

# THE BARRISTER



Published by the Camden County Bar Association

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September 2009

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## Best of the Best High School Scholarship



**Charles (Charlie) A. Hobbs**, a 2009 graduate of Triton Regional High School in Runnemede, was the recipient of the Association's "Best of the Best" High School Scholarship Award. In addition to a \$250 CCBA scholarship, Charlie also received a \$1,000 award for being the best of the 28 Camden County High School students who received a scholarship. Charlie received his scholarship check at a special presentation at Triton Regional HS in July. On hand for the presentation (l-r) **Julie Scully**, Triton HS Director of School Counseling; CCBA President, **Rick DeMichele**; **Charlie Hobbs**; Scholarship program chairman, **Jim Hamilton**; **Catherine Kelleher**, Triton Vice Principal. Congratulations and good luck, Charlie! We wish you much success as you head off to Harvard!

## Autumn Scramble October 5th

*Experience the 2009 Autumn Scramble!*

What's new? For starters we've moved the Scramble back to one of New Jersey's finest courses and a golfer favorite – Scotland Run! And that's not all that's new. Because we appreciate your support we've reduced the entry donation to \$190 per player,

lowered the price for tee signs, and simplified our sponsorship and foursome packages to offer you the best golfing value in the area.

There's no better way to wind down the 2009 golfing season than

*Continued on page 7*



### SCOTLAND RUN

CHECK THE INSERTS FOR DETAILS & TO REGISTER!

## Pay Your Dues, Don't Miss Out!

The Association's dues policy states: Members, whose dues remain unpaid as of September 1, *will not be entitled to the benefits of membership. As long as dues are outstanding, unpaid members will not be able to attend member-only events, will pay non-member tuition rates for Association-sponsored CLE seminars and events, will be removed from the Barrister mailing list, will not be able to serve on a committee, and will not receive discounts and services provided by Association Partners in Progress.*

All benefits will be restored when dues are paid in full.

Paying promptly enables your Association to continue serving you and the community with its many important programs and services. This year's dues structure remains the same as last year.

*Continued on page 9*



## Annual Memorial Service set for September 14th

*CCBA pays tribute to departed friends & colleagues*

Members and former members of the Camden County Bar Association who passed away during the past year will be remembered and memorialized at the Bar's annual "Opening of Court" Memorial Ceremony at 9 a.m., Monday, September 14th in Courtroom 63 of the Hall of Justice in Camden.

All Bar members, family and friends are urged to attend the ceremony, which will be presided over by Assignment Judge Francis J. Orlando, Jr. A coffee and pastry reception immediately follows the ceremony.

"The Annual memorial ceremony is one of our Association's oldest and most meaningful traditions," said Edward D. Sheehan, chair of the Memorials Committee. "It is the one opportunity we have as an Association to come together and pay our respects to the memory of cherished friends and colleagues who are no longer with us. I urge Bar members to take the time and make every effort to join us on September 14th."

Those being memorialized and remembered, as of the date of

publication are: **William Davis, William K. Dickey, Pat Talarico, Matt Potena, Daniel J. Ward, James P. McDonough, Hon. E. Stevenson Fluharty, Surrogate Bruce MacNaul, Hon. Barry Weinberg and Hon. William Lipkin.**

Judge Orlando echoes the sentiment of Mr. Sheehan, stating "Your presence will demonstrate to the families of the deceased the high esteem and regard felt for their loved ones by their colleagues in the Bar Association."

As in past years, CCBA Partner in Progress Tate & Tate Certified Shorthand Reporters in Medford will donate their services to transcribe the proceedings and provide a complimentary transcript to the family of the deceased.



## Meet the Judges and Law Clerks Reception Sept. 22

*Mix & Mingle on the river!*

Kick off the new Bar year at one of the Association's most popular events, the "Meet the Judges and Law Clerks" Reception. Plan now to join your colleagues from 6 to 8 p.m. on Tuesday, September 22nd at the Camden County Boat-house on the Cooper River in Pennsauken. This annual member-only event features a two-hour open bar and an abundance of mouth-watering hot and cold hors d'oeuvres.

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## Dates To Remember

**Tuesday, September 1**

*Young Lawyer  
Committee Meeting*  
Noon  
Bar Headquarters

**Thursday, September 3**

*Municipal Court Practice  
Committee Meeting*  
4 p.m.  
Haddonfield Municipal Court

**Tuesday, September 8**

*Foundation Board of  
Trustees Meeting*  
4 p.m.  
Bar Headquarters

*Association Executive  
Committee Meeting*  
5:30 p.m.  
Bar Headquarters

**Wednesday, September 9**

*Committee Leadership  
Orientation*  
5:30 p.m.  
The Coastline, Cherry Hill

**Thursday, September 10**

*Family Law Committee  
Happy Hour*  
6-8 p.m.  
Taylor's, Cherry Hill

**Monday, September 14**

*Annual Memorial Ceremony*  
9 a.m.  
Courtroom 63  
Hall of Justice, Camden

**Tuesday, September 15**

*Power Strategies for the  
Profitable Law Firm Seminar*  
4-6:15 p.m.  
The Mansion, Voorhees

**Wednesday, September 16**

*Association Board of  
Trustees Meeting*  
4 p.m.  
Bar Headquarters

**Tuesday, September 22**

*Meet the Judges & Law Clerks  
Reception*  
6-8 p.m.  
Camden County Boathouse,  
Pennsauken

**Tuesday, September 29**

*Meet the Judges Up Close  
& Personal Seminar*  
4-6:15 p.m.  
Crowne Plaza, Cherry Hill

**CLE Materials:**

Seminar materials are available in three formats: compact disk, email or paper packets. To assist the CCBA in its efforts to control costs and respect the environment, it is strongly suggested that seminar participants request materials either on a compact disk or via an emailed pdf.

**CLE Payment Policy:**

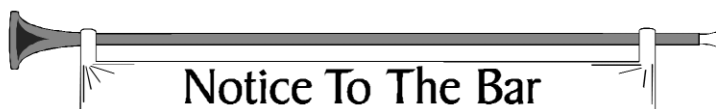
Seminar registration fees must be paid by cash, check or credit card, prior to the seminar. Anyone who must be billed will be charged an additional \$25 to cover the administrative costs associated with billing. Seminar presenters are also responsible for paying the Pennsylvania CLE credit fees. This policy applies to both pre-registrants and walk-ins.

**CLE Financial Hardship Policy:**

The Continuing Legal Education Committee of the Camden County Bar Association may, at its discretion, waive the course fee for any attorney, member or non-member, who wishes to attend an Association seminar, but for whom the cost would be a financial hardship. Requests for tuition waiver will not be accepted at the door. Requests for tuition waiver, along with an explanation of hardship, must be received in writing at least 10 days before the seminar via FAX to 856.482.0637. The payment of Pennsylvania Credit Fees is the responsibility of the attorney

**CLE Cancellation Policy:**

Full refunds will be given to registrants whose cancellations are received at least 48 hours before the program begins. No refunds will be granted thereafter. Substitute attendees, however, are welcome to attend. Pay at the door registrants are held to the same policy as prepaid registrants, and will be invoiced if cancellation is not properly received. Seminar materials will be provided to registrants who do not attend.



## Notice To The Bar

Please be advised that effective September 1, 2009 until further notice, Judge Lee Laskin has been recalled and has been assigned to sit in the Special Civil Part in Camden County. During this period Judge Ronald Freeman will be assigned cases in the Law Division with docket numbers ending in 86-99.

Cases in the Law Division are assigned as follows:

Judge Michele Fox	00-14
Judge Michael Kassel	15-29
Judge Louis Meloni	30-44
Judge Robert Millenky	45-59
Judge F.J. Fernandez-Vina	60-71
Judge Frederick Schuck	72-85
Judge Ronald Freeman	86-99

**George P. Coan****Civil Division Manager****Camden Vicinage****U.S. BANKRUPTCY JUDGESHIP VACANCY****Eastern District of Pennsylvania**

Chief Judge Anthony J. Scirica announces the application process for a bankruptcy judgeship in the Eastern District of Pennsylvania, seated in Philadelphia. Bankruptcy judges are appointed to 14-year terms pursuant to 28 U.S.C. §152. Current annual salary is \$160,080. Applicants must be members in good standing of the highest court of at least one state, the District of Columbia, or the Commonwealth of Puerto Rico, and in every other bar of which they are members. Applicants should have engaged in the active practice of law for at least five years; demonstrate outstanding legal ability and competence and a commitment to equal justice under the law; and indicate by their demeanor, character and personality that they would exhibit judicial temperament if appointed.

Qualified candidates will be considered equally and without regard to race, sex, age, disability, religious affiliation or national origin. An extensive background in bankruptcy practice is not required. The name of the candidate selected for the position will be published for public comment prior to appointment.

The application process is entirely automated. No paper applications or attachments will be accepted. Applications and attachments must be submitted electronically by **noon on Tuesday, September 22, 2009**. To apply, please email your request for an application to: [PAED\\_bankruptcy\\_application@ca3.uscourts.gov](mailto:PAED_bankruptcy_application@ca3.uscourts.gov)

## Tentative agenda for Sept 16 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.

**Agenda**

- 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 Report
- IX. Foundation Report
- X. NJSBA Update
- XI. New Business (if any)
- XII. Old Business
- XIII. Adjourn

**The BARRISTER**

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## Make CCBA YOUR CLE Source!

And help us in our "Green" efforts

It's CLE season again and the CCBA has planned another year of a variety of the quality seminars you need to earn your Pennsylvania CLE credits. Some, dating back to January 1, may also count toward NJCLE when it is instituted.

In addition to offering CCBA members a significant discount on seminar tuition, members whose dues are paid in full can take advantage of the CLE voucher they received with their dues notices to receive one free seminar on us! Additionally, we're giving you another way to save money just for being a Bar member — THE MAGIC NUMBER! — and you don't have to do a thing but register by the published RSVP date for the seminars you want to attend!

In our ongoing effort to reduce expenses to keep seminar tuition and dues at their current levels, we urge you to elect to receive seminar materials either by advance email or on a compact disk. Each seminar flier has a box

that allows you to check off how you want to receive seminar material, so please select one of the electronic options. If you do not make a selection, you will automatically receive your materials on a disk.

### PLEASE NOTE:

Be sure to check the monthly Barrister inserts for seminar notices.

Seminars will be held from 4-6:15 p.m., at THE MANSION in Voorhees unless otherwise indicated.

Attendees will not be allowed to enter the seminar until the tuition is paid in full.

CLE Credits will not be submitted to Pennsylvania until the CLE fee is paid, which is included in the seminar tuition.

We look forward to seeing you at seminars and events throughout the year! Remember, your dues for this bar year must be paid in order to receive the \$70 member tuition rate for seminars, use your CLE Voucher and to be eligible to win a Magic Number seminar on us!

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## September CLE Seminars

### September 15: POWER STRATEGIES FOR THE PROFITABLE LAW FIRM

This workshop was designed with efficiency, profitability and overall practice fulfillment in mind. Learn tips and tricks to make you and your firm more successful. The focus will be on how to control your practice instead of letting it control you. Workshop participants will walk away with specific points of practical, usable information that can be acted upon immediately.

Cynthia Sharp, founder of Sharp Talk and partner at Sharp Bratton is a noted member of the National Speakers Association and a certified consultant. She regularly presents seminars for the legal community, bar associations, individual clients and other organizations. Cynthia's practical wisdom comes from 28 years of law practice. She is truly the Voice of Experience.

Here's what prior workshop attendees have said about Cynthia's presentations:

"I found your motivational talks to be extremely to the point and truly enhancing when it comes to success in life's journey. The fine-tuning and the points you brought up really hit home. I'd certainly recommend your sessions for anyone who wants to be at the top of their game. Definitely a FOUR STAR course." -Workshop Attendee

"This is the most engaging CLE I've ever attended. Thank you." - Workshop Attendee

### September 29: MEET THE JUDGES – UP CLOSE & PERSONAL!

Here's your chance to hear firsthand from Assignment Judge Orlando and the Presiding Judges up close and personal! Ever wonder why court policies and procedures are as they are? Are they AOC rules or personal preferences of the Judge?

