

2017 Camden County Professional Lawyer of the Year Nominations Close June 9th

Nominations for Camden County's 2017 Professional Lawyer of the Year Award are now due.

The Professional Lawyer of the Year Awards are presented jointly by New Jersey Bar Associations and the New Jersey Commission on Professionalism in the Law to recognize deserving individuals and focus positive attention on the good works done by members of the legal profession.

The criteria for determining a Professional Lawyer of the Year are:

- A lawyer/judge who is committed to the ideals of professionalism
- Who is well recognized in the legal community for character and competence.
- Who is respected by all and looked upon as a model of professional behavior.

The awards will be presented at the annual awards luncheon next fall

Selection of the recipient is NOT based on the number of nominations an individual receives. Each nominee is reviewed by the CCBA selection committee with the recipient determined by who best exemplifies the criteria set forth.

To nominate a colleague for this prestigious award, use the nomination form included in this month's inserts.

NOMINATIONS ARE DUE TO BAR HEADQUARTERS BY 5 PM, FRIDAY JUNE 9.

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Always Tasteful!



Dawnn Briddell placed the highest bid for the "Rainy Day Fund" Umbrella with \$50 worth of NJ Lottery Scratch-offs at the Foundation's recent Wine Tasting & Silent Auction. Did she scratch enough to retire?

— For the complete story and more photos, please see page 9.

Your CCBA Membership At Your Fingertips—New Member Portal Launched!

We are pleased to announce the launch of our new membership portal. Using the password you received in a recent email, you can now login and update your contact information, register and pay for upcoming Events/CLE programs and make dues renewal payments to us on line.

If you are a member of the Lawyer Referral Service (LRS), you can also set an "Out of Office" notice when you cannot take LRS cases for any reason such as vacation, starting a trial, etc. Your position in rotation does not change when you use the Out of Office-it

(Continued on Page 4)

Enjoy Your Summer!

This is the final *Barrister* until September. We hope it has been an interesting and informative *Barrister* year for you, our readers, and we look forward to continuing the tradition next year.

The *Barrister* Editorial Board appreciates the efforts of all who have taken the time and interest to provide columns for our readers month after month, and extends its gratitude to all of our regular columnists.

In addition to the regular columns that appear, *The Barrister* is fortunate to receive a number of interesting articles throughout the year from various Bar members. To those of you who pen these articles, thanks and 'keep 'em comin'!

This is YOUR bar publication, written for and by members of the Camden County Bar Association and we're always looking for a fresh idea for a new regular column and additional articles on various topics. We would especially appreciate substantive articles from our committees as they meet and work throughout the year. We invite submissions from ALL Bar members.

Please remember that submissions are due on the first of the month prior to publication, i.e. August 1, for the September issue, etc. Articles should be no more than 750-1,000 words, 12pt. type, double-spaced and forwarded as an email attachment in MSWord or WordPerfect format to lbp@camdencountybar.org.

For additional information on submitting articles for publication, please contact Bar Headquarters at 856.482.0620 or via email to lbp@camdencountybar.org.

Rest, relax, re-charge and have a great and safe summer. See you in September!

Don't Delay, Renew Today! Pay dues by June 1! • See page 2

THE DOCKET

Saturday, June 3

Children's Picnic

10 am – 1 pm

Challenge Grove Park, Cherry Hill

Friday, June 9

Dinner Dance

6 – 11 pm

Lucien's Manor, Berlin

Wednesday, June 14

CCBA Board of Trustees Meeting

4 pm

Bar Headquarters

An Introduction to Criminal Tax Concepts

4 – 6:15 pm

Tavistock Country Club, Haddonfield

Saturday, June 17

Wiffle Ball Tournament

9 - ??

Camden Catholic High School, Cherry Hill

**Make YOUR association
work for you!
Get Involved in a
Committee.**

Tentative agenda for June 21st Trustees Meeting

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

- I. Call to Order
- II. Minutes from Previous Meeting
- III. Treasurer's Report
- IV. President's Report
- V. 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

Wednesday, June 21

Introduction to Intellectual Property:

Keeping Your Clients Protected

4 – 6:15 pm

Tavistock Country Club, Haddonfield

Friday, June 23

Civil eCourts Seminar Series -

General Overview Session

2 – 4 pm

Jury Assembly Room – Hall of Justice, Camden

Don't Delay, Renew Today!

Dues notices for the 2017-18 membership year have been mailed and are **payable by June 1**. Paying promptly ensures that your Association continues to serve you and the community with its many important programs and services.



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

- A wide array of affordable, convenient and informative CLE seminars, all offering New Jersey and Pennsylvania CLE credits.
- Discounted tuition and special offers on the many CLE programs available online through the *Camden County Online CLE Learning Center*.
- Our monthly publication, *The Barrister*.
- Committees that offer opportunities to network with peers while shaping the future of your Association.
- Professional and social activities designed to enhance your law practice
- Discounted rates for conference room rentals
- An online Member-to-Member Referral service
- Discounts on many legal products and services, and much more.

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

Renew your membership, or join today, and support our mission to ensure that the Camden County legal community remains the finest in New Jersey.

THE BARRISTER

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

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

Classified Advertising rates \$30 per insertion

Annual Subscription Rate \$40

**Be an active participant
in YOUR professional
organization.**

**ATTEND MEETINGS
AND FUNCTIONS!**

MEMBER ON THE SPOT



NAME: Thomas Andrew Hagner
PRACTICE AFFILIATION: Hagner & Zohlman, LLC
YEAR ADMITTED TO BAR: 2014
OTHER BAR ADMITTANCES: PA

PRIOR OCCUPATION: Bartender

RESIDENCE: Haddon Township, NJ

HIGH SCHOOL: Haddonfield Memorial High School

COLLEGE: University of Hawaii at Manoa

LAW SCHOOL: Rutgers School of Law - Camden

WHAT LED YOU TO A LEGAL CAREER: Genetics

BEST PERSONAL/PROFESSIONAL ATTRIBUTE: I am an attentive listener

GREATEST FAULT: A tendency to be impatient

WHAT I DO TO RELAX: Spend time with my wife and daughter, play golf

HOBBIES: Playing golf

FAVORITE RESTAURANT: Hy's Steak House

FAVORITE TELEVISION SHOW: *Cops*

FAVORITE MOVIE: *Caddyshack*

FAVORITE AUTHOR/BOOK: Dr. Joseph Parent/Zen Golf

FAVORITE VACATION PLACES: Hawaii and Thailand

FAVORITE WEBSITE: <http://www.hagnerzohlman.com>

FAVORITE MUSEUM: National Air and Space Museum

FAVORITE WEEKEND GETAWAY: St. Michaels, MD

ENJOY MOST ABOUT PRACTICING LAW: Helping others while working alongside and learning from my father

