

Annual Memorial Service Set for September 10th

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 am, Monday, September 10th 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 Faustino J. Fernandez-Vina. 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 Robert Aaron Greenberg, 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 10th."

Those being memorialized and remembered, as of the date of publication are: Peter N. Fiorentino, Jr; Hon. I.V. DiMartino; Cheryl B. Todd (CCBA Staff Member for 31 years); Elizabeth A. Hallowell; Patrick H. Ronga, Sr.; Edward C. Laird; Andrew Zeldin; Hon. Dominick J. Ferrelli; Hon. John McFeeley, III and Blaine E. Capehart.

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

TD Bank Signs On New Partner in Progress

The Association is proud to welcome TD Bank as its newest Partner in Progress.

The *Partners in Progress* Program is an initiative to provide Camden County Bar Members and their clients with substantial discounts on products and services directly related to the practice of law and personal needs. In essence, an exclusive member benefit to make the practice of law cheaper and easier.

The concept is simple but the rewards are many. Selected *partners* make a significant financial contribution to the Association in addition to providing a valuable members-only discount on products or services that members use in their practices. Basically,

a win-win-win arrangement—members receive valuable benefits, partners receive an opportunity to reach the membership, and the non-dues income generated helps us keep annual dues at their current low level.

The success of this program lies in the ability of the Association to demonstrate appreciation for our partners by supporting them. Your help will be immeasurable to our success. So look for the Partner in Progress Logo in the Barrister Partner ads for Abo & Company, BIREFinancial Services, Genworth, GetLegal.com, Susquehanna Bank, USI Affinity, and TD Bank, our newest Partner, to learn what they can do for you.

Crackin' for A Cause!

All members and friends invited to attend

Plans are just about complete for the Young Lawyer Committee's **Third Annual Lobster Bake** presented by **Flaster Greenberg** on Saturday, September 8, from 4-8 p.m. at The TapRoom in Haddon Township and **ALL members and friends are invited.**

In addition to a perfectly prepared, freshly flown-in Maine lobster, the menu includes shrimp, clams, corn on the cob, hamburgers, hot dogs, beer and wine all for just \$75 per person! Not to mention the live entertainment, games and just plain fun for all!

Proceeds from the Lobster Bake will be used to continue the **Scholarship Fund** for disabled students attending the **Larc School** in Bellmawr. The scholarship was established through the Bar Foundation with proceeds resulting in \$12,000 being donated to the school from the first two events.

To reserve your place early for this potentially sold out event, use the Lobster Bake flyer in this month's inserts.



Newly installed Association President Brenda Lee Eutsler & Foundation President Linda Eynon at the June 9 Installation Dinner Dance at Rutgers Camden.

See inside for additional photos of this year's big event.

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Meet the Judges and Law Clerks Reception Sept. 19 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 5:30 to 7:30 p.m. on Wednesday, September 19th at the Camden County Boathouse 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.

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. Valet parking will be available.

Tentative Agenda for September 19, Trustees Meeting

A tentative agenda for this month's regular Board of Trustees meeting follows. The meeting will begin at 4 p.m., at **The Camden County Boat House** in Pennsauken immediately preceding the Meet the Judges & Law Clerks Reception. All meetings are open to the membership. Members interested in attending should notify and confirm their attendance by calling Bar Headquarters at 856.482.0620.

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



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 Barrister 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 19, to be considered.

The award will be presented at the Annual Devine Award Luncheon in January.

THE DOCKET

Tuesday, September 4th

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

Thursday, September 6th

*Commercial Debtor/Creditor
Committee Meeting*
8 am
Bar Headquarters, Cherry Hill

Saturday, September 8th

*Young Lawyer Committee's
3rd Annual Lobster Bake*
4 – 8 pm
The TapRoom
427 W. Crystal Lake Avenue, Haddonfield

Monday, September 10th

Opening of Court Memorial Service
9 am
Courtroom #63
Hall of Justice, Camden

Wednesday, September 12th

*Nuts & Bolts of Municipal Court Practice
Seminar*
4 – 6:15 pm
Tavistock Country Club, Haddonfield

Tuesday, September 18th

ADHD Seminar
4 – 6:30 pm
Tavistock Country Club, Haddonfield

Wednesday, September 19th

CCBA Board of Trustees Meeting
4 pm
Camden County Boathouse
7050 North Park Drive, Pennsauken

Wednesday, September 19th

Meet the Judges & Law Clerks Reception
5:30 – 7:30 pm
Camden County Boathouse
7050 North Park Drive, Pennsauken

Thursday, September 27th

CLE on Tap! Seminar
NJ Real Estate Closing Procedures
3 – 6:15 pm
The TapRoom
427 W. Crystal Lake Avenue, Haddonfield

Tuesday, October 2nd

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

THE BARRISTER

Published monthly, except July and August, by the
Camden County Bar Association.

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Periodicals postage paid at Cherry Hill, NJ and additional offices (USPS 712 - 480).

Classified Advertising Rates: \$30 per insertion

Annual Subscription Rate: \$50

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OUT AND ABOUT

Judge Charles M. Rand's Retirement Party Hosted by the Family Law Committee



Sheryl Rand, Judge Rand & Surrogate Patricia Egan Jones



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Dave Epler & Pat McShane



Fred Levin, Judge Rand & Frank Tedesco

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.

Think about the many benefits you receive, in addition to a number of reduced member tuition and informative seminars throughout the year, each with New Jersey and Pennsylvania CLE credit. There's the monthly publication, *The Barrister*; committees that offer opportunities to network with peers while shaping the future of your Association and practice; numerous networking professional and social activities designed to enhance your law practice; discounts on many legal products and services; and much more.

Should you have questions or to use a credit card for payment, call 856.482.0620.

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

The Public Benefits Committee's Annual Children's Picnic at Campbell's Field



Fun in the Fun Zone



Time to eat!



Who doesn't love a Carousel?



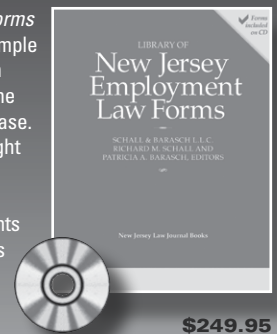
Autograph time

New September 2012!

Library of New Jersey Employment Law Forms

by *Richard M. Schall and Patricia A. Barasch*,
SCHALL & BARASCH L.L.C.

Library of New Jersey Employment Law Forms is a comprehensive library of over 125+ sample documents, created by attorney-experts in the field. The forms may be edited to suit the unique facts and circumstances of each case. The book contains everything a lawyer might need throughout the litigation process, including demand letters, complaints, discovery requests, as well as all documents necessary for trial and appeal. The authors provide helpful practice pointers. 1,000 pages. Softcover, with forms on CD.



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Disability Income Insurance: What Every Attorney Needs to Know

By Joel Goodhart, Stuart Leibowitz
and Dennis Freedman, BIRE Financial Services

Would you ever show up in the courtroom—or at a client meeting—without properly preparing your case or researching your client's situation?

Of course not. In fact, for most lawyers, the idea of being poorly prepared at a crucial moment is the stuff of nightmares.

But no matter how well you prepare your cases, there's an all-too-common scenario that you may not have anticipated fully: what would happen if you were to become disabled? Perhaps you believe that you're fully covered by a group policy your firm has purchased. However, the truth is that while group disability income insurance is often relatively inexpensive and easy to administer, it can also fall short just when you need it most—leaving you in for some unpleasant surprises when it's too late to correct the situation.

Furthermore, disability may be far more common than you imagine. Even if you're young and careful, it could happen to you—through an accident...an injury...or a lengthy illness. And in fact it does happen—probably much more often than you might think.

In a recent survey only 1% of employees felt they had a chance of becoming disabled during their working years, but in reality almost one-third of Americans entering the work force today (3 in 10) will become disabled before they retire.

Want to be better prepared? Consider the following:

Learning to speak the lingo

The right disability income insurance (DI) policy can help you keep your household going, even if you suffer a long-term disability. But before you go shopping for a DI policy, you need to know what features to look for—and the language the insurance industry uses to describe them. The following terms are part of the language describing high-quality policies, and are what you should look for to get coverage you can count on:

- **Non-cancelable:** To avoid the possibility of losing your coverage just when you need it most, choose a policy that's non-cancelable and guaranteed renewable to age 65—with premiums also guaranteed until age 65. With group or association group coverage, you run the risk of being dropped and left unprotected at a time in your life when, due to your age or to a change in your health, it would be very difficult to qualify for coverage from another provider.
- **Conditionally renewable for life:** Although premiums may increase after age 65, your policy should be renewable for life, as long as you are at work full time.
- **The core of any disability income policy is its definition of "Total Disability"** which outlines what constitutes being "totally disabled" and therefore eligible for benefits. This definition is in every carrier's policy; however, it does not always mean the same thing. For example, some policies pay benefits if you are unable to perform the duties of your own occupation, even if you are able to work successfully in another occupation, while others pay only if you cannot work at all.
- **Residual Disability coverage:** Through a rider, a good individual DI policy can provide you with protection against the income loss you may suffer as a result of *partial* (residual) disability—

even if you have never suffered a period of total disability. This kind of residual coverage is not available with most group plans.