For the first time, you will have the opportunity to hear from each of the judges about their preferences, the do's & don'ts, and other important information you need to know when practicing in each division. Following a presentation by each judge, you will have your chance to ask questions about court policies and procedures to help you better prepare for court.

Look for the seminar registration fliers in this month's inserts  
to reserve your place for these exceptional seminars.

## NEW OCTOBER 2009!

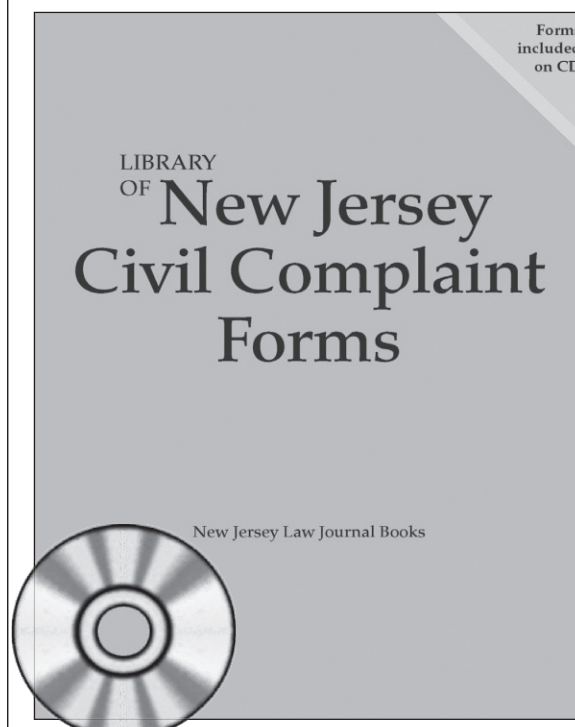
# Library of New Jersey Civil Complaint Forms

The New Jersey Law Journal is pleased to announce the October 2009 publication of New Jersey Civil Complaint Forms, a comprehensive library of over 120 complaints (in print and on CD), created, tested and honed by attorney-experts in the fields of:

- Employment Law
- Commercial Litigation
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New Jersey Law Journal



# NJSBA TRUSTEE'S REPORT

By Arnold N. Fishman, Esq.

State Bar Trustee for Camden County

## *What Have You Done For Me Lately?*

As your representative to the NJSBA Board, I have the privilege to serve on both the Camden County and the State Bar Boards. From that perspective I can see how important the organized bar is to the practice of law and the lives of the law's practitioners. As a Municipal Court maven, I am appalled that my clients, who generally see me within the first week of receiving their summonses, appear with a dozen letters from our colleagues offering to be their lawyer - many contain frightening messages. These lawyers routinely offer prices compatible only with pleading a person guilty, if a plea bargain is not offered. The question presented: Is that good for the public, the Bar, or the system?

A person has a right to plead guilty - and most do. There are those who maintain that acknowledging guilt and accepting its con-

sequence, is cathartic. I personally have never felt remorse over exceeding the posted speed limit. I would suspect that those few who seek out legal assistance expect real representation. The lamb to the slaughter mentality, which assumes that a conviction is inevitable, is problematic from all perspectives. The public is not served by this wholesale bargaining. They stand in long lines to plead guilty with a "factual" basis, to something they didn't do, in exchange for the something they did. Our clients have the right to have their defenses explored. Implicit in the guilty plea is the lack of meritorious defenses. Also, prosecutors know with whom they are dealing. They know which lawyers will go to trial, and which lawyers will not. The best pleas are reserved for those who are willing to assert the client's

position before the court. The profession is not served by our involvement in people sacrificing their defenses. (Notice, I do not use the word waive because a waiver requires a knowing relinquishment). Watching it happen is one thing, being complicit is another. JMC's, some of whom sit in so many towns that they make more than the Chief Justice of the SCOTUS, cowed by the loss of local favor, are hard pressed not to acquit. This makes the system lazy. Police addicted to winning do not prepare, and prosecutors equally habituated do not require them to be ready.

The New Jersey State Bar Association Professional Responsibility & Unlawful Practice Committee has proposed a change to RPC 7.3 to include personal injury plaintiffs in the 30-day ban on direct mail advertising to those

involved in mass disasters. At the July meeting the NJSBA Board responded to the concerns of some county associations and its own Municipal Court Section by resolving to support the proposal, and went on to include matters in the Municipal Courts. Persons facing the trauma of being called upon to defend themselves are entitled to time to reflect before being stampeded into a lawyer's office just as much as the others covered by the delay. While I concede that the First Amendment protects the practice, it should not be offended by a "cooling off" period. A 30-day delay permits the court to dispose of the "cattle shoot" cases, and at the same time offer the wide availability of attorneys necessary for healthy competition. I commend the organized bar in being responsive to those needs and taking a principled position. It is why I employ the word privilege when addressing my service on the State and County Boards.

*The following is a summary of actions taken at the July 17, 2009 meeting of the New Jersey State Bar Association Board of Trustees at the New Jersey Law Center in New Brunswick. This summary does not constitute official minutes.*

### **Mandatory Continued Legal Education**

President Allen A. Etish reported a successful June 30 meeting with the New Jersey Supreme Court and key officials from the Administrative Office of the Courts. Mandatory Continuing Legal Education was a central topic. Court officials said an update would be issued on the status of the concept as early as September.

### **New Trustees**

Two new trustees were sworn-in to the Board. Douglas Steinhardt, Lopatcong's Mayor and a partner at Florio Perrucci Steinhardt and Fader in Phillipsburg, is the Warren County trustee. Francis Koch, an assistant Sussex County Prosecutor and past president of the Sussex County Bar Association, is the representative from Sussex County.

### **Solicitation letters**

The Board of Trustees overwhelmingly supported the proposed change to RPC 7.3 on mail solicitations. The Board passed a resolution further urging a 30-day ban on mailings in municipal, criminal and negligence matters, unless an attorney has a personal relationship with a party.

### **Lobbying efforts**

Public Strategies/Impact lobbying firm will be retained to help improve the association's efforts in Trenton. The agency will work with association staff members to help influence legislation and garner meetings with key legislators. Association members, officers and directors will continue to serve as its public face and voice.

### **Name change**

The Board adopted a name change to Solo and Small Firm Section for what had been known as the General Practice Section. The change is a reflection of the demographics and focus of the section, said Etish.

### **Pro bono**

The Board agreed to hold an event during National Pro Bono week in October where a permanent plaque will be revealed memorializing past state bar Pro Bono award winners.

### **Other business**

The Board of Trustees also acted on a number of other matters, including:

A resolution supporting the American Bar Association's efforts opposing a Federal Trade Commission rule that would require lawyers to screen and report on potential identity theft.

Sending a letter to the state Division on Taxation regarding a change that would make taxable the undistributed earnings from charitable remainder trusts, an estate-planning mechanism.

Taking a survey of major banks to determine which best accommodate lawyers in real estate closings.

A resolution recognizing the work of the New Jersey Commission to Review Criminal Sentencing.

## **MEDIATION, ARBITRATION AND APPELLATE PRACTICE CONSULTATION**

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# VERDICTS IN THE COURT

Superior Court of New Jersey

VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): L-4277-06	No Cause (06/04/09) Frederick J. Schuck, J.S.C. Edward Crisonino, Esq. George Cortelyou, Esq. Jury	VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): -575-07	No Cause (06/25/09) Frederick J. Schuck, J.S.C. Steven Passarella, Esq. Jacqueline McDonald, Esq. Jury
VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): C-107-08	Favor of Plaintiff - No damages (06/04/09) Mary Eva Colalillo, J.S.C. Fara Sobel, Esq. Charlene Cathcart, Esq. Bench	VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): -4529-07	No Cause (06/24/09) Ronald J. Freeman, J.S.C. John J. Lack, Esq. Rachel V. Haninczak, Esq. Jury
VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): L-592-07	No Cause (06/04/09) Robert G. Millenky, J.S.C. Anthony Marcozzi, Esq. Murianda Ruffin, Esq. Jury	VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): -5087-07	No Cause (06/25/09) Michele M. Fox, J.S.C. Ronald Edelman, Esq. Raymond Danielewicz, Esq. Jury
VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): L-188-07	No Cause (06/10/09) Ronald J. Freeman, J.S.C. Jeffrey Hark, Esq. Laurie Tilghman, Esq. Jury	VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): -5097-07	No Cause (06/25/09) Michele M. Fox, J.S.C. Brian O'Connor Raymond Danielewicz, Esq. Jury
VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): L-4950-06	\$61,200 Damages Defendant (06/15/09) Robert G. Millenky, J.S.C. Michael Mignogna Anthony Castellini Jury	VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): -7427-06	No Cause (07/07/09) Ronald J. Freeman, J.S.C. Donna Friedel, Esq. Daniel DiStasia, Esq. Jury
VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): L-5886-06	No Cause (06/12/09) Michele M. Fox, J.S.C. Morton Shifkin, Esq. Raymond Danielewicz, Esq. Jury	VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): -5273-06	No Cause (07/09/09) Frederick J. Schuck, J.S.C. Jason Sunkett, Esq. Michael Malia, Esq. Jury
VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): C-114-098	Favor of Plaintiff - No Damages (06/15/09) Mary Eva Colalillo, J.S.C. Roger Mattson, Esq. Paul Dougherty, Esq. Bench	VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): -2186-07	No Cause (07/08/09) Michele M. Fox, J.S.C. S. Tatonetti, Esq. Miranda Ruffin, Esq. Jury
VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): L-7420-06	No Cause (06/16/09) Ronald J. Freeman, J.S.C. William Stopper, Esq. Laurie Tilghman, Esq. Jury	VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): -6634-06	No Cause (07/16/09) Louis R. Meloni, J.S.C. Paul Melleiz, Esq. Anthony Castellani, Esq. Jury
VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): L-8787-04	Settled During Trial (06/16/09) Michele M. Fox, J.S.C. Robert Joseph, Esq. Francis Ryan, Esq. Jury	VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): -8275-06	No Cause (07/24/09) Frederick J. Schuck, J.S.C. Richard DiTomaso, Esq. Laurie Tilghman, Esq. Jury
VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): L-137-07	No Cause (06/18/09) Robert G. Millenky, J.S.C. Barry Wendt, Esq. Laurie Tilghman, Esq. Jury	VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): -1205-07	No Cause (07/29/09) Michele M. Fox, J.S.C. Bruce Resnick, Esq. Colleen Ready, Esq. Jury
VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): L-4433-06	No Cause (06/24/09) Louis R. Meloni, J.S.C. Gary Pisenchia, Esq. Donald Bigley, Esq. Jury	VERDICT: Judge: Plaintiff's Atty(s): Defendant's Atty(s): -5825-08	No Cause (07/28/09) Ronald J. Freeman, J.S.C. Solomon Rubin, Esq. Andrea Hemscott, Esq. Bench



## GERROW COURT REPORTING CERTIFIED COURT REPORTING

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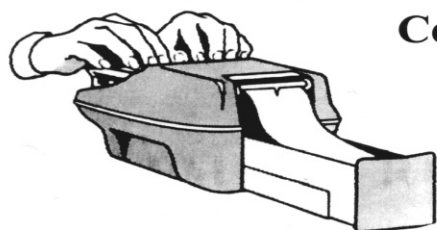
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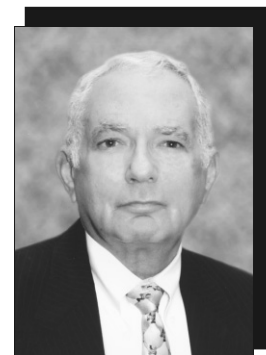
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# THE USUAL SUSPECTS

*"The voice of New Jersey, the best State money can buy."*



By M.W. Pinsky  
mike@mwpinsky.com

*"Do not walk behind me,  
for I may not lead.  
Do not walk ahead of me,  
for I may not follow.  
Do not walk beside me either.  
Just pretty much leave me  
the hell alone."*  
- Anonymous

*"A little sincerity is a  
dangerous thing, and a great  
deal of it is absolutely fatal."*  
- Oscar Wilde

*"A man cannot be too  
careful in the choice  
of his enemies."*  
- Oscar Wilde, The Picture  
of Dorian Gray (1891) Chap.1.