MOST ADMIRABLE PEOPLE AND WHY: My parents for dealing with me for the past 31 years

WHEN AND WHERE HAPPIEST? Whenever and wherever I am with my family, followed by the golf course

CHERISHED MEMORIES: Living in Hawaii

GREATEST FEAR: Flying

ALTERNATE CAREER CHOICE: Restaurateurs

GREATEST LESSON LEARNED FROM PRACTICE OF LAW: Triple-check everything, then check it again before sending

PERSON YOU'D MOST LIKE TO DINE WITH: Anthony Bourdain

PET PEEVE(S): When other drivers fail to use turn signals at the appropriate time

LIFE'S HIGHLIGHTS: Marrying my beautiful wife, Angela, and the birth of our daughter, Alice

GREATEST ACCOMPLISHMENT: Convincing Angela to move from Hawaii to New Jersey

#1 PROFESSIONAL GOAL: Become a Certified Civil Trial Attorney

#1 PERSONAL GOAL: Provide happiness for my family

LIFE EXPERIENCE(S) WITH GREATEST IMPACT: The birth of my daughter

ADVICE TO YOUNG LAWYER: Find the silver lining in every gray cloud

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

FAVORITE QUOTATION: "Impermanent are all created things. Strive on with awareness."

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 substantive law committees. Committee participation offers you a voice in the future of YOUR professional organization. As the new Bar year begins, committee appointments will be one of the first official acts of President Eric Fikry—**Let Eric know how you want to be involved!**

Use the committee call list and return it to Bar Headquarters with your committee choice(s) indicated. Committee participation 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.

WELCOME NEW MEMBERS

Public Sector (1)

Anna M. Trenga, Esq.
November 2016
 Camden County Prosecutor's Office
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Active (4)

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NJ Office of the Attorney General
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 Section
 25 Market Street
 Trenton, NJ 08625

Dominic A. Speziali, Esq.
December 2011

Stark & Stark
 401 Route 73 North
 Suite 130
 Marlton, NJ 08053

Student (1)

Syed T. Zaidi
 Tougo Law School
 23 Groom Street
 Burlington, NJ 08016



PERSONAL INJURY LAW

Divorce And Public Benefits

By Thomas D. Begley, Jr., CELA

Many divorces involve families in which a spouse or child has disabilities. Family law attorneys should always ask if this is the situation. In many instances, the individuals with disabilities are receiving public benefits and many other that may be eligible for benefits but are not aware of their eligibility and have not applied.

For many means-tested public benefits, such as Supplemental Security Income (SSI) and Medicaid, there is an asset test of \$2,000 in addition to an income test. Assets transferred from a healthy spouse to a spouse with disabilities, through equitable distribution, would be considered assets of the spouse with disabilities. Income transferred from a healthy spouse to a spouse with disabilities, such as alimony, is considered income to the recipient. Income paid to a child with disability, in the form of child support, is considered income to the child. Therefore, equitable distribution, alimony and child support could all adversely affect the right to receive public benefits. The solution is a Self-Settled Special Needs Trust (SSSNT).

In What Type of Matrimonial Settlement Situations Should A Special Needs Trust Be Utilized?

Special Needs Trusts (SNTs) should be utilized in matrimonial settlements when one spouse is disabled and eligible for public benefits, or when there is a child with a disability eligible for public benefits or who may become eligible in the future. The establishment of an SNT can enable the disabled spouse or child to qualify for public benefits. Therefore, the trust can help reduce the amount of money required to be paid from the non-disabled spouse while increasing the benefit to the disabled spouse. When public benefits are used to help fill some of the financial need, cases can be easier to settle. SNTs can be used in the following ways:

- *Equitable Distribution.* Equitable distribution is a division of the marital assets. If one of the divorcing spouses is disabled, the existence of the equitable distribution will prevent that person from accessing public benefits and will cause a loss of any existing public benefits. The solution is to have the equitable distribution paid into an SSSNT for the benefit of the disabled spouse.
- *Alimony.* Payment from a non-disabled spouse to a disabled spouse for maintenance and support during legal separation and/or after the divorce is finalized results in the alimony payments

being counted as income to the disabled spouse for SSI eligibility purposes. The alimony will reduce the SSI payment dollar for dollar. If the alimony is large enough to completely eliminate SSI, the individual with disabilities will also lose Medicaid. The solution is to establish an SSSNT and to have the court direct payments to the trustee of the SNT rather than directly to the disabled spouse.

- *Child Support.* Payment of child support is considered income to the child recipient. For SSI purposes, one-third of the support payment is excluded from the child's countable income. But the remaining two-thirds of the support payment reduces the child's SSI payment dollar-for-dollar. If the payment is reduced to \$0, the child will lose both SSI and the accompanying Medicaid. When the child support is paid directly to an SSSNT pursuant to a court order, the income is not counted to the child and public benefits can be maintained. The Court Order and the Trust must be reported promptly to the Social Security Administration (SSA) and to the State Medicaid Agency.

What Can The Trust Pay For?

The trust can pay for a very broad range of goods and services as long as payment is made directly to the provider, rather than to the person with disabilities. Examples include: personal effects such as furniture, appliances, computers, and automobiles, rent, home improvements, pools, utilities, medical insurance, newspaper subscriptions, services of a care manager, vacations, federal and state taxes, funeral expenses, and legal fees. Payments for food and shelter are likely to reduce the SSI payment by one-third or one-third plus \$20, depending on living arrangements.

Trusts can purchase homes and vehicles. While these are non-countable assets, they are considered special assets. If the trust will be used to purchase these items, there are several options that must be considered in consultation with the Special Needs attorney assisting in the case to ensure that the assets are properly titled.