- **A choice of "riders":** Riders offer optional additional coverage such as Future Increase Options and cost of Living Adjustments, or "COLA."

Protecting your business, as well as yourself

You must also protect the source of your income: the firm you've worked so hard to establish and grow. Special policies, available from the same DI providers who offer high-quality individual coverage, offer your office protection while you recover from a disability.

To help meet the expenses of running the office while you are disabled, consider a separate type of disability insurance coverage known as Overhead Expense or OE. Benefits reimburse your practice for expenses such as rent for your office, electricity, heat, telephone and utilities, as well as interest on business debts and lease payments on furniture and equipment.

Overhead expense insurance specifically designed for professionals pays some additional costs not included in most overhead expense policies—including the salaries of employees (except those who are members of your profession). In an office such as yours, for example, salaries for the receptionist and staff would be covered, but not the salary of your law partners or any junior attorneys. However, high-quality professional overhead policies will cover at least part of the salary of a professional temporary replacement for you, such as a lawyer retained to fill in during your total disability.

In addition...

Lawyers who are partners in a group will want to consider a policy known as a Disability Buy-Out or DBO. In much the same way that life insurance benefits can be set aside to fund a buy-out by the remaining partner (or partners) if one partner dies, DBO is designed to fund the healthy partners' purchase of the disabled partner's share of the business. With the proper agreement in place before disability occurs, hard feelings and the conflicts of interest that result from a partner's disability can be avoided. Furthermore, in combination with the disabled partner's individual Disability Income coverage and OE, a DBO policy can allow the business to continue to generate an income for the healthy partner, while the disabled partner is supported by the benefits from his or her individual DI policy. Any continuing share of the business expenses is reimbursed by the disabled partner's OE policy.

Take time to consider upgrading your DI coverage today. You know how valuable it is to be fully prepared—in all areas of life. Having the right DI coverage could be vitally important to your economic wellbeing in the future—and help protect one of your most valuable assets: the ability to earn an income by practicing law.

In the case of DI protection, as in your legal work, a little extra planning and research in advance could prove invaluable at a later date. The truth is, successful professionals often need far more complete DI coverage than is provided through their firm's group policy or through association coverage. How does your coverage stack up? To find out, ask a reputable DI agent for a free consultation—specifically to help you compare your present coverage to an individual own-occupation policy for professionals, tailored to suit your individual needs.



NJSBA Update

The ACA Opportunity

By Arnold N. Fishman
arnold@fishmanandfishmanlaw.com

The Affordable Care Act is constitutional, but not as an exercise of the Commerce Clause. It was saved by the Roberts pretzel twist maneuver. He found that the individual mandate is not a tax within the meaning of the Anti-Injunction Act, but it is a tax for the purpose of constitutional analysis. As the dissent describes it, “[t]hat carries verbal wizardry too far, deep into the forbidden land of the sophists.” But I digress. Of the holdings of the Court, the one I find most significant to my practice area is that the Congress overstepped its authority to withhold federal dollars from states that don’t comply with federal standards. As the plurality put it, the threatened loss of those funds “is economic dragooning that leaves the States with no real option but to acquiesce in the Medicaid expansion.”

Looking back I can remember when machines did not find people guilty of DRUNK DRIVING! The deal was closed by a DOCTOR who would conduct an examination, then formulate an opinion as to whether the suspect was unfit to operate a motor vehicle due to intoxication. That testimony was subject to cross-examination, and that witness evaluated as to credibility. Now we have an offense, the critical element of which is determined in a method not subject to any such scrutiny. The importance of that missing challenge can only be understood and is exacerbated by the awareness that we are dealing with an offense that traps people, many of whom believe they are not

violating the law. They are not drunk and they have no idea when their BAC reaches the prohibited level. The punishment of people who don’t recognize they deserve punishment is an ethical issue. It is bad public policy and fated to breed resentment.

I recognize that this state owes its citizens its best efforts to provide streets that are safe. However, both the New Jersey and United States Constitutions require the due process right to a fundamentally fair trial. If the state has done all that it could, then, almost by definition, it has been fair. There are, however, some things that can be done to make the playing field a little more level.

The simplest recommendation is to redesign the “Standard Statement”^{**} so as to contain a place for the date and time of the reading of it and a place for the soon-to-be-charged to sign it. That way the importance of the reading would be made clear to the officer, and it would have a much greater impact on the defendant. Of all the clients who tell me it was not read, some of them have to be right. Without a way of distinguishing the form actually read to a particular defendant the temptation to include a generic form into the discovery package is palpable. A requirement that all police cars and police stations be equipped with video recording equipment and those recordings preserved, as discoverable information would go a long way. As I tell my clients, “If there is a video and you look drunk on it, you need a better lawyer than me.” The courts presently require certain confessions to be video recorded. Why not condition the admissibility

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Rethinking Exemption Elections Under §522

Are New Jersey state exemptions really so bad? Not if you own a home in Florida!

By *Christin E. Deacon, Law Clerk to the Hon. Gloria M. Burns*

Debtors who file a chapter 7 bankruptcy case in the District of New Jersey typically must “choose” between the federal exemptions afforded under §522(d), or the state exemptions provided in the New Jersey Statutes pursuant to §522(b). To most bankruptcy attorneys, and their clients, the “choice” is usually a predetermined one, as the exemptions afforded under the federal exemption scheme are, in most circumstances, patently preferable. By way of example, under the New Jersey state exemptions, debtors are able to exempt personal property in an amount up to \$1000, furniture and other household goods up to \$1000, and benefits from worker’s compensation, disability, and retirement accounts in some circumstances. On the other hand, the federal exemptions permit a debtor to exempt his interest in a vehicle (up to \$2,950), jewelry (up to \$1,225), homestead or real property (up to \$18,450), and a life insurance policy with loan value (up to \$9,850)—just to name a few. Thus, from a debtor’s attorney’s point of view, the calculation of which exemption scheme to choose is usually a proverbial “no brainer.” Unfortunately, benefits attendant to choosing the state exemption scheme embodied in §522(b) are often overlooked because of this general assumption. This article serves to highlight one such benefit that should aid bankruptcy practitioners and estate planning professionals seeking to protect their clients’ interest in property in the event of future insolvency.

Section 522(b)(3)(B) provides that a debtor may exempt “...any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable non-bankruptcy law...” 11 U.S.C. §522(b)(3)(B). Unlike the mechanical formula embodied in §522(b)(3)(A), which sets forth a fairly complex formula for determining which State’s exemption law applies to a debtor, §522(b)(3)(B) is noticeably silent with respect to any domiciliary or residence requirement for a particular period of time pre-petition. It is also significant to note that §522(b)(3)(B) does not direct the court to look to §522(b)(3)(A)’s mechanical formula when determining which “applicable non-bankruptcy law” to apply under §522(b)(3)(B). Thus, the question arises as to what “non-bankruptcy law” referred to in §522(b)(3)(B) governs a debtor’s claimed exemption of entireties or joint tenancy property. Courts having considered the issue have consistently held that the law of the *situs* of the property at issue is the “applicable non-bankruptcy law” referred to under §522(b)(3)(B). See, *e.g.*, In re Schwarz, 362 B.R. 535 (Bankr.S.D.Fla. 2007); In re Buonopane, 359 B.R. 346 (Bankr.M.D.Fla. 2007); In re Garrett, et al., 435 B.R. 434 (Bankr.S.D.Tex. 2010); In re Aolnierowica, 380 B.R. 84 (Bankr.M.D.Fla. 2007).

Thus, it is conceivable that a debtor having no assets in New Jersey, having solely resided in New Jersey for his or her lifetime, and having filed his bankruptcy case in New Jersey, could potentially fully exempt a multi-million dollar mansion and other valuable assets in another state, so long as that property is held by the debtor as entireties property and the state where the property is located fully exempts such interests from the reach of creditors (*e.g.*, Florida). As most

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NJSBA Update

The ACA Opportunity

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of the results of the psychophysical tests and the administration of the breath test in a DWI prosecution on video recordation? Also, why is it that in order to insure the judicial independence of Supreme Court Justices and Superior Court Judges tenure is required, and for municipal court it is not? Are they made of sterner stuff? They should be vetted by County and State JPAC Committees and after one or two terms attain tenure.

Lets get back to the ACA. When the Federal Government was trying to reduce the prohibited breath alcohol concentration from 0.10% to 0.08%, New Jersey established a Commission to determine the question. The Attorney General testified that the Department of Justice opposed the change for fear that it would ensnare the social drinker. They did not want to prosecute those people. And strikingly there was no real evidence that the lower level would save lives. The commission decided to keep the existing level, and we stuck to our guns until the loss of federal highway dollars was imminent. To save those dollars we capitulated.

Since then I hear no crowing about the

lives saved; I can tell you about some lives severely wounded and a lot of suffering. I have cases where my client tells me they were not in any way feeling drunk and perfectly able to operate the vehicle. They may have been involved in an accident clearly the fault of the other driver. They may have been stopped for some reason having nothing to do with any bad driving such as an equipment violation. Sometimes they are in parked cars. The conviction can result in the loss of one’s job and perhaps his happy home. The charge alone imposes a financial burden that is always painful and sometimes unbearable. Lets get the *per se* level back to where a person has a better chance of realizing his condition and acting responsibly by refraining from driving. Lets see if the Federal Government can punish us for restoring fairness to these prosecutions.