## THEM JEWS

Dateline: Washington. The Reverend Dr. Field Marshall Jeremiah Wright, President Barack Obama's former minister and spiritual advisor, was asked during

an interview on a Washington, D.C. radio station if he wanted to meet with President Obama to mend fences. Reverend Wright replied that he was willing to forgive the President for dumping him but "them Jews won't let me see him." It's a credit to our President that he was able to sit through 20 years of Reverend Wright sermons and many one-on-one discussions and never heard one bit of racial or anti-Semitic bigotry. "Them Jews" must have it all wrong, as usual. Incidentally, the President never saw fit to comment on Wright's latest anti-Semitic babblings.

## EXIT STRATEGY

Dateline: Camden. A large piece of the heart and soul of the Camden County Prosecutor's Office will be retiring this coming December and they will be sorely missed by prosecutors and defense

attorneys alike. Two, Donna Spinosi and Stephanie Leibovitz have already pulled up stakes and at least six more geezers will be gone by the end of December.

The soon to be dearly departed include the wildly popular John T. Wynne, the irrepressible Mindy Mellits, the sharp-tongued but lovable Mike Chewkanes, the beautiful and gracious Leslie Dicker, the solidly consistent and dryly humorous Greg Smith, and the latest departee that fair-skinned charmer Bob Luther. All of the above have had long and honorable careers and their wisdom and experience will be deeply missed by their colleagues on both sides of the aisle.

## NO ACCOUNTING FOR TASTE

Dateline: Camden. Defense attorney Lou Caggiano is without doubt one of the nicest and most inoffensive lawyers practicing in

Camden County. In fact, we doubt if Lou has an enemy in the world, at least not a human one. Recently, Lou strolled quietly into one of the criminal courtrooms occupied, inter alia, by a visually impaired individual and his perfectly trained guide dog. The guide dog was seated at his master's feet quietly doing his job but as Lou approached, the dog suddenly and inexplicably attacked, chomping a huge piece of Lou's pant leg away. Fortunately, Fido got only a mouthful of fabric for his trouble and Lou's leg remained intact.

## VICK AND SHTICK

Dateline: Philadelphia. The Philadelphia Eagles may not win Superbowls, ever, but they are most certainly champions of pure shtick. In Yiddish, a shtick is defined as a piece of misconduct or a devious trick; a bit of cheating. "How did you ever fall for a shtick like that?" When the Eagles signed Michael Vic, they knew there would be a negative reaction from many people so they rolled out a shtick campaign starting with Coach Andy Reid at the press conference gushing about Michael Vick's admirable rehabilitative efforts and "good works" as he strides the path to redemption. Strange, since the dog killer has only been out of Federal Prison for two weeks. Big Red babbled on about second chances although clearly the Eagles have never been in the business of second chances. Like any other big corporation, the Eagles historically have cut loose loyal, longtime players at the drop of a hat.

Next, former NFL coach Tony Dungy mysteriously has emerged as Vick's onboard moral guide. How obvious and orchestrated is that? For the piece de resistance, Eagles owner Jeffrey Lurie went into a blah, blah, blah about how atrocious and despicable Vick's crimes were and how he met with him for hours looking for signs from Vick of self hating. Apparently, Vick exhibited a sufficient degree of self-loathing to satisfy Lurie.

Meanwhile, the NFL Commissioner announced that Vick

would be permitted to play in the NFL by the sixth game at the latest. He also will be allowed to practice and play in several pre-season games. Oh my, how harsh.

Unless, dear readers, you are terminally naïve, you will conclude that the Eagles saw a chance to hire a top quarterback at a reasonable price to back up the injury-prone Donovan McNabb. The rest is history and shtick.

Apologists now say that Vick paid his debt to society by involuntarily serving a jail sentence and should be welcomed back to the NFL. Not true. Vick is a convicted felon still on supervised release, the Federal equivalent of parole. I wonder if his United States Probation Officer will attend games and, if so, how will he get a ticket.

From the point of view of the Old Suspect, any man that would commit the crimes of Michael Vick has established beyond a reasonable doubt that he has a bestial nature and a depraved mind and spirit. The fact is that Vick is still awash in blood and hasn't even begun to prove that his depraved character has changed one bit. The Eagles well knew that the Chickie's & Pete's crowd could care less about the moral issues and calculated that the ministorm would soon pass. They were right. The drunken buffoons that make up a significant portion of the Eagles nation will continue to pack the stadium, tailgate into oblivion and pounce on any available tickets given up by disgusted fans.

The Old Suspect has been an Eagles fan all his life having attended his first Eagles game at Shibe Park in 1945 and stuck with them through thick and thin (mostly thin). If our present revulsion continues unabated, I will probably suspend my stupid allegiance indefinitely.

We also beg to report that a good friend, who is quite fey, has called forth a curse upon the Eagles commencing immediately. "Boil and bubble toil and trouble fire burn and cauldron bubble."

*Continued on page 7*



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# THE USUAL SUSPECTS

Continued from page 6

## OBAMARAMA

Dateline: St. Louis. President Obama threw out the first ball for the National League All Star game or, at least tried to. It might be more accurate to say that the President pushed out the first ball as he apparently throws like a 1950's girl. But no insult intended to modern women and girls many of whom, including my 11 year old granddaughter, can easily deliver the ball into the catcher's mitt. President Obama, unfortunately, only managed to get it to the catcher on one bounce.

Is it cruel to mention that former Presidents George Bush and Bill Clinton both had good arms and acquitted themselves admirably in similar circumstances?

## MISCHIEF

Dateline: Newark. Once again, a gaggle of New Jersey politicians have been charged with various types of political corruption. In fact, recently, 42 New Jersey politicians and a few clergymen of dubious repute were rounded up

by the Feds and transported to Federal Court in Newark where they were all quickly released. Apparently, there were no requests by the U.S. Attorney's Office for pretrial detention. It is absolutely bizarre how the powers that be treat political corruption like some form of enhanced mischief. It is assumed, particularly in the Federal system, that drug offenses automatically constitute a danger to the community justifying pretrial detention but that pervasive political corruption poses no danger to the community.

This month's "bag" included two New Jersey Assemblymen, three Mayors of major cities, and assorted lower level corrupt officials. The Assemblymen resigned when their salaries were cut off but at least one of the Mayors is clinging to his job.

*Threats, curses, maledictions and assorted evil spells should be sent to our e-mail address of mike@mwpinsky.com. The identity of lunatics, crazies and village idiots will be zealously protected.*

Continued from front page

the 2009 Autumn Scramble @ Scotland Run and outing co-chairs Brenda Lee Eutsler and Alan Schwalbe invite all members to participate whether you play golf or not. "This has always been one of the Foundation's most successful events, and we think you'll like our move back to Scotland Run." commented Eutsler. "In addition to the money raised for the Foundation's important community service projects, it's also a great event for socializing and networking with friends and colleagues in a relaxed atmosphere." she added.

At just \$190 per player, including greens fees, cart, gifts, lunch, happy hour and awards banquet, the Autumn Scramble is the best golfing value in South Jersey! And you don't have to make a hole-in-one to walk away with some great gifts and prizes.

Of course, the real winners are the less fortunate in the community who will benefit from the Foundation-sponsored parties and projects made possible by the pro-

ceeds from this annual rite of Fall. Bar members are encouraged to organize firm teams or invite non-lawyer clients and friends to participate in this special event.

The fun begins at 11 a.m. when the driving range and putting green open for that last minute warm-up, followed by lunch at Noon, and a shotgun start at 1p.m. After golf, enjoy open bar cocktails, before the Awards Banquet.

A number of sponsorship/marketing packages, including special foursome deals and tee signs are available. Please use the Autumn Scramble registration flier included with the inserts to read more about this year's outing,

then sign up to participate!

Now celebrating its 18th year, the Outing has raised more than \$200,000 to support the Foundation's many community service programs, and has something for everyone, whether you golf or not!

The deadline to register is September 28th. For additional information about the Autumn Scramble or Marketing/Sponsorship opportunities, call Bar Headquarters at 856.482.0620 or email [lbpc@camdencountybar.org](mailto:lbpc@camdencountybar.org).

Don't miss one of South Jersey's premier golf outings — the Autumn Scramble at Scotland Run!

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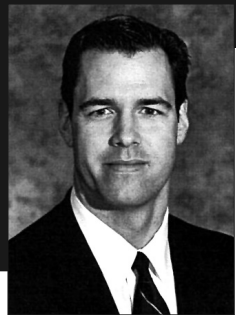


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## INVESTMENT CORNER



# Obstacles on the Road to Retirement

by John G. McCormick, JD, ChFC  
john.mccormick@axa-advisors.com

You can see the light at the end of the work tunnel: it's called retirement, and it's coming into view. You're feeling pretty good about it too, because you've done what you were supposed to do: socked money into a 401(k), IRA, and/or mutual fund, paid off the house, eliminated your debt. You're in good shape. But this is no time to become complacent, especially since there are four key risks that loom, threatening to derail your plans if not faced head-on. Some may be outside your control, but that doesn't matter. What matters is being able to address and overcome them to keep your retirement on track.

## RISK #1: INFLATION

Every year, a pesky little thing called inflation erodes the buying power of a dollar. A few cents here, a few cents there... after a while, it adds up. Thirty years ago, a gallon of milk cost about half as much as it does today. That means that if you buy a gallon of milk tomorrow, your same dollar will only stretch halfway to the dairy. For working people, these changes go virtually unnoticed since salaries generally keep pace with inflation. But, when your income becomes fixed – as is often the case in retirement – the changes hit a little harder. Add to it the real possibility of a 30-year (or longer) retirement, and suddenly inflation becomes a formidable risk to your purchasing power. You may begin your retirement in good shape financially, but

if your income is not indexed to keep up with inflation, you may find yourself much worse off a few decades down the road.

So, how much is inflation? The Consumer Price Index acts as the bellwether for our economy's inflation. Essentially, it compares the price changes of various products and services and calculates the difference in the dollar's buying power year to year. Over the last decade, the average increase has floated between 2 - 4%.<sup>1</sup> But, to put it into perspective, consider this: today, you will have to spend \$24.57 to purchase the same thing you could buy for \$10 in 1980.<sup>2</sup>

To preserve your standard of living, your retirement budget needs to adjust accordingly year after year.

## RISK #2: MARKET PERFORMANCE

Sometimes, it's the luck of the draw – you may plan to retire at age 60, and then find that once you reach that age, some circumstance outside your control is woefully impacting market performance. Believe it or not, something as cyclical as a bear market could significantly erode your retirement savings. Therefore, the year you retire will impact how much you have to draw upon going forward. Though you cannot predict if the market is about to take a downturn and if so, for how long, you can periodically evaluate market performance and adjust your budget accordingly to adapt to the market's volatility and help your dollars stretch farther into the future.

Besides conscientious portfolio evaluation, another way market risk can be mitigated is through annuities. These products are designed to preserve your capital while creating a guaranteed income stream for a duration of your choosing – be that several years, several decades, or for as long as you live. When it comes to annuities, there are many options, including how they are funded and how much risk they carry. A financial professional can explain the variations and help you decide if these types of products might complement your overall plan.

## RISK #3: LONGEVITY

When it comes to living a long life, most of us think the longer, the better! But when it comes to preparing to finance a retirement of 30 or 40 years, longevity becomes an important

planning factor. No one wants to outlive their money or become a burden on their family. Therefore, making sure you save enough to last as long as you do is critical.

In April of 2006, the CDC's National Center for Health Statistics reported that the average life expectancy for Americans had reached an all-time high: 77.9 years.<sup>3</sup> Women are living an average of 80.4 years while men are living 75.2 years.<sup>4</sup> Mind you, that is just the average. By definition, an average means that, statistically, half fall below and half fall above those numbers. Thus, there's a fairly good chance one member of a couple will live past "life expectancy." Will you be prepared if it's you?

Projecting retirement income in a variety of scenarios is a wise approach. It is beneficial to know just what you can afford to withdraw given various circumstances. That way, you are prepared to maneuver or make alterations to your plan as need be.