Generally, funds in the SSSNT can only be used for the benefit of the person with disabilities. Other family members or friends benefiting from the trust are usually required to pay a pro rata share for their benefit. As noted previously, trust assets usually are

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simply alerts the office team so they don't call during that period of time. Also, it will automatically come off after your return date, so no need to remember to let us know you are back.

To access your account, please use your email address and the temporary password you receive by email. Your user name will always be your email address, but you will need to set your own password once in the system.

After you have updated your password, **please check your membership profile and make any necessary changes**

or updates. Your information was transferred over from our old membership database and during that process some information might have been inadvertently changed, deleted

We are confident that you will be as delighted as we are with the new functionality provided by our new system.

Of course, if you have problems accessing your account or have any questions, please contact us at 856.482.0620 or info@camdencountybar.org.



FINANCIAL FORENSICS

We Don't Write The Tax Rules... We Just Help Interpret Them

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

A colleague/friend of mine, Jay MacDonald, is a contributing editor for *Bankrate*. In compiling his annual *Craziest Tax Deductions* story for *Bankrate*, Jay again reached out to me for some of his wackier examples.

I told Jay of my dialogue with a client regarding his aggressiveness in wanting to deduct certain "therapeutic" expenditures he felt should qualify as medical expenses. To that end, I cited for the client a Tax Court Memorandum from 2009 (*Halby v. Commissioner*). In that case a Brooklyn tax attorney tried to deduct AS MEDICAL EXPENSES approximately \$121,000 for expenditures he shelled out for prostitutes, pornographic publications and related finance charges. He did keep detailed records of his visits (i.e. date, name of the "service provider", publications or other items, etc.) thinking he would at least meet the substantiation rules for proper support. He felt all of these expenses qualified based on their positive health benefits. Alas, the Tax Court maintained that the Internal Revenue Code does not sanction deductibility for illegal operations or treatment. Also, the prostitute visits were not prescribed by a physician nor intended to treat a particular medical ailment. Similarly, the pornographic publications and similar items he purchased were disallowed as unrelated to the treatment of a medical condition.

The tax attorney, who was divorced, semi-retired and living alone in a Bay Ridge apartment was quoted in the press at the time saying "I was depressed. I live a solitary life. I have no social life. I needed that release." Halby

said he found his "sex surrogates"—preferably brunettes—through ads in *The Village Voice* and sometimes visited them several times a week. "Over the years, I've been with dozens of girls for full-body massage with . . . happy ending," he said. All told, Halby spent about \$322,000 to satisfy his desires, according to court papers.

Of course, we're really not sure how the Court would have ruled had the taxpayer paid for these treatments in Nevada where we understand prostitution is legal (not that I would know) and he had obtained a note from a doctor for such.

As an aside, I do recall mentioning this case to a very seasoned matrimonial attorney colleague (who often offers, along with half of the divorce attorneys of the Camden County Bar, to represent Jane pro-bono) and this nameless divorce lawyer responded "Shoot Abo, under that theory then I should be able to deduct the Chanel handbag I drool over. You have no idea how excited I get just thinking about it"

Abo and Company, LLC and its affiliate, Abo Cipolla Financial Forensics, LLC, Certified Public Accountants – Litigation and Forensic Accountants are Partners in Progress of the Camden County Bar Association. The above article was retrieved from the "E-mail alerts" disseminated to clients and friends of the firm. With offices in Mount Laurel, Morrisville, PA and Franklin Lakes, NJ, tips like the above can also be accessed by going to the firm's website at www.aboandcompany.com or by calling 856-222-4723.

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Abo Cipolla Financial Forensics, LLC and its affiliate, Abo and Company, LLC, are proud to be *Partners in Progress* with the Camden County Bar Association. As part of this program, we are offering member lawyers our most prized assets—our time, our insight and our expertise. Should you wish to confer on a complex technical issue, or simply get a second opinion, we welcome the conversation. Consider us an extension of your office where you can freely discuss any and all matters involving your clients or you personally.

Remember! It doesn't cost you anything to call us on a matter.

It may cost you *dearly* by *not* calling us on that matter. We can help, so why not give us a call!

We strive to successfully meet the needs of a very diverse client base. We have carefully focused and developed our practice to specialize in the complexities of tax planning and compliance; financial consulting; accounting and review services; estate planning and compliance. We are here to assist our judiciary and legal colleagues in any and all accounting, tax, valuation, investigative or litigation support project where our team may be of benefit. We offer consultations in many areas, including the following:

- Contract disputes
- Shareholder disputes & partnership dissolutions
- Lost profit claims & damage measurement
- Business interruption claims
- Business valuations
- Critique of other expert reports and Interrogatory assistance
- Matrimonial litigation
- Document requests & productions
- Fraud investigations
- Arbitration and Mediation
- Tax related valuations
- Lost earnings from wrongful death, termination or personal injury claims

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VERDICTS OF THE COURT

Superior Court of New Jersey

VERDICT: Liability Verdict (70% Defendant, 30% Defendant) (4/12-/17)
 Case Type: Auto Negligence
 Judge: Thomas T. Booth, Jr., J.S.C.
 Plaintiff's Atty: David W. Burns, Esq.
 Defendant's Atty: DA1 – John Dingle, Esq.
 DA1 – Brittany McCloskey, Esq.
 L34-15 Jury (6)

VERDICT: Liability Verdict (49% Plaintiff, 51% Defendant) (4/13/17)
 Case Type: Auto Negligence
 Judge: Yoland C. Rodriguez, J.S.C.
 Plaintiff's Atty: Andrew VanWagner, Esq.
 Defendant's Atty: Malcolm Thurmond, Esq.
 L-546-15 Jury

VERDICT: Liability Verdict (70% Defendant, 30% Defendant) (4/19/17)
 Case Type: Auto Negligence
 Judge: Anthony M. Pugliese, J.S.C.
 Plaintiff's Atty: John Borbi, Esq.
 Defendant's Atty: John Mastronardi, Esq.
 L 4454-14 Jury

VERDICT: Damages Verdict (4/20/17)
 Case Type: Auto Negligence
 Judge: Francisco Dominguez, J.S.C.,
 Plaintiff's Atty: Scott Goldberty, Esq.
 Defendant's Atty: Francis McDevitt, Esq.
 L 4457-14 Jury

VERDICT: No Cause (4/26/17)
 Case Type: Auto Negligence
 Judge: Christine S. Orlando, J.S.C.
 Plaintiff's Atty: Andrew Van Wagner, Esq.
 Defendant's Atty: Rachael Jamomczal, Esq.
 L-2117-14 Jury (6)

VERDICT: No Cause (4/27/17)
 Case Type: Auto Negligence
 Judge: Thomas T. Booth, Jr., J.S.C.
 Plaintiff's Atty: Gary Brownstein, Esq.
 Defendant's Atty: Raymond F. Danielewicz, Esq.
 L-2936-15 Jury

VERDICT: No Cause (4/20/17)
 Case Type: Auto Negligence
 Judge: Thomas T. Booth, Jr., J.S.C.
 Plaintiff's Atty: John C. Iannelli, Esq.
 Defendant's Atty: G. Harrison Walters, Esq.
 L-753-15 Jury

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CLE on Tap!