**The Standard Statement is the required implied consent form that advises a suspect of his or her rights and responsibility to provide an acceptable breath sample. The failure to give an unequivocal positive response results in an equally or even more serious charge of Refusing to Submit to a Breath Test.*



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Bad Faith Recovery in Personal Injury Case is Tax-Free

By Thomas D. Begley, Jr., CELA
www.begleylawgroup.com



Is a bad faith claim against an insurance company involving a personal injury claim taxable? Will the Internal Revenue Service (IRS) treat the recovery as an action in contract or in tort? The

general rule is that a litigation settlement or award will be treated for tax purposes based on the "origin of the underlying claim" test. If a claim is for *physical injuries or sickness*, the recovery will qualify for an exclusion from federal income tax.¹ If the claim is for breach of an employment contract, the recovery will be includable for income tax purposes as taxable wages. Cases can arise that are a mixture of a contract and a claim for physical injury or physical sickness. The treatment of the claims in that situation will depend on the origin of the underlying claim.² The IRS is not bound by an allocation in a settlement agreement or even in a court order. It is important for the parties to substantiate the origin of the claim for tax purposes.

Perhaps the most significant document in determining tax treatment is the Complaint.³ This is because the Complaint states the facts, frames the issues, and defines the nature of the case. Plaintiff's counsel should carefully draft the Complaint with an eye toward the ultimate tax treatment.

One way to allocate the amount of the settlement on various claims is in the Settlement Agreement. However, the Settlement Agreement is not binding on the IRS or on the courts. The IRS suggests that the Settlement Agreement determines the character of the settlement proceeds.⁴ However, both the courts and the IRS frequently deviate from the Settlement Agreement and make their own determinations.

The Settlement Agreement must be read in connection with the Complaint to determine whether or not the allocation in the settlement is consistent with the underlying claim.⁵ The tax court has held that the express language of a Settlement Agreement is the most important factor in determining the taxation of a settlement. However, the Settlement Agreement must have been negotiated at arm's length based on adverse parties in order to be respected by the courts.⁶ The issue really is whether

the Settlement Agreement is a product of *bona fide* adversarial negotiations. Even if a state court merely appears a settlement but has not made an independent review of the allocation, the IRS or a court may reject it. If a Settlement Agreement is entered into by the parties in an arm's length adversarial transaction, it will be given great deference.⁷

If the parties enter into a Settlement Agreement that has a "reasonable relationship" to the allocation that a jury may have been expected to award, the IRS will tend to approve it. This is called the "reasonable relationship" test.⁸ The burden of proof is on the recovering party to demonstrate what portion of the recovery is taxable and what is non-taxable.⁹

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¹ I.R.C. §104(a)(2).

² *United States v. Gilmore*, 372 U.S. 39, 83 S. Ct. 623 (1963); *United States v. Patrick*, 372 U.S. 53, 83 S. Ct. 618 (1963).

³ Rev. Rul. 85-98, 1985-2 C.B. 51.

⁴ IRS Publication 4345 "Settlements/Taxability."

⁵ *Maxwell v. Commissioner*, 95 T.C. 107 (1990).

⁶ *McKay v. Commissioner*, 102 T.C. 465 (1994).

⁷ *Robinson v. Commissioner*, 102 T.C. 116, 126 (1994) aff'd in part, rev'd in part 70 F.3d 34 (5th Cir. 1995).

⁸ Rev. Rul. 85-98.

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LEGAL LINE TO CRIMINAL LAW

Summer Recap

By Howard C. Giffert, Assistant Camden County Prosecutor

As summer draws to a close, it is time to catch up on developments in our area of practice. The courts have been busy. A brief discussion of several significant cases follows.

Amendments in 2010 permit expungement of certain convictions as soon as 5 years after the latter of conviction, completion of the sentence or payment of fines. N.J.S.A. 2C:52-2a(2). Among the convictions subject to expungement under this “early pathway” provision are third and fourth degree drug convictions: “where the court finds that expungement is consistent with the public interest, giving due consideration to the nature of the offense and the petitioner’s character and conduct since conviction.” N.J.S.A. 2C:52-2c(3). The court must also balance the desirability of freeing the petitioner from the disabilities resulting from the conviction against the need for the records of the conviction to be available. N.J.S.A. 2C:52-14b.

The New Jersey Supreme Court has just provided guidance on expungements under the early pathway provision. In re Ronald C. Kollman, ___ N.J. ___, ___ A. 3d. ___, 2012 WL 2688767, N.J., July 09, 2012. In Kollman, the petitioner had been convicted of possession of Ecstasy with the intent to distribute under N.J.S.A. 2C:35-5. The petitioner sought to expunge the conviction under the early pathway provision but was denied by the trial court. That decision was upheld by the Appellate Division.

The Supreme Court reversed the Appellate Division and remanded the case to the trial court. The Supreme Court held that the petitioner has the burden of establishing the objective elements required for expungement as well as the subjective “in the public interest” element. The court also discussed examples of evidence that may be considered regarding such expungements such as the number of transactions, whether any sales were to children and whether the offense involved a weapon. Trial courts may consider facts established through the plea and sentencing hearing and the presentence report and facts that are undisputed. Where the State’s opposition extends to other facts and they are disputed by the petitioner, the trial court must make appropriate findings and, if necessary, hold an evidentiary hearing.

In State v. Munroe, 210 N.J. 429 (2012), the defendant pled guilty to aggravated manslaughter. When interviewed for the presentence report, he claimed that he shot the victim in self defense. The defendant had also told the police he acted in self defense. The man the defendant killed was found clutching a box cutter. Before he was sentenced, the defendant moved to withdraw his guilty plea. The trial court denied the defendant’s motion and sentenced him.

On appeal, the New Jersey Supreme Court applied State v. Slater 198 N.J. 145 (2009) retroactively. It determined that the defendant’s assertion of self defense was plausible and constituted a colorable claim of innocence. As for the “prejudice to the State” element of Slater, the Court held that prejudice must be measured at the time the motion to withdraw the guilty plea was made rather than when the decision is later reviewed on appeal. Lastly, the court weighed the fact the defendant did not state that the killing was in reckless disregard of the value of human life during the plea colloquy. The defendant’s attorney stipulated to the existence of that element. The court reversed the denial of the defendant’s motion to set aside his guilty plea.

In State v. Galicia, 210 N.J. 364 (2012), the defendant had been convicted of aggravated manslaughter. On appeal, the defendant urged the Court to reconsider its holding in State v. Grunow, 102 N.J. 133 (1986) that the defense of passion/provocation applies only to murder. The Galicia court declined to reconsider Grunow. Therefore passion/provocation remains unavailable as a defense to reduce aggravated manslaughter to reckless manslaughter.

Electronic communications have become ubiquitous. It is therefore no surprise that electronic communications such as email, instant messages,

texts and tweets are becoming evidence in criminal cases.

State v. J.A.C., 210 N.J. 281 (2012) examined electronic communications in the context of the Rape Shield Law, N.J.S.A. 2C:14-7. At the age of 12, the victim in J.A.C. was discovered by her mother to be portraying herself as college student and engaging in sexually explicit online communications with adult men. A serious family crisis ensued during which the victim faced punishment and potentially being sent to live with her father in another state thereby uprooting her from her family, friends and school. It was during this upheaval that the victim revealed she had been repeatedly molested by her mother’s boyfriend when she was 9 years old.

At trial, the defendant sought to introduce evidence of the victim’s online conduct as evidence of her untruthfulness and as a motive to fabricate her allegations when caught. The trial court permitted the defendant to introduce evidence the victim was engaged in such communications and that she faced serious repercussions when her activities were discovered. The trial court barred the actual content of the instant messages as past “sexual conduct” under the Rape Shield Law.

The Supreme Court agreed that the content of the instant messages was properly barred under the Rape Shield Law. The Court noted that the messages were unrelated to the defendant, were sent 2 years after the crimes for which the defendant was on trial and had the capacity to distract the jury from the issues properly before it. The court also discussed the chilling effect introduction of such evidence would have on the willingness of sex abuse victims to come forward.

Lastly, the Supreme Court continued to define the automobile exception to the warrant requirement in New Jersey in State v. Minatee, 210 N.J. 307 (2012). In Minatee a police officer was on his dinner break when he was alerted to an armed robbery that had just occurred near his location. He arrived at the crime scene very quickly and was alerted by the victims or witnesses that the perpetrators were in an SUV stuck in traffic trying to flee. The officer approached the vehicle at gunpoint. One occupant emerged with a gun and purse. He dropped the items before fleeing on foot. Another man from the SUV also fled on foot. The driver of the SUV, Alnesha Minatee, managed to get through traffic and flee with another female occupant. Another police officer located and followed the SUV until it stopped at the end of dead-end road. Officers learned that the victims of the robbery had been duct taped. They observed rolls of duct tape in the vehicle.

