw his guilty plea. The Appellate Division disagreed with both of these arguments and affirmed the lower Court's decision. *State v. Frye* N.J. Super 2012.

The New Jersey Supreme Court granted certification and will rule whether the Defendant's two prior convictions for driving while intoxicated can be counted to sentence him as a third-time offender for a conviction of refusal to submit to a chemical breath test under N.J.S.A. 39:4-50.4a; and whether the Defendant should have been permitted to withdraw his guilty plea to refusal under the circumstances of his case. **A-30-12 State v. Roger Paul Frye (070975)**

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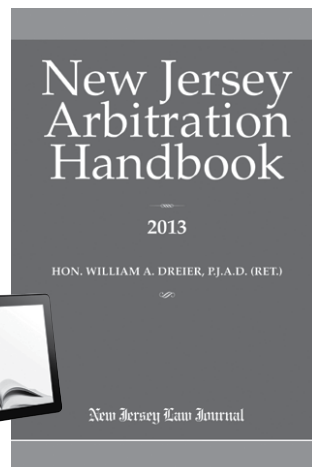
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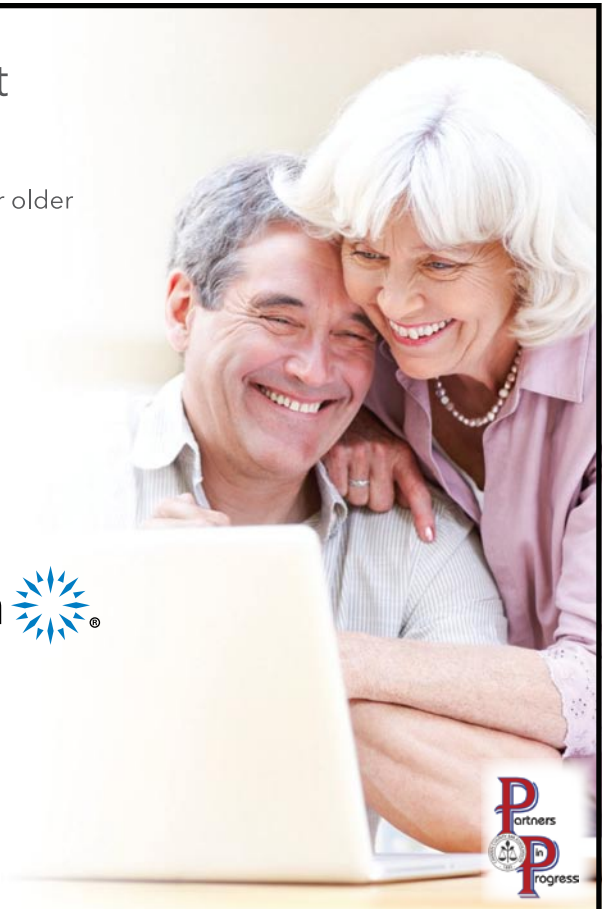
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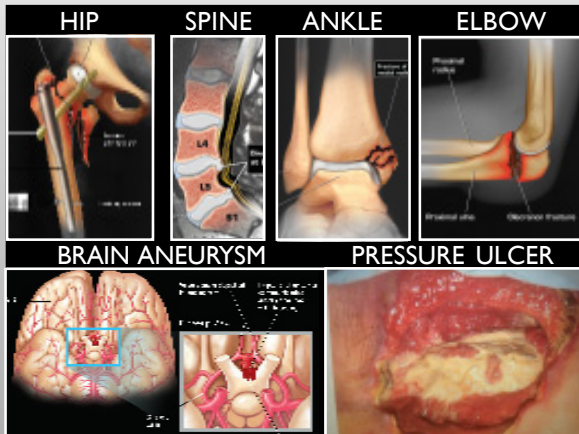
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