New Jersey Criminal Law Preparation was the subject of the CCBA's most recent CLE on Tap! program for newly admitted lawyers. Program faculty included **Eric Foley & Ted Baker**, Afonso & Baker, P.C.; **David Dietz**, Camden County Prosecutor's Office; and **Jordan Zeitz**, Law Offices of Glenn A. Zeitz.



CRIMINAL LAW

New Hope In Deportation Defense During A Time Of Otherwise Great Uncertainty

By Derek A. DeCosmo

Immigration attorneys across the United States celebrated last June when the Supreme Court rendered its decision in *Mathis v. United States*. The Court reaffirmed its preference for employing the “categorical” approach when determining whether a particular offense carries a negative immigration consequence. For practitioners in New Jersey, the celebration of the *Mathis* decision turned into elation when the Third Circuit on August 28, 2016, in the unpublished decision *Chang-Cruz v. Attorney General*, followed the *Mathis* analysis and ruled that a conviction under N.J.S.A. Section 2C:35-7 for distributing, dispensing or possessing a controlled dangerous substance on or within 1,000 feet of school zone is categorically not an aggravated felony for immigration purposes.

The *Chang-Cruz* decision, despite not being published, has been a game-changer for attorneys representing noncitizen clients in both criminal and removal

proceedings. The decision is routinely being followed by the Immigration Courts and the Board of Immigration Appeals for cases arising out of the Third Circuit. This article attempts to explain the recent and rapid evolution of the case-law, which led to the *Chang-Cruz* decision, and offer practice pointers to immigration and criminal defense attorneys who represent noncitizens.

Under the immigration laws as interpreted by the courts, a noncitizen generally is not subject to removal or other negative immigration consequences based on a criminal conviction unless the conviction (whether state or federal) fits categorically within one of the criminal removal grounds. It is a greater challenge to determine whether a state conviction (as opposed to a federal conviction) matches a federal criminal ground of removal. For example, when a criminal ground of removal lists a conviction for “theft” as the ground of removal, it is

referring to the federal generic definition of a “theft.” If a non-citizen is convicted of theft under federal law, we know that the conviction meets the federal immigration law definition of “theft.” However, in keeping with “theft” as the example, not all states define “theft” the same way it is defined under federal law. This is true for many of the federal criminal grounds of removal and inadmissibility. A particular state may only require a “temporary” taking for a “theft” conviction whereas federal law requires the violator’s intent to “permanently” deprive an owner of her property.

The question becomes...how do we determine whether a state criminal conviction fits categorically within a federal criminal ground of removal? We must understand the various analytical approaches the courts will employ and the order in which they will employ them. The favored approach is the “categorical approach,” which requires

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LEGAL BRIEFS

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

◆ Capehart Scatchard’s **Vincent T. Cieslik** served as Chair of the Inaugural March of Dimes 5K Run for Babies which took place on Sunday, April 30, on the campus of Rowan University in Glassboro. Mr. Cieslik has taken on the role to raise awareness and important funding to help babies born prematurely or with birth defects. Mr. Cieslik handles high risk litigation for insured and self-insured companies, and represents individuals and companies in sophisticated real estate and banking matters.

◆ Capehart Scatchard is pleased to announce that **Vania Fider** recently joined the Firm’s Family Law Department in its Mt. Laurel office. Ms. Fider focuses her practice in all aspects of family law, including divorce, post judgment motions, custody and visitation, child support, alimony and simple adoption matters.

◆ Capehart Scatchard Shareholder, **Yasmeen S. Khaleel** spoke at a seminar sponsored by the Food Bank of South Jersey. Her presentation was entitled, “The Need for Estate Planning at Any Age: How to Protect Your Assets.” During her presentation, Ms. Khaleel, addressed the salient estate planning issues; necessary documentation; common mistakes and ways to facilitate a smooth transition of control or wealth upon disability or death.

Ms. Khaleel is the co-chair of the firm’s Wills, Trusts and Estates Department, as well as the Business and Tax Department. She focuses her practice on representing individuals, business owners, medical, dental and other professionals in estate planning, estate and trust administration, business succession planning and transactional and tax planning.

◆ **John Giordano** has joined Archer & Greiner as a Partner in the firm’s Philadelphia office,

where he will concentrate on government and regulatory affairs. Mr. Giordano has had an extensive career serving in government positions in Washington, D.C., Pennsylvania and New Jersey, and will be a key member of Archer’s Government Affairs Group. Prior to joining Archer, Mr. Giordano served as Deputy General Counsel to the Presidential Transition Committee of President Donald J. Trump. Immediately before joining the Trump Transition Team, he was the founding Assistant Commissioner for the division of Air Quality, Energy and Sustainability at the New Jersey Department of Environmental Protection (DEP).

Mr. Giordano is a Lecturer in Law at the University of Pennsylvania Law School, and a Faculty Advisor at The Wharton School’s Initiative for Global Environmental Leadership.

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CRIMINAL LAW

New Hope In Deportation Defense During A Time Of Otherwise Great Uncertainty

(Continued from Page 7)

adjudicators to determine whether all of the conduct covered under the statute of conviction fits within the alleged criminal removal classification. If it does not, the conviction does not fit within the removal classification. Importantly, adjudicators may not consider the particular conduct underlying the defendant's conviction. Application of the categorical approach follows upon Congress' choice to require a conviction and thus to rely on the criminal process to determine immigration consequences of criminal conduct.