Officers searched for the men who fled the SUV. They apprehended one of them several miles from where he fled the SUV. At the police station, the man agreed to show them where he discarded his gun then reneged. Crime scene officers processed a number of locations. The SUV was towed to the police station where it was searched without a warrant.

The trial court denied the defendant’s suppression motion. The Appellate Division reversed, holding that the warrantless search was improper under State v. Pena-Flores, 198 N.J. 6 (2009).

The Supreme Court distinguished Pena-Flores and ruled that the search was legal. The Court noted that Pena-Flores involved a stop for a motor vehicle violation whereas Minatee involved an armed robbery, fleeing armed suspects, a discarded gun and multiple scenes to be searched and/or processed. The Court also noted that the list of factors applying to motor vehicle searches announced in Pena-Flores is not exhaustive.

For those of you interested in a broader survey of developments in the criminal law during the course of the entire year, I encourage you to attend the *Black Letter Law Blast* CLE course on January 24, 2013 where Deputy Public Defender Terry Lytle presents a pithy review of new criminal case law. Other fine presenters review new and amended criminal statutes and developments in the Code of Professional Responsibility.



YOUNG LAWYER CORNER

LARC School: “Where success takes flight”



By Michael J. Dennin

The Young Lawyer Committee's 3rd Annual Lobster Bake will take place on Saturday, September 8th. Our “Bake” was created by my predecessor, Michael Madden, two years ago. Bill Cook and the committee and foundation donated \$8,000 to the Larc School last year. While our physical goals are monetary, our personal goals are to provide a tangible benefit for the moderately to severely disabled children and young adults at the LARC school. At the same time, we are fortunate enough to be able to socialize, relax and enjoy a great meal with our peers.

LARC is a non-profit special education school serving disabled individuals ranging from ages 3 to 21. The services are provided at no cost to families. Because of federal and state funding restraints, a significant portion of the cost to fund LARC is through charity and fundraising. A large void in funding is for students who have graduated and are now adults. After a person turns 21 often there are limited if any resources provided by the government. This continuing education and service sets LARC apart. Having had the opportunity to tour LARC last year with my peers and LARC Executive Director, Susan Weiner, I was able to witness beauty firsthand. Have you ever seen a sunset, or a rainbow, or a child's first play? We felt that same love when touring LARC. What sets it apart is the warm and family-like atmosphere. Small class size, with student to teacher ratios of 3:1, allows individualized educational programs that focus on each student's capabilities. The school is truly wonderful.

LARC is the reason the Lobster Bake exists. People like Susan and the staff at LARC allow parents of disabled children and adults to rest assured knowing that they are leaving their children or loved ones in good hands. Being a father of two small children, it is difficult enough for me to leave them each day. I cannot imagine leaving such wonderful and vulnerable little ones with such disabilities out of my sight. The amenities the school provides make you feel like you are on a campus of a prestigious university.

Our bake provides an outlet where fellow attorneys, Judges, friends and families can get together after such a long hot summer. We indulge in fresh lobster, shrimp, and clams with corn on the cob, of course. Appetizers are delicious as is dessert. Beverages are tasted, and the music and atmosphere creates a “shore” feeling, although Labor Day has passed. The Tap Room provides a perfect venue, and it is surely worth the cost for 5 plus hours of entertainment and conversation. A silent question remains: Why are we all there? Why are we all together? We are there because of LARC. The children and adults need us there, although we probably do not know it. Susan Weiner needs us there, as does her staff. This silent question was truly answered by us when we became members of the Camden County Bar Association, and the Young Lawyer Committee. It was answered when we were sworn in as attorneys. We are there to better the public, to better the less fortunate. In all we do, human nature is to better ourselves.

The Lobster Bake enables us to contribute to those who need our help. It is an honor to carry on a tradition so rightly started by my peers. On behalf of the Young Lawyer Committee and LARC, we ask that you join us on September 8th and we look forward to seeing you there.

Use the Lobster Bake Reservation flyer in this month's inserts to reserve your place for this very special event.



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John E. Wallace, Jr. is a retired Justice of the New Jersey Supreme Court. He was appointed to the Superior Court of New Jersey in 1984 and was elevated to the Appellate Division in 1992. He was confirmed to the Supreme Court of New Jersey in 2003.

Justice Wallace served the Superior Court through the Civil Division handling all types of matters. He was admired and respected by both sides of the aisle. The *New York Times* described him as “a sound jurist and a political moderate.” Mr. Wallace is counsel to the firm of Brown & Connery, LLP. Justice Wallace has received many awards including the William J. Brennan Citation, the Lawyer of the Year Award from the New Jersey Commission on Professionalism in the Law and the Judge John Gerry Award from the Camden County Bar Association.

Mr. Wallace is a Trustee of the Board of Legal Services of New Jersey and a Board Member of Kennedy University Hospital. He is a member of the University of Delaware Wall of Fame and a member of its Board of Trustees. He has coached youth baseball and football teams for decades.

Justice Wallace served in the United States Army from 1968-1970 earning the rank of captain. Mr. Wallace received his Bachelors Degree from the University of Delaware in 1964 and received his law degree from Harvard Law School in 1967.

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Newly installed Officers & Trustees (l-r) Eric Feldhake, Trustee; Carl Price, Trustee; Casey Price, First Vice President; Mike Dennin, Young Lawyer Trustee; Jenifer Fowler, Second Vice President; Ellen McDowell, Trustee; Brenda Lee Eutsler, President; Jerry Poslusny, Trustee; Gary Boguski, President-elect; Eric Fikry, Secretary; John Palitto, Trustee; and Ron Lieberman, Trustee. (not pictured, Lou Moffa, Treasurer)

Eutsler Takes the Helm

Association & Foundation kick off a new bar year!

June 9th was a warm, muggy day as hundreds of members of the bench and bar, family and friends of incoming CCBA President Brenda Lee Eutsler came to the campus of Rutgers University in Camden to witness the changing of the guard. Following a lively cocktail party in the Athletic Center, guests moved to the Gordon Theatre for a moving performance by the Children's Choir of the Catholic Partnership Schools in Camden and the swearing in ceremony emceed by Sports Announcer Don Tollefson. New officers and trustees of the Association & Foundation were sworn in by the Honorable M. Allan Vogelson (retired), followed by the presidential swearing in administered by Brenda's husband Jim Herman while son Brian held the Bible.

Special thanks to Environmental Resolutions, Inc., James Herman, Esq. and The Ferrara Law Firm Co., for their sponsorship of the evening.



Also sworn in were new Foundation President Linda Eynon, and Foundation Trustees Shayna Slater (l) and Rachael Brekke (r).



Brenda Eutsler and Emcee Don Tollefson



Outgoing President Lou Lessig receives his plaque and Past President's pin from newly installed President Brenda Eutsler.



Children's Choir of the Catholic Partnership Schools



Brenda Eutsler & State Bar President Kevin McCann



CCBA Partner In Progress Marty Abo, Claire and Judge Snyder



Russell DePersia & Patricia Tanski



Let them eat cake!



Trustees Ellen McDowell & John Palitto, Kimberly Crum



Debbie Phillips & Chuck Resnick



Partners in Progress Dennis Freedman & Joel Goodhart from BIRE Financial Services



Pamela Fisk & Winston Extavour

Rethinking Exemption Elections Under §522

Continued from Page 7

practitioners recognize, through the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), Congress was attempting to prevent what some have characterized as debtors’ opportunistic and abusive behavior in taking advantage of unrestricted homestead exemptions in certain states. H.R. Rep. No. 109-31, at 15-16 (2005). To that end, §522(o), (p) and (q) were adopted by Congress in an effort to limit what it viewed as abusive use of unlimited homestead exemptions. Section 522(p), for example, limits a debtor’s homestead exemption taken under §522(b)(3)(A) to \$125,000 of any interest in property that was acquired by the debtor within 1215 (3 years, 4 months) days preceding the bankruptcy filing. The §522(o), (p) and (q) limitations, however, only apply to homestead exemptions taken pursuant to §522(b)(3)(A), and not tenants by the entirety exemptions taken pursuant to §522(b)(3)(B). The result being that debtors can shield their real and personal property, including homesteads, from the reach of creditors so long as their property is located in a jurisdiction where tenants by the entirety property is off-limits to individual creditors.

In Florida, for example, both real and personal property acquired by a married couple is afforded a rebuttable presumption of tenancy by the entireties ownership. *Beal Bank, SSB v. Almand and Associates*, 780 So.2d 45, 52 (Fla. 2001). Of course, to the extent there exists a joint debt of both spouses, it may be possible for a bankruptcy trustee or other creditor to reach tenancy by the entireties property to the extent of the joint debt. See *Havoco of America, Ltd. v. Hill*, 197 F.3d 1135, 1139 (11th Cir. 1999). This exception aside, there really seem to be very few limits, if any, as to what or in what amount a debtor may exempt property pursuant to §522(b)(3)(B) in any given state where entireties properties is recognized as fully exempt from the reach of an individual’s creditors. Some have argued that permitting such an unlimited exemption is contrary to the purposes espoused by Congress in enacting certain provisions of BAPCPA—namely,

to curb abusive and opportunistic filers from taking advantage of the system (O.J. Simpson in Florida and Kenneth Lay in Texas come to mind). However, some courts have countered that “despite its complex tinkering with homestead exemption provisions in BAPCPA, including changes to §§522(o), 522(p), and 522(q), Congress determined to leave wholly intact the preexisting blanket exemption available to debtors who own property in a tenancy by the entireties form if applicable non-bankruptcy law would exempt that property from process.” *In re Schwarz*, 362 B.r. 535, 534, n.2 (Bankr.S.D.Fla. 2007).