## RISK #4: GETTING YOUR DUE

Depending on your circumstance, you may expect to receive income from an employer-sponsored retirement plan or pension as well as Social Security and your personal savings. You may even be lucky enough to get retirement health coverage through your former employer. All of these components play into your overall retirement strategy. But, if one or more of these factors are reduced or disappear entirely, do you have a contingency plan?

## If Your Pension is Discontinued

It's a frightening predicament in which too many Americans have wound up. Though you should, by all means take advantage of all these benefits if available to you, you should also make sure you don't put all your eggs in one basket, just in case. Remember, diversification decreases risk. If the worst should happen and your company claims bankruptcy or defaults on pension payments, the Pension Benefit Guaranty Corporation (PBGC) is an organization that picks up the tab for programs insured through them. Recipients may receive a reduced amount, but at least they receive something. To find out if your pension is insured through PBGC, go online to [www.pbgc.gov](http://www.pbgc.gov) or call (800) 400-7242.

## If Your Health Insurance is Discontinued

Fewer and fewer companies are offering health insurance to their retirees. Thankfully, Americans qualify for Medicare once they turn 65. If you find there will be a gap between when your employer-sponsored insurance ends and your Medicare begins, you can investigate COBRA options through your company's plan, or you might consider buying a high-deductible (also called "catastrophic") plan to get you through. Though Medicare does well as the country's largest insurance program, it does not cover everything associated with medical care. There are some out of pocket costs, especially for vision, dental, and podiatric care. Further, Medicare does not cover longterm care unless directly associated with a hospital stay; even then it only covers the first 3 months of care. To learn more about what is and is not covered through Medicare, visit [www.medicare.gov](http://www.medicare.gov).

## LONG-TERM CARE

As we age, the likelihood of needing some form of assistance increases. Unfortunately, the cost of long-term care is extremely high and could quickly erode retirement savings if you or your spouse should need prolonged help performing the activities of daily living. There are two ways individuals can protect themselves: long-term care insurance and living care riders. Long term care insurance policies are stand-alone insurance contracts that will, in accordance with policy specifications, pay for qualified long-term care costs if such care is ever needed. These policies can be expensive, and if the owner never needs care, the premium payments will have been spent for naught. A living care rider works a bit differently. Unlike stand-alone policies that require years' worth of premiums, some insurers now offer a living care rider which can attach to qualified permanent life insurance contracts for a fee. This rider can accelerate the permanent policy's death benefit, if necessary, to pay for the costs associated with long term care. If, on the other hand, long term care is never required, the permanent policy remains as is, and no additional premiums have been wasted. For specific information about long-

term care costs and the types of insurance products available, contact your financial professional.

## SOCIAL SECURITY

Though there has been much discussion about Social Security and its future, analysts seem to think cuts to the program will impact generations to come more so than today's pre-retirees. If benefit reductions are ever required at all, they will be phased in over time. People who are already retired or planning to retire in the near term should not be affected. For more information on Social Security benefits, visit [www.ssa.gov](http://www.ssa.gov). Retirement is a new chapter in which you can explore options you never had the freedom or time for before. You've worked hard and kept your eye on the ball financially. Now, it's time to stare down those four key risks and make sure you're ready if they should ever present themselves. For a thorough assessment of your retirement plan, contact your financial professional today.

*AXA Advisors does not provide tax or legal advice. The information provided is based on our general understanding of the subject matter discussed and is for informational purposes only. Please consult your tax and/or legal advisors regarding your particular circumstances.*

*This article is provided by John McCormick. John McCormick offers securities through AXA Advisors, LLC (member FINRA, SIPC) 9 East Stow Road, Suite A/Marlton, NJ 08053, and offers annuity and insurance products through an insurance brokerage affiliate, AXA Network, LLC and its subsidiaries. GE 39692(05/07)*

1 Bureau of Labor Statistics: Consumer Price Index Table; February 21, 2007

2 Bureau of Labor Statistics: Inflation Calculator; February 28, 2007

3 Centers for Disease Control and Prevention; April 19, 2006; [www.cdc.gov/od/oc/Media/pressrel/r060419.htm](http://www.cdc.gov/od/oc/Media/pressrel/r060419.htm)

4 Centers for Disease Control and Prevention; April 19, 2006; [www.cdc.gov/od/oc/Media/pressrel/r060419.htm](http://www.cdc.gov/od/oc/Media/pressrel/r060419.htm)

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Continued from front page

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sional and social activities designed to enhance your law practice; discounts on many legal products and services; and much more.

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**REMEMBER:** The upcoming Meet the Judges & Law Clerks Reception is a Member-only event, which requires that dues be current to attend.

## Meet the Judges and Law Clerks Reception Sept. 22

Continued from front page

"The Meet the Judges and Law Clerks Reception is a terrific way for members of the bench and bar to mix and mingle on an informal basis," said Bar President Rick DeMichele. "It's an opportunity to meet the Judges and law clerks of the Camden County Superior Court and its Appellate Division, United States District Court for the District of New Jersey, and the

Workers' Compensation Court, in a relaxed setting conducive to conversation. I urge all members to take advantage of this unique, member-only occasion for camaraderie, networking and getting back into the Bar year."

Use the registration flier included in this month's inserts to register early and guarantee your place at this traditionally sold-out, member-only event.

## Nominations Sought for Devine Award

The Hon. Peter J. Devine, Jr. Award Committee is accepting nominations for this year's award.

The Devine Award is the highest honor afforded to the membership and is bestowed upon a member for distinguished service to the Camden County Bar Association. The Committee is chaired by Louis R. Moffa, Jr., a partner with Montgomery, McCracken, Walker & Rhoads, LLP

Please use the Devine Award

Nomination Form included in this month's inserts to nominate a colleague who has provided distinguished service to the Association and the legal community in Camden County. Nominations must be received by October 9, to be considered.

The award will be presented at the Annual Devine Award Luncheon on Friday, January 29, 2010.

## CCBA Offers New Cutting-Edge Hi Tech Member Benefit

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The CCBA has become a member affiliate with iamici.com, a professional networking website built exclusively for the legal community and encourages all members to join iamici.com to take advantage of all the resources it has to offer. And best of all, it's free! Logon to [www.iamici.com](http://www.iamici.com) to join the cutting-edge world of online legal resources.

When you join iamici you can work more effectively in the modern legal environment by using internet-based tools for legal professionals. Site Groups provide email-lists, Chatrooms, Messaging, File-Sharing and other helpful functions. Each CCBA committee can now have an iamici group dedicated to its work allowing committee members to communicate and share resources

more efficiently than ever before.

With iamici, you can also research and remain connected to the latest news feeds, legal resources and blogs. Dozens of research tools are available as are legal and general news feeds that are continually imported and updated. You can read and participate in online discussions through iamici's Blogs or host your own blog.

You can also develop an internet presence and increase your marketing efforts with iamici by creating a profile and linking to colleagues within the CCBA or around the state and country. Share your expertise through messages, blogs and the iamici Forums on dozens of practice



areas. Use Classifieds to market yourself and your firm or to meet employment needs.

So take advantage of this opportunity today and begin to reap the benefits of the latest online technology. Membership is free, easy, fun and extraordinarily useful.

The CCBA is pleased to provide this value-added member benefit and all of the resources it offers our members, and hopes you will take advantage of this and all of the other benefits your membership in the CCBA provides!

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*Cynthia and Chris are members of the National Association of Consumer Bankruptcy Attorneys.*

*Cynthia Sharp was featured as an Awesome Attorney in South Jersey Magazine (September of 2007).*

*Chris Bratton was featured as a Rising Star for 2009 in New Jersey Super Lawyer Magazine (April of 2009).*



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## MARKETING MATTERS

# Let's Be Clear: Developing New Business is NOT About Selling (Part 1 of 2)

by Kimberly Alford Rice

Previously published in the *Legal Intelligencer*



What would have been your reaction if when starting a private practice you were told you needed to know how to sell to have a successful legal career?

"Sell what?"

"I didn't complete years of educational training to be a salesperson."

"I'm a legal professional, not a sales rep."

Yet, many lawyers seem to be astounded when they realize (or someone helps them realize) that when they are practicing in a private law firm or in their own firm, new business doesn't usually materialize on its own. What must happen, then, between looking to open a new matter and building a healthy book of business? How does the business "come" to you?

In nearly 20 years of law marketing, I have worked with hundreds of lawyers in all sized firms who seem to have at least one thing in common: they are similarly repulsed by the notion that to generate new business they must "sell" their services to likely buyers.

There is clearly a "disconnect" between what lawyers perceive to be "selling" and what is traditionally labeled "business development."

To many, the concept of selling is an unseemly and distasteful, less-than-ethical process which evokes images of used car dealers and ambulance chasers, and one which causes them to cringe. Often, these folks fear to be successful in building a practice, they

will have to alter their authentic persona and adopt a more "pushy" and adversarial approach to generate new work. This mindset could not be further from the truth. Let me be clear, developing new business is NOT about selling.

The best business generators develop clients not coercing them to "buy" something they may or may not need but by employing some of the same critical habits they apply when delivering their services to clients:

- Genuinely caring about their clients' best interests and success
- Actively listening to clients' needs and concerns
- Identifying issues which may cause harm to clients and/or their businesses if left uncorrected
- Cultivating relationships which are predicated on building mutual trust and respect
- Routinely solving often difficult problems

Ok, if developing new business doesn't require selling, what exactly does it involve?

I will outline five principles which, if followed, will not only ease your anxiety about the business development proposition but which will also lead you to a more enjoyable client building experience and a bigger book of business.

## Build Rapport

We've all been told that it's "easier to catch more flies with honey than with vinegar," but when we examine that adage, what does it seem to suggest? Be a suck up? Behave in a contrived manner to get what you want? Not necessarily.

I would suggest that we

embrace the more positive message of being kind to and making a connection with others. Herein lies the similar message of building rapport: to take a genuine interest in your prospects, their business and the challenges they face, and communicate that effectively in a variety of ways.

In a recent study measuring how people purchase professional services, 30% of professional services purchasers surveyed reported they had experienced no personal connection or chemistry with a professional services provider. (This may not seem like an issue unless one of those providers was your counsel when a former client filed a claim against you).

In this same study, 85% of the "unconnected" buyers would be either "somewhat or much more likely" to purchase their services if they felt some level of personal chemistry was present.

While there is nothing new about building rapport with prospects and clients, the concept is often mishandled.

First and foremost, when engaging a prospect, be your authentic self. That's right, just be yourself. (Ok, be your "best" self). Don't try to be anything that you are not. It'll show.

Second, pay attention to timing. As much as you want to do business with someone, it's not going to happen until the purchaser (prospect) is ready. Relax. Cultivating genuine relationships cannot be rushed or forced. That said, don't forget the "tending." Once you have established a connection with a prospect, proactively "attend" to it. Make regular

contact; invite the prospect to an event or meal. Go out of your way to try to help that person in some way. Your efforts will be rewarded at some point.

Third, fully engage. Similar to the dating process, you want to ask open-ended questions to learn more. As you learn more about your prospect and her business, opportunities will arise to offer advice or suggestions on how to help her. This exchange will go a long way to demonstrate to the prospect your level of interest and genuine intentions.

Fourth, tune in. When you engage in one-on-one communication with someone (not just a prospect), actively listen to them. That doesn't include formulating your next thoughts while the other person is speaking. Nor is it okay to scan your Blackberry emails or jot down notes on an unrelated issue. Really tune in and focus on what the other person is saying. Not only will you show the person courtesy but you may discover issues/problems with which you may help that might not have otherwise been uncovered. Seems simple, but it is a recurrent complaint among clients that their legal advisor does not really listen to them.

Lastly, be prepared to accept that you will not share a chemistry with everyone you meet. That's to be expected. We all have a unique nature. Despite that, extend courtesy and respect to all knowing that referrals emanate from all sources.

In the second installment, I will address the remaining four points which illustrate why developing new client relationships does not involve selling, in the traditional sense of the word.