When the categorical approach resolves the issue there is no further inquiry. The Immigration Judge under the categorical approach should only review the state statute of conviction and the federal definition of the offense. When the underlying state criminal statute creates multiple offenses and some of the offenses match the federal definition and some do not, the statute is considered to be divisible and the Immigration Judge may employ the modified categorical approach. Under

the modified categorical approach, the Immigration Judge may look at criminal court documents to determine what part of a criminal statute the defendant violated. They look to the indictment, plea colloquy, disposition, and other documents composing the conviction record. The Immigration Judge, however, will still not independently investigate criminal conduct, and will rely only on the conviction record.

The U.S. Supreme Court has repeatedly stated recently that "when the Government alleges that a state conviction qualifies as an 'aggravated felony' under the Immigration & Nationality Act ("INA"), we will generally employ a "categorical approach" to determine whether the state offense is comparable to an offense listed in the INA." *Moncrieffe v. Holder*, 133 S. Ct. 1678, 1684 (2013). The reason is that the INA asks what offense the noncitizen was "convicted" of, 8 U.S.C. § 1227(a)(2)(A)(iii), not what acts he committed. "[C]onviction" is "the relevant statutory

hook." *Id.* at 1685.

The most difficult area to determine whether the categorical or modified categorical approach should be employed is the area of drug trafficking immigration aggravated felonies. INA Section 101(a)(43)(B) relates to controlled substance trafficking and defines aggravated felony using two phrases: "Illicit trafficking," and a "federal drug trafficking crime." In essence, there are two separate routes by which a state felony controlled substance conviction may be deemed to be an aggravated felony. For every state of New Jersey CDS conviction, we must determine whether the offense would be an aggravated felony drug trafficking offense under either route. All courts prior to *Mathis* and *Chang-Cruz* would employ the modified categorical approach when analyzing N.J.S.A Section 2C:35-5 or 2C:35-7. Specifically, the courts believed that "manufacture, distributing or dispensing" all created separate offenses,

(Continued on Page 16)

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It was a great evening for the Bar Foundation as a bevy of fine wines, craft beers, fine food from Camden's CK Café (Cathedral Kitchen) and exciting silent auction items drew members and guests to Virtua's Barry Brown Health Education Center in Voorhees for its *Wine Tasting & Silent Auction*. With over 100 wines available for tasting, guests had plenty to sample throughout the evening.

Special thanks to Kaplan Leaman & Wolfe Court Reporting & Litigation Support for their generous event sponsorship and to Steve Boyle and the Brown Center staff for their hospitality and assistance throughout the planning stages and the event.



Start your wining!



Foundation President Casey Price & Val Price



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WINE & FOOD

By Jim Hamilton

Attending a wine tasting can be rewarding in many ways. In the case of the recent Camden County Bar Foundation wine (and beer) tasting, guests were supporting a fundraising event that helps underwrite the many meaningful Foundation projects. Undoubtedly, most people who were able to join us primarily were motivated by their desire to contribute to the charitable work the organization performs each year. The satisfaction thus gained likely is the greatest benefit from attending.

However, for those who sampled some of the many wines chosen for guests' consideration, the ability to experience wines with which most tasters were unfamiliar offered an opportunity to expand their wine horizons beyond wine labels or varietals most often purchased. At last year's tasting we turned to a wine retailer to recruit wine distributors to pour wines and beers they selected to pour for us. This year, thanks to the generous underwriting by Kaplan Leaman & Wolfe, a court reporting and litigation support

company, we were able to select the wines and beers ourselves and, except for wines we gratefully received from an area wine distributor, we did. When deciding on which wines to feature, there were two main goals. One was to be able to expose guests to grape varieties that ran the gamut from A (Assyrtiko) to Z (Zinfandel), with most being decidedly off the beaten path. Even the well-known varietals represented were from countries or regions to which many people do not turn when buying them. Thus, the two Cabernet Sauvignons were from Italy and Spain, and the Chardonnay we poured was from Argentina.

The second goal when deciding on the wines to acquire was their current availability. Every wine and beer offered was purchased from Wineworks, Route 70, Marlton. None were special orders so, absent a run by enthusiastic consumers, each can be found in the bins or on the shelves at that store. This should alleviate any disappointment that can occur when a wine is discussed in this column but, for many



reasons, can be difficult to find in our market. Wineworks priced the wines and beer to enable us to maximize our purchasing ability, which is another reason to visit them to buy any favorites. If you were unable to attend the tasting but would like a copy of the wine lineup feel free to email me at jimhamilton@dshllaw.com.

Besides missing the chance to taste more than 50 different wines and a bevy of craft beers (except for the light beer chosen for the calorie conscious), those of you who could not participate missed the chance to bid on scores of interesting items, from vacations and memorabilia to a variety of wine and gift baskets

(Continued on Page 13)

Save These Fall Dates!



Monday, September 11 • 9 am
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Tuesday, September 19 • 6:30 pm
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Monday, October 9
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Enjoy your summer and refer to your E-Barrister for additional information and registration materials for these events and others such as the Young Lawyer Larc School Fundraiser, the Judge John F. Gerry Award Presentation, our CLE Seminar lineup, and more!

See you in September!



By Louis R. Moffa, Jr.

PRESIDENT'S PERSPECTIVE

Grazie Mille a Tutti!

Thank you so much for a great year as the 90th President of the Camden County Bar Association. It is hard to believe that 12 short months ago I started this journey on the road to hundreds of non-billable but truly rewarding and enjoyable hours. I would like to take this opportunity to reflect on some of the more memorable times and achievements.

Keep your belts on! Working closely with Assignment Judge Deborah Silverman Katz and the Camden County Sheriff's Office, we set up a new ID card system for the Camden County Courthouse. Members of the CCBA enjoy a discounted price for an official photo ID card that enables bearers to use the employees-only security line when it is open and to keep their belts on as they proceed through screening. Sales of the cards already have exceeded our expectations, and we have received many compliments and congratulations on the program. If you don't have one yet, step up and get yours today.

Fifty is Fabulous! At our Holiday Party in December, we paid tribute to our members who have been part of the CCBA for 50 years or more. It was truly an honor and a privilege to meet these extremely accomplished judges and lawyers and to give each of them a token of their achievement and our appreciation. I hope it is a tradition that will live on for many years.