The potential result is that wealthy married individuals may be allowed to plan and retain multi-million dollar mansions in certain jurisdiction, while creditors may be stuck holding millions in unpaid judgment liens and unpaid claims. Put another way, so long as the debtor has chosen to forego §522(d) federal exemptions in favor of §522(b) state exemptions, and so long as the property sought to be exempted is located in a *situs* where entireties property is off limits to creditors of an individual debtor, and regardless of the debtor’s residence or domicile—the debtor may be able to fully exempt his interest in entireties property. Whatever philosophical or moral debates are raised by this issue, the simple fact remains that it is for Congress to amend the statute and for attorneys to zealously represent their clients’ interests in accordance with the law.

The rush to elect §522(d) exemptions in a state whose own exemptions seem so grossly abridged in comparison to the federal scheme should be decelerated in cases where the debtor may have property located in another *situs*. For those planning professionals seeking to help their clients make fully informed and prudent decisions as to where to locate both real and personal property, including joint bank accounts, homes, vehicles, etc., full consideration should be given to the state’s recognition and/or treatment of a tenants by the entireties property.



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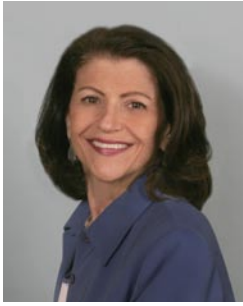
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PRESIDENT'S PERSPECTIVE

by Brenda Lee Eutsler

Greetings From Your New President

President Brenda Lee Eutsler's Installation comments

Thank you, Jim and Brian, for administering my oath as President which made the moment extra special. The Herman boys are the great loves of my life. They are always there to support me and they always keep me grounded, never letting a "Brendaism" pass without comment. "Brendaism" is their term of endearment for my faux pas.

I am thrilled to be in my hometown of Camden City to celebrate this milestone. Mayor Redd, thank you for welcoming us to your City and for your kind words. Thanks also to my friend, Don Tollefson, for serving as Master of Ceremonies—he is the best! The performance by the Catholic Partnership Schools Choir was beautiful and I thank the children for their inspiration. I also extend my sincere gratitude to my friends, Michael & Penny Ferrara and Chris & Debbie Noll of Environmental Resolutions, Inc. for their sponsorship support. Thanks also to His Honor, Allan Vogelson, for administering oaths to the officers and trustees.

As a young child, I lived on Atlantic Avenue near Broadway and attended Sacred Heart School. I remember fondly the many strolls down Broadway with my Mom, aunts and uncles and grandparents. We would go to Penn Fish on Fridays, Mother's Bakery for sweet treats, Woolworth's, the A&P, Lit Brothers (now the County Administration Building), the Savar Movie Theater and Horn and Hardarts which had the best macaroni and cheese and grilled cheese sandwiches.

My Italian immigrant grandfather worked at the NY Shipyard on Broadway. When the Campbell Soup tomato delivery trucks accidentally dropped baskets of tomatoes while passing our house, we retrieved the tomatoes for Grandmom's Sunday gravy. In my early teens, my Mom, brothers and I moved to East Camden. Dudley Grange was our playground and on hot days like today, Leo's Yum Yum cooled us off. We moved from Camden when I graduated from Woodrow Wilson High School but I kept coming back—to work as Deputy Surrogate, to attend Rutgers Business and Law schools, to teach at Rutgers Law, to appear in Court and to work with organizations located in the City. Considering I would not be at this podium today without my Rutgers Camden education, this campus

was the perfect choice for my installation.

Every member, except for one, of the Benjamin Asbell law firm and its successors has been President of the Camden County Bar Association, including my partner, Samuel Asbell. I am proud to continue that rich tradition. The tremendous success of our great Association is attributable to our loyal members, now 2,300 strong, the quality and breadth of programs and services provided to our members, our wonderful staff led by Executive Director, Larry Pelletier, and our dedicated trustees and officers, including Lou Lessig who had a stellar year as President.

Congratulations to our new officers and trustees and to Linda Eynon on her installation as President of the Camden County Bar Foundation. Linda mentored me when we served as Co-Chairs of the Public Benefits Committee and I will always be very appreciative of her assistance. She will do a fantastic job as Foundation President.

As President, my focus will be to build upon the successes and strengths of our association in order to enhance member services, attract new members and groom potential future leaders. Many mentors have enriched my life and legal experiences, including many of you here this evening. Our Association members consist of some of the most experienced lawyers, judges and bar leaders. The wisdom we share with today's young lawyers and law students will be invaluable to their future success.

Through our Membership and Diversity Committees, we will be developing ways to expand our membership and board to be reflective of the diverse cultures and traditions of the lawyers practicing in Camden County. Further details on these initiatives will be detailed in future *Barrister* articles, so stay tuned.

Many of my friends and loved ones, from near and far, are here this evening and I collectively thank you for your love and support, including my second son, Officer Michael Caruso of the Haddonfield Police. Special thanks to my older brother, Herb, who was unable to be here this evening and to my little brother, Greg. Greg is eight years younger than me and there was a time when he was smaller than me but that was before he turned eight. Greg is the ringer for Team Eutsler for the Foundation's Autumn Scramble. He is a great golfer but an even better brother.

A special shout out to my life-long girlfriends and fellow Wilson graduates, Lynn and Diane. The three of us have shared many laughs and memorable moments and tonight is no exception. Lastly, and most importantly, my mother was my greatest inspiration and mentor. Although she has passed, she lives always in my heart and soul and I know she is proud.

I am truly humbled and honored to be the 86th President of the Camden County Bar Association. Thank you for allowing me to serve you. I hope to prove worthy of your trust.

~ MEDIATOR / ARBITRATOR ~

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WINE & FOOD

By Jim Hamilton

Perhaps because I am preparing this column during another summer stretch of high 90s temperatures, the thought of drinking a high octane red wine is not nearly as appealing as pouring something cool and refreshing to consume. As a card-carrying member of the German Wine Society, and having recently tasted a bevy of wines that will be coming to our shores from a very good and abundant 2011 German vintage, I thought we might talk about some German wines to search out to buy and pour during the extended summers we continue to call Indian.

Most people enjoy being in the vanguard, particularly when it means paying less for something than its present or future worth. Naturally, this applies to that publicly traded stock which if one purchased would have caused you to out-Trump the Donald. It also can apply to wine, which while some feel is a liquid investment, most buy for enjoyment. In either case, one can derive added pleasure by being ahead of the wine curve and identifying producers whose talent and commitment deserve support regardless of what motivates it.

Now, the examples of German wine producers who have risen to lofty levels in our country are relatively few. J.J. Prum, Willi Schaefer, Diel and Dönnhoff are a few that currently may be regarded as exceptional and command prices a bit higher than others. While wine admittedly is subjective, and forecasting fraught with peril, I thought it might be worthwhile if I offered recommendations from German wineries that if not there have the potential to join more heralded colleagues because they are striving to improve and seem consistently to succeed.

Josef Leitz is a producer that not only seems to have a finger on the pulse of American consumers, but also is focused on



delivering real quality for the American buyer. Tasting with current proprietor Johannes Leitz, I was especially taken with the **2011 Leitz Dragonstone Riesling**. This is a lush, fruity wine with a wonderful combination of body weight and vibrancy. It exhibits bright acidity and such impeccable balance that the residual sugar is woven discretely and assuredly into the very fabric of the wine. When I voiced my belief that this was an exceptional Dragonstone, Johannes remarked that he felt it was his best ever.

Reuscher-Haart is another winery that appears to be on a marked upswing in quality since, as with Joannes Leitz, the next generation is in place and intent on making their name. Here, Mario Schwang now is fashioning the wine, and is doing a fine job across the relatively limited spectrum of different bottlings produced. To highlight but one, let's look at the **2011 Reuscher-Haart Piesporter Goldtröpfchen Riesling Kabinett**. The apricot and ripe apple fruit is expansive, with

a lithe slate and mineral grip that refuses to let go until well into the protracted finish. While the wine is not dry, the acidity provides such a complementary counterpoint that the wine will pair well with many more foods than you normally might associate with off-dry German Riesling while still being a wise choice as a palate awakening aperitif.

I first discovered the wines of **Hexamer** in the 2001 vintage, which was among the finest years for German wine in decades. Well, Harald Hexamer has continued to impress, and not simply with the standard-bearing Riesling grape. Indeed, one of the wines I tasted with Harald this year I thought was truly exceptional was **2011 Hexamer Spätburgunder Weissherbst Halbtrocken**. Essentially, this is a half-dry (halbtrocken) rosé wine made from the Pinot Noir (i.e. Spätburgunder) grape. The wine offers up strawberry and red cherry fruit that is bold, ripe, tart and enveloping. It is as versatile as most dry rosés can be when looking for a red wine substitute on a hot day.