*About the Author: Kimberly Alford Rice is Principal of KLA Marketing Associates (www.kla-marketing.net), a business development advisory firm focusing on legal services, and a CCBA Associate member. As a veteran law marketer of twenty years, Kimberly has helped numerous law firms and hundreds of lawyers develop critical business development and marketing strategies which lead to new clients and increased revenues.*

## Sheriff's Capture Title

As if apprehending fugitives and providing public safety were not enough, members of the Camden County Sheriff's Department and other officers from P.B.A. #277 captured their first Camden County Bar Association softball league title on August 12, 2009. By winning all five of their playoff games and all twelve of their regular season games, P.G.A. #277 is believed by league historians to be the first team in our thirty-two year history to have completed a perfect season. Co-managers Tony DiLorenzo and Herb Mogck applauded their players' dedication to winning every game with lineups that sometimes had to vary as a result of superseding professional demands.

League Commissioner Jeff Klinger reports that this season's experiment with a two division format was a success. There will be opportunities for new teams who want to play in either the more competitive or less competitive division, to join the league in 2010.

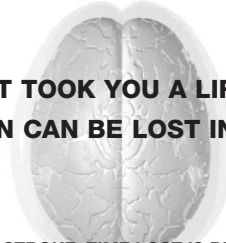
The final regular season standings are as follows:

	A			B	
	W	L		W	L
P.B.A. #277	12	0	Archer & Greiner	6	5
Par 4 Landscaping	8	4	Prosecutors	4	7
Young Lawyers	8	4	Flaster/Greenberg	2	9
Brown & Connery	7	5	Parker McCay	0	11
Barristers	6	6			

The new champs had to defeat last year's winner, the Barristers, and this year's closest competitor, Par 4 Landscaping, in the playoffs, which they did in five straight games.

The 2009 P.B.A. #277 team includes: Todd Ferry (P), Scott Mennel (P), Paul Robeson (1B), Mike Barr (2B), Brian Madison (3B), Dom Corino (SS), Pat Kerper (OF), Steve Blumenthal (OF), Jim Marango (OF), Tom Smith (C), Joe Rhodes (C), Keith O'Donnell and Eric Ruiz.

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# A Primer on Laurick and its Progeny

By Frederic Bor  
BorLaw3800@aol.com



This past year I had the opportunity to argue many Laurick motions, including several that were appealed to the Supreme Court. At the Municipal Court level, there is great disparity regarding the application of Court Rules and case law concerning Laurick applications. The lack of understanding and consistency extends to prosecutors, defense counsel and judges throughout the State. Recently, in a municipality in North Jersey, I filed a Laurick application with only an old summons, which indicated "no counsel" on the reverse side. The municipality could not locate any of the documentation and no transcript was available. Based upon the absence of counsel on the summons alone, the municipal judge entered a non-enhancement Order prior to my making an appearance. On the other hand, in a local community in Burlington County recently, the Municipal Judge, also having a summons in his hand which indicated that the defendant was unrepresented by counsel, used every nuance in the case law and Court Rules to deny relief. Indeed, this municipal judge clearly strained credulity in his interpretation of the body of case law from Rodriguez to Bringhurst.

The correct application of Laurick criteria is critical and ordinarily will bear on whether a motorist is incarcerated for 180 days for a third DWI. Consequently, this article is one in a series which will break down Laurick applications so counsel, prosecutors and judges may become more knowledgeable concerning such applications, particularly since a conviction in the underlying offense will likely result in a substantial period of imprisonment. The core issue is whether a defendant, who proceeds without legal counsel, and without an affirmative waiver, can have such a conviction used to enhance penalties in a subsequent DWI conviction. In State vs. Laurick, the Supreme Court found that a prior uncounseled DWI conviction could be used for enhanced penalties. However, such enhanced penalties cannot include an increased period of incarceration, if there was an uncounseled DWI conviction not within the parameters of Laurick. Or, to put it another way, a conviction without the benefit of counsel and without an effective waiver of right to counsel, is invalid for the purpose of increasing a period of incarceration. While a third offender can still lose his license for 10 years and other penalties, if a Laurick breach, the actual period of incarceration imposed may not exceed that for any uncounseled DWI conviction. Fifteen years after the Laurick holding, the Supreme Court reaffirmed its view of such uncounseled convictions in State vs. Hrycak. And during the last few years, there has been a series of important cases interpreting Laurick applications including Conroy and Bringhurst.

While a Laurick application is technically a post-conviction relief (PCR) application, a common mistake is that some counsel and even judges view it as a Motion to set aside a conviction. A Laurick application never seeks to set aside a conviction. Instead, it simply seeks to have the Court enter an Order that a prior conviction not be used for

sentencing enhancement purposes. While many judges are reluctant to set aside a conviction, they appear to be more open to a less drastic outcome which would result from a successful Laurick motion. Indeed, if a PCR application on a DWI is successful and a conviction is vacated, your client needs to return to that same Court for a new trial or a plea with perhaps a predictable result. On the other hand, if a Laurick application is successful, and a plea is entered to a pending third offense, your client should be able to avoid incarceration.

So let's work ourselves through the procedural aspects of a Laurick motion. Unless you comply with the guidelines set forth in R.7:10-2, some municipal judges will not even allow the motion to be placed on the calendar. I even had one Burlington County judge last week who indicated that absent "specificity of facts" in the verified petition, he would not even address the underlying substantive issues. This judge required a threshold showing of a prima facie presentation for Laurick relief before he would allow any testimony or argument. In short, he refused to recognize that the record included an uncounseled prior conviction of

a motorist who squarely fell within the guidelines of Laurick and a petition which included facts in support of the three step analysis, as set forth in Hrycak. Shortly after the Hrycak decision, the Court promulgated R.7:10-2(g) which set forth a structured procedure for Laurick applications in municipal court. Also be aware that there are new revisions of the Rules of Court, effective September 1, 2009. Keep in mind that §(g)(3) sets forth that a Laurick application must also include the requirements of R.7:10-2(f) so be certain that your petition includes, with specificity, the information requested in both §(f) and §(g). The requirements in §(f) are generic and you should have the information available upon filing. However, particularly since many prior convictions are from years back, information contained in (g)(3) may be difficult to obtain. Even so, your petition must include diligent inquiry to client and the violations clerk regarding the discovery and disclosure of such records. If a prior conviction is less than five years old, you are likely to have a record

*Continued on page 14*



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# PRESIDENT'S PERSPECTIVE

by Richard DeMichele, Jr.

## A Rough Summer for the Independence of the Judiciary

Our bar continued its long tradition of hosting a picnic for underprivileged children from the City of Camden. This year's Foundation picnic was a complete success and most importantly the children had a great time. I know many of them got on the bus to go home and were looking forward to

our annual Christmas party. Special thanks to everyone who helped make the picnic a success.

While the June picnic is an honored tradition of our Foundation, the bar experienced something new this summer. Furloughs. Hopefully the closing of the courthouse will not become

a tradition in New Jersey. The courthouse furlough did not sink in until the Friday morning before Memorial Day weekend. It was about 8:20 in the morning when I was driving my daughter to school and I happened to see a woman who looked like Mary Colalillo walking on King's Highway in

Haddonfield. As I came closer I was convinced it was Judge Colalillo. Even though she was not wearing a black robe I was relatively sure it was her. My eyes immediately looked at the clock on my dashboard and it was indeed 8:21 am. My immediate reaction was she will never make it to court by 8:30. Two blocks later I realized she probably would not have any problem getting to her chambers by 8:30 on Tuesday morning. Yes, for a moment I did not realize the courts were closed.

For the rest of the day I thought about the implications of the courts being closed. The obvious issues leaped out at me right away. This was one day that no cases would be cleared from the court's docket. The people who run the parking lots and coffee shops around the courthouse would have the day off too. But then I started to think what does the closing of the court house mean to the independence of the judiciary? Can our courts truly be independent if they are closed? Surely this could not be legal, or could it? In fact our state constitution prevents the cutting of judicial pay. However, our state constitution is silent as to the furloughing of judicial staff. The end result was that in the name of the economy and our state budget, our courts were closed for two days.

Ironically, this summer the independence of the judiciary was cited as the reason for a limited Senate confirmation hearing of Justice Barry Albin. There were some who advocated for a limited senate inquiry of Albin in the name of judicial independence; however, our State Constitution provides, and one might think it appropriate, that before any Justice is given life tenure, there be a full and fair hearing. Those who advocated for a

limited confirmation hearing did not explain how our State Constitution threatens the independence of the judiciary nor did they air any concerns about the closing of the courthouse. This is in no way a comment on Justice Albin or his confirmation. In fact if the Atlantic City gaming halls would have allowed such a wager I would have bet on Albin's confirmation back in January. (I'll save the "What types of wagering should be allowed in Atlantic City?" discussion for another article.)

On to lighter fare: The Camden County Bar is officially hip. This summer we launched a Facebook page for the Association. This new Facebook page will allow us to connect with new and existing members, especially young lawyers. Facebook users who join the page will get Facebook invitations for all of our seminars and events. This will allow our members to RSVP for our events with the click of a mouse and get bar association updates on their cell phones or blackberries. How convenient! Joining our Facebook page could not be easier. When you are on Facebook search Camden County Bar Association and click join. If you have not seen it yet, visit our new website [www.camden-countybar.org](http://www.camden-countybar.org). We now have a new members-only portion of the site where you can read the Barrister and other members only content on line. If you need help logging on for the first time please call our headquarters and our staff will assist you.

Lastly, this is the final edition of The Barrister... at least in this newspaper format. Next month will be the first edition of the "new" Barrister, so hold onto this edition as it is sure to be a collector's edition.

## Welcome New Members!

The Board of Trustees approved 14 applications for membership at its most recent meeting. Join us in welcoming these newest members of the Camden County Bar Association.

### ACTIVE (13)

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# Picnics Galore!

## Throw a picnic in the country, and the City kids will come!

Saturday, June 6 dawned warm with plenty of sunshine, smiles and much laughter as the Bar Foundation's annual Kid's Picnic for disadvantaged kids from Camden went off without a hitch! Bus loads of kids were greeted at Cherry Hill's Challenge Grove by Judges and member volunteers who cooked up plenty of picnic fare, games, and entertainment to make a very special day for their guests! Thanks to all who volunteered their time to bring a day of happiness into the lives of these deserving kids!



The Camden "Hoopsters"



How low can you go?



What goes around, comes around!



Amidst the fun & games, Judge Eynon swears in Mike Madden as a Foundation Trustee



Dancin' for McDonald's gift cards



What's a picnic without ice cream?



And a good time was had by all!

## Third Camden/Burlington Joint Bar Picnic a Success

Friday, June 19<sup>th</sup> was a perfect day for the Camden/Burlington Joint Bar Picnic at the Flying J in Medford. A highlight of the day was the "Surf & Turf" added to the menu due to the generosity of a member of the Burlington Bar.



(l-r) CCBA President Rick DeMichele, Burlington County Prosecutor Bob Bernardi, Assignment Judge Orlando & John Maroccia



CCBA President-Elect Linda Eynon & Judge Fox share a laugh



Jim Hamilton & Judge Donaldson



(l-r) CCBA Immediate Past President Joe McCormick, T. Alex Kushner & Greg DeMichele



Judges Schuck & Fratto, we think!



Carol Cannerelli & Partner in Progress Marty Abo



Judges Orlando & Colalillo

# Legal Line To Municipal Court Law

Continued from page 11

of the hearing and also in the file the summons, with notations on the reverse side, as well as other waiver forms or documentation to assist in your application. Keep in mind that these documents that are provided may also work against you in a Laurick application for relief.

Prior to filing a Petition, I ordinarily correspond with the clerk of the Court of original jurisdiction and ask for "records"

related to the underlying conviction, including copies of all complaints and other information contained in the Rule. Ordinarily, we receive a prompt reply concerning what information is available. On cases older than five years, it is unlikely that there can be a transcript available, but other important information may still be available for many years, depending on the system utilized in a particular municipality. There is a critical provision in the Rule which requires a petitioner to "account for any unavailable records by way of written documentation from the municipal court." Therefore, the return letter you receive from the court administrator or violations clerk must be attached to your application to confirm compliance with the proper procedure.