Bye Bye By-laws! For the first time in decades, we passed a revised set of CCBA By-laws. Streamlined, modernized, cleaned-up in a process that spanned a couple of presidential terms, the amended By-laws were passed at the annual membership meeting held during the Holiday Party. We no longer have "two" many vice presidents, and our operating procedures are more clearly spelled out. This process should be repeated at least every five years.

Welcome new judges! I had the pleasure of welcoming six new judges to the Camden vicinage this year, including my friend and former CCBA President Linda Eynon, and my cousin, Christine Orlando. Both come to the bench following strong family legacies. Along with Judges Thomas Booth, Judy Charny, Frank Dominguez, and Yolanda Rodriguez, Judges Eynon and Orlando bring great intellect, charm, wit and wisdom to Camden, and they are all committed to the fair and effective administration of justice. We look forward to working with all of them.

Welcome new citizens! I also had the pleasure of welcoming dozens of immigrants into the ranks of U.S. citizens in three separate naturalization ceremonies. Each was a moving and inspirational experience, especially the two ceremonies

conducted on the Battleship New Jersey. It was truly an honor to shake the hands of so many people who persevered through the system and fully embraced our country.

Except for our Native American brothers and sisters, we are all descendants of immigrants. As Dr. Martin Luther King, Jr., said, "we may have all come here on different ships, but we're in the same boat now." We must not fear our differences. We must embrace our diversity. Those truths seem to be overlooked or forgotten in much of today's heated political discourse on the subject of immigration, but they must not and cannot be forgotten. As lawyers and judges we have a special duty to insure that the fundamental legal principles on which this nation was founded are applied and enforced fairly and equally to all persons present within our borders.

For our part in the CCBA, we must always strive to bring meaningful, effective representation and access to justice to our clients; to bring citizens a better understanding of the law; and to bring our spirit of service and giving to those less fortunate. That is our goal, our mission and our passion.

It has truly been an honor and a privilege, and my pleasure, to serve this year as President, and I look forward to working with Eric Fikry as he takes the helm.

Ciao!



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YOUNG LAWYER HAPPENINGS



YOUNG LAWYER CHAIR

By Amir Goodarzi & Tom Hagner

Well the time has finally arrived for writing my last Young Lawyer Trustee's article for *The Barrister*. It has been a pleasure being able to speak with all of you about all sorts of topics, from the differences in life between California and New Jersey through learning about leadership and community. This past year as the Young Lawyer Trustee has been an enormous learning experience and one that has helped form the role I see myself taking in our profession.

I have many people to thank for helping me become part of the Bar Association and the Young Lawyers. I remember when I first joined nearly three years ago I had recently joined Asbell & Eutsler under the amazing direction and guidance of Brenda Lee Eutsler and Sam Asbell. Brenda was gracious enough to swear me in as an attorney into the New Jersey State Bar. I learned an incredible amount from her and I will always hold dear her lessons. She is the one who first showed me the amazing deeds attorneys can provide to the community even while running a law practice. Her work representing people in guardianship proceedings when they had no one to take care of them or, sometimes, no one trustworthy, will always sit with me as the perfect example of why our profession is so much more than litigating and fighting.

Aloha!

She is also the person who introduced me to the importance of the Bar Association and being part of a community of lawyers. I have since met many attorneys in Camden who also do amazing work for their clients and others. Whether it is the Christmas gift drive, the Children's Picnic, or any of the number of events that the Bar puts on, you get to meet great people doing great work.

In addition to Brenda, I would also like to thank Sam Asbell, Isabel Martins, Carol Lopez, Brian Herman, and James Herman for welcoming me into their work family. I would also like to thank Jenifer Fowler, Matt Rooney, Rachael Brekke, Jeanette Kwon, Abe Tran, Lou Moffa, Larry Pelletir, Mike Dennin, and so many others in the Bar Association for all their amazing work and support for the Young Lawyers. I would also like to congratulate Eric Fikry on his new role as President of the Bar Association for the upcoming year and can't wait to see what is in store next.

Lastly, I would like to introduce you all to Thomas A. Hagner, your incoming Young Lawyer Trustee for the 2017-2018 year. Tom has been an enormous part of our committee and a big help in so many of our activities. You are all in great hands with Tom taking the lead for our upcoming events.

While this is my last article as the Young Lawyer Trustee, it is not goodbye. I will be joining the Bar Association as a Trustee this June and will continue to be part of our amazing association. Now, please let me introduce Tom Hagner as your new Young Lawyer Trustee.



First and foremost, I would like to take the opportunity to thank Amir for all of his hard work as the 2016-2017 Young Lawyer Trustee. I would like to further thank all of the outgoing officers, trustees, and chairs, who have similarly dedicated their time and effort to the success of the Bar Association.

Many of you may be scratching your heads saying, "Tom Hagner? Young Lawyer Trustee? Hasn't he been practicing law a little too long to qualify as a Young Lawyer?" In order to quell any potential confusion, please allow me to briefly introduce myself. My name is Thomas Andrew Hagner, and I am an associate with the law firm of Hagner & Zohlman, LLC. I am fortunate enough to work alongside with both my father, Thomas J. Hagner, and his Partner, John A. Zohlman, III. My areas of practice include complex commercial/business litigation, ERISA/disability benefits litigation, commercial and residential Landlord/Tenant law, as well as personal injury and premises liability litigation.

Now that you've heard enough about me, I'd like to shift the focus of the remainder of this article to the upcoming 2017-2018 year. Although this past year played host to numerous rewarding events, and the Bar Foundation raised substantial amounts of funds raised for a variety of noble causes, as with everything in life, there is always room for improvement and for growth! In order to improve and grow, it is essential that the individual members of the Bar Association,

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WINE & FOOD

Continued from Page 10

donated by Association members and so ably coordinated by our head recruiter and auctioneer, Michelle Badolato. Beermeister Abe Tran worked hard all evening filling pilsner glasses for hops fans, while Jeanette Kwon was kept busy attending to the white wines.

As with any fundraiser, the most important ingredient for success is the support of the participants. Over many years writing this column I have received feedback from readers that I have tried to incorporate when determining content. This month, I thought it might be both fun and instructive if we identified wines we poured at the wine tasting that particularly pleased tasters.