Jakob Schneider is a yet another example of the younger generation taking over and making moves intent

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WINE & FOOD

Continued from Page 14

upon, and succeeding in, elevating quality. Among the 2011 offerings that hopefully will find their way to area retailers is the **2011 Jakob Schneider Niederhäuser Klamm Riesling Kabinett**. For those of you who find German wines too sweet, this may not be to your liking. For a Kabinett level wine (the driest wine in the hierarchy of quality German wine levels), it displays a bountiful, honeyed sweetness, with exceptional extract and texture forming the core of what is a surprising well-endowed wine. The fruit recalls peach compote and skins, with a simply sunny personality.

Finally, let me bring **Strub** into the conversation. With Sebastian Strub assuming greater responsibility from his father, Walter, the wines have risen in both quality and consistency. Among the many that should vie for your consideration, let's consider **2011 Strub**

Niersteiner Bruckchen Riesling Kabinett. I had the chance to taste together both the 2010 and 2011 versions of this wine, and while the vintages differed in many respects, the quality of each wine was the same. The 2011 was perhaps less vibrant (2010 was a very high acid vintage) but no less interesting. The fruit was deep and fleshy, with apricot and nectarines framed by some subtle cheese impressions and chalky notes.

I recognize that many merchants either are unfamiliar with artisanal German wines or simply feel the market for them is lacking. I'd submit these and many other German wines are worth the search, and in many cases are more affordable now than they will be when savvy wine drinkers discover what deals they truly are.



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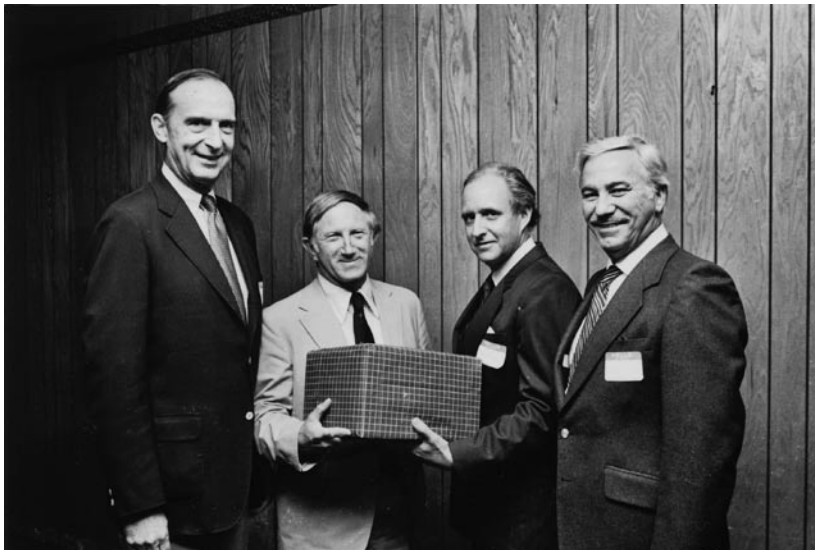
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Back in the Day

By Hon. Richard S. Hyland (ret.)

In my lifetime, I have experienced three significant events which changed the course of our country and which you may now find interesting, namely; (1) Pearl Harbor, (2) the assassination of JFK, and (3) the 9/11/2001 terror attack which was 11 years ago this month.

On the morning of 9/11 we left Cherry Hill to take our daughter to JFK Airport on Long Island where she was to take a flight to Japan. She was attending American University and was to spend her junior year in Kyoto. We were listening to "Imus in the Morning" on the radio, and as we were entering the Verrazano Bridge from Staten Island we heard that a plane had struck one of the WTC towers. As we approached the crest of the bridge we saw a plume of smoke coming down the Hudson River. Only moments later, Anne saw a jetliner flying very low over the bridge toward the smoke. Seconds later we heard that a second plane had struck the other tower and it must be a terrorist attack!



Judge John F. Gerry, Bill Scatchard, Harvey Mitnick, Hon. I.V. DiMartino



Eivind Barth, Chief Justice Richard J. Hughes, Hon. Charles Rizzi, Ted Adourian

At that point, I raced to the airport to get "Steph" out of the country. By the time we got there it was virtually deserted since all air traffic was cancelled. By then all of the bridges were closed and the airport hotels were filled with airline personnel. I realized I could be driving around all night until we found lodging, so I stopped at a gas station to fill up. The attendant refused to take my credit cards so I had to pay cash and then needed to replenish my cash reserves since I didn't know what was ahead with all the confusion. Luckily, I finally found an ATM (a great invention!) and then sought a place to stay.

After several rejections, I pulled into a gas station where a burly guy was fueling his pickup and he directed me to a Holiday Inn down the road. I thanked him and stupidly asked if he knew what was "going on?" With a fixed gaze, he replied that he was a NYC fireman and was headed into the City. Thanks to him we got the last room. We collapsed on the beds while the TV brought us up to date. Our dinner was our first meal since breakfast and I reviewed Island maps so we could try to get a ferry to Connecticut in the morning. By then, the bridges were open and we had an uneventful trip back down the

Turnpike. Steph booked an Air Japan flight 10 days later, but we had to deal with the just-enacted security measures at the airport which is a whole other story.

On Sunday, December 7th, 1941 our family (Mom and Dad and 6 children) had returned from Mass to our home in Camden (Parkside). As was his custom, my father had cooked a breakfast of eggs and scrapple or slices of broiled veal kidneys (I can hear the collective groan of " UGH" from readers, but really tasty). I was playing on the porch with my toy soldiers and naval ships (how prophetic) when a report came over the radio that the Japanese had bombed Pearl Harbor! My parents and siblings were shocked and scared since my brothers were of draft age. They didn't know I had defeated the enemy with my toys in short order later that day.

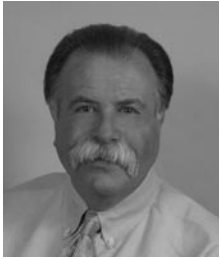
Many of our Association lawyers served in the war, but rarely talked about it. We only learned about their dangerous exploits from the eulogies for them at our Annual Memorial Ceremony. They were truly members of "The Greatest Generation."

In November 1963, I was sitting at the counter at Max's luncheonette in the Wilson Building when I saw Walter Cronkite announce on TV that JFK was dead. My family had been actively involved in Democratic politics for decades and it was a natural for me to be a fervent supporter of Kennedy. During his 1960 campaign he came to Camden Convention Hall for a rally and I was asked to provide the music, which I did. When he entered the Hall we played "Happy Days Are Here Again," but were drowned out by the tumult and cheers of the crowd. I was proud that my brother Bill introduced him and we have a picture with JFK looking up at him as Bill speaks. There is also a picture of him with our Angelo Malandra. "Ang" was instrumental in JFK's winning the West Virginia primary against Hubert Humphrey which later insured his nomination, as historians say. Later revelations have taken the bloom off of "Camelot," and with age comes wisdom, so I'm far less liberal than before, but they were indeed certainly thrilling days!

Please forward any comments or questions to:
rhylandatlaw@aol.com

SPINNING MY WHEELS

Whither Technology?



By Andrew Kushner

The other day I was thinking about what I would do to replace my current Saab which is quickly moving towards the decade mark and was again struck not only by the usual self imposed limitations (money, and manual transmission requirement) but also by my emerging attitude that over the last five years or so there has been

the inclusion of much technology, some of which may be considered of questionable value. It seems that automobile companies have taken the position that if "it can be done" it should be done, without regard to the cost or utility of the item. Now I don't consider myself to be some Luddite, intent upon squelching modernization or, what has also been termed "progress." Nor do I believe this opinion to be a product of my advancing years. In my very much younger days I was happy to be on the cutting edge of technology, especially in the audio world and even, for a short time during law school, made some decent money in those endeavors. While I consider myself somewhat less than a computer genius, I do believe that I am more than minimally computer literate and try to adopt technology to assist me in my practice.

Now, though, I am increasingly put off by the common idea that communication among individuals—both personal and professional—needs to be instant and continuous, 24 hours per day without respite. While I have email capability on my smart phone, I do not avail myself of it; I do not use the internet on that device and I try hard not to pick up phone messages over the weekend. There is, I believe, a bargain to be made and kept with technology that has to balance the utility of the device or application with the imposition that comes along with it. Those **LinkedIn** contacts from law school or tax school classmates who I have not heard of or from for over 30 years all fall into the latter alternative.

This personal communication and technology conundrum has a direct analog in the automobile industry's plethora of applications. Almost all of them have, at its base, computer technology as the culprit. That is not to say that computer and electronic technology has not been the savior of the industry over the past several decades. It has been the computer, either directly or otherwise, that has permitted the 125 year old internal combustion engine to live and flourish in the teeth of increasing environmental concerns and diminishing global resources. Not incidentally, computers have allowed the creation of 550 bhp Cadillacs that return over 20 mpg. The ever tightening nanny-state of computer driven car safety, which began with anti-lock brakes over 30 years ago, has morphed into traction control, active cruise control, yaw control, lane departure warnings and electronic stability control, to name a few. These have made cars eminently more safe and stable for the average (read: poor) driver in the same three decades.