Importantly, (g)(2) reinforces the five-year limitation on the filing of a Laurick application. However, State vs. Bringham, to be discussed later, is an important

and pragmatic modification to this Rule. In short, Bringham provides that, given the nature of a Laurick petition, the five-year limitation rule must have flexibility, particularly where there is a prima facie case for relief under Laurick.

So now your petition for relief has been prepared and filed. Next month we will begin to review the substantive case law that has been generated since State vs. Laurick in 1990.

*Fredric L. Bor is a member of the Municipal Court Committee of the Camden County Bar Association and was admitted to the New Jersey Bar in 1972. In addition to his law degree from Rutgers, Fred holds a Ph.D. in Philosophy and two Masters Degrees. He was a Municipal Court Judge from 1979 to 1984 in Gloucester Township, Berlin, Barrington, Woodbury Heights, Waterford, and Pine Hill.*

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*Gone or going solo? Changed firms or positions? Received an award or made a professional presentation? If so, share your news with your colleagues. Email your news to [lbpc@camdencountybar.org](mailto:lbpc@camdencountybar.org) to get listed in the monthly Barrister "Legal Briefs" section. We also appreciate updates so we can keep our membership files current.*

• **Edward P. Epstein**, principal of the Law Offices of Edward P. Epstein, Northfield, NJ, was reelected chairperson of the board of directors of the Jewish Business Network of Southern New Jersey at its June meeting. Mr. Epstein is a Camden county resident focusing his practice in family/divorce, serving as mediator or arbitrator, collections and commercial litigation throughout Camden, Gloucester, Burlington, Atlantic and Cape May counties.

• Capehart Scatchard litigation shareholder **Betsy G. Ramos, Esq.** was recently named co-chair of the Business Litigation Committee of the Business Law Section of the New Jersey State Bar Association. Certified by the Supreme Court of New Jersey as a Civil Trial Attorney, Ms. Ramos, a Mansfield resident, is a Shareholder and Chair of Capehart Scatchard's Litigation Department in its Mt. Laurel office. She is a seasoned litigator with over 25 years experience handling diverse matters and concentrates her practice in business litigation, estate litigation, employment litigation, insurance coverage, and general litigation.

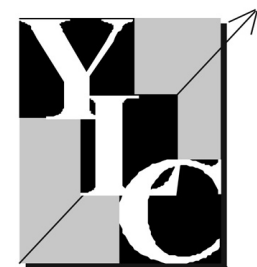
• Insolvency and restructuring attorney **Stephen M. Packman** of Archer & Greiner, P.C. in Haddonfield, has successfully completed the requirements for national certification in business bankruptcy law, the American Board of Certification (ABC) announced. Packman serves as Chair of Archer & Greiner's Bankruptcy/Debtor & Creditors' Rights Group, and Co-Chair of the firm's International Law Group. The certification program is accredited by the American Bar Association.

• **Tracy A. Siebold**, an attorney at Ballard Spahr Andrews & Ingersoll, LLP, was elected chair of the Camden County American Red Cross. She is the first woman chair in the chapter's 92-year history. Ms. Siebold had been vice chair for the chapter. She was elected during a board meeting on June 16, 2009 and replaces Dr. Thomas Tudor of Cherry Hill. She is a member of Ballard Spahr's real estate department. With a primary focus in land use and Mount Laurel Doctrine compliance and litigation, Ms. Siebold manages litigation on behalf of developers. She also has appeared before the New Jersey Council On Affordable Housing (COAH) on behalf of developers of low- and moderate-income housing.

• Capehart Scatchard attorneys, **Robert J. Hagerty, Esq.** and **Carol L. Jennings, Esq.** recently presented a seminar entitled "From Hiring to Record Keeping: Business and Employment Law Issues" at the Doubletree Guest Suites in Mt. Laurel. The attorneys spoke on various employment and business law issues that every business needs to be aware of, including negligent hiring, permissible interviewing questions and practices, performing background checks, privacy issues surrounding employment records and record retention requirements.

• Attorneys **John C. Connell** and **John P. Kahn** of Archer & Greiner, P.C., have been awarded New Jersey State Police Certificates of Commendation for their successful defense of a federal lawsuit against the State Police and three Troopers involved in the fatal shooting of a suspect in 2003. On Feb. 25, 2009, U.S. District Judge Noel L. Hillman in Camden entered an order dismissing the lawsuit, *Lamont v. New Jersey State Police, et al.* Based on written motions and court arguments by Connell and Kahn, Judge Hillman granted the defendants Summary Judgment. Connell and Kahn are experienced litigators and members of the Litigation Department in Archer & Greiner's Haddonfield office. In addition, Connell serves as Chair of the firm's Media & Communications Practice Group and Co-Chair of its Civil Rights Practice Group and Appellate Advocacy Group.

• **Catherine Merino Reisman** and **Amelia Carolla** are pleased to announce the relocation of their law firm, Reisman Carolla LLP, to 19 Chestnut Street in Haddonfield, New Jersey. The partners formed the law firm in September 2008, after practicing for many years at Montgomery, McCracken, Walker & Rhoads where they founded and co-chaired the firm's special education practice group. The firm concentrates in education related counseling and litigation, as well as employment, commercial, and appellate litigation.



By Adam Gersh

**YOUNG LAWYER CHAIRMAN'S NOTE:** *I am pleased to present the first in a series of articles on the theme of "what I wish I knew when I was a young lawyer." If you would like to find other ways to enrich your professional life, please join us for our next Young Lawyers' Committee meeting on September 1, 2009 at Bar Headquarters.*

**"Did I Make the Right Choice?"**

By Steve Greenberg, Flaster/Greenberg P.C.

When Adam Gersh asked me to consider writing an article for the Young Lawyer's column in the Barrister on what I wish I knew when I was a young lawyer, at first I thought of the usual pieces of advice, such as always return phone calls the day they are received, always record your time currently and like clichés. None of this was very profound and hardly justified taking up space in our Association's monthly newsletter, let alone taking people's time to read it.

Then I recalled an experience that had a tremendous impact on me and thought it was worth sharing. It is in keeping with the theme of I wish I knew then. . .

I was extremely fortunate to have attended Yale Law School, shortly after, or at the same time as, Bill and Hillary Clinton, Clarence Thomas and Sam Alito, and before Sonia Sotomayor. That credential provided a key that unlocked a practically unlimited set of doors, from high level government service, to the best judicial clerkships (including the state and federal Supreme Courts), to the most prestigious law firms in the country, some of which had offices throughout the world and promised not only extraordinary compensation but a chance to live in a foreign country for a time before returning to the United States and settling down. It was a very exciting time.

Despite these opportunities, I won the award in my class for going to work for the smallest, most unusual law firm. My family roots were in South Jersey and during the summer between my second and third year of law school, I worked for one of the mega firms in Philadelphia ("mega" at that time meaning approximately 125 lawyers). Through an amazing happenstance, I had the good fortune that summer to meet Rick Flaster, then a 32 year old Harvard Law School alumnus, who had recently left a prestigious Wall Street firm to join Manny Liebman in Cherry Hill and form the two person tax boutique, Liebman & Flaster. His wife's family had been from Camden and he felt that South Jersey was a place with untapped potential to build a sophisticated law practice in a suburban setting. I was immensely impressed by Rick's talent and creativity, and when I received an offer to join the firm following my graduation, I felt that this was an opportunity to have a mentor in the true sense of the word and help build something from the ground up. I rejected a lucrative offer from the mega firm and chose to become the third lawyer in a three lawyer tax practice in Cherry Hill. Meanwhile, I watched my classmates go off to New York, Washington, San Francisco, London and Paris.

My career progressed the way I had hoped it would. I worked at Rick Flaster's elbow, learning not only substantive tax and corporate law, but the practicalities of how to

be a lawyer and a counselor to clients. I learned about the business of the profession as we grew our firm. I had the opportunity to make a difference in the lives and businesses of our clients. I became entrenched in the community. And I never worked more than fifteen minutes from home, affording me the opportunity to see my daughters grow up and participate in their lives and activities. What more could I want?

Still, I always had this nagging feeling that Yale had given me a key that unlocked so many professional doors, and I never used it. I wondered what it would have been like to serve as tax legislative counsel to a prominent senator, work in London on international transactions, help create new investment vehicles, maybe even be instrumental in making policy on a national level. I watched my classmates' accomplishments from a distance and always thought about whether I had made the right career decision to come to a small firm in South Jersey.

I attended my 20th law school reunion in New Haven and on the drive there, found these doubts dominating my thoughts. I hoped that I would not be intimidated by my classmates and their accomplishments. I knew that the firm I had joined after law school had grown to about 20 lawyers and that I had established a pretty successful tax and corporate practice, but after all, it was in South Jersey, not the financial capitals of the world. Surely my career paled in comparison to my classmates'.

When waiting at our hotel for a ride to our class dinner, I struck up a conversation with a classmate with whom I had been marginally friendly during law school. Not surprisingly, he was a partner in the Washington, D.C. office of an internationally renowned firm, working regularly on international deals. He told me he routinely spent two to three weeks a month in European capitals, structuring multinational business transactions. I was green with envy. Nothing I had done came even close.

When I told my classmate how exciting his career sounded, to my complete surprise, I heard, "It sucks. The travel is exhausting, the time demands are impossible, I am divorced, I hardly know my kids and each deal looks just like the last one. I wish I had a practice like yours."

That was an epiphany. From that moment on, I never once doubted that I had made the right career choice. If only I had known that earlier, I would never have had the nagging doubts.

The practice of law has many faces and touches many lives. You can make a difference in the world around you whether you practice on an international playing field or in your own backyard. Don't think that the grass is greener elsewhere. It isn't.

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# ★★★ JUSTICE COMPLEX ★★★

By Jill M. Tribulas  
[jillmarietribulas@comcast.net](mailto:jillmarietribulas@comcast.net)

## TRIALS

We all have them. Sooner or later a trial will come that cannot be avoided nor easily resolved. Trials can be overwhelming—consuming all your time, energy and resources. Trials are often difficult and most times will stretch your ability and your courage further than you imagined they could extend.

A trial wouldn't be a trial without an adversary. Your antithesis. Your opponent who can sometimes appear to be bigger than you is ever-present telling you that you are wrong and that you're going to lose. But you are prepared for this fight. You know the Truth. You did the research and you know that the Law is on your side. With courage and conviction you stand ready to argue the Truth and you expect and have prepared for success. With the Law etched on you mind and your heart you stand with confidence before

the Judge.

Trials make you stronger and they give you the opportunity to see what you're made of and how far you've come. I don't know many people (any, really) who would voluntarily choose to go through a trial but there will come a time when the trial is inevitable. There is no more going around. You have to go through.

Trials can be unpredictable. What you first thought would last but one day has morphed into a two-week event and counting. Although you might have the Law on your side you should never underestimate the tenacity of your adversary. He is cunning and clever and wants to win just as bad as you do. Be prepared; memorize the Law and don't let him distract you with exaggerations and half-truths.

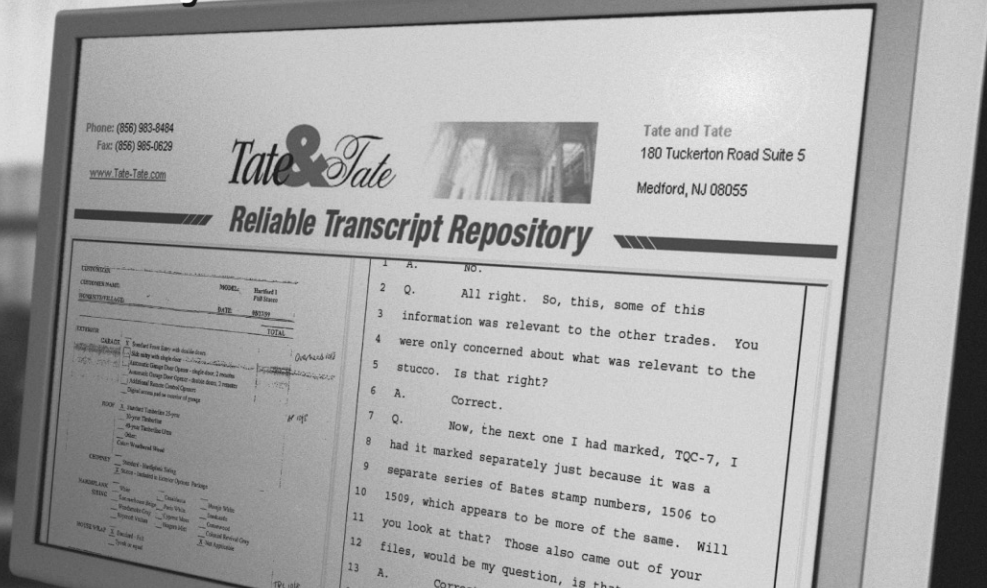
No doubt. If given the choice, I would respectfully abstain and

circumvent the whole thing. I can't picture myself suggesting to an adversary, "I know this is settled but do you want to go to trial anyway? It would be such fun!" No. Even with my imagination I just cannot see that happening. It offends our proclivity for self-preservation to choose to do something that could cause distress; whether financial, professional or personal.