Doreen Guss from our sponsor, Kaplan Leaman & Wolfe, singled out the **2015 Marco Felluga Mongris Pinot Grigio**. Pinot Grigio is a popular wine and Marco Felluga is a quality, if under the radar, producer. However, most commonly consumed Pinot Grigio comes from Italy's Alto Adige region, so this one was selected because it is from the Collio region bordering Slovenia.

Foundation President, Casey Price, said he enjoyed all of the wines he tasted but failed to note which ones he tried. However, he does recall the **2015 Perrier Apremont**, a "summer-in-a-glass" white wine made from the Jacquere grape.

Past Association President Jenifer Fowler found the **2015 Domaine de la Pepiere Muscadet** to her liking. This wine, made from the Melon

de Bourgogne grape, is the quintessential oyster/seafood wine made in the far western Loire Valley of France, near the lively city of Nantes. Jen's husband, Chris, was one of many fans of the **2015 Tait Ball Buster**, a popular Australian Shiraz with a name that inspires a snarky comment that will *not* be offered here. Jen's other partner, Steve Eisner, also enjoyed the TailBall Buster, as well as the **2014 La Tremenda**, a wine from Spain's Jumilla region that is made from the Monastrell (a/k/a Mourvedre) grape. This is a red wine value I came across perhaps a year ago and reported on with enthusiasm in this column. The fact that it remains available at Wineworks is surprising to me, but it explains why the equally impressive white wine from this winery has failed to penetrate our market.

Lou Hasner offered two wines he enjoyed—the **2016 Cairnbrae Sauvignon Blanc** from New Zealand and **2015 Quinta Milu**, an old vines Tempranillo (red) wine from Spain's Ribero del Duero. The latter wine was discussed previously here and, while relatively new to our market, seems well equipped to stand up to many of the more expensive wines from that region, including those from the better known Rioja. Lou's guest, Bob Kennedy, the wine columnist for *Jersey Man* magazine, singled out the **2015 Produttori del Barbaresco Langhe Nebbiolo** as a standout from among the wines he tasted. Indeed, this was a popular wine, offering Barbaresco character (the sister region to Barolo in Italy's Piedmont made from the Nebbiolo grape) at less than half the price. This producer, one Linda and I visited some years back, is widely regarded as one of the top wine cooperatives in the world, where more than 50 grape growers use a winemaker to fashion their grapes into some of the top wines and wine values from that area of northern Italy. Lou's partner and son, Dave Hasner, chose the **2015 Gunderloch Jean Baptiste Riesling** as his favorite. As you know from last month's interview with the national president of the

(Continued on Page 14)

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WINE & FOOD

Continued from Page 13

German Wine Society, 2015 was an exceptional year for German wines, and this Kabinett level offering underscores that observation.

Mike Dennin pointed to the **2014 Bodega Calle Alberti Malbec** as his winner. In an increasingly crowded field of Argentinean Malbec, this is a producer that has a chance to compete with some of the better known wineries vying for attention at Wineworks and other area shops.

From my firm, Dave Weissman was another fan of the Produttori Nebbiolo, but also agreed with our photographer and friend, Bud Cardone, that the **2015 Elio Altare Barbera** was a winning wine from a top flight producer. One of the more outgoing winemakers I've encountered, at a dinner and again at a trade tasting, is Silvia Altare, Elio's daughter. While Elio remains in charge of a winery he established some 50 years ago, Silvia seems destined to assume greater control of what is very much a small, family operation best known for its Barolo wines. Juliana Pettito's favorite wine was the **2014 Vina Chocalan Reserva**, a wine from Chile made with that country's signature red grape, Carmenere. Juliana also enjoyed the Tuckahoe Brewing Company Anglesea Irish Red Ale.

Finally, my wife Linda offered three favorites: the Produttori Nebbiolo, the Bohigas Cava and also the **2015 Lomas del Valle Pinot Noir** from Chile.

Thanks to all who attended, those who have shared their impressions of wines offered for this column and to all of you who read this column. I hope you find wines you will enjoy this summer. Until we reconvene in the fall—Cheers!

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YOUNG LAWYER CHAIR

Aloha! (Continued from Page 12)

especially the young lawyers, commit themselves to the efforts of the group. As the great Vince Lombardi once said, "Individual commitment to a group effort – that is what makes a team work, a company work, a society work, a civilization work."

That said, I look forward to the Young Lawyer Committee continuing to host prosperous events that benefit both the Bar Association and our local communities. It is important that we not forget our responsibility to serve and give back to the County of Camden and its residents. Accordingly, the Young Lawyer Committee will be renewing its commitment to the Larc School, to the Adopt-A-Family Program, to the Cathedral Kitchen, to the Anna Sample House, and to each and every organization with whom we work to provide better lives for those in need.

Now, you might be asking yourself, "With so much work to be done, when will I have time to simply kick back and relax with my colleagues from the Bar Association?" Fear not fellow fun-seekers, the 2017-2018 year will be chock full of happy hours, networking events, and other social activities geared toward the pursuit of happiness. Make sure to stay tuned not only to *The Barrister*, but also to the Camden County Bar Association and Young Lawyer Committee Facebook pages, so that you can stay up to date on each and every one of our events.

In closing, I would like to thank Jenifer Fowler and the rest of the Nominating Committee for selecting me to be the 2017-2018 Young Lawyer Trustee. I truly look forward to serving, and look forward to seeing everyone at the Installation Dinner Dance on June 9, 2017.

PERSONAL INJURY LAW

Divorce And Public Benefits

(Continued from Page 4)

not permitted to be used to discharge a parent's legal obligation of support.

How Should The Money Be Invested?

Any money placed in the SSSNT should be invested in accordance with the Uniform Prudent Investor Act. Because the assets need to last throughout the lifetime of the person with disabilities, they should be invested conservatively, with the objective of preserving principal while providing the growth necessary to outpace inflation and taxes. There should be a written Investment Policy Statement in place that specifies the acceptable level of investment risk to be taken and that outlines the trust's investment strategy.

How Is A Trustee Selected?

Family members often want to serve as trustees of SNTs. However, a professional trustee is usually a better option if the trust has sufficient assets. If the trust is simply for alimony or child support, which is generally distributed in the month received, then a family member is likely the only option. However, if sufficient money will remain in the trust to employ a professional trustee, the outcome is usually better. A trustee must have experience and expertise in the following areas, at a minimum:

- The Uniform Prudent Investor Act;
- The Principal and Income Accounting Act; and
- Public benefits laws.