But it seems that these very improvements have incurred trade-offs that may now be of questionable utility. The hugely increased use of computer applications, both in the control of vehicles and their diagnosis and repair has left the shade tree mechanic in the shade, leaving him or her only able to change oil or other simple repairs. Anything more than that must be left to the dealer who increasingly is the only one with the proprietary software able to make the appropriate diagnosis. Independent techs are at a severe, sometimes fatal, disadvantage. By the way, the men and women who do the repair work on your car are no longer "mechanics" but rather "techs," just as there are now flight attendants, not stewardesses and administrative assistants, not secretaries.

What follows, then, is a short list of technology advances that are a bridge too far in my humble opinion:

- **Run Flat Tires.** Probably the one single reason, besides price, that I will never again be an owner of my beloved BMWs. While the Bavarians have held up their part of the bargain by continuing to import manual transmission cars to these shores, the company's requirement that it employ these expensive, harsh riding and heavy tires has soured me. And no, the easy answer is not to replace them with conventional tires because the spare tire has been deleted just as the dipstick was removed from the engine compartment not so many years ago. Vater knows best.
- **Multifunction Control Knobs:** Again, BMW is the first and most visible offender. In fairness, other German companies (Is there a pattern here?) like Audi have followed suit. We know that we should not be distracted in our driving by drinking, eating, phone use or texting. But if you simply want to change the fan speed or search for radio station, you must use the knob to go through multiple screens on the display to get to where one button or mechanical rotary knob was the prior means of control. It is probably more dangerous than drunk driving, not that I am suggesting that as a safer alternative.
- **Push Button and Remote Start:** Both my 1941 Cadillac and 1959 Jaguar had these "conveniences" and the "insert key and twist" supplanted this. Try re-starting your car when your spouse has the key fob in her handbag and goes into a store for shopping while you wait in the car. Not quite thought through.
- **Voice Commands:** Didn't work in the 1980s, probably doesn't now. Besides the "gee whizz" factor, I really don't understand the utility. Somebody please ask Mike Rowe to stop telling potential Ford buyers that this is a real reason to buy their cars.
- **Self Parking:** Ranks right up there with the automatic fork. If you can't parallel park, perhaps you shouldn't really have passed your driver's test.
- **Blind Spot Camera:** I have this as an option on our Volvo. Generally it has notified me when I am about to pass a concrete Jersey barrier on my left or a road sign on my right. On occasion it has also identified a moving vehicle on either side of mine. As I have said previously, my \$2 blind spot mirror works better and is more reliable.

These and other advances of questionable technical value add more weight, complexity and cost to each vehicle. Once the bumper to bumper warranty expires, the cost to repair or replace will quickly spiral out of control *vis-a-vis* the residual value of the vehicle. If technology is good more may be better but I will continue to hope for sanity in this arena. If the buying public stops to think about it, maybe attitudes will change. But probably not.

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LAW PRACTICE MANAGEMENT

Overcome Fears of Asking for the Business



By Kimberly Alford Rice

“I did not go to law school to be a sales person.”

The last place most lawyers thought they would be in after law school was in the position of selling their services though the key to building a prosperous practice is to attract new clients and retain the ones you have. All of these

transactions require lawyers to master some basic sales skills and closing the sale is a non-negotiable part of the process.

For ages now, those of us in legal services have debated whether lawyers should be expected to “sell” to grow their client base. For many, the very word “sales” is an untenable reference. That is why in many law firms today we use the semantical reference “business development.” Call it what you will, but there’s no getting around the fact that in order to grow a legal practice, lawyers must be retained by new clients.

Below are some of the most common concerns clients have shared in the sales training workshops I have conducted as to why they do not directly ask for business.

- 1. Lawyers are uneasy with directly asking for business.** Given the lack of professional training (much less any practice) of how to actually ask for new business, most lawyers are very uncomfortable having those conversations. One of the keys is to have open-ended questions and strong responses to obstacles at the ready. As important as becoming comfortable with asking for business is to practice in front of a mirror observing your intonations, facial gestures and other non-verbal cues.
- 2. Fear of Rejection.** This is exceedingly the top concern and fear of my lawyer clients in directly asking for new business. While understanding that no one enjoys hearing “no,” I advise my law firm clients to separate a “no” from a personal rejection. Often, when a prospect says no, they actually mean “not now” or they do not understand how your services will help them solve and/or prevent a problem.
- 3. Lawyers Fear Prospects’ Negative Perceptions.** How many times have we heard “I don’t want to seem pushy,” “I don’t want to seem like an ambulance driver,” from colleagues when speaking of sales situations? The fact is lawyers’ fears of negative perceptions will be reduced proportionately to how much he/she professionally learns and practices/prepares for directly asking for new business.
- 4. They Are Unclear on How to Ask for Business.** This is a different fear than being uncomfortable with asking for new business in that literally clients don’t know what to say to prospects

to lead to a “close.” One of the most important techniques I teach my sales training clients is the art of the sales conversation. The sales process becomes infinitely easier and more comfortable when clients can dissect and clearly understand what needs to happen to lead the prospect to “yes.” When lawyers understand the process and how to logistically have the sales conversation, the fear usually dissipates.

- 5. Timing Concerns.** It is a sign of a professional salesperson to clarify upfront the time required for a sales conversation as well as to understand the prospects’ decision-making process and the key influencers who will be involved in authorizing the release of funds.

The most productive sales conversations will include a series of open-ended questions (those which cannot be answered ‘yes’ or ‘no’) to understand specific needs, the cost of doing nothing, and whether your services are the best fit. The “big close” is effectively avoided by asking for a number of little decisions, i.e., gaining confirmation as each point is established, similar to a litigator when questioning a witness.

Equally, poor preparation via rushing “the ask” often results in a negative response. Take your time to actively listen to your prospect, her needs, challenges, concerns, etc. so that you are in a stronger position to offer help with a more assured understanding of needs and expectations.

- 6. Fear of Overcoming Obstacles.** When lawyers are prepared and have learned what prospects are willing to give up in time and money to get, it becomes easier to respond to objections. Objections are typically a sign that while a prospect may be interested in “buying” your services; you have yet to adequately describe how you can add enough value and/or help prevent or solve a problem.

I often advise clients to incorporate questions such as “is there anything I haven’t addressed that is of concern to you or your organization?” Or “explain where we are not in alignment.” By presenting only concrete examples of relevant situations and successful buying decisions by clients most like this buyer, making a buying decision will be much easier for the prospect, and selling will be easier for you.

At the end analysis, we are all buying and selling something every day. It is in the nuances of actively listening, asking appropriate open-ended questions to fully understand the underlying problems, the value of solving it, the cost of doing nothing, and guiding your prospect to the point of recognition that you are uniquely qualified and situated to best address the issue. Then, practice, practice, practice your delivery to convincingly communicate that your services are the best fit for your prospects’ needs.

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Capehart Scatchard Shareholder, **Amy C. Goldstein, Esq.** was sworn in as the Treasurer of the New Jersey State Chapter of the American Academy of Matrimonial Lawyers (AAML). Ms. Goldstein's practice areas include marital and civil union dissolutions, appeals, alimony, child support, cohabitation, child custody issues, prenuptial, post nuptial and cohabitation agreements, post-divorce cases and all related matters. Ms. Goldstein received her J.D. from the University of Pennsylvania School of Law in 1982. She received her B.A., *with Honors, Phi Beta Kappa* from the State University of New York at Binghamton.

Capehart Scatchard school lawyer, **Robert A. Muccilli** spoke at the New Jersey Association of School Business Officials Conference in Atlantic City. The presentation was: "Agendas, Minutes and *McGovern v. Rutgers*," which focused on recent legal developments under the Open Public Meetings Act (OPMA). Mr. Muccilli has represented school districts with respect to a variety of special education issues including questions pertaining to inclusion, least restrictive environment, discipline, behavior

management, transition, evaluation, discrete trial instruction, medically fragile students, dyslexia, Down Syndrome, Aspergers Syndrome, and equal access to activities and services for disabled individuals. He received his B.A. degree, *Phi Beta Kappa*, from Trinity College and his law degree from Vanderbilt University School of Law.

The Estate and Financial Planning Council of Southern New Jersey officially swore in the 2012-2013 Board of Directors at its Annual Installation and Awards Dinner in May. The newly sworn-in Board includes CCBA members: 2nd Vice President – **Yasmeen S. Khaleel**, Capehart & Scatchard; Secretary – **Jamie Shuster Morgan**, Fendrick & Morgan; and Immediate Past President – **Anthony R. LaRatta**, Archer & Greiner.

Peter L. Frattarelli, a Partner with Archer & Greiner in Haddonfield, has been appointed to the Board of Directors of Habitat for Humanity Burlington County, a nonprofit organization working to provide decent, affordable housing to families. Mr. Frattarelli plans to use his experience in labor and

employment law to provide assistance and guidance to the organization. Mr. Frattarelli is Chairman of the Labor and Employment Law Department of Archer & Greiner His 20 years of experience include advising and representing clients in a variety of industries and settings, including government agencies, on labor and employment matters including labor unions and collective bargaining.