One definition of the word "trial" is the act of trying, testing or putting to the proof; which would accurately describe the process that happens in a court of law. But, I like the following definition of a trial even better: A trying, troublesome, or annoying person or thing. That covers both ends of the spectrum—legal trials and life trials. Neither are usually sought after yet they often appear

Continued on page 17

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*Continued from page 16*

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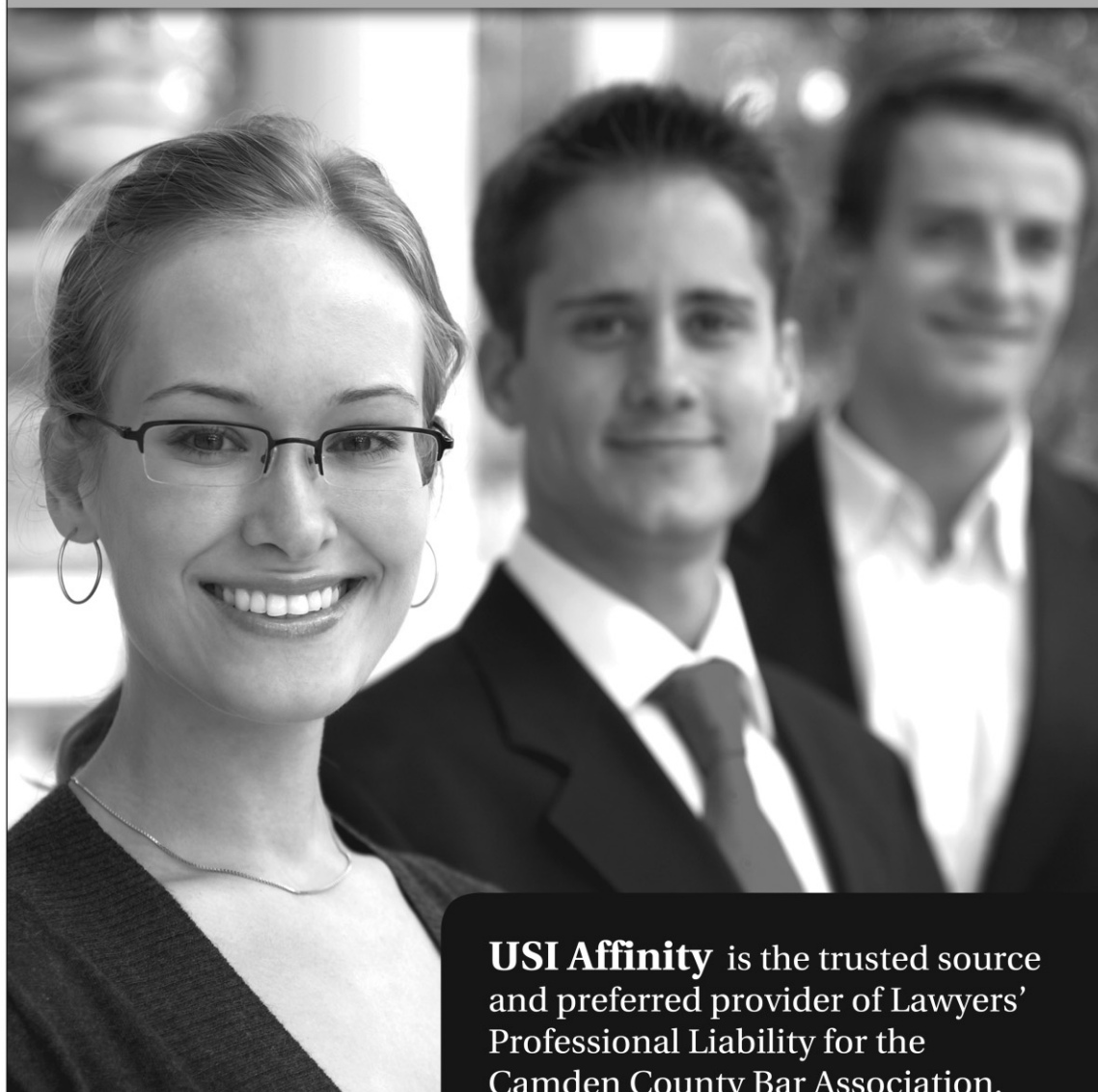
So, since we know there will be trials what can we do? Prepare for them ahead of time. Read the Law and follow the Truth. Let them be your guide because in the end life is really just a bunch of verdicts anyway: "You're

hired," "You're fired," "You're pregnant," "I'm leaving." Trial after trial. Verdict after verdict. Each one hopefully teaching a lesson and making you wiser. Trials will come whether we fight them or not. But if we are prepared and secure in our knowledge the ultimate verdict will always be in our favor.

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# Abraham Lincoln - Lawyer

## First of three parts

by John Morelli

Two hundred years after the birth of Abraham Lincoln, he remains one of the mythical figures in American history. Lincoln remains the most famous lawyer who ever practiced in the country, someone for all lawyers to emulate. What are the truths about the legend of Lincoln the lawyer?

Part of the myth of Lincoln as president are the humble origins in a log cabin. The legend of Lincoln the lawyer is fueled by the self-taught, rough hewn man, who honed his skills to a high level through diligence and hard work to become one of the best lawyers in the young nation.

Abraham Lincoln came to the law after failed careers as a surveyor, and store keeper. As a young man working on his father's farm, Lincoln came to despise hard labor. His father hired him out to work on surrounding farms and despite his dislike of hard labor, he became proficient with an ax, becoming in fact what he is known for, a rail splitter.

As soon as he became of age, Lincoln fled the manual labor of farming to make his way in New Salem, Illinois. There, he worked in a store, eventually becoming a part owner. The store failed and he became liable for not only his debts, but his partner's debts, which followed him for many years to come. He began a career as a surveyor, surveying the new lands of the West, hoping to avoid conflicting claims on those lands. That career came to an end when creditors seized and sold at auction his surveying equipment. He also served a political appointment as postmaster for a time while working as a surveyor.

Lincoln was unusual for the time, and perhaps for present times as well, in that he was elected to the State Legislature after one failed bid and became a politician who later became a lawyer rather than the reverse. After achieving some fame as a legislator in Illinois, he was urged to study the law by one of the leading lawyers of the day, Steven Logan. Lincoln was a self-taught lawyer, reading from Blackstone's Commentaries before being examined by the Illinois Supreme

Court and given his license to practice in 1836 at age 25.

Lincoln as a lawyer has been referred to in reverential ways throughout history. Just what was Lincoln like as a practicing attorney and what kind of career did he have. Hollywood has portrayed him as a champion of the poor and downtrodden, taking on unpopular causes for little or no compensation. Was this in fact the way Lincoln practiced on the Prairie? What did Lincoln himself feel about the law? This article will examine Lincoln as a lawyer and the skill that he brought to his craft.

Lincoln left notes for a lecture on the practice of law that were discovered in his private papers by his secretary John Hay after his death. Hay dated these notes as having been written around 1850, although they appear to have been written later in his legal career. Lincoln described his own approach to the practice of law for the lecture. He described himself as "not an accomplished lawyer." Lincoln found more material for his lecture on the practice of law

from his failures than his successes. "The leading rule for the lawyer, as for the man of every other calling, is diligence. Leave nothing for to-morrow which can be done to-day. Never let your correspondence fall behind. Whatever piece of business you have in hand, before stopping, do all the labor pertaining to it which can then be done."

Interestingly, his last law partner William Herndon, described him as less than diligent in his preparation of cases. Lincoln's advice to others was to gather the facts of a case immediately and write out a declaration, citing the law that supported your position at once, rather than waiting for the case to be called for trial. In ordinary legal matters "make all examinations of titles, and note them, and even draft orders and decrees in advance. This course has a triple advantage; it avoids omissions and neglect, saves your labor when once done, performs the labor out of court when you have leisure, rather than in court when you have not."

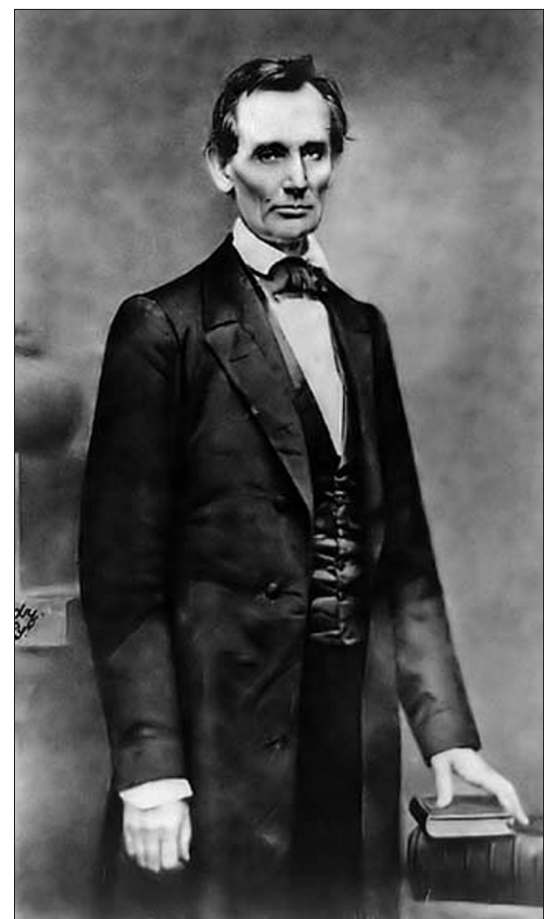
Lincoln taught that mediation

and compromise were to be pursued rather than litigation.

"Discourage litigation," Lincoln wrote in his lecture on the practice of law. "As a peace-maker the lawyer has a superior opportunity of being a good man." Lincoln counseled lawyers to "Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser in fees, expenses and waste of time." While recognizing that this would lessen the business revenue that lawyers received from litigation, he concluded "There will still be business enough." In the middle of a case between two merchants in 1839 involving the quality of flour, Lincoln counseled his client to settle, offering to charge nothing for his services if the dispute was resolved.

On the matter of fees, he cautioned "An exorbitant fee should never be claimed. As a general rule never take your whole fee in advance, nor any more than a small retainer. When fully paid beforehand, you are more than a common mortal if you can feel the same interest in the case, as if something was still in prospect for you, as well as for your client. And when you lack interest in the case

*Continued on page 20*





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# Civil DWI Claims in New Jersey: Overlooked Causes of Action

By Andrew J. Rossetti & Scott S. Amitrano

*Rossetti is a partner, and Amitrano a law clerk in the Cherry Hill office of Rossetti & Devoto, PC*

Don't drink and drive. Everyone knows the rule, but not everyone heeds the warning. Too often intoxicated individuals drive and sustain, and/or cause injuries. While most blame the driver, other parties may also be liable. Many lawyers fail to appreciate or consider all avenues of recovery, and as a result potential claims are lost.