Since family members rarely have this expertise, a better solution is to select a professional trustee. Family members can remain involved by serving as trust protectors.

What Agency Approvals Are Required?

- *Social Security Administration (SSA)*. If the person with disabilities is receiving SSI, the SSSNT should be filed with the SSA.
- *Medicaid*. If the person with disabilities is receiving Medicaid, the trust should be filed with the State Medicaid Agency.

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The Labor & Employment Committee recently held the *Lunch & Learn* CLE program "Understanding Psychological Fitness-For-Duty Evaluations" at Bar Headquarters. Program presenters were **Bill Cook**, *Brown & Conner*, and **Dr. Jennifer Kelly, Ph.D.**, Haddonfield.



Harry A. Green, Psy. D., from Medical Behavioral Health Care in Cherry Hill, and **Scott Levine**, with Gerstein, Grayson & Cohen in Mt. Laurel, recently presented the topical CLE program *Family Law: Third Party Custody: Including Artificial Insemination & Gestational Carrier Issues*.

CRIMINAL LAW

New Hope In Deportation Defense During A Time Of Otherwise Great Uncertainty

(Continued from Page 8)

thus making the statute divisible and requiring the use of the modified categorical approach to determine for which offense within 2C:35-7 the noncitizen was convicted. In most cases this led to a finding by the Immigration Judge that the noncitizen was convicted of a drug trafficking offense as that term is defined under federal law.

The *Mathis* decision bolstered strict application of the categorical approach for determining when a conviction will cause adverse immigration consequences. In *Mathis*, the Supreme Court emphasized that courts should focus on the elements of the state and federal crimes. 136 S. Ct. at 2254 & n. 4 (2016) (quoting *Descamps v. United States*, 133 S. Ct. 2276, 2285 (2013)). See also *Moncrieffe v. Holder*, 133 S.Ct. 1678 (2013). If the elements of the state offense match up with, or are narrower than those of the generic federal offense, then the state offense is an aggravated felony. Otherwise, the offense is not an aggravated felony. The *Mathis* Court concluded that the elements of Iowa's burglary law were broader than those of federal generic burglary and that, consequently, *Mathis*'s convictions could not give rise to a sentence enhancement under the Armed Career Criminal Act ("ACCA").

Mathis requires that, when "faced with an alternatively phrased statute," we must "determine whether its listed items are alternative elements," which must be unanimously found by a jury (or found by a judge at a bench trial) beyond a reasonable

doubt to sustain a conviction, or instead are alternative "means" that a jury need not unanimously find. 136 S. Ct. at 2256.

Since the Supreme Court's decision in *Mathis* was issued, the Third Circuit Court of Appeals, in a non-precedential decision, *Chang-Cruz v. Attorney General*, ___ F.3d ___, No. 14-4570 (3d. Cir. 2016), relied upon *Mathis* in applying the categorical approach to find that a New Jersey conviction for controlled-substance violations near a school was not an aggravated felony drug trafficking offense for immigration purposes.

In *Chang-Cruz* the Court was analyzing New Jersey's possession with intent to manufacture, dispense and distribute statute at N.J.S.A. Section 2C:35-7 in light of the *Mathis* decision. In addition to finding that manufacturing, dispensing and distributing constituted alternative means and not alternative elements, the Court determined that the least culpable conduct in the New Jersey statute was to possess with the intent to dispense a controlled substance. The court compared this least culpable conduct to sustain a conviction under the New Jersey statute to the generic federal definition of a federal controlled substance violation and established that such conduct would not be a federal CSA felony. *Id.* The court reasoned that N.J.S.A. Section 2C:35-7 sweeps more broadly than U.S.C.A. Section 860, which criminalizes distribution but not dispensing.

While not precedential, the *Chang-Cruz* decision is being followed by Immigration Judges within the jurisdiction of the Third Circuit as well as by the Board of Immigration Appeals, which is the appellate body that engages in the first level of review of all Immigration Judge decisions. It is widely expected that within the next year a precedential decision will be rendered that will either affirm or reject the analysis of *Chang-Cruz*. For now, immigration practitioners should follow the analytical framework of *Chang-Cruz* and the case should be appropriately cited when facing 2C:35-7 conviction. They should also argue that its reasoning extends to 2C:35-5 convictions as well. Criminal practitioners should look to plead their clients under 2C:35-7 even if the indictment only charges a 2C:35-5 offense when protection of immigration status is a critical concern for your client. In addition, any factual basis should utilize language as it relates to "dispensing" in the event that the courts in the future return to the modified categorical approach.



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(Continued from Page 7)

♦ Timothy J. Rice, founding partner of Timothy Rice Estate and Elder Law (TREETL), recently was a featured speaker at an Eldercare workshop entitled "When It's Time to be a Parent To Your Parents," held at the Cherry Hill, NJ offices of Wealth Bridge Advisory Services. The workshop addressed many of the more pressing issues facing adult children when they realize their parents can no longer be the parent or person they once were, and the family requires more help than the adult children themselves can provide directly. Among those concerns are an understanding and knowledge of the legal matters and issues involved.

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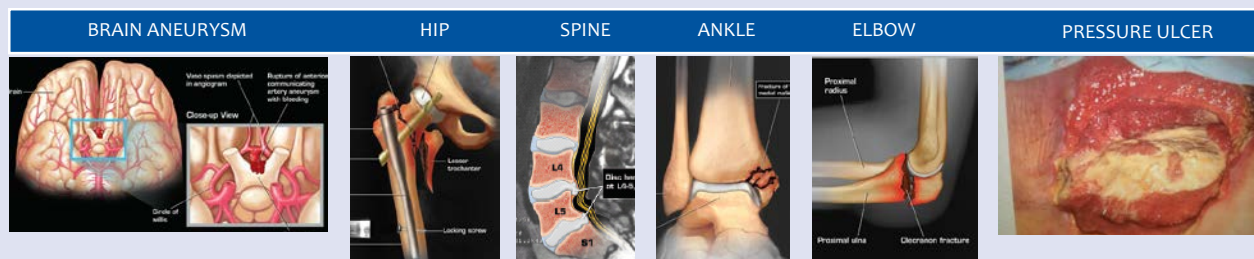
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