Tim Rice, Managing Partner of Timothy Rice Estate and Elder Law Firm, has assumed leadership in the Marlton Rotary as incoming President for the 2013-2014 year. Mr. Rice is a member of the American, New Jersey State, and Camden County Bar Associations, and the National Academy of Elder Law Attorneys. He is an accredited attorney for the preparation, presentation and prosecution of claims for veterans' benefits before the Department of Veterans Affairs.

The law firm of Stark & Stark is pleased to announce that attorney **Douglas A. Burke** has joined the Business and Corporate Group in the firm's Marlton office.

Bad Faith Recovery in Personal Injury Case is Tax-Free

Continued from Page 8

In a Private Letter Ruling involving a bad faith claim where the insurance company failed to pay for a personal injury, the IRS took the position that the recovery was tax-free.¹⁰ In that case, the plaintiff, formerly employed as a highway construction worker was, in the course of his employment, struck by a drunk driver. The drunk driver managed a tavern and had served himself liberally while on duty. The plaintiff was severely injured and sued the driver/manager as well as the tavern. The plaintiff received a jury verdict consisting of compensatory damages for his personal physical injuries, medical expenses, pain and suffering, and lost earnings. He was also awarded punitive damages. Before the judgment was awarded, the tavern's insurer had rejected an opportunity to settle for the limits of the tavern's policy. Under state law, the tavern as a policyholder had a cause of action against the insurance company, if it acted in bad faith in failing to settle the claim. The tavern believed it had a cause of action against the insurance company. The tavern assigned to plaintiff its rights to pursue a bad faith claim against the insurance company. Eventually, the plaintiff settled with the insurance company. The settlement agreement provided that on receipt of payment, the plaintiff would cause the bad-faith insurance litigation to be dismissed with prejudice, and cause the personal injury judgment against the manager in the tavern to be marked as satisfied.

The IRS began its analysis by discussing the origin of the claim doctrine. It then applied those basic concepts to the facts. Why were the damages awarded? The IRS reasons that the plaintiff may have recovered against the insurance company, but the recovery had its origin in the settlement of the case against the tavern manager and the tavern. The plaintiff sued the insurance company only as an assignee of the tavern. The plaintiff was merely trying to collect on his judgment against the manager and the tavern for damages awarded for the plaintiff's personal physical injury claim. But for the personal physical injury claim, plaintiff would be receiving nothing from the tavern's insurer. Applying the origin of the claim test, the IRS determined that the bad faith recovery was essentially a recovery for a physical injury or sickness and was, therefore, tax-free.

The IRS determined that the portion of the recovery allocated to punitive damages is taxable income as always.¹¹ A Private Letter Ruling expressed no opinion as to the proper allocation of the settlement proceeds between the personal physical injury and sickness damages on one hand and punitive damages on the other.

⁹ *Sager v. Glove Corp. v. Commissioner*, 311 F.2d 210 (7th Cir. 1962).

¹⁰ P.L.R. 200903073, Dec. 2009-1070, 209TNT11-27.

¹¹ *O'Gilvie v. United States*, 519 U.S. 79 (1996).

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VERDICTS IN THE COURT

Superior Court of New Jersey

VERDICT: No Cause (7/5/12)
 Case Type: Auto
 Judge: John A. Fratto, J.S.C.
 Plaintiff's Atty: John Morelli, Esq.
 Defendant's Atty: Francis McDevitt, Esq.
 L-5344-10 Jury

VERDICT: No Cause (7/13/12)
 Case Type: Medical Malpractice
 Judge: John A. Fratto, J.S.C.
 Plaintiff's Atty: Robert A. Greenberg, Esq.
 Defendant's Atty: Lora M. Foley, Esq.
 L-1386-09 Jury

VERDICT: No Cause (7/18/12)
 Case Type: Auto Negligence
 Judge: Richard F. Wells, J.S.C.
 Plaintiff's Atty: Marian Kelly, Esq.
 Defendant's Atty: Robert Kaplan, Esq.
 L-3181-10 Jury

VERDICT: No Cause (7/25/12)
 Case Type: Auto Negligence
 Judge: Richard F. Wells, J.S.C.
 Plaintiff's Atty: John Klamo, Esq.
 Defendant's Atty: Charles Blumenstein, Esq.
 L-4982-10 Jury

VERDICT: No Cause (7/10/12)
 Case Type: Auto Negligence
 Judge: John A. Fratto, J.S.C.
 Plaintiff's Atty: Michael R. Mignogna, Esq.
 Defendant's Atty: Laurie B. Tilghman, Esq.
 L-4708-10 Jury

VERDICT: No Cause (7/18/12)
 Case Type: Auto
 Judge: John T. Kelley, J.S.C.
 Plaintiff's Atty: Stephen DiStefano, Esq.
 Defendant's Atty: Scott Sheldum, Esq.
 L-5930-09 Jury (7)

VERDICT: No Cause (7/19/12)
 Case Type: Auto Negligence
 Judge: Stephen M. Holden, J.S.C.
 Plaintiff's Atty: Keith Jentis, Esq.
 Defendant's Atty: Tanja Riotta-Seybold, Esq.
 L-4996-09 Jury

VERDICT: No Cause (7/25/12)
 Case Type: Auto Negligence
 Judge: John A. Fratto, J.S.C.
 Plaintiff's Atty: Hercules Pappas, Esq.
 Defendant's Atty: Lawrence S. Berger, Esq.
 L-2811-10 Jury

VERDICT: No Cause Liability Verdict: 40%
 Against Plaintiff, 60% Against
 Defendant, Damage Verdicts: \$0
 (7/12/12)
 Case Type: Auto Negligence
 Judge: Stephen M. Holden, J.S.C.
 Plaintiff's Atty: Michael Albano, Esq.
 Defendant's Atty: Robert Pettino, Esq.
 L-4538-10 Jury

VERDICT: No Cause (7/18/12)
 Case Type: Personal Injury
 Judge: Louis R. Meloni, J.S.C.
 Plaintiff's Atty: Daniel Snyder, Esq.
 Defendant's Atty: Kimberly Hoehing, Esq.
 L-4321-10 Jury

VERDICT: No Cause (7/25/12)
 Case Type: Auto
 Judge: John T. Kelley, J.S.C.
 Plaintiff's Atty: David Cuneo, Esq.
 Defendant's Atty: Francis McDevitt, Esq.
 L-3715-10 Jury

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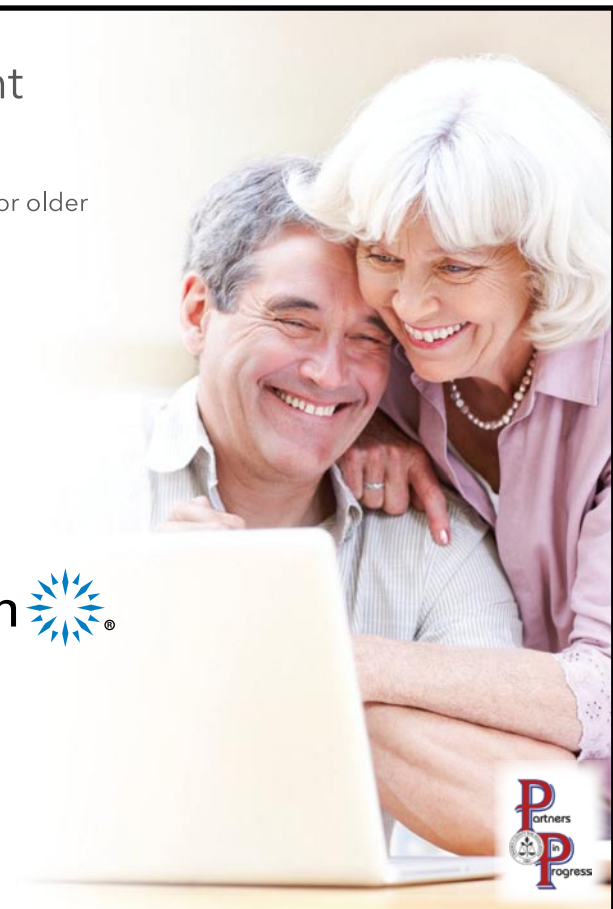
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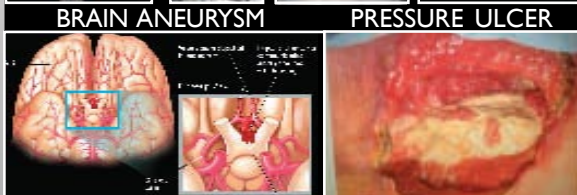
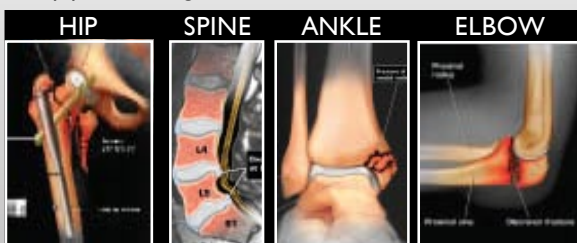


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