## LICENSED ESTABLISHMENTS:

Licensed establishments are

bound by the New Jersey Licensed Alcoholic Beverage Server Fair Liability Act, *N.J.S.A. 2A:22A-1-7*, commonly referred to as the Dram Shop Act. Under the Act, servers of alcohol will be held liable for injuries caused by drunken patrons, when they serve those patrons while visibly intoxicated. Although the meaning of "visible intoxication" can be fuzzy, most expert toxicology

witnesses will testify that one whose BAC is above 0.13% will exude signs of perceptible intoxication such as slurred speech, dilated eyes, etc.

Bars will not however be held liable for injuries caused to, or by, a patron who drives drunk after leaving a bar *when that patron was never served at the bar*. Consider this scenario: A person enters a bar while already drunk, orders a drink, and the bartender refuses. The patron, infuriated, leaves the bar, drives home, and crashes. The drunk driver wants to sue the bar for negligent supervision, and argues that they shouldn't have let him leave in such an intoxicated state. The New Jersey Supreme Court recently addressed this issue in *Bauer v. Nesbitt*, 198 N.J. 601, 612-613 (2009) and held that, if the establishment never serves alcohol to the patron, then the bar has no duty to supervise him, and will thus not be held liable for any injuries to, or caused by that patron once he leaves.

## SOCIAL HOSTS:

Consider this scenario: A friend whom you have not seen in a long time drives over to your place to have a few drinks. After two hours of reminiscing and consuming five gin and tonics each, you walk her outside to her car and wish her farewell. You receive a phone call 45 minutes later from your friend, who informs you that she has just

crashed and injured another driver.

The New Jersey Supreme Court in *Kelly v. Gwinnell*, 96 N.J. 538, 548 (1984), held that if a host serves a guest she knows to be drunk, and she knows the guest will be driving, the host is liable when that guest leaves and injures someone. The holding in *Kelly*, was codified in *N.J.S.A. 2A:15-5.6*, which holds a social host liable when the host willingly and knowingly provides alcohol to a visibly intoxicated person in her presence.

## NEGLIGENT ENTRUSTMENT:

Consider this scenario: You and three of your friends arrive at a bar in the same car. After a night of drinking, it must be decided which of you is the most sober to drive home. You hand your keys over to a friend who you believe is sober enough to drive despite his slurred speech. On the ride home, the driver falls asleep, crashes, and kills someone. The toxicology report places the driver's BAC at .17%.

The New Jersey Superior Court, Appellate Division in *Wagner v. Schlue*, 255 N.J. Super. 391, 397 (App. Div. 1992), held that a person in control of an automobile, who turns control over to someone who is visibly intoxicated, under circumstances which creates a foreseeable risk of harm, will be held liable for injuries caused by the drunk driver's negligence. Not only

would handing the keys to a friend violate New Jersey common law, but because of the BAC level of the driver, the owner will also be subject to *N.J.S.A. 39:4-50*, which penalizes persons in control of motor vehicles who allow people to operate their vehicles with BAC's over 0.08%.

Civil practitioners need to be careful not to overlook potential causes of action, as often times, more than just the driver is legally responsible in DWI accidents.

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## Abraham Lincoln - Lawyer

*Continued from page 19*

the job will very likely lack skill and diligence in performance."

Did Lincoln follow his own counsel in the practice of law? What was his reputation and skill as a lawyer in Illinois before he was elected President? Lincoln was concerned, as are most lawyers today, about the reputation of some lawyers in the mind of the public of being dishonest. History tells us that the sobriquet "Honest Abe" did not come from the practice of law, but rather from the fact that he labored many years to pay all of the debts incurred in his failed career as a storekeeper. Of course, Lincoln may have had little choice in that since when the store failed, a comprehensive bankruptcy act did not exist, making debtors liable for their debts without resort to bankruptcy. An examination of his career reveals that Lincoln had a well earned reputation as an able, competent and accomplished lawyer despite his self deprecating remarks.

*Part two will appear in the October Barrister. It will discuss Lincoln's early years of practice.*

## GET INVOLVED AND SHAPE THE FUTURE OF YOUR ASSOCIATION

A major benefit of your CCBA membership is the opportunity to serve on one of the many Association committees. Committee participation offers you a voice in the future of YOUR professional organization. As a new Bar year begins, committee appointments will be one of the first official acts of president Rick DeMichele. Let Rick know how you want to be involved!

Use the committee call list included in this month's inserts and return it to Bar Headquarters with your committee choice(s) indicated. Committee involvement is important to the future of the Association, and a terrific way to meet and network with fellow lawyers, judges and other members of the legal community. The strength of your Association depends upon the strength and activities of its committees.

# Code of Professionalism

*The Camden County Bar Association has an extensive and proud history of service to the public, to our system of justice, and to its members. The lawyers who have the privilege of being accepted as Association members continue a tradition of treating fellow members and the judiciary before whom they practice in a professional and courteous manner. While this professionalism includes demonstrating the utmost of integrity and compliance with the ethical standards mandated by the Rules of Professional Conduct, it goes beyond those fundamental obligations. It represents the higher standard of conduct that makes the profession of law more than a competitive service industry. The legal profession stands at the crossroads of becoming such a large, impersonal and technologically-oriented business that some members lose sight of the traditional values and virtues to which lawyers of the past subscribed.*

*At a time when the complexities of the law make practicing our noble art increasingly difficult, the Camden County Bar Association and its membership reaffirm their commitment to the standards of professional courtesy. To advance the standards of professionalism and civility, the Camden County Bar Association has adopted the following Code of Professionalism.*

1. I will provide my client with objective advice and will endeavor to represent my client's lawful interests as expeditiously and economically as possible.
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3. I will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation, and that civility and courtesy during the course of client representation are not a display of weakness, but are virtues upon which our system of justice was founded.
4. I will treat opposing counsel, other lawyers and their staffs, parties, witnesses, the courts and members of the court staff with civility and courtesy. Professional courtesy is a necessity entirely compatible with vigorous advocacy and zealous representation.
5. I will never knowingly misstate facts or law, and will consistently act in such a manner that other lawyers and judges can trust in and rely upon my oral or written word.
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7. I will endeavor to consult with opposing counsel prior to scheduling depositions, meetings, or rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested. I will be punctual in honoring scheduled appearances and in providing the earliest possible notice of cancellation of appointments, depositions, or hearings to all concerned parties.
8. In the conduct of litigation or negotiation, I will conduct myself with fairness and dignity, refraining from any course of conduct meant to harass the opposing party. I will not engage in excessive or abusive discovery, and will refrain from advancing groundless objections or committing other acts of rudeness or disrespect.
9. I will be considerate in my communications with others, promptly returning telephone calls and responding to correspondence from clients and other lawyers in a timely manner.
10. While I will be a vigorous advocate on behalf of my client, I always will be mindful that I am an officer of the court, and of the obligation to conduct myself with respect for the court and for my adversaries.
11. In civil proceedings, I will voluntarily withdraw claims or defenses if it becomes apparent that they lack merit, and I will stipulate to non-essential facts as to which there is no genuine dispute. I will cooperate with other lawyers towards the goal of having matters resolved in a prompt and fair fashion.
12. I will not quarrel needlessly over matters of form or style, but will concentrate on matters of substance and content.
13. I will strive to remain current in the areas in which I practice. I will familiarize myself with the Rules of Professional Conduct and adhere to these rules in the everyday practice of my profession.
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15. I recognize that the law is a learned profession. Among its desirable goals are devotion to public service, improvement of the administration of justice, and the contribution of uncompensated time towards the administration of justice on behalf of those persons unable to afford legal assistance.

*As a condition of membership in the Camden County Bar Association, I agree to abide by and conduct the practice of law in a manner consistent with this Code.*

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# WINE & FOOD

By Jim Hamilton  
jimhamilton@dshllaw.com



## WHERE THE BUYS ARE, SOME WINE WAITS FOR ME....

As the hardships of our recessionary economy continue to mount, we hear, or know firsthand, about the swelling ranks of the unemployed (lawyers included), and we read about, and likely experience ourselves, how consumer confidence remains badly shaken. Sellers of goods, be they furniture, automobiles, clothing or, yes, wine struggle to adjust to new "buying" habits (using the phrase advisedly). "Sales" and "inventory reduction" promotions abound, but "cash for clunkers" notwithstanding largely fail to lure those who are hunkered in their bunkers.

We have kept the focus of this column on affordable wines to be opened for guiltless consumption, in contrast to bottles that most might view as meant for special occasions. A problem with many coveted bottles is that there often is a temptation to reserve such wines for occasions that never seem special enough.

I thought it might be timely as we kick off a year when our Association will be dealing with the impact the recession is having on our organization by reducing the cost of publishing The Barrister to address in fewer words how those selling wines have been impacted by dramatically decreased disposable income. I have interviewed retailers so that my own observations of the marketplace can be expanded.

Many of you know Charlie Beatty from meeting him at Canal's Bottlestop in Marlton or from my references to him in this

column. I sat down with Charlie one day recently to gain insight from someone who truly has his finger on a number of pulses. As the wine director and buyer for one of the most successful wine retailers in our area, Charlie knows his customers and their buying interests. At the same time, he is a major player in dealing with wine distributors to acquire the wines he needs to satisfy customers from both the local and internet markets.

Charlie reports that during the past year or so, there has been a substantial decrease in the sales of higher priced wines, particularly those from California. Instead, many of his customers are searching for and buying imported wines that are priced under \$20. Charlie reports that it is difficult these days to sell an \$80 Napa Valley Cabernet Sauvignon when there are excellent quality Cabernet, or Malbec, wines from Argentina he can sell at a fraction of that price.

Charlie believes that Americans like to support their country's wineries, but that in this economy, price will win out. He feels that American wine producers need to lower prices while maintaining quality to avoid having their wines languish in the warehouses of their distributors or on the shelves of retailers who want to sell their wines. He sees consumers becoming more critical of overpriced wines, with many of his customers who bought fine wine without much regard for price now having a budget causing them to lower their sights when it comes to cost without exhibiting a corresponding willingness to accept lesser quality.

If the expectations of a wine

buyer for a Delaware wine shop are correct, we may see top name American wine producers cutting the price of their wines dramatically in an effort to sell inventory that their distributors cannot take because, in turn, the retailers have neither the room on the shelves nor the financial reserves to acquire wines that at best will be difficult to move. As the leader of domestic wine production, California producers are beginning to unload wines at prices intended to move them to the consumers. While the front line for these "fire sales" is in their home state, how and where California retailers elect to sell these wines will be interesting for consumers to watch. Will top name California winemakers sell their formerly high-end Merlot, for example, at prices that are relative bargains because the market no longer exists for the price the wine once commanded? If they do, will these wines find their way to our marketplace, either conveniently at your favorite wine store or as items to purchase online? The answers to these questions probably will be forthcoming.

A few examples of how wines now being made available may be a preview of buys to come. A Spanish wine I tasted, enjoyed and purchased for around \$40 was languishing on the shelves of its importer/distributor. The distributor decided to closeout the wine and it suddenly appeared at select retail stores for \$19.99. Naturally, I bought more (dollar cost averaging works in wine as it does with equities). These buying opportunities can occur even in good times when a distributor loses the right import or sell wine for a producer.

Another wine that recently

was touted by a retailer as being sold at a 60% price decrease is a nicely rated Bordeaux wine from the highly-touted 2005 vintage. Perhaps the wine was priced optimistically at \$120 retail, and even for its discounted price of \$99.99, but undoubtedly some buyers will respond to the new \$49.99 price and the free shipping offer.

One wine retailer believes that the New York/New Jersey marketplace soon will be fertile ground for higher end wines selling for drastically reduced prices. While New Jersey's three tier system historically has placed retailers here at a disadvantage when it comes to selling wines that are offered by the producers or their representatives, such as those in Bordeaux or Champagne, directly to retailers elsewhere, the climate may be changing. While New Jersey retailers normally cannot "dump" excess inventory by selling wine at less than their cost, as the distributors or producers are

squeezed for funds or space, we will want to keep an eye out for opportunities to acquire quality wines that heretofore may be outside the casual consumer's budget. While the sweet spot of the wine market probably will continue to be filled by inexpensive wines from quality producers, many of which are imported from countries like Spain, France or Italy, as with tennis racquets post-Connors and McEnroe, we may find the sweet spot expanding. I will be keeping an eye out for specific bargains I can pass along in upcoming issues.



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